



Afghanistan's Anti-Corruption Institutions: Too many, and with too few results

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Corruption in the Afghan state has blossomed and bloomed in the years since 2001. A report published by UNAMA today on Afghanistan's fight against corruption highlights how the frequent changes in corruption-related legislation and a mushrooming of anti-graft institutions have done little to stop it; recent reductions in petty corruption – as shown by the latest surveys of citizens' perceptions – have been minimal. AAN's Jelena Bjelica here takes stock of the country's principal anti-corruption institutions, looking at what they do and (often) do not do, and whether corruption is helped or hindered by the multiplicity of bodies.

Corruption eats into the faith of citizens in their state. It undermines what services the state provides – witness low-quality or even ghost schools, the disabled and families of martyrs seeing their pensions are taken by others and the poor-quality construction of roads and infrastructure. It feeds into the nexus between criminality and the state and widens social inequality, between those too poor and powerless to influence the system and those who are able to exploit it. Whether corruption manifests as bribe-taking, selling state jobs, stealing money or goods, paying money to ghost pensioners, teachers and soldiers, making crooked contracts or using state institutions or staff to commit a crime with impunity, the number and ways in which corruption has blossomed in the Afghan state since 2001 are many and varied. So, too, are the institutions set up by the state supposedly to combat this corruption. Yet, nothing much ever



seems to change.

In this dispatch, the author looks at UNAMA's overall conclusions in its new report on fighting corruption, before giving a brief history of anti-corruption efforts in the years since 2001. Then, in a bid to clarify the bewildering number of anti-corruption bodies, she details the ten most important ones, looking at how and why they were set up and why they are (largely) failing or (very occasionally) doing well.

What does UNAMA's report say about corruption in Afghanistan?

The new UNAMA report, "[Afghanistan's Fight against Corruption: Groundwork for Peace and Prosperity](#)" said that "some progress" against corruption has been made. In Transparency International's global corruption perception index, Afghanistan moved up from 177th (in 2017) to 172nd place (in 2018), out of 180 places. Mainly, this was a result of a slight decrease in corruption in Afghanistan. According to a leading Afghan watch-dog organisation, Integrity Watch Afghanistan, this was reportedly due to citizens paying fewer bribes. (1)

This decrease in corruption was followed by a boost in anti-corruption legislation. According to the UNAMA report, in 2018 and early 2019, legislative changes related to corruption, such as the Anti-Corruption Law, the Whistle Blower Protection Law and the Attorney General's Law "focused on clarifying the institutional framework of anti-corruption bodies to better align to the United Nations Convention against Corruption (UNCAC)." (2) According to the UNAMA, the Anti-Corruption Law, which entered into force on 5 September 2018 and which foresees the establishment of an independent Anti-Corruption Commission, shows that "the reform efforts have come a long way towards establishing a robust anti-corruption framework and dedicated institutions to implement it."

The new anti-corruption law was submitted to the Wolesi Jirga on 11 October 2018, about 20 days before the parliamentary elections (see this [AAN thematic dossier](#) on the aftermath of the 2018 parliamentary elections). As the new national assembly was only [inaugurated](#) on 26 April 2019, the law has not yet been debated. It was, nevertheless, amended by another presidential legislative decree regarding the selection process of the anti-corruption commissioners, on 5 March 2019.

The UNAMA report, however, warns that recurrent changes in legislation, inconsistent implementation of the 2017 Anti-Corruption Strategy and ad hoc interventions to change a course of reform or frequent changes in personnel within key institutions may have had a reverse effect.

None of this comes as any surprise, as Afghanistan's post-2001 anti-corruption history is rich with examples of just that – frequent changes in legislation, changes in personnel, inconsistently followed plans and the creation of numerous anti-graft institutions, most of which have had a very short life span, as will be explained in the following section.



Looking back, how did Afghanistan's fight against corruption begin?

In the years after 2001, corruption came to be recognised as one of the key impediments to Afghanistan's development and stability; thus, the fight against it eventually gained a high place on the post-2001 state-building agenda (for more background see this 2007 UNODC [paper](#)). Within three years, of the fall of the Taleban, Afghanistan had signed the United Nations Convention against Corruption (UNCAC) and promulgated a law against corruption and bribery in 2004. That same year, the first anti-corruption agency, the General Independent Administration for Anti-Corruption (GIAAC) was established. Based on the decree under which it was formed, GIAAC had wide-ranging responsibilities, including to investigate all cases of bribery and corruption. However, its work was politicised, and, according to reports, misused for political gains by its head, Dr Azzizulah Ludin (see [here](#) and [here](#)). (3) It was, very eventually, dissolved in 2008 after it lost international financial support, following former President Karzai's decision to replace Dr Ludin with Ezatullah Wasifi, who had been convicted of selling and distributing heroin in the United States (see media coverage [here](#)).

2006 saw the first anti-corruption benchmarks being agreed when the Afghan government and its international backers signed the Afghanistan Compact. Since then, they have been a prominent feature in all key agreements between the Afghan government and its international backers. These benchmarks are also used to measure anti-corruption efforts.

By the end of Karzai's presidency in 2014, four key institutions (4) in the Afghan anti-corruption sector had emerged. Some of these institutions, however, such as the High Office for the Oversight and Anti-Corruption (HOO) created by President Karzai in 2008 were just a new outlet for the same old staff at [GIAAC](#).

During the first three years of President's Ghani tenure, the number of institutions has blossomed. According to a 2017 UNAMA [report](#) on anti-corruption "18 separate bodies tasked with implementing aspects of the government's anti-corruption efforts" were operational in 2017. "The sheer number of existing anti-corruption bodies," said the report, "presents a significant challenge to coordination efforts."

Indeed, the closure of HOO, which began in 2014, gave rise to four new institutions: the Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC) and the High Council for Rule of Law and Anti-Corruption in 2016; the Administration on Registration and Assessment of Assets, located within the Office of Administrative Affairs of the President and; the Deputy Attorney General for Anti-corruption in [2017](#).

The increase in the number of institutions also coincided with the [approval](#) of a new Afghanistan National Strategy for Combatting Corruption in September 2017. (5) Some institutions, such as the Deputy Attorney General for Anti-Corruption, were created in line with the new strategy (see the 2018 US Special Inspector General for Afghanistan Reconstruction, SIGAR, report [here](#) and UNAMA's 2018 report [here](#)).



Nevertheless, these changes in the institutional landscape resulted in a situation, UNAMA's 2018 report on anti-corruption [found](#), in which key Afghan anti-corruption institutions were based on decrees not yet approved by parliament. (6) Decrees and regulations, the report said, "may be altered any time."

Moreover, a high and fluctuating number of institutions over a period of almost 18 years has done little to reduce corruption throughout the country – and may even have increased it. While everyday abuse of public officials in their interaction with citizens did decrease in 2018 (see footnote 1) – which may be a blip or the start of something more sustained – misuse of public funds has persisted. As a 2018 report on anti-corruption by the Special Inspector General for Afghanistan Reconstruction (SIGAR) [put it](#): "If the Afghan government continues not to take action against public officials who violate internal codes of ethics, a climate of corruption within the Afghan government will endure."

Which are the current anti-corruption institutions and what do they do?

In the following section, the key institutions in Afghanistan at the forefront of the country's fight against 'a climate of corruption' are laid out. This section provided an overview of the institutions according to their general area of work, ie policy making; prevention and oversight; investigation and prosecution; and institutional auditors. Each institution is described and a short overview of their achievements and shortfalls is discussed, based on the 2019 UNAMA report and other available reports.

Polycymaking

1. *The High Council on Governance, Rule of Law and Anti-Corruption*

A key policy-making and coordination body, the High Council for Rule of Law and Anti-Corruption was established by presidential decree on 17 August 2016. According to its terms of reference, the High Council's goals are to reform and reinforce the justice system, improve the legislative framework and fight corruption. It is chaired by the president and includes most senior members of government, the judiciary and independent institutions. (7) It became active in 2017, when, according to the 2018 UNAMA report, it adopted the new Anti-Corruption Strategy (on 28 September) and institutional reform plans under the overall Justice Sector Reform Plan (on 22 June 2017).

The work of the High Council is supported by sub-committees on legislative issues, justice and anti-corruption. The legislative and justice committees are chaired by Second Vice-President Muhammad Sarwar Danesh, while the anti-corruption committee is chaired by Attorney General Farid Hamidi. In line with the anti-corruption strategy, an additional Special Secretariat to monitor and report on the strategy's implementation was established in 2018. The Special Anti-Corruption Secretariat consists of a group of experts in five key areas: monitoring key ministries/departments; revenue and expenditure; specific decisions of the High Council on the law; anti-corruption and; communications and evaluation. It receives reports on the



implementation of the strategy from ministries and government departments and presents unified reports to the president. The High Council is one of the eight development councils listed in the Afghanistan National Peace and Development Framework (ANPDF) and is also responsible for overseeing two National Priority Programmes, the National Justice Sector and Judicial Reform Plan (NJSRP), and the Effective Governance Programme.

According to the 2019 UNAMA report, the High Council was also included in the new Anti-Corruption Law, according to which its main goals are to fight corruption and establish coordination among relevant entities under the chairmanship of the president.

In 2018 and 2019, the High Council adopted a Subnational Governance Policy and revised the National Anti-Corruption Strategy. However, according to UNAMA's report, there is room for improvement in the High Council's work. The report said the government should consider: turning the High Council sub-committees into technical expert working groups; creating a mechanism to advance the implementation of the National Justice Sector Reform Plan; and codify the participation of civil society and independent institutions in High Council meetings.

Prevention and Oversight

2. Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC)

The Independent Joint Monitoring and Evaluation Committee (MEC) was established through a presidential executive decree in 2010 as part of the HOO. The institution has had an important role in monitoring, evaluating and reporting anti-corruption issues in Afghanistan. It is famous for its 'vulnerability to corruption' assessments of Afghan institutions, publicly available on its [website](#).

In September 2016, in another executive decree (no 115) on the amendment of legal personality duties, functioning and authorities of the Independent Joint Anti-Corruption Monitoring and Evaluation Committee, it was separated from the HOO and tasked with focussing on five separate areas: monitoring and evaluating anti-corruption efforts by the government and the international community; issuing recommendations for introducing reforms; monitoring and evaluating the effectiveness, transparency and accountability of international community aid; monitoring the implementation of its recommendations; and reporting on the status of implementation of the Committee's recommendations and overall situation of corruption in the country to the president, parliament and the international community.

The MEC's commissioners consist of six senior anti-corruption experts selected by the Afghan government and its international backers, with the chairmanship alternating between an Afghan and an international every six months.

The MEC's legal foundation, an executive decree, is vulnerable to political change and influence as it can be easily changed at any time. There are no legal obligations for the next Afghan president to sustain it. However, if the MEC's mandate was codified in a law that was



passed by parliament, it would be more difficult and time-consuming to alter it.

3. National Procurement Commission

The National Procurement Commission (NPC) is the oversight commission of the National Procurement Authority (NPA), established in 2015. The NPA, which reports to the NPC, monitors and supervises procurement proceedings for efficiency, transparency and compliance with the law, and monitors the progress of contract implementation in accordance with procurement rules and procedures. Both the NPA and the NPC are chaired by the president.

The NPC is composed of the ministers of Finance, Economy and Justice and has the authority to review and approve contracts that are beyond the threshold authority of procuring entities and determine the duties and authorities of such entities. As well as the president, commission meetings are attended by the chief executive and second vice-president and also civil society, representatives of the parliament and some international observers. The NPC holds regular weekly meetings. For example, in 2018, UNAMA reported it held 45 weekly meetings and they were open and transparent.

However, there have been some changes in how the procurement authorities work. In November 2018, the president issued an executive decree (No. 100), according to which “effective from the beginning of fiscal year 2019, the NPA will be responsible for completing the procurement process, from the start to conclusion of contract, for all procurement falling within the jurisdiction of the NPC [ie above a certain monetary threshold].” This means that the NPA conducts the whole procurement process and not just facilitates it. This, according to the 2019 UNAMA report, points to increased centralisation of the procurement process:

[...] this centralization of procurement within a single entity also risks consolidating corruption, rather than preventing it. It may also result in depriving procurement units in government entities from acquiring relevant skills and experience on procurement matters.

4. Deputy Attorney General for Anti-Corruption

On 4 March 2018, the Attorney General’s Office (AGO) Law was amended to create a dedicated Deputy Attorney General for Anti-Corruption Affairs (DAG-AC). The 2017 Anti-Corruption Strategy directed that all anti-corruption bodies, with the exception of the MEC, should be merged under the DAG-AC. The office was, among other tasks, assigned preventive functions, and functions that included “analysing and assessing criminal causes and proposing criminal policy initiatives to the government” and “recommending precautionary measures on crime commission to competent authorities.” All of these go beyond the typical scope of a prosecution office. This was mainly done in order to integrate staff members of the dissolved HOO. As a result, a massive office was created with 367 professional, 94 administrative and 102 support staff. Interestingly, the DAG-AC was not assigned administrative oversight of the Anti-Corruption and Justice Centre (ACJC) Chief Prosecutor, who continues to report directly to the Attorney General.



In June 2018, the former chief prosecutor of the Anti-Corruption Justice Centre, Muhammad Alef Erfani was appointed deputy attorney general for [anti-corruption](#) but was then moved to the post of chief appeals prosecutor for Herat province in November 2018. Erfani told AAN in an interview conducted on 9 October 2018 while he was still the DAG-AC, that “no matter where you work on anti-corruption, you are always on the front line.” However, he had little to report on the achievements of the newly established deputy office. It seemed then that he was also struggling with the DAG-AC’s broad mandate.

The 2019 UNAMA report found that not only was the Deputy Attorney General for Anti-Corruption Affairs’ mandate unclear, so too was the role of his 367-staffed office since, so early on, but it had also been faced with “an abrupt change in leadership.” “These difficulties,” the UNAMA said in its report, “are likely to have led to a low output of the DAG-AC over the past year.”

In its recommendations to the government, UNAMA’s 2019 report said it was necessary to “clarify the role of the Deputy Attorney General for Anti-Corruption.” UNAMA further recommended that the government, having created the Anti-Corruption Commission, should “assess whether the [DAG-AC] office’s massive *tashkil* is still required” and that maybe, instead, the government should consider strengthening the DAG-AC’s prosecutorial functions.

5. Anti-Corruption Commission (to be established)

In line with the new Anti-Corruption Law, an independent Anti-Corruption Commission should be established. Once set up, it should function as a corruption prevention body in line with Article 6 of the United Nations Convention against Corruption (UNCAC). The commission is tasked with general corruption prevention measures, development and oversight of the Anti-Corruption Strategy approved by the High Council, as well as research, awareness-raising and training. It is also mandated to receive information on corruption offences and refer them to the competent authorities and to propose anti-corruption legislation and measures to counter corrupt practices in institutions. The commission will also collect and register asset declarations of government staff and high-ranking officials after this function is transferred to it within twelve months of its establishment.



Photo by BAY ISMOYO / AFP

The commission's broad mandate overlaps with those of several other institutions and officials, including that of the Deputy Attorney General for Anti-Corruption, the Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC), the Office for Asset Registration and Verification, and the Special Secretariat under the High Council. According to the 2019 UNAMA report, "this is a result of the drafting history of the law and a somewhat inconsistent approach to anti-corruption reforms."

The 2017 National Anti-Corruption Strategy did not provide for a dedicated corruption prevention body but dissolved the unsuccessful HOO and moved its functions to other institutions. The Government countered criticisms about the lack of a dedicated independent corruption prevention body by stating that such a body would not work in the Afghan context, arguing instead to streamline existing anti-corruption bodies. The Anti-Corruption Law created the new Commission, but the legal basis of other institutions has not been amended to reflect this change.

It remains to be seen how these conflicting mandates will be resolved once the commission is set up. One of UNAMA's key recommendations to the government is to clarify the roles of the Deputy Attorney General for Anti-Corruption and the newly created Anti-Corruption Commission.

Investigation and Prosecution



6. Anti-Corruption Justice Centre (ACJC)

On 30 June 2016, President Ghani established, through an executive decree, the Anti-Corruption Justice Centre (ACJC) with the purpose of investigating, prosecuting and adjudicating major corruption cases. The creation of the ACJC, however, was a donor-led effort and not genuinely Afghan-driven. An article in the “Journal of Complex Operations” offers a first-hand account of these [efforts](#). “Initially,” the article said, “the effort truly included the entire international community, with meetings being held at the EU compound, the British Embassy, or one of UNAMA’s compounds, but this large working group became too fragmented and unwieldy; and the core group agreed that an ambassador was needed to honcho the effort.” According to the 2018 SIGAR anti-corruption [report](#), “all of the ACJC’s buildings, vehicles, fuel, and other assets have been donated by the international community.”

According to its mandate, the ACJC has jurisdiction over corruption cases involving more than 10 million Afghanis (currently about 125,000 USD); bribery, money laundering, destruction or the selling of cultural and historical relics, crimes against internal or external security, illegal extraction of mines, and land usurpation involving more than five million Afghanis (currently about 63,000 USD) and; cases involving high-ranking government officials, such as deputy-ministers, generals, governors, and Provincial Council members regardless of the amount of money involved. In addition, the High Council on Rule of Law and Anti-Corruption may refer cases to the ACJC even if they do not meet the criteria mentioned above, though this referral option has never been used. Cases that do not meet the jurisdictional threshold of the ACJC continue to be investigated and prosecuted before ordinary provincial courts.

The UNAMA report found that from its inception to mid-May 2019, the ACJC court has tried 223 defendants in 57 cases before its trial chamber and 173 defendants in 52 cases before its appellate chamber. Thirty-six of its cases against 117 accused have been decided after an appeal to the Supreme Court, the report said. It had also issued 127 warrants and summonses, out of which only 13 warrants and 39 summonses could be executed to date, with only a single defendant tried as a result. According to UNAMA, the number of defendants tried in their absence before the ACJC remained high in 2018 and 2019, at 20 per cent. It also said:

Most of the defendants tried by the ACJC [since its inception] have been employees of the MoI [Ministry of Interior] with sizeable numbers from municipalities, [and] the Ministries of Finance and Defense.

But this ‘output’, UNAMA said, has been fluctuating. For example, there was a noticeable decline in the number of cases tried in the second half of 2018; from 1 April 2018 to 31 December 2018, 11 cases were tried at the Primary Court and 15 at the Appeal Court. (8) This compared with the period between 1 January 2019 and mid-May 2019, in which the Primary Court heard 13 cases, while the Appeal Court heard nine cases. UNAMA also found that in the period between January 2018 and April 2019, “not a single defendant affiliated with the MoD [Ministry of Defence] was tried.” The report said that although the Attorney General indicated that several MoD officials had been indicted, “the indictments had been returned, through



judicial rulings, for the prosecutor to cover gaps in the investigation.” Nevertheless, while no MoD official was tried in the abovementioned period, the appeal in one case had been heard shortly before UNAMA published its report.

The report also notes an increase “in the number of private businessmen indicted and tried, mostly for money laundering or illegal transfer of cash.” It concluded:

While the quality of cases being tried by the ACJC generally declined, in terms of the rank of the accused, there was a marginal increase in the amounts ordered by the court in compensation, restitution and confiscation.

UNAMA’s report also said that after emerging from the difficulties of its inception phase, the “ACJC should now be able to deliver on consistently prosecuting high-ranking or high-value corruption cases.”

The decline in the number of cases in 2018 also corresponds with a considerable turn-over in both senior and junior staff in the ACJC prosecution office. In June 2018 following chief prosecutor Mohammad Alef Erfani’s promotion to the position of DAG-AC, a new ACJC chief prosecutor, Fazel Sultan Safi, was appointed. “The appointment did not follow a public call [for applications],” the 2019 UNAMA report said.

The ACJC is also mentioned in the new Anti-Corruption Law, which, if and when passed by parliament, will bring about the long-awaited legislated codification of the ACJC (as opposed to by executive decree). The law contains provisions aimed at facilitating investigations by ACJC’s prosecutors and strengthening the anti-corruption work of the Major Crimes Task Force (MCTF) by placing it directly within the Minister of Interior.

7. Special Court of the Supreme Court

The constitution stipulates that the highest-ranking officials such as ministers who are accused of crimes are to be tried by a special court. In mid-2018, the Supreme Court, for the first time in its history, constituted a special panel chaired by Justice Muhammad Zaman Sangari and two other Supreme Court Judges (Barat Ali Matin and Abdul Hasib Ahadi) in accordance with the Special Courts Law, to hear the case of the former minister for Telecommunications and Information Technology, [Abdul Razaq Wahidi](#).

The former minister was indicted for the misuse of authority under Article 285(2) of the 1976 Penal Code, for allegedly profiting from the recruitment of 37 staff members and from the installation of a real-time telecommunications tax accounting system. The trial was broadcast live on television, with court appearances on 2 and 21 July 2018. In the live broadcast, the former minister attempted to shift the blame to the then-Minister of Finance. On 25 December 2018, the Special Court acquitted the defendant on all charges for lack of evidence, despite having repeatedly returned the case to the prosecution for further investigation. The 2019 UNAMA report said:



Regrettably, the Supreme Court has so far not published its decision in the case and its legal analysis and reasoning therefore remain unknown.

Four high-profile cases remain pending with the Supreme Court as of May 2019, UNAMA's new report said.

8. Major Crimes Task Force (MCTF)

In 2009, the Afghan government created the Major Crimes Task Force (MCTF). From the beginning, the MCTF has been mentored by the FBI. They helped to build the capacity of the task force to investigate organized crime, kidnapping and corruption cases and develop cases for prosecution by the Afghan Attorney General's Office. The US government, according to a report from SIGAR, provided at least 15.5 million USD to assist the MCTF, including refurbishing and maintaining its facilities and training and mentoring its [investigators](#). In July 2010, the MCTF went for its first big arrest, bringing in the chief of administration of the National Security Council, Muhammad Zia Salehi, on corruption charges. However, President Karzai ordered his immediate [release](#). The US backed off, deciding not to support the MCTF prosecution. It thereby consolidated the effective impunity enjoyed by the highest-ranking Afghan officials from anti-corruption efforts. Karzai's successful interference ruined the Major Crimes Task Force. Since then, it has achieved little. Almost the entire original leadership of the unit emigrated to the US following the shutdown of the Salehi investigation and has experienced instability in its leadership ever since.

The task force, nevertheless, was kept alive in the shadows of its one-time-off glory. In 2016, with the creation of the ACJC, it was given a second chance. However, a revamping of the unit was marked with confusion and conflict. The 2018 SIGAR report on Afghanistan's anti-corruption [efforts](#), for example, pointed out that, "despite efforts by the Afghan government to clarify the law, Afghan officials have differing opinions about when the MCTF's detective role ends and when the Attorney General's Office's (AGO) investigative role begins, which has led to recurring conflict between these two organizations."

The same [report](#) also said that "a lack of resources and security has been a continued detriment for detectives, investigators, prosecutors, and judges in Afghanistan" and that "the MCTF relies on the international community to provide resources for its day-to-day operations because it cannot count on the MOI to fully authorize its funding." The report said that in one case in 2017:

The MOI's leadership appears to have halved the MCTF's budget as a punitive measure because MCTF detectives refused to turn over an embezzlement case worth \$3.8 million to the "notoriously ineffective" MOI Inspector General. (The MCTF detectives carried forward with the case and it was eventually tried at the ACJC, but the courts only convicted the lowest-ranked defendants, and only for their attempts to bribe the MCTF to drop the case.)

Furthermore, the unit also struggled with its new leadership, which was itself accused of



unethical and corrupt behaviour. In April 2018, UNAMA reported, “the director of MCTF has been removed and despite allegations of unethical and corrupt behaviour, he was never formally charged.” Between April and September 2018, it said, the unit had two acting directors, before the current director, Colonel Muhammad Hamed, was appointed.

In October 2018, the SIGAR in its regular quarterly report [said](#) that the MCTF did “not appear to be the lead Afghan government investigative agency for high profile corruption crimes, as intended” and that its investigators were “not the best qualified, with some investigators possibly being assigned to the MCTF as a form of patronage.”

9. Financial Transactions and Reports Analysis Centre of Afghanistan (FinTRACA)

FinTRACA was established based on a legislative decree on Anti-Money Laundering and

Proceeds of Crime Law in 2006. It is the financial intelligence unit of the Central Bank. Its mandate is to track money flows and prevent money laundering and terrorism financing. It analyses financial crimes and disseminates financial intelligence to the Attorney General’s Office and other government and intelligence agencies to assist them in combatting money laundering and financial terrorism.

It is one of the few accountability institutions whose mandate is based in law. Since its inception, the office has been working well, reporting its output regularly on an annual basis. In 2018, for example, the FinTRACA [reported](#) that it had transferred 56 cases to relevant government agencies for investigation and prosecution, which included eight to the AGO, 16 to the MoI and 20 to the National Directorate of Security, among others.

The 2019 UNAMA report contains a detailed list of FinTRACA achievements, but also notes that more work to counter money-laundering and terrorism financing is required, especially since the European Commission blacklisted Afghanistan for strategic deficiencies in this area. The report said:

In February 2019, the European Commission adopted a blacklist of 23 third countries, including Afghanistan, for having strategic deficiencies in their anti-money laundering and counter-terrorist financing frameworks. Although the list was rejected by some European Union member states, Afghanistan’s appearance on it is a sign that it needs to continue to strengthen its commendable efforts to counter money-laundering and terrorism financing.

Institutional Auditors

10. Supreme Audit Office

The Supreme Audit Office comes from a long lineage of similar institutions from Afghanistan’s [past](#). The first was the General Department for the Audit of Accounts established in 1945, within the purview of the prime minister’s office. Its main purpose was to audit the



financial and accounting affairs of the government. The General Department for the Audit of Accounts name was changed to the Court of Accounts in 1954 with the approval of parliament. The responsibilities of the office remained the same. In 1965, the office was again renamed, becoming the General Department for the Audit of Accounts. A code of conduct and audit manual was issued during that period. In 1977, the again renamed Court of Accounts within the purview of the president's office was approved by a new law. During the Soviet-backed PDPA regime, in 1984, its name and mandate were again changed. As the Governmental Committee of Councils Minister Controllers, it was responsible for auditing economic, cultural and social activities, including construction, healthcare, transport and trade activities. In 1992, it lost its independent status and functioned under the Office of Administrative Affairs. In 2002 it regained its independent status and became known as the [Control and Audit Office](#). Its last re-naming was in 2013. Since then, the [Supreme Audit Office](#) has worked in line with a law passed by parliament.

According to the 2013 law, the Supreme Audit Office (SAO) has a powerful mandate. It has the authority to audit the accounting and financial affairs of the president's office and its related entities; the national assembly; the judiciary; central and local institutions and related units within and outside the country; general independent directorates; independent commissions; the Attorney General's Office; municipalities; enterprises, government companies and state joint stock companies and; other entities that utilise or hold public funds or public property.

Yet, despite this wide-ranging power to look into financial irregularities, it has never used it. For example, in 2017 an MP accused the speaker of the parliament of embezzling Wolesi Jirga funds (see this AAN detailed account of the [case](#)). As AAN reported, the media claimed that 50 million Afghani (approximately 725,000 USD) had been taken from the Wolesi Jirga's budget to pay for the rent of the speaker's house, guest house and office during the preceding five years. Although this was all made public, the SAO's annual audits noted no irregularities in the Wolesi Jirga budget. Nor did it question the almost one million USD spent on house rents.

The second issue with the SAO is its leadership. Director Sharif Sharifi, a Tajik from Panjshir province with a master's degree in Natural Science, is the brother of former Wolesi Jirga speaker, former vice-president and a leading figure in the Jamiat-e Islami/Shura-ye Nizar faction, Yunus Qanuni. Sharifi held this position – auditor general – from 2002 until earlier this year. He had also been the driving force behind the 2013 law, which, after it was passed by the Wolesi Jirga, secured him a further six-year term in the same office. Finally, In February 2019, the president appointed a new SAO director based on the 2017 revisions to the law. The new auditor general is a relatively young man named Muhammad Na'em Haqmal (born in 1980) who is from Sar-e Pul [province](#).

The end of Sharifi's term coincided with President Ghani's drive to amend the 2013 SAO Law. According to the UNAMA report, the first round of amendments to the law did not bring about the required in-depth reforms. The report said:

Besides unnecessary changes in the terminology, the 2017 amendments reduced the Auditor



General's term of appointment from six to four years, while retaining the President's appointment power. This contravened the recommendation in international standards and norms, which states: "(T)he independence of [State audit institutions'] heads and members (of collegial institutions), including security of tenure and legal immunity in the normal discharge of their duties" should be ensured and they should be "given appointments with sufficiently long and fixed terms, to allow them to carry out their mandates without fear of retaliation".

UNAMA did welcome amendments that require the accounting and auditing carried out by the SAO to be up to the standards of the International Organization of Supreme Audit Institutions. As of May 2019, the draft law was still with the Ministry of Justice for consideration.

Conclusion, and what to watch out for in Afghan anti-corruption efforts

Many institutions have been created supposedly to counter corruption in the years since 2001. Yet, the country has little to show for them. The 2019 UNAMA report, although detailing some sensible, positive developments, highlighted some serious shortfalls. It is worrying that some 18 years into state-building and over ten years since the country ratified the United Nations Convention against Corruption, it still cannot deliver on a basic requirement – truly independent anti-corruption institutions. In Afghanistan high-centralised state, some anti-corruption-related bodies still come directly under the president's authority. In other words, the person with the power to appoint the leadership of these bodies then also often presides over them.

It remains to be seen how the conflicting mandates of the Anti-Corruption Commission and the recently created Deputy AGO on anti-corruption, will be resolved once the commission is created. We will also have to wait to see how the MEC and the Anti-Corruption Commission, both of which have a mandate to research and monitor anti-corruption, work in practice, and whether this lack of clarity will be a source of potential conflict and ineffectiveness between the two institutions.

The sheer number of institutions as well as frequent changes of leadership within most of them – while others have seen no change, itself also a problem – as well as recurrent amendments to the law do not inspire confidence. It could be argued that the fluctuating number of anti-corruption institutions have to do with presidents testing what format of institution works for their country and society. However, it looks more like anti-corruption efforts have mainly been inspired by something else – pressure from outside (particularly during the Karzai years) to be seen to be doing something. In a rentier economy, even anti-corruption institutions can be rent-seeking, at best, vehicles for deploying donor money, or at worst, places which support corruption, for example, if officials use cases to get bribes from alleged offenders to not pursue cases.

The only good news in all this is the minimal decline in petty corruption, as experienced by citizens. However, the lack of any high-profile trials means there is little fear among perpetrators that their criminal endeavours carry risk. This lack of judicial follow-through indicates that the political will to try to deal with grand corruption apparent in 2016 and 2017 has probably now



faded. This should come as no surprise. 2019 is a presidential election year. It is most unlikely we will see any high-profile case at this politically-sensitive moment. On this current assessment, it seems apparent that, while the current state of anti-corruption institutions may or may not endure into the next presidency, grand corruption will certainly do so.

Edited by Sari Kouvo and Kate Clark

(1) [According](#) to a 2018 survey from the leading Afghan anti-corruption watchdog, Integrity Watch Afghanistan's (IWA) perceptions and experiences of corruption [estimated](#) the total value of bribes in 2018 to have fallen to 1.65 billion USD (from 2.88 billion USD in 2016). In 2016, more than 70 per cent of Afghans thought that corruption was worse than it had been in 2014 when a similar survey was conducted. An earlier perception survey on corruption by UNODC in 2012 estimated that the total cost of bribes paid by Afghan citizens to public officials amounted to 3.9 billion USD that year (see [here](#)).

The IWA and UNODC reports are based on a survey on citizens' perceptions and experiences. High-level corruption, which is usually not a theme of these surveys (but of official investigations and prosecutions), is also widespread. For example, see this AAN dossier on the [Kabul Bank scandal](#), which involved Afghan officials and businessmen at the highest levels, including former President Karzai and First Vice President Marshal Fahim's brothers, in the theft of nearly one billion USD, representing the state's entrenched culture of corruption and cronyism. Until now, Afghan authorities have only retrieved 89 million USD from the debtors, less than 10 per cent of the stolen money.

(2) All of these new laws were passed through presidential legislative decrees and this practice (of passing key legislation by decree) was the topic of an earlier, 2018 UNAMA [report](#) on anti-corruption. It said this practice was not compliant with the UNCAC, which Afghanistan ratified on 25 August 2008. The report said:

Although UNCAC Articles 5, 6 and 36 do not require the adoption of a dedicated anti-corruption law, it recommends that the independence and accountability of anti-corruption institutions be "enshrined in law rather than executive decrees (which can easily create such a body but also abolish it)."

(3) According to the IWA report, Karzai appointed Dr Ludin as governor of Herat in 2002. However, Ismail Khan, then-governor of Herat, did not recognize Dr Ludin's authority and forced him to leave the city. Upon his return to Kabul, President Karzai initially appointed Dr Ludin as an advisor and then as Director General of the General Independent Administration Against Corruption (GIAAC). The IWA report said:



The GIAAC was the first anti-corruption institution established in Afghanistan. Like many to follow, it was established without a study on the nature of corruption in the country and without a corresponding policy or strategy. As head of the GIAAC, the first thing Dr Ludin did was to initiate a corruption case against Ismail Khan. In addition to the case against Ismail Khan, the GIAAC initiated some 80 other cases, most of which were focused on foes of Dr Ludin.

(4) These included: the High Office for the Oversight and Anti-Corruption (HOO); Major Crimes Task Force (MCTF); Financial Transactions and Reports Analysis Centre of Afghanistan (FinTRACA); the Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC) within HOO.

(5) Approval of the anti-corruption strategy was also a benchmark to which the Afghan government committed itself at the Brussels Conference in October 2016. In Brussels, the Afghan government pledged to deliver on a number of benchmarks by certain deadlines. The High Council released the anti-corruption strategy on 12 October 2017 after it missed the mid-2017 deadline.

(6) These include, based on legislative presidential decrees, the Administration for Asset Registration and the former HOO); on executive presidential decrees MEC, ACJC, and the Special Secretariat of the High Council and; on a simple regulation, the Major Crimes Task Force.

(7) According to Decree 94 on the High Council for Rule of Law and Anti-Corruption from 17 August 2016, the permanent members of the High Council are: Chief Executive Officer; Second Vice President; Chief Justice; National Security Advisor; Director of Administrative Affairs of President's Office; Minister of Finance; Minister of Justice; Minister of Interior Affairs; Attorney General; General Director of the NDS; Presidential Advisors on Justice and Transparency affairs; Director of the Independent Commission on overseeing the Implementation of Constitution; Director of Independence Human Rights Commission; Director of Independent Directorate of Local Governance; Director of the High Office of Oversight and Anti-Corruption.

(8) According to the Attorney General's Office, UNAMA reported, in the second half of 2018, the ACJC Chief Prosecutor submitted 35 indictments to the ACJC Primary Court of which the court referred 21 cases for the prosecution to cover identified gaps.



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