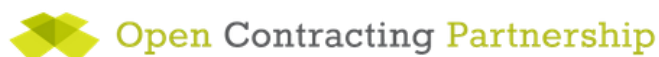


# CIVIL SOCIETY RECOMMENDATIONS FOR THE BRUSSELS CONFERENCE ON AFGHANISTAN 2016



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This set of recommendations is the result of a wide range of consultations beginning in 2015 which included meetings with H.E. President Ghani and his ministers, donors, civil society and leading organizations to assess the National Integrity System of Afghanistan. These recommendations are aimed at informing the Afghan and International community about their commitments on how to move the governance agenda forward in the new Afghan National Peace and Development Framework (ANPDF). It reflects not just the input of international and national experts, but also the concerns and experience of a wide section of Afghan civil society.

## 1. ENSURE THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

Effective and transparent administration of justice is the foundation of all effort to fight corruption. The removal of political interference and establishing a merit-based recruitment and promotion of personnel are essential. The government should take steps in implementation of the Bangalore Principles of Judicial Conduct to have the best-qualified judges with the highest levels of integrity independence, impartiality, confidence and diligence to the bench.

To achieve this, the Afghan government should commit to:

- **Establishing Independent Judicial Commission:** by June 2017, establish an independent judicial service commission to oversee appointments, recruitment and training programs of the judges and judicial staff, to handle complaints and conduct disciplinary procedures against judicial staff. The commission should be given the power to review any executive and legislative decrees which impede the independence of the Judiciary, and make periodic recommendations to the President to improve the integrity of the sector based on the present challenges and any other relevant administrative reforms.
- **Appointments and the Stage Examinations:** (Setaag-e Qazaye): by end of 2017, broaden the membership of the Stage committee to include vetted and independent representatives from the Legislative, Judiciary, Executive and relevant Civil Society organizations, including members of academia and foreign experts. Strongly restrict appointments outside of the Stage process and ensure they take place according to a transparent and competitive process.
- **Access to Justice:** by end of 2017, improve citizen's access to justice across the country and strengthen case management systems in the courts, including implementing safe archiving and strengthening coordination within the judiciary and law enforcement organs.
- **Open Trials:** by June 2017, ensure all trials are open to the public in accordance with the law. Issue and enforce clear directives requiring open trials which allow for and encourage community monitoring, and ensure court verdicts are made public at local level.

## 2. INSTITUTIONAL ARRANGEMENTS TO FIGHT CORRUPTION

New anti-corruption bodies have been introduced in recent months. However, an independent and effective anti-corruption agency (ACA), established in accordance with the United Nations Convention against Corruption (UNCAC) and Jakarta Statement on Principles for Anti-Corruption Agencies, is essential in the fight against corruption in Afghanistan. Afghanistan anti-corruption agencies suffer from multi-organizational sub-optimization where institutions exist and use resources, but there is little evidence of success in fulfilling their mandates.

To address the above issues, the Afghan government should commit to:

- **Clarification of Mandates:** by June 2017, clearly delineate the respective roles and responsibilities of other anti-corruption bodies, including the High Council for Governance, Rule of Law and Anti-corruption, the President’s Special Representative for Reform and Good Governance, and the Independent Administrative Reform and Civil Service Commission (IARCSC). Dissolve the High Office of Oversight (HOO) and/ or deliver fundamental structural reforms of the organizations.
- **Independent Anti-Corruption Commission:** by end of 2017, establish an Independent Anti-Corruption Commission, in accordance with the principles of the Jakarta Declaration and the Afghan government’s obligations under the United Nations Convention Against Corruption (UNCAC) The mandate of the Commission shall include overseeing the Anti-Corruption Justice Center (ACJC), coordinating the anti-corruption efforts of government agencies, providing support and overseeing the development and implementation of line ministries’ anti-corruption action plans, and educating the public on corruption issues.
- **The Anti-Corruption Justice Center (ACJC):** by January 2017, establish appropriate annual targets for the prosecution of corruption cases by the ACJC, and ensure coordination with other law-enforcement bodies. The conduct of the ACJC must comply with best practices of the administration of justice including ensuring its highest level of integrity, independence and effectiveness.
- **Anti-Corruption Laws:** by end of 2017,
  - Enact a comprehensive anti-corruption law, in accordance with international best practice and Afghanistan’s commitments under the UNCAC, which inter alia simplifies procedures for combatting corruption and sets out the powers and mandates of Afghan anti-corruption institutions on asset registration, corruption prevention and awareness raising, and the preparation of anti-corruption policies.
  - Enact a Whistle-blower Protection Law, setting out strong and effective protections for whistle-blowers in line with best practices of key principles of whistleblower protection law.
  - Strengthen the Audit Law, notably by adding enforcement mechanisms to ensure compliance with the recommendations of the Supreme Audit Office (SAO), including requiring public bodies to provide a public account of how they have addressed SAO findings
  - Amend the access to information law to meet international best practices and strengthen the recently established Oversight Commission on Access to Information.
- **Open Government Partnership:** by June 2017, join the Open Government Partnership initiative to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance.

### 3. PROCUREMENT TRANSPARENCY

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

To achieve this, it is recommended that:

- **Contract Publication as a Condition of Validity:** by the end of 2017, amend Afghan law to require that the full text of government awards, contracts, and contract alterations (including associated agreements, annexes, schedules and other documents) must be published as a condition of their coming into force.
- **Beneficial Ownership:** by the end of 2017, establish a public central registry of beneficial ownership in accordance with the Afghan Government’s commitment at the May 2016 London conference, and enshrine in law the requirement for the collection, publication and timely updating of this information. Amend the Afghan Procurement Law to establish a definition of “level of control” or “influence of beneficial ownership” that is in accordance with international best practice.
- **Transparency and Oversight in Contracting:** by the end of 2017, strengthen transparency in contracting to match or exceed international best practice, including by implementing the Open

Contracting Principles and the Open Contracting Data Standard, and by requiring online, machine readable publication of open data about contract planning, award method, tendering and implementation, including contractor performance. Provide for public consultation and stakeholder oversight of planning for major contracts, especially in infrastructure and the extractives sector, including allowing opportunity for public comment on contracts before they are finalised.

- **Capacity building:** by end of 2017, work with international community to secure the required capacity and resources to build the capacities of relevant officials for collecting, publishing, storing, accessing and sharing contract data and execution of a transparent public procurement system.

#### 4. TRANSPARENCY AND OPENNESS IN SECURITY SECTOR

The Afghan government commits to strengthening oversight, accountability and transparency in this sector, which is vital to the legitimacy and effectiveness of the ANSF and achieving stability in Afghanistan.

To achieve this the, Afghan government should commit to:

- **Appointments at the Ministry of Defense (MoD) and Ministry of Interior (MOI):** by June 2017, establish clear guidelines and procedures for appointments and promotions within the Afghan National Police (ANP) and Afghan National Army (ANA) in order to promote and ensure meritocracy and end appointments based on personal and political connections or corrupt practices.
- **Defence Planning, Budget and Strategy:** by June 2017, publish the national defence strategy, a detailed defence budget, and non-confidential acquisition plans, to enable scrutiny and oversight. Publish an anti-corruption action plan for the defence sector.
- **Oversight over Secret Procurement:** by June 2017, publish current oversight mechanisms for confidential procurement. Provide parliament with detailed audit reports related to the defence and security sector.
- **Ghost Soldiers and Ghost Police:** by June 2017,
  - develop and implement a verification plan that details procedures by which the MOD and MOI will verify ANA and ANP personnel and payroll data. In the meantime, ensure verification of payment measures are in place. This may include instituting spot checks on attendance by using a trusted second pair of eyes to oversee the submission of accurate attendance data, mandating all ANA and ANP personnel sign in and out daily and requiring use of identification numbers in attendance processes.
  - ensure that the MOD and MOI is using a fully operational electronic system(s) to track and report all ANA and ANP personnel and payroll data at the corps level and above, and calculate ANA and ANP salaries;
  - build on past capacity building efforts and strengthen MoD and MOI internal audit capacity and investigative powers, including monitoring and addressing conduct violations in areas such as payroll and attendance (i.e. to tackle ghost soldiers), and non-merit-based appointments.
- **Openness and Dialogue:** by June 2017, MoD and MOI relevant departments should hold quarterly briefings open to civil society with active question and answer sessions. As required by the Access to Information Law, the MoD and MOI should ensure they have an office that is effective and proactive in its provision of information.

#### 5. TRANSPARENCY AND OVERSIGHT IN EXTRACTIVES SECTOR

In the interests of strengthening stability, fostering development, and increasing state revenue, the Afghan government re-affirms its commitment to put in place effective measures to counter the threat of conflict and corruption linked to the extractives sector.

To achieve this, the Afghan government should commit to:

- **Strengthening Transparency:** by June 2018, amend Afghan law to require publication of project-level extractive sector payment and production figures; to require publication of natural resource and other contracts as a condition for their validity; to establish a public register of beneficial ownership; and to establish a single, transparent account, to be used for all natural resource revenues and payments as a condition of their receipt.
- **EITI Validation:** by the end of 2017, on the basis of these reforms, achieve validation under the Extractive Industries Transparency Initiative.
- **Community Monitoring and Benefits:** by October 2017, provide for community monitoring of extractive activities, linked to a mandate for affected communities to receive an appropriate percentage of legal revenues or profits from extraction.

## 6. IMPROVE CIVIL SOCIETY PARTICIPATION IN GOVERNANCE

Civil Society organizations (CSOs) must be recognized as a key partner in governance and fighting corruption in the country. The engagement of 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.

To achieve this, the Afghan government should commit to:

- **CSO and ANPDF:** by end of 2016, In collaboration with the international community, ensure and provide platforms and resources for CSOs and the Afghan people to engage in policy dialogue and play meaningful roles in monitoring and benchmark setting of the NUG's deliveries of the new ANPDF including through public forums, media engagement, and shadow reports.
- **Integrity Pacts:** by end of 2017, hold ministers and department chiefs accountable to the implementation of ministries anti corruption plans by signing and publicizing Integrity Pacts with civil society the media and donors involved in the sector.
- **Mandate Input from Civil Society:** by end of 2017, require all government institutions to include civil society inputs in the development of any new governance or anti-corruption legislation and policies.
- **Support and Protect investigative Media:** by December 2016, publicly support and promote investigative journalism and ensure the security of investigative journalists.

## 7. CUSTOMS, TAXES & BUSINESS ENVIRONMENT

High levels of corruption threaten Afghan government revenue collection, especially via customs receipts, and significantly obstruct the overall economy, especially business investment, trade, and job creation. The Afghan government has made improving the overall economy and reforming customs processes an important priority and a key development pillar. In order to improve the business environment and improve revenue generation, the Afghan government should commit to:

- **Domestic Tax Revenue Transparency:** by December 2017, the Afghan Government will have signed onto and have begun implementation of the Addis Tax Initiative and the Common Reporting Standard (formally known as the Standard for Automatic Exchange of Financial Account Information), to ensure better tax revenue transparency and accountability.
- **Customs Reform and Transparency:** by June 2017, the government will reform customs services in line with the principles set out in the Arusha Declaration of the World Customs Organization (WCO), including by advertising rates and procedures at borders and inland customs depots, on Afghan government websites, and through public service messages.
- **Trade Reforms:** by December 2018, the Afghan Government will fulfill its World Trade Organization (WTO) transparency commitments by enacting and implementing legislation, regulations, and practices mandated in its WTO Accession Package.