



**INDEPENDENT JOINT ANTI-CORRUPTION
MONITORING AND EVALUATION COMMITTEE**

د ادارې فساد پر وړاندې د څارنې او ارزونې
خپلواکه او گډه کمیټه

کمیټه مستقل مشترک نظارت و ارزیابی
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**Second Six Month Report of the
Independent Joint Anti-Corruption
Monitoring and Evaluation Committee**

Kabul, Afghanistan

July 25, 2012

Executive Summary

Corruption continues to be a major challenge to national development; and the legitimacy of the government and the international aid effort in Afghanistan. The Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC) was created after the need for independent monitoring and evaluation of anti-corruption efforts in Afghanistan was identified. MEC's terms of reference provide it with the mandate to identify effective development criteria for institutions, with necessary monitoring and evaluation of activities conducted against corruption at the national level, and of international organizations and donor aid.

MEC is comprised of three senior anti-corruption experts appointed on the recommendation of the Government of the Islamic Republic of Afghanistan and three on the recommendation of the international community. MEC makes recommendations and establishes and monitors the implementation of benchmarks; and must publish reports every six months, which are made available to the President, Parliament, international community and the people of Afghanistan through the media.

MEC is supported by a permanent secretariat in Kabul comprised of national and international individuals. The Secretariat is divided into three pillars (Governance, Prevention, and Law Enforcement) consisting of an international expert, a national adviser, and a national officer with technical expertise crossing the three areas provided by a Senior Policy Advisor.

MEC's operations and strategic framework are primarily based around quarterly Committee visits to Afghanistan. Six MEC missions have been held in Afghanistan since MEC's inception and MEC members have visited the provinces of Parwan, Herat, and Balkh. MEC members have broad authority to determine the Committee's quarterly agenda, but these include the following four areas:

1. Issuing recommendations and setting benchmarks;
2. Monitoring and evaluating the implementation of the benchmarks;
3. Policy advisory and advocacy for further progress; and
4. Reviewing effectiveness of international assistance.

To date, MEC has made 57 recommendations and established 58 benchmarks in the areas of governance, prevention, and law enforcement affecting a variety of government and international institutions and organizations. Nearly 81 percent of MEC's benchmarks have been fully or partially implemented. More specifically, of the 52 benchmarks evaluated: 12 (23%) have been fully implemented; 30 (58%) have been partially implemented; 9 (17%) have not been implemented; and the time limit has not yet expired for 1 (2%) other.¹

¹ These numbers reflect progress made to date and therefore differ from those reported in the *MEC Recommendations and Benchmarks Analysis Report* of May 20, 2012.

I. Background

Corruption continues to be a major challenge to national development; and the legitimacy of the government and the international aid effort in Afghanistan, with Afghanistan consistently ranked at the bottom of worldwide corruption indexes.² Commonly cited factors include lack of political and administrative willingness to combat and prosecute corruption, low salaries and unqualified public officials, weak legal and administrative structures, lack of transparency and public accountability for government actions, and limited oversight and accountability of international aid. Despite public commitments from the national and international community to tackle corruption, there has not sufficient progress to date, which puts the entire development and aid effort of the past ten years at risk.

MEC was created in March 2010 by Presidential Decree 61 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, the Government of the Islamic Republic of Afghanistan invited the international community 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 international community gathered at the London Conference.

MEC's terms of reference provide MEC with the mandate to identify effective development criteria for institutions; to monitor and evaluate anti-corruption activities at the national level, of international organizations, and donor aid; and to report to the President, Parliament, people and international community.

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

II. Organizational Overview

The Committee

According to its terms of reference, MEC is comprised of six senior anti-corruption experts, with three members appointed on the recommendation of the Government of Afghanistan and three on the recommendation of the international community. The current members of the Committee are:

Afghan Appointees

Mohammad Yasin Osmani
His Excellency Zakem Shah
Dr. Yama Torabi

International Appointees

Drago Kos (Slovenia)
Eva Joly (France/Norway)
Lt Gen. Hasan Mashhud Chowdhury (Bangladesh)

² Transparency International's Corruption Perception Index, Worldwide Governance Indicators 1996-2006 published by the World Bank Institute

The Chair of the Committee alternates between an Afghanistan and international appointee on a six-month basis. The current Chairperson is Mohammad Yasin Osmani who will chair the Committee until October 2012.

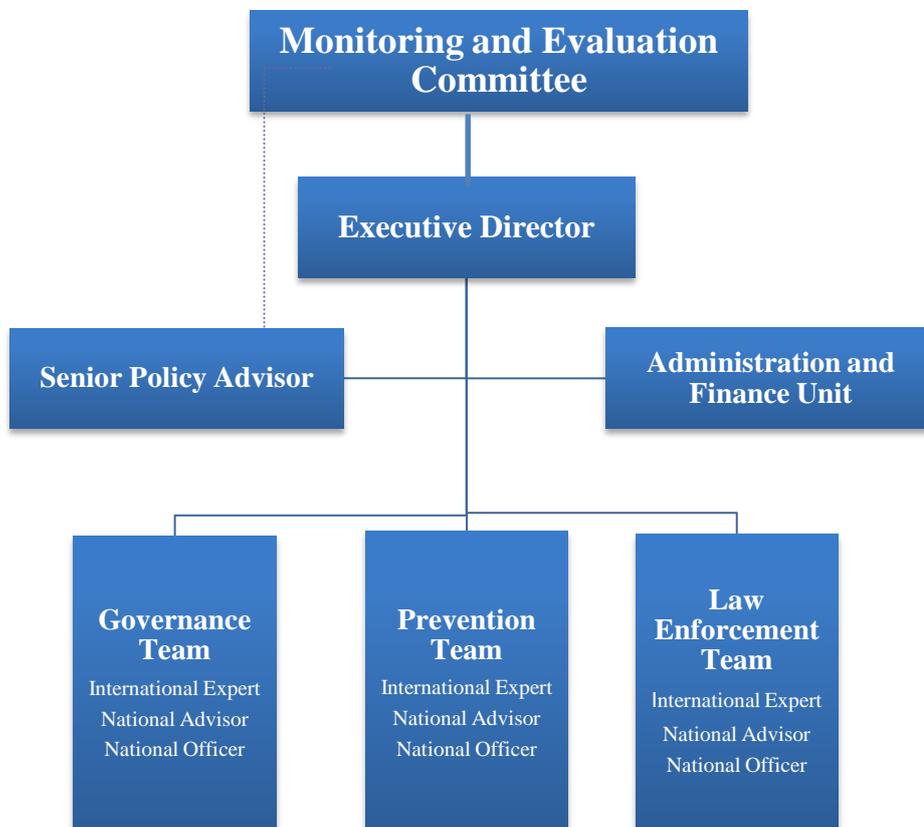
MEC Secretariat

MEC is supported by a technical secretariat in Kabul comprised of national and international individuals who support the work of the Committee; develop procedures for the identification, drafting and monitoring of the MEC benchmarks; and maintain an in-country presence for MEC’s on-going anti-corruption efforts.

The Secretariat is led by an Executive Director and is divided into three pillars (Governance, Prevention, and Law Enforcement) consisting of an international expert, a national advisor, and a national officer. Technical expertise is provided by a Senior Policy Adviser who is responsible for guiding the technical work of the Secretariat’s units and providing technical advice to the Committee. The Secretariat works closely with the parties implicated by the recommendations and benchmarks to ensure that they are implemented.

The Executive Director was appointed in August 2011, and the Secretariat was substantially staffed with international experts and national advisors and officers under the three pillars by May 2012. The practice of appointment of the Secretariat staff is handled through the Executive Director and senior staff is approved by the Committee. There are currently vacancies at the law enforcement and prevention expert level. Recruitment is ongoing and these positions will be filled in the near future.

Figure 1 MEC Organizational Chart



Stakeholder Groups

The Secretariat, in consultation with MEC and the international community, is in the process of establishing Stakeholder Groups composed of representatives from Afghan ministries, the private sector, media, civil society, and the donor community to serve as information sources and a sounding board for the Committee. Members of Parliament will be included in the stakeholder sessions.

There were meetings of potential stakeholders in April and May of 2012 to discuss the terms of reference, functions and modes of interaction these groups will take in relation to MEC. These stakeholder groups will also play an important role in maintaining momentum, effectively advocating for anti-corruption reforms and supporting the Committee and Secretariat's work between Committee visits. The first formal Stakeholder Groups meetings occurred in July 2012.

III. Current Activities and Achievements

MEC'S STRATEGIC FRAMEWORK

MEC was established to act as an agent of change in pushing forward anti-corruption reform both with the Government of Afghanistan as well as with the international community in Afghanistan.

Major areas in which the Government and international community's performance is being monitored and evaluated include specific anti-corruption activities, overarching programs aimed at strengthening the national integrity system as well as specific case driven initiatives that will rectify lapses in integrity.

In order to follow the actual implementation of the benchmarks and policy recommendations, MEC has developed a comprehensive annual work plan. MEC's operations and strategic framework are primarily based around quarterly Committee Member visits to Afghanistan, during which evidence related to corruption and anti-corruption measures is gathered to support benchmark development and review; and to identify anti-corruption best practices and lessons learned for Afghanistan. MEC members have a week prior to each visit to prepare and a week after to develop their findings. A report on MEC's activities is developed bi-annually as required by its terms of reference.

Six MEC missions have been held in Afghanistan since MEC's inception, with the most recent one being held in July of 2012. To date, MEC Members have visited Parwan Province (November 2011), Herat Province (February 2012), and Balkh (May 2012), to review the structure of systems within government and non-government offices including their management and decision-making practices, their responsibilities and also to take note of the obstacles to progress and functions. Strengths and weaknesses in the systems were also identified in order to produce recommendations for better governance at sub-national levels.

MEC Members have broad authority to determine their quarterly agenda, but these include the following four areas:

1. Issuing recommendations and setting benchmarks

MEC takes into account all information gathered through interviews conducted during its missions in formulating its benchmarks, as well as secondary evidence compiled by the Secretariat consisting of existing reports, documentary evidence, media articles and other analysis of gaps in the integrity system of the country. The increased staff compliment of the Secretariat has allowed MEC to be more efficient in the identification and drafting of its benchmarks. This has resulted in a benchmark formulation process that is well researched, multi-sourced, supported by evidence, and validated before it is issued.

As a result of the quarterly MEC member meetings and field visits, MEC members have finalized three sets of recommendations and benchmarks. A fourth set of benchmarks has been drafted and it is anticipated that it will be adopted in the near future.

2. Monitoring and evaluating the implementation of the benchmarks

Monitoring and evaluation activities assess whether the benchmarks are being implemented and measure whether efforts to tackle corruption are having an impact on the prevalence and severity of corruption and on public perceptions.

MEC and its Secretariat have a monitoring system in place for overseeing the progress of the implementation of the benchmarks, which is proving to operate effectively. After the May 2012 Committee visit, MEC conducted and published an evaluation of the first two sets of benchmarks that demonstrated the functionality of the current monitoring plan. MEC will continue to supplement direct interviews with agencies or written requests as the primary means of information gathering with the use of secondary sources such as reports, analysis, internet and documents from the donors as well as the Government to verify implementation.

3. Policy advisory and advocacy for further progress

MEC benchmarks, the analysis of their implementation as well as other outputs of the MEC Secretariat are building a body of policy advisory in the field of anti-corruption. MEC's analysis of the implementation of the benchmarks in June 2012 serves as a platform for institutional evaluation. Each recommendation that MEC makes is a piece of a broader mosaic of anti-corruption policy and advice. As MEC moves forward with its work this body of policy will provide a solid platform for identification of gaps in the system and what is being done or what needs to be done to correct these gaps. Areas of focus are likely to include weaknesses within the internal and external control of government agencies as well strengthening the oversight of donor programs. In the coming months, MEC will begin a regular process of evaluating what has, or has not, been achieved in the implementation of its recommendations and from that draw conclusions as to where the Government of Afghanistan and the international community should focus their efforts.

As a non-executive body MEC also functions as an agent of change and an advisory body to push the anti-corruption agenda forward. MEC is most effective in working formally through its Benchmarks, as well as in an informal capacity as an advocate to urge others to implement reforms.

4. Reviewing effectiveness of international assistance

MEC is tasked with reviewing the effectiveness of international assistance in support of anti-corruption efforts, and making recommendations to the international community. These recommendations will be in connection with changes in policy, practice, and direction; funding levels

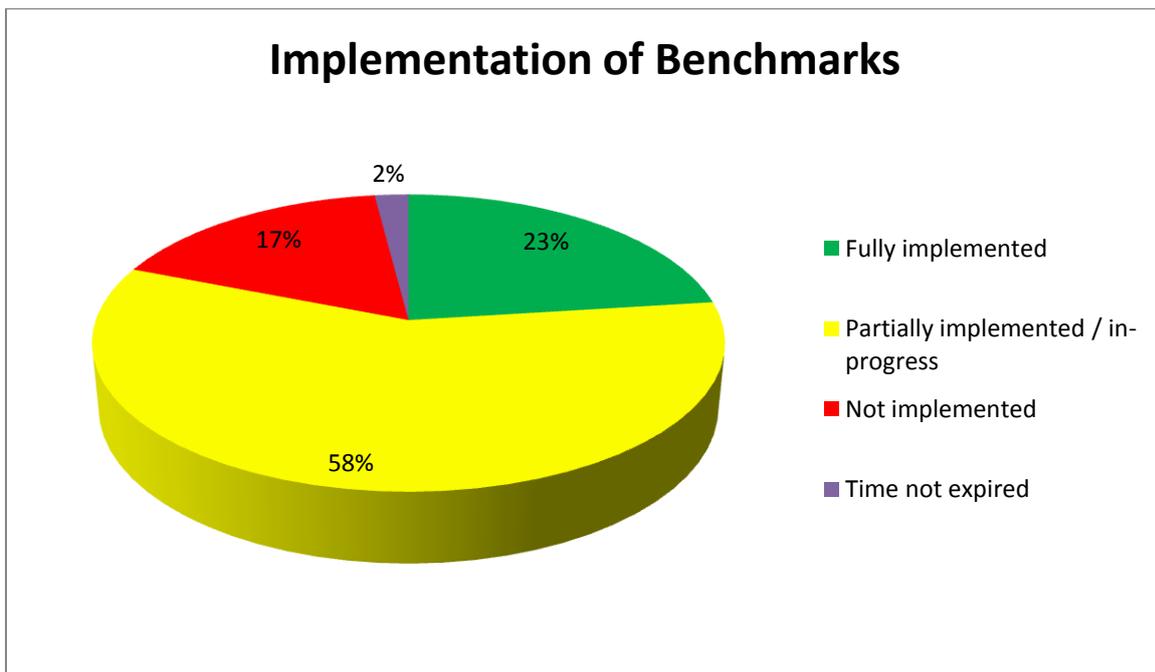
or priorities; quality and quantity of technical assistance; and/or conditions/terms of support, including direct budget support. To operationalize this mandate, MEC will establish a Donor Stakeholder Group, as discussed above. This will be utilized alongside the International Community, Transparency and Accountability Working Group as a platform for refining programming, policies and strategic direction.

IV. Progress in the Implementation of the Benchmarks

Overview of Benchmark Implementation

To date, MEC has met six times in accordance with its terms of reference and have issued 57 recommendations and 58 benchmarks in the areas of governance, prevention and law enforcement affecting a variety government and international institutions and organizations.

After its May 2012 meeting, MEC conducted an evaluation of the implementation of its first two sets of recommendations and benchmarks. The results of this evaluation indicate that nearly 81 percent of MEC's benchmarks have been fully or partially implemented. More specifically, of the 52 benchmarks evaluated: 12 (23%) have been fully implemented; 30 (58%) have been partially implemented; 9 (17%) have not been implemented; and the time limit has not yet expired for 1 (2%) other.³



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V. Institutional Assessments Based on the Implementation of Set 1 and 2 of the Benchmarks

Institutional Assessment of Governance Benchmarks

High Office of Oversight (HOO)

HOO is the highest governmental anti-corruption institution in Afghanistan, with the *Anti-Corruption Law* stipulating that all anti-corruption efforts should be coordinated with HOO. Therefore, the successful eradication of corruption in Afghanistan will require the significant effort and cooperation of HOO. In recognizing HOO's central importance, MEC has developed several benchmarks directed to HOO. Unfortunately, HOO has not been receptive to MEC's recommendations and benchmarks and has never formally responded to MEC's monitoring and evaluation efforts. The source of this consternation is HOO's unwillingness to recognize MEC's independence. HOO's continued resistance jeopardizes many constructive anti-corruption initiatives and impedes Afghanistan's overall progress in combating corruption.

The specific benchmarks directed to HOO are detailed below.

1. Consolidation and Coordination of Anti-Corruption Efforts

The first set of benchmarks relate to the consolidation and coordination of anti-corruption efforts in Afghanistan. In the past years many national anti-corruption strategies and other policies with anti-corruption substance have been adopted, without being successfully implemented. Benchmark 1.1 (distribution of anti-corruption strategies to implementing institutions); benchmark 1.2 (creation of institutional anti-corruption working groups); 1.3 (implementation of top three anti-corruption priorities); 1.4 (HOO to coordinate efforts for the consolidation of existing anti-corruption strategies); and 2.2 (working group for the drafting of a new Anti-Corruption Law), are all geared toward a more strategic approach to anti-corruption efforts and better coordination with HOO in the lead.

Although HOO proactively distributed anti-corruption strategies to relevant institutions in conformity with benchmark 1.1, they have not made any progress in consolidating and simplifying these strategies (BM 1.4), and have made insufficient progress to ensure implementation of the strategies through coordination and oversight of anti-corruption activities (BM 1.2).

Although, some government ministries and institutions have established working groups for the implementation of the anti-corruption strategies, many have not due to a variety of factors, including the lack of prioritization of anti-corruption efforts by some ministries, and the inability for HOO to effectively leverage them to do so.

HOO is responsible for approving and overseeing the top three anti-corruption priorities among all government ministries and institutions. It has been reported that while all ministries have submitted action plans many independent or stand-alone institutions have not identified their corresponding priorities. Some of the reports received by HOO were not in accordance with recommendation 1.3 and were rejected by HOO. According to information, some Ministries failed to

identify their three priorities and the HOO also failed to monitor the implementation of these priorities.

2. Complex Administrative Procedures

HOO has been tasked with being the lead for several cross-government initiatives related to the simplification of administrative procedures. Lengthy administrative procedures are a source of corruption within the public administration of Afghanistan. Such complex and lengthy procedures provide opportunities for public servants to engage in corrupt practices and to make demands for bribes. It also causes people to become frustrated and pass tasks to brokers or to bribe the civil servant to obtain a public service.

MEC benchmarks 1.14 (posting of information on the rights of citizens); 1.15 (legislative amendments for administrative reform); and 1.16 (administrative directions for implementing reforms) are aimed at informing citizens and simplifying procedures to reduce opportunities for corruption. HOO has been assigned a coordinating role in ensuring that these benchmarks are met, yet there has been little progress.

Together with reforming administrative structures, simplification of administrative procedures and awareness of people on their rights can prevent entrenched and pervasive corruption. Simplification and reform are the core principles of each institution and the HOO is generally responsible for the implementation of these tasks; unfortunately, neither other institutions, nor the HOO have taken effective measures. If administrative procedures are simplified and people are aware of their rights and responsibilities, then most corrupt practices will be reduced.

3. About the Kabul Bank Case

MEC has also created benchmarks for HOO in relation to the Kabul Bank crisis. Benchmark 1.13 (public officials indebted to Kabul Bank) indicates that HOO should analyse activities of public officials who are on the list of Kabul Bank's debtors and inform media and proper authorities on its findings and recommended sanctions. There has been no indication of the implementation of this benchmark.

4. Asset Verification

The verification of assets has been a long standing issue in Afghanistan, and forms a central part of HOO's mandate under the law. The reporting and tracking of assets introduces transparency and accountability in the monitoring of public officials conduct and assessment of their potential enrichment from public office. MEC benchmark 2.1 (asset verification MOUs) was developed to ensure that HOO upholds this important responsibility by having understandings in place with relevant institutions. HOO has not reported to MEC on the implementation of this benchmark and there is no publicly available information that would allow MEC to determine if assets have been verified and published in accordance with the law and constitution. Though assets of the high officials have been registered and published two years earlier, verification in line with the Afghanistan Constitution and Anti-Corruption Law have not been published. Hence, people are not aware of the assets of these high ranking officials.

United Nations Assistance Mission in Afghanistan (UNAMA)

For anti-corruption efforts to be successful there needs to be a coordinated approach from the international community in addition to national efforts. UNAMA has a central role in the administration of aid and development in Afghanistan and is a natural organization to coordinate efforts in this regard. Benchmark 1.5 (development of an international anti-corruption strategy) requests that UNAMA convene a meeting with relevant international organisations in order to adopt a work-plan on drafting and adoption of an international anti-corruption strategy.

UNAMA has indicated that they are working on a paper and will share it with other stakeholders. MEC has received preliminary documentation from UNAMA, but the documentation was not sufficient and MEC will follow-up with UNAMA to clarify expectations in fulfilling this benchmark.

Office of Administrative Affairs (OAA)

The Office of Administrative Affairs is the central agency responsible for connecting all institutions with the office of the President of Afghanistan and monitors the implementation of decrees and orders. Its central role in government makes them a key partner in setting the tone and direction for anti-corruption efforts related to governance. In this regard, the OAA has a key role in implementing several MEC benchmarks that would strengthen the role of internal monitoring bodies.

Benchmark 2.3 (illegal interference with public bodies) invites H.E. the President to issue a Ferman prohibiting all illegal interference with the work of public bodies and authorising those bodies and their employees to immediately inform the President's Office of any attempt to do so.

Benchmark 2.8 (instructions to reinforce internal oversight capacity) requests that instructions be issued to the Ministry of Interior, Ministry of Defence, the AGO and HOO to assess and reinforce their capabilities of internal oversight and investigative bodies.

Benchmark 2.10 (personnel employed in key institutions) invites H.E. the President to issue instructions to ministries and other key institutions, including at least the AGO, the HOO and the CAO, related to vetting procedures for important positions, the rationalization of personnel structures, and bans on reinstatement and compensation of officials removed from their positions for corruption and criminal offences.

The fulfilment of Benchmark 2.8 will strengthen the internal oversight capabilities and investigative bodies of Afghanistan's most important organizations in the overall management of government affairs, which would enhance the detection of fraudulent activities and reduce corruption. Similarly, the implementation of Benchmark 2.10 would ensure that those bodies assigned the responsibility for the investigation and prosecution of unlawful activities are staffed with qualified, capable, and ethical individuals as required to fulfil the responsibilities of the positions that they are hired for.

Recommendation and Benchmark 2.3 invites H.E. the President to issue an order on prohibition of illegal interference of official in the institutions. Though such order has not been issued so far; MEC requires the OAA to facilitate the issuance of such order.

Institutions and ministries that failed to implement MEC's recommendations and benchmarks may not be aware of the processes, or lacking capacity, as well as, not able to select their priorities. MEC will monitor all these issues in coordination with other institutions.

Ministry of Culture and Information

Access to information is one of the most important tools for public transparency and accountability. Recognizing this, MEC issued Benchmark 2.17 (draft access to information law) indicating that the Government of Afghanistan should send the draft *Law on Access to Public Information* to Parliament.

The draft *Law on Access to Public Information* was drafted by the Ministry of Information and Culture and has been sent to the Ministry of Justice for final drafting. In June 2012, the Council of Ministers prioritized the law for development by the Taqin Department during the second quarter of the Afghan calendar. Taqin has completed their study of the *Access to Information Law* provided by the Ministry of Culture and Information and have begun the final drafting process. It is anticipated that it will be introduced in Parliament in the coming weeks, which would fully satisfy this benchmark.

Local Government Office in Herat

In order to enhance the integrity of one of the entities at the sub-national level, MEC in agreement with the Governor of Herat province, suggested measures to further the fight against corruption in the provincial government offices in Herat. Benchmark 2.18 (risk assessments and monitoring) suggests that the provincial Governor's Office in Herat introduce a corruption risk assessment and monitoring mechanism; and establish a compliance mechanism within the Governor's office. Benchmark 2.19 (training for employees of the provincial government offices) outlines that basic anti-corruption and ethical training should be given to all employees of provincial government departments in Herat.

After the development of Benchmarks 2.18 and 2.19, MEC visited the provincial government offices in Herat Province and received a positive response from the provincial Governor of Herat Province. However, MEC was informed of a lack of sufficient resources to carry out the activities required to meet the benchmarks. Therefore, UNAMA Western Region Office agreed to try to organize donors to provide the required support to the provincial Governor where possible. MEC will conduct further follow-up activities to evaluate whether progress has been made. The success of this initiative is important for Afghanistan as the initiative is being considered a pilot that can be adapted to other areas if successful and is indicative of the commitment of provincial authorities in tackling corruption.

Institutional Assessment of Prevention Benchmarks

Ministry of Justice

The availability and awareness of Afghanistan law is central to the prevention of corruption and MEC's Benchmark 1.17 (publishing and delivery of legislation) requires the Ministry of Justice to publish all legislation in the Government's Official Gazette and to deliver them to all government

institutions within the capital and provinces at no cost. The publication department of the MoJ annually publishes 2,000-5,000 copies of laws and legislation and distributes them to institutions in the capital and at the local level of government.

The Ministry of Justice is one of the ministries that have consistently cooperated with the MEC's recommendations and benchmarks in a timely manner. The Ministry has posted all legislation on their official website, which is accessible to the public both in official languages. The use of the website increases the level of public awareness as well as public official's accessibility to existing laws and legislations. Therefore, benchmark 1.17 has been fully implemented.

MEC Benchmark 1.29 (police powers for access to banking data) indicates that legislation should be drafted to allow the police and HOO to have access to banking data in Afghanistan. There has been no update received from the Ministry of Justice, but the monitoring report submitted by DAB stated that the benchmark has not been implemented. DAB is following up with a discussion this issue with its legal advisory unit which is a starting point in completion of the benchmark.

Ministry of Agriculture, Irrigation and Livestock (MAIL)

Land usurpation continues to be a major problem in Afghanistan and extremely challenging for the state to deal with due to the involvement of political elites. The abuse of power of key players in the political system and other non-state actors is a key destabilizing factor for rebuilding Afghanistan. MEC's Benchmark 1.18 (reports on implementation measures) requires the Afghanistan Land Authority (ARAZI) under the Ministry of Agriculture to implement the National Anti-Corruption Strategy measures against land usurpation; and benchmark 1.19 (papers describing problems related to land usurpation) to the Ministry of Agriculture, HOO and the Office of the Kabul's Mayor requesting that they prepare short documents setting out the land usurpation problem and measures taken.

In response to Benchmark 1.18 ARAZI has sent its report on land usurpation problems to MEC. ARAZI's land dispute directorate has been mandated to deal with land usurpation problem. So far, they have recovered around 60,000 Jerib (12,000 Hectares) of usurped land.

In response to Benchmark 1.19, ARAZI is heading a committee to deal with land usurpation problems. This committee is mandated to develop short documents that describe the problem of land usurpation, measures already applied, results achieved, proposals for future activities, and obstacles and risks expected. Once completed, these documents will be shared with MEC.

Da Afghanistan Bank

Da Afghanistan Bank has a central role to play in regulating the financial policy and potential areas for corruption in Afghanistan. The effects of the Kabul Bank crisis have demonstrated the susceptibility of the fiscal stability of Afghanistan to large scale corruption in the banking sector. To identify any potential vulnerabilities, MEC developed Benchmark 1.27 (assessment in relation to Kabul Bank) to assess the work of its auditors, the Financial Intelligence Unit, and the compliance officer; and Benchmark 1.28 (forensic audits of large banks) which suggests that audits be carried out on the three largest banks in Afghanistan. DAB has complied with MEC's recommendations and benchmarks as outlined in a timely manner. Based on the DAB report, Forensic Audits of two largest

banks began in June 2011 and concluded in March 2012. Conducting a comprehensive forensic audit is extremely resource intensive and requires an advanced level of technical skill. The Central Bank and the commercial banks do not have either the financial or human resources to conduct a significant number of forensic audits and therefore have conducted Prudential Audits within 10 banks.

With regards to Benchmark 2.7 (amendments to the *Anti-Money Laundering Law* regarding the export of cash/capital flight), based on the DAB reports, 17 amendments were made to *Anti-Money Laundering Law*, which will soon be sent to the Ministry of Justice for review. The Ministry of Justice has already included anti-money laundering amendments in its work plan. Meanwhile, DAB has proposed to the Council of Ministers that an individual can only carry \$20,000 US at one time out of the country and the Council of Ministers have adopted this measure. In the future the implementation of this benchmark would prevent illegal transfer of money from the country.

Ministry of Finance

The Ministry of Finance is central to anti-corruption efforts in Afghanistan as the ministry responsible for the development, implementation and oversight of fiscal policy, budgeting and program spending. MEC has developed several benchmarks directed toward various aspects of the Ministry's business lines. In general, the MoF is willing to adhere to the recommendation and is a progressive institution in fulfilling MEC's recommendations and benchmarks.

- ***Public Procurement***

Public procurement is one of the most vulnerable areas to corrupt practices. State institutions often lack people who have capacity to detect and deter corruption as well as effective integrity management systems that enforce internal control. The current procurement law (a new law is being drafted) is vague and overly-complicated and as such has facilitated corruption. Also some of the donors with large amounts of reconstruction assistance in the country have created additional opportunities for corruption due to their use of off-budget support and failure to channel the resources through the government procurement process.

MEC benchmarks 1.20 (designation of public procurement leads in institutions); 1.21 (Amendment of the public *Procurement Act*); and 2.11 (strengthening of the Ministry of Finance's Public Procurement Unit and Appeal and Review Committee) are aimed at addressing some of these susceptibilities. In accordance with these benchmarks the Ministry has delivered a number of trainings on the public procurement to a number of public institutions as well as NGOs as provided by Benchmark 1.20; created a working group to consider amendments to the procurement laws of Afghanistan; and strengthened the Procurement Policy Unit by providing capacity building training to its officers. Until a new law is passed, Benchmark 1.22 directed to Shafafyat seeking the harmonization of international community's rules and practices in accordance with the new procurement law cannot be implemented.

- ***Afghanistan Customs Division (ACD)***

The Afghanistan Custom Division (ACD) of the Ministry of Finance is one of the most important institutions in the economic development of the country; and is a major source of revenue generation for the Afghan government. Corruption in the ACD undermines its reputation and has

negative impacts on the revenue of the government. Specifically, MEC has made recommendations related to Benchmark 1.7 (review of the *Customs Act*); Benchmark 1.8 (information technology for the inspection at border check-points); Benchmark 2.4 (access to customs' officers facilities); Benchmark 2.5 (incentives for customs officers); and Benchmark 2.6 (coordinating activities to avoid tax abuse related to tax exempt goods under Military Technical Agreements).

Of the MEC recommendations directed to the ACD, the ACD has succeeded in fully or partially implementing most of them. The continued monitoring and commitment of the ACD make it likely that ACD will implement more of MEC's recommendations. However, the benchmark related to tax exemptions is one of the major concerns for the ACD, but there is lack of political will from the international community making it difficult to implement the recommendation. Additionally, the ACD failure to comply with the MEC's recommendation regarding hiring an international testing company to verify goods at the border, as well as, a mobile testing laboratory to inspect and control low quality imported goods on the roads and dump sides, rely on the availability of funds for the implementation of such programs.

National Directorate of Security (NDS)

Another benchmark directed toward issues in customs is Benchmark 1.9 (Mobile Task Forces), which recommends that Mobile Task Forces be created comprised of members from the Ministry of Commerce, the Ministry of Finance, the Ministry of the Interior, HOO, NDS, and Office of National Standard to check and evaluate quantities and qualities of some imported goods.

MEC has not engaged NDS on this issue, but the Ministry of Finance has advised that the failure to comply with this recommendation relates to the lack of capacity within ACD, as well as the prohibitive costs associated with implementation. However, the NDS started to establish a committee and empower these groups. So far, the committee hasn't started its activities.

Ministry of Mines

The mining sector is the most promising sector for the economy of Afghanistan. Major resources of different minerals guarantee that the Afghan economy in the future can survive without foreign aid. Therefore, it is extremely important that all activities in this sector are conducted in a legal, open, transparent, and honest way, which will ensure substantial incomes and equal treatment for all partners taking part in the activities within the mining sector of Afghanistan. To this end, MEC has developed several recommendations in respect to mining, including Benchmark 2.12 (national policy on the exploitation of mineral resources); Benchmark 2.13 (highly qualified lawyers in the area of mining to negotiate contracts); Benchmark 2.14 (adherence to national and international anti-corruption standards in mining); and 2.15 (publishing of contracts on the Ministry of Mines website).

The Ministry of Mines has been one of the institutions within the Government of Afghanistan that has fulfilled MEC's recommendations and benchmarks. Of the five Benchmarks established by for the Ministry by MEC, two have been fully implemented while three have been partially implemented. It is clear that additional steps in enhancing transparency and accountability such as the publishing additional information on contracts have been taken by the Ministry of Mines since the publication of the benchmarks and the close monitoring by MEC has helped to advance things. Similarly the establishment of the Afghanistan Extractive Industry Transparency Initiative helped that

opportunities for corruption to be reduced in the Ministry of Mines. Given the steps undertaken by the Ministry it is fairly certain that they will continue a strong partner for MEC in advancing the fight against corruption.

Municipality of Kabul

A key issue in the simplification of administrative procedures relate to building permits. On the basis of the building permit assessment conducted by the HOO in 2010, it is apparent that one of the most complicated procedures in licensing is the procedure to acquire a building permit, either for commercial (where 609 steps and 4.5 years are needed) or for private use (where 90 steps and 1 year is needed). Lengthy procedures for simplification of acquiring building permits also open the space and provide opportunities for corruption for the civil servants.

More specifically, Benchmark 2.9 (simplification of procedures in the area of acquiring building permits) relates to the administrative procedures in the area of building permits. MEC has not received any formal report from Kabul Municipality, but based on the numerous visits, it is aware that the actual simplification has been started by the HOO and the Kabul Municipality.

Institutional Assessment of Law Enforcement Benchmarks

Rule of law is widely recognized as being weakly enforced in Afghanistan and a proper functioning law enforcement system and judiciary is crucial to future stability of the country. The unevenness of implementation of MEC's benchmarks across the law enforcement system demonstrates that there are institutional and political barriers to enhancing the integrity of the law enforcement system. MEC has identified a variety of factors that both promote and hinder promotion of transparency and accountability across a number of institutions.

Attorney General's Office (AGO)

AGO plays a critical role in enforcing laws in Afghanistan. Within the Attorney General's Office the specific body charged with conducting anti-corruption work is the Anti-Corruption Unit (ACU). The ACU has the mandate to investigate and prosecute major corruption cases. During the course of the last year of operation MEC has allocated seven benchmarks to AGO related to Kabul Bank, the Military Hospital and corruption case reports submitted by the police, HOO and CAO.

Regular and continued monitoring visits to AGO along with formal letters from MEC Secretariat have led the ACU to be more responsive on the implementation of the benchmarks. Implementation of benchmarks would increase transparency and accountability of AGO's handling of corruption cases and enhance their effectiveness in the specific cases outlined.

Reporting of Corruption Cases

In the implementation of BM 1.12 (AGO report on submitted cases) MEC Secretariat made repeated monitoring visits to the ACU/AGO to ensure that MEC was provided with details of the number of corruption cases it is handling. A recent visit in June by the MEC Secretariat Law Enforcement team resulted in the submission of a database of corruption cases submitted to the AGO by the Ministry of Interior, the High Office of Oversight and the Control and Audit Office from

the years 1388 to 1391 with details on the nature of the cases, resulting in the fulfilment of this benchmark. The data indicates that the CAO reported 12 cases with 6 being dismissed and 6 under investigation since 1389 and 1390; HOO sent 34 cases between 1388-1389,90,91, of which 8 were sent to the court for prosecution; 7 were dismissed; 14 are still under investigation in Kabul and provincial prosecution offices and 5 cases were sent back to HOO; and the MoI sent 28 cases in 1388-1389,90,91 of which 8 cases were finalized and the courts issued their verdicts; 13 cases are under investigation in different departments of AGO; and 7 cases were dismissed.

This report from the AGO points to a general problem of developing actionable corruption cases within the Afghan law enforcement system. While corruption prosecution has a low conviction rate worldwide, the low number (8) of cases passed from the HOO for prosecution over the last 4 years is far below average for an agency that serves as the prime anti-corruption institution in the country.

The HOO itself indicted in its last public report that it examined (conducted preliminary investigations) 216 cases in 1389 of which 34 were referred to AGO and other relevant agencies; and examined 251 cases in 1390 of which 32 were referred to AGO and other relevant agencies. The discrepancies between these figures will be researched and reconciled in the next 6 Month Report of the MEC.

- ***About Kabul Bank***

MEC has received cooperation from the ACU in relation to Kabul Bank benchmarks, Benchmark 1.23 (criminal investigation); Benchmark 1.24 (seizure of assets); and Benchmark 1.25 (publication of official debtors).

The ACU submitted two reports on the Kabul Bank case containing the information requested on all major debtors, the amount of debt and the current status of proceedings. The visible progress on these benchmarks can be attributed to the high level of interest of the international community and/or political support by the Government of Afghanistan for the case to be resolved. Other indications of progress based on reports of the AGO on the case were the partial recovery and identification and evaluation of assets of the debtors both inside and outside the country. According to Presidential Decree (No. 281 of 16/01/1391) on Kabul Bank, the case was referred to a special tribunal that is currently underway.

Similarly, the IMF and the Ministry of Finance has requested that MEC conduct a public inquiry into the Kabul Bank crisis that will be critical in clarifying the facts of the case and the sequence of events for the public. It is hoped that such a public inquiry will restore the public trust in the banking sector and help to curb the culture of impunity.

- ***Kabul Military Hospital***

Although MEC was not formally informed of the status of Benchmark 1.30 (creation of a joint investigation team) and Benchmark 1.31 (criminal prosecutions) related to the Kabul Military Hospital, it was made aware through its monitoring activities that a Joint Investigative Team (JIT) was formed to investigate the case composed of representatives from the AGO/military division, CAO, Ministry of Defence, National Directorate of Security and the HOO, and that this investigation is still

officially on-going. This JIT is led by the HOO and has regular case coordination meetings, originally on a daily bases. The HOO has not provided MEC with any information regarding the case, but according to AGO representatives, this case is very weak and there is no document and evidence available. Therefore, the JIT members might decide to close the case unless they receive a proper evidence base to carry the investigation forward. It is not clear what level of evidence that has been collected by ISAF in regards to the case. However, the latest information received by the secretariat of the MEC reveals that the JIT has received some information. The AGO has completed the investigation of 6 accused and the investigation continues for others.

VI. Conclusion

This Second Six Month Report of the MEC represents a turning point in the operations of MEC and potentially in the fight against corruption in the country. As MEC has formed a fully functioning Secretariat it is more able to conduct analytical work on its benchmarks as well creating a more advanced system of formulating the benchmarks.

Before the establishment of a MEC Secretariat the process of identification and creation of MEC benchmarks resulted from primary sources; a process that largely consisted of interviewing practitioners and experts from the Government, non-governmental and international spheres. Some benchmarks were created by issues that had been identified through lapses in the corruption prevention system of Afghanistan and come out of cases brought to the public's attention.

Now MEC is also focused on its evaluation of the gaps in the system as identified on the progress made by institutions in implementing MEC benchmarks and identifying where advances in fighting corruption are being made. Gaps in the system that allow corruption to occur has been the ongoing work of MEC. As the work of the Committee progresses more in-depth assessments of the drivers of corruption and vulnerabilities in the system will be conducted.

One broad pattern can be observed in the political will to enhance transparency and accountability of the potential revenue generation and collection system of the Government through the Ministry of Mines and the Afghan Customs Directorate. While these institutions are far from free of corruption they have undertaken some of the reforms recommended by the MEC as well as other steps initiated on their own. The consequences of continued reforms in both of these institutions will mean an improved revenue base of the Government and more importantly economic stability to Afghanistan.

Within the transparency and accountability framework of the country there are a number of institutions that have failed to implement MEC recommendations and benchmarks. The prime institution that should be playing the lead role is HOO. However, HOO didn't recognize the mandate of MEC and refuses to cooperate in trying to enhance the integrity of the governance structure. Such resistance of HOO has created vacuum of cooperation between these institutions that needs to be filled.

The ministries of Interior and Justice have been semi-compliant with fulfilling MEC's Benchmarks and have conducted other initiatives on their own to enhance the integrity of their institutions. As such they are mid-range in terms of anti-corruption reforms. Both institutions are critical ones in the future stabilization of Afghanistan and much more has to be done to reduce corruption opportunities within both these bodies. MEC will follow up with a focus on the operations of the Ministry of Interior and how to reduce the vulnerabilities to corruption that exist in those operations.

In addition, prevention of corruption in the international community relates to the strategies and financial procedures of these institutions; for which the MEC has issued recommendations and benchmarks. In order to bring transparency and accountability, the international community has promised to coordinate their strategies and procedures.