

SIGAR

**Special Inspector General for
Afghanistan Reconstruction**

SIGAR 18-51 Audit Report

Afghanistan's Anti-Corruption Efforts: The Afghan Government Has Begun to Implement an Anti-Corruption Strategy, but Significant Problems Must Be Addressed



MAY
2018

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WHAT SIGAR REVIEWED

At the Brussels Conference in October 2016, the Afghan government committed to developing and implementing new national-level anti-corruption policies in 2017 through the revised Self-Reliance through Mutual Accountability Framework (SMAF). Specifically, (1) the High Council on Rule of Law and Anti-Corruption (High Council) was to produce and endorse a whole of government anti-corruption strategy in “the first half of 2017;” (2) the Afghan government was to initiate this strategy “in the second half of 2017;” and (3) the Ministries of Finance (MOF), Mines and Petroleum, Commerce and Industries, Communications and Information Technology, and Transport and Civil Aviation were to publicly report on their progress implementing anti-corruption action plans in 2017.

SIGAR conducted this audit in accordance with the explanatory statement of the Consolidated Appropriations Act, 2017, which directed SIGAR to assess the implementation of the Afghan government’s national anti-corruption strategy and the five ministries’ action plans.

The objectives of this audit were to determine the extent to which the Afghan government: (1) met the anti-corruption deliverables it agreed to under the SMAF; (2) created an anti-corruption strategy that meets international anti-corruption strategy standards and best practices; (3) is implementing its anti-corruption commitments in the anti-corruption strategy and benchmarks; and (4) has made progress or experienced challenges implementing anti-corruption reforms.

In this report, we are offering six matters for consideration to the Afghan Government. Recognizing the importance of Afghanistan’s anti-corruption efforts, Congress required SIGAR, through the explanatory statement for the Consolidated Appropriations Act, 2018, to continue monitoring the Afghan government’s progress in implementing the strategy and provide an update to this report.

May 2018

Afghanistan’s Anti-Corruption Efforts: The Afghan Government Has Begun to Implement an Anti-Corruption Strategy, but Significant Problems Must Be Addressed

SIGAR 18-51 AUDIT REPORT

WHAT SIGAR FOUND

We found that the Afghan government has begun implementing its anti-corruption strategy and other reforms, but questions remain regarding its ability to fully implement the strategy and demonstrate a lasting commitment to combatting corruption. The High Council released the anti-corruption strategy on October 12, 2017, achieving the first of its SMAF objectives, though it missed the mid-2017 deadline. President Ghani ordered the strategy’s implementation on December 9, 2017, fulfilling the second SMAF objective. After receiving a draft of this report, the Afghan government demonstrated on April 22, 2018, that all five revenue-generating ministries have publicly reported on their progress implementing their anti-corruption action plans, meeting the third SMAF objective.

While the strategy is a positive step, it has weaknesses and it does not meet some international standards and best practices. Specifically, the strategy’s authors did not fully engage Afghan civil society organizations and ministries, even though some will be responsible for the strategy’s implementation. In addition, the strategy’s goals and benchmarks are not fully aligned. The strategy focuses primarily on 15 “priority” ministries but leaves the role of Afghanistan’s largest ministry, the Ministry of Defense, unclear. The strategy also does not fully incorporate Afghanistan’s other ongoing anti-corruption initiatives. Moreover, the strategy fails to call for the establishment of a permanent and fully independent anti-corruption organization to oversee, coordinate, and implement anti-corruption initiatives. In commenting on a draft of this report, the Afghan government explained that it “took a number of conscious decisions that differed from international practice... We did this with our eyes wide open and with strategic intent, as we are very much aware of the [United Nations Convention Against Corruption] that recommends the creation of an independent anti-corruption body.”

As of February 28, 2018, the Afghan government had met its self-imposed deadlines for only 2 of the 20 anti-corruption benchmarks that were due by that date. After receiving a draft of this report, the Afghan government completed an additional 12 benchmarks by May 14, 2018, bringing the total number of completed benchmarks to 14. Similarly, despite a presidential order mandating that approximately 58 Afghan government entities create anti-corruption action plans, only 22 had done so as of February 2018. However, after receiving a draft of this report, the Afghan government showed that an additional 26 ministries had submitted action plans. Therefore, as of May 14, 2018, Afghan government entities had submitted 48 out of 58 anti-corruption action plans to the High Council. SIGAR commends the Afghan government’s responsiveness to the draft report and will continue to track these benchmarks in its follow-on work.

In addition to developing its anti-corruption strategy, the Afghan government has reported progress in implementing anti-corruption and transparency initiatives such as updating the Penal Code. However, SIGAR identified five major challenges that continue to limit the Afghan government’s ability to combat corruption. First, key anti-corruption institutions such as the Anti-

Corruption Justice Center (ACJC) and Major Crimes Task Force (MCTF) lack the capacity, resources, or security they need to perform their functions. Second, despite efforts by the Afghan government to clarify the law, Afghan officials have differing opinions about when the MCTF's detective role ends and when the Attorney General's Office's (AGO) investigative role begins, which has led to recurring conflict between these two organizations. Third, Afghanistan's law enforcement and judiciary often avoid investigating, prosecuting, and punishing powerful individuals. Fourth, unqualified and potentially corrupt actors continue to operate in key Afghan anti-corruption institutions. For example, while the Department of Defense and the Afghan government conducted polygraph examinations of 139 ACJC, MCTF, and Ministry of Interior employees, with 53 of these employees failing, no follow-up polygraph examinations have been conducted. In response to a draft of this report, senior Afghan government officials expressed willingness to conduct follow-on polygraph examinations. However, U.S. Embassy officials expressed concerns that even if additional rounds of testing occur, the AGO has not committed to acting on the results. This, combined with reports of reprisals against reformers and whistleblowers, enables the capture of anti-corruption bodies by corrupt actors and discourages those who would challenge them. Finally, U.S., international, and Afghan officials all expressed skepticism about Parliament's willingness to support anti-corruption reforms, generally viewing it as a hindrance to the passage of anti-corruption reforms.

MATTERS FOR CONSIDERATION FOR THE AFGHAN GOVERNMENT

SIGAR is offering six matters for the Afghan Government to review and consider. To ensure the anti-corruption strategy's implementation is in accordance with international standards and best practices, SIGAR recommends the Afghan government consider:

- 1. Revising the anti-corruption strategy to tie each goal to a precisely-defined benchmark with a realistic deadline, and developing mechanisms to incorporate ministry and civil society feedback during this process; and**
- 2. Establishing independent anti-corruption organizations in accordance with the *United Nations Convention Against Corruption (UNCAC)*.**

Because the Ministry of Defense (MOD) accounts for more than 15 percent of the Afghan national budget, to ensure that the MOD continues to implement its anti-corruption commitments, SIGAR recommends the Afghan government consider:

- 3. Adding the MOD to the list of "priority ministries" required to submit an anti-corruption action plan for the High Council's review.**

To make progress and address challenges to implementing anti-corruption reforms, SIGAR recommends the Afghan government consider:

- 4. Clarifying which government entity or entities will take over High Office of Oversight and Anti-Corruption's education and public awareness responsibilities;**
- 5. Providing the necessary resources and specialized staff, as well as the training that such staff may require to carry out their functions, to key anti-corruption entities in accordance with the UNCAC; and**
- 6. Conducting a second round of polygraph tests, and annual follow-up rounds thereafter, for Anti-Corruption Justice Center and Major Crimes Task Force personnel, and taking appropriate action against individuals who fail these tests.**

SIGAR received comments on a draft of this report from the Government of Afghanistan, joint comments from the U.S. Embassy Kabul and the U.S. Agency for International Development, and comments from the Department of State's Bureau of International Narcotics and Law Enforcement. The Afghan government concurred with the first, third, fourth, and sixth matters for consideration; partially concurred with the fifth; and did not concur with the second. The draft report also included a matter for the Afghan government to direct the Ministries of Finance, Communications and Information Technology, and Transport and Civil Aviation to publish, and immediately make public the final progress reports for their 2017 anti-corruption action plans. However, following receipt of a draft of this report, on April 22, 2018, the Afghan government sufficiently addressed this matter, and so SIGAR removed it from this final report. In addition, SIGAR recommended that the Afghan government clarify which government entity or entities will take over the High Office of Oversight and Anti-Corruption's responsibilities if it were abolished. However, on March 6, 2018, the Afghan government abolished the office and officially transferred some responsibilities. In light of that development, SIGAR revised the fourth matter for consideration to reflect the need for the Afghan government to clarify which government entity or entities will take over the office's education and public awareness responsibilities.



SIGAR

Office of the Special Inspector General
for Afghanistan Reconstruction

May 31, 2018

The Honorable Lindsey Graham
Chairman
Subcommittee on State, Foreign Operations, and
Related Programs
Committee on Appropriations
United States Senate

The Honorable Hal Rogers
Chairman
Subcommittee on State, Foreign Operations, and
Related Programs
Committee on Appropriations
United States House of Representatives

The Honorable Patrick Leahy
Ranking Member
Subcommittee on State, Foreign Operations, and
Related Programs
Committee on Appropriations
United States Senate

The Honorable Nita Lowey
Ranking Member
Subcommittee on State, Foreign Operations, and
Related Programs
Committee on Appropriations
United States House of Representatives

Dear Committee Chairmen and Ranking Members,

This report provides the results of SIGAR's review of the Afghan government's efforts to develop and implement a national anti-corruption strategy in accordance with the deliverables it made at the October 2016 Brussels Conference on Afghanistan.

SIGAR conducted this audit in accordance with the explanatory statement of the Consolidated Appropriations Act, 2017, which directed SIGAR to assess the implementation of the Afghan government's national anti-corruption strategy, including the five revenue-generating ministries' action plans, and submit the assessment to the Committees on Appropriations not later than May 31, 2018.¹ The objectives of this audit were to determine the extent to which the Afghan government: (1) met the anti-corruption deliverables it agreed to under the Self-Reliance for Mutual Accountability Framework (SMAF); (2) created an anti-corruption strategy that meets international anti-corruption strategy standards and best practices; (3) is implementing its anti-corruption commitments in the anti-corruption strategy and benchmarks; and (4) has made progress or experienced challenges implementing anti-corruption reforms.

We are offering six matters for the Afghan government to review and consider. To ensure the anti-corruption strategy's implementation is in accordance with international standards and best practices, the Afghan government should consider (1) revising the anti-corruption strategy to tie each goal to a precisely-defined benchmark with a realistic deadline, and developing mechanisms to incorporate ministry and civil society feedback during this process; and (2) establishing independent anti-corruption organizations in accordance with the *United Nations Convention Against Corruption* (UNCAC). Because the Ministry of Defense (MOD) accounts for more than 15 percent of the Afghan national budget, to ensure that the MOD continues to implement its anti-corruption commitments, the Afghan government should consider (3) adding the MOD to the list of "priority ministries" required to submit an anti-corruption action plan for the High Council on Rule of Law and Anti-Corruption's review. To make progress and address challenges to implementing anti-corruption reforms, the Afghan government should consider (4) clarifying which government entity or entities will take over the High Office of Oversight and Anti-Corruption's education and public awareness responsibilities; (5) providing the necessary resources and specialized staff, as well as the training that such staff may require to

¹ 163 Cong. Rec. H4055 (daily ed. May 3, 2017) (explanatory statement of the Consolidated Appropriations Act, 2017); see also Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, § 4, § 7044.



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carry out their functions, to key anti-corruption entities in accordance with the UNCAC; and (6) conducting a second round of polygraph tests, and annual follow-up rounds thereafter, for Anti-Corruption Justice Center and Major Crimes Task Force personnel, and taking appropriate action against individuals who fail these tests.

We received comments on a draft of this report from the Government of Afghanistan, joint comments from U.S. Embassy Kabul and the U.S. Agency for International Development, and comments from the Department of State's Bureau of International Narcotics and Law Enforcement. These comments are reproduced in appendices V, VI, and VII respectively. The Afghan government concurred with the first, third, fourth, and sixth matters for consideration; partially concurred with the fifth; and did not concur with the second. The draft report also included a matter for the Afghan government to direct the Ministries of Finance, Communications and Information Technology, and Transport and Civil Aviation to publish, and immediately make public, the final progress reports for their 2017 anti-corruption action plans. However, following its receipt of a draft of this report, on April 22, 2018, the Afghan government sufficiently addressed this matter, and so SIGAR removed it from this final report. In addition, on the fifth matter, we recommended that the Afghan government clarify which government entity or entities will take over the High Office of Oversight and Anti-corruption's responsibilities if it were abolished. However, on March 6, 2018, the Afghan government abolished the office and officially transferred some responsibilities. In light of that development, we revised the matter to reflect the need for the Afghan government to clarify which government entity or entities will take over the office's education and public awareness activities.

The Afghan government, U.S. Embassy Kabul, U.S. Agency for International Development, and the Department of State's Bureau of International Narcotics and Law Enforcement also provided technical comments, which we incorporated into this report, as appropriate. In accordance with the explanatory statement of the Consolidated Appropriations Act, 2018, SIGAR will continue to monitor the Afghan government's progress in implementing its anti-corruption strategy and intends to provide an update to this report to the House and Senate Appropriations Committees.²

SIGAR conducted this work under the authority of Public Law No. 110-181, as amended, and the Inspector General Act of 1978, as amended, and in accordance with generally accepted government auditing standards. Overall, the Afghan government provided us the access necessary to conduct this work.

John F. Sopko
Special Inspector General
for Afghanistan Reconstruction

² 164 Cong. Rec. H2851 (daily ed. Mar. 22, 2018) (explanatory statement of the Consolidated Appropriations Act, 2018).

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ABBREVIATIONS

ACJC	Anti-Corruption Justice Center
AGO	Attorney General's Office
DOD	Department of Defense
High Council	High Council on Rule of Law and Anti-Corruption
HOO	High Office of Oversight and Anti-Corruption
INL	Bureau of International Narcotics and Law Enforcement
MCTF	Major Crimes Task Force
MEC	Independent Joint Monitoring and Evaluation Committee
MOD	Ministry of Defense
MOF	Ministry of Finance
MOI	Ministry of Interior
SMAF	Self-Reliance through Mutual Accountability Framework
State	Department of State
UNAMA	United Nations Assistance Mission in Afghanistan
UNCAC	<i>United Nations Convention Against Corruption</i>
USAID	U.S. Agency for International Development
USFOR-A	U.S. Forces–Afghanistan

Afghanistan is often ranked as one of the most corrupt countries in the world. According to the World Bank, Afghanistan ranked in the bottom six percent of countries for “control of corruption” between 2002 and 2016. Transparency International listed Afghanistan as 177 out of 180 in its corruption perceptions index in 2017, with lower-ranked countries characterized by “untrustworthy and badly functioning public institutions.”¹ Afghan citizens also recognize the extent of the problem. A 2017 survey by the Asia Foundation found that almost all Afghans say corruption is a problem in all areas of their lives, with 83.7 percent of Afghans saying corruption is a major problem in Afghanistan as a whole, and 13.1 percent saying it is a minor problem. Additionally, the Asia Foundation found that concerns about corruption in daily life reached a record high in 2017, with 69.8 percent of respondents saying corruption is a major problem in their daily life, and 23.0 percent saying it is a minor problem.² According to the Institute of Internal Auditors, “bribery and corruption put businesses and governments at risk worldwide and affect organizations, private individuals, and officials.”³ According to the United Nations Assistance Mission in Afghanistan (UNAMA), corruption in Afghanistan’s context has fueled the ongoing conflict, hindered national efforts to become self-reliant, and, in the words of Afghanistan’s President, Ashraf Ghani, “wasted a vast amount of precious resources that could otherwise have been spent reducing Afghanistan’s crushing levels of poverty.”⁴

In its 2017 study of corruption in Afghanistan, UNAMA found that a key part of the problem is that there is an “overall lack of policy coherence” in the Afghan government’s anti-corruption policies. According to UNAMA, as of 2017, there were 18 separate bodies tasked with implementing aspects of the Afghan government’s anti-corruption efforts, and “the sheer number of existing anti-corruption bodies presents a significant challenge to coordination.”^{5,6} Previously, Afghanistan’s government recognized that it needed to articulate a long-term anti-corruption vision and better coordinate action among government entities and international donors. For this reason, at the Brussels Conference in October 2016, the Afghan government agreed to a revised Self-Reliance through Mutual Accountability Framework (SMAF) that among other things, called for the creation and implementation of a national anti-corruption strategy in 2017.⁷

On May 3, 2017, Congress directed that SIGAR “in consultation with the Offices of the Inspector General of the Department of State and USAID, shall conduct an assessment of implementation of the anti-corruption strategy” as agreed to at the Brussels Conference on Afghanistan in October 2016, “including by revenue generating ministries in Afghanistan, and submit such assessment to the Committees on Appropriations not later than May 31, 2018.”⁸

¹ Transparency International, *Corruption Perceptions Index 2017*, February 21, 2018, available at https://www.transparency.org/news/feature/corruption_perceptions_index_2017.

² The Asia Foundation, *A Survey of the Afghan People: Afghanistan in 2017*, November 2017, available at <https://asiafoundation.org/publication/afghanistan-2017-survey-afghan-people>.

³ The Institute of Internal Auditors, *International Professional Practices Framework Practice Guide - Auditing Anti-Bribery and Anti-Corruption Programs*, June 2014, p. 2.

⁴ UNAMA, *Afghanistan’s Fight against Corruption: The Other Battlefield*, April 2017, p. 1.

⁵ Corruption experts typically recognize a difference between “anti-corruption,” which is the prevention and discouragement of corruption, and “counter-corruption,” which is the detection and punishment of corruption after it has occurred. However, the Afghan government collapses these two terms under “anti-corruption,” which it understands to encompass both prevention and enforcement activities. Therefore, in this report we will use “anti-corruption” in the same way.

⁶ UNAMA, *Afghanistan’s Fight against Corruption*, pp. 5-6.

⁷ Prior to the Brussels Conference, the Afghan government and international community agreed to the “Tokyo Mutual Accountability Framework” in July 2012, which laid out mutually agreed-to goals and indicators, committed donors to channeling more of their aid through Afghanistan’s national budget, and established a Joint Coordination and Monitoring Board to assess progress. In September 2015, the Tokyo Mutual Accountability Framework was consolidated with the National Unity Government’s comprehensive reform agenda, “Realizing Self-Reliance: Commitments to Reforms and Renewed Partnerships,” and renamed the “Self-Reliance through Mutual Accountability Framework” (SMAF). At the Brussels Conference in October 2016, a new set of SMAF goals and indicators was endorsed.

⁸ 163 Cong. Rec. H4055 (daily ed. May 3, 2017) (explanatory statement of the Consolidated Appropriations Act, 2017); see also Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, § 4, § 7044.

In accordance with this requirement, the objectives of this audit were to determine the extent to which the Afghan government:

1. Met the anti-corruption deliverables it agreed to under the SMAF;
2. Created an anti-corruption strategy that meets international anti-corruption strategy standards and best practices;
3. Is implementing its anti-corruption commitments in the anti-corruption strategy and benchmarks; and
4. Has made progress or experienced challenges implementing anti-corruption reforms.

To accomplish these objectives, we reviewed international agreements and best practices related to national anti-corruption strategy documents. Specifically, we reviewed the *United Nations Convention Against Corruption* (UNCAC), to which Afghanistan is a signatory, as well as the *Kuala Lumpur Statement on Anti-Corruption Strategies* and the *Jakarta Statement on Principles for Anti-Corruption Agencies*, which are two sets of best practices that resulted from conferences to discuss anti-corruption strategies. We have reproduced the Kuala Lumpur and Jakarta Statements in appendices II and III, respectively. We monitored the National High Council on Rule of Law and Anti-Corruption's (hereafter referred to as the High Council) progress in drafting and implementing a national anti-corruption strategy in accordance with these international agreements and best practices, and SIGAR representatives regularly observed High Council meetings and working groups.⁹ We reviewed each of the five revenue-generating ministries' anti-corruption action plans and progress reports and reviewed their websites for evidence of public reporting about anti-corruption reforms.¹⁰ Furthermore, we interviewed Afghan, U.S., and international donor officials, as well as international anti-corruption experts, to identify challenges to implementing the anti-corruption strategy. Finally, we reviewed documentation and interviewed U.S. officials to determine what assistance the U.S. government was providing to assist the Afghan government in developing and implementing its anti-corruption policies.

We conducted our work in Kabul, Afghanistan, and Washington, D.C., from June 2017 through May 2018 in accordance with generally accepted government auditing standards. In April 2018, we provided a draft of this report to the government of Afghanistan, Department of State (State), Department of Defense (DOD), and U.S. Agency for International Development (USAID), also in accordance with generally accepted government auditing standards. Appendix I has more details on our objectives, scope, and methodology.

BACKGROUND

National-level anti-corruption strategies are a relatively recent phenomenon. According to the United Nations Development Programme, most countries in the Asia-Pacific region, including Afghanistan, did not begin developing such strategies until after 2007.¹¹ The UNCAC, which the Afghan government signed in 2004 and ratified in 2008, was a key driver for the writing of these documents.¹² Article 5 of the UNCAC requires member countries to have in place "effective, coordinated anti-corruption polices," and Article 6 requires them to establish an independent, well-resourced anti-corruption body or bodies responsible for implementing and, where appropriate, overseeing and coordinating the implementation of those policies.¹³ UNCAC signatories have collectively understood these articles as a requirement to develop a comprehensive anti-corruption strategy and then empower an independent government entity or entities to implement it. According to the

⁹ The National High Council on Rule of Law and Anti-Corruption is one of 11 High Councils.

¹⁰ Afghanistan's five revenue-generating ministries are the Ministries of Finance, Mines and Petroleum, Commerce and Industries, Communications and Information Technology, and Transport and Civil Aviation.

¹¹ United Nations Development Programme, *Anti-Corruption Strategies: Understanding What Works, What Doesn't and Why? Lessons Learned from the Asia-Pacific Region*, 2014, p. 1.

¹² United Nations Development Programme, *Anti-Corruption Strategies*, p. 1.

¹³ *Convention against Corruption*, New York, October 31, 2003, *United Nations Treaty Series*, vol. 2349, No. 42146, pp. 41-367.

Kuala Lumpur Statement on Anti-Corruption Strategies, which the Conference of the State Parties to the UNCAC endorsed in November 2013, anti-corruption strategy documents are useful for providing “a comprehensive policy framework for actions to be taken by States in combating and preventing corruption . . . for mobilising and coordinating efforts and resources by governments and other stakeholders, for policy development and implementation, and for ensuring monitoring of policy implementation.”¹⁴

Afghanistan’s first attempts to develop anti-corruption policies and institutions in compliance with the UNCAC resulted in the “Anti Corruption Strategy for 1387-1391 (2007/08 – 2012/13),” which was developed in February 2008 and released as part of the Afghan National Development Strategy in July 2008.¹⁵ At around this time, the Afghan government also issued by Presidential decree the Law on Overseeing the Implementation of the Anti-Administrative Corruption Strategy, establishing the High Office of Oversight and Anti-Corruption (HOO), which was given the responsibility to oversee and coordinate implementation of the new anti-corruption strategy. USAID obligated \$27 million between 2010 and 2013 to provide technical assistance and internal anti-corruption trainings to the HOO through its Assistance for Afghanistan’s Anti-corruption Authority project.¹⁶

While the creation of the 2008 anti-corruption strategy and the HOO technically met the requirements of UNCAC Articles 5 and 6, in practice, it did not. In 2014, the United Nations Development Programme called the 89-page strategy document an overly broad and encompassing “wish list” that made it difficult to prioritize actions as well as identify roles and responsibilities for implementation.¹⁷ In July 2011, Afghanistan’s Independent Joint Monitoring and Evaluation Committee (MEC) wrote, “many different anti-corruption strategies from different authors have been adopted in Afghanistan in the last years but none of them are being seriously implemented.”^{18;19} The MEC recommended the HOO “to collect all existing strategies and to start actions for compilation of all existing strategies into one, to take the lead in coordination of all other Afghan institutions in these efforts and to produce a unified Afghan anti-corruption strategy, which will enable its serious implementation.”²⁰

The HOO also came under scrutiny for being weak and ineffectual. According to UNAMA, by retaining control over the appointment of the HOO’s director, President Karzai compromised its independence.²¹ In our 2009 audit report on the HOO, we reported that both the Director General and the Deputy Director General of the HOO held, and received salaries for holding, advisory positions within the Office of the President, creating even more of a conflict of interest.²² We also reported that the HOO was greatly understaffed and that many of its employees were either inexperienced or lacked basic skills, such as computer use and information gathering techniques.²³ After it became clear that the HOO was unwilling or unable to carry out its mandate, USAID

¹⁴ Kuala Lumpur Statement on Anti-Corruption Strategies, October 21-22, 2013, Malaysia.

¹⁵ Islamic Republic of Afghanistan, *Afghanistan National Development Strategy 1387-1391 (2008/09-2012/13)*, “Volume Five, Crosscutting Issues: Capacity Building, Gender, Counter Narcotics, Regional Cooperation, Anti-Corruption, and Environment,” “Anti Corruption Strategy 1387-1391 (2008/09-2012/13),” February 2008.

¹⁶ Additional information about this program is available at: <https://www.usaid.gov/news-information/factsheets/assistance-afghanistan%E2%80%99s-anticorruption-authority-4a>.

¹⁷ United Nations Development Programme, *Anti-Corruption Strategies*, p. 13.

¹⁸ The MEC is a hybrid oversight organization consisting of three experienced international anti-corruption experts selected by an international nomination committee and three local eminent persons selected by the Afghan president. Its mandate is to create anti-corruption benchmarks for the Afghan government and international community, as well as to independently monitor and evaluate progress in meeting those benchmarks through quarterly meetings in Kabul.

¹⁹ MEC, “Annex I, Recommendations, Benchmarks, and Follow up after the second MEC Mission (JULY 14 –27 2011),” p. 20.

²⁰ MEC, Annex I, p. 20.

²¹ UNAMA, *Afghanistan’s Fight against Corruption*, p. 6.

²² SIGAR, *Afghanistan’s High Office of Oversight Needs Significantly Strengthened Authority, Independence, and Donor Support to Become an Effective Anti-Corruption Institution*, SIGAR Audit 10-02, December 16, 2009, p. 7.

²³ SIGAR, *Afghanistan’s High Office of Oversight*, SIGAR Audit 10-02, p. 10.

sharply reduced its funding to support the HOO—of the \$27 million originally obligated for this purpose, USAID only disbursed \$9.4 million—and ultimately redirected most of that funding to support civil society organizations, media organizations, and activities of Parliament.²⁴ According to UNAMA, as of 2017, the HOO was largely relegated to collecting asset declarations from senior officials.²⁵ The Afghan National Unity Government abolished the office on March 6, 2018.²⁶

Afghanistan Committed to Creating and Implementing a New National Anti-Corruption Strategy at the Brussels Conference in 2016

Following the formation of the National Unity Government in 2014, renewed interest in meeting Afghanistan's anti-corruption commitments under the UNCAC emerged. At the London Conference on Afghanistan in December 2014, the Afghan government and international community issued a joint communiqué stating that Afghanistan “requires long-term commitments and sustained realistic strategies to root out corruption.”²⁷ In March 2016, President Ghani established the High Council to improve coordination and provide greater policy guidance on anti-corruption efforts. The Afghan government announced that it would take a staggered approach to reform efforts, allowing senior officials to focus attention on a few ministries each year. The initial focus would be on Afghanistan's five largest revenue-generating ministries: the Ministries of Finance (MOF), Mines and Petroleum, Commerce and Industries, Communications and Information Technology, and Transport and Civil Aviation.²⁸ In September 2016, each of these ministries produced a 1-year anti-corruption “action plan” to reduce vulnerabilities and improve internal controls.

At the Brussels Conference in October 2016, the Afghan government agreed to a new set of SMAF Deliverables. These new SMAF Deliverables laid out several objectives related to developing and implementing anti-corruption policies, specifically:

1. The High Council would produce and endorse a whole of government anti-corruption strategy in “the first half of 2017;”
2. The Afghan government would initiate this strategy “in the second half of 2017;” and
3. The five revenue-generating ministries would publicly report on their progress implementing their September 2016 anti-corruption action plans in 2017.

The Afghan National Anti-Corruption Strategy Consists of Five “Pillars” Assigned to Lead Implementers as Well as 15 “Priority” Ministries

On October 12, 2017, the Afghan government released an English language version of its anti-corruption strategy, the *Afghanistan National Strategy for Combatting Corruption*. This strategy follows a sectoral approach, naming five “pillars” of reform that it calls “pre-conditions for a credible anti-corruption program.” The five pillars of the strategy are:

- Pillar 1: Political Leadership and Empowering Reformers
- Pillar 2: Ending Corruption in the Security Sector
- Pillar 3: Replacing Patronage with Merit

²⁴ SIGAR, *Corruption in Conflict: Lessons from the U.S. Experience in Afghanistan*, SIGAR 16-58-LL, September 2016, p. 56.

²⁵ UNAMA, *Afghanistan's Fight against Corruption*, p. 6.

²⁶ President of the Islamic Republic of Afghanistan, Legislative Decree on the Amendments and Additions to the Law on [the] Organizational Structure and Jurisdiction of the Attorney General's Office, Article 4 (2018).

²⁷ London Conference on Afghanistan, Communiqué, “Afghanistan and International Community: Commitments to Reforms and Renewed Partnership,” December 4, 2014.

²⁸ UNAMA, *Afghanistan's Fight against Corruption*, p. 7.

- Pillar 4: Prosecuting the Corrupt
- Pillar 5: Following the Money

According to Afghan government officials, the High Council assigned each pillar to lead implementing institutions that are responsible for coordinating actions in their designated sector. With the exception of the Ministry of Defense (MOD), each of the lead implementers has a permanent representative on the High Council.

Each of these five pillars contains goals, or outcomes, that the Afghan government hopes to achieve between 2017 and 2020, with a total of 66 goals for the entire anti-corruption strategy. The strategy contains 38 benchmarks, each with a targeted date for achievement, to measure the Afghan government's progress in achieving these anti-corruption goals. In most cases, the strategy assigned these benchmarks to one of the lead implementers, but in some cases, it assigned some benchmarks to a secondary implementer, such as the Ministry of Foreign Affairs. Of the 38 benchmarks, 15 were due December 31, 2017; 5 by February 28, 2018; another 10 by June 20, 2018; and the remaining 8 by January 31, 2019. Table 1 summarizes information about the 5 pillars, 66 goals, and 38 benchmarks.

Table 1 - Summary of the Five Pillars of Afghanistan's Anti-Corruption Strategy

Pillar 1 Political Leadership and Empowering Reformers	Lead Implementers: Administrative Office of the President and High Council on Rule of Law and Anti-Corruption
	Secondary Implementers: Office of the Chief Executive, Ministry of Justice, Independent Administrative Reform and Civil Service Commission, Independent Directorate of Local Governance, Supreme Court
	15 goals due to be achieved by 2019
	7 benchmarks due to be completed between December 2017 and June 2018
Pillar 2 Reforming the Security Sector	Lead Implementers: Ministry of Defense and Ministry of Interior Affairs
	Secondary Implementers: Administrative Office of the President, National Security Council, Ministry of Finance
	10 goals due to be achieved by 2019
	9 benchmarks due to be completed between December 2017 and June 2018
Pillar 3 Replacing Patronage with Merit	Lead Implementer: Independent Administrative Reform and Civil Service Commission
	Secondary Implementers: Ministry of Justice; Supreme Court; Ministry of Higher Education; Ministry of Labor, Social Affairs, Martyrs, and the Disabled
	14 goals due to be achieved by 2019
	4 benchmarks due to be completed between December 2017 and December 2018
Pillar 4 Prosecuting the Corrupt	Lead Implementers: Ministry of Justice, Attorney General's Office, Judiciary
	Secondary Implementers: Administrative Office of the President, Ministry of Foreign Affairs, Supreme Court, Afghan National Police
	11 goals due to be achieved by 2019
	9 benchmarks due to be completed between December 2017 and December 2018
Pillar 5 Following the Money	Lead Implementer: Ministry of Finance
	Secondary Implementers: Ministry of Commerce and Industries, Attorney General's Office, National Procurement Authority, Supreme Audit Office
	16 goals due to be achieved by 2020
	9 benchmarks due to be completed between December 2017 and December 2018

Source: SIGAR analysis of the *Afghanistan National Strategy for Combating Corruption*, October 12, 2017

In addition, the anti-corruption strategy highlights 9 “priority ministries,” which it defines as the main revenue and expenditure ministries not primarily responsible for implementing one of the pillars. The strategy required the 9 priority ministries to revise or prepare anti-corruption plans describing their internal goals and benchmarks, and present them to the High Council by January 9, 2018. On February 18, 2018, the High Council reported that it had added the MOF, Ministry of Interior (MOI), Ministry of Justice, Attorney General’s Office (AGO), Independent Administrative Reform and Civil Service Commission, and Da Afghanistan Breshna Sherkat to the list of priority ministries, bringing the total number of priority ministries up to 15.²⁹ Table 2 lists these 15 ministries.

Table 2 - Afghanistan’s 15 Priority Ministries

Revenue-Generating Ministries	High-Expenditure Ministries	Ministries Later Added by the High Council
Ministry of Commerce and Industries	Ministry of Health	Ministry of Interior Affairs
Ministry of Communications and Information Technology	Ministry of Education	Ministry of Finance
Ministry of Energy and Water	Ministry of Labor, Social Affairs, Martyrs, and the Disabled	Ministry of Justice
Ministry of Mines and Petroleum	Ministry of Rural Rehabilitation and Development	Attorney General’s Office
Ministry of Transport and Civil Aviation		Independent Administrative Reform and Civil Service Commission
		Da Afghanistan Breshna Sherkat

Source: The *Afghanistan National Strategy for Combatting Corruption* and the Special Anti-Corruption Secretariat for Implementation of National Anti-Corruption Strategy, *Special Report Vol. 1*, February 18, 2018.

In his December 2017 order implementing the anti-corruption strategy, President Ghani mandated that *all* Afghan government institutions, not just the priority ministries, would finalize action plans based on the anti-corruption strategy by January 9, 2018.³⁰ According to the High Council, this order required as many as 58 organizations, including the priority ministries, to create action plans. While neither the anti-corruption strategy nor the presidential order implementing it requires the High Council to review these non-priority ministry action plans, an official from the High Council said it would prioritize review and approval of the 15 priority ministry action plans first, and will review the others as time allows. The High Council approved all 15 priority ministry action plans on May 14, 2018.

Security Sector Reform Is a Major Objective of the Anti-Corruption Strategy

The anti-corruption strategy identified the security sector as a major source of corruption. The anti-corruption strategy specifically states that because defense contracts have increasingly become major sources of income for legitimate and illegitimate actors alike, the struggle for control over those contracts has contributed to the rise of high-level corruption throughout the government and the use of violence to discourage those combatting corruption, in both the security sector and elsewhere in the economy. In response to this challenge, the strategy made ending corruption in the security sector the second of the five pillars, stating that security sector reform would be an “underlying driver in the fight against corruption.”³¹ As discussed above, the second

²⁹ Da Afghanistan Breshna Sherkat is Afghanistan’s national power utility company.

³⁰ President of the Islamic Republic of Afghanistan, Order on Enforcement of National Anti-Corruption Strategy, Article 4 (2017).

³¹ Islamic Republic of Afghanistan, *Afghanistan National Strategy for Combatting Corruption*, October 2017, p. 8.

pillar targets the MOI and sets 10 goals for the MOI to achieve (in coordination with the MOD), and the High Council required the MOI to submit an anti-corruption plan for its approval. With regard to the MOD, the anti-corruption strategy claims that “independent observers confirm that the reform plan developed with help from the Resolute Support Mission is leading to less corruption. . . .”³² The anti-corruption strategy also states that this plan, the “Five-Year National Campaign Plan” created in 2016, will remain the MOD’s anti-corruption plan.³³ The strategy does not require the MOD to develop a new anti-corruption action plan, and the High Council did not later require the MOD to develop one, even though it did later require the MOI to develop a plan. As discussed later in this report, we requested a copy of the “Five-Year National Campaign Plan,” but the Afghan government denied this request, citing the need for state secrecy. We learned that as of February 18, 2018, the MOD did develop a new anti-corruption action plan separate from the “Five Year National Campaign Plan.” However, when we asked for copies of any draft anti-corruption plans submitted to the High Council by that point, the Afghan government could not provide them, saying these drafts were too early and not ready for further distribution. Thus, we were unable to review the MOD’s anti-corruption plan during the course of this audit. After receiving a draft of this report, the Afghan government provided us a web link on May 10, 2018, to a publicly available copy of its security sector anti-corruption action plan.³⁴ We plan to review the security sector anti-corruption action plans as a part of our follow-up work. We have previously raised concerns about corruption within the MOD and how it has resulted in high attrition rates; criminal actions such as pay-for-play schemes; the theft of fuel, supplies, and commodities; and narcotics collusion.³⁵

Key Anti-Corruption Institutions

The Afghan government has four main entities that are responsible for anti-corruption-related policymaking, prevention, and enforcement activities: (1) the High Council, (2) the Major Crimes Task Force (MCTF), (3) the AGO, and (4) the Anti-Corruption Justice Center (ACJC).³⁶ Additionally, the MEC, a hybrid organization consisting of Afghan and international officials, provides independent oversight and accountability. According to international anti-corruption experts, this organizational framework exists, in large part, because the Afghan constitution requires a strict division of powers to avoid having any one institution capable of investigating, arresting, prosecuting, sentencing, and punishing defendants. In addition, other institutions are responsible for detecting and reporting suspected corruption crimes uncovered over the course of their normal duties.

The High Council is Afghanistan’s chief anti-corruption policymaking and coordinating body. President Ghani chairs the High Council and its members include Chief Executive Officer Abdullah Abdullah, Second Vice President Sarwar Danesh, Attorney General Mohammad Farid Hamidi, National Security Advisor Mohammad Hanif Atmar, and the heads of other ministries and executive institutions.³⁷ The High Council consists of five components:

- the Law Committee, which determines legislative priorities and reviews draft anti-corruption laws and regulations;

³² Islamic Republic of Afghanistan, Afghanistan National Strategy, p. 8.

³³ Islamic Republic of Afghanistan, Afghanistan National Strategy, p. 8.

³⁴ See [http://mod.gov.af/Content/files/palicy/%D9%85%D8%A8%D8%A7%D8%B1%D8%B2%D9%87%20%D8%B9%D9%84%DB%8C%D9%87%20%D9%81%D8%B3%D8%A7%D8%AF\(1\).pdf](http://mod.gov.af/Content/files/palicy/%D9%85%D8%A8%D8%A7%D8%B1%D8%B2%D9%87%20%D8%B9%D9%84%DB%8C%D9%87%20%D9%81%D8%B3%D8%A7%D8%AF(1).pdf).

³⁵ See SIGAR, *Reconstructing the Afghan National Defense and Security Forces: Lessons from the U.S. Experience in Afghanistan*, SIGAR 17-62-LL, September 2017, p. 85; SIGAR, *Quarterly Report to the United States Congress*, April 30, 2017, pp. 92-93; and SIGAR, *Afghan National Army: \$201 Million in DOD Fuel Purchases Still Unaccounted for Because Records Were Shredded*, SIGAR Investigative Report 13-1, December 20, 2012.

³⁶ Previously, the HOO was the chief body responsible for corruption-related research, prevention, and public education activities. However, the Afghan government abolished the HOO on March 6, 2018.

³⁷ These are the Minister of Economy, MOI, Minister of Justice, Head of the National Directorate of Security, Advisor to the President on Anti-Corruption and Transparency, Head of the Independent Human Rights Commission, Head of the Independent Directorate of Local Governance, Chief Justice of the Supreme Court, Head of the Independent Administrative Reform and Civil Service Commission, and Head of the Supreme Audit Office.

- the Judicial and Legal Committee, which develops and monitors national judicial reform programs;
- the Anti-Corruption Committee, which reviews and oversees criminal corruption cases;
- the Special Secretariat, which monitors implementation of the anti-corruption strategy and publishes biannual progress reports; and
- the Secretariat, which coordinates High Council meetings and agendas.

The MCTF, established in 2010 with the assistance of the U.S. Federal Bureau of Investigation and other international organizations, is the premier police body tasked with discovering corruption crimes. It is aligned under the MOI, as Article 134 of the Afghan constitution states, “Discovery of crimes shall be the duty of the police. . . .” Additionally, various other institutions are responsible for detecting and reporting potential corruption crimes. For example, Afghan government officials told us that the Financial Transactions and Reports Analysis Center of Afghanistan, Afghanistan’s financial intelligence unit, refers cases of suspected money laundering, and the National Procurement Authority refers cases of suspected price-fixing schemes or kickbacks to government procurement officials. Officials from the Financial Transactions and Reports Analysis Center of Afghanistan and the National Procurement Authority say they generally refer cases to either the MCTF for further detective work or directly to the AGO.

The AGO is responsible for investigating and prosecuting corruption cases referred by the MCTF and other bodies. However, the nature of the crime determines whether the AGO or the ACJC handles the prosecution. Two AGO headquarters units prosecute corruption cases valued at less than 5 million Afghanis through the standard court system.^{38;39} Cases valued at more than 5 million Afghanis, or those involving high-level security or civilian officials as defined under Afghan law, are referred to the ACJC, which is a special system of counter-corruption courts that prosecute high-profile corruption crimes. The ACJC is staffed by MCTF detectives, special AGO investigators and prosecutors, and special anti-corruption judges.

The Afghan judicial system allows public corruption cases to be appealed twice. The special ACJC Appeals Court can review corruption cases first heard at the ACJC, and the Afghan Supreme Court can hear appeals from the ACJC Appeals Court. Article 128 of the Afghan constitution also requires all trials to be held openly, except “the court shall hold secret trials when it considers necessary, but pronouncement of its decision shall be open in all cases.”⁴⁰ Figure 1 summarizes Afghanistan’s system of detecting, investigating, and prosecuting corruption crimes.

³⁸ The specialized headquarters units are the Anti-Corruption Unit and the Military Anti-Corruption Unit, which despite the name only covers police corruption cases. Army corruption cases are investigated and prosecuted under the MOD’s military court system.

³⁹ 5 million Afghanis is equal to approximately \$73,000.

⁴⁰ The Constitution of Afghanistan, Article 128 (2004).

Figure 1 - Corruption Prosecution Chain



Source: SIGAR analysis of Afghan legal procedures

Note: 5 million Afghanis is equivalent to about \$73,000. In practice, the ACJC can try cases valued at less than 5 million Afghanis if the defendant is a high-ranking civilian or security official. Sometimes, specialized anti-corruption units at the AGO investigate corruption cases before passing them along to the ACJC for further investigation and prosecution.

However, the Afghan constitution applies different rules for the prosecution of members of Parliament, sitting ministers, and judges. According to Article 102 of the Afghan constitution, if a member of Parliament is accused of a crime and the prosecution requires the detention of the member, the house of Parliament that member sits in must approve detention of the accused.⁴¹ Article 78 states that if a minister is accused of a crime, a special court tries the accused.⁴² Additionally, Article 133 states that if a judge is accused of a crime, the Supreme Court considers the case. If the Supreme Court considers the accusation valid, it submits a proposal to the Afghan President to dismiss the judge.⁴³ Furthermore, Afghanistan’s law on the judiciary states that judges may not be arrested, detained, or prosecuted for the crime without a presidential order.⁴⁴ The Judiciary Control Department, which is established within the Supreme Court, is responsible for prosecuting judges accused of duty-related crimes, and trials are conducted by the Supreme Court High Council.⁴⁵

Finally, in response to the need for an independent monitoring and evaluation body, the Afghan government created the MEC in 2010, following the London Conference, as an independent committee that is not subject to direction from either the Afghan government or the international community. The MEC’s leadership consists of six senior anti-corruption experts selected by both the Afghan government and the international community, with the chairmanship of the MEC alternating between an Afghan appointee and an international appointee every 6 months. Among other things, the MEC regularly performs “Vulnerability to Corruption” assessments of Afghan institutions. The MEC makes these reports publicly available on its website.⁴⁶

State, DOD, and USAID Provide Assistance to Afghan Anti-Corruption Institutions and Monitor Implementation of the Anti-Corruption Strategy

State, USAID, and DOD provide or have provided support to all of the Afghan government’s anti-corruption institutions to varying degrees. While the U.S. government was not directly involved with designing the anti-corruption strategy, it did provide some comments on a draft version through UNAMA, and funded support staff

⁴¹ The Constitution of Afghanistan, Article 102 (2004).

⁴² The Constitution of Afghanistan, Article 78 (2004).

⁴³ The Constitution of Afghanistan, Article 133 (2004).

⁴⁴ Law on Organization and Jurisdiction of the Judiciary of Islamic Republic of Afghanistan, Article 91 (2013).

⁴⁵ Law on Organization and Jurisdiction of the Judiciary of Islamic Republic of Afghanistan, Articles 92-94 (2013).

⁴⁶ See <http://mec.af/prs/index.html>.

for the High Council through a USAID contract. DOD, State, and the Afghan government also jointly monitor Afghan progress on a variety of benchmarks, including anti-corruption, through the Afghanistan Compact, a set of time-bound benchmarks in four priority areas jointly monitored by the U.S. and Afghan governments. As the anti-corruption strategy and Compact's benchmarks have significant overlap, Compact working groups indirectly monitor Afghanistan's progress on its anti-corruption strategy. However, there are no reward or enforcement mechanisms to ensure progress. In addition to its work on the Compact, State is required by Congress to independently certify that the Afghan government is implementing its anti-corruption strategy and prosecuting individuals alleged to be involved in corrupt or illegal activities in Afghanistan.⁴⁷

State Provides Training, Mentoring, and Supplies to Corruption Investigators and Prosecutors

State's Bureau of International Narcotics and Law Enforcement Affairs (INL) has provided training and mentoring for MCTF, ACJC, and AGO personnel through a variety of efforts. For example, INL concluded a 12-month interagency agreement with the Department of Justice in December 2017. According to INL, this interagency agreement was the most recent iteration of the partnership dating back to 2005. This program provided training and mentoring for Afghan detectives, investigators, and trial and appellate prosecutors working on major crimes and public corruption cases. According to INL, this program is designed to increase Afghan capacity through best practices workshops held at the U.S. Embassy, high-level mentoring of Afghan counterparts, and a pilot study and information exchange tours for Afghans. Additionally, in September 2017, State INL signed a \$2.3 million, 18-month Letter of Agreement with the United Nations Office of Drugs and Crime to fund two international mentors and support staff for on-site technical assistance to Afghanistan's financial intelligence unit and two prosecutorial units at the AGO focused on corruption cases. Finally, INL donated a generator and body armor to the ACJC and MCTF in 2017. According to INL, they donated the generator because providing the ACJC with a connection to city power would require difficult engineering work. INL said that they specified in the generator transfer that the MOI would provide the needed maintenance and diesel fuel, a condition that the Afghan government has met. In March 2018, the ACJC succeeded in connecting to city power and was able to use its budget from the MOF to pay its electrical bills. However, ACJC leadership noted that city power would be insufficient to energize the compound during the winter, given common power shortages, thereby requiring seasonal generator use.

While not directly supporting the creation of the anti-corruption strategy, U.S. Embassy Kabul provided comments on the anti-corruption strategy, along with the Embassies of Denmark and the United Kingdom, through UNAMA orally on September 4, 2017, and in writing on September 18, 2017.

USAID Programs Provide Support to the High Council, the Five Ministries Responsible for Preparing Anti-Corruption Action Plans for 2017, and the MEC

USAID has supported recent anti-corruption reform efforts by the Afghan government through two programs, one that finished in 2017 and one beginning in 2018.

1. The Advancing Efforts for Reform and Civic Accountability program concluded in September 2017. Through its third component (of three), program consultants assisted the MOF, the Ministry of Commerce and Industries, the Ministry of Communications and Information Technology, the Ministry of Mines and Petroleum, and the Ministry of Transport and Civil Aviation in writing their 2017 action plans.⁴⁸ The program supported the High Council's salaries and staff, and provided technical support for transparency initiatives like the Extractive Industries Transparency Initiative and the Open Government Partnership.

⁴⁷ Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, § 7044.

⁴⁸ The first component worked with seven Afghan government institutions (the Central Population Registration Department, Kabul Municipality, Ministry of Foreign Affairs, Ministry of Education, MOF's Small Taxpayers Office, Ministry of Economy, and Ministry of Refugees and Repatriation) to reform 25 customer-facing public services and minimize opportunities for bribery. The second component supported 17 civil society organizations with sub-grant awards.

2. USAID initiated a new 5-year anti-corruption program, Afghanistan's Measure for Accountability and Transparency, in January 2018. This program will provide anti-corruption capacity building to select line ministries.

Finally, USAID provided financial support to the MEC through a delegated cooperative agreement with the United Kingdom's Department for International Development.

DOD Provides Support to Afghan Anti-Corruption Bodies within the MOD and MOI

The Resolute Support Mission assisted the MOD and MOI through eight “essential functions” that focus on improving their personnel management, resource management and procurement, logistics, and maintenance, as well as building overall sustainability.⁴⁹ DOD, through the international Resolute Support Mission, has provided training, advice, and assistance to anti-corruption institutions affiliated with the MOD and MOI. According to DOD officials:

- Essential Function 1 provided training, advice, and assistance to the MOD's and the MOI's procurement and budgeting functions. Afghanistan's anti-corruption strategy states that a “detailed defense budget” and open procurements are anti-corruption priorities.
- Essential Function 2 provided training, advice, and assistance to the MOD's and the MOI's audit functions. Afghanistan's anti-corruption strategy states that new auditors will be trained and deployed at the security ministries.
- Essential Function 3 provided training, advice, and assistance to the MOD's Legal Department and the MOI's MCTF. It assisted the MOD in developing ethics and anti-corruption policy documents in 2017.
- Essential Function 4 supported rollout of the new Afghan Personnel and Pay System. This was intended to help the Afghan government achieve its anti-corruption priorities of eliminating ghost soldiers and police and expanding of electronic payroll systems to the district level.^{50;51}

DOD noted in our interviews that they could provide only limited, if any, assistance to anti-corruption institutions outside of the MOD and the MOI. This is because the use of Afghanistan Security Forces Fund monies, the primary way DOD funds assistance activities, are limited to supporting the security forces. For example, according to U.S. officials, DOD continues to have limited interaction with the AGO, even though the AGO has units dedicated to investigating and prosecuting corruption within the police. Similarly, DOD “liaises” with the ACJC and monitors its activities, but does not provide direct assistance to its prosecutors or judges.

State and DOD Monitor Whether Afghanistan Is Meeting Its Anti-Corruption Commitments

The United States is playing an indirect role in monitoring and evaluating the Afghan government's progress in achieving its anti-corruption goals through the Afghanistan Compact, which the U.S. and Afghan governments announced in August 2017. The Afghanistan Compact consists of a set of time-bound benchmarks in four priority areas of cooperation:

1. Economic Growth
2. Governance

⁴⁹ During the course of this audit, the Resolute Support Mission organized its “train, advise, assist” activities under these eight essential functions. As of the date of this report, it is currently undergoing a reorganization.

⁵⁰ “Ghost workers” refer to personnel data appearing in a payroll system that are not verifiably connected with real or active employees. Corrupt actors use ghost worker identities to garner unearned wages.

⁵¹ We have previously released three audit reports of the Afghan personnel and pay system. These were: SIGAR, Despite Improvements in MoI's Personnel Systems, Additional Actions Are Needed to Completely Verify ANP Payroll Costs and Workforce Strength, SIGAR Audit-11-10, April 25, 2011; SIGAR, Afghan National Police: More than \$300 Million in Annual, U.S.-funded Salary Payments Is Based on Partially Verified or Reconciled Data, SIGAR 15-26-AR, January 7, 2015; and SIGAR, Afghan National Army: Millions of Dollars at Risk Due to Minimal Oversight of Personnel and Payroll Data, SIGAR 15-54-AR, April 23, 2015.

3. Security
4. Peace and Reconciliation

A Compact working group co-chaired by members of the Afghan government and the U.S. Embassy monitors the “Governance” priority area, and a working group co-chaired by members of the Afghan government and U.S. Forces-Afghanistan monitors the “Security” priority area, which also has anti-corruption benchmarks. The “Economic Growth” and “Peace and Reconciliation” working groups did not set benchmarks explicitly targeting corruption, though in some cases their benchmarks combat corruption indirectly, for instance by promoting transparency initiatives in targeted ministries. According to State, each working group meets at least once a month to report progress and update benchmarks.

Although there is substantive overlap between the benchmarks in Afghanistan’s anti-corruption strategy and the benchmarks in the Compact, there are anti-corruption benchmarks in the strategy that are not being tracked by the Compact, and vice versa. An embassy official said this is because the U.S. Embassy does not believe all of the strategy’s benchmarks are well-written or good measures of progress, and also because the United States has its own priorities. Furthermore, this embassy official stressed that the Compact is a report-card-like mechanism for compiling all of the Afghan government’s commitments in one place, monitoring progress, and offering recommendations for course correction. According to State, there is no enforcement mechanism for missed benchmarks.

Despite the lack of an enforcement mechanism, this same U.S. Embassy official told us he remains optimistic about the Compact as a motivational tool. The official said he thinks the Compact has been successful in pushing the Afghan government to make modest, incremental anti-corruption reforms. This official said the Compact is a better mechanism than the U.S. government’s previous approach, which used semi-annual or annual conferences to assess progress on anti-corruption reforms, which he felt was not often enough. However, another U.S. Embassy official was more critical of the Compact, saying that, at least regarding anti-corruption efforts, the Afghan government has failed to meet key benchmarks, skirted accountability, and demonstrated little interest or initiative in meeting Compact objectives. Afghan government officials were similarly divided. One senior Afghan government official questioned the Compact’s value, saying that the U.S. government expects the Afghan government to accomplish too many Compact benchmarks too quickly. Another senior Afghan government official described the Compact as an “extremely useful framework,” saying that if the ministries were left to their own devices with no outside pressure, they would accomplish little. We plan to continue monitoring the implementation of the Compact as a part of our oversight mission.

State Must Independently Certify the Afghan Government’s Implementation of the Anti-Corruption Strategy and Record of Corruption Prosecutions

Since May 2017, State has been required to certify and report to Congress, prior to the initial obligation of certain funds for assistance to the central government of Afghanistan, that “the Government of Afghanistan is effectively implementing a whole-of-government, anti-corruption strategy that has been endorsed by the High Council of Rule of Law and Anti-Corruption . . . and is prosecuting individuals alleged to be involved in corrupt or illegal activities in Afghanistan.”⁵² This is one of eight certification requirements that the Secretary of State may waive if the Secretary determines “that to do so is important to the national security interest of the United States and the Secretary submits a report to the Committees on Appropriations . . . on the justification for the waiver. . . .”⁵³ We met with State representatives several times over the course of this audit and updated them on our findings. The Secretary of State waived the certification requirement for fiscal year 2017 funds after State determined that the Afghan government was not effectively implementing its national anti-corruption strategy.

⁵² Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, § 7044. This requirement is limited to funds made available under the headings “Economic Support Fund” and “International Narcotics Control and Law Enforcement.”

⁵³ Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, § 7044.

AFGHANISTAN MET ITS THREE SMAF ANTI-CORRUPTION DELIVERABLES

The Afghan government met all three of its anti-corruption SMAF deliverables, but it met two deliverables after the agreed deadlines. The High Council released the anti-corruption strategy on October 12, 2017. By doing so, it achieved the first of its SMAF deliverables, though it was 3 months behind the mid-2017 deadline agreed to at the Brussels Conference. Furthermore, the strategy's authors, high-ranking Afghan government officials, wrote this version in English, and the High Council did not release a Dari language version until December 9, 2017, on the same date that President Ghani ordered Afghan government institutions to initiate the strategy. Several ministry officials told us that they first saw the strategy in December 2017 or January 2018, after the Dari version had been distributed. While this meant the Afghan government met the SMAF requirement to initiate implementation in the second half of 2017, it left the line ministries only 22 days to do so before the strategy's first benchmark deadlines came due. As we discuss in further detail below, this was not a realistic timeframe and set up those ministries to miss the benchmarks' deadlines.

The strategy's authors shared an earlier version of the anti-corruption strategy with us as early as March 11, 2017, and again on August 12, 2017. However, in its meeting on August 16, 2017, the High Council decided to scrap this document entirely and begin again, resulting in the need for more drafting time and additional meetings and consultations. The drafting process also was likely slowed by the High Council's infrequent and irregular meeting schedule. In its April 2017 report on corruption in Afghanistan, UNAMA observed that "the High Council's long-term effectiveness may be constrained by multiple demands placed on its high-level members—all of whom are responsible for substantial portfolios."⁵⁴ Indeed, the Secretariat of the High Council reported that it met only 5 times in 2016 and 12 times in 2017.

Regarding the third SMAF deliverable, the MOF reported in February 2018 that the five revenue-generating ministries shared quarterly anti-corruption progress reports on their respective websites and with donors.⁵⁵ However, in March 2018, we checked all five ministries' websites in both Dari and English, and found that only two ministries, the Ministry of Mines and Petroleum and the Ministry of Commerce and Industries, made Dari-language progress reports publicly available on their websites. When we asked the MOF to provide support for its statement, it did not respond. However, after receiving a draft of this report, between April 21 and 23, 2018, the Afghan government provided international donors with links to the publicly available Dari-language reports for the MOF, the Ministry of Communications and Information Technology, and the Ministry of Transport and Civil Aviation. In May 2018, the MOF updated its SMAF report with links to all five ministries' final progress reports, which fulfilled the third SMAF deliverable.⁵⁶ We intend to analyze these, and subsequent progress reports, as a part of our follow-up work.

MEC reports between February and May 2017 analyzing progress on the action plans at the MOF, the Ministry of Communications and Information Technology, and the Ministry of Commerce and Industries found that these ministries made limited measurable progress on their anti-corruption action plans. International anti-corruption experts, USAID anti-corruption implementing partners, and an Afghan government official generally told us that they had observed limited to no progress. Several international anti-corruption experts stated that the ministries' anti-corruption plans were created mainly to please the international donor community, and one expert categorized the plans as "a box-ticking exercise." Furthermore, Afghan and U.S. officials observed that, until late 2017, Parliament had not yet confirmed many of President Ghani's appointed ministers, and these officials worked in an acting capacity throughout the year. As such, according to U.S. officials and an international anti-corruption expert, these acting ministers were in a politically tenuous position and vulnerable to demands from members of Parliament. The U.S. officials said acting ministers were reluctant to jeopardize their confirmations by pressing for anti-corruption reforms because they were worried that taking such action

⁵⁴ UNAMA, *Afghanistan's Fight against Corruption*, p.6.

⁵⁵ MOF, *Status Report on Achieving Self-Reliance through Mutual Accountability Framework Commitments 2017-2018*, February 2018.

⁵⁶ MOF, *Status Report on Achieving Self-Reliance through Mutual Accountability Framework Commitments 2017-2018*, May 2018.

might anger members of Parliament, where corruption is entrenched. Because many of these acting ministers have since been confirmed, the U.S. officials concluded that they may now be more willing to implement new anti-corruption policies.

MANY AFGHAN MINISTRIES AND CIVIL SOCIETY ORGANIZATIONS HAD LITTLE OR NO INPUT INTO THE DEVELOPMENT OF THE ANTI-CORRUPTION STRATEGY AND THE APPROVED STRATEGY HAS SEVERAL WEAKNESSES

The Kuala Lumpur Statement on Anti-Corruption Strategies emphasizes the importance of maintaining an inclusive, transparent process and engaging a broad subsection of stakeholders to ensure the acceptability and effectiveness of the adopted strategy.⁵⁷ In creating the anti-corruption strategy, the authors consulted international anti-corruption organizations, anti-corruption experts, and donors, including the U.S. government. However, in the effort to finalize the document by October 2017, the authors of the anti-corruption strategy limited the consultation process, and representatives from several key Afghan stakeholders—including line ministries targeted by the strategy, provincial government officials, and civil society organizations—told us they were left out of the drafting process. Although U.S. officials and international anti-corruption experts generally agreed that the approved anti-corruption strategy is a positive step for anti-corruption reform, they also said that the strategy has several weaknesses. These weaknesses include poorly defined benchmarks with unrealistic deadlines; unclear policy direction for the MOD, which accounts for \$830 million of the Afghan government's \$5.5 billion operating budget for 2018; a failure to fully incorporate other Afghan transparency initiatives; a failure to maintain or establish permanent and independent anti-corruption bodies; and not designating which anti-corruption entity is responsible for anti-corruption research and public education.

Relevant Afghan Ministries and Civil Society Organizations Said They Were Not Fully Included in the Development of the Anti-Corruption Strategy

The Kuala Lumpur Statement on Anti-Corruption Strategies—which describes international best practices for developing, implementing, monitoring, and evaluating anti-corruption strategies—emphasizes the importance of maintaining an inclusive, transparent process and engaging a broad subsection of stakeholders.⁵⁸ It recommends including representatives from state institutions (executive, legislative, and judiciary) at the national and sub-national levels, civil society organizations, the private sector, and the media, among others. According to the *Kuala Lumpur Statement on Anti-Corruption Strategies*, involving more stakeholders helps to ensure the acceptability and effectiveness of new policies and reduces their vulnerability to changes in political leadership.

Representatives from UNAMA, Global Witness, and the MEC all said that the High Council either invited them to participate in meetings about the strategy, or to review the draft document and submit written comments. Representatives from the World Bank said they submitted comments through UNAMA and felt their concerns were addressed in the final document, and representatives from Transparency International said that although the High Council did not consult with them directly, they felt that it took into account the recommendations they had made in prior reports. Furthermore, UNAMA consolidated comments from the embassies of the United States, the United Kingdom, Denmark, the European Union, and others at various points in the strategy's development. International donors and anti-corruption organizations generally said the Afghan government addressed their concerns in the final strategy document, though some were more satisfied than others with the High Council's responses. Similarly, representatives from the Afghan government institutions that have permanent seats on the High Council, such as the AGO and Independent Administrative Reform and Civil Service Commission, said they felt they had sufficient input on the anti-corruption strategy.

⁵⁷ Kuala Lumpur Statement on Anti-Corruption Strategies.

⁵⁸ Kuala Lumpur Statement on Anti-Corruption Strategies.

In contrast, other Afghan government officials, civil society representatives, international donor officials, and international anti-corruption experts told us that the High Council did not sufficiently engage stakeholders from the line ministries, provincial governments, civil society, or Parliament in the creation of the strategy. By limiting input from key Afghan stakeholders, the High Council created a risk that the anti-corruption strategy will not be understood or accepted by the organizations expected to implement it.

Afghan officials at the line ministries and civil society organizations had different complaints about the development of the anti-corruption strategy depending on when, or if, they were involved. One ministry official, who was involved early in the process in May 2017, said his contributions to the strategy were minimal, and another ministry official who was involved during the same timeframe expressed frustration that the draft he worked on was scrapped in August and replaced with a new one that changed issues he thought had been settled. Civil society officials, who were involved late in the process, said they were only given a matter of days, or even hours, to review the final document and contribute comments. Some Afghan government and civil society officials said they were not consulted at all, or had minimal input. One Afghan civil society organization reported that development of the strategy was “restricted to a couple of corners of the Presidential Palace,” and that civil society organizations were given only a 1-hour meeting to express their views just before the strategy was finalized.⁵⁹

International donor officials and anti-corruption experts said the High Council might have sought to minimize ministerial and civil society involvement because it was under significant time pressure and did not want to lose control of the strategy’s development process. These same officials and others added that many civil society organizations and provincial governments have poor reputations or are thought of as corrupt, and may have been a hindrance in designing the strategy. One Afghan official told us that the High Council e-mailed the draft strategy to all ministers and gave them 48 hours to respond; this official said many ministers may have been too busy or missed this e-mail, which may account for why they felt they had no input. International anti-corruption experts commented that the strategy document seemed written more for international donors than for Afghan officials. They said this was evident by the facts that the High Council rushed to finalize the strategy before the Senior Officials Meeting on October 5, 2017, and that the final version was presented in English and then had to be translated to Dari, an official language of Afghanistan.⁶⁰

We found evidence that because the stakeholder consultation process was not as broad-based as it could have been during the development of the strategy, the High Council raised the risk that the strategy’s goals and benchmarks will not be met. For example, the strategy calls for the MOF to implement the Addis Tax Initiative and the Common Reporting Standard by December 2017. However, one Afghan government official told us that the MOF did not even know what the Addis Tax Initiative and Common Reporting Standard were until after the strategy was released.⁶¹ Another Afghan government official said the MOF questioned the value of pursuing these policy goals over more pressing issues. As of the date of issuance of this report, the MOF has not implemented either the Addis Tax Initiative or the Common Reporting Standard.

The Anti-Corruption Strategy’s Goals and Benchmarks Are Not Fully Aligned, and Benchmarks Are Often Poorly Defined

The strategy establishes 66 goals that the Afghan government intends to achieve between 2018 and 2020. However, we found that, based on our analysis, those goals are not fully aligned with the 38 benchmarks set to

⁵⁹ Integrity Watch Afghanistan, “NUG’s new anti-corruption strategy: A half-hearted attempt to fight corruption,” September 9, 2017.

⁶⁰ The Tokyo Mutual Accountability Framework required senior officials from the Afghan government and international community to meet every 2 years to review progress on indicators and revise them where necessary. The SMAF carried forward this requirement. There have been Senior Officials Meetings in 2013, 2015, and 2017.

⁶¹ Countries subscribing to the Addis Tax Initiative commit to implementing reforms that will enhance the mobilization and effective use of domestic revenues and improve the fairness, transparency, efficiency, and effectiveness of their tax systems. The Common Reporting Standard is an internationally recognized standard for the automated exchange of tax information on request. It was developed to fight bank secrecy and cross-border tax evasion.

measure implementation progress. Additionally, representatives from international anti-corruption organizations and international anti-corruption experts expressed concerns that by creating some poorly defined benchmarks, the Afghan government may be setting itself up for failure. Senior Afghan government officials acknowledged that some benchmarks were poorly worded and stated that they would likely have to be revised.

The *Kuala Lumpur Statement on Anti-Corruption Strategies* recommends that strategy documents should set measurable indicators, with established baselines and tracking mechanisms, to determine whether goals are being achieved, and have a clear rationale explaining how the achievement of goals and benchmarks will help to accomplish anti-corruption outcomes. We analyzed the 66 goals and 38 benchmarks discussed in Afghanistan's anti-corruption strategy and determined that there are 38 goals (58 percent) without corresponding benchmarks to evaluate implementation progress. We also determined that there are 14 benchmarks (37 percent) without corresponding goals, making it unclear how the completion of these benchmarks will advance the government's anti-corruption goals. Afghan officials told us that they tried to limit the number of benchmarks because they did not want to dilute the strategy's focus on its key anti-corruption objectives. These officials expressed concern that including too many benchmarks during the initial period of the strategy would create another "wish list" rather than a focused set of action items. Furthermore, they stated that the strategy is a "living document" and that goals and benchmarks can be added over time. See appendix IV for our comparison of the strategy's goals against its benchmarks, and appendix I for our methodology.

By not setting benchmarks with clear targets, it will be difficult for the Afghan government to measure progress toward achieving its goals, as called for in the *Kuala Lumpur Statement on Anti-Corruption Strategies*, or hold line ministries accountable for failing to take action. For example, the anti-corruption strategy sets a goal of "competent and qualified leadership in the Ministry of [the] Interior," but it does not set a corresponding benchmark to measure progress toward this goal. Similarly, the strategy sets a goal of having the Attorney General review and follow up on all cases identified in 2013 by the AGO's *Shafafiat* ("Transparency") task force, but does not tie this goal to a benchmark with a clear deadline. According to U.S. officials, there has been no discernable action on pre-existing and long-stalled corruption cases, and they observed that the Attorney General has been reluctant to follow up on older corruption cases because he believes that pressing charges now against Karzai-era officials would amount to "political persecutions."

Furthermore, international anti-corruption experts, donor officials, and civil society representatives pointed out that the strategy does not always define its terms clearly, or explain how the achievement of the strategy's goals and benchmarks will help achieve broader anti-corruption goals, despite this being called for in the *Kuala Lumpur Statement on Anti-Corruption Strategies*. For example, according to the strategy, one of the Afghan government's anti-corruption goals is to "advance the use of biometric electronic voting technology in all large cities" by 2019. However, the strategy does not clearly define what it means by "advancing the use of biometric electronic voting," say which "large cities" the Afghan government plans to target, or set benchmarks with deadlines to measure progress toward this goal. In another example, the Afghan government set a goal of "advancing the extradition and prosecution of convicted criminals living abroad through international agreements," but the corresponding benchmark simply restated the goal without specifying targets that are precise and measurable. One U.S. Embassy official stated that the Afghan government has not begun new efforts to arrest and prosecute officials living abroad.

MOD's Roles and Responsibilities Are Unclear under the Anti-Corruption Strategy

The Afghan government does not define the MOD's roles and responsibilities in its anti-corruption strategy. The *Kuala Lumpur Statement on Anti-Corruption Strategies* recommends that strategies should be comprehensive and holistic, but should also take into account sector-specific needs.⁶² International anti-corruption experts,

⁶² Kuala Lumpur Statement on Anti-Corruption Strategies.

international donor officials, and civil society representatives generally agreed that this is one of the strengths of Afghanistan's anti-corruption strategy, saying that its organization into the five "pillars" strikes a good balance between high-level and sector-specific needs. However, during the course of this audit, we were unable to determine the MOD's anti-corruption roles and responsibilities, and could not say how it will advance the Afghan government's anti-corruption priorities in the security sector.⁶³

While the Afghan government's anti-corruption strategy cites security sector reform as a major objective, anti-corruption experts drew attention to a concern that the MOD—which, with its \$830 million budget, is by far the largest spending component in the Afghan government's \$5.5 billion national budget—does not appear to have a clear role in Afghanistan's anti-corruption strategy. As discussed above, the approved strategy named the MOI, the MOF, and the MOD as "pillar ministries" with specific goals and benchmarks to accomplish, but did not consider them to be among the "priority ministries" required to create anti-corruption action plans. The first quarterly update report from the High Council made the MOI and the MOF, along with all other "pillar" ministries, subject to the same requirements as the "priority ministries," but it still did not require the MOD to submit an action plan to the High Council.

The strategy does task the MOD with achieving two benchmarks in coordination with the MOI. Otherwise, the strategy simply directs the MOD to continue implementing its 2016 National Campaign Plan, which it says, "with help from the Resolute Support Mission is leading to less corruption, greater force effectiveness, and overall professionalization of the armed services."⁶⁴ We asked the Afghan government to provide a copy of the 2016 National Campaign Plan, but a senior representative from the Afghan government said it could not do so, citing the need for state secrecy. Despite the anti-corruption strategy's direction that the 2016 National Campaign Plan "will remain the Defense Ministry's guide for fighting corruption," the MOD submitted a separate anti-corruption plan to the High Council.⁶⁵ A senior Afghan official said that this plan "will need to be rewritten in part," and because the MOD is not one of the 15 "priority ministries," it is not a priority for the High Council to review. In February 2018, we asked for copies of any draft anti-corruption plans submitted to the High Council by that point, but the Afghan government could not provide them, saying these drafts were too early and not ready for further distribution. After receiving a draft of this report, the Afghan government provided us a web link on May 10, 2018, to a publicly available copy of its security sector anti-corruption action plan.⁶⁶ We plan to review the security sector anti-corruption action plans as a part of our follow-up work.

According to the anti-corruption strategy, implementing reforms at the MOI is the Afghan government's top priority and reforms at the MOD are already "well underway."⁶⁷ U.S. officials and international anti-corruption experts generally agreed with this assessment of the security sector, saying that the army is further along on anti-corruption efforts than the police. In addition, one international anti-corruption expert told us it is more beneficial to focus on the police than the army because the police have a more public-facing role, and police corruption tends to anger the public more than corruption within the army.

⁶³ After receiving a draft of this report, on May 10, 2018, the Afghan government provided a web link to a publicly available copy of its security sector anti-corruption action plan. See [http://mod.gov.af/Content/files/palicy/%D9%85%D8%A8%D8%A7%D8%B1%D8%B2%D9%87%20%D8%B9%D9%84%DB%8C%D9%87%20%D9%81%D8%B3%D8%A7%D8%AF\(1\).pdf](http://mod.gov.af/Content/files/palicy/%D9%85%D8%A8%D8%A7%D8%B1%D8%B2%D9%87%20%D8%B9%D9%84%DB%8C%D9%87%20%D9%81%D8%B3%D8%A7%D8%AF(1).pdf).

⁶⁴ Islamic Republic of Afghanistan, Afghanistan National Strategy, p. 8.

⁶⁵ This new anti-corruption plan was developed because of President Ghani's order implementing the anti-corruption strategy, which directed all Afghan ministries to create anti-corruption plans.

⁶⁶ See [http://mod.gov.af/Content/files/palicy/%D9%85%D8%A8%D8%A7%D8%B1%D8%B2%D9%87%20%D8%B9%D9%84%DB%8C%D9%87%20%D9%81%D8%B3%D8%A7%D8%AF\(1\).pdf](http://mod.gov.af/Content/files/palicy/%D9%85%D8%A8%D8%A7%D8%B1%D8%B2%D9%87%20%D8%B9%D9%84%DB%8C%D9%87%20%D9%81%D8%B3%D8%A7%D8%AF(1).pdf).

⁶⁷ Islamic Republic of Afghanistan, Afghanistan National Strategy, p. 8.

The Anti-Corruption Strategy Did Not Fully Incorporate Afghanistan’s Existing Transparency Initiatives

We found that Afghanistan’s anti-corruption strategy did not fully incorporate other existing transparency initiatives, which created a conflict in at least one case, with its Open Government Partnership country action plan. In addition to the High Council’s work on the national anti-corruption strategy, the Afghan government has at least two other anti-corruption initiatives underway: the Extractive Industries Transparency Initiative and the Open Government Partnership.^{68;69} According to the *Kuala Lumpur Statement on Anti-Corruption Strategies*, strategy documents should coordinate and align with other relevant national programs and reform agendas.

The anti-corruption strategy mentions the Extractive Industries Transparency Initiative only once, as a proposed benchmark for the Ministry of Mines and Petroleum to achieve by June 2019. We spoke with international experts in extractive sector transparency who expressed frustration that the Afghan government seems to regard the Initiative as “just another box to tick” rather than a tool it can use to achieve anti-corruption outcomes. These officials explained that the point of transparency initiatives like the Extractive Industries Transparency Initiative is to help expose corrupt activities and facilitate policy or legal interventions. Furthermore, one of these officials said that as a general rule, the anti-corruption strategy’s extractive sector benchmarks focus too much on transparency “outputs” and not enough on corruption “outcomes.” For example, Afghanistan’s end goal should not simply be to set up a beneficial ownership registry for mining contracts to comply with the Extractive Industries Transparency Initiative; its end goal should be to use that registry to identify contracts awarded in violation of Afghan law and terminate those contracts.^{70;71}

Similarly, even though the Open Government Partnership requires members to submit country action plans, an Afghan official involved with drafting that plan said his team was not an active participant in the creation of the anti-corruption strategy, even though the two documents had several areas of overlap. This led to conflicts between the Open Government Partnership country action plan and the national anti-corruption strategy. For example, the country action plan requires the registration, publication, and verification of the assets of 100 high-ranking government officials, and the establishment of a committee to oversee implementation of the anti-corruption strategy. By contrast, the strategy allowed the president to abolish the HOO, which occurred on March 6, 2018.⁷² According to the drafters of the Open Government Partnership country action plan, no one on the High Council communicated these decisions about the HOO to them. These discrepancies may complicate the Afghan government’s ability to meet its anti-corruption goals under the Open Government Partnership action plan, some of which were due as early as February and March 2018.

⁶⁸ The Extractive Industries Transparency Initiative is an international initiative to promote the open and accountable management of oil, gas, and mineral resources.

⁶⁹ The Open Government Partnership is a multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance.

⁷⁰ A beneficial owner is a person who enjoys the benefits of ownership even though title to some form of property is in another name. Requiring companies to register all beneficial owners would help the Afghan government to prevent individuals from hiding their identities behind corporate entities and profiting from contracts that violate Afghan law.

⁷¹ Afghanistan’s Mining Law stipulates that the following may not obtain mining licenses, among others: the president, vice presidents, ministers, members of Parliament, judges, prosecutors, any employee of the MOD or MOI, and any person sentenced to 10 or more years in prison for corruption who has not completed his prison term. It further states that if a company has one or more major shareholders, members of the executive board, or members of its board of directors who violate these restrictions, that company is disqualified from obtaining mining licenses.

⁷² President of the Islamic Republic of Afghanistan, Legislative Decree on the Amendments and Additions to the Law on [the] Organizational Structure and Jurisdiction of the Attorney General’s Office, Article 4 (2018).

The Anti-Corruption Strategy Does Not Provide for the Permanence and Independence of All Anti-Corruption Bodies, and Does Not Transfer All of the HOO's Roles and Responsibilities to an Enduring Anti-Corruption Body

Although the UNCAC states that anti-corruption bodies should be independent, the Afghan anti-corruption strategy states that anti-corruption bodies, except the MEC and ACJC, will be centralized under a new Deputy Attorney General at the AGO, which is not independent from the President and is vulnerable to political pressure. The strategy also designates other key responsibilities to the High Council Special Secretariat and the Administrative Office of the President, which are both similarly beholden to the President and vulnerable to political pressure.⁷³ Furthermore, the Afghan government abolished the HOO in March 2018, but did not assign all of the office's responsibilities to enduring anti-corruption bodies.

The UNCAC states that each state party shall ensure the existence of a body responsible for overseeing and coordinating the implementation of anti-corruption policies, and grant that body "the necessary independence, in accordance with fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence." Furthermore, the *Jakarta Statement on Principles for Anti-Corruption Agencies* states that anti-corruption bodies shall:

- have clear mandates to tackle corruption through prevention, education, awareness raising, investigation, and prosecution, either through one agency or multiple coordinated agencies;
- be established by a proper and stable legal framework, such as the Constitution or a special law, to ensure continuity; and
- shall have heads appointed through a process that ensures their apolitical stance, impartiality, neutrality, integrity, and competence.⁷⁴

While some U.S. officials, Afghan government officials, international anti-corruption experts, and international donor officials commended the High Council for seeking to streamline and eliminate redundant or ineffective anti-corruption institutions, others expressed concern that the new entity is not functionally independent. Specifically, international anti-corruption experts stated that because the President or Attorney General can fire the Deputy Attorney General without cause, the new office is vulnerable to political pressure, and the President or Attorney General could use it as a partisan tool to attack rivals with false corruption charges.

The Afghan Law on Overseeing the Implementation of the Anti-Administrative Corruption Strategy originally made the HOO "the highest office for the coordination and overseeing of the implementation of the Anti-Administrative Corruption Strategy and procedure for administrative reform in the country," and also made the HOO responsible for asset registration, research, prevention, and public education activities, among others.⁷⁵ However, beginning in 2016, the Afghan government transferred HOO responsibilities to other institutions, before finally abolishing it on March 6, 2018. For instance:

- On February 25, 2016, President Ghani issued a decree making the High Council the "forum for high-level dialogue and policymaking to end corruption."⁷⁶
- On December 9, 2017, through the new anti-corruption strategy, the Afghan government transferred responsibility for coordinating and overseeing the strategy's implementation to the High Council Special Secretariat, and transferred responsibility for asset registration of public officials to the Administrative Office of the President.

⁷³ As discussed below, the HOO was the only anti-corruption body outside the AGO that was consolidated under the new Deputy AGO for Anti-Corruption, according to a senior Afghan official.

⁷⁴ Jakarta Statement on Principles for Anti-Corruption Agencies, November 26-27, 2012, Indonesia.

⁷⁵ Law on Overseeing the Implementation of the Anti-Administrative Corruption Strategy (2008) (repealed 2018).

⁷⁶ President of the Islamic Republic of Afghanistan, Decree No. 1: Amendment to the Development Council on Governance and Justice ... to be renamed to High Council on Governance, Justice, and Anti Corruption (2016).

- On March 5, 2018, President Ghani issued a legislative decree endorsing amendments to Afghanistan's Civil Servants Law to effectively give the Independent Administrative Reforms and Civil Service Commission responsibilities for monitoring and regulating the civil service recruitment process that are similar to those previously held by the HOO.⁷⁷
- On March 6, 2018, in the same law that abolished the HOO, the Afghan government transferred its investigative and research functions to the new Deputy AGO for Anti-Corruption.⁷⁸

However, none of these laws or decrees transferred the HOO's responsibilities for public education and awareness raising to an enduring anti-corruption body.⁷⁹

U.S. government, Afghan government, and international donor officials, as well as international anti-corruption experts, praised the High Council for abolishing the HOO, which some of these officials and others described as one of the most inefficient institutions in the country. However, both these and other Afghan officials, civil society representatives, international donor officials, and international anti-corruption experts also expressed concerns that neither the new Deputy AGO nor the High Council Special Secretariat nor the Administrative Office of the President is an independent institution. Furthermore, although the Afghan government permanently established the new Deputy AGO by amending existing law, the Special Secretariat and the new Administrative Office of the President Asset Registration Office have not been made permanent.

Afghan government officials, international donor officials, and international anti-corruption experts stated that the Afghan government abolished the HOO and established the new Deputy AGO for four reasons.⁸⁰ First, they stated that the HOO's history of being ineffective proved that a centralized, independent anti-corruption body is not a model that works in Afghanistan. Second, they stated that because Article 134 of the Afghan constitution explicitly states that only the AGO is tasked with prosecuting crimes, it must necessarily play a central role in any effort to investigate, prosecute, and punish corruption crimes.⁸¹ Third, in its official response to this report, the Afghan government stated that placing its lead anti-corruption institution within an existing body like the AGO "creates an institutionally strong position," and suggested that the AGO will be better positioned than the HOO to "protect" its anti-corruption mandate. Fourth, the Afghan government also stated in its official response that embedding its lead anti-corruption institution within the AGO reduces the problem of corruption investigations needing to be transferred between entities and falling through the cracks. However, other Afghan government officials also stated that establishing the new Deputy AGO and abolishing the HOO emerged as a compromise and that in the long run, at least one senior member of the High Council still wants to set up an independent anti-corruption body responsible for both corruption prevention and enforcement.

Notably, an earlier draft of the anti-corruption strategy would have established a new, independent anti-corruption body in compliance with the UNCAC, and an interagency working group drafted an anti-corruption law that would have defined the roles and responsibilities of this new entity. This draft of the strategy indicated that the Afghan government would finalize the strategy and anti-corruption law at the same time, or shortly thereafter. However, the High Council scrapped the early version of the strategy that corresponded with the draft law. The revised version of the strategy eliminated the concept of a new, independent anti-corruption body in compliance with the UNCAC, and according to a senior Afghan government official, the draft law fell out of favor with the High Council because it did not align with the revised strategy. Afghan government officials said conflicts between the two documents resulted in the High Council proceeding with the release of the anti-corruption strategy but not the anti-corruption law. To date, the Afghan government has not passed the anti-

⁷⁷ President of the Islamic Republic of Afghanistan, Legislative Decree on [the] Endorsement of Amendments and Additions to Some Articles of the Civil Servants Law (2018).

⁷⁸ Law on [the] Organizational Structure and Jurisdiction of the Attorney General's Office, Article 12, as amended (2018).

⁷⁹ Concerns surrounding the transfer of the HOO's responsibility for coordinating and overseeing implementation of the strategy to the High Council Special Secretariat are discussed later in this report.

⁸⁰ The anti-corruption strategy also made establishing the new Deputy AGO's office a benchmark, and set a deadline for December 31, 2017. On March 6, 2018, the Afghan government met this benchmark with its amendments to the Law on the Organizational Structure and Jurisdiction of the Attorney General's Office.

⁸¹ Capacity shortfalls at the AGO are discussed later in this report.

corruption law. However, after receiving a draft of this report, a senior Afghan government official told us that the Ministry of Justice completed revisions to the draft anti-corruption law and presented them to the High Council for approval in May 2018.

THE AFGHAN GOVERNMENT COMPLETED 14 OF THE 20 INITIAL ANTI-CORRUPTION STRATEGY BENCHMARKS, AND CREATED 48 OF 58 ANTI-CORRUPTION PLANS

The Afghan government demonstrated progress in implementing its anti-corruption strategy, meeting 14 of the strategy's 20 initial benchmarks: 10 of the 15 benchmarks set for completion by December 31, 2017, and 4 of the 5 due by February 28, 2018.⁸² However, the Afghan government completed many of these benchmarks several months after their deadlines had passed. Furthermore, the government completed 12 of these benchmarks, or provided documentation of their completion, after it received a draft of this report in April 2018. Additionally, despite President Ghani's requirement that all Afghan institutions finalize their action plans by January 8, 2018, only 11 of the 15 priority ministries and 11 other Afghan institutions submitted action plans to the High Council by February 18, 2018. In an update provided to us on May 3, 2018, the Special Secretariat documented that at that point all 15 priority ministries and at least 33 non-priority ministries had submitted action plans to the High Council.⁸³ The High Council approved all 15 of the priority ministry action plans on May 14, 2018.

The Afghan Government Completed 14 of the 20 Initial Anti-Corruption Strategy Benchmarks

The anti-corruption strategy stated that the Afghan government would complete 15 benchmarks by December 31, 2017, and another 5 by February 28, 2018. According to the High Council Special Secretariat's first report on the implementation of the anti-corruption strategy, as of February 18, 2018, the Afghan government had completed 2 of the 20 benchmarks that the anti-corruption strategy set for completion by February 28, 2018.^{84:85} However, after receiving a draft of this report in April 2018, the Afghan government completed or provided documentation showing completion of, an additional 12 benchmarks. This brought the total number of completed benchmarks to 14. The *Kuala Lumpur Statement on Anti-Corruption Strategies* states that strategies should be "designed with the aim of enhancing the credibility of leadership and ensuring quick tangible results to strengthen the national commitment to reform."⁸⁶ By completing 12 benchmarks between 3 and 6 months after their deadlines, and not completing an additional 5 as of the publication of this report, the Afghan government risks losing the momentum needed to effect lasting change.

As stated above, two of the benchmarks were completed prior to the Afghan government receiving a draft of this report in April 2018. These benchmarks were:

- **Appoint a High Oversight Board to provide guidelines and audits of senior-related appointments and promotions.** According to a DOD official, the Afghan government completed this benchmark in September 2017, before the President issued the order to implement the anti-corruption strategy on December 9, 2017.

⁸² Following the publication of the anti-corruption strategy, the Afghan government deemed one benchmark as unnecessary, reducing the number of benchmarks due in December 2017 and February 2018 to 19.

⁸³ The Special Secretariat expected to receive progress reports from 58 entities in total.

⁸⁴ Special Anti-Corruption Secretariat for Implementation of National Anti-Corruption Strategy, *Special Report Vol. 1*, February 18, 2018.

⁸⁵ The next benchmarks are not due until June 30, 2018, at the earliest.

⁸⁶ Kuala Lumpur Statement on Anti-Corruption Strategies.

- **Propose an accounting law that would set national standards for public agencies and license auditors and accounting firms.** The High Council Special Secretariat reported that this was completed in February 2018. According to a senior Afghan government official, the Ministry of Justice and Presidential Cabinet approved a draft accounting law and forwarded it to Parliament for final passage.

Following the receipt of a draft of this report in April 2018, the Afghan government completed, or demonstrated that it had already completed, 12 additional benchmarks. These benchmarks are:

- **National Leadership consultation of the President on anti-corruption efforts.** On May 5, 2018, President Ghani and other senior officials in the central government held a large group video teleconference on the topic of anti-corruption with citizens from 34 provinces. Participants included governors, university chancellors, senior religious scholars, teachers, student groups, and civil society officials. These participants were invited to submit corruption-related comments and grievances ahead of the conference. SIGAR representatives attended this meeting in a listening capacity.
- **Establish an independent palace Ombudsman.** President Ghani signed a decree authorizing the creation of this new entity on May 12, 2018.
- **Introduce an awards program for civil servant individual and team achievements in fighting corruption.** On May 1, 2018, the Independent Administrative Reform and Civil Service Commission announced a new cash prize for excellence in civil service, and invited government officials to submit individual nominations to the commission. The commission stated that nominees will be evaluated by a special committee consisting of government and civil society representatives, and the evaluation criteria will be publicized at a later date. On May 13, 2018, the Afghan government provided us with a draft policy document describing the commission's operational plan for this award. This policy document stated that the commission does not expect to circulate an official memorandum calling for nominations until June 15, 2018, and does not expect to finish developing the terms of reference for the award committee or identifying the special committee's members until the end of June 2018.
- **Defense Planning, Budget, and Strategy: (1) publish unconditional defense strategy and a detailed defense budget; (2) publish an anti-corruption action plan for this sector.** The Afghan government provided us a web link to a publicly available copy of its "unconditional" defense strategy on May 12, 2018.⁸⁷ On May 10, 2018, the Afghan government provided a web link to a publicly available copy of its security sector anti-corruption action plan.⁸⁸ Also on May 10, 2018, the Director General for the National Budget at the Ministry of Finance sent us a letter explaining that the 2018 National Budget, which was finalized on January 1, 2018, and made publicly available on the MOF's website, gives detailed budget information for both the MOD and the MOI.⁸⁹ When we reviewed the posted budget, we found that it gives only the topline numbers for the MOD's combat forces and support forces and the MOI's internal security forces and supply services. Furthermore, other non-public budget documents exist that give more detailed budgetary information, but an Afghan government official stated that the MOF's national budget was sufficiently detailed to meet the benchmark.
- **Public advertising and competitive selection for all positions.** On May 9, 2018, the Independent Administrative Reform and Civil Service Commission sent us an official letter stating, "all civil service vacant positions recruited by the government of Afghanistan since June 2017 were subject to public announcement and open competition." Specifically, it noted that it had identified as many as 20,000 vacant positions in the past year, advertised these openings on its website, held competitive examinations for the 280,000 candidates who applied, and shortlisted 225,000 applicants, of which 83,498 were women. It also highlighted that the Afghan government amended the Civil Servants Law in March 2018 so that public announcement and competitive selection is required for all future job

⁸⁷ See <http://mod.gov.af/Content/files/palicy/%D8%AE%D9%84%D8%A7%D8%B5%D9%87.pdf>.

⁸⁸ See [http://mod.gov.af/Content/files/palicy/%D9%85%D8%A8%D8%A7%D8%B1%D8%B2%D9%87%20%D8%B9%D9%84%DB%8C%D9%87%20%D9%81%D8%B3%D8%A7%D8%AF\(1\).pdf](http://mod.gov.af/Content/files/palicy/%D9%85%D8%A8%D8%A7%D8%B1%D8%B2%D9%87%20%D8%B9%D9%84%DB%8C%D9%87%20%D9%81%D8%B3%D8%A7%D8%AF(1).pdf).

⁸⁹ See [http://www.budgetmof.gov.af/images/stories/DGB/BPRD/National%20Budget/1397_Budget/Final%201397%20ational%20Budget%20-%20approved%20\(Final\).pdf](http://www.budgetmof.gov.af/images/stories/DGB/BPRD/National%20Budget/1397_Budget/Final%201397%20ational%20Budget%20-%20approved%20(Final).pdf).

openings in the Afghan civil service. These actions complete the benchmark; however, the Afghan government must continue to publicly advertise and competitively select people for civil service positions for this benchmark to remain completed. We plan to continue to monitor this benchmark as part of our follow-on work.

- **Consolidate all anti-corruption bodies except the MEC under the AGO.** On March 4, 2018, President Ghani signed a presidential decree authorizing the structure of the new Deputy AGO for Anti-Corruption. This decree abolished the HOO, rescinded the 2008 Law on Overseeing the Implementation of the Anti-Administrative Corruption Strategy, and moved some but not all of the HOO's responsibilities to the new Deputy AGO.⁹⁰ A new AGO organizational chart indicates that the AGO's internal anti-corruption functions, such as the Anti-Corruption Unit and Military Anti-Corruption Unit, will be consolidated under the new Deputy AGO as well. According to a senior Afghan government official, the HOO is the only outside organization that was consolidated under the new Deputy AGO.
- **Secure the required capacity and resources to build capacities of relevant officials for collecting, publishing, storing, assessing, and sharing contract data and execution of transparent public procurement systems.** On December 25, 2017, the Afghan government signed a \$17.8 million grant agreement with the World Bank as part of its Fiscal Performance Improvement Support Project. An Afghan government official told us the Afghan government will use some of this money to upgrade and improve its National Procurement Institute, where it trains procurement officials with the support of international consultants. The National Procurement Authority expects that these upgrades and improvements will be completed by October 2018. Additionally, the National Procurement Authority reported upgrades to its Afghanistan Contracts Progress Monitoring System, and stated that it intends to train procurement officials on this new platform going forward.
- **Include civil society inputs in the development of new governance or anti-corruption legislation and policies.** Both the Afghan government and civil society officials reported that civil society organizations have been given opportunities to provide input on new governance and anti-corruption legislation and policies. For example, Integrity Watch Afghanistan officials reported that they were invited to participate in discussions about various new governance and anti-corruption laws, such as the Whistleblower Protection Law and the Anti-Corruption Law, between January and April 2018. They also provided written briefs about these laws. In another example, on May 14, 2018, the High Council held a meeting at which the new consolidated subnational governance policy was discussed, and civil society officials presented their views.
- **Oversight on Secret Procurement: (1) publish current oversight mechanisms for confidential procurement; (2) provide Parliament with detailed audit reports related to defense and security sectors.** On May 15, 2018, the Afghan government provided a link to a publicly available web page describing its oversight mechanism for confidential procurement.⁹¹ On May 13, 2018, the National Security Advisor sent us a letter explaining that the Supreme Audit Office typically conducts annual audits of all government entities, including defense and security institutions, shares the resulting audit reports with Parliament, and makes them publicly available on its website. According to the National Security Advisor, the Supreme Audit Office should finalize its 1396 report "during the next few months. We note that as of May 2018, the SAO had published neither the 1395 nor the 1396 audit reports on its English website."⁹²
- **Enforce full 100% compliance with asset disclosure requirement for senior officials.** We confirmed that the Administrative Office of the President published Dari-language asset disclosure forms

⁹⁰ Earlier in this report, we discuss concerns that some of the HOO's preventative functions, such as anti-corruption public education and awareness raising activities, were not transferred to the new Deputy AGO or any other entity.

⁹¹ See <http://www.budgetmof.gov.af/index.php/en/policies/oversight-mechanism-for-procurement>.

⁹² Afghan calendar year 1395 ran from March 21, 2016 to March 20, 2017, and Afghan calendar year 1396 ran from March 21, 2017 until March 20, 2018.

submitted and signed by 34 senior Afghan government officials.⁹³ With the exception of Vice President Abdul Rashid Dostum, who currently resides in Turkey under apparent political exile, these forms cover all senior officials in the government as defined by Article 154 of the Afghan constitution.⁹⁴

- **Pass a consolidated subnational governance policy.** The High Council approved a version of this policy document on May 14, 2018, but indicated that it will most likely be revised in the near future.
- **Review anti-corruption laws and regulations.** On May 13, 2018, the Ministry of Justice—the entity responsible for this benchmark—sent a letter to the Presidential Palace Chief of Staff General Directorate stating that it had completed its review of the draft anti-corruption law, and on May 14, 2018, a senior Afghan official said that the law had been referred back to the High Council for finalization. In its letter, the Ministry of Justice explained that earlier this year, it also completed reviews of the draft amendments to the AGO Structure and Authorities Law and the draft Access to Information Law, among others.

Of the remaining six benchmarks, five were still in progress as of the date of this report, and the High Council determined that one is no longer necessary. Additionally, Afghan government officials reported significant progress on other benchmarks due in the future. For example, these officials told us, and DOD officials confirmed, that the MOD and the MOI have made significant progress in rolling out new electronic systems to fight ghost soldiers and transferring the Afghan National Civil Order Police from the MOI to the MOD. Both of these benchmarks are due by June 30, 2018.⁹⁵

Although the Afghan government completed an additional 12 anti-corruption strategy benchmarks between April and May 2018, the full achievement of the reforms called for in the benchmarks could take much longer. For example, while the Afghan government has completed the tasks necessary to “review anti-corruption laws and regulations,” it must still draft, pass, and enforce them. Congress has required us to provide an update to our assessment of the Afghan government’s progress in implementing the anti-corruption strategy.⁹⁶ In accordance with this requirement, we will continue monitoring the completion and implementation of all the benchmarks outlined in the anti-corruption strategy.

Table 3 summarizes all benchmarks due by February 28, 2018, their deadlines, and whether they were complete or still in progress as of February and May 2018.

⁹³ See http://www.aop.gov.af/?page_id-2736.

⁹⁴ “The wealth of the President, Vice-Presidents, Ministers, members of the Supreme Court as well as the Attorney General, shall be registered, reviewed and published prior to and after their term of office by an organ established by law.”

⁹⁵ As noted below, the strategy sets a benchmark requiring the “use of a fully operational electronic system to track payroll data” by December 31, 2017. However, it also sets a benchmark requiring the MOI to “expand electronic payroll to all accessible districts” by June 30, 2018. We are interpreting these two requirements to mean that the new system should have been in place by December 31, 2017, and should be in use at the district level by June 30, 2018.

⁹⁶ 164 Cong. Rec. H2851 (daily ed. Mar. 22, 2018) (explanatory statement of the Consolidated Appropriations Act, 2018).

Table 3 - Status of Afghan Anti-Corruption Benchmark Implementation as of February and May 2018

Benchmark	Deadline	February 2018	May 2018
Appoint a High Oversight Board to provide guidelines and audits of senior security-related appointments and promotions.	December 31, 2017	Completed	Completed
National leadership consultation of the President on anti-corruption efforts.	December 31, 2017	In Progress	Completed
Empowering Laws: (1) Enact a Whistleblower Protection Law, (2) Amend the access to information law to meet international best practices and strengthen the recently established Oversight Commission on Access to Information, (3) Revise civil and criminal codes to seize illegally obtained assets and exclude those convicted of corruption from political office.	December 31, 2017	In Progress	In Progress
Introduce an awards program for civil servant individual and team achievements in fighting corruption.	December 31, 2017	In Progress	Completed
Establish an independent palace Ombudsman.	December 31, 2017	In Progress	Completed
Defense Planning, Budget, and Strategy: (1) Publish unconditional defense strategy and a detailed defense budget; (2) Publish an anti-corruption action plan for this sector.	December 31, 2017	In Progress	Completed
Ghost Soldiers/Police: (1) Develop a verification plan detailing personnel and payroll procedures, (2) Develop daily attendance sign-in procedures using identification numbers, (3) Ensure use of fully operational electronic system to track payroll data, (4) Training for internal audit and investigative powers.	December 31, 2017	In Progress	In Progress
Public advertising and competitive selection for all positions.	December 31, 2017	In Progress	Completed
Consolidate all anti-corruption bodies except the Independent Joint Anti-Corruption and Evaluation Committee under the Attorney General's Office.	December 31, 2017	In Progress	Completed
Amend Afghan law to require that the full text of government awards, contracts, and contract alterations must be published as a condition of their coming into force.	December 31, 2017	In Progress	In Progress
Secure the required capacity and resources to build capacities of relevant officials for collecting, publishing, storing, accessing, and sharing contract data and execution of transparent public procurement systems.	December 31, 2017	In Progress	Completed
Implement the Addis Tax Initiative and Common Report Standard to ensure better tax revenue transparency and accountability.	December 31, 2017	In Progress	In Progress
Move the Financial Crimes Task Force to the Attorney General's Office.	December 31, 2017	Deemed No Longer Necessary	Deemed No Longer Necessary
Include civil society inputs in the development of new governance and anti-corruption legislation and policies.	December 31, 2017	Cannot Determine Status Due to Lack of Information	Completed
Oversight on Secret Procurement: (1) Publish current oversight mechanisms for confidential procurement; (2) Provide Parliament with detailed audit reports related to defense and security sectors.	December 31, 2017	Cannot Determine Status Due to Lack of Information	Completed
Propose an accounting law that would set national standards for all public agencies and license auditors and accounting firms.	February 28, 2018	Completed	Completed
Enforce full 100% compliance with asset disclosure requirement for senior officials.	February 28, 2018	In Progress	Completed
Pass a consolidated subnational governance policy	February 28, 2018	In Progress	Completed
Review anti-corruption laws and regulations.	February 28, 2018	In Progress	Completed
Customs Reform and Transparency: (1) Reform the customs services in line with principles in the Arusha Declaration of the World Customs Organization, (2) Advertise the rates and procedures at the borders and inland customs depots, on website, or through public service.	February 28, 2018	In Progress	In Progress
Total Benchmarks Completed		2	14

Source: SIGAR analysis of the Special Anti-Corruption Secretariat for Implementation of National Anti-Corruption Strategy, Special Report Vol. 1, February 18, 2018; and updates from the Afghan government.

We identified several reasons explaining why the Afghan government completed some benchmarks after their deadlines and why others remained in progress as of May 14, 2018. First, the delay in implementing the anti-corruption strategy left line ministries only 22 days to meet the December 2017 benchmarks and 81 days to meet the February 2018 benchmarks. Second, Afghan officials, U.S. officials, and international anti-corruption experts all said that many of the strategy's benchmarks have overambitious deadlines. For example, a senior Afghan government official stated that reforming customs policies to bring them into compliance with the World Customs Organization Arusha Declaration will take years, and full implementation could have never been achieved by the February 2018 deadline set by the strategy. A second senior Afghan government official concurred, stating it would have been more realistic for the benchmark to call for the development of an implementation plan for achieving compliance with the Arusha Declaration. A third senior Afghan official explained that the High Council set ambitious deadlines to make a political statement, that it never expected to meet all of the deadlines in the strategy, that it may need to delay implementation in some cases because of political timing, and that the government will work at its own pace. A U.S. Embassy official told us it is normal for the Afghan government to miss mutually agreed-to benchmarks by 1 or 2 months. International anti-corruption experts and donor officials said that the Afghan government often sets unrealistic goals and deadlines and would benefit from moderating its ambitions. One example of this would be targeting a set amount of progress toward achieving full compliance with international norms, instead of targeting full compliance outright.

Also contributing to the missed benchmarks was that the ministries did not understand or agree with benchmarks assigned to them in some cases. For example, as previously discussed, when the MOF did not implement the Addis Tax Initiative and the Common Reporting Standard by December 31, 2017, an Afghan government official told us that, until recently, the MOF did not know what these standards were. Another official said he did not understand why the High Council inserted this as a benchmark into the strategy. To date, this benchmark has not been achieved. Separately, a senior Afghan government official told us that in one case, the High Council decided that a benchmark was no longer necessary. This official stated that there was no need to move the financial crimes task force to the AGO by December 31, 2017, because the task force was an ad hoc entity working on four specific cases, and had already been disbanded.

The delays in implementing the strategy's benchmarks may compound into further delays. For example, a senior Afghan government official stated that the government did not enact a Whistleblower Protection Law by December 31, 2017. He said that the government hoped to finalize and enact the law by presidential decree but would need to do so before the Parliament reentered session in March 2018. However, because the National Unity Government took too long to finalize the law, it had to be submitted for parliamentary review, and a senior Afghan governmental official confirmed that Parliament did not approve the law's passage.

48 of 58 Afghan Government Entities Submitted Action Plans by May 3, 2018

According to the High Council Special Secretariat's first report on the implementation of the anti-corruption strategy, only 22 Afghan government institutions submitted action plans by February 18, 2018, to the Special Secretariat.⁹⁷ After receiving a draft of this report, the Special Secretariat updated this number, telling us that it had received 50 of the 58 expected action plans by May 3, 2018.^{98:99} However, we were only able to verify

⁹⁷ Special Anti-Corruption Secretariat for Implementation of National Anti-Corruption Strategy, *Special Report Vol. 1*, February 18, 2018.

⁹⁸ In fact, the Special Secretariat received as many as 51 action plans. After we performed an independent analysis of the action plans provided to us by the Afghan government, it became evident that the Special Secretariat undercounted by one, neglecting to credit the Afghanistan National Disaster Management Authority for submitting an anti-corruption action plan. We informed Special Secretariat officials of this error and they stated they would correct their records.

⁹⁹ The Special Secretariat reduced the total number of expected action plans from 59 to 58 after the Afghan government abolished the HOO on March 6, 2018.

the existence of 48 action plans.¹⁰⁰ President Ghani's order on December 9, 2017, required that all Afghan government institutions, to include ministries, high-level commissions, and agencies, finalize anti-corruption action plans within 30 days.¹⁰¹ Because President Ghani officially implemented the strategy the same day he issued this order, all action plans should have been completed by January 9, 2018. While President Ghani's order did not set a date for the High Council to review and approve the 15 priority ministries' action plans, none were approved until May 14, 2018, more than 6 months after the anti-corruption strategy was implemented. President Ghani's December 9, 2017, order also required the Special Secretariat to monitor the implementation of the anti-corruption strategy. According to the Special Secretariat, this includes advising government entities on the development of action plans, reviewing action plans and providing feedback, and circulating plans through the High Council's review process.

The anti-corruption strategy originally listed 9 priority ministries responsible for submitting an action plan for the High Council to review. As previously discussed, the High Council subsequently expanded the number of priority ministries to 15. As of February 18, 2018, the High Council reported receiving action plans from only 11 of the 15 priority ministries, and of those, the Special Secretariat has approved just 2 ministries' plans, the MOF's and Ministry of Transport and Civil Aviation's. However, according to an international official, only the latter presented its plan to the High Council in February 2018, but did not receive approval. After receiving a draft of this report, the Special Secretariat showed that it had received all 15 priority ministries' action plans by May 3, 2018. The High Council approved all 15 of these plans on May 14, 2018.

For the remaining non-priority ministries, according to the Special Secretariat's February 18, 2018, report, neither the strategy nor President Ghani's implementation order specifically required the High Council to review and approve non-priority ministries' action plans, but it will do so anyway. The Special Secretariat also reported that priority would be given to reviewing the 15 priority ministries' action plans.¹⁰² As of May 3, 2018, the Special Secretariat documented that at least 33 non-priority ministries had submitted action plans. While the Special Secretariat did not say how many of these action plans were finalized and approved, it documented that some ministries have already provided implementation reports for the first quarter of the year.

As a part of its mandated duties, the Special Secretariat reported that it sent the ministries a specific format and guidelines on how to prepare their action plans and held "many meetings" with government offices to answer their questions.¹⁰³ However, according to international officials, the office of the Special Secretariat still had only one full-time staff member as of February 18, 2018, which significantly limited its ability to review and assist in the development of action plans.¹⁰⁴ Representatives from some Afghan government institutions told us that the Special Secretariat granted them extensions while they worked on their drafts. We also found that the process for getting the 15 priority action plans approved, which required a vote by the full High Council, was slowed because the Special Secretariat has no control over the council's agenda.

THE AFGHAN GOVERNMENT SHOWED PROGRESS IN IMPLEMENTING ANTI-CORRUPTION AND TRANSPARENCY INITIATIVES, BUT FIVE MAJOR CHALLENGES CONTINUE TO LIMIT ITS ABILITY TO COMBAT CORRUPTION

The Afghan government has highlighted, both in its anti-corruption strategy and elsewhere, that it has achieved significant gains in implementing anti-corruption reforms and transparency initiatives over the past 2 years.

¹⁰⁰ The Special Secretariat said it had copies of the MOD, National Procurement Authority, and the President's Chief of Staff Office's action plans, but did not provide these to us because they were in an older, unapproved format.

¹⁰¹ President of the Islamic Republic of Afghanistan, Order on Enforcement of National Anti-Corruption Strategy (2017).

¹⁰² Special Anti-Corruption Secretariat for Implementation of National Anti-Corruption Strategy, *Special Report Vol. 1*, February 18, 2018.

¹⁰³ Special Anti-Corruption Secretariat for Implementation of National Anti-Corruption Strategy, February 18, 2018.

¹⁰⁴ In response to a draft version of this report, Afghan government officials informed us that the Special Secretariat's staff had increased to three as of May 14, 2018.

However, despite this progress there remain five major challenges that limit the Afghan government's ability to implement its new anti-corruption strategy and fulfill its responsibilities under the UNCAC. First, a lack of capacity and resources, including qualified personnel, information technology systems, and security, remain serious challenges for Afghan anti-corruption institutions. Second, U.S. officials and international anti-corruption experts raised concerns about who is responsible for initiating investigations into corruption crimes. Third, while the Afghan government has demonstrated progress in prosecuting corruption and disqualifying individuals from holding public positions, it sometimes does not arrest high-ranking officials accused of corruption, fails to initiate prosecutions, or tries them *in absentia*, with inconsistent follow-through on enforcing sentences and prison terms handed down in these trials. Fourth, there are also continued concerns about corruption within the anti-corruption organizations themselves and the lack of protections afforded to would-be reformers. Fifth, U.S. government officials, Afghan government officials, and international donor officials told us that Parliament represents a significant institutional roadblock for anti-corruption reforms and that members of Parliament typically refuse to pass anti-corruption laws.

The Afghan Government Demonstrated Progress Implementing Several Anti-Corruption and Transparency Initiatives

In its anti-corruption strategy, the Afghan government highlighted how it had completed or shown progress in each of the eight anti-corruption priority areas contained in the Afghanistan National Peace and Development Framework.^{105;106} Specifically, these areas were:

1. Revamping public procurement;
2. Establishing the High Council;
3. Producing ministry-level anti-corruption action plans;
4. Launching the ACJC to investigate and prosecute high-level crimes;
5. Requiring judges and prosecutors to pass entry and refresher exams;
6. Replacing all 34 appellate justices;
7. Increasing the use of e-payments and e-procurement; and
8. Ramping up enforcement of the National Drug Action Plan.

Additionally, the Afghan government highlighted that the National Procurement Authority had reviewed more than 1,500 contracts, yielding an estimated savings of \$200 million; that the ACJC had pursued 315 corruption charges, in some cases against generals, deputy ministers, and directors general; and that the judiciary had implemented written examinations to test prosecutors' and judges' knowledge of the law.^{107;108}

Furthermore, U.S. and Afghan government officials cited several other anti-corruption and transparency achievements in the last year. For example, Afghan government officials commended the Ministry of Mines and Petroleum for publicly releasing on its website all of its mining contracts, even those that once existed only in hard copy at provincial offices. These officials also pointed to recent work on financial transparency initiatives, such as requiring ministries to publish their balance sheets, and credited the Independent Administrative

¹⁰⁵ The Afghanistan National Peace and Development Framework is the National Unity Government's 5-year (2017-2021) strategic plan for achieving self-reliance through sustainable development. It articulates the government's immediate and long-term development priorities, highlights key reforms, outlines priority investment areas, and establishes a fiscal strategy to guide budgetary decisions.

¹⁰⁶ Islamic Republic of Afghanistan, Afghanistan National Peace and Development Framework (ANPDF) 2017-2021.

¹⁰⁷ The National Procurement Authority is an Afghan government institution that has the mission of reforming the public procurement system, developing procurement policies, providing professional development for procurement officers, integrating procurement plans, monitoring procurement processes, and providing oversight of Afghan government contracts.

¹⁰⁸ Islamic Republic of Afghanistan, Afghanistan National Strategy.

Reforms and Civil Services Commission with openly advertising 17,000 merit-based government positions through its website. DOD officials highlighted how in September 2017, President Ghani implemented the “Inherent Law,” which mandates that MOD and MOI officers retire upon reaching a specified time in service, time in grade, time in rank, or age. They said this will help cycle out corrupt or ineffective leaders and clear the way for merit-based promotions of junior officers.

The Afghan government cited the enacting or drafting of several new laws as progress in combatting corruption:

- An Asset Declaration Law, enacted on October 10, 2017, requiring senior government officials to declare their assets before and after leaving office.¹⁰⁹
- An updated Penal Code, finalized May 15, 2017, and implemented February 2, 2018, which among other things updated articles regarding the punishment of individuals convicted of corruption crimes.¹¹⁰
- A worker’s rights law, approved by the Cabinet on March 3, 2018, allowing Afghan citizens to sue their employers for mistreatment in the workplace.
- Amendments to the Civil Servants Law, approved by the Cabinet, specifying that candidates for high-level positions (grade 2 or higher) must meet predetermined qualifications demonstrating their specialties, and also specifying that the Independent Administrative Reforms and Civil Services Commission will be responsible for appointing teachers.

Separately, in a March 2018 speech, Afghanistan’s Second Vice President highlighted 12 accomplishments the Afghan government had made in the last 2 years, many of which are discussed in detail in this report. In addition to the reforms already cited in this report, the Second Vice President discussed:

- The finalization and approval of the National Judicial Reforms Program to implement reforms within Afghanistan’s judicial institutions.
- Implementation of a special program for reforms in customs and the Office of Collection of Taxes and Revenues leading to increased national revenues.
- Open monitoring of government activities by civil society and the media.¹¹¹

On March 5, 2018, at the direction of President Ghani, Da Afghanistan Breshna Sherkat signed a memorandum of understanding with us allowing our auditors timely access to all personnel, records, reports, audits, reviews, documents, papers, recommendations, or other materials so that we can conduct an independent audit of its management, use, and expenditure of donor funds. Similarly, on August 29, 2017, the MOF signed a memorandum of understanding with Resolute Support Mission allowing them oversight into the MOD and MOI’s special Afghan Security Forces Fund bank accounts so that the coalition can follow the money and perform monthly reconciliations. Together, these two memorandums signal a commitment to greater transparency in how the Afghan government uses donor funding.

Although few of these items were discussed in or required by the anti-corruption strategy, U.S., international, and Afghan officials generally agreed that they represent significant strides toward fighting corruption. In its response to this report, the Afghan government lists additional actions it has taken that it believes will combat corruption, such as strengthening the independent land authority and eliminating line ministries’ ability to sell their land without Cabinet approval.

¹⁰⁹ According to UNAMA, the Asset Declaration Law was endorsed by the President on September 5, 2017, and enforced by presidential decree. The Lower House of Afghanistan’s Parliament voted to approve the law on November 27, 2017, but the Upper House has not voted to approve it. A draft version of the law remains pending before a joint committee to reconcile differences between the Lower House and Upper House.

¹¹⁰ According to UNAMA, the Penal Code was in fact implemented on February 14, 2018.

¹¹¹ Statement of H.E. Sarwar Danesh, Second Vice President of Islamic Republic of Afghanistan, in the OECD Anti-Corruption and Integrity Forum, March 27, 2018, Paris.

Afghanistan's Key Anti-Corruption Institutions Lack the Capacity and Resources to Perform Their Functions

Afghan government officials, U.S. officials, international donor representatives, and international anti-corruption experts all stated that a lack of capacity and resources will be a key challenge for Afghan anti-corruption bodies to overcome. Articles 6 and 36 of the UNCAC require that countries establish bodies that specialize in overseeing and coordinating the implementation of anti-corruption policies, engaging in activities to prevent and discourage corruption, and combating corruption once it has occurred, activities that the Afghan government has accomplished. These articles further require that such bodies be provided “the necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions,” tasks the Afghan government has had difficulty accomplishing.¹¹²

The Anti-Corruption Strategy Transfers the Coordination and Oversight Role to the High Council Special Secretariat, but the Special Secretariat Still Lacks Personnel and Resources

Although the Afghan government previously established the HOO as the “the highest office for the coordination and overseeing of the implementation of the Anti-Administrative Corruption Strategy and procedure[s] for administrative reform in the country,” the new anti-corruption strategy transferred those roles to the High Council’s Special Secretariat.¹¹³ Specifically, the strategy states that the Special Secretariat shall collect action plans and progress reports from each of the institutions assigned anti-corruption responsibilities, report regularly to the High Council, and report publicly on the strategy’s implementation progress every 6 months.

However, in its first progress report on the implementation of the anti-corruption strategy in February 2018, the Special Secretariat reported capacity shortfalls. The report noted that the Special Secretariat consisted of only one official: the head of the Special Secretariat. The Special Secretariat said that, as of February 2018, two other senior advisors for the Special Secretariat were in the process of being recruited, but could not yet work because they lacked a security badge to access the Presidential Palace. Furthermore, the report noted that the Special Secretariat submitted a proposal for a staff of 18, but the High Council has not yet approved this proposal. Donor officials noted that the Head of the Special Secretariat’s salary is currently being paid for by the Danish Embassy. Finally, the Special Secretariat stated that it has not yet received the office space, equipment, and other work-related supplies it needed to perform its functions.¹¹⁴ After receiving a draft of this report on April 13, 2018, the Afghan government provided an update stating that the Special Secretariat’s had completed the hiring process for three staff.

Separately, the Head of the Special Secretariat expressed other concerns to us about the limitations of his role. For example, the Special Secretariat exists in parallel with the High Council’s Secretariat, which has the power to set the High Council’s meeting agendas. He said because the High Council’s time is limited, he is often unable to get critical items, such as reviews of ministry anti-corruption action plans, on the agenda. On a similar note, a U.S. Embassy official was critical of the High Council’s ability to manage its own time, saying that it meets irregularly and typically on very short notice.¹¹⁵ This official further stated that the High Council frequently gets sidetracked by discussions about other issues, specifically citing one meeting during which the High Council dedicated a long period of time to discussing an issue related to a few acres of land in Kabul, and often fails to arrive at decisions about the items it discusses.

¹¹² Convention against Corruption, United Nations Treaty Series, pp. 41-367.

¹¹³ Law on Overseeing the Implementation of the Administrative Anti-Corruption Strategy (2008) (repealed 2018).

¹¹⁴ Special Anti-Corruption Secretariat for Implementation of National Anti-Corruption Strategy, *Special Report Vol. 1*, February 18, 2018.

¹¹⁵ As we discussed earlier in this report, the Secretariat of the High Council reported that it met 5 times in 2016 and 12 times in 2017.

The Administrative Office of the President and the Independent Joint Anti-Corruption Monitoring and Evaluation Committee Lack the Technical Capacity They Need

Before the abolishment of the HOO, the High Council transferred one of its key responsibilities, collecting and verifying asset declarations, to the Administrative Office of the President. As discussed above, U.S. officials, Afghan government officials, international donor representatives, and international anti-corruption experts all agreed that the HOO's asset declarations department was ineffective. However, some further stated that the Administrative Office of the President is not much better equipped to collect asset declarations and verify them, and will need to hire specialized staff and implement new systems to fulfill this new role. In its first progress report on the anti-corruption strategy in February 2018, the Special Secretariat stated that the Administrative Office of the President identified its preferred method for transferring documents, materials, and databases from the HOO; recruited "a number of workers;" dedicated a section of its website to asset declarations; and began discussing updated regulations and procedures.¹¹⁶ According to State, at a meeting UNAMA and USAID hosted on March 14, 2018, the Acting Director of the new Asset Registration Office briefed donor officials on the new entity's organizational structure and work plan.

The MEC, an independent joint Afghan and international donor organization that issues reports that identify vulnerabilities to corruption and make recommendations to address these vulnerabilities, faces similar concerns about its technical capacity. According to U.S. officials, Afghan officials, international donor representatives, international anti-corruption experts, and even MEC officials, in recent years the MEC has issued several reports with weak methodologies and questionable findings, diminishing its credibility with both the Afghan government and international donors. Some of these officials attributed these problems to the MEC failing to hire and train qualified staff, while others said it was because the MEC is a "parallel institution" pushed on the Afghan government, resulting in it lacking access to the ministries. According to MEC officials, the MEC has faced increasing pressure from both Afghan and international stakeholders to modify its reports and investigations, and donors have threatened to cut off their funding over disagreements about MEC reports about their programs. If such conditions continue, the MEC's independence may be threatened.

Lack of Resources and Security Is a Key Challenge for the Major Crimes Task Force, the Anti-Corruption Justice Center, and the Attorney General's Office

A lack of resources and security has been a continued detriment for detectives, investigators, prosecutors, and judges in Afghanistan. U.S. and Afghan officials said the MCTF relies on the international community to provide resources for its day-to-day operations because it cannot count on the MOI to fully authorize its funding. They said that in one case, the MOI's leadership appears to have halved the MCTF's budget as a punitive measure because MCTF detectives refused to turn over an embezzlement case worth \$3.8 million to the "notoriously ineffective" MOI Inspector General. (The MCTF detectives carried forward with the case and it was eventually tried at the ACJC, but the courts only convicted the lowest-ranked defendants, and only for their attempts to bribe the MCTF to drop the case.) U.S. officials further stated that nearly all of the ACJC's buildings, vehicles, fuel, and other assets have been donated by the international community, though the Afghan government pays salaries and benefits for the ACJC's staff.

Regarding security, three ACJC staff were killed in 2017 and one was injured, and according to U.S. officials, MCTF detectives and ACJC prosecutors, investigators, and judges receive constant death threats against themselves and their families. U.S. officials further stated that the ACJC's leadership requested security support from the international community because they did not feel they were getting what they needed from the Afghan government.

¹¹⁶ Special Anti-Corruption Secretariat for Implementation of National Anti-Corruption Strategy, *Special Report Vol. 1*, February 18, 2018.

On June 3, 2017, President Ghani issued a decree mandating that ACJC and MCTF staff be provided secure housing, armored vehicles, weaponry, and guards.¹¹⁷ According to State, there has been some action on these items, with MOI and Detachment 10 providing security personnel for senior prosecutors and judges, the Supreme Court and AGO loaning two armored vehicles, and the Ministry of Housing and Urban Development making progress on constructing secure housing for ACJC staff.^{118;119} In its response to this report, the Afghan government stated that it has “worked to fix any deficiencies” by providing secure housing and armored vehicles for ACJC officials. Additionally, international donors contributed 10 armored vehicles, which, according to senior Afghan officials, were distributed for officials at the ACJC to use. However, other Afghan officials said that these actions have not yet fully addressed the MCTF and ACJC’s security needs. U.S. officials further stated the MOI might not have any armored vehicles to spare because many of its vehicles had already been distributed as gifts to politically powerful individuals.

U.S. and Afghan Officials Raised Concerns about Who Is Responsible for Investigating Corruption Crimes despite Legal Documents Establishing the AGO and MCTF’s Respective Roles

Article 134 of Afghanistan’s constitution states that “discovery of crimes shall be the duty of police, and investigation and filing the case against the accused in the court shall be the responsibility of the Attorney’s Office, in accordance with the provisions of the law.”¹²⁰ Furthermore, in response to a draft of this report, President Ghani stated that he issued a presidential decree stipulating that the MCTF must coordinate with the AGO on anti-corruption cases. Nonetheless, U.S. and Afghan officials indicated that there remain significant differences of opinion around where the MCTF’s role in detecting corruption crimes ends and where the AGO’s role in investigating corruption crimes begins. This has resulted in the AGO and MCTF each asserting its primacy over corruption investigations. The *Jakarta Statement on Principles for Anti-Corruption Agencies* recommends that governments grant clear institutional mandates for investigating corruption, either through one body or multiple coordinated bodies, and that such a body or bodies be established by a proper and stable legal framework, such as the Constitution or a special law.

According to U.S. officials, the AGO states that based on the Afghan constitution, the police should have no role in investigating corruption, and that the MCTF, as a police body, should immediately refer corruption cases to the AGO as soon as it discovers them. In contrast, the MCTF has stated that the police’s “discovery” role allows it some latitude to put together case files. Officials from other Afghan government organizations told us that when they discover corruption crimes, sometimes they forward them to the AGO and sometimes to the MCTF or ACJC, depending on the rank of the accused and the nature of the crime.

Some U.S. officials suggested that this conflict between the AGO and MCTF may trace back to donors supporting institutions that conflict with Afghanistan’s legal tradition. They pointed out that international mentors were highly influential in the MCTF’s establishment, and many of these mentors hailed from common law countries, where police, not prosecutors, fulfill the primary investigative role. However, Afghanistan follows the civil law tradition, in which prosecutors or investigative judges take the lead on criminal investigations, but are sometimes supported by specially designated “judicial police” for more serious crimes. These U.S. officials said that with the MCTF, international mentors may inadvertently have been trying to create an institution in the mold of common law investigative bodies, rather than a body more in line with Afghanistan’s civil law tradition, and in doing so may have contributed to interagency conflict over investigations.

¹¹⁷ President of the Islamic Republic of Afghanistan, Decree in Order to Improve the Affairs and Ensure Physical Safety and Security of the Anti-Corruption Justice Center (ACJC) Personnel and Headquarters (2017).

¹¹⁸ Detachment 10 is a special protection unit for very important persons in the Afghan government.

¹¹⁹ There exists a memorandum of understanding between the MOF, AGO, and Ministry of Urban Development to distribute residential apartments to employees of the ACJC.

¹²⁰ The Constitution of Afghanistan, Article 134 (2004).

The MCTF's unclear role and position creates internal challenges for it within the MOI. Notably, no laws or decrees guarantee the MCTF's existence, and it could be disbanded at any time. According to U.S. officials, the MCTF falls low on the MOI's chain of command: it reports to the Director of the Afghan Anti-Crime Police, who then reports to the Deputy Minister for Security, who reports to the Minister. These U.S. officials said that while the Minister has demonstrated a strong commitment to fighting corruption, some Afghans working in the layers between the Minister and the MCTF are sabotaging the MCTF by leaking information about ongoing investigations. These U.S. officials said that in other cases, the Afghan Anti-Crime Police, which controls the MCTF's budget, sometimes refuses to authorize necessary resources for investigations.

Even so, U.S. officials expressed strong concerns about giving the AGO full control over corruption investigations, saying that the AGO has had a reputation for quietly ending some corruption investigations. Multiple Afghan officials told us that they find the MCTF is much more responsive and communicative about case progress than the AGO.¹²¹ DOD officials also pointed out that the Resolute Support Mission has an established relationship with the MCTF through the train, advise, and assist mission with the MOI, whereas it has no such relationship with the AGO.¹²² U.S. officials said that, despite their voicing concerns to the Afghan government, the AGO has hindered MCTF investigations. In one example, a senior U.S. official said the AGO has repeatedly seized MCTF case files without warning and has also opened up investigations into MCTF staff with the apparent intent of interfering with ongoing investigations.

However, other U.S. officials said that giving the MCTF exclusive purview over corruption investigations could prove equally undesirable, and thought that some of the AGO's investigations into the MCTF may end up having merit. They noted that in January 2018, President Ghani ordered an investigation into the MCTF director's alleged corrupt activities, and the Afghan government confirmed that the director has been suspended until this investigation concludes. U.S. officials also pointed out that the MCTF's leadership has been accused of stalling or obfuscating investigations into at least two high-profile money-laundering cases worth millions of dollars, and are suspected of taking bribes to do so.

Regardless of the merit of the accusations against the MCTF's leadership, U.S. and Afghan officials agreed that morale at the MCTF is very low because of the accusations, the interference by the AGO, and the perceived lack of support from both the MOI and the Presidential Palace. These unfavorable conditions may affect the MCTF's ability to recruit and retain competent, qualified, and honest staff.

Afghan Government Entities Have Limited Ability to Arrest, Prosecute, and Punish Powerful Individuals Suspected of Corruption

U.S. officials, Afghan officials, and international anti-corruption experts all observed that Afghanistan's law enforcement and judiciary tend to avoid investigating, prosecuting, and punishing powerful individuals, citing several reasons. First, police are reluctant to arrest people whose bodyguards are better armed than they are, and are discouraged by politically powerful individuals into not opening some cases. Second, even when police refer corruption cases to the AGO and ACJC, prosecutors often fail to follow up on them. This is in part because management practices and case management systems at the AGO remain poor, allowing some cases to go missing, and in part because prosecutors also face pressures to drop cases against powerful individuals. Third, after cases proceed to trial and sentencing, defendants can take advantage of opaque appeals processes to have their sentences reduced, or simply refuse to show up for their trials, sentences, and prison terms. All of these obstacles have created a sense that the rich and powerful are above the law.

¹²¹ An AGO official noted that although the AGO is not required to communicate case progress to other organizations, it is working to develop a system to keep stakeholders updated.

¹²² DOD is limited in the assistance it can provide to the AGO because the use of Afghanistan Security Forces Funds monies is limited to the Afghan security forces.

Political Pressure and a Lack of Resources Limit MOI's and MCTF's Ability to Make Arrests

U.S. and Afghan officials reported that MOI and MCTF officers are often unable to make arrests in support of their own investigations or arraign defendants for trials and sentencing hearings at the ACJC. They said this occurs because the MCTF's detectives lack the necessary resources to carry out arrests, and powerful individuals often pressure them not to do so. The UNCAC requires that bodies tasked with combatting corruption shall be granted the necessary independence, training, and resources to carry out their tasks, and in his decree authorizing the ACJC, President Ghani stated that "all governmental offices . . . are duty bound to help the [ACJC] in all stages of judicial prosecution of corruption cases."^{123;124}

According to U.S. and Afghan officials, the MCTF's underpowered weapons arsenal is a significant part of the problem. These officials stated that MCTF detectives are mostly armed only with pistols, and the MCTF rations its limited number of assault rifles and armored vehicles to its most senior officers.¹²⁵ By contrast, according to U.S. and Afghan officials, weapons and vehicles have disproportionately been allocated for the protection of ACJC prosecutors and judges. They said police and detectives cannot arrest certain individuals because they are simply outgunned. For example, U.S. and Afghan officials told us that one former MOI general, who was tried and found guilty of corruption by the ACJC *in absentia*, has defied arrest because he travels around Kabul with a large entourage of bodyguards armed with assault rifles. However, U.S. officials also pointed out that the Afghan government has the capability to go after heavily armed targets, namely in the General Command of Police Special Units, but has been unwilling to use this capability.¹²⁶

In other cases, as previously discussed, a lack of funds limits the MCTF's ability to make arrests. For example, DOD officials told us that in some cases, the MCTF needs "red-handed bribe money" in order to build a case against people who solicit bribes from undercover officers. However, they said that the MOI's Anti-Crime Police, which controls the MCTF's funding, often refuses to authorize funds for these operations, or fails to do so in a timely manner.

U.S. and Afghan officials said it is common for police and MCTF detectives to receive calls from members of Parliament, former ministers, and other political actors warning against making arrests of politically powerful individuals. These officials said that if the police and MCTF detectives fail to heed these warnings, they face personal or professional consequences. For example, according to senior Afghan officials, in one recent case the MCTF sought to arrest politically connected *hawaladars* (moneychangers) who it suspected of laundering hundreds of millions of dollars out of the country. These officials said that after the MCTF publicized its intent to make these arrests, the *hawaladars* called the Presidential Palace, which then had the MCTF officers jailed for several days for supposedly abusing their power. These officials also noted that the officers originally pursuing the *hawaladars* stopped the investigation after their temporary imprisonment.

Prosecutors Are Using Their Prosecutorial Discretion to Avoid Cases against Powerful Actors

U.S. and Afghan government officials report that prosecutors often choose not to pursue cases without communicating why, and that both the AGO and ACJC have used their prosecutorial discretion largely to punish low-ranking officials rather than high-ranking ones. In other cases, they have failed to take advantage of legal tools and techniques, such as using cooperating witnesses and money-laundering charges to pursue cases against the highest culpable party. Furthermore, Afghanistan's legal framework prevents the ACJC from pursuing cases against certain categories of officials. U.S. and international officials say this all creates a sense that certain powerful individuals are effectively above the law. The UNCAC declares that states should

¹²³ Convention against Corruption, United Nations Treaty Series, pp. 41-367.

¹²⁴ President of the Islamic Republic of Afghanistan, Decree on Establishing Anti-Corruption Justice Center (2016).

¹²⁵ In September-October 2017, INL procured and transferred lightweight Type III body armor for all 300 MCTF officers and 100 ACJC staff.

¹²⁶ The General Command of Police Special Units are highly trained police commando forces that perform counter-insurgency strikes in high-risk environments.

"ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for [anti-corruption offenses] are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences."¹²⁷

U.S. and Afghan officials report that the AGO has a reputation for dropping anti-corruption cases without explanation; one described it as a "black hole" and another as where cases "go to die." There are at least three reasons for this. First, the AGO is impaired by its poor organizational structure, lack of resources, and weak capacity. Second, AGO prosecutors face many of the same political pressures to drop cases that MCTF detectives do. Third, the AGO does not have a well-functioning, transparent system for processing cases referred to it by other agencies. AGO officials acknowledge that some AGO components do not use the electronic Case Management System designed to improve interagency coordination, and Afghan officials at other agencies told us that the AGO does not communicate case statuses to them.¹²⁸ An AGO official told us the AGO is working on developing its own internal case management system, but did not expect it would be ready to interoperate with other agencies until 2019. However, according to U.S. officials, the Attorney General has recently re-committed to utilizing the Case Management System, and State is planning an assessment to determine how the Case Management System can be better utilized. In March 2018, the Afghan government issued a Presidential decree making the Case Management System "the official data base of record for the Afghan justice system" and requiring all justice system entities enter case data into the Case Management System "immediately, accurately, and completely."¹²⁹

U.S. and Afghan officials told us that the ACJC prosecutors, in contrast to other AGO prosecutors, have a better record of communicating with other agencies and following up on prosecutions against high-level officials. A DOD official pointed out that since the Afghan government founded the ACJC in June 2016, it has convicted several colonels, generals, and former deputy ministers. While ACJC prosecutors are technically under the Attorney General's authority, U.S. officials suggested being physically located outside of the AGO's offices grants them a higher degree of independence.

However, the ACJC prosecutors have also reportedly not pursued some politically sensitive individuals. For example, according to international and U.S. officials, the ACJC has thus far avoided prosecuting any of the people implicated in the October 2015 "Farooqi Report," despite continued international pressure to do so.¹³⁰ Although U.S. officials have not seen a copy of the full report, they told us that the Afghan government has been slow to follow up on it because it implicates at least one influential politician. They told us that the ACJC continues to delay because of procedural issues; for instance, ACJC officials say they need the original report, rather than a copy, to proceed.

Additionally, constitutional protections afforded to Afghanistan's senior-most leadership constrain both the AGO and ACJC. As discussed above, if a member of Parliament stands accused of a crime and the prosecution requires the detention of that member, Parliament must approve the detention.¹³¹ Similarly, the Afghan constitution states that if a sitting minister stands accused of a crime, then a special court tries the accused, and U.S. officials told us that the ACJC is not considered to be one of these special courts.¹³² In its official response to this report, the Afghan government stated that it established a separate special court in late 2017 to try accused ministers, and that two cases have been referred to this court thus far, with a third case

¹²⁷ Convention against Corruption, United Nations Treaty Series, pp. 41-367.

¹²⁸ INL funded the purchase of the case management system.

¹²⁹ President of the Islamic Republic of Afghanistan, Regarding the Determination of Legal and Administrative Position of Case Management System (2018).

¹³⁰ According to U.S. officials, the "Farooqi Report" was the result of an independent investigation into more than a billion dollars in fuel contract bid rigging. It was presented to the Administrative Office of the President in October 2015, but was not referred to ACJC prosecutors until December 2017. U.S. officials said the Administrative Office of the President only transferred the report to ACJC prosecutors after sustained pressure from SIGAR and other international stakeholders.

¹³¹ The Constitution of Afghanistan, Article 102 (2004).

¹³² The Constitution of Afghanistan, Article 78.

expected to be referred shortly. Finally, if a judge stands accused of a crime, the Supreme Court considers the case, and if it considers the accusation valid, submits a proposal to the Afghan President to dismiss that judge.¹³³ Furthermore, Afghanistan's law on the judiciary states that judges generally may not be arrested, detained, or prosecuted for the crime without a presidential order.¹³⁴ The Judiciary Control Department, which is established within the Supreme Court, is responsible for prosecuting judges accused of duty-related crimes, and trials are conducted by the Supreme Court High Council.¹³⁵ In the case of Afghanistan's warlords, who each command their own private armies, international anti-corruption experts say that there is a tacit understanding that the ACJC should not prosecute these individuals for fear of sparking a civil war. However, State and USAID officials disagreed with this conclusion, saying that most senior-level officials could be prosecuted with no threats of violence, and the more relevant issue is that the ACJC lacks the mandate to prosecute these officials.

Special Anti-Corruption Courts Regularly Deliver Convictions, but Their Non-Transparent Appeals Process and Increasing Use of *In Absentia* Proceedings Undermine Their Authority

According to data collected by DOD advisers, ACJC judges are generally securing convictions against individuals accused of corruption, and more than half of the time are handing down prison sentences of 3 or more years, which until recently, disqualified officials from holding public office for at least 2 years.¹³⁶ However, U.S. and international donor officials expressed concerns about defendants whose sentences are reduced during the ACJC's appeals process, which is occasionally opaque, and powerful defendants who simply ignore courts summons and avoid prison time entirely. Article 30 of the UNCAC requires state parties to deliver sentences commensurate with the gravity of corruption crimes and the need to deter further such crimes, ensure that persons accused of corruption crimes are present for their trials and convictions, and consider disqualifying persons convicted of corruption crimes from holding public office for a period of time.^{137;138;139}

In analyzing data DOD collected about 93 court cases heard at the ACJC between November 12, 2016 and November 19, 2017, we found that the ACJC Primary Court secured convictions in 80 cases, or 86 percent of the time. In 57 of those 80 cases (71 percent), Primary Court judges handed down a sentence of 3 or more years, thus temporarily disqualifying these individuals from holding public office.

However, we also found that the ACJC Appeals Court frequently reduced these sentences. The ACJC Appeals Court heard 71 cases of individuals convicted by the Primary Court. In 30 cases, or 42 percent of the time, the

¹³³ The Constitution of Afghanistan, Article 133.

¹³⁴ Law on Organization and Jurisdiction of the Judiciary of [the] Islamic Republic of Afghanistan, Article 91 (2013).

¹³⁵ Law on Organization and Jurisdiction of the Judiciary of [the] Islamic Republic of Afghanistan, Articles 91-94.

¹³⁶ The law that established the HOO states that "persons sentenced more than [sic] 3 to 10 years of imprisonment for the crimes of administrative corruption shall not be appointed as an employee of the governmental [sic] or as a candidate to elective positions for 2 years starting from the date the punishment is completed." See Law on Overseeing the Implementation of the Anti-Administrative Corruption Strategy, Article 15 (2008) (repealed 2018). However, on March 6, 2018, the Afghan government repealed this law in its entirety, and it is unclear whether this provision temporarily banning corrupt officials from public office has been or will be replaced.

¹³⁷ Para. 3 states: "Each State Party shall endeavor to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offenses established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences."

¹³⁸ Para. 4 states: "In the cases of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defense, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal to take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings."

¹³⁹ Para. 7 states: "Where warranted by the gravity of the offense, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from: (a) Holding public office; and (b) Holding office in an enterprise owned in whole or in part by the State."

ACJC reduced prison sentences by an average of 2.1 years. In three cases, it eliminated prison sentences entirely, while in nine cases it lowered prison sentences below the 3-year threshold needed to disqualify someone from holding public office. We found that the Supreme Court heard 42 of the 71 cases brought before the ACJC Appeals Court but generally upheld its decisions.

International donor, U.S., and Afghan officials expressed concerns that the ACJC Appeals Court sometimes changes the ACJC Primary Court's verdicts or reduces sentences below the mandatory minimum for the crime. Furthermore, although the presidential decree establishing the ACJC states that the ACJC is "duty bound to ensure accountability and transparency . . . through access to open trial[s] and courts' decisions for mass media," U.S. officials pointed out that the Afghan Supreme Court sometimes does not publish its sentences, and that many ACJC Appeals Court hearings take place without public viewing.¹⁴⁰ This court's failure to pronounce decisions would violate Article 128 of the Afghan constitution, which requires the open pronouncement of all court decisions.

In addition to these problems with the appeals process, UNAMA and other organizations expressed concern about the courts' inability to compel defendants to show for their trials or sentencing hearings. So far, ACJC judges have tried nine defendants *in absentia*; according to U.S. officials, several of these individuals did not serve any jail time, and some continue to draw government pay. UNAMA observed that when the ACJC convicts people *in absentia*, this "may create the public perception that appearance before the ACJC is optional for powerful defendants and impact on the credibility of the ACJC." Going further, U.S. government officials described this as an "existential threat" to the ACJC, as it undermines the court's credibility.

Separately, Afghan officials told us that by not immediately filing to detain powerful officials who stand accused or convicted of corruption crimes, ACJC judges allow these officials the time they need to flee the country and escape punishment. According to Afghan government officials, at least two individuals who the ACJC convicted of corruption crimes are currently in India receiving medical treatment. ACJC staff say they believe the convicted will return to Afghanistan after their treatments are complete.

In one example, U.S. and international officials raised concerns about the case involving Kamran Alizai, the President of the Herat Provincial Council. After Alizai was caught on camera abusing his authority and using armed men to intimidate local prosecutors into releasing a jailed associate, prosecutors indicted him and brought his case before the ACJC. Grassroots organizers in Herat also raised awareness about Alizai's abuses. However, the ACJC Primary Court only required Alizai to remain under house arrest in the Herat MOI VIP guesthouse, convicted him of abuse of power *in absentia*, and sentenced him to 2.5 years in prison, below the threshold needed to prevent him from holding public office. In a series of non-public and unpublicized proceedings, the ACJC Appeals Court reduced Alizai's sentence to 8 months, with the prosecutor for the state declining to defend the original sentence. The Supreme Court then reduced it again, also without any publication of its decision, to a fine between \$175 and \$187. International donors only became aware of this decision two months after the fact, owing to proactive follow-up. U.S. officials told us that Alizai then ordered the assassination of a civil society organizer who helped build the case against him.

As previously noted, the Afghan government was supposed to draft an updated Anti-Corruption Law, which might resolve some of these problems. A draft version of that law, which was circulating in summer 2017, would have permanently barred individuals convicted of certain corruption crimes from holding procurement, legal, financial, or audit jobs in the Afghan government. However, Afghan officials and international anti-corruption experts told us they are not sure when the Afghan government will finalize this law or if it will retain those provisions.

¹⁴⁰ President of the Islamic Republic of Afghanistan, Decree on Establishing Anti-Corruption Justice Center, June 30, 2016.

Unqualified and Potentially Corrupt Personnel Are Not Removed from Anti-Corruption Institutions, and Reformers Are Not Protected

Afghan investigative and prosecutorial bodies have not taken action against staff who failed polygraph examinations in 2017 that specifically asked whether they have engaged in corrupt behavior while in office. Furthermore, several Afghan government officials gave examples of anti-corruption reformers denied promotions, targeted with frivolous investigations, or punished with fines and jail time for corruption accusations they deemed malicious and untrue. Additionally, as previously discussed, the Afghan government has not passed a law to protect whistleblowers, despite its commitment in the anti-corruption strategy to do so by December 31, 2017. Taken together, these problems contribute to the sense that, as stated to us by one Afghan official, being an honest public servant is not rewarded, and oftentimes even presents personal and professional risks.

Article 8 of the UNCAC recommends that governments should promote integrity, honesty, and responsibility among its public officials; establish codes or standards of conduct for correct, honorable, and proper performance of public functions; and take action, in accordance with the law, against public officials who violate those codes or standards.¹⁴¹ Furthermore, the *Jakarta Statement on Principles for Anti-Corruption Agencies* states that anti-corruption agencies, in particular, should adopt codes of conduct that require high standards of ethical conduct from their staff, and should develop internal monitoring and disciplinary mechanisms to minimize misconduct and abuses of power.¹⁴² However, U.S., international, and Afghan officials all relayed concerns about endemic corruption within Afghanistan's government institutions, including those responsible for investigating and prosecuting corruption. One Afghan official that we spoke to estimated that as many as half of his colleagues are taking bribes while another official acknowledged that his staff is "not clean," and his departments will likely never be perfectly clean.

DOD officials stated that Resolute Support Mission advisors receive frequent and often conflicting tips about internal corruption at Afghan investigative and prosecutorial bodies, suggesting the need for a more robust, standardized vetting system. On March 21, 2017, the Resolute Support Mission signed a memorandum of understanding with the AGO, which stipulated that AGO and MOI personnel assigned to the ACJC would submit to polygraph examinations. The memorandum of understanding also required a second round of polygraphs 4 to 6 months after the first test, and yearly polygraphs after.¹⁴³ Federal Bureau of Investigation polygraph examiners conducted the first round of polygraphs in April and May of 2017, testing 82 employees from the ACJC, 53 from the MCTF, and 4 from the MOI. According to DOD officials, 29 individuals at the ACJC, 20 individuals at the MCTF, and all 4 individuals at the MOI failed their polygraphs. However, we found that as of May 2018, no additional rounds of polygraph testing have taken place.

Even if additional rounds of polygraph testing occur, U.S. Embassy officials expressed concern that the AGO has not committed to taking action against personnel who fail these tests. They said the AGO only agreed to the polygraph examinations on the condition that the Resolute Support Mission would not require the Afghan government to take disciplinary action against the detectives, investigators, and prosecutors who failed. The memorandum of understanding states that until a second set of polygraph examinations takes place, no disciplinary action is required. However, the memorandum also states that "personnel shall not be retained or to [sic] re-assigned based solely on the results of any polygraph examination," and that the Attorney General "may use the results of any polygraph examination as a factor, to be weighed as he sees fit, in determining the suitability of personnel assigned to or working with the ACJC." According to the memorandum of understanding, Resolute Support Mission officials may only "express to the Attorney General any concerns"

¹⁴¹ Convention against Corruption, United Nations Treaty Series, pp. 41-367.

¹⁴² Jakarta Statement on Principles for Anti-Corruption Agencies.

¹⁴³ According to a DOD official, the DOD spent between \$20,000 and \$30,000 to cover the Federal Bureau of Investigation's expenses for conducting the polygraph examinations.

about the AGO's decisions, and it does not make any U.S. funding contingent on the AGO removing or reassigning individuals who fail their polygraph examinations.

U.S. Embassy officials reported that in a July 2017 meeting with the Attorney General, he demonstrated "deep reluctance" to making staffing decisions based on polygraph examinations, and the U.S. Embassy officials wrote that "it is unclear that polygraph results will be used going forward." One of these officials observed that the agreement between the AGO and Resolute Support Mission is weaker than earlier agreements between the U.S. and Afghan governments. According to this official, when the MCTF was first established, U.S. mentors required that all MCTF detectives pass polygraph examinations, and made clear to the Afghan government that crossing this "red line" would mean an end to U.S. assistance for the MCTF. In response to a draft of this report, senior Afghan government officials have expressed a willingness to resume polygraph examinations as soon as possible, and committed to taking action based on the findings of these examinations.

In addition to recommending that corruption risks should be actively removed from anti-corruption bodies, the *Jakarta Statement* states that anti-corruption officials should be immune from civil or criminal proceedings for acts committed within the performance of their mandate, and should be protected from malicious civil and criminal proceedings. However, Afghan officials gave several recent examples of anti-corruption reformers being maliciously accused of corruption themselves and then investigated and punished for it. According to one senior Afghan official, many public servants consider it more dangerous to serve with integrity, honesty, and responsibility than it is to take bribes. The official said that by taking bribes, a person signals that he or she is not a threat to the established order, whereas by being too enthusiastically pro-reform, a person signals that he or she is a danger that needs to be eliminated.

Finally, Article 8 of the UNCAC also states that countries should consider establishing measures and systems that facilitate the ability of public officials to report acts of corruption to the appropriate authorities.¹⁴⁴ The anti-corruption strategy included a requirement that Afghanistan enact a Whistleblower Protection Law by December 31, 2017, that would protect people reporting corruption crimes from retaliation. According to the Special Secretariat's first report on implementation of the strategy, as of February 18, 2018, the Afghan government had not yet passed this law, and a draft version was under review at the Ministry of Justice. A senior Afghan government official indicated that the National Unity Government later completed its review of the draft law, but had to submit it to Parliament for final approval and passage. However, according to this official, the Whistleblower Law did not receive the votes necessary for passage.

Parliament Remains a Roadblock for Any Reforms that Require New Laws

U.S., international, and Afghan officials all expressed concern about Parliament's willingness to pass new laws or amend existing laws to enable anti-corruption reforms, and many expected that Parliament would hinder reform. Article 90 of the Afghan constitution gives Parliament the responsibility of ratifying, modifying, or repealing laws or legislative decrees. Article 79 grants the President the right to issue legislative decrees with the force of law while Parliament is in recess, and further states that the President shall present any such decrees to Parliament within 30 days "of convening its first session, and if rejected by the [Parliament], they become void."¹⁴⁵

The Afghan Parliament has demonstrated limited willingness to support the National Unity Government's anti-corruption efforts. Although the National Unity Government urges Parliament to "[follow] the examples of the executive and judicial branches" and implement its own anti-corruption strategy, it cannot compel Parliament to act.¹⁴⁶ We met with four members of Parliament who are involved in anti-corruption efforts. These members

¹⁴⁴ Convention against Corruption, United Nations Treaty Series, pp. 41-367.

¹⁴⁵ The Constitution of Afghanistan, Article 79 (2004).

¹⁴⁶ Islamic Republic of Afghanistan, Afghanistan National Strategy.

of Parliament told us it does not have an anti-corruption strategy, and they resented not being consulted during the development of the High Council's anti-corruption strategy.

Many Afghan government officials we spoke with had concerns about Parliament's integrity. One official estimated that of the more than 350 seats in the Parliament, perhaps 20 members are not corrupt; while others described them generally as "smugglers, murderers, killers, and thieves." This perception generally tracks with publicly available survey data. The World Justice Project's 2016 *The Rule of Law in Afghanistan: Key Findings from the 2016 Extended General Population Poll & Justice Sector Survey*, a report drawing from a representative survey of 3,550 Afghans distributed proportionately across all 34 provinces of Afghanistan, found that Afghans perceive their legislature as the country's second most corrupt institution, narrowly following the judiciary.¹⁴⁷ U.S. and international officials raised concerns about how often President Ghani's ministerial nominees go unconfirmed, and Afghan officials told us that members of Parliament often pressure acting ministers to engage in corrupt behavior, such as awarding lucrative contracts illegally to members and their networks, as a precondition for successful confirmation. According to Afghan government officials, the National Unity Government does not believe Parliament will pass any of the anti-corruption laws submitted for its review, as these laws may damage members' financial interests.

Afghan officials said that in response to this problem, they are pursuing a strategy of issuing anti-corruption Presidential legislative decrees, as it is harder to convince Parliament to pass a law than it is to convince them *not* to reject a decree. However, the slow pace of Afghanistan's bureaucracy has complicated execution of this plan. According to Afghan officials, the Ministry of Justice must review each draft law, amendment, or regulation, and it typically takes at least 6 months to do so. They said the High Council directed the Ministry of Justice to accelerate work on reviewing anti-corruption laws, but even still, early reports indicated that the ministry was holding up draft anti-corruption laws, such as the Whistleblower Protection Law. Afghan government officials indicated that if the ministry did not take quicker action, they would miss their window to issue decrees while Parliament was in recess. A senior Afghan government official said that in the end Parliament did not pass the law, indicating that the National Unity Government had to submit its draft Whistleblower Protection Law to Parliament for final approval, and it did not receive the votes needed for passage.

CONCLUSIONS

Although the Afghan government has demonstrated progress in implementing its anti-corruption strategy, it still faces numerous challenges in combatting corruption. As of April 22, 2018, the Afghan government had met all three of its anti-corruption deliverables in the SMAF. However, it released its anti-corruption strategy late, and the government could have engaged more stakeholders to build ownership and ensure the anti-corruption strategy's acceptability and effectiveness. Some international donors and anti-corruption organizations were included in the strategy's development process, but many of Afghanistan's line ministries, provincial governments, and civil society organizations said they were not given sufficient opportunities to provide input. Some of these organizations are ones the Afghan government is seeking to reform.

The Afghan government has encountered problems, and will continue to have difficulty achieving the strategy's 66 anti-corruption goals because these goals lack realistic and precisely defined benchmarks for feedback. Furthermore, some relevant ministry and civil society officials indicated that the High Council did not solicit or incorporate their feedback when drafting these benchmarks. Because of these problems, of the 20 benchmarks that were due by February 28, 2018, the government had completed only 2 by that date. However, after receiving a draft of this report, the Afghan government presented evidence that showed it completed an additional 12 benchmarks as of May 14, 2018, bringing the total number of completed benchmarks to 14. We commend the Afghan government for taking immediate action when it learned of the

¹⁴⁷ World Justice Project, *The Rule of Law in Afghanistan: Key Findings from the 2016 Extended General Population Poll & Justice Sector Survey*, 2016.

delays highlighted in this report, and we will continue to monitor the implementation of these benchmarks in our follow-up work to ensure that the Afghan government follows through on the work it has begun.

Also limiting implementation of the anti-corruption strategy is the absence of the MOD as a priority ministry that would be required to submit its anti-corruption plan for the High Council's review and oversight. Additionally, contrary to the *United Nations Convention Against Corruption*—to which Afghanistan is a signatory—the anti-corruption strategy does not ensure the permanence and independence of all anti-corruption bodies, and does not transfer all of the High Office of Oversight and Anti-Corruption's preventative roles and responsibilities to an enduring anti-corruption body. According to the *Jakarta Principles for Anti-Corruption Agencies*, to guarantee the independence and effectiveness of anti-corruption bodies, governments should grant those bodies clear mandates, ensure their permanence through law, protect their heads from arbitrary firing, grant their employees immunity from malicious civil and criminal proceedings for actions taken during the performance of their official duties, and give them sufficient and reliable resources to carry out their tasks. Until Afghanistan brings its anti-corruption bodies in line with these principles for independence, serious questions will remain regarding the reliability and longevity of its anti-corruption efforts.

We found several major challenges in capacity, resources, and security that limit the Afghan government's ability to combat corruption and hold those accused of corruption responsible for their crimes. The Afghan government's progress in implementing anti-corruption reforms and overcoming challenges will continue to be impaired without the necessary resources and specialized staff, as well as the training that such staff may require to carry out their functions. Furthermore, without a second round of polygraph tests and annual follow-up rounds for Anti-Corruption Justice Center and Major Crimes Task Force personnel, and administrative action against individuals who fail these tests, the institutions responsible for enforcing Afghanistan's corruption laws may themselves be compromised by corrupt networks.

Although the Afghan government has begun to demonstrate to its own people and the international community its commitment to fighting corruption, it must institutionalize its commitment by providing necessary support to its anti-corruption bodies and ensuring that anti-corruption laws are strongly enforced. The Afghan government has made some progress in combatting corruption within its government, including creating transparency laws and advertising civil service positions. But it is unlikely that lasting change will be realized until the Afghan government commits to fighting corruption without reservations. For even if powerful individuals are convicted of corruption, if their sentences are not upheld and carried out, they will not truly be held responsible for their crimes. Similarly, if the Afghan government continues not to take action against public officials who violate internal codes of ethics, while simultaneously failing to protect reformers and whistleblowers from reprisal, a climate of corruption within the Afghan government will endure. As required by Congress in the explanatory statement of the Consolidated Appropriations Act, 2018, we will continue to monitor the Afghan government's efforts to implement the strategy and progress towards achieving its anti-corruption objectives and intend to provide an update to this report to the House and Senate Appropriations Committees.

MATTERS FOR CONSIDERATION FOR THE AFGHAN GOVERNMENT

To better meet the anti-corruption deliverables it agreed to under the Self-Reliance for Mutual Accountability Framework (SMAF), and to better implement its anti-corruption strategy goals and other reforms, the Afghan government should consider taking the following actions.

To ensure the anti-corruption strategy's implementation is in accordance with international standards and best practices, the Afghan government should consider:

1. Revising the anti-corruption strategy to tie each goal to a precisely-defined benchmark with a realistic deadline, and developing mechanisms to incorporate ministry and civil society feedback during this process; and
2. Establishing independent anti-corruption organizations in accordance with the *United Nations Convention Against Corruption* (UNCAC).

Because the Ministry of Defense (MOD) accounts for more than 15 percent of the Afghan national budget, to ensure that the MOD continues to implement its anti-corruption commitments, the Afghan government should consider:

3. Adding the MOD to the list of “priority ministries” required to submit an anti-corruption action plan for the High Council’s review.

To make progress and address challenges to implementing anti-corruption reforms, the Afghan government should consider:

4. Clarifying which government entity or entities will take over High Office of Oversight and Anti-Corruption’s education and public awareness responsibilities;
5. Providing the necessary resources and specialized staff, as well as the training that such staff may require to carry out their functions, to key anti-corruption entities in accordance with the UNCAC; and
6. Conducting a second round of polygraph tests, and annual follow-up rounds thereafter, for Anti-Corruption Justice Center and Major Crimes Task Force personnel, and taking appropriate action against individuals who fail these tests.

AFGHAN GOVERNMENT AND U.S. AGENCY COMMENTS

We received written comments on a draft of this report from the Afghan government, joint comments from U.S. Embassy Kabul and USAID, and comments from INL, which are reproduced as appendices V, VI, and VII, respectively. Additionally, we received technical comments from the Afghan government, the U.S. Embassy, INL, USAID, and UNAMA, which we incorporated into the report as appropriate.

In its comments, the Afghan government concurred with the first, third, fourth, and sixth matters for consideration; partially concurred with the fifth; and did not concur with the second. State, USAID, and INL did not comment on the matters for consideration. However, they noted that while many top-level Afghan government officials have publicly stated and affirmed their commitment to fighting corruption, they acknowledged that “at times the Afghan government’s commitment to enforcing rule of law and to ensuring transparency and accountability wavers.”

With respect to the first matter for consideration, the Afghan government concurred and stated that it would implement a process to revise the strategy’s benchmarks so that they reflect lessons learned during the implementation of the anti-corruption strategy thus far, and better align each goal with a specific and measurable benchmark. The Afghan government expects to complete these revisions by June 30, 2018.

With respect to the second matter for consideration, the Afghan government did not concur. It asserted “Afghanistan has already attempted to create various independent anti-corruption agencies, including the [HOO].” The government also stressed that “if a new body is not embedded within a strong larger institution . . . it typically will not succeed.” Furthermore, it is the Afghan government’s belief the “Attorney General’s Office (AGO), as an independent office, is the best location for anti-corruption activities.” We agree that the Afghan government should design an institutional framework that is appropriate for Afghanistan’s particular context. Article 6 of the UNCAC allows the Afghan government the discretion to build institutions “in accordance with the fundamental principles of its legal system.”¹⁴⁸ However, we do not agree with the Afghan government’s assertions that a powerful anti-corruption body cannot also be independent, or that the AGO is already sufficiently independent from the President. The UNCAC provides latitude regarding how state parties grant their anti-corruption bodies the “necessary independence . . . to enable the body or bodies to carry out its or their functions effectively and free from any undue influence.”¹⁴⁹ For instance, UNAMA has written:

¹⁴⁸ Convention against Corruption, United Nations Treaty Series, pp. 41-367.

¹⁴⁹ Convention against Corruption, United Nations Treaty Series, pp. 41-367.

Independence within the meaning of UNCAC does not require an anti-corruption body be separate from the government. Rather, the body may operate within existing government structures so long as “appropriate and functioning checks and balances” are in place to ensure that “nobody and nothing is above the law.”¹⁵⁰

UNAMA suggests that the Afghan government could achieve UNCAC compliance by giving senior anti-corruption officials fixed terms; making them subject to nomination by the President and confirmation by a separate body, such as Parliament; barring their removal unless they demonstrate malfeasance or abuse of office; and granting them legal immunity for official actions undertaken in good faith.¹⁵¹ As discussed in the report, such a system of checks, balances, and protections does not exist for the Deputy AGO for Anti-Corruption, the Administrative Office of the President Asset Registration Office, or the High Council Special Secretariat. As long as senior officials in these organizations serve at the pleasure of the President and remain vulnerable to political or legal reprisals for doing their jobs, concerns about their independence will remain.

With respect to the third matter for consideration, the Afghan government concurred, stating that the MOD will develop an anti-corruption action plan by June 30, 2018. However, it remains unclear whether the MOD will become a “priority ministry” whose action plan must be reviewed and approved by the High Council.

With respect to the fourth matter for consideration, the Afghan government concurred. However, it stated that it resolved this matter on March 6, 2018, when it amended the Law on the Organizational Structure and Jurisdiction of the Attorney General’s Office. We acknowledge that the HOO has been abolished and some of its responsibilities have been transferred to the new Deputy AGO for Anti-Corruption. However, as discussed in the report, the Afghan government did not transfer other HOO functions, such as public education and raising public awareness concerning anti-corruption efforts and resources, to the Deputy AGO or any other existing body. This omission seems to have left the Afghan government without an adequate way of addressing Article 6 (1)(b) of the UNCAC, which requires Afghanistan to establish a preventative body or bodies responsible for “increasing and disseminating knowledge about the prevention of corruption.”¹⁵² Therefore, we disagree with the Afghan government’s assessment that this matter has been fully addressed, and encourage it to grant an anti-corruption entity the legal mandate to perform these important preventative functions. As such, we revised the matter to reflect the need to clarify which government entity or entities will take over the HOO’s education and public awareness activities.

With respect to the fifth matter for consideration, the Afghan government partially concurred. It agreed that anti-corruption bodies should be granted the necessary resources and specialized staff, and the training that such staff may require to carry out their functions. However, it stated that all anti-corruption bodies are already secure, well-trained, and well-resourced. Although we acknowledge that the Afghan government has taken action over the past year to provide anti-corruption bodies the security, resources, and personnel they need to carry out their functions, significant security and capacity shortfalls remain. We plan to continue monitoring progress on these issues during our follow-up work.

With respect to the sixth matter for consideration, the Afghan government concurred. It committed to conducting a second round of polygraph tests and acting on the findings, and now awaits support from the international community to provide specialized polygraph teams to conduct these tests.

The draft of this report also included a seventh matter for consideration for the Afghan government to direct the Ministries of Finance, Communications and Information Technology, and Transport and Civil Aviation to publish, and immediately make public, the final progress reports for their 2017 anti-corruption action plans. The Afghan government concurred with the matter and, as previously noted, made the requested action plans public after receiving the draft report in April 2018. As such, we consider this matter addressed and removed it from this final report.

¹⁵⁰ UNAMA, *Afghanistan’s Fight against Corruption*, p. 6.

¹⁵¹ UNAMA, *Afghanistan’s Fight against Corruption*, p. 7.

¹⁵² *Convention against Corruption*, United Nations Treaty Series, pp. 41-367.

APPENDIX I - SCOPE AND METHODOLOGY

This audit examined the government of Afghanistan's efforts to develop and implement a national anti-corruption strategy as agreed upon in October 2016 at the Brussels Conference on Afghanistan. Specifically, the objectives were to assess the extent to which the Afghan government: (1) met the anti-corruption deliverables it agreed to under the Self-Reliance for Mutual Accountability Framework (SMAF); (2) created an anti-corruption strategy that meets international anti-corruption strategy standards and best practices; (3) is implementing its anti-corruption commitments in the anti-corruption strategy and benchmarks; and (4) has made progress or experienced challenges implementing anti-corruption reforms.

For all objectives, we interviewed officials from the Afghan government, civil society, international donors, the U.S. government, and the Resolute Support Mission, as well as international anti-corruption experts. With regard to the Afghan government, we interviewed officials from the Office of the President; the Office of the Chief Executive Officer; the Office of the Second Vice President; Parliament; the Supreme Court; the High Council on Rule of Law and Anti-Corruption (High Council) Secretariat and Special Secretariat; the Independent Monitoring and Evaluation Committee; the Ministry of Transport and Civil Aviation; the Civil Aviation Authority; the Ministry of Mines and Petroleum; the Independent Directorate of Local Governance; the High Office of Oversight and Anti-Corruption; the Anti-Corruption Justice Center; the Major Crimes Task Force; the Supreme Audit Office; the Ministry of Labor, Social Affairs, Martyrs, and the Disabled; the Ministry of Public Health; the National Procurement Authority; the Financial Transactions and Reports Analysis Center; the Independent Administrative Reform and Civil Service Commission; the Ministry of Justice; the Attorney General's Office; the Ministry of Energy and Water; the Ministry of Communication and Information Technology; the Ministry of Interior Affairs; the Ministry of Defense; and the Ministry of Finance.

With regard to civil society organizations, we interviewed officials from Integrity Watch Afghanistan, Afghan Independent Bar Association, National Endowment for Democracy, Anti-Corruption Network, Global Witness, Transparency International, Open Government Partnership, Natural Resource Governance Institute, and the Extractive Industries Transparency Initiative.

With regard to international donor organizations, we spoke with officials from the United Nations Assistance Mission to Afghanistan and the World Bank, as well as officials from the Embassies of the United Kingdom, the European Union, and Denmark. With regard to U.S. organizations, we interviewed officials from the Department of State, Department of Defense, United States Agency for International Development (USAID), Department of Justice, U.S. Forces-Afghanistan, and Combined Security Transition Command-Afghanistan.

To determine the extent to which the Afghan government met the anti-corruption deliverables it agreed to under the SMAF, we reviewed the anti-corruption deliverables that the Afghan government agreed to in the SMAF and the Afghan government's progress toward meeting those deliverables. In assessing the Afghan government's progress, we reviewed interim and final progress reports developed by the Afghan government, minutes of High Council meetings, reports created by the five revenue-generating ministries, and relevant Afghan laws and decrees. Finally, we interviewed officials from the organizations listed above.

To determine the extent to which the Afghan government created an anti-corruption strategy that meets international anti-corruption strategy standards and best practices, we reviewed the anti-corruption strategy approved by the High Council and implemented through presidential order. We also reviewed relevant Afghan laws and constitutional provisions. We compared these documents to recommendations and best practices contained in the *United Nations Convention Against Corruption*, the *Kuala Lumpur Statement on Anti-Corruption Strategies* and the *Jakarta Statement on Principles for Anti-Corruption Agencies*. We used our best professional judgement to evaluate the extent to which the anti-corruption strategy followed these best practices. For example, we analyzed to what extent the strategy's benchmarks helped measure progress, and were aligned with, the anti-corruption strategy's goals. Furthermore, we analyzed to what extent the anti-corruption strategy's benchmarks were precise, measurable, and realistic. Finally, we interviewed officials from the organizations listed above to solicit opinions about the strategy's design.

To determine the extent to which the Afghan government is implementing its anti-corruption commitments in the anti-corruption strategy and benchmarks, we reviewed the goals and benchmarks contained in the Afghan anti-corruption strategy and compared them to documentation demonstrating the achievement of these benchmarks and goals. Specifically, we reviewed reports from the High Council, relevant ministries, and presidential orders to determine if the goals and benchmarks set by the anti-corruption strategy were achieved by the dates set by the anti-corruption strategy. Furthermore, we interviewed officials from the organizations listed above.

To determine the extent to which the Afghan government has made progress or experienced challenges implementing anti-corruption reforms, we reviewed documentation demonstrating the achievement of anti-corruption reforms achieved to date, prosecutions and convictions achieved by the anti-corruption justice system, and roadblocks to reform. Furthermore, we interviewed officials from the organizations listed above.

To determine the extent to which the Afghan government receives U.S. government assistance in developing and implementing its anti-corruption efforts, we reviewed program and contract documentation for U.S. programs directed at assisting the Afghan government in making anti-corruption reforms, the Afghanistan Compact, and relevant U.S. laws governing assistance to Afghanistan. Furthermore, we interviewed officials from the organizations listed above.

We did not rely on computer-processed data for the purpose of the audit objectives. To assess internal controls, we analyzed the Afghan government's reporting of the achievements of anti-corruption reforms and corruption prosecutions. The results of our assessment are included in the body of the report.

This audit was conducted in accordance with the explanatory statement for the Consolidated Appropriations Act, 2017, which directed that SIGAR "in consultation with the Offices of the Inspector General of the Department of State and USAID, shall conduct an assessment of implementation of the anti-corruption strategy referenced in subsection (a)(2)(B)(v), including by revenue generating ministries in Afghanistan, and submit such assessment to the Committees on Appropriations not later than May 31, 2018."¹⁵³

We conducted our work in Kabul, Afghanistan, and Washington, D.C, from June 2017 through May 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides that reasonable basis for our findings and conclusions based on our audit objectives. This audit was performed by SIGAR under the authority of Public Law No. 110-181, as amended, and the Inspector General Act of 1978, as amended.

¹⁵³ 163 Cong. Rec. H4055 (daily ed. May 3, 2017) (explanatory statement of the Consolidated Appropriations Act, 2017); see also Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, § 4, § 7044.

Kuala Lumpur Statement on Anti-Corruption Strategies

Kuala Lumpur, 21-22 October 2013

On 21-22 October 2013, high level representatives of anti-corruption authorities as well as national planning authorities from the South, East and Southeast Asia and anti-corruption experts from around the world gathered in Kuala Lumpur at the invitation of the United Nations Office on Drugs and Crime (UNODC) and the United Nations Development Programme (UNDP), in partnership with the Government of Malaysia, to discuss a set of Guidelines for Anti-Corruption Strategies, that could instruct the process of developing, designing and implementing sustainable anti-corruption strategies.

The participants included several officials of anti-corruption authorities, other anti-corruption practitioners, and representatives from national planning authorities, and executive, legislative and judiciary branches. Representatives of UNDP, UNODC, the World Bank, the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, Transparency International and U4 Anti-Corruption Resource Centre also took part in the proceedings.

The participants reviewed and discussed country experiences from around the world, with a particular focus on South, East and Southeast Asia, relating to the process of developing anti-corruption strategies, the design and content of anti-corruption strategies and the monitoring and evaluation of anti-corruption strategies.

Recalling the United Nations Convention against Corruption (UNCAC),¹ which in its Articles 5 and 6 obliges States Parties, in accordance with the fundamental principles of their legal systems, to develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability,

Recognizing that anti-corruption strategies can provide a comprehensive policy framework for actions to be taken by States in combating and preventing corruption, a useful tool for mobilising and coordinating efforts and resources by governments and other stakeholders, for policy development and implementation, and for ensuring monitoring of policy implementation,

Considering that a number of countries in South, East and Southeast Asia have implemented anti-corruption strategies or are in the process of drafting new strategies and revising old ones,

Recognizing that there are a large variety of models and approaches to the development of anti-corruption policies and strategies and common lessons to be learned from experiences in developing these strategies in the region,

The participants:

¹ General Assembly resolution 58/4, annex.

1. *Recommend* the following:

Anti-Corruption Strategy Development Process

- **POLITICAL, SOCIAL, ECONOMIC AND CULTURAL CONTEXT:** States must take into account their particular political, social, economic and cultural context when designing anti-corruption strategies.
- **POLITICAL WILL:** Committed political leadership, ideally from the highest levels of the State, and broader political support to steer the overall process and mobilise necessary resources, is a necessary condition of an effective anti-corruption strategy development process.
- **STAKEHOLDER INVOLVEMENT (INCLUSIVE PROCESS) AND OWNERSHIP:** Broad engagement of stakeholders builds ownership and helps to ensure acceptability and effectiveness of strategies adopted. State institutions (executive, legislative and judiciary) at national and sub-national levels, civil society organizations, private sector, media, professional societies, trade and industry associations and labor unions, academic institutions, youth and cultural organizations, can serve as important allies and partners in the development of anti-corruption strategies and can reduce the vulnerability of the reform efforts to changes in political leadership.
- **CLEAR AND TRANSPARENT PROCESS:** The process of developing strategies needs to be clear and transparent from the outset.
- **COMMON VISION:** A consensus should be built around a common vision and intended objectives of strategies.
- **STRENGTHENING COORDINATION:** Anti-corruption strategies should focus on enhancing inter- and intra-agency coordination during the development process as well as implementation and monitoring phases.
- **SOUND KNOWLEDGE BASE:** Development, implementation and monitoring of strategies should be informed by sound diagnostics, needs and evidence of risk and vulnerability areas and gaps in anti-corruption policies and institutions.
- **SUSTAINABILITY AND INSTITUTIONALIZATION OF THE PROCESS:** Development of strategies should be institutionalized to ensure continued relevance and timely modification of the anti-corruption strategies.
- **ALLOCATING AND MOBILISING RESOURCES:** Necessary resources should be mobilised at the time of development of strategies to ensure effective implementation and monitoring of strategies.
- **PUBLIC COMMUNICATION AND ENGAGEMENT:** Anti-Corruption and National Planning Authorities shall communicate and engage with the public regularly in order to ensure public confidence and channel feedback for the effective implementation of anti-corruption strategies.

Anti-Corruption Design & Content

- **RATIONALE CORE OBJECTIVES AND REALISTIC GOALS:** Core objectives and goals, and rationale for interventions should be defined based on national priorities, and identified gaps and needs.
- **NATIONAL DEVELOPMENT STRATEGY/PRIORITIES AND BROADER CONTEXT:** Anti-corruption strategies should be incorporated within broader national development initiatives currently in focus and should take into account international/regional obligations.
- **INTEGRATION WITH OTHER RELEVANT NATIONAL PROGRAMMES/REFORM AGENDAS:** Anti-corruption strategies should take into account and establish links with other relevant national strategies (e.g., judicial sector, public administration reform, open government, etc.) and should seek to form synergies with other agencies.
- **COMPREHENSIVE AND COORDINATED APPROACH:** Anti-corruption strategies should be organized under an overarching/holistic approach while taking into account sector specific needs.
- **CLEAR AND UNDERSTANDABLE DOCUMENT:** Strategies have to be clear, concise and easily understood.
- **STRUCTURE AND DESIGN:** While there is no simple formula for the proper design, content or implementation of anti-corruption strategies, UNCAC can be used as a framework for anti-corruption strategies, taking into account relevant data, particular needs, and national capacities.
- **PRIORITIZATION AND SEQUENCING:** Strategies need to be realistic on what is achievable in the short, medium and long term, set clear priorities and sequence actions based on priorities. Strategies could be designed with the aim of enhancing the credibility of leadership and ensuring quick tangible results to strengthen the national commitment to reform.
- **IMPLEMENTATION MECHANISM:** It is imperative that strategies provide for an implementation mechanism in the form of an action plan with clearly identified responsibilities and timelines for implementation with focus on results. The agency designated to coordinate implementation of strategies should be within high level government agencies.
- **SUB-NATIONAL IMPLEMENTATION:** Where applicable, particular attention should be paid to strategies' implementation at sub-national and local levels.
- **INSTITUTIONAL & FINANCIAL SUSTAINABILITY (NEEDS & CAPACITIES):** Strategies should provide for their institutional and financial sustainability and should take into account capacity for implementation.

Anti-Corruption Strategy Monitoring & Evaluation

- **INTEGRAL PART OF STRATEGY DESIGN:** Monitoring and evaluation mechanisms are an integral part of national anti-corruption strategies. Elements of evaluation and data collection systems should be built into strategies from the design phase.
- **INDICATORS WITH CLEAR BASELINES AND TARGETS:** Measurable indicators, with established baselines and tracking mechanisms, are needed to determine whether targets are being achieved.
- **NEED FOR DATA GENERATION TOOLS:** Effective monitoring and evaluation requires reliable data that is generated based on multiple sources.
- **REGULAR REPORTING:** Regular monitoring and reporting allows authorities to gauge progress in implementation and achieving results in curbing corruption.
- **EVALUATION V. PROGRAMME MANAGEMENT:** It is important to distinguish between programme management monitoring (activities/outputs) as opposed to evaluation (outcomes/impact) and between implementation responsibilities as opposed to monitoring and oversight responsibilities.
- **RESPONSIBLE AUTHORITY:** National body/bodies should be entrusted with the responsibility for monitoring, implementation and regular reporting and be provided with sustainable institutional and financial support. An independent evaluation should ensure accurate monitoring and reporting at regular intervals.

2. *Encourage* Anti-Corruption and National Planning Authorities to promote these recommendations within their respective agencies, countries and regional/international networks in a time-bound manner.

3. *Call upon* Anti-Corruption and National Planning Authorities to promote these recommendations in order to assist members of the executive and the legislature and the judiciary, and the public in general, to better understand and support anti-corruption strategies in their development, design, and implementation and monitoring.

4. *Welcome* the commitment of the host country to raise these recommendations at the 5th Session of the Conference of the States Parties to the UNCAC and *encourage* other participating countries to support this initiative.

5. *Express* appreciation and gratitude to the Government of Malaysia for hosting the Asia Regional Meeting on Anti-Corruption Strategies organized by UNDP and UNODC to reflect on and promote these recommendations for anti-corruption strategies.

Jakarta Statement on Principles for Anti-Corruption Agencies

Jakarta, 26-27 November 2012

On 26-27 November 2012, current and former heads of anti-corruption agencies (ACAs), anti-corruption practitioners and experts from around the world gathered in Jakarta at the invitation of the Corruption Eradication Commission (KPK) Indonesia, the United Nations Development Programme (UNDP) and the United Nations Office on Drugs and Crime (UNODC) to discuss a set of “Principles for Anti-Corruption Agencies” to promote and strengthen the independence and effectiveness of ACAs.

The participants included several heads of ACAs and representatives of regional networks, notably the Network of National Anti-Corruption Institutions in West Africa, the Southeast Asian Parties Against Corruption, the Arab Anti-Corruption and Integrity Network, the Southern African Forum Against Corruption, the East African Association of Anti-Corruption Authorities, and the European Partners Against Corruption/European anti-corruption contact point network (EPAC/EACN).

Representatives from the United Nations Development Programme, the United Nations Office on Drugs and Crime, the United Nations Office of the High Commissioner for Human Rights and Transparency International took part in the proceedings. The Organization for Economic Cooperation and Development and the World Bank also submitted contributions to the Conference.

The participants reviewed and discussed country experiences from around the world, challenges faced by ACAs, and key requirements to ensure the independence and effectiveness of ACAs.

Considering that the Conference sought to discuss and elaborate guidance for ACAs as to how to promote and strengthen the independence and effectiveness of ACAs;

Acknowledging the diversity of ACAs around the world in combating corruption with some ACAs mandated to prevent corruption, others focused on investigation or prosecution, or a combination of these functions;

Recalling the international commitments and obligations at the regional and global level, including the United Nations Convention against Corruption (UNCAC), to ensure independence of ACAs;

Recalling the Marrakech Declaration by the International Association of Anti-Corruption Authorities (IAACA) adopted at its Fifth Annual Conference and General Meeting, in particular, the pledge to “joint action and support [...] to ensure that anti-corruption authorities [...] are able to function with the necessary independence, secure and stable funding and specialized staff with professional training, in order to operate effectively and free from any undue influence, in accordance with articles 6 and 36 of the UNCAC”;

Recalling also Resolutions 3/2, 3/3 and 4/4 adopted by the Conference of the States Parties of the UNCAC at its third and fourth sessions that acknowledge the “vital importance of ensuring the independence and effectiveness” of ACAs.

Taking note with appreciation of the Anti-Corruption Authority Standards developed by the European Partners Against Corruption/European anti-corruption contact point network (EPAC/EACN) as welcomed by the 6th Annual Conference and General Meeting of the IAACA;

Taking note with appreciation of the G20's resolve to lead by example by "strengthen[ing] the effective functioning of anti-corruption bodies or enforcement authorities in the prevention and fight against corruption, [...] enabl[ing] these authorities to carry out their function free from undue influence";

Taking note with appreciation of Transparency International's efforts at the 15th International Anti-Corruption Conference in Brasilia to promote the independence and effectiveness of ACAs;

The participants:

1. **Recommend** the following principles to ensure the independence and effectiveness of ACAs:
 - **MANDATE:** ACAs shall have clear mandates to tackle corruption through prevention, education, awareness raising, investigation and prosecution, either through one agency or multiple coordinated agencies;
 - **COLLABORATION:** ACAs shall not operate in isolation. They shall foster good working relations with state agencies, civil society, the private sector and other stakeholders, including international cooperation;
 - **PERMANENCE:** ACAs shall, in accordance with the basic legal principles of their countries, be established by proper and stable legal framework, such as the Constitution or a special law to ensure continuity of the ACA;
 - **APPOINTMENT:** ACA heads shall be appointed through a process that ensures his or her apolitical stance, impartiality, neutrality, integrity and competence;
 - **CONTINUITY:** In the event of suspension, dismissal, resignation, retirement or end of tenure, all powers of the ACA head shall be delegated by law to an appropriate official in the ACA within a reasonable period of time until the appointment of the new ACA head;
 - **REMOVAL:** ACA heads shall have security of tenure and shall be removed only through a legally established procedure equivalent to the procedure for the removal of a key independent authority specially protected by law (such as the Chief Justice);
 - **ETHICAL CONDUCT:** ACAs shall adopt codes of conduct requiring the highest standards of ethical conduct from their staff and a strong compliance regime;
 - **IMMUNITY:** ACA heads and employees shall have immunity from civil and criminal proceedings for acts committed within the performance of their mandate. ACA heads and employees shall be protected from malicious civil and criminal proceedings.

- **REMUNERATION:** ACA employees shall be remunerated at a level that would allow for the employment of sufficient number of qualified staff;
 - **AUTHORITY OVER HUMAN RESOURCES:** ACAs shall have the power to recruit and dismiss their own staff according to internal clear and transparent procedures;
 - **ADEQUATE AND RELIABLE RESOURCES:** ACAs shall have sufficient financial resources to carry out their tasks, taking into account the country's budgetary resources, population size and land area. ACAs shall be entitled to timely, planned, reliable and adequate resources for the gradual capacity development and improvement of the ACA's operations and fulfillment of the ACA's mandate;
 - **FINANCIAL AUTONOMY:** ACAs shall receive a budgetary allocation over which ACAs have full management and control without prejudice to the appropriate accounting standards and auditing requirements;
 - **INTERNAL ACCOUNTABILITY:** ACAs shall develop and establish clear rules and standard operating procedures, including monitoring and disciplinary mechanisms, to minimize any misconduct and abuse of power by ACAs;
 - **EXTERNAL ACCOUNTABILITY:** ACAs shall strictly adhere to the rule of law and be accountable to mechanisms established to prevent any abuse of power;
 - **PUBLIC REPORTING:** ACAs shall formally report at least annually on their activities to the public.
 - **PUBLIC COMMUNICATION AND ENGAGEMENT:** ACAs shall communicate and engage with the public regularly in order to ensure public confidence in its independence, fairness and effectiveness.
2. **Encourage** ACAs to promote the above principles within their respective agencies, countries and regional networks of ACAs;
 3. **Encourage** ACAs to promote these principles to assist members of the executive and the legislature, criminal justice practitioners and the public in general, to better understand and support ACAs in carrying out their functions;
 4. **Call upon** ACAs to appeal to their respective Governments and other stakeholders to promote the above principles in international fora on anti-corruption.
 5. **Express** appreciation and gratitude to the Corruption Eradication Commission of Indonesia for hosting the International Conference "Principles for Anti-Corruption Agencies" with support from the United Nations Development Programme and the United Nations Office on Drugs and Crime to reflect and agree on principles for ACAs.

APPENDIX IV - COMPARISON OF ANTI-CORRUPTION GOALS AND BENCHMARKS

Table 4 - Comparison of Anti-Corruption Strategy Goals and Benchmarks

Pillar	Goal	Benchmark
Pillar 1: Political Leadership and Empowering Reformers	Conduct an annual national outreach and feedback discussion on the anti-corruption strategy led by the President and CEO.	National leadership consultation of the President on anti-corruption efforts. (Due December 31, 2017.)
	Enforce full (100%) compliance with asset disclosure and verification requirements for senior officials.	Enforce full 100% compliance with asset disclosure requirements for senior officials. (Due February 28, 2018.)
	Revise civil and criminal substantive and procedural laws to foster the prosecution of corrupt individuals, to promote the recovery of illegally obtained assets.	Empowering Laws: (1) Enact a Whistle-blower Protection Law, (2) Amend the access to information law to meet international best practices and strengthen the recently established Oversight Commission on Access to Information; (3) Revise civil and criminal codes to seize illegally obtained assets and exclude those convicted of corruption from political office. (Due December 31, 2017.)
	Pass a Whistleblower's Protection Act and other necessary laws.	
	Create an independent Ombudsmen related to the Attorney General's Office for the President's Office aligned with Article 69 ("presidential accountability") of the Constitution.	Establish an independent palace Ombudsmen. (Due December 31, 2017.)
	Introduce an awards program for civil servant individual and team achievements in-fighting corruption.	Introduce an awards program for civil servant individual and team achievements in fighting corruption. (Due December 31, 2017.)
	Strengthen an Independent Board for Senior Security Official Appointments.	Appoint a High Oversight Board to provide guidelines and audits of senior security-related appointments and promotions. (Due December 31, 2017.)
	Hold a national consultative conference on ensuring electoral integrity for the 2019 presidential election.	
	Advance the use of biometric electronic voting technology in all large cities.	
	Support parliamentary leadership to develop an anti-corruption action plan for the Parliament and support its implementation.	
	Facilitate the exclusion of those convicted of corruption from public service.	
	Mobilize and strengthen High Council on Law, Justice, and Anti-corruption.	
	Expand public engagements by senior officials to discuss progress on fighting corruption in national media	
	Create Reformer Networks in the Ministry of Finance, the revenue and high spending ministries.	
Monitor enforcement of strengthened "open government" laws in the revenue and high spending ministries.		
	Pass a consolidated subnational governance policy. (Due February 28, 2018.)	
	Establish Independent Judiciary: (1) Open trials, (2) Community Engagement, (3) Independent Judicial Services Commission. (Due June 30, 2018.)	
Pillar 2: Reforming the Security Sector	Clarify the mandates of defense and policing, transfer Afghan National Civil Order Police (ANCOP) and the border guards from Interior to the Defense Ministry, with all senior commanders to undergo full review.	Transfer Afghan National Civil Order Police (ANCOP) and the border guards from Interior to the Defense Ministry, with all senior commanders to undergo full review. (Due June 30, 2018.)

Pillar 2: Reforming the Security Sector	Establish a police ombudsman to handle complaints against the police.	Create a channel for citizens to report corrupt officials without fear of reprisals: (1) monitor complaints through a public channel and ensure that those who report corruption can see the progress of their case, and receive feedback, (2) an audits of complaints system should be publicly available, (3) establish an ombudsman system. (An effective complaints management system would need an ombudsman to ensure that the process was secure, transparent, and effective.) (Due December 31, 2018.)
	Complete a security sector fiduciary risk assessment.	Complete a security sector fiduciary risk assessment. (Due June 30, 2018.)
	Expand electronic payroll to all accessible districts.	Expand electronic payroll to all accessible districts. (Due June 30, 2018.)
	Competent and qualified leadership in the Ministry of Interior.	
	Provide guidelines and audit senior security-related appointments and promotions.	
	Review and replace all MOI deputy ministers, director generals, and police chiefs as warranted.	
	Identify and revise laws needed for security sector reform.	
	Complete personnel inventory and discharge or prosecute commanders for ghost police.	
	Review and replace all provincial police chiefs as warranted.	
		Prepare guidelines for pilot program on public commentary on senior appointments. (Due June 30, 2018.)
	Defense Planning, Budget, and Strategy: (1) publish unconditional defense strategy and a detailed defense budget; (2) publish an anti-corruption action plan for this sector. (Due December 31, 2017.)	
	Include civil society inputs in the development of new governance or anti-corruption legislation and policies. (Due December 31, 2017.)	
	Ghost Soldiers/Police: (1) develop a verification plan detailing personnel and payroll procedures, (2) develop daily attendance sign in procedures using identification numbers, (3) ensure use of fully operational electronic system to track payroll data, (4) training for internal audit and investigative powers. (Due December 31, 2017.)	
	Oversight on Secret Procurement: (1) publish current oversight mechanisms for confidential procurement, (2) provide parliament with detailed audit reports related to defense and security sectors. (Due December 31, 2017.)	
Pillar 3: Replacing Patronage With Merit	Advertise all positions publicly.	Public advertising and competitive selection for all positions. (Due December 31, 2017.)
	Ensure competitive selection.	
	Revitalize the civil service training center and curriculum, with at least 5,000 inductees taking core courses in public administration, civil service gender policies, and anti-corruption.	Revitalization of the civil service training center and curriculum, with at least 5,000 inductees taking core courses in public administration and anti-corruption. (Due December 31, 2018.)

Pillar 3: Replacing Patronage With Merit	Manage out or give education options to at least 5,000 superannuated or non-performing, after which they will either meet performance criteria or leave the civil service.	At least 5,000 superannuated or non-performing civil servants managed out or given education option packages after which they either meet performance criteria or leave the civil service. (Due December 31, 2018.)
	Revise and approve laws and guidelines required for institutionalizing a transparent civil service system.	
	Centralize examination, training, and certification for all common ministry functions (procurement, financial management, human resource development).	
	Benchmark senior civil servant pay grades against market salaries.	
	Identify, protect, and promote honest, dedicated civil servants.	
	Compulsory retirement packages for 1,000 civil servants between the ages of 55 and 65 12 grade or lower educational levels.	
	Strengthen the Civil Service Commission's regional and provincial offices to support subnational governance improvements.	
	Launch a public communications campaign to promote a culture of accountability.	
	Introduce citizen feedback mechanisms into the Civil Service Commission.	
	Create civil society and media oversight mechanisms to monitor major recruitment drives.	
Systematically overhaul teacher recruitment.		
	Appointments and the Stage Examinations [Setazh-e-Qazaye]: (1) broaden the membership of the Stage committee to include vetted and independent representatives from the Legislative, Judiciary, Executive and relevant Civil Society organizations, including members of academia and foreign experts, (2) restrict appointments outside of the Stage process and ensure a transparent and competitive process. (Due June 30, 2018.)	
Pillar 4: Prosecuting the Corrupt	Identify and revise as needed laws related to anti-corruption.	Review anti-corruption laws and regulations. (Due February 28, 2018.)
	Create internal justice sector Appointment Commissions to oversee appointments and prevent the interference of others, including executive branch and legislative branch, in the affairs of the justice sector.	Create an independent judicial commission to oversee and audit appointments. (Due June 30, 2018.)
	Consolidate all anti-corruption bodies except the Independent Joint Anti-Corruption and Evaluation Committee (MEC) and the Anti-Corruption Justice Center (ACJC) under the office of the Attorney General.	Consolidate all anti-corruption bodies except the independent joint anti-corruption and evaluation committee (MEC) under the office of the Attorney General. (Due December 31, 2017.)
	Create a new Deputy Attorney General for Anti-Corruption	
	Reform the offices of Taqin [Legislative Drafting], Huquq [Legal Affairs], and Qaza-e Dawlat [Government Cases] in the Ministry of Justice.	Reform the offices of Taqin (Legislative Drafting), Huquq (Legal Affairs), and Qaza-e Dawlat (Government Cases in the Ministry of Justice. (Due June 30, 2018.)
	Advance the extradition and prosecution of convicted criminals living abroad through international agreements	Advance discussions and agreements on extradition, cross-border crime, and recovery of stolen assets. (Due June 30, 2018.)
	Ensure that all provinces have qualified prosecutors and introduce at least 50 prosecutors into secure districts.	Introduce at least 50 prosecutors into secure districts. (Due September 30, 2018.)

Pillar 4: Prosecuting the Corrupt	Complete the human resource review and execute the action plan to increase the capacity of judges and prosecutors to handle corruption cases, including training law clerks for all courts, in line with the new penal code.	
	All cases identified by the 2013 Shafafiat [Transparency] taskforce will be reviewed by the Attorney General for follow-up action.	
	Expand legal aid services, including through budget-based financing to civil society providers.	
	Integrate regular media briefings and engagements to increase public awareness of and support for the process	
		Access to Justice: (1) improve citizen's access to justice across the country, (2) strengthen case management systems in courts, including implementing safe archiving, (3) strengthening coordination within the judiciary and law enforcement organs. (Due December 31, 2018.)
	Open trials: (1) ensure all trials are open to the public in accordance with the law, (2) issue and enforce clear directives requiring open trials, (3) encourage community monitoring, and ensure court verdicts are made public at the local level. (Due December 31, 2018.)	
Pillar 5: Following the Money	Implementing the Financial Performance Improvement Program (i.e. budget reform roadmap) by 2019/20	Full implementation of the Financial Performance Improvement Program. (December 31, 2019.)
	Strengthening the Supreme Audit Office through a revision to the Supreme Audit Law.	Strengthening the Supreme Audit Office through a revision to the Supreme Audit Law. (Due June 30, 2018.)
	Applying the new Accounting Law to all public agencies.	Propose an accounting law that would set national standards for all public agencies and license auditors and accounting firms. (Due February 28, 2018.)
	Licensing auditors and accounting firms.	
	Moving the Financial Crimes Taskforce to the Attorney General's Office.	Move the financial crimes task force to the attorney general's office. (Due December 31, 2018.)
	Publishing all elements of procurement and audit not explicitly excluded by national security considerations on ministry websites.	Amend Afghan law to require that the full text of government awards, contracts, and contract alterations must be published as a condition of their coming into force. (Due December 31, 2017.)
	Revamping the Ministry of Finance Customs and Revenue department to include compulsory asset declarations, recruitment reforms, and reporting.	
	Simplifying and automating key revenue (tax) processes.	
	Deploying 150 trained auditors to the Supreme Audit Office.	
	Strengthen the internal audit offices of line ministries.	
	Training 200 internal auditors at key security, expenditure, and revenue ministries.	
	Identifying and revising relevant laws to advance financial transparency.	
Using anti-money laundering tools to detect, trace, and confiscate the proceeds of corruption.		

Pillar 5: Following the Money	Publishing annual budget plans and expenditure reports.	Secure the required capacity and resources to build capacities of relevant officials for collecting, publishing, storing, accessing, and sharing contract data and execution of a transparent public procurement system. (Due December 31, 2017.)
	Requesting international partners to provide expanded technical expertise, capacity building, and oversight in end use monitoring of development and security expenditures.	Implement the Addis Tax Initiative and the Common Reporting Standard, to ensure better tax revenue transparency and accountability. (Due December 31, 2017.)
	Expanding the use of electronic payments and record keeping as rapidly as possible.	Customs Reform and Transparency: (1) reform the customs services in line with principles of the Arusha Declaration of the World Customs Organization (WCO); (2) advertise the rates and procedures at the borders and inland custom depots, on website or through public service. (Due February 28, 2018.)
		Fulfill the WTO transparency by enacting and implementing legislation, regulations, and practices mandated in the WTO Accession Package. (Due December 31, 2018.)

Source: SIGAR analysis of the *Afghanistan National Strategy for Combatting Corruption*, October 12, 2017.

APPENDIX V - COMMENTS FROM THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF AFGHANISTAN



May 13, 2018

Dear Mr. Sopko,

We thank you for your recent review of the implementation of Afghanistan's anti-corruption strategy. As always, we value the partnership that the Government of the Islamic Republic of Afghanistan and SIGAR has developed over the past few years. This response will provide a wider context for the report.

When the National Unity Government took office, we were faced with state capture of most institutions. This included the institutions of political, judiciary, economic, defense, and the civil service. This provided a challenging environment to implement reforms and anti-corruption initiatives. Although we have a long road ahead of us, we have begun to reduce the influence of maligned state actors from each of these institutions.

Our strategy was simple: we wanted to change the culture of corruption and to address not merely symptoms, but the underlying drivers of corruption. To do so, we took a comprehensive and studied approach to changing this culture by implementing four key principles. First, we implemented an open and high-level decision-making process through the formation of multiple High Councils.¹ These councils removed a person-specific decision-making process, and instead created an open process with multiple stakeholders represented, including members of civil society, the business community, and our international partners.

Second, I committed to communicating a strong anti-corruption message and appointed persons with impeccable records to positions of influence. Just to highlight, my second Vice President, who was previously the Minister of Justice, now heads the legal review committee. Our new Supreme Court Justice has a long history in legal development. And our new Attorney General formerly sat as a deputy on our Human Rights Commission. Such appointments have cascading effects, as these individuals hire additional persons with strong anti-corruption tendencies throughout their respective organizations.

Third, we leveraged independent and government reports on corruption to create a sense of urgency so that action would be taken. One prominent example is SIGAR's

¹ There are 10 high councils, including the National Procurement Council (NPC), High Economic Council (HEC), and High Council on Governance and Anti-Corruption (HCGAC), among others



report on fuel collusion at our Ministry of Defense, which we used to cancel the fuel contract and reorganize fuel contract procurement. A second example is the MEC report on corruption at the Ministry of Education, which we used to implement a wholesale restructuring of the ministry.² However, we must recognize that although this process has begun in earnest, that entrenched cultures do not transform completely in just three years.

Fourth, we have begun to create a rule of law culture by requiring more rigorous reviews of all contracts that we sign. To assist the Government of Afghanistan, we have hired multiple international legal firms that provide counsel on issues from our four signed independent power producer (IPP) contracts to, for the first time, taking a contractor to international legal arbitration. We are also in the process of creating standard legal contracts from everything to IPPs to mining tenders.

Let us next evaluate reforms by each type of institution. In our political institutions, a culture of corruption was firmly embedded throughout the government. This started at the top. Political elites had captured line ministries for their private benefit. Ministerial positions were often granted without regard to merit. One can see the shift in the government by the appointment of capable youth in the new Cabinet. For example, the average age of Afghanistan's Cabinet has been reduced to only 53 years of age. Likewise, academic research has shown that including more women in government has a negative correlation with corruption.³ This is one additional reason that we have appointed three women ministers and 10 deputy ministers.

The formation of the High Council on Governance and Anti-Corruption created a high-level forum to discuss corruption issues. This high council is chaired by myself, and includes the CEO, the Second Vice-President, the Supreme Court Justice, the Attorney General, various line ministries, a member of civil society, and our international partners. The High Council has now met 21 times since its establishment. At every meeting, matters related to improving the performance of the courts, attorney general's office, or developing policies to combat corruption are discussed. There was previously no such high council that existed in Afghanistan.

In the judiciary and law-enforcement areas, bodies that have the goal of implementing justice were instead well known in Afghanistan as some of the most corrupt agencies. We therefore reformed these institutions, beginning at the top. I

² This included transferring school construction responsibilities to our Ministry of Urban Development and Housing (MUDH), transferring responsibilities of hiring teachers to the Civil Service Commission, and providing greater oversight of Ministry of Education procurement by our National Procurement Authority (NPA)

³ <https://www.oecd.org/cleangovbiz/Integrity-Forum-2017-SciencesPo-gender-corruption.pdf>



appointed three new supreme-court justices, a new attorney general, and replaced all 34 appellate judges and a total of 1,300 total judges. We are now moving to appointing 360 new lower-level judges. Many of these additional appointments have been our capable women judges. In addition to new appointments, we are clearing a large backlog of approximately 4,000 cases that was in the court system in 1395. We have eliminated the entire backlog of cases, except for 400 new cases that were filed only during the last quarter of 1396.

The creation of the Anti-Corruption Justice Center (*ACJC*) and Major Crimes Task Force (*MCTF*) has given a new impetus to identifying and prosecuting anti-corruption cases. Your report indicates that such institutions have not been given the necessary resources or support. While much remains to be done, we disagree with your assessment. We have recently allocated new buildings to provide secure housing for senior ACJC and MCTF members. We have finalized the transition of additional armored vehicles to ACJC members. And the head of the MCTF was recently suspended, while we investigate allegations against him.

As a result, since its establishment, more than 400 cases have been referred to the ACJC, leading to convictions in 25 cases, a total of 103 persons convicted, and over AFN1.0 billion in asset recoveries. This includes the convictions of four deputy ministers, thirteen generals, and the placement of an additional 13 generals on no-fly lists. Two additional cases were just referred to the ACJC. This includes a case of corruption of more than AFN2.3 billion by 32 generals, as well as another case that includes taking more than AFN700 million by one general. Few countries have so quickly moved to charge such high-level individuals.

Furthermore, as required by our Constitution, we established a special court for trials of accused Ministers in late 2017. Two cases have already been referred to this special court, and another case will be referred to the court shortly, highlighting that even the highest levels of government are not immune to being charged.

More broadly, our AGO have reviewed 1,515 corruption cases. Of these, 541 cases were investigated and referred to the courts. This led to convictions in 302 cases. The AGO has a plan to increase personnel in insecure districts before the end of this year, and now female employees comprise more than 20% of its workforce.

To ensure these reforms continue within the court system, our Supreme Court has developed an anti-corruption strategy, which was approved in February 2018. A first-quarter review of the implementation of this strategy has already been developed. In addition, a committee to monitor and supervise anti-corruption implementation has been established.



In economic institutions, economic actors had captured the procurement authority, the land authority, state corporations, and the mining sector. We therefore took action and created the National Procurement Agency (*NPA*). The NPA implemented a robust and transparent process. The National Procurement Commission (*NPC*), chaired by the President, has now held 149 meetings and approved over \$6.7 billion in contracts.⁴ In one of the most visible cases, we cancelled a fuel contract that led to over \$200 million in savings to U.S. taxpayers. To further cement procurement reforms, we have approved a new beneficial ownership (*BO*) strategy, and have appointed a new committee (led by H.E. Vice President Danish) to develop the required legislation and regulations to implement this new strategy.

Second, we strengthened the independent land authority (*ARAZI*) and eliminated the ability of line ministries to sell their land without approval of the Cabinet. The problem was that individual ministries had landholdings, and had the authority to sell and rent their lands. This institutional arrangement led to a great deal of corruption as individuals at every level of these organizations made side deals to sell valuable state lands. We have reduced corruption in land dealing through a three-stage process. First, a Presidential Decree was enacted that prohibited the sale of government land, unless explicitly approved by Cabinet. Second, we spent three years to catalogue all government land holdings into a comprehensive land database. Already, over 200,000 hectares have been identified, and *ARAZI* is on track to identify 2 million hectares by 2020. The third step is then to reclaim usurped land from land grabbers. In this way, a comprehensive strategy for eliminating corruption related to land has been implemented.

Third, our state-owned enterprises and state corporations were another area of corruption. We have sought to change the culture in these institutions through a two-pronged approach. From a bottom-up perspective, we have implemented formal accounting systems to these organizations that formerly had no such systems. Second, from a top-down perspective, we have passed improved corporate governance initiatives, including requiring independent directors, publication of board minutes, and annual audits. Although we still have a way to fully implement these requirements, the framework for increasing accountability has been put in place.

Let me also note that are revitalizing our efforts regarding recovery of Kabul Bank assets. First, we appointed to internationally qualified accountants to the board of the Kabul Bank Receivership (*KBR*). Second, we have engaged with an international law firm, and have given them full authority to more aggressively seek Kabul Bank assets held abroad. We believe these actions will generate positive returns over the next few months.

⁴ As of May 2018



Fourth, in the mining sector, we developed a strategy and introduced transparency into mining contracts. Our approved mining roadmap outlines reforms that we will implement in terms of the mining law, reform of the ministry, and moving forward with new mining tenders. Revisions to the mining law are progressing, and it will be ready for passage this year. This new law will introduce reforms in terms of the tendering process. In terms of the Ministry of Mines and Petroleum (MoMP), we seek to corporatize all four of its state-owned enterprises. In terms of transparency, we have updated the mining contract database and have published every mining contract, both of which are now available online.

In addition to these economic structural reforms, we continue to improve our commercial legislative framework to support the private sector. Just this year, we have approved a new Limited Liabilities Companies (LLC) law, which provides for significantly greater minority shareholder protections rights. We also approved a new Insolvency Law, which updates the previous law passed in 1942 and provides a robust framework for dealing with challenged companies. And a new Transport Law reorients oversight in the sector from a top-down heavy control regime to a new licensing regime, which will be implemented this year. Finally, we have eliminated government monopolies in the power generation and telecom fiber sectors, allowing private investment in both sectors for the first time.

Next, let us turn to Afghanistan's defense institutions. Here, military positions more often than not came with the reward of monetary gains through the provision of lucrative fuel and logistics contracts to business partners. The most important change here was the enactment and implementation of the inherent law, which provided for a mutually beneficial layoff of 140 generals and a total of more than 2,000 senior officers. This will allow more of our younger and battle experienced officers to move up in the ranks, improving the overall effectiveness of our armed forces.

Just as important as personal decisions is the institutional restructuring of our defense institutions. Our Office of the National Security Council has been enlarged and reconfigured to deal with strategic issues. Responsibilities between agencies have been clarified with the transfer of ANCOP and the Border Police from our Ministry of Interior to our Ministry of Defense. Identification cards and computerized salary payment systems to remove ghost soldiers have been implemented and are providing salary payments for a significant portion of our armed forces. We expect it to be fully implemented this year. With the doubling of our special forces, a tripling of our air force, and a strong international train and advise mission, we are moving to a sustainable model to ensure the security of our country.



Finally, let us discuss the civil service. Here, it was very common for appointments to be made on the basis of bribes rather than on merit. This culture has been completely changed. We have now opened up all civil service appointments, with over 17,000 civil service positions being advertised through an open and transparent examination process. Two examples of such reforms include the open selection process of teachers throughout most provinces of Afghanistan, as well the open selection process of our commercial attachés.

FRAMEWORK FOR STRATEGIC DECISIONS

Given this context, we took a number of conscious decisions that differed from international practice. The most important decision in this regard was the decision to not create yet another independent anti-corruption office. We did this with our eyes open and with strategic intent, as we are very much aware of the UNCAC Convention that recommends the creation of an independent anti-corruption body.

However, every decision must consider the country context. Here, we must acknowledge that Afghanistan has already attempted to create various independent anti-corruption agencies, including one that was just dissolved.⁵ In fact, various reports⁶ have emphasized the need to consolidate Afghanistan's various anti-corruption bodies. It should be noted that some of these anti-corruption agencies were already independent as stand alone entities, but were still politically influenced and accused of being corrupt themselves.

Too often in Afghanistan, power continues to trump independence. If a new body is not embedded within a strong larger institution, especially against strong corrupt forces that have vested interests, it typically will not succeed. We have seen this too often in Afghanistan. We have also analyzed various country case studies, and found few examples of independent anti-corruption bodies that changed the culture of corruption. Based on our research, the only three successful independent anti-corruption bodies that we identified were in Singapore, Hong Kong, and Indonesia. However, Singapore and Hong Kong have significantly higher levels of rule of law, which tends to protect the power and independence of such bodies, while Indonesia only created an independent body when they were not able to create an anti-corruption division within their attorney general's office.

Instead, we decided on the model that we felt would be best for Afghanistan's particular situation. First, it had to consolidate Afghanistan's various anti-

⁵ *The High Office for Oversight and Corruption (HOOAC)*

⁶ https://www.transparency.org/news/pressrelease/to_fight_corruption_afghanistan_must_strengthen_and_reform_its_anti-corrupt



corruption bodies under one roof. Second, the placement of that office had to be an independent organization itself. Third, that independent organization had to be to have some existing capacities and ability to protect its anti-corruption mandate.

Using these key principles, we decided to create a position of Deputy Attorney General for Anti-Corruption within the Attorney General's Office (AGO). To ensure implementation, we revised the Law on Responsibilities of the AGO, which created the new position and transferred the responsibilities of HOOAC to this new department. Second, we are conducting a review process to ensure that only the most competent HOOAC employees were transferred to this new office. We believe this new position and office will be well placed to prosecute anti-corruption efforts from a position of strength. Furthermore, imbedding this new position within an existing body creates an institutionally strong position, as the AGO office can protect its mandate and cannot be dissolved, unlike an office such as HOOAC. Lastly, the creation of this new position places it close to the prosecution division, and thus one step closer to prosecuting any issues it finds. This reduces one deficiency of HOOAC, where files were developed, but rarely acted upon by the AGO.

SPECIFIC DISPUTED ISSUES

We also want to provide clarifications regarding various specific issues where we feel were incorrect in your report. The first issue was the engagement of civil society in the development of the strategy. While admittedly our stakeholder consultations could have been broader, we never excluded anyone from our strategy development process. The most important indicator of this fact is that a member of civil society always sits on our High Council for Governance and Anti-Corruption, our highest decision-making body, and the relevant body that approves all anti-corruption strategies and policies.

SIGAR Comment 1

Second, the report cites that *"the strategy is not fully integrated with other anti-corruption strategies."* We respectfully disagree. We also participate in the Extractive Industries Transparency Initiative (EITI), as well as the Open Government Partnership (OGP). These are important mechanisms to implement, but the strategy provides a broader context in which the EITI and OGP strategies can be implemented.

SIGAR Comment 2

Third, the report cites that *"anti-corruption bodies such as the ACJC and MCTF lack the capacity, resources, and security they need to perform their functions."* We have worked to fix any deficiencies. This includes providing housing for ACJC officials in secure areas, as well as providing armored vehicles to ACJC staff.

SIGAR Comment 3

Fourth, you cite that *"Afghanistan's law enforcement and judiciary often avoid investigating, prosecuting, and punishing powerful individuals."* However, as cited above, we are currently in the process of moving forward cases against three former



ministers, and have convicted four former deputy ministers and thirteen generals, among others. In fact, we argue that there are few developing countries in the world that are moving forward as quickly as Afghanistan in pursuing cases against high-ranking officials.

SIGAR Comment 4

Fifth, you cite that *“the roles and responsibilities of the AGO and MCTF with respect to investigating corruption crimes are unclear, leading to conflict between the two organizations.”* Let us clarify. In Afghanistan, the police are responsible for initial investigations, while the AGO investigations beyond the initial stage, and after the police have referred the case to the AGO. Due to complaints arising from abuse of power against certain offices within MCTF, I issued a presidential decree stipulating that the MCTF must coordinate with the AGO on anti-corruption cases. Therefore, we are not of the view that there are any opacity regarding the roles and responsibilities between the AGO and MCTF.

SIGAR Comment 5

MOVING FORWARD & RESPONSE TO SIGAR MATTERS FOR CONSIDERATION

We view the anti-corruption document as a living document: one where we incorporate lessons learned and recommendations from our partners. For this reason, we agree to take immediate action regarding some of the key issues raised in your report.

First, SIGAR recommended: *“Direct the Ministries of Finance, Communications and Information Technology, and Transport and Civil Aviation to publish, and immediately make public, the final progress reports for their 2017 anti-corruption action plans.”*

- GoIRA concurs with Recommendation 1. We have already directed the cited ministries to publish their progress reports. We expect this to occur before end-June 2018.

Second, SIGAR recommended: *“Revise the anti-corruption strategy to tie each goal to a precisely-defined benchmark with a realistic deadline, and develop mechanisms to incorporate ministry and civil society feedback during this process.”*

- GoIRA concurs with Recommendation 2. We plan to implement a process to revise the benchmarks to reflect the lessons learned during the implementation of the anti-corruption strategy thus far and to better align each goal with a specific benchmark.

Third, SIGAR recommended: *“Establish independent anti-corruption organizations in accordance with the United National Convention Against Corruption (UNCAC)”*



- GoIRA does not concur with Recommendation 3. As discussed in the previous section, we are familiar with the UNCAC principles, but argue that one must recognize the country-specific context. Furthermore, we argue that the Attorney General's Office (AGO), as an independent office, is the best location for anti-corruption initiatives. See previous section for our full response.

Fourth, SIGAR recommended: *"Add the MoD to the list of priority ministries required to submit an anti-corruption action plan for the High Council's review."*

- GoIRA concurs with Recommendation 4. This is also a deficiency that we have already begun to remedy. I have instructed my Minister of Defense to develop such an action plan by end-June 2018

Fifth, SIGAR recommended: *"Clarify which government entity or entities will take over High Office of Oversight and Anti-Corruption's responsibilities, if it is abolished."*

- GoIRA concurs with Recommendation 5, but argues that recent actions, including the passage of the revised Law on Responsibilities of the AGO, has made this recommendation no longer necessary.

Sixth, SIGAR recommended: *"Provide the necessary resources and specialized staff, as well as the training that such staff may require to carry out their functions, to key anti-corruption entities in accordance with the UNCAC."*

- GoIRA partially concurs with Recommendation 6. We argue that we have provided staff with significant resources, including housing and armored vehicles for ACJC staff. Such staff are well trained and resourced. However, we will always seek to provide additional support to the extent available.

Seventh, SIGAR recommended: *"Conduct a second round of polygraph tests (and annual follow-up rounds thereafter) for Anti-Corruption Justice Center and Major Crimes Task Force personnel, and take appropriate action against individuals who fail these tests."*

- GoIRA concurs with Recommendation 7. SIGAR cites that there are unqualified and potentially corrupt actors within key Afghanistan anti-corruption institutions. We agree. To ensure that these institutions are comprised of the highest caliber and ethical personnel, we commit to acting on the findings of a second polygraph test. For this to occur, we are only awaiting for the specialized polygraph teams to arrive to Kabul to conduct the polygraph tests of MCTF and ACJC employees.



We are open to additional suggestions for improvement. We view our anti-corruption strategy as a living document, and will always consider additional benchmarks, and make changes where appropriate. To this end, we will clarify and make more specific some benchmarks during the next few months. We share the same goal of reducing corruption in Afghanistan, and in this regards, we view SIGAR as a natural partner in the fight against corruption.

Once again, we thank you for working with the Government of the Islamic Republic of Afghanistan on anti-corruption efforts.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mohammad Ashraf Ghani'.

Mohammad Ashraf Ghani
President
Islamic Republic of Afghanistan

Honorable John F. Sopko
Special Inspector General for Afghanistan Reconstruction
2530 Crystal Drive
Arlington, VA 22202

SIGAR's Response to Comments from the Afghan Government

SIGAR Comment 1. In response to this concern, we revised the report to better reflect the fact that the Afghan government did not actively exclude anyone from the strategy's development process. Rather, officials from various ministries and civil society organizations expressed to us that they did not feel adequately consulted as a result of the High Council's rush to finalize the strategy by early October 2017. *The Kuala Lumpur Statement on Anti-Corruption Strategies* emphasizes the importance of maintaining an inclusive, transparent process and engaging a broad subsection of stakeholders.

SIGAR Comment 2. In response to this concern, we revised the report to better reflect that we found Afghan government officials who were involved in existing transparency initiatives, such as the Extractive Industries Transparency Initiative and Open Government Partnership, were not involved in the development of the anti-corruption strategy. As a result, this created conflicts and missed linkages between the strategy and these two initiatives. For example, Open Government Partnership officials drafted their country action plan with the expectation that the High Office of Oversight and Anti-Corruption (HOO) would take the lead on its anti-corruption initiatives, and were not aware that the High Council was planning to abolish the HOO.

SIGAR Comment 3. We acknowledge that the Afghan government has taken action to provide secure housing and armored vehicles for Anti-Corruption Justice Center (ACJC) and Major Crimes Task Force (MCTF) personnel. However, multiple officials told us over the course of our fieldwork that these actions have not yet fully addressed the ACJC's and MCTF's security needs. We plan to continue monitoring progress on this issue during our follow-up work.

SIGAR Comment 4. We commend the Afghan government, both here and in the report, for prosecuting former deputy ministers and generals accused of corruption. However, Afghan, U.S., and international donor officials all expressed serious concerns about the Afghan government's ability and willingness to prosecute high-ranking officials, particularly those who served or are serving in the current government. As long as powerful individuals remain free from the threat of prosecution for their crimes, the Afghan government's credibility in this area will continue to suffer.

SIGAR Comment 5. In response to this concern, we revised the report to better reflect the fact that the Attorney General's Office (AGO) and the MCTF's roles and responsibilities are not unclear because of Afghan law, but rather because of definitional issues related to what qualifies as detective activities and what qualifies as investigative activities. As noted in the report, U.S. and Afghan officials indicated that there remain significant differences of opinion around where the MCTF's role in detecting corruption crimes ends and where the AGO's role in investigating corruption crimes begins.

APPENDIX VI - COMMENTS FROM U.S. EMBASSY KABUL AND THE U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT



Embassy of the United States of America

Kabul, Afghanistan

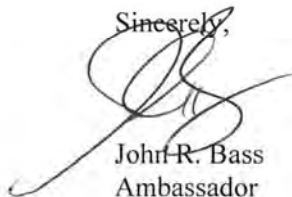
May 13, 2018

Mr. John F. Sopko
Special Inspector General
For Afghanistan Reconstruction
1550 Crystal Drive, Suite 900
Arlington, VA 22202

Dear Mr. Sopko:

The U.S. Embassy thanks SIGAR for the opportunity to review the report titled “Afghanistan’s Anti-Corruption Efforts: The Afghan Government Has Begun to Implement an Anti-Corruption Strategy, but Significant Problems Must Be Addressed.” The Report acknowledges the accomplishments and challenges associated with implementation of the Government of Afghanistan’s anti-corruption strategy. State and USAID assess that strategies, anti-corruption agencies, and focus on capacity-building will only be effective when senior Afghan Government officials fully commit to implement and maintain transparency throughout all three branches of government. While many top level Afghan government officials have publicly stated and affirmed their commitment to fighting corruption, State and USAID are concerned that at times the Afghan Government’s commitment to enforcing rule of law and to ensuring transparency and accountability wavers, and commitment to fighting corruption varies widely between the three branches of government. As noted in the Report, the Afghan government must continue and expand its efforts to demonstrate to the people of Afghanistan its commitment to fighting corruption.

Sincerely,



John R. Bass
Ambassador

Sincerely,



Tamra Halmrast-Sanchez
Acting USAID Mission Director

APPENDIX VII - COMMENTS FROM THE DEPARTMENT OF STATE BUREAU OF INTERNATIONAL NARCOTICS AND LAW ENFORCEMENT AFFAIRS




United States Department of State

Washington, D.C. 20520

Mr. John F. Sopko
Special Inspector General
For Afghanistan Reconstruction
1550 Crystal Drive, Suite 900
Arlington, VA 22202

Dear Mr. Sopko:

The Department of State thanks SIGAR for the opportunity to review the report titled "Afghanistan's Anti-Corruption Efforts: The Afghan Government Has Begun to Implement an Anti-Corruption Strategy, but Significant Problems Must Be Addressed". The Report acknowledges the accomplishments and challenges associated with implementation of the Government of Afghanistan's anti-corruption strategy. State believes that strategies, anti-corruption agencies, and focus on capacity-building will only be effective when senior Afghan Government officials fully commit to implement and maintain transparency throughout all three branches of government. While many top level Afghan government officials have publicly stated and affirmed their commitment to fighting corruption, State is concerned that at times the Afghan Government's commitment to enforcing rule of law and to ensuring transparency and accountability wavers. We understand the unique challenges facing the Afghan Government in addressing corruption and commend the government on the accomplishments achieved thus far. As noted in the Report, the Afghan government must continue and expand its efforts to demonstrate to the people of Afghanistan its commitment to fighting corruption. Attached to this letter are technical comments for SIGAR's review and consideration.

Sincerely,

Jeffrey C. Lee
Acting Executive Director
Bureau of International
Narcotics and Law
Enforcement Affairs

Attachment:
Technical Comments

APPENDIX VIII - ACKNOWLEDGMENTS

Chris Borgeson, Senior Program Manager

Zachary Rosenfeld, Analyst-in-Charge

Charles Hyacinthe, Special Agent in Charge

John Schenk, Senior Program Analyst

Margaret Tiernan, Senior Program Analyst

Farid Ahmad Akrami, Program Analyst

This performance audit was conducted
under project code SIGAR-121A.

SIGAR's Mission

The mission of the Special Inspector General for Afghanistan Reconstruction (SIGAR) is to enhance oversight of programs for the reconstruction of Afghanistan by conducting independent and objective audits, inspections, and investigations on the use of taxpayer dollars and related funds. SIGAR works to provide accurate and balanced information, evaluations, analysis, and recommendations to help the U.S. Congress, U.S. agencies, and other decision-makers to make informed oversight, policy, and funding decisions to:

- improve effectiveness of the overall reconstruction strategy and its component programs;
- improve management and accountability over funds administered by U.S. and Afghan agencies and their contractors;
- improve contracting and contract management processes;
- prevent fraud, waste, and abuse; and
- advance U.S. interests in reconstructing Afghanistan.

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