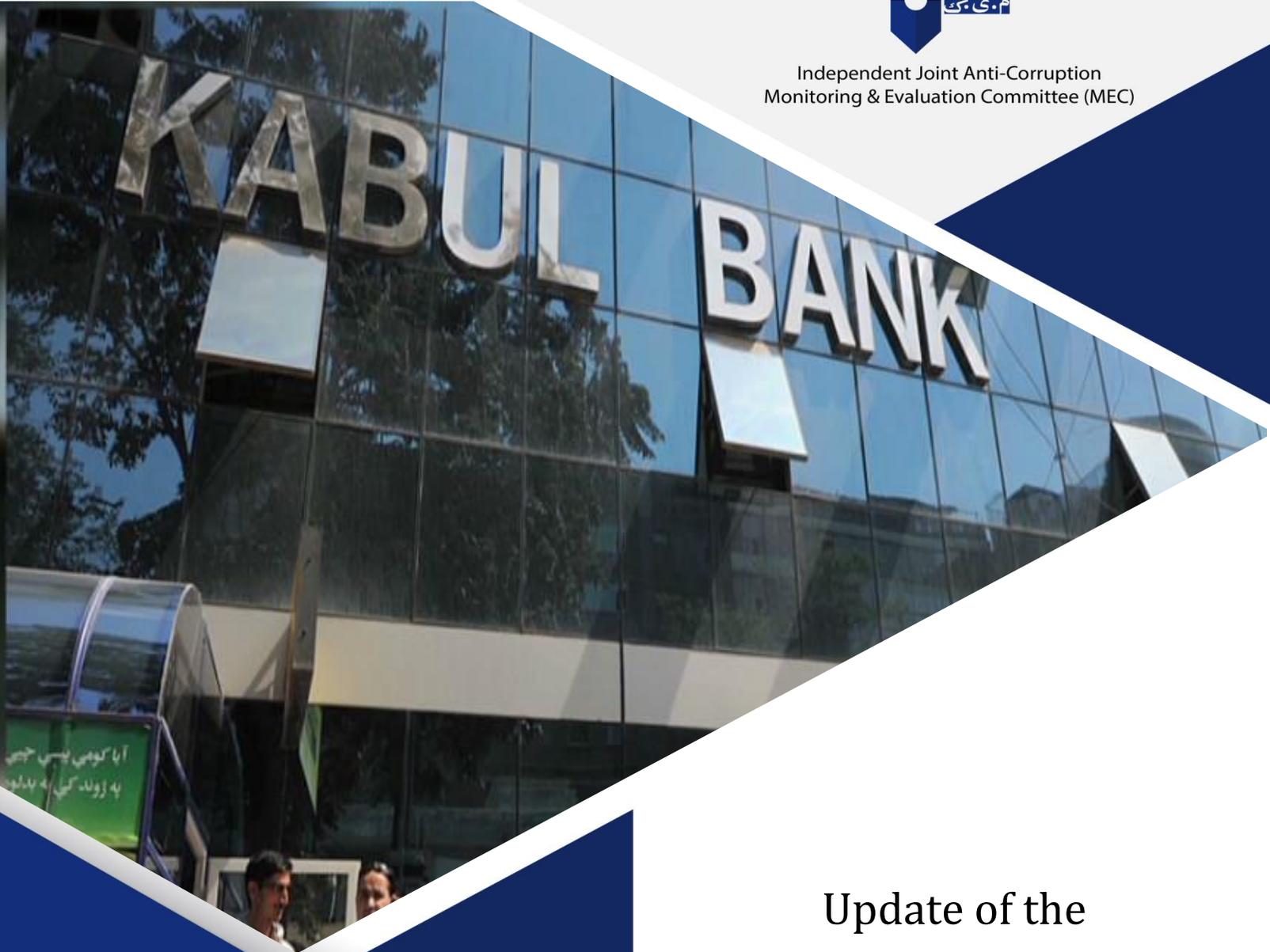




Independent Joint Anti-Corruption
Monitoring & Evaluation Committee (MEC)



Update of the Kabul Bank Case

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Kabul-Afghanistan



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Development of the Kabul Bank Case since the Formation of the National Unity Government

The collapse of the country's largest bank due to fraud and embezzlement in 2010 threatened the macro-fiscal stability of Afghanistan. In order to secure the customers' deposits and avoid larger crises for the country's nascent financial sector, the Afghan Government had to step in with a Lender of Last Resort and provide USD 825 million from the central bank's reserves. Subsequently, and due to enormous international pressure, especially through the IMF, MEC was mandated by the Government of Afghanistan to conduct a public inquiry into the Kabul Bank Crises "starting with the inception of the bank, and look into the operation of the bank, activities of its shareholders, the role of supervisory and auditing bodies and the subsequent effectiveness of the Government and the criminal justice system in dealing with any crimes committed."¹ MEC conducted the in-depth public inquiry and released the report of the inquiry in November 2012.

MEC's Report of the Public Inquiry into the Kabul Bank Crisis (see <http://www.mec.af/files/knpir-final.pdf>) was the first public document which uncovered the entire (very sophisticated) scheme of the former shareholders, their political connections and the role of the bank's auditors as well as the regulatory authorities. The circle of those involved in the systematic robbery of the largest financial institution of the country included several national business people, international experts who assisted in the sophisticated forgery and concealment, politicians, power brokers and family members of the then President and Vice President.

MEC also issued a follow-up report of the Kabul Bank Inquiry on October 2nd 2014 shortly after the inauguration of the National Unity Government, to remind both partners of the NUG of their promises during the campaign to solve the Kabul Bank case (see http://www.mec.af/files/2014_10_02_Kabul_Bank_Follow-Up_Report.pdf). In this follow-up report, MEC critically analysed the verdict of the Primary Court during the Karzai Administration which did not punish the culprits sufficiently. The former administration also did not take any serious measures to recover the stolen assets or resolve the case of the New Kabul Bank, which was brought under governments control after the crises.

MEC continues to follow this case very closely, and in this report we provide an update of the developments since the establishment of the National Unity Government.

The new Government was quick to condemn the scandal, and to open an investigation. President Ghani reopened the case on his second day in office through Presidential Decree Number (PD) 3 in September 2014. This Decree instructed the Attorney General to have the involved people arrested, prepares the indictment and ordered all other institutions to support in recovering the stolen public money through identification and freezing of the perpetrator's assets. The Ministry of Foreign Affairs was instructed to assist in the cross-border recovery of assets through diplomatic means and the Ministry of Finance was assigned to draft a plan for the privatization of the successor New Kabul Bank (NKB) within 10 days.

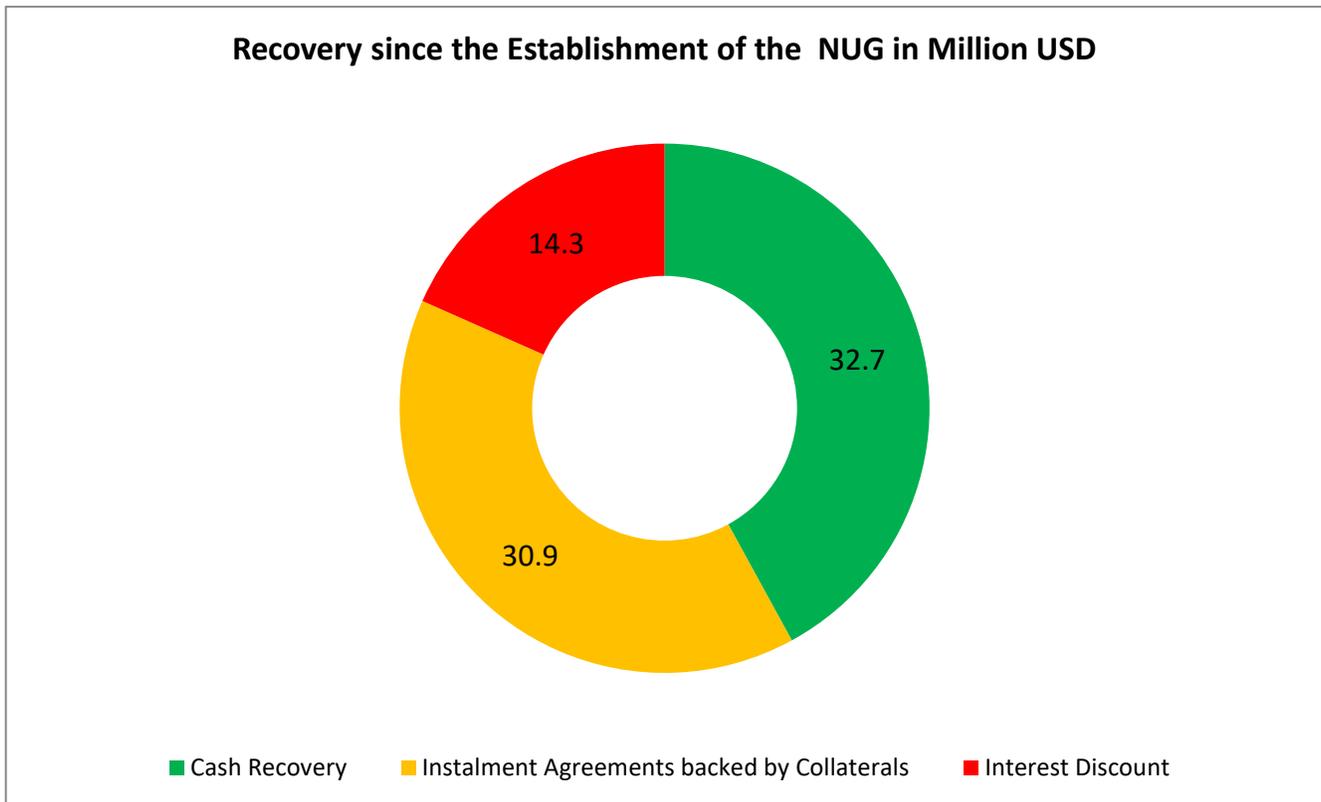
So, more than 3 years after the issuance of Presidential Decree Number 3, what has been the result? The National Unity Government states that the follow up has been successful, "*we have jailed the two*

¹ Official Letter of the MoF dated 02. June 2012

key culprits of the Kabul Bank and ... we have recovered \$250 million back.” (President Ghani May 16th 2016). However, in reality much less progress has been made since the initial burst of effort. Since October 2014, only 32.7 million USD of “buddy loans” has been recovered in cash, and repayment agreements amounting to 30.9 million USD have been signed with the debtors, according to MEC’s analysis of the official recovery records. We provide an update below on each of the three main elements of Presidential Decree Number 3.

The Recovery of Assets

To accelerate the recovery process and implement the verdict of the Supreme Court the, the NUG shortly after inauguration established the Kabul Bank Settlement Commission with the participation of the Attorney General’s Office, the Central Bank and Kabul Bank Receivership. The “Incentive Procedure” (طرز العمل تشويقي) that was developed by the Kabul Bank Settlement Commission and endorsed by the Cabinet in February 2015 to accelerate the recovery process had only a small effect. The chart below show the status of recovery of the stolen assets since the beginning of the NUG.

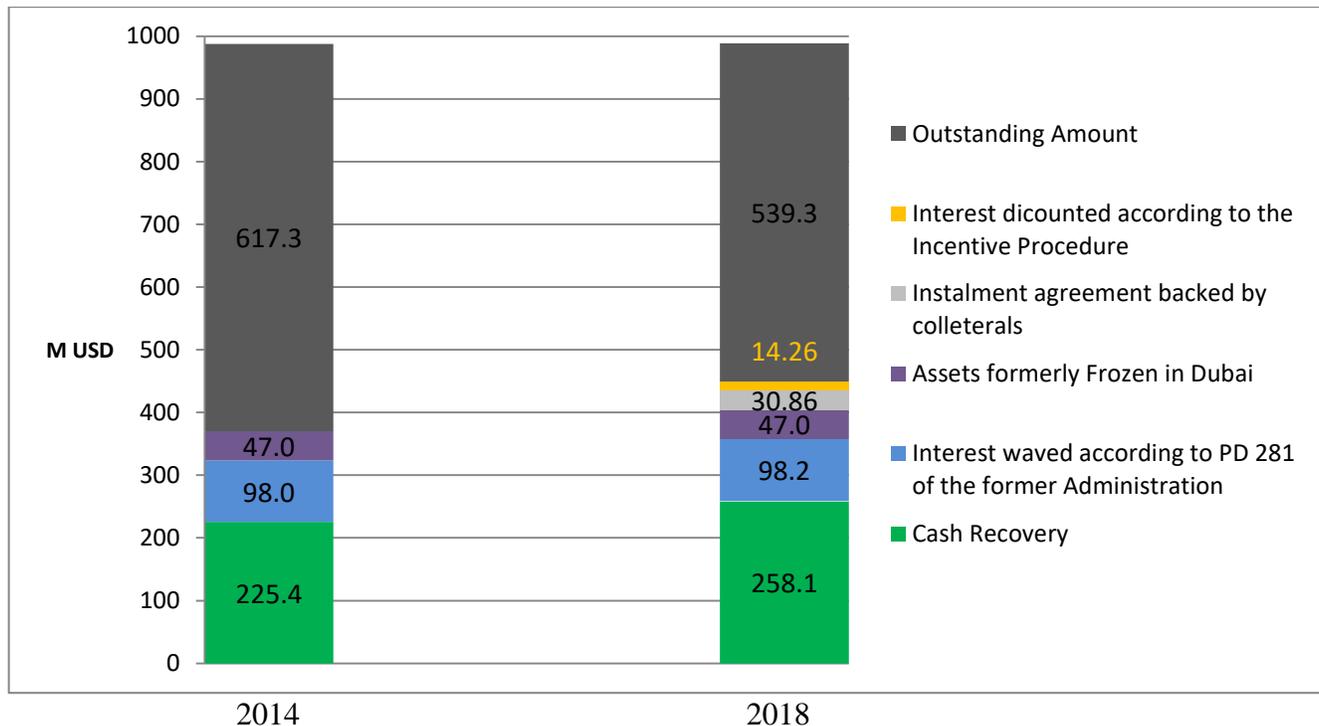


As illustrated in the above chart, only USD 63.6 million has been recovered since 2014. Of this amount USD 32.7 million has been recovered in cash and for the remaining USD 30.9 million repayment agreements have been signed with the debtors. On the other hand, USD 14.3 million has been discounted in accordance with the provision of the Incentive Procedure.²

² According to the Incentive Procedure, the total outstanding liability of each debtor is recalculated based on the reduced interest rate of 3.5% if the debtor pays back 20% of the liability in cash, provides collaterals for the remaining 80% and signs a repayment agreement with the KB Receivership. In case the debtor wants to repay the entire amount in cash at once, the interest rate is reduced to 0.5%.

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A comparison of the recovery status of April 2018 with October 2014 show, as illustrated in the chart below, that a considerable amount of the stolen money, namely USD 539 million is still outstanding.



The main purpose of this procedure was to give the debtor of Kabul Bank an incentive – in form of a considerable interest rate reduction – to pay back the (mostly fraudulent) loans they received from Kabul Bank. However, only 31 debtors contacted the receivership and signed an installment agreement, while most of the large debtors and former shareholders did not make use of this incentive. As of April 2018, the 31 debtors who signed installment agreements with the receivership are mostly not paying their outstanding liabilities in accordance with the agreed schedule. No enforcement actions have been taken by the receivership so far.

Worse, the Incentive Procedure paved the way for the former CEO and main shareholder of Kabul Bank to be released from jail, to reassume his businesses and even to sign a construction agreement with the Government. The inauguration ceremony of this construction project called Smart City project was broadcasted on several TV stations, where the main perpetrator of the embezzlement of Kabul Bank's assets received warm and cordial words from the then President's Special Representative for Reform and Good Governance and praise from the then President's Legal Advisor for signing the agreement with the Government. This was a major setback. Although the Smart City construction project was eventually cancelled by the president and the former CEO/shareholder of Kabul Bank was sent back to jail, this seriously damaged the reputation of the National Unity Government.

Criminal proceedings

As mentioned above, the second part of the Presidential Decree #3 was about the prosecution of all culprits. Initial success was followed by disappointment. In November 2014, the Kabul Province Appeal Court issued its verdict in the Kabul Bank Case and sentenced the two main convicts, both shareholders and managers of the Bank, to 10 years imprisonment for embezzlement and additional

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5 years for money laundering.³ Sentences for nine former employees of Kabul Bank and the Central Bank of Afghanistan ranged from modest fines to one year in prison. The Court also ordered that the assets of 12 persons and eight companies—those who “had an active role in the embezzlement of Kabul Bank’s assets,”— be frozen and blocked until they pay their debts. It called a group of 15 former board members and advisors of Kabul Bank who were not present at the appeal court to be investigated. The Appeal Court verdict was confirmed by the Supreme Court after some amendments in December 2014.

MEC had several concerns about the verdict of the Court, its enforcement and possible situation of impunity for the connected persons. For example, the 12 individuals who according to the court had an “active role in the embezzlement of Kabul Bank’s Assets” were not sentenced for embezzlement and money laundering. These 12 individuals included the brothers of the former president and vice president who were both shareholders of the Bank and issued themselves buddy-loans from Kabul Bank to finance their other businesses. Further, the verdict did not specifically order confiscation and seizer of the convicts’ assets; it merely required identification and freezing of the assets. This specifically makes it difficult for other institutions to seek international cooperation.

Regarding the enforcement of the verdict, no institution was clear about its responsibility and the concrete steps it was required to take. The INTERPOL’s National Central Bureau (NCB) for Afghanistan which is under the command of the Ministry of Interior did not seek international assistance to arrest and investigate the accused people.

The Kabul Bank Receivership was representing Afghanistan in a litigation in Dubai to freeze and sell the property of the former CEO and Shareholder of Kabul Bank. However, it turned out after two years that according to the Mutual Legal Assistance Agreement signed between the UAE and Afghanistan in 2009, the Central Authority on the Afghan side is the Ministry of Justice. As a result, the case to recover part of the assets in Dubai was lost in a court.

The debtors and those who “had an active role in the embezzlement of Kabul Bank’s Assets”⁴ are gradually trying to undermine the verdict of the court and deny being liable to the Bank or try to renegotiate the outstanding amount. In one case, the Supreme Court (for unclear reasons) allowed reopening the case of one of the debtors who argued that he is not a shareholder of the company that had an outstanding debt of USD 21 million to the Kabul Bank and thus not responsible for paying it back. The case was handled by the Kabul Bank Special Tribunal which decided in favor of the debtor.

This urged the other shareholders of that company as well as former debt and equity holders of Kabul Bank to deny having any outstanding liability or questioning the calculated amount.

Privatization of the New Kabul Bank

The privatization process, the third pillar of the Presidential Decree Number 3, has been sluggish and has had to be restarted from scratch several times. The MOF developed several plans for dealing with the Bank, including a liquidation plan, a merger with the other two public banks (Pashtany Bank and Bank E Millie), and a privatization plan. None of the plans seemed feasible so the Bank kept running at a loss for the past years.

³ The whole sentence is ten years according to the Afghan law since the most severe term is applied.

⁴ Verdict of the Appeal Court of November 2014.

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Since the last three attempts to sell the NKB to a private investor failed, in 2017 the Government decided to recapitalize the bank with USD 106 million and keep it as a state owned company for the time being.

The World Bank, after conducting an evaluation of the banking sector of Afghanistan, drafted the “State Banks Modernization Strategy” and submitted it to the High Council of Economy for approval. The Strategy envisages a merger of the NKB with the Bank e Milli Afghan. The World Bank’s Strategy was approved by the High Council of Economy and the Ministry of Finance has assigned a team to develop an operational plan with the support of the WB for implementing the new strategy.

Overall, this Bank scandal is one of the most shameful events in Afghanistan’s recent history. Lack of cooperation and coordination among national entities and lack of transparency in the conduct of the involved institutions has resulted in slow recovery of the stolen assets. The criminal prosecution of the fugitive perpetrators with international assistance in this regard was not even envisaged due to unknown reasons. As the process of prosecutions, recovery of assets, and sale of the NKB go forward, MEC will closely monitor and expect transparency in all these areas.