

USAID PROMOTES THE RULE OF LAW IN LATIN AMERICA AND CARIBBEAN DEMOCRACIES

THE IMPORTANCE OF THE RULE OF LAW

In Latin America and the Caribbean region, one of the greatest challenges of development is enabling the region's justice systems to effectively maintain order, successfully deter crime, and fairly decide cases, while at the same time protecting the rights of the accused. USAID has helped to establish a more just and efficient legal system in several countries in the region.

USAID funds and manages projects to strengthen the rule of law through partner organizations that work for change in those countries. The Agency's Office of Democracy and Human Rights in the Bureau for Latin America and Caribbean Affairs oversees regional strategies to reform courts, enable greater access to justice, and end practices of impunity for government and military officials. These projects are essential to strengthen democracies in the region, create greater stability and security, and attract greater inflows of foreign investment.

In effect USAID's rule of law program serves several vital and strategic U.S. interests.

Societies can be greatly weakened by judicial systems in which certain citizens are above the law, while others are victimized by unfair processes or inadequate access to justice. Without much-needed judicial reforms, many of the region's courts would continue to operate under antiquated laws adopted from former colonial regimes. Under corrupt or inefficient justice systems, the poor and other disenfranchised are granted less access to justice, court proceedings are long and unproductive, and delays can disable the court system. Defendants may spend years in jail before even going to trial, while gross offenders of human rights too often escape punishment.

The crime and corruption that result when the rule of law is not effective can be costly. According to a corruption and crime study by Center for Strategic and International Studies, a corrupt or inefficient justice sector can slow economic development, undermine the strength and credibility of democratic institutions, and erode the social capital necessary for development.¹ Economists with the World Bank estimate that Latin America's average per capita income would be 25 percent higher if it had a crime rate comparable to the typical crime rate in the rest of the world.

¹ Prillaman, William C. "Crime, Democracy, and Development in Latin America." *Policy Papers on the Americas*, Volume XIV, Study 6. CSIS: Washington D.C. June 2003.

Reinforcing this is the fact that the costs of crime and violence in Latin America in 1997 amounted to 14.2 percent of the region's gross domestic product. Those costs were as high as 25 percent of the GDP in Colombia and El Salvador.² These data argue that countries of the region have a vital interest to improve the rule of law to improve their security, make their economies more productive, and maintain public support for more legitimate and effective democratic systems.

U.S. INTERESTS IN PROMOTING THE RULE OF LAW

By helping countries to establish just and effective legal systems, the United States is able to strengthen democracies in the region, increase their legitimacy in the eyes of citizens, and bolster support for their democratic institutions. Judicial reform not only supports the idea of democracy for which the U.S. stands, it actually aids the mechanics of democracy, as well, ensures that justice functions effectively and transparently.

A desire to support and strengthen democracy in the region is not the United States' only motivation to work with those countries to help them establish the rule of law, however. Other factors include commercial interests, security matters, and humanitarian concerns. Countries with more effective and equitable justice systems provide more stable and attractive environments for investment, as they provide legal protections for investors. Increased investment invigorates local economies, promotes economic growth, and creates a favorable environment for U.S. investors.

Establishing the rule of law also helps to fight crime more effectively, and in the process improve security in those countries and throughout the region. In the new environment of security concerns and the War on Terror, the stability of the hemisphere is a high priority for the United States, especially as it recognizes that, in the post-Cold War environment, "the greatest threats to U.S. interests at home and abroad stem not from conquering states, but from failing ones."³

In short, for the United States to prosper and be secure, other states must prosper and be secure. Supporting the rule of law is one way to make the region safer for all.

For all of these reasons, USAID pioneered efforts to promote the rule of law in Latin America and the Caribbean. "When USAID first began actively exploring cooperative programs to strengthen judicial systems in the early 1980s, no other donors were working the field, and little effort was being made at national levels."⁴ Through the years, USAID has successfully supported wide-sweeping judicial reforms that have

² Javed S. Burki and Perry, Guillermo, *Beyond the Washington Consensus: Institutions Matter*. Washington, D.C.: World Bank, 1998, p. 23. Quoted in Prillaman.

³ Office of Democracy and Governance, Bureau for Democracy, Conflict and Humanitarian Assistance, USAID, *Congressional Budget Justification*, FY 2005. Washington, D.C.: 2004. Page 1.

⁴ Office of Democracy and Governance, Bureau for Democracy, Conflict and Humanitarian Assistance, USAID, *Achievements in Building and Maintaining the Rule of Law: MSI's Studies in LAC, E&E, AFR, and ANE*, Occasional Papers Series. Washington, D.C.: November 2002. PN-ACR-220.

effectively transformed the legal systems of several countries in the region. By the early 1990s, rule of law programs were established as important elements in most USAID country strategies there.

USAID's efforts also fueled a judicial reform movement that spread across the region, capturing the attention of civil society leaders and non-governmental organizations (NGO's). The issue of the rule of law became a key theme in presidential campaigns in countries like Colombia, Mexico, and Peru. Initiatives to strengthen the rule of law throughout the region have now been endorsed by the General Assembly of the Organization of American States (OAS) and the Summit of the Americas.

USAID's APPROACH

USAID's work in the area of the rule of law focuses on several areas. These include reforming the judicial system to be more efficient, fair, and transparent, and helping to reform laws and create criminal procedure codes that support the rule of law. USAID is strengthening justice institutions through training and expert technical assistance. In an effort to sustain those reforms, USAID programs also aim to improve legal education, train those currently involved in the justice sectors, and prepare students who will work in the field in the future.

USAID also supports the expansion of prosecutors and defenders' offices, and the professionalization of the judiciaries of those countries. USAID programs make justice more available to historically excluded groups through alternative dispute resolution and through the creation of community justice centers. USAID also equips civil society to better advocate for pro-justice initiatives, and works with other U.S. government agencies, regional organizations, and other donors to help coordinate efforts on rule of law projects in the region.

Though USAID programs sometimes supply tools like computers for better case-tracking or buildings to house community justice centers, in most cases, USAID "has invested in the cement of the justice system—human and institutional capacity—as distinguished from the investments in the bricks of physical infrastructure and equipment."⁵ Strengthening institutions and equipping people maximizes possibilities for long-lasting improvements to the justice sector, and through USAID's long-term commitment and established relationships in the region, tremendous results have been produced.

USAID's Democracy and Human Rights Office in the Bureau for Latin America and the Caribbean works with several partner organizations in the region. Current partners for regional initiatives include the Justice Studies Center of the Americas, and

⁵ Ibid.

the International Criminal Investigative Training Assistance Program of the U.S. Department of Justice.⁶

IMPROVING IMPLEMENTATION OF CURRENT LAWS

In many cases, USAID's first efforts to support the rule of law are to improve and implement the countries' current laws. By enabling the existing legal systems to work effectively and more legitimately, USAID paves the way for later revision and reform. Strengthening of current legal systems initially grew into support for a later judicial reform movement that began in Argentina and spread throughout Latin America and the Caribbean, bringing much-needed improvements to the courts and criminal justice systems across the region.⁷

CRIMINAL JUSTICE & LEGAL REFORM

These reforms typically transition judicial systems towards a more modern and efficient, adversarial and oral style -- away from the often laborious and paper-based trial procedures, which those countries inherited from former colonial regimes. Instead of panels of judges working to investigate every detail of a case and presenting all arguments through paper affidavits which could often take years, courts in Latin America and the Caribbean began to hear oral arguments from attorneys on both sides, with the judges acting more as impartial mediators and lay judges deciding on the verdicts.

With these changes came greater efficiency. In Bolivia, for example, the average time to complete a criminal case decreased from four years before the reforms to only four months today.⁸ Defendants in many courts today have legal assurances that they will not languish in jail for years before going to trial. In addition, most countries have abolished the practice of pre-trial sentencing. USAID also works to reform police forces, provide better training, and make them more accountable for their actions.

There are a number of success stories for USAID in terms of legislative reforms to promote the justice sector. In 1992, Guatemala with USAID technical assistance was the first country to enact a comprehensive reform to its criminal procedure code, providing for the first time a right to an oral trial, procedural due process guarantees, a right to confront witnesses, a right to counsel, and other fundamental rights. Similar codes have since been enacted across the region, including Honduras, El Salvador, Peru, Ecuador, Colombia, Nicaragua, Venezuela, Costa Rica, and Chile.

⁶ *Strategic Objective 598-005: Regional Re-enforcement of Regional Trends that Deepen Democracy in LAC, Fiscal years 2002-2006.* (Internal USAID document, unpublished.)

⁷ Office of Democracy and Governance, Bureau for Democracy, Conflict and Humanitarian Assistance, USAID, *Achievements in Building and Maintaining the Rule of Law: MSI's Studies in LAC, E&E, AFR, and ANE*, Occasional Papers Series. Washington, D.C.: November 2002. PN-ACR-220.

⁸ *World Bank Index...*

Similarly, since 1990, USAID's regional anticorruption program has worked on model legislation for financial management systems. Due, in large part, to USAID technical assistance, all countries in Latin America and the Caribbean, excluding Cuba, today have some level of financial management system in place for national accounts.

Successes perhaps can be seen best at the country level. For example, in 2003, Mexico launched new Freedom of Information legislation, modeled in part on U.S. legislation, with assistance from USAID. USAID is currently working with the Commissioners of the new Federal Institute on Access to Information to provide technical assistance to support the implementation of the law. The Commissioners recognize the milestone that the law represents for Mexico's democracy and culture of transparent government. Citizens are now able to submit petitions for government information.

The lack of public confidence in Mexico's criminal justice system is a major constraint to the country's continued democratic transition and future economic growth. At the Mexican Government's request, USAID has worked since October, 2002 to help develop this justice reform package. As the principal international donor and key advisor supporting criminal justice reform, USAID has provided technical assistance and advised in important areas, especially on the drafting of the new criminal procedural code.

USAID assistance is a key element of the U.S. Embassy's law enforcement program closely coordinated with other U.S. agencies' efforts in Mexico. President Fox presented the comprehensive legislative reform package on March 29, 2004, to transform the Mexican criminal justice system. The proposal calls for the transformation of criminal procedures from a written, inquisitorial system to an oral, adversarial one. It also calls for the restructuring of the police and prosecutors offices. Public and political support is broad-based and, unlike other recent reform proposals by the government of Mexico (like those for energy and fiscal reforms), passage looks likely for justice reform this year. With this reform, Mexico is poised to construct a real and effective rule of law.

Under USAID/Bolivia's Administration of Justice (AOJ) program, Bolivia now has an oral, adversarial criminal justice system that is significantly more transparent, efficient, and participatory. As of 2004, with three years experience under the new Legal Code and with new USAID help, average trial length has been reduced from seven years to 18 months; the cost of trials has decreased from an average of \$2,400 to \$400; and citizen confidence in the integrity of criminal processes has improved.

ICITAP

As part of a commitment to reform corrupt police forces, USAID has partnered with the U.S. Departments of Justice and State to work through the International Criminal Investigative Training Assistance Program (ICITAP). USAID obligated an initial \$1 million for community policing work in El Salvador. Since 1992, ICITAP has worked in El Salvador to improve police training and policing work.

Now, the National Civilian Police Force and the National Public Security Academy are well-established and functioning independently. Specialized investigative units within the police force are fully operational, and the Inspector General's Office and Internal Affairs has begun to routinely investigate citizen complaints and discipline officers. Modern emergency response systems are being implemented in select localities, and police personnel are increasingly receptive to learn and apply more advanced public safety and investigative techniques. These advances enable the government of El Salvador to more effectively combat major crimes, root out corruption within police ranks, and foster public confidence in the willingness and ability of the police to protect Salvadoran citizens.

USAID later extended funding through September, 2004 with a new cooperative agreement for ICITAP to continue to work towards improving policing in El Salvador. USAID obligated an additional \$250,000 to improve leadership and management of the National Civilian Police Force, to improve the information management and technology capabilities of the force through technical assistance and training, to provide additional training to police and the Attorney General's Office to enable these agencies to improve the thoroughness and quality of investigations and prosecutions, and to assist the Police Academy to develop better curriculum and training.

TRAINING AND DEVELOPMENT TO STRENGTHEN JUSTICE SECTORS

USAID's efforts in the area of the rule of law do not end with the creation of new laws and reform of judicial and policing systems. USAID also strengthens and equips the courts through transitional periods with training programs for judges, prosecutors, defenders, and court administrators to help them to adapt easily to their new roles in a revised legal system.

In some cases, there have been an insufficient number of prosecutors or public defenders to serve the needs of the population, so USAID helps to establish special offices and trains them to do the job. USAID programs also equip the courts with the technical expertise necessary for court systems to function well, providing training in areas such as computer-based case tracking, and transferring knowledge about the best administrative and management practices.

All judges in Guatemala, Bolivia and Honduras were trained through USAID programs in the revised criminal procedure codes when they were adopted. Thousands of other justice sector personnel and civil society actors have received training related to the rule of law from USAID. This training has equipped civil society groups better prepare to advocate for justice reforms, and justice sector personnel are able to perform in ways that preserve the equity and efficiency required of legitimate democratic institutions.

PROFESSIONALIZING THE JUDICIARY

In addition to training, USAID has worked to improve the quality and legitimacy of the judiciaries, advocating reforms of the judicial selection process through civil society actors. As a result, many countries in the region have adopted merit-based selection processes for judges, requiring them to have credentials and special training as a requirement to occupy their offices. Another benefit has been the creation of performance evaluations for judges based on established standards. This has served to make judges more accountable for their judicial acts and to increase the public's confidence in court systems.

PROVIDING ALTERNATIVE SOURCES OF JUSTICE

In addition to reform of the traditional court systems, USAID has also made significant advances in providing alternative mechanisms of justice. Since court systems can have backlogs of cases that are sometimes years long, there is a need for a speedier and less complicated route to justice. USAID programs in Latin America have initiated *casas de justicia*, or community justice centers. Now operating in several countries (including Colombia, Guatemala, and Peru), these justice centers bring together a variety of justice-related institutions and services under the same roof, typically in lower income or marginalized neighborhoods.

Results so far are impressive. The Justice Centers show improved citizen service, access to justice and quality of service, all with enhanced transparency. This provides the community with easy access to general legal help, social services, counseling, and referrals. Often, it is easier to resolve disputes and achieve some form of justice in these justice centers than it is through more traditional channels.

As a result, there is a heightened awareness about the access to justice, and marginalized groups are seeking legal help more than ever before. This, in turn, has advanced procedural due process and human rights.

Key elements of the Justice Centers are:

- (1) Organizational and administrative structures that reduce delay, minimize exposure to corruption, and create accountability;
- (2) Improved functioning of key actors in their assigned roles and management structures, and techniques that promote team approaches;
- (3) Use of standardized, user-friendly forms;
- (4) User-friendly case management and records systems that reduce opportunities for corruption, improve the quality of case supervision, and generate accurate statistics;
- (5) Interpreters and culturally-appropriate outreach and education programs in local languages to make the system truly accessible to non-native Spanish speakers; and

- (6) Promotion of alternative dispute resolution, plea bargaining, stay of prosecution, and other mechanisms to settle cases identified through improved case intake and diversion programs.

USAID/Guatemala has assisted the country to develop 14 centers. In Colombia, USAID has built 23 Justice and Peace Houses, and anticipates building 17 more throughout Colombia by September, 2005. The houses, most often located in cities of 100,000 or more, offer conciliation services, community police, public defenders, family law services, family violence response services, neighborhood dispute resolution, human rights ombudsman services, and other legal assistance as needed in the local community.

In concert with the Ministry of Justice, USAID has developed a strong nationwide network of community mediators. USAID provides training, reference manuals, and conferences throughout the country. Through a grant program, USAID also funds five regional mediation centers and works on legal reforms to improve access to alternative resolution sources.

IMPROVING LEGAL EDUCATION

Another avenue to strengthen the rule of law is USAID's work to revise legal education to include courses on the rule of law and to adapt to revised justice systems. This involves helping to develop curriculum that can prepare law students for their careers in the justice sector. Not only does this work provide an avenue to train students in the mechanics of law under an adversarial and oral system, but it also educates the attorneys-in-training about the importance of fair and efficient practices in legitimate and transparent courts.

The result is a new generation of justice sector professionals who respect and maintain the fair rule of law.

In Guatemala, USAID has funded projects that have worked to incorporate legal rights for women into the curriculum at San Carlos University Law School. Those efforts resulted in a diploma program in gender legal studies, providing vital training in the rights of women under the law. The university has become an epicenter for further initiatives in the area of the rule of law in Guatemala and other countries in the region.⁹

COORDINATING EFFORTS & EQUIPPING CIVIL SOCIETY

USAID recognizes that the task of promoting the rule of law in Latin America and the Caribbean cannot be accomplished alone. For this reason, USAID coordinates its

⁹ Office of Democracy and Governance, Bureau for Democracy, Conflict and Humanitarian Assistance, USAID, *Achievements in Building and Maintaining the Rule of Law: MSI's Studies in LAC, E&E, AFR, and ANE*, Occasional Papers Series. Washington, D.C.: November 2002. PN-ACR-220.

efforts with other actors and stakeholders. USAID collaborates with the U.S. Departments of State and Justice to make sure that all efforts in the rule of law work together to achieve the greatest results. USAID also works with the Summit of the Americas and the Organization of American States to coordinate efforts in the region, and it assists organizations that work across borders to promote the rule of law.

Also, USAID recognizes that enabling reform-minded professionals leads to greater success and ongoing action after USAID funding has ceased. For example, leaders of the USAID-supported Justice Studies Center of the Americas (JSCA, also known as CEJA) in Chile ultimately succeeded in implementing Chilean criminal code reform and are now directing a regional clearinghouse for training and justice reform. Participants in the initial justice sector reform in Panama later became key counterparts in elected government. As a young professor, the former dean of the University of San Carlos in Guatemala received a USAID scholarship for graduate study at the University of Costa Rica. He is now a leader in reforming law school curricula and teaching methods in Guatemala and elsewhere around the region. A staff-member of the Legal Reform Commission supported by USAID is now the Attorney General of El Salvador. The inter-American Institute for Human Rights in Costa Rica began with USAID funding in 1980 and continues to coordinate and promote regional training, networking, and research towards judicial and other reforms. All of these players have long-standing relationships with USAID, and incorporate the training and ideals they gained through USAID programs toward further efforts today.

JUSTICE STUDIES CENTERS OF THE AMERICAS

The JSCA, was an initiative begun at the Summit of the Americas to equip and coordinate efforts for justice sector reforms across borders and all over the region. USAID has agreed to provide \$2.2 million to the JSCA until 2006 for work in four primary areas: a) improve justice systems in the region and collecting standardized data about judicial systems in the region; b) improve the accessibility of information, research, and resources related to the establishment of modern justice sector institutions; c) evaluate national justice reforms to compare developments across countries and to develop recommendations for best practices and reforms; d) and strengthen the professionalization of the justice sector and support cross-border-cooperation to improve justice reform in the Americas.

As a result, the Justice Studies Center of the Americas developed a methodology to assess countries' progress in justice sector reform and established an electronic clearinghouse to link advocates and experts on justice reform.

CONCLUSION: REAL PROGRESS IN THE REGION

Through its efforts, USAID is able to effect great change in the countries of Latin America and the Caribbean. Though there is still a long way to go to promote the rule of

law in these countries, great achievements have been made since USAID started its initiatives in the region:

- Reforms toward oral and adversarial court systems with better case tracking and professional administrative procedures have made court procedures more efficient, fair, and transparent.
- Today, judges and prosecutors demonstrate greater independence, and are more willing to challenge wrongdoing by the powerful.
- It is less likely that the poor will have to languish in jail for years before a trial date or be sentenced prior to trial.
- Disadvantaged groups have gained greater access to legal remedies and assistance.
- There are more personnel working in justice systems, and more of them receive specialized training. Judges and staff are better qualified, and more are selected based on merit systems. In most countries, justice budgets are larger, productivity is higher, and backlogs are smaller.
- Improvements in legal education and the use of merit selection systems for judges, prosecutors, and defenders, have resulted in long-lasting improvements of the justice sector.¹⁰

Real achievements have also been made in the changing attitudes of the public in those countries. Corruption and impunity are no longer considered acceptable or inevitable by many citizens, and politicians and military officials can no longer be confident of being above the law. Civil society has become more concerned and involved with justice reform, and collaborative efforts have developed across borders to formulate regional approaches to justice reform. Networks of national and regional civil society organizations are monitoring progress, informing the public, and engaging in ongoing policy dialogue. “Throughout the LAC region, the rule of law is no longer a mere aspiration. It has become an expectation.”¹¹

The best results come from continued, long-term commitments to revitalize and strengthen justice systems. It is a continuing process, and in many of the countries that have recently reformed their judicial systems, much work remains to equip and strengthen a new system through continued training and sharing of technical expertise.

Where governments are still resistant to judicial form, USAID can continue to work through civil society actors to advocate for reform and increase public demand for equitable, efficient, and transparent justice systems. Through its long-term commitment

¹⁰ United States General Accounting Office (GAO). *U.S. Rule of Law Assistance to Five Latin American Countries*. Washington, D.C.: August, 1999. GAO/NSIAD-99-195 Foreign Assistance.

¹¹ Ibid.

to promote the rule of law, USAID will continue to be a major player in efforts to strengthen democracies, facilitate development, create security, and improve the lives of millions of people across Latin America and the Caribbean.

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