

SIGAR

**Special Inspector General for
Afghanistan Reconstruction**

SIGAR 21-47 Audit Report

**Afghanistan's Anti-Corruption Efforts:
Corruption Remained a Serious Problem in the
Afghan Government and More Tangible Action
was Required to Root It Out**



**AUGUST
2021**

SIGAR

Special Inspector General for Afghanistan Reconstruction

WHAT SIGAR REVIEWED

In May 2017, the Joint Explanatory Statement of the Consolidated Appropriations Act, 2017, directed SIGAR to analyze the enactment of the Afghan government's national anti-corruption strategy and five ministerial action plans. SIGAR issued that audit report in May 2018. Then, the Joint Explanatory Statement in 2018 tasked SIGAR with updating the May 2018 report, which we released in November 2019.

The November 2019 report reviewed the Afghan government's revised anti-corruption strategy and its implementation, and the Afghan government's progress towards addressing SIGAR's 2018 Matters for Consideration and other anti-corruption reforms, including the impunity of powerful actors.

Recognizing the importance of Afghanistan's anti-corruption efforts, the Senate Committee on Appropriations directed us to update our November 2019 report to evaluate whether the Afghan government is making any further progress toward achieving its anti-corruption objectives.

The objectives of this report were to determine the extent to which the Afghan government (1) addressed key concerns raised by SIGAR's November 2019 report and by international donors, including the extent to which the Afghan government took practical steps that yielded quantifiable and tangible results; (2) took steps towards addressing the impunity of powerful Afghans; and (3) made progress in meeting its international anti-corruption commitments.

August 2021

Afghanistan's Anti-Corruption Efforts: Corruption Remained a Serious Problem in the Afghan Government and More Tangible Action was Required to Root It Out

SIGAR 21-47 AUDIT REPORT

WHAT SIGAR FOUND

We completed substantive field work for this audit in April 2021. We briefed the Afghan government on our preliminary findings on April 1, 2021, then provided a complete draft of this report to the Afghan government for review and comment on May 21, 2021. We received comments from the Afghan government on July 24, 2021. Therefore, the events of August 2021, including the collapse of the Afghan government and the Taliban's return to the capital, are not considered or incorporated into our findings or the associated matters for consideration directed to the Afghan government.

Nevertheless, this report and others previously issued by SIGAR demonstrate the powerfully corrosive effect that corruption has had on core Afghan institutions, including the Afghan National Defense and Security Forces. Addressing our findings and associated matters for consideration would benefit any future Afghan government that wishes to meaningfully address the endemic corruption that has plagued Afghanistan's institutions for many years.

SIGAR found that the Afghan government has made some progress in combatting corruption, but serious problems remain. The Afghan government often seeks to make paper or "intangible" reforms, which ultimately do little to fight corruption. Additionally, the impunity of powerful actors remains a serious issue, and the Afghan government has made uneven progress in meeting its international anti-corruption commitments.

In response to SIGAR's 2019 report, which contained 8 matters for consideration for the Afghan government, the Afghan government committed to meeting 26 benchmarks that it had created and said would address these matters for consideration. As of the writing of this report, the Afghan government had met 19 of these 26 benchmarks. However, these completed benchmarks produced limited tangible reductions in corruption. (For the purposes of this report, SIGAR considers "tangible" reforms to be concrete reforms that are likely to reduce corruption without requiring further steps.) Out of the 19 completed benchmarks, SIGAR only considers 5 to be "tangible," while the remaining 14 are considered to be "intangible." Furthermore, these 19 completed benchmarks meant all benchmarks associated with 3 of the 8 matters for consideration were met.

SIGAR also found that the Afghan government addressed some concerns raised by international donors, but concerns about resourcing the Access to Information Commission, delays in appointing commissioners to the Anti-Corruption Commission, and corruption at the Ministries of Defense and Interior persist. Additionally, while the Afghan government has taken steps to address donors' concerns, some challenges remain to achieving

tangible anti-corruption results. SIGAR also found that neither the Afghan government nor the international donors have demonstrated the political will to create and implement specific, verifiable, and time-bound benchmarks related to the fight against corruption.

Similarly, the relative impunity of powerful Afghans during all phases of the investigative and judicial processes continues to be a problem. Certain constitutional protections for sitting members of Parliament; a reluctance or inability to investigate, arrest, and prosecute powerful individuals; and political pressure on Afghan legal institutions all undermine the Afghan government's ability to combat corruption. Separately, a lack of resources, a lack of capacity, leadership turnover, and even corruption within the anti-corruption institutions themselves, contributed to the Afghan Major Crimes Task Force's failure to arrest corrupt actors, judges sending back cases for further investigation, and fewer prosecutions of high-ranking officials at the Anti-Corruption Justice Center.

In 2018 and 2019, the Afghan government publicly committed to implementing arrest warrants against 255 individuals; as of July 2021, it reported executing approximately 83 percent of these warrants. The Afghan government has arrested some notable figures, including Major General Paikan, who was convicted of complicity in murder and misuse of authority, but evaded arrest for a number of years. However, according to information we received from the Afghan government, it has not made arrests in other high profile cases. Political pressure and fear for the safety of anti-corruption officials also impact efforts at anti-corruption institutions. While the Anti-Corruption Justice Center prosecuted 84 individuals in 2020, tying 2019 for the most corruption prosecutions on record, only 9 of the prosecuted individuals were of the "highest rank," the lowest number since the Anti-Corruption Justice Center was founded in 2017.

Additionally, the Afghan government has made limited progress in meeting its international anti-corruption commitments. Although the Afghan government reported meeting 96 percent of its anti-corruption benchmarks in the Geneva Mutual Accountability Framework, international donors are concerned about the reliability of the data and disagree over whether some of the benchmarks have been achieved. The Afghan government belongs to the United Nations Convention against Corruption, the United Nations Convention on Transnational Organized Crime, and the Asia/Pacific Group on Money Laundering, which all include standards for asset declaration and verification for public officials, cooperation with the law enforcement bodies of other countries, and anti-money laundering efforts. Afghanistan has made progress by meeting its asset declaration goals for public officials, but has made less progress in meeting its asset verification goals. In March 2021, the Afghan government reported that 29,848 officials declared their assets in 2020, exceeding its goal of 22,500. The government also verified the assets of 7,399 officials in the 2 years leading up to September 2020. The Afghan government published the names of 197 officials for failing to declare their assets in accordance with the sanctions listed in the Asset Declaration and Verification Law. After publication, 64 of the 197 officials declared their assets.

The Afghan government also achieved limited cooperation on criminal matters. Although the Afghan government participates in the International Criminal Police Organization (INTERPOL), it struggles with extraditing citizens back to Afghanistan, especially those suspected of corruption.

Finally, Afghanistan has made progress with anti-money laundering efforts, evidenced by its removal from the Financial Action Task Force grey list in 2018, and its continued funding of the Financial Transactions and Reports Analysis Center of Afghanistan (FinTRACA), one of Afghanistan's most respected anti-corruption institutions. The Afghan government was able to inspect 2,817 out of 3,176 hawaladars (informal money service providers), and register 500 previously unlicensed hawaladars. Despite this, U.S. officials have stated FinTRACA lacks the resources to fully investigate and monitor Afghanistan's financial system, including its hawaladars, through which an estimated 60 to 90 percent of Afghanistan's financial transactions flow.

MATTERS FOR CONSIDERATION FOR THE AFGHAN GOVERNMENT

If the Afghan government chooses to create updated benchmarks for its 2021 anti-corruption strategy or other national anti-corruption strategy documents, it should consider

1. creating and implementing benchmarks that are specific, verifiable, time bound, and achieve the desired outcome.

In order to enhance the rule of law in Afghanistan and reduce legal immunity and de facto impunity, the Afghan government should:

2. Amend Article 102 of the Afghan Constitution or develop and enforce procedures for the arrest and prosecution of members of Parliament;
3. Create and maintain a single, comprehensive list of warrants for individuals accused of corruption crimes;
4. Provide additional resources to support the declaration and verification of assets by public officials;
5. Increase formal and informal cooperation with international law enforcement organizations; and
6. Provide the necessary resources to FinTRACA to enable it to conduct regular inspections at hawaladars and better monitor illicit financial flows.

SIGAR provided a draft of this report to the Afghan government, the U.S. Departments of State, Defense, and Justice, and the U.S. Agency for International Development for review and comment. SIGAR received written comments from the Afghan government which are reproduced in appendix IV. The Afghan government concurred with the first and fifth matters for consideration and concurred in principle with the second, third, fourth, and sixth matters for consideration. SIGAR also received technical comments from State, which are incorporated as appropriate. The Department of Defense, the Department of Justice, and the U.S. Agency for International Development did not provide comments.



SIGAR

Office of the Special Inspector General
for Afghanistan Reconstruction

August 31, 2021

The Honorable Christopher Coons
Chair
Subcommittee on State, Foreign Operations,
And Related Programs
Committee on Appropriations
United States Senate

The Honorable Barbara Lee
Chairwoman
Subcommittee on State, Foreign Operations,
And Related Programs
Committee on Appropriations
United States House of Representatives

The Honorable Lindsey Graham
Ranking Member
Subcommittee on State, Foreign Operations,
And Related Programs
Committee on Appropriations
United States Senate

The Honorable Hal Rogers
Ranking Member
Subcommittee on State, Foreign Operations,
And Related Programs
Committee on Appropriations
United States House of Representatives

This report provides the updated results of SIGAR's review of the Afghan government's efforts to combat corruption and implement its national anti-corruption strategy. SIGAR conducted this audit in accordance with the Senate Committee on Appropriations report pertaining to the fiscal year 2020 appropriations for the Department of State, foreign operations, and related programs. The report directed SIGAR to:

[U]pdate the assessment required by the explanatory statement accompanying the Department of State, Foreign Operations, and Related Programs Appropriation Act, 2017 (division J of Public Law 115-31) of the Government of Afghanistan's implementation, resourcing, and administration of the *Afghanistan National Strategy for Combating Corruption*, including whether such government is making progress toward achieving its anti-corruption objectives, addressing impunity of powerful individuals, and meeting international commitments[.]¹

Accordingly, the objectives of this audit were to determine the extent to which the Afghan government (1) addressed key concerns raised by SIGAR's November 2019 report and by international donors, including the extent to which the Afghan government took practical steps that yielded quantifiable and tangible results; (2) took steps towards addressing the impunity of powerful Afghans; and (3) made progress in meeting its international anti-corruption commitments.

We completed substantive field work for this audit in April 2021.² Therefore, the events of August 2021, including the collapse of the Afghan government and the Taliban's return to the capital, are not considered or incorporated into our findings or the associated matters for consideration directed to the Afghan government. Nevertheless, addressing our findings and associated matters for consideration would benefit any future Afghan government that wishes to meaningfully address the endemic corruption that has plagued Afghanistan's institutions for many years.

¹ U.S. Congress, Senate, Committee on Appropriations, *Department of State, Foreign Operations and Related Programs Appropriations Bill, 2020; Report (to Accompany S. 2583)*. 116th Cong., 1st Session, 2019, S. Rep. 116-126, p. 31, <https://www.govinfo.gov/content/pkg/CRPT-116srpt126/html/CRPT-116srpt126.htm>.

² Specifically, we briefed the Afghan government on our preliminary findings on April 1, 2021, then provided a complete draft of this report to the Afghan government for review and comment on May 21, 2021. We received comments from the Afghan government on July 24, 2021.



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Overall, the Afghan government provided us the access necessary to conduct this work, and we are offering the following matters for the Afghan government to review and consider. The Afghan government should: (1) create and implement benchmarks that are specific, verifiable, time bound, and achieve the desired outcome; (2) amend Article 102 of its Constitution or develop and enforce procedures for the arrest and prosecution of members of Parliament; (3) create and maintain a single, comprehensive list of warrants for individuals accused of corruption crimes; (4) provide additional resources to support the declaration and verification of assets by public officials; (5) increase formal and informal cooperation with other international law enforcement organizations; and (6) provide resources to Financial Transactions and Reports Analysis Center of Afghanistan and other relevant bodies to enable them to conduct regular inspections at hawaladars and better monitor illicit financial flows.

We provided a draft of this report to the Afghan government, the U.S. Departments of State, Defense, and Justice, and the U.S. Agency for International Development for review and comment on May 21, 2021. We received written comments from the Afghan government's Anti-Corruption Commission on July 24, 2021, which are reproduced in appendix IV. The Afghan government concurred with the first and fifth matters for consideration and concurred in principle with the second, third, fourth, and sixth matters for consideration. The Afghan government listed actions it intends to take for each matter for consideration and we consider the listed actions responsive to the matters for consideration. We also received technical comments from State on June 21, 2021, which are incorporated as appropriate. The Department of Defense, the Department of Justice, and the U.S. Agency for International Development did not provide comments.

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.

John F. Sopko
Special Inspector General
for Afghanistan Reconstruction

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ABBREVIATIONS

ACJC	Anti-Corruption Justice Center
ACC	Anti-Corruption Commission
AGO	Attorney General's Office
AIC	Access to Information Commission
ANDSF	Afghan National Defense and Security Forces
CMS	Case Management System
CSTC-A	Combined Security Transition Command–Afghanistan
DOD	Department of Defense
DOJ	Department of Justice
FinTRACA	Financial Transactions and Reports Analysis Center of Afghanistan
GMAF	Geneva Mutual Accountability Framework
HCLAC	High Council on Rule of Law and Anti-Corruption
INL	Bureau of International Narcotics and Law Enforcement Affairs
INTERPOL	International Criminal Police Organization
MCTF	Major Crimes Task Force
MOD	Ministry of Defense
MOI	Ministry of Interior Affairs
PCASS	Preliminary Credibility Assessment Screening System
State	Department of State
UNAMA	United Nations Assistance Mission in Afghanistan
UNCAC	United Nations Convention Against Corruption
UNTOC	United Nations Convention on Transnational Organized Crime
USAID	U.S. Agency for International Development

Afghanistan is ranked among the most corrupt nations in the world. The World Bank ranked Afghanistan in the bottom 7 percent of countries for “control of corruption” every year from 2003 to 2019, and Transparency International’s corruption perceptions index ranked Afghanistan as 165th out of 180 countries in 2020.¹ Similarly, according to a 2019 survey from The Asia Foundation, 81.5 percent of Afghans found that corruption presents a “major problem.”² Corruption is pervasive in Afghanistan, and has detrimental and destabilizing impacts on Afghanistan’s development and security. Corruption undermines Afghanistan’s political institutions, incenses and perpetuates conflict, and depletes resources that could be used to offset endemic poverty.³

In recognition of the myriad issues caused or exacerbated by Afghanistan’s systemic corruption, in May 2017, the explanatory statement of the Consolidated Appropriations Act, 2017 directed SIGAR to analyze the enactment of the Afghan government’s national anti-corruption strategy and five ministerial action plans.⁴ Our May 2018 audit report found that the Afghan government had begun to implement its anti-corruption strategy, but that significant problems, including conflicting responsibilities and capacity and resource constraints, needed to be addressed.

The explanatory statement of the Consolidated Appropriations Act, 2018 tasked us with updating our May 2018 report.⁵ In response, we released a second anti-corruption report in November 2019, which assessed the Afghan government’s updated anti-corruption strategy and associated benchmarks, as well as other anti-corruption-related progress. In that report, we found that the Afghan government had made some additional progress in meeting its benchmarks, but that serious challenges remained to address systemic corruption.

Since our first report, the Afghan government has repeatedly assured international donors that it is committed to combatting corruption. However, its national anti-corruption strategy’s last benchmark had a June 2020 deadline and a new long-term strategy is yet to be established. Other issues, including Afghanistan’s 2019 presidential elections, peace negotiations between the Afghan government and the Taliban, troop withdrawals by the United States and other international partners, and the COVID-19 pandemic, also compete for attention from international stakeholders and the Afghan government, potentially diminishing their attention to corruption challenges.

In acknowledgment of ongoing corruption concerns in Afghanistan, the Senate Committee on Appropriations report pertaining to the fiscal year 2020 appropriations for the Department of State, foreign operations, and related programs directed us to update our November 2019 anti-corruption report to evaluate whether the Afghan government is making progress in achieving its objectives.⁶ Our November 2019 report noted that the Afghan government developed action plans, focused on outputs, and performed “box-checking exercise[s].”⁷ However, paper progress may not result in tangible outcomes for anti- and counter-corruption efforts. In accordance with the 2020 requirement, the three objectives of this audit were to determine the extent to which the Afghan government

1. Addressed key concerns raised by SIGAR’s November 2019 report and by international donors, including the extent to which the Afghan government took practical steps that yielded quantifiable and tangible results;

¹ Transparency International, “Corruption Perceptions Index 2020,” accessed April 4, 2021, <https://www.transparency.org/en/countries/afghanistan>; and World Bank, Worldwide Governance Indicators, “2003–2018,” August 25, 2020, <https://databank.worldbank.org/source/worldwide-governance-indicators>.

² The Asia Foundation, *Afghanistan in 2019: A Survey of the Afghan People*, 2019, p. 22, https://asiafoundation.org/wp-content/uploads/2019/12/2019_Afghan_Survey_Full-Report.pdf.

³ According to the World Bank, as of 2016, 54.5 percent of Afghanistan’s population lived below the poverty line. World Bank, World Development Indicators, “1990–2020,” accessed April 4, 2021, <https://databank.worldbank.org/reports.aspx?source=2&country=AFG#>.

⁴ 163 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.

⁵ 164 Cong. Rec. H2851 (daily ed. March 22, 2018) (explanatory statement of the Consolidated Appropriations Act, 2018, Pub. L. No. 115-31).

⁶ U.S. Congress, Senate, Committee on Appropriations, *Department of State, Foreign Operations and Related Programs Appropriations Bill, 2020; Report (to Accompany S. 2583)*, 116th Cong., 1st Session, 2019, S. Rep. 116-126, p. 31.

⁷ SIGAR, *Afghanistan’s Anti-Corruption Efforts: The Afghan Government Made Progress in Meeting its Anti-Corruption Strategy Benchmarks, but Serious Challenges Remain to Fighting Corruption*, SIGAR 20-06-AR, November 1, 2019, p. 8.

2. Took steps towards addressing the impunity of powerful Afghans; and
3. Made progress in meeting its international anti-corruption commitments.

To achieve these objectives, we analyzed relevant Afghan legislation, as well as documents from various ministries and institutions in the Afghan government, including the Attorney General's Office (AGO), the Anti-Corruption Justice Center (ACJC), the High Council on Rule of Law and Anti-Corruption (HCLAC), the Ministry of Interior Affairs (MOI), the Asset Declaration and Review Office, Special Anti-Corruption Secretariat, and the Major Crimes Task Force (MCTF). We also reviewed documents from international organizations, including the United Nations Assistance Mission in Afghanistan (UNAMA). We assessed the United Nations Convention Against Corruption (UNCAC), the United Nations Convention on Transnational Organized Crime (UNTOC), and the Geneva Mutual Accountability Framework (GMAF), each of which Afghanistan has signed. We also conducted interviews with officials from U.S. agencies, such as the Department of State (State), Department of Justice (DOJ), Department of Defense (DOD), and Department of the Treasury; officials from other foreign governments and international organizations; and Afghan government officials from agencies including the ACJC, AGO, Ministry of Finance, Ombudsperson Office, and Special Anti-Corruption Secretariat.⁸

We conducted our work in accordance with generally accepted government auditing standards in Arlington, Virginia, from January 2020 through August 2021.⁹

BACKGROUND

Afghanistan attempted to develop its first national anti-corruption strategy in compliance with the UNCAC in February 2008. The Afghan government released that anti-corruption strategy in July 2008 as part of the Afghan National Development Strategy, followed by its ratification of the UNCAC in August 2008. In 2014 the United Nations Development Programme criticized the July 2008 anti-corruption strategy, calling it a “wish list” and stating that the strategy did not prioritize actions well.¹⁰

After President Ghani's election in 2014, the Afghan government showed renewed interest in completing Afghanistan's anti-corruption commitments under the UNCAC. In December 2014, the Afghan government and delegations from 59 countries, including the United States, issued a joint communiqué stating that the Afghan government “requires long-term commitments and sustained realistic strategies to root out corruption.”¹¹ During the October 2016 Brussels Conference on Afghanistan, the Afghan government recommitted to addressing corruption, agreeing to an updated set of deliverables related to fighting corruption under the “Self-Reliance through Mutual Accountability Framework.” The updated anti-corruption deliverables included several objectives related to developing and implementing three anti-corruption policies, specifically:

1. The HCLAC would produce and ensure a whole-of-government anti-corruption strategy in the first half of 2017.

⁸ SIGAR further analyzed pertinent classified and non-public documents. While this report is unclassified, information found within the classified and non-public sources that we reviewed does not challenge what we publicly recount. This audit focuses on widespread, pervasive issues that inhibit anti-corruption efforts in Afghanistan and does not seek to recognize any individual Afghan or international official whose actions undermined the fight against corruption.

⁹ We completed substantive field work for this audit in April 2021. Specifically, we briefed the Afghan government on our preliminary findings on April 1, 2021, then provided a complete draft of this report to the Afghan government for review and comment on May 21, 2021. We received comments from the Afghan government on July 24, 2021. Therefore, the events of August 2021, including the collapse of the Afghan government and the Taliban's return to the capital, are not considered or incorporated into our findings or the associated matters for consideration directed to the Afghan government.

¹⁰ UN Development Programme, *Anti-Corruption Strategies: Understanding What Works, What Doesn't and Why? Lessons Learned from the Asia-Pacific Region*, 2014, p. 13.

¹¹ London Conference on Afghanistan, Communiqué, “Afghanistan and International Community: Commitments to Reforms and Renewed Partnership,” December 4, 2014, <https://www.afghanembassy.us/news/afghanistan-and-international-communitycommitments-to-reforms-and-renewed-partnership/>.

2. The Afghan government would begin implementing its strategy in the second half of 2017.
3. Afghanistan's five revenue-generating ministries would publicly report on their progress implementing their September 2016 anti-corruption action plans in 2017.¹²

On October 12, 2017, the Afghan government released the "Afghanistan National Strategy for Combatting Corruption," an English language version of its anti-corruption strategy. This anti-corruption strategy contained 38 benchmarks for the Afghan government to complete by January 2019. In May 2018, we released our assessment examining the creation and implementation of this strategy, which contained six matters for the Afghan government to consider in order to provide reasonable assurance that it implemented its anti-corruption strategy in line with international norms and standards.¹³ In December 2018, the Afghan government approved a revised anti-corruption strategy to align with our recommendations. This revised anti-corruption strategy contained 102 benchmarks, the last of which had a due date of June 2020. In 2018, Congress asked us to update our May 2018 report and determine whether the Afghan government was making progress toward achieving its anti-corruption objectives. We released our second anti-corruption assessment on November 1, 2019.¹⁴ Our report identified five primary concerns:

1. The way in which the Afghan government implemented its revised anti-corruption strategy caused concern among international donors and Afghan civil society organizations.
2. The Afghan government did not always achieve intended outcomes of anti-corruption strategy benchmarks, although it technically met many of them.
3. The Afghan government only met some of the anti-corruption benchmarks contained in the U.S. – Afghanistan Bilateral Compact (Afghanistan Compact) between June 2018 and March 2019.¹⁵
4. The Afghan government made progress toward addressing SIGAR's 2018 Matters for Consideration, but concerns found in SIGAR's 2018 audit report, such as the impunity of powerful Afghans, remained.
5. The Afghan government made additional anti-corruption reforms, but challenges continued; for example, warrant execution did not increase despite increased coordination between Afghan agencies.

Based on these findings, in order to improve implementation of the "Afghanistan National Strategy for Combatting Corruption" and other anti-corruption efforts, we issued eight matters for the Afghan government to review and consider:

1. Increase the resources provided to anti-corruption law enforcement organizations such as the AGO, ACJC, and MCTF, to provide them with the ability to increase the number of arrests and prosecutions of corrupt individuals;
2. Take action to reduce the legal and de facto immunity of powerful individuals;
3. Continue to polygraph personnel at the ACJC and the MCTF on a regular basis and increase efforts to eliminate lost productivity from the dismissal of personnel who fail the polygraph examinations;
4. Make public all anti-corruption court decisions in accordance with Afghan law;
5. Increase coordination and cooperation between Afghan law enforcement organizations and international law enforcement organizations;
6. Increase efforts to recover assets stolen from Kabul Bank and return the funds to the Afghan Central Bank;
7. Take actions that allow for the distribution of criminally derived assets to government organizations; and

¹² The five revenue-generating ministries designated to publicly report on their progress implementing their September 2016 anti-corruption action plans were the Ministry of Finance, the Ministry of Mines and Petroleum, the Ministry of Commerce and Industries, the Ministry of Communications and Information Technology, and the Ministry of Transportation and Civil Aviation.

¹³ SIGAR, *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-AR, May 31, 2018.

¹⁴ SIGAR, *Afghanistan's Anti-Corruption Efforts*, SIGAR 20-06-AR.

¹⁵ We reported on the Afghanistan Compact in our prior two anti-corruption assessments. Agreed upon in August 2017, the Afghanistan Compact is a compilation of the Afghan government's commitments across governance, security, economic growth, and peace and reconciliation. The Compact assists the U.S. and Afghan governments with monitoring progress on these commitments and offers opportunities for course correction. However, as of March 2020, State reported that the Afghanistan Compact has been suspended, and in September 2020, the Afghan government reported that it had not been updated for 2020 or beyond.

8. Continue to implement the Case Management System (CMS) and ensure its systematic use among Afghan law enforcement organizations.

The Afghan government concurred with all eight matters for consideration and provided 26 specific actions it would take to implement them. We discuss the Afghan government's implementation of our matters for consideration later in this report.

The Afghan Government Agreed to International Standards and Anti-Corruption Frameworks

In addition to its national anti-corruption strategy, the Afghan government agreed to, and signed, several international conventions, standards, and frameworks that outline its commitment to combatting corruption. The Afghan government signed the UNCAC in 2004 and ratified it in 2008.¹⁶ The UNCAC contains commitments that the member countries should complete. For example, Articles 5 and 6 require member countries to have in place “effective, coordinated anti-corruption polices,” and 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.¹⁷ Article 20 mandates member countries to consider adopting measures to criminalize “illegal enrichment” activities by public officials.¹⁸ Articles 44 through 50 require member countries to cooperate with each other in criminal matters, such as extradition, mutual legal assistance, and law enforcement.¹⁹ Finally, Article 63 established the Conference of States Parties to the Convention in order to “improve the capacity of and cooperation between” the signatories.²⁰

In addition to the UNCAC, the Afghan government signed the UNTOC in 2000 and ratified it in 2003. The UNTOC has several similar provisions to the UNCAC, such as Article 27, which requires that member countries cooperate closely with one another to enhance the effectiveness of law enforcement.²¹ The UNTOC also has a Conference of Parties to the Convention designed to improve the capacity of member countries to combat transnational organized crime. Article 7 also lays out the requirements for measures to combat money laundering, such as implementing steps to detect and monitor the movement of cash across borders. Articles 5, 6, and 8 require the criminalization of participation in organized criminal groups, laundering the proceeds of a crime, and corruption, respectively.

Through its commitment with the Asia/Pacific Group on Money Laundering, the Afghan government has also agreed to implement Financial Action Task Force standards to “combat money laundering, the financing of terrorism, and the financing of proliferation.”²² Additionally, the Afghan government has been an official member of the Egmont Group since 2010. The Egmont Group is a body of Financial Intelligence Units that securely share information with one another related to money laundering, terrorist financing, and related crimes.²³

Furthermore, along with international donors, the Afghan government agreed to the GMAF at the Geneva Conference on Afghanistan in November 2018. This framework includes four deliverables under the category of

¹⁶ In order for a country to be legally bound by a treaty, the treaty must be both signed and ratified. Afghanistan's President has the power to sign treaties, and the National Assembly has the power to ratify them. Afghanistan Legal Education Project, *International Law for Afghanistan*, 2011.

¹⁷ United Nations Convention Against Corruption, UN Treaty Series, vol. 2349, No. 42146, October 31, 2003, Articles 5 and 6.

¹⁸ UN Convention Against Corruption, Article 20.

¹⁹ UN Convention Against Corruption, Articles 44–50.

²⁰ UN Convention Against Corruption, Article 63.

²¹ UN Convention Against Transnational Organized Crime, UN Treaty Series, vol. 2225, No. 39574, November 15, 2000, Article 27.

²² Asia/Pacific Group on Money Laundering Homepage, accessed March 1, 2021, <http://www.apgml.org/>.

²³ Egmont Group Homepage, accessed April 4, 2021, <https://egmontgroup.org/en>.

“Anti-corruption, Governance, Rule of Law, and Human Rights,” as well as others indirectly related to combatting corruption.²⁴ We discuss the GMAF in detail later in this report.²⁵

Overview of Afghan Anti-Corruption Institutions

In 2010, the Afghan government created the Joint Monitoring and Evaluation Committee on Anti-Corruption, a hybrid organization consisting of Afghan and international officials that conducts oversight of government institutions and programs, notably through its Vulnerability to Corruption assessments, and which is intended to provide independent oversight of Afghan government entities. Apart from the Joint Monitoring and Evaluation Committee on Anti-Corruption, the Afghan government has four main entities responsible for anti-corruption-related policymaking, prevention, and enforcement activities: (1) the HCLAC; (2) the MCTF, which is part of the MOI; (3) the AGO; and (4) the ACJC, whose prosecutors also fall under the AGO.

In addition to these four entities, the Afghan government created the Special Secretariat under the HCLAC in 2018, which is responsible for monitoring the implementation of the national anti-corruption strategy, and the Access to Information Commission (AIC), which is intended to ensure the right of Afghan citizens to access government documents and information. The Afghan government also created the Anti-Corruption Commission (ACC) in 2018 to be Afghanistan’s independent anti-corruption body, and appointed commissioners in November 2020. Lastly, the Afghan government created the Ombudsperson Office within the Administrative Office of the President, also in 2018. The Afghan government has drafted legislation for parliamentary approval, which states that the Ombudsperson’s tasks include “[receiving and inspecting] corruption related [sic] complaints and information regarding institutions and high ranking government officials.”²⁶ The Supreme Audit Office and the Inspectors General at Ministries of Defense (MOD) and MOI also assist in anti-corruption efforts as a part of their work.²⁷

The United States Provides Assistance to the Afghan Government to Combat Corruption

State, DOD, and USAID provide assistance to the Afghan government to fight corruption. State provides assistance through the Justice Sector Support Program, which maintains the CMS, an electronic database used across various Afghan government institutions to track cases. State’s Bureau of International Narcotics and Law Enforcement Affairs (INL) also maintains an inter-agency agreement with DOJ to provide training and mentoring to justice sector actors.²⁸

DOD has not undertaken any new anti-corruption programs since the publication of our last anti-corruption assessment. However, it continues to provide assistance to the Afghan government by advising the MOD and the MOI, including by advising the MCTF and the MOD Inspector General.

²⁴ Geneva Conference on Afghanistan, *Geneva Mutual Accountability Framework (GMAF)*, November 27-28, 2018, Deliverables 2.1–2.4.

²⁵ In November 2020, the Afghan government, along with international donors, committed to the Afghanistan Partnership Framework. Similar to the GMAF from 2018, the Afghanistan Partnership Framework is the result of an international conference on the future of Afghanistan and the international community’s role in developing and supporting the country. The document comprises a number of core reform priorities and outcomes, including reform targets for 2021 through 2024. One outcome, “Progress towards effective, accountable and self-reliant state institutions,” largely focuses on anti-corruption. However, because the Afghanistan Partnership Framework was only established in November 2020, our assessment did not analyze it.

²⁶ Islamic Republic of Afghanistan, Draft Law of the Office of the Ombudsperson, p. 5.

²⁷ Per the Afghanistan Partnership Framework Action 2.1, the ACC “should subsume any existing parallel institutions” in 2021, apparently meaning that the Ombudsperson’s Office, the Joint Monitoring and Evaluation Committee on Anti-Corruption, and likely other anti-corruption institutions, will be absorbed into the ACC in 2021.

²⁸ INL also previously had a program with the UN Office on Drugs and Crime to combat money laundering and counter terrorist financing. INL officials told us that they are considering restarting the program and have begun discussions with the UN Office on Drugs and Crime.

USAID provides anti-corruption assistance to the Afghan government through direct programs and includes anti-corruption components in its other development interventions, such as education and health programs. Most directly, USAID assists the Afghan government through Afghanistan's Measure for Accountability and Transparency program, which provides capacity development assistance at ministries to make administrative and systemic changes to prevent corruption, and the Assistance for the Development of Afghan Legal Access and Transparency program, which provides technical assistance to the Afghan Supreme Court.

THE AFGHAN GOVERNMENT HAS TAKEN STEPS TO ADDRESS CONCERNS FROM OUR PRIOR REPORT AND THOSE OF INTERNATIONAL DONORS, BUT THESE STEPS HAVE RESULTED IN LIMITED TANGIBLE PROGRESS

Our November 2019 report contained eight matters for the Afghan government's consideration that, if acted upon, could help reduce corruption. In response, the Afghan government created 26 benchmarks related to the eight matters for consideration that it said it would complete. As of July 2021, the Afghan government completed 19 of these 26 benchmarks.²⁹ However, of the 19 completed benchmarks, 14 constituted intangible legal or regulatory reforms rather than actions that tangibly reduced corruption. For the purposes of this report, we define "tangible" reforms as concrete actions that are likely to reduce corruption, such as the arrest of corrupt actors, and "intangible" reforms as those that would require further steps beyond the initial reform to reduce corruption. For example, the Afghan government committed to "revise the Joint Action Plan for Improving Detection and Prosecution of Corruption Cases" to include measures that would increase the number of arrests and prosecutions of corrupt individuals.³⁰ The Special Anti-Corruption Secretariat completed this benchmark, but the revision of the Plan of Action facilitated only the preparation of additional plans and regulatory reforms. Thus, the passing of the Plan of Action represents an intangible result that has not actually reduced corruption. Of the seven reforms that are incomplete, six would have had a tangible impact on anti-corruption and one would have produced intangible reforms.

Our November 2019 report also identified specific concerns from international donors, including a lack of resources at the AIC and delays in appointing commissioners to the ACC. Separately, international donors also expressed concern about corruption at the MOD and MOI. Although the Afghan government has made some progress to address the concerns from international donors, additional steps are needed and the Afghan government's actions to date have resulted in few tangible anti-corruption outcomes. To date, neither the Afghan government nor the international donors have demonstrated the political will to create and achieve the specific, time-bound, and verifiable benchmarks required to realize lasting tangible anti-corruption progress in Afghanistan.

The Afghan Government Completed 19 of 26 Benchmarks, But Its Actions Produced Limited Tangible Progress

Our November 2019 report contained eight matters for consideration that addressed the ongoing challenges and shortfalls in the Afghan government's fight against corruption, including the capacity and resourcing of anti-corruption law enforcement organizations, the impunity of powerful actors, the arrest and prosecution of corrupt individuals, and the recovery of assets. In response, the Afghan government created and committed to completing 26 specific benchmarks that it determined would address our matters for consideration. Although the Afghan government took some steps since November 2019 to complete the matters for consideration and accompanying

²⁹ In its response to our draft report, the Afghan government said that it had completed all but two of the benchmarks. However, the Afghan government did not provide sufficient evidence demonstrating that the benchmarks were completed.

³⁰ Islamic Republic of Afghanistan Anti-Corruption Commission (ACC), Afghan government response to SIGAR's draft report, July 24, 2021, p. 7.

benchmarks, its efforts sometimes constituted “box-checking exercise[s].”³¹ Consequently, the Afghan government made limited progress in tangibly reducing corruption.

This problem is not new in Afghanistan. Over the past five years, we have repeatedly reported on the difficulty of the Afghan government’s anti-corruption reforms achieving lasting tangible progress. We noted in our September 2016 *Corruption in Conflict* report that a 2009 Organization for Economic Co-operation and Development report found that anti-corruption efforts “had succeeded in establishing some consensus around the corruption problem and setting specific benchmarks, but in terms of concrete impact, had amounted to little more than window-dressing.”³² More recently, our November 2019 anti-corruption assessment found, “Officials from one international donor stated that the Afghan government is making progress on paper, but that checking off completed benchmarks does not necessarily demonstrate real world reforms.”³³ Similarly, UNAMA’s June 2020 report highlighted the Afghan government’s tendency to “showcase progress rather than effectively reach tangible results” toward achieving its anti-corruption strategy.³⁴

As we reported in 2018 and 2019, the Afghan government has consistently lacked the resources and political will to directly address systemic corruption. Most recently, it has also demonstrated varying levels of commitment, political will, and resourcing to complete each of the self-imposed benchmarks outlined in its response to our second anti-corruption assessment. Of the 26 benchmarks from 2019, the Afghan government completed 19, but only 5 of these represent concrete actions to tangibly reduce corruption; the other 14 completed benchmarks are intangible regulatory reforms that require further action to decrease corruption. The Afghan government has yet to complete the remaining 7 benchmarks, but 6 of them would have produced tangible anti-corruption reforms had they been completed.³⁵

Of the eight matters for consideration identified in our previous report, the Afghan government has accomplished all of the benchmarks associated with three of them, as of July 2021. The three matters for consideration that the Afghan government completed were (1) increase efforts to recover assets stolen from Kabul Bank and return the funds to the Afghan Central Bank, (2) take actions that allow for the distribution of criminally derived assets to government organizations, and (3) continue to implement the CMS and ensure its systematic use among Afghan law enforcement organizations.

Although the Afghan government completed these three matters for consideration, only 2 of the associated 6 benchmarks it developed to address these matters for consideration produced tangible anti-corruption outcomes. The completion of these 2 benchmarks facilitated the enhanced recovery of funds stolen from the Kabul Bank, and increased accountability for corrupt actors and debtors. The benchmarks accompanying the remaining two matters for consideration, taking action to allow for the distribution of criminally derived assets to government organizations and implementing the CMS, represent intangible regulatory reforms implemented by the Afghan government and have not diminished institutional corruption.

Table 1 depicts the current status of the eight matters for consideration and 26 associated benchmarks, and shows the Afghan government’s preference toward paper reforms. These require additional steps to result in an anti-corruption outcome, and showcase the Afghan government’s difficulty in completing tangible benchmarks.

³¹ SIGAR, *Afghanistan’s Anti-Corruption Efforts*, SIGAR 20-06-AR, p. 8.

³² SIGAR, *Corruption in Conflict: Lessons from the U.S. Experience in Afghanistan*, SIGAR 16-58-LL, September 2016, p. 28.

³³ SIGAR, *Afghanistan’s Anti-Corruption Efforts*, SIGAR 20-06-AR, p. 9.

³⁴ UN Assistance Mission in Afghanistan, *Afghanistan’s Fight against Corruption: Crucial for Peace and Prosperity*, June 2020, p. 18.

³⁵ In its response to our draft report, the Afghan government said that it had completed all but 2 of the benchmarks. However, the Afghan government did not provide sufficient evidence demonstrating the completion of the additional benchmarks. Later in its response, the Afghan government stated that 1 benchmark should be added, 1 benchmark should be removed because it was an introductory sentence, and 2 benchmarks should be combined. We accepted these changes and updated the total number of benchmarks to 26, of which the Afghan government has provided sufficient evidence of completion for 19.

Table 1 - Summary Table of Complete and Tangible Benchmarks

Status	Tangible	Intangible	Total
Complete	5	14	19
Incomplete	6	1	7
Total	11	15	26

Source: SIGAR analysis of Afghan government documentation.

Through the completion of primarily intangible benchmarks, the Afghan government can claim that it is fulfilling its commitments without actually making tangible progress in reducing corruption. Overall, the Afghan government has made limited progress in addressing the eight matters for consideration from our November 2019 anti-corruption assessment. Appendix II of this report analyzes the completion status of the eight matters for consideration and their accompanying 26 benchmarks. Our work has shown that the Afghan government does not focus its efforts toward the completion of benchmarks that result in tangible anti-corruption outcomes, but instead, completes intangible paper reforms that require further action, implementation, or enforcement to fight corruption. As a result, the Afghan government continues to experience widespread institutional corruption, a finding consistent with our prior assessments.

International Partners' Political Will and the Establishment of Verifiable Benchmarks Are Critical to Achieving Anti-Corruption Reforms

While the Afghan government did not complete many of the benchmarks that would have produced tangible anti-corruption reforms, the U.S. government has also not consistently demonstrated the political will to push for tangible and lasting anti-corruption reforms in its reconstruction activities. As we reported in our 2016 Lessons Learned report on corruption in Afghanistan, DOD, State, and USAID could have tied specific security and development assistance to “tangible, measurable progress” in combating corruption.³⁶ Indeed, this report noted that the U.S. government’s approach to fighting corruption in Afghanistan has focused on technical fixes and bureaucratic improvements, rather than the political roots of corruption, Afghanistan’s culture of impunity, or concrete systemic reforms.

The U.S. government and international donors play an important role in advancing Afghanistan’s anti-corruption agenda, and have developed several international standards and frameworks with the objective of motivating institutional reform. These frameworks include the UNCAC, UNTOC, GMAF, and the Afghanistan Partnership Framework. However, in establishing these criteria, the U.S. government and international donors have not always prioritized the development of specific, verifiable benchmarks to help the Afghan government achieve tangible anti-corruption reforms. For example, our 2018 anti-corruption assessment criticized the Afghan government’s 2017 national anti-corruption strategy. Despite being developed in compliance with the UNCAC and in consultation with the international donors, our assessment found the strategy did not establish clear or verifiable benchmarks, rendering it difficult to measure the Afghan government’s progress. Our report described the challenges that the Afghan government would have in completing its benchmarks because the anti-corruption strategy did not comprise realistic and explicitly defined benchmarks. We recommended that the Afghan government better define its goals and benchmarks, an action it took when it revised its anti-corruption strategy in 2019. We are not alone in emphasizing the need for specific and verifiable benchmarks; UNAMA’s June 2020 anti-corruption report also did so and expressed concern about the Afghan government’s implementation of concrete steps against corruption.

³⁶ SIGAR, Corruption in Conflict, SIGAR 16-58-LL, p. 54.

The U.S. government and international donors have not always demonstrated the political will to push for specific, verifiable, and time bound benchmarks in relevant frameworks. However, such benchmarks are critical to achieving the desired end state in Afghanistan and completing concrete anti-corruption reforms. High-level political commitment on part of the U.S. government and international donors to support the Afghan government in creating well-defined and measurable benchmarks is crucial to realizing tangible anti-corruption progress in Afghanistan.

The Afghan Government Addressed Some International Donor Concerns, But Issues Remain

Article 50 of the Afghan Constitution established the right of Afghan citizens to access government documents and information, and GMAF Deliverable 2.4 stipulated that the Access to Information Law be enacted and demonstrated by the implementation of “policies and procedures for tracking requests, quality and timeliness of responses, maintaining statistics, and providing public quarterly updates...”³⁷ Additionally, Afghanistan’s Access to Information Law established the AIC in 2018 with the goal of safeguarding this right. The AIC is responsible for performing the functions outlined in GMAF Deliverable 2.4, and for monitoring the implementation of the Access to Information Law, including overseeing the information request process, promoting access to information, addressing complaints that arise from the denial of information, and advising Afghan citizens on matters pertaining to requests for information.

Although the AIC has a clear mandate to ensure the right of Afghan citizens to access government data and information, the organization reportedly struggles with receiving information from Afghan government officials. According to a knowledgeable Afghan government official, government personnel do not have an understanding of the Access to Information Law and do not uphold its provisions, such as complying with requests for information. According to the same official, many senior leaders in the Afghan government believe that they own the data and information relevant to their ministries and that all materials in their possession are “confidential,” and some may designate information as “confidential” in order to cover up corruption at their respective ministries. This knowledgeable Afghan government official also said that it is particularly difficult to access information related to government procurements. In accordance with the sanctions outlined by the Access to Information Law, this official stated that the AIC has issued warnings to several Afghan government organizations, including the MOD, Administrative Office of Statistics, and the Afghan Central Bank, about following the Access to Information Law, but the AIC continues to struggle with receiving information. The official stated that support for the AIC, as well as its mission to protect Afghan citizens’ rights to access information, stems from political will to uphold the Access to Information Law, understanding how it works, and sharing information that should be made public.

The limited understanding of the Access to Information Law among government officials and subsequent failure to comply with requests for information, mean that the AIC, media, and Afghan citizens do not always receive information that should be made public, such as public procurement information. Indeed, the UNCAC stresses the importance of access to information for preventing corruption, stating that access to information “promote[s] the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption” and “raise[s] public awareness regarding the existence, causes and gravity of and the threat posed by corruption.”³⁸

In response to a draft of this report, the Afghan government stated in July 2021 that it had “given positive and effective responses to the requests of this Commission [the AIC] and it has not has [sic] any financial problem [sic]

³⁷ Per Article 50 of the Afghan Constitution, “The citizens of Afghanistan shall have the right of access to information from state departments in accordance with the provisions of the law. This right shall have no limit except when harming rights of others as well as public security.” Islamic Republic of Afghanistan, *The Constitution of Afghanistan*, January 26, 2004, Article 50; Geneva Conference on Afghanistan, GMAF, November 27–28, 2018, Deliverable 2.4.

³⁸ UN Office on Drugs and Crime, “United Nations Convention Against Corruption,” 2004, Article 13.

currently.”³⁹ The Afghan government’s comments noted that the AIC’s budget increased by 66 percent from 2020 to 2021, and that the AIC is hiring additional employees and plans to “expand its activities.”⁴⁰

The Appointment of Anti-Corruption Commissioners Was Delayed and the Extent of Civil Society Participation in the Process is Unclear

In September 2018, President Ghani issued a presidential decree to enact the Anti-Corruption Law, which established a formal, independent ACC, expected to fulfill a number of the obligations set by both GMAF Deliverable 2.1 and UNCAC Article 6.⁴¹ The law made the ACC responsible for monitoring the implementation of the national anti-corruption strategy.⁴² However, both U.S. and Afghan civil society officials were concerned about the independence of the commission because only officials whom President Ghani had appointed comprised the ACC’s commissioner selection committee. In response to these concerns, President Ghani issued another presidential decree in March 2019, which amended the Anti-Corruption Law and expanded the commissioner selection process. This amendment represented a compromise with civil society over the rules on the selection and appointment of commissioners. While the amendment resolved international donors’ concerns about the independence of the ACC, Afghan civil society organizations continued to criticize the selection process. They maintained that the ACC could not be independent while the president still had final say on the selection of commissioners. The Afghan government subsequently blamed the delay in the appointment of commissioners on a lack of cooperation from civil society officials.

Finally, in November 2020, more than 2 years after the initial creation of the ACC, President Ghani announced the appointment of the five commissioners to the ACC. According to the Afghan government, the commissioners were selected pursuant to the terms of the amended Anti-Corruption Law: the Afghan government and civil society each nominated 25 individuals, 15 candidates made the shortlist, and the President selected 5 individuals. The Afghan government told us that civil society had direct input into the selection of commissioners, as members of civil society organizations originally recommended one of the confirmed commissioners. The Afghan government maintains that it followed all applicable laws and decrees in the selection and appointment of ACC commissioners, and international donors have not raised concerns about the legality of the process or legitimacy of the commission.

However, in January 2021, several Afghan civil society officials told us that the appointments did not follow the ACC selection process set forth in the March 2019 amendment to the Anti-Corruption Law. Afghan civil society officials reported that the Civil Society Joint Working Group, the representative body for approximately 1,400 civil society organizations throughout Afghanistan, chose two representatives to monitor the process for corruption. However, according to Afghan civil society officials, government officials interfered in the selection process, removed the civil society officials because of disagreements over delays in the selection process, and then brought in other civil society representatives, who were not members of the Civil Society Joint Working Group, to participate in the selection of ACC commissioners.⁴³ As such, some Afghan civil society organizations believe that the current ACC lacks independence and legitimacy, and was not staffed in accordance with established processes.

³⁹ Islamic Republic of Afghanistan ACC, Afghan government response to SIGAR’s draft report, July 24, 2021, p. 4.

⁴⁰ Islamic Republic of Afghanistan ACC, Afghan government response to SIGAR’s draft report, July 24, 2021, p. 4.

⁴¹ Per GMAF Deliverable 2.1, “The government formally approves... a concrete and time-bound plan by June 2019 to improve prosecution detailing case-flow, timelines, and clear functions and responsibilities of the Attorney General’s Office (AGO), Ministry of Justice, [Ministry of Interior Affairs] (MOI), Supreme Court, Anti-Corruption Justice Cent[er] (ACJC) and Anti-Corruption Commission.” Geneva Conference on Afghanistan, GMAF, November 27–28, 2018, Deliverable 2.1. UNCAC Article 6 provides for preventative anti-corruption body or bodies. UN Office on Drugs and Crime, “United Nations Convention Against Corruption,” 2004, Article 6.

⁴² Article 17 of the Presidential Decree on Endorsement of the Anti-Corruption Law gives the ACC the duty and authority to “Oversee, through its secretariat, the implementation of anti-corruption strategy and policies.” Islamic Republic of Afghanistan, *Presidential Decree on Endorsement of the Anti-Corruption Law*, No. 187, September 5, 2018, p. 7.

⁴³ In its July 2021 response to a draft of this report, the Afghan government stated that the process of selecting the ACC commissioners “was conducted according to the law and civil society had [sic] direct role in nominating half of the candidates

As reported in our 2018 and 2019 anti-corruption reports, the Afghan government has a history of creating anti-corruption institutions that are ineffective. The High Office of Oversight and Anti-Corruption is one such institution. A predecessor to the ACC, the High Office of Oversight and Anti-Corruption was established in 2008 to lead the Afghan government's anti-corruption efforts, and to oversee and coordinate the implementation of its national anti-corruption strategy.⁴⁴ The High Office of Oversight and Anti-Corruption was empowered to monitor the progress of corruption cases in appropriate law enforcement institutions. One of its priority tasks was to "address" the asset declarations of senior Afghan officials.⁴⁵ Our 2016 review found that the High Office was unable to "consistently register and verify asset declaration information of top Afghan officials."⁴⁶ We also found that the High Office of Oversight and Anti-Corruption lacked independence and capacity, and was relegated to asset registration. The High Office was also tasked to be Afghanistan's UNCAC Article 6 independent body and to oversee the Karzai-era Anti-Corruption Strategy, but the Afghan National Unity Government abolished the office on March 6, 2018. At the time of its abolishment, donors called it one of Afghanistan's most inefficient institutions.⁴⁷

The Office of the Deputy Attorney General for Anti-Corruption ("Deputy AGO"), established in 2018, is another example of an anti-corruption institution that has not met its mandate. The Deputy AGO was supposed to absorb most of the anti-corruption agencies, except for the ACJC and the Joint Monitoring and Evaluation Committee on Anti-Corruption, including some of the High Office of Oversight and Anti-Corruption's duties. However, the Deputy AGO absorbed only existing anti-corruption units within the AGO, as well as the High Office's research and investigative duties. Our November 2019 assessment reported on the ambiguity of the office's mandate. Additionally, we raised concerns in our May 2018 anti-corruption assessment that the office was not independent from the president.

We have previously raised similar concerns about the potential ineffectiveness of the ACC. It is not clear that the ACC is sufficiently independent from the president's office to satisfy Article 6 of the UNCAC. Given the concerns about the selection process for commissioners, there is reason to doubt the ACC's independence. Action 2.1 of the Afghanistan Partnership Framework states that the ACC must have a clear mandate in line with the UNCAC, that it should absorb other parallel institutions, and that it should take on the functions of the Joint Monitoring and Evaluation Committee on Anti-Corruption. However, Afghan civil society officials told us in January 2021 that the appointment of commissioners occurred after Parliament rejected the Anti-Corruption Law, which left the ACC without a budget, facility, or legal foundation.⁴⁸ According to an Afghan government official, as of January 2021, the ACC has assumed the Joint Monitoring and Evaluation Committee on Anti-Corruption, the Special Anti-Corruption Secretariat, and the Asset Declaration and Review Office. In July 2021, the Afghan government reported that the Ombudsperson Office was also integrated into the ACC. However, Afghan government officials are concerned about the ACC's capacity and resources to investigate corruption complaints and to retain anti-corruption experts within the organization.

In its July 2021 response to a draft of this report, the Afghan government sought to clarify the legal and resourcing status of the ACC. The Afghan government said that the "legislative decree of the Anti-Corruption law was rejected

as well as in the selection process." The Afghan government's response also said that one of the candidates put forward by civil society was selected as an ACC commissioner.

⁴⁴ SIGAR, Afghanistan's Anti-Corruption Efforts, SIGAR 18-51-AR, p. 3.

⁴⁵ To "address" the asset declarations of senior Afghan officials, the High Office of Oversight and Anti-Corruption established a department specifically focused on verifying asset registrations. For more information on this department, see: Islamic Republic of Afghanistan, *The Constitution of Afghanistan*, January 26, 2004, Article 154; SIGAR, *U.S. Reconstruction Efforts in Afghanistan Would Benefit from a Finalized Comprehensive U.S. Anticorruption Strategy*, SIGAR 10-15-AR, August 5, 2010, p. 20; SIGAR, *Afghanistan's High Office of Oversight Needs Significantly Strengthened Authority, Independence, and Donor Support to Become an Effective Anticorruption Institution*, SIGAR Audit 10-2, December 16, 2009, pp. 2-3.

⁴⁶ SIGAR, Afghanistan's High Office of Oversight, SIGAR 16-60-SP, p. 12.

⁴⁷ SIGAR, Afghanistan's Anti-Corruption Efforts, SIGAR 18-51-AR, p. 20.

⁴⁸ The Lower House of Parliament rejected the Anti-Corruption Law on October 6, 2020, citing the irregular process through which the law was enacted. The Upper House of Parliament approved the law, with amendments, on November 1, 2020. The law remains in force, pending a decision of a joint committee of both houses. In its July 2021 response to a draft of this report, the Afghan government reported that the Whistleblowers Protection Law and the UNCAC provide a legal basis for the ACC to operate.

only by the Wolesi Jirga [the lower house of Parliament], and the rejection of the law by the Wolesi Jirga does not invalidate it.”⁴⁹ The Afghan government added that while it continues to press for the law’s passage through the legislative process, the decree used to establish the ACC, the Whistleblowers Protection law, and the UNCAC provide sufficient legal grounds for the ACC to operate. Additionally, the Afghan government reported that the ACC now has a dedicated budget, permanent facilities, and “a minimum number of staff to carry out its activities,”⁵⁰ which have included responding to more than half of the 120 complaints it has received and referring 32 complaints to the AGO. Lastly, the Afghan government said that the merging of parallel anti-corruption organizations will resolve overlapping duties and will progress the fight against corruption.

The Use of Automated Processes and the Inherent Law at the MOD and MOI Have Reduced Corruption, But Interference in Corruption Investigations Remains an Issue

The Afghan government has made progress in curbing corruption within the Afghan National Defense and Security Forces (ANDSF) through the enhanced use of automated systems, including the Afghan Personnel and Pay System and Core Inventory Management System, as well as the increased application of Inherent Law.⁵¹ While prior reports from SIGAR, other oversight organizations, and the Combined Security Transition Command–Afghanistan (CSTC-A) have all highlighted faults with each of the three systems, continued assistance from international donors and coordination with CSTC-A to implement automated systems and Inherent Law at MOD and MOI have reduced avenues for corruption within the pay, inventory, and personnel systems of both ministries.⁵² Nevertheless, despite assistance from international donors and guidance from CSTC-A advisors, corruption remains a problem at MOD and MOI. For example, according to CSTC-A, powerful actors continue to influence and interfere in ANDSF counter-corruption investigations, especially in cases involving general staff officers, and ambiguities in Afghan law surrounding investigative procedures frustrates the meaningful investigation of corruption cases.

Afghanistan’s Anti-Corruption Strategy, the last benchmark of which had a deadline in June 2020, endorsed using the aforementioned systems, and CSTC-A officials have told us that the systems helped reduce corruption and streamline human resource processes at both MOD and MOI. In July 2020, CSTC-A estimated that between 96 and 98 percent of MOD personnel are registered in the Afghan Personnel and Pay System, a software system that integrates existing human resource data with compensation and payroll information to process authorizations, record time and attendance, and allow the Afghan government to automatically generate the payroll calculations and forms needed to process salary payments.⁵³ Similarly, in November 2020, the Afghan government told us that approximately 96 percent of National Police personnel are registered in the system. According to CSTC-A officials, the Afghan Personnel and Pay System helps reconcile time and attendance, and ensures that all registered personnel who receive pay are slotted into ANDSF positions. CSTC-A also has ongoing efforts to connect the Afghan Personnel and Pay System directly to the Afghanistan Automated Biometric Information System and the

⁴⁹ Islamic Republic of Afghanistan ACC, Afghan government response to SIGAR’s draft report, July 24, 2021, p. 6.

⁵⁰ Islamic Republic of Afghanistan ACC, Afghan government response to SIGAR’s draft report, July 24, 2021, p. 6.

⁵¹ The Inherent Law is a policy that lowers mandatory retirement ages, time-in-service maximums, and time-in-grade limits for personnel in the ANDSF.

⁵² For example, the DOD Office of Inspector General’s August 2019 audit of the Afghan Personnel and Pay System found that as of December 2018, CSTC-A did not validate the accuracy of the personnel records added to the system and did not verify that the contractor developed the system in accordance with contract requirements. As a result, CSTC-A paid \$26.2 million “for a system that cannot communicate directly with Afghan systems, relies on the same manually intensive human resource and payroll processes that the system was designed to streamline, and does not accomplish the stated objective of reducing the risk of inaccurate personnel records or fraudulent payments through the use of automated controls.” (DOD Office of Inspector General, *Audit for the Planning for and Implementation of the Afghan Personnel and Pay System*, DODIG-2019-115, August 15, 2019, p. i.) Similarly, SIGAR’s 2017 report on equipment and uniform oversight found that “the Afghan military was not fully using and could not support logistics information management systems, including [Core Inventory Management System], resulting in the use of manual processes that did not provide effective accountability over inventory.” (SIGAR, *Afghan National Defense and Security Forces: DOD Needs to Improve Management and Oversight of Uniforms and Equipment*, SIGAR 17-40-AR, April 2017, p. 6.)

⁵³ In October 2020, SIGAR initiated an audit examining DOD’s oversight of the Afghan Personnel and Pay System.

Afghanistan Financial Management System to ensure that only biometrically validated personnel receive pay. CSTC-A reported that these efforts would further reduce potential avenues for corruption.

In another effort to enhance accountability, since 2008, the ANDSF has used the Core Inventory Management System, an inventory management software that helps users understand the costs associated with their inventory and track the movement of goods across multiple locations. Although the system has weaknesses, in July 2020, CSTC-A advisors reported that the Core Inventory Management System provides an effective framework for transparent oversight and heightened visibility of assets in the supply chain.⁵⁴ CSTC-A officials also stated that Inherent Law serves as a framework to help MOD and MOI make personnel management decisions, including the hiring, firing, and promotion of personnel. The Inherent Law is a policy that lowers mandatory retirement ages, time-in-service maximums (e.g., 40 years for generals), and time-in-grade limits (e.g., 8 years for generals).⁵⁵ The purpose of the Inherent Law is to remove senior officials embedded in positions of power and open leadership positions to the next generation of ANDSF personnel through merit-based promotion. According to CSTC-A officials and the Afghan government, the automation of processes through the Afghan Personnel and Pay System and Core Inventory Management System has countered corruption by helping to ensure biometric enrollment and appropriate pay, eradicate so-called “ghost soldiers,” prevent the misuse and theft of assets, and enhance transparency at MOD and MOI.⁵⁶ According to CSTC-A officials, the Inherent Law also limits corruption by providing standardized rules and structures across the ANDSF. Indeed, CSTC-A officials noted that under Inherent Law, two individuals accused of corruption have been retired, a tangible anti-corruption outcome.

While both ministries use automated processes and Inherent Law, in July 2020, CSTC-A officials told us that powerful actors continue to interfere in corruption investigations at MOD and MOI. In July 2020, CSTC-A officials told us that it sees varying levels of interference, patronage networks, and the ability to circumvent the Afghan government’s processes, such as regional powerbrokers working behind the scenes to obfuscate judicial action, “at all echelons of the Afghan government.” According to these CSTC-A officials, General Officers in the ANDSF, particularly those with political connections, routinely escape accountability. Powerful individuals inject themselves into legal processes and intervene at different points in the prosecution process, depending on their location or the influence of their connections.⁵⁷

Legal and jurisdictional ambiguities represent additional impediments to the investigation of ANDSF corruption cases. In January 2021, CSTC-A reported to us that Afghan law regarding the division of investigative responsibilities is unclear. This leads to jurisdictional and other issues at law enforcement agencies, some of which lack clear mission statements, the ability to compel cooperation, and tangible metrics for success, all of which further debilitate their ability to investigate corruption. According to CSTC-A, as of January 2021, the MOD Criminal Investigative Directorate is one entity that is not effective in investigating complex criminal cases, especially those involving high-level actors or large sums of money. CSTC-A stated that because of this, U.S. government-contracted law enforcement officials investigate the complex cases, and produce information for MOD senior leaders to review and determine whether cases warrant administrative action.⁵⁸

⁵⁴ A 2020 DOD Office of Inspector General report found that the ANDSF did not use the Core Inventory Management System to account for weapons and vehicles held at all local sites because CSTC-A did not fully consider the difficulties the operational environment would pose in the implementation of the system. For instance, CSTC-A expanded the intended use of the Core Inventory Management System in 2016 to be the ANDSF’s primary system to account for weapons and vehicles, despite the recognized challenges of a lack of Internet connectivity and limited electrical infrastructure at local sites. DOD Office of Inspector General, *Audit of Combined Security Transition Command–Afghanistan’s Implementation of the Core Inventory Management System Within the Afghan National Defense and Security Forces*, DODIG-2020-104, July 10, 2020, p. i.

⁵⁵ Islamic Republic of Afghanistan, “The Officers, NCOs, and Sergeants Inherent Law,” p. 21.

⁵⁶ “Ghost soldiers” refer to personnel data appearing in a payroll system that are not verifiably connected with real or active members of the military. Corrupt actors use ghost soldier identities to collect unearned wages.

⁵⁷ Illustrative of the problem, as of June 2020, MOD leadership did not implement CSTC-A’s recommendations to suspend specific general officers in the ANDSF undergoing investigations for corruption, but suspended all lower-ranking officers, noncommissioned officers, and soldiers under investigation for the same corruption allegations. As such, high-ranking officers incurred no penalties for the same allegations that resulted in the suspension of lower-ranking officers.

⁵⁸ SIGAR, *Quarterly Report to the United States Congress*, January 30, 2021, p. 105.

As we have reported in our prior assessments, corruption within the MOD and MOI ultimately undermines mission readiness, which undercuts the fight against insurgents and warlords. Concurrently, corruption benefits and entrenches those insurgents and warlords who command their own militia.

THE AFGHAN GOVERNMENT HAS NOT TAKEN ACTION TO REDUCE THE IMPUNITY OF POWERFUL ACTORS, AND KEY LAW ENFORCEMENT BODIES STRUGGLE TO ACHIEVE THEIR MISSION

The Afghan government continues to struggle with addressing the impunity of powerful Afghans during all phases of the investigative and prosecutorial process. Many powerful actors enjoy legal immunity or de facto impunity, issues the Afghan government have not addressed. The legal immunity comes in the form of constitutional protections for sitting members of Parliament, while the de facto impunity comes through *in absentia* hearings, a reluctance or inability to arrest powerful individuals, technical challenges to gathering testimony against high-level individuals, and political pressure. Separately, a lack of resources and capacity, as well as corruption within the anti-corruption institutions themselves, contribute to the MCTF's failure to arrest corrupt actors, judges' remanding cases for further investigation, and fewer prosecutions of high ranking officials at the ACJC.

The Afghan Government Has Not Taken Action to Reduce the De Facto Impunity of Powerful Actors

De facto impunity for powerful actors in Afghanistan appears through the creation of barriers to arresting and prosecuting powerful people. We raised this issue in our two previous anti-corruption assessments. Even so, we find that the Afghan government has yet to take significant action to reduce the de facto impunity for powerful actors.

The Afghan Government Has Not Taken Action on Article 102 of the Afghan Constitution

In our November 2019 report, we stated that the Afghan government should consider “Taking action to reduce the legal and de facto immunity of powerful individuals.”⁵⁹ In response to this matter for consideration, the Afghan government stated that the “[Ministry of Justice] will hold a consultation session with anti-corruption sector stakeholders to review the laws in order to identify any possible loopholes ensuring legal impunity for powerful individuals.”⁶⁰ The Afghan government held the “consultation session” in March 2020 and determined that Article 102 of the Afghan Constitution “may need legal interpretation by the Supreme Court in order to enable the law enforcement and legal and judicial organs to hold the powerful individuals accountable.”⁶¹ Article 102 protects members of Parliament from arrest, detention, and prosecution, and states that the “responsible [law enforcement] official shall immediately inform the respective House and obtain its approval” when a member of Parliament is detained, and if an accusation of a member of Parliament takes place during recess, “the permission for arrest or detention shall be obtained from the administrative board of the respective House...”⁶² The Supreme Court responded in January 2021 that there is no legal ambiguity regarding Article 102, and stated that “the Supreme Court does not feel the need to evaluate it according to the relevant provisions of laws.”⁶³ This response suggests that there will remain substantial legal barriers to prosecuting members of Parliament. In its July 2021 comments to a draft of this report, the Afghan government stated that Article 102 of the Afghan

⁵⁹ SIGAR, Afghanistan's Anti-Corruption Efforts, 20-06-AR, p. 26.

⁶⁰ SIGAR, Afghanistan's Anti-Corruption Efforts, 20-06-AR, p. 49.

⁶¹ Afghan Government, response to SIGAR, May 2020; Islamic Republic of Afghanistan, *The Constitution of Afghanistan*, January 26, 2004, Article 102.

⁶² Islamic Republic of Afghanistan, *The Constitution of Afghanistan*, January 26, 2004, Article 102.

⁶³ Afghan Government, response to SIGAR, January 2021.

Constitution does not explicitly exempt members of Parliament from arrest or prosecution, and provides a “different mechanism” for the arrest or summoning of members of Parliament.⁶⁴

Meanwhile, members of Parliament accused of corruption crimes have used and continue to use Article 102 to evade justice. For example, Mr. Ahmad Yousuf Nuristani was accused by the Afghan government of misuse of authority and embezzlement, but President Ghani then appointed him to the Meshrano Jirga, or upper house of Afghan Parliament. Nuristani then claimed legal immunity from arrest due to this appointment, despite being convicted *in absentia* and sentenced to 13 months in prison by the ACJC.⁶⁵ Similarly, in September 2020, Mr. Abdul Hamid Sharifi, a member of Parliament, was arrested by the Afghan government on charges of attempting to smuggle 200,000 euros into the United Arab Emirates; he also was released based on Article 102 of the Afghan Constitution. The Afghan government has stated that Sharifi’s case “has been referred to judicial institutions.”⁶⁶ In response to the preliminary findings of this report, the Afghan government acknowledged that prosecution of members of Parliament remains an issue. The Afghan government began to actively address this issue by arresting three members of the Meshrano Jirga in late December 2020 in Balkh Province. These members of Parliament were suspected of accepting \$40,000 in bribes.⁶⁷

***In Absentia* Trials, Coupled with the Afghan Government’s Failure to Arrest Powerful Actors, Continue to Provide De Facto Impunity to Powerful Actors**

As we have reported in our previous anti-corruption assessments, trials held *in absentia*, combined with the Afghan government’s failure to arrest powerful people, present opportunities for de facto impunity of powerful actors.⁶⁸ Articles 209 through 212 of the Afghan Criminal Procedure Code set forth the conditions under which a trial may proceed in the absence of the defendant or the defendant’s attorney. However, while the Criminal Procedure Code allows *in absentia* cases, the absence of defendants from their trials, and the Afghan government’s failure to later arrest them, can allow them to evade justice.

Afghanistan’s bail and guarantee code, coupled with the Afghan government’s failure to later arrest the accused, is one system that contributes to *in absentia* trials and impunity. According to Articles 87, 100, and 149 of the Criminal Procedure Code, criminal suspects can be detained for only 72 hours, or a potential maximum of 108 days in certain situations, before being released during an investigation.⁶⁹ According to an international donor official, the short timeframe under which investigators may hold suspects in pre-trial detention results in many suspects being let out during their investigation. Additionally, according to the June 2020 UNAMA report, most defendants are not detained during their trials at the ACJC. This provides time for suspects to flee the country. The issue is compounded by Afghanistan’s bail and guarantee system, which also perpetuates impunity for powerful Afghans; CSTC-A and UNAMA have both raised concerns with the system. For example, UNAMA stated in its June 2020 report that the “release of suspects and accused persons on bail or guarantee has resulted in a high number of accused being tried *in absentia* and whose sentences are therefore not enforced.”⁷⁰ This report also stated that some individuals whom the ACJC convicted *in absentia* remain at large but were not added to unexecuted warrants

⁶⁴ The Afghan government did not specify what the “different mechanism” entails in its July 2021 comments to a draft of this report.

⁶⁵ In December 2019, Nuristani pled guilty to federal welfare fraud in the U.S. and is currently serving a probation term.

⁶⁶ Tamim Hamid, “Wolesi Jirga Confirms Arrest Of MP On Charges Of Smuggling €200K,” *Tolo News*, September 7, 2020, <https://tolonews.com/afghanistan/wolesi-jirga-confirms-arrest-mp-charges-smuggling-€200k>.

⁶⁷ In its July 2021 comments to a draft of this report, the Afghan government reported that the three members of the Meshrano Jirga were tried and that President Ghani revoked two of the individuals’ appointments to Parliament.

⁶⁸ SIGAR, Afghanistan’s Anti-Corruption Efforts, SIGAR 18-51-AR; SIGAR, Afghanistan’s Anti-Corruption Efforts, SIGAR-20-06-AR.

⁶⁹ Islamic Republic of Afghanistan, Criminal Procedure Code, Presidential Decree number 137, February 23, 2014, Articles 87, 100, and 149.

⁷⁰ The AGO reported that trials *in absentia* have decreased in frequency. The Afghan government stated that 30 people in 12 cases were convicted *in absentia* in 2019 and 2020. The AGO stated that more than 75 percent of the trials in the “last few months” have taken place in the presence of defendants; UN Assistance Mission in Afghanistan, *Afghanistan’s Fight against Corruption*, June 2020, p. 56.

lists.⁷¹ Those at large individuals include a former commander of the Afghan National Civil Order Police, a former deputy minister in the Ministry of Haj, a former Senator, and a former Provincial Council Member.

Not all donors have expressed serious concerns with the use of *in absentia* trials, per se, focusing instead on the Afghan government's failure to arrest suspects, which necessitates the use of *in absentia* trials. CSTC-A expressed more concern in October 2020 with a lack of warrant execution and said that law enforcement's "unwilling[ness] to force attendance and testimony through a warrant to compel participation" was a more pressing issue.⁷² Similarly, the AGO downplayed the impact of *in absentia* trials, reporting that trials *in absentia* have decreased in frequency since 2019. In September 2020, the AGO stated that more than 75 percent of the trials in the "last few months" have taken place in the presence of defendants. However, as of January 2021, the Afghan government stated that it convicted 60 people *in absentia* in 2020, and only 10 of them have been apprehended.

In absentia cases, though legal under the Afghan Criminal Procedure Code, can undermine the fight against corruption when combined with the Afghan government's failure to arrest powerful actors. Major General Paikan's case is one prominent example of the consequences of *in absentia* cases and the Afghan government's inability to enforce arrest warrants. The ACJC convicted Paikan *in absentia* of complicity in murder and misuse of authority, and sentenced him to 8 years in prison; however, Paikan remained at large for more than 2 years in Kabul while reportedly enjoying government protection. He was finally arrested by the National Directorate of Security in August 2020, although the MCTF reported that it had been planning to arrest him and was unaware beforehand of the National Directorate of Security operation.

Powerful Actors Continue to Benefit from Other Forms of De Facto Impunity

Powerful actors in Afghanistan can escape or delay justice, or otherwise escape consequences for their actions, because of the failure or unwillingness of Afghan institutions to aggressively pursue and hold corrupt actors accountable. According to international donors and CSTC-A, the Afghan government lacks political will or applies it unevenly to arrest powerful actors. Separately, one Afghan official told us that the MCTF often faces pressure to forgo investigating high-level cases. This official said that the pressure comes from both within and outside of the MOI, which likely dampens political will. One international donor official stated that there is often a lack of will to go after suspects who would be relatively easy to arrest, but they remain free, demonstrating impunity to Afghan citizens and international donors. Compounding these concerns is a fear some international donors expressed that the arrest of powerful individuals could cause instability in an area, which further allows these actors to enjoy impunity, an issue we have reported on previously in our anti-corruption reports.

Despite the challenges, demonstrating the political will necessary to make high-level arrests sometimes occurs. For example, in response to our November 2019 anti-corruption report, the Afghan government committed to summoning or arresting at least 85 percent of the warrants issued by ACJC before September 2019 and found in Afghanistan. In July 2021, the Afghan government reported that it had executed 180 of the 255 ACJC warrants issued prior to September 2019, and that individuals wanted on 37 of the 255 ACJC warrants were located outside of Afghanistan. This means that the Afghan government arrested approximately 83 percent of the individuals from the list of 255 whose presence was established in Afghanistan. While the Afghan government did not meet its benchmark of 85 percent, executing more than 80 percent of the warrants is an improvement from prior years.

We have also observed de facto impunity in the Afghan government not pursuing prosecutions of powerful actors. In response to our November 2019 report, the Afghan government said that it would try 18 former ministers for corruption. As of March 2021, however, the Afghan government reported that it had completed the prosecutions

⁷¹ UN Assistance Mission in Afghanistan, *Afghanistan's Fight against Corruption*, June 2020, p. 57.

⁷² CSTC-A, response to SIGAR, October 6, 2020.

for only 2 of these 18 cases. The Afghan government also reported that six investigations were under review, and six were sent to the Supreme Court for trial.⁷³

In a second example of de facto impunity, the individuals identified in the “Farooqi Report” have not yet been prosecuted. As we reported in our May 2018 assessment, President Ghani commissioned an independent investigation into more than \$1 billion in fuel contract bid rigging, with findings summarized in the Farooqi Report.⁷⁴ That report found that senior government officials likely committed the alleged crimes, including Afghanistan’s former Minister of Finance, Omar Zakhilwal.⁷⁵

The investigators sent their report to the Administrative Office of the President in October 2015, but the office did not send the report to ACJC prosecutors until December 2017. U.S. officials said the Administrative Office of the President transferred the report to ACJC prosecutors only after sustained pressure from SIGAR and other international stakeholders. The AGO reported that it ordered an investigation into the allegations contained in the Farooqi Report in 2018. In November 2020, the Afghan government stated it was waiting for SIGAR and NATO Resolute Support to provide relevant documents to the case, and promised it would be able to “determine the course of the case within a maximum of 15 days.”⁷⁶ SIGAR has said it repeatedly provided the Afghan government with the necessary documents. According to the Afghan government, all relevant officials had been investigated and that the complainant companies failed to appear in court. Specifically, the Afghan government said

In relation to the contract of diesel and gasoline required by the MOD in 2014, all the relevant officials and personnel of the Ministry of Defense, i.e., members of the Needs Assessment Committee and Bid Evaluation Committee, head of the ARDS [Afghanistan Reconstruction and Development Services] office and the companies that won the contract have been investigated. The complainant companies (Rahmat Siddiqui and Bibi Energy) did not appear before the ACJC courts to prove their allegations.⁷⁷

As of February 2021, the Afghan government has not pursued prosecutions of the individuals implicated in the Farooqi Report.

The case against Mr. Khalilullah Ferozi, who was convicted of stealing hundreds of millions of dollars from Kabul Bank, is a third example of de facto impunity for powerful Afghans. The Afghan government reported to us that it made an agreement with Ferozi to repay his debts. The Afghan government provided documentation to us that Ferozi is in the process of turning over possessions, including cash, property, and 58,000 carats of precious stones, to the Afghan government.⁷⁸ As of March 2021, after more than 10 years, the Afghan government had received \$14.5 million out of \$196.6 million, or 7.4 percent, of what Ferozi owed. Because Ferozi has not made any repayments in cash since his release from prison in 2019, in violation of his repayment agreement, the Afghan government fined him more than \$1.8 million in December 2020. President Ghani stated in December 2020 that “the payment of debts is slow [and] must speed up.”⁷⁹

⁷³ In its July 2021 response to a draft of this report, the Afghan government stated that it completed the benchmark to initiate all trials of former ministers whose investigations were completed. However, the Afghan government did not provide sufficient documentation for us to conclude the benchmark was completed.

⁷⁴ SIGAR, Afghanistan’s Anti-Corruption Efforts, SIGAR 18-51-AR, p. 35.

⁷⁵ Even after being implicated in the bid rigging, President Ghani appointed Zakhilwal to serve as Afghanistan’s Ambassador to Pakistan in 2016.

⁷⁶ Afghan Government, response to SIGAR, November 3, 2020.

⁷⁷ Afghan Government, response to SIGAR, November 3, 2020.

⁷⁸ In response to our November 2019 report, the Afghan government stated that “the agreement between Ferozi and Kabul Bank Receivership is based on the condition that it results in increased recovery [of assets].” SIGAR, Afghanistan’s Anti-Corruption Efforts, SIGAR 20-06-AR, p. 50.

⁷⁹ Afghan Government, response to SIGAR, March 2021.

The Afghan Government Struggles to Execute Arrest Warrants and Summonses

The Afghan government continues to struggle to execute arrest warrants and summonses—a condition that we first reported on in our May 2018 anti-corruption assessment. It also struggles to accurately report the number of outstanding warrants and summonses that remain to be executed, articulate which agency is responsible for executing anti-corruption warrants, and find the political will to arrest high-level suspects. According to international donors and the Afghan government, several factors contribute to the incomplete execution of arrest warrants and summonses, including challenges with reporting, security, and the COVID-19 pandemic.

Identifying the number of outstanding warrants is the first step in executing them. However, the Afghan government has provided a variety of figures for the number of warrants outstanding. Prior to the Geneva Conference in November 2018, the Afghan government published a list of 127 arrest warrants or summonses that it committed to executing. Since then, UNAMA's June 2020 anti-corruption assessment reported that this list had grown to 255, and that all summonses had been converted to warrants. In September 2020, the MCTF reported that there were 618 outstanding warrants for the ACJC alone. The Special Secretariat, originally unaware of this updated number of warrants, confirmed in January 2021 that there was a list of 618 warrants in addition to the list of 255 arrest warrants the Afghan government had previously published, with an overlap of 48 warrants between the lists. These varying figures show a lack of coherence among the different entities within the Afghan government for tracking and reporting arrest warrants.

Once a warrant has been issued, identifying the agency responsible for executing the warrant becomes the next challenge as there appear to be frequent changes in jurisdiction and responsibilities among Afghanistan's law enforcement organizations. For example, in February 2020, we learned that the AGO was planning to transfer warrant execution from MCTF to MOI's Criminal Investigation Division. However, in September 2020, the Afghan government stated, "The MCTF is responsible for executing arrest and summons warrants issued by the ACJC."⁸⁰ Additionally, UNAMA reported in June 2020 that the Minister of Interior directed all warrants to be sent to the MOI, and that the ACJC's warrants specifically should be assigned to the MCTF. At the same time, an ACJC judge stated that he was unaware of a specific department within MOI responsible for executing corruption-related warrants.

Similarly, the Afghan Warrants Action Committee, composed of officials from the AGO and MOI, is supposed to determine who will execute a warrant among law enforcement organizations, but the organizations sometimes do not coordinate with each other. For example, as noted previously, the MCTF had been planning to arrest Major General Paikan, but the National Directorate of Security arrested Paikan without coordinating with the MCTF.

Difficulties executing warrants are exacerbated when the wanted individuals have fled to a foreign country, in part because the Afghan government does not have extradition agreements with most countries. As of January 2021, the Afghan government said it had sent 31 warrants from the ACJC's list of 255 to the International Criminal Police Organization (INTERPOL) for execution.⁸¹ In April 2021, DOJ noted that sending an arrest warrant to INTERPOL for suspects thought to be abroad "will have little practical effect since only a handful of countries have extradition treaties with Afghanistan."⁸² Because there is no legal mechanism to return most fugitives to Afghanistan for trial, DOJ stated that Afghanistan is essentially "off-loading" the responsibility for foreign warrant execution to INTERPOL.⁸³

⁸⁰ Afghan Government, response to SIGAR, September 2020.

⁸¹ INTERPOL is an inter-governmental organization that, among other activities, disseminates Red Notices for fugitives to law enforcement across the world for arrest for "extradition, surrender, or a similar legal action." The Afghan government reported to us that it identified 11 people accused of corruption cases as living abroad. However, it is unclear why the Afghan government reported it had identified only 11 individuals abroad, instead of 31—the number of warrants it reportedly sent to INTERPOL. This further demonstrates the lack of coherence within the Afghan government for tracking and reporting outstanding arrest warrants. INTERPOL, "Red Notices," access accessed April 28, 2021, <https://www.interpol.int>.

⁸² DOJ, response to SIGAR, April 5, 2021.

⁸³ In its July 2021 response to a draft of this report, the Afghan government said that 37 cases from the list of 255 are in progress with INTERPOL. According to the Afghan government, of these 37 cases, 11 have been located abroad, 17 are "under work," and 9 are in the data collection phase.

The MOI has acknowledged the difficulties in executing warrants. It has also stated that coordination issues between the ACJC, the MCTF, and INTERPOL; a lack of follow-up on arrest warrants; sending warrants via the Afghan postal service; delays in providing documents to INTERPOL; and the MCTF's dealing with crimes outside of its purview all contribute to delayed execution of warrants. Additionally, the Afghan government has reported that it has difficulties executing warrants in areas controlled by insurgents because of instability. However, international donors also stated that the MCTF sometimes reports that suspects are in Taliban-controlled territory when they are not.

The MCTF Continues to Struggle with Capacity, Resources, and Leadership Concerns

In addition to the issues highlighted above, we have repeatedly reported concerns with the MCTF's human and organizational capacity and the resources at its disposal, such as vehicles. Both our May 2018 and November 2019 assessments contained matters for consideration encouraging the Afghan government to consider increasing the resources provided to anti-corruption law enforcement organizations, such as the AGO, ACJC, and MCTF; the Afghan government agreed. In addition to our matters for consideration, Article 6 of the UNCAC requires that the anti-corruption institutions of UNCAC signatories be properly resourced.

Despite these commitments, the MCTF continues to struggle with capacity and resources, which ultimately degrades the Afghan government's fight against corruption. UNAMA's June 2020 anti-corruption report stated that weak law enforcement hampered anti-corruption progress at the ACJC. It recommended the Afghan government boost the law enforcement capacity dedicated to corruption prosecutions and trials to ensure appropriate investigative support, and the execution of orders, summonses, and warrants.⁸⁴ Separately, one international donor official stated in July 2020 that their organization had been raising the lack of police support for some time with Afghan law enforcement organizations, to no avail. In November 2020, State reported that the MCTF's prior director identified several challenges, including poor infrastructure, a lack of clarity regarding the MCTF's jurisdiction (as we discussed above), and the MCTF's division of work and reporting structure.

Despite these well-known shortfalls, the Afghan government has reduced, rather than strengthened, the MCTF's capacity and resources, and has weakened MCTF's line of reporting since our November 2019 anti-corruption assessment. According to CSTC-A, the MOI cut between 40 and 60 percent of the MCTF's personnel and vehicles, and stripped the MCTF of some of its duties, such as its anti-kidnapping role. When we asked the Afghan government for clarification regarding the reduction, the Afghan government reported in May 2020 that the MOI had reduced the MCTF's *tashkil* from 291 to 234.⁸⁵ In July 2020, CSTC-A officials told us that the MCTF did have the *tashkil* to execute warrants; however, the officials also said that the MCTF needed a *tashkil* of 300 to accomplish its complete mission, which includes fighting corruption, especially among high-ranking officials. In January 2021, the Afghan government reported that the MCTF *tashkil* had been further reduced to 214 people. The MOI echoed that lack of human resources at the provincial level and the "rotation and replacement" of staff have also negatively affected the MCTF.

In addition to personnel shortages, one Afghan law enforcement official stated in September 2020 that the MCTF has equipment shortages that impede its ability to execute warrants. This official stated that the MCTF does not have sufficient vehicles for its personnel, that the vehicles it does have require repairs, fuel, and oil that the MCTF cannot afford. This Afghan official also said that the MCTF does not always have the wiretapping or GPS capabilities it needs in order to carry out arrests. However, in April 2021, DOJ reported that a lack of equipment is not a problem for MCTF, stating that CSTC-A mentors recently found personal protective equipment, as well as other equipment that should be "used to access and analyze mobile data in support of investigations and operations" unused.⁸⁶

⁸⁴ UN Assistance Mission in Afghanistan, *Afghanistan's Fight against Corruption*, June 2020, p. 77.

⁸⁵ A *tashkil* is the personnel structure of an Afghan organization.

⁸⁶ DOJ, response to SIGAR, April 5, 2021.

In addition to resource issues, the MCTF has experienced frequent leadership turnover and its organizational position within MOI was diminished. The MCTF has had three separate directors since our November 2019 assessment, with the most recent director fired in November 2020.⁸⁷ Amid the leadership turnover, the MCTF effectively was demoted with the reorganization of the MOI, and now reports to MOI deputies, rather than the minister as called for by the 2018 Anti-Corruption Law. An Afghan official stated that the change contributed to corruption because it lengthened the chain of reporting and increased the opportunity for interference in cases.

Based on statements from international donor and U.S. officials, a combination of a lack of capacity, insufficient resources, and a leadership vacuum have contributed to the MCTF's ineffectiveness. In March 2020, CSTC-A stated, "MCTF has been largely ineffective since [November] 2019 due to poor leadership, GDICC (General Directorate of Intelligence and Counter Crime) management, MOI interference and leadership, and possible internal corruption issues."⁸⁸ In April 2021, DOJ concurred with this analysis, adding that there is also a lack of political will at MCTF. The leadership issues do not appear to be limited to the MCTF director; in March 2021, the Afghan government stated that lack of hierarchy and chain of command at the provincial level also is an issue. International donors have said that it is difficult to determine if the MCTF's struggles in executing arrest warrants is an issue of capacity or political will. According to CSTC-A and DOJ, the cause appears to be both.

The ACJC Prosecuted Fewer High-Ranking Officials for Corruption in 2020 than Prior Years

According to Afghan law, the ACJC is responsible for trying major anti-corruption cases exceeding 5,000,000 afghanis, or those involving high-ranking officials.⁸⁹ The ACJC prosecuted fewer high-ranking officials in 2020 than in prior years. Based on our analysis, the ACJC's prosecution of high-ranking officials has declined since its first full year of operations in 2017. In 2020, the ACJC prosecuted only 9 high-ranking officials, its lowest total ever and down from 23 in 2019. UNAMA reported similar concerns about the rank of those prosecuted at the ACJC in its June 2020 report.⁹⁰ Figure 1 below shows that 2020 had the lowest number of high-ranking officials prosecuted since 2017.⁹¹

⁸⁷ According to the Afghan government, Samonwal Mohammad Hamid Abid, the former Director of the MCTF, was replaced by Abdulrahim Rahimi in March 2020 after he was found to have managerial weaknesses, a lack of mobility in implementing arrest and summons warrants, weak relations with the AGO and ACJC, and a lack of innovation in executing his authorities and responsibilities. Other Afghan government officials and anti-corruption stakeholders, however, reported that Abid was removed from the position on suspicion of corruption. Abdul Razaq Ahmadzai, the Director of the MCTF as of the publication of this report, then took over the position after Rahimi was fired in November 2020.

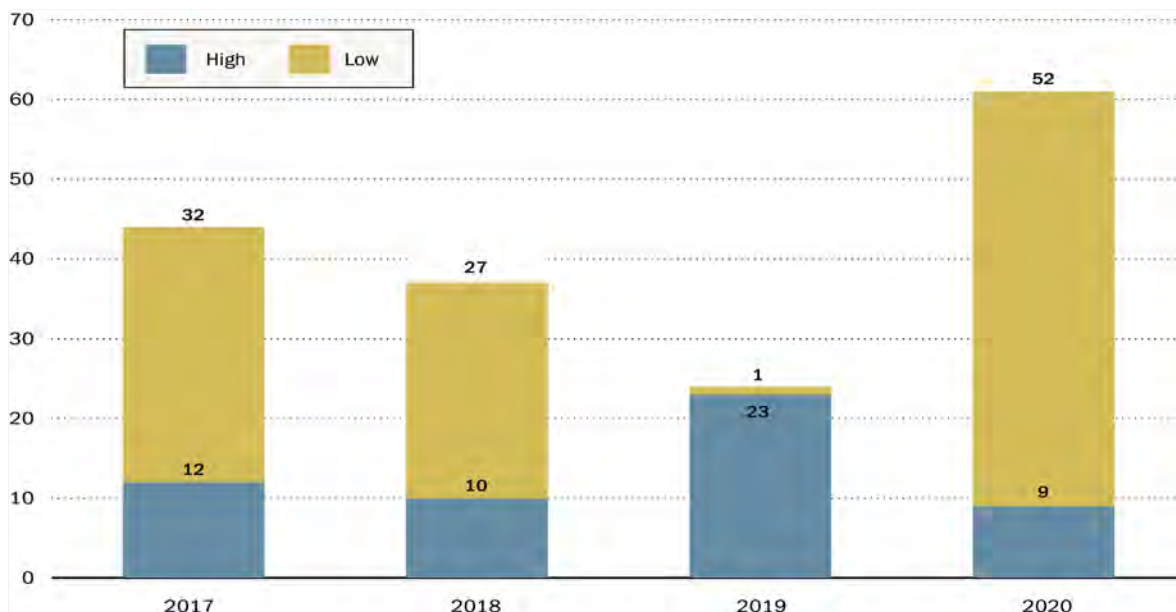
⁸⁸ CSTC-A, response to SIGAR, March 31, 2020.

⁸⁹ 5,000,000 afghanis is approximately 64,500 USD as of April 2021.

⁹⁰ UN Assistance Mission in Afghanistan, *Afghanistan's Fight against Corruption*, June 2020, p. 49.

⁹¹ The information we received on trials did not contain the rank or title of every defendant.

Figure 1 - Public Sector ACJC Defendants by Confirmed Rank, 2017-2020^{a,b}



^a “Confirmed rank” indicates that the defendants’ titles, and subsequent rank, were provided by the Afghan government. We did not include individuals whose rank could not be verified in our analysis.

^b UNAMA lists the following positions as “high-ranking”: Mayor, Deputy Minister, Military General, Member of Parliament, Member or Chair of Provincial Council, Provincial or District Governor, Electoral Commissioner

Source: SIGAR analysis of Afghan government documentation.

While the number of high-ranking public sector individuals who were prosecuted declined in 2020, according to data we received from the Afghan government in January 2021, the ACJC Primary Court prosecuted a total of 71 individuals in 2018, 84 individuals in 2019, and 84 individuals in 2020, which includes defendants from both the public and private sectors. This means 2020 tied for the second most individuals prosecuted by the ACJC in a calendar year since its founding. UNAMA’s June 2020 report found that ACJC output increased in 2019, but slowed towards the end of 2019, and that the rank of prosecuted officials declined. This is supported by data from the Afghan government, which showed that the ACJC Primary Court tried 3 people between January and March 2020, 13 people between April and June 2020, 26 people between July and September 2020, and 42 between October and December 2020.

The decline of prosecutions in the first half of 2020 is at least partially due to shutdowns related to the COVID-19 pandemic, though it is not clear why the Primary Court tried so few cases in the 3 months prior to COVID-19 shutdowns. An ACJC official we interviewed in August 2020 said that the ACJC had been hearing cases regularly since the COVID restrictions were lifted. An AGO official we interviewed in September 2020 said that, overall, 2020 has been a better year for the ACJC after taking into account restrictions due to the pandemic. However, if prosecutions do not grow in 2021 and beyond, the ACJC may not build momentum in its fight to prosecute corrupt, high-level actors.

In addition to a decline in the rank of those prosecuted, international donors also reported that ACJC judges sent a large number of cases back to prosecutors and the MCTF. According to UNAMA’s June 2020 report, from the beginning of 2020 until the COVID-19 shutdown in late March 2020, the primary court sent 9 out of 14 cases

back to ACJC prosecutors.⁹² A U.S. official stated in May 2020 that the judges often sent back cases to request additional details, resulting in delays. State concurred in December 2020, stating that “hyper-technical treatment of submitted cases by the courts” cause delays.⁹³ UNAMA reported in June 2020 that the ACJC prosecution office concurred, stating that the judges request irrelevant information that is difficult to obtain.⁹⁴

In September 2020, the AGO reported that judges were sending fewer cases back than in 2019. An ACJC judge echoed this sentiment and told us that the ACJC rejects cases outside of ACJC jurisdiction or requests information that prosecutors and investigators should be able to obtain. Indeed, Afghan law holds that judges can remand cases for additional investigation if they find insufficient evidence.⁹⁵ The ACJC judge also said that prosecutors are free to inform the judge of information they are unable to collect. For example, an ACJC official said in August 2020 that the ACJC sometimes does not receive the required documents from international partners in order to proceed with the prosecution of cases.

In addition to the cases sent back, State cited other causes for the decline of cases heard in 2020, including a “lack of capacity...bureaucratic stove-piping, security concerns, and corruption.”⁹⁶ International donors cited similar concerns. For example, one donor official stated in July 2020 that the ACJC lacks the capacity to hold corrupt actors accountable as a result of its non-competitive selection process for employees. International donor officials also said that they believe that if the ACJC selection process was more competitive, the quality of investigations would improve. One Afghan government official said in August 2020 that previous capacity programs had been very effective at the ACJC, and that they need more of them to build additional capacity.

International and Afghan Officials Indicated that Political Pressure and Fears for Safety Impact Operations

Afghan law enforcement officials said they often experience political pressure and threats to their safety. One AGO official stated in September 2020 that officials experience a great deal of pressure from members of Parliament and other powerful figures, while denying that this pressure successfully influences the outcome of cases. The official stated that pressure arises when members of Parliament push to be released from custody or for the AGO to drop their cases. One international donor official described to us what they called the “debilitating” practice of prosecutors and judges receiving requests for political favors, stating that this practice calls into question the independence of the ACJC. An Afghan government official disputed this claim in August 2020, stating that ACJC prosecutors do not experience political pressure from other government officials. However, the government official conceded that some prosecutors and judges do receive threats from defendants, especially high-ranking individuals. Additionally, in March 2020, CSTC-A told us that the ACJC seeks to avoid “troublesome and criminal prosecutorial decisions that will be personally dangerous for police, prosecutors and judges.”

The Afghan government and international donors have attempted to increase the safety and security of ACJC officials over the years because of threats, as we reported in our two previous anti-corruption assessments. Efforts have included beginning the construction of safe housing for ACJC staff and supplying armored vehicles. However, safety remains a top concern for Afghan law enforcement and anti-corruption officials. ACJC officials said they worry for their security, as they are constantly threatened and are often the targets of attacks. Attacks have included the following:

- Gunmen assassinated an Afghan Supreme Court justice in Kabul on December 4, 2020;
- Gunmen assassinated an AGO prosecutor in Kabul on December 6, 2020; and
- Gunmen assassinated two Supreme Court justices on January 17, 2021.

⁹² UN Assistance Mission in Afghanistan, *Afghanistan’s Fight against Corruption*, June 2020, pp. 48–49.

⁹³ State, response to SIGAR, December 23, 2020.

⁹⁴ UN Assistance Mission in Afghanistan, *Afghanistan’s Fight against Corruption*, June 2020, p. 52.

⁹⁵ Islamic Republic of Afghanistan, Criminal Procedure Code, Presidential Decree number 137, February 23, 2014, Article 202.

⁹⁶ State, response to SIGAR, May 21, 2020.

In September 2020, one AGO official stated that 2020 was the “deadliest” year for prosecutors. Similarly, MCTF staff have been the targets of attacks. At least seven attacks on MCTF employees occurred, with four employees killed, in the first 8 months of 2020 alone.

THE AFGHAN GOVERNMENT HAS ACHIEVED LIMITED PROGRESS IN MEETING ITS INTERNATIONAL ANTI-CORRUPTION COMMITMENTS

Since 2004, the Afghan government has agreed to numerous anti-corruption commitments with international bodies and has joined two international anti-corruption conventions. However, these commitments have produced varying levels of success in advancing Afghanistan’s fight against corruption. These anti-corruption commitments include those in the Afghanistan Compact, the GMAF, and their responses to our prior reports as discussed above. As noted earlier, according to State, the Afghanistan Compact has been on hold since the summer 2019, in advance of the Afghan Presidential elections in September 2019, and has no planned date for when it might resume. Regarding the GMAF, the Ministry of Finance’s 2020 GMAF Annual Report stated that the Afghan government met 96 percent of its anti-corruption area benchmarks. Consolidated donor comments to the Ministry of Finance’s report challenged the completion status of the benchmarks and highlighted issues with the implementation of the Afghan government’s reforms and the reliability of the Afghan government’s data.

Among the international anti-corruption conventions, the Afghan government is a party to the UNCAC and the UNTOC. It is also a member of the Asia/Pacific Group on Money Laundering, one of the Financial Action Task Force-Style Regional Bodies. Each of these defines standards of law and activity that signatories are expected to follow, including expectations for a regime of asset declaration and verification for public officials, cooperation with the law enforcement bodies of other countries, and anti-money laundering efforts. Afghanistan has made progress with anti-money laundering efforts, with its removal from the Financial Action Task Force grey list in 2018 and its continued funding of the Financial Transactions and Reports Analysis Center of Afghanistan (FinTRACA), Afghanistan’s financial intelligence unit.

Despite this progress, however, FinTRACA currently lacks the resources to fully investigate Afghanistan’s financial system, including hawaladars, through which an estimated 60 to 90 percent of Afghanistan’s financial transactions flow.⁹⁷ The Afghan government also has not verified the majority of asset declarations, has made sporadic progress in its cooperation with other countries’ law enforcement bodies, and struggles with extraditing individuals to or from Afghanistan.

The Afghan Government Reported Progress in Meeting GMAF Deliverables, But International Donors Continue to Have Concerns

The Ministry of Finance’s 2020 GMAF annual report found that of 63 total deliverables in the GMAF, it completed 43, made substantial progress in completing 13, made less substantial progress in completing 7, and classified the remaining 4 as “outliers.”⁹⁸ The Afghan government and international donors agreed to the GMAF at the November 2018 Geneva Conference. It contains 63 deliverables with which the Afghan government reports progress to international donors, including 4 related to anti-corruption, governance, rule of law, and human rights.

The 2020 GMAF annual report also found that the GMAF’s Program Area 2, related to anti-corruption, governance, rule of law, and human rights, was 96 percent completed and that all anti-corruption deliverables were completed. The anti-corruption deliverables called for

- 2.1: New indicators for the 2017 anti-corruption strategy to be approved

⁹⁷ According to the U.S. Department of the Treasury, “*Hawala* is an alternative or parallel remittance system. It exists and operates outside of, or parallel to ‘traditional’ banking or financial channels.” Hawala dealers are referred to as “*hawaladars*.”

⁹⁸ Islamic Republic of Afghanistan, Geneva Conference on Afghanistan, GMAF (2019–2020), Annual Report 2020, January 2020 [sic], p. 3.

- 2.2: Efficient tracking of corruption cases
- 2.3: Implementation of the Asset Declaration law
- 2.4: Implementation of the Access to Information law

While the GMAF contains 63 deliverables, including the four anti-corruption deliverables, both international donors and Afghan government officials stated that some GMAF deliverables are poorly worded and at times, the Afghan government and international donors disagreed whether a deliverable had been completed. For example, in classifying some benchmarks as “outliers” in the 2020 annual report, the Afghan government acknowledged that some benchmarks were not properly defined in the formulation stage, set unrealistic timeframes and deadlines, and were not set in accordance with government working processes.⁹⁹ Similarly, the Afghan government’s 2020 GMAF Second Quarter Report stated that some of the deliverables were unrealistic, do not “specify the exact role of the implementer,” do not align with government processes, and have unrealistic deadlines.¹⁰⁰ The report also suggested that the overall number of deliverables is “too high” and therefore, unmanageable.

Along with the Ministry of Finance’s 2020 GMAF Annual Report, we received a copy of the Afghan government’s response to the consolidated donor comments to the Ministry of Finance’s 2019 Annual GMAF report. This document contained numerous donor concerns for all four of the anti-corruption related benchmarks, focusing on the implementation challenges the Afghan government faces and the reliability of the Afghan government’s data. The consolidated comments also included overarching donor concerns about the reliability of the Afghan government’s tracking of GMAF completion and the lack of an international donor mechanism to verify the data reported by the Afghan government. UNAMA’s June 2020 anti-corruption assessment also found similar concerns; it reported that the Afghan government missed self-imposed deadlines in passing and implementing anti-corruption legislation.

Afghanistan Largely Enforces Asset Declaration Requirements, But Does Not Verify the Majority of the Declarations

The Afghan government has made progress in its efforts to require public servants to declare their assets, but it has not seen a corresponding increase in its efforts to verify those asset declarations. Article 20 of the UNCAC calls for signatory nations to criminalize illegal enrichment activities by public officials.¹⁰¹ In 2017, Afghanistan’s Asset Declaration and Verification Law expanded the asset declarations requirements of Article 154 of the Afghan Constitution by mandating the publication of officials’ asset declarations and expanding the categories of officials required to declare their assets.¹⁰² Additionally, as mentioned above, GMAF Deliverable 2.3 requires asset declaration and verification by Afghan officials.

In March 2021, the Afghan government reported that 29,848 officials declared their assets in 2020, exceeding its goal of 22,500. An Afghan government official stated in September 2020 that the Afghan government published the names of 197 officials for failing to declare their assets. After publication, 64 of the 197 officials declared their assets. Civil society officials and international donors told us they are unsure if the Afghan government did anything substantive to sanction those failing to declare their assets. However, according to Afghan officials, the other sanction available under the law for failing to file an asset declaration, withholding the official’s salary, is less effective than name publication.

⁹⁹ Islamic Republic of Afghanistan, Geneva Conference on Afghanistan, GMAF (2019–2020), Annual Report 2020, January 2020 [sic], p. 8.

¹⁰⁰ Islamic Republic of Afghanistan, Geneva Conference on Afghanistan, GMAF (2019–2020), Second Quarterly Report 2020, July 2020, p. 4.

¹⁰¹ UN Office on Drugs and Crime, “United Nations Convention Against Corruption,” 2004, p. 19.

¹⁰² The President of Afghanistan decreed the law and in 2019, the National Assembly approved it; UN Assistance Mission in Afghanistan, *Afghanistan’s Fight against Corruption*, June 2020, p. 24; Islamic Republic of Afghanistan, *The Constitution of Afghanistan*, January 26, 2004, Article 154.

According to Afghan officials, the Afghan government sent cases for six individuals who submitted their assets for verification to the AGO for further investigation. The officials stated that despite the referrals, the AGO declined to investigate or prosecute all six. When asked about the individuals, the AGO stated that it was not aware of receiving these referrals.

One international donor stated in July 2020 that the Afghan asset verification process is inefficient, and that many of the asset declaration forms are incomplete or inaccurate. According to the Afghan government, declaring and verifying asset declarations has been hindered by Afghan officials' unawareness of the submission requirements and their previous lack of computer access. Despite these hindrances, in September 2020, Afghan officials stated that coordination between Afghan agencies has increased through an interagency cooperation network.

In response to a draft of this report, the Afghan government reported in July 2021 that it had verified 7,399 asset declarations in the 2 years leading up to September 2020, and had verified an additional 3,391 asset declarations between September 2020 and June 2021. The Afghan government said that as a result of these 10,790 total verified asset declarations, the proportion of asset declarations filed to verified increased significantly. The Afghan government also said that it had verified the asset declaration forms for all high ranking government officials, judges, and prosecutors as required by the GMAF.

The Afghan Government Periodically Cooperates on Criminal Matters Such as Extradition

In our November 2019 assessment, we suggested that the Afghan government consider increasing coordination and cooperation between its law enforcement organizations and international law enforcement organizations. The Afghan government committed to address this issue in response to our matter for consideration, stating, "MOI will further work with INTERPOL to localize and ensure arrest of convicted individuals in corruption cases, and extradite any suspect requested by third countries."¹⁰³ During the course of this assessment, we found that Afghanistan participates in INTERPOL through the issuance of Red Notices (international arrest warrants), the identification and arrests of international criminals and smugglers in Afghanistan, the identification and locating of fugitives upon request of INTERPOL member countries, and the INTERPOL National Central Bureau-Kabul.

However, we also found that the Afghan government struggles with getting other nations to extradite Afghan citizens back to Afghanistan, especially those accused of corruption. In September 2020, the Afghan government stated that since October 2019, other countries had extradited a total of seven people back to Afghanistan, and four more extraditions were in progress. However, none of the seven were extradited for corruption crimes. In January 2021, the Afghan government stated it had identified eleven individuals accused of corruption as living abroad, nine of whom had appeared in the publicized list of 255 warrants that the Afghan government created between 2018 and 2019.¹⁰⁴

The Afghan government cited several conditions that make extradition difficult. These include a lack of interest in cooperation on the part of other governments "for political or economic reasons," and the prohibition against INTERPOL from interfering in political matters, which is relevant as the Afghan government said that many of its suspects have political backgrounds. Afghan officials also stated that they face difficulties in finalizing agreements with other countries for extradition.¹⁰⁵ In January 2021, the Afghan government stated that it has extradition agreements with seven countries: China, India, Iran, Russia, Tajikistan, the United Arab Emirates, and Uzbekistan. In cases involving countries without an extradition agreement, the Afghan government stated it is pursuing suspects

¹⁰³ SIGAR, Afghanistan's Anti-Corruption Efforts, 20-06-AR, p. 50.

¹⁰⁴ As noted previously, in its July 2021 response to a draft of this report, the Afghan government said that 37 cases from the list of 255 warrants were in progress by INTERPOL, and that 11 of these cases had been located abroad.

¹⁰⁵ Despite these difficulties, in its July 2021 response to a draft of this report, the Afghan government reported a recent improvement in the number of extraditions. According to the Afghan government, less than 10 individuals were extradited to Afghanistan from other countries between 2002 and 2018. However, since 2018, 21 individuals have reportedly been extradited.

abroad through diplomatic channels.¹⁰⁶ However, in April 2021, DOJ told us that other countries do not have “faith in the Afghan criminal justice system to impartially investigate, prosecute, and adjudicate a case,” contributing to Afghanistan’s trouble obtaining the extradition of suspects. In its July 2021 response to a draft of this report, the Afghan government said that it had developed and was implementing a follow-up plan for referrals by the ACJC to INTERPOL for arrest warrants, as well as a capacity-building plan to package and track referrals to INTERPOL.

Based on our analysis of supporting documentation we received throughout 2020 and in January 2021 from the Afghan government, the Afghan government received extradition requests for eleven individuals as of September 2020. Of the eleven, two individuals were extradited, leaving nine still wanted by other countries and thought to be in Afghanistan as of January 2021. In March 2021, the Afghan government sent one of the wanted individuals to Russia and one to Pakistan, leaving a third awaiting extradition back to Russia. Of the remaining eight, five were Afghan citizens or already had been prosecuted in Afghanistan, and three sought asylum in Afghanistan. In March 2021, the Afghan government told us that it extradited five Iranian citizens to their home country, but did not provide us with supporting documentation or evidence of the extradition.

The Afghan Constitution prohibits the extradition of Afghan citizens without “reciprocal arrangements” on extradition with other countries.¹⁰⁷ In March 2021, the Afghan government reported that 18 individuals were awaiting extradition to Tajikistan and 12 were awaiting extradition to Iran, in addition to the 9 individuals wanted by other countries and thought to be in Afghanistan that were previously discussed.¹⁰⁸ In its July 2021 response to a draft of this report, the Afghan government stated that 10 of the Iranian citizens were extradited to Iran on July 1, 2021, and that a dual citizen of Russia and Afghanistan was allowed to travel to Russia “under the guidance of the Supreme Court.”¹⁰⁹ According to the Afghan government, as of July 2021, the extraditions of the remaining 2 Iranian citizens have not taken place, and legal action regarding the extradition of the Tajik citizens is ongoing. While the Afghan Constitution prohibits the extradition of Afghan citizens without “reciprocal arrangements,” the Afghan government reported having extradition agreements with Iran and Tajikistan, so it is unclear why these individuals have not been extradited.¹¹⁰ In April 2021, DOJ noted that not all returns of fugitives from Afghanistan to another country were extraditions, stating “if there is neither an extradition treaty nor an extradition agreement of some kind between two countries, it is very likely that these ‘extraditions’ are actually deportations or expulsions of undesirables.”¹¹¹

FinTRACA is Generally Viewed as Effective, But May Lack Sufficient Capability and Resources to Prevent Illicit Finance, Especially in the Informal Financial Sector

FinTRACA, Afghanistan’s financial intelligence unit, is responsible for combatting money laundering and terrorist financing. Established in 2006 by Afghanistan’s Anti-Money Laundering Law, it is tasked with analyzing and disseminating information received from traditional financial institutions, such as banks, as well as informal financial institutions, such as hawaladars (money service providers). FinTRACA’s establishment complies with

¹⁰⁶ As discussed earlier, the Afghan government has separately stated that both 11 and 31 wanted individuals are thought to be abroad and have been referred to INTERPOL. However, the Afghan government has not provided us with information specifying which countries these suspects are located in, making it impossible to discern how many wanted individuals are residing in countries with which Afghanistan has signed an extradition agreement.

¹⁰⁷ Islamic Republic of Afghanistan, *The Constitution of Afghanistan*, January 26, 2004, Article 28.

¹⁰⁸ The Afghan government has not provided us with supporting information for these 30 individuals.

¹⁰⁹ It is unclear if this statement refers to the individual who was awaiting extradition to Russia as of March 2021, or implies that the individual was, in fact, extradited to Russia.

¹¹⁰ While the Afghan government reported that it has a memorandum of understanding on extradition with Iran in January 2021, in March 2021 the Afghan government told us that Iran’s requests to extradite five Afghan citizens to Iran were rejected based on Article 28 of the Afghan Constitution and because the two countries lack an agreement. This statement directly contradicts the Afghan government’s previous statement and further demonstrates the Afghan government’s lack of coordination on criminal matters.

¹¹¹ DOJ, response to SIGAR, April 5, 2021.

UNTOC Article 7, which mandates that state signatories “shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions...in order to deter and detect all forms of money-laundering...”¹¹² Additionally, Afghanistan is a member of the Asia/Pacific Group on Money Laundering, which ensures its members effectively implement international standards against money laundering, pursuant to Financial Action Task Force standards.¹¹³

Multiple sources, including DOD, DOJ, and Department of the Treasury officials, consider FinTRACA one of Afghanistan’s most trusted institutions and crucial in the fight against corruption and money laundering. Notably, according to UNAMA’s June 2020 anti-corruption report, FinTRACA is an example of the Afghan government’s ability to empower and build trust for an anti-corruption institution.¹¹⁴

The need to address illicit finance and money laundering in Afghanistan, pursuant to FinTRACA’s tasking, is a cornerstone in the fight against illicit finance, which State says fuels corruption. According to State,

Illicit finance is pervasive in Afghanistan and affects nearly every aspect of the licit and illicit economy at local and national levels. It empowers criminal and terrorist networks, powers the drug trade, siphons money and other resources out of the country, and touches the lives of nearly every Afghan citizen, undermining trust in the central government. Illicit financial flows also allow the powerful to fuel corruption, interfere in legal and political processes, and buy impunity for crimes.¹¹⁵

Although addressing illicit finance is critical to the fight against corruption, some U.S. officials believe that FinTRACA does not have enough resources to carry out its mission and the Afghan government may not have the capacity to enforce its anti-money laundering laws. Similarly, an International Monetary Fund report published in 2019 states that the “understanding and application of preventive measures by Afghan financial institutions has been improving, but further strengthening is needed.”¹¹⁶ According to U.S. officials, an estimated 60 to 90 percent of Afghan finance flows through informal channels, creating opportunities for corruption. As CSTC-A told us in 2020,

While the Afghan financial system has had criminal activity (e.g., Kabul Bank), there are larger issues which stem, in part, from the lack of transparency with hawaladars, where criminal networks and syndicates can move, hide, and transfer criminal proceeds with relative impunity.¹¹⁷

For example, we published a report in January 2021 that found the cash counting machines at the international airport in Kabul were not regularly used to track cash leaving Afghanistan and were not connected to the internet, nearly 10 years after the U.S. government installed them.¹¹⁸ We also found that while there are screening procedures and signs notifying passengers of the requirements to declare their currency at the main terminal, these same protections are absent from the VIP terminal. While not all of Afghanistan’s informal finance is illicit, the magnitude of the informal financial sector and its scattershot monitoring and enforcement may increase the difficulty in tracking illicit money flows.

According to State, the Afghan government reported that FinTRACA has been trying to force more of the estimated 3,200 hawaladars to “corporatize,” and the Afghan government said that it aimed to inspect all money exchange providers, which according to 2020 data would amount to 3,176 money exchange offices.¹¹⁹ The Afghan government has described some successes with these efforts, stating in January 2021 that it had registered 500

¹¹² UN Office on Drugs and Crime, “United Nations Convention Against Transnational Organized Crime and the Protocols Thereto,” 2004, p. 9.

¹¹³ Asia-Pacific Group on Money Laundering, “APG History and Background,” accessed March 3, 2021, <http://www.apgml.org/>.

¹¹⁴ UN Assistance Mission in Afghanistan, *Afghanistan’s Fight against Corruption*, June 2020, p. 32.

¹¹⁵ State, response to SIGAR, November 3, 2020.

¹¹⁶ International Monetary Fund, “Staff Report for the 2019 Article IV Consultation and the Sixth Review under the Extended Credit Facility Arrangement,” 2019, p. 73.

¹¹⁷ DOD, response to SIGAR, October 6, 2020.

¹¹⁸ SIGAR, *Hamid Karzai International Airport: Despite Improvements, Controls to Detect Cash Smuggling Still Need Strengthening*, SIGAR 21-15-SP, p. 5.

¹¹⁹ State, response to SIGAR, May 21, 2020.

previously unlicensed and unregistered money exchange and service providers. Additionally, the Afghan government said in January 2021 that it had conducted inspections of 2,817 out of 3,176 money exchange offices (about 89 percent). It is required to conduct yearly inspections of all money service providers, but has struggled to do so recently because of the COVID-19 pandemic. Additionally, U.S. officials stated that FinTRACA does not have the resources to monitor all hawaladars.¹²⁰

U.S. officials have also stated that FinTRACA has limited resources to respond to Egmont Group requests. According to CSTC-A, FinTRACA can take between 1 and 9 months to respond to an Egmont request, with an average response time of 5 months. CSTC-A reported in March 2020 that this delay has severely limited FinTRACA's impact toward removing corrupt Afghan officials. CSTC-A stated that increasing FinTRACA's resources are paramount to the continued effort to combat corruption in Afghanistan.¹²¹

Although CSTC-A is concerned that FinTRACA does not have enough resources to contend with Afghanistan's large and informal financial sector, CSTC-A stated in July 2020 that it cut its financial crimes advisory position as the U.S. military draws down its presence in Afghanistan. As such, in response to our questions on financial crimes, CSTC-A stated that it no longer has someone dedicated to this area. As a result, CSTC-A could be slower or less able to provide assistance to the Afghan government on illicit finance.¹²²

CONCLUSION

We completed substantive field work for this audit in April 2021.¹²³ Therefore, the events of August 2021, including the collapse of the Afghan government and the Taliban's return to the capital, are not considered or incorporated into our findings or the associated matters for consideration directed to the Afghan government. Nevertheless, this report and others issued by SIGAR clearly demonstrate the powerfully corrosive effect that corruption had on core Afghan institutions, including the Afghan National Defense and Security Forces. Addressing our findings and associated matters for consideration would benefit any future Afghan government that wishes to meaningfully address the endemic corruption that has plagued Afghanistan's institutions for many years.

The Afghan government continues to take steps to combat corruption, but it faces significant challenges to achieving tangible and long-lasting reforms. As this assessment and our other reports have shown, the Afghan government often focuses its efforts on "intangible" reforms and "box-checking exercise[s]" that ultimately do little to reduce corruption. Additionally, neither the Afghan government nor the international donor community have consistently shown the political will to create concrete benchmarks with serious incentives for accomplishing them. Both the Afghan government and the international community have the opportunity to signal a renewed interest in combatting corruption by creating a new anti-corruption strategy with specific, time bound, and verifiable benchmarks.

Similarly, both this report and our prior work have found that there remain significant barriers to the Afghan government exercising its authority to prosecute powerful individuals suspected of corruption. For example, the Afghan Constitution continues to grant protections to sitting members of Parliament that have been used by those members to avoid arrest and prosecution. In other cases, the Afghan government has failed to arrest powerful actors, has presented conflicting information about outstanding warrants, or has limited cooperation when

¹²⁰ In its response to a draft of this report, in July 2021, the Afghan government said that conducting financial inspections or supervision is not FinTRACA's main role, and that this type of inspection is one of the duties of the Supervision Department of Non-Banking Institutions at Da Afghanistan Bank. The Afghan government further stated that this Supervision Department has sufficient resources to carry out its duties.

¹²¹ In its response to a draft of this report, in July 2021, the Afghan government stated that FinTRACA had sufficient operational, technical, and logistical support to perform its duties.

¹²² For additional information, see: SIGAR, *Counter Threat Finance: U.S. Agencies do not Know the Full Cost and Impact of their Efforts to Disrupt Illicit Narcotics Financing in Afghanistan*, SIGAR 21-29-AR, March 25, 2021.

¹²³ Specifically, we briefed the Afghan government on our preliminary findings on April 1, 2021, then provided a complete draft of this report to the Afghan government for review and comment on May 21, 2021. We received comments from the Afghan government on July 24, 2021.

extraditing wanted individuals to or from Afghanistan. These challenges reduce trust in the Afghan court system as the powerful often appear to escape justice. Lastly, since much of Afghanistan's financial system flows through informal markets, well-connected individuals and government officials have had the opportunity to enrich themselves at the expense of the nation. Without the necessary resources dedicated to asset verification and the oversight of financial flows, the Afghan government has not been able to stop the illegal enrichment of public officials or the largely unregulated informal markets from fueling corruption. As the international donor community continues to fund much of Afghan government operations, there remain strong incentives for donors and the Afghan government to attempt to increase public confidence in the government by strengthening its ability to fight public corruption.

MATTERS FOR CONSIDERATION FOR THE AFGHAN GOVERNMENT

If the Afghan government chooses to create updated benchmarks for its 2021 anti-corruption strategy or other national anti-corruption strategy documents, it should consider

1. creating and implementing benchmarks that are specific, verifiable, time bound, and achieve the desired outcome.

In order to enhance the rule of law in Afghanistan and reduce the impunity of powerful actors, the Afghan government should:

2. Amend Article 102 of the Afghan Constitution or develop and enforce procedures for the arrest and prosecution of members of Parliament;
3. Create and maintain a single, comprehensive list of warrants for individuals accused of corruption crimes;
4. Provide additional resources to support the declaration and verification of assets by public officials;
5. Increase formal and informal cooperation with international law enforcement organizations; and
6. Provide the necessary resources to FinTRACA to enable it to conduct regular inspections at hawaladars and better monitor illicit financial flows.

RESPONSE TO AFGHAN GOVERNMENT AND U.S. AGENCY COMMENTS

We provided a draft of this report to the Afghan government, State, DOD, DOJ, and USAID for review and comment. Only the Afghan government, through the ACC, provided written comments; those comments are reproduced in appendix IV. The Afghan government concurred with the first and fifth matters for consideration and concurred in principle with the second, third, fourth, and sixth matters for consideration. The Afghan government listed actions it intends to take and we consider the listed actions responsive to the matters for consideration. We also received technical comments from State, which are incorporated as appropriate.

The Afghan government's response to our report was divided into four sections. The first section discussed the Afghan government's past and on-going anti-corruption efforts, the second section discussed the Afghan government's disagreement with nine points raised by our report, the third section provided the Afghan government's response to our previous report's matters for consideration, and the fourth section provided the Afghan government's response to our current report's matters for consideration. We summarize the first and fourth sections of the Afghan government's response here, and we respond to the second and third sections of its response following the reproduction of the Afghan government's official response in appendix IV.

The Afghan Government's Past and On-Going Anti-Corruption Efforts

In its response to our draft, the Afghan government highlighted the anti-corruption reforms it has advanced since the publication of our prior assessment in November 2019. First, the Afghan government stated that it completed 101 out of 102 benchmarks from its prior anti-corruption strategy that was in place from 2017 to 2020, noting

that “significant reforms have been made in strengthening legal framework and anti-corruption institutions and preventing corruption in the security, legal and judicial, financial, and economic sectors.”¹²⁴

Second, the Afghan government highlighted its implementation of the Afghan Personnel and Pay System, the Afghan Human Resource Management Information System, and the Core Information Management System. The Afghan government said that the implementation of these three systems has “significantly improved transparency in human resource management and asset management in the security sector.”¹²⁵

Third, the Afghan government highlighted its completion of one-stop shops for licensing at the Afghanistan Central Business Registry and Intellectual Property Office; the adoption of numerous regulations including those covering asset recovery, beneficial ownership, the case management system, hydrocarbon regulations and public investment management; and the amendment of Article 183 of the Afghan Constitution to require the publication of court decisions in corruption cases. The Afghan government also highlighted its reorganization of the Supreme Audit Office to ensure its independence and eliminate any overlap in duties in consultation with international partners.

Fourth, the Afghan government discussed its establishment of the ACC in November 2020, noting that the ACC “has all the resources and powers set out in the UN Convention against Corruption, the Anti-Corruption Law, the Whistleblowers Protection Law and the Criminal Procedure Code to carry out its mission effectively as a corruption prevention and anti-corruption agency.”¹²⁶ The Afghan government further said that the ACC is “based on the applicable laws of the country has [sic] full authority to handle complaints and allegations of corruption made against ministers, heads of independent government entities, and the head and employees of the President’s Office.”¹²⁷ The Afghan government also highlighted its creation of the AIC and its commitment to the Open Government Partnership and the values of transparency and accountability in government service.¹²⁸

Fifth, the Afghan government highlighted its progress in meeting international anti-corruption commitments, including its progress in implementing all of the recommendations from the Fifth Report of the Extractive Industries Transparency Initiative and the lifting of Afghanistan’s membership suspension. The Afghan government also discussed its cooperation with the Implementation Review Mechanism of the UNCAC in the second cycle of Afghanistan’s self-assessment, and Afghanistan’s implementation of most of the provisions of the UNCAC in recent years. The Afghan government credited the implementation of these reforms to Afghanistan’s rise in Transparency International’s Corruption Perceptions Index, the World Justice Project’s Rule of Law Index, and the Open Budget Index.

Sixth, the Afghan government discussed its efforts to develop the National Anti-Corruption Strategy for 2021 and noted its approval by the HCLAC. The Afghan government said that its 2021 national anti-corruption strategy was developed through consultation with both Afghan civil society and international partners. The Afghan government also said that the ACC had begun its impact assessment of the 2017–2020 anti-corruption strategy, which will provide baselines for developing a 2022–2025 anti-corruption strategy, and that the European Union is providing technical and financial support for the assessment.

Seventh, the Afghan government said that the fight against corruption is one of the main priorities of both the Afghan Partnership Framework of 2020, and the National Framework for Peace and Development of Afghanistan for 2021–2025. The Afghan government noted that both of these documents “envisage clear, specific, and effective measures to combat corruption over the next four years.”¹²⁹ The Afghan government also said that it amended the Joint Action Plan to Improve Detection and Prosecution of Corruption Cases based on a benchmark

¹²⁴ Islamic Republic of Afghanistan ACC, Afghan government response to SIGAR’s draft report, July 24, 2021, p. 1.

¹²⁵ Islamic Republic of Afghanistan ACC, Afghan government response to SIGAR’s draft report, July 24, 2021, p. 1.

¹²⁶ *Ibid.*, p. 2.

¹²⁷ *Ibid.*, p. 2.

¹²⁸ 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.

¹²⁹ Islamic Republic of Afghanistan ACC, Afghan government response to SIGAR’s draft report, July 24, 2021, p. 3.

from the GMAF, and that the updated prosecution plan and the National Anti-Corruption Strategy for 2021 “have clear, tangible, time-bound benchmarks and clear expected results.”¹³⁰

Lastly, the Afghan government discussed its progress in addressing major corruption cases and prosecuting powerful individuals. The Afghan government said that the “ACJC has continued to prosecute high-ranking officials, members of Parliament, former election commissioners, and generals.”¹³¹ The Afghan government highlighted the prosecution of two former cabinet ministers, the progress made in prosecuting three additional former ministers, and the arrest and prosecution of three senators. The Afghan government noted that President Ghani had also removed two of the accused senators from office.

The Afghan government concluded that the

adoption of the above measures demonstrate [sic] the strong political will of the Government of Afghanistan to combat corruption through the formulation and implementation of effective and coordinated strategies and policies to fight corruption. These efforts show that the Government of Afghanistan, despite the challenges posed by the war with the Taliban, the complexities of peace talks, and the outbreak of the Coronavirus, addresses concerns raised in the November 2019 SIGAR report and international partners, it has paid attention to and maintained the fight against corruption as a serious priority.¹³²

The Afghan Government’s Response to the Matters for Consideration

The Afghan government concurred with the first and fifth matters for consideration, and concurred in principle with the second, third, fourth, and sixth matters for consideration. The Afghan government listed actions it intends to take and we consider the listed actions responsive to the matters for consideration.

With regard to the first matter for consideration, the Afghan government reported that the ACC will consider the need for benchmarks to be specific, verifiable, time bound, and able to achieve desired outcomes when creating benchmarks for its National Anti-Corruption Strategy for 2022–2025.

With regard to the second matter for consideration, the Afghan government concurred in principle. The Afghan government said that it did not need to amend Article 102 of the Afghan Constitution, but included five actions that it would take to address the matter for consideration. The Afghan government said that (1) the AGO will work with the ACC to develop and implement specific procedures for the arrest and prosecution of members of parliament suspected of corruption crimes by July 2022; (2) it would amend Articles 100, 101, 102, 105, 106, 110, 209, 210, and 305 of the Criminal Procedure Code by August 2022; (3) the ACC will oversee the investigation and prosecution of high ranking officials referred to the AGO prior to December 2020 and will submit a report to the President, Parliament, and Afghan people by December 2022; (4) the ACC will conduct a comprehensive assessment of the detection, investigation, and prosecution departments of the MOD and MOI, and the Afghan government will take specific corrective actions based on the assessment by June 2022; and (5) will amend the Criminal Procedure Code to resolve any ambiguities that prevent the effective investigation of corruption cases at the MOD and MOI by September 2022. We consider these actions to be responsive to the matter for consideration.

With regard to the third matter for consideration, the Afghan government concurred in principle. The Afghan government said that it would create and maintain a single and comprehensive list of warrants for individuals accused of or convicted of corruption in a joint database run by the ACJC, AGO, and MOI by December 2021. The Afghan government said that all arrest warrants issued by the AGO and the ACJC will be registered in this database. The Afghan government also said that Afghan law does not allow for the publication of arrest warrants,

¹³⁰ *Ibid.*, p. 3.

¹³¹ Islamic Republic of Afghanistan ACC, Afghan government response to SIGAR’s draft report, July 24, 2021, p. 3.

¹³² *Ibid.*, p. 3.

and we updated the matter for consideration accordingly. We consider the creation and maintenance of a single joint database of corruption warrants to be responsive to this matter for consideration.

With regard to the fourth matter for consideration, the Afghan government concurred in principle. The Afghan government said that the ACC will conduct an assessment of the Office of Asset Registration and Verification's needs "to improve asset declaration and verification affairs" and the Afghan government will meet those needs by March 2022.¹³³ We consider these actions to be responsive to the matter for consideration.

The Afghan government concurred with the fifth matter for consideration. The Afghan government included five actions that it will take to address this matter for consideration. The Afghan government said (1) the ACC will conduct a comprehensive assessment of the performance of the INTERPOL Directorate at the MOI, the MOI will work with INTERPOL to ensure that persons convicted of corruption are arrested and any suspects requested by third countries are extradited, and that the AGO, the MOI, and the Ministry of Justice will sign memorandums of understanding with the European Union Police and INTERPOL by September 2022; (2) the AGO, the MOI, and the Ministry of Justice will sign cooperation agreements with Iran, Kazakhstan, Tajikistan, Turkey, the United Arab Emirates, and Saudi Arabia to prosecute corruption cases, extradite accused and convicted persons, and return illegal assets from abroad by December 2022, and will also finalize similar agreements with Germany, the United States, and India; (3) the ACC will have concluded three memorandums of understanding on joint cooperation on asset recovery, sharing experiences related to anti-corruption, and improving the capacity of the ACC staff with Tajikistan, Azerbaijan, and Saudi Arabia by August 2022; (4) the Afghan government will amend the Law on Extradition and Legal Cooperation to simplify the process for exchanging requests for legal cooperation and clarify internal procedures at the Ministries of Foreign Affairs, Justice, AGO, and MOI by September 2022; and (5) the AGO and MOI will deliver specific training programs to at least 100 professional staff by September 2022 to improve cooperation with international law enforcement agencies. We consider these actions to be responsive to the matter for consideration.

The Afghan government concurred in principle with the sixth matter for consideration. The Afghan government said that by March 2022, Da Afghanistan Bank and the ACC will conduct a joint assessment to identify and address the needs of FinTRACA to better perform its duties and respond to the Egmont Group's requests. We consider these actions to be responsive to the matter for consideration.

¹³³ Islamic Republic of Afghanistan ACC, Afghan government response to SIGAR's draft report, July 24, 2021, p. 15.

APPENDIX I - SCOPE AND METHODOLOGY

This audit evaluated the extent to which the Afghan government has made progress in achieving its anti-corruption objectives. Specifically, the objectives of this audit were to determine the extent to which the Afghan government (1) addressed key concerns raised by SIGAR’s November 2019 report and by international donors, including the extent to which the Afghan government took practical steps that yielded quantifiable and tangible results; (2) took steps towards addressing the impunity of powerful Afghans; and (3) made progress in meeting its international anti-corruption commitments.

For all objectives, we interviewed numerous officials from the Afghan government, Afghan civil society organizations, international donor organizations, and the U.S. government. With regard to the Afghan government, we interviewed officials from the Access to Information Commission, Anti-Corruption Justice Center, Asset Declaration and Review Office, Attorney General’s Office, Joint Monitoring and Evaluation Committee on Anti-Corruption, Major Crimes Task Force, Ministry of Finance, Ombudsperson Office, and Special Anti-Corruption Secretariat. We also interviewed officials from Afghan civil society organizations.

We spoke with officials from international donor organizations, including the UN Assistance Mission in Afghanistan, and the Embassies of the European Union and Denmark. With regard to U.S. organizations, we interviewed officials from the Department of Defense and Combined Security Transition Command–Afghanistan, Department of Justice, Department of State, Department of the Treasury, and U.S. Agency for International Development.

To determine whether the Afghan government addressed key concerns raised by SIGAR’s November 2019 report and by international donors, including the extent to which the Afghan government took practical steps that yielded quantifiable and tangible results, we analyzed documents that describe the Afghan government’s progress in addressing our concerns and those previously raised by international donors. We obtained these documents from the Afghan government, international donor officials, and U.S. government officials. We compared them against interviews with the aforementioned stakeholders to evaluate the Afghan government’s progress in addressing the concerns identified in our 2019 report and by international donors.

Specifically, to assess the Afghan government’s progress in addressing the matters for consideration outlined in our 2019 report, we used documentation provided by the Afghan government and analyzed the status (complete or incomplete) and outcome (tangible or intangible) of the benchmarks accompanying each matter for consideration. If a benchmark was incomplete, we evaluated the projected outcome of the benchmark. We defined “tangible” benchmarks as concrete actions that are likely to reduce corruption, and “intangible” benchmarks as those requiring steps beyond the initial reform to reduce corruption. Based on this analysis, we determined the number of complete, incomplete, tangible, and intangible benchmarks, and used this information to draw conclusions about the Afghan government’s achievement of the matters for consideration. We depicted the results of this analysis in Table 1 in the body of the report.

To determine the extent to which the Afghan government took steps towards addressing the impunity of powerful Afghans, we reviewed documentation regarding forms of legal and de facto impunity of powerful actors, the implementation of arrest warrants and summonses, the capacity and resourcing of Afghan law enforcement organizations, and attacks against Afghan judicial officials. We obtained these documents from the Afghan government, international donors, and U.S. government officials. We analyzed statistics on anti-corruption prosecutions and cases from the Anti-Corruption Justice Center to evaluate the number and ranks of defendants tried in the Primary Court, and corroborated this evidence with statements made by the interviewees listed above. We also built upon the information obtained in our first and second audits of the Afghan government’s anti-corruption progress to gain insight on Anti-Corruption Justice Center prosecution trends.

To determine whether the Afghan government made progress in meeting its international anti-corruption commitments and deliverables, we assessed relevant international frameworks to which Afghanistan is a signatory, including the Geneva Mutual Accountability Framework, the United Nations Convention Against Corruption, the United Nations Convention Against Transnational Organized Crime and its Protocols, and Afghanistan’s agreements on extradition with other nations. We also reviewed documentation provided by the

Afghan government, international donors, and U.S. government officials to analyze the Afghan government's ability to meet international standards enforced by the Egmont Group and the Financial Action Task Force. Finally, we compared this documentation against evidence provided in interviews with the officials noted above.

We relied on computer-generated data from the Afghan government to analyze statistics on Anti-Corruption Justice Center cases and prosecutions. We assessed the reliability and consistency of the Anti-Corruption Justice Center's data by comparing it with supporting documentation from, and interviews with, international donor officials. We determined that the data was sufficiently reliable for the purposes of this report. To assess internal controls, we analyzed the Afghan government's reporting on its progress toward, and achievement of, the concerns identified in our 2019 report, corruption prosecutions, and international anti-corruption commitments. These concerns included if control activities and information systems were designed and overseen to achieve their intended results and respond to risks; if organizations were committed to ethical operations, had adequate oversight, retained qualified staff, and held personnel responsible for internal control failures; if quality information was collected and communicated internally and externally to achieve organizational objectives; and if previously identified control deficiencies were remedied. We included the results of our assessment in the body of the report.

We conducted this audit in accordance with the explanatory statement for the Committee on Appropriations report, 2020, which directed that SIGAR shall

Update the assessment required by the explanatory statement accompanying the Department of State, Foreign Operations, and Related Programs Appropriation Act, 2017 (division J of Public Law 115-31) of the Government of Afghanistan's implementation, resourcing, and administration of the Afghanistan National Strategy for Combating Corruption, including whether such government is making progress toward achieving its anti-corruption objectives, addressing impunity of powerful individuals, and meeting international commitments.¹³⁴

We conducted our work in Arlington, Virginia, from January 2020 through August 2021, 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. SIGAR performed this audit under the authority of Public Law No. 110-181, as amended, and the Inspector General Act of 1978, as amended.

¹³⁴ U.S. Congress, Senate, Committee on Appropriations, Department of State, Foreign Operations and Related Programs Appropriations Bill, 2020; Report (to Accompany S. 2583). 116th Cong., 1st Session, 2019, S. Rep. 116-126, p. 31.

APPENDIX II - OVERVIEW OF AFGHAN GOVERNMENT EFFORTS TO COMPLETE BENCHMARKS

Given that we have repeatedly observed Afghanistan’s difficulty in making tangible anti-corruption progress, and considering the repeated criticism to this effect from international stakeholders, we performed an analysis of the status of all 26 benchmarks the Afghan government created in response to our November 2019 eight matters for consideration. The analysis categorizes the reforms as “tangible” and “intangible.” For the purposes of this report, we define “tangible” reforms as concrete actions that are likely to reduce corruption, such as the arrest of corrupt actors; and “intangible” reforms as those that will require further steps beyond the initial reform to reduce corruption. For example, the Afghan government committed to “revise the Joint Action Plan for Improving Detection and Prosecution of Corruption Cases” to include measures that would increase the number of arrests and prosecutions of corrupt individuals.¹³⁵ The Special Anti-Corruption Secretariat completed this benchmark, but the revision of the Plan of Action only facilitated the preparation of additional plans and regulatory reforms. Thus, the revision of the Plan of Action represents an intangible result that has not actually reduced corruption. The narrative below describes each matter for consideration and related benchmarks to provide a detailed account of our analysis and explanation of our findings.

Matter for Consideration 1: Increase the resources provided to anti-corruption law enforcement organizations such as the Attorney General’s Office (AGO), Anti-Corruption Justice Center (ACJC), and Major Crimes Task Force (MCTF) to provide them with the ability to increase the number of arrests and prosecutions of corrupt individuals.

Benchmarks:

1. Special Anti-Corruption Secretariat will revise the Plan of Action to Improve Prosecution and Detection adopted by the High Council on Rule of Law and Anti-Corruption (HCLAC) in July 2019 to include measures that will increase the number of arrests and prosecutions of corrupt individuals.
2. MOI (Ministry of Interior Affairs) will review the performance of all MCTF personnel and replace all weak performers.
3. MOI will define detailed procedures for cooperation between MCTF and ACJC.
4. MOI will ensure all detection cases referred to MCTF prior to July 2019 are cleared.
5. MOI will summon or arrest at least 85 percent of individuals whose arrest or summon warrants are issued by ACJC as of September 2019 and whose presence is established in Afghanistan.
6. MOI will develop an operational plan to implement all outstanding arrest and summons warrants.
7. AGO will adopt verifiable Prosecution Standards agreed upon by the judiciary to reduce judicial orders of return to prosecution.
8. AGO will determine case-distribution standards to prosecutors.

As reported in SIGAR’s 2018 and 2019 anti-corruption assessments, the Afghan government continues to struggle with resourcing its anti-corruption law enforcement organizations. The Afghan government completed six of the eight benchmarks associated with the first matter for consideration, but only one of these completed benchmarks produced a tangible anti-corruption outcome. In accordance with the benchmark to review the performance of all MCTF personnel and replace all weak performers, in March 2020, the MCTF conducted performance evaluations of all its personnel and removed three employees suspected of corruption. This included removing the former

¹³⁵ Islamic Republic of Afghanistan Anti-Corruption Commission (ACC), Afghan government response to SIGAR’s draft report, July 24, 2021, p. 7.

Director of the MCTF, a position that has experienced frequent leadership turnover, especially during 2020.¹³⁶ Additionally, the performance evaluations resulted in the reassignment of 167 employees within the MCTF based on their qualifications and backgrounds. The removal and replacement of weak performers and corrupt actors at the MCTF will likely improve capacity and tangibly reduce corruption at the organization.

The remaining five completed benchmarks constitute intangible regulatory measures that necessitate further action to curb corruption. For example, in July 2021, the Afghan government reported that the Plan of Action to Improve Prosecution and Detection was revised in consultation with international partners and approved by the HCLAC. According to the Afghan government, this plan facilitated activities such as the preparation of an operational mechanism to implement arrest warrants, the development of a plan to recover stolen assets, and attempts to extradite individuals accused of corruption from other countries. While the benchmark to revise the Plan of Action was completed, it ultimately represents an intangible measure that prompted the completion of supplemental regulatory reforms, which require additional steps to reduce corruption.

Further, the Afghan government has provided inconsistent information regarding the status of benchmarks. For example, on January 4, 2021, the Afghan government stated that 77 warrants from the list of 255 were outstanding, with 46 cases under investigation by the MCTF, and 31 cases in progress by the International Criminal Police Organization (INTERPOL). This indicates that 178 warrants had been executed. In a separate report dated January 24, 2021, the Afghan government said that 79 warrants from the list of 255 were outstanding, with 48 cases under investigation by the MCTF, and 31 cases in progress by INTERPOL. This means that 176 warrants had been implemented. These conflicting figures demonstrate that there is a lack of coordination among Afghan law enforcement agencies on tracking the number of outstanding arrest warrants.

In its July 2021 response to a draft of this report, the Afghan government stated that 180 warrants from the list of 255 have been executed, 37 individuals from the list of 255 are outside Afghanistan and being pursued by INTERPOL, and 218 individuals from the list of 255 are located in Afghanistan. This means that the Afghan government has arrested approximately 83 percent of individuals from the list of 255 whose presence was established in Afghanistan. However, these numbers conflict with the Afghan government's own January 2021 report that 31 cases were in progress with INTERPOL, as well as a separate January 2021 report by the Afghan government noting 11 individuals accused of corruption were living abroad, 9 of whom were included in the list of 255 warrants. The Afghan government's inconsistent reports regarding the number of individuals located abroad further exemplify a lack of organization on the part of Afghan law enforcement agencies. As a result, corrupt actors continue to remain at large, leaving international donors with doubts about the political will and capacity of the Afghan government to enforce arrests and prosecute corrupt individuals.

Additionally, while MCTF and ACJC developed standard operating procedures in June 2020 to detect major corruption crimes, arrest suspects in a timely manner, accelerate the investigation process, and enhance collaboration between the police and prosecution, the UN Assistance Mission in Afghanistan (UNAMA) stated in its June 2020 report that the number of cases referred to the ACJC remains low. Tellingly, in August 2020, an ACJC judge said that the ACJC was unaware of a specific department within the MOI that is responsible for executing corruption-related warrants. In March 2021, the Afghan government reported that one of the challenges in executing arrest warrants stems from coordination problems between prosecutors of the ACJC and the MCTF, casting further doubt on the effectiveness of the standard operating procedures. Also, the clearing of all detection cases referred to the MCTF prior to July 2019—a related tangible benchmark—remains incomplete, with 368 cases outstanding as of January 2021.¹³⁷

¹³⁶ In April 2021, the U.S. Department of Justice (DOJ) reported that the current director of the MCTF is not a police officer and has no law enforcement experience. According to DOJ, the placement of a non-law enforcement officer in command of Afghanistan's lead unit for investigating high-level and complex corruption cases indicates that the Afghan government lacks political will to pursue public corruption cases.

¹³⁷ Detection cases refer to cases for which the police have identified a suspect or suspects, and collected sufficient evidence to indict the suspect(s) before a court. In January 2021, the Afghan government reported that it struggles to clear detection cases because they are from previous years and some report allegations without substantial evidence. In its July 2021 response to a draft of this report, the Afghan government reported that 82 percent of the detection cases had been cleared.

Matter for Consideration 2: Take action to reduce the legal and de facto immunity of powerful individuals.

Benchmarks:

1. Ministry of Justice will hold a consultation session with anti-corruption sector stakeholders to review the laws in order to identify any possible loopholes ensuring legal impunity for powerful individuals.
2. Ministry of Justice will pass the law for the Ombudsperson Office.
3. The President's Office will fully resource the Ombudsperson Office.
4. The Supreme Court will complete trial of former electoral commissioners.
5. The Supreme Court will initiate trial of former ministers whose prosecutions are completed.

The Afghan government completed three of the five benchmarks related to the second matter for consideration, but did not significantly reduce the legal immunity and de facto impunity of powerful individuals, a trend also highlighted in our two previous anti-corruption reports.¹³⁸ Two of these completed benchmarks, the trial of former electoral commissioners and the resourcing of the Ombudsperson Office, tangibly reduced corruption by enabling the prosecution of corrupt actors and investigation of the misuse of COVID-19 emergency funds. The other completed benchmark, the holding of a consultation session to identify loopholes allowing legal impunity for powerful individuals, did not yield any revision to Afghan laws, as the Supreme Court determined there were no legal ambiguities associated with Article 102 of the Afghan Constitution. In its July 2021 response to a draft of this report, the Afghan government noted that Article 102 does not explicitly exempt members of Parliament from arrest or prosecution, but states that if the prosecution of a member of Parliament requires that individual to be detained, law enforcement must inform the individual's respective House and obtain its approval for detention. However, as documented earlier in this report, members of Parliament have used, and continue to use, Article 102 to evade justice.

Of the two incomplete benchmarks, one would have produced tangible anti-corruption reforms had it been completed. Although the Afghan government stated in March and July 2021 that it completed the benchmark to initiate all trials of former ministers whose prosecutions were completed, it provided sufficient documentation to support that only 6 of the 18 completed investigations of former ministers were referred to the Supreme Court, and only 2 former ministers were prosecuted.¹³⁹ Of note, though the Afghan Minister of Health was fired in December 2020 and is suspected of corruption, the Afghan government has not issued charges against him.¹⁴⁰

In September 2020, an Afghan government official said that the Ombudsperson Office requires more funding and security to perform its functions.¹⁴¹ However, in January 2021, the Afghan government reported that it has

¹³⁸ In its July 2021 response to a draft of report, the Afghan government stated that it completed all 5 benchmarks associated with the second matter for consideration. However, it did not provide sufficient supporting documentation for us to conclude the benchmarks were complete. Specifically, we are unable to support the Afghan government's conclusion that the benchmarks to "pass the law for the Ombudsperson Office" and "initiate trial of former ministers whose prosecutions are completed" are complete.

¹³⁹ In March 2021, the Afghan government reported that a court decision was issued on December 25, 2018, for the case of the former Minister of Communications and Information Technology. The Afghan government also stated that the trial of the former Minister of Mines and Petroleum was conducted on January 3, 2021; he was fined \$1.5 million and sentenced to 13 months in prison on a conviction of misuse of authority.

¹⁴⁰ According to State, in December 2020, President Ghani accepted the resignation of Ahmad Jawad Osmani, the Minister of Public Health. Osmani's firing came in the wake of the arrest of four individuals on bribery charges, including Osmani's brother and two cousins. Reports allege that Osmani forced non-governmental organizations associated with Afghanistan's Basic Package of Health Services program to provide funds he could use to pay off parliamentarians prior to his confirmation vote in Parliament. The Afghan government is also investigating alleged corruption at the Ministry of Public Health regarding misuse of COVID-19 funds. For his part, Osmani claimed his firing was a "political conspiracy."

¹⁴¹ In September 2020, an Afghan government official reported that the Ombudsperson Office shares security with another institution and does not have enough security or armored vehicles to protect its personnel. The Afghan government has had

provided the necessary financial and human resources for the Ombudsperson Office to operate, thus completing this benchmark related to the second matter for consideration.

Nevertheless, concerns remain regarding the Ombudsperson's independence and its lack of a solid legal basis. In January 2021, the Afghan government stated that it had determined there is no need for a law to establish the Ombudsperson Office, and that the Ombudsperson Office would consider drafting a regulation to strengthen its legal mandate. Similarly, in its July 2021 response to a draft of this report, the Afghan government stated that there was no need for an Ombudsperson Office law, as the Office, along with other parallel anti-corruption bodies, had merged with the Anti-Corruption Commission (ACC), and the legal framework for the ACC is set in the Anti-Corruption Law. As such, according to the Afghan government, the benchmark to pass the law for the Ombudsperson Office is complete. However, as documented earlier in this report, it is not clear that the ACC is sufficiently independent from the president's office to comply with Article 6 of the United Nations Convention Against Corruption (UNCAC), and Afghanistan's Lower House of Parliament rejected the Anti-Corruption Law in October 2020.¹⁴² Under the Principles on the Protection and Promotion of the Ombudsman Institution, all Ombudsmen require a solid legal basis.¹⁴³ Without a firm legal foundation, an Afghan civil society official expressed concern that the Ombudsperson must refer to the authority of the president. In consideration of international standards for Ombudsman institutions and given concerns about the autonomy of the ACC, we assess that the benchmark to pass the law for the Ombudsperson Office is incomplete.

In any case, an Ombudsperson Office law would constitute another intangible legal measure that would not directly affect corruption. While the Afghan government completed tangible reforms by concluding the trial of former electoral commissioners and resourcing the Ombudsperson Office, corrupt actors continue to enjoy legal immunity or de facto impunity, and institutional corruption often goes unchecked.

Matter for Consideration 3: Continue to polygraph personnel at the ACJC and the MCTF on a regular basis and increase efforts to eliminate lost productivity from the dismissal of personnel who fail the polygraph examinations.

Benchmark:

1. Conduct polygraph tests of MCTF and ACJC police and prosecutors and replace those who failed the test. In order to anticipate possible replacement, MOI and AGO will develop a roster of prequalified individuals prior to polygraph tests.

While the Afghan government prepared a list of eligible candidates who could replace MCTF and ACJC employees due to the polygraph test failures and considers this benchmark to be complete, U.S. Federal Bureau of Investigation personnel have not conducted polygraph tests of MCTF and ACJC personnel since 2018.¹⁴⁴ This means that the benchmark to polygraph MCTF and ACJC police and prosecutors, and replace those who failed the

these concerns under review for over a year, but as of September 2020, security personnel for the Ombudsperson Office were still not in place.

¹⁴² As noted previously in this report, in its July 2021 response to a draft of this report, the Afghan government said that the Whistleblowers Protection Law and the UNCAC provide an adequate legal basis for the ACC to operate.

¹⁴³ Principles on the Protection and Promotion of the Ombudsman Institution ("The Venice Principles") adopted by the Venice Commission at its 118th Plenary Session, Venice, March 15–16 2019, p. 3.

¹⁴⁴ An Afghan government official told us that Afghanistan does not have the capacity or the staff to conduct polygraphs. As such, U.S. Federal Bureau of Investigation personnel have conducted the polygraphs in the past. In its July 2021 response to a draft of this report, the Afghan government stated that this benchmark is complete, as its international partners are responsible for conducting the polygraph tests, and therefore the Afghan government has fulfilled its commitments and completed all relevant measures related to this benchmark. However, we are unable to designate this benchmark as complete, as available supporting documentation concludes that polygraphs have not been conducted since 2018. Moreover, the Afghan government has had several years to identify additional means to conduct the polygraph tests (whether internal or external), especially because the Afghan government appears to agree that polygraph tests are an important anti-corruption measure—the Afghan government could have taken action on its own rather than simply blaming international donors for its failure to implement this tangible anti-corruption measures.

test remains incomplete. In April 2021, DOJ stated that conducting polygraphs in Afghanistan presents numerous logistical and security difficulties. As such, MCTF personnel instead took the Preliminary Credibility Assessment Screening System (PCASS), which was referred to by DOJ as an “on the ground solution” to the operational considerations associated with the polygraph.¹⁴⁵ However, in March 2020, MCTF leadership reportedly deemed the PCASS to be unreliable and subject to misuse if administered by Afghans. Other challenges associated with the PCASS include a lack of final decision-making authority for negative PCASS results, inadequate manpower to conduct the tests, and a lack of Turkmen-, Pashai-, and Uzbek-speaking personnel.

In September 2020, the Afghan government reported that ACJC personnel were not subjected to the PCASS because NATO Resolute Support did not request that ACJC employees take the assessment. CSTC-A additionally stated in July 2020 that there were no plans in place to conduct additional polygraphs of ACJC and MCTF personnel. The regular polygraphing of all ACJC and MCTF personnel would have likely reduced corruption through the identification, removal, and replacement of corrupt officials. As the polygraphs did not take place, the PCASS may be ineffective, and the MCTF’s unit commander refuses to be vetted, it is likely that corrupt actors remain at both organizations.

Matter for Consideration 4: Make public all anti-corruption court decisions in accordance with Afghan law.

Benchmarks:

1. As of October 2019, the Afghan government will ensure all court verdicts are made public as allowed by law.
2. Ministry of Justice will amend the Penal Code to make mandatory the publication of court verdicts in corruption cases.

In August 2020, the Ministry of Justice amended Article 183 of the Afghan Criminal Procedure Code to make mandatory the publication of court verdicts in corruption cases, an intangible regulatory reform. Amending the Criminal Procedure Code did not result in the publication of all court verdicts as allowed by law, a tangible reform. In January 2021, the Afghan government provided supporting documentation that several ACJC Primary Court verdicts are published on the AGO’s website; and in its July 2021 response to a draft of this report, the Afghan government maintained that both of the benchmarks associated with the fourth matter for consideration are complete.¹⁴⁶ Additionally, in its July 2021 response, the Afghan government said that the verdicts for bribery cases are published on the AGO’s website, the verdicts for other corruption offenses are published on the ACC’s website, and that detailed verdicts are published on the AGO’s and Afghan Supreme Court’s official Facebook pages. However, our analysis found that the verdicts the Afghan government provided to us in January 2021 are not a comprehensive representation of the trials conducted by the ACJC Primary Court since the passage of the amendment in August 2020, and not all of the verdicts from this time period appear on the websites or Facebook pages for the AGO, ACC, or Supreme Court, as of July 2021.

For example, on October 18, 2020, the ACJC Primary Court tried and convicted 3 individuals from the Ministry of Energy and Water on charges of misuse of authority, and sentencing them each to 3 years in prison and \$306,718 in restitution. However, the Afghan government did not provide evidence that these verdicts were published on the AGO website, nor could we find them published on the websites or Facebook pages for the AGO, ACC, or Supreme Court. Illustrative of the gap in trials versus published verdicts, the ACJC tried 84 defendants in 2019, but provided us evidence of only 1 published verdict from 2019. Had it been completed, the benchmark to publish all court verdicts as allowed by law constitutes a tangible anti-corruption reform that likely would have facilitated greater access to the judicial rationale behind court proceedings, established precedence for future cases, deterred crime, and enhanced the public’s trust in the Afghan government.

¹⁴⁵ Under the PCASS, a trained investigator asks detailed questions of people who are under investigation. The PCASS is the assessment of inner thoughts of an individual by the PCASS machine, which shows several biological reactions as a variety of color on the PCASS machine screen to confirm individuals’ statements or lies.

¹⁴⁶ In its July 2021 response to a draft of this report, the Afghan government stated that the benchmark is complete, noting “As of October 2019, the Afghan government will ensure all court verdicts are made public as allowed by the law.” However, the Afghan government did not provide sufficient documentation to support this conclusion.

Matter for Consideration 5: Increase coordination and cooperation between Afghan law enforcement organizations and international law enforcement organizations.

Benchmarks:

1. The Afghan government will pursue discussions with other nations for agreements on extradition, cross-border crime, and recovery of stolen assets.
2. MOI will work with INTERPOL to locate and arrest individuals accused of corruption crimes, and extradite any suspect requested by a third country.
3. MOI will develop a follow-up plan for referrals by ACJC to INTERPOL for arrest warrants.
4. MOI will develop a capacity-building plan to properly package and track INTERPOL referrals.

The Afghan government's efforts to increase coordination and cooperation between Afghan law enforcement organizations and international law enforcement organizations have not resulted in substantial anti-corruption reforms. Of the four benchmarks associated with the fifth matter for consideration, the Afghan government completed three, all of which are intangible and require additional steps to produce anti-corruption outcomes.¹⁴⁷ The Afghan government pursued discussions with other nations for agreements on extradition, cross-border crime, and the recovery of stolen assets, but further action is needed to sign agreements on these issues.¹⁴⁸ In January 2021, the Afghan government stated that it has seven memoranda of understanding on extradition which include agreements with China, India, Iran, Russia, Tajikistan, the United Arab Emirates, and Uzbekistan.

In March 2021, the Afghan government reported that it completed and was enforcing the benchmark to develop a follow-up plan for referrals by ACJC to INTERPOL for arrest warrants. The Afghan government also developed a capacity-building plan to properly package and track INTERPOL referrals and reported that the plan had been implemented, but provided us with contradictory information about the number of referrals to INTERPOL. This inconsistent information indicates that the Afghan government has not properly packaged and tracked referrals to INTERPOL. Without the enforcement of extradition agreements and application of follow-up and capacity-building plans for referrals, tangible anti-corruption reforms may not take place.

The remaining benchmark would have produced tangible reforms had it been completed. While the Afghan government stated in March 2021 that MOI completed its benchmark to work with INTERPOL to locate and arrest individuals accused of corruption crimes, and extradite any suspect requested by a third country, it also reported that 9 individuals from the list of 255 arrest and summons warrants have been confirmed to be abroad, and that 15 individuals are being investigated by INTERPOL.¹⁴⁹ The Afghan government said that 15 international arrest warrants have been issued, 13 of which have been approved by INTERPOL, and that this demonstrates "75 percent progress."¹⁵⁰ Similarly, in its July 2021 response to a draft of this report, the Afghan government reported that, from the list of 255 outstanding warrants, 37 cases are in progress by INTERPOL. Of these 37 cases, 11 individuals had been located abroad, 17 cases are "under work," and 9 cases are in the data collection phase. These statements imply that this benchmark is incomplete.¹⁵¹

¹⁴⁷ In its July 2021 response to a draft of this report, the Afghan government stated that it completed all four of the benchmarks associated with the fifth matter for consideration. However, it did not provide sufficient supporting documentation for us to conclude all four benchmarks are complete. Based on supporting documentation provided by the Afghan government, we are unable to support the Afghan government's conclusion that the benchmark, "MOI will work with INTERPOL to locate and arrest individuals accused of corruption crimes, and extradite any suspect requested by a third country," is complete.

¹⁴⁸ In September 2020, the Afghan government said that it would prepare draft memoranda of understanding to be signed "in the coming years" with Azerbaijan, Pakistan, Qatar, Saudi Arabia, and Turkey.

¹⁴⁹ This number also conflicts with the other figures reported by the Afghan government. As documented earlier in our report, the Afghan government has separately stated that both 11 and 31 wanted individuals are thought to be abroad and have been referred to INTERPOL.

¹⁵⁰ Afghan Government, response to SIGAR, March 2021.

¹⁵¹ In its July 2021 response to a draft of this report, the Afghan government reported that 21 individuals have been extradited to Afghanistan from other countries since 2018. This represents significant progress, as less than 10 individuals were extradited to Afghanistan from other countries between 2002 and 2018.

Additionally, MOI did not extradite all suspects requested by third countries (meaning countries other than Afghanistan or the United States). In March 2021, the Afghan government reported that 2 individuals were extradited to their respective countries, 1 individual was awaiting extradition to Russia, 18 individuals (6 of whom were detained in Afghan prisons) were awaiting extradition to Tajikistan, and 12 citizens were awaiting extradition to Iran.¹⁵² In its July 2021 response to a draft of this report, the Afghan government stated that 10 of the Iranian citizens were extradited to Iran on July 1, 2021, and that a dual citizen of Russia and Afghanistan was allowed to travel to Russia “under the guidance of the Supreme Court.”¹⁵³ According to the Afghan government, the extraditions of the remaining 2 Iranian citizens have not taken place, and legal action regarding the extradition of the 18 Tajik citizens is ongoing.

Despite the fact that the Afghan government reported that it has agreements on extradition with Russia, Tajikistan, and Iran, Afghanistan was slow to extradite these individuals to their respective countries, and 2 citizens of Iran and 18 citizens of Tajikistan have still not been extradited to their respective countries as of July 2021. This exemplifies the Afghan government’s struggles with extradition.¹⁵⁴ In March 2021, the Afghan government stated that the MOI experiences challenges in implementing arrest warrants due to the absence of agreements on extradition with other countries, as Afghanistan’s Constitution prohibits the extradition of Afghan citizens to other countries without reciprocal agreements.¹⁵⁵ In April 2021, DOJ reported that Afghanistan also has difficulty extraditing suspects because other countries lack faith in the Afghan criminal justice system to impartially investigate, prosecute, and adjudicate cases.¹⁵⁶ The location, arrest, and extradition of individuals accused of corruption crimes represent tangible reforms that likely would have reduced corruption.

Matter for Consideration 6: Increase efforts to recover assets stolen from Kabul Bank and return the funds to the Afghan Central Bank.

Benchmarks:

1. Kabul Bank Receivership and AGO will assure that Ferozi’s repayments are in accordance with the terms of the agreement made with him or enforce the sanctions in the agreement.
2. The Afghan government will increase efforts to recover from other debtors and convicted individuals.

The Afghan government made tangible anti-corruption progress by enforcing sanctions against Khalilullah Ferozi, one of the Kabul Bank scandal perpetrators, and recovering assets from other debtors and convicted individuals, thereby completing both of the benchmarks related to the sixth matter for consideration. Of the \$987 million stolen from the Kabul Bank, the Kabul Bank Recovery Commission has recovered approximately \$399.8 million, or 40.5 percent of outstanding debt as of September 2020.¹⁵⁷ This is a slight increase from the amount reported in SIGAR’s November 2019 anti-corruption assessment, in which SIGAR stated that the Afghan government had

¹⁵² In March 2021, the Afghan government told us that it also extradited 5 Iranian citizens to Iran, but did not provide us with evidence that these individuals had, in fact, been extradited.

¹⁵³ It is unclear if this statement refers to the individual who was awaiting extradition to Russia as of March 2021, or implies that the individual was, in fact, extradited to Russia.

¹⁵⁴ In March 2021, the Afghan government stated that it lacked an agreement with Iran, contradicting its January 2021 report that specified that it had a memorandum of understanding on extradition with Iran.

¹⁵⁵ Under Article 28 of the Afghan Constitution, “No citizen of Afghanistan accused of a crime shall be extradited to a foreign state without reciprocal arrangements as well as international treaties to which Afghanistan has joined. No Afghan shall be deprived of citizenship or sentenced to domestic or foreign exile.” (Islamic Republic of Afghanistan, *The Constitution of Afghanistan*, January 26, 2004, Article 28.)

¹⁵⁶ In its July 2021 comments to a draft of this report, the Afghan government stated that it is committed to dealing with all corruption cases, and that there has been no official case of any country refusing to extradite criminals because of its alleged distrust of Afghanistan’s justice system.

¹⁵⁷ In September 2010, several politically-connected officials and entities committed fraud and embezzlement, resulting in the near-collapse of the Kabul Bank. The Afghan government was forced to extend a \$825 million bailout to the bank, an amount which was equal to five to six percent of Afghanistan’s gross domestic product at the time. The Kabul Bank scandal represents one of the largest bank thefts in the world, relative to the size of a nation’s economy. SIGAR, *Quarterly Report to the United States Congress*, July 31, 2019, p. 149.

recovered 40 percent of the debt. In particular, Ferozi has turned over assets to the Afghan government and repaid about \$14.5 million, or 7.4 percent, of his \$196.6 million debt as of March 2021. Per the other benchmark accompanying this matter for consideration, Ferozi submitted eight of his properties to the Afghan government, three of which were valued at \$11.3 million. However, he has not made cash repayments, and has violated the terms of his repayment agreement. As such, the Afghan government has issued him sanctions and additional fines of more than \$1.8 million as of December 2020. Nevertheless, the increased recovery of assets from debtors and convicted individuals will likely reduce corruption.

Matter for Consideration 7: Take actions that allow for the distribution of criminally derived assets to government organizations.

Benchmarks:

1. The Cabinet will pass the regulation on asset recovery including disposing of and distribution of stolen assets.
2. The AGO will develop a mechanism for the distribution of criminally derived assets to government agencies.

The Afghan government completed the two benchmarks associated with the seventh matter for consideration and took nominal action to allow for the distribution of criminally derived assets to government organizations. Nevertheless, these actions have not resulted in tangible anti-corruption outcomes.¹⁵⁸ In April 2020, the Afghan Cabinet passed a regulation on asset recovery, which includes provisions for the disposal and distribution of criminally derived assets to government entities. In July 2021, the Afghan government reported that the regulation's enforcement has provided a clear legal framework for the recovery of illegal assets. Also in July 2021, the Afghan government stated that it established the Anti-Corruption Fund to address the distribution of recovered assets to government organizations. According to the Afghan government, the Anti-Corruption Fund allocates 20 percent of the funds recovered from corruption cases to government organizations based on an annual distribution plan that was supposed to have been prepared by March 2021. As of July 2021, the Afghan government had not provided us with this plan, and it remains unclear how the remaining 80 percent of the recovered funds will eventually be distributed.¹⁵⁹ The Afghan government also reported that as of July 2021, \$60,000 and 1,722,000 afghanis have been seized and transferred to the Anti-Corruption Fund, and \$20,000 and 21,761,113 afghanis have been transferred to the AGO's revenue account.

Matter for Consideration 8: Continue to implement the Case Management System (CMS) and ensure its systematic use among Afghan law enforcement organizations.

Benchmarks:

1. The Cabinet will adopt the regulation on the CMS.
2. The systematic use of the CMS will be overseen by HCLAC on a quarterly basis.

The Afghan government completed the two benchmarks accompanying the eighth matter for consideration by adopting the regulation on the CMS and overseeing its systematic use on a quarterly basis. In November 2020, President Ghani signed and the Ministry of Justice published the regulation on CMS, which includes guidelines on the use of CMS and outlines the functions of each entity, committee, and user of the system. One of these entities,

¹⁵⁸ In its July 2021 response to a draft of this report, the Afghan government stated the two benchmarks associated with the seventh matter for consideration have produced tangible results. However, it did not provide sufficient supporting documentation for us to conclude that these benchmarks were tangible reforms.

¹⁵⁹ In its July 2021 response to a draft of this report, the Afghan government stated that the Ministry of Justice will hold a consultation session with representatives of the Supreme Court, ACC, AGO, and Ministry of Finance to determine how to transfer the remaining 80 percent of funds. The holding of a consultation session does not constitute a tangible anti-corruption reform, as any outcomes of this session would likely require additional steps to reduce corruption.

the HCLAC, is responsible for monitoring CMS use. HCLAC has overseen the systematic use of CMS by ensuring that all central, provincial, and district-based units use CMS, either electronically or in paper form.

Again, however, challenges remain in translating these regulatory measures into tangible anti-corruption outcomes.¹⁶⁰ In November 2020, the Afghan government reported that CMS has many gaps and is not responsive to the needs of legal and judicial bodies, citing the system's inability to produce analytical reports and statistics on crime and law enforcement organizations' performance. In March 2021, the U.S. Department of State's Bureau of International Narcotics and Law Enforcement Affairs (INL) stated that feedback from the Afghan government may only reflect an assessment from the National Statistics and Information Authority, and does not represent the views of all justice sector ministries, which were not given an opportunity to contribute to the report. According to INL, in September 2020, the CMS governance board directed the National Statistic and Information Authority to revise its assessment based on concerns raised by justice sector ministries and the Justice Sector Support Program.¹⁶¹

Additionally, in November 2020, the Afghan government reported that a large number of cases remain unregistered in the system.¹⁶² In March and April 2021, INL stated that these delays may stem from a lack of dedicated Afghan staff to input information into CMS, as well as staff technical capabilities and turnover, leadership transitions in offices dedicated to maintaining CMS records, and institutional culture. According to INL, in a small number of locations, weak electrical infrastructure, and unreliable internet connectivity may also delay data entry. Despite these reported deficiencies, the Afghan government continues to rely heavily on CMS and has used the system to conduct over 300,000 background checks, monitor and track prison populations, manage the release of prisoners, and generate reports for senior Afghan officials on cases in the justice system.

CMS was undergoing an update at the time of our audit, which may enhance and streamline the operability of the system. In April 2021, INL stated that ensuring the smooth launch of the update later in 2021, as well as providing trained and dedicated CMS-data entry staff, and strengthening Afghan government use and oversight of the system, will be necessary to maximize CMS anti-corruption outcomes. INL also noted that the time between the completion of the benchmarks in November 2020 and the conclusion of our audit was not sufficient to assess the benchmarks' impact. Nevertheless, according to INL officials, CMS remains an imperfect, albeit evolving, tool for law enforcement entities in the fight against corruption.

¹⁶⁰ In its July 2021 response to a draft of this report, the Afghan government stated the two benchmarks associated with the eighth matter for consideration contributed to strengthening and implementing CMS and, thus, produced tangible results. However, it did not provide sufficient supporting documentation for us to designate these benchmarks as tangible reforms.

¹⁶¹ As of April 2021, the Afghan government has not provided us with evidence that this assessment has been updated.

¹⁶² In July 2021, the Afghan government reported that most of the cases still absent from CMS "are mostly related to the past", and that pursuant to Article 27 of the CMS regulation, all cases that have not yet been registered in the system will be registered "based on a specific deadline to be determined" by the CMS Board. This does not represent a tangible anti-corruption measure, as the deadline to register all cases in CMS has not yet been established or enforced.

APPENDIX III - STATUS OF THE BENCHMARKS CREATED BY THE AFGHAN GOVERNMENT IN RESPONSE TO OUR NOVEMBER 2019 ANTI-CORRUPTION ASSESSMENT

In response to our second anti-corruption assessment, released in November 2019, the Afghan government committed to completing 26 benchmarks to implement our 8 matters for consideration. Table 2 shows the status of the 26 benchmarks at the time of our report. For the purposes of this report, we define “tangible” reforms as concrete actions that are likely to reduce corruption, such as the arrest of corrupt actors, and “intangible” reforms as those that would require further steps beyond the initial reform to reduce corruption.

Table 2 - Status of the Benchmarks Created by the Afghan Government in Response to our November 2019 Anti-Corruption Assessment

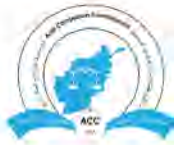
SIGAR Matter for Consideration	Afghan Government Benchmark	Deadline	Status	Output
1 Increase the resources provided to anti-corruption law enforcement organizations such as the Attorney General’s Office (AGO), Anti-Corruption Justice Center (ACJC), and Major Crimes Task Force (MCTF) to provide them with the ability to increase the number of arrests and prosecutions of corrupt individuals.	Special Anti-Corruption Secretariat will revise the Plan of Action to Improve Prosecution and Detection adopted by the High Council on Rule of Law and Anti-Corruption (HCLAC) in July 2019 to include measures that will increase the number of arrests and prosecutions of corrupt individuals.	Dec. 31, 2019	Complete	Intangible
	Ministry of Interior Affairs (MOI) will review the performance of all MCTF personnel and replace all weak performers.	March 2020	Complete	Tangible
	MOI will define detailed procedures for cooperation between MCTF and ACJC.	March 2020	Complete	Intangible
	MOI will ensure all detection cases referred to MCTF prior to July 2019 are cleared.	March 2020	Incomplete	Tangible
	MOI will summon or arrest at least 85 percent of individuals whose arrest or summon warrants are issued by ACJC as of September 2019 and whose presence is established in Afghanistan.	March 2020	Incomplete	Tangible
	MOI will develop an operational plan to implement all outstanding arrest and summons warrants.	March 2020	Complete	Intangible
	AGO will adopt verifiable Prosecution Standards agreed upon by the judiciary to reduce judicial orders of return to prosecution.	March 2020	Complete	Intangible
	AGO will determine case-distribution standards to prosecutors.	March 2020	Complete	Intangible

SIGAR Matter for Consideration	Afghan Government Benchmark	Deadline	Status	Output	
2	Take action to reduce the legal and de facto immunity of powerful individuals.	Ministry of Justice will hold a consultation session with anti-corruption sector stakeholders to review the laws in order to identify any possible loopholes ensuring legal impunity for powerful individuals.	March 2020	Complete	Intangible
		Ministry of Justice will pass the law for the Ombudsperson Office.	March 2020	Incomplete	Intangible
		The President's Office will fully resource the Ombudsperson Office.	March 2020	Complete	Tangible
		The Supreme Court will complete trial of former electoral commissioners.	March 2020	Complete	Tangible
		The Supreme Court will initiate trial of former ministers whose prosecutions are completed.	March 2020	Incomplete	Tangible
3	Continue to polygraph personnel at the ACJC and the MCTF on a regular basis and increase efforts to eliminate lost productivity from the dismissal of personnel who fail the polygraph examinations.	Conduct polygraph tests of MCTF and ACJC police and prosecutors, and replace those who failed the test. In order to anticipate possible replacements, MOI and AGO will develop a roster of prequalified individuals prior to polygraph tests.	N/A	Incomplete	Tangible
4	Make public all anti-corruption court decisions in accordance with Afghan law	As of October 2019, the Afghan government will ensure all court verdicts are made public as allowed by law.	N/A	Incomplete	Tangible
		The Ministry of Justice will amend the penal code to make mandatory the publication of court verdicts in corruption cases.	February 2020	Complete	Intangible
5	Increase coordination and cooperation between Afghan law enforcement organizations and international law enforcement organizations	The Afghan government will pursue discussions with other nations for agreements on extradition, cross-border crime, and recovery of stolen assets.	N/A	Complete	Intangible
		MOI will work with INTERPOL to locate and arrest individuals accused of corruption crimes, and extradite any suspect requested by a third country.	N/A	Incomplete	Tangible
		MOI will develop a follow-up plan for referrals by ACJC to INTERPOL for arrest warrants.	March 2020	Complete	Intangible
		MOI will develop a capacity-building plan to properly package and track INTERPOL referrals.	March 2020	Complete	Intangible

SIGAR Matter for Consideration	Afghan Government Benchmark	Deadline	Status	Output	
6	Increase efforts to recover assets stolen from Kabul Bank and return the funds to the Afghan Central Bank.	Kabul Bank Receivership and AGO will assure that Ferozi's repayments are in accordance with the terms of the agreement made with him or enforce the sanctions in the agreement.	February 2020	Complete	Tangible
		The Afghan government will increase efforts to recover from other debtors and convicted individuals.	N/A	Complete	Tangible
7	Take actions that allow for the distribution of criminally derived assets to government organizations.	The Cabinet will pass the regulation on asset recovery including disposing of and distribution of stolen assets.	Dec. 31, 2019	Complete	Intangible
		The AGO will develop a mechanism for the distribution of criminally derived assets to government agencies.	June 2020	Complete	Intangible
8	Continue to implement the Case Management System (CMS) and ensure its systematic use among Afghan law enforcement organizations.	The Cabinet will adopt the regulation on the CMS.	June 2020	Complete	Intangible
		The systematic use of the CMS will be overseen by the HCLAC on a quarterly basis.	N/A	Complete	Intangible

Source: SIGAR analysis of benchmarks created by the Afghan government in response to SIGAR's November 2019 anti-corruption assessment, and other documents provided to SIGAR by the Afghan government.

APPENDIX IV - RESPONSE FROM THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF AFGHANISTAN



Islamic Republic of Afghanistan
Anti-Corruption Commission



Date: July 24, 2021

Thank you for your recent assessment of the Afghan government's efforts to combat corruption. As always, we value the partnership between the Government of the Islamic Republic of Afghanistan and the Special Inspector General for Afghanistan Reconstruction (SIGAR). We appreciate and welcome the progress made in combating corruption in Afghanistan referred to in your report.

Before responding to the specific points raised in your report, I would like to highlight some of the key reforms and achievements that the Afghan Government has made and delivered since the publication of your 2019 assessment report. These reforms and achievements include Afghanistan's efforts for implementation of the eight areas for consideration raised in your previous assessment report and other anti-corruption reforms that Afghanistan has made.

Fighting corruption has been one of the top priorities of the Afghan government, and decisive actions have been taken in this regard in recent years. The Afghan Government has been able to implement 101 benchmarks out of 102 benchmarks of the previous anti-corruption strategy (2017-2020). With the implementation of this strategy, significant reforms have been made in strengthening legal framework and anti-corruption institutions and preventing corruption in the security, legal and judicial, financial, and economic sectors. In particular, since the publication of your previous assessment report, the Afghan Government has completed the biometric registration of ANA and ANP personnel in the APPS system and the biometric registration of civil servants in the electronic Human Resource Management Information System (HRMIS). This has prevented ghost soldiers in the Afghan Army and ANP and has significantly improved the transparency in the human resources management of the civil service sector, especially the elimination of ghost civil servants from civil service sector. In the security sector, the Government of Afghanistan uses APPS system modules to register martyrs, the disabled, prisoners of war, new recruitment, arbitrary leave, and use the Core-IMS system to register security sector organs' assets. These measures have significantly improved transparency in human resource management and asset management in the security sector.

The Government of Afghanistan has also equipped the licensing system with a biometric registration and has completed delivering licensing services under one-stop-shops at the Afghanistan Central Business Registry and Intellectual Property Office in Kabul and Herat, Nangarhar, and Kandahar provinces.

The Afghan Government has adopted the Assets Recovery Regulation, the Beneficial Ownership Regulation, the Case Management System Regulation, the Hydrocarbons Regulation, and the Public Investment Management Regulation. The Government of Afghanistan has also amended Article 183 of the Penal Code to require publication of the court decisions in corruption cases and has amended the Supreme Audit Office Law in consultation with international partners to

align with relevant international standards. The reorganization of the law for the Supreme Audit Office (SOA) has ensured the independence of the Audit Office in determining its budget, ensuring the job security of its employees, and the head of this office. It has eliminated the overlap between SAO and other relevant government institutions.

Similarly, the Government of Afghanistan established an independent Anti-Corruption Commission in November 2020. The Commission has a Chairman, Deputy Chairman and three members (commissioners) and from the five members of the Commission, three of them are men and two of them are women. This commission has a clear mission under the UN Convention against Corruption. The Commission has all the resources and powers set out in the UN Convention against Corruption, the Anti-Corruption Law, the Whistleblowers Protection Law and the Criminal Procedure Code to carry out its mission effectively as a corruption prevention and anti-corruption agency. The H.E. President of Islamic Republic of Afghanistan has always made it clear that the Anti-Corruption Commission based on the applicable laws of the country has full authority to handle complaints and allegations of corruption made against ministers, heads of independent government entities, and the head and employees of the President's Office.

The Afghan Government has resolved the challenges of parallel anti-corruption entities, which is also mentioned as a challenge in the current review report. Since the establishment of the Anti-Corruption Commission, all parallel anti-corruption entities, including the Special Anti-Corruption Secretariat, the Office of Asset Registration and Verification, the Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC), and the Office of Ombudsperson have been merged with the Commission, while maintaining their professional capacity.

Since the publication of your previous assessment report, the Afghan Government has been able to implement all the recommendations of the Fifth Report of the Extractive Industries Transparency Initiative (EITI) and has lift the suspension of Afghanistan's membership in this initiative.

The Government of Afghanistan has continued to fully cooperate with the Implementation Review Mechanism of the United Nations Convention against Corruption (especially Chapters II and V) in the second cycle of Afghanistan's self-assessment. Afghanistan has been able to implement most of the provisions of the Convention in recent years, and this is mentioned in UNAMA's 2020 Anti-Corruption Report on Afghanistan.

The implementation of the above reforms, especially the legal and institutional reforms that have taken place in the last three years, has significantly improved Afghanistan's position in Transparency International's Corruption Perceptions Index (CPI) in recent years. Thus, among the Asia and Pacific countries, Afghanistan has made the most improvement in this index and since 2012 Afghanistan has been able to increase its ranking by 11 points. Overall, Afghanistan ranks 165th out of 180 countries, from 176th in 2017 to 165th position. Similarly, Afghanistan's position in other indicators, including the Rule of Law Index of the World Justice Project and the Open Budget Index, in both of which Afghanistan has improved in 2020.

The Anti-Corruption Commission has continued to make significant efforts and has recently developed an alternative anti-corruption strategy, the National Anti-Corruption Strategy for 2021 and delivered it to the High Council for Rule of Law and Governance for approval. The Strategy was approved by this High Council and is being implemented now. This strategy has

been developed through comprehensive consultations and coordination with all stakeholders and relevant partners, including civil society and international partners. At the same time, the Anti-Corruption Commission, has started the impact assessment of the previous Anti-Corruption Strategy (2017-2020). The assessment will be conducted with the European Union's technical and financial support which will create baselines for developing a long-term Anti-Corruption Strategy (2022-2025). The impact assessment, and development of the new Anti-Corruption Strategy will follow a comprehensive consultation process with all relevant stakeholders.

The fight against corruption is one of the main priorities of the Afghanistan Partnership Framework (2020) and the National Framework for Peace and Development of Afghanistan (2021-2025) envisage clear, specific, and effective measures to combat corruption over the next four years. Given the importance of combating corruption, the Government of Afghanistan also amended the Joint Action Plan to Improve Detection and Prosecution of Corruption Cases, based on benchmark (2.1) of the Geneva Mutual Accountability Framework (GMAF). The amendments have been approved by the High Council for Rule of Law and Governance and are currently being implemented. This document and the national anti-corruption strategy for 2021 have clear, tangible, time-bound benchmarks and clear expected results.

The adoption of the above measures demonstrate the strong political will of the Government of Afghanistan to combat corruption through the formulation and implementation of effective and coordinated strategies and policies to fight corruption. These efforts show that the Government of Afghanistan, despite the challenges posed by the war with the Taliban, the complexities of peace talks, and the outbreak of the Coronavirus, addresses concerns raised in the November 2019 SIGAR report and international partners, it has paid attention to and maintained the fight against corruption as a serious priority.

The Government of Afghanistan has also made significant progress in addressing major corruption cases and prosecuting influential individuals involved in those cases. The ACJC has continued to prosecute high-ranking officials, members of Parliament, former election commissioners, and generals. Two former cabinet ministers of the Afghan government have been prosecuted, and the cases of three former ministers are under prosecution. In addition, the legal and judicial organs arrested three senators on charges of bribery, and their trials were held publicly with the media presence. The H.E. President of Islamic Republic of Afghanistan has canceled the membership of two of these senators who were appointed senators.

Finally, by establishing the Access to Information Commission which has the authority to monitor and apply continuous pressure on government entities to publish and share information based on the Access to the Information Law and completing the implementation of the first national action plan and the adoption and progress in implementation of the Second National Action of Afghanistan's Open Government Partnership has highlighted significant advances in ensuring Access to information and institutionalizing the principles of transparency, accountability, and public participation in the design and oversight of implementation of government policies and public service delivery.

Discussion on Specific Issues

The Anti-Corruption Commission would also like to comment on specific issues that appear to be inaccurate in your report or that the Commission think need further explanation.

SIGAR
Comment 1

First, in relation to the 27 benchmarks that the Government of Afghanistan undertook last year to implement based on your previous assessment report's recommendations, you categorized the results of some of those benchmarks as tangible and intangible, while these benchmarks were developed in response to your 2019 assessment report. The government's commitment and efforts in the fight against corruption are tangible and effective in our view; the reforms made through the implementation of these benchmarks have had tangible results. Overall for anti-corruption measures to have tangible and practical results, the Afghan Government expects SIGAR and other international partners to consider the effectiveness, tangibility, and practicality of their recommendations of their assessments and their evaluation the Afghan government's anti-corruption strategies, policies and action plans.

SIGAR
Comment 2

Second, in your assessment report, the number of completed benchmarks out of a total of 27 benchmarks, are mentioned 18 benchmarks. The Anti-Corruption Commission's evaluations and information show that out of a total of 27 benchmarks, 25 of them have been completed. Except for two benchmarks, which are in the final stages of implementation, the rest of the benchmarks have been completed. Details of progress in implementing these benchmarks have already been shared with you and published. Details of the progress in implementation of these benchmarks are described in the third section of this report, which focuses explicitly on this issue.

SIGAR
Comment 3

Third, in your assessment report, concerns have been raised about providing resources to the Access to Information Commission. The Government of Afghanistan has given positive and effective responses to the requests of this Commission and it has not has any financial problem currently. In terms of budget, we have increased the Commission's budget from 54 million AFN in 2020 to 121 million in 2021, which shows 66 percent increase in the AIC's budget. In addition, the current structure of the Commission includes 51 official employees, and the Ministry of Finance has approved the Commission's request to hire 22 other full-time contractual employees. In total, the AIC currently has 39 full-time employees and 21 part-time, bringing the total to 60. The Commission has recently submitted a 162-employees structure to the Independent Administrative Reform and Civil Service Commission, which has been approved. If the Ministry of Finance agrees, the Commission's human resources will increase to 162. With the approval of its new structure, the Commission will expand its activities to six zones.

SIGAR
Comment 4

Fourth, the report mentions the delay in appointing the commissioners of the Anti-Corruption Commission. This is due to the fact that the process of appointing the commissioners should have been carried out in consultation with and with the participation of civil society representatives. This required reaching to agreements with civil society on many issues including working procedures on how to conduct the process and determine criteria for assessment of candidates' abilities and skills and we had difficulties in finding suitable female candidates for the Commission membership. The process of selecting and appointing the commissioners of the Commission was conducted according to the law and civil society had direct role in nominating half of the candidates as well as in the selection process and one civil society nominee was chosen as an Commission member.

Fifth, the report noted that neither the Government of Afghanistan nor its international partners had demonstrated their political will to establish and implement specific, credible, and time-

SIGAR
Comment 5

bound benchmarks related to the fight against corruption. Our opinion is that the benchmarks set for the implementation of the 8 areas for consideration of your November 2019 assessment report as well as the benchmarks contained in the National Anti-Corruption Strategy comply with the above mentioned criteria. These benchmarks are selected after extensive and comprehensive studies and consultation with key stakeholders, including ministries and government institutions, international partners, civil society, and other stakeholders. In addition, an international consultant will be involved in the impact assessment of the Anti-Corruption Strategy (2022-2025), which is to be recruited with the technical support of the European Union to review the impact of the previous Anti-Corruption Strategy (2017-2020). It will ensure that the new strategy's benchmarks meet the mentioned criteria.

SIGAR
Comment 6

Sixth, your report emphasizes the impunity of powerful individuals in investigative and judicial processes. There is no provision in the Afghan constitution for exemption or immunity from arrest or prosecution of accused members of the National Assembly. Only if the prosecution of the accused requires his/her detention, this necessitates the permission of National Assembly. In fact, the problem lies in the misinterpretation of some members of the National Assembly from Article 102, which does not provide any immunity from prosecution. Instead, it introduces a relatively different mechanism for arresting or summoning of MPs. It has its logic. You must be aware that the three senators of the Meshrano Jirga, who were detained for allegation of taking bribery, were trialed in public and with the presence of the media. H.E. the President of Islamic Republic of Afghanistan has canceled the membership of two of the senators who were appointed senators as soon as His Excellency was informed of the crime.

SIGAR
Comment 7

Seventh, your assessment report cites progress in the dissemination of assets and little progress in achieving the goals related to the asset verification and states that the Government of Afghanistan has verified the assets of only 3,600 government officials and employees in the two years leading up to September 2020. This statistic stated in your report is not accurate. The Office of Assets Registration and Verification has verified 7,399 forms in the mentioned period, and from September 2020 to June 2021, another 3,391 forms have been verified and the total number of forms verified reaches to 10,790 forms. As a result, significant progress has been made in verifying the asset declaration forms of government officials and employees, and the asset verification has increased significantly in proportion to the increase in the number of asset declarations. The Office of Assets Registration and Verification has been able to verify the asset declaration forms of all high-ranking government officials, judges, and prosecutors following the obligations of the Geneva Mutual Accountability Framework (GMAF).

SIGAR
Comment 8

Eighth, in your report, it is stated that the Afghanistan Financial Transactions and Reports Analysis Center of Afghanistan (FinTRACA) lacks the necessary resources to inspect and monitor the Afghan financial system, including hawaladars. The primary mandate of the FinTRACA is to receive, analyze and share financial reports and it has sufficient operational, technical, and logistical resources to perform this role and are equipped with advanced technology, including case management system, system analysis, and sanctions database for information management and analysis of financial reports. The center receives and analyzes reports from non-banking institutions of the financial system through a specific portal and identifies the items that require further analysis; however, conducting financial inspections or supervision is not the center's main role. Carrying out this type of inspections is one of the duties of the supervision department of non-banking institutions of the Da Afghanistan Bank. The information received

from this center shows that the employees of this center do not face any financial constraints and have sufficient resources to perform their duties.

SIGAR
Comment 9

Ninth, in your report concerns have been raised on the establishment of the Anti-Corruption Commission after the rejection of the Anti-Corruption Law by the National Assembly and the potential ineffectiveness and lack of independence of this Commission. At the time of the establishment of the Anti-Corruption Commission, the legislative decree of the Anti-Corruption Law was rejected only by the Wolesi Jirga, and the rejection of the law by the Wolesi Jirga does not invalidate it. Following the rejection of the law by the joint committee of the two houses of the National Assembly in June 2021, the Government of Afghanistan, pursuant to Article 94 of the Afghan Constitution, sent a response containing the reasons for the rejection of the Joint Committee's decision to the Wolesi Jirga and we expect that given the strong reasons for the need for the National Assembly to approve the Anti-Corruption Law, the law should be approved by the National Assembly by two-thirds vote of the Wolesi Jirga. While the National Assembly approves the law, the decree issued to establish the Commission, the Whistleblowers Protection Law and the UNCAC which has been ratified by Afghanistan provide enough legal grounds for the Commission to operate and continue its activities.

The Anti-Corruption Commission has a dedicated budget, a specific permanent facility for its activities, and a minimum number of staff to carry out its activities. The Government of Afghanistan believes that by completing the process of merging parallel anti-corruption institutions into this Commission and completing the recruitment of its remaining staff through the Independent Administrative Reform and Civil Service Commission, the multiplicity of anti-corruption institutions and overlapping duties between them will be resolved, the Commission will access the resources, experience, and expertise accumulated by these institutions and, as a result, will have more progress and results in prevention and the fight against corruption. The Anti-Corruption Commission has good achievements in dealing with anti-corruption complaints and information since its inception. So far, the Commission has received 120 complaints and reports of corruption, of which more than half have been inspected, and 32 complaints have been referred to the Attorney General's Office for further investigation and prosecution. In addition, the Commission has referred five high-ranking government officials to the Attorney General's Office for providing false information on their asset registration forms.

Detailed progress report on the implementation of 27 benchmarks related to 8 areas for consideration of the SIGAR 2019 assessment report

SIGAR
Comment
10

Your report divided the 27 benchmarks into tangible and intangible. But these benchmarks were developed in response to the recommendations of your 2019 assessment report. The government's commitment and efforts in the fight against corruption are based on the tangible and effective fight against corruption. For anti-corruption measures to have tangible and effective results in general, we expect SIGAR and other international partners to consider the principles of tangibility, effectiveness and practicality in issuing their recommendations to be implemented and reported accordingly.

SIGAR
Comment
11

Regarding the implementation of the 27 benchmarks and how many are completed and are incomplete, the information on the actions taken by the Government of Afghanistan are different from what is mentioned in your 2021 assessment report. According to the steps taken by the Government of Afghanistan regarding the implementation of 27 benchmarks, except for two benchmarks which are in the final stages of implementation, the rest have been completed.

Matter for Consideration 1: Increase the resources provided to anti-corruption law enforcement organizations such as the Attorney General's Office (AGO), Anti-Corruption Justice Center (ACJC), and Major Crimes Task Force (MCTF) to provide them with the ability to increase the number of arrests and prosecutions of corrupt individuals.

For implementation of this recommendation, the following benchmarks were committed:

- i. Revise the Joint Action Plan for Improving Detection and Prosecution of Corruption Cases;
- ii. Review the performance of all MCTF personnel and replace all weak performers;
- iii. Define detailed procedure for cooperation between MCTF and ACJC;
- iv. Ensure all detection cases referred to MCTF prior to July 2019 are cleared;
- v. Summon or arrest at least 85 percent of individuals whose arrest or summon warrants are issued by ACJC as of September 2019 and whose presence is established in Afghanistan;
- vi. Develop an operation plan to implement all outstanding arrest and summon warrants;
- vii. Adopt verifiable Prosecution Standards agreed upon by the judiciary to reduce judicial orders of return to prosecution; and
- viii. Determine case-distribution standards to prosecutors.

Of these, the implementation of 6 benchmarks has been completed, and the implementation of the other two benchmarks is in the final stages of completion.

SIGAR
Comment
12

You have not mentioned an important benchmark in this report, which was part of benchmark (2.1) of the Geneva Mutual Accountability Framework (GMAF). In response to the 2019 SIGAR report, the Government of Afghanistan stated that "the Special Anti-Corruption Secretariat will revise the Action Plan to Improving Detection and Prosecution of Corruption Cases approved by the High Council of Rule of Law and Anti-Corruption in July 2019 before the end of the current fiscal year to include measures to increase the number of arrests and prosecute those suspected with corruption." In 2020, the revision of the plan was delayed due to the outbreak of the Coronavirus, but the revision process continued, and the plan was revised based on the international partners' comments and in consultation with stakeholders and was approved by the High Council of Rule of Law and Governance. UNAMA and other development partners have welcomed the inclusion of international partners' comments in the revised Action Plan.

The amended version of the Joint Action Plan was set in six priorities and includes priorities such as strengthening coordination between the legal and judicial organs, strengthening the legal framework for prosecution of corruption cases, strengthening the case management system, enhancing the capacity of law enforcement agencies and legal and judicial organs in handling of corruption cases and improving and accelerating reforms measures to combat corruption. In this plan, activities such as preparing a quick operational mechanism to implement arrest

warrants, including the remaining warrants from the list of 255 people, preparing a plan on asset recovery, trying to extradite corruption offenders from other countries, accelerating the investigation and trial of ministers and preparing and implementing the MCTF reform plan. In order to monitor the effective implementation of this action plan, a technical committee with the presence of the relevant entities and chaired by the Anti-Corruption Commission meets monthly to eliminate the challenges in the implementation process.

SIGAR
Comment
13

In addition, the progress on two benchmarks is reported incomplete. The work on completion of these benchmarks is being continued. The benchmark "Ensure all detection cases referred to MCTF prior to July 2019 are cleared" progress is 82%. The Ministry of Interior will try to follow up and implement the remaining 18% according to a specific plan.

SIGAR
Comment
14

There is progress in implementing the benchmark of "Summon or arrest at least 85 percent of individuals whose arrest or summon warrants are issued by ACJC as of September 2019 and whose presence is established in Afghanistan." Out of 255 arrest warrants, 180 have been executed, and 38 are being implemented by the MCTF. The arrest warrants of the 37 people who fled abroad are being implemented by the Interpol Directorate of the MoI. Given that in the text of the benchmark, the persons included in the list of 255 people whose presence has been established IN Afghanistan are 218 people, the implementation of this benchmark shows 83% progress, which is 2% less than the set target of (85%). Of course, the Ministry of Interior will continue to implement the remaining summons and arrest warrants from this list and other warrants based on the National Anti-Corruption Strategy-2021 and the Joint Action Plan for Improving Detection and Prosecution of Corruption Cases.

Matter for Consideration 2: Take action to reduce the legal and de facto immunity of powerful individuals.

For implementation of this recommendation, the following benchmarks were committed:

1. Hold a consultation session with anti-corruption sector stakeholders to review the laws in order to identify any possible loopholes ensuring legal impunity for powerful individuals.
2. Pass the law for the Ombudsperson Office.
3. The President's Office will fully resource the Ombudsperson Office.
4. The Supreme Court will complete the trial of former electoral commissioners.
5. The Supreme Court will initiate trial of former ministers whose prosecutions are completed.

SIGAR
Comment
15

According to the report shared with you in March 2021 and the following explanations, the implementation of the above five benchmarks has been completed. The implementation of the "Approval of the Ombudsperson Law" benchmark has been incomplete in your report. In this regard, the Anti-Corruption Commission would like to point out that the draft law on the Ombudsperson's Office was prepared and discussed twice in the Cabinet's Legal Committee. Since the Anti-Corruption Commission was established in accordance with the national and international commitments of the Government of Afghanistan, parallel anti-corruption bodies such as the Special Anti-Corruption Secretariat, the Office of Asset Registration and Verification, the Independent Joint Anti-Corruption Monitoring, and Evaluation Committee (MEC), and the Ombudsperson's Office merged with the Commission. Therefore, there is no need for a new law for the Office of the Ombudsperson, as the legal framework for the Commission is set out in the

Anti-Corruption Law. The professional staff of the Ombudsperson will continue to perform their duties in accordance with the provisions of the Anti-Corruption Law under the ACC. It should be noted that the ACC is reviewing the Anti-Corruption Law to make the necessary amendments and to clarify the ambiguities regarding the duties and responsibilities of the ACC.

SIGAR
Comment
16

Similarly, in the benchmark, "Hold a consultation session with anti-corruption sector stakeholders to review the laws in order to identify any possible loopholes ensuring legal impunity for powerful individuals." a misinterpretation has been made in your report that reads to protect members of Parliament from being caught and prosecuted and provides sustained potential to protect the corrupt. The constitution does not provide for the exemption or non-arrest or prosecution of accused members of the National Assembly. Only if the prosecution requires the detention of the accused, this requires the permission of the relevant Assembly. You must be aware that the three senators of the Meshrano Jirga, who were actively arrested on bribery charges, were trialed in public and with the presence of the media. H.E. the President of Islamic Republic of Afghanistan canceled the membership of two of them who were appointed senators as soon as His Excellency's was informed of the crime.

SIGAR
Comment
17

In addition, in your report, the implementation of the benchmark "the initiation of the trial of the former ministers whose cases have been completed" has not been considered complete. You are aware that two former ministers whose cases were completed have been trialed, therefore, the trial of the accused ministers have been initiated according to the benchmark. The Afghan Government agrees with you that this number is not enough. Other accused ministers whose cases are being investigated or sent to court will also be trialed in accordance with the laws of the country. The case of no suspected minister will be closed without investigation and in violation of the provisions of the law. In order to ensure the effective follow-up of the cases of high-ranking officials, specific measures have been considered in the National Anti-Corruption Strategy for 2021 and the Joint Action Plan for Improving Detection and Prosecution of Corruption Cases. These measures will continue in earnest with developing a long-term anti-corruption strategy by the end of 2021.

Matter for Consideration 3: Continue to polygraph personnel at the ACJC and the MCTF regularly and increasing efforts to eliminate lost productivity from the dismissal of personnel who fail the polygraph examinations.

SIGAR
Comment
18

Regarding the above recommendation, the commitment of the Government of Afghanistan was that the polygraph test of the prosecutors of the ACJC and the employees of the MCTF be carried out with a timely replacement of all those who fail the test. The polygraph test is performed by our international partners, and the Government of Afghanistan is committed to conducting the test with the cooperation of international partners and implementing its results. Accordingly, a roster of prequalified individuals prior to polygraph test has been developed in order to find the proper replacement of individuals by the ACJC according to the vetting procedure of the Attorney General's Office. The roster was also developed by the MCTF too. As stated in your report, the PCASS operation has been implemented in the Ministry of Interior. Therefore, all measures related to the Government of Afghanistan have been taken to implement this benchmark. Conducting the polygraph test is the responsibility of the international partners that has not been done. For the recommendations of your assessment which require the support of

international partners, it is necessary to coordinate with them in advance so that are implemented effectively and our international partners take responsibility for their implementation.

Matter for Consideration 4: Make public all anti-corruption court decisions in accordance with Afghan law.

For implementation of this recommendation, the following benchmarks were committed:

1. As of October 2019, the Afghan government will ensure all court verdicts are made public as allowed by the law.
2. Ministry of Justice will amend the Penal Code to make mandatory the publication of court verdicts in corruption cases.

According to the report that was shared with you in March 2021 and also the following explanations, the implementation of these two benchmarks has been completed. In your report, the benchmark implementation "from October 2019 onwards, all decisions of anti-corruption courts will be published in accordance with the domestic law." It has been reported incomplete. Pursuant to Article 387 of the Criminal Code, the final court ruling on the conviction of a person for bribery has been published on the website of the Attorney General's Office. The rulings are available on the Attorney General's website. The publication of court rulings on other corruption offenses required the amendment of the penal code. Pursuant to the amendment of Article 183 of the Penal Code, the courts are obliged to specify the publication of decisions related to corruption offenses in their verdicts. A copy of the court rulings is available and published on the Anti-Corruption Secretariat website. It should be noted that due to the access of majority of Afghans to the social network Facebook, the decisions of the courts of the ACJC are published in detail through the official Facebook page of the Attorney General's Office and the Supreme Court. Afghan citizens can read the details of court rulings and express their views there.

SIGAR
Comment
19

Matter for Consideration 5: Increase coordination and cooperation between Afghan law enforcement organizations and international law enforcement organizations.

For implementation of this recommendation, the following benchmarks were committed:

1. The Afghan government will pursue discussions with other states to conclude more agreements on extradition, cross-border crime, and recovery of stolen assets.
2. MOI will further work with INTERPOL to locate and arrest individuals accused of corruption cases and MOI will extradite any suspect requested by a third country.
3. MOI will develop a follow-up plan for referrals by ACJC to INTERPOL for arrest warrants.
4. MOI will develop a capacity-building plan to properly package and track INTERPOL referrals.

SIGAR
Comment
20

The above four benchmarks have been completed according to the report sent in March 2021 and the following explanations.

SIGAR
Comment
21

Benchmark "MOI will further work with INTERPOL to locate and arrest individuals accused of corruption cases and extradite any suspect requested by a third country" has been divided into two benchmarks in your 2021 report. Since the extradition of suspects is directly related to

efforts and coordination to locate and ensure that persons convicted in corruption cases are arrested, the implementation plan developed to implement the recommendations, it has been pursued and implemented under one single benchmark. According to the phrase and content of the benchmark and the documents that have been shared with you, the implementation of this benchmark has been completed. However, completing it, does not mean the end of the work. Efforts are underway to extradite criminals and suspects from other countries according to the applicable laws of the country and Activity (6.5) of the Joint Action Plan for Improving Detection and Prosecution of Corruption Cases.

SIGAR
Comment
22

To further clarify the completion of this benchmark, it should be noted that the Interpol Directorate of the Ministry of Interior has extradited 21 criminal defendants to Afghanistan since 2018, and the extradition process of 6 others is underway. This shows a significant difference in the work of this department, considering the previous small progress in the areas (extradition of less than 10 individuals from 2002 to 2018). The number of international arrest warrants issued by the Interpol Directorate of the MoI for defendants in criminal cases reaches 107. Work has also been done to locate and identify those accused of corruption cases. Considering that the latest actions of the Interpol Police against the accused defendants are the issuance of international arrest warrants, in the last three years, 21 international arrest warrants have been issued against the defendants from ACJC's 127 and 128 warrants and eight international arrest warrants against the defendants in other corruption cases and the defendants have been pursued by all member countries. Out of the ACJC's whole list of 255, INTERPOL are working on 37 of them, of them, 11 have been located abroad, 17 are under work, and 9 are in the phase of data collection.

SIGAR
Comment
23

Similarly, out of 16 miscellaneous corruption cases, 6 have been located abroad, 6 have been under the work by INTERPOL, and four are in the process of gathering information. Documents related to the activities carried out by INTERPOL for locating and identifying individuals accused of corruption, including the follow-up plan for referrals by ACJC to INTERPOL for arrest warrants and the MOI capacity-building plan to properly package and track INTERPOL referrals are available and will be provided whenever you want. The difference that is sometimes made in the statistics provided indicates a change in the figures that result from performance.

SIGAR
Comment
24

It should be noted that the extradition of corrupt defendants from other countries, including Turkey, Germany, Australia, and the United States, faces some challenges such as obtaining citizenship of the country by the defendants or other conditions existed in the domestic law of the states. The Government of Afghanistan will continue its efforts through negotiations to sign MoUs, with the Republic of Turkey and second with other countries. In relation to what is stated in your report as the lack of trust of countries in the Afghan justice system in dealing with cases, the Afghan Government would like to remind you that the Afghan judiciary is committed to dealing with all corruption cases. There has also been no official case of any country refusing to extradite criminals because it's alleged distrust of Afghanistan's justice system.

With regard to the extradition of suspects and accused persons to other countries, as the information has been shared with you, actions have been taken by Afghanistan in accordance with the applicable laws of the country. During the process of extradition and requesting information are parts of the work in this field that is going on normally. Efforts will be made to expedite the extradition of suspects and accused persons to other countries in accordance with the laws of the country as well as making amendments these laws.

SIGAR
Comment
25

Recently, on July 01, 2021, 10 Iranian nationals detained in Afghanistan were officially extradited to their respective country in accordance with the laws and the extradition agreement between the two countries. The extradition of the other two persons (one due to the lack of a final court decision in the case and the other due to lack of consent with the extradition) have not taken place. A Russian citizen who is also an Afghan citizen has been allowed to travel to that country under the guidance of the Supreme Court.

Legal action has been taken regarding the extradition of Tajikistan citizens, and the process of obtaining their consent or lack of consent is ongoing. With the completion of this process, actions will be taken on their extradition.

Matter for Consideration 6: Increase efforts to recover assets stolen from Kabul Bank and returning the funds to the Afghan Central Bank.

For implementation of this recommendation, the following benchmarks were committed:

1. Kabul Bank Receivership and AGO will assure that Ferozi's repayments are in accordance with the terms of the agreement made with him or enforce the sanctions foreseen in the agreement.
2. The Afghan government will increase efforts to recover from other debtors and convicted individuals.

The implementation of the above two benchmarks has been completed. What is stated in your report (the Government of Afghanistan will increase its efforts to recover assets in November 2019) as the benchmark is different from what was stated in the Government of Afghanistan's response to your 2019 report. The letter read: "We have been able to speed up the recovery process this month (October)." In fact, the Government of Afghanistan announced that it was speeding up the recovery of assets in October, not November. The second part of this benchmark you want (the agreement with Firoozi is subject to an increase in his repayment of assets) is the introduction of benchmark number 1. In any case, this was an action that had already been taken, and you have reported it completed.

SIGAR
Comment
26

The Afghan Government agrees with you on the point you have made about the impact of return of debts from debtors and those sentenced to return the assets, on reduction of corruption. In this regard, the Attorney General's Office will prepare and implement a follow-up plan for the return of assets in accordance with Activity (6.4) of the Joint Action Plan for Improving Detection and Prosecution of Corruption Cases. The quarterly reports on the AGO activities on asset recovery, prepared by the Anti-Corruption Commission in accordance with Article 35 of the Anti-Corruption Law, is submitted to H.E. the President of Islamic Republic of Afghanistan, the National Assembly and the public. If the existing measures do not bring significant changes in the asset recovery process, the Afghan government will bring necessary structural and operational changes in the mechanism and activities related to the asset recovery through the long-term anti-corruption strategy to be developed by the end of 2021.

Matter for Consideration 7: Take actions that allow for the distribution of criminally derived assets to government organizations.

For implementation of this recommendation, the following benchmarks were committed:

1. The Cabinet will pass the regulation on asset recovery including disposing of and distribution of stolen assets.
2. The AGO will develop a mechanism for the distribution of criminally derived assets to government agencies.

SIGAR
Comment
27

Two benchmarks related to this recommendation have been completed, which has also had a tangible result.

SIGAR
Comment
28

Your report states that the Asset Recovery Regulation has not been implemented, and the asset distribution mechanism has not been activated. In this regard, the Afghan Government would like to remind you that this regulation has been approved, enforced and implemented. The implementation of this regulation has provided a clear legal framework for the recovery of assets resulting from corruption offenses. The AGO shall follow the process of investigation and prosecution (seizure, freezing and confiscation) of illegal assets in accordance with this Regulation and the provisions of Article 37 of the Anti-Money Laundering and Proceeds of Crimes Law. The Asset Recovery Office has been set up within the AGO to achieve the objectives of this regulation. The Anti-Corruption Fund has been set up to maintain 20 percent of the funds recovered, and as of writing this letter, 60,000 USD and 1,722,000 AFN has been transferred to this fund. Also, the amount 20,975,090 Afghanis of funds has been transferred to the trust fund of the AGO, which will be decided upon after a legal decision is made.

SIGAR
Comment
29

Meanwhile, since the establishment of the Asset Recovery Office of the AGO, it has transferred 20,000 USD and 21,761,113 AFN to the revenue account of the AGO. In order to determine how to transfer another 80% of the funds restored to the Assets Recovery Fund or the Government Revenue Account, the Ministry of Justice will hold a consultation meeting with representatives of the Supreme Court, the Anti-Corruption Commission, the Attorney General's Office, the Ministry of Justice and the Ministry of Finance.

Matter for Consideration 8: Continue to implement the Case Management System (CMS) and ensure its systematic use among Afghan law enforcement organizations.

For implementation of this recommendation, the following benchmarks were committed:

1. The Cabinet will adopt the Regulation on Case Management System.
2. The systematic use of the CMS will be overseen by the High Council on Rule of Law and Anti-Corruption on a quarterly basis.

SIGAR
Comment
30

The implementation of the above two benchmarks has been completed. Considering that previously, the case management system did not have a clear legal framework and coordination mechanism between the relevant authorities, the approval and enforcement of the Case Management System Regulation and overseeing the activities accomplished in this regard by the Cabinet, the High Council of Rule of Law and the Legal and Judicial Committee of the Cabinet which led to clear and effective decisions in strengthening and effectively implementing this system, are of the tangible measures taken to implement this benchmark. Also, strengthening the Case Management System is a major priority of the Joint Action for Improving Detection and Prosecution of Corruption Cases (GMAF 2.1). According to the Case Management System Regulation and the Joint Action Plan, the standard use of the system is followed and monitored.

SIGAR
Comment
31

The cases that have not been registered in the system are mostly related to the past. According to Article 27 of the Case Management System Regulation, all cases that have so far not been registered in the system will be registered in the system based on a specific deadline to be determined by the Case Management System Board.

SIGAR
Comment
32

Another benchmark stated in the Afghan government's response, apart from the recommendations of your 2019 report, was the commitment to work to regain the country's membership in the Extractive Industries Transparency Initiative (EITI). As previously reported to you, our country has gained its membership in this initiative, and this benchmark has also been completed. Please correct the status of this benchmark in your report accordingly.

SIGAR
Comment
33

Therefore, out of a total of 27 benchmarks mentioned in the Afghan government's response to the 2019 SIGAR assessment, 25 benchmarks have been completed, and two other benchmarks are in the final stages of implementation. The report on implementing these benchmarks, which have already shared with you, will be officially published soon.

Afghan Government's response to SIGAR recommendations

The Afghan Government sees anti-corruption reforms as a dynamic long-term process with clear steps and results. The Afghan Government believes that its efforts to fight corruption will be effective if it learn from their successes and challenges. Therefore, the Afghan Government welcomes recommendations from its partners who evaluate its efforts. In relation to the new set of recommendations, the Afghan Government agrees to do the following:

SIGAR Recommendation 1: If the Afghan government chooses to create updated benchmarks for its 2021 anti-corruption strategy or other national anti-corruption strategy documents, it should consider (1) creating and implementing benchmarks that are specific, verifiable, time bound, and achieve the desired outcome.

- The Government of Afghanistan concurs with recommendation 1. The Anti-Corruption Commission will consider the mentioned criteria in creating benchmarks for (4) year-long National Anti-corruption Strategy (2022-2025), which has been started to be developed.

SIGAR Recommendation 2: In order to enhance the rule of law in Afghanistan and reduce legal immunity and de facto impunity, the Afghan government should consider: Amending Article 102 of the Afghan Constitution or developing and enforcing procedures for the arrest and prosecution of members of Parliament.

- The Government of Afghanistan concurs with recommendation 2 in principle. To solve this problem, there is no need to amend Article 102 of the Afghan Constitution, but by July 2022, the Attorney General's Office, in consultation with the government and the Anti-Corruption Commission, will develop and implement specific procedures for regulating the arrest and prosecution of MPs suspected or accused of corruption crimes.
- By August 2022, the Government of Afghanistan will amend Articles 100, 101, 102, 105, 106, 110, 209, 210 and paragraph 2 of Article 305 of the Criminal Procedure Code which provide mechanisms for release on guarantees, release on bail or trial in absentia and provide opportunities for powerful individuals to escape the law or delay the

administration of justice and the de facto immunity of powerful individuals in corruption cases.

- The Anti-Corruption Commission will oversee the investigation and prosecution of cases of high-ranking officials and MPs referred to the AGO before December 2020, and will submit a report on the completion of the investigation of the mentioned cases to the H.E. the President of Afghanistan, National Assembly and Afghan people by December 2022.
- To address the concerns raised about the interference of powerful people, the existence of patronage networks, and other types of interferences in investigation and prosecution of corruption cases related to the Ministry of National Defense and the Ministry of Interior, the Anti-Corruption Commission by June 2022, will carry out comprehensive assessment of the detection, investigation and prosecution departments in these ministries, and based on that, the Government of Afghanistan will take immediate and specific corrective actions in those ministries.
- The Government of Afghanistan by September 2022 will review and amend the Criminal Procedure Code to resolve any ambiguities that prevent the effective investigation of corruption cases involving the Ministries of National Defense and Interior.

SIGAR Recommendation 3: Creating, maintaining, and making public a single, comprehensive list of warrants for individuals accused of corruption crimes.

- The Government of Afghanistan concurs with recommendation 3 in principle. To create and maintain a single and comprehensive list for warrants for individuals suspected or accused of corruption or convicted of corruption, a joint database the ACJC, AGO and Mol by December 2021. All arrest warrants issued by the Attorney General's Office and the Justice and Anti-Corruption Center will be registered in this database. But in your report, it seems that the court's decision was mistaken with judicial warrant. By law, final court decisions in corruption cases are published, and we understand the importance of greater transparency and welcome any close oversight of the implementation of warrants that allows us to understand problems and adjust our policy accordingly. However, the law does not provide for the publication of arrest warrants, and their publication will, on the one hand, negatively publicize the identities of the accused, including those who are awaiting a final court decision, and on the other hand, will challenge their arrest process.

SIGAR Recommendation 4: Providing additional resources to support the declaration and verification of assets by public officials.

- The Government of Afghanistan concurs with recommendation 4 in principle. By March 2022, the Government of Afghanistan will address all of the Office of Asset Registration and Verification's needs to improve asset declaration and verification affairs. This will be done after an assessment by the Anti-Corruption Commission.

SIGAR Recommendation 5: Increasing formal and informal cooperation with international law enforcement organizations.

- The Government of Afghanistan concurs with recommendation 5. The Government of Afghanistan will have discussions to sign cooperation agreements with the EU Police and the INTERPOL. In addition, the Anti-Corruption Commission will conduct a clear and comprehensive assessment of the performance and weaknesses of the Interpol Directorate of the MoI. The MoI will further work with INTERPOL to establish and ensure that persons convicted in corruption cases are arrested, and any suspects requested by third countries are extradited. By September 2022, the Attorney General's Office, Ministry of Interior and Ministry of Justice will sign MoUs with the EU Police and the INTERPOL.
- By December 2022, the Attorney General's Office, the Ministry of Interior, and the Ministry of Justice will sign cooperation agreements with Iran, Kazakhstan, Tajikistan, Turkey, United Arab Emirates and Saudi Arabia to prosecute corruption cases, extradite accused and convicted persons, and return of illegal assets from abroad. They will also finalize similar agreements with Germany, the United States and India. This will facilitate the implementation of arrest warrants in other countries and the extradition of defendants and convicted persons from other countries by INTERPOL.
- Likewise, by August 2022, the Afghan Anti-Corruption Commission will have signed three MoUs for joint cooperation on asset recovery, sharing experiences in various areas of anti-corruption, and improving the capacity of the ACC staff with Tajikistan, Azerbaijan, and Saudi Arabia.
- The Government of Afghanistan will amend until September 2022 the Law on Extradition and Legal Cooperation to simplify the process of exchanging requests for legal cooperation and clarifying internal procedures, especially the roles of relevant institutions - Ministry of Foreign Affairs, Ministry of Justice, Attorney General, Ministry of the Interior - and to designate a central authority to coordinate all matters of international cooperation and mutual legal cooperation.
- By September 2022, the Attorney General's Office and the Ministry of Interior, in consultation and cooperation with the United Nations Office on Drugs and Crime and Anti-Corruption Commission, will deliver specific training programs to develop the required capacity in these agencies to implement these MoUs with international law enforcement agencies and other countries for staff of their respective departments and deliver at least two training programs for at least 100 relevant professional staff.

SIGAR Recommendation 6: Providing the necessary resources to FinTRACA to enable it to conduct regular inspections at hawaladars and better monitor illicit financial flows.

- The Government of Afghanistan concurs with recommendation 6 in principle. By March 2022, the Government of Afghanistan will address all the needs of this office to better perform its duties and respond to the requests submitted by Egmont Group. This will be done after a joint assessment by Afghanistan Bank and the Anti-Corruption Commission.

In addition to the above measures, the Government of Afghanistan will take other necessary steps to address the issues raised in your report, particularly addressing resources deficiencies and improving the capacity of anti-corruption and law enforcement agencies including the MCTF. Once again, the Government of Afghanistan thank you for your cooperation in the fight against corruption in Afghanistan.

Sincerely,

Anti-Corruption Commission
Islamic Republic of Afghanistan



SIGAR Response to Comments from the Government of the Islamic Republic of Afghanistan

SIGAR Comment 1: Actions in response to our matters for consideration need to be effective, tangible, and practical. The matters for consideration contained in our November 2019 report are advisory and descriptive, rather than mandatory and prescriptive, and thereby allow the Afghan government sufficient flexibility to create benchmarks that it deemed important, rather than having benchmarks imposed by an outside organization. As noted in our report, we defined “tangible” reforms as concrete actions that are likely to reduce corruption, such as the arrest of corrupt actors, and “intangible” reforms as those that would require further steps beyond the initial reform to reduce corruption. We agree that the implementation of all 26 benchmarks together could have a larger tangible impact on reducing corruption and acknowledge that the Afghan government has taken some steps to combat endemic corruption.

SIGAR Comment 2: Upon receipt of new information from the Afghan government, we increased the number of benchmarks that we consider completed from 18 to 19. Although the Afghan government reported that all but 2 benchmarks were completed, it did not provide necessary documentation to demonstrate the completion of those benchmarks.

SIGAR Comment 3: Increasing the resources of the Access to Information Commission (AIC) is a positive development. These resources can be used to help ensure that the Afghan public and Afghan government officials are aware of their rights and responsibilities under the Access to Information Law, and increase the transparency and accountability of the Afghan government. We updated our report to reflect the increased resourcing of the AIC.

SIGAR Comment 4: Our report’s description of the process that led to the selection of the Anti-Corruption Commission (ACC) commissioners was gathered from multiple civil society and Afghan government officials. We updated our report to reflect the additional information from the Afghan government.

SIGAR Comment 5: Establishing specific, verifiable, time bound, and outcome-focused benchmarks is important to fighting corruption. Our report highlighted that neither the Afghan government nor the international community have always demonstrated the political will needed to build benchmarks around these principles. By creating benchmarks that adhere to these criteria, progress in completing reforms can be better measured and verified by the Afghan government and the international community. It is for these reasons that we reiterated their importance as a matter for consideration in this report.

SIGAR Comment 6: While the arrest and trial of three senators demonstrates that the Afghan government has the ability to prosecute powerful actors, the continuing impunity of powerful Afghans and members of Parliament remain concerns. In its response, the Afghan government stated, “Only if the prosecution of the accused requires his/her detention, this necessitates the permission of National Assembly. In fact, the problem lies in the misinterpretation of some members of the National Assembly from Article 102, which does not provide any immunity from prosecution.”¹⁶³

SIGAR Comment 7: We updated our report to reflect the reported increase in the number of asset declarations that have been verified by the Office of Assets Registration and Verification.

SIGAR Comment 8: We updated our report to reflect the Afghan government’s response that the Financial Transactions and Reports Analysis Center of Afghanistan (FinTRACA) has sufficient resources to carry out its duties and that the inspection of financial institutions, such as hawaladars, is the responsibility of the Supervision Department of Non-Banking Institutions at Da Afghanistan Bank. However, we maintain that FinTRACA is an effective anti-corruption organization that should be properly resourced.

SIGAR Comment 9: We revised our report to reflect the updated legislative status of the ACC. Statements that the ACC has been resourced with “a minimum number of staff to carry out its activities,” and that it has investigated more than half of the complaints it received are both positive indicators.¹⁶⁴ However, we remain concerned, and

¹⁶³ Islamic Republic of Afghanistan Anti-Corruption Commission (ACC), Afghan government response to SIGAR’s draft report, July 24, 2021, p. 5.

¹⁶⁴ Islamic Republic of Afghanistan ACC, Afghan government response to SIGAR’s draft report, July 24, 2021, p. 6.

encourage the Afghan government to ensure that anti-corruption responsibilities and capacity are not lost through the merging of anti-corruption institutions.

SIGAR Comment 10: The Afghan government created each of the benchmarks in response to the matters for consideration contained in our November 2019 report. Additionally, our matters for consideration are meant to be advisory and descriptive, rather than mandatory and prescriptive, allowing the Afghan government the flexibility to create benchmarks that it deems important, rather than having benchmarks imposed by an outside organization. We agree that the implementation of all 26 benchmarks could have a tangible impact on reducing corruption, if fully implemented and carried through to effective implementation, and this report acknowledges Afghan government steps to combat corruption.

SIGAR Comment 11: We updated our report to reflect that the Afghan government completed 19 out of 26 benchmarks. The Afghan government did not provide sufficient documentation for us to conclude that the remaining benchmarks were met. Furthermore, one benchmark the Afghan government counted as completed was not included in their response to our November 2019 anti-corruption assessment.

SIGAR Comment 12: We updated our report to include an analysis of the additional benchmark the Afghan government submitted in response to our 2019 anti-corruption assessment. It should be noted that the original language of the benchmark in our 2019 report was, “The Special Anti-Corruption Secretariat will revise the Plan of Action to Improve Prosecution and Detection adopted by the High Council on Rule of Law and Anti-Corruption in July 2019 before the end of the year to include measures that will increase the number of arrests and prosecutions of corrupt individuals.”¹⁶⁵ Appendix II of the report provides greater detail of our analysis of the benchmark.

SIGAR Comment 13: We updated our report to include the Afghan government’s updated figure on the percentage of completed detection cases.

SIGAR Comment 14: We revised our report to include the Afghan government’s updated figures on the number of arrest warrants and summonses implemented from the list of 255, the number of individuals from the list of 255 whose presence is established in Afghanistan, the number of individuals from the list of 255 who are located outside of Afghanistan and being pursued by the International Criminal Police Organization (INTERPOL), and the percentage of individuals from the list of 255 who have been arrested *and* whose presence has been established in Afghanistan.

SIGAR Comment 15: We updated our report to acknowledge the Afghan government’s position that it completed all five benchmarks associated with the second matter for consideration. We also updated the assessment to include the Afghan government’s statements regarding the merging of the Ombudsperson Office with the ACC, as well as its position that there is no need for a law for the Ombudsperson Office, given that the legal framework for the ACC is established in the Anti-Corruption Law and that the Whistleblowers Protection Law, and United Nations Convention Against Corruption provides enough legal basis for the ACC to operate. However, we are unable to designate the benchmark, “[Ministry of Justice] will pass the law for the Ombudsperson Office,” as complete because the law for the Ombudsperson was never passed.

SIGAR Comment 16: We updated our report to clarify that Article 102 of the Afghan Constitution does not explicitly exempt members of Parliament from arrest or prosecution, but states that if the prosecution of a member of Parliament requires that individual to be detained, law enforcement must inform the individual’s respective House and obtain approval for the detention of a member. Additionally, our report acknowledges that the Afghan government has begun to address the impunity of members of Parliament by arresting three members of the Meshrano Jirga in December 2020. We added language to the report specifying that these individuals were tried and that President Ghani cancelled two of the individuals’ appointments to Parliament.

SIGAR Comment 17: We acknowledge in the report the Afghan government’s position that it completed the benchmark to “initiate trial of former ministers whose prosecutions are completed” and that two former ministers

¹⁶⁵ SIGAR, *Afghanistan’s Anti-Corruption Efforts: The Afghan Government Made Progress in Meeting its Anti-Corruption Strategy Benchmarks, but Serious Challenges Remain to Fighting Corruption*, SIGAR 20-06-AR, November 1, 2019, pp. 48–49.

whose investigations were completed were prosecuted. However, we are unable to designate this benchmark as complete, as the documentation provided by the Afghan government indicates that only 6 of the 18 completed investigations of former ministers were referred to the Supreme Court and that investigations remain on-going for other accused ministers.

SIGAR Comment 18: We acknowledge in the report that the Afghan government has prepared a roster of prequalified individuals prior to the polygraph test at both the Major Crimes Task Force (MCTF) and the Anti-Corruption Justice Center (ACJC). We updated our report to clarify that it is the Afghan government's position that its international partners are responsible for conducting the polygraph tests, and as such, the Afghan government has fulfilled all of its relevant commitments related to this benchmark. However, we are unable to designate this benchmark as complete since MCTF and ACJC personnel have not been subjected to polygraph tests since 2018.

SIGAR Comment 19: We acknowledge in the report the Afghan government's position that it completed the two benchmarks associated with the fourth matter for consideration. However, we are unable to designate the benchmark, "As of October 2019, the Afghan government will ensure all court verdicts are made public as allowed by the law," as complete. The Afghan government did not provide sufficient documentation to support the conclusion that the benchmark is complete. Our analysis determined that numerous corruption case verdicts have not been published on the websites or official Facebook pages for the Attorney General's Office (AGO), the Anti-Corruption Secretariat, or the Afghan Supreme Court.

SIGAR Comment 20: We updated our report to include the Afghan government's position that it completed all four benchmarks associated with the fifth matter for consideration. However, we are unable to conclude that the benchmark to "Work with INTERPOL to locate and arrest individuals accused of corruption crimes, and extradite any suspect requested by a third country," is complete based on supporting documentation provided by the Afghan government.

SIGAR Comment 21: We updated our report to combine the benchmarks, "MOI [Ministry of Interior Affairs] will work with INTERPOL to locate and arrest individuals accused of corruption crimes," and "MOI will extradite any suspect requested by a third country," into one benchmark. As stated in the previous SIGAR comment, we are unable to verify that this benchmark is complete based on available supporting documentation.

SIGAR Comment 22: We updated our report to reflect the Afghan government's revised figures on the number of extraditions. We updated the report to state that 21 individuals have been extradited to Afghanistan from other countries since 2018, and that this represents significant progress, as less than 10 individuals were extradited to Afghanistan from other countries between 2002 and 2018.

SIGAR Comment 23: We updated our report updated to reflect that the Afghan government completed the benchmark, "[Ministry of Interior Affairs] will develop a follow-up plan for referrals by ACJC to INTERPOL for arrest warrants."

SIGAR Comment 24: We updated our report to reflect the Afghan government's statements that it is committed to dealing with all corruption cases, and that there has been no official case of a country refusing to extradite criminals because of its alleged distrust of Afghanistan's justice system. However, we will not remove language in the report specifying that Afghanistan has difficulty extraditing suspects because other countries lack faith in the Afghan criminal justice system to impartially investigate, prosecute, and adjudicate cases, as this statement was provided by the U.S. Department of Justice.

SIGAR Comment 25: We updated our report to reflect the Afghan government's revised extradition numbers.

SIGAR Comment 26: Our report states that the two benchmarks were complete. We updated our report to remove the benchmark, "The Afghan government will increase efforts to recover assets in November 2019. The agreement with Ferozi is conditioned on the increased recovery of assets," as the Afghan government recognizes this as the introductory statement to the benchmarks associated with our sixth matter for consideration.

SIGAR Comment 27: Our report states that the two benchmarks were complete. We updated our report to reflect the Afghan government's position that the two benchmarks associated with the seventh matter for consideration

represent tangible reforms. However, the supporting documentation the Afghan government provided is not sufficient to designate these benchmarks as tangible reforms. Our analysis found that passing the regulation on asset recovery still constitutes an intangible, regulatory anti-corruption measure and that more action is needed to distribute recovered assets.

SIGAR Comment 28: We also updated our report to include the Afghan government's statements that the regulation on asset recovery has been enforced and that illegal assets have been seized and transferred to the Anti-Corruption Fund.

SIGAR Comment 29: We updated our report to include the Afghan government's statements on the transfer of funds to the AGO's revenue account and its plans to hold a consultation session to determine how to transfer the remaining 80 percent of funds.

SIGAR Comment 30: Our report states that the two benchmarks were complete. We updated our report to reflect the Afghan government's position that the two benchmarks associated with our eighth matter for consideration represent tangible reforms. However, the Afghan government did not provide sufficient supporting documentation to designate these benchmarks as tangible anti-corruption measures. Our analysis found that the adoption of the Case Management System (CMS) regulation represents an intangible, regulatory reform, and that despite the High Council on Rule of Law and Anti-Corruption's oversight of CMS, not all cases have been registered in the system.

SIGAR Comment 31: We updated our report to include the Afghan government's statements that most of the cases that have not been registered in CMS "are mostly related to the past," and that pursuant to Article 27 of the regulation on CMS, all cases that have not yet been registered in the system will be registered "based on a specific deadline to be determined" by the CMS Board.¹⁶⁶

SIGAR Comment 32: While we commend the Afghan government on regaining membership to the Extractive Industries Transparency Initiative, we are unable to include this action as a benchmark in our analysis, as the Afghan government did not submit it as a benchmark in response to the matters for consideration listed in our 2019 report.

SIGAR Comment 33: We performed additional analysis upon receipt of the Afghan government's comments and updated the report to reflect that the Afghan government completed 19 out of 26 benchmarks. We are unable to state that the Afghan government completed all but 2 benchmarks, as the Afghan government has not provided sufficient documentation showing that the benchmarks are complete.

¹⁶⁶ Islamic Republic of Afghanistan ACC, Afghan government response to SIGAR's draft report, July 24, 2021, p. 14.

APPENDIX V - ACKNOWLEDGEMENTS

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