

4.1: Defining Corruption in Afghanistan

Summary

This chapter reviews the definition of corruption as presented in the United Nations Convention Against Corruption and as defined in Afghanistan's domestic laws. This chapter concludes with a summary of recent surveys on the public perception of corruption in Afghanistan.

Introduction

Corruption is one of the most prevalent topics in Afghanistan. Many reports point to corruption as the most significant factor undermining Afghanistan's ability to develop in all sectors including security, good governance, as well as economic and social development. The Government of Afghanistan and the International Community have both made combating corruption a key priority.

Corruption is commonly defined as the abuse or misuse of public power for personal gain. Corruption may take the form of bribery, extortion, cronyism, nepotism, patronage, graft, or embezzlement. Every society has its own understanding of acceptable and unacceptable behavior and what constitutes corruption. In the United Nations Convention Against Corruption (UNCAC) the International Community has agreed upon "a comprehensive set of standards, measures and rules that all countries can apply in order to strengthen their legal and regulatory regimes to fight corruption."¹ UNCAC criminalizes certain practices and States Parties are obligated to implement measures to prevent, control, and punish corruption as set forth in the Convention.

This chapter provides a broad introduction to UNCAC focusing on the Convention's criminalization of certain practices as corrupt. The chapter then examines corruption as defined in Afghanistan's domestic laws including the Law on Overseeing the Implementation of the Anti-Administrative Corruption Strategy,² the Penal Code,³ and the Anti-Money Laundering Law.⁴

¹ United Nations Convention Against Corruption, General Assembly Resolution 58/4, 31 October 2003 (hereinafter UNCAC), p.iii: http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

² Law on Overseeing the Implementation of the Anti-Corruption Strategy: Unofficial Translation by UNODC and JSSP, 16 SEPT 2008 (hereinafter HOO Law).

³ Afghanistan Penal Code (1976), Official Gazette No. 347, published 1976/10/06 (1355/07/15 A.P.)(hereinafter Penal Code): [http://www.cicr.org/ihl-nat.nsf/6fa4d35e5e3025394125673e00508143/845809a497304d8fc12571140033ac69/\\$FILE/Penal%20Code%20-%20Afghanistan%20-%20EN.pdf](http://www.cicr.org/ihl-nat.nsf/6fa4d35e5e3025394125673e00508143/845809a497304d8fc12571140033ac69/$FILE/Penal%20Code%20-%20Afghanistan%20-%20EN.pdf); or URL link available on Legislation Afghanistan (Lexadin): <http://www.lexadin.nl/wlg/legis/nofr/oeur/lxweafg.htm>.

⁴ Islamic Republic of Afghanistan – Anti-Money Laundering and Proceeds of Crime Law, Official Gazette No. 840 (Oct. 31, 2004), Translated by BearingPoint from approved Dari version /Banking Reform Team Afghanistan Economic Governance Project Financial Supervision Dept/Legal Section/DAB 04/11/2004 (hereinafter Anti-Money Laundering Law): http://afghantranslation.chechiconsulting.com/documents/laws/Anti-Money_Laundering_Law_ET_ET.pdf.

The chapter ends with a summary of recent surveys on the public perception of corruption in Afghanistan.

United Nations Convention Against Corruption

UNCAC was adopted by the U.N. General Assembly in October 2003 and entered into force on 14 December 2005.⁵ As of November 29, 2013, UNCAC has 170 States Parties, including Afghanistan, which ratified the Convention on August 25, 2008.⁶ UNCAC's stated purposes are:⁷

- (a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- (b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;
- (c) To promote integrity, accountability and proper management of public affairs and public property.

The four pillars of the Convention include prevention, criminalization and law enforcement, international cooperation, and asset recovery. To assist States Parties in implementing UNCAC, the UN developed a Legislative Guide and a Technical Guide. "The objective of the legislative guide is to assist States seeking to ratify and implement the Convention by identifying legislative requirements, issues arising from those requirements and various options available to States as they develop and draft the necessary legislation."⁸ The Technical Guide "attempts to highlight policy issues, institutional aspects and operational frameworks related to the full and effective implementation of the provisions of the Convention."⁹ Both Guides are to be considered jointly "as components of a comprehensive package of tools aimed at enhancing the knowledge and capacity of stakeholders, in particular of anti-corruption agencies, as well as criminal justice and

⁵ Ibid; See also United Nations Office on Drugs and Crime (UNODC), United Nations Convention against Corruption (UNCAC), Background: <http://www.unodc.org/unodc/en/treaties/CAC/>.

⁶ UNODC, UNCAC Signature and Ratification Status (accessed February 23, 2014):

<http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>. The Islamic Republic of Afghanistan signed the UNCAC on 20 February 2004. It was passed by the *Wolosi Jirga* on 16 August 2007 and the *Moshrano Jirga* on 25 September 2007. It was endorsed by the President on 23 December 2007 and printed in the Official Gazette, No 936, on 15 January 2008. UNCAC was ratified by Afghanistan on 25 August 2008.

⁷ UNCAC, *supra* note 1, Art. 1:

⁸ UNODC Introduction of the Legislative Guide to Implementing the United Nations Convention Against Corruption: <http://www.unodc.org/unodc/en/treaties/CAC/legislative-guide.html>.

⁹ Technical Guide to the United Nations Convention Against Corruption, UNODC and the United Nations Interregional Crime and Justice Research Institute (UNICRI), 2009 (hereinafter Technical Guide), p. xvii: http://www.unodc.org/documents/corruption/Technical_Guide_UNCAC.pdf

law enforcement authorities, on specific aspects related to the implementation of the Convention.”¹⁰

Because this chapter focuses on defining corruption, the discussion in this section is limited to the Convention’s second pillar – criminalization and law enforcement. UNCAC “addresses not only basic forms of corruption, such as bribery and the embezzlement of public funds, but also acts carried out in support of corruption, obstruction of justice, trading in influence and the concealment or laundering of the proceeds of corruption.”¹¹ UNCAC mandates States Parties to criminalize certain acts of corruption if they are not already criminalized under domestic law. In addition to the mandatory criminalization of certain acts, States Parties are required to consider criminalizing additional practices.

Criminalizing Corrupt Practices

Under UNCAC, States Parties are mandated to establish the following acts, when committed intentionally, as crimes:

- **Bribery of National Public Officials** – Article 15(a):
“The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;”
- **Solicitation or Acceptance of a Bribe by National Public Officials** – Article 15(b):
“The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.”
- **Bribery of Foreign Public Officials and Officials of Public International Organizations** – Article 16(1):
“...the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.”

¹⁰ Ibid, p. xviii.

¹¹ Legislative Guide For the Implementation of the United Nations Convention Against Corruption, UNODC, 2006 (hereinafter Legislative Guide), pp. 76-77:

http://www.unodc.org/documents/treaties/UNCAC/Publications/LegislativeGuide/06-53440_Ebook.pdf.

- **Embezzlement, Misappropriation or other Diversion of Property by a Public Official** – Article 17:

“...the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.”

- **Laundering Proceeds of Crime** – Article 23:

“(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.”

- **Obstruction of Justice** – Article 25:

“(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.”

The Legislative Guide states that the acts covered by the mandatory criminalization provisions “are instrumental to the commission of corrupt acts and the ability of offenders to protect themselves and their illicit gains from law enforcement authorities. Their criminalization constitutes, therefore, the most urgent and basic part of a global and coordinated effort to counter corrupt practices.”¹² The mandatory criminalization provisions are the minimum standard

¹² Ibid, p. 77.

required by UNCAC. The Convention, however, also requires States Parties *to consider* criminalizing the following acts, when committed intentionally:

- **Bribery of Foreign Public Officials and Officials of Public International Organizations** – Article 16(2):
“...the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.”

- **Trading in Influence** – Article 18:
“...(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;
(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.”

- **Abuse of Functions** – Article 19:
“...the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.”

- **Illicit Enrichment** - Article 20:
“Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.”

- **Bribery in the Private Sector** - Article 21:
“...in the course of economic, financial or commercial activities:
(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for

the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.”

- **Embezzlement of Property in the Private Sector** - Article 22:
“...in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.”
- **Concealment** - Article 24:
“Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.”

Afghanistan, as a State Party to UNCAC, is required to adopt legislation criminalizing the acts set forth in the mandatory criminalization provisions (Articles 15, 16(1), 17, 23 and 25) and to consider criminalizing several other acts set forth in the Convention (Articles 16(2), 18-22, and 24).¹³

¹³ For a review of Afghanistan’s legislation in relation to UNCAC, see *The United Nations Convention against Corruption - A Gap Analysis of National Legislation in Afghanistan*, UNODC and UNDP, May 2008.

Corruption Defined by Afghan Law

Afghanistan has passed several laws in an effort to meet its obligations under UNCAC including, but not limited to a Procurement Law,¹⁴ Banking Law,¹⁵ Civil Service Law,¹⁶ and Political Party Law.¹⁷ In addition, the Government of Afghanistan has passed the Law on Overseeing the Implementation of the Anti-Administrative Corruption Strategy (HOO Law)¹⁸ and the Anti-Money Laundering Law.¹⁹ According to the Afghanistan National Development Strategy (ANDS) 2011 Annual Progress Report, Afghanistan's anti-corruption laws have been reviewed and aligned with UNCAC.²⁰ At the time of this writing, however, the revisions were still being considered and no new laws have been enacted.

Corruption is defined in several different Afghan laws including the HOO Law,²¹ the Penal Code,²² and the Anti-Money Laundering Law.²³ The HOO Law lists 18 specific acts that if committed by government officials are considered administrative corruption.²⁴ Afghan law, as it is currently written, does not define nepotism or simony (the buying or renting of official positions) as corruption. The HOO Law defines administrative corruption as:²⁵

1. Bribery
2. Embezzlement
3. Stealing of documents
4. Unauthorized destruction of official records
5. Exceeding the limits of legal scope of authority
6. Misusing of duty power
7. Impeding the implementation of justice
8. Using government facilities and official work hours for personal affairs
9. Refusing and abstention to perform duty without legal justification
10. Concealing the truth
11. Illegal increase in assets
12. Forgery of documents

¹⁴ The Procurement Law was originally enforced in October, 2005. A new law was enforced by Presidential Decree No. 59 dated 21 July, 2008 and amended by Presidential decree No. 146 dated 18 January, 2009 (order to ensure transparency in procurement and contracting sectors).

¹⁵ Presidential Decree No. 62 on 19 February 2004 (to ensure a safe and secure environment for investment and enhancing transparency in financial transactions).

¹⁶ Presidential Decree No. 94 on 21 February 2007 (to ensure civil servants rights and improve working conditions and enhance efficiency in performance of workers of public domain).

¹⁷ September 6, 2009 (to ensure the proper organization of political parties, affirm citizen access to public functions, regulate elections and control political parties' financing).

¹⁸ HOO Law, *supra* note 2.

¹⁹ Anti-Money Laundering Law, *supra* note 4.

²⁰ ANDS Annual Progressive Report 1389 (published Sept. 28, 2011), p. 44:

[http://moec.gov.af/Content/files/ANDS%20Annual%20Progressive%20Report%201389_English\(1\).pdf](http://moec.gov.af/Content/files/ANDS%20Annual%20Progressive%20Report%201389_English(1).pdf).

²¹ HOO Law, *supra* note 2.

²² Penal Code, *supra* note 3.

²³ Anti-Money Laundering Law, *supra* note 4.

²⁴ HOO Law, *supra* note 2, Art. 3.

²⁵ *Ibid.*

13. Misrepresentation of authority (falsely representing to have certain executive authority to grant or deny government approval).
14. Receiving any kind of gifts in order to perform or refrain from performing official actions.
15. Delaying the execution of assigned duties
16. Violating the code of ethics of the related office
17. Involving ethnic, regional, religious, party, gender and personal consideration in performing entrusted duties.
18. Acting or refusing to act in violation of provisions stipulated in Anti-administrative corruption Strategy.

The HOO Law applies to any person occupying a State office, elected position, or independent commission, as well as banks that deal with the State and non-governmental organizations (NGOs), international organizations and private enterprises that are party to financial transactions with the State within the framework of UNCAC, and other international treaties.²⁶ The HOO Law establishes the High Office of Oversight for the Implementation of the Anti-Administrative Corruption Strategy (otherwise known as the High Office of Oversight and Anti-Corruption, or alternatively the HOO or HOOAC), which is discussed in Chapter 4.2: Afghanistan's Anti-Corruption Policy and Legal Framework Instruments and Agencies.

Afghanistan's Penal Code criminalizes bribery (articles 254-267), embezzlement and treachery (articles 268-274), misbehavior of public officials (articles 275-279), theft and destruction of official papers and documents (articles 280-281), encroachment of public officials (articles 282-289), counterfeiting (articles 302-308), forgery/falsification of documents by a public servant (articles 308-320), obstruction of justice (articles 384-387), and misleading justice (articles 374-376).²⁷ In 2010, the HOO was directed by Presidential Decree to review and amend the Penal Code.²⁸ Revisions of the Penal Code relating to corruption have been drafted, but at the time of this writing the revisions were undergoing further review and not available for analysis. The Government of Afghanistan reported:²⁹

The Penal Code of Afghanistan is however currently under review for necessary modifications and amendments in order for it to display full compliance and effective fulfilment of UNCAC principles. Specific changes and amendments are made to articles 254, 257, 258, 260 and 261 incorporating provisions for dealing with corruption offences in private sector institutions and international NGOs/firms. The amendments are also anticipated to add-up specific codes/acts

²⁶ Ibid, Art. 7.

²⁷ Penal Code, *supra* note 3.

²⁸ Executive Order President of the Islamic Republic of Afghanistan Regarding implementation of government strategy on fighting administrative corruption. Hardcopy provided by the U.S. Embassy Interagency Rule of Law Office (IROL); *see also* Chapter 4. 2 for a discussion of the HOO.

²⁹ Islamic Republic of Afghanistan, Self-assessment checklist on the implementation of the United Nations Convention against Corruption, August 6, 2009, p. 30. Provided by IROL.

of offence; penalties/fines and sanctions on private sector institutions and firms in order to ensure Afghanistan's full compliance with the convention.

The Anti-Money Laundering and Proceeds of Crime Law states:³⁰

(1) A person commits the offence of money laundering if the person:

(a) Conceals, disguises, converts, transfers, removes from or brings into the Islamic Republic of Afghanistan funds and property, knowing or having reason to believe that it is derived directly or indirectly from acts or omissions:

(i) in the Islamic Republic of Afghanistan which constitute an offence against any law of the Islamic Republic of Afghanistan; or

(ii) outside the Islamic Republic of Afghanistan which constituted an offence in the place where they occurred and which, had they occurred in the Islamic Republic of Afghanistan, would have constituted an offence against the law of the Islamic Republic of Afghanistan; or

(b) acquires, possesses or uses funds and property knowing or having reason to believe that it is derived directly or indirectly from those acts or omissions; or

(c) enters into or participates in an arrangement or transaction knowing or having reason to believe that it facilitates (by whatever means) the acquisition, retention, use or control of funds and property derived directly or indirectly from those acts or omissions by or on behalf of another person.

Afghan Public Perception of Corruption

Several surveys on the perception of corruption have been conducted in Afghanistan. These surveys help illuminate how Afghan citizens view corruption and what the average citizen considers to be corrupt acts. Transparency International's Annual Corruption Perceptions Index ranks countries and territories according to their perceived levels of public sector corruption. In 2013, Afghanistan tied North Korea and Somalia for last place (all three countries are listed as 175 out of 177 countries and territories).³¹ In two recent surveys of Afghan citizens, respondents

³⁰ Anti-Money Laundering Law, *supra* note 4, Art. 3.

³¹ See Transparency International Corruption Perceptions Index 2013. Link to download report available at: <http://www.transparency.org/cpi2013/results>.

site corruption as the second biggest problem facing the country behind insecurity.³² The perception that corruption is a major problem in Afghanistan as a whole is at its highest point since 2006.³³

“Corruption at all levels of society continues to affect most Afghan citizens.”³⁴ The most prevalent form of corruption in Afghanistan is bribery, and institutional bribery is the most dominant form.³⁵ In 2012, 50 percent of the adult population paid at least one bribe to a public official.³⁶ Although this percentage has decreased from previous surveys, the frequency of paying bribes has increased.³⁷ Bribery has become so entrenched in all areas of Afghan lives that the term bribe (*reshwat*) has taken on several new expressions including:³⁸

- *dast-i-ma ra garm kon*: warming the hand
- *shirini*: sweets for celebrations
- *shukrana*: thanking
- *paisa-i-chai*: money for tea
- *masraf-i-ra*: travel expenses
- *cray-i-ra*: travel fare
- *telefon kharob shud*: my phone is not working
- *jeib khaaridan*: to scratch one’s pocket
- *hale ma kharob hast*: our situation is bad
- *hadia, tohfa* and *cadeau* (French): all meaning “gift”

In 2007, the adult population paid an estimated US\$ 466 million in bribes.³⁹ In 2012, “the total cost of bribes paid to public officials amounted to US\$ 3.9 billion. This corresponds to an

³² The Asia Foundation, *Afghanistan in 2013: A Survey of the Afghan People* (hereinafter Asia Foundation Survey), p. 5: <http://www.transparency.org/cpi2013/results>. Respondents ranked the top three problems as: insecurity (24%), corruption (23%), and unemployment (20%). In a UNODC Survey, respondents similarly ranked the top three problems as: insecurity, corruption, and unemployment. UNODC *Corruption in Afghanistan: Recent patterns and Trends*, December 2012 (hereinafter UNODC Survey), p. 3: http://www.unodc.org/documents/frontpage/Corruption_in_Afghanistan_FINAL.pdf. See also Integrity Watch Afghanistan, *Afghan Perceptions and Experiences of Corruption: A National Survey 2010* (hereinafter IWA Survey), p. 25: <http://www.iwaweb.org/Reports/PDF/IWA%20corruption%20survey%202010.pdf>. Respondents ranked the top three problems in the country as: insecurity (42%), unemployment (19%), and corruption (13%).

³³ Asia Foundation Survey, *supra* note 32, p. 9.

³⁴ *Ibid.*, p. 15.

³⁵ IWA Survey, *supra* note 32, p.23.

³⁶ UNODC Survey, *supra* note 32, p. 5.

³⁷ *Ibid.* In 2009, the UNODC reported 59 percent of the adult population paid at least one bribe to a public official. In 2010, Integrity Watch Afghanistan (IWA) reported 68 percent of respondents who experienced corruption during the previous year paid a monetary bribe. IWA Survey, *supra* note 32, p. 33.

³⁸ Afghanistan Research and Evaluation Unit Discussion Paper, *Corrupting the State or State-Crafted Corruption? Exploring the Nexus between Corruption and Subnational Governance*, June 2010 (hereinafter AREU Discussion Paper), p.8: <http://www.areu.org.af/Uploads/EditionPdfs/1021E-Corrupting%20the%20State%20or%20State-Crafted%20Corruption%20DP%202010%20-%20Web.pdf>.

³⁹ IWA Survey, *supra* note 32, p. 10.

increase of 40 per cent in real terms between 2009 and 2012, while the ratio of bribery cost to GDP remained relatively constant (23 per cent in 2009; 20 per cent in 2012).⁴⁰ Surveys also show that bribery is no longer limited to the city centers, but is now affecting rural populations.⁴¹ “Indeed, the prevalence of bribery was found to be slightly higher in rural areas (50.7 per cent) in 2012 than in urban areas (48.3 per cent).⁴² The majority of bribes paid in 2012 were paid to officers of provincial, district, or municipal authorities (52 percent).⁴³ Bribery has become so institutionalized that it has led to the development of “professional commission takers,” who act as middle men for bribery transactions between a state official and a public service user.⁴⁴

Ironically, corruption is condemned, but tolerated in certain circumstances.⁴⁵ The demarcation line appears to be need versus greed.⁴⁶ In 2009, a UNODC survey found:⁴⁷

[M]any citizens consider it acceptable that civil servants ask for gifts or money to speed up administrative procedures (38% of survey respondents), that a civil servant is recruited on the basis of family ties (42%) or that a public official request extra payments because of his/her low salary (42%). A significant percentage of the population (28%) find it acceptable that a person be stopped by the police and requested to pay some money even if the person did nothing contrary to law. However, not all forms of bribery demands are tolerated: for example a very small percentage of the population (8%) would find it acceptable for a teacher to request money from parents in order to have their children better treated. These responses indicate a mixed and somewhat confused perception of what should be the role and duties of public officials. Other factors, such as respect/fear of public authorities or intensity of family/tribal ties may have an important impact on the way certain behaviours are perceived and, at times, accepted.

Results from the same survey in 2012 “indicate a growing tolerance of corruption in Afghanistan, which is quite alarming.”⁴⁸ According to the survey, 68 percent of the adult population considers administrative bribery – i.e. the receipt of minor gifts by civil servants from service users – to be

⁴⁰ UNODC Survey, *supra* note 32, p. 5.

⁴¹ *Ibid*, p. 7; *see also* IWA Survey, *supra* note 32, p. 10.

⁴² UNODC Survey, *supra* note 32, p. 7.

⁴³ *Ibid*, p. 10.

⁴⁴ IWA Survey, *supra* note 32, pp. 10-11 & p. 45; *see also* UNODC Corruption in Afghanistan: Bribery as Reported by the Victims, January 2010 (hereinafter UNODC 2009 Survey), p. 22 (use of middle-men to minimize risk): <http://www.unodc.org/documents/data-and-analysis/Afghanistan/Afghanistan-corruption-survey2010-Eng.pdf>; AREU Discussion Paper *supra* note 3838, p. 11 (publicly known prices for intermediary agents), and p. 12 (discussion of *commissionkars*).

⁴⁵ IWA Survey, *supra* note 32, p. 14;

⁴⁶ *See ibid*, p. 40.

⁴⁷ UNODC 2009 Survey, *supra* note 44, p. 34.

⁴⁸ UNODC Survey, *supra* note 32, p. 27

acceptable.⁴⁹ In addition, 67 percent of the adult population considers the recruitment of civil servants on the basis of family and friendship ties to be acceptable.⁵⁰ Moreover, the percentage of bribes paid to teachers had a three-fold increase since 2009 (from 16 percent in 2009 to 51 percent in 2012).⁵¹

Islamic views of bribery also affect public tolerance of corruption. “[B]ribery is forbidden (*harma*), and it only becomes permitted (*majaz*) if the citizen has no other alternative to obtain the service.”⁵² Integrity Watch Afghanistan (IWA) found, “25% of respondents stated that they would protect their own interests through bribery if the opportunity presented itself” and “20% of respondents indicated they would take advantage of nepotism to secure employment.”⁵³

The corruption perception surveys tend to address petty or administrative corruption (mainly in the form of bribes between citizens and state officials) and institutional corruption (related to political appointments, embezzlement, and theft). These two forms of corruption affect citizens directly and are often differentiated from grand corruption involving large kickbacks from contracts, international aid money, or land confiscation. “The two forms of corruption often justify, reinforce and sustain each other in a circle of corruption and power [...]. In the view of Afghan citizens, small-scale bribery cannot be addressed effectively and legitimately without tackling grand corruption. Impunity for individuals and networks engaged in grand corruption sets the wrong example for those who engage in petty corruption such as bribery. Afghans often refer to a Dari proverb to describe the dilemma and their own powerlessness: ‘What can we do when the water is muddied from the source?’ In their minds, a sanctions-based approach to corruption should start by penalizing the most powerful.”⁵⁴

⁴⁹ Ibid, pp. 5 & 27.

⁵⁰ Ibid.

⁵¹ Ibid, pp. 5 & 10.

⁵² AREU Discussion Paper, *supra* note 38, p. 15.

⁵³ IWA Survey, *supra* note 32, pp. 49 & 14.

⁵⁴ AREU Discussion Paper, *supra* note 38, p. 33.

Resources

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http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.
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<http://www.lexadin.nl/wlg/legis/nofr/oeur/lxweafg.htm>
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