

**Afghanistan's High Office of Oversight Needs
Significantly Strengthened Authority, Independence,
and Donor Support to Become an Effective
Anti-Corruption Institution**



December 16, 2009



OFFICE OF THE SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION

December 16, 2009

The Honorable Hillary R. Clinton
U.S. Secretary of State

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U.S. Ambassador to Afghanistan

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This report discusses the results of the Office of the Special Inspector General for Afghanistan Reconstruction's review of U.S. and other donor efforts to strengthen the capability of Afghanistan's High Office of Oversight (HOO) to fight corruption. It includes five recommendations. This report is part of a series of audits of U.S. efforts to combat corruption and strengthen the rule of law in Afghanistan.

A summary of our report is on page ii. This performance audit was conducted under the authority of Public Law No. 110-181 and the Inspector General Act of 1978, as amended. When preparing the final report, we considered joint comments on a draft of this report from the U.S. Embassy Kabul and the U.S. Agency for International Development's Mission in Afghanistan (USAID/Afghanistan). Those comments indicated concurrence with the findings and recommendations in this report. A copy of the comments is included as an appendix to this report. We also provided a draft of this report to the HOO, but it did not provide a written response.

A handwritten signature in black ink, reading "John Brummet", is positioned above the printed name and title of the Assistant Inspector General for Audits.

John Brummet
Assistant Inspector General for Audits
Office of the Special Inspector General
for Afghanistan Reconstruction



SIGAR

Special Inspector General for Afghanistan Reconstruction

SIGAR Audit-10-2

December 2009

AFGHANISTAN'S HIGH OFFICE OF OVERSIGHT NEEDS SIGNIFICANTLY STRENGTHENED AUTHORITY, INDEPENDENCE, AND DONOR SUPPORT TO BECOME AN EFFECTIVE ANTI-CORRUPTION INSTITUTION

What SIGAR Reviewed

The strengthening of institutions that implement anti-corruption measures in Afghanistan is a key operational principle of the U.S. Government's draft Anti-Corruption Strategy. Afghanistan's High Office of Oversight (HOO) was established by President Karzai in July 2008 to oversee and coordinate national efforts to combat corruption in accordance with Afghanistan's own anti-corruption strategy under its Afghanistan National Development Strategy. During this audit, SIGAR (1) reviewed the assistance provided by the United States and other donors to strengthen the institutional development of the HOO, (2) assessed the capabilities and performance of the HOO in fulfilling its mandate, and (3) assessed U.S. assistance to the HOO. This report is part of a series of audits addressing U.S. efforts to combat corruption and strengthen the rule of law in Afghanistan. SIGAR conducted this performance audit in Kabul, Afghanistan and Washington, D.C. from September to November 2009 in accordance with generally accepted government auditing standards.

What SIGAR Found

In addition to its own funds, the HOO has received about \$1 million in assistance from the U.S. Agency for International Development (USAID) and is budgeted to receive a total of \$7.3 million from the United Nations Development Programme (UNDP). This assistance has been devoted to the institutional development of the HOO. With this assistance, the HOO has undertaken anti-corruption initiatives, with varying degrees of progress. These include a vehicle registration project and an asset declaration process for Afghan public officials. However, the HOO suffers from significant gaps in operational capacity. The HOO is greatly understaffed, and many of its employees are either inexperienced or lack basic skills, such as computer use and information gathering techniques. Moreover, the HOO's enabling legislation does not invest it with sufficient authority or enforcement power and the legislation needs substantial revision. Furthermore, the HOO lacks the organizational, external, and personal independence required by international standards for an oversight institution. Finally, although the international assistance provided thus far to the HOO has been greatly valued, the U.S. government has had no office or individual specifically designated to oversee or coordinate U.S. assistance to the HOO, and U.S. overall coordination and level of demonstrated commitment of support to the HOO needs improvement.

What SIGAR Recommends

SIGAR recommends that the U.S. Ambassador to Afghanistan:

- Determine, in consultation with the HOO, USAID, and other donors, conditions on which to base future assistance, including the enactment of mutually agreeable legislative reforms based on key principles to enhance HOO's authority and independence, and the establishment by the HOO of measureable performance benchmarks;
- Urge, through appropriate diplomatic channels including the Joint Coordination and Monitoring Board, that the HOO Director General and Deputy Director General either resign from their presidential advisory positions or, alternatively, resign from their HOO positions to remedy an impairment of personal independence on the part of those HOO leaders;
- Designate an agency or individual to oversee U.S. assistance to the HOO, both in terms of institutional capacity building and legislative reform, in conjunction with international partners;
- Ensure that the designated agency oversee the appointment of high-level advisors, such as judges or anti-corruption specialists, to be embedded at the HOO in order to provide sustained counsel, mentoring, and strategic advice to HOO leadership; and
- Engage the international community to reinvigorate international donor coordination efforts, perhaps under the auspices of the United Nations Assistance Mission in Afghanistan.

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ABBREVIATIONS

ACT	UNDP's Accountability and Transparency Project
ANDS	Afghanistan National Development Strategy
ARTF	Afghanistan Reconstruction Trust Fund
DOJ	Department of Justice
GAO	Government Accountability Office
HOO	High Office of Oversight
INTOSAI	International Organization of Supreme Audit Institutions
SIGAR	Special Inspector General for Afghanistan Reconstruction
TAF	The Asia Foundation
UNAMA	United Nations Assistance Mission in Afghanistan
UNCAC	United Nations Convention against Corruption
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime
USAID	U. S. Agency for International Development



Afghanistan's High Office of Oversight Needs Significantly Strengthened Authority, Independence, and Donor Support to Become an Effective Anti-Corruption Institution

Corruption is widely acknowledged to be a pervasive, entrenched, and systemic problem across Afghanistan that undermines security, development, and the very legitimacy of the Afghan government. Thirty years of conflict have weakened state institutions, while the sheer size of international security and development assistance has increased Afghanistan's vulnerability to corruption. Afghanistan's ranking in the 2009 Transparency International Corruption Perception Index was 179th out of 180 countries, making it, by that standard, the second most corrupt country in the world. Since corruption is a cross-cutting issue, an institution was urgently needed to oversee and coordinate anti-corruption efforts in the country. In July 2008, Afghan President Karzai established Afghanistan's High Office of Oversight (HOO) for that purpose.¹ The HOO has been mandated to coordinate and supervise the implementation of Afghanistan's National Anti-Corruption Strategy, as well as administrative procedural reform. The creation of the HOO is also in line with a provision of the United Nations Convention against Corruption, ratified by Afghanistan in August 2008, which requires that each state party "ensure the existence of a body or bodies" that prevent corruption.²

Strengthening the capacity of the Afghan government to develop and implement expressed commitments to combat corruption is an operational principle of the draft U.S. Government Anti-Corruption Strategy for Afghanistan. In order to fulfill its mandated requirements, the HOO must be of sufficient capacity to achieve its objectives based on a solid foundation of authority and independence. Various types of technical assistance provided by the United States and other members of the international community are currently being provided to strengthen the institutional development of the HOO. However, the HOO, as a relatively new institution, continues to face challenges in implementing the Afghan government's anti-corruption strategy, which serves as a cross-cutting issues paper for the Afghan National Development Strategy.

This report is part of a series of audits by the Office of the Special Inspector General for Afghanistan Reconstruction (SIGAR) to address U.S. efforts to combat corruption and strengthen the rule of law in Afghanistan. It (1) identifies the assistance provided by the United States and other donors to strengthen the HOO, (2) examines the capabilities and performance of that institution, and (3) assesses the effectiveness of U.S. assistance to the HOO. We reviewed relevant U.S., Afghan, and international laws, conventions, standards, and development strategies. We also interviewed HOO leadership, advisors and department heads, as well as representatives of U.S. and international agencies providing assistance to the HOO. We conducted our work in Kabul, Afghanistan and Washington, D.C. from

¹The HOO has been alternatively known as the High Office of Oversight and Anti-Corruption or the High Office for Oversight of the Implementation of the Anti-Corruption Strategy.

²United Nations Convention against Corruption (UNCAC), Article 6, Paragraph 1.

September to November 2009 in accordance with generally accepted government auditing standards. A discussion of our scope and methodology is in Appendix I.

BACKGROUND

Afghanistan's expressed commitment to combat corruption is elaborated in the Afghanistan National Development Strategy (ANDS) both as part of its Governance, Rule of Law, and Human Rights pillar and as a cross-cutting theme toward the achievement of national development objectives. A National Anti-Corruption Strategy³ was formulated as a cross-cutting issues paper for the ANDS and presented to President Karzai in March 2008. In the Declaration of the International Conference in Support of Afghanistan held in Paris in June 2008, the Afghan government "reaffirmed its commitment to intensify actions to combat corruption and to take concrete steps to that effect." Through enabling legislation, titled the Law on Overseeing the Implementation of the Anti-Corruption Strategy (to be referred to in this report as the HOO legislation), the HOO was created by Presidential Decree in July 2008 to oversee and coordinate the implementation of both the National Anti-Corruption Strategy and administrative procedural reform.

The establishment of the HOO is in line with Article 6, Section 1, of the United Nations Convention against Corruption, ratified by Afghanistan in August 2008, calling for the establishment of an oversight body to prevent corruption. The HOO is also responsible for communicating key UNCAC benchmarks among government institutions and ensuring their compliance.

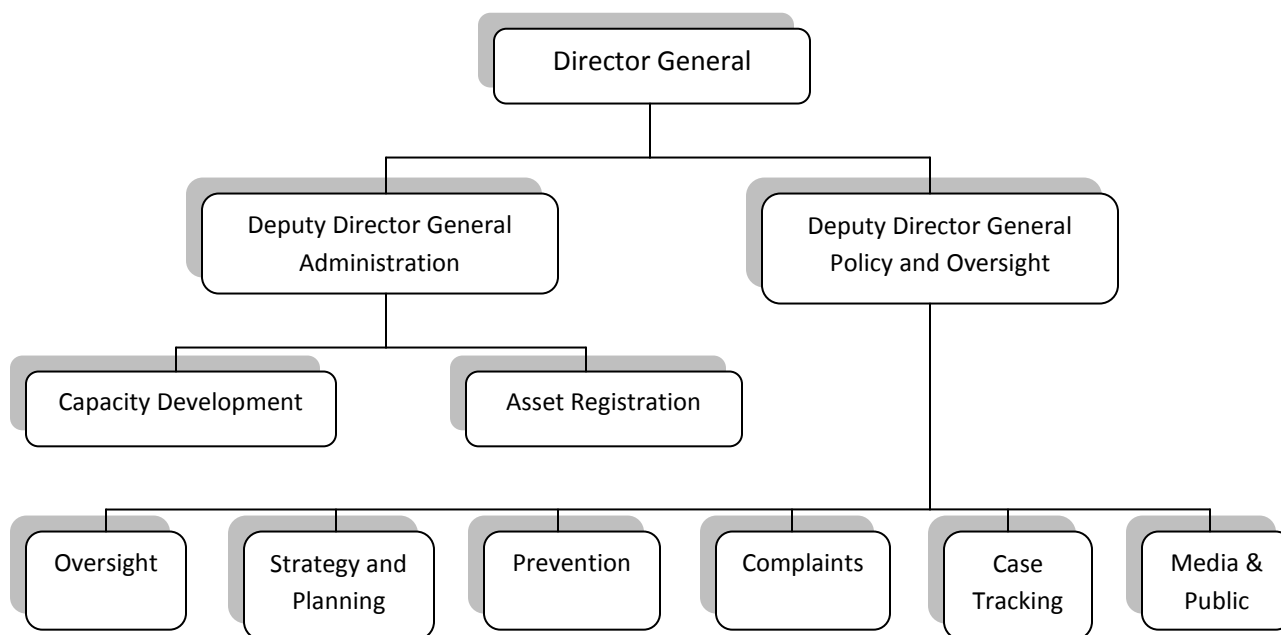
According to a HOO strategy paper, "The overall approach of the High Office will be one of coordination, collaboration, and leadership. It will not seek to control and command." In November 2008, high-level monthly meetings were established and chaired by the President to review progress in implementing the National Anti-Corruption Strategy. The HOO has not been invested with investigative or prosecutorial powers.⁴ Instead, the HOO is empowered to monitor the progress of legal cases related to corruption in the appropriate law enforcement agencies and to ensure that action is being taken by those institutions.

Currently, HOO leadership consists of the Director General and one Deputy Director General. The Director General is appointed by the President. As shown in Table 1, the HOO has established units focused on achieving the tasks assigned to it by the HOO legislation, each with distinct but interrelated functions related to oversight, administrative reform, capacity development, and public awareness.

³ This strategy was prepared under the direction of Abdul Salam Azimi, Chief Justice of the Supreme Court of Afghanistan.

⁴ Article 134 of the Afghan Constitution stipulates that discovery of crimes is the duty of the police and investigation and prosecution of crimes is the purview of the Attorney General's Office.

Table 1: Organization Chart of the High Office of Oversight



Source: High Office of Oversight

Note: The position of Deputy Director General for Administration is currently vacant.

The following is a summary of these units and their respective functions:

- The Capacity Development and Training Department is responsible for developing the professional capacities of both HOO staff and government ministries to implement anti-corruption measures.
- The Asset Registration Department, in accordance with Article 154 of the Afghan Constitution, is mandated to collect declarations of personal assets from public officials of the Afghan government. Completion of the Asset Registration process is also a benchmark of the Afghanistan Reconstruction Trust Fund.⁵
- The function of HOO's Oversight Department is to monitor and verify the progress government institutions are making in implementing anti-corruption measures. This department assists government ministries in developing their anti-corruption action plans.
- The Strategy and Planning Department, as a core unit within the HOO, serves as a gathering point for information received from other HOO departments and government ministries. It conducts research and analysis on corruption issues; exchanges information with Afghan government and international institutions on corruption matters; and works closely with the Prevention and Oversight Departments to find gaps in procedures and develop recommendations.

⁵ The Afghanistan Reconstruction Trust Fund is administered by the World Bank. It was set up in May 2002 to help the Afghan government finance spending in such areas as infrastructure, rural development, and salaries for public employees.

- The responsibilities of the Prevention Department include the simplification of bureaucratic procedures in government institutions, as well as the review of outdated laws, organizational structures, and civil service recruitment practices.
- The Complaints Management and Information Gathering Department serves as the “eyes and ears” of the HOO. It receives complaints from various sources and has limited information gathering capabilities. After obtaining additional information on complaints for background purposes, this department forwards complaints to appropriate government agencies.
- The Case Tracking Department is responsible for reviewing and analyzing cases received either from the Complaints Management and Information Gathering Department or directly from the HOO Director General. If a case is warranted it is referred to the Attorney General’s Office for investigation. The department then follows cases through investigation, prosecution, and sentencing.
- The Media and Public Outreach Department’s task is to support HOO’s mandate to promote public awareness of corruption and HOO anti-corruption initiatives.

The HOO is currently based in Kabul and has plans to expand to seven regional offices throughout the country. However, HOO leadership has informed SIGAR that they are being cautious about expanding outside of Kabul until they build sufficient capacity to support regional offices.

INTERNATIONAL SUPPORT HAS ENABLED THE HOO TO BEGIN SEVERAL ANTI-CORRUPTION EFFORTS

Members of the international community and the HOO staff acknowledge that the HOO has needed substantial technical and capacity development assistance given the critical role it has to play in the fight against corruption. The HOO has received various types of technical and financial support from U.S. and international agencies to achieve its objectives.⁶ International donors have emphasized the importance of providing assistance gradually so as not to build up expectations beyond the capacity of HOO staff to deliver.

International Assistance to Strengthen the HOO

The U. S. Agency for International Development (USAID) implements its Support for Strategic Needs of the Government of the Islamic Republic of Afghanistan Program through a cooperative agreement with the Asia Foundation (TAF). USAID funding, implemented through TAF, totaled approximately \$1 million from October 2008-October 2009. It was used primarily for information technology support, staff training, office equipment, support for public outreach and media projects, and to provide eight Afghan national advisors and acting heads of the HOO’s various departments. The Asia Foundation prepared a budget forecast for additional funding of approximately \$1.5 million through September 2010.

The HOO is the main Afghan government counterpart for the United Nations Development Programme’s (UNDP) Accountability and Transparency (ACT) Project, which initially ran from January 2007 to March 2009, at which point it was revised and is now scheduled to be completed in March 2012. The ACT

⁶ In addition to this assistance from other donors, the Afghan government has provided approximately \$1 million of its own funding for the HOO’s operating expenses.

Project, designed to support the Afghan government to develop the necessary capacities to fight corruption, consists of four components. The first component of the project is designed to improve the institutional and policy environment created to support the implementation of the national anti-corruption strategy. Support to the HOO under UNDP's ACT Project falls primarily under this component.

The total budget for the ACT Project is over \$22.3 million, of which approximately \$11.4 million has been allocated. Major contributors include the United Kingdom's Department for International Development which has contributed approximately \$8.6 million, the Government of Norway with approximately \$1.3 million, and the Government of Italy at nearly \$400,000. Project funds budgeted for support to the HOO total about \$7.3 million for the length of the project. Through the project, UNDP has provided support to the HOO for information technology, provision of equipment, rental of office space, security upgrades, the rental of vehicles, and both international and national consultants. UNDP has also begun the process of recruiting additional international and national advisors in various HOO departments.

The United Nations Office on Drugs and Crime (UNODC) is the agency responsible for the implementation of the United Nations Convention against Corruption. UNODC provided assistance to the HOO to coordinate Afghan government ministries' responses to a self-assessment checklist to gauge progress in UNCAC implementation. UNODC assistance to the HOO also included the development of a database for the HOO's Asset Registration Department. UNODC also brought in international experts to help analyze the HOO's needs.

Officials from the U.S. Department of Justice, the United Kingdom, UNDP, and UNODC have also assisted in preparing draft revisions of the HOO legislation to provide the HOO with more authority. Proposed revisions were sent to the HOO for their suggested changes and the draft is still in the review process.

HOO is also receiving assistance from the World Bank's Management Capacity Program in the form of western-level salaries to a small number of experienced experts hired by the HOO. At least one of the HOO's department heads has recently been hired through the Management Capacity Program.

To eliminate the prospect of duplication of effort among the international donors, a coordination mechanism was initiated in the summer of 2009 through a HOO Working Group hosted by the United Nations Assistance Mission in Afghanistan. However, with the departure of a UNAMA employee in September 2009, the meetings have been suspended.

The HOO Has Undertaken Certain Initiatives with Varying Degrees of Progress

Staff members and leaders of the HOO, as well as members of the international community, have provided SIGAR with several examples of initiatives undertaken by the HOO with international support. Following are some examples:

- In accordance with a specified benchmark of the Afghanistan Reconstruction Trust Fund (ARTF) and an UNCAC provision requiring asset declaration of public officials, the HOO put in place an asset registration process and, as of September 30, 2009, had received required forms from 78 percent of the individuals identified as needing to file such forms.
- Over a period of 7-8 months, HOO's Prevention Department has engaged in a project with the Ministry of the Interior to simplify the vehicle registration process. Reforms reportedly included reducing the number of necessary steps from 51 to 5.

- The HOO has developed and produced a series of television and radio documentaries on general anti-corruption issues as well as its vehicle registration pilot program.
- The HOO has coordinated a self-assessment questionnaire in cooperation with UNODC in order to gauge Afghanistan's progress in implementing the provisions of UNCAC.
- The HOO recently began a project, as an implementing partner, with the Afghan nonprofit organization Harakat to research and develop an action plan to reform the system for the issuance of construction permits in Kabul.
- Five HOO departments have completed departmental action plans that are pending final review by the HOO leadership.
- The HOO has collected and is reviewing draft anti-corruption action plans from 30 Afghan government ministries.
- The HOO senior officials, with support from USAID, participated in a special anti-corruption training program in Singapore. In addition, the HOO Advisor for Asset Registration attended advanced anti-corruption training in Indonesia that focused on asset registration and declaration processes.

THE HOO HAS SIGNIFICANT GAPS IN ITS OPERATIONAL CAPACITY

The HOO suffers from a lack of independence, a weak legal framework, and a lack of commitment from donors--particularly from the U.S. Government. It remains operationally under-resourced and lacking in the necessary skills to make a measurable impact in fighting corruption in the near term, due, in part, to the fact that no measureable performance benchmarks have been established. Thus, while the HOO has made limited progress in some areas, it is unable to demonstrate that its efforts have made a significant impact on the overall level of corruption in Afghanistan. Contributing to this challenge is an insufficient pool of qualified recruits from which to obtain talent. Consequently, the HOO has fallen short in several of its responsibilities and is unable to measure progress in others.

Lack of Independence

In its enabling legislation, the HOO is required to be independent in carrying out its duties. While the legislation does not define the term "independent," as an oversight organization, the HOO, including its leadership and employees, should subscribe to and follow internationally-accepted independence standards as well as a code of ethics. Independence is a crucial standard governing the operation of any oversight institution and is enshrined in such guiding documents as the International Organization of Supreme Audit Institutions' (INTOSAI) Code of Ethics and Government Auditing Standards produced by the U.S. Government Accountability Office (GAO).

The Code of Ethics issued by INTOSAI, of which Afghanistan is a member, was written for auditors but could also be applied to organizations such as the HOO. The following INTOSAI requirements are noteworthy:

- It is essential that auditors are independent and impartial, not only in fact but also in appearance.
- It is important to maintain both actual and perceived political neutrality. Therefore, it is important to maintain independence from political influence in order to discharge responsibilities in an impartial way.

- Avoid all relationships with managers and staff in parties which may influence, compromise or threaten the ability to act and be seen to be acting independently.

Although generally accepted government auditing standards issued by the GAO were also written for auditors, they too could be applied to organizations providing governmental oversight, such as the HOO. The general independence standard from GAO states:

In all matters relating to the audit work, the audit organization and the individual auditor...must be free from personal, external, and organizational impairments to independence, and must avoid the appearance of such impairments of independence.

According to GAO, personal impairments might (1) limit the extent of oversight inquiries, (2) limit disclosure of offenses, or (3) weaken findings. GAO includes in its examples of personal impairments, “biases, including those resulting from political, ideological, or social convictions that result from membership or employment in, or loyalty to, a particular type of policy, group, organization, or level of government.” The International Federation of Accountants has issued similar independence standards for oversight organizations.

Contrary to generally-accepted standards and ethical codes for oversight organizations, both the Director General and the Deputy Director General hold, and receive remuneration for holding, advisory positions within the Office of the President outside their HOO appointments. In addition to their leadership positions with the HOO, the Director General and Deputy Director General are also employed as presidential advisors within the Office of the President with the titles, respectively, of Advisor to President on Administrative Affairs and Chief of the Presidential Programs. We believe that holding two government positions simultaneously can, and in this case does, create a conflict of interest.

According to USAID, which provides funding for a wide array of presidential advisors under its Support to the Center of Government program, the Director General and Deputy Director General of the HOO were employed as advisors to the Afghan President under that program prior to their presidential appointments to the HOO. This employment arrangement under USAID continued even after they were appointed to their HOO leadership positions despite criticism from a variety of stakeholders within the international community. For example, during an international donor group meeting in August 2009, concern was expressed over USAID’s provision of salary support to the Director General of HOO as an advisor to the President. The meeting was chaired by UNAMA and included representatives from UNDP, USAID and UNODC. During interviews with SIGAR, some of these same international donors expressed disapproval with the HOO Director General and Deputy Director General not giving up their former jobs as presidential advisors.

As a result, the personal independence of both the Director General and the Deputy Director General of the HOO has been impaired, in appearance if not in actuality, because of their dual roles within the Afghan government. This impairment creates an inherent conflict of interest that could affect the HOO’s performance of its duties, including the limiting of oversight inquiries and reporting. For example, HOO leadership may have been distracted because of the 2009 election. One knowledgeable official noted that both the Director General and the Deputy Director General met frequently with the President prior to the election. Also, according to a USAID official, the Deputy Director General often acted as the President’s speechwriter. Concerns of this sort expressed by U.S. and international donor officials, regardless of their validity, indicate that there is a strong perception that HOO leaders are not independent.

The HOO also has external impairments to its independence due to the way in which its operating budget is administered by the Afghan government. While the HOO legislation states that the HOO is an independent budgetary entity, and the HOO has its own line item in the national budget, the amount of the HOO's government budget is decided by the Ministry of Finance, a line ministry that reports to the President. This means that the HOO has no control over the amount that goes into the budget line. In addition, the \$1 million budget allocation to the HOO for this year is reportedly for operating expenses only, and not for project development, making the HOO dependent on international donor assistance to carry out projects.

With regard to organizational independence, GAO's Government Auditing Standards stipulates that government oversight organizations are generally presumed to be organizationally independent if the head of the organization is elected or directly appointed or confirmed by a legislative body, subject to removal by a legislative body, reports to a legislative body, and is accountable to a legislative body. The HOO legislation specifies that the Director General is appointed by and reports to the President. Consequently, there is no check and balance on the appointment or dismissal of the HOO Director General by the President of Afghanistan which makes the HOO organization dependent on the Executive Branch.

Despite the declaration in the HOO legislation that the HOO "...shall be independent in carrying out its duties...", the consensus opinion among members of the international community is that the HOO is not truly independent as an institution. However, on the subject of parliamentary oversight, the HOO leadership as well as several international representatives stated that being accountable to the entire Afghan Parliament for appointment or dismissal would render the Director General vulnerable to the demands made by numerous Members of Parliament. Moreover, the HOO is reportedly renting its current office space from the Office of the President, which raises additional questions regarding the perception of HOO independence.

Weak Legislative Framework

There is wide recognition both within the HOO and among international partners that the current HOO legislation is too weak. As acknowledged by a Senior Advisor for the U.S. Department of Justice (who had been providing advice to the HOO on revisions to its enabling legislation), Afghan legislation does not currently provide the HOO with sufficient authority to be an effective oversight institution. Strengthening the HOO's legislative framework is necessary. For example, the HOO has no investigative powers. Under Article 134 of the Afghan Constitution, discovery of crimes is the duty of the police while investigation and prosecution are entrusted to the Attorney General's Office. As stated in a recent report by an international consultant, "Although 'oversight' is potentially a powerful tool in any area of activity, the public may perceive an oversight body without any power to detect or investigate corruption as being 'toothless.'"

The current HOO legislation lacks a direct investigation role for the HOO. The HOO can collect information and determine whether a complaint warrants investigation by other government agencies, but cannot conduct the investigations, and thus is dependent on other entities to perform these functions. Similarly, the Case Tracking Department can track the progress of corruption cases through law enforcement agencies but has no investigative or prosecutorial authority. HOO's Case Tracking Department informed SIGAR that it has referred 26 cases to the Attorney General's Office, the Supreme Court, and the Ministry of Justice since the HOO's inception.

The HOO legislation does not provide the HOO with adequate powers of enforcement. For example, the legislation does not contain criminal penalties for failure to submit asset declaration forms to the HOO or for lying on them. There is no provision in the legislation that formally obligates government agencies to report corruption to the HOO, nor are there any specified penalties for offices refusing to provide documents or information requested by the HOO, or for not complying with HOO advice or recommendations.

International representatives have bemoaned the fact that the definition of corruption, as outlined in the current HOO law, does not mention nepotism. Nor is there anything in the existing Civil Service Code defining what constitutes conflicts of interest for civil servants or addressing the issue of making false claims.

There have been ongoing efforts conducted by the U.S. Department of State, the UNODC, UNDP and the U.K. Embassy to revise the HOO legislation to invest the HOO with greater authority and independence. A version of the draft revision is under consideration by the HOO at this time. However, there has been a growing concern that even the current revisions of the HOO legislation are insufficient to provide the HOO with sufficient tools to be an effective oversight institution, and that technical efforts at reforming the legislation must be accompanied by renewed engagement in a high level political process to ensure that reform is enacted. International partners representing HOO donors (the United States, the United Kingdom, and Norway) have recently determined that despite recent efforts in to draft a new law, the draft remains lacking in proper enforcement mechanisms for compliance, investigative powers, independence from the President, and a guaranteed budget. In addition, the draft revision lacks any obligation on the part of government institutions to report corruption.

In light of fraud committed in the August 2009 presidential elections, as well as the current media attention directed toward the extent of corruption in Afghanistan, these international partners have indicated to SIGAR that the time is ripe to initiate a new and stronger process with the Afghan government for reform, not only of the HOO but for anti-corruption efforts in general. Establishing benchmarks as preconditions for international commitments of assistance could help lead to necessary reforms.

Human Resource Challenges

In terms of human resources, the HOO's organizational chart calls for a staff of approximately 500 employees, including positions in the provinces which the HOO plans to fill in the future. However, the current number of employees is approximately 100, meaning that the HOO is only 20 percent staffed. Some 80 of the HOO's current employees are holdovers from its predecessor organization, the General Independent Administration for Anti-Corruption,⁷ while the remaining 20 or so are made up of the new HOO leadership plus department managers and advisory staff. A clear example of the HOO's lack of staffing is the Prevention Department, responsible for working with government ministries to simplify bureaucratic procedures, which only has two of its 26 authorized positions filled. An advisor for that department informed SIGAR that he often needed to borrow staff from other departments in order to perform the department's tasks. Another example is the HOO Oversight Department which has filled only 10 out of its authorized 52 positions. Further, the Complaints Department did not have a database officer and the Strategy and Planning Department lacked a database developer to better enable

⁷ According to a March 2009 USAID assessment, the General Independent Administration for Anti-Corruption was considered a failure and was eventually dissolved due to charges of corruption.

collection and processing of information (though the department advisor stated that they were in the process of recruiting one). As a result, work that would normally be accomplished via computers has been done manually for the past six months.

The discrepancies between authorized and actual numbers of positions are attributable to a number of factors. According to several HOO representatives, it is very difficult to recruit new staff with the requisite qualifications for positions because many salaries for positions in the Afghan Civil Service are not competitive. Also, some HOO managers indicated a disinclination to go too fast in the hiring process to help ensure that prospective employees first pass a vetting process and possess the necessary qualifications. Moreover, many of the HOO's existing staff members had limited language and computer skills, and lacked capacity with respect to program monitoring and evaluation, and information gathering and interviewing techniques. Several department representatives informed SIGAR that some of their employees had only recently completed their education and may not be fully qualified.

HOO management has been critical of the slowness of actions on the part of UNDP. For example, the HOO Deputy Director General informed SIGAR that recruitment for a UNDP advisor can take months and that there is a slow rate of delivery on procurement.

To help mitigate some of these concerns, the HOO is currently working with the Afghan Civil Service Commission to implement a pay and grade system that would be merit-based and hopefully result in higher salaries including skills and performance-based pay increases. The HOO and UNDP are also considering a plan for a certain number of Afghan national positions to be funded by UNDP at higher salary rates than those of the Afghan Civil Service. In this case, the HOO would actually hire the candidates and the UNDP would have a say in candidate selection.

Operational Shortcomings

During the course of this audit, SIGAR noted a number of operational shortcomings on the part of the HOO. Following are some examples:

- Although the HOO has devised a strategy paper, it has not yet completed a concrete action plan with goals and measurable performance benchmarks. However, a HOO consultant has indicated that the HOO is in the process of completing its strategic plan.
- Despite the fact that publishing annual reports of the HOO's activities and making them available to the public is one of the prescribed duties in the HOO legislation, the HOO has not yet produced or published such a report.
- Although HOO management indicates that, from the HOO's inception to the present time it has submitted approximately 26 cases, along with evidence and documentation, to the Attorney General's Office, the Chief Justice of the Supreme Court, and various sections within the Ministry of Justice, the Case Tracking Department was unable to provide SIGAR with information on whether those cases resulted in any prosecution, conviction, or sentencing.
- Even HOO's declared accomplishments suffer from gaps and limitations. For example, in accordance with the Afghanistan Reconstruction Trust Fund and UNCAC, the HOO has received approximately 78% of asset declaration forms requested from public officials. However, the HOO has not yet begun the process of verifying the assets to determine the accuracy of the declarations, having informed SIGAR that they are still trying to develop a strategy for asset verification.

- In addition, the HOO has not yet completed a written evaluation of the impact of its pilot project for vehicle registration reform.

THE HOO NEEDS MORE COORDINATED SUPPORT AND COMMITMENT FROM THE UNITED STATES

As a relatively new institution, the HOO faces considerable challenges in implementing the Afghan government's anti-corruption strategy and is heavily dependent on the international community for assistance. According to its leadership, the HOO cannot perform its tasks alone and needs to collaborate with other institutions, especially U.S. organizations, since the United States is the largest contributor to reconstruction efforts in Afghanistan.

U.S. Government support for the HOO has been principally through USAID, which has budgeted just over \$1 million through October 2009 to assist the HOO with start-up costs, computer support, training, equipment, media projects, and advisors. While other U.S. agencies have been involved in discussions concerning the HOO, they have offered little or no support in terms of funding or advice to the HOO. A notable exception has been a senior DoJ advisor who has provided advice and legal assistance with respect to drafting a revision to the HOO's enabling legislation. However, that assistance has been on an ad hoc basis and narrowly focused. According to HOO leadership, the DoJ focuses primarily on the law enforcement side and needs to examine how to support an oversight and anti-corruption body like the HOO.

During an interview with SIGAR, the HOO Deputy Director General indicated that anti-corruption was not a big issue until this past year and that there was no clear U.S. Government strategy on how to be engaged in anti-corruption. With the increased attention given to corruption in Afghanistan by world leaders and the media, there has been more of a focus on the HOO, and its role in fighting corruption, within the U.S. Embassy community in Kabul. The first reported gathering by U.S. and international stakeholders to discuss matters related to the HOO and anti-corruption was held in May 2009 at the Norwegian Embassy, with a follow-on meeting in June 2009. However, despite this increased interest, no single agency or individual has been officially designated to lead or coordinate U.S. Government efforts to build the HOO's capacity to implement anti-corruption activities.

The international community has demonstrated a significant interest in and commitment to the HOO. For example, the UNDP has committed \$7.3 million over the next three years for HOO support through its ACT Project which provides the HOO with advisors, security, and rent for office space and vehicles. The ACT Project is supported by contributions from the United Kingdom, Norway, and Italy.

Although international donors to the HOO made initial attempts to coordinate donor assistance by way of a HOO Working Group led by the United Nations Assistance Mission in Afghanistan, the departure of a key UNAMA staff member in September 2009 contributed to the Working Group's demise after only a handful of meetings. The sessions were judged by participants (from USAID, UNODC, UNDP, and the Department of State) to be useful in preventing duplication of effort.

Members of HOO management have expressed the opinion that there has been insufficient leadership and coordination of donor assistance to the HOO, as well as no clear plan or demonstrated interest on the part of the U.S. government to support anti-corruption efforts. Their point of view is that donors are

not inviting the HOO to discuss needs or to make their intentions known. For example, the HOO Deputy Director General stated that USAID assistance provided to the HOO through the Asia Foundation, though instrumental for the start-up of the HOO, does not demonstrate a long term commitment. In addition, according to the Deputy Director General, USAID has not clearly indicated whether anti-corruption is a sector the agency is interested in supporting. He further stated that he would like for a U.S. government representative to provide dedicated anti-corruption support by actively engaging with the HOO, enabling a process whereby the HOO can articulate its needs and the U.S. government could then determine how best to support the HOO. Such determinations should be informed by a comprehensive report produced by a USAID contractor in March 2009 advising USAID on anti-corruption engagement in Afghanistan.

Central leadership is a critical element that underpins the Government Performance and Results Act of 1993 and a lead agency or coordinator can serve as a focal point for integrating multi-agency efforts and ensuring effective implementation. Without a designated leader or focal point for communicating with and coordinating U.S. Government assistance to the HOO, that assistance may not be as effective in achieving the anti-corruption goals desired by the Afghans, the U.S. Government, or the international community. Further, the Asia Foundation Project Advisor for assistance to the HOO expressed concern that some of the Afghan advisors hired by the foundation and seconded to the HOO (widely acknowledged to be a capable and talented group) might decide to seek employment elsewhere if they receive signals that donor assistance to the HOO will be discontinued.

One possible area in which the United States could provide meaningful and timely assistance might be the Provincial Committee for Redress (as a pilot project) that the HOO has discussed previously with U.S. officials. The concept for the project is to extend the complaints intake facility to the provinces, which would help provide credibility for the HOO outside of Kabul. HOO leadership would reportedly like to expand the concept into a proper plan and is looking for necessary resources and support.

CONCLUSIONS

The HOO suffers from serious shortcomings as an institution both in terms of its operational capacity and the legislative framework on which it is based. Despite its efforts and limited progress to date, as well as some dedicated staff, the HOO faces great challenges in building its capacity to fulfill its ambitious mandate. The development of human and operational capacity of the HOO will amount to little unless it is coupled with substantial reform of the legislation meant to provide “teeth” to its mandate. The Afghan government has not invested the HOO with the appropriate authority or support to make it an effective oversight institution. An emerging body of opinion among some international partners is that the international community has not engaged the Afghan government in a political process to press for meaningful reform of the HOO. International efforts for capacity development of the HOO have indeed benefited the HOO in the first year of operations. However, the international community, and the U.S. government in particular, need to improve coordination of its efforts and to demonstrate a more focused commitment as well as a greater sense of urgency toward the HOO’s success.

If the HOO is to succeed in its task to oversee and coordinate the National Anti-Corruption Strategy for Afghanistan, it must operate with clear and enhanced mechanisms of enforcement, investigation, and authority to support its daily responsibilities. It must benefit from organizational and external

(budgetary) independence and take steps to ensure personal independence. Finally, the HOO must develop and monitor the fulfillment of a clear set of performance benchmarks in conjunction with international partners.

RECOMMENDATIONS

SIGAR has developed the following five recommendations in order to address the issues identified in this report.

To help ensure the effective adoption and implementation of reform measures, SIGAR recommends that the U.S. Ambassador to Afghanistan, in consultation with USAID, the HOO, and international partners:

- Determine conditions on which to base future assistance, including the enactment of mutually agreeable legislative reforms based on key principles to enhance HOO's authority and independence, and the establishment by the HOO of measureable performance benchmarks.

To remedy an impairment of personal independence on the part of HOO leadership, SIGAR recommends that the U.S. Ambassador to Afghanistan, through appropriate diplomatic channels including the Joint Coordination and Monitoring Board:

- Urge the HOO Director General and Deputy Director General to either resign from their presidential advisory positions or, alternatively, resign from their HOO positions.

To provide leadership to the U.S. Government assistance effort for the HOO, SIGAR recommends that the U.S. Ambassador to Afghanistan:

- Designate an agency or individual to oversee assistance to the HOO, both in terms of institutional capacity building and legislative reform, in conjunction with international partners.

To support the HOO in meeting performance benchmarks, SIGAR recommends that the U.S. Ambassador to Afghanistan:

- Ensure that the designated agency or individual oversee the appointment of high-level advisors, such as judges or anti-corruption specialists, to be embedded at the HOO in order to provide sustained counsel, mentoring, and strategic advice to HOO leadership.

In order to improve coordination and avoid duplication of effort and assistance to the HOO among U.S. and international donors, SIGAR recommends that the U.S. Ambassador to Afghanistan:

- Engage the international community to reinvigorate international donor coordination efforts, perhaps under the auspices of the United Nations Assistance Mission in Afghanistan.

COMMENTS

The U.S. Embassy Kabul and the USAID Mission in Afghanistan provided joint written comments on a draft of this report. The comments are included in appendix II of this report. In their response, they expressed joint concurrence with the report's findings and recommendations. The U.S. Embassy Kabul and USAID Mission indicated their support for efforts to develop accountable and effective institutions across the Afghan government, as articulated in the draft anticorruption strategy currently under review in Washington. According to the Embassy's Coordinating Director for Development and Economic Affairs and Acting USAID Mission Director, that strategy envisions a substantial transformation of the HOO along the lines recommended by the SIGAR report. In its written response, the U.S. Embassy Kabul and USAID Mission indicated strong support for each of the recommendations in the draft report and outlined actions that it had already taken, or which it planned to take, in response to those recommendations. The U.S. Embassy Kabul and USAID Mission in Afghanistan also provided technical comments which SIGAR has incorporated into this report, as appropriate.

SIGAR also provided a draft of this report to the HOO for review and comment, but the HOO did not provide any written comments.

APPENDIX I: SCOPE AND METHODOLOGY

This report discusses the results of the Office of the Special Inspector General for Afghanistan Reconstruction's review of U.S. and other donor efforts to strengthen the capability of Afghanistan's High Office of Oversight (HOO) to oversee the implementation of Afghanistan's anti-corruption strategy.

To identify assistance provided by the United States and other donors to strengthen the institutional development of the HOO, we reviewed documentation from and conducted interviews with responsible officials at the U.S. Embassy-Kabul, including officials from the U.S. Departments of State and Justice, as well as the U.S. Agency for International Development. We also interviewed international and non-governmental providers and coordinators of assistance to the HOO, including the UN Office of Drugs and Crime, the UN Development Program, the UN Assistance Mission in Afghanistan, the Asia Foundation, the United Kingdom's Department for International Development, and the Government of Norway.

To assess the capabilities and performance of the HOO in fulfilling its mandate, we reviewed relevant U.S., Afghan, and international laws, conventions, standards, and development strategies. We conducted interviews with HOO leadership, management and advisory staff, including the Director General and Deputy Director General of the HOO, and advisors and heads of eight HOO departments and an international consultant embedded with the HOO.

To assess the effectiveness of U.S. assistance to the HOO, we utilized information obtained through the documents and interviews described above and developed conclusions based on that evidence. After identifying gaps in the HOO's legislative framework and operational shortcomings, we compared those findings with the provision of U.S. assistance to determine whether that assistance might effectively assist the HOO in filling those gaps and overcoming the shortcomings.

This report is part of a series of SIGAR audits addressing U.S. efforts to combat corruption and strengthen the rule of law. We conducted work in Kabul, Afghanistan, and Washington, D.C. from September to November 2009 in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. The audit was conducted by the Office of the Special Inspector General for Afghanistan Reconstruction under the authority of Public Law No. 110-181, and the Inspector General Act of 1978, as amended.

APPENDIX II: COMMENTS FROM U.S. EMBASSY-KABUL AND USAID/AFGHANISTAN



*Embassy of the United States of America
Kabul, Afghanistan*

December 5, 2009

**UNCLASSIFIED
INFORMATION MEMORANDUM**

TO: John Brummet, Assistant Inspector General for Audits
Special Inspector General for Afghanistan Reconstruction

FROM: CDDEA – Ambassador E. Anthony Wayne *(signature)*
Acting USAID Mission Director Rebecca Black *(signature)*

SUBJECT: SIGAR Audit-10-2 High Office of Oversight

The U.S. Embassy welcomes the comprehensive draft report by the Special Investigator General for Afghanistan Reconstruction (SIGAR) on its audit of Afghanistan's High Office of Oversight (HOO) of the Implementation of the Anticorruption Strategy. (Acting AID Mission Director Rebecca Black concurs on these comments.) We appreciate the opportunity to comment on its findings and recommendations. In addition to the Embassy's general response to the recommendations of the draft audit report, as well as some additional background information, detailed responses to each recommendation are included, and technical comments are attached. The technical comments may be removed from the Embassy's official reply if the comments are addressed in the final report.

The Embassy concurs with the report's findings regarding the weaknesses of the HOO's legislative framework. Independence is a prerequisite to providing effective oversight. After the Paris Conference of 2008, the Embassy determined that because the international community had insisted on the establishment of an anticorruption body, it would be appropriate to provide limited support, despite these weaknesses. The Embassy was also concerned that the very new institution could be overwhelmed by too much assistance, provided too quickly, along with burgeoning expectations that might have followed in the wake of extensive assistance.

Anticorruption commissions around the world are rarely successful substitutes for effective, transparent, and accountable judicial, law enforcement, and governance institutions. The High Office of Oversight – indeed, any specialized anticorruption commission – is just one part of the broader institutional architecture required for an effective anticorruption regime. This architecture includes the Anti-Corruption Unit of the Attorney General's Office, the Anti-Corruption Tribunal, the Major Crimes Task Force, the Supreme Court, the Civil Service Commission, and the Ministry of Finance's auditing division, among others.

The Embassy supports efforts to develop accountable and effective institutions across the Afghan government, as articulated in the draft anticorruption strategy currently under review in Washington. The strategy envisions a substantial transformation of the HOO along the lines recommended by the SIGAR report. U.S. assistance is already mobilized in many of the areas

covered in the draft strategy, and support for an independent and strengthened anticorruption authority is an important part of the Embassy's ongoing assistance planning.

The Embassy has intensified efforts with the Afghan government to address the shortcomings of the HOO organic law and resolve other concerns. We recognize the SIGAR audit team obtained information from all sources including through several meetings within the Embassy and with the international community in preparation for this report. The Embassy welcomes SIGAR's endorsement of the principles articulated in those discussions.

SIGAR Report Recommendations and U.S. Embassy Response

The Embassy strongly supports each recommendation of the draft report and is pleased to provide detailed responses to each.

Recommendation: To ensure effective adoption and implementation of reform measures, SIGAR recommends that the U.S. Ambassador to Afghanistan, in conjunction with USAID, the HOO, and international partners:

- determine mutually agreeable conditions on which to base future assistance; including the enactment of legislative reform based on key principles to enhance HOO's authority and independence, and the establishment by the HOO of measureable performance benchmarks.

Embassy response: The Embassy concurs with this recommendation. By April 2010, the Embassy will develop such mutually agreeable conditions as part of the dialogue that is being initiated with the Afghan government on further revision to the HOO law and overall improvement of its anticorruption performance.

Recommendation: To remedy an impairment of personal independence on the part of HOO leadership, SIGAR recommends that the U.S. Ambassador to Afghanistan:

- urge the HOO Director General and Deputy Director General to either resign from their presidential advisory positions or, alternatively, resign from their HOO positions.

Embassy response: The Embassy concurs with this recommendation. The Embassy agrees that the current situation with regard to the dual positions of the Director-General and Deputy Director-General impairs the independence of these positions and is not in keeping with international best practices. As background, the unique challenges of fighting corruption in Afghanistan affected the initial consideration of this issue. The decision-makers believed that the close connection between the HOO leaders and the President might help get the anticorruption effort off the ground.

By December 31, 2009, the U.S. Ambassador or his designee will include this issue in at least one meeting in the ongoing dialogue noted above.

As a point of clarification, the two incumbents of these positions receive *one* salary per person, not two. USAID's program through The Asia Foundation provides a supplement to the

government salary each receives, as has been the practice for many high officials over the past years of U.S. engagement in Afghanistan.

Recommendation: To provide leadership to the U.S. Government assistance effort for the HOO, SIGAR recommends that the U.S. Ambassador to Afghanistan:

- designate an agency or individual to oversee assistance to the HOO, both in terms of institutional capacity building and legislative reform in conjunction with international partners.

Embassy response: The Embassy concurs with the need for coordination of assistance to the HOO, as well as for all anticorruption assistance in Afghanistan. U.S. support for the HOO has been coordinated by the Embassy's Rule of Law Office (ROL), which has overall responsibility for coordination of U.S. anticorruption efforts in Afghanistan. The former director of the ROL Office was significantly engaged with the HOO until his departure in September 2009, and the Office has led current discussions within the Embassy and with the international community to address the shortcomings of HOO's organic law. Most decisions regarding U.S. support for the HOO require significant consultation throughout the Embassy community. For example, USAID's funding through The Asia Foundation was significantly slowed during the 2009 election period by consensus of USAID, the Rule of Law Office, and the Embassy Elections Team, due to the concern that the HOO's lack of independence would result in its activities unduly benefiting one competitor in the election. Regarding financial oversight, careful monitoring of USG funds to the HOO has been maintained by the program manager for the USAID Asia Foundation program.

To mark the Embassy's increased focus on anti-corruption issues, by December 31, 2009, the U.S. Ambassador will formally designate the Rule of Law Office as coordinator for anti-corruption assistance, including assistance to the HOO.

Recommendation: To ensure that mutually agreed performance benchmarks are met, SIGAR recommends that the designated agency or individual:

- oversee the appointment of high-level advisors, such as judges or anti-corruption specialists, to be embedded at the HOO in order to provide sustained counsel, mentoring, and strategic advice to HOO leadership.

Embassy response: The Embassy concurs with the recommendation. As part of the action in the response above, the Rule of Law Office will work closely with USAID, Department of Justice, international donors and other relevant stakeholders to coordinate the provision of advisors and mentors, as well as other assistance, to the HOO.

Recommendation: In order to avoid duplication of effort and assistance to the HOO among U.S. and international donors, SIGAR recommends that the U.S. Ambassador to Afghanistan:

- attempt to reinvigorate international donor coordination efforts, perhaps under the auspices of UNAMA.

Embassy response: The Embassy concurs with this recommendation. The Rule of Law Office, USAID and DOJ are already working with the international community to re-establish a

coordination mechanism for anticorruption assistance, including assistance to the HOO. Planning for an anticorruption coordinating conference in February 2010 is underway, and one objective of this conference will be the establishment of a new anticorruption coordinating mechanism.

Attachment:

Annex - Technical Comments

(This report was conducted under audit project code SIGAR-011A).

SIGAR's Mission

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

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

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