

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



کمیټه مستقل مشترک نظارت و ارزیابی  
مبارزه با فساد اداری

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

**3<sup>rd</sup> SIX-MONTH REPORT OF THE  
INDEPENDENT JOINT ANTI-CORRUPTION  
MONITORING AND EVALUATION  
COMMITTEE  
(July – December 2012)**

**Kabul, Afghanistan**

**March 13, 2013**

## Table of Abbreviations

AAN:	Afghanistan Analysts Network
ACBAR:	Agency Coordinating Body for Afghan Relief
ACCI:	Afghanistan Chamber of Commerce and Industries
ACSFo:	Afghanistan Civil Society Forum
ADB:	Asian Development Bank
AFCAC:	Afghan CSOs Coalition Against Corruption
AGO:	Attorney General's Office
AISA:	Afghanistan Investment Support Agency
ANDS:	Afghanistan National Development Strategy
ARAZI:	Afghanistan Land Authority
AWN:	Afghanistan Women's Network
BP:	Bearing Point
CBR:	Capacity Building for Results
CJIATF:	Combined Joint Inter-Agency Task Force
CSO:	Civil Society Organization
DAB:	Da Afghanistan Bank
DAD:	Development Assistance Database
DFID:	Department for International Development
DI:	Democracy International
FIU:	Financial Intelligence Unit
GIRoA:	Government of the Islamic Republic of Afghanistan
HOO:	High Office of Oversight
IARCSC:	Independent Administrative Reform and Civil Service Commission
IDLG:	Independent Directorate of Local Governance
IEC:	Independent Elections Commission
IMF:	International Monetary Fund
ISAF:	International Security Assistance Force
IWA:	Integrity Watch Afghanistan
KBR:	Kabul Bank Receivership
LOTFA:	Law and Order Trust Fund for Afghanistan
MAIL:	Ministry of Agriculture, Irrigation and Livestock
MEC:	Independent Joint Anti-Corruption Monitoring & Evaluation Committee
MoCI:	Ministry of Commerce and Industries
MoD:	Ministry of Defence
MoE:	Ministry of Education

MoF:	Ministry of Finance
MoFA:	Ministry of Foreign Affairs
MoHE:	Ministry of Higher Education
Mol:	Ministry of Interior
MoL:	Ministry of Labour, Social Affairs, Martyrs and Disabled
MoM:	Ministry of Mines
MoPH:	Ministry of Public Health
MoPW:	Ministry of Public Works
MoRR:	Ministry of Refugees and Repatriation
MRRD:	Ministry of Rural Rehabilitation and Development
MSI:	Management Systems International
MTA:	Military Technical Assistance
MTF:	Mobile Task Force
MWG:	Mobile Working Groups
NACS:	National Anti-Corruption Strategy
NATO:	North Atlantic Treaty Organization
NDS:	National Directorate of Security
NGO:	Non-Governmental Organizations
NPP:	National Priority Program
NPP2:	National Transparency and Accountability Program
OAA:	Office of Administrative Affairs and Council of Ministers Secretariat
PETS:	Public Expenditure Tracking Survey
PPU:	Procurement Policy Unit
SAO:	Supreme Audit Office
SIGAR:	Special Inspector General for Afghanistan Reconstruction
Taqnin:	Department of the Institute of Legislative Drafting and Academic Legal Research
TMAF:	Tokyo Mutual Accountability Framework
UN:	United Nations
UNAMA:	United Nations Assistance Mission in Afghanistan
UNCAC:	United Nations Convention against Corruption
UNDP:	United Nations Development Program
UNODC:	United Nations Office on Drugs and Crime
USAID:	United States Agency for International Development
VCA:	Vulnerability to Corruption Assessment
WB:	World Bank

## I. Introduction

Despite its short time in existence, MEC has made a significant impact on the anti-corruption landscape in Afghanistan. The last six months represents a very active and successful period for MEC due to the staffing of key positions within MEC's Secretariat and the pursuit of important activities such as the public inquiry into the Kabul Bank crisis, monitoring of Presidential Decree 45, and conducting VCAs, in addition to regular monitoring of its benchmarks.

The recent successes of MEC have increased its acceptance as an independent and objective body. This has enhanced the credibility of MEC and led to its formal and informal participation in a variety of anti-corruption initiatives, including providing assistance in the monitoring and evaluation of Presidential Decree 45 at the request of OAA, providing legal analysis on the publication of mining contracts, conducting legal and policy analysis of the proposed access to information law, and identifying anti-corruption priorities for consideration at the July 2012 Tokyo Conference. MEC has also acted as a key facilitator and coordinator amongst organizations that have a role to play in the fight against corruption in Afghanistan by, among other things, initiating stakeholder working groups to identify corruption issues and solutions.

MEC held its sixth and seventh missions to Afghanistan during this reporting period in accordance with its terms of reference resulting in the development and approval of a fourth set of recommendations and benchmarks during the sixth mission. A fifth set of recommendations and benchmarks was developed during the seventh mission and was recently approved by the Committee. MEC continues to monitor and evaluate all of its 74 recommendations and 75 benchmarks - a detailed analysis of which is contained as an annex to this report.

Monitoring and evaluation efforts to date indicate that some of MEC's recommendations and benchmarks are implemented, with 15 (20 percent) being fully implemented; 43 (58 percent) partially implemented; and 16 (22 percent) not implemented. It is worth mentioning that these numbers include four partially implemented recommendations and four recommendations that have not been implemented, for which the time limit has not expired. Removing these recommendations indicates that 82 percent of recommendations have been fully or partially implemented.

The most notable successes have been registered in relation to recommendations related to mines, finance, and customs. However, several key recommendations are not being implemented to the detriment of the anti-corruption effort in Afghanistan, including those in the justice sector, and those related to HOO and the international community.

There are several key factors affecting the implementation of MEC's recommendations and benchmarks. The most prevalent are political will and prioritization within some implementing institutions and the international community. Other factors include the institutional understanding of recommendations and the capacity to implement them. MEC will continue to work with implementing institutions to ensure that all recommendations and benchmarks are understood and effectively implemented.

MEC has also had significant achievements outside its core function of developing and monitoring benchmarks. Most notable was the completion of a public inquiry into the causes and responses to the Kabul Bank crisis. MEC decided by a majority vote in July 2012 to conduct the inquiry and issued its final report in November 2012 having met dozens of individuals and organizations and reviewing hundreds of pages of documents. MEC will continue to raise awareness of the report

among government institutions, CSOs, the media, and the public to ensure that its recommendations are implemented. All implementing institutions have until March 12, 2013 to respond to MEC about their intention to implement the report's recommendations and MEC will report to the public on progress during its eighth mission to Afghanistan in March 2013.

Although OAA is tasked with monitoring and evaluating Decree 45, MEC decided to independently monitor and evaluate the implementation in order to provide the public with an independent view. In doing so, MEC identified 38 articles to focus on and has conducted extensive monitoring activities to evaluate the government's progress. The six-month time period by which most articles of the Presidential Decree need to be implemented expired in January 2013 and a report detailing MEC's monitoring results will be issued in the near future.

## **II. MEC's Sixth and Seventh Missions to Afghanistan**

MEC conducted two missions to Afghanistan during the current reporting period. The first occurred from July 4<sup>th</sup> to July 18<sup>th</sup> 2012. During this mission MEC met and consulted with members of the government, civil society and the international community. Specifically, MEC met the International Community Transparency and Accountability Working Group comprised of international community members engaged in anti-corruption initiatives; Harakat; Afghanistan Public Policy Research; UNODC; UNDP; Taqin; the Treasurer of MoF; and the Special Representative of the Secretary General of the UN.

During this mission, MEC also conducted stakeholder meetings with numerous government officials and CSOs to facilitate discussions on corruption in Afghanistan and to foster cooperation in developing effective responses. Participation in the government stakeholder meeting included the Science Academy; DAB; IEC; Kabul Municipality; MAIL; MoE; MoE; the Ministry of Energy and Water; MoF; MoFA; MoHE; MoI; MoJ; MoPH; MoPW; MRRD; the Ministry of Transport; NDS; OAA; SAO; the Supreme Court; and members of the Wolesi and Meshrano Jirgas. The session was also attended by several national media organizations that observed and reported on key aspects of the meeting.

The second stakeholder meeting held by MEC included representatives from CSOs, media and the private sector. Specifically, participants included AAN; AFCAC; ACBAR; AWN; Cooperation for Peace and Development; DI; IWA; MSI; and Open Society of Afghanistan.

The individual and collective consultations conducted by MEC during its sixth mission provided the Committee with extensive background and factual information to support the development of 17 recommendations and benchmarks in several areas, including the simplification of legislation interpretation, the facilitation of future public inquiries, public awareness and anti-corruption curricula in schools, increasing support for civil society, effective border controls, and sub-contracting in infrastructure.

Additionally, during the sixth mission MEC made several important decisions including the majority decision to undertake a public inquiry into the causes of the Kabul Bank crisis, a decision to conduct VCAs, and the approval of its second six-month report covering the period of January – June 2012, which was issued at the beginning of August. MEC also identified the following priorities for future work to help focus their efforts in developing recommendations and benchmarks:

- Land usurpation;

- Elections;
- Infrastructure;
- On and off-budget financing; and
- Justice and impunity.

Finally, during this mission MEC developed a streamlined quality assurance process to ensure that recommendations are developed with optimal levels of research and consultation. This policy based approach allows MEC to identify priorities with experts and advisors in MEC's Secretariat conducting extensive research on the priority areas to support Committee consultations and recommendation development.

On November 1, 2012, the Chairmanship of the Committee passed from an Afghan member to one of the Committee's international members in accordance with MEC's terms of reference. The international member will hold the Chairmanship until May 2013 when it reverts back to an Afghan member.

MEC's seventh mission took place in Afghanistan from November 22<sup>nd</sup> – December 6<sup>th</sup>, 2012. A large amount of the Committee's time during the seventh mission was dedicated to the release of the report of the public inquiry into the Kabul Bank crisis (further details below). The report was issued at a press conference on November 28, 2012 which was well attended by major national and international media and key stakeholders. Individual MEC members participated in several follow-up interviews and television programs for national and international media.

Between missions the Committee's Secretariat conducted extensive primary and secondary research into the priority areas to support the Committee in consultations and development of benchmarks. During its seventh mission MEC conducted extensive consultations with a large number of officials from the Afghan government, the international community, and civil society, in Kabul and in Jalalabad. The consultations and workshops resulted in the development of several recommendations in the five priority areas, which are currently in the approvals process.

Consultations in Jalalabad included ARAZI; the Customs Department; the Acting Governor; the Directorate of IARCSC; the Directorate of MAIL; the Directorate of Breshna (Electricity); the Provincial Court; UNAMA; and representatives from civil society and youth associations. Organizations consulted in Kabul included the Head of the Transition Coordination Commission; Global Witness; His Excellency the Senior Minister and Head of the Governance Cluster; IEC; MoF; MoPW; and numerous donors and diplomats from the international community.

The Committee also conducted two workshops addressing the areas of infrastructure and land. The infrastructure workshop was attended by the IDLG; Kabul Municipality; MAIL; the Ministry of Energy and Water; MoPW; MRRD; and the Ministry of Urban Development. The land workshop was attended by the Afghan Geodesy and Cartography Office; ARAZI; the Directorate of Governmental Cases; and Kabul Municipality.

Future MEC missions are scheduled for March 4 – 18, 2013; and May 27 – June 10, 2013.

### **III. Monitoring and Evaluation of Recommendations and Benchmarks**

MEC has issued 74 recommendations and 75 benchmarks in the areas of governance, prevention and law enforcement affecting a variety of government and international institutions and

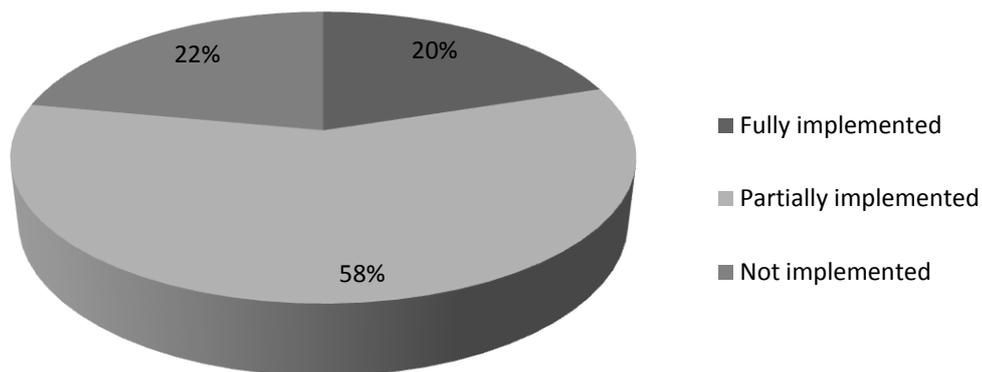
organizations. MEC's Secretariat has three teams responsible for monitoring and evaluating benchmarks. After the issuance of each set of benchmarks, MEC Secretariat staff meet with focal points at relevant organizations to ensure that the recommendations and benchmarks are clearly understood. Between missions, MEC's Secretariat works closely with implementing institutions to gauge progress and identify any potential problems. The Secretariat also seeks information from civil society and other partners to assess whether the recommendations have been implemented by the government and the effectiveness of this implementation. This is achieved through several methods, including in-person meetings, email and telephone follow-up, and the review of secondary sources of information.

### **Status of MEC's Recommendations and Benchmarks**

To date, the results of MEC's monitoring and evaluation efforts reveal mixed success in the implementation of its recommendations. The evaluation results indicate that 78 percent of MEC's recommendations have been fully or partially implemented. More specifically, 15 (20 percent) have been fully implemented; 43 (58 percent) have been partially implemented; and 16 (22 percent) have not been implemented.

These results represent a decrease from the review of the first 52 benchmarks contained in the first two sets of recommendations and benchmarks, which indicated that nearly 81 percent of MEC's benchmarks had been fully or partially implemented (23 percent fully, 58 percent partially). The difference can be attributed to the fact that 22 new recommendations have been added since the last evaluation and implementation of these recommendations has not proceeded as far. Removing recommendations for which the deadline has not expired from the current evaluation indicates that 82 percent of MEC's recommendations are being implemented (23 percent fully and 59 percent partially).

### **Implementation of Benchmarks**



### **Key Findings of MEC's Evaluations**

Ministries of GIRoA have generally been responsive to MEC's recommendations and benchmarks, with some progress registered in most areas. Examples of the most responsive ministries include MoM which recently published the vast majority of mining contracts in Afghanistan and retained experienced lawyers to assist in the negotiation of future contracts. Additionally, MoF has made several efforts to introduce measures to strengthen accountability of development funding; and the current Governor of Herat has undertaken efforts to implement MEC's recommendations.

Despite some success, the vast majority of ministries face challenges related to the capacity and resources required to implement MEC's recommendations fully. It's worth mentioning that several of the initiatives included in MEC's benchmarks are reflected in NPP 2 and His Excellency the Senior Minister and Head of the Governance Cluster is to be commended for his efforts in developing the program, among others in the Governance Cluster. However, this program has not been endorsed and it is unlikely that endorsement will occur before the second half of 2013. Although some elements of NPP2 could certainly benefit from refinement, the delay caused by the lack of endorsement and funding has contributed to the lack of progress on several benchmarks.

The justice sector and HOO have not had the same success registered in other areas by the government. Impunity has long been cited by MEC as one of the biggest issues facing anti-corruption efforts in Afghanistan. The AGO has not prioritized the initiatives that have been identified under MEC's recommendations and benchmarks thereby allowing corruption to continue unabated. For example, a simple initiative that would have a large impact on anti-corruption prosecution is the implementation of an adequate case management system and database for corruption cases. This initiative could be achieved at no cost, but the AGO has been unwilling to implement it. There has also been a lack of initiative from the AGO in coordinating justice sector efforts in the detection, investigation and prosecution of corruption. The AGO is the central piece and the natural body to lead such efforts, yet the required coordination has not occurred.

Additionally, many of MEC's recommendations and benchmarks aimed at enhancing public awareness of corruption issues through education, public awareness campaigns, and strengthening civil society have not been implemented.

Part of MEC's mandate is to evaluate the effectiveness of the international community's effort in preventing and fighting corruption and MEC has directed a number of recommendations and benchmarks to the international community in this regard. However, the international community has not effectively implemented many of MEC's recommendations.

One example is the need to better coordinate the international community's anti-corruption efforts. MEC issued a benchmark in the summer of 2011 suggesting that UNAMA take the lead in developing a unified international anti-corruption strategy given its central role as a coordinating body for international efforts in Afghanistan. Unfortunately, UNAMA was unwilling to take on this task, even when the expectations of MEC were clarified and adjusted to address their concerns. It was not until DFID took the initiative to establish a committee of key anti-corruption donors in late 2012 that any progress on this recommendation was made.

There has also been insufficient progress from the international community in registering or providing information on their development projects in Afghanistan. Registration allows the government to more effectively monitor programs that are being implemented in Afghanistan and to ensure that they are being done in an accountable and effective manner. Although this initiative aligns with the principles of mutual accountability espoused at the Tokyo Conference in 2012, there has been little progress in convincing many donors to register their projects despite efforts from the Aid Management Unit of MoF.

There has also been insufficient progress in the area of exemptions under the Military Technical Agreement, which presents a large vulnerability to abuse in bringing undeclared goods into Afghanistan. Despite information from MoFA that confirms that the procedure has been used in the past to import alcohol illegally, there has been no acknowledgement from ISAF that there could potentially be a problem and officials have clearly stated that they have absolutely no intention to

introduce any verification or oversight procedures to ensure that these abuses are detected and that the provisions of the agreement are respected.

#### **IV. Public Inquiry into the Kabul Bank Crisis**

In June 2012, MoF asked MEC to conduct a public inquiry into the events leading to the failure of Kabul Bank, the ensuing crisis, and the adequacy of the response to deal with it. The collapse of the Bank will impose a significant fiscal cost on the country, which will be absorbed by all Afghans through the government's budget, thereby depriving Afghans of important programs and services. Most of this money has been redirected for the benefit of a few individuals with reckless disregard for the country and the people of Afghanistan. However, the story of what happened at Kabul Bank had never been fully told prior to MEC's report on the crisis.

MEC's inquiry considered hundreds of pages of primary and secondary documents and included dozens of interviews with key individuals and organizations. Participants included Kabul Bank shareholders and administrators, DAB, KBR, the AGO, independent auditors, law enforcement agencies, and international organizations.

The Committee's report found that the primary reason behind the Kabul Bank crisis was that unscrupulous individuals capitalized on a regulatory vacuum by recklessly diverting Afghans' savings to their own personal ventures. A number of Kabul Bank shareholders, administrators, employees and others participated in a complex scheme to divert depositor funds, with weak regulatory oversight allowing the fraud to continue despite red-flags identified by national and international agencies. The inquiry also uncovered serious concerns related to inappropriate political interference affecting the ability of independent institutions to effectively pursue criminal cases and recover the missing money.

There were several contributing factors and actions – or lack of actions - that allowed the fraud to continue undetected and for the perpetrators and participants to escape accountability. Some of the contributing factors are specific to the financial sector (regulatory capacity, coordination amongst regulatory and oversight bodies), while others are systemic issues (political interference, weak institutions, impunity, abuse of office and process).

The inquiry resulted in the issuance of 48 recommendations covering the areas of governance, regulatory frameworks, supervision and enforcement of banking regulations, investigation and law enforcement, judicial proceedings, and recoveries. The Committee will work with implementing partners to ensure that they understand and implement the recommendations and will conduct monitoring and evaluation activities on these recommendations and will report to the public on progress.

#### **V. Monitoring of Presidential Decree 45**

On July 26, 2012, His Excellency the President of GIRoA announced broad ranging measures to improve government administration and to combat corruption. Decree 45 includes 164 articles directed to 33 institutions, with specific timelines for their implementation including deadlines of 1-month, 2-months, 3-months, 6-months, and longer. The initiatives contained in Decree 45 would improve the administration of Afghan institutions and help to prevent, detect, and punish corruption, but as with anything else, the key to success will be in the effective implementation.

OAA has been assigned to monitor the implementation of Decree 45 on behalf of the government and ministries responsible for implementation provide reports to OAA. However, OAA does not have the resources to conduct extensive verification of reports from ministries and a member of MEC's Secretariat provided temporary assistance to OAA to provide additional capacity in monitoring the decree.

MEC publicly welcomed the measures contained in the decree shortly after they were announced and offered to assist in the monitoring and evaluation. Given the importance of the decree to public administration and the fight against corruption, MEC decided that it would be important to qualitatively monitor and evaluate the government's implementation of the anti-corruption related initiatives contained within. The Committee identified 38 articles that would enhance efforts to fight corruption. Of those, 27 were to be implemented within one to three-months (by October 26, 2012), and nine within six-months (January 2013), while the last two are ongoing activities with no deadline.

Since July 2012, MEC has conducted several follow-up meetings with implementing organizations, and conducted several cross-checks to verify government reports on implementation. In conducting its monitoring activities, the Committee was able to make detailed evaluations of a number of anti-corruption articles, while others were inhibited because of challenges in obtaining information from relevant organizations. The Committee's evaluations revealed mixed results with progress being seen in the early stages of many initiatives.

The in-depth report of the Committee in evaluating Presidential Decree 45 will be released in March 2013.

## **VI. Vulnerability to Corruption Assessments**

Managing integrity and the effectiveness of the procedures and operations of government institutions is a critical component of preventing corruption. Any individual can be prone to malfeasance or the misuse of delegated power if the system they work in allows or even encourages it. Hence, the problem of corruption often lies squarely in the integrity management system and regulatory environment of operations rather than on the individual's moral compass.

VCAs facilitate the identification of susceptibilities to corruption in government processes and allow for the development of strategies to mitigate these risks. The assessments combine an examination of the operations and regulatory environment in a sector with semi-structured interviews that capture the informal practices that lead to vulnerabilities to corruption as well as an analysis of the formal rules and procedures within the sector.

MEC has engaged in a partnership with MSI - funded by USAID - to establish a vulnerability to corruption unit housed within MEC's Secretariat to conduct assessments in a number of service areas, prospectively:

- MoRR – Land issues
- MoI – National Identification Card (Tazkeras) Department and Traffic Police
- MoHE – Exams
- MoL – Pensions
- Herat Local Government

- IARCSC

During the time of October – December 2012 the Vulnerability to Assessment Team completed one assessment with recommendations in the area of land distribution within the MoRR, which is currently being finalized.

The assessment process begins with a review of the selected institutions and sectors to confirm their suitability for a VCA based on perceptions of corruption in those areas, the ability to conduct an assessment, and expected challenges and mitigation strategies. The VCA methodology is adopted to address the unique circumstances of the selected sectors and institutions with specific plans being developed for each institution, including identification of those to be interviewed.

The assessment process then involves a desk-study of existing legal and institutional frameworks related to the relevant business process, including a thorough, rigorous and critical review of all existing laws, regulations and policies. Key steps in each business process are identified, along with key decision makers, their responsibilities and accountability tools. This assessment results in a mapping of business processes that identifies gaps and areas that may be vulnerable to corruption.

The institutional framework is then supplemented through the collection of qualitative data received through several semi-structured interviews and/or focus groups with all major actors in the sector or institution being assessed to identify where the possibilities for corruption and undesirable practices exist.

The final stage of the process is to summarize key vulnerabilities to corruption based on the desk studies, interviews and focus groups, and develop options to mitigate these vulnerabilities to corruption. The findings and mitigation strategies are then validated with key participants from the institution being reviewed. Once the validation is complete, a final report will be compiled for publication. The report will provide information related to what vulnerabilities exist, who can mitigate the vulnerabilities, what priority they should have, and what timeframe and resources are necessary to mitigate them.

## VII. Outreach and Consultation

### Provincial Missions

#### *Jalalabad, Nangarhar Province*

MEC Secretariat conducted a mission to Nangarhar in September 2012 to assess anti-corruption achievements and challenges in the province, and to monitor and evaluate the implementation of MEC's recommendations at the local level. The visit included meetings with the Deputy Governor; Torkham Customs; the Directorate of Public Works; UNAMA; the Provincial Council; the Director of the IARCSC; the Directorate of Agriculture; the Directorate of Electricity; and youth associations and civil society who are very active in fighting corruption in the province. The mission revealed several corruption related areas of concern, including a money collection scheme involving vehicles at the border crossing; land usurpation involving government officials; bribery for seed distribution; appointments of public employees; the distribution of land to returnees; and the lack of monitoring of infrastructure projects.

### ***Mazar-i-Sharif, Balkh Province***

At the end of September 2012, MEC's Secretariat conducted a mission to Balkh Province and was able to visit many government institutions to conduct a general assessment of corruption. Meetings included the Acting Chief Prosecutor; the Director of Public Works; the Deputy Director of Agriculture; the Deputy Director of the Provincial Council; the Security Police Commander; the Director of the Chamber of Commerce; the Director of Education; the Head of the Traffic Police; the Municipality; and the Balkh District Governor.

Of note, the mission found that at the time there had been only five cases of corruption referred to the Attorney General's anti-corruption office by the police and Public Security Prosecution Department, but that no cases have been received from HOO. HOO was described as uncooperative with the Anti-Corruption Unit of the AGO.

The mission also found that educators were facing significant pressure from politicians and influential individuals in the recruitment and exchanging of teachers; that land usurpation was a major issue; that police recruitment was not based on merit; and that infrastructure projects were not being effectively monitored.

### ***Herat, Herat Province***

MEC's Secretariat visited Herat in September 2012 to meet several government and non-government institutions in Herat Province. The mission included monitoring and evaluation of MEC's recommendations and benchmarks and a general assessment of corruption and the mechanisms available to fight corruption in Herat province. During the mission, MEC's Secretariat met the Governor of the Province, the Provincial Chief Justice of the Appeals Court, the Chief Prosecutor, the Director of Public Works, the Director of Agriculture, the Director of Customs, the Director of MoE, the Director of MRRD, the Acting Director of IARCSC, UNAMA, the Director of CSOs, the Deputy Director of the Provincial Council, Police Headquarters and the Acting Director of HOO.

MEC's team also met the CSO Network, which represents 54 civil society members. CSOs in Herat are very active and have been involved in anti-corruption through good governance and justice initiatives in the province.

Many areas that could benefit from intervention in relation to fighting corruption were identified as a result of this mission, including the need for more oversight in the use of government budgetary funds, customs transactions and government procurement procedures; and salaries for government officials.

### **International Anti-Corruption Day**

International Anti-Corruption Day was marked worldwide on December 9, 2012 with many events taking place across Afghanistan. As an important anti-corruption organization, MEC attended several events in Kabul, and participated on a panel at the Anti-Corruption Conference to Commemorate International Anti-Corruption Day supported by UNODC, IWA, and the Japan International Cooperation Agency. The theme for the panel was *Fighting corruption through participation of public monitoring of services* and MEC's representative spoke regarding the issue of *Engaging the public in the fight against corruption*.

## **International Anti-Corruption Conference**

The 15<sup>th</sup> International Anti-Corruption Conference - with the theme of *Mobilizing people; connecting agents of change* - took place from November 7<sup>th</sup> – 10<sup>th</sup>, 2012 in Brasilia, Brazil. The conference takes place every two years to discuss anti-corruption challenges and solutions. The 2012 conference had 7 general sessions, more than 100 special plenary sessions, and more than 1,900 participants from over 140 countries, including representatives from MEC and other Afghan organizations (HOO, GIZ-Afghanistan, and CSOs). MEC members participated in panels, networked extensively, and conducted a press conference on the current improvements of anti-corruption efforts in Afghanistan. At the end of the conference participants issued a declaration that required the participants to enhance their efforts in fighting corruption and issued a common message.

## **VIII. Organization and Administration**

### **The Committee**

MEC was created by Presidential Decree in March 2010 after the need for independent monitoring and evaluation of anti-corruption efforts was identified at a series of international conferences (London, Kabul). Following the London Conference, GIRoA invited the international community to form a joint Afghan-International monitoring and evaluation committee to provide policy advice and monitor and evaluate progress against specific benchmarks, which was welcomed by the international community gathered at the London Conference.

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

The Committee is responsible to cooperate to identify effective development criteria for institutions, and with necessary monitoring and evaluation on activities conducted against corruption at the national level, and on the aid of donor countries and international organizations, shall report to the President, Parliament, people and international community every six months.

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

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

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

**Afghan Appointees**

Mr. Mohammad Yasin Osmani

Mr. Zakem Shah

Dr. Yama Torabi

**International Appointees**

Mr. Drago Kos (Slovenia)

Ms. Eva Joly (France/Norway)

Lt Gen. Hasan Mashhud Chowdhury (Bangladesh)

**MEC Secretariat**

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

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

**Funding**

Funding for MEC has been provided by Denmark and the United Kingdom. The funding agreement between MEC and DFID secures funds until the end of 2015 and obligates the Committee to provide financial and activity reports for each quarter. The Secretariat has robust structures in place to ensure that funds are administered prudently and in an accountable manner with sufficient oversight. The expenditure management system begins in advance of the new fiscal year with budgeting exercise based on the previous year's expenditures and the Committee's current priorities and business needs. The three year budget is then updated and shared with the Committee for approval, which in turn is shared with donors for validation.

The Secretariat procures all resources in accordance with government procedures and Afghan law, including the hiring of staff. Designated Committee members have signing authority to issue payments, which are supported by justification for the need of the purchase and evidence of a competitive process.

Although the Secretariat strictly adheres to Afghan law and government procedures, it is currently in the process of drafting key organizational policies related to financial management, procurement, travel, and per diems to clearly articulate the application of law and procedure to our specific organizational context. The financial policy will ensure that there are clear structures for financial accountability including appropriate checks-and-balances between need identification, order initiation, verification of delivery of goods and services, and invoice payment. The procurement process will ensure that value for money is the overriding principle and that competitive processes are used, with limited exceptions. Finally travel and per diem policies will ensure that travel and accommodation is provided at appropriate levels, while being cognisant of the need to contain expenses.

The Secretariat constantly evaluates its budget projections in relation to actual expenditures and reports to MEC quarterly and annually on expenses. Reports are developed by the Financial Officer and approved by the Executive Director for Committee consideration. An independent

auditor conducts an annual audit on the basis of the financial statements and all reports are shared with donors.

The Secretariat has retained an Ernst & Young affiliate to conduct the independent audit of funding provided for the period of April – September 2012, which is being finalized. The Committee will hire an independent auditor for future funding periods.

## **IX. Challenges and Mitigation**

A number of challenges arose during the reporting period, most of which were identified prior to their emergence. One of the most frustrating challenges relates to a lack of cooperation from organizations essential to the development and implementation of recommendations and benchmarks. Given that MEC does not have executive powers, it relies on the goodwill of implementing organizations to ensure that the recommended measures have an impact on corruption in Afghanistan.

In addition, MEC was faced with an increased workload in conducting a public inquiry into the Kabul Bank crisis. Also, due to the mix of national and international members of MEC there was a need to translate all documents, which presents capacity issues for the Secretariat and sometimes slowed the process for consideration, amendment, and approval of key documents.

MEC was also able to deal with the need for additional human resources by securing additional capacity through short term expert contracts. Short term assistance and contracting was also used to address gaps in translation, with a staff translator hired shortly thereafter to permanently address the need.

Despite the obstacles and challenges, MEC was able to overcome difficulties to ensure that it continued to operate at a high level. In relation to the difficulty securing the cooperation of key organizations, MEC was able to leverage its relationships with intermediary organizations to ensure that resistant organizations responded to MEC's benchmarks. This resulted in several key benchmarks being implemented or initiated.

## Annex: Detailed Monitoring and Evaluation of Recommendations and Benchmarks<sup>1</sup>

### ***1.1 The delivery of all anti-corruption strategies and policies to entrusted institutions will help to ensure that they are aware of and implement their obligations***

**Recommendation:** HOO as the independent body responsible for overseeing and implementation of the NACS/strategies and anti-corruption programs in Afghanistan should collect all existing anti-corruption strategies and other policies with anti-corruption measures and deliver them to all institutions entrusted with their implementation by 6 Dec 2011 (15 Qaus 1390).

**Benchmark:** Existing anti-corruption strategies and other policies with anti-corruption measures delivered to entrusted institutions by 6 Dec 2011 (15 Qaus 1390)

**Expected Outcome:** Increased awareness and understanding of anti-corruption strategies to improve institutional responses to corruption and to ensure better alignment and coordination of anti-corruption efforts.

**Status and Evaluation:** *Partially implemented.* Many national anti-corruption strategies and other policies with anti-corruption substance have been adopted in Afghanistan, but have not always been understood or effectively implemented. Effective efforts in fighting corruption require all institutions to be aware of what corruption is and have a clear understanding of their responsibilities to implement appropriate measures.

HOO advised that they sent the NACS (Azimi Strategy) to all relevant government institutions in 2010. A random sampling of institutions in January 2013 revealed that most have officially received the NACS from HOO, but some had not.

### ***1.2 Anti-corruption working groups have nominally been established in many institutions, but their operation and effectiveness has been mixed***

**Recommendation:** Ad-hoc working groups in all institutions entrusted with the implementation of the Anti-Corruption strategies should be established by 21 November 2011 (30 Aqrab 1390).

**Benchmark:** Ad-hoc working group established until 21 November 2011. Institutions that already have these groups established maintain their activities.

**Expected Outcome:** Anti-corruption working groups will ensure coordination and oversight in implementing anti-corruption efforts in institutions.

**Status and Evaluation:** *Partially implemented.* Many government institutions have established ad-hoc working groups or anti-corruption units in cooperation with HOO and international partners. This includes OAA, MoF, MoI, MoE, MoJ, MoCI, Ministry of Transportation, Ministry of Women Affairs, MoPH, MoD, Kabul Municipality, the AGO, IDLG, and SAO. The established working groups include a representative of HOO and generally meet every month or two, but some do not meet at all.

The effective functioning of these working groups requires qualified and competent officials. To this end, anti-corruption training has been provided by HOO, with support from the international

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<sup>1</sup> Note: Status and evaluations are current as of March 13, 2013.

community. Working groups that are effective appear to have the commitment of senior management within the relevant organization.

***1.3 Although anti-corruption priorities have been identified by many institutions, the strategies for meeting these priorities have not been sufficiently developed and implemented***

**Recommendation:** Established working groups should start / continue with the implementation of the anti-corruption top three priorities and report on the implementation to HOO quarterly, starting with 21 January 2012 (1 Dalwa 1390).

**Benchmark:** First reports on the implementation submitted to HOO until 21 January 2012 (1 Dalwa 1390) and then regularly every three months.

**Expected Outcome:** The identification of priorities will help focus institutional efforts in fighting corruption.

**Status and Evaluation:** *Partially implemented.* Presidential Order 987 (May 9, 2010) requires ministries and institutions to submit three anti-corruption priorities and a proposed action plan to HOO. The order requires HOO to monitor the implementation of the anti-corruption strategy within the government and to report to OAA.

As of last year, most government institutions had reported to HOO in regard to their anti-corruption priorities. Of the 49 entities required to submit their priorities and actions plans:

- 38 institutions' priorities and action plans have been accepted and are being implemented;
- 6 institutions' priorities and action plans have been rejected and have been returned for further review and technical assistance; and
- 5 institutions have not submitted their priorities and action plans.

MEC's analysis of some of the 38 institutions that have submitted their action plans reveals that the quality of the reports on implementation are not optimal, as they simply report on daily activities as opposed to the implementation of priorities. HOO needs to further develop its human resource capacity to support other ministries and relevant government institutions in addressing these deficiencies.

***1.4 The compilation of all anti-corruption strategies and policies into a single document has not progressed, leaving corruption efforts to be governed by a number of disparate strategies***

**Recommendation:** HOO (with the help of MEC Secretariat) should take the lead and coordinate efforts of all relevant institutions and representatives of civil society (NGOs and private sector) for the compilation / harmonisation of all existing anti-corruption strategies into one single document.

**Benchmark:** The President informed, the first multi-stakeholder working group meeting convened, work-plan adopted before 21 December 2011 (30 Qaus 1390).

**Expected Outcome:** Anti-corruption strategies and efforts of the Afghan government will be streamlined, clear, and comprehensive.

**Status and Evaluation:** *Not implemented.* The NPP2 outlines a plan to begin work on an overarching national anti-corruption plan. However, the program first calls for a functional review

of anti-corruption institutions and a review of the Strategy and Policy for Anti-Corruption and Administration Reform. The last functional review took the Afghan government two years to complete, which suggests that the proposed review will take a similar length of time, thereby concluding the exercise in 2014 or 2015 - if NPP2 is approved this year.

***1.5 The international community has only recently made efforts to better coordinate their anti-corruption activities***

**Recommendation:** UNAMA as the best suited international institution should convene a meeting before 15 December 2011 (24 Qaus 1390) with representatives of all relevant international forces, organisations and institutions in order to adopt a work-plan on drafting and adoption of the “International Anti-Corruption Strategy” in Afghanistan before 1 June 2012 (12 Jawza 1391). In the area of Anti-corruption measures needed, the “International Anti-Corruption Strategy” has to have the following elements: measure, responsible institution, timeframe for implementation, benchmark for the implementation, and estimated costs. There should be a separate part of the strategy devoted to the issue of monitoring of implementation and consequences for non-implementation or weak implementation of the strategy (including sanctions and/or other consequences for responsible authorities’ management).

**Benchmark:** The first meeting should be convened and the work-plan adopted before 15 December 2011 (24 Qaus 1390).

**Expected Outcome:** Anti-corruption efforts of the international community are better coordinated.

**Status and Evaluation:** *Partially implemented.* Since issuing this recommendation and benchmark it has become clear that the development of an international anti-corruption strategy was prohibitively challenging. However, the underlying principles – better alignment and coordination of international anti-corruption efforts – are important and attainable. To this end, MEC suggested a revised approach that included a review of all international anti-corruption related programs to identify gaps in the anti-corruption effort; and the creation of a regular working-group for donors with anti-corruption initiatives to have in-depth discussions about plans and priorities, programs, gaps, and potential responses, and to allow donors to coordinate funding so that programs and future initiatives can be leveraged.

Since MEC proposed the revised approach, DFID (United Kingdom) has taken the initiative to establish a group of donors who operate in the anti-corruption field to take on the activities suggested by MEC’s recommendation. The group has met several times since the end of 2012 and is currently completing a terms of reference.

***1.6 With the exception of HOO, MEC regularly shares information with key institutions involved in anti-corruption efforts, but has not been invited to meetings related to developing anti-corruption strategies***

**Recommendation:** HOO, UNAMA and Shafafiyat (and where necessary SIGAR) should invite the MEC Secretariat to all their meetings devoted to drafting Anti-Corruption strategies.

**Benchmark:** None.

**Expected Outcome:** The perspective and expertise of MEC are integrated into anti-corruption strategies as they are developed.

**Status and Evaluation: *Not implemented.*** HOO has never invited MEC or its Secretariat to strategic meetings. MEC participates in the International Community Transparency and Accountability Working Group, which includes Shafafiyat and UNAMA and often meets those organizations outside of formal working group meetings. MEC also meets occasionally with SIGAR to discuss issues of mutual importance.

**1.7 Amendments to the Customs Act have not been enacted hampering efforts to reduce vulnerabilities to corruption in the area of customs**

**Recommendation:** The *Customs Act* of Afghanistan should be reviewed and revised in order to achieve the following goals:

- Prohibition on the use of ‘brokers’ in customs procedures – without exemptions (e.g. Requiring the driver’s signature in person in front of the customs officer);
- Introduction of exact procedures for the establishment of the value of imported/exported goods (e.g. original invoices and their comparison with official catalogues of goods – should be adopted from the Azimi Strategy);
- Tariff policies should be reviewed and revised (in cooperation with all stakeholders);
- Introduction of exact procedures concerning controls of the goods (type of goods, quality, quantity) at the borders and in the country;
- Introduction of exact procedures enabling comparison of customs data from the border crossings and in the country;
- Introduction of clear and non-transferable powers of all authorities present at border crossings.

MoF should establish a working group for the preparation of amendments and drafting of the improved law by 30 October 2011 (8 Aqrab 1390). All relevant stakeholders should be invited to take part in the activities of the group (i.e. MoE, MoCI, MoH, MAIL, Chamber of Commerce and Industries, Control and Audit Office, and HOO) and the work-plan for the drafting of the existing law should also be adopted until 30 October. Draft amendments to the law should be ready by 21 November 2011 (30 Aqrab 1390).

**Benchmark:** A working group at MoF should be established, and its work-plan adopted by 21 November, amendments sent to the government before 31 December 2011 (10 Jadi 1390).

**Expected Outcome:** A working group for the revision of the *Customs Act* will help to ensure that the required amendments are developed with a broad set of expertise and practical experience.

**Status and Evaluation: *Partially implemented.*** The current *Customs Law* allows for the use of customs brokers, which has introduced opportunities for corruption as brokers are often powerful individuals that have influence on appointment and removal of customs departments’ employees. The role of customs brokers cannot be removed as it is a requirement of World Trade Organization membership. However, the role of brokers can be more tightly regulated and overseen to reduce abuses.

MoF has proposed a number of amendments to the *Customs Law*, which were submitted to the Taqin for review and sent to OAA. There were 39 proposed amendments, including articles 23 and 27 related to tariffs and preferred tariffs. However, the amendments were rejected by the

Council of Ministers and as of December 2012 a joint committee of government experts and the Chamber of Commerce was working to clarify and finalise the law.

As an interim measure, the Afghanistan Customs Department distributed a letter to all customs departments concerning the prohibition of intervention from third parties, but there is still interference at custom points, including governors, security commanders and other influential people.

The comparison of original invoices with those provided is being addressed by placing an automated system in some customs facilities such as Torkham, Hairatan, and others. The establishment of the system will continue in other customs facilities.

***1.8 The installation of appropriate information technology at border checkpoints is currently being undertaken and will reduce opportunities for corruption***

**Recommendation:** Appropriate information technologies regarding inspections at checkpoints at the border and in the country should be introduced. To achieve this, the Customs Department of MoF should explore financial and technical possibilities by 6 December 2011 (15 Qaus 1390).

**Benchmark:** The Assessment of the Customs Department shall be finished by 21 December 2011 (30 Qaus 1390).

**Expected Outcome:** The reduction of vulnerabilities to corruption in customs processes through the automation of tracking import and export documents.

**Status and Evaluation:** *Partially implemented.* The Afghanistan Customs Department has reported that they have completed the assessment of all border and provincial customs houses. The Department has developed and is using an automated system at 11 customs facilities, including nine customs facilities to control internal transit documents, one facility to control external transit documents, and one facility at the Kabul Airport to deal with cargo.

There are plans to install the automated system in Khost, Abu Nasar Farahi (Farah), Islam Qala (Herat); and Weesh (Kandahar) customs facilities for import and export documents. There are also plans to install the system in Torkham (Nangarhar); Hairatan (Balkh); Sherkhan (Kunduz); Weesh (Kandahar); and Islam Qala and Torghondi (Herat) for internal transit documents.

Despite these efforts, MEC has found that the system is not being properly used where it has been implemented. For instance, at the Hairatan border there are three types of entrance ports (train, ship, trucks), but only 30 percent of goods entering the country by truck or ships are being registered in the system, with the rest being registered in books. Additionally, it appears that none of the goods entering by train are being registered in the computerized system at the Hairatan border near Mazar-i-Sharif.

***1.9. MTFs need to be approved to monitor the quality of goods entering Afghanistan and to prevent smuggling***

**Recommendation:** MTFs with participating representatives from the MoCI, MoI, MoF, NDS, HOO, SAO, and the Office of National Standard will be established in Kabul, Kandahar, Balkh, Nangarhar, Herat, Paktia, and Kunduz. These MTFs will check and evaluate quantities and qualities of certain imported goods and supplies at various check points such as the central and border customs houses and major highways. The members of the MTFs will be professional,

honest, and experienced individuals selected and introduced by the relevant ministers and heads of the independent institutions. These members will be reviewed and their appointments will be approved by His Excellency the Second Vice President. NDS will be responsible for leading and chairing the MTF groups.

The relevant ministries and institutions shall jointly outline an MTF action plan and its activities mechanism and, through NDS, submit these to the Economics Committee of the Council of Ministers for approval.

The Second Vice President will require quarterly reports of the activities and accomplishments of the MTFs from the head of the team. These reports will then be submitted for review to the Economics Committee of the Council of Ministers. The Second Vice President will provide necessary feedback and instructions on the accomplishments of the MTFs and will decide on extension or replacement of the MTF members. The report should be published quarterly and the MTFs should hold conferences with civil society and the media to make the public aware of the findings of the responsible task forces.

Following the establishment of the MTFs, the current delegates of NDS, MoI, AGO, and even the customs police will be discharged and should not be allowed to interfere in the affairs of customs or to bother traders.

**Benchmark 1.9 (a):** The MTFs for the regions that are deemed necessary will be tasked to start their mandate as of 6 November, 2011 (15 Aqrab, 1390).

**Benchmark 1.9 (b):** The relevant ministries and institutions will outline their action plan and mechanism for their activities and, through NDS, submit to the Economics Committee of the Council of Ministers for approval prior to 6 November, 2011 (15 Aqrab, 1390).

**Benchmark 1.9 (c):** MTFs must be provided with all required equipment and facilities including mobile quality control labs by 21 November, 2011 (30 Aqrab, 1390). MoF has to finance all expenses associated with MTFs' responsibilities.

**Expected Outcome:** The creation of MTFs to allow customs to exercise oversight of goods in areas outside of established border points.

**Status and Evaluation:** *Partially implemented.* In order to implement MEC's recommendation, officials from the NDS have invited representatives from relevant ministries and formed a working group in Kabul. At the introductory meeting a request was developed for the establishment of MTFs, which was reportedly not accepted by the Office of the President.

According to the Afghanistan Customs Department, MTF is an expensive concept and paves the way for further extortion. Instead it recommends the establishment of the Border Management Model, which will reduce opportunities for corruption and the interaction of brokers with the public servants. The Afghanistan Customs Department has implemented this model in the Hairatan customs office as a pilot project. According to the Afghanistan Customs Department, the main goal of applying this model is to have custom-related affairs controlled by custom officers only.

MEC will evaluate the Afghanistan Customs Department's Border Management Model to determine whether it is sufficient to meet the purpose of the MTF as set out in this recommendation.

### ***1.10 Installation of material testing laboratories will limit the importation of low quality goods and will reduce opportunities for corruption***

**Recommendation:** Much corruption is due to the importation of low quality material. The importations of low quality gas / oil, medicine, foodstuffs, agriculture and construction material are often sources of corruption in the country. Some of these imports are smuggled and some are brought via borders and customs offices impacting the various health, economic, agricultural and industrial fields in the country.

In order to prevent these illegal activities, the Council of Ministers issued resolution number 11, dated 10/03/1389 to the Ministries of Commerce, Finance, Agriculture and institute of Environment Protection and Office of National Standard to take urgent action in regards to the items below:

- Contract with one of the reliable international companies to test and evaluate imported goods and material for quality and standard at borders and customs houses. This was meant to be a temporary contract until the National Standard Office obtained the necessary capacity to pursue this test and evaluation on its own.
- Provide mobile testing laboratories to evaluate qualities of imported goods, specifically gas, on the highways, at local gas stations, and gas supply reservoirs and introduce offenders to law enforcement.

Unfortunately, the above directive was not implemented and many abuses continue at the borders.

**Benchmark:** Ministries and relevant departments mandated in the above directive are obligated to implement this resolution and take decisive actions in regards to the mentioned two items within three months.

**Expected Outcome:** The installation of material testing laboratories to identify low quality goods being illegally imported into the country.

**Status and Evaluation:** *Partially implemented.* The Afghanistan Customs Department and Ministry of Commerce and Industries have not taken necessary action to implement the resolution of the Council of Ministers. However, the Afghanistan National Standard Authority has signed a five year contract with the Geokim Middle East Company to install five laboratories that will inspect the quality of imported fuels, after which all equipment will be handed over to the Afghanistan National Standard Authority. The company will train the Standard Authority's staff for six months and all these laboratories will be functional in early 2013. The five planned areas are as follow:

- Shirkhan Border (Kunduz);
- Hairatan Border (Balkh);
- Aqina Border (Juzjan);
- Islam Qala and Torghondi (Herat); and
- Nimroz Border (Nimroz).

It is worth mentioning that these laboratories will only check and control the quality of imported fuel and not other commodities. However, it has been reported that a material testing laboratory to check and control the quality of food and vegetables has been installed in Herat province. Similarly, Afghanistan Customs Department representatives in Hairatan advised that laboratory equipment has reached Hairatan and it will soon begin to operate. Other commodities such as medicine are controlled by MoPH, and mostly food stuff is checked by MAIL.

The major gap that exists is the quality control of imported construction materials such as cement, steel bar and many other products. MEC will continue to monitor the implementation and installation of the proposed laboratories and will ask the Afghanistan National Standards Authority to implement the entire resolution and will push relevant organizations to verify the quality of imported construction materials as well as other materials that need to be checked for quality control.

***1.11 Insufficient reporting on the implementation of measures required by the Azimi Strategy hamper efforts to monitor and evaluate progress in key areas of the fight against corruption***

**Recommendation:** Relevant institutions and organizations mentioned (or identifiable) on pages 68-75, 77-78 and 81-84 of the GIRoA Anti-Corruption Strategy (Azimi Strategy) and on page 70 of the “ANDS 1387 - 1391”, Chapter “Strengthening the Enforcement of Anti-Corruption” should prepare short reports on the implementation of measures foreseen by the mentioned pages in these two strategies until 21 December 2011 (30 Qaus 1390).

**Benchmark:** Reports prepared and submitted to MEC’s Secretariat.

**Expected Outcome:** Reporting on the preparation and implementation of anti-corruption measures allows for greater accountability and evaluation of effectiveness.

**Status and Evaluation:** ***Partially implemented.*** The relevant sections of the Azimi Strategy require the executive, judiciary, and the legislature to undertake specific anti-corruption measures in the area of prevention, prosecution, and the training of police, among others. Reporting to MEC will allow it to monitor and evaluate the implementation of these initiatives. However, only Mol, AGO, MoD, MoF, and MAIL have sent their reports. Unfortunately, most of these reports had little relevance to the reforms required by the Azimi strategy and MEC is working with all institutions to receive proper reports.

According to the report of the Mol, some preventative measures have been taken, including the establishment of a working Committee of Transparency and Accountability that worked on the simplification of issuing passports, thereby decreasing the steps from 26 to 2; and the training of internal investigation department staff.

Unfortunately MEC could not find any information that indicated the AGO had undertaken the measures required by the relevant sections of the Azimi Strategy, necessitating the restatement of these requirements in Presidential Decree 45.

***1.12 The AGO should demonstrate their commitment to fighting corruption by implementing a database for corruption cases***

**Recommendation:** The AGO should prepare – by 21 November 2011 (30 Aqrab 1390) - a report on submitted criminal cases of the Police, HOO and the Control and Audit Office from the years 1388 and 1389 with the following elements for each case:

- number of the Police/HOO/the Control and Audit Office document or short description of the case;
- entering date (when the case was submitted to the AGO);
- date of prosecutorial decision;

- type of prosecutorial decision;
- if not prosecuted: a list of reasons for the decision not to prosecute.

It is also recommended that by 19 February 2012 (30 Dalwa 1390) they should have a database of all the cases, registered with dates and status which can be followed and updated regularly.

**Benchmark:** The aforementioned report shall be delivered to MEC by 21 December 2011 (30 Qaus 1390) an updated copy of the report from the database will be shared by the end of the year.

**Expected Outcome:** Increased transparency and accountability in the handling of corruption cases by the AGO to ensure that corruption cases are appropriately pursued.

**Status and Evaluation:** *Not implemented.* The Anti-Corruption Unit of the AGO provided MEC with a short report in response to this benchmark. Unfortunately, the report did not include all of the required details, reportedly because their current database is too simplistic and incapable of providing the required information.

The database currently in use by the Anti-Corruption Unit does not meet the specifications mentioned in the benchmark. However, the creation of such a database could easily be achieved by Anti-Corruption Unit management with a request to the Case Management System Unit of the AGO to create a separate file system for corruption cases, which would be at no cost.

### ***1.13 Relevant institutions should submit ideas on the possible establishment of a national body dedicated to coordinating and enhancing efforts to investigate and prosecute corruption cases***

**Recommendation:** The MoJ, Mol, the AGO, HOO, IDLG and the Control and Audit Office should prepare a short proposal on the position, powers and tasks of possible independent and specialised anti-corruption body dealing with investigation and/or prosecution of the most important cases of corruption by 21 December 2011 (30 Qaus 1390).

**Benchmark:** Proposals shall be written and sent to the MEC's Secretariat by 21 December 2011 (30 Qaus 1390).

**Expected Outcome:** Better coordination and more effective investigation and prosecution of corruption cases in Afghanistan.

**Status and Evaluation:** *Not implemented.* The AGO, HOO, and Mol all have roles to play in the detection, investigation and prosecution of corruption cases in Afghanistan. A special anti-corruption unit has been created within the AGO to more effectively investigate and prosecute corruption cases, and will be expanded to the provinces. It is also worth mentioning that the Supreme Court has established anti-corruption courts to deal with anti-corruption cases, although these courts are underutilized and are only operational in some provinces.

Despite these efforts, corruption cases are still not effectively investigated and prosecuted in Afghanistan. While it may not be practical for the government to establish a new institution, the benchmark's objective of more coordination and streamlining of corruption cases can be accomplished by the establishment of a case management protocol and a formal committee or working group to regularly discuss case management and address challenges. MEC will encourage the named institutions to develop a proposal for a formal mechanism to enhance and better coordinate the investigation and prosecution of corruption cases.

**1.14 *The unresponsiveness of HOO to MEC's benchmarks has led MEC to seek alternative implementing partners to inform citizens of their rights regarding administrative procedures***

**Recommendation:** HOO should prepare general and comprehensive information on the rights of citizens in administrative procedures, which shall then be posted (by 21 December 2011 – 30 Qaus 1390) in all relevant institutions nationally (central as well as local level).

**Benchmark:** The aforementioned documents shall be posted by 21 December 2011 (30 Qaus 1390).

**Expected Outcome:** Citizen awareness of their rights in administrative procedures will lead to the reduction of corruption within government institutions.

**Status and Evaluation: *Not implemented.*** The lack of formal response from HOO prevents MEC from being aware of its activities on the implementation of this benchmark. As this benchmark is also related to IARCSC, MEC will try to work with the IARCSC as a substitute institution to implement this recommendation.

**1.15 *Efforts to streamline administrative processes need to be expanded and properly implemented to be more effective in reducing vulnerabilities to corruption***

**Recommendation:** All relevant ministries (if necessary, in cooperation with HOO) should prepare drafts for amending the existing relevant legislation by 21 December 2011 (30 Qaus 1390) and submit them to the government in order to achieve the following goals:

- All necessary administrative forms for different types of procedures and acquisition of different documents, permissions, licenses, etc. are prescribed by the law only, and no additional forms are allowed;
- There should be as limited number of required administrative forms and documentations as possible;
- Samples of applicable administrative forms should be attached to the relevant law/legislations;
- All necessary documents, permissions, licenses, and signatures within one single administrative entity should be issued in the shortest possible period following one single request of the customer;
- All necessary documents needed for a certain administrative decision, which already exist in the administrative system of Afghanistan should be collected by the relevant administrations themselves (and not by their customers) in the shortest possible time;
- A prohibition on the use of brokers in the administrative procedures of customs, traffic, court, municipality, and other institutions;
- Sanctions/punishments for civil servants dealing with administrative procedures for extensive delays, unfair treatment of customers and breach of new rules shall be introduced.

**Benchmark:** Draft amendments will be prepared and submitted to the MoJ by 21 December (30 Qaus 1390).

**Expected Outcome:** Improved, transparent and accountable administrative procedures for obtaining public services will lead to reduced opportunities for corruption.

**Status and Evaluation: *Partially implemented.*** The IARCSC has taken some measures to simplify administrative procedures, including the simplification of 356 administrative procedures in 6 ministries, namely, the Ministries of Higher Education; Parliament Affairs; Mines; Justice; Urban Development; and Agriculture, Irrigation and Livestock. The Commission plans to simplify procedures in another 47 institutions in 2013, but is limiting its activities to Kabul due to the lack of human resources and budget limitations.

The implementation in ministries is not being properly monitored by the Commission and MEC has observed that many simplified procedures are not being implemented. For example the simplified process for obtaining a graduation certificate from MoHE should take two to three days, but in practice it takes much longer and is much harder for those who have graduated less recently.

**1.16 *There has been an insufficient effort to inform and train staff in relation to simplified administrative procedures, thereby decreasing the chance that they will be properly implemented***

**Recommendation:** Relevant ministries (if necessary, in cooperation with HOO) should prepare draft instructions for all relevant administrations following the adoption of the above mentioned amendments with the following elements:

- Short description of previous procedures;
- Changes in the procedures;
- Description of new procedures;
- Responsible authorities and persons;
- Prohibition on the use of brokers in the administrative procedures;
- Sanctions for non-implementation of instructions;
- Samples of administrative forms needed.

Instructions should be submitted to relevant administrations in one month following adoption of the amended legislation.

**Benchmark:** Instructions shall be drafted and delivered to relevant administrations within one month after the adoption of relevant legislation.

**Expected Outcome:** Awareness of revised administrative procedures will assist in implementing procedural changes.

**Status and Evaluation: *Not implemented.*** As stated above the IARCSC has simplified 356 administrative procedures in 6 ministries. The Commission has allocated funds in the budget for 2013 to design and publish one hundred posters in various ministries to make the public aware of the revised administrative procedures. Although some ministries have created procedural manuals for their staff with the help of the IARCSC, they are not always being properly followed. MEC will monitor the development of manuals as the IARCSC implements revised procedures in the other 47 institutions in 2013.

**1.17 MoJ's efforts to publish and make Afghan laws more accessible enhances public awareness of their legal rights**

**Recommendation:** MoJ should ensure that all legislation adopted by the Parliament, Government or relevant ministries is published and delivered - for free - to all public institutions – starting by 20 March 2012.

**Benchmark:** Legislation shall be published and delivered to all public institutions starting by 20 March 2012.

**Expected Outcome:** Greater accessibility of legislation leading to higher levels of transparency and an enhanced ability to assert rights and hold government to account.

**Status and Evaluation: Fully implemented.** To date, all legislation, including some decrees and resolutions have been published on the MoJ website and comprehensively listed in the Official Gazette (Jarida Rasmi). MoJ's website is accessible to all and the Ministry is working on the website to create a navigation system to improve searching and accessing laws. Improvements also include plans to distinguish laws that are in force from laws that are no longer in effect.

The Directorate of Publication (Nasharat) also prints 2,000 – 5,000 copies of new legislation based on need and the importance of the laws. They send these publications to all institutes including provinces and districts through the Ministry of Information and Communication Technology as well as private companies. At the same time non-governmental and private sector organizations may purchase copies of legislation from the Ministry.

**1.18 ARAZI must provide broader reports on land issues in Afghanistan**

**Recommendation:** Relevant institutions and organisations mentioned (or identifiable) on pages 141 - 145 of GIRoA's NACS (Azimi Strategy) should prepare short reports on the implementation of measures foreseen by the mentioned strategy by 21 December 2011 (30 Qaus 1390).

**Benchmark:** Reports shall be prepared and submitted to MEC's Secretariat.

**Expected Outcome:** Enhanced monitoring of the implementation of the NACS.

**Status and Evaluation: Partially implemented.** The institutions required to report to MEC per the benchmark include the members of an independent board established to address land issues comprised of the Ministers of Agriculture, Urban Development, Interior, and Finance, the Attorney General, and representatives of the Independent Office Cartography and Geodesy; the Supreme Court; the MoJ; Governors' Offices; the Ministry of Urban Development; and the Ministry of Information.

Since the Azimi Strategy was completed, the government established ARAZI within the MAIL to perform the functions contemplated by pages 141 – 145 of the Azimi strategy, including creating an inventory of all government-owned land, establishing fair and transparent procedures for its leasing, and setting up a one-stop window that makes leasing attractive to both domestic and foreign investors.

To date, MEC has only received one report from ARAZI on land usurpation issues. ARAZI explains that producing a comprehensive report will be time consuming and requires further interviews and analysis in the provinces in order to meet the commitments under the Azimi Strategy. It is anticipated that some of the measures of the NACS will be completed under NPP 2.

**1.19 ARAZI must build on progress they have made in dealing with land issues by addressing private lands and developing plans for future action**

**Recommendation:** MAIL, OAA and the Office of the Kabul's Mayor should prepare (if necessary, with the assistance of the MEC's Secretariat) short documents until 6 December 2011 (15 Qaus 1390) with the following elements: description of the problem of land usurpation, measures already applied, results achieved, proposals for future activities, obstacles and risks expected, and submit them to the MEC Secretariat.

**Benchmark:** All documents shall be written and sent to the MEC Secretariat.

**Expected Outcome:** The identification of land usurpation issues and strategies to address them.

**Status and Evaluation: Partially implemented.** Land usurpation has been one of the most common forms of corruption in Afghanistan over the past decades. This has been an issue for the public as well as the government. Years of conflict in Afghanistan has weakened the government's control and provided opportunities for corrupt actors to illegally seize land.

ARAZI was established in September 2010 under the framework of the MAIL to improve access to government lands for commercial activities. ARAZI is heading a committee to deal with land usurpation problems and has issued a report finding that more than four million jeribs (800,000 hectares) of land has been usurped over the past three decades. ARAZI has started working on the issue and has returned 60,000 jeribs (12,000 hectares) to their original owners.

Despite their positive efforts, ARAZI needs to bridge the gap in the implementation of the benchmark by drafting a proposal for future activities, amendments in land management legislation and the submission of land usurpation cases to the AGO for criminal investigation. The Authority has focused on the return of public lands usurped, but should expand its focus to both public and private lands.

**1.20 Ministries have not effectively separated the contract award function from the contract oversight function in their procurement processes thereby increasing the risk of corruption**

**Recommendation:** All relevant institutions should nominate employees whose task will exclusively be to act in the area of public procurement with a clear separation between those responsible for deciding on new contracts and those responsible for overseeing these contracts. These employees should be nominated by 6 December 2011 (15 Qaus 1390) and trained on the issue by MoF and HOO by 4 February 2012 (15 Dalwa 1390).

**Benchmark:** All such specialised employees nominated and trained by 6 December 2011.

**Expected Outcome:** The designation of a procurement officer and the separation of contract awards and contract oversight will increase accountability and oversight in procurement activities.

**Status and Evaluation: Partially implemented.** The PPU of the MoF issued a circular in 2010 regarding the role of the Unit's procurement controllers in line ministries. The Unit has introduced procurement experts in all ministries to participate in the procurement process and to train procurement personnel. It has launched a wide range of training including basic, intermediate, advanced and special procurement training programs in various parts of the country and over 3,000 employees from various governmental institutions have been trained. However, MEC has

recently been informed that training has been suspended due to the lack of facilities that were previously provided by IARCSC.

Despite legal requirements and the provided training, there continues to be a lack of clear separation between those responsible for deciding on new contracts and those responsible for overseeing these contracts in most ministries, which creates large vulnerabilities to corruption.

**1.21 A revised Procurement Law based on international best practices and broad consultation is currently in development and should enhance transparency and accountability in public procurement if passed**

**Recommendation:** *The Public Procurement Act* should be analysed, compared with some good examples from other countries and amended according to the results of this analysis. MoF and HOO should form an ad-hoc working group for the review and preparation of necessary amendments until 21 November 2011, analysis should be finished and amendments ready by 19 February 2012 (30 Dalwa 1390). To this effect, international organisations (i.e. ADB, WB, and IMF) should be invited to assist.

**Benchmark:** The working group shall be nominated and the international organisations invited by 21 November 2011 (30 Aqrab 1390); amendments shall be sent to the government by the end of January 2012.

**Expected Outcome:** A modernized procurement law developed with broad expertise in consideration of international best practices in transparency and accountability.

**Status and Evaluation:** *Partially implemented.* *The Public Procurement Act* has been revised by the relevant institutions and sent to MoJ for review. MoJ finalized the law in consultation with several institutions and sent it to the Council of Ministers in September 2012. The Economic Committee of the Council of Ministers reviewed the law in December 2012 and passed it to the Council of Ministers general session, which then rejected the law and requested that MoJ consult more broadly on the contents.

MoJ has sent letters to various institutions for their comments and the PPU held a workshop in late January 2013 to discuss all changes with relevant institutions. The Unit had many meetings with members of the international community, including the WB, IMF, ADB, the African Bank, ISAF, and USAID.

**1.22 Preliminary work to align international procurement practices with Afghanistan's draft procurement law can start now, despite the law being before Parliament**

**Recommendation:** Shafafiyat should analyse the international community's existing rules and practises in the public procurement area in Afghanistan and introduce necessary changes in accordance with the (new) Afghan legislation by 19 April 2012 (31 Hamal 1391).

**Benchmark:** The analysis shall be conducted and changes introduced by 19 April 2012 (31 Hamal 1391).

**Expected Outcome:** Alignment of the international community's existing rules with Afghan procurement law.

**Status and Evaluation:** *Not implemented.* Although the draft *Procurement Law* for Afghanistan is currently before Parliament, it can be used by the international community to begin the process

of adapting international procurement practices to ensure alignment with its principles. The first step of conducting a comparative analysis may best be done by the newly established key donor anti-corruption committee.

**1.23 *The criminal investigation into the Kabul Bank fraud was conducted with limited assistance from experts and did not include many apparent perpetrators and beneficiaries of the fraud***

**Recommendation:** A criminal investigation against some perpetrators, beneficiaries of the organised criminal activity and involving shareholders of Kabul Bank has already started by the AGO. The MEC can provide foreign experts to assist in the investigation. The AGO should ensure that investigation will be carried on against all perpetrators and also consider the idea on the introduction of Joint Investigation Team, composed of members of the AGO, Police, HOO, Central Bank and others, for complete investigation of the case in a timely manner.

**Benchmark:** The Investigation report shall be submitted before 21 November 2011 (30 Aqrab 1390).

**Expected Outcome:** Complete investigation of all perpetrators and beneficiaries of the Kabul Bank fraud.

**Status and Evaluation: *Partially implemented.*** The AGO issued indictments against 21 individuals in the Kabul Bank fraud in June 2012. Despite many offers of assistance from the United Kingdom's Serious Organized Crime Agency, the AGO did not accept the offer until December 2011. However, the assistance was limited to the tracing of assets of two individuals and not many other obvious suspects. The Serious Organized Crime Agency also provided assistance in the development of international mutual legal assistance letters that were to be directed to dozens of international jurisdictions covering numerous beneficiaries of the Kabul Bank fraud. However, these letters were narrowed by the AGO and the ultimate scope limited to two individuals and few jurisdictions.

The criminal indictment explicitly states that it was developed on the basis of the forensic audit of Kabul Bank conducted by Kroll (an international forensic audit firm), but Kroll was never engaged to provide assistance with the investigation and the indictment has many inconsistencies, including charges against regulators for the concealment of crime without charges of the principal perpetrators.

The report of the public inquiry into the Kabul Bank crisis recommended that the AGO consider initiating criminal investigations to a broader group of perpetrators and beneficiaries of the Kabul Bank fraud, but there is no indication that they have done – or are willing to do so.

**1.24 *The AGO's resistance to making serious efforts to seize assets related to the Kabul Bank fraud is a major obstacle to recovering stolen money***

**Recommendation:** All assets of major debtors (shareholders and others) of Kabul Bank should be immediately provisionally seized and / or frozen by the AGO, in cooperation with foreign authorities if necessary.

**Benchmark:** All suspects' assets shall be seized and frozen by 21 November at the latest.

**Expected Outcome:** The freezing of assets will enhance recovery efforts by ensuring that assets are not liquidated and that cash is not moved to make it impossible to track or recover.

**Status and Evaluation:** *Not implemented.* Kabul Bank was placed into receivership in April 2011. At this time a receiver was appointed to pursue all assets and debts owed to Kabul Bank and had some limited success in recovering outstanding debts and assets.

The pursuit of funds and assets outside of Afghanistan requires assistance from the AGO and can come in the form of requests for mutual legal assistance, or the enforcement of a confiscation order related to convictions under the *Anti Money Laundering and Proceeds of Crime Law*.

To date, the AGO has sent official letters for legal assistance to the United Arab Emirates, France, Britain, Germany and Switzerland to ask for their assistance in freezing accounts, identifying and seizing properties and the exchange of information in relation to only two suspects in the Kabul Bank fraud. The restriction of these requests to only five jurisdictions and two individuals is completely inadequate given the number of beneficiaries of fraud and the number of jurisdictions that received Kabul Bank funds.

The Kabul Bank Special Tribunal issued their judgment in the criminal case on March 5, 2013. However, MEC raised concerns about the appropriateness of the verdict and the lack of a confiscation order under Afghanistan's *Anti-Money Laundering and Proceeds of Crime Law*, thereby affecting the ability to recover missing funds.

**1.25 The AGO has indicted numerous regulators of Kabul Bank, despite what appears to be a lack of vigorous investigation in this regard**

**Recommendation:** The AGO should continue investigations against persons responsible for the lack of monitoring of Kabul Bank's activities and extend all such investigations to foreign authorities (ie to the FIU and to auditors from foreign audit companies) if necessary.

**Benchmark:** All Investigations shall be continued and (if need be) extended.

**Expected Outcome:** All individuals related to Kabul Bank are properly investigated.

**Status and Evaluation:** *Partially implemented.* In June 2012 the AGO issued an indictment of 21 individuals related to the Kabul Bank fraud. The indictment included numerous individuals from regulatory organizations, including the FIU, and DAB. However, the findings of the public inquiry into the Kabul Bank crisis found that the investigation supporting the indictment raised serious concerns, particularly as they relate to charges against regulators. These concerns go so far as to suggest that at least one individual indicted was charged as a result of a personal grievance and abuse of process and office.

Although MEC has recommended that all potential suspects of crime be investigated, it also expects that such investigations be conducted reasonably, according to law, and according to the independence and high standard of conduct expected from the AGO. Unfortunately, the Committee does not have confidence that this has been met in relation to the Kabul Bank indictment of regulators.

The Special Tribunal for the Kabul Bank case held hearings on the indictment in late 2012 and issued its judgement on March 5, 2013. MEC recommended in its report on the Kabul Bank crisis that the Tribunal bring appropriate scrutiny to the charges brought against regulators to ensure that

any conviction that may be registered is based on sound evidence. However, this does not appear to have been reflected in the Tribunal's proceedings and its verdict.

#### **1.26 HOO has failed to inform the public about all Kabul Bank debtors**

**Recommendation:** HOO should analyse activities of public officials occupying important positions who are on the list of Kabul Bank's debtors and inform media and proper authorities, including the President, on its findings and recommended sanctions against those officials – by 21 November 2011.

**Benchmark:** Analysis conducted and other authorities informed on 21 November 2011 (30 Aqrab 1390) at the latest.

**Expected Outcome:** Public officials who benefited from the Kabul Bank fraud are identified and known.

**Status and Evaluation: Partially implemented.** In April 2011, the Investigative Commission Evaluation of the Kabul Bank Crisis - chaired by the head of HOO - was established to report on the factors of the crisis and the government officials and foreign entities involved in the Kabul Bank recklessness. The Commission issued its report in May 2011, and despite concerns with the process and conclusions, the report included an extensive list of Kabul Bank debtors. The list was provided by DAB and contained the names of several public officials. However, neither the report nor the list of debtors has ever been shared with the media or publicized as required by this benchmark, nor is the Committee aware of any intention of HOO to do so.

#### **1.27 The report of the public inquiry into the Kabul Bank crisis serves as a comprehensive record of regulatory deficiencies that allowed fraudulent activities to continue and provides a roadmap for changes that are required to avoid such events in the future**

**Recommendation:** The Central Bank of Afghanistan should analyse the work of its auditors, of its FIU and of the compliance officer in the case of Kabul Bank, introduce necessary changes and / or sanctions and produce a report by 21 November 2011 (30 Aqrab 1390). In order to achieve the best possible results, international monetary organisations (i.e. ADB, the WB, and IMF) should be invited to assist in these efforts.

**Benchmark:** International monetary organisations invited by 6 November 2011, shall produce a report and implement changes by 21 November 2011.

**Expected Outcome:** Identification of regulatory changes that are required to strengthen the oversight of Afghanistan's banking industry so that situations like the Kabul Bank crisis can be avoided in the future.

**Status and Evaluation: Fully implemented.** DAB conducted a lessons learned exercise in December 2010 after the Kabul Bank fraud was exposed in September of that year. The exercise highlighted weaknesses in the examination procedures and identified recommendations to be incorporated into an action plan, including enhancements to its Financial Supervision Department, changes in the manner in which examinations are conducted, and enforcement actions. In response, DAB developed a new organizational structure for its Financial Supervision Department and recruited additional staff.

Although the lessons learned exercise identified many elements consistent with reforms addressed in the IMF's Extended Credit Facility Program, it was an internal exercise and was not a comprehensive review that engaged all relevant national and international organizations.

A comprehensive review of the causes and responses to the Kabul Bank crisis came in the form of the public inquiry into the Kabul Bank crisis. This inquiry was conducted with participation from numerous national and international agencies that have knowledge of the Kabul Bank crisis, its causes and the response from national and international organizations. Given the extensive nature of the report and its recommendations, the Committee considers that the policy intention of this recommendation has been met and the benchmark satisfied.

### ***1.28 DAB has conducted audits of most banks in Afghanistan in an attempt to identify banking irregularities and susceptibilities***

**Recommendation:** In order to prevent similar events in other banks, Central Bank should introduce forensic audit to at least additional 3 largest banks in Afghanistan by 21 November 2011 (30 Aqrab 1390). Results of all – existing and future - forensic audits should be immediately sent to the AGO and HOO.

**Benchmark:** Forensic audit introduced to at least 3 of the largest banks by 21 December 2011.

**Expected Outcome:** The identification of possible irregularities in other banks will assist efforts to prevent similar events as occurred in the Kabul Bank case.

**Status and Evaluation:** ***Fully implemented.*** DAB initiated forensic audits of two of the largest banks in Afghanistan in June 2011, both of which have been completed. Given that forensic audits are extremely expensive – costing millions of dollars – DAB decided to conduct prudential audits of an additional 10 Afghan banks, with the support of the WB. These audits largely confirmed the findings of onsite examinations conducted by DAB and indicate that the sector is vulnerable to inadequate capital, deficiencies in governance, and excessive exposures. In response DAB has developed a strategy to define the minimum amount of capital requirement for the bank operation and distributed it to all banks and has attempted to address governance deficiencies through the new anti-money laundering law. The central bank has also issued a number of enforcement actions and corrective measures and distributed to all banks in relation to excessive exposures.

### ***1.29 Amendments to the legislation shall empower the police and HOO to access all banking activities in Afghanistan***

**Recommendation:** Legislation on the powers of the Police and of HOO should be amended in order to give them powers to gain full access to all – state and private - banking activities in Afghanistan. If banking secrecy protects some data, the police and HOO should have the power to request a court order to obtain those data, too. MoJ should prepare necessary amendments and send them to the government by 6 December 2011 (15 Qauss 1390).

**Benchmark:** Amendments shall be prepared and sent to the government by 6 December 2011 (15 Qauss 1390).

**Expected Outcome:** Enhanced powers of the police and HOO to investigate economic crimes.

**Status and Evaluation:** ***Fully implemented.*** DAB drafted amendments to the banking law with provisions that allow relevant authorities, including HOO and the police, to access banking records

with a court order. The draft amendments were submitted to the MoJ and are now with the Council of Ministers and it is anticipated that they will be approved soon and sent to Parliament for consideration. The Committee will continue to monitor developments in the approval, adoption, and implementation of the draft law.

***1.30 The investigation into the National Military Hospital has not been conducted expeditiously nor has there been sufficient transparency in its conduct and findings***

**Recommendation:** The AGO / MoD / HOO / Audit and Control Office should collect all existing information on the National Military Hospital case, form a Joint Investigation Team, composed of domestic and international (Shafafiyat) investigators and conduct thorough analyses of events in the National Military Hospital – by 31 December 2011 (10 Jadi 1390).

**Benchmark:** The Joint Investigation Team shall be formed and its investigation completed and published by 31 December 2011.

**Expected Outcome:** A transparent and thorough investigation is conducted and reported to the public.

**Status and Evaluation:** *Partially implemented.* A joint committee was formed in 2011 to investigate the case, led by HOO with representatives from the AGO military section, SAO, MoD, and NDS and the investigation is reportedly still on-going.

MEC has faced challenges in monitoring the implementation of this benchmark given that the investigation committee is led by HOO which has refused to cooperate with MEC and the reluctance of other members to provide information. However, information received by MEC indicates that the investigation has revealed that \$1 million has been embezzled. It has also been reported that the investigative committee has investigated other cases related to the National Military Hospital and that charges of misuse of power and embezzlement are being considered. Other matters being investigated include allegations of negligence of duty, conflict of interest and fraud against the head of the health department in MoD related to the purchase of flu vaccinations and other medicines.

MEC is concerned about the ineffectiveness of investigation, lack of cooperation between national and international institutions and unjustified prolongation of all phases of investigation.

***1.31 Nobody has been held criminally liable for the National Military Hospital and indictments have been delayed beyond reasonable limits***

**Recommendation:** The results of the investigation should be used by the team as a basis for prosecution of responsible persons after 31 December 2011 (10 Jadi 1390). All assets of responsible persons should be immediately seized and/or frozen after 31 December 2011.

**Benchmark:** The AGO shall initiate criminal prosecution of all suspects in the National Military Hospital case by 31 December 2012 (10 Jadi 1390). All assets of suspects shall be seized or frozen in January 2012.

**Expected Outcome:** Criminal prosecution of individuals responsible for cases related to the National Military Hospital.

**Status and Evaluation:** *Not implemented.* As far as MEC is aware, the investigation is ongoing and according to information received will take a long time because this case is becoming more

complicated and other cases have emerged out of it. However, MEC has received no information about the seizure or freezing of assets during the investigation as HOO has not cooperated with MEC. Officials at the AGO indicated that they are finalizing the charge sheet against the perpetrators of crimes at the National Military Hospital and that high ranking officials would be included.

MEC is concerned about the absence of concrete measures that would enable the prosecution to identify assets and to freeze and seize illegally attained assets. As of today no legal action has been taken against any individual in relation to this case and there are no restrictions in place to avoid the perpetrators fleeing the country, destroying evidence or hiding assets.

### **2.1 HOO's unwillingness to implement an effective asset verification system introduces unnecessary vulnerabilities to corruption**

**Recommendation:** HOO should send drafts of memoranda of understanding to all institutions, which it deems to be important for verifications of reported assets by 30 Dalwa 1390 (19 February 2012) and relevant institutions should return the signed Memoranda of Understandings to HOO by 15 Hamal 1391 (3 April 2012).

**Benchmark:** Memoranda of understanding shall be sent from HOO to all relevant institutions by 30 Dalwa 1390 (19 February 2012) which will then be signed and returned to HOO by 15 Hamal 1391 (3 April 2012).

**Expected Outcome:** The creation of a strong system of asset registration and verification.

**Status and Evaluation: Partially implemented.** The *Constitution of Afghanistan* requires that the wealth of the President, Vice-Presidents, Ministers, members of the Supreme Court and the Attorney General, be registered, reviewed (verified) and published prior to and after their term of office by an organization established by law. HOO was designated by the *Anti-Corruption Law* as the institution required to register, verify and publish the assets of officials mentioned in the *Constitution*.

To facilitate the verification process, HOO has signed a memorandum of understanding with some ministries, including NDS. Information that has been observed in Anis Newsletter regarding assets was ambiguous and did not provide details of the origin of the assets and appears to not have satisfied constitutional requirements. Subsequently, HOO stopped publishing high ranking officials' assets on the grounds that it presented security risks to officials. HOO indicated that they would only publish the required information when there is a need to, apparently in direct contradiction with the *Constitution of Afghanistan*.

### **2.2 The draft anti-corruption law was not developed with broad consultation, which may hinder its effectiveness**

**Recommendation:** Before 15/12/1390 (5 March 2012) HOO should establish an ad-hoc intergovernmental working group (inviting representatives of the following institutions/organisations: the Office of the President, the AGO, the Control and Audit Office, MoI, the MoJ, CJATF / Shafafiyat, the UNDP, UNODC, USAID and MEC) tasked to prepare a new draft Anti-Corruption Law by 15/03/1391 (04 June 2012).

**Benchmark:** An ad-hoc intergovernmental working group shall be established before 15/12/1390 (5 March 2012); a new draft Anti-Corruption Law shall be submitted to GIRoA by 15/03/1391 (04 June 2012).

**Expected Outcome:** Strengthened and improved anti-corruption legislation.

**Status and Evaluation:** *Partially implemented.* A revised anti-corruption law has been tabled in Parliament by GIRoA. Although HOO did not establish an ad-hoc working group as per the recommendation, it has consulted with MoJ, the AGO and SAO. The lack of broader consultation may affect the quality of the draft law.

### ***2.3 Interference in the functioning of public bodies continues to occur despite orders by the President to discontinue such practices***

**Recommendation:** His Excellency the President of the Islamic Republic of Afghanistan is invited to issue a Ferman before 05 March 2012, prohibiting all organizations / institutions / bodies and individuals from illegally interfering with the work of public bodies, requiring public bodies to strictly decline any form of illegal interference and authorizing those bodies and their employees to immediately inform the President's Office, HOO and the MEC of all attempts of illegal interference with their activities. The President's Ferman should be published in the media. Substantiated information received by the President's Office, HOO and the MEC should be sent to the AGO to start investigations of possible criminal offences of those illegally interfering.

**Benchmark:** His Excellency the President is invited to issue a Farman by 15/12/1390 (05 March 2012).

**Expected Outcome:** Public institutions that are operationally independent and free from inappropriate outside influences.

**Status and Evaluation:** *Partially implemented.* OAA has drafted an order for the President that prohibits the illegal interference of all institutions and individuals, but the order was never signed due to the inclusion of a similar article in Presidential Decree 45. Despite the order included in Decree 45, MEC has been informed of many cases of illegal interference with the work of public bodies, including the transfer and removal of some prosecutors, the assignment of grades by educators, and the distribution of land. Interference has been found to be exerted by Parliamentarians, government officials and even sometimes the judiciary and law enforcement agencies. There are also gaps in punishing cases of illegal interference, including unclear enforcement actions, and the lack of codes of ethics for high governmental officials.

### ***2.4 The restriction of access to customs facilities has reduced opportunities for corruption, but external influences are still being exerted by powerful individuals***

**Recommendation:** In order to clearly separate the activities of all border services and to enhance the establishment of their capabilities, MoF, with the cooperation of all border services, should ensure – before 15/12/1390 (05 March 2012) - that only customs officers are allowed to enter their facilities and take part in the customs proceedings.

**Benchmark:** The Customs office shall be free of interference from other bodies while performing their legal tasks before 15/12/1390 (05 March 2012).

**Expected Outcome:** Reduced interference with customs officers' functions and reduced influence in the enforcement of customs laws.

**Status and Evaluation:** *Fully implemented.* The Afghanistan Customs Department issued a letter to all its customs departments in 2012 stating that only custom officers are allowed to enter their facilities and that entry of all extraneous personnel is prohibited. MEC field visits in April 2012 to the Islam Qala Customs Department and to the Torkham Customs Department in September 2012 verified that extraneous personnel were generally not entering the customs facilities. However, MEC has been informed that there are still political and other types of interference in most major customs departments.

### **2.5 Competitive salary for public servants, particularly those working in the customs departments will reduce incentives to engage in corrupt practices**

**Recommendation:** An extremely low salary and the lack of an equitable pay scale are some of the major reasons for corruption in the Customs Office; material incentives should be introduced. MoF should – before 11/01/1391 (30 March 2012) – propose to GIRoA material incentives for the Customs Office. One possible form of such incentives would be the introduction of special rewards for the officers discovering smuggled goods in the form of a certain percentage of the value of discovered goods.

**Benchmark:** The proposal for incentives to the Customs Office shall be submitted to GIRoA before 11/01/1391 (30 March 2012).

**Expected Outcome:** Salary levels that provide a reasonable income and standard of living to reduce the demand side of corruption in customs departments.

**Status and Evaluation:** *Partially implemented.* MoF is working to increase the salary (special bonus) of its staff. However, only a small number of Afghanistan Customs Department staff have received special bonuses from the WB. The Afghanistan Customs Department has prepared a salary increase request to the President and MEC believes that the proposal provides a good foundation for increasing salaries and reducing corruption. The proposal is now before the Council of Ministers for approval.

### **2.6 ISAF has demonstrated an unwillingness to consider measures that would reduce vulnerabilities to corruption in relation to tax exemptions under MTA Agreements**

**Recommendation:** In order to avoid the abuse of tax exemptions (i.e. in the area of Military Technical Agreements) on imported goods into Afghanistan, MoF, MoFA, the United States Government, CJIATF / Shafafiyat and ISAF should reach an agreement before 30/11/1390 (19 February 2012) on the coordination of activities, which should lead to strict controls over the import of tax-exempted goods, exchange of information, establishment of investigative procedures and dissuasive sanctions for those who are abusing that benefit.

**Benchmark:** This agreement should be reached before 30/11/1390 (19 February 2012).

**Expected Outcome:** Vulnerabilities to corruption through the abuse of tax exemptions will be reduced.

**Status and Evaluation:** *Not implemented.* The Council of Ministers passed a resolution in 2010 requiring the Minister of Finance and Minister of Foreign Affairs to review all agreements made

with the international community and NATO in which there are tax exemptions, particularly the Military Technical Agreement. Since that time, the Afghanistan Customs Department has prepared a constructive proposal to reduce opportunities for corruption related to tax exemptions and has sought to engage ISAF on the issue several times, without response.

MEC has made several efforts to facilitate the implementation of this benchmark, including meetings in early 2013 with representatives from ISAF, the United States government, MoF and MoFA. However, during these meetings it was made clear in strong terms that ISAF is completely unwilling to consider any measure to verify goods being brought into Afghanistan. Without the cooperation of ISAF there will be opportunity to reduce vulnerabilities to corruption in tax exemptions until the Military Technical Agreement is renegotiated in 2014.

***2.7 Anti-money laundering law amendments have been drafted, but have not been introduced in Parliament thereby perpetuating the current system of inadequate monitoring of money flows outside of Afghanistan***

**Recommendation:** Before 15/01/1391 (30 March 2012), GIRoA should submit a draft of Article 6 of the *Anti-Money Laundering law* to the Parliament, inserting additional requirements regarding the export of cash from Afghanistan. One of these requirements should be a duty to report the export of cash to the FIU or Afghanistan Central Bank (DAB) with the aim to obtain its approval for the export, certified proof of the cash's origin, mandatory involvement of the FIU / DAB in the exporting procedures and mandatory monthly reporting of the FIU to DAB and MoF on their findings and conclusions.

**Benchmark:** Article 6 of the *Anti-Money Laundering law* shall be amended before 15/01/1391 (30 March 2012).

**Expected Outcome:** Enhanced tracking of money leaving Afghanistan leading to better detection and investigation of illegal money flows.

**Status and Evaluation:** *Partially implemented.* Seventeen amendments to the *Anti-Money Laundering Law* have been prepared by DAB and will soon be sent to MoJ for review. The amendments were developed by the Financial Action Task Force and cover the areas of extradition of criminals, confiscation of properties and cooperation among justice and judicial institutions. MoJ has included the *Anti-Money Laundering Law* in their work plan. The Council of Ministers has also approved the proposal of DAB for a maximum \$20,000 to be transferred out of the country in cash.

***2.8 Internal monitoring bodies of central institutions in the fight against corruption have not been strengthened***

**Recommendation:** Before 30 March 2012 GIRoA should issue instructions to MoI, MoD, the AGO and HOO to assess and reinforce their capabilities of internal oversight and investigative bodies before 04 June 2012.

**Benchmark:** Instructions to the aforementioned bodies shall be issued before 15/01/1391 (30 March 2012) and implemented before 15/03/1391 (04 June 2012).

**Expected Outcome:** A strengthened internal system of oversight for institutions that are central to the fight against corruption.

**Status and Evaluation: *Partially implemented.*** Mol, MoD, the AGO and HOO are all central institutions in the prevention and prosecution of corruption. However, they will have no impact if they themselves do not operate according to the highest standards. Internal monitoring bodies play a significant role in detecting and punishing illicit activities within these organizations and effective internal monitoring systems will have a direct impact on the effectiveness of these organizations to fight corruption in Afghanistan.

Informal responses from officials at HOO indicate that the Internal Audit Office has been given more power to investigate cases of internal corruption and has initiated several internal investigations which have been supported by the high ranking officials.

The AGO has enhanced its internal oversight department by recently appointing 75 prosecutors to conduct internal oversight, and the AGO has plans to establish internal oversight departments at the provincial level as well. However, the internal oversight department has no terms of reference and there has been no progress reports or evidence of improvement.

Despite the reports from HOO and the AGO, MEC requires the results of all assessments of their internal oversight bodies, including proposed measures to reinforce and develop their capacities.

### ***2.9 Simplification of administrative procedures in acquiring building permits will reduce opportunities for corruption***

**Recommendation:** The municipality of Kabul, relevant ministries, other municipalities and relevant institutions should immediately - in any case before 1/01/1391 (20 March 2012) - and without waiting for the implementation of the MEC recommendations from July 2011 start the simplification of procedures in the area of acquiring building permits and complete them before 15/03/1391 (04 June 2012).

**Benchmark:** The simplification of procedures in the area of building permits shall be started before 1/01/1391 (20 March 2012) and be concluded before 15/03/1391 (20 March 2012).

**Expected Outcome:** Simplified administrative procedures for acquiring building permits will reduce opportunities for corruption and increase efficiency.

**Status and Evaluation: *Partially implemented.*** The simplification process for obtaining building permits was initiated by HOO and the Kabul Municipality in February 2012 and was intended to be completed by May 2012. Simplification is occurring in three phases, namely assessment, simplification of procedures, and the implementation of pilot projects to implement the simplified process.

The assessment phase has already been completed and identified three types of building permits that needed simplification, namely residential, commercial, and high-rise. The second phase of actual simplification has also progressed with Kabul Municipality and HOO creating a working group. The working group has simplified the process for obtaining residential building permits reducing the process from 100 steps to 10 and work on the simplification of the other building permits is in process.

The simplification of the residential procedures has had mixed success. Permits for new buildings are being processed efficiently, but permits for re-builds (i.e. tear down and rebuild) are moving very slowly due to reported nepotism in the process. In light of these delays, buildings are being

built without the proper permit and it has been reported that individuals building homes have been approached by law enforcement soliciting bribes.

**2.10 His Excellency the President of Afghanistan has directed high ranking officials and key ministries to take measures to ensure that public servants are appointed based on merit**

**Recommendation:** His Excellency the President is invited to issue a Farman to ministries and other key institutions, by 30 April 2012, including at least the AGO, HOO and the Control and Audit Office, reminding them that there must be:

- Practical implementation of clear vetting procedures for the most important positions, including investigators and prosecutors,
- Practical rationalisation of personnel structures to reduce opportunities for corruption,
- Practical implementation of bans on the reinstatement and compensation of officials removed from their positions for corruption and criminal offences.

**Benchmark:** It is hoped that His Excellency the President will issue a decree (Farman) and that it will be implemented before 11/02/1391 (30 April 2012).

**Expected Outcome:** Transparent recruitment and merit-based appointments to reduce nepotism and enhance competence of public servants.

**Status and Evaluation: Fully implemented.** The recruitment and promotion of public servants needs to be based on competence and merit to reduce nepotism, reduce corruption, and enhance public services. His Excellency the President substantially covered the content of MEC's recommendation with the issuance of Presidential Decree 45 in July 2012, which directs high-ranking government officials to avoid interfering in the processes of appointments and recruitment; directs the AGO and HOO to assess personnel to identify corrupt officials; and directs other ministries to conduct similar exercises regarding appointments and assessments of officials.

MEC is currently conducting a detailed evaluation of the articles as part of an exercise to review the implementation of anti-corruption related measures of Presidential Decree 45 and will issue its report in the near future.

**2.11 The recourse for bidders who feel that procurement processes have been unfair or illegal have not been advertised or enhanced**

**Recommendation:** By 15/02/1391 (04 May 2012) MoF should strengthen its PPU and especially its "Appeal and Review Committee" (by providing more resources for its functioning, enhancing the level of its independence and ensuring permanent employment of its advisors and raising the awareness of domestic and foreign bidders on the existence and functioning of the Unit.

**Benchmark:** The PPU shall be strengthened and take actions in order to raise the awareness of bidders by 15/02/1391 (04 May 2012).

**Expected Outcome:** A strengthened and independent PPU that engages with bidders to ensure that bidding processes are being conducted fairly and according to the law.

**Status and Evaluation: Partially implemented.** The PPU has established the Review and Appeal Committee and appointed five members. The Unit plans to enhance the capacity of this committee and increase the number of experts to 21 with appointments from different institutions

such as the Afghanistan Chambers of Commerce and Industries and universities. In addition, MoF has provided various capacity building training to its PPU personnel related to general procurement, but nothing specific in the areas of appeal and review capacities. There has been no substantive awareness raising of the Unit amongst bidders.

***2.12 The enhanced national mining policy provides a strong framework for safeguarding Afghanistan's mining industry***

**Recommendation:** Before 15/04/1391 (05 July 2012), GIRoA should supplement a national policy on the exploitation of mineral resources in Afghanistan including requirements and safeguards on transparency, accountability and integrity in the mining sector.

**Benchmark:** The national mining policy shall be supplemented before 15/04/1391 (05 July 2012).

**Expected Outcome:** Opportunities for corruption in mining are reduced through transparency, accountability, and integrity in the mining sector.

**Status and Evaluation:** ***Fully implemented.*** The National Policy on the Exploitation of Mineral Resources is in place and has been accepted by the Council of Ministers. It contains clauses on transparency and accountability. MEC will monitor the implementation of the National Policy on the Exploitation of Mineral Resources.

***2.13 MoM has retained qualified lawyers to negotiate mining contracts on their behalf***

**Recommendation:** Starting from the 15/02/1390 (05 May 2011), MoM should engage / maintain additional assistance in the form of highly qualified lawyers in the area of mining to negotiate contracts on the exploitation of Afghan mineral resources.

**Benchmark:** Contracts for highly qualified lawyers shall be concluded and/or extended by/after 01/1/1391 (20 March 2012).

**Expected Outcome:** Fair mining contracts that provide the greatest benefit for Afghanistan are negotiated.

**Status and Evaluation:** ***Fully implemented.*** MoM has procured the services of a number of respected firms specializing in mining sector transactions and has established a Legal Department with two sections, each with four legal experts and one manager. Currently, the Legal Department has 11 staff, including the Director. Also, the WB has recruited two lawyers for this department and MoM has plans to recruit one more international lawyer.

***2.14 MoM has included anti-corruption clauses in mining contracts as one mechanism to prevent corruption in the mining sector***

**Recommendation:** While drafting contracts for the exploitation of mineral resources, MoM should insert provisions, which will oblige not only contracting partners but also their subcontractors to fully respect all international and national anti-corruption standards in general and specifically in the area of mining while implementing the contracts.

**Benchmark:** All future contracts shall oblige not only the contracting partners but also their subcontractors to fully respect all international and national anti-corruption standards.

**Expected Outcome:** Contractual guarantees that all firms engaged in extractive industries adhere to anti-corruption standards.

**Status and Evaluation: Fully implemented.** MoM includes anti-corruption requirements for contractors and sub-contractors in all of its mining contracts. All contracts since 2010 also include a clause that requires contractors to report to the Afghanistan Extractive Industries Transparency Initiative Secretariat.

#### ***2.15 MoM has taken the positive step of publishing all but one of its mining contracts***

**Recommendation:** MoM should publish all future contracts for the exploitation of mineral resources on its website explicitly mentioning all contracting and subcontracting parties within 30 days after the contract has been agreed upon and signed.

**Benchmark:** All future contracts shall list the names of all contracting and subcontracting parties and will be published on the MoM website.

**Expected Outcome:** Transparency and accountability will be enhanced through publication and increased scrutiny of contracts.

**Status and Evaluation: Fully implemented.** MoM has published 221 mining contracts on its website, which represents all but one contract in Afghanistan. The remaining contract is the Aynak copper mine contract, which the Ministry has committed to publish once negotiations for the companion agreements are completed. However, some of the contracts published on the Ministry's website reveal deficiencies. For instance, some of the contract documents do not fulfil the needs of a standard contract, being only three or four pages long without adequate provisions, terms and conditions for both parties.

#### ***2.16 The draft anti-corruption policy for mining has been developed, but not approved***

**Recommendation:** Before 15/07/1391 (06 October 2012), MoM should adopt an anti-corruption policy which contains risk assessment and management provisions in the area of corruption. International and national public and non-governmental organisations should be invited to take part in the aforementioned activities.

**Benchmark:** This anti-corruption policy containing risk assessment and management provisions in the area of corruption shall be applied in cooperation with international and national public and non-governmental organisations before 15/07/1391 (06 October 2012).

**Expected Outcome:** An anti-corruption policy that can help manage risks of corruption.

**Status and Evaluation: Partially implemented.** MoM reported that the anti-corruption strategy has been developed in consultation with stakeholders, including international organizations, relevant governmental institutions and civil society and is in its last stage of development. The policy will be shared with MEC once approved by the Minister.

#### ***2.17 Access to information legislation will increase government transparency and accountability once passed***

**Recommendation:** Before 04 June 2012, GIRoA should send the *Draft Law on Access to Public Information* to the Parliament. The draft should regulate access to public information as a general right and introduce only minor justified exceptions in the form of protected secrets, introduce a

mechanism, which will ensure the application of the law and establish judicial protection of the right of the public to access this information.

**Benchmark:** *The Draft Law on Access to Public Information* shall be sent to the Parliament before 15/03/1391 (04 June 2012).

**Expected Outcome:** Increased transparency and accountability through an informed public.

**Status and Evaluation:** *Partially implemented.* The draft law has been with MoJ for several months and has not been prioritized for completion despite numerous public commitments and pressure from civil society. The draft law was developed in consultation with civil society and media organizations.

### ***2.18 The Herat Governor has taken the initiative to implement MEC's recommendations related to a mechanism to deal with complaints and a VCA***

**Recommendation:** The local Government Office in Herat should introduce both a corruption risk assessment and monitoring mechanism and also establish a complaints office in cooperation with the MEC and international donors before 06 August 2011.

**Benchmark:** A Corruption Risk Assessment and Monitoring Mechanism and the establishment of a Complaints Office shall be introduced in the local government office in Herat before 15/05/1390 (06 August 2011).

**Expected Outcome:** The identification of vulnerabilities to corruption that will allow effective interventions to be developed.

**Status and Evaluation:** *Partially implemented.* MEC's benchmark requires the Herat Governor's Office to undertake a corruption risk assessment, to develop a monitoring mechanism for the implementation of the assessment findings and establish a complaints office. A mission conducted to Herat in September 2012 revealed that an office has been established within the Governor's Office where members of the public can record their complaints in writing. Several complaint boxes have been placed in the Governor's compound as well as other relevant provincial government institutions to allow the wider public to record their complaints. According to recent statistics from the Governor's Office 2,648 complaints have been received since March 2012.

The Herat Governor's Office has not been able to conduct a VCA due to resource issues. Given resource restraints the Governor invited MEC to conduct the VCA and it has been agreed that MEC's vulnerability team would undertake the initiative in the summer of 2013.

### ***2.19 Anti-corruption and ethical training has been provided to government officials in Herat***

**Recommendation:** Basic anti-corruption and ethical training should be given to all employees of the Local Government Office in Herat before 05 September 2012 in cooperation between the Governor, the MEC the Secretariat and international donors.

**Benchmark:** Basic anti-corruption and ethical training shall be given to all employees of the Local Office before 15/06/1391 (05 September 2012).

**Expected Outcome:** Increased awareness of local governance in Herat and an increased capacity of local government employees.

**Status and Evaluation: Fully implemented.** According to the Governor's Office, there has been four anti-corruption training sessions provided to local government office officials in Herat province. Additionally, the IARCSC provincial office conducted a comprehensive training for 100 provincial directors of Herat and Nemroz provinces in mid September 2012. The two-day training covered three topics on Regulation of the Code of Conduct, Regulation of the Personal Affairs of the Civil Servants, and the Anti-Corruption Law.

***2.20 An evaluation of international audit firms hired by donors reveals that there were several fraud indicators that were not sufficiently acted on***

**Recommendation:** International donors should evaluate the performance of the Kabul Bank auditors hired by them by 015/02/1391 (04 May 2012).

**Benchmark:** The evaluation of the auditors' performance shall be completed by 04 May 2012.

**Expected Outcome:** Review of the role of international auditors in the Kabul Bank crisis.

**Status and Evaluation: Fully implemented.** USAID's Office of the Inspector General conducted a report on the role of international audit firms that it had engaged to provide capacity building activities to DAB. The review concluded that embedded BP and Deloitte advisers had several opportunities to learn about fraudulent activities at Kabul Bank and should have been more aggressive in following up on indications of serious problems.

Deloitte's lead advisor reportedly indicated that his professional judgment and risk tolerance were probably clouded by the Afghanistan context of incessant rumour of fraud and corruption and that consequently he did not take the fraud indications seriously. The lead adviser acknowledged that Deloitte should have taken more aggressive actions in November 2009, such as resuming participation in onsite bank examinations, and moving previously planned fraud detection training forward. It has been suggested that if Deloitte's onsite assistance had restarted in November 2009, the fraud at Kabul Bank could have been detected earlier, and the magnitude of losses would have been smaller.

***3.1 HOO has extended the powers and authorities of its Department of Audit to better address internal corruption cases***

**Recommendation:** HOO should extend powers and authorities of the Department of Audit in order to ensure that the compliance mechanism is strengthened to deal with the potential office's internal corruption before June 30, 2012.

**Benchmark:** The powers and authorities of the Department of Audit to deal with internal corruption should be extended before June 30, 2012.

**Expected Outcome:** Increased transparency and integrity within HOO.

**Status and Evaluation: Partially implemented.** HOO has not formally responded to MEC on the status of this benchmark. However, informal responses from officials at HOO indicate that in the past few months the Internal Audit Office of HOO has been given more power to investigate cases of internal corruption. Even though the powers increased has not been officially granted to this department, responses from HOO suggest that they have initiated several internal investigations which have been supported by the high ranking officials of HOO.

### **3.2 HOO has not made sufficient progress in enhancing the capacity of its officials**

**Recommendation:** Before 30 June 2012, HOO should prepare a programme for capacity building of its new and existing management focusing on, inter alia, fair and objective recruitment and promotion processes, daily and strategic management, professional relations with other bodies and begin its implementation no later than 31<sup>st</sup> July 2012.

**Benchmark:** A program on HOO's management capacity building must be adopted before 30 June 2012 and be implemented by 31st July 2012 at the latest.

**Expected Outcome:** Increased capacity of HOO to tackle corruption.

**Status and Evaluation:** *Partially implemented.* HOO personnel lack adequate capacity to investigate corruption cases, which often require special skills including management and organisational skills. Although MEC has not received any formal response from HOO, it is worth noting that HOO has developed plans to enhance its internal capacity, which are included in NPP2. These plans include training for business process management, technical training and staff capacity development, skills development and a partnership building program.

External organizations have had to fill the development needs of HOO. This includes VCA training for 21 High Office of Oversight staff provided by MEC in partnership with MSI; anti-corruption and integrity promotion workshops that resulted in 16 trainers and two managers being trained; and a large number of staff attending trainings outside the country and particularly in Singapore.

Despite efforts of other organizations to train staff, HOO was again directed in Presidential Decree 45 to assess its staff for corruption and take appropriate measures against the corrupt people in their office.

### **3.3. International donors have not been responsive to MoF's attempts to encourage them to register their aid expenditures**

**Recommendation:** In order to ensure strict adherence of foreign donors to Afghan legislation in the area of registration of and reporting on donations, MoF should write appropriate letters to all donors before 31 May 2012 and inform the MEC of all registered breaches of the relevant Afghan legislation.

**Benchmark:** A letter from MoF should be sent before 31 May 2012; the MEC should be informed of all breaches after 31 May 2012.

**Expected Outcome:** Adherence to Afghan requirements regarding donor reporting requirements.

**Status and Evaluation:** *Partially implemented.* MEC has been informed that several donors do not adhere to requirements concerning registration of their contributions nor do they report on their projects to the responsible Afghan authorities. This prevents proper monitoring of foreign donations and minimises the possibilities of their effectiveness and enables misuse of related expenditures.

MoF sent a letter to donors on June 30, 2012, informing them about their obligations and the need to register projects in the online DAD to allow the government to track and monitor aid. However, donors feel the database is complicated and not user friendly and MoF has promised to upgrade the system. Regardless of the complexities of the system, donors are obliged to provide the required information in one way or another.

### **3.4 Donors should strengthen their monitoring procedures by introducing enhanced measures**

**Recommendation:** Before 31 August 2012 donors should strengthen their monitoring procedures on the use of their resources granted and donated to GIRoA by introducing relevant measures, which - at a minimum – should strictly:

- comply with the Terms of Reference of each contribution,
- exercise control over the use of funds by qualified personnel,
- highlight incompatible functions in the donor's organizations (e.g. separation between personnel deciding on the allotment of funds and personnel monitoring their use),
- prepare regular intermediate reports on the use of funds,
- Report on the use of donation approved by certified external auditors.

**Benchmark:** Donors' monitoring procedures should be strengthened before 31 August 2012.

**Expected Outcome:** Strengthened monitoring procedures for funds provided to the Afghan government.

**Status and Evaluation:** *Partially implemented.* Approximately 45 donors have provided \$69.7 billion of aid to Afghanistan between the years 2002 and 2011. MEC has engaged with key donors representing the majority of aid in evaluating the monitoring of these funds and has been provided with comprehensive documents related to financial management, audit, budget, disbursement reports, effectiveness and accountability, or project implementation guidelines. While donor requirements differ according to their domestic regulations and rules, they all generally require the government recipients to provide regular reports against the terms of the grant or contribution. These reports are generally compiled by the recipient organization, but often require independent financial or systems audits. It was noted by some donors that they also face capacity issues in relation to their monitoring of program implementation.

#### **3.5.1 UNDP has published the results of the KPMG audit of LOTFA**

**Recommendation:** UNDP should publish the results of the internal KPMG audit and continue its internal LOTFA integrity audits (investigation) and inform the MEC of its findings, conclusions, recommendations by 30 June 2012.

**Benchmark:** The MEC is informed on the results of UNDP internal investigation, starting on 30 June 2012 and every three following months.

**Expected Outcome:** Increased transparency and accountability for UNDP and LOTFA.

**Status and Evaluation:** *Fully implemented.* In May 2011, serious allegations of corruption inside LOTFA were publicly raised. In response, the UNDP Office of Audit and Investigation launched an investigation. The investigation transpired over a six-month period and included two separate visits to Kabul, interviews of more than 80 witnesses, the review of over 15 procurement files, and analysis of financial expenditures for all phases of the project.

The new leadership of UNDP published the KPMG report on its findings on April 30, 2012 and provided MEC with the 42 page report. The report found that there were insufficient policies, procedures, guidelines, supervision, monitoring, resources and planning and training.

### **3.5.2 UNDP has a risk assessment plan for LOTFA to help identify susceptibilities to corruption**

**Recommendation:** USAID and UNDP should finalise a risk assessment for LOTFA as directed and the United States MoD should follow up with a publication of its own in conjunction with MEC to evaluate the results.

**Benchmark 3.5.2:** LOTFA shall have a risk identification conducted and a Risk Mitigation Plan in-place before 30 October 2012.

**Expected Outcome:** All vulnerabilities to corruption will be known and strategies can be developed to mitigate those risks.

**Status and Evaluation:** *Fully implemented.* UNDP indicates that according to its operating procedures they have a risk assessment plan for LOTFA and a mitigation plan is being implemented.

### **4.1 MoJ will discuss the utility of having ministries provide explanatory memorandum when submitting laws for drafting**

**Recommendation:** In order to clarify new laws, drafting agencies should issue Explanatory Memorandum for all new, and some existing, legislation after the legislation has been drafted, but before it is sent to the Taqin Department of MoJ and the Supreme Court. The Explanatory Memorandum for previous legislation should follow a rough schedule of 3-4 Explanatory Memorandum every 6 months. This may include the *Procurement Law*, the *Anti-Money Laundering Law*, and the *Anti-Corruption Law*, etc.

**Benchmark:** The drafting of Explanatory Memorandum by the drafting agency for all new pieces of legislation before it is passed on to the Taqin Department of MoJ.

**Expected Outcome:** Explanatory Memorandum will help to simplify legal terms and will help law makers to understand draft law.

**Status and Evaluation:** *Partially implemented.* Many ministries, independent institutions and their provincial units claim that laws - particularly those related to financial issues - are complicated and poorly translated from foreign languages. Taqin acknowledged the importance of having ministries provide Explanatory Memoranda when submitting laws. MoJ committed to discuss this issue at a leadership meeting, with the thought that it should bring changes to their internal regulation before asking institutions to provide Explanatory Memorandum.

### **4.2 MEC will develop a draft Public Inquiry Act due to resource constraints within the Afghan government**

**Recommendation:** OAA should determine which ministry should draft the Act; and the designated ministry should draft a public inquiry act and submit it to MoJ for review by 1 Hamal 1392 (21 March 2013).

**Benchmark:** Draft public inquiry act is submitted to MoJ by 1 Hamal 1392 (21 March 2013).

**Expected Outcome:** A legal base established for future public inquiries.

**Status and Evaluation: *Not implemented.*** Although the *Constitution of Afghanistan* provides authority for the President to establish commissions for the improvement of the administration of the country, there is no legislation that provides for independent and transparent public inquiries into matters of substantial public interest. Due to resource restraints, OAA has asked MEC to draft an act for consideration by MoJ, which MEC has agreed to do. MEC will draft the law in consultation with relevant government and non-government stakeholders.

**4.3 MoE has made efforts to incorporate anti-corruption subject matter in its curricula, while MoHE and the Ministry of Haj and Religious Affairs have not taken the initiative to educate people about corruption**

**Recommendation:** MoE, MoHE, the Ministry of Haj and Religious Affairs and the Ministry of Culture in consultation with relevant CSOs shall develop a comprehensive educational module on anti-corruption and enter it in the curricula of schools and universities by 11 Jadi 1391 (December 31 2012) and enter it into effect for the school year of 1392.

**Benchmark:** A comprehensive educational module on anti-corruption is entered into the curricula of schools and universities by 11 Jadi 1391 (December 31 2012) and enters into effect for the school year of 1392.

**Expected Outcome:** Students of schools and universities are aware of the negative consequences of corruption and have the tools to better fight it.

**Status and Evaluation: *Not implemented.*** MoE has decided to revise the teaching books of schools and will include a number of lessons on anti-corruption for grades 1 to 6. The Ministry has decided to include a subject by the name of “Hob-i-Watan” (patriotism), with topics including fighting corruption and has also published leaflets and brochures that contain cartoons on corruption related matters. To date, neither MoHE or the Ministry of Haj and Religious Affairs have provided an official response to the recommendations and benchmarks of MEC.

**4.4 The international community has measures in place to strengthen civil society’s anti-corruption efforts, but it is not sufficient given the scope of corruption in Afghanistan**

**Recommendation:** In order for Afghan civil society to be compliant with the civil society provisions of UNCAC (Chapter II Preventive Measures, Articles 10 and 13) and to be in line with national legislation, the international donor community should increase their financial and technical support to civil society in the fight against corruption from 01 Meezan 1391 (22 September 2012).

**Benchmark:** International donor community’s financial and technical support to CSOs active in enhancing transparency and accountability is increased by 01 Meezan 1391 (22 September 2012).

**Expected Outcome:** More active role of civil society in the fight against corruption.

**Status and Evaluation: *Partially implemented.*** The relevant sections of UNCAC require the Afghan government to take such measures as may be necessary to promote the active participation of civil society in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. Given the resource limitations of the government, these obligations can only be fulfilled with the support of the international community.

There are several programs being funded by a variety of donors that meet these objectives of the Convention. These include strengthening CSOs to implement an anti-corruption public information campaign; strengthening CSOs to advocate for good governance and anti-corruption; the creation of organizations that provide support to civil society to participate in anti-corruption efforts; and funding to increase the participation of CSOs in advancing the rule of law and access to justice.

Although these initiatives are commendable, the reality is that the amount of donor funding being spent on anti-corruption efforts is small relative to the amount of overall aid being provided to Afghanistan and the scope of the corruption problem and its effect on all aspects of life in Afghanistan.

***4.5 Increased Islamic knowledge and awareness about the negative consequences of corruption will strengthen public participation in the fight against corruption and will reduce opportunities for it***

**Recommendation (a):** The Ministry of Haj and Religious Affairs, the Council of Religious Leaders and Ministry of Information and Cultural Affairs shall start a countywide anti-corruption campaign through Mosques and religious scholars and the Ministry of Information and Culture shall start a countrywide anti-corruption campaign through media (TV/Radio), especially Radio-Television Afghanistan and government publications such as newspapers, gazettes and magazines in coordination with MEC from 01 Meezan 1391 (22 September 2012) until 01 Jauza 1392 (22 May 2013).

**Benchmark (a):** A countrywide anti-corruption campaign started by 1 Meezan 1391 (22/09/2012) and continued until 1 Jauza 1392 (21 May 2013).

**Recommendation (b):** The Ministry of Haj and Religious Affairs, Council of Religious Leaders and Ministry of Information and Cultural Affairs, in cooperation with its provincial departments should conduct trainings and seminars for Mullahs (religious leaders) and Madrasa teachers starting from 1 Meezan 1391 (22/09/2012) until 1 Jauza 1392 (21st May 2013).

**Benchmark (b):** At least 12 training programs and/or conferences per province conducted from 1 Meezan 1391 (22/09/2012) until 1 Jauza 1392 (21/05/2013).

**Expected Outcome:** All Afghans are aware of their rights and the fight against corruption is strengthened.

**Status and Evaluation:** *Partially implemented.* The Ministry of Information and Culture has committed to take measures to implement this benchmark. The Ministry has a program named Transparency (Shefafyat) on national television, but it only takes place once a week and only on Radio Television Afghanistan, which provides limited information on corruption issues. Additionally, Tolo TV has launched a program on fighting corruption, but again the exposure to Afghans across the country is limited. Members of civil society are also interested to take part in this campaign and have promised to share their views on the campaign.

The Ministry of Haj and Religious Affairs has developed a proposal to conduct a country wide anti-corruption campaign. A key element of the strategy is a conference to launch the campaign bringing together religious scholars to discuss anti-corruption issues resulting in an anti-corruption declaration. The proposal also includes a community focused anti-corruption campaign supported by the publication of printed resources. The Ministry of Haj and Religious Affairs has prepared a plan to implement the proposal, but does not have money to implement it.

**4.6 The lack of accountability at borders, airports, and inland customs depots commission affects the ability of law enforcement to supervise illicit import and export**

**Recommendation:** OAA and other relevant institutions are required to take all necessary action to implement the Presidential Executive Commission on Transparency and Accountability at Borders, Airports and Inland Customs Depots.

**Benchmark:** OAA with the instructions from His Excellency the President of Afghanistan formally names the members of the Borders, Airports and Inland Customs Depots; the Minister of Finance convenes the first meeting of the Borders, Airports and Inland Customs Depots; and Borders, Airports and inland Customs Depots Terms of Reference are drafted and approved by the Borders, Airports and Inland Customs Depots Commission prior to 1 Meezan 1391 (22 September 2012).

**Expected Outcome:** The establishment of the Commission and its terms of reference to more effectively deal with illicit activity at borders, customs, and inland customs depots.

**Status and Evaluation: Partially implemented.** The President issued an order establishing the Commission in 2010 to control commercial goods at borders, to facilitate business, to avoid abuse of revenue, and to fight corruption. In addition in 2012, OAA directed its Monitoring and Evaluation Department requiring it to form this commission as soon as possible. However, the commission has not been formed to date. The Afghanistan Customs Department has indicated that it has informally developed the idea for this commission, but stated that influential people in the government are against the concept.

**4.7 Audited institutions are generally either unaware of audit findings or do not take them seriously**

**Recommendation:** Starting from 1 Aqrab 1391 (22 October 2012), all of the relevant inspection bodies should submit a copy of their oversight findings with institutions which will have been monitored by them within 15 working days of completing an audit, unless otherwise provided by the law.

**Benchmark:** Reports on monitoring submitted to the relevant institutions within 15 days of completing an audit, or within the time limit established by the law.

**Expected Outcome:** Institutions being audited will be better aware of their weaknesses and can implement changes accordingly.

**Status and Evaluation: Partially implemented.** According to the Unification and Coordination Department, SAO is the only audit office in the country mandated to conduct inspections and audits of governmental institutions. Audit teams of SAO share their audit reports with ministers and other relevant institutions, but SAO claims that the relevant institutions do not give their reports proper consideration.

In regard to other institutions who conduct inspections, MEC will continue following up whether institutions such as HOO, MoF or internal inspection departments of Ministries share their findings with inspected institutions or not.

**4.8 ISAF has demonstrated an unwillingness to consider measures that would reduce vulnerabilities to corruption in relation to tax exemptions under the MTA Agreement**

**Recommendation:** GIRoA and the international community shall review the MTA 2002 Agreement in order to reduce opportunities for corruption in relation to the importation of tax exempted goods by 12<sup>th</sup> Saur 1392 (2 May 2013).

**Benchmark:** The MTA 2002 Agreement reviewed by 12<sup>th</sup> Saur 1392 (2 May, 2013).

**Expected Outcome:** Tax exemption provisions of the MTA Agreement are appropriately scrutinized and vulnerabilities to corruption reduced.

**Status and Evaluation: Not implemented.** The Council of Ministers passed a resolution in 2010 requiring the Minister of Finance and Minister of Foreign Affairs to review all agreements made with the international community in which there are tax exemptions, particularly the Military Technical Agreement. Since that time, the Afghanistan Customs Department has prepared a constructive proposal to reduce opportunities for corruption related to tax exemptions and has sought to engage ISAF on the issue several times, without response.

MEC has made several efforts to facilitate the implementation of this benchmark, including meetings in early 2013 with representatives from ISAF, the United States government, MoF and MoFA. However, during these meetings it was made clear in strong terms that ISAF is completely unwilling to consider any measure to verify goods being brought into Afghanistan.

The Government of Afghanistan and Government of the United States will not start negotiating revisions to the Military Technical Agreement until 2014.

**4.9 A partial public expenditure tracking survey indicates that government programs are more cost effective as compared to programs implemented by the international donor community**

**Recommendation:** A joint committee comprised of MoPW, MRRD, Kabul City Municipality, IDLG, the United States Army Corps of Engineers, WB, ADB and other relevant institutions should request technical assistance from WB or other donors to conduct a comparative assessment using the PETS methodology that will demonstrate the amount of leakage on both on- and off-budget infrastructure projects.

**Benchmark:** A joint committee consisting of MoPW, MRRD, ADB, WB and other relevant institutions is formed and conduct a PETS for a select number (10 on-budget and 10 off-budget) of on- and off-budget construction projects 30 Qaus 1391 (20 December 2012) and the Expenditure Report issued by 1 Hoot 1391 (19 February 2012).

**Expected Outcome:** A comprehensive comparative analysis of the differences between implementation of projects done by donors and Afghan institutions.

**Status and Evaluation: Partially implemented.** MoPW convened a meeting to develop a response to this recommendation and it was decided MoPW would lead a collaborative approach to take this study forward. The Ministry studied 6 projects in MoPW, MRRD, and MAIL. As of November 2012, the preliminary results show that projects implemented by line ministries are cost efficient and effective. The Ministry also compared some other projects, including the delivery of seeds by the Ministry of Agriculture that demonstrated that the same project with the same amount

of seeds delivered and implemented by the Ministry for \$11 million was delivered by USAID for \$60 million. Other findings of the study indicate that donor projects do not take the priorities of the government and the need of the people into account; often do not have a capacity development component; and do not take maintenance into account.

It is worth noting that the international agencies suggested in MEC's recommendation did not take part in this study and this was not a complete PETS.

#### ***4.10 Issuance of counterfeit commercial and investment licenses has created numerous challenges and are an opportunities for corruption***

**Recommendation:** The Ministry of Commerce, MoF and AISA should publish the overall turnover of commercial and investment firms, as well as individual traders, should verify whether firms are still active or not through renewal of their licenses and should remove firms from the Central Business Registration who are not active. Firms who have not renewed their license or who have not provided the required reports should be removed from the Central Business Registration after 3 months.

**Benchmark:** Actual presence of the traders and investments and turnover of them published and functionality of firms verified by the end of each year starting from 30 Hoot 1391 (20 March 2013).

**Expected Outcome:** Enhanced tracking and registration of businesses in Afghanistan providing for greater transparency and accountability.

**Status and Evaluation:** *Partially implemented.* The *Law on Business Corporations and Limited Liability Companies* clearly sets-out the annual reporting requirements of all companies to the Central Business Registration. The law also sets-out the ability of the Central Business Registration to verify the non-functionality of businesses and the power to recommend to the Economic Committee of the Council of Ministers that they be deregistered. The Central Business Registration publishes the turnover of companies in the Official Gazette of MoJ. However, there are more than 33,000 businesses established in the last decade and publication of their turnover is not taking place. The Ministry of Commerce and Industry does not verify and publish all companies' turnovers or re-register or update information on these companies.

Similarly, AISA stated that it is difficult to close companies, because there are companies who do not pay their taxes or penalties to MoF, and if they close them, it will be challenged by MoF. Representatives of AISA advised that regulations make it mandatory for registered companies to renew their licenses every year, but it is not being implemented. Based on the law, if a company does not update or re-register on time, it will have a daily fine issued against them.

#### ***4.11 Efforts have been made to curtail the over reliance on sub-contracting in Afghanistan***

**Recommendation:** All contracts should contain a provision that declares the contract null and void if the legal limits of subcontracting are breached.

**Benchmark:** From 1<sup>st</sup> Meezan 1391 (22 September 2012) all contracting authorities both national and international will include a contract provision that declares the contract null and void if it violates the legal limits of subcontracting.

**Expected Outcome:** Subcontracting is mitigated and accountability and quality is enhanced.

**Status and Evaluation:** *Fully implemented.* The draft amended *Procurement Law* has been prepared by MoF together with stakeholders and was submitted to MoJ. The draft law includes provisions that would restrict sub-contracting to 20 percent of the total value of the contract.

In the interim, the PPU has prepared a 150 page procurement manual based on international standards and has shared it with all government agencies that are responsible to implement its procedures in their procurement processes. The manual includes a provision that states that subcontracts exceeding 20 percent of the original value of the contract without written consent of the procuring entity is a breach that results in forfeiture of the performance security, termination of the contract, and subjection of the contractor to prosecution under the law. The Unit has disseminated this new provision through a circular to all ministries and published it on their website.

#### ***4.12 The Ministry of Communication and Information Technology has not conducted a VCA of one of its contracting procedures***

**Recommendation:** In order to fill loopholes and prevent opportunities for corruption in Ministry of Communication and Information Technology contracts; it is important that the Ministry of Communication and Information Technology conduct a VCA of the contracting procedure for the telecommunication satellite to find the loopholes and opportunities that need to be strengthened.

**Benchmark:** The Ministry of Communication and Information Technology shall conduct a VCA in the contracting procedures for the telecommunication satellite by 11 Jauza 1392 (31 May 2013).

**Expected Outcome:** Tackle loopholes and corruption opportunities in satellite contracting.

**Status and Evaluation:** *Not implemented.* The Ministry of Communication and Information Technology has not conducted a VCA of its contracting procedure for the telecommunication satellite to help identify loopholes and opportunities that need to be strengthened in order to prevent opportunities for corruption in Ministry contracts.

#### ***4.13 The one stop shop model has had limited success due to narrow and ineffective implementation***

**Recommendation:** The pension department of MoL, the land distribution department of the MoRR, the identity card and traffic license department of the Ministry of the Interior, Examination and graduation certificate departments of MoHE, Herat Governor's Office, and IARCSC should start with the introduction of a computerized one stop shop mechanism for dealing with requests of citizens from 1 Aqrab 1391 (22 October, 2012). Similarly, those institutions should ensure that the introduction of the one-stop-shop mechanism reduces the volume of applications lost and application response times.

**Benchmark:** A computerized one stop shop mechanism is in place in mentioned ministries by 1 Aqrab 1391 (22 October 2012).

**Expected Outcome:** Direct contact between customers and civil servants is reduced and the application process simplified thereby reducing opportunities for bribe solicitation.

**Status and Evaluation:** *Not implemented.* Consistent with their mandate, IARCSC has indicated that they are interested in leading this effort on the government's behalf, but do not have the resources to do so. Most institutions tasked with implementing this recommendation have

committed to take the necessary measures to implement it, including the MoRR; the pension department of MoL that has automated some procedures and intend to expand the program into other areas; and MoI which has also indicated that the electronic identification card process is underway.

The Herat local government office has established a one-stop-shop where people having issues submit their enquiries and the administrator directs them to the relevant institutions. However, the implementation has faced challenges according to individuals interviewed and as there are only two administrators, the space is not large enough, the public is separated from officials who can answer their questions, and hours are limited.

#### ***4.14 The new Civil Servant Law has been drafted to regulate the use of acting appointments***

**Recommendation:** All public institutions should avoid acting appointments; IARCSC in consultation with other public institutions should ensure the implementation of existing legislative provisions on the acting positions (Para 2, of Article 7 of the Civil Servants Law – this provision doesn't exist in the civil servant's law) and should prepare a legislative proposal that prohibits consecutive acting appointments in one position and consecutive acting appointments of one public official to different positions in different locations.

**Benchmark:** legislative proposal prepared and sent to the Taqin / MoJ by 1 Qaus 1391 (21 November 2012).

**Expected Outcome:** Public office will be staffed by competent and qualified staff appointed on the basis of merit and equal opportunity.

**Status and Evaluation:** *Partially implemented.* Merit-based recruitment ensures that the best person for a job is selected on the basis of their abilities, skills, and experience. In Afghanistan, many high ranking public officials are appointed to acting positions to circumvent the required merit based and equal opportunity procedures and some public servants are appointed to acting positions for a period of time in one location and then transferred to another acting position.

IARCSC has drafted a new *Civil Servant Law* in collaboration with MoJ. The new law includes provisions that preclude public officials from serving in acting positions and will decrease the misuse of public positions by those who will be acting public officials.

#### ***4.15 Allegations of improprieties at Supreme Food Company have never been properly investigated***

**Recommendation:** Shafafiyat Task Force and SIGAR, in conjunction with the Control and Audit Office, should start conducting performance and fraud audits of Supreme operations by 1 Qaus 1391 (21 November 2012) and conclude the task by Hammal 1392 (March 2013).

**Benchmark:** Performance and fraud audit has been conducted by 10 Hammal 1392 (31 March 2013).

**Expected Outcome:** The allegations of fraud and overcharging that have been raised about the activities of Supreme are appropriately scrutinized.

**Status and Evaluation:** *Not implemented.* SAO has assigned an internal inspector to conduct an assessment of Supreme Company in collaboration with Shafafiyat and SIGAR. However, according to SAO, Shafafiyat and SIGAR have not assigned their respective investigators to assist

in the audit of the Supreme Company. MEC met officials from Shafafiyat on several occasions and Shafafiyat committed to cooperate with SAO on this issue, but no concrete actions have taken place.

SIGAR is expected to announce a stand-alone performance audit related to logistics and control of food supplies within the Afghanistan National Army, which is likely to include Supreme. SIGAR will also be releasing an audit report in the near future on business income taxes and associated penalties levied on companies which may touch on issues presented by this recommendation.

***4.16 The allegations that led to the resignation of high ranking officials from AISA have not been adequately investigated***

**Recommendation:** The Chamber of Commerce and Industries should cooperate with the commission set up to investigate the case of the resignation of seven high ranking officials from AISA. The decision shall be published, as well as all the files collected or submitted during the work of the commission.

**Benchmark:** The Chamber of Commerce and Industries starts to cooperate with the commission in the investigation. The findings of the commission are published by the commission within 4 working days after the commission has submitted its report to His Excellency the President.

**Expected Outcome:** The truth behind the resignation of seven high ranking officials from AISA will be revealed by the high level commission appointed to investigate through a fair and transparent investigation process.

**Status and Evaluation: *Not implemented.*** The Chief Executive Officer of ACCI wrote to MEC agreeing to attend any such meetings and the copy of the letter was forwarded to the assigned commission headed by the Minister of Justice. The Minister and the commission however ignored this recommendation and ACCI letter, and did not invite ACCI or any other private sector institute or representatives to their meetings and investigation.

The commission instead dealt with one side of the case which was to see if the resignations were against the law. What the commission did not investigate properly was the report of corruption of the new Chief Executive Officer of AISA and his intentions. The main reason the seven employees had resigned was the corruption case of the newly appointed Chief Executive Officer of AISA.

The case of the resignation was forwarded to the AGO by the commission for a further decision. Senior management of the AGO stated that the case will be closed soon because these resigned employees of AISA have not committed any crimes and their decision is within their legal rights. There is, however, no such evidence that the case has been closed. The Chamber of Commerce and Industries was not invited to take part in the decision, and the report has not been made public and the case is still open at the AGO.