Rebuttal: Effective Rule of Law Project Misrepresented

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In "Why U.S. Efforts to Promote the Rule of Law in Afghanistan Failed," Geoffrey Swenson critiques the efficacy of USG justice projects in Afghanistan.[1] Unfortunately, Swenson's description of one project, the USAID Rule of Law Stabilization – Informal Component program (RLS-I) (Swenson uses "RLS-Informal"), results a near wholesale misrepresentation of RLS-I's objectives, strategies, and impacts, thereby undermining his analysis and missing an opportunity for comparative learning. At the core of the issue is Swenson's conflation of RLS-I with the counterinsurgency aspects of other informal justice projects and approaches – approaches RLS-I deliberately avoided. Swenson's dismissal of RLS-I's stated objectives and selective reliance on sources of varying timeliness, relevance, and accuracy, supported by a few anonymous interviews in Kabul, results in a false, and damaging, portrayal. Swenson also misappropriates sources, including attributing secondary analysis of other projects or counterinsurgency approaches generally, to RLS-I specifically. With a more thorough review of his sources, a cursory review and acknowledgment of RLS-I's strategy documents, and engagement of its long-term designers, implementers, and participants, Swenson would have recognized RLS-I as a long-term "stabilization" project employing grassroots development strategies, not immediate-term counterinsurgency tactics, as he alleges. Understanding (and acknowledging) RLS-I's actual objectives, strategies, and activities would have resulted in a section on how to *avoid* nearly all of the pitfalls he identifies, not a false attribution of them to RLS-I.

## False Premise

Swenson begins by accurately quoting the project objectives as improving "access to fair, transparent, and accountable justice for men, women, and children by (1) improving and strengthening the traditional dispute resolution system, (2) bolstering collaboration between the informal and formal justice systems, and (3) supporting cooperation for the resolution of longstanding disputes." He then dismisses them, however, with, "the program's more pressing goal, however, was to supplement and consolidate U.S.-led counterinsurgency efforts," (p. 127) citing an outdated assessment of the project's first nine pilot months.[2] This assumption serves as the false premise for his subsequent analysis and numerous misplaced claims throughout the RLS-I section. The opposite is true. RLS-I designers and implementers understood from very early in the project that engagement with genuine traditional dispute resolvers[3] could not and

[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.org/10.1162/ISEC_a_00285. Further references to this article appear parenthetically in the text.

[2] Swenson cites Denis Dunn, Don Chisholm, and Edgar Mason, "Assessment: Afghanistan Rule of Law Stabilization Program (Informal Component)—Final Report" (Kabul: USAID, 2011), p. 17.

[3] Informal justice, traditional dispute resolution (TDR), and traditional justice are used interchangeably here. They refer to traditionally legitimate dispute resolvers, norms, and processes within communities. The usage assumes that "traditional" justice is evolving.

was not intended to fill a perceived justice vacuum by creating new justice mechanisms for immediate effect.[4] Contrary to the approaches Swenson ascribes to RLS-I, its implementers knew a more realistic goal was strengthening existing informal justice by first understanding and then improving it by mitigating specific harmful, conflict-inducing practices and supporting – without distorting – its positive components. This would enhance long-term stability by improving respect for rights and rule of law, thereby improving access to quality dispute resolution services and reducing destabilizing disputes. The program's actual design of pre-intervention research, targeted legal education, locally-initiated solutions, and mutual support and accountability between informal and formal justice stakeholders reflected this understanding.[5] It is therefore unclear what Swenson is referring to with assertions like, "the program largely echoed work done for state actors and drew on the highly suspect template" (p. 127).

RLS-I Capacity

Swenson's unsupported contention that understanding of local context and how international assistance would influence communal relations "far exceeded their technical capacity" (p. 128) required that Swenson gain familiarity with the technical capacity of RLS-I professionals in the field, which, obviously, he did not. All RLS-I program components and phases, including contextual research, participant selection, program design, management, and evaluation, required teams of qualified staff. RLS-I therefore recruited mostly Afghan national university law and sharia faculty graduates from – and very familiar with – the regions in which it worked. These expert local staff were advised by expatriates trained in social science research, law, dispute resolution, development practice, policy analysis, human rights, and traditional justice (or "community-based dispute resolution") as acknowledged by one of Swenson's sources.[6] Nevertheless, RLS-I did not rely alone on existing expertise, secondary sources, or outside templates.

Research

RLS-I's teams designed a pre-intervention research model to supplement the significant existing literature on informal justice in Afghanistan[7] and, critically, provide nuanced understandings of

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[4] Swenson, p. 127, citing Dunn, Chisholm, and Mason, "Assessment," P. 17.

[5] See Checchi and Company Consulting, Inc. "Phase 3 Final Report: Rule of Law Stabilization Program – Informal Component (RLS-I)," (Kabul: USAID, 2014): http://pdf.usaid.gov/pdf_docs/pa00n4gh.pdf, or *Afghanistan Justice Engagement Model – Practitioner's Guide* (http://www.tloafghanistan.org/AJEM.html) which details the model developed during RLS-I and being implemented and further refined during the USAID-funded Assistance for the Development of Afghan Legal Access and Transparency (ADALAT) project.

[6] Noah Coburn, "Informal Justice and the International Community in Afghanistan," (Washington, D.C.: United States Institute of Peace, 2013), p. 41. Coburn states: "…and recruiting an expert on informal dispute resolution and a team of Afghans with experience in the area" describing RLS-I's startup.

[7] The Afghanistan Research and Evaluation Unit (AREU), the International Development Law Organization (IDLO), The Liaison Office (formerly Tribal Liaison Office) (TLO), The United States Institute of Peace (USIP), Norwegian Refugee Council (NRC) and others published numerous descriptions and analyses of traditional justice and traditional justice programming in Afghanistan and internationally.

the unique justice context in each area it worked. The assessments identified local challenges to quality justice to inform design of targeted program interventions to meet the unique needs of each district. In 50 program districts, the teams engaged over 2,000 male and female individual interview and focus group respondents known for dispute and dispute resolution expertise. While more rigorous than a typical "assessment" involving a few interviews, each district assessment sought only to supplement existing literature and enable locally-relevant programming. Collectively, however, the vast primary data collected and analyzed informed design of a comprehensive intervention model (now rebranded as the Afghanistan Justice Engagement Model – JEM) [8] customizable to the unique needs of new districts as determined, again, through pre-intervention research. By design, RLS-I continued this learning process during programming with regular comprehensive program reviews harnessing feedback from all-staff and participant focus groups, trainers, and quantitative evaluation findings. Contrary to Swenson's assertions of incompetence and short-sightedness (p. 128), this consistent attention to rigorous planning and continued improvement reflected an evolving and detailed understanding of local context and long-term strategic planning.

Contextual Understandings

Through its primary and secondary research, programming, and evaluation, RLS-I developed nuanced understandings of the dispute and justice contexts in the regions in which it worked. This included confirmation of the well documented shortcomings of formal justice, including legitimate and illegitimate costs, slow pace, inaccessibility/remoteness from many rural residents, and, significantly, the fundamental disconnect between the adversarial nature of formal adjudication and the overarching cultural mandate for reconciliation and community harmony. The common winner-takes-all outcomes of formal justice can often result in exacerbated animosity between disputants. In addition, the state's physical reach to many rural areas has always been somewhat tenuous, so the government's ability to provide justice services or exert its influence directly, including through coercive enforcement or deterrence, is limited.

RLS-I also refined its understanding of the common perception of traditional justice as accessible, expeditious, low-cost, familiar, trusted, and, most importantly, satisfying the cultural mandate for reconciliation and community harmony, thereby making it the preferred dispute resolution choice for a great majority of Afghans.[9] The TDR institution, however, faces shortcomings, including those rooted in this prioritization of communal harmony at the expense of individual rights. This includes, as examples, the forced marriage of girls and women to resolve serious disputes (*baad*), or the illegal confiscation of a rightful owner's land in the spirit of compromise and reconciliation. In many cases these violations undermine the long-

[8] See *Afghanistan Justice Engagement Model (JEM) – Practitioner's Guide*: http://www.tloafghanistan.org/AJEM.html.

[9] While difficult to quantify, RLS-I and other sources agree that approximately 80 percent of all disputes are resolved outside the state justice system. See Afghanistan Human Development Report 2007: Bridging Modernity and Tradition—The Rule of Law and the Search for Justice (Kabul: CPHD, 2007)

term harmony they seek as community members become aware of and resent injustice to themselves or family members. In addition, the non-authoritarian traditional dispute resolvers can be vulnerable to coercion by strongmen or criminal elements, rendering them powerless in cases involving or associated with these actors.

Local social and justice contexts, like the micro-cultures within which they are embedded, vary by region and specific locality within those regions. In most areas RLS-I worked, informal justice was largely ad hoc – disputants selected groups of elders and other respected community leaders as needed to form *jirgas* to resolve disputes, rather than relying on standing councils, or *shuras* designated for the purpose. Nearly all of RLS-I's key research informants reported that disputants were free to select and reject *jirga* members. To a significant degree in many locations, this democratic control promoted integrity and best practice, disputant trust, and imbued legitimacy, although, in some cases, dispute resolvers were prone to malpractice, including corruption. Dispute resolution methodology ranged from mediation to binding arbitration, depending on location, case type, and disputants. Solutions were often ad hoc and pragmatic, lending the institution a degree of flexibility, but also unpredictability. Compliance mechanisms ranged from voluntary consent to community pressure to coercive enforcement, including confiscation of deposits or, in rare cases, burning of houses and exile.

The informal system to varying degrees operates outside of, parallel to, and in cooperation with, the state system. Where the justice sectors do cooperate, however, the limited legal framework for that cooperation means that valued added, effective collaboration is often less than maximized, with, for example, uncertainty by formal justice actors, including Ministry of Justice Civil Affairs (*Huquq*) Department professional staff, about when and how they can refer cases to traditional dispute resolvers and formally register the outcomes as enforceable by the state. Nevertheless, the high level of legitimacy traditional justice enjoys in Afghan communities, ingrained nature of traditional justice in local culture, and physical and cognitive distance between the state and local dispute resolvers and community means that the traditional justice system will continue to play a significant, if not dominant, role in local justice for some time to come. Many formal justice actors and officials, particularly at the local level, understand and embrace this reality. To a significant degree, the traditional system in many areas of Afghanistan, as in many global contexts, has been and will continue to be *the* justice system.

Perhaps most critically, legitimate traditional dispute resolvers in the areas RLS-I worked are embedded in the local culture they represent and serve, deriving their authority largely by voluntary consent of the community. They are in and of the community, thereby able to influence, but also beholden to, local culture, including its positive and well documented negative components. Informal justice, and, to a significant degree, formal justice, both operate and survive only by consent of the governed. Without overall social/cultural evolution, the justice mechanisms within it will not evolve, nor will understanding of or respect for individual rights, statutory law, and formal justice. In the fragile state context of Afghanistan, the informal and formal justice institutions do not operate and survive without a supporting culture. In fact, attempts at expanding formal rule of law without the requisite communal understanding of

that law and its sources can trigger backlash against the state. Therefore, influencing this hybrid justice system requires engaging its governing cultural context. It is from this premise that RLS-I endeavored to improve the quality of dispute resolution and justice services in Afghanistan.

RLS-I Model

Given these realities, RLS-I knew that a realistic program objective was an improved understanding of and respect for Afghan law and an improved, valued-added relationship between informal justice actors and state mechanisms for dispute resolution and justice provision. To do this realistically and sustainably required an engagement with the constituent members of local justice culture to transform that culture away from harmful practice and toward greater respect for rights and dispute resolution best practice. RLS-I needed not only to understand the strengths and weaknesses of local justice culture, as discussed above, but to establish common understandings among a critical mass of key stakeholders: trusted/influential male and female elders, state justice actors, religious and other leaders, and the community at large. RLS-I therefore incorporated collective stakeholder analysis during the assessment phase and throughout program activities. Having identified and prioritized key shortcomings of local justice – e.g., rights violations due to faulty legal understandings and subordination of individual rights to community interests, RLS-I addressed these challenges by providing resonant legal messaging from influential sources, facilitating collective development of solutions, and enabling mutual support and accountability through male and female networking and formal-informal justice linkage activities.

In essence, RLS-I worked to change the culture and its constituent stakeholders so that when they collaborate as justice actors, they come together with evolved perspectives on individual rights and greater valuation of all members of the community, including women and minorities – and that the community support and demand those evolved actions. This greater respect for rights reduces harmful justice and negative social practice generally, reduces disputes, and, critically, improves understanding of and appreciation for statutory law and the role of the state. Engaging the knowledge, attitudes, and practice of the constituent components of local culture – leaders and average citizens – was essential to establishing the foundation for greater respect for rights, rule of law, and general social cohesion. RLS-I found that the vast majority of its participants were open and eager to engage in learning and dialog on better ways of doing things. “Traditional” justice systems were evolving with the culture in which they are embedded.

Participants

Swenson’s statement that the project “sought to capitalize on the perceived desire of many local actors to increase their social standing,” is simply false (p.128). RLS-I developed and adhered to participant selection criteria and protocols to ensure selection of representative groups of legitimate male and female justice actors and community leaders known for integrity and dispute resolution skill – trusted leaders who hold authority by voluntary consent of the community. Given the embedded nature of traditional justice within local culture, RLS-I identified a critical mass of ethnically, tribally, and geographically representative participants from throughout its districts to ensure sustainable justice culture reforms rooted in collective

knowledge, attitudes, and practice. RLS-I field staff triangulated between local officials, senior elder/leaders, and male and female community members/leaders to ensure invitees met stringent participant selection criteria. RLS-I participants were not those likely to exploit international or military affiliations for personal gain or to "pursue personal agendas and vendettas," as Swenson suggests (p. 129). RLS-I specifically excluded minimally-legitimate and notoriously prominent strongmen and authoritarians – those Afghans often referred to as "imposed" – as corrupting influences who would indeed be more likely to use the international engagement "to enhance their influence." RLS-I did not "set up" Shuras to distribute funding or anything else precisely to avoid the power-distorting problems Swenson identifies (p. 129). RLS-I avoided affiliation with the military for the safety of our staff and participants. RLS-I and its participants were never dependent on military protection, as Swenson suggests (citing a source from 2007, three years prior to the start of RLS-I – more than sufficient time for RLS-I's designers to adopt its lessons).[10]

Legal Education

In most areas of Afghanistan, stature is as important as qualifications. Therefore, fully qualified staff and ongoing learning aside, RLS-I collaborated with the most respected legal trainers available – national university Law and Sharia Faculty professors and other formal justice professionals – teaching audience-specific legal material designed to target and reduce negative/illegal local justice practices. RLS-I's expert trainers held the requisite stature to gain the audience's confidence – an audience that included elders and uneducated local religious leaders who often and errantly promulgate harmful/illegal/un-Islamic customary practices as religiously compliant. Over several iterations, working groups of these experts and male and female program participants refined and focused the most relevant areas of family, inheritance, constitutional, criminal, property law and deeds to ensure resonance with and accessibility to RLS-I's audience. For example, RLS-I used material in Afghan statutory law and sharia on consent to marriage to reduce the practice of *baad* and other forms of forced marriage – and to raise the status of women and girls in society generally.

Contrary to Swenson's assertion that "the program lacked a clear, coherent approach for navigating the tensions between state law, including international human rights norms, and Sharia law" (p. 128), RLS-I gave significant attention to navigating the space "between" state law and Sharia. What Swenson misses is that most of Afghan statutory law in the areas most relevant to protecting human rights – e.g., family and inheritance – is derived directly from moderate Sharia. RLS-I went to significant lengths to ensure that our legal education materials and trainings adhered to Afghan statutory law. Our training curriculum was designed and written by national university law faculty and respected judges in consultation with working groups of male and female traditional dispute resolvers. Materials were reviewed by other faculty, the deans of the Kabul and Nangarhar University Law and Sharia Faculties, a prominent female judge/advisor to the Supreme Court, numerous other judges and legal professionals,

[10] Swenson cites Thomas H. Johnson, "The Taliban Insurgency and an Analysis of Shabnamah (Night Letters)," Small Wars & Insurgencies, Vol. 18, No. 3 (September 2007), doi:10.1080/09592310701674176.

and RLS-I lawyers. We trained our trainers to use audience-appropriated language and adhere to Afghan statutory law and assigned national and international staff to monitor trainings and event reports to ensure they did not deviate into teachings outside those adopted by the Afghan constitution and statutory law. Where one trainer insisted on using a version of law outside that adopted in Afghan law, RLS-I removed him from that topic.

Given the overriding influence of Sharia for the vast majority in our audience, RLS-I trainers taught our legal materials demonstrating the congruence of statutory law and Sharia to 1) maximize acceptance and resonance with the audience, especially where countering negative, ingrained customary beliefs and practice they often inaccurately ascribe to Sharia and 2) promote better understanding of Afghan statutory law (and the state) as consistent with their faith, rather than foreign-imposed, as has been widely rumored. The materials focus on key principles such as consent to marriage in Afghan law and Sharia to counteract some of most egregiously harmful customary practices, including, as examples, forced marriage of girls to resolve disputes (*baad*), and women's right to inheritance to counter the common denial thereof. Materials also address other key legal issues, including property law and deeds, to, for example, improve land dispute resolution and prevent potentially destabilizing land disputes. Given RLS-I's level of legal education planning, it is unclear what "ad-hoc" decisions and "short-term" calculations Swenson is referring to (p. 128).

Sustainability

RLS-I participants, as embedded members of their communities, are not going anywhere. They, and their predecessors, have been there for centuries – so have most of the positive traditional dispute resolution methodologies they employ. Therefore, RLS-I's approach of adding value to existing local justice institutions was, by nature, sustainable. RLS-I did not, as Swenson implies, establish standing councils, or *shuras*.[11] RLS-I staff were well aware of their shortcomings, including their likelihood of dissolution, and potential to distort local power dynamics, especially where comprised of powerful actors with little genuine legitimacy, as touched on by Swenson (p. 129). To the contrary, RLS-I participants, armed with relevant legal information they respect, self-generated solutions to challenges they have assessed and prioritized, and newly established or re-invigorated connections to their TDR peers and formal justice actors, bring these assets to traditional practices they would undertake irrespective of RLS-I's intervention. RLS-I's volunteers and other participants from throughout its areas of intervention remain in their communities and available to collaborate as needed on serious disputes with legal knowledge and enhanced informal and formal justice connections acquired during RLS-I. If, for example, RLS-I participants convince their peers and disputing families to forgo the use of *baad,* the project has succeeded. Or should a group of RLS-I participants, having committed to adhere to the law and integrity in dispute resolution, use contacts established during RLS-I networking meetings to assist other colleagues in addressing a particularly challenging dispute in a legal and transparent way, that is success. Whether or not RLS-I's participants continue to hold formal network meetings is secondary.

[11] Swenson attributes the activity to "international actors" within his discussion of RLS-I with no qualifying transition (p.129).

Finally, RLS-I partnered with Afghan civil society organizations, including The Liaison Office (TLO), an authority in Afghanistan on researching and programming for traditional justice practitioners. That approach continues under ADALAT where TLO acts as the lead implementer and trainer to other CSOs. By design, the RLS-I model (now JEM) solicits and incorporates the partners' expertise and ideas on TDR in the areas in which they work. The collaborative process continues to help ensure the relevance of the RLS-I/JEM model. RLS-I also regularly consulted human rights CSOs such as Women for Afghan Women to gather ideas on how best to promote adherence to human rights norms in traditional justice.

Women's Empowerment

The same sustainability principles applied to the one activity in which RLS-I *did* temporarily establish new bodies. In addition to legal education for a critical mass of women from throughout the project's areas of intervention, RLS-I supported volunteer women's dispute resolution groups, or *spinsary*[12] groups, as a mechanism to add value to their existing roles in dispute resolution. RLS-I supported the groups by facilitating structured discussion of the best ways to approach dispute resolution and how to apply their newly acquired legal knowledge in defusing disputes and promoting respect for rights – particularly women's. RLS-I understood that the learning, confidence, and collaboration bolstered by these groups far outweighed the importance of their ongoing existence as permanent entities. Nevertheless, the groups resolved over 500 disputes and contributed to men's efforts to resolve numerous others, particularly those involving family and women's issues, by providing legal information and advocating for respect of the rights of women and children.[13] These women's efforts not only helped prevent and resolve so called low-level disputes that very commonly escalate to serious inter-family conflicts, but contributed significantly to the women's confidence and, critically, their stature among male relatives, as confirmed by the USAID external evaluation cited by Swenson.[14]

Formal-Informal Justice Linkage

In highlighting the one-directional nature of formal-informal justice cooperation (formal to informal), even after RLS-I's formal-informal linkage activities, Swenson raises some valid questions. While increasing TDR (and public) use of the formal system is in fact challenging, the reason largely remains the shortcomings of state justice, including cost, slow process, cognitive and physical inaccessibility, and the ineffectiveness of adversarial adjudication in meeting the cultural mandate for conciliation and community harmony. These issues result in tempered public opinion of the institution. Nonetheless, RLS-I worked to improve acceptance of the state system by highlighting the congruence of statutory law, positive local custom, and faith, defining jurisdiction in criminal disputes, and fostering face-to-face value-added cooperation between formal and informal justice actors. This resulted in regular feedback from formal

[12] Spinsary literally means "grey headed" and is commonly used to refer to elder women. RLS-I's spinsary groups also included respected middle aged or younger adult women.

[13] Checchi, "Phase 3 Final Report," p. 31.

[14] Sayara Research, "Performance Evaluation of the Rule of Law Stabilization – Informal Component Program" (Kabul: USAID, 2014), p. 7. https://pdf.usaid.gov/pdf_docs/pa00jxpm.pdf

justice actors on elders' improved compliance with statutory law and respect for jurisdiction, which, these formal actors report, has reduced tension and improved cooperation between the two when addressing civil and criminal disputes. Still, the desirability of state justice will be limited until it can better address disputes in non-adversarial ways. Formal justice actors and local officials, particularly outside of Kabul, are well aware of the public's desire for conciliatory dispute resolution services and rely heavily on the traditional justice mechanism. Therefore, increased numbers of referrals to the state, outside of criminal cases, may not be an effective indicator of formal-informal justice linkage success or a requisite objective of access to justice efforts. If traditional mediation services are increasingly compliant with the law and fair, must disputes be referred to formal justice? The trend in the West, with its established formal system, is the opposite direction, largely for similar reasons; why go to court when you can reach an amicable solution – saving time and money – in some form of alternative dispute resolution?

The public mandate for mediation is why RLS-I advocated that future programs engage the government entity designed to, among other duties, provide mediation services in civil disputes, the Ministry of Justice Department of Civil Affairs (*Huquq*). While well-conceived, many RLS-I participants regularly reported that Huquq service providers performed their legal and procedural duties poorly, thereby undermining public confidence in the office. Institutionalization of professional staff capacity building systems and resourcing is now underway as part of the USAID-funded ADALAT project.

Counterinsurgency/Taliban

Contrary to Swenson's assertion, RLS-I was well aware that support for traditional justice actors alone was insufficient to counter the Taliban (p. 129). Legitimate traditional leaders are not armed authoritarians, leaving them vulnerable to Taliban intimidation and displacement. Therefore, RLS-I's primary interest was to avoid operating in territories where the Taliban were present for the obvious objective of staff and participant safety. Swenson's assertion that "insurgents almost invariably knew areas better" therefore lacks relevance (p. 128). RLS-I's staff and participants knew their areas quite well. In areas Taliban did control, the group largely maintained a monopoly on power and the ability to control justice processes as they saw fit – generally more decisively than either the state or TDR. However, most Afghans prefer reconciliation, which the Taliban, imposing draconian punitive enforcement in some cases, did not offer. While respected for decisiveness and compliance with sharia, the overriding cultural mandate for conciliation generally maintained TDR as preferable to both Taliban and state justice. The Taliban, like many local formal justice actors, recognized this and often sought, like the state, TDR cooperation in reconciling disputants in the areas they controlled.

District Selection

Another area where Swenson is largely off-base, but at least talking about the correct project, is the selection of the districts in which RLS-I worked. USAID and Checchi regularly consulted on preferred program districts. Some U.S. government representatives argued for engagement in districts that had in fact been "newly cleared" of insurgents. The RLS-I teams, however, were never pressed to work in areas that would put the safety of staff and participants at undue risk.

Where the field teams felt they were at risk, RLS-I forwent programming – with the concurrence of USG stakeholders. Security aside, RLS-I employed district selection criteria that prioritized need as defined by, as examples, rates of rights violations in TDR and poor formal-informal justice cooperation. More often than not, need was the determining factor in choosing districts. Furthermore, the vast majority of districts in the South, East, and North where RLS-I worked could benefit from a version the RLS-I model customized to its needs. So newly cleared of insurgents or not, RLS-I's programming added value to the justice context and contributed to long-term stabilization regardless of the chosen district.

Misuse of a Source

Swenson's selectivity results in several errors and misattributions of secondary analysis of other projects or general approaches to RLS-I. For example, Swenson misses or chooses to ignore material in one source, Noah Coburn's "Informal justice and the International Community in Afghanistan," that contradicts his overarching premise that RLS-I was a counterinsurgency project. Coburn uses "initial" in describing the project concept as counterinsurgency and early intragovernmental debate about the project's objectives and strategies.[15] And while failing to articulate what RLS-I became by the end of the first year, Coburn's discussion suggests that, in fact, it was something else. Coburn explains that few of the military officers interested in RLS-I "described it as an effective counterinsurgency tool, and there appears to have been little to no actual programmatic cooperation with the military."[16] In addition, earlier in the piece, Coburn says that the United States and United Kingdom had "turned away from counterinsurgency approaches"[17] as a partial explanation of the governments' diminished involvement in national informal justice policy development.

Nonetheless, Swenson proceeds to misattribute Coburn's discussion of other projects and approaches to RLS-I. In one example, he cites Coburn, without providing a page number, in alleging that program participants were often more motivated by the ability of international assistance to enhance their influence than concern for their communities (p. 128). Nowhere in his paper does Coburn attribute this dynamic to RLS-I specifically. Swenson then cites Coburn in implying that RLS-I was one of what Coburn calls a "confusing array"[18] of projects that may have exacerbated local tensions by discussing RLS-I and "international intervention" consecutively with no qualifying transition (p. 128). In fact, in describing what worked for USIP, Coburn describes many of RLS-I's successful approaches: "USIP has found that projects that focused on creating and supporting networks and linkages between elders or councils already in existence and government officials tend to be more effective in encouraging dispute resolution, increasing access to justice, and strengthening the ties between the government and the

[15] Noah Coburn, "Informal justice and the International Community in Afghanistan" (Washington, D.C.: United States Institute of Peace, 2013), P. 41
[16] Ibid., p. 42.
[17] Ibid., p. 23.
[18] Ibid., p. 37.

community. These attempts at facilitation and cooperation were the most productive when building on local innovations to resolve conflict."[19]

Results

In pursuing its strategy of reaching a critical mass of key stakeholders throughout each if its geographical areas of intervention, RLS-I reached tens of thousands of male and female participants[20] with a minimum "dosage" of education and action-oriented activities. Nearly all 6,431 district network members (unique program participants) in RLS-I's final phase of 24 districts (July 2012 – March 2014): created and signed pledges to adhere to best practice in dispute resolution and cooperate with government actors; regional volunteer groups identified and analyzed 99 longstanding, destabilizing disputes and employed program teachings and commitments to voluntarily resolve 31; female participants formed 63 *spinsary* groups, which resolved 526 disputes; *spinsary* group members and other female participants also frequently reported applying RLS-I legal knowledge in successfully advocating for the rights of women and girls in male-led dispute resolution processes; TDR practitioners recorded nearly 1,000 decisions on standard forms and registered 300 of those with formal justice actors; and formal justice actors regularly reported improved legality and fairness in TDR decisions. While the most difficult to record and quantify, this dual education and self-initiated solution process resulted in hundreds, if not thousands, of anecdotes from participants and local officials of improved awareness of and respect for rights in TDR decisions and generally more respectful social interaction, which has reduced the number of disputes to begin with.[21]

Outside sources verified many of RLS-I's observations. USAID's external performance evaluation of the project found that 85 percent of RLS-I's 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," [22] which validates a primary RLS-I objective: improving respect for women's rights and overall stature within their families and society generally. The evaluation also found that "All spinsary members … indicated that the training instilled in them a strong sense of personal responsibility to resolve disputes in their communities."[23] In addition, "76% of male and female direct beneficiaries indicated high levels of satisfaction with the trainings provided by the RLS-I program. Beneficiaries noted in qualitative interviews that they felt their knowledge of Afghan law improved as a result of the training, which further enhanced their ability to make decisions in accordance with Afghan law." The report notes that women were less satisfied with trainings, which is pulling this number down.[24] (In many rural areas that RLS-I worked, finding qualified women trainers and staff was often very difficult. RLS-I did its best through training-of-trainers for respected women with some level of education to convey the basics of its

[19] Ibid., p. 49-51.
[20] Non-unique participants – each unique participant attended multiple activities.
[21] Checchi Consulting, "Phase 3 Final Report," p. 2-3.
[22] Sayara Research, "Performance Evaluation," p. 7.
[23] Ibid., p. 7.
[24] Ibid., p. 20.

materials.) The report notes that "58% of the indirect beneficiary population reported that TDR actors' knowledge of Afghan law increased over the past two years. This finding indicates that new knowledge and skills gained from RLS-I trainings were used to improve the quality of justice, as perceived by the local population in the targeted districts."[25] On resolution of longstanding disputes, USAID's external evaluation said that, "The quantitative survey data however indicated that 58% of indirect beneficiaries believed that more long-standing disputes had been resolved in the past two years compared to previously, with only nine percent of respondents reporting that there had been no change (see Figure 11)." In the provinces where RLS-I engaged the most districts, Nangarhar and Kandahar, that perception was 88 percent and 69 percent, respectively.[26]

RLS-I and its internal and external evaluators collected hundreds of compelling participant anecdotes on the program's impact on their lives. Reprinting examples of them here would undoubtedly impress. However, RLS-I and its implementers embraced empirical evaluation to measure actual program impacts with the objectives of continued learning, program refinement, and accountability. Collecting output data, including numbers of participants trained, was easy, but insufficient. Measuring outcomes such as participant successes in resolving disputes legally and equitably was more challenging, but possible. Measuring cultural changes in dynamic grassroots social systems was not easy or inexpensive, but, arguably, necessary. The RLS-I evaluation team did its best with the resources available. Understanding that RLS-I's impacts should be indicated by, as examples, rates of pre- and post-intervention rights violations in TDR or public confidence in the justice system, pre- and post-intervention household surveys in program and comparison districts to determine impacts attributable to the program would have been ideal. Such expansive surveys were, however, cost prohibitive. As a more cost-effective alternative, RLS-I's evaluation team measured disputant perceptions of the quality of their dispute resolution processes and outcomes. RLS-I identified a positive correlation between disputant perceptions of the quality their TDR processes and outcomes with the numbers of our participants involved in those processes.[27] In other words, as the number of RLS-I participants in any given dispute resolution body, or *jirga*, increased, disputant satisfaction with the equity and fairness of their outcome increased. The finding demonstrated that RLS-I participants, armed with new legal awareness and possible solutions to common TDR shortcomings were able to influence their peers and increase the quality or "justness" of the dispute resolution processes in which they participated. The result therefore also validated RLS-I's strategy of reaching a critical mass of all potential dispute resolvers in our areas of intervention. RLS-I determined that approximately one-third of possible *jirga* members was a cost-effective target for enrollment, but further analysis could help determine more appropriate targets for any given area (e.g., areas of high rates of rights violations may require

[25] Ibid., 7.
[26] Ibid., p. 31.
[27] Checchi and Company Consulting, Inc. "Final Evaluation Report: The Rule of Law Stabilization Program – Informal Component" (Kabul: USAID, 2014), p. 4. https://pdf.usaid.gov/pdf_docs/pa00k7r4.pdf.

a higher ratio of program participants to ensure sufficient influence to change justice attitudes and practice).

This small sample of significant results indicates that Swenson's contention that RLS-I's "short-term approach generated pressure for quick wins and demonstrable metrics, but even these were often in short supply" and that the project saw "some results" are, again, selective uses of source material. While these externally-verified results are rewarding, the ability to measure lasting impacts (or lack thereof) attributable to RLS-I with significant degrees of confidence was still limited. The requisite resources to measure sociocultural change in determining whether or not program achievements are sustained or "quickly evaporated," as Swenson suggests, would have been welcome (p. 129).

## Conclusion

RLS-I welcomed informed critique. As demonstrated above, the project's designers incorporated robust evaluation into the intervention model itself to enable continued learning and improvement. RLS-I expected that the same attention given to ensuring a relevant and effective program be made in ensuring an accurate measurement of that program. While presumably well-intentioned, what Swenson offers is not only a missed opportunity for learning, but a barrage of misplaced assertions that damages a widely praised project and diverts time and resources better spent on improving development efforts. As always, we welcome an informed discussion of the most effective ways to improve access to quality justice and the lives of ordinary Afghans.