



The Policy department has launched a new series—‘Reforms in Review’—to analyze reforms progress across the Afghan government. We launch the series this month with an in-depth review of the reforms on-going to cut corruption and improve access to justice for the Afghan people.

Reforms in Review Part 1

The Justice Sector: Cutting corruption and improving access to justice for the Afghan people

When the National Unity government took office in 2014, its leaders promised to reform the justice sector in order to establish a transparent and impartial legal system built around the rigorous application of the Constitution and international conventions on human rights.

In 2016, the National Unity Government appointed a new Attorney General to take on the job—a long-time human rights lawyer and Harvard-educated attorney, Farid Hamidi. Attorney General Hamidi embarked on an overhaul to restore credibility to a sector marred by corruption.

The problems faced were immense: widespread corruption, inadequate human resources, parallel organizations with overlapping mandates, lack of infrastructure at the provincial and district levels, judicial professionals not able to travel and work in less secure areas. These issues deprived Afghans from accessing justice and increased the gap between Afghan citizens and the government.

The government laid out a detailed, long-term, strategic reform program for the justice sector in key documents such as the [Afghanistan National Peace and Development Framework](#), the national Anti-Corruption Strategy, and the National Justice Reform plan.

The overhaul included a wide range of reforms designed to cut corruption, make the sector efficient and effective, expand rule of law and access to justice, and protect and increase women's and humans rights.

Institutional and management reforms included restructuring judicial institutions; enhancing professional capacity; bringing more women into the sector; introducing higher educational standards and requirements for prosecutors and judges; and taking a number of actions to cut corruption, including establishing the position of attorney general for anti-corruption, and creating an internal justice sector Appointments Commission to eliminate patronage.

Technical reforms were also included such as consolidating land management issues at the new independent land authority (ARAZI) for professional adjudication; implementing an electronic case management system; and taking action to protect human rights and tackle violence against women. Such actions included ensuring that all provinces have qualified prosecutors, and the expansion of legal aid services.

Proposed legislative reforms included identifying and revising anti-corruption laws, drafting and passing legislation to address land dispute resolution, and proposing laws to further protect human rights.

On Sunday, April 8, the High Council on the Rule of Law and Anti-Corruption, a weekly coordination council chaired by the President and comprised of public institutions, private sector and civil society, gathered to assess the progress made on justice sector reforms since they began implementation.

Anti-corruption reforms

Given the level of corruption debilitating the justice system, anti-corruption reforms were the number one focus. The priority was rooting out corruption within the Attorney General's Office (AGO) and provincial units.

To chart the reforms, the AGO developed a five-year strategy. The Judicial Structural Reform Plan was also developed and approved. Once plans were in place, the AGO focused on cleaning house. An internal Appointments Commission was created and all prosecutors were required to be revetted and retested to assure their knowledge of the law and qualifications. As a result, more than 60 corrupt prosecutors were arrested and replaced, and 40 prosecutors relocated. Prosecutor salaries, some of the lowest in the justice sector, were doubled to decrease the incentive for corruption. Educational standards were raised so prosecutors must now hold a bachelors or master's degree in sharia or law. The AGO hired 250 new employees through a merit-based recruitment process, and now 40% of the AGO's high-ranking employees are young people who met higher educational standards.

To increase coordination and transparency, an electronic management system is being properly maintained, with two additional administrative assistants hired in each province to make sure that all cases are being entered into the database.

To oversee the on-going fight against corruption, a new position of Deputy Attorney General for Anti-Corruption was created, and is in the process of being filled. This new deputy attorney

general will be a key person within the government for shepherding anti-corruption reforms, and advancing the extradition and prosecution of convicted criminals living abroad.

Already, steps have been taken to correct prior abuses of power that had a direct impact on citizens. Over 3,000 people with pending corruption cases have now been banned from traveling abroad, while 1,500 people who had been wrongly placed on the travel ban list for no legal reason were removed. Hamidi has ended the illegal detention of 4,500 people since taking office.

Another reform area is to reduce overlapping mandates and parallel organizations. The government is committed to supporting the Independent Joint Anti-Corruption and Evaluation Committee (MEC) and the Anti-Corruption Justice Center (ACJC), though the High Office of Oversight for Anti-corruption is being dissolved, and its key staff absorbed into more effective and better functioning anti-corruption departments and organizations.

The ACJC, established in 2016 to investigate and prosecute high-level corruption cases, has also made significant process to date, with over 475 cases received, over 100 high-ranking previous government officials imprisoned or fined, and 21 million USD of stolen assets recovered, according to the Chief Executive of the ACJC Dr. Rohullah Abid.

Another problem within the AGO that has now been addressed was “the criminalization of civil disputes,” says Kawun Kakar, Founder and Managing Partner of Kakar Advocates Law Firm. “A critical decision that had major impact was that the Attorney General’s office is no longer accepting civil matters and disputes and instead, rightly, referring them to the courts.” Addressing civil disputes is not the legal mandate of the AGO while its surge had created a backlog of cases and had become a major source of corruption and bribery.

Another issue was that thousands of cases, many for corruption, remained open and not properly processed. The Attorney General instructed prosecutors to process cases, and to prosecute or close those cases as required. Backlogged cases have now been properly processed and closed. “The result is a dramatic drop, if not complete end, of prosecutions involving civil disputes,” said Kakar.

Increasing access to justice, particularly for women

Another focus has been increasing access to justice across the country, especially for women. AGO now has a prosecutor assigned to every district of Afghanistan—in those districts that are insecure, the prosecutor occupies an office at the provincial level.

On Mondays, the Attorney General opens his doors to members of the public, so Afghans have direct access. Since implementing this new policy, he has met thousands of citizens and issued orders for over 6,000 petitions. A media access commission and new media access policies have also been implemented to increase transparency within the organization.

There has also been a focus on gender equality and human rights, with new directorates established within the AGO for gender and human rights, addressing violence against children, and investigating international crimes. After a country-wide recruiting effort to bring gender balance into the justice sector, there are now 476 female prosecutors across the country, and the number of female employees increased from 3% to 17%. Women are leading nine of the AGO’s directorates.

In August 2016, the country's first-ever female deputy attorney general, Sina Sheena Mansoor, was appointed to lead the AGO's efforts to extend access to justice for women facing violence across the country. Under her leadership, the AGO has taken a number of actions to ensure that the Elimination of Violence Against Women (EVAW) law, which was signed into law by presidential decree in 2009, is actually being implemented.

"The government has taken multiple and very robust steps in the past couple years to ensure the implementation of this law," said the Human Rights Chief of UNAMA, Danielle Bell, in an interview last month.

Forty-four women work across 24 provinces under the gender and human rights directorate. EVAW courts have been established in 33 provinces, with EVAW prosecutors and EVAW committees working in every province. In November 2017, Mansoor reported that these EVAW units had recorded and tracked 1,726 cases of violence against women in the previous eight months.

Mansoor oversaw a pilot project earlier this year across police stations in Kabul province where evaluations took place to investigate how cases of violence against women were being handled by local law enforcement. Based on the evaluation results, training was provided accordingly. The evaluations will gradually be expanded to the provinces.

The new penal code, which was enacted in February 2018, was also a major achievement for increasing justice for women, and criminalizing more acts of violence against women. The penal code included a reduction in sentencing for so-called 'moral crimes' committed, and removed discretionary authority from judges to handle honor killings of women, rendering the act simply a crime of murder. It also recognizes war crimes and other crimes against humanity, including torture, as well as criminalizing sexual violence against children. The code also has the most up to date compliance with corruption crimes listed under the UN Convention against Corruption.

As women have increased awareness of their rights, and further confidence in their ability to seek justice and the government's credibility to deliver justice, more cases of violence against women are being self-reported and prosecuted.

Legislative reforms to protect rights and promote justice

Over the past three years, the government has drafted, scrutinized and finalized over 300 legislative documents, including laws, regulations, and charters. Many of these were focused on increasing rights, expanding protections to citizens, and cutting corruption.

The Law of Structure and Jurisdiction of the Attorney General's office was amended, which also established the creation of the deputy attorney general for anti-corruption.

The law on administrative courts was designed to resolve disputes between state institutions and citizens when litigation arises as a result of administrative decisions of government officials.

To cut abuse of power and corruption, the Law on the Declaration and Registration of Assets of State Officials and Employees was passed, which requires high government officials and employees, and members of Parliament and provincial councils, to declare their assets, in order to prevent them from misusing their authority to illegally increase their personal wealth.

In 2017, the government amended the Law on Anti-Money Laundering and Proceeds of Crime to establish better coordination between government bodies that are working to prevent money laundering and access to illicit funds, namely from the sale of narcotics, corruption, bribery, illegal mining, tax evasion, forgery and the unlawful usurpation of lands.

Land-grabbing has been a prevalent problem in Afghanistan following mass displacement during war and subsequent repatriation during the post-conflict era, with over 65% of civil disputes arising over land affairs. As a result, laws were created to clarify the issue. The Expropriation Law was passed in 2017 to address expropriation, the obligations of expropriator institutions, and valuation of and limitations on expropriated lands.

Furthermore, the Ministry of Agriculture and the Independent Land Authority of Afghanistan (ARAZI) drafted the Law on Managing Land Affairs, which addresses issues such as land acquisition, distribution, maintenance, and management, as well as standardization and transparency processes. The law was passed in 2017, aiming to reduce the number of disputes and provide clarification for the swift resolution of future cases. This law allowed for the creation of the Land Information Bank, an electronic bank where state and public properties are registered— hundreds of thousands of acres of property has since been logged into the bank, allowing the government to more effectively account for and utilize state-owned land.

A number of human and gender rights laws have also been proposed and passed in the past couple of years, namely the Prevention of Torture law, a law to protect the rights of children, the anti-harassment law, and the anti-human trafficking law.

Next

Steps

Though much progress has been made overall, many reforms are still in progress and pending. Continued efforts to increase effective communication between organizations in the justice and security sector across the country will include an upcoming conference with provincial and district level local government officials, security officials, and prosecutors and others working in the justice sector. Further reforms at the Ministry of Interior to strengthen law enforcement are in progress. The new Deputy Attorney General for Anti-Corruption will soon be hired to further drive forward anti-corruption reforms. Further training for prosecutors on the new penal code is still needed to increase awareness, and many reforms at the Ministry of Justice are still pending. A general discontent still exists between the positive changes to laws and policies, and the actual implementation and general awareness of those laws and policies. Strengthened monitoring, continued trainings, and increased coordination and communication are continued efforts to ensure the gap is gradually decreasing.

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