**Portfolio Review Outcome Summary:**

**Open Society Afghanistan Rule of Law**

**To:** Anthony Richter, Daniel Sershen, Daphne Panayotatos, Shaharzad Akbar

**From:** Abdul Basir Faizi

**Date:** April 27, 2015

**Re:** Outcome Summary

**Cc:** Robert von Dienes-Oehm, Sarah Han, Rachel Reid, Chris Rogers, Mustafa DaiMerkisha, Siavash Rahbari.

This document mainly explains outcomes of the key questions and answers raised during the April 6, 2015 review of OSA’s rule of law portfolio. The portfolio review has resulted in an adjustment of OSA’s strategy on rule of law specifically, access to justice, legal empowerment, legal education, and advocacy on behalf of detainees and transitional justice.

1. Participants

Portfolio lead: Abdul Basir Faizi, Rule of Law Officer;

Discussants: Chris Stone, OSF President, Nader Naderi, OSA Board Chairman;

Moderator: Anthony Richter;

Other participants:Shaharzad Akbar, Rachel Reid, Chris Rogers, Sarah Han, Farnoosh Hashemian, Lotta Teal, Siavash Rahbari.

1. Questions and Responses

Following a short presentation of OSA’s rule of law portfolio background, Chris Stone objected to the characterization in the portfolio review document that 14 years ago there was a complete lack of rule of law. He suggested that when OSA speaks of the history of the rule of law in Afghanistan, it should consider a deeper historical analysis beyond the last 15 years. Participants agreed with the suggestion.

Mr. Nadery responded that there is no doubt that a country with over a century of formal legal history has had a rule of law sector. But it is more accurate to say that successive governments have ruled *by* law rather than lived under the rule *of* law. Rules and procedures existed, but they served to support the government rather than serve the public. A growing population is now demanding human rights and political participation.

Mr. Stone noted that the portfolio documents describes the informal justice system as abusive of women’s rights. However, on his trip to Afghanistan, he visited the Kabul female prison center where there were women who were being abused in the formal justice system. Mr. Faizi responded, that this was due to the weak capacity of the formal justice system, but that the formal justice system is amenable to change in a way that the informal system is not. Ms. Reid further noted that the women in the shelters may have been abused in significant ways, but that informal systems are much harsher on women than the failures of the formal system.

Mr. Stone’s overall emphasis was that the justice system of Afghanistan should not be an import but an iterative development that represents rule of law in an Afghan way.

With regard to OSA’s rule of law portfolio, Mr. Stone noted that with human affairs there are always regrets and that the portfolio review process is designed to help Open Society learn from these regrets. He asked the portfolio lead to give some examples of these kinds of regrets overs the past years.

Mr. Faizi described one such regret: the fact that so much effort was spent on short-term projects that were difficult to evaluate, instead of building long-term relationships with strategic partners to help build organizational capacity in addition to seeking specific outcomes. Chris Stone agreed with the lesson learned.

Chris Stone asked about Justice For All Organization’s leadership and organizational development. Mr. Faizi answered that as a result of OSA’s continued partnership, the organizational capacity of JFAO has remarkably improved. JFAO succeeded to developing its strategy as well as its finance, administration, and monitoring policies. More importantly, through OSA’s support the organization got the opportunity to increase its donors and expand its activities to three more provinces. The organization needs more advancement to become a well-organized legal aid and legal empowerment organization.

Another lesson learned was that the setting a goal of creating a national cadre of paralegals was not realistic. Given our limited budget it is possible to enhance the capacity of a local NGO, but it is very difficult or even impossible to bring such a major change to the legal aid delivery system of Afghanistan. Mr. Faizi also spoke of the need for OSA to build consensus before engaging in ambitious projects such as the creation a national cadre of paralegals.

Mr. Nadery explained that in 2008, the situation was more stable and less dynamic. Civil society knew the views of the government, but that the situation is now more complex with the new government. The new government has been more aggressive on all fronts. What lessons have we learned to apply to the current situation?

Mr. Faizi responded that many large projects and ideas failed because of the problems of the previous government. It was inattentive to many of the problems in the country; also there was a great gap between civil society and government, but the new government has already met with civil society several times and has expressed interest in dealing with issues such as torture. At the same time, CSOs have spent the last decade learning how to function and be effective through trial and a lot of error. The Karzai government was somewhat of a learning stage for them. With all of this opportunity, we have to be careful to be focused.

Mr. Stone pivoted to look forward. He noted that judicial leadership is very important and that leaders need to be identified who can fulfill this role. He explained that it will be important to look for these leaders. And while it can be of value to look outside to see what is admirable about other systems, the thing about good governance is that you can’t export it you can only import it.

Mr. Faizi identified leadership in the Detention Working Group, such as the head of the Bar Association, the head of AID (LAOA). There are hundreds of new lawyers and mid-level judicial professionals who are about to take the reins of power. We should support these individuals. Again he emphasized the need for more systematic change to the legal education system.

Mr. Richter noted the impact of advocacy and its cost effectiveness. Still he noted that advocacy is built on consensus and demonstration has a role in creating such a consensus.

Mr. Faizi stated that advocacy will need to involve linking civil society with the government and that OSA can play a constructive role.

Ms. Shaharzad listed some of the broad lessons that will be carried forward from the portfolio review process:

* On legal education, it may be time to switch to advocacy for broader systematic change.
* On legal empowerment and access to justice, there is a need for strong independent organizations and core support and organizational development grants will be key.
* We need to consider whether we should spend more funds on advocacy or whether money would ruin the motivations involved. Should we support a secretariat for the DWG?

Mr. Stone shared that Open Society has a good deal of experience on leadership development. He hopes that we will take this forward with specific individuals who are poised and ready to lead civil society on these issues. It is important to blend individual and organizational support.

1. Outcome and Follow Up

One of the main successes of OSA in the rule of law field has been the legal clinics program at universities in Herat and Nangarhar. OSA’s partner, Herat University with further assistance from USAID engaged in advocacy efforts that led the Ministry of Higher Education to incorporate clinical legal education in the formal curriculum of law schools. OSA was the first organization (in conjunction with JI) to set up legal clinics in Afghan Universities and has been a partner in engaging both the deans of the universities to allow these clinics to function and the government of being supporting them.

As noted in the portfolio review, in the long term, there is a need for Afghans to determine what rule of law entails for their country. However, while some elites are being educated abroad, the vast majority of legal professionals are educated in an antiquated system that leaves them wholly unprepared to have the conversations necessary to bring about a truly Afghan form of rule of law. Even the elites educated abroad often find a one year LLM to be insufficient to give them the skills necessary to innovatively think about solving the problems of the Afghan justice system without leaning heavily on legal imports. Thus, it is important to enhance the legal education system of Afghanistan with the idea of nurturing a local perspective, to allow for real interaction among international and national legal professionals and innovative and context specific development of the rule of law in Afghanistan.

OSA’s past experience and relationships in legal education, its interest in long-term goals, and its relationships with civil society and the government allow it to seize the current opportunity with the new government to advocate for greater structural changes. In the coming years, there is a need engage in advocacy with the Ministry of Higher Education and the faculties of Sharia and law to continue supporting legal clinics and to reform the legal education more generally. OSA will identify and develop organizational partners and individual leaders for advocacy and policy development on this long-term goal.

On access to justice, OSA will evaluate its current partner, JFAO to determine how to responsibly reduce its general support so OSA can spread its capacity building and core support funds and create more long-term strategic partnerships keeping in mind OSA’s budget capacity.

By maintaining and improving the organizational capacity of its strategic partners, OSA can maintain the diversity of views on legal aid in Afghanistan. It can leverage its relationship engage in advocacy and coordination efforts with other donors, the government of Afghanistan and other Open Society programs to work towards consensus on a legal aid strategy for Afghanistan.

Finally, given the impressive results of OSA’s support for advocacy activities in the last two years, OSA will specifically incorporate advocacy both as independent activities and as part of the above goals. Our independent advocacy will continue to focus on protecting detainee right and supporting organizations working towards transitional justice and accountability.

The most significant outcome of the review process has been OSA’s strategic shift to raising the level of dialog over the long term in Afghanistan with the goal of developing an Afghan model of the rule of law. It will do so by working towards better legal education, providing long-term support to individual leaders and partner organizations, and by refocusing on advocacy.