

## POLICY BRIEF

# Taking on Corruption: Institutional Arrangement to Fight Corruption in Afghanistan

## INTRODUCTION

Corruption is pervasive in Afghanistan; penetrating all sectors and at all official levels. The total volume of corruption equals the GDP of Afghanistan. According to Integrity Watch Afghanistan, Afghans pay USD 2 billion in bribes annually.<sup>1</sup> The Afghan National Assembly has suggested that 1.3 million *jerebs* (26,000 hectare) of public and private lands have been grabbed by powerful elites.<sup>2</sup> On customs revenues, SIGAR reports that half of customs revenues do not reach the government treasury due to corruption.<sup>3</sup> According to a forthcoming report on mining sector, there has been a USD 50 million loss of revenues to the government of Afghanistan due to royalty and tax evasion only from a five selected mines.<sup>4</sup> And also extraction of minerals has illegally been taking place at about 2000 sites.<sup>5</sup> Transparency International's Corruption Perception Index (2014) shows that Afghanistan is the 4<sup>th</sup> most corrupt country in the world.<sup>6</sup>

In Afghanistan, grand corruption reinforces pity corruption and is embedded into the government system in a vicious circle. In general, corruption is the largest contributor to insecurity and instability, it wastes billions of dollars of the government and donors' funds, and leads to a dysfunctional judiciary, discriminated and selective rule of law, a culture of impunity, and finally a disgruntled nation. This Policy Brief outlines the way out of this crisis and calls on the Afghan government and international community to take into consideration the recommendations of this

policy brief to institutionalize the fight against corruption.

## SITUATION ANALYSIS

The political will to fight corruption was abysmal during the thirteen years of President Karzai's rule; both in terms of designing an institutional framework and selection of people to lead the fight against corruption.

In terms of institutionalizing the fight against corruption, Afghanistan still does not have an Anti-Corruption Law. During Karzai's administration, the whole legal framework for anti-corruption attempts was based on legislative decrees—all of them questioned by the National Assembly, thus, undermining the legitimacy of anti-corruption laws and institutions created by the same decrees. In this series of decrees, President Karzai issued a legislative decree establishing the High Office of Oversight and Anti-Corruption (HOOAC) in 2008. When an Anti-Corruption Law was presented to the National Assembly, the Lower House rejected the draft law and asked the government to dissolve the HOOAC.<sup>7</sup> Although the Upper House rejected the dissolution of the HOOAC, the decision by the Lower House undermined the legitimacy of the HOOAC. The HOOAC scores the lowest public confidence among the people compared to other government agencies.<sup>8</sup> In addition, the legal framework did not meet the requirements of the

UNCAC to which Afghanistan became a signatory in 2003. Article 6 of the United Nations Convention Against Corruption (UNCAC) requires each State Party to grant “necessary independence” and provide “necessary resources and specialized staff” to an anti-corruption body. Neither in law nor in practice, has the government fulfilled this international obligation. Based on the Law on Supervision of Anti-Corruption Strategy, the head of the HOOAC does not have a fixed term in office. Therefore, the President can remove him any time. In terms of resources, the HOOAC law does not guarantee its financial independence and in practice there have been changes in organizational strength and resources of the HOOAC.<sup>9</sup>

On the other hand, President Karzai’s selection of people to lead anti-corruption agencies has been even worse. Ezatullah Wasefi who had spent nearly four years in jail in the US for his involvement in drug trade,<sup>10</sup> was appointed to lead General Independent Administration Against Corruption (GIAAC). Previously he had served as governor of Farah and was removed due to corruption in his administration. GIAAC was the predecessor of the HOOAC. In 2008, Azizullah Lodin, a controversial personality, was appointed the Director General of the HOOAC. Lodin intertwined his political interests and the mandate of the HOOAC.<sup>11</sup> Among the first cases he initiated was against Ismail Khan—a political opponent of his. Other heads of anti-corruption agencies were, at best, incompetent.

The result of President Karzai’s institutional setup and his selections of people to lead various anti-corruption agencies is not difficult to guess. According to a forthcoming report, the HOOAC has not had a single successfully prosecuted case during the seven years of its existence. In 2009, SIGAR reported, “the Case Tracking Department was unable to provide SIGAR with information on whether those cases resulted in any prosecution, conviction, or sentencing.”<sup>12</sup> The UNDP reported in 2012, “within the last year the Case Tracking Department completed more than 140 investigations of high-level government officials. No charges have been filed on any of the cases as of the writing of this report.”<sup>13</sup> Meanwhile, the HOOAC has registered the assets of around 8000 government

officials. Not even a single case has been found fraudulent to be prosecuted by the AGO in a court of law.

The situation of other anti-corruption agencies is no better. Independent Joint Monitoring and Evaluation Committee (MEC) was established in 2010 to provide recommendations to government agencies to fight corruption. Although it has conducted thorough research, its recommendations are seldom given serious attention by government agencies because those recommendations are not legally binding. Another anti-corruption agency is the Supreme Audit Office (SAO)—in charge of auditing government expenditures annually. The SAO proposes recommendations to government agencies to fix their financial management and forward suspicious cases to Attorney General Office. According to SIGAR its recommendations are hardly taken seriously.<sup>14</sup> According to a forthcoming report, the SAO has detected 206 cases since 2003. It has forwarded those cases to Attorney General Office and received feedback on only 10 to 12 cases.<sup>15</sup>

In September 2014, President Karzai handed over the power to the National Unity Government (NUG). Unlike the former administration, NUG has shown a strong will to fight corruption. President Ashraf Ghani reopened the case of Kabul Bank one month after he took office. In another important instance, Badakhshan police arrested three former top officials of the Ministry of Urban Development who tried to escape to Tajikistan. They were subject to a travel-ban and accused of massive corruption. In an equally significant step, President Ashraf Ghani established a central public procurement entity in the Office of the President. The National Procurement Authority has processed the bidding of 230 contracts worth of around AFN 46 billion (USD 800 million).<sup>16</sup>

Although the NUG has shown the political will to fight corruption, it has done little to establish an institutional framework to fight pervasive corruption in the country. When President Ghani took office he issued a decree according to which the HOOAC lost its power to oversee or coordinate the fight against

corruption, investigate cases of corruption, receive corruption-related complaints or track the status of cases of corruption.<sup>17</sup> In the same decree, President Ghani ordered that the Anti-Corruption Department within the Attorney General Office be abolished. The President should be credited for such a decree because through such legal authorities, the HOOAC and AGO indulged in corrupt practices themselves. However, NUG still has not come up with an alternative to what has been dissolved. In other words, the National Unity Government has done nothing to establish a legal framework and an institutional setup to fight corruption.

## PROPOSED INSTITUTIONAL ARRANGEMENTS TO FIGHT CORRUPTION

An anti-corruption commission to implement, coordinate, and provide oversight to anti-corruption polices and activities in all government agencies is necessary in Afghanistan to fight corruption. Such a commission would meet the requirements of Article 6 of the UNCAC to which Afghanistan is a signatory. The Commission should be mandated to take preventive measures against corruption including asset registration and simplification of administrative procedures, handle knowledge management, coordinate anti-corruption activities, conduct capacity building programs for civil servants, educate the public and mobilize civil society and media against corruption. The Commission should undertake those activities for the line ministries and independent government agencies (in Figure 1).

In addition, the Commission should be authorized to act as an external oversight body to police, prosecutors and judges who detect, prosecute and sentence the corruption related cases. The Commission should track cases of corruption throughout its necessary procedures, namely, the detection by the Ministry of Interior, prosecution by the Attorney General Office and sentencing by the courts. In addition to the Anti-Corruption Commission, the NUG should establish the Deputy for Anti-Corruption within the Attorney General Office (Figure 2).

Prosecutors from the AGO and police from the Ministry of the Interior should be specially assigned and housed in the commission to investigate, arrest, and prosecute cases, to ensure that the commission has a prosecutorial role without infringing on the Constitution. The Anti-Corruption Commission should be authorized to oversee the performance of the Deputy for Anti-Corruption at the AGO and Supreme Audit Office and submit quarterly reports to the President, National Assembly and the People on their performances. The President is expected to act based on such reports.

In order to ensure its independence, impartiality and effectiveness, and to resist political pressure from NUG, the Commission should have several commissioners (5 perhaps). The Commissioners should be appointed by the President for a fixed term. The leadership of this commission should rotate among the commissioners.

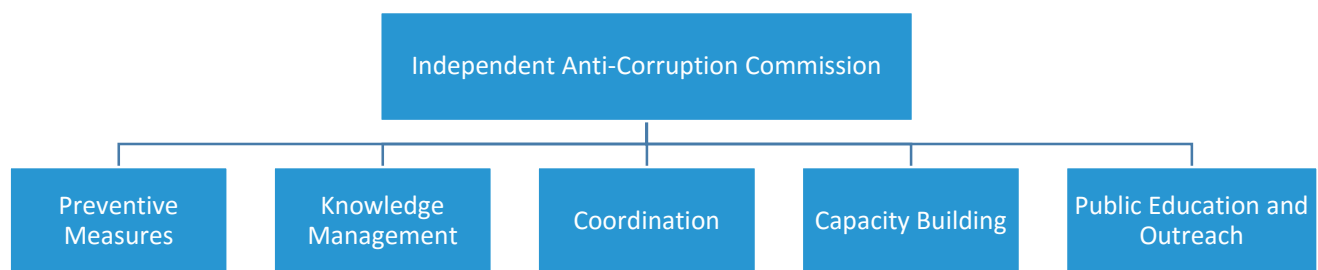
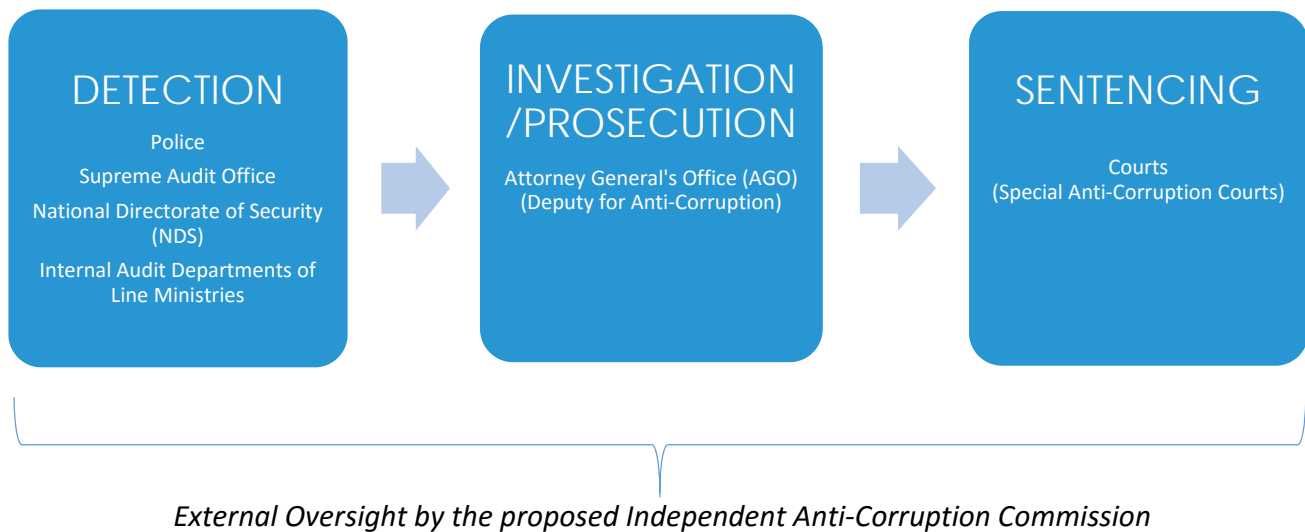


Figure 1: Duties of the Proposed Independent Anti-Corruption Commission considering UNCAC requirements



*Figure 1: Proposed Institutional Arrangement*

## RECOMMENDATION

- Establish an Anti-Corruption Commission to implement, provide oversight and coordinate anti-corruption policies and activities based on UNCAC.
- The Anti-Corruption Commissioners should be appointed by the President for a fixed term. The head of the Commission should be appointed on rotational basis.
- Establish an Anti-Corruption Deputy within the Attorney General Office with external oversight from the Anti-Corruption Commission reporting to the President, National Assembly and the People on the Anti-Corruption Deputy's performance related to corruption cases.
- Prosecutors from the AGO and police from the Ministry of the Interior should be specially assigned and housed in the commission to investigate, arrest, and prosecute cases, and to ensure speedy processing of corruption cases and prosecuting the wrongdoers without infringing on the Constitution.
- Establish a Case Tracking System within the Anti-Corruption Commission and make the reports public on a continuous basis.
- The Anti-Corruption Commission should develop an Anti-Corruption Strategy based on Article 5 of UNCAC in consultation with relevant ministries and stakeholders.
- Anti-Corruption Law should be passed, Access to Information Law should be revised and a Whistle Blower Protection Law should be drafted.
- A Judicial Services Commission should be established to administer Judicial Stage and to ensure transparency in judicial appointments.

## ABOUT INTEGRITY WATCH AFGHANISTAN

Integrity Watch is an Afghan civil society organization committed to increase transparency, accountability, and integrity in Afghanistan.

### **Integrity Watch Mission**

The mission of Integrity Watch is to put corruption under the spotlight through community monitoring, research, and advocacy. We mobilize and train communities to monitor infrastructure projects, public services, courts, and extractives industries. We develop community monitoring tools, provide policy-oriented research, facilitate policy dialogue, and advocate for integrity, transparency, and accountability in Afghanistan.

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## ENDNOTES

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