

2012

Implementing International Anti-Corruption Standards to Improve Afghanistan's Education System

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Adam J. Centner, *Implementing International Anti-Corruption Standards to Improve Afghanistan's Education System*, 44 Case W. Res. J. Int'l L. 847 (2012)

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**IMPLEMENTING INTERNATIONAL ANTI-CORRUPTION STANDARDS TO
IMPROVE AFGHANISTAN’S EDUCATION SYSTEM**

*Adam J. Centner**

Education is central to every country’s growth and sustainability, but it is particularly important in a war-torn and developing nation like Afghanistan. The education sector in Afghanistan has made drastic strides since the overthrow of the Taliban government. Now, its biggest obstacle is no longer the lack of students or funds, but rather the culture of corruption that runs rampant in all aspects of Afghan life. From bribery to pilfered paychecks, corruption destroys government credibility, wastes money, and undermines the rule of law. This Note examines the United Nations Convention Against Corruption and various international best practices to investigate, prevent, prosecute, and educate against corruption. In Afghanistan’s education sector, corruption will never be completely eradicated, but it can be managed. Afghanistan’s future depends on it.

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I. INTRODUCTION

Afghanistan is at a pivotal moment. After decades of instability and warfare, the future of this war-torn country relies on today’s policies and initiatives. Involvement from both the Afghan government and the international community is crucial.

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Education may be the most vital of these policies and initiatives. Unfortunately, Afghanistan's national education system is tragically corrupt, depriving millions of school-aged children of the opportunity to learn. Imagine being a teacher and having to pay a bribe for your paycheck. Imagine being a parent and having to pay a bribe for your child to receive a passing grade. Imagine being an employer and being unable to decipher between the authentic diplomas and the counterfeit replicas.

Without suppressing the rampant corruption that currently plagues Afghanistan, its educational goals will continue to go unmet, stripping the country of its most vital resource: educated children. A poor education system will severely cripple Afghanistan's future growth and development, both socially and economically. Education is only one part of an extremely corrupt national governmental infrastructure in Afghanistan.¹ In January 2010, Afghan President Hamid Karzai ordered all government ministries, including the Ministry of Education (MoE), to devise detailed and independent anti-corruption strategies.²

This Note will analyze how the United Nations Convention Against Corruption (UNCAC) can be better implemented to reduce corruption in Afghanistan's education system. Specifically, it will discuss various anti-corruption programs implemented in other countries and will consider how Afghanistan's MoE can benefit from the lessons learned and successes achieved in the international community, as well as potential steps the MoE can take to reduce corruption.

This Note is divided into three main parts. It begins with a glimpse of the history of Afghanistan's education system and its current state, as well as the importance of a solid, functioning national education program, particularly in such a war-torn and developing nation. Next, it examines the impact that corruption has had on the education system and how it plays a role in weakening the governmental infrastructure. This is followed by a discussion of the United Nations Convention Against Corruption, as well as current Afghan anti-corruption policies. This section also discusses ideas—some already being implemented and some new—for battling corruption

¹ See BOB WOODWARD, *OBAMA'S WARS* 218–19 (2010). It is well-documented that Afghanistan's government, from top to bottom, is extraordinarily corrupt. U.S. Secretary of Defense Robert Gates said Afghan President Hamid Karzai and his government are “way beyond the pale in terms of corruption.” *Id.* at 219. U.S. Ambassador to Afghanistan Karl Eikenberry said that the international coalition led by the United States is “dealing with an extraordinarily corrupt government.” *Id.* at 218.

² *Ministry of Education Drafts Anti-Corruption Policy*, U.S. AGENCY FOR INT'L DEV. (Mar. 15, 2010) [hereinafter *MoE Drafts Policy*], available at http://afghanistan.usaid.gov/en/USAID/Article/1066/Ministry_of_Education_Drafts_Anticorruption_Policy. The Ministry of Education drafted its anti-corruption policy throughout much of 2010. As of the date of this Note, the policy is under review and not publicly available. Many have speculated, however, on the issues and solutions it will address, and much of that is discussed in this Note.

within the education sector. Finally, the Note explores different potential solutions for Afghanistan and the international community to take to reduce the effect of corruption and stabilize the national education system.

II. EDUCATION IN AFGHANISTAN

The importance of education in a society cannot be overstated. A functioning and stable education system is a boon to progress, especially in a struggling and transforming country. A core goal of Afghanistan's MoE is to develop a system that can serve as a cornerstone to peace, stability, democracy, poverty reduction, and economic growth.³ A good education program not only helps stabilize and grow a society, but it is also a key ingredient in the fight against violent extremism.

A strong Afghanistan in the future requires a strong education system today. The median age in Afghanistan is eighteen years: the country has one of the youngest populations on the planet.⁴ It also has one of the highest illiteracy rates in the world, with nearly three out of four people unable to read or write.⁵ With this comes a vicious cycle: if so few members of the population are literate, who is going to teach the children? Despite the alarming numbers, though, Afghanistan's education system has come a long way in just ten years.

Education has never been particularly strong in Afghanistan, as instability and religious priorities have made traditional schooling difficult.⁶ However, Afghanistan's education system has never been as strong as it is now, either. In the last century, Afghanistan's education sector has transformed from nonexistence into a developing infrastructure, then back to near nonexistence. Today, it has become a rapidly growing, but still flawed system. To understand how and why Afghanistan's education system is what it is today, it is important to start at the beginning.

³ Mohammad Haneef Atmar, Minister of Educ., *Message from the Minister* in MINISTRY OF EDUC., ISLAMIC REPUB. AFG., NAT'L EDUCATION STRATEGIC PLAN FOR AFGHANISTAN: 1385–1389, at 9–10 (2007), available at http://www.iiep.unesco.org/fileadmin/user_upload/News_And_Events/pdf/2010/Afghanistan_NESP.pdf. The late Richard Holbrooke, a special advisor to President Barack Obama on Afghanistan, in a meeting with the president, stressed that the United States should have three priorities in Afghanistan: agriculture, education, and reduction of poppies. WOODWARD, *supra* note 1, at 239.

⁴ *The World Factbook: Afghanistan*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/af.html> (last updated May 8, 2012). The life expectancy in Afghanistan is only slightly more than 44 years. *Id.*

⁵ *Id.*

⁶ See U.S. AGENCY FOR INT'L DEV., EDUCATION AND THE ROLE OF NGOs IN EMERGENCIES: AFGHANISTAN 1978–2002, at 2–5 (2006) [hereinafter USAID] (describing the impact of the Soviet occupation and later Taliban rule on education).

In 1904, the first government-supported boys school was built in Kabul, Afghanistan;⁷ the first all-girls school was built in 1921.⁸ The following year, Afghanistan's MoE, still the entity overseeing national education today, was created with the goal of building "a national system of schools with a modern curriculum."⁹ For years, Afghanistan seemed to be on the right path: schools operated in every province, and additional schools existed for the country's nomadic population.¹⁰ Without question, there were still not enough teachers, resources, or school buildings to accommodate all of Afghanistan's educational needs, but the progress was undeniable.¹¹

During this time, Afghanistan instituted more modernized laws, including less-restrictive dress codes for women and equal rights for all.¹² While this progressive reform was good for education, it also stirred up opponents and it wasn't long before the modernization came to a screeching halt.¹³ In 1929, a change in government drastically altered Afghanistan's educational agenda: government schooling was considered "unreligious," leading children to become "infidels."¹⁴ For the next twenty years, education reform in Afghanistan went nowhere.

In the 1940s and 1950s, Afghanistan's government renewed its commitment to education. Education spending increased dramatically,

⁷ *Id.* at 2.

⁸ Mir Hekmatullah Sadat, *Modern Education in Afghanistan*, AFGHAN MAG. (Mar. 2004), http://www.afghanmagazine.com/2004_03/articles/education.shtml. The first girls school was created by Queen Soraya, whose mother served as the first principal. By 1928, the school had educated more than 800 girls. In that same year, Afghanistan's first co-educational elementary school opened. Though progress was being made at the elementary level, no formal system existed for higher education and many top graduates were sent to study in Egypt, Germany, and France. *Id.*

⁹ RICHARD NEWELL, *THE POLITICS OF AFGHANISTAN* 54 (1972).

¹⁰ Sadat, *supra* note 8.

¹¹ See *Afghanistan Education History*, SCHOOL IS OPEN, http://www.schoolisopen.org/sio/index.php?option=com_content&view=article&id=53&Itemid=62 (last visited May 15, 2012) (explaining the expansion of an educational system during the mid-20th century, despite the challenges of changing government leadership and access to resources). Much of the progress was made in the larger cities, especially Kabul. Though it was a good step for Afghanistan, no formal schooling existed for many children living in remote villages. The infrastructure was growing, but it was not yet at the point where the system could spread throughout the country. Unfortunately, it would never get to that point in the 20th century. *Id.*

¹² See BARRY YOUNGERMAN & SHAISTA WEBB, *A BRIEF HISTORY OF AFGHANISTAN* 106 (2007) (describing the advent of a new constitution in 1923, which, among other protections, provided equal rights for non-Muslims and explicitly guaranteed women's rights).

¹³ *Id.* at 109 (noting that uprisings against the government led the king to dramatically reverse course on his reform plans).

¹⁴ Sadat, *supra* note 8.

eventually comprising more than 40% of the country's national budget.¹⁵ Afghanistan sought assistance for education programs from international organizations, including the United Nations Educational, Scientific, and Cultural Organization (UNESCO) and several countries.¹⁶ While the renewed focus was certainly positive, the numbers were still underwhelming. By 1950, only 6% of children from age six to twelve were enrolled in primary education.¹⁷

By the time the Soviet Union invaded in 1978, the gross enrollment rate for all school-aged children attending classes had risen to 54% for males and 12% for females.¹⁸ However, with the invasion came the fighting, and in the next several decades an estimated 80% of the country's school buildings were destroyed.¹⁹ After the withdrawal of the Soviet Union in 1989, many expected education to improve, but the opposite occurred.²⁰ After decades of war, the system was unable to grow, instead crumbling from the continued fighting of different Mujahedeen factions grappling for control, leading to the destruction of many more roads and schools.²¹

In 1996, the Taliban acquired control and quickly terminated all modernized educational institutions in Afghanistan.²² The extremist government banned girls from school and women from teaching, effectively setting Afghanistan's education system back almost a full century.²³

When the Taliban government was officially overthrown in late 2001, there were less than one million school-aged children attending

¹⁵ *Id.*

¹⁶ See SAIF R. SAMADY, U.N. EDUC., SCI., & CULTURAL ORG., EDUCATION AND AFGHAN SOCIETY IN THE TWENTIETH CENTURY 16 (2001) (describing UNESCO's role in developing education infrastructure and programs and other nation's support for Afghan education via advisory roles).

¹⁷ Sadat, *supra* note 8.

¹⁸ USAID, *supra* note 6, at 3. At this same time, the literacy rate was 18% for males and 5% for females. Sadat, *supra* note 8.

¹⁹ USAID, *supra* note 6, at 3.

²⁰ See Leigh Nolan, Afghanistan, Education, and the Formation of the Taliban 18–20 (Jan. 2006) (unpublished M.A. thesis, Tufts University) (describing the failure of various anti-Soviet factions to unite and provide any meaningful leadership after Soviet withdrawal). During the Soviet era, there were two types of schools: pro-Soviet and anti-Soviet. The former created institutions designed to educate Afghan children on Communism and the Soviet way of life. The anti-Soviet schools focused on traditional Afghan teachings. As time passed, this branch became increasingly religious-based, focusing on Muslim teachings and preaching against foreign occupation. This extremist-type of schooling played a critical role in the years following the Soviet withdrawal. *Id.* at 15–18.

²¹ See *id.* at 18–20

²² USAID, *supra* note 6, at 4.

²³ *Id.*

classes.²⁴ Today, there are more than 6.8 million children enrolled in school, including 2.5 million girls.²⁵

Undoubtedly, Afghanistan's education sector has seen many tangible and impressive successes over the last decade. Yet roughly half of the country's school-aged children remain out of school. Only 25% of the country's approximately 160,000 teachers have a high school education,²⁶ and even fewer are well versed in more than one subject and have the ability to transfer that knowledge to the students: a recent survey found that only ten out of 200 teachers (5%) could pass the exact same exam they were giving their students.²⁷

III. A WAY OF LIFE: CORRUPTION IN THE EDUCATION SECTOR

While education has vastly improved in the last several years, it still has a long way to go. Unfortunately, systemic corruption threatens not only the progress that has been made in the education system, but also the future of Afghanistan itself.

For the purposes of this Note, corruption is defined as "the abuse of trusted power for private gain."²⁸ Corruption in the government compromises security, development and state building.²⁹ In Afghanistan, it is contributing to the deterioration of public confidence in the government and the resurgence of the Taliban.³⁰ In the education sector specifically,

²⁴ GEORGE W. BUSH, DECISION POINTS 219 (2010). At this same time, there were only 3,400 school buildings, the majority of which were unusable, and 20,000 teachers. AGENCY COORDINATING BODY FOR AFGHAN RELIEF, HEALTH AND EDUCATION IN AFGHANISTAN: AN EMPTY GIFT 9 (2011) [hereinafter ACBAR].

²⁵ ACBAR, *supra* note 24, at 9.

²⁶ Ben Arnoldy, *Big Test for Afghanistan Education*, CHRISTIAN SCI. MONITOR (Nov. 13, 2009), <http://www.csmonitor.com/World/Asia-South-Central/2009/1113/p06s17-wosc.html>.

²⁷ OXFAM, FREE, QUALITY EDUCATION FOR EVERY AFGHAN CHILD 10 (2006), available at <http://www.oxfam.org/sites/www.oxfam.org/files/Free,%20Quality%20Education%20for%20Every%20Afghan%20Child.pdf>.

²⁸ *Anti-Corruption FAQs*, TRANSPARENCY INT'L, http://www.transparency.org/whoweare/organisation/faqs_on_corruption/2/ (last visited May 15, 2012).

²⁹ U.S. AGENCY FOR INT'L DEV., ASSESSMENT OF CORRUPTION IN AFGHANISTAN I (2009) [hereinafter CORRUPTION ASSESSMENT]. In a report to then-President George W. Bush, Army Lieutenant General Douglas Lute wrote that U.S. interests in Afghanistan hinge on three goals: curtailing corruption, controlling the out-of-control opium trade, and destroying Taliban and al-Qaeda safe havens in Pakistan. WOODWARD, *supra* note 1, at 43–44. In July 2009, General Stanley McChrystal echoed this sentiment, arguing that the military "could run the finest counterinsurgency campaign in world history and still fail because of the weak and corrupt Afghan government." *Id.* at 151.

³⁰ Dexter Filkins, *Bribes Corrode Afghans' Trust in Government*, N.Y. TIMES, Jan. 2, 2009, at A1. The article also noted quite eloquently, "From the lowliest traffic policeman to the family of President Hamid Karzai, the state built on the ruins of the Taliban government

corruption results in the payment of sixteen to twenty thousand ghost teachers.³¹ In addition, teachers grade many students not on their own performance or ability, but on arbitrary factors, including familial relations and the family's ability to pay a bribe.³² Largely due to their inadequate salaries, many teachers rely on these bribes to feed their own families.³³

Moreover, because of the poor organizational system and lack of technology in the MoE, many teachers are not paid in a timely manner or are forced to pay a bribe themselves to receive their own paycheck.³⁴ Additionally, one cannot overlook the effect that corruption has directly on children, especially when they grow up in an environment where corruption is not only tolerated, but is a way of life. When it comes to implementing anti-corruption programs, the battle lies in changing the culture of corruption that undermines government at all levels. Theoretically, if corruption is strongly condemned, public acceptance of corruption will decline, thus establishing the beginning of a successful long-term, anti-corruption strategy.

In addition to corruption's direct effects on education, corruption also deters and distorts private investment and erodes the functioning, credibility, and legitimacy of the government.³⁵ Transparency International, an international watchdog organization that monitors corruption around the globe, ranked Afghanistan as the third most corrupt country in the world in 2011, the most recent year for which data is available.³⁶ Even worse, corrup-

seven years ago now often seems to exist for little more than the enrichment of those who run it." *Id.*

³¹ MORTEN SIGSGAARD, U.N. EDUC., SCI., AND CULTURAL ORG., EDUCATION AND FRAGILITY IN AFGHANISTAN: A SITUATIONAL ANALYSIS 23 (2009). Ghost teachers are those who do not show up to work but continue to collect a paycheck or those who are doubly registered and collect two paychecks for a single job. *Id.*

³² See CORRUPTION ASSESSMENT, *supra* note 29, at 7 (describing how relationships among individuals in the public and individuals in government have more authority than actual government regulations).

³³ *Id.* at 8.

³⁴ See *id.* at 6 (explaining how the MoE is beginning to address how teachers must pay bribes to receive pay checks and performance evaluations).

³⁵ Asian Dev. Bank, U.K. Dep't for Int'l Dev., U.N. Dev. Programme, U.N. Office on Drugs and Crime & The World Bank, Fighting Corruption in Afghanistan: A Roadmap for Strategy and Action 1 (Discussion Draft, Feb. 16, 2007), available at http://www.unodc.org/pdf/afg/anti_corruption_roadmap.pdf.

³⁶ TRANSPARENCY INT'L, CORRUPTION PERCEPTIONS INDEX (2012). Afghanistan was tied for third worst with Myanmar; the essentially government-less Somalia was rated the world's most corrupt country. Transparency International ranked 182 nations based on the perception of corruption in the public sector. The results reflect a compilation of several (four in Afghanistan) relevant surveys and assessments from reputable international institutions and watch-groups. Afghanistan received an Index score of 1.5. By comparison, New Zealand

tion continues to grow: the same Transparency International survey in 2005 ranked Afghanistan 117th out of 180 countries, and more recently has plummeted to 180th out of 182 countries.³⁷ A 2010 survey found that 15% of Afghans believe the MoE is one of the three most corrupt public institutions in the country, up from 12% in 2007.³⁸ Additionally, 10% of Afghans surveyed said that corruption deprived them or their children of a primary or secondary education.³⁹ While paying bribes for an education is not as common as paying for police or court services, the bribes paid to obtain educational services were usually among the highest.⁴⁰ For the households that paid education bribes, the average amount paid was 10,925 Afs per year, about U.S. \$218.⁴¹

Why does corruption occur in the education system? First, it is important to note that in just over a decade the number of children attending schools in Afghanistan has increased from about one million to almost seven million, and the number of teachers has jumped from 20,000 to 160,000.⁴² These increases would be quite significant for any system to absorb, but they are particularly cumbersome in an already weak infrastructure. Moreover, in a more-developed nation, where technological tools are more readily available, the strains of such an enrollment increase might not be as harsh. However, in Afghanistan, most teachers and schools, and certainly the MoE, lack the ability to update quickly. For example, until recently the government paid all teacher salaries in cash. As one would expect, this process had several steps, with money flowing from the MoE to provincial offices to district offices to individual schools and finally to the individual teacher.⁴³ It was not uncommon for the intermediaries to siphon

claimed the top spot for the least corrupt country with an Index score of 9.5, followed by Denmark and Finland with scores of 9.4. *Id.*

³⁷ *Id.*

³⁸ INTEGRITY WATCH AFG., AFGHAN PERCEPTIONS AND EXPERIENCES OF CORRUPTION: A NATIONAL SURVEY 30 (2010). Interestingly, several public institutions, including the Ministry of Interior, banks, courts, and municipalities decreased in their perceived level of corruption. *Id.* The largest difference occurred in the Courts, where 53% of Afghans rated them one of the most corrupt in 2007, but only 18% held the same view in 2010. *Id.* The Ministry of Justice and Ministry of Defense were the largest increases in perceived corruption, raising 13 and 16 points, respectively, between 2007 and 2010. *Id.*

³⁹ *Id.* at 64–65. The same survey also found that 76% of Afghans felt they had not been deprived of education because of a corrupt government, while 13% were unsure. *Id.*

⁴⁰ *Id.* at 68.

⁴¹ *Id.* By comparison, the average bribe for other public services is U.S. \$160. In 2009, the U.N. estimated that Afghans paid U.S. \$2.5 billion in bribes across the board, equaling almost 23% of the country's GDP and making corruption the second largest income generator in Afghanistan behind only the opium trade. U.N. OFFICE ON DRUGS AND CRIME, CORRUPTION IN AFGHANISTAN: BRIBERY AS REPORTED BY THE VICTIMS 4 (2010).

⁴² Arnoldy, *supra* note 26.

⁴³ CORRUPTION ASSESSMENT, *supra* note 29, at 41.

off money at each step.⁴⁴ The MoE has recently improved its direct-deposit system for teachers, thereby allowing money to go straight from the Ministry into individual bank accounts.⁴⁵ However, these advancements have only been accessible to teachers in larger cities, particularly Kabul.⁴⁶ Many teachers in outlying villages and regions don't have access to this type of technology, or even bank accounts.⁴⁷

The incentives to solicit bribers are particularly great for teachers. Afghanistan's teachers are some of the lowest paid in the world, making approximately U.S. \$100 per month.⁴⁸ Couple this with the fact that there is minimal oversight and accountability, it is apparent that teachers have little to fear and much to gain through bribery.

Additionally, the MoE lacks information regarding teachers. This is due to the influx of new teachers and the MoE's inability to keep up in the past decade, evidenced by the number of ghost teachers in the country and the Ministry's general lack of knowledge about many of its educators.⁴⁹

IV. A GLOBAL SOLUTION TO A GLOBAL PROBLEM: THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

Corruption only occurs when a public official expects to derive a net positive benefit from the transaction. Accordingly, a successful anti-

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* According to USAID, the agency is currently working with the Central Bank of Afghanistan, to develop direct deposit systems for the military and police. *Id.* When resources become more readily available, the agency hopes to expand this program to more civil servants in non-urban areas. See also *Faster Payment for Afghan Civil Servants*, U.S. AGENCY FOR INT'L DEV. (May 15, 2010), http://afghanistan.usaid.gov/en/USAID/Article/1166/Faster_Payment_for_Afghan_Civil_Servants.

⁴⁷ See The World Bank, *Afghanistan Public Expenditure Review 2010: Education Sector* 11–12 (The World Bank, Working Paper No. 5, 2010), available at <http://siteresources.worldbank.org/AFGHANISTANEXTN/Resources/305984-1264608805475/6739619-1276813833351/Paper5.pdf> (noting that challenges remain in streamlining direct deposit for teachers). One of the steps the MoE is taking to combat corruption and low wages is to require teachers to open bank accounts. While this is not a problem for some, others must travel long distances to do so, which would also require them to travel to collect their paychecks. Abbas Daiyar, *Teacher's Day in Afghanistan*, KABUL PERSPECTIVE BLOG, (May 23, 2009, 10:09 PM), <http://www.kabulperspective.wordpress.com/2009/05/23/teachers-day-in-afghanistan/>.

⁴⁸ Arnoldy, *supra* note 26.

⁴⁹ Cf. Jonathon Burch, *Afghan Census Postponed for Two Years: UN*, REUTERS (June 8, 2008), <http://www.reuters.com/article/2008/06/08/us-afghan-census-idUSISL267420080608> (noting that policy makers have insufficient and unreliable data and therefore struggle to properly allocate government funds and international aid). In 2008, the country's first census since 1979 was postponed due to poor security and the potential of the 2009 presidential election politicizing the event and jeopardizing its statistical integrity. The census was rescheduled for 2010, but at the time of this Note, no census statistics were available. *Id.*

corruption program would lower the expected gains and raise the expected penalties of corrupt behavior. If the costs—or potential costs—were to outweigh the expected gain, officials would be hesitant to engage in corruption. In an attempt to combat such a global problem and alter the cost-benefit calculations that may favor corruption, the international community has devised a multi-faceted framework to target corruption at its roots and punish those who engage in it.

The United Nations Convention Against Corruption (UNCAC) was entered into force on December 14, 2005, and is the first and only legally binding international anti-corruption treaty.⁵⁰ UNCAC acknowledges the negative effects of corruption, noting that corruption leads to human rights violations, distorts markets, allows organized crime and terrorism to flourish, and undermines democracy and the rule of law.⁵¹ Afghanistan signed the Convention in 2004 and ratified it in August 2008.⁵² This was a significant step for Afghanistan, but much remains to be done.

The Convention's stated goals are:

- (a) [t]o promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- (b) [t]o promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery; and
- (c) [t]o promote integrity, accountability and proper management of public affairs and public property.⁵³

⁵⁰ *The Global Compact and the United Nations Office on Drugs and Crime*, U.N. GLOBAL COMPACT, http://www.unglobalcompact.org/ParticipantsAndStakeholders/un_agencies/United_Nations_Office_on_Drugs.html (last visited May 16, 2012).

⁵¹ Kofi Annan, U.N. Secretary-General, *Foreword* to U.N. Office on Drugs and Crime, U.N. Convention Against Corruption (2004), available at http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

⁵² SPECIAL INSPECTOR GEN. FOR AFG. RECONSTRUCTION, U.S. RECONSTRUCTION EFFORTS IN AFGHANISTAN WOULD BENEFIT FROM A FINALIZED COMPREHENSIVE U.S. ANTI-CORRUPTION STRATEGY 2 (2010) [hereinafter FINALIZED STRATEGY], available at <http://www.sigar.mil/pdf/audits/2010-08-05audit-10-15.pdf>.

⁵³ U.N. Convention Against Corruption, G.A. Res 58/4, U.N. Doc. A/RES/58/4, Annex, art. 1 (Oct. 31, 2003) [hereinafter UNCAC]. The Convention has 140 signatories. *United Nations Convention Against Corruption*, U.N. OFFICE ON DRUGS AND CRIME, <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html> (last visited May 16, 2012). It is lauded in the international community for being the first international anti-corruption instrument with an asset recovery provision, often considered a key ingredient lacking in other anti-corruption strategies. See Philippa Webb, *The United Nations Convention Against Corruption*, 8 J. INT'L ECON. L. 191, 206–12 (describing the focus on asset recovery during UNCAC drafting and debates).

To meet these ends, UNCAC relies on four pillars: prevention, criminalization, international cooperation, and asset recovery.⁵⁴ Combating corruption in the education sector cannot focus solely on the education sector. It is not possible to rid one Ministry of corruption while it occurs in epidemic proportions throughout the rest of the government. Accordingly, adhering to the provisions of UNCAC will enable Afghanistan to strive for and achieve four main goals in combating corruption: (1) improving transparency and accountability in government institutions; (2) improving financial oversight; (3) building judicial capacity to investigate, prosecute, punish, and remove corrupt officials; and (4) aiding organizations in educating and empowering the public to participate in good governance.⁵⁵ Accomplishing these four goals will greatly reduce corruption in Afghanistan, and UNCAC is the first international convention to establish a comprehensive framework for doing just that.

A. *Prevention: Ending the Culture of Corruption*

The first pillar, prevention, is a comprehensive set of requirements aimed not only at deterring corruption before it occurs, but also at changing the culture of corruption in a society through transparency and public participation.⁵⁶ Afghanistan has recently established three organizations to prevent, investigate, and prosecute corruption: (1) the High Office of Oversight and Anti-Corruption (HOOAC); (2) the Major Crimes Task Force (MCTF); and (3) the Anti-Corruption Unit (ACU).

The HOOAC, discussed in detail below, is the unifying organization tasked with overseeing the government-wide anti-corruption efforts, including complaint follow-up, investigation, and coordination among agencies.⁵⁷ The MCTF is a unit comprised of 163 agents and is responsible for investigating cases of high-level corruption.⁵⁸ Unfortunately,

⁵⁴ UNCAC, *supra* note 53, arts. 5, 15, 43, 51.

⁵⁵ FINALIZED STRATEGY, *supra* note 52, at 3–4.

⁵⁶ See UNCAC, *supra* note 53, arts. 5–14 (outlining the preventative measures and roles of public and private officials and institutions in preventing and fighting corruption).

⁵⁷ SPECIAL INSPECTOR GEN. FOR AFG. RECONSTRUCTION, ANTI-CORRUPTION REPORT TO THE UNITED STATES CONGRESS 108 (Jan. 30, 2011) [hereinafter SIGAR REP'T], available at <http://www.sigar.mil/pdf/quarterlyreports/2011-01-30qr.pdf> (discussing the various Afghan bodies charged with implementing the Afghan anti-corruption movement and the progress that they have made).

⁵⁸ *Id.* at 108–09. The MCTF receives logistical support from the FBI and mentoring support from the Department of Justice. According to the U.S. Bureau of International Narcotics and Law Enforcement Affairs, the MCTF is operating at 70% capacity. President Karzai undermined its credibility when he ordered that the task force be investigated for illegal activities and human rights violations following the arrest of one of his aides. Subsequently, two lead prosecutors involved in the investigation and arrest were transferred to a provincial office. *Id.*

the MCTF has little involvement in the education system and focuses largely on high-level officials in the national government: its investigations have led to very few prosecutions.⁵⁹ Lastly, the ACU operates in the Afghan Attorney General's Office and oversees prosecution of corruption cases.⁶⁰ In the final quarter of 2010, the ACU secured eight convictions of mid-level officials, but it has not pursued prosecution of high-level government employees.⁶¹ In a clear sign of the government's reluctance to rigorously root out corruption within its ranks, the Attorney General and the Afghan Supreme Court issued directives forbidding the use of polygraphs on newly hired anti-corruption officials.⁶² While the ACU hired fifty new prosecutors between July 2010 and January 2011, it did not subject any of these individuals to polygraph testing, and only five of the eleven judges on the Anti-Corruption Tribunal have taken and passed a polygraph examination.⁶³

In implementing each entity and its functions, Afghanistan has increasingly relied on UNCAC's provisions. The Convention's initial step in combating corruption is to establish a body to oversee all aspects of the anti-corruption program within a government.⁶⁴ Likely out of fear that an anti-corruption body is susceptible to the same temptations that plague government officials and public employees, UNCAC requires the government to give to the body the necessary independence and freedom to carry out its broad array of tasks without undue influence.⁶⁵

In fulfilling this obligation, President Karzai created HOOAC, a promising organization designed to provide unifying oversight to coordinate, supervise, and support all anti-corruption programs within Afghanistan.⁶⁶ The President appoints the top officer of HOOAC, the

⁵⁹ *Id.* at 109.

⁶⁰ *Id.*

⁶¹ *Id.* Until July 2010, officials from the U.S. Department of Justice provided full-time assistance to ACU prosecutors. However, this partnership was terminated in July because of efforts by Karzai to undermine the prosecution of a presidential aide. The DOJ has since reinstated the mentoring program, but is only permitted by the Afghan government to work on a limited number of mid-level cases. SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION, ANTI-CORRUPTION REPORT TO THE UNITED STATES CONGRESS 92-93 (July 30, 2011), available at <http://www.sigar.mil/pdf/quarterlyreports/2011-07-30qr.pdf>.

⁶² SIGAR REP'T, *supra* note 57, at 109.

⁶³ *Id.*

⁶⁴ UNCAC, *supra* note 53, art. 6, ¶ 1.

⁶⁵ *Id.* art. 6, ¶ 2.,

⁶⁶ HIGH OFFICE OF OVERSIGHT AND ANTI-CORRUPTION, ANTI-CORRUPTION STRATEGIC PLAN: 2011-2013, at 6 (2010) [hereinafter HOOAC STRATEGIC PLAN], available at https://www.pksoi.org/document_repository/doc_lib/HOO_Anti-Corruption_Strategic_Plan_2011-2013.pdf. In December 2010, HOOAC released a 60-page anti-corruption strategy detailing what it expects to accomplish by 2013. *Id.* This is a great start, but clearly missing from the strategy is an individualized approach to each Ministry. The MoE is only mentioned a handful of times, largely in regard to weaving anti-corruption education into the curriculum of

Director General.⁶⁷ Its mandate includes oversight of all administrative and preventative measures against corruption undertaken by individual ministries, as well as investigation and prosecution of citizen complaints.⁶⁸ While HOOAC's concept and goals are a significant start, more is necessary. HOOAC would do well to serve as an umbrella organization, perhaps coordinating all sectors in an anti-corruption strategy, as it is expected to do. However, combating the kind of corruption that is rampant in Afghanistan will not be accomplished by one large government oversight organization.⁶⁹

It is important to remember that Afghanistan is a society in which truckers pay bribes to get from Point A to Point B, citizens pay bribes to settle lawsuits, homeowners pay bribes to acquire the title to their home, and parents pay bribes to ensure passing grades for their children. Corruption is so entrenched and common that a single organization cannot be expected to oversee and reform the entire government, particularly when the organization is grossly understaffed and undertrained.⁷⁰ The U.N. Office on Drugs and Crime (UNODC), which provides assistance to member states on the implementation of their obligations under UNCAC, has acknowledged that HOOAC lacks key infrastructure, staffing, and technical assistance.⁷¹ Considering this acknowledgement alongside HOOAC's broad, daunting mandate, HOOAC risks becoming obsolete. During its first year,

primary and secondary schools. *See, e.g., id.* at 27, 47. A more narrow approach is necessary in the education system to achieve real and lasting progress.

⁶⁷ *Introduction: Who We Are?*, HIGH OFFICE OF OVERSIGHT AND ANTI-CORRUPTION, <http://anti-corruption.gov.af/en/page/1733> (last visited May 16, 2012).

⁶⁸ *See* HOOAC STRATEGIC PLAN, *supra* note 66, at 19–26 (describing the policies, objectives, and scope of the projects at HOOAC).

⁶⁹ ISLAMIC REPUB. AFG., STRATEGY AND POLICY FOR ANTI-CORRUPTION AND ADMINISTRATIVE REFORM 7 (2009) [hereinafter SPACAR], *available at* http://anti-corruption.gov.af/Content/files/ANTI%20CURAPTION%20STRATIGY_Eng.pdf (calling for more than just government oversight to fight corruption). Among a number of external factors blamed for facilitating corruption, “unsound performances of detection and investigation organizations” was identified as a primary reason Afghanistan’s culture of corruption remains so prevalent. The report noted that police and investigative agencies often delay or botch the process, then preventing the judicial system from sanctioning the perpetrator. *Id.* at 85.

⁷⁰ HOOAC STRATEGIC PLAN, *supra* note 66, at 12. HOOAC represents a shift from stopping current corruption to deterring and preventing future corruption, and aims to do so by investigating individual corruption cases. Unfortunately, corruption is so rife that it occurs in almost every business transaction, so investigations by one organization would almost certainly go nowhere in the long run, as the demand would be too high to have an impact. *Id.* at 14.

⁷¹ U.N. Office on Drugs and Crime, *Anti-Corruption Measures in Afghanistan 1* (unpublished Concept Note, Jan. 2010), *available at* http://www.unodc.org/documents/afghanistan/conceptnotes/Microsoft_Word_-_2010_11_April_01_Concept_Note_Anti-Corruption.pdf [hereinafter UNODC *Anti-Corruption Measures*].

HOOAC installed public drop boxes, established a hotline to collect complaints, and assisted various ministries in the creation of their own anti-corruption strategies.⁷² Nonetheless, perhaps in a sign that the organization is over-stretched, it led only one high-profile arrest and sent only fifteen cases to law-enforcement agencies.⁷³

Instead, Afghanistan should create a separate organization within the MoE to identify and focus on corruption as it occurs within that realm, unified under the umbrella organization of HOOAC and in cooperation with the other anti-corruption organizations.⁷⁴ This would allow for a much narrower mandate, focusing only on corruption as it occurs in the education sector. Ideally, it should be a boots-on-the-ground, in-your-face organization that would publicly march against corruption. By becoming more involved than drop boxes and hotlines, the organization could more easily cater to the citizens and could establish a presence, hopefully diminishing the public's acceptance of bribery and corrupt practices. A visible organization would almost certainly enhance pressure on those responsible and provide more transparency to those concerned.

This organization must also be largely independent of government influence. A significant concern with HOOAC is that it reports directly to President Karzai, a man whom many believe contributes heavily to the worsening culture of corruption in Afghanistan.⁷⁵ In response to

⁷² Ben Arnoldy, *The Man Leading Afghanistan's Anti-Corruption Fight*, CHRISTIAN SCIENCE MONITOR (Nov. 16, 2009) [hereinafter *Anti-Corruption Fight*], <http://www.csmonitor.com/World/Asia-South-Central/2009/1116/p06s07-wosc.html>. HOOAC has also developed a system to seek out complaints and then distribute all information to the relevant ministry. While this is a good start, this is the exact type of on-the-ground operation that a smaller organization, focusing only on the education sector, should be conducting. It would allow for greater independence and establish conduits through which people may report corruption and receive immediate response, rather than filtering from HOOAC down to the MoE for further investigation. Even with HOOAC, the organization only collects complaints, leaving the ministries to address them and enforce any remedies, providing only an additional unnecessary step and further bureaucracy. See CORRUPTION ASSESSMENT, *supra* note 29, at 15 (discussing the split between HOOAC's investigatory authority and the individual ministries' enforcement authorities).

⁷³ *Anti-Corruption Fight*, *supra* note 72.

⁷⁴ Though it might seem that HOOAC and the other organizations working together would be sufficient to combat corruption in the education system, it is not. All of the organizations are grossly untrained, understaffed, and unfunded, and they all are designed to root out the most common and blatant forms of corruption. Corruption that is unique to an individual ministry requires a more narrow and hands-on approach to focus on diminishing it within that realm. See, e.g., UNODC *Anti-Corruption Measures*, *supra* note 71, at 3 (proposing further anti-corruption efforts focus on localized level).

⁷⁵ See Adam Entous, *Pentagon Puts Pressure on Hamid Karzai Over Corruption*, REUTERS (Mar. 29, 2010), <http://www.reuters.com/article/2010/03/29/us-afghanistan-usa-mullen-idUSTRE62S0BG20100329> (describing U.S. efforts to convince Karzai to do more to fight corruption). Karzai's brother, Ahmad Wali Karzai, was the top provincial official in

Afghanistan's 2009 election fraud and renewed calls by the international community to confront corruption, Karzai has pledged to do just that.⁷⁶ However, there is also sufficient evidence to show that Karzai is merely giving lip service to an issue that has received increased attention, particularly as he has weakened anti-corruption investigations and condoned the culture of impunity in some instances.⁷⁷

The creation and goals of HOOAC are commendable and a strong first step. This body will lead the entire government in its anti-corruption agenda, but it should not be considered a silver bullet. A narrower approach to education would likely be more effective in Afghanistan. The creation of a body within the MoE would allow for a more customized approach to fighting corruption as it occurs in the education sector, and it would limit the scope of complaints, investigations, and prosecutions.

The Hong Kong Independent Commission Against Corruption (ICAC) is a good example of the type of comprehensive, independent, and successful organization that a MoE anti-corruption body should strive to become. When Hong Kong established the ICAC in 1974, corruption in Hong Kong was so widespread and accepted that many dismissed the new organization.⁷⁸ However, the ICAC garnered almost-immediate legitimacy after the prosecution of 247 government officials.⁷⁹ While Afghanistan and

Kandahar and considered by many to be the cause of much corruption, particularly related to the opium trade. American officials have anonymously spoken out against Wali Karzai, going as far as saying U.S. interests would rather him be out of the government. *Id.* After the initial writing of this Note, Ahmad Wali Karzai was assassinated in July 2011 by a longtime confidant. Alissa J. Rubin & Scott Shane, *Assassination in Afghanistan Creates a Void*, N.Y. TIMES, July 13, 2011, at A1.

⁷⁶ UNODC *Anti-Corruption Measures*, *supra* note 71, at 1. In his second inaugural speech, Karzai pledged his commitment to fight corruption and end the culture of impunity. He also created HOOAC, tasked the body to organize national anti-corruption conferences, and ordered all government ministries to perform their own anti-corruption strategies. *Id.* While this has been completed by the MoE, the draft is currently under review and has not yet been released. *MoE Drafts Policy*, *supra* note 2.

⁷⁷ See Richard Spencer, *Karzai Seeks to Weaken Anti-Corruption Investigations in Afghanistan*, TELEGRAPH, (Sept. 9, 2010), <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/7991297/Karzai-seeks-to-weaken-anti-corruption-investigations-in-Afghanistan.html>. After the United States invested more resources into assisting anti-corruption investigations, including teams from the FBI and Treasury Department, Karzai insisted on less involvement by foreign officials and more local Afghan control, a move critics say weakens the investigations and relies solely on inept or unwilling officials. *Id.*

⁷⁸ See Tony Kwok Man-Wai, *Formulating an Effective Anti-Corruption Strategy: The Experience of Hong Kong ICAC*, in ANNUAL REPORT FOR 2005 AND RESOURCE MATERIAL SERIES NO. 69, at 196 (2006) (noting that few people in Hong Kong believed ICAC would be successful).

⁷⁹ *Id.* In 2000, Hong Kongers ranked the creation and success of ICAC as the sixth most important event in Hong Kong history. *Id.* In 2010, the Transparency International Corrup-

Hong Kong differ significantly, there are still similarities and lessons to be learned from the creation and implementation of such a successful organization. Most importantly, in both countries corruption is—or was—systemic, both at the highest levels of government and throughout the system.⁸⁰ In Hong Kong, police officers were regarded as the largest part of the problem, whereas in Afghanistan, teachers and MoE administrators are often to blame.

To accomplish its mandate, ICAC has three overarching departments: (1) Operations, (2) Corruption Prevention, and (3) Community Relations.⁸¹ The Operations Department exposes and investigates corruption through the use of undercover operations and complaint follow-up. ICAC receives complaints through a report center and hotline number, and an ICAC agent investigates each complaint and has authority to arrest suspects upon evidence that a corrupt transaction has occurred.⁸²

ICAC's Corruption Prevention Department is charged with providing anti-corruption recommendations and conducting studies to determine where the corruption is most active and harmful.⁸³ By law, ICAC's Commissioner must relay his or her findings from the studies to public sector organizations, and he or she must make recommendations on the effective implementation of corruption prevention mechanisms to both public organizations and to any requesting member of the public.⁸⁴

Lastly, ICAC's Community Relations Department is responsible for educating the public about the evils of corruption.⁸⁵ One of the most critical functions of an oversight body is the enhancement of transparency throughout the government and individual ministries, from conducting corruption investigations to providing education statistics and financial data. UNCAC refers several times to the importance of transparency, particularly in allowing the public to see and participate in the decision-making

tion Perception Index ranked Hong Kong as the 13th best country (13 out of 178) with an Index score of 8.4. TRANSPARENCY INT'L, *supra* note 36.

⁸⁰ JOHN R. HEILBRUNN, INT'L BANK FOR RECONSTRUCTION AND DEV., ANTI-CORRUPTION COMMISSIONS: PANACEA OR REAL MEDICINE TO FIGHT CORRUPTION? 3 (2004).

⁸¹ Presentation by Andrew H.Y. Wong, Dir. of Admin., ICAC, *Anti-Corruption Strategy of the Hong Kong Special Administrative Region of the People's Republic of China* (Dec. 2003), available at <http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan019145.pdf>.

⁸² INFO. SERVS. DEP'T, HONG KONG SPECIAL ADMIN. REGION GOV'T, HONG KONG: THE FACTS: ICAC (Apr. 2011). Between its creation in 1974 and the end of 2010, ICAC received 108,389 corruption complaints, conducted 70,511 investigations, and prosecuted 13,808 persons. *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

processes of government.⁸⁶ This could range from publicizing funding and tracking where money goes, to publicizing the names of those officials caught soliciting bribes or otherwise engaging in corrupt business transactions. Corruption thrives in secrecy; maximizing transparency where possible can only serve to deter corruption.

ICAC's Community Relations Department not only disseminates anti-corruption messages to the public, but it also is tasked with ensuring that ICAC remains a transparent and responsive organization, which it accomplishes largely through the use of an ICAC website and various training programs intended to encourage integrity among civil servants.⁸⁷ Afghanistan can take similar measures. While many anti-corruption programs aim to educate the public on the negative consequences of corruption, the MoE has firsthand access to a key demographic: children. The MoE anti-corruption body should work to communicate with the general public through training programs, seminars, and mass media, but it should also incorporate anti-corruption lessons and discussions into the general school curriculum. When corruption is as common and destructive as it is in Afghanistan, educating children against it is a critical objective.

A key difference between HOOAC and ICAC—and a critical factor in the success of the organizations—is the number of staff members. ICAC has a staff of almost 1,400.⁸⁸ By comparison, HOOAC's Complaints Management and Review, Prevention, and Community Relations departments have a total of sixty-five positions, thirty-three of which are currently vacant.⁸⁹ Though HOOAC's structure is similar to that of ICAC, it is vastly understaffed and lacks the resources it needs to achieve ICAC-type success. Instead, the smaller MoE anti-corruption body should be created with a similar structure. Its focused mandate would allow it to operate on a smaller budget with fewer agents.

Finally, and perhaps most importantly, ICAC is successful because of its independent structure.⁹⁰ Collectively, the departments answer to a Commissioner who in turn answers directly to the Chief Executive of the Hong Kong Special Administrative Region.⁹¹ Most critical, however, are the checks and balances that are incorporated into the system. Five independent committees closely scrutinize the ICAC, each consisting of leading and non-

⁸⁶ UNCAC, *supra* note 53, art. 7, 10, 13 (emphasizing transparency in public sector services, public reporting, and in dealings with society).

⁸⁷ INFO. SERVS. DEP'T, *supra* note 82.

⁸⁸ *Id.*

⁸⁹ See HOOAC STRATEGIC PLAN, *supra* note 66, at 20, 24, 27 (providing the number of people on staff and number of vacancies for each department).

⁹⁰ See INFO. SERVS. DEP'T, *supra* note 82 (stating that ICAC is independent of the civil service and describing the independent committees that oversee ICAC's work).

⁹¹ *Id.*

official citizens: the Advisory Committee on Corruption advises on Commission-wide policies and issues; the Operations Review Committee monitors all ICAC investigations; the Corruption Prevention Advisory Committee supervises the Commission's efforts to improve practices and procedures; the Citizens Advisory Committee on Community Relations supervises and makes recommendations regarding ICAC's engagement with the public; and the Complaints Committee examines public complaints against ICAC and its staff.⁹² With so many different and independent bodies overseeing the operation of ICAC, its independence is assured. The MoE's anti-corruption body must take similar steps to ensure its integrity and dedication to anti-corruption efforts. Unless it establishes a comprehensive system of checks and balances, the body risks becoming another puppet of the already corrupt government.

One risk associated with creating a smaller, more focused organization is the competition for funds and coordination—or lack of—that might occur between the smaller organization and the HOOAC. Funding is discussed below, but the advantages of an organization, most notably the corruption-related investigations within only the MoE, outweigh the complications caused by the additional agency. Ultimately, the organization could save money by more specifically targeting anti-corruption efforts to achieve the desired results within the MoE.

Outside of an administrative anti-corruption body, the Convention also requires Afghanistan to maintain and strengthen systems for recruiting, hiring, and retaining civil servants, including teachers.⁹³ The Convention aims not just to attack corruption as it occurs, but it also tries to remedy the root causes of corruption.

Central to any anti-corruption mechanism is the notion that self-interested individuals will seek out and accept bribes, and that they will engage in corrupt business practices if the expected gains outweigh the potential costs.⁹⁴ The Afghan government could influence this cost-benefit consideration by promoting adequate remuneration and equitable pay scales.⁹⁵ Much has been made of Afghanistan's teachers' low salaries—some of the lowest in the world—along with paychecks being late and officials bribed for teachers to receive them. Confronting the issue of teacher payment is more complex than it may seem.

⁹² *Id.*

⁹³ UNCAC, *supra* note 53, art. 7, ¶ 1. The Convention also notes that these systems should be based on efficiency, transparency, merit, equity, and aptitude. *Id.*

⁹⁴ Jeff Huther & Anwar Shah, *Anti-Corruption Policies and Programs: A Framework for Evaluation* 3 (The World Bank Policy Research Working Paper No. 2501, 2000).

⁹⁵ See UNCAC, *supra* note 53, art. 7, ¶ 1(c) (presenting pay scales as a means to strengthen accountability among public officials).

First and foremost, Afghanistan must increase teacher salaries over the next several years. The MoE has begun this process by increasing salaries from \$100 per month to a range of \$120 to \$428 per month, and it is critical that this pay raise continue for several reasons.⁹⁶ To start, teachers making more money will not have to rely as heavily on bribes to feed their families and to make ends meet. Further, the higher the relative salaries for teachers, the more he or she risks losing if caught engaging in corruption, and low salaries in the public sector tend to attract lower-level applicants, resulting in less competent employees.⁹⁷ Additionally, teachers comprise two-thirds of the civil servants in Afghanistan; when teachers are paid well and happy, they translate that success to their students and promote respect for and understanding of the law. And when civil servants are paid very little, the moral cost of corruption is reduced; poorly paid teachers might find it less reprehensible to accept bribes.⁹⁸ This is particularly true in Afghanistan, where there is very little, if any, moral condemnation in requesting or paying a bribe.

Second, education needs to be professionalized. In 2010, the MoE took significant steps in doing so by opening forty-two teacher-training colleges throughout the country.⁹⁹ This program not only certifies and registers teachers, but also serves as an anti-corruption mechanism by promoting a more professional work environment and adhering to a strict code of conduct. This process will immediately cut down on the number of ghost teachers and allow the MoE to more accurately allocate funds and resources to the villages and provinces in need. With the increased number of teachers and a more professionalized work environment, the MoE will also be able to raise its hiring standards.¹⁰⁰

⁹⁶ Arnoldy, *supra* note 26. The pay scale is based on the teacher's level of education and their score on a national standardized test. Unfortunately, limited funding has hampered the government's efforts to increase teacher pay and international donors have been reluctant to contribute because of the problems arising from corruption, lack of security, etc. *Id.*

⁹⁷ CHR. MICHELSEN INST., *CORRUPTION IN THE EDUCATION SECTOR* 10 (2006).

⁹⁸ *Id.*

⁹⁹ Press Release, ISAF Pub. Affairs Office, Progress in Afghanistan Highlighted by Business Growth, Job Creation and New Infrastructure Projects (Nov. 4, 2010), available at <http://www.centcom.mil/press-releases/progress-in-afghanistan-highlighted-by-business-growth-job-creation-and-new-infrastructure-projects>. The training colleges offer certification programs to certify Afghans as professional teachers. This is a substantial step toward improving teacher quality throughout the country. As of late 2010, these colleges had graduated more than 123,000 teachers from the short-term course and another 20,000 from the teacher-in-training two-year program. Sgt. Shawn Coolman, *Lashkar Gah TTC Educates Future Afghan Teachers*, DVIDS NEWS (Oct. 7, 2010), <http://www.dvidshub.net/news/57732/lashkar-gah-ttc-educates-future-afghan-teachers#.T7XJp3IYtuQ>.

¹⁰⁰ Arnoldy, *supra* note 26. Understandably, shortly after the fall of the Taliban, teachers were in such dire need that the MoE could not afford to set high standards. However, as the

Another step the MoE can take is the development of direct deposit systems that will allow a teacher's paycheck to be deposited directly into a bank account. A World Bank working policy paper argues that reducing the number of transactions involving public officials is a significant mechanism in influencing cost-benefit considerations and reducing corruption.¹⁰¹ Direct deposit systems would immediately achieve this by not only cutting down the time it takes to send the money, but also reducing the number of hands that have access to the money. One common problem with this approach, however, is that many teachers, particularly those in rural and distant villages, do not have easy access to a bank.¹⁰² In 2009, the MoE instituted a new system requiring some teachers to register, open a bank account, and take a competency test.¹⁰³ Without a doubt, there are problems with this method, particularly because many teachers lack easy access to banks. But despite these problems, this type of system should be instituted throughout the country, as it would allow the Ministry to collect data, distribute payment more easily, and weed out unqualified teachers.¹⁰⁴ These types of preventative measures would allow the MoE to crack down on ghost teachers and more effectively provide resources—financial and otherwise—to teachers and schools throughout the country.

B. Criminalization: Finally Enforcing the Laws

Criminalization is the second pillar of UNCAC.¹⁰⁵ The Convention requires states to criminalize the offering or giving of a bribe to a public

system continues to develop, the MoE can begin implementing more appropriate standards, including education requirements, mandatory training classes, registration systems, etc. *Id.*

¹⁰¹ Huther & Shah, *supra* note 94, 3–4. The other mechanisms include reducing the scope for gains from each transaction, increasing the probability of paying a penalty, and increasing the penalty from corrupt behavior. *Id.*

¹⁰² Daiyar, *supra* note 47. On his blog, one journalist wrote of the problems many teachers have faced. Because many are “untrained and non-professional,” he said, they have no bank account and often find themselves traveling long distances to get to the bank before waiting all day to open an account and receive their paycheck. *Id.*

¹⁰³ CORRUPTION ASSESSMENT, *supra* note 29, at 19, 41. The Ministry's goal was to establish teacher in-service training throughout the country by attaining a 70% competency rating for all teachers by the end of 2011. Mohammed Haneef Atmar, Minister of Education, *Education Sector Strategy for the Afghanistan National Development Strategy 1* (Ministry of Educ., Draft, Mar. 2007).

¹⁰⁴ See CORRUPTION ASSESSMENT, *supra* note 29, at 19 (detailing a new project to ensure teachers are uniformly qualified). The Office of Social Sector Development is also working with the MoE to develop a teacher registration database and more uniform recruitment practices. Additionally, the Capacity Development Project is working with the MoE to develop forgery proof paper for the printing of authentic diplomas. *Id.*

¹⁰⁵ See generally UNCAC, *supra* note 53, arts. 15–44 (providing for the criminalization of acts of corruption and necessary law enforcement mechanisms).

official and the solicitation or acceptance of a bribe by a public official, which Afghanistan has done.¹⁰⁶ However, corruption is so widespread and accepted that merely criminalizing it is not a complete solution. For example, wealthier citizens often bribe police officers and judges, avoiding any criminal sanctions and only serving to enhance the problem.¹⁰⁷ For Afghanistan's anti-corruption agenda to be successful, it must bridge the gap between prevention and law enforcement. This stage is critical and should include a strong up-front component to establish credibility immediately.

Afghanistan's current anti-corruption legislation is based on the Afghan Constitution, UNCAC, the Afghanistan National Development Strategy (ANDS), and the Strategy and Policy for Anti-Corruption and Administrative Reform (SPACAR).¹⁰⁸ Unfortunately, Afghanistan's laws, investigative procedures, and enforcement regulations overlap and are difficult to decipher.¹⁰⁹ In December 2010, the Director-General of HOOAC, Mohammad Yasin Osmani, announced that the Afghan government was working to further revise the country's anti-corruption laws to better comply with UNCAC.¹¹⁰

ANDS and SPACAR require the government to focus on reducing administrative corruption by increasing monitoring, introducing additional programs to limit the risk of corruption, and enhancing public interaction and complaint capabilities.¹¹¹ Both focus on the underlying causes of

¹⁰⁶ *Id.* art. 15(a)–(b).

¹⁰⁷ *UN Afghanistan Survey Points to Huge Scale of Bribery*, BBC NEWS (Jan. 10, 2009), <http://news.bbc.c o.uk / 2/hi/8466915.stm>.

¹⁰⁸ See CORRUPTION ASSESSMENT, *supra* note 29, at 16–18 (outlining the current legal foundation in Afghanistan); see also FINALIZED STRATEGY, *supra* note 52, at 2–3. Article 7 of the Afghan Constitution requires the country's laws to comply with its international obligations and treaties; Article 75 states the government has the duty to “[maintain] public law and order and elimination of administrative corruption;” and Article 142 requires the national government to establish the necessary departments to comply with all provisions of the Constitution. Though it is rare for a constitution to explicitly discuss corruption, Afghanistan's Constitution does not go into any depth or provide a framework for the government to combat corruption in any way. CONST. OF AFG. 1392, available at http://www.afghan-web.com/politics/current_constitution.html.

¹⁰⁹ See CORRUPTION ASSESSMENT, *supra* note 29, at 15–18 (describing the many offices involved with anti-corruption effort). Currently, complaints regarding corruption are collected at HOOAC or the Afghanistan Independent Human Rights Commission (corruption falls under AIHRC's mandate because it violates human rights). Complaints then must be sorted to go to the individual ministries, the Attorney General's Office, or the Afghan National Police in the Ministry of Interior (all of which are extraordinarily corrupt in and of themselves). The National Directorate of Security, responsible for countering organized crime, also gathers information and refers it to the Attorney General. *Id.*

¹¹⁰ SIGAR REP'T, *supra* note 57, at 108.

¹¹¹ FINALIZED STRATEGY, *supra* note 52, at 2.

corruption and advocate for programs and institutional changes outside of criminalization to transform the perception of corruption and mitigate its impact.

Still, SPACAR comprehensively details many of the current deficiencies in the governmental framework for combating corruption, and it outlines steps to be taken by different government agencies to correct these deficiencies. However, it also acknowledges that “current laws and regulations, whether they are previous, translated or new, sometimes do not conform to the administrative conditions in the country and causes different types of corruption and chaos in the work process.”¹¹² In the education system specifically, SPACAR provides little guidance, only requiring the MoE to include constitutional law for all students in 7th grade and higher, develop a more efficient system for busing students to school, promote respect for the justice system, create more transparent procedures for procurement and construction contracts, and standardize the curriculum and student forms to allow employers to more easily and accurately identify students’ qualifications.¹¹³

Despite the lack of specificity regarding MoE anti-corruption programs, SPACAR does offer a number of improvements regarding Afghanistan’s general anti-corruption strategy that will benefit all anti-corruption programs.¹¹⁴ Among these are the recommendations for higher wages for public employees,¹¹⁵ an increased focus on standards of professionalism in the public sector,¹¹⁶ new regulations requiring police and judicial officials to abide by the law when arresting and sentencing individuals rather than letting individuals off because of connections or the

¹¹² SPACAR, *supra* note 69, at 60.

¹¹³ *Id.* at 64. Interestingly, though SPACAR does not specifically discuss corruption in the education sector, it does touch on a number of individual sectors, including courts, health, transportation, logging, and mining. *See generally id.*

¹¹⁴ *See, e.g., id.* at 27, 34–54, 114–17 (proposing standards for regulating the influence of personal relationship, professionalism in the workforce, and government contracting).

¹¹⁵ *See id.* at 53 (“The salary and retirement allowances for employees should be stabilized and approved justifiably, this way employees will never prefer another job over than their current job due to lack of salary.”).

¹¹⁶ *See id.* at 90.

The authorities of the Supreme Court should make an assessment of the qualifications, experience and competence of the judicial professional staff, both in the center and as well as in the provinces, and should take legal steps in regard to judges and judicial staff whose employment is in contradiction with judicial rules and regulations.

Id.

ability to pay a bribe,¹¹⁷ and provisions promoting accountability within the government.¹¹⁸

While these provisions are beneficial, it is necessary to go further. Criminalizing the payment and receipt of a bribe will help by punishing the activity, but it is important to have additional punitive measures available. If every person who requested, received, offered or paid a bribe were jailed or fined for their crime, then many—if not most—of the country's inhabitants would be imprisoned and bankrupt. Additionally, there is concern that with the influx of corruption cases, Afghanistan's courts would be unable to handle the increased workload. The U.S. Department of Justice is currently working with Afghan courts and the Anti-Corruption Tribunal to increase their efficiency and effectiveness when dealing with these cases.¹¹⁹ However, it could also serve the MoE well to have internal sanctions outside of the court system. For example, the MoE and its anti-corruption body should consider alternative punishments, including non-penal sanctions, to punish and condemn the behavior. These measures could include a fine, but they should also include more creative techniques, including public censure in the local media, transfer to a different school, or unpaid suspension for a number of days.¹²⁰ Theoretically, a teacher who is publicly reprimanded for requesting a bribe from one student would be more reluctant to continue requesting bribes from other students. While monetary sanctions are often successful, Afghanistan's traditional village hierarchy makes it less likely that some students will report teachers. For this reason, the Afghan government should continue to educate the public

¹¹⁷ See *id.* at 69 (“The Police must be rewarded in accordance with Their [sic] every good and acceptable action, which shows their devotion and self-sacrifice, and must be legally prosecuted for every bad action. Paying no attention the implementation of reward and punishment principles, shows the administration is not giving good over site [sic].”)

¹¹⁸ See SPACAR, *supra* note 69, at 22 (“If such job recommendations and Wastas (connections) are not prevented, the opportunity for transparency and accountability to prevent corruption will never be provided.”).

¹¹⁹ See generally SIGAR REP'T, *supra* note 57 (detailing the relationship between the United States and Afghanistan in this capacity).

¹²⁰ Cf. Jamie Sarrio, *State Panel to Consider Lighter Punishment for Educators Who Cooperated in Cheating Probe*, ATLANTA J. CONST. (Sept. 7, 2011), <http://www.ajc.com/news/atlanta/state-panel-to-consider-1161669.html>.

Commissioners, relying extensively on evidence from the state investigation, will look into each case and decide over the next few months whether the educators named in the report are guilty of cheating or other ethical violations. Those found guilty could face sanctions ranging from a reprimand to loss of a teaching license.

Id. Suspending a teacher could cause quite a dilemma, as it would leave a number of students unable to attend school or require them to work with another teacher. However, suspensions could be more appropriate for students and officials within the Ministry, as it would serve as immediate punishment but could also serve to embarrass among peers, and thus as a future deterrent.

and embarrass those caught engaging in corruption, making the act morally reprehensible and creating an additional deterrent.

Additionally, keeping the investigation, prosecution, and punishment solely within the MoE would allow the anti-corruption body to see the case through to its resolution. In doing so, it would prevent further corruption in the courtroom and would ensure that justice is done in each case. As discussed above, Afghanistan's justice system is not known for its integrity, but keeping cases inside the MoE would mitigate the potential for additional corruption once a case goes to the courts and would presumably lessen the expense and time to complete a case. There is a point, however, at which only so much can be done, and the MoE would need to set clear lines for when cases shall be bound over to the court system for more severe punishment.

C. *International Cooperation: Joining Forces to Fight Corruption*

International cooperation is the third pillar of UNCAC.¹²¹ This section requires parties to assist each other in criminal matters and to provide “the widest measure of mutual legal assistance” in investigations, prosecutions, and judicial proceedings.¹²²

Afghanistan is at an interesting point in its history and has a unique opportunity to take advantage of the international presence within its borders. If it chooses to do so, Afghanistan can benefit from unprecedented international collaboration, which would provide the country with logistical and mentoring support on issues ranging from security to mining technology to development projects. Years from now, Afghanistan could be the model for experts to look to when developing international cooperation strategies because of the vast number of organizations willing to provide assistance. Currently, international governmental and non-governmental organizations are providing assistance with anti-corruption strategies, from drafting legislation to aiding investigations to furthering education.¹²³ For example, an American multi-agency group based at the U.S. Embassy in Kabul, Afghanistan has drafted an additional anti-corruption strategy for the Afghan government to improve transparency and accountability.¹²⁴ Despite the international presence, Afghan citizens must own the anti-corruption

¹²¹ See generally UNCAC, *supra* note 53, arts. 43–49 (detailing the role of international cooperation in anti-corruption efforts).

¹²² *Id.* arts. 43, 46. The Convention also has a significant section detailing extraditions and transfers between state parties. *Id.* arts. 44, 45.

¹²³ See CORRUPTION ASSESSMENT, *supra* note 29, at 1–2 (listing the U.S. agencies currently pursuing anti-corruption efforts in Afghanistan).

¹²⁴ FINALIZED STRATEGY, *supra* note 52, at ii. This strategy has not yet been approved by the U.S. State Department. *Id.*

agenda; without political and moral will, no anti-corruption plan can succeed. However, international organizations and individuals can play key roles in this development.¹²⁵

To do so, however, it is important for U.S. and European agencies to work alongside Afghan officials in investigating and prosecuting Afghans at all levels, including those in President Karzai's national government. Following the arrest of one of his aides, President Karzai introduced legislation allowing only Afghan investigators to make decisions regarding corruption cases.¹²⁶ In response, President Obama met with his national security advisors in mid-September 2010 to formulate new ways to combat corruption in Karzai's administration.¹²⁷ In January, the Obama administration announced that the U.S. government would no longer pursue top Afghan officials, conceding that "limited judicial capacity and political pressure" make prosecution nearly impossible.¹²⁸ Though this would undermine the application and legitimacy of some anti-corruption measures,

¹²⁵ Many governments and NGOs are currently providing assistance with anti-corruption initiatives. For example, USAID has conducted comprehensive reviews regarding the extent of corruption within Afghanistan and the country's current anti-corruption laws. *See generally* CORRUPTION ASSESSMENT, *supra* note 29. In addition, they have provided assistance with various programs, including the printing of diplomas on forgery-proof paper. *Id.* at 19. The Federal Bureau of Investigation has provided expertise and assistance with anti-corruption investigations and prosecutions, and international legal experts have provided guidance to ensure that Afghanistan's laws comply with UNCAC and achieve the stated goals. *Id.* at 20, 32.

¹²⁶ *See* Rajiv Chandrasekaran, *Karzai Seeks to Limit Role of U.S. Corruption Investigators*, WASH. POST (Sept. 9, 2010), http://www.washingtonpost.com/wp-dyn/content/article/2010/09/08/AR2010090805935_pf.html. An Afghan task force that received financing, training, equipment, and intelligence from the FBI and other U.S. law enforcement agencies made the arrest of Karzai's aide. Following Karzai's statement, advisors from the U.S. Department of Justice temporarily suspended their work with the Afghan anti-corruption unit. While there is concern among the Obama administration that the American assistance is creating a rift with Karzai, one U.S. official hinted at the importance of the investigations to the Afghan public, saying, "The Afghans want to see their leaders held to account. They don't want these cases swept under the rug." Rajiv Chandrasekaran, *Karzai Rift Prompts U.S. to Reevaluate Anti-Corruption Strategy in Afghanistan*, WASH. POST (Sept. 13, 2010) [hereinafter *U.S. to Reevaluate*], <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/12/AR2010091203883.html>.

¹²⁷ *U.S. to Reevaluate*, *supra* note 126. In addition to calling for new legislation, Karzai intervened and ordered his aide, Mohammad Zia Salehi, released from custody. The Afghan government subsequently dropped all charges against Salehi. Warren P. Strobel & Marisa Taylor, *U.S. Won't Pursue Karzai Allies in Anti-Corruption Campaign*, MCCLATCHY NEWSPAPERS (Jan. 6, 2011), <http://www.mcclatchydc.com/2011/01/06/106314/afghan-anti-corruption-plan-sidesteps.html>.

¹²⁸ Strobel & Taylor, *supra* note 127. The strategy does not completely rule out pursuing top Afghan officials, saying the U.S. government may be compelled to act unilaterally if the Afghan government fails to act by freezing officials' assets or limiting travel to the United States. *Id.*

it is a practical resolution: pursuing President Karzai's allies would be fruitless and would only serve to frustrate the current partnership between the U.S. and Afghan government. Instead, Obama's new anti-corruption plan targets corruption at the local level and fortifies Afghan institutions.¹²⁹ This strategy could be very successful in the MoE, as many of the individuals engaging in corruption in the education sector are low-level officials and civil servants whom the Afghan government will not protect.

Afghanistan is sovereign and reserves the right to make its own decisions regarding corruption, but it is critical at this stage that U.S. and other international agencies be permitted to assist in these lower-level investigations and prosecutions. Not only would this allow Afghanistan to use more modern techniques, but also it would assure a level of credibility and accountability that might otherwise be absent in an all-Afghan organization. Additionally, foreign agencies could provide the necessary manpower required until the MoE's anti-corruption body can fully recruit and train its own anti-corruption agents.

Although Afghan officials will largely decide the extent of any international assistance, the international community could take direct steps to influence President Karzai's decisions. The most obvious and effective technique would be to withhold aid, both monetary and otherwise. If President Karzai or MoE officials were to refuse to allow American law enforcement agencies to assist—as they have—the clearest condemnation the Obama administration could convey would be to withhold money. Since 2002, the U.S. government has allocated roughly \$50 billion for reconstruction assistance in Afghanistan; an additional \$20 billion has been pledged.¹³⁰ In the past decade, the education sector has received 9% of the total aid, but that number has decreased with respect to just the past seven years, for which education has received the least amount of aid of any government sector.¹³¹ With a decrease in provided aid, it might seem unwise to discontinue funding, particularly for education.

However, numerous studies, including the Azimi Report, which was produced by the Inter-Institutional Commission on Corruption, have found that the unprecedented large inflows of international assistance have led to pressures to commit and spend the money quickly and have greatly

¹²⁹ *Id.* The plan states: “The goals of this strategy are to strengthen Afghan institutions to provide checks on government power, to positively influence the behavior of corrupt officials, and to tackle visible corruption (especially at the local level) so that the Afghan people can see that change is happening.” *Id.*

¹³⁰ FINALIZED STRATEGY, *supra* note 52, at ii.

¹³¹ *Id.* The infrastructure/natural resources and agriculture sectors received the most aid, with 24% and 18% respectively. Governance, operating budget assistance, economic governance, social protection, education, and health complete the remaining sectors in descending order of aid provided. *Id.*

increased the opportunities for corruption.¹³² Withholding funds not only limits the amount of money that can be corruptly distributed, but it also encourages the government to ensure that the money is used as effectively as possible. With so many funds disappearing or prices rising because of corruption, the continuing inflow of significant financial assistance will only continue to feed a corrupt system.

Most recently, in a course-changing and risky move, the Obama administration's anti-corruption strategy pledged not to withhold funds, but to funnel hundreds of millions of dollars directly to individual ministries and municipalities.¹³³ While this plan circumvents the extra hand of the Afghan national government, it could be effective if the money is carefully distributed and monitored. In addition to money donated to the MoE for the funding of teachers, school buildings, and books, the U.S. government and international allies should ensure that a substantial portion flows to the independent anti-corruption body to continue uncovering corruption within the Ministry. To satisfy governmental and non-governmental donors, Afghanistan and its international partners should simplify the auditing procedures within each Ministry and sector, ensuring that all money is accounted for. Any anti-corruption plan that continues to fund development projects will likely fail if it does not also strengthen anti-corruption organizations responsible for monitoring those projects and ministries.¹³⁴

D. *Asset Recovery: The Cost of Corruption*

Asset recovery is the final pillar of UNCAC.¹³⁵ Theoretically, this provision requires the government to confiscate corrupt funds from the perpetrator and to return those funds to their rightful owner. It relies on the notion that anti-corruption reform will succeed if it can create a widespread sense of justice and the faith that corruption does not pay. In order to succeed, the fruits of the crime must be taken away and returned to the rightful party.

However, the type of corruption that is occurring within the education sector is not as sophisticated or severe as the Convention seems to intend. For example, UNCAC requires that a state "[t]ake such measures as

¹³² CORRUPTION ASSESSMENT, *supra* note 29, at 5.

¹³³ Strobel & Taylor, *supra* note 127.

¹³⁴ Should it strengthen its auditing policies, Afghanistan would also likely benefit from increased donor aid from non-governmental organizations, as many organizations remain reluctant to donate out of a fear that the money will be re-distributed or "lost." Aunohita Mojumdar, *Afghanistan: Donor Funding Missing Mark*, EURASIANET (Dec. 28, 2010), <http://www.eurasianet.org/node/62640>.

¹³⁵ See generally UNCAC, *supra* note 53, arts. 51–59. This aspect of the Convention is considered a breakthrough in the international anti-corruption field, but is not particularly applicable to the MoE.

may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party...¹³⁶ But international corruption is not the type of corruption that the education sector is wrought with. When a teacher demands a bribe, the student's family pays the bribe and there is little involvement with banks, a network of people, or international connections.

Afghanistan should ensure that its laws and regulations comply with UNCAC, but the sophistication of the Convention's asset-recovery provisions require do not apply to all forms of corruption in Afghanistan, particularly within the MoE.¹³⁷ Because of this, Afghanistan should focus on requiring repayment of bribes in the criminalization aspect of its reform, ensuring that part of the punishment for bribery includes returning the funds.

V. CONCLUSION

The detrimental effects of corruption on the education sector in Afghanistan are vast, overwhelming, and discouraging. But they are problems that a society—particularly one that has been in the midst of conflict for the better part of fifty years—should expect to face. The steps that Afghanistan has already taken in the education sector are encouraging. From increasing teacher salaries and implementing direct-deposit systems, to more comprehensive and rigorous information gathering, investigation, and prosecution of corruption, Afghanistan's MoE has and must continue to make progress in the months and years ahead. However, for any real change to occur, national and MoE officials must be willing to commit significant resources to the recruitment and training of individuals to fill a narrowly focused and highly visible MoE anti-corruption body.

Corruption in Afghanistan will never disappear, just as it will never be eradicated in any country. However, Afghanistan can reduce corruption to a manageable level by working with the international community. When that happens, the education system will become stronger, as will the rest of Afghanistan.

¹³⁶ *Id.* art. 54, ¶ 1(a).

¹³⁷ The UNCAC's asset recovery provisions apply more appropriately to international actors working within the state, specifically NGOs and government contractors.