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USAID SUPPORT FOR RULE OF LAW IN CENTRAL AMERICA AND MEXICO: STRATEGIC PRIORITIES FOR THE FUTURE

NOVEMBER 2009

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List of Acronyms

ABA/CEELI	American Bar Association Central European and Eurasian Law Initiative
ADR	Alternative Dispute Resolution
ARENA	<i>Alianza de Renovación Nacional</i>
BANOBRAS	<i>Banco Nacional de Obras y Servicios Públicos</i>
CAFTA	Central America Free Trade Agreement
CEJA	Justice Studies Center of the Americas
CEPEJ	European Commission for the Efficiency of Justice
CIA	U.S. Central Intelligence Agency
COMET	Community Empowerment and Transformation project
CPC	Criminal Procedures Code
CSO	Civil Society Organization
DA	Development Assistance
DCHA/DG	USAID Bureau for Democracy, Conflict, and Humanitarian Assistance, Democracy and Governance Office
DG	Democracy and Governance
DI	Democracy International, Inc.
FBI	U.S. Federal Bureau of Investigation
FMLN	<i>Frente Farabundo Martí de Liberación Nacional</i>
GDP	Gross Domestic Product
IADB	Inter-American Development Bank
IBRD	International Bank for Reconstruction and Development, the World Bank Group
ICITAP	U.S. Department of Justice International Criminal Investigative Training Assistance Program
IIDH	Inter-American Institute for Human Rights
ILANUD	Latin American Institute for the Prevention of Crime and Treatment of the Offender
INL	U.S. State Department Bureau of International Narcotics and Law Enforcement Affairs
INECIP	Institute of Comparative Studies in Penal and Social Sciences

LAC	Latin America and the Caribbean
NAFTA	North American Free Trade Agreement
NAS	U.S. Department of State Narcotics Affairs Section
NGO	Non-Governmental Organization
OAS	Organization of American States
OECD	Organisation for Economic Cooperation and Development
PAN	National Action Party
PPP	Purchasing Power Parity
PRI	Institutional Revolutionary Party
PRODERECHO	<i>Programa de Apoyo al Estado de Derecho</i>
ROL	Rule of Law
SOW	Statement of Work
UNDP	United Nations Development Programme
USAID	United States Agency for International Development
USG	United States Government
UTE	<i>Unidad Técnica de Evaluación</i>

EXECUTIVE SUMMARY

This study reviews the United States Agency for International Development’s recent support for rule of law (ROL) in Mexico and Central America, with an emphasis on Mexico, Guatemala, and El Salvador. The purpose of the study is to examine current political, economic, and social challenges in the region in a changing context, gauge the effectiveness of ROL programs to date in advancing democratic development, and make recommendations for strategic priorities for ROL programming in the region over the next five to ten years.

The report is divided into six parts: Part One provides an introduction detailing the objectives, methodology, limitations and organization of the study. Part Two contains a review of the political, economic and social context in the region over the last few decades and how it has changed. Part Three analyzes threats to democracy in the region and key rule of law issues. Part Four discusses ongoing USAID support for justice sector reforms and the rule of law in a changing regional context, as well as what other donors have done to support reforms. Part Five contains recommendations for future ROL programming. Finally, Part Six contains country overviews for the three countries visited for this study: El Salvador, Guatemala, and Mexico. Conditions in Mexico, and its relationship with the United States, are markedly different from those of either El Salvador or Guatemala, making direct comparisons with Central American countries problematic.

Part One: Context. The challenges of the revolutionary upheavals in Central America dating from the late 1970s provided the political backdrop for USAID ROL programming in the criminal justice system that began in the mid-1980s. The original rationale for programs was rights protection and efforts to end impunity in an environment marked by serious human rights violations. Democratic transitions and the resolution of internal armed conflicts during the 1980s and 1990s helped change that context. Today all the countries in the region are electoral democracies, but “democratic backsliding” is evident in countries such as Honduras and Nicaragua. Though the original rationale for ROL programming is no longer as compelling, the general argument for the need to consolidate democratic institutions and confront new problems remains valid.

Countries in the region have made moderate economic progress in the past decade. Macroeconomic stability has improved markedly and the inflation, balance of payments, and debt crises of earlier years have not been repeated. The demographics of the region show a very young population. Historically quite rural and agricultural, more of the population now lives in urban areas. The rural to urban migration has been rapid and continues despite the fact that formal employment opportunities in the cities have not kept pace. This combination of young men and urban unemployment is a volatile social mix. The level of violent crime is high and rising, especially in major urban areas.

The most dramatic characteristic that has not changed is the poverty of most people. Per capita incomes have risen slightly, but poverty has not been significantly alleviated. Equality before the law and legal empowerment of the poor is quite limited in spite of improvements in the areas of access to justice, public defense, and alternative dispute resolution. True equality before the law is unlikely to be realized until severe income inequality and social exclusion are significantly reduced. Overall, the context in the region should be examined through a lens of effective democratic governance. Democratic systems are now being asked to “deliver the goods,” a shorthand way of saying that citizens expect visible improvements in the quality of their lives and economic

and social well-being. Viewed as a public service or public good, the same expectation applies to the court system and, more broadly, to citizen security.

Legal Reforms. Latin American legal systems derive from the civil law heritage, which relies on written, inquisitorial methods that concentrate primary responsibility for case investigation and fact-finding in the judge. As practiced in Latin America, the criminal justice system lacked transparency or accountability, and permitted unconscionable delays, secrecy, abuse, illegal and lengthy pre-trial detentions, corruption, and inefficiency. A legal reform movement originated in Argentina in the 1990s with the goal of transforming the inquisitorial systems into adversarial systems with oral and public proceedings. USAID provided early and continuing support to this reform movement. From the early 1990s through the present, most countries in the Latin America and the Caribbean (LAC) region have revised their Criminal Procedures Codes (CPCs) to establish adversarial systems mixing attributes of civil and common law systems.

The reformed CPCs and introduction of oral trial procedures have been major steps forward, although the process of implementation has not been smooth. Countries in the region also have undertaken even broader legal and judicial reform programs to modernize substantive codes, strengthen the judiciary, promote independence, improve the training of judges and court personnel, increase judicial efficiency and transparency, develop alternative methods of dispute resolution, and expand access to justice. Civil society organizations have played an active role in legal and public policy issues. They often include universities and private think tanks, as well as activist citizens' groups and interested professional associations that have exerted pressure for reform in many areas.

Notwithstanding the progress of reforms, public perceptions of criminal justice systems remain highly negative. Judges are widely viewed as corrupt, and the police are seen as abusive as well as corrupt. Underpinning these perceptions is the sharp rise in murder and other violent crime rates in recent years, along with the expansion of narcotics trafficking and growing power of drug cartels. Regional governments and criminal justice systems have been largely incapable of confronting or suppressing criminal activity. In the face of these harsh realities, important systemic reforms over the past two decades are overshadowed or seen as ineffective.

Part Two: Threats to Democracy in the Region and Key Issues for the Rule of Law. The report identifies and analyzes the following major issues that threaten democracy in the region and hobble the operation of the rule of law:

- Governance failures and institutional weaknesses;
- Poverty and the rise of populist authoritarianism;
- Citizen security, violent crime, and law enforcement;
- Lack of political will to sustain and deepen reforms;
- Problems of judicial independence and accountability;
- Access to justice for ordinary citizens.

USAID Support to Reforms. Despite substantial and continuing challenges, USAID-supported ROL programs have made significant contributions to justice sector reform efforts throughout the region. Among such contributions and challenges are the following:

- Criminal justice reforms adopting adversarial systems with oral public hearings have taken root throughout the region, representing perhaps USAID's greatest long-term success;

- Judicial modernization and court administration programs have received significant attention and resources since the 1980s with some success, but the failure of justice sector institutions today to perform satisfactorily demonstrates that such technical improvements have not transformed institutional cultures or behaviors to sustain the reform process;
- Due in part to USAID's support, an active, energized civil society is playing a larger, more influential role in justice sector issues; working with a wide swath of civil society to promote reforms, including influential actors such as the business community, has been a successful approach;
- USAID support for access to justice programs has been popular and successful in the region and serves compelling public needs;
- Creation or strengthening of public defense services through Public Defender Offices, legal advocacy or civil society organizations, and university law clinics has expanded access to justice;
- Consolidated legal services centers, such as the *Casas de Justicia* (Justice Houses) model and the "24-hour courts" in Guatemala, are improving access;
- Programs targeted to the legal status and treatment of women have worked well;
- Strengths and weaknesses in rule of law efforts and sector status vary widely between and, in some cases, within countries; no single model for reform exists.

The rise in violent crime and concern about personal security is the new driver to which USAID programs are responding. The inability of governments in the region to control the spread of violent crime has led USAID Missions to initiate programs to improve prosecutorial and police performance in the criminal justice system.

Part Three: Recommendations. The report gives highest priority to improving institutional performance of the key justice sector institutions, devising workable responses to the citizen security problem, and efforts to combat corruption. Other issues remain important, but are ranked as lower priorities. Recommendations include:

Strengthening Performance of Critical Institutions, Governance and Customer Focus. Despite many years of ROL programming, justice sector institutions are not seen as doing a minimally satisfactory job. This calls for renewed attention to institutional performance with accountability standards. "Justice" needs to be viewed as provision of a public service to a citizen/customer. Institutionally-focused improvements and training for system operators cannot be considered adequate or complete until tracked to the customer level and tested to see if citizen needs and expectations are being met:

- The highest strategic priority should be given to further advancing the institutional gains achieved over two decades in the court system for its central institutional actors – judges, prosecutors, and counsel (public defenders) – to improve the effectiveness of the adversarial system in criminal justice; police institutions will need to be added to this mix;
- With highest priority, focus more clearly and sharply on the specific institutional performance improvements needed in these three institutions (and police) and the indicators to be used to track negotiated performance standards, using intensive "change management" approaches for management reforms;

- Articulate and implement as a high priority the basic governance principle of the courts as public service institutions that deliver services to citizen court users (“customers”) so as to protect personal and property rights and maintain the rule of law in a democratic society.

Citizen Security and Response to Violence in Society. The inability and unwillingness of the region’s police forces to modernize, function, and cooperate as required within the reformed systems is a major and recognized obstacle to progress:

- USAID, in responding to the need for more effective prosecution of criminal cases, should give a high priority to improved collaboration between prosecutors and police in criminal investigation and trial preparation;
- Community policing programs represent a promising high priority approach and should be tested more fully, while recognizing the need for substantial additional integrated development inputs beyond just the policing program and corresponding community activities;
- As a highest priority if shown to be feasible, comprehensive institutional reforms in police institutions are needed to improve performance; USAID should initiate thorough assessments of what programming should be put in place for the next five to ten years;
- Successful criminal justice reform programs should incorporate prevention strategies and provide for alternatives to incarceration.

Access to Justice. Access to justice activities have reduced social marginalization and inequality with respect to justice sector institutions and should continue to receive priority, both with government and civil society. In addition to public defense and resolution of criminal disputes, USAID should expand strategically to increase access in the area of civil law and disputes, especially in small claims and common matters that affect people in their daily lives, but are not being adequately addressed.

A Role for Civil Society. Civil society has become a key actor in the reform process and its role will be critical in advancing and sustaining reforms:

- Maximize use of USAID expertise in civil society development by continuing to give priority to non-governmental organization (NGO) partners as justice sector “watch dogs” for accountability, as supporters of reforms in a rights-based legal system, as partners with the government in crime prevention, and as the principal advocates for greater legal empowerment of the poor;
- Give high priority to work with civil society ‘justice coalitions,’ as well as emerging professional associations that have real interests and political will in improving the system at the working level and from within.

Judicial Independence and Accountability. In the judiciary, serious questions remain as to whether acceptable quality, integrity, and efficiency are serving to sustain judicial reforms. Continued corruption was often cited, and citizen confidence in judges and the courtrooms they run is still unacceptably low:

- In addition to recommended change management and institutional performance improvement programs with the judiciary, USAID should support judicial integrity programs, such as disciplinary bodies and focused anti-corruption mechanisms;
- Where political will or leadership in the judiciary for higher accountability standards is lacking, USAID should emphasize ‘demand side programming’ with civil society organizations (CSOs) to continue efforts to improve the integrity and quality of the judiciary;

- USAID has moved away from programs with the judiciary in recent years, largely due to dissatisfaction with judicial performance and lack of support for reforms, but because of the importance of the judiciary should still seek programming opportunities, which might include targeted assistance to professional associations of judges or particular categories of jurists, rather than the traditional judicial branch as a whole.

Corruption. Corruption affects all of the justice sector institutions to varying degrees, but all observers cite it as an urgent issue that must be addressed. USAID should support serious efforts with highest priority to reform these institutions and improve their performance in the eyes of their customers and the public at large, as recommended above, and should require anti-corruption and accountability elements in all assistance packages and change management plans.

Extending the Adversarial System from Criminal to Civil Reforms. Reforms to Civil Procedures Codes and practices could have potentially far-reaching consequences and significant benefits to a broad range of civil matters and litigation, including such everyday matters as divorce, family law, debt, commercial transactions, property, and labor disputes. Helping to create a modern, harmonized system based on oral and public proceedings in matters of both criminal and civil jurisdiction would be a signal achievement. Reducing complex and formalistic civil procedures, especially in small claims, would moreover enhance access to justice. The regional trend appears to be shifting toward civil law reforms, and USAID should look for ways to support reforms in the civil justice system to the extent possible.

Synthesis of Recommendations and Funding Scenarios. It is clear that the direction of ROL programming will continue to give highest, almost exclusive, priority to elements of the criminal justice system. Given anticipated funding levels for DG programs and ROL in particular, it unfortunately appears that USAID may not have sufficient resources to take advantage of the attractive opportunity to support emerging reform efforts in the civil justice system, although civil reforms will assuredly be less time and resource-intensive than the criminal code reforms.

USAID programs in the region and elsewhere typically include civil society and access to justice components in addition to a public sector institutional partner, *e.g.*, courts, prosecutors, and public defense. Such a structural approach remains desirable. However, the high priority given to governance and institutional reform objectives in justice sector institutions will make it difficult to maintain balanced funding across all three without an increase in resources for ROL programs. This is especially true if USAID adds police institutions as a major new justice sector partner.

Work to achieve ROL objectives should be done at multiple levels, with relative emphasis depending on country circumstances, openings presented, and host country leadership, *i.e.*, both “bottom up” and “top down.” The report recommends that in a strategic sense USAID focus most importantly on achieving measurable results at operational levels where institutional changes intersect with service delivery to citizen customers who can recognize improvements that represent better governance on their behalf. Strategic focus should be placed on the ultimate downstream benefit and utility to the public.

1.0 INTRODUCTION

1.1 Objectives, Methodology and Limitations

1.1.1 Objectives

The USAID Bureau for Democracy, Conflict, and Humanitarian Assistance, Democracy and Governance Office (DCHA/DG), commissioned the firm Democracy International (DI) to conduct this study to review USAID’s recent support for rule of law strengthening in Mexico and Central America, with an emphasis on Mexico, Guatemala, and El Salvador. The study focuses on the last five to seven years of programming, although the core countries began rule of law (ROL) programming at different points and are now at different stages of development.¹ The purpose of the study is to examine current political, social, and economic challenges in the region, gauge the effectiveness of ROL programs in advancing democratic development, and formulate recommendations concerning strategic priorities for ROL programming in the region over the next five to ten years.

1.1.2 Methodology

The study team consisted of two ROL experts/lawyers with substantial regional and USAID experience: Charles E. Costello, Team Leader, and J. Michele Guttmann (with particular expertise and knowledge of Mexico). Danielle Pearl and William Gallery of Democracy International provided research and logistical support at different points.

In accordance with the Scope of Work (SOW), this study began with a desk review of USAID project-generated documents and reports detailing USAID ROL assistance for justice reform in the region, particularly Mexico, Guatemala, and El Salvador. Where available, attention has been focused on evaluations, assessments, and studies of challenges, impact, and lessons learned from ROL efforts. Similar such documents from other sources, including NGOs and other donor institutions, were also identified and reviewed to a limited extent.

The research team held initial planning meetings and conducted interviews in Washington, DC with representatives of USAID/DCHA, the Bureau for Latin America and the Caribbean (LAC), the State Department Bureau of International Narcotics and Law Enforcement Affairs (INL), the former head of the Department of Justice International Criminal Investigative Training Assistance Program (ICITAP), the Inter-American Development Bank, think tanks, and a number of contractors that have implemented ROL programming in the region. The initial Washington meetings were scheduled to coincide with the annual DG Officers’ Conference, which afforded the research team the opportunity to attend and meet with a number of officers serving in the region.

The team conducted limited field work, totaling two weeks, in the core countries of Mexico (one week), Guatemala (2 ½ days), and El Salvador (2 ½ days). Meetings were held with USAID and Embassy officials in all countries. To the extent possible, the team conducted interviews with key

¹ For a more in-depth historical and programmatic review of USAID’s rule of law assistance in Latin America, *see* the Latin America Regional Synthesis and individual country reports included in: “Achievements in Building and Maintaining the Rule of Law: MSI’s Studies in LAC, E&E, AFR, and ANE,” Occasional Papers Series, United States Agency for International Development (2002) [*hereafter* USAID ROL Achievements Study].

counterpart institutions and individuals in the judiciary, prosecutors' offices, public defenders' offices, ombudsman's offices, ministries, NGOs, and universities, as well as with implementing partners. The team visited courtrooms and observed legal proceedings in all three countries, in addition to several alternative dispute resolution (ADR) facilities. Subsequent to the field work, the team leader held a debriefing with DCHA and LAC officers.

DI submitted a draft report to USAID on September 1, 2009. A half-day workshop to discuss preliminary findings, clarify recommendations, and respond to questions with USAID staff was held on September 10, 2009. The draft was later revised to incorporate information and input from the workshop, written comments from USAID, follow-up interviews, and further discussions with USAID DCHA/DG.

1.1.3 Limitations

This study was not designed to be comprehensive in its coverage; the scope of work is broad and relatively shallow. The time span considered is substantial, but the documents available and field time allotted were rather limited.² Moreover, although providing distinct perspectives and experiences in ROL reform, the three core countries visited are not fully representative of all countries in this region.

Available documentation, particularly recent evaluations and assessments of program impact, was limited. USAID's search of its Development Experience Clearinghouse yielded relatively modest results, and failed to identify a number of relevant reports that have not been incorporated into the database. Many of the reports produced tended to concentrate on descriptions of project activities, rather than tying program approaches to results and impact. The surprising lack of project and program evaluation studies made it more difficult to determine why approaches were more or less successful and therefore forced greater reliance on historical and anecdotal evidence. To a significant extent, however, certain regional patterns and trends are nonetheless apparent.

The principal methodology of the study was informant interviews supplemented by desk review. Though providing valuable information and insights for informed investigators, the methodology is not empirically based or data rich and is necessarily qualitative.

1.2 Organization of the Report

Following this introductory material, the study is divided into five substantive parts. Part Two contains a review of the political, economic and social context in the region over the last few decades and how it has changed. Part Three analyzes threats to democracy in the region and key rule of law issues. Part Four discusses ongoing USAID support for justice sector reforms and the rule of law in a changing regional context, as well as what other donors have done to support reforms. Part Five contains recommendations for future ROL programming. Finally, Part Six contains country overviews for the three countries visited for this study: El Salvador, Guatemala, and Mexico.

² Due to scheduling needs, the Mexico field work took place in mid-July and was limited to some extent by court and judicial holidays at that time.

2.0 STATUS OF RULE OF LAW IN THE REGION

2.1 Political, Economic and Social Context

The challenges of the revolutionary upheavals in Central America dating from the late 1970s provided the original context for USAID rule of law programming that began in the 1980s. The initial rationale for programs was rights protection and efforts to end impunity in an environment marked by serious human rights violations. Democratic transitions and the resolution of internal armed conflicts during the 1980s and 1990s helped change that context. During this 30-year period the countries in the region have undergone major political changes, mainly for the better in terms of democratic development and human rights protections, but with serious governance and social stability problems still evident.

As the political transformation gained momentum in the 1980s, the rule of law and independence of the judiciary became increasingly important to democratic development and economic growth in more open economies. Most Latin American judiciaries had traditionally been treated as adjuncts to the regime in power. Private law had played a comparatively minor role and was allowed to languish or was limited in its application. Judicial systems were largely inefficient and unprepared to meet the needs and challenges of modern and evolving political, economic, and social needs. The necessity for wide-ranging justice sector reforms to support development goals and accommodate those changes became increasingly clear. Much has been accomplished, but many new challenges have emerged since the original focal points of USAID ROL programming were set. A review of the history and successes of USAID's ROL programming generally, including a regional analysis of Latin America as well as individual country studies, was published in 2002.³

Any attempt to describe the Mexico/Central America region accurately must differentiate among countries. They do not fit neatly into one basket. Mexico is a North American country and by far the largest in size and population, with more land and people than all the countries of Central America combined. Mexico has also attained a much higher level of development and is now a member of the Organisation for Economic Cooperation and Development (OECD). Mexico has enjoyed a long period of relative political stability, and its one-party democracy has matured in recent years into a competitive, multiparty system. Mexico is also a federal republic, while the others are unitary states. Costa Rica has been peaceful and democratic for many years. Panama has seen military interference in its politics, but traditionally has kept quite separate from the Central American countries in managing its affairs. Belize is located in Central America but has a clear Caribbean orientation. The Dominican Republic is an island Caribbean nation but has strong ties to the Spanish-speaking countries of the region. The countries that share the most common characteristics are Guatemala, El Salvador, Honduras, and Nicaragua.

With these caveats, the following narrative discusses changes in conditions in the region, particularly with respect to how such changes have affected democratic development and the rule of law. The emphasis is on changes since the 1980s, when USAID rule of law programming began. More specifically, the main focus is on the last five to seven years, which represents one "generation" in

³ USAID ROL Achievements Study (2002).

USAID programming. Political developments predominate, but economic and social conditions are highly relevant as well.

Politically, the region has no strong tradition of governance by rule of law. Generally, until the last two decades elections have not been open and free, and military interference in political affairs or military regimes was common. Executive authority was dominant in all aspects of government. Courts and judges have not enjoyed independence. In such an environment it is not surprising that acceptance in fact of the principle of rule of law is weak. Only with the recent advent of democratically elected civilian leaders have we begun to see any serious attempts to enforce the discipline of the law in public and private affairs. The “culture of lawfulness” necessary to underpin the rule of law is only shallowly rooted in the region. Development projects are not able to change the culture of a society in a dramatic way in such a short period of time. If we consider strengthening the rule of law as an ongoing political process in a democratic system, the region is still in an early stage.

Today all the countries in the region are electoral democracies, and the civil wars in several of the countries have ended. However, “democratic backsliding” is evident in countries such as Honduras and Nicaragua. The original rationale for USAID rule of law programming in the criminal justice system, *i.e.*, to combat human rights violations and impunity as part of the transition to freely elected democratic regimes, is no longer as compelling. The general argument of the need to consolidate democratic institutions, then as now, remains valid.

El Salvador has experienced significant changes in context in recent years. The Peace Accords in 1992 wrought major changes in the structure and institutions of government, including the courts, army, police, and electoral commission. The politically based violence of the civil war ended and has not recurred, although violent crime is a serious social problem and has been for a number of years. All observers agree that El Salvador has become a much more pluralistic society and that the government respects fundamental rights and liberties. Political dissent is no longer met with violence, and elections are open and competitive with results respected. The main opposition party, known by its acronym of FMLN (*Frente Farabundo Martí de Liberación Nacional*), the political party that grew out of the armed insurgency forces and its political arm, gradually increased its strength in legislative and municipal elections, but had never successfully competed for the presidency.

The presidential elections early this year represent a watershed in El Salvador’s political history. For the first time, the leftist FMLN has assumed power, marking a sharp break from 15 straight years of conservative control of government by the rightist ARENA party (*Alianza de Renovación Nacional*). The new president, Mauricio Funes, not an ex-combatant, is a self-proclaimed moderate and is expected to follow centrist policies and maintain close relations with the United States. Nonetheless, major changes in the government’s policies and outlook on governance are expected.

Guatemala does not have a democratic tradition or governments historically known for ruling according to the law. Fraudulent elections and military-dominated governments prevailed until 1985. Democratic government has gained ground since then, and the Peace Accords in 1996 that finally ended the civil war have promoted a more open society where free expression is not met with government repression. However, elected governments have not been able to maintain strong

public support once in office. The current government is having serious problems governing effectively.

In Mexico, the landmark presidential election of National Action Party (PAN) candidate Vicente Fox in 2000 ended 71 years of PRI rule. He was succeeded in 2006 by the election of President Felipe Calderón, also of the PAN party, whose term ends in 2012. Over the past two decades, Mexico has initiated a series of profound democratic reforms in its government institutions in order to ensure free and fair elections; increase accountability and reduce corruption in the executive branch; decentralize federal authority to states and municipalities; strengthen and make the legislature more representative; and increase the independence and efficacy of the judiciary. Notwithstanding its progress and potential, Mexico suffers serious shortcomings in basic requirements of competitiveness, including poor governance, rampant corruption, low citizen trust in politicians, high levels of crime and violence, and an inefficient and extremely weak criminal justice system.⁴ A major criminal justice reform at the federal constitutional level was passed in June 2008 and is considered an important step toward increasing productivity and fostering growth, “however, it is unclear whether the changes can be implemented.”⁵

Economically, countries in the region have made moderate progress in the past decade. Per capita incomes have risen slightly, but rapid and significant alleviation of poverty has not been achieved. Macroeconomic stability has improved markedly and the inflation, balance of payments, and debt crises of earlier years have been avoided. As USAID rule of law programming has not focused on economic growth objectives or the civil and commercial law system, the relevance of the changes in economic conditions is not high. Arguably, support to recent market-oriented economic reforms would be desirable, as the current legal systems do not provide an adequate foundation for a dynamic, modern market economy. Fulfilling the economic potential of the Central America Free Trade Agreement (CAFTA) would lend support to that argument (USAID is currently supporting a small regional labor law activity).

El Salvador is a dollarized economy with an open, market-friendly policy framework. Whether that will change under the Funes administration is yet to be seen. Indications are that the government will retain a private sector-driven growth strategy, but with higher government investment and spending in social sectors such as health and education. Per capita incomes are at \$6,670 (PPP method) and, although the majority of the population still is poor, incomes have risen and poverty levels have dropped appreciably, supported by a high level of remittances from the diaspora in the U.S. Government revenues have increased and now stand at 19.2% of GDP.⁶ Income inequality is severe and has increased, with the lowest 10% of the population receiving only 1.8% of household income (the highest 10% receives 37%). The country’s Gini co-efficient is 52.4.⁷

Per capita annual income at \$4,520 (PPP method)⁸ puts Guatemala in the lower middle-income tier, but it belies severe income inequality. The Gini coefficient is 56, and the bottom 10% of the

⁴ Ricardo Hausmann, et al., eds. “The Mexico Competitiveness Report 2009,” World Economic Forum (2009) pp. iv, 10, 23.

⁵ Id. p. 10.

⁶ Inter-American Development Bank, Country Page, El Salvador, Macro Watch Country Table, www.iadb.org.

⁷ CIA World Factbook (2009), El Salvador, Economy, www.cia.gov.

⁸ World Bank, Country Page, Guatemala, Data, Economy (2009).

population receives only 1.3% of household income (the highest 10% receives 42.4%).⁹ Taxes as a percentage of GDP are 12.9%,¹⁰ one of the lowest in the Western hemisphere. A landowning elite controlling the arable land that produces the country's main export crops has long dominated the economy. Allied with urban banking and commercial interests, this elite traditionally supported military rule in government in the interests of stability and protection of its economic position. As a result of very low taxation and public revenues, the level of public investment and services is quite low. Guatemala has opened its economy considerably as part of the CAFTA process and follows generally adequate macroeconomic policies. Annual GDP growth in the years 2003-2007 (before the onset of the global recession) has been good at above 4%, but sustained high growth levels are necessary to achieve per capita income gains to alleviate poverty.¹¹

Conditions in Mexico, and its relationship with the United States, are markedly different from those of either El Salvador or Guatemala. Mexico and the U.S. have extensive historical, commercial, cultural, geographic, and educational ties. Economic development and expansion have grown dramatically through partnership in the North American Free Trade Agreement (NAFTA), and, since ratification of NAFTA in 1994, Mexico has become the third largest trading partner of the United States. Mexico's economy – the twelfth largest in the world – has been one of the hardest hit in Latin America by the economic crisis due to its close ties with the U.S.¹² The U.S. and Mexico share a border of almost 2,000 miles that spans four U.S. and six Mexican states. More people cross the border between the U.S. and Mexico than between any other two countries in the world.¹³ U.S. relations with Mexico have a direct impact on the lives and livelihoods of millions of citizens of both countries in matters such as trade and economic reform, homeland security, drug control, migration, and democratic development. Per capita income is much higher at \$14,270 (PPP method), but the lowest 10% of the population receives only 1.8% of national household income (the highest 10% receives 37.9%); government revenues of 14.7% (as a percentage of GDP) are relatively low for the country's level of development.¹⁴ The Gini coefficient has gone down in recent years and is currently 47.9, indicating a lessening of inequality in income distribution.¹⁵

Socially, the demographics of the region show a very young population. Although historically quite rural and agricultural, more of the population now lives in urban areas. The rural to urban migration was rapid and is continuing in spite of the fact that formal employment opportunities have not kept pace. This combination of young men and urban unemployment is a volatile social mix.

⁹ CIA World Factbook (2009), Guatemala, Economy.

¹⁰ Inter-American Development Bank, Country Page, Guatemala, Macro Watch Table, www.iadb.org.

¹¹ World Bank, Country Page, Guatemala, Introduction (2009).

¹² Peter Hakim, "Political Ramifications of the Economic Crisis," *Américas* (July 2009), p. 11; "Freedom in the World: Mexico" (Freedom House, 2009), p. 3.

¹³ The San Diego/Tijuana crossing alone allows the largest international flow of people to cross than any other border crossing in the world, and the El Paso/Juárez crossing is not far behind. "U.S.-Mexico Border Security and the Evolving Security Relationship: Recommendations for Policymakers," U.S.-Mexico Binational Council (April 2004), p. 3.

¹⁴ CIA World Factbook (2009), Mexico, Economy; Inter-American Development Bank, Country Page, Mexico, Macro Watch Table.

¹⁵ CIA World Factbook (2009), Mexico, Economy.

The level of violent crime, especially homicide, is high, mostly in major urban areas; this is not an entirely new phenomenon.¹⁶ Murder rates are high almost everywhere in Latin America by international standards. The sharp increase in recent years is often attributed to internecine drug cartel wars and the growing presence of violent youth gangs spawned in the United States, an unintended consequence of the civil wars in the region. The percentage of successful prosecution of homicides is very low, further strengthening the public perception that the criminal justice system does not meet social needs of citizen security.¹⁷

In a social as well as economic sense, the most dramatic characteristic that has not changed is the poverty of most people. Anything done to date in rule of law has not significantly affected the low-income status and social marginalization of the majority of the population, nor did it purport to do so. Equality before the law or legal empowerment of the poor is quite limited in spite of improvements in access to justice, public defense, and alternative dispute resolution. Political influence is valuable currency as well, and the net result is corruption and still-present impunity, very serious problems negatively affecting respect for the rule of law and performance of the justice system. True equality before the law is unlikely to be realized until severe income inequality and social exclusion are significantly reduced. “Rule of law” is not an independent variable in a society.

El Salvador, like its neighbors, has a young population and a labor force with low educational attainment. The civil war caused large-scale emigration and also a large movement from rural areas to safer urban centers. The consensus that ended the war has served in the last 15 years to make the society much more open. This greater inclusiveness seems to have fostered a certain sense of optimism about the country’s future, and the new government is regarded with high expectations for social change and greater efforts to deal with pervasive poverty.

Guatemala remains a deeply divided country, with its large indigenous population in particular suffering great disparities in income, health, education and other indicators of social well-being. The Peace Accords finally recognized Guatemala as a multi-cultural nation, but severe social inequality is still undeniable. The civil war exacted a huge toll in human lives and social disruption, especially in rural areas. The demographics of the country describe a very young population, with 39.4% under the age of 15 and a median age of only 19.4 years.¹⁸ Although Guatemala was until recently very rural and agricultural, the population is now split about evenly between urban and rural areas. The country is at peace, but the levels of violent crime are high, especially in major urban areas.

Mexico’s much higher level of economic and social development makes comparisons with Central America problematic, but Mexico still faces serious problems of poverty, especially in rural areas and the southern part of the country. A sharp rise in kidnappings and murder rates, especially in those areas most affected by organized crime and narcotics trafficking, has shaken social stability.

¹⁶ UNDP, Statistical Report on Violence in Guatemala, (December 2007), p. 21. www.undp.org.gt/frmPub.aspx.

¹⁷ "Estado de Derecho," Checchi & Company Consulting, USAID/Guatemala, undated.

¹⁸ CIA World Factbook (2009), Country Page, Guatemala, Data, People.

Overall, the regional context should be examined through the lens of the challenge of effective democratic governance. This holds true even for Mexico, although Mexico has much greater state capacity and is a special case compared to the other countries in the region. Throughout the region, democratic systems are now being asked to “deliver the goods,” a shorthand way of saying that citizens expect visible improvements in the quality of their lives and economic and social well-being. Viewed as a public service or public good, the same expectation applies to the court system. This is especially true of the criminal justice system, despite the fact that few citizens are ever court users, because citizens are the victims of crime and judge the system’s shortcomings harshly. It is important in this context to analyze the role of the police closely, because most citizens’ real-world contacts with the overall justice system are initially or solely with the police. This also includes the important prosecutor-police relationship, which is critical to the operation of the adversarial system in criminal matters.

2.2 Legal Frameworks

Latin American legal systems derive from the civil law heritage, which relies on written, inquisitorial methods that concentrate primary responsibility for case investigation and fact-finding in the judge. As practiced and applied in Latin America, the criminal justice system lacked transparency or accountability, and permitted unconscionable delays, secrecy, abuse, illegal and lengthy pre-trial detentions, corruption, and inefficiency. A legal reform movement based on Western European models and practices originated in Argentina in the 1990s and spread from there throughout Latin America. The goal of the reform movement was to move away from the inquisitorial system and to incorporate oral, adversarial, and public proceedings. Modernization and revision of criminal procedures codes became the principal focus.

USAID provided early and continuing support to this reform movement. Support from other donors and lenders followed. From the early 1990s through the present, many if not most countries in the LAC region have revised their Criminal Procedures Codes (CPCs) to establish adversarial systems mixing attributes of civil and common law systems and to incorporate provisions for the protection of individual rights, presumption of innocence, due process, freedom from arbitrary or lengthy detentions, open and oral trial proceedings, processing deadlines, increased prosecutorial roles, and judges who serve as impartial decision-makers rather than investigators.

The CPC reforms commonly allow alternative case dispositions such as plea-bargaining, *nolle prosequi*, mediation, restitution, and community service. The reforms further provide for conditional terms of pre-trial release for criminal defendants instead of indefinite pre-trial detention. The new CPCs sought to remedy much of the inequity and imbalance inherent to the systems in place, to reduce impunity and opportunities for corruption, to confer and protect individual rights and due process, to speed case resolution, and to build more credible, reliable, transparent legal systems.

In the Mexico/Central America region, Guatemala was the first to reform its CPC in 1992. Guatemala’s reform was to have taken effect as of 1994 for all new cases, but implementation was delayed due to insufficient preparation. Guatemala was followed by Panama (1995 reforms, which modified a process already fairly adversarial), Costa Rica (1996 code took effect for all cases in 1998), El Salvador (1996 reforms took effect for all new filings as of 1998), Nicaragua (2001 reforms took effect in 2003), Honduras (1999 reforms effective as of 2002), and the Dominican Republic (2002 reforms took effect for new cases in 2004). Mexico has taken the most re-

cent steps toward CPC reform, beginning at the state level in 2004 and culminating in 2008 with a federal constitutional reform that mandates implementation of state and federal CPC reforms throughout the country (a total of 33 jurisdictions) by 2016. Many substantive criminal codes have also been modified, both to modernize and refine antiquated criminal laws. Not surprisingly, progress and success in implementation of reforms has been uneven across the region. Reform of outdated and formalistic *civil* procedure codes has taken a back seat to criminal reforms. Despite the introduction of oral and public court proceedings in criminal cases, civil matters are still conducted by written submissions and in closed proceedings, shielded from scrutiny and highly susceptible to corruption. Civil systems remain archaic, formalistic, and unwieldy. Overall complexity and delays in civil processes prolong enforcement, reduce confidence, and contribute to perceived or effective impunity.

2.3 Actors and Institutions

The reformed CPCs and introduction of oral trial procedures have been major steps forward for the region's justice sectors, but the process of implementation has not been smooth. Reforms have imposed enormous new demands on justice sector actors and institutions, and existing institutions have required massive organizational and operational reforms to implement the new laws. Key players had significant new responsibilities to carry out in an unfamiliar process and setting.¹⁹ The new adversarial systems separate and redefine the roles of critical actors in the investigation and prosecution of crimes. Thus, the new CPCs rely on adequate performance, cooperation, and integration of roles and responsibilities of four principal institutions: the police, the prosecutors, the public defenders, and the judiciary. Despite pockets of excellence in the region, these institutions are largely weak and have faced substantial barriers to operate and coordinate efforts for successful criminal investigations and adjudication.

The new systems have suffered some significant setbacks, as well as backlash, particularly against pre-trial release provisions and alternative case dispositions, which are seen by some segments of the population as “protecting criminals.” Public reaction to pre-trial release has become more and more negative, especially in those countries where crime and public security concerns have risen. Conditional release and alternative sentencing are perceived as “allowing criminals to go free.” In some countries, conditional release is more often denied to poor defendants in cases of petty crimes, but still permitted for wealthier defendants and in cases of white-collar crime and corruption. This growing trend and lack of public education feeds public perception of injustice and cynicism about the application of laws.

All countries in this region have made efforts to make changes and reform actors and institutions to fulfill the new CPC requirements, but the process has been slow and uneven. It has become abundantly clear that code reforms, in and of themselves, will not produce the necessary institutional and practical changes for implementation without significant additional political will and resources to carry them through.

1. *Judiciaries*. In recent years, progress toward transparency, merit selection, and career laws have led to improvements in judicial appointments. Courts have gained strength and independence, and public awareness and visibility of judges and judicial decisions have been raised. Non-

¹⁹ USAID ROL Achievements Study, p. 7.

etheless, significant problems persist, including politicization, corruption, and lack of independence (both horizontal and vertical). Many countries have created judicial councils to administer courts and manage judicial personnel, including hiring, training, and performance evaluation (of court personnel and lower court judges). The composition of such councils varies widely between countries, but they are generally intended to oversee judicial selection, supervise court administration, reduce political interference, and allow supreme courts to focus on judicial functions rather than administrative tasks. In some countries, tensions and political rivalries have arisen between councils and supreme courts that have complicated this relationship. Even where relatively successful, underlying structural problems have not been eradicated, as courts throughout the region still suffer from inefficiency, delays, backlog, poor management, corruption, and political influence.

Formal courts do not provide adequate access or coverage in most countries. Both formal and informal alternative mechanisms to increase access to justice have mushroomed in recent years. These include a variety of ADR resources (through courts, municipalities, prosecutors, other governmental entities, as well as numerous private sources). Justices of the Peace are in place in several countries to resolve small claims, but often do not in fact provide significant local access to justice because of a number of factors, including requirements for legal representation even in minimal cases, court and related costs, complicated civil procedures, and lengthy delays.

2. Prosecutors. Prosecutors historically were few in number and performed largely formalistic duties. Under the reformed systems, prosecutors direct case investigations and in theory exercise greater control over police so as to reduce the incidence of police misconduct and build stronger cases based on admissible evidence. Competent and effective prosecutors are essential if the new systems are to function correctly, but Latin American prosecutors have been largely unprepared for their expanded roles and responsibilities. Prosecutors' offices operate within independent or quasi-independent Public Ministries. These offices and ministries have received considerable external support to increase their professionalism, including hiring and promotion practices based on merit, career laws, and extensive training programs.

Unfortunately, prosecutorial offices appear to have remained to a great extent highly politicized, and there have been serious allegations of political influence determining hiring decisions and directing prosecutions (or decisions not to prosecute).²⁰ Prosecutorial offices further suffer from training and technical weaknesses, corruption, and failure to cooperate with defense counsel. The troubled relations with police, however, and difficulties carrying out new roles requiring cooperation and oversight of police investigations, constitute the most serious threat to carrying through the criminal justice reforms.

3. Public Defenders. Competent defense counsel is critical to the functioning, fairness, and success of the reformed systems. National constitutions incorporate broad guarantees of free legal

²⁰ In Honduras, for example, political allegations have compromised the credibility and capacity of the Public Ministry. A number of well-regarded prosecutors who had received training from USAID were fired in 2003/2004 in alleged retaliation for their inquiries and allegations about questionable or corrupt practices within the Public Ministry. In April/May 2008, allegations made by prosecutors within the Public Ministry of institutional corruption, concealment of cases, and failure to prosecute powerful interests escalated into a public hunger strike in the congressional square alleging corruption and collusion by the Attorney General and his Deputy.

representation to poor defendants in criminal cases and, in some countries, the guarantee extends to civil matters. Historically, however, minimal state attention and resources have been devoted to fulfilling these obligations and the guarantees have existed mainly on paper. Full-time public defenders are scarce in the countries of Latin America, which instead rely heavily upon inexperienced contract attorneys and lawyers working *pro bono* or at minimal charge to fulfill the state's obligation to provide counsel to indigent defendants. As a result, poor people accused of crimes have had little access to competent legal assistance. The harm and inequities resulting from this failure are magnified by the widespread incidence of and reliance upon lengthy pre-trial detentions for criminal defendants.

In accordance with CPC reforms, much greater emphasis has been directed to establish or expand public defender offices in the region, train criminal defense attorneys representing poor people, implement competitive exams and career laws, coordinate defense networks, and create cadres of competent and professional public defenders. Most public defender offices operate under the Supreme Court, although some are autonomous or semi-autonomous. Although still inadequate to meet the overwhelming demands for representation, and still outweighed by the resources directed to prosecution, the quality and availability of legal defense through public defender offices in the region have improved dramatically.²¹

4. *Police.* Well-functioning police forces, conscious of their new role in a democratic society, are integral components of the reformed criminal justice systems. Almost without exception, however, police operate poorly throughout the region and undermine reform potential. We heard positive comments about police only for Nicaragua and El Salvador, and we assume better performance in Costa Rica. In addition to their troubled relationship with prosecutors, the police have scarce resources to perform even basic police duties, are underpaid, and lack adequate education, training, vetting, internal controls, and oversight. Incompetence, corruption, and abuse of police authority are frequent complaints. Reforms have also been hampered by a crippling lack of capacity, failure of cooperation (especially with prosecutors), and infiltration and influence of non-judicial actors, such as organized criminal networks and narcotics traffickers. Rising crime, gang activity, and public insecurity have at times fostered a tolerance of harsh police practices, and allegations of human rights violations have likewise multiplied. Military personnel and private security forces have increasingly been enlisted to aid inadequate civilian police forces in efforts to control crime, creating additional serious problems of training, oversight, and abuse of authority, *e.g.*, Mexico, Honduras.

5. *Prisons.* Prison conditions in the region are “harsh and dangerous.”²² Prisons are staffed with poorly trained, underpaid, and corrupt guards; overcrowding, alcoholism, drug addiction, and corruption are prevalent, constituting a serious threat to prisoner health and safety.²³ Gang and other criminal activity, including extortion, kidnapping, and illegal drug sales and use, routinely

²¹ The Public Defender Office in the Dominican Republic is a notable example of one such emerging strong institution. Although still outnumbered by prosecutors, the Dominican defenders are reported to be more capable and successful than their opposition.

²² “2008 Human Rights Report: El Salvador,” Country Reports on Human Rights Practices, US Department of State (2009), p. 4; “2008 Human Rights Report: Guatemala,” Country Reports on Human Rights Practices, US Department of State (2009), p. 6.

²³ “2008 Human Rights Report: Mexico,” Country Reports on Human Rights Practices, US Department of State (2009), p. 6.

occur within prison walls and with knowledge or acquiescence of authorities. Physical and sexual abuse of women and juveniles are reportedly common, and pre-trial detainees are held with the general prison population, including violent criminals. Prison conditions are particularly worrisome because of the very high percentages of pre-trial detainees in the region, and the inadequate staffing and coverage of public defenders to provide for their representation and release.²⁴ “[T]here are endless examples of individuals being left in pretrial detention for years, often far longer than the maximum sentence had they been found guilty. Most of these detainees are poor, have never seen a lawyer, and are probably the victims of police who were just looking for someone to take the blame.”²⁵ Mexican and Central American prisons have suffered from notorious riots, violence, and escapes. One objective of the CPC reforms was to reduce the incidence of pre-trial detention. Real progress has been made toward that end, but could be threatened by the climate of insecurity, and public backlash and perception that conditional release allows “criminals to go free.”

6. *Bar associations and other legal professional associations/institutions.* There are no general requirements for bar examinations or continuing legal education for admission or law practice. Whether membership in bar associations is mandatory or voluntary varies by country. Bar associations are largely viewed as political and protective of the legal profession, and in general have been resistant to reforms, although that appears to be changing. Bar associations are often charged with discipline over the profession, but are normally weak and ineffectual in that regard. Very few ethical standards, professional associations, oversight commissions, or mandatory continuing education requirements exist to impose, monitor, police, or enforce standards of legal practice. A variety of legal professional associations are springing up, at both national and regional levels, to represent common interests and actors in the justice sector, including associations of female jurists, prosecutors, magistrates, public defenders, and justice coalitions. A growing regional network of nongovernmental entities and international/intergovernmental organizations is also coordinating reform efforts and sharing information, technical expertise, and experience among countries. Among those are: the Inter-American Institute for Human Rights (IIDH) in Costa Rica; the Latin American Institute for the Prevention of Crime and Treatment of the Offender (ILANUD), also in Costa Rica; the Institute of Comparative Studies in Penal and Social Sciences (INECIP), based in Argentina, which has been a principal leader of the Latin American reform movement; and the Justice Studies Center of the Americas (CEJA) of the Organization of American States (OAS), headquartered in Chile, which functions as a think tank, clearinghouse, and training center for Latin American justice reform.

7. *Law schools/legal education.* Numerous law schools are found throughout the region, and the caliber of legal education varies widely. Legal education and standards of professionalism are inconsistent and often inadequate. Nonetheless, law school curricula have had to evolve to accommodate legal procedural reforms and reorganization and are incorporating broader and often nontraditional issues, such as professional ethics and alternative dispute resolution mechanisms.

²⁴ Procedures under the federal constitutional reforms in Mexico allow not only pre-trial, but pre-charge, detention if certain types of crime are even suspected. Prosecutors may place individuals suspected of organized crime in pre-charge detention (*arraigo*), without defense, for up to 80 days. Human rights organizations have strongly objected to this procedure.

²⁵ Linn A. Hammergren, *Envisioning Reform: Improving Judicial Performance in Latin America* (Penn State Press, 2007), p. 31 [*hereafter* Hammergren, *Envisioning Reform*].

Law school clinical programs and public interest law clinics have begun to develop within the region's law faculties, which contribute importantly to providing representation to poor people, as well as teaching law students practical litigation skills.

The overall quality of legal practice in the region was reported as poor; the caliber of graduates is said to be declining as the number of law schools and students grows.²⁶ Some work has been done to improve standards and consistency, but legal education and the practice of law are subject to minimal regulation and oversight. Strengthening legal education and training is fundamental to bolstering the justice system, but will require a very long-term perspective.

8. *Civil Society.* Civil society has assumed an expanded and active role with respect to development and application of the rule of law. In addition to law-oriented civil society organizations, groups representing specific contingencies or interests have also pursued justice reform to benefit their memberships. For example, women's groups in Latin America have greatly influenced the passage of legal reforms pertaining to domestic violence, political participation, and representation. Media, labor, environmental, business, and human rights organizations have also exerted significant influence in the region. Civil society has engaged in public advocacy and media campaigns on basic issues such as impunity, judicial independence, and corruption. Civil society has led efforts in some countries to demand input into and transparency of judicial selection proceedings, e.g., Dominican Republic, Honduras. In several cases, civil society organizations have influenced legal reforms and have helped to secure a place for reform on the political agenda. In many countries, "pro-justice" movements are now operating alongside more technical think tanks and research institutes. Civil society actors have created pressure and political will for reform, and have "encouraged public awareness and interest in the law, broadened the scope and influenced the direction of reform efforts, and combated justice sector isolationism and secrecy."²⁷

2.4 Progress Toward Justice Sector Reforms

Over the past three decades, countries in the region have undertaken legal and judicial reform programs to modernize substantive and procedural codes, strengthen the judiciary, promote independence, improve the training of judges and court personnel, increase judicial efficiency and transparency, develop alternative methods of dispute resolution, and expand access to justice. Many of the countries have worked with international donors and lenders in this process.

As described in the preceding sections, these justice sector reforms have made considerable progress in the region. The adversarial system, with all the problems in implementation, is widely accepted and appears to be a permanent reform. Although still highly problematic and often subject to political influence, judicial independence has been strengthened. Prosecutors' offices are officially autonomous and prosecutors are adapting to their new, stronger role, although political interference in prosecutorial decisions is still seen as commonplace. The strengthening of public defense systems represents a significant advance. Police forces are problematic. In these now more open societies, civil society organizations are playing an active role in public policy issues

²⁶ "Although law schools in these countries have proliferated...many schools do not provide adequate legal training." "Foreign Assistance: U.S. Democracy Programs in Six Latin American Countries Have Yielded Modest Results," U.S. General Accounting Office (March 2003), p. 33.

²⁷ USAID ROL Achievements Study, p. 11.

with respect to the justice system. They often include universities, private think tanks, emerging professional associations and coalitions, and the activist citizens' groups that have exerted pressures for reform in many areas.

The justice sector reform process began early in El Salvador, but under wartime conditions. The adversarial system supported by USAID has taken strong root and is sustainable, perhaps reflecting the best transition in the region. Plans are already laid to extend it from criminal to civil proceedings next year. Criminal code reforms have been carried out and updated periodically. The backlog in criminal cases, which used to be a major problem of due process, has been eliminated, according to the president of the judicial council. A new Family Law code was also adopted. A budgetary earmark of 6% for the judiciary was given constitutional status, but has had many unintended negative effects. The police force was completely reorganized as part of the Peace Accords in order to improve its effectiveness and to serve its role in a democratic society.

Judicial independence is much stronger, but the judiciary itself has abused it by not keeping judges accountable for the integrity of their actions. The National Judicial Council was established, which appoints all lower-level judges, conducts judicial performance evaluations, and provides training programs. The council and the Supreme Court have an antagonistic relationship that is not beneficial for the judiciary. Observers agree that the Supreme Court and the judiciary have gone backwards in integrity and public confidence in the last decade. This undermines the many gains in the judiciary and the rule of law generally in the country since the end of the war. However, new leadership on the Supreme Court has just taken office since the elections.

In 1994, Guatemala became the first country in the region to modernize its criminal procedure code, but preparations for implementation were inadequate and real progress was stalled for at least four years afterwards. Fifteen years after code reform a number of other reforms demonstrate progress made. The Public Ministry (Prosecutor's Office) is autonomous, as is a strengthened public defender's office that is improving access to justice for persons charged with criminal offenses. The national civilian police are separate from the military and under control of the Ministry of Interior. A Constitutional Court, Judicial Council, a career judicial path, civil service status for judicial administrative staff members, and a budgetary earmark all have been established in order to strengthen judicial institutions.

Justices of the Peace, providing judicial presence, are now found in each municipality, with support from a World Bank project. The Bank's \$33 million project also financed construction of larger regional justice administration centers. Infrastructure overall has improved significantly. However, the Bank's own internal final report on the project was highly critical and rated it "moderately unsatisfactory,"²⁸ citing lack of "buy-in" by implementing judicial branch agencies.

Public perceptions of the criminal justice system remain highly negative. Judges are widely viewed as corrupt, and the police are seen as abusive as well as corrupt. What drives these perceptions most is the fact that murder and other violent crime rates have risen sharply in recent years, and drug trafficking and the power of the drug cartels is growing. The government and the criminal justice system are seen as incapable of suppressing criminal activity.

²⁸ "Guatemala - Judicial Reform Project Implementation Completion and Results Report," The World Bank (2008).

In Mexico, a critical turning point for judicial reform occurred in 1994, when the incoming Zedillo Administration enacted a series of constitutional amendments that changed the composition, tenure, and judicial review powers of the Supreme Court; added a judicial council to take over administration and disciplinary controls of the courts; and established a judicial career with new procedures for selection and appointment of federal judges. Further amendments followed, which likewise contributed to strength and independence of the federal judiciary. After the federal reforms of 1994, Mexican state courts throughout the country began to initiate their own judicial reforms that largely followed the federal trends, but with many local variations.

Despite initial efforts and optimism, comprehensive criminal justice reform at the federal level was not achieved during the Fox Administration (2000-2006), although progress was made in many areas of legal and judicial reforms. Criminal justice reform movements at the state level, however, emerged and gained momentum. CPC reforms have since been passed in the states of Nuevo Leon, Chihuahua, Oaxaca, Morelos, Zacatecas, Baja California, Puebla, Veracruz, Estado de México, and the Federal District. Others are pending at widely varying stages of progress.

In June 2008, the Mexican congress passed a major federal constitutional reform requiring transformation of all state and federal systems from a written, inquisitorial criminal justice system to a more transparent oral, adversarial system. The constitutional reforms provide for radical systemic changes to move towards an open adversarial justice system, including due process, a presumption of innocence, strengthened public defense, alternative dispute resolution mechanisms, police and other reforms, and mandate an eight-year timeline for implementation (by 2016). Implementation will require massive legal and institutional restructuring and implementation efforts, as well as enormous human and financial resources.

3.0 THREATS TO DEMOCRACY IN THE REGION AND KEY ISSUES FOR THE RULE OF LAW

3.1 Governance Failures and Institutional Weaknesses

The governance failures of the “democratic experiment” to provide services and visible benefits of democracy to citizens, along with generally weak government institutions, are undermining the legitimacy of the state, including those institutions essential to rule of law. Institutionalized corruption is an important element in these deficiencies. This issue goes to the fundamental viability of the young democratic systems in Central America, as elected regimes face the daunting challenge of governing. Governance failures and loss of public confidence in political elites have opened the door to aggressive populist leaders and political options that threaten democratic institutions. Whether this constitutes an existential threat to the sustainability of the hard-won democratic transitions is discussed in the following section. As applied to the justice sector, „governance’ here is a term of art, which can be explained in simpler language as whether democratically elected governments are “delivering the goods” or “getting the job done” in the view of the public. Survey data indicates public opinion on this issue is negative.²⁹ Governance is also sometimes described in business-like terms, with state institutions as providers of services or sellers, and citizens as customers or consumers. Justice sector institutions can be analyzed through a governance prism to identify weaknesses experienced by end users (citizens).

In the justice sector, notwithstanding reforms and progress already noted, glaring institutional weaknesses persist. Here, we refer mainly to the courts and their principal institutional actors: judges, prosecutors, and public defense counsel. In the criminal justice system, this also includes police. Although the same can be said about the penitentiary institutions, this study does not encompass prison systems.

Reasonable, even reformed, structures and frameworks may exist in theory or in reality, but in practice most justice institutions operate poorly and are poorly run. Long-term continuity of strategy is lacking, and institutional goals, methods, and objectives are not clearly stated and pursued. Excessive reliance has been placed on the power of rewriting codes and introducing oral arguments to effectuate change, without adequate appreciation of the practical, institutional, and cultural barriers to true reform. “As we have learned, far more attention is required to creating and strengthening critical organizations, changing internal incentive systems, overcoming external opposition and customary practices, building new forms of interaction among key actors, and monitoring for results and emerging problems.”³⁰

Courts are characterized largely by a culture of excessive formalism and bureaucratic justice leading to serious inefficiency. The courts are plagued by delays, limited access, lack of filters to screen cases, lack of restrictions on pleading and practice, inadequate remedies, unlimited appeals, lack of *pro se* proceedings, etc. Moreover, reliable methodologies and statistics do not exist to evaluate judicial and other institutional performance and to serve as performance benchmarks.

²⁹ “The Political Culture of Democracy in Mexico, Central America and Colombia” (2004). The Americas Barometer by the Latin American Public Opinion Project (LAPOP), pp. 7-9, 23-25, 28-29. www.LapopSurveys.org.

³⁰ Hammergren, *Envisioning Reform*, p. 39.

Lack of performance accountability is a consequence. There are no quick technological fixes for these problems. Reforming codes, or simply automating inefficient processes, will not improve productivity or service without substantial changes in management culture and practices. A study commissioned by the Supreme Court in Mexico concluded that proceedings are geared inordinately toward the ends of detailed paperwork and filing requirements, rather than substance and justice.³¹

Politicization of justice sector institutions also seriously affects and undermines performance if measured by reform objectives. The institutions most often reported as highly politicized were the courts and the Public Ministries (prosecutors). Successful justice systems require independent and strong institutions, institutional practices, and operators. At some point and to differing degrees, even successful, well-prepared reform efforts have collided with these ingrained cultural norms and legal practices.

Institutional corruption is very difficult to identify and quantify, but corruption was cited by most interlocutors as a serious, continuing problem in the region's justice institutions. Corruption comes in a variety of forms. First is the most blatant form of corruption, involving payment of money in exchange for favorable legal outcomes. Second is the accepted influence of personal friendships or family relationships to shape favorable legal outcomes, no matter how minor. Third is allowing political connections, influence, or favoritism to affect legal decision-making. All three variants are present to some degree throughout the region's judiciaries and other justice institutions. The acceptance and prevalence of these practices facilitate corruption and actual or perceived abuse of authority in the institutional environment. These factors foster a public perception of inequity and undermine confidence in the law and legal institutions, even the legitimacy of the state itself.³² Corruption issues are closely related in the public's mind with institutional performance failures, and that perception undoubtedly corresponds to some extent with reality.

The problem of institutional weakness is highlighted and exacerbated by the CPC reform process, which requires simultaneously coordinating and reforming four separate key institutions involved with criminal prosecution: the judicial branch, prosecutors, police, and public defenders. Changes in roles, responsibilities, and power structures within and between institutions are challenging. That kind of inter-institutional coordination and cooperation is difficult to achieve in any system, including our own. Virtually all institutions and entities require technical training and capacity building to harmonize and carry through new responsibilities to support prosecution. Effective police/prosecutor collaboration has proved to be especially difficult.

3.2 Poverty and the Rise of Populist Authoritarianism

The governance failures in institutional terms described above are only a part of the equation. The higher expectations of the public are that the democratic regimes will be able to perform -- "deliver the goods" -- in terms of policies and programs that result in visible improvements in people's lives, especially the poor majority. These expectations may be somewhat unrealistic in the short-term, but they are real.

³¹ See, "El Sistema Penal Acusatorio en México: Estudio Sobre su Implementación en el Poder Judicial de la Federación," Justice Studies Center of the Americas (2008).

³² LAPOP, op. cit., pp. 57-59.

The stubborn and grinding persistence of poverty affecting very large segments of the population has led to frustration and impatience with current democratic systems, which many people see as not meeting their needs better, certainly not as well as expected. Dissatisfaction with the performance of public institutions, justice sector institutions included, feeds this frustration.³³ In recent years we see the emergence of politicians speaking a populist language that has strong historical antecedents in Latin America. They call for strong leadership concentrated in the person of the president and implicitly or explicitly reject the notion of checks and balances and co-equal, independent democratic institutions. To such leaders, judicial independence is considered an unacceptable restraint on executive authority.

Authoritarian populist tendencies in Latin American politics have a long history, with Perón in Argentina and Fujimori in Peru as prime examples, to mention only two from the recent past. Several others in power currently, such as in Venezuela and Bolivia, could be added to this list. It is usually inaccurate to describe them in terms of left-wing or right-wing, as they often combine elements of such ideologies, but they almost always assert a strong nationalism and a major role for the state in the economy, usually with disastrous economic results in the end. The best term to describe the character of such regimes is *caudillismo*, the Spanish word connoting a strongman leader who accepts little opposition to imposition of his will in very personal terms. Until recently, most *caudillos* were military men who crossed over into civilian politics. They may initially be elected to office or seize power unconstitutionally, but they are essentially non-democratic in philosophy and practice. Abuse of executive authority and disregard for the rule of law is characteristic of such regimes.

Populist leaders coming to power through open elections are not necessarily authoritarian, and they may receive strong mandates from the voters and govern in accordance with democratic rules of the game, at least at the outset. Recent experience in Honduras is an example: there, an elected president turned populist and refused to respect the rule of law or the authority of co-equal branches of government to restrain his attempt to call an illegal referendum to expand constitutional term limits. In that case, his interest in extending his time in office has led to a breakdown of constitutional order and a continuing political crisis threatening the democratic system.

Honduras may be the prime example at the moment, but Guatemala is another case in point in spite of the fact that it has a freely elected government. Guatemala is close to being seen as a “failing state” according to one seasoned observer.³⁴ Public services remain at a very low level, public revenues are inadequate to support increased services, and public respect and support for the national government is extremely low. The sense of an impending governance crisis is palpable. Penetration of the Colombian and Mexican drug cartels and their alliances with local criminal organizations have raised concerns about the “state capture” phenomenon and are blamed for the spike in the murder rate. This threat to the whole democratic state is real, but in the narrower rule of law context the weakness of the Guatemalan state overall puts even greater strain on justice sector institutions and their ability to deliver justice services in a governance sense.

Continuing poverty and economic hardship combined with strongly-perceived governance failures is the classic formula for the emergence of the kind of populist authoritarianism that becomes

³³ Id., pp. 7-9.

³⁴ Schneider, Mark, International Crisis Group, in *GlobalPost* (April 16, 2009).

a direct threat to democracy. Many informants expressed concern that countries in the region are suffering such stress to democratic institutions as to tempt the public to support essentially non-democratic options that would undermine the rule of law completely. Mexico has its share of governance and public security problems, but should not be seen in this category; the concern is greater in Central America. However, poverty and severe income inequality, even more so than crime, are the all-important factors in the regional development context. Crime is an exacerbating factor, but failures of democratic governance in alleviating poverty are the greatest threat to democratic institutions, as evidenced by recent developments in Honduras, Venezuela, Ecuador and Bolivia.

3.3 Citizen Security, Violent Crime, and Law Enforcement

The lack of citizen security in the countries of the region has become perhaps the „hottest’ public policy issue those governments and societies are facing today.³⁵ Latin America has high rates of violent crime in comparison with other regions of the world. The murder rate of 30 per 100,000 population compares with 5.6 per 100,000 in the U.S. and a world average of 6.8.³⁶ The most striking data, however, shows a very sharp increase in the region in recent years even from those already high levels. For example, the rate in Honduras has risen to 59.6 per 100,000 and in Guatemala to 44.24 per 100,000.³⁷ Unofficial reporting in El Salvador indicates high homicide rates in the first half of 2009, with the greatest concentration in the San Salvador metropolitan area. The same holds true in Guatemala City, which suffers from a staggering murder rate of 108 per 100,000 persons.

Poverty alone does not account for high murder rates; the closest correlation is that of poor countries with severe income inequality (high Gini co-efficients). According to a World Bank study cited in Americas Barometer reporting, “a central finding [of the study] is that homicide is directly connected to income inequality; the greater the inequality within nations, the higher the homicide rate.”³⁸ Differences in homicide rates are not evidently linked to other indicators of economic and social well-being, such as gross national product levels or infant mortality. Income inequality may play a large part in such high rates, but does not explain the rapid, recent rise.

This data should be interpreted carefully to avoid overly broad conclusions. *Correlation* is different from *causality*. We cannot say that poverty or income inequality *per se* causes people to commit murder, only that where such social conditions exist it is likely we will find that homicide rates also will be high. Cultural factors can also affect the equation. In Guatemala, the indigenous areas of the country are the poorest, but they have sharply lower homicide rates than *ladino* majority areas. Nicaragua has income and income distribution figures similar to those of its northern neighbors, but much lower murder rates, perhaps because of better law enforcement.

³⁵UNDP, “Central America Human Development Report 2009-2010: Opening Spaces for Citizen Security and Human Development.” This report, not yet available online, will be required reading for analysis of citizen security issues in the region. See UNDP news release, dated October 20, 2009.

³⁶ UNDP, *op. cit.*, p. 21 ; World Bank Latin America and Caribbean Studies Series (1998), Fajinzylyber, Lederman and Loayza: “Determinants of Crime Rates in Latin America and the World: An Empirical Assessment,” p. 12.

³⁷ UNDP, *op. cit.*, p. 21.

³⁸ LAPOP, *op. cit.*, p. 63.

The most plausible explanation for the sharp rise in homicides and violent crime in general is the growth in drug trafficking in the region. Empirical data supporting this hypothesis is cited in the World Bank study, which showed higher crime rates associated with higher drug production and possession rates.³⁹ The quality of policing in the region is known to be low, but that has always been the case and does not appear to be an important variable in this situation, except to the extent that organized crime and drug money are corrupting police forces more than before. Whatever the reasons behind it, the unchecked violent crime underlying citizen insecurity is a major issue that undermines respect for the rule of law and demonstrates the need for more effective criminal justice institutions.

The activities of organized crime, narcotics traffickers, and urban gangs also have distorted the application and success of justice sector reforms in the past decade. Their criminal activities and level of violence has generated strong police response and even military deployment in some countries; this response has been accompanied by a rise in allegations of human rights violations and the use of extra-judicial or other methods that lie outside legal parameters. At the same time, access to vast financial resources allows such groups to corrupt the system and the officials in charge. The recent extraordinary level of criminal violence in Mexico in particular is largely attributed to battles between drug cartels and their attacks on state and federal law enforcement personnel as the Mexican government steps up its campaign against criminal organizations.

The role of police and the limitations of discrete assistance efforts have not been fully appreciated in the approach and planning of criminal justice reforms, but have become abundantly clear in recent years. Weak police institutions critically undercut law enforcement, prosecution, and overall public confidence in the rule of law. As with other justice sector institutions, meaningful institutional reforms in the police departments will require significant political will and resources beyond targeted assistance for training activities or equipment purchases.

In Mexico, worsening public security and escalating violence are the drivers of dissatisfaction with the justice system, but also fuel attacks on the still-early reform process and undermine public perception of reforms. The reforms were designed to create a more open and transparent system with due process guarantees and just resolution of judicial proceedings based upon reliable evidence. These objectives will not necessarily lead to prompt or visible improvements in public security. To the contrary, the passage and implementation of reforms in the state of Chihuahua has coincided with spectacular increases in crime and violence related to the Calderón Administration's crackdown on drug cartels and organized crime. This situation has contributed to a growing public (mis)perception that the reforms have not only failed to confront crime, but also that the reforms have somehow caused or contributed to the rise in crime and violence. "There is a prevalent misconception in Mexico – that begins with the government and trickles down to all the social groups – that the rule of law is an obstacle to public safety. Authorities that adhere to citizen's civil liberties ... are accused of merely protecting criminals."⁴⁰

Institutional incapacity and systemic failings of Mexican law enforcement are central to the weakness of the justice system there, which cannot be enforced properly or reformed without

³⁹ World Bank, *op. cit.*, pp. 2, 15, 22.

⁴⁰ Miguel Sarre, "Challenges Associated with the Judicial Reform" (presented at Woodrow Wilson Binational Working Group Meeting, October 17, 2008).

their active participation, especially at local and state levels. Criminal procedural reform will require sophisticated investigations to carry it into effect. Meaningful change will require addressing the fundamental issue of law enforcement reform in tandem with other efforts. Institutional police reform has been attempted for at least the past decade without significant improvements.⁴¹ At the time of this field work, we were informed that there is apparent political will and progress on police reform from the leadership. Whether that realistically and effectively can occur within this administration's time in office, in successful collaboration with prosecutors and other integral actors, is still an open question.⁴² Even assuming progress in police institutional reform, the challenges of dealing with the powerful counterweight of narcotics trafficking and organized crime in Mexico pose massive additional hurdles.

Weaknesses in the criminal investigative capacity of both police and prosecutors are especially acute problems in all countries studied. In El Salvador, for example, the lack of capacity for good criminal investigation and the same weakness seen in the prosecutor's office results in very low rates of arrest, prosecution and conviction in murder cases, the crimes that have inflamed public opinion and created a sense of citizen insecurity. A 2007 United Nations Development Programme (UNDP) report on the criminal justice chain concluded that the police and prosecutorial investigative failings are a major problem for the criminal justice system.⁴³ According to all respondents interviewed, the same holds true in Guatemala, where weak crime investigation capacity of the police and poor prosecutor-police cooperation have driven the successful prosecution rate for homicides down to four percent, according to some estimates. The adversarial process makes it essential for the police and prosecutors to develop credible evidence for use in trials. To change dramatically the dynamic for police institutional reform in the criminal justice system in any of the countries of the region will require extraordinary political will, an ingredient that external actors cannot supply. The risks of being overly committed to short-term successes in bringing down violent crime rates, especially for homicide, are high.

3.4 Lack of Political Will to Sustain and Deepen Reforms

The importance of political will and capacity as integral components of successful reform is well known, but has frequently been underestimated or evaluated overly optimistically in this region. Genuine and realistic appraisals of support and opposition to reform are critical to mapping successful strategies. Professed support for reform has often been belied by inaction or weak compliance. Even where support and capacity both exist, political and personal relationships and practices often have subverted new methods and applications. This likewise reflects the governance failures and weak state institutions described above. In Guatemala, an apparent lack of po-

⁴¹ "[T]here have been many past efforts to purge Mexico's police of corrupt agents and create new security agencies, but all have failed to put into place the structural reforms necessary to ensure police accountability and have generated both a serious lack of faith in the police and attempts at police reform." Testimony of Joy Olson, Executive Director of the Washington Office on Latin America, on the Merida Initiative (March 10, 2009) p. 3.

⁴² "Much of the skepticism about whether the [Minister of Public Security] can succeed is rooted in the history of Mexican law enforcement. The government has announced plans to reform its police so many times over the decades that it is hard for some to take new attempts seriously... [The] biggest obstacle may be time, ... [lack of] institutional continuity...[and the] elections in 2012." Wall Street Journal (October 24, 2009).

⁴³ UNDP/El Salvador, "Seguridad y Paz, Un Reto de Pais: Recomendaciones para una Politica de Seguridad Ciudadana en El Salvador," (Security and Peace, A Challenge for the Country: Recommendations for a Policy of Citizen Security in El Salvador), (2007), pp. 73-74 (in Spanish).

litical will or basic government inability to match the power of drug cartels and other organized criminal groups, including some within state institutions, represents a major constraint to the success of rule of law programs that focus principally on crime issues.

Weak political will and reluctance by judicial leadership to accomplish serious internal reforms have been problems, notably in El Salvador and Guatemala. The need for thorough, comprehensive approaches to achieve improved institutional performance does not seem to be recognized. In Guatemala, USAID and other major donors have found it difficult to elicit full cooperation and support from the Supreme Court for major technical assistance programs targeted at the judiciary. A newly-elected President of the Supreme Court, however, has indicated strong support for USAID assistance programs and greater cooperation. In El Salvador, a respected new Supreme Court president has acknowledged the problem of corruption and may open the judiciary to reforms (his predecessor was in office for nine years and was considered an old-fashioned *caudillo* hostile to reforms). Only time will tell.

Institutionalized corruption saps political will internally in justice sector institutions. Even if reform-minded senior leadership takes control or CSOs exert strong public pressure, existing institutional incentives that promote and protect corrupt practices will prevail unless good practices with positive incentives can supplant as well as punish bad practices. The inertia of a corrupt system is much stronger than often recognized by outside donor institutions, especially where public employees are poorly paid. The problem of corruption receives separate treatment below.

3.5 Problems of Judicial Independence and Accountability

Lack of independence of regional judiciaries has seriously constrained judicial authority and credibility, although that is changing and significant improvements have been seen in some countries, often with the support of USAID programs. Intrusions have occurred both horizontally, *i.e.*, between branches, and vertically, *i.e.*, from the top down within the judicial branch or justice institutions. In addition to horizontal influence, the judiciaries have commonly been influenced by a lack of vertical independence within the judicial branch and top-down control. Internal pressure from high-court judges has been brought to bear on lower-court judges to influence judicial decisions. Hiring or changes in employment status due to personal or political favoritism has also been reported. In some countries, judges and lawyers have additionally been subjected to intimidation and violence due to their roles in controversial litigation, especially cases involving organized crime or narcotics trafficking.

The legal profession is essentially self-regulating and accountability of all justice sector personnel is generally very weak throughout the region. Although individual complaints for misconduct can be brought and have been pursued against judges, lawyers, and judicial personnel, few meaningful codes monitor performance or assure accountability. Scant attention has been given to disciplinary codes or enforcement, and little incentive exists to motivate excellence or punish violations. USAID and other programs have attempted to bolster accountability mechanisms in a variety of countries and contexts, but legal culture, practices, political and personal manipulation of investigations, and lack of genuine enforcement or incentives have undercut those efforts.

Beyond its weak support for judicial reforms, the judiciary is sometimes seen as an actual obstacle to reform, operating in a closed system and resistant to change. In El Salvador, for example, the judiciary is viewed as one of the most problematic institutions. In the quest for judicial inde-

pendence, the judiciary and individual judges seem to have become untouchable, and therefore, in practical terms, unaccountable. The judiciary is seen as independent to a fault, and very corrupt. The unintended consequences of a constitutional six percent budgetary earmark for the judiciary to protect its independence has made the judiciary (judges and courts) overfunded compared to the other actors in the system and financially unaccountable to executive or legislative processes. Independence has become a shield to defend against accountability. Individual judges act without constraints, opening the door to corruption. Feuding between the Supreme Court and the National Judicial Council, in which the court has the upper hand, has further diminished judicial performance accountability.

3.6 Access to Justice for Ordinary Citizens

Access to justice refers broadly to the existence and availability of justice institutions, fair laws and procedures, law enforcement, legal education and awareness of rights, and effective and just remedies and resolution of conflicts and other legal matters in accordance with constitutional guarantees. Government action to eliminate discriminatory statutes and regulations is one element; other examples include positive action to enhance legal rights of marginalized populations, extend human rights protections, and protect women's rights in issues pertaining to inheritance, domestic violence, child support and custody, and political participation. Access programs have focused both on formal and informal systems, but concentrated largely on the provision of services to marginalized and vulnerable populations. Civil society NGO programs that support advocacy on access issues can often reach targeted beneficiaries much more effectively than government programs.

Relevance of the law and of legal reforms to the everyday concerns of the public is an important issue. Limited access to justice, at its most basic level, arises from socio-economic factors that cannot be isolated from their effect on legal rights. In reality, most people do not have the resources or political connections normally required to navigate the justice system, but that does not mean that they do not have legal problems. Indeed, legal problems are commonplace in the region (divorce and family issues, inheritance, contracts, property disputes, labor issues, etc.), but many people do not have reasonable access to the justice system for their resolution due to practical impediments. Access to justice is even more restricted in rural areas, and is limited by factors including distance, lack of infrastructure, transportation, language, etc. Marginalized groups, such as women and indigenous populations, are disproportionately affected. Limited access to justice feeds overlying perceptions of corruption and impunity, fosters perceptions that the legal system serves the wealthy and powerful, and undermines the authority and credibility of the rule of law. At best, this may lead to simple resignation or frustration and, at worst, to self-help or extra-judicial recourse for dispute resolution, including illegal and even violent acts.

For all the work done to reform and reshape justice sector institutions, limited attention has been given to the question of whether these changes are serving to meet the everyday needs and expectations of citizens as they see them, as opposed to how they are perceived by ROL specialists, judges, and lawyers. Public dissatisfaction with legal services and institutions remains high,⁴⁴ and a more service and user-oriented program planning approach may be needed to broaden the relevance and utility of legal systems. This question goes to *relevance* and *responsiveness* in a public

⁴⁴ LAPOP, op. cit., pp. 22-23.

services or governance sense and starts with users, not operators. Small claims courts, administrative tribunals, and expedited or streamlined civil procedures could all serve wider public needs and interests. “[S]implifying processes and creating more accessible and user-friendly adjudication opportunities” would further benefit and empower poor populations, who are ill-served by inadequate and inaccessible legal systems.⁴⁵ USAID’s programming is strongly oriented toward the criminal justice system, but the question of simpler, fairer, and faster procedures applies equally or more so to the civil justice system.

⁴⁵ “Legal Empowerment of the Poor: From Concepts to Assessment,” United States Agency for International Development (2007), p. 25.

4.0 USAID JUSTICE SECTOR SUPPORT IN A CHANGING REGIONAL CONTEXT

4.1 USAID Support in the Region: Findings and Observations

USAID was one of the early international actors lending support to justice sector reform in Latin America in the 1980s.⁴⁶ The inception of USAID’s Judicial Reform Project in El Salvador in 1984 was followed by rule of law efforts in most of the countries in the region. USAID assistance focused, with some exceptions, on three principal areas: (1) support for criminal procedures code (CPC) reform, (2) judicial modernization, and (3) increased access to justice.⁴⁷ Other donors and lenders, including the World Bank and the Inter-American Development Bank, added support to legal and judicial reform efforts in the region as of the early 1990s.

USAID provided considerable support in drafting and implementing new CPCs, training and technical assistance to justice sector actors, and organizational reforms necessary to carry out the revised procedures. USAID strongly promoted court administration programs in the late 1980s and included the creation of court clerks’ offices, case tracking and handling of files, court management, computerization of court systems, improved infrastructure, and alternative dispute resolution (ADR). CPC and court administration programs were followed by USAID efforts to expand access to justice. These included the introduction and development of additional mechanisms for alternative dispute resolution and attention to strengthening public defender services and other sources of quality and affordable legal representation.

This study was commissioned, in part, to identify successful approaches to rule of law work in the region, and key obstacles that have hindered reform. No single model for success can be fashioned for the region as a whole, although broad patterns can be discerned and provide an important backdrop to understand and analyze evolving regional trends and needs. In addition to identifying approaches and obstacles to reform, the team arrived at numerous specific findings and conclusions concerning the status of legal frameworks, key actors and institutions, key issues, and cross-cutting themes. Many of those have been discussed in preceding sections; additional findings and observations are enumerated below.

Criminal justice reforms adopting adversarial systems with oral public hearings have taken root throughout the region, representing perhaps USAID’s greatest long-term success. The most significant change since the inception of USAID programming has been the near-universal transformation of criminal procedures codes throughout the region and adoption of adversarial systems that provide for oral public hearings and guarantees of due process and individual rights. This represents a huge achievement: a permanent structural reform owing a great deal to USAID’s continuing support. Despite significant continuing challenges in implementation, the underlying

⁴⁶ “U.S. assistance to the LAC region had included law-related initiatives in the past, but those initiatives had not targeted justice system reform. Two relevant programs in the 1960s and 1970s, law and development (university legal education) and public safety (police assistance), were widely considered as unsuccessful. Positive results of these programs were discounted and an overall negative image of work in the justice sector persisted.” USAID ROL Achievements Study, p.1.

⁴⁷ See generally, Hammergren, *Envisioning Reform*, *supra*.

theories and procedures have been generally accepted and passage of initial legislation has been secured. Mexico is at the early stages of implementation and the reform process may still be somewhat vulnerable. With that exception, however, the remaining countries have adopted reform measures that appear to have firmly imprinted adversarial practices on their criminal justice systems. This transformation has contributed generally to reducing delays in case disposition and the incidence of lengthy pre-trial detentions, and has thus accomplished genuine progress towards human rights objectives. Even in countries that are plagued with difficulties in the implementation of reforms, such as Honduras, system operators have firmly declared their preference for the more transparent, open, and faster criminal proceedings. The new oral and open procedures appear to have taken root, although progress in the face of impediments will likely continue to be challenging and uneven across countries.

El Salvador

Programs included the full range of technical assistance and material support, including early assistance for the forensic crime laboratory. The principal focus of activities was support for the drafting and implementation of the new criminal procedures code and the adversarial, oral system it introduced to the courts. Training for judges and court personnel reached a large number of participants. USAID provided support for the National Judicial Council. The recent trajectory of ROL programming was interrupted by a hiatus beginning around 2005, when most activities in the sector were discontinued and democracy and governance (DG) programs were no longer seen as essential. However, part of the reason with respect to ROL activities was dissatisfaction with the Supreme Court and judiciary, which were seen as uncooperative, corrupt and not in need of external funding assistance. In 2006 the Mission went “outside the system” (courts and judiciary) to support a mediation project through the Public Defender’s Office, which is an autonomous part of the independent Public Ministry. Around this time ICITAP also supported a community policing activity, which suffered when donor funding ended; but new activities are starting through NAS with INL funding, with a special focus on youth gangs.

In 2007-08 USAID resumed ROL programming after a two-year break by initiating a new criminal justice project. As in neighboring countries, the new project was designed principally to respond to the alarming increase in violent crime and, to some extent, the special problem of youth gang violence, which is also addressed in a regional project. The main components of the project cover implementation of a new CPC, improved use of scientific evidence, and other initiatives to improve the delivery of services. Notably, a significant activity under the CPC component provides institution-strengthening assistance to the national civilian police through a “change leader” program funded by DCHA/DG with police “matching funds.” In addition, El Salvador is home to a small regional “labor justice” project that is trying to strengthen the system of labor courts and labor law implementation as part of a workers’ rights protection provision of CAFTA agreements.

The Mission hopes to expand ROL programming in FY2010 with activities focused on transparency, courts, prosecutors, police, and crime prevention. The Mission has established a close working relationship with the new government and is doing joint planning in the justice sector at the highest levels to align priorities and plans for implementation.

Judicial modernization and court administration programs have received significant attention and resources since the 1980s with some success, but the failure of the justice sector institutions today to perform satisfactorily demonstrates that such technical improvements have not trans-

formed institutional cultures or behaviors enough to sustain the reform process. Good data is simply not available to show the incremental results being achieved by past investments in court administration and systems. The general dissatisfaction with current performance of the courts, prosecutors' offices, and the police (to the extent benefited) indicates that many intended improvements were not completed or sustained. Public Defenders offices have fared better, based on what was described to us in all three countries visited as a strong commitment to their mission (*mística* or *espíritu de corps*). New approaches, such as change management to improve institutional performance, will need to revisit what has been done in the past in order to formulate practical, workable improvement plans that can be more successful and measured accurately.

Due in part to USAID's support, an active, energized civil society is playing a larger, more influential role in justice sector issues. One of the real benefits of the democratic political transitions in the region was creating greater space for civil society to participate without fear in public affairs. USAID programs have actively supported civil society's participation in rule of law matters:

- 1. Incorporating civil society groups to demand justice sector strengthening has increased pressure for transparency, accountability, and other reforms.* In several countries, notable successes have been achieved by recruiting civil society organizations to become actively involved in justice sector strengthening and reform. This is especially true with respect to „interest-based' CSOs such as associations of judges, prosecutors, public defenders, women lawyers or judges, and the like that have a direct, long-term interest in sustaining reforms. Lower and mid-level echelons in the professional associations are often the most pro-reform, and these CSOs can give voice to them and aggregate their interests in the public arena. In particular, this has led to more open and transparent merit selection of Supreme Court justices, e.g., Dominican Republic, Honduras, and recently in Guatemala where CSOs are working to improve the quality of the judiciary by active participation in a judicial nomination electoral process. Significant successes in pressuring for the passage of transparency laws providing for citizen access to public records have relied upon the participation of civil society organizations, e.g., Mexico, Honduras. Civil society organizations and networks incorporating a broad range of interests, including the business community, have been instrumental in passage and promotion of CPC and other justice sector reforms, e.g., Mexico, Dominican Republic. NGO federations in Guatemala have seats at the table in government-civil society coordinating mechanisms related to citizen security and other rule of law issues. New programming in Mexico includes work with citizen participation councils set up by the government to build understanding and support for the criminal justice reforms. Honduras and the Dominican Republic have NGO citizen oversight groups (*observatorios*) that serve as watchdogs and publish reports on justice sector institutional performance.
- 2. Working with a wide swath of civil society to promote reforms, including influential actors such as the business community, has been a successful approach. Incorporating and emphasizing public relations, education, and awareness campaigns is critical to developing understanding and ownership, and helps to avoid backlash.* In Mexico, an umbrella organization of more than 80 public and private organizations (the RED: Network in Favor of Oral Trials and Due Process) drafted and developed the federal reforms, and, for the first time, civil society was a key player in presenting constitutional reforms to the legislature. USAID worked close-

ly with civil society and congressional actors to obtain, to the extent possible, consensus on the initiatives.

Guatemala

As with the other countries in the region, USAID role of law programming concentrated on the criminal justice system, with a special interest in human rights and due process protections, so often violated during the long years of military rule and civil conflict. Strengthening the rule of law was seen as essential to sustaining the civilian democratic transition. USAID began project activities in 1986 working through ILANUD to provide technical assistance, training and materials. Projects begun in 1987 and 1988 struggled against an adverse environment for implementation and were terminated early. Court leadership was not strongly committed to internal reforms, and the poor human rights conditions in the country still inhibited major involvement in rule of law activities.

It was not until 1993 that USAID began a new project to help implement the newly reformed criminal procedure code, particularly the introduction of the adversarial system and oral public trials. Because of weak implementation the new system did not really get off the ground until after further code reforms in 1997 made it more adaptable to the basic structures of a civil law system. This project also introduced the regional justice service centers, the forerunner to what has come to be known as the *casas de justicia* concept, now better known from Colombia. The center in Quetzaltenango in western Guatemala benefited from strong local leadership and commitment, and it is still considered the best example of a grass roots legal services center approach. Through 2004 USAID's programming specifically supported Peace Accords commitments in the justice sector.

The current rule of law project (2004-2009) and the proposed follow-on project have the most relevance for strategic analysis, as they have introduced significantly different elements and have shifted toward citizen security issues, especially suppression of violent crime, in the interests of public order and maintenance of democratic institutions. They support a special homicide unit in the public ministry and will emphasize prosecution of serious violent crime. Material support may go to equip a "high impact court," which would have facilities that are hardened and made more secure for court personnel and the conduct of major trials. Institutional reforms for prosecutors and police are proposed, with police assistance subject to special approvals, with the objective of increasing internal oversight and accountability as well as efficiency. Activities to mobilize the justice sector and civil society to reduce and prevent crime and to provide services to victims also demonstrate the citizen security focus of programming.

USAID support for access to justice programs has been popular and successful in the region and serves compelling public needs. USAID has promoted access to justice in the region, including in civil matters, but not yet in a cohesive or strategic manner. Support to expand access has taken various forms:

1. *Creation or strengthening of public defense services through Public Defender Offices, legal advocacy or civil society organizations, and university law clinics.* Although not yet balanced with prosecution, public defender services have improved significantly and serious attention has been directed to fulfilling constitutional obligations to provide legal services to indigent populations. This approach has focused attention on state obligations and has motivated expansion of legal defense. Respondents in all three countries visited praised the work of the

public defenders, saying they are dedicated and effective advocates for their clients. In addition, legal clinics and public interest law clinics have made modest contributions to expand access, but have concurrently promoted practical legal skills and education for a new generation of legal practitioners.

2. *Consolidated legal services centers, such as the Casas de Justicia (Justice Houses) model and the “24-hour courts” in Guatemala, are improving access. The 24-hour courts are bringing greater speed and transparency to the initial stages of the criminal process.* This centralized approach to co-locating legal services has been generally popular, but is resource-intensive and is not yet utilized to full capacity. Three courts (the first, in Guatemala City, was the USAID model court) currently function as arraignment courts where police, prosecutors, public defenders, and judges work closely together in continuous operation with rotating personnel to initiate the first stages of criminal cases. Police bring in suspects who are “booked” into a computerized database and then immediately passed to prosecutors, who interview the suspect and review the police report to evaluate the case. Public defenders also are on hand to represent the suspect. A recommendation is then passed to a sitting judge, who will decide if the case proceeds and whether the suspect can be released on bail. A complex but well-structured system of rotation of personnel and records maintains transparency and limits the possibility of corrupt practices by any of the parties. Suspects are no longer held in police custody without being brought before a judge promptly. The process moves speedily and efficiently. The 24-hour courts have improved justice services *by* the operators among themselves as well as *to* the unwilling “customers.” Data indicate it is a good application of the adversarial system at the basic level.⁴⁸ The Supreme Court endorsed the approach, and the two courts in outlying Villa Nueva and Mixco are now funded by local resources and have been expanded to offer the full services of a first instance court.
3. *The regional justice centers in Guatemala also have brought services closer to the citizens, especially in semi-rural areas and to indigenous populations.* The smaller size service center concept piloted by USAID has been followed by larger, World Bank-funded regional justice administration centers. The larger centers involve significant infrastructure investments and provide modern working facilities for the courts and prosecutors’ offices.
4. *ADR mechanisms, including mediation and conciliation programs,* have been widely promoted through various public and private institutions. These programs are highly variable in utility, application, and success. Numerous ADR mechanisms and entities, both public and private, exist and many have received support throughout Mexico, resulting in state and national networks. ADR mechanisms in Mexico have included court-annexed mediation/conciliation, public defender and prosecutorial ADR programs, municipal and community mediation programs, legal aid, private mediation/arbitration programs, cross-border ADR programs, indigenous dispute resolution mechanisms, and restorative justice. In El Salvador, the Mission supports a small mediation project with the Public Defender as implementing partner, and 23 mediation centers have been opened in conjunction with public defender offices around the country.

⁴⁸ "Estado de Derecho," Checchi & Company Consulting, USAID/Guatemala, undated.

5. *Programs targeted to the legal status and treatment of women*, especially with respect to family laws, domestic violence legislation, specialized prosecutorial units, and victims' assistance units, have built upon and mobilized strong existing constituencies in support of women's rights and interests, and have led to real improvements in women's access and legal status. One such program was the Women in Development/Women's Legal Rights Initiative, which concluded in Guatemala in 2007 and contributed to new laws, better training throughout the justice system, increased public awareness, more effective assistance for victims of violence, and greater inter-institutional coordination on women's rights issues.

Mexico

USAID has supported administration of justice and rule of law programs in Mexico since 1997 and has been the main international actor in this field. Since the early days of the Fox Administration, the central objective of USAID/Mexico's strategy was criminal justice reform. The main goal of the reform was to transform the closed inquisitorial Mexican justice system to a more open, public, and adversarial system that would protect individual rights and reduce corruption and inefficiency. Mexico has lagged far behind the rest of the hemisphere in justice reform and modernization efforts. USAID/Mexico provided significant technical assistance at the federal level to the Fox Administration, but concurrently undertook to promote reform of criminal procedural codes at the state level, which handles more than 95% of all criminal matters. Although the federal level reforms moved slowly, the state reforms bore rapid fruit, and USAID provided assistance and encouraged local reform efforts in numerous states that began their own criminal procedure code reforms. The expanding state reform movement created pressure for reform at the federal level, which was ultimately enacted through the 2008 constitutional reforms.

The bulk of this assistance has been carried out since 2004 through the project implementing office known as PRODERECHO (*Programa de Apoyo al Estado de Derecho*), which has developed a reputation with state and federal authorities for its expertise in justice reform.

Citizen security, prosecutors and police, and crime prevention are areas of growing programming importance, but in general activities are quite recent and have not received full assessment and evaluation. The relationship of citizen security to development and what is known as "security sector reform" have become major topics in development dialogue in recent years. We analyze those issues in the following section in connection with our strategic recommendations, but here look at the direction of recent USAID programming on the ground. Dating back to the beginning of ROL programming in the region, the introduction of the adversarial system and oral process involved work with prosecutors, mainly training activities to prepare them to perform their new roles. Little or no assistance went from USAID to police, although USAID funding provided the bulk of the resources used by ICITAP in its work. Crime prevention *per se* was not a significant element in ROL programs.

The rise in violent crime and citizen and government concern about personal security is the new driver to which USAID programs are responding. The inability of governments in the region to control the spread of violent crime has led USAID Missions to initiate programs to improve prosecutorial and police performance in the criminal justice system. In Guatemala, USAID assists a special prosecutorial investigative unit dedicated to "crimes against life," *i.e.*, homicides. A pilot effort in community policing also received support, and the 24-hour courts include the arresting

police officers as integral participants. In El Salvador, the Mission funds a dedicated senior advisor working with the national police at its headquarters. A community policing pilot effort through ICITAP has already been completed and considered successful, but its sustainability is in question now that the external funding has ended. A major new program is underway in Mexico to expand coverage of the criminal justice reforms that are introducing the adversarial system and oral process. A massive training effort for judges, prosecutors and public defenders in the operation of the new system, mainly at the state level, has begun. Coordination with police institutions is included, but the project does not directly target the police as major recipients of assistance other than including them in human rights training. Nonetheless, the issue of poor police performance is well recognized. Crime prevention elements are included in the newest ROL projects in all three countries.

The focus on states as opposed to federal-level reforms in Mexico has clearly been both important and appropriate. Incorporating prevention and providing alternatives to incarceration were significant strategic elements of this approach. USAID evaluated the risks and opposition to reform efforts at the federal level, considered the breadth of state jurisdiction and interest in reform, and made a well-advised decision to concentrate at the state level. Although progress has been uneven and reform is still in early stages, states have clearly demonstrated greater receptiveness, need, and political will for reform. Initial support efforts at this level have had the advantage of built-in networking and transfer of expertise between the states, which have functioned almost as pilots for reform and adaptation. Both bad and good experiences at the state level can be remedied or replicated more easily than at the federal level. The extensive work at the state level clearly augmented pressure for the recent federal constitutional reform, although its trajectory is not yet clear. The federal judicial branch has ample resources, but had previously developed a separate reform plan and has shown resistance to the 2008 reforms in spite of the constitutional requirement. Reforms focused on reducing pre-trial detentions and alternative sentencing require adequate planning and attention to creating the programs that will be needed in their stead, e.g., court alternatives, pre-trial services, sentencing alternatives, probation, community service, monitoring, etc.

Strengths and weaknesses in rule of law efforts and sector status vary widely between and, in some cases, within countries; no single model for reform exists. The countries of this region reflect widely divergent political, social, and economic histories and conditions that have shaped their justice systems. The range of disparities is starkly revealed by the country overviews of the three core countries visited. That coverage begins with El Salvador, the smallest country in the region, with a population of six million and a unitary legal system where reforms were enacted in 1996. It includes Guatemala, a country of more than 13 million with an indigenous majority in the western half of the country. It ends with Mexico, by far the largest country with a population in excess of 110 million, a federal system encompassing 33 separate jurisdictions, and federal constitutional reforms just passed in 2008. The core country studies alone confirm the very distinct and uneven progress toward justice sector strengthening and reform. No single model for success can be fashioned for the region as a whole.

Long-term planning, continuity, and presence is critical to passage and sustaining support for reform implementation. The continued presence of USAID and/or other donors who have supported reforms has been crucial to successful implementation, even if support has been greatly reduced or focus has shifted. Short-term interventions do not lead to systemic change, and “quick

fixes” are unrealistic in the justice sector. The magnitude of changes expected within relatively short time periods has at times been overly ambitious. Longer-term programming support is necessary for sustainable results, but has been difficult because of management requirements, resource and technical limitations, and inconsistent funding flows. Withdrawal of presence before code reforms have become implanted in the legal culture with well-performing institutions, and before reforms are publicly accepted, can contribute to backsliding or reversal of the reform process.

Identifying and supporting local groups and individuals committed to strengthening the rule of law in their countries has helped create ownership and tailor reforms to local needs. Projects that build upon local reform agents have demonstrated higher levels of success; this approach also builds continuity and a foundation for continuing reform. USAID has a successful history in this region of fostering local reformers to promote and help shape the course of projects. “Those individuals and groups have frequently gone on to contribute (far beyond the parameters of the original USAID projects) to further national and regional justice reform.”⁴⁹ In Mexico, for example, we were told that much of the project’s success has been due to the increasing reliance on talented and progressive local actors to spearhead project activities.

Incorporating and emphasizing public relations, education, and awareness campaigns is critical to developing understanding and ownership, are key to success, and should be fostered to avoid backlash. Successful programs have employed communication and education strategies to develop public understanding and confidence in reforms, publicize successes, and reinforce support.

4.2 Relationship of Other Donors to USAID Programming

While USAID clearly was the pioneer in supporting rule of law programs in the region beginning in the 1980s, other donors in more recent years also have developed rule of law projects with host country governments and civil society.

The World Bank (IBRD) and the Inter-American Development Bank (IADB), the large multilateral lending institutions operating in the region, are the most notable. Other bilateral donors, mainly European, have entered the field; the European Union through the European Commission is also funding programs. Their programs tend to be targeted to specific areas such as human rights protection, access and civil society. Guatemala in particular has received attention as part of the commitments in support of the Peace Accords, more so than El Salvador. Although other bilateral donors have become more active in the region, USAID remains the leading bilateral donor by far. The evolving context, however, makes it even more important to seek consistency in programming across donors in support of national objectives.

Looking at the three counties visited, in Mexico the U.S. remains the primary international donor supporting Mexican leadership of the criminal justice reform process. The World Bank financed a public sector infrastructure investment program through the *Banco Nacional de Obras y Servicios Públicos* (BANOBRA), which included funding for judicial buildings. In Guatemala, both the World Bank and the IADB funded recent major projects in the justice sector. Some technical assistance activities were included, but the bulk of the funding went for infrastructure improve-

⁴⁹ USAID ROL Achievements Study, p. 12.

ments, including the regional justice administration centers. The World Bank project funded the services and facilities expansion of justice of the peace coverage to all Guatemalan municipalities. The IADB approved a follow-on project in 2006, in part to expand upon the 24-hour service model for regional justice centers, but the project has never reached implementation, according to the Bank's reporting. In El Salvador, the World Bank financed a major justice institutions complex in San Salvador, the capital, which is accommodating large numbers of users with much-improved physical facilities. The World Bank appears to be limiting its involvement in the justice sector in the coming years, as no new justice sector projects appear to be active or in preparation in Guatemala, Honduras, El Salvador or Nicaragua.

The relationship of the multilateral banks, operating mainly through their loan windows, to USAID programs should be complementary. The banks' programs provide much-needed capital improvements and equipment, but their technical assistance activities are more limited due to the scarcity of grant funding. USAID remains essentially alone in its commitment to grant-funded, long-term, intensive technical assistance programming focused on public sector institutional development. The Agency's comparative advantage in that regard is fully consistent with the strategic recommendations in this report, which give highest priority to capacity building and strengthening in the justice sector institutions.

Other bilateral donors have become more active in the region in recent years, but the limited time allotted for field visits did not allow the authors to interview representatives of those donors in the field in the three countries visited, thereby limiting fuller coverage of their activities and plans.

Inter-Institutional Coordination and Division of Tasks within the U.S. Government

The issue of inter-institutional coordination and division of tasks was raised repeatedly by interviewees in Washington and the field. We looked briefly at some of the ROL-related activities of other USG departments and agencies but did not presume to evaluate their effectiveness, focusing solely on coordination issues and their insights on USAID programs and ROL challenges. In Washington and the three country visits, we interviewed officials from the Departments of State (INL, NAS) and Justice (U.S. Department of Justice Resident Legal Advisor, FBI, and the former director of ICITAP) to discuss their programs and relationships with USAID.

Reflecting the importance of Country Team daily contacts and the leadership role at post of the Chief of Mission, senior USAID officials in the field devoted a large amount of interview time to discussion of inter-agency coordination and working relationships in ROL work. Not surprisingly, narcotics-related, law enforcement issues are the main topics involved. The Merida Initiative was not part of the scope of this study, but its size, high profile, and huge inter-agency cast of characters only increases the importance of inter-institutional coordination.

In Washington interviews, both USAID officers and contractors discussed this issue at length, often expressing frustration about the complexities of effective inter-agency coordination. Within the U.S. community, agency objectives are seen to differ, and sometimes conflict. Agencies do not work together, and sometimes work at cross-purposes, thus potentially undermining development goals. Everyone seeks greater clarity in role definitions and policy guidance that will make work efforts more productive. In part, the need for close coordination arises from the fact that so many different funding sources finance various ROL activities.

USAID must seek to clarify this issue, because it muddies strategic thinking damages programs on the ground. Difficulties in ROL programs most often arise in the context of law enforcement activities, where missions and functions overlap the most. To some extent, this applies to work with prosecutors, but the main area has to do with work on criminal investigation and with the police. As stated above, this finding cannot be accompanied by a recommendation related to inter-agency coordination. Nonetheless, we do suggest that USAID define its own ROL strategy as clearly as possible and set its own priorities for the future in a way that focuses on certain core development objectives where the Agency has the clearest mandate and strengths, taking into account the fact that other USG departments and agencies will definitely continue to work in rule of law-related areas as part of their core programs.

5.0 CONCLUSIONS AND RECOMMENDATIONS

5.1 Strengthening Performance of Critical Institutions, Governance and Customer Focus

An integrated approach that takes into account all key institutional components of the justice sector is necessary to balance institutional strengthening and collaboration. The CPC reforms require significant and broad-based institutional reforms and cooperation between the judicial branch, prosecutors, defense counsel, and police. Focusing attention on any single component can weaken other elements and work to the detriment of the overall system. The most successful reforms have taken a balanced and comprehensive approach to assure and coordinate reform efforts with all institutions. By and large, these have not included the police. Assistance to the police, controversial and subject to special statutory restrictions, needs to be factored in to assure the preferred “holistic” approach to rule of law programming.⁵⁰

The highest strategic priority should be given to further advancing the institutional gains achieved over two decades in the court system for its central institutional actors – judges, prosecutors, and counsel (public defenders) – to improve the effectiveness of the adversarial system in criminal justice. Police institutions will need to be added to this mix, as discussed below under Citizen Security. While much progress has been made, much remains to be done with these central actors and their institutions. A balanced approach is to be preferred, as stated in the previous recommendation. This needs to include the judiciary in spite of mixed results from prior USAID assistance and significant questions about the judiciary’s openness to reforms. Performance of the court system, whether criminal or civil, depends heavily on judges and court personnel, including the judge’s authority to oversee the conduct of prosecutors and defense counsel. Judges are in charge of their courtrooms and the public trials under the new oral adversarial system, and it will not be successful if they do not lead it well. The recommended approach for achieving better results is through use of institutional performance improvement plans and change management methodologies, with an emphasis on operational levels. This recommendation does not call for a judge-centric approach strategically, but rather one in which the judiciary needs to be included as part of a balanced approach. This might include targeted assistance to professional associations of judges or particular categories of jurists, where they exist, rather than simply or solely working with the traditional judicial branch as a whole.

With highest priority, focus more clearly and sharply on the specific institutional performance improvements needed in these three institutions (and police) and the indicators to be used to track targeted performance standards, using intensive “change management” approaches for management reforms to ensure local leadership and ownership. USAID does not appear to have for itself a clear understanding of what is required to transform institutional performance in the system. Specific interventions tend to attack identified problem areas, but little has been done to date to link program activities to a whole set of institutional performance improvement targets that have been negotiated with partners and that become the responsibility of the senior operators of the system. USAID indicators of project performance do not meet this standard. Inclusive, team-based change management approaches that bring people together on a regular basis to implement

⁵⁰ USAID, “Assistance for Civilian Policing,” Policy Guidance (December 2005), p. 4.

comprehensive, practical improvement plans and measure progress against calendar target dates are in full use with the judiciary elsewhere in USAID ROL projects, *e.g.*, Bulgaria, Bosnia, but only now are being introduced in the region. USAID Missions in the region with support from DCHA/DG should be using “best practices” or “benchmarking” more in their approaches to institutional development and reform in the region. One example of this kind of tracking in USAID practice is the Judicial Reform Index developed by the American Bar Association Central European and Eurasian Law Initiative (ABA/CEELI) that has been used at the country level in the European region. The National Center for State Courts has “CourTools,” performance standards with quantifiable indicators for member state trial courts. The European Commission for the Efficiency of Justice (CEPEJ) in the European Union and CEJA in Latin America are developing performance measures for tracking judicial systems. This recommendation should not be read to call for a lengthy, expensive process to create a new USAID measurement tool. The approach recommended is one of agreement with partners on measurable improvement plans in specific project contexts. These become change management action plans for operating units.

Articulate and implement as a high priority the basic governance principle of the courts as public service institutions that deliver services to citizen court users (“customers”) in order to protect personal and property rights and maintain the rule of law in a democratic society. Despite many years of ROL programming, the justice sector institutions are not seen as doing a minimally satisfactory job. This calls for renewed attention to institutional performance with accountability standards. “Justice” needs to be viewed as provision of a public service to a citizen/customer. Institutionally-focused improvements and training for operators of the system cannot be considered adequate or complete until tracked to the customer level and tested to see if citizen needs and expectations are being met. This can range from proper signage, orderly flow of visitors, and customer service training for court operators, to tracking and public reporting of court performance in clearance rates, time to disposition, case backlogs, speedy access to court records and information, and other such court users’ and public concerns. Public opinion surveys are useful to measure general citizen opinions, but court user (who include the public) surveys are better for measuring progress against actual performance targets embodied in change management methodologies.

Another way of expressing this strategic approach is to focus on interventions at the level where the institutions and the public most directly interact. Improvements at that level can be more visible and respond directly to the public’s needs. This can also be referred to as a more community-based approach. It lends itself well to the trial courts, police precincts, and prosecutors’ offices operating at that level. The 24-hour courts in Guatemala are a good example, actually bringing all the actors physically together to take prompt action. Expansion of a model trial criminal court in Villa Nueva is planned in the Mission’s new project. Model courts or model offices at operating levels are good choices, although they tend to be resource-intensive and replication of successful programs can be challenging. This level also is often where the most reform-minded personnel, willing to enter into performance compacts and innovations, are found. However, any model courts or community policing institutional strategies, for example, need to build in replicability and sustainability plans with the clear objective of scaling up to have systemic impact if the model is successful.

5.2 Citizen Security and Response to Violence in Society

The levels of violent crime in the region are alarmingly high and have been discussed already as a key issue affecting civic order and citizen security. The just-released (October 20, 2009) regional UNDP human development report calls the Central American “northern triangle” (Guatemala, El Salvador, Honduras) the most violent region in the world.⁵¹ USAID has worked with the judiciary, prosecutors, public defenders and CSOs as partners in criminal justice reform, but the effectiveness of those reforms and public support for them is being undermined by public insecurity caused by crime and apparent impunity of most perpetrators. One of the recognized main problems is lack of capacity in the police forces to operate in the reformed system and play their appropriate role as modernized institutions in a democratic society.

USAID’s role in this area is restricted by statute since 1975, which prohibits police assistance.⁵² Over the years, however, the prohibition has been riddled with statutory exceptions to grant latitude to deal with issues such as anti-narcotics programs. In 2002, an amendment permitted “community policing” assistance in Jamaica as a special case. El Salvador was included the following year. In 2005, that exemption was broadened and given worldwide applicability for USAID to assist civilian police authorities in areas such as training, strategic planning, addressing gender-based violence, and improved police relations with the communities they serve.⁵³ USAID has since supported community policing programs on a trial basis in Guatemala and El Salvador, and is considering much broader police assistance programs in countries in the region. USAID/El Salvador has placed a senior police advisor at police headquarters to work with senior management. This assistance is welcomed and the new government is showing solid signs of support for the program. In one sense there is nothing new about USAID work with the police, having used ICITAP as a permissible implementing partner drawing funding from USAID accounts since the 1980s. The difference nowadays is that USAID is beginning to implement police assistance programs directly.

*USAID, in responding to the need for more effective prosecution of criminal cases, should **give a high priority** to improved collaboration between prosecutors and police in criminal investigation and trial preparation.* Regional weaknesses in police and prosecutorial criminal investigative capacity are a recognized serious problem that negatively affects the criminal justice system and creates a perception of impunity for criminals. USAID in some cases is already including relevant police officers or units in training programs for prosecutors where the need for close prosecutor-police investigative and evidence collection cooperation is important. This link between prosecutors and police will be an important part of improving performance in both institutions.

*Community policing programs represent a promising **high priority** approach and should be tested more fully, but with recognition of the need for substantial additional integrated development inputs beyond just the policing program and police-supported community activities.* The clear lesson of USAID’s successful community policing experiment in Jamaica was that the new, closer relationship of the police to the local community was a part of a contemporaneous multi-sector, multi-agency and private sector USAID-funded effort to effect transformational change in a

⁵¹ UNDP, “Central America Human Development Report 2009-2010.”

⁵² Foreign Assistance Act of 1961, as amended, Section 660.

⁵³ USAID, op. cit., p. 1.

crime-ridden, ghettoized inner-city neighborhood of Kingston, the capital city. (USAID/Jamaica is now implementing a follow-on project – Community Empowerment and Transformation (COMET) – that should be tracked closely to learn lessons).

The „community’ in community policing needs to be read as „community development,’ of which policing is a part, though not necessarily the most important part. We suggest following the logic in USAID’s rule of law guide, which “encourages looking outside the justice sector” for programming options to achieve objectives, where necessary to deal with “underlying problems” that lie outside the sector.⁵⁴ Such is the case with violent crime in urban communities. „Community transformation’ urban development projects (“development assistance [DA] projects” in USAID terminology) that are community-based and also include resources for community policing programs may hold the greatest promise for improving citizen security and reducing violent crime in high-crime urban areas in the near term. ROL funding would need to be matched with larger amounts of other DA funding for things such as street lighting, water supply, job training and placement, and other program elements that go well beyond police-supported civic activities and youth programs, such as sports leagues.

In other words, high crime levels directly correlate with “bad” neighborhoods, and those social and environmental conditions must improve if community policing is to be effective and sustainable. Creating educational and real job opportunities for youth at risk, especially males, is fundamental to reducing crime rates. Trust and cooperation between the police and the community is not enough to prevent crime. Community policing assistance in urban areas, although attractive in many ways, cannot be expected to have significant impact on crime levels in the absence of integrated urban redevelopment investments in housing, job training, and similar programs. USAID has a comparative advantage in community policing, but only if the Agency commits other funds in areas such as health, education, and economic development at the community level at the same time.

As a highest priority, if shown to be feasible, comprehensive institutional reforms in police institutions are needed to improve performance and USAID should initiate thorough assessments of what programming should be put in place for the next five to ten years. Police institutions are discussed in this section because of the direct relationship to citizen security issues, but the institutional improvement recommendations from the preceding section are generally applicable to police institutions as well. With respect to possible police assistance activities in countries in the region, the official USAID policy guidance for “Assistance for Civilian Policing” emphasizes that “civilian police assistance is not to be stand-alone assistance, divorced from other USAID objectives.”⁵⁵ Furthermore, the same guidance reinforces the importance of using a balanced approach to the justice sector institutions involved, stating that “good practice suggests that assistance to civilian police is best undertaken in the context of a holistic approach to the justice sector. It is recommended that relationships among judges, prosecutors, and police within the overall justice system should be carefully considered.”⁵⁶ USAID should look to regional good practices in policing as part of its analysis. Nicaragua was frequently cited as having the most professional, effective police, and its homicide rate is well below the regional average.⁵⁷ El Salvador’s reformed

⁵⁴ USAID, “Guide to Country Rule of Law Analysis,” op. cit., pp. 4, 21, 25.

⁵⁵ Id., p. 4.

⁵⁶ Id., p. 4.

⁵⁷ UNDP, op. cit., p. 21.

civilian force still enjoys greater public support than most others, although it is slipping. In Colombia, very high homicide rates in Bogotá and Medellín have fallen sharply in recent years. Without knowing the causal connections, this experience should be analyzed for lessons learned from its combination of enforcement actions and social programs in low income, high crime urban neighborhoods.

Just as judges are the public face of the court system, police are the public face of the law enforcement system. Police deliver services to citizens as customers and should take the same customer-focused approach in their improvement plans as the other justice sector institutions. Community policing as a way to protect citizen security lends itself well to this problem-solving, service-oriented approach. The most experienced police official interviewed stressed the point that comprehensive plans encompassing the operations of the entire institution are necessary in order to effect real change in police institutions; piecemeal efforts will be overcome by vested interests and perverse incentives in the current systems. However, as with community policing, institutional strengthening programs cannot be expected to have a significant, sustainable effect on violent crime rates unless high-crime areas concurrently receive adequate community development investments to improve overall socio-economic standards.

Successful criminal justice reform programs should incorporate prevention strategies and provide for alternatives to incarceration. Criminal justice systems and bigger prisons will not solve problems of crime and violence in any country; numerous interview subjects emphasized the need for serious national prevention strategies as a component of reform. In addition, reforms have been designed to reduce pre-trial detention and provide for alternative case dispositions, such as community service, restitution, etc. Successful approaches need to build in good programs to oversee and accommodate these alternatives. The Missions in Mexico, Guatemala, and El Salvador are already following this approach by including prevention components in projects, taking advantage of alternatives to imprisonment in the codes, and by engaging civil society heavily in crime prevention activities.

5.3 Access to Justice

*Access to justice activities have reduced social marginalization and inequality with respect to justice sector institutions and should **continue to receive priority** both with government and civil society.* This is an area that has received considerable USAID attention to date through a variety of mechanisms and approaches, with successful results in many instances. Women, the poor, the disabled, indigenous peoples, ethnic minorities, displaced persons, war and crime victims are examples of groups that have benefited. In societies marked by social inequality and where equality before the law is often honored in the breach, these programs help to level the playing field and add greater fundamental fairness in the legal system. Access to justice programs fill a need and niche appropriate for USAID, are aimed at protecting and expanding rights, and are consistent with Agency strengths and core development objectives. Inequality and poverty provide a strong strategic rationale for continuing efforts in this area.

USAID should continue to direct its efforts at supporting public defense and resolution of criminal matters, but should expand strategically to increase access in the area of civil law and disputes, especially in small claims and common everyday matters that affect people in their daily lives but are not being adequately addressed. Emphasis should continue to be placed on the rights of women and other marginalized or vulnerable populations. Increasing access to justice for small

claims, and building public confidence and credibility in courts at lower levels of direct public contact, could be extremely fruitful and helpful to people of lower socio-economic status. Moreover, it would coincide with the focus on poverty and downstream users emphasized in the ROL Strategic Framework and promote legal empowerment of the poor. The specific approach would vary by country: a number of systems are already in place, such as *casas de justicia*, Justices of the Peace, criminal and civil ADR mechanisms, ombudsmen, etc., but function quite differently depending on the locale. Justices of the Peace may have broad coverage in one country, but limited practical application or utility. USAID Missions should explore the possibility of working with existing structures or mechanisms, but work to decrease complexities and obstacles to effective utilization. Any such efforts should be preceded by a needs analysis to tailor programming means and mechanisms, and identify existing barriers. In the Dominican Republic, for example, a system of Justice of the Peace courts are in place, but are underutilized in large part because of the complexities of the civil procedure codes, excessive costs and delays, and requirement of legal representation in even minor administrative matters. Under these circumstances, the parallel recommendation to support civil procedure code reform could dovetail nicely with access to justice goals and objectives. Reforms in civil procedure, especially simplification of processes, and expansion of community and small claims venues for dispute resolution, would have positive effects on access to justice.

5.4 A Role for Civil Society

*Maximize use of USAID expertise in civil society development by **continuing to give priority to NGO partners as justice sector “watch dogs” for accountability, as supporters of reforms in a rights-based legal system, as partners with the government in crime prevention, and as advocates for greater legal empowerment of the poor.*** USAID has played an important role in strengthening the participation of civil society organizations in public policy and justice sector reforms. This is an important democratic development achievement applied to rule of law. We saw clear examples of this influence in Mexico and Guatemala, and doubtless the same is true in El Salvador. Civil society programs also have been active and effective in ROL efforts in Honduras and the Dominican Republic. Many of the successful civil society efforts have built off of strong existing constituencies with common interests that have recognized the potential value of ROL and justice reform to advance and protect their own particular needs, *e.g.*, women’s groups, media, environmentalists, business and trade associations, unions, etc. Among USG actors, USAID clearly has the experience, expertise, and comparative advantage to design and implement civil society programs in the justice sector. The “culture of lawfulness” that civil society can best promote is an area that should get attention to provide the sustaining foundation for the superstructure of justice institutions that USAID has done so much to improve. Democratic accountability is still very weak throughout the region for the young democratic systems. Building citizen confidence in the rule of law by citizens’ own participation in reform activities should be a priority for USAID engagement.

In addition, civil society efforts could be channeled into “judicial auditing,” *i.e.*, programs to compile and analyze public information for the purpose of overseeing the justice sector and gathering information and commitment to pressure for openness, accountability, stronger institutions, and reforms. These judicial audits could be undertaken by legal and non-legal NGOs, as well, to promote and protect cross-sectoral interests that suffer the effects of weak legal and judi-

cial systems. This type of civil society engagement can potentially build and maintain external pressure for reforms where internal institutional political will is otherwise lacking.

*We make special mention of and give **high priority** to working with emerging professional associations and civil society „justice coalitions’ that have real interests and political will to improve systems at the working level and from within.* In addition to generic bar associations, professional associations include a broad range of other associations, such as judicial associations, women’s bar and judicial associations, public interest or legal aid centers, commercial bar associations, specialized private attorney associations, public lawyer associations, and numerous other categories of common professional alliance or interest. Such specialized professional associations are appearing throughout the region, often coming together in networks or coalitions, and many of them are highly motivated by genuine desire and self-interest in professional progress and institutional improvements. These associations could be strengthened and supported to participate and actively promote and advocate improvements to legal and judicial systems and institutions, especially with regard to policies and practices concerning the selection, discipline, promotion, and other terms of employment of judges, and ethical codes and disciplinary procedures for lawyers. They have the potential to overcome the elite „state capture’ phenomenon that often blocks or turns back reforms at the highest levels of the justice sector institutions. Judicial sector employee organizations need to take steps, however, to avoid being seen as merely trade union organizations interested only in salaries and working conditions. Both types of CSOs represent “demand side” actors pressing for systemic reforms, but the professional organizations often can exercise greater influence because of their intimate knowledge of the workings of the system and greater credibility with the public and legislatures. They can be the „glue’ of sustainable advocacy that holds together broad-based coalitions for reform. These efforts should include public education about legal rights already in place and reform measures under consideration in order to build and sustain public support.

5.5 Judicial Independence and Accountability

In the judiciary, serious questions remain as to whether acceptable quality, integrity, and efficiency are serving to sustain judicial reforms. Continued corruption was often cited, and citizen confidence in judges and the courtrooms they run is still unacceptably low. This is as much a problem of institutional performance as it is of the judges themselves. Much effort has been expended, with some success, to increase judicial independence. Judicial councils, merit selection, new appointment cycles, and career laws, among other changes, were all designed toward that end. Improvements in facilities, equipment, and administrative support systems have been put in place with donor assistance to improve the efficiency and productivity of the judiciary, with varying results. Less attention has been paid to judicial accountability, the other side of the same coin, and accountable performance still lags in the judiciary. The same may be true in the other justice sector institutions, but we attach special importance to the judiciary because of their due process oversight role and to the judicial branch as a check on abuse of power by the executive and legislative bodies.

In addition to recommended change management and institutional performance improvement programs within the judiciary, USAID should support judicial integrity programs, such as effective disciplinary bodies and focused anti-corruption mechanisms, to try to expose incompetent or corrupt judges and take appropriate action. Accountability, especially with respect to corrupt acts by judges and court personnel, has become perhaps a more pressing issue than judicial indepen-

dence. Judicial independence can only be protected by public confidence in the judiciary that empowers judges with public support to resist encroachments on independence by the other branches or powerful political interests. The judiciary has not earned that level of public trust.

Where political will or leadership in the judiciary for higher accountability standards is lacking, USAID should emphasize ‘demand side programming’ with CSOs to continue efforts to improve the integrity and quality of the judiciary. Political will and active participation on the part of civil society on these issues was evident in the countries visited. CSOs have become actively involved in high court judicial selection processes, as in Guatemala, Honduras, and the Dominican Republic, and public opinion in El Salvador has pressured political parties to overcome partisan selection approaches in the interest of putting better quality justices on the Supreme Court. For more on this, see the broader discussion of such a role for civil society in the preceding section.

*USAID has moved away from programs with the judiciary in recent years, largely due to dissatisfaction with judicial performance and resistance to reforms, but should still actively seek programming opportunities **and give priority to them** because the judiciary is indispensable to the sustainability of the reforms achieved in the criminal justice system and to the whole constitutional structure of checks and balances in a democratic political system.* Accountability is more than an anti-corruption focus, and positive change management programs leading to measurable performance improvements by courts and judges can provide the incentives to recognize and reward good courts and judges as well as to take action against judges and other court personnel who fail to meet performance standards or show evidence of a lack of integrity. Both positive and negative incentives need to be reinforced. Only recognized better performance and accountability standards can protect the independence and co-equal status of the judicial branch and the judges themselves. Ultimately, qualified, independent, and accountable judges are central to the integrity of the entire system. As stated in USAID’s rule of law assessment guide: “If the judiciary is not operating effectively, it is highly unlikely that rule of law will prevail. The judiciary plays a key role in achieving all five essential elements of rule of law.”⁵⁸ New approaches to institutional improvement of the judiciary and other justice sector institutions are included in this report’s recommendations.

5.6 Corruption

*Corruption affects all justice sector institutions to varying degrees. Serious efforts **with highest priority** to reform these institutions and improve their performance in the eyes of their customers and the public at large, as recommended above, will require building anti-corruption and accountability elements into all assistance packages and change management plans.* Mission ROL programs are beginning to focus more on the problems of corruption in justice sector institutions. Stand-alone anti-corruption programs for the government or justice sector institutions are likely to be less successful than positive, institution-specific performance improvement plans that incorporate accountability standards that specifically seek to identify and reduce corrupt practices. Change management is meant to modify the incentive structures that allow corruption to flourish or to be tolerated. The USAID study dealing with corruption in the judiciary offers useful guidance that to a great extent can be applied to other justice sector institutions, as well.⁵⁹ Examples

⁵⁸ USAID, “Guide to Country Rule of Law Analysis: The Rule of Law Strategic Framework,” (August 2008), p. 13.

⁵⁹ USAID, “Reducing Corruption in the Judiciary,” Program Brief (December 2008), pp. 5-7.

include transparent selection and appointment procedures, security of files and records, standardized performance guidelines, and asset disclosures. Outreach efforts to the public and court users in particular should make clear that accessible procedures are in place to receive complaints about corruption and that information about action taken in response will be made available to the public. Civil society activism is readily channeled toward anti-corruption and accountability issues. CSOs are already carrying out institutional oversight programs. Support for civil society should be linked with performance improvement and anti-corruption programs in justice sector institutions in order to achieve more integrated, holistic ROL programming.

Administrative law can also provide accountability mechanisms and some possibility for checking executive authority and increasing transparency, in addition to increasing access to justice. Administrative law *per se* is not a discrete substantive area of law, but applies to a range of subject areas that permit citizens to contest government actions or decisions; administrative law governs the legal relations between government and its citizens in contexts that directly affect their everyday lives and concerns, (e.g., small business licensing, health and pension benefits, education, social programs, transportation, labor and unemployment benefits, etc.). The fundamental purpose of administrative law is to ensure that government officials and agencies exercise their powers and authorities lawfully and in accordance with defined rules and procedures. Recent regional initiatives to enact and implement Transparency Laws – akin to our Freedom of Information Act – that enable citizen access to previously unavailable information concerning government activities and operations are important advances in administrative law. Other efforts, such as the regional labor initiative, are directed at administrative courts and agencies. Pursuing the use of administrative law to better protect citizens, combat corruption, and check executive authority would not be resource intensive, could provide significant benefits to citizens, and would promote Agency goals.⁶⁰

5.7 Extending the Adversarial System from Criminal to Civil Reforms

The regional trend appears to be shifting toward civil law reforms. This study has focused to a large extent on criminal law reforms as the central area of USAID assistance in the region. The failure of the ROL to function regionally in non-criminal matters, *i.e.*, civil matters, may be of broader relevance to the general population on an everyday basis, and the source of substantial frustration and dissatisfaction with the rule of law. Civil procedural code reforms to streamline practices and adopt adversarial methods are now underway in several countries in differing stages of progress that can provide a valuable foundation of local ownership for USAID support. A new civil procedures code has already gone into effect in Honduras, and El Salvador is planning to introduce oral proceedings in civil cases beginning next year. Prior history and experience with the reformed criminal processes should make it much easier for USAID to lend productive technical support and transfer lessons learned from the criminal to the civil arena, as well as to garner local support. If those reforms result in less formality, more transparency, and fewer delays in processing civil cases, they would increase public confidence and credibility in the rule of law.

Reforms to Civil Procedures Codes and practices could have potentially far-reaching consequences and significant benefits to a broad range of civil matters and litigation, including such

⁶⁰ See generally, “Using Administrative Law Tools and Concepts to Strengthen USAID Programming” (USAID/IRIS, February 2008).

everyday matters as divorce, family law, debt, commercial transactions, property, and labor disputes. As such, civil procedural reform will help to open the formalistic and complex civil system, and thereby enhance access to justice. Implementation of civil procedural reforms would undoubtedly be difficult, but will not require the capacity and cooperation of as many state actors and institutions as the criminal arena, *i.e.*, success will not depend on the performance and interactions of police, prosecutors, or public defenders. Accordingly, civil procedure code reforms should not require as much orchestration or investment as the criminal reforms.

Helping to create a modern, harmonized system based on oral and public proceedings across both criminal and civil law would be a signal achievement. USAID has learned many valuable lessons about how to catalyze action toward legal reforms that can be applied to a civil process reform, such as the importance of civil society engagement, including the private bar, to build support, and the need to take into account gender equality and access to justice for ordinary citizens. USAID has learned the limitations of mechanistic code reform exercises and too great a reliance on inwardly-focused institutional approaches that do not aim to meet court users' practical, everyday expectations of the courts. As a consequence, much of the CPC experience and practices to date are transferable, and many costly mistakes can thus be avoided.

5.8 Synthesis of Program Recommendations, Funding Scenarios and Opportunity Costs

Among the various ROL programs USAID is currently supporting and those on the drawing boards, it is clear that the direction of programming will continue to give highest, almost exclusive, priority to elements of the criminal justice system. Of course, prioritizing among various program elements is still required to maximize impact and return on resources invested. A holistic approach should be used as called for in USAID's strategic framework for rule of law assessments,⁶¹ but USAID will not have enough resources to attempt to address needs everywhere identified. Our recommendations give highest priority to institutional improvement programs with the justice sector institutions, including the police, based on a more effective governance rationale. This approach needs to be balanced with continued "demand side" programming to generate and maintain public pressure for reforms.

Given anticipated funding levels for DG programs and ROL in particular, it is highly unfortunate that USAID may not have adequate resources to take advantage of the attractive opportunity to support emerging reform efforts in the civil justice system. Programs aimed at institutional performance improvements in the courts can, however, have important spillover effects on the operations of the system in civil matters, as well as in targeted criminal matters. Programs targeted to strengthening judicial independence and accountability will likewise cross the civil/criminal divide: independent, capable, honest, and accountable judges held to performance standards for themselves and their courts are equally important in civil and criminal matters. Access to justice programs will similarly span both civil and criminal matters. Civil society activism to improve the quality of the judiciary and in favor of other reforms will also likely be directed at the system as a whole, or at cross-sectoral component parts that will include multiple categories of civil interests. These "synergies" can be achieved at limited marginal costs if USAID ROL programs specifically take them into account in program design and impact measurement.

⁶¹ USAID, "Guide to Country Rule of Law Analysis," *op. cit.*, pp. 1-4.

USAID programs in the region and elsewhere typically include civil society and access to justice components in addition to a public sector institutional partner, *e.g.*, courts, prosecutors, public defense. In light of our recommendations, such a structural approach remains desirable. However, the high priority given to governance and institutional reform objectives in public justice sector institutions will make it difficult to maintain balanced funding across all three without an increase in resources for ROL programs. This is especially true if USAID adds police institutions as a major new justice sector partner. The mix of these components is important to achieve integrated programming that can create cross-cutting synergies. The question of how USAID can actually achieve results on the ground is more than this strategy review can adequately cover, for it requires detailed analysis of country-specific conditions, political dynamics, sequencing and timing.

Finally, we wish to synthesize discussion of the issue of “bottom up” versus “top down” programming in a strategic sense. Work to achieve ROL objectives should be done at multiple levels, with relative emphasis depending on country circumstances, openings presented, and leadership in both a personal and organizational sense, *i.e.*, both “bottom up” and “top down.” As a matter of overarching strategy, USAID should focus most importantly on achieving results at operational levels where institutional changes intersect with service delivery to citizen customers who can benefit from improvements that represent better governance on their behalf. These changes may usually take effect at lower levels, *e.g.*, first instance courts, pre-trial hearings, public defender or prosecutors’ intake offices, ADR mechanisms, or initial police contacts. Although these changes may be felt at lower levels, they nonetheless will often reflect and require high level approval and support. Of most significance and impact are actual practices, procedures and behaviors that can be identified and measured as part of practical, specific institutional improvement plans designed to transform them into true “public service” institutions that can operate effectively. Whether we are talking about public sector, civil society or access to justice activities, the strategic focus should be on the ultimate downstream benefit and utility to the public.

6.0 COUNTRY OVERVIEWS

In July 2009, the DI team carried out brief field work in the core countries identified for this study: El Salvador, Guatemala, and Mexico. These three countries represent a range of circumstances and a spectrum of reform from the earliest USAID ROL program in El Salvador in the mid-1980s, to the more recent support of Mexico's reforms enacted over the past five years. Although much greater analysis is merited for each of these countries individually, the field work focused on each country's role within the regional context and what it could tell us about the larger view of regional reform progress and issues. Therefore, the narrative overviews and descriptions in this section will provide relatively brief snapshots of each country's context, reforms, successful approaches, and challenges. The countries are addressed chronologically in order of USAID programming history.

6.1 El Salvador

6.1.1 Political, Economic, and Social Context

El Salvador has experienced significant changes in context in recent years. The Peace Accords in 1992 wrought major changes in the structure and institutions of government, including the courts, army, police, and electoral commission. The politically-based violence of the civil war ended and has not recurred, although violent crime is a serious social problem and has been for a number of years. All observers agree that El Salvador has become a much more pluralistic society and that the government respects fundamental rights and liberties. Political dissent is no longer met with violence, and elections are open and competitive with results respected. The main opposition party known by its acronym of FMLN (*Frente Farabundo Martí de Liberación Nacional*), the political party that grew out of the armed insurgency forces and its political arm, gradually increased its strength in legislative and municipal elections, but had never successfully competed for the presidency.

The presidential elections in early 2009 represent a watershed in El Salvador's political history. For the first time, the leftist FMLN has assumed power, marking a sharp break from 15 straight years of conservative control of government by the rightist ARENA party (*Alianza de Renovación Nacional*). The new president, Mauricio Funes, not an ex-combatant, is a self-proclaimed moderate and is expected to follow centrist policies and maintain close relations with the United States. Nonetheless, major changes in the government's policies and outlook on governance are already evident.

As these apply to the rule of law and the justice sector, the new government has rejected the *mano dura* or hard-line approach of the previous government, which involved large-scale roundups and detention of youth as part of a "get tough" approach to crime. The police dragnets were not effective in lowering the crime rate. The National Public Security Council is to play a leading role in a presidential-level strategy and effort to emphasize crime prevention, working at the local government level in conjunction with civic groups. This new approach has not yet come up against the reality of violent crime in the country.

For the courts, the new government successfully brokered a political agreement with the opposition that allowed for the selection of a respected, nonpartisan, new Supreme Court president and

five other justices considered to be quality jurists. This will open the door to possible renewed USAID cooperation with the judiciary.

Based on Peace Accords commitments, the police force has been completely “civilianized,” restructured and restaffed with vetted personnel, including excombatants from the armed insurgency. USAID provided considerable funding for this effort but did not play a direct role in such things as the new police academy. Applying new doctrine and training, the national civilian police have built considerable public credibility and trust, although their success in combating the current crime wave is not evident. Unlike their counterparts in many of the other countries of the region, however, they do not have a reputation as a highly repressive or corrupt force.

Economically, El Salvador is a very open, “dollarized” economy with what might be called a neo-liberal policy framework. Whether that will change under the Funes administration is yet to be seen. Indications are that the government will retain a private sector-driven growth strategy but with higher government investment and spending in social sectors such as health and education. Per capita incomes are low and the majority of the population still is poor, although supported by a high level of remittances from the diaspora in the U.S. Agrarian reform has changed land tenancy patterns dramatically and has contributed to social stability, but it has not raised productivity and small landholdings are still the norm.

Socially, El Salvador, like its neighbors, has a young population and a labor force with low educational attainment. The civil war caused large-scale emigration and also a large movement from rural areas to safer urban centers. The consensus reached to end the war has served in the last 15 years to make the society much more open. This greater inclusiveness seems to have fostered a certain sense of optimism about the country’s future, and the new government is looked to with high expectations for social change and greater efforts to deal with pervasive poverty.

6.1.2 USAID Assistance and Directions

It was in El Salvador that USAID initiated ROL programming with the first project in 1984 at the height of the civil war. Gross human rights violations, including the murder of a number of U.S. citizens, made it difficult to justify U.S. counterinsurgency military assistance or the claims that the El Salvadoran government was defending democracy. So USAID, which already had a massive assistance program in place, began to try to strengthen the rule of law under very difficult circumstances. ROL programs continued after that for some 21 years, with varying degrees of success.

Programs included the full range of technical assistance and material support, including early assistance for the forensic crime laboratory. The principal focus of activities was support for the drafting and implementation of the new criminal procedures code and the adversarial, oral system it introduced to the courts. Training for judges and court personnel reached a large number of participants. USAID provided support for the National Judicial Council.

It is more difficult to describe the recent trajectory of ROL programming because of a hiatus beginning around 2005, when most activities in the sector were discontinued and DG programs were no longer seen as essential. However, part of the reason with respect to ROL activities was dissatisfaction with the Supreme Court and judiciary, which were seen as uncooperative, corrupt and not in need of external funding assistance. In 2006 the Mission went “outside the system”

(courts and judiciary) to support a mediation project through the Public Defender's Office, which is an autonomous part of the independent Public Ministry. Around this time ICITAP also supported a community policing activity considered successful but with uncertain sustainability, and new activities are starting through the U.S. Department of State Narcotics Affairs Section (NAS) with INL funding, with a special focus on youth gangs.

In 2007-08 USAID resumed ROL programming after a two-year break by initiating a new criminal justice project, based mainly on a crime and violence prevention rationale. As in neighboring countries, the new project was designed principally to respond to the alarming increase in violent crime and, to some extent, the special problem of youth gang violence. In addition, El Salvador is home to a small regional "labor justice" project that is trying to strengthen the system of labor courts and labor law implementation as part of a workers' rights protection provision of CAFTA agreements.

The Mission hopes to expand ROL programming in FY2010 with activities focused on transparency; courts, prosecutors, and the police; and crime prevention. The Mission has established a close working relationship with the new government and is doing joint planning in the justice sector at the highest levels to align priorities and plans for implementation. The Mission also has strong interest in supporting the upcoming transition to oral, adversarial procedures in civil matters.

6.1.3 Successful Programming Approaches

Due to the off- and-on-again flow of USAID's involvement, it is harder to cite "successful" programming approaches in recent years. Earlier successes, though significant, date back to earlier stages of programming. They include code reforms, institutional strengthening and training activities.

Mediation. Although the mediation project is small, the Mission views it as very successful to date. The Public Defender is the implementing partner, and 23 mediation centers have been opened in conjunction with public defender offices.

New criminal justice project. The current ROL project cannot be called an 'approach' and because of the recent renewal of project activities it is actually too early to claim new successes in the criminal justice field, but the project is seen as making good progress. The government's justice sector coordinating mechanism known as UTE (*Unidad Tecnica de Evaluacion*) plays a serious coordinating role, is stronger than in other countries, and welcomes USAID collaboration as effective. Placing a senior police advisor with the deputy of the national police represents a new approach and a move into a direct assistance relationship with the police institution. The cooperation with prosecutors and police was noted positively, as they welcome working with USAID. The new government is showing signs of solid support for the program as it begins to implement its national crime strategy, which emphasizes prevention and community-based approaches.

6.1.4 Constraints and Obstacles to Reform

Judiciary seen as an obstacle to reform. Unlike the other countries visited or studied, the judiciary itself is viewed as a major problem in El Salvador. In the quest for judicial independence, the judiciary and individual judges seem to have become untouchable, and therefore, in practical terms, unaccountable. The judiciary is seen as independent to a fault, and very corrupt. The unin-

tended consequences of a constitutional 6 percent budgetary earmark for the judiciary to protect its independence has made the judiciary (judges and courts) overfunded compared to the other actors in the system and financially unaccountable to executive or legislative processes. Independence has become a shield to defend against accountability. Individual judges act without constraints, opening the door to corruption. Feuding between the Supreme Court and the National Judicial Council, in which the court has the upper hand, has further diminished judicial performance accountability. A respected new Supreme Court president may attempt to open the judiciary to reforms (his predecessor was in office for nine years and was considered an old-fashioned *caudillo* hostile to reforms). He stated to us that he recognizes corruption is a major problem. The Attorney General also is a respected figure.

Weaknesses in criminal investigative capacity of police and prosecutors. Though the police enjoy greater public confidence as to their capacity and integrity, the lack of capacity for good criminal investigation and the same weakness seen in the prosecutor's office results in very low rates of arrest, prosecution and conviction in murder cases, the crimes that have inflamed public opinion and created a sense of citizen insecurity. Add to this lack of confidence in the judiciary. A 2007 UNDP report on the criminal justice chain stated clearly that the police and prosecutorial investigative failings are a major problem for the criminal justice system.

Information technology, case tracking and case management systems are poor. Court administration systems for information technology, case tracking and case management were described as badly degraded and in need of urgent attention and upgrading.

6.2 Guatemala

6.2.1 Political, Economic, and Social Context

Politically, Guatemala has no history of governance according to the law. The country did not achieve constitutional government or orderly transfers of power for any significant period of time from independence in 1821 through to the 1940s. Most rulers were military officers who took power by armed force. The two open elections that followed the 1944 revolution were considered legitimate, but the left-leaning Arbenz government was ousted in 1954 by a CIA-supported armed uprising. Elections from then until 1985 were not free and, with one exception, gave power only to army generals. Military *coups d'état* occurred in 1982 and 1983 as well. Since the free election in 1985, however, only civilians have held the presidency and constitutional order has been maintained with the exception of an unsuccessful *auto golpe* by an elected president in 1993, which the army refused to back.

Thus, it is safe to say that almost all Guatemalan governments until the mid-1980s have been illegitimate or military dominated, with rule by decree being the norm. Courts and judges lacked independence, and the military was not subject to civilian control. In such an environment it is not surprising that acceptance in fact of the principle of rule of law is weak. Moreover, Guatemala suffered from armed internal conflict for 36 years until the Peace Accords in 1996 ended the terrible civil war. Only in recent years under democratically elected civilian leaders have we begun to see any serious attempts to make the principle of rule of law a reality. This is not meant to be an indictment of Guatemala, but rather to show that the rule of law is a recent development and Guatemala is still at an early stage.

Economically, Guatemala has long been dominated by a landowning elite controlling the arable land that produces the country's main export crops. Allied with urban banking and commercial interests, this elite supported military rule in government in the interests of stability and protection of their economic position. Per capita annual income at \$4,520 in 2007 (PPP method) puts Guatemala in the lower middle income tier, but it belies severe income inequality. The Gini coefficient is 56, and the bottom 20 percent of the population receives only 3.8 percent of national income.

Taxes as a percentage of GDP are 12.9 percent, one of the lowest in the Western hemisphere. As a result, the level of public investment and services is quite low. Guatemala has opened its economy considerably as part of the CAFTA process and follows generally adequate macroeconomic policies. Annual GDP growth in the years 2003-2007 (before the onset of the global recession) has been good at above 4 percent, but sustained high growth levels are necessary to achieve per capita income gains to alleviate poverty.

Socially, Guatemala remains a very divided country, with its large indigenous population in particular suffering great disparities in income, health, education and other indicators of social well-being. The Peace Accords finally recognized Guatemala as a multi-cultural nation, but severe social inequality is still undeniable. The civil war exacted a huge toll in human lives and social disruption, especially in rural areas. The demographics of the country describe a very young population, with 39.4 percent under the age of 15 and a median age of only 19.4 years. Although Guatemala was until recently considered a very rural and agricultural country, almost 50 percent of the population now lives in cities. The country is at peace, but the levels of violent crime are high, especially in major urban areas.

6.2.2 Progress Toward Justice Sector Reforms

The democratic transition in 1985 opened the political space for serious discussion of justice sector reforms. In 1994 Guatemala became the first country in the region to modernize its criminal procedure code, but preparations for implementation were inadequate and real progress was stalled for at least four years afterwards.

Fifteen years after code reform a number of other reforms demonstrate progress made. The Public Ministry (Prosecutor's Office) is autonomous, as is a strengthened public defender's office that is improving access to justice for persons charged with criminal offenses. The national civilian police are separate from the military and under control of the Ministry of Interior. A Constitutional Court, Judicial Council, a career judicial path, civil service status for judicial administrative staff members, and a budgetary earmark all have been established in order to strengthen judicial institutions.

Justices of the Peace, providing judicial presence, are now found in each municipality, with support from a World Bank project. The Bank's \$33 million project also financed construction of larger regional justice administration centers. Infrastructure overall has improved significantly. However, the Bank's own internal final report on the project was highly critical and rated it "moderately unsatisfactory," citing lack of "buy-in" by implementing judicial branch agencies.

Nonetheless, public perceptions of the criminal justice system remain highly negative. Judges are widely viewed as corrupt, and the police are seen as abusive as well as corrupt. What drives these

perceptions most is the fact that murder and other violent crime rates have risen sharply in recent years, and drug trafficking and the power of the drug cartels is growing. The government and the criminal justice system are seen as incapable of suppressing criminal activity. In the face of these harsh realities, important systemic reforms in the past 15 years are overshadowed or seen as ineffective.

6.2.3 USAID Assistance and Directions

As with the other countries in the region, USAID role of law programming concentrated on the criminal justice system, with a special interest in human rights and due process protections, so often violated during the long years of military rule and civil conflict. Strengthening the rule of law was seen as essential to sustaining the civilian democratic transition. USAID began project activities in 1986 working through ILANUD to provide technical assistance, training and materials. Projects begun in 1987 and 1988 struggled against an adverse environment for implementation and were terminated early. Court leadership was not strongly committed to internal reforms, and the poor human rights conditions in the country still inhibited major involvement in rule of law activities.

It was not until 1993 that USAID began a new project to help implement the newly reformed criminal procedure code, particularly the introduction of the adversarial system and oral public trials. Because of weak implementation the new system did not really get off the ground until after further code reforms in 1997 made it more adaptable to the basic structures of a civil law system. This project also introduced the regional justice service centers, the forerunner to what has come to be known as the *casas de justicia* concept, now better known from Colombia. The center in Quetzaltenango in western Guatemala benefited from strong local leadership and commitment, and it is still considered the best example of a grass roots legal services center approach. Through 2004 USAID's programming specifically supported Peace Accords commitments in the justice sector.

The current rule of law project (2004-2009) and the proposed follow-on project have the most relevance for strategic analysis, as they have introduced significantly different elements and have shifted toward law enforcement objectives, especially suppression of violent crime, in the interests of public order and maintenance of democratic institutions. They support a special homicide unit in the public ministry and will emphasize prosecution of serious violent crime. Material support may go to equip a "high impact court," which would have facilities that are hardened and made more secure for court personnel and the conduct of major trials. Institutional reforms for prosecutors and police are proposed, with police assistance subject to special approvals, with the objective of increasing internal oversight and accountability as well as efficiency. Activities to mobilize the justice sector and civil society to reduce and prevent crime and to provide services to victims also demonstrate the crime-centric focus of programming. (Special activities related to the Millennium Challenge Account and the archeological treasures of the Peten are not relevant to this analysis.)

6.2.4 Successful Programming Approaches

The "24-hour courts" model is bringing greater speed and transparency to the initial stages of the criminal process. The "24 hour courts," of which there are now three in operation (the first, in Guatemala City, was the USAID model court), are arraignment courts where police, prosecutors,

public defenders and judges work closely together in continuous operation with rotating personnel to initiate the first stages of criminal cases. Police bring in suspects who are “booked” into a computerized database and then immediately passed to prosecutors who interview the suspect and review the police report to evaluate the case. Public defenders also are on hand for representation of the suspect. A recommendation is then passed to a sitting judge who will decide if the case proceeds and whether or not the suspect will be released on bail. A complex but well-structured system of rotation of personnel and records maintains transparency and limits the possibility of corrupt practices by any of the parties. Suspects are no longer held in police custody without being brought before a judge promptly. The process moves speedily and efficiently. The 24-hour courts have improved justice services by the operators as well as to the unwilling “customers.” Data indicate it is a good application of the adversarial system at the basic level. The Supreme Court endorsed the approach, and the two courts in outlying Villa Nueva and Mixco are now funded by local resources and have been expanded to offer the full services of a first instance court. Expansion to other cities is planned.

The regional justice centers have brought services closer to the citizens, especially in semi-rural areas and to indigenous populations. The smaller size service center concept piloted by USAID has been followed by larger, World Bank-funded regional justice administration centers. The larger centers involve significant infrastructure investments and provide modern working facilities for the courts and prosecutors’ offices. Such decentralization is presumably a good approach, but it is unlikely to overcome systemic deficiencies that affect the entire system.

Having become well established, the adversarial system itself, with oral trials, prosecutors and public defenders, is perhaps the greatest long-term success. The “new” system has taken root and is widely seen as preferable to the “old” system. The public can be present, and arguments and decisions are heard in open court. This transparency serves democratic development objectives well. However, the adversarial system (and more liberal pre-trial release practices) is being unfairly criticized for contributing to the crime rate. The adversarial system is not *per se* a crime-reduction mechanism.

An active, energized civil society is playing a larger role in justice sector issue. One of the real benefits of the Peace Accords ending the civil war was creating greater space for civil society to participate without fear in public affairs. USAID programs have actively supported civil society’s participation in rule of law matters, and NGO federations have seats at the table in government-civil society coordinating mechanisms. Civil society groups are working openly to improve the quality of the judiciary by influencing the voting for the nomination rosters for appellate and Supreme Court judges, now in process. The final selection process, however, remains in the Congress and is highly politicized.

6.2.5 Constraints and Obstacles to Reform

Reluctance by judicial leadership toward serious internal reform of the judiciary has been a problem. For whatever reasons, USAID and other major donors have found it difficult to elicit full cooperation and support from the Supreme Court for major technical assistance programs targeted at the judiciary. The need for thoroughgoing “change management” approaches to achieve improved institutional performance does not seem to be recognized. However, when we met with the newly elected President of the Supreme Court he expressed strong support for USAID assistance programs and welcomed greater cooperation. He was well informed about the

content of the programs and said they are addressing priority needs.

The governance failures of the “democratic experiment” in providing services and visible benefits of democracy to the people, weak government institutions in general, and limited state presence in many parts of the country are undermining the legitimacy of the state, including those institutions essential to rule of law. Guatemala is close to being seen as a “failing state.” Public services remain at a very low level comparatively, and public revenues are not robust enough to support increases. According to all the people we interviewed, public respect and support for the national government is extremely low. The sense of an impending governance crisis is palpable. Penetration of the Colombian and Mexican drug cartels and their alliances with local criminal organizations have raised concerns about the “state capture” phenomenon and is held responsible for the spike in the murder rate. As discussed elsewhere, this threat is real; but the weakness of the Guatemalan state overall puts greater strain on justice sector institutions.

To the extent crime is the central justice sector issue, corruption and ineffectiveness of the police in preventing and investigating crime is a serious constraint. Weak crime investigation capacity of the police and poor prosecutor-police cooperation make the successful prosecution rate for homicides committed as low as 4 percent, according to some estimates. That translates into virtual impunity for murderers. The adversarial process makes it essential for the police to develop credible evidence for use in trials. Guatemala recently has chosen to place greater investigative authority with the prosecutor’s office, and USAID has a specific component in its current project to build the capacity of a special unit dedicated to “crimes against life.” Solid data to show whether this approach is succeeding in reducing homicide or in improving the conviction rate for defendants charged are not yet available. The new project about to start will continue this support.

Political will does not appear to be strong. An apparent lack of political will or inability to match the power of drug cartels and other organized criminal groups, including some within state institutions, is a major constraint to the success of USAID rule of law programs that focus principally on crime and criminal justice issues. This is in part simply an objective reflection of the governance failures and weak state institutions described above. To change this dynamic for the criminal justice system will require extraordinary political will, an ingredient that external actors cannot supply. The risks of being overly committed to major crime issues are high. Political will for justice sector reforms might be stronger in other more prosaic but essential elements of a modern system of justice and courts.

6.3 Mexico

6.3.1 Political, Social, and Economic Context

Mexico became a federal republic in 1917 and was ruled by the Institutional Revolutionary Party (PRI) from the party’s founding in 1929 until 2000. The landmark presidential election of National Action Party (PAN) candidate Vicente Fox in 2000 ended 71 years of PRI rule. He was succeeded in 2006 by the election of President Felipe Calderón, also of the PAN party, whose term ends in 2012.

Conditions in Mexico, and its relationship with the United States, are markedly different from those of either El Salvador or Guatemala. Mexico, with a population of more than 110 million, is

a federal republic with 31 states and a Federal District.⁶²

Mexico and the U.S. have extensive historical, commercial, cultural, geographic, and educational ties. Economic development and expansion have grown dramatically through partnership in the North American Free Trade Agreement (NAFTA), and, since ratification of NAFTA in 1994, Mexico has become the third largest trading partner of the United States. Mexico's economy – the twelfth largest in the world – has been one of the hardest hit in Latin America by the economic crisis due to its close ties with the U.S.⁶³

The U.S. and Mexico share a border of almost 2,000 miles that spans four U.S. and six Mexican states. People cross regularly to pursue business, family, and tourism interests. More people pass between the U.S. and Mexico than between any other two countries in the world.⁶⁴

U.S. relations with Mexico have a direct impact on the lives and livelihoods of millions of citizens of both countries in matters such as trade and economic reform, homeland security, drug control, migration, and democratic development.

Over the past two decades, Mexico has initiated a series of profound democratic reforms in its government institutions in order to ensure free and fair elections, increase accountability and reduce corruption in the executive branch, decentralize federal authority to states and municipalities, strengthen and make the legislature more representative, and increase the independence and efficacy of the judiciary. Notwithstanding its progress and potential, Mexico suffers serious shortcomings in basic requirements of competitiveness, including poor governance, rampant corruption, low citizen trust in politicians, high levels of crime and violence, and an inefficient and extremely weak criminal justice system.⁶⁵

A major criminal justice reform at the federal constitutional level was passed in June 2008 and is considered an important step toward increasing productivity and fostering growth, “however, it is unclear whether the changes can be implemented.”⁶⁶

Crime and violence, particularly that associated with organized crime and narcotics trafficking, have reached record levels in recent years, and public security has become a focal point of the Calderón Administration. Homicides have increased each year, and more than 12,000 drug-related deaths have occurred since he took office.⁶⁷ Kidnapping, extortion, and other crimes have

⁶² Mexico is one of only three Latin American countries that have both state and federal governments and corresponding judicial systems, as in the U.S. The other two are Brazil and Argentina. The remaining Latin American countries, including El Salvador and Guatemala, have unitary governments and a single national court system.

⁶³ Peter Hakim, “Political Ramifications of the Economic Crisis,” *Américas* (July 2009), p. 11; “Freedom in the World: Mexico” (Freedom House, 2009), p. 3.

⁶⁴ The San Diego/Tijuana crossing alone allows the largest international flow of people to cross than any other border crossing in the world, and the El Paso/Juárez crossing is not far behind. “U.S.-Mexico Border Security and the Evolving Security Relationship: Recommendations for Policymakers,” U.S.-Mexico Binational Council (April 2004), p. 3.

⁶⁵ Ricardo Hausmann, et. al., eds. “The Mexico Competitiveness Report 2009,” World Economic Forum (2009) pp. iv, 10, 23.

⁶⁶ Id., p. 10.

⁶⁷ William Booth and Steve Fainaru, “New Strategy Urged in Mexico: Calderón's U.S.-Backed War Against Drug Cartels Losing Political Support,” *Washington Post*, July 28, 2009.

also risen dramatically. In an effort to check this violence, President Calderón has deployed 45,000 soldiers to the most violent and crime-ridden states, including the northern border.⁶⁸ Although criticized by human rights organizations, the move was politically popular at first. Recent polling, however, indicates that public perception may be shifting as violence has resumed, and claims of human rights violations by the military have risen.⁶⁹ After an initial lull when 10,000 troops and federal police officers were deployed to Ciudad Juárez, Chihuahua, in February 2009, drug-related homicides soared over 300 percent in June, to eight killings a day.⁷⁰

Social and poverty issues fuel criminal activity and violence. This mixture is especially volatile at the border, with its confluence of illegal activities centered on crossings, e.g., human smuggling and trafficking, narcotics trafficking, organized crime, weapons and cash transport, auto theft, etc. More and more, however, crime and violence related to drug cartels and trafficking have permeated the Mexican interior and spread southward.

Citizen insecurity is high due to the legal system's inability to address problems arising from increasingly ubiquitous crime. Mexico's justice institutions have been plagued by corruption, political favoritism, archaic practices, inefficiency, and ineffectiveness. Reports of human rights violations within the justice system are widespread. The justice sector is widely considered ineffectual, unreliable, and unresponsive to the average citizen's needs. The Mexican public as a whole has little trust or confidence in the rule of law and to some extent views existing legal systems as threatening – rather than protecting – their rights and interests.

Mexico is said to be at a historical crossroads. President Calderón has stated that “the future of democracy in Mexico [is] at stake in the government's fight against official corruption and organized crime.”⁷¹ President Calderón's efforts to combat drug cartels and crime have been strongly supported by the U.S. government, which has importantly acknowledged responsibility to reduce the flow of illegal weapons and cash flowing southward across its border into Mexico. Cooperation has increased between the two countries. Although not a subject of this study, financial assistance is being significantly ramped up and restructured through the Merida Initiative.

6.3.2 Progress Toward Justice Sector Reform

Mexico mixes constitutional theory with a “civil law” system based on a series of Napoleonic Codes and written procedures. Mexico's criminal justice system is inquisitorial and, until recently, had changed little since independence; in application and practice, it has long been criticized for its lack of fundamental due process, basic fairness in the investigation and adjudication of crimes, and credibility. Multiple police forces are entrusted with law enforcement and maintenance of order within the country, but are notoriously corrupt, poorly trained, and inadequately equipped to investigate or resolve crimes. Despite constitutional and other legal prohibitions, torture is an endemic and continuing practice in the investigation and prosecution of criminal cases.

⁶⁸ Id.

⁶⁹ Freedom House, *supra*, p. 3; Ginger Thompson and Marc Lacey, “Mexico Drug Fight Fuels Complaints,” *New York Times*, August 18, 2009 (This article describes a State Department report calling for 15 percent of money for the Merida Initiative to be withheld pending verification that the Mexican government is meeting human rights requirements, including prosecution of police officers and soldiers accused of rising numbers of human rights violations).

⁷⁰ Id.

⁷¹ “Crime Threatens Democracy, Mexico's President Warns,” *New York Times*, June 25, 2009.

In addition to tortured confessions, Mexican authorities are often implicated in any number of criminal violations, ranging from minor bribery to murders. Citizens have little confidence in police, prosecutors, or the judiciary.⁷²

A critical turning point for judicial reform occurred in 1994, when the incoming Zedillo Administration enacted a series of constitutional amendments that changed the composition, tenure, and judicial review powers of the Supreme Court, added a judicial council to take over administration and disciplinary controls of the courts, and established a judicial career with new procedures for selection and appointment of federal judges. Further amendments followed, which likewise contributed to strength and independence of the federal judiciary. After the federal reforms of 1994, Mexican state courts throughout the country began to initiate their own judicial reforms that largely followed the federal trends, but with many local variations.

Despite initial efforts and optimism, comprehensive criminal justice reform at the federal level was not achieved during the Fox Administration (2000-2006), although progress was made in many areas of legal and judicial reforms. Criminal justice reform movements at the state level, however, emerged and gained momentum. Nuevo León was the first state to enact criminal procedural code reforms to change to a more open adversarial process, and the first open oral public trial in Mexico took place in the city of Monterrey in February 2005. CPC reforms have since been passed in the states of Chihuahua, Oaxaca, Morelos, Zacatecas, Baja California, Puebla, Veracruz, Estado de México, and the Federal District. Others are pending at widely varying stages of progress.

In 2005, the Mexican Supreme Court of Justice convened legal and judicial theorists and practitioners from all over the country – both state and federal – to meet and discuss the future of judicial reform in Mexico. From these consultations and preliminary groundwork emerged a conceptual framework and commitment to a judicial reform process: “The White Book of Judicial Reform.” The main objective of the announced reform effort was to increase access to quality justice in Mexico and create an efficient, reliable, and credible legal system.⁷³ The principal vehicles to achieve this goal were to be through reform of the criminal justice system, strengthening of state judicial branches, and reforms to limit the much-overused appellate writ of *amparo*. The White Book enumerated 33 specific reform recommendations and announced a 10-year implementation period. A National Association of Justice Authorities was formed pursuant to this plan, and some progress has been made.

In June 2008, the congress passed a major federal constitutional reform requiring transformation of all state and federal systems from a written, inquisitorial criminal justice system to a more transparent oral, adversarial system. This constitutional reform is separate and distinct from the Supreme Court’s previous reform plan. The constitutional reforms provide for radical systemic changes to move towards an open adversarial justice system, including due process, a presumption of innocence, strengthened public defense, alternative dispute resolution mechanisms, police reforms, etc., and mandate an eight-year timeline for implementation (by 2016). Implementation

⁷² See, Encuesta de Victimización y Eficacia Institucional de 2008, (Centro de Investigación y Docencia Económicas 2009).

⁷³ José Antonio Caballero, et. al., “33 Propositions for Reforming the Judiciary in Mexico,” (Supreme Court of Justice of the Nation, 2006), p. 20.

will require massive legal and institutional restructuring and implementation efforts, as well as enormous human and financial resources.

Many individuals interviewed seriously questioned the extent of capacity and political will to actually carry out implementation that will lead to genuine change, especially at the federal level. In June 2009, on the first anniversary of the constitutional reform, an Implementation Coordination Commission was formed, but there has been little significant progress since passage of the reforms. The commission has not taken a strong leadership role in the process.

6.3.3 USAID Assistance and Directions

USAID has supported administration of justice and rule of law programs in Mexico since 1997 and has been the main international actor in this field. In the early years, USAID's assistance to administration of justice efforts in Mexico was focused on making connections and establishing relationships to build trust and overcome initial hostility to foreign aid efforts in this sector. USAID also worked with other U.S. government agencies, regional organizations, and other donors to help coordinate efforts on rule of law projects in the region, as well as to promote modernization and reform generally.

Since the early days of the Fox Administration, the central objective of USAID/Mexico's strategy was criminal justice reform. The main goal of the reform was to transform the closed inquisitorial Mexican justice system to a more open, public, and adversarial system that would protect individual rights and reduce corruption and inefficiency. Mexico has lagged far behind the rest of the hemisphere in justice reform and modernization efforts. USAID/Mexico provided significant technical assistance at the federal level to the Fox Administration, but concurrently undertook to promote reform of criminal procedural codes at the state level, which handles more than 95% of all criminal matters. Although the federal level reforms moved slowly, the state reforms bore rapid fruit, and USAID provided assistance and encouraged local reform efforts in numerous states that began their own criminal procedure code reforms. The expanding state reform movement created pressure for reform at the federal level, which was ultimately enacted through the 2008 constitutional reforms.

In addition to criminal procedure reforms and related efforts, such as training of system operators, USAID has also provided training and technical assistance for the following: access to justice, mediation programs, antitrafficking efforts, restorative justice, juvenile justice, community policing, domestic violence prosecution, cross-border collaboration, court administration/case management, forensic support, human rights, civil society and NGO assistance, and educational programs and partnerships. The bulk of this assistance has been carried out since 2004 through the project implementing office known as PRODERECHO (*Programa de Apoyo al Estado de Derecho*), which has developed a reputation with state and federal authorities for its expertise in justice reform. The project has changed hands in the past and is about to begin a new iteration, but it will continue with the same name. The new project also folds in activities and efforts planned under the Merida Initiative.

6.3.4 Successful Programming Approaches

Although still early in the process, a number of factors have contributed to success to date of justice sector reform in Mexico. The following list is not intended to be comprehensive or to imply complete success, but includes key elements:

The focus on states as opposed to federal-level reforms has clearly been both important and appropriate. USAID evaluated the risks and opposition to reform efforts at the federal level, considered the breadth of state jurisdiction and interest in reform, and made a well-advised decision to concentrate at the state level. Although progress has been uneven and reform is still in early stages, states have clearly demonstrated greater receptiveness, need, and political will for reform. Initial support efforts at this level have had the advantage of built-in networking and transfer of expertise between the states, which have functioned almost as pilots for reform and adaptation. Both bad and good experiences at the state level can be remedied or replicated more easily than at the federal level. The extensive work at the state level clearly augmented pressure for the recent federal constitutional reform, although its trajectory is not yet clear. The federal judicial branch has ample resources, but had previously developed a separate reform plan and has shown resistance to the 2008 reforms in spite of the constitutional requirement.

Identifying and nurturing knowledgeable and dedicated local leaders and champions of reform has been critical both to success and sustainability. Foreign technical assistance has likewise been crucial, but as adjuncts to Mexican reformists and tailored to Mexican circumstances, needs, and sensitivities.

Working with a wide swath of civil society to promote reforms, including influential actors such as the business community, was a successful approach. An umbrella organization of more than 80 public and private organizations (the RED: Network in Favor of Oral Trials and Due Process) drafted and developed the federal reforms, and, for the first time, civil society was a key player in presenting constitutional reforms to the legislature. USAID worked closely with civil society and congressional actors to obtain, to the extent possible, consensus on the initiatives.

Incorporating and emphasizing public relations, education, and awareness campaigns is critical to developing understanding and ownership, and should be fostered to avoid backlash. This appears to have faltered some recently, despite strong initial efforts.

Taking into account institutional resistance and cooperation requirements contributes to successful reform. Although invariably problematic, it is critical to incorporate and provide for institutional strengthening and collaboration so as to increase transparency and reduce opportunities for inefficiency and corruption.

Incorporating prevention and providing alternatives to incarceration were significant strategic elements of this approach. Reforms focused on reducing pre-trial detentions and alternative sentencing require adequate planning and attention to creating the programs that will be needed in their stead, e.g., court alternatives, pre-trial services, sentencing alternatives, probation, community service, monitoring, etc.

6.3.5 Constraints and Obstacles to Reform

Mexico differs dramatically from Central American countries in many ways, but shares many challenges to justice sector reform encountered elsewhere in the region. Mexico has very high levels of capacity and resources and stronger national institutions in general, but it also presents the most complicated arena for justice reform in Latin America, even if only because of the country's sheer size and the number of institutions and jurisdictions. Reforms will have to be enacted for 33 separate jurisdictions (31 states, the Federal District, and the federal judicial system). The

following, while far from exhaustive, is an overview of current and foreseeable challenges to reform implementation:

Fragility and Vulnerability of Reforms: Worsening public security and escalating violence are the drivers of Mexican dissatisfaction with the justice system, but also fuel attacks on the reform process and undermine public perception of reforms. The reforms were designed to create a more open and transparent system with due process guarantees and just resolution of judicial proceedings based upon reliable evidence. These objectives will not necessarily lead to prompt or visible improvements in public security. To the contrary, the passage and implementation of reforms in the state of Chihuahua has coincided with spectacular increases in crime and violence related to the Calderón Administration's crackdown on drug cartels and organized crime. This situation has contributed to a growing public perception that the reforms have not only failed to confront crime, but also that the reforms have somehow caused or contributed to the rise in crime and violence. "There is a prevalent misconception in Mexico – that begins with the government and trickles down to all the social groups – that the rule of law is an obstacle to public safety. Authorities that adhere to citizen's civil liberties ... are accused of merely protecting criminals."⁷⁴

Disenchantment with reform as a panacea to the rise in violence has led to public opposition. This misperception and frustration with corruption, impunity, and the criminal justice system generally have fomented a serious and growing backlash and counter-reform movement.

The reforms are further made vulnerable by apparent lack of ownership or political will, most notably at the federal level. The Implementation Coordination Commission was formed a full year after the eight-year implementation process began. Necessary reforms to corollary laws, regulations, and practices have lagged. We were told by numerous sources that the federal judiciary did not consider itself to have been adequately consulted in the reform process, considers the federal level reforms unnecessary, and is highly resistant to change. Despite some movement at the federal level, this presents a gloomy forecast for meaningful implementation. A cautionary tale is seen in the example of the Juvenile Justice Code reform, passed in 2005 for implementation in 2007, and which required similar oral processes and change on a much less complicated and smaller scale. Despite mandatory formal changes, that system has simply continued to function as before and is considered a "façade of reform." We heard concerns that the CPC reforms could likewise evade application.

Enormous challenges of institutional police reform necessary for implementation: Institutional incapacity and systemic failings of Mexican law enforcement are central to the weakness of the justice system, which cannot be enforced or reformed without obtaining their support, especially at local and state levels. Criminal procedural reform will require sophisticated investigations to carry it into effect, including informant networks, witness protection programs, and surveillance techniques. Meaningful change will require addressing the fundamental issue of law enforcement reform in tandem with other efforts. Institutional police reform has been attempted for at least the past decade without significant improvements.⁷⁵ At the time of this field work, we were informed

⁷⁴ Miguel Sarre, "Challenges Associated with the Judicial Reform" (presented at Woodrow Wilson Binational Working Group Meeting, October 17, 2008).

⁷⁵ "[T]here have been many past efforts to purge Mexico's police of corrupt agents and create new security agencies, but all have failed to put into place the structural reforms necessary to ensure police accountability and have genera-

that there is apparent political will and progress on police reform from the leadership. Whether that realistically and effectively can occur within this administration's time in office, in successful collaboration with prosecutors and other integral actors, is subject to debate.⁷⁶ Even assuming successful institutional reform, the challenges of dealing with the counterweight of narcotics trafficking and organized crime pose massive additional hurdles.

In the wake of exploding violence, especially in the border areas, the Calderón Administration has deployed military troops to take over civilian policing functions and maintain public security. This military presence has raised additional issues of potential abuse of authority and human rights violations.

Judicial management culture that perpetuates excessive formalism, bureaucratic justice, and inefficiency: Courts are characterized largely by a culture of excessive formalism and bureaucratic justice. A study commissioned by the Supreme Court concluded that proceedings are geared toward the ends of detailed paperwork and filing requirements, rather than substance and justice.⁷⁷ The courts are plagued by delays, limited access, lack of filters to screen cases, lack of restrictions on pleading and practice, inadequate remedies, unlimited appeals, lack of *pro se* proceedings, etc. Moreover, reliable statistics do not exist to evaluate judicial performance and to discern substantive improvements that could be used to counter backlash or respond to counter-reform efforts. There are no quick technological fixes; reforming codes, or simply automating inefficient processes, will not improve productivity or service without substantial changes in management culture.

Lack of inter-institutional coordination and reform: The need for collaboration and orchestration of all key justice sector actors and efforts presents particular difficulties. Virtually all institutions and entities will require technical training and capacity building to harmonize and carry through new responsibilities to support prosecution. The progress of requisite reforms is uneven. Cooperation is required between institutions, especially police and prosecutors, which is a particularly thorny yet critical area of cooperation. Changes in roles, responsibilities, and power structures within and between institutions will be challenging. We were told of serious problems with prosecutorial corruption, inefficiency, and resistance to reform that could thwart successful implementation.

Limited capacity and resources for implementation, especially at state levels: The federal judiciary has ample resources and funding, although political will to effectuate the reforms has been questioned. Although widely divergent, the states have significantly fewer resources and capacity to carry through implementation.

Penitentiary systems: Beyond the ability to convict criminals on the basis of credible and admis-

ted both a serious lack of faith in the police and attempts at police reform." Testimony of Joy Olson, Executive Director of the Washington Office on Latin America, on the Merida Initiative (March 10, 2009) p. 3.

⁷⁶ "Much of the skepticism about whether the [Minister of Public Security] can succeed is rooted in the history of Mexican law enforcement. The government has announced plans to reform its police so many times over the decades that it is hard for some to take new attempts seriously.... [The] biggest obstacle may be time, ... [lack of] institutional continuity...[and the] elections in 2012." Wall Street Journal (October 24, 2009).

⁷⁷ See, "El Sistema Penal Acusatorio en México: Estudio Sobre su Implementación en el Poder Judicial de la Federación," Justice Studies Center of the Americas (2008).

ible evidence lies the issue of incarceration. Mexico’s prison system has serious failings, among which are frequent escapes and allegations of criminal complicity with guards and other prison authorities. Criminal operations are reportedly run from inside prison walls.⁷⁸ Although outside the purview of this study, this issue merits highlighting. Any successful, effective, and complete reform process ultimately must somehow consider and address severe problems within the penitentiary system.

⁷⁸ “Mexico’s prisons...are places where drug traffickers find a new base of operations for their criminal empires, recruit underlings, and bribe their way out for the right price.” Marc Lacey, “Mexico’s Drug Traffickers Continue Trade in Prison; Easy Escapes Point to Cartels’ Use of Jails as a Base of Operations for Business,” New York Times, August 11, 2009.

Appendix A: List of Persons Interviewed

WASHINGTON, D.C.

Javier Agosto	Checchi Consulting (Washington/Nicaragua)
Eric Beinhart	USAID, DCHA/DG (on detail from DOJ/ICITAP)
Alexandre Berg	USAID, DCHA/DG
John Buchanan	Senior Police Advisor, USAID, DCHA/DG
Christina del Castillo	Democracy Specialist, USAID/DCHA/DG
Donald P. Chisholm	Senior Criminal Justice Advisor, Office of Civilian Police and Rule of Law Programs, Bureau of International Narcotics and Law Enforcement Affairs (INL), U.S. Department of State
Carl Cira	Senior Technical Advisor, National Center for State Courts (NCSC)
Garber Davidson	Checchi Consulting
Marina Fanning	Executive Vice President, Management Systems International (MSI)
Brad Fujimoto	USAID, Team Leader DCHA/DG/ROL
Gloria Jean Garland	Senior Rule of Law/Human Rights Expert, USAID/DCHA/DG
April Hahn	Democracy Specialist, USAID/DCHA/DG
Linn Hammergren	Public Sector and Rule of Law expert/consultant, The World Bank
Josh Kaufmann	Democracy Specialist, USAID/DCHA/DG
Deborah Kennedy-Iraheta	Acting AA/LAC, USAID
M. Eric Kite	Democracy Specialist, USAID/LAC/RSD/DHR
Jim Michel	ARD/DPK Consulting
Norma Parker	Project Director, NCSC
Ray Rivera	DOJ/ICITAP
Tamaira Rivera	Democracy Fellow, USAID/DCHA/DG
Margaret Sarles	USAID, DCHA/DG
Mark Schneider	Senior Vice President, International Crisis Group
Michael Shifter	Vice President for Policy, Inter-American Dialogue
Todd Sloan	DG Team Leader, USAID/Guatemala
Jan Stromsem	Management Systems International (MSI)

Lucy Tacher	Senior Counselor, Mexico and the Dominican Republic, Inter-American Development Bank
Jene Thomas	DG Team Leader, USAID/ Colombia; former DG Team Leader, USAID/ Mexico
Diane Valesky	Checchi Consulting
Mark Williams	Checchi Consulting (Miami)
Sonia Zacapa	Program Officer, USAID/Honduras

MEXICO

Mexico City

Anon.	Public Prosecutor, Attorney General of the Republic
Tracey Bardorf	Resident Legal Advisor/Mexico, U.S. Department of Justice
María Barrón	DG Advisor, USAID/Mexico
Felipe Borrego Estrada	Technical Secretary, Technical Secretariat of the Coordination Council for Implementation of the Criminal Justice System, Ministry of the Interior
José Antonio Caballero Juárez	Director, Division of Legal Studies, Center for Economic Research and Teaching (CIDE)
Roberta Cavitt	Director, Office of Democracy and Economic Growth (DEG), USAID/Mexico
Edgar Cortez	Executive Secretary, National Network of Civil Organizations for Human Rights: Todos los Derechos para Todas y Todos
Rodger D. Garner	Mission Director, USAID/Mexico
Mara Gómez Pérez	Director General of Legal Planning, Secretary, National Supreme Court of Justice
Samuel González	Professor, Law Faculty, Universidad Autónoma de Mexico (UNAM); independent consultant and congressional advisor
Meredith Hamilton	Political Section, U.S. Embassy/Mexico
Robert B. Loosle	FBI, Legal Attaché, U.S. Embassy/Mexico
Juan José Olivera	Magistrate, Judicial Council, First Circuit Criminal Bench
Alfonso Oñate Laborde	Executive Secretary, Legal Office, Judicial Branch of the Federation, National Supreme Court of Justice
José Antonio Ortega Sánchez	Private Attorney and President, Citizen Council for Public Security
Cecilia Real	Project Management Specialist/DEG, USAID/Mexico

Hugo Rodríguez	Federal Public Defender; Professor, UNAM
Carlos Suárez	Acting Deputy Director/Senior Advisor, USAID /Mexico
Nancy Tafoya	Restorative Justice Advisor, Program of Support for the Rule of Law in Mexico (PRODERECHO)
Anel Alejandra Valadez Murillo	Investigative Assistant, Public Interest Law Clinic, CIDE
Fabio Valdés Bensasson	Director, PRODERECHO

Municipality of Cuernavaca, State of Morelos

Israel Calderón Reyes	Director of Reparations Agreements, Center for Alternative Justice, Office of the Attorney General, State of Morelos
Luis Jorge Gambóia Oléa	Preliminary and Investigative Hearings Judge, First Instance Court
Manuel Granados Quiroz	Director of Criminal Investigations and Processes, Office of the Attorney General, State of Morelos
Lorena G. Quevedo Chávez	Director General, Center for Alternative Justice, Office of the Attorney General, State of Morelos
Cuitláhuac Rolón Luna	Private Criminal Defense Attorney

GUATEMALA

Guatemala City

Carla Aguilar Stwolinsky	DG Advisor, Transparency Programs, USAID/Guatemala
José Amilcar Velásquez Zárate	Attorney General of Guatemala, Public Ministry
Alfredo Calderón	DG Officer, USAID/Guatemala
Raymond M. Campos	Program Manager, Law Enforcement Development Unit, Narcotics Affairs Section (NAS), U.S. Embassy/Guatemala
Carlos G. Chacón Torrebiarte	President, Supreme Court of Guatemala
Oscar Chavarría	ROL Advisor, USAID/Guatemala
Alvaro Ferrandino	Chief of Party, Rule of Law Program (Checchi), USAID/Guatemala
Verónica Godoy Castillo	Director, Association for Public Security Monitoring and Support; Member, Pro Justice Alliance
Javier Monterroso Castillo	Director of Political Programs, Institute of Comparative Criminal Sciences Studies of Guatemala (ICCPG)
Sergio F. Morales Alvarado	Human Rights Ombudsman
Wayne R. Nilsestuen	Mission Director, USAID/Guatemala

Erick Gustavo Santiago de León	Professor, Law Faculty, Universidad de San Carlos de Guatemala; private commercial lawyer
Cassandra Wheeler de Vides	Rule of Law Program (Checchi), USAID/Guatemala
Anna-Christina Winterstein	Legal Consulting Section, International Commission Against Impunity in Guatemala (CICIG)

EL SALVADOR

San Salvador

Pablo Mauricio Alvergue	Sub-Director, Institute of Legal Investigation, Universidad Dr. José Matías Delgado
José Belarmino Jaime	Chief Justice, Supreme Court of El Salvador
Joseph Caldwell	Chief of Party, Improving the Justice System in El Salvador (Checchi), USAID/El Salvador
Rosamaría de Colorado	Senior Rule of Law Advisor, USAID/El Salvador
Carl Dereck	Deputy Director, USAID/El Salvador
Astor Escalante Saravia	Acting Attorney General of the Republic of El Salvador
René Fortín Magaña	Director, Institute of Juridical Investigation, Universidad Dr. José Matías Delgado; Director, Inter-American Institute of Constitutional Rights; former Supreme Court Justice
Rodolfo González Bonilla	Justice, Constitutional Bench, Supreme Court of El Salvador
David Gonzalo Cabezas Flores	President, National Judicial Council
Tom Hank	Private Sector/MCC Committee, El Salvador
Jennifer M. Link	Director, DG Office, USAID/El Salvador
Aldo Miranda	Chief of Party, RTI/El Salvador
María L. Navarrete de Peraza	Acting Public Defender of the Republic of El Salvador
Walter Palacios	Executive Director, National Public Security Council
Rommell Sandoval	Deputy Chief of Party, USAID Strengthening Labor Justice Program for CAFTA-DR (MSD)
Aída L. Santos Mejía de Escobar	President, National Public Security Council

Appendix B: Bibliography

“Achievements in Building and Maintaining the Rule of Law: MSI’s Studies in LAC, E&E, AFR, and ANE.” Occasional Papers Series, United States Agency for International Development/Bureau for Democracy, Conflict, and Humanitarian Assistance (2002), www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/pnacr220.pdf.

AportesDPLF #8, No. 8, Vol.2, Due Process of Law Foundation (2007-09), www.dplf.org/index.php?c_ID=225.

“Assessment of Civil Society Participation in Local Governance and Recommendations for Future Programming.” United States Agency for International Development: USAID/Mexico (2001), http://pdf.usaid.gov/pdf_docs/PNACK741.pdf.

“At a Crossroads: Drug Trafficking, Violence and the Mexican State.” Washington Office on Latin America (2007), [www.wola.org/media/Beckley%20Briefing13web%20\(2\).pdf](http://www.wola.org/media/Beckley%20Briefing13web%20(2).pdf).

“Below the Radar: A 10-Year Retrospective of U.S. Aid to Latin America.” Washington Office on Latin America (2007), http://www.wola.org/index2.php?option=com_content&task=view&id=215&Itemid=2&pop=1&page=0.

Biebesheimer, Christina and Francisco Mejfa, eds. *Justice beyond our borders: Judicial Reforms for Latin America and the Caribbean*. Inter-American Development Bank (2000), <http://IDBdocs.idb.org/wdocs/getdocument.aspx?docnum=418458>.

Booth, William and Steve Fainaru. “New Strategy Urged in Mexico: Calderón’s U.S.-Backed War Against Drug Cartels Losing Political Support.” *Washington Post*, July 28, 2009, www.washingtonpost.com/wp-dyn/content/article/2009/07/27/AR2009072703074.html.

“A Brief Background on the UN Commission against Impunity in Guatemala.” Washington Office on Latin America, April 25, 2007, www.wola.org/index2.php?option=com_content&task=view&id=350&Itemid=2&pop=1&page=0.

Caballero, José Antonio, Sergio López Ayllón, and Alfonso Oñate Laborde. *33 Propositions for Reforming the Judiciary in Mexico*. Matthew C. Ingram, Manuel González Oropeza, and Adriana Laura Santana, trans. Mexico City: Supreme Court of Justice of the Nation (2006).

“The Captive State: Organized Crime and Human Rights in Latin America.” Washington Office on Latin America (2008), <http://www.wola.org/media/WOLA-rpt-OrganizedCrimeFinal.pdf>.

Carothers, Thomas. *Assessing Democracy Assistance: The Case of Romania*. Carnegie Endowment for International Peace (1996), pp. 51-57.

Castillo, Javier Monterroso. “Experiences in prevention and combating youth violence and crime in the Municipality of Villa Nueva, Guatemala.” Coalición Centroamericana para la Prevención de la Violencia Juvenil (2009).

- “Central America and Mexico Gang Assessment.” USAID Bureau for Latin American and Caribbean Affairs Office of Regional Sustainable Development (2006), www.usaid.gov/gt/docs/gangs_assessment.pdf.
- “Community Policing Activity (Annex to MSD Annual Report).” USAID/Mexico, undated.
- Cook, Colleen W., Rebecca G. Rush, and Clare Ribando Seelke. “Mérida Initiative: Background and Funding.” Congressional Research Service, March 2008, www.wola.org/media/Mexico/CRS%20report.pdf.
- Cooper, Robert. *The Breaking of Nations: Order and Chaos in the Twenty-first Century*. London: Atlantic Books (2003), pp. vii-xi.
- “Country Program Evaluation: El Salvador (1992-2004).” Inter-American Development Bank (2005), www.iadb.org/ove/Documents/uploads/cache/571780.pdf.
- “Country Program Evaluation: Guatemala (1993 – 2003).” Inter-American Development Bank (2004), www.iadb.org/ove/Documents/uploads/cache/527143.pdf.
- “Country Program Evaluation: Mexico (1990 – 2000).” Inter-American Development Bank (2003), www.iadb.org/ove/Documents/uploads/cache/320586.pdf.
- “Country Program Evaluation: Nicaragua (2002-2007).” Inter-American Development Bank (2008), <http://IADBdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1834366>.
- “Crime Threatens Democracy, Mexico’s President Warns.” *New York Times* (AP), June 25, 2009, Americas section, online edition, <http://www.nytimes.com/2009/06/25/world/americas/25mexico.html?fta=y>.
- “Criminal Procedure Reform in Latin America: Results of the Follow-up Study, Stage IV.” Justice Studies Center of the Americas (2007), www.cejamericas.org.
- “Criminalization of Social Protest: A Memo to Congress.” Washington Office on Latin America (2008), www.wola.org/media/WOLA-SHARE%20memo_letterhead_FINAL.pdf.
- “La crisis de derechos humanos en la frontera sur de México.” Due Process of Law Foundation (2008), www.dplf.org/uploads/1221486169.pdf.
- Crone, Amy. “El Salvador Field Report MCA Monitor.” Center for Global Development (2008), http://www.cgdev.org/files/16595_file_El_Salvador_FINAL.pdf.
- “Data Profile: Guatemala.” World Bank website (access date August 30, 2009), http://ddp-ext.worldbank.org/ext/ddpreports/ViewSharedReport?REPORT_ID=9147&REQUEST_TYPE=VIEWADVANCED&DIMENSIONS=95.
- “Disclosing Justice: A Study on Access to Judicial Information in Latin America.” Due Process of Law Foundation (2007), <http://www.dplf.org/uploads/1196288246.pdf>.
- Duce, Mauricio. “La Oralizacion de las Etapas Previas al Debate: La Experiencia de la Ciudad de Quetzaltenango en Guatemala.” Justice Studies Center of the Americas (2006).

- “El Salvador.” *CIA World Factbook*. US Central Intelligence Agency (2009), [ww.cia.gov/library/publications/the-world-factbook/geos/ES.html](http://www.cia.gov/library/publications/the-world-factbook/geos/ES.html).
- “El Salvador.” Country Reports on Human Rights Practices, US Department of State (2008), www.state.gov/g/drl/rls/hrrpt/2008/wha/119159.htm.
- “El Salvador.” Country Reports on Judicial Independence, Due Process of Law Foundation (2009), www.dplf.org/uploads/1184357012.pdf.
- “El Salvador.” *Freedom in the World 2008*, Freedom House (2008), www.freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?country=7388&year=2008&page=0&view=more&pf.
- “El Salvador.” *Report of Justice in the Americas 2004-2005*, Justice Studies Center of the Americas (2005), www.cejamericas.org/reporte/pdfing/15-ELSALVADOR_ING.pdf.
- Encuesta de Victimización y Eficacia Institucional de 2008*. Centro de Investigación y Docencia Económicas (2009), www.cide.edu/Resumen_Encuesta_Victimizacion_y_Eficacia_Institucional_2008.pdf.
- "Estado de Derecho," Checchi & Company Consulting, USAID/Guatemala, project publication, undated.
- “Evaluation of Judicial Corruption in Central America and Panama and the Mechanisms to Combat it: Executive Summary and Regional Comparative Study.” Due Process of Law Foundation (2007), www.dplf.org/uploads/1196091774.pdf.
- “Foreign Assistance: U.S. Democracy Programs in Six Latin American Countries Have Yielded Modest Results,” U.S. General Accounting Office (March 2003), <http://www.gao.gov/new.items/d03358.pdf>.
- Frühling, Pierre. “New Report on Violence and Judicial Corruption in Central America (Abstract).” F&G Editores (2008), www.fygeditores.com/FGPI9789992261903.htm.
- “Gender Assessment.” United States Agency for International Development: USAID/Guatemala (2009).
- “Guatemala.” *CIA World Factbook*. US Central Intelligence Agency (2009), www.cia.gov/library/publications/the-world-factbook/geos/GT.html.
- “Guatemala.” Country Reports on Human Rights Practices, US Department of State (2008), www.state.gov/g/drl/rls/hrrpt/2008/wha/119161.htm.
- “Guatemala.” Country Reports on Judicial Independence, Due Process of Law Foundation (2009), www.dplf.org/uploads/1184357156.pdf.
- “Guatemala.” *Freedom in the World 2008*, Freedom House (2008), www.freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?country=7403&year=2008&page=0&view=more&pf.

- “Guatemala.” *Report of Justice in the Americas 2004-2005*, Justice Studies Center of the Americas (2005), http://www.cejamericas.org/reporte/pdfing/17-GUATEMALA_ING.pdf.
- “Guatemala - Judicial Reform Project Implementation Completion and Results Report.” World Bank (2008), www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/08/28/000333038_20080828034304/Rendered/PDF/ICR6230Box03341IC010disclosed081261.pdf.
- “Guatemala National Security Agreement.” Document provided by USAID/Guatemala, undated.
- Hakim, Peter. “Political Ramifications of the Economic Crisis.” *Americas*, Vol. 61 No. 4 (July 2009).
- Hammergren, Linn A. *Envisioning Reform: Improving Judicial Performance in Latin America*. Penn State Press (2007).
- Harbitz, Mia Elisabeth. “Democratic Governance, Citizenship, and Legal Identity: Linking Theoretical Discussion and Operational Reality.” Inter-American Development Bank (2009), <http://IADBdocs.iadb.org/wsdocs/getdocument.aspx?docnum=2012487>.
- Hausmann, Ricardo, Emilio Lozoya Austin, and Irene Mia, eds. “The Mexico Competitiveness Report 2009.” World Economic Forum (2009), http://www.weforum.org/pdf/Mexico/MCR_2009.pdf.
- “Honduras - Judicial Branch Project Appraisal Document.” The World Bank (2005), www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2005/06/20/000160016_20050620100943/Rendered/PDF/32128a.pdf.
- “The Impact of USAID DG Programs on Political Change: Guatemala Case Study.” United States Agency for International Development: USAID/Guatemala (2002), http://pdf.usaid.gov/pdf_docs/PNACS872.pdf.
- “Implementation Completion and Results Report: Guatemala Judicial Reform Project (IBRD-44010).” The World Bank, March 10, 2008, http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/08/28/000333038_20080828034304/Rendered/PDF/ICR6230Box03341IC010disclosed081261.pdf.
- Lacey, Marc. “Mexico’s Drug Traffickers Continue Trade in Prison; Easy Escapes Point to Cartels’ Use of Jails as a Base of Operations for Business.” *New York Times*, August 10, 2009, Americas section, online edition, www.nytimes.com/2009/08/11/world/americas/11prisons.html?scp=1&sq=%22Drug%20Traffickers%20Continue%20Trade%20in%20Prison%22&st=cse.
- “Latin American and Caribbean Macro Watch Country Table: Guatemala.” Inter-American Development Bank website (2009), www.iadb.org/res/lmw_countrytables.cfm?country=Guatemala.
- “Legal Empowerment of the Poor: From Concepts to Assessment,” United States Agency for International Development (2007).

- Lehoucq, Fabrice, Gabriel Negretto, Francisco Aparicio, Benito Nacif and Allyson Benton. "Political Institutions, Policymaking Processes, and Policy Outcomes in Mexico (Working Paper #R-512)." Inter-American Development Bank (2005), <http://IADBdocs.iadb.org/wsdocs/getdocument.aspx?docnum=770252>.
- Linz, Juan J., and Albert Stepan, eds. *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*. Baltimore: Johns Hopkins University Press (1996).
- "Local Government Strengthening and Democratic Decentralization Assessment." United States Agency for International Development: USAID/El Salvador (2000), http://pdf.usaid.gov/pdf_docs/PNACH773.pdf.
- Menocal, Alina Rocha, David Booth, Malcolm Geere, Lauren Phillips, Bhavna Sharma and Enrique Mendizabal. "„Punching above its weight’: An evaluation of DFID’s PSPS, LAMIT and ENLACE programmes in Latin America." UK Department for International Development (2008), <http://www.dfid.gov.uk/Documents/publications/final-dft-odi-eval-dfid-latin-am-dec08.pdf>.
- "Mexico." *CIA World Factbook*. US Central Intelligence Agency (2009), www.cia.gov/library/publications/the-world-factbook/geos/MX.html.
- "Mexico." *Comparing Transparency: A Study on Access to Information in the Judicial and Executive Branches*. Due Process of Law Foundation (2008).
- "Mexico." Country Reports on Human Rights Practices, US Department of State (2008), www.state.gov/g/drl/rls/hrrpt/2008/wha/119166.htm.
- "Mexico." Freedom in the World 2008, Freedom House (2008), www.freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?country=7447&year=2008&page=0&view=more&pf.
- "Mexico." *Report of Justice in the Americas 2004-2005*, Justice Studies Center of the Americas (2005), www.cejamericas.org/reporte/pdfing/22-MEXICO_ING.pdf.
- "Mexico - Gender Equity Project (ProGenero)." The World Bank (2000), http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2000/06/27/000094946_00061005312682/Rendered/PDF/multi_page.pdf.
- "Mexico Rule of Law Strengthening Quarterly Report to USAID First Quarter 2007 – January 1 to March 31, 2007." United States Agency for International Development: USAID/Mexico (2007).
- "Mexico Rule of Law Strengthening Quarterly Report to USAID Second Quarter 2007 – April 1 to June 30, 2007." United States Agency for International Development: USAID/Mexico (2007).
- "Mexico Rule of Law Strengthening Quarterly Report Third Quarter 2005." United States Agency for International Development: USAID/Mexico (2005).

“Mexico Rule of Law Strengthening Quarterly Report to USAID Third Quarter 2007 – July 1 to September 30, 2007.” United States Agency for International Development: USAID/Mexico (2007).

“Mexico Rule of Law Strengthening Quarterly Report to USAID Fourth Quarter 2007 – October 1 to December 31, 2007.” United States Agency for International Development: USAID/Mexico (2007).

“Mexico - State Judicial Modernization Supporting Access to Justice Project.” The World Bank (2004), www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2004/06/16/000160016_20040616172510/Rendered/PDF/279460MX.pdf.

“More Resources on Femicide Trial before Inter-American Court.” Collection of documents: Washington Office on Latin America (2009), www.wola.org/index.php?option=com_content&task=viewp&id=904&Itemid=2.

Panizza, Ugo. “Public Administration and Institutions in Latin America: Alternative View Paper.” Inter-American Development Bank (2007), <http://IADBdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1186216>.

Parker, Norma, Gerardo Berthin, Roberto de Michele and Yemile Mizrahi. “Corruption in Latin America: A Desk Assessment.” USAID (2004), http://pdf.usaid.gov/pdf_docs/PNACY710.pdf.

Payne, J. Mark, Daniel Zovatto G., and Mercedes Mateo Díaz. *Democracies in Development: Politics and reform in Latin America*. Inter-American Development Bank (2007), dbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1578309.

Pinker, Steven. *The Blank Slate: The Modern Denial of Human Nature*. Viking (2002), pp. 141-158, 306-336.

“PRODERECHO: End of Year Report FY 2008 (October 1, 2007 – September 30, 2008).” United States Agency for International Development: USAID/Mexico (2008).

“Pretrial Custody and Criminal Procedure Reform in Latin America- Evaluation and Perspective.” Justice Studies Center of the Americas (2008).

“Project Appraisal Document on a Proposed Loan in the amount of US\$18.2 Million to the Republic of El Salvador for a Judicial Modernization Project.” The World Bank (2002), http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2002/08/02/000094946_02071904_025194/Rendered/PDF/multi0page.pdf.

“Protect and Serve? The Status of Police Reform in Central America.” Washington Office on Latin America (2009), www.wola.org/media/WOLA_Policing_Final.pdf.

“Reform of Penal Processes in Latin America.” Justice Studies Center of the Americas (2007), www.cejamerica.org/doc/proyectos/CEJAIV.pdf.

“Report on Criminal Justice Issues and U.S. Government Assistance in Mexican Border States,” United States Agency for International Development (2006).

- “Report on Justice-Comparative Report on Controlling Corruption (2004-2005).” Justice Studies Center of the Americas (2005), www.cejamericas.org/reporte/muestra_seccion.php?idioma=INGLES&capitulo=ACJU-030&tipreport=REPORTE2&seccion=INST_250.
- “Report on Justice-Comparative Report on Judicial System and Key Changes (2004-2005).” Justice Studies Center of the Americas (2005), www.cejamericas.org/reporte/muestra_seccion.php?idioma=INGLES&capitulo=ACJU-030&tipreport=REPORTE2&seccion=INST_233.
- “Report on Justice-Comparative Report on Prison Systems (2004-2005).” Justice Studies Center of the Americas (2005), www.cejamericas.org/reporte/muestra_seccion.php?idioma=INGLES&capitulo=ACJU-030&tipreport=REPORTE2&seccion=INST_236.
- “Report on Justice-El Salvador Country Report (2004-2005).” Justice Studies Center of the Americas (2005), www.cejamericas.org/reporte/muestra_pais.php?idioma=INGLES&tipreport=REPORTE2&seccion=0.
- “Report on Justice-Guatemala Country Report (2004-2005).” Justice Studies Center of the Americas (2005), www.cejamericas.org/reporte/muestra_pais.php?idioma=INGLES&tipreport=REPORTE2&seccion=0.
- “Report on Justice-Honduras Country Report (2004-2005).” Justice Studies Center of the Americas (2005), www.cejamericas.org/reporte/muestra_pais.php?idioma=INGLES&tipreport=REPORTE2&seccion=0.
- “Report on Justice-Mexico Country Report (2004-2005).” Justice Studies Center of the Americas (2005), www.cejamericas.org/reporte/muestra_pais.php?idioma=INGLES&tipreport=REPORTE2&seccion=0.
- “Report on Justice-Nicaragua country Report (2004-2005).” Justice Studies Center of the Americas (2005), www.cejamericas.org/reporte/muestra_pais.php?idioma=INGLES&tipreport=REPORTE2&seccion=0.
- Rose-Ackerman, Susan. “Public Administration and Institutions in Latin America.” Prepared for Copenhagen Consenso, Consulta de San José de Costa Rica, October 21-25, 2007, San José, September 11, 2007, <http://IADBdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1186236>.
- “Rule of Law Project: Mexico – 1st Quarter Report FY 2009 (October 1st – December 31st 2008).” United States Agency for International Development: USAID/Mexico (2009).
- “Rule of Law Project: Mexico – 2nd Quarter Report FY 2009 (January 1st – March 31st 2009).” United States Agency for International Development: USAID/Mexico (2009).
- “Rule of Law Program: Third Annual Report and Twelfth Quarterly Report (July 1st – September 30th, 2007).” United States Agency for International Development: USAID/Guatemala (2007).
- “Rule of Law Program: Sixteenth Quarterly Report.” United States Agency for International Development: USAID/Guatemala (2008), http://pdf.usaid.gov/pdf_docs/PDACM369.pdf.

- “Rule of Law Program: Seventeenth Quarterly Report (October 1st – December 31st, 2008).” United States Agency for International Development: USAID/Guatemala (2009).
- “Rule of Law Program: Eighteenth Quarterly Report (January 1st – March 31st, 2009).” United States Agency for International Development: USAID/Guatemala (2009).
- “Rule of Law Program: Nineteenth Quarterly Report (April 1st – June 30th, 2009).” United States Agency for International Development: USAID/Guatemala (2009).
- Salazar, Katya and Jacqueline de Gramont. “Civil Society’s Role in Combating Judicial Corruption in Central America.” *Global Corruption Report 2007*, Transparency International (2007), p. 115. Available online from the Due Process of Law Foundation, www.dplf.org/uploads/1184345110.pdf.
- Sarre, Miguel. “Challenges Associated with the Judicial Reform.” Binational Working Group Meeting: U.S.-Mexico Security Cooperation: A discussion on multilateral and unilateral strategies and challenges, Woodrow Wilson International Center for Scholars, October 17, 2008, www.wilsoncenter.org/news/docs/Sarre%20report.pdf.
- “Seguimiento de la Reforma Procesal Penal en El Salvador.” Justice Studies Center of the Americas/Fundacion de Estudios para la Aplicación del Derecho [FESPAD] (2003).
- “Seguimiento de los Procesos de Reforma Judicial en America Latina: Informe de Guatemala, 2002-2003.” Justice Studies Center of the Americas (2003).
- Shirk, David A. “The Rule of Law in Mexico: Findings & Policy Implications.” PowerPoint presentation, The Trans-Border Institute, University of San Diego, February 25, 2009, www.wilsoncenter.org/index.cfm?topic_id=5949&fuseaction=topics.categoryview&categoryid=357C6B6F-65BF-E7DC-40010C2563441FAA.
- “El Sistema Penal Acusatorio en México: Estudio Sobre su Implementación en el Poder Judicial de la Federación.” Justice Studies Center of the Americas (2008).
- “Summary of Findings – Decentralization and Effective Citizen Participation: Six Cautionary Tales.” Inter- American Development Bank (2001), www.iadb.org/ove/Documents/uploads/cache/320116.pdf.
- Thompson, Ginger and Marc Lacey. “Mexico Drug Fight Fuels Complaints.” *New York Times*, August 18, 2009, Americas section, online edition, www.nytimes.com/2009/08/19/world/americas/19mexico.html?scp=1&sq=%22Mexico%27s%20Drug%20Crackdown%22&st=cse.
- “Transitional Justice: The current situation of the victims in Chile and Guatemala.” Due Process of Law Foundation (2009), www.dplf.org/uploads/1225813582.pdf.
- “USAID Rule of Law Program: Sixteenth Quarterly Report (July 1st – September 30th, 2008) and Fourth Annual Report (October 1st, 2007 – September 30th, 2008).” United States Agency for International Development: USAID/Guatemala (2008).

“USAID/Mexico’s Role in the Meridia Initiative.” United States Agency for International Development: USAID (2009), http://pdf.usaid.gov/pdf_docs/PDACM592.pdf.

US Department of State. “The Meridia Initiative.” U.S. –SICA Dialogue on Security (Power point): Washington, D.C., December 11-12, 2008: http://pdf.usaid.gov/pdf_docs/PCAAB861.pdf.

U.S.-Mexico Binational Council. “U.S.-Mexico Border Security and the Evolving Security Relationship Recommendations for Policymakers.” Center for Strategic and International Studies (CSIS), with the Instituto Tecnológico Autónomo de México (ITAM), April 2004.

Veillette, Connie, Clare Ribando and Mark Sullivan. “Foreign Assistance: U.S. Rule of Law Assistance to Five Latin American Countries.” Congressional Research Service (August 1999).

Waleed Haider, Malik et al. “Furthering judicial education - proceedings of the Conference of Judicial Schools in Latin America.” The World Bank (2002), http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2003/01/07/000094946_02122404075765/Rendered/PDF/multi0page.pdf.

“WOLA on the Merida Initiative.” Washington Office on Latin America, March 19, 2008, www.wola.org/index2.php?option=com_content&task=view&id=668&Itemid=2&pop=1&page=0.

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