

Designing A Standard Assets Registration System to Reduce Corruption in Afghanistan: What Afghanistan Can Learn from Examining Model Assets Declaration Systems

ZALMAY MALLYAR*

TABLE OF CONTENTS

I.	INTRODUCTION	86
II.	CORRELATION BETWEEN CORRUPTION AND THE ABSENCE OF ASSETS REGISTRATION IN AFGHANISTAN	88
	A. <i>What is an Assets Declaration System?</i>	90
	B. <i>Current Efforts to Establish an Assets Registration System</i>	91
	1. <i>High Office of Oversight and Anti-Corruption (HOOAC)</i>	93
	2. <i>Sanctions for Non-Compliance</i>	94
III.	NEW COMMITMENT TO CREATING AN ASSETS DECLARATION SYSTEM	94
	A. <i>Obligations Under Domestic Laws</i>	95
	B. <i>Obligations According to the Sharia Principles and Islamic Jurisprudence</i>	97
	C. <i>Obligations Under International Treaties</i>	99
	1. <i>United Nations Convention Against Corruption (UNCAC)</i>	99

* © Zalmay Mallyar. Assistant Professor of Law and Political Science, Herat University. LL.M., S.I.D., University of Washington School of Law.

	2. <i>The Tokyo Declaration Partnership for Self-Reliance in Afghanistan from Transition to Transformation (TMAF)</i>	99
D.	<i>Accountability and Enforcement Issues</i>	100
	1. <i>A Lack of Enforcement Mechanisms</i>	100
	2. <i>Lack of Staff Dedicated to Overseeing Assets Declaration</i>	101
IV.	EXAMPLES OF SUCCESSFUL ASSETS REGISTRATION SYSTEMS.....	101
	A. <i>Assets Declaration System in the Republic of Georgia, Malaysia, and the United States</i>	101
	1. <i>The Republic of Georgia Experience in Assets Declaration</i>	102
	2. <i>Assets Declaration in Malaysia</i>	104
	3. <i>The United States Experience with Assets Declaration</i>	106
	B. <i>Lessons learned from Georgia, Malaysia, and the United States</i>	106
V.	RECOMMENDATIONS FOR REFORM OF ASSETS REGISTRATION IN AFGHANISTAN	107
	A. <i>New Legislation</i>	108
	1. <i>Clear Definition of Assets</i>	108
	2. <i>Verification and Investigation Tools</i>	108
	3. <i>Criminal Rules for Violators</i>	110
	B. <i>Enforcement Mechanisms</i>	110
	1. <i>A Strong Independent Agency for Registration of Assets</i>	110
	2. <i>Limited Exemptions for Asset Registration, Verification, Investigation, and Disclosure of High Government Officials</i>	111
	C. <i>Involvement and Assistance of Civil Society Organizations</i>	111
	D. <i>A Five-Year Strategy Plan</i>	112
	E. <i>Online Assets Database</i>	112
	F. <i>Electronic Immovable Property Database</i>	112
VI.	CONCLUSION	113

I. INTRODUCTION

Corruption in Afghanistan has emerged as one the greatest challenges to strengthening national and subnational governance and to rebuilding a transparent, accountable system of delivery services.¹ One way that corrupt actors in Afghanistan have perpetuated corrupt practices is through hiding assets.² Because of weak assets registration and verification systems,

1. See generally INTEGRITY WATCH AFGHANISTAN, NATIONAL CORRUPTION SURVEY 2016: AFGHAN PERCEPTIONS AND EXPERIENCES OF CORRUPTION i (2016), https://iwaweb.org/wp-content/uploads/2016/12/NCS_English_for-web.pdf [<https://perma.cc/YPQ4-EM9M>].

2. See generally SPECIAL INSPECTOR GEN. FOR AFGHANISTAN RECONSTRUCTION, SIGAR-16-60-SP, *Afghanistan's High Office of Oversight: Personal Asset Declarations of High-Ranking Afghan Government Officials Are Not Consistently Registered and*

corrupt officials hide the money and assets they receive through corrupt acts such as selling public land with fake documents, receiving bribe money from illegal judgments, or receiving money from illegally transferred national projects.³ For example, according to a 2016 report by the Office of the Special Inspector General for Afghanistan Reconstruction (SIGAR),⁴ identified the lack of a standard asset declaration system as the main reason for army commanders' corruption because these commanders invest in businesses or building construction.⁵ Currently, Afghanistan has no standard system for implementing or overseeing asset declarations; however, under Article 154 of the Afghan Constitution,⁶ Article 12 of the former Anti-Corruption Strategy Act,⁷ and some international treaties,⁸ it has committed to creating one. This Article suggests that heeding international standards and examining the assets registration system designed and successfully implemented in the Republic of Georgia, Malaysia, and the United States, Afghanistan can identify ideas for designing its own effective assets declaration system. An efficient system will be one comprising a strong independent agency, enforcement mechanisms, and one in which the involvement and assistance of civil society organizations will be solicited. For example, in the Republic of Georgia, the Information Bureau of Assets and Finances of Public Officials requires officials to share all their

Verified 8-9 (2016), <https://www.sigar.mil/pdf/special%20projects/SIGAR-16-60-SP.pdf> [https://perma.cc/CP4T-G25K] (last visited Feb. 23, 2020) [hereinafter SIGAR-16-60-SP].

3. See U.N. OFFICE ON DRUGS AND CRIME, *Fighting Corruption in Afghanistan: A Roadmap for Strategy and Action*, Informal Discussion Paper 27 (Feb. 16, 2007), https://www.unodc.org/pdf/afg/anti_corruption_roadmap.pdf [https://perma.cc/GZY4-P8WX].

4. "Congress created the Office of the Special Inspector General for Afghanistan Reconstruction (SIGAR) to provide independent and objective oversight of Afghanistan reconstruction projects and activities." *About SIGAR*, SIGAR, <https://www.sigar.mil/about/index.aspx?SSR=1> [https://perma.cc/RL7U-W22C].

5. See generally SIGAR-16-60-SP, *supra* note 2, at 2–3.

6. AFGHANISTAN CON., art. 154 (Jan. 26, 2004).

7. Law on Overseeing the Implementation of the Anti-Administrative Corruption Strategy Official, Gazette No. 838/2008, art. 12 (Afghanistan) (repealed 2018), https://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Afghanistan_Law%20on%20Combating%20Corruption_2008_en.pdf [https://perma.cc/W7WW-8V4T].

8. G.A. Res. 58/4, Convention Against Corruption, art. 8, ¶ 5 (Oct. 31, 2003); see also *Tokyo Mutual Accountability Framework*, USAID FROM THE AMERICAN PEOPLE (Jul. 8, 2012), <https://www.usaid.gov/tokyoconference/framework> [https://perma.cc/6TR6-5ZSU].

assets and those of some of their family members because oftentimes corrupt officials invest money through their immediate family members.⁹

II. CORRELATION BETWEEN CORRUPTION AND THE ABSENCE OF ASSETS REGISTRATION IN AFGHANISTAN

Corruption continues to be one of the main barriers to good governance and economic development in Afghanistan; it took root over the past three decades of conflict and political instability,¹⁰ which have afflicted the lives of people all over the country, economically, politically, socially, and culturally.¹¹

The corruption system works from top to bottom with high ranked officials imposing the corruption system to lower officials: people cannot just chose to avoid the corrupt system and it fosters a culture that bribes are a part of the government work.¹² Those in power make it hard for others to succeed, for instance by requiring people to pay a bribe to obtain government employment and by requiring they continue paying to keep their position.¹³

The Afghanistan High Office of Oversight and Anti-Corruption (HOOAC),¹⁴ the primary government agency fighting corruption, asserts the main causes of government corruption include: low salaries of government officials (this provides an incentive to supplement incomes with bribes);¹⁵ lack of a strong supervisory system for government employee performance;¹⁶ gaps and inconsistencies between laws, rules, regulations, and administrative

9. *Law of Georgia on Conflict of Interest and Corruption in Public Institutions*, No 157. of 21, art. 15, Sakanomdeblo matsne (2016), translated in LEGISLATIVE HERALD OF GEORGIA, <https://matsne.gov.ge/en/document/download/33550/55/en/pdf> [<https://perma.cc/6MN6-3D52>].

10. See generally Alex Thier & Scott Worden, U.S. INST. OF PEACE SPEC. REP., *Political Stability in Afghanistan A 2020 Vision and Roadmap* (July 2017), <https://www.usip.org/sites/default/files/2017-07/sr408-political-stability-in-afghanistan-a-2020-vision-and-roadmap.pdf> [<https://perma.cc/E8E7-UPAB>].

11. See generally *Corruptions Perceptions Index 2016*, TRANSPARENCY INT'L (Jan. 25, 2017), https://www.transparency.org/news/feature/corruption_perceptions_index_2016 [<https://perma.cc/58U3-9Z5C>].

12. See generally Benjamin Olken & Rohini Pande, MASS. INST. OF TECH., *Corruption in Developing Countries* (Feb. 2012), <https://economics.mit.edu/files/7589> [<https://perma.cc/E7RE-XA34>].

13. *Id.*

14. CIVIL-MILITARY FUSION CTR., *Corruption & Anti-Corruption Issues in Afghanistan* 5, 10 (2012), <https://reliefweb.int/sites/reliefweb.int/files/resources/CFC-Afghanistan-Corruption-Volume-Feb2012.pdf> [<https://perma.cc/CN2H-8786>] (“The HOOAC has been mandated to coordinate and supervise implementation of the National Anti-Corruption Strategy and act as the focal point for overseeing policy development and implementation of anti-corruption strategies.”).

15. *Id.* at 5.

16. *Id.*

procedures that lead citizens and businesses “to offer bribes in order to navigate the maze of regulations”;¹⁷ and an outdated and bureaucratic administrative system.¹⁸ In the meantime, insufficient knowledge of the law prevents enforcement,¹⁹ and current laws do not sufficiently condemn corruption, thus creating little incentive to stop the practice.²⁰

The hidden nature of corruption makes it difficult to measure precisely. However, surveys²¹ and international indices²² give some idea of the scope of the problem. According to Transparency International, in 2016 Afghanistan ranked 169 out of 176 countries in public perceptions of corruption, ahead of only Somalia, South Sudan, North Korea, Syria, Yemen, Sudan, and Libya.²³ According to Integrity Watch Afghanistan, nearly 80% of Afghans surveyed said corruption is a major problem in the country.²⁴ The Afghan government made anti-corruption a “key priority” and, in an attempt to change Afghanistan’s reputation for corruption, various actions have been undertaken, including: increased scrutiny of government contracts, implementation of the Procurement Commission, a serious fight against corruption by the government, and the creation of a judicial center.²⁵

Efforts to actually implement these changes are vital given this level of corruption is a costly drain on the already depressed Afghan economy as evidenced by Integrity Watch Afghanistan (IWA) release of its 2016 National Corruption Survey addressing Afghan perceptions and experiences of

17. *Id.*

18. ISLAMIC REPUBLIC OF AFGHANISTAN, STRATEGY & POLICY FOR ANTI-CORRUPTION AND ADMIN. REFORM 60–62 (2017), https://web.archive.org/web/20170202125037/http://anti-corruption.gov.af/Content/files/ANTI%20CURAPTION%20STRATIGY_Eng.pdf [https://perma.cc/WS6K-7B5A].

19. *Id.* at 62–64.

20. See, e.g., Jamil Danish, *Afghanistan’s Corruption Epidemic is Wasting Billions in Aid*, THE GUARDIAN (Nov. 3, 2016), <https://www.theguardian.com/global-development-professionals-network/2016/nov/03/afghanistans-corruption-epidemic-is-wasting-billions-in-aid> [https://perma.cc/VC7W-VAWH].

21. RELIEFWEB, *National Corruption Survey 2016: Afghan Perceptions and Experiences of Corruption* (Dec. 8, 2016), <https://reliefweb.int/report/afghanistan/national-corruption-survey-2016-afghan-perceptions-and-experiences-corruption> [https://perma.cc/6R7C-87NY] [hereinafter *Nat’l Corruption Survey 2016*].

22. *Corruptions Perceptions Index 2016*, *supra* note 11.

23. *Id.*

24. *Id.*

25. *Civil Society Anti-Corruption Benchmarks for the Brussels Conference on Afghanistan*, GLOBAL WITNESS (Sept. 20, 2016), <https://www.globalwitness.org/en/campaigns/afghanistan/civil-society-anti-corruption-recommendations-2016-brussels-conference-afghanistan/> [https://perma.cc/BS8G-WZVT].

corruption.²⁶ IWA's survey estimated that Afghans paid nearly \$3 billion in bribes over the last year, representing a 50% increase compared to IWA's 2014 survey.²⁷ Respondents to the survey listed insecurity, unemployment, and corruption as the major problems Afghanistan faces.²⁸ Corruption is seen as fueling insecurity by undermining support for the government and driving citizens towards the Taliban.²⁹ Despite some improvement in Transparency International's and United Nations' rankings, corruption levels in Afghanistan are still unacceptably high. Indeed, more than 80% of Afghans reported that it is at least relatively common for Afghans to pay bribes or otherwise participate in corrupt acts in order to manage their relationship with government services.³⁰

The remainder of this section describes how the lack of transparency perpetuates and enables corruption in Afghanistan. It also explains why the Afghan government's current efforts to create an assets registration system have mostly failed.

A. What Is an Assets Declaration System?

An assets declaration system obliges public officials to declare their income, assets, liabilities, and financial interests.³¹ The immediate objectives are to identify and avoid conflicts of interest and to detect and prevent cases of illicit enrichment.³² In the long run, a properly functioning asset declaration regime can increase the transparency of the public administration and the citizens' trust in the integrity of state institutions.³³ It may also encourage transparent, professional, and ethical behavior among public officials.³⁴

Historically, assets declarations systems began to evolve in the early 1950s in response to growing government and corruption scandals in the United States.³⁵ Various factors initially prevented the introduction of

26. INTEGRITY WATCH AFGHANISTAN 2016, *supra* note 1.

27. *See id.* at 24; *see also* INTEGRITY WATCH AFGHANISTAN, NAT'L CORRUPTION SURVEY 2014: AFGHAN PERCEPTIONS AND EXPERIENCES OF CORRUPTION (2014), https://iwaweb.org/wp-content/uploads/2016/02/executive_summary_ncs2014_english.pdf [<https://perma.cc/27A6-ZT85>].

28. *See* INTEGRITY WATCH AFGHANISTAN 2016, *supra* note 1, at viii.

29. *Id.* at viii, 46.

30. *See id.* at 47.

31. OECD, ASSET DECLARATIONS FOR PUB. OFFICIALS: A TOOL TO PREVENT CORRUPTION 14–15 (2011), <http://www.oecd.org/corruption/anti-bribery/47489446.pdf> [<https://perma.cc/3952-EQQR>].

32. *Id.* at 12.

33. *Id.*

34. *See id.*

35. *See id.* at 22.

assets declarations systems; however, after the Watergate and other scandals, asset declarations systems were institutionalized in the United States.³⁶

In the 1980s, asset declarations systems spread throughout Western Europe, but not Central and Eastern Europe.³⁷ Later, along with the global anti-corruption program and the European Union enlargement, asset declarations systems were adopted by most Central and Eastern European countries.³⁸

Finally, in 2003, financial disclosure by public officials became an international standard and was embedded in Article 8 of the United Nations Convention Against Corruption.³⁹ Article 8 requires all state parties “to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict may result with respect to their functions as public officials.”⁴⁰

While no clear European Union (EU) directive regulating the field of asset disclosures exists, countries’ achievements and failures in the anti-corruption framework are continually monitored for candidate countries seeking to become members of the EU.⁴¹ As such, asset declarations have become a de facto standard for candidate countries.⁴²

B. Current Efforts to Establish an Assets Registration System

This section describes current efforts to implement an asset registration system and identifies the ways and reasons those efforts have so far mostly failed.

Afghanistan has not been successful in designing and implementing a strong asset declaration system, and as a result, government officials effectively have free reign to engage in embezzlement and drug trade with impunity.⁴³ In fact, Afghanistan is known worldwide for its opium driven economy, with revenues from the drug trade becoming so high at one point

36. *See id.*

37. *Id.* at 22.

38. *Id.* at 23.

39. *Id.* at 24.

40. U.N. Convention Against Corruption, *supra* note 8.

41. Reg’l Anti-Corruption Initiative Secretariat, Integrity Experts Network, RULES AND EXPERIENCES ON INTEGRITY ISSUES 27 (Feb. 2012), http://www.rai-see.org/doc/Study-Rules_and_experiences_on_integrity_issues-February_2012.pdf [<https://perma.cc/M4KU-XLJY>].

42. *Id.*

43. *See* U.N. OFFICE ON DRUGS AND CRIME, *supra* note 3.

that it essentially became a legal activity.⁴⁴ The lack of asset registration subsequently enables governmental officials to participate in the drug trade without consequence.⁴⁵ Moreover, Afghanistan is heavily dependent on foreign aid, and over the last fourteen years, hundreds of senior government officials have stolen aid through corrupt practices, for instance by hiding assets.⁴⁶ Furthermore, the absence of a standard asset registration system allows government officials to accumulate massive capital.⁴⁷ In addition to combatting corruption, asset declaration systems have the potential to increase public confidence in the integrity of government and to ensure that political authorities are honest when they provide services to people.⁴⁸

According to the General Director for Asset Registration of HOOAC, only a small percentage of officials' assets are registered properly: more than 70% of asset registration forms turned in contained incomplete or incorrect information.⁴⁹ According to this report, "[t]he HOOAC has been able to only distribute around 9,500 forms for asset registration in 16 provinces of Afghanistan; however, about 30% of forms have not been filled and submitted by the government officials to HOOAC yet."⁵⁰

The first effort to create a system of assets declaration occurred with the government's creation of the High Office of Oversight and Anti-Corruption (HOOAC).⁵¹ HOOAC was established in accordance with Articles 7, 75, and 142 of the Afghan Constitution and with President Karzai's Decree Number 63, which required the government to create a monitoring system to oversee the implementation of the anti-corruption strategy and to establish procedures and administrative reforms to fight corruption.⁵² In addition,

44. *See id.* at 1, 6.

45. *Id.* at 8.

46. *See id.*

47. *See id.*

48. *Stolen Asset Recovery Initiative: The World Bank & U.N.O.D.C.*, PUBLIC OFFICE, PRIVATE INTERESTS: ACCOUNTABILITY THROUGH INCOME AND ASSET DISCLOSURE 19 (Mar. 28, 2012), <https://star.worldbank.org/publication/public-office-private-interests> [<https://perma.cc/MKM8-4HZR>].

49. *A New Chapter in Fighting Corruption: Asset Registration*, INTEGRITY WATCH AFGHANISTAN, <https://iwaweb.org/wp-content/uploads/2015/12/2-Fighting-Corruption-in-Afghanistan-A-Focus-on-Asset-Registration-and-Access-to-Information.pdf> [<https://perma.cc/43RZ-H9TE>] (last visited Jan. 12, 2020).

50. *Id.*

51. SPECIAL INSPECTOR GEN. FOR AFGHANISTAN RECONSTRUCTION, SIGAR AUDIT REPORT NO. 18-51, AFGHANISTAN'S ANTI-CORRUPTION EFFORTS: THE AFGHAN GOV'T HAS BEGUN TO IMPLEMENT AN ANTI-CORRUPTION STRATEGY, BUT SIGNIFICANT PROBLEMS MUST BE ADDRESSED 3 (2018).

52. *About HOOAC*, HIGH OFF. OF OVERSIGHT & ANTI-CORRUPTION, <http://anti-corruption.gov.af/en/Page/1733> [<https://perma.cc/RT4T-M89K>] (last visited Jan. 12, 2020).

Article 154 of the Afghan Constitution,⁵³ Article 9 of the United Nations Convention Against Corruption (UNCAC),⁵⁴ and Article 12 of the Law Monitoring the Implementation of the Administrative Anti-Corruption Strategy⁵⁵ oblige the Afghan government to create a regular program to register and publish government officials' assets every year.⁵⁶

1. High Office of Oversight and Anti-Corruption (HOOAC)

The Officials' Assets Registration and Publication Department of the HOOAC exists to register officials' assets.⁵⁷ The department has struggled to register and verify all officials' assets.⁵⁸ In Kabul alone, 10,000 officials must register their assets every year.⁵⁹ In addition, the verification system is limited by the lack of cooperation with other organizations, such as banks

53. AFGHANISTAN CON., art. 154 (Jan. 26, 2004) (“The wealth of the President, Vice-Presidents, Ministers, members of the Supreme Court as well as the Attorney General, shall be registered, reviewed and published prior to and after their term of office by an organ established by law.”).

54. See U.N. Convention Against Corruption, *supra* note 8, at art. 8 (“Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.”).

55. Law on Monitoring the Implementation of the Anti-Administrative Corruption Strategy, art. 12(2) (“The High Office for Monitoring, on annual basis, is obliged to register, assess and if needed disclose the assets of the National Assembly, provincial and district councils members, deputy ministers, heads of departments and independent commissions, ambassadors, governors, mayors and their deputies, judges, officers of the Interior and Defense ministries, district heads, prosecutors, staff working in second grade and higher and employees who work in finance, accounting and procurement sections, prior to occupation of their positions.”).

56. National Action Plan-1 2018-2019, OPEN GOVERNMENT PARTNERSHIP AFGHANISTAN (OGPA) 23 (2018) available at https://www.opengovpartnership.org/wp-content/uploads/2018/09/Afghanistan_Action-Plan_2017-2019_EN_UPDATED.pdf [<https://perma.cc/3DEU-XSKB>].

57. *Registering Assets of Government Officials* (AF0005), OPEN GOV'T P'HIP (2017), <https://www.opengovpartnership.org/members/afghanistan/commitments/AF0005/> [<https://perma.cc/BFZ4-HQWJ>].

58. *A New Chapter in Fighting Corruption: Asset Registration*, *supra* note 49.

59. See generally SIGAR-16-60-SP, *supra* note 2 (citing the lack of staff as part of the reason why all of the officials' assets haven't been recovered).

and tax offices, and by the absence of a specific mechanism to verify assets.⁶⁰

Consequently, after five years of operation, the department has only registered the President and his deputy, the Chief Executive Officer and his deputy, the Supreme Court president, twenty-six ministers, seven of them were changed, and thirty-four other high-ranking officials in Kabul⁶¹ as well as thirty-four governors.⁶² Several hundreds have not registered their assets.⁶³

2. Sanctions for Non-Compliance

Because violations and fraud in assets registration are common, there should be a specific criminal law providing appropriate punishment; currently, none exists,⁶⁴ because violations and fraud in assets registration are governed by the anti-corruption law.⁶⁵ However, imposing criminal sanctions under the Penal Code maybe would not be appropriate, since violations in the registration of assets are more comparable to administrative or civil violations. Ideally, the new criminal law for violations and fraud in assets registration cases would provide for administrative sanctions. Moreover, since the creation of the asset registration system, no case involving a violation of the assets registration has been referred to the courts.⁶⁶

III. NEW COMMITMENT TO CREATING AN ASSETS DECLARATION SYSTEM

Currently, assets registration is governed by Article 154 of the Afghan Constitution and Article 12 of the Anti-Corruption Strategy Act, and some other domestic laws ordering the government to establish a registration system.⁶⁷ In addition, Afghanistan has specific responsibilities to fight corruption and create an assets registration system under the UNCAC⁶⁸

60. See *A New Chapter in Fighting Corruption: Asset Registration*, *supra* note 49; see also SIGAR-16-60-SP, *supra* note 2; see also generally *Registering Assets of Government Officials*, *supra* note 57, at 13 (stating that once there is a developed mechanism to inspect registration of assets, there may be a partnership between the Afghan government and Civil Society Organizations, such as banks and tax offices).

61. See SIGAR-16-60-SP, *supra* note 2, at 11–12.

62. *Id.* at 4.

63. See generally *id.*

64. SIGAR-16-60-SP, *supra* note 2.

65. قانون جزا [Penal Code], art. 236, Issue No. 13 Serial No. 347 Official Gazette Government of the Republic of Afghanistan (Afghanistan).

66. See SIGAR-16-60-SP, *supra* note 2 (quoting Transparency International about no prosecutions for violating assets registration).

67. *Id.* at 4.

68. See U.N. Convention Against Corruption, *supra* note 8, at art. 5–6.

and the Tokyo Declaration Partnership for Self-Reliance in Afghanistan from Transition to Transformation,⁶⁹ which contains provisions requiring members to establish an assets registration system. Afghanistan has taken some steps to comply with these mandates: for example, during the 2012 Tokyo conference, the former government of Afghanistan committed to register the assets of governmental officials with HOOAC to fight corruption.⁷⁰ The next subsection reviews the commitments and laws that the Afghan government has implemented under both domestic and international sources of law and policy.

A. Obligations Under Domestic Laws

The following persons are required to register their assets:

- The President, Vice President, cabinet ministers and deputy ministers;
- Members of the Supreme Court and judges;
- Members of the Attorney General and prosecutors;
- National Assembly members;
- Heads of departments and independent commissions;
- Ambassadors;
- Governors, members of provincial councils, mayors and their deputies;
- Defense and Interior Ministry officers and higher officials of the second rank to high;
- The staff of the finance, accounting, and procurements.⁷¹

Assets and income of officials' spouses, children and dependents also must be declared.⁷² While this may appear to cover a large portion of officials, it is not nearly complete because of the widespread corruption in Afghanistan.⁷³ Thousands of people are required to report assets, and

69. See *Tokyo Mutual Accountability Framework*, USAID FROM THE AM. PEOPLE (July 8, 2012), <https://www.usaid.gov/tokyoconference/framework> [<https://perma.cc/XU7Y-JE95>].

70. *A New Chapter in Fighting Corruption: Asset Registration*, *supra* note 49.

71. AFGHANISTAN CON., art. 154 (Jan. 26, 2004); Law on Overseeing the Implementation of the Anti-Administrative Corruption Strategy, art. 12.

72. Law on Overseeing the Implementation of the Anti-Administrative Corruption Strategy, Official Gazette No. 838/2008.

73. The list of officials required to register their assets should also include lower officers in the health sector, personnel in the academia and in intergovernmental organizations

because of limited resources, it challenges the ability to effectively implement and oversee the asset declarations.

According to the Afghanistan Law on Overseeing the Implementation of the Administrative Anti-Corruption Strategy. Assets and incomes that need to be registered include all movable property and assets, for instance cash, gold jewelry of value, immovable properties, such as houses and apartments, income, including monthly income from secondary or additional employment or from other sources (e.g., rental income.).⁷⁴

Additionally, the Afghanistan Law on Structure and Authority of Attorney General Office requires all high-ranking officials and employees to register their movable and immovable assets before starting their duty, and to report any change and increase in their assets every year.⁷⁵ Under Article 105 of the Law on Organization and Jurisdiction of Courts of the Islamic Republic of Afghanistan, members of the Supreme Court, courts employees, chiefs of courts and judges are required to register their movable and immovable assets before assuming their functions.⁷⁶

The Afghanistan President Decree Number 168 established the Anti-Corruption Justice Center (ACJC) setting annual targets for the prosecution of corruption cases by the ACJC and to ensure coordination with other law enforcement bodies.⁷⁷ The ACJC is expected to comply with the best practices of the administration of justice including ensuring its highest level of integrity, independence, and effectiveness.⁷⁸

Article 12 of the High Office of Oversight and Anti-Corruption requires public officials to register their assets before starting their duties and to register them again every year, and HOOAC is obliged to verify and publish it.⁷⁹

(e.g., Afghans working at the United Nations), private contractors, as well as employees of the office of the President. *Id.*

74. See SIGAR-16-60-SP, *supra* note 2, at 8.

75. Ehsanullah Zarak, *Afghanistan Toward a Robust Asset Declaration and Verification Regime*, AFGHANISTAN TIMES, (June 22, 2020), available at <http://www.afghanistantimes.af/afghanistan-toward-a-robust-asset-declaration-and-verification-regime/> [<https://perma.cc/BNQ3-42KY>].

76. Qanoone Tashkil Wa Salahiyat Qowah Qazaeiyeh Jamhuri Islami Afghanistan, *The Law on Organization and Jurisdiction of Courts of the Islamic Republic Afghanistan*, OFFICIAL GAZETTE NO. 851/2005.

77. Farmane Raiese Jomhour Dar Morede Ejade Markaze Adli Wa Qazayei Mobarezeh Ba Fesade Edari [The President Decree on: Establish the Anti-Corruption Justice Center] (2005), <https://president.gov.af/en/president-ghanis-remarks-at-brussels-conference-on-afghanistan-brussels-belgium/> [<https://perma.cc/ACQ4-V778>].

78. AFGHAN BIOS, *Anti-corruption Judicial Center (ACJC)*, http://www.afghan-bios.info/index.php?option=com_afghanbios&id=3573&task=view&total=3459&start=352&Itemid=2 [<https://perma.cc/67KT-ZH8H>] (last visited Jan. 18, 2020).

79. SIGAR-16-60-SP, *supra* note 2, at 59.

Public officials who are required by Article 154 of the Constitution and Article 12 of the Law on Overseeing the Implementation of the Administrative Anti-Corruption Strategy to register their assets must complete a specific form developed by the Department of Registration and Distribute Assets.⁸⁰ The audit cycle is generally done in three stages, preliminary proceeding, administrative processing/logical checking, and a full audit and verification. During the first stage, preliminary processing, the officials send their forms with all the required information, and the auditors review the form for any incorrect completion or mistaken responses. Then, under the administrative processing stage, the assets declared are examined and evaluated. Finally, during the full audit and verification state, the data is verified and conflicts of interests are identified (if any).

B. Obligations According to the Sharia Principles and Islamic Jurisprudence

The Shari'ah, takes a strong stance against corruption and prohibits acts that may be associated with bribery and corruption. The Afghan legal system is a mixed legal system composed of civil law, Islamic law, and customary law; Articles 3 and 130 of the Afghan Constitution mandate that all Afghan law must comport with principles of Islam, Shari'ah, and it is the highest ranking legal authority in Afghanistan.⁸¹ As such, the Islamic sources of Afghan law that describe or provide support for assets registration systems are key to the regulatory scheme, and they include sources such as the Quran, the Hadith, and the religious jurisprudence (Faq).⁸² More than fifty verses in the Holy Quran forbid people from engaging in corruption.⁸³

80. NAT'L ACTION PLAN 1, OPEN GOV'T P'HIP (2019), <https://www.opengovpartnership.org/members/afghanistan/commitments/AF0005/> [<https://perma.cc/42B5-N4D4>].

81. AFGHANISTAN CON. (Jan. 26, 2004); *see also Women and the Rule of Law in Afghanistan*, CANADIAN WOMEN FOR WOMEN IN AFGHANISTAN, https://www.cw4wafghan.ca/sites/default/files/attachments/pages/cw4wafghan-womenruleoflaw-factsheet2_0.pdf [<https://perma.cc/92DE-C6CL>].

82. *See* Siraj Sait & Hilary Lim, LAND, LAW & ISLAM: PROPERTY & HUMAN RIGHTS IN THE MUSLIM WORLD 76–78 (2006).

83. For example, verse 85 of Sura Hud God Almighty says: “Waya qawm ‘wfuu almikyal walmizan bialqist wala tabkhasuu alnnas ‘ashya’ahum wala taethawa fi al’ard mufsidin”, which translates as “[a]nd O my people, give full measure and weight in justice and do not deprive the people of their due and do not commit abuse on the earth, spreading corruption.” *See, e.g., Quran surah Hud 85 (QS 11: 85) in Arabic and English translation*, ALQURAN (July 1, 2009), <http://www.alquranenglish.com/quran-surah-hud-85-qs-11-85-in-arabic-and-english-translation> [<https://perma.cc/42Q3-ED86?type=image>] (translated

The second legal source in Islamic law hierarchy is the Hadith,⁸⁴ daily practices of the Prophet Mohammad (PBUH) that have been passed down via chains of narrators.⁸⁵ The Prophet Mohammad said about combatting corruption, “Ean maeadh abin jabal ean rrasul aallah suli aalillah ealayh qal: “la tazul qudumaan ebd yawm alqiamat haty yus’al ean arbe, ean eumruh fima afnah w ean shibabih fima abilah w ean malah min ayn aktsbh w fima annifaqah w ean eamalih madha eamal bih,”⁸⁶ which means, as narrated by Abu Barzah:

A slave of Allah will remain standing on the Day of Judgement till he is questioned about (four things) his life on earth and how he spent it, and about his knowledge and how he utilized it, and his wealth and how he acquired it and in what way did he spend it, and about his body and how he wore it out. (At-Tirmidhi).⁸⁷

In this tradition, the Prophet of Islam defines four important tasks for Muslims, and one of these responsibilities includes not hiding assets.⁸⁸ This

by Sahih International). The Quran Allah (God) also says, “Wabtagh fima atak allah alddar alakhirat wala tans nasibak min alddunya wa’ahsin kama ‘ahsan allah ‘iilayk wala tabgh alfasad fi al’ard ‘inn allah la yuhibb almufsidin,” which translates as “[b]ut seek, with the (wealth) which Allah has bestowed on thee, the Home of the Hereafter, nor forget thy portion in this world: but do thou good, as Allah has been good to thee, and seek not (occasions for) mischief in the land: for Allah loves not those who do mischief.” See also *AYAH al-Qasas 28:77*, ISLAM AWAKENED, <https://www.islamawakened.com/quran/28/77/> [<https://perma.cc/XDQ6-HCFH>] (translated by Yusef Ali) (last visited Jan. 16, 2020). In another part the Quran also mentions, “Wala takuluu ‘amwalakum baynakum bialbatil watudluu biha ‘iilaa alhukkam litakuluu fariqana mmin ‘amwal alnnas bial’iithm wa’antum taelamuna,” i.e., “[a]nd do not consume one another’s wealth unjustly or send it [in bribery] to the rulers in order that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful].” See also *Quran surah Al Baqarah 188 (QS 2: 188) in Arabic and English translation*, ALQURAN (July, 1, 2009), <http://www.alquranenglish.com/quran-surah-al-baqarah-188-qs-2-188-in-arabic-and-english-translation> [<https://perma.cc/FPX8-8KVU>] (translated by Sahih International).

84. See *What is Hadith?*, AHADITH (last visited Jan. 19, 2020), <https://ahadith.co.uk/whathadith.php> [<https://perma.cc/2966-L8PP>] (providing the historical and cultural background information of hadith).

85. Hadith is a source of legislation for Muslims, in addition to the Quran, the Sunnah, Consensus (Ijmaa) of the Sahaba (companions), and the Qiyas (analogical reasoning of the latter two). Ahadith (plural of hadith) were collected by famous Muhaddiths such as Imam Bukhari and Imam Muslim in their Sahih collections. They verified narrators via very stringent rules, i.e., if a narrator is known to be unreliable, then hadith would not be taken from that person. It is recorded that Imam Bukhari traveled miles to hear hadith which he could gather for his collection. He collected over 100,000 hadith, of which only over 7,000 can be found in his Sahih collection.

86. *Id.*

87. HADITH, 2417, Vol. 4, Book 11 (Islam), translated at SUNNAH.COM, <https://sunnah.com/urn/677220> [<https://perma.cc/V77R-E7JV>] (last visited Jan. 15, 2020).

88. AFGHANISTAN CON., <https://moj.gov.af/en/enforced-constitution-afghanistan>, [<https://perma.cc/CNE4-K5D3>] (last visited Jan. 15, 2020).

is an important duty because, with this Sharia rule, Muslims are obliged to declare their assets as a religious duty under Islam.

C. Obligations Under International Treaties

Article 7 of the Afghan Constitution provides that when Afghanistan signs and ratifies a convention or an international treaty, the country accepts the obligations thereto and must implement the contents of the treaty.⁸⁹ This section explains Afghanistan's obligations under international law to fight corruption through asset registration.

1. United Nations Convention Against Corruption (UNCAC)⁵⁰

The UNCAC is one of the UN's most influential conventions, providing strict rules against corruption and describing mechanisms for reducing it.⁹⁰ Article 8, paragraph 5 of the UNCAC states that

[e]ach State Party shall endeavor, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.⁹¹

In addition, Article 20 discusses penalties for corrupt governments,

subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.⁹²

2. The Tokyo Declaration Partnership for Self-Reliance in Afghanistan from Transition to Transformation (TMAF)

Another important treaty addressing assets registration is the Tokyo Declaration Partnership for Self-Reliance in Afghanistan from Transition to Transformation, which was adopted at the Tokyo Conference on Afghanistan

89. *Cf. e.g.*, U.N. Convention Against Corruption, *supra* note 8.

90. *See id.*

91. *Id.* art. 8(4).

92. *Id.* art. 20.

held on July 8, 2012.⁹³ This “Conference reaffirmed the historic alliance between Afghanistan and its international partners based on the Tokyo Mutual Accountability Framework.”⁹⁴ which has provided the foundation for partnership for the Transformation Decade (2015-2024).⁹⁵ One of the main conference topics was Afghanistan’s new commitment to reduce corruption using new methods and one of these new methods was to include an assets declaration system.⁹⁶

Under Mutual Commitment Number 9, a section entitled “Representational Democracy and Equitable Elections” states that Afghanistan is committed to “[e]nact and enforce the legal framework for fighting corruption including, for example, annual asset declarations of senior public officials including the executive, legislative and judiciary.”⁹⁷

Notably, the rule of law efforts under TMAF have been pursued narrowly, focusing largely on asset declarations rather than on a strategic approach to “improving access to justice for all” that would translate the TMAF goal.⁹⁸

D. Accountability and Enforcement Issues

This section identifies those elements that have had a specific role in the accountability and enforcement on the asset registration system failures.

1. A Lack of Enforcement Mechanisms

The lack of enforcement mechanisms is an important factor in the failure of the asset registration system and is in part due to the lack of definition of key concepts like the following: (1) what property are assets or estate related transactions; (2) lack of banking record and asset database

93. The situation in Afghanistan, Letter Dated 9 July 2012 from the Rep. of Afghanistan and Japan to the U.N. addressed to the Secretary-General, U.N. Doc. A/66/867 (July 12, 2012).

94. *Id.*

95. In Tokyo, the Afghan Government and the International Community succeeded in transforming their mutual commitments made in Bonn to cooperate throughout the Transformation Decade into a solid and credible framework focused on the priorities of the Afghan Government as contained in its strategy paper Towards Self-Reliance. *Id.*

96. *Id.*

97. *Tokyo Mutual Accountability Framework*, USAID FROM THE AMERICAN PEOPLE (Jul. 8, 2012), <https://www.usaid.gov/tokyoconference/framework> [<https://perma.cc/TNG8-AVXX>].

98. Trent Ruder, *Lessons and Opportunities from the Tokyo Mutual Accountability Framework*, U.S. INST. OF PEACE (Sept. 2015), <https://www.usip.org/sites/default/files/SR378-Lessons-and-Opportunities-from-the-Tokyo-Mutual-Accountability-Framework.pdf> [<https://perma.cc/YF2H-W9LZ>].

information; (3) lack of documents database relating to land owners and property movable and immovable; (4) lack of a clear strategy for at least five years to cover all the assets declaration standards specified in a prevailing system; (5) absence of criminal law to push people to register their assets; (6) lack of sufficient independent agency with expert organizations with the necessary technology; (7) lack of enforcement mechanisms in the verification of registered assets; and (8) lack of cooperation from the judicial power to put pressure on government officials to register their assets.

2. Lack of Staff Dedicated to Overseeing Assets Declaration

The insufficient number of staff dedicated to overseeing assets declaration also explains the failures of the system. The Assets Registration Unit is a small office of the HOOAC and it lacks independence; there are not enough employees to investigate; there lacks non-specialist asset registration staff, provincial offices as well as a specific system for assessment and verification of registered assets.⁹⁹

IV. EXAMPLES OF SUCCESSFUL ASSETS REGISTRATION SYSTEMS

Many countries have adopted laws and principles requiring public officials to declare their wealth and assets either upon starting public service or upon being promoted to a position with potential for illicit enrichment. These countries and some of these laws and principles can provide useful examples to Afghanistan as it attempts to find ways to improve its own systems.

A. Assets Declaration System in the Republic of Georgia, Malaysia, and the United States

This section reviews assets declaration systems in the Republic of Georgia (because of the similar government conditions), Malaysia (because of similar religion and society conditions), and the United States (because of political and economic support of the Afghan government and the have strong social reforms).

99. Ehsanullah, *supra* note 75.

1. The Republic of Georgia Experience in Assets Declaration

Georgia is known for having a transparent electronic system of asset declarations. Information regarding the property and economic interests of public officials is accessible to the public through a website created for this purpose.¹⁰⁰ In 1997, Georgia adopted a specific Law on Conflict of Interest and Corruption in the Public Service: this law regulates in detail conflict of interest situations and requires complex asset declarations to be submitted by officials.¹⁰¹ It is, however, difficult to measure the real impact of these provisions, as no agency is in charge of their enforcement.

Georgia introduced a financial disclosure system for public officials in 1998.¹⁰² Following a previous paper-based system, declarations became available online in February 2010.¹⁰³ The Civil Service Bureau scanned and published more than 50,000 declarations dating from 1998 to 2010.¹⁰⁴ Since 2010, all senior Georgian officials submit their asset declarations annually.¹⁰⁵ Submitted declarations appear instantly on the Civil Service Bureau's website;¹⁰⁶ currently, the website hosts more than 60,000 declaration documents.¹⁰⁷

Articles 2 and 14 of the Law of Georgia relate to Conflicts of Interest and Corruption in Public Service (Conflicts of Interest Law).¹⁰⁸ Under both articles, public officials that must declare their assets include the president, members of parliament, the prime minister and ministers, deputy ministers,

100. *Introduction of the Public Officials' Asset Declarations Monitoring System* (GE0050), OPEN GOV'T PARTNERSHIP, <https://www.opengovpartnership.org/members/georgia/commitments/GE0050/> [<https://perma.cc/H8HB-DFX4>] (last visited Jan. 23, 2020).

101. *See generally* Law of Georgia on Conflict of Interest and Corruption in Public Institutions, No. 4358/ No.157, Sakanonmdeblo matsne (2016), *translated in* LEGISLATIVE HERALD OF GEORGIA, <https://matsne.gov.ge/en/document/download/33550/56/en/pdf> [<https://perma.cc/V995-5X78>].

102. CIVIL SERVICE BUREAU, ROUND TABLE: DEVELOPMENT OF ASSET DECLARATION MONITORING SYSTEM IN GEORGIA, <http://www.csb.gov.ge/en/news/მრგვალი-მაგიდა-კონკრეტული-მდგომარეობის-დეკლარაციების-მონიტორინგის-სისტემის-დანერგვის-საქართველოში/> [<https://perma.cc/F6NL-GEG8>] (last updated July 16, 2013).

103. OECD, THIRD ROUND OF MONITORING: GEORGIA, MONITORING REPORT 52–53 (Sept. 25, 2013), <https://www.oecd.org/corruption/acn/GEORGIAThirdRoundMonitoringReportENG.pdf> [<https://perma.cc/4YUM-K5EP>].

104. Irakli Kotetishvili, *Public Financial Disclosure System in Georgia*, CIV. SERV. BUREAU OF GEORGIA (May 13, 2013), http://www.csb.gov.ge/media/1323/irakli-kotetishvili-financial-disclosure-system-in-georgia_final.ppt [<https://perma.cc/5DTK-ET87>].

105. OECD, THIRD ROUND OF MONITORING: GEORGIA, MONITORING REPORT, *supra* note 103.

106. *Id.* at 53.

107. Kotetishvili, *supra* note 104.

108. Law of Georgia on Conflict of Interest and Corruption in Public Institutions, No. 20/44, Sakanonmdeblo matsne (Nov. 11, 1997), *translated in* LEGISLATIVE HERALD OF GEORGIA, <https://matsne.gov.ge/en/document/view/33550?publication=56> [<https://perma.cc/2RPS-2CF9>].

heads of departments and units, judges on all levels, executive officials (e.g., governors), heads of big state-owned corporation, and any other senior officials, as indicated in Article 14 of the Conflicts of Interest Law.¹⁰⁹

In addition, under Articles 4 and 15 of the Conflicts of Interest Law, asset declarations must include information on family members (a declarant's spouse, minor and stepchildren, as well as these persons living in the same household).¹¹⁰ The information in the declaration form requires financial information regarding income, gifts, loans given or loans received, bank accounts, real estate (e.g., houses, land), moveable items (e.g., cars, jewelry, paintings), and any losses over a certain monetary amount.¹¹¹

Therefore, it's possible to view the declaration system as serving with a dual purpose: enabling the verification of the financial situation of public officials and alerting about possible conflicts of interest.¹¹²

Some items and assets that are purely cash-flow related and they do not have any meaning for a conflict of interest verification.¹¹³ Others are more helpful to detect for conflicts of interest verifications (for example gifts, which are apparently not declared for cash-flow purposes, but for conflict of interest purposes).¹¹⁴ A different registration deadline applies to candidates in the parliamentary election. Registration must be within seven days.¹¹⁵ The Civil Service Bureau sends deadline notifications via letter mails, e-mails, and text messages.¹¹⁶ Penalties for non-submission or false data include the following: (1) a fine of up to 1,000, GEL ~ USD 600 for late submissions¹¹⁷;

109. *Id.*

110. *Id.*

111. *Id.*

112. U.N. OFF. ON DRUGS AND CRIME, *Thematic Compilation of Relevant Information Submitted by Georgia* (2018), https://www.unodc.org/documents/corruption/WG-Prevention/Art_8_Financial_disclosure_declaration_of_assets/Georgia.pdf [<https://perma.cc/T6YX-T9DD>].

113. Erekle Urushadze, *Verification of Asset Declarations*, OPEN SOC'Y GEORGIA FOUND. 1–4 (May 2015), https://osgf.ge/files/2015/Publication/EU-Georgia%20Association%20/Angarishi_A4_1.pdf [<https://perma.cc/6A98-REQP>].

114. *Id.*

115. OFF. FOR DEMOCRATIC INST. & HUMAN RIGHTS, GEORGIA PARLIAMENTARY ELECTIONS 8 AND 30 OCTOBER 2016, OSCE/ODHIR, ELECTION OBSERVATION MISSION FINAL REP. (Feb. 3, 2017), <https://www.osce.org/odihr/elections/georgia/297551?download=true> [<https://perma.cc/M3YN-CY3G>].

116. *Id.*

117. *See supra* note 108.

and (2) a fine by community work or by deprivation of the right to occupy a position for up to three years.¹¹⁸

The online submission, storage, and publicity of information, and the use of highly advanced technology has caught the attention of international organizations.¹¹⁹ However, until now, verification of declarations has been confined to scrutiny of journalists, NGOs, and interested citizens. The Afghan government did not plan to establish an administrative verification mechanism until the end of 2014.¹²⁰

In the Georgia asset declaration system, all asset declarations are available to the public.¹²¹

The Ministry of Justice of Georgia drafted “the Legislative Package of the Anti-Corruption Purposes,” which provides for the introduction of complex and systemic mechanisms in the fight against corruption. In accordance to this legislative package, the role of the Information Bureau of Assets and Finances of Public Officials was strengthened significantly. Having the statistical role, the Bureau reorganizes into the active, independent State institution with the effective means of control. Consequently, it changes its name and status.¹²²

2. *Assets Declaration in Malaysia*

Malaysia has a growing economy that also struggles with corruption that it appears to be overcoming in some measurable ways.¹²³ The Malaysian government has made a strong commitment and adopted an anti-corruption strategy that appears to be working.¹²⁴ Malaysia has primarily used modern European methods in combatting corruption, but as to its assets registration system, it seems to have followed a mix system from central Asia with some elements taken from older French models. The current assets declaration system in Malaysia models a workable modern system by categorizing the list of officials that must declare their assets. The Malaysian system divides officials into five categories: ministers and top government officials, members

118. CODE CRIMINAL [C. CRIM.], art. 355 (Georgia).

119. See generally OECD, FIGHTING CORRUPTION IN TRANSACTION ECONOMIES: GEORGIA (2005).

120. PUBLIC ADMIN. REFORM ROADMAP 2020, GEORGIA GOV'T PLANNING & INNOVATIONS UNIT 1, 11 (2015), [http://gov.ge/files/425_49309_322150_15.07.21-PublicAdministrationReformRoadmap2020\(Final\)\(1\).pdf](http://gov.ge/files/425_49309_322150_15.07.21-PublicAdministrationReformRoadmap2020(Final)(1).pdf) [<https://perma.cc/WT99-QLD5>].

121. See OECD, THIRD ROUND OF MONITORING: GEORGIA, MONITORING REPORT, *supra* note 105.

122. *Id.* at 50.

123. THE WORLD BANK, Malaysia Overview, <https://www.worldbank.org/en/country/malaysia/overview> [<https://perma.cc/EVS6-H2R5>] (last updated Mar. 2019).

124. But see Noore A. Siddiquee, *Approaches to Fighting Corruption and Managing Integrity in Malaysia*, J. OF ADMIN. SCI. 47, 48 (2011).

of the civil service, members of parliament, special officers to the ministers, and Penang and Selangor state governments.¹²⁵

Annually, top Malaysian government officials are required to confidentially declare assets to the Prime Minister and these reports are accessible to the Chief Commissioner of the Malaysian Anti-Corruption Commission (MACC).¹²⁶ It's also important to note how it is possible that, although members of parliament are not legally required to declare their assets, a Cabinet-approved Code of Ethics requires that members declare assets every two years. Such assets that must be declared under the Code of Ethics include local and overseas bank accounts, property, vehicles, direct or proxy stakes in companies, and equities held.

The asset declaration process for public servants has been automated via the Human Resource Management Information System (HRMIS).¹²⁷ The Human Resource Department of the respective ministries verifies the asset declaration of public servants and check them for completeness and compliance of declarations.¹²⁸

The Delivery Task Force (DTF) on Anti-Corruption National Key Results Area (NKRA) decided that all ministerial special officers must declare assets to the MACC.¹²⁹ The declaration format is like the circular provided for civil servants.¹³⁰

Malaysia's assets registration system proves useful because of there is a specific organization for assets (MACC), a specific classification about who might be involved in corruption, and a mechanism for verification. It is also possible to see that Afghanistan and Malaysia have similar characteristics. For instance, both countries have a mixed legal system, they are both Islamic societies, and they both have a long history of government's corruption.

125. Shaza Onn, *How can Malaysia's Asset Declaration System be improved to help combat corruption?*, THE INST. FOR DEMOCRACY AND ECON. AFFAIRS (Mar. 8, 2017), http://ideas.org.my/wp-content/uploads/2015/01/IDEAS-Asset-Declaration_softcopy_RGB-2.pdf [<https://perma.cc/Q5PZ-2PMY>].

126. MALAYSIAN ANTI-CORRUPTION COMM'N, MACC PRINCIPLE, <http://www.sprm.gov.my/index.php/en/corporate-info/mengenai-sprm/organisation-info/macc-principle> [<https://perma.cc/N6Y6-TDLT>] (last visited Jan. 20, 2020).

127. Chin Chin Hong, *Reforming the System of Asset Declaration in Malaysia as a Strategy to Combat Corruption*, INT'L ANTI-CORRUPTION ACAD. (2016), https://www.iaca.int/images/Research/Chin_Chin_Hong_Masters_Thesis.pdf [<https://perma.cc/VKK5-6PPR>].

128. *Id.*

129. *Id.*

130. *Id.*

Thus, some steps taken by Malaysia, especially the verification system, can be useful for Afghanistan.

3. *The United States Experience with Assets Declaration*

The modern assets declaration system—as it is known today—was created by American lawyers and economists to prevent corruption in the progressive U.S. economy.¹³¹ The United States can claim its current system of assets registration is known as the mother system of assets declaration in the world.

The asset declaration system in the United States is a highly regarded model with high compliance rates due to its comprehensiveness and transparency.¹³² The Office of Government Ethics (OGE) employees ensure that the submission of documents are complete and check for potential conflicts of interest, but they do not verify the information's accuracy.¹³³ If conflicts are detected, the case is referred to the Office of the Inspector General, the Federal Bureau of Investigation, or the Public Integrity Section of the Department of Justice.¹³⁴ The main purpose of the OGE is to detect potential conflicts of interest.¹³⁵

The Ethics in Government Act of 1978 sets disclosure requirements for all branches of government (i.e., the judicial, legal and executive body) and established the jurisdiction of the OGE to supervise, monitor and ensure compliance of the executive branch.¹³⁶ Submissions by executive branch members (including senior officials) are made to the Designated Agency Ethics Official (DAEO) where the individual is employed.¹³⁷

B. Lessons Learned from Georgia, Malaysia, and the United States

These three countries have adopted specific systems for asset registration according to their legal system, social needs, political and economic situation, and their mechanisms to fight corruption. As previously discussed, these

131. OECD, ASSET DECLARATIONS FOR PUB. OFFICIALS, *supra* note 31.

132. TRANSPARENCY.ORG, *Holding Politicians to Account* (Jan. 17, 2013), https://www.transparency.org/news/feature/holding_politicians_to_account_asset_declarations [<https://perma.cc/2M9E-J49B>].

133. WORLD BANK, INCOME AND ASSET DISCLOSURE CASE STUDY ILLUSTRATIONS 205 (2013), <http://documents.worldbank.org/curated/en/664561468340842190/pdf/Income-and-asset-disclosure-case-study-illustrations.pdf> [<https://perma.cc/6DSH-U5D8>].

134. *Id.* at 222.

135. *Id.* at 203.

136. *Id.* at 209–10.

137. *Id.* at 211.

countries have specific legislation for assets declaration.¹³⁸ They also have specific organizations and professional offices dedicated to this mission.¹³⁹

The verification system tailored to each country's system was an important part of the fight against corruption; it was staffed with enough personal and legal enforcement. In addition, it usually incorporated a modern investigative approach, one that took into account banking and tax records.

In Afghanistan, politicians have immediate control over the management of public assets and funds, thus, the requirements for filling out their asset declarations should be similar to those requirements for civil servants. All elected Members of Parliament and Senators should be legally bound to declare their assets to a parliamentary committee that is independent from the Executive.

A specific mechanism for verification should be developed; the specific commission of office for assets declaration should be given the mandate to verify and monitor asset declaration. An independent body overseeing, verifying and monitoring the process, would ensure compliance. The specific commission of office for assets declaration can play this role.

Making the information on assets publicly available (particularly for high-level officials) is key to improve the perception of corruption. Once verified, the specific commission of office for assets declaration should make all information available publicly. However, in order to protect privacy, the information can be made available by request rather than automatically published.

V. RECOMMENDATIONS FOR REFORM OF ASSETS REGISTRATION IN AFGHANISTAN

This section presents recommendations for strengthening Afghanistan's assets registration system based on its own, current commitments under domestic and international law, and informed by the systems and experiences in countries like Georgia, Malaysia, and the United States. This Article overall recommends new legislative solutions, including clarifying the definitions of assets and procedures, the creation of new monitoring tools, the adoption of criminal sanctions for violators, and procedures to involve civil society.

138. *See supra* Part IV.

139. *Id.*

A. New Legislation

One of the main problems in the current system is the lack of strong laws. This Article recommends that the Afghan government create two new specific laws for assets declaration and verification: a specific law for assets registration and verification, and a specific penal and administrative punishment law against assets registration offender.

Legislation in the areas mentioned are necessary to strengthen the system with useful mechanisms, for instance with the creation of an Independent Commission of Assets Registration and Verification that would function as a mechanism for registration and verification of assets and would combine both traditional and electronic methods. Also, for those who violate the asset registration process, provide wrong information or simply avoid registration, some penalties should be devised, including administrative punishment, fines, or imprisonment in certain cases. This Article specifically recommends the following:

1. Clear Definition of Assets

A comprehensive asset declaration law should be made and enforced by government in collaboration with civil society for government. The assets declaration law should define and clarify the related concepts such as income, assets and their various types, gifts, movable and immovable property, financial value, common assets, pecuniary and non-pecuniary interests, and identification of spouses, relatives and other related persons. Because today the notion of valuable things has evolved and people invest in new types of businesses, like online businesses, the legislators shall research and include these types of businesses. The law should also clearly define money and assets related to money: the banking system in Afghanistan is often not trusted and traditional methods of hiding money in a safe place is still common. The law should also address the exchange shops.

2. Verification and Investigation Tools

The government should create a strong system with limited exemption for asset registration, verification, investigation and disclosure of high government officials' and their families' assets. To this goal, the government must do the following tasks:

1. Create an independent office to register assets, with central and local branches.
2. Establish guidelines for fast and accurate verification.
3. Establish a graduate program to train specialists for the investigation and verification processes.

4. Create an electronic database to speed up data recording and analysis of data.
5. Create a comprehensive database of registered immovable property using aerial photos.
6. Create database with financial transactions.

There are many ways to verify the wealth and assets that official state in their forms, but because the Afghanistan governmental system is old, it is not computerized yet and has a hard time transitioning into a modern system. In the end, the government could expand the current registration system over time to increase its usefulness and trustworthiness.

First, the assets registration commission can use local databases to investigate the content documented in the assets' forms, for instance by consulting the documents in the Land Registry Office, documents in municipal office, etc. In addition, the assets registration commission can use the banking data and records to meaningfully verify non-official declarations. In many jurisdictions, bank secrecy poses an obstacle, so law enforcement agencies will only have access to banking data under special procedures, often involving a court order or government can create specific rules for the authority to commission officials to access easy on some banking records with specific reasons and the bank satisfying.

Some international cooperation exists to help countries investigating their citizens financial records. These procedures tend to go through the Ministry of Justice and the Foreign Affairs Ministry and can be time-consuming. Because Afghanistan Foreign Affairs Minister does not have a specific program for this kind of relation, I suggest some other approaches the Afghan government can use, including: 1) entering into banking, financial, and tax-based treaties; 2) using the international network of the Financial Intelligence Unit to obtain data from abroad in a direct and less formal way.

The assets registration commission can request data from private entities using a particular legal framework. Data from private entities (natural persons or legal entities) is essential in many verification cases and the requests could be satisfied by voluntarily providing information or by using legal tools access them as long as they are connected to the declaration of a public official, for example to creditors of a loan.

Human resources departments in every organization should record the officials' subsistence in daily or monthly subsistence records. Today in Afghanistan, every official gives their salary from their official bank

accounts. Reviewing and investigating their bank accounts can show the official incomes and balance with existing assets.

Another approach is for the commission to compare the assets registration forms with official tax records. However, because the current Afghan assets registration system is on written paper, it is prone to mistakes. And, such a confusion and mixture of terms makes it difficult in practice to verify the declarations. Online or electronic submission of declarations is a solution to this problem, as it would standardize the information declared through drop-down menus and through electronic plausibility checks of the keyed-in information.

Oversight bodies in Afghanistan can normally launch a full verification procedure in the following cases which can give them red flags: with a complaint by a citizen or private agencies; a police and other security agencies, and media reports; and notifications from the Prosecutor or courts.

In addition, there are other ways to use red flags including a disparity between the income and assets (noted during the previous processing of the declaration) or between data as declared and as obtained from other sources; an incident of conflict of interest; suspicions of corruption against a specific public official; unusual/excessive loans; highly profitable businesses with little or no registration and/or auditing (farming, etc.); considerable profits made from the sale of assets (especially if the alienation of assets is considerably above the acquisition price); windfalls (any income without compensation: wins, gifts, inheritances, etc.); asset deals with family members; and etc.

3. Criminal Rules for Violators

The Ministry of Justice, in collaboration with the High Office of Oversight and Anti-corruption, should reform the anti-corruption law and the current criminal law to propose the necessary reforms. Those who do not register their assets in accordance with the legal requirements or give wrong information must be punished and administrative sanctions (official notices, fines, demotion and dismissal).

B. Enforcement Mechanisms

1. A Strong Independent Agency for Registration of Assets

The government like in Malaysia or Republic Georgia, should create a new independent commission for asset registration with local branches. This commission should have executive authority and its member (7 Commissioner) shall be appointed by President with vote of confidence by parliament (Wolesi Jirga or House of People). This commission should

have power to verify all governmental officials' assets in executive, legislation, and judiciary branches.

Also, the government should strengthen its role in asset registration, verification, and disclosure through closely working with Attorney General Office (AGO) to share the corrupt officials' information to the AGO for further investigation and prosecution. This commission shall create various media campaigns and educational-training programs for the public and government agencies employees.

2. Limited Exemptions for Asset Registration, Verification, Investigation, and Disclosure of High Government Officials

Corruption Law aligns with constitutional requirements to publish the assets of officials without exception so that transparency is increased and the asset registration system is strengthened in Afghanistan. Integrate accountability mechanisms, such as complaint mechanisms and citizen-led monitoring systems, into key service delivery ministries. A system to verify the asset declarations of all senior public officials should be established, and failure to register should be met with appropriate sanctions. All asset declarations should be verified through documentation. A system to verify the asset declarations should be established and failure to register should be met with appropriate sanctions.

Given the widespread of corruption in Afghanistan, including corruption from low level employees, this Article suggests that the list of people who should register their assets should expand. For example, the list of people should also include private persons who share financial activities with government agencies, all government employees from mid to high levels, all Afghan staff working in foreign institutions and domestic non-governmental organizations, and all consultants working in government agencies.

C. Involvement and Assistance of Civil Society Organizations

The Afghan government should also mirror some actions taken by Georgia. In Georgia, the Georgia civil society has a special committee for mobilizing the assets process and can investigate. Just like the Georgian special committee, the Afghan government would benefit in calling the civil society organizations to advocate for the current revised anti-corruption law

to be approved by Parliament, and commit for its proper implementation with strong political will.

D. A Five-Year Strategy Plan

This research proposes to create a five-year strategic plan for process of creation an independent commission to register assets, create online and electronic databases (later listed in the recommendations lists), the initial registration of assets of public officials, and its verification process.

E. Online Assets Database

This Article suggests, to facilitate and speed in the process of asset registration and its publication. The government should create an online registration database because according to several national and international reports related to corruption in Afghanistan, corruption is a widespread virus in all government, non-government, and foreign organizations. Therefore, the online database can help the people for fast register their assets and monitor other officials' assets.

F. Electronic Immovable Property Database

One of the most fundamental problems in recent years is that the government did not specify a database of public land and immovable property. This problem was caused disruption of government finances. Also, this problem is causing several legal problems for courts and other agencies. Many corrupt officials abused from this problem to deal with money laundering. One of the biggest challenges facing the lack of verification of assets is lack of documents and database of immovable property.

The Afghanistan Government in 2014, with \$4 million contract to buy a satellite, called «AfghanSat1», from the Eutelsat French company.¹⁴⁰ This satellite is used by the Afghanistan government for 8 years. This satellite can provide telecommunications, radio, and internet services.

This Article suggests that the government must use the «AfghanSat1» satellite to take pictures and make a map of all immovable property, including land, houses, and gardens. From the pictures and maps, which the «AfghanSat1» provide, the government can create a useful database with other document in government departments. Following that, this database can be the best tool for banking services, taxing, assets verification, and many other usages. And finally, this plan is technically possible and the

140. *Afghanistan's First Satellite Was Launched Activity*, BBC NEWS (May 14, 2014), <http://www.bbc.com/persian/afghanistan/2014/05/140510> [<https://perma.cc/G2LV-9ARH>].

cost of it is not high, mostly due to the availability of satellite «AfghanSat1». Therefore, it is reasonably argued that this plan can be implemented within four to six years.

VI. CONCLUSION

Corruption in Afghanistan is a leading cause of the government's inefficiency. Corruption even explains the failure of various national and international projects intended to help the country's development process. There are multiple approaches to deal with corruption, and many institutions that fight against corruption report successful experiences of countries with powerful systems for asset registration along with a strong mechanism for continuous monitoring and punishment, such as in Georgia and Malaysia.

The previous government of Afghanistan established the unit of assets registration, and it was made in accordance with Article 154 of the Afghan Constitution, the UNCAC, Article 12 of the now repealed Anti-Corruption Act and other existing laws. The government action was very rushed and incomplete, and the current unit has not had any effect in reducing corruption. The new government's efforts have failed to have a significant effect in reducing corruption, in part because of the lack of independent mechanisms for asset registration office or the lack of necessary legislation supportive of this process. There are many ways to reform the assets registration system or to rebuild a powerful asset registration system, such as by using the lessons learned from successful countries in reducing corruption.

