Correspondence

Debating the Rule of Law in Afghanistan

*Eric Bartz and
Khalid Momand*

Geoffrey Swenson

To the Editors (Eric Bartz and Khalid Momand write):

In "Why U.S. Efforts to Promote the Rule of Law in Afghanistan Failed," Geoffrey Swenson's inaccurate description of one project, the U.S. Agency for International Development's (USAID's) Rule of Law Stabilization—Informal Component program (RLS-I) (Swenson uses "RLS-Informal"), misrepresents an effective rule of law program while missing an opportunity for comparative learning.[1] At the core of the issue is Swenson's conflation of RLS-I with counterinsurgency projects and approaches— approaches that RLS-I deliberately avoided. Swenson's dismissal of RLS-I's stated objectives and his selective reliance on sources of varying timeliness, relevance, and accuracy results in the false assumption that the "program's more pressing goal . . . was to supplement and consolidate U.S.-led counterinsurgency efforts" (p. 127). This faulty conclusion serves as the premise for his subsequent analysis, which results in inaccurate assertions and misattributions throughout the article.

Swenson claims that RLS-I assumed the existence of and sought to fill a post-Taliban justice vacuum by propping up self-serving, marginally legitimate figures to help stave off an insurgent return. On the contrary, RLS-I's implementers understood that engaging legitimate practitioners of traditional dispute resolution was not intended to fulfill these immediate-term counterinsurgency objectives. They knew that a more realistic goal was engaging existing informal justice mechanisms by first understanding them and then mitigating their harmful, conflict-inducing practices while supporting— without distorting—their positive components. Achieving this objective would contribute to long-term stability by increasing respect for rights and the rule of law, thereby improving dispute resolution services and reducing destabilizing disputes. The program's pre-intervention research, targeted legal education, locally initiated solutions, and mutual support and accountability among justice stakeholders reflected this understanding. We were therefore dumbfounded by statements from Swenson that, for

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1. Geoffrey Swenson, "Why U.S. Efforts to Promote the Rule of Law in Afghanistan Failed," *International Security*, Vol. 42, No. 1 (Summer 2017), pp. 114–151, at pp. 127–129, doi:10.1162/ISEC_a_00285. Further references to this article appear parenthetically in the text.

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example, RLS-I "sought to capitalize on the perceived desire of many local actors to increase their social standing" (p. 128), a trait that, on the contrary, RLS-I's participant selection criteria sought to avoid.

Swenson also presumes that an understanding of the local context and how international assistance would influence communal relations "far exceeded [RLS-I's] technical capacity" (p. 128). To ensure quality contextual research, participant selection, program design, management, and evaluation, RLS-I recruited mostly Afghan national university law faculty graduates from—and very familiar with—the regions in which it worked. These expert staff were advised by expatriates trained in social science research, law, traditional justice, and development. RLS-I did not, however, rely solely on existing expertise, secondary sources, or outside templates.

RLS-I's teams designed a pre-intervention qualitative research model to supplement existing literature and, most importantly, provide nuanced understandings of the unique challenges to fair and effective justice in each area it worked. In assessing fifty program districts, the teams engaged more than 2,000 male and female respondents. Although each district assessment enabled customization of programming to local needs, the vast amount of primary data gathered and analyzed provided an in-depth understanding of broader justice patterns. This knowledge enabled design of a flexible intervention model that Afghan partners continue to implement and refine as the Afghanistan Justice Engagement Model.[2] Contrary to Swenson's assertions of incompetence and shortsightedness (p. 128), RLS-I's assessments and integrated mechanisms for ongoing learning demonstrate a commitment to a thorough and evolving understanding of local context and long-term strategic planning.

Through multiple cycles of research, programming, and evaluation, RLS-I understood that a majority of Afghans prefer using traditional justice mechanisms, including disputant reconciliation, accessibility, speed, and low cost. RLS-I also understood that key shortcomings of traditional dispute resolution may cause harm and exacerbate disputes. But perhaps most significantly, RLS-I understood that traditional dispute resolvers are embedded in the local culture they serve. To affect change required changing the knowledge, attitudes, and actions of the constituent components of that culture—representative leaders and the broader community. RLS-I therefore established participant selection criteria to reach a critical mass of legitimate male and female dispute resolvers with sufficient levels of programming to affect lasting improvements to dispute resolution practice.

RLS-I maximized available resources in evaluating program effectiveness. It identified increased disputant satisfaction with the fairness of dispute resolution processes as the number of RLS-I participants involved in those processes increased, thereby validating the program's strategy of reaching critical mass.[3] In addition, USAID's external

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2. See Checchi and Company Consulting, "Phase 3 Final Report: Rule of Law Stabilization Program—Informal Component (RLS-I)" (Kabul: USAID, 2014), http://pdf.usaid.gov/pdf_docs/pa00n4gh.pdf; and "Afghanistan Justice Engagement Model—Practitioner's Guide" (Kabul: USAID, 2018), www.tloafghanistan.org/Afghanistan_Justice_Engagement%20Model%20(JEM)_Practitioner's-Guide.pdf.
3. Checchi and Company Consulting, "Final Evaluation Report: The Rule of Law Stabilization Program—Informal Component" (Kabul: USAID, 2014), p. 4, https://pdf.usaid.gov/pdf_docs/pa00k7r4.pdf.

evaluation noted that 85 percent of female participants "believed that they personally benefited through either increased knowledge and/or the increased respect that they received from male family members after conveying their new legal knowledge,"[4] a glowing result for a primary RLS-I objective: improving respect for women's rights and overall status within their families and communities.

RLS-I welcomed valid critique. What Swenson offers is a barrage of misplaced assertions that misses an opportunity for learning and harms an effective development effort. With greater diligence, including consultation with its implementers and participants, Swenson would have recognized RLS-I as a long-term stabilization project employing grassroots development strategies, not immediate-term counterinsurgency tactics. Acknowledging RLS-I's actual objectives, strategies, and activities could have resulted in a section of Swenson's article on how to avoid nearly all of the pitfalls he identifies, rather than a false attribution of them to RLS-I.

—*Eric Bartz*
Washington, D.C.

—*Khalid Momand*
Kabul, Afghanistan

Geoffrey Swenson Replies

I thank Eric Bartz and Khalid Momand for their letter in response to my article "Why U.S. Efforts to Promote the Rule of Law in Afghanistan Failed."[1] Below I address two main substantive areas of disagreement: the purpose of the U.S. Agency for International Development's (USAID's) Rule of Law Stabilization Program—Informal Component (RLS-I) and its practical results.

First, Bartz and Momand argue that RLS-I was "a long-term stabilization project employing grassroots development strategies," not a counterinsurgency (COIN) program. This claim is a distinction without a difference, as stabilization is routinely conceptualized as a component of counterinsurgency. Here the U.S. Army Counterinsurgency Field Manual is instructive: "COIN operations combine offensive, defensive, and stability operations to achieve the stable and secure environment needed for effective governance, essential services, and economic development."[2] Indeed, my article acknowledges that RLS-I had numerous objectives, and it provides ample documentation that counterinsurgency was foundational to its mission (pp. 125, 127–130). Its own per-

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4. Sayara Research, "Performance Evaluation of the Rule of Law Stabilization—Informal Component Program" (Kabul: USAID, 2014), p. 7, http://pdf.usaid.gov/pdf_docs/pa00jxpm.pdf.

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1. Geoffrey Swenson. "Why U.S. Efforts to Promote the Rule of Law in Afghanistan Failed," *International Security*, Vol. 42, No. 1 (Summer 2017), pp. 114–151, doi:10.1162/ISEC_a_00285. Further references to this article appear parenthetically in the text.
2. United States Army, *Field Manual 3-24: Counterinsurgency* (Washington, D.C.: Department of the Army, 2006), p. 5-2.

formance management plan explicitly states that RLS-I aimed to "help eliminate Taliban justice and defeat the insurgency."[3]

Second, my article demonstrates that RLS-I failed to promote either the rule of law or stability and did not meaningfully advance its declared objectives with regard to either traditional dispute resolution or its relationship to the state justice system. This conclusion does not mean that RLS-I failed to complete program activities or that many program beneficiaries did not respond positively. Bartz and Momand consistently conflate good intentions and detailed procedures with achieving overarching objectives. For example, they emphasize the extensive selection process for engaging nonstate actors, which I acknowledged (p. 128). Despite these efforts, significant information asymmetries existed between local communities and program implementers. RLS-I hinged on finding willing collaborators, and those individuals often did not reflect the dominant local power structures.

As evidence of RLS-I's success, Bartz and Momand prominently cite its internal program evaluation. Yet, they neglect to disclose that this evaluation relied on surveys where "neither districts nor individuals could be randomized to treatment or control groups." Moreover, the authors of the evaluation admit that the assessment relied on surveys that lacked adequate sample sizes and faced extensive problems with data quality stemming from security constraints, survey fatigue among respondents, and unclear questions. They further note, "Unfortunately, the treatment and comparison groups' scores on several measures were much different than expected under a random sampling design, leaving the possibility that estimates of treatment effect are biased."[4]

If Bartz and Momand remain skeptical of my assessment, they should review other high-quality independent analyses of RLS-I's performance. For example, the Special Inspector General for Afghanistan Reconstruction (SIGAR) identified serious shortcomings with RLS-I's management, design, and implementation. SIGAR found that "the extent to which USAID's Rule of Law Stabilization—Informal met its objectives cannot be fully determined because of deficiencies in the program's performance management system."[5] Noah Coburn has highlighted RLS-I's implementation and strategic challenges and ultimately demonstrated that "internationally sponsored programs attempting to promote rule of law through the informal justice sector have faced serious paradigmatic and programmatic challenges that have made these programs generally ineffective and, at times, counterproductive."[6]

In sum, aid implementation is difficult, important work. I remain deeply impressed by the RLS-I implementers I met in Afghanistan, as well as practitioners affiliated with

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3. Checchi and Company Consulting, "Performance Monitoring Plan 14 October 2012–13 January 2014," rev. (Kabul: USAID, 2013), p. 3, https://pdf.usaid.gov/pdf_docs/PA00JGWJ.pdf.
4. Checchi and Company Consulting, "Final Evaluation Report: The Rule of Law Stabilization Program—Informal Component" (Kabul: USAID, 2014), p. 2, https://pdf.usaid.gov/pdf_docs/pa00k7r4.pdf.
5. Special Inspector General for Afghanistan Reconstruction (SIGAR), "SIGAR 15-68 Audit Report: Rule of Law in Afghanistan—U.S. Agencies Lack a Strategy and Cannot Fully Determine the Effectiveness of Programs Costing More Than $1 Billion" (Washington, D.C.: SIGAR, 2015), p. 17.
6. Noah Coburn, *Informal Justice and the International Community in Afghanistan* (Washington, D.C.: United States Institute of Peace, 2013), pp. 3, 41–42.

other programs. While I recognize that program performance is a sensitive topic, I cannot accept Bartz and Momand's attempt to obscure RLS-I's motivations and results. It is, however, all too characteristic of an aid dynamic in Afghanistan that seeks to justify and ultimately perpetuate itself rather than ask hard questions about what could be done better.

—Geoffrey Swenson
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