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FIGHTING CORRUPTION IN AFGHANISTAN

STEPPING UP TRANSPARENCY, INTEGRITY AND ACCOUNTABILITY



UNITED NATIONS ASSISTANCE MISSION IN AFGHANISTAN

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List of Abbreviations

ACBAR	Agency Coordinating Body for Afghan Relief and Development
ACC	Anti-Corruption Commission
ACJC	Anti-Corruption Justice Centre
AFN	Afghan Afghani
AG	Attorney General
AGO	Attorney General's Office
AIBA	Afghanistan Independent Bar Association
AIC	Access to Information Commission
AML-PC	Anti-Money Laundering and Proceeds of Crime Law
ANCOP	Afghan National Civil Order Police
ANPDF	Afghanistan National Peace and Development Framework
APF	Afghanistan Partnership Framework
BRU	Budget Reform Unit
CMS	Case Management System
CNJC	Counter Narcotics Justice Centre
COVID-19	Corona Virus Disease
CPC	Criminal Procedure Code
CSJWG	Civil Society Joint Working Group
DAG-AC	Deputy Attorney General for Anti-Corruption Affairs
DANIDA	Danish International Development Agency
DfID	Department for International Development
DGICC	Directorate General for Intelligence and Combating Crime
ECC	Electoral Complaints Commission
ExPres	Executive Committee on Prevention of Corruption and System Development
FinTRACA	Financial Transactions and Reports Analysis Centre of Afghanistan
FIU	Financial Intelligence Unit
GIZ	<i>Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH</i>
GMAF	Geneva Mutual Accountability Framework
HOOAC	High Office of Oversight and Anti-Corruption
HRMIS	Human Resources Management Information System
IARCSC	Independent Administrative Reform and Civil Service Commission
ICCPR	International Covenant on Civil and Political Rights
ICSPA	Institutional and Capacity Support to the Parliament of Afghanistan
IDLG	Independent Directorate of Local Government
IEC	Independent Election Commission
IMF	International Monetary Fund
Interpol	International Criminal Police Organization
IWA	Integrity Watch Afghanistan
MCTF	Major Crimes Task Force
MEC	Independent Joint Anti-Corruption Monitoring and Evaluation Commission
MoD	Ministry of Defence
MoE	Ministry of Education
MoEC	Ministry of Economy
MoF	Ministry of Finance
Mol	Ministry of Interior
MoJ	Ministry of Justice
MoPH	Ministry of Public Health
MoU	Memorandum of Understanding
MVCA	Ministry-wide Vulnerability to Corruption Assessments

NDS	National Directorate of Security
NGO	Non-Governmental Organization
NJSRP	National Justice Sector and Judicial Reform Plan
NPA	National Procurement Authority
NPC	National Procurement Commission
NWARA	National Water Affairs Regulation Authority
OG	Official Gazette
OGP	Open Government Partnership
PFM-Law	Public Financial Management Law
RAP	Anti-Corruption Reform Acceleration Plan
SAO	Supreme Audit Office
SMP	State Ministry of Peace
SNGP	Subnational Governance Policy
SOLA	Strengthening of Legislature in Afghanistan
SOM	Senior Officials Meeting
TAGHIR	Tackling Afghanistan's Government HRM and Institutional Reforms Project of Afghanistan
UNAMA	United Nations Assistance Mission in Afghanistan
UNCAC	United Nations Convention Against Corruption
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organized Crime
USD	United States Dollar
VCA	Vulnerability to Corruption Assessments

Executive Summary

The decision to withdraw U.S and international troops from Afghanistan by September 2021 and the ongoing peace negotiations between the Afghan Government and the Taliban, make this a critical juncture in Afghanistan's history. The uncertainty about the future course of the peace talks, the deteriorating security situation, the continued threat posed by the COVID-19 pandemic, the deepening humanitarian crisis and uncertainty about the future level of international engagement, all pose significant risks to the prospects of achieving sustainable peace, prosperity, and security.

Against this challenging backdrop, the Government needs to demonstrate a greater ability to deliver basic security, justice, and improved governance. Unless steadily addressed, corruption will continue to be a significant conflict driver, increasing public mistrust and discontent, encouraging criminality and illicit activities, and undermining the legitimacy of the State.

The Government continues to consider corruption as an existential threat to peace and development. UNAMA welcomes the commitment made by the Government at the Geneva Donor Conference in November 2020 to take further "robust measures to address both the causes and manifestations of corruption in Government institutions", as articulated in the reform priorities of the Afghanistan Partnership Framework agreed between donors and the Afghan Government.

This 5th Annual Report on anti-corruption in Afghanistan, issued by the United Nations Assistance Mission in Afghanistan (UNAMA), covers the period January 2020 to May 2021. To its credit, during this period, the Government has continued supporting anti-corruption reforms. The worsening impact of the COVID-19 pandemic, ongoing peace talks and increased violence after the announcement of international troops' withdrawal, have however slowed down the pace of reforms.

The trend remains one of gradual improvement. Afghanistan ranked 165th of 180 countries on Transparency International's Corruption Perception Index 2020, up from 173rd in 2019. Over the past few years, Afghanistan has established a robust anti-corruption legal framework with dedicated institutions to implement it. The national legal framework to prevent and combat corruption include the Penal Code, aligned with the requirements of the United Nations Convention Against Corruption, the Anti-Corruption Law, the Whistle-blower Protection Law, the Asset Declaration and Registration Law, the Access to Information Law, and the Anti-Money Laundering and Proceeds of Crime Law. This framework provides a sound legal basis for anti-corruption measures. However, effective implementation in practice remains a challenge. Improved collaboration between the National Assembly and the Government in timely enacting legislation is also important.

Key institutions to help implement the legal framework to combat corruption have been established, including the High Council on Rule of Law and Governance, the Anti-Corruption Justice Centre, the Assets Declaration and Registration Office, the Financial Intelligence Unit (FinTRACA) and the Access to Information Commission. The Attorney General's Office has also set up a dedicated Prosecution department to investigate and prosecute corruption cases.

The Anti-Corruption Commission (ACC), established in November 2020 to streamline the anti-corruption institutional framework, represents an important milestone but needs to be followed by strong support and adequate resources to enable the Commission to perform its functions independently and effectively. The same applies to the Anti-Corruption Justice Centre, the Major Crimes Task Force under the Ministry of Interior, and the Financial Intelligence Unit (FinTRACA).

Closely engaging with all anti-corruption stakeholders, including the private and public sectors and civil society, the ACC should articulate the Government's genuine commitment to address corruption root causes and tackling corruption, including by timely finalizing and overseeing the effective implementation of the new anti-corruption strategy from 2022 onwards. The new strategy should be guided and informed by a thorough and independent review of the impact of the reforms implemented to date and should be aimed at developing and consolidating a culture of trust, integrity, transparency, and accountability.

Progress made on human resources management through the ongoing institutionalization of merit-based recruitment for government positions by the Independent Administrative Reform and Civil Service Commission needs to be sustained, regardless of positions' seniority, including at the subnational level.

While there is an increased number of public officials declaring their assets in accordance with the new legislation, lack of compliance remains a concern as well as the pace of assets' verification. Steps need to be taken to improve the efficiency of the process and to sanction those officials who fail to file asset declarations.

Stepping up criminal accountability for perpetrators of serious corruption offences, regardless of their wealth and political affiliations, must remain a key priority both in terms of deterrence and enhancing public trust. Despite Covid-19 constraints, cases brought before the Anti-Corruption Justice Centre (ACJC) increased during the second half of 2020. This was evidenced by more indictments and trials against high-ranking officials, including from the military, as well as members of Parliament. However, the recent turnover of ACJC key staff raises concerns as it may undermine the consistency of its work. The Supreme Court continued playing an essential role in adjudicating anti-corruption cases and should accelerate its efforts towards this end. Effectively prosecuting alleged perpetrators requires, however, a reinforcement of the Major Crimes Task Force's capacity to effectively and timely execute summons and arrest warrants.

The amendment of the Penal Code to allow the publication of final judgements in all anti-corruption cases, combined with the Supreme Court's direction to judges to specify judgements' reasoning in an evidence-based manner are welcomed developments, which, if consistently implemented, should result in greater transparency and public awareness of the outcomes of corruption cases.

Insecurity remains a significant challenge to addressing corruption. Justice personnel remained one of the main targets of insurgents and criminal groups. During 2020, UNAMA documented 29 incidents that targeted justice actors, including judges, public prosecutors, and courts' staff. These incidents resulted in 27 people killed and 17 injured - a significant increase from 2018 and 2019. In January 2021, two Supreme Court female judges were killed in Kabul. Few, if any, of the

attacks against justice actors have ever been sufficiently investigated to indict those responsible. This de facto impunity has made the judiciary even more vulnerable.

The Case Management System became the official case management system of Afghanistan in 2020, allowing for the tracking of cases across the criminal and civil justice system, thereby improving efficiency and transparency. The adoption in October 2020 of the regulation delineating the functions of all institutions using the system is a welcome development. The Government needs to support Institutions in effectively using it, improving, and maintaining it as needed, which should reduce opportunities for corruption.

Ongoing efforts to ensure the return of stolen public assets in corruption cases to the benefit of the State and its people should be reinvigorated. The adoption of the Asset Recovery Regulations in 2020 operationalizes the legislative framework for asset recovery and should be used as a springboard to accelerate the recovery of proceeds of crime and other illicit assets, particularly through reinforced regional and international cooperation.

Greater transparency in the Government through increased access to information is essential for combatting corruption. Inconsistent compliance with requests for information results in the Access to Information Commission, media, and Afghan citizens not consistently receiving information that should be made public. The Government should therefore enhance understanding and compliance with the Access to Information Law among government officials.

Ongoing efforts by the Ministry of Finance to streamline public funding and revenue management as well as to increase audits and compliance monitoring to enhance service delivery, including at the sub-national level, should be sustained and consolidated.

Corruption and fraud associated with the Government's responses to the Covid-19 pandemic, amid reports of officials exploiting the crisis to their personal advantage, embezzling much needed aid, not only negatively impacts the most vulnerable members of society but also has political and security ramifications. The conviction in October 2020 by the Primary Court of the ACJC of three staff of the Ministry of Public Health for Covid-19 related bribery is a welcome development and sent a strong signal. Increased accountability and oversight in the allocation and distribution of Covid-19 aid remains essential.

While this report places a strong focus on Government efforts, it also recognizes the central importance of functionally independent commissions and bodies, including the Ombudsperson's office, now embedded within the ACC, as well as the key role of civil society and media, in exposing and combatting corruption. During the review period, journalists have tragically been the victims of a spate of serious attacks and killings. These attacks risk curtailing the capacity of the media to report freely without fear of retaliation. The Government must take robust action to end violence against journalists, including through prosecutions and protection measures. Civil society, more generally, should continue to play a strong role in anti-corruption reforms.

1. Introduction

1.1 Afghan context

The period covered in this report, January 2020 to May 2021, was dominated by two events of major significance: the agreement between the United States and the Taliban in February 2020 setting in motion peace negotiations between the Taliban and the Islamic Republic, and the mid-April 2021 announcement of a full international troop withdrawal in 2021 as part of that agreement.

The agreement called for international military forces to leave Afghanistan by May 1, 2021. On 14 April 2021, U.S. President Biden announced that all troops would be withdrawn by 11 September. The negotiations between the Taliban and the Republic stalled as the Taliban refused to attend a proposed peace conference in Istanbul in April 2021.

The delayed formation of a cabinet after the presidential election held in September 2019, which was resolved in May 2020, slowed reforms at a time when it was increasingly clear that the international community was preparing to reduce its military presence in Afghanistan and promote a negotiated solution between the Islamic Republic and the Taliban. The tensions over the results of the presidential election took place just as the U.S.-Taliban agreement, which guaranteed a withdrawal of international forces, was concluded.

Negotiations between the Republic and the Taliban finally began in September but made little progress. At the same time, in November 2020, international donors and the Afghan Government met in Geneva to agree on a package of assistance for the next four years. Donors committed to continue helping the Afghan State at slightly reduced levels than previous years. The Afghan Government committed to instituting certain reforms. Most relevant to this report, in the Afghanistan Partnership Framework, which anchors these donor commitments, the Government committed to take “robust measures to address both the causes and manifestations of corruption in Government institutions.”

Apart from temporarily putting the negotiations on hold, the COVID 19 pandemic exacerbated the permanent humanitarian crisis in Afghanistan and significantly disrupted Government priorities and slowed the Government’s work. During the lock-down in the early months of 2020, several courts were unable to hear cases and other anti-corruption initiatives were delayed. The Government’s limited response to COVID-19 came under scrutiny by the press and other watchdog organizations, which alleged that donor funds provided to mitigate the effects of the pandemic were misused.

During the review period, Afghanistan has entered a period of acute uncertainty. The international community has continued to back the Afghan State through well-established practices such as supporting elections and maintaining donor support to the Government, while also pushing for negotiations with the Taliban that could fundamentally alter the nature of the State.

This anti-corruption report is written from the perspective of the current Government's attempts to address the long-standing problem of corruption in Afghanistan. A major reason for the international community's sustained concern about corruption has been its negative effect on the legitimacy of the State. The premise motivating this concern is that seriously addressing the problem of corruption would reinforce the viability and legitimacy of the State. The report highlights, however, that despite the introduction of several notable reforms there has still been insufficient tangible progress in reducing corruption and that the concerns regarding the impact of corruption on State legitimacy remain valid.

Given these developments, the observations in this report should be read through a slightly different lens than that of previous reports. First, they represent a legacy of past anti-corruption efforts, but also of Government decisions that have exacerbated corruption. A theme that has been emphasized in these annual reports is that many opportunities for corruption are rooted in the design of the institutions themselves. As the Afghanistan Analysts Network put it, "The dizzying revision of institutional arrangements for anti-corruption efforts continues, with confusion and discord over institutional and regulatory arrangements sucking the energy out of reform efforts [...] new institutions are yet to demonstrate impact, and previously functioning entities are in decline."ⁱ This year's report demonstrates that many of these issues remain to be resolved.

Second, given the likelihood that a peace process could last some time, and that it is imperative that core state institutions continue during these negotiations and beyond so that a post-agreement government does not need to be entirely reconstructed, some thought should be given to the most immediate measures that can be taken to ensure State continuity. For example, the changes in leadership of a number of anti-corruption institutions, including the Attorney General's Office, the ACJC, the National Procurement Authority, FinTRACA, and the Major Crimes Task Force, may have been intended to strengthen these institutions by replacing under-performing officials, but they have also potentially undermined institutional continuity and coherence.

Despite the push for a peace process, levels of violence in Afghanistan remain extremely high. The Taliban, while formally engaged in negotiations with representatives of the Republic to end the violence and agree on a political future, have simultaneously continued to contest the state on the battlefield, extending the violence. There is an under-explored link between violence and corruption as a conflict driver. As Afghanistan's post-2001 history of elections has demonstrated, insecurity has weakened the integrity of the vote and led to numerous challenges to the legitimacy of elections. More generally, the inability of the State to extend its writ across the national space, because it is contested in many areas, has led to impunity. Even where institutions are effective and not corrupt, they cannot always exercise their authority.

Finally, the third lens through which this report should be read is how to ensure that corruption is minimized in any post-agreement period, when State institutions may well be reconfigured. UNAMA's reports and other papers document in some detail what has and has not worked in the past, informing a future agenda for reform for those who are genuinely committed to not repeating the same mistakes.

UNAMA's anti-corruption reports have acknowledged, but do not cover in detail, the fact that international donor practices have contributed to the problem of corruption in Afghanistan. It is therefore time for donors to continue to reinforce accountability and oversight as they consider assistance for a post-agreement State and review the ways in which the modalities of donor assistance provided to Afghanistan have abetted corruption.

Afghan political actors who may be part of an eventual post-agreement government similarly need to understand how damaging chronic corruption has been to the legitimacy and stability of the State. The premise of this report is that corruption is corrosive of legitimacy, jeopardizes accountability and therefore drives conflict. The situation Afghanistan finds itself in now partially validates this premise.

1.2 Purpose, scope and methodology

The United Nations Security Council has, since 2006,ⁱⁱ regularly highlighted the importance of anti-corruption reforms in its resolutions on Afghanistan. Since 2012, UNAMA has been explicitly mandated to assist the Government with its anti-corruption efforts.ⁱⁱⁱ Most recently, on 15 September 2020, the Security Council, through resolution 2543 (2020), directed UNAMA to: "support the efforts of the Government of Afghanistan in fulfilling its commitments to improve governance and the rule of law, including transitional justice as an essential component of the ongoing peace process, budget execution and the fight against corruption throughout the country".

UNAMA began issuing annual anti-corruption reports in 2017.^{iv} This 5th Annual Report on Anti-Corruption in Afghanistan covers the period from January 2020 to 30 May 2021 (unless explicitly stated otherwise). Its purpose is to support Afghanistan's anti-corruption reforms by assessing the impact of anti-corruption measures taken so far and providing concrete recommendations on how to move forward.

Following the same methodology as previous years, this report includes open-source material, information collected in the course of UNAMA's mandate implementation, and data provided to UNAMA by a broad range of stakeholders specifically for developing the report. During the research, UNAMA held (in person or virtual) discussions with representatives from the Supreme Court (SC), the Attorney General's Office (AGO), the Anti-Corruption Justice Centre (ACJC), the Independent Administrative Reform and Civil Service Commission, the Anti-Corruption Commission (IARCSC), the Office of the Ombudsperson, the Anti-Corruption Commission (ACC), the Financial Transactions and Reports Analysis Centre Afghanistan (FinTRACA), the Supreme Audit Office (SAO), the Assets Declaration and Verification Office, the Ministries of Interior (MoI), Justice and Finance (MoF), Members of Parliament, and civil society. Following COVID-19-related movement restrictions, starting in mid-March 2020, in-person meetings were no longer possible. UNAMA continued holding meetings via telephone and IT-tools to validate the report's factual basis. In this process, it received the support from the Special Secretariat for Anti-Corruption (Special Secretariat),^v which had also commented on the report's proposed outline early in the report drafting process.

In May, UNAMA shared the first draft of the report in English and Dari with the Office of the First Vice President (VPO) and sought feedback from key stakeholders through the VPO. UNAMA also consulted civil society separately, as well as UNODC and other international actors.

The chapter on investigation, prosecution and adjudication of corruption offences is based on data gathered from UNAMA's structured trial monitoring programme^{vi} of cases tried before the Anti-Corruption Justice Centre (ACJC) and an analysis of its written decisions during the reporting period. The focus on assessing the ACJC's work is on trends and recurring observations, as illustrated by individual case examples.

UNAMA is highly appreciative of the strong interest shown by Afghanistan's authorities and other national and international stakeholders in this report, and grateful for the substantive input that they have provided to make it as active and informative as possible.

2. Anti-corruption measures and reform framework

2.1 Government's delivery on international commitments to address corruption

2.1.1 Implementation of the United Nations Convention Against Corruption

Afghanistan's international legal obligations on preventing and prosecuting corruption are derived primarily from the 2003 United Nations Convention Against Corruption (UNCAC), which Afghanistan signed on 20 February 2004 and ratified on 25 August 2008.^{vii}

The UNCAC's Implementation Review Mechanism is a peer review process that assists States parties in implementing the Convention. Each State party is reviewed by two peers.^{viii} The first review cycle for Afghanistan^{ix} (2010-2015) focused on criminalization, law enforcement, and international cooperation. Its recommendations were largely incorporated in the new Penal Code adopted in 2017.^x The ongoing second review cycle (2016-2020) covers UNCAC's Chapter II, "Preventive measures", and Chapter V, "Asset recovery".^{xi} The review is based on Afghanistan's comprehensive self-assessment, supplementary information and a dialogue with the two peer States.^{xii} The Special Secretariat compiled and submitted the answers to the self-assessment questionnaire in cooperation with Government experts of relevant institutions.^{xiii} In September 2019, Afghanistan's representatives met the reviewing States parties in Vienna. Under the UNCAC review mechanism, the publication of the executive summary of the review is mandatory. In addition, State parties seeking additional transparency can voluntarily publish the full country report and commit to the further involvement of other stakeholders, including civil society.^{xiv}

Afghanistan has prioritized anti-corruption in its reform agenda and has taken important steps to move this agenda forward. The national legal framework developed to prevent and combat corruption includes aligning the country's the Penal Code with the requirements of the UNCAC, the Anti-Corruption Law, Criminal Procedure Code, Administrative Procedure Law, Whistle-blower Protection Law, Asset Declaration and Registration Law, Access to Information Law, Beneficial Ownership Regulation and the Anti-Money Laundering and Proceeds of Crime Law. Further noteworthy developments have been the adoption of the Asset Registration/Verification Law, and the review and adoption of the Supreme Audit Office Law. These measures have provided a sound legal basis for counter corruption measures, even though some are yet to be approved by Parliament.

Major institutional reforms have included the establishment of the High Council for Rule of Law and Governance; the Anti-Corruption Justice Centre (ACJC); a dedicated Deputy Attorney General for Anti-Corruption; and the recently established Anti-Corruption Commission, as mandated by the Anti-Corruption Law (2018).^{xv} Along with the ongoing development of a new National Anti-Corruption Strategy, these reforms aim at effectively implementing UNCAC and the 2020 Afghanistan Partnership Framework (APF).

Reforms need to be sustained with a focus on the implementation of legislation and the enhancement of institutional effectiveness and capacity. This is particularly the case for the

ACJC, the Major Crimes Task Force under the Ministry of Interior, the Financial Intelligence Unit (FinTRACA) and the Anti-Corruption Commission.

Coordination among key anti-corruption stakeholders, including the Ministry of Justice, the AGO and the ACJC, the Ministry of Interior, the Supreme Court, the High Council for Rule of Law and Governance and the Anti-Corruption Commission, also needs to be reinforced

2.1.2 The 2020 Donor Conference in Geneva and the development of the new Afghanistan Partnership Framework

In November 2020, Afghanistan, Finland and the United Nations co-hosted the latest pledging conference of the Transformation Decade (2015-24). The Conference, in Geneva, highlighted the importance of combatting corruption for a stable, peaceful, prosperous and healthy Afghanistan. One of the side events focused on corruption and featured success stories, such as the Ombudsperson's investigation into the abuse of COVID-19 funds and the recent work of the Access to Information Commission (AIC).

Whilst donors pledged a total of 13.5 billion USD over the next four years in civilian aid, they underlined that Afghanistan would need to do more with less international financial support. The Joint Communiqué adopted at the end of the Conference stated: *"In the spirit of mutual accountability, we underscore the importance of the Afghan Government's actions and the commitment from the international community to support the efforts of the Government in fulfilling its commitments to improve governance and the rule of law, including transitional justice as an essential component of the ongoing peace process, budget execution and the fight against corruption throughout the country."*^{xvi}

Reform priorities under the agreement between donors and the Afghan Government, the Afghanistan Partnership Framework (APF)^{xvii}, include carrying out the meaningful, demonstrable fight against corruption; and continued commitment by the Government to sound macroeconomic policies and public financial management.

Within the core principles of the APF, the Government has committed to taking robust measures to address both the causes and manifestations of corruption in Government institutions.^{xviii} One of its core reform priorities is the adoption of a comprehensive and long-term national anti-corruption strategy in consultation with civil society and international partners following an independent impact assessment of the previous strategy. Furthermore, the APF aims to strengthen the effectiveness of institutions and public administration as a means to prevent corruption.^{xix} Progress towards accomplishing these targets will be assessed at the Senior Officials Meeting (SOM) in late 2021.^{xx}

The Afghanistan Partnership Framework corruption-related targets:

APF Action 2.1.:

As part of the revised anti-corruption strategy, Government implements the following anti-corruption measures:

Target 2021: A functionally independent Anti-Corruption Commission (ACC) is made operational, with sufficient resources, by 6/2021. The ACC must have a clear mandate in line with the UN Convention Against Corruption, should subsume any existing parallel institutions, as well as incorporate the functions assumed and the expertise accumulated by the Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC).

Target 2022: Improving on the existing Civil Service codification, an ethical code of conduct for civil servants – including commitments to integrity, honesty, fairness and the rule of law – is clearly articulated, made public, and incorporated into all ministries as an enforceable regulatory framework. All managers in Government institutions are required to exemplify this code; promote it in the organizational culture and arrange training on the code for employees.

Target 2023: Across the budget and public financial management cycle, establishing electronic and other systems that complement AFMIS and create accountability, checks and balances, and a clear auditable electronic or paper trail for Government budgeting, procurement and service delivery processes.

Target 2024: The ACC will have conducted at least 15 independent, objective and evidence-based evaluations on high-level institutional processes vulnerable to abuse and on organizational cultures enabling corruption. These evaluations have resulted in effective reform.

Government ensures progress in the legal ramifications of corruption cases, including at the high-level.

Target 2021: Verifiable data on the number of corruption cases reported versus the number of corruption cases investigated by the Attorney-General's Office (AGO) Anti-corruption units, including the Anti-Corruption Justice Centre (ACJC).

Target 2022: Increased efficiency of the prosecution of corruption cases by the ACJC and the Supreme Court, demonstrated by a 50 % increase in the number of cases that go from investigation to conclusion at trial in both institutions.

Target 2023: Increase in the number of high-level officials (Governor, ex-Minister, Deputy Minister, Commissioner, Member of Parliament) tried by ACJC and the Supreme Court.

Target 2021-2024: 10 % increase of assets recovered year on year between 2021 and 2024 against confiscation orders made in significant corruption cases. This includes the transparent transfer of these assets to the national budget.

2.2 The High Council for Rule of Law and Governance

The High Council for Rule of Law and Governance (High Council) was established by Presidential Decree on 17 August 2016 to advance reforms of the justice system, improve the legislative framework and fight corruption.^{xxi} It is one of eight development councils listed in the Afghanistan National Peace and Development Framework (ANPDF)^{xxii} and is responsible for overseeing two National Priority Programmes: the National Justice Sector and Judicial Reform Plan (NJSRP) and the Effective Governance Programme.^{xxiii} The role of the development councils is preserved in the updated ANPDF II.^{xxiv} The High Council was codified in the Anti-Corruption Law with the mandate to fight corruption and coordinate relevant entities. It is chaired by the President.^{xxv}

The High Council draws its authority, in part, from the seniority of its members.^{xxvi} The active participation of senior officials in its meetings gives its conclusions political weight. This is necessary because the High Council's decisions, on their own, are not legally binding. They require separate endorsement by the Cabinet or the President to gain a formal legal status.^{xxvii}

Although the High Council's terms of reference require that it convenes once a month,^{xxviii} in 2020 it met eight times,^{xxix} with all meetings chaired by the President: It has so far met twice in 2021. The High Council approved the report and findings of the Independent Joint Anti-Corruption Monitoring and Evaluation Commission (MEC) in the vulnerability to corruption assessment in the area of revenue and customs of the Ministry of Finance (MoF).^{xxx}

The High Council decided that the MEC's 41 recommendations should be implemented, including that only merit-based recruitment should be used at the MoF, and directed security organs not to interfere in Customs affairs.^{xxxi} The Council also approved the MEC's vulnerability to corruption assessment report on public procurement and directed the National Procurement Authority to implement the 37 recommendations and findings of that report.^{xxxii} In July, the Council directed that all Members of the National Assembly and high-ranking officials comply with the Law of Registration and Declaration of Assets. It further requested a consultative opinion of the Supreme Court regarding the Independent Elections Commission's (IEC) non-compliance with a request to remit assets registration forms of successful Wolesi Jirga candidates in the 2018 elections to the Asset Registration Office as required by the GMAF Short-Term Deliverable on asset registration.^{xxxiii} In August, in preparation for the 2020 Geneva Conference, the High Council directed the Independent Administrative Reforms and Civil Service Commission (IARCSC) to "adopt immediate action on the appointment of members of the Anti-Corruption Commission".^{xxxiv}

The High Council convened on 17 May 2021, at which the ACC presented the draft new interim Anti-Corruption Strategy. President Ghani referred during his opening remarks to priority reform areas, including the need to improve service delivery, raise awareness, strengthen the judicial system, make governance more transparent, and involve both the public and private sectors in anti-corruption efforts. The President also highlighted the need to effectively counter money laundering and strengthen the formal economy.

The **Executive Committee on Prevention of Corruption and System Development (ExPres)**, an ad hoc anti-corruption body, co-chaired by the former Chief Executive, the Minister of Justice and Integrity Watch Afghanistan (IWA) met for the last time on 29 January 2020, following the removal of the Chief Executive position. The Committee was dissolved, and its staff were absorbed into other Government institutions or left the Government.

Observation

The High Council and the newly established Anti-Corruption Commission must closely cooperate in coordinating the fight against corruption, including through the effective implementation of the long new term national anti-corruption strategy, after its adoption.

2.3 The Strategic framework for anti-corruption reforms

Afghanistan's National Strategy for Combatting Corruption (Anti-Corruption Strategy)^{xxxv} was adopted by the High Council in September 2017.^{xxxvi} Key achievements from the Strategy's implementation included: a significant increase in registered asset declarations of public officials,^{xxxvii} an improved legal framework to fight corruption,^{xxxviii} steps towards increasing integrity in human resource management in public service, and increased recruitment through an open merit-based process in the civil service.^{xxxix} Out of the 102 benchmarks of the Strategy, 101 benchmarks have been completed.^{xl}

The Strategy, however, only covered a two-year period, 2017-19, and its implementation ended without a successor strategy. In September 2020, the Special Anti-Corruption Secretariat (SACS) presented its new draft Anti-corruption Strategy for 2020-2024 to international partners. The draft was not, however, informed by an independent impact review of the 2017 National Strategy, despite that such a review was specially mandated in the 2017 Strategy.^{xli} The importance of ensuring alignment of the strategy with international standards and norms, in particular the UN Convention Against Corruption, was also highlighted. An interim strategy was drafted as a stop-gap measure.

In March 2021, the recently established Anti-Corruption Commission (ACC), which is mandated, among other functions, to develop the anti-corruption strategy and policies in consultation with the relevant institutions and present them to the High Council for Rule of Law and Governance for approval, presented a further draft of the interim strategy to international partners and civil society at a meeting of the Stakeholders Anti-Corruption Working Group and subsequently received comments from civil society.^{xlii} The ACC developed terms of reference of the National Anti-Corruption Strategy Assessment Committee^{xliii} to help start the impact assessment process of the 2017–2019 Strategy with the support of the international community.

The new interim Anti-corruption Strategy was presented to the High Council on 17 May 2021 by the Head of the ACC. The President and the 1st and 2nd Vice Presidents instructed that it be further reviewed in order to make it more inclusive, implementable and results oriented.

Observation

The development of a successor national strategy on anti-corruption remains crucial to help guide the Government's anti-corruption efforts. The Government must support the completion of the independent impact assessment of the previous strategy and the preparation of a successor document through a process that is consultative, participatory and inclusive of all stakeholders, including Government entities and departments and civil society. The new strategy shall continue addressing the need to effectively implement legislation, step up the verification of registered assets and further enhance the transparency and independence of selection processes.

2.4 Establishment of the Anti-Corruption Commission as a key milestone

In November 2020, President Ghani inaugurated the five Commissioners of the new Anti-Corruption Commission (ACC) following a lengthy selection process.^{xliv} The establishment of the Commission, as required by the September 2018 Anti-Corruption Law, succeeds the discredited High Office on Overseeing the Implementation of the Anti-Administrative Corruption Strategy (HOO), abolished in March 2018.^{xlv}

The establishment of the functionally independent ACC represents an important milestone in Afghanistan's fight against corruption. Incorporating lessons learned from the failure of the HOO,^{xlvi} the competencies of the Commission include preventing, coordinating and monitoring counter-corruption measures; developing policy documents (including a new Anti-Corruption Strategy); conducting research; registering and verifying asset declarations of public officials and receiving information of corruption crimes for referral to the Attorney General.^{xlvii}

The selection process for the Commissioners was controversial from the outset. In early 2019, civil society organizations succeeded in advocating to amend the Anti-Corruption Law's provisions on the selection process. Accordingly, the Independent Administrative Reform and Civil Service Commission (IARCSC) administered and led a process in which 25 candidates were nominated by five Government institutions (the Supreme Court, the Ministry of Justice, the Ministry of Women's Affairs, the Attorney General's Office and the Afghanistan Independent Human Rights Commission) and 25 candidates were nominated by civil society organizations specialized in countering corruption. After protracted re-advertisements and COVID-19 related delays in early 2020, the umbrella Civil Society Joint Working Group (CSJWG) walked out in protest at the selection process's final stage, when the shortlist of 15 candidates was presented

to the President for the selection of the five commissioners. In a press conference after the announcement of Commissioners, the CSJWG strongly criticised the Government for the “illegal appointment of commissioners which would result in a weak Commission”, notwithstanding that one of the CSJWG’s candidates was among the appointed commissioners.^{xlviii}

The establishment and ongoing operationalization of the ACC signals Afghanistan’s intent to implement one of its commitments under the UNCAC. It is also in line with recommendations of development partners and recommendations contained in UNAMA’s past Anti-Corruption Reports.

The appointment of the Commissioners coincided with the ongoing debate on the Anti-Corruption Law in Parliament. Since its return from summer recess on 6 September 2020, the *Wolesi Jirga* (lower house) has rejected every Presidential Legislative Decree under its consideration, including the Anti-Corruption Law, arguing that these laws had not been adopted in keeping with the President’s limited Constitutional emergency powers to legislate.^{xlix} For its part, the *Meshrano Jirga* (upper house) approved the law with amendments and it is currently pending before a Joint Committee of both Houses which may approve, reject or amend it. While already in force as a legislative decree, adoption of the law by Parliament would further consolidate the Anti-Corruption Commission’s legal basis. Rejection of the law, on the other hand, would seriously imperil Afghanistan’s entire anti-corruption legal and institutional framework.

The ACC has operated on the budget of the Administrative Office of the President (AOP) since November 2020. The Government implemented the new Afghanistan Partnership Framework (APF) benchmark by operationalizing the Commission subsuming existing parallel anti-corruption institutions, including the Independent Joint Anti-Corruption Monitoring and Evaluation Committee.ⁱ While the Anti-Corruption Law expressly requires the ACC’s assumption of the asset registration and verification function from the AOP within a year of its establishment, it is ambiguous about which other bodies should be merged. Nevertheless, the Government implemented its Geneva commitment to merge the Independent Joint Anti-Corruption Monitoring and Evaluation Commission (MEC) into the ACC.ⁱⁱ In addition, the Palace’s Special Secretariat for Anti-Corruption and the Office of the Ombudsperson were similarly merged with the Commission.

In March 2021, the ACC issued its first quarterly report for 2021, in which it sets out initial achievements since its establishment. These include the approval of an interim organizational structure for the institution, approval by the President of a *Tashkeel* for the year 2021 and preparation of internal procedures.ⁱⁱⁱ

Observation

Streamlining the anti-corruption institutional framework by establishing the Anti-Corruption Commission during the reporting period appointment, represents a significant opportunity to advance anti-corruption reforms. The Commission shall however be provided with the necessary resources and the required independence to effectively exercise its functions.

2.5 Legislative reforms

In September, Presidential Decree No. 74 amended article 183 of the Criminal Procedure Code to allow publication of final decisions in all anti-corruption cases. On 12 April 2021, the *Wolesi Jirga* approved the Whistle-blower Protection Law, initially enacted by Presidential Decree in September 2018. Ongoing legislative projects related to fighting corruption, include reviewing the Attorney General Office Law and the Criminal Procedure Code. The Penal Code, adopted by Presidential Legislative Decree in February 2018, is pending approval by the *Wolesi Jirga*.

2.5.1 Parliamentary review of the Anti-Corruption Law and efforts to codify the Ombudsperson's Office

The *Wolesi Jirga* rejected both the Anti-Corruption Law and its two amendments in October and November 2020, due mainly to its displeasure over the President's perceived overuse of the Executive's legislative powers under Article 79 of the Constitution.^{liii} Although the *Meshrano Jirga* subsequently approved the law with minor amendments, and it remains in force as a legislative decree, in accordance with the Constitution, the legislative decree is pending a joint decision by both houses of the National Assembly. If the joint delegation fails to reach an agreement, the *Wolesi Jirga* has the final say and may reject the law in its entirety upon a two-thirds vote.^{liv} Should the *Wolesi Jirga* ultimately reject the law, it would be a significant setback to anti-corruption reforms as the law represents the legal basis for most of Afghanistan's anti-corruption institutions. Regardless of the outcome of discussions around the Anti-Corruption Law, better collaboration between Government and Parliament on the adoption and review of legislation is desirable.

Observation

Afghanistan's legal framework provides a good basis for addressing corruption if effectively implemented. Lack of progress however in ongoing legislative processes, has the potential to imperil the anti-corruption legal and institutional framework. There is therefore a continuing need to improve collaboration between the National Assembly and the Government to prevent the reversal or weakening of legislative gains.

The Office of the Ombudsperson was established by Executive Decree in 2018. Although the decree tasked the office to draft its own law within three months of the appointment of the Ombudsperson, this did not occur. As discussed in Chapter 5.3 below, the Office circulated several versions of a draft law to development partners and civil society for comments. The latest iteration of the draft was rejected by the Cabinet's Legislative Committee which referred the law back to the Ministry of Justice to ensure that it does not conflict with other legislation. Though subsequent discussions of the draft law by the High Council on Rule of Law and Governance leaned towards downgrading the legal basis for the Office of the Ombudsperson, from a law to a regulation, the Council did not issue a specific directive in this regard and the

Office has continued to operate without a proper legal basis. Nevertheless, a Presidential Order in February 2021 appears to have settled the issue by directing that the Office of the Ombudsperson be merged with the Anti-Corruption Commission.^{lv}

2.5.2 The 2018 Penal Code

A new Penal Code was adopted by Presidential Legislative Decree in 2017,^{lvi} following several years of review, entering into force in February 2018. The code implements Afghanistan's international obligations under the UNCAC and the United Nations Convention against Transnational Organized Crime (UNTOC) and thus represents another milestone in advancing anti-corruption and related reforms in Afghanistan. The Code is currently under review by the National Assembly.^{lvii} The Supreme Court took the lead in supporting the country-wide unified application of the Penal Code, but since coming into force, its implementation has been uneven.^{lviii}

In March 2019, the Supreme Court issued a circular directing judges to specify the basis and reasoning for their sentencing decisions in an evidence-based manner, especially where judges ruled on mitigation or aggravation, or on the use of minimum or maximum punishments anticipated in the law.^{lix} ACJC judgements have, by and large, adhered to this directive. To comprehensively map out the main challenges faced by judicial institutions in applying the new Code, the Supreme Court, supported by the United Nations and partners,^{lx} held two seminars in 2019 and 2020 where judges, prosecutors, Ministry of Justice legislative drafters (the *Taqnin* Department), the Afghan Independent Bar Association (AIBA), and others shared their experiences. The goal was to foster consistent jurisprudence by supplying explanations to complicated provisions in the Code and identifying provisions where experience showed that amendments were needed. The seminars delivered two main products: a commentary providing explanations to complicated provisions and a comprehensive list of Penal Code articles that were proposed for amendment. The Supreme Court's Commentary on the Penal Code offers guidance on legal interpretation, including in relation to terms such as "illegal benefit", a subset of the definition of bribery. It is authoritative given the Supreme Court's constitutional power to interpret laws and provide clarification to courts "in order to implement law in a sound manner and to ensure a unified judicial precedent."^{lxi}

The amendment of Penal Code Article 183 in September 2020,^{lxii} to allow the publication of final judgements in all anti-corruption cases, should result in greater transparency of outcomes of prosecutions in such cases. A more comprehensive process of reviewing the Penal Code is under way following collection of the comments and experiences of justice actors during the above-mentioned Supreme Court seminars. The process is currently ongoing under the Ministry of Justice's Criminal Law Reform Working Group.

Observation

The amendment of the Penal Code to allow the publication of final judgements in all anti-corruption cases, combined with the circular of the Supreme Court directing judges to specify the basis and reasoning for their sentencing decisions in an evidence-based manner should, if consistently implemented, result in greater transparency in the outcomes of the prosecutions of such cases.

2.5.3 Assets Registration and Verification Law

The National Assembly ratified the Law on Registration and Declaration of Assets of High-Ranking Officials and Government Employees (Assets Declaration Law) in January 2019^{lxiii}, without amending the decree of the President which adopted the law in September 2017.^{lxiv} The law expanded the categories of Government officials and employees who are required to declare their assets,^{lxv} obligated the publication of asset declarations of Government officials in addition to the high-ranking officials listed in Article 154 of the Constitution,^{lxvi} and transferred the responsibility to register assets from the now dissolved High Office of Oversight and Anti-Corruption (HOOAC) to a newly established Asset Registration and Verification Agency within the Office of Administrative Affairs of the President.^{lxvii} As reported in previous UNAMA Anti-Corruption Reports, the new law has led to significant levels of compliance by public officials in registering their assets.^{lxviii}

However, as reported last year,^{lxix} after it ratified the law, the National Assembly almost immediately embarked on efforts to amend it. On 15 July 2019, the *Wolesi Jirga* removed the Law's requirement for public officials to declare the assets of their spouses, parents and children, in addition to their own, and excluded members of the provincial, district and municipal councils from those who must declare assets.^{lxx} On the other hand, the *Meshrano Jirga* proposed amendments that required the declaration of assets of spouses and minor children, but removed the requirement for annual declarations.^{lxxi} A Joint Commission of both Houses did not resolve the impasse in 2020 and the law continues to apply as ratified in 2019. However, should the Joint Commission adopt the amendments proposed by both Houses, the result would be to dilute the high thresholds already set in the law and that are in compliance with Afghanistan's obligations under UNCAC Article 8.^{lxxii} Furthermore, the proposed amendments would contravene Afghanistan's commitments to fight corruption, including under the 2018 Geneva Mutual Accountability Framework (GMAF) which required implementation of the Asset Declaration Law as it was then in force.^{lxxiii}

In early 2020, the Assets Declarations Office drafted a regulation on declaration, registration, investigation and publication of assets for the purposes of implementing the Assets Declaration Law.^{lxxiv} However, the regulation has not been approved to date, although the draft interim Anti-Corruption Strategy circulated to donors by the Anti-Corruption Commission in February 2021 envisages the regulation's approval by June 2021.^{lxxv}

Observation

The Government has made progress in requiring an increased number of public officials to declare their assets in accordance with the Assets Declaration Law. However, the possible amendment and thereby dilution of the law combined with ongoing non-compliance continues to be a concern. Further steps need to be taken to improve the efficiency of the process and to sanction those officials who fail to file asset declarations.

2.5.4 Amendments to the Law on the Structure and Authority of the Attorney General's Office

The 2013 Law on the Structure and Authority of the Attorney General's Office (AGO Law)^{lxxvi} regulates the affairs of the Office of the Attorney General and is enacted pursuant to Article 134(3) of the Constitution. The AGO Law has been amended on several occasions, the last significant amendment having been in 2018, to create two offices of Deputy Attorneys General – one for Anti-Corruption and one for Elimination of Violence against Women and Juvenile Offences. This amendment also repealed the Law on Monitoring the Implementation of the Anti-Corruption Strategy.^{lxxvii} In 2020, the Attorney General's Office worked on revising the AGO Law to codify existing *de facto* arrangements, especially on the establishment of a training institute and capacity development, to clarify both the legal basis and objectives of the law and to entrench a merit-based recruitment culture. According to the AGO, after review by the Cabinet's Legislative Committee, the draft law is pending with the MOJ, for endorsement prior to submission to Parliament.^{lxxviii}

2.5.5 Case Management System and its new regulation

The Case Management System (CMS) was established for use in Afghanistan's justice organizations in 2008^{lxxix} as an online database to track the status of criminal cases from when a suspect is arrested, across the criminal justice chain, up to the end of detention.^{lxxx} Supported by the United States Bureau of International Narcotics and Law Enforcement Affairs (INL), The purpose of the CMS is to manage and safeguard sensitive case information, increase coordination between intelligence, investigative, and judicial institutions, enhance transparency and accountability, ensure the effective application of legislation throughout the processing of court cases, and facilitate access to criminal and legal information by justice actors across the country. The system is also supposed to register accurate statistics of

crime levels and be a source of information to victims about how their respective cases are processed. The CMS is now the official case management system of Afghanistan.

On 19 December 2019, the High Council for Rule of Law and Governance decided that there was a need for regulation to delineate the functions of all institutions using the CMS system. The regulation was adopted on 19 October 2020 through Presidential Order No. 1894 and published in the Official Gazette in December.^{lxxxii} The objectives of the regulation are to organize the responsibilities of institutions involved in the CMS; to regulate the registration, administration, tracking, and processing of all criminal, civil and commercial cases in an efficient, rapid and timely manner; to improve and expedite criminal, civil and commercial case proceedings; to digitalize case proceedings, enhance their transparency and accountability and ensure the security and safety of the CMS and the data stored in it.^{lxxxiii} The regulation also sets up a governance board which is chaired by the judiciary and composed of representatives of justice institutions, among others.^{lxxxiii}

While the National Statistics and Information Agency (NSIA) reported, in July 2020, on some shortcomings and challenges in implementation of the CMS, it remains an important tool to track cases across the criminal and civil justice system, improve efficiency and transparency. It therefore remains a priority anti-corruption initiative. To date, the system contains more than 700,000 case entries and is operational at 550 CMS stations located at user institutions countrywide, including at the Supreme Court, the Ministry of Justice, the Ministry of Interior, the Ministry of Defense, the Attorney General's Office, the National Directorate of Security, the Office of Prisons Administration, Juvenile Rehabilitation Centres, and others. Two important CMS initiatives are underway: 1) the development and implementation of CMS 2.0, a streamlined and more efficient version, and 2) the transfer of CMS to full Afghan Government control by the third quarter of 2022. CMS 2.0 is due to be launched in early 2022.

In 2019 and 2020, plans and benchmarks for the 2022 handover of CMS to full Afghan control were developed. These included the establishment of the CMS governance board and a technical committee. Also in 2020, CMS user institutions developed and approved budgets and tashkeels for the CMS. Challenges to the more efficient implementation of CMS and its handover to full national control include ensuring that user institutions hire, train, and retain sufficient CMS data-entry staff, that justice institutions continue to use CMS exclusively, and that timelines and benchmarks continue to be met to ensure the timely handover of the system. These efforts will ensure that CMS fulfils its purpose of improving judicial efficiency, promoting transparency in the execution of justice, and reducing opportunity for corruption by replacing inefficient paper-based files with traceable digital records.

Observation

The Case Management System is an important anti-corruption tool to track cases across the criminal and civil justice system, thereby improving efficiency and transparency. The adoption, in October 2020, of the regulation delineating the functions of all institutions using the system and regulating its use is a welcome development. The Government, supported by the international community, should ensure that user institutions hire, train, and retain sufficient CMS data-entry staff, and that timelines and benchmarks continue to be met to ensure the timely handover of the system to full national control by 2022. The sustainability of the system through regular maintenance and the sufficient allocation of resources will be essential.

2.5.6 Beneficial Ownership Regulation

At the 2016 London Anti-Corruption Summit, the Government of Afghanistan committed to establish public central registers of company beneficial ownership information and to ensure that law enforcement agencies have full and effective access to beneficial ownership information for companies and other legal entities registered within their jurisdiction. These steps would ensure transparency of the ownership and control of all companies involved in property purchase and public contracting.^{lxxxiv} In the ANPDF 2017-2021, Afghanistan pledged to introduce new requirements for the disclosure of beneficial ownership and ensure that revenues from licensed exploitation were collected,^{lxxxv} while the 2017 Anti-Corruption Strategy called for “audit reports, company beneficial ownership, and other documents that describe financial accountability” to increasingly move into the public domain so that they could be verified and used to build demand for accountability.^{lxxxvi}

With the approval of the Beneficial Ownership Regulation in November 2020, Afghanistan met its commitments from the 2016 London Anti-Corruption Summit.^{lxxxvii} According to the regulation, if there is a change in the ownership, the owner should inform the responsible institution within 15 days. Registration of beneficial ownership is done in a database maintained by the Ministry of Commerce which is responsible for the implementation of the regulation. The Ministry of Information and Technology is obliged to provide a secure system which enables a security search of information for the AGO, the Ministry of Petroleum, FinTRACA, and the Customs Department of the Ministry of Finance. Sharing of information contained in the database with other countries shall be based on the principles of international cooperation and Mutual Legal Assistance.

2.6 Merit-based recruitment and reforms advanced by the Independent Administrative Reform and Civil Service Commission

Established pursuant to Article 50 of the Constitution of Afghanistan and in accordance with the Bonn agreement, the mission of the Independent Administrative Reform and Civil Service

Commission (IARCSC) as part of the infrastructure needed for transparent and accountable governance is *“to lead and provide strategic guidance and expertise in civil service administration and support the development of a robust and effective public administration system”*.^{lxxxviii} In its 2020-2025 Strategy, the IARCSC formulates its vision for the Civil Service as follows: *“An efficient and impartial civil service administration, run by qualified civil servants that advances the country’s economic development goals and serves the interests of all Afghan citizens”*, with as its core values: meritocracy, accountability, respect, integrity, and fairness.

Efforts to strengthen leadership and promote diversity in the civil service can, in addition to improving accessibility of services, also contribute to undermining prevalent patronage systems and thereby reduce corruption. Such efforts should *“Improve inclusiveness within a given social environment and break ‘networks’ to reduce corruption: mainstreaming should aim to include individuals who have been excluded due to the gendered manifestations of corruption”*.^{lxxxix}

In August, the IARCSC was able to launch its 2020 annual competitive mass-recruitment process, with a view to filling 16,966 entry-level Civil Service positions country-wide. For the first time, a total of 220 entry-level positions of the Ministry of Finance, including for its Customs Department, were included. Mass recruitment exams were held in Kabul and across the country. As a result, 12,591 successful candidates who met the minimum requirement filled these positions through a competitive and transparent process. Successful female candidates accounted for 24.1% of the positions filled. The IARCSC reported during the launch of its annual activity report^{xc} that, in 2020, a total of 451,440 people had applied for vacancies and that 20,575 civil servants had been recruited through a merit-based competitive recruitment process across the country, out of which 3,774 (18.3%) were female. After developing a competitive procedure to shortlist proposed candidates for positions in the newly established Anti-Corruption Commission, the IARCSC was able to send a shortlist to the President, who on 12 November appointed three men and two women as its first Commissioners. Furthermore, the IARCSC was able to work with the Ministry of Finance to lead a competitive recruitment process for 220 civil service positions in the Ministry of Finance, and for more positions in its Customs Department. The Commission also monitored the recruitment of 78 positions in the Ministry of Foreign Affairs through an internal open competition.

To ensure the development of organizational structures in the government entities that are goal-oriented, based on legal documents, and responsive to the development needs of the country, the IARCSC has worked with all line ministries and agencies (LMAs) to support structural and substantial content reform. As a result of these reviews, over 300 positions of various grades (including those of deputy ministers) were amended or eliminated from the organizational structures of the civil service in order to improve efficiency and reduce unnecessary financial burdens. As part of these structural reforms across the government entities, a number of other actions were undertaken, including the division of Ministry of Energy and Water into two institutions, the Power regulatory Authority and National Water Affairs Regulation Authority (NWARA). Competitive merit-based recruitment of professional staff for both institutions started in late 2020.

Progress was reported with the roll out of the Human Resources Management Information System (HRMIS),^{xcⁱ} supported by Tackling Afghanistan's Government HRM and Institutional Reforms (TAGHIR) project of the World Bank. In late 2020 all the LMAs and agencies across the country received the required technical and administrative trainings on how to handle and manage HRMIS. The system has been deployed and handed over to all LMAs in Kabul.^{xcⁱⁱ} In coordination with the Directorate of Local Governance (IDLG), the process to expand the HRMIS to local administrative units began in April 2021, to be completed by June 2021.^{xcⁱⁱⁱ} The immediate result of the HRMIS has been to provide updated and accurate data about civil servants, analytical reports on each LMA *tashkeel* and biographic information for all civil servants.

While the LMAs will be responsible for keeping HRMIS updated, the IARCSC will closely monitor and evaluate the system use and provide technical support to LMAs. In general, it is expected that, with the deployment of the HRMIS across all civil service agencies, all activities related to human resources management, organizational structure, and salary payment system will be conducted electronically, thus reducing opportunities for corruption.

To improve the functionality, security and internal controls and scalability of the system, the IARCSC, supported by the TAGHIR project, hired an international firm to conduct an assessment. The assessment was completed in early 2021 and its recommendations are being implemented.

Observation

With the deployment of the HRMIS across all civil service agencies, it is intended that all activities related to human resources management, organizational structure, and the salary payment system will be conducted electronically, which should reduce opportunities for corruption.

As a part of the Civil Service Commission's 2020-2025 Strategic Plan, a draft Regulation on Process Reform and Improvement has been developed. During 2020, nine business processes related to licenses were streamlined and simplified in five LMAs and subsequently submitted to the Ministry of Industries and Commerce which has the presidential and cabinet mandate to digitalize processes related to licenses. This reform process aims to increase efficiency, transparency, enhance productivity and improve service delivery to the public.

In order to simplify and increase efficiency in addressing complaints, the IARCSC has introduced the Online Complaints Handling system. The IARCSC's in-house experts developed this new system to allow citizens from across the country to register their complaints online and track their progress.

In early 2021, the IARCSC began to recruit senior civil servants based on the new amendments to the Procedure on Recruitment of Civil Servants. The amendments were designed to achieve quality, speed and accuracy in the recruitment processes of senior, civil service positions. Competency-based recruitment has therefore been incorporated.

In July 2020 the Board of Commissioners announced that, in line with a Presidential Directive, it had identified 400 senior staff in acting positions country-wide to be replaced by competitively merit-based recruited civil servants before the end of the year.^{xciv} As a result, the recruitment process of these senior civil service positions, both previously managed by acting directors or vacant, has been completed.^{xcv}

Challenges arose when, in October 2020, Presidential Order No. 1751 was issued affording powers to the Office of the President, the Ministry of Interior, the Independent Directorate for Local Governance (IDLG), and traditional local councils in the appointment of district governors.^{xcvi} This overturned the merit-based Civil Service appointment procedure.^{xcvii} The IARCSC worked closely with the IDLG to develop a new procedure for the appointment of district governors and to develop appropriate terms of reference for the posts. These procedures have not been concluded and, as a result, district governors are currently being appointed without any formal procedure and awarded acting positions irrespective of merit-based considerations. Similarly, in July 2020, the cabinet agreed that the second deputy provincial governor positions should be filled with women. A procedure was developed by the IARCSC, in close coordination with the Independent Directorate for Local Governance (IDLG), to select these positions. The new women deputy governors are currently also being awarded in acting positions. At the end of March 2021, a total of 196 of 387 district governors have been appointed, of whom 40 of were retained or reshuffled, and the remaining were new appointees. The number of merit-based and competitively recruited district governors fell from 213 to 134 during the same period.^{xcviii}

More efforts will be needed to ensure senior level civil service appointments are made in a transparent and competitive manner, through a formal merit-based procedure and terms of reference, and in line with the Civil Servants Law.

The IARCSC developed a new procedure, in consultation with all LMAs, to regulate the performance evaluation process for senior, mid-management, and entry-level civil servants, thus creating a more accountable and performance-based reward system, ensuring transparency, administrative justice, and job security of civil servants with a more responsible provision of services to citizens. Special emphasis is placed on efforts made by the civil servants to support implementation of the Afghanistan National Peace and Development Framework II, good governance and anti-corruption efforts, and the provision of access to information requested by institutions and the public. The role of Provincial Governors in the evaluation of provincial directors has also been clarified. Performance evaluation officers, and other relevant staff of LMAs from the centre and provinces were trained to implement the new procedure on

performance appraisal of civil servants^{xcix} before and after its introduction across the civil service in 2021.

During the reporting period, the IARCSC has also hosted visits by members of the Government and Civil Society's Joint Committee overseeing the implementation of the previous National Anti-Corruption Strategy, ethnic minorities elders/members of councils, women representatives from civil society, teachers, students from across the country to witness first-hand how the IARCSC has been able to establish a merit-based civil service administration, reducing interference and patronage in appointments.^c

Observations

- **The IARCSC has taken positive steps to strengthen the integrity and quality of the competitive merit-based recruitment processes, facilitating access for all Afghans to join the civil service through competitive and merit-based recruitment processes. The IARCSC has also worked to ensure that evaluations of civil servants conform with the law, are fair, transparent and performance-based.**
- **The IARCSC should continue its outreach and consultations with Afghans, both at the national and the sub-national levels, to strengthen citizen support for its efforts to build a professional and merit-based civil service and seek input and advice to help guide and increase the effectiveness of reforms.**

2.7 Implementation of the Supreme Audit Office Law

A revised Supreme Audit Law incorporating international standards, norms and best practices^{ci} was adopted by Presidential Legislative Decree in March 2020 and is in force pending approval of the National Assembly.^{cii}

The law has strengthened the independence and powers of the Supreme Audit Office (SAO) in its operations, human resources and financial management. It also defines the required professional qualifications of the Auditor General,^{ciii} increased the Auditor General's tenure from four to six years (renewable once)^{civ} and expands the SAO's mandate to include conducting emerging types of audits such as performance, forensic, IT system and environmental audits.^{cv} The SAO prepares its budget in consultation with the Government and independently implements it. The budget is, is approved by the National Assembly as a supplement to the national budget.^{cvi}

The SAO, under its revised mandate through the new SAO Law, states that it has been able to exercise its mandate without Government interference. The organizational structure (tashkeel) is prepared by the SAO and directly submitted to the President for approval. The 2020 tashkeel

was approved by the President. SAO's annual budget was prepared in consultation with the Ministry of Finance but presented to Parliament as part of the National Budget. In accordance with the new Law, the SAO developed an audit plan that was directly approved by the Auditor General and then implemented in the public sector without government intervention. The SAO also established an Audit Training Centre to focus on the development of the professional capacity of auditors. In 2020, at least 50 newly recruited staff graduated after successfully completing a one-year professional training program on auditing. The SAO plans to upgrade the existing training centre to a National Audit Institute.

In accordance with the Law and UNCAC requirements that non-compliance with the auditing system be sanctioned through civil, administrative or criminal measures depending on the nature of the violation,^{cvii} the SAO identified 26 possible cases of fraud and corruption and referred them to the Attorney General's Office for investigation.

The SAO implemented more than 50 percent of its annual audit plan in 2020, with restrictions related to the Covid-19 pandemic limiting some progress. It also continued to carry out audits on the expenditure of Covid-19 relief funds in 9 provinces including Kabul and referred suspicious cases to the AGO. The SAO also carried out special audits based on the decrees and orders of the President. In 2020 the SAO carried out almost 50 special audits and submitted the reports to the Administrative Office of the President (AOP). In line with the Government's initiative under the Open Government Partnership (OGP), the SAO has set up mechanisms for public participation, including of civil society organizations, in the audit process. These mechanisms also allow for the receipt of complaints from the citizens regarding specific audits.

In accordance with good practices of the Supreme Audit Institutions (SAIs), and as envisaged in INTOSAI P-20: Principles of Transparency and Accountability, the SOA has been reporting to the public and development partners on its activities and achievements, and the impact of its audits in furtherance of its mandate and strategic objectives. The SAO published its 2019 annual report,^{cviii} including its audited financial statements and implementation of its obligations under the Afghanistan Partnership Framework (APF).^{cix}

2.8 Asset Registration and Verification: transfer to the Anti-Corruption Commission

UNCAC requires State parties to establish a legal framework for asset declarations in accordance with the principles of their domestic law.^{cx} As discussed in Chapter 2.5.2 above, Afghanistan's assets declaration and verification regime is governed by the Constitution,^{cxii} the 2019 Law on Declaration and Registration of Assets of High-Ranking Officials and Employees (Assets Declaration Law),^{cxiii} and the 2018 Anti-Corruption Law.^{cxiii} The 2018 Penal Code penalises non-compliance with the assets registration framework, including making false declarations^{cxiv} and illicit enrichment.^{cxv} Subsidiary legislation contemplated under the Assets Declaration Law is pending approval of the Cabinet. The Constitution requires that the wealth of the President, Vice Presidents, ministers, members of the Supreme Court and the Attorney General be registered, reviewed and published prior to and after their terms of office.^{cxvi}

The 2019 Assets Declarations Law vested the responsibility to register and verify asset declarations in the Asset Registration and Verification Office ("the office") which was

established within the Administrative Office of the President. In order to achieve the Government's vision of consolidating all anti-corruption institutions in one overarching entity, the 2018 Anti-Corruption Law required that the asset registration and verification function be transitioned to the Anti-Corruption Commission within one year of the Commission's establishment.^{cxvii} Following the appointment of the Anti-Corruption Commissioners in November 2020,^{cxviii} the Commission entered into a Memorandum of Understanding (MoU)^{cxix} with the Asset Registration and Verification Office setting out the process for the merging of the two institutions. According to the MoU, the merger process will take one year during which the Director of the Asset Registration and Verification Office will report to the Deputy Head of the Anti-Corruption Commission. The staff of the Office will continue to hold their jobs for one year to ensure that institutional knowledge is seamlessly transitioned. Furthermore, to ensure the safety of sensitive physical and electronic data gathered by the Asset Registration and Verification Office, the Office will not move premises until suitable arrangements are made.

In 2020, the Assets Registration and Verification Office continued to register assets as it had in 2018 and 2019,^{cxx} but shifted its focus to ensure the completeness of declarations filed and digitize records on asset verification. The office nonetheless remained hampered by the low number of professional staff available to it.^{cxxi} Cooperation with other Government institutions, especially the AGO and FinTRACA in verifying assets, continued but was, according to the Office, hindered by the absence of systematic data and information management in those institutions. In 2020, the Office analysed 8,290 declarations for their compliance with requirements out of which 600 were subjected to comprehensive verification. Out of the 600 files verified, six cases were referred to the Attorney General's Office for investigation for possible false declaration. The Office plans to verify 2,800 declarations in 2021.

On 13 July 2020, the High Council for Rule of Law and Governance directed that all members of the National Assembly and high-ranking Government officials register their assets as required by the law and that related reports be presented to the Council. Pursuant to the directive, the Asset Registration and Verification Office published the names of high-ranking public officials who had not declared their assets. The list of 452 officials included two ministers, four governors, twelve members of the Upper House of the National Assembly and 172 members of the Lower House. The Office also announced sanctions, including the suspension of salaries and the imposition of travel bans. According to the Asset Registration and Verification Office, the publication of names prompted 363 officials to declare their assets. In addition, 131 public officials were referred to the Ministry of Finance and AGO (100 officials to the MoF and 31 to the AGO) for disciplinary measures while 404 declarations were rejected and sent back to the filers. Two members of parliament were referred to the AGO for investigation for false declaration and illicit enrichment.

According to the Assets Registration and Verification Office, the Independent Electoral Commission forwarded^{cxxii} all asset declaration forms of successful parliamentary candidates in the 2018 elections as per the Government's commitment to donors under the Geneva Mutual Accountability Framework. Using these declarations as a baseline, and comparing them with

subsequent declarations, the Office identified two possible cases of false declaration and/or illicit enrichment and referred the two members of parliament to the AGO for investigation.

Unfortunately, non-compliance by senior public officials with Article 154 of the Constitution, which requires named public officials to declare their assets on assuming and vacating office, has continued. In 2020, only the President, both Vice Presidents, 30 ministers, the Attorney General and six members of the High Council of the Supreme Court declared their assets.

Observations

- **The Government has made progress in requiring an increased number of public officials to declare their assets in accordance with the Assets Declaration Law. However, non-compliance persists and necessary steps need to be taken to improve the efficiency of the process and to sanction those officials who fail to file asset declarations.**
- **In addition to prioritizing compliance with declarations of assets by those constitutionally required, the Anti-Corruption Commission should endeavour to preserve successes achieved by the Asset Registration and Verification Office.**

2.9 Afghanistan's Financial Intelligence Unit

The Financial Transactions and Reports Analysis Centre of Afghanistan (FinTRACA) was established in 2006 as the Financial Intelligence Unit (FIU) within Da Afghanistan Bank. Its creation was in line with the recommendations of the Financial Action Task Force and other international standards, under the then in force Anti-Money Laundering and Proceeds of Crime Law (AML-PC Law),^{cxxiii} as endorsed by Presidential legislative decree. While it is a unit of the Central Bank, FinTRACA is independent in its operations under the AML-PC Law. It has full authority to make decisions to receive, analyse and disseminate suspicious transactions and other information related to money laundering, major crimes and terrorism financing, under the AML-PC Law.^{cxxiv}

FinTRACA has effectively cooperated with the ACJC in combating money laundering, terrorism financing and other financial crimes by coordinating the exchange of information among local authorities. In 2020, it analysed and reported 34 cases including 59 suspicious transactions to law enforcement and the AGO.^{cxxv} These cases related to money laundering, terrorist financing, gold smuggling, fraud, fictitious police, cash smuggling and counterfeiting, among other crimes. Of the files that FinTRACA forwarded to the AGO for investigation, 72 suspects were indicted by the ACJC leading to the conviction of 18 individuals and financial penalties in millions of Afghanis.^{cxxvi}

In the same year, FinTRACA received 314 requests for information involving 1,339 subjects from law enforcement and other Government authorities. Requests to FinTRACA from the Attorney General's Office increased from 61 in 2019 to 128 in 2020.^{cxxvii}

The Asset Registration and Verification Office made 26 requests in 2020, up from 21 in 2019. In exercise of its mandate under Article 37^{cxxviii} of the AML-PC Law, FinTRACA froze 86 corporate and individual bank accounts in 2020, with total funds of AFN 351,921 and USD 997,120, based on suspicion of committing various crimes, including money laundering and terrorism financing. FinTRACA's freezing actions were either taken proactively or on the request of detecting and investigating agencies. There has been instability in its leadership given that its Director General was replaced in December 2019, and once again in September 2020, which risks jeopardising the consistency of its operations.

Observation

FinTRACA plays a key role in identifying and promoting accountability for financial crimes, including money laundering and the financing of terrorism. The Government must continue allocating sufficient resources to enable FinTRACA to function effectively and independently.

2.10 Reforms in public procurement

The 2016 Procurement Law^{cxxix} established the institutional framework governing public procurement in Afghanistan. The law specifies how Afghanistan implements its obligations under the UNCAC to take the necessary steps “to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption.”^{cxxx} The Procurement Rules of Procedure^{cxxxi} and circulars complete the legal framework.

According to the Procurement Law, the institutional framework consists of the National Procurement Commission (NPC) and the National Procurement Authority (NPA).^{cxxxii} The NPC is by law composed of the Ministers of Finance, Economy, and Justice.^{cxxxiii} In practice, the President chairs the Commission's meetings, which are also attended by the Vice Presidents and are open to both national and international observers, including civil society members. The NPC reviews and approves, amends or rejects bids for contracts that are beyond the threshold authority of procuring entities.^{cxxxiv} The threshold for open bidding contracts for goods and services in the domestic market is AFN 20 million (approx. USD 250,000) and AFN 100 million (approx. USD 1.3 million) for construction. The threshold is raised two-fold if procurement is international. The thresholds for restricted bidding and single-source procurement are even lower^{cxxxv} and, therefore, these contracts are not considered by the NPC. In 2020, the Commission held 20 sessions compared to 33 sessions in 2019 and 45 in 2018 and reviewed procurement proposals worth over AFN 141 billion. The publication of detailed minutes of the meeting would give additional transparency to the meetings.

The NPA, through its National Procurement Commission Secretariat, manages procurements that are within the authority of the NPC.^{cxxxvi} The NPA also monitors and supervises other procurement proceedings for efficiency, transparency and compliance with the law, and monitors progress of

contract implementation in accordance with procurement rules and procedures.^{cxxxvii} Presidential Executive Decree No. 100, was issued in November 2018 to “coordinate and expedite the procurement proceedings and better implement the provisions of the Procurement Law as well as make savings in the public resources spending”.^{cxxxviii}

According to its 2020 Annual Report, the NPA implemented various reforms, particularly the preparation of a five-year public procurement strategy, introduction of a vendor registration system, issuance of conflict-of-interest management guidelines and the e-tendering system. These measures complement previous anti-corruption measures, instituted in 2019, including the creation of an integrity email address, affixing of complaints boxes in all procurement offices and holding weekly “procurement transparency days”, to receive complaints and interact with contractors and the public in the presence of the Access to Information Commission, civil society organizations and media representatives. Fifty complaints were addressed during these transparency days.

The NPA also reported that it had fully implemented all its commitments under the 2018 Geneva Mutual Accountability Framework (GMAF) which required it to develop the first phase of Electronic Government Procurement by December 2019 and to implement it by mid-2020, and to ensure compliance with Open Contracting requirements in 2019 and 2020.^{cxxxix} The NPA also reported that in 2020, it received 100 disbarment cases resulting in 45 companies being disbarred.

Observation

While the NPA rates high in promoting access to information and accountability, cases that were referred to the Attorney General’s Office for investigation, including in connection with allegations of crimes committed in procuring COVID-19 relief materials, should be duly completed.

2.11 Increased transparency in budget planning, execution and financial management

According to UNCAC, State parties shall “take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia: Procedures for the adoption of the national budget; timely reporting on revenue and expenditure; a system of accounting and auditing standards and related oversight; Effective and efficient systems of risk management and internal control; and where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.”^{cxli} In addition, a State party shall take measures “to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.”^{cxlii} Previous UNAMA reports have highlighted steps to improve budget transparency, including efforts to formulate a more realistic budget.^{cxliii}

The Government's proposed 2021 national budget, was passed by Parliament in February 2021. The Budget Execution Unit remains one of the most important units in the Ministry of Finance. Both development and operation budgets are executed through this unit after controlling and checking documents for requested amounts from the line ministries. The Ministry of Finance (MoF) conducted budget hearing sessions at which budgetary units and line ministries defended their budget proposals, needs and requirements.

As regards to financial management, the Public Financial Management Law (PFM Law) increases the capacity of line-ministries to implement programs effectively and efficiently thereby strengthening budget processes and management, and the accountability and transparency of its overall fiscal operations.^{cxliii} One of the key accomplishments is that the PFM Law has been able to contribute to an increased tax compliance rate, including filing and voluntary payments on a timely basis by taxpayers, including contractors.

2.12 Integrity reforms at the subnational level

Afghanistan is composed of 34 provinces, 387 districts, 165 municipalities, and approximately 45,538 villages. The Constitution provides for a unitary state while stating that "necessary powers" shall be transferred "in accordance with the law, to local administrations in order to accelerate and improve economic, social as well as cultural matters, and foster peoples' participation in developing national life."^{cxliv}

In May 2018, the High Council for Rule of Law and Anti-Corruption (now the 'High Council for the Rule of Law and Governance') approved Afghanistan's Subnational Governance Policy (SNGP). The policy aims at creating a functional and accountable subnational governance mechanism under which services are delivered in a cost-effective and transparent manner, leading to enhanced economic opportunities for the local populations. Its reforms include measures to enhance integrity at the subnational level through the merit-based recruitment of district governors, mayors and deputy provincial governors as well as their performance management at the subnational level. The SNGP proposes policy prescriptions for resource allocation and service delivery and offers policy guidance for subnational accountability mechanisms, including the oversight roles of provincial councils and civil society monitoring and advocacy.^{cxlv}

In 2020/21, the Government continued to focus subnational governance reforms on the implementation of the SNGP under the framework of the Subnational Governance Roadmap developed in May 2018.^{cxlvi} The key areas of focus have included the operationalization of robust subnational regulatory and administrative frameworks and fostering increased linkages between subnational and national institutions to enhance the relevance and effectiveness of development and service delivery at the local level, including the national COVID-19 response. The reform process was led by the Independent Directorate of Local Governance (IDLG) on behalf of the President.

In January 2020, IDLG increased cooperation between provincial councils and civil society, and between the councils and the provincial administrations in line with the Law on Local Councils to subnational authorities and civil society in all provinces.^{cxlvii} Under the same Law, the Provincial

Council Directorate of IDLG formulated a new procedure called “Handling of Public Complaints through Provincial Councils”, which provides guidance to provincial councils on public outreach, particularly in facilitating the processing and follow-up of public complaints.

To improve coordination between local authorities and line ministries in the delivery of services at local level, and to enhance the operational effectiveness of districts, in January 2020, the Office of the President and IDLG commenced a national dialogue on the draft District Administration Guidelines. The draft guidelines were subsequently formulated and approved by the Cabinet on 13 April 2020 and introduced to all 34 provincial Governments by the end of 2020.^{cxlviii} IDLG built the capacity of deputy provincial governors and heads of line and capacity building on the guidelines for further dissemination in districts in their respective provinces. In a similar development, in December, IDLG drafted the Local Administration Law. The Law will clarify the relationships between institutions engaged at the subnational level and address subnational planning and budgeting, including the utilization of incentive grants to foster economic activities at provincial and district levels. The legislation is currently under review by IDLG.^{cxlix}

Prioritizing accelerated but accountable subnational development continued to be high on the Government’s agenda. The Cabinet established an internal working group in June 2020, comprising the Ministry of Finance, the Ministry of Health and IDLG at the leadership level for timely response to subnational needs.^{cl} Civil society groups emphasized that continued amendment of the national budget to accommodate new projects must be undertaken in compliance with the Global Open Budget mechanism ensuring transparency, public engagement in the budget process and credible oversight during budget execution. In August, the Cabinet decided to establish a Subnational Governance Consultative Board, comprised of former provincial governors, whose knowledge and experience will inform subnational governance reforms.^{cli}

In October 2020, IDLG published its five-year strategic plan (2020-2024). The plan prioritizes implementation of the subnational governance policy, focusing on operationalizing subnational legal and administrative frameworks and improving local planning and budgeting processes and organizational capacity to support provincial, district and municipal administrations to deliver services and lead local peace efforts. The Municipality Directorate, in particular, intensified its capacity building programmes for the provincial municipalities and developed various regulations on revenue collection, waste management, city sanitation and tax collection to enhance transparency and accountability in the management of the municipalities.

A key element of subnational reforms is to move service delivery closer to the people with community representatives taking responsibility and accountability for the resources utilized. The Citizen’s Charter National Priority Programme, which aims to contribute to reducing poverty and improving socio-economic conditions for communities, was rolled out in all provinces by December 2020. The programme provided critical services, including short term employment as well as increased access to electricity, irrigation, water supply, sanitation services, roads and bridges for more than 14 million beneficiaries in rural and urban communities. However, the

programme faced some operational challenges, including lack of local capacity in the monitoring of project activities and low substantive delivery in insecure districts.^{clii}

3. Detection, investigation, prosecution and adjudication of corruption offences and anti-corruption measures in the Judicial Branch

3.1 Justice reform

In December 2016, the Government adopted the five-year National Justice Sector and Judicial Reform Plan (NJSRP).^{cliii} In June 2017, the High Council for Rule of Law and Governance approved institutional reforms for the Supreme Court, the Attorney General's Office (AGO), the Ministry of Justice (MoJ) and the Afghanistan Independent Bar Association (AIBA), aligning their internal action plans to the six general strategic goals of the NJSRP.^{cliv}

Notwithstanding the disruptions caused by the COVID-19 pandemic, in 2020 the Supreme Court and the Ministry of Justice, continued to implement and report on their respective action plans pursuant to the NJSRP and the Anti-Corruption Strategy, including to the High Council on Rule of Law and Governance.^{clv}

All 2,185 judiciary staff, including judges, heads of administrative departments, logistics, financial and accounting staff of the capital and provinces, who were required to register their assets in 2020, had complied.

The Supreme Court Anti-Corruption Plan and the NJSRP expire in 2021. New plans, under development, should build on and consolidate anti-corruption achievements through judicial remedies, including cases adjudicated by the ACJC and the Supreme Court.

Insecurity is a key challenge to the provision of justice services. Justice sector personnel remained one of the main targets of insurgents and criminal groups. During 2020, UNAMA documented 29 incidents that targeted people working for the justice sector in Afghanistan, including judges, public prosecutors and other employees working for the courts and public prosecutors, resulting in 44 casualties (27 killed and 17 injured),^{clvi} a significant increase from 2018 and 2019.^{clvii} Although there were no complex attacks on court premises reported in 2020, there were clearly targeted attacks against justice sector workers. On 17 January 2021, gunmen on a motorcycle shot and killed two female judges on their way to work at the Supreme Court in Kabul, and injured their driver.^{clviii} Few of the attacks against the judiciary have ever been sufficiently investigated to indict those responsible. This *de facto* impunity has made the judiciary even more vulnerable. The sense of insecurity and direct threats to judges was cited by female judges as one of the reasons for their reluctance to work in remote districts.

In 2020, the Supreme Court's Judicial Control and Surveillance Department detected a number of alleged corruption cases. Subsequent investigations led to 102 persons being disciplined including the dismissal of four staff members, warnings to 21, deduction of salary from 16, disciplinary transfer of seven, the compulsory retirement of one, and the sentencing of one staff member to a cash fine of AFN 15,000 following internal disciplinary proceedings.

Observations

- **The new National Justice Sector Reform Plan and Supreme Court Anti-Corruption Plan should build on and consolidate anti-corruption achievements through judicial remedies.**
- **The Government should strengthen the security of justice sector personnel to enhance access to formal justice, including at the provincial level.**

3.2 Prosecution of corruption cases

The Office of the Deputy Attorney General for Anti-Corruption (DAG-AC) investigates corruption cases that do not meet the jurisdictional threshold of the Anti-Corruption Justice Centre (ACJC) and prosecutes them before ordinary provincial courts.^{clix} The Supreme Court may order the transfer from the provincial courts to the ACJC of a case that is not within the ACJC's jurisdiction, upon a request by the defendant^{clx} or the Attorney General.

According to the AGO, in fiscal year 2020,^{clxi} the DAG-AC's Office recorded a total of 3,403 administrative corruption cases countrywide, including 1,878 cases pending from the previous year, a notable increase from the 2,018 cases handled in 2019 and 1,911 cases in 2018.^{clxii} Of the 3,403 cases, 2,850 were civilian cases, while 553 were military cases. 1,940 cases were still under investigation, 378 were returned to detecting agencies for further data collection, and 453 indicted. In 205 cases, no action was taken. Primary and Appeal Courts in the provinces had adjudicated 207 cases while 251 cases were still under process. The majority of the cases indicted were for the crimes of misuse of authority, embezzlement, forgery and bribery.^{clxiii} The AGO did not indicate whether any prosecutors or AGO administrative staff were among those investigated. The Supreme Court informed UNAMA that, in 2020, it reviewed 278 cases of corruption from the capital and the provinces.

According to the AGO, of the abovementioned prosecutions, 220 persons were convicted and sentences of AFN 31,346,332 and USD 93,550 in either fines or compensation ordered, out of which AFN 8,264,098 was recovered and transferred to the government budget.^{clxiv} About 1000 detainees were released on bail and 37 were banned from leaving the country.

3.3 The Anti-Corruption Justice Centre

The ACJC was established in June 2016 by Presidential Executive Decree to prosecute and adjudicate cases of those "accused of major-crimes of corruption, the perpetrators of which are high ranking officials... in order to conduct comprehensive investigation, to prevent exertion of influence, to adhere to fair trial standards as well as to address the aforementioned criminal cases in a speedy and transparent manner."^{clxv}

The 2018 Anti-Corruption Law codified the ACJC, providing it with a firm legal basis.^{clxvi} The law defines the duties and authorities of the Centre, highlighting that it should initiate criminal

action, conduct prosecutions and render judicial decisions free from undue influence.^{clxxvii} The ACJC has jurisdiction to adjudicate specified corruption offences when committed by high-ranking Government officials,^{clxxviii} military generals or military officers functioning in the capacity of generals, heads of administrations and ministries in Grade 1 posts and legal persons, irrespective of the amounts involved^{clxxix} or, irrespective of the defendant's rank or grade, if the benefit obtained from the perpetration of the crime exceeds AFN 10 million (USD 130,000) or its equivalent in foreign currencies.^{clxxx} For the crimes of bribery^{clxxxi} and money laundering,^{clxxxii} the ACJC's pecuniary threshold is half that amount.^{clxxxiii} In May 2019, the Supreme Court issued a circular confirming that the ACJC had jurisdiction to hear certain election crimes if they entailed an element of corruption.^{clxxxiv} The Supreme Court may also delegate a case to the ACJC based on a request from the Attorney General or the defendant(s), "in the presence of justifiable reasons and a dire need in accordance with provisions of law."^{clxxxv}

The Supreme Court appoints the 14 judges of the ACJC.^{clxxxvi} In September 2020, both the Chief Judges of the ACJC Primary and Appeals Courts were transferred and replaced in what was said to be a routine rotation. The appointment of new judges seemed to trigger an increase in the number of trials conducted both at the primary and appeal levels. The number of prosecutors has increased from 111 in 2020 to 116. There were changes in the leadership of the Major Crimes Task Force following the suspension and subsequent removal of the then director in 2020 and the appointment of a new Director in January 2021.

Security of the Centre and its staff continues to be a significant concern. In February 2020, a member of the Major Crimes Task Force (MCTF) was shot while on duty. In April 2020, an ACJC prosecutor was attacked and seriously injured. The previous year, an ACJC prosecutor was attacked and killed. The 2017 Presidential order to increase security and ensure the physical safety of ACJC personnel and its headquarters has yet to be fully implemented. In early 2021, a Government decision to remove or restructure the provision of VIP protection services resulted in the reduction of the number of perimeter guards and close protection staff at the ACJC.

In February 2021, the President established a committee to assess the financial and administrative problems of the ACJC.^{clxxxvii} The committee is led by the General Director of Administration of the Supreme Court and its membership includes the Deputy Attorney General for Anti-Corruption, a commissioner of the Anti-Corruption Commission and the Director of Coordination of National Intelligence of the National Security Council. The remit of the committee is "to conduct a comprehensive assessment on the financial and administrative problems and challenges, integrity of the staff and other necessary matters; and share their findings with their specific recommendations within one month with the Presidential Palace."

On 26 March, the Chief Prosecutor of the ACJC resigned alleging interference in his work. The ACJC Executive Director has also departed the country amid corruption allegations. They have both since been replaced, along with many other senior prosecution officials. These resignations and replacements cause significant concern with regard to the continuity, consistency and the development of expertise at the ACJC, which risks undermining its performance. A new acting Chief Prosecutor was appointed in April. His appointment has yet to be endorsed by Parliament.

3.4.1 Police support to the ACJC

Article 28 of the 2018 Anti-Corruption Law established the legal basis of the Major Crimes Task Force (MCTF) and embedded it within the organizational structure of the Ministry of Interior Affairs, reporting directly to the Minister,^{clxxviii} but operating at the ACJC. The MCTF was initially established through a Presidential Decree in 2009,^{clxxix} that mandated it to investigate major corruption, kidnapping and organized crime cases. When the ACJC was established in 2016, the MCTF was assigned to support the detective and police functions of the ACJC.

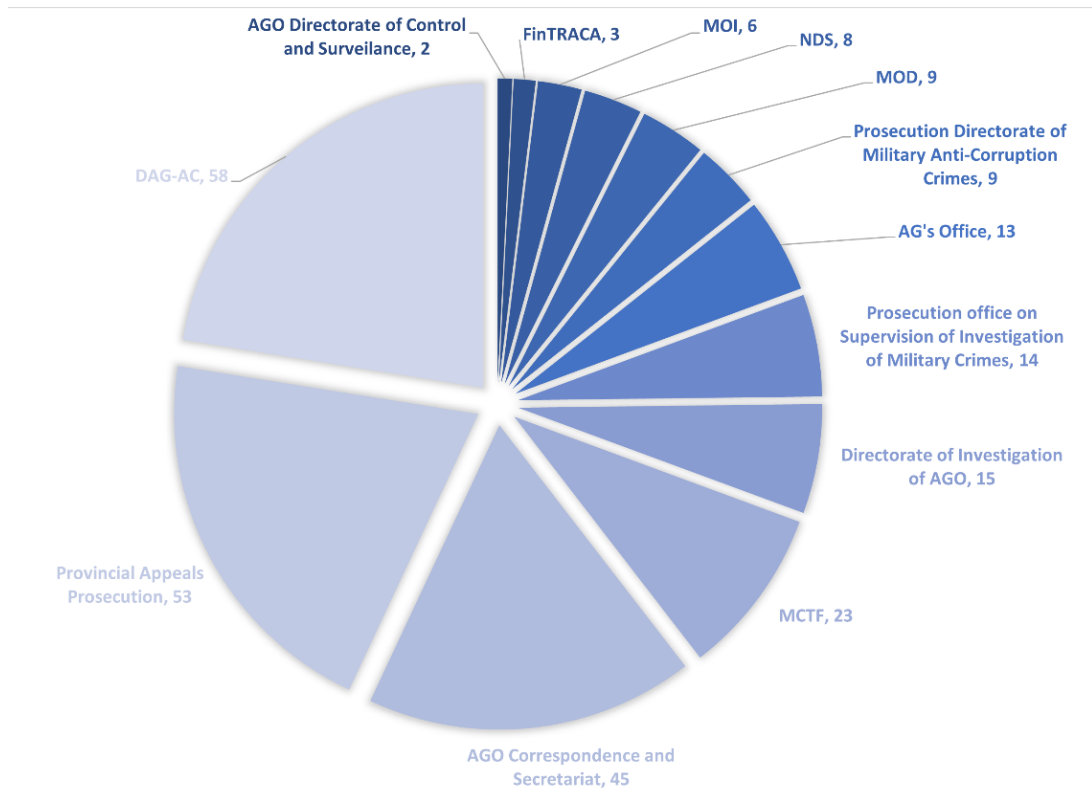
Following reform of the Ministry of Interior, in mid-2019, the MCTF was integrated into the Directorate General for Intelligence and Combating Crime (DGICC) based on the premise that the reform would allow other operational sub-pillars of the MoI that have a provincial outreach to support the MCTF, as well as enable support from the other DGICC directorates. Consolidation under the DGICC, was also presumed to enable systematic utilization of the Case Management System (CMS), coordinate anti-corruption efforts with other crime combatting functions and provide a clear command line for the entire crime-combatting umbrella, orientating the MoI's full resources towards anti-corruption efforts. However, a decision in 2021 for the MCTF to open offices^{clxxx} at the provincial level, apparently because of the high number of cases of corruption being reported in the provinces, seemed to contradict one of the reasons for its integration into the DGICC which was to avail it the support of other operational sub-pillars of the MoI that have a provincial outreach. This step also came at a time when the MCTF had identified a lack of sufficient capacity as one of its major challenges. Nevertheless, a request to increase its *tashkeel* was approved by the President.

In 2020, the ACJC Chief Prosecutor reported improved cooperation with the MCTF in execution of ACJC orders. According to the MCTF, in 2020, it had executed summonses or conducted detective activities at the request of the ACJC in respect of five former governors, 13 former deputy ministers, six members of parliament or provincial councils, 40 heads of departments, two mayors and 24 former generals.^{clxxxi} Furthermore, according to the MCTF, 63 cases with 65 defendants were referred to the ACJC after detection and they referred 107 cases to other prosecution offices. However, data from the ACJC continued to show that the MCTF was not the origin of most of the cases that were referred to the ACJC Prosecution for investigation; the majority of which were referred by the Office of the Deputy Attorney General for Anti-Corruption followed by the Department of Correspondence and Secretariat of the AGO and provincial appeals prosecutions offices.

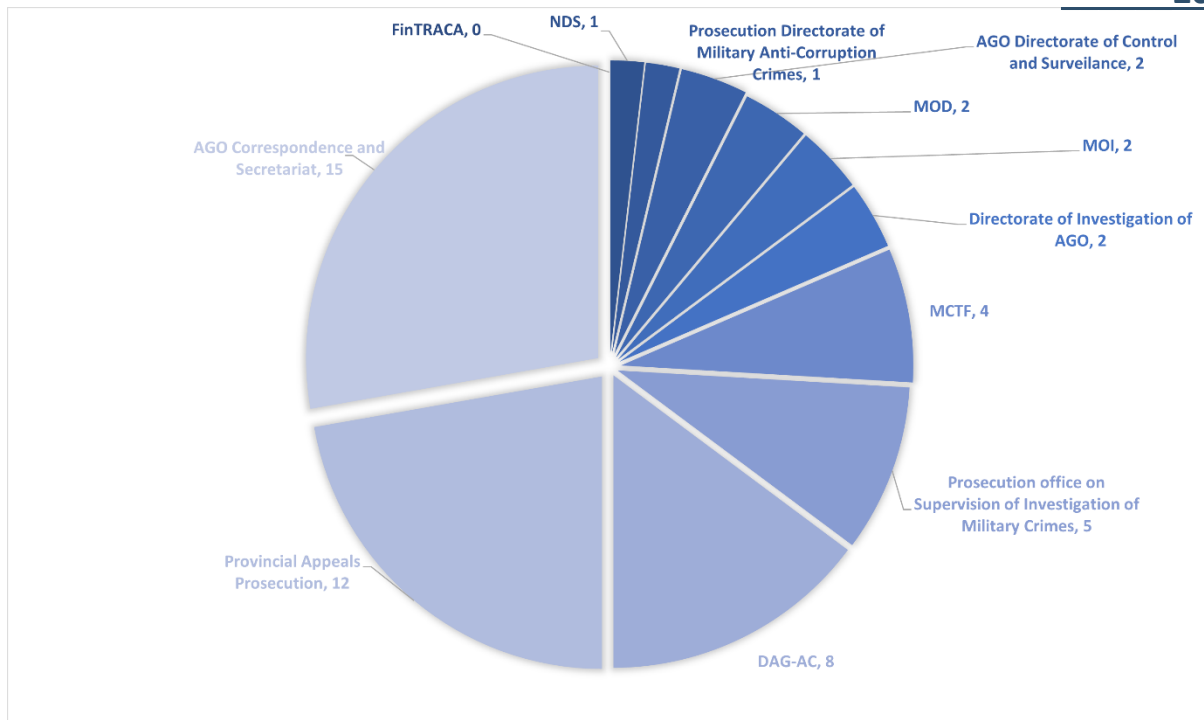
According to information provided by the MCTF to the 1st VPO in June 2021, during the last quarter of 2020, the MCTF intercepted four cases of attempted customs' tax evasion, as well as eight cases of property usurpation during the last four months of 2020.

Number of cases by referring entity

2020



2021



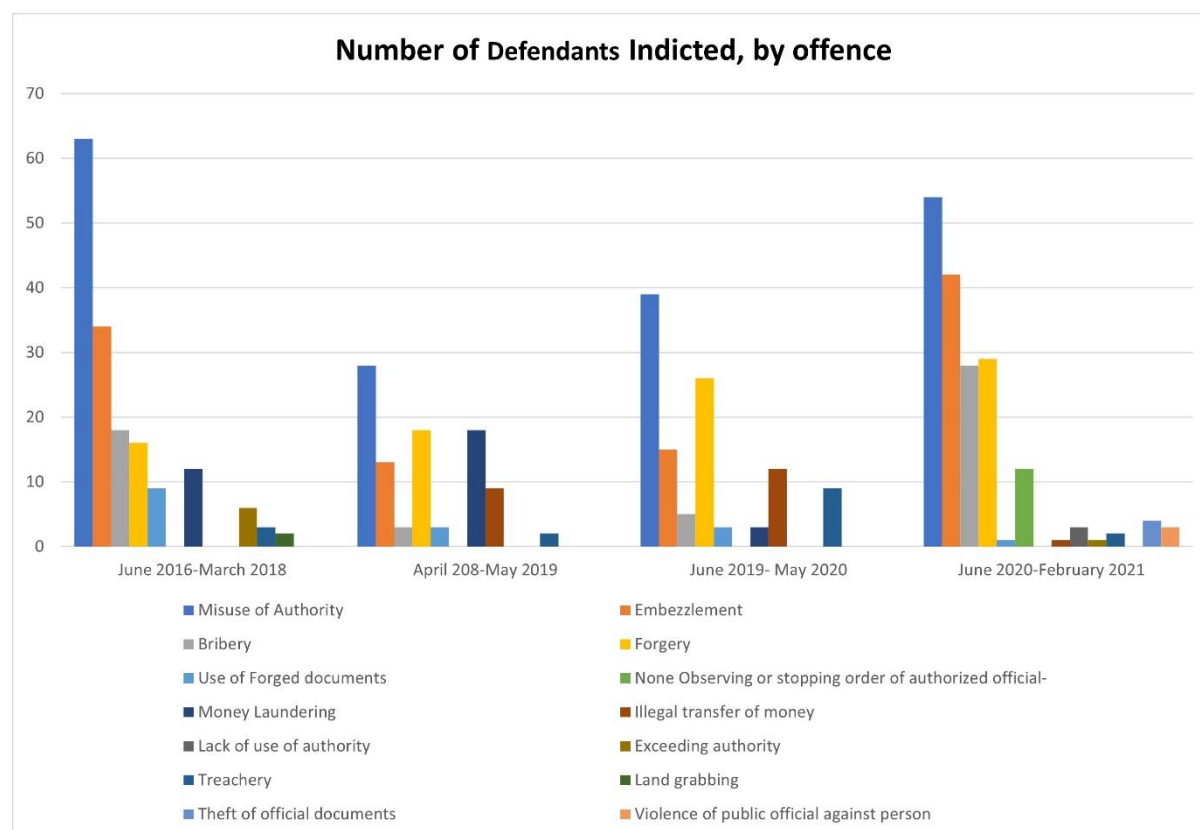
Observation

Improved cooperation between the MCTF and the ACJC is a positive development. The capacity of the MCTF should be further strengthened to enable it to perform its key functions independently and effectively in detecting corruption cases.

3.4.2 Misuse of Duty or Authority - the most indicted crime

When the ACJC was established in 2016, the 1976 Penal Code was still applicable. Other statutes, including the Anti-Money Laundering and Proceeds of Crime Law,^{clxxxii} the Law on the Protection of Historical and Cultural Properties^{clxxxiii} and the Law on Crimes against Internal and External Security,^{clxxxiv} among others, provided the legal basis for the other offences within the ACJC's jurisdiction.^{clxxxv} The new Penal Code, which came into force in February 2018, codified all crimes,^{clxxxvi} which were previously contained in various statutes, and significantly revised and refined the definitions of various crimes, including "corruption crimes". For example, misuse of duty or authority, which was defined in a single article^{clxxxvii} in the 1976 Penal Code, now has a fully dedicated chapter comprising fifteen articles.^{clxxxviii}

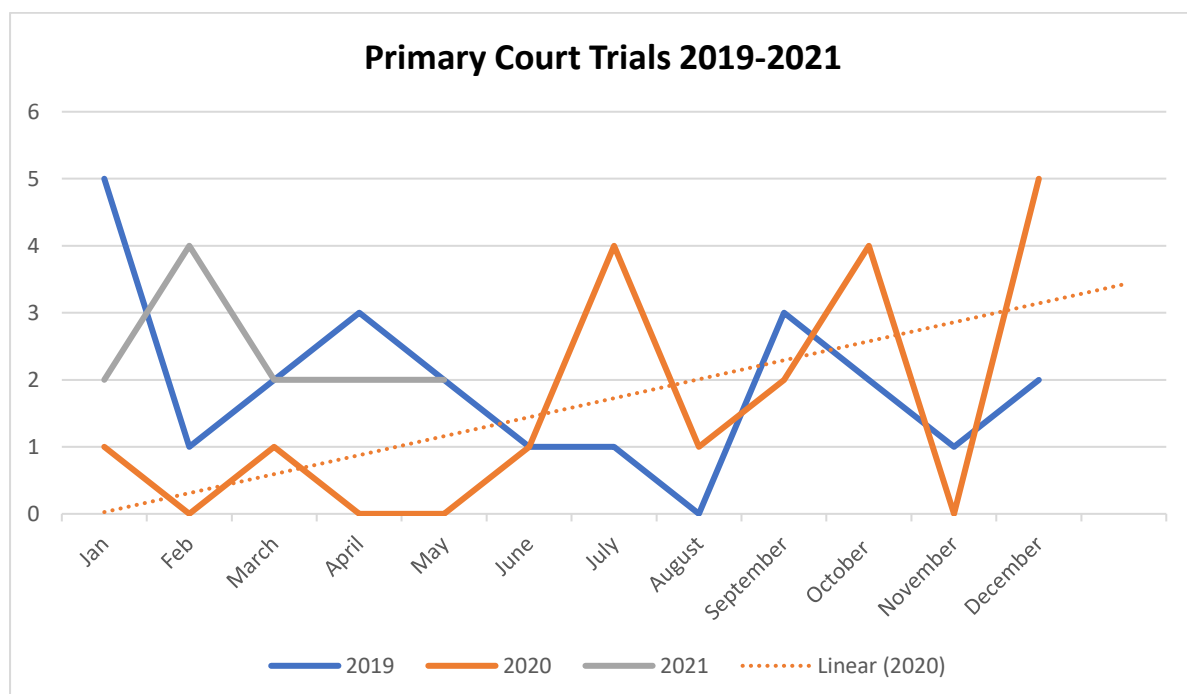
As in previous years, the offence of misuse of duty or authority was the most indicted offence with 45 out of the total number of 117 defendants indicted. Other frequently charged offences were embezzlement (35), bribery (28), forgery of documents (22) and non-observing or stopping an order of an authorised official (12).^{clxxxix}



3.4.3 The increase in the number of trials since July 2020

The ACJC suspended open court trials between March and June 2020 in response to the COVID-19 pandemic. Open court trials resumed in late June and increased notably in July when the Primary Court conducted four cases. Between August and December 2020, the number of court trials continued to rise with the Primary Court adjudicating twelve cases while the Appeal Court conducted eight trials. As no trials took place during the April-June COVID-19 lockdown, ACJC prosecutors utilized this time to advance and complete investigations on pending cases so that, by the time the court resumed its sessions, several additional cases were ready for trial.

The increase in trials also seems to be related to the appointment of new chief judges for both the primary and appeal courts. In September 2020, the Supreme Court appointed the Chief Primary Court Judge of the Counter Narcotics Justice Centre (CNJC) and the Head of the Criminal Division of the Appeal Court of Kabul to head the ACJC Appeal and Primary courts, respectively, taking over from the inaugural, long serving judges. The new judiciary leadership seems to have brought fresh impetus to the ACJC. The ACJC Prosecution Directorate reported better cooperation with the judiciary resulting in the reduction in the number of cases returned to the prosecution through judicial decisions. The trend continued into 2021, with the Primary Court conducting six cases in January and February while the Appeal Court heard seven cases. For the first time since its establishment, the ACJC heard a court case every day for a full week in February 2021.



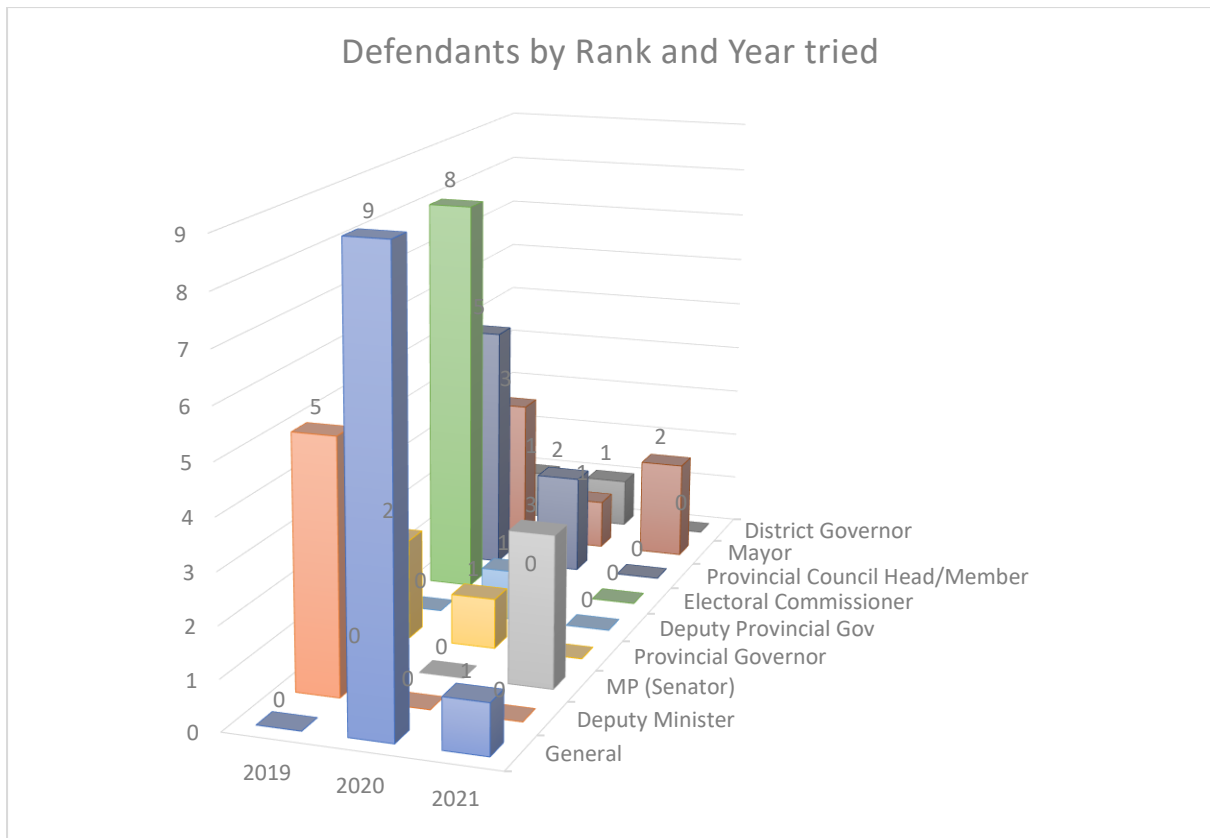
3.4.4 The indictment of high-ranking officials, including the military

The ACJC has jurisdiction over corruption crimes allegedly committed by high-ranking Government officials.^{cxci} The ACJC has since its inception tried several deputy ministers and military generals.^{cxci} In 2020, UNAMA reported that fewer officials of the highest rank, particularly military officials, were indicted in 2019 compared to the previous years.^{cxcii} This negative trend seems to have been reversed in 2020, particularly for military officials. Between January 2020 and February 2021, ten military officials of the rank of general were tried by the ACJC Primary Court. Three of the generals were from the Ministry of Defence (MoD), two from the Ministry of Justice (Prisons officers from the period when prisons were under the MoJ), while the remaining (five) were from the Ministry of Interior. Further reversing a trend seen in recent years not to indict Ministry of Defence officials,^{cxci} eleven other current or former lower-

In January 2021, three Members of the Upper House of Parliament were arrested in an alleged “sting” operation while receiving a bribe. The arrest of the senators complied with Article 102(1) of the Constitution which permits arrest of a member of the National Assembly in cases of a crime when its commission is witnessed. However, where detention (or continued detention in such crimes) of the suspect is needed, Article 102(2) requires that the permission of the relevant House of the National Assembly be obtained. In this case, permission of the Upper House was sought but declined and the suspects were released from detention on guarantee of the House pending completion of investigations and prosecution. The Senators were subsequently indicted and on 6 February the Primary Court conducted the trial during which the defendants were absent but were represented by counsel. The Court convicted all the defendants and sentenced each to ten years’ imprisonment and a fine of US\$ 40,000. By the time of trial, two of the Senators, who were members of the Senate through nomination, had already been removed by the President. This did not deter the Senate from writing to the Supreme Court guaranteeing the defendants and requesting that they not be arrested pending their appeal to ACJC Appeal Court and the Supreme Court. The Supreme Court did not act on the letter, instead transmitting it to the ACJC Appeal Court for decision. The defendants have neither surrendered to the court nor been arrested following their conviction and sentence and, although they may appeal the conviction and sentence to the Appeal Court and Supreme Court, the law requires that they first surrender or be arrested before they can lodge their appeals.

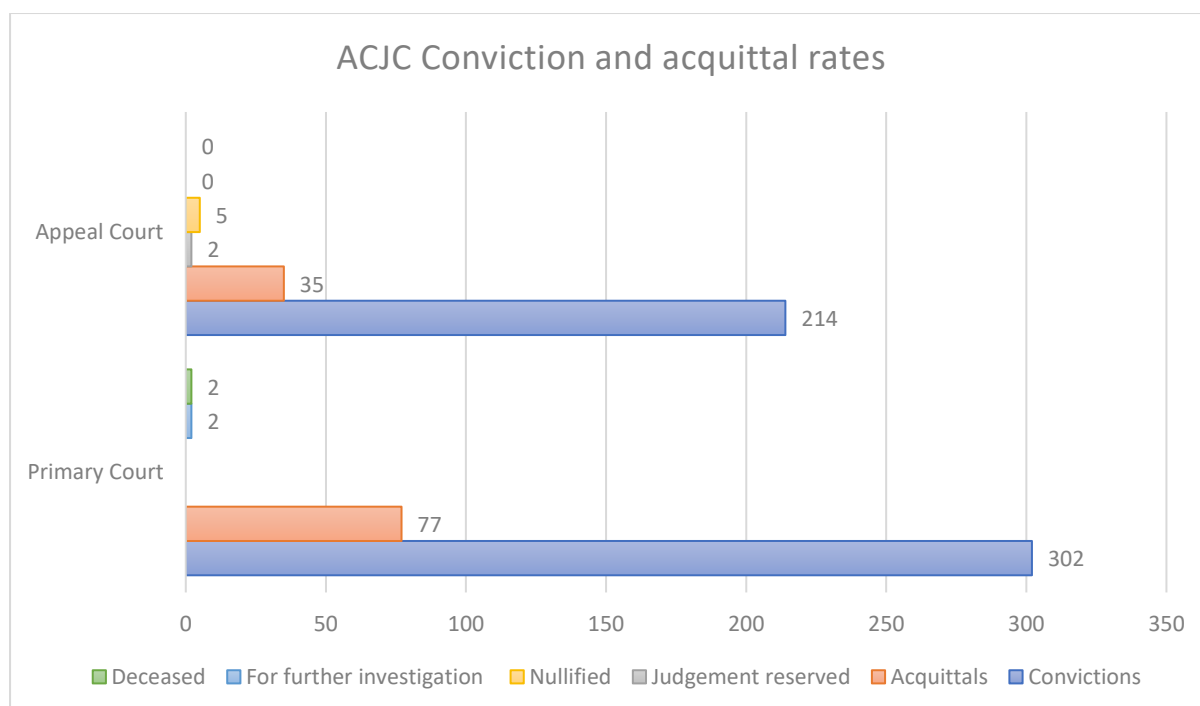
ranking MoD officers were indicted, and ten lower ranking Ministry of Interior officers were also indicted.

Other high-ranking officials indicted included one provincial governor and one deputy provincial governor, three members of the *Meshrano Jirga*, two members of provincial councils, and three mayors. However, no deputy minister was indicted in the reporting period compared to five in 2019.^{cxci} Of these high-ranking officials, three generals, three members of the *Meshrano Jirga*, one provincial governor and two provincial council members were tried in absentia. A member of the *Wolesi Jirga* who was arrested in September 2020 on allegations of attempting to smuggle currency out of the country, and who was released pursuant to Article 102 of the Constitution,^{cxci} was not indicted because he agreed to pay an administrative penalty.



3.4.5 ACJC Primary Court conviction rates

Conviction rates were generally higher in the Appeal Court than in the Primary Court. Since its establishment, the ACJC Primary Court has conducted trials in 95 cases involving 384 defendants. Of these, the court convicted 302 defendants, acquitted 77 and returned cases of two defendants to the prosecutor for further investigation. Two defendants died before their trials were conducted. The general conviction rate therefore is around 80 per cent. In the same period, the Appeal Court conducted 78 trials with 254 defendants, convicting 214 and acquitting 33. Cases against 5 defendants were nullified and referred to a different court for want of jurisdiction while judgement was reserved in respect of two defendants. In the majority of cases, the Appeal Court affirmed the Primary Court's judgement of acquittal, reversing an acquittal only once. In the period from January 2020 to February 2021, the ACJC Primary Court tried 117 defendants in 27 trials resulting in the conviction of 90 defendants and the acquittal of 27 defendants.



3.4.6 Unprosecuted cases and compliance with interim court orders to cover investigation gaps

Under Article 202(4)(4) of the Criminal Procedure Code (CPC) the court can, through a judicial ruling, refer a case back to the prosecutor for further investigation. The court may also order the prosecutor to investigate other suspects who were not initially indicted and to indict them jointly or separately. The number of cases officially either rejected or returned to the prosecution by judicial order by the Primary Court remained very high. According to court statistics, out of 411 cases referred to the court since the ACJC was established, 120 cases had been rejected while 186 were returned to the prosecution through judicial order.

During 2020, the Primary Court, after conducting open court trials, returned two cases - the Pashtani Bank Case^{CXCvi} and the case of Head of Star Gulf Company^{CXCvii} - to the prosecution for further investigation. The Primary Court also issued various orders directing the Prosecution to investigate and indict suspects who had not been indicted initially. Despite several arrest warrants, the suspects remain at large^{CXCviii}. In the case of embezzlement at the Azizi Bank,^{CXCix} the Court ordered the prosecution to arrest and prosecute four additional defendants. Similar orders were issued in the Officials of the General Directorate of Prisons case^{CC} and in the Herat Land Grabbing Case.^{CCi}

Many other cases, including cases of major corruption, remain under investigation without any indication by the ACJC Chief Prosecutor as to whether a decision to proceed with prosecution or not had been made. Some examples include the officials implicated in the MoD fuel bid rigging scandal which was the subject of the 2014 Farooqi Report, who have not been arrested or prosecuted, and investigations related to the Badakhshan Province Elections Case which seem to have stalled or been abandoned since the case was returned to the ACJC Prosecution

Directorate in July 2019 to address investigatory gaps.^{ccii} The case has been referred to the Internal Inspection of the Electoral Commission for further investigation^{cciii}. Furthermore, an order of the Supreme Court in the Kunar Elections Case, to investigate three former officials of the Independent Elections Commission has yet to be implemented. The court issued a conviction in absentia that has not been enforced^{cciv}. Another long-standing investigation that appears to be stalled is the case relating to a meat contract for the Ministries of Defence and Interior. Overall, the AGO has stated that since the ACJC's establishment, 109 cases received by the ACJC Prosecution had been reviewed by investigatory prosecutors and decisions taken for no further action due to lack of sufficient evidence. Furthermore, 637 cases had been sent back to the relevant detecting or referring authorities after basic reviews.

Observation

Strengthening cooperation between the MoI, the AGO and the ACJC regarding access to information, the collection and analysis of evidence and the timely execution of arrest warrants, would reduce delays in investigations and prosecutions and ultimately enhance accountability.

3.4.7 ACJC Adjudication of elections related crimes

As a result of the codification of crimes in the 2018 Penal Code, electoral crimes, which were previously enumerated under Article 99 of the 2016 Elections Law,^{ccv} became part of Chapter 6 of Part IV of the Code under the general rubric titled "corruption and financial crimes." Under article 31 of the Law on the Structure and Jurisdiction of the Courts, the High Council of the Supreme Court has jurisdiction to adjudicate election crimes upon the request of the prosecution or a claimant.^{ccvi}

Following the 2018 *Wolesi Jirga* (Lower House) elections, the ACJC Prosecution Office, in early July 2019, submitted to the ACJC Primary Court, indictments relating to the parliamentary elections in Kunar and Badakhshan. The defendants in both cases were charged with misuse of authority, an offence under Penal Code Article 403.^{ccvii} The Kunar Elections Case was finally adjudicated by the Supreme Court in March 2020 when the court affirmed the judgement of the ACJC Appeal Court on both conviction and sentence. The ACJC Primary Court convicted ten of the twelve defendants for changing result sheets of parliamentary elections, dismissing the charge of misuse of authority, and sentenced them to five years' imprisonment. One of the defendants was tried in absentia, having failed to appear in court. Two defendants who were charged as accessories were acquitted. The ACJC Appeal Court affirmed the convictions but reduced the sentences to two years and six months' imprisonment.

In addition, the Supreme Court directed the Attorney General to investigate three other staff members of the Independent Elections Commission for their possible participation in the crime. However, to date, the results of these investigations, if they were carried out, remain unclear as no indictment has yet been filed.

Pursuant to special Presidential Decree No. 1 of 26 March 2020^{ccviii} which was issued “in order to reduce crowding in the prisons and for the purpose of taking precautionary measures to prevent the spread of the coronavirus in the places of limiting freedom”, the ACJC Appeal Court, on 15 April 2020, postponed the enforcement of sentences on all nine commissioners and released them on a bail of AFN 250,000. Through the operation of a subsequent Presidential Pardon and Commutation Decree issued on 20 April 2020, the commissioners’ remaining sentences were reduced by three quarters.^{ccix} Since then, the commissioners have remained on guarantee/bail notwithstanding the easing of the coronavirus situation in Afghanistan. Furthermore, the commissioner who absconded and was tried *in absentia* has yet to be arrested.

Investigations in the Badakhshan Case, in which all the seven former Independent Elections Commission (IEC), five former Electoral Complaints Commission (ECC) commissioners and two IEC officials were indicted, appears to have stalled. The ACJC Primary Court had referred the case back to the prosecution for further investigatory work. Throughout 2020, the ACJC Chief Prosecutor asserted that part of the delay in finalizing the investigation was because of limited cooperation provided by both the IEC and the ECC who were busy with the presidential elections. The continued lack of progress in concluding investigations in the Badakhshan Case, together with the investigations ordered by the Supreme Court in the Kunar Case, remains a concern, especially given that the presidential elections have long concluded and there are no obvious reasons why the IEC and ECC cannot now fully cooperate with the ACJC.

3.4.8 The future adjudication of land usurpation cases in the Central Region

On 16 July 2020, the President decreed^{ccx} the establishment of the Special Court on Adjudication of Land Grabbing cases and other Government Properties, based in Kabul, with a view to accelerating the adjudication of cases involving public and Government property rights violations. The court has jurisdiction over both criminal and civil aspects of alleged land usurpation cases involving more than ten *jiribs* of land within Kabul City and districts of Kabul Province.

To bring the above decree into effect, the Supreme Court High Council issued its approval No. 211, dated 7 August 2020, establishing the special court, temporarily located at the ACJC premises. Judges and administrative staff of the court were appointed in September 2020 and deployed to the ACJC. This court replaces the special zonal courts which the Supreme Court had established in 2018^{ccxi} under which the ACJC Primary and Appeal courts were designated as special courts to adjudicate land usurpation cases in the Central Zone (Kabul, Maidan Wardak, Parwan, Logar, Kapisa and Ghazni provinces) involving ten or more *jiribs* of land^{ccxii} or properties on which buildings had been erected.^{ccxiii} Land cases in the provinces are now adjudicated by the Public Rights Courts of the Provincial Appeal. A special prosecution unit was also established to serve the special land court but is not currently housed within the ACJC premises.

According to the Chief Judges of the special land court, since the court started work, they have issued multiple judicial rulings to the State Cases Department of the Ministry of Justice to fill gaps in investigated cases.^{ccxiv} There have been delays in responding to the judicial rulings and the court has not received the needed support from police and prosecution units. According to

the new land court's judges, t a prosecution committee composed of ACJC prosecutors who had previously supported the ACJC when it acted as the special zonal land court, still exists as a prosecution office specialised in land cases, but it is not operational. For future efficiency, the judges recommended that all the components of the special land court be based at the same premises, modelled after the ACJC.^{ccxv}

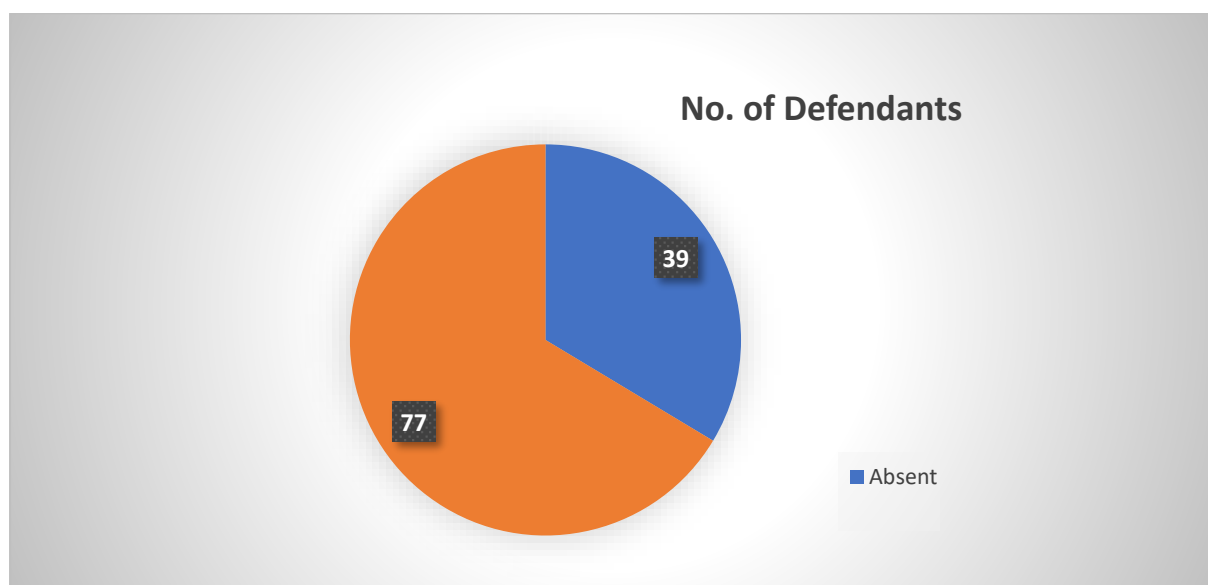
Observation

The newly established special land court may face similar operational challenges as the ACJC. Police and prosecution units must engage with the court in detecting and effectively investigating alleged property rights violations. To become fully operational, the Court and its staff must also be provided with sufficient resources, while preserving the court's independence and impartiality.

3.4.9 Application of bail and in absentia trials

Under the Criminal Procedure Code, a court may conduct a judicial session in the absence of the defendant and issue a decision in a trial for any type of crime. However, in trials for misdemeanour and felony crimes, the presence of the accused is considered highly desirable and certain conditions must be satisfied before a court issues a decision in the absence of the accused.^{ccxvi} If the accused does not appear after receiving the notification, the court will issue a summons or an arrest warrant. Subsequently, the court will issue an announcement which, if not honoured, will lead the court to assign a legal aid attorney, hear the case without the accused, and issue a decision.^{ccxvii}

As noted in previous UNAMA Reports,^{ccxviii} the ACJC has historically conducted a high number of trials *in absentia*. The number of *in absentia* trials remained high during the reporting period. Between January 2020 and February 2021, the ACJC Primary Court conducted hearings in 26 cases with 116 defendants out of whom 77 were present in court while 39 were tried *in absentia*.



Both ACJC prosecutors and judges have attributed the high number of *in absentia* trials to the legal framework which permits criminal cases to proceed in the absence of the accused, as well as to the fact that a number of defendants who initially cooperated with prosecutors and were temporarily released on bail pending completion of the investigations, did not appear at the open court trial. While the ACJC practice of granting pre-trial and post-conviction (or acquittal and pending appeal) release on bail has not been consistent, most defendants are usually released on bail or guarantee during investigation, trial and appeal.^{ccxix} While the CPC limits the time for detention of a suspect during investigations to a maximum of 75 days,^{ccxx} the investigation of corruption cases is complex and often takes longer, leading to the accused release on bail before the prosecution's case is ready and in many cases their subsequent non-appearance at trial.

The statistics demonstrate that the release of suspects and accused persons on bail or guarantee has resulted in a high number of accused being tried *in absentia* and whose sentences are subsequently not enforced. Prominent cases include that of General Piaikan, the former commander of the Afghan Civil Order Police (ANCOP) who, having been released during his trial at the Primary Court level, upon the decision by the AGO and the court, did not appear in court and was subsequently only arrested two years later. Former electoral commissioner Badghisi and Senator Yousuf Nooristani are still at large. For these reasons, there is a need for the ACJC Prosecution Directorate to explore ways of applying the right to bail in a manner that ensures that defendants are compelled to attend trial when needed to ensure compliance with due process and other fair trial standards, including through imposing the proper bail conditions, on a case-by-case basis, and ensuring judgements are enforced.

3.4.10 The enforcement of arrest warrants, summons, and sentences

For prosecutions to become a deterrent to corruption, the ability of the law enforcement authorities to enforce orders, especially arrest warrants and summons, is crucial. Afghanistan's record in this respect has generally been weak.^{ccxxi} In 2018, just before the November Geneva Conference, and in early 2019, the Government released two lists totalling 255 ACJC issued warrants and summonses that were targeted for immediate enforcement. By early 2020, the AGO reported^{ccxxii} that 171 arrest warrants and summonses had been implemented,^{ccxxiii} 50 were under process, and 34 individuals had been identified as residing outside its jurisdiction. In February 2021, the Major Crimes Task Force, which is responsible for executing ACJC orders,^{ccxxiv} informed UNAMA that 179 warrants had been executed, 39 warrants were pending execution while 37 individuals were resident in another country.^{ccxxv} The MCTF added that the names on 37 warrants had been shared with Interpol but did not indicate whether proceedings for extradition and or steps for ad hoc cooperation with the relevant countries had been initiated.

In addition to the combined list of 255 from which 76 warrants are still pending, the ACJC has since issued more warrants and summons. In 2020/21, for example, 51 individuals were tried in *absentia* and are subject to arrest. An update by the Arrest Warrants Joint Committee^{ccxxvi} in September 2020 indicated that the committee had analysed warrants for the period 2016-2018 and found that 5,705 warrants had been issued for a total of 7,693 suspects, accused or

convicts. 1,246 of those warrants with 1,637 subjects had been enforced and 1,663 warrants for 3,206 people were under process by the Ministry of Interior. The Committee cited various reasons why so many warrants were pending, among them that 1,086 subjects had been identified to be living in areas outside the control of the Government, 105 cases lacked adequate evidence and documents and 113 warrants related to cases that were time-barred by virtue of the statute of limitations.

The arrest in August 2020 of the former commander of the Afghan National Civil Order Police^{ccxxvii} by the National Directorate of Security was an important achievement for the Government. However, other powerful suspects, among them a former deputy minister in the Ministry of Haj, four former senators and a former commissioner of the Independent Election Commission, convicted in absentia by the ACJC during the reporting period, remain at large while at the same time seeking, through emissaries, to benefit from the March and April 2020 presidential pardoning decrees.

3.5 The Supreme Court's adjudication in corruption cases

The Constitution and the Law on the Structure and Authority of Special Courts confers on the Supreme Court exclusive jurisdiction to adjudicate cases of serving or former ministers for crimes associated with the performance of their functions.^{ccxxviii} 2021 has seen a notable increase in cases tried by the Court.

Following his conviction and incarceration, former Minister of Mines and Petroleum, Waheedullah Shahrani, criticized the Special Courts Law, under which he was tried, as being in violation of fair trial rights guaranteed by the Constitution and under international law. Specifically, the Minister alleged a violation of his right to appeal to a higher tribunal as specified under Article 14(5) of the International Covenant on Civil and Political Rights (ICCPR), since the Supreme Court is the highest and final jurisdiction, and the law expressly prohibits any appeal.

In January 2021, a special panel of the Supreme Court convicted a former minister of Mines and Petroleum, Waheedullah Niamatullah Shahrani, on charges of misuse of authority and sentenced him to imprisonment of one year and one month and restitution of USD 1.5 million. Shahrani alleged that the Special Courts Law violated the Constitution and the International Covenant on Civil and Political Rights because it did not allow him the opportunity to appeal.

In February 2021, another Supreme Court special panel tried, *in absentia*, and convicted a former Minister of Commerce, Amin Farhang, on charges of misuse of

authority and sentenced him to imprisonment for one year and a fine of USD 864,000. As previously reported by UNAMA, a special panel of the Supreme Court tried and acquitted a former Minister of Telecommunications and Information Technology in 2018.^{ccxxix} As in the 2018 case, although trial proceedings were held in public, their scheduling was not widely disseminated, and to UNAMA's knowledge, the Supreme Court has yet to publish the written judgments against former Ministers. Under Article 17 of the Law on the Structure and Authority

of Special Courts,^{ccxxx} the decision of the special panel is final and cannot be appealed. According to the AGO, out of the seven Special Court cases that had been investigated, three had been heard, three were under review by the Supreme Court after investigations were completed and one had been returned to the AGO on technical grounds and is being worked on.^{ccxxxi}

Criminal appeals from lower courts may be submitted to the Supreme Court when: the decision contradicts the law, there is an error in the implementation or interpretation of the laws, when the court decision is a nullity or when there are nullities in the proceedings that may affect the court decision.^{ccxxxii} Notwithstanding these parameters, the majority of ACJC Appeal Court cases are routinely appealed to and admitted for hearing by the Supreme Court.

The Supreme Court has considered 58 appeals from the ACJC since it was established in 2016. In 2020, the Supreme Court decided on 13 appeals from ACJC cases. As in previous years,^{ccxxxiii} the Supreme Court upheld most of the verdicts and sentences determined by the ACJC Appeal Court.

3.6 Asset recovery initiatives

In line with the vision of the 2017 Afghanistan National Strategy for Combating Corruption to revise civil and criminal substantive and procedural laws to “foster the prosecution of corrupt individuals and to promote the recovery of illegally acquired assets”,^{ccxxxiv} Afghanistan has streamlined the legislative framework for asset recovery. In addition to the 2018 Penal Code,^{ccxxxv} amendments to the Law on Structure and Authority of the Attorney General’s Office created the office of Deputy Attorney General for Anti-Corruption (DAG-AC) and vested in that office the duty and authority to take action and make decisions on the recovery of illegally acquired assets.^{ccxxxvi} The AGO subsequently established a department for asset recovery under the DAG-AC – the Office of Asset Recovery. The 2018 Anti-Corruption Law^{ccxxxvii} and the Asset Recovery Regulations (“the 2020 Regulations”), adopted by Cabinet on 4 March 2020, completed the legal framework.^{ccxxxviii}

The 2020 Regulations^{ccxxxix} clarify the duties and authorities of justice institutions and other relevant organizations in the recovery of illicit assets; identify illicit assets controlled or possessed by real or legal persons, provide for the management of seized and confiscated assets, and aim to improve coordination between Governmental institutions, foreign states, national and international organizations to identify, and recover illicit assets.^{ccxli}

Since it started its substantive work in April 2020, the Office of Asset Recovery has successfully investigated and prosecuted two Special Court trials: first, of a former Minister of Petroleum and Mines (the Shaharani Case referred to above) which resulted in his conviction and sentence to restitution of USD 1.5 million, and a term of imprisonment; secondly, a former Minister of Commerce who was convicted and sentenced to one-year imprisonment and a fine of USD 864,000. Efforts are under way to identify properties which may belong to the defendants and which may be located in the country. According to the Director of the Office of Asset Recovery, the Office had also recovered AFN 75 million in cash which was transferred to the Ministry of Finance and had identified assets worth between AFN 200-300 million which it was working to recover. According to the AGO, the total amount of recovered properties is 369,051,968 Afghanis and 2,208,000 US dollars.

The ACJC Primary Court has, since it was established, ordered the payment of a total of AFN 962,564,175 and USD 836,009.90 in cash fines; AFN 579,288, USD 23,639,125 and Euro 600,000 in restitution; confiscation of AFN 90,132,000 and USD 103,123,525;^{ccxli} and compensation of AFN 887,406,195 and USD 22,388,357. However, as noted above, enforcement of court orders has remained poor and total recoveries to date amount to only AFN 75 million (about USD 960,000).

Observation

The adoption of the Asset Recovery Regulations in 2020 operationalizes the legislative framework for asset recovery and should serve to accelerate the recovery of proceeds of crime and other illicit assets. Regional and international cooperation in this regard should be reinforced. Greater efforts by the Office of Asset Recovery need to be made to close the gap between what has actually been recovered and what the ACJC has ordered to be recovered.

3.7 Oversight of COVID-19 relief funds

Following the onset of the COVID-19 pandemic in Afghanistan in 2020, the National Budget was amended to allocate funds to fight the virus.^{ccxlii} Procurement procedures were eased to facilitate the purchase of hygienic materials and equipment, and there was a temporary lockdown of offices and administrative districts. Other measures included the President issuing decrees on pardons, the suspension of investigations and postponement of sentence enforcement.^{ccxliii} However, by June 2020, there were reports in the media of allegations of misuse or embezzlement of resources set aside for the COVID-19 response, as well as efforts to influence the pardon process. Following these reports, the President tasked the Ombudsperson's Office to review the complaints and reports of corruption and, based on the results, to refer any cases of a criminal nature to the Attorney General's Office for investigation.^{ccxliv}

On 26 August 2020, the Ombudsperson announced that her investigation had identified instances where acts of a possible criminal nature may have been committed in relation to the application of COVID-19 relief resources. The Ombudsperson referred her findings to the Attorney General's Office for formal investigation and assured that further findings from her inspections would be transparently shared with the public. So far, the Ombudsperson's Office has not publicly issued its reports and it remains unclear, after the office was merged into the Anti-Corruption Commission and the resignation of the Ombudsperson in May 2021, how the Commission intends to address the publication, or otherwise, of these reports.

Acting on the reports of the Ombudsperson, the Attorney General opened investigations in several provinces as well as in the Ministry of Public Health. According to the AGO, while investigations in seven provinces are ongoing, cases investigated in Kandahar, Herat and Maidan-Wardak provinces have been referred to and are under initial consideration of the ACJC Primary Court. In October 2020, the ACJC Primary Court tried a case involving six staff members of the Ministry of Public Health who were indicted for bribery and mediation of bribery for soliciting and receiving US\$ 80,000 to facilitate payments to a contractor who had supplied personal protective equipment (PPE) to the Ministry of Public Health. The Primary Court convicted three of the defendants as charged and sentenced them to terms of imprisonment and to a cash fine of US\$ 300,000.^{ccxlv}

Observation

Cooperation between the Ombudsperson, Attorney General Office and the ACJC leading to accountability is to be commended and should assist in deterring further misuse of funds. There is however a need to increase the effectiveness and timeliness of investigations, prosecutions and court proceedings to increase accountability.

4. Anti-Corruption Measures in the Legislative Branch

The second year of the 17th legislative term of the National Assembly, covering the period from March 2020 to February 2021, was impacted by the COVID-19 pandemic. Following an initial suspension of plenary sessions and commission meetings, in line with a Ministry of Public Health recommendation, the Lower and Upper Houses (*Wolesi Jirga* and *Meshrano Jirga*) gradually recommenced their work in mid-May 2020.

Parliamentarians called for a commitment by the Government to accountability and transparency in the use of funds allocated for the COVID-19 response, the delivery of humanitarian aid, and the recruitment of civil servants. Controversy continued regarding the spending of discretionary and emergency funds by the Presidential Palace. In October and November 2020, an Upper House commission also investigated corruption allegations regarding the misuse of funds by the Afghan Embassy in Washington and land purchases by the Afghan consulate in Istanbul, Turkey. The findings of the investigation of the misuse of funds in Washington were shared with the Attorney General. On 23 November 2020, First Vice President Amrullah Shaleh addressed a side event on anti-corruption efforts at the donors Conference in Geneva, accusing some Members of Parliament of involvement in corruption. In reaction, the Lower House suspended the confirmation hearings of appointees for ministerial and key Government positions for five days. On 28 December, a joint statement by the National Directorate of Security and the Attorney General's Office announced the arrest of three senators for allegations of receiving bribes at the Hairatan Port in Balkh Province. On 29 December, the Upper House demanded a free, fair and

transparent investigation into the bribery allegation against the senators. On 8 February 2021, the three senators were convicted. .

4.1 Parliamentary oversight

The current Parliament elected in 2018 has reinforced its oversight of the Executive, particularly regarding budgetary allocations and spending. This has resulted in increased tensions between the two branches. Parliament repeatedly expressed concerns over the establishment of new administrative entities by the Executive through the discretionary use of “emergency code budget lines.” Parliamentarians argued that Article 90 of the Afghan Constitution gave Parliament the sole authority “to form, change or abolish Government offices.” For example, on 13 July 2020, the Lower House rejected two legislative decrees on separating the Oil and Gas Directorate from the Ministry of Commerce and Industries, and the National Directorate for Examinations Affairs from the Ministry of Higher Education. Parliamentarians asked that Government submit a draft law on the creation of these new entities as independent budgetary units for approval by Parliament. At the same time, Parliamentarians criticized the executive for threatening to reduce funding for parliamentary privileges and entitlements, such as security, as attempts to stifle their legitimate oversight role.

In addition, Parliament used the national budget approval process to draw attention to concerns about the Executive’s under-funding of development programmes. The Lower House demonstrated its concern by repeatedly rejecting the Government’s proposed budget until modifications were made to balance provincial and sectoral development budget allocations. Furthermore, in the context of the annual review of the Executive’s budget performance, the head of the Financial and Budgetary Committee of the Lower House announced that lawmakers *“will refer to the Attorney-General’s Office the leadership of ministries, which have spent less than 80 per cent of their annual development budgets.”*

Parliamentary members submitted complaints about presidential decrees and proposed legislation that was contrary to parliament’s priorities. For instance, proposals for draft amendments to the election law, the introduction of *e-tazkiras* (electronic national identity cards) and implementation of the National Dining Table Programme (a short-term basic relief programme for households) were opposed, the latter over corruption concerns.

Parliament also criticized the Government’s national COVID-19 response, complaining that COVID-related spending lacked oversight, was prone to corruption and was politically motivated.

4.1.1 Legislative activities

Drafting and adoption of legislation by Parliament remained limited, with a persistent backlog of around 70 pieces of legislation. The consideration legislation continued to be slow due to

absenteeism that prevented quorums from being formed, limited technical capacity by parliamentary commissions and difficulties in reaching consensus on substantive issues. Controversial pieces of legislation remained pending before Parliament, such as the Anti-Corruption Law.

Following the outbreak of COVID-19, some legislative activities focused on the Government's pandemic response, including amendments proposed by the Government to the 2020 national budget and the Government proposal for an AFN 17 billion (USD 229 million) loan from the International Monetary Fund (IMF) to respond to the crisis. On 17 June 2020, Parliament announced that a joint committee of the Lower and Upper Houses accepted the proposal for the IMF loan. At the same time, Parliamentarians continuously voiced criticism regarding the alleged misuse of COVID-19 allocations by Government authorities, including at the sub-national level.

4.2 Parliamentary oversight including confirmation of ministers

The Constitution provides the National Assembly with the powers to oversee the work of the Executive through its authority to approve the budget and question ministers and key Government officials.^{ccxlv} The *Wolesi Jirga*, in addition has the authority to decide on development programmes and to approve or reject the appointments, including of ministers.^{ccxlvii} The full exercise of these oversight functions could further contribute to parliamentary anti-corruption efforts. In the second year of the 17th legislative term, the *Wolesi Jirga* summoned seven ministers and three Government officials for questioning, while the *Meshrano Jirga* summoned 20 ministers and 511 Government officials. Although the *Meshrano Jirga* generally expressed concerns about corruption in some of its plenary sessions, no officials were summoned specifically in connection with this issue. Some individuals were summoned more than once; not all summoned individuals appeared for questioning.

The Constitution requires that the Lower House approves appointments to ministerial positions as well as the Attorney General, the Head of the Central Bank, the National Security Director and the Head of the Afghanistan Red Crescent Society.^{ccxlviii} However, there is no constitutional requirement for parliamentary approval of state ministers. In October 2020, President Ghani introduced nominees for 23 ministerial positions and other Government posts requiring parliamentary approval to the Lower House for a vote of confidence. The confirmation process took place between 16 November and 2 December 2020, resulting in the approval of 19 out of the 23 ministerial appointments and the National Security Director, while nominees for four ministerial positions and the Head of the Central Bank nominee were rejected. For the confirmation process, the Lower House held a total of six hearings and three voting rounds. The House called on the President to introduce replacements for the four rejected ministers and the Head of the Central Bank; however, these acting ministers have so far remained in office despite assurances by President Ghani to end this practice. The President subsequently replaced three confirmed ministers and nominated acting ministers in their stead. These include the Minister of

Public Health on 31 December 2020, following the arrest on corruption charges of individuals affiliated with him; the Minister of Finance on 19 January 2021, inter alia citing non-observance of constitutional provisions; and on 19 March 2021, the Minister of Interior. The replacements need to be confirmed by Parliament according to the constitution.

During the reporting period, Parliament also exercised its oversight responsibilities of the national budget approval process. On 9 December 2020, the Ministry of Finance presented the first draft of the national budget for fiscal year 1400 (2021) to Parliament, with two thirds allocated to operational and one third to development spending. On 22 February 2021, the *Wolesi Jirga* approved the 2021 national budget. Out of 147 parliamentarians present, 144 approved and three objected to the proposed budget. Several Members of Parliament again highlighted concerns over the Government's use of discretionary and emergency funds, which are exempt from the regular budgetary process and controls. In addition, there were demands related to increasing the salaries of teachers and civil servants, as well as for a balanced allocation of development projects across provinces. These demands were accepted by Government and incorporated in the budget after long debates during nine plenary session and several commission meetings. Parliamentarians also used these sessions to accuse senior Government officials of embezzlement and the misappropriation of funds.

4.3 Criminal accountability and the National Assembly

The UNCAC requires States parties to take necessary measures “to establish or maintain [...] an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.”^{ccxlix} This provision should ensure accountability for corruption offences by public officials.^{ccl} Afghan authorities have acknowledged the importance of this principle, stating in the framework of the periodic review of the UNCAC that complete immunity from prosecution “is not possible under the fundamental principles of the criminal law of Afghanistan.”^{ccli} The Constitution provides absolute functional immunity from prosecution for members of the National Assembly for exercising their voting rights or expressing opinions in discharging their duties.^{cclii} Article 102 of the Constitution provides that Members of the National Assembly may be legally prosecuted for crimes and the respective House should be informed about the case. The approval of the relevant House is required for the detention or other measures of restraint regarding its members.^{ccliii}

During the reporting period, the ACJC Prosecution received two cases which involved Members of the National Assembly. In February 2021, three Members of the Upper House were convicted by the ACJC Primary Court and sentenced each to ten years' imprisonment and a fine of USD 40,000 for bribery. To date, none of them have been arrested in enforcement of the judgement. However, following their arrest and indictment, the President removed two of the senators. Both had been appointed to the Upper House by the President, rather than elected. Also, in 2020, a Member of Parliament was caught while allegedly attempting to smuggle currency out

of the country. The case was referred to the ACJC Prosecution Directorate for investigation, but the member was never detained or indicted following his agreement to pay a penalty.^{ccliv}

Observation

The National Assembly should continue playing a key role in monitoring the effective implementation of anti-corruption legislation and the functioning of anti-corruption institutions, including in cooperation with the executive and other stakeholders. There is also a need to advance legislative processes given existing backlogs pending review and approval of legislation by the Parliament, including the Anti-Corruption Law.

5. Independent institutions' Anti-Corruption work

Under the Afghanistan Partnership Framework agreed in Geneva in November 2020, Afghanistan committed to operationalize the Anti-Corruption Commission, in line with UNCAC, which would subsume any existing parallel anti-corruption bodies, in particular the Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC), the Special Anti-Corruption Secretariat and the Ombudsperson's Office.

5.1 The closure of the Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC)

Pursuant to the commitment made in Geneva, on 2 January 2021, the President decreed the merger of the Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC) in the Structure of the newly constituted Anti-Corruption Commission (ACC).^{cclv} The Decree stated the rationale for the merger as being for the "purpose of management of anti-corruption affairs, supervision from implementation of its strategy through a united system and resource and implementation of commitment of Government of Islamic Republic of Afghanistan in Afghanistan partnership framework...".^{cclvi} To oversee the merger, the President appointed a committee of seven, headed by a commissioner of the Anti-Corruption Commission.^{cclvii} The Decree only provided for the recruitment of the professional staff into the Anti-Corruption Commission after an evaluation of their relevant skills by the Commission in coordination with the Independent Administrative Reform and Civil Service Commission (IARCSC).^{cclviii}

Decree No. 142 effectively dissolved the MEC by voiding Decree No. 115 of 16 September 2016 by which the MEC had been established.^{cclix} By the time of its dissolution, the MEC had gradually drawn down following years of uncertainty and decreased donor support and funding.^{cclx} By March 2020, all the six committee members' mandates had expired and had not been renewed. Since core donor funding had expired in December 2019, the MEC was left with

only international project funding to complete and publish its remaining assessments and produce follow-up results. It continued to operate in 2020 notwithstanding its doubtful legal status and the absence of any appointed committee members.^{cclxi}

By the time of its winding up, the MEC had issued 1,433 recommendations contained in 50 of its Ministry-Wide Vulnerability to Corruption Assessments (MVCAs), Vulnerability to Corruption Assessments (VCAs), Public Inquiries and Follow-Up Reports.^{cclxii} During 2020, the MEC issued two^{cclxiii} Ministry-Wide Vulnerability to Corruption Assessment Reports and five^{cclxiv} follow-up reports. These reports and recommendations are a valuable body of research and information that should be preserved. To ensure that the data was not lost, on 14 October 2020, the MEC launched an online “Anti-Corruption Monitoring and Evaluation Database” which it had developed to “manage the stock of MEC recommendations and make it accessible in an efficient and user-friendly format” and would “provide easy access to Government entities, donor organizations, research institutions, civil society, media, and everyday citizens to MEC’s recommendations in various sectors”.^{cclxv} While the MEC reports and recommendations would remain publicly accessible, the ACC has not yet clearly set out how it is to capture and retain MEC’s procedural experiences.^{cclxvi}

5.2 The Independent Access to Information Commission

UNCAC highlights the importance of access to information for preventing corruption. It states that access to information rights are designed to “promote the active participation of individuals and groups outside the public sector [...] in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption.”^{cclxvii} This entails a range of activities from awareness raising^{cclxviii} to promoting the freedom to seek and receive information^{cclxix} to ensuring effective access to information itself.^{cclxx} A broad interpretation of access to information rights should mandate the proactive disclosure of any work processes of Government entities in understandable language to help citizens understand Government practices.^{cclxxi} This includes establishing and publishing policies on reporting obligations, making reports accessible, defining official documents and rules for denial of disclosure (including for reasons of national security and personal privacy), establishing timetables for the provision of documents, and setting up appeals procedures when disclosure is denied.^{cclxxii}

In Afghanistan, the Access to Information Commission was established by the Law on Access to Information (2014),^{cclxxiii} and strengthened by a Presidential Decree of 3 March 2018,^{cclxxiv} that amended the Law.^{cclxxv} The Commission should realize citizens’ right to access to information according to Article 50 of the Constitution. In recognition of its importance, the implementation of the Law on Access to Information was a deliverable of the 2018 GMAF, which required the “implementation of policies and procedures for tracking requests, quality and timeliness of responses, maintaining statistics, and providing public quarterly updates; and deliver[s] awareness programs in 15 provinces in 2020.”^{cclxxvi}

The Commission began functioning in December 2018, after five commissioners were appointed by the President.^{cclxxvii} The commissioners’ term is for five years and is non-renewable.^{cclxxviii} On

27 July 2019, the National Assembly amended the Access to Information Law to change the selection process for the commissioners, increased their term from five to seven years and required the inclusion of a representative of the *Meshrano Jirga* and the Ministry of Justice in the selection committee.^{cclxxix} The Commission was included as an independent budget entity in the 2020 budget, which is expected to boost its independence and fiscal security. The Commission's budget for the 2021 fiscal year was further increased to AFN 123 million.^{cclxxx}

The Commission's responsibilities include overseeing the implementation of the Access to Information Law, including the process of requesting information and assessing reports by authorities on information sharing.^{cclxxxi} Its outreach function includes promoting its own work and the rights guaranteed in the Access to Information Law leading towards a culture of transparency and information sharing.^{cclxxxii} The Commission addresses complaints arising from the denial of the right to access to information, advises citizens on how to exercise their right to information and issues direct requests to authorities to provide information on the citizens' behalf.^{cclxxxiii} In 2020, the Commission registered 151 complaints of denial of information out of which it resolved 122 and 29 are being addressed.

With the support of GIZ, the Commission prepared its five-year strategic plan for 2020-2025. In 2020, the Government approved the Commission's plan to increase its *Tashkeel* from the current 51 posts to 162 posts, to be filled through a competitive hiring process. In conjunction with the Supreme Court and the Attorney General's Office, the Commission developed information classification procedures for both institutions which limit the type of information that may be classified as confidential and therefore inaccessible to the public. Furthermore, the Commission designed and inaugurated an online system that facilitated access to information by citizens.^{cclxxxiv} The Commission conducted 38 outreach programs for citizens both in Kabul and in the provinces where 1,991 people participated, including 436 women. In addition, the Commission entered into memoranda of understanding with institutions in the private sector to raise public awareness on the right to access to information.

Observation

Greater transparency in Government through increased access to information is essential for combatting corruption. Inconsistent compliance with requests for information, result in the Access to Information Commission, media, and Afghan citizens not consistently receiving information that should be made public. The Government should enhance understanding and compliance with the Access to Information Law among government officials, to further strengthen the culture of information sharing, transparency and accountability.

5.3 The Ombudsperson's Office

On 23 February 2021, the President ordered that the Ombudsperson's Office be merged with the Anti-Corruption Commission. All 24 staff of the office, excluding the Ombudsperson and the Deputy Ombudsperson, were transferred to the Commission and their contracts guaranteed for

one year.^{cclxxxv} The status of these two officials remains unclear. While the President's order was issued pursuant to the Government's commitment at the 2020 Geneva Conference to sufficiently resource the Anti-Corruption Commission, which would subsume all existing parallel institutions,^{cclxxxvi} there seemed to have been no prior analysis of what constituted a "parallel" institution and what approach was most suitable in carrying out the mergers of those institutions. An analysis of the Ombudsperson's Office was particularly needed as the office, situated in the President's Office and mandated to only receive complaints regarding activities of high-ranking officials, performed a unique function. Furthermore, since June 2020, when it was tasked by the President to "investigate" alleged misuse of COVID-19 relief resources,^{cclxxxvii} the Ombudsperson's Office was perceived as having been extremely effective.

The Office of an Ombudsperson in the Palace was first mentioned in the 2017 Anti-Corruption Strategy which scheduled its establishment in 2017 and the appointment of an Ombudsperson in March 2019.^{cclxxxviii} However, the Strategy left the functions of the institution and its role within the larger anti-corruption institutional architecture undefined. The Ombudsperson's office was eventually established by presidential executive decree in May 2018 and the first Ombudsperson was appointed in August 2019 for a non-renewable term of four years beginning on October 2019.^{cclxxxix} The Ombudsperson was mandated to receive and investigate complaints regarding the activities of administrative units in the Office of the President and the Chief Executive Office, high-ranking Government officials and heads of independent budgetary units, with the exception of the President.^{ccxc} Although the Office of the Ombudsperson was located at the Presidential Palace within the Office of the Chief of Staff of the President, creating a perception of dependence on the Presidency, the Ombudsperson always asserted that she was independent in her technical work and was only supported in administrative affairs by the Office of the Chief of Staff.

In accordance with the founding decree which tasked the Ombudsperson to draft the law for the office within three months of taking up functions,^{ccxci} the Ombudsperson spent most of 2020 consulting with stakeholders and drafting the law. The resultant draft was rejected by the Cabinet's Legislative Committee in late February 2020. Civil Society, particularly Integrity Watch Afghanistan, also provided a robust critique of the draft on the grounds that: it had not been sufficiently consulted with all stakeholders and the public, it undermined the yet (by then) to be established Anti-Corruption Commission, and did not meet international standards on independence and neutrality since it was housed in the President's office and reported to the President.^{ccxcii} On 19 August 2020, a revised draft was once again rejected by the Cabinet's Legislative Committee, which referred it back to the Ministry of Justice to review and eliminate any conflict with other laws, in particular, the Anti-Corruption Law and the Supreme Audit Office Law. It later emerged that the Government had decided to downgrade the Office's legal basis from a law to a regulation.^{ccxciii} In June 2020, while discussions on the legal basis of the Office of Ombudsperson were ongoing and following widespread media reports of misuse of COVID-19 relief resources, the President tasked the office to "receive and inspect complaints and reports related to the management and the use of resources to combat the spread of the coronavirus."^{ccxciv}

In August 2020, the Ombudsperson announced that following her “inspection” a number of persons had been identified as suspects of misconduct in the application of COVID-19 relief resources and had been referred to the Attorney General’s Office for investigation.^{CCXCV} She assured that further findings from her inspections would be transparently shared with the public. As a result of the investigations regarding the misuse of funds in the Ministry of Public Health covering 16 provinces and involving 220 people, including the Minister, Deputy Minister, have been sent to the AGO for further investigation, leading to several convictions of Ministry of Health’s staff during the reporting period^{CCXCVI}.

6. Civil society initiatives on anti-corruption

6.1 Civil society engagement on the establishment of the Anti-Corruption Commission

Civil society welcomed the establishment of the Anti-corruption Commission, calling the measure critical for the coordinated and coherent fight against corruption. Civil society, in particular, welcomed the Government’s invitation to have two civil society representatives serve on the Committee for the selection of members of the Commission. However, civil society expressed concerns that the two civil society representatives elected to serve on the committee were later replaced by non-elected members who were perceived to be close to the Government. Efforts to have the two representatives reinstated failed and the committee proceeded with the selection of 15 candidates out of which the President selected five members as Commissioners. Civil society groups issued a statement, calling into question the transparency of the process, noting that no feedback was given to the Committee on the criteria used in the final selection of the five commissioners by the President.^{CCXCVII}

The Civil Society Joint Working Group (CSJWG), a consortium of more than 1,000 civil society networks and organizations, raised concerns that a politicized and non-independent Anti-Corruption Commission would pose a threat to the fight against corruption. They argued that Afghanistan’s past efforts to fight corruption largely failed due to the lack of political will, the absence of an independent anti-corruption agency, and the non-responsiveness of the international community to civil society’s concerns regarding the lack of progress in the fight against corruption.^{CCXCVIII} Therefore, while civil society welcomed the establishment of the Commission, it remains pessimistic regarding the new Commission’s independence and how its work will impact the prevention of corruption alongside investigation, prosecution, and punishment.

Looking to the future, civil society has recommended that the Commission should act as an overarching body with oversight over all anti-corruption agencies or institutions, including the Ombudsperson and the Anti-Corruption Justice Centre, and as facilitator of the High Council for Rule of Law and Governance meetings. In a consultative meeting with the Ministry of Finance on 21 October, ahead of the November 2020 Geneva Conference on Afghanistan, civil society

noted that functional and accountable Government, also required a depoliticized civil service bureaucracy.^{ccxcix} They called for international aid to be conditioned on the independence of the Commission.

Meanwhile, civil society has indicated that it is committed to working in partnership with the Government and the Anti-Corruption Commission in particular, to formulate and execute credible anti-corruption policies and strategies and to monitor and report on the overall fight against corruption. It has proposed amendments to the Anti-Corruption Law to ensure that in the future, civil society, the Parliament and the Judiciary constitute the selection committee while the final selection of the commissioners would remain the responsibility of the President, as head of the Executive.

6.2 Enhanced civil society engagement in policy making and monitoring

Civil Society has continued to play an important role in anti-corruption related policy making and engaging the Government as a partner in enhancing transparency and accountability in governance, development, and service delivery among other areas. During the reporting period, civil society engaged in policy advocacy and monitoring Government activities, including the Government's management of COVID-19 responses, the preparation and conduct of the 2020 Geneva Conference by the Government and international partners, the state of civic space for civil society's work, and the Government's stewardship of the direction of the intra-Afghan peace process.

On 23 April 2020, civil society groups established a committee dedicated to advocacy and the monitoring of national COVID-19 responses. The committee monitored and issued public statements and advisories on the procurement and distribution of aid packages and delivery of health services. They appreciated the Government's decision to redeploy resources from the national budget for immediate response to COVID-19 pending support from international partners. However, they also cautioned that continued amendment of the national budget to accommodate new projects must be done in compliance with the Global Open Budget mechanism on full budget transparency, public engagement in the budget process and credible oversight during budget execution. They expressed concerns regarding the lack of openness in the procurement of non-food items for COVID-19 relief, although appreciated the Government's engagement of civil society in the distribution of food items. Civil society called for increased efforts for public consultations and dissemination of public information to improve the transparency of COVID-19 response going forward.^{ccc}

To ensure an effective interface between civil society and the Government in the ongoing negotiations with the Taliban, on 9 June 2020, civil society established an Advisory Board, including representatives from all seven regions of the country (albeit with few women). The Board launched its formal engagement with the State Ministry of Peace (SMP) and communities on the peace process.^{ccci} On 9 July 2020, five members of this Advisory Board identified and discussed with SMP key issues, including ceasefire, clarification on Taliban's Emirate form of

Government, commitment to the principles of human rights and the root causes of corruption.^{ccci} In a UNAMA hosted civil society consultative meeting on 23 December, the SMP and civil society agreed that the SMP should continue to engage civil society in the peace process, but civil society could not be represented at the peace talks.^{ccci} Civil society has since undertaken community sensitization and awareness raising and engaged with the SMP on the peace process.

On the key issue remains preserving civic space for civil society to freely operate. On 19 and 22 August 2020, the Afghan Ministry of Economy discussed with international partners, including the Agency Coordinating Body for Afghan Relief and Development (ACBAR), new legislation affecting the 2005 Non-Governmental Organisations (NGO) Law. Civil society observed that the new draft would exert more Government control on the governance, administration and management of NGOs operating in Afghanistan, restricting the latter's independence, impartiality, and neutrality.^{ccci} By the end of 2020, dialogue between the Government, the NGOs, the wider civil society, the UN and the development partners did not result in progress, but civil society groups remained optimistic that further engagement and advocacy by international partners would yield consensus on the law in such a way that would preserve the overall civic space needed to facilitate the work of NGOs and civil society in general.

On aid coordination, the Ministry of Finance (MoF) announced in October 2020 an invitation to civil society to participate in the preparation and proceedings of the 23-24 November Geneva pledging conference on Afghanistan, and in the implementation of conference outcomes. In a UNAMA hosted meeting on 21 October, the MoF and civil society discussed finalisation of ANPDF II as part of the preparation for the conference and civil society acknowledged that ANPDF II presents impressive progress in many areas, notably women's economic empowerment, efforts to deal with the effects of climate change, a focus on building sustainable peace, dealing with the pandemic and job creation. As part of its contribution to the conference proceedings, civil society prepared position papers, providing independent assessment of the development situation in Afghanistan and the extent to which the Government and donor partners may or may not have met their commitments as stipulated in the mutual accountability framework.^{ccci}

The Office of the President and civil society continued to engage under the Open Government Partnership (OGP), a global compact under which member states commit to work with non-state actors - in Afghanistan civil society and the private sector – in governance. For 2020-2021 both parties agreed to a National Action Plan with 18 commitments including increased public participation in the budget process of municipalities, development of an electronic system of revenue collection in the five large municipalities and establishment of a commission to combat administrative corruption with participation of civil society organisations.^{ccci} Significant progress has been realised in the implementation of the 18 OGP commitments, with nine fully implemented, albeit with differing levels of effectiveness, while three are 50 percent implemented and on track to be completed. Progress in the implementation of the remaining

six commitments, including public participation in budget amendments and Relief Efforts for Afghan Communities and Households (REACH) has been insignificant.^{cccvii}

Observations

- **Civil society has an important role to play in supporting anti-corruption efforts and should strengthen its engagement with the Government and the Anti-Corruption Commission to help formulate and implement credible anti-corruption policies and approaches and to monitor and report on the fight against corruption, including in relation to COVID-19 responses.**
- **Any new legislation on non-governmental organizations and their interactions with the Government should not undermine their independence and ability to operate free of pressure and fear.**

6.3 The free media and its role in combatting corruption

The free media can perform an important role in strengthening democratic governance and the rule of law in Afghanistan, directly contributing to the development of civil society, promoting transparency and exposing corruption. It serves as a check on the Government and other actors and has reported widely on alleged corruption, for example, on allegations of misuse or embezzlement of resources set aside for the COVID-19 response.^{cccviii}

Afghanistan is regarded as having a vibrant media sector, with multiple outlets in print, radio, and television that collectively carry a wide range of views and are generally uncensored. Media providers include independent and commercial firms, as well as a state broadcaster and outlets tied to specific political interests.^{cccix} Where there used to be one radio and one newspaper, some 1,700 private TV, radio, print, and online media outlets are now operating in Afghanistan.^{cccix} The significant expansion in the availability of mobile phones, the internet, and social media has provided citizens greater access to diverse views and information. A wide range of editorials and daily papers openly criticize the Government. Due to high levels of illiteracy, most citizens prefer broadcast to print or online media. A greater percentage of the population, including those in distant provinces, have access to radio over other forms of media. The Government has, generally, supported media freedom and does not restrict or disrupt access to the internet. There are no credible reports of the Government monitoring private online communications without appropriate legal authority. This progress has been achieved despite threats and targeted attacks against Afghan journalists.

In accordance with Article 13 of UNCAC, Afghanistan's 2017 National Strategy for Combating Corruption recognizes the importance of protecting the freedom of the media and civil society. In addition to the passage of whistle-blower protections, the strategy calls for committed

reformers in Government to forge strong links with media and civil society. In 2018, a whistle-blower law, the main objective of which is to ensure safety and protection of whistle-blowers, encourage individuals to report administrative corruption and facilitate their contribution to this process, was issued through a Presidential Legislative Decree and approved by the *Wolesi Jirga* in April 2021. The Law on Access to Information was issued by decree in 2014 and further strengthened in 2018.

The 2020 World Press Freedom Index ranked Afghanistan 122 out of 180 countries, ahead of all its immediate neighbours in South and Central Asia, and higher than India. Afghanistan has also ranked first on the Global Right to Information Rating with a score of 139 points out of a possible 150 (93%),^{cccxi} making it the country with the best transparency laws. However, while independent media has remained active, implementation of the Access to Information Law has been inconsistent. The media has criticized consistent failures by the Government to meet the requirements of the law.^{cccxi} Government officials have often restricted media access to Government information or simply ignored requests.^{cccxi} The Access to Information Commission has entered into a memorandum of understanding with the Afghan Journalists Safety Committee with a view to working together with media institutions to provide them with access to information available at Government offices. Another memorandum of understanding signed with the National Radio and Television of Afghanistan aims at making effective use of the facilities of the National Radio and Television Directorate in raising public awareness about the Access to Information Law.

In 2020, Transparency International awarded its 2020 Anti-Corruption Award to journalist Zaki Daryabi and his Etilaat Roz Newspaper citing them “...for their tireless efforts in exposing major corruption scandals in Afghanistan, despite the multiple challenges, threats and limitations they have had to overcome.”

The recent spate of intimidation and the killing of journalists has, however, seriously curtailed the capacity of the media to report freely and speak out against corruption or other crimes perpetrated by powerful local figures. Journalists have faced the threat of harassment and attacks by ISIS-K, the Taliban, Government-related actors and private citizens, all seeking to influence how they are covered in the news. Journalists reporting on administrative corruption, land embezzlement, and local officials’ involvement in narcotics trafficking have complained of threats and engage in self-censorship due to the fear of violent retribution.^{cccxi} According to Reporters Without Borders (RSF),^{cccxi} at least 70 media workers, including 16 foreign journalists, have been killed, while more than 40 media outlets have been attacked and destroyed since 2001. Hundreds of journalists have reported threats to their lives and their media outlets. 2018 was the deadliest year for journalists when a total of 15 journalists and media workers were killed in a series of bombings, nine of them in a single day as a result of a suicide bombing. Female journalists have been especially vulnerable. Media advocacy groups have reported that many female journalists have had to work under pseudonyms in both print and social media to avoid recognition, harassment and retaliation.^{cccxi}

Most recently, in November 2020, Yama Siawash, who had been a well-known news anchor who pursued corruption issues, was killed in Kabul by a car bomb. Shortly afterwards, Elyas Da'ee, a reporter who worked for Radio Azadi, was murdered in Helmand. His brother, also a journalist, was injured. In December, Malalai Maiwand, a woman journalist, was killed in Jalalabad. Also in December, Rahmatollah Nekzad, a reporter for international media, was killed in Ghazni. On the 1 January 2021, the Director of the *Voice of Ghor* radio station, Besmellah Adel Imaq, was gunned down in Firoz Koh. In March, three women employees^{cccxvii} of Enekaas TV, a local channel, were shot and killed in Jalalabad. Most recently, on 6 May, Nimat Rawan, a former news anchor at Tolo News, was shot dead in Kandahar.

The Office of the National Security Council approved, in 2016, a new set of guidelines to address cases of violence against journalists. The initiative created a joint national committee in Kabul and separate committees in provincial capitals, a coordination centre to investigate and identify perpetrators of violence against journalists, and a support committee run by the NDS to identify threats against journalists. While press freedom organizations reported that this did result in the referral of cases to the AGO, there has been no significant improvement in the protection for journalists.

In February 2021,^{cccxviii} the United Nations highlighted the recent targeted killings of journalists and human rights defenders through the Special Rapporteurs communications to the Afghan Government in emphasizing the Government's failure to adequately respond to these attacks and address the ongoing climate of impunity. The Government has been urged to take robust action to end this spiral of violence against journalists.

Observation

Afghanistan benefits from having a vibrant media sector that can play an important role in reporting and exposing corruption. However, the most recent spate of serious attacks and killings of journalists since November 2020 has seriously curtailed the capacity of the media to report freely without fear of retaliation. The Government must take robust action to end this spiral of violence against journalists and improve the protection of journalists, including through the effective investigation and identification of perpetrators.

7. Conclusions and Recommendations

It remains critically important that Afghanistan not only maintains but reinforces its efforts to combat corruption and take the necessary steps towards achieving self-sufficiency, political and economic stability and development. Unless sufficiently addressed, corruption will continue to be a significant conflict driver, increasing public discontent, emboldening illicit activities and undermining future investment. It can also negatively impact key activities, including the negotiating of a lasting political settlement, responses to the COVID-19 pandemic, the strengthening of the rule of law and good governance, reforms of the civil service, parliament, the security services, protecting human rights and providing humanitarian aid and reconstruction assistance.

Afghanistan has taken important steps towards establishing a robust anti-corruption legal framework with dedicated institutions to implement it. The establishment, during the review period, of the Anti-Corruption Commission, presents a significant opportunity to advance anti-corruption reforms subject to the Commission being given the necessary resources and the required independence. However, implementation and accountability challenges persist, undermining integrity, transparency and public trust in the Government, which ultimately undermines the legitimacy of the State.

The focus should therefore remain on further advancing the implementation of Afghanistan's legal framework and the effectiveness of anti-corruption institutions to strengthen criminal accountability, including for perpetrators of serious offences of corruption, regardless of their wealth and political affiliations. An implementable national strategy should also be timely developed following inclusive consultations with a view to consolidate and step up progress made towards a culture of integrity, transparency and accountability in the long term.

UNAMA stands ready to continue supporting ongoing efforts to prevent and address corruption in cooperation with the Government, civil society and other key stakeholders. Based on its consultations in the process of developing this report, the United Nations makes the following recommendations.

Recommendations to Government

- » *Prioritize the achievement of the corruption related targets of the 2020 Afghanistan Partnership Framework to address both the root causes and manifestations of corruption and strengthen the effectiveness, transparency and accountability of public institutions and the judiciary.*
- » *Prioritize the finalization of a realistic, long-term and implementable national anti-corruption strategy, based on an independent impact assessment of the previous strategy through inclusive consultations with key stakeholders, including civil society and other non-State actors.*

- » *Ensure the functional independence of and adequately fund the newly established Anti-Corruption Commission to enable it to fulfil its important mandate. Promote regional/international cooperation with similar anti-corruption institutions to exchange best practices and know how.*
- » *Reinforce the capacity of the anti-corruption justice institutions, as needed to enable the conduct of effective, transparent and independent investigations, prosecutions and adjudication of court cases. Such measures should include ensuring independent recruitment, oversight and evaluation processes.*
- » *Reinforce the capacity of justice sector and law enforcement personnel to strengthen the enforcement of arrests, summonses, warrants and judgements.*
- » *Increase regional and international coordination and cooperation, including in the execution of Afghan arrest warrants and extradition agreements as well as to seize the proceeds of corruption related crimes.*
- » *Support civil society and media in their efforts to expose corruption and provide external oversight, including through effective implementation of the Whistleblower Protection Law and the Law on Access to Information, while also strengthening the safety and security of journalists, human rights defenders and other members of civil society.*

Recommendations to the Judiciary

- » *Develop a new National Justice Sector Reform Plan (NJSRP), and respective institutional reform plans of the Supreme Court and the Ministry of Justice, building on the achievements of previous action plans towards the strengthening of justice effectiveness, transparency, independence and impartiality.*
- » *Ensure sufficient resources are allocated to the implementation of the strategy.*
- » *Enhance transparency and increase public trust by regularly disclosing information on public court hearings and publishing court decisions as well as through public outreach.*
- » *Implement the necessary measures to strengthen security and ensure the physical safety of justice sector personnel, including at the Anti-Corruption Justice Centre.*
- » *Put in place the necessary safeguards when releasing accused on bail, or guarantee, to ensure their attendance at trial proceedings and reduce the number of cases tried in absentia and thus reduce impunity.*

Recommendations to the National Assembly

- » *Exercise legislative and representation functions transparently, foster accountability and strengthen the capacities of relevant standing commissions.*
- » *Cooperate and engage constructively with the Government in tackling corruption, including through legislative and external oversight powers.*
- » *Increase effective internal oversight to reduce opportunities for corruption and effectively address corruption practices within the Parliament by enhancing transparency, integrity and accountability.*

Recommendations to Civil Society

- » *Work in partnership with the Government and the new Anti-corruption Commission to help formulate and execute credible anti-corruption policies and strategies and to monitor and to publicly report on the overall fight against corruption.*
- » *Continue to engage in the effective implementation of the Open Government Partnership, through implementation of its 2020-2021 National Action Plan, including increased public participation in municipalities' budget exercises.*

Endnotes

ⁱ <https://www.afghanistan-analysts.org/en/reports/economy-development-environment/unamas-new-report-on-anti-corruption-more-backsliding-from-government-and-growing-frustration-from-donors/>

ⁱⁱ Security Council resolution 1662 (23 March 2006).

ⁱⁱⁱ S/RES/2041 (2012); S/RES/2145 (2014); S/RES/2210 (2015); S/RES/2274 (2016); S/RES/2344 (2017); S/RES/2405 (2018); S/RES/2460 (2019); S/RES/2543 (2020).

^{iv} UNAMA, Afghanistan's Fight against Corruption: The Other Battlefield, April 2017, (UNAMA Anti-Corruption Report, April 2017); UNAMA, Afghanistan's Fight against Corruption: From Strategies to Implementation, May 2018, (UNAMA Anti-Corruption Report, May 2018); UNAMA, **Afghanistan's Fight against Corruption: Groundwork to Peace and Prosperity**, (UNAMA Anti-Corruption Report, May 2019); UNAMA, Afghanistan's Fight against Corruption: Crucial for Peace and Prosperity, June 2020, (UNAMA Anti-Corruption Report, May 2020); **all available at:** <https://unama.unmissions.org/corruption> (accessed on 6 February 2021).

^v The Special Secretariat, and its functions, sat under the High Council of Rule of Law and Governance before being subsumed into the Anti-Corruption Commission soon after its commissioners were appointed and commencement of its duties in November 2020.

^{vi} This programme is conducted according to international best practices; see for example: OSCE ODIHR, Trial Monitoring: A Reference Manual for Practitioners, Revised edition 2012, available at: <https://www.osce.org/odihr/94216> (accessed on 23 January 2020).

^{vii} See UNCAC Signature and Ratification Status, available at:

<https://www.unodc.org/unodc/en/treaties/CAC/signatories.html> (accessed on 7 February 2020).

^{viii} Dominica and Jordan are currently peer reviewers for Afghanistan.

^{ix} In the first review cycle 2010 - 2015, Afghanistan was reviewed by Brunei and China regarding the implementation of Articles 15 – 42 of Chapter III, "Criminalization and law enforcement" and Articles 44 – 50 of Chapter IV "International cooperation" of the UNCAC.

^x UNAMA Anti-Corruption Report, May 2018, p. 10; See Afghanistan's Statement of Implementation Measures at the resumed seventh session of the Implementation Review Group of the United Nations Convention against Corruption found at: <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/14-16November2016/Statements/Afghanistan.pdf> (accessed on 7 February 2020).

^{xi} See UNCAC country profiles Afghanistan at: <https://www.unodc.org/unodc/treaties/CAC/country-profile/CountryProfile.html?code=AFG> (accessed on 7 February 2020).

^{xii} Terms of Reference of the Review Mechanism, para. 27.

^{xiii} See Governmental Experts List (as of 19 December 2019), at: https://www.unodc.org/documents/treaties/UNCAC/IRG-Experts/English/SecondCycle/Afghanistan_E.pdf (accessed on 7 February 2020).

^{xiv} Examples for wider stakeholder consultation and participation can be found <https://uncaccoalition.org/uncac-review/uncac-review-mechanism/> (accessed on 7 February 2020).

^{xv} See: <https://president.gov.af/en/members-of-anti-corruption-commission-swear-in/>

^{xvi} See: <https://um.fi/documents/35732/0/Communiqu%C3%A9+2020+Afghanistan+Conference+%281%29.pdf/50a27a60-402e-6f32-8e11-7253024f5cff?t=1606233928329> (accessed on 27 February 2021).

^{xvii} Following the ANPDF and the GMAF.

^{xviii} See paragraph 3 of the Afghanistan Partnership Framework. <https://unama.unmissions.org/sites/default/files/apf.pdf>

^{xix} See paragraph 8 of the APF (link above)

^{xx} An APF Task Force and a Steering Committee is also in place.

^{xxi} Presidential Decree 94, Regarding the High Council for Rule of Law and Anti-Corruption (17 August 2016).

^{xxii} Afghanistan National Peace and Development Framework 2017-2021, Article 5.3.b (ANPDF).

^{xxiii} International observers in the High Council are Denmark, the United Kingdom, the United States, the European Union, SIGAR and UNAMA.

^{xxiv} Afghanistan National Peace and Development Framework (ANPDF II) 2021-2025, at p.15: "The National Cabinet and High Councils will continue to be pivotal in setting strategic direction, approving policies, procedures, and multi-year plans".

^{xxv} Presidential Decree No. 187, on the Endorsement of the Anti-Corruption Law of 5 September 2018, OG-01314 (Anti-Corruption Law), Article 24. see also Decree 94 Regarding the High Council for Rule of Law and Anti-Corruption (17 August 2016).

^{xxvi} Article 2 of Decree No. 94 Regarding the High Council for Rule of Law and Anti-Corruption (17 August 2016) states as follows: Permanent Members of the High Council are: Chief Executive; Second Vice President; Chief Justice; National Security Advisor; Director of Administrative Affairs of President's Office; Minister of Finance; Minister of Justice; Minister of Interior Affairs; Attorney General; General Director of NDS; Presidential Advisors on Justice and Transparency Affairs; Director of Independent Commission on Overseeing on Implementation of Constitution; Director of the Afghanistan

Independent Human Rights Commission; Director of Independent Directorate of Local Governance; and Director of High Office of Oversight and Anti-Corruption. See also, Anti-Corruption Law, Article 24.

xxvii UNAMA Anti-Corruption Report, May 2018, p. 13.

xxviii Terms of Reference of the High Council for Rule of Law and Anti-Corruption of 29 June 2016, Article 7.

xxix In 2020, High Council meetings were held on 25 June; 13 July; 16 August; 27 August; 30 September

xxx Ministry-Wide Vulnerability to Corruption Assessment of the Ministry of Finance, date January 2020.

<https://mec.af/ministry-wide-vulnerability-to-corruption-assessment-of-the-ministry-of-finance/>

According to information provided by the Ministry of Finance in June 2021, the Ministry took over the reporting mechanism of the Law Enforcement Department to prevent conflicts of interest, undertook measures to increase the independence of provincial mobile monitoring teams as well as to strengthen internal auditing mechanisms in line with ongoing efforts to address the deficiencies of the internal Audit Management Information System (AMIS).

xxxi High Council meeting of 25 June 2020.

xxxii Ministry-Wide Vulnerability to Corruption Assessment of Public Procurement. <https://mec.af/npa-full-report/>

xxxiii The Supreme Court delivered its opinion on 29 September 2020 via Letter No. 370 and opined that there was no legal impediment to the IEC to remit the declarations. Accordingly, the forms were delivered to the Asset Registration Office.

xxxiv Meeting of 16 August 2020.

xxxv Strategy and implementation progress available at: <https://www.sacs.gov.af/en> (accessed on 3 March 2020).

xxxvi The Strategy contained five priority pillars 1) political leadership and institutions; (2) ending corruption in the security sector; (3) replacing patronage with merit; (4) prosecuting the corrupt; and (5) tracking money flows. A sixth pillar, Improving Economic Institutions, was added on 24 November 2018

xxxvii See infra 2.6.

xxxviii See infra 2.3.

xxxix See infra 2.5.

xl <https://sacs.gov.af/uploads/reports/special/282.pdf>

xli In Part VIII: Medium- and Long-Term Actions, the Strategy provided that “Several months before the conclusion of the strategy’s first phase, the High Council will commission an independent review to assess its impact. Based on the review, the High Council would make recommendations to an incoming Government on approaches to fighting corruption that should be continued; those that need improvement, and those that should be replaced by new measures and innovations.”

xlii Integrity Watch Afghanistan’s comments on the draft Interim Anti-Corruption Strategy, 13 March 2021.

xliii Comments on the Terms of reference of Committee and Methodology Review Impact of National Anti-Corruption Strategy

xliv Decree No. 110 of the President on Appointment of Members of Anti-Corruption Commission and start of Operation of the Commission dated 22 November 2020.

xlv The HOOAC Law was repealed in 2018 by Presidential Decree No.268 which amended the Law on the Structure and Authority of the Attorney General’s Office and abolished the HOO.

xlvi Established under Article 4 of Law on Overseeing¹ the Implementation of the Anti-Administrative Corruption Strategy, Official Gazette No. 957 dated 29 July 2008 (HOOAC Law).

xlvi AC Law, Article 17.

xlvi See: <https://iwaweb.org/blog/news/the-Government-violated-the-anti-corruption-law-in-creating-a-political-anti-corruption-commission>, accessed 28/04/2021.

xlvi Wolesi Jirga proceedings, 6 October 2020.

¹ APF Action 2.1 Target 2021: A functionally independent Anti-Corruption Commission (ACC) is made operational, with sufficient resources, by 6/2021. The ACC must have a clear mandate in line with the UN Convention Against Corruption, should subsume any existing parallel institutions, as well as incorporate the functions assumed and the expertise accumulated by the Independent Joint Anti-Corruption Monitoring and Evaluation Committee.

² Decree No. 142 of the President on merging of Independent Joint Anti-Corruption Monitoring and Evaluation Committee in the Structure of Anti-Corruption Commission dated 2 January 2021. Under Article 3 of the Decree, a committee of seven was established “For the purpose of completion of process of transferring moveable assets (systems, tools, equipment and vehicles) and officials documents of independent joint Anti-corruption monitoring and evaluation committee (MEC) to Anti-corruption commission, the merging committee...”

³ Performance Report of the Anti-Corruption Commission - First Quarter of the Fiscal Year 1400 (Jan – March 2021)

⁴ The Lower House rejected the Law on 4 October. Other laws which were similarly rejected, without looking at their merit included as well amendments to the Criminal Procedure Code.

⁵ The Constitution of the Islamic Republic of Afghanistan, Article 100.

⁶ Order No. 3394 of the President on the transfer of the Office of Ombudsperson to the Anti-Corruption Commission dated 23 February 2021.

⁷ Presidential Legislative Decree No. 256, 4 March 2017.

⁸ Pursuant to Article 79 para 3 of the Constitution, Legislative decrees shall be presented to the National Assembly within 30 days of convening its first session, after recess.

⁹ In December 2019, the Supreme conducted a seminar in Faizabad City for all justice sector stakeholders to, among others, review the implementation of the Penal Code and share lessons learned. At the end of the seminar, the Court

issued a list of 54 proposals to amend the Penal Code as well as a commentary explaining 146 questions on various articles of the Code that were raised during the meeting.

^{lix} Office of the Chief Justice Circular Letter# 2206-2275 dated March 6, 2019 issued pursuant to Supreme Court High Council Approval Number (1002) dated 26 February 2019).

^{lx} UNAMA, UNDP and the *Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH* (GIZ) supported the seminars financially and logistically and advised on the agenda.

^{lxi} Law on Organization and Jurisdiction of Courts, OG 1109 of 30 June 2013, Article 31 (6).

^{lxii} Presidential Legislative Decree No. 74 published in Official Gazette No. 1389 dated 28 October 2020.

^{lxiii} Published in Official Gazette No. 1329, 20 February 2019

^{lxiv} The Law on Registration and Declaration of Assets of High-Ranking Officials and Government Employees, Presidential Legislative Decree No. 154, Official Gazette 1271 of 28 October 2017.

^{lxv} Assets Declaration Law, Articles 7 and 8.

^{lxvi} Assets Declaration Law, Articles 7 and 8.

^{lxvii} UNAMA Anti-Corruption Report, May 2019, p. 26.

^{lxviii} UNAMA Anti-Corruption Report, May 2019, p. 26.

^{lxix} *Ibid.*, p. 62.

^{lxx} *Wolesi Jirga* Decision No. 311 of 15 July 2018.

^{lxxi} *Meshrano Jirga* Decision No. 327 of 1 January 2019.

^{lxxii} UNCAC Article 8(5): Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

^{lxxiii} GMAF 2.3: The Asset Declaration Law is implemented by 2020, demonstrated by: Transferring to the Administration for Asset Declaration from the IEC; verifying asset declarations of successful 2018 parliamentary candidates; verifying high ranking Government officials, prosecutors, and judges' asset declarations and enforcing sanctions against those who refuse to declare their assets or those who provide false declarations.

^{lxxiv} Under Article 15 of the Assets Declaration Law.

^{lxxv} Draft Interim National Anti-Corruption Strategy dated 20 November 2020 and circulated to donors for comment on 6 February 2021.

^{lxxvi} Published in Official Gazette No. 1117 dated 7 October 2013.

^{lxxvii} Presidential Legislative Decree No.268 dated 3 March 2018.

^{lxxviii} UNAMA meeting with the AGO, 28 February 2021 and Justice Stakeholders meeting convened by UNAMA on 29 April 2021.

^{lxxix} Annual Report of Fiscal Year 2019 on the Implementation of the National Strategy for Combating Corruption, p.26.

^{lxxx} The system was originally developed and managed by the United States Bureau of International Narcotics and Law Enforcement Affairs (INL) with the gradual handover to Afghan Government institutions.

^{lxxxi} Regulation on Administration of the Afghanistan Case Management System (Case Management Regulation) published in Official Gazette No. 1390 of 31 October 2020.

^{lxxxii} Case Management Regulation, Article 2

^{lxxxiii} Per Article 7, other members of the Governance Board are: the Attorney General's Office; Ministry of Justice; Ministry of Interior Affairs; Ministry of Defence; Ministry of Communication and Information Technology; Ministry of Finance; Ministry of Women Affairs; Office of the National Security Council; the Independent Commission for Overseeing the Implementation of the Constitution; National Directorate of Security; Prisons High Administration; the Afghanistan Independent Bar Association; the Anti-Corruption Commission, and the Traffic Department of the Mol.

^{lxxxiv} https://assets.publishing.service.gov.uk/Government/uploads/sytem/uploads/attachment_data/file/522697/Afghanistan.pdf.

^{lxxxv} Afghanistan National Peace and Development Framework (ANPDF) 2017-2021, p.23.

^{lxxxvi} Afghanistan National Strategy for Combating Corruption, p. 14.

^{lxxxvii} Presidential Order No. 2175 of 13 November 2020 published in Official Gazette No. 1393 (dated of 21 November 2020). According to Article 5 of the regulation, its provisions "...shall be implemented to companies possessing license of economic activities, financial institutions and individuals that own economic activities".

^{lxxxviii} Independent Administrative Reform and Civil Service Commission, *About Us in its website*, March 2018, available at: <https://iarcsc.gov.af/en/about-iarcsc/>

^{lxxxix} The Time is Now: Addressing the Gender Dimensions of Corruption, UNODC, 2020: p50, available at https://www.unodc.org/documents/corruption/Publications/2020/THE_TIME_IS_NOW_2020_12_08.pdf

^{xc} <https://iarcsc.gov.af/en/nadery-close-to-21-thousand-civil-servants-were-hired-through-open-competition-in-2020/>

^{xci} The HRMIS has various modules such as organizational structure module, personnel record registry module, biometric module, attendance module and payroll module. These modules contain components like data entry and data review, dashboard, data filter (information validation) and developing reports. The system can be used to identify encumbered and vacant positions, including ghost staff, and is planned to be integrated with the electronic salary payment system of the Civil Service.

- ^{xcii} <https://iarcsc.gov.af/en/implementation-of-the-human-resources-management-information-system-in-the-civil-service-agencies-was-assessed/>
- ^{xciii} <https://iarcsc.gov.af/en/the-handover-process-of-the-hrmis-to-local-administrations-has-officially-begun/>
- ^{xciv} <https://iarcsc.gov.af/en/acting-positions-in-public-administration-will-be-ended/>
- ^{xcv} <https://iarcsc.gov.af/en/the-board-of-commissioners-assesses-the-recruitment-process-of-senior-civil-service-positions/>
- ^{xcvi} Objective of Presidential Order No. 1751: consolidating stability and security, improved subnational governance, mobilization and participation of people in support of government programmes through the recruitment and appointment of “reputable, influential and experienced” individuals as district governors.
- ^{xcvii} The merit-based appointment of district governors was regulated through the IARCSC and IDLG 2017 Procedure for the Appointment of Deputy Provincial Governors and District Governors.
- ^{xcviii} Nangarhar (15), Badakhshan (15), Takhar (7), Kandahar (15).
- ^{xcix} <https://iarcsc.gov.af/en/?s=A+Training+Program+on+Implementation+of+the+New+Procedure+on+Performance+Appraisal+Was+Launched>
- ^c <https://iarcsc.gov.af/en/iarcsc-was-awarded-the-golden-key-of-the-access-to-information/>
- ^{ci} The Lima Declaration of Guidelines on Auditing Precepts (adopted by the Ninth Congress of the International Organization of Supreme Audit Institutions, Lima, 17–26 October 1977) and the Mexico Declaration on Supreme Audit Institutions Independence (adopted by the Nineteenth Congress of the International Organization of Supreme Audit Institutions, Mexico City, 5–10 November 2007). Available at: https://www.intosai.org/fileadmin/downloads/documents/open_access/INT_P_1_u_P_10/issai_1_en.pdf and https://afrosai-e.org.za/wp-content/uploads/2019/04/ISSAI-10_-Mexico-Declaration-on-SAI-Independence1_00.pdf (accessed on 30 March 2020).
- ^{cii} Presidential Legislative Decree No. 45 dated 15/12/1398 (5/3/2020) (Hereinafter referred to as the “Revised SAO Law”).
- ^{ciii} Revised SAO Law, Article 8.
- ^{civ} Ibid, Article 9.
- ^{cv} Ibid, Article 3.
- ^{cvi} Ibid, Article 6 (1) & (2).
- ^{cvi} UNCAC, Articles 9(2)(c) and (3).
- ^{cvi} <https://www.sao.gov.af/sites/default/files/2020>
- ^{cix} Afghanistan Partnership Framework, APF Action 3.4.
- ^{cx} UNCAC, Article 8(5).
- ^{cx} Afghan Constitution, Article 154.
- ^{cxii} Presidential Legislative Decree No. 154, OG 1271 of 28 October 2017. The Decree was approved without amendments by the National Assembly and published in OG No. 1329 of 20 February 2019 (Assets Declaration Law); changes to the Law in 2019 are discussed under 2.4.
- ^{cxiii} Presidential Decree No. 187, on the Endorsement of the Anti-Corruption Law of 5 September 2018, OG-01314 (Anti-Corruption Law).
- ^{cxiv} Penal Code, Article 421(1) If a public official makes false or misleading declaration on his/her assets declaration form based on the circumstance shall be sentenced to 30,000 to 180,000 AFN. (2) The funds and assets earned through commission of crimes stated in this chapter shall be confiscated based on court order.
- ^{cxv} Penal Code, Articles 419 and 420.
- ^{cxvi} Afghan Constitution, Article 154.
- ^{cxvii} Anti-Corruption Law, Article 17(1)(17).
- ^{cxviii} See section 2.4 above.
- ^{cxix} According to the Commission, the memorandum was signed December 2020.
- ^{cx} There were 16,943 and 21, 362 assets registrations in 2018 and 2019 respectively. See UNAMA Anti-Corruption Report, May 2019, p. 26; UNAMA Anti-Corruption Report, June 2020, p. 29.
- ^{cx} According to the director, the office had a total of 72 members in 2020/21.
- ^{cxii} This followed a Supreme Court Opinion (Letter No. 370, 26/09/2020) which paved the way for the IEC to transmit the documents.
- ^{cxiii} Subsequently replaced by a new AML-PC Law: Presidential Legislative Decree published in OG 1142, of 23 July 2014.
- ^{cxiv} Article 25(2)(3), AML-PC Law.
- ^{cxv} Da Afghanistan Bank Financial Intelligence Unit Annual Report 2020, p.16, http://www.fintraca.gov.af/assets/Annual%20Report/FinTRACA_Annual%20Report_2020.pdf, accessed on 23 February 2021.
- ^{cxvi} Ibid., p. 6.
- ^{cxvii} Ibid, p.17.
- ^{cxviii} Article 37 Freezing of accounts and transactions
- 1) In the case of the seriousness or urgency of the case, the Financial Intelligence Unit, shall issue an order to freeze funds or property or a transaction for a period not exceeding ten days, which shall be communicated immediately to the funds or property owner or reporting entity. If the Financial Intelligence Unit finds within the time provided above that the reasons for suspicion of money laundering or financing of terrorism no longer exist, it shall inform the funds or property owner or reporting entity that the freeze order has been lifted.

- cxlix Procurement Law, Published in Official Gazette No. 1223 of 17 September 2016 (Procurement Law).
- cxx UNCAC, Article 9 (1).
- cxix Issued in Circular number C08 / 1395, dated 26/04/1395.
- cxixii In addition, the Government may establish special administrations or mechanisms for procurement of commonly used items: Procurement Law, Article 55.
- cxixiii Procurement Law, Article 54(1).
- cxixiv Procurement Law, Article 54(1).
- cxixv As low as AFN 5 million and AFN 8 million for single-source and restricted bidding respectively for procurement of services in the domestic market.
- cxixvi Procurement Law, Article 54(6). It further clarified the NPA's role in relation to procuring entities. While procurement below the NPC threshold has remained the responsibility of the procuring Government entity, the NPA has supervised the process from the receipt of the "needs verification document" to the conclusion of the contract.
- cxixvii Procurement Law, Articles 56 and 57.
- cxixviii Article 1, Decree of President of Islamic Republic of Afghanistan on Coordination of Procurement Processes for Government Administrations, Decree No. 100, November 2018.
- cxixix Geneva Mutual Accountability Framework short-term deliverable 11.1 and 11.2.
- cx UNCAC, Article 9 (2).
- cxli UNCAC, Article 9 (3).
- cxlii UNAMA Anti-Corruption Report, June 2020, p35, and UNAMA Anti-Corruption Report May 2019. p31.
- cxliii The PFM Law has been implemented in the Ministry of Agriculture, Irrigation and Livestock (MAIL), Ministry of Public Health (MoPH), Ministry of Education (MoE), and Ministry of Rural Rehabilitation and Development (MRRD)) to strengthen their public financial management systems, thereby contributing to improved execution of their development budgets.
- cxliv Afghan Constitution, Article 136.
- cxlv The Government's budget allocation for the implementation of the SNGP is inadequate at a time when direct support from partners is dwindling.
- cxlvi IDLG, A roadmap for Subnational Reform, Citizen-Centred Governance, July 2018 (Subnational Governance-Policy), at: <https://idlg.gov.af/en/departement-policy/> (accessed on 5 March 2020).
- cxlvii <http://idlg.gov.af/7794>
- cxlviii <http://idlg.gov.af/en/3922>.
- cxlix Consultative meeting with IDLG
- cl Consultative meeting with IDLG
- clii <http://www.ccnpp.org/Default.aspx>
- cliii UNAMA Anti-Corruption Report, May 2018, p. 29.
- cliv UNAMA Anti-Corruption Report, May 2018, p. 29.
- clv Supreme Court responses to "UNAMA questions to the Supreme Court for the UNAMA 2021 Annual Anti-Corruption Report". March 2021.
- clvi UNAMA, Afghanistan Protection of civilians in Armed Conflict, 2020, released in February 2021, p. 53, at: https://unama.unmissions.org/sites/default/files/afghanistan_protection_of_civilians_report_2020_revs3.pdf. (accessed 21 April 2021).
- clvii See: UNAMA, Afghanistan Protection of civilians in Armed Conflict, 2019, released in February 2020, p. 44, at: https://unama.unmissions.org/sites/default/files/afghanistan_protection_of_civilians_annual_report_2019_-_22_february.pdf.
- clviii UNAMA, Afghanistan Protection of Civilians in Armed Conflict, First Quarter Update: 1 January to 31 March 2021, p. 3, at: https://unama.unmissions.org/sites/default/files/unama_protection_of_civilians_in_armed_conflict_1st_quarter_2021_2.pdf (accessed 21 April 2021).
- clix UNAMA Anti-Corruption Report, April 2017, p. 49.
- clx An example is the case of former director of public works in Farah Province (Case No. 16).
- clxi The AGO and courts collect figures according to the Islamic calendar year thus for 1399 21 March 2020-20 March 2021.
- clxii UNAMA Anti-Corruption Report, May 2019, p. 47.
- clxiii 761, 362, 306 and 295, respectively.
- clxiv Table: Performance of the Directorates and Units of the Deputy Attorney General's Office for Anti-Corruption Affairs, handed to UNAMA at a meeting on 19 April 2021.
- clxv Article 1, Decree of the President of Islamic Republic of Afghanistan on establishing Anti-Corruption Justice Centre, Decree No. 53 dated 30/06/2016 (10/04/1395).
- clxvi Decree No. 187 of 5 September 2018 published in OG-01314.
- clxvii Anti-Corruption Law, Article 26.
- clxviii Although per Article 3 of the Law on Regulating Salaries of High-ranking Government Officials, "high-ranking officials" include the President, Ministers, Judges and Members of the National Assembly, the Constitution provides for the procedure for trial of the President (Article 69) while the Special Courts Law (OG No. 1130-12, April 2014) provides for the establishment and procedures of Special Courts to try Ministers (including former Ministers) and Supreme Court Judges.
- clxix Article 27(1) of the Anti-Corruption Law.
- clxx Anti-Corruption Law, Article 27(2)(1).

- clxxi Penal Code, Chapter One, Part Four, starting with Article 370.
- clxxii Penal Code, Chapter Two, Part Six, starting with Article 498.
- clxxiii Anti-Corruption Law, Article 27(2)(2).
- clxxiv Circular No. (908_834) Dated 02/03/1398 (23/05/2019)
- clxxv Law on Organization and Jurisdiction of the Judiciary of Islamic Republic of Afghanistan, OG No. 01109 dated 30 June 2013, Article 31(3). For example, through its approval No. 82 of 1 January 2018, the Supreme Court designated the ACJC court as the special court for investigation of cases of usurpation of States lands and other properties, for the Central zone comprising Kabul, Maidan Wardak, Parwan, Logar, Kapisa and Ghazni provinces.
- clxxvi Ibid, Article 84: "A judge normally may not be transferred before completing three years of service, except upon his own demand substantiated with reasons acceptable to the Supreme Court, or at the discretion of the administration. The transfer of a Judge shall take place normally once every three years in the month of Hoot and shall become effective from the beginning of the subsequent year."
- clxxvii Presidential Decree on the Assignment of a Delegation for the Assessment of Financial and Administrative Problems of Anti-Corruption Justice Center (ACJC) of 20 February 2021.
- clxxviii Anti-Corruption Law, Article 28(4).
- clxxix UNAMA Anti-Corruption Report, May 2019, p. 44.
- clxxx UNAMA meeting with MCTF Director, 16 February 2021.
- clxxxi MCTF Table of Names of high-ranking officials summoned for investigation provided to UNAMA for this report.
- clxxxii Amendments to the Anti-Money Laundering and Proceeds of Crime Law (AML-PC), Official Gazette No.1142, 23 July 2014.
- clxxxiii Decree No. 3367 of 1383/02/26 (16 April 2004).
- clxxxiv Decree No. 153 of October 1987.
- clxxxv High Council of the Supreme Court, Directive No. 385, 19 July 2016 (29/04/1395).
- clxxxvi Except those not included in Article 916 of the Code, notably the EVAW Decree.
- clxxxvii 1976 Penal Code, Article 285(1): "If the official of public services, making use of his official authority, deliberately and without legal grounds stops the implementation of provisions of laws, regulations, verdict and decision of the court, or orders issued by competent authorities of the Government, and/or collection of goods and taxes stipulated by the law, the official shall be sentenced in the light of circumstances to short imprisonment of not less than three months of cash fine of not less than three thousand and not more than twelve thousand Afghanis. (2) If as a result of stoppage mentioned in the above paragraph the execution of State plans are delayed or interrupted or a loss is inflicted upon public property, the offender shall be sentenced in the light of circumstances to long or medium imprisonment."
- clxxxviii Penal Code, Book Two, Part Four, Chapter Four, Articles 403-418.
- clxxxix Internal UNAMA ACJC Case Tracking Tables.
- cxc As defined in the Law on Regulating Salaries of Government High Ranking officials, OG 1121 dated 30 October 2013. The ACJC does not however have jurisdiction over Ministers whose trial is regulated under the Special Courts Law.
- cxc Overall, the ACJC has tried XXX generals, XXX Deputy Ministers and XXX Provincial Governors.
- cxcii UNAMA AC Report, June 2020, p. 49.
- cxciii UNAMA AC Report, June 2020, p. 49; UNAMA Anti-Corruption Report, May 2019, p. 53.
- cxciv UNAMA AC Report, June 2020, p.50.
- cxcv Article 102 of the Constitution: If a member of the National Assembly is accused of a crime, the responsible official shall inform the House of which the accused is a member, and the accused shall be legally prosecuted. In case of an evident crime, the responsible official shall legally pursue and arrest the accused without the permission of the House of which the accused is a member. In both cases, if the legal prosecution requires detention, the responsible official shall immediately inform the respective House and obtain its approval. If the accusation takes place during an Assembly recess, the permission for arrest or detention shall be obtained from the administrative board of the respective House, and the issue shall be referred to the first session of the aforementioned House for decision.
- cxcvi Decision of 7 July 2020.
- cxcvii Decision of 3 October 2020.
- cxcviii Information provided to the 1st VPO by the ACJC.
- cxcix Decided on 13 September 2020 where the court ordered the prosecution of four suspects, including an employee of Kabul Police District 9
- cc Decided on 6 December 2020
- cci Decided on 9 December 2020. The Court ordered the prosecution of a district governor, a member of the provincial council and other members of the commission for the prevention of land grabbing.
- ccii Judicial Ruling number 13 (6 July 2019).
- cciii Information provided to the 1st VPO by the ACJC.
- cciv Information provided to the 1st VPO by the ACJC.
- ccv Elections Law, OG No. 1226 of 25 September 2016.
- ccvi Information provided by the Supreme Court to the 1st VPO in June 2021.
- ccvii Misuse of Public Official. Article 403 provides that "(1) If a public official for the purpose of obtaining undue advantage for himself/herself or another person commits an illegal act or omits a legal act, this act shall be considered abuse of function and he/she shall be sentenced to medium imprisonment or cash fine from 60,000 AFN – 300,000 AFN. (2) If the

perpetrator of the crime stated in paragraph (1) of this article is a public official, he/she shall also be dismissed and relinquished from profession and duty (3) If one of the authorities stated in article 151 of constitution conducts a profitable contract with the Government during work tenure, he/she shall be sentenced to cash fine equivalent to price of contract.”

ccviii Special Decree of the President of the Islamic Republic of Afghanistan about Pardon of Punishments, Suspension of Investigation and Postponement of Sentence Enforcement.

ccix Article 2(1), Decree of the President of the Islamic Republic of Afghanistan concerning commutation and Pardon of Juveniles and Prisoners’ sentences on the 28th Anniversary of Jihad Victory of the People of Afghanistan.

ccx Presidential Executive Decree No. 918, 16 July 2020.

ccxi Through Decision No. (676), dated 22/06/1396 of the Supreme Court’s High Council and Order No. (2709), dated 11/09/1396 of the President of Islamic Republic of Afghanistan.

ccxii The equivalent to 2000 SM in Afghanistan.

ccxiii Supreme Court High Council Approval No. (82) dated 1 January 2018 (11/10/1396).

ccxiv The Primary Court had issued 20 judicial decisions referring the cases to the State Cases Department to complete investigation of cases. Some of the cases related to grabbing of 60,000 square metres beside Darulaman Place, 3121 Jiribs of land in Logar, 350 jiribs in Kamaz, 888 jiribs in Bagرامي of Kabul, 542 jiribs in Deh Sabz area in Kabul, among others. The Appeal Court had referred three cases to the State Cases Department.

ccv UNAMA meeting with the Land Court Judges, 4 March 2021.

ccvi Criminal Procédure Code (CPC), Article 209. Per Article 31 of the Penal Code, a Felony is a crime for which the penalty in this law is long imprisonment, grade two continued imprisonment, grade one continued imprisonment, or capital punishment. Penal Code Article

ccvii CPC Article 209(2).

ccviii UNAMA 2020 AC Report, p. 56.

ccix Out of 116 defendants tried by the Primary Court between January 2020 and February 2021, 85 had been released on bail or guarantee, 26 were detained and one had absconded.

ccx CPC, Article 100.

ccxi See, for example, SIGAR, January 30, 2019 Quarterly Report to Congress, p.134

<https://www.sigar.mil/pdf/quarterlyreports/2019-01-30qr.pdf> (accessed on 10 May 2020); SIGAR, April 30, 2019 Quarterly Report to Congress, p. 126 <https://www.sigar.mil/pdf/quarterlyreports/2019-04-30qr.pdf> (accessed on 10 May 2020) and UNAMA Anti-Corruption Report, May 2019, Chapter 3.4.2.

ccxii Report on date and figures related to arrest warrants of prosecution office of Anti-Corruption Justice Centre, Prepared by the Subcommittee for Execution of Warrants, 11 February 2020 (22/11/1398).

ccxiii The AGO informed that all summonses had been turned into warrants by then.

ccxiv Letter No: 4685 dated 4/4/98 (25 June 2019) by which the MoI Minister assigned this responsibility.

ccxv MCTF’s written responses to UNAMA requests for information in preparation of this report, February 2021.

ccxvi The Committee was set up by the Attorney General and the Minister of Interior to better coordinate and accelerate execution of all warrants. It is chaired by a representative of the AGO. See Ministry of Interior Memo No. 586 dated 2 January 2020.

ccxvii General Paikan was arrested on 23 August 2020. See <https://tolonews.com/afghanistan/zemairai-paikan-arrested-security-forces-kabul>.

ccxviii Afghan Constitution, Articles 78, 127; Law on the Structure and Authority of Special Courts, OG 1130 of 12 April 2014 (Special Courts Law).

ccxix Judgement was rendered on 25 December 2018.

ccxx Published in Official Gazette No. 1130 of 12 April 2014

ccxxi UNAMA meeting with responsible AGO Prosecutor, 1 March 2021.

ccxxii CPC Article 270(1) Paras 1, 2 and 3.

ccxxiii UNAMA Anti-Corruption Report, May 2018, p. 47.

ccxxiv Anti-Corruption Strategy, Pillar 1: Political Leadership and Empowering Reformers.

ccxxv Adopted through a Presidential Legislative Decree in March 2017.

ccxxvi Article 3, Amendments of and additions to some articles of Law on Structure and Authorities of Attorney General Office, Official Gazette number (1117) dated 1392/7/15.

ccxxvii Adopted by Decree on 5 September 2018 and amended through Presidential Legislative Decree No. 354 dated 5 March 2019.

ccxxviii Regulation on Recovery of Illicit Assets of Proceeds of Corruption adopted by cabinet on 4 March 2020.

ccxxix UNAMA and UNODC provided joint comments on 13 October 2019.

ccxl Regulation on Recovery of Illicit Assets of Proceeds of Corruption, Article 2.

cccli It also included: 299,500 Pakistan Rupees, 309,000,000 Iranian Toman, 6,701,000 Saudi Riyal, 110, 440 UAE Dirham and 42 kilos of Gold.

ccclii See: <https://mof.gov.af/en/allocated-budget-combating-covid-19>, accessed on 14 April 2021.

cccliii See UNAMA 2020 Anti-Corruption Report, p. 49.

cccliv Order of the President of the Islamic Republic of Afghanistan on the inspection of complaints and reports on management and use of resources to combat the spread of coronavirus, No. 764, dated 30/06/2020.

- ccxlv The MoPH bribery case was heard on 5 October 2020. Three defendants were convicted and three acquitted. Two of the convicted defendants were sentenced to 10 years and one month imprisonment and third defendant to serve 3 years' imprisonment. The three defendants were sentenced to cash fine of US\$300000 jointly. On 7 December 2020, the ACJC Appeal Court affirmed both the convictions and acquittals but reduced the sentences of the two defendants from 10 years' imprisonment to five years and dismissal from their employment.
- ccxlvii Afghan Constitution, Articles 90(3), 93, 98-99.
- ccxlviii Afghan Constitution, Articles 91-93.
- ccxlvix Afghan Constitution, Articles 64(11), 91.
- ccclx UNCAC, Article 30(2).
- cccl UNODC, Legislative guide for implementation of the UNCAC, 2012, paras. 386-387.
- cccli Implementation Review Group, Executive summary: The Islamic Republic of Afghanistan, 22 June 2016, CAC/COSP/IRG/2016/CRP.20, p. 4. Available at: <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/20-24June2016/V1603822e.pdf> (accessed 10 March 2020).
- ccclii Afghan Constitution, Article 101.
- cccliii Afghan Constitution, Article 102.
- cccliv See Chapter 3.4.4 above
- ccclv Decree of the President of Islamic Republic of Afghanistan on merging of the Independent Joint Anti-Corruption Monitoring and Evaluation Committee in the Structure of Anti-corruption commission, Decree No. 142 dated 2 January 2020. Article 2 of the decree required the merger process to be completed within two months of the date of the decree.
- ccclvi Decree No. 142, Article 1.
- ccclvii Ibid, Article 3.
- ccclviii Ibid, Article 4.
- ccclix The MEC was established on 18 March 2010, through Presidential Decree No. 61 on Effective Combat Against Corruption, as a part of the High Office of Oversight and Anti-Corruption (HOOAC) which at the time was Afghanistan's UNCAC Article 6 body in attempt to improve the HOOAC.
- ccclx The MEC was a hybrid mechanism composed of three national and three international committee members who were appointed by the President. A group of key donors (the Department for International Development (DfID, UK), Danish International Development Agency (DANIDA, Denmark), Norway, *Deutsche Gesellschaft für Internationale Zusammenarbeit* (GIZ, Germany), and United States Agency for International Development (USAID, United States) selected the MEC international committee and recommended them to the president for appointment. See <http://www.mec.af/index.php/aboutt-us/donors>.
- ccclxi MEC was composed of six committee members supported by a secretariat led by an executive director.
- ccclxii See <https://mec.af/reports/>, accessed on 23 February 2021.
- ccclxiii The Ministry-Wide Vulnerability to Corruption Assessment of Public Procurement (18 January 2020) and the Ministry-Wide Vulnerability to Corruption Assessment of the Ministry of Finance (21 January 2020).
- ccclxiv First Monitoring Report on the Inquiry of Employment and Deployment Process Ministry of Foreign Affairs (23 December 2020); First Follow-up Report on the Ministry of Finance (9 December 2020); First Follow-up Report on the National Procurement Authority (9 November 2020) and the Third and Fourth Follow-up Reports on the Ministry of Mines and Petroleum (20 March 2020 and 17 November 2020, respectively).
- ccclxv MEC Executive Director's email inviting stakeholders to the launch of the database dated 12 October 2020. In a subsequent email to donors on 20 January 2021, the Director expressed concern that the MEC online database, cloud data, and other online systems risked expiry if they were not immediately transferred to the ACC.
- ccclxvi These include the importance of legal certainty for anti-corruption bodies, the need for a mandatory trigger for the recruitment of new Committee Members within a defined period after their tenures ended, difficulties in seeking approval prior to issuing public anti-corruption reports and the importance of adopting code of ethics for anti-corruption bodies.
- ccclxvii UNCAC, article 13.
- ccclxviii UNCAC, article 13(c).
- ccclxix UNCAC, Article 13(d).
- ccclxx UNCAC, Article 13(b).
- ccclxxi UNODC, Technical Guide to the United Nations Convention against Corruption, p. 63.
- ccclxxii UNODC, Technical Guide to the United Nations Convention against Corruption, p. 44.
- ccclxxiii Access to Information Law, Article 22.
- ccclxxiv Access to Information Law (Access to Information Law), Legislative Decree 256, dated 3 March 2018.
- ccclxxv Law on Access to Information, Official Gazette 1156, 23 December 2014. (Law on Access to Information, 2014).
- ccclxxvi GMAF, short term deliverable 2.4.
- ccclxxvii Presidential Executive Decree 106 of 22 November 2018.
- ccclxxviii Access to Information Law, Articles 20 (5)-(7); the terms of two initial members are only three years.
- ccclxxix Decree of the President of Islamic Republic of Afghanistan, About the Endorsement of the Access to Information Law, 1 October 2019; see *supra* 2.4.
- ccclxxx Access to Information Commission's responses to a UNAMA request for information for this report, April 2021.
- ccclxxxi Access to Information Law, Articles 22(1), and 22(5) and (10).
- ccclxxxii Access to Information Law, Articles 22(7) and (8).

- ccclxxxiii Access to Information Law, Articles 22(2), (3) and (4).
- ccclxxxiv Accessible in both Dari and Pashtu at www.askforinfor.af.
- ccclxxxv Order No. 3394 of the President on the transfer of the Office of Ombudsperson to the Anti-Corruption Commission dated 23 February 2021.
- ccclxxxvi APF 2.1.
- ccclxxxvii Order of the President of the Islamic Republic of Afghanistan on the inspection of complaints and reports on management and use of resources to combat the spread of coronavirus, Order No. 734 dated 30 June 2020.
- ccclxxxviii See Anti-Corruption Strategy, Benchmarks, Pillar 1. Available at: https://www.sacs.gov.af/uploads/strategy_pdf/Strategy_en.pdf (accessed on 28 February 2020).
- ccclxxxix Presidential Decree 3 On the Establishment of an Ombudsman Office of 12 May 2018; Presidential Decree 56 on the Appointment of an Ombudsman of 4 August 2019. On 8 October 2019, the Ombudsperson was officially inaugurated.
- cccxc Presidential Decree 3 On the Establishment of an Ombudsman Office of 12 May 2018, Article 7.
- cccxi Presidential Decree 3 On the Establishment of an Ombudsman Office of 12 May 2018, Article 3.
- cccxi Integrity Watch Afghanistan's intervention during the UNAMA Stakeholders Anti-Corruption meeting of 29 July 2020.
- cccxi Meeting of the High Council for Rule of Law and Governance, 27 August 2020.
- cccxiv Order of the President of the Islamic Republic of Afghanistan on the inspection of complaints and reports on management and use of resources to combat the spread of coronavirus, Order No. 734 dated 30 June 2020.
- cccxcv Press Conference conducted on 26 August 2020.
- cccxcvi See section 3.7 above 'Oversight of Covid 19 relief funds.
- cccxcvii Civil Society Joint Working Group (CSJWG) Statement – 07/03/2021.
- cccxcviii Civil Society Joint Working Group (CSJWG) Statement– 07/03/2021.
- cccxcix UNAMA-Hosted consultative meeting between Ministry of Finance and Civil Society on ANPDF-II -21:10;2020.
- ccc Civil Society Joint Working Group (CSJWG) monthly meeting for April 2020.
- ccci UNAMA hosted Civil Society Support Group (CSSG) meeting on 14 June 2020
- ccci Civil Society Joint Working Group (CSJWG) monthly meeting for June 2020
- ccci UNAMA hosted a consultative meeting between the State Ministry of Peace and civil society on 23 December 2020.
- ccciv UNAMA hosted Civil Society Support Group (CSSG) meeting on 3 Sep 2020.
- ccciv UNAMA hosted meeting between MoF and civil society on the 3-4 Nov 2020 Geneva Conference.
- cccvi OGP National Action Plan II – OGP Secretariat, Office of the President.
- cccvi OGP National Action Plan II – OGP Secretariat, Office of the President.
- cccvi <https://thedi diplomat.com/2019/06/how-free-press-has-strengthened-democracy-in-afghanistan/>
- cccix Freedom House Report December 2020 <https://freedomhouse.org/country/afghanistan/freedom-world/2020>
- cccix <https://rsf.org/en/afghanistan?nl=ok>
- cccxi 2019 rating
- cccxi <https://www.aa.com.tr/en/asia-pacific/afghanistan-media-freedom-in-downward-spiral/1971146>
- cccxi See previous reports of UNAMA, Human Rights Watch, and Reporters without Borders (*Reporters Sans Frontieres*, RSF) reporting that the Government has not fully implement the Access to Information Law and that journalists often did not receive access to information they seek
- cccxi <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/afghanistan>
- cccxi <https://rsf.org/en/afghanistan?nl=ok>
- cccxi See UNAMA Special report "killings of Human Rights Defenders, Journalists and Media Workers" February 2021
- cccxi Sadida Sadat, Shahnaz Roufi and Mursal Waheedi,
- cccxi <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26036> and <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36066>