

FROM PROMISES TO ACTION

NAVIGATING AFGHANISTAN'S
ANTI-CORRUPTION COMMITMENTS

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Since 2001 Transparency International has been engaged on anti-corruption issues in Afghanistan through campaigning for greater transparency and accountability in government institutions. Since 2014 Transparency International has been working with civil society organisations on the ground in Afghanistan, most notably with Integrity Watch Afghanistan.

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Contributors: Victoria Jennett, Alison Matthews, Edris Arib,
Mohammed Naeem Shinwari
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INTRODUCTION

Afghanistan's National Unity Government (NUG) took office in September 2014 promising change to Afghanistan and its people. Addressing corruption was a high on its reform agenda,¹ with Afghan citizens consistently rating corruption as one of the top problems affecting their country.²

Since 2014, the NUG has made over 50 commitments to address corruption.³ These commitments cover multiple forms of corruption, traverse many sectors and involve numerous institutions and mechanisms. The reform landscape is crowded, under-resourced and, at times, confusing.⁴

The NUG has faced many challenges since it took office in 2014. Afghanistan's security situation has deteriorated⁵ and the focus of the NUG and the international community has been primarily on efforts to secure ceasefires and develop peace processes with the various armed insurgent groups.⁶ Corruption fuels insecurity and further limits the ability of the NUG to implement many of its priority reforms, including and beyond its anti-corruption reform agenda. Within this context, addressing corruption is not just a desirable objective; it is a strategic imperative.

Civil society finds it difficult to engage in key areas of governance reform and implementation, with no effective partnership arrangement in place on anti-corruption issues.⁷ Furthermore, reliable data is difficult to access, further limiting civil society's ability to measure progress against these commitments and collaborate with the government and the international community on key reform areas. Publicly available reports do not cover the NUG's entire anti-corruption reform agenda, with piecemeal reporting mechanisms in place that reflect the event-driven nature of the NUG's anti-corruption announcements.⁸

Against this backdrop, Transparency International has collated and reviewed the NUG's anti-corruption commitments over its past two years in office, and prioritised the commitments that, if achieved, would most likely lead to meaningful progress in tackling corruption in Afghanistan. Drawing on the expert inputs of individuals from Afghan civil society and business, Afghan Government institutions and the international community, this report sets out Transparency International's findings and collates information on NUG progress against these priority commitments. To assist the NUG in achieving these priority commitments, this report also sets out Transparency International's recommended NUG actions over the short term (6-12 months) and during the remainder of its term in office (up to three years).

¹ Ghani (29 September 2014).

² In 2015, corruption was ranked third, behind insecurity and unemployment, by Afghans who considered their country was moving in the wrong direction. See The Asia Foundation (2015), p. 6. See also The Asia Foundation (2014).

³ See Annex 3 for a list of 50 commitments counted by Transparency International.

⁴ For example, the NUG has established multiple anti-corruption bodies in recent months, and this has created institutional overlap and confusion about the responsibility each institution has for anti-corruption competences. See 'Findings and Recommendations' section below for further discussion.

⁵ Taliban-initiated armed clashes in April 2016 were at their highest recorded number since 2001. United Nations (10 June 2016).

⁶ United Nations (10 June 2016).

⁷ See 'Findings and Recommendations' section below for further discussion.

⁸ The NUG has not released a comprehensive anti-corruption plan. Its main anti-corruption commitments are contained in the SMAF, ANPDF, London and EU anti-corruption conference documents (see Annex 3).

This report is designed to inform the NUG's anti-corruption priorities and assist civil society to focus its advocacy and monitoring efforts on priority anti-corruption commitments.⁹ It also seeks to create a baseline for civil society to measure the NUG's progress against these commitments in the coming years. By preparing this report, Transparency International aims to coordinate and exchange information on anti-corruption efforts¹⁰ and demonstrate to the NUG and the international community that civil society should be meaningfully included in processes for devising anti-corruption reforms and tracking their implementation. This report highlights the priority areas that need immediate attention.

⁹ This report reflects Transparency International's views based on desk research, assessments made by participants at a specially convened 'Transparency Forum' in Kabul in August 2016 and interviews carried out by Transparency International between July and September 2016 with a range of people from civil society, government, business and the donor community in Afghanistan.

¹⁰ In preparing this report, Transparency International has reviewed the multiple processes to tackle corruption in Afghanistan, led by the NUG as well as bilateral and multilateral donor organisations. Transparency International has also spoken with individuals from civil society, business, Afghan Government institutions and the international community.

1. NAVIGATING THE GOVERNMENT'S ANTI-CORRUPTION COMMITMENTS

Transparency International has collated and reviewed the NUG's anti-corruption commitments over its past two years in office, and has identified a limited number of commitments that, if achieved, would most likely lead to meaningful progress in tackling corruption in Afghanistan. Transparency International recommends prioritising these commitments both for action by the NUG and for civil society monitoring and advocacy efforts. Transparency International undertook desk research and engaged various in-country stakeholders in the prioritisation process.

IDENTIFYING ANTI-CORRUPTION COMMITMENTS

As a first step, Transparency International collected the existing commitments by the NUG in terms of anti-corruption policies. These are set out in the following documents.

- President Ghani's 2014 vision for reform, 'Realizing Self-Reliance', which built on the 2012 Tokyo Mutual Accountability Framework (TMAF).¹¹ The two documents were consolidated in the 'Self- Reliance through Mutual Accountability Framework' (SMAF).¹²
- President Ghani's anti-corruption commitments made in his inaugural address to the EU Delegation at Afghanistan's Anti-Corruption Conference on 5 May 2016.¹³
- Afghanistan Country Statement, London Anti-Corruption Summit on 12 May 2016¹⁴ and Ghani Essay to London Anti-Corruption Summit¹⁵
- The Afghanistan National Peace and Development Framework (ANPDF),¹⁶ which has been prepared for the Brussels Conference on Afghanistan.¹⁷

Altogether, Transparency International found 50 anti-corruption commitments, which were grouped into three broad areas.

1. Building capable, accountable and responsible governance: these commitments cover civil service reform, justice sector reform and the participation of civil society in governance and decision-making.
2. Improving economic governance: these commitments cover the extractive industries, transparency in company ownership, private sector development and tackling land-grabbing.

¹¹ TMAF/Ministry of Finance (2013).

¹² SMAF/Government of Afghanistan (2015).

¹³ Ghani (5 May 2016).

¹⁴ Country Statement/Government of Afghanistan (May 2016).

¹⁵ Ghani (12 May 2016).

¹⁶ September 2016 draft, which will be endorsed at the Brussels Conference on Afghanistan on 5 October 2016.

¹⁷ 5 October 2016, Brussels.

3. Strengthening public financial management: these commitments cover improving procurement transparency, the transparency of tax affairs, tackling money-laundering and recovering stolen assets, and the transparency of donor aid to Afghanistan.

PRIORITISING ANTI-CORRUPTION COMMITMENTS

Transparency International engaged various in-country stakeholders in order to inform its prioritisation of these anti-corruption commitments for NUG action, and civil society monitoring and advocacy efforts, over the coming years.

Transparency International sought 'on-the-ground' input, and so convened a 'Transparency Forum' on 22 August 2016 in Kabul with participants from civil society, business, Afghan Government institutions and the international community. The purpose was to help prioritise a reduced number of anti-corruption commitments that are considered key in the fight against corruption in Afghanistan and that could continue to be tracked over the coming three years (that is, the remainder of the NUG's current term in office).

The Transparency Forum provided not only an opportunity to involve participants in discussing corruption challenges and anti-corruption priority areas, but also an occasion to build relationships between and exchange information with the NUG, civil society groups, international donors and business groups about anti-corruption efforts in Afghanistan.

The profiles of the 45 interviewees and participants at the Transparency Forum were as follows.

15 from government

13 from civil society organisations (CSOs)

One from the private sector

16 from the international community

In total there were 38 males and seven females

At the Transparency Forum, the list of 50 commitments was reduced to a shortlist of 30 commitments, according to the following criteria: (1) whether the commitment was included in the NUG's current or future anti-corruption commitments; (2) whether the commitment was a top priority for the NUG and civil society; (3) whether success in fulfilling the commitment would lead to meaningful progress in Afghanistan; (4) whether there is data available for civil society to track progress; and (5) whether processes and partners exist in Afghanistan to measure and track progress against the commitment.

Criteria 1, 2 and 3 enabled key anti-corruption commitments to be prioritised and Criteria 4 and 5 enabled Transparency International to ensure that appropriate data and partners are in place to enable it and other civil society groups to track progress over the coming years.

Transparency International also undertook a series of individual interviews with 13 interlocutors, two of whom attended the Transparency Forum and one who had in-depth knowledge of the NUG's process for drafting the new ANPDF ahead of the Brussels Conference on Afghanistan.

Drawing from the Transparency Forum and individual interviews, and noting the importance of all the NUG's anti-corruption commitments,¹⁸ Transparency International has determined that 22 NUG anti-corruption commitments should be prioritised for NUG implementation and civil society monitoring and advocacy efforts. These 22 priority commitments fall into seven categories, which are set out in the 'Prioritised Anti-Corruption Commitments' section of this report.¹⁹

COLLATING INFORMATION ON THE PRIORITISED COMMITMENTS

In order to assist Afghan civil society in measuring the NUG's progress against these commitments over the coming years, Transparency International has collected information indicating NUG progress over the past two years against each of the 22 priority commitments.²⁰ Noting the difficulties in locating reliable data in Afghanistan, Transparency International relied heavily on interviews with informed interlocutors²¹ and sought input from the Transparency Forum participants.²² Transparency International also drew from publicly available reports²³ and non-public internal working documents shared by government and non-government contacts.

The 'Findings and Recommendations' section of this report draws heavily on the information contained in the information table (Annex 1).

¹⁸ See the list of 50 anti-corruption commitments in Annex 3.

¹⁹ See 'Prioritised Anti-Corruption Commitments' section below at page 7.

²⁰ See Annex 1.

²¹ Through conducting 13 interviews, Transparency International collected inputs from in-country experts on the progress the NUG is making in implementing anti-corruption reforms. The international community and CSOs gave assessments on the quality of implementation of commitments. Government interviewees provided information on reasons for a lack of progress on commitments. All interviewees described the Afghan context and the effects of corruption on government institutions, public service sectors and the daily lives of citizens. Interviewees pointed out relevant reports and assessments that Transparency International could refer to. Some interviewees, in addition to oral interviews, followed up by completing survey questions about which they had expert knowledge.

²² Fifteen Transparency Forum participants responded to the survey questions with their expert knowledge. Minutes were taken at the forum, both from plenary sessions and working group sessions, detailing facts and the views and opinions of participants about corruption challenges, priority areas and opportunities for meaningful reform.

²³ Transparency International reviewed reports on progress in implementing these 22 priority commitments. These included the NUG's progress reports on the implementation of SMAF commitments, corruption vulnerability assessments by the Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC) and Global Witness reports on extractive industries. Transparency International also reviewed MEC reports and recommendations to the NUG concerning the 22 prioritised anti-corruption commitments. Transparency International reviewed reports on NUG progress by the United Nations Assistance Mission in Afghanistan (UNAMA) as well as academic articles on corruption and development in Afghanistan over the past years, especially since the NUG was formed in 2014. Transparency International also reviewed its own previous research on Afghanistan, especially the country assessment under the National Integrity System (NIS) (Transparency International, 2016).

2. PRIORITISED COMMITMENTS

Transparency International has determined that 22 NUG anti-corruption commitments should be prioritised for NUG implementation and civil society monitoring over the coming three years. They fall into seven categories.

1. Justice reform

1. The Justice Sector Reform Plan will be launched by December 2016²⁴
2. There are new qualification requirements for prosecutors and judges to pass entry and refresher exams and increased legal rigour standards for justice officials²⁵
3. There is rotation or retirement of unqualified candidates within the justice institutions, including the replacement of all 34 provincial chief judges, carried out by an independent judicial appointments body²⁶
4. Procurement corruption cases are being prosecuted²⁷
5. A specialised Anti-Corruption Justice Centre has been established²⁸

2. Civil service integrity and public service delivery

6. At least 90 per cent of the officials of the new government, under article 154 of the Constitution, had declared their assets by the first half of 2016²⁹
7. The High Council for Governance, Rule of Law and Anti-Corruption has been established and is operating effectively³⁰
8. Expanding the use of electronic payments and e-procurement to line ministries³¹
9. The Ministry of Interior's computerised human resource information system to catch 'ghost' workers has been implemented³²
10. The results of the investigations and trials concerning the Ministry of Education will be made public³³
11. Five revenue-based ministries (Ministry of Finance, Ministry of Mines and Petroleum, Ministry of Commerce and Industries, Ministry of Transport and Civil Aviation and Ministry

²⁴ SMAF/Government of Afghanistan (2015).

²⁵ Ghani (5 May 2016).

²⁶ Ghani (5 May 2016).

²⁷ Ghani, (12 May 2016).

²⁸ Ghani (5 May 2016); Country Statement/Government of Afghanistan (May 2016).

²⁹ SMAF/Government of Afghanistan (2015).

³⁰ Country Statement/Government of Afghanistan (May 2016).

³¹ ANDPF/Government of Afghanistan (September 2016).

³² Ghani (5 May 2016).

³³ Ghani (5 May 2016).

of Communication and Information Technology) had prepared their anti-corruption plans by the end of 2015 and begun implementation by the first half of 2016, with the remaining ministries' plans to be completed by the end of 2016³⁴

12. The government is implementing ARAZI, a new, high performing agency for land and water administration and has already compiled a list of all of the lands illicitly appropriated and is preparing the legal procedures needed to return them to their rightful owners³⁵

3. Procurement transparency

13. The government has formed a National Procurement Commission (NPC) to review all high-value contracts and to enable the consolidation of construction contracts³⁶
14. The government is working towards a phased implementation of the principles of the Open Contracting Data Standard, focusing on major projects as an early priority³⁷
15. The government has published contracts on a publicly available website, benchmarking bids against known unit costs and reviewing procurement rules³⁸

4. Civil society engagement

16. Deepened and strengthened government partnership with civil society's anti-corruption activists, including the investigative media³⁹

5. Business development

17. The government has established public central registers of company beneficial ownership information⁴⁰
18. The government is taking steps to ensure transparency in the ownership and control of all companies involved in property purchase and public contracting⁴¹
19. The government is preparing a business simplification roadmap covering business registration, construction permits, tax registration and payment, access to electricity and adjudication in land disputes, to be approved by Cabinet by December 2016⁴²

6. Extractive industries

20. Update the mining law to make it compliant with the Extractive Industries Transparency Initiative (EITI)⁴³
21. The government is enhancing company disclosure (regarding payments to governments for the sale of oil, gas and minerals), exploring the scope for a common global reporting

³⁴ SMAF/Government of Afghanistan (2015).

³⁵ Ghani (5 May 2016).

³⁶ Ghani (12 May 2016).

³⁷ Country Statement/Government of Afghanistan (May 2016).

³⁸ Ghani (12 May 2016).

³⁹ NPA (2016).

³⁹ MEC (30 June 2016).

⁴⁰ Country Statement/Government of Afghanistan (May 2016).

⁴¹ Country Statement/Government of Afghanistan (May 2016).

⁴² SMAF/Government of Afghanistan (2015).

⁴³ ANDPF/Government of Afghanistan (September 2016).

standard and working to build a common understanding and strengthen transparency in this area⁴⁴

7. Donor aid

22. Donors provide all aid information, including spending, both on and off the budget, in Afghanistan, recorded in the Development Assistance Database (DAD) annually through the Development Co-operation Directorate (DCD) process, starting by September 2015⁴⁵

⁴⁴ Country Statement/Government of Afghanistan (May 2016).

⁴⁵ SMAF/Government of Afghanistan (2015).

3. FINDINGS AND RECOMMENDATIONS

Based on an analysis of the information collated, the following key findings regarding the institutional anti-corruption framework, as well as in each priority category, emerge.⁴⁶ Furthermore, in order to assist the NUG to achieve its anti-corruption commitments, Transparency International makes the following recommendations in each priority sector. These recommendations highlight concrete measures the NUG can make over the short term (the next 6-12 months) and during the remainder of its current term in office (up to three years).

1. INSTITUTIONAL FRAMEWORK

Multiple anti-corruption bodies have been established in recent months under NUG leadership. However, an independent anti-corruption agency (ACA), established in accordance with the United Nations Convention against Corruption (UNCAC) and the Jakarta Statement on Principles for Anti-Corruption Agencies, is essential for the fight against corruption in Afghanistan. Afghanistan anti-corruption agencies currently suffer from multi-organisational sub-optimisation, whereby institutions exist and consume resources, but with little evidence of success in fulfilling their mandates.

Furthermore, there is no comprehensive legal framework for preventing, detecting and prosecuting corruption.

Additionally, there are personal and political connections and corrupt practices in the recruitment, rotation and promotion processes in Afghan public institutions.

Transparency International recommends a set of institutional reforms to embed anti-corruption protections throughout governance structures in Afghanistan. Over and above the key recommendations in the seven categories analysed in this report,⁴⁷ the NUG should also focus on establishing and strengthening its institutional architecture for the national integrity system. This should include clarifying, in line with UNCAC principles, the roles of: the High Council for Governance, Rule of Law and Anti-Corruption; the Special Representative of the President for Reform and Good Governance; the High Office of Oversight and Anti-Corruption; the Monitoring and Evaluation Commission; the Attorney General's Office; and the Supreme Audit Office.

Transparency International also recommends the enactment of a comprehensive anti-corruption law, in accordance with international best practice and Afghanistan's commitments under the UNCAC.⁴⁸

In addition, the NUG should focus on establishing independent, merit-based recruitment, rotation and promotion processes within Afghan public institutions, prioritising the judiciary and civil service. It should establish clear guidelines and procedures for appointments and promotions in order to

⁴⁶ These findings draw from the Transparency Forum and individual interviews with representatives from Afghan civil society, business, Afghan Government institutions and the international community, in addition to desk-based research and Transparency International's previous research for the NIS. See overview above in 'Navigating the Government's Anti-Corruption Commitments' section.

⁴⁷ See following sub-sections in this 'Findings and Recommendations' section.

⁴⁸ As foreshadowed in the ANPDF. See ANPDF/Government of Afghanistan (September 2016).

advance and ensure meritocracy and end appointments based on personal and political connections or corrupt practices.

2. JUSTICE REFORM

The NUG has established the specialised Anti-Corruption Justice Center (ACJC), which is mandated to prosecute large-scale and high-profile corruption cases. ACJC appointments have been made⁴⁹ and its policies and special operating procedures are under development.⁵⁰

There has been little progress in tackling corruption in the judiciary. Political interference in judicial appointments, judicial decision-making and the solicitation of bribes by court officials to expedite court processes remain prevalent across the sector. The Judicial Surveillance Department of the Supreme Court has investigated and arrested judicial officials, including judges, accused of judicial corruption,⁵¹ which both points to a major problem with judicial integrity but also to some efforts by the government to tackle judicial corruption.

There have been efforts to improve the selection and performance of judges. The Government has reassigned about one-quarter of the judiciary, including Chief Appeals Courts judges in 33 of 34 provinces, in an effort to bolster judicial independence by weakening the ties between judges and local influences.⁵² However, these rotations and reassignments were not determined or carried out by an independent judicial commission.

Transparency International recommends the following.

(within 6-12 months)

- An independent Judicial Services Commission should be established to appoint and train judges and judicial staff, handle complaints and conduct disciplinary procedures against judicial staff, including enforcing the retirement of unqualified judges.
- New entry qualification requirements and refresher exams for prosecutors and judges should be promptly established.
- The Anti-Corruption Justice Center should remain independent and adequately resourced to actively investigate and prosecute large-scale, high-level procurement cases. The ACJC should establish clear, realistic, time-bound targets for prosecuting cases. The major crimes task force that supports anti-corruption investigations must be strengthened to aid the work of the ACJC. Appropriate annual targets for the prosecution of corruption cases by the ACJC should be established.

(within 2-3 years)

- Case management systems in the courts must be strengthened, with a particular focus on registering cases (so that their progress through the court system may be tracked), the 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 and ensure that a uniform case management system is implemented throughout the country.

⁴⁹ Saboory (2016).

⁵⁰ Transparency International interview with senior government official (19 September 2016).

⁵¹ United Nations (10 June 2016).

⁵² United Nations (10 June 2016).

- Ensure that the Attorney General's Office has qualified staff with investigation and prosecution skill sets, especially at the provincial and district levels. The Attorney General's Office should run a continuous comprehensive training and retraining programme and be responsible for coordinating support from international partners as needed.

3. CIVIL SERVICE INTEGRITY AND PUBLIC SERVICE DELIVERY

There is resignation among citizens that paying bribes is essential to access public services.⁵³ This is particularly prevalent in sectors in which a high level of interaction between government officials and citizens exists, such as the judiciary, police and customs.

There is very limited publicly available data on public service delivery and civil service processes. This contributes to a lack of clarity and public awareness as to Afghan ministries' mandates, policies and activities.

Although the NUG commitment that at least 90 per cent of government officials declare their assets has been formally met,⁵⁴ this commitment was limited only to officials listed under article 154 of the Constitution, and these asset declaration have not been transparent or independently verified.

Transparency International recommends the following.

(within 6-12 months)

- The NUG commitment concerning asset declaration⁵⁵ should be expanded to include all senior public officials, including members of the executive, legislative, judiciary, law enforcement, customs and the tax administration and other civil servants.
- A system to verify the asset declarations of all senior public officials should be established, and failure to register should be met with appropriate sanctions.
- Expand the use of electronic payments and improve transparency within payroll systems.

(within 2-3 years)

- Provide infrastructure to line ministries to assist implementation of e-procurement practices.
- Integrate accountability mechanisms, such as complaint mechanisms and citizen-led monitoring systems, into key service delivery ministries.

⁵³ Transparency International interviews (3 June 2015; 11 August 2015; 22 August 2015); The Asia Foundation (2015), p. 10.

⁵⁴ SMAF/Government of Afghanistan (2015): 'At least 90 per cent of the officials of the new government, under article 154 of the Constitution, have declared their assets by the first half of 2016.'

⁵⁵ SMAF/Government of Afghanistan (2015): 'At least 90 per cent of the officials of the new government, under article 154 of the Constitution, have declared their assets by the first half of 2016.'

4. PROCUREMENT TRANSPARENCY

There is evidence of success and savings made by the National Procurement Commission in holding public procurement processes and contracts to account during its weekly review of public contracts.⁵⁶ Moreover, the National Procurement Authority (NPA) has successfully implemented a number of key reforms, including recent legislative approval of the National Law on Procurement.⁵⁷ Implementation of procurement reforms relies heavily on high-level political intervention and oversight, however, which threatens to undermine the sustainability of stable public procurement procedures and institutions throughout state bodies.⁵⁸ Further, there are reports of Members of the Afghan Parliament obstructing the implementation of laws and regulations concerning the NPA.⁵⁹

Transparency International recommends the following.

(within 6-12 months)

- The NUG should set clear and measurable targets for expanding effective procurement systems to the provincial level and ensure that the staff of the provincial authorities have the necessary capacity, competences and resources to work effectively.
- Civil society participation in the monitoring of procurement processes should be legally guaranteed and adequately resourced.

(within 2-3 years)

- The NUG should implement the Open Contracting Principles and the Open Contracting Data Standard.

5. CIVIL SOCIETY ENGAGEMENT

Civil society organisations have not gained a strong foothold as watchdogs holding the government to account or as participants in governance reform and implementation. There is no effective partnership arrangement in place between government and civil society on anti-corruption issues.

Transparency International found that there is a lack of understanding in Afghanistan about the role civil society can play in aiding anti-corruption reform. There is no clear distinction between civil society groups that advocate public reforms for Afghan society as a whole and groups that seek for-profit procurement contracts to implement public policy. Some donors routinely include non-governmental organisations (NGOs) in community-led monitoring and evaluation processes of donor projects, an initiative that helps strengthen NGO capacity,⁶⁰ though additional support is required to increase NGOs' core capacity to contribute to anti-corruption efforts.

Transparency International recommends the following.

(within 6-12 months)

- The NUG signs up to the Open Government Partnership.

⁵⁶ United Nations (7 March 2016).

⁵⁷ Afghan National Law on Procurement (August 2016).

⁵⁸ See Scorecard, Tables 3.1 and 3.2.

⁵⁹ Transparency International interview with senior government official (19 September 2016).

⁶⁰ MEC (30 June 2016).

- Implement the 2014 Access to Information Law, prioritising supporting infrastructure to improve information collection and archiving processes across all Afghan government institutions.
- Include representatives from civil society and the Afghan parliament as participants or observers in the newly established High Council for Governance, Rule of Law and Anti-Corruption.
- Involve civil society in governance reform policy as well as encourage citizen-monitoring in public service ministries, including in procurement processes and in assessing the NUG's delivery of governance reform.
- Ensure civil society meaningfully contributes to the drafting of the 'National Anti-Corruption Strategy'.
- Publicly support and protect anti-corruption activists and investigative media.

(within 2-3 years)

- Require all government institutions to include civil society inputs in the development of any new governance or anti-corruption legislation and policies.

6. BUSINESS DEVELOPMENT

Business development suffers from the burden of an outdated regulatory regime. The Afghan law on commercial contracts⁶¹ imposes impractical and unreasonable procedural and bureaucratic requirements on businesses to register and operate within the country. Commercial contract enforcement is a lengthy and complicated process, which undermines transparency and discourages businessmen from referring to commercial courts for contract dispute resolution.⁶²

Citizens and businesses face endemic bribery when trying to access official permits and business licences.⁶³ Business support services, such as customs facilitation and access to electricity, are also very difficult to access without engaging in corrupt practices.

Transparency International recommends the following.

(within 6-12 months)

- The government should establish a public central register of company beneficial ownership information.
- Building on the business simplification roadmap, the NUG should implement its pledge to review licensing requirements, reduce red tape and clarify property titles.

⁶¹ Law on Commercial Contracts and Selling Property (LCCSP). See Transparency International (2016).

⁶² The LCCSP is silent regarding the procedures, cost and duration of a claim for effective commercial dispute resolution. See Transparency International (2016).

⁶³ See Scorecard, Table 5.2.

(within 2-3 years)

- The government should ensure that the public central register of company beneficial ownership information is comprehensive and updated on a regular basis.

7. EXTRACTIVE INDUSTRIES

The Mining Law lacks basic protections for the extractive industries sector, including no legal requirements either for the beneficial ownership of companies to be registered or for the publication of production and payment data by companies. The future development of the extractive industries sector, without basic protections, threatens greater revenue losses for the NUG and is a driver of insecurity for the country at large.

Additionally, the extractive industries sector is not – yet – operating at its maximum capacity, largely due to the lack of security in Afghanistan. There is an opportunity now for the NUG to improve regulation of the sector to prevent future further – and greater – revenue losses than it currently bears. Imposing legal obligations on companies to register beneficial ownership and publish production and payment data would assist in improving transparency in the sector.

Transparency International recommends the following.

(within 6- 12 months)

- Amend the Afghan Mining Law to require public registration of the beneficial ownership of companies and publication of production and payment data by companies.
- The Ministry of Mines and Petroleum should publish production and payment data by companies.
- The NUG should encourage and facilitate community monitoring of extractive activities.

8. DONOR AID

Delegations from approximately 50 countries and international agencies⁶⁴ interact with the NUG, including on anti-corruption reforms. Although donor coordination is improving, there is still limited NUG overview of donor projects and spending. Donor projects remain fragmented and many are off-budget. Donor coordination is essential to focus NUG and international community efforts on key anti-corruption reforms.

Transparency International recommends the following

(within 6-12 months)

- Donors should make information about donor aid programmes publicly available, including information on the budget (allocated and expensed), programme objectives, activities, results, beneficiaries and evaluation reports.

⁶⁴ UNAMA (2015).

- Donors should be transparent about the misuse of funds and publicise sanctions taken. Donors should work with Afghan public institutions to make available complaints mechanisms for all activities funded through their aid programmes.
- Donors should invest in strengthening civil society's capacity to engage in anti-corruption efforts and processes. Donors should involve civil society in the planning and implementation of anti-corruption policies and activities.
- Donors should strengthen their coordination with each other, civil society and the NUG on anti-corruption efforts and processes.

(within 2-3 years)

- Donors should prioritise strengthening Afghan government public financial management systems.
- Donors should hold the NUG accountable for implementation of its reform commitments, including the new ANPDF. Donors should facilitate public fora so that the NUG can be accountable to the public and CSOs, and encourage the NUG to take part in CSO-led scorecard and feedback processes.

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ANNEX 1: INFORMATION TABLE ON PRIORITISED COMMITMENTS

| 1. Justice Reform | | |
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| NUG commitment | Status | TI recommends |
| 1.1 The Justice Sector Reform Plan will be launched by December 2016⁶⁵ | <ul style="list-style-type: none"> The NUG has created a Task Force to prepare the plan, comprised of all justice sector institutions, under the direct supervision of the second vice president.⁶⁶ The Justice Committee has approved the first draft of the plan.⁶⁷ The plan has been presented to President Ghani.⁶⁸ The ANPDF states that both the Supreme Court and the Attorney General's Office are producing reform plans to professionalise their services and provide legal access for all citizens.⁶⁹ | <ul style="list-style-type: none"> The Office of the Second Vice President, which is responsible for the Justice Sector Reform Plan, should present a strengthened draft by October 2016 that is available for civil society to comment on. The plan should: (1) set out a vision of how the justice sector will contribute to improving Afghan society, security and economic development; (2) assess the current status of the justice sector and prioritise deficiencies; (3) identify measurable goals; (4) address implementation, including budgetary considerations; (5) align with the ANPDF and other NUG justice sector commitments; and (6) include the establishment of an independent judicial commission. |

⁶⁵ SMAF/Government of Afghanistan (2015).

⁶⁶ 'First draft of the Justice Sector Reform Plan was approved by the Justice Committee chaired by the second vice president (VP) on 27, February 2016. The Plan was then presented to President Ghani on 27 July. The Task Force comprised of all justice sector institutions, under the direct supervision of Second VP, is incorporating the comments from the President, CEO and other members of the meeting in the plan.' SMAF Progress Report/Ministry of Finance (2016).

⁶⁷ SMAF Progress Report/Ministry of Finance (2016).

⁶⁸ SMAF Progress Report/Ministry of Finance (2016).

⁶⁹ ANPDF/Government of Afghanistan (September 2016).

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| <p>1.2 There are new qualification requirements for prosecutors and judges to pass entry and refresher exams and increased legal rigour standards for justice officials⁷⁰</p> | <ul style="list-style-type: none"> • The ANPDF states that, concerning rooting out corruption, the NUG has already launched key reforms, including '[i]nstituting requirements for prosecutors and judges to pass entry and refresher exams'.⁷¹ • There have been reports of illegal practices in the hiring of prosecutors.⁷² | <ul style="list-style-type: none"> • The Supreme Court and the Attorney General's Office should revise and implement plans for identifying the training needs for judges and prosecutors. • The NUG should coordinate with donors, ensuring that there are sufficient resources and training programmes for judges and prosecutors with the Supreme Court and the Attorney General's Office. |
| <p>1.3 There is rotation or retirement of unqualified candidates within the justice institutions, including the replacement of all 34 provincial chief judges, carried out by an independent judicial appointments body⁷³</p> | <ul style="list-style-type: none"> • An independent judicial appointments body has not been created. • The Government has reassigned about one-quarter of the judiciary, including Chief Appeals Courts judges, in 33 of 34 provinces in an effort to bolster judicial independence by weakening the ties between judges and local influences.⁷⁴ • The ANPDF states that all 34 chief justices have been replaced.⁷⁵ • The Attorney General has transferred and appointed some 40 new key officials.⁷⁶ | <ul style="list-style-type: none"> • Establish an independent judicial commission. Ensure this body develops clear, transparent processes for rotating, hiring and firing judicial officials. |

⁷⁰ Ghani (5 May 2016).

⁷¹ The ANPDF (Government of Afghanistan, September 2016) states that, with regard to the justice sector, the NUG is committed to '[e]nhancing the professional capacity of law enforcement personnel at all levels'.

⁷² MEC (March 2015a; September 2015; February 2015).

⁷³ Ghani (5 May 2016).

⁷⁴ United Nations (10 June 2016).

⁷⁵ The ANPDF (Government of Afghanistan, September 2016) states that the NUG will enhance the professional capacity of law enforcement personnel at all levels.

⁷⁶ United Nations (10 June 2016).

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| <p>1.4 Procurement corruption cases are being prosecuted⁷⁷</p> | <ul style="list-style-type: none"> • No procurement corruption cases have been prosecuted. • The NUG has pledged to enhance efficiency and responsiveness in the justice sector by 'restructuring judicial institutions and implementing an electronic case management system' for all cases.⁷⁸ | <ul style="list-style-type: none"> • The NUG should enforce the law and prosecute cases of corruption involving senior officials. • The international community should support the NUG's institutions in bringing legal proceedings against the powerful and the corrupt. |
| <p>1.5 A specialised Anti-Corruption Justice Center has been established⁷⁹</p> | <ul style="list-style-type: none"> • The Anti-Corruption Justice Center (ACJC) was established on 23 August 2016. • ACJC appointments have been made.⁸⁰ • ACJC policies and special operating procedures are under development.⁸¹ • The ACJC recently announced that five big corruption cases will be investigated.⁸² | <ul style="list-style-type: none"> • The NUG must ensure the ACJC is adequately resourced, including with qualified personnel. The recruitment of ACJC staff must follow a transparent process and be in line with a clear set of qualification requirements. • Ensure the ACJC remains independent. • The ACJC should establish clear, realistic, time-bound targets for prosecuting cases. • Provide specialised training for ACJC staff on Afghanistan issues as well as on international anti-corruption best practices. |

⁷⁷ Ghani (12 May 2016).

⁷⁸ ANPDF/Government of Afghanistan (September 2016).

⁷⁹ Ghani (5 May 2016; 12 May 2016).

⁸⁰ Saboory (2016).

⁸¹ TI interview with senior government official (19 September 2016).

⁸² Shaheed (2016).

2. Civil Service Integrity and Public Service Delivery

| NUG commitment | Status | TI recommendation |
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| <p>2.1 At least 90 per cent of the officials of the new government, under article 154 of the Constitution, had declared their assets by the first half of 2016⁸³</p> | <ul style="list-style-type: none"> • The High Office of Oversight and Anti-Corruption (HOOAC) has been mandated to oversee asset declaration by officials under article 154 of the Constitution. • Over 90 per cent of government officials, under article 154 of the Constitution, have declared their assets.⁸⁴ | <ul style="list-style-type: none"> • This NUG commitment should be expanded to include all senior public officials, including members of the executive, legislative, judiciary, local government, law enforcement, customs and tax administration and other senior civil servants. TI welcomes the new commitment in the ANPDF, which states: '[e]xpand public disclosure of asset declaration to cover law enforcement, customs, and tax administration'.⁸⁵ • Asset declaration should become an institutionalised process. • All asset declarations should be verified through documentation.⁸⁶ A system to verify the asset declarations should be established and failure to register should be met with appropriate sanctions. |

⁸³ SMAF/Government of Afghanistan (2015).

⁸⁴ The HOOAC website lists 37 officials and makes publicly available their asset declarations under article 154 of the Constitution. See <http://anti-corruption.gov.af/en/page/1733>.

⁸⁵ ANPDF (2016)

⁸⁶ Transparency International's *National Integrity System Assessment: Afghanistan 2015* found that MPs routinely contested legal requirements to declare assets and the more senior the official, the more difficult it was to compel asset declaration. See Transparency International (2016).

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| <p>2.2 The High Council for Governance, Rule of Law and Anti-Corruption has been established and is operating effectively⁸⁷</p> | <ul style="list-style-type: none"> • The Council has been established and one meeting has taken place, on 28 July 2016.⁸⁸ | <ul style="list-style-type: none"> • The High Council for Governance, Rule of Law and Anti-Corruption should focus on its core mandate,⁸⁹ especially in terms of setting strategy and policy direction. • The High Council for Governance, Rule of Law and Anti-Corruption should report monthly and publish reports in an accessible manner. • The High Council for Governance, Rule of Law and Anti-Corruption should involve anti-corruption experts from civil society organisations in its current task to develop a 'National Anti-Corruption Strategy'. • Ensure the institutionalisation of anti-corruption expertise and mechanisms throughout the whole system of government, not just within the High Council and the Office of the President. |
| <p>2.3 Expand the use of electronic payments and e-procurement to line ministries⁹⁰</p> | <ul style="list-style-type: none"> • The Ministry of Interior has already introduced computerised human resource information systems.⁹¹ • The government has drafted a law on electronic IDs,⁹² which, it is hoped, will ease the way to developing a comprehensive e-payment system for all public services across government departments. • There is resignation among citizens that paying bribes is essential to access public services, particularly in sectors in which a high level of interaction between government officials and citizens exists (such as the judiciary and customs).⁹³ | <ul style="list-style-type: none"> • The NUG should continue to support phased implementation of this commitment, including the carrying out of an e-readiness assessment, then developing a plan to implement e-procurement. • The NUG should focus on providing infrastructure to line ministries that are not equipped to implement this commitment. • The NUG should also focus on passing legislation to create a legal foundation for implementing this commitment. |

⁸⁷ Country Statement/Government of Afghanistan (May 2016).

⁸⁸ Ghani (28 July 2016).

⁸⁹ Article 3: 'Duties of the Council'.

⁹⁰ ANPDF/Government of Afghanistan (September 2016).

⁹¹ Ghani (5 May 2016).

⁹² TI interview with senior government official (19 September 2016); Khaama Press (2016).

⁹³ TI interviews (3 June 2015; 11 August 2015; 22 August 2015); The Asia Foundation (2015), p. 10.

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| <p>2.4 The Ministry of Interior's computerised human resources management information system to catch 'ghost' workers has been implemented⁹⁴</p> | <ul style="list-style-type: none"> • The Ministry of Interior has introduced a computerised human resources management information system (HRMIS), though it is not available in all provinces. • There is no publicly available data yet on progress made in catching 'ghost' workers. • A report is due to be published by the time of the Brussels Conference on Afghanistan (5 October 2016). | <ul style="list-style-type: none"> • The systems in place to catch 'ghost' workers must be transparent. • Exposed 'ghost' workers must be removed from ministry payrolls and human resources systems. • Officials found to have supported 'ghost' workers should be brought to justice. |
| <p>2.5 The results of the investigations and trials concerning the Ministry of Education will be made public⁹⁵</p> | <ul style="list-style-type: none"> • There is no publicly available data on the investigations and trials of the Ministry of Education officials charged with falsifying information regarding 'ghost' schools and 'ghost' teachers. • An investigation has reportedly taken place to identify 'ghost' positions and a report submitted to the Office of the President.⁹⁶ • Most 'ghost' schools and teachers are in conflict areas, which the government could not access to investigate and check.⁹⁷ | <ul style="list-style-type: none"> • The NUG should promptly publish information on the status of ongoing investigations and the outcomes of trials. |

⁹⁴ Ghani (5 May 2016).

⁹⁵ Ghani (5 May 2016).

⁹⁶ TI interview with senior government official (19 September 2016) and Transparency Forum (22 August 2016). The report is expected to be published on 10 October 2016: TI interview with senior government official (19 September 2016).

⁹⁷ TI interview with senior government official (19 September 2016).

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| <p>2.6 Five revenue-based ministries (Ministry of Finance, Ministry of Mines and Petroleum, Ministry of Commerce and Industries, Ministry of Transport and Civil Aviation and Ministry of Communication and Information Technology) have prepared their anti-corruption plans by the end of 2015 and begun implementation by the first half of 2016, with the remaining ministries' plans to be completed by the end of 2016⁹⁸</p> | <ul style="list-style-type: none"> • The five ministries have developed their anti-corruption plans. These have been submitted to the Ministry of Finance and presented to the president on 26 July 2016.⁹⁹ Civil society was not meaningfully included in the drafting process.¹⁰⁰ • There are reported to be delays with the remaining ministries completing their anti-corruption plans by the end of 2016.¹⁰¹ | <ul style="list-style-type: none"> • Civil society should be consulted on the development of anti-corruption plans and their implementation. • All ministries' anti-corruption plans should be published online immediately after finalisation. |
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⁹⁸ SMAF/Government of Afghanistan (2015).

⁹⁹ SMAF Progress Report/Ministry of Finance (2016).

¹⁰⁰ TI interview with senior civil society representative (19 September 2016).

¹⁰¹ TI interview with senior government official (19 September 2016).

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| <p>2.7 The government is implementing ARAZI, a new, high-performing agency for land and water administration, and has already compiled a list of all of the lands illicitly appropriated and is preparing the legal procedures needed to return them to their rightful owners¹⁰²</p> | <ul style="list-style-type: none"> • ARAZI has referred a list of 15,831 land usurpers, including high-ranking officials and powerful people, to the Office of the President and the National Assembly. Currently six cases of land usurpation are under investigation by the Criminal Investigation Department of the Attorney General's Office.¹⁰³ • Amendments to the law and the implementation of a memorandum of understanding (MoU) between ARAZI and the Supreme Court are pending, to transfer the responsibility of land transfer and registration from the courts to ARAZI.¹⁰⁴ Currently ARAZI cannot act on these issues. The draft Law on Basic Structure of the Government may help clarify each agency's tasks and avoid duplication.¹⁰⁵ • ARAZI is developing a 'National Administration Titling' programme to register titles to land and property.¹⁰⁶ • A Committee on Prevention of Land-Grabbing has been established in the Office of the President.¹⁰⁷ | <ul style="list-style-type: none"> • ARAZI should publish publicly accessible data on the scale of the land usurpation problem.¹⁰⁸ • ARAZI should make publicly available its data on the number of returned lands, and coordinate the data with the Independent Directorate of Local Governance and the Office of the President. |
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¹⁰² Ghani (5 May 2016).

¹⁰³ It is difficult to locate reliable data about the numbers of returned lands. The Independent Directorate of Local Governance and the Office of the President have released different figures on the numbers of usurped lands returned. See Heart of Asia (2016); Ghubar (2016); Faizy (2016).

¹⁰⁴ MEC (June 2016).

¹⁰⁵ MEC (June 2016).

¹⁰⁶ MEC (June 2016).

¹⁰⁷ TI interview with senior government official (19 September 2016).

¹⁰⁸ MEC (June 2016).

3. Procurement Transparency

| NUG commitment | Status | TI recommends |
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| <p>3.1 The government has formed a National Procurement Commission (NPC) to review all high-value contracts and to enable the consolidation of construction contracts¹⁰⁹</p> | <ul style="list-style-type: none"> • The NPC was established on 13 December 2014.¹¹⁰ • The NPC mandate includes reviewing all high-value contracts and consolidating construction contracts.¹¹¹ • The NPC holds weekly meetings, chaired by the president and including observers from the Afghan parliament, the Combined Security Transition Command – Afghanistan and the Special Inspector General for Afghanistan Reconstruction.¹¹² • The Afghan Law on Procurement was passed in August 2016. • NPC oversight has supported the Government to identify at least \$350 million of procurement savings since its establishment. | <ul style="list-style-type: none"> • The NUG should implement the Open Contracting Principles and the Open Contracting Data Standard. • CSO participation in procurement processes should be institutionalised. • The NUG should develop a plan and set a deadline by which procurement review work is expanded to the provincial level. |
| <p>3.2 The government is working towards phased implementation of the principles of the ‘Open Contracting Data Standard’, focusing on major projects as an early priority¹¹³</p> | <ul style="list-style-type: none"> • In September 2016 the National Procurement Authority (NPA) signed an MoU with Open Contracting Partnership and Integrity Watch Afghanistan. The MOU includes commitments to: assess current levels of transparency and accountability in Afghanistan's public procurement system; build the capacity for participation and feedback; undertake pilot cooperation on contract implementation monitoring for a major infrastructure project; and document and disseminate project results and learning.¹¹⁴ | <ul style="list-style-type: none"> • The NPA should implement the MoU, in collaboration with Open Contracting Partnership and Integrity Watch Afghanistan. • The NUG should implement the Open Contracting Principles and the Open Contracting Data Standard. |

¹⁰⁹ Ghani (12 May 2016).

¹¹⁰ See Office of the President website: <http://aop.gov.af/english/59/general-directorate-of-national-procurement>.

¹¹¹ Legislative Decree no. 72, dated 13/12/1393, issued by President Ghani.

¹¹² NPA (September 2016).

¹¹³ Country Statement/Government of Afghanistan (May 2016).

¹¹⁴ Memorandum of Understanding between National Procurement Authority, OCP and IWA (16 September 2016).

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| <p>3.3 The government has published contracts on a publicly available website, benchmarking bids against known unit costs and reviewing procurement rules¹¹⁵</p> | <ul style="list-style-type: none"> • The National Procurement Authority is responsible for implementing an electronic procurement system. • The NPA has already published some contracts and intends to expand the practice by the end of 2016. • The NPA reports that, concerning its SMAF deliverables, it 'has planned to make online tracking mechanisms for facilitation of procurement cases called "PFTS – Procurement Facilitation Tracking System", "CIM – Contracts Implementation Monitoring System", Procurement Planning and NPC cases tracking system. NPA will start with PFTS and CIM online very soon followed by NPC and Procurement Planning systems.'¹¹⁶ • The NPA has not yet been able to implement an electronic procurement system because it requires laws on electronic governance and cyber-security, as well as the development of IT infrastructure and capacity development.¹¹⁷ • The NPA is hampered by a lack of technical capacity.¹¹⁸ • The Ministry of Public Works intends to establish a comprehensive database of all infrastructure projects, including technical information.¹¹⁹ | <ul style="list-style-type: none"> • The NUG should implement the Open Contracting Principles and Open Contracting Data Standard. |
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¹¹⁵ Ghani (12 May 2016).

¹¹⁶ NPA (August 2016).

¹¹⁷ MEC (June 2016).

¹¹⁸ TI interview with senior government official with procurement expertise (12 September 2016).

¹¹⁹ MEC (June 2016).

4. Civil Society Engagement

| NUG commitment | Status | TI recommends |
|---|--|---|
| 4.1 Deepened and strengthened government partnership with civil society's anti-corruption activists, including investigative media¹²⁰ | <ul style="list-style-type: none"> There is no effective partnership arrangement in place on anti-corruption issues. Civil society was not meaningfully included in the ANPDF drafting process.¹²¹ The Ministry of Finance Policy Department (Delivery Unit) has reportedly prepared and is implementing a government plan for enhancing cooperation with civil society.¹²² International donors incorporate local CSOs and community groups in their monitoring and evaluation plans for their projects and programmes. | <ul style="list-style-type: none"> Implement the 2014 Access to Information Law, prioritising supporting infrastructure to improve information collection and archiving processes across all Afghan government institutions. Ensure that civil society meaningfully contributes to the drafting of the 'National Anti-Corruption Strategy'. Publicly support and protect anti-corruption activists and the investigative media. Require all government institutions to include civil society inputs in the development of any new governance or anti-corruption legislation and policies. The NUG signs up to the Open Government Partnership. Include representatives from civil society and the Afghan parliament as participants or observers in the newly established High Council for Governance, Rule of Law and Anti-Corruption. |

¹²⁰ NPA (August 2016).

¹²⁰ MEC (June 2016).

¹²¹ TI interview with senior civil society representative (19 September 2016).

¹²² 'Matrix of Reforms' (internal Afghan Government working document, received September 2016).

5. Business Development

| NUG commitment | Status | TI recommends |
|--|--|---|
| 5.1 The Government has established public central registers of company beneficial ownership ¹²³ | <ul style="list-style-type: none"> There is no public register of company beneficial ownership information. The Central Registration Directorate of the Ministry of Commerce and Industries holds a database of 130,000 licensed companies.¹²⁴ This information is not publicly available. The Ministry of Commerce and Industries intends to develop an online system to verify the tax payments of all companies. The current database may assist in efforts to establish a public register of company beneficial ownership information.¹²⁵ | <ul style="list-style-type: none"> The government should fulfil its pledge to establish a public central register of company beneficial ownership information. |
| 5.2 The Government is taking steps to ensure transparency in the ownership and control of all companies involved in property purchase and public contracting ¹²⁶ | <ul style="list-style-type: none"> The identities of contracting parties are published on the NPA's website,¹²⁷ but this does not include beneficial ownership information. The NPA states that the identities of contracting parties are also published on the website of the procuring institution.¹²⁸ The Ministry of Public Works intends to establish a comprehensive database of all infrastructure projects, including technical information.¹²⁹ | <ul style="list-style-type: none"> The government should establish a public central register of company ownership, including beneficial ownership. |

¹²³ Country Statement/Government of Afghanistan (May 2016).

¹²⁴ MEC (June 2016).

¹²⁵ MEC (June 2016).

¹²⁶ Country Statement/Government of Afghanistan (May 2016).

¹²⁷ See NPA website: www.ppu.gov.af.

¹²⁸ MEC (June 2016).

¹²⁹ MEC (June 2016).

| | | |
|---|---|--|
| <p>5.3 The Government is preparing a business simplification roadmap covering business registration, construction permits, tax registration and payment, accessing electricity, and adjudicating land disputes, to be approved by Cabinet by December 2016¹³⁰</p> | <ul style="list-style-type: none"> • The NUG states that the roadmap for the simplification of the business environment has been prepared and approved by the High Economic Council.¹³¹ • A DBI (Doing Business Indicators) plan was developed by the Directorate of Private Sector Support in March 2016. It awaits approval by the Council of Ministers.¹³² • The NUG has pledged to review licensing requirements, reduce red tape, clarify property titles, facilitate exports, provide reliable supplies of electricity, facilitate access to transport and ensure the personal safety of entrepreneurs and businesspeople.¹³³ • The Afghan law on commercial contracts¹³⁴ imposes impractical and unreasonable procedural and bureaucratic requirements on businesses to register and operate within the country. Commercial contract enforcement is a lengthy and complicated process, which undermines transparency and discourages businesspeople from referring to commercial courts for contract dispute resolution.¹³⁵ | <ul style="list-style-type: none"> • Building on the business simplification roadmap, the NUG should implement its pledge to review licensing requirements, reduce red tape and clarify property titles. This should also include updating the Afghan law on commercial contracts.¹³⁶ • The NUG should make the business simplification roadmap publicly available. |
|---|---|--|

¹³⁰ SMAF/Government of Afghanistan (2015).

¹³¹ SMAF Progress Report/Ministry of Finance (2016).

¹³² MEC (June 2016).

¹³³ The ANPDF states: 'Government regulatory processes often contain acceptable principles, but their practical application involves multiple steps that create openings for bribes and inefficiency.' The NUG pledges to review licensing requirements with the goal of eliminating unnecessary ones and establish one-stop shops offering streamlined electronic business administration services (registration, licensing, customs payments) in Kabul plus seven hubs. ANPDF/Government of Afghanistan (September 2016).

¹³⁴ Law on Commercial Contracts and Selling Property (LCCSP). See Transparency International (2016).

¹³⁵ The LCCSP is silent regarding the procedures, cost and duration of a claim for effective commercial dispute resolution. See Transparency International (2016).

¹³⁶ Currently regulated under the Law on Commercial Contracts and Selling Property.

6. Extractive Industries

| NUG commitment | Status | TI recommends |
|--|--|---|
| 6.1 Update the mining law to make it EITI-compliant¹³⁷ | <ul style="list-style-type: none"> The current Mining Law excludes some senior officials from direct or indirect benefit from a mining licence. Those not on the list notably include Members of Parliament and members of the security forces. A draft amendment to the Afghan Mining Law has not been shared with civil society.¹³⁸ Coordination of the Afghanistan Extractive Industry Transparency Initiative (AEITI) activities will reportedly be moved to the national economic adviser in the Office of the President.¹³⁹ | <ul style="list-style-type: none"> The amendment to the Afghan Mining Law should require public registration of the beneficial ownership of companies and the publication of production and payment data by companies. The NUG should encourage and facilitate community monitoring of extractive activities. |
| 6.2 The Government is enhancing company disclosure (regarding payments to governments for the sale of oil, gas and minerals), exploring the scope for a common global reporting standard and working together to build a common understanding and strengthen the evidence for transparency in this area¹⁴⁰ | <ul style="list-style-type: none"> The Ministry of Mines and Petroleum has reportedly prepared an Extractive Industries Development Plan.¹⁴¹ This is not publicly available. Data concerning company payments to government and company production data is not publicly available.¹⁴² | <ul style="list-style-type: none"> The Ministry of Mines and Petroleum should publish production and payment data by companies. |

¹³⁷ ANPDF/Government of Afghanistan (September 2016).

¹³⁸ TI interview with senior civil society representative with expertise in extractive industries (22 September 2016).

¹³⁹ 'Matrix of Reforms' (internal Afghan Government working document, received September 2016); TI interview (September 2016).

¹⁴⁰ Country Statement/Government of Afghanistan (May 2016).

¹⁴¹ 'Matrix of Reforms' (internal Afghan Government working document, received September 2016); TI Interview (September 2016).

¹⁴² Global Witness (2016).

7. Donor Aid

| NUG commitment | Status | TI recommends |
|--|---|---|
| <p>7.1 Donors provide all aid information, including spending, both on- and off-budget in Afghanistan, to be recorded in the Development Assistance Database annually through the DCD process, starting by September 2015¹⁴³</p> | <ul style="list-style-type: none"> • The NUG states: 'As of 31 July 2016, 93% of total ODA committed for FY 2016 is recorded in the DAD.'¹⁴⁴ • In 2015 six major donors were requested by MEC to align their programmes with the NUG's development priorities. Two donors have confirmed that alignment has taken or is taking place.¹⁴⁵ • The MEC reports that most donor projects are off-budget and the NUG has no control over them.¹⁴⁶ • The Development Assistance Database lacks publicly available information on the long-term commitment of programmes and the content, results, beneficiaries and evaluation reports of the programmes. • The NUG is preparing a new Public Financial Management Roadmap, led by the Ministry of Finance, with a special focus on enabling donors to increase on-budget assistance.¹⁴⁷ This plan is not publicly available. | <ul style="list-style-type: none"> • Donors should make publicly available information about donor aid programmes, including information on the budget (allocated and expensed), programme objectives, activities, results, beneficiaries and evaluation reports. • Donors should involve civil society in the planning and implementation of anti-corruption policies and activities. • Donors should prioritise strengthening Afghan government public financial management systems. • Donors should strengthen coordination with each other, civil society and the NUG for anti-corruption efforts and processes. Donors should facilitate citizen-led monitoring, citizen report cards and participatory and transparency systems, including aid complaints hotlines with the associated infrastructure to pursue and resolve complaints. |

¹⁴³ SMAF/Government of Afghanistan (2015).

¹⁴⁴ SMAF Progress Report/Ministry of Finance (2016).

¹⁴⁵ MEC (June 2016).

¹⁴⁶ MEC (June 2016).

¹⁴⁷ 'Matrix of Reforms' (internal Afghan Government working document, received September 2016); TI Interview (September 2016).

ANNEX 2: PROFILE OF PARTICIPANTS

| Interview/Transparency Forum/both | Date | Position and sector | Expertise | Male/ Female | Afghan/ Foreign |
|--|-----------------------|---|--|-------------------------|----------------------------|
| Interview | 11/7/2016 | Senior CSO | Extractive industries | Male | Foreign |
| Interview | 21/7/2016 | Senior CSO | Extractive industries and justice reform | Female | Foreign |
| Interview | 25/7/2016 | Senior government | Anti-corruption (all sectors) | Male | Afghan |
| Both | 31/7/2016 | Senior government | Anti-corruption (all sectors) and auditing | Male | Afghan |
| Interview | 8/8/2016 | Senior international community | Rule of law and justice reform | Male | Foreign |
| Interview | 8/8/2016 | International community | Rule of law and justice reform | Male | Afghan |
| Both | 8/8/2016 22/8/2016 | International community | Rule of law and justice reform | Male | Afghan |
| Interview | 11/8/2016 | Senior international community | Rule of law and governance | Female | Foreign |
| Both | 11/8/2016 | Senior international community (GIZ) ¹⁴⁸ | Rule of law | Male | Foreign |

¹⁴⁸ Deutsche Gesellschaft für Internationale Zusammenarbeit.

| | | | | | |
|--------------------|------------------------|--|--|--------|---------|
| | 22/8/2016 | | | | |
| Interview | 30/8/2016 | Senior government (Ministry of Finance) | Anti- corruption (all sectors) | Male | Afghan |
| Both | 22/8/2016 30/8/2016 | Senior government | Anti- corruption (all sectors) | Male | Afghan |
| Interview | 29/8/2016 19/9/2016 | Senior government | Anti- corruption (all sectors) | Male | Afghan |
| Transparency Forum | 22/8/2016 | Senior government | Civil service reform | Male | Afghan |
| Both | 22/8/2016 19/9/2016 | Senior government | Procurement | Male | Afghan |
| Transparency Forum | 22/8/2016 | Senior parliament | Rule of law and anti- corruption | Female | Afghan |
| Transparency Forum | 22/8/2016 | Senior government | Anti- corruption | Male | Afghan |
| Transparency Forum | 22/8/2016 | Senior government | Public financial management | Male | Afghan |
| Transparency Forum | 22/8/2016 | CSO | Human rights | Male | Afghan |
| Transparency Forum | 22/8/2016 | International community | Rule of law and anti- corruption | Male | Foreign |
| Transparency Forum | 22/8/2016 | Private sector | Business administration | Male | Afghan |
| Transparency Forum | 22/8/2016 | Senior government | Anti- corruption and auditing | Male | Afghan |
| Transparency Forum | 22/8/2016 | International community | | Female | Foreign |
| Transparency Forum | 22/8/2016 | International community | | Male | Foreign |

| | | | | | |
|--------------------|-----------|-------------------------|--------------------------------|--------|---------|
| Transparency Forum | 22/8/2016 | Senior government | Minority rights | Male | Afghan |
| Transparency Forum | 22/8/2016 | CSO | Anti-corruption | Male | Afghan |
| Transparency Forum | 22/8/2016 | Senior CSO | Business administration | Male | Afghan |
| Transparency Forum | 22/8/2016 | International community | | Male | Foreign |
| Transparency Forum | 22/8/2016 | International community | | Female | Foreign |
| Transparency Forum | 22/8/2016 | CSO | Rule of law and justice sector | Male | Afghan |
| Transparency Forum | 22/8/2016 | Senior government | Civil service administration | Female | Afghan |
| Transparency Forum | 22/8/2016 | International community | | Male | Foreign |
| Transparency Forum | 22/8/2016 | CSO | Development projects | Male | Afghan |
| Transparency Forum | 22/8/2016 | Senior government | Human rights | Female | Afghan |
| Transparency Forum | 22/8/2016 | CSO | Rule of law and justice sector | Male | Afghan |
| Transparency Forum | 22/8/2016 | International community | | Male | Foreign |
| Transparency Forum | 22/8/2016 | International community | | Male | Foreign |
| Transparency Forum | 22/8/2016 | CSO | Anti-corruption | Male | Afghan |
| Transparency Forum | 22/8/2016 | CSO | Rule of law and justice sector | Male | Afghan |
| Transparency Forum | 22/8/2016 | Government | Civil service | Male | Afghan |
| Transparency Forum | 22/8/2016 | International community | | Male | Foreign |

| | | | | | |
|--------------------|-----------|-------------------------|---------------------------|------|---------|
| Transparency Forum | 22/8/2016 | CSO | Anti-corruption | Male | Afghan |
| Transparency Forum | 22/8/2016 | CSO | Rule of law and elections | Male | Afghan |
| Transparency Forum | 22/8/2016 | International community | | Male | Foreign |
| Transparency Forum | 22/8/2016 | CSO | Anti-corruption | Male | Afghan |
| Transparency Forum | 22/8/2016 | International community | | Male | Afghan |

ANNEX 3: LIST OF 50 ANTI-CORRUPTION COMMITMENTS

Category 1: Building **Capable, Accountable and Responsive Governance**

There are 16 commitments within this category, sorted into five different sub-categories: government; justice sector; anti-corruption agencies; ministry reform; and civil society engagement.

Government

1. Pass laws criminalising corruption in line with the United Nations Convention against Corruption¹⁴⁹
2. Implement the national anti-corruption plan and legal framework¹⁵⁰
3. At least 90 per cent of the officials of the new government, under article 154 of the Constitution, had declared their assets by the first half of 2016.¹⁵¹ *This commitment can be augmented by the ANPDF statement: 'Expand public disclosure of asset declaration to cover law enforcement, customs, and tax administration'*
4. The new PFM Roadmap II has been/will be launched by the second half of 2016.¹⁵² *This commitment can be changed or augmented with the ANPDF statement about updating Afghanistan's internationally recognised public expenditure and accountability measurements in line with PEFA, an internationally recognized instrument for fiduciary risk assessment*

Justice sector

5. The Justice Sector Reform Plan will be launched by December 2016¹⁵³
6. There are new qualification requirements for prosecutors and judges to pass entry and refresher exams and increased legal rigour standards for justice officials¹⁵⁴
7. There is rotation or retirement of unqualified candidates within the justice institutions, including the replacement of all 34 provincial judges, carried out by an independent judicial appointments body¹⁵⁵
8. Procurement corruption cases are being prosecuted¹⁵⁶
9. A specialised Anti-Corruption Justice Center has been established¹⁵⁷

¹⁴⁹ ANPDF/Government of Afghanistan (September 2016).

¹⁵⁰ ANPDF/Government of Afghanistan (September 2016).

¹⁵¹ SMAF/Government of Afghanistan (2015).

¹⁵² SMAF/Government of Afghanistan (2015).

¹⁵³ SMAF/Government of Afghanistan (2015).

¹⁵⁴ ANPDF/Government of Afghanistan (September 2016); Ghani (5 May 2016).

¹⁵⁵ ANPDF/Government of Afghanistan (September 2016); Ghani (5 May 2016).

¹⁵⁶ Ghani (12 May 2016).

¹⁵⁷ Ghani (5 May 2016); Country Statement/Government of Afghanistan (May 2016).

Anti-corruption agencies

10. The High Council for Governance, Rule of Law and Anti-Corruption has been established and is operating effectively¹⁵⁸

Ministry reform (the Government has prioritised the Ministries of Interior, Transport, Mining, Public Health, Communications and Education for 'clean-up' in 2016,¹⁵⁹ as well as setting goals for other ministries)

11. Expand the use of electronic payments and e-procurement to line ministries¹⁶⁰

12. The Ministry of Interior's computerised human resources management information system to catch 'ghost' workers has been implemented¹⁶¹

13. The Ministry of Education is undergoing 'deep restructuring' in response to ongoing investigations building prosecution dossiers concerning its practices¹⁶²

14. The results of the investigations and trials concerning the Ministry of Education will be made public¹⁶³

15. Five revenue-based ministries (Ministry of Finance, Ministry of Mines and Petroleum, Ministry of Commerce and Industries, Ministry of Transport and Civil Aviation and Ministry of Communication and Information Technology) prepared their anti-corruption plans by the end of 2015 and began implementation in the first half of 2016, with the remaining ministries' plans to be completed by the end of 2016¹⁶⁴

Civil society engagement

16. Deepened and strengthened government partnership with civil society's anti-corruption activists, including the investigative media¹⁶⁵

¹⁵⁸ Country Statement/Government of Afghanistan (May 2016).

¹⁵⁹ Ghani (5 May 2016).

¹⁶⁰ ANPDF/Government of Afghanistan (September 2016).

¹⁶¹ Ghani (5 May 2016).

¹⁶² Ghani (5 May 2016).

¹⁶³ Ghani (5 May 2016).

¹⁶⁴ SMAF/Government of Afghanistan (2015).

¹⁶⁵ Ghani (12 May 2016).

Category 2: Improving **Economic Governance**

There are 13 commitments within this category. This category covers four sub-categories: extractive industries; transparency of company ownership; private sector development; and tackling land-grabbing.

Improving the transparency and accountability of extractive industries

1. Update the mining law to make it EITI-compliant¹⁶⁶
2. The government publishes full details of all natural resource exploitation contracts, before they are awarded¹⁶⁷
3. The government has embraced the principles of community consultation and monitoring to ensure that local habitats are not destroyed, that community rights are respected and that disputes are properly adjudicated¹⁶⁸
4. The government is enhancing company disclosure (regarding payments to governments for the sale of oil, gas and minerals), exploring the scope for a common global reporting standard and working together to build a common understanding and strengthen the evidence for transparency in this area¹⁶⁹
5. The government supports voluntary disclosures through EITI reporting and by some major companies regarding payments to governments for the sale of oil, gas and minerals¹⁷⁰
6. The government supports the new 2016 EITI Standard, in particular the requirements on beneficial ownership and the sale of the state's share of production¹⁷¹

Improving the transparency of company ownership

7. The government has established public central registers of company beneficial ownership information¹⁷²
8. The government has ensured that law enforcement agencies have full and effective access to beneficial ownership information for companies and other legal entities registered within their jurisdiction¹⁷³
9. The government is implementing bilateral arrangements to ensure that law enforcement in one partner country has full and effective access to the beneficial ownership information of companies incorporated in the other partner country¹⁷⁴
10. The government is taking steps to ensure transparency of the ownership and control of all companies involved in property purchase and public contracting¹⁷⁵

¹⁶⁶ ANPDF/Government of Afghanistan (September 2016).

¹⁶⁷ Ghani (5 May 2016).

¹⁶⁸ Ghani (5 May 2016).

¹⁶⁹ Country Statement/Government of Afghanistan (May 2016).

¹⁷⁰ Country Statement/Government of Afghanistan (May 2016).

¹⁷¹ Country Statement/Government of Afghanistan (May 2016).

¹⁷² Country Statement/Government of Afghanistan (May 2016).

¹⁷³ Country Statement/Government of Afghanistan (May 2016).

¹⁷⁴ Country Statement/Government of Afghanistan (May 2016).

¹⁷⁵ Country Statement/Government of Afghanistan (May 2016).

Private sector development

11. The government is preparing a business simplification roadmap covering business registration, construction permits, tax registration and payment, accessing electricity and adjudicating land disputes, to be approved by Cabinet by December 2016¹⁷⁶

Tackling land-grabbing

12. To provide security and end land-grabbing affecting the urban poor, by the end of December 2015 the government had launched a national programme to survey informal settlements and provide 100 per cent coverage of land tenure certificates in the cities of Kabul, Herat, Kandahar, Mazari-Sharif and Jalalabad¹⁷⁷

13. The government is implementing ARAZI, a new, high-performing agency for land and water administration and has already compiled a list of all of the lands illicitly appropriated and is preparing the legal procedures needed to return them to their rightful owners¹⁷⁸

Category 3: Strengthening Public Financial Management

There are 21 commitments within this category. The following four sub-categories are covered: improving procurement transparency; transparency of tax affairs; tackling money-laundering and recovering stolen assets; and transparency of donor aid.

Improving procurement transparency

1. The government has formed a National Procurement Commission to review all high-value contracts and to enable the consolidation of construction contracts¹⁷⁹

2. The government has established a specialised agency within the NPC for national public works¹⁸⁰

3. The government has established a specialised agency within the NPC that is a state-owned enterprise to manage government contracting¹⁸¹

4. The government has published contracts on a publicly available website, benchmarking bids against known unit costs and reviewing procurement rules¹⁸²

5. The National Procurement Commission adopts and implements service standards according to the Procurement Law of Afghanistan 2009 (as amended) by the second half of 2016¹⁸³

6. The government has supported the establishment of transparent central registers of foreign companies bidding on public contracts and buying property¹⁸⁴

¹⁷⁶ SMAF/Government of Afghanistan (2015).

¹⁷⁷ SMAF/Government of Afghanistan (2015).

¹⁷⁸ Ghani (5 May 2016).

¹⁷⁹ Ghani (12 May 2016).

¹⁸⁰ Ghani (12 May 2016).

¹⁸¹ Ghani (12 May 2016).

¹⁸² Ghani (12 May 2016).

¹⁸³ SMAF/Government of Afghanistan (2015).

¹⁸⁴ Country Statement/Government of Afghanistan (May 2016).

7. The government is working towards a phased implementation of the principles of the Open Contracting Data Standard, focusing on major projects as an early priority¹⁸⁵

8. The government has established an accessible central database of companies with final convictions¹⁸⁶

9. The government is exploring ways of sharing information on corrupt bidders across borders¹⁸⁷

Improving the transparency of tax affairs

10. The government had put in place a joint working group by December 2015, to define common principles and deliver recommendations on taxation by June 2016 that will be taken forward through bilateral dialogue¹⁸⁸

11. The government has signed up to the Common Reporting Standard initiative on taxation¹⁸⁹

12. The government has joined the Addis Tax Initiative¹⁹⁰

13. The government has reviewed penalties and other action against professional enablers of tax evasion, including for corporations that fail to prevent their employees from facilitating tax evasion¹⁹¹

14. The government is supporting the development of a global commitment for public country-by-country reporting on tax information for large multinational enterprises¹⁹²

Tackling money-laundering and recovering stolen assets

15. The government is deploying public-private information-sharing partnerships to bring together governments, law enforcement agencies, regulators and the financial sector to detect, prevent and disrupt money-laundering linked to corruption¹⁹³

16. The government is working together with all countries to share information between respective public-private partnerships to ensure the most effective response to international money-laundering¹⁹⁴

17. The government is strengthening asset recovery legislation, including through non-conviction-based confiscation powers and the introduction of unexplained wealth orders¹⁹⁵

18. The government is developing internationally endorsed guidelines for the transparent and accountable management of returned stolen assets¹⁹⁶

¹⁸⁵ Country Statement/Government of Afghanistan (May 2016).

¹⁸⁶ Country Statement/Government of Afghanistan (May 2016).

¹⁸⁷ Country Statement/Government of Afghanistan (May 2016).

¹⁸⁸ SMAF/Government of Afghanistan (2015).

¹⁸⁹ Country Statement/Government of Afghanistan (May 2016).

¹⁹⁰ Country Statement/Government of Afghanistan (May 2016).

¹⁹¹ Country Statement/Government of Afghanistan (May 2016).

¹⁹² Country Statement/Government of Afghanistan (May 2016).

¹⁹³ Country Statement/Government of Afghanistan (May 2016).

¹⁹⁴ Country Statement/Government of Afghanistan (May 2016).

¹⁹⁵ Country Statement/Government of Afghanistan (May 2016).

¹⁹⁶ Country Statement/Government of Afghanistan (May 2016).

19. The government is developing common principles governing the payment of compensation to the countries affected, to ensure that such payments are made safely, fairly and in a transparent manner¹⁹⁷

Transparency of donor aid to Afghanistan

20. Donor-funded contractors on the national technical assistance invoicing scale follows government-approved CBR (Capacity Building for Results) scales by June 2016¹⁹⁸

21. Donors provide all aid information, including spending, both on and off the budget, in Afghanistan, recorded in the Development Assistance Database annually through the DCD process, starting by September 2015¹⁹⁹

¹⁹⁷ Afghanistan Country Statement, London Anti-Corruption Summit (2016)

¹⁹⁸ SMAF (2015)

¹⁹⁹ SMAF (2015)

Transparency International
International Secretariat
Alt-Moabit 96, 10559 Berlin, Germany

Phone: +49 30 34 38 200
Fax: +49 30 34 70 39 12

ti@transparency.org
www.transparency.org

blog.transparency.org
facebook.com/transparencyinternational
twitter.com/anticorruption