I. OVERVIEW OF CORRUPTION IN AFGHANISTAN

Corruption is an essential issue in any State building policy and represents a major obstacle to its political, economic and social development. In the case of post-war countries such as Afghanistan, this issue is even more crucial in the context of the recovery of the rule of law and government institutions. Many surveys and documents have highlighted this problem since 2001, and the first part of this paper synthesizes the main points of this problem and the institutional response implemented by Afghan authorities.

Three main factors define the importance of corruption in Afghanistan:

• Three decades of war that led to an extreme erosion of the Afghan state and its administrative institutions in particular, correlated with a capture of the state by certain tribal groups or factions, in certain regions or provinces.
• An economy largely based on illicit cultivation of opium. According to recent surveys, Afghanistan remains the largest supplier to illicit international market for heroin, supplying 90% alone in the world market. As per some studies, the total revenues would represent $2.8 Billion, which is equivalent to almost one-third of GDP. Part of the income derived by the illicit cultivation primarily in regions classified high or extreme risk by the United Nations, would fuel the insurgent groups there.
• A massive inflow of international capital to rebuild the country and its institutions. This unprecedented scale of funding through international assistance for development and humanitarian assistance, often engaged in emergencies and under pressure, can also be an important source of corruption, especially given the lack of transparency and accountability of many NGOs present on the ground, sometimes engaged in long-term projects with little positive effect for the remaining population. It can also be added to the precariousness of civil servants or members involved in international projects in the short or medium term may also be a source of corruption through kickbacks, conflict of interest, political patronage or nepotism, for example.

According to the High Office of Oversight against Corruption, the causes of corruption in Afghan public administration are deep-rooted and structural. Six important key drivers that produce huge wealth are sustaining grand corruption:

• seizure of natural wealth;
• subversion of public finance, particularly the customs and tariff regime;
• smuggling;
• forced appropriations of public land and other assets;
• contracting for delivery of goods and services;
• and most significantly the production, processing, and trafficking of narcotics.

Many other causes of administrative or petty corruption are affecting directly the day life of Afghan citizens and undermine their confidence in government bodies, such as:

* Director, Asset Registration and Declaration, Afghanistan High Office of Oversight and Anti-Corruption (HOO).
2 More than $40 billion has been spent on aid to Afghanistan over the past nine years.
• complicated and bureaucratic procedures for service delivery;
• inadequate laws and regulations;
• limited public administration capacity at the national and sub-national levels;
• insufficiently trained and underpaid government staff;
• undue interference of influential powers in the work of government agencies;
• lack of attention and leadership to implement the National Anti-Corruption Strategy by ministries and other institutions;
• insufficient system of auditing and oversight.

A. Forms of Corruption

According to previous surveys on the corruption issue in Afghanistan, the forms of corruption are broadly similar to those found in other countries.

This corruption can be considered in petty and grand corruption. Petty corruption generally concerns the people in their daily administrative relations. Amounts of bribes, kickbacks and other forms of this common corruption are lower, but repetitive and endemic, this accrued corruption accounts for an enormous sum and gives a very bad perception of the integrity of government institutions to civil society.

Grand corruption concerns other higher levels of corruption, both in amounts and practices, such as corruptive networks, organized crime, elaborated embezzlements of public assets, political patronage, cartels between civil servants and contractors in biddings and procurement.

Forms of corruption in Afghanistan can be classified into six categories:

1. Queue Processing
   This first category is very common, particularly in the case of lengthy, unclear or deficient administrative procedures. People pay bribes to speed up an administrative process to a service to which he or she has an existing right. A survey underlines that the most common practice of corrupt behavior of civil servants is to delay service delivery unless a bribe is paid. 4

2. Service Delivery
   This second category concerns the payment of bribes by the public to obtain unjustified administrative documents or services that the petitioner does not right. For example, to pay for a driving license, or other administrative authorization, or to obtain an educational certificate, generally in illicit circumstances. But it also can concern civil servants demanding money from the public for required services or documents (abuse of function), for example: to ask for a bribe to obtain an electricity connection, water and other power services, paying doctors for extra care; paying teachers for extra school time or for grade promotions. Corruption is also perceived to be prevalent in service delivery institutions (health, education, electricity).

3. Decision Saving
   The citizen pays a bribe to avoid a charge or fine in a penalty, judicial sentence, investigation, taxes, witnesses (obstruction of justice), etc. This category includes extortion by law enforcement authorities. The justice sector, the security sector, and customs, are generally considered to be most corrupt institutions.

4. Procurement Colluding
   This category concerns the corruptive deal between a civil servant in charge of bidding and procurement processes, and a candidate contractor. The objective is to advantage a candidate contractor in such processes. This kind of corruption generally accrues high benefits for the civil servant if the project has a large huge budget. At certain level, this kind of bribery needs a complicity with other persons (like certificators, accountants); the civil servant can also act for the benefit of a third/external party. Various cases involving high-level civil servants in biddings and procurements in past years show the vulnerability of this sector, despite the Procurement Law adopted in 2008.

---

5. Asset Plundering

This category is particular, because at the opposite of the four previous categories, the proceeds of this kind of bribery are public funds and the objective is to make a fraud, an embezzlement or a theft against the assets of the institution. It can be realized by a single civil servant (outright theft of government assets, mere fraud) but generally it involves a criminal network of actors, internal and external at the victimized institution. It includes the theft of computerized data. In this category we can find patronage, nepotism and other forms of state capture, that refers to political elites manipulating state policies and structures, often for political as well as personal gain. In this level there are included various manifestations linked with a post-conflict situation, such as the appointment of heads of parties and political factions to public positions, the buying of support and votes during elections, and interception and retention of government income by regional commanders.

6. Drug and Related-Crimes Corruption

This category is very particular and only concerns countries with a huge drug problem (production or traffic) linked to organized crime groups engaging in many types of crimes linked to drug trafficking (e.g. human trafficking, extortion, kidnappings, counterfeiting, piracy, etc). In the case of Afghanistan, the enormous importance of the drug economy, close to one-third of its GDP, appears to be a dominant source of corruption, likely to undermine government institutions or political systems, particularly in the provincial areas of cultivation/traffic.5 “The opium economy by all accounts is a massive source of corruption and undermines public institutions especially in (but not limited to) the security and justice sectors. There are worrying signs of infiltration by the drug industry into higher levels of government and into the emergent politics of the country. Thus it is widely considered to be one of the greatest threats to state-building, reconstruction, and development in Afghanistan”.6

Drug money in Afghanistan is corrupting and capturing not only the economic legal sector where it is laundered through the commercial sector (trade, security), construction or banking services, but also it is likely to feudalize political representatives who can bias legal reforms to impede or give inoperative government measures against crime. Corrupt practices range from facilitating drug activities to benefiting from revenue streams that the drug trade produces. Corruption in the eradication process has severe negative side-effects. Wealthier opium producers pay bribes to avoid having their crops eradicated, greatly reducing the effectiveness of counter-narcotics measures. A strong correlation between lack of security and opium cultivation and the financing of insurgent groups by drug proceeds has been highlighted.

There are no official statistics on corruption cases, no more a scientific survey about the characteristics and real importance of the corruption in Afghanistan. Currently the amplitude of corruption in Afghanistan only results from perception indicators or from important cases denounced in the media.

B. Prevention of Corruption

Preventive policy and strategy is directed to the following themes:

1. Civil Servant Anti-Corruption Policy

This issue includes the environment of the civil service likely to reduce its motivations and opportunities for eventual corruption, and focuses on five elements:

- **abilities** (adequacy of educational level and the work exigencies);
- **skill** (gaining the required training of the work station);
- **equipment** (having at disposal sufficient and appropriate tools to implement their duties within satisfactory conditions);
- **motivation** (this motivation must include a balanced policy between rewards and sanctions, as well as other issues such decent salaries and pensions, work stability, social protection and career policy); and
- control, that must permit an efficient dissuasion.

---

Within this first category, the Afghan Government undertook projects to give a response to each of these five points, especially with the Service Civil Law (2005), the objectives of which are to establish sound administration through the planning and implementation of reform of the country’s administrative system; to determine the duties of civil service; to fill civil service posts on merit and competency, and to regulate personnel management arrangements and duties of civil servants. This essential law also created the Independent Administrative Reform and Civil Service Commission (IARCSC) that has charge of leading, regulating, reforming, formulating and implementing structure policies of public administration system. IARCSC depends directly of the President’s Office. The functions and duties of the IARCSC are elaborated within the organizational structure.

- **The Civil Service Management Department**: Develops policies relating to the structure, management, appointment of civil servants, develop civil service law, civil service regulations and implement the P&G.
- **The Civil Service Appointments Board**: Identifies and recommends the recruitment, appointment, promotion, transfer, retirement, pension payments and other personnel matters of civil servants for the approval of the President.
- **The Civil Service Appeals Board**: Manage the appeals of civil servants who consider they have been disciplined unfairly or discriminated against.
- **The Administrative Reform Secretariat**: Provides administrative and financial support to the Chairman and monitors the implementation of reform programs.
- **The Programs’ Design and Management Department**: Leads the institutional capacity development of civil servants, donor relations and technical assistance management, management of development programs/projects and enhancing capacity through appointment of national and international experts for the ministries and government agencies.
- **The Afghan Civil Service Institute**: Leads and manages all civil service training activities.

The Law of Civil Servants completes the main legal base on the civil servant policy.

2. **Asset Declarations**
   This measure has been undertaken with the law on overseeing the implementation of the anti-corruption strategy (2008) and HOO is the office in charge of receipting and controlling them. This important tool in the AC preventive system is currently in a developing process.

3. **Codes of Conduct and Ethics**
   Codes of conduct and ethics are essential to the civil servants of an organization, to define and regulate the rules, regarding the responsibilities and good practices, and to determine violations and sanctions in case of misbehaviour.

4. **Transparency Initiatives and Administrative Process Simplification**
   Transparency and simplification of administrative procedures are essential to prevent petty corruption, and to avoid bribes to accelerate services and documents delivery. HOO has initiated reforms to simplify the vehicle registration process, a main source of such corruption, and to reduce the number of necessary steps from 51 to 5, and its delivery from two months to a couple of days. Many other reforms of simplifying administrative service delivery have to be enhanced in order to eliminate other sources of bribes for delay or delivery complexity.

5. **Citizen Awareness & Charter**
   It is important for Afghanistan to face up to the fact that its administration is at a very low level of computerization, and that it has a certain culture of acceptance by citizens of bribe payments. The participation of the citizen and civil society in preventing corruption is crucial to assure a real efficiency. A strong awareness campaign has to be implemented, to inform them about corruption, and infuse a culture of non-tolerance. Recent indicators show that a good percentage of Afghan people consider bribing a normal way to do business with the state.

---

\[8 \text{http://www.afghanexperts.gov.a/index.php}\]
\[9 \text{http://www.lexadin.nl/wlg/logic/ofr//:eur/kweafg.htm#Administrative/\%20Public\%20Law}\]
\[10 \text{Afghan Perceptions and Experiences of Corruption – a National Survey – Integrity Watch Afghanistan, 2010}\]
"A kickback is so commonly sought (and paid) to speed up administrative procedures, that more than a third of the population (38%) thinks that is the norm".  

One of the main and priority challenges for the authorities will be to end this culture of acceptance and tolerance of daily corruption.

6. Detection of Corruption Cases

The Control and Audit Office (CAO), -that also is the Afghanistan’s Supreme Audit Institution (SAI)-, is a central agency that reports directly to the President, and should serve an important role for detecting corruption and helping to ensure the transparency of government operations. External auditing is the primary responsibility of the CAO. Currently, the CAO focuses on assessing the financial reporting ministries and compliance with laws and regulations. In each ministry a department of internal audit, linked with CAO, helps to control the internal operations regarding rules and laws. Its key objectives are:

- To protect public funds and take action against errors, irregularities, and misuse of public property;
- To prevent illegal expenditures;
- To review the systems of control over government receipts and payments;
- To identify fraud and ensure that accused individuals are brought to justice;
- To identify shortfalls in the government budget; and
- To guarantee the accuracy of aid and grants provided by donor countries.

Corrupt behaviours can be detected in different ways: inside the government institution through internal audit, or information from complaints or whistle-blowing. The difference between a complaint and whistle-blowing lies in the interest of the informant. A person who makes a complaint generally has a direct personal grievance in the illicit action, for example a victim of bribe solicitude. A whistle-blower is an informant, generally not directly concerned by the illicit act, who makes a voluntary disclosure, anonymously or not, about a suspected wrongdoing or a corrupt person within an institution. This information can result from a dysfunction of a civil servant or service, in its usual work duties, or from a sudden unexplained change of work behaviour. It also can result from a significant unjustified change in the personal lifestyle of a civil servant, or from an inadequacy between own assets and income of the civil servant. Colleagues and immediate superiors generally are aware of these “anomalies” of a civil servant.

Article 8(4) of the UNCAC requires the State to consider establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions. Article 33 of the Convention requires the State to consider incorporating into domestic law appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authority any facts concerning offences established in accordance with the Convention. Art. 14 of the Law on Monitoring the Implementation of the Anti-Corruption of the Anti-Administrative Corruption Strategy states protects the informant or witness in an investigation or trial, from any type of pressure, intimidation and ill-treatment and shall be rewarded. Disclosing their identity without their consent also is prohibited.

Afghan authorities currently are implementing a complaints system at a national level, managed by the HOO, or in some ministries (like in the Ministry of Finance), but no law exists to protect informants of corrupt behaviour by civil servants. Other sources of detection inside institutions are its own internal controls/audits. The fraud or corrupt wrongdoing is detected through such usual controls. In this context, the role of internal control/audit units of the institutional bodies is essential to detecting corruption.

The media also can uncover information that can bring suspicion on an employee, for example about a lifestyle or other behaviour, not in phase with the current work position or official source of income. Other sources of detection come from other institutional systems:

- Detection directly by law enforcement authorities, either through complainants or whistle-blowers, either by detecting incidentally corruptive cases during a criminal/financial investigation for other
reasons;
• Through the HOO’s complaint system;
• From financial and banking information through the anti-money laundering system, including the recently operated Financial Intelligence Unit (FIU), called “FinTRACA” (Financial Transactions and Reports Analysis Center of Afghanistan). This is a semi-independent body administratively housed within the Central Bank of Afghanistan (Da Afghanistan Bank). The main objective of FinTRACA\(^\text{12}\) is to deny the use of the Afghan financial system to those who obtained funds as the result of illegal activity, and to those who would use it to support terrorist activities. In so doing, FinTRACA will make a significant contribution to the overall integrity of the Afghan financial environment, the ability of the Afghan financial system to integrate with the global financial system, and to future economic growth, investment, and prosperity in Afghanistan. The Afghan AML system is based on the 2004 Anti-Money Laundering and Proceeds of Crime Law, that applies to the proceeds of corruption (art 3 states that the offence of money laundering refers to proceeds from an offence against any law of the Islamic Republic of Afghanistan). FinTRACA will contribute to verifying and investigating the asset declarations of high-level civil servants, in agreement with HOO. FinTRACA is a signatory to a number of information exchange agreements with other foreign FIUs. Nevertheless, according to a 2010 report, money laundering and terrorist finance investigations in Afghanistan have been hampered by a lack of capacity, awareness, and political commitment.\(^\text{13}\)

7. Documentation/Investigation of Corruption Cases

Once corruption is suspected in a government institution, the internal control/audit unit comes in to document the case to confirm the corrupt act or omission. It can use usual techniques of control, internal fraud investigation, integrity testing or other licit techniques, analysing work documentation and the lifestyle of the suspect. In this administrative approach, the investigative administrative authorities do not have coercive measures against the suspect. If the case is proved, they refer the case to the Attorney General’s Office, to initiate the criminal process.

In the criminal process, law enforcement authorities (prosecutors and investigative police), conduct a penal investigation, using of all the usual investigative techniques, financial investigative techniques, and if need be, some special techniques permitted by the criminal procedure code, such as communication interceptions.

Art. 50 of the UNCAC requires the State to take necessary measures to allow for the appropriate use by the competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, and to allow for the admissibility in court of evidence derived therefrom.\(^\text{14}\) Current Afghan anti-corruption law does not permit these special investigative techniques; nevertheless, they are authorized in the Counter Narcotics Drug Law in respect of drug trafficking-related corruption, and also in the Anti-Money Laundering and Proceeds of Crime Law for the purpose of obtaining evidence of offences of the predicate offences, including corruption.

Tracking and seizing the proceeds of corruption is also the domain of Afghan prosecutors and FinTRACA, at the national and international levels. UNODC and World Bank are engaged in a training programme in this respect (the StAR Initiative) with Afghan authorities.

GiROA has undertaken measures to specialize the law enforcement authorities in charge of investigating and prosecuting corruption cases. The main Afghan institutions involved in the right against corruption, particularly with a special anti-corruption unit within the Major Crime Task Force created to prosecute corruption cases involving high-level government officials, and including prosecutors and police investigators. This vetted task force is supported, equipped, trained and mentored by the US Bureau of International Narcotics and Law Enforcement Affairs (INL), the Federal Bureau of Investigation and the UK SOCA (Serious & Organized Crime Agency). EUPOL also are training investigative police in financial

\(^{12}\) http://www.fintraca.gov.af/about.asp


investigation. The Attorney General’s Anti-Corruption Unit (ACU) was created in May 2009, as a group of specially selected and vetted Afghan prosecutors dedicated to the prosecution of high level corruption cases. While the ACU is still relatively new, it has more than 40 active cases and obtained its first conviction in January 2010. Several investigations are underway and are expected to lead to prosecutions.

Nevertheless, despite ongoing efforts by the international community to build the capacity of Afghan police and customs forces, Afghanistan is questioning its low-level ability at this time to consistently uncover and disrupt sophisticated financial crimes, in part because of few resources, limited capacity, little expertise and insufficient political will to seriously combat financial crimes.15

C. Fighting Corruption: A Huge Challenge for the GfRoA

GfRoA is facing a double challenge: to reduce a very important level of corruption, and to restore the confidence of the society in its institutions.

For example, the International Transparency’s Corruption Perception Index classifies Afghanistan between the most corrupt countries. IPC evolution for Afghanistan suggests a pervasive increase and generalization of corruption since 2005:

<table>
<thead>
<tr>
<th>IPC/TI</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>RANK</td>
<td>117/159</td>
<td>-</td>
<td>172/179</td>
<td>176/180</td>
<td>179/180</td>
<td>176/178</td>
</tr>
<tr>
<td>SCORE/10</td>
<td>2,5</td>
<td>-</td>
<td>1,8</td>
<td>1,5</td>
<td>1,3</td>
<td>1,4121</td>
</tr>
</tbody>
</table>

Another survey published on January 2010, based on interviews with 7,600 people in 12 provincial capitals and more than 1,600 villages around Afghanistan, shows than for Afghan people, corruption is their biggest worry: for an overwhelming 59% of the population the daily experience of public dishonesty is a bigger concern than insecurity (54%) and unemployment (52%).

According to this report, it is almost impossible to obtain a public service in Afghanistan without greasing a palm: bribing authorities is part of everyday life. During the past 12 months, one Afghan out of two, in both rural and urban communities, had to pay at least one kickback to a public official [...]. The average amount was $160, in a country where GDP per capital is a mere $425 per year [...]. The problem is enormous by any standards. In the aggregate, Afghans paid out $2.5 billion in bribes over the past 12 months—that’s equivalent to almost one quarter (23%) of Afghanistan’s GDP”.

This report also is comparing this amount with the revenue accrued by the opium trade in 2009 (estimated at $2.8 Billion), by concluding that “drugs and bribes are the two largest income generators in Afghanistan, together amounting to about half the country’s (licit) GDP”

The second survey produced by Integrity Watch Afghanistan, in 2010, which covered a research conducted at the end of 2009, from 6500 respondents in 32 provinces, assesses the impact of corruption on the relationship between Afghan citizens and the state, the trust in state and non-state institutions, and based on personal experiences of corruption. This survey focuses on petty and administrative corruption. It concludes that corruption is widespread, one adult in seven experienced direct bribery in 2009, and 28% of Afghan households paid a bribe to obtain at least one public service, and the total of bribes paid in 2009 were close to 1 billion USD, that is to say twice as much in 2009 as the Afghan population as a whole was likely to pay in 2007, date of the first survey. Security and judiciary institutions are perceived as the most corrupt institutions. However the survey notes that “corruption is now increasingly spreading to social public services such as health and education, in which the average amounts of the bribes have often been higher”.16

Without wanting to question these figures (which do not consider the totality of the various sources of corruption, particularly that of grand corruption, political corruption and organized crime), however, it is obvious that corruption is a major perceived issue for the people of Afghanistan.

II. AFGHAN ANTI-CORRUPTION MECHANISMS

Criminalization of corruption in Afghanistan is based on the following system:

A. Penal Code (1976)

Corruption offences in the Penal Code appear to be articles 254, 258 and 259. Article 254 addresses the active bribery and article 258 the passive bribery, of an official of the public services. Article 259 concerns a Member of Parliament, municipality, provincial or local council. The legal definition of bribery is “to request, receive of accept any money, good, gift or other benefit, for the purpose of performance of or abstention or disruption of a assigned duty, in his own or someone else’s name. Embezzlement is defined by Art. 3 of the Law Law on Campaign against Bribery and Official Corruption as well by Art 268 of the Penal Code that states that “any official of public services to whom the goods of State or persons have been given in the line of his duty, and he embezzles it or hides it” shall be sentenced to long imprisonment. Article 269 of the Penal Code states that any official of public services who turns into his own proprietorship State money, priced documents, goods or other articles, shall be sentenced to medium imprisonment, but does not criminalize diversion for the benefit of another person or entity. Public servant concept (official of public services) is defined by Art. 12 of the Penal Code. Art 4 of Civil Service Law (2005), defined the civil servant as a “person appointed by the Government to perform its executive and administrative duties based on the provisions in law”. A review of the Penal Code is ongoing to enhance penalties for administrative corruption, making the code compliant with the UN Convention against Corruption (UNCAC).

B. The Law of Campaign against Bribery and Official Corruption

The Law on Campaign against Bribery and Official Corruption (2004) was the first law against corruption. This law no defined the offence of “bribery”, and referenced only with the legal definition of article 254 to 267 of the Penal Code (see below). Only it defined the “official corruption” as “an illegal act committed by state employees and other public servants to attain to personal or group aims”, giving a list of behaviors considered as administrative corruption, in fact cover both criminal acts and work malpractices. None of these prohibited behaviors were defined. The law also created a central specialized organ, the Office for the Campaign against Bribery and Official Corruption, as the independent body under the supervision of the President, to implement this law. In fact, the functions of this office were in charge of the “General Independent Administration against Corruption” (GIAAC) that was created by Presidential Decree on December 2003. GIAAC was mandated to develop a foundation for fight against corruption by establishing regional offices in the country, drafting anti-corruption law and policies, investigating corruption cases in the government institutions and soliciting support from the Police and Attorney General Office to arrest and prosecute corrupt officials. GIAAC worked until 2008, focusing in fact only on the aspect of investigations and it seems it faced some problems of efficiency. Finally GIAAC was substituted by the High Office of Oversight Against Corruption, through the new law on overseeing the implementation of the anti-corruption strategy (2008-see below).


Art 75 item 3 of the Afghan Constitution (2004) states the Government is in charge of “eliminating every kind of administrative corruption”. Article 154 states that the wealth of the President, Vice-Presidents, Ministers, members of the Supreme Court as well as the Attorney General, shall be registered, reviewed and published prior to and after their term of office by an organ established by law.

D. United Nation Convention against Corruption (UNCAC)

The Government of Afghanistan signed the UN Convention against Corruption on February 2004 and ratified it on August 2007. On May 2008, an UNDP’s assessment reviewed the level of compliance of the existing national legislation and administrative procedures, and identified gaps and potentials incompatibilities, with a proposal of a legislative action plan for the Government and Parliament with suggested prioritization. This assessment concluded that at this date a very large gap existed in the legal system of Afghanistan in respect of the UNCAC obligations, and noted the absence of any effective institutional mechanism or the legal framework, essential to implement a credible anti-corruption strategy.

From 2008, the Afghan government is in process of adequacy with UNCAC obligations (see below).

**E. National Anti-Corruption Strategy (2008)**

From 2008, Afghanistan adopted a National Anti-Corruption Strategy, based on the following goals: i) enhancing government anti-corruption commitment and leadership; ii) raising awareness of corruption and evaluating the effectiveness of anticorruption measures; iii) mainstreaming anticorruption into government reforms and national development; and iv) strengthening the legal framework for fighting corruption and building an institutional capacity for effective implementation of the UNCAC.

In this National Development Strategy (ANDS) for 2008-2012, corruption issue was recognized as a significant and growing problem in Afghanistan, and GIRoA confirmed its fully commitment to controlling the corruption, promoting transparency and accountability through establishing new and effective mechanisms. Founded on a 2006 survey, developed by a joint informal product of staff of the Asian Development Bank, UK Department for International Development, United Nations Development Program, United Nations Office on Drugs and Crime, and the World Bank, on the corruption issue, ANDS provides summary background on corruption in Afghanistan and lessons from international experience, highlights some key policy issues, lays out a suggested roadmap for action, and proposes a programme of work by the Government with support of international partners.

This plan (National Anti Corruption Strategy – NACS) outlines all forms of corruption in the government (institutions and ministries at national and sub-national level) and suggests solutions and mechanisms in order to combat it, with timelines for its implementation by the different authorities. It focuses on six main points: i) administrative factors; ii) legislative factors; iii) corruption in the judicial system: iv) financial and budget factors; v) inspection factors and; vi) corruption in other areas.

**F. The Law on Overseeing the Implementation of the Anti-Corruption Strategy (2008)**

On July 2008, consecutively at the National Anti Corruption Strategy, the new Law also updates the measures and definitions of the “administrative corruption”, regarding the first definitions of the 2004 Law on bribery and official corruption, and creates the present national organism to coordinate the anticorruption national strategy. This Law lists only “the administrative corruption” regarding the following acts and crimes by government officials or other authorities, without defining them:

- Bribery
- Embezzlement
- Stealing of documents
- Unauthorized destruction of official records
- Exceeding the limits of legal scope of authority
- Misusing of duty power
- Impeding the implementation of justice
- Using the government facilities and official works for personal affairs
- Refusing and abstention to perform duty without legal justification
- Concealing the truth
- Forgery of documents
- Misrepresentation of authority (falsely representing to have certain executive authority to grant or deny government approval
- Receiving any kind of gifts in order to perform or refrain from performing official actions
- Delaying the execution of assigned duties
- Violating the code of ethics of the related office
- Involving ethnic, regional, religious, party, gender and personal consideration in performing

---


entrusted duties
• Acting or refusing to act in violation of the Anti-administrative corruption strategy.

G. The High Office of Oversight Against Corruption

The Law on Overseeing the Implementation of the Anti-corruption Strategy, created in 2008 the High Office of Oversight and Anti-Corruption (HOO), as the national body in charge of overseeing and coordinating the implementation of the Anti-Corruption Strategy and to fulfil the requirement of Art 6 of the UNCAC.

This office is independent in carrying out its duties and shall report to the President (Art.4). The duties are defined by Art. 9 and principally they concern the overseeing of the implementation of the anti-corruption strategy and the procedure for administrative reform and combating administrative corruption. The government offices are obliged to cooperate with the HOO by providing necessary facilities for its officials (Art 11). The offices of Audit and Control, the Police, Prosecutors, Courts shall report their performance regarding the cases of corruption (Art 18).

HOO is in charge of the registration of the assets, and publication as and when required, of the President, Vice-Presidents, Ministers, members of the Supreme Court, Attorney General and president and members of lower and upper house of the national assembly, members of provincial and district councils, heads of independent commissions and offices, ambassadors, governors, prosecutors, Judges, Officers of the ministries of Defense and Interior, district administrators, Deputy ministers, Officers and staff working in second and higher grades, staff in finance, accounting and procurement sections of the offices prior to occupation of their positions and on an annual basis.

In March 2010 HOO was empowered to conduct preliminary investigations of corruption complaints, by Presidential Decree that also ordered the Ministry of Interior to cooperate with the HOO by assigning judicial police who will assist in these preliminary investigations, indicated that the HOO should refer cases where a corruption crime was identified to the Office of the Attorney General (AGO) for further investigation and prosecution. New HOO’s organizational chart and summary of the respective functions of its units is the following:

A current three-year Anti Corruption Strategic Plan (2011-2013) charges the HOO’s to implement measures emphasizing three objectives:
• Pursue a multi-pronged approach to dealing with the problem of corruption in Afghanistan. This means operating with all agencies of government at national and local levels; interacting with civil society, the mass media and the private sector; and applying a range of techniques – involving enforcement, prevention and public education tools.
• Strengthen staff capacity and professionalism. The HOO is faced with a very sensitive and challenging assignment, but with few qualified professionals and minimal resources. The Plan promotes a major effort to strengthen technical capacity and professionalism of the staff.
• Focus on achieving anti-corruption impacts. The Plan encourages the accomplishment of early successes, even if small and incremental. By itself, the HOO can make some headway in the fight against corruption, but it is only when all key anti-corruption institutions are working together cooperatively that major results will be achieved. This Plan seeks to establish the foundations for this cooperative approach.

III. IMPLEMENTATION OF THE ANTI-CORRUPTION MECHANISMS

A. Highest-Level Political Willingness to Combat Corruption

President Karzai has recognized that corruption is destroying the country. At the inauguration of his second term in November 2009, he rightly identified “ending the culture of impunity and strengthening integrity as key priorities” for his new administration. “The Government of Afghanistan is committed to

end the culture of impunity and violation of law and bring to justice those involved in spreading corruption and abuse of public property. To do this, will require effective and strong measures. Therefore, alongside an intensified judicial reform, all government anti-corruption efforts and agencies have to be strengthened and supported”.

B. The 2010 London Conference

In January 2010, the Afghan Government and the international community met in London to reaffirm the goals of the Afghan leadership and development, to increase Regional Cooperation and more effective international Partnership.

In corruption domain, the Conference Participants welcomed the Government of Afghanistan’s whole-of-government approach to fighting corruption, and its ongoing work to mount a concerted effort to tackle the key drivers of corruption, through development of clear and objective benchmarks and implementation plans.

Conference Participants committed to helping the Government of Afghanistan’s anti-corruption efforts by providing assistance to the new institutions and committed to increase the transparency and effectiveness
of its own aid in line with the June 2008 Paris Conference Declaration and the United Nations Convention against Corruption.

C. Kabul Process: Anti-Corruption Action Plan

The following Kabul Conference (July 2010), reaffirmed the GIRoA commitment to improve security, governance and economic opportunity for its citizens, and the international community’s commitment to support this transition. In corruption matter, the Afghan Government pledged to improve governance in Afghanistan by implementing legislation to define a major crimes task force and an anti-corruption tribunal, combating cash smuggling, and improving financial audits of government ministries and lower-level government offices. The plan follows President Karzai’s decree prohibiting nepotism in the Afghan government.

Measures of the Anti Corruption Action Plan:

• Undertake all necessary measures to increase transparency and accountability and tackle corruption.
• Finalize by October 2010 the Framework of the Afghan Government’s National Priority Programs, including guidelines for clear goals, benchmarks and timelines;
• Establish, within twelve months, the statutory basis for the Major Crimes Task Force (MCTF) and the Anti-Corruption Tribunal (Special Courts);
• Submit an Audit Law within six months, meeting international standards, for external audits to ensure the strengthening and the independence of the Control and Audit Office, and to authorize the Ministry of Finance to carry out internal audits across government;
• Establish a legal review committee within six months to review Afghan laws for compliance with the United Nations Convention against Corruption (UNCAC) which the Government of Afghanistan has already signed into law and ratified. Laws found to be inconsistent are to be prioritized for revision;
• Adopt policies governing bulk cash transfer, including regulations or laws that are needed, and begin their implementation over the next twelve months;
• Establish the Joint Monitoring and Evaluation Committee with a permanent secretariat, to be fully operational in three months;
• Verify and publish the asset declarations of all senior officials required by the law, and update and publish these declarations on an annual basis, starting in 2010;
• Increase its efficiency and effectiveness by continuing to implement broad-based policy, legal, and structural reform in public administration. Over the next six months, the appointment procedures for senior civil servants are to be simplified and made transparent, merit-based procedures are to be introduced and salary reform accelerated;
• Strengthen civil service reform by enhancing complementarity between the Afghan Civilian Technical Assistance Program (CTAP) and the Management Capacity Program (MCP) in twelve months;
• Seek an understanding with donors, over the next six months, on a harmonized salary scale for donor-funded salaries of persons working within the Afghan Government;
• Introduce and implement a standardized methodology to assess public financial management of line ministries, and, within six months, design with donor support, capacity development programs to fulfill assessment recommendations;
• Implement over the next twelve months, in a phased and fiscally sustainable manner, the Sub-National Governance Policy, and strengthen local institutional capacity, including training of civil servants and development of training curricula, and develop sub-national regulatory, financing, and budgetary frameworks;
• Improve capacity in the judicial system through the design and implementation of a comprehensive human resources strategy that strengthens accountability mechanisms and provides adequate benefits for judicial employees within 12 months;
• In cooperation with civil society and the Afghan Independent Human Rights Commission (AIHRC), finalize and begin the implementation of the National Priority Program for Human Rights and Civic Responsibilities, and undertake human rights, legal awareness and civic education programs targeting communities across Afghanistan to foster a more informed public and civil society, and to increase Government accountability;
• Strive to ensure the necessary political and financial support for the AIHRC while guaranteeing its constitutional status, and initiate discussions with the AIHRC within six months to explore its budgetary status.
IV. PROGRESS IN THE AC IMPLEMENTATION AND INTERNATIONAL ASSISTANCE

In terms of instruments developed since 2004, several legal instruments were passed, including the Procurement Law, the Civil Service Law, and in particular the Law is Monitoring the Implementation of the Anti-Corruption Strategy Administrative, that Created The National High Office of Oversight Against Corruption. New Audit law, Penal Code and Corruption Law are pending.

At this date, several progresses were made in the implementation of the National Anti Corruption Strategy:

• Creation of the High Office of Oversight;
• Anti Corruption Units established within the AGO in order to investigate corruption cases;
• Anti-corruption tribunals established in Supreme Court in order to deal with crimes of corruption;
• Development of ministries anti-corruption strategies;
• Strengthening complaints and investigation capacity with MoF and MoI (Fraud Investigation Unit, Anti Corruption Unit);
• Launching implementation of asset registration policy and system;
• Launching review of anti-corruption laws and regulations (Penal Code);
• Launching public awareness campaign;
• Implementation of the anti money laundering system and creation of the Financial Intelligence Unit (FINTRACA).

Since its creation, the High Office of Oversight has undertaken a number of initiatives with varying degrees of progress, in particular in the domain of asset declarations of public officials, complaint system, simplification of the vehicle registration process, public awareness campaign on anti-corruption issues, review of the draft anti-corruption actions plans from the majority of Afghan government ministries, and in the definition of benchmarks for a monitoring system. Regarding the complaint channel and corruption case investigations, from March to December 2010, the HOO’s results are the following:

Regarding the legal obligation of asset declaration by government officials (approximately 3500), based on Art. 154 of the Constitution and Article 12 of the HOO Law, in December 2010, a total of 1905 had been collected. But only a few number have been verified (five ministers and 12 heads of independent agencies). The HOO is very understaffed (only nine staff of the requested 21) due to limitations (lack of skills and professional training) including low salaries. 23

In a general way, HOO’s capacity is considered no yet fully operational, in particular regarding its human and financial resources, and a yet weak general anti-corruption legal framework.

In the domain of prosecution and Justice, there have been very few prosecutions – and even fewer successful ones – of corruption cases in Afghanistan. A National Justice Program was undertaken in the Justice administration that permitted for example, in the Court Supreme, to have a total number of 246 civil servants detained and disciplined from 2007 to 2009 for corruption charges. (Including 37 judges detained on corruption charges in 2009.) 24

A. An Holistic Anti-Corruption Approach

Fighting corruption must include a complete mechanism that has to correspond with the following cycle:

<table>
<thead>
<tr>
<th>Total of complaints received</th>
<th>644</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases deemed to relate to corruption offenses</td>
<td>109</td>
</tr>
<tr>
<td>Cases referred to AGO</td>
<td>15</td>
</tr>
<tr>
<td>Cases referred to other government institutions to find remedies</td>
<td>47</td>
</tr>
<tr>
<td>Pending cases under preliminary investigation by HOO</td>
<td>49</td>
</tr>
</tbody>
</table>

Any anti-corruption system must focus its actions and means on the following four-step cycle:
Prevention / Detection / Investigation / Sanction

Nevertheless, it is also important to know the true scale of corruption as well its characteristics and the involved sectors of the administration, economy and civil society, in order to adopt appropriate tools. A continuous system of monitoring and assessment (benchmarking) must cover this whole cycle, to identify weaknesses and take the necessary corrective measures, in the sense of a progressive reduction of corruption towards an accepted level of tolerance.

The Afghan anti-corruption model has a holistic approach, conforming to international standards. Part of these measures is already in action, others are on drafting or ongoing implementation. Within the legal domain, several important and adequate laws have been undertaken, to implement a holistic anti-corruption approach, such as: anti money laundering law, law on overseeing the implementation of the anti-corruption strategy, procurement law, civil servant law, and terrorist financing law. The following Afghan anti-corruption model is based on the five traditional pillars: prevention, detection, investigation, sanction and monitoring.
B. Sanctions

Sanctions can be administrative or penal, or both, according to the case. The Afghan AC strategy includes specialized courts against corruption. During the Kabul Conference (July 2010), President Karzai pledged to the Anti-Corruption Tribunal (special courts).

C. Monitoring

An independent monitoring system (Monitoring and Evaluation Committee) has been implemented since the Kabul Conference. MEC should be operative in the next months and will be a joint team of national and international members with a permanent secretariat. President Karzai just has appointed the responsible to lead this Committee, who was before the HOO’s director general.

D. Stakeholders and International Assistance in AC Domain

HOO is receiving a strong assistance and funding from several foreign stakeholders and donors, especially from UNODC, UNDP, USAID, World Bank, UNAMA, ADB, EUPOL, United States of America, United Kingdom, Italy, Denmark, Canada, Norway and others European countries. Different AC programs sustained by international organizations, like USAID, UNDP, UNODC, World Bank, Asia Foundation, and different national and international NGOs, are involving in various projects to strengthened Afghan government institutions and civil society to build capacity in prevention and detection of fraud and corruption.

As we have seen before, UNDP in partnership with UNODC, and funded by international donors (Italy, Norway, th United Kingdom, Canada, Denmark), is implementing the Accountability and Transparency (ACT) project that has been designed to support the Government of Afghanistan and Afghan civil society networks in developing the necessary capacities to fight and prevent corruption. It is supporting the implementation of the National Anti-Corruption Strategy (NACS) and the capacity development of the High

---

Office of Oversight (HOO), supporting the strengthening of internal integrity frameworks/mechanisms in key government institutions – the Control and Audit Office (CAO), Ministry of Education (MoE), Ministry of Finance (MoF) and the Ministry of Interior (MoI), supporting the active engagement of civil society in the fight against corruption, and supporting efforts to increase awareness and understanding amongst civil servants and the Afghan public of their role in the fight against corruption. The ACT project takes the Afghanistan National Development Strategy (ANDS), the NACS and the United Nations Convention against Corruption (UNCAC) as its main framework, with the ANDS addressing anticorruption as a crosscutting issue. The project components have been developed in order to support the Government of Afghanistan in meeting the priorities and requirements set out in these key strategies and conventions.  

The new donor approach since January 2010, in the London Conference, consisting of increasing the percentage of reconstructive international assistance delivered through the Afghan government channels, is conditional upon the Afghan government’s progress, particularly in reducing corruption and strengthening its public financial management systems, with the commitment to: a) work with the proposed anti-corruption bodies to review existing procedures and investigate instances of corruption that involve internationals; and b) work with the Government to improve procurement processes, including establishing additional measures to ensure due diligence in international contracting procedures.