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Anti-Corruption Justice Centre: A Comparison of its Operation in the Republic and the Emirate of Afghanistan

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ANTI-CORRUPTION JUSTICE CENTRE: A COMPARISON OF ITS OPERATION IN THE REPUBLIC AND THE EMIRATE OF AFGHANISTAN

Fahima Sirat

Abstract: Transparency International's annual reports in recent years have put Afghanistan near the top of the list of corrupt countries. This paper explores how the Anti-Corruption Justice Centre (“ACJC”) – established in 2016 to prevent the loss of national assets, speed up the discovery, investigation, and judicial review of corruption cases, and observe international obligations – set about tackling the country’s endemic corruption. This paper then examines what happened to the ACJC after the fall of the Republic in August 2021 and the declaration of the Taliban Emirate. Lastly, this paper details the approach the Taliban Emirate has taken to the problem of corruption.

This paper draws on the unique insights of the author (a judge at the ACJC’s special corruption court until the fall of the Republic), with special attention to the ways in which key cases were brought to the court and adjudicated, under the Afghan Republic. For the period of the Taliban Emirate, the paper draws on interviews with prosecutors and other original research.

The findings indicate that, although the ACJC had weaknesses, it was relatively effective at adjudicating the cases brought before it and, had it had more time and continued to enjoy the moral and material support of the Afghan government, could have played a key role in an intensifying fight against corruption. By contrast, though many Afghans remembered the first Taliban regime as comparatively corruption-free, and though Taliban insurgents used public indignation at Republic officials’ blatant corruption as a recruiting draw, the current Taliban regime has closed down relevant institutions including ACJC, and turned a blind eye to the problem of corruption. The status of the laws addressing the subject is currently ambiguous and opaque. The future of the ACJC cases and the effort to combat corruption in Afghanistan is indeterminate.¹

¹ I am deeply indebted and grateful to my supervisor Prof. Catherine O’Regan, for her patient guidance, encouragement, suggestions, and support during the progress of my research at the Bonavero Institute of Human Rights at Oxford University. I would be remiss if I did not acknowledge the assistance provided by Prof. Sandy Fredman which was also greatly appreciated. I further wish to extend my special thanks to all my Alliance of International Women's Rights mentors who have remained by my side in Afghanistan and are now with me virtually at Oxford University. They have reviewed my article and made insightful suggestions.

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INTRODUCTION

Many countries are entrenched with corruption and this presents an obstacle to their progress and development. To identify challenges and lessons learned for achieving more effective and efficient ways of fighting corruption in Afghanistan — and in other countries as well — this paper attempts to compare corruption in the time of the Afghan Republic with the time of the Taliban Emirate.

Many countries, including Afghanistan, have seen the need for specialized courts to tackle corruption.² These are quite distinct from the regular courts of justice.³

Afghanistan's Anti-Corruption Justice Centre (“ACJC”) was established in 2016 by the Afghan Government as part of its commitment to the international community to crack down on corruption.⁴ The ACJC addressed high-level corruption cases, defined as those involving high-ranking officials or above a high financial threshold. To pursue those cases, ACJC employed specialized

² See generally Sofie Arjon Schütte & Matthew C Stephenson, *Specialised anti-corruption courts A comparative mapping*, (2016), <https://open.cmi.no/cmi-xmlui/handle/11250/2475252>.

³ *Id.*

⁴ United Nations Assistance Mission in Afghanistan, *New Facility Inaugurated for Afghanistan Anti-corruption Justice centre*, Jan. 29, 2017, <https://unama.unmissions.org/new-facility-inaugurated-afghanistan-anti-corruption-justice-centre>.

police, prosecutors, and courts to impartially detect, investigate, prosecute, and adjudicate corruption crimes.⁵

After the fall of the previous Taliban regime (1996 – 2001), many countries contributed huge sums of money and personnel towards the reconstruction of Afghanistan.⁶ Yet, as years went by, the public grew increasingly outraged by rampant and blatant corruption,⁷ which absorbed the bulk of the resources and left ordinary people struggling. Despite efforts by some regional courts to address the problem, corrupt officials frequently flaunted their impunity, and corruption remained rampant throughout the government so much that it is considered one of the reasons for the unexpected sudden fall of the Afghan government.⁸ Although the ranking is only a prediction based on the perception of business people and country experts as found in a range of sources,⁹ Afghanistan had continued to hover near the bottom of Transparency International's Corruption Perception Index (CPI).¹⁰

Year	Afghanistan's Rank	Total Countries
2013	175	177
2014	172	175
2015	165	168
2016	169	179
2017	177	180
2018	172	180
2019	173	180
2020	165	180
2021	174	180

As the figures above show, any improvements in ranking were not sustained the following years.

⁵ *Id.*

⁶ SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION, CORRUPTION IN CONFLICT: LESSON FROM THE U.S. EXPERIENCE IN AFGHANISTAN (2016), <https://www.sigar.mil/pdf/lessonslearned/sigar-16-58-11.pdf>.

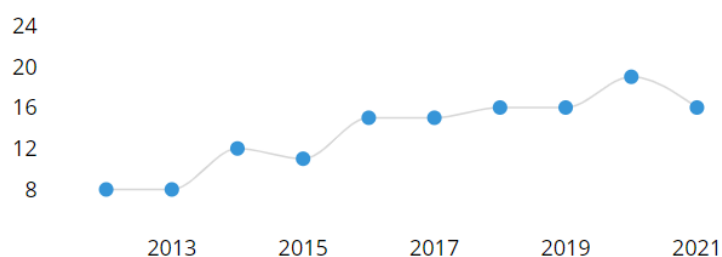
⁷ Interview with six judges.

⁸ Interview with six judges.

⁹ TRANSPARENCY INTERNATIONAL, *Corruption Perceptions Index 2021* (2021), <https://www.transparency.org/en/cpi/2021>, last visited Dec. 20, 2022.

¹⁰ TRANSPARENCY INTERNATIONAL, *Corruption Perceptions Index 2020* (2020), <https://www.transparency.org/en/cpi/2020>, last visited Feb. 3, 2022.

Score changes 2012 - 2021



This paper begins with a description of the ACJC, its structure, and role in combatting corruption, relevant cases, and the challenges it faced. Next, it compares the ACJC in the time of the Afghan Republic with its equivalent under the current Taliban Emirate regime.

Given the security concerns for the judges and prosecutors in Afghanistan at present, I had to conduct six interviews with former judges and eight interviews with former prosecutors from ACJC over WhatsApp and Zoom, without disclosing their names and positions. This semi-structured methodology allows for a more flexible, two-way conversational approach.

My judicial experience served as a basis for identifying and comparing the different approaches to combating corruption under the Republic and Emirates. Given the poor infrastructure and technology in Afghanistan, resources for legislators and strategic planning in the area of corruption are limited.¹¹ Thus, the battle against corruption suffers from a lack of comprehensive research.

The United Nations Assistance Mission in Afghanistan (UNAMA) has produced five reports about the function of the ACJC, describing how it tackled corruption by detecting, investigating, and prosecuting cases.¹² However, none of these reports have addressed the challenges the courts are facing during the Taliban period. This paper aims to fill this gap by comparing the Republic with the second Emirate period. Pointers for other countries intending to establish their own ACJC will also be offered.

I. FIGHTING CORRUPTION IN AFGHANISTAN FROM 2002 TO THE ESTABLISHMENT OF THE ANTI-CORRUPTION JUSTICE CENTER IN 2016

¹¹ Interview with judges.

¹² UNITED NATIONS ASSISTANCE MISSION IN AFGHANISTAN, *Corruption*, <https://unama.unmissions.org/corruption>, last visited August 19 2022.

The phenomenon of corruption is a problem whose seriousness remains largely underestimated despite its increased attention over the past decades.¹³ It is considered a threat not just to good governance and trust within and between communities, but also to global security, even to the health of the planet, as the recent global pandemic has demonstrated.¹⁴

In Afghanistan, the influx of massive international aid beginning in 2002 often came without effective supervision, and thus had the effect of fueling and reinforcing corruption.¹⁵ Between 2002¹⁶ and 2004¹⁷ international donors pledged an unprecedented sum of nearly \$14 billion for Afghan development. In return, the government of President Hamid Karzai committed to spending the money to rebuild the country along democratic lines and to combat governmental corruption.¹⁸ As a result, in 2004, an Anti-Bribery and Anti-Corruption Office was established and the Anti-Bribery and Corruption Law was approved.¹⁹

In 2006, the London International Conference on Afghanistan highlighted that the implementation of these measures was lackluster, and in fact corruption became more widespread and more organized than before.²⁰ Nevertheless, this meeting recorded an extra \$10 billion in pledges from 70 countries, while reiterating the strict condition that it be spent on sincere reduction of corruption.²¹ Yet once again, no enforcement or claw-back mechanism was attached to the grant and admonition.²² One of Afghanistan's major commitments at that time were to establish accountable and transparent governmental offices and relentlessly fighting corruption.²³

Afghanistan's failure to meet this commitment did not go unnoticed and in 2007 in Rome, the international community discussed ways to improve the

13 Interview with judges.

14 Interview with judges.

15 Muhammad Akbar Farahmand "Eqtesad Afghanistan az Sal 2001 ta 2021" last visited, June. 18, 2023, <https://8am.media/afghanistans-economy-from-2001-to-2021/>.

16 At the Tokyo Conference on 21 and 22 January 2002, hosted by Japan and the United Nations and attended by representatives from more than 50 countries and international donor organizations, the international community pledged \$5.4 billion in assistance to the Government of Afghanistan for development projects over five years.

17 On 31 March 2004, another world conference on Afghanistan was held in Berlin, Germany, and the international community pledged an additional \$8.2 billion in aid to Afghanistan over three years. At that conference, the Afghan Transitional Government pledged to establish healthy government institutions, strengthen the private sector, involve political groups and parties in power to rebuild the country and prevent the squandering of foreign aid, and hold presidential and parliamentary elections. It also pledged to combat corruption.

18 *Id.*

19 Dar Haway Adalat, *Qanon mobarezeh alayhe Ertesha wa Fesad Adary dar Afghanistan*, <https://amin91.blog.ir/1393/05/15/افغانستان-اداری-در-عقیده-ارتش-و-فساد-اداری>, last visited May 7, 2023.

20 Dawood Qarizada, *London Conference and the "Afghanistan Agreement"* (2006), https://www.bbc.com/persian/afghanistan/story/2006/02/060202_v-afghan-london-conference-wraplast visited September 9, 2022.

21 *Id.*

22 *Id.*

23 *Id.*

judicial system and pledged to provide long-term assistance in reforming it.²⁴ As part of Afghanistan's National Strategy for Combating Corruption, another department was established: the High Office for Supervision of the Implementation of the Anti-Corruption Strategy.²⁵

Then in 2008, at an international conference in Paris, the Afghan government presented its five-year National Development Strategy, which included the introduction of effective mechanisms to fight against corruption.²⁶ This was followed, in 2009, by a major conference in Kabul, where the government assured its international partners that it would take all necessary measures for greater transparency and accountability in the fight against corruption.²⁷ One concrete commitment that emerged at the Kabul conference was the pledge to establish an Anti-Corruption Court within twelve months.²⁸ The Anti-Corruption Court was to be a special court dedicated to high-level corruption crimes staffed by specialized personnel and operating in secure facilities. In addition, the State authorized the Ministry of Finance to conduct internal audits throughout the government every six months. Over the next six months, corruption laws were reviewed to ensure consistency with the constitution and with the UN Convention against Corruption which Afghanistan had ratified in 2008. The outcome of the review led to the establishment of a Joint Monitoring and Evaluation Committee, which identified and published the assets of all high-ranking officials and required an annual declaration of assets starting in 2010.²⁹ That same year, in fulfillment of its Kabul Conference commitments, the government established Special Prosecutors' Offices and Anti-Corruption Courts.

However, these steps satisfied neither international donors nor the Afghan public. A 2010 report by the United Nations Office on Drugs and Crime (UNODC) found that Afghans regarded corruption as a greater and more pervasive problem than even insecurity.³⁰ UNAMA reiterated the by now familiar call on the government to further consolidate its efforts to combat corruption.

24 UNITED NATIONS PEACEMAKER, ROME CONFERENCE ON JUSTICE AND RULE OF LAW IN AFGHANISTAN (2007) <https://www.peaceagreements.org/viewmasterdocument/1069>, last visited August 13, 2022.

25 Ebdollah Behmanesh, MOBAREZA BA FESAD DAR AFGHANISTAN: CHURA NEHAD HY MASOOL SHEKAST KHORDAND? [Fighting Corruption in Afghanistan: Why are responsible institutions failing?] (2020), <https://8am.media/seasonal-fight-against-corruption-a-trick-to-attract-global-aid/>, last visited May 7, 2023.

26 BBC NEWS, *Dar do Daha Chand Conference Jahani ba Cheqadar Tahod Malee dar Mawred Afghanistan Bargozar Shod* [How many world conferences have been held in two decades with how much financial commitment to Afghanistan] (2020) <https://www.bbc.com/persian/afghanistan-55023507>, last visited, September 19, 2022.

27 *Id.*

28 *Id.*

29 UNITED NATIONS OFFICE ON DRUGS AND CRIME, *International Conference on Afghanistan* <https://www.unodc.org/afghanistan/en/Events/international-conference-afghanistan.html>, last visited, August 14, 2022.

30 UNITED NATIONS OFFICE ON DRUGS AND CRIME, CORRUPTION IN AFGHANISTAN BRIBERY AS REPORTED BY THE VICTIM 3 (2010), <https://www.unodc.org/documents/data-and-analysis/Afghanistan/Afghanistan-corruption-survey2010-Eng.pdf>, last visited May 7, 2023.

In 2012, before pledging another \$16 billion in aid, the international community made it explicitly conditional on the pursuit of an effective fight against corruption. The countries who attended the conference agreed with Afghanistan on a clear accountability structure called the Tokyo Joint Accounting Framework, under which Afghanistan and the international community would conduct joint monitoring and evaluation of foreign aid spending.³¹

Nevertheless, investigative reports from domestic and international organizations indicate that yet again, far from being contained, corruption grew even more widespread.³² Experts accused the Afghan government of lacking the “political will” to fight corruption, citing a speech by Hamid Karzai at the National Anti-Corruption Conference, where Karzai said that “the international community is the cause of corruption in Afghanistan.”³³ Karzai defended the government under his command and supported the mayor of Kabul who had been arrested on charges of corruption.³⁴ The government’s motive, the critics maintained, was to distract from international and domestic pressure on this issue. The inability of the government to combat organized crime particularly in government institutions became a source of tension between the international community and the administration of the former President of Afghanistan. Owing to this, the Government of Afghanistan felt compelled to effectively address the corruption, in line with the commitments in the above-mentioned agreements of the International Conferences and the UN Convention against Corruption, which it signed in February 2004 and ratified in August 2008.³⁵ This situation occurred while the term of Karzai’s presidency was coming to an end and the 2014 presidential campaign had begun. The candidates, most of whom were former members of the government cabinet, had a deep understanding of the extent of corruption and public dissatisfaction with the government. In addition, they anticipated the consequences stemming from tensions with the international community over corruption in the government, and the dependence of any future government on the continuation of foreign aid.³⁶ Therefore, due to all these

31 UNITED NATIONS OFFICE ON DRUGS AND CRIME, *Tokyo Conference on Afghanistan*, 8 July 2012 <https://www.unodc.org/afghanistan/en/Events/tokyo-conference-on-afghanistan.html> last visited, Sep 19, 2022.

32 Tawasse Gharjestani, *Mobarezah Ba Fesad Edare; Az Sheaar ta Amal* [Fighting corruption, from slogans to action!] (2013), http://dailyafghanistan.com/opinion_detail.php?post_id=128195 last visited, September 19, 2022.

33 Pul hay Amrica ba’as tashdid fasad dar Afghansitan Shoda ast [Karzai: US Currency Fuels Corruption in Afghanistan], DW MADE FOR MIND, <https://www.dw.com/fa-af/-افغانستان-متحدہ-باعث-تشدید-فساد-در-افغانستان/a-51618309>, last visited, December 11, 2019.

34 *Id.*

35 HAYAT MAWENAT SAZMAN MELAL MOTAHED DAR AFGHANISTAN (UNAMA), “Mobareza Afghansitan dar Barabr Fesad Adare; Maidan Nabard degar”, 2016, page 6, https://unama.unmissions.org/sites/default/files/31_may_mh_final_ac_report_dari_bw_final_edit_lh_revision15_june17.pdf, last visited June. 18, 2023.

36 Hussain Sirat, Wadah hy Namzadan wa Khawasta hy Mardom [Candidates’ promises and people’s wishes], <https://www.dw.com/fa-af/مبارزات-انتخاباتی-و-عهده-های-نامزدان-و-خواسته-های-مردم/a-17403751>, last visited, August 12, 2022.

considerations, candidates put the fight against corruption at the top of their campaign manifestos.³⁷

The election result was fervently disputed and eventually a power-sharing agreement was negotiated between the two top contenders, Ashraf Ghani and Abdullah Abdullah, to form a National Unity Government (NUG).³⁸ This political impasse put the international community in the ironic position of having to devise and defend a compromised solution that violated the very constitution it had largely drafted.³⁹ Lacking any basis in the Afghan constitution, however, this solution was fundamentally illegitimate.

The NUG inherited the previous administration's commitment to foreign countries assisting in the fight against corruption with sadly ineffective measures to implement the UN Convention against Corruption. Because Anti-Corruption measures had been among the central promises of their election campaigns, the NUG was under immense pressure to curb corruption. Furthermore, it was under enhanced scrutiny to earn the international community's confidence, which was necessary to unlock continued foreign aid.

Internally, an effective fight against corruption would have led to an increase in the country's economic prosperity and an improvement in the security situation. A higher public satisfaction and trust in the government following an efficient fight against corruption would have additionally helped mitigate NUG's initial legal and legitimacy gap. On the other hand, the NUG's perpetuation of corruption and unwieldy bureaucracy of the previous government was set to be a clear recipe for failure.

Thus, internal pressures to adopt effective policies against corruption and the failure of previous measures, as well as the conditionality of continued foreign aid and the government's obligation to implement the UN Convention against Corruption, pushed the government to enact some new, concrete measures. Chief among them was the establishment of the Anti-Corruption Justice Centre. When President Ashraf Ghani announced the instituting of the ACJC at the Brussels

³⁷ *Id.*

³⁸ Amid widespread demonstrations and allegations of election fraud and ballot stuffing by Ghani's supporters, the US government negotiated a shared government where Abdullah was appointed the CEO position, which had no legal basis in the constitution.

³⁹ The foundation and formation of the Republic of Afghanistan was the result of the people's vote, which was obtained through national elections with the rule that whoever earned over 50% won. In 2014, it was alleged that election fraud was committed and both candidates claimed victory. Dr. Abdullah Abdullah and Ashraf Ghani were the two leading candidates. Dr. Abdullah did not accept the election results and requested the intervention of the United Nations. Then, based upon the request of the United Nations and the agreement of the two candidates, with the assistance of US Secretary of State John Kerry, a recount of the votes was called. During the recount, various conflicts surfaced until finally both opposition teams agreed to gather under the supervision of a national unity government. Under the agreement, Ashraf Ghani became the president and Abdullah became the chief executive. Such a power sharing arrangement is not foreseen under the constitution.

Conference on Afghanistan in 2016, the international community agreed to invest \$15.2 billion in Afghanistan.⁴⁰

II. SERIOUS CORRUPTION CRIMES COURT: ANTI-CORRUPTION JUSTICE CENTER

A. COMPOSITION

In 2016, President Ghani established the Anti-Corruption Justice Center (ACJC)⁴¹ by Presidential Decree.⁴² The ACJC was conceived as a joint anti-corruption cross-institutional body including the Attorney General's Office, the Supreme Court, and the Ministry of Interior Affairs.⁴³ The aim was to create a centralized system whereby the police, the prosecutor's office, and the courts would streamline the handling of corruption cases, coordinate their work, and strengthen the legitimacy of the institution. Although the jurisdiction of the court and the appointment of the judges⁴⁴ was established by the President,⁴⁵ he adhered to the recommendations of the Supreme Court.⁴⁶

B. COMPETENCIES

The court's jurisdiction *ratione materiae* included crimes such as bribery, embezzlement, abuse of influence, abuse of position and task, illegal increase in

40 COUNCIL OF THE EUROPEAN UNION, *Brussels Conference on Afghanistan 2016*, <https://www.consilium.europa.eu/en/meetings/international-summit/2016/10/04-05/>, last visited May, 7 2023.

41 The court was established as a political response to Afghanistan's ranking among the most corrupt countries and people's lack of trust in the government. The former President, during his candidacy, had promised the Afghan nation that he would work to combat corruption. On that basis, donors could have been confident that their financial assistance was spent as it was intended to be and not wasted.

42 Decree 53 consisted of 9 provisions, which included the purpose of the establishment of a judicial centre so that high-ranking officials could be prosecuted based on documents, evidence, comprehensive investigations, prevention of infiltration, and observance of fair trial guarantees. Furthermore, the decree introduced the concepts of transparency and immunity, confidentiality, and rights of whistle-blowers. It also clarified that transparency and accountability is conditioned to the access of the media and the public to the court public hearings, and it spelled out the obligation of government offices to provide the required information to the ACJC.

43 *Id.*

44 Directive 385 dated 19 July 2016 of the High Council of the Supreme Court determines the jurisdiction of the court.

45 It was approved in the decree of 1265, dated 20/7/2016 from the presidential office.

46 Paragraph 3 of Article 32 of the Organization and Jurisdiction of the Judiciary Law: "approval of the establishment of the new courts, the appointment of judges and administrative staff by the provision of Law are the duties of the supreme court".

assets, forgery, and money laundering.⁴⁷ The court had the power to prosecute high-ranking officers,⁴⁸ governmental officials, and generals.⁴⁹

The court's jurisdiction extended to anyone accused of bribery and money laundering who was alleged to have been involved in a crime where the proceeds exceeded AFG 5 million or its equivalent, or for other crimes exceeding AFG 10 million or its equivalent. The ACJC dealt with corruption cases of high-ranking government officials regardless of the monetary amount. It also addressed high-dollar corruption cases -- notwithstanding the position of the accused.⁵⁰

The ACJC had four major strengths: (1) helping the judicial system address the impunity of high-ranking government officials, (2) speeding up the process of fighting corruption, (3) creating an effective deterrent through the punishment of the convicted, and (4) being able to recover and return large sums of money to the government that had been lost through corruption.⁵¹

Despite these accomplishments, the ACJC encountered numerous obstacles, which should not come as a surprise considering the multitude of issues the country had been facing over the years. Those challenges included a lack of promptness and professionalism, a lack of transparency, and the absence of a clear mechanism for the recruitment and designation of professional and expert staff in certain sections.⁵² These obstacles impeded the efficiency and effectiveness of the ACJC work to combat corruption.

The traditional and tribal culture of Afghanistan represented an obstacle to the implementation of the law. Popular support for certain leaders and tribal beliefs led to the unwavering support of certain unprincipled political figures in Afghanistan. For example, one case involved the head of the Herat Provincial Council, where a large number of armed men stormed the prosecution office to set free a bribery suspect who was being detained there, attempting to block the investigation.⁵³ This was a blatant violation of the constitution⁵⁴ and the law

47 Anti-Corruption Law.

48 High-ranking officers are defined in Article 3 of the law governing the salaries of high-ranking officers ("the high-ranking officers' Law") as follows: Vice Presidents, National Council Presidents, Chief Justice, Ministers, members of Parliaments, member of the High Council of the Supreme Court, the Attorney General.

49 Governmental Officials are listed in Article 2 of the Law governing of the salaries of governmental officials.

50 Anti-Corruption Law.

51 PAMELA CONSTABLE, FINALLY, AFGHANISTAN IS TRYING TO PENETRATE AND PURGE HIGH-LEVEL CORRUPTION (2016) https://www.washingtonpost.com/world/asia_pacific/finally-afghanistan-is-trying-to-penetrate-and-purge-high-level-corruption/2016/11/25/73610b50-a6a0-11e6-ba46-53db57f0e351_story.html?utm_term=.66b660595ace&tid=a_inl_manual, last visited, Aug 14, 2022.

52 Interview of six judges.

53 The video of Kamran Alizay's judgment. HAFIZULLAH AMIN SALANGI, *Kamran Alizai, the former head of Herat Provincial Council, was tried on 07 01 1396*, YOUTUBE, https://www.youtube.com/watch?v=H_q87g0y39Q, last visited, Dec. 29, 2022).

54 Article 75, Constitution Law: The Government shall have the following duties: 1. Execute the provisions of this Constitution, other laws, as well as the final decisions of the courts; 2. Preserve the independence, defend the territorial integrity and safeguard the interests and prestige of Afghanistan in the international community; 3.

establishing the authority and structure of the Attorney General's Office (AGO).⁵⁵ The Head of the Council, by blocking the investigation and freeing the bribery suspect, interfered with the investigation, and was accordingly tried, convicted, and sentenced to two years and six months for the corruption crime of "exceeding authority."⁵⁶ Afterwards, hundreds of supporters protested the verdict, demanding the court decision be vacated.⁵⁷ The central government was initially not successful in arresting the Head of the Council, due to his influential position. Every time an attempt was made, massive public demonstrations prevented his arrest. Eventually the court sentenced him *in absentia*, and eventually he was arrested and imprisoned.⁵⁸

Challenges of this kind allowed perpetrators of serious crimes of corruption to elude prosecution. Such obstacles complicated trial, introduced delays, and led the loss of public assets, and diminished trust by Afghan citizens and the international community in the Afghan government's sincere ability to fight against corruption.⁵⁹ These challenges also laid the foundations for further corruption and ultimately the perpetuation of injustice and impunity in society. The establishment of the ACJC was only able to partially restore the trust of society⁶⁰ and the international community⁶¹ in the Afghan government and to accelerate the process of fighting corruption. Witnessing the punishment of the convicted acted as an effective deterrent. The involvement of the media and the public during the trials which the Presidential Decree had recognised as essential to ensure transparency and accountability also stand out as positive features of the ACJC's legacy.⁶² Court hearings were conducted transparently in the presence of national and international observers. This achievement of transparency and access to information followed the example of other successful countries in the fight against corruption and were clear indicators of the freedom of the press.⁶³

Maintain public law and order and eliminate every kind of administrative corruption; 4. Prepare the budget, regulate the financial conditions of the state as well as protect public wealth; 5. Devise and implement social, cultural, economic, and technological development programs; 6. Report to the National Assembly, at the end of the fiscal year about the tasks achieved as well as important programs for the new fiscal year; 7. Perform other duties that, in accordance with this Constitution and other laws, fall within the Government's responsibilities.

55 Article 4, the law establishing the authority and structure of the AGO: Prosecution is a part of the executive branch. Their performance is independent and subject to compliance with the law.

56 HAFIZULLAH AMIN SALANGI, *supra* note 53.

57 This YouTube link contains a video of the protests against the court's judgment. Ariana Herat, *Blocking of Herat transit highways by Kamran Alizai supporters*, YOUTUBE, <https://youtu.be/BGZhSgHKqJs>, last visited, Dec 29, 2022.

58 UNAMA, AFGHANISTAN FIGHT AGAINST CORRUPTION FROM STRATEGIES TO IMPLEMENTATION 42 (2018), last visited, December 29, 2022.

59 Interview of Six judges.

60 UNITED NATIONS ASSISTANCE MISSION IN AFGHANISTAN, AFGHANISTAN'S FIGHT AGAINST CORRUPTION: THE OTHER BATTLEFIELD 58 (2017), last visited, December 29, 2022.

61 QADIR MOSHARAF, GHANI IS MORE COOPERATIVE WITH US COMPARED TO KARZAI (2017), <https://www.darivoa.com/a/sepko-sigar-afghan-government-us-corruption/3760740.html>, last visited, August 10, 2022.

62 Decree 53 dated 30 June 2016, of the presidential office.

63 UNAMA, *supra* note 58 at 41.

This increased the accountability of government agencies and had a positive effect on the level of public participation in the country.⁶⁴

Overall, while the progress made by the ACJC fell short of expectations and hopes in some respects, the Center can be credited with some success in preventing the loss of national assets, speeding up detection, investigation, prosecution, and adjudication of corruption cases, as well as complying with international obligations.

III. TALIBAN AND ANTI-CORRUPTION

The next part of this paper examines the present status of the ACJC and anti-corruption efforts under the Taliban regime.

Before the Taliban took over Kabul and the entire country in August 2021, they already administered “justice” in the areas under their control. The Taliban judicial system was unambiguous⁶⁵ in its absence of formalized and discernible rules. The Taliban did not rely on a specific set of laws or procedures for deciding cases before them. Instead, they employed an informal justice system to punish people with little to no reliance on the gathering of evidence. This system was questionable from a due process perspective. Typically, the more powerful side of the case would win.⁶⁶

The Taliban informal justice system was evidently incompatible with the formal processes and legal rigor upon which the work of the ACJC rested.

On August 15, 2021, the Taliban marched unopposed into Kabul and overthrew the democratic government. As a result, Afghanistan was subject to a radical transformation, which rendered the country economically poorer, more isolated, and much more fragile. After the fall of the Republic, Afghanistan was, and still is at the time of writing, on the verge of a catastrophe in all fields.⁶⁷

Countless challenges threaten Taliban rule. There is no law-based order; Taliban rule has taken sovereignty away from the people. In addition to lacking national and international legitimacy, the Taliban's principles do not match the existing reality of Afghanistan. The Taliban cannot guarantee stability for the country by resorting to violence.

Since taking power, the Taliban have not developed a plan for the management of the country. They have appointed leaders in an arbitrary and unprofessional manner, failed to recruit knowledgeable and skilled professionals, and have practically removed all specialization from the country's administrative system.⁶⁸

⁶⁴ *Id.*

⁶⁵ CARNEGIE ENDOWMENT, *What will Governance and Corruption look like under the Taliban?*, YOUTUBE, (Sep 2, 2022) <https://www.youtube.com/watch?v=62SNKDHoEhs>, last visited, September 19, 2022.

⁶⁶ Interview with judges.

⁶⁷ Interview with judges.

⁶⁸ Interview with six judges.

There is no separation of powers, no system of checks and balances,⁶⁹ no recognition of individual and civil liberties, and a complete absence of rule of law. The Taliban behaviour has created mistrust and dissatisfaction towards their governance.⁷⁰ The current crisis of the country will continue unabated unless the Taliban return to the rule of law. This would involve respecting the rights of the people, allowing them to express their opinions without fear, and basing the administration of the civil service on the knowledge, professionalism, and expertise of employees who have been appointed through fair and meritocratic procedures.

Other undeniable facts attesting to the failure of the Taliban rule include economic collapse, humanitarian crisis, the erosion of women's rights and freedoms, and the prevailing desire of skilled people to flee the country.⁷¹

A. *LEGISLATION AND CORRUPTION IN THE TALIBAN JUDICIAL SYSTEM*

Taliban officials claim that since their recapturing of power corruption in Afghanistan has declined to the point of becoming negligible.⁷² However, cases of corruption have been reported in government offices. Although there are no reliable sources that document the extent of corruption in the Taliban administration, the sheer fact that the system and its bureaucratic process is tainted with corruption is hardly questionable.⁷³

There is a lack of clarity even amongst the Taliban as to which laws are applicable under their rule. The Taliban have not yet officially passed any laws, and it is not clear how and based on which principles and laws the Taliban courts operate.⁷⁴ Mullah Hebatullah Akhundzada, the leader of the Taliban, has said that in the Taliban government, "only God's order can be implemented, and the solution of all problems is based on Sharia, and all decisions are made in

69 They do not have a system of checks and balances between the legislature, judiciary, and executive.

70 Etelaat Sanati Afghanistan, Faslee Be Tadberee; Chalesh ha Ferawan ast 2021 (Dec 26) <https://afghanistan-iim.com/blog/1400/10/05/%DA%86%D8%A7%D9%84%D8%B4%E2%80%8C%D9%87%D8%A7-%D9%81%D8%B1%D8%A7%D9%88%D8%A7%D9%86-%D8%A7%D8%B3%D8%AA/>, last visited, September 19, 2022.

71 *Id.*

72 "SPUTNIK, Wazee Fele Fasad dar Afghanistan?" Dec.9, 2022, <https://sputnik.af/20221209/%D9%88%D8%B6%D8%B9-%D9%81%D8%B9%D9%84%DB%8C-%D9%81%D8%B3%D8%A7%D8%AF-%D8%AF%D8%B1-%D8%A7%D9%81%D8%BA%D8%A7%D9%86%D8%B3%D8%AA%D8%A7%D9%86-%DA%86%DA%AF%D9%88%D9%86%D9%87-%D8%A7%D8%B3%D8%AA-12993574.html>, last visited June. 18, 2023

73 Hamid Ahmadi, *Dastgah Qazay Taliban: Faqed Fasad ama Ghair Adelana* [Taliban Judiciary Lacks Corruption but Unfair?] 2021, <https://ufuqnews.com/archives/188438> last visited, August 19, 2022.

74 Interview with six judges.

accordance with Sharia."⁷⁵ He claims that human-made laws cannot be enforced.⁷⁶

Meanwhile, Mufti Mohammad Bashir, the spokesman of the Ministry of Justice of the Taliban government, has stated that they have been implementing all the laws of the past 20 years that do not conflict with the rules of Sharia.⁷⁷

In contrast, Abdul Hakim Sharai, Acting Minister of Justice of the Taliban, in a meeting with Wang Yu, the Chinese ambassador in Kabul, stated that the constitution of Mohammad Zahir Shah the last king of Afghanistan⁷⁸ which was enacted in 1964, has been reinstated, albeit for a temporary period, with the exception of (unspecified) articles that are considered to conflict with Islamic law. He further asserted that the Taliban respect those international laws that do not conflict with Islamic Sharia or the principles of the Taliban government. However, he made no mention of the specific treaties or international obligations referenced by the 1964 constitution of Mohammad Zahir Shah.⁷⁹

In relation to the restrictions introduced by the Taliban, legal experts have warned that greater clarity is needed and the Taliban should be unambiguous about which parts of the constitution are not Islamic and which ones are instead acceptable.⁸⁰ It should also be noted that the constitution of 1964 was the product of that era -- it reflected the needs of Afghans then and was developed by the representatives of the people and the government of the time, which is in no way a guarantee of its correspondence to the needs of the people today.⁸¹

To further muddy the waters, Bilal Karimi, the assistant of Zabihullah Mujahid, the spokesperson of the Taliban, contradicted Sharai's assertion.⁸² He rejected the report that the constitution of 1964 is being implemented while asserting that there is no legal vacuum in the country. Karimi instead stated simply that the Taliban are carrying out the affairs of the country according to the principles of Islam.⁸³

The Taliban additionally claim to implement *Hanafi fiqh* (Hanafi Jurisprudence), which is precisely the Islamic jurisprudence that for decades the

75 *Qawanin ke Tawasot Ashkhas Sakhta Shoda Qabel Tatbeq Nest* [Taliban Leader: laws made by individuals not applicable], ETILAAT ROZ, <https://www.etilaatroz.com/149018/taliban-leader-laws-made-by-individuals-cannot-be-implemented/>, last visited, August 15, 2022.

76 *Id.*

77 Sar dar Gomi dar Ejraye Qawanin; Taliban Kodam Qanon ra Tatbeq Mekonand, [Confusion in Enforcement of Laws: Which Law are the Taliban Implementing] ETILAAT ROZ, (2021) <https://www.etilaatroz.com/137333/confusion-in-law-enforcement-which-law-does-the-taliban-implement/>, last visited, August 14, 2022.

78 On 20 September 1964 during the reign of Mohammad Zahir Shah, the current law was approved in 11 chapters and 128 articles.

79 "Chora Qanoon Asase zaman Zahir Shah Jawaboo Neyazmande hy Emroze Nest?" Etilaat Roz (2021), <https://www.etilaatroz.com/131885/why-does-the-constitution-of-time-of-zahir-shah-not-meet-todays-needs/>, last visited June. 18, 2023.

80 *Id.*

81 *Id.*

82 *Id.*

83 *Id.*

judicial system in Afghanistan has relied upon.⁸⁴ Still, there are many conflicting sources in Hanafi jurisprudence which can create a conflict of competing norms. In a three tier judicial system, if the first instance verdict is challenged based on a given interpretation of the Hanafi jurisprudence, it will be the Court of Appeal that will decide upon which interpretation to follow. Under the Taliban rule, however, there are not specific criteria nor decisions on if and how to appeal a case, nor is there any evidence of any operating court of appeals.⁸⁵

What do all these different Taliban opinions on applicable law show?⁸⁶ they indicate the lack of cohesion among the Taliban and demonstrate that the group itself is divided between the Haqqani network and the group of Mullah Omar's followers which explains their ambiguity vis-à-vis the applicable law.⁸⁷

Islamic jurisprudence consists of the interpretation of jurists from the main religious texts. These texts are subject to human and historical interpretation and can be revised. Therefore, in the present era, it is understood that the fundamental religious texts (Qur'an and Sunnah) need to be re-read to extract legal rules apt to the present age which are in harmony with the spirit and main message of Islam, which is justice. At the same time, these principles should be compatible with the values of the modern world, including the principle of rule of law.⁸⁸ To what extent this is feasible and whether the Taliban agree with this approach remains an open question. In any case, it seems that the alternatives are either the transformation of the Taliban regime in line with the principles of popular legitimacy, transparency, and accountability, or the continuation of war in Afghanistan.

There remain serious, deep concerns about unfair decisions by Taliban courts and the prevalence of unjust and oppressive judicial procedures.⁸⁹ For example, according to news agencies, Afghan "Residents of Hazara town (Wali Asr) in

84 For example, if a claimant finds a ruling in his favor in the legal text, *Majlatah al-Ahkam* and cites it, the defendant may find a conflicting ruling in his favor in the book *Kamaliyah fatwa* and assert that instead. In the meantime, the judge may issue a ruling based on yet another Hanafi book, *Dorel-Muhtar*.

85 Arash Homayon, *Mahakim Afghanistan dar Hokomat Taliban bar Bonyad Kodam Osool wa Qawanin Fallyat Mekonand* [What principles and laws do Afghan courts operate under the Taliban Agreement] (2021) <https://da.azadiradio.com/AMP/31604705.HTML> last visited, Aug. 15, 2022.

86 Difference among the Taliban re which law(s) apply.

87 Gul Rahman Faraz "Aya Goroh Taliban ba Shekast Nazdek Shoda ast" June. 22, 2022, <https://8am.media/is-the-taliban-close-to-defeat/>, last visited June. 19, 2023.

88 Fahim Naime "Taliban wa Masala Hoqoq Zanan" (2020), <https://8am.media/the-taliban-and-the-issue-of-womens-rights/>, Last visited June. 19, 2023.

89 A former senior official of the Supreme Court of Afghanistan noted that the judicial hierarchy and the different attributions to different bodies are no longer applicable under Taliban rule. He adds, "They use violence and torture when arresting the accused, and as much as they can, the accused whose crime is still to be proven is beaten." This knowledgeable official explains: "Then the officer who proceeds to the arrest without completing the special form for detailing the health status of the accused sends him/her to the police department, and there the case is settled with the mediation of tribal elders, and in cases where the accused does not have a complaint, he is released with the guarantee of five people. And in cases like theft and murder, Sharia Hudud will determine the outcome." He emphasizes that the people present in the security field who face the accused in the initial stage are almost all part of the Taliban's judicial system, and in addition to being prosecutors, they also perform the duties of defense lawyers and judges.

Mazar-i-Sharif have received an order from the Taliban to leave the town."⁹⁰ The Taliban were also accused of forced migration of residents of Daikundi and Kandahar provinces.⁹¹ These residents, who had been living there for over ten years, were told to leave their accommodations and forfeit them to new owners from the Taliban group. If the residents were unhappy about this, they allegedly could take their claims to court. However, any such cases would be very complex and require an extensive judicial process. Legal experts fear that, as there is no independent judicial system under the Taliban, residents would be revictimized by ethnic or religious discrimination and not be given fair rulings.⁹²

Commentator Hamid Ahmadi (2021) insists, "[t]he judicial system in Afghanistan is in the darkest period of injustice, lawlessness, and terror. Afghans have a long way to go together, but the common goal is still far away, there are many obstacles, and important steps left to create a stable, prosperous, and democratic Afghanistan." He points out that rather than making progress in this area, obstacles to just rule of law have actually increased since the Taliban takeover. There are worries that the Taliban will not bring to Afghanistan a robust⁹³ system of law and justice, with rights for all and a transparent and accountable judicial system.⁹⁴

B. *CONDITIONS OF EMPLOYMENT – TALIBAN GOVERNMENT OFFICES*

Under Taliban rule, the lack of specialised professionals in the legal field is highly problematic.⁹⁵

In many areas of public life, departments are undergoing ethnic cleansing, with recruitment now based on political, gender, religious and ethnic affiliations. Media sources claim that the Taliban consider war experience to be a necessary criterion for employment even when it is not relevant to the post in question and the candidate lacks the expertise and experience for the job. In fact, Mullah Yaqoob, the Acting Minister of Defense of the Taliban, has stated that members of the Taliban even without educational certificates should be recruited into government offices.⁹⁶

This situation also applies to the Republic's 2,000 judges. As a result, all of them have been dismissed and replaced with inexperienced, unprofessional,

90 Hamid Ahmadi, *supra* note 73.

91 *Id.*

92 *Id.*

93 *Id.*

94 *Id.*

95 Arash Homayon, *supra* note 85.

96 "Sabeqa Jange, Pesh shart Taliban Baray Estekhdam Karmand ba Edarat Hokomati" Afghanistan International Radio (2022), <https://www.facebook.com/Afintlradio/videos/871359463822428>, last accessed 10 August 2022.

uneducated Talib.⁹⁷ The former judges have further suffered from harassment,⁹⁸ threats, torture, and even assassination by the prisoners whom they had sentenced in the past. In the Taliban view, “only those who are aligned with the Taliban and have a history of jihad in the past 20 years are capable of administering justice.”⁹⁹

The fall of the Republic and the oppression by the Taliban have affected all areas. The ACJC has not been spared from its sting. Currently all court offices of the ACJC are sealed and the judges of serious crimes have been placed in a frightening predicament. The future of their careers and livelihoods is uncertain and it is not clear how the Taliban will treat them. Many are currently in hiding.¹⁰⁰

Interviews with six judges were conducted in a semi-structured manner. The interviews did not follow a pre-determined data model, nor have pre-determined goals, and the questioning was unconventional due to the constraints of high security. The interviews with the six judges revealed that it was almost impossible for them to continue their lives, even if living under a pseudonym, without being subjected to ferocious attacks. Today, when the Taliban proclaim that only those who have war and jihad experience can be hired, that means in effect there is no place for literacy and education in the country; “justice” is administered only by those trained with guns and violence against the people.¹⁰¹

The ACJC nominally exists under the Taliban, and Qari Mohammad Amir Mohammadi was appointed chief of its prosecution section in 2022. However, he immediately resigned stating a lack of expertise and knowledge in the field of corruption. In his place, on January 29, 2022, a member of the Taliban, Molave Fazl al-Rabi, was appointed. Al-Rabi also has no experience in corruption law. Accounts suggest no cases are being prosecuted at this time.¹⁰²

It appears that the offices of the Attorney General and the courts have been shut down, and whether the Taliban have initiated any investigative procedures is unknown. The new chief prosecutor, Fazl al-Rabi, addressed a group of prosecutors in his inaugural speech, stating that the basis of their work is the Qur'an; that everything they need is in the Holy Book. Al-Rabi's claim has created great uncertainty. If the new ACJC leadership does not accept the international and national laws on combating corruption -- a very complex area of modern law -- it is uncertain how they can pursue corruption cases based on the Qur'an alone.¹⁰³

97 “Anjoman Qozat: 2000 Qazi Hokomat Peshen Tawasot Taliban Azel Shodand” Shafaqna Afghanistan 2021(26 Dec), <https://af.shafaqna.com/FA/494402>, last accessed 19 September 2022.

98 Arash Homayon, *supra* note 85.

99 Nelofar Langar, *Kase ba Fekr Qazi hy Mard Afghanistan Nest* [No one is talking about Afghan judges] (2021), <https://www.independentpersian.com/node/192186/کسی-به-فکر-قاضی-کمی-اجتماعی-و-سیاسی-E2%80%8C-های-مرد-افغانستان-نیست>, last visited, Aug. 12, 2022.

100 Interview of six judges

101 Zoom call Interview with six former Judges of ACJC on 20 July 2022.

102 Interview with two prosecutors of ACJC in a WhatsApp audio call on 2 July 2022.

103 Interview with a prosecutor of ACJC in a WhatsApp audio call, 20 June 2022.

In addition, as mentioned, the Taliban have terminated the contracts of all sitting judges in Afghanistan, including those of the ACJC. According to interviews with six previous judges of the ACJC,¹⁰⁴ the Taliban have appointed a few judges in other courts who are inexperienced and unprofessional *mullah* and *mufti*, religious leaders with only knowledge of Sharia. They have not yet appointed any judges to the ACJC. If they do appoint judges to the ACJC, how will those judges be able to adjudicate corruption cases which involve complex crimes with broad and sometimes international dimensions? If the judges cannot refer to established anti-corruption laws, how can they deliver justice?

Religious, ethnic, and gender prejudices form the basis of the Taliban government. The declaration of jihad against Panjshir and the removal of Jafari jurisprudence¹⁰⁵ from Bamyan University demonstrate the clear bigotry of this group. The Taliban have banned girls' education beyond sixth grade, and women's social and economic participation in society. Ninety-nine percent of the Taliban cabinet is formed by the Pashtun ethnicity, and other ethnic groups are completely marginalized, with countless Panjshir Tajiks disappeared, murdered, or imprisoned.¹⁰⁶ The continuation of the current situation may lead to a spontaneous wave of protests and the re-ignition of ethnic wars, taking Afghanistan to the brink of a civil war yet again. The Taliban have not indicated any commitment to stop extremism.¹⁰⁷

The continuation of this situation will increase corruption in Afghanistan and paralyze the administrative system. Rather than obsessing over controlling women's dress and travel, the Taliban should focus instead on developing rules to run the country, employing specialists and experts so that the country's administration can be organized properly. To govern effectively, the Taliban should create a system to provide services, with a specialized, pluralistic, dynamic and fair political system designed to hear the voices of all the people, to rely on expertise in providing services, and to enable the citizenry to trust and believe in the government.

C. *LACK OF CLARITY APPLICABLE PROCEDURAL AND SUBSTANTIVE LAW*

Before the Taliban takeover there existed many mechanisms to fight corruption both at the legislative and executive levels of government. There was a set of procedural and substantive laws for citizens, including the Procurement Law, the

104 Zoom interviews with six former judges of ACJC, 2 July 2022.

105 Jafari jurisprudence is the Islamic school of jurisprudence followed in Afghanistan by the Shi'a community.

106 HUMAN RIGHT WATCH, *Afghanistan: Taliban Torture Civilians in Panjshir* (2022), <https://www.hrw.org/news/2022/06/10/afghanistan-taliban-torture-civilians-panjshir>, last visited Dec. 8, 2022.

107 Gol Rahman Faraz "Aya Goroh Taliban ba Shekast Nazdek shoda ast" (2022), <https://8am.af/is-the-taliban-close-to-defeat/>, accessed 10 August 2022.

Law of the Central Bank of Afghanistan, the Law on Combating Money Laundering, Bribery and Administrative Corruption, the Law on Monitoring and Implementing the Strategy to Combat Corruption, the Media Law and dozens of other laws that guided the country. These laws led to increased transparency of proceedings, shortening the previous lengthy systems, and removing the shortcomings of prior laws. Despite these efforts, the country's anti-corruption laws were not flawless. The laws were drafted keeping in mind the then-present needs and necessities of Afghan society, and while imperfect, they helped prevent corruption.¹⁰⁸

While the ACJC was just one in a long line of efforts by the Republic to tackle corruption. The Centre succeeded in the arrest of hundreds of high-ranking and mid-level officials of government departments, including officials of the Ministry of Urban Development, employees of municipalities, the Ministry of Interior Affairs, and dozens of governors.¹⁰⁹ The ACJC succeeded in addressing high profile cases including the Kabul Bank case, cases against ministers who pocketed development funds for the (non) building of imaginary schools, returning to the government thousands of acres of land usurped by squatters, and increased nearly twenty percent of domestic revenue. These were noteworthy achievements of the previous government in the fight against corruption, for which the ACJC was central.¹¹⁰

In most countries, it is common for the law of the land to remain intact after a regime change. In exceptional cases, some provisions or selected laws may be added, amended, or repealed altogether. However, with the arrival of the Taliban, even the applicability of the constitution, the supreme law of the country, was called into question. As mentioned earlier, some Taliban declared the constitution of 1964 adopted under the King Mohammed Zahir Shah to be temporarily in effect (with the exception of unspecified provisions in conflict with the religion of Islam).

Afghanistan's laws have always been based on Islamic law. The major laws formulated and implemented by the previous government to fight against corruption are now in a state of uncertainty and ambiguity. Whether this set of laws will be used in the future is not yet clear. Almost a year and half past their country's overtaking, the Taliban leaders have yet failed to establish unambiguously which laws apply or to explain the limits within which the Taliban intend to exercise their otherwise unfettered power to curtail the risk of abuse. Such type of unconstrained governance breeds frustration and chaos and creates an enabling environment for violent unrest. An imperfect law is better

108 Mohammad Ahrar Ahrar "Administrative Corruption and How to Fight Against it, Kabul" (2017), P 80.

109 Zia Danish, *Mobarezah ba Fasad Adari; Negaresh, Rahkar ha wa Amalkard ha dar Hokomat Afghanistan* [Combating Administrative Corruption: Attitudes, Strategies, and Practices in the Government of Afghanistan] (2016), https://ocs.gov.af/dr/article_details/145, last visited, Aug. 20, 2022.

110 *Id.*

than no law. It would be better if the Islamic Emirate continued the implementation of the procedural and substantive laws of the Republic, or at minimum form a commission to review and make changes to such laws.¹¹¹

Misuse of public funds in violation of pre-existing law has continued to take place unrestrained under the Taliban government.¹¹² According to one recent report, "the commander of the Taliban took his bride from Logar province to Khost province in a military helicopter and married this girl for 1.2 million Afghani."¹¹³ This action was severely criticized by people on social networks. Previously, Bilal Fatih Sangin, a Taliban commander, was reported to use government funds to organize a lavish ceremony for his second marriage and took the bride from Wardak Square to Paktika province with joyful gunshots. All this occurred while the leaders of the Taliban were claiming that they had established an "Islamic" system and had also warned their followers against corruption and abuse of the treasury and urged them to eradicate government corruption.¹¹⁴

Any policy and action of the current de facto government to address corruption will not be effective without a healthy judicial system. The implementation of anti-corruption law requires the existence of an effective, forward-looking, responsible, and accountable judicial system.

D. HALF-FINISHED FILES

The establishment of ACJC was one of the achievements of the former government which has been lost and damaged by the current de facto authorities. Complex corruption cases need professional judges and systematic investigation according to principles of due process. As discussed earlier, the Taliban dismissed the knowledgeable judges of the courts on the charge of "involvement in corruption and injustice" and appointed their own uneducated people in their place. Although no judges have been appointed to the ACJC at present, the district attorney's department has been active, and during an interview with a prosecutor of the ACJC, he stated that the work in the center has not yet officially started and the unfinished files of the defendants from the previous government are now in a state of limbo and suspension.¹¹⁵ They have not taken any action regarding the follow-up and investigation of these incomplete files. The district attorney added that the acts of corruption that took place during the Taliban regime were resolved in other courts based on Islamic Sharia and Hanafi jurisprudence.

111 Abdulsabor Fakhre, *Emirate Islami; Chalesh hy Peshroy* [Islamic Emirate of Taliban: Challenges ahead] (2021), <https://www.aa.com.tr/fa/2438346/-/هاي-پيش-رو-افغانستان-امارت-اسلامي-طالبان-چالش-هاي-پيش-رو>, last visited July 15, 2022.

112 CARNEGIE ENDOWMENT, *supra* note 65.2

113 *Farmandah Taliban Aros ash ra ba Charkhabl az Logar Ba Khost bord* [Ghani Orders Probe Into Wardak Operation] (2022), KHABARGOZARE UFAQ, <https://ufuqnews.com/archives/202003>, last visited, August 10, 2022.

114 *Id.*

115 Interviewed six judges

However, in the ACJC, no new file has been opened for the purpose of investigation and prosecution.¹¹⁶

According to news sources, citizens who go to courts to pursue lawsuits say that currently all heads of court and judges are members of the Taliban and most of these judges have attended only religious schools. The courts settle the cases orally and based on fatwas. Neither documents nor guarantees are provided, and cases remain unfinished and the parties unsatisfied.¹¹⁷

Dr. Eid Mohammad Ahmadi, an expert on legal issues, in a conversation with Radio Dari recognized corruption as a past and present endemic problem in Afghanistan. He addressed the lack of a standard legal and judicial system in the country, of professional and experienced personnel, and of law as the most challenging issues in the current Taliban regime. Eventually, he concluded that with these obstacles, Afghanistan will witness increasing corruption as the time goes on.¹¹⁸

The Cabinet of the Islamic Emirate¹¹⁹ has mandated the Attorney General Office to report the results of its investigation on the cases of "corrupt" officials to the Cabinet in the meeting of the Ministers.¹²⁰ The Cabinet has been reminded to pay particular attention to the cases of administrative corruption crimes of the officials of the previous administration, which were under the investigation of the ACJC, and ordered the creation of a list of such cases within one month. The list that was developed for this purpose included 237 cases of embezzlement, misuse of authority, treachery, forgery, and bribery, involving more than AFG 10,279,151,298 plus US \$ 562,524,560, that are under the investigation department.¹²¹

In order to manage these cases, the head of the prosecution office at the ACJC was hired to conduct the necessary investigations of the various institutions and people involved, to examine these case files. However, to date the ACJC's investigation department have not investigated any cases. Even if the new head of the prosecution office issues the instruction to conduct the necessary investigation, it is difficult to say on what basis and criteria they will perform this investigation.¹²²

Assuming that an investigation is initiated, when it has no clear legal basis and principles, how can the court provide a basis for its verdict? Without a legal basis,

116 Interview with four prosecutors of ACJC in a WhatsApp audio call, 12 July 2022.

117 Arash Homayon, *supra* note 85.

118 Chalesh hy Pesh Royee Taliban dar Barrasee Dosya Fesadd Moqamat Pars Today (2021), <https://parstoday.com/dari/news/afghanistan-i168236>, last accessed 10 August 2022.

119 Resolution 25 dated 28/2/2022 of the Council of Ministers of the Islamic Emirate.

120 "Dadstan kol Taliban Darbarah Parwandah hy Maqamat Faseed Tahqeqq Mekonad" Pars Today (2021), <https://parstoday.com/dari/news/afghanistan-i168174>, last accessed 10 August 2022.

121 Interview with two prosecutors of ACJC in a WhatsApp audio call, 12 July 2022.

122 Interview of four prosecutors of ACJC in a WhatsApp audio call, 15 July 2022.

the investigation has no value, and therefore, appointing the head of the ACJC prosecution has no value either.

CONCLUSION

The fight against corruption is a long-term struggle that can only be accomplished successfully with ongoing political determination and commitment. Two things are considered in the process of fighting corruption: firstly, corruption has always existed, and secondly, the effectiveness of anti-corruption solutions should be monitored and evaluated progressively and systematically over time with careful attention paid to corruption's eradication.

Preventing corruption is an important component of good governance. Wherever the fight against corruption is taken seriously, the stability of the country's systems is improved. In contrast, if corruption is allowed to thrive, the distance between the people and the government increases. This means that the stability of the state is shaken whenever national interests are subordinated to the private interests of government officials in an illegal and unethical manner.

To respond to the pressures of its international supporters and implement promises made at international conferences to unlock financial assistance, the Republic of Afghanistan came to view the fight against corruption as a top priority. The government established the ACJC to confront the most serious corruption crimes in terms of perpetrators and amounts of money involved. The various departments of the ACJC (detection, investigation, prosecution, and sentencing) were urged to carry out their assigned tasks with special care within the scope of the Law of Criminal Procedure.

The ACJC worked to overcome many obstacles and challenges and was moving in the right direction in terms of combatting serious corruption. Other countries with such dedicated courts may learn from Afghanistan's experience of the ACJC. Countries should pay particular attention to ensuring the independence of any such anti-corruption center and the expertise of the legal practitioners working there, as these were the obstacles that ACJC most frequently faced.¹²³ Overall, the ACJC was relatively effective, and, with more time, it could have continued to make significant progress in the fight against corruption. However, the Taliban takeover reversed all the progress, making access to rule of law an illusion again. The Taliban have closed down relevant institutions and turned a blind eye to corruption in Afghanistan.

¹²³ In Afghanistan those who performed their duties at the ACJC prosecution section were often interfered with in their work or were themselves affiliated with corrupt people. The manner of appointing and removing members of the ACJC affected the people's confidence in the staff at the ACJC. There was a concern that some professionals at the center were neither independent nor adequately qualified for their jobs. Having the necessary expertise, including technical and specialized capacity, is paramount to successfully fighting corruption.

The nascent Taliban government is facing many challenges and has been contaminated with corruption in various political, economic, security, and social fields. This government has been unable to gain public trust or global legitimacy. At the same time, the Taliban urgently need financial resources to overcome the economic challenges facing Afghanistan and prevent the collapse of the country's economy, a task that cannot be realized without a legitimate, transparent, and accountable government.

Short of that, the situation is deemed to worsen. With the arrival of the Taliban, the 2004 constitution was apparently abolished, and the major works and laws that the previous government had formulated and implemented to fight corruption are now in a hopeless and ambiguous state. The unfinished proceedings of the defendants which were left over from the previous government are in a state of suspension, and no action has been taken to follow up and investigate these half-way processed cases. The Taliban are only allowing the processing of cases presented during the Taliban regime based on Islamic Shari'a to be solved by the Taliban according to Hanafi Jurisprudence of which there are many conflicting sources with many different interpretations. This system causes the courts and litigants to feel bewildered.

So far, the Taliban have shown little respect for basic human rights. It is unclear how long the Taliban's second reign will last, but one thing seems clear: an independent judiciary and the rule of law are even more uncertain for the foreseeable future. If the rulers of the Islamic Emirate want to survive and ensure the well-being of the Afghan people, the security of the country, the rule of law, justice, and the cooperation of the international community, the Taliban should reconsider their policies. Instead of violence, coercion, restrictions, exclusion, and monopolization, they should build upon the achievements of the prior two decades. They should preserve the Republic's institutional accomplishments, including the ACJC, and the ratification of international laws to support the rule of law and establish a fair, inclusive, and strong government. Given the Taliban's actions to date, that is unlikely to happen.