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United States Department of State  
and the Broadcasting Board of Governors  
Office of Inspector General

# Report of Inspection

## Rule-of-Law Programs in Afghanistan

Report Number ISP-I-08-09, January 2008

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## KEY JUDGMENTS

Advancing the rule of law (ROL) is a global objective of the Department of State. Secretary Rice has said, “The advance of freedom and the success of democracy and the flourishing of human potential all depend on governments that honor and enforce the rule of law.”<sup>1</sup> That is particularly critical in Afghanistan where there is a direct connection between the lack of a workable system of governance and the national security of the United States. The absence of a modern, functional government sustains the Taliban and Al-Qaeda and encourages the rapid growth of the opium trade. Confidence that the government can provide a fair and effective justice system is an important element in convincing war-battered Afghans to build their future in a democratic system rather than reverting to one dominated by terrorists, warlords and narcotics traffickers.

- Without ROL the country cannot progress no matter what contributions are made by outsiders. There are no quick solutions. Implementing ROL requires a commitment by Afghan and foreign authorities to long-term effort and cooperation.
- Afghanistan’s formal civil code judicial system, like its frail police, corrections, and educational institutions, was destroyed in 30 years of conflict. Most Afghans only have confidence in, and prefer to use, the different systems of dispute resolution of their particular tribe or ethnicity, sometimes interwoven with Islamic law. These, too, have been weakened by war and instability. Neither the government of the Islamic Republic of Afghanistan nor western ROL innovators has adequately addressed the balance between the formal and informal systems.
- Afghan public confidence in formal ROL structure is unlikely to improve without a significant reduction in the level of corruption in the country. Both the government of Afghanistan and the donor community need to demonstrate a greater commitment to fighting corruption at all levels.
- Many past ROL coordination failures have been addressed with support from the previous ambassador and the deputy chief of mission (DCM), who created a senior ROL coordinator position. This position is where all U.S. agencies in Afghanistan, the kaleidoscopic international donor community, and the major legal institutions of the Afghan justice sector now know that they can turn for information, communication, and guidance.

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<sup>1</sup> Quoted from Secretary of State Condoleezza Rice’s remarks at the American Bar Association’s Rule of Law Symposium, Capital Hilton, Washington, DC, November 9, 2005.

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- Bureaucratic coordination on ROL issues has greatly improved but is a daunting task involving multiple participants with very different capacities and goals. The continuous turnover of U.S. government staff and the conflicting priorities among even U.S. government entities, in the context of the desperate straits of the Afghan justice sector, indicate that the challenges of the ROL coordinator will only continue to grow. Thus the position continues to require strong chief of mission support.
- The many U.S. efforts to support ROL in Afghanistan are laudable for their professionalism and tenacity, but it is often not clear how, or even if, ROL efforts are being measured for success, and when the intense international attention wanes, whether these projects can be sustained.
- The U.S. government, through several agencies, is funding many programs related to ROL. This inspection team found no indication that the funds are being used improperly. However, no one source seems to have a clear picture of the scope of U.S. expenditure in this field.

The inspection took place in Washington, DC, between July 20 and September 27, 2007, and in Kabul, Afghanistan, between October 1 and 25, 2007.<sup>2</sup> In Afghanistan, the inspection team interviewed officers of all embassy sections and civilian and military agencies working in the ROL arena, including the ROL coordination office of the Combined Joint Task Force - 82<sup>nd</sup> Airborne (CJTF-82) at Bagram, the Wardak provincial government center, and the provincial reconstruction team (PRT) and regional training center in Jalalabad. The team also met with, and reviewed the documents of international organizations and donor nation representatives, U.S. government justice sector contractors, and Afghan judicial leaders and scholars who are familiar with ROL programs. Appendix A gives a general illustration of the relationships among the major U.S. mission elements with ROL programs. Ambassador David Newton (team leader), Frank Ward (deputy team leader), Jay Dehmlow, Erich Hart, and Katherine Schultz conducted the inspection.

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<sup>2</sup> The focus of this inspection was Department of State Rule of Law programs, but this was done in the context of USAID, DOD and international donor activities in this field. While the OIG team consulted with each of these institutions, it did not inspect their programs.

## CONTEXT

Afghanistan's history has been marked by repeated foreign invasions, persistent conflict among tribes and ethnic groups, and an economy that did well when it rose merely to the subsistence level. For the past century, a series of central governments (with the notable exception of the Taliban and Marxist governments) have tried to introduce a formal legal order based on a combination of European civil code and Sharia (Islamic) law. In the course of more than 30 years of war and revolution, however, the impact of such modernization has been minimal and confused.

Since coalition forces routed the Taliban in late 2001 and helped a new Afghan regime take shape, Afghanistan has made remarkable strides towards creating an emerging democracy. The UN-sponsored Bonn Conference in December 2001 won international support to restore stability and governance to Afghanistan. On December 22, 2001, Hamid Karzai took charge in Kabul as Chairman of the Afghan Interim Authority, a coalition of Afghan groups supported by foreign coalition members and international bodies, and in 2002 he became president of the Transitional Islamic State of Afghanistan. On January 4, 2004, a national grand council (Loya Jirgah) ratified a constitution, and by October of that year, Karzai was elected president under that constitution. By the end of 2005, Afghanistan had an elected parliament. In October 2006 leadership of security forces shifted from the coalition of Operation Enduring Freedom to the North Atlantic Treaty Organization's (NATO) International Security Assistance Force (ISAF).

On the negative side and despite the political progress, the Taliban and Al-Qaeda have continued an insurgency. At the same time, lack of governmental control in the countryside and the poverty pervasive in much of Afghanistan have contributed to the country becoming the world's largest producer of opium, controlled by many powerful and well-armed drug lords. Internationally Afghanistan has complicated relations with Pakistan, Iran, and its formerly Soviet Central Asian neighbors. Complicating its military and development efforts, while the United States provides the bulk of the foreign forces and foreign development assistance to the Karzai government, it is not alone, and must work in partnership with the NATO countries and other allies, the United Nations, nongovernmental organizations (NGO), and other bilateral and multilateral donor nations.

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Afghans and donor nation officials identified justice sector reform as an integral part of establishing a stable government. With many competing demands, however, the actual implementation of ROL assistance had been slow. The agreements that were made at the Bonn Conference called for a judicial reform commission. Italy accepted the role as lead donor nation in judicial administration and the penal system. The United Kingdom was to be the lead in counternarcotics and Germany in police training. The concept of lead nations was dropped at the 2006 London Conference, but these three nations still are seen as key partners in these fields. The United States assisted in all ROL areas from the beginning, but expanded funding greatly in 2003 when the efforts of the other donors seemed too slow and limited in scope.

Six years after the fall of the Taliban, the formal legal code is still understood by very few Afghans, including its judicial and legal officers. The infrastructure of the system of law enforcement, courts, and corrections had been eradicated and is just beginning to reemerge in urban centers with international donor support. What most Afghans know as law are the different systems of dispute resolution of their particular tribe or ethnicity, sometimes, as noted, interwoven with Islamic law as interpreted by local mullahs. The familiar, reliable traditional or tribal system generally has the people's confidence, but often abuses human rights and has been corrupted by decades of invasion, civil war, warlordism, insurgency, and narcotics trafficking. There is a real need for continuing international support for ROL efforts to include these informal systems.

By 2007, there were hundreds of direct-hire and contract staff engaged in different aspects of the loosely defined ROL initiative as part of the U.S. civilian and military initiatives in Afghanistan. Although large sums of money are being directed towards efforts in Afghanistan that contribute to creating a just and secure society, it is not always clear which of these funds can be described as purely "Rule of Law." The total U.S. government assistance to Afghanistan from FY 2001 to FY 2007 was over \$22.8 billion. The Bureau of International Narcotics and Law Enforcement Affairs (INL) is the principal vehicle for funding the Embassy's justice programs, counternarcotics, and police training programs, but the United States Agency for International Development (USAID) funds justice programs, as does the Department of Defense (DOD) which provides INL with \$300 million to \$400 million annually for police training. ROL funding has increased over the years, but the \$68 million proposed in the President's budget for FY 2008 pales in comparison to counternarcotics efforts estimated at an annual \$500 million.

ROL programs are funded by continuing resolutions and supplemental appropriations. From FY 2002 through FY 2007, INL and USAID have spent \$110.4 million on ROL programs. In addition, INL has spent \$48 million on corrections

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programs and \$10 million on counternarcotics justice programs. However, there was no way to determine what the many different elements of DOD (some under direct DOD command, some under NATO), were spending specifically on ROL, but the current military leadership in Afghanistan briefed the team that implementing ROL programs was important to them.

International donors provide substantial financial contributions.<sup>3</sup> In July 2007 the Rome Conference of donors resulted in additional pledges of \$98 million, including \$15 million from the U.S. government. Prior international pledges totaled \$82 million.<sup>4</sup> Unfortunately for the Afghans, despite this generosity, bilateral and nongovernmental donors often do not know what the others are doing. Every entity interviewed by the Office of Inspector General (OIG) team, as well as Afghans it queried, recognized this problem.

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<sup>3</sup>Other significant new pledges, from the ten countries represented at the conference, included Canada with \$30 million and Italy with \$13.6 million.

<sup>4</sup>In addition international donors have contributed \$218 million for police programs. The total for new pledges, old pledges, and police contributions is \$447.8 million.



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## THE CHALLENGES OF COORDINATION OF RULE OF LAW PROGRAMS

There is no single universal definition of ROL. OIG has described ROL to include “the entire legal complex of a modern state – from a constitution and a legislature to courts, judges, police, prisons, due process procedures, a commercial code and anticorruption mechanisms.”<sup>5</sup> This is a broad and inclusive description. The first five goal papers of the FY 2009 Mission Strategic Plan for Afghanistan include performance indicators directly related to issues that fall under this description broken down as elements of security, counternarcotics, governance, justice reform, and economic growth. Previous OIG inspection teams have focused upon the extensive U.S. government efforts in police training and counternarcotics in Afghanistan.<sup>6</sup> This inspection addressed the aspects of ROL not covered in those reports. In the process, the inspection team found that since 2002 the different civilian and military agencies engaged in aspects of ROL development have approached their tasks with different goals, methodologies, and timelines, and have often been unaware of each other’s efforts.

### COMPLEXITIES OF INTERNATIONAL AND INTERAGENCY COOPERATION

Coordination of the many ROL initiatives being executed in Afghanistan is a challenge on many levels. The international donors recognized, early, the importance of working together in Afghanistan, as evidenced by the rapid calling of the December 2001 Bonn Conference, and the division of sectoral responsibilities among lead nations. Their on-the-ground coordination since then has been less successful. The international community has improved its coordination over the past year, as Italy and the United Nations Assistance Mission in Afghanistan established the International Coordination Group for Justice Reform (ICGJR) which brings the donors together at formal meetings.

<sup>5</sup>Department of State, OIG Report No. ISP-IQO-06-01. Inspection of Rule-of-Law Programs, Embassy Baghdad, October 2005, p. 5.

<sup>6</sup>Department of State, OIG Report No. ISP-IQO-07-07, Department of State-Department of Defense, Interagency Assessment of Afghanistan Police Training and Readiness, November 2006. Department of State, OIG Report No. ISP-I-07-34: Department of State-Department of Defense, Interagency Assessment of the Counternarcotics Program in Afghanistan, July 2007.

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Rule of law activities in Afghanistan not only involve a large number of different nationalities, but even within the U.S. government, there are multiple agencies and programs funded by the same agency. The U.S. military has been training the Afghan National Police as well as the Afghan National Army. It plays an important role in the counternarcotics effort, and Judge Advocate General officers have worked with civilian as well as military courts. In the PRTs, military as well as civilian staff address issues of governance, which include the justice sector.<sup>7</sup> USAID has the U.S. government lead in civil and commercial law, and is the primary conduit for U.S. government assistance to the Supreme Court. It has built courthouses, helped to educate judicial officials, organized and widely distributed written law codes, and funded human rights programs. The Drug Enforcement Administration's efforts include improving the quality of Counter Narcotics Police of Afghanistan by establishing an Afghan capacity to interdict drugs. The State Department, through INL, works with the Afghan Ministry of Justice (MOJ), Supreme Court, and Attorney General's Office (AGO) to develop a modern criminal justice sector, including a correctional system with habitable prisons and trained staff. The Department of Justice (DOJ) does not have the authority to do international programs on its own, but, with INL funding, takes an active role in Afghanistan, particularly in assistance to the Afghan Criminal Justice Task Force and the AGO's anticorruption efforts.

So many different international partners and U.S. government agencies were working with so many different grantees and contractors that by 2004 serious questions were raised regarding how well the U.S. government and its allies were communicating with one another, coordinating their efforts, and monitoring their expenditures. In Washington, interagency coordination was addressed in 2007 by having the Principal Deputy Assistant Secretary of INL serve as the U.S. Coordinator for Counternarcotics and Justice Reform in Afghanistan. His Afghanistan Justice Coordination Committee shares information among civilian and military elements with justice-related programs, "deconflicts" their programs, and feeds into senior interagency decisionmaking bodies dealing with Afghanistan.

At the embassy in Kabul, according to individuals both in and out of the U.S. government, by late 2005, internal U.S. coordination meetings on ROL were best characterized as shouting matches between representatives of different agencies. Meetings between the donors were described as meetings of lawyers, each with a specific brief that allowed no flexibility and with no interest in sharing information.

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<sup>7</sup> CJTF-82 and its subordinate task forces work directly through PRTs with their Afghan contract attorneys to ensure implementation of ROL initiatives at the district level. For example, they have widely distributed USAID's compilation of Afghan legal codes.

## THE U.S. MISSION RULE OF LAW COORDINATOR

It became evident that a single authoritative “honest broker” was needed to sort out the chaos. In November 2005, the previous ambassador determined that the embassy required an ROL coordinator who would report directly to the DCM and himself. The proposal was approved and the first ROL coordinator took the position in early 2006 for three months. There was then a four month gap before the present coordinator arrived in October 2006, but the efforts of the first ROL coordinator, a retired ambassador, laid the foundation for the position within the U.S. mission and in the international and Afghan communities. The present incumbent is a senior DOJ officer, funded by INL, reporting to the DCM and the Ambassador. A deputy coordinator position was permanently filled in 2007 and a position for a locally employed office manager-translator has been advertised. Both these positions and future incumbents of the coordinator position will be regular embassy, not INL-funded, positions.

The current ROL coordinator has long experience as a DOJ prosecutor and has held positions in the National Security Council, the Treasury Department, and INL at the Department of State. He has defused tensions between agencies, improved the information flow within the U.S. government ROL community and organized and chaired a weekly Special Committee on ROL meeting, which brings together representatives from both the civilian and military communities. He is the primary voice of the U.S. government in Kabul in international donor meetings dealing with ROL matters and with government of Afghanistan officials on matters with judicial sector implications.

Given his professional background as a prosecutor with DOJ, the incumbent coordinator has been able to assist other sections of the mission and the government of Afghanistan with legal questions and to serve as the line supervisor of the INL-funded DOJ officers working at the embassy. That arrangement is reasonable given the coordinator’s DOJ rank and experience. However, the position will be filled in the future by State Department Foreign Service officers. Shortly after this inspection, the position was announced as a regular Foreign Service opening, was bid upon and an officer selected to succeed the current coordinator. If the DOJ office were to continue to be supervised by that State Department officer, it would leave the DOJ as the only federal agency at the mission without a direct reporting link to the front office. It would also raise questions about the role of the coordinator as honest broker among the different offices with ROL programs. If a future coordinator were to supervise one of these offices, in this case DOJ, he would not be seen as completely neutral.

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There remain questions, both in Washington and in Kabul, about the future of the ROL coordinator position. In the past four months, a new Ambassador and DCM have arrived and are examining embassy staffing and organization. One proposal would shift the ROL coordinator responsibility to the narcotics affairs section (the INL office); another would incorporate it in the DOJ section. The inspection team believes that any such change would be unwise. One of the strengths of the current coordinator is his perceived neutrality. Non-State agencies indicated that a coordinator with no line authority over any agency or program is seen as an honest broker in representing them and reporting to the front office. Many of these agencies' officers stated that the incumbent ROL coordinator was a fair conveyer of their opinions in solving policy disagreements. Several interlocutors suggested that support from the front office for the ROL coordinator has not been as apparent as it had been under the previous front office team. The acting DCM in the months prior to this inspection had not participated in ROL meetings. That may simply be a result of the staffing gaps before the arrival of a new front office team and the process of reorganizing a complex mission, but the absence of visible participation was noted by the interagency ROL community.

**Recommendation 1:** Embassy Kabul, in coordination with the Bureau of Human Resources and the Bureau of South and Central Asian Affairs, should retain the rule-of-law coordinator position, filled by a Senior Foreign Service officer, or alternatively a federal official of comparable rank and experience, reporting directly to the deputy chief of mission. (Action: Embassy Kabul, in coordination with HR and SCA)

**Recommendation 2:** Embassy Kabul should demonstrate its commitment to the role of the rule-of-law coordinator, through a means such as having the deputy chief of mission attend at least one meeting of the Special Committee on Rule of Law each month. (Action Embassy Kabul)

**Recommendation 3:** Embassy Kabul should have the senior officer of the embassy Department of Justice section report directly to the deputy chief of mission with the arrival of the new rule-of-law coordinator. (Action: Embassy Kabul)

## POLICE-JUSTICE SECTOR COORDINATION

The potentially largest gap in ROL coordination is where the work of the police converges with that of the prosecutors and judges. In Afghanistan there is a long history of lack of cooperation between the police and the prosecutors. The U.S. military has expended considerable effort and resources since 2005 in training and equipping the Afghan police. The embassy political-military section has been the embassy's liaison to those efforts and to the different U.S. military elements in Afghanistan. One political-military section officer has police training as his portfolio. Active U.S. support for prosecutors and judges came later and with less funding, a disparity in support that could add to the police-prosecutor divide. Although the ROL coordinator addresses police-prosecutor tensions from the justice side, he has no direct involvement in the police training effort. The political-military officer's presence at the Special Committee on ROL meetings is important to keeping the group informed about this key portfolio. Intermittent participation of the political-military section in the Special Committee on ROL meetings in the months prior to this inspection limited the coordinator's ability to fully coordinate U.S. government-wide ROL programming.

At the time of this inspection, important discussions were taking place on the role of the police in Afghanistan as well as the police-prosecutor relationship. Both civilian and military U.S. agencies are involved in these issues. A number of interviewees expressed concern about the lack of clarity as to the role of Afghanistan's police forces as law enforcement agents versus a paramilitary role in counterinsurgency operations. There is currently a full-scale review of the police training process underway and a new, nationwide district-based training model planned by the Combined Security Transition Command – Afghanistan. This is an excellent opportunity to better synchronize the law enforcement and justice sector programs. On October 17, 2007, the AGO-Ministry of Interior Commission began to meet formally to minimize conflict and ensure police-prosecutor collaboration. As the Combined Security Transition Command – Afghanistan moves into its innovative, large-scale Focused District Development plan to improve police training, an INL contractor plans to have one of its staff working as a liaison with the military to assure mutual awareness of police-prosecutor issues. But the fact remains that the Focused District Development program will result in a significant disparity between police and other justice sector capacities, which is a source of concern to a number of the OIG team's interlocutors.

**Recommendation 4:** Embassy Kabul should require that the embassy officer with the police training portfolio, currently with the political-military section, attend the meetings of the Special Committee on Rule of Law on a regular basis to provide better insight into the way the U.S. military-led police training program deals with law enforcement issues and interfaces with the justice sector. (Action: Embassy Kabul)

## CIVILIAN-MILITARY RULE OF LAW COORDINATION

While coordination of ROL efforts has improved, there is room for improvement, particularly with the U.S. military. U.S. combat forces are led by CJTF-82 at Bagram, comprised largely of two brigades of the 82<sup>nd</sup> Airborne Division from Fort Bragg, North Carolina, and the 173<sup>rd</sup> Independent Airborne Brigade from Italy. CJTF-82 is broken down into three brigade-sized task forces, which together form Regional Command East and, operating from several locations, are responsible for a dozen provinces in that troubled region.

CJTF-82 determined, before its arrival in Afghanistan, that ROL was to be one of its civil affairs priorities. Each task force commander is committed to implementing an ROL program during the deployment. This has placed understandable pressure on the commanders and their staff legal officers to initiate ROL efforts, such as training programs for Afghan justice officials. Those training programs have not always been coordinated with the other ROL actors, either in the U.S. government or the government of Afghanistan. This was due, in part, to the fact that the task force implementers were not aware of other programs or, if aware, did not understand the reasons for the comparatively slower pace of the civilian programs or the sensitivities of the host country participants and other international donors.

During the OIG visit, civilian and military ROL officials began to meet to improve this situation, but some tensions remain. The task force commanders are under pressure to implement programs and obtain visible results during the span of their deployment, and because they work independently, their units can execute programs quickly. Their need to act rapidly and their tendency to operate unilaterally conflicts with the efforts of the U.S. mission, the government of Afghanistan, and the international community, who after several years of uncoordinated, sometimes unsustainable or redundant ROL projects, have only recently agreed on the need to plan and execute programs under a common strategy.

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Without effective coordination, there can be duplication or working at cross purposes. Afghan justice sector officials in Kabul take a personal interest in which persons from their staffs receive training. They want a role in decisions involving their subordinates and may have reason not to delegate those decisions to their provincial or district representatives. For example, a minister may believe that certain provincial staff members are corrupt and want to screen a list of proposed trainees for that purpose.

The embassy ROL coordinator has committed both to other donors and to the government of Afghanistan to have U.S. government ROL initiatives, especially training programs, implemented in a coordinated, transparent, and consistent manner. Unfortunately just as the various civilian donors arrived at this understanding, one of the task forces executed a training program that, while otherwise well-conceived, violated the principle of a coordinated international training initiative. At the time of this inspection, the need for a coordinated U.S. government effort was just beginning to be conveyed to the brigade-level commanders in the field. The inspection team believes that the Special Committee on ROL, chaired by the ROL coordinator, is the most logical clearinghouse for all U.S. government ROL-related training proposals. Military officers have rightly responded that clearer objectives and strategic planning from the civilian side are needed if coordination is to work.

Even if all differences are worked out with CJTF-82, the ROL implementers will have to communicate the same understandings and lessons learned about interagency cooperation to the 101<sup>st</sup> Airborne Division, which will replace the 82<sup>nd</sup> in early 2008. The new task force is expected to continue an emphasis on ROL, and, while it has initiated some dialogue with CJTF-82, communications with the embassy ROL coordinator have not yet begun. USAID and the embassy are establishing contact with the 101<sup>st</sup>. Such communications would provide an essential overview of the ROL situation and help educate the successor task force commanders and Judge Advocate General officers to the sensitivities of the donor and government of Afghanistan players. It would also provide a possible set of guidelines for the kinds of activities that are most needed and would work best in CJTF-101's and future task forces' areas of operation.

**Recommendation 5:** Embassy Kabul should coordinate with the Bureau of International Narcotics and Law Enforcement Affairs, the Bureau of South and Central Asian Affairs, Central Command, and the Combined Joint Task Force-82's rule-of-law coordinator to have the Embassy rule-of-law coordinator and Washington officers expert in these programs conduct in-depth briefings at the 101<sup>st</sup> Airborne Division headquarters and successor commands for incoming task force commanders and Judge Advocate General officers on rule-of-law programs and sensitivities prior to their deployment. (Action: Embassy Kabul)



**Recommendation 6:** Embassy Kabul should require the rule-of-law coordinator to develop and implement with other U.S. government training stakeholders a standardized notification of proposed training to be used and shared by all U.S. civilian, military, and contract training organizations. (Action: Embassy Kabul)

## NEED FOR A STRATEGIC PLAN

The FY 2009 Mission Strategic Plan for Afghanistan said “Cooperation within the international community should make it possible to begin drawing down the Embassy Rule of Law Office.” That assertion is contrary to the views of virtually every person or group interviewed by the OIG team. The capacity of the Afghan justice sector is so low that most observers, including government of Afghanistan officials, talk about ROL development as being a “generational” program, at best.

After almost five years of donor activities in Afghanistan, the baseline knowledge about the formal justice sector outside of Kabul remains fairly rudimentary. There are questions about the actual number and qualifications of prosecutors and corrections officials, the number of cases that are going through the courts, and the true conditions of the facilities of the justice sector. One of the outcomes of the Rome Conference is an agreement to implement the U.S.-proposed Provincial Justice Coordination Mechanism, which will place international ROL coordinators in approximately nine provinces. The United Nations Assistance Mission in Afghanistan will oversee the program. Each coordinator will have regional responsibilities. The provincial coordinators’ first task will be to conduct a nationwide ROL assessment to provide an agreed-upon baseline for the government of Afghanistan, and the donor community to implement new programs. As the planning for this assessment goes forward, it will be important to factor in work that has already been done by CJTF-82 and another assessment being planned by ISAF and ROL assessment tools such as the one developed by INL.

The Embassy ROL coordinator’s priorities over the past year have been to strengthen internal U.S. government coordination, provide a single point of coordination for other donors, and win the confidence of government of Afghanistan authorities. In the OIG team’s assessment, he has done an excellent job at all three tasks in a difficult environment. Identifying the different participants in the ROL community and exchanging information about their programs has underlined the need to develop a more strategic U.S. government approach to ROL. In the past, U.S. government agencies and other donors, with little interaction, have approached

ROL programming in an ad hoc manner. The host country and the donor community appear to be ready for a more comprehensive approach. In October 2007, the government of Afghanistan released drafts of its National Justice Sector Strategy and its National Justice Programme, both called for by the Rome Conference. The U.S. government and other donors have not developed longer range strategic plans that correspond to the planning framework developed by the government of Afghanistan and incorporate performance measures focused on the desired outcomes for the Justice Sector. Such a longer range U.S. government plan would be a valuable tool for budget and program planners in Washington and would provide a degree of continuity at an embassy with almost 100 percent turnover every year.

**Recommendation 7:** Embassy Kabul should direct the rule-of-law coordinator to convene a series of meetings of the Special Committee on the Rule of Law participants, to include representatives from Combined Joint Task Force – 82 Rule of Law office, to develop a five year strategic plan for the rule-of-law sector to correspond with the Afghan government’s Justice Sector Strategy and implementation plan. The plan should incorporate specific outcome-oriented performance targets. Elements of the rule-of-law plan should be incorporated into the Mission Strategic Plan and the Foreign Assistance Operational Plan. (Action: Embassy Kabul)

## THE JUSTICE SECTOR – FORMAL AND INFORMAL

The government in Kabul, with considerable international assistance, is concentrating on rebuilding Afghanistan’s formal justice system. Nearly 30 years of civil war have left both the physical and human infrastructure of the justice system gravely damaged. All the elements of the formal system are not available country-wide. The continuing insurgency makes it extremely dangerous for government of Afghanistan officials, particularly those in the justice sector, to establish themselves in many districts outside of provincial capitals. Further, there is little awareness or understanding of the formal legal system anywhere in Afghanistan. Finally, most Afghans view the formal court system as slow, inconsistent, opaque, costly, and corrupt.<sup>8</sup> In fact all interlocutors estimated that 80 to 90 percent of disputes are settled informally in local councils (jirgas or shuras).<sup>9</sup> The informal justice system is a famil-

<sup>8</sup> According to the *Afghanistan Human Development Report 2007*, produced by the Center for Policy and Human Development (p.72), the judiciary is perceived as the most corrupt institution within Afghanistan.

<sup>9</sup> There is, however, a glimmer of hope that attitudes may be changing. The Asia Foundation recently released a poll that said 46 percent of Afghans said in 2006 that they had gone to state courts to resolve disputes that they could not resolve on their own, up from 20.1 percent in 2005. The Asia Foundation: *Afghanistan 2007: A Survey of the Afghan People*, October 2007; p. 71.

iar pillar of traditional culture that emphasizes social harmony over the state system's emphasis on guilt or innocence. Interpretation of Islamic law by imperfectly educated mullahs varies in different parts of the country.

Despite the overwhelming predominance of the informal system, ROL donors have devoted very few resources to it. ISAF military commanders in the field have worked with local jirgas as have a small number of NGOs; however those numbers are very limited. There are several reasons for this: (1) the needs of the formal system are so great that its Afghan and foreign supporters are reluctant to share scarce resources with traditional institutions; (2) the continuing violation of internationally accepted standards of human rights, particularly the rights of women, by the traditional institutions embarrasses and offends the Afghan and international donors addressing ROL; (3) there is no one "informal system," but rather many customary patterns that vary according to tribe or region; and (4) civil war, invasion, the imposition of Taliban interpretation of Sharia law, and warlordism have undermined the society that sustained informal justice.<sup>10</sup>

It was repeated by almost all interlocutors that the expansion of the formal sector to all of Afghanistan is a long-term process and that for many years a significant percent of the Afghan population will continue to depend upon, even demand, that their problems be handled by the informal sector. Experts interviewed during this inspection emphasized that the mediation mechanisms of the informal tradition are closer, cheaper, faster, and more comprehensible to the average Afghan, but they acknowledge these mechanisms' limitations and problems.<sup>11</sup> This issue was highlighted in a number of the documents prepared for the Rome Conference, and both the draft Justice Sector Strategy and the National Justice Programme include discussions on linking the two systems. The MOJ, working closely with the United States Institute of Peace, funded by INL, is drafting a policy to bring about that linkage. The Minister of Justice told OIG team members that drafting the policy should be easy, but that implementing it will be very difficult. The goal is to take advantage of the positive elements of the informal system in order to increase all citizens' access to justice, and to proscribe the negative parts, which too often result in human rights violations. There is broad agreement among Afghan and international ROL stakeholders that the informal sector should not have jurisdiction over criminal cases but that there is room in family, civil, and commercial law to defer to traditional councils.

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<sup>10</sup> Neamat Nojumi, Dyan Mazurana, Elizabeth Stites, *Afghanistan's System of Justice: Formal, Traditional, and Customary*, Feinstein International Famine Center, Youth and Community Program, Tufts University, June 2004, p. 35-36.

<sup>11</sup> Asia Foundation, *Survey*, p. 73.

According to the MOJ, the United States Institute of Peace, Afghan law professors, and others, the informal system may be a good forum to settle land and building disputes.

**Recommendation 8:** Embassy Kabul, after consultation with the Afghan government, the State Department, U.S. Agency for International Development, and the international donors should develop a policy position on the desirability of linking parts of the informal sector with the formal justice system. (Action: Embassy Kabul)

## BUREAU OF INTERNATIONAL NARCOTICS AND LAW ENFORCEMENT AFFAIRS PROGRAMS: JUSTICE SECTOR SUPPORT PROGRAM AND CORRECTIONS SYSTEM SUPPORT PROGRAM

INL is strengthening ROL in Afghanistan with its Justice Sector Support Program (JSSP) and Corrections System Support Program (CSSP). INL also supports ROL by funding other efforts such as DOJ's Senior Federal Prosecutors Program, a University of Washington grant program to send Afghan prosecutors to America, an Afghan Women's Judges Association grant program, and a grant to the United States Institute of Peace to explore the possibility of forging links between the formal and informal systems of law in Afghanistan.

The JSSP team has a great deal of experience, particularly in criminal law, and according to government of Afghanistan officials, has developed a thorough program providing effective assistance to government of Afghanistan ministries and the AGO. The JSSP management team supervises four sections including the Attorney General's Office Assistance Section (AGOAS), Access to Justice and Integration Section (AJIS), Ministry of Justice Assistance Section (MOJAS), and the JSSP-Regional Section (JSSP-R).

Since 2005, CSSP has been split off from JSSP to focus on the long-ignored prisons and correctional officers of the country. Training, equipping, capacity building, construction of appropriate facilities, rank and pay reform, and increasing transparency in the system are some of the aspects of this program.

These programs are described in detail in Appendix B. Until precise measures of effectiveness are implemented, there is, at least, anecdotal evidence that these programs are having an impact. The government of Afghanistan's Attorney General

told the inspection team that without the support of the U.S. government he would not have been able to achieve all that he had done over the past 14 months.

## PUBLIC DIPLOMACY

One of the serious weaknesses of the justice sector is the lack of public awareness of the operations of the formal justice system, the benefits it can bring them, and their rights under that system. This contributes to the lack of confidence in the formal system. The OIG team had heard concerns in Washington that there might not be adequate, culturally appropriate, or bureaucratically coordinated programs to educate both the legal community and the general Afghan populace about the operation of the system, and the rights of citizens.

The inspection team found that many earlier shortcomings have been addressed. The USAID Afghanistan Rule of Law Program (ARoLP) has researched, translated, and published compilations of all Afghan laws and printed and distributed thousands of copies for judges, prosecutors, lawyers, and educators. To promote popular access to justice, ARoLP has produced 21 radio and television programs, billboards, illustrated informational pamphlets in comic book format, and bumper stickers addressing many aspects of citizens' rights under the new constitution and explaining how to benefit from and be protected by the judicial system. INL and the U.S. military also produce media products and assist USAID and each other in distributing the materials. The embassy public affairs section had infrequently participated in these programs in the past but, with new leadership and the growing spirit of cooperation in the mission, has become more involved in these outreach efforts.

In the course of this inspection, mission ROL officers, working with the new public affairs section team, began to participate in a mission-wide public diplomacy meeting, and ROL was given a place on the new public diplomacy web site for mission staff.

## OUTREACH TO THE PROVINCES

Whenever Afghanistan has had a functioning government, the rulers have striven to centralize power and administration in Kabul. That remains true under the new constitution. Most of the international assistance efforts are also centralized in Kabul. The ROL programs had gotten off to a slow start and most of the training

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and mentoring programs have operated primarily in Kabul. Part of the reason for that was the continuing insurgency and deteriorating security situation. During the course of this inspection, the OIG team observed several programs that had established themselves sufficiently in Kabul to be able to make serious efforts to reach the provinces where 90 percent of Afghans live. Planned interagency outreach to the provinces has now begun:

- The maturation of the PRTs is an important factor in making such outreach possible. There are as many models of PRTs as the provinces in which they function. They operate under ISAF authority, so many are led by NATO allies who have different approaches to their work. A typical U.S. PRT is commanded by a military officer who may have 40 uniformed personnel for security, another 40 executing civil affairs programs, and several civilians such as a State political, economic, or public diplomacy officer, a USAID officer or two, and perhaps a U.S. Department of Agriculture officer. At the time of this writing, there were 25 PRTs in Afghanistan's 34 provinces. The State Department had officers in 20 PRTs: 11 under U.S. military commanders, and nine under other coalition nation commanders. USAID has 22 field program officers at 20 PRTs. In recent months, PRT commanders have assisted USAID's ARoLP to distribute its materials throughout their areas of operation. Nevertheless, the inspection team noted that State Department PRT officers were often not aware of the scope of ROL potential in their work.
- In late 2007, the Combined Security Transition Command – Afghanistan will have an impact on several provinces when it executes its Focused District Development program which will have the full complement of Afghan National Police in a district (subdivision of a province) sent to a central training facility for several weeks. Meanwhile a trained mobile police force will be moved to the district to execute the responsibilities of the local force being trained.
- The role of the Regional Training Centers is expanding beyond police training. INL's JSSP and CSSP projects have initiated training programs there, and USAID's ARoLP will be using the centers to do more programs for provincial judges. These are excellent initiatives and hopefully there will be more.

This expansion into the provinces is a positive and much-needed initiative. It will require coordination among the various international donors and the U.S. civilian and military authorities. Keeping Afghan central government and provincial authorities informed is essential. Within the U.S. mission in Kabul, there needs to be close coor-

dination among the offices that have contractors implementing their programs in the field. A first step would be to make sure that civilians in the PRTs are thoroughly familiar with ROL activities including the Provincial Justice Coordination Mechanism.

**Recommendation 9:** Embassy Kabul should require, prior to beginning service in a provincial reconstruction team, that officers consult with the rule-of-law coordinator, the narcotics affairs section, the Justice Sector Support Program, the Corrections System Support Program, the U.S. Agency for International Development Agency governance office, the Afghanistan Rule of Law Program and the rule-of-law coordinators at the Combined Security Transition Command - Afghanistan and the Combined Joint Task Force-82 on programs relevant to his or her region. (Action: Embassy Kabul)

## CORRUPTION

Corruption is a major problem that pervades every aspect of public life in Afghanistan. As the Afghan Attorney General told the OIG team, “Corruption is the mother of all crimes in Afghanistan.” The Interim Afghan National Development Strategy states, “Corruption undermines the accountability of government, eroding public trust and reducing the legitimacy of state institutions. Corruption is a means for Illegal Armed Groups to maintain their hold on power structures at the provincial and district levels, preventing the consolidation of state authority and rule of law...” Another interlocutor said that “corruption in the justice sector will be the death of us.” Integrity Watch Afghanistan released a survey report on March 19, 2007, that stated that Afghan citizens believe the court system is the society’s most corrupt institution, followed by the administrative branches of the government, mainly in the Ministry of Interior, the municipalities, the Ministry of Finance, and the National Security Directorate. Corruption in the Afghan National Police is widespread and has undermined the legitimacy and utility of the police in the eyes of the Afghan population.<sup>12</sup>

The government of Afghanistan has committed itself to a number of anticorruption benchmarks under the Afghanistan Compact, including ratification of the United Nations Convention Against Corruption. Government of Afghanistan institutions and political will are still weak, however, and both assistance and outside political pressure will be required to wage a successful fight against corruption.

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<sup>12</sup> *Afghanistan Human Development Report, 2007*; p.84

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There are multiple factors contributing to the high level of corruption. One of the most prominent is the inadequate government of Afghanistan salary structure. Judges are the most highly paid officials in the justice system (if one excludes the better-paid police from that definition). Judges' salaries, however, average only \$100 a month, while monthly apartment rents in Kabul are well over \$200. Prosecutors and corrections officials earn even less. The salaries of the Army and the police have been addressed in earlier reforms, but judges, prosecutors, and other essential ROL officials have been left behind.

Pay reform was a principal focus of the Rome Conference. Participants agreed to create a trust fund to supplement justice officials' salaries as the government of Afghanistan implements pay and rank reform in the MOJ, the Supreme Court, and the Attorney General's Office. Reforms will also incorporate lessons learned in the implementation of payroll systems, which reduce the ability of corrupt supervisors and paymasters to skim funds before employees are paid.

Another important reform is the drafting and implementation of ethics codes so that employees, private attorneys, and Afghan citizens understand what is acceptable behavior. The Supreme Court has approved a judicial code, and all judges will be required to attend training programs on it by the end of 2008. Similar codes are being developed for prosecutors and corrections officers. There is also a proposal to create an "independent" Afghan Bar Association, which will draft a code of ethics coupled with sanctions for its members.

Today, it is relatively easy to evade any ethical code in Afghanistan because none of the justice sector institutions have consistent, transparent records systems. Papers get lost, accidentally and intentionally, as they are transported between the police and the prosecutors, between the prosecutors and the courts, and from the courts to the prisons. This problem is being addressed, and again the court system is in the lead. U.S. government contractors have assisted both the prosecutors and the prison officials who each expect to introduce compatible records systems by early 2008. The government of Afghanistan, with advice from U.S. government contractors, wisely decided to initially make the records systems paper based (because of Afghanistan's lack of capacity) and built the systems so they will be easily convertible to electronic systems in the future. Implementing those systems nationwide and making sure that they are understood and used correctly will take some time, but getting them in place will make it just that much harder for corrupt individuals to operate openly.

The U.S. incorporates anticorruption elements in many of its programs. Appendix C details the anticorruption efforts being made by INL and USAID in various ROL programs. This is a good beginning, but fighting corruption in Afghanistan is a



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daunting prospect. The efforts by U.S. agencies and their contractors in the ROL sector are positive innovations, but only address part of the problem of corruption that pervades all elements of Afghan governance. Absent a concerted and coordinated anticorruption effort by the U.S. government together with the entire donor community and support from key Afghan leaders, critical programs like the ROL initiative will be undermined. But before American implementers press the international community to coordinate a common front, there needs to be a common strategy for the U.S. mission elements, with American civilian and military initiatives informed of each other's efforts.

**Recommendation 10:** Embassy Kabul should develop and implement a coordinated anticorruption strategy to include all of the mission's rule-of-law institutions. (Action: Embassy Kabul)

## PROGRAM MANAGEMENT

### OVERVIEW

ROL funding is difficult to identify and to quantify. Funding for the ROL program in Afghanistan is split among several U.S. government agencies. There is no one place where all funds spent specifically on ROL can be identified. ROL program funding is often multiyear and is combined with other programs such as police training and correction facilities, which often make identification of specific costs difficult. ROL programs are also funded by the United Nations, other bilateral donors, and a variety of NGOs. The result is that there is currently no way to readily identify ROL funding and subsequently to identify duplicate programs, overlapping programs, or programs conflicting with each other. Afghans, while seemingly eager to embrace ROL, are confused by the variety of programs implemented specifically by INL, USAID, and the U.S. military units in Afghanistan.

### FUNDING SOURCES

The OIG team used documents from several different agencies to try to identify what is being spent by the U.S. government specifically on ROL in Afghanistan. Funding figures from one source may not match other Department or agency funding matrices identifying funds that are ROL specific. INL is working to identify program-specific funds for budget requirements to balance all programs in justice and corrections allocations.<sup>13</sup> INL and USAID programs identified during the OIG review could amount to a total commitment from FY 2002 – FY 2007 of \$110.4 million<sup>14</sup>. Funding pledged to date by the international donors, other than the United States, is reported to be \$164.8 million.<sup>15</sup> The commitment of funds by the U.S.

<sup>13</sup> Funding mechanisms, such as multiyear and supplemental funds, make tracking funds and programs by fiscal year difficult. Programs prior to FY 2006-07 often overlapped particularly with overhead and staffing costs.

<sup>14</sup> The figure includes the following: \$64 million for INL ROL programs and \$46.4 million for USAID ROL programs.

<sup>15</sup> International donors pledges include \$83 million in new international donor pledges from the July 2007 Rome Conference, and former commitments by international donors of \$81.8 million from the EU. Not included are donations by the United States and donations for police programs.

government and international donors is approximately \$275.4<sup>16</sup> million for both the present and future. The inspectors did not review internal controls on funds or contracts that would require a full audit, rather than the planned inspection, but there was no apparent indication of malfeasance in either area. Specific details of INL, USAID, and DOD programs are in Attachment D.

## National Security Policy Directive-44

The Department of State is responsible for planning and implementing U.S. foreign policy under National Security Policy Directive-44. As the pivotal organization in reconstruction and development assistance, which includes ROL, the Department would logically take the lead in ensuring that funding for justice sector programs is coordinated and transparent. The Office of the Director of Foreign Assistance has taken the lead in developing common definitions and program descriptions to make activities consistently and readily identified. Through Operational Planning, initiated in FY 2007, ROL activities will be identified, coordinated, and evaluated, regardless of implementing agency against common indicators and measures. Funding for ROL programs from other agencies such as DOD can, and should, be included in the Operational Plan so that there can be a fully comprehensive picture.

The scope of this review is limited to the Department of State. However, the OIG team encourages the Office of the Director of Foreign Assistance to reach out to the United Nations and NGOs to coordinate funding mechanisms. A unified summary of what funds are spent on what programs, and in what locations, will assist the Department and the international community to make efficient monetary commitments. As a first step in improving this coordination, the Operation Plan will provide information on funding and programs that international organizations and NGOs are undertaking in the area of ROL.

**Recommendation 11:** The Office of the Director of Foreign Assistance, in coordination with Embassy Kabul and the Bureau of International Narcotics and Law Enforcement Affairs, should draft a plan in coordination with the U.S. Agency for International Development to meet the mandate in National Security Policy Directive-44 by developing a funding matrix to identify all justice sector funds. (Action: F, in coordination with Embassy Kabul and INL)

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<sup>16</sup> INL and USAID funding for ROL specific programs estimated at \$110.6 million and international donor commitments of \$164.8 million, total \$275.4 million.

## FORMAL RECOMMENDATIONS

**Recommendation 1:** Embassy Kabul, in coordination with the Bureau of Human Resources and the Bureau of South and Central Asian Affairs, should retain the rule-of-law coordinator position, filled by a Senior Foreign Service officer, or alternatively a federal official of comparable rank and experience, reporting directly to the deputy chief of mission. (Action: Embassy Kabul, in coordination with HR and SCA)

**Recommendation 2:** Embassy Kabul should demonstrate its commitment to the role of the rule-of-law coordinator, through a means such as having the deputy chief of mission attend at least one meeting of the Special Committee on Rule of Law each month. (Action Embassy Kabul)

**Recommendation 3:** Embassy Kabul should have the senior officer of the embassy Department of Justice section report directly to the deputy chief of mission with the arrival of the new rule-of-law coordinator. (Action: Embassy Kabul)

**Recommendation 4:** Embassy Kabul should require that the embassy officer with the police training portfolio, currently with the political-military section, attend the meetings of the Special Committee on Rule of Law on a regular basis to provide better insight into the way the U.S. military-led police training program deals with law enforcement issues and interfaces with the justice sector. (Action: Embassy Kabul)

**Recommendation 5:** Embassy Kabul should coordinate with the Bureau of International Narcotics and Law Enforcement Affairs, the Bureau of South and Central Asian Affairs, Central Command, and the Combined Joint Task Force-82's rule-of-law coordinator to have the Embassy rule-of-law coordinator and Washington officers expert in these programs conduct in-depth briefings at the 101<sup>st</sup> Airborne Division headquarters and successor commands for incoming task force commanders and Judge Advocate General officers on rule-of-law programs and sensitivities prior to their deployment. (Action: Embassy Kabul)

**Recommendation 6:** Embassy Kabul should require the rule-of-law coordinator to develop and implement with other U.S. government training stakeholders a standardized notification of proposed training to be used and shared by all U.S. civilian, military, and contract training organizations. (Action: Embassy Kabul)

**Recommendation 7:** Embassy Kabul should direct the rule-of-law coordinator to convene a series of meetings of the Special Committee on the Rule of Law participants, to include representatives from Combined Joint Task Force – 82 Rule of Law office, to develop a five year strategic plan for the rule-of-law sector to correspond with the Afghan government’s Justice Sector Strategy and implementation plan. The plan should incorporate specific outcome-oriented performance targets. Elements of the rule-of-law plan should be incorporated into the Mission Strategic Plan and the Foreign Assistance Operational Plan. (Action: Embassy Kabul)

**Recommendation 8:** Embassy Kabul, after consultation with the Afghan government, the State Department, U.S. Agency for International Development, and the international donors should develop a policy position on the desirability of linking parts of the informal sector with the formal justice system. (Action: Embassy Kabul)

**Recommendation 9:** Embassy Kabul should require, prior to beginning service in a provincial reconstruction team, that officers consult with the rule-of-law coordinator, the narcotics affairs section, the Justice Sector Support Program, the Corrections System Support Program, the U.S. Agency for International Development Agency governance office, the Afghanistan Rule of Law Program and the rule-of-law coordinators at the Combined Security Transition Command - Afghanistan and the Combined Joint Task Force-82 on programs relevant to his or her region. (Action: Embassy Kabul)

**Recommendation 10:** Embassy Kabul should develop and implement a coordinated anticorruption strategy to include all of the mission’s rule-of-law institutions. (Action: Embassy Kabul)

**Recommendation 11:** The Office of the Director of Foreign Assistance, in coordination with Embassy Kabul and the Bureau of International Narcotics and Law Enforcement Affairs, should draft a plan in coordination with the U.S. Agency for International Development to meet the mandate in National Security Policy Directive-44 by developing a funding matrix to identify all justice sector funds. (Action: F, in coordination with Embassy Kabul and INL)

PRINCIPAL OFFICIALS

	<b>Name</b>	<b>Arrival Date</b>
Ambassador	William B. Wood	04/07
Deputy Chief of Mission	Richard B. Norland	Departed 06/07
Acting Deputy Chief of Mission	Carol Rodley	06/07 to 10/07
Deputy Chief of Mission	Christopher W. Dell	08/07
Rule of Law Coordinator	Gary J. Peters	10/06
Chiefs of Sections:		
Economics	Frederic W. Maerkle	05/07
Management	John Olson	08/07
INL/Narcotics Affairs Section	James R. Vanlaningham	09/07
Political	Sara A. Rosenberry	08/06
Political Military	Brent R. Hartley	08/07
Provincial Reconstruction	Bruce D. Rogers	07/07
Public Affairs Section	Thomas C. Niblock	08/07
Other Agencies:		
Department of Justice	Robert C. Lunnan	11/06
Drug Enforcement Administration	Vincent M. Balbo	02/07
Federal Aviation Administration	Charles R. Friesenhahn	10/06
Federal Bureau of Investigation	Tony T. Riedlinger	Departed 10/07
USAID – Democracy and Gov’t	Kelley Strickland	07/07
Department of Defense (Rule of Law Coordinators)		
CJTF-82	LTC. Christopher Jacobs	07/07
ISAF	CDR. Robert Morean	07/07
CSTC	CDR. Albert S. Janin	07/07

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ABBREVIATIONS

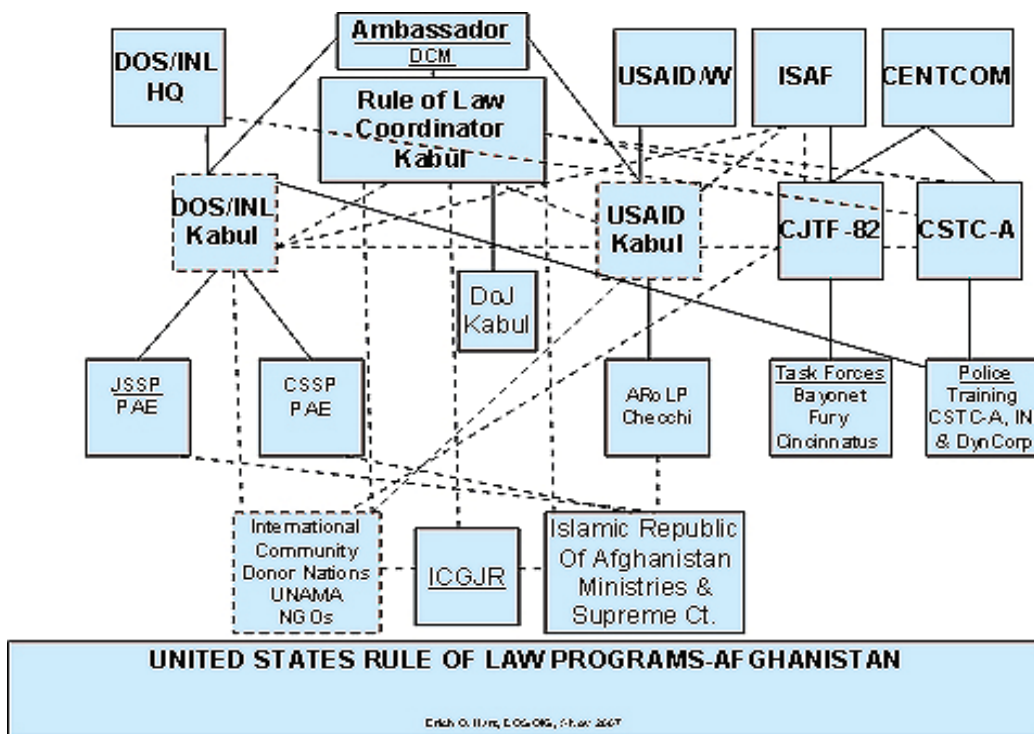
AGO	Attorney General's Office
AGOAS	Attorney General's Office Assistance Section
AJIS	Access to Justice and Integration Section
ARoLP	Afghanistan Rule of Law Project
CENTCOM	Central Command
CJTF-82	Combined Joint Task Force – 82nd Airborne Division
CPD	Corrections Program Department
CSSP	Corrections System Support Program
CSTC-A	Combined Security Transition Command – Afghanistan
DCM	Deputy chief of mission
DOD	Department of Defense
DOJ	Department of Justice
DOS	Department of State
ICGJR	International Coordination Group for Justice Reform
INL	Bureau of International Narcotics and Law Enforcement Affairs
INLTC	Independent National Legal Training Center
ISAF	International Security Assistance Force
JSSP	Justice Sector Support Program
JSSP-	Justice Sector Support Program Regional Section
MOJ	Ministry of Justice
MOJAS	Ministry of Justice Assistance Section
NATO	North Atlantic Treaty Organization
NGO	Nongovernment organizations
OIG	Office of Inspector General
PAE	Pacific Architects & Engineers



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PJC	Provincial Justice Conferences
PRT	Provincial Reconstruction Team
ROL	Rule of Law
UNAMA	UN Assistance Mission in Afghanistan
USAID	U.S. Agency for International Development

**APPENDIX A: DIAGRAM OF RELATIONSHIP OF MAJOR U.S. MISSION RULE OF LAW ELEMENTS**



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## APPENDIX B: DESCRIPTION OF THE JUSTICE SECTOR SUPPORT PROGRAM AND CORRECTIONS SYSTEM SUPPORT PROGRAM

### THE JUSTICE SECTOR SUPPORT PROGRAM

#### The Attorney General's Office Assistance Section

AGOAS has six major initiatives: the Anticorruption Enforcement Project, Training, Police-Prosecution Coordination, Gender Issues, Administrative Reform, and Legal Reform.

While training is a separate initiative, it is also a component of virtually all the other elements. JSSP staff work with U.S. Department of Justice attorney mentors on the anticorruption initiative, which is one of the Attorney General's highest priorities. Another major priority has been the drafting of a new criminal procedures code to replace one developed by Italian advisors three years ago with little government of Afghanistan input. This required collecting the input from the AGO and then assisting the legislative drafting body of the MOJ (Taqnin) to craft the law and move it through the government of Afghanistan bureaucracy. JSSP works with the AGO to develop curriculum for training prosecutors and trains the Afghan trainers. JSSP has been involved with the "Stage" (a French term for the professional training) training program, a 12 month program (nine months theoretical and three months practical). Professors from Kabul University and other Afghans teach the Stage courses. JSSP took the lead in developing a gender justice curriculum. JSSP also provided materials and funding to keep 110 prosecutors in school.

#### The Ministry of Justice Assistance Section

The MOJ has ten directorates with vastly different missions, and JSSP has embedded advisors into five of the most important directorates. MOJAS has a policy and strategy unit that develops institutional strategic plans, particularly those implementing Rome Conference agreements. MOJAS has been assisting MOJ to develop Afghan driven reform plans and provides support to key MOJ directorates. It also assists the Taqnin with legislative drafting. This is a challenging task as the transla-

tion of legal concepts from English into Dari or Pashtu is difficult, and translators with adequate language and legal skills are scarce. MOJAS has assembled a number of law graduates who assist with this effort. MOJAS also works with the Huquq (rights section) on rights protection and alternative dispute resolution. Generally the Huquq manages civil, property and family disputes. MOJAS also advises on government cases and MOJ administration issues.

## Access to Justice and Integration Section

AJIS is particularly important to developing the capacity of defense attorneys. AJIS has done defense assessments to determine needs in Herat, Balkh, Nangarhar, and Konduz provinces. There are very few defense counsels in Afghanistan. One interviewee said that there were no more than 300 and virtually all of them in Kabul. Generally, the accused has no lawyer and simply throws himself on the mercy of the judge. Even if the accused is represented, the judge may not allow the attorney a role in the proceedings. There is no space allotted in existing courthouses for defense attorneys. JSSP is searching for ways to create space for defense attorneys wherever cases are heard. JSSP experts train and mentor Afghans, and work with a group of NGOs (who have international funding) to train more defense attorneys. AJIS sponsors moot courts as a means of training new defense counsel.

The second focus of AJIS is on judicial integration. There are a number of programs, including provincial justice conferences that bring officials from the prosecutors, judges, police, corrections and defense sectors together for several days of training. Six such conferences have been held, and another five are scheduled for FY 2008. This element of the project also provides support for the Independent National Legal Training Center (INLTC), which opened in Kabul in 2007. JSSP is just one U.S. government project working with the INLTC to develop training courses for members of the government of Afghanistan justice sector, both at the basic and advanced levels. A third important element of the integration effort is the development of a prosecutorial case tracking system that will have links to similar systems developed for the courts and the corrections system.

## Justice Sector Support Program-Regional Section

JSSP-R is responsible for regional police-prosecutor training. The police and prosecutors have not historically worked well together each suspicious of the other and convinced the other is corrupt, ignorant of the law, and unwilling to coordinate. This new training program brings provincial police and prosecutors together for nine months, divided into classroom lectures and on-the-job mentoring. Classroom work

focuses on the law, practical exercises to improve investigative skills, and some team building/bonding. The-on-the-job field mentoring reinforces the lessons learned and helps students apply their newly learned skills on live cases. The course also demonstrates the effectiveness of interactive teaching techniques, something few Afghans have been exposed to and hopefully will adopt when they instruct in the future.

JSSP-R has been training and mentoring police and prosecutors in Herat, Nangrahar, and Balkh provinces since Sept 2006. In August 2007, Kunduz was added. The course is housed at regional training centers in those provinces. JSSP provides trainees with copies of relevant laws, treaties, and other reference materials that are lacking in the provinces. The first three provincial classes graduated in August 2007. A second class began in October 2007. JSSP is training Afghans to teach this program as a part of INL's overall sustainability strategy. The OIG team visited the Nangrahar regional training center and received positive feedback on the programs from Afghan interlocutors including the chief prosecutor and the chief of police of the province.

## CORRECTIONS SYSTEM SUPPORT PROGRAM

The CSSP project began in 2005, growing out of the JSSP contract. Both JSSP and CSSP are contracted by INL with Pacific Architects and Engineers. The program now has four focus areas: training, capacity building, infrastructure program management, and the Counter-Narcotics Justice Center development and implementation. (The Counter-Narcotics Justice Center development and implementation was dealt with in the 2006 Joint DOD-Department of State counternarcotics inspection and will not be covered here.)

The Afghan corrections system suffers from the same general problems as every other part of the justice system: poorly trained staff, inadequate pay, crumbling buildings, and poor connections to the other components of the system. One significant difference is that inside its crumbling buildings are thousands of Afghan citizens, most of who are living in conditions that are far below minimum international standards. The corrections system is, as of 2004, part of the MOJ, but when the transfer of responsibility took place many of the staff remained with the Ministry of Interior.

CSSP developed training programs, for new recruits and for existing staff. There is now a fully developed basic curriculum, adopted officially as the national curriculum, which is taught by Afghans and supervised by CSSP staff. All the training has a

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human rights component. The plan's objective is that all corrections offices will have completed the basic course by the end of 2008. The Minister of Justice has determined that completion of the course is a prerequisite for a corrections officer to be included in any pay reform program. Beyond the basic course, CSSP and the MOJ, are working on more advanced courses including noncommissioned officers training, emergency response team training, English language programs, and special training for dealing with female inmates. CSSP has also taken the corrections department leadership on a study tour of corrections facilities in the United States. Much of the training is conducted in the four INL-funded regional training facilities outside of Kabul.

CSSP capacity building addresses the administrative operation of the corrections department. According to the project managers there was some capacity when they arrived, but it was poorly organized. The project has assisted in locating a new administration building, preparing strategic development plans and budgets, preparing vehicle and facilities maintenance programs, and reviving a prison industries component that provides inmates with skills they can use upon release.

The infrastructure component deals with the construction of new corrections facilities. CSSP interlocutors said space is one of the most critical deficiencies. Although there are provincial level corrections facilities in all 34 provinces, half of those facilities are rented, many of them houses converted to prisons. The situation is even worse in the 203 district level centers. CSSP, working with Afghan counterparts, have developed a hybrid prison design that incorporates local construction techniques with western standards. The design has been provided to both U.S. and ISAF military commands who are working with CSSP and government of Afghanistan officials to help in the construction of new facilities.

## APPENDIX C: JUSTICE SECTOR SUPPORT PROGRAM AND CORRECTIONS SYSTEM SUPPORT PROGRAM ANTICORRUPTION PROGRAMS

### JUSTICE SECTOR SUPPORT PROGRAM

The JSSP Statement of Work (paragraph 2.1.7) identifies five anticorruption activities as responsibilities of JSSP's AGOAS. One anticorruption advisor began working in June 2007, and the staffing was completed on October 2 with the addition of a second anticorruption advisor. AGOAS team members are now working actively in all five of the areas outlined in the Statement of Work:

1. *Assist the AGO in developing an anticorruption strategy:* The AGO Strategy Development Group is developing the Afghan National Anticorruption Strategy. The Strategy Development Group created a National Task Force on Anticorruption and invited JSSP/AGOAS to be one of a limited number of international members to advise the Afghan government as it consolidates all ministry-specific anticorruption strategies and develops an action plan for implementation of the newly consolidated strategy. A second draft of the strategy is currently under discussion.
2. *Advise the Attorney General on appropriate mechanisms for carrying out anticorruption prosecutions:* JSSP AGOAS team members are helping the AGO develop dedicated anticorruption units. JSSP advised the Attorney General on the reorganization of the AGO, which includes dedicated anticorruption and financial crimes divisions, and assisted in preparing an initial draft of reorganization legislation. The draft legislation has not been formally submitted to the National Assembly, and may be further modified. (If it is, JSSP will participate in the process of developing such modifications). In addition, JSSP has proposed an alternative short-term solution that would allow for development of an anticorruption unit within the existing structure of the AGO while the reorganization law is pending. This proposal includes the use of "integrity testing," a technique used to identify and apprehend corrupt officials. The proposal was submitted to INL-Kabul in August 2007 and is currently pending approval.



3. *Work with the AGO training department to design effective investigation, prosecution, and anticorruption modules to follow on AGO Stage training for anticorruption prosecutors:* JSSP AGOAS team members have developed a range of anticorruption training materials including a written anticorruption training strategy and curriculum, delivered to INL-Kabul in accordance with the Statement of Work in July 2007.<sup>17</sup> JSSP has further developed the written curriculum overview into a multiweek, specialized training course for the AGO in Kabul. This curriculum is a portable training module, and JSSP has the ability to modify it for use in regional instructional settings. The curriculum is currently being taught in weekly instructional segments at the AGO's Stage training course.
4. *Work with other U.S. agencies and international partners as appropriate to train the cadre of dedicated anticorruption prosecutors:* JSSP is working with DOJ to deliver an anticorruption curriculum to be part of the Stage training for all newly recruited Afghan prosecutors. JSSP is working with DOS/INL-Kabul to attempt to arrange for a team of Federal Bureau of Investigation instructors to offer instruction during portions of the course.
5. *Mentor the anticorruption prosecutors to target, build, and prosecute cases according to the anticorruption strategy and in accordance with all applicable Afghan laws and procedures:* Direct mentoring of corruption cases in Kabul has begun slowly. The AGO's anticorruption efforts are spread across several departments, and much recent anticorruption activity has taken place at the regional level. With the newly enhanced team staffing, and Stage training ongoing, mentoring efforts will increase. JSSP has arranged for four AGO prosecutors to attend a financial investigation training program offered by the World Bank and the Financial Transactions and Reports Analysis Center of Afghanistan.<sup>18</sup> The Attorney General has consented to assign these four prosecutors to training their colleagues, with JSSP support upon their return.

In addition to the five categories of direct anticorruption activities listed above, all JSSP teams are working on projects intended to have indirect impact on anticorruption efforts. Those projects are:

1. JSSP's AGOAS team is crafting a Prosecutor Code of Ethics, which will develop professional ethics standards for AGO prosecutors, codify the expected standards of integrity and professionalism for all prosecutors, and establish disciplinary procedures for violations of such standards.

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<sup>17</sup> The Statement of Work paragraph 7.8 calls for JSSP to prepare a written anticorruption training strategy and curriculum as a contract deliverable.

<sup>18</sup> The Financial Transactions and Reports Analysis Center of Afghanistan is the mandatory financial investigative unit within the Afghan National Bank, required by the United Nations Convention Against Corruption.

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2. JSSP's AGOAS team as secretariat for the Ministry of Interior-Attorney General's Office Commission, is working to coordinate police and prosecutor standard operating procedures for criminal investigations.
3. JSSP's MOJAS team is working to update and modernize management practices in the MOJ, which will better equip the Ministry to resist and combat corruption. It is reorganizing the departments of the MOJ to bring them into line with the existing MOJ strategic plan. In conjunction with these efforts, JSSP works to support the MOJ's efforts to participate in the Priority Reform and Restructuring process that is designed to ensure open and transparent civil service hiring practices and improve civil service salaries.
4. JSSP's MOJAS team is working to modernize enforcement of judgment practices and minimize the opportunities for corruption in the enforcement system. The current law invites corruption. The MOJ's Huquq Department is responsible for enforcing judgments, although seizure and sale of assets can involve police and other law enforcement personnel. Current procedures create an incentive for other government ministries to attempt to offer similar "services" whether or not they have the requisite legal authority to do so. JSSP will focus on ensuring that fees collected in enforcement proceedings are limited to the actual cost of the proceedings, thereby eliminating the potential for unregulated expansion of a system that some ministries presently view as a cash cow.
5. JSSP's AJIS team is working to improve transparency and accountability in AGO case tracking and case management procedures. The criminal justice system and integration initiative will improve case tracking and data collection in the AGO by (1) producing a case tracking system for prosecutors; (2) enhancing information sharing within the criminal justice system; and (3) improving the efficiency of case tracking policies and practices. Team members are conducting a detailed study of AGO case management practices and case data at headquarters and provincial offices throughout Afghanistan.
6. JSSP's AJIS team incorporates anticorruption issues in its provincial justice conferences and training programs.<sup>19</sup> Provincial justice conferences are intended to promote coordination among provincial and national justice officials, prioritize ROL reform efforts in a particular province, and identify opportunities for training and capacity building. At the request of the provincial

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19 The Statement of Work paragraph 7.13 calls for JSSP to plan and organize five provincial justice conferences during the current contract year. JSSP is presently in the process of planning provincial justice conferences for Kunduz, Ghazni, Panjshir, Logar, and Nuristan provinces.

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governor, the chief prosecutor, and the chief primary court judge in Bamiyan, the provincial justice conference there will address anticorruption issues. JSSP will include an abbreviated version of the Bamiyan anticorruption training in all future provincial justice training programs.

7. JSSP's AJIS team works with Afghan NGOs and other entities to ensure open and transparent management, and to provide legal and technical advice to the Legal Aid Office of Afghanistan<sup>20</sup> and to the INLTC<sup>21</sup>. Ensuring that law-related organizations practice transparent, ethical management is an effective way of modeling sustainable anticorruption practices to the legal community as a whole.
8. JSSP's regional training teams vet prospective students and ensure that training is offered only to qualified and trustworthy candidates.
9. The JSSP-R teams incorporate extensive anticorruption training and respect for the rights of citizens into their classroom discussions.
10. JSSP provides guidance and support for individual corruption investigations and prosecutions as part of the mentoring phases of its JSSP-R program.
11. JSSP provides legal advice and analysis to Embassy Kabul on matters of substantive Afghan law related to corruption issues helping to inform and coordinate embassy decisionmaking with the goal of ensuring an effective U.S. anticorruption strategy.

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<sup>20</sup> The Legal Aid Office of Afghanistan is receiving financial and technical assistance from international institutions working on ROL programs in Afghanistan. The Legal Aid Office of Afghanistan's Board of Directors will be facing increasing pressures to formalize their operations and adhere to international standards by maintaining a transparent and democratic governing process in conformity with their by-laws. JSSP has assisted in mentoring the board of directors and the Legal Aid Office of Afghanistan's Executive Director in managing a board and transparency in governance.

<sup>21</sup> INLTC is the governmental agency responsible for the enhancement of legal professionalism in Afghanistan. INLTC's role is to coordinate/provide academic and ethics education for the justice sector employees of all Afghanistan's justice sector organizations as well as members of the independent bar association. JSSP's role as Legal Advisor to the INLTC has been to provide governance training and ensure establishment of a corporate structure with rules and responsibilities that promote transparency, independence, a distinction between governance and management, and responsible and ethical resource management.

## CSSP ANTICORRUPTION EFFORTS

In Afghanistan, any records center could also be considered by corrupt officials to be a profit center -- control of records provides an excellent opportunity for making money through the ability to change or destroy them. A more transparent and better records center also decreases others opportunities in the system to be corrupt. As CSSP started the process to help the Corrections Program Department (CPD) roll out the new records management system, a number of CPD staff have been transferred or have departed. CSSP believes that is in part due to their belief that the increased transparency will decrease their opportunities to make money.

CSSP will soon help the Afghans enact a program in which the new records system will be used in conjunction with “case managers” to track both pretrial and sentenced prisoners in the system. Initially, the focus will be on ensuring that all prisoners in detention centers and prisons are held legally. This will help ensure that defendants enter and move through the justice system according to the time limits allowed by law. Besides the many obvious benefits (e.g, improving human rights, ROL, and lessening the inmate population) it will lessen the opportunities for corruption by many justice system actors to include CPD staff, prosecutors, and judges.

The new CPD engineering office is designed (and mentored) to work with MOJ-CPD to develop modern and proper infrastructure planning, contracting, and building processes -- from the Minister of Justice down. In addition to developing the necessary knowledge and skills to operate an effective infrastructure program, it brings transparency to the entire contracting process: a traditional venue for corruption.

## U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT ANTICORRUPTION PROGRAMS

USAID, through the ARoLP, has assisted the Chief Justice of the Afghan Supreme Court to implement a two-prong anticorruption strategy: (a) to seek an increase in judicial salaries; and (b) to promote judicial ethics.

With ARoLP support, the Afghan Supreme Court recently created and adopted a modern code of judicial ethics. ARoLP assisted the Supreme Court to train trainers in the Code and has taken the lead working with other international donors relating to the training of all 1,300 sitting judges in the new Code by the end FY 2008. ARoLP is also providing capacity building and technical assistance to the

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Supreme Court to create an action plan to effectively administer and enforce the new Code in a manner that meets international standards. A copy of the new code will be distributed to each sitting judge as part as the training of judges in the code. Furthermore, USAID funded the creation of standard training materials in the new code for use by all international donors engaged in the training of Afghan judges.

In 2006, the Supreme Court, with USAID support, initiated inspecting provincial courts in each of the country's eight judicial zones. Associate justices of the Supreme Court are responsible for inspections in their respective zones. These inspections include scrutiny for judicial corruption. The OIG team was informed that at least 10 corrupt judicial officers, including judges, had already been identified and punished through this process.

Afghanistan recently enacted a measure to increase the compensation of judges and prosecutors. This law, combined with the potential salary improvements made through the government of Afghanistan's priority reconstruction and reform process and the funds pledged for a trust fund at the Rome Conference, should reduce the financial incentive for official judicial corruption. According to USAID, work on this process is the focus of a European Union project implemented by Adam Smith International.

The Afghan case administration system, funded by USAID, will simplify and standardize court administration procedures. While developed as a case management tool, it will also assist in anticorruption efforts because it will increase transparency and improve access to court information.

There are anticorruption components to the judicial Stage training program. Judicial applicants must meet the requirements of Article 58 of the Law on Judicial Power, Organization and Competence. Among these requirements is a clean criminal record, which presumably would include any convictions related to public integrity. Stage applicants are scrutinized for compliance with these requirements by the Afghan Supreme Court prior to appointment to the Stage training program. After completion of the stage training program, applicants are reviewed by the Afghan Supreme Court and the names of acceptable candidates are nominated to the Office of the President for appointment to the judiciary by presidential decree.

## APPENDIX D: FUNDING OF RULE OF LAW PROGRAMS

### BUREAU OF INTERNATIONAL NARCOTICS AND LAW ENFORCEMENT AFFAIRS

INL's objective, since FY 2004-05, is to develop "institutional capacity building." The ROL contract (JSSP) and reimbursements to DOJ for Assistant United States Attorneys provide training to prosecutors and supports the AGO. Expenditures have increased over the years from a JSSP base contract of \$8 million in FY 2004-05 to \$24.5 million from April 2007 through March 2008. The duration of the contract is from April 21, 2007, to March 24, 2008. It is the final option year and will be re-competed in early 2008 in order to detail specific tasks. The total cost of JSSP from 2004 through contract termination in March 2008 is approximately \$43.2 million. Originally the JSSP (justice support) and CSSP (corrections support) programs were combined. The CSSP from February 2007 to January 2008 is \$22.7 million. However, the size and scope of each has changed resulting in a separate contract modification for each. In 2008 the Department will compete new contracts for both the justice and corrections programs. Since 2002, INL has reimbursed the Department of Justice \$6.2 million for mentoring and training prosecutors and investigators of the Criminal Justice Task Force.

### UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

Program costs overlap and overhead is difficult to allocate, but, in general since 2004, USAID has spent \$46.4 million on ROL justice sector programs. There is an additional \$4 million as yet not allocated to complete the contract through 2008 for ROL. USAID provides training for court administration, legislative reform, access to justice, women's rights, and commercial dispute resolution. Since 2004, two main programs have supported the justice sector. One program constructed 40 court-houses across the country at a cost of approximately \$12.4 million. The second program has to date allocated \$33.5 million for training all levels of the legal profession and developing media and publications for professional use and general public education. The products include: the 17-book codification of core Afghan laws

dating from 1964, in both Dari and Pashtu; an electronic and print gazette of all Afghan laws; television spots, dramas, quizzes, and radio clips on a citizen's legal rights with particular emphasis on women's rights; and a series of comic books to educate the Afghan population in rural areas where literacy is low. In July of 2007 USAID allocated \$500,000 for international judicial training from the participant training fund. The fund is a cross-cutting training fund for USAID programs.

USAID has designated an additional \$4 million to be spent in FY 2008 to develop training and professional publications. At the time of this review, USAID was unsure whether it would be able to spend these funds on ROL or would have to reallocate them to another high priority program. The OIG team believes that any such reallocations away from ROL, for either USAID or INL, would have a significant negative impact on ROL programs that are already relatively small in size.

## DEPARTMENT OF DEFENSE

The U.S. military commanders in Afghanistan are funding projects in the field. Commanders at the provincial and local levels use their Commanders' Emergency Reconstruction Program funds for projects to achieve ROL objectives. CJTF-82 provides training to prosecutors and judges as well as logistical support for training and for the distribution of USAID publications. Military units at PRTs deliver USAID materials and some of their own creation to legal professionals and the general population. The OIG team was unable to obtain an estimate of the funds spent by DOD commands on ROL.

## INTERNATIONAL DONORS

Other international donors at the Rome Conference in July 2007 pledged \$83 million for ROL in Afghanistan. The total of new pledge funds was \$98 million, which included a new pledge of \$15 million from the United States. These funds will be administered, through the World Bank. Prior to the Rome Conference, commitments by international donors for justice sector programs were \$81.8 million for a total international commitment of \$164.8 million. During the inspection, the OIG team was unable to find any composite list of the funding provided by NGOs for ROL programs. Anecdotal evidence indicated that there are many NGO's providing such programs in the country.

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