

# Policy Recommendations to Counter Corruption and Revenue Loss in Afghanistan

June 2015

This set of recommendations is the result of a wide range of consultations, including the first Afghanistan Transparency Forum, in March 2015 with the participation of more than 20 Afghan civil society organizations, and further discussions between Integrity Watch, Transparency International, Global Witness, the Natural Resource Governance Initiative, the Open Contracting Partnership, the Columbia Center on Sustainable Investment, and Radon Law.

This document is not intended to be a comprehensive tool for fighting corruption in Afghanistan, but rather is a working document designed to present a range of key recommendations for the Afghan government on policy measures that could be practical, realistic and effective in addressing the systemic governance issues facing the country. It reflects not just the input of international and national experts, but the concerns and experience of a wide section of Afghan civil society.

## INSTITUTIONAL MEASURES AGAINST CORRUPTION

### I. PROMOTE CLEAN LEADERSHIP IN KEY INSTITUTIONS

In post-conflict environments where the regulatory controls on corruption are weak, it is particularly important that key positions in the administration are filled with strong, capable, and honest leaders, with appointments made on the basis of proven competency and integrity and meaningful accountability.

#	Recommendation	Suggested Timeline
1	<b>Appointments</b> Appoint individuals to key posts (such as the Auditor General, Attorney General, the Minister of Interior, Supreme Court High Council, and others) who have proven integrity, leadership qualities and expertise in their respective fields. Hold all officials to account for abuses.	December 2015
2	<b>Asset Declarations</b> Expand the mandatory asset declaration to include the following posts <ul style="list-style-type: none"><li>- Deputy Ministers</li><li>- Directors</li><li>- Members of National Assembly (both upper and lower houses)</li><li>- Provincial and District Councils</li><li>- Independent Commissions/Bodies</li><li>- Ambassadors</li><li>- Governors</li><li>- Judges</li><li>- Prosecutors</li><li>- High ranking officials (grade II and above)</li><li>- AGO leadership, including the Attorney General and provincial and district AGO heads</li><li>- Police leadership, including provincial and district heads</li></ul> The registration process should be made public, and priority given to expanding capacity so a more effective verification process is established to check and monitor the declarations. Punitive measures should be put in place for non-compliance and false declarations, as well as unjust enrichment. Given the technical challenges of the asset registration process, a phased timeline may be needed, with lower-ranking and less exposed officials vetted later.	June 2016

### II. ENSURE THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY AND AGO

The independence and effectiveness of the judiciary is critical to generating accountability. Only the best-qualified judges of the highest levels of integrity should be appointed to the bench. The integrity of the Attorney General's Office (AGO) is equally critical to enforcing accountability, and should similarly be a priority.

#### Judiciary

#	Recommendation	Suggested Timeline
1	<b>Stage examinations</b> Strengthen the integrity of the <i>Stage</i> examinations by ensuring diversity and integrity of the <i>Stage</i> Committee, for example by including with representatives from the Legislature, Judiciary, Executive and relevant Civil Society including members of academia on the Committee. Strongly restrict appointments outside of the <i>Stage</i> process and ensure they take place according to a transparent and competitive process.	June 2016
2	<b>Transparency of the SCHC</b> Ensure that the SCHC, responsible for the promotion of judges, operates	June 2016

	according to a transparent public process designed to ensure objectivity and transparency. (For example, make public the biographies of candidate judges and justifications for appointments.)	
3	<b>Enforcement of the Code of Conduct</b> Publicise the Code of Conduct among judges and the public, and strengthen monitoring and enforcement mechanisms.	June 2016
4	<b>Case management</b> Strengthen case management systems in the courts, with a particular focus on safe archiving of materials, coordination between departments, and ensuring the accessibility of information for those seeking the services of the courts. The government should provide resources and capacity-building ensure a uniform case management system is implemented throughout the country.	June 2017
5	<b>Open trials</b> Ensure all trials are open and issue clear and binding directives regarding open trials which encourage community participation and monitoring; make those courts accountable to those communities.	June 2017

#### Attorney General's Office

#	Recommendation	Suggested Timeline
1	<b>Guidelines for appointments</b> Establish clear guidelines and transparent procedures for appointments and promotions within the AGO in order to promote a meritocracy and reduce appointments based on personal and political connections or corrupt practices.	June 2016
2	<b>Review qualifications, salaries and benefits</b> The education and qualifications of senior prosecutors serving in AGO should be reassessed. Those who are unqualified or received promotions contrary to Afghan government procedures should be removed from senior posts and replaced with more qualified prosecutors. Review the salary and benefits of those staff who are retained to ensure their salaries are proportionate to their responsibilities.	June 2016
3	<b>Transparent investigation</b> Investigate cases of corruption in a transparent manner and publicize major cases in order to end the culture of impunity, which undermines prosecutors' accountability. Final decisions by government bodies (disciplinary and judicial) should be public, and should lead to dismissal where wrong-doing is shown.	June 2016
4	<b>Security</b> MoJ and MoI should urgently review and strengthen security arrangements for the AGO and prosecutors.	December 2015

### III. ESTABLISH AN INDEPENDENT RIGHT TO INFORMATION COMMISSION

An effective Access to Information (ATI) law will be an important umbrella guarantee of transparency in the government, but it is important an independent and effective Right to Information Commission is established.

#	Recommendation	Suggested Timeline
1	<b>ATI commission</b> Complete the establishment of the ATI Commission under the Access to Information Law, and back it with political will and adequate financial resources. Enact an enabling regulatory framework within a reasonable timeframe, including the establishment of specific ATI offices.	January 2016
2	<b>Amend ATI law</b> Amend the Access to Information Law to meet international best practices, and to include the amendments proposed by civil society organizations to HE President Ghani in early 2015, notably to ensure that there are clear definitions and limits to information protected as state secrets.	December 2016
3	<b>Proactive disclosure</b> Establish proactive disclosure mechanisms at all levels of government (including penalties for non-disclosure) to ensure easy access to information for the general public.	June 2016

### IV. ESTABLISH A STRONG ANTI-CORRUPTION LAW AND AGENCY

ACAs have a mixed record, but an independent anti-corruption agency, established in accordance with the Jakarta Principles and in consultation with civil society organizations, could still play a useful front-line role against abuses.

#	Recommendation	Suggested Timeline
1	<b>Anti-corruption agency</b> Establish an independent anti-corruption agency in accordance with the Jakarta Principles and in consultation with civil society. This particularly includes: <ul style="list-style-type: none"> <li>• Appointment of commissioners with high levels of integrity, professionalism and commitment</li> <li>• Appointment of Commissioners by the President with the endorsement by the National Assembly</li> <li>• Nomination of the Head of the Commission with consultation and consensus of all commissioners</li> <li>• Assurances of the independence and autonomy of the commission</li> <li>• A coordinating and knowledge management role among the various government and non-government bodies working on corruption issues</li> <li>• A mandate for prevention and awareness, including strengthening and involvement of civil society</li> <li>• Allocation of adequate resources, including the development of human resources</li> </ul>	June 2016

	<ul style="list-style-type: none"> <li>Prosecutors from the AGO and police from the Ministry from the Interior should be specially assigned and housed in the commission to investigate, arrest, and prosecute cases, to ensure the commission has a prosecutorial role without infringing the Constitution.</li> <li>Authority to give binding recommendations to governmental bodies on anti-corruption policy and to order internal administrative investigations on suspected corruption.</li> </ul>	
2	<b>Anti-corruption law</b> Enact a strong anti-corruption law in accordance with international good practices and reflecting Afghanistan's commitments under the UN Convention against Corruption (UNCAC), particularly mandating the commission with powers on asset registration, corruption prevention, simplification of bureaucratic procedures and the preparation of anti-corruption policies.	June 2016
3	<b>Deputy Attorney General</b> Establish an Anti-Corruption Deputy portfolio under AGO to assist the commission with its work.	June 2016

## V. ESTABLISH AN INDEPENDENT AND MERIT BASED PUBLIC SERVICE

It is obviously critical that the government establish an independent and professional civil and public sector service, by providing the regulatory infrastructure to promote transparency, accountability and equal opportunity for employment. Afghan and international civil society groups are developing concrete recommendations in this area, and they will be the subject of a future, separate document.

## VI. INTEGRITY IN CUSTOMS & REVENUE COLLECTION

Tax administration, collection of domestic revenue and customs are fraught with opportunities and incentives for administrators to engage in corrupt activities. Revenue and Customs departments with highly technical staff and appropriate integrity mechanisms are invaluable to avoid leakages and for sound fiscal management and border security.

#	Recommendation	Suggested Timeline
1	<b>Inland Revenue Authority</b> Establish an independent Inland Revenue Authority (IRA) and appropriate associated regulatory framework. Within the IRA, establish human resources management systems including merit based hiring, regular staff rotation schemes and asset declaration. Mandate regular internal audits.	June 2016
2	<b>Tax ombudsman</b> Create a Tax Ombudsman to hear complaints on issues relating to taxation.	June 2016
3	<b>Custom and Excise</b> <ul style="list-style-type: none"> <li>Create mechanisms to pre-establish the origins of goods in order to reduce the discretion of Customs officials. Establish mechanisms for Pre Shipment Inspection (PSI).</li> <li>Add transparency to tariff regulations by advertising rates and procedures in posters, through radio, and through public service messages.</li> <li>Establish, publicize and enforce Codes of Conducts for Customs Officials.</li> <li>Establish mandatory periodic rotations for officials and establish procedures for division of tasks and mandatory witnessing for major decisions.</li> </ul>	June 2016

## PROCUREMENT TRANSPARENCY AND OPEN CONTRACTING

### I. PROCUREMENT TRANSPARENCY

In line with global best practices, such as the Open Contracting Principles and the Open Contracting Data Standard, Afghanistan should provide open and transparent information about government contracts and awards across its procurement processes from pre-award to contract completion stages.

#	Recommendation	Suggested Timeline
1	<b>Contract publication</b> Disclose awards, contracts, and contract alterations, including associated agreements, annexes, schedules and other documents, as a condition of their coming into force – i.e. they are not valid until they are public. Allow companies as well as government to publish to an appropriate venue if necessary to ensure publication does cause unfair delays. Contracts should be made available in national languages – Pashto and/or Dari, and in English where possible – and on easily accessible venues, including online and in provincial government offices.	June 2016
2	<b>Publish performance information</b> Require the accessible publication of information on the execution, performance, and completion of contracts (e.g. production/royalties for mine contracts)	June 2016
3	<b>Selection criteria</b> Require publication of selection criteria and details of the award method in a timely manner before the procurement process commences. If an open, competitive tendering process is not used, the relevant authority should explain the rationale publicly.	June 2016
4	<b>Public information</b> Publishing real-time information on public procurement for free in widely used open and structured data formats that are non-proprietary, searchable, platform-independent and machine-readable – such as through the Open Contracting Data Standard.	June 2016

5	<b>Appeals process</b> Provide a robust, independent, impartial, accessible and effective appeals process for aggrieved bidders.	June 2016
6	<b>Independent monitoring</b> Ensure independent monitoring of sensitive or important government procurements and providing for public monitoring and consultation on major projects.	June 2016
7	<b>COST Initiative</b> Implement the Construction Sector Transparency Initiative, including establishment of a secretariat, provision of adequate resources and consistent political support.	
8	<b>Enforcing penalties for fraud</b> Establishing penalties for fraud and corruption that are enforced to ensure there is no impunity for fraud and mismanagement.	June 2016
9	<b>E-governance and E-procurement</b> Enacting an E-Governance law to facilitate e-procurement and prepare an e-procurement strategy, using free, open, online processes to reduce corruption risks.	June 2017
10	<b>Capacity</b> Building capacities of relevant officials for collecting, publishing, storing, accessing and sharing contract data and execution of a transparent public procurement system.	June 2017

## PUBLIC ACCOUNTABILITY

### I. ACCOUNTABILITY MECHANISMS

Civil Society must be recognized as a key partner in fighting corruption in the country. The engagement of Civil Society Organizations (CSOs) and the public at large in the state building process will lead to greater social accountability in the public sector and a greater level of adherence to transparency standards.

#	Recommendation	Suggested Timeline
1	<b>Anti-Corruption Plans</b> Follow through on the commitment to create sectorial and ministerial Anti-Corruption Action Plans as pledged under the Realizing Self Reliance document. Publicize the Plans through media, and create meaningful dialogue around the measures proposed. Incorporate central monitoring mechanisms for the Anti-Corruption Action Plans and publicize progress reports.	December 2015
2	<b>Integrity Pacts</b> Hold Ministers and Department chiefs accountable to the implementation of these plans by signing and publicizing Integrity Pacts with the media, donors involved in the sector and civil society.	Every 12 months
3	<b>Whistle-blower protection</b> Put in place and enforce strong legal protections for whistle-blowers	June 2016
4	<b>Local accountability mechanisms</b> Establish social accountability mechanisms at the sub-national level, down to the village level.	June 2017

## REFORMING POLICE

### I. ACCOUNTABILITY AND RESPONSIBLE POLICE SERVICE

The present police service of the country should be reform particularly building it as an effective force to curb corruption and promote accountability and justice in the country.

#	Recommendation	Suggested Timeline
1	<b>Appointments</b> Establish clear guidelines and procedures for appointments and promotions within the Afghan National Police (ANP) in order to promote and ensure meritocracy and end appointments based on personal and political connections or corrupt practices.	June 2016
2	<b>Independent personnel commission and appeal process</b> Establish an independent commission, similar to the Independent Administrative Reform and Civil Service Commission, within the ANP to process merit-based appointments and promotions, based on transparent procedures and mechanisms. Establish a clear appeal process and a board of appeal allowing ANP personnel who have not received due promotion or appointments to have their cases reviewed.	June 2016
3	<b>Reform the Inspector General</b> Reform the Inspector General office to ensure its independence from political interference, with a sufficient structure and budget	June 2016
4	<b>Police Ombudsman</b> Establish an Office of Police Ombudsman (OPO) as an independent external oversight and complaints mechanism.	June 2016
6	<b>Review qualifications</b> Reassess the qualifications of senior officers. Those who are unqualified or received promotions contrary to rules and procedures should be removed from senior posts and their ranks re-evaluated to match their educational qualifications and work experience.	June 2017
7	<b>Transparent investigations</b> Investigate cases of corruption in a transparent manner and publicize major cases of corruption in order to end the culture of impunity. Findings of corruption by official disciplinary and judicial bodies must lead to immediate dismissal once appeals are exhausted.	June 2017

## EXTRACTIVE INDUSTRIES

### I. TRANSPARENCY AND OVERSIGHT

Improved transparency and oversight increases revenue generation, reduces opportunities for illicit rent seeking activity, and decreases the chances of conflict surrounded mineral and gas extraction.

#	Recommendation	Suggested Timeline
1	<b>Publish contracts</b> Amend the Mining Law to require publication in full (not summary) of all extractive sector contracts, and ancillary or subsidiary agreements, as a condition for their coming into force (i.e. contracts are not valid until they are made public). Allow companies as well as government to publish to appropriate, accessible venues, if necessary – such as resourcecontracts.org.	December 2015
2	<b>Beneficial ownership</b> Enshrine in law the publication of the beneficial ownership of contract-holders and contracts, a key governance measure which is encouraged under the EITI and which the EU, UK and other EITI countries are in the process of implementing.	June 2016
3	<b>Publish production, revenue and payments data</b> Amend the mining law to require publication of project-level data on payments and revenue. This includes meeting the 2013 Extractive Industry Transparency Initiative (EITI) Standard, which Afghanistan has committed to do, but should be extended to also cover project-level production data. Amend Regulations as an interim measure.	December 2016
4	<b>EITI</b> Fulfill the Afghan government's commitment to EITI validation with the established time limits. Issue a presidential directive or cabinet decision to require urgent action to improve collection and reporting of payment and production data, and to require cooperation between relevant ministries.	1 month
5	<b>Model contracts</b> Develop a series of model contracts for different types of extraction, based on open discussions and inputs from experts, industry, and civil society in order to create the strongest possible framework for mining. Model contracts should be public.	June 2016
6	<b>Natural resource revenue fund</b> Create a fully transparent fund to manage natural resource revenues, providing detailed transparency on the source of revenues and what they are spent on. This account could in due course be structured as a dedicated Infrastructure or Sovereign Wealth Fund, provided that it incorporates effective safeguards against misuse.	June 2016
7	<b>Confidentiality</b> The government should consider amending the Minerals Law to make only proprietary technology subject to routine confidentiality, with other confidentiality requests requiring a specific justification which would be considered against the wider public interest.	June 2016

### II. ENFORCEMENT AND CAPACITY BUILDING

A credible, legitimate extractive industry sector, largely manned by educated local Afghan staff, is the best means of ensuring that the maximum amount of natural resource revenue reaches the Afghan Treasury, and that mining helps build a secure middle class. But Afghanistan faces a particular challenge given the conflict in many parts of the country. Some key mining areas are of relatively limited size, but have a disproportionate impact: they should be a strategic priority.

#	Recommendations	Suggested Timeline
1	<b>Strategy</b> Make key mining areas a special priority within security strategy, with particular resource, effort and government oversight capacity dedicated not just to maintaining government control but critically to putting in place the minimum conditions for legitimate, legal exploitation. Develop and implement an explicit strategy for responding to mining in areas outside of government control, in order to minimise potential harm.	June 2016
2	<b>Capacity building</b> Work with donors to target capacity-building in the MOMP, NEPA, MoF and other relevant bodies, with a specific focus on inspection functions, monitoring of contract implementation and on building up capabilities in conflict and corruption prevention.	December 2015
3	<b>Contract terms</b> Require contracts to include effective transparency guarantees, conflict resolution processes and corruption clauses allowing cancellation if abuses are proven.	September 2015
4	<b>Innovative monitoring</b> With donor support, develop and use innovative enforcement tools like satellite monitoring, to supplement community monitoring.	December 2015
5	<b>Supply chain controls</b> At present there is no mechanism to determine the conditions in which minerals sold in Afghanistan or abroad are produced or traded, including -whether they are associated with adverse human rights impacts, such as the funding of armed groups. The Afghan government should amend the Minerals Law to provide for a system of supply chain transparency for minerals produced in the country. Similar schemes have been put in place for minerals linked to conflict financing in central Africa, with some success. The Law should make it a legal requirement for mining companies operating in Afghanistan to carry out and make public their supply chain due diligence in accordance with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.	June 2016

### III. COMMUNITIES, SOCIAL IMPACT, AND ENVIRONMENTAL PROTECTION

The most profitable and socially beneficial extractive industry projects are those in which community rights and interests are respected, where the social impact of projects is adequately assessed and mitigated, and where the local environment is protected on behalf of future generations.

#	Recommendation	Suggested Timeline
1	<b>Community rights and consultation</b> Afghan law, regulations and policies should ensure local communities rights and interests are respected, by requiring that they be consulted starting from before an area is designated for extraction, are involved in the management of those resources, and have an equitable benefit from revenues and employment. This includes ensuring Afghans and local communities benefit from training, employment, and procurement.	June 2016
2	<b>Community funds and community monitoring</b> Mandate that a small but significant percentage of legal mining revenues be returned to local communities through the National Solidarity Program, to be allocated by Community Development Councils. This provides a clear element of self-interest which can be linked to community monitoring of mining.	June 2016
3	<b>Dispute resolution</b> Create accessible, independent and effective mechanisms for dispute resolution, which are fair to companies and communities alike.	June 2016
4	<b>Environmental and social impacts</b> Ensure environmental and social impacts of extraction are fully taken into account before a contract is granted or an area is designated for extraction, and that they are effectively mitigated. This includes effective enforcement of environmental and social laws and regulations, including health and safety rules, and special protection for environmentally sensitive areas and against over-use or pollution of water. Publish all relevant impact assessments.	June 2016

### IV. SECURITY

Credible, legitimate security provision that is in compliance with human rights principals will be the most important factor in preventing extractive industries from fuelling additional conflict.

#	Recommendations	Suggested Timeline
1	<b>Special rules, training and accountability for mine forces</b> Mandate that any security forces protecting mining sites operate according to strict rules that incorporate recognized best practices, such as the Voluntary Principles on Security and Human Rights, are held accountable for any breaches, and work in close consultation with local communities but without illegitimate political influence.	December 2015
2	<b>Independent Monitoring</b> The legal commitment of the Voluntary Principles should be backed up by independent monitoring and an independent system, overseen by credible third parties, to investigate and address complaints and any abuses by mining security forces. In addition, structures for community	December 2015
3	<b>National Mining Police</b> The government should explore the feasibility of creating a dedicated national Mining Police, but only if it is specially trained, operates according to special rules to safeguard against abuses, and is subject to special oversight by government and civil society.	December 2016
4	<b>Exclude armed groups</b> Amend Afghan law to make it illegal for armed groups or those associated with them to be involved in either extraction or trade in minerals or petroleum products.	June 2016