



INTEGRITY
WATCH
AFGHANISTAN



POLICY BRIEF

Review of Government's Anti-Corruption Commitments

July 2017

Introduction

This brief is a review of the implementation of anti-corruption and good governance commitments made by the Afghan government at the Brussels Conference on Afghanistan (BCA) that took place in October 2016 and other international conferences. Out of 24 commitments made at BCA, 2 sets of commitments were identified to fit the scope of this note. They are set out verbatim in Box 1.

BOX 1: BCA/Anti-Corruption Commitments

Anti-Corruption Institutions

- Anti-corruption strategy for the whole of government drafted and endorsed by the High Council on Rule of Law and Anti-corruption in the first half of 2017 and implementation initiated in the second half of 2017.
- Five revenue generating ministries publicly report on implementation progress of their anti-corruption action plans in 2017.

Mining Management and Transparency

- To operationalize the government's commitment to the Extractive Industries Transparency Initiative (EITI), amendments to the Mining Law submitted to the parliament include measures such as publication of mining contracts, identification of the mining contracts beneficial ownership, assignment of mineral rights for funding of mining projects, suspension for Force Majeure, rights of private land owners' enforcement of mining contracts being linked to their publication, by first half 2018.

Background

Civil society organizations were disappointed with the scope of commitments agreed between the National Unity Government (NUG) and the International Community at the BCA. They were notable for their lack of ambition and for the emphasis on process rather than measurable results – in stark contrast to the promise of 'SMART indicators'. While the

commitment on extractives was at least linked to concrete changes in legislation, the commitment to produce an anti-corruption strategy is nothing more than a promise to produce a document – a ludicrously low bar given the existential threat corruption poses to Afghanistan. Overall, the BCA did little to show that the government and its international partners are serious about tackling corruption with actions rather than just words.

At the time of the conference, Integrity Watch Afghanistan (IWA) and Global Witness expressed deep concern “at the lack of specific commitments on corruption.”¹ The watchdog NGOs further stated, “The Afghan government and donors have made strong statements on fighting corruption in Afghanistan, but among the 24 commitments they have agreed in Brussels, there is only one that relates to corruption, in addition to the benchmark on extractives. That benchmark is relatively weak and unspecific, only calling for an anti-corruption strategy to be created and for ministries to report on implementation of anti-corruption action plans.”²

The two commitments were not entirely without value. We take the extractives commitment in particular as a firm benchmark that the government will introduce a full set of strong transparency and anti-corruption measures within the amendments to the Mining Law, and an anti-corruption strategy is needed, even if it is of little value until it is implemented. However, this civil society review shows that the NUG has not so far fulfilled even these limited promises.

The Anti-Corruption Strategy

There has been close to zero engagement in the process of developing the anti-corruption strategy. There has been no public discussion or even any information available as to whether a draft is being worked on. Although civil society organizations have carried out continued advocacy through government channels on a comprehensive anti-corruption strategy, and raised its importance and timeline in the media, in practice the NUG does not seem to have taken any practical steps to start the development of the anti-corruption strategy.

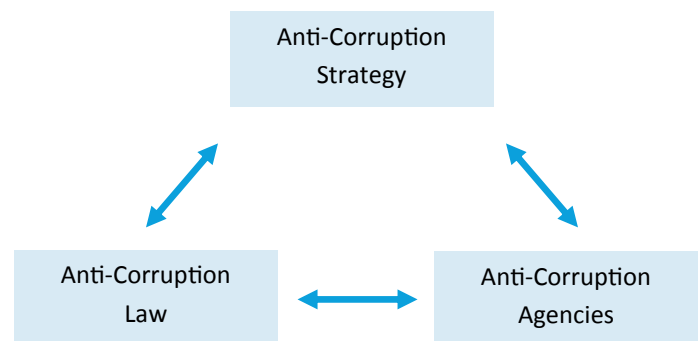
Civil society organizations led by Integrity Watch have followed up on this commitment through several channels and on multiple occasions. As early as December 2016, Integrity Watch wrote to the Administrative Office of the President (AOP) and inquired about the plans to develop an anti-corruption strategy. With no satisfactory answer, IWA approached the Secretariat of the High Council on Rule of Law, Good Governance and Anti-Corruption (HCAC). In March 2016, at a Transparency Forum held by Transparency International, a representative of HCAC told the civil society that the President himself would prepare the anti-corruption strategy.

While the actual document of the anti-corruption strategy may be important, what is crucial is the *process* through which the strategy is developed. Global experience indicates that it is during the development of an anti-corruption strategy when a public debate is generated, stakeholders are engaged, views are heard, and a consensus is built, ultimately paving the way for the implementation of the actual strategy.³ It seems that the NUG does not reflect such an understanding of an anti-corruption strategy and has instead decided that the President will prepare the document.

Anti-Corruption Institutions

The NUG has also overlooked two important institutional pieces of any anti-corruption effort, namely the anti-corruption law and an independent anti-corruption agency (a commitment at the 2014 London Conference on Afghanistan).⁴ With regard to the anti-corruption law, the NUG's Leadership appears to have opted for a *strategy of indifference*. Although the review of the anti-corruption legislative decree started as early as 2016, the NUG's leadership did not engage politically, and did not respond to requests from the group that was tasked to review the anti-corruption law. At a certain point of time (May 2016) the anti-corruption law group realized that the government has to make two policy decisions, namely, 1) which anti-corruption model the NUG would like to adopt (an anti-corruption *commission* or anti-corruption *directorate*) 2) whether the NUG is willing to *eliminate/dissolve* the existing anti-corruption agencies or wishes to *reform* them.

The civil society organizations in the anti-corruption law working group, namely, Afghan Public Policy Research Organization (APPRO), Afghan Women Network (AWN) and IWA, argued to the wider group (composed of government, internationals, and civil society organizations) that the NUG has already committed to establish an anti-corruption commission at the London Conference on Afghanistan December 2014, where it promised, "We will form an independent anti-corruption commission with time-bound prosecutorial pow-



ers. Membership of this commission will be drawn from civil society and qualified legal specialists as well as from the government."⁵ The NUG never responded to the anti-corruption group to clarify its policy direction.

In May 2017, President Ghani vaguely committed again that his government is ready to "restructure anti-corruption agencies in consultation with Integrity Watch, Global Witness, Transparency International and Open Contracting Partnership." One week after the President's declaration, Integrity Watch submitted its proposal for the structuring of the anti-corruption agencies to Administrative Office of the President. As of June 21, 2017, Integrity Watch has not been approached by the government, nor is it aware of any action on their side.

The civil society organizations believe that the NUG has intentionally opted for a *back-and-forth strategy* in regard to reform of anti-corruption agencies. Karzai's administration was not open or did not give any attention to proposals by civil society organizations to reform anti-corruption agencies. The NUG, alas after months and sometimes years of advocacy, responds and accepts certain proposal but does not take practical action to implement its commitment. Very disappointingly, the NUG has backtracked in regard to reform of anti-

corruption agencies and establishment of an independent anti-corruption commission. The civil society organizations believe that the NUG has killed three years of precious time and last lost the opportunity to reform anti-corruption agencies in a way to bear its fruit during its five-year tenure.

As part of the London Summit 2016 commitments, the government established the Anti-Corruption Justice Center (ACJC) and the creation of the new body has been welcomed by the civil society organizations.⁶ However, the independence and sustainability of ACJC is under serious threat.⁷ One of the major functions of the independent anti-corruption commission that draws its members from civil society and lawyers' associations is to ensure independence of the ACJC. Instead the NUG has established a body, High Council on Rule of Law, Governance and Anti-Corruption (HCAC) comprising of the President and senior government officials that threatens the independence of anti-corruption agencies and units including the ACJC.⁸

A promising decision by the NUG, however, has been the decision to respond to the civil society organizations by the cabinet to join the Open Government Partnership (OGP). In late 2016, President Ghani signed the Letter of Interest and the government representative formally declared Afghanistan joining the initiative in December 2016 at the OGP Summit in Paris.⁹ The civil society organizations held their internal consultation meetings in March¹⁰ and the government has created Afghanistan OGP Secretariat within the Administrative Office of the President.

The Five Ministerial Anti-Corruption Action Plans

As part of the BCA commitments, the NUG committed that five of its revenue generating ministries would report on the implementation of their anti-corruption plans. The Ministry of Finance, Ministry of Mines & Petroleum, Ministry of Information Technology & Communication (MoICT), Ministry of Transport and Ministry of Commerce & Industries have not shared any information with CSOs and have not publically reported on the progress they have made. In fact, one of the ministers (MoICT) has been under suspension for many

months due to corruption charges, without any progress shared with the public on prosecution of this case.

Mining Management & Transparency

The BCA commitment on reforms to the Afghan mining law extractive sector is stronger than the benchmark on an anti-corruption strategy, in that it at least has a measurable outcome which would improve the governance of the sector if it was implemented. It remains unclear whether the government will interpret it in a way which meets the goals of the benchmark. Engagement with stakeholders has been limited, but the real test will be what amendments to the mining law are actually published. Afghanistan can only credibly be said to have met this benchmark if they include a strong set of basic reforms, including those mentioned in the benchmark but also other basic measures.

The benchmark itself is somewhat bizarrely worded, with a degree of grammatical incoherence which is dismaying in an international agreement involving dozens of partners. One noticeable error is that the last part of the benchmark, which reads "rights of private land owners' enforcement of mining contracts being linked to their publication", makes no sense unless it is missing a comma after 'land owners' – as companies not land owners own mining contracts. Enforcement of mining contracts being linked to their publication on the other hand is a core transparency reform. The fact that this error was not corrected even though civil society pointed it out around a week before the conference does not reflect well on the seriousness with which the international community regards the commitments.

It is also notable that the commitment is for reforms 'such as' contract publication, beneficial ownership etc. On a positive note, clearly the amendments will need to encompass more protections than those listed in the benchmark, and this allows for that. But a cynical mind might interpret this as an attempt to provide a loophole for the government and international community to rubber stamp any amendment of the mining law as technically sufficient to say the benchmark is met. 'Including' would have been better, with a longer list of specific amendments which at last encompassed the four key

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transparency measures that are so fundamental to reform.

However, given the many statements of donors and the Afghan government on fighting corruption, the only reasonable assumption is that the benchmark was intended as a clear commitment to put in place a full and rigorous range of amendments to strengthen the transparency of the extractive sector and embed the principles of the EITI in law, including but not limited to contract publication as a condition of validity and the creation of an effective register of beneficial ownership. Again, for these amendments to be credible, we consider that they must include at least the four basic transparency asks set out below, and would strongly urge that they include amendments requiring the use of model contracts, and establishing the legal framework for community monitoring of and benefit from mining.

Interpreted this way, the commitment certainly has significant value, and government and donors deserve credit for adopting it. However, once again, implementation has so far been weak. Indeed, the NUG until now has arguably a weaker record in the management of mining sector in Afghanistan than its predecessor, mainly due to the political infighting which has delayed the appointment of the MOMP minister. The NUG has been in power for 33 months (see chart below): in this time the MOMP has had a fully-mandated minister for only 15 months.

Civil society organizations have expressed their concerns and protested against these delays. Mining Watch Afghanistan (MWA), a coalition of CSOs advocating for extractive transparency, has raised the issue with the government several times. April 30th 2017 marked the one-year period of an acting minister leading the MOMP. The MWA had publically raised it twice earlier and again called up on the government to explain the reason behind the long delay. It also urged the government to immediately introduce a mining minister.¹¹ After a year-long delay, the NUG introduced another acting minister of MOMP who has not yet received a vote of confidence from the Parliament and it is still unclear if she would do so any-time soon.

According to civil society organizations advocating for extractive sector transparency, the lack of a fully-mandated leadership at MOMP has severely affected the ministry, and some

even argue that it has turned the ministry into a dysfunctional agency (although it had severe issues even before this).¹²

October 2014	NUG took office
<ul style="list-style-type: none"> Acting Minister Barakzai 	
January 2015	Parliament Votes
<ul style="list-style-type: none"> Davood Shah Saba Voted as Minister of MOMP 	
March 2016	Saba Resigns
<ul style="list-style-type: none"> Acting Minister Safi 	
April 2017	NUG introduces a new minister
<ul style="list-style-type: none"> Acting Minister Nargis Nehan 	

Against this background, the government has as yet made no systematic effort to consult with civil society organizations to improve and amend the mining law since the Brussels Conference on Afghanistan in 2016. However, the civil society organizations have not remained idle. MWA joined by Global Witness, an international NGO, have prepared a thorough analysis of the mining law and proposed amendments to improve the transparency and accountability of the mining sector.

The CSOs proposal includes a number of amendments. Of these, six are especially important - four on transparency and two relating to contracts and communities.

- Publication of contracts *as a condition of their validity*
- Declaration of beneficial ownership of the companies *as a condition to participate in bids or hold licenses*
- A *legal requirement* for the publication of mining revenues and production
- A requirement for a single transparent account for all mining revenues, which must be used *as a condition of receipt* and which can only clear into the government's single revenue account.
- A requirement the use publicly developed model contracts incorporating best practice against corruption and conflict,

- Provision for community monitoring and a share in revenues for the societies around mines.

MWA has of its own initiative submitted this proposal to various government agencies including President's advisors as well as MOMP leadership, and has been able to meet with many of these actors. However, the government has yet to publish the draft amendments and has taken no action itself to approach civil society organizations for their views on possible amendments.

Meanwhile, Integrity Watch has facilitated the dialogue among the stakeholders on the development of beneficial ownership regulation. In February 2016, IWA hosted National Procurement Authority, Afghanistan Central Business Registry and Afghanistan Extractive Industries Transparency Initiative as the major beneficial ownership stakeholders to exchange views and agree on the roadmap to development of a cross-sector beneficial ownership regulation. The meetings were followed until it culminated in the development of a proposal on beneficial ownership and submitted to the High Economic Council.

The civil society organizations have taken initiative where the government has been slow or indifferent as in case of amendment of the mining law or beneficial ownership, and raised their concerns in regard to political roadblocks in the appointment of the mining minister and approached government and international community to address the daunting challenges faced by the mining sector. However, the government does not seem to have shown systematic interest to the calls by civil society organizations. It is time for the government to immediately introduce a timeline and allocate dedicated resources to implements its BCA and other commitments. For civil society, the true test of whether Afghanistan meets the BCA benchmarks remains one thing: whether the government's amendments include the basic protections set out above.

Nine months after the BCA, we are deeply concerned over the political will and the commitment of the NUG to fulfill its promises to fight corruption. We call upon the NUG and donors to immediately come up with a timeline and allocate dedicated resources to urgently implement their BCA and

other anti-corruption commitments. Their credibility in the fight against corruption is at stake.

RECOMMENDATIONS

The NUG should act now to implement its BCA commitments and other anti-corruption commitments including the following:

- Initiate the development of the anti-corruption strategy through an inclusive process engaging all stakeholders including the civil society and donors.
- Establish an independent anti-corruption commission based on international standards stipulated in United Nations Convention Against Corruption and elaborated in the Jakarta Statement on Principles for Anti-Corruption Agencies.
- Accelerate the process of development of anti-corruption law that is under process by a group of stakeholders led by Ministry of Justice.
- Finalize the amendment of the mining law through a transparent and consultative process taking into account civil society recommendations.
- The role of the civil society has been minimum and at times ceremonial. The civil society organizations should be meaningfully engaged throughout the process of implementation of the commitments including the development of the anti-corruption strategy, the anti-corruption law, and amendment of the mining law.

NOTES

1. <https://iwaweb.org/brussels-conference-on-afghanistan-a-commitment-on-extractives-but-little-on-corruption/>.
2. Ibid.
3. <http://bit.ly/2sumrk8>
4. Government of Afghanistan, "Realizing Self-Reliance: Commitments to Reform and Renewed Partnership," Government of Afghanistan: 9.
5. Ibid.
6. Integrity Watch Afghanistan, "Fighting Corruption in Afghanistan: Solving the Institutional Puzzle," IWA, 2016.
7. Ibid.
8. Ibid.
9. <https://iwaweb.org/afghan-civil-society-ensures-inclusive-open-government-partnership-process-in-afghanistan/>.
10. Ibid.
11. <https://iwaweb.org/new-mining-minister-will-face-test-of-government-credibility-on-reforms-and-revenue-says-civil-society/>.
12. Ibid.

ABOUT INTEGRITY WATCH AFGHANISTAN

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

Integrity Watch Mission

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

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