SEEKING JUSTICE
A Survey of How Corruption in the Justice System in Afghanistan Affects Citizens’ trust
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Integrity Watch Afghanistan
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# Table of Contents

About Integrity Watch........................................................................................................2
Acknowledgments ..............................................................................................................3
Executive Summary ..........................................................................................................4
Introduction .....................................................................................................................5
Methodology ...................................................................................................................5
Trust in the Judiciary .......................................................................................................6
Corruption and Trust in Courts .......................................................................................7
Support for harsh corporal punishments .......................................................................8
Corruption and corporal punishments ..........................................................................9
Conclusion ......................................................................................................................11
Recommendations .........................................................................................................12
Annex I: Afghanistan’s Judiciary’s Comments on the Report ........................................13
Annex II: Integrity Watch’s response to Supreme Court’s comments .........................16
Bibliography .....................................................................................................................19
About Integrity Watch

Integrity Watch is an Afghan civil society organization committed to increasing transparency, accountability, and integrity in Afghanistan. Integrity Watch was created in October 2005 and established itself as an independent civil society organization in 2006. The head office of Integrity Watch is in Kabul with provincial programmatic outreach in Balkh, Bamyan, Herat, Kabul, Kapisa, Kunduz, Nangarhar, Paktia, and Parwan provinces of Afghanistan.

Over the last decade, Integrity Watch’s work focused on: Community Monitoring, Research, and Advocacy.

Ever since its establishment, Integrity Watch has tried to encourage active citizenship and community mobilization through its programs. The community monitoring work included development of community monitoring tools, mobilizing and training communities to monitor infrastructure projects, public services, courts, and extractives industries.

The research work focused on policy-oriented research measuring trends, perceptions and experiences of corruption and covering wide range of corruption related issues including security and justice sectors, extractive industries, public finance and budget management, and aid effectiveness. The objective is to develop new, ground-breaking empirical research in order to set the agenda, influence decision-makers, bring to the public attention non-document ed and un-explored issues.

Integrity Watch has taken up a pioneering role in advocating for knowledge-based decision-making and informed public debate on corruption and integrity issues. The advocacy work includes facilitation of policy dialogue on issues related to integrity, transparency, and accountability. Integrity Watch’s policy advocacy has been to examine accountability of the government and service providers to the communities they serve. The issues focused on to date are access to information, budget transparency and accountability, aid transparency and effectiveness, effective public service delivery, and anti-corruption.
Acknowledgments

This report is the result of collective efforts by a number of individuals. Integrity Watch expresses its appreciation and gratitude to many people but in particular to the author of the report Mohammad Isaqzadeh and to Ezatullah Adib, Head of Research at Integrity Watch Afghanistan for leading the research. The organization would also like to extend its gratitude to Sayed Ikram Afzali, Norville Connolly and Mohammad Nasir Timory for the review and immense contribution to this report.

The organization would also like to thank the Supreme Court of Afghanistan and all other reviewers who took the time to review and comment on the initial drafts of this report. Finally, we extend our appreciation to the field staff who did much work on the ground.

Finally, we extend our appreciation to the Research and support staff of Integrity Watch Afghanistan for providing on-time support during the research.
Executive Summary

Numerous reports and writers have proposed that corruption has undermined trust in the formal judicial system and has made Afghans decide instead to refer to the informal justice system or the Taliban courts to seek justice. There, however, has been no systematic study of corruption and Afghans’ preferences for the administration of justice and the Taliban courts. This study aims at filling this gap.

This study is based on the National Survey of Corruption in Afghanistan, was conducted by face to face interviews with more than Eight Thousand (8000) respondents of both male and female genders and which was conducted throughout the country except in areas under the control of the anti-government forces. It examines the relationship between corruption and preferences for the administration of justice. The study empirically assesses Afghans’ perception of the judiciary and the relationship between corruption and trust in the state courts and the two other alternatives, namely informal justice and the Taliban courts.

In general, Afghans who live in areas outside the Taliban control still express much higher trust in both the state courts and informal justice provided by local councils and elders than in the Taliban courts. Of the total respondents, 60% expressed no trust in the Taliban court and majority of Afghans (55%) expressed medium or higher trust in informal courts. 40% of Afghans expressed similar level of trust in the state courts. Both perception and experience of corruption are, however, associated with there being lower trust in the state courts and higher trust in the informal justice system and in the Taliban courts.

The perception and experience of corruption seem to undermine trust in the state court and instead increase trust in the Taliban courts and the informal justice system. Findings suggest that the perception of corruption and the actual experience of corruption have different effects on trust in the Taliban courts. While perceived higher corruption in Afghanistan is associated with lower trust in the state courts as well as in the Taliban courts, the experience of corruption (i.e. having personally had to pay bribes) not only lowers trust in the state courts but also is correlated with higher trust in the Taliban courts.

Furthermore, both perception and experience of corruption, are associated with higher support for the enforcement of corporal punishment (flogging criminals or cutting thieves’ hands) instead of incarceration. Those who perceived corruption to be very serious or have had to pay bribes within 12 months prior to the survey expressed higher support for corporal punishment and higher trust in the Taliban courts.

In sum, corruption in the judiciary and the weakness of formal justice system in enforcing the law and punishing criminals seem to boost support for harsh corporal punishments, which are promoted by the Taliban.
Introduction

The relationship between corruption and support for the Taliban has been subject of intense debate and speculation in Afghanistan. Qualitative studies and reports suggest that because of widespread corruption within the judiciary and law enforcement agencies, the enforcement of harsh corporal punishments and the Taliban courts have gained support in Afghanistan. The Taliban framed their resurgence as a political movement for bringing law and order and formed mobile courts to enforce harsh punishments in the rural communities under their control (Guistozzi 2013). According to numerous reports, the Taliban courts have gained popularity for administering “fast and tough justice for thieves, bandits and murderers” (Nijssen 2011). “If I have a problem,” a local tribesman put, “the Taliban will rule in an hour according to our customs and Islam. If I take it to the government, in six months nothing will have happened. Then whoever pays the most will win” (Farmer 2010).

In his book, The Politics of the Taliban’s Shadow Judiciary, Antonio Guistozzi (2014) went as far as arguing that “the Taliban’s method of dealing with common criminality and resolving disputes was often welcome [...] In the long run, the establishment of credible judicial institutions [by the Taliban] reshapes the social environment and creates vested interests in favor of Taliban domination.” A member of the Afghan parliament highlighted that “[w]hen people have problems, they don’t go to the government. They go to the Taliban, and the Taliban decide. There are no files and no paperwork” (Nijssin 2011).

These speculations and claims are not totally baseless. Afghans have consistently been critical of the judiciary. Based on the Afghanistan National Corruption Survey in 2018, the judiciary and courts were viewed more frequently than any other institution as the most corrupt public institution, followed by the Ministry of Education and the Attorney General’s Office. In addition, the judiciary was reported as the top recipient of bribes among the public institutions, followed by the Attorney General’s Office and the Ministry of Education. 22% of respondents reported to have paid bribes, within the preceding 12 months, to the judiciary while 16% reported to have paid bribes to the Attorney General’s Office and 8% to the Ministry of Education. Furthermore, 62% of respondents believed that corruption within the state facilitated the expansion of the Taliban.

There, however, has been no systematic study of corruption and Afghans’ preferences for the administration of justice and the Taliban courts. This study aims at filling this gap and empirically assessing Afghans’ perception of the judiciary and the relationship between corruption and trust in state courts and the two other alternatives, namely informal justice and the Taliban courts.

Methodology

This study relies on the Afghanistan National Corruption Survey in 2018. The Afghanistan National Corruption Survey is conducted biannually with a nationally representative sample of respondents throughout 34 provinces of Afghanistan. The survey consists of over 8,000 face-to-face interviews. It collects detailed information on two variables: perception of corruption in state institutions and the experience of corruption, that is, having to pay bribes or other forms of corruption, when seeking public services. With respect to the perception of corruption, respondents are asked to express their opinion as to how corrupt public institutions are and to rank the three most corrupt institutions.

This survey was a countrywide survey by Integrity Watch Afghanistan on Afghans’ perceptions and experiences of corruption and
assessment of how corruption impacts their lives and communities. Since 2007, this is the sixth biannual survey of its kind by Integrity Watch. The survey offers insights to the high-level government authorities, political leaders, CSOs, think tanks and public officials about Afghans’ perception of corruption and their expectations from the state and political leaders of the country.

The target population for this survey was Afghans aged 18 years or over the age of 18. According to population data from Central Statistics Organization (CSO) of Afghanistan (Settled Population by Sex and Age Groups - 2016-17), around 48 percent of the provincial population is 18 or over the age of 18. That number will be the target population for this research project (total population 18/+ = 13,558,493 and total population of Afghanistan is = 29,2 million (estimated). In this study, the sampling frame was list of villages or nahias, using the different village database, in each of the selected districts as the research location. The representative sample villages were drawn at random process from the list in each district.

Integrity Watch Afghanistan administered a country level public opinion survey in one hundred forty (140) sample districts including Nahias and thirty-four (34) provinces of Afghanistan. The sample size for the whole country was calculated to obtain 1.1% margin of error at 95% confidence level with an estimate of 50 percent response distribution (among male and female). The total number of surveys taken was 8130. To increase demographic variation and taking into account the budget considerations, the research team distributed 10 surveys per sampling point which accounts for a total of 813 sampling points in all one hundred and thirty-seven districts of thirty-four provinces.

Trust in the Judiciary

Comparing the trust in the state courts with trust in the informal justice (i.e. adjudication by local leaders and elders) and the Taliban courts, the respondents expressed a considerable level of trust in the state courts. They expressed much higher trust in the state courts than the Taliban courts although they preferred informal justice over the state courts. Figure 1 summarizes the respondents’ expressed level of trust in different alternatives for administration of justice.

Figure 1: Trust in the judiciary and non-state alternatives

Contrary to claims by reporters and politicians, Taliban courts are not popular. Of the total respondents, 60% expressed no trust in the Taliban courts, and less than 15% expressed high level of trust (to a large or very large extent) in them. The highest level of trust was expressed in the informal justice system. The majority of
Afghans (55%) expressed medium or higher trust in the informal justice, but 40% expressed similar levels of trust in the state courts. Only 26% of the respondents trusted the Taliban court to such extent.

There is an important variation in the trust in the Taliban courts in that female respondents expressed the least trust in the Taliban courts. More than 65% of female respondents expressed no trust in the Taliban courts and only 12% trusted the Taliban courts to a large extent or higher. Among male respondents, 54% expressed no trust in the Taliban courts and only 20% said they had trust in the Taliban courts to a large or very large extent (see Figure 2).

**Figure 2: Trust in the Taliban courts by gender**

Comparing Trust in the Taliban Courts among Female and Male Respondents

<table>
<thead>
<tr>
<th>Trust Level</th>
<th>Female Respondents</th>
<th>Male Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not at all</td>
<td>65%</td>
<td>54%</td>
</tr>
<tr>
<td>To some extent</td>
<td>14%</td>
<td>15%</td>
</tr>
<tr>
<td>To medium extent</td>
<td>10%</td>
<td>11%</td>
</tr>
<tr>
<td>To a large extent</td>
<td>9%</td>
<td>12%</td>
</tr>
<tr>
<td>To a very large extent</td>
<td>3%</td>
<td>8%</td>
</tr>
</tbody>
</table>

Corruption and Trust in Courts

Figure 3 explores the relationship between the perception of corruption and trust in the state courts and the other two alternatives for the administration of justice. When asked how seriously they thought corruption in Afghanistan was, around 51% of the respondents believed that corruption was “very serious” while the remaining 49% thought that corruption was less serious. We thus divided the respondents into two groups: those who thought corruption was very serious and those who thought it was less serious. Trust was also coded from 0 to 1, where 0 means “no trust” and 1 means “trust to a very large extent”.

As summarized in Figure 3, those who thought corruption was very serious expressed lower support in the state courts. Those who thought corruption to be less serious on average expressed 38% trust in the state courts (0.38 on a scale of 0 to 1) but those who viewed corruption to be very serious on average expressed only 30% trust in the state courts (0.3 on a scale of 0 to 1).

**Figure 3: Perception of corruption and trust in courts**

<table>
<thead>
<tr>
<th>Perception of Corruption and Average Trust in Courts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trust in state courts</td>
</tr>
<tr>
<td>Trust in informal justice</td>
</tr>
<tr>
<td>Trust in the Taliban courts</td>
</tr>
<tr>
<td>- corruption very serious</td>
</tr>
<tr>
<td>- corruption less serious</td>
</tr>
</tbody>
</table>

Moreover, Figure 3 shows that the perception of corruption does not seem to affect trust in the
informal justice but does reduce trust in the Taliban courts and to some extent in the formal courts as well. The respondents trusted 55% in the informal justice (0.55 on a scale of 0 to 1), which did not vary with perception of corruption. It seems that perception of corruption in Afghanistan does not affect the respondents’ trust in the informal justice. What is even more important is that those who think that corruption is very serious also express lower trust in the Taliban courts. It suggests that perceived corruption is correlated with an unfavorable perception of the Taliban courts as well. The observed decline in trust in the state courts and Taliban courts with higher perception of corruption is statistically significant.¹

Figure 4: Experience of corruption and trust in courts

Comparing Figure 3 and Figure 4 suggests that the perception of corruption and the actual experience of corruption have different effects on trust in the Taliban courts. While perceived higher corruption in Afghanistan is associated with lower trust in the state courts as well as in the Taliban courts, the experience of corruption (i.e. having personally had to pay bribes) not only lowers trust in the state courts but also is correlated with higher trust in the Taliban courts.

Support for harsh corporal punishments

It has been argued, that corruption in the judiciary and the weakness of the formal justice system in enforcing the law and punishing criminals leads to support for harsh corporal punishment, which are promoted by the Taliban. This survey shows that there is substantial support for harsh corporal punishment such as flogging criminals in public or cutting off thieves’

¹ The difference in means of trust in state courts between those who view corruption to be very serious and other respondents (with assumption of two independent samples) has t-statistics of -12.217 and p-value of < 0.001. T-statistics for the trust in the Taliban courts is -8.33 with p-value < 0.001.

² The t-statistics is -5.9869 and p-value < 0.001.

³ The t-statistics is 8.2972 and p-value < 0.001.
hands instead of incarceration, which is the
punishment sanctioned in the Afghanistan penal
code. Figure 5 summarizes the respondents’
support for flogging criminals in public, instead
of incarceration. Flogging criminals in public is
viewed favorably, particularly among male
respondents, 60% of whom thought that such a
punishment should be used most of the time or
always. However, among female respondents,
only 48% supported public flogging in lieu of
incarceration.

Figure 5: Support for public flogging and gender

Figure 6 shows support for cutting off thieves’
hands instead of incarcerating them. Once again,
there is strong support for such a punishment,
specially by men. 64% of male respondents and
46% of female respondents believed that
thieves’ hands should be cut off most of the time
or always. Only 13% of male respondents and
24% of female respondents believed that such a
punishment should never be used.

Corruption and corporal punishments

Does corruption affect support for harsh
corporal punishments in lieu of incarceration? In
this section we try to answer this question.
Figure 7 reflects the relation between
perception of corruption and support for
flogging criminals in public and cutting off thieves’ hands. Those who viewed corruption to be very serious expressed stronger support for flogging criminals than the other respondents (0.6 vs. 0.53 points), which shows an increase of 13% in support for public flogging. They showed stronger support for cutting off thieves’ hands as well (15% increase in support for this type of corporal punishment) compared to those who viewed corruption to be less serious. The observed differences are statistically significant.\(^4\) It seems that perception of corruption indeed leads to higher support for harsh corporal punishments promoted by the Taliban.

\textit{Figure 7: Corruption and support for corporal punishments}

As summarized in Figure 8, the experience of corruption is also associated with higher support for flogging criminals in public and cutting off thieves’ hands. Those who experienced corruption i.e. had to pay bribes within the last 12 months expressed on average higher support (around 10% increase in support) for these forms of corporal punishment. These increases in support for corporal punishment are statistically significant.\(^5\) Once again, these findings confirm that the experience of corruption seem to increase support for harsh punishments, promoted by the Taliban, in lieu of incarceration, which the Afghanistan judiciary uses to deal with crimes.

\textit{Figure 8: Experience of corruption and corporal punishment}

\(^4\) The t-statistic for public flogging is 7.8126 and p-value < 0.001. The t-statistic for cutting off thieves’ hands is 9.668 and p-value < 0.001.

\(^5\) The t-statistic for public flogging is 4.202 and p-value < 0.001. The t-statistic for cutting off thieves’ hands is 5.1083 and p-value < 0.001.
Conclusion

This study provides empirical evidences for the propositions about the relationship between corruption and support for the informal justice system and the Taliban courts and harsh corporal punishments. Both the perception and experience of corruption seem to undermine the legitimacy of the state judicial system and drive Afghans to become more supportive of other mechanisms for the administration of justice and harsh physical punishments as a deterrent to crime.

This study provides empirical evidences for the propositions about the relationship between corruption and support for the informal justice system and the Taliban courts and harsh corporal punishments.

Both the perception and experience of corruption seems to undermine the legitimacy of the state judicial system and drive Afghans to become more supportive of other mechanisms for the administration of justice and harsh physical punishments as a deterrent to crime. These findings are alarming. People’s perception of corruption in the justice system is as serious as their actual experience of it. The judiciary and all others involved in the administration of justice in Afghanistan must build people’s trust in the formal justice system. If they do not then support for informal justice and the Taliban courts will continue and may increase.
Recommendations

Afghans still express a considerable level of trust in the judiciary and state courts. The following recommendations, which address internal as well as external accountability, would help the Afghan government and the judiciary to strengthen the public trust in the formal justice system.

1. Independence of the Judiciary is a critical part of a properly functioning state. There is an absolute necessity for a clear separation of function between the Judiciary and the Executive. The lack of this leads to a reduction in public trust in the justice system. Therefore, the government should urgently examine obstacles which are interfering with the independence of the judiciary and have these obstacles removed without delay.

2. The government should ensure that there is a properly functioning independent legal profession by supporting the Afghan Lawyers Union, the Afghanistan Independent Bar Association and associations formed by prosecutors and judges as well as working closely with legal departments of public and private universities.

3. The government should immediately implement an independent judicial appointments process which is transparent and is based on merit. The government should explore the possibility of establishing an independent judicial services commission that manages the personnel affairs of judges in an impartial way.

4. The government should establish a properly funded independent judicial complaints commission to hear complaints against judges and which has strong powers of investigation, censure and dismissal. The current judicial oversight directorate could be expanded, empowered and made independent to reach best global standards.

5. An Ombudsman’s Office for the judiciary and Open Justice Initiatives are indispensable for establishing external accountability. The Afghan government should prioritize improving the administration of justice by state courts and the provision of access to impartial and transparent justice. The establishment of an Ombudsman Office, independent of the judiciary, to investigate citizens’ complaints and concerns about court processes and decisions would be an essential step in regaining public trust in state courts.

6. The government and the judiciary should facilitate and support access to Open Justice including online courts. Given the complexity of the Afghanistan legal system, public oversight of the judicial processes and decisions made by the state courts, such as Community-Based Monitoring (CBM), would increase transparency and enhance the public trust in the state courts.

7. The government should ensure defendants without financial resources to defend themselves receive adequate legal help by supporting the current legal aid department within the Ministry of Justice.

8. The government should take such measures to ensure the hearing of cases in a speedy and fair way by making sure the case management system (CMS) is in functioning and used across the country and necessary measures are taken in regard to the cases that are lagging behind.

9. In remote areas where state courts are inaccessible, the government and the judiciary should support the provision of informal justice by providing technical support and training for local figures who administer justice and adjudicate disputes. In addition, the government should expedite the enacting of legislation to establish a formal relationship between the informal and formal justice and to regulate the risks associated with the informal justice such as practices that violate human rights and access to justice.
Annex I: Afghanistan's Judiciary’s Comments on the Report

The Supreme Court presents the following comments in regard to a draft survey Report titled (Corruption and Justice Delivery in Afghanistan) it has received and reviewed recently:

1. The Report has made a comparison of public confidence in governmental courts, informal justice, and Taliban’s courts, adding that the corruption has undermined the public’s confidence in the formal judicial system and this has caused Afghans to refer to the informal justice establishments or to the Taliban courts to seek justice. It is noteworthy to say that there is no legal logic or justification for comparing Afghanistan's justice system with that of the Taliban. The Afghan government is a legal administration and its judicial system issues decrees based on the provisions of endorsed written laws and laws of procedures. Disregard of the laws of procedure in judicial proceedings, which includes the rights of the parties in the dispute, can cause annulment of decrees. Observing all these procedures is usually time-consuming. Responding to how the Taliban courts issue decree or impose physical punishments is up to them. Whereas justice is a divine right and a major characteristic of dispositive law, national and international organizations will again accuse Afghanistan judicial power of not observing fair trials, if it does not adhere to the laws of procedures and the rights of parties in disputes in judicial proceedings.

2. In regard to the informal justice system, the Report relates people’s preference of using informal justice systems also to the reduction of public confidence in governmental courts while the informal justice system, including traditional Jirgas, mediation of a third party in conflict resolutions, has been functional in some certain cases and has its own social basis and structure. In addressing some civil disputes, personal statues, and trade disputes, the governmental courts also encourage parties to the cases to resolve their disputes through informal justice and Jirgas and this has resulted in some parties being reconciled and settlements made. These settlements are registered with the courts and therefore this process is efficient in resolving disputes in a short-term period and in preventing troublesome proceedings for the people and the government courts. Using this informal system does not have any connection to corruption and low public confidence in the country’s courts.

3. In regard to people’s attitudes towards the existence of corruption and their personal experience, part of the Report says that the corruption has undermined the legitimacy of the government’s judicial system and encourages people to support other mechanisms used for justice delivery. It is noteworthy that this phenomena (corruption) has been contained more than ever in judicial organs after five years of fighting against corruption and the Supreme Court currently has committed, honest, and responsible administrative personnel. Questioning the honesty, duty, and activities of all the Supreme Court personnel who have devoted themselves in their judicial missions amid the current tough circumstances and where 126 of its staff members have been killed and wounded over past five years, is unjust. Corruption does not exist as a general problem in the judicial system but whenever it emerges as an individual offence, then, it will be prosecuted legally and seriously. Most of the Report’s argument is based on interviews conducted with the people. It needs to be said that half of parties in civil cases and most of those who committed crimes in criminal cases are not satisfied with regard to legal judgments made against them. It is normal that no one expresses satisfaction with the judgments making responsible and they normally then relate the judgments to corruption which is unrealistic and not true. The people’s confidence in Afghanistan’s
judicial system has tangibly increased in recent years. Annually, handling an average of 1,000 civil and criminal cases in primary, appellate, and final courts of the Supreme Court indicates the people's accessibility to justice and their increased confidence in the judicial system.

4. The following points need to be made in respect of the recommendations proposed by the Report in regard to the independence of the judicial system, the process of appointments in judicial system, the establishment of a new independent judicial complaint commission, establishing an appeals office independent from judicial system, and facilitating accessibility to open justice:

- According to Article 166 of Constitution, the Supreme Court is the highest judicial authority, at the head of the judicial system of the Islamic Republic of Afghanistan. Adhering to this aforementioned article of the Constitution, the leadership of the judicial system has maintained its full impartiality and independence, has rejected any types of interference and influence in its judgments, and has not faced any serious problem in doing so. The law has clearly defined the process of judicial proceedings and has left no room for external interference.

- Appointment of judges are made in accordance with the Constitution and in line with the Organization and Jurisdiction Law of Courts after evaluations of an authorized committee under the leadership of the High Council of Supreme Court. The criteria for appointing judges are only commitment, honesty, and accountability. No relation is preferred during the hiring process which is under the oversight of the High Council of the Supreme Court.

- There are complaint commissions in all appellate courts in the capital and provinces, the Chief Justice meets with referees and hear their complaints twice a week, complaints boxes exist in the courts and in judicial observatory offices, and legal demands of the dispute parties are addressed. Therefore, there is no reason to establish an independent judicial complaints commission.

- Establishing any other body under any title which is not within the structure of the judicial power to oversee the operation of the judicial authorities is clearly against the Constitution. The Supreme Court is responsible to Report on its performance only to the President.

- The Supreme Court has no problem in institutionalizing open governance, it has made current commitments regarding this and it does not hesitate to cooperate in institutionalizing open governance while observing the Judiciary’s policies.

5. The judicial authorities believe that the surveys should be conducted in a standardized way and serve as problem solvers and not disturb the public mind or question the Judiciary’s prestige. While we feel the judicial system is in a better position than in the past years after bringing some judicial and administrative reforms, we have committed staff, we are consistently attempting to address any shortcomings, deliver a better service for the citizens, and keep such an attitude while making progress. Releasing such surveys creates misperceptions among national and international communities, and the people of Afghanistan towards the judicial system and this increases the distance between the people and the government. Such moves must be avoided.

6. This Report is not realistic about the Supreme Court as the judicial power is obliged to adhere to all written laws and laws of
procedures. It is not correct that the Judiciary is not accountable for any of its actions. Producing such Report based on interviews done with 8,000 people and generalizing it to 30 million population of Afghanistan – while its methodology is not clear – is questionable for the Supreme Court and is not acceptable.

Note: The original response by the Supreme Court is in Dari and published in the Dari version of the report. The original response by Integrity Watch to the Supreme Court is in Pashto and published in the Pashto version of the report. The translation of communications into English, Dari and Pashto is by Integrity Watch.
Annex II: Integrity Watch’s response to Supreme Court’s comments

As part of its 2019 research program last year Integrity Watch Afghanistan carried out a National Survey on Corruption in Afghanistan’s Justice System. The Report was shared with Afghanistan’s Supreme Court on the 20th November 2019. Integrity Watch received a response to this Report from the Supreme Court on the 22nd December 2019. Integrity Watch would like to respond to the points made by the Supreme Court in their response letter as follows:

1. The Supreme Court expresses the view that “there is no legal logic or justification for comparing Afghanistan’s justice system with that of the Taliban”. In fact, the Survey was an analysis of public opinion about these systems. It was a survey as to what people thought of these systems, not a comparison of the three systems. We don’t dispute that the official judicial systems have improved and its management has been strengthened compared to the past. However, in this survey the public’s views were sought about the different judicial systems. Accordingly, it is clear that the report has never been for the purpose of comparison or to express a preference of any system over another.

2. It is clear that people refer their cases to traditional judicial systems because of their belief that there will be quick decision making and a lack of time-wasting. It is correct that people may refer to the informal justice system because of its accessibility. However, based on this survey there is a strong correlation between the perception of corruption and higher trust in the informal justice system. As it is carefully worded in the report, we are not making any causal claim here but highlight the statistically significant correlation between the two. This correlation is a very important part of the Report and is something the Supreme Court must investigate and resolve. It is for the judiciary to combat corruption within its ranks and to conduct public awareness programs to explain the work which is being done about this so that the public perception changes and their trust in the judiciary increases. The public can’t do this themselves. Only the judiciary can. If this is done the trust of citizens in the judicial system will increase and the gap between citizens and government will decrease.

3. We are neither questioning the sacrifices made by judiciary staff but we appreciate the efforts made. We are just presenting the relationship between the perception of corruption and trust in the judiciary. Once again, we are not making any claims about the existence of corruption and its extent within the judiciary. Instead, we are reflecting only what people think about the judiciary and their personal experiences with the Judiciary. Furthermore, this study was conducted with a random sample of respondents rather than those with criminal backgrounds. Furthermore, it was never the intention of our investigative report to evaluate the extent to which the Supreme Court has succeeded with reforms. We note your statement that corruption is not systemic in the judicial system but instead is unusual & occurs only in individual cases. The public clearly disagrees with this assessment. Other reports e.g. Asia Foundation, the Corruption Survey, World Bank also report similar conclusions as our Report.

A SURVEY OF HOW CORRUPTION IN THE JUSTICE SYSTEM IN AFGHANISTAN AFFECTS CITIZENS’ TRUST


We acknowledge after any court decision one or both sides can be dissatisfied. However, as trust in the judicial system increases the level of dissatisfaction will decrease. Also, importantly this survey didn’t interview anyone who had a criminal background. Instead the participants were selected after strict procedures were followed.

4. We respect independence of the Judiciary and you would also agree that courts should be accountable to the public. Having independence & accountability enshrined in the Constitution and other legislation is hugely important. However, it is meaningless unless brought into practice. Independence from political interference is very distinct from accountability. Every public body must be accountable to the citizens. This includes the judiciary. The judiciary must also be independent & free from political interference. This includes recruitment and financial independence, where more effort to reform is needed. In fact, we have supported courts financial independence like the Supreme Court budgetary independence including in the High Council of Rule of Law and Anti-Corruption. Considering the extent of citizen’s mistrust of the judiciary and their complaints of corruption, more efforts are needed to reform, to be transparent, and accountable. Citizens have the right to have independent oversight of the justice sector’s work and to insist on independence. The report’s recommendations highlight this issue.

5. You say we should not carry out a survey which questions the Judiciary’s ‘prestige’. It is our role to carry out such surveys and also explain how it would assist the courts understand and improve their public image. Citizens are entitled to express their opinion about the judiciary. This is what they are doing in this Report and in these other reports:


It is common global practice that governments pay attention to public opinion when drafting policies for various matters of social importance. Therefore, research and surveys to assess public opinion are important. These must be conducted according to proper academic methods. Integrity Watch Afghanistan uses the approved professional and academic methods for every research project. As a lack of public awareness or weak public awareness can increase the gap between citizens and the judiciary, greater importance must be given to this issue by all parts of the justice sector including the judiciary.

Integrity Watch Afghanistan is committed to working with the Supreme Court and we suggest meetings, discussions and cooperation regarding this report and other programs.
Note: All activities of Integrity Watch Afghanistan are for the purpose of reform, transparency and combating corruption. This is appreciated both nationally and internationally including by the President of Afghanistan and the international community. Our goal is good governance and accountability. Integrity Watch as an independent, non-political and non-profit civil society organization works along with government to achieve good governance, public interest protection and representation of citizens.

According to the principles and definition of democratic regimes, government officials are accountable to the citizens, must provide public services transparently, share information with citizens, and provide the opportunity for social audits and be fully accountable. The legitimacy of government comes from the trust of its citizens and its failure will also be based on citizens dissatisfaction.
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