

Negotiating Anti-Corruption Reforms in Post-Conflict Societies: The Case of Afghanistan

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INTERNATIONAL AND BILATERAL DONORS HAVE poured large sums of money into post-conflict countries like Afghanistan and Iraq to hasten security, stabilize the peace, rebuild governance, and stimulate economic and social development. Often, a cross-cutting goal is to combat corruption, and major programs have been designed and implemented to promote anti-corruption reforms, but they have yielded few immediate results. Are the expectations of these programs unrealistic or are post-conflict countries just not ready or capable of implementing the difficult legal, political, economic, and cultural changes that are required to reduce or prevent corruption?

Producing a measurable and visible impact on corruption levels can take time—a long time. International experience shows that traditions of corruption among political and economic elite or among the populace at large cannot be reversed quickly. The process can take generations. Under much more propitious conditions, the rampant corruption in the United States that spanned from the late nineteenth century through the early twentieth century was presided over by the industrial robber barons and Tammany Hall leaders and took decades to overcome. Amidst the fragility of governance institutions and rule of law in post-conflict societies, addressing corrupt tendencies head-on and with rapidity

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is a tall order.

Of the 32 countries on the World Bank's list of fragile states in 2011, 24 showed a decline in the World Bank's Control of Corruption indicator between 1998 and 2008, only 7 showed improvement, and 1 showed no change.¹ Over a 10-year period, few have been able to alter their downward trajectory. Moreover, all of these countries have among the lowest control of corruption scores worldwide. In many cases, corruption contributed to the onset of their conflicts, and it continues to impact their fragility in the post-conflict period.² On top of these disappointing outcomes is the fact that these are the very countries that receive large foreign assistance packages. How can we expect difficult transformations to quickly transpire from the depths of instability? Yet, in times of financial belt-tightening, international organizations and donors demand to know whether their assistance is effective, development is proceeding vigorously, and anti-corruption goals are being met. On this very point, for instance, the United States Consolidated Appropriations Act of 2012 places strict conditions on the wide range of U.S. development assistance to Afghanistan if visible steps are not taken to actively reduce corruption.³

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Corruption typically manifests itself in post-conflict states in several ways: in the maldistribution of political and military power, in cross-border trafficking of people and commodities, in a strong informal and weak formal post-war economy, in inadequate public administration capacity, in inequitable law enforcement, and in the misdirection of foreign assistance.⁴ These corruption vulnerabilities can negate development goals but often stimulate the initiation of donor programs that promote legitimate criminal justice systems, transparent governments, accountability mechanisms, stronger public service sectors, and democratic elections.

Recent research has demonstrated that as internal conflicts come to an end, those fragile states that negotiate and implement a forward-looking peace agreement with provisions that directly tackle the corruption that initiated the conflict are more likely to set their country on the right path toward solving past injustices and establishing stability.⁵ But sustainability of these reforms can become a problem as enthusiasm for the peace agreement wanes, local stakeholders seek to consolidate their own power bases, and donors move on to other crises.

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Does this mean that all anti-corruption initiatives, and short-term measures

in particular, should be abandoned? Having worked in over 40 developing countries—some of which would be considered fragile—to promote anti-corruption reform programs, I believe something essential is missing in most donor and host government anti-corruption portfolios. Dealing with corruption in all societies, but especially in post-conflict situations, requires local political will, a readiness on the part of local stakeholders, and the resilience of societies to make difficult and significant changes both culturally and in their political–economic dynamics. No matter how strong the preconditions for action, sustainable anti-corruption programs require acceptance and ownership by all local stakeholders. Donor programs will eventually end and the local parties will need to carry the reforms forward. Stakeholders must buy into the idea that it is in all of their interests to reduce the negative impacts of corruption on society. Local interests must be invested in anti-corruption programs if these initiatives are to become institutionalized. And no matter how comprehensive and well intentioned the anti-corruption programs are, there is always a need to adjust, improve, and experiment with anti-corruption reforms as they are implemented over time. There is no one and sure way to fight corruption—programs must be customized to fit each country’s needs and the interests of stakeholders.

The missing mechanism that can promote all of these stakeholder actions is a *negotiation process* among local parties aimed at achieving long-term acceptance of anti-corruption programs. Without a successful negotiation of their interests, some stakeholder groups will certainly be motivated to act as spoilers and erect roadblocks to impede the implementation of the best-intended anti-corruption laws, regulations, procedures, and institutions. But through a successful and continuous negotiation among stakeholders, what is put on paper may truly have a chance of being implemented effectively.

Most anti-corruption-related foreign assistance in post-conflict countries is focused on strengthening the functioning and capacity of government institutions, such as anti-corruption commissions, supreme audit institutions, prosecutors’ offices, the courts, and the police, so they are better equipped to enforce the law and prevent corruption. These programs certainly have the potential to yield concrete results, such as developing systems and procedures that make public procurements and public financial management less vulnerable to abuse. Often overlooked in these foreign aid programs is developing the capacity of the demand-side of the corruption equation—civil society organizations, business associations, and the mass media—so these entities can exercise their voice in the aftermath of conflict and in the rebuilding of democratic institutions and processes. These are messier initiatives with less-certain results. After

all, engaging local nongovernmental stakeholders in continuing dialogue with government authorities over anti-corruption programs and good governance initiatives can provide a platform for endless talks and produce results that are difficult to measure. But it is only through pursuing this negotiation process that the interested parties from all sides have an opportunity to resolve their differences, find common ground for a peaceful and sustainable future, and develop ownership of reforms. Both foreign donors and host governments need to recognize the importance of such negotiations among local interest groups in establishing a meeting of the minds to address corruption and good governance issues. While the outcome of such negotiation initiatives can never be certain, they are worth the effort to find solutions that all can live with and promote over the long term.

After elaborating on the elements and processes of such negotiations, I will discuss how such an initiative might be mobilized in Afghanistan.

STAKEHOLDER NEGOTIATIONS

Nurturing the building blocks of local stakeholder negotiations—the structure, actors, issues, process, strategies, and outcomes—is critical to their success.⁶ If the preconditions for effective negotiations can be established, sustained anti-corruption programs that the society as a whole can embrace may be within reach.

There is no cookie-cutter approach to *structure* negotiations to ensure successful results. One method establishes a relatively informal structure. This can take the form of public–private dialogues between government officials and NGO leaders drawn from a wide variety of interest groups. Such dialogue groups were effective vehicles for generating the active participation of both government and non-government stakeholders in designing and implementing anti-corruption programs in several Russian provinces.⁷ Negotiations might also be more formally institutionalized in national anti-corruption forums or advisory commissions, as in Guatemala after its peace agreement in 1996.⁸ Alternatively, they could be structured in the context of a civilian oversight board, such as Hong Kong’s Complaints Committee, which monitors the Independent Commission Against Corruption. What form the negotiations take depends largely upon the openness of government to divergent perspectives from society, the experience and sophistication of civil society leaders, and the confidence these leaders enjoy from their constituencies.

All major *actors* in society need to be involved in these negotiations. From the public’s side, all major NGOs, media organizations, and business

interests—those that are specifically concerned with corruption issues as well as those that represent citizens who might be victims of corruption in a variety of sectors—have an interest in addressing abuse-of-power issues and placing controls on and increasing transparency within government. Additionally, all government agencies that are empowered to deal with anti-corruption issues should be sitting at the table. Factions intent on maintaining the vested interests of influential elites and networks need to be shown that there are equally powerful stakeholders that oppose their abuses. Incentives may be needed to ensure that all interested parties are drawn into the negotiating process. These incentives might include public recognition of the role these stakeholders play in promoting good governance in the country or extending the possibility of receiving donor-funded grants to strengthen advocacy and awareness campaigns.

The *issues* put forth at the negotiating table need to address the programs that are most needed to reduce the spread and impact of corruption. Public opinion surveys on corruption typically attempt to identify the government sectors, institutions, and functions that citizens see as most vulnerable to corruption, and assess which of them is perceived to impose the greatest cost on society. These surveys can guide the agenda and help prioritize which reforms are most critical and thus need serious investment of resources and effort.⁹ The negotiators, however, must also take into account the motivation behind these programs: each stakeholder needs to represent the interests of their constituencies and demonstrate through their actions that they believe anti-corruption programs can make a difference. The confluence of interests of the many parties at the negotiating table—all focused on anti-corruption reforms—will likely result in stronger controls on government, improved accountability, and increased transparency.

The *negotiation process*, framed within the negotiation structure, can be multifaceted. It can take the form of periodic face-to-face talks, as well as private talks between parties, to resolve sticky issues. Outside groups—religious organizations, foreign donors, neighboring countries, or international organizations—can serve as mediators on occasion to help the parties think through difficult issues. In post-conflict settings, such as in Sierra Leone after 1999 and in Liberia after 2003, United Nations peace-builders found themselves to be the “honest brokers” who promoted dialogue among local stakeholders.¹⁰ It is most important to remember that these stakeholder negotiations need to take place over the long term to promote the building of trusting relationships among interest groups based on a shared understanding of the benefits of reducing corruption.

The *strategies* used in these stakeholder talks need to focus attention on the

common good that all parties seek. By targeting win–win solutions, the entire society can benefit from improved political and economic growth and development, because certain parties will be constrained from abusing their power and influence at the expense of the wider public. The parties need to be attuned to pursuing strategies that persuade others to compromise, reduce their aspirations, or locate the convergence points where all or most interests can be satisfied. The latter—integrative or problem-solving strategies—are most likely to lead the negotiations toward sustainable solutions because they engender mutual trust, as all parties perceive benefit.¹¹

Negotiated outcomes are always complex and require the balancing of multiple issues, interests, and actors through promises, warnings, and commitments within a proposed schedule of implementation. The results of successful negotiations are typically seen as “formulas” that incorporate many tradeoffs, which make all stakeholders believe that they have achieved a win–win solution.¹² Perceived fairness of the negotiated agreements—the extent to which they integrate and deliver on the interests of the various stakeholders—will impact the likely success of implementation over the long term.

Support for getting such stakeholder negotiations established and on their way to cementing and sustaining anti-corruption programs is an area that has received insufficient attention, especially in post-conflict societies. The path for these negotiations is almost always uncertain, and their time frames are often extended. As a result, they are less attractive to international donors than assistance programs that produce, for example, rapid and concrete systems or strengthened auditing procedures. It is important, however, that donors find a way to suspend their disbelief under the special circumstances of post-conflict fragility. They may find that providing assistance to bolster such stakeholder negotiations can have a long-lasting impact on their other anti-corruption reform programs and help the societies dig themselves out of a culture of corruption that impedes development. Afghanistan is a prime example of a country that offers a complex but potentially enlightening case for local stakeholder negotiations to yield anti-corruption benefits.

AFGHANISTAN

Afghanistan, a country that has been embroiled in internal and regional conflicts for over 30 years, currently ranks number 180 out of 182 countries in Transparency International’s 2011 Corruption Perception Index. The international community’s support for fighting corruption in Afghanistan as it emerges from

conflict was confirmed in communiqués produced at the London, Kabul, and Bonn international conferences on Afghanistan in 2010 and 2011. These communiqués not only affirmed what the international community is prepared to do, but also emphasized what the Afghan political, economic, and social leaders need to contribute and how they should participate actively in building an accountable, transparent, and non-corrupt system of governance.

A portion of the approximately \$60 billion in foreign aid provided to Afghanistan over the past decade has been devoted to programs meant to strengthen governance and fight corruption.¹³ Some progress has been made, but it has been a very slow trek. All major surveys and indicators of corruption show the situation worsening, at least in terms of the public's

perception of the problem. In part, this can be attributed to the continuing insecurity and violence in Afghanistan. Certainly, however, another factor impeding progress has been a lack of dialogue among the local stakeholders—the powerful and the not-so-powerful—concerning their interests in relation to anti-corruption reforms. Those with vested interests in maintaining the traditional corrupt networks and transactions tend to wield the power in society, put up roadblocks, and flaunt the rule of law. Those interested in reducing corruption often find it hard to make their voices heard and have few opportunities to engage in dialogue with others to strengthen anti-corruption efforts and enhance enforcement of the law.

Afghanistan has national anti-corruption strategies, plans, laws, executive decrees, and several government institutions devoted to the fight against corruption.¹⁴ Anti-corruption provisions are integrated into the constitution. The principal anti-corruption body—the High Office of Oversight and Anti-Corruption (HOO)—is mandated to coordinate and supervise implementation of the national strategy, as well as serve as the focal point for overseeing the development and implementation of anti-corruption strategies across government agencies. It also serves as a venue for citizens to register complaints about corruption. The HOO conducts preliminary investigations of these complaints and then passes them on to the attorney general's office for prosecution. The HOO also supports corruption prevention through the redesign of government procedures that have allowed for excessive bureaucratic discretion. It has a responsibility to record and verify the asset declarations of government officials as well. Lastly, it is mandated to conduct public awareness campaigns about the costs of corruption and how to stand up for one's rights. There are many other agencies

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in the Afghan government that must coordinate with the HOO for all of these tasks to get done effectively; these agencies include the police, the courts, public finance agencies, and many others. In addition, it is the responsibility of more than 50 ministries and major government agencies to follow through on their anti-corruption priorities based on the national strategy set by the government.

Much effort and many resources have been mobilized by international donors to support the Afghan government in getting all of this accomplished. Over the years, the World Bank, the United Nations, the United States Agency for International Development (USAID), Deutsche Gesellschaft für Internationale Zusammenarbeit, and others have provided support to the HOO and other elements of the Afghan anti-corruption constellation of institutions. All of these bodies have been established under difficult circumstances and have been plagued by a lack of physical and human resources and capacity. Some of the job is getting done, but some of the tasks have been delayed or ignored, and an objective measurement of progress is likely to take time.

One current project, funded by USAID and implemented by Management Systems International (MSI), provides institutional and technical support to strengthen the capacity of the HOO. The project is helping to build a strong and effective institution to lead, monitor, and report on efforts to combat corruption in Afghanistan. In addition, MSI staff works hand-in-hand with a small number of civil society organizations, building their capacity to educate the public about corruption and citizen rights, leveraging their outreach to strengthen the impact of the government's anti-corruption program, conducting external oversight of government agencies, and advocating to keep the fight against corruption high on the government's agenda.¹⁵

During the project's first year, assessment and training activities were conducted to strengthen the HOO's institutional capacity. A new three-year strategic plan was developed and a review of human resources was conducted that helped to realign organizational structure and functions. In support of mandated tasks, the project team supported the launch of asset registration workshops that have reached all ministries and major government departments in Kabul. It also initiated close cooperation between the HOO and the Ministry of Finance to promote active bank account verification of asset declarations. In support of more effective anti-corruption action planning, MSI provided training and technical assistance in the use of corruption-vulnerability and business process-reengineering tools. The project team also helped to standardize complaint-management procedures and case-tracking efficiencies. A nationwide public opinion survey was conducted that generated recommendations on how the

HOO could improve its public outreach capabilities and its regional operations. A very small but important component of the project promoted public awareness activities by NGOs targeted at the most vulnerable populations—women and youth—and initiated a dialogue among civil society groups, the mass media, private sector organizations, the HOO, and other anti-corruption entities to promote understanding and design better and more sustainable programs.

The second and third years of the project are structured to continue building capacity in all of the above areas, and seek to achieve measurable results. But despite all that can and has been accomplished in strengthening government and nongovernment institutions to fight corruption in Afghanistan, the most essential driver of sustainability that appears to be missing is the institutionalization of public–private dialogue on anti-corruption issues. A negotiation forum for local stakeholders does not yet exist, but needs to emerge so that local parties can better communicate and understand the interests and concerns of other local groups; improve and adjust existing and proposed initiatives; develop a sense of ownership and buy-in for anti-corruption programs throughout all sectors and functions; and begin a dialogue on a regular and frequent basis with the authorities. Such a forum could take the form of a public–private partnership or a joint advisory committee on anti-corruption issues that brings together civil society leaders with government managers on a regular basis to negotiate anti-corruption priorities, decide on new reform programs to undertake, initiate open hearings on budgetary matters, and deal with frequent complaints about corruption registered by victims. With regard to dealing with citizen complaints, the project has recently awarded a small grant to establish a Citizen Legal Advocate Office that will negotiate administrative resolution of these cases with the offending government department and avoid lengthy and indeterminate court cases.¹⁶ Thus, a start can be made, but there must be long-term enduring support for these activities for them to have an impact.

What needs to happen in these future dialogues and negotiations between local stakeholders and the government? First, there has to be a serious attempt to promote *inclusiveness* in these talks, meaning that the political and economic elites and perhaps even Taliban representatives should participate. The greater the inclusion of all stakeholders—the friendly and the not-so-friendly—the greater the likelihood that outsiders will not be able to spoil any progress that is made in promoting anti-corruption programs. While some might argue that inclusiveness can lead the negotiations toward a morass of irreconcilable interests, democracy is often a messy process, and the opposite has proven to be worse. For example, the absence of several key factions from peace talks in Burundi resulted in eight

years of continued violence after a negotiated agreement was signed in 2000; all outliers eventually needed to be brought into the fold of the agreement before its good-governance provisions could start to be implemented.¹⁷

Associated with this goal of inclusiveness is the need to *build trust* among all stakeholders. As the talks proceed, it is likely that they will begin to understand others' interests and goals in fighting corruption, what

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role each stakeholder must play, and what will incentivize each to agree to win-win solutions. The Taliban's recent decision to open a political

office in Qatar to begin discussing peace and an end to the insurgency may demonstrate an opening for eventual discussions on other issues, including the nature of post-conflict governance. History has shown that despite age-old enmities, warring factions can begin to empathize with each other and find areas of common interest when they are exposed to one another for extended periods. The rebels and government in El Salvador, for example, found common ground during their prolonged peace negotiations in a mutual desire to reduce the excessive power and influence of the military in political affairs. The trust and common interests that developed between these former enemies during mediated dialogues provided an opening to the resolution of many other issues.¹⁸

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As the negotiations continue, the parties can review the national strategy and *add detail* to the action plan. With detail come roles, responsibilities, and timelines for the completion of milestones. This turns words into deeds. New international programs such as the Open Government Partnership offer opportunities for civil society groups to participate more actively in designing and implementing their country's anti-corruption strategies and action plans.¹⁹ Moreover, negotiation participants can ensure that the *prerequisites* for effective anti-corruption programs are established. This means that gaps and deficiencies in laws and institutional structures will be identified and fixed. Reviews of ongoing programs will also be an important function of the dialogue, identifying where *adjustments and improvements* are needed to make implementation more successful and where better sequencing of activities can lead to more logical programming.

The continuing negotiation among civil society and government can also result in some *persuasive efforts* that serve to keep anti-corruption initiatives high on the public agenda. Civil society representatives can generate demands

and pressures on government to implement promised programs. For example, government can demand that businesses abide by integrity pacts when bidding on public procurements, or that NGOs follow through on public education programs with their constituencies. MSI's work in Afghanistan demonstrates that there is an emerging civil society that has the capacity for action and can be asked to live up to its commitments.

From the sidelines, *international donors* can play an important role. They certainly ought to remain major promoters of the public–private dialogue and provide resources to make it happen. They can also introduce best practices, set deadlines, and incentivize stakeholders through grants and funding of activities.

CONCLUSION

International donors invest in fragile states to accomplish development results that will bring greater political, economic, and social stability. But donors are, by definition, external to the system and eventually leave local stakeholders behind to carry on the work. Empowering these stakeholders ought to be a central theme of all donor interventions so that all parties can be ready to pick up the mantle. To institutionalize the reforms, local groups must be prepared to declare their goals and interests and negotiate with other stakeholders, including the government, to keep reform programs alive and operational. Citizen oversight boards of national anti-corruption programs in Hong Kong, Singapore, and elsewhere have strengthened those programs by ensuring accountability, keeping planned initiatives on track, and maintaining continuous dialogue among the interested stakeholders.

Emerging from conflict, local stakeholders may not be solidly attuned to peaceful forms of resolving differences. Thus, training and opportunities to operate within a negotiation setting involving groups with compatible *and* opposing interests can only be a positive experience. The continuous nature of these negotiations in the post-conflict period—concerning governance and anti-corruption issues, as well as other issue areas—is important to establish as a mainstay of democratic governance.

In Afghanistan, some early efforts in the direction of public–private negotiations among local stakeholders on anti-corruption issues have already begun, but much more needs to be done to promote these discussions and keep them active. Such dialogues are the essence of democratic governance, where all interests have a voice and sustainable public policy initiatives can be presented and debated by stakeholders who believe in the principles of peaceful negotiation

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and compromise—not conflict and violence—as the way forward to reduce corruption and ensure a fair and just society.

NOTES

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2. Bertram Spector, *Negotiating Peace and Confronting Corruption: Challenges for Post-conflict Countries* (Washington, DC: United States Institute of Peace Press, 2011), 8–10.

3. *Consolidated Appropriations Act of 2012*, United States House of Representatives, HR 2055, September 2011, 449–50.

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9. Bertram Spector, *Detecting Corruption in Developing Countries* (Sterling, VA: Kumarian Press, 2012), 1–22.

10. Spector, *Negotiating Peace*, 51–60, 85–96.

11. Jeffrey Rubin, Dean Pruitt, and Sung Hee Kim, *Social Conflict: Escalation, Stalemate and Settlement* (New York: McGraw-Hill, 1994): 168–87.

12. I. William Zartman et al., “Negotiation as a Search for Justice,” *International Negotiation* 1, no. 1 (1996): 79–98.

13. Eray Basar, *An Overview of Corruption in Afghanistan* (NATO Civil-Military Fusion Centre, November 2011), 3.

14. Afghanistan’s constitution, laws, strategy and strategic plan are available at: <http://anti-corruption.gov.af/en/page/1783>.

15. The author is senior technical director of Management Systems International.

16. Management Systems International has established 27 such Citizen Advocate Offices in Russia, Ukraine, and Albania since 1998 with much success. See: Management Systems International, “Public–Private Partnerships,” 13–17.

17. Spector, *Negotiating Peace*, 61–73.

18. *Ibid.*, 25–34.

19. See: <http://www.opengovpartnership.org>.