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# SOCIAL DEVELOPMENT PAPERS

CONFLICT PREVENTION & RECONSTRUCTION

Paper No. 37 / October 2006

## Rule of Law Reform in Post-Conflict Countries

### Operational Initiatives and Lessons Learnt

Kirsti Samuels

## Summary Findings

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This paper aims to provide a *tour d'horizon* of common operational initiatives and policy approaches adopted by agencies and institutions involved in the area of rule of law reform in fragile or post-conflict countries, and identify key lessons highlighted in the policy literature.

There is a growing focus on rule of law reform in aid and development packages. However, as discussed in this paper, the numerous rule of law assistance programs implemented in post-conflict or fragile countries have had few lasting results on the somewhat intangible social-end goals associated with rule of law reform: (i) a government bound by law (ii) equality before the law (iii) law and order (iv) predictable and efficient rulings, and (v) human rights. Despite two decades of experimenting, still little is known about how to bring about these difficult and interdependent social goods.

In the non-conflict development context, rule of law reform appears to have been moderately more successful. However, even in those cases, there is little solid analysis in the literature evaluating why those strategies were relatively effective, or how they could be adapted to post-conflict settings. It is clear that the difficulties faced are severely heightened in the post-conflict context, where capacity and the rule of law starting point are very low and the country is often facing urgent law and order and dispute resolution problems.

The paper reviews some of the key lessons to have emerged from the last two decades of rule of law experience, typically undertaken in fragile or post-conflict countries (and more generally in developing countries) by a multiplicity of uncoordinated actors and projects. There is a striking lack of systematic results-based evaluations of the programs, especially independent rigorous cross country evaluations, or comprehensive case studies of all the programs in a country. The rule of law expertise that exists is not centralized or institutionalized, and resides in individuals who have often learnt through trial and error. The field lacks a common foundation or basic agreement on the goals of rule of law reform, on how different aspects should be sequenced to avoid them working against each other, and fundamentally what sorts

of strategies are effective. The paper highlights 11 important lessons: lack of coherent strategy and expertise; insufficient knowledge of how to bring about change; a general trend to focus on form over function; emphasis on the formal legal system over informal and traditional systems; short-term reforms in contrast to longer term strategies; wholesale vs. incremental and context-determined change; the need for local change agents; how to engender local ownership; rushed and compromised constitution making; poorly designed training and legal education programs; and the need to sequence and prioritize change.

The paper also includes detailed annexes on (i) key international actors involved in rule of law reform (ii) comprehensive examples of rule of law interventions in conflict-affected and developing countries, organized by actor, as well as (iii) a detailed reference list organized by major themes.

In this complex situation, it would be difficult, and probably unhelpful, to devise a rule of law strategy for the Bank without first undertaking comprehensive and well structured evaluations of how the different rule of law reform projects have interacted and played out in a range of post-conflict countries, as well as in some of the apparently more successful non-conflict countries. Given the state of development of this field, a literature review of the type undertaken in this paper can only serve as a starting point. However, a carefully designed, comparative field project based on systematic results-based case study evaluations, and drawing on the expertise of those that have worked in this field for years, could contribute substantially to the evolution of the field of rule of law reform. It would help give direction, centralize, institutionalize, and render accessible some of the lessons that should be guiding future programming in this area. These case analyses will be part of the second phase of this work at the Bank with the aim of contributing to the rule of law programming in post-conflict countries.

# SOCIAL DEVELOPMENT PAPERS

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## Conflict Prevention and Reconstruction

Paper No. 37/ October 2006

### Rule of Law Reform in Post-Conflict Countries

### Operational Initiatives and Lessons Learnt

Kirsti Samuels

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## Foreword

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The World Bank's involvement in conflict-affected countries is at the very origin of its mission. Indeed, the first loans of the International Bank for Reconstruction and Development were made for the reconstruction of Western Europe after World War II. The Bank's mandate has evolved since then. Poverty reduction has become the World Bank's overarching mission. Since the early 1990s, rule of law assistance including justice sector reform has become a substantive element of the World Bank's response to poverty challenges. The World Bank's approach to conflict has also evolved. The institution's intervention in post-conflict Bosnia and Herzegovina has laid the framework for its current approach to conflict and development. Operational Policy (OP/BP) 2.30 states that assistance to countries that are dealing with conflict is at the core of the World Bank's mission, with a focus that has shifted from rebuilding infrastructure to promoting economic and social stability.

This report on "Rule of Law Reform in Post-Conflict Countries" examines the common ground between the conflict and the rule of law fields of development assistance. Because the World Bank operates in an environment with numerous multilateral and bilateral donors, the study does not limit its scope to the assistance provided by the World Bank alone. Indeed, useful lessons can be learned about rule of law assistance in post-conflict countries by reviewing the valuable experience of institutions having differing mandates and approaches. The rule of law challenges in post-conflict situations are very complex, and there is little solid analysis providing guidance in this area. Some of the complexity is caused by the very existence of the many different actors involved in the field. A detailed appendix to the report provides an overview of the work that some of these actors are carrying out to strengthen the rule of law in conflict-affected countries.

This study evaluates what is known about the effectiveness of programs to strengthen justice in post-conflict countries, identifies some of the gaps in knowledge and analysis that need to be addressed in order to guide future work, and gathers some of the lessons learned from experience. These lessons are threefold. Some of them pertain to development assistance in general. This is the case, for example, when it comes to our understanding of how to bring about change, the role of local ownership, and the necessity for donor coordination. Other lessons relate to rule of law assistance more specifically, such as the perceived emphasis of form instead of function of legal institutions. The main focus of this study, however, is the lessons learned from rule of law assistance in the particular setting of post-conflict countries.

Though the paper reports that rule of law assistance programs in conflict-affected countries show, to date, limited impact on the ultimate social goals associated with the rule of law, it also argues that systematic case analysis represents a natural next step toward guiding future programming in this area and contributing to the evolution of the field of rule of law reform in post-conflict countries. It was precisely with the view to carrying out case analysis that the World Bank commissioned this study, which we hope provides a solid basis for that next step.

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# RULE OF LAW REFORM IN POST-CONFLICT COUNTRIES: OPERATIONAL INITIATIVES AND LESSONS LEARNT

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## I. INTRODUCTION

There is a growing focus on rule of law reform in aid and development packages,<sup>1</sup> and most UN agencies, Breton Woods Institutions, Regional Banks and bilateral development agencies have rule of law reform programs. This literature review is the first step in an effort by the World Bank to develop a strategy on justice reform activities in fragile and post-conflict states. It aims to provide a *tour d'horizon* of common operational initiatives and policy approaches adopted by agencies and institutions involved in the area of rule of law reform in fragile or post-conflict countries, and synthesize the key challenges and pitfalls facing rule of law reform that are highlighted in the policy literature.

To allow for a more coherent understanding of the breadth and complexity of rule of law reform, and how different reform aspects interact, the paper does not restrict itself to matters within the mandate of the Bank.

### 1. What is Meant by Rule of Law Reform?

Rule of law reform is a term that covers a range of initiatives and projects, means different things to different organizations, and has ranged in content and focus over time.

The rule of law reform programming that has evolved over the last 20 years should be distinguished from the Law and Development phase that preceded it in the 1960s and early 1970s, although there are clearly overlaps. The Law and Development effort was largely a US endeavor, funded primarily by USAID and the Ford Foundation, and relying on the expertise of US academics at the major law schools. The programming aimed to reform the judicial systems and legal systems of many countries throughout the developing world to assist their economic development. The ambitious projects relied on the belief that legal changes would engender social changes, and that the US legal system was the best model to support economic development. The movement was declared to be a failure in the mid-seventies by its key supporters. Criticism of the programming included that it was not based on a theory of how law impacted on development, that there was no local ownership of the projects, that the focus was entirely on the formal legal system (ignoring the traditional or informal mechanisms), and that it relied on the ethnocentric view that the American legal system could be successfully transplanted into the developing world.<sup>2</sup>

The current rule of law reform programming is a more global phenomenon, supported by a far greater number of agencies and countries, and is rationalized on the basis of economic development, democracy, and peace. Its approach to the issues of reform and rebuilding of a legal system is on the whole more nuanced. It may, nonetheless, need to relearn some of the lessons learnt during the Law and Development approach.

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<sup>1</sup> Figures vary, and it can be difficult to quantify rule of law assistance, but a recent report claims that the US alone provided \$970 million during 1993-98, of which \$349 million was for Latin America and the Caribbean (U.S. General Accounting Office 1999). The list of the World Bank programs, and their nominal cost, can be found in *Initiatives in Legal and Judicial Reform 2004*, Legal Vice Presidency, 2004.

<sup>2</sup> See <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/LawandDevelopmentMovement>.



Since the terminology has no internationally accepted definition, and in practice is used in a fluid and uncertain fashion, it is important to break down the term ‘rule of law’ into its component parts, as it often masks very different programs and emphases. Some actors have focused on corruption, some on human rights, some on creating an economic framework, others on judicial training, and still others on reforming the police—all under the rubric of rule of law reform.<sup>3</sup>

Two distinctions should be drawn when defining rule of law reform: the first is between end-goals, programmatic strategies and institutional goals; the second is a distinction between the different end-goals.

First, the end goals sought by rule of law reform are complex and intangible, and must be distinguished from programmatic strategies that are hoped will create these social goods. The recent Secretary General’s Report on rule of law formulates the rule of law in terms of ambitious end goals:

A principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency. (Secretary General 2004, para. 6)

In contrast, others have tended to conflate the social goals with the institutional goals in a laundry list approach to rule of law reform.<sup>4</sup> This lack of specificity in defining the goals undermines rigorous analysis of the achievements of the programmatic strategies since the institutional end-goals may be achieved but this may not bring about the social goods that are the real justification for the interventions (Kleinfeld Benton 2005).

Second, the end-goals or social goods incorporated within the term rule of law fall into different categories. Kleinfeld Belton’s definition, which breaks the concept down into five elements, is a helpful starting point:

The rule of law is not a single, unified good but is composed of five separate, socially desirable goods, or ends: (1) a government bound by law (2) equality before the law (3) law and order (4) predictable and efficient rulings, and (5) human rights. (Kleinfeld Belton 2005, p. 27)

Although there are other ways of conceptualizing the categories of end-goals, this approach focuses on the outcome sought to be achieved, and allows strategic analysis of how the different elements interact, whether they are reinforcing and must advance at the same time, or whether some ought to be prioritized, and whether, in fact, some will involve conflicting reforms (Kleinfeld Belton 2005).

Finally, rule of law must be distinguished from rule *by* law. In many Asian countries the focus is on predictable and enforceable law, but the government does not consider itself subject to the law. This

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<sup>3</sup> For example, the Office of the United Nations High Commissioner for Human Rights (OHCHR) tools on rule of law in post-conflict countries actually restricts its analysis to criminal law issues, although its title simply refers to rule of law (Office of the United Nations High Commissioner for Human Rights 2006a). Different entities highlight different elements seemingly without acknowledging that they are ignoring other elements. In the Secretary General’s definition the emphasis is on law and order and human rights, whereas the World Bank has emphasised commercial and economic rights.

<sup>4</sup> For example, the European Union in its 1998 Commission Communications to the Council and the European Parliament, lists a combination of end goals and institutional goals as implied by rule of law. The OECD-DAC also seems to lean in that direction, identifying a list of institutional goals or expectations.

approach is best termed rule by law, rather than rule of law, as the latter implies that the sovereign or government is also bound by law (Carothers 2006). Rule by law requires the use of legal rules in order to assure the uniformity and regularity of an existing legal system. Thus, even an authoritarian legal system, or one which does not protect human rights, will qualify as ruling by law if it uses and enforces legal rules routinely through the use of officials and some form of a judiciary, as long as it achieves a relative degree of certainty and predictability.<sup>5</sup>

## 2. The Rationales for Rule of Law Reform

There are at least four rationales that have been put forward by different agencies as justifications for rule of law reform in fragile, post-conflict or underdeveloped states (this has varied partly on the basis of mandate or vogue). (1) Economic development: the argument that rule of law is essential to economic development focuses on the need for predictable and enforceable laws for contract enforcement and foreign investment. (2) Democratization: the protection of human rights and mechanisms holding government accountable are essential in liberal democracy, and inherent in rule of law. (3) Poverty reduction: rule of law reform is considered essential to poverty reduction as the poor suffer more from crime, the impact of crime on their livelihood is greater, and they are less able to access the justice systems (DFID 2000, p. 1). (4) Peacebuilding: transitional justice, creation of courts to resolve conflict, and writing constitutions and legislation to remove sources of conflict and injustice are increasingly considered essential aspects of peacebuilding in fragile and post-conflict states (Secretary General 2004).

As is the case for most complex state-building goals, it is difficult to prove the requisite causality to establish any of these justifications with certainty. The propositions themselves are complex, multifaceted, and general, and while there is little rigorous evidence to support them, there is at the same time little evidence to disprove them. Moreover, the individual goods in themselves, such as economic empowerment, the protection of human rights, or professional and independent judges are generally recognized to have inherent value of their own.

At the same time, absolute statements about the need for rule of law before economic development, democracy or peace cannot be supported. In reality, all countries fall short in their practice of the rule of law ideal. In all democratic systems, elements of the rule of law are violated—consider for instance the politicization of the appointment of the judiciary in the US, or the ongoing debates over the role of racism in the application of the criminal law in many countries (Carothers 2003). Thus, although for example the protection of civil and political rights and a government subject to law are logically fundamental aspects of liberal democracy, in fact democracy “usually, co-exists with substantial shortcomings in the rule of law” (Carothers 2003, p. 7).

The one area which has raised sustained controversy has been that of the relationship between rule of law and economic development (Hewko 2002, p. 2). China is sometimes cited as evidence that the economic development rationale for rule of law is flawed (Upham 2002, p. 10). However, China’s example, while interesting, does not challenge the basic premise that predictable and enforceable commercial and contractual matters are essential for foreign investment and economic development. While China certainly does not abide by a Western conception of rule of law in relation to human rights or a government subject to law, it does nonetheless subscribe to rule *by* law, and has in its own way ensured predictability and enforceability of commercial dealings (Ortis 2001).

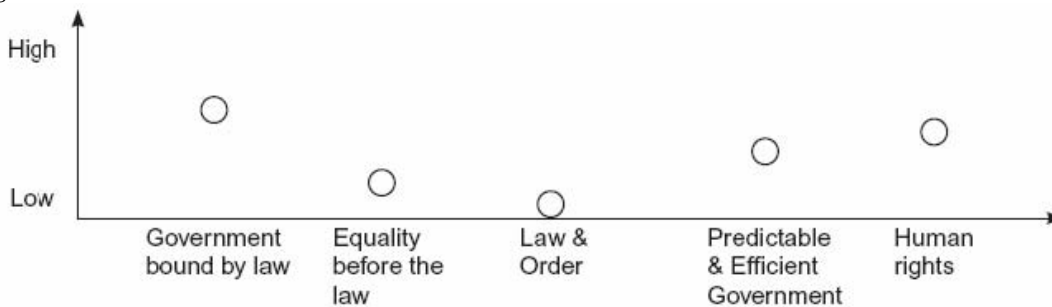
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<sup>5</sup> See the useful discussion by Ortis (2001).

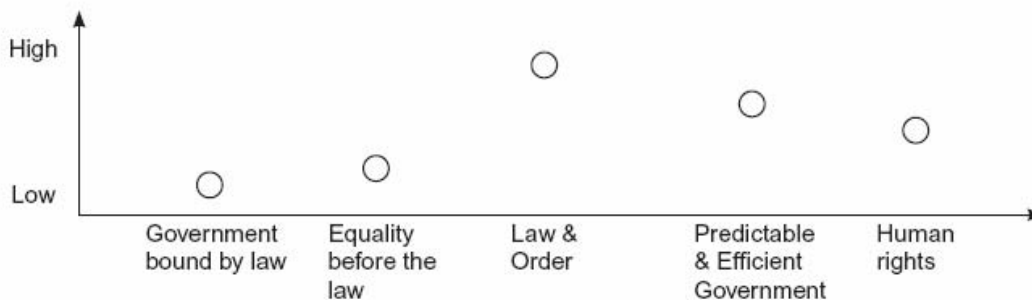
The rule of law programs that incorporate specific economic ideology (such as privatization) within their strategy are justifiably more controversial. The expansion of the concept of rule of law to cover such strategies is questionable.

A further point is that reforms targeting different end goals are not necessarily reinforcing. Although these end goals co-exist more or less in developed countries, the reforms needed to achieve, for instance, a high level of law and order may undermine human rights or the accountability of government. Kleinfeld Benton's diagrammatic break-down of the five end goals of rule of law is a useful model to ensure that each aspect of rule of law is considered independently, as well as in its relationship to each other. For instance, her diagrams of rule of law in Russia under Presidents Yeltsin and Putin highlight that law and order is not necessarily related to the degree the government is bound by law or the other core elements of rule of law (Kleinfeld Benton 2005).

**Figure 1:** Rule of Law in Russia under Yeltsin



**Figure 2:** Rule of Law in Russia under Putin



### 3. The Actors in Rule of Law Reform<sup>6</sup>

The area of rule of law reform has been characterized by a multiplicity of actors and largely uncoordinated projects. The main actors can be divided into those that primarily fund and those that primarily implement – although there is some cross-over. In the first category, the principal actors include UNDP, USAID, DFID, the regional banks and the World Bank, UNDPKO and the Soros Foundation. Key implementers include the Asia Foundation, the American Bar Association, and the OSCE through its Office for Democratic Institutions and Human Rights and the High Commissioner on National Minorities. Nonetheless, these large entities represent only a portion of the rule of law programming that takes place in a country. There are also many small programs targeting different elements or functions of the justice and government systems, run by small entities, legal specialists, bar associations, judges associations, law schools, former police officers, human rights organizations, humanitarian organizations, and a range of

<sup>6</sup> See Appendix for a tabulated, more complete list of actors.

other more or less qualified private firms. The funding entities generally sub-contract within this medley of actors.

#### 4. The Evolution of International Policy Frameworks

Rule of law reform programming has progressed in waves. The first rule of law programming was largely driven by USAID and took place in Latin America both in post-conflict (e.g., El Salvador and Guatemala) and post-dictatorial contexts. Its focus was largely on human rights monitoring, judicial training, legislative reform and physical infrastructure projects. Programming then extended to the rebuilding of the post-communist states (some of which were emerging from conflict such as Yugoslavia, the FRY, Croatia, Bosnia-Herzegovina or Albania). In these countries the economic aspects were a major target, with extensive redrafting of commercial, regulatory and banking legislation to meet capitalist market principles, creation of legislative human rights protections, as well as judicial training and emphasis on improved legal education. USAID again was a major actor, as was the American Bar Association, and the Open Society as well as European regional and bilateral involvement. Rule of law reform programs in Africa and Asia have followed more slowly, and in more of an *ad hoc* fashion, ranging from anti-corruption and good governance drives, to legislative reform, judicial training and legal education reform, or support to parliaments.

At the same time, since 2000 there has been increasing focus on the role of rule of law reform in UN peacebuilding. In 1993, the General Assembly first recognized that “the rule of law is an essential factor in the protection of human rights.” In 2000, the Brahimi report first identified the need for a shift in the use of police and rule of law elements in peace operations. In 2004, the Secretary General published the first report on rule of law and transitional justice in conflict and post-conflict societies, which responded to and formalized the growing conviction that rule of law reform is fundamental to peacebuilding:

Our experience in the past decade has demonstrated clearly that the consolidation of peace in the immediate post-conflict period, as well as the maintenance of peace in the long term, cannot be achieved unless the population is confident that redress for grievances can be obtained through legitimate structures for the peaceful settlement of disputes and the fair administration of justice. At the same time, the heightened vulnerability of minorities, women, children, prisoners and detainees, displaced persons, refugees and others, which is evident in all conflict and post-conflict situations, brings an element of urgency to the imperative of restoration of the rule of law. (Secretary General 2004, p. 3)

A rule of law component has been placed within the UN DPKO civilian police division and DPKO has incorporated rule of law programming into most of its recent peacebuilding missions, including Kosovo, East Timor, Haiti, Liberia, Afghanistan, Cote d’Ivoire, Burundi, the DRC, and Sudan.<sup>7</sup> The focus of this programming has been on law and order, especially the police and penal systems, and some judicial capacity building.

At the same time, the World Bank has increasingly highlighted that effective, efficient and fair legal and judicial systems are essential to national economic and social development (Wolfensohn 1999). Since the late 1990s, the World Bank has developed projects in most regions of the world covering aspects of

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<sup>7</sup> For example, the 2004 United Nations Stabilization Mission in Haiti provides that the Mission will monitor and report on the human rights situation, re-establish the prison system and investigate violations of human rights and humanitarian law, help rebuild, reform and restructure the Haitian National Police, including vetting and certifying that its personnel have not committed grave human rights violations, develop a “strategy for reform and institutional strengthening of the judiciary” and “assist with the restoration and maintenance of the rule of law, public safety and public order.” The 2003 Liberia mission was even mandated to develop a strategy to consolidate government institutions including a national legal framework and judicial and penal institutions.

economic and commercial legislative reform, judicial training, court modernization and land administration.<sup>8</sup>

The EU has put emphasis on law and order in its crisis management capability. In June 2004 it initiated the first EU rule of law crisis management operation in Georgia, followed by missions in Africa and the Middle East. The OSCE also coordinated rule of law reform activities in the Former Yugoslavia, Georgia, Azerbaijan, Armenia, Moldova and Chechnya and has worked on rule of law issues in Albania and Bosnia Herzegovina. The OSCE Office for Democratic Institutions and Human Rights has been active throughout the OSCE area in the fields of election observation, democratic development, human rights, tolerance and non-discrimination, and rule of law. The High Commissioner on National Minorities has also been active in this field, particularly with respect to reforms aiming to contribute to the resolution of ethnic tensions.

Nonetheless, the field remains somewhat *ad hoc*, with little centralized or institutionalized strategy or expertise despite a surge in interest and actors entering the field. For instance, there remains a lack of in-house expertise in the main funding agencies. The Criminal Law and Judicial Advisory Unit was only established in DPKO in February 2003 within the Civilian Police Division of DPKO, and consists of one post. UNDP/BCPR has few dedicated posts at Headquarters, and both outsource the projects to legal consultants,<sup>9</sup> and in essence the same is true of the Banks. USAID probably has probably developed the most expertise from its long history of rule of law programming.

Some developments may help overcome these difficulties. The Joint Needs Assessment and Poverty Reduction Strategy Paper (PRSP) processes can play a useful role in shaping an integrated strategy for a country, providing some direction and focus to the collection of projects. The recent drive to create the Peace Building Commission and Peace Building Support Office in the UN, as recommended by *The United Nations High Level Panel on Threats, Challenges and Change* (2004), opens opportunities for further coordination, although it is not clear to what extent this will come about, given the wrangling over the responsibilities and capabilities of this new commission.

## II. RULE OF LAW IN POST-CONFLICT COUNTRIES

Although there is growing focus on rule of law in post-conflict countries, there is little guidance on how to approach such rule of law reform, nor how the strategy adopted ought to differ from that in developing countries. Rule of law in conflict and post-conflict states is most likely to fall into the latter two categories of rule of law breakdown suggested by Mani (2002), namely: corrupt and dysfunctional, and devastated and non-functional. The third category she identifies: illegitimate but functional, is common in the developing context but rare in the post-conflict context.

Post-conflict states will present many of the features of fragile and underdeveloped states but to a more extreme degree, and with particularly acute peace and security, law and order, and transitional justice concerns. Key features of transitions from civil conflict include a devastated infrastructure, destroyed institutions, a lack of professional and bureaucratic capacity, an inflammatory and violent political culture, and a traumatized and highly divided society. In many cases the degree of capacity, physical

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<sup>8</sup> According to the report, *Initiatives in Legal and Judicial Reform 2004*, there have been some 600 Bank-financed projects related to legal and judicial reform across regions (e.g., Mongolia, Guatemala, Togo, Zambia, Cambodia), ranging from credit reform, land administration, judicial training, court modernization programs, to review of economic and commercial legislation. As of 2004 there were 16 active projects in four regions, and seven more projects coming up. Seven projects had been completed.

<sup>9</sup> See *UN Peacebuilding Capacity Inventory*, forthcoming 2006.

infrastructure, and public trust in the government and its institutions will be dramatically lower than in developing countries. Other common problems include a lack of political will, judicial independence, technical capacity, materials and finances, and government respect for human rights. In addition, in the post conflict context, a shadow or criminalized economy is likely to be entrenched and there is likely to be widespread access to small arms reflected in a high level of violence in the society. Given the lack of law and order, accountability and trust it is difficult to entrench major reform, and ultimately the reforms that are sustainable may be somewhat limited.

Rule of law entry points range from peace negotiations/agreements, constitution-making processes, Post-Conflict Needs Assessments (PCNA), UN Security Council resolutions, Poverty Reduction Strategy Papers, bilateral developments programs and individual NGO action. The context for the rule of law reform program will include the nature of the international/UN presence in the country. The primary distinction is between trusteeship-like situations (UNTAC/Cambodia, UNMIK/Kosovo, UNTAET/ East Timor) where the UN transitional administration had primary responsibility for all of the elements of rule of law, and “lighter footprint” models (such as Afghanistan or Liberia) where a transitional government or newly elected government has prime responsibility, and the international agencies play the advisory and funding role that is more typical of a development situation.

The discussion below explores the types of rule of law reform projects that have taken place in post-conflict countries across the different agencies and players. It does not represent a menu of recommended projects, but could be used as a starting point in thinking through interrelated needs. The review is broken down into five different categories representing different social goods:

- Human security and basic law and order;
- A system to resolve property and commercial disputes and the provision of basic economic regulation;
- Human rights and transitional justice;
- Predictable and effective government bound by law; and
- Access to justice and equality before the law.

## **1. Human Security and Law and Order<sup>10</sup>**

The breakdown of law and order is one of the defining aspects of any conflict or post-conflict state. During the conflict years extreme armed violence dominates the political environment and criminal violence and theft become the norm as legal rules are not enforced. The post-conflict context is likely to involve a breakdown of the formal justice system, physical destruction of the criminal justice infrastructure, a weak or destroyed legal community, and the general perception that judges who have not been killed are weak or biased.<sup>11</sup> The police force is also likely to be prone to corruption or non-existent, and the prison system inadequate. There is also generally a lack of essential tools for legal or judicial work, including paper, legal texts and computers although this is a common problem in many low income developing countries (Widner 2001).

The armed forces may have played a negative role in the administration of justice during the conflict by intimidating judges, arresting civilians, or taking over the role of the police. Even once the conflict is

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<sup>10</sup> The mandate of the Bank in this area would be shaped by the recent legal opinion on support for criminal justice reform.

<sup>11</sup> This problem was experienced in both Rwanda and Sierra Leone, making efforts to construct legal and judicial systems exceptionally difficult (Mburu 2001).

officially over, large numbers of armed militias or army units with weak command and control structures, little training, and often little or no pay provide a continuing source of violence and disorder. Moreover, the population tends to be highly traumatized, and have little trust in government or a legal system which allows for a culture of impunity and lack of accountability for violent actions.

**Two Phases.** There are two phases to consider in relation to post-conflict human security and law and order: the first is the immediate need to regain some degree of law and order in the state—this crisis management phase often involves peacekeeping troops, UN police, and sometimes foreign judges. The development phase, which is practically concurrent with the crisis phase, aims to set up a more long term sustainable environment of law and order in the state, and represents an even more difficult challenge. The crisis management phase has been largely dealt with by DPKO in peacebuilding missions (e.g. East Timor, Kosovo, Haiti, and Liberia). Typical issues include:

- Questions over the UN or other foreign military's role in providing law and order, and what they are to do with persons that they arrest (USIP 2004);
- Strategies for disarming, demobilizing, and reintegrating fighters (DDR);
- The difficulty of bringing in foreign police who do not speak the local language and are not trained in the local law;
- Questions of what law to apply, both because of questions of perceived legitimacy of laws associated with previous regimes, and because in many cases it is difficult to find copies of laws since most have been destroyed;
- Questions as to where persons who are arrested are to be held, tried, and incarcerated; and
- The question of judicial capacity—a key difficulty. In both East Timor and Kosovo the question of whether to rely on local or international judicial capacity arose. Reliance on the local capacity as a first resort led to difficulties—from the breakdown of the legal system in East Timor, to public hostility in Kosovo when local judges had to be replaced by international judges as it became clear that they were unable to act in an unbiased fashion when dealing with cross-ethnic matters.<sup>12</sup>

The development phase, which must be planned from the start and must be integrated into the crisis management phase, involves the need to re-establish a sustainable law and order environment in the country. It requires a more long term strategy to address criminal behavior and assist in conflict resolution. Typically this has been conceived as requiring the restoration of a formal criminal justice system, which will include the police structures, the judicial system and prosecutors, and the penal system. In addition, it may include DDR, reforming the armed forces and amending criminal codes.<sup>13</sup> It may also involve strategies to target the public perceptions of the armed forces and of the criminal justice system, as the effectiveness of a criminal legal system largely turns on the degree to which is it perceived as legitimate and fair by the population.

**Typical Programmatic Interventions in the Development Phase.** Depending on the circumstances on the ground, one or more of the following activities have been undertaken in post-conflict countries. It is useful to keep in mind that the institutional starting point in these cases is generally substantially lower than in non-conflict countries, as the police and judicial structures have often been completely destroyed.

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<sup>12</sup> See for example Chesterman (2004, 2005) and Strohmeyer (2001).

<sup>13</sup> For example, the UNDP ROLS program in Somalia covers 5 components: Judiciary; Law Enforcement; Human Rights and Gender; Disarmament, Demobilization and Reintegration and Small Arms and Light Weapons Control; Mine Action.

**Table 1:** Typical Programmatic Interventions in the Development Phase

Police	<p>Police vetting and recruiting;</p> <p>Police reforming, restructuring, training and strengthening;</p> <p>Training in community policing;</p> <p>Monitoring local police services to ensure observance of the principles of democratic policing;</p> <p>Assistance in developing public information strategies;</p> <p>Assistance with basic administrative and financial management arrangements for the local police services, determination of fair and equitable police salary scale; and</p> <p>Provision of personnel for positions where local capacity is lacking.</p>
Judicial capacity	<p>Recruiting judges and magistrates;</p> <p>Training of judges or magistrates in judicial responsibilities, ethics, human rights, local law relevant to their jurisdiction, legal procedures; and</p> <p>Training in lawyering techniques, e.g., how to run a courtroom, move cases along, keep track of files, write opinions and manage heavy caseloads efficiently.</p>
Prisons	<p>Upgrading prison infrastructure and corrections operational capacity;</p> <p>Assisting in the preparation of laws on prisons, prison policies and regulations;</p> <p>Assisting in the preparation and adoption of human rights policies and guidelines for prison officials and in the implementation of relevant human rights instruments;</p> <p>Selecting, vetting and training local corrections personnel;</p> <p>Human rights training for police and penal system officials, provision of personnel for positions where local capacity is lacking;</p> <p>Monitoring issues such as bribery, corruption, manipulation and abuse of power;</p> <p>Developing reporting procedures to address abuses; and</p> <p>Inspection or oversight of the correctional system.</p>
Prosecutor capacity building	<p>Recruitment and training of prosecutors; and</p> <p>Capacity building of prosecutor's office.</p>
Legal education	<p>Infrastructure and capacity building for law schools, professional legal training organizations, judicial training centers and bar associations; and</p> <p>Provision of personnel for positions where local capacity is lacking.</p>
Ministries of Justice, Interior and Defense	<p>Infrastructure support and capacity training of ministry staff, provision of personnel for positions where local capacity is lacking.</p>
Criminal law reform	<p>Advice on codification or bringing criminal law provisions in line with IHR Standards.</p>
Traditional and customary law	<p>Vetting for compliance with IHR standards, possible codification.</p>
Legal education in Criminal law	<p>Infrastructure and capacity building for law schools, professional legal training organizations, judicial training centers and bar associations; and</p> <p>Providing personnel for positions where local capacity is lacking.</p>
Peacekeeping measures	<p>Deployment of UN Police or international judges.</p>

## 2. Property and Commercial Disputes, and Economic Regulation

The economy is generally devastated in the post-conflict environment. Crops will not have been planted or harvested and most legitimate business and commerce will have stopped operating because of the



insecurity and violence. A shadow and criminalized economy is likely to have emerged. One of the essential steps in stabilizing the peace is to encourage a return to legitimate economic activity. There is an urgent need for a mechanism to resolve property (especially land, livestock and commercial) disputes. Land tenure is a key point of friction, in particular land ownership claims, demands for restitution by former owners and compensation demands. The provision of land to ex-combatants, mechanisms to achieve quick administrative solutions, and the drafting of land legislation, before these disputes escalate to violence is fundamental to long term peace.

Mechanisms to ensure predictable enforcement of contracts are also essential (even if these are oral or informal) to allow commerce and economic activity to develop. In time, once basic economic stability is achieved, the questions turn to more advanced economic regulatory frameworks, including matters such as a banking and investment legal framework, tax legislation, capital regulation, foreign investment and customs.

**Table 2:** Typical Programmatic Interventions, Property and Commercial Disputes and Economic Regulation

Economic and commercial conflict resolution and law reform	Formalization and strengthening of commercial conflict resolution mechanisms (e.g., public reputation systems, alternative dispute resolution, commercial courts).
Property law reform	Assisting in setting up courts or tribunals to deal with recognition of Property (housing, commercial enterprises, livestock and personal effects); and Seeking a fair and unambiguous legal framework to deal with land tenure conflicts.
Legal education in Economic and Commercial Law	Infrastructure and capacity building for law schools, professional legal training organizations, judicial training centers and bar associations; and Providing personnel for positions where local capacity is lacking.
Economic regulatory frameworks and legislative reform	Advice on reform/drafting of laws dealing with commercial and contract matters, banking law, monetary policy, customs duties, taxation, foreign exchange controls, capital markets, and foreign direct investment in infrastructure sectors; and Training members of the bar and the judiciary in business reorganization and insolvency law.

### 3. Human Rights and Transitional Justice<sup>14</sup>

Issues of transitional justice are necessarily a key focus of the post-conflict context, both to confront and address the culture of violence and impunity and massive human rights violations that took place during the conflict, and to begin a healing process within the community through truth and reconciliation, accountability and reparations. The transitional justice phase is of a fixed term (generally a few years) and hence does not of itself require long-term capacity. Nonetheless, when planning transitional justice institutions, the question might be asked whether these can also be used to work towards larger efforts to build the capacity of a country's justice system post-conflict (e.g., the ICTR in Rwanda did little to promote Rwanda's justice system, but the Special Court for Sierra Leone may have a greater impact).

Protection of human rights requires changes which are sustainable in the longer term. Human rights problems can emerge from massive movements of refugees and internally displaced persons (IDPs), the increasing conscription of child soldiers and the sexual exploitation and trafficking of women and children. In the post-conflict context, the protection of women and girls is often of prime importance as violence and rape increases during conflict, since many men and boys recruited into warring factions

<sup>14</sup> The mandate of the Bank in this area will be shaped by the recent legal opinion on human rights.

often view rape as a tactic of war. Legal, religious or cultural restrictions on women's rights, such as the right to own property, or entitlement to education or employment are also essential issues.

**Table 3:** Typical Programmatic Interventions, Human Rights and Transitional Justice

Human rights	Advocacy, education, legislative reform protecting rights; Support for the creation of watch-dog bodies (e.g., Ombudsman, Human Rights Commission); Monitoring of courts and governments for compliance with human rights; Assistance ratifying appropriate international treaties and incorporating them into national legislation; Reporting human rights violations and working to prevent future abuse; and Capacity-building with local governmental agencies and non-governmental organizations.
Accountability for past abuses, transitional justice, war crimes and truth and reconciliation commissions	Infrastructure, advice, capacity training of staff, technical assistance; Provision of personnel for positions where local capacity is lacking; Investigating and verifying past human rights violations; and Assisting relevant judicial and truth and reconciliation processes to foster a culture of accountability and address impunity.
Law	Vetting for compliance with IHR standards; and Developing strategy for incorporating different legal systems in one country in a complimentary fashion.
Women's rights	Assisting government to understand its obligations under international human rights standards regarding women; Advocacy and capacity building of civil society; and Advice and support to constitution-making or reform on issues of women's rights (including public education, consultation, comparative legal support, drafting assistance).

#### 4. Predictable and Effective Government Bound by Law

A core indicator of rule of law is the requirement that in addition to the citizens being bound by law, the rulers are bound by law and government operates in an effective and predictable fashion. In most post-conflict environments, however, this is very difficult to achieve. There is usually no remaining professional public bureaucracy and the executive tends to be over-dominant. Key institutions required to check executive power (parliament, the courts, ombudsman, civil society, the media) are weak, under funded or non-existent. The effectiveness of the newly formed parliament is typically undermined by relative lack of parliamentary experience in democracy, drafting and debating legislation, and holding the executive accountable. The courts that exist or are reinstated are often politicized, corrupt, or the judges have little independence and are subject to a high level of executive intervention. Civil society tends to be very weak in the post-conflict environment, as do the media structures.

However, the sorts of changes required to create a professional committed bureaucracy and change the political culture are some of the most difficult and intangible aspects of any transition—requiring changes in behavior, expectations and norms. The strategies adopted have typically insufficiently acknowledged that these sorts of societal changes require long timeframe strategies involving large segments of society and extensive education and sensitivity campaigns as well as dialogue and consensus building within society.

**Table 4:** Typical Programmatic Interventions, Predictable and Effective Government Bound by Law

Constitution-making or constitutional reform	Advice and support for constitution-making or reform (including public education, consultation, comparative legal support, drafting assistance).
Justice reform strategy	Technical assistance for government to develop a coherent strategic framework and 'vision' to guide future development and reform of the legal sector.
Public administration	Capacity building and support for efficient and transparent administration of public registrations and records (e.g., vehicle registration, building permits, rubbish removal, public health inspection, banking regulations, tax collection).
Corruption	Advocacy, legislative reform, supporting creation of watch-dog bodies; Identification of the necessary institutional and regulatory reforms; the publication of manuals on combating corruption/money laundering etc; and Public financial management and accountability training.
Ministry of Justice, Interior and Defense	Infrastructure support and capacity training of ministry staff, provision of personnel for positions where local capacity is lacking.
Military civilian accountability	Security Sector reform, human rights training of military.
Parliamentary Accountability	Parliamentary capacity building and training programs.
Judicial independence	Promoting the independence of the judiciary and highlighting any improper pressure on judges, prosecutors and courts; Advising on processes for the appointment and selection of judges, judicial tenure and judicial discipline; Assistance identifying law reform on issues of appointment and disciplining of judges and prosecutors and management of financial resources for judiciary.
Exploitation of mineral and oil resources	Assistance creating and setting up mechanisms to regulate the exploitation of, and render accountable the use of funds from, oil and mineral resources; Advise on the use of resource trust funds.
Media reform, freedom of the press	Legislative reform, advocacy, civil society capacity building.

## 5. Access to Justice and Equality before the Law

The accessibility of the justice system and its treatment of cases in an equal fashion are also considered fundamental to peace and democracy. In the post-conflict environment, where the justice sector may have been completely destroyed, and the population is impoverished, simple matters like traveling to a hearing, or obtaining legal advice or legal books become a major hurdle to accessing justice. In addition, there are very real questions of judicial bias in societies where different ethnic or confessional groups have fought each other. These issues require careful consideration of what infrastructure and modernization reforms will be sustainable, keeping in mind alternatives to the formal, high cost processes, especially outside of the cities. They also require strategies to overcome bias and perception of bias in the judicial body and the police.

**Table 5:** Typical Programmatic Interventions, Access to Justice and Equality before the Law

Court administration and registration offices reform	Monitoring the judicial process, including observing trials; Court administration capacity building; Infrastructure support, systems modernization; Strengthen court administration and case management; Provision of personnel for positions where local capacity is lacking; and Collect, analyze and disseminate criminal justice data.
Access to justice	Support for mobile courts, or paralegal services; Creation of legal aid offices, financial support; Support for alternative dispute resolution, decentralization; and Distribution of legal information.
Judicial bias	Use of international judges or introduction of balanced ethnic/confessional benches; and Vetting and appointment and training of judges, especially in IHR.

### III. EVALUATIONS<sup>15</sup>

There is a striking lack of coherent and systematic studies evaluating rule of law programming. In Carother's words:

Aid organizations have proven themselves to be ill-adept at the task of generating and accumulating the sort of knowledge that would help fill the gap. They profess great interest in lessons learned but tend not to devote many resources to serious reflection and research on their own efforts... [Moreover], if aid organizations are themselves not sponsoring the kind of applied policy research that would build knowledge in the rule-of-law promotion domain, neither are political science departments or law schools. (Carothers 2003, p. 13)

Thus, as DFID points out "Many initiatives in the justice sector have not been subject to careful monitoring and evaluation" (DFID 2002, p. 42). There are a range of reasons for this, one of which being that rule of law is an area of great complexity, conceptually and practically, and any studies face difficult causality issues. Nonetheless, the degree to which such evaluations are lacking is surprising. As Frank Upman comments:

Given the attention and money now directed to legal-reform efforts, one would assume that there is a carefully elaborated model of law and development based on empirical evidence from the developmental periods of Western economies, what has worked and not worked in the developing world over the last fifty years, and the experience of the previous period of law and development in the 1960s. If such a model exists, however, I have not found it." (Upham 2002, p. 8)

This lack of empirical and comparative experience undermines the ability to develop strategies and programs that take account of potential strengths, weaknesses and unintended consequences of previous experiences. The majority of evaluations that are publicly available are those commissioned by USAID on their various programs.<sup>16</sup>

The studies and reports evaluating rule of law programs tend to fall into two categories: self-reporting exercises, often in the form of an interim or final project report, and commissioned or independent program or country rule of law evaluations. The self-evaluations are typically descriptive of the program and context but are not particularly helpful in determining the effectiveness, rationale, and program

<sup>15</sup> See examples of evaluation studies listed in the bibliography.

<sup>16</sup> See <http://dec.usaid.gov> - USAID's Development Experience Clearinghouse (DEC).

strategy.<sup>17</sup> The external evaluations vary from relatively in-depth analyses, some of which attempt to identify appropriate empirical markers, to ‘think-pieces’ or policy lessons-learnt discussions which highlight some failures in the strategy which may have undermined the outcome. These can be more or less helpful, but often are not grounded in sound comparative or empirical analysis.

Some of the more interesting independent evaluations include:

- An evaluation of the effectiveness of the Commune Councils in Cambodia and that of judicial reform in China (Ninh and Henke 2005).<sup>18</sup>
- The report *A Case for Change*, which reviews the post-conflict peace operations in Sierra Leone, Kosovo, East Timor and Afghanistan up to 2002, and provides a comprehensive discussion of the lack of strategy and the many hurdles faced by UN peacekeeping missions in relation to rule of law. It focuses on law and order and transitional justice, as these were the primary focus of those missions. Given the serious lack of strategy and attention to the rule of law issues in those missions however, the report cannot provide much guidance on the effectiveness and desirability of particular strategies or programs.
- The Congress report on rule of law assistance in the Former Soviet Union focuses on the broader impact of the programs and sustainability of changes achieved (e.g. has the new curriculum course been adopted by other law schools, has the legislation been passed and implemented), and concluded that the US rule of law assistance efforts in the Former Soviet Union had had limited impact thus far, and results may not be sustainable in many cases (Ford 2001). In contrast, the review of the USAID funded activities of the American Bar Association in 22 countries in Eastern Europe (CEELI) was largely positive when evaluating the impact and outcome, perhaps overly positive given the contrast with the Congress report (Blue and Chernev 1999).
- Another largely positive evaluation of the impact of rule of law reform was undertaken by Management Systems International (MSI) on behalf of USAID and provides a very broad overview of rule of law reform in countries on all continents. The report suggests that there have been significant positive changes in many of the countries where such programs have been undertaken, particularly in the non-post conflict countries in Latin America. However, this report only provides a starting point for concrete policy development, as the description of the programs is not very detailed, and the results cited tend to be based on general perceptions (MSI 2002). In addition, the review of similar cases by Alvarez, undertaken a few years earlier, seems to take different views of some of the claimed successes.<sup>19</sup>

Overall, particular weaknesses in the literature include the lack of rigorous cross country evaluations,<sup>20</sup> the lack of comprehensive case studies of all the rule of law programs in a country (most evaluations focus on one institutional actor, or one program)<sup>21</sup> and insufficient focus on empirical markers to evaluate outcomes rather than outputs. In instances where conflict is ongoing, the measures of success have at times become somewhat absurd, as in Gaza and the West Bank. For instance, Ierley suggests that “The

<sup>17</sup> See final programme evaluations listed in bibliography.

<sup>18</sup> Also for a fairly useful analysis of judicial reform in China, see Gechlik (20050).

<sup>19</sup> In relation to El Salvador, Guatemala and Colombia, for example, Alvarez evaluated that there was “at best ‘meager’ empirical evidence that any of these projects demonstrably improved the technical capacities of the three countries” (Alvarez 1991, p. 302).

<sup>20</sup> A few that have taken a cross country approach include: Dahrendorf (2003) on Sierra Leone, Kosovo, East Timor and Afghanistan; Mburu (2001) on Rwanda and Sierra Leone; the USAID funded review of the CEELI operations in 22 countries in Eastern Europe (Blue and Chernev 1999); Ford and Huntington (1999) on rule of law assistance to five Latin American countries; Ford (2001) on rule of law assistance to the Former Soviet Union; Hammergren (2003) on international assistance to Latin American justice programs; and Davis and Trebilcock (1999) on legal institutions.

<sup>21</sup> For a useful review of judicial reform in conflict environments, see Ierley (2001).

lack of success measured by a failure to meet substantive goals in training judges presumes a more stable environment. The process of bringing lawyers together for continuing legal education has also been flagged as an important success, as well as the fact that the lawyers were willing to participate” (Ierley 2001).

The methodological approaches have varied dramatically. It is clear that evaluating outcomes rather than outputs is a key component of any successful evaluation. However, this is difficult to achieve both because of causality problems and lack of indicators that are not merely linked to outputs (e.g., number of individuals trained, number of courthouses refurbished). The one set of indicators published by Freedom House on rule of law combine too many factors and result in one global indicator, which is not helpful when planning strategy - given that the rule of law is composed of such different sub-elements.

The Vera Institute has developed a useful methodology regarding indicators (also picked up by OHCHR). They advise combining strategic indicators (focusing on the highest policy levels, e.g., reducing violence in the society, ensuring equal access to justice, etc.), institutional indicators (measuring outputs of the institutions supposed to be part of the rule of law structure e.g., number of criminal convictions, who the court serves, number of cases heard a year etc.), and activity indicators, such as arresting suspects or delivering training (Vera Institute of Justice 2003). This methodology was generated in the developed world, and it is a lot more difficult to access such relevant data in post-conflict or fragile environments, but it could provide a useful starting point for the development of a systematic evaluation.<sup>22</sup>

#### IV. LESSONS LEARNT

Despite the lack of systematic evaluations, there have been many think tank and policy lessons-learnt papers produced from the experiences in various regions.<sup>23</sup> The numerous rule of law assistance programs in post-conflict or fragile countries have so far resulted in few lasting consequences.<sup>24</sup> Some individual programs have had a modicum of success, when evaluated according to their programmatic strategies or institutional goals, but even then most have not built institutions that might outlast the donor presence. Overall, rule of law reform in the post-conflict context has only minimally impacted on the complex and somewhat intangible social end goals associated with rule of law reform, which can be defined as: (i) a government bound by law (ii) equality before the law (iii) law and order (iv) predictable and efficient rulings, and (v) human rights.<sup>25</sup>

Despite two decades of experimenting, there is still little known about how to bring about the difficult and interdependent social goods that constitute the big-picture aims of rule of law reform. This is especially true in the post-conflict context where the starting point is so challenging: frequently characterized by a complete legal vacuum, devastation of the justice sector infrastructure from courts to prisons, very low human capacity with few, if any, qualified personnel, including judges, prosecutors, defense lawyers, legislators, drafters, law professors, and legal policy experts, and a population with a deep mistrust and lack of faith in the justice sector.

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<sup>22</sup> See also an interesting discussion of indicators in La Salle Institute of Governance and UNDP (2003).

<sup>23</sup> See bibliography attached, in particular: Benomar (2001); Hambergren (2002a, 2002b, 2003); Mburu (2001); Ninh and Henke (2005); Davis and Trebilcock (1999); Messick (1999); Carlson (2003); Covey, Dziedzic and Hawley (2005); de Soto (2000); and Dahrendorf (2003).

<sup>24</sup> See Jensen (2003); Carothers (2006); Ford (2001); and Fox and Heller (2000).

<sup>25</sup> Adopting Kleinfeld Belton’s definition (Kleinfeld Belton 2005, p. 27).

The following section reviews some of the fundamental lessons to have emerged from the last 20 years of rule of law experience.<sup>26</sup> This somewhat depressing overview of the range of difficulties that have arisen in the field of rule of law reform programming is meant to highlight those lessons that should be common knowledge to anyone seeking to develop a rule of law reform strategy in a post-conflict context.

## 1. Lack of Coherent Strategy and Expertise

Rule of law reform has suffered from a notable lack of strategy. Given the systemic nature of the changes that are sought to be brought about in rule of law reform and the inherently interconnected nature of elements of a legal system, it is difficult to achieve sustainable change if the elements are not approached in a coherent fashion. For instance, judicial training that allows judges to make better judgments is not likely to have much impact if there is no judicial independence, corruption still dominates the legal system and the police system is destroyed or biased. Similarly, benefits gained from raising the capacity of the lower courts can be entirely undermined if the final court of appeal is incompetent or corrupt. More importantly, no reform will have any impact if the perception of the people remains that the legal system is unjust and biased.

### **Box 1:** Rule of Law Reform in East Timor

UNTAET did not develop a coherent strategy for the administration of justice and the creation of institutions that would be sustainable once the mission left East Timor. No comprehensive assessment of the legal and judicial situation was undertaken before actions were initiated. The focus was almost entirely on issues of criminal law and justice, rather than on the creation of the areas of law associated with the longer term day-to-day governance. Judges were appointed before agreement on the court structure and legal regime. The new judges had no judicial experience, but were given only intermittent and uncoordinated training: some undertook a brief training period in Darwin, Australia, and Indonesia, followed by an attempt at a formal academic training program. Other judges, prosecutors and public defenders went to Portugal for two months as part of an entirely separate program. The mentoring element of the program experienced many difficulties. There was no serious planning made for the training of future lawyers and at the same time little serious capacity building. The outcome is that the justice sector is close to non-existent. Cases have been piling up. By 2003, there were 287 unheard cases in Oecussi, 535 in Suai, 754 in Baucau and 1,903 in Dili. The Office of the Prosecutor General recorded a total backlog of 3,197 cases at the end of 2003. In 2005, the Timor-Leste government dismissed all of its judges for failing government capacity tests. For a useful review of the weaknesses of the judicial sector from the perspective of the civilian support group advisors, see Estrada-Castillo (2004), Nataf (2004), Tristao (2004) and Ximenes (2004).

Lack of coordination has been particularly striking in the post-conflict environment, where different actors have taken forward different programs with little knowledge of the local context, little coordination and little prioritization. The collapse of the legal system and a serious breakdown of law and order in the post-conflict environment has encouraged crisis style responses and *ad hoc* reactive projects (Dahrendorf 2003). East Timor is a particularly striking example of how a piecemeal approach results in unsustainable outcomes (Box 1). The focus on crisis security, law and order measures and transitional justice has tended to overwhelm longer term planning and capacity building (Mburu 2001, p. 6), which could address not only the lack of physical security but also the lack of legal structure for economic development and political accountability.

<sup>26</sup> Note that this section does not focus on the lessons learnt in the following individual areas of rule of law reform which are extensively discussed in detail elsewhere: DDR, Human Rights, Security Sector Reform, Police and Corrections Reform, Transitional Justice, or Parliamentary support and capacity building.

In addition, there is a lack of available systematic expertise. The recent peacebuilding capacity inventory acknowledged that while many UN institutions claim rule of law expertise, they have little of it in-house.<sup>27</sup> There are no training courses or studies to prepare a practitioner to reconstruct a justice system after conflict. The expertise that exists is largely in the heads of a few practitioners who developed it through trial and error over the last few decades, and the quality of expertise varies substantially.

Different tactics have been pursued to achieve a coherent country rule of law plan, including the use of Joint Assessment Missions, PRSPs or coordinated donor communications strategies. Albeit essential, they have not yet developed to the point that they can overcome the lack of coherent strategy and expertise. It seems essential to develop new approaches to the planning and implementation of rule of law reform, through more coherent and coordinated planning strategies, and through different delivery systems (such as regional institutions or centers of excellence).

## **2. Insufficient Knowledge of How to Bring About Change**

A fundamental problem is that the goals sought to be achieved are extremely complex and there is little clarity on how to best proceed. Despite two decades of experimenting, little is known about how to bring about legal change in developing or post-conflict countries. There is an urgent need for more systematic discussion of how institutions evolve and how they can become self-enforcing.<sup>28</sup> This failure of strategy and knowledge is common across a large part of the post-conflict state-building field (Samuels 2005). As Carothers puts it:

Aid providers know what endpoint they would like to help countries achieve—the Western style, rule-oriented systems they know from their own countries. Yet, they do not really know how countries that do not have such systems attain them. That is to say they do not know what the process of change consists of and how it might be brought about. (Carothers 2003, p. 9)

Carothers further points out that this lack of knowledge also masks unintended consequences of change,<sup>29</sup> and further undermines strategic planning for reform.

The lack of knowledge in the rule of law reform field is reinforced by the lack of systematic evaluation of programs, and has led to a focus on short term outputs in evaluations and program design, rather than longer term outcomes, which are more difficult to anticipate and plan.<sup>30</sup>

## **3. Form over Function**

Clearly rule of law reforms must focus on practical steps and goals, rather than the somewhat grand end-goals discussed earlier, and yet a limiting and unsuccessful emphasis on ‘form’ rather than ‘function’ seems to have dominated much of the rule of law reform over the years. Programs have typically focused on institutional objectives and formal legal structures without a nuanced understanding of the political and economic dynamics that prevented such structures from existing in the first place, or the reality on the ground of how disputes were settled, which often turned out to be based on informal mechanisms.

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<sup>27</sup> *UN Peacebuilding Capacity Inventory*, forthcoming 2006.

<sup>28</sup> Gavener Grief has investigated how institutions evolve over time, which is of course of fundamental importance to designing rule of law reform.

<sup>29</sup> For instance it is possible that if the processing of cases speeds up in a country where it was previously inefficient, the number of cases might increase substantially and overwhelm the court.

<sup>30</sup> See for example criticism in Ford (2001).



This has led to a dramatic divergence between the reality of who holds power—including local power structures and informal institutions—and the formal institutions created both through the Constitution and the internationally assisted state-building process. The assumption behind most of the reform projects - that the aim of rule of law reform should be an attempt to recreate the institutional frameworks, that in the West are indicative of strong rule of law - is neither effective nor justified.<sup>31</sup> The focus on formal institutions has largely resulted in shell-like institutions, un-enforced and poorly understood legislation, and judges and police with little commitment to the rights and values sought to be entrenched through the reform. As a result, the formal governance framework and institutions have been unable to neither mediate the grievances, divisions and damaging political culture, nor the peaceful transfer of power.

#### 4. Formal over Informal and Traditional Mechanisms

A related issue in post-conflict countries, where the formal mechanisms may have completely disappeared or been discredited, is that informal mechanisms may be crucial to restoring some degree of law and order. Even where the formal legal system has collapsed in a country, there are often other mechanisms that have dealt with criminal or civil disputes, possibly using traditional systems, village elders or even local strongmen.<sup>32</sup>

Such systems have a role to play in the larger justice system. These informal or traditional conflict resolution mechanisms (such as tribal or clan elders) may be conflict-reducing if they are more focused on negotiating or mediating disputes rather than adversarial win-lose outcomes of the formal court system (Widner 2001). Moreover, they may be all that is available for many years.<sup>33</sup> It is increasingly clear that a realistic timeframe for re-creating a working criminal justice system following serious armed conflict with formal courts, trained judges and a retrained police force is close to twenty-years. This is all the more true where the criminal justice system was never particularly strong or effective before the conflict, and it is even worse if new legal norms are sought to be introduced, or if there is little political will or weak local constituency support for the reforms.<sup>34</sup>

Existing alternatives to formal legal structures, which may be more effective and less costly such as paralegal programs in South Africa, or community councils or other culturally appropriate dispute resolution mechanism, should be considered. One useful step, going forward, would be to develop (and evaluate) new strategies to take advantage of the informal structures and at the same time encourage appropriate reforms.

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<sup>31</sup> See Carothers (2003); Kleinfeld Belton (2005); and Ierley (2001).

<sup>32</sup> In Somalia, for instance, two distinct and yet overlapping conflict resolution mechanisms have been active in the last 15-years where no formal law has operated. Traditional customary law (Xheer) implemented by clan elders has retained or even regained popularity. In addition, a system of Sharia courts has been created in some regions with the support of the community. These are run by clan elders with religious leaders, supported by a paid militia that acts as a police force.

<sup>33</sup> See discussion of the Gacaca courts in Rwanda, initiated as a desperate measure to deal with hundreds of thousands of cases yet to be tried for genocide (Mburu 2001). These courts have been somewhat controversial raising issues of procedural fairness and questioning the lack of legal representation for the accused. This is certainly the most extreme example of resort to traditional conflict resolution systems, as in most cases only low level criminal offences and civil disputes would be resolved at such level, or at the least, more important cases would be open to appeal to the formal legal system.

<sup>34</sup> In East Timor, for instance, even five years after independence, the formal legal system has close to no capacity and does not function. This is the result of the very low capacity (prior to independence all judges and prosecutors were part of the Indonesian occupation, thus there was no local capacity), destroyed infrastructure, and a lack of strategy and funding for the rebuilding of the justice sector. Nevertheless, in East Timor village chiefs traditionally performed a strong conflict mediation role, and yet this mechanism was not considered as part of the law and order strategy. See also Dahrendorf (2003).

Nonetheless, difficult issues do arise in relation to the protection of international human rights standards and the rights of women and minorities under traditional or informal mechanisms (Human Rights Watch 2003). It is of key importance to attempt to forestall or overcome bias in such mechanism in favor of men, wealthier citizens or the dominant ethnic group. Thus, such mechanisms should be evaluated, supported, and reformed as part of rule of law reform strategy.<sup>35</sup> The existence of traditional or informal mechanisms cannot be overlooked, however, as they will otherwise continue to undermine or conflict with the formal structures, and where appropriately formalized or amended they can assist to support an environment with a base level of law and order.

## 5. Tangible Short Term Reforms over Long Term Strategies

There has also been a strong focus on tangible and more easily quantifiable changes, such as buildings or computers. Rebuilding infrastructure is a readily identifiable mark of progress and hence is often favored over more long term and difficult capacity building. However, infrastructure projects can only have a limited impact where political and economic incentives are the key reasons for the non-existence or weakness of the rule of law. An example of how this focus on quick progress, rather than long term change, can undermine the reform of rule of law can be seen in the ongoing weakness of the legal system in Haiti and East Timor where the major focus was on police reform and training, rather than the more intangible and difficult capacity building of the judiciary. This also highlights that the flawed institutions created in the chaotic aftermath of conflict can be severely damaging to reform in the longer run when they become entrenched and act as a hurdle to reform.

## 6. Wholesale over Incremental and Context Determined Change

In the post-conflict context, there appears to be a window of opportunity for reform because the system has often collapsed, and there are few actors remaining that have institutional incentives to oppose reform, in contrast to rule of law reform in weak but entrenched legal systems. However, in reality, the changes that are sustainable in this environment are fairly limited—there is always a *status quo* from which the changes need to be made. The equilibrium that can be reached requires an in-depth understanding of both, what is taking place in the post-conflict environment, and what was in place before the conflict to determine what sorts of changes would be sustainable.

As Chopra and Hohe point out, there is inherent in such a decision a fundamental dilemma - that interventions can “either reinforce the status quo and build on it, further empowering the already strong; or replace altogether what exists with a new administrative order” (Chopra and Hohe 2004. In post-conflict environments “those wielding power may well have gained ascendancy because of the war [through] unsavory and often illegal methods” (Schetye 2002). In practice, however, the imposition of foreign approaches, rules or structures wholesale does not take account of the fact that the changes advocated are not simply technical changes, but deep societal changes that will only be effective if a large portion of the population accepts, understands and implements them.<sup>36</sup>

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<sup>35</sup> In Somalia, for instance, the Danish Refugee Council has been undertaking a successful project with clan elders to reform the traditional law to better accord with international human rights standards.

<sup>36</sup> Hewko argues a similar point in relation to foreign investment reform in post-communist countries. Rather than completely changing the structure, he argues that “a short laundry list of specific complaints with the system as it is usually arises which, if rectified, would greatly facilitate the success and continued viability of their investment. As a result, the emphasis of legislative reform efforts should be on the details (not the general concepts) and on determining *specific* (very often mundane) changes that need to occur for *existing* legislation to function within the cultural, political, and economic realities of the host countries” (Hewko 2002, p. 2).

The methodology that can be extrapolated from de Soto's work is to begin with a careful study of what is actually happening, compare that to the formal system and then determine what reform to the two elements of the system is realistic, rather than bringing in a foreign system to replace a broken formal system.<sup>37</sup> This may mean that informal practice needs to be formalized and acknowledged and that only incremental reforms to this practice can be made in the short term, to make it a little more efficient, fair, and better aligned to international human rights standards. Thus, an incremental strategy of legal change carefully grounded in the reality of the situation is one of the most important lessons to be derived from de Soto's seminal book, *The Mystery of Capital* (de Soto 2000).

In addition, the plan for the legal system must take account of the available resources and capacities of the country. Often insufficient attention is paid to what running and maintaining such a system would cost a country once the aid project is completed, which leads to the creation of unsustainable standards and institutions.

## 7. The Need for Local 'Agents of Change'

A key point to emphasize is that law reform in any country requires demand for change. For the changes to be sustainable and implemented there must be a demand among the population, and local champions of the changes to drive the reform, be it citizens, membership organizations, human rights activists, opposition parties, etc.

In many instances, reform and education programs have achieved a short term impact, but institutions revert to previous approaches rapidly, or new systems of case management or recording are not used once the project ends.<sup>38</sup> Moreover, even if reform takes place, unless the citizens believe and trust in this reform, little will change. As Carothers' points out, law is a normative system that relies on the understanding and support of the citizens and its strength depends on how citizens value and use the law (Carothers 2003, p. 8).

Practitioners—who have often started out as lawyers with little development background, and also seem to idealize how the Western legal systems operate—have tended to favor technical rather than political or social approaches. Hence, much of the programming has overlooked politics and power incentives, such as whose interests are served by weak rule of law institutions (Upham 2002, p. 8), seemingly forgetting the role of power and politics in the western models as well (Kleinfeld Belton 2005, p. 22).

Such an approach also tends to overlook the substantial role of custom and values in legal structures. A judge or a legal community must embrace certain ethics and beliefs about their role in society. Exogenous institutions can be transplanted through external projects, but they do not tend to deeply entrench themselves in the culture, remaining mere institutional shells and reinforce relationships of accountability between the government and the international donors, rather than the government and the population. This is not helpful, as Kleinfeld Belton points out, “while customs without material institutions can manage to uphold some rule-of-law ends [...] institutions without customs are weak and easily circumvented by raw power” (Kleinfeld Belton 2005, p. 22).

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<sup>37</sup> Fact finding missions and Joint Assessment Missions can be a useful aspect of such a study.

<sup>38</sup> In Haiti for instance, efforts to create a new police force and promote human rights achieved some success, particularly through the joint UN-OAS MICIVIH mission, which started out as a human rights observer mission and evolved to include police training, human rights promotion, civic education and election monitoring. However, these were not coordinated with systematic judicial reform, and were not supported by the political elite. Hence, the improvements ended up reverting to previous dysfunctional states, the police force returned to its corrupt and violent practices and there is nothing to show for years of programming.

Thus, it is essential to incorporate incentive structures to drive and support sustainable reform. Domestic political reform pressure and local political reform champions are essential for real change. There must be a systematic focus on identifying and supporting “agents of change” who have a driving will to reform (Carothers 2003, p. 9).

## **8. The Paradox of Local Ownership**

Local ownership is a core element of sustainable strategies. However, determining what local ownership means, and how it can be successfully implemented is a difficult challenge (Hansen and Wiharta 2006). An upcoming policy report on local ownership in the transition to order after conflict produced by SIPRI, highlights a number of dilemmas: that of local ownership of the process versus local ownership of the outcome, finding appropriate partners, opposing timeframes and dependency. They conclude that a nuanced approach must be adopted, recognizing a differentiated understanding of the local stakeholders (such as the population in its organized forms, the business community, the authorities, and members of the rule of law sector), and that differing strategies must be adopted for anchoring responsibility for a reform in local perceptions and among local stakeholders. At the same time they emphasize, “It is critical to remember that while the value of ultimate local ownership is indisputable, it is usually a breakdown of local capacity that has brought about the international effort in the first place” (Hansen and Wiharta 2006).

For instance, the use of local judicial reform councils to decide what the reform strategy should be and to implement it seems logical, and yet an experiment with such councils in Afghanistan has been largely unsuccessful. They were not able to develop a meaningful strategy and hardly any reform or rebuilding has taken place in the justice sector (Dahrendorf 2004). Another issue is whether to bring in foreign judges or lawyers to undertake line tasks. This may appear to conflict with local ownership, and yet where there is a serious lack of capacity, inexperienced people undertaking legal tasks can lead to chaos (Mburu 2001, p. 10). Moreover, in highly divided societies, one ethnic group may not be prepared to appear before or be represented in court by the other group, and the legal system may be disproportionately staffed (e.g., Bosnia-Herzegovina). In addition, judges may be associated with the former regime and perceived as biased. Addressing this issue can be particularly difficult, and different strategies have been tried, including bringing in foreign judges (Kosovo), appointing new judges with strong moral reputations (South Africa), or attempting to encourage balanced benches (Bosnia-Herzegovina).

The question of local ownership often turns on who the ‘local owners’ are and how they are chosen. As in all societies, some may have incentives to undermine change or serious reform, or not have the comparative knowledge or expertise to construct an appropriate strategy, and others may be ‘change makers’ or leaders. A pragmatic and reasonable approach must be devised to ensure that the key stakeholders buy-in to the reforms, or are unable to undermine them, and that the population or key civil society groups support the outcome sought to be achieved through the reforms.

## **9. Rushed and Compromised Constitution-Making**

The design of a constitution and its constitution-making process can play an important role in the political and governance transition. Constitution-making can be a forum and process for negotiation of divisive issues, bring fragmented elements of a state together to think about a future vision for the state and a road map on how to get there, provide basic democratic education to the population, and ensure that the governance structure results from a national dialogue and has legitimacy and local ownership (e.g., South Africa, Uganda).

However, if undertaken poorly, through an exclusionary, provocative or inflammatory process, or by entrenching divisive governance choices in the constitution, constitution-making can undermine the

creation of a sustainable peace and a legitimate state. It can result in disillusionment and bitterness in the population if the consultations are not genuine or the resulting constitution is not representative or if unfair or divisive provisions are adopted that privilege certain groups over others (e.g., Zimbabwe, Nigeria, and Fiji).

Constitution-making in post-conflict countries is a difficult process, which reflects an irresolvable tension between what is required to secure the peace in the short term, and what is required for longer term peace and stability. For instance, broad participation increases its legitimacy and results in more democratic constitutions with greater public support, yet at the same time can jeopardize the likelihood of the constitution being accepted by the elite and thus enforced. This tension is also seen in governance choices. For instance, the inclusion of power-sharing between the various factions, ethnic or confessional groups has evident value in conflict-termination, but has less positive impacts in the longer term (Samuels 2005, 2006, 2006 forthcoming).

To minimize the negative risks, the international community should adopt a constitution-making strategy that balances a number of issues: (i) supporting a state-building inclusive and participatory constitution-making process, but (ii) taking into account the compromises needed to maintain the peace, balanced with the involvement of the people in deciding the future of their country, and (iii) aiming to elicit aspirations of statesmanship from the leaders, as well as (iv) anticipating the need for incentives for enforcement. If the time is not right for an inclusive process the approach should be to delay the process rather than undertake it poorly. All advisors involved in a constitution-making process should be familiar with post-conflict constitution making processes and the impact of relevant constitutional articles in the context of developing countries.

## 10. Poorly Designed Training and Legal Education Programs

Most judicial training programs (often popular with donor agencies) have failed to have a sustained impact. Programs seem to have been poorly designed, unsustainable, too theoretical or ambitious, focused on laws that were too complex, or theoretical international human rights standards and conventions, too short, adopt a condescending tone or cause the local judiciary to feel insulted.<sup>39</sup> Or they simply did not sufficiently take account of the incentives and political pressures for judges to continue to function in a corrupt, *ad hoc*, or biased fashion.

That is not to say that it is not possible to design judicial training programs to play a useful reform role, if they are able to take account of the actual capacity of the judges coming into the program and the time required for true change. Such programs would need to adopt a long timeline and have achievable goals: such as seeking at best to ameliorate the judicial standards in the short term, while putting in place long term training and education strategies to create a new generation of lawyers and judges. Sustainability would need to be built in through the use of local experts, and train-the-trainer methodology (Ford 2001). In relation to longer term legal education reform, some favor the use of a legal clinic model based on the US approach,<sup>40</sup> although this is the subject of ongoing debate in the literature.<sup>41</sup>

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<sup>39</sup> In the Kazakhstan evaluation report for USAID it was felt that foreign experts had insufficient knowledge of local laws, oversimplified substance and under-estimated the sophistication of the Kazakhstani legal community (Remias 2005). See also Dahrendorf (2003). In Rwanda, for instance most of the courses for legal personnel that were due to handle the genocide cases were of three months duration, with a few extended to six months, which was clearly insufficient given the complexity of the issues (Mburu 2001). Note that the CEELI report found that criticism that the programs were not conceptually well structured and the instructors did not know Russian conditions or speak the language were overstated (Blue and Chernev 1999).

<sup>40</sup> Attaching legal clinics to law schools began in the US in the 1950s and has become an integral component of legal education at law schools throughout the country. Such clinics tend to have four major goals: raising the social

## 11. Sequencing and Prioritizing

The lack of knowledge on how to bring about the change sought also means that there is no sensible way to prioritize. Increasingly, evaluations have concluded that what is required is to address all elements of the system (Remias 2005). The Secretary General's report, for instance, suggested that all elements must be addressed in a comprehensive way:

Our experience confirms that a piecemeal approach to the rule of law and transitional justice will not bring satisfactory results in a war-torn or atrocity-scarred nation. Effective rule of law and justice strategies must be comprehensive, engaging all institutions of the justice sector, both official and non-governmental, in the development and implementation of a single nationally owned and led strategic plan for the sector. Such strategies must include attention to the standards of justice, the laws that codify them, the institutions that implement them, the mechanisms that monitor them and the people that must have access to them. (Secretary General 2004, p. 9)

Achieving a comprehensive approach would require that different entities (with different mandates) work together in partnerships to ensure effective rule of law reform. Moreover, understanding interdependence, and how rule of law problems may be linked is fundamental to being able to appropriately sequence reforms. As the DFID guidelines highlight: "there is no point enhancing the supply of legal services through legal aid if the judges are corrupt; judicial corruption would have to be tackled first" (DFID 2002, p. 42).

## V. CONCLUSION

On average, 39 percent of states emerging from conflict return to conflict in the first five years, another 32 percent return to conflict in the following five years (Collier and Hoeffler 2004). State-building theory has increasingly recognized that elections, and the other formal trappings of governments are not sufficient to initiate or sustain transitions to peace and democracy without rule of law reform. As Amos Sawyer (a former president of Liberia) says "The state we produced turned out to be a criminal state, legitimized by elections."

As discussed in this paper, rule of law reform in fragile or post-conflict countries (and more generally in developing countries) aims to bring about highly complex and interdependent social goods, yet there is little clarity on how to best proceed. Despite two decades of experimentation, little is known about how to bring about legal change and create sustainable legal institutions in post-conflict countries. While rule of law reform appears to have been moderately more successful in the non-conflict context, there are heightened difficulties in the post-conflict context (a very low institutional starting point and urgent law and order and dispute resolution problems), and there is insufficient analysis or understanding to easily adapt those positive experiences to the post-conflict context.

This situation is reinforced by the striking lack of coherent and systematic studies evaluating rule of law programming, especially independent rigorous cross country evaluations, or comprehensive case studies

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consciousness of law students; teaching legal skills to law students; teaching critical thinking skills through students working on real cases and strategizing about client problems and by using classroom teaching methodologies such as simulations and problem-solving, and finally, to aid the poor and assist in the development needs of the country through the provision of free legal services.

<sup>41</sup> Jessup (2002); Uphoff (2000); Schnasi (2003); and Wortham (2006). Not all agree that these are useful models. Dowdle for instance, criticises the efforts to establish legal clinics based on a Western paradigm in Chinese universities since these focus on litigation which is the wrong model for China, where other kinds of legal aid activities, such as lobbying and social education, may be more relevant (Dowdle 2000).

of all the rule of law programs in a country. There is also a lack of available institutionalized expertise. The recent peacebuilding capacity inventory acknowledged that while many UN institutions claim rule of law expertise, they have little in-house capacity. Moreover, there are no training courses or studies to prepare a practitioner to reconstruct a justice system after conflict. The expertise that exists is largely in the heads of practitioners who developed it through trial and error over the last few decades, and the quality of expertise varies dramatically.

Many negative lessons have emerged from the practice, as discussed above. However, these lessons are frequently overlooked because of the way in which rule of law reform has tended to be undertaken by a multiplicity of uncoordinated actors and projects. The field lacks a common foundation or basic agreement on the goals of rule of law reform, how different aspects should be sequenced to avoid them working against each other, and fundamentally what sorts of strategies are effective. It seems essential to develop new approaches to the planning and implementation of rule of law reform, through more coherent and coordinated planning strategies (such as JNA or PRSP approaches), and through different delivery systems (such as regional institutions or centers of excellence).

Given this complex situation, it would be difficult, and probably unhelpful, to devise a rule of law strategy for the Bank without first undertaking comprehensive and well structured evaluations of how the different rule of law reform projects have interacted and played-out in a range of post-conflict countries, as well as in some of the apparently more successful non-conflict countries. Given the state of development of this field, a literature review of the type undertaken in this paper is suggested only as a starting point. However, a carefully designed, comparative field project based on systematic results-based case-study evaluations, and drawing on the expertise of those who have worked in the field for years, could contribute substantially to the evolution of the field of rule of law reform. It would help give direction, centralize, institutionalize, and render accessible some of the lessons that should be guiding future programming in this area.

## Annex 1: Actors Involved in Rule of Law Reform

Category	Type	Key players	Comments
Inter-governmental Organizations	UN	DPKO UNDP UNIFEM OHCHR UN Special Rapporteur on the Independence of Judges and Lawyers International Development Law Organization	<p>Only recently DPKO focus on ROL. Criminal Law and Judicial Advisory Unit established in February 2003 within the Civilian Police Division of DPKO.</p> <p>UNDP Global Programme on Parliamentary Strengthening, which provides support to parliaments to ensure that they have the capacity, resources and necessary independence to carry out their core functions effectively.</p> <p>The International Development Law Organization (IDLO) aims to encourage and facilitate the improvement and use of legal resources in the development process; to contribute to the establishment and development and application of good governance and the rule of law in developing countries and countries in economic transition.</p>
	Regional organizations	OSCE EC OECD	<p>OSCE supports the participating States in stepping up anti-corruption actions and in launching strategies for law enforcement. It gives recommendations for legislative reforms and for monitoring the humanitarian situation, including the return of refugees, internally displaced persons and trafficking in human beings. Specific projects range from assistance to legal clinics to supporting Ombudsmen and human rights institutions. It has 3 entities that work in this area: The Office for Democratic Institutions and Human Rights, the High Commissioner on National Minorities, and the Conflict Prevention Centre.</p> <p>Countries wishing to join the Organization for Economic Co-operation and Development (OECD) must meet its standards that require strengthening property rights regimes, recognizing the important role of the private sector and adhering to the rule of law.</p>
Development Banks		WB AfDB IDB ADB EBRD	
Bilateral Actors	UK US Germany Norway Switzerland	USAID Millennium Challenge Corporation (MCC) CIDA DFID US Justice Department Office of Prosecutorial Development Assistance and Training (OPDAT) Department of Justice, Norwegian Royal Ministry of Foreign Affairs The German Agency for Technical Cooperation (GTZ)	<p>Millennium Challenge Corporation (MCC) is a new U.S. Government body whose mission is to provide assistance that will support economic growth and poverty reduction in carefully selected developing countries that demonstrate a commitment to just and democratic governance, economic freedom, and investments in their citizenry.</p> <p>CIDA has been involved in legal and judicial development in a range of countries (including Bosnia-Herzegovina, Afghanistan, Ethiopia, etc.)</p> <p>GTZ helps its partners establish democratic systems. It promotes democratic elections and parliaments, equal rights for women and the protection of minorities. It also supports participation by civil society in government decision-making processes, and promotes free and independent media. GTZ offers a wide range of services adapted to the specific political and socio-cultural conditions in its partner countries. (e.g., Morocco, Chile).</p> <p>DFID has been involved in a wide range of rule of</p>



			law projects through the world.
NGOs	Human rights Organizations	Amnesty International Human Rights Watch Transparency International Human Rights Program, The Carter Center	
	Universities and Law Schools	Institut des Hautes Etudes sur la Justice (Paris, France), Public Interest Law Initiative Columbia Law School (US), Brennan Center for Justice (NYU) Centre for the Study of Global Governance, London School of Economics and Political Science (London, UK) Global Corruption and the Rule of Law program, American University's Washington College of Law Boalt Hall School of Law, University of California at Berkeley, Transnational Business Law Program at Stanford Center for Legislative Development of the State University of New York at Albany	.
	Policy Think Tanks	IFES USIP (is about to set up the INPROL network as well) (US) International Centre for Transitional Justice The Henry L Stimpson Centre (US) Centre for Humanitarian Dialogue (Geneva) Democracy and Rule of Law Project of the Carnegie Endowment for International Peace International Centre Against Censorship (London) International Peace Academy (US) International Center for Criminal Law Reform and Criminal Justice Policy (CA)	International Foundation for Election Systems (IFES) provides professional advice and technical assistance in promoting democracy and serves as an information clearinghouse on democratic development.  The Centre for Humanitarian Dialogue is an independent and impartial organization, based in Geneva, Switzerland, dedicated to the promotion of humanitarian principles, the prevention of conflict and the alleviation of its effects through dialogue.  International Network to Promote the Rule of Law (INPROL) www.inprol.org. INPROL is a web-based knowledge network of international rule of law practitioners and experts working on rule of law issues in societies transitioning from war to peace.
	International Development NGOs	Open Society Justice Initiative The Asia Foundation Oxfam (Afghanistan defense lawyer training) Ford Foundation Parliamentary Center of Canada Westminster Foundation for Democracy Public International Law and Policy Group National Democratic Institute International Human Rights Law Group (Global Rights) EU Accession Monitoring Program	The Open Society Justice Initiative contributes to the development of legal capacity worldwide.  The Ford Foundation has been active in funding legal education and other projects in developing countries since the law and development movement. Its policy is to support lawyers, clinicians and law faculty from the developing countries rather than supporting US law faculty working abroad.  The Asia Foundation is a non-profit, non-governmental organization committed to the development of a peaceful, prosperous, just, and open Asia-Pacific region. It supports programs in Asia that help improve governance and law, economic reform and development, women's empowerment, and international relations  Parliamentary Center of Canada is an NGO with a mandate to support the House of Commons and the Senate of Canada in the fields of international relations and trade. The Center has undertaken parliamentary development programs in Russia,

			<p>South East Asia, Africa and the Middle East.</p> <p>Westminster Foundation for Democracy is a UK foundation that funds projects aimed at building and strengthening pluralist democracies, such as: political parties, Parliaments or other representative institutions, legal reform, human rights groups, independent media, women's organizations and projects, Other political non-governmental organizations, election systems, and Trades Unions.</p> <p>The Public International Law and Policy Group (PILPG) is a global <i>pro bono</i> law firm that provides free legal assistance to developing states and sub-state entities involved in conflicts</p> <p>The International Human Rights Law Group is a human rights advocacy group that partners with local activists to challenge injustice and amplify new voices in the global discourse with considerable work for USAID in Asia and Africa.</p> <p>The EU Accession Monitoring Program (EUMAP) of the Open Society Institute monitors human rights and the rule of law in 10 Central-Eastern European and 5 largest EU countries. It works with local NGOs and civil society organizations to encourage a direct dialogue between governmental and nongovernmental actors on issues related to the political criteria for EU accession.</p>
	Lawyer and Judges Associations	<p>American Bar Association (Central &amp; East European Law Initiative), Africa Initiative (ABA-Africa), Asia Initiative (ABA-Asia)</p> <p>International Bar Association</p> <p>Avocats sans Frontieres (Belg)</p> <p>Citizen's Network (Belg)</p> <p>Juristes sans Frontieres (French)</p> <p>International Centre for Human Rights and Democratic Development (Can)</p> <p>Southern African Legal Assistance Network (SALAN)</p> <p>Human Rights Institute</p> <p>Institute for Court Management (US)</p> <p>National Center for State Courts (US)</p> <p>Australian Institute of Judicial Administration, Inter-judicial Affairs</p> <p>Federal Judicial Center (US)</p> <p>International Commission of Jurists</p> <p>Center for the Independence of Judges and Lawyers</p> <p>Center for Judicial Independence (US)</p> <p>International Legal Assistance Consortium (33 member organizations)</p>	<p>ABA/CEELI (the American Bar Association Central European and Eurasian Law Initiative): The ABA established CEELI (Central European and Eurasian Law Initiative) in 1990 to advance "the rule of law by supporting the law reform process in Central and Eastern Europe and the Soviet Union." The programs are government funded.</p> <p>The Human Rights Institute (HRI) provides long-term, sustainable technical assistance to develop the capacity of Bar Associations and Law Societies.</p> <p>The mission of the National Centre for State Courts is to improve the administration of justice through leadership and service to state courts, and courts around the world</p> <p>The Federal Judges Center is an education and research agency for the U.S. federal judiciary.</p> <p>The International Commission of Jurists is dedicated to the primacy, coherence and implementation of international law and principles that advance human rights. What distinguishes the International Commission of Jurists (ICJ) is its impartial, objective and authoritative legal approach to the protection and promotion of human rights through the rule of law.</p>
Companies	Legal Consultancy Firms	<p>E. g.,: DPK Consulting (US), CHF International (US), GRM Group (US), Chemonics (US), Booz Allen (US), ALTAIR ASESORES (Spain), Checchi Consulting (US), Management Systems International (US), Development Alternatives (US), Development associations (US), FIU Center for the Administration of Justice (US).</p>	

## Annex 2: Examples of Interventions in Conflict and Developing Countries by Actor

Actor	Country	Description
ADB	Law and Policy Reform Activities in 2000	<p>Asian Development Bank Law and Policy Reform Activities in 2000 (Source: <i>An Overview Of ADB's Law And Policy Reform Activities in 2000</i>, ADB, 2000)</p> <p>ADB has provided substantial assistance through loans and technical assistance projects with significant Law and Policy Reform (LPR) components. Stand-alone legal technical assistance (TA) has focused on LPR for private sector development, particularly for finance, banking, and corporate governance; judicial reform; legal training; dissemination of legal information; and environmental protection.</p> <ul style="list-style-type: none"> <li>• Legal education and training of the judiciary and government lawyers: In 2000 training took place in Vietnam, Mongolia, and the South Pacific, the first legal and judicial education and training institute in the Maldives was established, the loan package for Nepal included support for the establishment of a National Judicial Academy that will cater to the needs of not only the judiciary but also government and private lawyers.</li> <li>• Judicial Independence: In 2000, ADB began work on a project to strengthen the independence of the Philippine judiciary focusing on a number of reforms identified by the Supreme Court in its comprehensive Action Plan for Judicial Reform. It will (a) design and set up financial, budgetary, and administrative frameworks that will allow the judiciary to act autonomously in relation to its fiscal and administrative matters, (b) improve the appointment and nomination process of the judiciary to make it more transparent and performance-based, and formulate performance-based incentives to improve the competence and impartiality of the judiciary, and (c) improve the delivery of sustained, focused, and responsive training to the members of the bench.</li> <li>• Systemic Issues in Legal and Judicial Reform: In 2000, building on two previous projects in Pakistan, ADB approved a \$2.7 million grant to develop the capacity of the judiciary to institute substantive long-term reforms. It aims to support the development of a judiciary that is aware of its larger role in development, technically competent, well resourced and accountable will provide the predictable justice that an economy such as Pakistan's requires. The creation of new methods of alternative dispute resolution, improved legal information, strengthening systems of administrative justice, and the use of local language will allow the poor to open the door to legal remedies, which has long been closed to them. Through work with various stakeholders: the federal and provincial bench, civil society groups, and various government agencies, ADB has set the groundwork for a comprehensive reform program which in addition to the above will deal with issues as diverse as: legal education, judicial training, case management, and long term financial sustainability of key institutions in the sector.</li> <li>• Legal Information: Legal information is vital to the success of market-based reforms—particularly, the promulgation of new legislation. In 2000, ADB worked with the Law Reform Commission, which had been previously established with ADB assistance, to establish a database of laws and legal acts and to publish a collection of laws in both the Tajik and Russian languages.</li> <li>• Combating Money Laundering: ADB began work in 2000 on a regional technical assistance to assist the Financial Action Task Force and the Asia/Pacific Group on Money Laundering (APG) in combating money laundering. It will help to improve transparency within regional financial institutions and establish strong accountability mechanisms. Among the anticipated outputs are: the identification of the necessary institutional and regulatory reforms; the publication of a comprehensive manual on combating money laundering; and the development of a regional action plan to promote regional cooperation to counter money laundering.</li> <li>• Insolvency and Secured Transactions: ADB lead regional initiatives in insolvency and secured transactions law reform. Following on from its initiative in carrying out a comprehensive analysis of insolvency laws in the region in 2000, ADB has implemented technical assistance to Thailand to train members of the bar and the judiciary in business reorganization and insolvency law. Similar training was provided to the Judiciary in the Philippines following the transfer of jurisdiction over insolvency cases from the Securities and Exchange Commission to the courts.</li> <li>• Regional work on secured transactions and insolvency culminated in 2000 with the publication of two substantial texts on the matter, <i>The Need for an Integrated Approach to Secured Transactions and Insolvency Law Reforms</i>, as well as <i>Secured Transactions Law</i></li> </ul>

		<p><i>Reform in Asia: Unleashing the Potential of Collateral.</i></p> <ul style="list-style-type: none"> <li>• In 2000, in Nepal ADB is supporting an integrated approach to reform of insolvency and secured transactions laws in the context of a larger initiative for improving governance corporate and financial governance (CFG). A secured transaction registry will also be established.</li> <li>• Land Law: In Cambodia, the LPR program began implementation of land legislation. Nationwide implementation of this law will do a great deal to reduce the vulnerability of the rural poor and facilitate their access to justice either through the courts or a system of alternative dispute resolution. ADB TA includes a component to assist the poor to assert their rights under the new law through non-governmental organizations specializing in advocacy of the rights of the poor.</li> <li>• Pro-Poor Judicial Reform: A study to develop a pro-poor approach will look at questions of access to justice across Asia and identify existing impediments and solutions to the provision of justice to the region's most vulnerable individuals.</li> </ul> <p>TA 2853-VIE: <i>Retraining of Government Legal Officers</i> (\$1.2m), approved on 26 August 1997.  TA 2967-MON: <i>Retraining of Legal Professionals in a Market Economy</i> (\$1m), approved on 23 December 1997.  RETA-5895: <i>Pacific Judicial Training</i> (\$350,000),  TA 3015-PAK: <i>Legal and Judicial Reform Project</i> (\$995,000), approved on 7 May 1998.  TA 3433-PAK: <i>Strengthening of Institutional Capacity for Judicial and Legal Reform</i> (\$2.9m), approved on 27 April 2000.  TA 3238-TAJ: <i>Dissemination of Laws and Strengthening of the Legal Information System</i> (\$380,000), approved on 9 August 1999.  TA 3000-PRC: <i>Strengthening of the Legal Information System</i> (\$630,000), approved on 23 March 1998.  The Law Reform Commission was created through an agreement with the ADB during the inception mission for TA 3238-TAJ: <i>Dissemination of Laws and Strengthening of the Legal Information System</i> .  RETA-5795: <i>Insolvency Law Reforms</i> (\$550,000), approved on 13 July 1998.  TA 3389-MLD: <i>Strengthening Legal Education and Judicial Training</i> (\$995, 000), approved on 23 December 1999.  TA 3580-NEP: <i>Corporate and Financial Governance Institutional Support</i> (\$3.3m), approved on 14 December 2000 and Loan 1811: <i>Corporate and Financial Governance</i> (\$7.3m), approved on 14 December 2000.  TA 3461-NEP: <i>Company, Insolvency, and Secured Transactions Law Reform</i> (\$250,000), approved on 27 June 2000.</p>
<b>ADB</b>	Pakistan	<p>The Access to Justice Program Pakistan (Source: Armytage, L 'Pakistan's Law and Justice Sector Reform Experiences: Some Lessons', 2003 (2) <i>Law, Social Justice &amp; Global Development Journal</i>) (AJP) is a program loan provided by the Asian Development Bank (ADB) to the Government of Pakistan valued at USD 350 million.</p> <p>Phase One (1998-99): Extensive 'research diagnostic' to identify and assess the needs for reform of the judicial and legal sector.</p> <p>Phase Two (2001-02): The Government of Pakistan defined an agenda of priority reforms based on this research which was piloted with a technical assistance grant from the ADB of \$3m.</p> <p>Phase Three (2002+) - The Government then started to implement the substantive reform program, which has been designed in the light of experience gained from the pilot projects.</p> <ul style="list-style-type: none"> <li>• Fund the building of hundreds of court complexes and the renovation of existing court houses. Improve court infrastructure and facilities through computerization of the courts. It will provide funding for the training of new and existing judges and, possibly additional recruitment.</li> <li>• Integrate reforms affecting the establishment of an independent prosecution service, and the management, administration and training of police.</li> <li>• The bar will receive a range of benefits involving improvements in legal education and training, and the distribution of collections of books for bar libraries.</li> </ul>
<b>UNDP</b>	Asia	<p>(Source: <i>Regional Perspectives in Access to Justice: UNDP's work in South and West Asia</i>, Stefan Priesner, Kathmandu SURF, UNDP)</p> <p>Nepal:  Strengthening the rule of law and reform of the judiciary (2001-)</p> <ul style="list-style-type: none"> <li>• Access to justice pilot testing of arbitration boards</li> <li>• Improving legal framework: criminal code and criminal procedure code, reconciliation of national laws with IHR</li> <li>• Capacity building of ministry of law and justice</li> </ul>

		<ul style="list-style-type: none"> <li>• Court efficiency: establishing a pilot courts to overcome delayed judgment</li> <li>• Capacity building of supreme court</li> <li>• Access to justice (legal literacy of public) and code for judicial appointment and disciplinary processes (program in draft form)</li> <li>• Preparation of HR support plan</li> </ul> <p>Bhutan:</p> <ul style="list-style-type: none"> <li>• Strengthening the legal framework: Capacity building and planning in substantive areas: Assessment of legal system, legislative drafting, juvenile justice, commercial law, IT for judiciary</li> </ul> <p>Sri Lanka:</p> <ul style="list-style-type: none"> <li>• Institution building of the legal aid commission</li> <li>• Legal aid for remand prisoners</li> </ul> <p>Iran:</p> <ul style="list-style-type: none"> <li>• Institution/capacity building – MA and PhD programme in Human Rights</li> <li>• Establishment of a centre for Human Rights</li> <li>• Capacity building of HR Commission</li> </ul>
<b>UNDP</b>	Somalia	<p>(Source: <i>Rule of Law and Security Programme Somalia</i>, Annual Report, UNDP 2005)</p> <ul style="list-style-type: none"> <li>• The UNDP program in Somalia has adopted a ‘top-down’ approach of training and infrastructure rehabilitation with a ‘bottom-up’ approach that includes legal empowerment and confidence-building of the Somali public, including legal clinics, legal aid, and awareness raising at community levels.</li> <li>• The program includes the creation and support of a Legal Clinic at University of Hargeisa, which provides free legal representation to marginalized groups while providing valuable supervised work experience to law students. The Legal Clinic has also undertaken awareness raising campaigns in rural areas and districts where vulnerable populations reside, as part of a broader strategy to educate individuals on their rights, and the services of the Legal Clinic in protecting those rights.</li> <li>• That program has also commissioned useful research on the role of alternative justice mechanisms and the perception and study of different justice systems in order to help them develop their programs (e.g., Survey of Justice Systems in Somaliland and Puntland. Survey of Gender-based Violence in Somaliland. Study of Juveniles in Prisons in Somaliland. Territorial Diagnosis and Institution Mapping).</li> </ul>
<b>USAID &amp; University of Maryland</b>	Georgia	<p>Georgia USAID Project (Source: Final Report on Georgia Rule of Law Project Contract No. 114-C-00-01-00136-00)</p> <p>After the civil war ended in 1995 the judiciary was restructured with USAID and other donor assistance, in 1999. Using a newly incorporated bench exam, Georgia replaced 184 judges with a new group that was universally thought to be more able and better qualified. But by 2001, donors saw political will for reform fading. Rampant corruption was fuelling public cynicism.</p> <p>More specifically, after a brilliant start, judicial reform was imperiled. Due to a budget crisis, judges were not being paid regularly. Driven in part by the tremendous flurry of legislative activity, there was also a growing gap between law and implementation. Ignorance of the laws contributed to this implementation gap. Legal professionals could not get copies of relevant laws.</p> <ul style="list-style-type: none"> <li>• Public awareness activities: Several local NGOs were instrumental in implementing the public awareness activities, including the Georgian Young Lawyers Association (GYLA), the Liberty Institute, and Internews. They used newsletters, pamphlets, newspaper inserts, town meetings, radio shows, billboards, and public service announcements (PSAs) to communicate their messages. Working with Internews the project produced 19 documentaries and 22 PSAs aimed at promoting human rights, transparency and decreasing corruption. Other major partner, GYLA, opened regional offices in Gori, Rustavi, Kutaisi, Ozurgeti, Telavi, Dusheti and Batumi where town hall meetings, roundtable discussions, seminars and workshops were used to disseminate information to citizens, regional NGOs and the local governments. Additionally, bus tours were organized to cover even the most remote regions throughout the country. During these tours documentaries were shown, legal literature was distributed and consultations were given not only to the Georgian speaking population, but also to minority populations.</li> <li>• Legal Services: Another major task of the project was to provide legal services and human rights specialists in order to help citizens use the government and legal system to secure their rights. Again, through grants to GYLA, the Liberty Institute, and Article 42, IRIS provided legal advice and assistance. IRIS supported the creation of an advanced computer database system to facilitate case management for both the public attorney service and NGOs, the Ministry of Justice, IRIS, Open Society Institute Georgia Foundation (OSIGF), and GYLA—to create the Public Attorney Service. Before the project, there was virtually no free state-funded legal aid. IRIS’s monitoring and evaluation data revealed a surge of increased confidence in the justice system. In 2003, when asked “Do you think that the law and legal system in</li> </ul>

		<p>Georgia function very effectively, somewhat effectively, somewhat ineffectively, or very ineffectively?" 28% of survey participants responded that the legal system functions somewhat or very effectively. The following year this number had increased to 66%.</p> <ul style="list-style-type: none"> <li>• A large part of the project focused on helping government officials understand their role under the new laws, and making certain that the internal rules of their offices were consistent with the new laws. The office within the MOJ was staffed with an IRIS attorney that provided ongoing information and training to government agencies on Administrative Law. A variety of publications, checklists and manuals were produced to supplement trainings that occurred throughout the project.</li> <li>• Legislative Drafting: The project worked with the Parliament, various ministries, other USAID contractors, and local NGOs to facilitate the adoption of good laws to promote the rule of law and an open, market-based economy. We focused on laws that promote open government and the accountability of officials for their actions.</li> <li>• Providing Training and Information: The project worked to increase knowledge about legal reforms and the rule of law. Activities related to this included funding legal information centers in courts and libraries around the country, and arranging for government information and laws to be available over the Internet. Publishing commentaries on newly enacted laws, holding conferences to discuss developments in the law, and making experts available to talk with different groups and organizations were also part of this component. Literally thousands of books, journals and leaflets were produced during the life of the project.</li> </ul>
<b>USAID</b>	Peru	<p>Justice Sector Modernization Program (Source: Justice Sector Modernization Program Final Report, 2005)</p> <ul style="list-style-type: none"> <li>• Establishing a career system for judges – one that would regulate entry into the judiciary, promotion, evaluation, and discipline – would clearly define the relationship between judges (or judge candidates) and the Judicial Branch, minimize arbitrariness, and promote a higher level of professionalism and competence. Recognizing the importance of such a career system, the Judicial Branch formed a commission (called the Judicial Career Commission) on May 24, 2004, tasked with the responsibility of presenting a draft judicial career law to the Supreme Court president within a period of six months.</li> <li>• Improvement of Selection and Nomination Regulation of National Judicial Council</li> <li>• Career System for Prosecutors</li> <li>• Legal dissemination: Throughout 2003 and in the beginning of 2004, a small group of academics and justice sector actors wrote the new criminal procedural code. There was never any outreach effort to civil society and little within the separate justice sector institutions during the writing of the procedural code. Consequently, it remained largely unknown. IRIS assisted the Code Commission with a variety of activities and consultants designed to strengthen the planning process and build inter-institutional relationships. Activities including observation trips, in-house technical assistance and external consultancies to orient the Code Commission and the justice sector institutions in the planning process, creation of a dissemination plan, assistance in developing institutional norms, in-depth technical assistance in writing the approved implementation plan, creation of initial dialogue between the Public Ministry and the Ministry of Interior, and help establishing budgetary requirements.</li> <li>• Towards this end, IRIS provided ninety-two hours of training by international experts to sixteen justice sector actors and private attorneys. These ninety-two hours included training on the content of the new criminal procedure code, training on practical skills necessary to successfully implement the new code, and training on adult education methods and techniques. Trainers carried out a sixteen-hour workshop in three of the seven USAID-designated zones, in the two pilot project sites for the implementation of the new criminal procedure code, and in Lima. In all, these trainers taught 221 justice sector actors.</li> <li>• Support to Superior Courts in Lima and Other Designated Zones for Improving Court Administration: IRIS teamed with the Executive Council of the Judicial Branch ("Executive Council") to provide technical assistance in recommending specific changes and implementing backlog reduction programs. Such technical assistance required multiple visits to those courts outside of Lima during which IRIS carried out diagnostics, provided recommendations, signed agreements to implement these recommendations, monitored and evaluated the progress of implementation, and—with selected superior courts—carried out inventories of existing caseloads, established case processing time baselines, and organized backlog reduction programs.</li> </ul>
<b>USAID &amp; State University of New York Center for Legislative</b>	Lebanon	<p>USAID Lebanon Project (Source: Lebanon Relief and Redevelopment Project Government Institutions Strengthening Component Local Government and Parliament Project Mahmoud Batlouni, Lebanon Country Director Center for Legislative Development Albany, New York)</p> <p>The Center for Legislative Development undertook a rule of law reform project for USAID in Lebanon. The activities in 2003 included:</p>

<b>Development</b>		<ul style="list-style-type: none"> <li>• MPs: Developing a means to ensure that timely information regarding political news, committee decisions, agendas, upcoming events, etc. is available to all Members of Parliament (MPs) and to media representatives.</li> <li>• A Bill Tracking System was developed as part of the assistance program to review amendments to proposed laws</li> <li>• Budget Review Process simplified providing comparative analyzes of budget with budgeted expenses.</li> <li>• Training and modernizing of Court of Audit, which is responsible for evaluating the entire financial transactions of government expenditures.</li> <li>• Increasing tax compliance through automated system</li> </ul>
<b>American Bar Association Central and East European Law Initiative (CEELI) Contracted by USAID</b>	Eastern Europe	<p>CEELI Programs in Eastern Europe (Source: <i>Evaluation of the rule of law program in Central and Eastern Europe and the New Independent States : the American Bar Association/Central and Eastern Europe law initiative (ABA/CEELI)</i>, Final report, Blue, Richard N, Chernev, Silvy, Management Systems International, Inc, USAID, 28 Jan 1999)</p> <p>Program evaluation of all 22 countries where CEELI has worked, from 1992 to present, with emphasis countries selected for site visits: Russia, Ukraine, Georgia, Bosnia and Herzegovina (BiH), Macedonia, and Poland, Latvia and Lithuania. CEELI's program is implemented in the field by American lawyers working on a pro bono basis, serving as liaisons and legal specialists, and supported by paid in-country local staff</p> <p>In the early years, from roughly 1992 to 1995, CEELI aimed to mobilize American lawyers and other legal experts to provide timely assistance to newly independent countries. During this phase, CEELI's program focused on educating and organizing legal reformers, as well as identifying partners with whom CEELI could build long-term relationships. The second and current phase, beginning about 1995-96, is characterized by long-term strategies for strengthening the institutional capacity of local partners, such as judges' associations, lawyers' associations, legislative reformers, and special interest groups, to advance their own reform objectives with support from CEELI</p> <ul style="list-style-type: none"> <li>• Independence of the Judiciary: CEELI's work in judicial reform has included two key components one, assistance in the establishment and development of independent judges' associations, and two, provision of judicial training, through workshops and seminars, as well as through establishment and development of judicial training centers (JTCs)</li> <li>• CEELI has addressed training needs for the judiciary in all 22 countries. In the early years, CEELI's efforts focused on the organization of workshops and seminars featuring large numbers of Western legal experts, including a high percentage of sitting US judges, and over time, increasingly utilized local expertise. The team found consistent evidence that participants in judicial reform workshops have profited from training and exposure to new concepts. Workshops held outside capital cities have often been the first exposure judges and other legal professionals have had to Western legal principles and practices.</li> <li>• In more recent years, CEELI's efforts to train the judiciary have focused on more systematic activities aimed at developing cadres of trainers through "training the trainers" programs.</li> <li>• Institutionally, as independent judges' associations have developed, CEELI has co-sponsored continuing legal education for judges within these associations. In some countries, such as BiH and Georgia, CEELI still shoulders a substantial part of the organizational work, but in countries where the associations have matured, such as Macedonia, CEELI is gradually assuming a more supporting role. In a few countries without effective independent judges' associations, CEELI has used its own resources and organizational skills to mount training programs for judges, especially at the local and provincial level. In Ukraine, for example, a local legal NGO mounted a national program of training for the legal profession.</li> <li>• In order to build an element of sustainability into judicial education, CEELI has assisted in the establishment of judicial training centers (JTCs) in at least 10 CEE and NIS countries.</li> <li>• CEELI has worked in many other ways to achieve greater judicial autonomy and effectiveness through 1) development of judicial codes of ethics, 2) reform in the selection and appointment of judges, 3) advocacy training, and 4) the development of better information systems. CEELI has helped judges prepare formalized codes of ethics in 13 of the 22 countries</li> <li>• CEELI has from the beginning worked on development of judicial libraries, newsletters, print publications of court decisions, and the preparation of bench books. In 1998, with computer training centers and an on-line commercial law web site (established with CEELI and private sector support in Poland), and with a new four-court pilot computer internet project put on line by CEELI and Chicago-Kent University in Macedonia, CEELI and its partners are now moving into an age of vastly more efficient, accessible and affordable information systems.</li> <li>• Developing Independent Bar Associations: followed up by a variety of organizational efforts, ranging from study tours, technical assistance in framing charters, advice on organizational structuring, developing work plans, and providing small grants for start-up costs. CEELI</li> </ul>

		<p>programs also stressed the role of private law. CEELI has also worked with the development of associations of women in the law (six countries).</p> <ul style="list-style-type: none"> <li>• Legal Education Reforming the Law Schools: The objective of legal education reform has been especially challenging. In the six countries visited by the team, the principal finding is that CEELI has been able to introduce limited change in legal education in some schools, largely by cultivating, training, and supporting the efforts of reform-minded faculty members and students who are prepared to take risks and try a different approach to learning CEELI support includes extended (3-4 month) study tours in the US for members of law faculties, the development of a Sister Law School program, support for libraries and information systems, and a wide variety of in-country workshops on such matters as clinical legal education, the development of new curriculum materials, and the development of law student associations.</li> <li>• Legislative Assessments Giving Expert Advice on New Legislation: Upon receiving a request for a review of draft legislation CEELI organizes a panel of American and European experts, each of whom prepares a written assessment of the draft law, which is then synthesized into a single document.</li> <li>• Criminal and Commercial Law Reform: Without substantial reform in these two areas of law, both dismal features in the Soviet system, the successful development of new democratic free market regimes would be sharply constrained. Criminal law effort has occupied a higher place in the overall CEELI level of effort. CEELI began its work in criminal law reform in 1992. By 1998, CEELI had active criminal law programs composed of training, technical assistance, and criminal law drafting in 13 countries, mostly in collaboration with the Department of Justice.</li> <li>• The commercial law program takes on different dimensions and character, depending on the country. CEELI is visibly active in commercial law in 10 of the 22 CEE/NIS countries. Bulgaria is perhaps the most comprehensive commercial law effort to be mounted by CEELI, with more targeted technical assistance efforts found in Poland, Slovakia, Lithuania, Latvia and Croatia.</li> <li>• CEELI's environmental law initiative is a regional program with a strong country focus in Ukraine, has been successful and illustrates that one way to build respect for rule of law is to demonstrate that law is an effective way of achieving socially desirable public policy outcomes. CEELI-supported Environmental Public Advocacy Centers (EPACs) are available to Ukrainians who are seeking to settle environmental issues.</li> </ul> <p>USAID has invested almost \$34m in CEELI's program since 1992. The highest program, is Russia, at \$6.2m, and the lowest, Tajikistan, as well as the \$1m for regional programs, the annual program funding for each country in CEEINIS over the entire 7 year period is an average \$176 000. The CEELI program in Ukraine, a country which has received substantial foreign assistance from the US, has received \$2.9m over 7 years. Ukraine is the second largest CEELI program Poland which has received \$1.8 million for commercial and related rule of law development by CEELI, or about \$257,000 per year</p>
<p><b>USAID &amp; ICITAP</b></p>	<p>Latin America</p>	<p>USAID Latin America (Source: <i>Foreign assistance: U.S. rule of law assistance to five Latin American countries</i>, Ford, Jess T., Huntington, Albert H., III, U.S. General Accounting Office (GAO), National Security and International Affairs Div. (NSIAD), DEC, August 1999)</p> <p>USAID has focused on improving the capabilities of judges, prosecutors, and public defenders and their respective institutions as well as increasing the population's access to the services provided by justice institutions. The Department of Justice's International Criminal Investigative Training Assistance Program (ICITAP) group has emphasized enhancing the overall capabilities of the police and other law enforcement institutions, with an emphasis on investigative capacity, and has supported efforts to reorganize the police in El Salvador, Guatemala, Honduras, and Panama.</p> <p>Criminal justice systems:</p> <ul style="list-style-type: none"> <li>• In 1991, with USAID technical assistance and support, Colombia revised its constitution and a criminal code and began restructuring its judicial institutions accordingly. USAID, ICITAP, and OPDAT assistance is focusing on strengthening the capabilities of the courts, the Prosecutor General's Office, the Public Defender's Office, and the investigative units of various law enforcement organizations. Also, USAID is supporting a pilot effort for demonstrating new trial procedures in selected locations.</li> <li>• In El Salvador and Guatemala, USAID supported the development of criminal codes that were enacted in 1998 and 1994, respectively. When fully implemented, the codes will make their criminal justice systems more open and transparent. USAID and ICITAP are now providing training and technical assistance to judges, prosecutors, investigators, and public defenders and their respective institutions to implement the necessary changes.</li> <li>• Similarly, in Honduras, USAID supported the development of a new criminal code that would help make its justice system more transparent. Legislative action on the code was delayed in 1998 in the aftermath of Hurricane Mitch but, according to U.S. officials, passage is expected</li> </ul>



		<p>in 1999. USAID has also focused on strengthening the Public Ministry by preparing prosecutors and other court personnel for the changes expected with the passage of the code. Honduran officials noted USAID also helped establish a court Inspector General's Office, which has worked to stem judicial corruption by conducting public investigations of judges.</p> <ul style="list-style-type: none"> <li>• In Panama, USAID and ICITAP helped restructure Panama's criminal justice system in the early 1990s. Before the USAID rule of law program was terminated in 1997, it focused on training judicial personnel, developing a merit-based career track for judges and prosecutors, improving case management, supporting a judicial school and the Public Defender's office, and establishing legal libraries. ICITAP is currently assisting efforts to strengthen the capabilities of investigative units. Primarily through the efforts of ICITAP, the United States has enhanced the capabilities of police organizations in all countries and assisted with the transition to civilian authority in four of the five countries. In all five countries, reports of human rights abuses by police forces have declined in recent years. In Colombia, however, the overall human rights situation continues to deteriorate due to ongoing armed conflict among government forces, paramilitaries, insurgents, and narco-traffickers.</li> <li>• In Colombia, ICITAP has helped strengthen the investigative capabilities of the police and other law enforcement organizations through training, technical assistance, and other support for investigative units, forensics laboratories, and other units.</li> <li>• In El Salvador, the United States was the primary donor that supported scaling back the military and transitioning to a professional civilian police force, as required by the 1992 peace agreement. ICITAP helped establish a new police academy, trained academy officials in administration and management, provided specialized training in 36 areas, and developed an instruction manual on the new criminal procedures. ICITAP has also sought to enhance the police investigative capacity through support for a new forensics laboratory and special units for criminal and background investigations.</li> <li>• In Guatemala, ICITAP assisted with the transition to a civilian police force in accordance with the 1996 peace agreement. While Spain is the primary donor for police assistance in Guatemala, ICITAP is complementing the Spanish effort by helping develop the police's Criminal Investigative Service, Criminal Investigative School, and forensics laboratory.</li> <li>• In Honduras, ICITAP assisted with the transition of the police to civilian rule through technical assistance and helped revise academy curricula to include courses on professional responsibility. ICITAP also supported improvements in the police's investigative capacity by providing training and helping establish a crime laboratory.</li> <li>• In Panama, ICITAP was instrumental in the development of a civilian-run police force, following the abolishment of the Panamanian Defense Force controlled by former dictator Manuel Noriega in late 1989. More recently, ICITAP has shifted its focus from institution building to more specialized training. It is developing activities that are designed to sustain police reform, such as establishing a career ladder for officers, providing training for new instructors, and supporting a strategic planning unit and an integrated management information system.</li> <li>• In the five countries we visited, U.S. assistance has helped improve access to the justice system for the poor and marginalized populations. U.S. officials are also helping create and sustain grassroots support for justice system reforms. In Colombia, USAID has supported eight "Houses of Justice" that provide judicial services to low-income individuals. At these centers, citizens can seek alternative dispute resolution or have direct access to judges, prosecutors, public defenders, and the police. Colombia, with the support of USAID, plans to expand the program.</li> <li>• In El Salvador, USAID provided support for hiring additional judges, prosecutors, and public defenders throughout the country. In 1999, USAID is focusing on both institution building and improving access for rural populations. ICITAP developed a pilot "911" emergency call system in Santa Ana that lowered the crime rate in the area and increased community confidence in the police. Plans are underway to replicate the program nationwide. ICITAP is also developing a program for community policing.</li> <li>• In Guatemala, USAID helped create two pilot justice centers in rural areas to improve access to judicial services and test innovations in case administration and referrals for alternative dispute resolution. A team approach to the delivery of justice services brings together the police officer, investigator, prosecutor, and judge. As a result of the centers' popularity, the Guatemalan government plans to expand the centers to other locations with the support of USAID and other international donors.</li> <li>• In Honduras, USAID has funded activities to build support for judicial reform among the general public and civil society groups. USAID provided small grants to nongovernmental organizations that are active in police reform and are supporting passage of a new criminal code.</li> <li>• In Panama, USAID funded public training through a nongovernmental organization on how to obtain access to the criminal justice system. A USAID activity under consideration includes</li> </ul>
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		<p>funding civil society groups to generate demand for legal reforms. Host government officials, representatives of nongovernmental organizations, and other international donor officials generally noted that U.S. assistance has been important in promoting legal and institutional reform, improving the capabilities of the criminal justice system, and increasing the access of the population to justice. In addition to program aid, they said the U.S. presence has helped identify targets of opportunity and bring international attention to rule of law issues.</p>
<b>WB</b>	Guatemala	<p>Guatemala – WB project 2005 (Source: “Guatemala: The Role of Judicial Modernization in Post Conflict Reconstruction and Social Reconciliation” <i>World Bank Social Development Notes</i>, 28 June 2005)</p> <ul style="list-style-type: none"> <li>• The judicial modernization program was launched through stakeholder consultations with judges, administrative personnel of the Judiciary, legal professionals, government agencies, NGOs and civil society organizations, including indigenous and gender advocacy groups, the media, business associations and chambers of commerce. These consultations were supplemented with surveys of public perceptions of the justice system. The Modernization Plan for the Judicial Branch emerged as a product of these consultations and participatory assessment, with the global objectives of improving the efficacy, credibility and accessibility of judicial services, by strengthening and decentralizing judicial institutions, eliminating corruption, broadening and diversifying dispute resolution mechanisms, and improving communications and civil society participation.</li> </ul> <p>The strategic objectives achieved under the Project include:</p> <ul style="list-style-type: none"> <li>• The creation of departments and the training of personnel to perform four critical tasks: planning, human resources, administrative services, and financial management. Reorganizing the workflow of the courts has involved introducing economies of scale and streamlined procedures, and introducing technologies for the creation, automation and management of court records and documentation.</li> <li>• The ongoing decentralization of judicial and other administrative functions at the regional level has successfully been piloted in the Huehuetenango area, which was strategically targeted as having borne some of the worst of the conflict.</li> <li>• The Judicial Branch set a target of equipping every municipality with a Justice of the Peace court, and every Departmental capital with criminal, civil, family, and labor courts.</li> <li>• Civil society education campaigns spearheaded by the Modernization Unit and the Supreme Court have made progress toward building a new public image of the Judiciary, while raising awareness about dispute resolution services.</li> <li>• In an attempt to reverse the growing trend of vigilantism, a community outreach project was undertaken which included more than 600 workshops which reached nearly 40,000 community leaders and citizens. Basing the approach on community dialogue and legal education about rights and judicial mechanisms for dispute resolution.</li> <li>• Educational campaigns in schools were also identified as a potentially fruitful approach toward achieving the sustainability of social reconciliation by educating the younger generation in dispute resolution mechanisms and the social role of the Judiciary.</li> <li>• Training program for secondary school social studies teachers accompanied the introduction of a new curriculum entitled “Basic Guide to the Criminal Justice System.” In 2002, 1,549 educators in 21 Departments (provinces) participated in 16 training workshops, which impacted an estimated 150,000 students.</li> <li>• A Judicial Career Law and a Code of Ethics were introduced to regulate the hiring and promotion of judges and to institute standardized evaluation and oversight procedures. A transparent, competitive, merit-based process of recruiting judges was also instituted, and new a Disciplinary Board now investigates and sanctions ethical breaches.</li> <li>• Comprehensive judicial training curricula were developed and entry-level and continuous training programs are now provided for judges and administrative personnel. The Judicial Training School was set up and now provides standardized and effective training nationally. As part of project implementation, seminars and workshops were conducted nationally to facilitate change management and the development of a culture of service orientation in the Judiciary.</li> <li>• 24 Mediation Centers have been created nationally employing bilingual mediators in Spanish and local Mayan languages. Between 2002 and 2004, 14,992 mediation cases were handled, of which 6,146 were resolved by means of mutual agreement between the parties. Cases handled relate to land and property disputes, child maintenance, domestic violence, contract enforcements and wages, and minor criminal offences.</li> <li>• To support the full access of indigenous communities to the justice system, 49 community led workshops were carried out in 36 rural municipalities (as part of the Development Marketplace 2000 Award) to promote awareness of the role of newly created justice of the peace courts, and to educate judicial operators in the customs and values of indigenous communities (1,875 community leaders and 500 judicial operators participated in these</li> </ul>

		<p>workshops). Basic guides to legal procedures and laws have been published in Mayan languages, and radio broadcasts inform local populations about the role and availability of dispute resolution services through both formal and ADR mechanisms.</p> <ul style="list-style-type: none"> <li>• Two pilot mobile courts have been created which provide free mediation and conciliation services. (Between May 2003 and March 2004, the mobile courts attended to 1,564 users, of which 63 percent were women).</li> </ul>
<b>WB</b>		<p>Example WB Projects (Source: <i>Initiatives in Legal and Judicial Reform 2004</i>, Legal Vice Presidency, The World Bank, 2004 )</p> <p><b>WEST BANK and GAZA:</b></p> <p>Legal Development Project: World Bank Trust Fund No. 26063-GZ, approved June 24, 1997 for \$5.5m</p> <p>The project represents a first step in the Palestinian Authority's quest to establish the rule of law in the parts of the West Bank and Gaza under its control. The project objectives are to put in place a legal framework adequate to support a modern market economy and the growth of the private sector, and to increase the efficiency, predictability and transparency of the judicial process. To attain these objectives, the project supports the Palestinian Authority's efforts to:</p> <ul style="list-style-type: none"> <li>• Unify and develop the existing legal framework;</li> <li>• Improve the judiciary's administrative and case management procedures (court administration);</li> <li>• Introduce selected training programs for judges;</li> <li>• Expand the use of alternative dispute resolution (ADR) mechanisms within the judiciary; and</li> <li>• Disseminate legislation and court precedents to the legal, judicial, academic and business communities, and the public at large.</li> </ul> <p><b>GEORGIA:</b></p> <p>Judicial Reform Project: Credit No. 3263-GE approved June 29, 1999 for \$13.4m (equivalent)</p> <p>With the enactment of the 1995 Constitution, Georgia embarked on a judicial reform program. The Georgian government requested that the World Bank assist in the definition of measures to promote the reform and in donor coordination. Under a technical assistance operation (SATIC II), the preparation of a master-plan for the development of a new court administration structure, new case management procedures, and the introduction of computer technology was financed. Furthermore, new design standards for court infrastructure rehabilitation were developed.</p> <p>The project components include:</p> <ul style="list-style-type: none"> <li>• Court administration, encompassing case management and court administration procedures and their implementation, computerization of two Appellate Courts, audio equipment for all courts, and equipment for the Supreme Court;</li> <li>• Infrastructure rehabilitation of court facilities;</li> <li>• Enforcement of court judgments;</li> <li>• Legislative drafting/harmonization by the Ministry of Justice;</li> <li>• Training and study tours; and</li> <li>• A public information/education campaign.</li> </ul> <p><b>CHINA:</b></p> <p>Economic Law Reform Project: Credit No. 2654-CN approved October 18, 1994 for \$10m (equivalent)</p> <p>The Bank's first free-standing legal reform project, the IDA-financed Economic Law Reform Project, supports technical assistance in drafting key economic legislation, training in new economic laws and institutional strengthening of key agencies such as the National People's Congress (NPC) Commission on Legislative Affairs; the NPC Economic and Finance Committee; the State Council's Office on Legislative Affairs; and the Ministry of Justice. The project is comprised of three components:</p> <ul style="list-style-type: none"> <li>• Legal drafting;</li> <li>• Training; and</li> <li>• Institutional support</li> </ul> <p>The legal drafting component currently supports a wide range of subprojects, in such areas as enterprise reform, corporate restructuring, competition policy, tax, trade, legal profession, procurement, intellectual property, etc.; many of these also support Bank economic and sector work. The project also finances innovative training programs prepared by law faculties. The Office of Legislative Affairs has a program to establish a legal information system accessible to all national and regional government agencies (and eventually the public at large).</p> <p>Judicial Reform Project: Loan No. 4066-EC approved April 13, 1995 for \$10.7mi (equivalent)</p>

	<p>In the early 1990s, judicial reform was included in the agenda for the Modernization of the State. A judicial sector review was completed in 1994 and updated in 2003; it assessed the state of the legal and judicial system, and provided recommendations for reform, thereby laying the groundwork for the Judicial Reform Project and facilitating discussions among stakeholders. In addition, an overall judicial reform strategy was prepared in 1995 and updated in 2000 with the stakeholders, including the development agencies, to develop a long-term reform agenda and priorities, as well as to ensure donor coordination.</p> <p>The Judicial Reform Project, which was completed in 2002, was part of the Government's overall strategy. It had four components:</p> <ul style="list-style-type: none"> <li>• Case administration and information support to be piloted at the first instance level courts in three main cities;</li> <li>• Court-annexed Alternative Dispute Resolution (ADR) mechanisms to be piloted and ADR training;</li> <li>• Program for law and justice, including, inter alia: a special fund for law and justice, a program for the modernization of property registration, a professional development program; a study on the state of legal education; research and evaluation of ADR pilot programs; and legal service pilots for poor women; and</li> <li>• Infrastructure remodeling and development of court infrastructure standards.</li> </ul> <p><b>CROATIA:</b></p> <p>Court and Bankruptcy Administration Project: Loan No. 4613-HR approved June 15, 2001, for \$5m</p> <p>A 1998 report on "The State of the Judiciary" detailed problems and proposals for action, and included two detailed analyses of the judicial system prepared by ABA/CEELI and USAID, in 1994 and 1998, respectively. The Government is taking a phased approach, starting with a set of actions aimed at the commercial courts, specifically in the area of bankruptcy. Results of this focused reform can then be used for designing an overall judicial reform program. The project's main components are:</p> <ul style="list-style-type: none"> <li>• Testing a replicable model of court administration and case management at three first instance and the second instance commercial courts;</li> <li>• Designing a more effective system of management for extra-court bankruptcy professionals;</li> <li>• Providing court and extra-court bankruptcy professionals with training;</li> <li>• Identifying the basic parameters of a legal information system for bankruptcy administration; and</li> <li>• Increasing the awareness of entrepreneurs, bankers, judges, other legal professionals and government officials of the area of bankruptcy.</li> </ul> <p><b>Other elements of projects supported by the WB:</b></p> <ul style="list-style-type: none"> <li>• Legal awareness and legal education; publication and dissemination of laws, publicity campaigns, and counseling. <i>The West Bank and Gaza Legal Development Project supports the enhancement of law libraries in the Ministry of Justice and the Judiciary to serve as reference centers for judges, lawyers, academics, business people and the public at large.</i></li> <li>• Legal information and services in indigenous languages. <i>The Guatemala Judicial Reform Project supports the enhancement of multilingual communication capabilities in the Judicial Branch, including the publication of documents and reports.</i></li> <li>• Legal education in primary and secondary schools. <i>The Russia Legal Reform Project supports legal education in secondary schools.</i></li> <li>• Providing legal information via the Internet. <i>An online Legal Information Network (LAWNET) has been created under the Sri Lanka Legal and Judicial Reforms Project, which includes statutes, government regulations, case information, and court decisions.</i></li> <li>• Indigents, the vulnerable, and poor communities to use law to empower themselves in their everyday lives, including supporting affordable legal services; legal aid to individuals and community associations; social services counseling to enforce rights. <i>The Ecuador Judicial Reform Project finances five legal service centers for poor women, which provide legal consultations and representation, counseling, referrals, and alternative dispute resolution services.</i></li> <li>• Processes to enhance the effective participation of civil society in law reform. <i>The Legal Reform component of the Sri Lanka Legal and Judicial Reforms Project set up multidisciplinary teams, which include NGOs, to discuss and coordinate new commercial laws to be drafted.</i></li> <li>• Civil Society Organizations (CSO). <i>A Special Fund for Law and Justice was set up under the Ecuador Judicial Reform Project which awards grants to NGOs and CSOs to support</i></li> </ul>
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		<p><i>research and access to justice activities.</i></p> <ul style="list-style-type: none"> <li>• The media. <i>The Armenia Judicial Reform Project supports training for journalists on legal issues and the development of a public relations strategy for the judiciary.</i></li> <li>• Bar Associations. <i>The Morocco Legal and Judicial Development Project works with the Moroccan Bar Association to provide free basic legal advice to poorer segments of the population.</i></li> <li>• Developing creative methods for people in rural and remote areas to access judges and courts (e.g., by the use of video technology or traveling judges and courthouses). <i>The Guatemala Judicial Reform Project supports the diversification of judicial services and reorganization of justice-of-the-peace-courts in rural areas. Activities include assessment of the socio-economic, geographic, and cultural characteristics (including customary practices) and judicial service needs of rural and urban communities, including communities of high geographic mobility such as indigenous, refugees, and internally displaced populations.</i></li> </ul>
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