




BRIDGING THE GAPS
ENHANCING THE EFFECTIVENESS
OF AFGHANISTAN'S
ANTI-CORRUPTION AGENCIES

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EXECUTIVE SUMMARY

The future of Afghanistan as a viable democratic state, capable of providing security and a strong foundation for its people to prosper, is undermined by the widespread, systemic presence of corruption. Although the immediate prospects for peace in the country remain unclear, what is certain is that long-term stability cannot be secured unless a sustained effort is made to tackle corruption. Experience from post-conflict countries around the world shows that widespread corruption undermines the authority of the state and its institutions and provides fertile ground for criminal networks to develop and insurgents to operate. Corruption also deprives the poor and vulnerable of essential services and limits their access to justice. By weakening the bonds of trust between citizens and the state, it heightens the risk of conflict re-emerging.¹

This is a real concern for Afghanistan, a country that is ranked 169 out of 176 countries on Transparency International's Corruption Perceptions Index (CPI)² and where almost 80 per cent of citizens say that corruption is a serious problem in their daily lives.³

The National Unity Government has made clear its commitment to fighting corruption,⁴ including by establishing in 2016 the High Council of Governance, Rule of Law and Anti-Corruption, to provide political support and oversight of anti-corruption reforms, and the Anti-Corruption Justice Center, to fight impunity through investigating, prosecuting and adjudicating cases of grand corruption. Afghanistan's multiple anti-corruption agencies (ACAs) are not forming an effective, comprehensive ACA system, however. Key weaknesses within the current system include duplication and overlapping functions, a lack of independence, a weak legal basis, limited budgets, weak staff capacity and a lack of coordination.⁵ Additionally, no institution currently works on corruption education and awareness-raising,⁶ key anti-corruption functions that must not be neglected.⁷

Against this backdrop, Transparency International has analysed Afghanistan's current ACA system⁸ and proposes three reform models that could lead to a more effective, independent and sustainable ACA system in the country.⁹

Option 1 Establish a new, independent ACA to replace all current ACAs

Ideally, the Afghan government should establish a new independent ACA that contains all the ACA functions,¹⁰ including (at a minimum) investigation powers, responsibility for preventing corruption, and corruption education. This option should be preferred over the longer term, as it would be the strongest model for addressing and preventing corruption in Afghanistan. This option would require an amendment to the constitution, however, in order to provide the new ACA with the mandate to investigate corruption cases (which is constitutionally under the Attorney General's Office's

¹ Transparency International Germany (2014).

² Transparency International, 'Corruption Perceptions Index 2016', available at: www.transparency.org/news/feature/corruption_perceptions_index_2016.

³ Integrity Watch Afghanistan's (IWA's) National Corruption Survey 2016 found that corruption was identified by 47 per cent of the respondents as the third major problem facing Afghanistan, after insecurity (79 per cent) and unemployment (66 per cent), and 79 per cent of them viewed corruption as a 'very serious' or 'somewhat serious' problem: IWA (2016b, pp. 11, 24). Surveys initiated by the Asia Foundation also show that the percentage of respondents who describe corruption as a major problem in their daily lives has increased from 42.1 per cent in 2006 to 61.1 per cent in 2015.

⁴ Afghanistan National Peace and Development Framework: Government of Afghanistan (2016).

⁵ See Section 4, 'Limitations of Afghanistan's ACAs'.

⁶ See Section 5, 'Policy options for enhancing the ACAs' effectiveness'.

⁷ See Section 1, 'Types and roles of anti-corruption agencies'.

⁸ See Sections 3, 'Overview of Afghanistan's ACAs and supporting agencies', and 4.

⁹ See Section 5. These three models require further examination to assess the legal, political and institutional requirements to implement such reforms.

¹⁰ ACA functions are: investigation, prosecution, education and awareness-raising, prevention and coordination. Prosecution is often performed by an attorney general's office rather than an ACA. See Section 1.

mandate).¹¹ Additionally, even if a new ACA were to be established in Afghanistan, a major challenge would be to ensure that it functions as an independent watchdog that investigates all corruption cases effectively, without fear or favour and regardless of the position or status of those being investigated.

Option 2 Set up a two-agency model through consolidating the current ACAs

This option recommends reforming the current ACA model to cover all ACA functions under two strong institutions: the Anti-Corruption Justice Center and the High Office of Oversight and Anti-Corruption (HOOAC) (reformed and renamed). In this option, the HOOAC's mandate would be extended to include prevention, education/awareness-raising and coordination functions.¹² Additionally, all investigative and prosecutorial functions would sit within one institution – the Anti-Corruption Justice Center – whose mandate would be extended to cover all corruption offences.¹³ The High Council of Governance, Rule of Law and Anti-Corruption would remain a high-level political advisory body, with oversight of anti-corruption reforms but without the operational mandate of ACA functions.

Option 3 Maintain the multiple-agency model with reforms to the current ACAs

This option proposes similar reforms to Option 2, but without extending the mandate of the Anti-Corruption Justice Center (ACJC). This model recommends a reformed and rebranded High Office of Oversight and Anti-Corruption alongside strengthening and increasing coordination between the High Council of Governance, Rule of Law and Anti-Corruption, the HOOAC, the ACJC and the Civilian and Military Anti-Corruption Prosecution Departments within the Attorney General's Office.¹⁴

The three ACA models proposed in this report apply the following key principles, which are essential for any successful ACA reforms: (1) all ACA functions should be present in Afghanistan's ACA system;¹⁵ (2) the new Anti-Corruption Law¹⁶ should clearly specify which ACA functions are allocated to each ACA, ensuring clear mandates with a strong legal basis; (3) the Anti-Corruption Law should include additional provisions supporting the ACAs' independence, particularly regarding the appointment, removal and fixed tenure for the ACAs' leadership, and budgetary independence; (4) the ACAs should be well resourced to enable them to carry out their functions and their budgets should be protected; (5) the ACAs' case selection processes should be transparent and independent of external and internal interference; and (6) the Anti-corruption law should require coordination and cooperation between the ACAs. Furthermore, ACA system must be adequately resourced to allow for provincial-level presence, in addition to Kabul.¹⁷

Drawing on the inputs of international experts in anti-corruption institutions, in addition to individuals from Afghan civil society, Afghan government institutions and the international community,¹⁸ this

¹¹ Article 134 of the Afghan constitution entrusts the police with exclusive jurisdiction to detect crimes and the AGO with exclusive jurisdiction over investigation and prosecution. Therefore, in the absence of constitutional reform, any ACA system must ensure that investigation and prosecutions powers remain within the AGO; an operationally independent ACA in Afghanistan cannot have its own investigation powers.

¹² Extensive reform of the HOOAC would be required for this proposal to be effective. See discussion in Section 5.

¹³ The Anti-Corruption Justice Center is responsible for investigating and prosecuting major crimes of corruption committed by senior public officials in Afghanistan and major corruption crimes (grand corruption) committed by any individual within its jurisdiction. Under this option, the ACJC's mandate would be extended to also include the serious problem of petty corruption in Afghanistan, which is the responsibility of the AGO's Civilian and Military Anti-Corruption Prosecution Departments for investigation and prosecution, and the Anti-Corruption Tribunals within the Supreme Court for adjudication.

¹⁴ The four major ACAs are: the High Office of Oversight and Anti-Corruption (HOOAC), the High Council of Governance, Rule of Law and Anti-Corruption (HCAC), the Anti-Corruption Justice Center (ACJC) and the AGO's Civilian and Military Anti-Corruption Prosecution Departments (CACPDs and MACPDs).

¹⁵ ACAs' functions are: investigation, prosecution, education and awareness-raising, prevention and coordination. See Section 1.

¹⁶ In draft form at the time of publication (March 2017).

¹⁷ Developing a suitable ACA model operating at national level is not sufficient to address most types of corruption occurring across the country, particularly petty corruption, which is highly prevalent in the provinces and has the most impact on the everyday lives of Afghans.

¹⁸ Specifically, the Transparency Forum (November 2016, Kabul) and the Transparency Conference (March 2017, Kabul); individual interviews with Kabul-based ACA representatives, individuals from Afghan civil society, the Afghan

report sets out Transparency International's findings on what elements an effective ACA system requires and how these could be applied to Afghanistan's ACA system in order to enhance its effectiveness.

This report is designed to inform Afghanistan's anti-corruption reform agenda in the coming years. An effective, independent, sustainable ACA system is key to preventing and addressing corruption over the longer term. Strong political will and leadership will be essential to provide the support for any proposed reforms to be effective. This report highlights the priority areas that are essential for any ACA reforms to incorporate.

government, donors and the international community; and consultations with international ACA experts. See Attachment A for further details and the profiles of participants.

INTRODUCTION

This report analyses Afghanistan's current anti-corruption agencies (ACAs) and assesses major gaps and challenges in the current ACA system. Taking into consideration comparable ACA models (regional and/or international), the United Nations Convention against Corruption (UNCAC) and the Jakarta Principles, the report develops key recommendations for improving Afghanistan's current ACA system. The report is divided into five sections. Section 1 defines an ACA and describes its functions. Section 2 identifies the key principles for effective ACAs according to the Jakarta Principles and the UNCAC. Section 3 provides an overview of Afghanistan's ACAs and their supporting agencies. Section 4 applies the analysis in Section 2 to the Afghan context by highlighting the limitations of the major ACAs. Section 5 sets out three policy options for reforming Afghanistan's ACA system.

Research approach

Between October 2016 and March 2017 Transparency International engaged with various in-country stakeholders in order to undertake the research for this report. This consultation process included the following:

- convening a Transparency Forum on 22 November 2016, in Kabul, with participants from civil society, business and representatives of Afghanistan's ACAs and the international community;
- interviews with Kabul-based representatives of ACAs and individuals from Afghan civil society, the Afghan government, donors and the international community;
- consultations (written and via interviews) with international ACA experts between February and March 2017;
- holding a Transparency Conference on 12 and 13 March 2017, in Kabul, with participants from civil society, business and representatives of Afghanistan's ACAs and the international community.¹⁹

¹⁹ See Attachment A for further details and the profiles of participants.

1 TYPES AND ROLES OF ANTI-CORRUPTION AGENCIES

An anti-corruption agency (ACA) is a specialised organisation established by a government so as to minimise corruption in the country. An ACA is a publicly funded body of 'a durable nature, with a specific mission to fight corruption and reduce the opportunity structures propitious for its occurrence in society through prevention and repressive measures'.²⁰ More specifically, an ACA usually has these six features: (1) it is separate from other government agencies and focuses on preventing and controlling corruption; (2) it is a permanent and not a temporary organisation; (3) it is funded by the government; (4) it is accountable either to parliament, the justice ministry or the executive; (5) it centralises information on domestic corruption that is disseminated to the media and other law enforcement agencies; and (6) it is recognised by, and accessible to, the general public.²¹

A comparative study of the institutional arrangements for combating corruption in 14 countries found that ACAs commonly perform these functions: investigation; prosecution; education and awareness-raising; prevention; and coordination.²² Investigation is usually the most important function for most ACAs, but some ACAs, such as the Anti-Corruption and Civil Rights Commission (ACRC) in South Korea, cannot investigate corruption cases. In Latvia, the Philippines and Thailand, an important part of their ACAs' investigation function is to monitor the asset and liability declarations (and lifestyle) of senior public officials. Second, some ACAs are responsible for prosecuting corruption cases, but not all ACAs perform this function, because the mandate to prosecute is usually the responsibility of the Attorney General's Office in many countries.²³ The Independent Commission Against Corruption (ICAC) in Hong Kong and the Corrupt Practices Investigation Bureau (CPIB) in Singapore investigate corruption cases and refer these cases to the Attorney General's Office for prosecution only if there is sufficient evidence for conviction.

ACA FUNCTIONS

- *Investigation*
- *Prosecution*
- *Education and awareness-raising*
- *Prevention*
- *Coordination*

The third function, education and awareness-raising, is a key function for many ACAs. Hong Kong's ICAC has adopted a 'unique outreach programme' that has confirmed the importance of education and awareness-raising for combating corruption.²⁴ The ICAC's 'full-blown community relations strategy' has contributed to its success by communicating and winning support for its anti-corruption strategy.²⁵ Related to the educational function is the fourth function, prevention. Hong Kong's ICAC's Corruption Prevention Department (CPD) prevents corruption in the territory by reviewing the practices and procedures of government departments and public agencies to improve their work methods or procedures that are vulnerable to corrupt practices.²⁶ The Independent Commission Against Corruption in New South Wales, Australia, has strengthened its prevention function through

²⁰ De Sousa (2010), p. 5.

²¹ Charron (2008), p. 6.

²² UNDP (2005), p. 6.

²³ UNDP (2005), p. 7.

²⁴ UNDP (2005), p. 8.

²⁵ Scott (2013), pp. 80, 104–105.

²⁶ ICAC [Hong Kong] (2016a), p. 51.

its Corruption Prevention Division, which identifies and analyses corruption risks of sector-wide significance and makes corruption prevention recommendations to the government.²⁷

Finally, as the performance of the previous four functions requires coordination, ACAs are also responsible for coordinating the implementation of anti-corruption policies, including related strategies and action plans, as recommended in the UNCAC's articles 5 and 6. Even though this function is not always stated explicitly in an ACA's mandate, it should not be underestimated, because it is 'one of the most challenging aspects of anti-corruption work'.²⁸

There are two types of ACAs, depending on the scope of their functions: (1) Type A are those dedicated ACAs that perform only anti-corruption functions; and (2) Type B are those diffused ACAs that perform both anti-corruption-related and non-corruption-related functions.²⁹ Examples of Type A ACAs include Singapore's CPIB, and the ICAC in Hong Kong and New South Wales, Australia. On the other hand, South Korea's ACRC and the Philippines' Office of the Ombudsman (OMB) are Type B ACAs, which perform anti-corruption and other functions. Type B ACAs are less effective because they do not enjoy these two advantages of Type A ACAs: the 'centralisation of all necessary information and intelligence about corruption' and the 'resolution of coordination problems among multiple agencies through vertical integration'.³⁰

²⁷ ICAC [New South Wales] (2016b), p. 33.

²⁸ Doig, Williams and Ashour (2012), p. 13.

²⁹ See Appendix A, 'Type A versus Type B ACAs'.

³⁰ Meagher (2005), p. 80.

2 KEY PRINCIPLES FOR EFFECTIVE ANTI-CORRUPTION AGENCIES

There are three patterns of corruption control via ACAs in Asian countries.³¹ The first pattern applies to Japan and Papua New Guinea, which do not rely on ACAs to enforce their anti-corruption laws. The second pattern refers to Afghanistan, China, India, Pakistan, the Philippines, Taiwan and Vietnam, which rely on many ACAs to implement their anti-corruption laws. The third pattern, which relies on a single ACA to combat corruption, is practised by many Asian countries, including Bhutan, Hong Kong, Indonesia, Malaysia, Mongolia and Singapore, to name some examples.

The United Nations Convention against Corruption (UNCAC)³² provides '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'.³³ There are several important Articles, including Article 6 (emphasising the importance of creating an ACA or ACAs to prevent corruption),³⁴ Article 10 (requiring public reporting on corruption risks in public administration)³⁵ and Article 13 (emphasising the participation of civil society in corruption prevention and public awareness of the adverse consequences of corruption).³⁶ Furthermore, each 'signatory to the convention should ensure that the ACAs are known to the public and provide access for the reporting of corruption offences. Finally, Article 36, on specialised authorities, states that the ACA or ACAs should have trained personnel, adequate resources and independence in order to perform their functions effectively and without any undue external influence. The need for cooperation among national authorities and the private sector and for international cooperation is specified in Articles, 38, 39 and 43.³⁷

The participants attending an anti-corruption conference in Jakarta on 26 and 27 November 2012 recommended the adoption of 16 principles to enhance the independence and effectiveness of ACAs, which are summarised in Table 1. Some of the Jakarta Principles mirror the UNCAC articles mentioned in the previous paragraph. Apart from having a clear anti-corruption mandate, an ACA should be a permanent body that collaborates with other domestic and international agencies, and operates independently without political interference but with financial autonomy, and under the leadership of a head with security of tenure. The ACA should also be provided with adequate budget and personnel, be accountable for its actions and inform the public regularly of its activities.

³¹ Quah (2011), pp. 25–29.

³² The UNCAC was adopted by the United Nations (UN) General Assembly on 31 October 2003 at the UN headquarters in New York. It was signed by Afghanistan on 20 February 2004 and ratified on 25 August 2008.

³³ UNODC (2004), p. iii.

³⁴ Article 6, UNCAC

³⁵ Article 10, UNCAC

³⁶ Article 13, UNCAC

³⁷ UNODC (2004), pp. 10, 13, 15–16, 26–27.

Table 1 Jakarta Principles for ensuring Anti-Corruption Agencies' independence and effectiveness

No.	Principle	Definition
1	Mandate	Combating corruption through prevention, education, awareness-raising, investigation and prosecution, by relying on a single ACA or multiple coordinated ACAs.
2	Collaboration	ACAs should cooperate with state agencies, civil society, the private sector and other international agencies.
3	Permanence	ACAs are established by the Constitution or a special law to ensure their continuity and permanence.
4	Appointment	ACA heads are appointed through a transparent process that ensures their apolitical position, impartiality, neutrality, integrity and competence.
5	Continuity	When the ACA head is suspended, dismissed, resigns, retires or completes his/her tenure, all his/her powers are delegated by law to an appropriate ACA official until the appointment of his/her successor.
6	Removal	ACA heads have security of tenure and are removed only through a legally established procedure like the procedure for removing a key independent authority protected by law, such as the Chief Justice.
7	Ethical conduct	ACAs should adopt codes of conduct requiring the highest standards of ethical conduct from their staff and a strong compliance regime.
8	Immunity	ACA heads and personnel are immune and protected from civil and criminal proceedings for acts committed within the performance of their mandate.
9	Remuneration	ACA personnel are remunerated adequately to ensure that the ACA has a sufficient number of qualified staff to perform its functions.
10	Authority over human resources	ACAs have the power to recruit and dismiss their own staff according to clear and transparent internal procedures.
11	Adequate and reliable resources	ACAs have sufficient financial resources to perform their tasks, taking into account the country's budgetary resources, population size and land area. ACAs are entitled to timely, planned, reliable and adequate resources for the gradual capacity development and improvement of their operations and the fulfilment of their mandate.

12	Financial autonomy	ACAs should receive a budget that they manage and control without prejudice to the appropriate accounting standards and auditing requirements.
13	Internal accountability	ACAs should develop and establish clear rules and standard operating procedures, including monitoring and disciplinary mechanisms, to minimise misconduct or abuse of power by ACA personnel.
14	External accountability	ACAs should strictly adhere to rule of law and be accountable to mechanisms established to prevent abuse of power.
15	Public reporting	ACAs should formally report at least annually on their activities to the public.
16	Public communication and engagement	ACAs should communicate and engage with the public regularly to ensure public confidence in their independence, fairness and effectiveness.

Source: UNODC (2012), pp. 2–3.

An effective ACA should perform a ‘watchdog role’ – that is, acting as an independent ACA that investigates all corruption cases, without fear or favour and regardless of the position or status of those being investigated.³⁸ Luis de Sousa has defined an ACA’s independence as ‘the capacity to carry out its mission without political interference, that is, operational autonomy’.³⁹ Singapore’s CPIB and Hong Kong’s ICAC have performed this watchdog role, and they have been described as good examples of ACAs with high *de facto* independence and high operational impartiality.⁴⁰ The CPIB’s extensive powers to investigate corruption cases are supported by the political leaders, who do not interfere in its daily operations.

An ACA system must be built on a strong legal basis for its mandate.⁴¹ The ACA must also be provided with adequate personnel and funding so as to be able to perform its anti-corruption functions effectively.⁴²

The ACA must enforce the anti-corruption laws impartially, because its credibility will be undermined if it devotes all its efforts to combating petty corruption by convicting ‘small fish’ and ignoring grand corruption by the rich and powerful individuals in the country.⁴³ Curbing petty corruption is also important in those countries where citizens have to pay bribes for basic services, such as Afghanistan. Learning from the success of Singapore and Hong Kong in combating corruption, it is necessary to avoid relying on the police to curb corruption when there is widespread police corruption in the country, because ‘this would be like giving candy to a child, expecting that it would not be eaten’.⁴⁴

Similarly, in the Afghanistan context, when the Attorney General’s Office (AGO) has mandate to investigate corruption cases, internal integrity within the AGO is necessary to ensure the ACA system’s credibility and effectiveness. In addition to independence from the police, the ACA must

³⁸ See Attachment B, ‘Three roles for an ACA in combating corruption’.

³⁹ De Sousa (2010), p. 13.

⁴⁰ Gregory (2015), pp. 130–131.

⁴¹ For example, the Prevention of Corruption Act 1960 in Singapore identifies the CPIB’s director in section 2 and specifies his/her powers and those of his/her officers in sections 15 to 20. See Quah (2007), pp. 19–20.

⁴² An analysis of the per capita expenditures of nine Asian ACAs in 2008 shows that Hong Kong’s ICAC receives the highest per capita expenditure, of US\$13.40, followed by Singapore’s CPIB, with per capita expenditure of US\$2.32. Both these ACAs are high performers and sufficiently resourced to be able to perform their mandates effectively. The level of per capita expenditure is also an indication of the political will to fight corruption. See Quah (2011), p. 455.

⁴³ If the ‘big fish’ are protected and not prosecuted, the ACA will lack credibility and will be used as an ‘attack dog’ by the government against its political opponents. See Attachment B, ‘Three roles for an ACA in combating corruption’.

⁴⁴ Quah (2004), pp. 1–2.

also be independent from political control by the political leaders, in two respects. First, the political leaders must not interfere in the ACA's daily operations. Second, the ACA must be able to investigate all political leaders, senior civil servants and community leaders impartially, without fear or favour.⁴⁵

The ACA must be incorruptible itself, for two reasons. First, if the ACA's personnel are corrupt, its legitimacy and public image will be undermined because its officers have broken the law by being corrupt themselves when they are required to enforce the law. Second, corruption among the ACA's staff not only discredits the agency but also prevents it from performing its duties impartially and effectively.

“To ensure its integrity, the ACA must be staffed by honest and competent personnel. Overstaffing or understaffing should be avoided and any staff member found guilty of corruption must be punished and dismissed.”

Details of the punishment of corrupt staff must be widely publicised in the mass media to serve as a deterrent to others, and to demonstrate the ACA's integrity and credibility to the public.⁴⁶

The importance of public reporting by the ACA and its engagement with civil society and other community-based organisations are recognised by both the UNCAC's Articles 10 and 13 and the Jakarta Principles 15 and 16. This means that, to be effective, an ACA should initiate a community relations programme to educate the public on the negative effects of corruption and mobilise their support for its anti-corruption activities.⁴⁷

Finally, a key overarching precondition for the effectiveness of an ACA system is political will or the sustained commitment of the political leaders to minimise corruption in the country by initiating and implementing appropriate measures to address the causes of corruption. 'political will' has been defined as 'the demonstrated credible intent of political actors (elected or appointed leaders, civil society watchdogs, stakeholder groups, etc.) to attack perceived causes or effects of corruption at a systemic level'.⁴⁸ The success of some ACAs⁴⁹ in addressing and preventing corruption has promoted the belief that single ACAs are effective in combating corruption,⁵⁰ resulting in a proliferation of ACAs around the world as a solution to the corruption problem.⁵¹

The actual performance of many Asian ACAs has been disappointing, because of their governments' weak political will, as reflected in their 'inadequate legal powers, limited budgets, lack of trained personnel, and lack of independence'.

⁴⁵ Quah (2008), pp. 96, 102.

⁴⁶ Quah (2000), pp. 111–114.

⁴⁷ This is shown by the Hong Kong ICAC's effective community relations strategy. The ICAC's annual reports and other publications are available online in English and Mandarin on its website: www.icac.org.hk.

⁴⁸ Kpundeh (1998), p. 92.

⁴⁹ Such as Singapore's CPIB and Hong Kong's ICAC.

⁵⁰ UNDP (2011), p. 8.

⁵¹ De Jaegere counted 150 ACAs worldwide in 2012: see De Jaegere (2012), p. 80.

3 OVERVIEW OF AFGHANISTAN'S ACAS AND SUPPORTING AGENCIES

As shown in Table 2, Afghanistan relies on several ACAs to perform the anti-corruption functions in its difficult governance environment.

Table 2 Afghanistan's Anti-Corruption Agencies and supporting agencies⁵²

Institution	Functions
High Council of Governance, Rule of Law and Anti-Corruption (HCAC)	Broad mandate of preventing corruption, civil awareness and public accountability (see Section 4 below).
High Office of Oversight and Anti-Corruption (HOOAC)	<ol style="list-style-type: none"> 1. Preventing corruption by simplifying administrative procedures. 2. Preventing corruption by registering and verifying assets of public officials. 3. Evaluating anti-corruption activities of government agencies. 4. Receiving and investigating complaints.
Civilian Anti-Corruption Prosecution Departments (CACPDs) within the Attorney General's Office (AGO)	Investigation and prosecution of most petty corruption offences by the civilian population (under the AGO's mandate to investigate and prosecute crimes).
Military Anti-Corruption Prosecution Departments (MACPDs) within the AGO	Investigation and prosecution of petty corruption offences by police and military personnel (under the AGO's mandate to investigate and prosecute crimes).
Anti-Corruption Tribunals (ACTs)	Adjudication of petty corruption offences by civilians, police and military personnel.

⁵² See Attachment A, 'Afghanistan's ACA functions'.

Anti-Corruption Justice Center (ACJC)	Detection, investigation, prosecution and adjudication of grand corruption offences by all individuals under its jurisdiction and all corruption offences by senior officials (excluding ministers and ex-ministers).
Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC)	Preventing corruption by developing anti-corruption recommendations and monitoring and evaluating anti-corruption efforts.
Financial Transactions and Reports Analysis Center of Afghanistan (FinTRACA)	Combating money-laundering and terrorism financing in Afghanistan by providing financial intelligence to the Attorney General's Office, law enforcement agencies, other government agencies and international agencies.
Supreme Audit Office (SAO)	Enhancing fiscal transparency and public accountability by overseeing and auditing the financial activities of the government, government-funded organisations and public-private partnerships.
Office of the President Special Representative for Reform and Good Governance (OPSR)	Promoting good governance by implementing priority reforms to increase the effectiveness, efficiency, accountability and transparency of government.

Source: Compiled by Professor Jon Quah (March 2017).

Afghanistan's anti-corruption agencies

The first ACA in Afghanistan, the General Independent Administration for Anti-Corruption (GIAAC), was ineffective and was replaced by the High Office of Oversight and Anti-Corruption (HOOAC) in July 2008 as a Type B ACA⁵³ (one that performs both anti-corruption-related and non-corruption-related functions) to initiate administrative reforms and anti-corruption measures. The HOOAC was established by Presidential Decree no. 61 of 2010 and, as will be explained below, could not investigate corruption cases⁵⁴ since its mandate was reduced in 2015 to include only administrative procedures and the registration of the assets of public officials. A third function, of evaluating the anti-corruption activities of other government agencies, was added in 2016. The HOOAC is also responsible for registering and verifying the asset declaration forms of public officials,⁵⁵ and its amended legislation (October 2016) allows it to impose penalties for non-compliance.⁵⁶

⁵³ See Appendix A, 'Type A versus Type B ACAs'.

⁵⁴ Article 134 of the Afghan constitution has entrusted the police with combating crime and the AGO with investigation and prosecution. Therefore, any ACA system reforms must ensure that these powers remain within the AGO.

⁵⁵ In its annual report for 2016, the HOOAC indicated that it had collected 7,636 (55.4 per cent) of the 13,794 asset declaration forms it had distributed. Furthermore, 6,636 (48.1 per cent) of the collected forms were recorded in the database, and only 277 cases (4.2 per cent) were under verification, with 234 completed cases (3.5 per cent). HOOAC (2016), p. 1.

⁵⁶ The HOOAC revealed on 4 January 2017 that 15 governors had not registered their personal assets declaration forms, which had been sent to them a year earlier, and requested government agencies to impose sanctions on these individuals. In addition, 15 other senior officials had also not registered their assets. *Daily Outlook Afghanistan* (2017).

Originally the functions of investigating and prosecuting all corruption offences were performed by the Civilian Anti-Corruption Prosecution Departments (CACPDs) and the Military Anti-Corruption Prosecution Departments (MACPDs) in the Attorney General's Office. Following the establishment of the Anti-Corruption Justice Center in June 2016, however, the AGO's Civilian and Military Anti-Corruption Prosecution Departments have been responsible only for investigating and prosecuting 18 petty corruption offences⁵⁷ committed, respectively, by civilians and by police and military personnel. The ACJC is now responsible for investigating and prosecuting senior public officials (excluding ministers and ex-ministers) for all crimes of corruption, and grand corruption offences committed by all individuals under its jurisdiction (see Section 4 below for further discussion on the ACJC). The Anti-Corruption Tribunals (ACTs) deal with cases referred to them by the AGO's Civilian and Military Anti-Corruption Prosecution Departments, as well as the AGO's National Security Prosecution Department.⁵⁸

Afghanistan's anti-corruption supporting agencies

The Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC) was formed by Presidential Decree no. 61 and replaced by Presidential Decree no. 115 in 2016, which granted it operational independence.⁵⁹ The MEC's mandate is to develop anti-corruption recommendations, monitor and evaluate anti-corruption efforts and report regularly to the president and parliament on the progress of anti-corruption efforts.

The Financial Transactions and Reports Analysis Center of Afghanistan (FinTRACA) was established under the Anti-Money Laundering and Proceeds of Crime Law in 2006 to combat money-laundering and terrorism financing in Afghanistan. FinTRACA combats money-laundering and terrorism financing in Afghanistan by providing financial intelligence to the Attorney General's Office, law enforcement agencies, other government agencies and international agencies. It has responded to 138 (95 per cent) of the 145 requests received. Additionally, FinTRACA receives large cash transfer and suspicious transaction reports from commercial banks and money exchanges and conducts analysis and refers cases to law enforcement agencies.

The remaining three agencies in Table 2 that are not ACAs are the High Council of Governance, Rule of Law and Anti-Corruption, which is an advisory and oversight body, but it is important for securing political support for the implementation of anti-corruption reforms,⁶⁰ the Office of the President Special Representative for Reform and Good Governance (OPSR)⁶¹ and the Supreme Audit Office (SAO).⁶²

Table 3 provides a summary of the legal basis, functions, personnel and independence of the ACAs in Afghanistan and the supporting agencies, namely the High Office of Oversight and Anti-Corruption (HOOAC), the High Council of Governance, Rule of Law and Anti-Corruption (HCAC), the Anti-Corruption Justice Center (ACJC), the Attorney General's Office's Civilian and Military Anti-Corruption Prosecution Departments (CACPDs and MACPDs), the Anti-Corruption Tribunals (ACTs), the Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC), the Supreme Audit Office (SAO), the Office of the President Special Representative for Reform and Good Governance (OPSR) and the Financial Transactions and Reports Analysis Center of Afghanistan (FinTRACA).

⁵⁷ Article 3 of the Law on Overseeing the Implementation of the Anti-Administrative Corruption Strategy, OG no. 957.

⁵⁸ The National Security Prosecution Department is within the AGO and its mandate is to investigate and prosecute all crimes concerning internal and external security. It is not an ACA but it plays a referral role.

⁵⁹ Originally the MEC was envisaged as being part of the HOOAC to enable it to perform the functions of preventing corruption and evaluating the anti-corruption activities of other government agencies. The MEC remains as an operationally independent agency outside the purview of the HOOAC, however.

⁶⁰ See Sections 4 and 5 below for an overview of the High Council of Governance, Rule of Law and Anti-Corruption.

⁶¹ The OPSR was established by Presidential Decrees nos. 49 in 2006 and 92 in 2015 to promote good governance by initiating priority reforms to increase the effectiveness, efficiency, accountability and transparency of the government.

⁶² The SAO (previously the Control and Audit Office) was renamed in 2013 under the Audit High Administration Law. Its mandate is to improve fiscal transparency and public accountability in Afghanistan by overseeing and auditing the financial activities of the government, government-funded organisations and public-private partnerships.

Table 3 Afghanistan's anti-corruption agencies and supporting agencies⁶³

ACA	HOOAC (2008)	HCAC (2016)	ACJC (2016)	AGO: CACPDs and MACPDs 2009/2010	Supreme Court: Anti-Corruption Tribunals (2010)	MEC (2011)	SAO (2013)	OPSR (2015)	FinTRACA (2006)
LEGAL BASIS	Presidential Decree no. 61	Presidential Decrees nos. 168 and 94	Presidential Decree no. 53	Law on Overseeing the Implementation of the Anti-Administrative Corruption Strategy	Law on Overseeing the Implementation of the Anti-Administrative Corruption Strategy	Presidential Decrees nos. 61 and 115	Audit High Administration Law	Presidential Decrees nos. 49 and 92	Anti-Money Laundering and Proceeds of Crime Law
FUNCTIONS	1. Simplification of administrative procedures; 2. asset registrations; 3. evaluation of anti-corruption activities of government agencies	1. Preventing corruption; 2. increasing civil awareness; 3. ensuring public accountability	Detection, investigation, prosecution and conviction of corruption cases committed by high-ranking officials and any acts of major crimes of corruption by any individual	Investigation and prosecution (petty corruption)	Conviction (petty corruption)	1. Developing anti-corruption recommendations; 2. monitoring and evaluating anti-corruption efforts; 3. reporting regularly to the president and parliament on progress in war on corruption	To oversee and audit the financial activities of the government, government-funded organisations and public-private partnerships to enhance fiscal transparency and public accountability	To promote good governance by undertaking priority reforms to increase the effectiveness, efficiency, accountability and transparency of the government	To receive, analyse and disseminate financial intelligence to the AGO, other government agencies and international agencies to help combat money-laundering and the financing of terrorism
PERSONNEL	Senior (20), operational (260), support (110); total (390)	Chaired by the president, and members are high-level NUG officials, three subcommittees and a secretariat	Executive directorate (19), judiciary (32), prosecution (37), detection (150); total (219)	52 professional administrative staff (CACPD), 33 professional staff (MACPD) and eight administrative staff	14 judges, 20 administrative staff	Six commissioners (3 foreign and 3 local), appointed by the president for two years; the secretariat consists of 25 professional and 15 support staff; total (46)	258 professional staff, 63 administrative staff (321 or 69% of its establishment), 98 support staff; total (419)	One special adviser, eight advisers, six experts and four assistants; total (19)	Director, deputy director, 19 managers, 32 senior officers, four support staff; total (57)
INDEPENDENCE	Budget approved by parliament and director appointed and accountable to president without fixed tenure	Advisory and oversight body, not an ACA, and not independent, as it is chaired by the president and includes heads of agencies	ACJC personnel come under the purview of the Supreme Court, the Attorney General's Office and the Ministry of Interior Affairs.	The CACPDs report to the deputy attorney general for investigation affairs; the MACPDs report to the deputy attorney general in military affairs; the budget is provided by the AGO	The ACTs report monthly to the Supreme Court; their budget is administered through the Supreme Court	Budget from donors; the MEC is accountable and reports to the president and donors	The budget is provided by the Ministry of Finance; the auditor general is appointed by the president for six years and is accountable to him and parliament	The budget is provided by the government	DAB

⁶³ Note 1: the HOOAC, SAO and FinTRACA have implied detection functions as they can directly refer cases to the AGO. Note 2: the Independent Administration Reform Civil Service Commission (IARCSC), National Directorate of Security (NDS) and each institutions' internal audit units are also anti-corruption supporting bodies.

4 LIMITATIONS OF AFGHANISTAN'S ACAS

Among the seven Asian countries that rely on multiple ACAs, the Philippines' experience with many ACAs is perhaps the most relevant for analysing Afghanistan's ACAs' performance. The weak political will of political leaders in the Philippines is reflected in their continued reliance on ineffective multiple ACAs without making any improvements to enhance their effectiveness. Instead of coordinating their activities and cooperating with each other, these ACAs compete for recognition, personnel and resources because they are understaffed and poorly funded.⁶⁴ Their overlapping jurisdictions diffuse anti-corruption efforts, and result in 'poor coordination in policy and programme implementation, weak management and wastage of resources'.⁶⁵

Like the ACAs in the Philippines, Afghanistan's ACAs also suffer from duplication and overlapping of functions, a lack of independence, a weak legal basis, limited budgets, weak capacity in terms of their personnel and a lack of coordination. For example, the function of preventing corruption is shared between three agencies: the High Council of Governance, Rule of Law and Anti-Corruption (HCAC), the High Office of Oversight and Anti-Corruption (HOOAC) and Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC). The HCAC's mandate includes preventing corruption but, one year on from when it was formed in March 2016, it has not formulated any corruption prevention programme. The HOOAC's corruption prevention mandate is limited to the simplification of administrative procedures and the registering of the asset declarations of public officials. The MEC seeks to prevent corruption by developing anti-corruption recommendations, and monitoring and evaluating the anti-corruption measures of government agencies.

Similarly, the functions of investigating and prosecuting corruption cases are shared between multiple ACAs: the AGO's Civilian and Military Anti-Corruption Prosecution Departments (CACPDs and MACPDs) and the Anti-Corruption Justice Center (ACJC). The AGO's Civilian and Military Anti-Corruption Prosecution Departments (CACPDs and MACPDs) are responsible for petty corruption offences committed, respectively, by the civilian population and police and military personnel. The ACJC focuses on the investigation and prosecution of corruption cases involving senior public officials and major crimes (grand corruption) committed by any individual within its jurisdiction.

High Office of Oversight and Anti-Corruption

Perhaps the best way to illustrate the problems facing the ACAs in Afghanistan is to highlight the limitations of the oldest ACA, the High Office of Oversight and Anti-Corruption (HOOAC). In 2016 Transparency International and Integrity Watch Afghanistan (IWA) undertook a National Integrity System (NIS) assessment of Afghanistan⁶⁶ and found that the HOOAC was 'one of the weakest agencies within the Afghan state structure', because of 'its inadequate laws, lack of independence, allegations of corruption, and, above all, weak leadership capacities'. The NIS assessment found that the HOOAC was the least productive NIS pillar with the 'fewest concrete results' and 'the lowest public confidence'. The NIS assessed that the HOOAC failed because of 'its over-ambitious mandate' and its 'parallel functions' to other government agencies.⁶⁷

The HOOAC's leadership is not fully independent. The Director General is appointed by the President (there is no transparent appointment procedure) and does not have a fixed term of tenure.⁶⁸ This means that the president can appoint or dismiss the director general easily without

⁶⁴ Gabriella Quimson has observed that the proliferation of ACAs in the Philippines has led to 'duplication, layering and turf wars': Quimson (2006), p. 30.

⁶⁵ Oyamada (2005), p. 99.

⁶⁶ The NIS assessment (IWA 2016a) reviewed 12 pillars. p.173.

⁶⁷ IWA (2016a), p. 110.

⁶⁸ Article 8 of the Law on Overseeing the Implementation of the Administrative Anti-Corruption Strategy.

any safeguards. Additionally, the HOOAC's leadership is not politically impartial, and its political affiliation has eroded its legitimacy in delivering its mandate.⁶⁹

The HOOAC's mandate is further weakened by its lack of investigative powers, as it cannot collect information and assess whether a complaint requires investigation by other government agencies. Although investigative powers were included in the HOOAC's earlier mandate,⁷⁰ it was unable to exercise these functions, as Article 134 of the Afghan Constitution entrusts the police with detecting crime and the AGO with investigation and prosecution; it is therefore unconstitutional for the HOOAC to conduct such investigations.

The HOOAC's third limitation is that it is under-resourced. Its original requirement for 500 personnel has still not been achieved after eight years,⁷¹ and its personnel are not recruited through a transparent, merit-based process and are not adequately trained and effective in fulfilling their duties.⁷²

In view of the HOOAC's ineffectiveness during the past eight years, it would be extremely difficult to justify its continued existence without revising its mandate and rebranding the organisation to improve its public perception and credibility. To enhance the HOOAC's effectiveness it is necessary to change its focus and improve its independence and internal integrity, as will be recommended in the next section. Additionally, gaining public trust in the ability of the HOOAC to effectively and impartially address corruption will be critical for its success. Ensuring internal integrity and external accountability will be key steps in developing and securing this trust.

High Council of Governance, Rule of Law and Anti-Corruption

The broad mandate of the High Council of Governance, Rule of Law and Anti-Corruption (HCAC) includes preventing corruption, increasing civil awareness and ensuring public accountability.⁷³ It has three subcommittees:⁷⁴ (1) the Legislative Subcommittee;⁷⁵ (2) the Judicial Subcommittee;⁷⁶ and (3) the Anti-Corruption Subcommittee.⁷⁷

The HCAC is chaired by the President, and its members are senior government officials.⁷⁸ To support the HCAC's activities, there is a secretariat, based within the Administrative Office of the

⁶⁹ IWA (2016a), p. 113.

⁷⁰ In 2010, facing pressure from the international community, President Karzai promoted the HOOAC's professional staff as judicial record officers to provide them with 'the authority to collect, document and investigate evidence related to corruption suspects, and present it to the AGO'. The AGO did not cooperate, however, because the expansion of the HOOAC's mandate from a supervisory to an investigative organisation was contrary to article 134 and not accompanied by an increase in its investigative capacity. IWA (2016a), p. 112.

⁷¹ The HOOAC staff level increased from 473 to 503 from 2013 to 2014 but was then reduced to 131 in 2015. Similarly, the HOOAC's budget was increased from US\$2.8 million to US\$5.3 million for the recruitment of new staff during 2013/2014, but then cut to US\$4 million in 2015 following the downsizing of the HOOAC's functions and personnel. Interview with HOOAC official, January 2017; and IWA (2016a), p. 111.

⁷² Transparency Forum participants (Kabul, March 2017).

⁷³ Presidential Decree no. 94, of 18 October 2016, lists the HCAC's seven functions in article 3: (1) formulating a national strategy for enhancing rule of law, administration of justice and anti-corruption; (2) endorsing the decisions of the legislative, judicial and anti-corruption subcommittees; (3) supporting the ACJC's decisions; (4) coordinating donor funding for its programmes; (5) providing guidance to government agencies to implement programmes promoting the HCAC's objectives; (6) providing guidance and support to the three subcommittees; and (7) receiving reports from those government agencies and non-governmental organisations that come under the HCAC's mandate.

⁷⁴ Article 4 of Presidential Decree no. 94.

⁷⁵ For prioritising, analysing and amending legislative documents before presentation to the Cabinet and advising the president on the ratification of new laws.

⁷⁶ For overseeing and implementing the national judicial reform programme, providing access to justice for citizens and resolving special judicial problems and cases referred to it by the HCAC, Cabinet, National Security Council or other agencies.

⁷⁷ For conducting research and providing advice on corruption prevention, cooperating with the ACJC and promoting civil and public awareness of corruption.

⁷⁸ They include the Chief Executive Officer (CEO); the Vice President; the Chief Justice; the Presidential Advisers on Transparency and Anti-Corruption Affairs; the Minister of Justice; the Attorney General; the Director of the Supreme Audit Office; the HOOAC Director; and the Director of the Independent Directorate of Local Governance (article 2).

President.⁷⁹ The HCAC is required to meet once a month (according to Presidential Decree no. 94) but it has met only five times during its first eleven months. So far there is no evidence that the HCAC has performed any of its anti-corruption duties, and the three subcommittees have not formulated their work plans. During its first meeting, on 28 July 2016, the HCAC approved the appointment of its members and the establishment of the Anti-Corruption Justice Center.

The HCAC's anti-corruption functions should be limited to an advisory and oversight capacity only; it is not an ACA, but it is important for securing political support for the implementation of anti-corruption reforms. Due to its composition it cannot be an independent ACA⁸⁰ (and therefore should not have a mandate to implement ACA functions; for further information, see Section 5 below). The president and HCAC members should not interfere in the daily operations of the agencies represented through its membership or protect any HCAC member from prosecution if he or she is found guilty of a corruption offence.

Anti-Corruption Justice Center

The Anti-Corruption Justice Center (ACJC) was established on 30 June 2016, by Presidential Decree no. 53, to detect, investigate, prosecute and adjudicate corrupt offences committed by high-ranking officials (excluding ministers and ex-ministers) and the following acts of corruption committed by all individuals under its jurisdiction: (1) bribery exceeding AFN 5 million (around US\$74,600); (2) embezzlement of more than AFN 10 million (some US\$149,000); (3) money-laundering; (4) illegal mining; (5) land grabbing; and (6) smuggling historical artefacts.⁸¹ This means that the ACJC is concerned only with investigating and prosecuting corruption cases committed by high-ranking officials and any act of grand corruption by an individual under its jurisdiction.

The ACJC is led operationally by an Executive Director and has five units: Primary and Appeals Courts; Primary and Appeals Civil Prosecution Departments; Primary and Appeals Military Prosecution Departments; Criminal Investigation Prosecution Department; and the Major Crimes Task Force (MCTF). Additionally, the jurisdiction of these five units is shared between the Supreme Court (regarding the Primary and Appeals Courts), the AGO (regarding the Executive Director and the Primary and Appeals Prosecution Departments) and the Ministry of Interior Affairs (regarding the MCTF). As the division of the jurisdictions of the ACJC units by the Supreme Court, AGO and Ministry of Interior Affairs is in accordance with articles 120, 122 and 134 of the constitution of Afghanistan, strong cooperation and coordination is required between their respective personnel in order to be effective in implementing the ACJC's mandate.

Given the shared jurisdiction of the ACJC with the AGO, Supreme Court and Ministry of Interior Affairs, its appointment, recruitment and vetting processes are not uniform. AGO personnel are subject to the AGO's internal vetting mechanisms, and the vetting process in the ACJC's courts is conducted by the Supreme Court. Furthermore, the ACJC had previously introduced additional recruitment processes for judges, prosecutors and police interrogators. The heads of the Primary and Appeals Courts, the head of each prosecution unit, and the MCTF head are appointed by presidential decrees after being recommended by their respective institutions. Article 132 of the Afghan constitution requires that the appointment of all judges, including the ACJC's judges, is approved by the president on the proposal of the Supreme Court. There is also a department in the Supreme Court that is responsible for managing the appointment, vetting and rotation of judges. The ACJC had previously introduced additional recruitment processes for judges, prosecutors and police interrogators, however, which were additional to the processes already within each jurisdiction (AGO, Supreme Court and Ministry of Interior Affairs).

The ACJC's Executive Director is recruited through and is accountable to the AGO. This undermines his or her ability to oversee the ACJC's total operations, particularly as AGO staff cannot legally manage the operations of Supreme Court and Ministry of Interior Affairs staff. Subsequently, this

⁷⁹ The Secretariat's nine duties are specified in article 5 of Presidential Decree no. 94. During February 2017 the secretariat was in the process of hiring four permanent staff members, and on 15 March 2017 two staff members were appointed.

⁸⁰ In addition to the president, who is the chairman, there is a conflict of interest, because the HCAC membership includes the heads or directors of the agencies under its supervision (including the CEO, Supreme Court chief justice and attorney general).

⁸¹ Supreme Court High Council decision 29/4/1395.

has impacted on the level of coordination the ACJC has received from the Supreme Court and the Ministry of Interior Affairs.

A major limitation of the ACJC is that its mandate does not include acts of corruption committed by ministers and ex-ministers. Under article 78 of the Constitution, ministers must be prosecuted by the Attorney General⁸² and tried under a Special Court.⁸³ This has been extended to ex-ministers under article 3 of the Law on Organisation and Jurisdiction of Special Courts.

Military and Civilian Anti-Corruption Prosecution Departments

An effective ACA system also requires a functioning AGO in order to investigate and prosecute corruption cases impartially. The AGO's Civilian and Military Anti-Corruption Prosecution Departments (CACPDs and MACPDs) are mandated to investigate and prosecute all corruption cases falling outside the jurisdiction of the ACJC.⁸⁴ The heads of these departments are not appointed and removed through transparent processes, however, and do not have fixed tenure, which compromises their independence and effectiveness. Additionally, staff within these departments receive inadequate training in specialised anti-corruption skills and content. This impedes their ability to investigate and prosecute cases of corruption within their mandate. There is also a lack of cooperation and coordination between the MACPDs and CACPDs and other agencies,⁸⁵ reducing the effectiveness of the ACA system. Furthermore, although the AGO is required to extend these units to provincial level,⁸⁶ it has not done so to date.⁸⁷

⁸² For prosecuting cases against ministers and ex-ministers, these cases are investigated by two high-ranking and experienced prosecutors, led by the attorney general. See article 5, para. 1, Law on Organisation and Jurisdiction of Special Courts (Official Gazette no. 1033, 26 July 2010).

⁸³ For adjudicating cases against ministers, the Supreme Court must establish Special Courts consisting of three members of the Supreme Court. See article 11, para. 1, Law on Organisation and Jurisdiction of Special Courts (Official Gazette no. 1033, 26 July 2010).

⁸⁴ Note that, under section 78 of the constitution, ministers can be adjudicated only in Special Courts. The Law on Organisation and Jurisdiction of Special Courts extends this to also cover ex-ministers for acts undertaken during their time in office.

⁸⁵ Transparency International interview, November 2016.

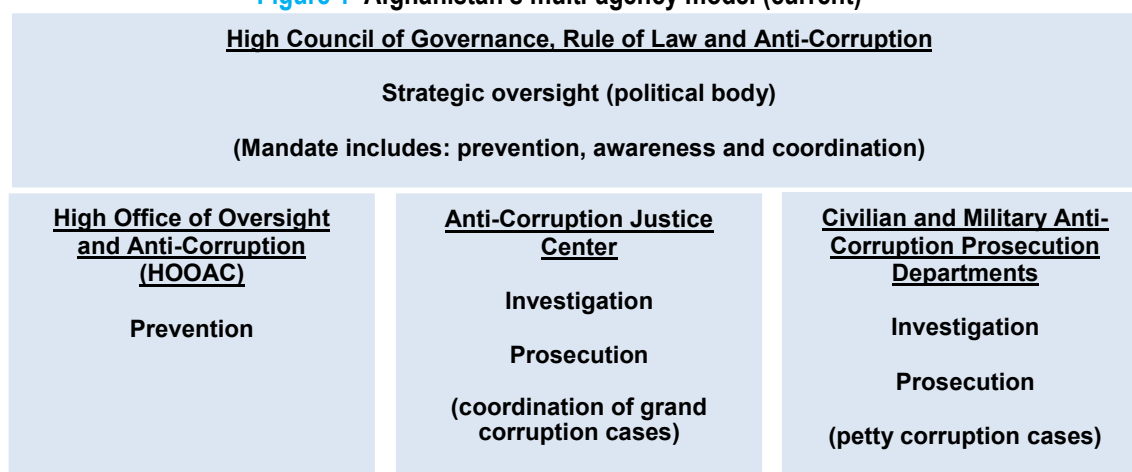
⁸⁶ Law on Overseeing the Implementation of the Anti-Administrative Corruption Strategy, OG no. 957.

⁸⁷ Reasons include a lack of political will and insufficient budget: Transparency International interview.

5 POLICY OPTIONS FOR ENHANCING THE ACAS' EFFECTIVENESS

Afghanistan's multi-agency ACA model distributes the main anti-corruption functions between four bodies (depicted in Figure 1 below): the High Council of Governance, Rule of Law and Anti-Corruption (HCAC), the Anti-Corruption Justice Center (ACJC), the AGO's Civilian and Military Anti-Corruption Prosecution Departments (CACPDs and MACPDs) and the High Office of Oversight and Anti-Corruption (HOOAC). Notably, Figure 1 illustrates clearly that the education function has been neglected by these agencies (see also Table 2 above).

Figure 1 Afghanistan's multi-agency model (current)



To address the limitations of Afghanistan's major ACAs,⁸⁸ three policy options are outlined below.⁸⁹

- Option 1** Establish a new, independent Type A ACA
- Option 2** Set up a two-agency model (ACJC and HOOAC)
- Option 3** Maintain the multiple-agency model with reforms to the current ACAs

The three options apply the following key principles, which are essential for any ACA reforms to incorporate: (1) all ACA functions should be present in Afghanistan's ACA system;⁹⁰ (2) the new Anti-Corruption Law⁹¹ should clearly specify which ACA functions are allocated to each ACA, ensuring clear mandates with a strong legal basis; (3) the Anti-Corruption Law should include additional provisions supporting the ACAs' independence, particularly regarding the appointment, removal and fixed tenure for the ACAs' leadership, and budgetary independence; (4) the ACAs should be well resourced to enable them to carry out their functions and their budgets should be protected; (5) the ACAs' case selection processes should be transparent and independent of external and internal interference; and (6) the Anti-corruption law should require coordination and

⁸⁸ See Sections 3 and 4.

⁸⁹ See also Appendix D for Options 2 and 3, 'Summary of recommendations'.

⁹⁰ ACAs' functions are: investigation, prosecution, education and awareness-raising, prevention and coordination. See Section 1.

⁹¹ In draft form at the time of publication (March 2017).

cooperation between the ACAs. Furthermore, ACA system must be adequately resourced to allow for provincial-level presence, in addition to Kabul.⁹²

Additionally, the ACAs must undergo extensive internal reform; a crucial first step is to appoint honest, independent leaders with secure tenure to lead their institutions impartially, without fear or favour.⁹³ This, in the context of Afghanistan, may be the biggest challenge of all. Moreover, the integrity of the ACAs' personnel must be ensured by recruiting honest and trained personnel who are required to adhere to a strict code of conduct⁹⁴ and will be punished if they are found guilty of corruption.⁹⁵ Therefore, in addition to clarifying Afghanistan's ACA model, the Anti-Corruption Law should include complementary measures creating accountability mechanisms to investigate and prosecute acts of corruption committed by ACA staff, including punishment if they are found guilty of corruption and special provisions to make these cases publicly available after adjudication.

Any attempt to review and recommend changes to Afghanistan's ACA system must take into account Article 134 of the Afghan Constitution, which entrusts the police with detecting crime and the AGO with investigation and prosecution. Therefore, any ACA system reforms must ensure that these powers remain within the AGO; an operationally independent ACA in Afghanistan cannot have its own investigation powers. Additionally, Article 122 of the Constitution has entrusted the judiciary with the exclusive mandate to adjudicate, including corruption offences.

Although deciding on an effective ACA model is a crucial step in developing an effective ACA system, it is only one piece of a larger puzzle; any ACA model in Afghanistan will be operating within the context of a weak rule of law, including poor judiciary, and high levels of insecurity. Therefore, any decision on which ACA model to adopt must be pursued as part of the government's broader reform agenda, including ongoing reforms to the Attorney General's Office and the judiciary. Political will and leadership will be essential to support any proposed reforms if they are to be effective.

ACA EFFECTIVENESS

*The effectiveness of ACAs is highly dependent on an independent, impartial judicial sector that can effectively and efficiently adjudicate corruption cases. According to Transparency International's Global Corruption Barometer 2013, however, the judiciary in Afghanistan is perceived to be the most corrupt institution, with a score of 3.7, while the police are ranked fifth, with a score of 2.9. These results were reaffirmed by Integrity Watch Afghanistan's National Corruption Survey in 2016, which found that judges and prosecutors were perceived to be the most corrupt by 49 per cent of the respondents, followed by the courts, with 46 per cent of respondents.*⁹⁶

The three options set out below require further examination to assess the legal, political and institutional requirements to implement such reforms effectively.

⁹² Developing a suitable ACA model operating at national level is not sufficient to address most types of corruption occurring across the country, particularly petty corruption, which is highly prevalent in the provinces and has the most impact on the everyday lives of Afghans.

⁹³ Quah (2008), pp. 96, 102.

⁹⁴ Following Jakarta Principle 7.

⁹⁵ Following Jakarta Principles 13 and 14.

⁹⁶ IWA (2016, p. 26).

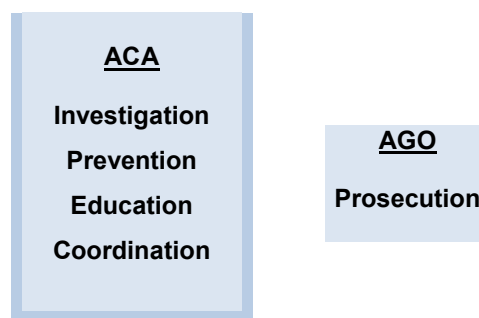
OPTIONS

Option 1 (one ACA) should be preferred over the longer term, as it would be the strongest model for addressing and preventing corruption in Afghanistan. Given the current constitutional limitations, however, this is not feasible in the absence of constitutional reform. Options 2 and 3 both expand the mandate of the High Office of Oversight and Anti-Corruption (HOOAC) to include prevention, education/awareness-raising and coordination functions – while stressing the importance of reforming the HOOAC – in addition to strengthening other ACAs. Option 2 (the two-agency model) proposes additional reforms to bring all anti-corruption case work within one institution, the Anti-Corruption Justice Center (ACJC), alongside a reformed and strengthened HOOAC exercising all remaining ACA functions. Option 3 (the multi-agency model) proposes a reformed HOOAC alongside strengthening the current major ACAs.

Option 1 Establish a new, independent Type A ACA

Ideally, following the best practice models in Singapore and Hong Kong, the Afghan Government should establish a new, independent Type A ACA that contains all the ACA functions, including (at a minimum) investigation powers and responsibility for preventing corruption and corruption education (see Figure 2).⁹⁷

Figure 2 Single-agency model (proposed Option 1 reform)
(example based on Hong Kong and Singapore ACA models)



This option would require an amendment to the Constitution, however, in order to provide the new ACA with the mandate to investigate corruption cases (which at present is constitutionally under the AGO's mandate). Additionally, even if a new ACA were to be established in Afghanistan, two main challenges would be to ensure that it had sufficient trained personnel to investigate corruption cases and to function as an independent watchdog; The likely scenario would be that the new ACA would have difficulty in recruiting trained investigators and function as a 'paper tiger' rather than as an independent watchdog.

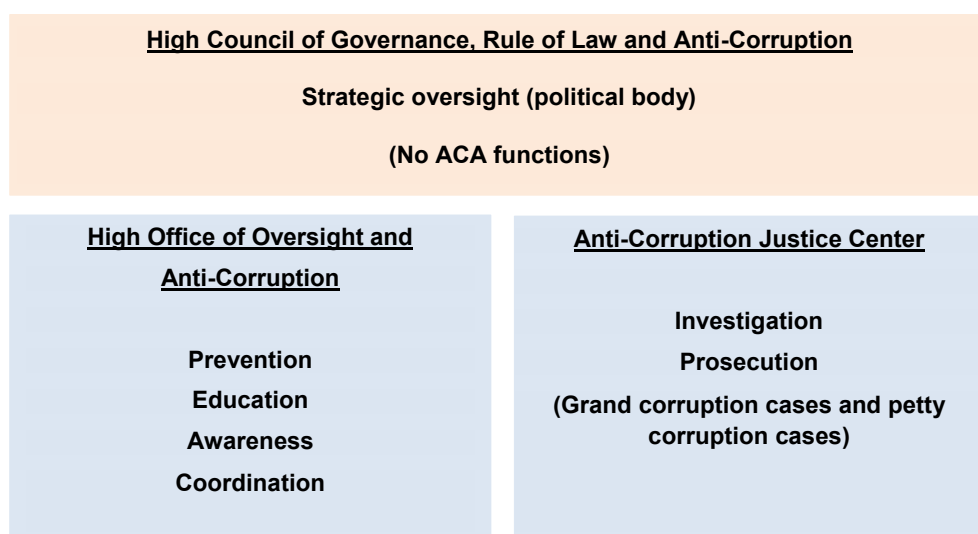
⁹⁷ See Appendix C, 'Example of ACA models'.

Option 2 Set up a two-agency model (ACJC and HOOAC)

This option recommends reforming the current ACA model to cover all ACA functions under two strong institutions: the Anti-Corruption Justice Center (ACJC) and the High Office of Oversight and Anti-Corruption (HOOAC) (reformed and renamed).

In this option, the HOOAC's mandate would be extended to include prevention, education/awareness-raising and coordination functions. (Extensive reform of the HOOAC would be required for this proposal to be effective: see discussion below.) Additionally, all investigative and prosecutorial functions would sit within one institution – the ACJC – whose mandate would be extended to cover all corruption offences (incorporating the CACPDs and MACPDs under its mandate, in addition to its current mandate:⁹⁸ see discussion below). This option is summarised below in Figure 3.

Figure 3 Afghanistan's two-agency model (proposed Option 2 reform)



1. *The HOOAC should focus on coordination, corruption prevention and education*

As the HOOAC has been ineffective during its first eight years, it should be reformed and renamed (for example, as the Afghanistan Anti-Corruption Agency, or 'AACA'). Its mandate should be extended to focus on the neglected functions of coordination, corruption prevention and education/awareness-raising, in addition to its function of registering and verifying the asset declarations of public officials. In recommending these reforms, the limitations imposed by the HOOAC's previous poor recruitment and management practices must be taken into account and addressed.

The HOOAC's function of verifying the asset declarations of public officials should be retained. The HOOAC's current mandate of simplifying administrative procedures must be re-examined, however. Is it necessary for the HOOAC to expend money and resources on its function of simplifying administrative procedures⁹⁹ when it has failed to perform this function effectively after eight years and when the Independent Administrative Reform and Civil Service Commission (IARCSC) is also responsible for improving administrative reforms and training civil servants in Afghanistan?¹⁰⁰ The

⁹⁸ Grand corruption and all corruption offences committed by senior government officials. See Section 3 above.

⁹⁹ In its annual report for 2016, the HOOAC stated that it had completed the simplification of issuing licences and land distribution for commercial companies, the simplification of procedures for martyrs and disabled scholarships for the Ministry of Higher Education and for deeds for the Department of Macrorayan were under process but the simplification of the revenue collection procedure for the Ministry of Finance had been delayed.

¹⁰⁰ IWA (2016a), p. 61.

HOOAC should revise its mandate to remove simplifying administrative procedures and focus instead on the functions of corruption prevention and education.

HONG KONG'S ICAC

Hong Kong's ICAC is an instructive example of an effective and 'holistic approach to fighting corruption, combining enforcement, prevention and education'. In the ICAC, the education and prevention functions are performed, respectively, by the Community Relations Department (CRD) and the Corruption Prevention Department (CPD). The CRD educates the public on the evils of corruption and enlists their support in the fight against corruption by adopting innovative strategies, including the use of social media and television programmes targeting both the young and old. The CRD also conducts an annual public opinion survey to monitor the community's attitudes towards corruption and its views on the ICAC. The CPD examines the practices and procedures of government departments and public agencies to revise corruption-prone work methods and procedures and provides corruption prevention advisory services for private organisations or individuals on request. It also works closely with the relevant government departments and organisations to implement corruption prevention recommendations.¹⁰¹

As part of the proposed reform of the HOOAC, the HOOAC's Prevention Department, which is responsible for simplifying bureaucratic procedures in government agencies and reviewing outdated laws, organisational structures and civil service recruitment practices,¹⁰² should be reorganised following the best practices of the Hong Kong ICAC's procedures in government agencies (see box). Similarly, the HOOAC's Media and Public Outreach Department, which has kept a low profile during the past eight years, should be revamped and strengthened by the recruitment of media and public relations specialists to initiate its community relations programme.¹⁰³ (Even though the national television and radio anti-corruption campaign has ceased,¹⁰⁴ Afghan citizens can still report corruption complaints to the HOOAC by telephone or e-mail, in person or by leaving their complaints in the complaints boxes available at government agencies.)¹⁰⁵ As Hong Kong's ICAC is widely recognised for its effectiveness in performing the functions of corruption prevention and education, the HOOAC should learn from its Community Relations Department and Corruption Prevention

¹⁰¹ ICAC (2016a), pp. 13, 51, 63, 74.

¹⁰² The HOOAC's Corruption Prevention and Simplification Department performs these four functions: (1) to collaborate with the IARCS and Ministry of Justice to improve the effectiveness of the administrative system by simplifying cumbersome bureaucratic procedures and amending outdated laws and regulations; (2) to develop e-governance and administrative reform; (3) to evaluate the corruption risks within government agencies and recommend appropriate reforms; and (4) to review administrative organisational structure (*tashkeel*), terms of references and recruitment and suggest effective policies. HOOAC (2017).

¹⁰³ During its first year of operation the HOOAC initiated a national television and radio anti-corruption campaign, introduced a website for Afghan citizens to lodge their complaints against corrupt officials and established a corruption complaints office for receiving written and verbal complaints. See Asia Foundation (2009), p. 2.

¹⁰⁴ According to the HOOAC's website, the Media and Public Education Department conducts public education campaigns regularly and engages actively with journalists, media, civil society organisations and other community groups. Information on the campaigns and the department's activities with these groups is not publicised on the HOOAC's website however, or in its 2016 annual report. See HOOAC (2016). From January to September 2016 the HOOAC received 519 complaints, with 198 direct complaints (38.2 per cent), followed by 107 complaints (20.6 per cent) collected in complaint boxes, 76 complaints (14.6 per cent) by telephone, 53 complaints (10.2 per cent) by e-mail and 85 cases (16.4 per cent) from information and documents received officially. The HOOAC had completed the processing of 474 complaints (91.3 per cent) by September 2016, as only 45 complaints (8.7 per cent) were still being processed. See HOOAC (2016), p. 4.

¹⁰⁵ An examination of the HOOAC's website shows that, when the Complaints and Information Inception Department receives a complaint from the public, it is reviewed for relevance and sent to the review team for verification of the information provided before a decision is taken as to whether further action is necessary, including administrative action or formal investigation.

Department how to introduce and implement a similar community relations programme, albeit on a smaller scale initially and adapted to Afghanistan's special needs and circumstances.

In addition to the above functions, the HOOAC should also be entrusted with the coordination function – including corruption prevention and education. The HOOAC's original mandate included 'overseeing the implementation of the anti-corruption strategy and the procedure for administrative reform and combating administrative corruption' (article 9 (1) of Law on Overseeing the Implementation of the Anti-Administrative Corruption). As mentioned above, however, the HOOAC has failed to perform this coordination effectively because of the lack of cooperation from other government agencies. Additionally, the HOOAC should publish the number and category of cases referred to these bodies for investigation and prosecution, so as to encourage transparency and responsiveness to these referrals.

Importantly, to ensure the HOOAC's independence, its Director General should be appointed on merit by a transparent process¹⁰⁶ to ensure his/her apolitical position, impartiality, neutrality, integrity and competence. Furthermore, according to the sixth Jakarta Principle of removal, the HOOAC Director General should have security of tenure and be removable only by a legally established procedure.¹⁰⁷ Thus, instead of the current practice of the HOOAC director general being appointed only by the president, he or she should be appointed by the president on the advice of a selection committee consisting of senior officials, members of parliament, civil society representatives and journalists.

2. Extend the ACJC's mandate to include all corruption offences

The ACJC is responsible for investigating and prosecuting both petty corruption crimes committed by senior public officials in Afghanistan and major corruption crimes (grand corruption) committed by any individual within its jurisdiction.¹⁰⁸ The serious problem of petty corruption in Afghanistan is the responsibility of the AGO's Civilian and Military Anti-Corruption Prosecution Departments for investigation and prosecution, however, and the Anti-Corruption Tribunals within the Supreme Court for adjudication.

Building on the ACJC's strong coordination role in corruption case management, the political support for its operations, and its stronger internal integrity procedures (including staff vetting and open trials and media involvement), the Afghan government should consider expanding the ACJC's mandate to include all corruption offences. This would involve bringing the AGO's Civilian and Military Anti-Corruption Prosecution Departments and the Supreme Court's Anti-Corruption Tribunals under the ACJC.¹⁰⁹

This reform proposal would increase vertical cooperation between the investigation, prosecution and adjudication units working on grand corruption and petty corruption offences. It would also increase coordination between the staff currently within the Civilian and Military Anti-Corruption Prosecution Departments and Anti-Corruption Tribunals. Additionally, reducing the number of ACAs would strengthen the ACA system's capacity to fight corruption through minimising opportunities for political interference. Apart from housing the new units within the ACJC,¹¹⁰ their staff should be provided with more specialised training to enhance their capacity and effectiveness. Additionally, the ACJC's vacant positions should be filled with qualified and honest personnel.

Crucially, the ACJC Executive Director should be an independent appointee¹¹¹ to ensure its effectiveness as a coordination and logistical body, by protecting the independence of each jurisdiction under its mandate.¹¹² This could occur through appointment by the president on the advice of a selection committee comprising senior officials, members of parliament and civil

¹⁰⁶ Following the fourth Jakarta Principle.

¹⁰⁷ According to the sixth Jakarta Principle.

¹⁰⁸ Excluding ministers and ex-ministers; see Section 4 above.

¹⁰⁹ Similar to the ACJC Investigation and Prosecution Units and the ACJC courts.

¹¹⁰ The AGO's Civilian and Military Anti-Corruption Prosecution Departments and the Anti-Corruption Tribunals within the Supreme Court.

¹¹¹ The ACJC's Executive Director is currently appointed by recommendation of the Attorney General and is accountable to the AGO (see Section 4 above).

¹¹² AGO, Supreme Court and Ministry of Interior Affairs.

society representatives and journalists. Additionally, the selection process should be transparent and based on merit.

Furthermore, all corruption complaints lodged against prosecutors should be investigated and prosecuted, and those found guilty should be punished accordingly. Additionally, the heads of the ACJC units (including the heads of the CACPDs, MACPDs and ACTs) should have security of tenure so that they cannot be removed arbitrarily. The ACJC units should publicise the number of cases received – including those referred to them by the HOOAC¹¹³ – and sub-categorise the number of cases that are not pursuable (following the Hong Kong ICAC's practice), including the reasons for not proceeding (following the Singapore CPIB's procedure). The ACJC units should not be influenced or have their cases interfered with by internal or external stakeholders. ACJC staff should be fully supported in the independent performance of their duties.

The ACJC should introduce additional measures to ensure that its judges, prosecutors and police interrogators are carefully selected and remain uncorrupted in performing their duties.¹¹⁴ These additional vetting procedures should apply to all ACJC staff. Additionally, all complaints against ACJC staff must be investigated, and those found guilty must be punished according to the severity of their offences.¹¹⁵

Apart from having competent and uncorrupted personnel, the ACJC's judges, prosecutors and police must be impartial in their investigation and prosecution of senior officials.¹¹⁶ Additionally, the ACJC should establish appropriate annual targets for the prosecution of corruption cases and publicise the number of cases received, including those that are not pursuable.¹¹⁷ The ACJC should be cooperative and transparent regarding the cases referred to it by the HOOAC.

Finally, coordination and cooperation between the ACJC units and the HOOAC should be strengthened through the Anti-Corruption Law.¹¹⁸ This would assist in addressing the historical lack of cooperation and political infighting between the HOOAC and the AGO, which has refused to prosecute those cases investigated by the HOOAC.¹¹⁹ Moreover, regular meetings should be held between the unit heads to coordinate case management (including the handling of complaints), in addition to the functions of corruption prevention and education.

3. Revise the HCAC's mandate to reflect its role as an oversight and political body

As seen above, the High Council of Governance, Rule of Law and Anti-Corruption (HCAC) is not strictly speaking an ACA; it is an oversight and advisory body that performs a key political role in supporting anti-corruption reforms. Therefore, its mandate should be limited to advising on and oversight of anti-corruption reforms, and the functions of prevention, awareness and coordination should be moved to the High Office of Oversight and Anti-Corruption (HOOAC).

Furthermore, the HCAC's governance and capacity should be improved to increase its effectiveness within the current ACA system. To prevent conflicts of interest, the relevant government senior official should not participate in the review of his/her own agency. Additionally, the HCAC's capacity can be improved by increasing the number of personnel in its secretariat and three subcommittees and providing them with relevant specialised training. The secretariat and subcommittees should develop their work plans and make them publicly available.

¹¹³ Since its establishment the HOOAC has assessed 1,109 corruption cases and 400 have been referred to the AGO for further action (interview with HOOAC official, January 2017).

¹¹⁴ As discussed in the previous section, the ACJC has introduced some anti-corruption measures for recruiting its staff.

¹¹⁵ Indonesia's experience shows that the pernicious influence of the well-organised and powerful 'court or judicial mafia' (*mafia peradilan*, in Indonesian) has 'systematically and seriously weakened the capacity, integrity, and quality of the enforcement institutions in their battle against corruption'. Brata (2014), p. 269.

¹¹⁶ According to Michael McKinley, the former US ambassador to Afghanistan, the most important factor for the ACJC's success 'will be the Afghan government's political will to prosecute high-level officials in a fair and impartial manner, in order to combat corruption'. SIGAR (2016), p. 4.

¹¹⁷ Following Hong Kong's ICAC, for example.

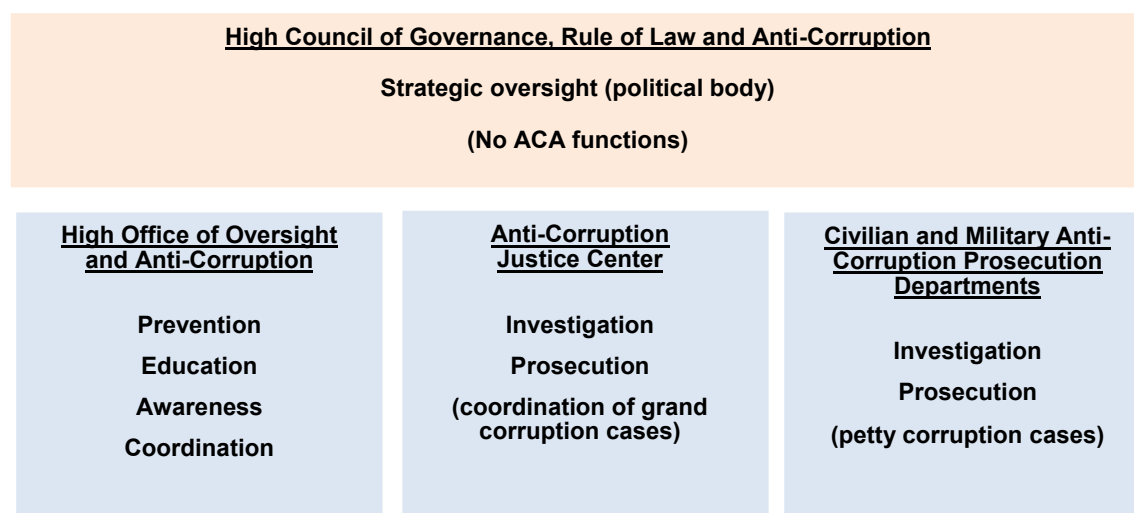
¹¹⁸ In draft form at time of writing (March 2017).

¹¹⁹ IWA (2016a), pp. 110, 112.

Option 3 Maintain the multiple-agency model with reforms to the current ACAs

This option recommends four reforms to enhance the effectiveness of the High Office of Oversight and Anti-Corruption (HOOAC), the High Council of Governance, Rule of Law and Anti-Corruption (HCAC), the Anti-Corruption Justice Center (ACJC) and the AGO's Civilian and Military Anti-Corruption Prosecution Departments (CACPDs and MACPDs). This option is summarised in Figure 4, below.

Figure 4 Afghanistan's multi-agency model (proposed Option 3 reform)



1. Reforms to the High Office of Oversight and Anti-Corruption

This option follows the same reforms to the HOOAC proposed above in Option 2.

2. Reforms to the High Council of Governance, Rule of Law and Anti-Corruption

This option follows the same reforms to the HCAC proposed above in Option 2.

3. Strengthening anti-corruption measures in the Anti-Corruption Justice Center

This option follows the same internal reforms to the ACJC proposed above in Option 2, though under this option the additional units¹²⁰ would not be included under the ACJC and the ACJC would retain its current mandate.

4. Improve the capacity of the Civilian and Military Anti-Corruption Prosecution Departments

The serious problem of petty corruption in Afghanistan is the responsibility of the Civilian and Military Anti-Corruption Prosecution Departments in the AGO. As both agencies lack sufficient personnel to perform their heavy workloads (see Table 3), the Afghan government should not only increase their complement of staff (*tashkeel*) but also provide their staff with more specialised training to enhance their capacity and effectiveness. They should be adequately resourced so as to be able to expand their activities and presence to provincial level.

Furthermore, all corruption complaints lodged against prosecutors should be investigated and prosecuted, and those found guilty should be punished accordingly. To help increase public trust and the agencies' reputation, the outcomes of such cases should be made publicly available.

¹²⁰ The additional units are the AGO's Civilian and Military Anti-Corruption Prosecution Departments (CACPDs and MACPDS) and the Supreme Court's Anti-Corruption Tribunals (ACTs)

Additionally, these agencies should act transparently regarding the corruption cases they work on, including through publicising the number and type of cases received – including those referred to them by the HOOAC and other agencies – and their actions taken (or reasons for inaction).

Additionally, the heads of the Civilian and Military Anti-Corruption Prosecution Departments should be appointed through transparent and merit-based processes and have security of tenure, so that they cannot be removed arbitrarily. Prosecutors must also be fully supported, for independence in their investigation and prosecution of cases of petty corruption; they should not be influenced by internal or external stakeholders.

Figure 5 below illustrates the differences between Option 2 and Option 3.

Figure 5 Difference between Afghanistan's multi-agency model and two-agency model (proposed Option 2 and Option 3 reforms)

ACA functions	Option 2	Option 3
Prevention Education Awareness Coordination	High Office of Oversight and Anti-Corruption (HOOAC)	
Investigation Prosecution (Coordination of grand corruption cases)	Anti-Corruption Justice Center (ACJC)	
Investigation Prosecution (Petty corruption cases)	Anti-Corruption Justice Center (ACJC)	Civilian and Military Anti-Corruption Prosecution Departments (CACPDs) and (MACPDS)
High Council of Governance, Rule of Law and Anti-Corruption (HCAC) Oversight (political body) No ACA functions		

APPENDIX A

TYPE A VERSUS TYPE B ACAs

There are two types of ACAs, depending on the scope of their functions.

1. Type A: dedicated ACAs that perform only anti-corruption functions
2. Type B: diffused ACAs that perform both anti-corruption-related and non-corruption-related functions.

Type A ACAs perform these anti-corruption functions: policy development and research and the monitoring and coordination of implementation measures; the prevention of corruption in power structures; education and awareness-raising; and the investigation and prosecution of corruption cases.¹²¹ By contrast, Type B ACAs perform both anti-corruption and non-corruption-related functions. For example, the Office of the Ombudsman in the Philippines performs these five functions: (1) the investigation of anomalies and inefficiency; (2) the prosecution of graft cases in the Sandiganbayan (Special Anti-Graft Court); (3) administrative adjudication, involving disciplinary control of all elective and appointed officials, except for members of Congress and the judiciary and impeachable officials; (4) the provision of assistance by public officials and employees to the public; and (5) graft prevention by analysing anti-corruption measures and increasing public awareness and cooperation.¹²² Table 4 provides examples of Type A and Type B ACAs in 16 Asian countries. The HOOAC in Afghanistan is a Type B ACA.

Table 4 Selected ACAs in Asian countries by Type

Type A ACAs	Type B ACAs
Corrupt Practices Investigation Bureau (1952) Independent Commission Against Corruption (1974) Anti-Corruption Bureau (1982) Komisi Pemberantasan Korupsi (KPK) (2003) Bhutan Anti-Corruption Commission (2006) Independent Authority Against Corruption (2006) National Anti-Corruption Commission (2008) Malaysian Anti-Corruption Commission (2009) Agency Against Corruption (2011) Myanmar Anti-Corruption Commission (2014)	Central Bureau of Investigation (1963) Central Commission for Discipline Inspection (1978) Ministry of Justice Investigation Bureau (1980) Office of the Ombudsman (1987) Commission Against Corruption (1999) Anti-Corruption and Civil Rights Commission (2008) High Office of Oversight and Anti-Corruption (2008)

Source: Compiled by Professor Jon Quah (March 2017).

¹²¹ OECD (2008), pp. 9–10.

¹²² OMB (2009), pp. 7–8.

APPENDIX B

THREE ROLES FOR AN ACA IN COMBATING CORRUPTION

How does an ACA help the government that establishes it to minimise corruption in the country? There are three roles that an ACA can perform, as shown in Table 5, which provides examples of seven Asian ACAs. The first role, which is the preferred model, is the watchdog role, as performed by an independent ACA that investigates all corruption cases, without fear or favour and regardless of the position or status of those being investigated. Luis de Sousa has defined an ACA's independence as 'the capacity to carry out its mission without political interference, that is, operational autonomy'.¹²³ Examples of Type A ACAs performing this role are Singapore's Corrupt Practices Investigation Bureau (CPIB) and Hong Kong's Independent Commission Against Corruption (ICAC). Robert Gregory has described the CPIB and ICAC as good examples of ACAs with high de facto independence and high operational impartiality.¹²⁴

The second role is for the ACA to be the 'attack dog' of a government that abuses its powers by using the fight against corruption as a weapon against its political opponents. The use of corruption charges to discredit rivals and settle political scores is widespread in many Asian countries, including Cambodia, Indonesia, Malaysia and Vietnam.¹²⁵ In China, anti-corruption campaigns are frequently used against political enemies to undermine their power base in the Chinese Communist Party (CCP). In July 2014 the Central Commission for Discipline Inspection (CCDI), which is the leading Type B ACA in China, investigated Zhou Yongkang, the Minister of Public Security from 2002 to 2007, for corruption; the procuratorates confiscated US\$16.05 billion worth of assets from his many residences in seven provinces in China. Zhou was expelled from the CCP on 5 December 2014, not simply because of his corruption offences but, more importantly, for his conspiracy with Bo Xilai to challenge Xi Jinping's leadership.¹²⁶ Other examples of ACAs being used as 'attack dogs' by their governments are Cambodia's Anti-Corruption Unit (ACU), Myanmar's Anti-Corruption Commission (ACC) and Pakistan's National Accountability Bureau (NAB).¹²⁷

Table 5 Roles of selected Asian ACAs

Role	Anti-corruption agency	CPI rank/score 2016
Watchdog	Corrupt Practices Investigation Bureau (Singapore) Independent Commission Against Corruption (Hong Kong)	7 th /176 (84/100) 15 th /176 (77/100)
'Attack dog'	Central Commission for Discipline Inspection (China) National Accountability Bureau (Pakistan) Anti-Corruption Commission (Myanmar) Anti-Corruption Unit (Cambodia)	79 th /176 (40/100) 116 th /176 (32/100) 136 th /176 (28/100) 156 th /176 (21/100)

¹²³ De Sousa (2010), p. 13.

¹²⁴ Gregory (2015), pp. 130–131.

¹²⁵ Djalal (2001), pp. 32–33.

¹²⁶ Quah (2015), pp. 79–81.

¹²⁷ Quah (2016), pp. 256–257.

'Paper tiger'	Anti-Corruption and Civil Rights Commission (South Korea) High Office of Oversight and Anti-Corruption (Afghanistan)	52 nd /176 (53/100) 169 th /176 (15/100)
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Source: Compiled by Professor Jon Quah (March 2017).

The third role, that of using the ACA as a 'toothless tiger' or 'paper tiger', is also undesirable, as it reflects the government's lack of political will to curb corruption by not providing the ACA with the necessary legal powers, budget, personnel and operational independence to enforce the anti-corruption laws impartially. South Korea's Korea Independent Commission Against Corruption (KICAC), when it was established on 25 January 2002, was a 'poor cousin' or weak replica of Hong Kong's ICAC, because it could not investigate corruption cases. A similar problem afflicted its successor, the Anti-Corruption and Civil Rights Commission (ACRC), created in February 2008 when the KICAC was merged with the Ombudsman and Administrative Appeals Commission; it inherited the KICAC's Achilles' heel of being unable to investigate corruption cases, and became a Type B ACA. South Korea's inability to improve its CPI score beyond the range 53 to 56 between 2002 and 2016 reflects its failure to curb corruption and an indictment of its futile strategy of relying on such 'paper tigers' as the KICAC and ACRC during these 14 years.¹²⁸ South Korea's experience confirms the futility of establishing a 'toothless' ACA to combat corruption. Afghanistan's HOOAC is also a 'paper tiger', because it cannot investigate corruption cases.

¹²⁸ Quah (2017b), pp. 23, 26.

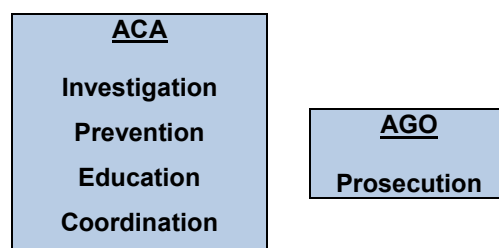
APPENDIX C

EXAMPLES OF ACA MODELS

Afghanistan's policy-makers can draw lessons from the following five ACA models – Hong Kong, Singapore, Jordan, South Korea and the Philippines – when considering whether a single ACA would be suitable to adopt as a reform option.

In the case of Hong Kong, section 12 of the ICAC Ordinance of 1974 describes the ICAC commissioner's duties as the investigation and prevention of corruption, including the 'education of the public against the evils of corruption and the enlisting and fostering of public support in combating it'.¹²⁹ Since July 1997, however, the ICAC has been directly responsible to the SAR's chief executive, and its commissioner reports directly to him, and has easy access.¹³⁰ Figure 6 illustrates the CPIB/ICAC single-agency model, indicating the performance of the functions of investigation, prevention, education and coordination by the CPIB/ICAC and the prosecution function by the AGO.

Figure 6 Single-agency model (proposed Option 1 reform)
(example based on Hong Kong and Singapore ACA models)



The ACRC in South Korea operates without an investigation mandate. As mentioned in Section 1, the South Korea's ACRC is a Type B ACA, formed from the merger of the Korea Independent Commission Against Corruption (KICAC) with the Ombudsman and the Administrative Appeals Commission in February 2008 to perform these functions: to deal with public complaints, prevent public sector corruption and protect people's rights from illegal and unfair administrative practices. Like the KICAC, the ACRC cannot investigate corruption cases, which are referred to the Board of Audit and Inspection or other agencies for investigation.¹³¹

The Jordan Anti-Corruption Commission (JACC) was established by Law no. 62 of 2006 and began operating in March 2007 to investigate and prosecute financial and administrative corruption. The JACC has relied on 'public prosecutor' judges seconded from the High Judicial Council to perform the investigative role.¹³² Like the ACRC in South Korea, however, the JACC in Jordan has now been transformed from being a Type A to a Type B ACA, following its merger with the Ombudsman Bureau to form the Jordan Integrity and Anti-Corruption Commission (JIACC) with the enactment of the Integrity and Anti-Corruption Law in June 2016. Furthermore, the JIACC has a specialised prosecution office to investigate corruption cases received by its council, and the law also allows the

¹²⁹ Quoted in Lethbridge (1985), p. 104.

¹³⁰ Quah (2011), p. 253.

¹³¹ Quah (2011), p. 331.

¹³² Touq and Al-Nouaydi (2016), p. 20.

JIACC to open a special account with the Central Bank of Jordan for depositing the retrieved assets from corruption cases before returning these assets to their owners.¹³³

As South Korea and Jordan are less effective than Singapore and Hong Kong in combating corruption, judging from their respective Corruption Perceptions Index (CPI) scores in 2016, the ACRC in South Korea and JIACC in Jordan might not be suitable models for adoption by Afghanistan. Nevertheless, they are two alternative models that Afghan policy-makers can consider in addition to the CPIB in Singapore and ICAC in Hong Kong when considering whether a single ACA would be suitable as a reform option.

The Philippines is the Asian country that has introduced the most anti-corruption measures, because it has relied on seven laws and 19 presidential ACAs since it began its fight against corruption in the 1950s.¹³⁴ Today there are five ACAs in the Philippines: the Office of the Ombudsman (the lead ACA); the Sandiganbayan (Anti-Graft Court); the Presidential Commission on Good Government; the Inter-Agency Anti-Graft Coordinating Council; and the Office of the Deputy Secretary for Legal Affairs.¹³⁵ Consequently, the Philippines' experience of continuing to rely on multiple ineffective ACAs in spite of their weaknesses for 67 years is instructive for Afghanistan, as it illustrates the need for reform.

Accordingly, Michael Johnston has recommended the consolidation of anti-corruption responsibilities among the multiple ACAs in the Philippines into a single ACA that (1) focuses on investigation and prosecution; (2) has arrest and subpoena powers and the power to prosecute; (3) is minimally involved in donor-driven anti-corruption projects; and (4) has adequate personnel and resources.¹³⁶ He has justified his recommendation for this difficult reform on the following grounds:

At present anti-corruption projects [in the Philippines] proliferate while responsibility for corruption control is divided among several agencies. As a result the projects have little public credibility... [and] citizens do not have a clear picture of what is being done. [...] Where projects and agencies work at cross-purposes resources and opportunities can be wasted, efforts may overlap and contradict each other, and there are real risks, after a time, of 'project fatigue.' The Hong Kong and Singapore approaches, by contrast, show the value of a single unified reform leadership, coordinated and consistent anti-corruption strategies, and a clear focus for citizen activity and corruption complaints. [Nevertheless,] changes at this level will require legislation, at a minimum, and constitutional changes too if the Office of the Ombudsman is to be replaced by the new consolidated agency.¹³⁷

The Philippines' failure to implement Professor Johnston's important proposal is instructive for our purposes here, as it demonstrates the tremendous difficulties that would be encountered in establishing a new ACA in Afghanistan in the short term. Even if a new Type A ACA were to be established tomorrow in Afghanistan, it would be subject to the limitations imposed by article 134 of the constitution, meaning that the new ACA would have difficulty in establishing a genuine investigative function, which is a key function for an independent Type A ACA to be effective.

¹³³ *Jordan Times* (2016).

¹³⁴ Quah (2011), p. 135.

¹³⁵ Batalla (2015), pp. 55–56.

¹³⁶ Johnston (2010), p. 20.

¹³⁷ Johnston (2010), pp. 20–21.

APPENDIX D

SUMMARY OF RECOMMENDATIONS

1. *Overarching recommendations*

- 1.1. All ACA functions should be present in Afghanistan's ACA system. Any reform model must ensure that all ACA functions are included.
- 1.2. The Anti-Corruption Law should clearly specify which ACA functions are allocated to each institution, ensuring that they all have clear mandates with a strong legal basis.
- 1.3. The coordination of and cooperation between all ACAs should be strengthened. The Anti-Corruption Law should require coordination between ACAs. ACAs should hold regular meetings between unit heads to coordinate case management (including complaints handling), in addition to corruption prevention, education and awareness-raising initiatives.
- 1.4. The Anti-Corruption Law should include additional provisions supporting each ACA's independence, particularly regarding the appointment, removal and fixed tenure of the ACAs' leadership (see 2.1 and 2.2 below) and budgetary independence.

2. *Recommendations for individual ACAs*

- 2.1. The ACAs' leaders should be appointed independently and through a transparent process. For example, leaders could be appointed by the president on the advice of an independent selection committee comprising senior officials, members of parliament, civil society representatives and journalists. The selection process should be transparent and based on merit.
- 2.2. The ACAs' leaders (and the head of each ACJC unit) should have security of tenure, so that they cannot be removed arbitrarily.
- 2.3. The ACAs should not be influenced or have their work interfered with by internal or external stakeholders. Staff should be fully supported such that they have the independence to be able to perform their functions. ACA case selection processes should be transparent and free from external and internal interference.
- 2.4. ACAs should establish appropriate annual targets for the prosecution of corruption cases and publicise the number of the cases received, including the cases that are not pursuable.
- 2.5. ACAs should introduce additional measures (vetting procedures) and apply them to ensure that their staff are selected carefully and remain uncorrupted in the performance of their duties. ACAs should adopt codes of conduct requiring the highest standards of ethical conduct from their staff and a strong compliance regime.
- 2.6. ACAs should be sufficiently staffed (*tashkeel*), and staff should receive specialised anti-corruption training.

- 2.7. ACA staff should be investigated if they are suspected of engaging in corrupt acts, and if found guilty they should be punished accordingly. To help increase public trust and ACAs' reputation, the outcomes of such cases should be made publicly available.
- 2.8. ACAs should be sufficiently well resourced to be able to carry out their functions effectively. Their budgets should be protected.
- 2.9. ACAs should formally report to the public at least annually on their activities.

ATTACHMENT A: PROFILE OF PARTICIPANTS AND INTERVIEWEES

INTERVIEW/ TRANSPARENCY FORUM/BOTH	DATE	POSITION AND SECTOR	EXPERTISE	MALE/ FEMALE	AFGHAN/ FOREIGN
Transparency Forum	21/11/2016	International community	Justice Sector	Male	Foreign
Transparency Forum	21/11/2016	Afghan Government	Anti-Corruption	Male	Afghan
Transparency Forum	21/11/2016	International Community	Rule of Law	Male	Foreign
Transparency Forum	21/11/2016	CSO	Justice and rule of law	Female	Afghan
Transparency Forum	21/11/2016	International community	Development Cooperation	Male	Afghan
Transparency Forum	21/11/2016	International community	Anti-corruption	Male	Afghan
Transparency Forum	21/11/2016	International community	Anti-corruption	Female	Afghan
Transparency Forum	21/11/2016	International community	Rule of Law	Male	Afghan
Transparency Forum	21/11/2016	International community	Good governance and rule of law	Male	Foreign
Transparency Forum	21/11/2016	Senior government	Reform and Good Governance	Male	Afghan
Transparency Forum	21/11/2016	Elected government official	Oversight and public representation	Male	Afghan
Transparency Forum	21/11/2016	Senior Advisor to Minister of Justice	Law and legislation	Male	Afghan
Transparency Forum	21/11/2016	Afghan Government	Anti-corruption	Male	Afghan

Transparency Forum	21/11/2016	International community	Development Cooperation	Male	Afghan
Transparency Forum	21/11/2016	government official	Law and legislation	Female	Afghan
Transparency Forum	21/11/2016	International community	Good governance	Male	Afghan
Transparency Forum	21/11/2016	INGO/International community	Mines and extractives	Male	Foreign
Transparency Forum	21/11/2016	International community	Anti-corruption	Male	Afghan
Transparency Forum	21/11/2016	Senior government official	Law and legislation	Male	Afghan
Transparency Forum	21/11/2016	International community	Legal support to parliament	Male	Afghan
Transparency Forum	21/11/2016	CSO	Anti-Corruption	Male	Afghan
Both	21/11/2016 1/1/2017	government official	Judiciary	Female	Afghan
Transparency Forum	21/11/2016	CSO	Anti-Corruption	Male	Afghan
Transparency Forum	21/11/2016	Media	Journalism	Male	Afghan
Transparency Forum	21/11/2016	Senior government official	Human Right	Male	Afghan
Transparency Forum	21/11/2016	SCO	Research	Female	Afghan
Transparency Forum	21/11/2016	Senior government	Role of law and Anti-Corruption	Male	Afghan
Transparency Forum	21/11/2016	CSO	Anti-Corruption	Male	Afghan
Transparency Forum	21/11/2016	Senior International community	Anti-Corruption	Male	Foreign
Transparency Forum	21/11/2016	Senior government	Procurement	Male	Afghan
Transparency Forum	21/11/2016	Senior government	Procurement	Male	Afghan

Transparency Forum	21/11/2016	Senior government	Financial Sector	Male	Afghan
Transparency Forum	21/11/2016	Private sector	Educational	Male	Afghan
Transparency Forum	21/11/2016	Senior government	Audit	Male	Afghan
Transparency Forum	21/11/2016	CSO	Research	Female	Foreign
Transparency Forum	21/11/2016	CSO	Anti-Corruption	Male	Foreign
Transparency Forum	21/11/2016	International community	Researcher	Male	Afghan
Both	21/11/2016 4/1/2017	Senior government official	Audit	Male	Afghan
Transparency Forum	21/11/2016	Senior government	Rule of law and justice	Male	Afghan
Transparency Forum	21/11/2016	CSO	Anti-Corruption	Male	Afghan
Both	21/11/2016 21/11/2016	Senior government	Role of law and Anti-Corruption	Male	Afghan
Both	21/11/2016 2/1/2017	Senior government	Role of law and Anti-Corruption	Male	Afghan
Transparency Forum	21/11/2016	Senior government official	Procurement	Male	Afghan
Transparency Forum	21/11/2016	International organisation	Program/ Anti-Corruption	Male	Afghan
Transparency Forum	21/11/2016	International organisation	Program/ Anti-Corruption	Male	Afghan
Transparency Forum	21/11/2016	International organisation	Program/ Anti-Corruption	Female	Afghan
Transparency Forum	21/11/2016	International organisation	Program/ Anti-Corruption	Male	Afghan
Transparency Forum	21/11/2016	CSO	Rule of law	Male	Afghan

Transparency Forum	21/11/2016	International community	Justice support	Male	Afghan
Transparency Forum	21/11/2016	International community	Good governance	Male	Afghan
Transparency Forum	21/11/2016	International community	Rule of Law	Male	Afghan
Transparency Forum	21/11/2016	Senior government	Anti-corruption	Male	Afghan
Transparency Forum	21/11/2016	International community	Anti-Corruption	Male	Afghan
Transparency Forum	21/11/2016	CSO	Anti-corruption	Male	Afghan
Transparency Forum	21/11/2016	Senior government	Reform and Good Governance	Male	Afghan
Transparency Forum	21/11/2016	International community	Rule of law	Male	Afghan
Transparency Forum	21/11/2016	International community	Good governance and rule of law	Male	Afghan
Transparency Forum	21/11/2016	CSO	Anti-corruption	Male	Afghan
Transparency Forum	21/11/2016	International Community	Good governance	Male	Afghan
Both	21/11/2016 3/1/2017	Senior government	Anti-corruption	Male	Afghan
Transparency Forum	21/11/2016	CSO	Policy and research	Female	Foreign
Transparency Forum	21/11/2016	International community	Rule of law and good governance	Male	Afghan
Transparency Forum	21/11/2016	Senior government	Law	Male	Afghan
Transparency Forum	21/11/2016	CSO	Anti-corruption	Male	Foreign
Transparency Forum	21/11/2016	CSO	Anti-corruption	Male	Afghan
Transparency Forum	21/11/2016	CSO	Anti-corruption	Male	Afghan

Transparency Forum	21/11/2016	Senior government	Reform and Good Governance	Male	Afghan
Transparency Forum	21/11/2016	CSO	Anti-corruption	Male	Afghan
Interview	1/1/2017	Senior government	Justice and Anti-corruption	Male	Afghan
Both	1/1/2017	Senior government	Justice and Anti-corruption	Male	Afghan
Interview	2/1/2017	Senior government	Justice and Anti-corruption	Male	Afghan
Interview	2/1/2017	Senior government	Justice and Anti-corruption	Male	Afghan
Interview	2/2/2017	Senior government	Justice and Anti-corruption	Male	Afghan
Transparency Forum	21/11/2016	International community	Anti-Corruption	Male	Afghan
Transparency Forum	21/11/2016	International community	Anti-Corruption	Male	Foreign
Transparency Forum	21/11/2016	International community	Anti-Corruption	Female	Foreign
Both	21/11/2016	International community	Anti-Corruption	Female	Afghan
Transparency Forum	21/11/2016	International community	Anti-Corruption	Male	Afghan
Transparency Forum	21/11/2016	International community	Anti-Corruption	Male	Afghan
Transparency Forum	21/11/2016	International community	Anti-Corruption	Male	Afghan
Transparency Forum	21/11/2016	International community	Anti-Corruption	Male	Afghan
Transparency Forum	21/11/2016	Government official	Anti-corruption	Male	Afghan
Transparency Forum	21/11/2016	CSO	Justice/ Advocacy	Male	Afghan
Transparency Forum	21/11/2016	Senior Government	Anti-corruption	Male	Afghan

Transparency Forum	21/11/2016	Senior government	Justice and legislation	Male	Afghan
Transparency Forum	21/11/2016	CSO	Press	Male	Afghan
Written comments	05/03/2017	Independent Consultant	ACA expert	Male	Foreign
Written comments	05/03/2017	Independent Consultant	ACA expert	Male	Foreign
Written comments	05/03/2017	Independent Consultant	ACA expert	Male	Foreign
Written comments	05/03/2017	Independent Consultant	ACA expert	Male	Foreign
Transparency Conference	12/03/2017 & 13/03/2017	International community	Rule of law	Male	Afghan
Transparency Conference	12/03/2017 & 13/03/2017	International community	Rule of law	Male	Afghan
Transparency Conference	12/03/2017 & 13/03/2017	International community	Rule of law	Male	Afghan
Both	12/03/2017 & 13/03/2017	International Community	Justice and Anti-Corruption	Male	Afghan
Transparency Conference	12/03/2017 & 13/03/2017	International Community	Justice and Anti-Corruption	Male	Foreign
Transparency Conference	12/03/2017 & 13/03/2017	Parliament	Anti-Corruption	Female	Afghan
Transparency Conference	12/03/2017 & 13/03/2017	CSO	Corruption Expert	Male	Foreign
Transparency Conference	12/03/2017 & 13/03/2017	International Organistaion	Anti-Corruption	Male	Afghan
Transparency Conference	12/03/2017 & 13/03/2017	CSO	Research and Anti-Corruption	Female	Afghan
Transparency Conference	12/03/2017 & 13/03/2017	International Community	Rule of law	Female	Afghan
Transparency Conference	12/03/2017 & 13/03/2017	Business Sector	Director	Male	Afghan
Transparency Conference	12/03/2017 & 13/03/2017	CSO	Advocacy and Anti-Corruption	Male	Afghan

Transparency Conference	12/03/2017 & 13/03/2017	CSO	Director	Male	Afghan
Both	12/03/2017 & 13/03/2017	Government	Strategic Advisor	Male	Afghan
Both	12/03/2017 & 13/03/2017	Government	Employee	Male	Afghan
Transparency Conference	12/03/2017 & 13/03/2017	Government	Policy	Male	Afghan
Both	12/03/2017 & 13/03/2017	International Organisation	Anti-Corruption	Male	Afghan
Transparency Conference	12/03/2017 & 13/03/2017	CSO	Anti-Corruption	Male	Afghan
Transparency Conference	12/03/2017 & 13/03/2017	Senior Government	Media and Public Outreach	Male	Afghan
Transparency Conference	12/03/2017 & 13/03/2017	Senior Government	Audit and Anti-corruption	Male	Afghan
Both	12/03/2017 & 13/03/2017	International Organisation	Rule of Law	Male	Foreign
Transparency Conference	12/03/2017 & 13/03/2017	International Organisation	Rule of Law	Male	Foreign
Transparency Conference	12/03/2017 & 13/03/2017	CSO	Anti-Corruption	Male	Afghan
Transparency Conference	12/03/2017 & 13/03/2017	Senior Government	Planning and Policy	Female	Afghan
Transparency Conference	12/03/2017 & 13/03/2017	Senior Government	Legislation	Male	Afghan
Transparency Conference	12/03/2017 & 13/03/2017	CSO	Anti-Corruption	Female	Afghan
Transparency Conference	12/03/2017 & 13/03/2017	CSO	Advocacy and Communication	Male	Afghan
Transparency Conference	12/03/2017 & 13/03/2017	CSO	Policy and advocacy	Male	Afghan

Transparency Conference	12/03/2017 & 13/03/2017	CSO	Anti-Corruption	Male	Afghan
Transparency Conference	12/03/2017 & 13/03/2017	International Organisation	Anti-Corruption	Male	Foreign
Transparency Conference	12/03/2017 & 13/03/2017	International Organisation	Policy, Advocacy and Anti-Corruption	Male	Afghan
Transparency Conference	12/03/2017 & 13/03/2017	Transparency International	Anti-Corruption	Female	Foreign
Transparency Conference	12/03/2017 & 13/03/2017	Transparency International	Strategy, Policy and Anti-Corruption	Female	Foreign
Transparency Conference	12/03/2017 & 13/03/2017	International Organisation	Rule of Law	Male	Foreign
Transparency Conference	12/03/2017	International Community	Policy	Female	Foreign
Both	12/03/2017	International Community	Strategy and Policy	Male	Foreign
Transparency Conference	13/03/2017	CSO	Policy and Advocacy	Female	Afghan
Transparency Conference	12/03/2017 & 13/03/2017	Media	Advocacy		Afghan

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