

Fighting for Legitimacy in Afghanistan

The Creation of the Anti-Corruption Justice Center

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This article recounts the efforts of international stakeholders who, working with a small number of Afghan officials, threw the equivalent of a geopolitical “hail Mary” in 2015 to reverse the culture of corruption and impunity that permeated the highest levels of the Government of the Islamic Republic of Afghanistan (GIROA). The NATO-led *Resolute Support* (RS) Mission’s efforts in Afghanistan to rejuvenate counter- and anti- corruption lines of operations with the creation of the Anti-Corruption Justice Center (ACJC) is worth examining.¹ The ACJC is not a magic talisman that will eliminate all corruption but, if properly resourced, the Center can help the GIROA regain political legitimacy in the eyes of its people, its soldiers, and the world.

The Stage is Set

In late 2015, many were skeptical of the survivability of the GIROA. Afghan civilians viewed the GIROA and the leadership of the National Unity Government (NUG) as illegitimate because of widespread corruption within all levels of the government, to include the judiciary—a belief supported by the unwillingness of international stakeholders to commit additional manpower or donations. Afghan soldiers, in turn, realized that, while they were fighting, their leaders had embezzled their salaries and supplies. Many U.S. and NATO military leaders, as well as international stakeholders, failed to see the correlation between poor performance and corruption,

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and their central focus remained on the kinetic fight, with the presumption that with battlefield success, political stability would follow.

Afghanistan President Ashraf Ghani, seeking to hold together the shaky NUG with one of his political opponents as a partner, seemed to lack the will or ability to pursue counter-corruption policies without fracturing his own power base. He had successfully, but controversially created the National Procurement Authority (NPA) as an anti-corruption measure, although he had to personally oversee its activities, as he did with too many projects in which his underlings lacked the will to reform. Apart from the famous Kabul Bank case that failed to recover lost funds, the Attorney General's office had not brought a serious corruption case to trial in years.²

It is easy to point to the many weaknesses of the GIRoA and unbridled self-interest within its institutions as the reason for lack of progress on counter-corruption initiatives. However, while the Afghans have perpetuated many of their problems, reasoning that solely places blame on them is a convenient and self-serving rationale. International stakeholders had for years enabled inaction—their poor oversight on donor expenditures has been well-documented by the Special Inspector General for Afghan Reconstruction—and their lack of will to tie aid to corruption reform further fueled the problem.

Initial Reforms

The predecessor of the NATO-led RS Mission—the International Security Assistance Force (ISAF)—did attempt to tackle corruption with the creation in 2009

of the Major Crimes Task Force (MCTF) and the Combined Joint Interagency Task Force–Shafafiyat, commanded by then U.S. Army Brigadier General H.R. McMaster.³ However, the international community engaged in counter-corruption activities largely abandoned these efforts by 2013 after the failed Salehi and Kam Air cases, which prompted then Afghan President Hamid Karzai to gut the MCTF and the High Office of Oversight and Anti-Corruption for daring to reveal corruption within his regime.

RS, when it transitioned from ISAF in 2015, kept only a token unit strictly limited to anti-corruption activities with Afghan inspectors general in the Ministries of Defense (MOD) and Interior (MOI). The Mission justified this retreat on two bases: counter-corruption activities undermine donor confidence, potentially at risk of turning off donations altogether; and any anti-corruption initiative must be “Afghan-led”—a school of thought that was not a consensus view.

Leading into 2015, some nations advocated an Afghan-led approach, viewing monetary sanctions for noncompliance as infringing upon Afghan sovereignty, while others believed that accountability was necessary since Western aid was being stolen. Within this latter group, USAID, the International Narcotics and Law Enforcement, and other U.S. Embassy stakeholders advocated against moving too quickly, advocating for counter-corruption training programs that they projected would yield results sometime after 2020.

International law enforcement offices and some at RS, however, saw an immediate need for action. To them, Afghan-led was a polite euphemism for doing nothing in a country

where preserving the status quo lined the pockets of the nation's elite with hundreds of millions of dollars in misappropriated coalition aid.

Beyond policy differences, personnel rotations and the constant bleeding of institutional knowledge remained significant challenges to anti-corruption reforms. As Western personnel rotated in and out of Kabul on 6-month or 1-year tours, little incentive existed for new arrivals to take ownership of an issue that everyone wanted someone else to own.

Against the web of conflicting policies, intransigent stakeholders, and Afghan resistance, by the middle of 2015 the deterioration of the security environment and decline in donor resolve presented the need for RS to turn matters around regarding confidence in GIRoA within months, not years. A few personnel at RS who possessed a historical understanding of corruption in Afghanistan, recognized it as an immediate existential threat—Afghan security forces were waning in their resolve because of corrupt leaders, as were the donors whose funds fueled GIRoA.

However, the differences in western timelines and philosophies muddled political priorities, and conflicting messaging to the Afghans clouded efforts to try to develop priorities for counter-corruption initiatives. For example, in late 2015 Western military advisors reinforced to their counterparts at the Afghan Palace that future international support and funding was at-risk unless the justice system held the corrupt accountable. At the same time, however, embassy personnel from some of the same Western nations conveyed that such prosecutions were politically risky and could

undermine stability. To elements within GIRoA who were profiting from skimming a steady stream of Western funds, this conflicting messaging permitted them to repeatedly obfuscate and delay their Western counterparts by playing the two groups against each other.

A New Approach—the ACJC

In 2015, RS determined it needed to eliminate communication gaps between the ministries responsible for administering justice—the police, the prosecutors, and the courts—in order to cut the bureaucracy and gamesmanship hindering reform. The processing and transitioning of corruption cases among these groups allowed for bribery to stop any attempts at prosecution. Efforts to create an insulated investigative and prosecutorial fusion center began in late 2015 at an event at the British Embassy, where diplomats highlighted how London had directed fighting corruption in Afghanistan as the Embassy's first priority for 2016. The event serendipitously brought together some experienced veterans from the RS and the British National Crimes Agency (NCA) who had worked together on corruption reform in the past. All agreed a specialized jurisdiction to prosecute high-level corrupt actors was needed. The NCA suggested expanding the mandate of the existing Afghan Counter Narcotics Justice Center (CNJC) to include high-level corruption cases. The CNJC, a fusion center of law enforcement and prosecutors co-located with an independent court and oversight from the international community, enjoyed a 95 percent conviction rate and routinely handed out 20-year jail sentences to drug dealers. All agreed, and with that a rough plan

established the groundwork to create an insulated counter-corruption institution, which would be renamed the ACJC.

All parties also agreed that the key to the ACJC's success would then be to appoint and retain independent prosecutors and judges on board that were insulated from bribery, intimidation, and murder.⁵ The MCTF had traditionally worked closely with RS and the international community and was selected as the police arm of the ACJC since, after a recent leadership change, it was the most trustworthy and potentially capable of Afghan police forces. In moving forward to insulate the ACJC from illicit external influences, it was key to understand the source of the corruption threat.

Widespread belief among the few at RS and in the international community willing to acknowledge that corruption flourished in 2015 was that the GIRoA had been co-opted by malign actors via a series of independent criminal patronage networks, and that the GIRoA as a fledgling state was not powerful enough to address this problem. A small group of other Afghan veterans took a different view, that Afghanistan was a fully organized vertically integrated kleptocracy, run as a criminal enterprise.⁶ An alternative view, espoused by the authors, was a mixture of the two: the Karzai Administration used corruption as a coalescing force for GIRoA to draw power brokers into the government to vest their interest in its survival. The credit for this theory belongs to McMaster.⁷ Former President Karzai and others in power at the time protected power brokers for a fee, resulting in a web of loosely connected criminal networks that all embezzled from the system, and extorted the Afghan public.⁸

By winter 2015–16, the authors managed, with the strong support of the Commander Combined Security and Transition Command–Afghanistan, Major General Gordon “Skip” Davis, to convince RS leadership of a plan that allowed for a change of course. General John Campbell, Commander RS, then ordered the pre-existing rule of law and anti-corruption elements within RS to take the steps necessary to reinvigorate the MCTF and create the ACJC.⁹ These RS elements then established a working group of stakeholders to include eight countries, the European Union (EU), the United National Assistance Mission Afghanistan (UNAMA), and RS with the NATO mission as lead. The U.S. Embassy publically supported this, but behind the scenes in Afghanistan key powerbrokers within the Embassy actively opposed it as a rushed, destabilizing initiative. Despite its inherent political weight, the U.S. Embassy was unable to persuade most members of the international community, who recognized the GIRoA would fail if course corrections were not made.

In addition to making the ACJC initiative an international-led effort, a core group from within the larger working group made up of the authors, representatives from the British Embassy, a few seasoned veterans from NCA, the rule of law team from UNAMA and select anonymous entities was established. This core group decided to put the international community as lead and agreed to have RS personnel help steer the effort as a partner rather than as a leader. Initially, 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. British Ambassador Dominic Jermey then took the lead and began to coordinate efforts. His representative, as a member of the core group, was perfectly positioned to seamlessly convey our needs and issues that required engagement at the Ambassador's level. This pivotal action solved many problems that plagued the early stages of the ACJC by giving us unity of communications with other ambassadors, a high-level diplomat readily available to push the Afghans on tough issues, and a senior diplomat who would quell concerns of other ambassadors. Ambassador Jermey was able to enlist other ambassadors to help with the cause and to hold a regular monthly meeting with a dozen or more ambassadors on corruption.

Throughout spring 2016, the core group communicated daily and met frequently to discuss how to proceed with the mission of establishing the ACJC, as well as how to defend the Center against corrupt Afghans seeking to co-opt it, or those within the international community who disagreed with it. In this manner, the group worked through jurisdiction, likely budget, logistics issues, proposed locations, personnel issues, etc. in a matter of weeks, as opposed to letting the process last months or years. All of these issues required detailed work with various subject matter experts, and compromise amongst the interested parties in the core group. The broader international community working group and the GIRoA were involved on an ad hoc basis, depending on the issue. Despite the complexity of the issues, time did not permit delay owing to the need to bolster morale. Afghan soldiers were being denied

food, medicine, pay, and ammunition as a result of corruption. Additionally, two major NATO donor conferences for the international community were scheduled in the upcoming months to decide whether to continue financially supporting the GIRoA.

In May 2016, President Ghani announced the establishment of the ACJC at the London Conference on anti-corruption. This announcement was everything the core group had worked for—the result of months of behind the scenes work primarily by the core group with Afghan officials, supported by ambassadors and on occasion other leaders. However, skeptics of the GIRoA's survivability viewed the President's announcement as window dressing before the NATO donor conferences scheduled for June in Warsaw and Brussels in October. They did not expect follow up action, having heard similar proclamations from former Afghan President Karzai, as well as bombastically false claims of prosecutions since 2008 from the office of the Afghan Attorney General. But this time, action followed.

After President Ghani's announcement, the core group had to make the ACJC happen. In mid-July Ambassador Jermey committed an estimated \$2 million for the startup of the Center, at a time when no other Western embassy would commit funds, owing to 15 years of undelivered promises by the Afghans to fight corruption. The British Embassy did not freeze into inaction—it conveyed that perpetuating a system built upon the theft of international funds was not stability, but a slow path to the ultimate withdrawal of international support to Afghanistan by donor nations who were feeling political pressure at home to account for progress. The significance of British

support to the successful creation of the ACJC cannot be overstated, as it changed international opinion that Afghanistan was beyond redemption.

Efforts to get the ACJC operational slowed that summer with a seemingly endless succession of Afghan holidays, Afghan cancelled meetings, and Afghan requests for information. This period was difficult and discouraging for the core group, and it seemed as if the Afghans were having a moment of buyer's remorse. However, in the fall of 2016 the ACJC became a clear priority for the Palace. In the week preceding the NATO donor conference that October, President Ghani instituted the ACJC; designated a compound in Kabul as the Center's new site; evicted the current police unit to create space for the ACJC; moved the Attorney General's prosecutors on-site; delivered furniture to make it operational; renovated the site's utilities; and began bona fide operations. These initiatives were performed without the slightest involvement or support from the Coalition.

What had changed to spur the Afghans into action? Some attributed the action to an attempt to convince donors prior to the NATO donor conference that the Afghan President was committed to countering corruption. An element of that may hold truth; however, the new Attorney General and new security ministers had made the President aware of the corrosive impact of corruption on his government's survival. Regardless, the fast pace set by the Afghans continued after the conference. That fall the MCTF arrested two major generals (one from the MOI and one from the office of the Attorney General) in separate incidents of alleged bribery. In the past, such police

actions would have resulted in the immediate release of the perpetrators as parliamentarians intervened politically on their behalf and routine bribes were paid. This time, however, that did not occur. Both have since been prosecuted and sentenced to multi-year terms at the ACJC.¹⁰ The arrest within the MOI led to suspensions of eight other high-placed ministerial officials who were alleged co-conspirators of the bribery scheme, and the prime suspect was held in detention prior to his trial. Further the ACJC, based on information exposed during these trials, ordered subsequent investigations and the Center has since successfully prosecuted powerbrokers who interfered with corruption investigations in Herat.¹¹

Special Assistant to the U.S. President for National Security Affairs Lieutenant General H.R. McMaster during his trip to Afghanistan in April conveyed to the GIRoA that the United States expects the NUG to take firm action on corruption, which emphasizes the importance of ACJC for the future of Afghanistan and legitimacy of the GIRoA as it is the only functioning court that addresses serious corruption. This importance and the efficacy of the Center was further highlighted in May, when two ACJC employees were fatally shot on their way to work.¹²

The Promising Future

The RS cannot create a stable Afghanistan with a legitimate government merely by killing insurgents. It must focus on building Afghan capacity to provide services, security, and rule of law to its people. The NATO-led mission must commit to the ACJC for the duration of their stay in Afghanistan—the Center is the only true means by which the RS can deter the theft of donor funds and

help remove corrupt Afghans from government. The ACJC has the potential to replace the parade of special commissions and bodies that have not returned results, and which have, in fact, insulated those in power from accountability. If corrupt officials infiltrate the ACJC then it likely will fail, and further erode waning support for Western financial assistance. Constant vigilance including pre-employment polygraphs and other background checks is key to the Center's success. Transparency is also key, as is continued resolve. Any complacency on these points or any distractions by the "next good idea" could also cause failure.

The benefit of long-term, specialist personnel, like those within the core group, cannot be overstated. After 16 years of conflict, the war in Afghanistan has taken a back seat to events in Iraq and Syria, leading to a military personnel replacement system that accepts the next available "warm body."¹³ Only those few civilian and military personnel with either enough prior experience in Afghanistan, or an in-country network, could accomplish anything as complicated as the ACJC. Several of the individuals in the core group had been involved in the Afghan mission for 3 or more years—some as long as 8—and had worked together on prior deployments.

Leaders must be willing to listen to, leverage, support, and perfect the initiatives of the individuals who have in-country experience—real time and historical—with the institutions in Afghanistan. For the U.S. military, few programs apart from the ACPAK Hands program allow for the training and repeat deployments to the same mission that is necessary to build the experience and the contacts to have any real mission impact.¹⁴

Yet, that program is being trimmed and those who enroll in it are viewed as being at a career disadvantage. For civilians at the U.S. Department of State, Afghanistan is a volunteer assignment, and those who volunteer often are motivated by the likelihood of a comfortable assignment in a more desirable location after their deployment.

The road ahead will be difficult since the culture of corruption is institutionalized. President Ghani must balance competing interests, and remain on-guard and involved in ACJC activities. Should the President choose a hands-off approach, it would potentially allow for corrupt influences to stack the ACJC with self-interested prosecutors and investigators—a practice that has contributed to instability these past 16 years. Alternatively should the palace assume too great a role in ACJC operations, it will carry the specter of presidential interference and potentially politicize the judicial process. Media, journalist, and watchdog groups are essential to insulating the ACJC from cooption attempts by corrupt actors. As is the placement of mentors who have experience in establishing and reforming court systems—a type of international support that was always part of the ACJC plan.

The Center is part of a menu of solutions that address related, but distinct challenges to Afghan stability. Complementary efforts such as the creation of a mechanism to recover the funds already siphoned off to illicit accounts worldwide, and anti-money laundering and counter-threat finance efforts are required to interdict the flow of funding to the enemy on the battlefield. These initiatives must coexist and complement but not dominate the other. Counter-threat finance accomplishes little if

over-the-horizon the GIROA implodes through the avarice of its own bureaucrats.

The roots of graft run deep in Afghanistan. Those in charge of cleaning up the culture of impunity have been some of the most flagrant pilferers of the national treasury and international aid. Corrupt actors intimidate those who seek reform—“The Americans will not be here forever” is a veiled threat. Those influenced by the whispers fail to grasp that any effort to stop corruption is not for the Americans or the international community—it is a conscious choice by Afghans to lift themselves out of poverty and establish an economy and infrastructure needed for long-term stability. The ACJC is a step-off point from which rule of law can spread. If Afghan leaders have the vision and courage to place the good of the nation above personal profit, the GIROA has a chance to succeed as a nation-state. **PRISM**

Notes

¹ See also “Counter and Anti-Corruption Theory and Practice from NATO Operations.” NATO Joint Analysis and Lessons Learned Center (June 2013); “Operationalizing Counter/Anti-Corruption.” Joint and Coalition Operational Analysis (February 2014); “Corruption in Conflict: Lessons from the U.S. Experience in Afghanistan.” Special Inspector General for Afghan Reconstruction (September 2016). To clarify, counter-corruption refers to actions taken against corruption once it has occurred, directed at deterring future criminal conduct—investigations and prosecutions. Anti-corruption refers to those efforts made to prevent the possibility of corrupt activities by improving systems and processes within GIROA—inspections to ensure resource accountability or other measures to prevent the opportunity for corruption. Collectively, these operations are referred to as the CAC line of operation, a subset of Rule of Law (RoL) operations. See also: Chad Brooks “The Counter and Anti-Corruption Mission in Afghanistan: An Asymmetric Mission Failing.” (master’s thesis, National Intelligence University, 2015).

² The Afghan Attorney General had previously tried to bring several corruption cases to trial with little or limited success due to political interference or conflicting agendas between the international community’s desire to address corruption and the need to work with corrupt Afghan who were otherwise effective. These include the case against Kabul Bank officials, the case against Mohammed Zia Salehi aid to former President Karzai, and the embezzlement cases concerning the National Military Hospital.

³ The FBI and DOD jointly worked to create the Major Crimes Task Force in 2009 as a small, well-trained, Afghan unit with international mentorship to investigate Afghan corruption. ISAF created Combined Joint Inter Agency Task Force–Shafafiyat as a Deputy Chief of Staff unit, reporting directly to the Commander of ISAF, to formalize its nascent counter- and anti-corruption effort in 2010.

⁴ The international community primarily involved in counter-corruption activities were CJIATF–Shafayit, Task Force 2010, Task Force Nexus, Task Force Spotlight, the FBI, U.S. Treasury via the Afghan Threat Finance Cell, British National Crimes Agency, and various disparate mentoring efforts from foreign Embassies and the European Union Police Mission (EUPOL). The High Office of Oversight and

Anti-Corruption (HOOAC) was created by President Karzai in 2008 as a result of international pressure on him to address corruption. Initially the HOOAC had broad authority to address corruption however, over the years President Karzai reduced this authority, which rendered the HOOAC a hollow institution.

⁵ The judges and prosecutors were regularly killed in 2016 by those who sought to destabilize GIRoA.

⁶ Sarah Chayes, *Thieves of State: Why Corruption Threatens Global Security* (New York: W. W. Norton & Company, 2015).

⁷ Chad Brooks, "The Counter and Anti-Corruption Mission in Afghanistan," 54–56.

⁸ President Ghani's staff later confirmed this in a March 2016 working paper that was provided to the international community before a palace dinner that was arranged to discuss anti-corruption initiatives in Afghanistan. The paper explained that, "[o]ver time this model of using corruption to bind power holders into the government was institutionalized.

Corruption was no longer a matter of individuals breaking the law, but a matter of entire sectors operating on the basis of informal rules and practices that placed opportunities for making money over achieving public results." Author Unknown, Afghan Presidential Palace White Paper, "Anti-Corruption Strategy Brief," March 23, 2016.

⁹ CSTC-A is a command under RS, which included various subordinate units and is responsible for the administration of financial support from the U.S and NATO, as well as other train, advise, and assist responsibilities.

¹⁰ "Top Afghan General Jailed for 30 Months by Anti-Corruption Tribunal," accessed March 5, 2017, available at <<http://www.kabultribune.com/index.php/2016/11/20/top-afghan-general-jailed-for-30-months-by-anti-corruption-tribunal/>>. MOI General Gets 14 Years in Prison for Taking a Bribe, accessed March 5, 2017, available at <<http://www.tolonews.com/afghanistan/moi-general-gets-14-years-prison-taking-bribe>>.

¹¹ The provincial council chief of Herat province, Karan Alizai, was sentenced to 2.5 years in prison by the ACJC on March 27, 2016 for coercing prosecutors of the Attorney General's Office into releasing a corruption suspect under threat of violence. Accessed April 20, 2017, available at <<http://1tvnews.af/en/news/afghanistan/28606-herat-provincial-council-chief-sentenced-to-prison>>.

¹² Pamela Constable, "Finnish woman may have been abducted by insurgent group," *Washington*

Post, May 22, 2017, 8, available at <https://www.washingtonpost.com/world/german-woman-afghan-guard-killed-in-kabul-guest-house-attack/2017/05/21/8301da10-3e05-11e7-9869-bac-8b446820a_story.html?utm_term=.7d1f87e5a346>. For information on additional attacks see: "Two ACJC's Employees Shot Dead in Kabul", accessed April 10, 2017, available at <<http://www.tolonews.com/afghanistan/two-acjc%E2%80%99s-employees-shot-dead-kabul>>.

¹³ For example, at one point in April 2016, an accountant and a Pentagon business manager staffed the Rule of Law section of RS under its director. RS constantly experienced problems with personnel in the Essential Functions involved with establishing the ACJC who had been sent as temp fills, for a short tour or were inadequately trained for the mission.

¹⁴ The AFPAK Hands program is a joint program initiated in 2009 to create a cadre of advanced mission capable professionals, trained in culture, language and special military skills, who are committed to the regional mission for a longer period of time, which enables them to ensure a degree of mission continuity.