

TESTIMONY OF FRANCIS B. WARD
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U.S. DEPARTMENT OF STATE AND BROADCASTING
BOARD OF GOVERNORS
BEFORE THE
HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND
GOVERNMENT REFORM SUBCOMMITTEE ON
NATIONAL SECURITY AND FOREIGN AFFAIRS
ON
RULE OF LAW PROGRAMS IN AFGHANISTAN

JUNE 18, 2008

Chairman Tierney, Ranking Member Shays, and other Members of the Subcommittee on National Security and Foreign Affairs.

Thank you for inviting me and Mr. Erich Hart to discuss our Inspection of Rule-of-Law Programs in Afghanistan. I have attached a copy of the Inspection to this testimony.

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."¹

Rule of law 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.

Our inspection took place in Washington, DC, between July 20 and September 27, 2007, and in Kabul, Afghanistan, between October 1 and 25, 2007.² In Afghanistan the inspection team interviewed officers of all embassy sections and civilian and military agencies working in the ROL

¹ 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.

² 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.

arena, including the ROL coordination office of the Combined Joint Task Force - 82nd 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. We also derived a general illustration of the relationships among the major U.S. mission elements with ROL programs. Ambassador David Newton served as our team leader and I served as his deputy for the inspection. Erich Hart, our OIG general counsel and retired USAF JAG officer, served as an inspector on our team.

We reported six key judgments and made 11 formal recommendations. This report was issued in January 2008 and we can report some compliance activity today and will continue compliance reporting in the future.

First, these judgments formed the framework for our observations and recommendations:

- 1) 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.
- 2) 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 international ROL donors has adequately addressed the balance between the formal and informal systems.

- 3) 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.
- 4) 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.
- 5) 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.

- 6) 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.

One important observation we made was that we could find no single universal definition of Rule of Law. 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.”³ This is a broad and inclusive description. The FY 2009 Mission Strategic Plan for Afghanistan includes performance indicators directly related to issues that are broken down as elements of security, counter-narcotics, governance, justice reform, and economic growth. Previous OIG inspection teams have focused upon the extensive U.S. government efforts in police training and counter-narcotics in Afghanistan.⁴ 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.

³Department of State, OIG Report No. ISP-IQO-06-01. Inspection of Rule-of-Law Programs, Embassy Baghdad, October 2005, p. 5.

⁴ 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.

The following are the findings and recommendations of the Inspection.

The Rule of Law Coordinator - In November 2005, the previous ambassador determined that the embassy required an ROL coordinator who would report directly to the DCM and himself. There remain questions, both in Washington and in Kabul, about the future of the ROL coordinator position. At the time of our visit in October 2007, a new Ambassador and DCM had been in the country for five months and were 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.

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 Bureau of South and Central Asian Affairs)

Update: Since the inspection, the incumbent ROL Coordinator has extended his tour for an additional year through mid-2009 and, the incumbent reports to the DCM. This one-person office now has one additional civilian and Army Lieutenant Colonel Judge Advocate General officer.

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)

Update: It is our understanding that such participation has begun.

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)

Update: The Embassy disagreed, noting that the Department of Justice advisors should report to the ROL Coordinator. OIG does not see a problem with this as long as the ROL Coordinator is assigned from the DoJ.

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 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.

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.

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)

Update: Embassy Kabul agreed and such participation is underway.

Civilian-Military Rule of Law Coordination - While coordination of ROL efforts has improved, there is room for further improvement, particularly with the U.S. military. During our inspection, U.S. combat forces were led by CJTF-82 at Bagram, comprised largely of two brigades of the 82nd Airborne Division from Fort Bragg, North Carolina, and the 173rd 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.

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.

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 101st 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)

Update: INL briefed incoming ROL staff from CJTF-101 prior to the departure from the U.S. INL also participated in the first ROL training class at the JAG School in Charlottesville, VA. At the Embassy, INL, AID and the ROL coordinator have provided briefings to CJTF-101 personnel. With the assistance of INL and the Army JAG, a JAG of lieutenant colonel rank has been assigned to assist the ROL section for one year.

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)

Update: Embassy Kabul agreed and the ROL Coordinator has prepared the notification.

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.

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)

Update: We understand that various mission elements are drafting a five-year strategic plan, for interagency approval by the NSC deputies, which will align the USG's ROL strategy with the Afghan National Justice Sector Strategy. Also, members of the Special Committee on the ROL will then prepare their own strategic implementation plan derived from the strategy, once it is approved.

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 countrywide. 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 in many parts of in Afghanistan. Finally, most Afghans view the formal court system as slow, inconsistent, opaque, costly, and corrupt.⁵

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)

Update: We understand the Embassy and its international partners have embarked on policy development to rectify the abuses of the informal

⁵ 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.

judicial system and establish linkage between the formal judicial system with the informal system. With Department of State and USAID support, the U.S. Institute of Peace is completing a six-month study of how the two systems can work in mutually supportive ways and how to encourage support from Afghan government officials for such cooperation.

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 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 in the PRTs, the Focused District Development program and the Regional Training Centers.

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)

Update: After our inspection, the ROL Coordinator, INL and USAID addressed a conference consisting of all PRT civilian and military officials. Embassy Kabul expects to implement this recommendation before this summer's transfer cycle.

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.⁶

The U.S. incorporates anticorruption elements in many of its programs. Appendix C of the report 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 daunting prospect. The efforts by U.S.

⁶ *Afghanistan Human Development Report*, 2007; p.84.

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.

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)

Update: Embassy Kabul partially agreed. We understand the Government of Afghanistan has subsequently produced such a detailed strategy and the international donor community is developing a coordinated response. The Embassy did recently establish an anticorruption working group within the SCROL, chaired by the DCM.

Program Management - 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.⁷ INL and USAID programs identified during the OIG review could amount to a total commitment from FY 2002 – FY 2007 of \$110.4 million⁸. Funding pledged to date by the international donors, other than the United States, is reported to be \$164.8 million.⁹ The commitment of funds by the U.S. government and international donors is approximately \$275.4¹⁰ 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 included in the report attachments.

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

⁷ 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.

⁸ The figure includes the following: \$64 million for INL ROL programs and \$46.4 million for USAID ROL programs.

⁹ 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.

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

¹⁰ 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.

justice sector funds. (Action: Director of U.S. Foreign Assistance, in coordination with Embassy Kabul and INL)

Update: Embassy Kabul agreed with the recommendation. The Director of Foreign Assistance and INL has designed a process to identify and track justice sector funding.

Thank you for this opportunity and we are prepared to respond to your questions.

