



Tactical Pocket Reference
A Guide for U.S. Forces
October 2012



Evidence-Based Operations (EvBO) in Afghanistan

Tactical Rule of Law

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Disclaimer: This is not current U.S. policy. Always rely on existing doctrine. Examine and use the information herein in light of your mission, operational environment, the Law of War, and other situational factors.

References

- Afghanistan Theater of Operations: Evidence Collection Guide (OCT 2011)
- Afghan Criminal Procedure Code
<http://afghantranslation.checchiconsulting.com/>
- ISAF SOP 206 (Information Release)
- ISAF SOP 362 (Detention of Non-ISAF Personnel)
- ISAF SOP 236 (Intelligence & Forensics ISO Detainee Operations)
- ISAF SOP 220 (Target Nomination, Vetting, and Management Procedures)
- Army Professional Forum / Protection Net / OEF Evidence Based Operations (NIPR)

EvBO

EvBOs are operations where Afghan law enforcement authorities, supported by ISAF, effectively investigate, apprehend, search or seize criminal suspects and affiliated property in accordance with Afghan law."

What is EvBO?

EvBO is an ISAF concept; it means dealing with insurgent-related actions as crimes under Afghan Law. Therefore EvBO must be conducted in partnership with GIRoA.

**Remember, the term "EvBO" may not resonate with the Afghans as this is what the police and prosecutors do everyday.*

•Criminal investigations deal with evidence; military operations are driven by intelligence. The EvBO process assists in the transition between these different perspectives--using intelligence to plan operations that will gather and secure evidence.

•Under Afghan law, the prosecutor or judicial official is responsible for gathering and assessing evidence. The ANP have an important role, especially in the initial stages of the investigation, but are subordinate to the prosecutor. It is essential that the EvBO process engages with the relevant prosecutor at the earliest opportunity so that (s)he may provide advice.

• Except for intelligence collection and internal investigations, the ANA have no power to gather and provide evidence to the prosecutor; they should not be used for this task unless there are no ANP available to do so. They should primarily cordon and secure site for the investigator.

What EvBO is Not

- A coalition unilateral operation using ISAF or National Rules of Engagement.
- A replacement or infringement of the published rules of engagement—especially that of self-defense.

Why EvBO?

Criminalizing insurgents and their methods further undermines their legitimacy. Using Afghan Rule of Law to deal with the insurgency helps strengthen GIRoA and will assist in developing its ability to tackle the criminality that undermines the stability of the country and hampers its development.

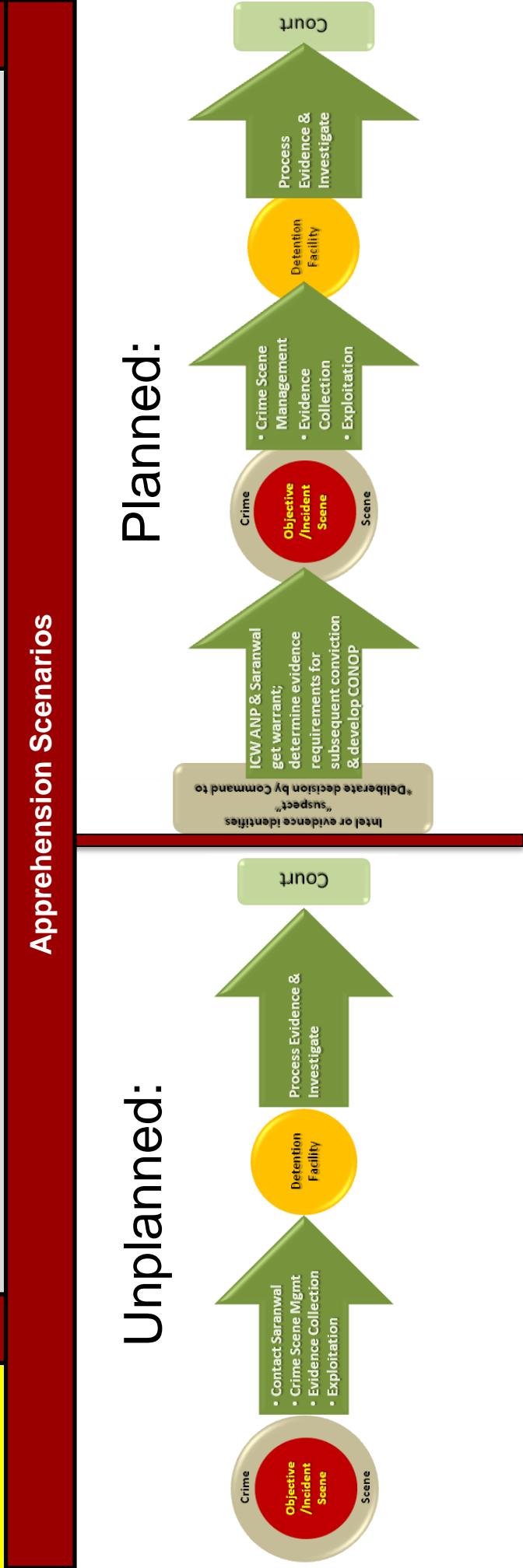
The goal is to get insurgents off the battlefield!

Evidence-Based Operations Concepts

- **The EvBO Team**
 - Saranwal (GIRoA prosecutor) preferably Anti-Terrorism Prosecution Department
 - National Directorate of Security (NDS) Investigators
 - Afghan National Police (especially Afghan Anti-Crime Police)
 - Afghan National Army (to support and enable Afghan National Police)
 - Coalition Forces: Police Advisory Teams (PATs); Military Advisory Teams (MATs); SFA ATs; ISAF SOF; Partnered BCTs and SOF.
 - Law Enforcement Professionals and Civilian Police Advisors working with PATs
 - Enablers:
 - Afghan legal advisor
 - Judge Advocate/Rule of Law attorney
 - CJTF Paladin Theatre Explosives Team/ACME Labs
 - CJTF 435
- **Relationship building.** The key to EvBO! CF must work with Afghan counterparts as teammates. Get them all involved, get them talking, and get them working together. One team, one fight.
- **The Saranwal.** The most important part of the process; the Saranwal is the lead GIRoA investigator and the first person who must agree in taking action. The Saranwal should set investigative priorities for EvBO. The Saranwal will outline what evidence and testimony is necessary for a prosecution. The police will work with the Saranwal to develop cases.
- **The detention facility.** A functioning and authorized detention facility is necessary to transfer a detainee to GIRoA custody; if there is no functioning or authorized detention facility in the area, the closest NDS facility is the preferred alternative.
- **The Court.** A functioning court is necessary to hear the case; if there is no secure functioning court in the area, another provincial court (as approved by Supreme Court) can hear the case.
- **Customer Service Orientation.** The customer is always right!
 - Satisfy what the prosecutor wants=arrest
 - Satisfy what the judge wants=justice

Guiding Principles

- Be Flexible** – GIRoA Legal procedures, paperwork and requirements may vary from district to district and province to province.
- Intelligence** –“Write to Release” or “Write for Display”
- It is their system** – Adjust to their rules and learn their system
- Give them what they want** – Not what we think they need
- Talk to local legal officials** – Forge relationships with and amongst them (prosecutors, investigators, judges)
- Leverage it to your best tactical advantage**



Apprehension Scenarios

Planned:

Unplanned:

Documenting and Reporting Evidence

Afghan Police Participation

The GIRoA legal system prefers Afghan witnesses to foreign (Coalition Forces) witnesses. Put your counterparts in the position to be the primary witnesses whenever possible. **Ask your Afghan Prosecutor for guidance on how best to utilize ANSF on the objective.**

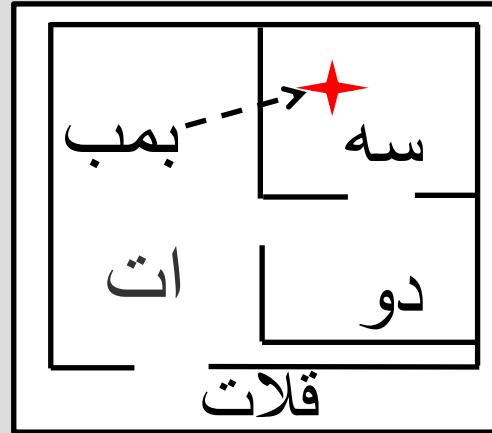
Evidence

Evidence is proof of who is responsible (and who is not) for a criminal act under Afghan law.

- Statements from victims, witnesses, police and prosecutors.
- Forensic reports, such as fingerprint matches and original physical items that connect a subject to a crime scene.
- If the original evidence cannot be preserved, use detailed photographs as documentation, but also explain why the original evidence could not be preserved.
- Partner with police and the Saranwal to learn what is considered a criminal act under Afghan law and what evidence (s)he needs to indict and convict.

Scene Report/Site Sketch

Use Afghan police or interpreter to fill out all forms for GIRoA evidence package **in the local language**, including lettering or numbers. The Afghans may refer to the site sketch document as a *scene report*. This form can also include witness statements and evidence lists. **Ask your prosecutor for guidance on site sketch and scene report preparation.** Document the objective with a site sketch. Draw the outline of the objective and indicate where individuals and seized items were located. If Afghan police or interpreter drew the sketch, have him sign and place a thumbprint on each sketch. Document the owner of the site/compound where contraband or detainees were found, as the owner is legally liable for all materiel/persons on site per GIRoA law. Attempt to have the detainee acknowledge by signature and thumbprint on evidence custody documents what was owned by/seized from them.



Always complete accurate biometric collections of all detainees and/or arrestees.

Use GIRoA forms and follow local GIRoA guidance on completing all forms.

Capture Video/Photographs of Bulk or Dangerous Evidence Requiring Destruction

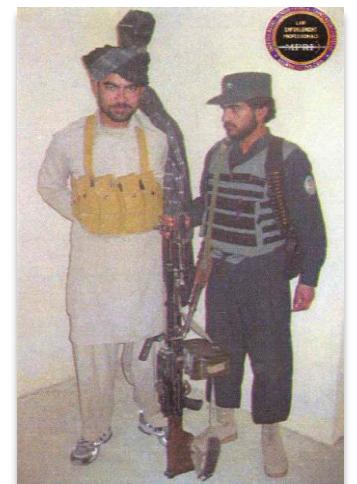
Bulk or dangerous evidence may need to be destroyed on site. Examples include RPGs, mortar rounds, large amounts of homemade explosives (HME), chemicals or drugs. Although HME test kit results have proven reliable as court evidence, it remains preferred to collect a sample for lab analysis with the lab report entered as evidence. Such collection actions must be documented, ideally by video or photographs. In the photographs, show your Afghan Police counterparts handling and destroying the evidence, with a village elder or leader present. Have Afghan Police give a verbal accounting of the destruction on videos and a written statement signed and thumbprinted to accompany photographs. Obtain a required sample of the destroyed items for submission to the court (check with Saranwal for the necessary amount).

Witness Statements

Witness statements should be obtained from Afghan Police or GIRoA personnel who were on the objective. Use an interpreter for illiterate Afghan Police. Both Afghan Police and interpreter (if used) are to sign and thumbprint **each** statement. Attempt to use the same Afghan Police for both witness statements and in the photos. **Ask your Saranwal for statement preparation guidance and how many witnesses are needed.** If in doubt, seek two Afghan Police/GIRoA witnesses.

Photos

Photos should ideally depict the detainee next to Afghan Police (with evidence displayed; however, always employ minimal handling of evidence so as to reduce contamination). Do not place detainee in a submissive pose.



In a series of photographs, document items as found at the point of discovery and again when consolidated.

Seek to have Afghan Police in each photo.

Ask the Saranwal for the best way to display photographs depicting detainees and evidence for the case.

Put Signatures and Thumbprints on ALL Documents

Thumbprints are very important to the GIRoA judicial process. Have witnessing Afghans and Afghan Police personnel and interpreters **both sign and thumbprint all reports, statements, or forms (to include Evidence Custody documents)**. If a Coalition Forces member is a witness, or fills out any forms, also collect his signature and thumbprint.



Operational Checklist

Crime Scene Safety <ul style="list-style-type: none"> ▪ Safety first <ul style="list-style-type: none"> ▪ Police and Coalition Forces ▪ Civilian ▪ Suspect ▪ Secure objective/crime scene ▪ Secure suspects ▪ Be IED-aware ▪ Record who comes and goes ▪ Remove civilian witnesses 	Photographs <ul style="list-style-type: none"> ▪ Photograph evidence before it is moved ▪ Include suspect in photo with evidence and ANP ▪ ANP-- professional pose ▪ Suspect – not in submissive position ▪ Minimize handling evidence ▪ Seek direction from Saranwal if in attendance 	Bulk Destruction– Drugs and Dangerous Goods <ul style="list-style-type: none"> ▪ Document evidence before, during and after destruction ▪ Use HME test kits– video/photograph ANP conducting test and showing results ▪ Include photos and video in evidence package ▪ Collect samples for lab analysis ▪ Collect material for physical evidence– check with Saranwal for required quantities ▪ Obtain written statement from ANP officers involved ▪ When possible, include local village elder or leader in photographs or video–obtain statement if possible 	Thumbprints <ul style="list-style-type: none"> ▪ Very important to GIRoA judicial process ▪ ANP and interpreters should sign and thumbprint all reports, statements and forms included in the evidence package ▪ Coalition Forces members should also sign and thumbprint all documents in an evidence package 	Evidence Storage <ul style="list-style-type: none"> ▪ Always wear gloves when handling evidence ▪ Ensure evidence is photographed prior to collection ▪ Weigh drugs and HME ▪ Store perishable evidence in paper bags ▪ Ensure bags are sealed and seal is signed or thumbprinted ▪ Maintain a written record of all evidence, including the following: <ul style="list-style-type: none"> ▪ Description of evidence ▪ Time, date and place seized ▪ Name of ANP who found the evidence ▪ A record of to whom it was sent and current location ▪ Maintain chain of custody–person taking evidence must sign for it 	Detainee Handling <ul style="list-style-type: none"> ▪ Safety first ▪ Always search detainee ▪ Secure detainee ▪ Record the following: <ul style="list-style-type: none"> ▪ Time of detention ▪ Name and age ▪ Father's name ▪ Location detained ▪ Reason detained ▪ Name of ANP who detained suspect ▪ Any injuries to detainee ▪ When detainee was taken ▪ To whom detainee was handed over ▪ Conduct Biometric enrollment ▪ Treat detainees with respect ▪ Maintain records of all dealings with detainee 	Follow-Up Investigations <ul style="list-style-type: none"> ▪ Maintain contact with prosecutor ▪ Follow all directions of prosecutor to gain additional evidence ▪ Investigator to send evidence to lab for analysis ▪ Investigator to send information to intelligence agencies for collation and analysis (GIRoA & CF) ▪ Keep track of your detainees ▪ Keep track of the case as it progresses through court
Crime Scene Examination <ul style="list-style-type: none"> ▪ Safety first ▪ Wear gloves ▪ Appoint Evidence Officer ▪ Photograph and sketch ▪ Collect and bag evidence ▪ No serum (blood) in plastic bags ▪ Record what, where and who ▪ Maintain chain of evidence 	Site Sketch <ul style="list-style-type: none"> ▪ Draw a sketch of the crime scene ▪ Outline the objective and depict where suspects, victims and evidence were located ▪ Use local language ▪ The owner of premises is legally liable for all material/persons on site as per Afghan Law ▪ Seek guidance from your Saranwal 		Witness Statements <ul style="list-style-type: none"> ▪ ANP who attend objective, victims, and civilians who witness the incident should provide statement ▪ Utilize Afghan female security forces ▪ Use interpreters to write statements for illiterate people ▪ Remember–Who, What, Where, When and How 			