



Embassy of the United States of America

Kabul, Afghanistan

May 19, 2015

Ms. Gabriele A. Tonsil
Deputy Assistant Inspector General
for Audits and Inspections
Special Inspector Afghanistan Reconstruction (SIGAR)
1550 Crystal Drive, Suite 900
Arlington, VA 22202

Dear Ms. Tonsil:

This letter conveys consolidated comments from U.S. Embassy Kabul and from the U.S. Agency for International Development (USAID) in Kabul in response to SIGAR's draft audit report titled *Rule of Law in Afghanistan: U.S. Agencies Lack a Strategy and Cannot Fully Determine the Effectiveness of Programs Costing More Than \$1 Billion*.

As the draft report highlights, the United States' rule-of-law programming in Afghanistan spans four agencies and numerous programs. The Embassy has taken great pains over the past several years to coordinate rule-of-law activities among its constituent offices and agencies, maintaining several highly engaged interagency exchanges on rule-of-law activities and program development. Regular meetings among offices working specific rule-of-law issues also further coordination. For example, USAID's work on the Afghanistan Court Administration System and INL's work on the Case Management System have had overlap in judicial record keeping. Both offices met regularly to discuss how their programs were evolving and how they could best complement each other.

Similarly, the Embassy's Coordinating Directorate chairs a monthly Anti-Corruption Coordination Group (ACCG) meeting among stakeholders from Embassy sections, the Department of Justice, USAID, the Department of the Treasury, and the Drug Enforcement Agency. This meeting includes U.S. military counterparts from USFOR-A and Resolute Support. The Political Section acts as the ACCG's secretariat and works with Embassy sections and agencies to advise on development of anti-corruption strategies (guided by the Integrated Country Strategy) and on coordination with the Afghan government.

Our preliminary rule-of-law framework is fully compatible and in accordance with the 2010 QDDR principles. The strategy has been designed and built in response to evidence and analysis gleaned through our programmatic performance metrics, which are based upon common reporting indicators. Furthermore, the strategy fully takes into account the Government of Afghanistan's rule-of-law objectives.

Below please find responses to SIGAR's specific recommendations.

SIGAR Recommendation 1: *That the Secretary of State, in coordination with other U.S. agencies managing rule-of-law programs in Afghanistan, ensure that a new strategy is finalized that includes an agreed-upon scope of activities and a performance management plan to evaluate U.S. progress in meeting strategy objectives.*

The Embassy concurs with this recommendation, with one qualification. Performance management plans should apply to programs, not strategies. As detailed further in this letter, both State and USAID have processes and procedures in place to measure program performance and effectiveness. We concur that any new rule-of-law strategy should draw on this existing material as well as other available data to evaluate strategy implementation and effectiveness.

SIGAR Recommendation 2: *That the Secretary of Defense track the activities and funding going forward and report this information to the Secretary of State, in recognition of State's capacity as lead coordinator of U.S. rule-of-law development assistance in Afghanistan.*

The Embassy defers to the Secretary of Defense on this recommendation.

SIGAR Recommendation 3: *That the Secretary of Defense, the Attorney General, the Secretary of State, and the USAID Administrator, taking into account the challenges to measuring performance in Afghanistan, revise performance management plans for all ongoing rule-of-law programs and develop and implement plans for planned programs that include appropriate performance indicators, baselines, and targets, and ensure program progress is consistently monitored and reported.*

The Embassy does not concur with SIGAR's recommendation to "revise performance management plans for all ongoing rule-of-law programs." Performance management is part of how we do business. Our programs utilize a

number of performance management techniques that ensure program objectives are being met and progress is being made. Program managers regularly review various data and reporting documents to adjust programs as needed. Moreover, rule-of-law programs and topics and the role of Embassy Kabul elements (including Embassy sections, USAID and offices representing other departments) feature prominently in Embassy Kabul's February 2015 Integrated Country Strategy (ICS). The ICS includes action plans and identifies indicators and milestones for measuring performance.

The Embassy's International Narcotics and Law Enforcement (INL) section began implementing Performance Measurement Plans (PMPs) for its key Afghanistan programs in the fall of 2011, with most PMPs completed by late 2012. In October 2013, INL refreshed its PMPs to align better with subsequent State Department performance measurement guidance. As part of the refresh process, INL re-mapped activities, outputs, outcomes, and impacts to the program objectives, connecting them in an explicit logical framework, and added performance targets. INL's and USAID's PMPs are living documents which are continually assessed and updated to reflect the changing realities on the ground.

Consistent with USAID policy, as codified in detail by Automated Directives System (ADS) Chapter 203, USAID's standard practice is to require Implementing Partners (IPs) to develop Activity Monitoring and Evaluation Plans (AMEP) for all Agency programs, and to report regularly on them. The Mission also has a Performance Management Plan (PMP), to which individual AMEPs contribute. USAID ensured that AMEPs for its key rule-of-law activities were developed by IPs shortly following their award in 2010. Subsequently these were updated periodically in response to USAID's monitoring data needs.

Currently, USAID's future rule-of-law programming is in the procurement phase. The solicitation includes extensive language requiring bidders to submit detailed AMEPs as part of their proposals. AMEPs must include quantitative and qualitative measurable targets, as well as information on the indicator definitions data sources, data collection methodology and analysis, and frequency of collection. The solicitation also instructs bidders to include language in their proposals explaining how they will avoid program duplication, enhance programmatic synergies, and coordinate with other donors, U.S. government agencies and implementing partners.

Once the winning bidder is selected, USAID's rule-of-law team will work closely to finalize the AMEP, which will be informed by a baseline assessment. The assessment findings, which are based on extensive interviews with key justice sector stakeholders, will inform the planning and implementation of project deliverables and the development of monitoring and evaluation indicators.

Upon completion of the procurement for the rule-of-law program, USAID/Afghanistan will provide to SIGAR the documents supporting actions taken in regard to development of the Annual Monitoring and Evaluation Plan (AMEP) to include quantitative and qualitative measurable targets, information on the indicator definitions, and data collection methodology. USAID's target date for completion is December 31, 2015.

SIGAR Recommendation 4: That the Secretary of Defense, the Attorney General, the Secretary of State, and the USAID Administrator conduct reviews to assess whether ongoing and future rule-of-law programs are sustainable and determine whether and how those programs will be continued. If programs are to be continued or new programs are to be initiated, the agencies should obtain Afghan government commitment to help support them through a formal, written agreement prior to the expenditure of U.S. taxpayer funds.

The Embassy concurs with the recommendation with respect to the State Department and USAID, but notes that in many instances we already conduct such reviews and have formal written agreements with the Afghan government.

U.S. experience in other countries has shown that rule-of-law foreign assistance efforts require long-term, enduring commitments. Recognizing the need for long-term donor support as well as the current realities of the Afghan economy, INL designs and implements foreign assistance programs that build host government capacity to sustain criminal justice systems. Some programs, such as advisory and training programs, are discontinued once skills are successfully transferred. Other programs, such as operations and maintenance support, are directly transitioned to the Afghan government, including funding for such activities.

The Embassy's INL section works diligently to strengthen Afghan government capacity to assume ownership of and sustain rule-of-law programs. INL and the Afghan government, through a Letter of Agreement (LOA), have

committed to support capacity building in future programs. The LOA explicitly states the U.S. and Afghan governments will work to extend Afghan sovereignty.

USAID has already completed evaluations of its RLS-F and RLS-I rule-of-law projects. The findings of these evaluations have already informed the design of the Mission's forthcoming rule-of-law project. USAID also notes it has already concluded a formal written agreement in the form of a Strategic Objective Agreement (SOAG)/306-SOAG-306-05-0006.00-1 with the Afghan government in 2005 that specifically covers the Mission's rule-of-law assistance.

In addition to the SOAG, the Mission's Office of Democracy and Governance initiated a process specifically designed to obtain and maintain the Afghan government's commitment throughout the lifespan of the future rule-of-law project. USAID requested key institutional stakeholders in the Afghan justice sector, such as the Supreme Court and the Ministry of Justice, participate in the procurement process. Involving Afghan government staff in the procurement process not only brings much needed local perspective and expertise, but also gives the Afghan government a stake in the outcome.

After the project is awarded, the Supreme Court and the Ministry of Justice will be asked to sign official implementation letters that, in accordance with ADS Chapter 200, will include detailed procedures, terms of cooperation, and funding commitments. Finally, USAID and its selected implementing partner will hold periodic meetings with Afghan government institutions and other project stakeholders at the start of the project to ensure its activities are meeting stakeholder needs. The implementing partners are also required to achieve certain milestones, such as instituting training systems developed and used by local legal professionals and strengthened budget execution capacity in the judiciary to ensure sustainability upon completion of the project. USAID knows from experience that investing in Afghan professionals and giving them a stake in the successful outcome in assistance projects will ultimately help achieve sustainability.

Upon completion of the procurement for the rule-of-law program, USAID/Afghanistan will provide to SIGAR the documents for supporting actions discussed in the response to this recommendation including the official implementation letters signed with the Supreme Court and the Ministry of Justice with the details on procedures, terms of cooperation and funding commitments.

Also, USAID will develop and incorporate provisions in the award document for the rule-of-law program, requiring the implementing partner to take steps necessary to ensure sustainability upon completion of the project. USAID's target date for completion is December 31, 2015.

We appreciate the opportunity to comment on this draft report.

Sincerely,

A handwritten signature in blue ink, appearing to read "Charles Randolph", with a long horizontal flourish extending to the right.

Charles Randolph
Program Coordinator
Coordination Directorate

Attachment: Annex A Technical Comments