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REBUILDING THE RULE OF LAW IN POST-CONFLICT ENVIRONMENTS

MAY 2005

This publication was produced for review by the United States Agency for International Development. It was prepared by Dr. Corbin Lyday and Jan Stromsem of the National Center for State Courts.

PREFACE

This guide provides practical guidance on rule of law programming in post-conflict environments. It reflects over twenty years of experience working in post-conflict environments, and presents the key challenges, lessons learned, and programming options for advancing rule of law development objectives in these environments. It is hoped that this guide will facilitate effective analysis, planning and programming that contribute to the strengthening of the rule of law in post-conflict societies.

More information, including electronic versions of the Office of Democracy and Governance Technical Publication Series, is available from the office's Intranet site at <http://inside.usaid.gov/DCHA/DG> and USAID's Internet site at http://www.usaid.gov/our_work/democracy_and_governance.

ABOUT THE DG OFFICE

The Office of Democracy and Governance (DG) supports and advances USAID's DG programming worldwide. The DG Office provides technical and intellectual leadership in the field of democracy development, assists USAID Missions in the design and implementation of democracy and good governance strategies, and directly manages some USAID programs.

The DG Office's primary objective is to work with USAID Missions, regional and pillar bureaus, and other U.S. Government partners to incorporate democracy and governance as a key element in foreign assistance programming. Especially where USAID has limited presence, the DG Office often leads democracy and governance assessment teams that help define objectives and establish new programs.

The DG Office provides assistance in the following areas: 1) Rule of Law; 2) Elections and Political Processes; 3) Civil Society; 4) Governance; 5) Special Programs to Address the Needs of Survivors (SPANS); and 6) Strategic Planning and Research.

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The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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Jan Stromsem, Executive Director and Vice President of NCSC's International Programs Division, has more than 32 years of international experience with the US Government. At NCSC she managed a core staff of international experts in rule of law, anti-corruption, and conflict prevention and directly supported NCSC programs in Kosovo, Croatia and Serbia, and Haiti. Prior to joining NCSC, she served for three years in USAID's Office of Democracy and Governance on the Rule of Law team. She provided assistance to USAID missions in conducting assessments, evaluations, and program designs in several countries, including Mongolia. In Nigeria and Jamaica she assisted in the design of the citizen security and crime reduction components of these Rule of Law projects. Ms. Stromsem is an expert on police and security issues, particularly in post conflict environments. She served as the Director of the International Criminal Investigative Training Assistance Program (ICITAP), a program of the Department of Justice funded by USAID and later by the International Narcotics and Law Enforcement Bureau of the Department of State, where she worked to integrate police development programs into broader rule of law programming. She was Deputy Chief of the US National Central Bureau of INTERPOL. She holds a Masters Degree and is fluent in French.

The National Center for State Courts is a leading U.S. institution providing national and international leadership in justice sector reform and rule of law. Internationally, NCSC has significant experience in carrying out justice sector assessments and designing and executing justice reform initiatives that emphasize the application of internationally proven techniques that are adapted to local conditions and needs. Founded more than 30 years ago, NCSC is the source of many innovations that have led to critical improvements in justice system operations throughout the world. Through its Court Technology Division, NCSC supports the development and implementation of national standards to improve the acquisition and use of case management systems and other technology within the courts. NCSC's Institute for Court Management (ICM) is the premier judicial branch education organization whose mission is to educate, inform, and support the management and leadership of the state courts in the US. NCSC's International Visitors Training Program

annually hosts over 300 international officials from the judicial and executive branches, providing a combination of short-term training, academic courses, and practitioner-oriented study tours. NCSC has also spearheaded the advancement of problem solving courts, such as drug, family and community courts, in the U.S. and overseas.

NCSC International has evaluated, designed, and implemented rule of law programs in South and Central America, the Caribbean, Africa, the Balkans, former NIS countries, and Southwest and Southeast Asia. NCSC is the only organization that was awarded three consecutive ROL IQCs by USAID. NCSC also developed a guide to assist USAID DG officers in designing ROL programs for post-conflict countries and a manual on court management and administration. NCSC projects have supported justice sector development in both civil and common law countries, countries following predominantly Shari'a law, and those where customary law and traditional leaders are the choice of the majority of the people. In addition, 23 foreign governments and organizations have contracted directly with NCSC for assistance services in the form of information, research, training, technical assistance, and technology services.

CHAPTER ONE: INTRODUCTION AND USER'S GUIDE

THE PURPOSE OF THIS GUIDE

The purpose of this guide is to help the USAID Democracy and Governance (DG) Officer and other practitioners design, implement, and monitor rule of law programs in post-conflict environments. These programs are pivotal to USAID's goals to establish democracy and protect human rights. Post-conflict rule of law programs help restore disrupted justice functions in post-conflict environments, bridge gaps in access to those functions, create productive state-society relationships, promote peaceful dispute resolution, and foster awareness of rule of law reform and societal healing.¹

THE KINDS OF CONFLICTS THIS GUIDE ADDRESSES

Boundaries separating post-conflict states from states-in-conflict are not always clear. This guide focuses on recent conflicts where a formal peace process, foreign intervention, or regime change has created a marker recognizable to all stakeholders, whether or not all hostilities have ended. The guide incorporates experiences from seven country case studies. These countries, along with the dates that mark the beginning of post-conflict interventions, include **El Salvador** (1992), **Cambodia** (1992), **Haiti** (1993), **Rwanda** (1994), **Bosnia and Herzegovina** (1995), **East Timor** (1999), and **Kosovo** (1999). The guide also cites examples from other countries, including **Afghanistan, Angola, Burundi, Eastern Slavonia (Croatia), Guatemala, Iraq, Jamaica, Liberia, Peru, Serbia, Sierra Leone, South Africa, Uganda, and West Bank/Gaza.**

THE ROLE OF RULE OF LAW IN POST-CONFLICT RECONSTRUCTION

Rule of law is a central focus and critical underpinning of post-conflict reconstruction. Though no two conflicts are identical, many situations share a number of common attributes with regard to the breakdown of the rule of law and the impact it has on society. Among the "public goods" that all nations are expected to provide are public security, justice and human rights, social services and economic well being, and processes

RULE OF LAW

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. (United Nations Security Council: *The Rule of Law and Transitional Justice in Conflict and Post Conflict Societies, Report of the Secretary General* (August 2004).

¹ In situations where rule of law did not exist prior to the conflict, or where the justice system was not functional, USAID's goal would be to establish rule of law rather than to re-establish the status quo ante.

for participation of the governed. The restoration of the rule of law addresses all of these key public goods and brings under a legal framework the structures of government that may have failed during the period of conflict and its immediate aftermath.

For example, guaranteeing security is not simply a military or police objective, but a political one that promotes the state as the guarantor of that security. This is the very first step in rebuilding shattered legitimacy. The ability of the state to re-establish order, security and the rule of law will greatly influence the extent of popular support for later democratic reforms. By consolidating the use of force into the hands of governmental institutions accountable to the people and bound by human rights standards and transparent laws, the establishment of the rule of law also reduces the risk of continuing conflict. The ability of society to access the mechanisms to resolve conflicts in an organized and impartial manner, without resorting to violence and vigilantism, is fundamental to the easing of residual tension among groups that harbor continuing grievances. The establishment of the rule of law further supports the restoration of human rights, which may have been denied to segments of the population during the conflict. Similarly, social and economic recovery depends on the proper functioning of commercial and administrative law. Private sector investment relies on investor confidence that contracts can be enforced, real and intellectual property protected, and business and government protected from state capture. Further, in a democracy, governance and participation exist within a comprehensive legal framework that determines the nature of the relationship between state and society. This framework also defines how state institutions provide services, reconcile disputes, and dispense justice.

The U.S. Department of State Office of the Coordinator for Reconstruction and Stabilization (S/CRS) has defined five essential tasks for post-conflict reconstruction.² While each has its own objectives, justice and reconciliation also underlie the other four tasks.

S/CRS ESSENTIAL TASKS

1. Security
2. Governance and Participation
3. Humanitarian Assistance and Social Well-being
4. Economic Stabilization and Infrastructure
5. Justice and Reconciliation

APPROACHES TO RULE OF LAW PROGRAMMING IN POST-CONFLICT COUNTRIES

This guide describes three programming approaches to guide building or rebuilding the rule of law in post-conflict countries. These approaches provide a useful way of thinking about how and where to intervene. They respond directly to the particular conditions that prevail in post-conflict environments. They are inter-related, and the boundaries between them are not fixed. Protection of human rights underlies all three.

Table I-1 shows the programming approaches. Promoting access to justice and legal empowerment, with a strong civil society focus, links citizens to both formal and informal justice systems. Rebuilding core function within the justice sector helps restore professional, credible justice sector institutions, such as courts, prosecutors and police. Dealing with the past, unique to post-conflict environments, provides accountability for abuses and human rights violations that characterized the conflict period. Together, the three approaches incorporate cross-linkages that reinforce the twin nature of all conflict-focused interventions: 1) strengthening institutions, and 2) garnering support for new cultural and political relationships vital to sustain those institutions.

² Department of State, Post-Conflict Reconstruction Essential Tasks (April 2005) www.state.gov/documents/organization/53464.pdf.

Table I-1. Approaches to Post-conflict Rule of Law Programming		
Promoting Access to Justice and Legal Empowerment	Rebuilding Core Function Within the Justice Sector	Dealing with the Past

LESSONS LEARNED FROM PAST INTERVENTIONS

Approximately 20 years of experience has generated significant lessons. These basic principles should serve as the starting point for planning post-conflict rule of law interventions:

- Post-conflict rule of law programs merit a high priority. They are likely to require long-term investment to take root.
- Post-conflict rule of law programs need to be strategic. Lack of a clear roadmap creates the risk of *ad hoc* programs that are based on donor ideas of needs, rather than on the needs perceived by local stakeholders. For example, donors may focus resources on security and transnational criminal issues, while local stakeholders may place the highest value on the return of land and property, restoring basic civil rights, and re-starting day-to-day commercial functions. Donor-driven intervention may ultimately make the path to reform more difficult, with far fewer champions. However, donors may also have legitimate interests that differ from local stakeholder interests (for example, regional stability).
- Post-conflict rule of law programs need to be flexible because post-conflict environments change rapidly. Within the framework of a strategic vision, it is essential to be opportunistic, capitalizing on events, emerging trends, and resources that can propel interventions.
- Post-conflict rule of law programs must be linked to specific problems, and expected results should be consistent with available funding and capacity.
- Post-conflict rule of law programs should reflect an appreciation of the politics of the reform process. They are not purely technical interventions that simply convey learning or improve capacity. They also upset power balances and are often feared by those who perceive—rightly or wrongly—that they will lose influence. Because they can upset power, technical interventions must reinforce democratic ideals of popular ownership, institutional checks and balances, and government accountability.

ORGANIZATION OF THE GUIDE

Chapter 2 (*Post-conflict Rule of Law Programs: Special Conditions, Approaches, and Guidelines*) describes conflict-related conditions that affect programming, the programming approaches, and guidelines for programming choices and prioritization.

Chapter 3 (*Post-conflict Rule of Law Assessment and Strategic Planning*) identifies key issues to explore through an in-country assessment and guides key actors in a participatory strategic planning process.

Chapter 4 (*Promoting Access to Justice and Legal Empowerment*) describes access and empowerment programs and interventions that promote civil society participation, ownership, and oversight in the justice system rebuilding process.

Chapter 5 (*Rebuilding Core Functions within the Justice Sector*) defines core justice sector components, the special considerations that influence the development of these components in the post-conflict environment, and systemic interventions to restore core functions.

Chapter 6 (*Dealing with the Past*) describes transitional justice mechanisms that diminish impunity and create accountability in the wake of mass violence, war crimes, or genocide.

Chapter 7 (*Advancing Post-conflict Rule of Law Programming*) describes opportunities for advancing strategic programming that restores the rule of law in post-conflict environments.

CHAPTER TWO: POST-CONFLICT RULE OF LAW PROGRAMS: SPECIAL CONDITIONS, APPROACHES AND GUIDELINES

Both effective institutions and a commitment to values that support them are necessary for the rule of law to support peace, human rights, democracy, and prosperity. Effective justice institutions require competent professionals who adjudicate disputes and administer rules in well-managed organizations. Cultural and political commitments—trust, loyalty, voluntary compliance, and citizenship—require certain formal and informal behaviors from both society and the state. From the state, they require a commitment to justice, human rights, and accountability. From society, they require a consequent acceptance of the state as legitimate and deserving of loyalty

In well-governed states, those two sets of behaviors strengthen and reinforce each other. In many post-conflict states, however, the institutions meant to uphold the law are themselves profoundly discredited, while the cultural commitments have either been shattered or are dysfunctional. Rebuilding, thus, does not mean reconstituting institutions alone, but creating a rule of law culture that can nourish them. This in turn entails promoting access to justice and legal empowerment. In post-conflict states, it also requires providing accountability for abuses of the past.

This chapter defines conflict-related conditions that practitioners agree profoundly affect the intervention process. With these conditions in mind, it describes three program approaches for rule of law interventions: (1) promoting access to justice and legal empowerment; (2) rebuilding core functions within the justice sector; and (3) dealing with the past. By providing guidelines for programming choices and prioritization, this chapter also helps the user to identify opportunities for maximizing investments in strategic interventions to rebuild the rule of law.

CONFLICT-RELATED CONDITIONS THAT AFFECT RULE OF LAW INTERVENTIONS

Certain types of conditions that are present in most post-conflict environments affect the sequencing, quality, capacity, and entry points for rule of law interventions. The most important include:

- **The Culture of Impunity.** Countries emerging from conflict often suffer from the legacy of corrupt or abusive elites and officials who manipulated laws and institutions for their own benefit. Weak justice systems and the absence of a culture of accountability failed to check this kind of behavior. Formal laws guaranteeing equality of access or benefiting the poor and disenfranchised were not implemented, supported, or enforced. Geographical, linguistic, ethnic, and financial barriers and discrimination may have

deterred citizens from using justice institutions to secure their rights. Accustomed to weak institutions, uneven enforcement of laws, and inaccessible justice institutions, citizens are often unaware of their rights and the role of judicial institutions in a democratic society. These conditions deepen the challenge of building a rule of law culture among citizens with little trust in laws or institutions.

- **Absent or Dysfunctional Institutions.** In many post-conflict countries, justice institutions are absent from much of the country, due to the destruction of infrastructure and flight of personnel. In other countries, corruption, elite manipulation, “ethnic” dominance, or insufficient resources have resulted in dysfunctional justice systems characterized by antiquated legal frameworks, absence of basic management and administrative functions, insufficient material resources, and poorly trained personnel.
- **A Legacy of Trauma.** The physical and psychological trauma of war crimes, gender-based violence, child soldiering, displacement of persons, and indiscriminate killings of non-combatants has powerful implications for interventions. Associated with such conflicts is a special kind of psychological degradation that outside interveners at first may not see. Host country partners and counterparts may find themselves exhausted and demoralized, or preoccupied with caring for family members worse off than they. Aside from brain drain, exile, and flight, many nationals, depending on the severity and cruelty of the conflict, cannot be the kind of energetic partners donors want them to be, at least during the emergency phase.
- **The Security Gap.** When indigenous military or security forces are dismantled and new civilian police forces have not yet been recruited, trained, and deployed, international peacekeepers (United Nations (UN) International Civilian Police (CIVPOL), military personnel, or other types of monitors) frequently exercise temporary control over the immediate security situation until new police, trained by internationals, begin their deployment. This period is always the most dangerous both for order and security and for state legitimacy. It is frequently characterized by rioting, looting, abductions, ransom-seeking, retaliation, and other types of citizen-on-citizen violence. Unchecked, these environments are the perfect soil for spoilers with strong incentives and means to destabilize and discredit new governments.
- **The Presence of Interim, Non-Sovereign State Structures.** Under conditions of state failure and collapse, some kind of non-sovereign outside structure, such as a UN Mission or military intervention during an emergency phase, is frequently present. Each scenario has important implications for the law that is applied in the country, the participation of local institutions and actors, and the way in which assistance programs are structured and implemented.
- **Underlying Chaos.** The influx of bilateral and international donors and Non-Governmental Organizations (NGO) immediately post-conflict is often enormous. Combined with the effects of war or state failure and the disruption of the social and economic fabric, the larger environment is dominated by disorganization, if not chaos. This situation increases the difficulty of coordination among donors and local partners. It also creates opportunities for host country partners to obscure information and use confusion to play donors off each other. Unchecked, this kind of behavior too rapidly influences long-term host-country institutional behavior and

EXAMPLES OF INTERIM, NON-SOVEREIGN STATE STRUCTURES

- United Nations Transitional Authority in Cambodia (UNTAC), with a limited governance mandate in comparison to later missions
- International protectorates under near absolute powers of a Special Representative of the Secretary General or Transition Administrator in **East Timor**, **Kosovo**, and **Eastern Slavonia** (Croatia)
- Interim indigenous governments established after military interventions involving U.S., North Atlantic Treaty Organization (NATO), and Coalition troops in **Iraq** and **Afghanistan**
- Interim governing councils imposed by internationals until monitored elections formally deposed the preceding governments in **Liberia** and **Haiti**

donor responses to it. A participatory strategic planning process can help provide some order and direction and avoid harmful effects.

- **Incentives for Corruption.** The rapid infusion of resources and underlying chaos create perfect conditions for many types of corruption, and for the misuse of funds earmarked for reconstruction. This is especially true when corruption was endemic before the conflict. It mandates a priority on establishing accountability mechanisms.
- **Residual Hatred and the Likelihood of Sabotage.** In a non-conflict, transitional environment, passive resistance to reform from within bureaucracies and line ministries always impedes program impact. In conflict-ridden environments, resistance can be direct, active, and violent. In some cases, especially when outside forces broker an uneasy peace, warring parties have not yet reached the point of exhaustion and have strong incentives to continue the conflict by means of sabotage, non-cooperation, and other forms of spoilage. Internally negotiated settlements, by contrast, particularly those with specific provisions for the legal and economic re-integration of former combatants, offer much better chances for both peace and subsequent reform. They also help defuse what might otherwise be a zero-sum game for those involved.

By bringing the Farabundo Marti Liberation Movement into the demobilization and reintegration negotiations (and even giving former combatants job training and health care, and a large economic development program), the 1992 Peace Accords in **El Salvador** not only permitted, but also created institutional space for reconciliation—a critical component of rebuilding rule of law. The insurgency itself was made a formal implementer of *Comisión Presidencial de la Paz*, the mechanism to oversee implementation of the accords, and was also allowed to form up to 20% of the new police force, provided vetting and training guidelines were met. This not only marginalized spoilers and potential instigators of renewed conflict, but also gave substance to the accord provisions that called for land reform and the re-integration of former insurgents.
- **Military Involvement in Civil Transitions.** The role of the military in post-conflict rule of law interventions has undergone enormous transformation over the past 15 years. In **El Salvador**, there was no U.S. military intervention at all following the Peace Accords, and strategic planning, rule of law, and other governance activities were led entirely by civilian agencies, such as the UN and USAID. However, the use of military-led stabilization programs, as in **Iraq**, has led to a proliferation of U.S. government actors in post-conflict environments. A new doctrine from the Department of Defense now gives “stability operations” priority comparable to “combat operations,” which requires careful assignment of roles and responsibilities.³ While high-level decisions will be made by the Ambassador and Mission Director, the DG Officer may have to find creative ways to share critical information with military counterparts who may not have development expertise or interest. In turn, USAID and its implementers may need to interact with the military in a variety of ways, for example to receive and transport materials required for development programs, or to rely on military contractors for security. This can complicate relations with counterparts and other donors.
- **Resource Destruction.** In the post-conflict arena, the challenges posed by deteriorating and outdated justice infrastructures and a lack of material resources can be extreme. Moreover, justice institutions—and the legal professionals who work there—were often deliberately targeted as symbols of repression. Buildings are often razed, court records and evidence destroyed, and judges, police, attorneys, and their families killed, or terrorized into fleeing the country. At the very least, post-conflict rule of law programs must consider the costs of refurbishment, or of additional personal security and protection.

³ Department of Defense, *Stability Operations, FM 3-07* (October 2008) <http://usacac.army.mil/CAC2/Repository/FM307/FM3-07.pdf>.

- **Logistical Constraints.** High turnover, personnel shortages, and limited mobility present major challenges to post-conflict rule of law programming. Particularly in the emergency phase, hard-pressed DG Officers must often make decisions without the benefit of institutional memory or without the luxury of being able to gain first-hand knowledge of local conditions. Isolation in “safe spaces” or other areas limits the quality and quantity of information needed to make key programmatic decisions.

RULE OF LAW PROGRAM APPROACHES FOR WORKING UNDER THESE CONDITIONS

This guide divides post-conflict rule of law interventions into three approaches. This framework takes into account the special conditions that prevail in post-conflict environments. As shown in Table 2-1, each approach has its own objectives:

Table 2.1 Objectives of Post-conflict Rule of Law Program Approaches	
Program Approach	Key Objectives
Promoting Access to Justice and Legal Empowerment	<p>Rebuild legitimacy and generate a rule of law culture</p> <p>Increase citizens’ awareness of their rights and their ability to use justice systems</p> <p>Build capacity to advocate for change and hold institutions accountable</p>
Rebuilding Core Functions within the Justice Sector	<p>Reconstruct the disrupted, often dysfunctional formal justice sector</p> <p>Define/redefine the legal framework and institutional roles</p> <p>Develop institutional capacity and effectiveness</p>
Dealing with the Past	<p>Develop reconciliation mechanisms</p> <p>Promote public trust</p> <p>Create accountability for past abuses and end the culture of impunity</p> <p>Build political support for restoring rule of law</p>

- **Promoting Access to Justice and Legal Empowerment.** Promoting access to justice helps change justice into a goal worthy of popular support. Thus, it directly promotes the rebuilding of legitimacy. It brings marginalized groups within the reach and protection of formal and informal institutions. Legal empowerment helps those most affected by injustice and legal dysfunction to shape the society they want. It enables them to use the law to increase their control over their lives, participate in public decision-making processes, and advocate for change.

- **Rebuilding Core Functions within the Justice Sector.** These interventions are generally more long-term and less emergency-oriented. Unlike formal rule of law efforts in transitional countries, post-conflict interventions should not merely strengthen pre-existing institutions. These institutions may in fact have been the source of conditions that led to the conflict, and may lack critical accountability as well as checks and balances. In conflict-ridden states, an institutional approach must not only rebuild capacity. It must also promote *systemic* reform rather than reforms that focus on a single institution or function. Systemic reform addresses how the components of formal justice systems function as an organic whole. Also, post-conflict rule of law programs may not simply strengthen existing systems, but may also create *new mechanisms* that promote peaceful, fair, and transparent management of disputes over property and resources.
- **Dealing with the Past.** These interventions require special consideration in post-conflict environments. They acknowledge that to be sustainable, rule of law cannot simply promote the proper functioning of formal institutions, or even empower the poor and disenfranchised, but must find ways to confront the past. These interventions meet the critical need to rebuild political and social capital, restoring societal balance in the wake of savage violence and widespread violations of human rights laws. Restorative justice, typically in the form of community-based reconciliation and truth commissions, elevates the importance of the victim and the life of the community from which both perpetrator and victim come. Retributive justice, typically in the form of international, national, or hybrid tribunals, addresses the culture of impunity and provides for formal prosecution of architects and perpetrators of war crimes and other atrocities.

Within each of these approaches, interventions are divided into three phases to guide sequencing and prioritization⁴:

Table 2-2. Phases of the Post-conflict Environment	
Phase	Intervention Characteristics
Emergency phase	Short-term interim or stop-gap measures needed to fill security and governance gaps left behind by non-functioning local institutions
Institution-building phase	Training and technical assistance to reassign or reorganize core functions in a coherent, strategic fashion
Self-government phase	Technical assistance and training to enable national counterparts within and outside of the formal justice sector to formalize monitoring and oversight capacity

For each program approach, this guide provides examples of rule of law strategies and activities appropriate to each phase. It is important to recognize that movement through the phases is not always strictly linear. For example, for a variety of reasons, some countries may backslide from the institution-building phase to the emergency phase as conditions change on the ground. Also, different parts of the justice system may proceed at different rates. For example, immediate attention to re-establishing civilian police may move police functions quickly from the emergency phase to the institution-building phase, while restoration of judicial functions proceeds more slowly. Given the volatility of the post-conflict environment, flexibility is key. The DG Officer must be prepared to structure strategies and activities that may span phases, or to back-pedal and revise expectations, depending on local conditions and priorities.

⁴ For further elaboration on the origin and definition of these three phases, see *Managing Security Challenges in Post-Conflict Rebuilding*, (International Peace Academy, Wilson House, Ottawa, 2001) http://www.ipacademy.org/PDF_Reports/MANAGING_SECURITY3.pdf.

GUIDELINES FOR POST-CONFLICT RULE OF LAW PROGRAMMING CHOICES AND PRIORITIZATION

Most societies emerging from conflict need all three program approaches. However, doing all three may not be possible, practical, sequentially logical, or called for during emergency or institution-building phases. There is no “one size fits all” approach to post-conflict rule of law programming. Nevertheless, experience points to some critical issues and broad guidelines that can help the DG Officer select which types of post-conflict rule of law interventions to support and in what order:

- **Where political will is weak and where institutions are deeply dysfunctional and/or corrupt, large-scale reforms in the formal justice sector are not promising. Strong grassroots advocacy and legal empowerment programs, working with civil society, will be more effective.** Because judges, police, and prosecutors were often key participants in the pre-conflict system, they cannot be counted on to promote reform from within unless there is also strong political and civil society pressure from outside. In the aftermath of conflict, there will be few who can oversee the integrity of justice sector reform efforts from the inside. A better approach can be to shift the bulk of assistance away from institutions and toward legal empowerment and access programs. Support for institutional reforms may occur later, when other political institutions committed to rule of law, together with the private sector and civil society, emerge as checks on excessive power.
- **Where there is or has been a high degree of social disruption, chaos, and violence, the priority may be on programs to prevent the renewal of flash points and unchecked violence.** Civic education programs (added as components to humanitarian relief, peace-building, or community development programs) can play a role in preventing violence and can constitute initial programming. Later on, as funding allows, community development programs can begin to add other components that promote access or rebuild communities. In addition, immediate support to informal justice mechanisms can help promote dispute management techniques indispensable to the stability of post-conflict society.
- **Where there is a legacy of trauma, ethnic or inter-group tensions, and the potential for renewed violence, transitional justice mechanisms to deal with the past can help begin the transition to the rule of law.** The physical and psychological trauma typical of post-conflict environments can hinder the development of a rule of law culture and lead to recurrent violence. Restorative justice mechanisms help to promote reconciliation, and re-integrate ex-combatants, displaced people, or marginalized populations into their societies. Community-based reconciliation can help to defuse flashpoints and begin to build a culture of lawfulness and non-violence. Retributive justice holds perpetrators accountable for past abuses and crimes. A visible commitment to assuring citizens of accountability removes incentives for continued violence.
- **Where there is a legacy of corruption, supporting strong, independent oversight mechanisms is crucial.** Designing, funding, or supporting the establishment of such mechanisms for the judiciary, police, and prisons sends powerful messages to citizens that impunity will no longer be tolerated and that the landscape is truly different. This involves creating formal oversight mechanisms in the justice system, such as formal audit and investigation units, and strengthening the oversight capacity of other state institutions, such as legislative oversight committees. It also requires supporting civil society actors to develop robust external monitoring, oversight, and advocacy roles. Undertaking these kinds of programs helps to accelerate later, more difficult, institutional reforms, and deters corruption in the process.

- Where conflicting visions of justice reform predominate among donors, a strategic planning process with strong local leadership can create a locally-owned vision and roadmap for creating a robust justice system.** Such a process is also useful when there are incentives for corruption, manipulation, or resistance. Otherwise, these conditions can lead to wasted resources, procedural disharmony, and dysfunctional institutions. Programming options include facilitating a multi-donor, locally-led inclusive strategic planning process, advocating for and supporting legal empowerment, supporting local consultations to promote missing local ownership, and facilitating fora or other opportunities for donors and local stakeholders to come to consensus on institutional approaches.
- In **Kosovo**, the process of drafting new codes of criminal procedure lasted several years – culminating in the enactment of the new code in April 2004 – and was dominated by one group of donors. Simultaneously, police reform efforts were underway with another group. Neither group coordinated with the other. The result was significant discrepancies in rules governing the investigative process, such as evidence handling. Six years after initial interventions, those discrepancies are finally being resolved, requiring further time and resources, as well as retraining.
- Where pressure is high to obligate funds and roll out programs on short notice, it usually makes more sense to focus on simply restoring core functions, such as basic management and administration of courts, rather than engaging in comprehensive institution-building reform efforts.** For example, during an emergency phase when basic functions have been disrupted, decisions about a country’s long-term legal framework and structure should rarely be made. Such decisions require levels of political consensus, civic involvement, and organizational discipline that are generally absent in most countries immediately post-conflict. Stop-gap measures that neither promote institutional reform nor respond to specific problems are a waste of resources and inevitably short-lived. Great care is needed to select interventions without the potential for negative impact.
 - Where infrastructure has been completely destroyed, the need to rebuild may be absolutely urgent.** This was the case in **East Timor**, where courthouses, police stations, and prisons were simply demolished. However, since funding of expensive courthouse reconstruction could easily translate into fewer resources for other priorities, other donors may be a source of support for infrastructure.
 - Where funding is limited, high impact programs in priority areas can make a difference and stimulate public commitment for further reform.** These programs can jump-start the justice system. Examples include reducing pre-trial detention, public information dissemination and outreach, providing supplies and equipment, and basic training in core skills — those that are not dependent on laws or procedures that are non-existent or highly likely to change — for many different justice system players.
 - Where funding constraints are minimal, it is critical to take a strategic, realistic approach based on an assessment and on local priorities defined through inclusive consultations.** There is a danger of weighing down host country governments, ministries, and departments with expensive programs that may not address core needs or cannot be sustained once donors leave. In the emergency phase, it is critical not to provide interventions and support that are simply too much to handle. In transitioning to the institution-building phase, it is critical to focus on systems that are not unnecessarily elaborate. For example, in establishing a new ministry, it is important to begin with the most essential functions, such as generating or reviewing legislation, rather than trying to stand up an entire ministry all at once.
 - Where opportunities exist to cross-cut rule of law programs with other democracy/government and development programs, such efforts can promote a rule of law culture.** This enhances the potential for mutual leveraging
- In Kwazulu-Natal state in **South Africa**, following the collapse of apartheid in 1994, educators implemented legal literacy programs targeted at illiterate women, the rural poor, and other marginalized groups in order to transmit new values and new information about basic rights and responsibilities.

and sustainability. Examples of program areas include elections, civil society development, decentralization, governance improvement, health, education, humanitarian response, economic growth, infrastructure development, and natural resource conservation.

- **Where donors have strong influence, they should take advantage of the opportunity to leverage reform.** This influence can result from a substantial financial investment, a large cadre of personnel on the ground, political considerations, or other factors. Regardless of the reason, windows of opportunity open and close quickly, and donors should exert influence when they have it — ideally through strategic processes that engage local allies to ensure local ownership.

CHAPTER THREE: POST-CONFLICT RULE OF LAW ASSESSMENT AND STRATEGIC PLANNING

A country-specific assessment provides the context for using the program to develop appropriate post-conflict rule of law interventions. This chapter provides guidance on the assessment and on strategic planning to address the issues revealed by the assessment. Without these two steps, basic assumptions about cause-and-effect go unchallenged, and programs end up reflecting donor needs and conveniences, rather than host-country needs.

POST-CONFLICT RULE OF LAW ASSESSMENT

USAID's *Guide to Rule of Law Country Analysis: The Rule of Law Strategic Framework*⁵ asks the DG Officer to determine how five essential elements of a well-functioning justice system—*order and security, legitimacy, fairness, checks and balances, and effective application*—actually work, both in theory and in practice. A USAID conflict assessment⁶ maps out larger destabilizing patterns and trends. A conflict-oriented rule of law assessment marries these efforts by integrating a conflict analysis and the rule of law assessment. Rebuilding often involves not just re-tailoring or changing existing functions, but supplanting them with new ones. The assessment must answer if, and to what degree, such replacement is possible or desirable. It requires anthropologists, political scientists, and conflict management or organizational specialists to work alongside national experts, especially those excluded from pre-conflict power structures, to complement the usual cadre of judges, prosecutors, and other legal consultants involved in rule of law assessments.

Typical logistical challenges include travel restrictions due to residual violence and disorder, infrastructure damage or destruction, lost documents, and few legal professionals and interlocutors to inform the assessment. NGOs with a long presence on the ground can contribute substantially, and the assessment process may have to be ongoing and iterative. In addition, United Nations Development Program, Office of the United Nations High Commissioner for Refugees, International Crisis Group, and others often produce substantive conflict-oriented assessments which might simply be augmented, updated, or supported by more focused rule of law components.

The assessment serves two basic purposes: (1) providing a systemic perspective on rule of law reform and (2) creating avenues for local involvement and participation in reconstruction. The systemic perspective provides a holistic view that often gets lost when donors divide technical assistance efforts by agencies, institutions, sectors, or tasks. It also creates an opportunity to craft a larger vision for positive change, rather than simply

⁵ USAID, [Guide to Rule of Law Country Analysis: The Rule of Law Strategic Framework](#) (September 2008).

⁶ USAID, [Conducting a Conflict Assessment: A Framework for Strategy and Program Development](#), (April 2005).

reproducing the *status quo ante*. Local involvement and participation not only involves consultations with local citizens and justice professionals to elicit their views, but also engages them in the analysis itself.

The assessment should develop information on

- **The conflict itself:** The nature of the conflict, the manner in which violence ended (for example, a negotiated peace accord, a cease-fire, or foreign occupation), and the interests and resources of the various parties to the conflict.
- **Sovereignty issues:** Where applicable, the relationship between international forces and local sovereignty and institutions.
- **Security and capacity gaps:** The level and nature of ongoing disorder (such as organized crime, looting, weapons/drug smuggling, and trafficking in persons) and the kind of mechanisms in place, if any, to address it.
- **“Applicable law”:** The formal legal framework that was in place prior to the conflict and/or is considered to be valid in the country, including any interim laws that are being applied pending the passage of organic, permanent legislation.
- **Formal justice⁷:** The extent to which formal institutions remain intact or functional, and the availability of qualified professionals to staff them.
- **Informal justice:** The informal justice and dispute resolution mechanisms that citizens use, how they relate to each other and to the formal justice system, how they might relieve pressure on the formal justice system, and the extent to which their traditional practices reflect or violate human rights standards.
- **Stakeholder opinions and expectations:** How key stakeholders feel about systematic rule of law rebuilding components (e.g., human rights, institutional redesign, legal empowerment, and reconciliation efforts) and how the intervention process can help manage their expectations. Key stakeholders include host country public and private sector counterparts, political and opposition leaders, NGOs, other civil society organizations (such as professional associations, business alliances, and community-based groups), previously marginalized populations (such as women, ethnic groups, the poor, and youth), and donors.
- **Potential private sector reform partners:** Civil society, business, and human rights actors who are likely to play a leadership role in advocating for reform and/or in overseeing and reporting on efforts to rebuild the formal sector as they take shape. (It is important to assess the past histories of local NGO leaders before giving them unqualified support, as some may be associated with an authoritarian former regime or, for other reasons, may not necessarily be committed to democratic principles.)
- **Potential public sector and political champions:** Government officials, politicians, and others at national and sub-national levels who were neither part of a patronage system nor participants in corruption or oppression, and who could serve as internal champions for rule of law reform. (These types of resources exist in some post-conflict countries. Examples include members of opposition parties, younger civil servants, and regional government representatives. Such individuals may not have actively opposed the prior regime, but in principle would support reform. At the same time, it is important to engage reformists within the former power structure to prevent active opposition.)

⁷ Please note that the terms “formal” and “informal” justice are used consistently throughout this paper in order to avoid confusion and to distinguish between the two systems. We recognize that the terms do not necessarily accurately describe the systems and mechanisms of justice. We use the term “formal” justice mostly to refer to state justice institutions and processes. The term “informal” refers loosely to a variety of mechanisms and processes that include non-state mechanisms, traditional practices, and customary law; the term does not imply procedural informality.

- **Potential for mutual donor leveraging:** The degree to which other donor resources can be leveraged to support USAID initiatives, and vice versa. For example, New Zealand’s International Aid & Development Agency, Canadian International Development Agency, and others have done some work in prison reform, an area in which USAID faces statutory limitations, though not total exclusion. The European Agency for Reconstruction and the World Bank provide some funding and implementation support for buildings as well as hardware and software for automated systems and local area networks. Along with USAID, the United Nations Office of the High Commissioner on Human Rights and Department for Peacekeeping Operations⁸ are developing comprehensive approaches to post-conflict justice restoration. Scandinavian bilateral aid agencies have built strong human rights monitoring records, and the Norwegian Institute for Human Rights has compiled a field guide on monitoring justice sector institutions, including police and prisons.⁹

POST-CONFLICT RULE OF LAW STRATEGIC PLANNING

Building on the assessment findings and the assessment process, a well-conceived strategic plan presents a consensus-based vision of justice and how its core missions and functions should best be organized. Such a vision lays out broad tasks that lead to the development of practical measures.

There are numerous obstacles to bringing together donors and recipients at the beginning of a complex post-conflict reform process — chaotic conditions, diverse donor interests, competing priorities, and often the absence of key local counterparts. Nevertheless, most of the observed inefficiencies in past post-conflict rule of law interventions can be tied to the absence of such a forum. An inclusive, transparent strategic planning process helps generate—rather than expend—legitimacy for the larger reform and reconstruction process. USAID may not be the lead agency, but the DG Officer can help influence the adoption of an effective strategic planning process.

CONSEQUENCES OF FAILURE TO ENGAGE IN STRATEGIC PLANNING

In **Somalia**, development responsibility was assigned to countries by geographical area (with the British responsible for activities within former British Somaliland and the Italians responsible for activities within former Italian Somalia). This reinforced state failure and solidified ethnic divisions, donor cronyism, and competing legal approaches. In **Cambodia**, French and U.S. interveners could not agree on whether to have a civil- or common-law based criminal justice system, delaying reform for several years. In **Haiti**, from 1993 to 2003, international and local efforts to promote rule of law were largely *ad hoc*, pursued without an overall framework agreed to and shared by all stakeholders. Because there was no donor coordination, many interventions simply failed. In **Kosovo**, beginning in 1999, the same lack of donor coordination currently prevails, resulting in duplication of efforts and competing programs, but on a far larger scale.

The strategic plan must be flexible and practical, focusing on achievable, realistic targets. The process should use cross-national and/or cross-agency teams, working with local counterparts, blending best practice models and hybrids of different systems. It can even include members of opposition parties, excluded ethnic, racial, or religious minorities, women, and rural inhabitants. The objectives are not merely technical, but political—to foster transparency and disabuse notions that donors are practicing favoritism. Such an approach will help the

⁸ See <http://www.un.org/Depts/dpko/lessons> and <http://www.ohchr.org/english/about/publications>.

⁹ See <http://www.humanrights.uio.no/english/>.

plan to survive inevitable political changes because it is locally owned. Local ownership helps guarantee that later donor responses fit into a comprehensive, multi-year strategic framework developed, refined, and implemented by experienced legal professionals within the country.

Failure to engage in inclusive strategic planning has serious consequences. First, without local participation, donors may not take local perspectives into account. Second, interventions are likely to reflect procedural disharmony, and thus promote a *new* type of dysfunction among core institutions in a system already suffering from internal dysfunction. This simply reinforces the message of a state being carved up by outsiders and insiders—precisely the wrong message to deliver to citizens emerging from conflict. The DG Officer can be a strong advocate for civic consultation to promote missing local ownership, and can press other donors to agree to harmonize approaches and programs.

Strategic planning achieves the following:

- Helps bridge gaps between policymakers and program implementers and distinguishes intervention decisions for political expediency from those made for technical reasons
- Facilitates the organization of tasks around functional benchmarks, rather than unrealistic timelines
- Links activities to their full cost—political, financial, and personal
- Helps moderate institutional disagreements, particularly if coordinating units are established within institutions themselves to promote coordination.

The strategic plan is the basis for developing an action plan or tactical guide. The action plan provides for the following:

- Identifies short-term goals, activities, and strategies to provide quick wins in order to generate political support in post-conflict settings where conditions are evolving
- Assigns responsibilities, designates timelines, and provides performance benchmarks
- Within the context of the strategic plan, also fosters longer-term development objectives (such as providing for harmonization through system-wide interventions, rather than interventions that are function- or institution-based).

Despite good planning, in-country consultative and planning processes may still go awry. Because legal reform is intensely political, merely technical, resource and planning commitments to it may not attract concomitant support, leadership, and imagination. Often, other host government departments and line ministries outside the justice sector react to donor-led consultative processes with fear, believing that reforms will reward insiders at their expense. While there are no easy answers to resolving intra-institutional jealousies, without planning, such potential downfalls are even more likely to occur.

In **Afghanistan**, the Judicial Reform Commission was created by the Bonn Agreement in 2001 to oversee the rebuilding of the judiciary. The first commission was disbanded, and in 2002 a new commission made up of esteemed Afghan judicial and legal authorities and former professors was named. Some believe the second failed as well because the Commission, and the core justice ministries it constituted, could not stem the institutional rivalry from line ministries. An ambiguous mandate from the President, a cautious response in the face of vocal opposition, together with a lack of strategic planning and a failure to resolve conflicting donor visions for rule of law development, finally culminated in a Commission that had far less authority to implement a coherent plan than originally intended.

CHAPTER FOUR: PROMOTING ACCESS TO JUSTICE AND LEGAL EMPOWERMENT

THE NEED FOR POST-CONFLICT RULE OF LAW PROGRAMS THAT PROMOTE ACCESS TO JUSTICE AND LEGAL EMPOWERMENT

As indicated in Chapter 2, many factors often make post-conflict interventions to rebuild the formal justice system unwise or unfeasible, at least initially. Instead, raising awareness among citizens about what their rights and responsibilities are, providing for greater access to available formal and informal justice mechanisms, and creating new mechanisms can actually promote the demand for justice while imparting methods of channeling such demands into later institutional reform efforts. Successful interventions must take into account the local definition of “applicable law,” and the formal and/or informal justice mechanisms that people actually use for peaceful settlement of differences and grievances.¹⁰

The official, formal justice system includes courts, prosecutors, police, prisons, and public defenders. The unofficial, informal justice system includes both modern processes, such as non-court mediation and arbitration, and customary justice, or traditional justice. Examples of customary justice mechanisms include tribal councils, village elder councils, or other local, time-honored dispute resolution approaches. They are based on local traditions. Though outside the formal court system, informal justice approaches can include quite intricate processes and even court-type hearings. *Shari’a* courts that decide cases based on *Shari’a* law may be either formal or informal justice institutions, depending on the country.

Access and empowerment initiatives underscore a larger relationship among justice, legal reform, democracy, and peace. They act to generate legitimacy and create a rule of law culture for the state and its citizens. A critical imperative is to expand access to previously marginalized groups, such as women, minorities, youth, indigenous populations, rural residents, the landless and urban under-classes.

Strengthening access to justice involves linking formal rule of law institutions with citizens. Improving access involves expanding the capacity of the formal sector to reach underserved populations and removing barriers to their use. It also involves educating citizens to increase their capacity to use formal institutions. Strengthening access can also entail working with informal justice institutions to improve their reach, effectiveness, and adherence to human rights norms. These institutions can be as binding as the formal justice system, thanks to citizen involvement, investment, custom, and trust acquired over generations. These mechanisms can be faster, cheaper, and more accessible. However, it is important to clarify the relationship of these mechanisms to formal justice institutions, in particular the right of appeal.

Legal empowerment helps to refashion broken and dysfunctional social contracts in conflict-ridden environments. It reflects the principle that citizens cannot be asked to be instigators of change unless they want it themselves. When they know about their rights and responsibilities and about how the justice system

¹⁰ Please see discussion of the term “informal justice” in *supra* footnote 4.

is supposed to work, they are less likely to support—or even tolerate—spoilers committed to derailing the reform process. Legal empowerment involves strengthening the organizations and citizens groups that can advocate for reform and protect citizen rights, while providing citizens with the necessary legal education and tools. It not only enables individuals to pursue their rights. It also creates individual and community capacity and confidence to use the law beyond individual cases, to influence broader governance and development issues. Examples include promoting land reform, developing civil society coalitions organized around anti-poverty advocacy, and protecting women from gender-based violence.

SPECIAL CONSIDERATIONS IN INFORMAL JUSTICE INTERVENTIONS

Because some informal justice mechanisms have traditionally excluded or been biased against certain groups, great care must be taken in selecting partners for post-conflict rule of law interventions to ensure compliance with international human rights standards. While the leaders who dispense informal justice are often recognized and respected, they may also be predominantly male, unreceptive to gender equality, and reluctant to rule in ways that may prejudice their own status or ethnic group. Further, enforcement may be weak.

A successful rule of law strategy focuses on ways to harmonize customary practices with international human rights standards. In deciding whether to move in this direction, the DG Officer needs to consider the following:

- The extent to which the formal justice system was an instrument of state repression (which may paradoxically strengthen positive views of customary justice, however “unjust”)
- The extent to which previous state reforms were widely disregarded, unenforced, or bought off (also strengthening the legitimacy of customary justice, which is more commonly enforced)
- The extent to which outside support might undermine the legitimacy and effectiveness of informal institutions
- The extent to which either system has the ability and means to enforce judgments
- Whether or not alternatives to the formal justice system really are available, widely trusted, uniform throughout the country, and considered impartial
- The extent to which informal justice systems are consistent with – or can be made consistent with – respect for international human rights standards.

In **Afghanistan**, women—especially rural women—have largely been denied access to justice through the traditional pre-Taliban *jirgas* and through the *shuras* imposed by the Taliban. The *shuras*, in many cases, became instruments of the political powers and a forum for enforcing the Taliban version of *Shari’a*. Some areas are re-established *jirgas*, which are more democratic, but only for adult men. In the early 1990s, United Nations Office for Project Services began supporting the formation of women’s *shuras* in Badakhshan. However, women’s participation in *shuras* or *jirgas* remains extremely limited.

POST-CONFLICT RULE OF LAW INTERVENTIONS TO PROMOTE ACCESS TO JUSTICE AND LEGAL EMPOWERMENT

Table 4-1 defines objectives by phase for post-conflict rule of law interventions to promote access to justice and legal empowerment.

Phase	Objectives
Emergency	Enable citizen participation in order to build reform constituencies
	Defuse flash points for renewed violence through informal justice mechanisms and other services
	Educate, strengthen, and mobilize civil society
Institution-building	Enhance advocacy and community involvement
	Provide core legal defense functions
	Develop a continuum between formal and informal justice
Self-government	Expand the quantity and quality of resources
	Monitor institution building

For convenience of presentation, this section describes potential interventions by phase. Because each country context is different, the assignments to phases are not binding. In some post-conflict environments, particular interventions may start earlier or later. Moreover, some interventions may begin in one phase and end in another. The assessment and strategic planning exercises will help determine the selection and timing of interventions.

EMERGENCY PHASE INTERVENTIONS

Post-conflict rule of law activities in the emergency phase are an opportunity to lay the groundwork for a new relationship between state and society. The objectives are to (1) enable citizen participation in order to build reform constituencies, (2) defuse flash points for renewed violence through informal justice mechanisms and other services, and (3) educate, strengthen, and mobilize civil society. Examples of activities include:

- **Baseline Studies.** There may be a need to expand on assessment findings by documenting baseline conditions. For example, the DG Officer could support public opinion polls to define citizens' priorities for rule of law reform. Similarly, special studies could assess the extent of damage, determine the size and location of internally displaced populations, or document the nature, status, and relationship of formal and informal justice mechanisms, the availability of civil society partners and public and private sector champions, or justice sector human resource capacity and needs. In the often chaotic post-conflict environment, such an investment can have a substantial payoff in terms of ensuring that subsequent programming is realistic, feasible, and on target in terms of local needs and priorities. Also, as a result of their participation, study partners can become part of the reform constituency.
- **Promoting Civic Dialogue.** Creating avenues of discussion between aggrieved communities and individuals helps defuse flash points and lay the future foundations for more systematic efforts to bring citizens into the legal reform process. If carefully planned and moderated, it also helps rebuild the fabric of civil society, develop consensus on priorities, and identify areas in which substantial disagreement exists. Support could include engaging NGOs to develop community discussion platforms, providing them with technical support and training, and sponsoring or co-sponsoring consultative fora.

In **East Timor**, researchers recorded the oral narratives of traditional authorities (*Lia Nain*) in four areas of the country. These narratives were analyzed for concepts of traditional jurisprudence and comparative assessment of dispute resolution. These studies supported recommendations for the further development of East Timor's justice system and for strengthening adherence within the traditional justice system to international human rights standards, gender equality, and guarantees in East Timor's constitution and other laws.

- **Disseminating Critical Emergency Information.** Citizens need to know how police and patrol functions by external intervention forces (such as a UN Civilian/Military or Civil/Political authority, when they are present) affect them in their daily lives. They also need to know their rights and responsibilities under these new rules, especially with respect to criminal justice functions. Citizen interest in such issues will be high, depending on how much violence continues to affect them. Most external intervention forces do a poor job of communicating this kind of basic information to people who need it most. The DG Officer can help generate scarce information at this stage by assisting in organizing appropriate fora, with the participation of other donors and external intervention authorities, where such information can be provided and citizens' questions can be answered openly and transparently. Other programming options include public education *Know Your Rights* campaigns and developing simple "fact sheet" publications for wide dissemination to the population. These publications inform citizens of their rights and contact points to lodge complaints or seek assistance.

In **Rwanda**, the UN Human Rights Field Operation created an entire department devoted to promoting information and training for teachers' organizations, women's groups, journalists, NGOs, and others on human rights standards, including rights of detainees and prisoners, children's rights, and fair trials. It retained a local theater troupe to present plays with human rights themes in villages all over the country, after which actors and audiences would discuss issues raised in the play.

- **Establishing Reporting and Referral Centers for Dealing with Violence and Human Rights Violations.** Regardless of differences between societies over licit and illicit behavior, all states have laws that forbid and condemn citizen-on-citizen violence. But most states in the developing world lack the reporting and enforcement networks for such laws to be meaningful—a capacity gap magnified greatly in a post-conflict environment. Interim authorities must provide ways and means to help people report human rights violations, atrocities, and injustices quickly, so that later courts or interim tribunals can operate effectively. Examples include women subject to rape and gender violence, parents who need to report missing children who may have been abducted into armies or trafficking networks, and individuals who have claims for destroyed or stolen property or assets. To begin providing the most basic services that citizens need in the wake of disorder and violence, the DG Officer can work to set up, staff, and fund such immediate conflict-oriented centers—and disseminate their work to selected publics. In addition, the DG Officer can provide technical assistance in designing referral links to other agencies or facilities, such as ombudsmen.
- **Supporting or linking with special programs.** The post-conflict environment is generally characterized by a substantial disruption of public services. Even more critical, however, is the lack of special services for populations that may be disproportionately affected. Examples include groups subject to ethnic or racial violence or discrimination. Establishing the rule of law is critical to protecting these populations. The DG Officer could support post-conflict rule of law programs that seed service start-up directly, or link with social service programs to ensure that these victims understand their legal rights and how to access them.
- **Stimulating and promoting advocacy.** Even during the immediate emergency phase, and even where civil society may be weak or disorganized, it is critical to develop and support the capacity to advocate for access to justice and legal empowerment, and for rule of law reform overall. Taking care to select NGOs and other civil society partners who are not tainted by association with the prior regime or by inappropriate political affiliations, the DG Officer can support technical assistance and training to develop advocacy capacity (for example, in issue identification, lobbying, public education and outreach, and using the media), and can fund advocacy campaigns.

In **Bosnia and Herzegovina** and **Kosovo**, UN military peacekeepers initially established Civilian-Military Centers to receive and handle reports.

- **Supporting informal justice mechanisms.** Typically, in post-conflict environments there are a multitude of residency, property, and petty criminal cases in which the formal court system cannot (or should not) become involved. Informal mechanisms can dispense justice at critical moments and in what citizens may consider priority areas. Thus, they can reduce the potential for ongoing conflict and renewal of violence. Programming support may be technical or material, enabling the system to resolve large numbers of cases as rapidly as possible and ensuring that they respect international human rights standards.

INSTITUTION-BUILDING PHASE INTERVENTIONS

Institutionalization of civic participation establishes foundations for oversight, and lessens the ability of spoilers to reignite flash points. It is critical for support to continue in the institution-building phase. Given concrete examples of improvement, those previously disenfranchised have new reasons not to return to violence, or to ignore the justice system altogether. Some institution-building phase activities constitute expansion of emergency phase activities, and some spill over to the formal sector, bridging critical gaps between formal and informal justice, with the goal of creating complementarity. The objectives are to (1) enhance advocacy and community involvement, (2) provide core legal defense functions, and (3) develop a continuum between formal and informal justice.

- **Expanding the Reach of State Justice Institutions.** When the formal justice system is absent from much of the territory, there is a critical need to provide citizens with access to justice mechanisms capable of dealing with serious cases, such as torture, rape and abuse, which lie outside the competency of non-state mechanisms. Creative approaches to quickly and inexpensively expand the presence of the formal justice system to under-served areas can rebuild accountability, improve stability, and bolster government legitimacy, while the state justice system gradually builds up its capacity.

In **The Democratic Republic of Congo** “mobile court” programs transported judges, prosecutors, and lawyers to outlying areas to gather cases and hold court sessions. In **Sierra Leone**, the United Nations Development Programme (UNDP) supported the training of community leaders to serve as Justices of the Peace and adjudicate minor cases in places where formal courts were absent, while referring more serious cases to first instance courts.

- **Establishing Independent Legal Aid and Public Defender Offices.** In conflict-ridden environments, the shortage of legal professionals makes access to counsel a critical need. The need is especially compelling for those wrongfully incarcerated on charges related to the conflict. Often, the most talented legal professionals are captured by the lucrative private or international donor sector that always emerges in the wake of conflict, while others are considered too tainted by the old system to be effective. Because many states emerging from conflict are focused on prosecuting war criminals, they ignore the public defender role and rarely make it a priority for funding, inadvertently aided by unsympathetic publics eager for “justice.” International donors are similarly focused on promoting the prosecution of trans-border crimes, such as trafficking in narcotics, weapons, or persons. Thus, the DG Officer should

In **East Timor**, local courts are very new and the legal framework has rapidly changed. The Asia Foundation supports the legal aid programs of Perkumpulan HAK and five legal aid institutes. A legal services guide developed in collaboration with these NGOs will promote consistent and professional services throughout the country.

In **Kosovo**, beginning in 2000, the Organization for Security and Cooperation in Europe Mission established a training and resource center for defense counsel. This has resulted in the first-ever, high-quality legal defense for citizens, regardless of ethnic background.

In **El Salvador**, the Public Defender’s Office has established such credibility that it now represents over 90 percent of the country’s criminal cases.

strongly consider setting up and funding independent legal aid mechanisms to fill the gap. While the form of this mechanism depends, in part, on the legislative framework governing criminal and civil procedure and the practice of law, some examples include access to *pro bono* attorneys through the local bar association or other NGOs, law students through clinical programs, or paralegals. In time, such programs can be augmented by state-supported efforts which do not simply promote client representation, but enhance access by mitigating the abuse of power, compelling police and courts to improve investigative and adjudicatory policies and standards.

- **Creating Citizen Help Desks for Courts and Police.** Because dysfunctional or failed justice so often involves an absence of even the most basic information and services, setting up “help desks” inside courts and police stations is a low-risk and low-cost mechanism to promote familiarity with procedures, and in some cases, with new facilities. Public information officers, assisted by civilian employees, impart basic information on the legal system. They also provide hands-on help to fill out forms, explain processes and dates, give information about case status, translate, and respond to questions about defense and rights. Such programs link both formal and informal sectors, promoting access and helping to rebuild core institutional function. The DG Officer can foster the development of such functions through providing models and supporting technical assistance and training.
- **Introducing Community-Police Relations Programs and Fostering Community-Oriented Crime Response or Prevention Strategies.** In a post-conflict setting, the foundation for mutual trust between state security forces and citizens is frequently absent. Too often, police services have been used to suppress dissent and to control, rather than to serve the community. Rebuilding the connection between police and the communities they serve is a critical component of establishing democratic civilian policing procedures. The DG Officer can support community-based programs to improve communication, understanding and accountability between the police and the public. One example is highly visible foot and bike patrols, undertaken in conjunction with, and with the cooperation of, communities and NGOs. Other examples include strategies to improve response times to calls for assistance at the community level, which improves citizen perception of police infrastructure, and crime watch programs that help foster a real police-community partnership where one was simply absent before. Such activities are appropriate and well suited for USAID, with its strong developmental focus, and can promote much good while lessening chances for misunderstanding and harm. USAID’s 2005 policy guidance can inform these programmatic decisions.¹¹
- **Promoting Paralegal Development.** Paralegals are lay persons with limited legal training. Their authorities and services are generally governed by local laws and regulations. Where no such provisions

USAID has made significant progress in integrating police-community relations and community policing programs in conflict-prone communities in **Jamaica** (2002 to the present) and in post-conflict **El Salvador**, beginning in 1997. Through mechanisms such as the *Jamaican Citizen Consultative Committee*, police officers are trained with residents to support urban community police facilities and services that build trust and reduce tensions between the police and the community they serve. In addition to providing citizens with better access to police services, they increase public access to information and build local advocacy for improved police programs.

In **East Timor**, the *Policia Nacional de Timor Leste* held joint training programs in schools and with women’s programs to talk about human rights. This has strengthened police understanding of the community and its concerns. It has also improved the community’s perception of the police and people’s willingness to report crimes.

¹¹ USAID, *Assistance for Civilian Policing: USAID Policy Guidance*, (December 2005).

exist, they can be created fairly easily. Paralegals can provide basic legal services in areas such as property documentation, registering births and marriages, and wills. They can also provide guidance on using courts and basic representation of clients before the law. Because they serve both clerical and leadership functions in their communities, they understand local needs and may enjoy inherent levels of trust often denied to outsiders or to higher-level attorneys. They require minimum amounts of education and training and can help bridge gaps between NGOs, communities, farmers, and consumers associations and more formal mechanisms and courts. The DG Officer can support paralegal training and technical assistance to design paralegal programs.

In **Sierra Leone**, paralegals are beginning to play a critical new role in bridging gaps between formal and customary courts, and helping to address some of the shortcomings in customary law in the process. There are few formally trained attorneys in the country and even fewer who are willing to work outside the capital. Because the customary system has dispensed justice in ways that too strongly reflect previous biases and insensitivities, the paralegals are helping to move cases to the formal system. They are also working with fair-minded chiefs and village elders who administer customary systems to improve these systems.

- **Opening “One-Stop” Community Justice Centers.** Combining social work services, counseling, referrals, legal assistance, and minor arbitration and dispute resolution, community justice centers are designed to serve local needs and foster resolution of everyday impasses before they become flash points for more serious problems. Generally, they serve as adjuncts to state institutions and operate with the full force of those institutions. Borrowed from the experience of several Latin American countries, “houses of justice” (*casas de justicia*) serve as both stop-gap measures for missing state functions, and intermediaries for communities who have never had much contact with the state or its justice institutions. The process addresses unmet legal needs, and also restores and legitimizes the role of the state and the rule of law at village and community levels. The DG Officer can provide training, technical assistance, or material support for center establishment.

In **Colombia** and other countries in Latin America, *casas de justicia* provide a variety of safety net services at a single location, easing logistical and geographical barriers to justice. These neighborhood centers have worked to stem ordinary conflicts that can rapidly escalate into extraordinary violence in climates of lawlessness, particularly where security forces are inadequate. They extend the range and presence of the formal national system to the local level and decrease lower court caseloads.

- **Promoting Alternative Dispute Resolution (ADR) Mechanisms.** In many societies, community-based dispute resolution mechanisms form a part of customary law and tradition that is less focused on retribution and more on the promotion of overall social harmony within the community. Because of this, their importance to the peace-building effort is clear and recognizable. However, interveners can make costly mistakes by deferring too much to local custom and tradition in the interest of social harmony, and such mechanisms may not be effective in resolving cross-communal disputes involving other ethnicities or regions. ADR mechanisms can be used for such disputes when customary mechanisms cannot be applied or when formal ones are too costly. There are also more formal ADR options, both independent and court-annexed. The USAID publication entitled *Alternative Dispute Resolution Practitioners’ Guide* describes the types of ADR mechanisms, considerations in deciding whether and how to support them, and programming options.¹²
- **Supporting Civil Society Networking and Coalition-Building around Justice and Legal Reform Issues.** Many post-conflict countries may still have strong, brave, or vibrant individual NGOs. However,

¹² USAID, *Alternative Dispute Resolution Practitioners’ Guide*, (July 1998).

the vast majority are inexperienced, do not naturally seek or embrace opportunities to combine forces, scatter their efforts over too narrow or too wide a political arena, and suffer from a lack of experience in effective interaction with the government. As adversaries, they tend to be unwilling or unreliable partners, which makes it easy for governments to ignore their advice. Some NGOs may be mired in the politics of condemnation, rarely adopting more effective problem-solving approaches on their own. The DG Officer can encourage shifts in tactics, programs, and outreach strategies that engage NGOs in combining forces, finding common cause, embracing new members, and reaching beyond immediate clan, village, ethnic, regional, or religious loyalties. It is important to encourage NGO coalitions that link legal reform objectives with related objectives, such as combating gender violence, anti-trafficking and ensuring consumers' rights. The experience of networking and coalition-building alone tends to make the NGO community as a whole more effective in its relations with governments.

- Expanding Pilot Civic Outreach Programs.** Emergency phase civic outreach concentrates mainly on starting dialogues and disseminating information on emergency functions and procedures, in the institution-building phase. Civic outreach would have the goal of building a culture of respect for rule of law. One example is making the text of law available to legal practitioners and the public. Others include building civic education into the implementation of peace accords and providing civic education to promote awareness of new constitutions, founding laws, and basic legal rights. Adding legal literacy components to adult education programs in health, education, agriculture, or other sectors is another option. Street law programs targeted to youth, internally displaced persons, or other minorities can also be used to help impart basic legal literacy messages. Civic outreach programs can use a range of methodologies, including radio and TV, video-taped and live drama, Community Theater, print media, public meetings, and workshops and seminars.
- Formalizing Justice Sector Outreach Programs.** These programs complement civic outreach programs by involving courts, prosecutors, and police, so as to help citizens better understand formal functions and processes. Programs that provide lectures, combined with site visits and observations for teachers, students, civic and religious leaders, and representatives of business, trade, and consumers' organizations, for example, can go a long way to provide basic information. They can also potentially reduce distrust and ease communication among groups not accustomed to it. Town hall meetings are also good venues for promoting this type of open discussion about democratic practices and cooperative problem-solving. In addition, rural outreach departments within largely urban and centralized courts can help improve access for rural residents. The DG Officer can support development and delivery of these services.
- Creating Ombudsmen's or Citizens' Advocacy Centers and Offices.** An ombudsman can take many forms and acts as a kind of inspector-at-large for formal state agencies, accountable to none of them but overseeing their performance to a higher executive or legislative authority. In this way, the ombudsman acts as a direct citizen's advocate for good governance. Depending on the power of the office and the personalities, an ombudsman may have wide latitude to compel line ministry, local government, and other executive branches of power, including the police, to function the way they are supposed to, sometimes with or without judicial or prosecutorial authority. Such offices are being crafted in many emerging and post-conflict societies to help promote civic confidence in new governments, check low-level graft and corruption, and counsel victims of fraud, abuse, or human rights violations. In most places, there is little to no tradition of such direct citizen advocacy. Therefore, the DG Officer can provide technical advice, support, mentoring, and resources to ensure that these offices are sustainable. The DG Officer should

The **East Timor** Ministry of Justice developed a legal glossary that includes Tetum, one of the country's two official languages and the language understood by the greatest number of citizens, as well as Portuguese, Indonesian, and English. This vital and practical tool created a foundation for a common working knowledge for legal professionals and citizens. It will also enable the justice sector to communicate more effectively, and to develop more technically accurate laws in the country's official languages.

also consider facilitating regional meetings of ombudsmen to discuss common issues, such as cross-border displaced persons and trafficking in persons.

- **Creating NGO Human Rights Monitoring Programs.** Human rights monitors can serve as a check against impunity and play a key role in raising public awareness regarding ongoing rights violations. Monitors can be trained to work on a range of rights issues and serve a geographical area, or be specialized and affiliated with specific institutions. For example, on-site court monitors can be part of a “courtwatch” program that observes the conduct of trials, application of the law, and behavior of the formal system with respect to individual litigants from various population subgroups. The findings from these activities, particularly when distributed to the press, can influence compliance with laws and regulations. The DG Officer can support such programs with training, technical assistance, and direct grants.

SELF-GOVERNMENT PHASE INTERVENTIONS

As a rule, the self-government phase is the smallest for internationals. However, internationals may help promote long-term institutional transformation, such as legal education, that often require years, if not decades, before its effects can become visible. Through local partners and grantees with long histories of independent thinking, organizational self-sufficiency, and practical problem-solving approaches to new rule of law problems, the DG Officer can help bring some of these resources to the longer-term reconstruction effort. The objectives are to (1) expand the quantity and quality of resources, and (2) monitor institution building.

- **Promoting Law School Curriculum Reform that Includes Legal Service Clinics.** Law schools are critical players in rebuilding the rule of law because they produce new generations of lawyers who do not have to overcome years of training and custom in dysfunctional legal systems. Assistance interventions can help improve curricula and teaching methods. More often than not, prior legal education has been theoretical, divorced from real-world problems. Also, it has rewarded rote learning rather than encouraging analysis. In addition, the DG Officer could support the integration of community-based legal service clinics into the curriculum. When carefully designed and implemented, these clinics can address problems prevalent in the community, and provide access to justice for citizens otherwise unable to pursue claims and grievances in the formal system. Such programs can also include the creation of legal clinics where attorneys are encouraged to pursue *pro bono* activities as a form of community service, in societies where such traditions are often missing or non-existent.

In 2000, the Open Society Institute sponsored the establishment of a human rights clinic at Fourah Bay College in **Sierra Leone**. Founded by students and human rights activists, with assistance from Yale Law School students, the clinic works to address human rights abuses in the wake of conflict marked by extensive violations of human rights and international humanitarian law. The clinic helps to meet citizens’ immediate needs, while developing future human rights leaders.

- **Mobilizing and Strengthening Professional Associations.** Professional associations representing judges and lawyers (private attorneys, public defenders, and prosecutors) are integral parts of the justice system. At their worst, they can be forces of self-interest and stumbling blocks to reform. But at their best, they can serve as vehicles to transform attitudes among their members, advocate for and develop codes of ethics, hold their peers accountable through disciplinary mechanisms, lobby for governmental

In the **West Bank/Gaza**, USAID assisted in developing criteria for admission to the bar, promoting legal ethics, developing continuing legal education, and providing access to reference material. In **South Africa**, USAID made grants to 250 historically disadvantaged lawyers to enter mainstream practice and provided continuing legal education to disadvantaged lawyers.

support of their institutions, support continuing education and professional training and mentoring programs, access international experience through links to international counterparts, and disseminate information to the public about their activities. The DG Officer can provide a variety of technical and material supports, including sponsoring mentoring relationships with mature professional associations in similar countries.

- **Longer-term NGO Coalition-building.** Over time, and with progressive experience and proper encouragement by donors, the inhibitions to networking and coalition-building among NGOs in conflict-ridden environments can diminish. Promoting such coalitions to move from single-sector agendas into broader or national ones increases chances for long-term sustainability once donors leave. Such coalitions may also serve as incubators for new political parties that provide avenues for broader citizen participation and empowerment. This promotes legitimacy for the state. Over time, some rule of law-based NGOs in transitional states have become national grassroots organizations, metamorphosing into political movements to promote anti-poverty, land reform, resource conservation, women's rights, and other broad agendas, using legal and peaceful means to further change. Examples of program options for the DG Officer include supporting inclusive fora, joint advocacy campaigns, and capacity building.
- **Monitoring and Improvement.** It is not always easy to sustain attention and commitment to strategies and mechanisms that promote access to justice and legal empowerment, particularly for those who remain relatively disadvantaged or disenfranchised. To prevent backsliding and promote ongoing improvement in programs and services, the DG Officer can support external advisors, as well as periodic public surveys, to ensure that the system is working well. The DG Officer can also help capitalize on opportunities for cross-sectoral programming that integrates access to justice and legal empowerment components into other programs, or support the monitoring efforts of civil society groups.

CHAPTER FIVE: REBUILDING CORE FUNCTIONS WITHIN THE JUSTICE SECTOR

In the aftermath of ethnic conflict, mass violence, or state failure, it is a given that the operations of the formal justice sector will be disrupted. In the chaos of such environments, it is often difficult—not just for donors, but for host-country stakeholders themselves—to determine with certainty what the most immediate institutional priorities are, the lengths to which intervening parties should go to replace disrupted functions with stop-gap measures, how long such measures should last, and the role outsiders should play in creating new institutions, structures, and functions. Answering these questions requires an understanding of what constitutes the core of a country’s justice system, without which it cannot function, and then determining what parts of that core need to be restarted, rebuilt, or created from the ground up.

Finding and cultivating long-term working relationships with key stakeholders is essential to the development of appropriate, sustainable strategies to rebuild justice sector institutions. Engagement of local counterparts generates legitimacy for the new state and greatly favors long-term acceptance. Not all stakeholders will share a common vision, or even a commitment to a rule of law culture, and some will actively pursue parochial and narrow interests in the process. However, if larger reform efforts take into account a broad spectrum of opinions and viewpoints, nationals will feel ownership over the programs being carried out in their name.

CORE COMPONENTS OF A FUNCTIONAL JUSTICE SYSTEM

As shown in Table 5-1, five core components generally make up every justice system, whether based on civil or common law, a combination of both, or even on religious law.

Component	Description
Legal Framework	<p>Written or formal constitutions, often called “founding” or primary laws, which set out the nature of the state itself. They also specify divisions of power among executive, legislative, and judicial branches at national levels, the relationship between national and sub-national governments, and the rights and responsibilities of citizens.</p> <p>Secondary legislation—laws, codes, statutes, policies, and regulations necessary to carry out and implement primary laws, together with clear procedures governing how to change primary and founding laws.</p>
Structure	<p>Organizations and institutions authorized to enforce primary and secondary laws, investigate offenses, and adjudicate disputes between private citizens or between citizens and the state (ministries of justice and interior, police, judges, courts, court-annexed dispute resolution centers, prosecutors’ offices, judgment enforcement offices, prisons, and pre-trial detention facilities).</p> <p>The competence, authority, and procedural relationships of each</p>

	institution within the structure, together with the management and support systems each needs to function properly.
Oversight Institutions and Entities¹³	Ombudsman offices, judicial councils, judicial inspection offices, parliamentary and legislative oversight and budget committees, anti-corruption commissions, and public expenditure tracking bodies. Such institutions or entities may lie outside the executive or judicial branches, operating in a quasi-formal capacity to oversee the behavior and function of the justice and other related sectors.
Professionals	Personnel responsible for the day-to-day functioning of formal legal institutions, departments, and structures (judges and magistrates, police officers, prosecutors, public defenders, private counsel, court reporters, administrative and support staff, bailiffs, recorders, notaries, judgment enforcement officers, and prison administration officials).
Training Institutions	Law schools, police academies, and judicial, magistrate, and prosecutorial training facilities that support formal justice system operations and functions by increasing the technical skills and expertise of justice system professionals.

Law enforcement agencies and prisons are integral parts of the justice system structure. However, due to problems with law enforcement assistance programs in the 1960s and 1970s, Congress passed amendments to the 1961 Foreign Assistance Act (FAA Section 660), severely restricting the provision of USAID assistance to police. Over time, a number of exceptions have been made, permitting such assistance in limited circumstances. More recent legislation has expanded the circumstances under which USAID can provide post-conflict assistance to police forces, and USAID has carried out certain types of community-police liaison programs which some have considered essential for rebuilding in the post-conflict environment. USAID’s “Assistance for Civilian Policing: USAID Policy Guidance” addresses the provision of assistance to police.¹⁴ Restrictions on working with prisons have evolved. Supporting non-governmental organizations to provide oversight or improve basic conditions may be permitted, as long as legal approval is obtained before any initiation of activities. In addition, under section 7085(a) of Public Law 111-117, assistance is required to be provided to prisons in those countries the Secretary of State determines are making significant efforts to eliminate inhumane conditions. This chapter addresses only those functions that fall within USAID’s programming authority. It is necessary to check with a USAID Regional Legal Advisor or Office of the General Counsel prior to planning assistance for police.

RE-ESTABLISHING THE CORE COMPONENTS OF THE JUSTICE SYSTEM IN POST-CONFLICT ENVIRONMENTS: SPECIAL CONSIDERATIONS

Ideally, sequencing of justice system development is as follows:

- Establishing the constitution or constitutional framework
- Developing the body of laws that pertain to justice institutions, including the organic laws that describe the role, function, and responsibilities of each institution
- Defining the regulations, policies, and procedures that translate the laws into practice

¹³ In addition to institutions and entities that provide oversight functions, there are a variety of informal mechanisms that can be involved in oversight. Examples include citizen advocates, civic “report cards” on government bodies, and right-to-information programs.

¹⁴ USAID, [Assistance for Civilian Policing: USAID Policy Guidance](#). (December 2005).

- Training justice system personnel in the laws, policies, and procedures.

This sequencing is rarely possible in post-conflict environments for several reasons. First, in practice, such environments are generally dominated by fundamental, unresolved disputes over applicable law and regime type. There may be different sets of laws that have different levels of legitimacy among different groups. Second, of the system that remain in place may be corrupt, and in fact a source of or contributor to the conflict in the first place. Finally, the level of disruption is often so severe, resources so scarce, and the need for restoration of basic services so great, that it is impossible to take each step in the sequence in turn.

It is possible, however, to undertake initiatives that can restore function and capacity relatively rapidly and that, in the long run, will not require redoing once sequential elements are put in place. As indicated in Chapter 2, two considerations are key for the DG Officer. First, it is important to focus on core rather than extraneous functions. For example, a Ministry of Justice needs to be able to generate legislation. This is a core function that needs to be operational early. An external affairs function, on the other hand, is not immediately necessary, and therefore does not merit attention until after the core functions are in place.

Second, despite a need for quick, emergency training just to enable start-up, it is critical during the emergency phase to resist pressures to invest in extensive legal and procedural training for judges, prosecutors, court staff, and others when these laws and procedures are non-existent, out of date, or likely to change as the system develops. This kind of training cannot take place until the laws, organizational arrangements, and procedures are in place. When done too early — a common mistake in many post-conflict interventions — it wastes resources and good will, and retraining will inevitably be required later. A far better investment is training in basic skills and principles that are not law- or procedure-dependent, such as management, courtroom communication, and institutional leadership. This can be augmented by programs that help promote a common vision of reform for legal professionals who may not immediately know how their system ought to function or who need greater consensus with regard to it.

POST-CONFLICT RULE OF LAW INTERVENTIONS TO REBUILD CORE FUNCTIONS WITHIN THE JUSTICE SECTOR

Table 5-2 defines objectives by phase for post-conflict rule of law interventions to rebuild core function within the justice sector.

Phase	Objectives
Emergency	Restore and maintain order and security for key stakeholder and community involvement
	Set the stage for justice system reconstruction and reform
	Provide mechanisms for dealing with high priority issues
Institution-building	Develop the constitutional and broader legal and regulatory framework, including the vision, core mission, and functions for each institution and unit
	Increase state capacity and effectiveness
	Start or re-start operations
Self-government	Institutionalize enhanced capacity and training
	Monitor performance for fairness and efficiency

For convenience of presentation, this section describes potential interventions by phase. Because each country context is different, the assignments to phases are not binding. In some post-conflict environments, particular interventions may start earlier or later. Moreover, some interventions may begin in one phase and end in another. The assessment and strategic planning exercises will help determine the selection and timing of interventions.

EMERGENCY PHASE INTERVENTIONS

While restoring basic order and security is a major emergency phase concern, especially filling in criminal justice functions that have ceased to function in the wake of conflict, much of this responsibility falls to other international actors who carry out such functions. Prisons are often in deplorable conditions that violate international standards. Restoration of prosecutors, police, and prisons is critical to interrupting human trafficking networks and other forms of criminal activity. As indicated below, USAID rule of law programs can contribute to these efforts, but USAID does not usually play the leadership role in restoring security.

When international forces entered **Somalia** in 1993, they found prisoners housed in locked, windowless Conex containers. In **Haiti** in 1993, formal prison buildings existed, but were in clear violation of international standards. In one prison in **Rwanda** after the genocide, most of the prisoners had no case files or dossiers, in violation of Rwandan and international law.

The objectives of emergency phase interventions are to (1) restore and maintain order and security for key stakeholder and community involvement, (2) set the stage for justice system reconstruction and reform, and (3) provide mechanisms for dealing with high priority issues.

- **Diagnosics/Special Studies.** To rebuild core functions, it is critical to define which organization or element in the justice system is supposed to do what, as well as the lines of reporting and accountability within and among organizations. It is also important to identify high priorities, key issues and problems that can hamper progress, and windows of opportunity for quick wins that will contribute logically to the overall rebuilding process and, at the same time, reinforce the constituency for reform. The DG Officer can support contractors, NGOs, think tanks, and others to conduct diagnostics and other studies that expand on information developed in the initial assessment described in Chapter 3.
- **Establishing an Interim Legal Framework.** When the overall legal framework and structure remain open to question, time-limited, internationally accepted codes can help re-establish basic, critical functions. This is especially true in the area of criminal justice, which is strongly tied to addressing the immediate security gap. International legal professionals have recently formulated broad, conflict-related codes of criminal law and procedure that are designed to cover operations during an emergency phase. Examples include model codes developed by the U.S. Institute for Peace and toolkits developed by the UN Office of the High Commissioner for Human Rights.¹⁵ While security needs are often the most urgent, there are also transitional civil codes governing such areas as property and contract rights, family status and relations, and business transactions. The DG Officer can make these materials available, and can also sponsor technical assistance in establishing an interim legal framework.

A rapid court mapping exercise in **Kosovo** defined how cases were processed and identified bottlenecks and backlogs. This facilitated rapid problem diagnosis and the implementation of corrective measures.

¹⁵ O'Connor Vivienne and Collette Rausch (eds), Model Codes for Post-Conflict Criminal Justice, Vol. I, II and III. Washington, DC: United States Institute of Peace, available at <http://www.usip.org/programs/initiatives/model-codes-post-conflict-justice>. United Nations Office of the High Commissioner for Human Rights, Rule-of-law tools for post-conflict States: Truth commissions (HR/PUB/06/1); Mapping the justice sector (HR/PUB/06/2); Monitoring legal systems (HR/PUB/06/3); Prosecution initiatives (HR/PUB/06/4); Vetting: an operational framework (HR/PUB/06/5); Reparations programmes (HR/PUB/08/1); The legacy of hybrid courts (HR/PUB/08/2)., available at <http://www.ohchr.org/EN/PUBLICATIONSRESOURCES/Pages/SpecialIssues.aspx>.

- Establishing Stability and Jump-starting Judicial Operations.** A myriad of issues challenge the restoration of core justice functions during the emergency phase. The DG Officer can make available technical expertise in such areas as pre-trial detention, case review, and case purging. Other options include providing basic supplies appropriate to local needs and helping to establish an emergency, rapid-action group to focus on high priority justice issues. These kinds of programs are high-impact activities that provide for quick, visible wins and facilitate the longer-term process of restoring functionality.
- Mentoring and Monitoring of Local Professionals.** Bringing in outside professionals to mentor and monitor local professionals can be helpful in a highly politicized or corrupt environment. For example, internationals can monitor teams of judges, prosecutors, defenders, and police dealing with notorious, problematic cases. However, such an approach can be politically sensitive and also has implications for sustainability. The DG Officer must weigh these factors and also ensure that there is a legal basis for such involvement.
- Providing Security for Justice Sector Personnel.** Perhaps one of the most unappreciated aspects of post-conflict reconstruction is the need to protect the security of host country and implementer personnel. Legal professionals need assurance that they are secure from threats of violence, intimidation, and revenge-seeking. Security-enhancing assistance may well continue through the institution-building phase. Examples include updating security equipment for courthouses, redesigning courthouse space, providing advice and training to judges and other legal professionals on personal security, training court police and bailiffs, and assisting with the development and implementation of witness protection programs.
- Training.** Justice system professionals can benefit during the emergency phase from training on basic skills, principles, and concepts that apply regardless of the overall legal framework. Some training can involve multiple groups. For example, human rights training for court officials, prosecutors, police, and prison officials should be undertaken jointly whenever possible, with police watch, monitoring, and community groups invited as observers and selected participants. Examples of concepts on which emergency phase training can be provided include checks and balances of power between and among levels and branches of government, the functioning of an independent court system, citizen redress through lawful means, the role of civilian police forces in a democratic system, and how prisons rehabilitate offenders. One objective of these types of training is to restore basic functions. Another, equally important, is to promote “unlearning” the procedures of corrupt or dysfunctional justice systems founded on poor management, secrecy, and impunity, and to introduce modern principles of sound management, democracy, judicial independence, and public service. Thus, the DG Officer can serve multiple purposes by supporting such training.
- Justice System Personnel Recruitment and Selection Criteria.** As indicated below, vetting and reconstituting the justice system personnel generally begins during the institution-building phase. However, establishing the criteria and procedures for this process can and should begin earlier, providing a uniform foundation and standards to guide recruitment and re-staffing initiatives. The DG Officer can make technical assistance available to analyze needs and develop the

In **Haiti**, teams of judges, prosecutors, lawyers, and law students were formed to review prisoner cases. Those who have already served more time in pre-trial detention than they would have served if convicted are released. In **Somalia**, basic packages containing manual typewriters, paper, pens, file folders, and other supplies enabled staff to begin processing cases.

- EXAMPLES OF BASIC SKILLS**
- Principles of management
 - Institutional leadership
 - Change management
 - Managing a courtroom
 - Courtroom communications
 - Human rights
 - Basic techniques for conducting investigations
 - Methods of protecting crime scenes
 - Forensics
 - Chain-of-custody in evidence-gathering
 - Interviewing and protecting witnesses
 - Evidence presentation

criteria and procedures, and can also provide information on approaches taken and results achieved in other countries.

- **Infrastructure Rehabilitation/Refurbishment.** Given the infrastructure devastation that results from most conflicts, meeting needs for rehabilitation and infrastructure security is becoming an increasingly important component of emergency phase programming. Examples include **Afghanistan, Serbia, and West Bank/Gaza.** In addition to structural rehabilitation, the provision of basic supplies (such as generators, paper, pens, copiers, tape recorders, furniture, and even gasoline for vehicles) can facilitate at least basic proceedings. The DG Officer can support programs that focus on either aspect. Where rehabilitation/refurbishment focuses on courts, courts of first instance should often receive priority because they are the ones with which the public is most likely to come into contact.

INSTITUTION-BUILDING PHASE INTERVENTIONS

The objectives of institution-building phase interventions are to (1) develop the constitutional and broad legal and regulatory framework, including the vision, core mission, and functions for each institution and unit, (2) increase state capacity and effectiveness, and (3) start or re-start operations. It is necessary to check with a USAID Regional Legal Advisor or the Office of the General Counsel prior to working on constitutional reform that may involve issues for which foreign assistance funding is prohibited, e.g., abortion.

- **Inclusive Consultations to Develop/Refine the Legal Framework.** For purposes of relevance and sustainability, an inclusive process for developing/refining the legal framework is critical. Avenues for public and professional input will promote transparency, a key factor in stimulating commitment to a rule of law culture. This task requires high degrees of political consensus, astute political leaders to guide the effort, civic interest and involvement, and the ability of former warring elites and their followers to articulate and accept compromises. A logical, inclusive process fosters not simply an end-product, but a coherent, system-wide approach that balances international expertise against local traditions, values, and culture, and creates a blueprint for nationals to follow in making further changes as needed later on. The DG Officer can support seminars, workshops, and other fora for promoting participation and developing legal framework principles and documents. These should include opportunities for public review and comment on draft legislation. As appropriate, the DG Officer can also provide international experts to help develop the process and to participate as resources in these dialogues. In addition, the DG Officer can support training for NGOs on when and how to comment or advocate for change, drawing on administrative law and procedure where they are developed, and on how to obtain input from constituents and communicate it to lawmakers.

In 1999, United Nations Interim Administration Mission in Kosovo immediately identified applicable law in **Kosovo** to be the law in force in the Federal Republic of Yugoslavia at the onset of hostilities in the mid-1990s. This unfortunate and arbitrary decision included no formal Kosovar input, and it caused a public outcry, squandering some of the goodwill that had been afforded the U.S. and its allies at the end of the war. Kosovar Albanian legal professionals simply refused to apply what they considered to be a discriminatory code from an oppressive regime.

In contrast, in **East Timor**, the Office of the President organized a National Dialogue on Justice to gain grassroots views on the justice sector. There were 13 district-level dialogues involving 1,200 citizens, and 600 citizens attended a three-day conference in Dili. The national proceedings were covered by radio and TV, reaching citizens throughout the country. Justice sector officials are using the resulting recommendations to further develop the justice sector in ways that address the population's concerns.

effort, civic interest and involvement, and the ability of former warring elites and their followers to articulate and accept compromises. A logical, inclusive process fosters not simply an end-product, but a coherent, system-wide approach that balances international expertise against local traditions, values, and culture, and creates a blueprint for nationals to follow in making further changes as needed later on. The DG Officer can support seminars, workshops, and other fora for promoting participation and developing legal framework principles and documents. These should include opportunities for public review and comment on draft legislation. As appropriate, the DG Officer can also provide international experts to help develop the process and to participate as resources in these dialogues. In addition, the DG Officer can support training for NGOs on when and how to comment or advocate for change, drawing on administrative law and procedure where they are developed, and on how to obtain input from constituents and communicate it to lawmakers.

- **Defining Core Institutions and Functions.** Defining the role, mission, and functions of all the various justice sector institutions, and how they should operate together, is fundamental to rebuilding the rule of

law. This ensures that the legal drafting process responds to functional needs in ways that promote systemic harmonization. It also ensures that the system provides for enforcement, since laws and regulations are ineffective without it, nor can a rule of law culture flourish without it. Further, it provides for the development of judicial independence, and for differentiating the roles of prosecutors and public defenders in common and civil law systems.¹⁶ An integral consideration in structural and functional decisions is determining proper levels of oversight, auditing, and monitoring functions that the system needs to make it accountable to citizens. Most corrupt institutions, for example, lack the functional equivalents of Inspectors General – officials and offices authorized to recommend or carry out disciplinary measures against agencies and key officials in them. The process of defining institutions and functions is quite complex, since decisions about one institution or functional area inevitably have implications for other institutions and functional areas. Failure to understand and account for these implications will result in disharmony, ineffectiveness, and inefficiency. The DG Officer can support this process through stakeholder consultations and targeted technical assistance to explore and resolve issues.

- Drafting Laws, Policies, and Regulations.** Writing or rewriting laws, policies, and regulations is a difficult, comprehensive undertaking that requires competent host country drafters. It will also require GC consultation if it involves subjects ineligible for USAID assistance as a matter of law, e.g., abortion. Such resources rarely exist in post-conflict environments. Assistance should reflect three principles. First, counterpart consultation is critical; donors should not simply write new criminal or civil codes in isolation. Their role should be to advise and comment. Second, new codes and laws should be feasible and implementable. This requires assessing budget implications as well as the potential for conflicting responsibilities among justice system institutions. Third, the drafting process should be uniform across all agencies that generate legislation, understood by the public and the implementing agencies, and sustainable. Within this framework, the DG Officer can provide technical experts to help counterparts analyze the pre-existing framework to define those portions of laws and traditions that were useful, were in accordance with international human rights standards, and should be carried forward into new frameworks. Assistance can also focus on developing a legislative drafting manual. Technical experts can help draft constitutions, organic laws, basic criminal and civil codes and procedures, critical democratic process laws (such as election and media laws), and secondary legislation and regulations. They can also help develop policies and procedures that promote harmonization among the core elements of the justice system, thus avoiding many of the fragmented approaches that have characterized past post-conflict rule of law programs. In structuring technical assistance programs, the DG Officer should ensure that they include mentoring and on-the-job training, thus establishing local research, analysis, and code development capacity. Programs may target not simply the justice system, but also members of parliament and their staffs, executive branch ministries, departments, and commissions, and oversight bodies such as anti-corruption offices.
- Police Assistance.** Within the statutory authorization on USAID work with law enforcement (see page 20), there are a number of interventions that the DG Officer can support as part of a holistic rule of law program. Where appropriate, police can be integrated into many of the other types of interventions listed

The new Criminal Procedure Code required **Kosovar** courts to have verbatim transcripts – a requirement with which the courts were unable to comply, at least initially. However, the provision in the new law created an incentive for the courts to find a way to meet the requirement in order to be able to meet the “Kosovo Standards Implementation Plan” to which Kosovo must adhere. Under a USAID project, an audio recording pilot program was implemented, and is now being rolled out nationally – financed under the local Kosovar budget. The Kosovar courts were eager to implement the digital recording program because it enabled them to comply with the Standards requiring accurate reporting.

¹⁶ USAID, Guidance for Promoting Judicial Independence and Impartiality. (January 2002).

(training, defining core institutions and functions, vetting and lustration, etc.) Additional examples of police assistance programs include drafting police organic laws and related statutes, police management training, investigative procedures and forensic training, chain of custody training, court security, harmonization of investigative policies and procedures with prosecutors and police, institutional development and police academy development, police/community relations, training in gender-based violence, and crime prevention strategies. Close coordination is essential with other U.S. Government agencies working to rebuild police capacity, as well as with other international and bilateral organizations participating in this process.

- **Initiating Operations.** With organizations defined and laws and policies in place, the DG Officer can support programs that facilitate operational start-up. These programs can include training in organizational management and substantive laws and procedures (see below), technical assistance in organizing functions within institutions and in developing communications procedures within and across institutions, and/or provision of furnishings and equipment. Other initiatives could address establishing the fundamentals of conducting criminal investigations, developing crime prevention strategies, and improving the interaction and cooperation between police and the community as described in Chapter 4.
- **Public Education and Outreach.** Consistent with transparency and public participation in developing the legal framework, disseminating the results of the legislative process following enactment is essential. In political and legal atmospheres formerly dominated by state secrecy, posting laws in public locations, publishing them in newspapers and on internet-accessible databases, and creating accessible ways of engaging directly or through NGOs with citizens may do more than anything else to foster a rule of law culture. The DG Officer can support this kind of public education and outreach, as well as other mechanisms, such as help desks, public information centers, or similar mechanisms in courthouses, police facilities, and prosecutors' offices. These operations can provide walk-up legal advice, facilitate direct complaint filing, or provide access to information on legal rights and court processes. As indicated in Chapter 4, institutional information services also contribute to promoting access to justice and legal empowerment.
- **Vetting and Lustration.** The "Leahy Amendment," section 6205 of the Foreign Assistance Act of 1961, as amended, requires vetting before assistance may be provided to security units, including police. Vetting involves examining employment and other records for the purposes of hiring or firing. Sources include available data from automated or manual records systems held locally or by internationals. Vetting uses these data as well as information developed during actual background checks. The process should seek information about criminal activities, alleged human rights abuses, and other problems. The background checks involve the candidate filling out a form, with subsequent corroboration of the information provided by

In **East Timor**, The Asia Foundation supported five local NGOs to organize community-level discussions providing citizens first-time access to information about the country's legal framework and its new laws. The Foundation also supports three organizations to publish and distribute monthly bulletins on law and human rights issues to citizens and government officials in order to raise awareness of the new legal system.

In **Bosnia and Herzegovina**, police vetting after 1999 distilled more than 44,000 heavily armed, poorly trained and mono-ethnic wartime police into fewer than 16,000 disciplined law enforcement officers, helping to transform a corrupt, patronage-based institution into an organization meeting international standards of democratic policing, including oversight and monitoring bodies. An example of lustration occurred in **Iraq**, where the Coalition Provisional Authority created the De-Baathification Council in 2003, which disallowed any former Baath Party member above the rank of colonel from serving in the country's new military and police forces (see: http://www.cpa-iraq.org/regulations/20030603_CPAMEMO_I_Implementation_of_De-Ba_athification.pdf).

a team of investigators. Lustration involves preventing an entire class of persons, generally a political party, from holding either elected or appointed office. Lustration was first used in post-war Germany, when former Nazi Party members were barred from any participation in the Bonn Government, including judicial appointments. Most pre-conflict regimes had rule of law institutions that either precipitated conflict, or engaged in or condoned significant human rights violations and other injustices. To prevent new institutions from once again being used as tools of repression, new political leaders often vet existing personnel or restrict new ministry, judicial, and police appointments to those who pass background checks for suitability. There are advantages and disadvantages to vetting, and the DG Officer will rarely be in a position to decide whether or not to implement this activity. However, if such an initiative is undertaken, the DG Officer can support programs that urge people to submit information on candidates or provide avenues for participating in the vetting process. In addition, technical assistance could support implementation of the recruitment and selection procedures developed in the emergency phase.

- **Training and Training Resource Development.** Once the framework is in place, training in the law and standard operating procedures can begin for justice system professionals. This builds on any basic skills and principles training that may have been provided in the emergency phase, before the laws, policies, and procedures were defined. For example, training for judges will include new laws and codes, and both judges and court administrators will require training in courtroom procedures, especially new methods of management and court administration. The DG Officer can support curriculum development, training of trainers, and delivery of training. The DG Officer can also help promote cross-training of different cadres of personnel (for example, judges, prosecutors, and police) in such areas as the criminal investigation process. In addition to providing direct training support, the DG Officer can bring technical assistance to training units and centers to develop local capacity to sustain training efforts. Such programs would help to define missions and operating procedures, and to establish curriculum design and delivery capacity. Other options include stimulating the development of required continuing legal education through professional associations.
- **Oversight Mechanisms.** Every justice sector institution will need to incorporate some mechanism into its organizational structure to provide for oversight and accountability. In the post-conflict environment, these mechanisms are critical to restoring public confidence. *Internal* oversight mechanisms have two principal functions: (1) conducting proactive and regular compliance reviews to ensure that personnel adhere to established rules and regulations; and (2) inspection, wherein trained investigators conduct formal inquiries into alleged cases of wrongdoing. There are also *external* oversight mechanisms, such as an Ombudsman, an Independent Complaints Directorate for processing citizen complaints, or executive or parliamentary oversight bodies. In addition, where judicial councils exist, they generally have some kind of investigative and disciplinary body. Further, actors outside the formal system, such as NGOs, law schools, and bar associations can work with or alongside oversight institutions. The DG Officer can support technical expertise to design such mechanisms and train personnel. In addition, the DG Officer can support the development of codes of ethics, manuals, and training for justice system personnel that define the standards of ethics and comportment to which the oversight mechanisms will hold them, and the sanctions for violations. While specific rules may differ from one institution to another, systemic consistency is important, especially with regard to sanctions.
- **Case Management and Recordkeeping.** Records in most post-conflict environments are often in a shambles, and whatever systems and procedures may have existed were mostly likely inadequate, cumbersome, and/or opaque. USAID's *Case Tracking and Management Guide* describes in detail the elements of good court records management.¹⁷ It also emphasizes the need to establish solid manual systems and procedures before proceeding to automation. The DG Officer can support programs to analyze and improve case management and recordkeeping, and can also make available generic examples of sound case tracking and management systems that could be used as a basis for future

¹⁷ USAID, *Case Tracking and Management Guide*, (2002).

- **Infrastructure Improvement.** Costs of bricks-and-mortar programs can be daunting, but the DG Officer can support a variety of projects to improve existing infrastructure. This can include an inventory of infrastructure needs and advice on design (for example, securing separate entrances for defendants and witnesses or establishing a court reception area staffed by a trained public information officer).
- **Legislative Strengthening Programs.** Legislative development more broadly is primarily a function of the legislative branch, not the justice sector. Nevertheless, the DG Officer can fund specific institutional development programs that promote the technical capacity of the legislature to assume greater responsibility for law-making. Such programs can also foster cross-factional, inter-ethnic, and inter-communal dialogue, as well as political coalitions and political parties, contributing to political stability. The goal is to ensure that capacity is firmly entrenched within the legislative branch as well, not simply within the office of the president, prime minister, or executive-based ministries and cabinets.

SELF-GOVERNMENT PHASE INTERVENTIONS

The objectives in this phase are to (1) institutionalize enhanced capacity and training, and (2) monitor performance for fairness and efficiency.

- **Strengthening Judicial/Legal Training Centers.** Permanent, sustainable training capacity is critical to ensure that justice system professionals understand and can implement the legal framework, thus preventing the re-emergence of conflict. The DG Officer can support technical assistance as needed in organizational development, faculty and staff development, curriculum development, materials design, training needs assessment, training methodology, training evaluation, and other functions. In **El Salvador**, assistance strengthened the Judicial Training Center in the National Council of the Judiciary.
- **Institutional Development.** New or restructured justice system institutions may mature at different rates. Some may require continuing technical advice or mentoring during the self-government phase on such issues as functional organization, internal communication, or monitoring institutional performance. The DG Officer can support technical expertise as required.
- **Monitoring Justice System Operation and Performance.** By the self-government phase, some countries will have local monitoring capacity, through NGOs, other citizens groups, or internal or independent oversight agencies. Others will benefit from outside review. The DG Officer can provide continuing support to local organizations as well as external technical assistance to ensure adherence to procedures and legal requirements, as well as the imposition and enforcement of sanctions where appropriate.

CHAPTER SIX: DEALING WITH THE PAST

In most post-conflict environments, there is a critical need to provide full accountability for past crimes, atrocities, and other human rights violations. Transitional justice includes temporary post-conflict structures and processes that meet this need. Some fall under the rubric of *restorative justice*, an approach that attempts to restore relations between victims and offenders using community involvement and participation wherever possible. Restorative justice, typically in the form of truth commissions and community-based reconciliation mechanisms, emphasizes the larger need of society to learn from past violence and conflict in order to avoid it in the future, thus breaking the cycle of violence and vengeance. It can be punitive, non-punitive, or a combination of the two. *Retributive justice*, typically in the form of tribunals, is punitive. It often targets high-level planners or architects of war crimes and other atrocities but can also deal with lower-level perpetrators, depending on tribunal type.

Transitional justice generally involves the use of a combination of mechanisms to address past impunity and simultaneously foster political support for rebuilding efforts focused on the future. Thus, it contributes to the legitimacy of other rule of law efforts. Citizens cannot be asked to have confidence in a new state or future institutions unless they also have visible evidence of accountability for the past.

Each transitional approach has varying objectives, strengths, and limitations, and is targeted at a different aspect of the accountability process. To consolidate peace, some accountability must be pursued in a way that is relevant to community norms and understandings, provides short-term redress, and serves as an example for rule of law practices for the longer term. Restorative justice meets these needs. At the same time, accountability requires sanctions for perpetrators of serious crimes and eliminating a culture of impunity. These needs are met by tribunals, and by some restorative justice mechanisms.

In **South Africa** in 1996, the Truth and Reconciliation Commission blended both retributive and restorative functions by offering amnesty to perpetrators who agreed to testify during an initial two-year window, provided they made “full and complete” disclosures of their crimes. Reviewing committees had discretion to decide whether such disclosures were full and complete, however, and could remand cases to regular courts when they felt otherwise. Those who did *not* seek such amnesty were subject to indictment, as were those found to have perjured themselves or who failed to register within the two-year window of opportunity (later expanded to three). Over 20,000 victims and more than 1,800 perpetrators told their personal stories in open, well-publicized and well-attended hearings all over the country.

In **Sierra Leone**, transitional justice included both a Truth and Reconciliation Commission and a Special Court. A Women’s Task Force consults with both mechanisms to encourage women’s participation at all levels. The task force advocated for establishing a special unit to investigate gender-specific war crimes. This resulted in greater gender balance in the commission and a commitment by the Special Court to prioritize prosecution for sexual violence.

Attractive as restorative justice approaches might be, great care must be taken to ensure that they reflect the priorities of local societies. Civil society must take a major role in defining how to pursue restorative justice. Perhaps because of the complexities involved, donors have unwittingly erred in promoting certain aspects of reconciliation before the society was ready to engage in it, prompting reactions against the larger process. In

Bosnia and Herzegovina, Kosovo, and Rwanda, some feel that donors have pushed ethnically divided communities toward reconciliation while wounds were still too deep. Therefore, in determining whether and how to promote restorative justice, the DG Officer must be sensitive to the underlying cultural contexts that facilitate the goals of reconciliation, and to the readiness of the country to move in this direction.

This chapter describes three transitional justice mechanisms — truth commissions, community-based reconciliation, and tribunals — and outlines their relative advantages and disadvantages. It also provides examples of post-conflict rule of law programs that meet the need to deal with the past.

TRANSITIONAL JUSTICE MECHANISMS

Truth Commissions

For the last three decades, a number of countries have implemented some form of *truth commission*. The goals of such commissions are not so much to provide punitive redress for mass violations of human rights, but to help a society acknowledge past violence and its causes, and in some cases to provide a forum for individual and group reconciliation. Truth commissions are critical to opening up social histories marked by misinformation, censorship, and concealment of past injustices that led to violence. Additionally, they can play an important role in promoting reparations. Originally used to illuminate the state's role in fomenting violence against its own citizens, truth commissions are now used more broadly in a wide variety of post-conflict states to serve any or all of these goals.

TRUTH COMMISSIONS

Mechanisms outside the formal justice system for fact-finding and public discussion of conflict.

While truth commissions generally have limited authority to levy sanctions, political leaders can use them to meet needs that retributive justice cannot. Through inclusive information-gathering, truth commissions form a more complete picture of the conflict. Through vivid, personal testimony by victims and perpetrators alike, they can provide a profound forum for individuals to tell histories that investigations may not pursue. Finally, the report of a truth commission can highlight reforms needed to address injustice and restore state legitimacy. In some cases, such as in **El Salvador** and **South Africa**, commission recommendations have included targeted guidance for the larger justice sector reform process. USAID/Office of Transition Initiatives (OTI) programs have supported truth commissions, particularly in **Peru** and **Guatemala**.

In **South Africa**, traditional concepts of interconnectedness and humaneness (*ubuntu*) greatly promoted the success of the Truth and Reconciliation Commission and other community-focused reconciliation efforts. In recent years, in part because of the widespread publicity afforded to the South Africa experience, donors have moved to incorporate truth commissions as part of a reconstruction checklist of activities to support. However, donors should not push funding, capacity building, and training for such commissions before a society is ready to embrace them. A commission's power and effectiveness lie in the process by which it is formed and carried out, and in how it reaches and publicizes its findings and recommendations. Domestic political pressure can also skew information or misrepresent events, defeating the purpose of fact-finding altogether. Therefore, when considering support, it is important to gauge the ability of the commission to operate independently, transparently, and objectively.¹⁸ Moreover, there are other mechanisms that also get at the truth. In **Guatemala**, for example, there is no longer a truth commission, but efforts continue to identify disappeared persons through exhumation.

¹⁸ It is noteworthy that relative to many other post-conflict countries, South Africa was wealthy and had a well-developed judiciary and judicial culture, providing it with the means to establish its Truth and Reconciliation Commission.

Community-Based Reconciliation

Community-based reconciliation efforts generally levy justice outside of formal justice institutions and use or draw on informal or customary justice mechanisms. The formal court or police system, especially in regions where it is seen as part of an abusive regime, is not the place where the average citizen will turn to seek justice. Informal mechanisms constitute accepted practice in many parts of the world. In many societies, they have handled the majority of contested claims in family, land, and other small-scale civil matters. Some claims are suited to community-based reconciliation.

COMMUNITY-BASED RECONCILIATION

Using informal justice systems to help promote accountability, the need to acknowledge past behaviors, and encourage peace and forgiveness.

The use of informal justice plays an increasingly important role in the post-conflict context for a number of reasons. As **Rwanda** has shown, the extent of war crimes or other atrocities that can accompany conflict often overwhelms the capacity of formal justice institutions, either national or international, to address such crimes. For capacity reasons alone, the need to provide alternative fora in which victims can confront their attackers can be acute. Also, many lower-level perpetrators have been forcibly recruited, thus making them—at least in part—victims themselves. The appropriateness of criminal sanctions in such situations must be balanced against equally compelling needs for some type of restitution to the victim and for a larger vision of harmony and reintegration of both perpetrator and victim. Such “healing ceremonies” have taken place in northern **Uganda, East Timor, Sierra Leone**, and other countries.

There are caveats, however, with respect to using community-based reconciliation mechanisms. In some contexts, as described in Chapter 4, informal justice has historically exercised bias against certain population groups, such as minorities or women. Modification of certain types of customary justice systems may be appropriate. For example, in **Rwanda**, USAID DG Officers and UN human rights officers worked with local officials to modify some of the more pernicious aspects of *gacaca* to accommodate modern human rights provisions.¹⁹ Donor assistance should ensure that traditional practices uphold fundamental human rights standards, rather than perpetuate injustice. Moreover, because of its usual focus on civil disputes, using traditional justice to pursue past criminal wrongdoing such as rape or mass murder, or to adjudicate previous interethnic disputes or appeals, may be inappropriate. In particular, rape is a challenging issue to address, requiring special expertise.

Tribunals

Despite the cost and organizational complexity, it is difficult to identify circumstances under which it is not appropriate to pursue prosecution of those who orchestrate and commit violations of international humanitarian law. However, prosecuting leaders has potential political implications on negotiation and peace processes when those leaders may still be in power or maintain a broad support base.

In conflict-ridden environments, the refusal to investigate past atrocities can easily serve as justification for new violence. The 1998 peace agreement in **Sierra Leone** included an amnesty provision that many feel emboldened the warring parties when renewed violence broke out months later.

¹⁹ *Gacaca* was a traditional dispute resolution mechanism. In the aftermath of the genocide, it was modified into a new system of 11,000 community courts manned by about 200,000 elected *Inyangamugayo* (persons of integrity). While national courts retained jurisdiction over the most serious cases (involving planners, leaders, notorious killers, and perpetrators of sexual violence), *gacaca* courts are trying lower-level perpetrators as well as property offenses committed during the genocide.

Tribunals can take several forms:

- **International Tribunals:** Under UN auspices, and with international staffing and funding, the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda are *ad hoc* international tribunals established to address violations of international humanitarian law. These have proven quite costly, the numbers prosecuted and convicted are not large, and the establishment of tribunals in locales outside of the territory over which they have jurisdiction has drawn substantial criticism. The establishment of the permanent International Criminal Court in 2002 changes many of the conditions surrounding high-level prosecutions of war crimes. In contrast to previous decades, when political leaders could weigh the need for trials against the fragility or urgency of the peace process, the ICC is empowered to step in when states are unwilling or unable to pursue high-level prosecutions. Although the U.S. is not a State Party to the ICC, the DG Officer may be operating in a country which is and therefore needs to be aware of the ICC's role.
- **Hybrid Tribunals**—Hybrid tribunals involve both internationals and nationals of the affected country, often applying a combination of international and domestic law.
- **National Tribunals**—With or without the existence of international or hybrid tribunals, some alleged perpetrators will likely be tried in the national court system, using national staff. Some countries have addressed these cases by creating special divisions within the national judiciary for dealing with conflict. Such divisions may focus exclusively on cases arising from the conflict period or include other complex criminal cases. For example, in 2003, a Special Court Division for War Crimes and Organized Crime was created within the Belgrade District Court in **Serbia**.

The ICC has jurisdiction over genocide, war crimes, and crimes against humanity. As of 2005, the ICC Prosecutor has already opened investigations into events in **Uganda, the Democratic Republic of Congo, and Darfur, Sudan.**

EXAMPLES OF HYBRID TRIBUNALS

In **Sierra Leone**, an independent, temporary court was established by agreement between the Sierra Leone government and the UN. Beginning in the late 1990s in **Kosovo, Bosnia and Herzegovina, and East Timor**, international legal professionals participated in national level legal structures.

Because the decision to establish a formal tribunal is made at such high political levels, the DG Officer will rarely be consulted. However, once established, tribunals often receive inordinate attention from donors looking for quick and measurable ways to deal with issues of impunity.

Table 6-1 illustrates the relative advantages and disadvantages of truth commissions, community-based reconciliation, and tribunals.

Table 6-1. Transitional Justice Mechanisms: Advantages and Disadvantages

Mechanism	Advantages	Disadvantages
Truth commissions	Establish accountability and official acknowledgement of the state's role in violence	Cannot enforce recommendations without special mandate or link to official enforcement body
	Help understand the scope and roots of violence and provide an agreed upon history for the future	Focus on understanding and reconciliation, generally not on punishing combatants or architects of violence for their crimes
	Identify underlying justice problems and policies that contributed to abuse and violence and suggest reforms to alleviate them	Do not focus on creating functioning justice sector institutions
	Raise awareness of victims' needs, including needs for compensation and restitution	Generally do not create a system for addressing victims' needs or funds to provide all victims with full compensation
	Facilitate community-based reconciliation activities	Often neglect linkage to formal system to address severe atrocities
Community-based reconciliation	Reintegrate low-level perpetrators, combatants, and victims in the community	Unsuitable for high-level architects of violence, mass murder, and similar severe crimes
	Prevent vigilantism and private revenge-seeking	Susceptible to control of majority groups and potential suppression of minority rights
	Fill the void left by lack of formal justice mechanisms	Often lack uniform approach to ensure equal justice
	Engage established social structures and institutions in the reconciliation process	Potential failure of traditional community sanctions to protect human and individual rights
	Provide sustainable mechanisms to resolve interpersonal and community level conflict	Require somewhat stable community conditions that respect minority rights
Tribunals	Address impunity and remove perpetrators from positions of power	Individual trials may not provide a comprehensive explanation of events or in-depth understanding of the conflict
	Partially re-establish social contract between citizens and the state	In the case of international tribunals, limited state responsibility for atrocities and violence and no contribution to creating local justice systems or capacities
	Restore international community relationships and fulfill responsibility to prosecute architects of violence	Cannot respond to the needs of all individual victims or communities (although the ICC has provisions that give victims a much greater role in proceedings and better address their needs)

	Incapacitate high-level perpetrators and serious offenders	Sometimes addresses only higher levels of perpetrators and the most serious crimes, especially in the case of international tribunals
	Assign individual rather than collective responsibility	Potential for limiting information about the actual breadth of the violence perpetrated
	Provide an example of democratic, legal processes and due process	Very costly, and may divert attention and resources from more permanent justice sector reform

POST-CONFLICT RULE OF LAW INTERVENTIONS FOR DEALING WITH THE PAST

Table 6-2 defines objectives by phase for post-conflict rule of law interventions to deal with the past. Because transitional justice mechanisms are by definition temporary, their functions shift to permanent mechanisms, both formal and informal, in the self-government phase – except in circumstances where the process of accounting for past crimes takes place many years after the conflict. Thus, interventions during this phase transition to the technical assistance, monitoring, and oversight activities described in Chapters 4 and 5, and there are no objectives specific to this program approach in the self-government phase.

Phase	Objectives
Emergency	Engage broad justice sector, civil society, and traditional leaders in dialogue
	Create transitional justice approaches
	Promote transparency in pursuing accountability
Institution-building	Establish infrastructure and local capacities for transitional justice
	Integrate transitional justice and other rule of law education

It is particularly important to note the linkage between some of the transitional justice interventions and those presented in Chapter 4—Promoting Access to Justice and Legal Empowerment. As the immediate crisis abates, initiatives to provide justice for past crimes and atrocities later blend into and serve the larger purposes of access and empowerment. One example is training community mediators who begin by helping to administer transitional justice. Later, they may play a role in strengthening informal justice institutions that resolve a wider range of disputes, and in facilitating access to the formal justice system. Another example is public education that focuses first on familiarizing citizens with the purposes and mechanisms of transitional justice and then transitions to legal rights in general and how to access these rights through formal and informal justice mechanisms.

For convenience of presentation, this section describes potential interventions by phase. Because each country context is different, the assignments to phases are not binding. In some post-conflict environments, particular interventions may start earlier or later. Moreover, some interventions may begin in one phase and end in another. The assessment and strategic planning exercises will help determine the selection and timing of interventions.

EMERGENCY PHASE INTERVENTIONS

The objectives in this phase are to (1) engage broad justice sector, civil society, and traditional leaders in dialogue, (2) create transitional justice approaches, and (3) promote transparency in pursuing accountability.

- Support for Consultative Processes to Prioritize Community Concerns.** Transitional justice requires broad consensus on objectives and approaches. Most important, it requires a level of civic participation that engages society in defining the problem and deciding how to address it. The DG Officer can support consultative fora in which key national and local leaders, along with representatives of civil and traditional or religious society, identify context-specific challenges and determine how best to approach them. Select experts within the international community can facilitate and inform the dialogue. The objective of these consultations should be to obtain information on the extent of violations, the current state of formal and informal justice institutions and the level of public access to them, the fragility of the cease-fire and the political transition process, the role of the state in past human rights violations, the feasibility of meaningful compensation or reparation, and society's understandings of justice. The DG Officer can also support key informant interviews, focus group discussions, public polling, or other standard data collection methods to help articulate these views and complement public dialogue.
- Documentation of Atrocities.** There is an urgent need to begin collecting information as soon as possible, regardless of when transitional mechanisms may be established. Administrative records, eyewitness accounts, location of mass grave sites, forensics evidence, and pertinent government documents all need to be secured before the information is lost, destroyed, or forgotten. This type of information and analysis can be integral to a complete picture of events, and can help to target areas in need of further assistance or reparations. In the case of tribunals, governmental, quasi-governmental, and non-governmental organizations can assist with the data collection process and supplement efforts of tribunal investigators by interviewing victims or witnesses and identifying potential witnesses for follow-up discussions by tribunal staff. Tribunals can also benefit from quantitative analyses of events that provide a picture of patterns and trends that would not be evident from individual testimonies. The DG officer can support domestic and international NGOs to conduct this type of analysis. Truth commissions and community-based reconciliation also benefit from documentation support, since they rarely have resources to collect or analyze data that will facilitate their functions. Support to these mechanisms ordinarily comes from NGOs. Documentation programs generally require training for data collectors and data entry personnel, customization of existing database applications for data transmission and storage, and provision of statisticians to analyze the data. Whenever possible, national staff should participate to promote long-term capacity building.
- Providing Expertise on Comparative Approaches and Procedures.** To establish the structure and procedures for new transitional justice mechanisms, host country leaders will need basic information on how issues such as structure, scope, functions, processes, methods of data collection, reporting, role of reparations, budgets and staffing, and public education were handled in other locations. Also, in the case of tribunals, since war crimes trials are far more complex than ordinary criminal trials and must rely on a body of international law that will be largely unfamiliar to the local legal community, projects that provide

The **Afghan** Independent Human Rights Commission is committed to highlighting the importance of eliminating impunity and to enabling the people of Afghanistan to recommend transitional justice strategies. Its action plan includes documentation and collection of evidence and conducting a national consultation to develop mechanisms that the people support.

In 2001, the U.S. Government funded the American Bar Association to conduct a war crimes documentation project in **Kosovo**, analyzing interview information collected from Kosovar Albanians. This information helped International Criminal Tribunal for the former Yugoslavia (ICTY) investigators locate potential witnesses for questioning. In addition, the resulting report had significant evidentiary value and was eventually presented as expert evidence in the ICTY trial of Slobodan Milosevic.

The International Center for Transitional Justice and The Open Society Institute – Justice Initiative have sponsored series of working meetings with local and international experts to discuss issues related to transitional justice in places such as **Cambodia** and the **Democratic Republic of Congo**.

comparative technical expertise on basic rules of procedure, prosecution and defense strategies, witness protection, the taking of testimony, and other functions are particularly important for hybrid and national tribunals. The DG officer can provide assistance in a variety of ways, such as workshops for discussing these issues as well as technical assistance to analyze and prioritize options for transitional justice mechanisms. Where tribunals are under consideration, support could also include sponsoring the posting of short-term technical advisors from other countries to assist the court or sponsoring working group sessions or roundtable discussions with international experts, local stakeholders, and court officials to review options. Also, in situations where it is not realistic for national legal professionals to be involved in trying highly sensitive or high-visibility cases, the DG Officer could support the provision of international judges and prosecutors for a limited period of time, as was done in **Kosovo** and **Burundi**. However, such approaches may be problematic, especially for political and sustainability reasons.

- **Public Education/Outreach.** Public education programs are integral to the success of any accountability effort. The public must be informed about the existence of transitional justice mechanisms, their goals, and their methodology, and must recognize how these mechanisms respond to citizens' priority needs. No mechanism can restore justice unless it is made relevant to the local population. A truth commission's ability to obtain information is dependent upon wide public participation. Similarly, the public needs to know how community-based reconciliation is supposed to work, what violations it covers, and how to access it. In the case of tribunals, the international community needs to take advantage of the opportunity to provide the population an example of fair trials and due process in practice. This public education imperative is even more critical in cases where a formal justice process is functioning concomitantly with a truth commission or other body. In **Sierra Leone**, for example, confusion among citizens about the difference between the Truth and Reconciliation Commission and the Special Court has posed difficulties for both organizations. The DG Officer can support citizen education and outreach programs that promote awareness and understanding of these issues. Programs can use television, radio, and print media, townhall meetings, and community events, such as sports contests, theater, and festivals. Local civil society groups are well-placed to design and conduct public education and outreach. Involvement in these activities allows the organizations to develop their skills and build an audience for other rule of law-related topics.

From 2001-2004, USAID funded an American NGO, Internews, to conduct a public education campaign in **Rwanda** to disseminate information about genocide trials. Internews was the only television news source to reach prisoners and low-income rural audiences and provide up-to-date information about the prosecution of genocide suspects. The project enabled Rwandans to learn more not only about the accountability issues, such as their local *gacaca* process and International Criminal Tribunal of Rwanda proceedings, but also other topics.

- **Assisting in Model Design.** Particularly for restorative justice mechanisms, the DG Officer can support programs that work with national, community, judicial, civil society, and/or religious and traditional leaders to determine which model is most appropriate, whether an adaptation of existing practices or creation of a new

In **East Timor**, the Commission for Reception, Truth, and Reconciliation (CAVR) was established at central and regional levels to facilitate Community Reconciliation Processes (CRPs). Incorporating some traditional practices, the CRPs brought together the perpetrator (who had admitted responsibility) and victim(s) in a public forum to determine whether the parties could be reconciled and, if so, what the reparation should be. The reconciliation agreement was filed with the Dili District Court, and if the perpetrator did not comply with the terms of the agreement, he or she was subject to prosecution. Moreover, the General Prosecutor could choose to exercise jurisdiction if the crime did not fall within the scope of CAVR, thus stopping the reconciliation process. One problem was that the Dili District Court lacked the resources to pursue perpetrators or follow up on failures to comply with the reconciliation agreement.

mechanism. Deliberations should consider the types of crimes to be addressed and the number of potential perpetrators and victims, so as not to overload the capacity of the planned approach. In post-conflict countries where restorative justice will include a direct interface between the formal and informal justice systems, it is critical that the design define the linkage in detail and also take into account the capacities of both systems.

INSTITUTION-BUILDING PHASE INTERVENTIONS

The objectives in this phase are to (1) establish infrastructure and local capacities for transitional justice, and (2) integrate transitional justice and other rule of law education.

- **Strengthening Community Mediation.** Community mediation can go a long way to improve post-conflict relationships. In some cases, it relieves pressure on the justice system. In other cases, it fills in where the justice system is not functioning. The DG Officer can support a variety of programs that meet these objectives, including training community mediators, developing peer mediation programs for youth, and developing court-annexed ADR programs.
- **Supporting Community Women’s and Youth Groups.** These groups generally have a strong local constituency and a vested interest in preventing the renewal of conflict. This is because they often suffer disproportionately from violence and conflict. In addition to conflict resolution and community mediator training, the DG Officer can provide support for raising awareness and advocating for increasing rights and access to justice for these vulnerable groups. Other program options include sponsoring events aimed at reconciliation, community rebuilding, and post-trauma healing.
- **Expanded Public Education/Outreach.** Awareness and educational campaigns on transitional justice during the emergency phase can expand in the institution-building phase to address a broader range of issues that are critical to stabilizing society and eliminating underlying causes of the conflict. The DG Officer can support NGOs and other organizations to conduct these activities. In **Sierra Leone**, public information campaigns focused on confronting corruption and advocating for increased protection of women’s rights. In **Sierra Leone, Liberia, Burundi, and Angola**, radio programs aimed at reconciliation among groups, raising awareness on key issues, and civic education. In **Haiti**, a radio soap opera educated citizens about the justice system.
- **Support for Developing Competent Restorative Justice Personnel.** Restorative justice mechanisms may include informal, customary justice systems, new structures and processes, or a combination of the two. In many cases, leaders who administer these mechanisms will require some level of training or technical assistance to meet the special needs for restorative justice in post-conflict environments. The DG Officer can provide a range of support, such as training on international human rights standards, enabling NGOs to second experts who advise or serve on truth commissions, technical assistance on developing structures and processes, and training in mediation and conflict resolution.

In **Angola**, with support from Search for Common Ground, training community mediators within refugee camps helped resolve disputes and diminish tensions. Conflicts existed related to land, property, tribalism, language, and political affiliation in an area where formal justice was not available. This program adapted traditional mechanisms and also trained traditional leaders in modern conflict resolution and mediation techniques.

In **Burundi**, with support from Search for Common Ground, the Women’s Center sponsored a day of community pardon in which, after a series of dialogues among community leaders and members, thousands of residents publicly admitted and apologized for their actions. A youth group sponsors conflict resolution training and community reconciliation activities, including sports tournaments, the publication of a comic book dealing with conflict issues, and radio programs.

- **Training of Tribunal Staff.** The complexity and sensitivity surrounding war crimes and massive violations of human rights necessitates an unbiased, highly-trained group of judges, prosecutors, and defense counsel. Both national and international legal professionals will likely require initial training in the rules of procedure and evidence, applicable law, and the growing body of jurisprudence from similar tribunals. The DG Officer can support pragmatic orientation courses and ongoing workshops. In some cases, training may accompany the provision of equipment or information technology tools. In situations where war crimes trials take place in national courts, such programs should be part of ongoing rule of law efforts to build local capacity in investigating and prosecuting crimes.
- **Skills Transfer and Resource Development.** This is particularly important when international and hybrid tribunals form part or all of the transitional justice approach. These tribunals have been frequently criticized because they divert resources and attention from rebuilding the local legal system. Interventions should support linkages to ensure that resources invested in tribunals have an impact on permanent institutions. The DG Officer can play a strong role in fostering local knowledge and skills by supporting programs that draw upon tribunal staff expertise as mentors or trainers, create legal libraries and databases accessible to national counterparts, or establish consortia of national and foreign law schools to provide supplemental research for the tribunal, for example. It is also important to ensure that tribunals do not drain human and material resources away from the national court system. In **Sierra Leone**, donors supported Special Court programs to provide internships for Sierra Leoneans, create human rights clubs in schools and universities, and draft legal reference materials for local legal professionals.
- **Establishing Human Rights Monitoring and Reporting Capacity.** Transitional justice mechanisms are effective only when they work as planned, and only when they have the confidence of citizens. The existence of human rights monitors who observe and report on tribunal proceedings not only ensures that international human rights standards are being upheld, but also promotes the acceptance of such processes among the citizenry. The DG Officer can promote the development of civil society organizations and other advocates to perform oversight functions. This can include technical and financial support for organizations to train these monitors. When local NGOs serve as monitors, this type of program can also support general rule of law reform by providing a foundation for permanent human rights monitoring capacity.
- **Institutional Support.** Establishing tribunals, in particular, is a complex process that often requires a

In the mid-1990s, the UN/OAS International Civilian Mission in Haiti supported the efforts of a local NGO, the National Coalition for Haitian Rights (NCHR), to train representatives from grass-roots organizations in human rights monitoring, reporting, and intervention techniques with local authorities. All received copies of the Haitian Constitution and the Universal Declaration of Human Rights in Creole, and were encouraged to form a network to gather, analyze, and disseminate information and reports. Because NCHR received critical expertise on trial monitoring and international human rights law, it became one of the most important national advocates for human rights and impartial justice in high-level trials.

In Serbia, the Belgrade District Court Special Division and Special Prosecutor Division for War Crimes and Organized Crime had to function with new staff and new laws and regulations, some totally new to the Serbian legal tradition. Moreover, the organizations had to be established within only a few months to deal with some of the country's most complex and important cases. Special challenges included intense national and international media scrutiny, and a compelling need to provide security, dignity, and transparency for war crimes proceedings. USAID-funded assistance focused on core functions: refurbishing and equipping a completely remodelled building, developing software to track case information, and creating a secure environment for retrievable multi-media case files (electronic files which permit audio and video recordings alongside more traditional case file text). Additional training and assistance prepared the judges and prosecutors for the technical and media challenges of managing these high profile trials.

broad range of personnel, financial, material, and other inputs, often within a very short timeframe. Working with other donors and national counterparts, the DG Officer can support a variety of services to accelerate tribunal development and operations.

CHAPTER SEVEN: ADVANCING POST-CONFLICT RULE OF LAW PROGRAMMING

Post-conflict rule of law programming is an evolving field, as is post-conflict reconstruction, in general. Experiences in a variety of environments have generated important lessons about what to do and what not to do. Even more importantly, however, they have underlined the need for new, more creative and more effective approaches not only to re-establish the rule of law, but also to use the rule of law as a stabilizing force that promotes democracy and development at large.

Four key areas offer opportunities for advancing post-conflict rule of law programming:

- **Programmatic Linkages Within and Across Sectors.** Re-establishing the rule of law requires a complex set of interventions involving not only formal and informal justice systems, but also mechanisms to increase and institutionalize civil society participation. Moreover, it puts in place critical structures and functions that enable the state to serve its citizens. These structures and functions prevent state capture and misuse by special interest groups, a common precursor to conflict. The nexus of rule of law programming with programming in other democracy/governance areas and other sectors is well understood. It now needs to advance in practice. Chapter 3 illustrates the importance of multi-disciplinary teams in carrying out post-conflict rule of law assessments. The next step is a multi-disciplinary team approach to implementation, from planning through monitoring, with other disciplines complementing rule of law professionals. One objective is to reinforce the mutual contributions of rule of law and other initiatives to each other's strategic objectives, and to the overall goals of post-conflict reconstruction and the prevention of re-emerging conflict. Another objective is to leverage every possible resource towards supporting and accelerating the reforms that post-conflict reconstruction requires.

In the USAID/Liberia Civil Society Initiative, partnerships with 109 community-based organizations and 12 NGOs, working together to establish nearly 100 development and literacy committees, have already been set up. Technically, these are health, civil society, and agriculture projects. However, individual program components can easily be expanded to include civil and legal literacy programs, running parallel to reconciliation programs which target ethnically divided communities with histories of conflict.
- **Integration of Rule of Law and Conflict Mitigation.** The Office of Democracy and Governance is taking a leadership role in post-conflict rule of law programming. The establishment of the Office of Conflict Management and Mitigation (CMM) underlines USAID's commitment to conflict prevention through integrating conflict management into mainstream development programming. Rule of law is central to conflict prevention. A strong, viable justice sector — formal and informal — can help resolve grievances before they escalate to conflict. Moreover, it can provide for the security and impartiality that limits opportunities for “conflict entrepreneurs” who capitalize on discontent and undermine the state. The ability to predict future conflicts will enable the development of preventive programs. Stable, fair, and

effective justice systems are an essential part of prevention. One critical opportunity for advancing post-conflict rule of law programming is to incorporate elements aimed at future conflict mitigation. The challenge is to ensure that interventions balance immediate needs (for transitional justice, for example) with the needs for a justice sector that can continuously prevent the re-emergence of conflict. The DG Officer can influence the design process to reflect this balance.

In **Ethiopia**, CMM is supporting programs to prevent conflict in a region where current food insecurity and historical differences among ethnic communities pose a high risk. In **Nigeria**, CMM is strengthening the capacity of government and civil society in conflict mitigation. CMM also supports the **Nepal** Transition to Peace Initiative, with both government and civil society components.

- **Strengthening Local Ownership.** The importance of local ownership in post-conflict rule of law programming, from the initial assessment forward, has long been recognized. However, implementation has often fallen short. In the chaotic post-conflict environment, it is sometimes difficult to engage stakeholders, or to distinguish those who are willing to participate in reform from those whose interest is in maintaining the *status quo*. Rule of law interventions are by their very nature political, with a strong impact on reallocating power. Also, there are few established avenues for participation by disenfranchised groups, and many interventions have ended up focusing on formal and centralized institutions that do not reach much of the population. There has been little attention to engaging groups that already represent multiple segments of society (for example, business or agricultural associations that include members of several ethnic groups) and thus can bring multiple interests to the table. Better, more creative strategies are needed to institutionalize and maintain local ownership, thus ensuring greater sustainability of reforms. The DG Officer can be instrumental in expanding the definition of “key stakeholders” and in fostering new processes that engage these stakeholders throughout the rebuilding process.
- **Generating Political Buy-in.** USAID’s post-conflict rule of law programming experience points to the need for inter-agency collaboration. The success of these programs requires improving outreach and communication to generate both moral and material support from Congress, the Department of State, the Department of Justice, the Government Accounting Office, and other agencies. Such efforts will have dual benefits. First, they will help generate the resources and the long-term attention required for successful post-conflict rule of law interventions. These agencies need a better understanding of the benefits of post-conflict rule of law interventions to U.S. interests. Second, such efforts will help resolve some of the inter-agency conflicts that interfere with these interventions. Generating political buy-in has both bottom-up and top-down components. In the field, the DG Officer can increase the visibility of post-conflict rule of law programs and their contributions to restoring stability and promoting democratic development at the Mission level, thus enabling dissemination of information through the Country Team to the Ambassador. At the headquarters level, more proactive outreach to disseminate success stories will generate a larger constituency for USAID’s programs and facilitate inter-agency collaboration based on the missions, roles, and special capacities of each agency. This is especially important in high-profile, high-budget interventions, where there may be a premium on visible leadership. Bottom-up and top-down efforts will combine to generate greater political buy-in and hence greater support.

Together, initiatives in these four areas will both promote rule of law goals and mitigate conflict. DG Officers engaging in post-conflict rule of law programming are a critical part of the leadership in developing new approaches that enhance learning and improve responses.

APPENDIX A: LIST OF RELEVANT ORGANIZATIONS

I. International Organizations

Name	Acronym
United Nations General Assembly	UNGA
United Nations Department of Peacekeeping Operations	UNDPKO
United Nations Office of the High Commissioner on Human Rights	OHCHR
United Nations High Commissioner for Refugees	UNHCR
United Nations Children's Fund	UNICEF
United Nations Development Program	UNDP
World Bank	WB
Organization of American States	OAS
Organization for Security and Cooperation in Europe	OSCE
OSCE Office for Democratic Institutions and Human Rights	ODIHR
African Union	AU
International Committee of the Red Cross	ICRC
International Organization for Migration	IOM

2. Bilateral Organizations

Name	Acronym
Canadian International Development Agency	CIDA
Swedish International Development Cooperation Agency	SIDA
United Kingdom Department for International Development	DFID
Danish International Development Agency	DANIDA
Deutsche Gesellschaft für Technische Zusammenarbeit	GTZ
Norwegian Agency for Development Cooperation	NORAD
Australian Government Overseas Aid Program	AusAID
New Zealand International Aid and Development Agency	NZAID
Japan International Cooperation Agency	JICA

3. U.S. Agencies with Roles in Post-conflict Rule of Law and Related Programs

Agency	Acronym
Department of State	DoS
Bureau of International Narcotics and Law Enforcement Affairs	INL
Bureau of Democracy, Human Rights, and Labor	DRL
Coordinator for Reconstruction and Stabilization	S/CRS
War Crimes Issues	S/WCI
Office to Monitor and Combat Trafficking in Persons	G/TIP
Agency for International Development	USAID
Bureau of Democracy, Conflict, and Humanitarian Assistance/Democracy and Governance	DCHA/DG
DCHA Office of Conflict Management and Mitigation	CMM
DCHA Office of Transition Initiatives	OTI
Office of Military Affairs	OMA

Department of Justice	DOJ
International Criminal Investigative Training and Assistance Program	ICITAP
Overseas Prosecutorial Development Assistance and Training	OPDAT
Department of Defense	DOD

APPENDIX B: REFERENCES

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