FIGHTING CORRUPTION IN AFGHANISTAN:
SOLVING THE INSTITUTIONAL PUZZLE

Sayed Ikram Afzali
Mohammad Naser Timory

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ABOUT THE AUTHORS

Sayed Ikram Afzali

Sayed Ikram Afzali is the Executive Director of Integrity Watch Afghanistan since 2014. Mr. Afzali is also the Chairman of the Oversight Commission on Access to Information. He has extensive experience in the fight against corruption leading anti-corruption programs and organizations for more than a decade. He has been involved in setting up many anti-corruption agencies including the High Office of Oversight, Monitoring and Evaluation Committee, and recently the Oversight Commission on Access to Information.

Mohammad Naser Timory

Mohammad Naser Timory joined Integrity Watch as a researcher in January 2015 and was part of the National Integrity System Assessment 2015 (an assessment of the legal basis for and the activities of eight government agencies, including the High Office of Oversight as well as four non-governmental institutions), the Scoping Study for the Construction Sector Transparency Initiative 2016 (a study which mapped and analyzed the transparency and accountability of institutions of the Afghan government involved in procurement), and the Community Score Card of Kabul Municipality 2016. He was previously an Adjunct Assistant Professor of Philosophy at Herat University. Mr. Timory has a BA in Philosophy from Fergusson College (Pune) and completed his post-graduate studies in International Relations from South Asian University (New Delhi).
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ACRONYMS

AGO Attorney General’s Office
ANDSF Afghan National Defense and Security Forces
ACJC Anti-Corruption Justice Center
CEO Chief Executive Officer
CNJC Counter Narcotic Justice Center
CPI Corruption Perceptions Index
CPIB Corrupt Practices Investigation Bureau
CPRO Corrupt Practices and Other Related Offences Act
DFID Department for International Development
EUPOL European Union Police
FinTRACA Financial Transactions Reporting and Analysis Center
GIAAC General Independent Administration Against Corruption
HCAC High Council on Anti-Corruption
HOO High Office of Oversight
IACC Independent Anti-Corruption Commission
IARCS Independent Administrative Reform and Civil Services Commission
ICPC Independent Corrupt Practices and Other Related Offences Commission
IWA Integrity Watch Afghanistan
KPK Komisi Pemberantasan Korupsi (Commission for Eradication of Corruption)
MCTF Major Crimes Task Force
MEC Independent Joint Monitoring and Evaluation Committee
NDS National Directorate of Security
NUG National Unity Government
OCAI Oversight Commission on Access to Information
SAO Supreme Audit Office
SIGAR Special Investigator General for Afghanistan Reconstruction
SOM Senior Officials Meeting
SWOT Strengths Weakness Opportunity Threat
TI Transparency International
UNAMA United Nations Assistance Mission for Afghanistan
UNCAC United Nations Convention Against Corruption
UNDP United Nations Development Program
UNODC United Nations Organization on Drugs and Crimes
USAID United States Assistance for International Development
USD United States Dollar
VCA Vulnerability to Corruption Assessment
EXECUTIVE SUMMARY

More than 67 percent of the people believe that the National Unity Government has not done enough to address major problems in Afghanistan and around 74% of the people believe that there has been no improvement in any public institution in reducing corruption.¹ There may be many reasons for such a sobering situation but massive systemic corruption and lack of an institutionalized response to fight against corruption in the government is the most important factor behind this high public discontent with the government.

In the last fourteen years, the Afghan government has failed in the fight against corruption. During the twelve years of the Karzai administration, it started with petty corruption, extended to grand corruption and soon became systemic throughout the government. In addition to five traditional law enforcement agencies, President Karzai established another five anti-corruption agencies to prevent and fight corruption in his administration. Lack of political will and inappropriate institutional arrangements were amongst the key factors behind the total failure of the fight against corruption during the Karzai administration.

The NUG has made some progress in terms of prevention of corruption. President Ghani’s transparency commitments in London, establishment of external oversight of the procurement process through the National Procurement Commission and the National Procurement Authority, and the reshuffling of staff in the justice sector were all important moves that indicate that there is some willingness on the part of President Ghani to tackle corruption. However, in terms of having a clear and comprehensive strategy and the institutionalized approach to fight corruption, as well as in terms of the prosecution of corruption cases, the NUG has not been particularly successful.

The government has made several commitments and efforts to create or re-mandate anti-corruption bodies but has failed to establish an overarching institutional design that would lead to an accountable and institutionalized approach towards fighting corruption. In addition, the newly established institutions have not been provided the much needed political and financial support to enable them to achieve their mandate.

After two months in office, President Ghani promised to establish an independent anti-corruption commission that would draw its membership from civil society, legal specialists and government institutions.² However, after almost two years, the NUG’s promise has not materialized. The NUG has removed the investigation function of the HOO and the oversight functions of the AGO and NDS but it has retained the existing institutional arrangements and continues to suffer from multi-organizational sub-optimization where a multitude of agencies exist at considerable expense but with little progress to show in the fight against corruption. Recently, the NUG seems to have backtracked on some of its promises. Now, instead of an anti-corruption commission, the NUG has established High Council on Governance, Rule of Law, and Anti-Corruption (hereafter referred to as High Council on Anti-Corruption or HCAC) that exclusively draws its members from various branches of the state, other than Parliament.

International experience shows that institutions such as high council against corruption will not work in Afghanistan for two principal reasons: First, high level coordination councils work for countries where corruption is not pervasive and law enforcement agencies are functioning. This is certainly not the case in Afghanistan. Second, the HCAC, created by President Ghani, is not independent. The government claims that the HCAC is simply a coordination body, however, it has features of an anti-corruption agency such as prevention, public outreach (article six), creation of an anti-corruption strategy (article three), and the forwarding of corruption cases to the AGO in cases which come to the notice of the HCAC secretariat (article seven).³ Lack of independent anti-corruption agency can lead to political partisanship which would run counter

¹ National Corruption Survey 2016, Integrity Watch Afghanistan (survey not published yet).
³ President Decree 168 on Promotion of Governance and Justice Council to High Council of Governance, Justice and Anti-Corruption, 29/12/1394 [19 March 2016].
to the recommendations of the Jakarta Statement on Principles for Anti-Corruption Agencies.\(^4\) Independence is the cornerstone for an effective anti-corruption agency\(^5\), and the lack of diversity in the members of the HCAC undermines the appearance of independence and, consequently, the credibility of the HCAC.

The Anti-Corruption Justice Center (ACJC), established based on the model of Counter Narcotic Justice Center (CNJC), is an important step towards the prosecution of corruption cases. The CNJC is an integrated justice model where police, prosecutors and judges sit under one roof while maintaining their respective independence to adjudicate serious narcotics related cases. The Afghan CNJC handled more than six hundred cases in 2015 alone. Adapting such a model would give a strong drive to an enforcement-led strategy against corruption. However, it has not been clarified who would decide on the level of seriousness or the targeting of cases. In addition, the ACJC is not a comprehensive anti-corruption body since does not have preventive or public outreach dimensions.

President Ghani signed off the Access to Information Law as one of his first steps after taking office in late 2014. In July 2015, the Oversight Commission on Access to Information (OCAI) was established. However, despite clear guidance of article 24 of the same law, Ministry of Information and Culture has failed to provide any meaningful financial or technical support to the commission. Despite clear orders from President Ghani to Ministry of Information and Culture and Ministry of Finance, no support has been provided to the commission. Thanks to donors support, the commission has been able to launch a public and civil service awareness campaign about the law.

An independent anti-corruption commission, based on international standards, could compliment and encompass the ACJC. It is believed that an anti-corruption commission coupled with the ACJC would be the optimal model for Afghanistan. Such a commission should decide on cases to be handled by the ACJC and should provide oversight to the ACJC in terms of case management. In addition, the commission should have a preventive and outreach mandate that would also include knowledge management, coordination and integrity building of civil servants. In order to ensure its independence, impartiality, and effectiveness, and to resist political pressure from within the government and non-state actors, the proposed independent anti-corruption commission should have several commissioners (preferably five). The commissioners should be appointed for a fixed tenure by the President through a process involving civil society and the international community. The chair of such a commission should be based on rotation among the commissioners. Meanwhile, a hybrid of an ACJC, and the anti-corruption commission would meet the requirements of UNCAC that obligates state parties to take preventive measures and establish anti-corruption agencies with prosecutorial powers.

Finally, key institutions such as Supreme Audit Office and the Major Crimes Task Force should be extensively reformed including changing the top-level leadership and increasing professional staff at technical level to ensure that detection of corruption is done in a systematic way. In addition, institutions such as the Oversight Commission on Access to Information should be made independent and should be support with technical and financial resources to regulate access to information and to promote a culture of transparency across government institutions.

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METHODOLOGY

This research utilizes an institutional arrangements framework, together with a comparative and SWOT (strengths, weaknesses, opportunities, and threats) analysis as its theoretical perspective. The identification of an optimal institutional arrangements framework for an anti-corruption agency in Afghanistan is the guiding objective of this research. This paper has used a consultative approach where stakeholders expressed their viewpoints during multiple workshops on the initial draft of this report. Separate interviews were conducted with relevant Afghan government, international community and civil society organizations to receive their perspectives on an appropriate anti-corruption agency structure for Afghanistan.

Institutional arrangements are policies, strategies, laws, and agencies that a state, as a political organization, uses to legislate, plan and manage their activities efficiently to fulfill their mandate. Afghanistan has elaborate, although outdated and dysfunctional, institutional arrangements to fight corruption including an outdated national anti-corruption strategy, a partly nullified anti-corruption law and finally a dozen anti-corruption organizations. This research has focused on an evaluation of those anti-corruption institutions, their interaction and their interdependence. This research will specifically address the following questions: Why have Afghan anti-corruption institutions failed to ameliorate corruption in the course of the last decade? What are the factors which have led to the success or failure of anti-corruption institutions in other countries? And finally, what are the principal proposals in regard to institutional arrangements to fight corruption in Afghanistan and what are the possibilities for the implementation of each option?

In order to assess the strengths and weaknesses of the Afghan institutional arrangements to combat corruption, Afghanistan has been compared with three countries, namely, Nigeria, Indonesia and Singapore. The rationale for the selection of these countries was to compare and contrast the experience of countries with certain common trends but with a variety of specific contexts and varied levels of success and failure with regard to anti-corruption practices.

Singapore is a city-state with a high level of economic development and impressive success against corruption; Nigeria is a large country, underdeveloped, marred with corruption, with internal conflict and problems in nation and state building and with limited success against corruption. It is tempting to argue that the situation in Afghanistan is similar to that of Nigeria and that any effort against corruption is doomed to failure as a result of the combination of conflict and underdevelopment. The selection of Indonesia as a further comparative case shows that in spite of problems of underdevelopment and instances of insurgency, the fight against corruption is possible. In recent history, Indonesia was a country very similar to Nigeria: underdeveloped, with an insurgency problem, massive corruption and limited success in stopping graft. Indonesia has changed considerably, thanks in large part to reforms undertaken by the post-Suharto administrations. Indonesia is now a country with encouraging success against corruption led by the establishment of a specialized anti-corruption agency (in spite of recent efforts by the Indonesian parliament to weaken it). The variety of experiences and the successes and failures of these countries help explain the failure of anti-corruption institutions in Afghanistan.

Finally, a SWOT analysis is carried out on the dominant institutional models to fight corruption in Afghanistan proposed by different stakeholders, including by the current Afghan government, the international community and civil society. The purpose of this analysis is to identify the strengths and weaknesses of each model and pinpoint the internal and external factors that are favorable and unfavorable to implement each of the models in Afghanistan.

PART ONE: INSTITUTIONAL FAILURE TO FIGHT CORRUPTION IN AFGHANISTAN

1. INTRODUCTION

Over the last one decade and more, Afghanistan has failed in the fight against corruption despite international support to establish a functioning and sustainable bureaucracy and to create the appropriate institutions capable of preventing and fighting corruption. After fourteen years of massive financial assistance, Transparency International in 2015 ranked Afghanistan as the third most corrupt country among 170 rated countries in the world. The impact of the failure to prevent and combat corruption has been huge on Afghan society and government. The Afghan government’s failure to address corruption has weakened the government and diminished its ability to provide security for its citizens. It has distorted the free market by structurally forcing business people to indulge in corrupt practices. In addition, corruption has weakened the ability of the justice system to provide fair trials and of the public sector to deliver public services to ordinary citizens.

There are several reasons behind such a failure. The lack of genuine political will in the former administration is one important factor. However, the fight against corruption has also failed in Afghanistan due to the failure of the government to establish appropriate and effective institutions. The institutions created in the past to address corruption have failed due to ineffective institutional arrangements, political interference, a lack of coordination, and the capture of these institutions by powerful elites. Before discussing the failure of anti-corruption institutions in greater detail, the next section will analyze the pervasive nature of corruption that has affected all institutions in the country.

1.2. PERVERSIVE CORRUPTION AND ITS DESTRUCTIVE EFFECTS IN AFGHANISTAN

In the last decade, corruption has penetrated all facets of the Afghan state. Pervasive corruption has adversely affected the ability of Afghanistan to become a responsible and self-reliant member of the international community by failing to maintain security for, and generating adequate revenues to deliver basic public services to, its citizens. This section discusses the nature of corruption in the most corrupt sectors of Afghanistan and the sectors where corruption has the greatest negative impact, i.e. collection of revenues, the justice sector, service delivery, and public appointments and procurement. The NUG leadership believes that it has cleaned the procurement from corruption but does not consider justice sector, and service delivery as areas of concern but acknowledges that there is corruption in the public appointments. The following discussion outlines that there still is serious issues with the procurement and that justice sector and service delivery are massively corrupt and should be top priorities.

The total revenue that the Afghan government collects is around USD 2 billion annually. Currently, 44-48 percent of Afghan revenues come from customs, while extractives make a small contribution of USD 7 million to the national treasury. Corruption is so pervasive in the customs department that SIGAR was led to opine that by the time the revenues from customs reaches the government account, they are cut in half. The

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situation is even worse in connection with the mining operations where both evasion of royalty payments and illegal mining are rampant. According to one study on mines, there has been a USD 50 million annual loss of revenue to the government of Afghanistan due to unpaid or underpaid royalties and due to tax evasion, from only five researched mines.\(^{13}\) Moreover, illegal extraction of minerals has taken place at approximately 1,400 sites across Afghanistan.\(^{14}\) Based on even a modest estimate, the Afghan government could double its revenues if there were a serious move against corruption in the area of customs and tax collection, as well as stronger oversight and accountability in the extractives sector.

After insecurity, corruption remains the largest impediment to investment and economic development in Afghanistan. Since the Afghan government is the largest spender in the country, businesses expect a fair opportunity to win government contracts. A majority of the country’s businesses, however, are deprived of these chances because government contracts often go to companies whose ultimate beneficiaries are government officials.\(^{15}\) This was especially the case throughout President Karzai’s administration.

Pervasive corruption has impacted the economy which has remained import-based. Criminal capture of the national economy has resulted in a significant economic dependence on imports, thus preventing clean investments which might otherwise create jobs.\(^{16}\) When importing, a businessperson not only has to compete within the market itself but also at customs. In fact, to succeed, one has to first make a good deal at customs to even be able to compete in the market in the first place. Honest businesspeople who pay customs to the government as required are often blocked from competing in the market. In order to compete, businesspeople are forced to pay bribes. Finally, the nexus of public officials-warlords-businessmen has created a monopoly of large business opportunities in the country that further diminish incentives for clean and honest businesses.\(^{17}\)

While the collection of revenue is an area which involves an enormous amount of money, delivery of public services is a sector which impacts a large number of citizens. Police, prosecutors, judges, and civil servants are in close contact with ordinary citizens on a regular basis. Due to mismanagement, lack of integrity, greed, and low salaries and meager benefits to public servants, service delivery is abysmal in Afghanistan. According to Integrity Watch Afghanistan, Afghans pay USD 2 billion each year in bribes to government servants in return for services.\(^{18}\) UNODC estimates this figure at two times higher.\(^{19}\) In addition, the Asian Foundation reports that 89 percent of the Afghan populous reports corruption as a problem they face in everyday life.\(^{20}\) Such corruption which impacts basic provision of services can often then deprive the state of its popular legitimacy.

The government loses legitimacy if its officials force citizens to pay bribes for service delivery. Within the justice sector, corrupt police officers, prosecutors, and judges, as well as corrupt civil servants such as teachers and doctors all erode government legitimacy every time they require an Afghan citizen to pay a bribe. Without other options, this action risks incrementally pushing ordinary citizens into the ranks of the country’s insurgents. As early as 2014, the National Corruption Survey warned the government that corruption not only undermines the legitimacy of the state but directly contributes to insecurity.\(^{21}\)

In addition to the risks associated with diminishing legitimacy, pervasive and grand corruption in the armed forces risks the crippling of police and soldiers tasked with maintaining the security of citizens and protecting the territorial integrity of the country. Ghost soldiers, police, and security personnel, as well as grand corruption in military procurement, and nepotism in senior appointments are the three largest areas that adversely affect the armed forces in Afghanistan. SIGAR quoted the Associated Press in a February 2016 report, noting that the most troubling aspect of the AP report was “that an Afghan official estimated the total ANDSF number at

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15. Integrity Watch Afghanistan, “Plunderers of Hope?” Integrity Watch Afghanistan, 2016. The Kabul Bank case is another example of how government officials award government contracts to their close relatives.
17. Ibid.
around 120,000—less than half the officially reported 322,638 assigned personnel.”

There are numerous reports that suggest a large number of imaginary soldiers and policemen in rural areas where there is little oversight. As a consequence, on paper the government might, for instance, report two hundred armed forces in a particular district while in reality there may be less than a hundred. This drastically affects security management with consequences to the ability to defend Afghan territorial integrity against insurgents.

In conjunction with this issue, corruption in military procurement continues to affect all aspects of performance of the country’s soldiers. The largest military procurements are fuel, food, military hardware, and operation and maintenance. While there has been improvement in procurement in Afghanistan thanks to reforms and restructuring undertaken by the National Unity Government, the legacy of corruption within military procurement since the days of the Karzai administration has remained a serious problem. For example, in a three-year fuel contract with the Ministry of Defense, the Afghan government and donors were overcharged USD 216 million.

While corruption in the collection of revenues, service delivery, and the armed forces has affected the legitimacy of the Afghan state for its citizens and international partners, corruption in public appointments has weakened the state from within. Political interference in the making of appointments based on networks, friendships, nepotism, or ethnicity has impeded necessary reforms and therefore the efficient functioning of the government. According to studies on the police and army, senior police and army appointments are most often awarded based on nepotism, cronyism and graft rather than on merit. The situation is even worse with regard to appointments for civil servant positions and, as a result, the Executive branch and Parliament have come into conflict on several occasions. Eventually, some members of parliament suggested merging the Independent Administrative Reform and Civil Services Commission (IARCSC) with another government body or, dissolving it entirely. However, the IARCSC was not dissolved due to differences within the National Assembly. While IARCSC suffered from rampant corruption and institutional capture, the government did not appoint, until recently, a new head to bring the necessary reforms.

As public offices continue to be sold and positions are awarded based on personal and ethnic/tribal relationships, institutions have been captured by powerful elite. Loyalties of appointees are to their networks rather than to the government. This deeply undermines the ability of the government to deliver necessary services to the people.

Another serious implication of corruption in public appointments is the creation of organizational conflicts within and among the institutions of the state. The Afghan state is a political organization with some sixty independent agencies, including the three branches of state, twenty-five ministries, and two dozen independent commissions and general directorates. According to the National Integrity System Assessment of Afghanistan 2015, the conflicts among the director general and two deputy directors of the High Office of Oversight (HOO) added to the failure of the agency to fulfill its mandate. At some point, the five hundred staff of the HOO were divided between the three most powerful people at the top of the organization. As a result, most of the energy of the staff has been consumed in intra-organizational conflict among the three networks of power, leaving little energy for the leadership or employees to fulfill their required mandate.


The inter-organizational rivalry led also to a lack of cooperation by the Attorney General’s Office in the processing of cases submitted by the HOO. Despite its dysfunction, the HOO submitted a few hundred cases to the Attorney General’s Office (AGO). Yet in seven years, the AGO hardly processed any cases. The head of the HOO criticized lack of cooperation by the AGO in public and through the media, but to no avail. Intra-organizational conflict and inter-organizational rivalry is not unique to the HOO or its relationship with the AGO; it exists in nearly all institutions of the state. A lack of commitment on President Karzai’s part was also evident during this failure of institutional cooperation, and a closer look at the background of the people in key positions and how they were appointed suggests that nepotism also contributed to these failures.

1.3. WHY ANTI-CORRUPTION EFFORTS HAVE FAILED IN AFGHANISTAN

In Afghanistan, corruption has been pervasive and occurs with impunity mostly because of lack of political will and because the most corrupt and weakest institutions are the very agencies mandated to prevent and fight corruption in the first place, i.e. the police, the AGO, and the courts (see table 1 for a full list of anti-corruption agencies). According to the National Corruption Survey by Integrity Watch Afghanistan and the Corruption Barometer from Transparency International, the judiciary and police branches are the top two most corrupt institutions in the country. The Afghan courts are especially marred with corruption—the public’s perception of corruption in the judiciary is reported as high as 72 percent. Furthermore the HOO, which was mandated to act as an umbrella organization from October 2008 to November 2014 to prevent and fight corruption, has been assessed as the weakest organization within the entire Afghan state.

According to a senior advisor to President Ghani, the Attorney General’s Office requires significant reform and capacity building, as out of thousands of cases sent to it by state investigative agencies, it has prosecuted hardly any of the cases. The Supreme Audit Office complains that of 302 cases it submitted to the AGO, it has been informed of progress on only 34 of them. From a sample survey the Presidential Palace conducted under the National Unity Government, a senior advisor has reported that corruption cases disappeared within the AGO during the former administration.

1.3.1. THE FAILURE OF ANTI-CORRUPTION INSTITUTIONS DURING KARZAI’S ADMINISTRATION

A lack of political will under former President Karzai and his team, as well as the “box-ticking” approach of donors, has been the driving force behind the failure of anti-corruption institutions in the last decade. The design of institutional arrangements by the former administration, and an unsustainable approach to supporting those institutions by the international community has resulted in corrupt and weak anti-corruption agencies in the country.

According to a senior advisor who closely worked with the HOO, “It is impossible to discuss anti-corruption in Afghanistan without a corresponding discussion of Dr. Azizullah Lodin.” Dr. Lodin was from Herat. He and President Karzai belonged to the same Mujahidin party during the war against the Soviets. In 2002, President

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36 Interview with Sardar Mohammad Roshan, Senior Advisor to President Ghani, 28 February 2016.
38 Interview with Sardar Mohammad Roshan, Senior Advisor to President Ghani, 28 February 2016.
Karzai appointed Dr. Lodin as the governor of Herat. However, Ismail Khan, the then governor of Herat, did not recognize Dr. Lodin’s authority and forced him to leave the city. Upon his return, President Karzai initially appointed Dr. Lodin as an advisor and then as Director General of the General Independent Administration Against Corruption (GIAAC).40

The GIAAC was the first anti-corruption institution established in Afghanistan. Like many to follow, it was established without a study on the nature of corruption in the country and without a corresponding policy or strategy. As head of the GIAAC, the first thing Dr. Lodin did was to initiate a corruption case against Ismail Khan.41 This indicates how unimportant it was for the leadership of the previous government to ensure that an independent and impartial anti-corruption agency was established. In addition to the case against Ismail Khan, the GIAAC initiated some 80 other cases, most of which were focused on foes of Dr. Lodin. Mixing political interests with the mandate of the GIAAC diminished the legitimacy of the organization before any real anti-corruption efforts could take shape in the country. In the words of a senior advisor who worked closely with Lodin: “Rather than bringing energy, dynamism, and strong leadership to the anti-corruption effort as intended, Lodin inadvertently muddied the institutional waters giving rise to confusion and uncertainty.”42

In spite of such obvious intermingling of anti-corruption and political agendas, the international community continued to support the GIAAC until 2007. At that point, President Karzai appointed Ezatullah Wasifi, who had been convicted of selling and distributing heroin in the United States.43 It was only then that the international community withdrew their support for the GIAAC. Interestingly, one advisor notes:

“The appointment of Wasifi and the withdrawal of international support was not the cause of GIAAC’s failure; it was simply the last in a long line of problems such as an overly ambitious mandate, confusion about its roles (vis-à-vis other agencies); lack of leadership; inadequate resources; and an unclear policy and strategy.”44

Under pressure from donors in Kabul, President Karzai decreed a high-level commission led by the then-Chief Justice to work on the root causes of corruption and recommend remedies. The commission took one and a half years and produced a 200-page document. “It was not, nor was it intended to be, a strategy for implementation.”445 However, President Karzai touted it an excellent strategy and signed a law creating the High Office of Oversight to oversee what was at the time called the National Anti-Corruption Strategy or, the Azimi Report.

The High Office of Oversight was created in August 2008 and the donor community assisted in its establishment by providing financial and technical support. The HOO showed signs of failure as early as 201046, and the way the initial failure of the HOO was handled illustrates the confusion and the persistent lack of genuine political will on the part of President Karzai and his team. To begin with, President Karzai indiscriminately removed the head of the HOO—showing no respect to political independence and tenure of head of the agency. More important than the removal of the HOO head was the reappointed of Dr. Lodin, the former head of the infamous GIAAC. Dr. Lodin added to the politicization of the HOO until his demise in 2013. It is important to note that donors continued their assistance to the HOO even after reappointment of Dr. Lodin.47

Bowing to the international pressure, in 2010, President Karzai also decreed the establishment of the Independent Joint Monitoring and Evaluation Committee (MEC). According to the President’s decree, the MEC was supposed to be created within the HOO,48 but the international community pressured the President to create it as an independent agency to monitor and evaluate Karzai government’s anti-corruption efforts. After the establishment of the MEC, the HOO, led by Dr. Lodin, refused to cooperate with the MEC. A substantial amount of time was consumed by political

41 Ibid: 6.
42 Ibid: 8.
46 There are two indications that can be attributed to early failure of the HOO. The first being the decision to remove its head in 2010. And the second is the establishment of as MEC an independent entity that took away some functions of the HOO.
bickering between President Karzai and the international community and then by the HOO and the MEC over the establishment of the MEC as an independent body. The Karzai government continued to ignore the international community’s demand to tackle corruption seriously. This was evident in the way MEC recommendations were dealt with - 87 percent of its recommendations were not implemented during Karzai’s administration.\(^{49}\)

The year 2010 was a year of anti-corruption initiatives in Afghanistan. In the same year, the FBI supported the establishment of the Major Crimes Task Force (MCTF) to investigate organized crime, kidnapping and corruption.\(^{50}\) Initially, the MCTF had some real success especially with the arrest of the chief of administration of the National Security Council, Mohammad Zia Salehi, on corruption charges.\(^{51}\) However, President Karzai immediately undercut the MCTF’s authority by ordering the release of Salehi and since that time the MCTF has not investigated a significant corruption case against a current or former MP, minister, chief of police, army general or any other high ranking official.

Other symbolic and therefore unsuccessful measures were also taken during President Karzai’s administration. Specialized units within the AGO and court system were created to deal with corruption cases.\(^{52}\) In addition, ‘oversight and control departments’ were established within AGO and Supreme Court to look into corruption cases within these agencies. The Ministry of Interior Affairs started a 119 hotline in 2007, a general hotline intended to receive complaints related to police misconduct.\(^{53}\) Similar anti-corruption actions had already been taken in other government agencies during the former administration to tackle corruption such as establishing a complaints mechanism at the Ministry of Finance and the Ministry of Education among others.\(^{54}\) However, none of the above measures were substantial enough, or enjoyed political support, to bring significant changes in the fight against corruption.

In July 2012 the donor community met in Tokyo and decided that further aid to the Afghan government would be conditioned on its performance against corruption—signaling the government’s failure to tackle corruption. After the Tokyo Conference, President Karzai issued Decree No 45, which obligated all state institutions, including the National Assembly and Supreme Court, to pass pending laws dealing with corruption, process corruption cases, reform their structures, establish coordination mechanisms, and remove parallel functions within one to six months.\(^{55}\) The implementation of the decree was, of course, not feasible in the allotted six-month timeframe. Experts believed that the decree was not meant to be implemented from the outset.\(^{56}\) The Decree 45 was more window dressing for the international community.

While the traditional anti-corruption agencies failed due to corruption in their own ranks, agencies created under pressure from the international community—like the HOO, MEC, MCTF, and FinTRACA—failed due to political interference and/or unmerited appointments. In addition, institutional arrangements to fight corruption during Karzai’s administration suffered from conflicting mandates, parallel functions, and difficulties in coordination and oversight.

During the Karzai administration, in the anti-corruption sector, there were two bodies focused on prevention, four focused on oversight, six focused on investigations, three focused on prosecutions, and one acting in a coordinating capacity as well as two types of courts. Questions such as the following, however, should have been asked: Was there a national anti-corruption policy to guide them? Were they all required? Were there robust coordination mechanisms among each of them? Did the President provide the required oversight to avoid inter-organizational conflicts? Was there the political will to support them to fulfill their mandates? Did they have enough resources (financial, human, technical, and physical)? And, finally, were they able to function autonomously?

\(^{49}\) Interview with Sayed Hamidullah Tawab, Monitoring and Evaluation Team Leader, MEC, 8 February 2016.
\(^{55}\) President of Islamic Republic of Afghanistan, Farman No: 45 dated 05/05/1391 (2011).
President Karzai had neither the genuine political will to fight corruption nor did he provide the required presidential oversight over these agencies necessary to ensure that they would fulfill their mandates to fight corruption. There were no clear coordination mechanisms, and there were pervasive inter-organizational conflicts and rivalry among these government agencies, in particular among the HOO, AGO, and MEC. These institutions were not independent under the law, as highlighted by the lack of a fixed tenure for the head of the HOO, and in practice, as seen in the head of the HOO’s propensity to mix his political interest with the mandate of the agency. The Karzai government was, at best, incompetent in the fight against corruption since it created confusion, parallel institutions, and structurally pitted one organization against another leading to intra and inter-organizational conflict, while providing little or no presidential oversight.

Finally, the donor community was responsible for financially supporting the institutions that proved ineffective. Donors spent millions of dollars to build capacity and keep these organizations in operation without considering their effectiveness or assessing their results (or the lack thereof). In specific cases, both USAID and UNDP had multi-year programs to support the HOO while UNAMA and several other donors were supporting the MEC since 2010. The FBI funded, established, and trained the MCTF, while the AGO and SAO received assistance from several donors, including EUPOL and the World Bank, respectively. Thanks to the huge turnover and the short-term approach of the donor community, these institutions remain very weak in terms of capacity and resources.

1.3.2. ASSESSING THE STATUS QUO: GHANI’S ADMINISTRATION

For the first two years in office (October 2014 to September 2016), the National Unity Government’s actions against corruption can be best described as slow and confused while institutional arrangements to fight corruption continue to suffer from multi-organizational sub-optimization. In addition, in the area of prosecutions, there has been little progress until the recent establishment of ACJC. Even NUG officials seem to agree with this assessment. In the words of an advisor to the President, “Until now, the NUG has done nothing to fight corruption [in terms of prosecution of corruption cases].”

In his first days in office, President Ghani reopened the case of Kabul Bank which was later tainted in controversy. Instead of building confidence in the government, the way the government dealt with the Kabul Bank case undermined the entire anti-corruption effort of the government. It resulted in serious criticism from international community and Afghan civil society. An Afghan anti-corruption civil society called it “outrageous” while the international community indicated that “The message it sends is that if you have stolen enough money, you can get away with it.”

In another move, the arrest of three former officials of Ministry of Urban Development demonstrates the ad hoc approach of the NUG to fighting corruption. Although it has been more than a year since their arrest, the public and media have not been informed about the fate of this case. What is evident from these two cases is that, apart from weak political will, the NUG lacked a systematic approach to fighting corruption.

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Table 1: Institutions with anti-corruption role during Karzai’s Administration

<table>
<thead>
<tr>
<th>Category</th>
<th>Institutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preventive</td>
<td>HOO, IARCSC</td>
</tr>
<tr>
<td>Oversight</td>
<td>HOO, AGO, NDS, MEC</td>
</tr>
<tr>
<td>Investigative</td>
<td>HOO, Police, NDS, SAO, MCTF, FinTRACA</td>
</tr>
<tr>
<td>Prosecution</td>
<td>HOO, AGO, specialized courts and general courts</td>
</tr>
<tr>
<td>Coordinating</td>
<td>HOO</td>
</tr>
</tbody>
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57 Interview with an advisor to President Ghani, dated 28 February, 2016
There are six questions that should test the seriousness of any fight against corruption. Is it systematic? Is it comprehensive? Is it consistent? Does it have focus? Is it well publicized? Does it carry people along? (OtiveIgbuzor, 2008, 21). Following is an application of the six questions in the context of Afghanistan taking into account performance of National Unity Government (NUG) in the fight against corruption.

**Is it systematic?** The NUG’s efforts to fight corruption lack many elements of a systematic approach. The NUG has not come up with a strategy, an anti-corruption law, an independent anti-corruption agency, and clarifying roles of all government agencies involved in the fight against corruption. The fight against corruption has been individual-centric, mainly the President making ad hoc decisions of removing or appointing individuals and adding or reducing powers of various agencies. Since the institutions are not established, the process does not go on itself regularly and in an impersonal manner. It requires building immense pressure from the civil society and donors on every small step the government should take. The NUG has not started high-level prosecution in a systematic way without political interference. Therefore, the government receives 0 out of 3.

**Is it comprehensive?** Fighting corruption should entail a three-pronged approach of prevention, education, and prosecution. The NUG has a prevention aspect but it is limited to high level procurement only. Its prosecution is also limited to high level prosecution. It lacks a public outreach program altogether. Therefore, it receives 1 out of 3.

**Is it consistent?** In December 2014 the NUG committed to establish an Independent Anti-Corruption Commission that would draw its members from civil society, independent lawyers and government officials but it took the government 15 months only to decide that it would not establish such a commission. The NUG decided to create high council on rule of law and anti-corruption that is presided by the President himself and ten of his high level government officials. In addition, both the President and CEO have appointed advisors and government officials who are suspected of involvement in grand corruption. In addition, the case of Kabul Bank scandal was reopened in a promising way but ended up in a disaster. Another example of inconsistent approach of the NUG is the way President Ghani has dealt with the High Office of Oversight (HOO). Within one month in office, the President removed all authorities of the HOO except registration of assets and simplification of business procedures. The staff of the HOO was reduced from about 500 to some 150 people. A year later, the President agreed to increase the staff of the HOO to 300. Within two years of reducing powers of HOO, the President ordered the HOO to re-start assessing government agencies when he decided not to establish an independent anti-corruption agency. Since the government has been very inconsistent in the fight against corruption, it receives 0 out of 3.

**Does it have focus?** High level prosecution and high level prevention of corruption in public procurement seem to be the focus of the NUG. Although no prosecutions have happened so far. The government has almost ignored lower level prosecution and prevention at the service delivery level of health, education, security, and access to justice. The NUG, therefore, receives 1 out of 3.

**Is it well publicized?** The government has done well to publicize its actions. The NUG leadership does not miss any opportunity to condemn corruption and outline the government achievements in their speeches and meetings. The establishment of Anti-Corruption Justice Center was announced in a high level conference at the Palace and then inaugurated at similar high level meeting aired on the National TV. However, the NUG has not been very transparent about its decisions made on anti-corruption efforts and has confined sharing information only with donors. Therefore, the NUG receives 2 out of 3 for this question.

**Does it carry people along?** The President seems to try to carry people along but this engagement is not deep enough and nor genuine. With the establishment of the high council, the President and CEO from the executive and Chief Justice from the judiciary are permanent members but it excludes the National Assembly. Even within the Executive institutions such as the Oversight Commission on Access to Information has not been included. In addition, when the High Council and ACJC were being established, many of government and civil society organizations were not consulted at all. Therefore, it receives 1 out of 3.

Overall, the NUG receives 5 out of 18 for its efforts in the fight against corruption.
Since assuming power in October 2014, the NUG has not formulated a comprehensive strategy to fight corruption in the country (Please see part three for a discussion on the NUG’s four-page anti-corruption strategy brief) nor does Afghanistan yet have a comprehensive anti-corruption law. Only recently, at the Brussels Conference on Afghanistan, the Afghan government committed to prepare an anti-corruption strategy until mid-2017 and will start implementation of it afterwards.\(^6\) Draft of an anti-corruption law is being worked out through a multi-stakeholder group led by the Ministry of Justice.

However, on the prevention front, the government has taken some encouraging steps. Resolution number three of the cabinet, issued one month after President Ghani took office, reduced the powers of the HOO to asset registration and simplification of business procedures only; explicitly removing the oversight power of the AGO and NDS.\(^6\) The self-proclaimed powers of the AGO and NDS to oversee the activities of all government agencies, and the legal authority of the HOO to conduct similar oversight, resulted in layers of corruption in the administration.\(^6\)

Although those who were engaged in procurement corruption in the former administration have not been prosecuted as yet, the procurement law has been amended and new institutional arrangements for procurement have been established under the NUG. The Special Commission for Procurement that was headed by the Minister of Finance and was tainted with corruption under the previous Procurement Law (2008) has been replaced by the National Procurement Commission presided over by the President and operates under the revised Procurement Law (2015) and oversees all large procurement contracts. Under the NUG the Procurement Policy Unit, and Contract Management Unit that were located in the Ministry of Finance and the Afghanistan Reconstruction and Development Services housed in the Ministry of Economy were merged into a single agency, the National Procurement Authority (NPA).\(^6\) The NPA oversees procurement at a national level, manages contracts, and functions as a secretariat to the National Procurement Commission.\(^6\)

Both in terms of legal framework and institutional setup, there have been significant improvements in public procurement under the NUG. Creation of such oversight mechanism was an important step in the right direction. Nevertheless, there is still a long way to go in order to achieve comprehensive reform of the procurement system including: ensuring transparency of the process (through measures such as publication of contracts and related documents, meeting Open Contracting Data Standards, and ensuring transparency of beneficial ownership of companies), reforming procuring units within ministries at both the central and the provincial level, and formulating and implementing an e-procurement strategy.

President Ghani signed off the Access to Information Law as one of his first steps after taking office in late 2014. In July 2015, the Oversight Commission on Access to Information was established. However, despite clear guidance of article 24 of the same law, Ministry of Information and Culture has failed to provide any meaningful financial or technical support to the commission. Despite clear orders from President Ghani to Ministry of Information and Culture and Ministry of Finance, no support has been provided to the commission. Thanks to donors support, the commission has been able to launch a public and civil service awareness campaign about the law.

After almost two years of delay, the NUG introduced the much awaited nominee for Attorney General Office to the National Assembly. Farid Hamidi received an unprecedented vote of confidence from the National Assembly, a result of remaining an uncontroversial technocrat in his previous tenure as a commissioner of the Independent Human Right Commission.\(^6\) The new Attorney General reshuffled forty senior posts within

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\(^6\) Ibid.

the AGO and published the list in its website—something unprecedented in the AGO’s history. However, the qualifications of those who were promoted in the reshuffle is yet to be vetted by independent observers. In addition, the Supreme Court has also announced that more than five hundred judges have been reshuffled in the courts. Unlike the AGO, the Supreme Court has not published the list of the reshuffled judges. The reshuffle by the Supreme Court should be independently verified and, as in the case of the staff changes in the AGO, the integrity of the judges who are promoted should be open to public scrutiny. In general, such developments in the judicial system shows signs of the political will needed to bring much needed reform. However, ensuring reform in a sustainable way in the justice sector requires that such appointment and removals should be done in an institutionalized manner through structures such as a judicial service commission.

Additionally, at the London Conference in December 2014, the government of Afghanistan presented an ambitious plan—Realizing Self-Reliance: Commitments to Reform and Renewed Partnership. The document promised the establishment of an anti-corruption agency with prosecutorial power: “We will form an independent anti-corruption commission with time-bound prosecutorial powers. Membership of this commission will be drawn from civil society and qualified legal specialists as well as from the government.”

However, in terms of institutional arrangements the NUG seems to have chosen the status quo over its bold electoral – and London Conference - promises. The NUG has thus far retained the existing institutional arrangements and, consequently, suffered from the same multi-organizational sub-optimization where parallel institutions exist and utilize public funds but there is no meaningful change in the fight against corruption. The unsystematic, ad hoc approach to anti-corruption agencies, combined with a general complacency to corruption, if not worsening the situation, has not improved it either.

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2. PART TWO: A COMPARISON OF DYNAMICS OF SUCCESS AND FAILURE OF ANTI-CORRUPTION INSTITUTIONS IN SELECTED COUNTRIES AND AFGHANISTAN

2.1. INTRODUCTION

In this part, three countries have been selected for comparison with Afghanistan: Singapore, Nigeria, and Indonesia. The rationale for the selection of these countries for a comparison is to identify common trends and differences from a sample of diverse experience, different contexts and varied level of successes and failures with regard to anti-corruption practices.  

Each of the three countries examined represent distinct situations. Singapore, once plagued by corruption, is today a city-state with a high level of economic development and impressive successes in the fight against corruption. Singapore is a good example of a nation that, with a sincere political will, can tackle corruption and rid state institutions of corrupt elements. Nigeria is a large country that remains underdeveloped and marred with corruption and internal conflict. Nigeria has experienced problems with nation building and has seen only limited success against corruption. However, the example of Indonesia shows that in spite of problems of underdevelopment and internal conflict, the fight against corruption is possible.

As recently as a couple of years ago, Indonesia was a country very similar to Nigeria. It was underdeveloped, had a serious internal insurgency problem, was subject to massive corruption, and saw only limited success in stopping graft. Indonesia is no longer as corrupt as it was a decade ago, thanks to post-Suharto reforms. The country has experienced encouraging success against corruption with the establishment of a specialized anti-corruption agency, the KPK, despite recent parliamentary efforts to weaken that agency.

This part of the report is not confined to the comparison of Afghanistan with the above countries; although each of the three are relevant in their own ways in analyzing the anti-corruption landscape. References to several other countries are discussed as well here, including Hong Kong, Bulgaria, and Malaysia among others, to draw lessons learned and recommend what would be relevant for the Afghan context.

In a comparison of Afghanistan and other countries some of the most pressing issues will be examined. These include the supposed duplication of roles between a specialized anti-corruption agency with the Attorney General’s Office, as well as the dynamics of both failures and successes of anti-corruption efforts that result from political will, lack of coordination, and the capture of anti-corruption agencies by the country’s elite.

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2.2. LAW ENFORCEMENT AGENCIES OR A SPECIALIZED ANTI-CORRUPTION AGENCY

One of the first dilemmas some countries face when deciding to fight corruption is whether or not to use existing law-enforcement agencies or to opt for a specialized anti-corruption institution. Over time, the experience and policies of some countries show a pattern that has emerged in this regard. Countries that are massively corrupt seem to require a specialized agency to take on corruption effectively. Singapore, Malaysia, Hong Kong, and Indonesia are a few of the countries once marred with massive corruption that decided to establish specialized anti-corruption institutions to tackle the problem. On the other hand, Bulgaria opted to take on corruption through its law enforcement agencies. Among countries with specialized agencies, Hong Kong and Singapore have been very successful in their efforts, while Malaysia and Indonesia still struggle against corruption but have seen encouraging success through the establishment of specialized agencies. In recent years, for example, with the establishment of the Komisi Pemberantasan Korupsi (KPK), Indonesia's Corruption Eradication Unit, Indonesia has experienced a five-year success record against corruption, based on the country's ranking in Transparency International's Corruption Perception Index from 2010 to 2015.

Conversely, some relatively corrupt countries, such as Bulgaria, have chosen to fight corruption through traditional law enforcement agencies, i.e. the police and Attorney General’s Office. The reason that Indonesia, for example, has opted for a specialized anti-corruption agency while Bulgaria has fought against corruption through traditional law enforcement agencies was a function of the level of corruption and the ability of traditional state institutions to fight it. In Bulgaria, police and prosecutors were ready to take on corruption and thus required more specialized training, special task force units within these organizations, guidance strategies, and more strict and comprehensive anti-corruption laws. In Nigeria, the police are perceived to be one of the most corrupt institutions in the country. This seems to be the reason the country has opted for a specialized anti-corruption agency instead of relying on the existing institutions.

Afghanistan has been ranked as one of the top five most corrupt countries in the world for the last seven consecutive years according to the TI's CPI. As outlined in Part One, it is a country where corruption is institutionalized and has penetrated all state institutions at all levels. Law enforcement agencies in Afghanistan that are mandated to fight corruption and expected to be paragons of the rule of law, are themselves the most corruption institutions. Therefore, fighting corruption through existing institutions in Afghanistan, at least in the short term, is quite problematic.

74 Afghanistan and Nigeria are examples of countries that could not decide whether to establish specialized anti-corruption agencies or rely on existing law enforcement agencies. Both countries established specialized anti-corruption agencies after trying and failing with the law enforcement agencies and pseudo specialized agencies.
78 On TI's CPI, Singapore is ranked 8th and Hong Kong 18th but Malaysia is 54th down from 50 in 2014 and Indonesia 84th up from 107 in 2014. Please see Transparency International, https://www.transparency.org/country/#IDN (accessed on 19 August 2016).
2.3. DUPLICATION OF ROLES OF ATTORNEY GENERAL OFFICE AND AN ANTI-CORRUPTION AGENCY

Countries that decide to establish specialized anti-corruption agencies with prosecutorial power face the problem of duplication of functions between their attorney general’s office or chief prosecutor and their specialized anti-corruption agencies. In most countries, the attorney general’s office or chief prosecutor is the only constitutionally authorized agency to prosecute criminal cases. Some countries, like Malaysia, have been able to solve this efficiently, while others, like Nigeria, have faced serious delays and opposition as a result.

Article 145 of the Malaysian Constitution stipulates, “The Attorney General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence....” In spite of this provision, the Malaysian Anti-Corruption Agency also possesses prosecutorial power. However, according to the Malaysian anti-corruption agency law, all corruption-related offences can only be instituted with the consent of the Public Prosecutor.

85 Constitution of Malaysia, 1957: article 145.
Box 2: Anti-corruption in Nigeria

**Before Anti-Corruption Measures**

*Political Will*

The political will to fight corruption not only did not exist during Nigeria’s Abacha Administration (1993-1998), but it was the high officials themselves, including General Sani Abacha, who were entrenched in massive corruption. After Abacha’s death in 2000, more than 0.5 billion belonging to Abacha was traced only with Swiss banks (Associated Press, 2004).

*Strategy*

Anti-corruption strategy was tagged with general policy of the state referred to as MAMSER (OtiveIgbuzor, 2008, 20).

*Institutional Arrangements*

The Abacha administration relied on traditional law enforcement agencies, i.e. police and prosecutors, to fight corruption. It is relevant to note that the most corrupt institutions within the Nigerian government were the police (UNDP;2004, 69).

**After Anti-Corruption Measures**

*Political Will*

With the return of democracy in 1999, the new administration in Nigeria identified corruption as a major obstacle to development and promised to take action. Upon assuming office, President Olusegun Obasanjo initiated the passage of the Corrupt Practices and Other Related Offences Act (CPRo) in 2000. The CPRo Act established the Independent Corrupt Practices and Other Related Offences Commission (ICPC) (UNDP: 2005). However, the Nigeria President underestimated the role of a whole-state approach to anti-corruption. In other words, political will does not mean the will of the head of a state. It includes all major actors within the state (BBC, 2016). When ICPC was established, its constitutionality was challenged. After two years, the courts ruled in favor of ICPC, but the Senate further delayed ICPC operations by proposing to amend the anti-corruption law, thus weakening the investigative power of the specialized anti-corruption agency (UNDP: 2005).

*Strategy*

There was an anti-corruption policy in Nigeria under President Olusegun Obasanjo (David UchennaEnweremadu, 2006)

*Institutional Arrangements*

The CPRo Act established the Independent Corrupt Practices and Other Related Offences Commission (ICPC). The ICPC, which consists of one Chairperson and twelve members, has a three-pronged approach of prevention, investigation, and education. However, its prosecution was instituted with the consent of the Attorney General. The Chairperson and the other members of the Commission are appointed by the President upon confirmation of the Senate. In the first four years after its establishment in 2000, there was a perception that the ICPC performed below expectations and was not acting diligently to investigate corruption allegations of high-profile suspects (UNDP: 2005). Nigeria was ranked 90 out of 91 for corrupt states in 2001, 152 out of 159 in 2005, and 134 out of 178 in 2010, an improvement that will likely not be seen again anytime in the next five years. Since 2010, corruption has seen no additional improvement and has even worsened. The country was ranked 143 in 2011, 139 in 2012, 144 in 2013, and 137 out of 168 in both 2014 and 2015.
It took Nigeria two years to solve the duplication of authority between the Independent Corrupt Practices and Other Related Offences Commission (ICPC) and the Attorney General’s Office of Nigeria. When the ICPC was established in 2000, its constitutionality was challenged in the courts. While the case was pending, the ICPC could not prosecute cases of corruption. Finally, after two years, the Nigerian courts ruled in favor of the ICPC.

In Afghanistan, the problem of duplication with regard to prosecution has not been solved in the last eleven years since the Afghan Constitution came into being in 2004. Article 134 of the Afghan Constitution stipulates, “Detection of crimes by the police and prosecution of crimes and its proceeding in a court of law take place by the Attorney General’s Office based on the provisions of law.”

The Afghan Attorney General’s Office has been successful in convincing a majority of people who are not aware of the international experience that it is only the AGO in Afghanistan that is legally authorized to prosecute criminal cases. But there is a second view that has been partly considered in Afghanistan since 2008 as well.

Considering the international experience and even other relevant Afghan legal precedents, Article 134 of the Afghan constitution does not mean that the Attorney General’s Office must be the sole prosecutor of crimes. There are two instances that such an interpretation of law has been materialized in Afghanistan. At some point in time, the HOO had investigative power and submitted the cases to the AGO for their proceeding in court. Another important example is that of military prosecutors within the Ministry of Defense (MoD) in Afghanistan. Realizing the uniqueness of military crimes and the specialized knowledge required to investigate such cases, the Afghan government delegated this power to the MoD despite reservations about how the MoD might utilize this authority. The MoD then forwarded the cases to the AGO to be defended in the courts. Therefore, both by international standards and certain instances of Afghan legal experiences, the prosecution does not have to be exclusively dealt with by the AGO in Afghanistan.

2.4. THE RELATIONSHIPS AMONG EXECUTIVE BRANCH, PARLIAMENT, AND THE ANTI-CORRUPTION AGENCY

The case studies of Indonesia, Nigeria and Afghanistan show that an inclusive national approach is required to effectively fight corruption in a country. While the independence of an anti-corruption agency is necessary, as emphasized by UNCAC and the Jakarta Principles on Anti-Corruption Agencies, political support from the executive branch and a sound working relationship with the legislative branch of government can provide an important underpinning to such an institution. In this regard, Indonesia was successful in building upon the national consensus to fight corruption in the post-Suharto regime, while early in this century Nigeria and Afghanistan failed.

The financial crisis of 1997 affected the day-to-day lives of the Indonesian people and was one domestic issue that contributed to the fight against corruption. With the fall of President Suharto in 1998, the conditions for anti-corruption action were ripe, and B.J. Habibie, the successor as to Suharto, utilized this environment to pass several regulations against graft in Indonesia. Although Indonesia did not achieve immediate success against corruption with the introduction of an amended legal framework, the regulations did help to create an enabling environment in the fight against corruption that could be utilized later.

In Africa, Nigeria also established a democratic state one year later, in 1999, following 16 years of an authoritarian regime. Like in Indonesia, corruption in Nigeria was a daily problem in the lives of ordinary people. A 2001 survey conducted by a consortium of institutions showed that households perceived corruption as second only to unemployment as an impediment to development. President Olusegun Obasanjo, who came to power in 1999, fulfilled his electoral commitments to take on corruption by establishing a specialized anti-corruption agency.
However, the Nigerian President seemed to have underestimated the power of Parliament (see box 1). Similar to the Afghan Parliament, a large number of the Nigerian Parliament members benefited from the country’s rampant corruption. The Nigerian President did not make enough of an effort to cultivate the support of clean parliamentarians through whom he could have secured the legislature’s support for his anti-corruption campaign. As soon as the President decreed the establishment of the anti-corruption agency, some members within the Public Prosecutor’s Office questioned its constitutionality. While the court eventually ruled in favor of a specialized agency with prosecutorial power, the Senate decided to amend the anti-corruption law to reduce the commission’s power. Political bickering between the legislature and executive wasted two years until the courts ruled in favor of the President.

BOX 3: Anti-corruption in Indonesia

Before Anti-Corruption Measures

Political Will
President Suharto’s political will to fight corruption was questioned throughout his power. At the beginning of the New Order, as Suharto’s thirty-one-year reign is refereed to, there was strong criticism against rampant corruption. In 1970, the Commission of Four was appointed to look into the nature of corruption in Indonesia. The commission recommended urgent action, but none of the cases were followed up with under Suharto (J. A. C. Mackie: 1970, 87-101).

Strategy
There was not a comprehensive anti-corruption policy or strategy during Suharto’s rule.

Institutional Arrangements
Indonesia relied on traditional law enforcement agencies to fight corruption despite rampant corruption in the country. In 1999, laws were passed and police and prosecution services were authorized to investigate cases of corruption (J. A. C. Mackie: 1970, 87-101).

After Anti-Corruption Measures

Political Will
With the fall of Suharto in 1998, the condition for an anti-corruption drive was ripe. B.J. Habibie, the following President, utilized this environment to pass several regulations against graft in Indonesia. Although Indonesia did not achieve significant success against corruption until establishment of the KPK in 2005 and did not see subsequent encouraging results in the fight against corruption until 2010, the regulations helped to create an enabling environment in the fight against corruption later (UNDP; 2005, 46).

Strategy
Currently, Indonesia has a comprehensive policy against corruption referred to as the National Strategy of Corruption Prevention and Eradication pertaining a long term section (2012-2025) and an already fulfilled medium term (2012-2014). The strategy includes issues like law enforcement, harmonizing of laws, asset confiscation, and public outreach. (Government of Indonesia: 2012).

Institutional Arrangements
Indonesia established its anti-corruption specialized agency in 2005: the KPK or Commission for Eradication of Corruption. The KPK has a three-pronged mandate of prevention, investigation, and education. The commission is headed by a commissioner as Chair and four commissioners as Vice Chairmen. The five commissioners are proposed by the President and approved by Parliament. Police and prosecutors have to inform the KPK if they handle any cases of corruption within fourteen days, and the KPK can take over any case from a detective agency at any stage (UNDP: 2005). After the establishment of the KPK, Indonesia has recorded impressive achievements in the fight against corruption. Ranked as the 136th most corrupt country in 2005, it has improved 48 spots, reaching 88 in 2015 (Transparency International: 2005).
In Afghanistan, like in Nigeria, President Karzai did not show any interest to build a national consensus or to gain the support of the Afghan Parliament for his anti-corruption efforts. Except in a few cases, Afghanistan has also lacked a Supreme Court willing to adjudicate between the Executive and the Parliament in times of confrontation. In 2008, President Karzai decreed a law that established the High Office of Oversight as an umbrella organization to oversee the implementation of an anti-corruption strategy. The anti-corruption strategy was not shared with Parliament, nor was Parliament consulted on its content. In 2014, the HOO Law was tabled in the Parliament. The Wolesi Jirga (the Lower House) rejected the law and passed a resolution that obligated the Executive branch to dissolve the HOO. Although the HOO was not dissolved, thanks to the Mashrano Jirga’s (the Upper House) rejection of the Wolesi Jirga’s resolution, political bickering between the President and the Wolesi Jirga undermined the legitimacy and effectiveness of the HOO. Even after the legislative decree by President Karzai establishing the HOO in 2008, Afghanistan still does not have any proper anti-corruption legislation.

2.5. COORDINATION AND COOPERATION OF ANTI-CORRUPTION AGENCIES

The experience internationally in setting up mechanisms for cooperation and coordination among anti-corruption agencies has varied. While Bulgaria has given the task of coordination to an inter-ministerial commission, in Indonesia, it is the KPK—the country’s specialized anti-corruption agency—that has been mandated to coordinate all anti-corruption activities. The case of Indonesia has been relatively successful in obligating police and prosecutors to coordinate their anti-corruption activities with the commission. The KPK can request that police or prosecutors investigate a case if it cannot find enough evidence to do so itself. As a result of a lack of a constitutional barrier, in Indonesia the KPK can take over the indictment process from police or prosecutors at any time. Furthermore, police and prosecutors must inform the KPK of any corruption case they undertake within fourteen days.

The Independent Corrupt Practices and Other Related Offences Commission (ICPC) in Nigeria and the High Office of Oversight in Afghanistan were mandated to coordinate and supervise anti-corruption activities across state institutions, but they both have failed. In Nigeria, in addition to the ICPC, the Budget Monitoring and Price Intelligence Unit, the Code of Conduct Bureau, and the Economic and Financial Crimes Commission, among others, have also been mandated to combat corruption. While the Nigerian government has shown its political commitment to fight corruption by establishing several agencies, “with this came the risk of blurred boundaries and lack of coordination,” according to the UNDP. In Nigeria, it was not clear which agency was leading the fighting against corruption, and as a result the legal framework did not obligate relevant state agencies to coordinate with the ICPC based on robust mechanisms against corruption. Some suggest that in order for Nigeria to establish coordination among its anti-corruption agencies, “a coalition between the various institutions should be established, with the ICPC Chairperson as Chair.”

Coordination and collaboration were at a minimum during twelve years of President Karzai’s administration. Not only that, some state agencies went as far as to damage one another and tried to create hurdles to each other’s work. This was especially true in the case of anti-corruption agencies. When the HOO was established in Afghanistan in 2008, it was mandated to coordinate and supervise all anti-corruption activities across state agencies. However, the most relevant agency, i.e. the AGO, did not cooperate with the HOO. As discussed in the first part, there were serious inter-organizational conflicts between the AGO and the HOO, the MEC and the HOO, and the AGO and the SAO.

99 Ibid.
101 Ibid.
102 Ibid.
The Attorney General’s Office did not cooperate with the HOO in the prosecution of corruption cases, believing that the HOO duplicated its processes. Specifically, during the last ten years, the Supreme Audit Office has submitted 206 cases to the AGO for prosecution, but the AGO has informed the SAO regarding only a dozen of those cases. The Supreme Audit Office complains that whenever they insist to be informed about a case, the AGO responds that the Attorney General’s Office reports only to the President. Meanwhile, the National Directorate of Security has submitted some 1,200 cases to the AGO during the Karzai administration, but very few cases have been prosecuted. According to an advisor to President Ghani, some of these case files went missing while in the possession of the AGO.

To conclude, coordination and cooperation among anti-corruption agencies requires a consensus around a common anti-corruption strategy. In addition, since anti-corruption cases are sensitive and often include high-ranking government officials, close and regular presidential oversight is a necessity.

2.6. INDEPENDENCE VS. CAPTURE OF ANTI-CORRUPTION AGENCIES

When Singapore established its first anti-corruption agency in 1952, a majority of its enforcement staff were the same corrupt policemen which had necessitated the new anti-corruption agency to be established in the first place. Therefore, the anti-corruption campaign in Singapore did not initially bear any positive results. In addition, the Corrupt Practices Investigation Bureau staff did not have fixed tenure, and they were reappointed or replaced before they could conclude their investigations. When the People’s Action Party came to power in 1959, it took firm action against corruption by reforming the agency’s human resources and granting the Corrupt Practices Investigation Bureau (CPIB) further authority to prosecute corruption cases (see box 3).

Afghan anti-corruption agencies have lacked independence and were captured in a variety of forms over the last decade. To begin with, the HOO was not independent as an institution because no one, including the head of the HOO, had fixed tenure in office. This meant that the President, in theory, could remove him or her at any time. In practice, this is exactly what happened in the case of Osmani, who was removed after two years in 2010 and replaced by Dr. Lodin as discussed in Part One. As an example of appointing people loyal to the leadership of the government, Osmani was later appointed as a board member of the MEC, despite obvious failures and incompetence.

The political leadership during President Karzai created a weak law, and positioned their own people as senior staff of the country’s anti-corruption agencies. While the head of the agency was selected by President Karzai, the two deputies within the HOO were associates of the First and the Second Vice Presidents. While the head of the HOO was loyal to President Karzai, the Deputy Director of Policy aligned himself instead to First Vice President Marshal Fahim.

Penetration of the agency was not limited to high-level officials. When the GIAAC was dissolved and the HOO was established in 2008, the same people who previously worked for the GIAAC gradually moved over to the HOO. If not impossible, it is very difficult to build an anti-corruption agency out of a human resources team whose senior management is politically affiliated and where the integrity and capacity of the middle and lower-level staff is questionable.

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103 Ibid.
104 Interview with Sardar Mohammad Roshan, Senior Advisor to President Ghani, 28 February 2016.
105 Ibid.
107 Ibid.
110 Ibid.
112 Ibid.
113 Ibid.
Before Anti-Corruption Measures

Political Will
Under the colonial rule, there was no political will to fight corruption in Singapore. Corruption was a low-risk and high-reward activity with no fear of detection or prosecution (UNDP: 2005). Civil servants did not feel the commitment to serve the people and greasing public officials in return for services was widespread (UNDP: 2004, 75).

Strategy
Although an anti-corruption agency existed, it was not guided by a robust strategy nor was the strategy updated to meet the changing environment (UNDP: 2004, 75).

Institutional Arrangements
Under colonial rule, the Corrupt Practices Investigation Bureau (CPIB) was established within the Attorney General’s Chambers in 1952 (UNDP: 2005). The CPIB had investigative authority, but it hardly had any effect on combating corruption (UNDP: 2004, 75).

After Anti-Corruption Measures

Political Will
Singapore attained self-government in 1959. When the People’s Action Party came to power in the same year, it committed to take firm action against corruption. Prime Minister Lee Kuan Yew translated his political commitment into a robust strategy and the development of strong institutions to fight corruption (UNDP: 75, 2004).

Strategy
In 1960, a comprehensive anti-corruption strategy was drafted. The strategy was based on the principle that corruption is caused by both the incentives and the opportunities to be corrupt. Therefore, both the incentives and the opportunities for corruption had to be fought. The high officials’ commitment to a policy of zero-tolerance against corruption and leading by example were the key elements of a strategy that changed people’s attitudes and promoted a clean state (UNDP: 2005).

Institutional Arrangements
Prime Minister Lee Kuan Yew shifted the CPIB into the Prime Minister’s Office and ensured its independence from police and prosecutors. The anti-corruption strategy further increased the authorities of the CPIB to prosecute cases of corruption independently. Since then, the CPIB has proven to be one of the most effective anti-corruption agencies in the world. Singapore’s economic development and governance best practices paved the way for the country to become a hub of international business (UNDP: 2005). Singapore is ranked as the 8th most clean government out of 170 countries on Transparency International’s Corruption Perception Index 2015 (Transparency International, 2015).
3. PART THREE: PROSPECTS OF INSTITUTIONAL ARRANGEMENTS TO FIGHT CORRUPTION IN AFGHANISTAN

3.1. INTRODUCTION

It was established in Part One that the traditional anti-corruption agencies (i.e. law enforcement agencies including the police, the AGO, and anti-corruption institutions established at the insistence of the international community), have failed in the fight against corruption in Afghanistan. In Part Two, it was further argued that countries facing massive corruption, such as Indonesia, Singapore, and Nigeria, among others, have historically opted for specialized anti-corruption agencies to fight corruption, whereas in countries like Bulgaria, where corruption is relatively under control, reliance has been on traditional law enforcement agencies. This third part discusses models of institutional arrangements to effectively and sustainably fight corruption in Afghanistan.

Currently, there are at least two alternative models for institutional arrangements to fight corruption in Afghanistan: one led by the High Council on Governance, Rule of Law, and Anti-Corruption (hereafter referred to as the High Council on Anti-Corruption or HCAC), and another one is an independent anti-corruption commission, or IACC. The NUG has established the HCAC through a decree, despite the fact that it promised to establish of an independent anti-corruption commission. An independent anti-corruption commission was forcefully advocated for by national and international civil society organizations and was actually committed to by the NUG in the London Conference on Afghanistan in December 2014. Each of the two models will be analyzed to determine which would be the most effective and sustainable for Afghanistan considering the country’s legal framework, political sensitivities, security situation, and economic viability. Before exploring the models in more detail, the following part outlines the enabling environment for anti-corruption in Afghanistan that are preconditions for any effective anti-corruption efforts.

3.2. THE ENABLING ENVIRONMENT FOR ANTI-CORRUPTION

Establishing institutions is by no way a panacea for alleviating corruption. In fact, in some countries’ political elites have established institutions in order to hide their lack of political will to fight corruption. For example, in Indonesia before the establishment of the KPK in 2005, a UNDP report concludes: “Some observers suggest that the legislation and the associated institutions were designed to fail—providing a superficial commitment to fighting corruption, but with built-in features to render them inoperable.” The report goes on to suggest that, “This can be considered a particularly sophisticated form of ‘state capture’—indicating the necessity of political commitment at the highest levels in order for any anti-corruption effort to have a chance of being successful.”

The situation in Afghanistan was no different during the former Afghan administration (2001-2014). As outlined in the first part, President Karzai decreed the establishment of five new agencies against corruption in addition to another five traditional state agencies that were supposedly empowered to fight corruption. In spite of this, there was no change in the control or reduction of graft in the country. While the then President and his team used the establishment of a multitude of corruption-fighting institutions to exhibit their political will, in reality these institutions were tailored to fail because their legal mandates were weak and incompetent individuals were appointed to lead them as outlined in the first part of this report.

For this reason, to ensure favorable results, the creation of an enabling environment is a precondition to any anti-corruption initiative. Two major aspects of an anti-corruption enabling environment in Afghanistan would be: first, to develop a broad political consensus that would lead to a clear political vision, and second, to enable civil society actors and citizens to fight corruption.

Political consensus in Afghanistan should entail a strong willingness to fight corruption on the part of a majority of political actors, including the leadership of the Executive branch, members of Parliament and the Supreme

Court. As stated by MEC, political will is much more than the will of the head of the state alone, “but the will of the political class and those who are mandated to fight corruption.” 115 Such a consensus would help Afghanistan avoid the failed path Nigeria took a decade back where despite the fact that Nigeria’s President was determined to fight corruption, the country’s Senate and Public Prosecutor created hurdles to the process and wasted a lot of time in the fight against corruption.

Any political consensus should include a clear political vision and must acknowledge that there is massive corruption within a country and that it has resulted in both a dysfunctional state and discontent of its citizens. In the words of an anti-corruption expert:

Corruption has risen to the level of a national security threat in Afghanistan. If the NUG doesn’t reign in corruption in the security sector, it is possible (perhaps even likely) that the NUG will either cease to exist or have such limited power that it will be confined to the urban areas only. 116

Acknowledgment that corruption is a serious problem would pave the way to eliminate another strategic confusion: the prioritization of security over anti-corruption. In Afghanistan’s former administration, the narrative suggested that the security situation did not allow the government to take meaningful action against corrupt officials and powerful non-state actors. It seems this narrative has now penetrated the NUG after only a few months in office. According to an advisor to President Ghani, the NUG fears that collusion between the corrupt elite and the armed opposition might be precipitated if the government takes a resolute and combative approach against corrupt officials. 117

While “collusion among insurgents and corrupt officials” is highly debatable, this issue is pertinent to a state where corruption is not an effect of insecurity but a cause of insecurity. As argued in Part One, corruption undermines the legitimacy of the state in the eyes of the citizens, which directly affects the security of a country. In addition, corruption within Afghanistan’s security sector has prevented the Afghan police and the army from effectively withstanding the insurgency.

**Figure 1: From Political Will to Political Action**

- **Political Will**
  - Acknowledge corruption as a serious threat
  - Zero tolerance against corrupt individuals

- **Political Vision**
  - Draw big picture
  - Direct strategy
  - Prioritize anti-corruption
  - Analyze previous cases with a vision toward the future

- **Political Action**
  - Clear strategy
  - Comprehensive law
  - Independent institutions
  - Undiscriminated prosecution

- **High Level Oversight**
  - Take corrective action and redirect resources if needed

In order to prioritize corruption as a national existential threat and for anti-corruption efforts to remain sustainable, civil society actors and citizens have to be enabled to meaningfully engage in the fight against corruption. The development of laws and institutions, as well as the support of civil society organizations, are the two major components necessary to create this enabling environment.

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116 Interview with Jeffery Coonjohn, independent anti-corruption expert, 7 March 2016.
117 Interview with an advisor to President Ghani, name withheld.
One of the laws that would assist CSOs and other actors to bring transparency and hold government officials accountable is the Access to Information Law (ATI). The NUG has made good progress in signing the ATI Law in late 2014, which was followed by the establishment of the Oversight Commission on Access to Information (OCAI). However, the Afghan ATI Law is weak and in need of amendments, and the OCAI requires independence and further strengthening. The NUG has provided very little attention to the commission despite numerous promises made by the President and the CEO.\textsuperscript{118}

Further compounding these issues is that Afghanistan has neither a whistle-blower protection law nor a grievances redressal law. A whistle-blower protection law has been drafted and tabled in the Parliament by the Anti-Corruption Caucus of the Parliament. Afghanistan also lacks a grievance redressal law through which citizens would be able to report complaints and demand accountability. Promulgation of such laws would pave the way for the media, civil society, and citizens to engage in and contribute to the fight against corruption.

In order to witness this type of contribution, the media and civil society must be protected by the government of Afghanistan and sustainably supported by the international community. Since 2004, NAI has registered 44 cases of killings and more than 450 cases of violence against journalists.\textsuperscript{119} Most of these violations occurred when journalists asked government officials for information. As a result, it’s clear that journalists require protection by law enforcement agencies. In addition, both media and civil society organizations are under serious financial constraints. While the independence of media is a serious concern, according to an assessment, the top threat to both media and civil society is not security but lack of financial sustainability.\textsuperscript{120} Therefore, political and legal support by the government and adequate financial support by the international community would be crucial for media and civil society organizations to play a defining role in the fight against corruption.

### 3.3. Institutional Arrangement Models to Fight Corruption in Afghanistan

After two weeks in office, the National Unity Government swiftly removed and/or reduced the powers of the institutions mandated to fight corruption in the country. On 10 October 2014, Resolution No: 3 of the cabinet removed the oversight authority of the AGO, the NDS, and the HOO. It further stated, “The HOO shall only register assets and simplify business procedures.” It states that the HOO does not have the authority to provide oversight or audit any government agency. It further states that “The budget and staff of the HOO shall be reconsidered based on the above duties.”\textsuperscript{121} In light of this, the cabinet resolution removed case tracking, complaints handling, public education, and the oversight and audit authority of the HOO. Subsequently, the HOO staff were dramatically reduced.\textsuperscript{122} The decision was welcomed by anti-corruption experts because the oversight mechanisms were duplicative and added to corruption instead of curbing it.

After reducing the mandate of the HOO, the idea of an alternative to the HOO has always been discussed among government officials, donors, and civil society organizations. There are generally two models of institutional arrangement being discussed among the anti-corruption stakeholders. The government of Afghanistan has established an ACJC and a High Council on Governance, Rule of Law, and Anti-Corruption (HCAC), while some national and international civil society organizations have proposed an alternative: the establishment of an independent anti-corruption commission. In the following sections, the recently announced ACJC shall be discussed and evaluated. Later each of the two models are presented and analyzed. In addition, each model will be evaluated considering existing international experience as outlined in Part Two, in order to identify the best model for Afghanistan.

\textsuperscript{118} Interview with Ainuddin Bahaduri, member of Oversight Commission on Access to Information, dated 8 September 2016.
\textsuperscript{120} Ibid.
3.3.1. ANTI CORRUPTION JUSTICE CENTER (ACJC)

On May 5th 2016, President Ghani announced the establishment of the ACJC at a conference organized by the EU Delegation in Afghanistan. The successful trajectory of the Counter Narcotics Justice Center (CNJC) had convinced the stakeholders in Afghanistan that replicating it in the area of anti-corruption would result in a similar success story. The fact that the CNJC is immune from political interferences from within the Afghan government or Afghan non-state actors, as well as the availability of financial and technical resources, the agency has resulted in a substantial increase in successful prosecutions of individuals involved in the narcotics trade. Since its establishment in 2005, it has successfully prosecuted hundreds of high-level cases of narcotics in Afghanistan.

The CNJC could be called an integrated justice system for counter narcotics, where specialized counter narcotics units of the police, attorneys, and judges are placed in a segregated justice center separate from the principal state organizations which investigate, prosecute, and sentence narcotics-related cases. Counter Narcotics Police of the Ministry of Interior, specialized prosecutors from the Attorney General’s Office, and the Counter Narcotics Tribunal of the judiciary are well trained, receive top-up salaries from the donor community, and are placed next to the Kabul International Airport away from the mainstream justice system buildings.

In order for a case to be conducted by the CNJC, it has to pass certain thresholds of seriousness. Rather than petty drug sellers, it is the drug lords who have been targeted by the CNJC. If there is not sufficient evidence to prosecute an individual, he or she is released before the primary hearing. All cases usually take only three months to go through the three-tier court system. As a result of sufficient resources and a lack of hindrance by political interference, the specialized police and prosecutors are able to provide optimal conditions for a swift collection of evidence.

In replicating the CNJC, and fulfilling a detection, prosecution, and conviction mandate, the ACJC could be assisted by the Major Crimes Task force of the Ministry of Interior for detection and the Counter Corruption Courts from the judiciary to hear corruption cases. Upon shifting the Counter Corruption Unit from within the Attorney General’s Office into the ACJC, the justice sector’s chain of investigation, prosecution, and conviction would come under one roof. In addition, defenders of the ACJC further suggest that a confiscation order enforcement unit should be established within the Ministry of Finance to trace and recover criminal assets.

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125 A working concept note of anti-corruption justice center.
126 The working primary concept note for anti-corruption justice center.
127 The working primary concept note for anti-corruption justice center.
The ACJC will not conduct all corruption-related cases, but like the CNJC it would look into the most serious of these cases. According to the ACJC concept note, “The threshold for cases to be adopted would be set around a combination of public interest, national security, seriousness of the offense, monetary value, and position held.”

By shifting the specialized agencies of the justice sector organizations into a justice center, effectiveness and speed would be brought to thousands of pending corruption cases in Afghanistan. The ACJC would bring a strong element of enforcement to anti-corruption—something that was hardly considered seriously as a result of the lack of political will during Karzai’s administration. Like the CNJC, the ACJC is expected to be immune from political interferences both from within the Afghan state and from powerful non-state actors, since the ACJC would be closely monitored by the international community.

Despite the above-noted merits, the ACJC structure lacks a comprehensive approach to anti-corruption in Afghanistan. As discussed in Part Two, international experience shows that successful anti-corruption agencies have a three-pronged strategy (i.e. prevention, investigation, and education), as in the case of Indonesia. An exclusive investigation-led strategy to combat corruption may be successful in the short term, but it could also end up where the CNJC did after several years. Although the Counter Narcotics Justice Center was successful in its mandate to bring hundreds of drug lords to justice, it was unable to contribute to its ultimate objective of reducing the narcotics business in Afghanistan. Several surveys show that narcotics production and business have seen an increase, not a decrease, since the establishment of the CNJC. This counter narcotics failure should not be attributed solely to the CNJC but more broadly to the general strategy of counter narcotics in Afghanistan. The CNJC case shows that when an enforcement-led strategy is not complimented by equally strong preventive measures, it might succeed in one area but fail in bringing real and meaningful change to the bigger picture.

In addition, the ACJC has suggested that there would be a threshold to cases that it would handle, but it has not established an independent mechanism to determine what cases to be handled by ACJC and tracking of those cases. In addition, apart from international community’s oversight role, independent mechanisms to hold ACJC accountable is necessary. Such an independent oversight and decision-making body is critical and would be a determining factor in the success or failure of the ACJC.

### 3.3.2. THE HIGH COUNCIL ON GOVERNANCE, RULE OF LAW AND ANTI-CORRUPTION (HCAC)

At the London Conference in December 2014, the NUG submitted an ambitious plan for the coming five years—Realizing Self-Reliance: Commitments to Reform and Renewed Partnership. In order to tackle corruption, the document promised the establishment of a specialized and independent anti-corruption commission “with time-bound prosecutorial powers.”

The speed and effectiveness of the NUG in reducing the authority of corrupt agencies and promising to establish a new anti-corruption agency was welcomed by public. These moves increased people’s confidence in the government for a period. According to a survey conducted two months after President Ghani took office, eighty-four percent of the people were happy with the actions of the president and the pace of initiatives being undertaken by the NUG. Both business people and citizens in general were optimistic that Afghanistan was back on the track of development and prosperity.

However, from December 2014 till February 2016, the NUG did not take any practical steps to fulfill its anti-corruption commitments. Anti-corruption was suddenly dropped from the government’s list of priorities for around one and half years. Such a long delay changed public opinion against the government. This was reflected in the Asia Foundation’s A Survey of Afghan People 2015, in which eighty nine per cent of people indicated that corruption was a problem in their daily lives.
After almost one and half years, the National Unity Government has seemingly changed its mind and ignored the commitment it made in the London Conference to establish an anti-corruption commission and has come up with another idea - to create a High Council of Governance, Rule of Law and Anti-Corruption (HCAC). In late February 2016, Sardar Mohammad Roshan, the President’s Senior Advisor for Transparency in Development Projects, reported in an interview that the HCAC would be presided over by the President would include the CEO, Chief Justice, and senior representatives from other relevant agencies. According to Roshan, the HCAC would be assisted by a “small” administrative office within the Palace. In early March 2016, President Ghani signed Decree 168 establishing the HCAC. Along with this decree, the NUG came up with an anti-corruption strategy brief which outlined its overall policy to fight corruption in the country. In the following section the strengths and weaknesses of that anti-corruption strategy brief and of the HCAC will be evaluated.

3.3.2.1. EVALUATING THE ANTI-CORRUPTION STRATEGY BRIEF

The four-page strategy brief of the NUG attributes pervasive corruption to fragmentation of the government, institutionalized capture and impunity. In order to tackle corruption, the strategy states that the NUG took high level actions—brought a cadre of reformers to the government, opened the Kabul Bank case to end impunity, ensured merit-based recruitment, reformed the procurement system and advanced budget management. The NUG promised to take anti-corruption to a new level in order to address public grievances. In addition, the NUG’s anti-corruption strategy was quite candid in diagnosing that corruption in the defense sector, in particular, and procurement and appointments across the government, were the main areas of focus. In a bold statement the NUG asked donors to make a choice between elite “settlements” and fighting corruption. Finally, the strategy brief prioritized the ministries of interior, mines, transport and education as the next focus after the Ministry of Defense in the fight against corruption. Such decisions indicated some clarity of vision and realism.

However, the NUG anti-corruption strategy suffers from five major shortcomings: a lack of consistency, false assumptions, a weak institutional model, a lack of consultation with critical actors, and incomprehensiveness.

When the NUG was established in October 2014, it took two major actions against corruption with institutional significance. It removed many of the authorities of the HOO because it had proven to be both incompetent and corrupt. Secondly, the NUG promised, during the London Conference of 2014 (in its Realizing Self-Reliance paper), to establish an independent anti-corruption commission that would draw its membership from civil society, legal experts and government officials. Contrary to its previous commitments, the NUG seemed to backtrack on these two commitments: it has reinvigorated the HOO by increasing its staff from 131 to 300 in the 1395 fiscal year (2016). Contrary to its commitment in the London Conference, the NUG came up with the HCAC that draws its members exclusively from government institutions. This is inconsistent with the earlier commitment of the government.

The original strategy also implied that those responsible for the Kabul Bank debacle and corrupt officials at the Ministry of Labor, Social Affairs, and Disabled, and at the Ministry of Urban Development would receive punishment. This was not the case and the public is still, to this day, unaware of what transpired after these cases were passed to the AGO’s office. Regarding Kabul Bank, people saw only the NUG’s misguided willingness to enter into a $900 million housing development project (the “Smart City Township” project in early November 2015) with Khalil Ferozi (the Kabul Bank felon). The NUG strategy seemed to assume that by assigning new individuals with clean backgrounds to the positions of Attorney General and Chief Justice

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134 Interview with Sardar Mohammad Roshan, Senior Advisor to President Ghani, 28 February 2016.
136 Ibid.
137 Ibid.
that the justice sector in Afghanistan would suddenly be able to take investigative and prosecutorial actions against corruption. However, it will likely take years to reform the judicial system and build capacity at the AGO and courts sufficient to enable them to effectively fight corruption.

Convinced by the relative success of the National Procurement Commission and National Procurement Authority, the HCAC seems to have adopted the former’s institutional setup. However, such an institutional model is unlikely to be effective in Afghanistan as long as the HCAC is required to rely on implementation by the current law enforcement agencies of the Afghan government which are themselves corrupt. Such an institutional model has worked in countries like Bulgaria, but as outlined in the second part, Bulgaria was able to establish an inter-ministerial coordination mechanism because its existing law enforcement agencies were functioning properly and appropriate anti-corruption laws were in place.

The situation in Afghanistan, however, is not like Bulgaria since the judicial institutions in Afghanistan are highly corrupt. It may well be more effective, therefore, if Afghanistan were to follow the model of an independent anti-corruption institution. A more appropriate model for Afghanistan may be that employed in Indonesia where a specialized anti-corruption agency was established with a three-pronged approach consisting of prevention, investigation and education to both fight corruption and to reform the bureaucracy as a preventive measure. The HCAC, which will probably meet every week, does not seem to be able to develop anti-corruption strategies, draft laws, reform the bureaucracy, coordinate anti-corruption activities or, most importantly, to provide oversight over the law enforcement agencies in addressing corruption. All of these shortcomings may also be due, in part, to the high-level nature of its membership and its lack of independence (from the government bureaucracy).

Unlike the Kuala Lumpur Statement on Anti-Corruption Strategies, the NUG’s anti-corruption strategy does not meet the minimum standards of international best practices. The strategy talks as if the NUG is in constant consultation on anti-corruption issues with its citizens, civil society, and the Ulama, which is not true. It should be further noted that the current NUG’s anti-corruption strategy and decree 168 were not discussed in the cabinet or the Council of Ministers. Neither was the parliament consulted. The Kuala Lumpur Statement on Anti-Corruption Strategies recommends stakeholder involvement stating that, “State institutions (executive, legislative and judiciary) at national and sub-national levels, civil society organizations, private sector, media, professional societies, trade and industry associations and labor unions, academic institutions, youth and cultural organizations, can serve as important allies and partners in the development of anti-corruption strategies.” In addition the Statement advises that the “development of strategies should be institutionalized to ensure continued relevance and timely modification of the anti-corruption strategies.” The development of the NUG’s anti-corruption strategy brief has ignored practices which are likely to ensure its success. And finally, the NUG’s strategy is not comprehensive by international standards. Most anti-corruption strategies typically have a three-pronged approach: prevention, prosecution and education. While the NUG’s strategy seems to have been aware of such a standard it has chosen the wrong institutional arrangement for addressing those functions. The NUG model, rather relies on the corrupt and ineffective justice sector for prosecutions, the infamous HOO to initiate preventive measures and placing the HCAC secretariat in charge of public outreach. In addition, the strategy fails to mention anything about the enabling environment for anti-corruption. Two major aspects of such an environment is the creation of broad political consensus and enabling civil society and citizens to fight corruption. The government has not, however, tried to build a political consensus. In terms of enabling civil society and citizens, the strategy fails to mention anything about promoting a culture of transparency (access to information) and accountability to public (establishing mechanism to address public complaints).

141 For the purpose of this research, the meeting minutes of the cabinet was reviewed for the last three months preceding the decree, there was no mention of proposals to establish such a council.


143 Ibid.
3.3.2.2. EVALUATING THE ANTI-CORRUPTION DECREE

The NUG has translated the anti-corruption strategy into a legal document through decree 168 of the President. The decree that was signed on 3 March 2016, established the High Council on Governance, Rule of Law, and Anti-Corruption. (HCAC)\(^ {144}\) According to the decree, the HCAC shall be presided over by the President and has twelve other government officials as members: the CEO, the two vice presidents, the Chief Justice, two of the senior advisors to the President, the Minister of Justice, the Attorney General, the Director Generals of the Supreme Audit Office, the HOO, the Independent Administrative Reform and Civil Services Commission, and the Independent Local governance Directorate. The HCAC is mandated to take preventive measures against corruption, raise public awareness and promote public accountability. The HCAC shall be assisted by a secretariat that is part of the Administrative Office of the President. Article 7 stipulates that if the secretariat identifies activities that would lead to corruption, it would report these to the HCAC. Upon the HCAC’s approval these cases will then be prosecuted.\(^ {145}\)

![Figure 3: the Structure of High Council on Governance, Rule of Law, and Anti-Corruption](image)

In establishing the HCAC, *independence*, a necessary but minimum international standard of an anti-corruption institution has not been taken into consideration. While the HCAC is not a comprehensive anti-corruption model, there are critical issues with the HCAC’s accountability and membership criteria.

The strategy acknowledges the institutionalized capture of government agencies by elites (politicians) and their followers but the strategy assigns politicians not independent figures to directly take charge of the fight against corruption. This will likely politicize the whole process of anti-corruption. An anti-corruption agency requires independence and impartiality not only from non-state actors but also from government officials and the political


\(^{145}\) Ibid.
leadership. Assigning heads of various institutions as members of the council, is against the “apolitical stance, impartiality, neutrality...” appointment requirements of Jakarta Statement on Principles for Anti-Corruption Agencies and the UNCAC. Individuals involved in high level corruption, especially politicians, may try to discredit the institution by accusing it of being politically motivated. In addition, the political nature of the council runs the risk of actually being politically motivated. It would be very difficult, if not impossible, for the council to ensure that anti-corruption cases against high ranking officials are taken up without political deals. More concerning is lack of action against corrupt individuals at the highest level due to political interests of a divided government.

The NUG has announced the establishment of the ACJC and it has already decreed the establishment of the HCAC. However, the institutional link between the two is not clearly defined. In addition, there is nothing in the strategy brief on how the HCAC would deal with the 1,500 cases of corruption from the former administration. It does mention that the government will not be able to prosecute all cases but it does not go beyond that and does not say anything how the government would create some deterrence through consistency and predictability of prosecution. The preventative aspect of the HCAC has further blurred the role of the existing institutions. The HOO and IARCSC as members of the HCAC and may continue to register assets and reform administrative procedures respectively. However, according to article 6 of the decree, the HCAC secretariat would prepare Vulnerability to Corruption Assessments (VCAs)—something MEC has been doing for the last five years. The development of a national anti-corruption strategy is given to the secretariat of the HCAC which still has not been established. The strategy and the decree have already overwhelmed the so-called “small” secretariat with development of an anti-corruption strategy, preparing VCAs, and administrative and logistics affairs of the HCAC among others. Meanwhile, the President’s Special Representative Office for Reform and Good Governance, while continuing to exist, has been swiftly marginalized in the newly created institutional arrangements against corruption.

In terms of its membership, the HCAC draws its members from two branches of the state but excludes the third - the parliament. The parliament is an independent branch of the state with an oversight function. Therefore, leaving out Parliament from such arrangements weakens the position of the HCAC. If it were to be a fully inclusive membership, parliamentarians should have been included.

Accountability of the HCAC is even more problematic. According to the decree, the HCAC shall report to the cabinet and the people each year. The HCAC is presided over by the President and half of its members are also members of the cabinet; it seems that the HCAC members are accountable only to themselves. This may meet the requirements of internal accountability but it is not an external accountability mechanism by any standard.

3.3.3. INDEPENDENT ANTI-CORRUPTION COMMISSION

Independent anti-corruption commissions have been tried across the world with mixed results. Singapore and Hong Kong provide very successful cases, as were Malaysia and Indonesia, both countries with relatively successful results in anti-corruption through specialized independent commissions.

In Afghanistan, the vision for an anti-corruption commission is shared among Integrity Watch Afghanistan, Transparency International, and to some extent the MEC. (Please see the discussion below for further details) However, it has been Integrity Watch Afghanistan that has come up with some elaboration on the structure and functions of such a commission.

In August 2015, Integrity Watch Afghanistan submitted a policy brief, Taking on Corruption: Institutional Arrangements to Fight Corruption in Afghanistan, to Senior Officials Meeting (SOM) that was held in Kabul in September 2015. In that brief, Integrity Watch elaborated on the need for such a commission with suggestions as to its mandate, structure, and function. Integrity Watch has argued that an anti-corruption commission with a prevention, education, and oversight mandate is necessary to fight corruption in Afghanistan. The commission’s prevention and education mandate should also include knowledge management, coordination among anti-corruption agencies, integrity capacity building for civil servants, and public outreach.

In addition, it is proposed that the commission should have oversight authority over the detection and prosecution of corruption cases in terms of case tracking and performance evaluation. Very similar to the ACJC, Integrity Watch had suggested that prosecutors from the Attorney General’s Office and police from the Ministry of the Interior should be specially assigned and housed in the commission but administered by their respective agencies to investigate, and prosecute cases of corruption. This would ensure that the commission maintains a prosecutorial role without infringing on the Constitution. Integrity Watch further proposed that a deputy portfolio to fight corruption be established inside the AGO to collaborate closely with the commission.

According to Integrity Watch, in order to ensure its independence, impartiality, and effectiveness, as well as to resist political pressure from within the government and non-state actors, the commission should have several commissioners (perhaps five). These commissioners should be appointed by the President for a fixed term through a competitive selection process led by civil society and the international community. Furthermore, leadership of the commission should rotate among the commissioners. Only such a commission would meet the requirements of Article 6 of the UNCAC, to which Afghanistan is a signatory.149

Figure 4: Independent Anti-Corruption Commission and broader institutional arrangement for fighting corruption

Legend
- To be established
- Established
- Proposed relationship
- Existing relationship

149 Ibid.
3.3.3.1. ANALYZING A POSSIBLE INDEPENDENT ANTI-CORRUPTION COMMISSION

An independent anti-corruption commission entails a comprehensive approach to anti-corruption in Afghanistan because it would complete a three-pronged strategy of prevention, investigation, and education.\footnote{150} The commission should be led by several commissioners, so it is expected to be immune from political interferences. There would be vertical accountability within the Afghan government, meaning that the commission would provide horizontal coordination and oversight and would thus enable the President to make informed decisions regarding how to fix the bureaucracy. Since the commission has a strong enforcement dimension, it would bring changes in the short term, and the long-term effect would be ensured by its preventive and public outreach activities.

The institutional enforcement arrangement of the commission would be very similar to that of the ACJC because it is suggested that specialized police and prosecutors should be housed inside the commission while the ACJC proposes that police and prosecutors, as well as judges, be placed inside a justice center.\footnote{151} The proposed commission providing an oversight function over the ACJC would ensure that prosecutions are done in a timely manner and that the process is immune from political interference.

Generally, the proposed commission together with other agencies would make a comprehensive anti-corruption institutional arrangement that would include prevention and outreach. However, while a commission led by several commissioners would ensure a balanced leadership, it comes with the risk of political power-struggle between the two teams of the NUG, considering the current situation in Afghanistan, as well as subsequent delays and political consideration in the appointment of commissioners.


CONCLUSIONS

Looking at the institutional arrangements during both Karzai’s administration and the NUG from a three-pronged approach of prevention, prosecution and education, Karzai relied on the traditional law enforcement agencies for prosecution, and on HOO and MEC for prevention and education. Karzai’s anti-corruption institutional arrangements failed due to lack of political will, corrupt law enforcement and justice institutions, parallel functions in the mandates of agencies, inter and intra organizational conflicts, institutional capture and finally lack of high level strategic direction and coordination.

The NUG created a new prosecutorial mechanism in the form of ACJC, and divided the prevention and education tasks between the HOO, MEC and the secretariat of the HCAC. In addition, the NUG initially created the President’s Special Representative Office for Reform and Good Governance for high level coordination. Later, the NUG excluded the President’s Special Representative Office and decreed the creation of HCAC presided over by the President with the same function.

The NUG has taken a bold and correct step by establishing the ACJC for investigation and prosecution purposes but has failed to address the problem of external oversight of the ACJC itself or to consider robust institutional arrangements for the prevention and education aspects of anti-corruption. In addition, the NUG has further blurred the mandates of agencies, created institutions with weak accountability mechanisms, assigned tasks to the wrong institutions, kept the failed institutions of Karzai’s administration thus risking an organizational sub-optimization, and most importantly has not ensured that anti-corruption institutions will be independent and non-political, as required by international standards.

The NUG has blurred the mandates of MEC and the HCAC secretariat by giving the responsibility to conduct VCAs to the latter as well, and complicated the task of strategic direction and high level coordination by retaining the Special Representative Office while creating the HCAC.

The NUG has tasked the HCAC secretariat, a unit within the Administrative Office of the President, to lead the public outreach to fight corruption and the secretariat is tasked to prepare the anti-corruption strategy while the former should have been given to the anti-corruption agency and the latter to the MEC considering its expertise in anti-corruption.

In the first year in office, the NUG initially seemed to have decided to gradually dissolve the HOO by reducing its staff in the national budget, but in the second year the HOO was re-funded to hire new employees. In addition, MEC should have been focusing on its monitoring and evaluation mandate but it has maintained a number of other activities than it was supposed to. The HOO is an institution that uses resources but contributes little to the fight against corruption—worse, its infamous history raises questions about the political will and understanding of the NUG in terms of institutionalizing the fight against corruption.

Above all, the NUG has not ensured the independence, accountability and apolitical nature of the anti-corruption institutions. The establishment of ACJC is an important step forward but it lacks external oversight in terms of case tracking. The ACJC seems to be overseen by the HCAC which risks the politicization of the whole process of prosecution of corruption cases. If the HCAC is a high level coordination body, as it seems, it should include membership from the National Assembly. If HCAC is foreseen to play the role of an anti-corruption agency, which seems so by having an institutional link with the ACJC, it is against UNCAC and Jakarta Declaration on Anti-Corruption Agencies that obligates/suggests apolitical membership of an anti-corruption agency. In addition, there is an obvious accountability gap when it comes to HCAC, since it reports to the cabinet on annual basis while it is presided over by the President and almost all cabinet members.

Going forward with such weak and overlapping, and sometimes contradictory, institutional arrangements to fight corruption, the NUG risks further waste of public and the international community’s resources. It would increase the risk of failure in anti-corruption in Afghanistan and would eventually further ruin the trust of the Afghan people in the government’s efforts for reform. It is in this context and under such circumstances that national and international anti-corruption stakeholders, experts and civil society organizations propose a well-informed, robust and strong institutional arrangements to fight corruption in Afghanistan.
Anti-corruption experts and stakeholders are unanimous in their belief that only a specialized anti-corruption agency can bring a difference in the fight against corruption in Afghanistan. According to the MEC, the agency was consulted on the document the NUG presented at the London Conference in December 2014, in which it promised to establish an anti-corruption commission with prosecutorial power and membership that was drawn from civil society organizations, legal experts, and the government. A number of donors believe that such a specialized anti-corruption agency is required in Afghanistan, should be thoroughly weighed.

Transparency International also suggests that traditional law-enforcement agencies would not be capable to tackle corruption in Afghanistan. According to TI, an anti-corruption commission in which police and prosecutors from their respective agencies are housed in the commission but administered by their relevant agencies is the optimal option for Afghanistan. Experts who have worked on the issue of anti-corruption in Afghanistan for several years, believe the existing law-enforcement agencies are unable to take on corruption effectively in Afghanistan. For these reasons, the whole package of the institutional arrangements the NUG has come up with does not have the endorsement of national or international stakeholders.

In light of the above discussions, it is believed that the Independent Anti-Corruption Commission and the ACJC would complement each other in a comprehensive three-pronged anti-corruption strategy, in which the ACJC would provide enforcement and the IACC would prepare a national anti-corruption strategy, provide strategic direction and horizontal coordination, assess the anti-corruption plans and efforts of the government agencies, take preventive measures against corruption, conduct public outreach and mobilize and assist civil society and media against corruption, track corruption cases from its detection stage, receive corruption related complaints and follow them up with relevant agencies, and finally provide external oversight to the ACJC in terms of case tracking and performance assessment. The commission would also provide timely and informed recommendations to the president on the above issues.

In order to ensure its independence, impartiality, apolitical nature, the IACC may have five or seven commissioners identified by a Selection Committee and appointed by the President for a fixed tenure in office. The leadership should rotate among the commissioners. All the existing counter and anti-corruption agencies should be dissolved/merged into the IACC’s secretariat.

152 Interview with Sayed Hamidullah Tawab, Monitoring and Evaluation Team Leader, MEC, 8 February 2016.
153 Interview with Josie Stewart, Governance Advisor, DFID-Afghanistan, 10 February 2016.
154 Interview with Rukshana Nanayakkara, Regional Outreach Manager, Asia Pacific Department, Transparency International, 9 February 2016.
155 Interview with Jeffery Coonjohn, independent anti-corruption expert, 7 March 2016.
RECOMMENDATIONS

- The NUG should consider corruption as a threat to national security and should treat the fight against corruption a top priority as dealing with insecurity.
- The NUG’s leadership should demonstrate political will at institutional level and a vision to fight corruption. This should be reflected in anti-corruption policies, legal frameworks, and plans for key institutions and should prioritize the security sector, justice system and financial sector as priority areas for intervention.
- The Government of Afghanistan should implement its commitment to strengthen the ACJC as a coordination mechanism for the law enforcement and justice institutions to fight corruption where, without further delays, specialized police, prosecutors, and judges should sit under one roof to adjudicate serious corruption related cases. The international community should politically and financially support the creation of ACJC.
- The Government of Afghanistan should establish an independent anti-corruption commission, based on Jakarta Principles to oversee anti-corruption efforts, strategic direction, preventive measures, case-tracking of ACJC, and coordinate a whole-state endeavor against corruption.
- The independence of proposed anti-corruption commission should be ensured by appointing five commissioners for a fixed tenure to lead the anti-corruption commission to ensure independence, impartial decision-making and to avoid political pressure or influence.
- The proposed independent anti-corruption commission should be mandated to perform the role of an ombudsman office as well to receive and manage corruption related complaints and report.
- The proposed independent anti-corruption commission should have an international advisory group to provide advice to the commission and key government institutions in preparing and implementation their anti-corruption plans.
- Dissolve institutions with parallel functions such as the High Office of Oversight that have proven to be ineffective and continue to waste financial and human resources.
- Restrain the role of the HCAC to high-level coordination to avoid duplication of functions and competition among the state institutions that have a role in anti-corruption in particular between the HCAC and the proposed anti-corruption commission.
- Include independent members, including civil society, in the HCAC as either members or permanent observers to ensure transparency, impartial decision making and to reduce the gap between government and the people.
- Corruption detection agencies such as Supreme Audit Office and Major Crimes Task Force should be reformed, including drastic changes in its leadership and increasing professional staff at technical level, to improve detection of corruption.
- Other key institutions such as Oversight Commission on Access to Information should be provided political and financial support and independence to promote a culture of transparency across government institutions.
ANNEXES

ANNEX I: Counter and Anti-Corruption Agencies, Units and Related Institutions

<table>
<thead>
<tr>
<th>No</th>
<th>Agency title</th>
<th>Type of legal basis</th>
<th>Date of establishment</th>
<th>Core functions and related provisions</th>
</tr>
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</table>
| 1  | High Council on Governance, Justice and Anti-Corruption | Executive decree    | Decree 168 dated 12/28/1394 | Article six: 
<table>
<thead>
<tr>
<th>No.</th>
<th>Institution</th>
<th>Type of Document</th>
<th>Relevant Document</th>
<th>Article/Article Section</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>2</td>
<td>Independent Joint Monitoring and Evaluation Committee</td>
<td>Executive decree</td>
<td>Decree 61 dated 27/12/1388</td>
<td>8</td>
<td>The High Office of Oversight shall propose and establish within its own structure a Monitoring and Evaluation Committee consisting of national and international experts within three months. The Committee shall assist government agencies to prepare effective development indicators, and shall conduct necessary monitoring and evaluation of anti-corruption measures at national level, donor countries assistance, and international organizations and shall report to the President, National Assembly, people, and the International community every six months.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Executive decree</td>
<td>Decree 115 dated 28/06/1395</td>
<td>1</td>
<td>The [MEC] shall functions independently with a limited number of staff.</td>
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<td></td>
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<td>2</td>
<td>The Monitoring and Evaluation Committee Against Corruption shall consists of six national and international expert committee members three of whom shall be appointed by the President of Afghanistan and the remaining three proposed by the international community and approved by the President. The committee members shall work for a two year tenure based on the terms of reference attached with this decree.</td>
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<tr>
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<td>3</td>
<td>all Afghan government and international agencies in Afghanistan are obligated to share the required information with the committee, implement its recommendations, and report on the implementation of the recommendations.</td>
</tr>
<tr>
<td></td>
<td>High Office of Oversight</td>
<td>Legislative decree</td>
<td>Law on Supervision and Implementation of Anti-Corruption Strategy, Official Gazette (1387AH [2008]), Issue Number: 957.</td>
<td>9</td>
<td>oversight to National Anti-Corruption Strategy, propose to amend the strategy, conduct research on causes of corruption, take preventive measures to fight corruption, propose recommendations to government agencies, evaluate and provide oversight to all government appointments, oversee the implementation of anti-corruption legislations, propose recommendations to the president on procurement process, re-evaluate assessed documents when needed, request information from government agencies, evaluate business simplification documents of government agencies, receive corruption related complaints, establish relations with global and international agencies to fight corruption, hold integrity related training courses among others.</td>
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<tr>
<td></td>
<td></td>
<td>Cabinet resolution</td>
<td>resolution 3 dated 01/08/1393</td>
<td></td>
<td>The High Officer of Oversight shall register assets and simplify business procedures only. Its Tashkeel shall be reduced accordingly.</td>
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<tr>
<td></td>
<td></td>
<td>HCAC resolution</td>
<td>Resolution 2 dated 20/06/1395</td>
<td></td>
<td>The High Office of Oversight has the authority to assess/evaluate all government agencies based on a regular and planned schedule.</td>
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<tr>
<td></td>
<td>Institution/Agency</td>
<td>Type of Law</td>
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| 4 | Anti-Corruption Justice Center                                                    | Executive   | Decree 53 dated 10/4/1395                                                           | Article 1: In order to prosecute and adjudicate major corruption cases where high ranking officials are involved, the ACJC shall be established.  
Article 3: the Supreme Court, the AGO and the MOI shall create special units.  
Article 5: the High Council and on Rule of Law and Anti-Corruption can forward other corruption related cases to the ACJC.  
Article 7: the AGO shall take care of financial, administrative and logistic affairs of the ACJC.                                                                                               |
| 5 | President Special Representative for Reform and Good Governance                    | Executive   | Decree                                                                              | Provides oversight on the behalf of the president in the fields of reform and good governance.                                                                                                               |
Creation of a sound administration through planning and implementing reforms in the government bureaucracy.  
Article 21:  
1. The commission shall have a secretariat in the area of reform that shall function under the head of the commission.  
2. The secretariat shall oversee the implementation of reform programs and shall report to the head of the commission.                                                                                   |
<p>| 8 | Special Anti-Corruption Prosecution                                               | Legislative | Law on Supervision and Implementation of Anti-Corruption Strategy, Official Gazette (1387AH [2008]), Issue Number: 957.                | Article 19: the AGO shall establish anti-corruption prosecution units at the center and provinces.                                                                                                           |</p>
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<tr>
<td>9</td>
<td>Major Crimes Task Force</td>
<td>It is a directorate within the MOI. A draft law to establish it could not complete its legislative cycle and remains with the Ministry of Justice.</td>
<td>Mandated to detect kidnapping, organized crime and grand corruption cases.</td>
</tr>
<tr>
<td>10</td>
<td>Asaan Khedmat (one stop shop)</td>
<td>MOU between Ministry of Finance and Azerbaijan government dated 22/04/1395</td>
<td>A unit within the ministry of finance that leads the One Stop Shop system. It will provide the facilities to receive passport, tazkara, marriage certificate, driving license, car plate number, birth certificate, death certificate, educational certificate among others under one ceiling. Based on SMART deliverables of Brussels Conference, 15-25 business procedures shall be simplified and integrated into the Asan Khedmat (one stop shop).</td>
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<tr>
<td>12</td>
<td>119 Hotline</td>
<td></td>
<td>A unit within the MOI that receives corruption related complaints among others.</td>
</tr>
<tr>
<td>13</td>
<td>Complaints unit at Administrative Offices of the President</td>
<td></td>
<td>A unit within the AOP receives corruption related complaints at an appeal level.</td>
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<tr>
<td>14</td>
<td>Internal Audit units of each budgetary unit</td>
<td></td>
<td>Each budgetary unit have an internal audit unit that conducts financial audit of the agency on a regular basis. The internal audit units forward cases to the AGO in case evidences of corruption be there.</td>
</tr>
<tr>
<td>15</td>
<td>Control Unit of the Ministry of Finance</td>
<td></td>
<td>It controls the financial transactions of all government agencies on a regular basis and forward cases of corruption where there is evidences to the AGO.</td>
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**Related Counter Corruption Agencies**

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<td>16</td>
<td>National Procurement Authority</td>
<td>Procurement Law, Official Gazette no: 1186 dated 15/07/1394</td>
<td>Article 57: Provides oversight to the procurement conducted by government agencies.</td>
</tr>
<tr>
<td></td>
<td>Oversight Commission on Access to Information</td>
<td>Law on access to information, official Gazette no 1156 dated December 2014.</td>
<td>Article 19: Provides oversight to applicants’ access to information from the government agencies.</td>
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<td>Law</td>
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<td>Law</td>
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