



global witness

Senate Foreign Relations Committee

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1. Where We Are—the State of Anti-Corruption Efforts in Afghanistan

It is well acknowledged that corruption in Afghanistan erodes the legitimacy of the government and bolsters the myriad of illicit terrorist and criminal actors. For that reason, both President Ashraf Ghani and CEO Abdullah ran on counter-corruption platforms, and both leaders seek to enable their nation to become a secure, economically viable state.

As a civil society organization dedicated to ending the nexus between corruption and conflict, especially in the natural resource sector, Global Witness has worked in Afghanistan since 2011, travelling regularly to the country to work with our local civil society partners, the Afghan government, and international donors to build momentum for governance reforms so that corruption ceases to be an existential threat to the Afghan state. As one of the leading counter corruption organizations operating in Afghanistan, Global Witness was honored in June of this year to be invited, along with Transparency International and Integrity Watch Afghanistan, to meet with President Ashraf Ghani to discuss the government reform agenda.

There have been some early counter-corruption victories. For example, President Ghani has set up a procurement board and personally reviews all contracts over one million dollars, claiming that millions of dollars have been saved, for instance, in fuel contracts for the Ministries of Defense and Interior. President Ghani, CEO Abdullah, and other senior members of the government have also now declared their financial assets, and the High Office of Oversight and Anti-Corruption (HOOAC) is reportedly in the process of further asset registration, as required by Afghan Law and its commitments in the United Nations Convention Against Corruption (UNCAC).

Nevertheless, the view from the ground is that building a more transparent, accountable, and legitimate Afghan government that can ultimately fund and protect itself remains a formidable challenge. While the Afghan government has publicized important counter-corruption initiatives, there

has been a lack of strategy and institutionalization of reforms. There are consistent reports that corruption increased in the aftermath of election turmoil in 2014 and continues to grow in response to political stagnation, rising insecurity, and economic decline.

Recent new scandals have hurt the perception of government commitment to a reform agenda. One of the most notable involves senior government officials working with the perpetrators of the 2010 Kabul Bank scandal for a highly profitable public-private partnership on land which should have already been confiscated and with money whose origins are unclear. Last month, the government announced a contract for a new township of nearly nine thousand homes across over thirty acres of land near Kabul with an initial investment of at least \$95 million. One of the leading investors, however, was Khalilullah Frozi, who was supposed to be serving a fifteen year prison sentence for his leading role as the Chief Executive of Kabul Bank, which collapsed in 2010 after revelations that nearly \$900 million had been embezzled from the bank by key elites in the Afghan government. At the very public ceremony to sign the contract, Frozi was flanked by President Ghani's legal advisor and the Special Representative of Afghanistan in Reform and Good Governance.

Meanwhile, the very public resignation by Drago Kos, the former leader of the Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC), further hurt perceptions of the government's commitment to reform. Mr. Kos was quoted by the New York Times as saying "With the exception of some sporadic activities, in one year since the new president and the CEO took positions, I could not see any systematic action against endemic corruption in the country. All we've needed was some good political will and support, which never came and in such circumstances, I did not see the point to go on."

At the same time, corruption continues to be cited as a primary reason for growing insecurity there. Numerous reports by think tanks, UN agencies, human rights organizations, and the media have

documented a litany of abuses by Afghan elites (and a significant number of internationals) during the fourteen years of American involvement: Afghan police chiefs with literally tons of heroin stored in their compounds, senior commanders involved in human rights abuses, private militias, smuggling, and massive levels of corruption which undermine the capacity and legitimacy of the state. Powerful strongmen and local warlords have a stake in maintaining a dysfunctional government unwilling or incapable of reining them in. Such leaders have rarely been removed, and even if they were, they tend to be “recycled” into new positions shortly after.

And yet, many of these warlords have been largely embraced as necessary evils—they have been considered the only ones capable of fighting the Taliban and holding their districts or the government together. They have been provided with training, weapons, airpower and logistical support, and political backing. Many Afghans naturally assumed that the American and other NATO governments also backed their misdeeds, and were driven into the arms of the insurgency, thereby helping re-empower the Taliban, who had initially been decimated and discredited by 2002.

Increasingly, academic studies bolster this picture. A 2014 Carnegie Endowment report highlighted the correlation between high levels of corruption and political instability, including everything from civil protests all the way to revolutions and civil wars. In May of this year, the Institute for Economics and Peace went one further in its monograph *Peace and Corruption*, which documented a “tipping point” in countries where small increases of corruption lead to a much higher likelihood of conflict.

The economic impact of corruption is also critical. Afghanistan’s ability to get its fiscal house in order and prosecute corruption and economic crime will ultimately be a fundamental determinant to security and economic growth there. It is well documented that much economic activity takes place in the illegal sector, especially narcotics, but also in lucrative sectors like human smuggling, precious

minerals trafficking, and consumer goods smuggling. This empowers corrupt politicians and other criminal actors and is an enabler for terrorist financing, but it also further widens the fiscal gap between the Afghan budget and revenues into the Afghan Treasury – a gap which US taxpayers are then called on to help fill. Corruption, especially in tax and customs departments, mean the Afghan government remains starved of crucial revenues that are desperately needed to fund its security and development, as well as to eventually wean itself off of foreign assistance. Grand corruption and the perceived immunity of public officials involved in that corruption further alienates international donors, which could lead the United States to take on additional financial and even security burdens as other allies eventually pull back support.

All of this has challenged the American strategy that security could be achieved first, even at the cost of arming warlords, and that “soft issues” like human rights, transparency, accountability, governance, and justice reforms could be dealt with afterwards. On the contrary, the studies show that if improving governance and security do not go hand in hand, then long term peace and stability will be difficult, if not impossible, to achieve. This makes governance a security issue – not simply a concern for civil society, but a matter of core US self-interest.

2. Where Can Be Done to Ensure Crucial Reforms?

A cynical response to all of this could be that the place is just too corrupt to make anything happen and to give up trying. Instead, Global Witness believes that, while anti-corruption efforts there will require a generation, there are many short-term measures that can have a substantial impact on corruption and help to put Afghanistan on a more stable path, and the United States has a crucial leadership role to play in making this happen.

Effectively combatting corruption in Afghanistan unavoidably requires an increase in accountability and transparency. That is not an easy task, not least as it affects the interests of powerful

elites and is unavoidably political. But there are measures which can reduce the political effort required, and make it easier to get results.

It is important to note that the primary actor in this effort has to be the Afghan government: in the end only they can put in place lasting reforms and create accountability in their own country. But the US has considerable influence which it can and should use, and many of the levers of this influence have not been fully employed in this particular fight. They range from deciding who to invite for training in the US or to meet a visiting American VIP, up to asset seizures and criminal proceedings against individuals with US citizenship or other links to America. These tools need to be used carefully and appropriately, and with a clear aim of affecting the incentives and interests of those involved in abuses, but they can have a very real impact.

There is some discussion about whether the US should increase conditionality around its support to the Afghan government to achieve these aims. Conditionality can be a blunt instrument, and the Afghan government has valid concerns about its effects on sovereignty. However, it is legitimate for the American government to expect its Afghan partners to live up to their commitments on governance issues. Even if conditionality is avoided, the US government can do much to build in incentives for progress into its support to the Afghan government.

We ask for additional support in the form of leadership, political engagement, and sometimes, additional funding from Congress in three key areas.

First, the government and its international partners can do more to ensure direct accountability where there are abuses. The Afghan government desperately needs a permanent, confirmed Attorney General to prosecute corruption, and to develop the capacity and teeth of enforcement and oversight bodies. A strong Monitoring and Evaluation Committee (MEC) can also help by providing investigations and oversight in the counter-corruption fight. Second, there are many opportunities to strengthen the

legal framework to integrate transparency and accountability in a way which effectively raises the costs for abuses. That includes anti-corruption, transparency, fiscal and banking reforms – which will have the major added benefit of improving the environment for business and investment and spurring growth in the Afghan economy. Third, in accordance with its international commitments, Afghanistan should fully implement international standards – such as the Extractive Industry Transparency Initiative (EITI), Open Contracting Principles, and Open Government Partnership in order to improve transparency and accountability, and thus civil society and Parliamentary oversight.

Most importantly, countering corruption in Afghanistan is difficult without the appointment of a permanent Attorney General - the only person according to Afghan Law who can prosecute corruption. Afghanistan has gone far too long without leadership in this key position, with only an acting official in place – the same individual who has been in the position for many years under the Karzai government. Once an Attorney General is confirmed, they will need material support but more importantly political backing to carry out their role effectively.

Also, while the MEC has had a leadership changeover and has had to engage in some housecleaning, its “dual key” approach of combining an equal number of Afghan and international members to monitor corruption and reforms is a unique capability that is being copied in places like Ukraine. Three members of the MEC are Afghans who have local knowledge of how corruption works there. The other three are international members who have a substantial background and outstanding reputations in anti-corruption efforts. All decisions by the group require at least four of six votes, so that both aspects of Afghan counter-corruption are represented. The result is over three hundred recommendations made by the MEC, with regular reports on implementation of those recommendations. They have also published well-respected, authoritative reports on the Kabul Bank scandal, civil service appointments, and corruption case tracking. The MEC is preparing to undertake an

investigation into corruption in the Ministries of Defense and Interior, including assessing corruption in staff, salaries, ammunition, and food. In order to strengthen this body, the MEC requires continued political support from Congress and the State Department as it provides oversight of corruption that can rile members of corruption networks, as well as funding to continue their mission.

Law enforcement agencies charged with fighting corruption, such as the Major Crimes Task Force, as well as supervisors within Afghanistan's Central Bank, were decimated under the Karzai administration and will need to be rebuilt. A vetted judicial sector for trying corruption-related cases, similar to the system developed for narcotics cases, may also be required.

Again, financial and economic corruption is a special concern. Up through the Kabul Bank scandal, which broke in 2010, and through the publication of the 2012 Tokyo Mutual Accountability Framework (TMAF), there were robust efforts by a myriad of international actors to help build capacity, provide technical assistance, and funding, including from the International Monetary Fund and the US Treasury Department. Due to a perceived lack of political will by the Karzai administration for reforms as well as a deteriorating security situation, much of that assistance has since significantly decreased. Afghanistan cannot rebuild its financial and law enforcement institutions, meet its anti-money laundering (AML) and counter threat finance (CTF) commitments, or eventually develop a viable banking system without such support.

In order to bring this agenda back on track, we call for the commitments for reforms made in the wake of the Kabul Bank scandal and promised in the TMAF to be aggressively pursued. This includes the creation of a credible body that meets regularly, reports to the most senior levels of the Afghan government, and through which the international community can engage on these important reforms. In particular, the Afghan government has promised to develop an Economic Crimes Task Force which could fulfill this role. Concurrently, the Afghan government should develop a strategy to link its anti-

corruption goals with the ways and means it has at its disposal. Such a strategy should identify shortfalls in capacity and funding as well as work with the international donors to develop solutions to meet shortfalls. Specific focus areas to get Afghanistan's fiscal house in order will include developing a strong bank regulatory and supervisory framework, resolution of Kabul Bank and its missing assets, asset recovery for other monies that has been spirited overseas, and oversight and assessment of other Afghan banks

In addition to incentives such as increased funding and technical assistance, carefully considered and targeted incentives should be built into US support to encourage and assist the Afghan government to make difficult political reforms that will threaten the interests of entrenched, corrupt actors. Kingpin, transnational crime, and terrorist finance designations along with visa bans may also help marginalize particularly malign actors, as well as keep the proceeds of Afghan corruption out of the American banking system.

Second is a stronger effort to fill the gaps in the legal framework against corruption. Stronger rules on transparency and accountability do not eliminate the need for political will, but they can seriously increase the cost of abuses reduce the political capital needed to prevent them. President Ghani's establishment of a procurement board is a good start here, but more could be done. President Ghani's personal commitment to oversee major contracts is an important aspect of a counter-corruption fight. Given the role that government procurement plays in the Afghan economy, it is also a major economic issue. This procurement board, however, now needs to be institutionalized, and core principles incorporated into the Procurement Law and other legislation. Core transparency principles can help here. For example, contract publication should be made a condition for validity and implementation of contracts – an effective way to guarantee that abusive, secret contracts are no longer an issue even where corrupt officials might want to conceal them. Routine publication of the beneficial

ownership information of contracting companies is more challenging but can uncover corrupt allocation of contracts, and data on contract performance makes it harder to conceal abuses.

Afghanistan could also do more to fully implement three key international transparency and accountability mechanisms: the Extractive Industry Transparency Initiative, the Open Contracting Principles, and the Open Government Partnership. The United States has committed itself to all three of these. While Afghanistan has made significant progress in the EITI recently, much work remains to be done for it to be validated as fully compliant by the December 2016 deadline, along with regular compliance requirements thereafter. International donors and civil society groups have pledged assistance to Afghanistan to help achieve these international standards, but Afghanistan will still need political support, technical assistance, and perhaps funding to reach key benchmarks.

Again, it is worth stressing the importance of these reforms not just to Afghanistan's security, but to the Afghan economy and its ability to move towards self-sufficiency. These reforms are not an obstacle to legitimate business, they are an essential enabler. It is hard for Afghan or American businesses, for instance, to risk investing capital in Afghanistan due not only to insecurity, but also because of a poor legislative and regulatory environment, an opaque procurement system, a lack of accountability in taxation and regulatory authorities, and, for American businesses, legitimate concerns about possible violation of the Foreign Corrupt Practice Act.

An excellent example of this is the role mining plays in Afghanistan. The US Geologic Survey proved that there are substantial mineral deposits in Afghanistan, and mining should be a central driver of the Afghan economy and a major source of revenue for the Afghan budget. Instead it is a major source of conflict and corruption, and brings in little or nothing in taxes – on the contrary, the United Nations has noted that mining is the number two source of revenue for the Taliban, just behind the narcotics sector. And not only is the Taliban garnering revenues from mining, but so too are other illicit actors, including a

variety of warlords and criminal networks. Fighting over key mining areas is a major source of insecurity. For instance, Global Witness has received numerous credible reports that the fight over lapis mines and key lines of communication for smuggling lapis lazuli in Badakhshan Province contributes to fighting between various warlords as well as moves by the Taliban to control districts there.

Nevertheless, despite two different mining laws passed by the Afghan Parliament and signed by President Karzai since 2004, Afghanistan's mining law still lacks basic investor protections against expropriation. It also lacks transparency and accountability mechanisms, as well protections for local communities and cultural and archeological relics. Reputable mining firms will seek these kinds of laws and regulations before they can have confidence that they can invest millions of dollars in long term mining projects and reasonably expect return on their investment. Global Witness, pro bono work by international legal experts in natural resource law, and Afghan civil society organizations have worked to support the Afghan government by developing legal language for the most important reforms, but so far, those reforms have not been submitted to the Afghan Parliament for debate. Key reform benchmarks include requiring publication of project-level production and payment data of natural resource contracts, creation of a single, transparent account for all natural resource payments to ensure better tracking and accountability, and stronger rules for more transparent and fair bidding procedures on natural resource contracts. But putting these reforms in place has not been a priority for the US engagement with the Afghan government.

Make no mistake that there are no easy fixes to fighting the extreme predatory levels of corruption in Afghanistan. Case studies published by the World Bank in 2011 demonstrated that fighting grand corruption is usually a generational struggle. But these case studies also prove that corruption can indeed be battled. The groundwork for that reform in Afghanistan must be established now if corruption is going to ultimately be controlled so that security can be established and a sustainable

economy developed, but to do so, anti-corruption will have to be prioritized alongside security and economic development, rather than treated as an afterthought. Strong, consistent leadership by the United States can help make that happen. Careful use of all the levers of US influence, legal reforms, and targeted funding, and capacity building can begin to turn the country around before it is too late.

About Global Witness

Global Witness has over 20 years of experience investigating and campaigning to break the links between natural resources and conflict. Our advocacy helped put a stop to illegal logging which was funding wars waged by the Khmer Rouge in Cambodia and by Charles Taylor in Liberia. We brought the issue of blood diamonds to the world's attention and the landmark Kimberley Process Certification Scheme was established as a result. In 2003 we were co-nominated for the Nobel Peace Prize for our work on diamonds. Similarly, our investigations into corruption in oil, gas and mining were instrumental in making a case for the establishment of the Extractive Industries Transparency Initiative (EITI), the leading global mechanism aimed at increasing transparency in transactions between governments and companies.