

# COMPENDIUM OF EVALUATION FINDINGS



## *RULE OF LAW PROGRAMS*

*Development of legal systems in support of the rule of law has emerged as one of the key tenets of democracy programs currently being implemented by USAID. Because such programs frequently require only modest funding, the Agency can act as an experimental, risk-taking innovator in developing approaches that can then be taken over by other donors willing to make more substantial investments.*

### *Background*

USAID interest in rule of law activities goes back to the early 1960s, when the Ford Foundation and USAID supported the development of law faculties in many African, Latin American, and Asian countries. USAID legal-systems-development efforts expanded in the 1970s and 1980s to include legal aid for the poor and court reform. In the 1990s, support for democracy emerged as a major Agency objective. Within USAID democracy programs, law projects now have a wider array of objectives, strategies, and activities than before and have thus come to be referred to as “Rule of Law” or ROL programs.

In 1993, CDIE completed a six-country study of USAID and other donor ROL programs, aiming to assess recent experience in the ROL area, develop criteria for initiating ROL programs, and propose a strategic framework for setting ROL priorities and designing country programs. The assessment covered Argentina, Colombia, Honduras, the Philippines, Sri Lanka, and Uruguay. In the first four countries USAID was the major ROL donor; in the latter two the Ford and Asia Foundations were the principal donor agencies. The six countries demonstrate a variety of strategies in addressing ROL issues and thus offer lessons in guiding future ROL programming. The CDIE assessment report is the basis for this summary.

### *Findings*

ROL activities can be classified into four strategies: (1) legal system strengthening; (2) access creation; (3) structural reform; and (4) constituency/coalition building. In some countries, USAID pursued only one strategy; in others, multiple strategies were undertaken.

*Legal system strengthening strategies focus on enhancing the capacities of host-government judicial institutions to*

*deliver justice more efficiently and effectively. This approach was used in all six countries.*

- **Strengthening legal systems is not necessarily the best strategy for beginning ROL development programs.** It is a high risk strategy where there is an absence or weakness of political will or public pressure to demand and support improvement in judicial performance. This has been the case at the national level in Honduras, the Philippines, and Argentina.

- **The most successful of these strategies in each country had elements peculiar to the particular legal system environment.** In Argentina the strategy involved a variety of small activities at the local level, while Colombian work was focused on the Public Order Courts. In Uruguay a major element was training in new oral presentation procedures in civil cases, while the Sri Lanka work helped to establish the national mediation program.

- **Introducing court statistical and database systems involves more than counting cases.** It means understanding the whys and wherefores of bottlenecks, delays, and backlogs in the court system.

*Access creation strategies include alternative dispute resolution (ADR), legal aid services, paralegal training, legal literacy campaigns, and legal advocacy NGO support—all of which are intended to make legal services more available and affordable to low income people.*

- **ADR mechanisms show promise as a low-cost measure for settling grievances** through mediation boards, neighborhood counselling centers, and binding arbitration. While providing more expeditions and accessible services for low income people, ADR mechanisms also relieve some of the usual burdens on the regular court system.

- **Legal aid and literacy efforts are often quite limited in their reach and impact if pursued as discrete efforts.** They are much more effective when integrated around specific needs and issues and when linked to organizations that have the legal competence necessary to engage in litigation and representation. Legal advocacy NGOs are performing this role, but support for such organizations has been limited to Sri Lanka and the Philippines.

- **Legal advocacy NGOs have the potential for yielding high returns.** They employ lawyers who seek out and engage in class-action public-interest suits and test cases on behalf of disadvantaged groups' rights. They can be highly effective because they target specific issues and groups, seek through legal means to reform structures that perpetuate poverty and oppression, and empower communities.

*Structural reform strategies address the rules that govern the legal system, usually reflected in constitutional provisions and laws. Four of the countries studied are engaged in some type of structural reform.*

- **Structural reforms are frequently diluted** by the absence of pressures for accountability and enforcement. Without continuous prodding and public pressure, consolidation of structural reforms is problematic.

- **Donor investments to help create new institutions may yield greater returns than trying to reform existing institutions.** For example, in five of the six countries, alternative dispute resolution (ADR) mechanisms are being created with donor support, apparently a better investment in strengthening the rule of law than formal court reform.

*Constituency/coalition-building strategies provide support for citizen, commercial, and professional groups engaged in mobilizing public pressure for legal reform and in oversight and monitoring of government performance in executing reform measures.*

- **Generally, donors need to devote more attention to constituency and coalition building.** Return on investment can be high, as exemplified in Colombia where USAID helped bring together reformist elites to change the judiciary, and in the Philippines, where the Asia Foundation supported an NGO coalition which won housing rights for the urban poor.

- **There is considerable variability among the constituencies that have potential for supporting reform.** For example, commercial sector as well as NGO-based coalitions can be strong forces for reform.

- **Free and effective media are essential for implementing successful coalition or constituency building efforts.** Informed public debate on a justice system requires sound court statistics and data on the system's inner workings. Polling can both assess public perceptions and mobilize demand for reform.

## *Recommendations*

- **Employ strategies of constituency building and access creation, especially in countries where conditions for reform are mixed.** Success in institution building and structural reform may depend on sustained demand by reformist constituencies.

- **Consider a range of criteria** in judging whether host-country environments are favorable to ROL investments. Beyond a host government's commitment to basic standards of human rights, the outlook for reform improves *if*:

- there are elites and constituencies prepared to support reform;

- the judicial branch is relatively autonomous and free of corruption; and

- the media are independent and professional in reporting judicial issues.

- **Tailor ROL strategies** to particular country conditions, using "analytical tree" methodology.

- **Anticipate intensive USAID staff involvement, but not large financial expenditures, in facilitating dialogue and change.**

- **Be innovative, blaze trails;** do not be afraid to take well-calculated risks or try experimental approaches. USAID will learn from failures as well as successes. Other donors can be encouraged to make substantial follow-on investments in successful ROL activities.

- **Consider using intermediary organizations as ROL managers.** American and host-country NGOs, as well as international organizations, have successfully served in this role, in some instances providing insulation to the U.S. Government in sensitive activities.

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