Applying A Project Management Strategy To Rule of Law Programs:
Recommendations For Myanmar Based On Lessons Learned From Afghanistan

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Abstract
Since 2003, the United States government and international partners have worked to develop the rule of law (RoL) in Afghanistan. This effort has focused on areas such as the judicial system, corrections system, informal justice system, legislative reform, legal education and anticorruption efforts. In a report issued by the Special Inspector General for Afghanistan Reconstruction, RoL programs funded by the United States have been impaired by four significant factors: a lack a comprehensive RoL strategy; an inability to account for the total amount of funds spent to support RoL development; problems measuring the performance of RoL programs; and significant challenges due to pervasive corruption (SIGAR, 2015). Since 2011, with its rapid democratic transition and removal of international sanctions, Myanmar has experienced a significant increase in multi-year RoL projects funded by international donors, such as the United States government, United Nations and European Union. However, many of the objectives of these programs, such as improved access to justice, protection of human rights, justice sector reform, empowering civil society to participate in the formal justice system and combating corruption, face challenges. In a previous conference paper, the authors discussed ways to encourage the RoL profession to implement a project management model to more effectively implement future projects. The paper proposed the creation of an inter-agency Project Management Office tasked with providing proper training, management assistance, templates and monitoring and evaluation for international RoL projects. The purpose of this paper is to apply this framework, along with lessons learned from Afghanistan, to propose recommendations to achieve RoL program outcomes in Myanmar.

Keywords: rule of law, project management

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I. Introduction

According to a World Justice Project survey on rule of law (RoL) around the world, Afghanistan is the second worst country, bested only by Venezuela. Placing slightly higher on the list, but remaining in the bottom tier, is Myanmar, ranked at 92. A total of 102 countries were evaluated for this report (WJP, 2015). The survey established eight primary categories to create the rankings, along with 44 indicators, focusing on key RoL issues such as corruption, fundamental rights, regulatory enforcement and civil, criminal and informal justice.

Establishing RoL is an essential building block for any country, but this foundation is critically important in fragile states and those countries moving through governmental and societal transformations. Without proper governance and justice, emanating from the central authority and evenly implemented and enforced from the capital to the local level, States remain internally weak, unstable and lack the ability to instill confidence in their citizenry regarding positive change moving forward. When citizens experience and benefit from effective law enforcement and justice sector responses, a fair and transparent judicial system and a government demonstrating progress in reducing the problem of corruption, grassroots support increases and a stable and peaceful nation becomes a potential achievable outcome. This is especially important in nations with continuing internal conflict, such as insurgent opposition to the central government or ethnic divisions, which has existed in Afghanistan and Myanmar for decades.

International donors, including the United States, United Nations and European Union, have poured a significant amount of funding and assigned thousands of personnel dedicated to RoL programs into Afghanistan over the past 15 years. When comparing the numbers against the results, these efforts have resulted in limited to no change in key RoL areas. Based on the co-authors experience working on a RoL program in Afghanistan, access to justice remains an allusive idea to many Afghans, gender empowerment has fallen on deaf ears, the judicial system is dysfunctional and corruption at all levels of government continues to place a significant roadblock in the way of enforcing and applying the law to all citizens regardless of social, economic or political power.

With the recent peaceful transfer of power from the ruling military regime in Myanmar to the National League for Democracy (NLD), led by Aung San Suu Kyi and President Htin Kyaw, and the preceding years of warming relations with the West, RoL is a key programmatic focus of the international donor community. Thus, the question presented for the purpose of this paper is the following: what lessons learned from the RoL experience in Afghanistan, both from the international and host country perspectives, will help avoid repeating the same mistakes in Myanmar?

II. Lessons Learned in Afghanistan…Looking Forward with Myanmar

A. Developing a RoL Strategy

As stated by the Special Inspector General for Afghanistan Reconstruction (SIGAR), when reviewing the RoL strategy in Afghanistan, a fundamental flaw in the planning was identified:

> *U.S. agencies…lack a current, comprehensive interagency rule of law strategy to help plan and guide U.S. rule of law development efforts in Afghanistan…The lack of a rule of law strategy during the majority of U.S. involvement in Afghanistan may be a significant reason why DOD, DOJ, State, and USAID do not clearly and consistently define the range of activities that constitute their rule of law development efforts* (SIGAR, pg. 4).

As the SIGAR report demonstrates, the failure to coordinate interagency RoL programs and define their purpose was absent in the overall US RoL strategy, which significantly impeded the overall objectives of RoL development efforts in Afghanistan. Common RoL objectives include holding governing powers accountable, establishing clear and stable rules and protecting fundamental rights (Wang, 2014). Achieving these goals without a RoL strategy is even more challenging in Afghanistan given its historical legal environment, which has three competing sources of law: 1) local customary practice, which employs common cultural and ethical standards in dispute resolution; 2) sharia law, divinely inspired and universal; and 3) the formal state legal code (Wang, 2014). In addition, considering the urgent need to draft and enact new laws and regulations in the post-Taliban era, along with an unstable security environment, the need for a comprehensive RoL strategy in the beginning was a critical requirement. Lastly, projecting the RoL from the central authority in Kabul through the formal state system to the grassroots level in the provinces clearly shows signs of limited progress. Therefore, the competition between the formal and informal legal systems remains a major impediment to improving RoL standards throughout the country.

While Myanmar does not have a significant conflict between informal and formal justice systems, achieving those common RoL objectives mentioned above in Myanmar will require addressing several challenges. Similar to Afghanistan, law reform is driven by a top-down approach from the executive branch of government. Therefore, government bureaucracies must play a larger role in pushing reform and education at the grassroots level (New Perimeter, 2013). Moreover, in protecting fundamental human rights, while Myanmar ratified the Convention on the Rights of the Child and recently signed its Optional Protocol on children in armed conflict, the country has not joined the vast majority of nations by ratifying several key human rights instruments (OHCHR, 2016). Safeguarding fundamental rights will establish good international practices and ratifying the core human rights treaties is an essential step which should be promoted in any RoL strategy (IBA, 2012). While the Taliban, ISIS and other insurgent groups in Afghanistan present a serious threat to internal stability in Afghanistan, Myanmar faces its own less serious, but constant problem, with armed rebel movements. Establishing a strong RoL standard will be more difficult in the northern states and should be a key component addressed in any

national RoL strategy. In addition, while many of these issues are holdovers from the days of the military regime, the military still retains a strong footing within the government structure, and the new NLD government, working with international RoL donors, will need to consider this dynamic when developing a comprehensive RoL strategy for the country.

B. Monitoring RoL Funding and Evaluation Program Effectiveness

The SIGAR report next focused on issues surrounding the funding and tracking of RoL projects in Afghanistan:

> *For the purposes of this report, we analyzed the information DOD, DOJ, State, and USAID provided to identify the total number of known U.S. government rule of law programs conducted and assistance provided since 2003…the U.S. government does not have a clear, comprehensive record of its rule of law activities…* (SIGAR, pg. 7).

Monitoring and evaluating RoL programs on a rolling basis throughout the project management cycle is critically important. Even a project framework established through consultation and analysis, meetings with government counterparts and civil society and based on a well-thought out plan, will still encounter problems on the ground during implementation. In addition to ensuring a RoL program is on target towards meeting its targeted outcomes, a proper monitoring and evaluation mechanism provides an ability to respond and adapt to unforeseen circumstances which could create obstacles to project success. Specifically, evaluating RoL programs and determining their effectiveness in addressing RoL needs in Afghanistan was further noted by SIGAR:

> *Because these agencies did not systematically measure and report on their programs' achievements—or how those programs fulfilled the broader 2009 strategy—they cannot fully determine the extent to which these $1 billion in programs have made progress in achieving objectives for developing the rule of law in Afghanistan* (SIGAR, pg. 10).

Myanmar, especially with the recent change of government, will continue to see international donor attention focused on RoL, governance and human rights issues. Many of these same donors were, and continue to be, present in Afghanistan. As funding levels increase, monitoring and evaluating these programs is essential. Moreover, coordinating this mechanism across ministries, donors and implementers, will help improve communication, coordination and the sharing of best practices, which will increase the likelihood of project success.

C. Corruption

Corruption has a devastating impact on the effectiveness of government and erases the hopes of citizens for seeking change in their communities. SIGAR made particular note of this issue, stating the following:

> *Two major challenges continue to undermine U.S. efforts to develop the rule of law in Afghanistan: (1) the pervasive corruption in Afghanistan's justice sector, and (2) the uncertainty regarding whether the Afghan government can or will sustain U.S. program activities and reforms* (SIGAR, pg. 19).

Last year, Transparency International (TI) released its annual Corruption Perceptions Index. Out of 168 countries and territories, and similar to the WJP RoL rankings, Afghanistan and Myanmar resided near the bottom. TI ranked Afghanistan at 166, Myanmar at 147 (Transparency, 2015). Corruption in Afghanistan and Myanmar is systemic, cultural and enabled by the residing power structure. The ability to address corruption is hindered by the existence of weak or non-existing RoL components. For example, in Myanmar, the judicial system requires a major overhaul, Parliament requires continued support in drafting and implementing meaningful legislation and the country lacks a strong criminal defense and legal aid and education system (IBA, 2012; New Perimeter, 2013). A similar situation was faced, and continues to persist, in Afghanistan. Thus, creating new laws, improving the capacity of justice sector through trainings and building the next generation of lawyers, is critical to establishing a strong RoL standard, creating a sustainable legal environment and reducing the problem of corruption (IBA, 2012). Going hand in hand with these initiatives is educating the public about their rights, ways to access the justice system and changing perceptions of the citizenry about their government and its law enforcement establishment (New Perimeter, 2013).

III. Host-Country Project Management Office Strategy

While the RoL community assesses the successes and failures of programmatic work in Afghanistan and Iraq, one idea which provides a potential path forward is the creation of a Host-Country Project Management Office (HCPMO). As illustrated in the figure below, which was previously introduced by the co-authors in a paper earlier this year, the HCPMO provides international donors, relevant host country ministries and program implementers with a centralized coordinating body for RoL projects (Briggs, Khan, 2016). When moving through the project management cycle-initiation, planning, execution, monitoring and evaluation and closing-the HCPMO facilitates the process for the relevant stakeholders by helping control and manage individual RoL projects from beginning to end.

While international donors and government ministries will be required to sacrifice a certain amount of power and authority, the ultimate benefit is the potential reduction of waste, fraud and abuse and the creation of a sustainable HCPMO which houses a significant level of institutional knowledge related to past, present and future programs. With this knowledge, repeating mistakes from past projects is reduced, regardless of the international donor, project area or personnel. For example, the HCPMO could establish a standardized project management process, including

common terminology and forms, which all international donors, ministries and implementers would use in their programmatic work. This data would be reported and stored at the HCPMO as public record, which would provide greater transparency and aid donors and ministries working on similar RoL issues to communicate and coordinate on achieving their project outcomes. Moreover, when a RoL project closes due to any issue, such as loss of funding, a new donor would be able to review prior work completed while determining whether, and how, to move forward with their own related project.

Figure: The Host Country Project Management Office
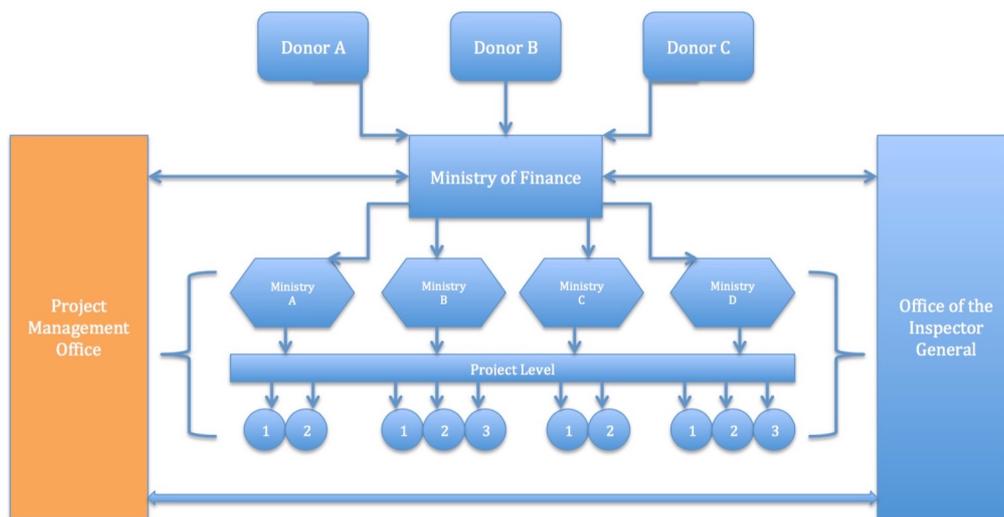
Lastly, a critical component in the success of the HCPMO, along with holding donors and ministries more accountable with a greater level of transparency, is the role of an inspector general to lead the monitoring and evaluation of all RoL programs, including an annual audit of the HCPMO. With independent oversight, the inspector general would provide an additional check on the work of the HCPMO, stakeholders and play a role in reducing the problem of corruption encountered throughout the project management cycle.

IV. Conclusion

In the coming months and years, as international donors and civil society work with governmental actors to design and implement RoL programs in Myanmar, avoiding the pitfalls experienced in other countries such as Afghanistan, should be a key focus at the initiation and planning stages of any project. This is especially critical given current global economic conditions. In short, with governments struggling with budget deficits, spending choices require greater justification, especially in the area of foreign aid. Governments and international organizations must ensure money spent is returned with substantive achievements.

Establishing an HCPMO provides international donors and host country governments with a structure which builds institutional capacity, develops professional skill-sets required to manage and monitor programs, improves communication and coordination between multiple RoL projects and provides a foundation for implementing sustainable programs across the thematic range of RoL issues. Furthermore, if corruption is reduced and local buy-in from the host government and its citizens is increased, these two additional components will help create an environment for greater success over the long term for improving the RoL in Myanmar.

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