

Washington International Law Journal

Volume 32 | Number 1

12-30-2022

The Mutual Legal Assistance Regime in Afghanistan: Assessing Compliance with International Law and Exposing Loopholes (2001-2021)

Abdul M. Hazim
Arizona State University Sandra Day O'Connor College of Law

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wilj>



Part of the [International Law Commons](#)

Recommended Citation

Abdul M. Hazim, *The Mutual Legal Assistance Regime in Afghanistan: Assessing Compliance with International Law and Exposing Loopholes (2001-2021)*, 32 Wash. Int'l L.J. 46 (2022).

Available at: <https://digitalcommons.law.uw.edu/wilj/vol32/iss1/4>

This Article is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington International Law Journal by an authorized editor of UW Law Digital Commons. For more information, please contact lawref@uw.edu.

THE MUTUAL LEGAL ASSISTANCE REGIME IN AFGHANISTAN: ASSESSING COMPLIANCE WITH INTERNATIONAL LAW AND EXPOSING LOOPHOLES (2001-2021)

Abdul Mahir Hazim*

Abstract: To constrain transnational crime effectively and strengthen mutual legal assistance mechanisms among member states, the United Nations adopted four Suppression Conventions: the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, the 1999 UN International Convention for the Suppression of the Financing of Terrorism, the 2003 UN Convention against Transnational Organized Crime, and the 2005 UN Convention against Corruption. Ratified globally, these conventions contain many similar or identical mutual legal assistance obligations and non-mandatory measures with which state parties either must or should comply. Afghanistan is a state party to all four UN Suppression Conventions.

This article examines the Afghan domestic mutual legal assistance mechanisms and the extent to which they comply with the requirements of the UN Suppression Conventions. This article identifies and analyzes the relevant provisions of Afghanistan's domestic law and proceeds to compare and contrast those provisions with the requirements set forth by the UN Suppression Conventions. The resulting analysis reveals how Afghanistan has either fully or partially complied or else completely failed to comply with its mutual legal assistance obligations. The article also reveals the extent to which Afghanistan has either fully or partially incorporated or else entirely failed to incorporate the UN Suppression Conventions' non-mandatory mutual legal assistance measures.

This article then exposes loopholes in the Afghan mutual legal assistance mechanisms. These include serious problems and inconsistency in use of legal terminology; setting unrealistic and inconsistent time frames and deadlines for taking or completing actions; and designating competent authorities and a central authority. The article also reveals how the implementation of domestic legislation confuses mutual legal assistance with extradition and lacks clear references to the international obligations arising from the UN Suppression Conventions.

* Visiting Associate Research Professor, Arizona State University Sandra Day O'Connor College of Law; Ph.D. (2020) & LLM (2016), University of Washington School of Law. I am deeply grateful to Professor Jon Eddy for his incredible guidance and support during writing my Ph.D. dissertation at the University of Washington (this article is extracted from said dissertation). I thank Gayle Zilber very much for reviewing this article and providing thoughtful comments and edits. I also deeply appreciate the Institute of International Education (IIE) for sponsoring my visit at Arizona State University. Finally, my heartfelt gratitude goes to the editorial team of the *Washington International Law Journal* for carefully reviewing this article and providing insightful comments and useful edits.

INTRODUCTION	48
I. INTERNATIONAL LAW AND MUTUAL LEGAL ASSISTANCE OBLIGATIONS IN THE CONTEXT OF AFGHANISTAN: AN OVERVIEW	50
II. EXTENT OF AFGHAN DOMESTIC LAWS' COMPLIANCE WITH MUTUAL LEGAL ASSISTANCE UNDER THE UN SUPPRESSION CONVENTIONS.....	56
A. Compliance Assessment of Domestic Laws Related to Afghanistan's International Mutual Legal Assistance Obligations	60
B. Examination and Assessment of Provisions Related to Non-Mandatory Measures	77
III. OTHER AFGHAN DOMESTIC MUTUAL LEGAL ASSISTANCE PROVISIONS.....	85
A. Competent Authorities That Can Authorize/or Respond to a Mutual Legal Assistance Request	85
B. Conditions for Providing Legal Assistance	89
C. The Role of the AGO in Transmitting and Rendering Evidence and Documents	89
D. The Role of the Courts in Transmitting and Rendering Documents and Assets	90
E. Responding to Requests from More Than One Country at Once	91
F. Conditions Required to Execute a Foreign Court Order.....	91
G. Admissibility of Cross-Border Evidence	92
IV. TRACING PROBLEMS AND INCONSISTENCIES WITHIN AFGHAN DOMESTIC LAWS.....	92
A. Problems with Language and Terminology	93
B. Problem of Time Frames.....	93
C. The Problem of a Central Authority	94
D. Conflating Mutual Legal Assistance with Extradition	95
E. Lack of Reference to Afghanistan's International Obligations	96
CONCLUSION.....	96

INTRODUCTION

In our globalized world, cross-border criminal activities continue to increase both in number and complexity. The ever-growing movement of people, goods, and wealth across national boundaries along with technological innovations have significantly and steadily contributed to a surge in transnational criminal activities such as human trafficking, cybercrime, terrorism, drug trafficking, and money laundering. In recognition of the serious threat posed by transnational crime, as well as its far-reaching effects, the international community, by way of the United Nations (UN), has developed mutual legal assistance mechanisms to facilitate the flow of information and evidence among member states so as to enable more effective containment of transnational crimes. Mutual legal assistance refers to the process by which States seek and provide assistance to other States by servicing judicial documents and gathering evidence for use in criminal cases.¹

Over the past four decades, the UN has adopted four “UN Suppression Conventions” intended to combat various criminal activities:² the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (“Vienna Convention”);³ the 1999 UN International Convention for the Suppression of the Financing of Terrorism (“Financing Convention”);⁴ the 2003 UN Convention Against Transnational Organized Crime (“UNCTOC”);⁵ and the 2005 UN Convention Against Corruption

¹ United Nations Office on Drugs and Crime (UNODC), Mutual Legal Assistance (MLA) <https://www.unodc.org/e4j/en/organized-crime/module-11/key-issues/mutual-legal-assistance.html> (last visited Aug. 1, 2022).

² The author has drawn the term “UN Suppression Conventions” from Neil Boister’s book: *AN INTRODUCTION TO TRANSNATIONAL CRIMINAL LAW* (2d ed., 2018).

³ See United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances art. 7, Nov. 11, 1990, 1582 U.N.T.S. 95. [hereinafter Vienna Convention]. Afghanistan signed the Vienna Convention on Dec. 20, 1988 and ratified it on Feb. 14, 1992, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=VI-19&chapter=6&clang=_en (last visited Dec. 17, 2021).

⁴ See International Convention for the Suppression of the Financing of Terrorism art. 12–17, Apr. 10, 2002, 2178 U.N.T.S. 197. [hereinafter Financing Convention]. Afghanistan acceded to the Financing Convention on Sep. 24, 2003, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtmsg_no=XVIII-11&chapter=18&clang=_en (last visited Dec. 18, 2021).

⁵ See United Nations Convention against Transnational Organized Crime art. 7, 18, Sep. 29, 2003, 2225 U.N.T.S. 209. [hereinafter UNCTOC]. Afghanistan signed UNCTOC on Dec. 14, 2000, and ratified it on Sep. 24, 2003, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=XVIII-12&chapter=18&clang=_en (last visited Dec. 18, 2021).

⁶ See United Nations Convention Against Corruption art. 14 (b), 46, Dec. 14, 2005, 2349 U.N.T.S. 41. [hereinafter UNCAC]. Afghanistan signed UNCAC on Feb. 20, 2004 and ratified it on Aug. 25, 2008, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg_no=XVIII-14&chapter=18 (last visited Dec. 19, 2021).

(“UNCAC”).⁶ Because these have been ratified by an overwhelming proportion of states, these convention are authoritative.⁷ A primary goal for these UN Suppression Conventions is to enhance international cooperation in the fight against transnational crime.⁸ In addition to other international legal cooperation methods such as extradition, mutual legal assistance serves as an integral part of these conventions. In total, the UN Suppression Conventions establish seventeen (17) obligations and recommend an additional eight (8) non-mandatory measures related to mutual legal assistance.⁹ This article assesses the extent to which the Islamic Republic of Afghanistan incorporated these obligations and recommended measures into its domestic law prior to its fall in 2021.¹⁰

Analytically comparing the relevant provisions of Afghan domestic law with the requirements set forth by the UN Suppression Conventions¹¹ reveals that, out of the seventeen (17) obligations,¹² Afghanistan has fully complied

⁶ See United Nations Convention Against Corruption art. 14 (b), 46, Dec. 14, 2005, 2349 U.N.T.S. 41. [hereinafter UNCAC]. Afghanistan signed UNCAC on Feb. 20, 2004 and ratified it on Aug. 25, 2008, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-14&chapter=18 (last visited Dec. 19, 2021).

⁷ At least 189 states are party to each of the four UN Suppression Conventions. The fewest number of parties (189) have ratified the Financing Convention. See Financing Convention, *supra* note 4; See also UNCAC, *supra* note 6; UNCTOC, *supra* note 5; Vienna Convention, *supra* note 3.

⁸ See e.g. UNCTOC, *supra* note 5, at art.1. Article 1 of the UNCTOC stipulates that “[t]he purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.”

⁹ Figure 1 details the UN Suppression Treaties’ mutual assistance-related obligations and recommended measures, which the author delineated and analyzed in a separate article. See Abdul Mahir Hazim, *Identifying and Understanding Mutual Legal Assistance Obligations under International Law: The Case of Afghanistan*, 25 Gonz. J. Int’l L. 2 (forthcoming 2022). It must be noted that this article was drawn from the author’s Ph.D. dissertation, *Transnational Crime, Mutual Legal Assistance, and Compliance with International Obligations in the Developing World: Reforming and Enforcing Legal Mechanisms to Effectively Combat Transnational Crime in Afghanistan* (2020) (Ph. D. dissertation, University of Washington).

¹⁰ The Taliban has not officially rescinded nor endorsed any laws enacted under the previous Afghan government. On multiple occasions, the Taliban has cited laws from the previous government and indicated that those laws are still in force. However, significant evidence exists to indicate that the Taliban’s actions violate many laws enforced before their takeover, particularly in the field of women’s rights as well as civil and political rights. In any scenario, this study and its findings are valuable and remain relevant and informative to the understanding of the relationship between international law and Afghanistan’s domestic law for the years to come.

¹¹ In terms of method, this article analyzes the requirements and recommendations of the UN Suppression Conventions in mutual legal assistance area and compares them with the provisions of the relevant Afghan national statutes. To understand whether and to what extent Afghanistan incorporated the requirements of the conventions, it develops three separate assessment criteria against which the degree of incorporation of each requirement can be analyzed: full compliance/incorporation, partial compliance/incorporation, and non-compliance/not incorporated. See *infra* Section III (A), (B).

¹² See *infra* Figure 1.

with only seven (7) obligations (41.2%), has partially complied¹³ with three (3) obligations (17.6%), and has not complied at all with seven (7) obligations (41.2%). The comparative analysis also reveals that, out of the eight non-mandatory measures, Afghanistan has fully incorporated only two measures (25%), partially incorporated two measures (25%), and has completely failed to incorporate four measures (50%).

In addition, his article further explores and reveals many contradictions, inconsistencies, and shortcomings that exist in the current mutual legal assistance mechanisms in Afghanistan. These include serious problems and inconsistencies with respect to the use of legal terminology; lack of coordination between international treaties and domestic law; setting unrealistic and inconsistent time frames and deadlines for taking or completing actions; and inconsistent or deficient designation of competent authorities.

Furthermore, some Afghan laws conflate mutual legal assistance with extradition, thereby intermingling inapposite provisions. Moreover, in general, Afghanistan's domestic legislation often putatively implements the UN Suppression Conventions without clearly referencing the specific international obligations the law purports to address.

Part I of this Article briefly highlights Afghanistan's mutual legal assistance obligations under the UN Suppression Conventions and situates the status of these obligations under Afghan domestic law. Part II assesses the extent of Afghanistan's compliance with its international mutual legal assistance obligations and the non-mandatory measures as set forth by the UN Suppression Conventions. Part III examines Afghanistan's domestic law provisions that relate neither to the aforementioned international obligations nor to the non-mandatory measures, but nonetheless regulate certain procedures related to mutual legal assistance. Part IV exposes many loopholes and contradictions within the Afghan domestic mutual legal assistance regime.

I. INTERNATIONAL LAW AND MUTUAL LEGAL ASSISTANCE OBLIGATIONS IN THE CONTEXT OF AFGHANISTAN: AN OVERVIEW

The four UN Suppression Conventions impose many mutual legal assistance obligations and recommend several non-mandatory measures on

¹³ As a working definition, "partial compliance means the provisions of the relevant Afghan laws either embody only part of the UN Suppression Conventions' requirements related to an obligation, or their language is not as clear as the conventions require." *See infra* Section III (A).

State Parties, including Afghanistan. In a separate article, the author delineated and analyzed Afghanistan's seventeen (17) mutual legal assistance obligations and eight non-mandatory measures set forth by the four UN Suppression Conventions.¹⁴ Nearly all of Afghanistan's obligations come from three of the four conventions: the Vienna Convention, the UNCTOC, and the UNCAC.¹⁵ The provisions related to mutual legal assistance found in these conventions are very similar and often utilize identical wording and rules.¹⁶ The UNCTOC and UNCAC contain the most extensive and widest coverage of mutual legal assistance obligations.¹⁷ By contrast, the Financing Convention's provisions are not very comprehensive and well-organized as compared to the other three conventions.¹⁸ As shown in Figure 1, the Vienna Convention, UNCTOC, and UNCAC separately impose nearly all the listed obligations for Afghanistan.¹⁹ Consequently, Afghanistan is subject to similar or identical obligations under various conventions, but related to the different crimes addressed by each convention.²⁰

Figure 1. An overview of Afghanistan's obligations under the four UN Suppression Conventions²¹

No	Obligations	UN Conventions			
		Vienna Convention	Financing Convention	UNCTOC	UNCAC
1	Set the scope of mutual legal assistance	YES	YES	YES	YES
2	Provide mutual legal assistance where offenses involve a legal person	NO	NO	YES	YES
3	Determine specific purposes for mutual legal assistance	YES	NO	YES	YES
4	Follow the conventions' procedures in the absence of an actual legal assistance treaty	YES	NO	YES	YES

¹⁴ See Hazim, *supra* note 9.

¹⁵ See *id.*

¹⁶ See UNCTOC, *supra* note 5, at art.18; UNCAC, *supra* note 6, at art. 46; Vienna Convention, *supra* note 3, at art. 7.

¹⁷ See UNCTOC, *supra* note 5, at art.18; UNCAC, *supra* note 6, at art. 46.

¹⁸ As demonstrated by Figure 1, the Financing Convention imposes only three mutual legal assistance obligations on State Parties, a number far smaller as compared to the number of obligations under the UNCTOC and UNCAC.

¹⁹ See Hazim, *supra* note 9.

²⁰ See *id.*

²¹ Figure 1 is adopted in its entirety from the author's forthcoming Article, *Identifying and Understanding Mutual Legal Assistance Obligations under International Law: The Case of Afghanistan* (forthcoming 2022), *supra* note 9. Please refer to this article for an extended explanation of each obligation.

5	Bar bank secrecy as grounds to refuse mutual legal assistance	YES	NO	YES	YES
6	Designate a central authority	YES	NO	YES	YES
7	Make requests in writing	YES	NO	YES	YES
8	Set requirements for content of mutual legal assistance requests	YES	NO	YES	YES
9	Use information or evidence only for the requested purposes	YES	YES	YES	YES
10	Require speedy execution of requests	NO	NO	YES	YES
11	Mandate confidentiality	YES	NO	YES	YES
12	Requested state must bear the ordinary cost of executing a request	YES	NO	YES	YES
13	Provide copies of publicly available records, documents, or information	NO	NO	YES	YES
14	Provide mutual legal assistance for purposes of confiscation and recovery of assets	YES	NO	YES	YES
15	Determine the scope of law enforcement cooperation	YES	YES	YES	YES
16	Enable national authorities to cooperate and exchange information (particularly in money-laundering cases)	NO	NO	YES	YES
17	Establish special investigative techniques	NO	NO	YES	YES

In Figure 1, “YES” indicates the obligation is present under a specific convention, and “NO” means the obligation does not exist under a convention.

In addition to the above-listed obligations, the four UN Suppression Conventions recommend many other measures to be taken by State Parties, herein referred to as “non-mandatory measures.” Although not obligatory, these non-mandatory measures can contribute significantly to the development of functional and effective domestic mutual legal assistance apparatuses. .²² Without the inclusion of these recommended measures, mutual legal assistance regimes may not be complete or sufficiently responsive. Accordingly, it would be imperative for Afghanistan to incorporate those measures into its domestic legal system. The author identified eight (8) non-mandatory measures, the majority of which are recommended by two of the four UN Suppression Conventions: the UNCTOC and UNCAC.²³

²² See Hazim, *supra* note 9.

²³ See *id.*

Figure 2. An overview of non-mandatory measures under the four UN Suppression Conventions²⁴

No	Non-Mandatory Measures	UN Conventions			
		Vienna Convention	Financing Convention	UNCTOC	UNCAC
1	Communicating information spontaneously	NO	NO	YES	YES
2	Requirements for transfer of a person	NO	YES	YES	YES
3	Conducting hearing through videoconference	NO	NO	YES	YES
4	Grounds for refusal	YES	NO	YES	YES
5	Grounds for postponing mutual legal assistance	YES	NO	YES	YES
6	Entering into new agreements and arrangements	YES	NO	YES	YES
7	Facilitating cooperation via use of modern technology	NO	NO	YES	YES
8	Conducting joint investigations	YES	NO	YES	YES

In Figure 2, “YES” indicates the obligation is present in a specific convention, and “NO” means the obligation does not exist under a convention.

Afghanistan’s 2004 Constitution required²⁵ the Afghan government to comply with its obligations under international legal documents, including international treaties to which the country is a state party.²⁶ Article 7 of the Constitution specifically provided that the State shall “observe the United Nations Charter, inter-state agreements, as well as international treaties to which Afghanistan has joined, and the Universal Declaration of Human Rights.”²⁷ The Constitution thus set out a strong legal basis for the application of international norms and standards within Afghanistan.

Nonetheless, the approach Afghanistan ostensibly utilized with regard to the UN Suppression Conventions was dualistic: international and national

²⁴ Figure 2 is drawn in its entirety from the author’s forthcoming article, *Identifying and Understanding Mutual Legal Assistance Obligations under International Law: The Case of Afghanistan*, *supra* note 9. Please refer to this article for a detailed discussion of these non-mandatory measures.

²⁵ The Taliban put the 2004 Constitution of Afghanistan on hold after retaking power in August 2021. See Mahir Hazim, *Going Back to Zero: How the Afghan Legal and Judicial System Is Collapsing Under the Taliban Regime*, JURIST (Mar. 7, 2022), <https://www.jurist.org/commentary/2022/03/mahir-hazim-Afghan-legal-judicial-system-collapsing-taliban-regime/>.

²⁶ See *Qanooni Asasi Afghanistan* [The Constitution of Afghanistan] Official Gazette, Extraordinary Issue, Jan. 2004, No. 818, art 7 (unofficial translation), <http://www.afghanembassy.com.pl/afg/images/pliki/TheConstitution.pdf> [hereinafter THE CONSTITUTION].

²⁷ *Id.*

law existed as two distinct and independent systems.²⁸ Under such an approach, a state “can ratify an international treaty or convention without it automatically having the force of law in that particular state until the state enacts new or amends existing domestic legislation to reflect the provisions of the treaty or convention.”²⁹ In the context of Afghanistan, the country incorporated various substantive provisions of the UN Suppression Conventions into different domestic laws, including the Penal Code and the Whistleblowers Protection Law, in order to bring its domestic legal system into conformity with the conventions’ requirements.³⁰ Yet of the four UN Suppression Conventions a Dari/Pashto translation of only one, the UNCAC, went through Afghanistan’s legislative process and was published in the Official Gazette;³¹ however, there is no evidence that Afghanistan directly implemented the translation of that convention.³² Several reports from United Nations Assistance Mission in Afghanistan (UNAMA) which assess Afghanistan’s compliance with the UNCAC, confirm Afghanistan’s dualistic approach towards that convention.³³ Since the UNAMA has been the primary UN agency monitoring Afghanistan’s implementation of international conventions, including the UNCAC its assessments and reports are generally deemed credible.³⁴

²⁸ UNODC, Manual on Mutual Legal Assistance and Extradition, para. 23 (Sept. 2012), https://www.unodc.org/documents/organized-crime/Publications/Mutual_Legal_Assistance_Ebook_E.pdf.

²⁹ *Id.*

³⁰ United Nations Assistance Mission in Afghanistan (UNAMA) confirms that Afghanistan has incorporated a large number of its obligations under the UNCAC into the new Penal Code and Whistleblowers Protection Law. (See UNAMA., *Afghanistan’s Fight Against Corruption: Groundwork For Peace and Prosperity* 9, 21 (May 2019), https://unama.unmissions.org/sites/default/files/afghanistan_fight_against_corruption_groundwork_for_peace_and_prosperity-20_may_2019-english.pdf) See also *Qanooni Hemayat Az Etila Dehendagane Jarayeme Fesade Edari* [Whistleblowers Protection Law], at art. 5-18, Official Gazette, September 2018, No. 1314 (Afg.).

³¹ *Meesaqe Mubareza Alaihe Fesade Edari* [Convention against Corruption], Official Gazette, Extraordinary Issue, January 2008, No. 936 (Afg.). The Convention is approved by the Parliament, signed by the President, and translated and published in Dari and Pashto.

³² The Afghan Parliament adopted—and the President signed—the Dari/Pashto translation of the UNCAC in addition to incorporating many provisions of the UN Suppression Conventions into domestic legislation. This is not only completely confusing, but also an unusual practice in Afghanistan. The author’s empirical research (publication forthcoming) demonstrates that Afghan judges do not directly implement or cite the text of the convention in their decisions, despite its approval by Parliament because Afghan judges only rely only on domestic legislation when rendering opinions. Therefore, Parliament’s approval of the Dari-Pashto translation of the UNCAC seems completely unnecessary.

³³ For instance, in its latest report, UNAMA indicates that Afghanistan brought its domestic laws into conformity with the requirements of UNCAC. This approach (aligning current domestic laws with treaty obligations) is dualist by definition. See UNAMA, *Fighting Corruption in Afghanistan: Stepping Up Transparency, Integrity and Accountability* 13 (Aug. 2021), https://unama.unmissions.org/sites/default/files/fighting_corruption_in_afghanistan_stepping_up_transparency_integrity_and_accountability_english_10_aug_21.pdf.

³⁴ *Id.* at 11.

Beginning in 2004, Afghanistan enacted several laws that include provisions related to mutual legal assistance. Three statutes in particular embody the bulk of Afghanistan's mutual legal assistance legislation: (1) the Law on Extradition of the Accused and Convicted Persons and Legal Cooperation (the "2013 Legal Cooperation Law");³⁵ (2) the Law on Prevention of Money Laundering and Proceeds of Crimes (the "2014 Anti-Money Laundering Law");³⁶ and (3) the Law on Prevention of Financing Terrorism (the "2014 Anti-Financing Terrorism Law").³⁷

Whether the legislative bodies that drafted these laws actually considered Afghanistan's obligations under international law, however, is difficult to ascertain because the drafters did not maintain a parliamentary or legislative record and these laws lack direct reference to compliance with specific international treaties or conventions. Even if the drafters *did* consider Afghanistan's international obligations under international law, determining which treaties or conventions the drafters considered, as well as the extent to which the drafters intentionally derived any given provision from international law, is nearly impossible.³⁸ Afghan authorities routinely, albeit informally, incorporate international law into domestic law for treaties to which Afghanistan is a party, but these authorities do not always mention, name, or cite any international conventions.³⁹ Thus, it is not always easy to determine whether a law contains international norms and obligations or to pinpoint if certain provisions have been derived from international conventions.⁴⁰

In order to understand the extent to which Afghanistan had complied with its international mutual legal assistance obligations, this article examines the extent to which Afghan legal assistance laws complies with the UN

³⁵ See *Qanooni Esterdade Mutahameen, Mahkomeen, Wa Hamkari Adli* [Law on Extradition of Accused and Convicted Persons and Legal Cooperation], Official Gazette, April 2013, No. 1103 (Afg.) [hereinafter EXTRADITION AND LEGAL COOPERATION LAW].

³⁶ See *Qanooni Jelowgiri Az Polshoae Wa Awayede Nashi Az Jarayem* [Law on Prevention of Money Laundering and Proceeds of Crimes], Official Gazette, July 2014, No. 1142 (Afg.) [hereinafter ANTI-MONEY LAUNDERING LAW].

³⁷ See *Qanooni Jelawgiri Az Tamweele Terrorism* [Law on Prevention of Financing Terrorism], Official Gazette, Sept. 2014, No. 1146 (Afg.) [hereinafter ANTI-FINANCING TERRORISM LAW].

³⁸ Researchers analyze the relationship of all domestic Afghan legislation with international law, not just those laws related to mutual legal assistance. Better practice would be to provide references.

³⁹ In 2019, the author conducted interviews with officials at the Afghan Ministry of Justice. These officials indicated that international law is routinely incorporated, albeit informally—the specific international convention or treaty is rarely referred to or cited.

⁴⁰ During conversations with the author, the officials emphasized that Afghanistan's obligations under international conventions are considered during the drafting process. However, they could not say whether they used the relevant provisions of any of the UN conventions related to mutual legal assistance when they drafted and finalized the Law on Extradition and Legal Cooperation, for example.

Suppression Conventions.⁴¹ In particular, the article focuses on the 2013 Legal Cooperation Law because this law applies to the broadest scope of crimes, whereas other Afghan mutual assistance laws apply only to particular treaties. In the next sections, this Article first examines the relevant statutes/laws and the extent to which these laws comply and with the Afghanistan's obligations under international law. Thereafter, the article will discuss domestic legislation which does not align with the obligations or non-mandatory measures set forth by the UN Suppression Conventions, but which nevertheless relate to many mutual legal assistance issues domestically. Finally, the Article discusses the inconsistencies, contradictions, and deficiencies that existed within the Afghan mutual legal assistance mechanisms as a whole.

II. EXTENT OF AFGHAN DOMESTIC LAWS' COMPLIANCE WITH MUTUAL LEGAL ASSISTANCE UNDER THE UN SUPPRESSION CONVENTIONS

In Afghanistan, mutual legal assistance legislation in criminal matters was only been very recently introduced and in a limited way. After the collapse of the Taliban 1.0 in 2001, the newly established transitional government of Afghanistan enacted a series of laws and regulations, such as when it enacted the Law on Money Laundering and Proceeds of Crimes⁴² and a Law on Prevention of Financing Terrorism⁴³ on almost the same date in October 2004. These two laws constitute the first time that mutual legal assistance was considered in Afghan legislative history. However, the relevant mutual legal assistance laws were, however, limited to money laundering and terrorist finance cases.⁴⁴ Moreover, these two laws were later superseded by the 2013 Legal Cooperation Law,⁴⁵ the 2014 Anti-Money Laundering Law,⁴⁶ and the 2014 Anti-Financing Terrorism Law.⁴⁷

⁴¹ As mentioned above, this approach is also utilized by UNAMA when it assesses the extent of Afghanistan's compliance with the UNCAC.

⁴² Qanooni Mubareza Alaihe Tathire Pol Wa Awaayede Nashi Az Jarayem [Law on Combating Money Laundering and Proceeds of Crimes], Official Gazette, Extraordinary Issue, Oct. 2004, No. 840 (Afg.) [hereinafter LAW ON COMBATING MONEY LAUNDERING].

⁴³ Qanooni Mubareza Alaihe Tamweele Terrorism [Law on Combating Financing Terrorism], Official Gazette, Extraordinary Issue, October 2004, No. 839 (Afg.) [hereinafter LAW ON COMBATING FINANCING TERRORISM].

⁴⁴ See LAW ON COMBATING FINANCING TERRORISM, *supra* note 43, at art. 18; LAW ON COMBATING MONEY LAUNDERING, *supra* note 42, at art. 51.

⁴⁵ See EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 51.

⁴⁶ See ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 70.

⁴⁷ See ANTI-FINANCING TERRORISM LAW, *supra* note 37, at art. 29.

Some general points must first be clarified before analyzing these laws' mutual legal assistance provisions in relation to Afghanistan's international obligations, some general points must first be clarified. First, the 2013 Legal Cooperation Law is the principle source to examine when assessing compliance with Afghanistan's international obligations. Although Afghanistan does not have generalized obligations under the UN Suppression Conventions, the 2013 Legal Cooperation Law provides generalized authority for mutual legal assistance, regardless of the type or severity of the crime. Moreover, the 2013 Legal Cooperation Law's relevant mutual legal assistance provisions often neatly correspond to the UN Suppression Convention obligations.⁴⁸ In contrast, the 2014 Anti-Money Laundering Law and the 2014 Anti-Financing Terrorism Law are applicable only to crimes related to money laundering and the financing of terrorism, and therefore provide specific authority for mutual legal assistance for only those two specific crimes.⁴⁹

Second, the 2013 Legal Cooperation Law contains more detailed and comprehensive provisions than the 2014 Anti-Money Laundering Law and the 2014 Anti-Financing Terrorism Law. The 2014 Anti-Financing Terrorism Law adds no new specific provisions on mutual legal assistance;⁵⁰ instead, it refers to the relevant mutual legal assistance provisions of the 2014 Anti-Money Laundering Law.⁵¹ This Article therefore omits significant discussion of the 2014 Anti-Financing Terrorism Law from later sections.

Third, the laws do not use consistent terms for mutual legal assistance. The 2013 Legal Cooperation Law does not employ a straightforward Dari⁵² equivalent for the English term "mutual legal assistance."⁵³ Instead, it employs the Dari term "*hamkari adli*" [همکاری عدلی] which translates literally as "justice cooperation." The 2013 Legal Cooperation Law defines *hamkari adli* as the "exchange of information, evidence, and documents, transferring of witnesses during investigation, prosecution and trial, and enforcement of courts' final orders."⁵⁴ This definition is essentially equivalent to "mutual legal

⁴⁸ See generally EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 26.

⁴⁹ See ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 55 (1); ANTI-FINANCING TERRORISM LAW, *supra* note 37, at art. 6.

⁵⁰ The 2014 Anti-Financing Terrorism Law has only three general articles. (See ANTI-FINANCING TERRORISM LAW, *supra* note 37, at art. 6, 7, 8).

⁵¹ See ANTI-FINANCING TERRORISM LAW, *supra* note 37, at art. 6.

⁵² Dari (aka Farsi) is an of official languages in Afghanistan.

⁵³ "Mutual legal assistance" can be translated into Dari as "*hamkari du janebae huqooqi*" [همکاری دوجانبه حقوقی]

⁵⁴ See EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 3 (2).

assistance” in English.⁵⁵ By contrast, neither the 2014 Anti-Money Laundering Law nor the 2014 Anti-Financing Terrorism Law define the various terminology each law employs to describe “mutual legal assistance.” The 2014 Anti-Money Laundering Law itself utilizes very inconsistent legal terminology to describe “mutual legal assistance”—it employs three different terms, and in varying order. In several of its articles, the law mentions only *hamkari adli*.⁵⁶ In another article, the law uses both *hamkari adli mutaqabel* [همکاری عدلی متقابل] and *hamkari mutaqabele adli* [همکاری متقابل عدلی] interchangeably.⁵⁷ In yet a different article, the law employs *hamkari adli du janeba* [همکاری عدلی دوجانبه].⁵⁸ The literal English translation of the latter three terms is similar to “mutual justice cooperation” or “mutual justice assistance.” Finally, the 2014 Anti-Financing Terrorism Law uses two different terms in within one article: *hamkari mutaqabel* [همکاری متقابل] and *hamkari adli wa qazaade du janeba* [همکاری عدلی وقضایی دوجانبه].⁵⁹ The literal translation of the first term is “mutual cooperation” and the second translates most closely in English as “mutual justice and judicial cooperation.” To avoid confusion and maintain consistency with the terms in the UN Suppression Conventions, this Article consistently uses “mutual legal assistance” as the translation for all of the above-mentioned terms⁶⁰

Fourth, the first article of each law provides that the derives authority from Article 7 of the 2004 Constitution, the constitutional provision that requires Afghanistan to observe international treaties to which it is a party.⁶¹ Despite the scant reference to international treaties or conventions, the broad implication is certainly that is the laws intend to observe Afghanistan’s obligations under international conventions by incorporating the relevant international provisions into domestic law. Two of the laws, the 2013 Legal Cooperation Law and the 2014 Anti-Money Laundering Law, do not reference a single international convention. Only the 2014 Anti-Financing Terrorism

⁵⁵ According to the UNODC “[m]utual legal assistance (MLA) in criminal matters is a process by which States seek for and provide assistance to other States in servicing of judicial document and gathering evidence for use in criminal cases.” (UNODC, *Mutual Legal Assistance (MLA)*, <https://www.unodc.org/e4j/en/organized-crime/module-11/key-issues/mutual-legal-assistance.html> (last visited Aug. 1, 2022).

⁵⁶ See e.g. ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 55, 59.

⁵⁷ See *id.* at art. 56.

⁵⁸ See *id.* at art. 57.

⁵⁹ See ANTI-FINANCING TERRORISM LAW, *supra* note 37, at art. 6.

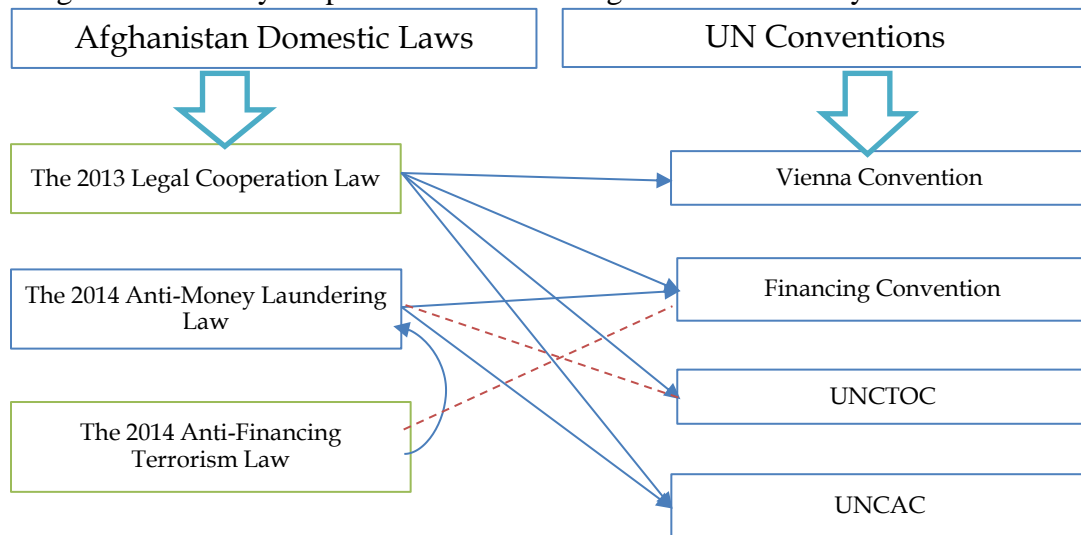
⁶⁰ Based on the author’s understanding and observation, any inconsistencies may be ascribed to lack of capacity in the relevant legislative agencies.

⁶¹ See EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 1; ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 1; ANTI-FINANCING TERRORISM LAW, *supra* note 37, at art. 1.

Law identifies the Financing Convention,⁶² however, as noted, the law does not have much in the way of mutual legal assistance provisions.

Fifth, the 2013 Legal Cooperation Law is the only law related to mutual legal assistance that applies to a broad array of crimes. As depicted in Figure 3, the law addresses mutual legal assistance provisions found in all of all the UN Suppression Conventions, and consequently, satisfies a requirements under any of the UN Suppression Conventions, provided that if the law has a mutual legal assistance provision that meets the requirement of the UN Suppression Conventions. Accordingly, this Article focuses on the extent to which that law has provisions that satisfy one or more of the requirements of the UN Suppression Conventions. However, if a specific convention, such as the UNCAC, includes a requirement (concerning, for example, money laundering cases) that is not met under the general provisions of the 2013 Legal Cooperation Law, the extent of compliance with that treaty requirement will be further examined with reference to the 2014 Anti-Money Laundering Law.⁶³

Figure 3. The relationship between the relevant Afghan laws and the UN Suppression Conventions. The arrows show the subject matter relationship between the Afghan laws and the UN Suppression Conventions. For instance, the 2013 Legal Cooperation Law corresponds to all the UN Suppression Conventions because it establishes general authority for provision of mutual legal assistance in any criminal cases.



Instead of tracking the order of obligations as written in the UN Suppression Conventions this Article separates the provisions of the laws

⁶² See ANTI-FINANCING TERRORISM LAW, *supra* note 37, at art. 2 (1).

⁶³ It will be elucidated in footnotes if a requirement exists in several conventions (e.g. UNCTOC, UNCAC, and Financing Convention), and it is met by both the general provisions of the 2013 Legal Cooperation Law and the specific provisions of the 2014 Anti-Money Laundering Law.

related to the requirements of the UN Suppression Conventions into two overarching categories: obligations and non-mandatory measures.

Part I, Section A assesses the extent of Afghanistan's compliance with international obligations by comparing provisions of the UN Suppression Conventions related to Afghanistan's obligations with relevant provisions of the 2013 Legal Cooperation Law and 2014 Anti-Money Laundering Law. Section B addresses the extent of Afghanistan's compliance with the UN Suppression Conventions' non-mandatory measures by comparing corresponding provisions of Afghan domestic law and assessing the extent to which Afghan mutual legal assistance mechanisms incorporate these non-mandatory measures.

A. Compliance Assessment of Domestic Laws Related to Afghanistan's International Mutual Legal Assistance Obligations

The 2013 Legal Cooperation Law and the 2014 Anti-Money Laundering Law contain multiple provisions that correspond to the mutual legal assistance obligations of Afghanistan under the UN Suppression Conventions. However, in order to assess the extent of Afghanistan's compliance with its obligations under the UN Suppression Conventions, this Article compares and contrasts the general provisions of the 2013 Legal Cooperation Law with Afghanistan's obligations under the conventions.⁶⁴ The results of this assessment will be classified as full compliance, partial compliance or non-compliance. For the purposes of this Article, full compliance means the relevant Afghan laws fully met the requirements of the UN Suppression Conventions for an obligation. Partial compliance means the provisions of the relevant Afghan laws either embody only part of the UN Suppression Conventions' requirements related to an obligation, or their language is not as clear as the conventions require. Non-compliance means that the Afghan laws⁶⁵ either lack any provisions concerning the relevant obligations, or their provisions fail to substantially correspond to the conventions' obligations.

⁶⁴ Similar or identical provisions of the 2014 Anti-Money Laundering Law will largely be mentioned in footnotes unless a provision of that law corresponds to an obligation under the Financing Convention and UNCAC (crimes related to money laundering and terrorism financing) which might not be addressed by the 2013 Legal Cooperation Law.

⁶⁵ Under non-compliance, both the 2013 Legal Cooperation Law and 2014 Anti-Money Laundering Law come into play. The reason is that "non-compliance" is recognized as a situation where none of the two laws has any provisions in relation to an obligation under the UN conventions. As such, regardless of their general or specific authority, both should lack provisions with respect to an obligation.

As illustrated in Figure 4, Afghanistan has partially or fully complied with slightly less than 60% of its obligations under the UN Suppression Conventions. Figure 5 lists the 17 international obligations previously identified in Figure 1 and compares the relevant provisions of the 2013 Legal Cooperation Law. A detailed explanation follows Figure 5.

Figure 4. Percentage of Afghanistan’s compliance with its international obligations

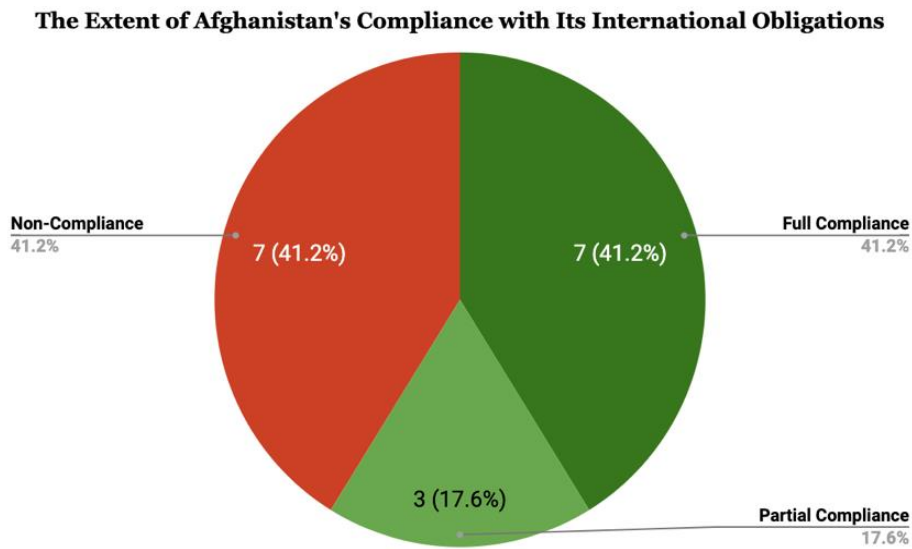


Figure 5. An overview of Afghanistan’s compliance under the UN Suppression Conventions

No.	Obligations	The 2013 Legal Cooperation Law		
		Full Compliance	Partial Compliance	Non-Compliance
1	Determining specific purposes for mutual legal assistance			
2	Prohibiting bank secrecy as grounds for declining mutual legal assistance			
3	Requirements regarding the content of mutual legal assistance requests			
4	Using information or evidence only for the requested purposes			
5	Confidentiality requirement			
6	Providing mutual legal assistance for purposes of confiscation and recovery of assets			

7	Enabling national authorities to cooperate and exchange information (particularly in money-laundering cases)			
8	Setting the scope of mutual legal assistance			
9	Making requests in writing			
10	Speedy execution of requests			
11	Providing mutual legal assistance where offenses involve a legal person			
12	Following the conventions' procedures in the absence of an mutual legal assistance treaty			
13	Designating a central authority			
14	Making the requested state bear the ordinary costs of executing a request			
15	Providing copies of publicly available records, documents, or information			
16	Determining the scope of law enforcement cooperation			
17	Establishing special investigative techniques			

The relevant provisions of the law are analyzed in detail below.

i. Full Compliance

As noted above, Afghanistan has fully complied with seven of its obligations. The following sections detail the relevant provisions of the 2013 Legal Cooperation Law to demonstrate specifically how Afghanistan has fully complied with each obligation under the UN Suppression Conventions.

a. Determining Specific Purposes for Mutual Legal Assistance

The UN Suppression Conventions delineates a number of purposes for mutual legal assistance.⁶⁶ For example, Article 46 (3) of UNCAC states:

Mutual legal assistance to be afforded in accordance with this Article may be requested for any of the following purposes: (a)

⁶⁶ See e.g. UNCTOC, *supra* note 5, at art. 18 (3); UNCAC, *supra* note 6, at art. 46 (3).

Taking evidence or statements from persons; (b) Effecting service of judicial documents; (c) Executing searches and seizures, and freezing; (d) Examining objects and sites; (e) Providing information, evidentiary items and expert evaluations; (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records; (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes; (h) Facilitating the voluntary appearance of persons in the requesting State Party; (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party; (j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention; (k) The recovery of assets, in accordance with the provisions of chapter V of this Convention⁶⁷

Like the UN Suppression Conventions,⁶⁸ the 2013 Legal Cooperation Law identifies specific purposes requiring the use of mutual legal assistance.⁶⁹ The 2013 Legal Cooperation law's provisions of the law are quite similar to the provisions of the UN Suppression Conventions.⁷⁰ According to Afghanlaw, the following purposes justify requesting or providing mutual legal assistance:

1. Collecting evidence and taking statements of persons;⁷¹
2. Assisting in submission of detained persons and summoning other people to obtain evidence;⁷²

⁶⁷ UNCAC, *supra* note 6, at art. 46 (3).

⁶⁸ *See e.g.* UNCTOC, *supra* note 5, at art. 18 (3); UNCAC, *supra* note 6, at art. 46 (3).

⁶⁹ *See* EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 26 (1). The 2014 Anti-Money Laundering Law embodies similar provisions about the purposes of mutual legal assistance. (*See* ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 56 (2)).

⁷⁰ *See e.g.* UNCTOC, *supra* note 5, at art. 18 (3); UNCAC, *supra* note 6, at art. 46 (3).

⁷¹ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 26 (1) (1). Similar provision exists in the 2014 Anti-Money Laundering Law. (*See* ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 56 (2) (1)).

⁷² EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 26 (1) (2). The 2014 Anti-Money Laundering Law contains similar provision. (*See* ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 56 (2) (2)).

3. Sending court orders for execution;⁷³
4. Executing searches and seizures and confiscating assets;⁷⁴
5. Examining objects and locations;⁷⁵
6. Providing information and evidence;⁷⁶ and
7. Providing the original or certified copies of documents and records such as bank statements and other business documents.⁷⁷

In addition, 2014 Anti-Money Laundering Law includes purposes pertaining particularly to offenses related to money laundering and financing of terrorism:⁷⁸

1. Identifying or tracing proceeds of crime, assets, and instrumentalities for the purpose of collecting evidence or confiscating them;⁷⁹
2. Freezing or seizing and other temporary measures;⁸⁰
3. Executing investigative measures and special investigative techniques including undercover operations and controlled delivery;⁸¹

⁷³ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 26 (1) (3). Similar provision exists in the 2014 Anti-Money Laundering Law. (See ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 56 (2) (3)).

⁷⁴ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 26 (1) (4). Similar provision is present in the 2014 Anti-Money Laundering Law. (See ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 56 (2) (4)).

⁷⁵ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 26 (1) (5). The 2014 Anti-Money Laundering Law embodies similar provision. (See ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 56 (2) (5)).

⁷⁶ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 26 (1) (6). Similar provision exists in the 2014 Anti-Money Laundering Law. (See ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 56 (2) (6)).

⁷⁷ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 26 (1) (7). The same requirement is present in the 2014 Anti-Money Laundering Law. (See ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 56 (2) (7)).

⁷⁸ These purposes correspond to the sources of obligation under the UNOCTC and UNCAC. The subject matter in both conventions are offenses related to money laundering.

⁷⁹ ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 56 (2) (8).

⁸⁰ *Id.* at art. 56 (2) (9).

⁸¹ *Id.* at art. 56 (2) (10).

4. Other purposes that are not contrary to Afghan law.⁸² (Both the 2013 Legal Cooperation Law and the 2014 Anti-Money Laundering Law contain this provision.)

The above list follows the UN Suppression Conventions so closely⁸³ that it is safe to conclude that Afghanistan has fully complied with its obligation to determine specific purposes for mutual legal assistance.

b. Bank Secrecy Cannot Be Used as Grounds for Refusing Mutual Legal Assistance

According to the UN Suppression Conventions, “States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.”⁸⁴ Similar to the conventions’ requirement, the 2013 Legal Cooperation Law prohibits Afghan authorities from using bank secrecy as grounds for refusing mutual legal assistance requests.⁸⁵ This constitutes complete compliance with Afghanistan’s obligation under the UN Suppression Conventions to forbid bank secrecy as a basis for declining mutual legal assistance requests.⁸⁶

c. Requirements Regarding the Content of Mutual Legal Assistance Requests

The UN Suppression Conventions set forth requirements regarding the content of mutual legal assistance requests. For example, UNCTOC and UNCAC provide:

A request for mutual legal assistance shall contain: (a) The identity of the authority making the request; (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding; (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents; (d) A description of the assistance

⁸² EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 26 (1) (8); ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 56 (2) (11).

⁸³ *See e.g.* UNCTOC, *supra* note 5, at art. 18 (3); UNCAC, *supra* note 6, at art. 46 (3).

⁸⁴ *See e.g.* UNCTOC, *supra* note 5, at art. 18 (8); UNCAC, *supra* note 6, at art. 46 (8).

⁸⁵ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 38 (2). The same provision exists in the 2014 Anti-Money Laundering Law. (*See ANTI-MONEY LAUNDERING LAW, supra* note 36, at art. 57 (3)).

⁸⁶ *See e.g.* UNCTOC, *supra* note 5, at art. 18 (8); UNCAC, *supra* note 6, at art. 46 (8).

sought and details of any particular procedure that the requesting State Party wishes to be followed; (e) Where possible, the identity, location and nationality of any person concerned; and (f) The purpose for which the evidence, information or action is sought.⁸⁷

The 2013 Legal Cooperation Law's provisions regarding the underlying content of mutual legal assistance requests are similarly comprehensive.⁸⁸ Under the law, some of the most important requirements for the content of a mutual legal assistance request include:⁸⁹

1. The identity of the requesting authority;⁹⁰
2. The identity of the requested authority;⁹¹
3. The requested information, including evidence and documents related to the case;⁹²
4. A detailed description of the crime committed;⁹³

⁸⁷ See e.g. UNCTOC, *supra* note 5, at art. 18 (15); UNCAC, *supra* note 6, at art. 46 (15).

⁸⁸ See EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 28. The 2014 Anti-Money Laundering Law contains similar provisions with respect to content of mutual legal assistance requests. (See ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 60) There is a small issue with the 2013 Legal Cooperation Law in terms of content of mutual legal assistance request. (See EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 28 (1)) The problem is that the law conflates content of mutual legal assistance requests with content of extradition requests. The law indicates that a mutual legal assistance request should have some additional requirements (as noted above) in addition to the requirements set for an extradition request. (See *id.*) This conflation complicate implementation of the law pertaining to preparing requests for mutual legal assistance and extradition. The 2014 Anti-Money Laundering Law, in contrast, has clear and straightforward requirements for content of mutual legal assistance requests. (See ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 60.) While the 2014 Anti-Money Laundering Law does not suffer from this defect, it applies only re: anti-money laundering cases.

⁸⁹ Other requirements not listed above include: date of request, final date of expected delivery of information, and information about property, financial documents, and bank accounts in question. (see EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 28 (2), (3)). According to the 2014 Anti-Money Laundering Law a request should also contain name and position of the person who carries out investigation or prosecution. (ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 60 (1) (2)).

⁹⁰ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 10 (1) (1). The same requirement is present in the 2014 Anti-Money Laundering Law. (See ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 60 (1) (1)).

⁹¹ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 10 (1) (2). The same requirement is present in the 2014 Anti-Money Laundering Law. (See ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 60 (1) (4)).

⁹² EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 10 (1) (4). Similar provision is present in the 2014 Anti-Money Laundering Law. (See ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 60 (1) (4), (5)).

⁹³ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 10 (1) (4).

5. Information about the persons in question, including the accused, witnesses, their locations, and the questions that will be asked of them;⁹⁴
6. Specification of the applicable provisions of the relevant laws, agreements, or conventions upon which mutual legal assistance is requested;⁹⁵
7. A description of the legal assistance requested⁹⁶
8. If information in the request is insufficient to reach a decision, the requested state⁹⁷ can ask the requesting state to provide additional information and documents.⁹⁸

The 2013 Legal Cooperation Law further provides that a request should contain a description of the facts and evidence of the case in certain circumstances.⁹⁹ For instance, in confiscation cases, the request should contain information about the facts, reasoning, and the law upon which a court issued an order of confiscation.¹⁰⁰ In addition, such a request should seek information about the rights of third parties who may have a claim to the assets in question.¹⁰¹

Compared to the requirements of the UN Suppression Conventions concerning the content of mutual legal assistance requests, the 2013 Legal Cooperation Law exceeds the minimum contents required by the conventions.¹⁰² Accordingly, regarding the content of mutual legal assistance requests, Afghanistan has again fully complied with the requirements of the UN Suppression Conventions.

⁹⁴ *Id.* at art. 28 (1) (4).

⁹⁵ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 10 (1) (7). The 2014 Anti-Money Laundering Law embodies similar provision. (See ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 60 (1) (8)).

⁹⁶ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 28 (1) (1). The 2014 Anti-Money Laundering Law contains similar provision. (See ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 60 (1) (9)).

⁹⁷ “Requested state” refers to the state from which the legal assistance (i.e., information, documents, or other evidence) is requested.

⁹⁸ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 28 (3) (4).

⁹⁹ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 28 (2), (3). Similar provision exists in the 2014 Anti-Money Laundering Law. (See ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 60 (2)).

¹⁰⁰ See EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 28 (2) (2), (3) (1)

¹⁰¹ See EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 28 (2) (2), (3).

¹⁰² See *e.g.* UNCTOC, *supra* note 5, at art. 18 (15); UNCAC, *supra* note 6, at art. 46 (15).

d. Using Information or Evidence only for the Requested Purpose

UN Suppression Conventions provide that “[t]he requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party.”¹⁰³ The 2013 Legal Cooperation Law likewise prohibits Afghan authorities from using evidence or documents produced through mutual legal assistance beyond the purposes specified in the request.¹⁰⁴ Moreover, as provided by the UN Suppression Conventions,¹⁰⁵ the law permits authorities to use evidence for other purposes in exceptional circumstances, conditional upon receipt of the requested state’s prior consent.¹⁰⁶ The 2013 Legal Cooperation Law deems any proceedings undertaken by Afghan authorities in violation of the above provisions deemed null and void.¹⁰⁷ In summary, the provisions of the 2013 Legal Cooperation Law contain all the requirements set forth by the UN Suppression Conventions¹⁰⁸ that prohibit the use of information or evidence beyond the identified purpose(s). Therefore, Afghanistan is in full compliance with this requirement.

e. Confidentiality Requirement

The UN Suppression Conventions provides that “[t]he requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.”¹⁰⁹ Similarly, the 2013 Legal Cooperation Law requires Afghan authorities to preserve the confidentiality of a request if the requesting state invokes such confidentiality.¹¹⁰ If Afghan authorities cannot possibly preserve

¹⁰³ UNCAC, *supra* note 6, at art. 46 (19).

¹⁰⁴ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 46. It should be noted that the 2014 Anti-Money Laundering Law does not contain any provisions on the above requirement.

¹⁰⁵ *See e.g.* UNCTOC, *supra* note 5, at art. 18 (19); UNCAC, *supra* note 6, at art. 46 (19).

¹⁰⁶ *See* EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 46.

¹⁰⁷ *Id.*

¹⁰⁸ *See e.g.* UNCTOC, *supra* note 5, at art. 18 (19); UNCAC, *supra* note 6, at art. 46 (19).

¹⁰⁹ *See* UNCTOC, *supra* note 5, at art. 18 (20); UNCAC, *supra* note 6, at art. 46 (20).

¹¹⁰ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 44. The 2014 Anti-Money Laundering Law contains the same requirement. (*See* ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 62.

confidentiality, the authorities must swiftly inform the requesting state as much.¹¹¹ These provisions appear substantially identical to those of the UN Suppression Conventions,¹¹² so Afghanistan fully complies with the requirement to honor a requesting state's requests for confidentiality.

f. Providing Mutual Legal Assistance for Purposes of Confiscation and Recovery of Assets

The UN Suppression Conventions oblige a state party to provide assistance by confiscating property or proceeds of crime upon the request of other state parties that have jurisdiction over a crime implicated by the UN conventions.¹¹³ Similarly, according to the 2013 Legal Cooperation Law, the government of Afghanistan can request a foreign country to return assets or property confiscated by a competent Afghan court.¹¹⁴ Similarly, Afghanistan will accept and implement such a request from a foreign country.¹¹⁵ After receiving a request, the government of Afghanistan will render the confiscated assets (confiscated per court order in the requesting state) to the requesting state.¹¹⁶ If the assets in question are real property, the government will sell the properties at auction and transfer the proceeds to the requesting state.¹¹⁷ As an exception to the rule, the 2013 Legal Cooperation Law permits Afghan courts to refuse or postpone returning confiscated assets to a foreign country if the assets in question are subject to seizure or related to another case currently pending under Afghanistan's jurisdiction.¹¹⁸ The provisions of the Afghan law thus mirror the requirements of the UN Suppression Conventions¹¹⁹ with respect to providing legal assistance for the purposes of confiscation and asset recovery. Thus, Afghanistan has fully met its obligation under the conventions.

¹¹¹ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 44. The same requirement exists in the 2014 Anti-Money Laundering Law. (See ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 62).

¹¹² See UNCTOC, *supra* note 5, at art. 18 (20); UNCAC, *supra* note 6, at art. 46 (20).

¹¹³ See UNCTOC, *supra* note 5, at art. 13; UNCAC, *supra* note 6, at art. 55.

¹¹⁴ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 31.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.* at art. 33.

¹¹⁸ *Id.* at art. 37.

¹¹⁹ See UNCTOC, *supra* note 5, at art. 13; UNCAC, *supra* note 6, at art. 55.

g. Enabling National Authorities to Cooperate and Exchange Information (Particularly in Money Laundering Cases)

The UN Suppression Conventions require State Parties to ensure that “authorities dedicated to combating money-laundering... have the ability to cooperate and exchange information at the national and international levels.”¹²⁰ Consistent with this requirement, the 2014 Anti-Money Laundering Law established the Financial Transactions and Reports Analysis Center of Afghanistan (FinTRACA),¹²¹ an autonomous department within the Central Bank.¹²² The law contains comprehensive provisions detailing the role of the center and authorizes the center to exchange financial intelligence information and cooperate with its foreign counterparts in money laundering and financing of terrorism cases.¹²³ In addition, the 2013 Legal Cooperation Law identifies the center as a competent authority to execute mutual legal assistance requests.¹²⁴ The Suppression Conventions provides only that State Parties “shall *consider* the establishment of a financial intelligence unit...” (emphasis added).¹²⁵ As such, Afghanistan has fully met—or even exceeded—its obligation to enable its national authorities to cooperate with foreign counterparts in combating money laundering cases by not only legislating for this cooperation, but also by establishing FinTRACA as a financial intelligence unit.

ii. Partial Compliance

Afghanistan has only partially complied with the following three (3) mutual legal assistance obligations under the UN Suppression Conventions.

¹²⁰ See UNCTOC, *supra* note 5, at art. 7 (1) (b); UNCAC, *supra* note 6, at art. 14 (1) (b).

¹²¹ See generally Government of Afghanistan, *FinTRACA Overview*, <https://www.dab.gov.af/Financial-Intelligence-Unit> (last visited Aug. 2, 2022). (“FinTRACA mandate and statutory duties are to, receive, analyze and disseminate financial intelligence to Attorney General’s Office (AGO), law enforcement agencies, other relevant government bodies and international counterparts to assist combating money laundering and financing of terrorism.”) *See id.*

¹²² See ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 25. It should be noted this is one of few areas where the above provision of the 2014 Anti-Money Laundering Law satisfies the obligation of Afghanistan under the UN conventions. The reason is that the requirement of the UN conventions is exclusively related to money laundering cases.

¹²³ *See id.* at art. 25–34.

¹²⁴ See EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 29 (1).

¹²⁵ See UNCTOC, *supra* note 5, at art. 7 (1) (b); UNCAC, *supra* note 6, at art. 14 (1) (b).

a. Setting the Scope of Mutual Legal Assistance

The UN Suppression Conventions require Afghanistan to provide “the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings”¹²⁶ in relation to the crimes covered by the conventions. Although the 2013 Legal Cooperation Law generally allows Afghanistan’s authorities to provide mutual legal assistance,¹²⁷ it does not clearly lay out the scope of mutual legal assistance as “the widest measure” as required by the UN Suppression Conventions. The absence of a clear scope for mutual legal assistance indicates that Afghanistan at best has met its obligation only partially.

b. Making Requests in Writing

According to the UNCTOC and UNCAC, “[r]equests *shall be made in writing* or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to *establish authenticity*.”¹²⁸ The language of the 2013 Legal Cooperation Law is ambiguous about the requirement that requests must be made in *writing*. For instance, the law provides that the Afghan competent authorities should send mutual legal assistance requests to the Ministry of Foreign Affairs (MOFA),¹²⁹ which directs the requests to the diplomatic mission of the requested state.¹³⁰ According to the law, in urgent and emergency circumstances, an incoming or outgoing request could be channeled through the International Criminal Police Organization (INTERPOL) or exchanged directly between the competent authorities of Afghanistan and foreign countries through postal services or other methods that could produce a written record.¹³¹ These provisions are therefore in compliance with the part of the conventions’ obligations that require that such requests be through “means capable of producing a written record.” However, the Afghan law does not explicitly require that *all* requests be made

¹²⁶ See e.g. UNCAC, *supra* note 6, at art. 46 (1) (b).

¹²⁷ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 26.

¹²⁸ See UNCTOC, *supra* note 5, at art. 18 (14); UNCAC, *supra* note 6, at art. 46 (14).

¹²⁹ See generally Government of Afghanistan, *MOFA Information*, <https://mfa.gov.af/en/home-2/> (last visited Aug. 2, 2022). The MOFA has the primary responsibility of directing Afghanistan’s foreign relations.

¹³⁰ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 26 (2). It can be implied from the language of the provision that request are made in writing by the Afghan competent authorities. However, the law is not explicit about the issue.

¹³¹ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 26 (3). The 2014 Anti-Money Laundering Law contains similar language but extends the postal services and other methods to all circumstances, not limited to urgent situations. (See ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 59 (1)).

in writing and instead only requires requests in writing in urgent or exigent circumstances. Moreover, the Afghan law omits any discussion of the conditions for establishing authenticity. As such, Afghanistan only partially complies with this obligation.

c. Speedy Execution of Requests

According to the UN Suppression Conventions, “[t]he requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request.”¹³² In contrast, the 2013 Legal Cooperation Law requires the MOFA and other competent authorities to respond to incoming requests within specific time frames set forth by the 2013 Legal Cooperation Law itself.¹³³ According to the law, upon receipt of an incoming request, the MOFA shall within fourteen (14) days direct the request to any of the designated competent authorities (the Ministry of the Interior (MOI),¹³⁴ the Attorney General’s Office (AGO),¹³⁵ or the Supreme Court).¹³⁶ To determine the proper competent authority to which to send the request, the MOFA is directed to evaluate the circumstances of the request.¹³⁷ Upon receipt, the designated authority (the MOI, AGO, or Supreme Court) shall consider the case and render a decision based upon applicable law within sixty (60) days.¹³⁸ One could consider these time frames to be an attempt at the speedy execution of requests. But whether a request is truly swiftly executed depends largely upon the *requesting* state’s deadlines; however, Afghan law does not contemplate the requesting State’s deadlines as required by the UN Suppression Conventions.¹³⁹ As a result, Afghan law has only partially complied with the obligation to speedily execute requests. In subsequent sections, this Article discusses the problematic and unrealistic nature of the time frames established by the 2013 Legal Cooperation Law.

¹³² UNCTOC, *supra* note 5, at art. 18 (24); UNCAC, *supra* note 6, at art. 46 (24).

¹³³ See EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 26 (4) (5).

¹³⁴ See generally Government of Afghanistan, *MOI Information*, <https://moi.gov.af/en> (last visited Aug. 3, 2022). The MOI is the leading ministry responsible for policing, ensuring law and order, and preventing and fighting crimes across Afghanistan.

¹³⁵ See generally Government of Afghanistan, *AGO Information*, <https://ago.gov.af/en> (last visited Aug. 3, 2022). The AGO is the leading agency responsible for investigating and prosecuting crimes before courts.

¹³⁶ *Id.* at art. 26 (4).

¹³⁷ See *id.*

¹³⁸ *Id.* at art. 26 (5).

¹³⁹ UNCTOC, *supra* note 5, at art. 18 (24); UNCAC, *supra* note 6, at art. 46 (24).

iii. Non-Compliance

Although Afghanistan has fully or partially complied with many obligations set forth by the UN Suppression Conventions, Afghanistan does not comply with seven (7) out of seventeen (17) obligations.

a. Providing Mutual Legal Assistance Where Offenses Involve a Legal Person

The UN Suppression Conventions provide that “[m]utual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable....”¹⁴⁰ However, neither the 2013 Legal Cooperation Law nor the 2014 Anti-Money Laundering Law contain any provisions on providing mutual legal assistance in offenses involving legal person, such as a corporate entity, as opposed to a natural person. As such, Afghanistan has not met its obligation under the UN Suppression Conventions¹⁴¹ to establish mutual legal assistance laws concerning crimes involving a legal person.

b. Following the Conventions’ Procedures in the Absence of a Mutual Assistance Treaty

The UN Suppression Conventions indicate that state parties should apply specific mutual legal assistance provisions of the conventions if no other binding mutual legal assistance treaty exists between the parties in question.¹⁴² The conventions states “[p]aragraphs 9 to 29¹⁴³ of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance.”¹⁴⁴ However, Afghan laws fail to mandate Afghan authorities to provide legal assistance based on the relevant mutual legal assistance provisions of the UN Suppression Conventions in the absence of a bilateral mutual legal assistance treaty with a country. Instead of requiring the application of the mutual legal assistance

¹⁴⁰ See UNCTOC, *supra* note 5, at art. 18 (2); UNCAC, *supra* note 6, at art. 46 (2).

¹⁴¹ See UNCTOC, *supra* note 5, at art. 18 (2); UNCAC, *supra* note 6, at art. 46 (2).

¹⁴² See UNCTOC, *supra* note 5, at art. 18 (7); UNCAC, *supra* note 6, at art. 46 (7).

¹⁴³ Paragraphs 9 to 29 of the UN Suppression Conventions lay out a relatively detailed procedure and principles for provision of mutual legal assistance among state members. Most of the requirements and recommendations of the UN Suppression Conventions are discussed in this article including requirements related to bank secrecy, transfer of persons, central authority, request in writing, speedy execution of requests, and costs of implementing requests. *See id.*

¹⁴⁴ See UNCTOC, *supra* note 5, at art. 18 (7); UNCAC, *supra* note 6, at art. 46 (7).

procedures in the UN Suppression Conventions, the 2014 Anti-Money Laundering Law indicates that, in the absence of specific mutual legal assistance agreements, the government of Afghanistan's sole basis for providing or seeking mutual assistance is principle of reciprocity.¹⁴⁵ Although the principle of reciprocity indeed supports such cooperation, it neither corresponds to nor meets the requirements of the UN Suppression Conventions.¹⁴⁶ Moreover, the principle of reciprocity is not exclusive and should not preclude the application of procedures required by the UN Suppression Conventions. The procedures in the conventions can play a significant role in the absence of a bilateral treaty because the UN Suppression Conventions have been ratified by nearly every country, so both requesting and requested states would almost certainly be parties to the convention (190 and 189 States are party to the UNCTOC and UNCAC respectively).¹⁴⁷

c. Designating a Central Authority

The UN Suppression Conventions mandate that “[e]ach State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution.”¹⁴⁸ A state's central authority generally serves as a liaison between domestic and foreign authorities in executing incoming and outgoing mutual legal assistance requests.¹⁴⁹ However, Afghan laws fail to designate a central authority to facilitate and effectively execute incoming and outgoing mutual legal assistance requests. Afghan laws not only fail to meet this requirement of the UN Suppression Conventions as of this writing,¹⁵⁰ but, even worse, Afghanistan neglected to designate any institution as its central authority when it deposited its instrument of ratification in 1999.¹⁵¹ Instead, Afghan laws only identify domestic competent authorities and require requests to be

¹⁴⁵ ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 55 (3).

¹⁴⁶ *See* UNCTOC, *supra* note 5, at art. 18 (7); UNCAC, *supra* note 6, at art. 46 (7). Among other things, the provision of mutual legal assistance on the reciprocity basis is wholly discretionary; this clearly leaves Afghanistan non-compliant, as a major purpose of mutual legal assistance is to introduce a mandatory basis for co-operation.

¹⁴⁷ *See* United Nations Convention against Transnational Organized Crime, *U.N.T.C.*, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=_en (last updated Mar. 12, 2022); Signature and Ratification Status, *UNODC*, <https://www.unodc.org/unodc/en/corruption/ratification-status.html> (last updated Nov. 18, 2021).

¹⁴⁸ *See e.g.* UNCTOC, *supra* note 5, at art. 18 (13); UNCAC, *supra* note 6, at art. 46 (13).

¹⁴⁹ *See generally id.*

¹⁵⁰ *See e.g.* UNCTOC, *supra* note 5, at art. 18 (13); UNCAC, *supra* note 6, at art. 46 (13).

¹⁵¹ *See generally* A G.A. Res. 55/25 (Sep 29, 2003). *See also* Conference of the States Parties to the United Nations Convention against Corruption, *Review of implementation of the United Nations Convention against Corruption*, CAC/COSP/IRG/I/3/1/Add.29 (Aug. 4, 2016).

processed through standard diplomatic channels. As such, the MOFA emerges as a liaison office despite lacking formal designation a central authority. For instance, the 2013 Legal Cooperation Law and the 2014 Anti-Money Laundering Law provide that the competent authorities (such as the Supreme Court, MOI, or AGO) should send their mutual legal assistance requests to the MOFA.¹⁵² The MOFA then has the responsibility to channel the requests to the respective diplomatic mission of foreign countries.¹⁵³ Similarly, if the MOFA receives mutual legal assistance requests from foreign countries, it should forward the requests to the relevant Afghan competent authorities.¹⁵⁴ However, the laws do provide for exceptions in urgent and emergency circumstances: in such cases, an incoming or outgoing request could be channeled through INTERPOL or else directly exchanged between the competent authorities of Afghanistan and foreign countries through postal services or other methods that produce a written/receipt.¹⁵⁵ However, even in exigent circumstances, the government of Afghanistan will not provide a formal response until it receives the request through diplomatic channels, such as MOFA.¹⁵⁶

All the above-referenced procedures laid out by Afghan laws are necessary and normal steps for channeling information and requests through diplomatic processes. The role of the MOFA in this diplomatic process flows naturally from its role as the principal agency for managing Afghanistan's foreign relations; however, it is not officially designated the central authority, as required by the UN Suppression Conventions.¹⁵⁷ Furthermore, international mutual legal assistance procedures have been deliberately structured to remove the process from the hands of diplomats.¹⁵⁸ Because Afghanistan not only has failed to designate central authority, but also undermines this intent by granting the MOFA such a significant role, Afghanistan does not comply with the UN Suppression Conventions' provisions regarding competent authorities.

¹⁵² See EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 26 (2); ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 59 (1).

¹⁵³ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 26 (2).

¹⁵⁴ ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 59 (1).

¹⁵⁵ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 26 (3); ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 59 (1).

¹⁵⁶ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 26 (3).

¹⁵⁷ See *e.g.* UNCTOC, *supra* note 5, at art. 18 (13); UNCAC, *supra* note 6, at art. 46 (13).

¹⁵⁸ Based on the observations of Jon Eddy (University of Washington School of Law professor emeritus) while in Indonesia, diplomats tend to: (1) move with the speed of molasses, (2) lack necessary criminal law expertise, and (3) obsess over "sovereignty" and perceive it to be violated at the drop of a hat.

d. The Requested State Must Bear the Ordinary Costs of Executing a Request

According to the UN Suppression Conventions, requested states must bear the ordinary costs of executing mutual legal assistance requests.¹⁵⁹ In contrast, the 2013 Legal Cooperation Law and the 2014 Anti-Money Laundering Law mandate that the costs of executing a mutual legal request shall be incurred by the requesting state.¹⁶⁰ This provision is antithetical to the UN Suppression Conventions' corresponding requirement.¹⁶¹ As such, Afghanistan is in a state of non-compliance with its obligation—at least nominally. As a practical matter, Afghanistan, like many other developing states, likely needs the financial support of requesting states to pay the costs associated with executing mutual legal assistance requests.

e. Providing Copies of Publicly Available Records, Documents, or Information

The UN Suppression Conventions mandate that “[t]he requested State Party (a) [s]hall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public....”¹⁶² Conversely, the 2013 Legal Cooperation Law and the 2014 Anti-Money Laundering Law do not contain a single provision mandating the relevant authorities to provide copies of records or documents that are available to the public under the applicable Afghan law on access to information.¹⁶³ Therefore, Afghanistan has not met its obligation under the UN Suppression Conventions¹⁶⁴ to require the provision of publicly available records, documents, or information to the requesting state.¹⁶⁵

¹⁵⁹ See UNCTOC, *supra* note 5, at art. 18 (28); UNCAC, *supra* note 6, at art. 46 (28).

¹⁶⁰ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 50; ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 64.

¹⁶¹ See UNCTOC, *supra* note 5, at art. 18 (28); UNCAC, *supra* note 6, at art. 46 (28).

¹⁶² UNCTOC, *supra* note 5, at art. 18 (29) (a); UNCAC, *supra* note 6, at art. 46 (29) (a).

¹⁶³ See *Qanooni Dastrasi Ba Etlaat* [Law on Access to Information], art. 15, Official Gazette, October 2019, No. 1358 (Afg.).

¹⁶⁴ UNCTOC, *supra* note 5, at art. 18 (29) (a); UNCAC, *supra* note 6, at art. 46 (29) (a).

¹⁶⁵ It should be noted that as a matter of law and obligation Afghanistan has not complied with its obligation. However, due to lack of resources and capacity, Afghanistan practically needs other states' assistance with respect to fulfilling the obligation.

f. Determining the Scope of Law Enforcement Cooperation

The UN Suppression Conventions require law enforcement cooperation among member states and provide that “States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences” addressed by the conventions.¹⁶⁶ Among other measures, the UN Suppression Conventions require state parties to “enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information...”¹⁶⁷ As indicated in this provision, the exchange of information may be in the form of police-to-police cooperation or direct cooperation between other law enforcement authorities. The applicable Afghan laws do not incorporate the conventions’ requirements concerning determining the scope of law enforcement cooperation. As such, Afghanistan has not complied with this requirement.

g. Establishing Special Investigative Techniques

Finally, the UN Suppression Convention states that state parties shall “take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations....”¹⁶⁸ The conventions further require that evidence produced via special investigative techniques should be admissible in court.¹⁶⁹ However, Afghanistan’s relevant laws do not provide for the establishment and use of the aforementioned techniques, even when requested by the requesting state, and therefore fail to comply with this requirements of the UN Suppression Conventions.¹⁷⁰

B. Examination and Assessment of Provisions Related to Non-Mandatory Measures

While the two Afghan laws examined in this Article contain a handful of provisions that relate to non-mandatory measures, they do not incorporate

¹⁶⁶ See UNCTOC, *supra* note 5, at art. 27 (1); UNCAC, *supra* note 6, at art. 48 (1).

¹⁶⁷ See UNCTOC, *supra* note 5, at art. 27 (1) (a); UNCAC, *supra* note 6, at art. 48 (1) (a).

¹⁶⁸ See UNCTOC, *supra* note 5, at art. 20 (1); UNCAC, *supra* note 6, at art. 50 (1).

¹⁶⁹ See *id.*

¹⁷⁰ See *id.*

other non-mandatory measures that the UN Suppression Conventions strongly recommend. As illustrated in Figure 6, an examination of the relevant provisions of the 2013 Legal Cooperation Law again reveals a 50/50 split between incorporation of some/all of the non-mandatory measures under the UN Suppression Conventions and a complete lack of incorporation of some non-mandatory measures.¹⁷¹

The Extent of Incorporating the Non-Mandatory Measures

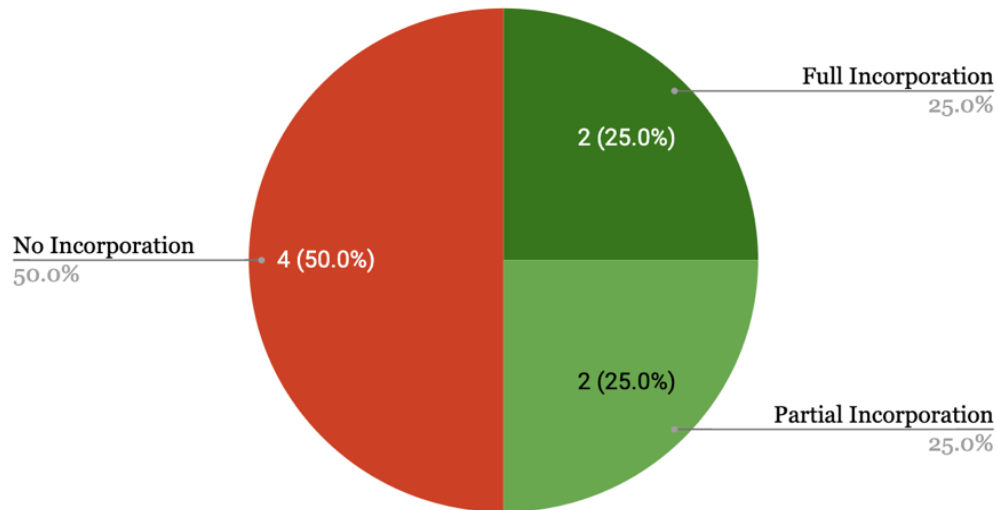


Figure 6. Measuring incorporation of the non-mandatory measures in Afghan laws

Figure 7. An overview of incorporation of the non-mandatory measures into the Afghan domestic law

No	Non-Mandatory Measures	The 2013 Legal Cooperation Law		
		Full Incorporation	Partial Incorporation	No Incorporation
1	Grounds for refusal	Full		
2	Grounds for postponing mutual legal assistance	Full		
3	Requirements for transfer of a person		Partial	
4	Entering into new agreements and arrangements		Partial	

¹⁷¹ Most of the domestic provisions pertaining to non-mandatory measures stem from the 2013 Legal Cooperation Law. The 2014 Anti-Money Laundering Law contains few provisions that correspond to the non-mandatory measures (which in any event would only apply to money-laundering offenses).

5	Communicating information spontaneously			
6	Conducting hearing through videoconference			
7	Facilitating cooperation via use of modern technology			
8	Conducting joint investigations			

iv. Full Incorporation

a. Grounds for Refusal

The UN Suppression Conventions provide a list of grounds upon which state parties may refuse to provide mutual legal assistance. Specifically:

Mutual legal assistance may be refused: (a) If the request is not made in conformity with the provisions of this article; (b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests; (c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction; (d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.¹⁷²

Similarly, Afghanistan's 2013 Legal Cooperation Law provides a long list of grounds justifying refusal of mutual legal assistance requests.¹⁷³ Some of the most important grounds upon which Afghanistan can refuse to provide mutual legal assistance to a foreign country include:

1. The request is not provided in accordance with the laws of the requesting state;¹⁷⁴

¹⁷² See UNCTOC, *supra* note 5, at art. 18 (21); UNCAC, *supra* note 6, at art. 46 (21).

¹⁷³ See EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 38. The 2014 Anti-Money Laundering Law contains similar provisions. (See ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 57.

¹⁷⁴ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 38 (1) (1). Similar provision exists in the 2014 Anti-Money Laundering Law. The law adds that a request may be refused if the legal assistance is sought by an agency which is not a competent authority based upon the laws of the requesting State. (See ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 57 (1) (1)).

2. The execution of the request will violate the laws of Afghanistan, or it will likely harm fundamental public policy and essential interests of the country;¹⁷⁵
3. A court has already issued a final order about the crime which is the subject of the request;¹⁷⁶
4. The request requires taking measures that are not allowed under Afghan law or not applicable with respect to the crime in question;¹⁷⁷
5. The request to execute a court order of a foreign country violates Afghan law;¹⁷⁸
6. There are strong indications that the request arises from discriminatory considerations based on race, religion, nationality, ethnicity, gender, or political beliefs of the person about whom the legal assistance is sought;¹⁷⁹

In the case of refusal, the 2013 Legal Cooperation Law requires the government of Afghanistan to swiftly inform the requesting state of the grounds upon which the request is denied.¹⁸⁰

The grounds listed in these Afghan domestic law provisions are very similar to the grounds recommended by the UN Suppression Conventions,¹⁸¹ and thus one may safely conclude that Afghanistan has fully incorporated this non-mandatory measure.

¹⁷⁵ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 38 (1) (2). The 2014 Anti-Money Laundering Law embodies the same provision. (ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 57 (1) (2)).

¹⁷⁶ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 38 (1) (3). Similar provision is present in the 2014 Anti-Money Laundering Law. (See ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 57 (1) (3)).

¹⁷⁷ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 38 (1) (4).

¹⁷⁸ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 38 (1) (5).

¹⁷⁹ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 38 (1) (6). The 2014 Anti-Money Laundering Law contains similar provision. (See ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 57 (1) (4)). In addition to the above bases, the 2014 Anti-Money Laundering Law adds two grounds for refusal in crimes related to money laundering or financing terrorism: (1) The crime listed in the request is not criminalized under Afghan law or it lacks the criminal elements anticipated in Afghan law. In the latter situation, legal assistance could be provided to the requesting State only if the request does not entail mandatory measures, (ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 57 (1) (5)) and (2) the requested measures in connection with money laundering or financing of terrorism cases could not be taken due to the statute of limitations under Afghan law or the laws of the requesting State. (*Id.* at art. 57 (1) (6)).

¹⁸⁰ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 38 (3).

¹⁸¹ See UNCTOC, *supra* note 5, at art. 18 (21); UNCAC, *supra* note 6, at art. 46 (21).

b. Grounds for Postponing Mutual Legal Assistance

The UN Suppression Conventions indicate that “[m]utual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.”¹⁸² Similar to this provision of the UN Suppression Conventions, the 2013 Legal Cooperation Law provides that, in circumstances where referring a mutual legal assistance request to the Afghan competent authorities would disrupt ongoing investigations, the AGO can postpone issuing the request to the relevant Afghan authorities.¹⁸³ The AGO must subsequently inform the requesting state of this decision.¹⁸⁴ Apparently, this provision addresses situations where a request may interfere with proceedings actively under consideration by the Afghan authorities. In a similar provision, the 2013 Legal Cooperation Law indicates that a request for mutual legal assistance could be delayed if the request is related to a crime that is currently under investigation by the Afghan authorities.¹⁸⁵ These provisions of Afghan law are sufficiently similar to the UN Suppression Conventions¹⁸⁶ and contain all the requirements of the non-mandatory measures as to be deemed compliant.

v. Partial Incorporation

a. Requirements for a Transfer of a Person

The UN Suppression Conventions allow a requested state to transfer a person in detention or serving a sentence in a prison to another state party “for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings”¹⁸⁷ if two “conditions are met: (a) The person freely gives his or her informed consent; [and] (b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.”¹⁸⁸ Further, the UN Suppression Conventions prohibit a requesting state from requiring the subsequent extradition of the transferred person back to the

¹⁸² UNCTOC, *supra* note 5, at art. 18 (25); UNCAC, *supra* note 6, at art. 46 (25).

¹⁸³ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 45. Similar provision is present in the 2014 Anti-Money Laundering Law. (See ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 63.

¹⁸⁴ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 45.

¹⁸⁵ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 36 (1).

¹⁸⁶ See UNCTOC, *supra* note 5, at art. 18 (25); UNCAC, *supra* note 6, at art. 46 (25).

¹⁸⁷ UNCTOC, *supra* note 5, at art. 18 (10); UNCAC, *supra* note 6, at art. 46 (10) .

¹⁸⁸ UNCTOC, *supra* note 5, at art. 18 (10) (a) (b); UNCAC, *supra* note 6, at art. 46 (10) (a) (b).

requested state.¹⁸⁹ By comparison, the 2013 Legal Cooperation Law allows a convict to be temporarily transferred to a foreign country and subsequently returned via extradition for the purpose of providing testimony before the competent authorities of a requesting state.¹⁹⁰ However, such transfer is prohibited if the convict's presence is required in a case under consideration in an Afghan court or if the duration of the transfer and return would exceed the person's remaining sentence.¹⁹¹

Afghanistan has only partially incorporated this non-mandatory measure because the relevant law permits the transfer of a convicted person, but does not condition the transfer upon the convict's consent. As explained, the UN Suppression Conventions prohibit the requested state from transferring persons without their free and informed consent.¹⁹² In addition, the law fails to incorporate a separate measure prohibiting a requesting state from requiring other states to submit an extradition request before the requesting state will return of a person already transferred to the requesting state's custody.¹⁹³

b. Entering into New Agreements and Arrangements

According to the UN Suppression Conventions, "States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions"¹⁹⁴ of mutual legal assistance. In comparison, the 2013 Legal Cooperation Law does not explicitly encourage the government of Afghanistan to enter into new bilateral or multilateral.¹⁹⁵ However, the law does obligate the MOFA¹⁹⁶ to follow the provisions of that law when it enters into mutual legal assistance agreements with foreign countries.¹⁹⁷ In addition, Afghanistan has ratified the South Asian Association for Regional Cooperation (SAARCC) Convention on Mutual Legal Assistance in Criminal Matters¹⁹⁸ and signed bilateral agreements with

¹⁸⁹ UNCTOC, *supra* note 5, at art. 18 (11) (c); UNCAC, *supra* note 6, at art. 46 (11) (c).

¹⁹⁰ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 40 (1).

¹⁹¹ *Id.* at art. 40 (2) (3).

¹⁹² UNCTOC, *supra* note 5, at art. 18 (10) (a) , (b); UNCAC, *supra* note 6, at art. 46 (10) (a) , (b).

¹⁹³ UNCTOC, *supra* note 5, at art. 18 (11) (c); UNCAC, *supra* note 6, at art. 46 (11) (c).

¹⁹⁴ *See* UNCTOC, *supra* note 5, at art. 18 (30); UNCAC, *supra* note 6, at art. 46 (30).

¹⁹⁵ *See id.*

¹⁹⁶ Ministry of Foreign Affairs, *see generally supra* note 129 and related commentary.

¹⁹⁷ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 49.

¹⁹⁸ SAARC Convention on Mutual Assistance in Criminal Matters, Aug. 3, 2008.

Iran¹⁹⁹ and United Arab Emirates.²⁰⁰ Afghanistan has therefore partially incorporated the objectives of the measure because it has entered into several multi- and bilateral treaties regarding mutual legal assistance, despite lacking an explicit legal directive at the domestic level to enter into such arrangements

vi. Measures Not Incorporated

Afghan law²⁰¹ fails to incorporate several of the conventions' non-mandatory measures of the conventions, as detailed below.

c. Communicating Information Spontaneously

The UN Suppression Conventions recommend that “the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings....”²⁰² However, the relevant Afghan laws do not include any provisions implementing the UN Suppression Conventions' recommendation to authorize Afghan authorities to share information with foreign countries spontaneously or without prior request. Consequently, Afghanistan has not incorporated this crucial measure into its domestic law.

d. Conducting Hearings Through Videoconference

Another important measure recommended by the UN Suppression Conventions, but not incorporated into the Afghan laws, is the power to conduct hearings through videoconference.²⁰³ According to the UN Suppression Conventions, “[w]herever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the

¹⁹⁹ See Judicial Assistance Agreement Between Islamic Republic of Afghanistan and Islamic Republic of Iran, Iran-Afg., March 2008.

²⁰⁰ See Agreement Between Islamic Republic of Afghanistan and the United Arab Emirates on Mutual Legal Assistance in Criminal Matters, U.A.E.-Afg., July 2010.

²⁰¹ Under this section (no incorporation), both laws should be analyzed because if the 2014 Anti-Money Laundering Law happened to contain a provision concerning a non-mandatory measure, then the measure would be partially incorporated..

²⁰² See UNCTOC, *supra* note 5, at art. 18 (4); UNCAC, *supra* note 6, at art. 46 (4).

²⁰³ See *e.g.* UNCTOC, *supra* note 5, at art. 18 (18); UNCAC, *supra* note 6, at art. 46 (18).

territory of the requesting State Party.”²⁰⁴ This measure can increase efficiency and be critical for accessing witnesses and experts that live abroad and cannot attend court in person.²⁰⁵ Due to these methods’ potential to reduce costs, their absence is particularly regrettable in a poor country with weak public finances such as Afghanistan.

e. Facilitating Cooperation via the Use of Modern Technology

Unfortunately, the Afghan laws do not incorporate the UN Suppression Conventions’ non-mandatory measure²⁰⁶ that permits authorities to use modern technology in providing law enforcement cooperation. The UN Suppression Conventions provide that “States Parties shall endeavour to cooperate within their means to respond to transnational organized crime committed through the use of modern technology.”²⁰⁷ Modern technology, such as reliable databases, e-mail, and other applications, can facilitate cooperation swiftly and effectively, and there is no indication that Afghan law would prohibit the use of modern technology²⁰⁸ Yet Afghanistan has, regrettably, failed to incorporate this non-mandatory measure as well.

f. Conducting Joint Investigations

Finally, the Afghan laws do not incorporate the measure recommended by the UN Suppression Conventions²⁰⁹ to allow Afghan authorities to conduct joint investigations or establish bodies for conducting joint investigations in collaboration with the competent authorities of foreign countries.²¹⁰ In order

²⁰⁴ See *id.*

²⁰⁵ Domestically, the Afghan Criminal Procedure Code allows taking witness’s testimony through videoconference. (See *Qanooni Ejra’at Jazae* [Criminal Procedure Code], art. 53 (3), Official Gazette, May 2014, No. 1132 (Afg.)) This will make it easier to extend the measure for cross-border videoconference.

²⁰⁶ See e.g. UNCTOC, *supra* note 5, at art. 27 (3); UNCAC, *supra* note 6, at art. 48 (3).

²⁰⁷ See e.g. UNCTOC, *supra* note 5, at art. 27 (3).

²⁰⁸ Quite to the contrary, it can be implied from the Afghan Criminal Procedure Code that using modern technology may not violate any law. (See *Qanooni Ejra’at Jazae* [Criminal Procedure Code], art. 53, Official Gazette, May 2014, No. 1132 (Afg.)) The author observed in the field that, even domestically, judges and prosecutors face various challenges due to lack of access and use of modern technology. For instance, judges have complained that they have to send their draft opinions to other judges in nearby courts through a courier, as the courts do not provide e-mail/internet (and many judges do not have personal e-mail/internet). Also, prosecutors and judges have complained that they need to travel in person to other provinces to obtain evidence from prosecutors in those other provinces, since they do not have court e-mail to request evidence from prosecutors at other courts.

²⁰⁹ See e.g. UNCTOC, *supra* note 5, at art. 19; UNCAC, *supra* note 6, at art. 49.

²¹⁰ Since many Afghan criminal networks extend into wealthy countries (UAE, Europe, etc.), joint investigation authority poses significant potential for the financially-strapped Afghan authorities to leverage utilizing the resources of wealthier countries.

to establish joint investigation bodies, the UN Suppression Conventions encourage state parties to enter “bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States.”²¹¹ The 2013 Legal Cooperation Law only permits competent law enforcement officers of another country to observe an investigation or trial, and even then observation is permitted only to obtain information and assurances regarding the investigation or trial process.²¹² The law requires that such an officer be assigned by a requesting state.²¹³

III. OTHER AFGHAN DOMESTIC MUTUAL LEGAL ASSISTANCE PROVISIONS

Many provisions in Afghanistan’s 2013 Legal Cooperation Law lay out domestic procedures pertaining to mutual legal assistance mechanisms, but do not correspond to any of the obligations or non-mandatory measures set forth by the UN Suppression Conventions. Instead, these provisions regulate internal processes, specify competent authorities, and characterize the conditions under and limits within which mutual legal assistance requests may be responded to or be initiated. An exploration of these provisions allows us to identify the Afghan domestic mutual legal assistance procedures’ loopholes and inconsistencies. This section discusses the most important provisions of the 2013 Legal Cooperation Law that address specific domestic issues.

A. *Competent Authorities That Can Authorize/or Respond to a Mutual Legal Assistance Request*

The 2013 Legal Cooperation Law is inconsistent in specifying competent authorities with the ability to issue and/or respond to a mutual legal assistance request. This inconsistency may create confusion and jurisdictional conflict among the designated competent authorities when executing a mutual legal assistance request. For instance, in Article 26, the law vests the power to authorize an outbound mutual legal assistance request in three institutions: the MOI,²¹⁴ AGO,²¹⁵ and High Council of the Supreme Court.²¹⁶ The law implies

²¹¹ See e.g. UNCTOC, *supra* note 5, at art. 19; UNCAC, *supra* note 6, at art. 49.

²¹² EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 41. Basically, the foreign officer is only an observer, not a collaborator.

²¹³ *Id.*

²¹⁴ MOI Information, *see supra* note 134 and relevant commentary.

²¹⁵ AGO Information, *see supra* note 135 and relevant commentary.

²¹⁶ *See id.* at art. 26 (1).

that each of these three (3) institutions can authorize an *outgoing* mutual legal assistance request when a request is brought before them by their sub-agencies (e.g., a provincial police department may bring a request to the MOI).²¹⁷ However, in Article 29,²¹⁸ the law specifies *four* (4) institutions that can determine their sub-agencies' jurisdiction over the execution of *incoming* mutual legal assistance requests: specifically, this article adds the Central Bank²¹⁹ as another competent authority in addition to the three institutions named above.²²⁰ There is no stated reason why the law only recognizes the Central Bank as a competent authority to execute *incoming* requests but not as a competent authority with the power to authorize *outgoing* requests. One possible explanation is that the Central Bank, particularly the FinTRACA²²¹ unit, is not considered a law enforcement agency and therefore does not have as extensive authority as the three other institutions.²²² However, as discussed below, FinTRACA regularly exchanged financial intelligence information with its foreign counterparts in accordance with the 2014 Anti-Money Laundering Law.²²³

In determining the competent authorities for both outgoing and incoming requests, the 2013 Legal Cooperation Law appears to follow the distinction between the three “stages of a case” set forth in the Afghan 2004 Constitution²²⁴ and the Afghan Criminal Procedure Code (CPC),²²⁵ which also establish each institution's jurisdiction over the corresponding “stage” of the case.²²⁶ Afghan law designates three “stages” of a case, from the beginning of a case until the issuance of the court's final decision: discovery,²²⁷

²¹⁷ *See id.*

²¹⁸ *See id.* at art. 29.

²¹⁹ Da Afghanistan Bank is the central bank of Afghanistan. “Da Afghanistan Bank operates to stabilize price levels, strengthen the financial sector, ensure the safety of payment system, manage currency reserves effectively, print Afghani banknotes and act as state banker.” *See* Government of Afghanistan, *Departments*, <https://www.dab.gov.af/departments> (last visited Aug. 3, 2022).

²²⁰ *See id.*

²²¹ After the Taliban takeover of Afghanistan in 2021, FinTRACA is no longer operational. *See* Tom Arnold, *Anti-Laundering Unit Goes Off-Grid, Fraying Afghan Ties to Global Finance*, REUTERS (Sept. 15, 2021).

²²² FinTRACA is responsible to receive and analyze reports from financial institutions about suspicious transactions to track and determine illegal financial flows such as money laundering. It does not have much enforcement authority. *See supra* note 121.

²²³ *See* ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 31.

²²⁴ *See* THE CONSTITUTION, Official Gazette, Extraordinary Issue, Jan. 2004, No. 818 (unofficial translation), <http://www.afghanembassy.com.pl/afg/images/pliki/TheConstitution.pdf>.

²²⁵ *Qanooni Ejra'at Jazaae* [Criminal Procedure Code], Official Gazette, May 2014, No. 1132 (Afg.) [hereinafter CRIMINAL PROCEDURE CODE]

²²⁶ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 29.

²²⁷ Discovery of a crime involves a preliminary investigation by police and is defined as taking measures for the purpose of preventing the commission of crimes; detecting perpetrators, methods, and

investigation²²⁸ and prosecution, and trial.²²⁹ One of the three authorities mentioned above (except the Central Bank which has authority only in money laundering cases) has exclusive power and responsibility over each stage of a case. For instance, pursuant to the Constitution of Afghanistan and Police Law, the discovery of a crime is one of the main functions and responsibilities of the police,²³⁰ and the MOI is the flagship institution that leads and manages the national police.²³¹ Similarly, the Constitution vests the responsibility for investigation and prosecution of crimes in the AGO.²³² Finally, the Constitution gives exclusive authority to issue judgment in criminal cases to the courts.²³³ Against this backdrop, it appears that the 2013 Legal Cooperation Law determines these institutions to be competent authorities based on their investigative authority and involvement in every phase of a criminal case as mandated by the Constitution and other relevant laws of Afghanistan. This suggests that the ability of the MOI, AGO, or the High Council of the Supreme Court to authorize outgoing mutual legal assistance requests depends on whether a case is in the discovery, investigation, or trial stage, respectively.²³⁴

The 2013 Legal Cooperation Law provides greater detail regarding jurisdiction of each competent authority for executing incoming requests as contrasted with outgoing requests. To facilitate the execution of an incoming mutual legal assistance request, Article 29 of the 2013 Legal Cooperation Law provides partial guidance as to how the four institutions should determine the

motives of committing crime; specifying the place of occurrence; and preserving evidence and instrumentalities of the crime. (CRIMINAL PROCEDURE CODE, *supra* note 225, at art. 4 (1). The discovery concept in the Afghan CPC is different from the discovery process which common in civil actions in the United States.

²²⁸ Investigation is defined as conducting a thorough inquiry into a criminal incident, collecting information and evidence via interrogating the accused, taking witness testimony, analyzing the gathered evidence and information in order to establish the occurrence of a crime and its perpetrators, and charging the accused person in accordance with the law. (CRIMINAL PROCEDURE CODE, *supra* note 225, at art. 4 (4)).

²²⁹ Trial is defined as consideration of the indictment, the defendant's defense, and issuance of a final decision in accordance with law by a competent court. (CRIMINAL PROCEDURE CODE, *supra* note 225, at art. 4 (9)). It should be noted that even though the Constitution and other laws distinguish various stages in a case, the stages themselves are not always clearly defined and may overlap. For instance, according to the CPC, courts can have semi-investigative authority during trial, including returning a case to the prosecution for further investigation. (*See* CRIMINAL PROCEDURE CODE, *supra* note 225, at art. 177, 202 (4) (2)). Moreover, this code recognizes the National Directorate of Security (an intelligence agency) as an additional institution with discovery authority besides the police. (*See id.* at art. 80, 81.)

²³⁰ *See* THE CONSTITUTION, Official Gazette, Extraordinary Issue, Jan. 2004, No. 818, art. 134 (1) (unofficial translation), <http://www.afghanembassy.com.pl/afg/images/pliki/TheConstitution.pdf>; *Qanooni Police* [Police Law], art.5 (4).

²³¹ *See* Police Law, *supra* note 179, at art. 3, 4 (1).

²³² *See* THE CONSTITUTION, Official Gazette, Extraordinary Issue, Jan. 2004, No. 818, art. 134 (1) (unofficial translation), <http://www.afghanembassy.com.pl/afg/images/pliki/TheConstitution.pdf>.

²³³ *See id.* at art. 131; CRIMINAL PROCEDURE CODE, *supra* note 225, at art. 178.

²³⁴ *See* EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 26 (1).

jurisdictional authority of their sub-agencies when they receive a request.²³⁵ According to this article, in the *discovery stage*, jurisdiction lies with the police department in the territory where the crime was committed, or with FinTRACA of the Central Bank.²³⁶ As such, if a case is in the discovery stage, the MOI should refer a mutual legal assistance request to the police department with territorial jurisdiction over the crime; in money laundering cases, the Central Bank may refer the request to FinTRACA. In the *investigation stage*, jurisdiction resides with the prosecution department stationed where the crime was committed, or the department with territorial jurisdiction over the assets in question.²³⁷ Lastly, at the *trial stage*, jurisdiction rests with the court located where the crime was committed or with the court that has territorial jurisdiction over the assets in question.²³⁸

The CPC establishes the time frame for each stage of a case.²³⁹ These time frames are extremely important because they have significant implications for deciding whether to use or not to use mutual legal assistance mechanisms in transnational criminal cases.²⁴⁰ According to the Afghan Criminal Code, the police must deliver a case to the prosecution within 72 hours if a suspect or suspects are in detention.²⁴¹ This means that the period for discovery only lasts 72 hours if a suspect has been detained.²⁴² Regardless of whether or not a suspect has been detained, the police must inform the relevant prosecution department of the discovery within 24 hours.²⁴³ Then, a prosecutor must complete investigation and prosecution within 27 days for misdemeanors and 75 days for felonies.²⁴⁴ If a suspect has not been detained, the Attorney General can extend the time frames to 90 days for misdemeanors and 180 days for felonies.²⁴⁵ With regard to the permissible duration of trials,

²³⁵ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 29. The language of the Article is not clear about incoming or outgoing requests. However, it can be construed that the Article is discussing executing mutual legal assistance requests not initiating a request. As such, executing a request usually relates to an incoming request.

²³⁶ *See* EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 29 (1).

²³⁷ *See id.* at art. 29 (2).

²³⁸ *See id.* at art. 29 (3).

²³⁹ *See e.g.* CRIMINAL PROCEDURE CODE, *supra* note 225, at art. 87 (1), 149 (1).

²⁴⁰ For instance, the process for seeking or obtaining cross-border evidence through mutual legal assistance is extremely time-consuming and may exceed the time frames. Hence, the tight time frames in the CPC may discourage or even make it practically impossible for prosecutors to look for/obtain cross-border evidence.

²⁴¹ *See id.* at art. 87 (1).

²⁴² *See id.*

²⁴³ *See id.* at art. 80 (3).

²⁴⁴ *See id.* at art. 149 (1).

²⁴⁵ *See id.* at art. 149 (3).

the primary court must reach a final decision in the case within 30 days if an accused person is in detention.²⁴⁶

B. Conditions for Providing Legal Assistance

According to the 2013 Legal Cooperation Law, legal assistance will be provided only after three conditions are met. First, the action in question must be a crime punishable by more than a year based on the laws of both Afghanistan and the requesting state.²⁴⁷ Second, the requesting state must be obligated to observe the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) during the investigation and trial processes.²⁴⁸ Third, either Afghanistan or the requesting state should be at the location where the accused person has been detained or the crime took place must either be Afghanistan or the requesting state, or else the accused person or victim must be a citizen of either Afghanistan or the requesting state.²⁴⁹

It should be noted, however, that the law conflates the conditions for providing mutual legal assistance with conditions for extradition.²⁵⁰ For instance, the requirement to observe the ICCPR and UNCAT comes from conditions for extradition.²⁵¹ However, in subsequent provision, the law renders mutual legal assistance conditional upon observation of the ICCPR and UNCAT as well.²⁵² This conflation may create confusion for the relevant authorities and complicate implementation. For instance, the relevant authorities might experience difficulty with determining what conditions must be followed when responding to a mutual legal assistance request.

C. The Role of the AGO in Transmitting and Rendering Evidence and Documents

The AGO is one of the major players in Afghan domestic mutual legal assistance mechanisms. According to the 2013 Legal Cooperation Law, the AGO can agree to transmit evidence and documents to a requesting State after the following conditions are met:²⁵³

²⁴⁶ See *id.* at art. 101 (1) (1).

²⁴⁷ EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 11 (1) (2).

²⁴⁸ *Id.* at art. 11 (1) (3); G.A. Res. 2200A (XXI) (Dec. 16, 1966); G.A. Res. 39/46 (Dec. 10, 1984).

²⁴⁹ *Id.* at art. 27.

²⁵⁰ See *id.* at art. 27, 11 (1) (2)–(3).

²⁵¹ See *id.* at art. 11 (1) (3).

²⁵² See *id.* at art. 27.

²⁵³ *Id.* at art. 30.

1. The evidence and documents were the instrumentalities of the crime or they were produced as a result of the crime²⁵⁴
2. The crime to which the requested evidence and documents are related is not under judicial consideration in Afghanistan²⁵⁵
3. Transmitting the requested evidence and documents would not hurt third parties or they do not carry any value which a third party can rightly claim.²⁵⁶

The law implicitly gives the AGO authority to approve transmission of evidence to a foreign country. The law, however, does not explain whether the AGO has the authority to approve transmission of the requested evidence in every stage of a case, or if its authority is limited to the investigation and prosecution stage. Given that the law provides similar authority to the court,²⁵⁷ it can be implied that the AGO has the authority only during investigation and prosecution, and that it must defer to the courts once the matter has progressed to the trial stage.

D. The Role of the Courts in Transmitting and Rendering Documents and Assets

Courts also play an important role in providing mutual legal assistance in Afghanistan. The 2013 Legal Cooperation Law also grants courts the authority to approve transmission of documents and assets under certain conditions, which are similar to the conditions for the AGO discussed above.²⁵⁸ Under the law, a court can authorize transmission of evidence and assets of high value not claimed by third parties that are prohibited assets or instrumentalities or proceeds of crime.²⁵⁹ The law also indicates that the court can temporarily freeze assets for a period of time, not exceeding a month, based on notice from the requesting state, before an official request for freezing or confiscating assets is received from the requesting state.²⁶⁰ These provisions are very similar to the ones explained above with respect to the AGO's authority. The only difference is that the provisions addressing the courts' role specify that the assets and evidence must be of high value. The

²⁵⁴ *Id.* at art. 30 (1).

²⁵⁵ *Id.* at art. 30 (2).

²⁵⁶ *Id.* at art. 30 (3), (4).

²⁵⁷ *See id.* at art. 32.

²⁵⁸ *See id.*

²⁵⁹ *Id.* at art. 32 (1).

²⁶⁰ *Id.* at art. 32 (2).

law does not address how to determine whether an asset or evidence should be considered “high value,” nor does it describe in which stages of a case the courts have approval authority. This ambiguity may create unnecessary jurisdictional conflict of jurisdiction between the courts and the AGO, negatively impacting effectiveness of the process.

E. Responding to Requests from More Than One Country at Once

The 2013 Legal Cooperation Law provides some guidance to the AGO and Supreme Court in anticipation of some situations in which two or more states request the same evidence or assets.²⁶¹ According to the law, if Afghanistan receives requests from more than one state to render the same evidence, documents, or assets in relation to the *same crime*, the AGO or Supreme Court should only accept the request of the state whose citizen is the victim of the crime.²⁶² If two or more states request the same evidence, documents, or assets in relation to *different crimes*, the AGO or Supreme Court should accept the request of the state whose citizens or assets endured the severest crime or greatest harm.²⁶³ If the requesting states endured the harm equally, the AGO or Supreme Court can render the requested evidence or assets to the state that requested the items first.²⁶⁴ While these provisions may be helpful for responding to requests for transfer of assets, they appear rather unnecessary with respect to documents or evidence that can be copied. In such cases, Afghanistan can send certified copies of documents or records to many requesting states at once.

F. Conditions Required to Execute a Foreign Court Order

According to the 2013 Legal Cooperation Law, a court order from a foreign country may be executed in Afghanistan if the order is considered a final order (not appealable to higher courts) in the requesting state and the action upon which the person was convicted constitutes a crime under Afghan law.²⁶⁵ However, the order of the foreign court may not be executed in Afghanistan if: (1) a competent Afghan court has already issued a final order on the case;²⁶⁶ (2) the crime addressed by the foreign court order is not

²⁶¹ See *id.* at art. 34.

²⁶² *Id.* at art. 34 (1).

²⁶³ *Id.* at art. 34 (2).

²⁶⁴ *Id.*

²⁶⁵ *Id.* at art. 42.

²⁶⁶ *Id.* at art. 43 (1).

considered a crime in Afghanistan,²⁶⁷ or (3) the foreign court order is contrary to Afghan law or would disrupt fundamental public policy in the country.²⁶⁸

G. *Admissibility of Cross-Border Evidence*

Neither the 2014 Anti-Money Laundering Law nor the 2013 Legal Cooperation Law provide guidance on the admissibility of cross-border evidence or whether the method of obtaining such evidence would impact its admissibility in court. However, it may be instructive to look to the CPC on inadmissibility of evidence.²⁶⁹ CPC Article 21 provides that evidence is inadmissible if it is obtained as a result of violating any provision of the CPC or other laws of Afghanistan.²⁷⁰ If the CPC applies—and, in the author's opinion, it does—then all the limitations on admissibility of evidence apply. For instance, when considering witness testimony, an obvious example of inadmissible evidence would be testimony from individuals (such as lawyers or doctors) that have a duty of confidentiality.²⁷¹

IV. TRACING PROBLEMS AND INCONSISTENCIES WITHIN AFGHAN DOMESTIC LAWS

As observed, even though the Afghan laws are far from full compliance with all mutual legal assistance obligations set forth under the UN Suppression Conventions, the laws contain fairly detailed provisions on mutual legal assistance. The laws include extensive and comprehensive provisions on various topics of mutual legal assistance including competent authorities; purposes for and contents of mutual legal assistance; grounds for refusal; transferring of the accused and witnesses; conditions for providing legal assistance; search and seizure; confiscation and returning assets; and confidentiality. However, despite the many advantages of the mechanisms Afghanistan has established, these laws suffer from a range of problems and inconsistencies that make them difficult to implement and ineffective in practice.

²⁶⁷ *Id.* at art. 43 (2).

²⁶⁸ *Id.* at art. 43 (4).

²⁶⁹ CRIMINAL PROCEDURE CODE, *supra* note 225, at art. 21.

²⁷⁰ *Id.*

²⁷¹ *See id.* at art. 26 (1).

A. *Problems with Language and Terminology*

As noted previously, there are two major problems with language in the laws examined by this Article. First, the laws contain many inconsistent and ambiguous provisions. For instance, each law uses a different term for the concept of mutual legal assistance, from “justice cooperation” to “judicial assistance” to “mutual legal aid.”²⁷² This inconsistency may confuse the relevant authorities when dealing with responding or seeking mutual legal assistance from foreign jurisdictions. Similarly, some provisions of the 2013 Legal Cooperation Law are ambiguous. For example, the law gives similar authority to the prosecution and courts to hand over evidence or documents to a requesting state without drawing a clear line between the powers of the institutions.²⁷³ The only distinction that can be implied from the relevant provisions is that courts have authority over rendering the “more valuable” documents or evidence.²⁷⁴ However, the law does not provide any guidance for determining the value of an item of evidence or document or what threshold must be met to trigger the court’s involvement. As such, a conflict of jurisdiction between courts and the AGO over decisions to produce evidence is inevitable.

Second, too many nearly identical provisions in the 2013 Legal Cooperation Law and the 2014 Anti-Money Laundering Law are nearly identical to one another. This produces an unnecessary layer of legal rules and may generate divergent practice depending which institutions refer to which of the laws. In addition, it could be confusing for foreign jurisdictions to comprehend the Afghan domestic mutual legal assistance mechanisms when seeking legal assistance from Afghanistan. For instance, both laws have the same or similar provisions concerning the purpose of requests, content of requests, grounds for refusal, confiscation of assets, confidentiality, and so on.²⁷⁵ This repetition could be avoided if the 2014 Anti-Money Laundering Law would refer to the relevant provisions of the 2013 Legal Cooperation Law rather than setting forth duplicative provisions.

B. *Problem of Time Frames*

The time frames for execution of incoming mutual legal assistance requests set in the 2013 Legal Cooperation Law and the CPC’s times for

²⁷² See Section IV of this Article.

²⁷³ See e.g. EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 30, 32.

²⁷⁴ See *id.*

²⁷⁵ See e.g. EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 26, 28, 36, 44; ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 56, 57, 60.

different stages of a case are not realistic, unpracticable, and unenforceable in practice in cases involve mutual legal assistance requests. There are two problems with time frames in the current provisions of the 2013 Legal Cooperation Law. First, the law sets a maximum of 14 days for the MOFA²⁷⁶ to channel an incoming mutual legal assistance request to the competent authorities inside Afghanistan²⁷⁷ and then the competent authorities must provide their response within two months.²⁷⁸ These time frames could be too long for some requests (simple cases) and too short for other requests (complex cases). The law does not provide any explanation and guidance for different scenarios. Most importantly, the law does not anticipate what the consequences would be if the authorities cannot fulfill their duties within the given time frames.

Second, the time frames in the CPC for discovery, investigation and prosecution, and trial are extremely restrictive for prosecutors if there is a need for mutual legal assistance request in a transnational crime case.²⁷⁹ It is quite challenging for prosecutors to complete their investigation and prosecution based solely on domestic evidence in a felony case within 75 or 180 days, let alone also to seek, and receive, and integrate into their case cross-border evidence via mutual legal assistance within those time frames. As the field research findings indicate,²⁸⁰ these short time frames discourage prosecutors from seeking cross-border evidence and pressure them to shape their case based on whatever domestic evidence they have at their disposal.²⁸¹

C. *The Problem of a Central Authority*

The Afghan laws related to mutual legal assistance discussed in this Article do not take a consistent approach to determining the “competent” authorities for providing or requesting legal assistance, and do not designate any official “Central” authority, as required by the UN Suppression Conventions.

As for competent authorities, there is a lack of clarity and consistency with designation of competent authorities and their jurisdiction. For example,

²⁷⁶ Ministry of Foreign Affairs, *see supra* note 129 and associated commentary.

²⁷⁷ *See* EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 26 (4).

²⁷⁸ *See id.* at art. 26 (5).

²⁷⁹ *See* CRIMINAL PROCEDURE CODE, *supra* note 225, at art. 87 (1), 149 (1).

²⁸⁰ *See* Abdul Mahir Hazim, Transnational Crime, Mutual Legal Assistance, and Compliance with International Obligations in the Developing World: Reforming and Enforcing Legal Mechanisms to Effectively Combat Transnational Crime in Afghanistan 299-300 (2020) (Ph.D. dissertation, University of Washington).

²⁸¹ Although in addition to domestic evidence, there might be some foreign-sourced evidence that was produced spontaneously or via informal cooperation.

the 2013 Legal Cooperation Law specifies the MOI, AGO,²⁸² and High Council of the Supreme Court as the competent authorities in one article.²⁸³ Without providing any clear reason, the law also recognizes the Central Bank as an additional competent authority in another article.²⁸⁴ Moreover, the 2014 Anti-Money Laundering Law does not explicitly specify any institution as a competent authority. Instead, the law merely mentions “competent authorities” and requires them to provide legal assistance to the competent authorities of foreign countries.²⁸⁵ However, it neither identifies any institutions as competent authorities, nor references the applicable provisions of the 2013 Legal Cooperation Law. Such inconsistencies fail to provide a clear picture regarding which institutions have what powers and how the institutions can exercise authority properly in the process of requesting or executing a legal assistance request. This lack of clarity and consistency might ultimately undermine the effectiveness of the entire mutual legal assistance mechanisms, as no-one would know with any degree of certainty what must be done to implement a mutual legal assistance request.

More significantly, both the 2013 Legal Cooperation Law and the 2014 Anti-Money Laundering Law fail to designate a central authority.²⁸⁶ A central authority may also be a competent authority, but role as a central authority should be determined by domestic law, with the specific powers and responsibilities expressly described.²⁸⁷ The two laws only refer to “competent authority,” and competent authorities are different from a central authority. Based on the UN Suppression Conventions, the central authority functions as a liaison or point of contact between domestic and foreign competent authorities.²⁸⁸ Competent authorities, on the other hand, have the investigative and judicial jurisdiction over a case in their country and can include many institutions (such as police, prosecution, or courts) within a country that have jurisdiction over criminal cases.²⁸⁹

D. *Conflating Mutual Legal Assistance with Extradition*

As noted previously, the 2013 Legal Cooperation Law covers both extradition and mutual legal assistance (legal cooperation). Regulating the

²⁸² AGO Information, *see supra* note 135 and associated commentary.

²⁸³ *See* EXTRADITION AND LEGAL COOPERATION LAW, *supra* note 35, at art. 26 (1).

²⁸⁴ *See id.* at art. 29.

²⁸⁵ *See e.g.* ANTI-MONEY LAUNDERING LAW, *supra* note 36, at art. 55 (1).

²⁸⁶ And, as noted previously, Afghanistan also failed to designate a central authority when it deposited its instrument of ratification for the UNCTOC to the United Nations.

²⁸⁷ *See* UNCAC, *supra* note 6, at art. 46 (13).

²⁸⁸ *See generally id.*

²⁸⁹ *See id.*

two topics under one law may not in itself be problematic, but conflating provisions of the two could be. For instance, the law combines the content of a request for mutual legal assistance with the content of a request for extradition.²⁹⁰ Blending the two further complicates the process and makes it difficult to follow and implement because each process contains unique legal requirements and standards.

E. Lack of Reference to Afghanistan's International Obligations

Neither the 2013 Legal Cooperation Law nor the 2014 Anti-Money Laundering Law refer to the mutual legal assistance obligations of Afghanistan under the UN Suppression Conventions or other international instruments. This makes it difficult to understand the extent to which they incorporate the conventions' relevant measures, both obligatory and recommended. Apparently, the legislature and the people involved in the legislative process indeed incorporated many provisions of the UN Suppression Conventions,²⁹¹ but the lack of reference (even general reference) makes it difficult to decipher which were reviewed and considered.²⁹² Lack of such a specific reference also makes it hard for the MOFA to determine the extent of Afghanistan's compliance with international law when it is requested by international body (e.g., treaty monitoring bodies) to provide reports on Afghanistan's compliance with the international conventions.

CONCLUSION

Several Afghan laws contain mutual legal assistance provisions correspond to the mutual legal assistance obligations and non-mandatory measures under the UN Suppression Conventions. Since the 2013 Legal Cooperation Law provides general authority for mutual legal assistance regardless of the type of crime, it is the primary source to be compared with the UN Suppression Conventions in order to assess Afghanistan's compliance with its international obligations. As this Article demonstrates, Afghanistan has not fully complied approximately half of its obligations and has not incorporated many of the non-mandatory measures into domestic law. In addition to failing to fully comply and incorporate the obligations and non-mandatory measures, the Afghan mutual legal assistance mechanisms suffer from many shortcomings and inconsistencies including inconsistencies and

²⁹⁰ See, e.g., *id.* at art. 28 (1).

²⁹¹ See *supra* note 40 where the author discusses 2019 conversations with Afghan Ministry Officials.

²⁹² As previously indicated, Afghanistan also lacks an accessible legislative record.

ambiguities in utilizing legal terminologies, establishing inconsistent time frames, ambiguity in defining competent authorities, and conflating the concepts of mutual legal assistance and extradition.