

# FIGHTING CORRUPTION IN AFGHANISTAN

## STEPPING UP TRANSPARENCY, INTEGRITY AND ACCOUNTABILITY

*EXECUTIVE SUMMARY*



UNAMA

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## 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, makes 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.<sup>1</sup> 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 5<sup>th</sup> 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,<sup>2</sup> up from 173<sup>rd</sup> 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.

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<sup>1</sup> Afghanistan National Peace and Development Framework II (2021-25). <https://um.fi/about-the-conference>

<sup>2</sup> Transparency International, *Corruption Perceptions Index 2020* (Transparency International: Berlin, 2020). Available at: <https://www.transparency.org/en/cpi/2020/index/afg>.

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 recruitments 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 to be 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 the 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.