

## **PKSOI Perspectives**

Rule of Law Activities: Lessons Learned

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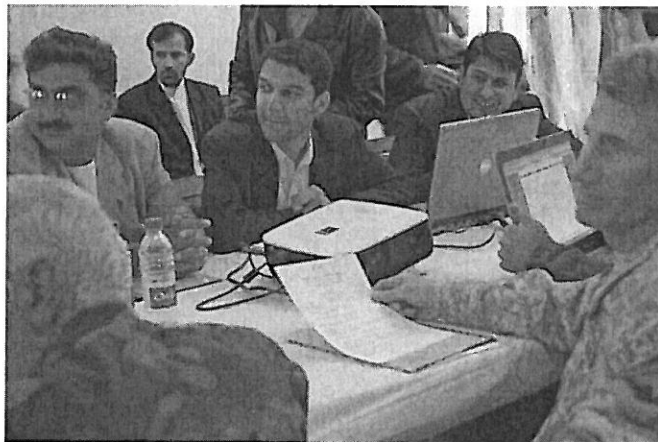


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### **INTRODUCTION**

Restoring and promoting rule of law is one of the most critical elements of stabilization reconstruction in failed, failing or fragile states. It is increasingly recognized as both a critical enabler of and contributor to security sector reform. U.S.-led stability operations in both Iraq and Afghanistan recognize rule of law as an essential component of a successful counterinsurgency strategy, and important lessons are emerging from both conflicts. This paper will review some of the most important best practices emerging from U.S. rule of law activities.

The following observations are based on a series of informal discussions with U.S. public and private sector actors who have served in rule of law positions in Iraq and Afghanistan, and in other countries with U.S. rule of law programs. Participants included U.S. Department of Justice (DOJ) assistant United States attorneys, U.S. Department of State Bureau of International Narcotics and Legal Affairs foreign service officers, U.S. military lawyers (Staff Judge Advocates), contracted private sector attorneys, and Department of State term employees, many of them with experience working as rule of law coordinators, advisors, or Provincial Reconstruction Team (PRT) members in Iraq or Afghanistan, or both. The conclusions in the paper reflect the view of the author and are not intended to represent the official position or view of any U.S. agency, public or private.



URUZGAN, AFGHANISTAN - Four governors from Regional Command South Afghanistan meet for the second governor's conference with Kabul representatives, hosted by Uruzgan's Governor Asadullah Hamdam at his palace, Nov. 15, 2008.

**RULE OF LAW ACTIVITIES:  
THE ROLE OF ASSISTANT U.S. ATTORNEYS**

Since 2007, rule of law activities in Iraq have been primarily directed by assistant U.S. attorneys (AUSAs) detailed to Iraq from their duties in the U.S. as federal prosecutors. They operate under the direction of the Deputy U.S. Attorney General and the Rule of Law Coordinator in Iraq, pursuant to an agreement between the U.S. Department of Justice and the U.S. Embassy Country Team. These AUSAs, who began deploying to Iraq in 2006, provide advice to the Chief of Mission, to other U.S. Country Team members, and to U.S. military forces operating within Iraq. As part of the Embassy Rule of Law Office, the AUSAs participate with colleagues from the Department of State and from the Department of Homeland Security in administering U.S. rule of law programs in the country, working in close coordination with the Multi-National Force-Iraq Office of the Staff Judge Advocate. They also provide direct advice and assistance to a broad range of host nation rule of law actors and officials.

This is a change to initial practice in Iraq, in which rule of law programs were overseen by foreign service officers (FSOs) from the Department of State Bureau of International Narcotics and Law Enforcement (INL), and actual advisor duties were performed by attorneys contracted by INL (although AUSAs were among the first attorneys assigned to Provincial Reconstruction Teams). The INL-contracted attorneys, some of whom continue to fill positions as rule of law advisors, have come from a variety of legal backgrounds in the United States, many of them from private practice. There is an ongoing debate within the U.S. interagency over which approach is most effective in providing for rule of law support to security sector reform and to other stabilization and reconstruction programs in Iraq and Afghanistan.

DOJ AUSAs with experience in Iraq have affirmed that their official status as federal prosecutors was critical to establishing their bona fides with Iraqi counterparts. Their Iraqi counterparts understood the authority and experience that a U.S. federal prosecutor represented. The linkages of the AUSAs to the U.S. Department of Justice and ultimately to the U.S. Attorney General gave them a reach back capability into the U.S. justice and law enforcement system that frequently proved critical to meeting the needs of rule of law programs in Iraq.

The AUSAs also asserted that their experiences with the full range of activities involved in operating a justice system were uniquely applicable to rule of law advisory tasks in Iraq. Rule of law advisors were frequently called upon to provide comprehensive advice and assistance to the full range of justice sector actors, including judges (at national, provincial, and local levels), prosecutors, defense counsels, justice administration officials, and corrections officials. AUSA attorneys have experience in all of these areas. As one of the DOJ veterans of multiple tours in Iraq put it, "we know right when we see it." From the perspectives of the AUSAs, the benefits of deploying them as rule of law advisors were especially evident when contrasted with their contracted attorney counterparts, who frequently had no criminal or prosecutorial background, lacked any

official standing with their Iraqi counterparts, and rarely possessed the network of U.S. justice contacts necessary for effective reach back to the U.S. justice community.

Former rule of law advisors also emphasized the highly personal nature of the advisory relationships established by DOJ AUSAs in the course of their duties in Iraq. Their status as formal representatives of the U.S. Justice Community lent weight to the advice that they provided to Iraqi counterparts. The AUSAs' previous experience in overseeing criminal prosecutions and in making difficult prosecutorial decisions fostered the sense of the AUSAs having a critical set of common experiences with the Iraqi justice officials whom they were advising and assisting.

Extending the rule of law assistance and advisory effort to the full range of judicial bodies and justice institutions represented a major challenge in Iraq, and an even greater challenge in Afghanistan. Lacking sufficient personnel to establish a permanent presence with every Iraqi court, DOJ AUSAs developed a circuit rider approach to providing comprehensive assistance across the full range of Iraqi justice bodies. AUSAs stationed in Baghdad and with U.S. Provincial Reconstruction Teams made efforts to visit each local court every six to eight weeks. The AUSAs provided comprehensive advice and assistance to the full range of local Iraqi justice partners, leveraging the limited number of AUSAs in country to provide an immediate impact on justice and rule of law at multiple levels. The DOJ approach optimized the impact of AUSAs both vertically and horizontally in the Iraqi justice system.

The circuit rider model strengthened linkages between the national, provincial and local elements of the Iraqi justice system. It also provided an integrated picture of that system to the Country Team leadership at the U.S. Embassy in Baghdad, as is evident from the February 2009 *Rule of Law Strategic Action Plan and Assessment* produced by the Embassy's Rule of Law Office. The model is also in use in Afghanistan, where it plays an even more critical role due to the more limited numbers of AUSAs detailed to support U.S. rule of law programs in that country.

#### **RULE OF LAW ACTIVITIES: THE ROLE OF INL FOREIGN SERVICE OFFICERS**

The Department of State Bureau of International Narcotics and Law Enforcement Affairs (INL) represents an important partner where U.S. rule of law programs are concerned, in Iraq and Afghanistan as well as in other countries in which the U.S. is involved in support to rule of law. INL as an organization has extensive experience with program management that other actors supporting U.S. rule of law activities cannot match. The presence of veteran INL programmers who are able to administer complex initiatives created valuable synergies with the efforts of AUSAs.

INL program management expertise is complemented by the Bureau's familiarity with funding and authorization mechanisms that are essential to rule of law programming. Most rule of law funding is provided through the U.S. Foreign Assistance Act under the rubric of International Narcotics and Law Enforcement (INCLE) funds.

INL's role as the primary administrator of that element of foreign assistance through the appropriate Country Team gives it a central role in the program design and implementation process that complements the activities of AUSAs and other rule of law actors. Of particular note here is the partnership that has been developed over many years by INL personnel in Washington with the congressional committees responsible for approving program funding.

Of particular value is the partnership that has evolved between INL and capacity builders in the DOJ office of Overseas Prosecutorial Development and Assistance (OPDAT) and the DOJ International Criminal Investigative Training Assistance Program (ICITAP). OPDAT and ICITAP provide implementing partners for INL, which in turn furnishes access to the INCLE funding necessary to enable that partnership. OPDAT and ICITAP bring to the table the requisite technical skills and experience to support comprehensive approaches to justice capacity building.

Where rule of law support focused on institutional capacity building and reform, INL FSOs generally bring much deeper experience sets to the table than other rule of law stakeholders. The traditional INL focus on long term capacity building in an institutional context facilitates the development of processes and structures that can more effectively support the AUSAs' individually-focused rule of law advisory activities. INL FSOs routinely work with a broad range of very different justice systems, providing a context for institution building that few AUSAs have.

#### **RULE OF LAW ACTIVITIES: THE ROLE OF CONTRACTORS**

Contracted attorneys recruited from private practice in the United States offer important advantages of their own, even if they lack the official standing of AUSAs or their INL counterparts. A senior Judge Advocate with extensive experience in Iraq pointed out that some of the contracted attorneys in Iraq were especially effective in an advisory role. In some cases, these contracted attorneys brought superior intercultural communications skills to the advisor mission, and established close and highly effective relationships with Iraqi counterparts. Some of the contracted attorneys also had a broader range of legal experience than that of their AUSA counterparts—commercial law, administrative law, and regulatory law, for example. This was especially important at the provincial level and below, where rule of law issues extend well beyond criminal prosecutions.

As previous experience with contracted rule of law and security sector reform programs has demonstrated using contracted attorneys can permit a rapid scaling up (or down) of rule of law support, with more speed and flexibility than is the case with either INL FSOs or DOJ AUSAs. This flexibility is particularly important as rule of law efforts shift over time, in quality and scale, across different justice offices and jurisdictions. Rule of law activities can also be tailored to the unique needs of each locality through selective hiring of contracted attorneys having specific skill sets.

**RULE OF LAW ACTIVITIES:  
THE ROLE OF U.S. MILITARY FORCES**

Deployed U.S. military forces have played an important role in building rule of law systems in both Iraq and Afghanistan. Staff Judge Advocates (SJAs) assigned to U.S. military organizations have formed the heart of that effort. AUSAs in Iraq and Afghanistan routinely partnered with SJAs in areas where U.S. military organizations were operating. All of the AUSAs interviewed commented on the value of collaborating with their SJA counterparts.

*Operation Hammurabi* provides an excellent example of military rule of law support. Initiated by Multi-National Division – Baghdad after the cessation of general hostilities in 2004, the operation established a program through which Iraqi justice officials were trained in basic administrative skills. The program also provided equipment and facilities necessary to restore justice services in the Baghdad area. *Operation Hammurabi* was conducted in partnership with INL using a combination of INCLE funding and Commander's Emergency Response Program (CERP) funds. It provided the necessary influx of justice assistance and training during the early stages of *Operation Iraqi Freedom*.

**RULE OF LAW ACTIVITIES:  
CONCLUSION**

Programs focused on individual advising and mentoring, like those described by AUSA rule of law advisors in Iraq and Afghanistan, are valuable vehicles for capacity building, transformation, and reform in a transitioning host nation. Sustaining that effort will require institutional capacity building and structural reforms that are a core competency of INL. Leveraging the partnership developed in Iraq between AUSAs from DOJ and veteran FSOs from INL may offer an effective path to enhancing the effectiveness and legitimacy of individual host nation justice system officials while generating long-term, sustainable improvements in host nation judicial institutions and processes. In building that partnership, contracting attorneys from private practice in the United States can complement the efforts of both AUSAs and INL FSOs in important ways, providing the ability to respond rapidly to changing requirements and tailoring the rule of law support effort geographically and contextually.

Military rule of law efforts in Iraq complemented and facilitated the activities of AUSAs and INL FSOs. SJAs played a particularly important role in this process. The bridge that the SJAs provided between the Country Team rule of law strategy and the operations by U.S. military components in country was an important element in the successes achieved.

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