

د اداري فساد پر وړاندی د خارنۍ او ارزونې
څلواکه او ګډه کمیته



کمیته مستقل مشترک نظارت و ارزیابی مبارزه
علیه فساد اداري

INDEPENDENT JOINT ANTI-CORRUPTION
MONITORING AND EVALUATION COMMITTEE

FIFTH SIX-MONTH REPORT

(July 1, 2013 - December 31, 2013)

January 30, 2014





INDEPENDENT JOINT ANTI-CORRUPTION
MONITORING AND EVALUATION COMMITTEE

The results of Transparency International's 2013 Corruption Perceptions Index highlight the continuing struggle that Afghanistan faces in tackling corruption. Corruption permeates all aspects of Afghan life, from paying bribes for government services to the organized diversion and misuse of government resources.

MEC's VCAs on several public services reveal grave concerns about their vulnerabilities to corruption, and demonstrate the need for structural reform and top-down commitment to anti-corruption measures. The Committee is hopeful that its related recommendations will be effectively implemented by the relevant ministries based on their commitments to do so.

Monitoring activities over the past six months have also confirmed previous concerns with prosecutions related to Kabul Bank and the National Military Hospital, with criminal proceedings being unnecessarily delayed in the former, and all charges being dismissed in the latter. The issue of impunity in Afghanistan is more broadly reflected in the hundreds of corruption cases that have been reported to the AGO by other government agencies yet have had no further investigation or prosecution.

Despite the overall lack of progress, there has been notable movement in implementing some of MEC's recommendations, including the establishment of CoST in Afghanistan which provides for multi-stakeholder monitoring and oversight of construction projects; the creation of an anti-corruption campaign to engage over 2,700 religious scholars; and the drafting of a new Anti-Money Laundering Law.

MEC has also enhanced its communication and outreach in an attempt to raise awareness of factors affecting corruption and efforts taken to address corruption. These efforts have included several meetings with members of the National Assembly, four provincial missions, open letters calling for action, and the regular use of social media. New recommendations have also been issued in relation to enhanced transparency in mining, election campaign financing, and governance and accountability within AISA.

MEC's Fifth Six-Month Report provides a full accounting of MEC's activities, the status of its recommendations and anti-corruption related articles of PD 45, and newly-developed institutional rankings.

As MEC's chair for the period of November 1, 2013 – April 30, 2014, I look forward to guiding the Committee's efforts in reviewing a number of priority areas, including procedures for registering and verifying assets of high-ranking officials, the recruitment of prosecutors, government audit procedures and practices, land usurpation, and aid effectiveness.

Sincerely,

Drago Kos
MEC Chair

TABLE OF ABBREVIATIONS AND ACRONYMS

| ABBREVIATION OR ACRONYM | DEFINITION |
|----------------------------|-----------------------------------------------------------|
| AAN | Afghanistan Analysts Network |
| ACBAR | Agency Coordinating Body for Afghan Relief |
| ACCI | Afghanistan Chamber of Commerce and Industries |
| ACD | Afghanistan Customs Department |
| ACSFo | Afghanistan Civil Society Forum |
| ACU | Anti-Corruption Unit |
| ADB | Asian Development Bank |
| AEITI | Afghanistan Extractive Industries Transparency Initiative |
| AFCAC | Afghan CSOs Coalition Against Corruption |
| AGO | Attorney General's Office |
| AIBA | Afghanistan Independent Bar Association |
| AIMS | Afghanistan Information Management Services |
| AISA | Afghanistan Investment Support Agency |
| ALP | Afghan Local Police |
| AML | Anti-Money Laundering |
| ANA | Afghan National Army |
| ANCB | Afghan NGO Coordination Bureau |
| ANDS | Afghanistan National Development Strategy |
| ANP | Afghan National Police |
| ANSA | Afghanistan National Standards Authority |
| ANSF | Afghan National Security Forces |
| ARAIZI | Afghanistan Land Authority |
| ARDS | Afghanistan Reconstruction and Development Services |
| ARTF | Afghanistan Reconstruction Trust Fund |
| ASYCUDA | Automated System for Customs Data |
| ATRA | Afghanistan Telecommunication Regulatory Authority |
| AUAF | American University of Afghanistan |
| AUSAID | Australian Agency for International Development |
| AWN | Afghanistan Women's Network |
| BP | Bearing Point |
| CBR | Central Business Registry (MOCI) |
| CERP | Commander's Emergency Response Program (U.S. Army) |
| CIM | Center for International Migration and Development |
| CJIATF | Combined Joint Inter-Agency Task Force |
| CMS | Case Management System |
| CoST | Construction Sector Transparency Initiative |
| CSO | Civil Society Organization |
| CTAP | Civilian Technical Assistance Programme |
| CTF | Counter-Terrorism Financing |
| DAB | Da Afghanistan Bank |
| DABS | Da Afghanistan Breshna Sherkat |
| DAD | Development Assistance Database |
| DAIL | Directorate of Agriculture, Irrigation and Livestock |
| DANIDA | Danish International Development Agency |
| DBI | Doing Business Index |
| DFID | Department for International Development (UK) |
| DORR | Directorate of Refugees and Repatriations |
| EITI | Extractive Industries Transparency Initiative |

| ABBREVIATION OR ACRONYM | DEFINITION |
|----------------------------|-----------------------------------------------------------------------|
| EU | European Union |
| EUPOL | European Union Police Mission |
| FDRC | Financial Disputes Resolution Commission |
| FINTRACA | Financial Transactions and Reports Analysis Centre of Afghanistan |
| FIU | Financial Intelligence Unit |
| FSD | Financial Supervision Department (FINTRACA) |
| GDPT | General Directorate of Pension Treasury |
| GIRoA | Government of the Islamic Republic of Afghanistan |
| GIS | Geographic Information System |
| GIZ | Deutsche Gesellschaft für Internationale Zusammenarbeit |
| Harakat | Afghanistan Investment Climate Facility Organization |
| HOO | High Office of Oversight |
| IARCSC | Independent Administrative Reform and Civil Service Commission |
| IB | Islamic Bank |
| IC | International Community |
| ICPC | Interim Criminal Procedure Code |
| ICT | Information and Communication Technologies |
| ICTAWG | International Community Transparency and Accountability Working Group |
| IDLG | Independent Directorate of Local Governance |
| IDLO | International Development Law Organization |
| IDP | Internally Displaced Person |
| IEC | Independent Election Commission |
| IFC | International Finance Corporation |
| IMF | International Monetary Fund |
| INL | Bureau of International Narcotics and Law Enforcement Affairs (USG) |
| INTERPOL | International Criminal Police Organization |
| IRD | International Relief and Development |
| ISAF | International Security Assistance Force (NATO) |
| IWA | Integrity Watch Afghanistan |
| JCMB | Joint Coordination and Monitoring Board |
| JICA | Japan International Cooperation Agency |
| KBR | Kabul Bank Receivership |
| KfW | Kreditanstalt für Wiederaufbau (German Development Bank) |
| KM | Kabul Municipality |
| LCTR | Large Cash Transaction Report |
| LOTFA | Law and Order Trust Fund for Afghanistan |
| MAIL | Ministry of Agriculture, Irrigation and Livestock |
| MCTF | Major Crimes Task Force |
| MEC | Independent Joint Anti-Corruption Monitoring and Evaluation Committee |
| MIS | Management Information System |
| MOCI | Ministry of Commerce and Industries |
| MOCIT | Ministry of Communication and Information Technology |
| MOD | Ministry of Defense |
| MOE | Ministry of Education |
| MOEC | Ministry of Economy |
| MOF | Ministry of Finance |
| MOFA | Ministry of Foreign Affairs |
| MOHE | Ministry of Higher Education |
| MOHRA | Ministry of Hajj and Religious Affairs |
| MOI | Ministry of Interior |

| ABBREVIATION OR ACRONYM | DEFINITION |
|----------------------------|-----------------------------------------------------------------------|
| MOIC | Ministry of Information and Culture |
| MOJ | Ministry of Justice |
| MOLSAMD | Ministry of Labour, Social Affairs, Martyrs and Disabled |
| MOMP | Ministry of Mines and Petroleum |
| MOPH | Ministry of Public Health |
| MOPW | Ministry of Public Works |
| MORR | Ministry of Refugees and Repatriations |
| MOTCA | Ministry of Transportation and Civil Aviation |
| MOU | Memorandum of Understanding |
| MP | Member of Parliament |
| MRRD | Ministry of Rural Rehabilitation and Development |
| MSI | Management Systems International |
| MTA | Military Technical Agreement |
| MTF | Mobile Task Force |
| NACS | National Anti-Corruption Strategy (Azimi Strategy) |
| NATO | North Atlantic Treaty Organization |
| NDS | National Directorate of Security |
| NGO | Non-Governmental Organization |
| NMH | National Military Hospital |
| NPP | National Priority Program |
| NPP2 | National Transparency and Accountability Program |
| OAA | Office of Administrative Affairs and Council of Ministers Secretariat |
| OECD | Organisation for Economic Co-operation and Development |
| PAGO | Provincial Attorney General's Office |
| PD 45 | Presidential Decree 45 |
| PETS | Public Expenditure Tracking Survey |
| PPU | Procurement Policy Unit (MOF) |
| PRT | Provincial Reconstruction Team |
| SAO | Supreme Audit Office |
| SIGAR | Special Inspector General for Afghanistan Reconstruction |
| STR | Suspicious Transaction Report |
| STRE | Specialist Team Royal Engineers (UK) |
| TDF | Telecom Development Fund (MOCIT) |
| TMAF | Tokyo Mutual Accountability Framework |
| TOR | Terms of Reference |
| UAE | United Arab Emirates |
| UN | United Nations |
| UNAMA | United Nations Assistance Mission in Afghanistan |
| UNCAC | United Nations Convention against Corruption |
| UNDP | United Nations Development Programme |
| UNHCR | United Nations High Commissioner for Refugees |
| UNODC | United Nations Office on Drugs and Crime |
| UNOPS | United Nations Office for Project Services |
| UNTOC | United Nations Convention against Transnational Organized Crime |
| USAID | United States Agency for International Development |
| USD | United States Dollar |
| USG | United States Government |
| VCA | Vulnerability to Corruption Assessment |
| WB | World Bank |

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1 MEC MISSIONS



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MEC members discuss issues during the 10th MEC Mission in September 2013.

MEC MISSIONS

Mission 10: September 16 - 29, 2013

MEC held its tenth quarterly mission to Afghanistan from September 16 - 29, 2013. During the mission the Committee approved the Fourth Six-Month Report, which was published and announced at a press conference held on September 28, 2013, and widely distributed through MEC's mailing list and web site.



Committee Member Mr. Drago Kos answers a question from the media regarding contract oversight at a press conference on September 28, 2013.

During the mission the Committee also approved the Sixth Set of Recommendations and Benchmarks after extensive discussions. The topics covered in the sixth set include mining (AEITI), campaign financing (IEC), and issues related to AISA. The sixth set is described in detail beginning on page 5 of this report.

In order to reach as many stakeholders as possible, the Committee held a Justice Sector working dinner with senior representatives of governmental justice sector institutions and a dinner with CSO representatives to discuss current issues of common concern. These events helped to improve MEC's outreach to key players in those sectors.

The Committee met with governmental entities (MOF, IARCSC, OAA, SAO and ARAZI), ministers (of MOPW, MOMP and MOHE), independent agencies (AISA and IEC), CSOs and the IC (SIGAR, ICTAWG and donors). The Communications Strategy, research paper on International Projects, *Anti-Money Laundering Law* and *Public Inquiry Law* were also discussed.

Additionally, the hiring process for the Executive Director position was completed after an extensive search and a one-day media training was held for Committee members.

MEC MISSIONS

Future Missions

MEC's 11th mission will take place in January 2014 and the 12th mission is tentatively scheduled for May 2014. In addition to the normal schedule of meetings, the Committee will visit Kapisa, approve the contents of the Fifth Six-Month Report, and discuss the following areas of interest during the 11th mission:

- International Aid Effectiveness
- Whistle Blower Protection Legislation
- Ombudsman Legislation
- Health Care Sector Spending
- Security Sector Spending/Accountability
- Hiring and Training of Prosecutors
- HOO's Asset Verification System
- Land Usurpation Inquiry

The Secretariat has developed policy papers that outline the issues and challenges for many of the aforementioned areas. The Secretariat will also propose a new system of consolidated recommendations and benchmarks meant to provide a streamlined, but comprehensive mechanism for monitoring and evaluation of national and international efforts to fight corruption in Afghanistan with clear indicators and benchmarks that can be monitored over time.

Sixth Set of Recommendations and Benchmarks

During the Tenth MEC Mission, the Committee approved the issuance of MEC's Sixth Set of Recommendations and Benchmarks. Each recommendation was developed after extensive research, consultations and discussions with relevant stakeholders and was issued with a corresponding news release, backgrounder, and formal letter to the affected institution(s). A brief description of each recommendation is provided below; comprehensive descriptions are provided in the subsequent pages.

6.1 MEC issues recommendations for improved oversight of mining revenues.

Relevant Institution: Multi-Stakeholder Group (AEITI)

6.2 - 6.5 IEC must develop campaign financing regulations to ensure that candidates do not run illegal campaigns.

Relevant Institutions: IEC, MOF and HOO

6.6 - 6.9 An audit of AISA and a restructuring of its regulatory framework are necessary to address questionable practices and enhance accountability and oversight. The transfer of responsibility for industrial parks needs to be reviewed for legitimacy.

Relevant Institutions: AISA, MOCI, OAA, and SAO

New MEC Recommendation for the Mining Sector

On October 21, 2013, MEC released Recommendation 6.1 on the mining sector. This was done after extensive research in the area, which involved a review of the *Minerals Law*. Given the importance of the *Minerals Law* for the economic development of Afghanistan and its significance for the sound management of the country's natural resources, MEC requested on October 20, 2013 through an official letter that the Commission on Natural Resources and the National Assembly ensure that the law contains sufficient provisions to protect the mining sector from corruption. MEC also briefed MPs and ICTAWG on the specifics of this recommendation and the *Minerals Law*.

Lowering the threshold for mining revenue reporting to the Afghanistan Extractives Industry Transparency Initiative will increase transparency and reduce opportunities for corruption

Currently, mining revenues above AFN 7.5 million must be reported to AEITI. The current threshold, however, only obliges six companies to be registered with the organization, leaving a large volume of revenues that go unreported.

Recommendation 6.1: The Multi-Stakeholder Group (consisting of representatives from government, industry, and civil society) should lower the materiality threshold for reporting revenue based on a quantitative market analysis. The new threshold should ensure that a majority of the companies active in Afghanistan's mining industry as well as a majority of the revenue generated by the industry is recorded and reconciled with AEITI.

Benchmark 6.1: Lower reporting threshold agreed on and requirements implemented within 6 months.

Expected Outcome: Reducing the materiality threshold for reporting revenue to AEITI will increase the level of transparency and accountability in the mining sector.

New MEC Recommendations for Enhanced Accountability in Afghanistan's Elections

Reports from past elections in Afghanistan have raised concerns that the 2014 Presidential election is vulnerable to corruption and fraud, such as in the use of government resources and illicit financing of political campaigns.

MEC's recent review identified monitoring gaps that create opportunities for corruption and fraud, including the abuse of official positions or government resources. An effective regime to register and verify all income sources for parties and candidates, and to monitor expenses, is essential in mitigating the potential for abuse. However, it is unclear how the IEC and MOF intend to regulate and monitor election campaign financing and expenditures.

The last Presidential election also faced allegations of widespread ballot stuffing, intimidation and other electoral fraud. Although the IEC has initiated a fraud mitigation strategy, it needs to enhance the training and monitoring of polling station staff to mitigate against past abuses.

In response, MEC issued recommendations calling on the IEC and MOF to work with the HOO to monitor and verify the financing and expenditures of candidates and political parties in the upcoming elections. MEC is also calling on the IEC to ensure that polling officials are properly trained to mitigate fraudulent activity noted in past elections.

MEC MISSIONS

On November 4, 2013, MEC published a news release and held a press conference on the issuance of Recommendations 6.2 - 6.5 to mitigate illicit practices in the election process.

Recommendation 6.2: The IEC should set requirements for Presidential candidates in the 2014 elections to register their campaign assets and expenditures, including the source of campaign funds and assets.

Benchmark 6.2: Requirements set within one month.

Expected Outcome: Transparency increased in campaign financing.

Recommendation 6.3: The IEC should verify the source of income and assets of Presidential and Provincial Council candidates in close cooperation with the HOO.

Benchmark 6.3: Income and assets of individual candidates and parties verified by April 2014.

Expected Outcome: Funds and assets from illegal sources will be detected.

Recommendation 6.4: The MOF and HOO should develop an oversight and audit program to ensure that income, assets and expenditures of political parties are fully registered in conformity with the law. The program should include the verification of the source of registered assets and monitoring of expenditures.

Benchmark 6.4: An oversight and audit program developed by January 2014.

Expected Outcome: Transparency will be increased and use of illicit income and assets will be avoided.

Recommendation 6.5: The IEC shall develop a training plan that trains polling station staff more directly and should implement an effective monitoring program to ensure that polling station staff are aware of their duties.

Benchmark 6.5: Plan developed within 2 months.

Expected Outcome: IEC's staff members and particularly polling station officials are properly trained and the level of malpractice will be decreased.

New MEC Recommendations for AISA

An audit of AISA is required to address questionable practices within AISA

Significant gaps in the accountability of AISA exist due to a number of inconsistencies in legislation and regulations governing the organization. This has been exacerbated by a lack of oversight exercised by the High Commission on Investment and the absence of corporate governance mechanisms that would normally hold management to account. Since AISA has operated within this vacuum, there is a need for an independent financial and performance audit of AISA, including oversight exercised by the High Commission on Investment, to identify any inappropriate activities or uses of funds.

Recommendation 6.6: The SAO should conduct an independent financial and performance audit of AISA, including of the governance and oversight exercised by the High Commission on Investment, specifically focused on verifying AISA's performance with respect to requirements set out in law and to identify any potential misuse of funds.

Benchmark 6.6: Independent financial and performance audit completed and results published by the end of March 2014.

Expected Outcome: Accountability gaps related to AISA and the High Commission on Investment identified and transparency strengthened.

AISA's legal status is unclear and should be reconstructed immediately to enhance accountability and oversight

AISA is governed by several different legislative and legal documents, including the 2005 *Law on Private Investment*, the *Law on Corporations and Limited Liability Companies*, AISA's 2004 charter, and its 2006 bylaw as a limited liability company. The legal and regulatory framework created by these instruments incorporate elements of public- and private-sector governance creating a confusing and inconsistent structure that has allowed AISA to operate without sufficient oversight and accountability. It is incumbent upon the MOCI and the High Commission on Investment to reconstruct and clarify AISA's status to ensure appropriate oversight.

Recommendation 6.7: The High Commission on Investment should develop and implement a plan to restructure AISA's regulatory framework in a manner that clarifies its legal status and provides enhanced transparency and accountability. The plan should update all relevant instruments (laws, regulations, procedures, charter, bylaw, etc.) related to AISA's mandate, authorities, organizational structure, budgeting, reporting requirements, and audit processes. The plan should be shared with the OAA and the IARCSC to ensure appropriate approval and implementation.

Benchmark 6.7: Plan is developed and submitted to the OAA and the IARCSC by the end of March 2014. Implementation commenced by June 1, 2014.

Expected Outcome: AISA's legal status is clarified and transparency and accountability are enhanced.

MEC MISSIONS

Lack of transparency regarding High Commission on Investment decision-making creates the potential for undesirable practices

Decisions taken within the High Commission on Investment with respect to the oversight of AISA are not made transparently. The lack of transparency has led to concerns being raised about the appropriateness of AISA's broad scope of activities in commercial affairs and its use of funds.

Recommendation 6.8: The High Commission on Investment should publish all previous and future decisions and meeting outcomes. This should include the outcome of AISA performance reviews, budget approvals, work plans, financial reports, and audit results.

Benchmark 6.8: Previous and future decisions and outcomes are published on the MOCI website by the end of January 2014, and updated continuously thereafter.

Expected Outcome: Increased transparency of the High Commission on Investment's decision-making.

Transfer of responsibility for industrial parks from the MOCI to AISA has raised significant concerns

According to a resolution of the Council of Ministers from October 2012, the MOCI was to transfer industrial park responsibility along with its thousands of jeribs to AISA. Analysis shows that the transfer of responsibility is not in conformity with provisions of the Constitution and laws of Afghanistan. From a practical perspective, the incorporation of a large administrative unit into a relatively small organization presents a number of challenges. Information already received by MEC indicates that transfer procedures have not been transparent and are leading to nepotism and other concerning practices.

Recommendation 6.9: The MOCI, in cooperation with the MOJ and MOF, should review the legitimacy of the transfer of MOCI's responsibility for industrial parks to AISA and submit the results to the Council of Ministers.

Benchmark 6.9: The review is completed and findings submitted by the end of February 2014.

Expected Outcome: A review of the legitimacy of the transfer would provide an opportunity for the Council of Ministers to review the resolution of the transfer of industrial parks.

2 MONITORING & EVALUATION



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The MEC Prevention Unit reviews documents related to donor-funded projects in July 2013.

Highlights from MEC's Recommendations and Benchmarks

MEC's first five sets of recommendations and benchmarks are comprised of 109 recommendations developed since 2011. This section highlights the recommendations that are notable. An analysis of all 109 recommendations is provided in Appendices B - F of this report.

IARCSC makes progress in simplifying procedures

Recommendations 1.15 and 1.16 require the IARCSC to standardize forms used by public entities, minimize the number of entities involved in procedures, eliminate the role of brokers for public services, and introduce disciplinary measures for non-compliance of civil servants, while recommendation 1.16 also seeks to ensure that civil servants are made aware of the amended procedures and know how they are to be applied.

The IARCSC created the Procedures Simplification Department in 2010 and soon after simplified several administrative procedures across different ministries. In addition to this, the department developed an "Administrative Procedures Simplification Manual" that introduced nine steps to simplify procedures. MEC reviewed a copy of the manual, which includes detailed steps on how to simplify an administrative process and the use of needs assessments, but lacks information on addressing public awareness of simplified administrative procedures. In 2013, in order to identify further procedures to be simplified, the IARCSC visited every ministry to identify and prioritize procedures.

The IARCSC has developed a draft of the *Civil Servant Law* that would address recommendation 1.16. The draft contains provisions for the simplification of processes as well as public awareness of the changes. The law has been held up by the MOJ for the last two years, and has yet to be passed to the Council of Ministers.

MEC has observed that many simplified procedures are not being implemented properly. For example, the simplified process for obtaining a graduation certificate from the MOHE should take two to three days, but in practice it takes much longer; this issue is explored in detail in MEC's VCA on certificate issuance.

The IARCSC should be commended for the work it has already done in terms of implementing recommendations 1.15 and 1.16. Nevertheless, the IARCSC should be pushed to work on disciplinary measures as well, while the MOJ needs to prioritize the new law. The IARCSC should furthermore be engaged by donors and other stakeholders to overcome its capacity constraints, both in terms of the number of qualified staff and financial resources.

MONITORING & EVALUATION

MOF denies problems with CTAP despite MEC's concerns supported by independent auditors

The Minister of Finance sent a letter to MEC in September 2013 responding to criticism of the lack of progress in addressing problems with CTAP as highlighted in recommendations 5.32 and 5.33. The Minister's letter rejected the allegations of nepotism, fraud and negligence in CTAP and claimed that the program's recruitment process is merit-based and transparent. To justify his claim, he stated that CTAP has successfully gone through multiple audits. An analysis of the audit reports, however, actually shows that the auditors have many of the same concerns with the program that MEC has identified.

The MOF has previously shown an unwillingness to fulfill this recommendation, let alone address any of the deficiencies in the operations of CTAP.

MEC replied to the MOF in an official letter in October 2013 insisting on the implementation of the recommendations. Subsequently, MEC met with the Director of CTAP and he stated his intention to implement MEC's recommendations. MEC will involve donors in this issue if it fails to see action taken by the MOF.

Insufficient investigation and prosecution by the IC and law enforcement agencies results in nobody being held to account for the NMH case

As highlighted in MEC's Fourth Six-Month Report and through MEC recommendations 1.30 and 1.31, the NMH case exemplifies the worst outcomes of corruption, bribery and abuse of power in recent memory. A Joint Investigation Team was formed in 2011 to investigate this case, and they finalized their report and sent it to the AGO in September 2012. Although the report has not been made public, information received by MEC indicates that the investigation has revealed that \$1 million has been embezzled.

The AGO indicted 10 individuals accused of misuse of power, negligence of duty and smuggling related to this case; these cases were sent to the anti-corruption court in March 2013.

MEC was disturbed to find out that the NMH case was dismissed following several court hearings. The deficiencies in the investigation process by GIRoA and the IC (including the loss of transfer documents) resulted in no one being convicted in this case, which is an egregious outcome given the extent of patient abuse. The Court has refused to provide the judgment to MEC, despite legal requirements for judgments to be made public.

MEC wrote a letter to SIGAR in October 2013 regarding issues with the lack of accountability over \$39 million worth of pharmaceuticals, without any outcome.

MOHE approves use of anti-corruption module in universities

To address MEC's recommendation 4.3 on the development and integration of an anti-corruption module in schools and universities, the MOHE National Curricula Committee recently approved the inclusion of anti-corruption issues into university curricula. As a first step, the Sharia Law faculty of Kabul University has been tasked with including anti-corruption issues into their Islamic Culture module.

RECOMMENDATION HIGHLIGHT

AFGHANISTAN BECOMES 11th COUNTRY TO JOIN CONSTRUCTION SECTOR TRANSPARENCY INITIATIVE

In MEC's Fifth Set of Recommendations and Benchmarks, recommendation 5.9 encourages GIRoA to establish CoST - a global initiative that creates more transparent and accountable construction sectors - in Afghanistan:

5.9: The multi-stakeholder initiative CoST should be developed by the ANDS Secretariat with technical assistance from CoST's international secretariat. Participants in the initiative should include representatives from ANDS, MoPW, PPU, CSOs, ACCI, ANSA and Shafafyat.

In response to recommendation 5.9, MOEC sent an official letter to the CoST International Secretariat in July 2013 requesting that Afghanistan become a member of CoST. MEC facilitated the subsequent negotiations between MOEC and the CoST International Secretariat. They accepted Afghanistan's request and sent representatives to Kabul in October 2013. MOEC organized a workshop to introduce CoST-Afghanistan to stakeholders on October 22, 2013. The CoST-Afghanistan program, led by MOEC, was officially launched at a press conference on October 23, 2013, but still needs funds for the establishment of the CoST-Afghanistan Secretariat.

The Chair of the CoST Board stated in a press release following the establishment of Afghanistan's national CoST program, "the announcement in Kabul today demonstrates how important CoST can be for reconstruction and development in fragile states. The ability to put in place the right procedures and frameworks to ensure greater transparency will be essential to Afghanistan's future."



CoST Logo

Source: <http://www.constructiontransparency.org/>

By establishing CoST in Afghanistan, GIRoA is making a commitment to create a more transparent construction sector with, among other things, improved value for money spent by the government and by international donors. The government will be more accountable for how public funds are spent on construction projects, and participation in CoST should lead to better outcomes for Afghan citizens.

MEC will continue to support the initiative and monitor its future activities.

MONITORING & EVALUATION

MEC has concerns regarding the proposed Anti-Corruption Law's consistency with other Afghan laws

MEC has conducted a review of the draft Anti-Corruption Law and a letter with its analysis and recommendations for improvement was sent to the Parliament. The legislation deals mostly with the jurisdiction of the HOO, defines crimes that are considered corruption, and establishes a special tribunal for corruption cases.

MEC identified some amendments that would strengthen the law that include the monitoring of the enforcement of signed and ratified international legal instruments; the monitoring of donations to political parties, candidates and elected officials; and overseeing the disclosure of assets, income and expenditures of political parties, candidates and politicians.

The law provides unwarranted powers to HOO that appear to contradict current laws, particularly the ICPC and the *Law on Jurisdiction and Structure of the AGO*. Furthermore, provisions for whistleblowers, informants and accomplices are unclear and inadequate.

MOF blocks attempts by MOCI to dissolve inactive companies

The *Law on Business Corporations and Limited Liability Companies* clearly states the annual reporting requirements of all companies to the CBR. The law also gives the CBR the power to verify businesses that are not operating and to recommend to the Council of Ministers that they be deregistered. According to the MOCI, there are 100,000 registered private companies, of which 65% are inactive. The CBR has attempted to dissolve companies that are not active, have not renewed their license or have not provided the required reports, as suggested in MEC recommendation 4.10. One of the intentions behind this recommendation is to prevent these inactive companies from being used as vehicles for corruption, since they can be used to commit fraudulent activities. Immediately after trying to dissolve them, however, the MOF sent MOCI an official letter demanding that they should not dissolve these companies. The apparent reason for this letter is that the MOF is charging penalties to these companies and they do not want to lose the potential revenue from these penalties if the companies were dissolved.

RECOMMENDATION HIGHLIGHT

MEC'S REQUEST TO ACCESS CASE MANAGEMENT SYSTEM TO MONITOR CORRUPTION CASES REJECTED

Corruption cases are often not properly investigated or prosecuted in Afghanistan and the number and current status of cases referred to the AGO by detection agencies is often in dispute.

Understanding the progression of cases through the justice system will assist in identifying bottlenecks and the causes that contribute to cases being stalled. It will also help to ensure that procedural rights of potential suspects and individuals held in detention are respected. To this end, MEC issued a number of recommendations to the AGO and other governmental institutions that would allow it to cross-reference and monitor the progress of cases, including:

RBM 1.12: Requests the AGO to prepare a report with details on submitted criminal cases of the ANP, HOO and the SAO and to develop a database with details of all cases.

RBM 5.22: Requests ARAZI, MOI, HOO, IDLG and the NDS to provide MEC with all land usurpation cases referred to the AGO.

KBR 29: Requests the AGO to document the outcome of all criminal investigations.

MEC is also monitoring PD 45 article 1(2) which requested that the Supreme Court decide and finalize all running cases, especially those related to corruption and land usurpation.

PD 45 article 6(1) asks the AGO to study and provide a complete list of all detainees with the descriptions of their accusations.

To date, several agencies – including HOO, MOI, SAO, ARAZI, and MOPH - have indicated that they referred hundreds of potential corruption cases to the AGO for further investigation, without receiving any information about the cases' status or whether they have even been

investigated. This, despite the legal requirement for the AGO to investigate all cases that they are aware of and the explicit legal obligation to notify some referring agencies, such as the SAO under the Audit Law.

The AGO has never provided MEC – or referring organizations – with the status of cases in question.

The CMS can be an effective tool for the tracking of cases throughout the entire justice system. The CMS was implemented to track criminal cases through the system and to enhance coordination among investigative, legal and judicial organizations. According to sources, over 50,000 criminal cases have been entered into the CMS.

In October 2013, MEC made a request for access to the CMS in an effort to enhance its monitoring of corruption cases, but the request was rejected by the CMS Steering Committee, which is comprised of officials from the AGO, HOO, MOI, MOJ, MOD, NDS, Supreme Court and AIBA.

MEC will continue to attempt to gain access to the CMS to strengthen its monitoring of corruption cases and calls on the AGO to actively partner with detection agencies to ensure that potential corruption cases are properly investigated.

MEC has identified several potential enhancements to the CMS, such as including relevant drop boxes related to corruption cases so that they can be better tracked and analyzed, and will engage with the Committee in order to modify the system.

RECOMMENDATION HIGHLIGHT

HOO's ASSESSMENT OF COMPLIANCE WITH UNCAC MISLEADING AND INACCURATE

MEC's recommendations 5.18 and 5.19 are related to the wide participation in the development of the UNCAC Self-Assessment, and its public distribution. Although these recommendations have been notionally fulfilled, an analysis of the actual assessment document shows numerous deficiencies.

The responses provided in the UNCAC Self-Assessment are completely insufficient to achieve the objectives of the assessment, which include presenting a comprehensive and accurate picture of the state of Afghanistan's implementation of and compliance with UNCAC's specific requirements and achievement of its broader purposes.

The fundamental purpose of the UNCAC self-assessment is to provide a candid, comprehensive, and accurate foundation upon which the larger mechanism for reviewing the country's level of implementation of UNCAC's requirements and achievement of its purposes can be built.

The comprehensive self-assessment checklist is meant to be prepared through "broad consultations at the national level with all relevant stakeholders, including the private sector, individuals and groups outside the public sector." Based on the numerous superficial and irrelevant responses to the individual items on the checklist, it appears that not only was it not prepared by any process involving "broad consultations," it was also not prepared by a team of professionals with a substantive legal background. There is not even an attempt at explanations, let alone analyses, evident in the responses.

The assessment unrealistically asserts that Afghanistan is in compliance with UNCAC with respect to each and every provision of the Convention that is addressed in the assessment.



High Office of
Oversight & Anti-corruption

Islamic Republic of Afghanistan

HOO logo

Source: <http://anti-corruption.gov.af/en>

However, the responses to the questions about adoption and implementation of measures required by the Convention consists exclusively of quoted provisions of laws and decrees that are, presumably, relevant to the question at hand. As often as not, however, they are completely irrelevant or only partially relevant.

As inaccurate as the responses asserting complete compliance are, the self-assessment likewise sells Afghanistan short by failing to include any description of the substantial steps toward implementation that have already been taken, that are in process, or that are planned for the future. These include legislation to amend the current Penal Code specifically to address its shortcomings in relation to UNCAC or the ongoing total revision of all the criminal laws of Afghanistan that is intended, among other things, to bring Afghanistan into compliance with all of its criminal law-related obligations under international treaties and conventions, including UNCAC.

Overall, the content of the self-assessment can be categorized as superficial, inaccurate, and incomplete. In short, it is simply inadequate. However, the comprehensive checklist that forms the initial basis for the UNCAC Self-Assessment is an important part of the mechanism for reviewing implementation of UNCAC, but it is not the only part. And while the self-assessment itself and the process by which it was prepared both were sorely lacking, it is nevertheless encouraging that there will be additional opportunities to engage in the broad participatory and nationally driven process towards anti-corruption reform that is necessary to accurately assess the capacities of national anti-corruption systems, laws, and institutions (de jure and de facto), and to identify possible reforms to address capacity gaps.

RECOMMENDATION HIGHLIGHT

MOHRA, HARAKAT AND IWA ESTABLISH INTEGRITY INITIATIVE TO FIGHT CORRUPTION THROUGH PUBLIC AWARENESS

MEC's recommendation 4.5 encouraged MOHRA, MOIC and the Council of Religious Leaders to implement a country-wide anti-corruption campaign that incorporates strong religious and media outreach components. It also recommended that trainings and seminars on anti-corruption topics be conducted for mullahs and madrasah teachers throughout Afghanistan.

In November 2013, MOHRA, IWA and Harakat signed an MOU that established an anti-corruption campaign entitled the Integrity Initiative Project. The project will be implemented by IWA over an initial period of 16 months and has a budget of \$650,000, which was donated by Harakat. The project contains the following three objectives:

1. Train 2,700 religious scholars (mullahs) on corruption-related issues and to become active in the anti-corruption campaign;
2. Assign mullahs to specific areas to support the anti-corruption public awareness campaign through discussions during Friday Prayers (Namaz Jomaa); media interactions; and the distribution of anti-corruption materials;
3. Hold writing competitions for students of religious schools on the topic of the Islamic fight against corruption.

In addition to these primary activities, IWA will also develop a website and hotline phone service. These two services will help people to share their ideas and comments regarding the anti-corruption process in Afghanistan. IWA also has plans to print and distribute imitation Afghan currency to be given to civil servants who ask for bribes as a symbolic gesture against corruption.



Representatives of MOHRA, IWA and Harakat at the press conference held on the establishment of the Integrity Initiative Project in November 2013.

A report shared with MEC reveals that MOHRA has already conducted many anti-corruption awareness programs in mosques and through the media. This usually takes the form of mullahs or other religious scholars discussing the negative consequences of corruption on national radio stations or TV channels.

RECOMMENDATION HIGHLIGHT

REVISED AML LAW SHOULD COMPLY WITH INTERNATIONAL FINANCIAL STANDARDS AND BE PROMPTLY PROCESSED

Money laundering and its underlying crime and corruption undermine the Afghan economy and divert funds from much needed priorities. An effective AML regime can serve as a deterrent to money laundering, reduce corruption and provide a more effective tool for the fight against organized crime, while also detecting officials who attempt to hide illicitly obtained funds.

Afghanistan's current *Anti-Money Laundering Law* has been criticized for being outdated and for not having the explicit endorsement of Parliament, as it was passed by Presidential Decree.

The submission of AML legislation to Parliament is a structural benchmark of the IMF's Extended Credit Facility Program for Afghanistan. The IMF program could be at risk if the benchmark is not met, thereby putting donor funding into jeopardy. In addition, the Asia Pacific Group requested GIRoA to enact AML legislation that meets all Financial Action Task Force standards by the end of December 2013.

The Afghan government – in cooperation with DAB – has been developing new legislation for several months. Unfortunately, the draft law has yet to be sent to the National Assembly, due to concerns about the enhanced powers of the financial intelligence unit. Given the narrowing window for legislative initiatives to be passed, MEC is calling on GIRoA and the National Assembly to give the *Anti-Money Laundering Law* top priority to ensure its enactment as soon as possible.

MEC has conducted a review of the draft legislation and will submit its comments to the National Assembly once the law has been tabled. Our analysis found that it generally meets international standards and represents a marked improvement over the current law. The draft law criminalizes money laundering, allows for the confiscation of money and assets, applies preventive

measures for the financial sector, establishes powers and responsibilities for investigative, law enforcement and supervisory authorities, and sets the basic framework for international cooperation in the fight against money laundering.

There are some amendments, however, that would strengthen the law even further by enhancing the operational independence of the financial intelligence unit to allow it to better share information with other law enforcement agencies and international partners.

Firstly, terms related to AML - such as connected transactions and cash - should be extended and included in the law. Currently, these definitions do not clearly cover these terms, thereby adding ambiguity and uncertainty to the law.

Secondly, national coordination among the relevant authorities is weak under the draft law. The lack of coordination between the governmental authorities and the absence of coordinated policies mitigates the effort to address money laundering. FinTRACA must be given the authority to establish mechanisms for cooperation with other government institutions, regulators, supervisors, reporting entities and law enforcement authorities. This will optimize FinTRACA's analysis and establish information flows that remain confidential.

Thirdly, articles related to record keeping should be clarified and made more precise. The information that should be recorded, the content of the recorded data, and other important issues for the appropriate recording of data are not clearly specified in the law. This gap includes precise and specific information related to procedures for identification, monitoring and transactions. There is a need for a new article about record keeping by FinTRACA that would identify specific types of information and notifications, including more detailed operational information.

Finally, a wider range of special investigative techniques need to be set-out in the law such as controlled/monitored delivery, the use of undercover agents, interception of communications, and electronic surveillance. Judicial bodies should also be provided with an adequate legal basis for the use of a wide range of special investigative techniques when conducting investigations.

Institutional Rankings

MEC is monitoring recommendations and PD 45 articles that cover more than 40 GIRoA institutions and international organizations. During the 10th MEC Mission, the Committee decided to give scores to institutions to present an empirical and objective view of how the different institutions are performing with regards to MEC's recommendations and the varying levels of cooperation and effort put forth by elements of GIRoA and the IC.

MEC Oversight

MEC currently monitors 109 recommendations, 48 Kabul Bank Public Inquiry Recommendations, and 38 PD 45 Articles.

The institutions are ordered by their score. The best-performing institutions' scores are indicated in green; the middle-performers in yellow; and the worst-performers in red. The best-performing institutions are the IEC, DAB, MOMP and the Supreme Court. The worst-performing institutions are ISAF, MORR, the Kabul Bank Special Tribunal and AISA.

The rating system takes into consideration the implementation statuses of the recommendations assigned to individual institutions as of December 31, 2013. The institutional score is based on an equation that assigns the numbers 0,1 and 2 that represent the current status of the recommendation (0 = not implemented; 1 = partially implemented; and 2 = fully implemented) to each recommendation related to the institution. The final score is the combined score divided by the number of recommendations, which provides a number between 0 and 2 that represents the institution's average score per recommendation.

Additionally, institutions with only one or two relevant recommendations were not scored since the scores would be disproportionately skewed by one or two statuses.

MONITORING & EVALUATION

| Institution | Total Recommendations | # Fully Implemented | # Partially Implemented | # Not Implemented | Score |
|-------------------------------|-----------------------|---------------------|-------------------------|-------------------|-------|
| IEC | 4 | 3 | 1 | 0 | 1.75 |
| DAB | 20 | 13 | 6 | 1 | 1.60 |
| MOMP | 6 | 2 | 4 | 0 | 1.33 |
| Supreme Court | 3 | 1 | 2 | 0 | 1.33 |
| MOJ | 10 | 5 | 3 | 2 | 1.30 |
| MOPW | 8 | 2 | 5 | 1 | 1.13 |
| IARCSC | 11 | 2 | 7 | 2 | 1.00 |
| MAIL | 7 | 1 | 5 | 1 | 1.00 |
| Herat Government | 3 | 1 | 1 | 1 | 1.00 |
| IDLG | 3 | 0 | 3 | 0 | 1.00 |
| MOHRA | 3 | 0 | 3 | 0 | 1.00 |
| HOO | 19 | 1 | 16 | 2 | 0.95 |
| MOEC | 9 | 1 | 6 | 2 | 0.89 |
| MOF | 23 | 2 | 16 | 5 | 0.87 |
| IC/Donors | 24 | 4 | 12 | 8 | 0.83 |
| SAO | 6 | 1 | 3 | 2 | 0.83 |
| MOCI | 5 | 0 | 4 | 1 | 0.80 |
| AGO | 24 | 2 | 14 | 8 | 0.75 |
| OAA | 4 | 0 | 2 | 2 | 0.50 |
| AISA | 3 | 0 | 1 | 2 | 0.33 |
| Special Tribunal (Kabul Bank) | 3 | 0 | 1 | 2 | 0.33 |
| MORR | 3 | 0 | 0 | 3 | 0.00 |
| ISAF | 4 | 0 | 0 | 4 | 0.00 |

Status of Kabul Bank Public Inquiry Recommendations

Kabul Bank continues to epitomize many of the structural issues affecting good governance and impunity in Afghanistan. September 2013 represents the three-year mark since the collapse of Kabul Bank and its entry into conservatorship. Unfortunately, many of the underlying issues related to the failure of Kabul Bank and the justice sector response have not been addressed, despite claims from national and international institutions of their resolve in doing so.

MEC continues to closely monitor the overall progress in the effort to recover Kabul Bank funds and to hold to account individuals responsible for criminal activity. Unfortunately, the past six months have seen few positive developments, and some that appear to be steps backwards in resolving outstanding issues.

The Court of Appeal proceedings have introduced delays to the resolution of the substantive criminal issues

The most troubling development relates to the proceedings in the criminal appeals before the Court of Appeal, which the Court received on April 4, 2013. Despite concerns with the lack of expert evidence heard at the Special Tribunal, there has been ample opportunity for the Court of Appeal to use its broad scope under Afghan law to obtain and properly consider the volumes of evidence in the Kabul Bank case. To date, this has not occurred as the AGO has failed to submit such evidence to the Court of Appeal despite support being provided by international experts. Instead, the Court of Appeal conducted several hastily-organized hearings where the parties were apparently called to court on short notice without legal representation and that soon devolved into verbal exchanges between defendants without the hearing of any real evidence.

As a result, on November 26, 2013 – over seven months after the appeal was received – the Court of Appeal ordered that the assigned Prosecutor collaborate with the KBR to clarify the accounts of all Kabul Bank's shareholders and borrowers in their presence, and for the file to be sent to the FDRC if the parties are not satisfied. The FDRC is to determine the issue and highlight the main legal points to be addressed by the Court, at which time the Court will make a decision.

The Court of Appeal's order calls for the duplication of efforts made several years ago, with little prospect of advancing recoveries or the criminal process

With respect, the order from the Court of Appeal defies logic as it repeats steps already taken to resolve the issue of liability, ignores volumes of available evidence that would satisfy the issues in the order, and focuses on civil recoveries without dealing with the criminal matters underlying the appeal in any way.

MONITORING & EVALUATION

Shortly after the fraud at Kabul Bank was publicly exposed in 2010, several key shareholders had written to DAB committing to work with DAB and to sign agreements to pay amounts owed. At this time the KBR was able to compile a detailed accounting of liability for Kabul Bank funds based on the Kabul Bank database and loan files and assistance from an international forensic audit firm. Several contentious meetings were held with shareholders and beneficiaries which ultimately resulted in legally-binding agreements being signed with most debtors representing hundreds of millions of dollars. At this time, many shareholders disputed their liability for shareholder loans and the case was referred to the FDRC. Liability for other loans was also disputed at this time, making it clear where the opinion of the KBR and the beneficiaries differed.

The Court of Appeal's order essentially asks KBR to undertake efforts that have already been made, thereby introducing months – if not years – of delay with little hope of resolving the criminal or civil issues of liability. This potential for delay has already become a reality as neither the KBR or the AGO have taken steps to implement the Court's order, months after it was made. KBR indicates that they have not received the order officially and are unwilling to take any action until they do. Therefore, even the order with its deficiencies, is not proceeding. There are unverified reports that bribes have been paid to ensure that this case does not proceed.

The AGO is making no effort to end the impunity by investigating and prosecuting other beneficiaries of the Kabul Bank fraud

Of additional concern, the AGO has not undertaken any further criminal investigations into beneficiaries of Kabul Bank loans as recommended by MEC. The absence of an investigation perpetuates the perception that politically-exposed people are given preferential treatment. Instead, the AGO made a public statement in June 2013 indicating that foreign audit firms associated with Kabul Bank would be brought to justice. Although MEC views the focus on periphery actors such as the auditors to be misguided, the reality is that nothing has been done even in this case where the AGO has committed to undertake further investigation. This calls into question the AGO's sincerity in resolving the outstanding criminal issues and leaves MEC with the impression that such public statements are only for show.

The UAE continues to demonstrate its unwillingness to provide assistance in recovering Kabul Bank funds

The international and national recovery effort also continues to be faced with difficulties, predominantly related to the inability to work with the UAE in fulfilling a mutual legal assistance request. This concern was highlighted at an OECD conference in December 2013 by a MEC Committee member. At this time, the member requested that the OECD consider adding the UAE to a list of countries that do not enforce anti-money laundering laws due to its lack of performance in assisting Afghanistan in relation to Kabul Bank.

MONITORING & EVALUATION

In one positive development, MEC has been informed that the AGO has drafted additional mutual legal assistance requests for the United States and China, but has been unable to verify that they have been sent through diplomatic channels to the receiving countries.

While some domestic recoveries have been made, Gas Group continues to receive preferential treatment

On the domestic recoveries side, KBR has apparently reached an agreement with the Gas Group to repay \$72 million of the \$121 million that they were originally obliged to repay, with the rest being written off. The structure of payments anticipates payments of 1 million Afghani per month for the first year, 2 million per month for the second year, 5 million per month for the third year, 10 million per month for the fourth year, 15 million per month for the fifth year, and 59 million per month for years 6 – 10.

Although payments have reportedly been made over the past five months resulting in \$100,000 of recoveries, the result of the repayment schedule is that the Gas Group has received a favorable loan of \$72 million over more than 10 years with no interest. Of further concern is the susceptibility of recoveries to currency fluctuations as the loan amounts were made in USD, while repayment is in Afghanis.

Additionally, KBR has made progress in the sale of Pamir Airways assets, having sold seven planes to Ariana Airways for \$24 million, although KBR has yet to receive payment. The sale of mortgaged villas in the UAE has faced challenges due to disputes with mortgage holders who are proceeding to sell the properties. It is not known whether KBR will be able to recover the excess value as they are not the registered title holders.

The total amount of cash recoveries reported by KBR at the end of 2013 stands at \$174.9 million, with \$738.9 million in outstanding claims and \$97.4 million in approved reductions.

Strong due diligence must be undertaken to ensure that the qualifying bid received for New Kabul Bank is not associated with related parties of Kabul Bank

In a final development, the MOF re-tendered New Kabul Bank on September 3, 2013 after a first round of tenders failed to identify a suitable buyer. The re-tender resulted in a qualifying bid of \$28 million being received from Kru Capital, raising concerns about the purchase price versus the value of New Kabul Bank's assets. MEC had recommended that the MOF pursue its Action Plan for the sale of New Kabul Bank calling for the liquidation of New Kabul Bank failing the identification of a suitable buyer, which should have been pursued after the first tender process failed. There are also lingering concerns that past shareholders may be involved in the bidding for New Kabul Bank and MEC will closely follow DAB's assessment of the bidders to ensure that they are fit and proper and unrelated to past shareholders of Kabul Bank.

Status of Presidential Decree 45 Articles

On July 26, 2012, the President of Afghanistan issued PD 45, an extensive decree comprised of 164 articles directed at 33 governmental institutions aimed at improving governmental administration and reducing corruption. OAA's Monitoring and Evaluation Department was tasked with monitoring the implementation of PD 45. MEC identified 38 anti-corruption related articles of PD 45 to monitor independently from the OAA.

On March 24, 2013, MEC published its *Report on the Implementation of Anti-Corruption Related Elements of Presidential Decree 45*. At the time of publication, MEC found that of the 38 articles being monitored, 8 (21%) had been fully implemented, 23 (61%) had been partially implemented, and 7 (18%) had not been implemented.

In August 2013, the OAA stopped monitoring PD 45, claiming that most of the articles had been implemented and there was no reason to continue monitoring them. MEC disagrees with this assessment, and based on ongoing monitoring and evaluation, considers less than half of the 38 monitored articles to be fully implemented. The difference can be attributed to the substantive evaluation carried out by MEC versus the procedural requirements of PD 45. MEC's second full analysis of the 38 corruption-related articles is included in this report in Appendix H.

3 PROVINCIAL VISITS



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View of Band-e-Amir lake in Bamyan.

PROVINCIAL VISITS

Helmand: July 24 - 27, 2013

In July 2013, the MEC Secretariat conducted an in-depth review of the infrastructure contracting procedures and practices at the Helmand PRT. During the provincial visit Secretariat staff analyzed volumes of primary contract documents, secondary sources of information and interviewed a number of officials from DFID, STRE, USAID, and GIRoA.

The review is part of broader effort to assess the effectiveness of off-budget development aid in Afghanistan to identify weaknesses and best practices. Off-budget infrastructure projects have often been alleged to be high cost and low quality, due to a lack of alignment, coordination, monitoring, and maintenance.

Helmand PRT is a suitable case-study due to its size and the scope of off-budget projects

At the time of the study, the Helmand PRT was one of the largest in Afghanistan consisting of approximately 160 staff. In 2011, over \$170 million was spent on development in Helmand, which represents the third highest provincial total after Kabul and Kandahar. The PRT stated that it has implemented approximately 390 infrastructure projects of different sizes, including over 200 km of asphalt roads across Helmand.

Prior to 2011 infrastructure projects in Helmand were being implemented in an ad-hoc manner

From 2006 until 2011 there was no comprehensive plan for the implementation of infrastructure projects in Helmand. Projects were identified and implemented on an ad-hoc basis, with priorities loosely identified by quick-impact assessments, without longer term strategic planning.

More recently, governance structures have been established in Helmand, which includes a Provincial Governor, an elected provincial council, District Governors in 12 of 13 districts, and seven elected District Community Councils.

A PRT-supported district planning and budgeting process has been implemented by IDLG allowing District Community Councils to develop district plans linked to national and provincial plans, which are then rolled into the provincial development plan.

PROVINCIAL VISITS

There has been enhanced governance, planning and coordination since 2011

In 2011, a single Helmand Plan was agreed by the Afghan government and its international partners to coordinate efforts in nine thematic areas, including governance, rule of law, and infrastructure. The Helmand Plan 2011 – 2014 includes a Provincial Roads Strategy that prioritizes the construction of paved roads to connect rural districts to Lashkar Gah and Gereshk. The plan also partially aims to rehabilitate irrigation and to generate provincial hydro-electric power through refurbishing the Gereshk Hydro Power Plant and South-East Power System. Objectives for the end of 2014 also include increasing government capacity to develop and maintain roads, power, and irrigation infrastructure. In January 2013, the Department of Public Works and the PRT identified 90 road projects along with their prioritization.

Joint working groups allow for prioritization and review of projects

The Sector Working Group has existed since 2010 and comprises a number of Afghan ministries and key departments. The working group allows the PRT to share details of all its projects from concept to implementation and works with donors to complete sector working plans for the Provincial Development Plan and prioritizes proposals against available resources and capacity.

There is also a Provincial Governor's Technical Committee comprised of engineers from various departments. The technical committee considers sector needs at both the district and provincial levels and is involved in the monitoring and evaluation of infrastructure projects.

STRE was responsible for overseeing the procurement and implementation of off-budget infrastructure projects

STRE is comprised of military engineers seconded as contracting authorities for PRT-implemented projects. STRE has participated in the implementation of nearly 400 projects with an estimated value of \$136 million. At the time of the review, STRE has 12-15 active projects in various stages of delivery which is a marked departure from a high of approximately 125 projects underway in the past.

STRE is delegated to ensure that the contractor performs and delivers the requirements of the contract specification and conditions. All projects are implemented according to their standard operating procedures.

Project initiation requires the engagement of end-users and consideration of sustainability

The STRE standard operating procedures have an explicit requirement that the statement of requirement is completed in consultation with end users, and line ministries as required. The client is required to engage with key stakeholders, namely those who will use and maintain the facility, and investigate the sustainability of the project, whether it will be easily operated and maintained with existing skills, and whether the facility will result in positive change, among other things.

PROVINCIAL VISITS

Project design must conform to national and international standards and must be approved by provincial officials

The second stage is the development of a rough order of costs based on past prices for similar materials contained in the contractor database. The design is developed to conform to the technical specifications set by MRRD, MOPW, or other relevant ministries and is shared with MOPW at this stage.

After the design is completed, the client will arrange a siting shura with elders, land owners, and line ministries to confirm the location of the work and clear up land registration issues. If successful, the client submits the project to the Helmand Provincial Development Committee where it is accepted, deferred, or rejected, and seeks approval from the Provincial Governor's Technical Team. Finally, confirmation of the end-user ability to operate and maintain the project is required. However, no formal maintenance plan is developed.

Project tender and evaluations of bids are conducted jointly by STRE and provincial technical experts

The commercial phase includes the pre-tender stage (invitation to tender), tender evaluation, and the awarding of a contract. At the pre-tender stage STRE identifies 10 -15 contractors depending on the size, urgency, and location of the project that will be asked to the invitation to tender. Contractors are identified using the contractor database, expressions of interest, referrals from government ministries, and pre-qualification questionnaires. The contractor database contains approximately 400 contractors assessed and graded on a running score. The selection of contractors for a tender includes a number of new contractors to increase the contractor base.

The invitation to tender is attended by the relevant line ministry, clients, and end users, if they choose. Once tendering has closed, a tender evaluation board convenes to evaluate the tenders. Tenders are opened and the technical and commercial information is separated. The commercial evaluation is pass or fail and is done without releasing the prices to any other person other than the assessors. Deviations from the rough order of cost are evaluated and followed-up on where necessary. Evaluations are confirmed by an internal or external verifier.

The technical evaluation is done by a panel comprised of STRE personnel and line ministry or Provincial Governor's Technical Team representatives. The panel completes a technical evaluation matrix for all companies and a technical evaluation summary is produced.

All relevant information about the contractor is collected and saved into the contractor database noting the security classification and successful contractors are vetted by Task Force 2010. The contractor is responsible for the recruitment and management of a suitably qualified and experienced workforce and cannot assign, transfer, or sub-contract the contract without permission from the PRT.

PROVINCIAL VISITS

Projects are monitored through regular on-site visits by STRE

All work by the contractor will be in accordance with applicable Afghan and United Kingdom laws, regulations, and other rules. Failure to adhere to the contract can result in a verbal warning, notice of default, or termination.

STRE implements a quality assurance plan in relation to all of its projects, with contractors attending regular progress meetings. Most projects are visited daily by the local Afghan STRE engineers who inspect works, take photographs and advise on progress, while STRE engineers make site visits once a week. In previous years, the workload related to monitoring over one hundred projects put a strain on STRE's ability to fully monitor its projects.

STRE has the power to inspect, examine and test any part of the works. Quality assurance tests for off-budget projects in Helmand were conducted at the Camp Bastion laboratory, while the Governor's Technical Team and MOPW use civilian labs.

Early monitoring results often turned up issues of poor sub-contractor workmanship due to the number of projects and the existence of only a few qualified sub-contractors. Issues related to unapproved sub-contracting has been monitored through site visits and questioning laborers regarding their employer. More recently, the quality of sub-contracts has improved due to less contracts and more experienced sub-contractors.

The Afghan government also engages in monitoring of infrastructure projects

In Helmand, the Department of Municipal and Urban Development, whose director is a member of the Provincial Governor's Technical Team, also undertakes monitoring of infrastructure projects in Helmand and compiles related reports. The monitoring reports have generally been positive in relation to off-budget projects, but identify many problems with government-administered projects related to quality due to poor capacity in structural design and the use of inferior materials to save money. Ad-hoc monitoring occurs at the local level as many elders have raised issues with infrastructure projects at various stages of implementation.

Past disagreements about the quality of infrastructure projects have been resolved through STRE and the Provincial Governor's Technical Team joint inspections.

Joint investigation teams ensure that the project meets all requirements before it is handed over to the end users

Once a project is completed, the client convenes a handover board and the relevant government ministry will be required to receive the project for operations and maintenance purposes. Joint inspection teams evaluate the project for deficiencies. There is a 10 percent retention that is withheld until the end of the 12 month maintenance period.

PROVINCIAL VISITS

STRE meets with the Provincial Governor's Technical Team and shares information at a variety of stages and documents are provided. The provision of these documents is logged in the project log, which retains a note on every action related to the project. Once hand-over is complete, the project is archived and retained until the retention payment has been made.

Although the MOPW has recently developed a road maintenance strategy, there is no provincial road building and maintenance strategy for Helmand. Furthermore, the capacity of line ministries needs to be enhanced to ensure that projects are maintained appropriately. Besides wear and tear, Helmand roads are also susceptible to improvised explosive devices, which require contingency planning and funding to ensure that the resources exist to fix damage.

There are grounds to believe that PRT-implemented projects have been susceptible to corrupt practices

The Helmand PRT has clearly faced circumstances that made them concerned about corruption in the implementation of contracts. This is reflected in memos to contractors indicating that commercial malpractice was linked to rising prices, that fraud and corruption remained a problem, and that external influences were being exerted on some contractors.

Some of the practices that were identified by the PRT included instances of collusion, suspicion of extorting contractors, selling of contracts, and funding the insurgency. A specific example of corruption occurred when the PRT had grounds to believe that the rough order of costs was being leaked to contractors leading to inflated prices. The suspected individual was investigated and charged.

Other suspicions have been raised about delays in the handover process where approval seems to be slow and defects are raised where no evident defect exists, thereby tying up the contractor's retention payment. A similar practice occurs when representatives from the end users show up on job sites and directly demand payments from contractors to avoid the raising of deficiencies.

Conclusion

The Helmand Plan acknowledges that managing corruption is critical, but there is no clear strategy to address the stated issues and no indication of what concrete actions need to be taken to address specific concerns.

Additionally, the general terms of contracts have some anti-corruption provisions, which indicate that the contractor shall not solicit, receive or agree to receive, or offer or agree to give to any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favor or disfavor to any person.

PROVINCIAL VISITS

The most common mechanism to deal with concrete cases was to blacklist contractors found to have engaged in undesirable practices. Of the approximately 400 contractors in the PRT's database, 20 have been blacklisted. These blacklists are shared with other contracting authorities, including Task Force 2010.

The PRT also moved to a No Acceptable Price – No Contract model in late 2011. This has contributed to driving down costs by up to 30 percent resulting in an estimated \$3 million savings since 2011.

Despite these efforts, there has been little to indicate that many corruption concerns are investigated by the PRT, nor does it appear that contractors are provided with a means to report these practices where they may be occurring.

PROVINCIAL VISITS

Kandahar: August 16 - 19, 2013

MEC's Prevention and Law Enforcement Officers visited Kandahar from August 16 - 19, 2013 to monitor and evaluate anti-corruption activities in the province. The team met with the Governor's Spokesperson, the Head of the Provincial Council, the Acting Heads of the Appeal Court and AGO, the Directors of Customs and DAIL, and representatives of DABS and civil society, among others.

A lack of judges and poor security decrease the effectiveness of the courts

According to the tashkil, the courts in Kandahar should have 150 judges, but they currently only have 40. This makes it difficult to process cases in a timely manner. Additionally, the poor security environment in Kandahar and frequent threats made to judges and other government officials result in an ineffective rule of law throughout the province.

The customs systems seem to be functioning, but certain deficiencies remain

Processing of imported goods is time consuming and the Directorates of Agriculture and Health have no analytical labs to analyze the quality of food stuffs and medication in Kandahar. Therefore, samples are sent to Kabul which delays the process.

The Kandahar Customs Department is using the ASYCUDA system and has mobile teams that help to minimize the amount of goods being smuggled into Afghanistan via Kandahar's border.

The provincial government has taken steps to improve electricity provision

Previously, power in Kandahar was not provided in a fair manner. Some people had two power meters while others had none. Some used electricity but did not pay the government due to a lack of meters. The Governor of Kandahar personally intervened and referred those responsible to the legal and judicial authorities. DABS has also confiscated about 3,000 illegally distributed electricity meters.

The transportation sector takes small steps to curb corruption

Officials at the Transportation Directorate in Kandahar had reportedly allowed a number of buses to transport people beyond their capacity in exchange for bribes. This resulted in damage to roads and an increase in traffic accidents. A committee consisting of the Directors of Transportation, Traffic and Customs was established to prevent these occurrences, though the problem still exists with buses that do not originate in Kandahar.



Da Afghanistan Breshna Sherkat
logo.

Source: www.dabs.af/en

PROVINCIAL VISITS

More needs to be done to address the many cases of land usurpation

Land usurpation is a serious problem throughout Kandahar, especially in the Aino Maina Township. Land in this township previously belonged to the MOD but was recently, and inexplicably, given to Kandahar Municipality. A commission comprising of the Provincial Governor and representatives of Kandahar Municipality, the courts, ARAZI, the Prosecutor's Office, the NDS and the Legal Directorate has been created to investigate cases of land usurpation, including this one. Findings of this commission have not been shared with the Governmental Cases Department.

Donor-funded projects fail to consider local needs

Donors have allegedly not implemented projects based on public needs, which has resulted in the dissatisfaction of many citizens. Additionally, there were many complaints about the poor quality of the implemented projects. Projects supporting legal and judicial reform, however, were widely seen as having been well-implemented.

Conclusion

Many governmental offices in Kandahar are vulnerable to corruption. Corruption in Kandahar originates from several factors, including a lack of sufficient capacity, security, political will, and attention to public needs.

The poor security situation in Kandahar - particularly in the districts - makes it harder to recruit qualified individuals for government jobs and easier for powerful people to interfere in the operations of the government. Threats to government officials affect the ability of the judicial system to attract and retain staff and to operate effectively. In many parts of Kandahar GIRoA has no authority and armed opposition groups can operate with impunity.

The governor's office and other governmental entities have adopted some measures to deal with corruption and some officials have been investigated for corrupt practices, but much more needs to be done to have any noticeable impact on corruption.

PROVINCIAL VISITS

Bamyan: September 8 - 11, 2013



Sign explaining development plan for Band-e-Amir region.

As a follow-up to the Committee visit of June 2013 (9th Mission), MEC's Prevention Advisor and Governance Advisor visited Bamyan from September 8 - 11, 2013. The follow-up visit included meetings with the Provincial Governor, the Deputy Governor, the Head of the Provincial Council, the Directors of Economy, Mines, and ARAZI, the Head of the Anti-Corruption Primary Court, six members of the Anti-Corruption Commission, and approximately 20 representatives of Civil Society (through the ACSFo).

During the visit, the following themes emerged from the statements of both the governmental and non-governmental representatives:

- Bamyan has a low level of corruption compared to other provinces in Afghanistan. In terms of development projects, however, corruption remains an intractable problem;
- The central government ignores the needs of Bamyan and provides little to the province despite receiving significant mining revenues from the province;
- The development and implementation of donor-funded projects do not take the needs of the province into consideration and are often poorly implemented;
- Land usurpation is not a significant issue.

Efforts to fight corruption in the province include the establishment of an Anti-Corruption Commission in the Governor's Office, the processing of cases in the Anti-Corruption Primary Court, and the monitoring of projects by the government and CSOs. Despite these efforts and some local successes, the issues regarding the central government neglect and international project implementation remain the most serious obstacles to fighting corruption in Bamyan.

Anti-corruption efforts have yielded some small successes

The Anti-Corruption Commission was established under the auspices of the Governor's Office a few years ago. They claim some minor successes, including the prosecution of some local police and prosecutors.

During the Committee visit, the Provincial Council expressed concern due to the fact that they lacked the power to oversee projects, but according to the Provincial Council Head, the new law concerning provincial councils gives them this power.

PROVINCIAL VISITS

The governmental departments, provincial council and Anti-Corruption Commission seem to have a strong working relationship with each other, which they all recognize and point to as one of the reasons for their successes.

Although the Anti-Corruption Primary Court has processed at least 30 corruption cases in each of the years since its establishment in 2010 and issued 10 verdicts so far this year, it still faces numerous obstacles. In addition to security issues related to the safety of its judges, it lacks proper housing for its staff, a dedicated work space, a secure storage area for evidence, electricity, computer equipment and internet access.

The former Governor claimed that contracts under 15 million Afghanis must be signed in the provinces, based on a Council of Ministers Resolution. Despite this, and multiple complaint letters to IDLG, most contracts are still signed in Kabul.

International projects remain the main source of complaints

Both governmental and CSO representatives were in agreement that donor-funded projects in Bamyan are of poor quality and often do not represent the needs of the people. Additionally, the Governor's Office usually does not receive documentation or details on the projects, despite their requests.

The Shash Pul Road Project is often cited as typical of donor-funded projects: it was developed without the involvement of the local government or CSOs; it was contracted to a Kabul-based construction company; the road was poorly built and began falling apart within six months; and despite monitoring by the Governor's Office and recommendations given to the donor, they were ignored by both the donor (U.S. Army) and the contracting company. At least two other road projects were mentioned by officials as having similar problems.

Other examples of poorly-developed and/or implemented projects include a \$15 million solar project funded by New Zealand Aid that was reportedly developed without the input of local officials, represents a poor choice for electricity production due to the abundance of potential hydro-electric options, and is late in its implementation, as well as multiple CERP projects that are incomplete and show no signs of progress.



Solar panels from New Zealand Aid project in Bamyan.

PROVINCIAL VISITS

Mining remains the best hope for sustainable development and revenue, but unexplained delays in Kabul are frustrating the population

The Director of Mines explained the potential benefits the Hajigak Iron Mine project has for the people of Bamyan, but was disappointed that unexplained delays in Kabul have put the project on an indefinite hold. If the project is implemented as planned, it will provide 20,000 - 30,000 jobs that will be prioritized for residents of Bamyan; 240 kilometers of road; a vocational training center for employees of the mine; and a residential town with a school and clinic.

Civil Society Organizations are active, but also aware of their limitations

Bamyan has a very active civil society, as evidenced by the more than 20 civil society representatives who met with MEC at a meeting held at the ACSF on September 9, 2013, a public holiday.



Afghanistan Civil Society Forum web site:
<http://www.acsf.af/>

Many of the representatives complained about nepotism and the lack of transparency in the awarding of contracts; ethnic discrimination; the lack of attention by the central government to the priorities and needs of Bamyan; serious crimes allegedly committed by MPs that have not been investigated; and collusion between contractors and the MOE. They also recognized that CSOs can only do so much and that there needs to be a higher-level monitoring entity that can investigate cases of corruption.

A few attendees felt that Bamyan should get more attention and funding since it was the first province to transfer international forces to ANSF control; is one of the safest provinces in the country; has the highest rate of girls' education; and has successfully implemented poppy eradication programs.

One NGO director provided MEC with a monitoring report that detailed the deficiencies in certain donor-funded projects, included the Shash Pul Road Project.

Land usurpation cases are few, and are concentrated in one district

The Director of ARAZI in Bamyan stated that the level of land usurpation is low in Bamyan compared to other provinces. The total amount of reported usurped land is less than 1,100 jeribs, of which 900 is in the Kaghard district. ARAZI refers land usurpation cases to the Department of Governmental Cases (Qazaya e Dawlat) which in turn, refers them to the AGO.

PROVINCIAL VISITS

Central government not responsive to the needs of the province

Despite having significant mineral reserves, Bamyan Province lacks basic infrastructure, including a reliable source of electricity. Many of those interviewed claimed that this situation could be rectified through the use of hydro-electric power, but the central government has denied such requests. A common complaint from both the provincial government and CSOs is that the central government does not seem to pay much attention to the province and does not involve the province in crucial areas such as project formulation or the signing of contracts. Even though in certain cases they are legally obligated to have the provincial government sign contracts, they ignore such rules and the related complaints from the Governor's Office.

Significant mining revenues remain elusive due to implementation delays

The Hajigak Iron Mine project has not started, despite the contract being signed more than one year ago. The Bamyan Director of Mines does not know why the project is being delayed, but it is resulting in the delay of potentially significant benefits for the province, including employment opportunities for thousands of Bamyan residents.

The IC has a small presence in Bamyan and has shown poor choice in project selection and implementation

Similar to the complaints regarding the central government, the provincial government and CSOs feel that the IC has shown bad judgment in project and contractor selection, resulting in many examples of poor project implementation. Additionally, the donors rarely listen to their complaints or recommendations and fail to adequately monitor the projects or hand over the project documentation and details to the authorities.



Ministry of Mines and Petroleum web site:

<http://www.mom.gov.af/en>

Conclusion

In comparison to other provinces in Afghanistan, Bamyan has a relatively low level of corruption, though this is arguably a function of the low level of governmental and international funding that is provided to the province. As revenue from mining increases, and if donor funding increases, corruption will inevitably rise in parallel.

Both the neglect by the central government and poor choices made by international donors regarding their projects are intractable problems facing Bamyan and its residents. The two issues combined form the basis for the majority of corruption in Bamyan, according to governmental and CSO representatives.

PROVINCIAL VISITS

Kunduz: September 8 - 12, 2013



MEC Advisor being interviewed by a reporter in Kunduz.

Two members of the MEC Secretariat travelled to Kunduz from September 8 - 12, 2013 to monitor and evaluate the implementation of recommendations issued by MEC; to meet with international organizations and donors active in the region; and to introduce MEC to organizations and institutions based in Kunduz.

The MEC representatives were warmly received by the Provincial Governor and provided with introductory letters to 18 different institutions in Kunduz in order to expedite their work. During the four days the Secretariat members were active in Kunduz, a total of 20 meetings were held with various stakeholders.

The border facilities have been upgraded with appropriate ICTs, but they are not being used effectively

The Kunduz Customs Department is located in Shirkhan Bandar, approximately 1.5 kilometers from the Tajik border and the border customs facility. It was built by the EU and is fully equipped with ICTs; the ASYCUDA system is also functional. Although the ICTs have been set up and staff trained on their use, they have yet to be utilized. The ASYCUDA system processes the documents of approximately 30 vehicles a day, although the Border Police report that on average around 100 vehicles pass through the border every day.

Fuel imports are being quality tested and taxed, although further improvements are necessary

The Fuel and Petroleum Department at Shirkhan Border is responsible for monitoring and controlling the quality and quantity of fuel imported into Afghanistan. It also collects revenue from fuel tankers and pump stations in Kunduz province, however, it is unclear how this is controlled and enforced. The department has a laboratory to check the quality of imported fuel, but is not satisfied with the results, as the facilities are very simple. Officials at the Fuel and Petroleum Department were looking forward to the establishment of an ANSA office at the border, which they feel will have a positive impact on the quality of imported fuel.

Judges and prosecutors in Kunduz are under-qualified, despite capacity building efforts

According to the Head of the Provincial Court, the judges operating in Kunduz are not well qualified, despite the existence of a number of capacity building programs for them. A high-ranking official at the PAGO also complained that some judges within the provincial courts have low capacity and/or are unqualified and cannot manage their assigned tasks. Additionally, there have not been any specific capacity building trainings on investigating financial crimes.

PROVINCIAL VISITS

Capacity-building measures are constrained by resistance from various parties

A GIZ Rule of Law project in the region reportedly faces a number of problems, including the resentment of mentees - who are often senior figures - in being mentored by younger people. As a result, a tandem approach is used, where knowledgeable and experienced individuals (e.g. retired prosecutors with good reputations) are chosen as mentors, but assisted by younger counterparts who are better trained on the technical aspects of law.

Another issue is that the mentoring effort is not always appreciated, reportedly because it interferes with an elaborate system of rent extraction. The concept of "Thursday money" – where every week the district prosecutors need to pay a certain fee based on the number of cases and people in their jurisdiction, has allegedly been introduced. If they are unable to deliver, they are reportedly removed from duty and the district's post is auctioned to the highest bidder. There is even some speculation that the system of "Thursday money" extends beyond Kunduz to the capital.

Given this situation, increasing the number of cases may not necessarily be conducive to fighting corruption, as the Rule of Law program representatives readily admitted.

The provincial government is frustrated with the limited influence it has on project and budget decisions made in Kabul

Representatives of the provincial government and IC commented that there are a number of disagreements between the local and national government related to the transfer of funds, project planning, and general autonomy.

The Governor of Kunduz felt that the provincial government was forced to carry too much responsibility in the absence of true authority to make decisions. He said that the provincial government is frequently seen as weak because decisions are constantly being made in Kabul.

The central government fails to share important information with provincial stakeholders

Another issue mentioned by the Provincial Governor was that information about projects initiated in the capital were rarely shared with the provinces. In fact, he claimed that internationally-funded projects do a better job at incorporating local interests and structures than those of the central government. This was supported by accounts from directorates in the province, such as the Directorate of Public Works, which claimed to be rarely consulted before project contracts are signed. In many cases the directorate is not even aware of projects being implemented in its jurisdiction.

PROVINCIAL VISITS

Capital limits of contractors and payment procedures of donors cause problems for project implementation

One issue is that many companies simply do not have the capital to finance projects without receiving money up front. This, however, is frequently at odds with the financing procedures of international donors. For example, the KfW payment cycle is long and exacerbates the capital limits of contractors. As a result, a number of projects have seen only modest progress due to frequent stoppages.

Time constraints and centralized decision-making structures cause donors to make suboptimal decisions

The quality of infrastructure projects in the region is also frequently diminished because contractors are selected in Kabul that cannot function with the security conditions in Kunduz. The IC has also recognized that projects tend to be overpriced, but the pressure to produce quick and numerous results has meant that they are willing to pay the inflated prices.

Local stakeholders feel that not enough information on projects is shared with them, despite claims to the contrary by the IC

Most of the international project and program staff visited indicated that they share relevant data and information with their Afghan counterparts, and described mechanisms for doing so. Despite this, several national stakeholders claimed that although projects are almost without exception handed over to them upon completion to be maintained, they rarely receive project documents to help them do so. Most of the issues reportedly pertain to USAID projects; Germany as well has only recently started sharing project information.

Some representatives of the IC speculate that problems arise not because information is not shared, but because the Afghan counterparts fail to take ownership of projects. However, by the same token it was conceded that sometimes projects were done without Afghan counterparts because none could be identified, and that in many cases Afghan partners may simply have been overwhelmed by the sheer volume of projects being conducted. Problems also arise from the high turnover rate among staff of international organizations that results in little continuity and relationship building.

PROVINCIAL VISITS

Conclusion

The provincial visit to Kunduz revealed that progress in implementing MEC's recommendations has been made in many respects, but that more needs to be done for the recommendations to be considered fully implemented.

The visit also allowed for the identification of a number of interesting trends. For instance, a lot of problems that arise in terms of corruption have their roots in what happens in the capital and the limited autonomy of the provinces.

Another observation was that a lot of problems and opportunities for corruption are caused by the incompatibility between the payment procedures of international donors and the realities of contractors on the ground.



MEC Secretariat staff introduce MEC to Kunduz CSO representatives.

4 VULNERABILITY TO CORRUPTION ASSESSMENTS



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Commissioners, directors and experts gather for MEC's VCA workshop on the IARCSC Recruitment Process in November 2013.

VCA Project Overview

The VCA Unit, established in September 2012 in collaboration with MSI, completed five VCAs and their accompanying workshops in November 2013. The funding for establishing the unit and conducting the VCAs ended in November 2013, but the unit has been continued under the MEC Secretariat. The VCA Unit is maintaining contact with the relevant institutions to monitor the implementation plans that were finalized during the VCA workshops held in October and November 2013. The unit will also monitor the progress against the implementation plans, effectiveness of measures taken, and impact of the VCAs' recommendations to the respective institutions.

The MEC Secretariat has been asked for assistance by several governmental and international organizations to provide training and support for VCAs in other areas.

VULNERABILITY TO CORRUPTION ASSESSMENTS

MORR: Land Distribution

The VCA Unit's first paper assessed the issue of land distribution to returnees and displaced people and concluded that the process has many vulnerabilities to corruption. Visitors and applicants are obligated to go through 63 bureaucratic steps in order to obtain a piece of land. In reality, completing these steps is not devoid of corruption and mostly gives rise to the disappointment of visitors who are in need of a piece of land on which to build their homes. Meanwhile, according to information and complaints, the process of land distribution is influenced by powerful and influential individuals and other means of intervention and consequently the rights of the needy are ignored and in turn their land rights are given to those who are not entitled to it.



A refugee camp on the outskirts of Kabul, Afghanistan (May 2013).

There is a fear that the lack of necessary monitoring and auditing of cases paves the way for corruption and opens the ministry to various complaints and criticisms. Therefore, the recommendation to the ministry is to set up a database that determines the identity of needy people with respect to land allocation, simplifies the bureaucratic process of land distribution, and keeps a firm stance within the law on the illegal interference of powerful individuals.

The report was sent to MORR for their comments, and they replied indicating their acceptance of and commitment to the recommendations in the report.

MOHE: Internal Examinations



MEC's workshop on the Internal Examinations and Certificate Issuance Processes at MOHE held in October 2013.

Since 2001, the improvement of the educational system has been a priority for the IC and GIRoA. Although some marked improvements have been seen, especially in the percentage of girls attending all levels of education, much more needs to be done. Given its importance to finding employment and other professional opportunities, the educational sector is also particularly vulnerable to corruption. Administrators, whose salaries are too low to act as a deterrent, can exploit this vulnerability to solicit bribes.

The VCA report recommended that the *Higher Education Law* be approved by Parliament; monitoring of the process be intensified; courses and programs for enhancing capacity for administrative staff and teachers be held; and a mechanism be designed through which visitors can submit their complaints to authorities.

MOHE: Certificate Issuance

Some vulnerabilities to administrative corruption are noticeable in the issuance of educational documents. Being accepted to a faculty and completing all requirements such as educational courses should be enough to receive an educational certificate, but occasionally students feel compelled to pay to receive their certificates. Sometimes, different excuses such as missing documents or the lack of blank diplomas will be made to delay the process. In some cases, students' records get lost due to the old system of saving documents which paves the way for corruption.

It is worth noting that currently obtaining an educational document requires going through 43 steps. It has sometimes been observed that applicants become disappointed and return home empty-handed. MEC's suggestion to the MOHE is to prioritize the simplification of the process to prevent corruption and help graduates to more efficiently receive their educational documents.

The Certificate Issuance VCA recommends that the procedures for certificate issuance be simplified and applied to all universities in Afghanistan; a workshop be conducted for university staff on the new procedures; administrative and teaching positions be separated; a one-stop shop be created to service the student requests; and the number and capacity of staff working in the process be increased. Additionally, the report recommends the implementation of a computerized database for student records to prevent many of the problems that arise from the use of the current, paper-based system.

The reports were sent to the MOHE for their comments and they replied indicating their acceptance of the results of the reports and desire for increased cooperation between the ministry and MEC in the future.

IARCSC: Recruitment Process

The IARCSC was established based on a decision of the Bonn Conference to reform public institutions in Afghanistan. The IARCSC has undoubtedly had a number of achievements since its inception, including the review and development of organizational structures, the training of thousands of officers in modern management techniques, and the formulation of laws, regulations and policies. Despite these efforts, however, this sector has not been spared the harm of corruption.

The IARCSC recruitment process has a crucial role in improving public service delivery in the country. Based on this process qualified staff should be hired through open competitions in the various governmental entities. In late 2012, however, UNODC published a report that mirrored citizen complaints regarding the lack of transparency, the influence of private relationships, and the lack of merit considerations in the recruitment process. Due to the seriousness of this issue, MEC decided to conduct a VCA of this process.

The VCA Unit assessed the legal and institutional framework, organizational structure, human resources, operations, and document management system of the process. The results of the evaluation showed, among other things, the weakness of the legal framework and lack of enforcement of relevant legislation; the long and complicated bureaucratic procedures of recruitment; weaknesses in the assessment process and background evaluation of candidates; low levels of cooperation and coordination of other entities with the commission; the improper influence of senior members of the government in the recruitment process; and the lack of an electronic information and document management system, all of which create many vulnerabilities to corruption in this process.

The report's recommendations include the following: approve the law related to the basic structure of the state by the Parliament; prepare and approve the *Administrative Performance Law*; change the working procedure of the employment process to a simpler and more practical mechanism; develop a transparent mechanism for monitoring the workflow process; develop a policy to prevent the intervention of government authorities in the recruitment process; and develop an electronic information and document management system.

The report was sent to the IARCSC for their comments, and they replied indicating their acceptance of and commitment to the recommendations in the report.



MEC's workshop on the IARCSC Recruitment Process held in November 2013.

MOLSAMD: Pension Process



MEC's workshop on the MOLSAMD Pension Process held in November 2013.

The goals of conducting a VCA on the pension process for retirees were to identify the forms, sources, implications, and extent of corruption; present appropriate recommendations in order to improve and speed up the working process; and to protect the process from potential vulnerabilities to administrative corruption.

The process of distributing pensions to retirees in the GDPT of MOLSAMD is one of the most important and demanding processes in the government. The GDPT typically has over 300 daily visitors to its office. The old administrative system is the main reason pension payments are often delayed. The “Reforming the Pension Process and Social Security Network Project” of the WB began in 2009 and is attempting to establish a new electronic pension system. Nevertheless, there are still numerous complaints due to the complicated administrative bureaucracy. Therefore, MEC conducted research and an assessment into the vulnerabilities to administrative corruption of this process. The VCA Unit used different methods of research, including interviews, roundtable discussions, questionnaires and meetings.

The findings of this assessment indicate that numerous deficiencies and gaps within legislative documents, the organizational structure, and the information management system are to blame for the various forms of administrative corruption found by the VCA Unit. The most common forms of administrative corruption found during the assessment were bribery, process delays, forgery, and nepotism. Additionally, the VCA Unit observed weak cooperation and coordination between departments in implementing the new pension system.

Vulnerabilities identified through the assessment include the weak implementation of the process by the relevant authorities; insufficient staffing levels; the lengthy procurement process of the WB-funded project; weak coordination between related organizations; inappropriate influence and involvement by some authorities and MPs; and the use of two systems of filing (classic and modern).

Given the vulnerabilities, the report recommends that MOLSAMD amend the relevant legislative documents; design a monitoring mechanism for enforcing the law; recruit sufficient staff; simplify the working procedure of the process; create a mechanism to prevent unfair interference in the process; establish a modern information system to replace the old one; ensure the safety of retiree documents; and establish a one-stop window for the process.

VULNERABILITY TO CORRUPTION ASSESSMENTS

Workshops

Following the completion of the VCAs, workshops were organized for each institution covered by the reports that jointly developed the way forward for the institutions and any other relevant stakeholders. They were well-attended and provided an opportunity for the participants to ask questions about the VCAs and to better understand their role in the implementation of the recommendations. In all of the workshops, the participants agreed to implement the recommendations set out in the VCAs. Overall the VCAs and the workshops were well-received by the relevant institutions and stakeholders. The details of the workshops are described below.

MORR: October 23, 2013

The MORR workshop was held on October 23, 2013 and was attended by approximately 60 individuals. Of the 60, 15 were from other ministries and 11 were from provincial directorates of MORR. The workshop was opened by the Minister and closed by the Deputy Minister.



The MORR workshop on land distribution in October 2013.

MOHE: October 29 – 30, 2013

The MOHE workshop combined both VCAs that related to MOHE and was held over the course of two days. Approximately 50 individuals participated, of which eight were from provincial universities; eight were from Kabul public universities; and six were from private universities. The workshop was opened and closed by the Deputy Minister.



The VCA Team Leader addresses the audience at the MORR workshop on land distribution in October 2013.

MOLSAMD: November 5, 2013

On November 5, 2013 the MOLSAMD workshop was held to cover the VCA on the pension process. A total of 70 individuals participated, all of whom were from MOLSAMD. The workshop was opened and closed by the Deputy Minister.

IARCSC: November 6, 2013

The IARCSC workshop was held on November 6, 2013 and was attended by 60 participants. Although the participants were all from the IARCSC, they included many commissioners, directors and experts. The workshop was opened by the General Director of the IARCSC Secretariat and closed by IARCSC Commissioner Mr. Said Habib Shah.

5 LAND USURPATION PUBLIC INQUIRY



LAND USURPATION PUBLIC INQUIRY

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A view of farmland in rural Kunar province.

LAND USURPATION PUBLIC INQUIRY

Report Overview

Land usurpation is a major challenge confronting GIRoA and the citizens of Afghanistan. Based on a recent land usurpation report, in the past decade more than 1,200,000 jeribs of land has been usurped which has negatively impacted the public, economy, and government. Given the significance of this problem, MEC decided in its eighth mission to conduct comprehensive research into land usurpation including the legal framework of land management, land surveys, land registration, land distribution, methods of land usurpation and mechanisms to address land usurpation.

Two researchers were hired to create a professional and informative report to improve public awareness and provide recommendations to address the problem of land usurpation in Afghanistan. The final Land Usurpation Public Inquiry Report is scheduled to be finalized in June 2014.

Methodology

In the course of research multiple methods and tools have been used. Firstly, efforts have been made to collect and study all related legislative documents including laws, regulations, presidential decrees and procedures; these include the *Law for Regulating Land Affairs, Cadastre Law, Penal Code, Civil and Commercial Procedure Law, Expropriation Law* and government cases. Secondly, the research team has analyzed multiple government documents related to land use, such as files related to land distribution in Kabul and a processed file of property transition of the courts.

The team also conducted individual and group interviews with officials of related institutions, such as the Primary and Appeal Courts, the Law Office of the MOJ, Kabul Municipality, MORR, the Cadastre Office, and the Department of Government Cases.

The report covers many issues including land registration, land transition in the private and government sectors, and challenges of land usurpation, and also provides recommendations for mitigating the problem. The report also includes specific sections on addressing land usurpation through legal bodies; addressing challenges of land usurpation via the primary courts; land distribution in the Kabul Municipality; land distribution within MORR; the geographical assessment of land usurpation; the government's efforts to tackle this issue; and preventative action against land usurpation.

LAND USURPATION PUBLIC INQUIRY

Preliminary Findings

The Land Usurpation Public Inquiry will provide significant details into the methods, causes and possible solutions to the problem of land usurpation in Afghanistan. Although the report is not finished, the following are some of the preliminary findings of the report:

- The policies and interests of the many governments of the past four decades have contributed to the lack of definitive land rights. For instance, multiple individuals may have supporting documentation given to them under different regimes. Determining the rightful owner in such situations is often impossible.
- The number of organizations with responsibilities over land issues makes land management unnecessarily complicated.
- The lack of documentation, (due to records being destroyed or lost), documentation with errors (names, dates, etc.), or falsified documentation (signatures, stamps, etc.) are all common occurrences in land usurpation cases. Also, the limited storage capacity of GIRoA entities to preserve records, the low quality of paper used for record-keeping, and poor facilities that do not properly preserve documents can make verification of claims to land difficult, if not impossible.
- The use of threats, force, or political influence by usurpers, land mafias, and high-ranking political officials makes the legal process vulnerable to corruption.
- The lack of financial and human resources of relevant institutions weakens their ability to work and enforce the law.
- The lack of political will, comprehensive legislation, and stability in some parts of the country all hinder progress in addressing land usurpation.
- Supporting the Cadastre Offices to increase the percentage of land surveyed will help to decrease the amount of land usurpation.
- Computerizing the deed registration system of the primary court will help to prevent corruption and the falsification of documents related to land usurpation.



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6

COMMUNICATIONS & OUTREACH

د اداري فساد پروراندي د خارجي او ارزوني
خپلواکه او ګډه کمبيته

کمبيته مستقل مشترک نظارت و ارزیابی
مهارزه با فساد اداري



Independent Joint Anti-Corruption
Monitoring and Evaluation Committee



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Committee members being filmed at the MEC Press Conference on the release of the Fourth Six-Month Report on September 28, 2013.

Communications

The following are summaries of the five news releases MEC published during the reporting period:

October 9, 2013: MEC asks SIGAR to review \$39 million worth of US funded pharmaceuticals that cannot be accounted for

MEC's monitoring of various investigations related to national military hospitals has led to the conclusion that allegations of the disappearance of millions of dollars of pharmaceuticals cannot be substantiated due to the inability of international forces to locate distribution records.

October 21, 2013: MEC calls on the National Assembly to amend the Minerals Law to enhance accountability and issues recommendations for improved oversight of mining revenues

MEC is calling on the National Assembly to improve the draft Minerals Law to better protect the mining sector against corruption. MEC has written a letter to the National Assembly, calling on legislators to strengthen certain provisions to further promote transparency and accountability and to expedite the approval of the law.

November 4, 2013: IEC must develop campaign financing regulations to ensure that candidates do not run illegal campaigns

Reports from past elections in Afghanistan have raised concerns that the 2014 Presidential election is vulnerable to corruption and fraud related to the use of government resources and illicit financing of political campaigns.

In response, MEC issued recommendations calling on the IEC and MOF to work with the HOO to monitor and verify the financing and expenditures of candidates and political parties in the upcoming elections.

December 4, 2013: Afghanistan's ranking in the Corruption Perceptions Index highlights the need for MEC's recommendations to be effectively implemented

Afghanistan is again perceived as one of the most corrupt countries according to Transparency International's Corruption Perceptions Index. Effective implementation of MEC's anti-corruption recommendations could have helped Afghanistan's performance in this year's index and MEC is calling on the government to quickly move forward with the implementation of outstanding recommendations.

December 9, 2013: MEC welcomes Presidential Candidates' Anti-Corruption Pledge and intends to monitor their performance against the pledge

MEC was encouraged to see most presidential campaigns commit to an anti-corruption pledge at an event hosted by AFCAC on International Anti-Corruption Day and will continue to monitor those commitments. To mark International Anti-Corruption Day, MEC also participated in many anti-corruption events throughout Kabul.

COMMUNICATIONS & OUTREACH

Media Events

During the reporting period, members of the Committee and Secretariat participated in more than 20 media engagements aimed at increasing awareness of anti-corruption issues among Afghans. These engagements included interviews, roundtables, debates, and panel discussions with national media outlets, including Tolo News, Khurshid TV, Noor TV, Radio Azadi, and Radio Salam Watandar, and international media outlets such as the British Broadcasting Corporation, Al Jazeera, Reuters, the Wall Street Journal and the Voice of America.

MEC held two press conferences on the following subjects that each attracted 15 - 25 national and international media outlets:

1. Release of the Fourth Six-Month Report, September 28, 2013;
2. Election Campaign Financing, November 4, 2013.

Social Media

MEC's Facebook group page (www.facebook.com/groups/mec.af) surpassed 530 members during the reporting period and is updated multiple times per week. MEC's Twitter feed (www.twitter.com/IJAMEC) is generally updated once per week and the MEC web site (www.mec.af) averaged more than 400 visitors and 1,500 report downloads per month during the reporting period.

7 ADMINISTRATION



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MEC Secretariat staff members.

Administration

Human Resources

The MEC Secretariat is comprised of 23 professional positions and includes experts, advisors, officers, translators, and administrative support. Currently, the Secretariat is comprised of seven international experts and advisors and 16 national advisors and officers. An international recruitment process for the Executive Director position was completed during the reporting period, resulting in a highly qualified national candidate being selected. The new Executive Director's term began on January 1, 2014.

Transparent and competitive recruitment processes based on merit were also held for expert, advisor and officer positions that became vacant during the reporting period. The Secretariat is now operating with a full complement of staff.

One committee member stepped down for personal reasons during the reporting period and the IC is leading a worldwide recruitment process for that post. It is likely that the position will be filled before the 12th MEC mission planned for May 2014.

Financial Report

Funding for MEC is provided by DFID and DANIDA. The funding agreement between MEC and DFID obligates the Committee to provide financial and activity reports for each quarter. MEC Donor Board Meetings are also held every Committee mission to facilitate accountability for funds received.

Funding in the reporting period was also provided by USAID through MSI for the VCA project which wound-up in December 2013. The German development agency GIZ provides in-kind support for three technical advisors through its CIM program.

8 APPENDICES



APPENDICES

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Appendix A

ABOUT MEC

The Committee

MEC was created by Presidential Decree after the need for independent monitoring and evaluation of anti-corruption efforts was identified at a series of international conferences (London, Kabul). Following the London Conference, GIRQA invited the IC to form a joint Afghan-International monitoring and evaluation committee to provide policy advice and monitor and evaluate progress against specific benchmarks, which was welcomed by the IC.

The mandate of MEC is to develop anti-corruption recommendations and benchmarks; to monitor and evaluate the government and IC's efforts to fight corruption; and to report to the President, Parliament, people and the IC. Specifically, the terms of reference in the Presidential Decree state that:

The Committee identifies effective development criteria for institutions, and through the monitoring and evaluation on activities conducted against corruption at the national level, and with the aid of donor countries and international organizations, reports to the President, Parliament, people and international community every six months.

MEC is wholly independent from the Government of Afghanistan and the IC. This independence ensures that MEC is capable of carrying out its mandate in a transparent manner without undue influence.

The Committee is responsible for setting priorities, issuing recommendations, benchmarks, and reports, and outreach and communication. The Committee meets in Afghanistan quarterly, normally resulting in the development of recommendations and benchmarks, and issues regular reports every six months, with special reports being issued on an ad-hoc basis.

According to its terms of reference, the Committee is comprised of six senior anti-corruption experts selected through a nomination process implemented by the IC and the Afghan government. The Chairmanship of the Committee alternates between an Afghan and international appointee on a six-month basis. The Chair of the Committee is responsible for chairing Committee missions and meetings, and providing directions to the Secretariat during periods that the Committee is not meeting.

MEC Secretariat

MEC is supported by a technical secretariat comprised of national and international staff. The Secretariat is led by an Executive Director and is divided into three main pillars (Governance, Prevention, and Law Enforcement) consisting of an international expert, a national advisor, and a national officer, with over-arching policy expertise provided by a Senior Policy Advisor. The Secretariat works closely with the parties implicated by the recommendations and benchmarks to ensure that they are implemented. The Secretariat also has a VCA Unit that undertakes corruption assessments.

An administrative team provides financial and administrative support to the Secretariat and the Committee, and is responsible for budgeting, reporting, information management, and the development of business processes and organizational policies.

Appendix B

STATUS OF FIRST SET OF RECOMMENDATIONS AND BENCHMARKS

Following the second MEC mission of July 14 - 27, 2011, MEC published the 1st Set of Recommendations and Benchmarks.

| Recommendation | Benchmark | Expected Outcome | Status and Evaluation |
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| 1.1 The delivery of all anti-corruption strategies and policies to entrusted institutions will help to ensure that they are aware of and implement their obligations. | | | |
| HOO as the independent body responsible for overseeing and implementation of the NACS/strategies and anti-corruption programs in Afghanistan should collect all existing anti-corruption strategies and other policies with anti-corruption measures and deliver them to all institutions entrusted with their implementation by 6 Dec 2011 (15 Qaus 1390). | Existing anti-corruption strategies and other policies with anti-corruption measures delivered to entrusted institutions by 6 Dec 2011 (15 Qaus 1390). | Increased awareness and understanding of anti-corruption strategies to improve institutional responses to corruption and to ensure better alignment and coordination of anti-corruption efforts. | Partially Implemented: According to HOO's Planning Department, the NACS is the only anti-corruption strategy for GIROA, but it has not always been fully understood or effectively implemented. HOO sent the NACS to all relevant government institutions in 2010, and recently requested the President of Afghanistan to extend the deadline for the implementation of this strategy. MEC is aware that HOO has conducted some training programs, seminars, and conferences, which support the awareness-raising aspect of this recommendation. |
| 1.2 Anti-corruption working groups have nominally been established in many institutions, but their operation and effectiveness has been mixed. | | | |
| Ad-hoc working groups in all institutions entrusted with the implementation of the Anti-Corruption strategies should be established by 21 November 2011 (30 Aqrab 1390). | Ad-hoc working group established until 21 November 2011. Institutions that already have these groups established maintain their activities. | Anti-corruption working groups will ensure coordination and oversight in implementing anti-corruption efforts in institutions. | Partially Implemented: According to HOO's Planning Department, ACUs have been established in all governmental ministries and institutions and 21 quasi-governmental (tasadi) institutions. The established working groups include a representative of HOO and generally meet every month or two, but some do not meet at all. HOO has developed working procedures for ACUs which have been accepted with line ministries. ACUs report every six months to line ministries and HOO on their work plan as well as on the implementation of their priorities. Although many ACUs have been established and are chaired by high-ranking officials, they face difficulties when trying to implement reforms, and therefore, remain largely symbolic. MEC requested these procedures, work plans and reports, but HOO directors and senior management declined MEC's request. |
| 1.3 Although anti-corruption priorities have been identified by many institutions, the strategies for meeting these priorities have not been sufficiently developed and implemented. | | | |
| Established working groups should start / continue with the implementation of the anti-corruption top three priorities and report on the implementation to HOO quarterly, starting with 21 January 2012 (1 Dalwa 1390). | First reports on the implementation submitted to HOO until 21 January 2012 (1 Dalwa 1390) and then regularly every three months. | The identification of priorities will help focus institutional efforts in fighting corruption. | Partially Implemented: Presidential Order 987 from May 2010 requires ministries and institutions to submit three anti-corruption priorities and a proposed action plan to HOO, and requires HOO to monitor the implementation of the anti-corruption strategy within the government and to report to OAA. According to HOO, all government institutions have reported to HOO regarding their anti-corruption priorities, which have been accepted by HOO. MEC's analysis of some action plans revealed that the implementation details are insufficient, as they simply report on daily activities as opposed to the implementation of priorities. HOO needs to further develop its capacity to support other ministries and institutions in addressing these deficiencies. |

| Recommendation | Benchmark | Expected Outcome | Status and Evaluation | |
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| 1.4 The compilation of all anti-corruption strategies and policies into a single document has not progressed, leaving corruption efforts to be governed by a number of disparate strategies. | HOO (with the help of MEC Secretariat) should take the lead and coordinate efforts of all relevant institutions and representatives of civil society (NGOs and private sector) for the compilation / harmonisation of all existing anti-corruption strategies into one single document. | The President informed, the first multi-stakeholder working group meeting convened, work-plan adopted before 21 December 2011 (30 Qaus 1390). | Anti-corruption strategies and efforts of the Afghan government will be streamlined, clear, and comprehensive. | Not Implemented: Developing a comprehensive national anti-corruption strategy requires a significant outlay of man-hours and funding from both the international community and GIRoA. The NPP2 outlines a plan to begin work on an overarching national anti-corruption plan, but it was not approved. HOO has instead sought an extension of the NACS, which has expired. It appears that HOO does not have the capacity to implement this recommendation. |
| 1.5 The international community has only recently made efforts to better coordinate their anti-corruption activities. | UNAMA as the best suited international institution should convene a meeting before 15 December 2011 (24 Qaus 1390) with representatives of all relevant international forces, organisations and institutions in order to adopt a work-plan on drafting and adoption of the "International Anti-Corruption Strategy" in Afghanistan before 1 June 2012 (12 Jawza 1391). In the area of Anti-corruption measures needed, the "International Anti-Corruption Strategy" has to have the following elements: measure, responsible institution, timeframe for implementation, benchmark for the implementation, and estimated costs. There should be a separate part of the strategy devoted to the issue of monitoring of implementation and consequences for non-implementation or weak implementation of the strategy (including sanctions and/or other consequences for responsible authorities' management). | The first meeting should be convened and the work-plan adopted before 15 December 2011 (24 Qaus 1390). | Anti-corruption efforts of the international community are better coordinated. | Partially Implemented: Although the development of an international anti-corruption strategy has proven to be prohibitively challenging, the underlying principles – better alignment and coordination of international anti-corruption efforts – are important and achievable. To this end, MEC suggested a revised approach that included a review of all international anti-corruption related programs to identify gaps in the anti-corruption effort and the creation of a regular working-group for donors with anti-corruption initiatives to coordinate and discuss programs. Since MEC proposed the revised approach, donors involved in the area of anti-corruption have established a group of donors who operate in the anti-corruption field to ensure effective international coordination at the policy and programmatic level on anti-corruption in Afghanistan. The working group generally meets monthly and is chaired by the United Kingdom, with representation from the EU, the US, the UN, the WB, Japan, Denmark, and Germany. The group has established terms of reference, which includes the prioritization of areas for anti-corruption efforts, identifying areas for joint and individual action, and the harmonization of projects and programs on anti-corruption to avoid duplication and maximize effects. |
| 1.6 With the exception of HOO, MEC regularly shares information with key institutions involved in anti-corruption efforts, but has not been invited to meetings related to developing anti-corruption strategies. | HOO, UNAMA and Shafafiyat (and where necessary SIGAR) should invite the MEC Secretariat to all their meetings devoted to drafting Anti-Corruption strategies. | None. | The perspective and expertise of MEC are integrated into anti-corruption strategies as they are developed. | Not Implemented: HOO has never invited MEC to their strategic meetings. MEC participates in the ICTAWG meetings, which includes Shafafiyat and UNAMA, and also meets with SIGAR to discuss issues of mutual importance. |

| Recommendation | Benchmark | Expected Outcome | Status and Evaluation |
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| 1.7 Amendments to the Customs Act have not been enacted hampering efforts to reduce vulnerabilities to corruption in the area of customs | | | |
| <p>The Customs Act of Afghanistan should be reviewed and revised in order to achieve the following goals:</p> <ul style="list-style-type: none"> • Prohibition on the use of 'brokers' in customs procedures – without exemptions (e.g. Requiring the driver's signature in person in front of the customs officer); • Introduction of exact procedures for the establishment of the value of imported/exported goods (e.g. original invoices and their comparison with official catalogues of goods – should be adopted from the Azimi Strategy); • Tariff policies should be reviewed and revised (in cooperation with all stakeholders); • Introduction of exact procedures concerning controls of the goods (type of goods, quality, quantity) at the borders and in the country; • Introduction of exact procedures enabling comparison of customs data from the border crossings and in the country; • Introduction of clear and non-transferable powers of all authorities present at border crossings. <p>MoF should establish a working group for the preparation of amendments and drafting of the improved law by 30 October 2011 (8 Aqrab 1390). All relevant stakeholders should be invited to take part in the activities of the group (i.e. MoE, MoCI, MAIL, Chamber of Commerce and Industries, Control and Audit Office, and HOO) and the work-plan for the drafting of the existing law should also be adopted until 30 October. Draft amendments to the law should be ready by 21 November 2011 (30 Aqrab 1390).</p> | <p>A working group at MoF should be established, and its work-plan adopted by 21 November, amendments sent to the government before 31 December 2011 (10 Jadi 1390).</p> | <p>A working group for the revision of the Customs Act will help to ensure that the required amendments are developed with a broad set of expertise and practical experience.</p> | <p>Partially Implemented: The current <i>Customs Law</i> allows for the use of customs brokers, which has introduced opportunities for corruption as brokers are often powerful individuals that have influence on the appointment and removal of ACD employees. The role of customs brokers cannot be removed as it is a requirement of World Customs Organization membership. ACD officials acknowledged, however, that the role of brokers can be more tightly regulated and overseen to reduce abuses. The Director General of Customs told MEC that they have plans to reduce the role of brokers by, among other measures, implementing the Border Management Model at five border points, which limits brokers' interaction with custom officials.</p> <p>The MOF proposed a number of amendments - including some related to tariffs - to the <i>Customs Law</i>, which were submitted to the MOJ for review. Although they were rejected by the Council of Ministers, a joint committee of government experts and the Chamber of Commerce is working to clarify and finalize the law, which will soon be sent to the Council of Ministers again.</p> <p>An automated system in the Torkham, Hairatan, and other customs facilities along with a valuation regulation are being used to provide more accurate valuations of imported and exported goods.</p> <p>The ACD is not involved in checking the quality of goods, which is the responsibility of ANSA, MAIL, MOPH and other institutions. The ACD distributed a letter to all customs departments prohibiting the interference of third parties, but there is still interference being observed from senior figures including governors, security commanders and other influential people.</p> |
| 1.8 The installation of appropriate information technology at border checkpoints is currently being undertaken and will reduce opportunities for corruption | | | |
| <p>Appropriate information technologies regarding inspections at checkpoints at the border and in the country should be introduced. To achieve this, the Customs Department of MoF should explore financial and technical possibilities by 6 December 2011 (15 Qaus 1390).</p> | <p>The Assessment of the Customs Department shall be finished by 21 December 2011 (30 Qaus 1390).</p> | <p>The reduction of vulnerabilities to corruption in customs processes through the automation of tracking import and export documents.</p> | <p>Partially Implemented: The ACD has installed the ASYCUDA automated system at 11 customs facilities. Despite these efforts, MEC has observed that the system is not being properly used where it has been implemented. For instance, at the Hairatan border only 30 percent of goods entering the country by truck or ship are being registered in the system.</p> <p>In addition, there are reports that some influential people import goods into the country without paying the necessary taxes. MEC's Sixth Set of Recommendations and Benchmarks includes several recommendations related to customs issues.</p> |

| Recommendation | Benchmark | Expected Outcome | Status and Evaluation |
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| 1.9. MTFs need to be approved to monitor the quality of goods entering Afghanistan and to prevent smuggling | | | |
| <p>MTFs with participating representatives from the MoCI, MoI, MoF, NDS, HOO, SAO, and the Office of National Standard will be established in Kabul, Kandahar, Balkh, Nangarhar, Herat, Paktia, and Kunduz. These MTFs will check and evaluate quantities and qualities of certain imported goods and supplies at various check points such as the central and border customs houses and major highways. The members of the MTFs will be professional, honest, and experienced individuals selected and introduced by the relevant ministers and heads of the independent institutions. These members will be reviewed and their appointments will be approved by His Excellency the Second Vice President. NDS will be responsible for leading and chairing the MTF groups.</p> <p>The relevant ministries and institutions shall jointly outline an MTF action plan and its activities mechanism and, through NDS, submit these to the Economics Committee of the Council of Ministers for approval.</p> <p>The Second Vice President will require quarterly reports of the activities and accomplishments of the MTFs from the head of the team. These reports will then be submitted for review to the Economics Committee of the Council of Ministers.</p> <p>The Second Vice President will provide necessary feedback and instructions on the accomplishments of the MTFs and will decide on extension or replacement of the MTF members. The report should be published quarterly and the MTFs should hold conferences with civil society and the media to make the public aware of the findings of the responsible task forces.</p> <p>Following the establishment of the MTFs, the current delegates of NDS, MoI, AGO, and even the customs police will be discharged and should not be allowed to interfere in the affairs of customs or to bother traders.</p> | <p>Benchmark 1.9 (a): The MTFs for the regions that are deemed necessary will be tasked to start their mandate as of 6 November, 2011 (15 Aqrab, 1390).</p> <p>Benchmark 1.9 (b): The relevant ministries and institutions will outline their action plan and mechanism for their activities and, through NDS, submit to the Economics Committee of the Council of Ministers for approval prior to 6 November, 2011 (15 Aqrab, 1390).</p> <p>Benchmark 1.9 (c): MTFs must be provided with all required equipment and facilities including mobile quality control labs by 21 November, 2011 (30 Aqrab, 1390). MoF has to finance all expenses associated with MTFs' responsibilities.</p> | <p>The creation of MTFs to allow customs to exercise oversight of goods in areas outside of established border points.</p> | <p>Partially Implemented: In order to implement MEC's recommendation, NDS officials invited representatives from the relevant ministries and formed a working group. The group requested the President to establish MTFs, but the request was reportedly not accepted by the Office of the President.</p> <p>Furthermore, the ACD is against the establishment of MTFs because it feels that it would only add to the burdens faced by traders and business people, and is too expensive to implement. The ACD instead recommends the establishment of the Border Management Model, which has already been established at five borders, and they claim will reduce opportunities for corruption.</p> |

| Recommendation | Benchmark | Expected Outcome | Status and Evaluation |
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| 1.10 Installation of material testing laboratories will limit the importation of low quality goods and will reduce opportunities for corruption | <p>Much corruption is due to the importation of low quality material. The importations of low quality gas / oil, medicine, foodstuffs, agriculture and construction material are often sources of corruption in the country. Some of these imports are smuggled and some are brought via borders and customs offices impacting the various health, economic, agricultural and industrial fields in the country. In order to prevent these illegal activities, the Council of Ministers issued resolution number 11, dated 10/03/1389 to the Ministries of Commerce, Finance, Agriculture and Institute of Environment Protection and Office of National Standard to take urgent action in regards to the items below:</p> <ul style="list-style-type: none"> • Contract with one of the reliable international companies to test and evaluate imported goods and material for quality and standard at borders and customs houses. This was meant to be a temporary contract until the National Standard Office obtained the necessary capacity to pursue this test and evaluation on its own. • Provide mobile testing laboratories to evaluate qualities of imported goods, specifically gas, on the highways, at local gas stations, and gas supply reservoirs and introduce offenders to law enforcement. Unfortunately, the above directive was not implemented and many abuses continue at the borders. | <p>Ministries and relevant departments mandated in the above directive are obligated to implement this resolution and take decisive actions in regards to the mentioned two items within three months.</p> | <p>The installation of material testing laboratories to identify low quality goods being illegally imported into the country.</p> <p>Partially Implemented: The ACD and MOCI have not taken the necessary action to implement the resolution of the Council of Ministers mentioned in this recommendation. ANSA, however, has signed a five-year contract with the Geokim Middle East Company to establish six laboratories to inspect the quality of imported and extracted fuels. The company has trained ANSA staff and six laboratories are currently functional.</p> <p>Based on the law the MOPH is responsible for certifying and controlling imported medicine. Its Pharmacy Department is responsible for the certification of companies and quality control of medicines, but the process for both is exacerbated by the lack of provincial pharmacy departments.</p> <p>In a meeting held on August 24, 2013, ANSA officials stated that they purchased the equipment for three construction material testing laboratories and will install them in Torkham (Nangarhar), Hairatan (Balkh), and Islam Qala (Herat).</p> <p>MEC will need to inspect some of the mobile laboratories to monitor their operation, as well as inspect the activities in the provinces to verify ANSA's accounts.</p> |
| 1.11 Insufficient reporting on the implementation of measures required by the Azimi Strategy hamper efforts to monitor and evaluate progress in key areas of the fight against corruption | <p>Relevant institutions and organizations mentioned (or identifiable) on pages 68-75, 77-78 and 81-84 of the GIRoA Anti-Corruption Strategy and on page 70 of the "ANDS 1387 - 1391", Chapter "Strengthening the Enforcement of Anti-Corruption" should prepare short reports on the implementation of measures foreseen by the mentioned pages in these two strategies until 21 December 2011 (30 Qaus 1390).</p> | <p>Reports prepared and submitted to MEC's Secretariat.</p> | <p>Reporting on the preparation and implementation of anti-corruption measures allows for greater accountability and evaluation of effectiveness.</p> <p>Partially Implemented: The respective sections of the NACS require GIRoA to undertake specific anti-corruption measures in the area of prevention, prosecution, and the training of police, among others. Reporting as specified in the recommendation will allow MEC to monitor and evaluate the implementation of these initiatives. Unfortunately, only MOI, the AGO, MOD, MOF, and MAIL have sent their reports, and most of them had little relevance to the reforms required by the NACS. MEC is contacting the respective institutions with specific requests for information to receive more complete and proper responses.</p> |

| Recommendation | Benchmark | Expected Outcome | Status and Evaluation |
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| 1.12 The AGO should demonstrate their commitment to fighting corruption by implementing a database for corruption cases | | | |
| The AGO should prepare - by 21 November 2011 (30 Aqrab 1390) - a report on submitted criminal cases of the Police, HOO and the Control and Audit Office from the years 1388 and 1389 with the following elements for each case: <ul style="list-style-type: none"> • number of the Police/HOO/ the Control and Audit Office document or short description of the case; • entering date (when the case was submitted to the AGO); • date of prosecutorial decision; • type of prosecutorial decision; • if not prosecuted: a list of reasons for the decision not to prosecute. It is also recommended that by 19 February 2012 (30 Dalwa 1390) they should have a database of all the cases, registered with dates and status which can be followed and updated regularly. | The aforementioned report shall be delivered to MEC by 21 December 2011 (30 Qaus 1390) an updated copy of the report from the database will be shared by the end of the year. | Increased transparency and accountability in the handling of corruption cases by the AGO to ensure that corruption cases are appropriately pursued. | <p>Not Implemented: The AGO provided MEC in June 2013 with a short report in response to this recommendation, but it did not include the required information.</p> <p>With financial support from INL, a CMS has been developed that is operated by the following eight institutions that have authority over criminal cases: MOI, MOJ, MOD, AGO, HOO, NDS, Supreme Court, and AIBA. The CMS strives to organize and safeguard case information; enable coordination between investigative, legal and judicial organizations; improve transparency and accountability; and ensure the timely processing of cases.</p> <p>MEC requested access to the system to obtain the information specified in this recommendation, but the Steering Committee - consisting of members from the aforementioned eight institutions - rejected the request in October 2013.</p> |
| 1.13 Relevant institutions should submit ideas on the possible establishment of a national body dedicated to coordinating and enhancing efforts to investigate and prosecute corruption cases | | | |
| The MoJ, Mol, the AGO, HOO, IDLG and the Control and Audit Office should prepare a short proposal on the position, powers and tasks of possible independent and specialised anti-corruption body dealing with investigation and/or prosecution of the most important cases of corruption by 21 December 2011 (30 Qaus 1390). | Proposals shall be written and sent to the MEC's Secretariat by 21 December 2011 (30 Qaus 1390). | Better coordination and more effective investigation and prosecution of corruption cases in Afghanistan. | <p>Partially Implemented: As stated in MEC's 3rd Six-Month Report, "the benchmark's objective of more coordination and streamlining of corruption cases can be accomplished by the establishment of a case management protocol and a formal committee or working group to regularly discuss case management and address challenges." The INL-funded CMS could address this recommendation through an expansion of the TORs of the implementing partners (MOI, MOJ, MOD, AGO, HOO, NDS, Supreme Court, and AIBA) and the specifications of the system itself, which MEC recommended to the CMS Steering Committee.</p> <p>Separately, a special ACU has been created within the AGO to more effectively investigate and prosecute corruption cases, and will be expanded to the provinces. Additionally, although the Supreme Court has established anti-corruption courts to deal with anti-corruption cases, they are underutilized and only operational in some provinces.</p> <p>According to HOO's Planning Department, a committee has been established within the AGO that HOO can refer corruption cases to for them to track. To date, HOO indicated that they have sent almost 300 corruption cases to this committee.</p> |

| Recommendation | Benchmark | Expected Outcome | Status and Evaluation |
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| 1.14 The unresponsiveness of HOO to MEC's benchmarks has led MEC to seek alternative implementing partners to inform citizens of their rights regarding administrative procedures | | | |
| HOO should prepare general and comprehensive information on the rights of citizens in administrative procedures, which shall then be posted (by 21 December 2011 – 30 Qaus 1390) in all relevant institutions nationally (central as well as local level). | The aforementioned documents shall be posted by 21 December 2011 (30 Qaus 1390). | Citizen awareness of their rights in administrative procedures will lead to the reduction of corruption within government institutions. | <p>Partially Implemented: HOO has not done anything for this recommendation given that it fits more with the mandate of the IARCSC. The IARCSC has developed an Anti-Corruption Action Plan that includes the following awareness-raising activities:</p> <ul style="list-style-type: none"> • Laws and regulations should be reformed to clarify their provisions and to make them understandable; • Line ministries and independent directorates should disseminate the relevant and amended laws and regulations to their provincial and district offices; • Each institution is responsible for raising awareness of its employees in regards to relevant laws, regulations and procedures. |
| 1.15 Efforts to streamline administrative processes need to be expanded and properly implemented to be more effective in reducing vulnerabilities to corruption | | | |
| All relevant ministries (if necessary, in cooperation with HOO) should prepare drafts for amending the existing relevant legislation by 21 December 2011 (30 Qaus 1390) and submit them to the government in order to achieve the following goals: <ul style="list-style-type: none"> • All necessary administrative forms for different types of procedures and acquisition of different documents, permissions, licenses, etc. are prescribed by the law only, and no additional forms are allowed; • There should be as limited number of required administrative forms and documentations as possible; • Samples of applicable administrative forms should be attached to the relevant law/legislations; • All necessary documents, permissions, licenses, and signatures within one single administrative entity should be issued in the shortest possible period following one single request of the customer; • All necessary documents needed for a certain administrative decision, which already exist in the administrative system of Afghanistan should be collected by the relevant administrations themselves (and not by their customers) in the shortest possible time; • A prohibition on the use of brokers in the administrative procedures of customs, traffic, court, municipality, and other institutions; • Sanctions/punishments for civil servants dealing with administrative procedures for extensive delays, unfair treatment of customers and breach of new rules shall be introduced. | Draft amendments will be prepared and submitted to the MoJ by 21 December (30 Qaus 1390). | Improved, transparent and accountable administrative procedures for obtaining public services will lead to reduced opportunities for corruption. | <p>Partially Implemented: The Procedures Simplification Department at IARCSC was established in 2010 and started to simplify administrative procedures in 2011. Despite not having a comprehensive plan, they were able to take some measures to simplify administrative procedures, including the simplification of several administrative procedures across different ministries. The department has also developed an "Administrative Procedures Simplification Manual" that introduces nine steps for process simplification.</p> <p>In 2013, in order to identify procedures that need to be simplified, the IARCSC sent official letters and formed teams to visit every ministry to identify these procedures. Based on gathered information, they prioritized 50 procedures to be simplified in 1393. The 50 procedures cover more than 10 ministries and include such areas as tazkera issuance; driver's license issuance; and work permits for foreigners. The implementation in ministries is not being properly monitored by the Commission and MEC has observed that many simplified procedures are not being implemented. For example the simplified process for obtaining a graduation certificate from MOHE should take two to three days, but in practice it takes much longer and is much harder for those who have graduated less recently.</p> |

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| 1.16 There has been an insufficient effort to inform and train staff in relation to simplified administrative procedures, thereby decreasing the chance that they will be properly implemented | | | |
| <p>Relevant ministries (if necessary, in cooperation with HOO) should prepare draft instructions for all relevant administrations following the adoption of the above mentioned amendments with the following elements:</p> <ul style="list-style-type: none"> • Short description of previous procedures; • Changes in the procedures; • Description of new procedures; • Responsible authorities and persons; • Prohibition on the use of brokers in the administrative procedures; • Sanctions for non-implementation of instructions; • Samples of administrative forms needed. <p>Instructions should be submitted to relevant administrations in one month following adoption of the amended legislation.</p> | <p>Instructions shall be drafted and delivered to relevant administrations within one month after the adoption of relevant legislation.</p> | <p>Awareness of revised administrative procedures will assist in implementing procedural changes.</p> | <p>Partially Implemented: The IARCSC is reviewing the <i>Civil Servant Law</i> again and will include amendments on the simplification of procedures. In addition, the IARCSC has recently shared its anti-corruption plan with MEC which requires institutions to simplify their processes and develop simplified forms for providing services to the public. It also includes provisions on informing the public about simplified procedures. The commission has reported that it has a plan for providing training on new procedures to the employees involved in providing services to the people and will share the new procedures with relevant institutions. The IARCSC has also developed an "Administrative Procedures Simplification Manual" and shared a copy with MEC that includes detailed steps on how to simplify an administrative process and the use of needs assessments, but lacks information on addressing public awareness of simplified administrative procedures.</p> |
| 1.17 MoJ's efforts to publish and make Afghan laws more accessible enhances public awareness of their legal rights | | | |
| <p>MoJ should ensure that all legislation adopted by the Parliament, Government or relevant ministries is published and delivered - for free - to all public institutions – starting by 20 March 2012.</p> | <p>Legislation shall be published and delivered to all public institutions starting by 20 March 2012.</p> | <p>Greater accessibility of legislation leading to higher levels of transparency and an enhanced ability to assert rights and hold government to account.</p> | <p>Fully Implemented: To date, all legislation has been published on the MOJ website or in the Official Gazette (<i>Jarida Rasmī</i>). MOJ's website is accessible to all and the ministry is developing a navigation system on the website to improve the searching and accessing of the legal database. The MOJ is currently seeking international support to continue to fund the database project.</p> <p>The Directorate of Publication (Nasharat) prints 2,000 – 5,000 copies of new legislation based on the need and importance of the legislation. They send these publications to all public institutions throughout the country through the MOCIT as well as private companies. Non-governmental and private sector organizations may also purchase copies of legislation from the ministry.</p> |

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| 1.18 ARAZI must provide broader reports on land issues in Afghanistan | | | |
| <p>Relevant institutions and organisations mentioned (or identifiable) on pages 141 - 145 of GIRoA's NACS should prepare short reports on the implementation of measures foreseen by the mentioned strategy by 21 December 2011 (30 Qaus 1390).</p> | <p>Reports shall be prepared and submitted to MEC's Secretariat.</p> | <p>Enhanced monitoring of the implementation of the NACS.</p> | <p>Partially Implemented: The institutions required to report to MEC include the members of an independent board established to address land issues comprised of the Ministers of Agriculture, Urban Development, Interior, and Finance, the Attorney General, and representatives of several other governmental institutions.</p> <p>Since the NACS was completed, the government established ARAZI to perform the functions described on pages 141 – 145 of the NACS, including the creation of an inventory of all government-owned land; the establishment of fair and transparent procedures for the leasing of such land; and the creation of a one-stop window to makes leasing easier for domestic and foreign investors.</p> <p>To date, MEC has only received one report from ARAZI on land usurpation issues. ARAZI believes that producing a comprehensive report as required under the NACS is too time consuming. They did promise, however, that once the inventory of government-owned land is completed, they will provide MEC with the inventory and leasing procedures as stipulated in the NACS.</p> |
| 1.19 ARAZI must build on progress they have made in dealing with land issues by addressing private lands and developing plans for future action | | | |
| <p>MAIL, OAA and the Office of the Kabul's Mayor should prepare (if necessary, with the assistance of the MEC's Secretariat) short documents until 6 December 2011 (15 Qaus 1390) with the following elements: description of the problem of land usurpation, measures already applied, results achieved, proposals for future activities, obstacles and risks expected, and submit them to the MEC Secretariat.</p> | <p>All documents shall be written and sent to the MEC Secretariat.</p> | <p>The identification of land usurpation issues and strategies to address them.</p> | <p>Partially Implemented: ARAZI was established in September 2010 under the framework of MAIL to improve access to government land for commercial activities. ARAZI is heading a committee to deal with land usurpation problems and has issued a report finding that more than four million jeribs (800,000 hectares) of land has been usurped over the past three decades. ARAZI has started working on the issue and has returned 60,000 jeribs (12,000 hectares) to their original owners.</p> <p>ARAZI needs to bridge the gap in the implementation of the benchmark by drafting a proposal for future activities, including proposed amendments in land management legislation and the submission of land usurpation cases to the AGO for criminal investigation. ARAZI should also expand its focus to both public and private land.</p> <p>Due to the lack of progress in this area, MEC is undertaking a public inquiry covering most of the substantive issues identified in this recommendation.</p> |

| Recommendation | Benchmark | Expected Outcome | Status and Evaluation |
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| 1.20 Ministries have not effectively separated the contract award function from the contract oversight function in their procurement processes thereby increasing the risk of corruption | | | |
| All relevant institutions should nominate employees whose task will exclusively be to act in the area of public procurement with a clear separation between those responsible for deciding on new contracts and those responsible for overseeing these contracts. These employees should be nominated by 6 December 2011 (15 Qaus 1390) and trained on the issue by MoF and HOO by 4 February 2012 (15 Dalwa 1390). | All such specialised employees nominated and trained by 6 December 2011. | The designation of a procurement officer and the separation of contract awards and contract oversight will increase accountability and oversight in procurement activities. | <p>Partially Implemented: The PPU issued a circular in 2010 regarding the role of their procurement controllers in line ministries. The PPU has representatives in all ministries to support the procurement process and to train procurement personnel. The PPU has also created a new department of capacity building, whose task is to train procurement personnel. It has launched a wide range of trainings including basic, intermediate, advanced and special procurement training programs in various parts of the country and over 5,000 employees from various governmental institutions have been trained so far.</p> <p>Despite legal requirements and the provided training, there continues to be a lack of a clear separation between those responsible for deciding on new contracts and those responsible for overseeing these contracts.</p> |
| 1.21 A revised Procurement Law based on international best practices and broad consultation is currently in development and should enhance transparency and accountability in public procurement if passed | | | |
| The Public Procurement Act should be analysed, compared with some good examples from other countries and amended according to the results of this analysis. MoF and HOO should form an ad-hoc working group for the review and preparation of necessary amendments until 21 November 2011, analysis should be finished and amendments ready by 19 February 2012 (30 Dalwa 1390). To this effect, international organisations (i.e. ADB, WB, and IMF) should be invited to assist. | The working group shall be nominated and the international organisations invited by 21 November 2011 (30 Aqrab 1390); amendments shall be sent to the government by the end of January 2012. | A modernized procurement law developed with broad expertise in consideration of international best practices in transparency and accountability. | <p>Partially Implemented: The MOJ finalized the Procurement Law in consultation with several institutions and sent it to the Council of Ministers in September 2012. The Economic Committee of the Council of Ministers reviewed the law in December 2012 and passed it to the Council of Ministers General Session, where it was rejected and sent back to the MOJ to be amended.</p> <p>The PPU held a workshop in late January 2013 to discuss all changes with relevant institutions, and after incorporating all relevant comments from the governmental and non-governmental institutions, the MOF again sent the law to the MOJ to review. The MOJ reviewed the law and passed it to the Council of Ministers in July 2013.</p> <p>The MEC Secretariat will undertake a review of the law to ensure that it conforms to international best practices.</p> |
| 1.22 Preliminary work to align international procurement practices with Afghanistan's draft procurement law can start now, despite the law being before Parliament | | | |
| Shafafiyat should analyse the international community's existing rules and practises in the public procurement area in Afghanistan and introduce necessary changes in accordance with the (new) Afghan legislation by 19 April 2012 (31 Hamal 1391). | The analysis shall be conducted and changes introduced by 19 April 2012 (31 Hamal 1391). | Alignment of the international community's existing rules with Afghan procurement law. | <p>Not Implemented: According to Shafafiyat, they currently have several initiatives to improve procurement processes in the MOI and MOD, and are assisting the MOF with planning a National Procurement Conference.</p> <p>Shafafiyat believes that the current draft Procurement Law is sufficient for GIRoA's current procurement responsibilities and capacity. Shafafiyat is working to institutionalize the processes contained within the law, not to undertake a significant revision of it.</p> |

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| 1.23 The criminal investigation into the Kabul Bank fraud was conducted with limited assistance from experts and did not include many apparent perpetrators and beneficiaries of the fraud | | | |
| A criminal investigation against some perpetrators, beneficiaries of the organised criminal activity and involving shareholders of Kabul Bank has already started by the AGO. The MEC can provide foreign experts to assist in the investigation. The AGO should ensure that investigation will be carried on against all perpetrators and also consider the idea on the introduction of Joint Investigation Team, composed of members of the AGO, Police, HOO, Central Bank and others, for complete investigation of the case in a timely manner. | The Investigation report shall be submitted before 21 November 2011 (30 Aqrab 1390). | Complete investigation of all perpetrators and beneficiaries of the Kabul Bank fraud. | <p>Partially Implemented: The criminal proceedings related to the 21 people indicted and convicted for crimes related to the Kabul Bank fraud has had some troubling developments in the past six months. Despite concerns with the lack of expert evidence heard at the Special Tribunal, there has been ample opportunity for the Court of Appeal to use its broad scope under Afghan law to obtain and properly consider the volume of evidence in the Kabul Bank case. To date, this has not occurred as the AGO has failed to submit such evidence to the Court of Appeal despite support being provided by international experts.</p> <p>Of additional concern, the AGO has not undertaken any further criminal investigations into beneficiaries of Kabul Bank loans as recommended by MEC. The absence of an investigation perpetuates the perception that politically exposed people are being provided with preferential treatment. Instead, the AGO made a public statement in June 2013 indicating that foreign audit firms associated with Kabul Bank would be brought to justice. Although MEC views the focus on periphery actors such as the auditors to be misguided, the reality is that nothing has been done even in this case where the AGO has committed to undertake further investigation. This calls into question the AGO's sincerity in resolving the outstanding criminal issues and leaves MEC with the impression that such public statements are only for show.</p> |
| 1.24 The AGO's resistance to making serious efforts to seize assets related to the Kabul Bank fraud is a major obstacle to recovering stolen money | | | |
| All assets of major debtors (shareholders and others) of Kabul Bank should be immediately provisionally seized and / or frozen by the AGO, in cooperation with foreign authorities if necessary. | All suspects' assets shall be seized and frozen by 21 November at the latest. | The freezing of assets will enhance recovery efforts by ensuring that assets are not liquidated and that cash is not moved to make it impossible to track or recover. | <p>Not Implemented: Kabul Bank was placed into receivership in April 2011, at which time a receiver was appointed to pursue all assets and debts owed to Kabul Bank.</p> <p>A KBR analysis of Kabul Bank money transfers between March 2007 and April 2011 showed that \$935 million of licit and illicit funds were sent to 28 countries, including the UAE, China, United Kingdom, Turkey, United States, Switzerland and Germany. The AGO sent requests for mutual legal assistance to five jurisdictions, but they were limited in scope and fell short of meeting MEC's recommendation. The efforts by the AGO are completely inadequate given the number of beneficiaries of the fraud and the number of jurisdictions that received Kabul Bank funds.</p> <p>In late 2013, senior officials of KBR told MEC that \$174.9 million had been recovered so far, and that various issues, including the interference of other institutions and lack of cooperation with relevant organizations, were hampering their efforts to increase this amount.</p> <p>Additionally, due to the significant amount of Kabul Bank funds that remain in the UAE and the country's unwillingness to support recovery efforts, the Committee is informing international organizations about the behavior of the UAE.</p> |

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| 1.25 The AGO has indicted numerous regulators of Kabul Bank, despite what appears to be a lack of vigorous investigation in this regard | The AGO should continue investigations against persons responsible for the lack of monitoring of Kabul Bank's activities and extend all such investigations to foreign authorities (ie to the FIU and to auditors from foreign audit companies) if necessary. | All Investigations shall be continued and (if need be) extended. | All individuals related to Kabul Bank are properly investigated. | <p>Partially Implemented: In June 2012 the AGO issued an indictment of 21 individuals related to the Kabul Bank fraud. The indictment included numerous individuals from regulatory organizations, including the FIU and DAB. However, the findings of the public inquiry into the Kabul Bank crisis found that the investigation supporting the indictment raised serious concerns, particularly as they relate to charges against regulators. These concerns go so far as to suggest that at least one individual indicted was charged as a result of a personal grievance and abuse of process and office.</p> <p>Although MEC has recommended that all potential suspects of crime be investigated, it also expects that such investigations be conducted reasonably, according to law, and according to the independence and high standard of conduct expected from the AGO. Unfortunately, the Committee does not have confidence that this has been met in relation to the Kabul Bank indictment of regulators as they were convicted of crimes in March 2013 with little evidence being presented or considered. Furthermore, the AGO made a public statement in June 2013 indicating that foreign audit firms associated with Kabul Bank would be brought to justice. Although MEC views the focus on periphery actors such as the auditors to be misguided, the reality is that nothing has been done even in this case where the AGO has committed to undertake further investigation.</p> |
| 1.26 HOO has failed to inform the public about all Kabul Bank debtors | HOO should analyse activities of public officials occupying important positions who are on the list of Kabul Bank's debtors and inform media and proper authorities, including the President, on its findings and recommended sanctions against those officials – by 21 November 2011. | Analysis conducted and other authorities informed on 21 November 2011 (30 Aqrab 1390) at the latest. | Public officials who benefited from the Kabul Bank fraud are identified and known. | <p>Partially Implemented: In April 2011, the Investigative Commission of the Kabul Bank Crisis - chaired by the head of HOO - was established to report on the factors of the crisis and the government officials and foreign entities involved in the Kabul Bank fraud. The Commission issued its report in May 2011, and despite concerns with the process and conclusions, the report included an extensive list of Kabul Bank debtors. The list was provided by DAB and contained the names of several public officials, however, neither the report nor the list of debtors has ever been shared with the media or publicized as required by this benchmark, nor is the Committee aware of any intention of HOO to do so.</p> <p>HOO has referred the Kabul Bank case to the AGO, and fulfilled its responsibilities based on the existing Anti-Corruption Law. Full investigation and prosecution of the Kabul Bank case is the responsibility of the judiciary.</p> |

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| 1.27 The report of the public inquiry into the Kabul Bank crisis serves as a comprehensive record of regulatory deficiencies that allowed fraudulent activities to continue and provides a roadmap for changes that are required to avoid such events in the future | The Central Bank of Afghanistan should analyse the work of its auditors, of its FIU and of the compliance officer in the case of Kabul Bank, introduce necessary changes and / or sanctions and produce a report by 21 November 2011 (30 Aqrab 1390). In order to achieve the best possible results, international monetary organisations (i.e. ADB, the WB, and IMF) should be invited to assist in these efforts. | International monetary organisations invited by 6 November 2011, shall produce a report and implement changes by 21 November 2011. | Identification of regulatory changes that are required to strengthen the oversight of Afghanistan's banking industry so that situations like the Kabul Bank crisis can be avoided in the future. | <p>Fully Implemented: DAB conducted a lessons learned exercise in December 2010 after the Kabul Bank fraud was exposed in September 2010. The exercise highlighted weaknesses in the examination procedures and identified recommendations to be incorporated into an action plan, including enhancements to its Financial Supervision Department, changes in the manner in which examinations are conducted, and enforcement actions. In response to the exercise, DAB developed a new organizational structure for its Financial Supervision Department and recruited additional staff.</p> <p>Although the lessons learned exercise identified many elements consistent with reforms addressed in the IMF's Extended Credit Facility Program, it was an internal exercise and not a comprehensive review that engaged all relevant national and international organizations.</p> <p>A comprehensive review of the causes and responses to the Kabul Bank crisis came in the form of the public inquiry into the Kabul Bank crisis. This inquiry was conducted with participation from numerous national and international agencies that have knowledge of the causes of and response to the Kabul Bank crisis. Given the extensive nature of the report and its recommendations, the Committee considers that the policy intention of this recommendation has been met and the benchmark satisfied.</p> |
| 1.28 DAB has conducted audits of most banks in Afghanistan in an attempt to identify banking irregularities and susceptibilities | In order to prevent similar events in other banks, Central Bank should introduce forensic audit to at least additional 3 largest banks in Afghanistan by 21 November 2011 (30 Aqrab 1390). Results of all – existing and future - forensic audits should be immediately sent to the AGO and HOO. | Forensic audit introduced to at least 3 of the largest banks by 21 December 2011. | The identification of possible irregularities in other banks will assist efforts to prevent similar events as occurred in the Kabul Bank case. | <p>Fully Implemented: DAB initiated forensic audits of two of the largest banks in Afghanistan in June 2011, both of which have been completed. Given that forensic audits are extremely expensive – costing millions of dollars – DAB decided to conduct prudential audits of an additional 10 Afghan banks, with the support of the WB. These audits largely confirmed the findings of onsite examinations conducted by DAB and indicate that the sector is vulnerable to inadequate capital, deficiencies in governance, and excessive exposures. In response DAB has developed a strategy to define the minimum amount of capital requirement for bank operations and distributed it to all banks and has attempted to address governance deficiencies through the new Anti-Money Laundering Law. DAB has also issued a number of enforcement actions and corrective measures and distributed them to all banks in relation to excessive exposures.</p> |

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| 1.29 Amendments to the legislation empower the police and HOO to obtain court orders related to banking activities in Afghanistan | Legislation on the powers of the Police and of HOO should be amended in order to give them powers to gain full access to all – state and private - banking activities in Afghanistan. If banking secrecy protects some data, the police and HOO should have the power to request a court order to obtain those data, too. MoJ should prepare necessary amendments and send them to the government by 6 December 2011 (15 Qauss 1390). | Amendments shall be prepared and sent to the government by 6 December 2011 (15 Qauss 1390). | Enhanced powers of the police and HOO to investigate economic crimes. | Fully Implemented: DAB drafted amendments to the <i>Banking Law</i> with provisions that allow relevant authorities, including HOO and the police, to access banking records with a court order. The draft amendments were submitted to the MOJ and the Council of Ministers for consideration, and are currently with the Parliament awaiting approval. |
| 1.30 The investigation into the National Military Hospital has not been conducted expeditiously nor has there been sufficient transparency in its conduct and findings | The AGO / MoD / HOO / Audit and Control Office should collect all existing information on the National Military Hospital case, form a Joint Investigation Team, composed of domestic and international (Shafafiyat) investigators and conduct thorough analyses of events in the National Military Hospital – by 31 December 2011 (10 Jadi 1390). | The Joint Investigation Team shall be formed and its investigation completed and published by 31 December 2011. | A transparent and thorough investigation is conducted and reported to the public. | Partially Implemented: A Joint Investigation Team comprised of representatives of the AGO, MOF, MOD, NDS, SAO, HOO and ISAF was formed in 2011 to investigate this case. The investigation team finalized their report and sent it to the AGO in September 2012. Although the report has not been made public, information received by MEC indicates that the investigation has revealed that \$1 million has been embezzled. SIGAR has also provided MEC with a short report on the case that determined that the alleged theft of \$42 million worth of pharmaceuticals could not be substantiated. The AGO has indicted 10 individuals accused of misuse of power, negligence of duty and smuggling related to this case; these cases were sent to the anti-corruption court in March 2013. MEC is still concerned about the ineffectiveness of investigation, lack of cooperation between national and international institutions and unjustified prolonging of all phases of investigation. MEC was recently informed that the National Military Hospital case was dismissed following several court hearings and that all of the accused were released. The AGO and the court have both refused to provide the judgment to MEC. |
| 1.31 Nobody has been held criminally liable for the National Military Hospital and indictments have been delayed beyond reasonable limits | The results of the investigation should be used by the team as a basis for prosecution of responsible persons after 31 December 2011 (10 Jadi 1390). All assets of responsible persons should be immediately seized and/or frozen after 31 December 2011. | The AGO shall initiate criminal prosecution of all suspects in the National Military Hospital case by 31 December 2012 (10 Jadi 1390). All assets of suspects shall be seized or frozen in January 2012. | Criminal prosecution of individuals responsible for cases related to the National Military Hospital. | Not Implemented: As far as MEC is aware, the investigation was closed when the case was sent to the court. Additionally, MEC has received no information about the seizure or freezing of assets during the investigation since the HOO and AGO have not cooperated with MEC. As of November 2013, the investigations are closed as there will be no further court hearings. |

Appendix C

STATUS OF SECOND SET OF RECOMMENDATIONS AND BENCHMARKS

Following the third MEC mission of November 11 - 26, 2011, MEC published the 2nd Set of Recommendations and Benchmarks, consisting of 20 recommendations for MOF, MOMP, HOO and OAA, among others.

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| 2.1 HOO's unwillingness to implement an effective asset verification system introduces unnecessary vulnerabilities to corruption | | | |
| HOO should send drafts of memoranda of understanding to all institutions, which it deems to be important for verifications of reported assets by 30 Dalwa 1390 (19 February 2012) and relevant institutions should return the signed Memoranda of Understandings to HOO by 15 Hamal 1391 (3 April 2012). | Memoranda of understanding shall be sent from HOO to all relevant institutions by 30 Dalwa 1390 (19 February 2012) which will then be signed and returned to HOO by 15 Hamal 1391 (3 April 2012). | The creation of a strong system of asset registration and verification. | <p>Partially Implemented: HOO was designated in the Anti-Corruption Law as the institution required to register, verify and publish the assets of officials mentioned in the Constitution.</p> <p>To facilitate the verification process, HOO has signed memoranda of understanding with some institutions. Information regarding assets was published in the Anis Newsletter but was ambiguous, did not provide details of the origin of the assets, and appears to not have satisfied constitutional requirements. Subsequently, HOO stopped publishing high ranking officials' assets on the grounds that it presented security risks to officials. HOO indicated that they would only publish the required information when there is a need to, apparently in direct contradiction with the Constitution of Afghanistan.</p> <p>According to senior management of HOO a new MOU on Asset Registration and Verification has been recently drafted by HOO and will be signed in the near future between HOO, FINTRACA, MOI, NDS and AGO.</p> |
| 2.2 The draft anti-corruption law was not developed with broad consultation, which may hinder its effectiveness | | | |
| Before 15/12/1390 (5 March 2012) HOO should establish an ad-hoc intergovernmental working group (inviting representatives of the following institutions/ organisations: the Office of the President, the AGO, the Control and Audit Office, MoI, the MoJ, CJIAF / Shafafiyat, the UNDP, UNODC, USAID and MEC) tasked to prepare a new draft Anti-Corruption Law by 15/03/1391 (04 June 2012). | An ad-hoc intergovernmental working group shall be established before 15/12/1390 (5 March 2012); a new draft Anti-Corruption Law shall be submitted to GIRoA by 15/03/1391 (04 June 2012). | Strengthened and improved anti-corruption legislation. | <p>Partially Implemented: The revised Anti-Corruption Law has been tabled in Parliament by GIRoA. It is being reviewed by all Wolesi Jirga commissions.</p> <p>HOO established an internal committee consisting of some directors and advisors of HOO to review the law. They also discussed the law with representatives of the AGO, MOJ, and MOI, among others.</p> <p>MEC also provided a letter to Parliament with its recommendations for enhancing the law in March 2013.</p> |

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| 2.3 Interference in the functioning of public bodies continues to occur despite orders by the President to discontinue such practices | | | |
| <p>His Excellency the President of the Islamic Republic of Afghanistan is invited to issue a Ferman before 05 March 2012, prohibiting all organizations / institutions / bodies and individuals from illegally interfering with the work of public bodies, requiring public bodies to strictly decline any form of illegal interference and authorizing those bodies and their employees to immediately inform the President's Office, HOO and the MEC of all attempts of illegal interference with their activities. The President's Ferman should be published in the media. Substantiated information received by the President's Office, HOO and the MEC should be sent to the AGO to start investigations of possible criminal offences of those illegally interfering.</p> | <p>His Excellency the President is invited to issue a Farman by 15/12/1390 (05 March 2012).</p> | <p>Public institutions that are operationally independent and free from inappropriate outside influences.</p> | <p>Partially Implemented: OAA has drafted an order for the President that prohibits the illegal interference of all institutions and individuals, but the order was never signed due to the inclusion of articles 1(7), 1(9) and 1(15) in PD 45. Despite these articles, MEC has been informed of many cases of illegal interference in the work of public bodies, such as in the transfer and removal of some prosecutors, the assignment of grades by educators, and the distribution of land. Interference has been found to be exerted by Parliamentarians, government officials, the judiciary and law enforcement agencies. There are also gaps in punishing cases of illegal interference, including unclear enforcement actions, and the lack of codes of ethics for high governmental officials. It is MEC's opinion that the full implementation of these articles in PD45 and this recommendation is practically impossible.</p> |
| 2.4 The restriction of access to customs facilities has reduced opportunities for corruption, but external influences are still being exerted by powerful individuals | | | |
| <p>In order to clearly separate the activities of all border services and to enhance the establishment of their capabilities, MoF, with the cooperation of all border services, should ensure – before 15/12/1390 (05 March 2012) - that only customs officers are allowed to enter their facilities and take part in the customs proceedings.</p> | <p>The Customs office shall be free of interference from other bodies while performing their legal tasks before 15/12/1390 (05 March 2012).</p> | <p>Reduced interference with customs officers' functions and reduced influence in the enforcement of customs laws.</p> | <p>Partially Implemented: The ACD signed an MOU with the Afghan Border Police that limits the interference of other entities at border points. The presence, however, of representatives of the NDS, the AGO and other institutions at these border points makes this MOU difficult to enforce. The ACD also issued a letter to all customs departments in 2012 stating that only custom officers are allowed to enter their facilities. MEC field visits in 2012 to the Islam Qala and Torkham Customs Departments verified that banned personnel were generally not entering the customs facilities. MEC has been informed, however, that there are still political and other types of interference at most major customs departments. Similarly, ACD officials complained about the interference of high-ranking government officials in the hiring process. ACD officials stated that limiting the interference of third parties would be ideal for them, but they don't have the capacity to enforce the restrictions.</p> |
| 2.5 Competitive salary for public servants, particularly those working in the customs departments will reduce incentives to engage in corrupt practices | | | |
| <p>An extremely low salary and the lack of an equitable pay scale are some of the major reasons for corruption in the Customs Office; material incentives should be introduced. MoF should – before 11/01/1391 (30 March 2012) – propose to GIRoA material incentives for the Customs Office. One possible form of such incentives would be the introduction of special rewards for the officers discovering smuggled goods in the form of a certain percentage of the value of discovered goods.</p> | <p>The proposal for incentives to the Customs Office shall be submitted to GIRoA before 11/01/1391 (30 March 2012).</p> | <p>Salary levels that provide a reasonable income and standard of living to reduce the demand side of corruption in customs departments.</p> | <p>Partially Implemented: The ACD submitted a salary increase request for its staff to the President in 2012 and MEC believes that, if approved, the request will provide a good foundation for reducing corruption through the increase of salaries. ACD officials are also working on a new policy for staff that graduate from the Customs Academy to receive additional incentives.</p> |

| Recommendation | Benchmark | Expected Outcome | Status and Evaluation |
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| 2.6 ISAF has demonstrated an unwillingness to consider measures that would reduce vulnerabilities to corruption in relation to tax exemptions under MTA Agreements | | | |
| In order to avoid the abuse of tax exemptions (i.e. in the area of Military Technical Agreements) on imported goods into Afghanistan, MoF, MoFA, the United States Government, CJIATF / Shafafiyat and ISAF should reach an agreement before 30/11/1390 (19 February 2012) on the coordination of activities, which should lead to strict controls over the import of tax-exempted goods, exchange of information, establishment of investigative procedures and dissuasive sanctions for those who are abusing that benefit. | This agreement should be reached before 30/11/1390 (19 February 2012). | Vulnerabilities to corruption through the abuse of tax exemptions will be reduced. | <p>Not Implemented: The Council of Ministers passed a resolution in 2010 requiring the Minister of Finance and Minister of Foreign Affairs to review all agreements made with the international community and NATO that have tax exemptions, particularly the Military Technical Agreement. The ACD prepared a proposal to reduce opportunities for corruption related to tax exemptions and has attempted, without success, to engage ISAF on the issue several times.</p> <p>MEC has made several efforts to facilitate the implementation of this benchmark, including meetings in early 2013 with representatives from ISAF, the USG, the MOF and MOFA. During these meetings, however, it was made clear in strong terms that ISAF is completely unwilling to consider any measure to verify goods being brought into Afghanistan. Without the cooperation of ISAF there is no possibility for the relevant parties to reach an agreement as stated in this recommendation.</p> |
| 2.7 Anti-money laundering law amendments have been drafted, but have not been introduced in Parliament thereby perpetuating the current system of inadequate monitoring of money flows outside of Afghanistan | | | |
| Before 15/01/1391 (30 March 2012), GIRoA should submit a draft of Article 6 of the Anti-Money Laundering law to the Parliament, inserting additional requirements regarding the export of cash from Afghanistan. One of these requirements should be a duty to report the export of cash to the FIU or Afghanistan Central Bank (DAB) with the aim to obtain its approval for the export, certified proof of the cash's origin, mandatory involvement of the FIU / DAB in the exporting procedures and mandatory monthly reporting of the FIU to DAB and MoF on their findings and conclusions. | Article 6 of the Anti-Money Laundering law shall be amended before 15/01/1391 (30 March 2012). | Enhanced tracking of money leaving Afghanistan leading to better detection and investigation of illegal money flows. | <p>Partially Implemented: A revised AML law is currently being considered by the Council of Ministers. The law sets out standards that respond to MEC's recommendation requiring any person who leaves or enters Afghanistan in possession of currency, bearer negotiable instruments or gold with a value exceeding the prescribed threshold or arranges for the transportation of such items through a person, luggage, cargo, the postal service or any other means to declare the fact to the Customs Department. Declarations made shall be submitted to the Financial Intelligence Unit in an appropriate amount of time.</p> <p>Although the current draft AML law satisfactorily meets the needs for effective control of currency reporting at the border, there is concern that the law has been excessively delayed. After revision of the law by the special committee, it was submitted to the Council of Ministers for approval, but it was not endorsed due to concerns from finance officials about the FIU being provided with independent authority to conduct its activities.</p> <p>MEC is concerned about any potential amendments that might restrict or limit the power and authority of the FIU to directly share information, data and findings with national and international partners as this would be a step backward in overall efforts to effectively tackle organized crime. Such amendments would undermine the effectiveness and independence of the FIU and would not meet the needs and standards provided through the Financial Action Task Force recommendation and could decrease the credibility of the FIU internationally.</p> <p>Additionally, FinTRACA has signed an MOU with the MOF for implementing provisions related to border currency controls at Kabul International Airport.</p> |

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| 2.8 Internal monitoring bodies of central institutions in the fight against corruption have not been strengthened | | | |
| Before 30 March 2012 GIRoA should issue instructions to MoI, MoD, the AGO and HOO to assess and reinforce their capabilities of internal oversight and investigative bodies before 04 June 2012. | Instructions to the aforementioned bodies shall be issued before 15/01/1391 (30 March 2012) and implemented before 15/03/1391 (04 June 2012). | A strengthened internal system of oversight for institutions that are central to the fight against corruption. | <p>Partially Implemented: The AGO has enhanced its internal oversight department by recently appointing 75 prosecutors to conduct internal oversight; they have plans to establish internal oversight departments at the provincial level as well. The internal oversight department, however, has no terms of reference, progress reports or evidence of improvement. Under the new Audit Law, internal audit departments must report to their line ministries and as well as to the SAO, but in practice this often does not happen. According to the OAA, although internal oversight and investigative bodies exist in all ministries and independent directorates, they often do not have the capacity to implement their mandate or the support of their own ministries.</p> |
| 2.9 Simplification of administrative procedures in acquiring building permits will reduce opportunities for corruption | | | |
| The municipality of Kabul, relevant ministries, other municipalities and relevant institutions should immediately - in any case before 1/01/1391 (20 March 2012) - and without waiting for the implementation of the MEC recommendations from July 2011 start the simplification of procedures in the area of acquiring building permits and complete them before 15/03/1391 (04 June 2012). | The simplification of procedures in the area of building permits shall be started before 1/01/1391 (20 March 2012) and be concluded before 15/03/1391 (04 June 2012). | Simplified administrative procedures for acquiring building permits will reduce opportunities for corruption and increase efficiency. | <p>Partially Implemented: The simplification process for obtaining building permits was initiated by the HOO and KM in February 2012 and was intended to be completed by May 2012. Simplification is occurring in three phases: assessment, simplification of procedures, and the implementation of pilot projects to implement the simplified process. The assessment phase has already been completed and identified three types of building permits that needed simplification: residential, commercial, and high-rise. The simplification phase has progressed with KM and HOO creating a working group that has simplified the process for obtaining residential building permits by reducing the number of steps from 100 to six. The application for commercial building permits has also been reduced to six steps, and a new application for the distribution of commercial land (consisting of 10 steps) has been introduced. KM has started the implementation of the simplified residential commercial building permits. Although over 300 forms have already been distributed, the distribution of commercial building permit forms is moving more slowly. Based on a processed copy of a residential building permit form which was shared with MEC, it takes around seven days to apply for the permit. A processed copy of a commercial building permit form which was also shared with MEC showed that processing the commercial building permit takes almost a month.</p> |

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| 2.10 His Excellency the President of Afghanistan has directed high ranking officials and key ministries to take measures to ensure that public servants are appointed based on merit | | | |
| <p>His Excellency the President is invited to issue a Farman to ministries and other key institutions, by 30 April 2012, including at least the AGO, HOO and the Control and Audit Office, reminding them that there must be:</p> <ul style="list-style-type: none"> • Practical implementation of clear vetting procedures for the most important positions, including investigators and prosecutors, • Practical rationalisation of personnel structures to reduce opportunities for corruption, • Practical implementation of bans on the reinstatement and compensation of officials removed from their positions for corruption and criminal offences. | <p>It is hoped that His Excellency the President will issue a decree (Farman) and that it will be implemented before 11/02/1391 (30 April 2012).</p> | <p>Transparent recruitment and merit-based appointments to reduce nepotism and enhance competence of public servants.</p> | <p>Fully Implemented: The recruitment and promotion of public servants needs to be based on competence and merit to reduce nepotism, reduce corruption, and enhance public services. His Excellency the President substantially covered the content of MEC's recommendation with the issuance of PD 45 in July 2012, which directed high-ranking government officials to avoid interfering in the processes of appointments and recruitment; directed the AGO and HOO to assess personnel to identify corrupt officials; and directed other ministries to conduct similar exercises regarding the appointments and assessments of officials.</p> |
| 2.11 The recourse for bidders who feel that procurement processes have been unfair or illegal have not been advertised or enhanced | | | |
| <p>By 15/02/1391 (04 May 2012) MoF should strengthen its PPU and especially its "Appeal and Review Committee" (by providing more resources for its functioning, enhancing the level of its independence and ensuring permanent employment of its advisors and raising the awareness of domestic and foreign bidders on the existence and functioning of the Unit.</p> | <p>The PPU shall be strengthened and take actions in order to raise the awareness of bidders by 15/02/1391 (04 May 2012).</p> | <p>A strengthened and independent PPU that engages with bidders to ensure that bidding processes are being conducted fairly and according to the law.</p> | <p>Partially Implemented: The PPU has established the Appeal and Review Committee and appointed five initial members (including one from the ACCI), with plans to increase the membership to 21 experts through appointments from other institutions. The MOF has also provided various capacity-building trainings to PPU staff, although not in topics related to appeal or review capacities. There have been no substantive efforts to raise awareness of bidders of the PPU.</p> |
| 2.12 The enhanced national mining policy provides a strong framework for safeguarding Afghanistan's mining industry | | | |
| <p>Before 15/04/1391 (05 July 2012), GIRoA should supplement a national policy on the exploitation of mineral resources in Afghanistan including requirements and safeguards on transparency, accountability and integrity in the mining sector.</p> | <p>The national mining policy shall be supplemented before 15/04/1391 (05 July 2012).</p> | <p>Opportunities for corruption in mining are reduced through transparency, accountability, and integrity in the mining sector.</p> | <p>Fully Implemented: The National Policy on the Exploitation of Mineral Resources has been in place for almost a year. It contains clauses on transparency and accountability. The National Mining Policy is a clear and concise document and sets high standards for the regulatory framework governing the Afghan extractives sector. The quality of the National Mining Policy is hampered by referencing issues, while its implementation and the enforcement of its principles may prove to be problematic due to capacity issues. MEC is working with MOMP to receive additional information that would allow MEC to evaluate the practical effect of implementation.</p> |

| Recommendation | Benchmark | Expected Outcome | Status and Evaluation |
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| 2.13 MoM has retained qualified lawyers to negotiate mining contracts on their behalf | | | |
| <p>Starting from the 15/02/1390 (05 May 2011), MoM should engage / maintain additional assistance in the form of highly qualified lawyers in the area of mining to negotiate contracts on the exploitation of Afghan mineral resources.</p> | <p>Contracts for highly qualified lawyers shall be concluded and/or extended by/after 01/1/1391 (20 March 2012).</p> | <p>Fair mining contracts that provide the greatest benefit for Afghanistan are negotiated.</p> | <p>Fully Implemented: MOMP has procured the services of a number of respected firms specializing in mining sector transactions and has established a Legal Department with two sections, each with four legal experts and one manager. Currently, the Legal Department has 11 staff, including the Director. The WB has recruited two lawyers for this department and MOMP has plans to recruit one more international lawyer. In a meeting with MEC, the then Minister of Mines and Petroleum also indicated that the ministry has hired international monitors to observe the contracting process to ensure the integrity of the negotiations.</p> <p>MOMP claims that its legal department has been successful in its work and is increasingly in a position to take the lead in the negotiation of mining contracts. As a result, international lawyers have begun focusing on advising MOMP's lawyers during negotiations, rather than taking the lead themselves.</p> <p>IWA, however, disagrees with the assessment that MOMP lawyers are in a position to take the lead on contract negotiations, saying that the MOMP legal team is in fact incompetent, understaffed and still relies heavily on international advisors.</p> <p>MEC has attempted to meet the legal department, but has been unsuccessful to date.</p> |
| 2.14 MoM has included anti-corruption clauses in mining contracts as one mechanism to prevent corruption in the mining sector | | | |
| <p>While drafting contracts for the exploitation of mineral resources, MoM should insert provisions, which will oblige not only contracting partners but also their subcontractors to fully respect all international and national anti-corruption standards in general and specifically in the area of mining while implementing the contracts.</p> | <p>All future contracts shall oblige not only the contracting partners but also their subcontractors to fully respect all international and national anti-corruption standards.</p> | <p>Contractual guarantees that all firms engaged in extractive industries adhere to anti-corruption standards.</p> | <p>Partially Implemented: MOMP includes anti-corruption requirements for contractors and sub-contractors in all of its new mining contracts. Older contracts will be amended on a case by case basis. All contracts since 2010 also include a clause that requires contractors to report to the AEITI Secretariat if their annual revenue exceeds AFS 7.5 million. Of the over 100 active mining companies in Afghanistan, only six meet this criterion and are registered with AEITI. A seventh company lost its contract after it failed to register with AEITI. The threshold is to be renegotiated (i.e. lowered) with the multi-stakeholder group, but there are concerns that accounting standards in Afghanistan will not meet the EITI requirements, as was the case in the past.</p> <p>MOMP has shared with MEC its general provisions concerning contractors and excerpts from two contracts in which the contractors are held accountable for transparent and non-corrupt conduct. However, at this point it is not clear whether the provisions and clauses are sufficient, and even if they are, there are concerns that what looks good on paper is not fully implemented on the ground. This is partly due to the weak CSO sector and their limited ability to monitor MOMP and its contractors. MEC will evaluate the extent the recommendation is implemented beyond being included in documents and what impact it will subsequently have.</p> <p>Furthermore, MOMP has indicated that it does not currently have the capacity to enforce or monitor the implementation of the anti-corruption clauses. Although the mining inspectorate visits mines every three months and also conducts spot-checks, their focus is on the technical compliance of mines. There have been cases where contracts were cancelled because of non-compliance. In any case MOMP argues that it should not have to bear the sole responsibility for ensuring the transparency of contractors, given that there are several other entities that could help with the enforcement.</p> |

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| 2.15 MoM has taken the positive step of publishing all but one of its mining contracts | | | |
| MoM should publish all future contracts for the exploitation of mineral resources on its website explicitly mentioning all contracting and subcontracting parties within 30 days after the contract has been agreed upon and signed. | All future contracts shall list the names of all contracting and sub-contracting parties and will be published on the MoM website. | Transparency and accountability will be enhanced through publication and increased scrutiny of contracts. | <p>Partially Implemented: MOMP has published over 200 mining contracts on its website as part of an ongoing process that includes the publication of all future contracts - including the names of contractors and subcontractors. The only contract not published on the MOMP website is the Aynak copper mine contract, which MOMP has committed to publish once negotiations with the company are completed.</p> <p>Some of the contracts published on the Ministry's website reveal deficiencies. For instance, some of the contract documents do not fulfill the needs of a standard contract, being only three or four pages long without adequate provisions or terms and conditions for both parties.</p> <p>There are currently four other mineral contracts (besides Aynak) and one other hydrocarbon contract being negotiated or close to being signed. Those that are close to being signed are essentially waiting for the new <i>Minerals Law</i> to be passed. They should be published once signed. The draft law also includes an article on the publication of contracts.</p> |
| 2.16 The draft anti-corruption policy for mining has been developed, but not approved | | | |
| Before 15/07/1391 (06 October 2012), MoM should adopt an anti-corruption policy which contains risk assessment and management provisions in the area of corruption. International and national public and non-governmental organisations should be invited to take part in the aforementioned activities. | This anti-corruption policy containing risk assessment and management provisions in the area of corruption shall be applied in cooperation with international and national public and non-governmental organisations before 15/07/1391 (06 October 2012). | An anti-corruption policy that can help manage risks of corruption. | <p>Partially Implemented: MOMP has developed a draft anti-corruption strategy in consultation with internal stakeholders, international organizations, other governmental institutions and civil society. It is unclear when it might be approved and to what extent the strategy covers the requirements of a policy. The strategy includes the simplification of certain procedures at the ministry and takes into account consultations with employees across the country. This multi-stakeholder approach to developing the strategy is also partly the reason why it is late. MOMP was due to present the strategy at the session of the ministry's Leadership Council that was scheduled to take place in July 2013, but was cancelled. The next meeting was to be held in August 2013, but despite several attempts, MEC has not received further updates as to whether the meeting occurred. The strategy does not have the same institutional importance as other areas with relevant policies, and approaches the topic of anti-corruption simply from an investment standpoint. This poses the threat of distracting anti-corruption measures from the arguably higher goal of transparency and accountability in general, as some corrupt practices which might not have an immediate impact on investor confidence might subsequently be left unchecked. Generally speaking the strategy reads more like an outline or brainstorm of possible anti-corruption measures.</p> |
| 2.17 Access to information legislation will increase government transparency and accountability once passed | | | |
| Before 04 June 2012, GIRoA should send the <i>Draft Law on Access to Public Information</i> to the Parliament. The draft should regulate access to public information as a general right and introduce only minor justified exceptions in the form of protected secrets, introduce a mechanism, which will ensure the application of the law and establish judicial protection of the right of the public to access this information. | The <i>Draft Law on Access to Public Information</i> shall be sent to the Parliament before 15/03/1391 (04 June 2012). | Increased transparency and accountability through an informed public. | <p>Partially Implemented: The MOJ indicated that the draft of the <i>Access to Information Law</i> was sent to MOIC on February 21, 2012 for their study and review. The Taqnin Directorate of MOJ has conducted its own review of the law that included the participation of CSOs. The letter also stated that the law was submitted to the Council of Ministers on April 27, 2013, and that the Council established a committee consisting of representatives of the MOJ, MOIC, MOHRA and presidential advisors to review the final draft. The amended draft law was submitted to the Council of Ministers and if approved, will then be sent to Parliament for their review. The Secretariat was informed that the law is undergoing final consideration in the Council of Ministers, though no date has been set for its final approval.</p> |

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| 2.18 The Herat Governor has taken the initiative to implement MEC's recommendations related to a mechanism to deal with complaints and a VCA | | | |
| The local Government Office in Herat should introduce both a corruption risk assessment and monitoring mechanism and also establish a complaints office in cooperation with the MEC and international donors before 06 August 2011. | A Corruption Risk Assessment and Monitoring Mechanism and the establishment of a Complaints Office shall be introduced in the local government office in Herat before 15/05/1390 (06 August 2011). | The identification of vulnerabilities to corruption that will allow effective interventions to be developed. | <p>Partially Implemented: An office exists within the Herat Governor's Office where members of the public can record their complaints in writing. Additionally, several complaint boxes have been placed in the Governor's compound as well as other relevant provincial government institutions to allow the public to submit their complaints. According to statistics from the Governor's Office, over 2,000 complaints have been received since March 2012.</p> <p>The Herat Governor's Office has not been able to conduct a VCA due to resource issues and had requested assistance from MEC.</p> |
| 2.19 Anti-corruption and ethical training has been provided to government officials in Herat | | | |
| Basic anti-corruption and ethical training should be given to all employees of the Local Government Office in Herat before 05 September 2012 in cooperation between the Governor, the MEC the Secretariat and international donors. | Basic anti-corruption and ethical training shall be given to all employees of the Local Office before 15/06/1391 (05 September 2012). | Increased awareness of local governance in Herat and an increased capacity of local government employees. | <p>Fully Implemented: According to the Governor's Office, there have been four anti-corruption training sessions provided to local government office officials in Herat province. Additionally, the IARCSC provincial office conducted a comprehensive training for 100 provincial directors of Herat and Nemroz provinces in mid-September 2012. The two-day training covered three topics on the Regulation of the Code of Conduct, the Regulation of the Personal Affairs of the Civil Servants, and the Anti-Corruption Law.</p> |
| 2.20 An evaluation of international audit firms hired by donors reveals that there were several fraud indicators that were not sufficiently acted on | | | |
| International donors should evaluate the performance of the Kabul Bank auditors hired by them by 015/02/1391 (04 May 2012). | The evaluation of the auditors' performance shall be completed by 04 May 2012. | Review of the role of international auditors in the Kabul Bank crisis. | <p>Fully Implemented: USAID's Office of the Inspector General conducted a report on the role of international audit firms that it had engaged to provide capacity building activities to DAB. The review concluded that embedded BP and Deloitte advisers had several opportunities to learn about fraudulent activities at Kabul Bank and should have been more aggressive in following up on indications of serious problems. Deloitte's lead advisor reportedly indicated that his professional judgment and risk tolerance were probably clouded by incessant rumors of fraud and corruption and that consequently he did not take the fraud indications seriously. The lead adviser acknowledged that Deloitte should have taken more aggressive actions in November 2009, such as resuming participation in onsite bank examinations, and moving previously planned fraud detection training forward. It has been suggested that if Deloitte's onsite assistance had restarted in November 2009, the fraud at Kabul Bank could have been detected earlier, and the magnitude of losses would have been smaller.</p> |

Appendix D

STATUS OF THIRD SET OF RECOMMENDATIONS AND BENCHMARKS

MEC published the 3rd Set of Recommendations and Benchmarks following the fourth MEC mission of February 2012.

| Recommendation | Benchmark | Expected Outcome | Status and Evaluation |
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| 3.1 HOO has extended the powers and authorities of its Department of Audit to better address internal corruption cases | | | |
| HOO should extend powers and authorities of the Department of Audit in order to ensure that the compliance mechanism is strengthened to deal with the potential office's internal corruption before June 30, 2012. | The powers and authorities of the Department of Audit to deal with internal corruption should be extended before June 30, 2012. | Increased transparency and integrity within HOO. | Partially Implemented: HOO has not formally responded to MEC on the status of this benchmark. Informal responses from HOO officials, however, indicate that the HOO Internal Audit Department has recently been unofficially given more power to investigate cases of internal corruption. According to the HOO Internal Audit Department, they have initiated several internal investigations which have been implicitly supported by high ranking officials of HOO but the low capacity of the department's staff members remains one of their main problems. |
| 3.2 HOO has not made sufficient progress in enhancing the capacity of its officials | | | |
| Before 30 June 2012, HOO should prepare a programme for capacity building of its new and existing management focusing on, inter alia, fair and objective recruitment and promotion processes, daily and strategic management, professional relations with other bodies and begin its implementation no later than 31st July 2012. | A program on HOO's management capacity building must be adopted before 30 June 2012 and be implemented by 31st July 2012 at the latest. | Increased capacity of HOO to tackle corruption. | Partially Implemented: According to HOO's Planning Department they have conducted, in conjunction with their Human Resources Department, more than 100 trainings for new and existing staff members on the following issues: <ul style="list-style-type: none"> • Training of trainers; • Afghan laws and anti-corruption strategy; • Planning, reporting and management; • Three anti-corruption priorities; • Analyzing and overseeing methods; • Corruption from the Islamic perspective; • Code of conduct; and • Simplification of procedures. |
| 3.3. International donors have not been responsive to MoF's attempts to encourage them to register their aid expenditures | | | |
| In order to ensure strict adherence of foreign donors to Afghan legislation in the area of registration of and reporting on donations, MoF should write appropriate letters to all donors before 31 May 2012 and inform the MEC of all registered breaches of the relevant Afghan legislation. | A letter from MoF should be sent before 31 May 2012; the MEC should be informed of all breaches after 31 May 2012. | Adherence to Afghan requirements regarding donor reporting requirements. | Partially Implemented: TMAF committed each development partner to update its aid information in the MOF's DAD by June 2013, and annually thereafter. The MOF developed its "Aid Management Policy for Transition and Beyond 2013," in which the DAD was identified as the central (and official) aid information-management system and an effective tool for aid accounting and reporting in Afghanistan. Donors have, however, sought to overcome "technical obstacles related to verification and the labor-intensity of data entry into the DAD." On December 1, 2013, USAID and other donors met with the MOF to address these technical issues with the DAD and reportedly "agreed in principle on a solution that would enable donors to send electronic files of data annually to the MOF for entry into the DAD per the TMAF agreement." As of October 2013, the Aid Management Directorate of the MOF reported that 626 projects, from 33 of 53 donors, had been entered into the DAD system in 2013. Nevertheless, this represents only \$2.109 billion of the \$5.417 billion in aid committed in 2012. |

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| 3.4 Donors should strengthen their monitoring procedures by introducing enhanced measures | | | |
| Before 31 August 2012 donors should strengthen their monitoring procedures on the use of their resources granted and donated to GIRoA by introducing relevant measures, which - at a minimum – should strictly: <ul style="list-style-type: none">• comply with the Terms of Reference of each contribution,• exercise control over the use of funds by qualified personnel,• highlight incompatible functions in the donor's organizations (e.g. separation between personnel deciding on the allotment of funds and personnel monitoring their use),• prepare regular intermediate reports on the use of funds,• Report on the use of donation approved by certified external auditors. | Donors' monitoring procedures should be strengthened before 31 August 2012. | Strengthened monitoring procedures for funds provided to the Afghan government. | <p>Partially Implemented: According to the MOF Development Cooperation Report, approximately \$119.44 billion in official development assistance was pledged by donors from 2002 to July 2012. As of the end of 2011, \$85.116 billion in official development assistance had been committed by 45 donors, of which \$69.723 billion has been disbursed. For 2012, the MOF informed MEC that an additional \$5.417 billion was committed and an estimated \$5 billion was disbursed. So from 2002–2012, a total of approximately \$90.5 billion was committed and \$74.7 billion disbursed.</p> <p>MEC has engaged with key donors - including the USG, European Community, WB, DFID and JICA - representing the majority of this aid in evaluating the monitoring of these funds and has been provided with documents related to financial management, audits, budgets, disbursements, effectiveness and accountability, and project implementation. While donor requirements differ according to their domestic regulations and rules, they all generally require the government recipients to provide regular reports regarding the terms of the grant or contribution. These reports are generally compiled by the recipient organization, but often require independent financial or systems audits.</p> <p>MEC is currently preparing a questionnaire to enable donors to more fully respond to the terms of this recommendation.</p> |
| 3.5.1 UNDP has published the results of the KPMG audit of LOTFA | | | |
| UNDP should publish the results of the internal KPMG audit and continue its internal LOTFA integrity audits (investigation) and inform the MEC of its findings, conclusions, recommendations by 30 June 2012. | The MEC is informed on the results of UNDP internal investigation, starting on 30 June 2012 and every three following months. | Increased transparency and accountability for UNDP and LOTFA. | <p>Fully Implemented: In May 2011, serious allegations of corruption inside LOTFA were publicly raised. In response, the UNDP Office of Audit and Investigation launched a six-month investigation that included two separate visits to Kabul, interviews of more than 80 witnesses, the review of over 15 procurement files, and an analysis of financial expenditures for all phases of the project. Additionally, an external audit by KPMG was commissioned.</p> <p>UNDP published the KPMG report on April 30, 2012 on its website, and also provided MEC with the 42-page report. The report found that the policies, procedures, guidelines, supervision, monitoring, resources and planning were all deficient in some manner.</p> <p>As of November 2013 the internal investigations have not yet concluded. According to UNDP/LOTFA officials, the internal audit report should be published by December 31, 2013. Two UNDP employees are still on administrative leave pending the result of the investigations.</p> |
| 3.5.2 UNDP has a risk assessment plan for LOTFA to help identify susceptibilities to corruption | | | |
| USAID and UNDP should finalise a risk assessment for LOTFA as directed and the United States MoD should follow up with a publication of its own in conjunction with MEC to evaluate the results. | LOTFA shall have a risk identification conducted and a Risk Mitigation Plan in-place before 30 October 2012. | All vulnerabilities to corruption will be known and strategies can be developed to mitigate those risks. | <p>Partially Implemented: UNDP recently hired a consultant to produce a risk mitigation framework for LOTFA that will replace the old risk assessment plan and was scheduled to be completed - but was not - by the end of 2013. This framework will identify key risks to the project, including vulnerabilities to corruption in various sectors.</p> |

Appendix E

STATUS OF FOURTH SET OF RECOMMENDATIONS AND BENCHMARKS

Following the sixth MEC mission of July 6 - 20, 2012, the Committee published the 4th Set of Recommendations and Benchmarks. This set contains 16 recommendations and benchmarks covering such areas as the Public Inquiry Act, PETS and the issuance of business licenses.

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| 4.1 MoJ will discuss the utility of having ministries provide explanatory memorandum when submitting laws for drafting | | | |
| In order to clarify new laws, drafting agencies should issue Explanatory Memorandum for all new, and some existing, legislation after the legislation has been drafted, but before it is sent to the Taqnin Department of MoJ and the Supreme Court. The Explanatory Memorandum for previous legislation should follow a rough schedule of 3-4 Explanatory Memorandum every 6 months. This may include the <i>Procurement Law</i> , the <i>Anti-Money Laundering Law</i> , and the <i>Anti-Corruption Law</i> , etc. | The drafting of Explanatory Memorandum by the drafting agency for all new pieces of legislation before it is passed on to the Taqnin Department of MoJ. | Explanatory Memorandum will help to simplify legal terms and will help law makers to understand draft law. | <p>Not Implemented: Many ministries, independent institutions and their provincial units claim that laws - particularly those related to financial issues - are complicated and poorly translated from foreign languages. Taqnin acknowledged the importance of having ministries provide explanatory memoranda when submitting laws.</p> <p>The MOJ had previously discussed instituting changes to their internal regulations before asking institutions to provide explanatory memoranda. According to the MOJ, as of November 2013, this procedure has not yet been implemented. Moreover, multiple attempts to table the issue were not successful. According to sources within the MOJ, it is planning a workshop on this matter, however the Secretariat is still awaiting an official response on this issue.</p> |
| 4.2 MEC will develop a draft Public Inquiry Act due to resource constraints within the Afghan government | | | |
| OAA should determine which ministry should draft the Act; and the designated ministry should draft a public inquiry act and submit it to MoJ for review by 1 Hamal 1392 (21 March 2013). | Draft public inquiry act is submitted to MoJ by 1 Hamal 1392 (21 March 2013). | A legal base established for future public inquiries. | <p>Partially Implemented: Although the Constitution of Afghanistan provides authority for the President to establish commissions for the improvement of the administration of the country, there is no legislation that provides for independent and transparent public inquiries into matters of substantial public interest. Due to resource restraints, OAA has asked MEC to draft an act for consideration by the MOJ, which MEC agreed to do. In October 2013, the Secretariat completed a draft <i>Public Inquiry Act</i> and shared it with the OAA, AGO, MOJ and MOI.</p> |
| 4.3 MoE has made efforts to incorporate anti-corruption subject matter in its curricula, while MoHE and the Ministry of Haj and Religious Affairs have not taken the initiative to educate people about corruption | | | |
| MoE, MoHE, the Ministry of Haj and Religious Affairs and the Ministry of Culture in consultation with relevant CSOs shall develop a comprehensive educational module on anti-corruption and enter it in the curricula of schools and universities by 11 Jadi 1391 (December 31 2012) and enter it into effect for the school year of 1392. | A comprehensive educational module on anti-corruption is entered into the curricula of schools and universities by 11 Jadi 1391 (December 31 2012) and enters into effect for the school year of 1392. | Students of schools and universities are aware of the negative consequences of corruption and have the tools to better fight it. | <p>Partially Implemented: The National Curricula Committee of MOHE recently approved the inclusion of anti-corruption issues into university curricula. As a first step, the Sharia Law faculty of Kabul University has been tasked with including anti-corruption issues into their Islamic Culture module. MOHRA oversees over 1,000 schools in Afghanistan with over 300,000 students. Although these religious schools do not have specific anti-corruption courses, it is taught through other subjects such as the Quran and Hadiths. For instance, there are many verses and speeches by the Prophet which prohibit Muslims from embezzling money or receiving bribes. If it can obtain funding, MOHRA has plans to introduce anti-corruption modules and textbooks for its schools. The MOE has stated that they will include lessons on anti-corruption for grades 1 - 6.</p> |

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| 4.4 The international community has measures in place to strengthen civil society's anti-corruption efforts, but it is not sufficient given the scope of corruption in Afghanistan | | | |
| In order for Afghan civil society to be compliant with the civil society provisions of UNCAC (Chapter II Preventive Measures, Articles 10 and 13) and to be in line with national legislation, the international donor community should increase their financial and technical support to civil society in the fight against corruption from 01 Meezan 1391 (22 September 2012). | International donor community's financial and technical support to CSOs active in enhancing transparency and accountability is increased by 01 Meezan 1391 (22 September 2012). | More active role of civil society in the fight against corruption. | <p>Partially Implemented: Certain parts of the UNCAC require GIRoA to promote the active participation of civil society in the prevention of and fight against corruption and to raise public awareness of corruption issues. Given the resource limitations of the government, these obligations can only be fulfilled with the support of the IC.</p> <p>There are several programs that meet the aforementioned objectives, including the following: Denmark, DFID: Afghan Civil Society Trust Fund, 2011-2016 (25 million Danish Krone, £19.9 million). This support funds and strengthens Afghan CSOs to advocate for good governance.</p> <p>Japan/UNODC: Criminal Justice Programme (USD 491,550). This program strengthens the capacity of CSOs to advocate for anti-corruption enforcement measures.</p> <p>UNODC/IWA: Strengthening Afghanistan's Anti-Corruption Measures, 2012 -2013 (USD 40,000), This program supports CSOs in implementing anti-corruption awareness campaigns.</p> <p>Although these initiatives are commendable, the amount of donor funding being spent on anti-corruption efforts is small relative to the amount of overall aid and the scope of the corruption problem in Afghanistan.</p> |
| 4.5 Increased Islamic knowledge and awareness about the negative consequences of corruption will strengthen public participation in the fight against corruption and will reduce opportunities for it | | | |
| (a): The Ministry of Haj and Religious Affairs, the Council of Religious Leaders and Ministry of Information and Cultural Affairs shall start a countrywide anti-corruption campaign through Mosques and religious scholars and the Ministry of Information and Culture shall start a countrywide anti-corruption campaign through media (TV/Radio), especially Radio-Television Afghanistan and government publications such as newspapers, gazettes and magazines in coordination with MEC from 01 Meezan 1391 (22 September 2012) until 01 Jauza 1392 (22 May 2013). | (a): A countrywide anti-corruption campaign started by 1 Meezan 1391 (22/09/2012) and continued until 1 Jauza 1392 (21 May 2013). | All Afghans are aware of their rights and the fight against corruption is strengthened. | <p>Partially Implemented: MOHRA has developed a proposal to conduct a country wide community-based anti-corruption campaign. In November 2013, MOHRA, IWA and Harakat signed an Anti-Corruption Campaign MOU to fund and implement the project. Project funds - estimated at USD 650,000 - are to be provided by Harakat, while IWA will support the implementation. The project has a Management Board which consists of representatives from MOHRA, IWA, and Harakat. The project has three objectives:</p> <ol style="list-style-type: none"> 1. Train 2,700 religious scholars (Mullahs) on corruption-related issues and to become active in the anti-corruption campaign; 2. Assign Mullahs to specific areas to support the anti-corruption public awareness campaign through discussions during Friday Prayers (Namaz Jomaa); media interactions; and the distribution of anti-corruption materials; 3. Hold a competition for students of religious schools, in which students will write articles regarding the Islamic fight against corruption. <p>A report shared with MEC reveals that MOHRA has already conducted many anti-corruption awareness programs in mosques and through the media. This usually takes the form of mullahs or other religious scholars discussing the negative consequences of corruption on national radio or tv channels. MEC will monitor the implementation of the campaign very closely.</p> |
| (b): The Ministry of Haj and Religious Affairs, Council of Religious Leaders and Ministry of Information and Cultural Affairs, in cooperation with its provincial departments should conduct trainings and seminars for Mullahs (religious leaders) and Madrasa teachers starting from 1 Meezan 1391 (22/09/2012) until 1 Jauza 1392 (21st May 2013). | (b): At least 12 training programs and/or conferences per province conducted from 1 Meezan 1391 (22/09/2012) until 1 Jauza 1392 (21/05/2013). | | |

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| 4.6 The lack of accountability at borders, airports, and inland customs depots commission affects the ability of law enforcement to supervise illicit import and export | | | |
| OAA and other relevant institutions are required to take all necessary action to implement the Presidential Executive Commission on Transparency and Accountability at Borders, Airports and Inland Customs Depots. | OAA with the instructions from His Excellency the President of Afghanistan formally names the members of the Borders, Airports and Inland Customs Depots; the Minister of Finance convenes the first meeting of the Borders, Airports and Inland Customs Depots; and Borders, Airports and inland Customs Depots Terms of Reference are drafted and approved by the Borders, Airports and Inland Customs Depots Commission prior to 1 Meezan 1391 (22 September 2012). | The establishment of the Commission and its terms of reference to more effectively deal with illicit activity at borders, customs, and inland customs depots. | Not Implemented: The President issued an order in 2010 to establish a commission to oversee commercial activities and fight corruption at specific border points. Additionally, in 2012, the OAA directed its Monitoring and Evaluation Department to form this commission as soon as possible. Despite these efforts, the commission has not been formed to date. The ACD has stated that influential people in the government are against the concept. A formal TOR was drafted and signed by the MOF and ISAF and subsequently submitted to the President's Office via OAA for approval. Unfortunately, MEC has recently been informed that the proposal was rejected by the President's Office. |
| 4.7 Audited institutions are generally either unaware of audit findings or do not take them seriously | | | |
| Starting from 1 Aqrab 1391 (22 October 2012), all of the relevant inspection bodies should submit a copy of their oversight findings with institutions which will have been monitored by them within 15 working days of completing an audit, unless otherwise provided by the law. | Reports on monitoring submitted to the relevant institutions within 15 days of completing an audit, or within the time limit established by the law. | Institutions being audited will be better aware of their weaknesses and can implement changes accordingly. | Fully Implemented: According to the Unification and Coordination Department, SAO is the only audit office in the country mandated to conduct inspections and audits of governmental institutions. SAO Audit teams share their audit findings with ministries and relevant institutions, but SAO claims that the relevant institutions do not give their reports proper consideration. This, despite the fact that the audit reports are shared with the respective institutions for two months before being finalized to allow them to make corrections and voice their comments. The SAO Analysis Department typically follows up each audit with one or two monitoring visits to the relevant institutions within two months of the audit publication. Additionally, according to the new SAO Law, the SAO has to send all audit reports to the President and Parliament every six months. |
| 4.8 ISAF has demonstrated an unwillingness to consider measures that would reduce vulnerabilities to corruption in relation to tax exemptions under the MTA Agreement | | | |
| GIRoA and the international community shall review the MTA 2002 Agreement in order to reduce opportunities for corruption in relation to the importation of tax exempted goods by 12th Saur 1392 (2 May 2013). | The MTA 2002 Agreement reviewed by 12th Saur 1392 (2 May, 2013). | Tax exemption provisions of the MTA Agreement are appropriately scrutinized and vulnerabilities to corruption reduced. | Not Implemented: The Council of Ministers passed a resolution in 2010 requiring the Minister of Finance and Minister of Foreign Affairs to review all agreements made with the IC and NATO that have tax exemptions, particularly the MTA. The ACD prepared a proposal to reduce opportunities for corruption related to tax exemptions and has attempted, without success, to engage ISAF on the issue several times. MEC has made several efforts to facilitate the implementation of this benchmark, including meetings in early 2013 with representatives from ISAF, the USG, the MOF and MOFA. During these meetings, however, it was made clear in strong terms that ISAF is completely unwilling to consider any measure to verify goods being brought into Afghanistan. Without the cooperation of ISAF there is no possibility for the relevant parties to reach an agreement as stated in this recommendation. |

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| 4.9 A partial public expenditure tracking survey indicates that government programs are more cost effective as compared to programs implemented by the international donor community | | | |
| <p>A joint committee comprised of MoPW, MRRD, Kabul City Municipality, IDLG, the United States Army Corps of Engineers, WB, ADB and other relevant institutions should request technical assistance from WB or other donors to conduct a comparative assessment using the PETS methodology that will demonstrate the amount of leakage on both on- and off-budget infrastructure projects.</p> | <p>A joint committee consisting of MoPW, MRRD, ADB, WB and other relevant institutions is formed and conduct a PETS for a select number (10 on-budget and 10 off-budget) of on- and off-budget construction projects 30 Qaus 1391 (20 December 2012) and the Expenditure Report issued by 1 Hoot 1391 (19 February 2012).</p> | <p>A comprehensive comparative analysis of the differences between implementation of projects done by donors and Afghan institutions.</p> | <p>Fully Implemented: MOPW convened a meeting to develop a response to this recommendation and it was decided that they would lead a collaborative approach to take this study forward. The ministry invited representatives of all relevant ministries and representatives of the WB, ADB, IB, and JICA, among others, to conduct the study. In the first two meetings held on October 3 and 21, 2012, the ADB, WB and IB did not show up. Similarly, other line ministries, excluding the MRRD, MOPW, and MAIL, did not participate in the study.</p> <p>The group studied six projects in MOPW, MRRD and MAIL. The results of the study showed that projects implemented by line ministries are more cost-effective compared to off-budget projects. One comparison regarding seed distribution projects showed that one implemented by MAIL cost USD 11 million and a similar one implemented by USAID cost USD 60 million.</p> <p>MEC is currently undertaking a study on the implementation of donor funded off-budget projects to identify vulnerabilities to corruption and determine their effectiveness.</p> |
| 4.10 Issuance of counterfeit commercial and investment licenses has created numerous challenges and are an opportunities for corruption | | | |
| <p>The Ministry of Commerce, MoF and AISA should publish the overall turnover of commercial and investment firms, as well as individual traders, should verify whether firms are still active or not through renewal of their licenses and should remove firms from the Central Business Registration who are not active. Firms who have not renewed their license or who have not provided the required reports should be removed from the Central Business Registration after 3 months.</p> | <p>Actual presence of the traders and investments and turnover of them published and functionality of firms verified by the end of each year starting from 30 Hoot 1391 (20 March 2013).</p> | <p>Enhanced tracking and registration of businesses in Afghanistan providing for greater transparency and accountability.</p> | <p>Not Implemented: The Law on Business Corporations and Limited Liability Companies clearly states the annual reporting requirements of all companies to the CBR. The law also gives the CBR the power to verify businesses that are not operating and to recommend to the Council of Ministers that they be deregistered. According to MOCI, there are 100,000 registered private companies, of which 65% are inactive. The CBR has attempted to dissolve companies that are not active, have not renewed their license or have not provided the required reports. Immediately after trying to dissolve them, however, the MOF sent MOCI an official letter demanding that they should not dissolve these companies. The apparent reason for this letter is that the MOF is charging penalties to these companies and does not want to lose the potential revenue from these penalties if the companies were dissolved.</p> |

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| 4.11 Efforts have been made to curtail the over reliance on sub-contracting in Afghanistan | | | |
| All contracts should contain a provision that declares the contract null and void if the legal limits of subcontracting are breached. | From 1st Meezan 1391 (22 September 2012) all contracting authorities both national and international will include a contract provision that declares the contract null and void if it violates the legal limits of subcontracting. | Sub-contracting is mitigated and accountability and quality is enhanced. | <p>Partially Implemented: The draft amended <i>Procurement Law</i> was prepared by the MOF and other stakeholders and submitted to the MOJ, and is currently before the Council of Ministers. Article 54 of the draft law includes provisions that would restrict subcontracting to 20 percent of the total value of the contract. The PPU has also prepared a 150-page procurement manual based on international standards and shared it with all government agencies that are responsible for implementing its procedures in their procurement processes. The manual includes a provision that states that subcontracts exceeding 20 percent of the original value of the contract without written consent of the procuring entity are prohibited. The PPU has disseminated this new provision through a circular to all ministries and published it on their website. MEC has learned, however, that the manual is not being properly implemented. There are examples in which as much as 100% of a project was subcontracted by the primary contractor. MEC will evaluate PPU's enforcement of this requirement to determine if any contracts have been nullified as required by this regulation.</p> |
| 4.12 The Ministry of Communication and Information Technology has not conducted a VCA of one of its contracting procedures | | | |
| In order to fill loopholes and prevent opportunities for corruption in MOCIT contracts; it is important that the MOCIT conduct a VCA of the contracting procedure for the telecommunication satellite to find the loopholes and opportunities that need to be strengthened. | The MOCIT shall conduct a VCA in the contracting procedures for the satellite by 11 Jauza 1392 (31 May 2013). | Tackle loopholes and corruption opportunities in satellite contracting. | <p>Not Implemented: MOCIT has not conducted a VCA of its contracting procedure because they are unfamiliar with the VCA process. MOCIT has requested an official letter from MEC to introduce VCA experts that they can consult in order to implement this recommendation. Furthermore, the official letter sent by MEC outlining the recommendation was also shared with ATRA and the Evaluation Committee of the Satellite Project. It was agreed that a report would be sent to MEC outlining the project and its progress to date, however, no report has been sent to MEC so far. An official letter will also be sent to the ministry identifying VCA focal points in order to facilitate the implementation of this recommendation.</p> |
| 4.13 The one stop shop model has had limited success due to narrow and ineffective implementation | | | |
| The pension department of MoL, the land distribution department of the MoRR, the identity card and traffic license department of the MOI, Examination and graduation certificate departments of MoHE, Herat Governor's Office, and IARCSC should start with the introduction of a computerized one stop shop mechanism for dealing with requests of citizens from 1 Aqrab 1391 (22 October, 2012). Similarly, those institutions should ensure that the introduction of the one-stop-shop mechanism reduces the volume of applications lost and application response times. | A computerized one stop shop mechanism is in place in mentioned ministries by 1 Aqrab 1391 (22 October 2012). | Direct contact between customers and civil servants is reduced and the application process simplified thereby reducing opportunities for bribe solicitation. | <p>Not Implemented: The IARCSC has indicated that they are interested in leading this effort on the government's behalf, but do not have the financial resources or technical capacity to do so. MEC recently conducted a VCA of the IARCSC recruitment process that further highlighted the need to establish a one-stop-shop. MEC also conducted a VCA on certificate issuance at the MOHE that recommended the establishment of a one-stop-shop, and has sent three official letters on this subject to the MOHE. MOHE replied to MEC and mentioned several process improvements that have been implemented, but did not express an intention to implement a one-stop shop. The Pension Department of MOLSAMD has automated some procedures through a WB-funded project to reform the pension payment procedures. It has also begun to introduce a retirement application system that simplifies the process by only requiring applicants to engage their own institution's human resources department. Despite the support for this recommendation from the IARCSC, MEC has not seen any progress on the establishment of one-stop-shops at any of the relevant institutions.</p> |

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| 4.14 The new Civil Servant Law has been drafted to regulate the use of acting appointments | | | |
| All public institutions should avoid acting appointments; IARCSC in consultation with other public institutions should ensure the implementation of existing legislative provisions on the acting positions and should prepare a legislative proposal that prohibits consecutive acting appointments in one position and consecutive acting appointments of one public official to different positions in different locations. | Legislative proposal prepared and sent to the Taqnin / MoJ by 1 Qaus 1391 (21 November 2012). | Public office will be staffed by competent and qualified staff appointed on the basis of merit and equal opportunity. | Partially Implemented: In Afghanistan, many high-ranking public officials are appointed to acting positions to circumvent the required merit-based and equal-opportunity procedures. Other public servants are appointed to acting positions in one location and then transferred to other acting positions. The IARCSC has drafted a new <i>Civil Servant Law</i> in collaboration with the MOJ which prohibits unlimited acting appointments. The law has been at the MOJ for the last two years and recently the IARCSC has asked to review it once again. MEC will review the draft law to determine whether or not it satisfies the requirements of this recommendation. |
| 4.15 Allegations of improprieties at Supreme Food Company have never been properly investigated | | | |
| Shafafiyat Task Force and SIGAR, in conjunction with the Control and Audit Office, should start conducting performance and fraud audits of Supreme operations by 1 Qaus 1391 (21 November 2012) and conclude the task by Hammal 1392 (March 2013). | Performance and fraud audit has been conducted by 10 Hammal 1392 (31 March 2013). | The allegations of fraud and overcharging that have been raised about the activities of Supreme are appropriately scrutinized. | Not Implemented: SAO assigned an internal inspector to conduct a collaborative assessment of the Supreme Company, however, according to SAO, Shafafiyat and SIGAR have not assigned their respective investigators to assist in the audit. MEC met officials from Shafafiyat on several occasions and despite commitments to cooperate with SAO on this issue, no concrete actions have taken place. SIGAR was expected to announce a performance audit related to logistics and the control of food supplies within the ANA that would have likely covered Supreme's operations, but have not done so to date. |
| 4.16 The allegations that led to the resignation of high ranking officials from AISA have not been adequately investigated | | | |
| The Chamber of Commerce and Industries should cooperate with the commission set up to investigate the case of the resignation of seven high ranking officials from AISA. The decision shall be published, as well as all the files collected or submitted during the work of the commission. | The Chamber of Commerce and Industries starts to cooperate with the commission in the investigation. The findings of the commission are published by the commission within 4 working days after the commission has submitted its report to His Excellency the President. | The truth behind the resignation of seven high ranking officials from AISA will be revealed by the high level commission appointed to investigate through a fair and transparent investigation process. | Not Implemented: The Chief Executive Officer of ACCI wrote to MEC agreeing to attend any meetings on this issue and a copy of the letter was forwarded to the assigned commission headed by the Minister of Justice. The Minister and the commission ignored this recommendation and the ACCI letter, and did not invite ACCI or any other private sector institutes or representatives to their meetings. The commission instead dealt only with the issue of whether the resignations were against the law. They did not properly investigate the reports of corruption against the new Chief Executive Officer of AISA. The main reason the seven employees resigned was the corruption case against the newly appointed Chief Executive Officer of AISA. The case of the resignations was forwarded to the AGO by the commission, and senior management of the AGO stated that the case will be closed soon because the employees of AISA did not commit any crimes by deciding to resign. |

Appendix F

STATUS OF FIFTH SET OF RECOMMENDATIONS AND BENCHMARKS

On March 24, 2013, following the eighth MEC mission of March 4 - 18, 2013, MEC published the 5th Set of Recommendations and Benchmarks. The set includes 36 recommendations and benchmarks in the areas of infrastructure, mining, elections, off-budget aid, justice and impunity, land usurpation, civil society, international agencies, CTAP, the private sector, and ARDS.

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| 5.1 Enhanced technical and managerial capacity in MoPW will strengthen the monitoring of infrastructure projects and will lower vulnerabilities to corruption | | | |
| MoPW and international donor agencies involved in building infrastructure projects should develop and implement a technical and managerial capacity building program for the Ministry. This program must contain a strategy that will provide short-term expertise and contain a long term capacity building component. | Program developed within six months and implemented within 12 months. | Enhanced managerial and technical capacity of MoPW employees will increase oversight of projects and lead to higher-quality infrastructure projects. | <p>Partially Implemented: The MOPW has prepared an internal capacity building training program that covers administrative topics, technical subjects, language and information technology. The trainings include such modules as communication skills, leadership, report writing, monitoring and evaluation, GIS, railway maintenance, legal awareness, procurement and donor coordination.</p> <p>The ministry has also included an external relation department in its structure for 2014 that will deal with the coordination of all capacity building and other assistance provided to the ministry. The department will coordinate and align donor capacity building trainings and programs with the needs and priorities of the ministry.</p> <p>Currently, JICA, DFID, IRD (USAID) and UNOPS are implementing capacity building programs for the MOPW. The efforts include sending engineers abroad for short-term trainings or for master's degrees in engineering.</p> <p>Additionally, the MOPW signed an MOU with AUAF to provide trainings for MOPW employees. A new faculty of transportation infrastructure was established at AUAF that will train staff for the ministry.</p> |
| 5.2 MOPW must be supported with required financial and technical resources to improve its contract management activities | | | |
| GIRoA should devote financial and technical assistance to ministries - particularly MoPW - to enhance contract management practices. This assistance should include the development of a contract management capacity building plan developed by the MoPW in cooperation with IARCSC. | Financial and technical assistance provided and contract management capacity building plan developed within three months. | Better contract management will reduce vulnerabilities to corruption. | <p>Partially Implemented: Contract management within the MOPW is dealt with by a number of departments, including those involved in project planning, procurement, and implementation. The MOPW has shared a detailed plan regarding procurement activities in contracts and promised to share information regarding contract implementation. It is also developing procurement guidelines together with the ARDS and the PPU that will be shared with MEC upon its completion. The ministry is also working on developing an MIS system that will cover all phases of the contract management cycle.</p> |

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| 5.3 The establishment of construction materials testing laboratories will enhance efforts to detect fraud and corruption in infrastructure projects | | | |
| MoPW should conduct a needs assessment for permanent and mobile quality control testing laboratories in all regional Directorates of Public Works and should establish these laboratories in accordance with the priorities identified by the assessment. | Needs assessment completed and prioritized quality control laboratories, including mobile testing labs, in place within one year. | The existence of quality control laboratories in the capital and provinces will assist in detecting and preventing fraud in infrastructure projects. | <p>Partially Implemented: The MOPW reported that it has conducted an initial needs assessment and decided to establish material testing laboratories for infrastructure projects in five provinces (Kunduz, Nangarhar, Herat, Kandahar, and Paktia) in the near future. According to the head of the MOPW Laboratories Department, some MOPW contracts have provisions stating that each contractor should install a testing laboratory before commencing its work, and that when the project is completed, the equipment should be handed over to the MOPW. The MOPW plans to use equipment from these projects to establish the five laboratories mentioned above. It also plans to establish a mobile testing laboratory that will test on-site activities of infrastructure projects. UNOPS has promised USD 500,000 for this purpose. The MOPW has purchased and equipped the central material testing laboratory and plans to open it next month. In November 2013, according to the deputy minister, the provincial laboratories are equipped and ready to begin operations, but the ministry does not have enough professional staff to operate the labs. They have included additional staff in their tashkil request for next year.</p> |
| 5.4 Enhanced coordination of international donors' selection and implementation of infrastructure projects with Afghanistan's government organizations and among themselves will increase effectiveness of international aid | | | |
| Donor projects should be aligned with Afghan government priorities and donor agencies should coordinate their project selection and implementation with relevant Afghan government institutions and among themselves. | Selection and implementation of projects aligned and coordinated within six months. | Proper implementation, monitoring and maintenance of infrastructure projects through better coordination of projects between donors and Afghan government institutions. | <p>Partially Implemented: MOPW officials told MEC that the situation is improving with more donors registering and aligning their projects with MOPW. Although problems remain with many old projects that have not been completed or are lacking technical specifications, the officials are optimistic that future contracts will not be as problematic, seeing that more donors are now willing to share and align projects with their needs. The MOPW has shared with MEC a list of projects that were either left incomplete or are missing technical specifications or relevant documents. MEC is following up with donors of these projects to encourage them to provide the necessary documentation to the MOPW. Additionally, the ministry has reported that it plans to create an external relations department within its structure for 2014 that will deal with the alignment and coordination of international assistance to the ministry.</p> |

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| 5.5 Disclosure of information on infrastructure projects to the public will increase transparency and accountability | | | |
| MoEc and the PPU should develop binding standards and procedures for all contracting parties (project owner, contractors, and donors) to publish future infrastructure contracts above \$100,000 in full on their official websites and to make non-sensitive information available to the public. | Standards and procedures developed within six months and all contracts exceeding \$100,000 published within three months of the signing of such contracts. | Binding standards and publication of infrastructure project contracts will increase transparency and accountability. | Partially Implemented: The PPU issued a circular requiring all institutions to publish their contracts on their websites as well as the PPU website. The PPU website, however, currently only provides basic details about government contracts. MOEC reported that it has published all of its contracts signed in the last three years, but only limited sections of the contracts were actually published. MOEC has worked with the PPU on developing procedures on the future publication of all contracts. MEC will continue to monitor the MOEC and PPU websites to verify whether full contracts - not only summaries - are published. |
| 5.6 Daily reporting from donor agencies, contractors, consultants and monitoring and oversight bodies is essential for preventing fraudulent activities and delayed and sub-standard work | | | |
| MoEc together with the PPU should develop and implement a communication policy containing provisions for the daily reporting of all activities from work-sites, including deficiencies and delays. | Communication policy developed and implemented within six months. | Proper communication between the project owner and contractor will enhance monitoring and limit opportunities for corruption. | Partially Implemented: The ARDS (MOEC) sent official letters in August 2013 to various relevant ministries requesting them to select a representative to participate in a working group to develop the daily reporting mechanism. The first meeting was held on October 28, 2013 and included representatives of MOPW, PPU, MEC and the ARDS. The group agreed to continue working on the development of the mechanism and decided to invite representatives from other ministries. Another meeting was held on December 2, 2013 where it was decided that each institution will provide a draft mechanism for the next meeting, at which point they will be combined into one unified reporting mechanism. |
| 5.7 A corruption reporting mechanism will help project owners and donors to prevent wrongdoing early on | | | |
| All government institutions who deal with infrastructure projects, particularly MoPW, should establish a corruption-reporting mechanism, such as a "call center" with assistance from relevant donors. The reporting mechanism should help whistleblowers adequately and confidentially report wrongdoings and corrupt practices during the project execution phase. All relevant information (i.e. special phone numbers) regarding the mechanism should be shared with the public. | Corruption reporting mechanism established within six months. | Reporting will lead to increase detection of corruption and deter others from engaging in corruption activities. | Not Implemented: The MOPW is unclear how to develop a corruption reporting mechanism, so MEC has provided them with some background information to support them in meeting this recommendation. The Minister of Public Works and his staff are in full support of this initiative, and MEC will continue to provide support to them as they research best practices and begin to establish the reporting mechanism. |
| 5.8 Community-based monitoring will increase transparency and accountability of projects | | | |
| MRRD in coordination with international donor agencies should develop and implement a mechanism that provides for community-based monitoring of all infrastructure projects. The mechanism should provide capacity building for community-based monitors and other relevant individuals. | Community based monitoring mechanism developed and implemented within six months. | Enhance capacity for local community to monitor and oversee infrastructure projects leading to detection and prevention of corruption. | Partially Implemented: MRRD has shared its Local Governance Policy with MEC, which contains a paragraph on community-based monitoring. MRRD will send official letters to all relevant ministries requesting them to support the monitoring efforts. They also have a mechanism in place that provides training in the monitoring of small-scale projects, which they will expand and offer to staff of all ministries. |

| Recommendation | Benchmark | Expected Outcome | Status and Evaluation |
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| 5.9 Including CSOs, the private sector, and national and international donors in monitoring publicly financed infrastructure projects will increase transparency | | | |
| <p>The multi-stakeholder initiative CoST should be developed by the ANDS Secretariat with technical assistance from CoST's international secretariat. Participants in the initiative should include representatives from ANDS, MoPW, PPU, CSOs, ACCI, ANSA and Shafafyat.</p> | <p>CoST-Afghanistan initiative developed within six months.</p> | <p>Increased transparency in publicly financed infrastructure projects to promote transparency and accountability and monitor publicly financed infrastructure projects.</p> | <p>Partially Implemented: MOEC sent an official request to the CoST International Secretariat in July 2013 for Afghanistan to become a member of CoST. MEC facilitated the subsequent negotiations between MOEC and the CoST International Secretariat. They accepted Afghanistan's request and sent representatives to Kabul in October 2013. MOEC organized a workshop to introduce CoST-Afghanistan to stakeholders on October 22, 2013. The CoST-Afghanistan program was officially launched at a press conference on October 23, 2013, but still needs funds for the establishment of the CoST-Afghanistan Secretariat. MEC will continue to support the initiative and monitor its future activities.</p> |
| 5.10 Sharing technical information/data of infrastructure projects implemented by donors with the Afghan government will increase cooperation between them and will help government institutions properly conduct maintenance work | | | |
| <p>In order to better implement the MoPW Road Maintenance Strategy:</p> <ul style="list-style-type: none"> • MoPW should prepare a list of all road construction projects constructed and financed by international donors that are missing technical information/data and request the missing information from relevant donor agencies. • Donor agencies who constructed and funded highways and roads should share all technical documents/data (i.e. soil investigation reports, survey data, approved design and technical specifications) with MoPW. | <p>List of projects missing technical data prepared within two months and technical documents/data shared within four months.</p> | <p>Better knowledge of road and highway technical information/data will lessen opportunities for corruption in the maintenance phase of these projects.</p> | <p>Partially Implemented: The MOPW has shared a list of road projects missing technical information with MEC. It has tasked its provincial departments with collecting relevant information on infrastructure projects implemented by international donors. Most of its directorates have shared their reports and the MOPW is preparing a detailed report on infrastructure projects that are missing technical information. According to the MOPW, there are lots of problems with PRT-funded projects related to their design, technical specifications and costs, information which is often not shared with the ministry. Technical specifications and other relevant data are missing for most of the projects implemented before 2011. The results of MEC's study into donor-funded off-budget projects indicate that the level of engagement with the MOPW and sharing of technical information varies according to the donor and PRT. Some very important road segments, including Kabul-Jalalabad, Jalalabad-Torkham, Kabul-Kandahar, and Kandahar-Herat, are still missing necessary documentation. The MOPW has requested MEC support in collecting this information from donors.</p> |

| Recommendation | Benchmark | Expected Outcome | Status and Evaluation |
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| 5.11 Conducting a comparative study of international experiences in the mining sector will prevent unsuccessful experiences and increase successful experiences of other countries in Afghanistan | | | |
| IWA – as the only Afghan CSO with extensive experience in mining – should undertake a mining study in cooperation with MoM. The study should compare the experiences of countries that have successfully regulated and benefited from the mining industry with those that have not to identify best practices that can be implemented in Afghanistan. | Comparative study completed within 6 months. | A comparative study of the mining sector will lay the foundation for future policy development in mining. | Partially Implemented: IWA has hired researchers and the services of consultants in order to conduct the research necessary for this study. The study will include comparative analyses of mining in Azerbaijan, Burkina Faso, the Democratic Republic of Congo, Kyrgyzstan, Mongolia, and Timor-Leste. A first draft of this study was delivered in October 2013, but had many shortcomings. MEC received an updated copy of the draft report in December 2013. The current version, which attempted to address many of the shortcomings previously identified, is under peer review and should be published in February 2014. |
| 5.12 Preventing the recruitment of past IEC employees who have engaged in corruption will minimize fraud in the upcoming elections | | | |
| The IEC should vet all job applicants for the 2014 and 2015 elections against the list of individuals who allegedly participated in illicit activities in past elections to ensure that they are not recruited again. The IEC should provide MEC with a report on their vetting activities. | The IEC reports to MEC within 2 months and every 3 months thereafter. | Increased transparency in IEC hiring process leading to reduced fraud in the elections. | Fully Implemented: An IEC representative stated that this recommendation had been addressed through the creation of a list - and associated database - of thousands of employees who committed fraud or misused their official authority during the previous elections. Access to the database, which includes names, addresses and workplaces of the employees, has been granted to all IEC provincial offices. Although MEC has not seen the list or database, the IEC claims that it will enable them to ensure that the blacklisted employees are not hired for the upcoming elections. |
| 5.13 The IEC must strengthen its plans around voter registration to ensure that vulnerabilities to fraud are addressed as much as possible | | | |
| The IEC should enhance its voter registration plan to register voters in insecure areas through the utilization of existing government infrastructure and public services, including clinics, mosques, and schools. This should be done with the support of security forces to protect these institutions and staff. | Voter registration plan enhanced within two months. | A comprehensive and reliable voter list reduces vulnerability to corruption in issuing voter cards. | Partially Implemented: The IEC completed the first two rounds of voter registration, which were held in May and July 2013. The operational plans for both rounds were shared with the ANSF. The IEC has signed MOUs with the MOE, MOHRA, MOHE and MOPH that allows the IEC to use the ministry facilities in non-urban areas for the upcoming election. The IEC has indicated that they are capable of implementing their plan throughout Afghanistan except for in nine districts - representing approximately 40,000 voters - which they deem inaccessible due to security problems. To address this problem, the IEC has developed a plan to send mobile voter registration teams to these areas a couple of weeks before the election with security forces to provide additional election security. Additionally, according to IEC's Chief Electoral Officer, they will need around USD 50 million to allow for Afghan refugees in Pakistan and Iran to vote, but they currently do not have the funds to support this task. |

| Recommendation | Benchmark | Expected Outcome | Status and Evaluation |
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| 5.14 The publication of all past development projects will enhance transparency and accountability | | | |
| MoF should prepare and publish a list of all development projects implemented in Afghanistan since 2005 in cooperation with MoEc and other line ministries and donor agencies. Any administrative or technical problems in compiling the list should be made public. MEC will selectively monitor and evaluate specific projects from the list. | The list prepared and published within six months. | Improved transparency, accountability and public awareness through an enhanced government role in monitoring of development projects. | Not Implemented: The Aid Coordination Unit of the MOF promised to provide MEC with the list of all development projects implemented in Afghanistan since 2005, however, as of December 2013, MEC has not received the list. MEC will continue to follow-up with the MOF to try to obtain the list of projects. |
| 5.15 Public engagement in the budget process will help to ensure that budget allocations are not made on the basis of undue influence | | | |
| MoF and MoEc should ensure that the government's annual budget aligns with the needs of all provinces through the active participation of provincial development councils representing local government needs; the advisory functions of provincial councils representing the people; and the use of budgeting best practices. | Annual budget aligned with provincial needs in the 2014 budget cycle. | Public participation leads to increased transparency and accountability and the reduction of undue influence. | Partially Implemented: GIROA committed, through the TMAF, to develop a provincial budgeting process linked to a provincial planning process in which Provincial Councils have consultative and oversight roles. Progress in this area has been slow, however, and sub-national governance remains a politically sensitive area. The Strengthening Provincial Administration and Delivery Program is a provincial budgeting program that replaced the District Delivery Program and ensures that local government can be responsive to the needs of the people. It is focused on capacity building in planning and budgeting at the provincial level, is run by civil service staff, and links national plans and policy guidance to provincial-level plans. DFID took on full management of this program in 2012. MEC met with the Head of the Sub-national Financing and Budgeting Unit of MOF in December 2013 and he stated that the MOF still prepares their annual budget using the old budgeting procedures. The General Budget Directorate, however, is developing a new budgeting policy that should be completed by the end of 2013. Once completed, a workshop will be conducted by the MOF to explain the policy to provincial representatives of the IDLG and MOEC. |
| 5.16 Preparing a mechanism to ensure that evidence is properly maintained will lead to more effective prosecutions | | | |
| In order to better utilize evidence during investigation and prosecution, MoI, AGO and other relevant agencies should enact enhanced procedures and practices to properly document, control, dispose of and purge evidence and property. | Procedures and practices enhanced within 6 months. | All evidence and property will be better maintained and managed increasing the effectiveness of investigations and prosecutions; and evidence will be protected from being used inappropriately. | Partially Implemented: The MOI has a dedicated place for storing most evidence from cases; in situations where DNA is involved (e.g. a knife covered with blood), the evidence is kept in the MOI's Criminology Department. At the AGO, as far as MEC is aware, there are dedicated rooms for storing evidence. According to some sources at the AGO, there have been instances where evidence has been stolen or disposed of that resulted in the accused being released or found innocent. These sources also stated that the storage areas are not managed well in general. According to AGO officials, there is no central storage facility for evidence; instead, separate evidence storage facilities are located in six different police zones. The facilities are also lacking secure entry controls. |

| Recommendation | Benchmark | Expected Outcome | Status and Evaluation |
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| 5.17 Improved standards for transferring cases from one province to another will reduce impunity | | | |
| The Supreme Court is requested to improve standards and procedures for transferring criminal cases from one province to another. | Standards and procedures improved within six months. | The opportunity for corruption will be reduced and influential people will not remain immune from penalty. | Partially Implemented: The Study and Research Department of the Supreme Court submitted MEC's recommendations to the High Council of the Supreme Court. The Supreme Court wrote an official letter to MEC stating that they issued a resolution ordering the courts to strictly follow the laws concerning the transfer of criminal cases from one jurisdiction to another in a way that avoids impunity and the misuse of justice. |
| 5.18 The assessment of the implementation of UNCAC requires the full participation from relevant ministries of the Afghan government and civil society | | | |
| Relevant organizations, including the AGO, MoJ, MoI, the Supreme Court and CSOs should fully and effectively participate in the UNCAC self-assessment being led by HOO with support from the UNODC. HOO and the UNODC should provide information to MEC on the participation of the relevant agencies. | Information on the participation of the relevant agencies provided within 3 months. | Broad participation will ensure that the assessment is complete and accurate, thereby forming the strongest grounds for future action and technical assistance. | Partially Implemented: HOO is the GIRoA focal point for the UNCAC self-assessment and as such, proposed the establishment of a committee, consisting of representatives of the Supreme Court, AGO, SAO, NDS and HOO, to undertake the self-assessment. Following the President of Afghanistan's approval of its establishment, the committee underwent the self-assessment and submitted the assessment report to the UNCAC Secretariat. The assessment report is publicly available on the UNODC web site (www.unodc.org/documents/treaties/UNCAC/SA-Report/2013_11_28_Afghanistan_SACL.pdf). MEC has concerns regarding the accuracy of the contents of the report and will raise them with UNODC. MEC's analysis of the UNCAC assessment report can be found on page 18 of this report. |
| 5.19 The full assessment on the implementation of UNCAC should be made available to participants | | | |
| HOO should share the results of its self-assessment of the implementation of the UNCAC with all participant stakeholders and MEC. | The self-assessment report shared within one month of its completion. | The distribution of the self-assessment will provide information for civil society and policy makers to have an informed basis to monitor the government's progress in strengthening the justice system. | Fully Implemented: The committee approved by the President of Afghanistan - consisting of representatives of the Supreme Court, AGO, SAO, NDS and HOO - has finished the UNCAC self-assessment report and submitted it to the UNCAC Secretariat. The assessment report is publicly available on the UNODC web site (www.unodc.org/documents/treaties/UNCAC/SA-Report/2013_11_28_Afghanistan_SACL.pdf). MEC's analysis of the UNCAC assessment report can be found on page 18 of this report. |
| 5.20 The legal framework for identifying and processing cases of land usurpation should be reviewed and enhanced | | | |
| ARAZI with the support of the AGO should review the legislative framework for detecting, investigating and prosecuting land usurpation offences and identify required amendments to enhance the effectiveness of dealing with land usurpers and returning property to its rightful owners. | Review conducted and required amendments identified within 3 months. | The identification of structural changes in the way that land usurpation cases are investigated and prosecuted. | Fully Implemented: ARAZI, in addition to the MOJ, AGO and Parliament, have taken initiatives to improve the detection, investigation and prosecution of land usurpation cases. On August 10, 2013 MEC received a report that indicated that there is only one resolution on land usurpation; ARAZI stated that they have plans to develop other related legislation in the future with the cooperation of security and justice institutions. ARAZI is developing a new law on land restitution and land confiscation; according to this recommendation, ARAZI should consider the detection, investigation and prosecution of land usurpation offenses in the law. The AGO is the responsible party for dealing with the investigation and prosecution of governmental land usurpation offenses, which is consistent with the Constitution and existing laws since the AGO is the only institution with the authority to investigate and prosecute criminal offenses. |

| Recommendation | Benchmark | Expected Outcome | Status and Evaluation |
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| 5.21 The specific criminalization of land usurpation will help to more effectively deal with land usurpers and deter others from future infractions | | | |
| GIRoA should ensure that the acquisition and possession of illegally acquired private or public land is explicitly criminalized through specific legislative provisions. | Legislative amendment submitted to Parliament within 6 months. | Prosecutors have a clear offense to pursue in relation to land usurpation, which will strengthen enforceability. | Partially Implemented: The Special Commission on the Study and Monitoring of Government Affairs of the Parliament has drafted a <i>Law on Illegal Possession and Acquisition of Government and Private Properties</i> in 2013, in which illegal acquisition and possession of land has been criminalized and penalties for land usurpation have been established. The draft law was introduced in the Upper House in September 2013 and was also sent to the relevant commission. |
| 5.22 All cases of land usurpation need to be effectively tracked to ensure that they are being investigated and prosecuted | | | |
| ARAIZI, MoI, HOO, IDLG, and the National Directorate of Security should provide MEC with a list of all land usurpation cases referred to the AGO since January 1, 2010, including unique case numbers and the date that it was submitted. The AGO should submit to MEC a list of all cases received from these institutions as of January 1, 2010, including the same information, the current status and any reasons for delay. | Lists provided within six months and every four months thereafter. | Tracking land usurpation cases will strengthen transparency and accountability as cases progress through the system. | Partially Implemented: ARAIZI told MEC that the list of all land usurpation cases will be announced through security or judicial institutions. Despite this, MEC is unaware of any list being published and ARAIZI has not been forthcoming in agreeing to meet with MEC again or answer inquiries regarding this recommendation. IDLG has collected the requested information through its municipalities and shared it with MEC and the OAA. The MOI has sent a list of over 190 land usurpation cases to the AGO and regional prosecution departments, but has not received any feedback from them. This list was also shared with MEC. MEC will look into the possibility of supporting the implementation of this recommendation by suggesting to the Case Management Working Group that a field be added to track land-related cases. |
| 5.23 Cases of land usurpation and their outcomes need to be publicized to ensure transparency and accountability and to act as a deterrent for other land usurpers | | | |
| The Supreme Court is requested to publish all its judgments related to land usurpation from January 1, 2010 onwards. | Land usurpation judgments are published within three months and onwards. | Transparency and accountability for concluding land usurpation cases is enhanced, as well as the monitoring of the outcomes to ensure that perpetrators are held accountable. | Fully Implemented: The Chief Justice of the Supreme Court ordered the Publication Directorate of the Supreme Court through resolution 297 to publish all judgments related to land usurpation in Mezan, the official publication of the Supreme Court. The MEC Secretariat has confirmed the publication of land usurpation cases in the Mezan Magazine. |
| 5.24 The possible role of international actors in supporting land usurpers needs to be explored and understood so that effective interventions can be developed if necessary | | | |
| ARAIZI should collect information on illegally-acquired government and private land that is being used by – or with the support of – international organizations. This information should be shared with MEC. | Information collected and shared with MEC within six months. | The extent of international involvement in land usurpation will be understood thereby allowing informed policy development. | Partially Implemented: The Policy and Planning Director of ARAIZI told MEC that they have started an assessment of 1,200 military bases regarding land usurpation. The assessment found that some governmental and private lands had been usurped by the international forces in some provinces. Although in many cases ISAF is paying rent for the use of such land, in some cases the landlords have unsuccessfully requested the land back from ISAF. The director stated that he believes that if ISAF will eventually return the land and facilities to the rightful owner, he does not consider this usurpation. |

| Recommendation | Benchmark | Expected Outcome | Status and Evaluation |
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| 5.25 An expert commission consisting of national and international NGOs is best placed to evaluate NGOs against the NGO code of conduct | | | |
| The Directorate of NGOs in MoEc should establish an Expert Commission consisting of NGO coordinating bodies (namely ACBAR, ACSFo, ANCB, AWN and Counterpart International) to conduct a review of the structures, capacity, and effectiveness of all NGOs in line with the requirements of the code of conduct for NGOs. This review should be financially supported by the international community and should provide progress reports to MoEc, MEC, and the public. | Expert Commission established within three months and progress reports are provided every six months thereafter. | All the existing NGOs are monitored and evaluated. | Not Implemented: In an official letter from MOEC they stated that the ministry is discussing ways to monitor and evaluate NGOs. They have considered the possibility of creating an expert commission, which would require more discussions to select the proper institutions to be involved, an appropriate structure to be developed and the necessary funding to be secured. MEC is awaiting an official response from MOEC on this issue and will monitor the ministry's efforts to evaluate NGOs. |
| 5.26 Key information about individual NGOs should be published to enhance accountability and oversight | | | |
| MoEc should create a publicly available database of all NGOs in Afghanistan, which includes their name, address, basic activities, previous year's financial statements, annual budget, and composition and names of its executive board and executive director, as well as three major donors of each NGO. | Database created and made available to the public within one year. | NGOs' effectiveness is increased and systemic classification and overview of the NGOs is ensured. | Partially Implemented: MOEC indicated in an official letter that the work on the creation of an NGO database has begun with the financial support of Counterpart International and AIMS. Additionally, media reports and the MOEC website indicate that MOEC launched a database on October 23, 2013 that will improve the work of NGOs. MEC has not been able to confirm if the required NGO information has been entered into the database or not. |
| 5.27 Forensic audit can identify corrupt practices within UNHCR | | | |
| UNHCR should conduct and publish the results of a forensic audit starting from January 1, 2010 and inform MEC of its findings, conclusions, and recommendations. The audit should capture the potential misuse of funds for facilities, secondary accounts, salary administration, and the construction of shelters. | MEC is informed of the results of the forensic audit within six months. | Transparency and accountability in the office of the UNHCR will be strengthened. | Partially Implemented: In November 2013 the Secretariat learned from an official letter from MOFA that the UN Office of Internal Oversight Services audit of the UNHCR/MORR program had been completed. Subsequently the UN Inspector General's Office conducted its own investigation and concluded that the MORR engaged in questionable transactions that were in violation of their 2012 agreement with UNHCR. Some of these transactions included an office rental that included conditions in direct contravention of UNHCR rules and GIRA laws; reimbursements to MORR officials that were supported by fake documents; and the use of funds earmarked for IDPs for MORR staff bonuses. The UN is seeking the reimbursement for the misappropriated funds from the MORR. Additionally, the UN audit report should be published on its website according to a UN General Assembly resolution, but as of December 2013 the report has not been published. MEC was also not able to get an appropriate response regarding actions taken against responsible individuals. |

| Recommendation | Benchmark | Expected Outcome | Status and Evaluation |
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| 5.28 Internal integrity and finance audit can identify corrupt practices within MoRR | | | |
| SAO – in cooperation with FINTRACA – should immediately conduct an internal integrity and finance audit of MoRR starting from January 1, 2010 and inform MEC of its findings, conclusions, and recommendations. The audit should capture the potential misuse of funds for facilities, secondary accounts, salary administration, and the construction of shelters. | MEC is informed of the results of the internal audit within two months. | Transparency and accountability in MoRR will be strengthened. | Partially Implemented: In an official letter SAO informed MEC that they assigned two auditors to audit the MORR with a focus on the potential misuse of funds for facilities, secondary accounts, salary administration and shelter construction. The SAO auditors told MEC that often the MORR employees do not allow themselves to be interviewed, do not provide requested documents, and are generally uncooperative. Although the audit is not finalized, SAO informed MEC that the findings showed embezzlement of UNHCR funds by MORR officials that will be used as a basis for a criminal case. |
| 5.29 Hidden or second accounts in ministries need to be identified and eliminated to prevent corruption and the misuse of funds | | | |
| SAO should evaluate other ministries in their regular audit process to ensure that there are no secondary accounts in other ministries. | Audits begin to include evaluation for secondary accounts within one month and a report is sent to MEC within eight months. | Transparency will be strengthened in the audited ministries. | Partially Implemented: In an official letter SAO informed MEC that they have included this recommendation in their working plan and will send a complete report to MEC about their findings once the evaluations are completed. |
| 5.30 Vulnerabilities to corruption in UNHCR need to be better understood to ensure that measures are in place to prevent and detect corruption | | | |
| UNHCR should conduct a vulnerability to corruption assessment and provide MEC with a report in sufficient detail to allow MEC to evaluate the results. The vulnerability to corruption assessment should capture the potential misuse of funds for facilities, secondary accounts, and salary administration. | Vulnerability to corruption report completed and submitted to MEC within six months. | Vulnerabilities to corruption will be identified allowing informed measures to be developed and implemented. | Not Implemented: UNHCR wrote to relevant line ministries in April 2013 informing them that they were stopping payments to individual DORR bank accounts to address MEC's recommendation. Double payments to the MORR and DORRs have also been stopped, secondary accounts have been closed, and the UN Afghanistan Resident Coordinator's Office has taken all necessary steps to inform other UN agencies on this issue. The Secretariat has been informed by UNHCR in October 2013 that the requested VCA report will be conducted following the UN Office of Internal Oversight Services audit. MEC's VCA Unit also completed a VCA of MORR's land distribution process in mid-2013; the findings of this VCA can be found in the VCA section of this report. |

| Recommendation | Benchmark | Expected Outcome | Status and Evaluation |
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| 5.31 Enhanced cooperation between UNHCR and relevant institutions will enhance transparency in UNHCR funded projects | | | |
| UNHCR and MoRR should sign a memorandum of understanding detailing the prioritization, selection and implementation of the projects funded by UNHCR. UNHCR should provide MEC, MoF, and MoEc with a copy of the executed memorandum of understanding. | Memorandum of understanding signed and provided to MEC, MoF, and MoEc within two months. | Coordination and transparency in implementation of projects will be improved and strengthened. | Not Implemented: UNHCR has prepared a sub-agreement with MORR that does not meet the requirements of this recommendation. MEC sent a letter to UNHCR stating that an MOU, not a sub-agreement, was recommended; UNHCR subsequently postponed signing the sub-agreement and is currently in discussion with MORR and MOF regarding an MOU that covers such issues as parallel structures and capacity building. Unfortunately, as of December 2013, UNHCR and MORR still have not signed an MOU. |
| 5.32 A Steering Committee with executive power and appropriate membership would enhance accountability of CTAP | | | |
| MoF should replace the CTAP Advisory Board by re-establishing the Steering Committee with executive powers and representation from the IC. | Steering Committee established within three months. | Transparency and accountability in CTAP will be strengthened. | Not Implemented: The Minister of Finance sent a letter to MEC in September 2013 responding to criticism of the lack of progress in addressing problems with CTAP as highlighted in recommendations 5.32 and 5.33. The Minister's letter rejected the allegations of nepotism, fraud and negligence in CTAP and claimed that the program's recruitment process is merit-based and transparent. To justify his claim, he stated that CTAP has successfully gone through multiple audits. An analysis of the audit reports, however, actually shows that the auditors have many of the same concerns with the program that MEC has identified. The MOF has previously shown an unwillingness to fulfill this recommendation, let alone address any of the deficiencies in the operations of CTAP. MEC replied to the MOF in an official letter in October 2013 insisting on the implementation of the recommendations. Subsequently, MEC met with the Director of CTAP and he stated his intention to implement MEC's recommendations. MEC will involve donors in this issue if it fails to see action taken by the MOF. |
| 5.33 An audit is required to bring transparency to CTAP | | | |
| SAO – in cooperation with the IARCSC – should conduct a financial and performance audit of CTAP personnel, including those embedded in different ministries and institutions and inform MEC of the results. | Audit completed and MEC informed within three months. | Increase transparency and accountability. | Not Implemented: The SAO told MEC that they are unable to conduct an audit of CTAP due to a lack of personnel. The IARCSC had said that they were willing to cooperate if SAO finds the personnel to move forward with the CTAP audit. |

| Recommendation | Benchmark | Expected Outcome | Status and Evaluation |
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| 5.34 MoCI's action plan to respond to the DBI must take into account anti-corruption measures to avoid increasing vulnerabilities to corruption | | | |
| MoCI should update and implement its DBI action plan, in cooperation with relevant stakeholders, to ensure that all measures are consistent with anti-corruption principles and do not introduce vulnerabilities to corruption. | Action plan updated within two months. | | <p>Partially Implemented: The MOCI updated the draft DBI action plan and is planning to meet all relevant stakeholders to discuss data collection methods related to the action plan indicators. The plan is focused on the following four main indicators: construction permits; business permits; access to credit; and cross-border trade.</p> <p>The MOCI incorporated recommendations of the WB into the action plan, including the removal of criminal background checks.</p> <p>To effectively monitor the action plan, the MOCI plans to establish a steering committee comprised of relevant stakeholders such as Harakat, MEC, IFC, and USAID, to oversee the process.</p> <p>The MOCI will provide details to MEC on each indicator in the near future. The Doing Business Annual Report will also be published soon by the MOCI and shared with MEC.</p> |
| 5.35 The development of a unified blacklist would enhance the effectiveness of efforts to identify and avoid contracting with corrupt contractors | | | |
| MoEc should develop a unified blacklist of contractors in cooperation with key donors involved in anti-corruption initiatives and other relevant national and international entities. The unified blacklist should be regularly updated and published on the websites of all participating organizations and in national and local newspapers. | Unified blacklist developed and published within four months with updates published every month thereafter. | Increased effectiveness in using blacklists to avoid awarding contracts to corrupt contractors. | <p>Not Implemented: MOEC rejected their role in the implementation of this recommendation, stating that according to the <i>Procurement Law</i>, the PPU (MOF) is the responsible institution. MEC will follow up with the PPU on this issue.</p> |
| 5.36 An audit will clarify allegations of questionable practices within ARDS | | | |
| SAO – with assistance from the WB – should conduct a financial and performance audit of ARDS from January 1, 2010 – December 31, 2012 and publish the results in national print and electronic media. | Audit completed and results published within four months. | Enhanced transparency and accountability of ARDS. | <p>Not Implemented: SAO, in an official response, indicated their inability to conduct an audit of ARDS because of a lack of personnel and their involvement in other audits. MEC will meet again with the SAO officials to determine their capabilities to conduct this audit.</p> |

Appendix G

STATUS OF KABUL BANK PUBLIC INQUIRY RECOMMENDATIONS

The Kabul Bank Public Inquiry Report, published in November 2012, included 48 recommendations for governmental institutions related to the Kabul Bank fraud.

| Category | Implementing Body (-ies) | Status and Evaluation |
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| | | <p>1. The Government of the Islamic Republic of Afghanistan should ensure the adoption of legislation establishing the institution of an Ombudsman who will ensure protection of human rights and liberties, initiate procedures to ensure that laws and administrative decisions, including presidential decrees, comply with the constitution of Afghanistan; review the independence of quasi-governmental institutions, including their exercise of discretionary powers, and the avoidance of undue political influence; and who will report directly to Parliament. The Ombudsman should have statutory investigative powers sufficient to compel oral and documentary evidence.</p> |
| Governance | GIRoA | <p>Not Implemented: The concept of an Ombudsman is new to Afghanistan. According to the OAA's Director of Organizational Structure Department, an Ombudsman's office should be established based on the law. The OAA requested details from MEC on the proposed establishment of an Ombudsman's office, including its independence and financing. In November 2013, MEC has sent an official letter to the President's Office General Directorate of Complaints requesting a meeting to discuss the concept and establishment of an Ombudsman's Office. MEC is considering the possibility of drafting legislation on the creation of an Ombudsman's Office.</p> |
| | | <p>2. The heads of independent quasi-governmental organizations should undertake training at the beginning of their appointment regarding administrative independence, the appropriate use of discretion, and inappropriate government interference or influence.</p> |
| Governance | GIRoA | <p>Partially Implemented: MEC met with the Afghanistan Civil Service Institute in November 2013, where they agreed to implement this recommendation in the following phases:</p> <ul style="list-style-type: none">1) Share a list of relevant institutions with MEC;2) Share the curricula of existing trainings that are relevant for the independent quasi-governmental organizations with MEC;3) Identify gaps in the current trainings of the independent quasi-governmental organizations in relation to the requirements of this recommendation. <p>The Civil Service Institute has given MEC the list of relevant institutions and determined that <i>administrative independence, the appropriate use of discretion, and inappropriate government interference or influence</i> are not topics covered by any of their training programs. They told MEC to make a formal request to IARCSC if they want the Civil Service Institute to provide trainings on these topics. MEC sent this request letter to the IARCSC in December 2013.</p> |
| | | <p>3. The Government of the Islamic Republic of Afghanistan should ensure adoption of a law regulating financing of political parties and electoral campaigns to ensure that all political contributions are transparent and reported to the public.</p> |
| Governance | GIRoA | <p>Partially Implemented: In Afghanistan, the <i>Law on Political Parties</i> created regulations on the financial affairs, transparency and funding of political parties. Despite this positive step, the law did not require that the political parties' funding sources be made public or include procedures to verify compliance. MEC has serious concerns about the verification of compliance with the law's regulations, especially regarding the use of government resources and sources for campaign financing.</p> <p>MEC's Secretariat developed a policy paper in the area of campaign financing and the financing of political parties that includes recommendations developed to ensure the effective implementation of the law. These recommendations are part of MEC's Sixth Set of Recommendations and Benchmarks and are particularly relevant as the Presidential and Provincial Council elections are scheduled for April 2014.</p> |

| Category | Implementing Body (-ies) | Status and Evaluation |
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| | | 4. The Government of the Islamic Republic of Afghanistan should ensure adoption of legislation that will enhance whistleblowing, protect whistleblowers from adverse consequences of their disclosures, establish whistleblower and witness protection programs, and protect public officials from criminal and civil liability or adverse employment action when conducting official duties in good faith. |
| Governance | GIRoA | <p>Partially Implemented: The existing <i>Anti-Corruption Law</i> contains an article on “Information and Witness Immunity,” that states that individuals who willingly cooperate in administrative corruption cases as an informant or assist during an investigation or trial as a witness or provide admissible evidence or documents for such cases shall be protected from any type of pressure or intimidation and shall be rewarded. Disclosing the identity of such individuals, without their consent, is also prohibited.</p> <p>This article, however, is not sufficient to fully protect whistleblowers. Based on international best practices and the requirements of signatories to the UNCAC, Afghanistan should enact a <i>Whistleblower’s Protection Law</i> to fight corruption and protect and support whistleblowers.</p> <p>Although MSI developed a preliminary draft of the <i>Whistleblower’s Protection Law</i> and sent it to the HOO, they have made no progress since receiving the draft.</p> |
| | | 5. The Government of the Islamic Republic of Afghanistan should ensure the establishment of an institute of directors of companies to develop and monitor standards for corporate governance in order to ensure that all corporations are governed professionally. |
| Governance | GIRoA | <p>Partially Implemented: The MOCI agreed that the establishment of a body for responsible corporate governance is needed, and stated that they are willing to create a “corporate governance” subdivision under the Private Sector Directorate to facilitate companies with the development of standards for corporate governance to ensure that all corporations are governed professionally.</p> |
| | | 6. The Government of the Islamic Republic of Afghanistan should establish a self-governing professional accounting and auditing body wherein all the accountants and auditors get their licenses and which can take disciplinary action. This body should establish requirements for education and should establish accounting and auditing principles that will govern every industry. This body should regularly monitor adherence to these principles and should create a public registry of all audit and accounting companies that are licensed and in good standing. |
| Regulatory Environment | GIRoA | <p>Partially Implemented: The Afghanistan Accountants and Auditors Association was established in August 2013. This association aims to promote proper audit practices in private and governmental organizations. The objectives of this association are to revise the <i>Accounting Law</i> to meet international standards, establish proper auditing practices in Afghanistan, and include accounting subjects in the curricula of private and government educational institutes.</p> |
| | | 7. The Government of the Islamic Republic of Afghanistan should establish requirements for economically important companies and institutions to develop and publish annual reports, including audited financial statements prepared according to the standards set by the professional oversight body, three-months after the end of their fiscal year. |
| Regulatory Environment | GIRoA | <p>Partially Implemented: According to Article 15 of the <i>Corporations and Limited in Liability Law</i>, private companies should file annual reports with the CBR, although in practice this provision is rarely followed.</p> <p>Based on this recommendation, the MOCI will send official letters to companies requiring them to file their last annual reports with the CBR; if they fail to do so, the MOCI will take steps to dissolve the company according to the provisions of the <i>Corporate Law</i>.</p> |
| | | 8. The Afghanistan Investment Support Agency should make additional data related to registered companies available to the public online, including complete information related to the companies owners and management teams. |
| Regulatory Environment | AISA | <p>Not Implemented: The Secretariat arranged a meeting between the Committee and the AISA Chief Executive Officer in September 2013 to discuss the status of the implementation of AISA’s benchmarks, but he did not attend. The Secretariat has tried many times to follow up with AISA, but they have been generally unresponsive. In one instance they promised to provide MEC with information regarding this recommendation, but so far MEC has received nothing.</p> |

| Category | Implementing Body (-ies) | Status and Evaluation |
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| | | 9. The Financial Tracking and Reports Analysis Centre – with the assistance from the international community – should develop mechanisms, including information technology, that would allow it to proactively monitor all banking transactions and to be automatically and immediately notified of suspicious transactions and large cash transfers. The appropriate legal requirements for this new function should be clearly set-out in Financial Tracking and Reports Analysis Centre's constituting legislation. |
| Supervision & Enforcement: Capacity | | <p>Partially Implemented: An international donor has promised to support FINTRACA in acquiring banking software that would meet the requirements of this recommendation, but the assistance has not been provided yet. Currently, few banks have the necessary information technology systems to be able to flag LCTRs and send them to FINTRACA. FINTRACA will encourage all banks operating in Afghanistan to implement software that allows for the automatic identification of accounts and transactions that require a regulatory filing. The FIU also needs to be equipped with software that enables them to receive system-generated STRs and LCTRs.</p> <p>A new IMF project has been launched to improve the government's ability to develop and effectively implement its AML and CTF framework. This project is expected to reduce money laundering and the financing of terrorism; improve the AML and CTF supervisory regime; and increase the capacity of AML and CTF supervisors and the FIU to understand money laundering and terrorist financing risks.</p> |
| | | 10. Da Afghanistan Bank – with the assistance from the international community – should implement a program for supervisory capacity building particularly focused on fraud detection, financial analysis, and monitoring of bank information systems tailored to the level of development of the financial system in Afghanistan. Furthermore, special attention should be devoted to monitoring of the effectiveness of the supervisory process and prompt planning of changes to the system, if required. |
| Supervision & Enforcement: Capacity | | <p>Fully Implemented: According to DAB, 49 trainings have been conducted for FSD staff on the principles of effective banking supervision, on-site inspections, financial analysis, risk-based supervision, accounting, the AML, enforcement actions and fraud. FSD's supervisor capacity building is an important part of DAB's five-year strategic action plan, and will be addressed in the following two ways:</p> <p>Long term: Introduce a certificate system whereby all staff will be provided professional certificates on their specialized supervisory function;</p> <p>Short term: The FSD will prepare a list of annual trainings to be provided by the human resources department. The trainings will be divided into general trainings that will be required for all supervisors and specialized topics that will be tailored to specific functions.</p> <p>Additionally, the IMF has funded a project to improve the capacity of AML/CTF supervisors and the FIU to identify and fight money laundering and terrorist financing.</p> |
| | | 11. The Financial Tracking and Reports Analysis Centre and the Financial Supervision Department of Da Afghanistan Bank should vigorously implement their memorandum of understanding to share information more effectively, particularly in relation to the results of bank examinations and suspicious transactions or large money transfers. |
| Supervision & Enforcement: Cooperation | | Not Implemented: FINTRACA has drafted an MOU, with the support and cooperation of the IMF, that specifies measures to be taken to improve cooperation with the FSD, Customs Department, MOI, AGO, HOO, and NDS. The MOU would promote information sharing and the effective implementation of the AML. FINTRACA shared the MOU with all partners and asked them to provide their feedback. None of the institutions have registered any objections, so the MOU is now awaiting the signature of the DAB Governor. |
| | | 12. Da Afghanistan Bank should establish a financial irregularities working group to share information and coordinate detection and enforcement efforts. This group should consist of the Financial Supervision Department, the Financial Tracking and Reports Analysis Centre, National Directorate for Security, the High Office of Oversight, the Attorney General's Office, and police. |
| Supervision & Enforcement: Cooperation | | Partially Implemented: To improve coordination between relevant institutions, two articles have been included in the draft AML to establish a "High Level Coordinating Committee" that will be comprised of high-ranking officials from DAB, MOJ, MOF, MOI, MOEC, AGO and NDS, among others. This committee has been proposed to improve information sharing and inter-agency coordination and should begin regular meetings once the Anti-Money Laundering Law is approved. |

| Category | Implementing Body (-ies) | Status and Evaluation |
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| | | 13. The Government of the Islamic Republic of Afghanistan should develop formal procedures for cooperation between Da Afghanistan Bank, the Ministry of Finance and the government in case of financial crisis. The procedures should outline the divisions of responsibilities and cost sharing between the central bank and the Ministry of Finance when the severity of the crisis requires government intervention. |
| Supervision & Enforcement: Cooperation | GIRoA | <p>Partially Implemented: DAB shared an official report on their implementation of the Kabul Bank recommendations. According to the report, both the current <i>Banking Law</i> and the new <i>Banking Law</i> have extensive articles devoted to the mechanisms to be taken in the event that a bank is determined to be insolvent. The current <i>Banking Law</i> also has explicit enforcement actions that may be put into place by DAB to encourage banks to take corrective actions prior to reaching a state of insolvency, and empowers the FDRC to take an oversight role in the administration of receiverships.</p> <p>DAB is concerned with the protection of depositors and in this regard has developed the Afghanistan Deposit Insurance Commission which will be active after the enactment of the <i>Deposit Insurance Law</i>.</p> |
| | | 14. The Government of the Islamic Republic of Afghanistan should ensure adoption of bankruptcy legislation that details procedures and terms of financing bank collapses, including the activation of lender-of-last-resort facilities. The legislation should clearly delineate responsibilities of all institutions, including potential financial liabilities, and provide a certain degree of automation to increase the expediency and transparency of the process. |
| Supervision & Enforcement: Governance | GIRoA | <p>Partially Implemented: The new <i>Banking Law</i> includes detailed amendments on the conservatorship (Chapter 12) and receivership of banks (Chapter 13). The use of Lender-of-Last-Resort facilities when dealing with problematic banks is also addressed in the <i>Law of Da Afghanistan Bank</i> (Article 69).</p> |
| | | 15. Da Afghanistan Bank should review caps on the amount of money that it approves for disbursement through borders to ensure that proper banking channels are used. |
| Supervision & Enforcement: Governance | DAB | <p>Fully Implemented: According to Presidential Decree 47, no one can export more than one million Afghani or USD 20,000 from Afghanistan. Additionally, anyone who wants to transfer more than USD 20,000 has to use one of the registered banks. A new DAB proposal submitted to the President's Office proposes reducing the export limit to USD 10,000 and requiring a declaration.</p> |
| | | 16. Da Afghanistan Bank should set industry and sector wide exposure limits for banks. |
| Supervision & Enforcement: Governance | DAB | <p>Fully Implemented: The <i>Asset Risk Diversification and Limitation</i> regulation published on May 17, 2011, which was based on Articles 32.2, 32.5, 35.4, 35.5, and 35.6 of the <i>Banking Law</i>, sets sector wide exposure limits for banks.</p> |
| | | 17. Da Afghanistan Bank should strictly adhere to all legislative requirements for licensing and approving shareholders, management and supervisors of banks. |
| Supervision & Enforcement: Governance | DAB | <p>Fully Implemented: According to DAB, there are strict eligibility criteria in place for Supervisory Board Members, Management Board Members and other senior positions in commercial banks. The licensing regulation of May 2012, based on Articles 6-16 of the <i>Banking Law</i>, established all legislative requirements and eligibility criteria for issuing licenses and approving the shareholders and management of banks.</p> |
| | | 18. Da Afghanistan Bank should limit shareholdings of banks to 10 percent holdings per person or group of related persons. |
| Supervision & Enforcement: Governance | DAB | <p>Fully Implemented: According to DAB in July 2013, there is no such restriction in the current <i>Banking Law</i>, but shareholders are required to obtain DAB approval before increasing a qualifying holding above certain thresholds (10%, 20%, 33%, 50% and above). Additionally, in the draft <i>Banking Law</i>, the "Qualifying Holding" threshold is decreased from 10% to 5%.</p> |
| | | 19. Da Afghanistan Bank should develop standards – in terms of format and content - and procedures for financial reporting in banks in order to increase the efficiency of information collection in the supervision process. |
| Supervision & Enforcement: Reporting | DAB | <p>Fully Implemented: DAB Circular 91.1 in June 2012 details rules for banks on the content and procedures of financial reporting. DAB is also working with international donors to develop an online reporting system to improve the timeliness of reporting and analysis. Additionally, Circular No. 91.01 of April 7, 2012, requires all commercial banks to officially submit their reports using the new Islamic banking formats issued by DAB.</p> |

| Category | Implementing Body (-ies) | Status and Evaluation |
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| | | 20. Da Afghanistan Bank should prepare guidelines for commercial banks in the areas of internal audit and risk management, focusing on efficient communication between the internal audit departments, risk management departments and supervisory boards with the aim to promptly identify all risks. |
| Supervision & Enforcement: Reporting | DAB | Partially Implemented: According to DAB, they have included 11 new regulations on topics such as comprehensive risk management and internal audit regulations in the draft <i>Banking Law</i> . If it is approved, the FSD will enforce the new regulations as part of their five-year strategic action plan. |
| | | 21. Da Afghanistan Bank should develop standards of reporting on international financial transactions that would enable prompt monitoring of international financial flows on monthly basis. |
| Supervision & Enforcement: Reporting | DAB | Fully Implemented: Based on the draft <i>Anti-Money Laundering Law</i> , all cash money transfer reporting entities are required to send all transactions, including international wire transfers, when the transaction amount exceeds 500,000 Afghani. The draft law includes some major changes on international financial transactions, including a requirement to use an authorized financial institution or authorized money transmission service for any international transfer equal to or exceeding 1,000,000 Afghani or its equivalent in foreign currency. According to DAB, their Balance of Payments Unit receives extensive data on international transactions. The DAB FSD will develop an MOU with this unit to share information on international transactions on a periodic basis. |
| | | 22. Da Afghanistan Bank should make it mandatory that proceeds of a loan account can only be transferred to a seller by way of check or wire transfer. |
| Supervision & Enforcement: Lending and Credit Files | DAB | Fully Implemented: According to DAB regulations, the proceeds of loans must be disbursed through a wire transfer or deposit into the borrower's account. Also, DAB requires banks to follow up on use of loan proceeds. |
| | | 23. Da Afghanistan Bank should ensure that all deposits held at commercial banks are insured. |
| Supervision & Enforcement: Lending and Credit Files | DAB | Partially Implemented: According to DAB, there is a draft <i>Deposit Insurance Law</i> - currently with the Taqnin Department of the MOJ - that will insure deposits amounting up to 1,000,000 Afghani. |
| | | 24. Da Afghanistan Bank should require all corporate borrowers to furnish tax returns and audited balance sheets to the lending bank, which should be retained and available for review by Da Afghanistan Bank examiners. |
| Supervision & Enforcement: Lending and Credit Files | DAB | Fully Implemented: According to DAB in July 2013, there is a law that requires all commercial banks to obtain three years of audited financial statements from corporate borrowers that are available for DAB examiners to review. |
| | | 25. Da Afghanistan Bank should establish guidelines restricting bank shareholders from directly approving loans and prohibiting related persons from approving loans to themselves. |
| Supervision & Enforcement: Lending and Credit Files | DAB | Partially Implemented: According to DAB, there is a regulation on credit extensions that prevents shareholders from making decisions on their own loans. |
| | | 26. The Government of the Islamic Republic of Afghanistan should ensure amendments of the banking laws of Afghanistan to incorporate a degree of automation in the implementation of enforcement action to remove the inherent reluctance of regulators to implement severe corrective measures. |
| Supervision & Enforcement | GIRoA | Partially Implemented: The <i>Banking Law</i> contains changes that address this recommendation and is currently under review at the Parliament. |

| Category | Implementing Body (-ies) | Status and Evaluation |
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| | | 27. The Attorney General's Office should send expanded mutual legal assistance requests to include all current debtors and beneficiaries of Kabul Bank funds. |
| Investigation and Law Enforcement | AGO | <p>Partially Implemented: The international and national recovery effort continues to be faced with difficulties, predominantly related to an inability to work with the UAE in fulfilling a mutual legal assistance request. This concern was highlighted at an OECD conference in December 2013 by a MEC member. In one positive development, MEC has been informed that the AGO has drafted additional mutual legal assistance requests for the United States and China, but has been unable to verify that they have been sent through diplomatic channels to the receiving countries.</p> <p>Previous requests have been sent to the UAE, Germany, Switzerland, France, and India, but they did not capture all of the beneficiaries of the Kabul Bank fraud. Regardless, the response from the IC has been notably anemic.</p> |
| | | 28. The Attorney General's Office should consider initiating a criminal investigation to determine if criminal charges are warranted against other shareholders of Kabul Bank, employees of Pamir Airways, accounting firms used by companies receiving loans from Kabul Bank, government staff who may have fraudulently registered companies, and anyone else, if appropriate. |
| Investigation and Law Enforcement | AGO | <p>Partially Implemented: Based on the findings of the Kabul Bank report, MEC has recommended that the AGO initiate an investigation to determine if charges are warranted against other individuals and document the decision to pursue charges or not in writing with clear and transparent rationale. This recommendation was also included in the March 5, 2013 judgment of the Special Tribunal, which identified 29 individuals for investigation for their suspected involvement in Kabul Bank-related crimes. KBR has also referred five individuals to the AGO for investigation. MEC has been informed that no other criminal investigations are being undertaken besides those mentioned above.</p> |
| | | 29. The Attorney General's Office should document the outcome of all criminal investigations in writing, particularly those recommended above, providing clear and transparent rationale for decisions to lay charges or not. |
| Investigation and Law Enforcement | AGO | <p>Not Implemented: The CMS has the ability to document the outcome of all AGO investigations. MEC is currently reviewing the system to determine if all cases are being entered and if the reasons for indictments or closing cases are documented.</p> |
| | | 30. The Attorney General's Office – with support from the international community – should establish a capacity building program for prosecutors to enhance its ability to conduct special investigations and incorporate intelligence led criminal investigations. |
| Investigation and Law Enforcement | AGO | <p>Not Implemented: The IC is involved in various capacity building programs within the AGO. The AGO's Human Resources Department has set up a special Capacity Building Commission, but the curricula for the programs it oversees appear to be out of date and need to be amended. MEC is unaware of any specific training programs that cover the areas in this recommendation.</p> |
| | | 31. The international community should support a capacity building program to provide training for prosecutors in criminal procedure, the United Nations Guidelines on the Role of Prosecutors (1990) and Handbook on Practical Anti-Corruption Measures for Prosecutors and Investigators (2004). |
| Investigation and Law Enforcement | International Community | <p>Not Implemented: As of November 2013, despite the existence of multiple capacity building programs at the AGO funded by the IC, MEC has not been able to confirm that the aforementioned topics are being covered.</p> |
| | | 32. The Attorney General's Office should enhance standards for writing indictments and the laying of criminal charges to ensure that unified standards on prosecutions, especially in highly demanding cases of economic criminality, will be applied throughout the country. |
| Investigation and Law Enforcement | AGO | <p>Partially Implemented: The <i>Interim Criminal Procedure Code</i> has specific requirements related to the format and content for writing indictments. According to the AGO's Human Resources Department, all new staff undergo a one-year course that includes a section on legal writing skills. For existing staff, the AGO has internal capacity building programs that address this issue.</p> |

| Category | Implementing Body (-ies) | Status and Evaluation |
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| | | 33. The Attorney General's Office should immediately review the status of people currently in detention in relation to Kabul Bank to ensure that their detention is lawful. |
| Investigation and Law Enforcement | AGO | Partially Implemented: See PD 45 6(1) . |
| | | 34. The Attorney General's Office should create and maintain a central repository for the registration of all criminal investigations, charges, and outcomes in the country that can be accessed for legally authorized criminal background checks. |
| Investigation and Law Enforcement | AGO | Partially Implemented: The AGO's CMS is in operation and includes all of the information specified in this recommendation; it has been used to conduct criminal background checks, but this practice has not been formalized nor is it in widespread use by regulatory or investigative agencies. MEC could propose that this aspect of the CMS be formalized and expanded through the CMS Working Group. |
| | | 35. The Attorney General's Office should better coordinate the exchange of information with Interpol through a memorandum of understanding. |
| Investigation and Law Enforcement | AGO | Not Implemented: MEC was informed that INTERPOL and the AGO have agreed to sign an MOU, but was unable to confirm its existence. In the past, INTERPOL has attempted to standardize the request procedure through forms that contain relevant data, but has failed since the AGO has refused to follow their procedures. MEC remains concerned about the effectiveness of the cooperation and the absence of the MOU. |
| | | 36. The Attorney General's Office should consider using the police more fully and effectively for the collection of evidence, including the full participation of the Major Crimes Task Force. |
| Investigation and Law Enforcement | AGO | Partially Implemented: The Afghan government established the MCTF as the agency responsible for investigating and processing major anti-corruption, kidnapping and organized crime cases. Within the MCTF the Anti-Corruption Unit has the mission of conducting criminal investigations regarding corruption allegations against high- level officials in the Afghan government. The USG provides agents, primarily from the Federal Bureau of Investigation, who mentor and train MCTF investigators. The MEC Secretariat has attempted to follow-up this recommendation with the AGO without success and is awaiting responses from the relevant USG agents. |
| | | 37. The Government of Islamic Republic of Afghanistan should develop legislation to extend the application of special investigative techniques to cover a wide range of serious offences and to provide competent agencies with appropriate means and training in order to make the system of special investigative techniques work efficiently in practice. |
| Investigation and Law Enforcement | GIRoA | Partially Implemented: A new provision on special investigative techniques has been incorporated in the new draft <i>Anti-Money Laundering Law</i> . |
| | | 38. The Government of Islamic Republic of Afghanistan should ensure adoption of legislative measures to ensure that legal entities can be held liable for criminal offences committed for their benefit by any person who has a leading position within that entity. Liability should not exclude criminal proceedings against the people who perpetrate, participate, or act as accessories to the criminal offences. |
| Investigation and Law Enforcement | GIRoA | Not Implemented: Currently the Penal Code of Afghanistan stipulates liability clauses for legal entities, although state-owned enterprises are not included in the clauses. Furthermore, the <i>State Owned Enterprise Law</i> does not include any corporate liability clauses. These legal provisions were therefore not applicable in the context of the Kabul Bank scandal, since the relevant legal entities could not be charged because they failed in their monitoring duties. The proposed annexes of the Penal Code do not include any changes to these provisions. |
| | | 39. The Special Tribunal should focus on processing the criminal charges in the Kabul Bank indictment and should cease all extra-judicial activities, including those related to the recovery, until such time as those issues are brought properly before the Tribunal. All proceedings of the Tribunal should be on the record, except where the laws of Afghanistan provide otherwise. |
| Judicial Proceedings | Special Tribunal | Partially Implemented: The Kabul Bank case was referred to the Special Primary Court for Kabul Bank in 2012 for review and further proceedings. In 2013 the court began the trial and subsequently issued a verdict that convicted 21 individuals for up to five-year prison terms. The AGO has since submitted an appeal request to the Appeals Court. |
| | | 40. The Special Tribunal should ensure that it has financial expertise available to assist it in analysing financial data, or other technical issues. |
| Judicial Proceedings | Special Tribunal | Not Implemented: Although it had sufficient time to do so, the Tribunal did not obtain the necessary financial expertise to analyze financial data for the court proceedings. |

| Category | Implementing Body (-ies) | Status and Evaluation |
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| 41. The Special Tribunal should appropriately scrutinize charges brought by the Attorney General's Office related to Kabul Bank, particularly charges against regulators; and should ensure that the rights of the accused are sufficiently safeguarded. | | |
| Judicial Proceedings | Special Tribunal | Not Implemented: In June 2012 the AGO issued an indictment of 21 individuals related to the Kabul Bank fraud. The indictment included numerous individuals from regulatory organizations, including the FIU and DAB. However, the findings of the public inquiry into the Kabul Bank crisis found that the investigation supporting the indictment raised serious concerns, particularly as they relate to charges against regulators. These concerns go so far as to suggest that at least one individual indicted was charged as a result of a personal grievance and abuse of process and office. In March 2013, all of the indicted regulators were convicted of criminal offenses on what appears to be insufficient and irrelevant evidence. |
| 42. The international community should support a judicial capacity program to provide training for judges in criminal procedure and the principles of fundamental justice, and the United Nations Universal Declaration of Human Rights, International Covenant on Civil and Political Right, and the Bangalore Principles of Judicial Conduct. | | |
| Judicial Proceedings | International Community | Partially Implemented: Multiple international donors and organizations, including AUSAID, GIZ, EUPOL and IDLO, support judicial capacity-building programs in Afghanistan. Despite the wide range of support, the impact of the programs is questionable since most of the programs lack of a way of measuring the training impact and there is little coordination between the donors. The focus of the capacity-building efforts has changed from workshop-based to mentoring programs. In December 2013 the Secretariat learned that over 2,000 judges have participated in various capacity building projects, mostly funded and implemented by international donors. |
| 43. All courts and administrative tribunals should conduct their proceedings publicly and should publish their judgments, including the Financial Dispute Resolution Committee. | | |
| Judicial Proceedings | FDRC and all courts and administrative tribunals | Partially Implemented: In December 2013, the Head of the FDRC informed MEC that they have processed about 60 cases related to Kabul Bank and will begin publishing their judgments on their website as soon as they hire an IT officer. |
| 44. The Government of the Islamic Republic of Afghanistan should ensure adoption of a law that provides for administrative decisions, including presidential decrees, to be exposed to judicial review by individuals having a direct and substantial interest, or who can satisfy a court that it is in the public interest to do so. | | |
| Judicial Proceedings | GIRoA | Not Implemented: Currently, there are no generally applicable provisions of law or regulations that provide a uniform mechanism for either administrative or judicial review of administrative or executive actions, decisions, or decrees. The Supreme Court has the authority to review the constitutionality of laws and legality of regulations, but it is unclear how an instance in which a mere misapplication of a law or regulation at the administrative level would get to the courts. The Independent Commission for the Supervision of the Implementation of the Constitution may have the authority in cases of unconstitutional actions, decisions, and decrees. However, for those actions, decisions, and decrees that merely violate (or misapply) laws or regulations, or legal rights (but not constitutional rights), there is no clear mechanism available to seek remedy of such wrongs. While there may be informal means of dealing with administrative actions or decisions (such as complaints to a minister or to the HOO, etc.), there is no legally based and consistently applicable means by which an aggrieved or interested party might clearly seek a remedy. |
| 45. Kabul Bank receivership should make decisions based on economic considerations and should more fully exercise its discretion in selling property where recoveries would be strengthened, despite any external advice, and should be protected from investigation or prosecution for decisions made in good faith. | | |
| Recoveries | KBR | Partially Implemented: Senior officials from KBR informed MEC in late-2013 that KBR has recovered 174.9 of the 975.1 million dollars owed to Kabul Bank. They mentioned the interference of outsiders, the lack of cooperation from relevant institutions, and the high purchase price of many of the properties as challenges to the recovery process. |

| Category | Implementing Body (-ies) | Status and Evaluation |
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| 46. New Kabul Bank should be sold in strict adherence with the action plan approved by the Council of Ministers to ensure that parties associated with Kabul Bank do not exercise ownership or management in the new bank. | | |
| Sale of New Kabul Bank | MOF | Not Implemented: The MOF re-tendered New Kabul Bank on September 3, 2013 after a first round of tenders failed to identify a suitable buyer. The re-tender resulted in a qualifying bid of \$28 million being received from Kru Capital, raising concerns about the purchase price versus the value of New Kabul Bank's assets. MEC recommended that the MOF pursue its Action Plan for the sale of New Kabul Bank calling for the liquidation of New Kabul Bank failing the identification of a suitable buyer, which should have been pursued after the first tender process failed. There are also lingering concerns that past shareholders may be involved in the bidding for New Kabul Bank and MEC will closely follow DAB's assessment of the bidders to ensure that they are fit and proper and unrelated to past shareholders of Kabul Bank. |
| 47. Within 60-days of the issuance of this report, the Government of the Islamic Republic of Afghanistan, Da Afghanistan Bank, and other affected institutions should provide a written response to the Independent Joint Anti-Corruption Monitoring and Evaluation Committee indicating their intention to implement the recommendations of this report, and timelines for doing so. | | |
| Monitoring & Reporting | GIRoA, DAB and other affected institutions | Partially Implemented: The Kabul Bank recommendations were directed to a number of institutions, including the AGO, OAA, AISA, DAB, MOF, FINTRACA, FDRC, KBR, the Kabul Bank Special Tribunal and the IC. Although most institutions provided substantive responses to the Kabul Bank recommendations and generally indicated their willingness to implement them, no official responses were ever received from the AGO, OAA, or AISA by the 60-day deadline. Subsequently, MEC has made several attempts to engage these institutions in the implementation of the Kabul Bank recommendations with limited success. |
| 48. The Government of the Islamic Republic of Afghanistan, Da Afghanistan Bank, and other affected institutions should respond to the Independent Joint Anti-Corruption Monitoring and Evaluation Committee's requests for progress reports in a timely manner. | | |
| Monitoring & Reporting | GIRoA, DAB and other affected institutions | Partially Implemented: MEC has incorporated the Kabul Bank recommendations into its regular monitoring and evaluation and reporting. While MEC engages all institutions with recommendations directed to them, some key organizations like the AGO and OAA have never committed to implement the recommendations. |

Appendix H

STATUS OF PRESIDENTIAL DECREE 45 ARTICLES

On July 26, 2012, the President of Afghanistan issued PD 45, consisting of 164 articles meant to improve governance and fight corruption. Although the OAA was officially tasked with monitoring all articles, MEC has been monitoring 38 articles that relate to corruption and published the first Report on the Implementation of Anti-Corruption Related Elements of PD 45 on March 13, 2013. This appendix is the second complete update on the implementation of the 38 articles. As of August 2013, the OAA informed MEC that they are no longer monitoring PD 45 articles.

| Timeframe | Implementing Agency (-ies) | Status and Evaluation |
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| 1 (2): The Supreme Court of Afghanistan is requested to decide and finalize all running cases, especially those of corruption, land usurpation, and serial killing. | | |
| 6 months | Supreme Court | <p>Partially Implemented: The Supreme Court created a committee consisting of representatives of the MOJ, OAA, MOI, AGO, and NDS and led by the Audit Directorate of the Supreme Court to respond to this article. They identified 17,570 total running cases (10,266 criminal; 6,534 civil; 475 corruption; 283 usurpation of government property; and 12 serial killing), and began implementing a work plan to reduce the case load. Within seven months, the Supreme Court has reduced the number of running cases from 17,570 to less than 10,000.</p> <p>The Supreme Court noted that the processing of cases involves all justice sector organizations and that most of the cases pending in Kabul are due to the late performance of the AGO. MEC's interviews with some prosecutors indicate that they are not being allowed to dismiss cases where there is insufficient evidence despite having the legal authority to do so. The AGO rejects the assertion that they delay cases and lays blame on the Supreme Court for not having enough human resources to properly process the cases.</p> <p>Despite the contention, it is obvious that both institutions have an important role to play in processing cases efficiently and effectively and enhanced cooperation will ensure that they meet their respective obligations. Case management and coordination mechanisms are the best way to ensure that this is done.</p> |
| 1 (15): All government organizations are advised to refrain from signing contracts and protocols of construction, procurement and services with high-ranking government officials, agents and individuals carrying their support. Such acts will be considered corruption crimes and the perpetrators will be prosecuted by the AGO. | | |
| Ongoing | All organizations and agencies | <p>Partially Implemented: Most institutions contacted (ANSA, IARCSC, MOCIT, MOEC, MOD, MOHE, MORR, MOHRA, MOMP, OAA, MOPW, and KM) regarding this recommendation claim that they are in full compliance, yet are unable to provide supporting documentation. This is in part due to the ambiguity of the article and the lack of a centralized database or list of banned individuals. ANSA and the IARCSC stated that all of their contracts are processed through the ARDS and therefore they are in full compliance with this article. MOCIT does not include provisions in its regulatory framework that forbids signing contracts with high-ranking government officials since it feels that this action is unnecessary due to the provisions of this article. MOCIT does, however, have an evaluation committee that reviews all contracts to ensure that they fulfill their procurement regulations.</p> <p>Given the deficiencies in its wording, MEC cannot determine to what extent governmental institutions are actually complying with the terms of the article.</p> |
| 1 (17): In order to organize and provide services that are in the public interest, until the facilitation of means of municipal elections, the process of appointing a mayor will be administered by the special board of appointing high ranking officials of the President and by the recommendations of IDLG. The Directorate shall introduce and through the special board of appointments, appoint provincial mayors and mayors in some major districts. | | |
| 3 months | IDLG | <p>Partially Implemented: The IEC is currently not capable of conducting municipal elections. Therefore, IDLG nominates candidates to serve on the special board of appointing high ranking officials. This group selects potential mayoral candidates to be interviewed and to take an examination. If these candidates are successful, the President is required to give his approval before they can be appointed as mayors. Currently, the appointments of mayors are taking place as required by the article of the decree.</p> <p>For the 150 municipalities in Afghanistan (provincial and district level), 20 mayors have been selected and are awaiting the President's approval.</p> |

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| 2 (1): Prepare and provide a revised, transparent and complete procurement mechanism for the ministry with the assistance of the MoF, MoEc and MoJ. | | |
| 2 months | MOD | <p>Partially Implemented: A survey conducted by Transparency International in 2012 found that in Afghanistan's defense sector, procurement is the area with the highest corruption risk compared to political, financial, personnel, and operational aspects. The MOD developed a revised procurement policy in October 2012, which it sent to the Council of Ministers and shared with MEC.</p> <p>Upon reviewing the document, however, MEC found that the policy is vague and only reflects the <i>Procurement Law</i>, rather than the specific procurement needs of the MOD. Furthermore, the policy does not include an implementation plan. MEC met with the MOD in October 2013 to discuss the shortcomings of the policy and suggested they develop a more customized procurement policy.</p> <p>MEC will continue to follow up with the MOD to find out whether the policy has been amended to include MEC's concerns and to monitor its implementation if it is approved by the Council of Ministers. Additionally, MEC will meet with Shafafiyat to discuss procurement-related developments, since they are working on several initiatives to improve procurement processes in the MOI and MOD.</p> |
| 3 (1): Act on all final decisions of the Court specifically on those that were taken against usurpation of public or private property, and provide a written report to OAA and the Secretariat of the Council of Ministers. | | |
| 2 months | MOI | <p>Partially Implemented: In a meeting in November 2013, the MOI told MEC that according to article 84 of the <i>Interim Criminal Procedure Code</i>, court orders are sent directly to the AGO for implementation and then the AGO sends them to MOI for enforcement. The MOI has received 215 court orders from the AGO, but none of them have been related to land usurpation. This, despite the fact that they claim to have sent a list of over 190 cases of land usurpation of public and private properties to the AGO and the Governmental Cases Department for investigation and prosecution. A copy of this list was also shared with the OAA, Council of Ministers, and MEC Secretariat, but MOI is not aware of any subsequent response or follow-up.</p> |
| 3 (5): Prepare a plan on how to improve the activities of traffic police in Kabul and other major cities, with the assistance of Kabul and other relevant municipalities, and provide it to the Council of Ministers. | | |
| 6 months | MOI | <p>Fully Implemented: According to an MOI official in charge of PD 45 implementation, the MOI, KM, MOTCA, MOPW and the traffic department developed a comprehensive plan to improve traffic police activities in July 2012 and shared it with the OAA. The official stated that the plan was not implemented because it was deemed to be too costly. The aforementioned institutions developed a less costly plan that dealt with constructing parking lots and underway passages, extending certain roads, and moving some ministries and international organizations that is being considered. This report has been shared with the MEC Secretariat.</p> |
| 3 (7): Carry-out and process the promotions of eligible officers, as high as the rank of a Colonel. | | |
| 1 month | MOI | <p>Partially Implemented: The MOI reportedly sent a report to the OAA verifying the promotion of 2,395 eligible officers and authorization of 154 extraordinary promotions. According to some sources in the MOI, however, the figures in the report are incorrect and the promotions that did occur did so based on personal relations and not meritocracy. The MEC Secretariat has requested a copy of the report from MOI, but they have not provided one.</p> |
| 4 (2): Review and propose reforms on the recruitment mechanism of diplomats and their working capacities to the President's Office in order to aid in decision making. | | |
| 3 months | MOFA | <p>Not Implemented: According to the internal procedures, the ministry must convene entrance exams for diplomats, but an official of MOFA indicated that in the past three years, the ministry has only conducted one entrance exam. MEC has also interviewed many employees of MOFA, most of whom claim that the hiring of diplomats is heavily influenced by high ranking officials and MPs.</p> <p>In November 2013, the MOFA Human Resources Director and Head of Recruitment told MEC that they are working on the implementation of this article, but would not provide any evidence or documentation to back up their claim.</p> |

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| 5 (3): Process an amended plan for the procurement law. | | |
| 2 months | MOJ | <p>Fully Implemented: The MOJ finalized the <i>Procurement Law</i> in consultation with several institutions and sent it to the Council of Ministers in September 2012. The Economic Committee of the Council of Ministers reviewed the law in December 2012 and passed it to the Council of Ministers General Session, where it was rejected and sent back to the MOJ to be amended.</p> <p>The PPU held a workshop in late January 2013 to discuss all changes with relevant institutions, and after incorporating all relevant comments from the governmental and non-governmental institutions, the MOF again sent the law to the MOJ to review. The MOJ reviewed the law and passed it to the Council of Ministers in July 2013.</p> |
| 5 (4): Finalize and send the electoral law to the Council of Ministers. | | |
| 2 months | MOJ | <p>Fully Implemented: The <i>Election Law</i> was reviewed and approved by the Council of Ministers and the President on July 20, 2013. The Law contains 13 chapters and 72 articles and proposes giving the role of dealing with complaints from the Electoral Complaints Commission to the Central and Provincial Appeal Courts. This appears to be in contradiction with the <i>IEC Structural Law</i>, which is also currently before Parliament. Reportedly the Supreme Court has already begun to develop a regulation to implement the new complaint process despite the status of the proposed reforms.</p> |
| 5 (5): Finalize and submit laws on municipalities and the AGO. | | |
| 6 months | MOJ | <p>Fully Implemented: The current <i>Municipalities Law</i> in Afghanistan was developed during the Taliban regime. In the past few years, Afghan officials have been working on revising and updating the law; the current draft <i>Municipalities Law</i> has been finalized by the Legislation Department of the MOJ and was sent to the Legislation Committee of the Council of Ministers in January 2013. The draft was also shared with IDLG and KM for comments. MEC will monitor the status of the law with the Taqnin Directorate.</p> <p>According to an official letter from the MOJ, their Publication Directorate will soon publish the <i>Law on the Jurisdiction and Organization of the Attorney General's Office</i>. The MOJ's Taqnin Director stated that the law has progressed to its final stages through the efforts of Afghan and international lawyers. MEC will continue monitoring of the law once it is published in the official gazette.</p> |
| 6 (1): Study the cases of all detainees through relevant prosecution offices, prevent detention without evidence, and provide a complete list of detainees with the descriptions of their accusations to the judicial committee. | | |
| 1 month | AGO | <p>Partially Implemented: Article 6 (1) requires the AGO to study the cases of all detainees, prevent detention without evidence, and provide a complete list of detainees with the descriptions of their accusations to the judicial committee. The AGO provided assurances that the decree had been implemented, however, MEC met with officials from the different institutions and concluded that reports from the AGO were inaccurate. According to the information collected there is still concern that many detainees are being held in detention unlawfully. Some of them are held despite the fact that there are no sufficient grounds or their term of detention has lapsed. MEC also learned that some of the suspects were regularly held for up to a month despite statutory provisions that allow them to be held for no more than 72 hours. This seems to represent a common practice in many detention centers. Also, it has been observed that some people have been waiting for many years in detention facilities for the Supreme Court to make a decision about their statuses. All of the aforementioned points demonstrate the ineffectiveness of judicial bodies and there are still concerns that these practices still exist in many detention facilities.</p> <p>The appropriate use of a CMS, however, would facilitate tracking of all cases through the system as well as create more effective coordination between investigative, legal and judicial organizations. Such practices would improve transparency and accountability and ensure accurate and timely implementation of the law during the processing of cases in all phases and minimize risk of possible violations of detainees' rights. MEC is aware that the CMS is currently being updated to include a back-log of data that could facilitate its use and minimize illegal detentions.</p> |

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| 6 (2): The appointment of provincial Attorney Generals shall, as the heads of ministries and other administrations, be proposed to the Office of the President. | | |
| 1 month | AGO | Fully Implemented: Information received by MEC indicates that the AGO proposed the appointment of 13 provincial Attorney Generals that were all approved by the President. The 13 appointees were already working in the AGO, so the appointments did not result in any significant changes or replacements in the provinces. Information received by MEC also indicates that an additional 15 proposed Attorneys were rejected by the President reportedly because the appointees were being recycled. MEC has sent a written request to the AGO for an update on this issue, and is awaiting an official response. |
| 6 (4): Study and submit a plan to the Council of Ministers on the establishment of a prosecution office surveillance department or the delegation of surveillance to the Supreme Court's department of surveillance. | | |
| 2 months | AGO | Fully Implemented: The AGO has established a Surveillance Department that is mandated to carry out similar functions as the Inspection Directorate, but with more authority and personnel. The AGO now has three major directorates: Inspection, Special Anti-corruption, and Surveillance. According to the Director of the Surveillance Department, they are mandated to monitor procedural activities and procedural gaps that may lead to corruption. Currently, 20 prosecutors are assigned to this unit and 10 more are being recruited. To date the Surveillance Department has undertaken 27 investigations into cases of corruption, prepared some indictments and reported to the High Council of the AGO. As of November 2013, the Surveillance Department facilities have been set up and their organizational structures are in place, but MEC has concerns about the use of political influence to affect the operations of the department. |
| 6 (7): Assess all professional and support personnel, identify corrupt cadres, undertake specific measures, and submit a report to the President's Office. | | |
| 6 months | AGO | Not Implemented: The AGO reported to MEC that it assessed its staff and transferred 30 staff members to different locations, but since they did not provide any reason or justification for their actions, they have not satisfied the requirements of this article. Their process of identifying corrupt personnel is not sufficient and only junior staff have been transferred. The AGO's Surveillance Department does not seem to have the capacity to accomplish this task. |
| 7 (1): Monitor the implementation of the anti-corruption strategy within the government and private sector and forward the results to the President's Office. | | |
| 2 months | HOO | Partially Implemented: The evaluation for this article is covered by the evaluations for Recommendations 1.1, 1.2, 1.3, and 1.11. HOO claims to have submitted a report on this issue to the OAA, but has not shared it with MEC. |
| 7 (2): Investigate and forward the results of suspicious assets of government officials and private organizations and report to the President's Office every two months. | | |
| 6 months | HOO | Partially Implemented: HOO stated that they completed the investigation as specified and sent the report to the OAA, but would not share a copy with MEC. MEC's own monitoring of asset verification is covered in recommendation 2.1. The HOO stated that they have registered around 7,000 officials, but the verification of assets has only been symbolic. |
| 7 (3): Assess all professional and support personnel of HOO, identify corrupt cadres, undertake specific measures, and submit a report to the President's Office. | | |
| 6 months | HOO | Partially Implemented: According to HOO's Planning Department, HOO completed the assessment of professional and support staff and sent the report to the OAA. During a meeting with the HOO, MEC requested a copy or details of the report, but the request was refused. Informal comments from HOO officials indicate that the Internal Audit Office has been given more power to investigate cases of internal corruption and has initiated several internal investigations that have been supported by high-ranking officials. |
| 8 (2): Take measures to recruit patriotic, sincere, intelligent and qualified deputy governors through open and fair competition, with the assistance of IARCSC. | | |
| Ongoing | IDLG | Partially Implemented: Previously, deputy governor posts were not processed through the IARCSC - they were simply political appointments. Currently, however, these positions are considered civil servant positions. As such, the IDLG in coordination with the IARCSC conducted a merit-based recruitment process that recruited 32 deputy governors. Most of the former deputy governors simply applied for the same positions, went through the merit-based recruitment process, and were selected again. Although the process has improved, MEC has concerns about the transparency of the process given that most of the former deputy governors were selected for the same positions. |

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| 9 (2): Prepare a list of all unimplemented decrees and provisions of the President's Office and approvals of the Council of Ministers, and submit it to the Council of Ministers accompanied with analysis of ministries and related administration. | | |
| 2 months | OAA | <p>Partially Implemented: The OAA has a Monitoring and Evaluation Department that was established in 2006 to monitor all decrees, resolutions and orders, and which maintains a database that stores all decisions since the creation of the department. The department, however, does not have data before 2006 as it resides with the Council of Ministers Secretariat. The Secretariat did not have an electronic system at that time and they have not carried out a review of existing documents.</p> <p>According to the Director of Monitoring and Evaluation at the OAA, in the first half of this year, the Council of Ministers issued 228 instructions that included 995 tasks for different ministries. Of these resolutions, 65% have been implemented, 16% are on-going, and the rest have been delayed for a variety of reasons.</p> <p>Additionally, 57 percent of decrees and orders were implemented in 2011, 25 percent were in progress and the remaining 18 percent were unimplemented. Out of all decrees, orders and resolutions from 2006 to 2011, 73 percent have been implemented, 15 percent are in progress and 12 percent have not been implemented. The department did not provide the reasons that some decrees, articles, and orders have not been implemented.</p> <p>According to the OAA, 3,000 to 5,000 orders and decrees and around 52 to 55 resolutions of the Council of Ministers are issued annually. Given the number of decrees and resolutions typically issued, it is important for MEC to focus on those that relate to the fight against corruption. To this end, MEC must strengthen its relationship with the OAA to gain access to the decrees and resolutions as they are issued to more effectively identify anti-corruption measures and track their implementation.</p> |
| 11 (2): Review the structure of the Commission and appointments of all personnel including that of the board of appointments and the general directorate for civil services and submit an internal reform plan in line with high standards and recruitment to the President's Office. | | |
| 1 month | IARCSC | <p>Partially Implemented: The task of assessing the IARCSC was given to the Director General of the Oversight Committee of the IARCSC. A six-page reform plan was developed that includes the following four recommendations, which will be implemented if the plan is approved by the President:</p> <ol style="list-style-type: none"> 1. Divide the IARCSC into an Independent Civil Service Commission responsible for the recruitment of high-level officials and the monitoring of the process for lower-level staff recruitment, and an Institute of Reform and Capacity Building responsible for policies, strategies and capacity building of employees; 2. Review all personnel - including appointment board experts, civil service experts and commissioners - to help improve the recruitment process and ensure recruited staff have high standards; 3. Enforce civil service regulations and properly monitor staff by improving the management of human resources and capacity building; and 4. Introduce job security and entrance exams for civil servants and invest in capacity building in all institutions. <p>MEC has been informed that this reform plan is currently being reviewed by the OAA. MEC's VCA Unit also finalized a VCA on the IARCSC Recruitment Process in October 2013 and held a workshop describing the findings of the report to relevant staff in November 2013.</p> |
| 12 (1): Prepare a voter registration plan for the 2014 Presidential elections and submit it to the Council of Ministers. | | |
| 1 month | IEC | <p>Fully Implemented: In November 2013, MEC received a copy of IEC's Voter Registration Plan, which explains the three-stage plan for voter registration and rules for voting. The IEC stated that all previous voter registration cards will remain valid and that it would issue new cards to those who have either lost their cards or are now of legal voting age (18). The new voter registration cards will have some security features meant to minimize fraud in the upcoming elections. The IEC will also accept electronic identity cards (E-Tazkirahs) as valid documents for voting.</p> <p>According to the IEC's Chief Electoral Officer, three million people have received voting cards since the beginning of the voter registration drive, of which 34% are women. Additionally, voter registration did not take place in five districts in Helmand, Zabul, Ghazni and Kapisa provinces due to security issues.</p> |

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| 12 (2): Design transparent and orderly electoral programs that, by ensuring public participation, provide a comprehensive electoral schedule for the Presidency, and national and provincial councils. | | |
| 3 months | IEC | <p>Fully Implemented: The IEC prepared and finalized the Elections Calendar one year prior to the planned election date of April 2014. It was shared with the ANSF to ensure their coordination in providing security in certain areas. The IEC has also developed a Strategic Plan and Operational Plan for the upcoming elections, which complement the Elections Calendar.</p> <p>According to the IEC, since voter registration began in May 2013, three million people have received voting cards, of which 34% are women. They also stated that they do not yet have the funds to allow for Afghan refugees in Pakistan and Iran to participate in the elections.</p> |
| 13 (5): Take measures regarding the recruitment of eligible teachers in the capital and provinces of the country, and the recruitment of 11,000 new teachers and employees through open competition and merit based examinations and report monthly to the Council of Ministers. | | |
| 6 months | MOE | <p>Partially Implemented: The MOE has a policy that it will only recruit teachers with an undergraduate degree or who have completed grade 14. A previous evaluation indicated that the MOE recruited more than 11,000 teachers in 2012 and indicated that they need 40,000 more. In a second official letter sent to MEC, however, the ministry explained that it conducted a recruitment exam in early 2012 that only 3,000 candidates passed. The ministry subsequently conducted a second exam, but did not disclose how many candidates passed. As such it remains unclear whether the ministry truly managed to recruit the 11,000 teachers as it had initially claimed.</p> <p>MEC is seeking updated information regarding the numbers and locations of new teachers to verify the information received from the MOE. CSOs and other organizations that work in the educational sector will also be identified in order to verify the ministry's statements.</p> |
| 16 (2): Assess the process of producing and importing medicine in the country's markets from the perspective of quality and quantity, and present opinions and proposals for reform to the Council of Ministers. | | |
| 6 months | MOPH | Partially Implemented: The MOPH has assessed the process as required and subsequently reported that of the 80 companies that import pharmaceuticals, 15 have been identified as bringing in low-quality medicine; nine of these companies have been referred to the AGO. |
| 17 (3): Prepare and implement a follow-up plan from Tokyo Conference commitments and report progress to the President. | | |
| 2 months | MOF | <p>Fully Implemented: The MOF sent a proposal on the implementation of the TMAF to the Secretariat of the Council of the Ministers in August 2012. The proposal contained three main elements: 1) Establishing independent coordination boards and committees to oversee the implementation of the process; 2) Conducting a high-ranking officials meeting in 2013 to evaluate the progress of the TMAF; and 3) Conducting a meeting at the minister level in 2014 to evaluate the progress of the TMAF and review the benchmarks.</p> <p>Based on the proposal, a Secretariat for the TMAF was established under the Policy Unit of the MOF, and includes the Deputy Minister, the General Director of Strategic Plans, and the Executive Director for the ANDS Secretariat. The relevant ministries have to report to this Secretariat on progress made and the Policy Unit of the MOF is responsible to report this information to GIRoA and the IC.</p> <p>In April 2013, a set of deliverables was agreed upon between GIRoA and the IC. The first follow-up meeting was held on July 3, 2013, from which a joint assessment report was issued. The report highlighted several anti-corruption efforts of GIRoA and the IC, including the activities of AEITI; the simplification of building permits by the KM; and the creation of an Anti-Corruption Committee at the MOE.</p> |
| 17 (6): In collaboration with IARCSC, prepare a scheme for the consistent salaries of civil services personnel and present it to the Council of Ministers. | | |
| 3 months | MOF | Fully Implemented: The MOF and IARCSC have held several meetings and developed a plan for the equalization of salaries for civil servants. The plan has three primary recommendations: bringing reforms and changing salaries; aligning regulations; and establishing a research unit to research salaries of civil servants. The plan - which has been shared with MEC - has been approved by the cabinet and the MOF is planning to implement it soon. |

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| | | 17 (7): Prepare a mechanism to improve government revenue and the capacity of involved ministries for expanding and executing accountable budget and modulator requirements and national preferences and introduce it with identification of new revenue sources. |
| 3 months | MOF | Partially Implemented: The MOF has prepared - and shared with MEC - a draft version of a plan to increase the revenue and improve the capacity of government agencies. The plan includes three main areas for future revenue generation: 1) tax collection; 2) revenue from government institutions (untaxed revenue); and 3) customs revenue. The plan explains the problems that currently exist in the system and provides 40 recommendations across all three areas to improve the revenue collection process. Regardless, enhanced revenue streams are at risk of being diverted if strengthened integrity systems are not established at the MOF. |
| | | 18 (1): Report on the number of commercial attachés in different countries and their appointment mechanism based on requirements and volume of state's commerce to the Council of Ministers. |
| 1 month | MOCI | Fully Implemented: The appointment mechanism for commercial attachés was drafted based on the needs and volume of commerce with specific countries and sent to the OAA. According to the MOCI, a commission consisting of representatives of the OAA, MOFA, MOF, IARCSC and MOCI was created to oversee the implementation of this article. In December 2013, the MOCI Human Resources Director told MEC that the number of commercial attachés and executive officers has decreased from 55 to 33, based on the aforementioned commission's needs assessment. There are currently 23 commercial attachés and 10 executive officers serving in 19 countries. According to the existing mechanism, commercial attachés are appointed for three years, but there are reports that some attachés remain in their positions for more than three years due to their connections with high-ranking officials. |
| | | 19 (1): Present a specific mechanism to monitor development projects including municipal projects to the Council of Ministers. |
| 1 month | MOEC | Fully Implemented: MOEC has prepared a comprehensive mechanism for the monitoring and evaluation of all development projects, including those of municipalities, and has submitted the plan to the OAA. The plan has been approved by the Council of Ministers and a copy has been shared with MEC. The mechanism includes the monitoring of projects throughout their phases as well as the assignment of specific responsibilities for the project owner, contractors, and monitoring and oversight bodies. MOEC has also prepared and shared a work plan for 2012-2013 for the monitoring of projects throughout Afghanistan. |
| | | 19 (2): In collaboration with MoF and MoCIT; all government contracts entered into with companies, national and international institutions with all details (should not be confined to summary of contracts) shall be published via internet websites and related institutions. |
| 3 months | MoEc with MoF and MoCIT | Partially Implemented: The ARDS requested all government institutions to provide them with their contracts to publish on the ARDS website. Although most institutions agreed and provided the ARDS with their contracts, MOFA, MOCI, and KM did not agree to share their contracts; the MOD and MOI agreed to share their contracts, but have not sent them yet. The ARDS has published most of the government contracts on its website, which seems to be a positive move towards transparency and accountability. Unfortunately, most of these contracts are incomplete, and many only contain a summary. Additionally, a large number of the contracts do not have attachments and only include names with contract amounts. MEC will continue to monitor the number and completeness of contracts published on the ARDS website. |

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| | | 20 (1): The policy for exchange exit via state's foreign currency outflow via airports shall be implemented, continuously observed and its outcomes shall be reported to the President. |
| 1 month | DAB | <p>Fully Implemented: To implement the policy DAB signed an MOU with the border police and customs service and has representation with the FIU at Kabul International Airport. The Afghan border police at Kabul International Airport - with support of USAID and other international organizations - have received training in anti-money laundering and smuggling techniques to strengthen their abilities to track money flows and conduct investigations. Although the border police welcomed the adoption of provisions contained in the policy to regulate the transfer of money, they also expressed concerns regarding some undefined points, such as the absence of a requirement to verify the origin of money and the \$20,000 limit permitted to be transferred across borders.</p> <p>The Committee was informed that in drafting the policy document DAB did not consult those directly involved in the prevention or detection of illicit money being moved through the border. The experiences and perspectives of the border police should be incorporated into the policy to provide a higher degree of effectiveness. DAB should work in close cooperation with a working group consisting of the border police, customs, NDS and other stakeholders who directly or indirectly take part in the implementation of the policy document.</p> |
| | | 21 (5): A specific plan to ensure transparency in mining contracts shall be finalized and presented to the Council of Ministers. Ensuring transparency in the contracts based on the agreed international principles and according to the future of the country shall be put at the top of their work and all details of contracts (should not be confined to summary of contracts) shall be published via websites of MoM, MoF and MoEc. |
| 3 months | MOM | <p>Partially Implemented: This article substantially overlaps with MEC's recommendations 2.14 and 2.15, the evaluations of which provide the current status of this article. Disappointingly, although the draft Minerals Law requires the publication of contracts, it does not stipulate whether full or summarized contracts are required.</p> |
| | | 24 (3): Prepare a list of all partially completed projects with reasons for the delay, stoppage, or postponement and present it to the Council of Ministers. |
| 1 month | MOPW | <p>Fully Implemented: A detailed list of incomplete projects has been prepared by MOPW and sent to the OAA. The list includes 35 projects that are funded by the Afghan government, ADB, IDB, WB, ARTF, and others, but does not include projects implemented by other donors such as USAID, the United States Army Corps of Engineers, or PRTs. The problems related to delayed projects include insecurity, severe weather, a lack of required materials, land acquisition issues, re-contracting of some projects, inadequate design, and a lack of cooperation from beneficiaries.</p> <p>The MOPW was only able to provide a detailed list of projects related to their ministry as they faced a lack of cooperation from other relevant parties. They are currently working with USAID to discuss their incomplete projects.</p> |
| | | 25 (1): A transparent, comprehensive and revised mechanism for collection of land transport revenue shall be prepared and presented to the Council of Ministers. |
| 3 months | MOTCA | <p>Not Implemented: To reduce corruption and increase governmental revenue from land transportation, MOTCA has prepared a mechanism that includes, among other things, the identification of planned revenue streams that are lower than expected. The mechanism has been sent to the OAA, but has not been approved by the Council of Ministers.</p> |
| | | 25 (5): All personnel and organizational structure of the ministry shall be reviewed, corrupted cadres shall be identified, specific measures shall be taken and reported to the President. |
| 6 months | MOTCA | <p>Partially Implemented: For the implementation of this article, MOTCA reported that it has created a committee that has visited Kabul and other provinces to monitor the activities of its personnel. The committee identified reforms to be implemented and removed some officials that were involved in illegal practices, including the use of fake educational certificates. Results from these reforms, however, have not been seen on the ground.</p> |

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| | | 27 (2): Collect accurate information regarding the confiscation of government and personal properties at the national level (in the first step in first-rate provinces then in other provinces) in collaboration with MOJ, MoI, and AGO, Anti-Corruption Administration and IDLG and present it to the Council of Ministers. |
| 3 months | MAIL/ARAIZI | <p>Partially Implemented: ARAZI, in collaboration with the MOJ, MoI, AGO, HOO and IDLG, developed a report in 2012 on land usurpation, but it was not shared with MEC. In the report, ARAZI identified usurped lands and usurpers in various parts of Afghanistan, from which the following details were provided to MEC:</p> <ul style="list-style-type: none"> 1. 16 individuals representing the largest land usurpers account for a total of 138,996 jeribs of land usurped; 2. 42 people with more than 1,000 jeribs each accounting for a total of 109,631 jeribs; 3. 260 people with 100-999 jeribs each accounting for 65,810 jeribs; 4. 693 people with 10-99 jeribs each for a total 18,284 jeribs; 5. 1,558 individuals who have usurped 1-9 jeribs in major cities accounting for 4,384 jeribs; 6. 848 people who have usurped less than 1 jerib for a total of 275 jeribs; 7. 230,000 jeribs in 228 residential towns; 8. 139 government entities that are using lands and properties without legal authorization. <p>The required information about individuals who have usurped lands has been shared with officials, but their response will indicate whether political will exists to fight this problem. According to the MAIL report, only 60,000 jeribs of government land that has been usurped has been reclaimed over the past year.</p> <p>This article directs officials to look into governmental and private properties being usurped, but unfortunately, sufficient attention has not been given to private usurped properties. Despite some achievements, an important deficiency in ARAZI's efforts is their exclusive focus on usurped public land despite the decree's explicit reference to private lands. The MEC Secretariat has attempted to receive further information from ARAZI, but their cooperation was not forthcoming.</p> |
| | | 31 (1): A report on fair distribution of land in towns to refugees in 34 provinces of the country shall be given to the Council of Ministers. |
| 3 months | MORR | <p>Not Implemented: The MORR claims to have created a committee to monitor and report on the distribution of land to refugees and returnees in the provinces. Another committee composed of directors under the MORR Policy and Planning Deputy has been created in Kabul to evaluate and address the issues in the reports. A number of recurring problems continue to be noted; for instance, provincial chiefs, governors, and other influential people still have influence on the distribution of land to returnees. They are accused of taking bribes and distributing land to warlords and governmental officials.</p> <p>MORR has prepared a report on this issue for the OAA, but has not shared it with MEC.</p> |

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