



**Independent Joint Anti-Corruption Monitoring and Evaluation Committee**

# **Vulnerability to Corruption Assessment of the Payment System for Martyrs and Persons Disabled by Conflict**

**(VCA Team)**

## **1. Summary**

This Vulnerability to Corruption Assessment (VCA) examines the numerous challenges that Afghans disabled by armed conflict face obtaining financial benefits promised to them by law. Many of the corruption vulnerabilities identified in this process are similar to those identified in previous VCAs, including a significant number of lengthy, convoluted, and at times seemingly arbitrary steps. While the process contains a high number of steps, nearly all of which constitute discretionary transactions conducive to bribery, influence, etc., there is one significant difference. For many, the corrupted process of obtaining these payments places an additional emotional and physical burden not commonly experienced in obtaining other government services. For the disabled in particular, a group that many Afghans treat as outcasts, corruption contributes to their further marginalization from society.

## **2. Preface**

It is nearly impossible to go anywhere in Afghanistan and not come across someone who has been disabled as a result of armed conflict. This Vulnerability to Corruption Assessment (VCA) focuses on what this group must go through to receive disability/compensation payments from the Government. For many disabled persons, this income is absolutely critical as much of Afghan society views them as outcasts and many are unable to secure other sources of income. Stories abound about former soldiers begging in streets due to the insufficiency of the payments or inability to obtain them.<sup>1</sup>

The obstacles they must overcome are numerous. Everything from the determination of the severity of their disability to receiving funds is vulnerable to corruption and the VCA Team found that corruption is so institutionalized that most interviewees identified what is effectively a market price or “market bribe” for certain critical steps in the process. In addition, the lack of technical and human resources leads to significant backlogs.

It should be noted that while this VCA focuses primarily on the process of applying for disability payments, many of the steps are similar to what dependents of martyrs or family members who have “disappeared” must go through to receive similar payments. In that regard, the process of applying for disability payments can be viewed as indicative of broader corruption vulnerabilities and institutional problems in the Ministry of Labor, Social Affairs, and Martyrdom (MOLSAMD).

## **3. Methods of collecting information during conducting VCA**

Information for this VCA was collected through meetings and interviews with stakeholders involved in the disability registration and payment process, particularly applicants. The VCA Team conducted these activities in Kabul and in the provinces of Herat, Nangrahar, Badakshan, Balkh and Laghman. Interviews were conducted with the following:

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<sup>1</sup> Rob Nordland; “Maimed Defending Afghanistan, Then Neglected”; The New York Times; May 2<sup>nd</sup>, 2015

- Ministry of Labor, Social Affairs, Martyrs and Disabled (MOLSAMD)
- Ministry of Public Health (MOPH)
- Health Commission
- Afghan Independent Human Rights Commission
- Disabled persons and dependents of persons killed as a result of conflict
- Social Center for the Disabled
- Unions of Disabled in the capital and provinces
- Ministry of Women’s Affairs

## 4. POLICY/LEGAL FRAMEWORK

### 4.1. 2003 Policy

In October 2003, several months before the new Constitution was adopted, the Transitional State of Afghanistan in conjunction with Italian Cooperation, submitted *The Comprehensive National Disability Policy in Afghanistan* to the Ministry of Martyrs and Disabled (MMD), which later became part of the Ministry of Labor Social Affairs and Development (MOLSAMD). This policy adopted a rights based approach with several core principles, including the removal of social and economic barriers and promoting inclusion for the disabled. Several international legal/policy instruments formed the foundation for many of the strategies outlined in the policy, including:

- The United Nations World Program of Action Concerning Disabled Persons
- Standard Rules for the Equalization of Opportunities for Disabled Persons
- The Biwako Millenium Framework for Action Towards an Inclusive, Barrier-Free and Rights Based Society for Person with Disabilities in the Asia and Pacific Region
- The International Convention to Protect and Promote the Rights of Disabled Persons

In 2015, despite several Constitutional provisions, international treaty commitments, and national legislation (see below) outlining the rights of the disabled, the aspirations of the 2003 policy have gone largely unfulfilled.

### 4.2. Constitutional Provisions

According to Article 53 of the Afghanistan Constitution:

*The State shall adopt necessary measures to regulate medical services as well as financial aid to survivors of martyrs and missing persons, and for reintegration of the disabled and handicapped and their active participation in society, in accordance with provisions of law. The State shall guarantee the rights of retirees, and shall render necessary aid to the elderly, women without caretakers, disabled and handicapped, as well as poor orphans, in accordance with provisions of the law.*

Many of the “necessary measures”, including specific legislation and regulations fail to promote “reintegration” and “active participation” in Afghan society. Many laws and regulations in

Afghanistan, including Constitutional provisions, continue to be misinterpreted or interpreted in a manner not conducive to fulfilling broader policy objectives for which they were enacted to achieve.

#### ***4.3. United Nations Convention on the Rights of Persons with Disabilities***

Afghanistan is a signatory to the United Nations Convention on the Rights of Persons with Disabilities, which it acceded to on September 18<sup>th</sup>, 2012. Article 3 of the Convention outlines several guiding principles:

- Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
- Non-discrimination;
- Full and effective participation and inclusion in society;
- Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- Equality of opportunity;
- Accessibility;
- Equality between men and women;
- Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

Based on the VCA Team’s observations and interviews with key stakeholders, it would be hard to argue that the Government of Afghanistan upholds any of these principles in practice. At minimum, the long lines, redundant or extraneous steps, vague procedures, etc. are not conducive to upholding accessibility or human dignity.

#### ***4.4. Law on the Rights and Privileges of People with Disabilities***

The Law on the Rights and Privileges of People with Disabilities is the most important national law regarding the rights of those disabled by conflict and their dependents. It provides a range of legal protections and rights designed to remove barriers and promote inclusion, including employment quotas, educational opportunities, etc. It also outlines the legal definition of a “disabled person”:

- i. A person who has become disabled for the sake of Allah and in defense of the independence and freedom of the country during the holy war (Jihad).
- ii. A person who has become disabled in the course of armed conflicts in the past three decades.
- iii. A person who has become disabled in defense of territorial integrity and protection of rule of law during the course of his duty or as a result of work related affairs.
- iv. A person who has become disabled as a result of terrorist and an anti-government acts including firing heavy and light weapons, or firing by government forces.

Note that this law only defines disabled persons as those who have been injured as a result of armed conflict, either as a member of the armed services or as a civilian casualty. For purposes of this VCA the terms “disabled” or “disability” is based on this legal definition. This is the definition that the Ministry of Labor, Social Affairs, Martyrs and Disabled (MOLSAMD) uses when registering disabled persons and processing applications for disability payments.

Interviewees noted that many violations of the Law on the Rights and Privileges of People with Disabilities are due to nepotism and bribery. For example, according to Article 22 of the Law on the Rights and Privileges of People with Disability, disabled persons should comprise 3% of state employees. This means that there should be 11,280 state employed disabled persons, but there are only 637. Interviewees emphasized that this discrepancy is not due to lack of qualified disabled candidates, given Afghanistan’s enormous disabled population, but because position slots are given to non-disabled persons through bribery or nepotism.

While there is room for improvement it would be hard to argue that even the most exemplary legal framework would address most of the vulnerabilities identified in this VCA, given the dominant role that institutionalized corruption plays, and the apparent freedom of civil servants to openly violate laws procedures and regulations.

## **5. THE PROCESS OF OBTAINING DISABILITY PAYMENTS**

Disabled persons must negotiate a series of steps to obtain payments to which they are legally entitled. The below discussion is not an exhaustive examination of all steps, but rather focuses on the more significant corruption vulnerabilities and those most frequently complained of by applicants and other stakeholders. As a general observation, the overall application process is lengthy and consists of numerous and often-redundant steps, many of which lack clarity or follow any discernible policy.

### ***5.1. Initial Verification of Security Incident***

Applicants are required to obtain proof that their disability was the result of conflict. In most provinces, applicants may obtain an initial verification from the local head of Shura. In Badakshan, however, the VCA Team noted that initial verifications are done by the National Directorate of Security (NDS).

Interviewees noted that the process of obtaining security incident notifications is not uniform and is exceedingly difficult and burdensome to not only identify the relevant security entity, but to obtain certification.

### ***5.2. Re-Verification of Security Incident***

After the initial security incident verifications, applicants must re-verify with local representatives from NDS, the Ministry of Interior (MOI), Ministry of Defense (MOD), as well as their employer. Interviewees stated that small bribes are often required for at least some, if not

all, of these entities. As with initial verifications, lack of clarity and uniformity in procedures makes this stage vulnerable to corruption.

### ***5.3. Determination of Disability***

Disabled applicants are required to establish the severity of his/her disability. This determination is made by the Health Commission, which is comprised of physicians representing the Ministry of Interior (MOI), the Ministry of Defense (MOD), the Ministry of Public Health (MOPH), and MOLSAMD. The payments are based on severity of disability.

<b>No</b>	<b>Disability degree/%</b>	<b>Rights/Benefits in (Afghanis)</b>
1	60-100%	5000
2	30-60%	2500
3	1-30%	0

Interviewees noted that the Health Commission does not devote enough time to disability determinations and this, combined with large volumes of applicants, is primarily responsible for the delays. Interviewees noted that many Health Commissions in the provinces only allocated about 8 hours per week to the activity, which causes significant backlogs. Determinations have been known to exceed one month, compelling many to pay bribes in order to speed up the process.

Interviewees stated that criteria for determining the degree of disability are somewhat vague and few interviewees recalled seeing published criteria. The VCA Team was also unable to obtain any documents that contained clearly established criteria. Bribes can be submitted to obtain higher grades of disability or allow non-disabled persons to obtain disability determinations.

### ***MOLSAMD Verification***

After obtaining security incident verifications, as well as the certification from the Health Commission, applicants must submit their paperwork to MOLSAMD. Many of the interviewees stated that MOLSAMD often resorts to bureaucratic tactics to solicit bribes, such as claiming that dates are wrong, names of places are misspelled, etc.

### ***5.4. Fact Finding Commission***

The Fact Finding Commission consists of 2-3 MOLSAMD Directors in Kabul who are required to approve all applications, including those submitted at the provincial level. It has no legal basis and, according to interviewees, conducts no substantive “fact finding”. It is alleged that the Fact Finding Commission has been known to hold applications for 2-3 years and some MOLSAMD employees noted that there is a container filled with un-approved applications. Interviewees noted that the Commission is also known for randomly rejecting applications with little or no

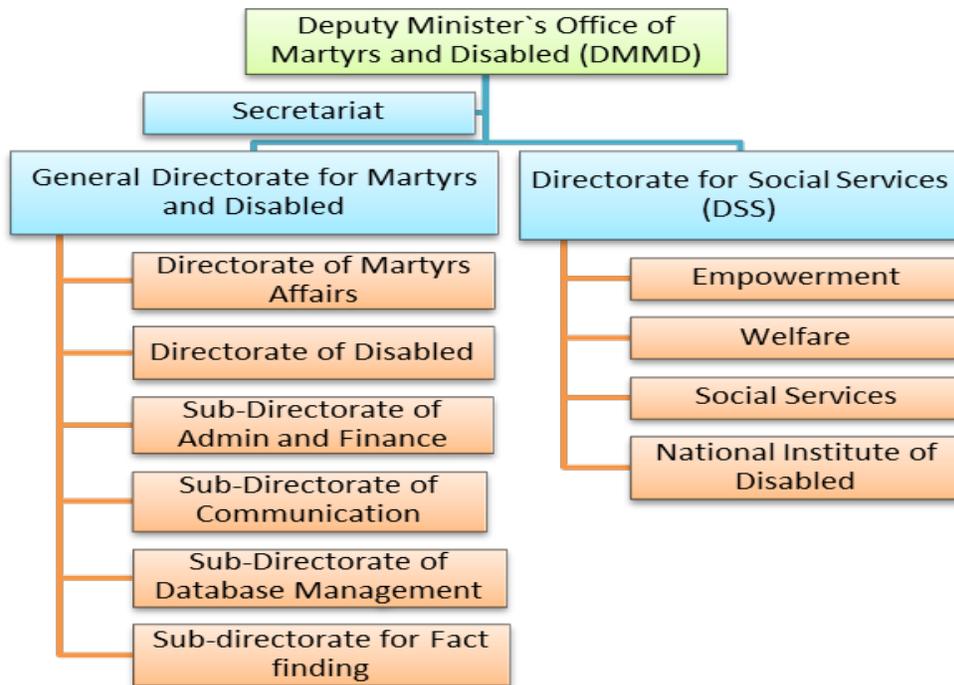
basis. Many respondents reported having to pay the Commission 10,000-15,000 Afghanis in bribes.

### 5.5. Payments

Disabled/ heirs of martyrs receive their payments through direct deposit once a year. Before MOLSAMD sends the money, however, recipients must re-confirm their identity in person at the relevant MOLSAMD office. This re-confirmation is done to ensure that only eligible recipients receive money. However, according to those interviewed, MOLSAMD officials can be bribed to confirm ineligible recipients.

## 6. INSTITUTIONAL/HUMAN RESOURCE ISSUES

Previously, disabled issues were under the purview of one ministry, the Ministry of Martyrs and Disabled (MMD). This Ministry was later combined with the Ministry of Labor and Social Affairs to form (MOLSAMD). Currently, disabled and martyr issues come under a Deputy Ministry.



The Deputy Minister's Office of Martyrs and Disabled (DMMD) is divided into two departments, the General Directorate for Martyrs and Disabled (GDMD) and the Directorate for Social Services (DSS). DSS responsibilities include provision of educational, housing, and vocational training assistance, The GDMD is responsible for managing payments to all disabled persons and dependents of martyrs/disappeared.

Interviewees stated that the organizational structure of MOLSAMD makes little sense given that the services provided could just as easily be managed under a general directorate structure, rather

than a deputy ministerial structure. Interviewees stated that the current structure wastes resources, creates unnecessary steps, and also creates confusion given that some departments appear to do more or less the same thing. They stated that the Department of Martyrs and the Department of Disabled Affairs could easily fulfill the responsibilities for DSS.

As mentioned earlier, the Sub-Directorate of Fact Finding appears to have no useful function whatsoever and, according to interviewees, is a major solicitor of bribes given their ability to hold applications for long periods with no apparent justification.

### ***6.1. Human Resources Capacity***

The most common complaint among interviewees was the lack of adequate human resources devoted to processing applications. This problem is of particular concern at the provincial level. For example, in Badakshan, where the number of eligible recipients is around 11,000, there is only one finance manager. This deficiency also exists in other provinces.

Interviewees also noted that many of the MOLSAMD staff involved in the registering and processing of disability payments are not qualified for their positions. MOLSAMD employees interviewed stated that a combination of excessive workload and lack of technical capacity create backlogs and incentives for bribery. Many stakeholders stated that the Deputy Ministry of Martyrs and Disabled is not treated seriously by the Government, both in terms of the resources it receives as well as scrutiny of its procedures. For many, the institution reflects the sense of neglect and marginalization felt among many of Afghan's disabled. The relative lack of importance of the Deputy Ministry effectively allows many of the more egregious corruption vulnerabilities to go unnoticed and unaddressed.

### ***6.2. General Database***

The general database used to register disabled persons and dependents of martyrs is done in Excel, which effectively means it can be manipulated at any time. Respondents noted that multiple payment cards for one individual are not uncommon, as are falsified cards for "ghost" recipients. One employee, who has worked for the DMMD in the past, suggested that up to half of the recipients of payments are ineligible. The VCA Team was unable, however, to verify this allegation. It should be noted this is not the first time allegations of "ghost" recipients have been raised in MOLSAMD.

This corruption vulnerability is almost exactly the same as that identified in the MOLSAMD Pension Department VCA. The VCA Team has learned that an electronic system similar to the one being utilized by the Pension Department will be established for the Deputy Ministry of Martyrs and Disabled. The World Bank is implementing this project.

## **7. CONCLUSIONS/ RECOMMENDATIONS**

While numerous vulnerabilities have been identified in this VCA, there are three that the Committee believes should be addressed immediately:

1) **The Deputy Ministry of Martyrs and Disabled needs to reduce parallel or redundant structures and establish a reliable complaints mechanism.** The Fact Finding Commission should be abolished, as it is redundant and was identified by nearly all interviewees as a significant corruption vulnerability. In addition, MOLSAMD, in coordination with the AIRCSC should establish a joint complaints board to address client problems/complaints.

2) **New criteria for disability determinations need to be developed and made publicly available.** The new criteria should be detailed, comprehensive, and made available to all disabled applicants. Detailed disability examination forms should be mandatory and require signature of all relevant Health Commissioners.

3) **One-stop shops should be established in all MOLSAMD provincial offices.** All applications and procedures, including security verifications, disability determinations, etc. should be conducted/arranged through a single entity. In addition, these one one-stop shops should have biometric capability and all of an applicant's information should be entered into a database that is linked with the national database.

## **8. Resources and references**

- The Constitution
- Law on the Rights and Privileges of Disabled People, (MoJ, serial number 1037,89 / 06/15
- Law on the Privileges of Heirs of Martyrs and Disabled People
- Convention on the Rights of People with Disabilities
- Radio Klid, (93/06/05\_
- Statistic calendar of the Ministry of Economy, (1392)
- Information obtained from consultation meetings and advisory groups
- Exclusive interviews with authorities of MOLSAMD, Afghanistan Independent Human Rights Commission, disabled people and heirs of martyrs and other national and international organizations