From cosmetic changes to ensuring judicial openness and integrity

Sayed Ikram Afzali, Executive Director

The Supreme Court High Council summoned me this week because they were upset about the results of our National Corruption Survey 2016 that indicated the courts as one of the most corrupt institutions. The Supreme Court in their letter to us dismissed our report as baseless and substandard calling our organization “so-called Integrity Watch Afghanistan”. In a follow-up letter, they asked us to provide the details of survey participants who thought that there was corruption in courts. They also asked us to provide evidence based on which the participants of the survey claimed that they had to pay a bribe. They warned us that we could face prosecution if we fail to meet the demands of the Supreme Court.

The anti-openness mentality dominates

This is not the first time the Supreme Court has summoned someone in an intimidating way to explain survey results. Ali Wardak and Daud Saba, the two authors of National Human Development Report 2007, were summoned to defend the report showing that people choose informal justice over formal justice partly because of widespread corruption in the judiciary. Yama Torabi, the former Director of Integrity Watch and other media representatives have been summoned and intimidated in a similar way. Integrity Watch being summoned by the Supreme Court after two years of the National Unity Government proves that the old mentality still prevails and the changes so far have been cosmetic.

The unfulfilled promise of the President

More than two years ago, President Ghani in his inaugural speech said this about the judiciary: “Unfortunately, there are allegations of corruption in this branch.” He added that corruption in the judiciary “paves the way for insecurity.” He asked the Supreme Court “to carry out a review of all its courts' staff within a month, based on the principle of reward and punishment.” It was clear from the beginning that this was not only an ambitious task but also a fruitless demand from a leadership that failed for years to clean up the judiciary.

However, President Ghani’s appointment of honorable Halim as the Chief Justice created some hopes for reform. But, it has not been able to create a momentum for reform in the judiciary due to two basic reasons: (1) the reform has not been institutionalized and has largely been ad-hoc with President Ghani himself interviewing judges, and (2) the old leadership of the Supreme Court continue to dominate the “reform” process. Therefore, to ensure fundamental reform in the judiciary, the Supreme Court leadership of the High Council and also administration needs to change in an institutionalized manner embracing openness and integrity as the guiding principles for reform.

What can be done?

A whole justice system reform needs to be undertaken including institutions involved in detection, prosecution, and sentencing. The Anti-Corruption Justice Center needs to become independent of political interference from the Presidential Palace and elsewhere. The government should fulfil its commitment of establishing an Independent Anti-Corruption Commission to oversee and coordinate anti-corruption reform.

There are three positions still open in the Supreme Court’s High Council. These appointments should be made in a transparent manner. The positions should be filled through an independent mechanism involving civil society to oversee a competitive process through which a final list of judges to be recommended to the President to choose from, taking into consideration gender, ethnic, and technical backgrounds of nominees.
Leadership of administrative teams of the Supreme Court needs to be changed and new leadership should be appointed through a transparent and competitive process and an independent mechanism of vetting the candidates. However, as a long-term measure, an Independent Judicial Service Commission to oversee appointments, promotions, transfer, and removal of judges needs to be established. Involvement of civil society in such a commission would be the key to its success.

**Community-based monitoring of trials** to promote transparency at the local level, an auditable complaints mechanism including feedback to the complainants on judges and judicial staff that are involved in corruption, and integrity trainings and steps to cultivate a culture of integrity within the judiciary are other steps that the judiciary and President Ghani should take if they are really serious about fighting corruption in the judiciary. Silencing anti-corruption voices will not help any reform efforts.

**Regular follow up brings necessary changes in cold storage construction**

*By Mohammad Haneef Hashimi, Provincial Coordinator, CBM-I Program, Nangarhar Province*

Nangarhar is a province that produces more vegetables than other province in Afghanistan and exports its produce to other provinces as well as abroad. Due to the hot weather, however, it is difficult for farmers to preserve their produce for very long. Because of this situation, it was clear to farmers in Nangarhar Province – as well as to farmers in other provinces with a similar situation – that there was a great need for cold storage. To address this issue, the Ministry of Agriculture, Livestock and Irrigation agreed to build cold storage facilities in several provinces including Nangarhar where one such facility is being built in Farm-e-Hada in Behsud district, at a total cost of $275,000.

The project in Farm-e-Hada, however, has faced several problems including the postponement of both the allocated budget and the redesigning process. During a site visit by local community monitors, it was discovered that progress on the facility was moving slowly and that because the contractor had used oversized stone in the project floor filing, the flooring, after compaction, was not satisfactory. While local monitors held discussions with the project’s implementer to discuss this matter, the problem was still not resolved. Local monitors then reported the problem to the Integrity Watch team who took up the issue with the representative engineer of the donor. The donor promised to find a solution for this issue, but after a while local monitors reported that the problems were still unresolved. This time the Integrity Watch team decided to raise this matter in the government-community coordination meeting. Participants of this meeting visited the project site and again requested the implementer to find solutions for these problems and a copy of their recommendations was submitted to local monitors for follow up.

Local monitors regularly followed up on the progress of this project but continued to observe unresolved problems. The local monitors, however, did not lose their patience and continued in the course of regular site visits to press for quality work. They kept the project under monitoring until all the problems in this important project were eventually resolved. Local monitors are continuing to monitor this project as it is still ongoing.
Community solves Baba Haji School’s problems in Herat

By Sayed Naweed Raee, Local Monitor

Baba Haji School in Herat province hosts nearly 3,000 male and female students, but while it has a sizeable land area, it had quite inadequate facilities. Among other problems, the school had only 15 classrooms, no proper playground, and had not been renovated for a considerable period of time.

Haji Khuda Bakhsh, a volunteer local community monitor mobilized the communities around the school and organized a meeting with the school’s administration. During this community mobilization, the local members of the community showed a lot of interest to contribute to the improvement of the school.

With the urging of the local community a number of improvements were implemented. The school’s main yard of over 600 square meters was cleaned up and flowers were planted, the backyard was leveled and prepared for students to play various sports, drawings were placed on the walls, the school’s electricity was reconnected, the school’s surrounding walls were repainted, and a microphone and amplifier were purchased to be used by students for their events. These improvements were possible only because of the community’s interest and their cooperation and support to the school administration.

Encouraged by the community’s drive to improve their school by themselves, Adina – a private charity foundation – also took an interest in the school and undertook to build six additional classrooms for the students. The construction work on these additional classrooms has already begun.

The school environment is now quite satisfying for both students and teachers. It has also made the local community aware of the important role they can play in the monitoring of their own communities. Students’ parents now regularly visit the school and take up any problems they observe with the school’s administration. Because local communities have been directly involved in reconstruction and improvements in schools like Haji Baba, a sense of ownership and of the importance of monitoring of schools by the people has been created in the area.

There are many more communities who are interested to monitor their schools. Integrity Watch currently runs the Community-Based Monitoring of Schools in 3 provinces and covers 150 schools. In 2017, the program will expand to 9 provinces and will cover more than 270 schools.
Community monitoring of trials addresses fundamental issues in Bamyan courts

Amin Alipoor, Provincial Coordinator at Integrity Watch

In the past, most trials were held behind closed doors with no outside observers thereby marginalizing the people in Bamyan’s provincial center. Except for a small number, the majority of people did not know how a trial should be conducted and were seldom aware of the results of any such trials. The observing of a trial was, in the past, out of question for many who did not only not know their rights but were also scared to go to the courts.

The Community-Based Monitoring of Trials program of Integrity Watch has changed such perceptions within local communities. During the last few years with the support of provincial courts, the program has changed the entire culture of closed-door trials into open trials. People who were once scared of courts are now monitoring the courts and informing court officials about shortcomings in court procedures which they observe.

Following community mobilization and awareness raising with local councils, social activists and community monitors have now been selected and assigned to monitor open trials. Local community representatives have now become active in attending and monitoring trials and in observing court proceedings.

At first, the presence of local people during court trials created a negative reaction from some officials who deemed open trials to be a disturbance for the courts. However, as time passed, most of the same officials have come to view open trials as an important factor for the court to establish trust between themselves and the public.

The program has also increased awareness about other rights such as the right of the accused to have access to a defense lawyer. Such increased awareness has been important because in most cases a lack of knowledge of such rights by the accused can result in an unfair decision by the courts. Local monitors have reported to court officials’ problems such as when the accused is not given the right to be represented by a defense lawyer. Judges have opened up considerably and have come to accept, within certain legal limits, the need to solve problems identified by local monitors. As a result, the rights of an accused are now typically explained by the judges at the beginning of each public trial.

As a result of the cooperation of courts with other
organizations, there are now 12 defense lawyers and many more legal aide providers in Bamyan province. Open trials are increasingly complying with the fair trial guidance and the procedural matters expected under the law.

One key lesson from the success of the program in Bamyan has been the importance of ensuring coordination with all stakeholders including prosecutors, court officials, and with other organizations such as the Independent Human Rights Commission, UNAMA, and civil society organizations.

After many years of effort, Integrity Watch, together with the courts, has succeeded to establish a trend of public participation in court proceedings. Looking at the successful results of this program, more and more communities are interested to get educated about open trials and have offered to provide volunteers for similar programs to monitor trials.