



The Judiciary and the Rule of Law in Afghanistan

BY MEHDI J. HAKIMI

Long before the fall of Kabul, the rule of law and the judicial system in Afghanistan suffered from corruption, design flaws, and missed opportunities.

The *sine qua non* of the rule of law is the enforcement of legal constraints on government power. Absent such constraints, the rule of law will devolve into “rule by law” or “rule of man.” Separation of powers is an important mechanism in checking unbridled government authority. Indeed, the legislative and judicial branches of the state serve critical roles in curbing executive overreach. Ultimately, an independent and competent judiciary is indispensable to a robust checks and balances system and thus often viewed as the lynchpin of a rule of law society.¹

The risk of regression into authoritarianism is inevitably more pronounced in countries with a historically weak rule of law culture such as Afghanistan. The Taliban’s recent takeover of the country has rightly exacerbated concerns about significant backsliding on the progress of the last two decades. The current assault on the rule of law in Afghanistan, however, commenced shortly after the Taliban’s ouster in 2001 — via a constitutional scheme that established a flawed separation of powers system in the then-fledgling democracy.

This article examines the nexus between the judiciary and the rule of law in Afghanistan. First, I will provide an overview of the separation of powers under the 2004 Constitution, which so many hoped would herald a new era. Next, I will show how institutional design flaws, primarily in the constitutional architecture, curtailed the judiciary’s capacity to act as a check on the other branches, particularly vis-à-vis the executive. Finally, I will argue that a widening gap between the *de jure* rules on paper and the *de facto* practice

of contempt for judicial independence further undermined the rule of law in Afghanistan — long before the Taliban again seized power in August 2021.²

Separation of Powers in Afghanistan

The rule of law has been elusive throughout much of Afghanistan’s turbulent history. Since the country’s inception in the mid-18th century, Afghans have experienced a range of government systems: monarchies, communist regimes, emirates, and quasi-democratic rule. Notwithstanding their differences, these disparate regimes shared, to varying degrees, a common feature: the lack of legal constraints on government power. Unrestrained by a strong legislature and an independent judiciary, Afghan rulers governed as *de facto* autocrats.³

The Taliban’s fall in 2001 ushered in hope for reversing the historical trajectory of violence and despotism in Afghanistan. Building a new constitutional order presented a unique opportunity to move toward democracy and the rule of law. The Constitution of 2004 established a system of separation of powers between the executive, legislative, and judicial branches of the state. The three branches were intended to act as checks and balances on each other.⁴

The Constitution conferred substantial authorities on the executive branch, which was headed by the president. The president’s powers included supervising the implementation of the Constitution, determining the national policy of the country, serving as the commander-in-chief of the armed forces, defending the territorial integrity and independence of Afghanistan,

and appointing high-level officials, including cabinet ministers.⁵

The executive was also responsible for enforcing laws and court judgments, maintaining public order and combatting administrative corruption, preparing the state budget and protecting public wealth, devising and implementing development programs, and reporting progress to the National Assembly.⁶ The president also had (and frequently deployed) the power to issue legislative decrees.⁷

The National Assembly, which was composed of two chambers,⁸ served “as the highest legislative organ” and “manifest[ed] the will of [the] people.”⁹ The National Assembly’s powers included, *inter alia*, ratifying and abrogating laws, approving the state budget, endorsing development programs, ratifying international treaties and agreements, and approving or rejecting high-level appointments.¹⁰

The Constitution stipulated that the judiciary “shall be an independent organ of the state” comprised of the Supreme Court, Courts of Appeal, and Primary Courts.¹¹ The Supreme Court was composed of nine members, appointed by the president and endorsed by the National Assembly.¹² The judges of the top court were promised lifetime financial security at the end of their terms under certain conditions.¹³

The judiciary was generally authorized to consider all cases filed by real or incorporeal persons (including the state).¹⁴ The Supreme Court also had the power to review laws, legislative decrees, and international treaties for their compliance with the Constitution.¹⁵ Trials were required to be open to the public,¹⁶ and Afghan judges were instructed to state the ►

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reasons for their verdicts when issuing decisions.¹⁷ (The Attorney General’s Office (AGO) was part of the executive organ and, as with the bench, envisaged to be independent in its performance.)¹⁸

The Bench and Flawed Institutional Design

Notwithstanding the establishment of a mechanism of checks and balances, the institutional design was hogtied by serious flaws — particularly considering Afghanistan’s history of authoritarianism and the rulers’ strong autocratic tendencies. These structural deficiencies produced a weak separation of powers system and emboldened the executive branch to increasingly disregard the rule of law. Some of the core institutional flaws that afflicted the bench in particular concerned judicial appointments, judicial review powers, budgetary issues, jurisdictional limitations, and the legal education system.

In a country where the courts were traditionally subordinated to the ruler, the Constitution gifted the president an unduly expansive role in judicial appointments. The president not only enjoyed the authority to appoint judges to the Supreme Court¹⁹ but also the sole discretion to select the chief justice of the top court.²⁰ Judicial appointments to lower courts also required the approval of the president.²¹ Moreover, the president held the power to retire judges and accept the resignation and dismissal of lower court judges.²² In essence, the judicial appointment process bore substantial resemblance to high-level appointments in the executive branch.

Afghan presidents Hamid Karzai and Ashraf Ghani used this leverage over

the Supreme Court in various ways — including by extending their own presidential terms unconstitutionally. In 2019, for instance, contrary to constitutional stipulations, Chief Justice Sayed Yousuf Halim rubber-stamped President Ghani’s request to extend his presidential tenure.²³ The approval reflected a disturbing *quid pro quo* practice between the president and the top court of prolonging each other’s terms without regard for the law.

The Constitution further limited the Supreme Court’s authority through ambiguous provisions concerning judicial review. This apparent lacuna was exploited by the other two branches, to the top court’s chagrin. Article 121 of the Constitution granted the Supreme Court the authority to “review the laws, legislative decrees, international treaties as well as international covenants for their compliance with the Constitution and their interpretation *in accordance with the law*.”²⁴ It was argued, for instance, that Article 121’s reference to “*in accordance with the law*” empowered the Parliament to modify the Supreme Court’s jurisdiction to conduct judicial review.²⁵ Article 121 also limited the exercise of the review power only to requests by the government and lower courts — thus effectively denying standing to other key stakeholders, including the legislature.²⁶

Seizing on Article 121’s seeming lack of an unequivocal reference to the interpretation of the Constitution, and relying on Article 157, the Parliament enacted a law establishing the Independent Commission for Overseeing the Implementation of the Constitution (ICOIC) and granted it express power to interpret the

Constitution.²⁷ Article 157 of the Constitution, which provided the original basis for the ICOIC, envisaged the body to “supervis[e] . . . the implementation of the Constitution.”²⁸ The Supreme Court opposed the ICOIC’s scope of power arguing, *inter alia*, that the ICOIC was merely vested with the mandate of “supervision” — not interpretation — of the Constitution.²⁹ Notwithstanding the Supreme Court’s position, the ICOIC was established and began engaging in constitutional interpretation, which further deepened the constitutional crisis and confusion surrounding judicial review powers.³⁰

The ambiguity over the Supreme Court’s jurisdiction to adjudicate constitutional disputes, coupled with an increasingly emboldened ICOIC, further diminished the bench’s capacity to act as a check or balance against other branches. The top court routinely sided with the president to undermine parliamentary authority over legislative, oversight, and impeachment proceedings. For example, in reviewing the constitutionality of various laws, the Supreme Court repeatedly approved the president’s encroachment on the law-making powers of the Parliament.³¹ In addition, according to reports in 2020, at President Ghani’s behest, Chief Justice Halim signed off on a questionable financial transfer from the central bank to the Ministry of Finance — another example of contempt for parliamentary scrutiny.³² The top court also appeased the executive by ruling that the Parliament’s no-confidence votes against certain cabinet ministers were unconstitutional.³³

In addition, the executive’s control over the judiciary’s budget further hampered the bench’s independence.

The Constitution mandated that the judiciary's budget be prepared "in consultation with the [g]overnment, and . . . presented to the National Assembly as part of the national budget."³⁴ This arrangement was similar to the budgetary process envisioned for executive organs and exposed the judiciary to politicization as the presidency and the legislature wielded considerable clout over the courts' financial resources.

The Constitution further undercut the judiciary by stipulating exceptions to its jurisdiction over certain cases, including those involving ministers.³⁵ The judiciary similarly lacked the authority to hear cases involving military personnel, which were instead adjudicated by tribunals overseen by the executive branch.³⁶ This made the executive even more cavalier in flouting the rules applicable to the security forces. For instance, in early 2021, government security forces led by Allahdad Fedae killed and wounded 42 unarmed Hazara civilians engaged in a peaceful protest in the Behsud district of Maidan Wardak province. The government first tried to cover up the massacre by falsely claiming that the victims were illegally armed militia members.³⁷ Investigations, however, revealed that all protestors, including the victims, were in fact unarmed civilians.³⁸ Despite these findings, instead of prosecuting the perpetrators, President Ghani appointed Allahdad Fedae as the police chief of Laghman province.³⁹ That the perpetrators were never investigated or tried deepened the public sense that the judicial apparatus was under President Ghani's thumb, and that executive abuses of power could not be meaningfully checked.

The judiciary was also beset by a lack of institutional capacity owing, in key part, to Afghanistan's historically deficient legal education system. Despite

some progress over the past two decades, Afghanistan's legal education system still grapples with formidable challenges.⁴⁰ These include a bifurcated legal education model, ineffective pedagogical approaches, and a dearth of legal skills and ethics training, among other obstacles. Moreover, there are multiple pathways to becoming a judge or lawyer in Afghanistan — including via madrasas (religious schools outside the higher education system).⁴¹ In fact, most judges are graduates of madrasas and the Shari'a Faculty rather than the Law Faculty.⁴² The bench and the bar have long been plagued by systemic shortcomings concerning the state of legal knowledge, skills, and ethics among Afghan judges and lawyers.⁴³ The lack of these foundational competencies further weakened the judiciary in fulfilling its mandate of safeguarding the rule of law.

Growing Disdain for Judicial Independence

These institutional design flaws, coupled with Afghanistan's perennially weak rule of law culture owing to centuries of autocracy, created the conditions for accelerated assaults on the judicial branch. Over time, a widening gap emerged between the *de jure* rules on paper and the *de facto* practice of contempt for judicial independence. This was evinced, *inter alia*, through interference with judicial proceedings and sanctions, selective enforcement of court decisions, weaponization of the AGO, poor security protections for judicial personnel, and negative perception of the bench's independence.

The executive branch regularly interfered with judicial proceedings and sanctions. A recent high-profile example was President Ghani's legally dubious release of thousands of Taliban fighters in 2020, many of whom were

convicted of grave crimes.⁴⁴ President Ghani's decision to free the Taliban inmates not only likely violated Afghan law but also likely contravened Afghanistan's obligations under the Rome Statute of the International Criminal Court.⁴⁵ President Karzai also interfered in judicial proceedings, for instance, by pressuring the Supreme Court to issue the death sentence in some cases⁴⁶ while pardoning men convicted of gang raping a woman in another case.⁴⁷ The executive's unabashed meddling in judicial affairs further undermined the bench's independence.

The government also eroded the judiciary's credibility by failing to consistently enforce final court decisions, in violation of the Constitution, particularly *vis-à-vis* politically-connected actors.⁴⁸ For example, under President Ghani's administration, Ahmad Yusuf Nuristani — the former election commission chief who declared Ghani the winner of the fraud-riddled 2014 presidential polls — was able to ignore arrest warrants⁴⁹ and easily fled the country, even though he was a convicted felon and there were travel bans for criminals.⁵⁰ (After escaping from Afghanistan, however, Nuristani was convicted of federal welfare fraud in the United States.⁵¹)

The government also exploited the AGO, which was part of the executive organ, for self-serving reasons. For instance, while the AGO relentlessly pursued certain critics of President Ghani on dubious charges,⁵² it conveniently ignored the alleged misconduct of individuals with the right connections.⁵³

The judicial apparatus was also menaced by poor security and direct threats to judges. Justice sector personnel were among the main targets of insurgents and criminal groups.⁵⁴ In ►

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2019, targeted attacks killed 13 judges and 19 prosecutors.⁵⁵ Yet, no case of an attack against judicial institutions was ever properly investigated to indict the crime, rendering the judiciary acutely vulnerable.⁵⁶ The persistent failure to conduct genuine investigations reflected the rampant culture of impunity and the government's attitude toward the bench.

The president deployed various other measures that further imperiled judicial independence. A decree by President Ghani in 2017, for instance, effectively compelled judges to declare their assets to the executive organ rather than to an independent body.⁵⁷ The initiative, ostensibly designed to promote transparency, sowed conflicts of interest and further limited the judiciary's ability to act as an effective check on the government.

Another challenge concerned the public's perception of judicial neutrality. The reality and the appearance of judicial independence are in a constant feedback loop and reinforce each other.⁵⁸ Many Afghan judges, however, showed a perturbing lack of appreciation of the principles and practice of judicial independence.⁵⁹ This was reflected, *inter alia*, in the undue proximity of the bench to executive organs, particularly the Office of the President.⁶⁰ The Chief Justice of the

Supreme Court, for instance, attended meetings at the presidential palace that appeared to be political in nature, alongside other cabinet members, and even reported on the judiciary's work to the President.

In March 2020, following yet another controversial election, Chief Justice Halim conducted the swearing-in ceremony of President Ghani while severe doubts lingered over who actually prevailed at the polls. Ghani's rival, Abdullah Abdullah, held a parallel inauguration ceremony on the same day.⁶¹ After the competing inauguration events, while negotiating a power-sharing scheme, candidates Ghani and Abdullah reportedly discussed dividing key institutions — including the Supreme Court and the AGO — between themselves, which intensified concerns over judicial autonomy.⁶² Such recurring episodes sapped public confidence in the independence of the judiciary as reflected, for instance, in ordinary citizens' negative perception of the bench.⁶³

Conclusion

The 20-year period following the Taliban's fall in 2001 provided an unprecedented opportunity to develop a robust judiciary and nurture a rule of law culture in Afghanistan. The failure to learn from history, however, proved costly. A confluence of factors

— including institutional design flaws, primarily in the 2004 constitutional scheme, and rampant disdain for judicial independence in practice — dealt severe blows to those aspirations.

The Taliban's August 2021 military takeover of Afghanistan has once again raised the specter of a despotic and repressive regime ruling the country. Despite the insurgent group's declaration of a general amnesty,⁶⁴ many judges have gone into hiding.⁶⁵ So far, the Taliban have shown little respect for fundamental human rights — much less an inclination to adopt a system of checks and balances. It is unclear how long the Taliban's second stint in power will last, but one thing seems certain: An independent judiciary and the rule of law will remain even more elusive for the foreseeable future.



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¹ For a discussion of the importance of a strong judiciary to maintaining the rule of law, see, e.g., Sandra Day O'Connor, *Vindicating the Rule of Law: The Role of the Judiciary*, 2 CHINESE J. INT'L L. 1 (2003).

² For an overview of the state of the rule of law in Afghanistan prior to the Taliban takeover, see Mehdi J. Hakimi, *The Rule of Law Crisis in Afghanistan*, GEO. J. INT'L L. (Sep. 7, 2020).

³ For a discussion of Afghanistan's historically weak rule of law culture, see Mehdi J. Hakimi, *Rule of Law from the Ground Up: Legal Curriculum Reform in Afghanistan*, 11 CALIF. L. REV. ONLINE

249, 254–58 (2020).

⁴ For an in-depth analysis of the separation of powers under the 2004 Constitution, see KRISTINA ALEKSEYEVA ET AL., AN INTRODUCTION TO THE LAWS OF AFGHANISTAN, 102–29 (Afg. Legal Educ. Project, Stanford Law School) (4th ed. 2017); see also Farid Hamidi & Aruni Jayakody, *Separation of Powers under the Afghan Constitution: A Case Study*, AFG. RESEARCH AND EVALUATION UNIT (Mar. 2015).

⁵ *Qanoon Asasi Jomhori Islami Afghanistan* [Const. of the Islamic Rep. of Afg.] Jan. 4, 2004, art. 64 [hereinafter "Constitution"].

⁶ Constitution, art. 75.

⁷ *Id.* at art. 79.

⁸ *Id.* at art. 82.

⁹ *Id.* at art. 81.

¹⁰ *Id.* at arts. 90, 91.

¹¹ *Id.* at art. 116.

¹² *Id.* at art. 117.

¹³ *Id.* at art. 126. The conditions included abstaining from political activities. *Id.*

¹⁴ *Id.* at art. 120. No law may exclude any case or area from the jurisdiction of the courts and submit it to another authority. *Id.* at art. 122.

¹⁵ *Id.* at art. 121.

¹⁶ *Id.* at art. 128.

¹⁷ *Id.* at art. 129.

- ¹⁸ *Id.* at art. 134.
- ¹⁹ *Id.* at art. 64(12). The president had the power to appoint Supreme Court justices with the endorsement of the Parliament.
- ²⁰ *Id.* at art. 117.
- ²¹ *Id.* at art. 132.
- ²² *Id.* at art. 64(13).
- ²³ Gulabuddin Ghubar, *Supreme Court Extends President Ghani's Tenure*, TOLO NEWS (Apr. 21, 2019), <https://tolonews.com/afghanistan/supreme-court-extends-president-ghani's-tenure>.
- ²⁴ Constitution, art. 121 (emphasis added).
- ²⁵ Hamidi & Jayakody, *supra* note 4, at 19.
- ²⁶ Rainer Grote, *Separation of Powers in the New Afghan Constitution*, 64 ZAÖRV 897, 911 (2004).
- ²⁷ Hamidi & Jayakody, *supra* note 4, at 27.
- ²⁸ Constitution, art. 157.
- ²⁹ Hamidi & Jayakody, *supra* note 4, at 27. The top court also argued that the ICOIC law contravened other provisions of the Constitution, including Article 122 which stipulated that “[i]n law shall, under any circumstances, exclude any case or area from the jurisdiction of the judicial organ[] and submit it to another authority.” *Id.* Moreover, Article 157 is situated under Chapter 12 of the Constitution which deals with “transitional provisions.” This suggests that the ICOIC was meant to play a supervisory role during the transitional period following the fall of the Taliban in 2001 — not engage in constitutional interpretation. *Id.* at 29–30. In addition, Article 64 of the Constitution used identical language to Article 157 — “supervise the implementation of the constitution” — in establishing the president’s powers. However, that language has never been construed to mean that the president too has the power to interpret the Constitution. *Id.* at 30.
- ³⁰ Moreover, in direct violation of Article 121, the ICOIC also interpreted domestic statutes, which was a clear encroachment on the Supreme Court’s jurisdiction. *Id.* at 30. For a more in-depth discussion of the judicial review issues, see *id.* at 27–31.
- ³¹ See *id.* at 14.
- ³² See, e.g., Khaled Nikzad, *Chief Justice Ordered Central Bank to Pay MoF Document*, TOLO NEWS (Jan. 4, 2020), <https://tolonews.com/afghanistan/chief-justice-ordered-central-bank-pay-mof-documents>.
- ³³ See, e.g., Hamidi & Jayakody, *supra* note 4, at 22–26 (discussing the high-profile case of the no-confidence vote against then Foreign Minister Spanta).
- ³⁴ Constitution, art. 125.
- ³⁵ *Id.* at art. 78.
- ³⁶ *Id.* at art. 122.
- ³⁷ See, e.g., Ruydade Behsud: “Qorbaniyan Ghayre Nezami Budehand”; Wazifaye Farmandehe Polis be Ta’liq dar Amad [The Behsud Incident: “The Victims Were Civilians”; The Police Chief Has Been Suspended], BBC PERSIAN (Feb. 8, 2021), <https://www.bbc.com/persian/afghanistan-55976869> (the Ministry of Interior Affairs spokesman, Tariq Arian, for instance, falsely claimed that the protestors were illegally armed militiamen who had opened fire on the security forces and, as a consequence of the ensuing clash, several illegally armed militiamen were killed and wounded). See also *Namayande Maidan Wardak dar Majles: Hokumat dar Talash ast keh Jenayat Behsud ra beh Hashiye Bebarad [Maidan Wardak Member of Parliament: The Government is Trying to Marginalize the Behsud Crime]*, HASHTE SUBH (Feb. 8, 2021), <https://8am.af/maidan-wardak-mp-the-government-is-trying-to-marginalize-behsuds-crime/> (the Ministry of Interior Affairs had falsely claimed that the victims were all illegally armed militiamen).
- ³⁸ See, e.g., *Reports of Civilian Casualties in Behsud*, AFG. INDEP. HUMAN RTS. COMM’N (Feb. 8, 2021), https://www.aihrc.org.af/home/research_report/9066;MaidanWardakPoliceChiefSuspendedOverBehsudIncident, TOLO NEWS (Feb. 8, 2021), <https://tolonews.com/afghanistan-169852>.
- ³⁹ Fedaae, who was accused of killing civilians, appointed as Laghman police chief, KABUL NOW (Mar. 17, 2021), <https://kabalnow.com/2021/03/fedaae-who-was-accused-of-killing-civilians-appointed-as-laghman-police-chief/>.
- ⁴⁰ For a discussion of the Afghan legal education system, see generally Mehdi J. Hakimi, *Rule of Law from the Ground Up: Legal Curriculum Reform in Afghanistan*, 11 CALIF. L. REV. ONLINE 249 (2020); see also Mehdi J. Hakimi & Erik G. Jensen, *Rethinking Legal Education in Afghanistan: The Law Program at the American University of Afghanistan*, 55 STAN. J. INT’L L. 83 (2019).
- ⁴¹ See Hakimi & Jensen, *supra* note 40, at 87.
- ⁴² The first Chief Justice of the Supreme Court, Fazl Hadi Shinwari, was a madrasa graduate and a conservative Islamist. Hamidi & Jayakody, *supra* note 4, at 17.
- ⁴³ See, e.g., Livingston Armytage, *Justice in Afghanistan: Rebuilding Judicial Competence after the Generation of War*, 67 HEIDELBERG J. INT’L L. 185, 200 (2007).
- ⁴⁴ See Mehdi J. Hakimi, *The International Criminal Court’s Afghan Dilemma: Complementarity and the Quest for Justice in Afghanistan*, COLUM. J. TRANSNAT’L L., Vol. 60 (forthcoming 2021–2022) (discussing, *inter alia*, the questionable legality of releasing the Taliban prisoners).
- ⁴⁵ Considering the Taliban’s alleged commission of international crimes, President Ghani’s legally dubious decision to release dangerous Taliban prisoners was inconsistent with Afghanistan’s Rome Statute obligations to conduct genuine proceedings and hold perpetrators of grave crimes accountable. See *id.*
- ⁴⁶ See, e.g., *Afghanistan: Gang Rape Trial Badly Flawed*, HUMAN RTS. WATCH, (Sep. 8, 2014), <https://www.hrw.org/news/2014/09/08/afghanistan-gang-rape-trial-badly-flawed>.
- ⁴⁷ Kate Clark, *Afghan President Pardons Men Convicted of Bayonet Gang Rape*, THE INDEP. (Aug. 24, 2008), <http://www.independent.co.uk/news/world/asia/afghan-president-pardons-men-convicted-of-bayonet-gang-rape-907663.html>.
- ⁴⁸ The government is legally obliged to “execute the provisions of [the] Constitution, other laws, as well as the final decisions of the courts.” Constitution, art. 75(1).
- ⁴⁹ Karim Amini, *Police ‘Ignore’ ACJC’s Arrest Warrant For Nuristani*, TOLO NEWS (Sep. 2, 2018), <https://tolonews.com/afghanistan/police-ignores-acjc-s-arrest-warrant-%C2%A0nuristani>.
- ⁵⁰ *Kabul Court Hands Jail Term for Ex-Election Commission Chief*, TOLO NEWS (2019), <https://tolonews.com/elections-2019/kabul-court-hands-jail-term-ex-election-commission-chief>.
- ⁵¹ *Afghan Senator Convicted of Federal Welfare Fraud*, Department of Justice, U.S. Attorney’s Office, Southern District of California (Dec. 11, 2019), <https://www.justice.gov/usao-sdca/pr/afghan-senator-convicted-federal-welfare-fraud>.
- ⁵² See, e.g., *Appeal court declared ex-minister of MCIT innocent*, KABUL NOW (July 24, 2019), <https://kabalnow.com/2019/07/appeal-court-declared-ex-minister-of-mitc-innocent/>.
- ⁵³ See, e.g., Khaled Nikzad, *Murder Case Against Son of Ghani’s Adviser Not Pursued*, TOLO NEWS (Aug. 6, 2020), <https://tolonews.com/afghanistan/murder-case-against-son-ghani%E2%80%99s-adviser-not-pursued>; Zahra Rahimi, *‘Afghan AGO Failed to Act on High-Level Corruption Cases’: MEC*, TOLO NEWS (June 25, 2020), <https://tolonews.com/afghanistan/afghan-ago-failed-act-high-level-corruption-cases-mec>; Zahra Rahimi, *AGO, ACJC Failed to Pursue Major Corruption Cases: Watchdog*, TOLO NEWS (July 23, 2020), <https://tolonews.com/afghanistan/ago-acjc-failed-pursue-major-corruption-cases-watchdog>.
- ⁵⁴ U.N. Assistance Mission in Afg. Anti-Corruption Report., *Afghanistan’s Fight Against Corruption: Crucial for Peace and Prosperity*, 40 (June 2020), https://unama.unmissions.org/sites/default/files/afghanistans_fight_against_corruption_crucial_for_peace_and_prosperity_june_2020-english.pdf.
- ⁵⁵ *Id.*
- ⁵⁶ *Id.* at 41.
- ⁵⁷ The Asset Registration and Verification Agency was housed under the Administrative Office of the President. *Id.* at 29–30.
- ⁵⁸ David F. Levi, *Protecting Fair and Impartial Courts: Reflections on Judicial Independence*, 104(2) JUDICATURE 58, 59 (2020).
- ⁵⁹ See, e.g., Armytage, *supra* note 43, at 198, 201.
- ⁶⁰ See *id.* at 198.
- ⁶¹ See, e.g., Shereena Qazi, *Ghani sworn in as Afghan president, rival holds own inauguration*, AL JAZEERA (Mar. 9, 2020), <https://www.aljazeera.com/news/2020/3/9/ghani-sworn-in-as-afghan-president-rival-holds-own-inauguration>.
- ⁶² See e.g., INTEGRITY WATCH AFGHANISTAN, *Civil Society urges government leadership to commit to independence of the judiciary and having oversight, and regulatory institutions following a political deal* (June 5, 2020), <https://iwaweb.org/news/civil-society-urges-government-leadership-to-commit-to-independence-of-the-judiciary-and-having-oversight-and-regulatory-institutions-following-a-political-deal/>.
- ⁶³ Ordinary Afghans viewed the courts as among the most corrupt institution in the country. See, e.g., TABASUM AKSEER ET AL., *THE ASIA FOUNDATION, AFGHANISTAN IN 2018: A SURVEY OF THE AFGHAN PEOPLE*, 119 (Tabasum Akseer and John Rieger eds., 2018), <https://asiafoundation.org/publication/afghanistan-in-2018-a-survey-of-the-afghan-people/>; see also *The Rule of Law in Afghanistan: Key Findings from the 2018 Extended General Population Poll*, WORLD JUSTICE PROJECT, 10 (2018), https://worldjusticeproject.org/sites/default/files/documents/WJP_Afghanistan_Report_Reduced%20%281%29.pdf (Afghans viewed judges and magistrates as the most corrupt authorities).
- ⁶⁴ The Taliban’s pledge of clemency has been largely empty. See, e.g., Mehdi J. Hakimi, *The Taliban’s False Amnesty*, THE DIPLOMAT (Sep. 24, 2021), <https://thediplomat.com/2021/09/the-talibans-false-amnesty/>.
- ⁶⁵ See, e.g., Claire Press, *Female Afghan judges hunted by the murderers they convicted*, BBC NEWS (Sep. 28, 2021), <https://www.bbc.com/news/world-asia-58709353>.