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TABLE OF CONTENTS

Background	2
U.S.-Funded Counter-Narcotics Detention Facility May Not Be Utilized As Intended	3
Conclusions	4
Recommendation	4
Comments	5
Appendix I: Scope and Methodology	6
Appendix II: Comments from the United States Embassy Kabul	7

Abbreviation

SIGAR	Special Inspector General for Afghanistan Reconstruction
INL	Bureau of International Narcotics and Law Enforcement Affairs



OFFICE OF THE SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION

September 30, 2009

The Honorable Karl W. Eikenberry
U.S. Ambassador to Afghanistan

Ambassador Eikenberry:

Last month SIGAR issued a report discussing delays in the construction of a new detention facility at the \$11 million U.S.-funded Counter-Narcotics Justice Center in Kabul, Afghanistan. The Center is a secure facility that houses Afghanistan's Criminal Justice Task Force, consisting of Afghan prosecutors and investigators, and Central Narcotics Tribunal, which has exclusive nationwide jurisdiction over significant narcotics cases.¹ We recommended expediting the construction of the new detention facility in order to accommodate additional drug-related detainees. During the course of the audit, we identified a separate but related issue warranting action.

SIGAR is concerned that the current detention facility at the Center may not be utilized as intended. Specifically, during a July 2009 site visit to the Center, SIGAR auditors noted that all the detention cells were occupied by low-profile detainees, whereas, according to State and Justice Department officials, the Center was built with the intention of housing mid- and high-profile drug traffickers. Because it was filled with low-profile detainees, the Center did not have any available detention cells to hold mid- and high-profile drug traffickers. Further, SIGAR is concerned that the new detention facility, once constructed, may also become filled with low-profile prisoners, rather than the high-value targets for whom the Center was designed. This could have a negative effect on the ability of the Criminal Justice Task Force to investigate major narcotics offenders and the Central Narcotics Tribunal to prosecute them. In commenting on a draft of this report, Justice and State officials stated that procedures are in place to handle high-volume criminals on a case-by-case basis. However, these procedures have not been formalized or documented.

Consequently, we recommend that the U.S. Ambassador to Afghanistan work with appropriate U.S. and Afghan officials to formalize and document procedures to ensure that current and future detention facilities at the Counter-Narcotics Justice Center are utilized on a priority basis with regard to mid- and high-value detainees. This could include a review as to whether the threshold for referring drug-related cases to the Central Narcotics Tribunal for adjudication should be raised to help ensure that more detention cells at the Center are available for mid- and high-value detainees. Our observations are

¹ See SIGAR Audit-09-04, *Actions Needed to Resolve Construction Delays at the Counter-Narcotics Justice Center*, August 27, 2009.

based on the review of documents from and interviews with officials from the State Department's Bureau of International Narcotics and Law Enforcement Affairs and the Department of Justice in Washington, DC, and in Kabul, Afghanistan, and a site visit to the Center in July 2009. Our work was conducted during July and August 2009 in accordance with generally accepted government auditing standards. A discussion of our scope and methodology is in Appendix I.

BACKGROUND

A major goal of the Afghanistan National Development Strategy (ANDS) is to eliminate the narcotics industry, which remains a formidable threat to the people and state of Afghanistan, the region and beyond. One of the benchmarks under the ANDS is that the Afghan Government will increase the number of arrests and prosecutions of drug traffickers and corrupt officials.

To assist the Afghan Government in these efforts, the United States recently completed construction of the first phase of an \$11 million Counter-Narcotics Justice Center to support ongoing narcotics interdiction efforts by the Afghan Government. The Center is a dedicated, secure facility constructed by the U.S. Army Corps of Engineers that provides a centralized location for the Afghan Government to detain and prosecute major narcotics detainees. It houses Afghanistan's Central Narcotics Tribunal, which has exclusive nationwide jurisdiction over significant narcotics cases, and the Criminal Justice Task Force consisting of Afghan prosecutors and investigators who receive mentoring by Department of Justice advisors.

The Center, which consists of a detention building, courthouse, offices for judges and prosecutors, and related support facilities, became fully operational in May 2009. The detention building contains 28 cells that can accommodate a total of 56 prisoners with two prisoners per cell. The courthouse includes courtrooms for primary and appellate courts and chambers that accommodate 14 judges—7 for the primary court, including a chief judge, and 7 for the appellate court, including a chief judge. There are also offices for 35 investigators and 30 prosecutors. Located near the Kabul International Airport, the Center will receive two years of operations and maintenance support from the State Department.

A second phase of construction for the Center was to include the design and construction of an additional 176-bed detention facility. In August 2009, SIGAR issued an audit report that addressed delays in the construction of the additional detention facility.² That report included recommendations for the State Department's Bureau of International Narcotics and Law Enforcement Affairs to expedite the construction of the additional detention facility and related utility upgrades in order to accommodate a high demand for detaining drug-related prisoners.

² See SIGAR Audit-09-04.

U.S.-FUNDED COUNTER-NARCOTICS DETENTION FACILITY MAY NOT BE UTILIZED AS INTENDED

During a site visit to the Center in July 2009, SIGAR auditors observed that, although the Center had only been fully operational for three months, its existing detention cells were already filled to capacity. All 28 detention cells were occupied—27 cells held two prisoners and one cell held one prisoner, for a total of 55 prisoners. Because of the high demand for detaining prisoners with narcotics-related charges, and because construction of the new detention building had been delayed, detention center officials were considering putting four prisoners in each cell. Meanwhile, excess prisoners were being sent to another detention center in Kabul.

According to officials from the State Department's Bureau of International Narcotics and Law Enforcement Affairs (INL) and the Justice Department's Criminal Division, the Center was built with the intention of housing mid- and high-profile drug traffickers. A threshold was established for determining which narcotics-related cases should be referred to the Central Narcotics Tribunal for adjudication.³ However, when asked about the type of prisoners being detained, the Afghan commander of the detention center indicated that the Center only held those charged as low-profile drug carriers. Due to the large number of low-profile detainees being held, the Center had no detention cells available to hold mid- and high-profile drug traffickers, as of July 2009. In response to a draft of this report, Justice Department officials noted that, as of September 25, 2009, the Center is currently housing three high-value criminals and has housed several other important targets in the past.

INL officials stated that the Center's existing detention center has been almost entirely filled with low-profile drug criminals who present little threat to Afghan society and, in these officials' opinion, are not particularly useful sources of information about extensive drug operations. However, according to Justice Department officials, working with low-level drug traffickers is a common method for reaching targets of higher-value. These officials also cited the utility of the sentence reduction provision in Article 41 of the Afghan Counter Narcotics Law, in which many low-level traffickers have provided useful information about other higher-value targets.⁴ According to these officials, several Article 41 reductions have been granted in the last year because of information provided by arrestees.

Further, INL officials indicated that, because of substantial overcrowding at Ministry of Justice and Ministry of Interior detention centers in Kabul, the new detention facility at the Counter-Narcotics Justice Center would also likely become overcrowded with low-profile detainees who might be better suited for housing at other detention centers. This has left few if any cells available for mid- and high-profile drug criminals. According to INL officials, the Center has no written procedures for ensuring the availability of detention cells at the Center for mid- and high-profile drug traffickers—for example, to transfer lower-level detainees to other facilities should the need arise to house mid- and high-value

³ The Counter Narcotics Law enacted pursuant to Article 7 of the Constitution of Afghanistan gives the Central Narcotics Tribunal exclusive jurisdiction over cases involving more than 2 kilograms of heroin, morphine or cocaine, more than 10 kilograms of opium and more than 50 kilograms of hashish or precursor chemicals.

⁴ Article 41 of the Counter Narcotics Law provides for a reduction in sentence of up to 50 percent for any defendant who cooperates with the government.

detainees. In addition, according to Justice Department officials, the Kabul Detention Center, which now houses the overflow of detainees, is inappropriate for high- or even medium-value targets because of a lack of security, close contact between co-conspirator detainees, and the potential for inappropriate influences over guards and other personnel.

In response to a draft of this report, Justice Department officials indicated that the level of traffic has allowed detainees to be handled on a case-by-case basis and that there has been no trouble housing high-value detainees coming through the Center. According to Justice Department and INL officials, no high-value detainees have been turned away from the existing detention facilities and some high-value detainees have been successfully prosecuted at the Center. According to these officials, in the event that a high-value detainee arrives at the Center and there is insufficient room to house that person, a joint assessment is made by the Afghan prosecution, investigators, and Central Prison Department—in conjunction with their respective mentors—whether adjustments should be made and whether lower-value detainees occupying needed cells at the Center should be sent to the Kabul detention center.

CONCLUSIONS

The conduct of swift and effective investigations and prosecutions of criminals depends upon good access to the detainees for the investigators and prosecutors. If major narcotics offenders are not actually present at the Counter-Narcotics Justice Center, it becomes more difficult for the Criminal Justice Task Force to investigate them and the Central Narcotics Tribunal to prosecute them in a successful manner. Substantial overcrowding at detention centers in Kabul and the potential solution to house overflow mid- and high-value drug criminals at the Kabul Detention Center present risk to the effective investigation and prosecution of mid- and high-profile drug criminals in Afghanistan. With the construction of additional detention facilities at the Center, the potential infusion of more U.S. troops in drug-producing regions of Afghanistan, as well as an expected increase in operations by the U.S. Drug Enforcement Agency throughout the country, the level of detained drug offenders is likely to increase accordingly. An increase in drug offenders will make the formalization of detainee procedures even more important. However, these procedures have not been formalized or documented.

RECOMMENDATION

To better ensure that the Counter-Narcotics Justice Center is utilized as intended, we recommend that the U.S. Ambassador to Afghanistan work with appropriate U.S. and Afghan officials to formalize and document procedures to ensure that the detention facilities at the Counter-Narcotics Justice Center are utilized on a priority basis with regard to mid- and high-value detainees. This could include a review as to whether the threshold for referring drug-related cases to the Central Narcotics Tribunal for adjudication is being effectively used and whether that threshold should be raised to help ensure that more detention cells at the Center are available for mid- and high-value detainees.

COMMENTS

The United States Embassy in Kabul provided written comments on a draft of this report, which is included in appendix II. Officials from the Justice Department and State Department's Bureau of International Narcotics and Law Enforcement Affairs at the U.S. Embassy Kabul also provided technical comments on a draft of this report, which we incorporated in this report, as appropriate.

The United States Embassy in Kabul concurred with the recommendation that evaluation procedures for detainees at the Counter-Narcotics Justice Center should be formalized. The Embassy's Coordinating Director for Development and Economic Affairs stated that, based on SIGAR's recommendation, they are in the process of formalizing evaluation procedures conducted by Afghan police investigators, prosecution, and Central Prison Directorate command, in conjunction with their respective mentors.

If you have any questions about this report, please contact me at (703) 602-3812 or john.brummet@sigar.mil.



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

Appendix I: Scope and Methodology

During the course of the audit work we conducted and reported on in August 2009 regarding the construction of an additional detention facility at the Counter-Narcotics Justice Center in Kabul, Afghanistan, we identified a separate but related issue warranting action.⁵ This letter is a part of a series of SIGAR audits addressing U.S. efforts to deter corruption and strengthen the rule of law.

Our observations in this report are based on the review of documents from and interviews with officials from the State Department's Bureau of International Narcotics and Law Enforcement Affairs and the Department of Justice in Washington, DC, and in Kabul, Afghanistan. Our work was conducted during July and August 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusion based on our audit objectives. The audit that resulted in the observations in this report was conducted by the Office of the Special Inspector General for Afghanistan Reconstruction under the authority of Public Law 110-181, and the Inspector General Act of 1978, as amended.

⁵ See SIGAR Audit-09-04.

Appendix II: Comments from the United States Embassy Kabul



Embassy of the United States of America

*Kabul, Afghanistan
September 30, 2009*

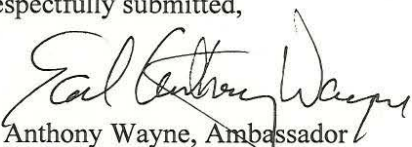
Mr. John Brummet
Assistant Inspector General for Audits
Office of the Special Inspector General for Afghanistan Reconstruction
2221 S. Clark Street
Arlington, VA 22202

Dear Mr. Brummet:

The recommendation of the SIGAR Report Audit 09-7, i.e., to ensure that the detention facilities at the CNJC are utilized on a priority basis with regard to mid- and high-value detainees, is a very good one. Shortly after opening the facility, all 56 beds at the CNJC were fully occupied. Current procedures call for evaluation of detainees on a case-by-case basis and so far there has been no difficulty housing the mid- and high-value targets that have been brought to the facility. This evaluation is conducted by the police investigators (in conjunction with their DOJ and Norwegian police mentors), the prosecution (with their DOJ and UK mentors), and the Central Prison Directorate command (in conjunction with their CSSP mentors). We agree that these evaluation procedures should be formalized, and we are in the process of doing so, based upon the SIGAR recommendation.

We concur with SIGAR's proposed revisions to the draft report and believe that the new title will aptly describe the critical content of the revised document.

Respectfully submitted,


E. Anthony Wayne, Ambassador
Coordinating Director for Development
and Economic Affairs

(This report was conducted under the audit project code SIGAR-007A).

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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- U.S. fax: +1-703-604-0983

Public Affairs**Public Affairs Officer**

- Phone: 703-602-8742
 - Email: PublicAffairs@sigar.mil
 - Mail: SIGAR Public Affairs
400 Army Navy Drive
Arlington, VA 22202
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