POLICY BRIEF
FIXING THE PROBLEM OF CORRUPTION IN THE PROSECUTION SERVICE
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INTRODUCTION

The Attorney General’s Office (AGO) has been frequently ranked as one of the most corrupt public institutions in Afghanistan. According to Integrity Watch’s 2018 National Corruption Survey, the AGO was ranked as the third most corrupt public institution by respondents. Part of this corruption lies in the recruitment cycle of prosecutors, the importance of which was highlighted by the Independent Joint Monitoring & Evaluation Committee (MEC) recommendations on the AGO.

Recommendation Number 6 states that there should be a “legal amendment to the Law on Structure and Authorities of the AGO that sets out a procedure for prosecutors to be appointed based on merit and competition”.

In its Fourth Quarterly Report of the AGO’s progress published in December 2019, MEC acknowledged the implementation of 40 out of 50 recommendations. However, in regard to the need for reform in the AGO’s recruitment procedures, it commented that “information provided to MEC from the AGO was not sufficient to determine progress, to date.”

To address this concern, the AGO has drafted amendments to the Law on Structure and Authority of the AGO which proposes a set of reforms in its recruitment mechanism. While such a step is welcome and the minimal progress made in reforming the AGO in the past five years, is acknowledged, the introduced reforms are insufficient. Instead a more functional mechanism namely a Prosecution Services Commission, which would cover the entire recruitment cycle should be introduced. This policy brief sets out why such a Commission is needed and how it should be established.

Analysis of AGO’s Proposed Model

The proposed model by the AGO suffers from several deficiencies which can potentially make the entire recruitment process vulnerable & ineffective. Some of the major deficiencies in the AGO’s model are as follows:

- The AGO proposed model is limited to the recruitment of new prosecutors. Limiting reform only to the recruitment of new prosecutors only partially addresses the problem. The proposed model by the AGO fails to take note of the entire recruitment cycle, namely, retirement, promotion, demotion and dismissal. Undoubtedly, corruption may occur when new prosecutors are recruited but this is not the only place where corruption takes place. Corruption can also happen in promotion, demotion, transfer, and dismissal of prosecutors. By introducing only, a limited measure to reform only recruitment process of prosecutors, the scope of reform in the AGO will be very limited and unsustainable.

- Another major problem is the poor oversight mechanism for recruitment. Any proposed oversight mechanism should be independent to prevent corruption and political interference in the process. The only oversight mechanism proposed by the

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3 Ibid, 13
4 Ibid.
AGO’s draft is the presence of one representative from civil society organizations⁵. Accordingly, this proposal suffers from several problems. First, having only one representative from civil society is unlikely to decrease the chances of corruption. Second, the draft proposes the presence of a civil society representative only during two of the four important stages of the recruitment process (in the Written Test Committee and the Interview Committee). This means there will be no civil society engagement in the first and last stage (Document Assessment and Appeal states). In addition, the suggestion that all relevant CSOs agree that one representative from one organization would attend the exams is not realistic as these exams may happen quite often.

- Finally, a proper appeal mechanism should be put in place. The appeal stage, termed Complaints in the draft amended law, again is deficient as there is the recurring problem of lack of oversight. The members of the Appeal Committee are only drawn from the AGO directorates and no external oversight agency is involved.

Overall, the AGO’s mission of having a fair and transparent recruitment process is admirable but there must also be an independent and comprehensive mechanism for managing a prosecution service and an appropriate independent oversight mechanism. Failure to implement an appropriate oversight structure in this regard will seriously hamper the prosecution service and is also unlikely to tackle the prevalence of corruption.

Proposed Model: Prosecution Service Commission

In the light of the above-explained points, Integrity Watch Afghanistan proposes a more accountable model which if properly implemented and operated should overcome these challenges. The Prosecution Service Commission model is drawn from the recommendations of the Organization for Economic Development and Cooperation (OECD) model for civil service commissions⁶. This model distinguishes the three steps of recruitment, oversight and appeal. In our proposed model, these three functions are the responsibility of the Commission as detailed below:

- Integrity Watch’s proposed model is a multi-member Prosecution Service Commission that should be exclusively charged with all aspects of the recruitment cycle. The cycle should include recruitment of new prosecutors, promotion, demotion, transfer, dismissal and retirement.

- The members of such a Commission should be appointed for a 3-5-year term through an open, transparent and competitive merit-based process to ensure its accountability and transparency. Members of the Commission could potentially be retired/senior judges and prosecutors, senior experienced members of legal profession such as Afghanistan’s Independent Bar Association and Lawyers’ Union of Afghanistan and from other relevant Civil Society Organizations (CSOs).

- Such a Commission should function extremely well simply because it will resolve the combined issues of lack of meaningful oversight and having a proper appointments process. It should cover the entire recruitment cycle and should ensure

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⁵ This number was discussed during a meeting between CSOs representatives and AGO officials.

⁶ OECD, Study on the Political Involvement in Senior Staffing and on the Delamination of Power between Ministers and Senior Civil Servants, (2007/6), 58
that such a process is appropriate, fair, transparent and accountable.

Integrity Watch is also calling, at this time of proposed recruitment reform, for wider reforms in the AGO both regarding its independence and operation. These reforms should include fundamental changes to make the AGO an independent institution, including having financial independence, with freedom from political interference and being neutral and impartial in its work. These fundamental reforms should include the establishment of an independent ombudsperson whose office would provide effective oversight of all workings of the AGO’s office. Integrity Watch will quite soon provide more details of the structures required for these wider changes in the AGO which are so badly needed.

With a proper recruitment process and these wider proposed changes, we will have an AGO which would operate to an international best practice standard and would thereby be at last fit for the purpose of properly and fairly serving the people of Afghanistan.

Figure 1: Proposed Model of Prosecution Services Commission

Conclusion

The justice sector in Afghanistan needs substantial reform to bring it up to international best practice standards. Part of this badly needed reform is to the AGO’s office not just in regard to all aspects of the recruitment cycle eg relating to new prosecutors and other staff and the promotion, demotion, transfer, dismissal and retirement of staff. There is also a need for wider reforms so that it becomes an independent institution, including having financial independence, with freedom from political interference and being neutral and impartial in its work.
Recommendations:

- Establish an independent Prosecution Service Commission which would have authority over recruitment, oversight and appeal functions in the Attorney General’s Office.

- The Commission should manage recruitment of new prosecutors as well as promotion, demotion, dismissal and retirement of current prosecutors.

- The commission should include robust mechanisms for ethical conduct of its members to ensure their integrity and independence.

- The Commissioners should be appointed for a term of 3-5 years through an independent open, transparent and competitive process.

- Members of the Commission could be recruited from retired judges and prosecutors and sufficiently experienced members of the legal community and civil society.

- Civil Society Groups should be involved in all recruitment steps and processes.

- These fundamental reforms should include the establishment of an independent ombudsperson whose office would provide effective oversight of all workings of the AGO’s office.

- All appropriate steps should be taken without delay to ensure that the AGO becomes an independent institution including having financial independence, with freedom from political interference and being neutral and impartial in its work.

- The President should identify a competent and trustworthy Attorney General through an open, competitive and transparent process before approval by the Lower House.