



Frontier Justice

A New Approach for
U.S. Rule of Law Assistance

Robert M. Perito and
Ambassador Donald J. Planty



Project Description

The project was funded by a grant from the Smith Richardson Foundation whose mission is to address serious public policy challenges facing the United States. It focused on three categories of states in crisis that are both important to U.S. national security interests and recipients of U.S. rule of law assistance: the northern tier states of Central America—Guatemala, El Salvador, and Honduras—that are experiencing extreme levels of organized criminal violence; Pakistan, Tunisia, and Mali, where international Islamist terrorists are attempting to impose extreme versions of Shariah law; and Azerbaijan and Venezuela, where governments have morphed into kleptocracies. The project looked at these states from a Washington policy and funding perspective and, where possible, visited them to meet with government officials, political activists, researchers, civil society representatives, and U.S. Embassy officials.

The project was led by two veteran rule-of-law practitioners: Robert M. Perito, former Director of the Center of Innovation for Security Sector Governance at the United States Institute of Peace, and Donald J. Planty, former United States Ambassador to Guatemala. The project was assisted by a Senior Advisory Council of distinguished experts with broad experience in governance, national security, and promoting the rule of law.

Members of the Senior Advisory Council included:

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Alexander Watson, Managing Director of Hills & Company and former Assistant Secretary of State for Western Hemisphere Affairs and U.S. Ambassador to Peru.

This document is the summary of the complete report that contains additional information and analysis on the findings of the study and its recommendations. Both versions of the report will be available on the Public International Law and Policy Group website:

<https://www.publicinternationallawandpolicygroup.org>.



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Executive Summary

United States rule of law assistance is failing to help recipient governments provide good governance, security and justice. This is particularly true in three categories of states in crisis: (1) states that are experiencing extreme levels of organized criminal violence; (2) states where international Islamist terrorism is attempting to impose extreme versions of Shariah law; and (3) states where corrupt authoritarian governments have morphed into kleptocracies. Though conditions have changed in these countries, U.S. rule of law assistance continues to employ a fragmented and technocratic approach to improving foreign criminal justice systems. Dedicated officials, civil society leaders, and concerned citizens in these countries want to establish the rule of law. In many cases, our current assistance does not help them change the prevailing paradigm. What new approaches for U.S. rule of law assistance are required to provide them with the support needed to change the system?

In countries threatened by criminal violence, terrorism, and corrupt authoritarian rule, the study found that those working to promote a democratic political process believed rule of law was the essential element in providing good governance, security, and justice. They pointed out that law enforcement authorities and the criminal justice system were primary targets for those seeking to impose despotic regimes. They looked to the United States as a natural ally sharing common values and providing a model of what they can achieve.

These individuals confirmed the critical importance of U.S. assistance in preventing further deterioration in the local conditions and to providing any hope that the situation might be improved. In all cases, these activists lamented the fact that U.S. rule of law assistance programs were often not strategically focused, culturally relevant, or adequately resourced. They made clear that more—not less—U.S. help is required to move forward. Indeed, they called for increased use of U.S. political and diplomatic leverage, closer consultations on program selection and development, and more intelligent targeting of financial resources.

Whether aimed at establishing justice, enabling economic development, or promoting foreign investment, U.S. rule of law assistance has been a tool of U.S. foreign and national security policy since the end of World War II. The Obama Administration, however, subordinated rule of law programming to assistance for promoting democracy, protecting human rights, and enabling good governance. There also was a sharp drop in the financial resources devoted to aiding the justice sector. Outside of programs in Iraq and Afghanistan, funding for aid to courts and corrections fell from several billion dollars to \$1.9 billion in 2013 to less than \$500 million in 2016. At the same time, rule of law assistance became ‘securitized’ with assistance increasingly focused on convicting and incarcerating drug traffickers and terrorists.

The study identified other conditions and practices that undermined the effectiveness of U.S. rule of law programming. From the Washington perspective there is no readily knowable number for the total amount the United States spends annually on rule of law assistance, nor is there a common policy, doctrine, strategy, or coordinating mechanism for this aid. Funding is provided from a number of legislative funding sources, allocated to various government departments, and then spread among numerous implementing partners, primarily non-governmental organizations (NGOs) and commercial contractors. Assistance programs militarize civilian security forces and train prosecutors to charge terrorism suspects and jailors to prevent radicalization. Government agencies concerned with rule of law programming utilize staff with legal and law enforcement backgrounds largely as advisors and rely upon generic program officers to handle program design, funding and program management. As a result, establishing the rule of law is less a tool than an end state that hopefully will result from programs to ensure free elections, fight drug trafficking, and counter violent extremism.

To effectively promote the rule of law in crisis states, the United States requires a new paradigm that would help implement the President's 2017 National Security Strategy's call to devote greater resources to dismantle transnational organized crime.

In the field, the study found the administration of U.S. rule of law assistance is neither strategically focused nor designed to produce sustainable change. U.S. programs fail to emphasize that state building efforts

are political initiatives and not technical exercises. Program funding is not concentrated to achieve objectives and mobilize sufficient local support. In areas where criminals, jihadists, and insurgents operate without respect for national borders, U.S. assistance does not have a regional perspective. Project implementation is also affected by a lack of U.S. government staff with legal and law enforcement backgrounds on the ground and by risk averse State Department personnel policies that restrict the movement of U.S. officials making it difficult for them to meet with counterparts and visit project sites to access progress.

To effectively promote the rule of law in crisis states, the United States requires a new paradigm that would help implement the President's 2017 National Security Strategy's call to devote greater resources to dismantle transnational organized crime. The Strategy notes that these organizations threaten U.S. national security by undermining democratic institutions in partner states, enabling terrorist organizations and cooperating with corrupt authoritarian regimes. The new paradigm would highlight the critical role that the justice sector plays in countering all forms of organized criminal activity. It would highlight the fact that the justice sector is an integral part of the democratic process, essential for the protection of human rights and the basis for good governance. It would also acknowledge that the justice sector is among the primary of targets of criminal organizations and thus requires political, financial and technical support.

Acting on the new paradigm would require a strategic approach that would prioritize U.S. rule of law assistance as a means of dealing with the threat to U.S. national security interests posed by organized crime, terrorism, and corrupt authoritarian rule. The approach would utilize a comprehensive, whole of government and whole of society approach to understanding challenges and developing solutions. It would acknowledge that all forms of development assistance

require engaging in the realms of policy, power, and politics. It would emphasize promoting social and institutional reforms over provision of training and equipment to judicial officials and security forces. The plan would aim to realign societal forces to help create a culture of lawfulness.

Implementing the new approach would start with creating a common policy, doctrine, and strategy for rule of law assistance. It would also require establishing a high level, central coordinating mechanism with sufficient authority to marshal all available resources and direct interagency program development and implementation. The new paradigm would necessitate empowering the relevant U.S. government agencies to develop new policy options and program designs. It would involve recruiting a cadre of government

personnel with legal and law enforcement experience, trained to implement rule of law programs. U.S. government agencies could then effectively oversee, if not directly implement, rule of law assistance programs.

The new policy and programmatic paradigm would replace the current decentralized, *ad hoc* approach with the annual collection of random program suggestions and efforts to balance the allocation of tasks and financial resources among competing government entities. It would also necessitate phasing out the Washington, D.C. cottage industry of NGOs and contracting firms that actually implement most U.S. rule of law projects with the resultant loss of resources to administrative overhead, delay in implementation, and lack of effective oversight.

Importance of U.S. Rule of Law Assistance

Laws, law making, and law enforcement do not exist in a vacuum. Rule of law develops within a complex, interdependent system of security and justice. Absence of rule of law is not merely a legal problem; it is a problem of governance that perpetuates insecurity. To be effective, rule of law development must be embedded in a framework of democracy and open and effective governance. Otherwise, it fails to address fundamental problems of legitimacy and enforceability and risks being irrelevant and ultimately unsustainable. When rule of law is effective, the result is a free and fair democratic political process and effective governance providing basic services including security and justice.

The World Justice Project (WJP) offers a working definition of the rule of law based upon four universal principles: (1) accountability, where laws apply equally to government and private actors; (2) justice, where laws protect personal security, property, and human rights; (3) transparency, where laws are formulated and enforced through an open and commonly accepted process; and (4) accessibility, where impartial and competent authorities, reflecting the composition and values of the communities they serve, provide peaceful dispute resolution.¹

The WJP definition has guided this study along with the understanding that implementing rule of law

involves a democratic political process and good governance. Rule of law may be administered through a broad collection of institutions, ranging from formal government ministries, security forces, judicial institutions, and corrections facilities, to informal or other traditional mechanisms for peaceful dispute resolution and maintaining social stability.

Historically, the United States has viewed promoting rule of law abroad as a critical component of its foreign and national security policy. The critical nature of this component was confirmed on July 24, 2017, when the Center for Strategic and International Studies (CSIS) issued the report of a congressionally-led, bipartisan taskforce on “Reforming and Reorganizing U.S. Foreign Assistance: Increased Efficiency and Effectiveness.”² The taskforce was led by Senators Jeanne Shaheen and Todd Young and was composed of representatives from government agencies, research institutions, and academia. The report acknowledged that U.S. foreign assistance needed reform, but that foreign assistance was vital in dealing with challenges that were beyond the capacity of developing countries and fragile states. The report stated that fragile and failing states remain a source of instability with the potential to export transnational threats to the United States. These countries require U.S. funding, training, and technical assistance to deal with political dysfunction, terrorism, transnational crime, and establishing the rule of law.

The importance of implementing the rule of law abroad was also noted in the President's 2017 National Security Strategy that called for devoting increased resources to dismantling international criminal organizations and their subsidiary networks. The Strategy noted that these organizations weaken our allies and partner states by corrupting democratic institutions. They also enable corrupt authoritarian regimes and other national security threats such as terrorist organizations. The first line of defense against organized crime in all countries is the criminal justice system. Strengthening those systems in partner countries is vital to U.S. national security interests.³

In fragile and failing states that are threatened by criminal violence, terrorism, and corrupt authoritarian rule, the project team found dedicated officials and selfless activists working to promote democratic political change. These individuals argued that the rule of law was the essential element in providing good governance, security, and justice. They also pointed out that law enforcement authorities and the criminal justice system were primary targets for those seeking to impose despotic regimes. They looked to the United States as a natural ally that shared common values and could provide a model of what they could achieve.

In Guatemala, the head of a leading think tank emphasized that U.S. assistance was critical to making progress on rule of law reform but that U.S. programs were too limited in their reach and not strategic in scope. Interlocutors in Tunisia sounded a similar note, stating that the U.S. was overly concerned with security and insufficiently engaged in promoting and strengthening democracy. The United States was not using its considerable political leverage, and therefore, its programming did not have a strategic impact. The United States needed to increase political pressure on the Tunisian government to complete rule of law reforms. In Azerbaijan, political opposition leaders said the United States abandoned its efforts to improve

the rule of law and had accepted the government's kleptocratic nature. The United States no longer urged the regime to return to democratic norms by permitting free elections and an independent judicial system. There can be no rule of law in Azerbaijan without the restoration of democratic freedoms.

Criminal justice systems were primary targets for those seeking to impose despotic regimes.

Individuals interviewed in all three categories of states confirmed the critical importance of U.S. rule of law assistance in preventing further deterioration of local conditions and in providing hope that the situation might be improved. In all cases, these activists lamented the fact that U.S. rule of law assistance programs often were not strategically focused, culturally relevant, or adequately resourced. They made clear that more—not less—U.S. help is required to hold the current ground and to move forward. They called for increased use of U.S. political and diplomatic leverage, closer consultations on program selection and development, and more intelligent targeting of financial resources. These appeals from rule of law advocates indicate the continued need for U.S. rule of law assistance as the core of our overall support for democracy, good governance, and the respect for human rights. These practitioners believe that rule of law is the critical element in meeting the needs of their societies for security and justice.

A History of U.S. Rule of Law Assistance

Rule of law has been a subject of U.S. foreign policy and development assistance since the end of World War II. In the aftermath of that conflict, there have been a series of distinct waves of effort to build viable judicial systems in countries considered vital to U.S. national security interests. The first of these waves, from 1945 to the mid-1960s, was built on Modernization Theory, the idea that economic development and creating a modern state required building centralized bureaucracies. At that time, support to judicial systems played a secondary role. In the mid-1960s, however, U.S. academics made the argument that legal education and judicial reform were the missing pieces in Modernization Theory and that true modernization required the rule of law to succeed. The subsequent “Law and Development” movement emphasized educating foreign lawyers and judges in U.S. universities and transplanting models of Western judiciaries into developing countries. The belief was that rule of law was a technocratic process that would proceed on its own once the benefits were made clear to recipient societies.⁴

This emphasis on transplanting U.S. legal institutions and legal education continued, with diminishing results, until a third wave began in the 1980s. Often called the “Administration of Justice” movement, this effort was precipitated by civil wars and human rights abuses in Latin America and involved a massive

resurgence in rule of law assistance. Programs in this phase continued to focus on formal state institutions. Over time this effort lost momentum as emerging regimes in Latin America proved resistant to change.⁵ A decade later, in the aftermath of the Cold War, a fourth surge in rule of law assistance sought to support the transition of communist countries to democratic rule. Under the rubric of “Rule of Law Reform,” the size and scope of U.S. rule of law assistance grew dramatically as more government agencies and private voluntary organizations became involved. Assistance was motivated by the belief that the rule of law would facilitate transitions to market economies by increasing predictability and efficiency and by encouraging free elections and respect for political and civil rights. Given the magnitude of the effort, the results were less than satisfactory.⁶

The War on Terrorism’s Impact on Rule of Law Assistance

The terrorist attacks of September 11, 2001, and the subsequent U.S. interventions in Iraq and Afghanistan launched a fifth wave of U.S. rule of law assistance related to stability operations. This meant the securitization of rule of law support in conflict environments.⁷ After initially opposing nation building, the George W. Bush Administration threw its full support behind

efforts to rebuild the police forces and justice sectors of Iraq and Afghanistan as part of a counter-insurgency strategy. National Security Presidential Directive 44 entitled “Management of Interagency Efforts Concerning Reconstruction and Stabilization” stated that the United States should “promote peace, security, development, democratic practices, market economies and rule of law.”⁸ Department of Defense (DOD) Directive 3000.05 elevated stability operations to “a core military mission,” equivalent to war fighting and committed DOD to assist other agencies, foreign governments, and international organizations to “strengthen governance and the rule of law.”⁹

Implementing these directives in Iraq involved a massive surge of resources for rule of law assistance that was ostensibly designed and led by civilian agencies but largely delivered by the DOD and the U.S. military. This assistance spread over a number of years and resulted in: rebuilding interior and justice ministries; training and equipping civilian security forces (400,000 police in Iraq); constructing judicial infrastructure; training judges, prosecutors, and court administrators; and the development of a national prison system.¹⁰

Not surprisingly, the institutions that emerged from this herculean effort were military rather than civilian in character. Uniformed personnel directed and staffed these ministries. Police forces received weapons, body armor, and basic military training. U.S. and European police advisors were involved, but their numbers were limited, as was their ability to influence the character of training. Civilian advisors argued that police should be trained in law enforcement and community relations. Their military counterparts agreed, but only after the police had helped to fight and win the war. Attracted by lucrative DOD contracts, U.S. private sector firms added rule of law programs to their portfolios which expanded the variety of civilian participants in the field. U.S. justice sector assistance focused on reforming state institutions based on U.S. models.¹¹

In Afghanistan, rule of law programs were an integral part of U.S. counter insurgency strategy, with a declared policy of establishing fair dispute resolution mechanisms to eliminate a perceived justice vacuum that the Taliban had exploited. However, U.S. policy makers did not realize the complex mixture of justice mechanisms already in place in Afghanistan. The Taliban operated a parallel legal system to the official Afghan court system, acknowledged by Afghans to be fair and free of bribery. Taliban courts provided predictable, legitimate, and accessible dispute resolution in contrast to the formal legal system that was seen as distant, corrupt, and undependable. The official justice system and Taliban justice competed with a third alternative: traditional tribal justice systems that had been degraded but were still utilized in many parts of the country. U.S. rule of law programs in Afghanistan failed because they focused on filling a nonexistent justice vacuum and did not address the real problem which was competing dispute resolution systems.¹²

In Afghanistan, rule of law programs were an integral part of U.S. counter insurgency strategy.

From 2004–2009, the United States Agency for International Development (USAID) carried out the \$44 million Afghanistan Rule of Law program that sought to strengthen local courts, educate legal personnel, improve access to justice, and engage the informal justice sector. Also in 2004, the State Department’s Bureau of International Narcotics and Law Enforcement Affairs (State/INL) became the official coordinator of U.S. rule of law assistance and established the \$241 million Justice Sector Support Program focused on the formal justice system. The

program sought to train justice officials, establish a case management system and build the administrative capacity of the Ministry of Justice. From 2010–2014 USAID funded the follow-on Rule of Law Stabilization Program with a formal and informal justice component. This \$47.5 million program was operated by Tetra Tech and sought to fill the justice vacuum in areas the U.S. military had cleared of Taliban courts. Simultaneously, the U.S. military engaged in providing rule of law assistance through the \$24 million Rule-of-Law Field Force-Afghanistan program that was integrated with the larger counter-insurgency effort and sought to establish “rule-of-law green zones” where U.S.-supported traditional authorities would provide justice.¹³

Failure of the massive U.S. effort to reform the justice system in Afghanistan discredited rule of law assistance as a nation building tool.

Despite a decade of effort and the expenditure of over \$350 million, the State and Defense Department Inspectors General and the Special Inspector General for Afghanistan determined that while U.S. assistance achieved tactical gains and built some judicial infrastructure it had failed to meaningfully advance the rule of law in Afghanistan. This was attributed to the Afghan government’s disinterest in establishing the rule of law and its willingness to thwart U.S. programs. Despite the evident lack of progress over time, U.S. officials continued to implement programs already identified as ineffective. They also failed to confront the massive corruption in the Afghan government and the patronage networks it relied upon for support. U.S. programs emphasized the importance of the informal justice sector, but U.S. actions

emphasized creating a Western-style judiciary. The United States did not seriously attempt to engage with the key elements of traditional Afghan judicial legitimacy: cultural affinity, Islam, and creating accessible forums for equitable dispute resolution.¹⁴

The Obama Administration Emphasized Democracy and Governance

Failure of the massive U.S. effort to reform the justice system in Afghanistan discredited rule of law assistance as a nation building tool.¹⁵ In 2010, the Obama Administration realigned priorities for rule of law assistance at USAID by creating the Center of Excellence for Democracy, Human Rights, and Governance (DRG).¹⁶ The Center emphasized free and fair elections, political party development, human rights, and labor and gender protection. The Rule of Law Office merged into a new Office of Governance and Rule of Law. This new office supported activities to improve the accountability, transparency, and responsiveness of governing institutions and to promote legal and regulatory frameworks aimed at improving security and law enforcement. In the bureaucratic reorganization, the rule of law was transformed from a tool to promote democracy, human rights, and good governance to an outcome that would be achieved by these programs. As a practical matter, USAID in Washington effectively ceded responsibility for rule of law programming to the Department of State.¹⁷

The motivation behind this change was in part ideological, but in larger part it reflected a major reduction in available resources. Presidential initiatives took much of what had been USAID’s funding. President Bush’s “President’s Emergency Plan for HIV/AIDS Relief” was continued and followed by President Obama’s own initiatives: the “Feed the Future” program that sought to increase global agricultural production, and

the “Global Development Lab” that encouraged the use of science, technology, and innovation to promote development. The DRG budget declined from \$2.8 billion in 2009 to \$1.5 billion in 2015. In the field, larger USAID missions used discretionary funds to continue traditional rule of law programming. Smaller missions were forced to choose between rule of law programs, which tended to be expensive, and numerous smaller projects in other areas. The drop in funds limited staffing, often to a single program officer responsible for managing all of USAID’s accounts.¹⁸

The State Department’s Bureau of International Narcotics and Law Enforcement Affairs (State/INL) emerged as the U.S. government’s most important institution for rule of law assistance to address narcotics trafficking and organized crime.¹⁹ State/INL was not a law enforcement agency, but it operated in over 80 countries and had dedicated Bureau representatives in 42 U.S. missions abroad. INL was the primary U.S. entity for providing policy, coordination and funding for training and equipping foreign law enforcement, border control, court systems and corrections institutions. Its most unusual component was an air force of 100 helicopters and 30 fixed wing aircraft that conducted narcotics crop eradication and countered drug trafficking and narco-terrorism. Funding was provided by Congress under the Foreign Operations Appropriation Act and the International Narcotics and Law Enforcement Fund. INL funded rule of law programs were implemented by the Justice and Treasury Departments and federal law enforcement agencies under interagency agreements; through grants, cooperative agreements and contracts with commercial firms; through letters of agreements with the UN and other international organizations and under partnership arrangements with U.S. state and local law enforcement and justice agencies.²⁰ Despite its broad mandate, INL primarily focused on assisting law enforcement and paid less attention to courts and prisons. Like Clinton, President Obama placed an interagency Rule of Law

Coordinator at the State Department. This experiment failed because the Coordinator was given limited authority and no project funding and staff and had little ability to influence the policy process.²¹

The State Department’s INL Bureau emerged as the government’s most important institution for rule of law assistance for countering narcotics trafficking and organized crime.

During Obama’s second term, the State Department’s Counter Terrorism Bureau (State/CT) joined State/INL as an important provider of rule of law assistance funding. In FY 2015, the Bureau received \$250 million in Nonproliferation, Anti-Terrorism, Demining and Related Programs (NADR) funds for law enforcement programs. Of this amount, \$200 million was transferred to State’s Diplomatic Security Bureau for U.S. embassy security and to support the Bureau’s Anti-Terrorism Assistance (ATA) program that provided foreign training in terrorist incident investigation, countering improvised explosive devices, and forming civilian police rapid reaction squads. The remaining \$50 million was spent on a variety of terrorism-related programs in the justice sector. In FY 2016, State/CT hired its first rule of law program officer when it received \$155 million from a new source, the Counter Terrorism Partnership Fund. This money was used for: (1) Countering Safe Havens (\$75m) by creating civilian crisis response forces in Mali and Jordan, vetting a law enforcement unit in Bangladesh, and sending Justice Department rule of law advisors to improve counter terrorism investigations and prosecutions in eleven countries; (2) Countering Returned Foreign Terrorist Fighters (\$50m) in Bosnia, Albania, and Kosovo;

and (3) Countering Terrorist Actions from Iran and Hezbollah (\$30m). State/CT also moved into training for corrections officials on such terrorism-related topics as preventing radicalization in prisons, special handling of imprisoned terrorists, and tracking and rehabilitating terrorist prisoners after their release from prison.²²

U.S. Programs Were State-Centric and Top-Down

After World War II, the theories, priorities, objectives, and funding levels of U.S. rule of law assistance evolved over time, but the content of U.S. programs remained remarkably constant. According to Carnegie Fellow Rachel Kleinfeld, U.S. programs advocated top-down reforms of government judicial institutions. U.S. programs targeted legal professionals, training lawyers and jurists in technical skills and improving court administration. Parliamentary assistance sought to improve legislative drafting skills and committee processes. Assistance for lawyers focused on strengthening law schools and bar associations, and on improving technical skills such as contract drafting, interviewing clients, and oral advocacy. Programs for judges covered plea bargaining, alternative sentencing, and international crimes such as money laundering, asset recovery, and financial corruption. As Kleinfeld points out, this approach to legal reform resulted in institutional modeling where local laws and judicial institutions were modified to more closely resemble those of the United States.²³

Institutional modeling resulted in local laws and judicial institutions that more closely resemble those of the United States.

During the Obama Administration, however, USAID began to move away from technocratic and top-down rule of law programming.²⁴ Recognizing that understanding the political context was critical to the success of development efforts, USAID integrated Political Economy Analysis (PEA) into its rule of law programs. USAID/DRG developed its own PEA field guide²⁵ and required that a political analysis was undertaken at the beginning of every rule of law project and reflected in planning and program management. USAID expanded its bottom-up support of civil society that included citizen empowerment and programs to expand access to justice to include Crime and Violence Prevention Projects.²⁶ These programs created municipal councils composed of local authorities, community organizations, religious institutions and business leaders to identify local security threats. The councils developed prevention plans that included education and employment opportunities, women and youth activities and services and improved cooperation between citizens and law enforcement. To ensure a more comprehensive and integrated approach, USAID began including the rule of law in some of its five-year Country Development Cooperation Strategies. For Kosovo, the Strategy called for moving beyond providing courthouse infrastructure and equipment to focusing on commercial law to improve the investment climate and capacity building by supporting the Kosovo Judicial Institute.²⁷

State/INL compensated for the overall decline in the number of government rule of law experts by creating the Office of Criminal Justice and Assistance Partnerships staffed by former police, corrections officers and legal professionals that advised program officers in the Bureau. These advisors conducted in-country assessments, developed specific program recommendations and worked with program officers that were not rule of law experts, but had responsibility for designing, funding and managing programs. The advisors also developed policy guidance, created

briefing documents and delivered in-house orientation and training sessions. Capacity building within State/INL benefited from the Justice Sector Training, Research and Coordination Program,²⁸ a partnership between the State Department and the University of South Carolina to strengthen U.S. justice sector programming through capacity building seminars for U.S. agencies and program implementers. To obtain the services of law enforcement professionals, State/INL created the State and Local Partnerships Program²⁹ with U.S. state and local police, courts, and corrections agencies to enable serving officers and officials to conduct training and capacity building sessions abroad and to host educational visits for foreign counterparts. The Bureau paid increased attention to justice and corrections, taking a more holistic approach to rule of law programming that included institutional capacity building along with training personnel.³⁰

U.S. Assistance was Militarized and Failed to Acknowledge Traditional Systems

Still the U.S. approach to rule of law assistance evinced shortcomings. Attempts to fine tune formal judicial systems failed to acknowledge the evolution in international organized crime and public corruption that made these scourges increasingly immune to such traditional methods as anti-crime campaigns, arrests, prosecutions, and institutional reforms. The Twentieth Century view of organized crime as an external virus attacking otherwise healthy state institutions no longer applied. Similarly, describing public corruption as the activity of a “few bad apples” in otherwise properly functioning institutions no longer fit contemporary reality. Instead, organized criminal enterprises replaced state administrations, expropriated revenues and development assistance, and engaged in drug trafficking and terrorist financing.

Corruption became the standard operating procedure for officials, the judiciary, and police who utilized public office to maximize personal gain. Increased criminality within public administrations contributed to a rise in violence as government security forces acted with impunity, engaged in criminal activities, and suppressed manifestations of citizen disapproval with no state repercussions.³¹

The Twentieth Century view of organized crime as an external virus attacking otherwise healthy state institutions no longer applied.

In post-Soviet Central and Eastern European states, U.S. top-down, regime-centric police assistance short-circuited bottom-up, civil society driven efforts to achieve democratic reforms. In a forthcoming book, Professor Erica Marat writes that in five post-Soviet states—Ukraine, Georgia, Kyrgyzstan, Kazakhstan, and Tajikistan—regime change and police reform occurred only after an incident of transformative police violence in which police brutality exceeded the level of citizen tolerance, provoking a massive popular backlash.³² In these instances, political activists and civil society groups initially engaged with political elites and security officials to achieve meaningful reductions in police brutality and abusive practices throughout the criminal justice system. In several cases, however, police assistance from the United States and other international donors enabled newly installed governments to preempt the bottom-up reform process and institute top-down, unilateral and largely cosmetic changes involving new uniforms, modern equipment, and recruiting new personnel. In the process, these governments were able to retain

the essential characteristics of police in post-Soviet countries: personal loyalty to individual leaders and a priority on protecting the state.

Overall U.S. assistance to law enforcement agencies was ‘securitized.’ Aid that militarized police and border guards improved partner-country security forces’ abilities to conduct counter narcotics and counter terrorism operations. For example, the U.S. Central American Regional Security Initiative (CARSI) provided \$642 million in weapons, equipment, and training to regional security forces to fight drug and arms trafficking, gangs, and organized crime.³³ Most of this assistance, however, did not address the underlying fragility of rule of law at the community level where gangs and traffickers thrived, or the culture of impunity that pervaded security and justice institutions. Throughout Africa, the United States prioritized training border guards and counterterrorism units, and providing assault rifles, body armor, and armored vehicles. Militarizing civilian security agencies reinforced an existing authoritarian ethos and undermined efforts to improve police-community relations. It also did little to improve police’s ability to investigate transnational organized crime.³⁴

Additionally, U.S. rule of law assistance failed to bridge the gap between formal legal institutions and the lives of people in rural areas and traditional societies. With its top-down orientation, U.S. rule of law assistance did not acknowledge the relevance of alternative justice systems based upon customary practice, religious principles, or tribal law that people turned to for personal safety and social justice. In rural villages people viewed formal legal systems as distant, corrupt, and irrelevant to their needs. Instead, they were more likely to seek dispute resolution through traditional authorities and customary legal traditions. These approaches to resolving disputes among people who must continue to live in close proximity avoided assigning guilt and innocence. Instead, they sought to achieve mutual accommodation that resolved problems and allowed life to go on. In countries where most economic activity is in the informal sector, traditional norms are more relevant than foreign inspired legal codes. By failing to link formal and informal systems, U.S. rule of law programs failed to take advantage of the contribution that customary justice could make to reducing pressure on the formal judicial system and providing alternatives to the resort to violence to resolve conflict.³⁵

New Challenges Facing U.S. Rule of Law Assistance Programs

The shortcomings in current U.S. rule of law assistance programs are particularly evident in three categories of states that are important to U.S. national security interests and recipients of U.S. rule of law programming. These states are experiencing a particularly virulent mix of armed violence, terrorist tactics, and organized crime often linked with authoritarian rule. In some cases these phenomena occur together. The report focuses on the most pressing concern of the three in each country explored. Following is a description of the new challenges presented by these states and the status of current U.S. rule of law programs.

Criminal States

Guatemala, El Salvador and Honduras

The northern tier states of Central America—Guatemala, El Salvador, and Honduras—occupy a strategic geographical space between North and South America. They form a physical funnel on the Central American isthmus channeling illicit drugs, migrants, and contraband through Mexico to the United States. A reverse flow of weapons, stolen cars, laundered cash, and deported migrants, some with criminal records, travels south. The movement of goods in both directions takes advantage of porous land borders, clandestine airstrips, unpatrolled rivers, and open sea lanes. This intense level of illegal activity

generates extreme violence and billions of dollars in unlawful revenue that has overwhelmed law enforcement, created a climate of impunity and undermined democratic institutions.

The high level of poverty and the lack of economic, social, and political opportunity in all three countries exacerbate this situation. Socio-economic indicators compiled by the UN Economic Commission for Latin America and the Caribbean reveal that Guatemala has the lowest Human Development Index in the Western Hemisphere, one of the most unequal distribution of income ratios, and the highest levels of poverty in the region. Chronic child malnutrition in Guatemala is the highest in the Hemisphere and fourth highest in the world. Honduras and El Salvador fare little better on socio-economic indices. Honduras has a poverty rate of 63.9% in rural areas and 50.5% in urban centers.³⁶

The rule of law in Central America has been historically weak due to the absolutism of Spanish colonial rule and the caudillo tradition—the man on horseback as authoritarian ruler. While Central American countries established constitutional democracies based on the U.S. model after gaining independence from Spain, frequent constitutional change—including extra-constitutional seizures of power—has weakened democratic institutions and interfered with the development of the rule of law. The caudillo tradition

has produced highly centralized systems of government that are corrupt, non-transparent, and unable to provide basic services to the population. Legislatures are weak and dysfunctional, judiciaries are corrupt and incompetent and security forces are exploitative and abusive. The sub-region continues to struggle against these historical and cultural forces. This was especially true in the 1980s when ideologically-based internal armed conflicts led to the demise of democratic governance and long periods of military rule. Rule of law institutions, in particular the police and the judiciary, were progressively degraded and eventually rendered ineffective.

The United Nations International Commission Against Impunity in Guatemala has pursued a series of high profile anti-corruption cases.

In Guatemala, the government led by political neophyte Jimmy Morales is not overtly corrupt, but has been characterized by ineffective leadership. Guatemala's Congress is dysfunctional and the courts are notoriously corrupt and incompetent. The country's one rule of law bright spot is the United Nations International Commission Against Impunity in Guatemala (CICIG) which has pursued a series of high profile anti-corruption cases. On February 13, 2018 former President Alvaro Colom and nine of his cabinet ministers were arrested, the fourth ex-president to face corruption charges.³⁷ CICIG has not, however, fulfilled its mandate to bolster Guatemalan democratic institutions and equip them to function as independent actors in a democratic state. Guatemala's rule of law institutions will remain ineffective after CICIG's forthcoming departure from the country.

In Honduras, President Juan Orlando Hernandez controls the congressional and judicial branches of government. Hernandez was reelected on November 26, 2017 after judges he appointed to the Supreme Court lifted the constitutional ban on multiple presidential terms. International observers documented irregularities in the voting which was suspended when the opposition candidate appeared to be ahead. On January 18, 2018, the Honduran Congress passed a law revoking the attorney general's authority to investigate cases involving the theft of public funds that involved high ranking government officials and 60 current and former legislators.³⁸ In response the leader of the Organization of American States Support Mission Against Impunity in Honduras resigned stating the new law would make it impossible for him to continue his work.³⁹

Over the past three decades, the United States has attempted to improve the rule of law climate in these three countries, and to staunch the northward movement of people and goods, with little success. U.S. policy has focused mostly on stopping narcotics smuggling and has only tangentially dealt with the underlying problems—weak government institutions, pervasive official corruption, and low levels of national investment in health, education, and welfare. While the totality of U.S. government programs appears impressive, they have had little impact on the prevailing rule of law climate. One reason is the absence of a strategic plan for implementing U.S. rule of law assistance for the region. Without a holistic approach to rule of law challenges that features integrated programming across U.S. agencies, real reform and a transformation of rule of law institutions are unlikely. Contractors implement all USAID and most State/INL programming—most of which are failing. A major USAID evaluation published in late 2017 concluded that programming is producing limited results and several programs are having no impact at all.⁴⁰

During this project, Ambassador Planty made multiple visits to the region and met with government leaders, opposition political groups, civil society representatives, and academic experts. From this field research, Planty found that, despite the generally grim conditions, reformers—political leaders, businessmen, NGOs, and civil society representatives—still exist in all three countries but are not sufficiently organized or funded to mount a sustained challenge to the corrupt system. U.S. rule of law assistance does support these reform elements to some degree with financial and material resources, but reformers say that U.S. programs are neither sufficiently comprehensive nor durable enough to overcome corruption and strengthen institutions. In some cases, U.S. assistance has perpetuated the status quo by making it possible for corrupt regimes to use enough resources to avoid a total collapse while diverting much of the aid to corrupt enterprises. NGOs and academic experts stressed that U.S. rule of law programs were not “strategic,” since they did not make a major impact in an important sector at a critical time.⁴¹

At U.S. Embassies, Planty found that diplomats readily admitted that U.S. programs were aimed more at enhancing security in general and, particularly, at improving community safety to stem the tide of emigration to the United States.⁴² This approach is based on a misreading of the reasons for mass migration northward. Migrants are not fleeing narcotics traffickers and gang violence so much as a lack of opportunity and social services: unavailability of doctors and medications at health centers, absence of elementary schools and teachers, no access to universities, and no jobs and economic opportunity.

Terrorist States

In an arc from Pakistan to Mauritania, the United States faces a region in turmoil as democratic

transitions have stalled, chaos has spread, and violent extremists have gone on the offensive. In the aftermath of the Arab Spring, popular aspirations for democratic change have been replaced by the realization that regional governments are not coping with crime and terrorist violence. This growing awareness is based on: (1) revelations of government corruption and the use of terrorist threats to justify crackdowns on political opponents; (2) the inability of security forces to prevent the proliferation of Islamist terrorist groups and their ability to control territory and to strike high profile targets; and, (3) the failure to counter terrorists’ appeals to radicalized youth to join their cause.⁴³

NGOs and academic experts stressed that U.S. rule of law programs were not strategic since they did not impact the judicial sector at a critical time.

The most extreme example has been that of the Islamic State (IS) in Syria, Iraq, and Libya, where IS fighters ruled the city of Sirte until they were driven out by Misratan militias backed by U.S. Special Forces and air support. IS fighters are now attempting to regroup in Libya’s southern desert where they threaten the Sahel along with al-Qaeda in Islamic Maghreb, Boko Haram, and Islamist tribal insurgencies.⁴⁴ In North Africa and the Sahel’s vast ungoverned spaces, terrorist groups have joined with organized criminal networks to turn historic caravan routes into trafficking corridors for narcotics, weapons, and migrants.⁴⁵ Smuggling networks have seized on regional instability, grinding poverty, and the lack of opportunity to become deeply entrenched in local economies, making them difficult to dislodge. Impaired by

growing instability, regional states are increasingly unable to deliver basic government services. Endemic corruption has left government institutions bereft of legitimacy as alienated citizens are frustrated by declines in health care, educational opportunities, and living standards.⁴⁶

In Pakistan, the police have first-line responsibility for providing security and justice.

To evaluate U.S. rule of law assistance in this vast area, the project team looked at three historic American allies that face serious challenges from Islamist terrorism: Pakistan, Tunisia, and Mali. Pakistan partnered with the United States to evict the Soviet Union from Afghanistan and remains a frontline state in the battle against al Qaeda and the Taliban. Tunisia signed its first treaty of friendship with the United States during Thomas Jefferson's presidency. Today it remains North Africa's best hope to complete the transition to democracy despite a series of damaging terrorist attacks.⁴⁷ Prior to the 2012 coup, Mali was considered a model for democracy in Africa and a success story of U.S. development assistance. Today Mali is maintained by a United Nations peacekeeping mission and a French expeditionary force that are engaged against Islamist terrorist groups and tribal insurgents. The project team visited Pakistan and Tunisia and, due to a State Department travel advisory, worked with resident experts and U.S. officials to develop its findings on Mali.

Pakistan

Since September 11, 2001, Pakistan has been a frontline state in the Global War on Terrorism, a sanctuary for al Qaeda and Afghan Taliban leaders, and the site of a growing domestic insurgency. Pakistan has received

\$33.4 billion in U.S. military and counterterrorism aid since 2001 and Congress had initially proposed \$345 million in security assistance and economic aid for FY 2018. The Obama Administration mostly ignored Pakistan's duplicity in harboring Afghan terrorists for fear of losing its cooperation in the Afghan conflict. The United States needs Pakistan's approval to transport military supplies from Pakistani ports to Afghanistan.⁴⁸ In August 2017, National Security Advisor Lt. General H.R. McMaster publically charged that Pakistan was selectively fighting terrorist groups and stated that the United States wanted Islamabad to stop providing safe havens to the Afghan Taliban and the Haqqani Network.⁴⁹ On January 4, 2018, the United States suspended nearly all of its \$1.3 billion in annual security assistance to Pakistan in response to Pakistan's failure to respond to U.S. concerns.⁵⁰ On February 23, the Paris-based international Financial Action Task Force, at U.S. request, placed Pakistan on its state terrorism watch list, a step that could damage the country's economy.⁵¹

In Pakistan, the police have first-line responsibility for providing security and justice. Advancing the rule of law in Pakistan must begin with police reform.⁵² The 2016 World Justice Project survey on "The Rule of Law in Pakistan" found that 82% of those interviewed considered the police the most corrupt authorities and 83% wholly distrusted the police.⁵³ Pakistan's problems with police corruption and abuse relate directly to institutions left over from the country's colonial era. The underlying philosophy and legal framework for policing date to the Police Act of 1861, enacted under British rule. Under this law, police serve as the enforcement arm of the state, controlling the population through repression and fear. As in the colonial era, Pakistan's police have no jurisdiction in the Federally Administered Tribal Areas (FATA) along the Afghan border. Thus, the police are unable to operate in the area from which the major threats to the country's security originate.⁵⁴

Decisions on police officers' assignments are made by provincial officials who have the authority to direct police operations, including ordering arrests or releasing persons in custody. This arrangement serves the interests of the political elite, wealthy landowners, and influential members of society who can pay for or demand special treatment. Political control of the police opens the way for massive corruption and abuses within the force. Command-level officers are often chosen for their willingness to comply with illegal orders and harass political opponents. Senior police officers are required to pay bribes to their political superiors to obtain postings. Positions that provide opportunities for payoffs and kickbacks—from both the private sector and organized crime—are in high demand and require large bribes at every level as police officers must raise money from subordinates to recoup their own payments.⁵⁵

The structural limitations imposed by laws, bureaucratic structures, and customary practice on police are also evident in the country's judicial institutions—particularly those that focus on countering terrorism. The Anti-Terrorism Act (ATA) of 1997 is Pakistan's primary counterterrorism law and applies throughout the country except in the FATA. The Act created a special category of Anti-Terrorism Courts (ATCs), 54 of which now operate in parallel with the regular court system. The ATA and the courts it created are deeply flawed and foster a situation where there is a 7% conviction rate in terrorist cases and rampant finger-pointing between police, prosecutors, and judges. Despite repeated amendments, the ATA remains vaguely worded and lacks specific definitions of terrorism or terrorist acts. The law's overly broad scope allows police and prosecutors to bring any offense that might frighten or terrorize the public before the special courts. Prosecutors bring high profile criminal cases before the ATCs to show the public that they are doing something. For the same reason, the police register irrelevant cases

that clog the ATCs. As a result, terrorism cases suffer long delays and are often either dismissed or end in acquittals because documents and witnesses have disappeared over time.⁵⁶

Interviews with a cross-section of police officers, judicial officials, and civil society representatives showed that Pakistanis view U.S. rule of law assistance programs as well-intentioned but generally irrelevant. U.S. pilot programs that create model police stations, demonstrate the applications of computers or deliver forensic training are helpful but reach limited numbers and are not sustained by Pakistani government investment. Interviewees viewed U.S. programs that promote practices that violate Pakistani cultural norms as counterproductive. The current U.S. approach fails to identify, or simply ignores, the structural problems that are the source of police and judicial corruption and malpractice in Pakistan. Unless these impediments are addressed, U.S. programs will continue to have only superficial effects. Informed observers argued that the United States should cease offering rule of law assistance programs designed to promote cosmetic changes that merely make Pakistani rule of law institutions look more like their American counterparts. Instead, the United States should use its political and diplomatic leverage to promote programs that demonstrate U.S. understanding of the political dynamics and power relationships that prevent reform.

Tunisia

On December 17, 2010, the Arab Spring began in the Tunisian town of Sidi Bouzid with an episode of police abuse that led to the self-immolation of a fruit peddler named Mohammed Bouazizi. His death sparked protests that spread quickly from the rural south to the capital where the country's U.S. trained military refused a presidential order to fire on protesters. That same day, President Zine El Abidine

Ben Ali fled to Saudi Arabia.⁵⁷ Following his overthrow, Tunisia experienced an upsurge in Islamist terrorist violence. In 2012, Ansar al Sharia led a mob attack on the U.S. Embassy in Tunis. In 2013, insurgents established a base in the mountains near the Algerian border and began a campaign of political assassinations, ambushes of police and army units, and suicide bombings. Two prominent political leaders were killed in Tunis with the Islamic State (IS) claiming credit. In 2015, more than 70 foreign tourists were killed in IS attacks on the Bardo Museum in Tunis and the Marhaba Hotel in Port el Kantaoui. A dozen members of the presidential guard were killed in a suicide attack claimed by IS. In March 2016, Tunisian security forces thwarted an attempt by a group of 60 jihadists to occupy the city of Ben Geurdane near the Libyan border. Subsequently, Tunisia built a 125-mile earthen wall along its Libyan border to prevent infiltration.⁵⁸

On the seventh anniversary of the Arab Spring, Tunisia remains the region's best hope to complete the transition from authoritarian rule to democratic governance.

Today, there is a sense amongst Tunisia's security forces and political class that the terrorism threat has abated over the last year. There has not been a mass casualty attack in 17 months. British tourists have returned to the Tunisian beach resort at Sousse two years after the terrorist attack that killed 38 people.⁵⁹ Yet, two proto-insurgencies involving Al-Qaeda in the Islamic Maghreb (AQIM) and IS-affiliated groups continue in the western governorates along the Libyan border.⁶⁰ On January 20, 2018, the National Guard ambushed and killed two leading members of AQIM

who were on a mission to reorganize the group's Tunisian branch.⁶¹ Returning Islamic State fighters also pose a threat. More Tunisians joined the IS than from any other country. As many as 6,000 Tunisians went to Syria and Libya, where hundreds died in battle while others moved on to commit terrorist acts in France and Germany. Tunisian officials fear that thousands may return home, increasing the threat of terrorist violence at a time when the country is ill prepared to respond.⁶²

At the same time, on the seventh anniversary of the Arab Spring, Tunisia remains the region's best hope to complete the transition from authoritarian rule to democratic governance. Tunisians have adopted a new constitution and held free and fair parliamentary and presidential elections in 2014. The next year, Tunisia's parliament approved a unity government led by the secular Nidaa Tounes party that included the rival Islamic party. In July 2017, parliament passed landmark legislation outlawing domestic violence and economic discrimination against women.⁶³ However, the country faces growing challenges from economic stagnation and youth unemployment. On January 1, 2018, a new government budget that raised taxes on gasoline and food items brought protesters into the streets in ten cities resulting in over 800 arrests.⁶⁴ Political elites are stalling the democratic transition. Parliament has not appointed a constitutional court because of failure to agree on the judges. Local elections were postponed four times and are now tentatively scheduled for May 2018. Major parties are already positioning themselves for national elections scheduled for 2019.⁶⁵

To protect Tunisia's democratic gains and to assist in the fight against terrorism, the United States provided \$225 million in security assistance and \$700 million to strengthen civil society, empower women and youth, advance economic reforms, promote the rule of law, and protect human rights between 2011 and 2015.

In 2014, Tunisia became a founding member of the State Department-led Security Governance Initiative (SGI) that works to enhance the institutional capacity of partner countries in confronting security challenges.⁶⁶ The SGI-Tunisia Joint Country Action Plan (JCAP) of September 2016 focuses on border management, police-community engagement, and countering radicalization in the criminal justice system. SGI has sought to play a coordinating role for a group of rule-of-law-related programs aimed at promoting high-level attention and Tunisian inter-ministerial cooperation in their implementation.⁶⁷

Beyond the SGI effort to coordinate selected programs, U.S. rule of law assistance in Tunisia involves numerous State/INL-funded programs aimed at improving the capabilities of the interior and justice ministries and the operational capacity of the Tunisia National Police and National Guard.⁶⁸ State/CT is focused on creating a Fusion Center, a counter terrorism investigation task force combining all relevant government ministries and law enforcement organizations.⁶⁹ USAID established a presence in Tunisia in 2016–17 but is not engaged in traditional rule of law programming. Its small project team has supported a new law that creates a more permissive legal environment for civil-society groups and has launched programs promoting community resilience and youth development.⁷⁰ Despite the abundance of U.S. programs, political activists believe the United States is not using its leverage to help produce democratic change. They believe the United States does not take a strategic approach to advocate for change and seems to value stability over reform. Activists felt the United States needs to be engaged in strengthening democracy and Tunisia's institutions.

Mali

After the Libyan revolution in 2011, ethnic Tuareg soldiers who had served as mercenaries in former Libyan President Muammar Gaddafi's army returned

home to northern Mali. Emboldened by their superior arms and ties to AQIM, they attacked Malian army bases, captured the major cities of Kidal, Gao, and Timbuktu, and declared the new, independent nation of Azawad, an action condemned by the international community. Their time in power was short-lived. A coalition of three Islamist terrorist organizations, AQIM, Ansar al Din, and the Movement for the Unity and Jihad in West Africa, routed the Tuaregs, took control of urban centers in the north, and imposed a radical version of Shariah law. Meanwhile, on March 22, 2012, the retreating Malian Army staged a coup, blaming lack of government support for their defeat in the north, removing the democratically elected president, and installing a military regime in Bamako.

As the chaos spread, the United Nations Security Council on October 12, 2012, authorized the deployment of an African Union-led peacekeeping force and French military intervention. In January 2013, Ansar al Din and other jihadist groups unexpectedly began to move south. French troops repelled their advance, recapturing the three major cities in the north and driving the insurgents into the mountains near the Algerian border. Finally on April 23, 2013, the U.N. Security Council authorized the deployment of the U.N. Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) with 12,000 military and police personnel and a mission to reestablish democratic governance in Bamako, launch a national political dialogue, and return Malian administrative and military presence to the north.

Five years on, Mali has made some progress with U.N. and international community support. The presence of MINUSMA and French forces removed the threat of an extremist takeover, but there is still widespread terrorist violence. In 2013, U.N. supervised presidential and parliamentary elections were held returning Mali to democratic rule after the 2012 coup.⁷¹ On

June 20, 2015, the Malian government, the pro-government Platform militia group, and an alliance of Tuareg rebel groups called the Coordination of Movements of Azawad (CMA) signed an Algerian-brokered Bamako Peace Agreement that provided for greater autonomy and a role for CMA security forces in the north.⁷² On June 29, 2017, the State Department warned Americans against travel to Mali due to ongoing terrorist attacks, kidnappings, and criminal violence. The warning followed a June 18, 2017, jihadist attack on a luxury hotel frequented by expatriates near Bamako, the fourth such attack in the capital in two years.⁷³ Northern Mali saw growing instability from renewed clashes between pro and anti-government armed groups and attacks by Nusrat al-Islam wal Muslimeen, a new jihadist alliance of al-Qaeda-linked factions.⁷⁴ On February 28, 2018, four U.N. peacekeepers were killed and others were wounded when their vehicle hit an explosive device. Mali remains the most deadly U.N. peacekeeping mission in history with over 150 peacekeepers killed since the mission was established.⁷⁵

At the end of 2017, the U.N. Secretary General reported that the security situation in Mali had worsened and terrorist attacks against U.N. and Malian security forces had increased. Terrorist groups had improved their operational capacity and expanded their areas of operations. U.N. concern was increasingly focused on the central portion of the country, where more terrorist incidents occurred than in the five northern regions of the country combined. Malian security forces were heavily targeted and suffered increased casualties. Attacks on high ranking state and judicial officials also increased. Violent extremist and radical armed groups asserted control over increasingly large areas, enforcing extremist religious dogma, threatening civilians with violence if they cooperate with the Malian authorities, and engaging in violent reprisals when faced with resistance.⁷⁶

The International Crisis Group developed a three-point plan,⁷⁷ based upon restoring the rule of law, for a possible Malian government initiative to reverse the course of events in the central region. The initiative would begin with the government seeking the support of local elites by bringing them into a dialogue designed to reduce ethnic rivalries and achieve political consensus on the region's future. This effort would be supported by a government-sponsored, locally-staffed territorial police force that would provide security, replacing village militias and other informal armed groups. Finally, the government would provide an alternative to jihadist-led justice by supporting existing customary justice mechanisms already utilized by the majority of the population in resolving disputes over land, inheritance, theft, and marital issues. In Mali, customary justice is trusted because of its ability to preserve social cohesion, where the formal judicial system is seen as complicating social relations and disrespecting cultural values.⁷⁸

There is much that a U.S.-led coalition of the United Nations and donor governments could do to assist the Malian government in implementing such a plan. Diplomatic pressure would be necessary to prevent Malian authorities from employing their traditional strategy of organizing pro-government tribal factions and pitting them against anti-government ethnic rivals. International support would be essential for outreach to regional elites and for organizing conferences on the region's future. Technical assistance with organizing a new territorial police force would be required, along with providing training and equipment. Deploying such a force would require assistance from MINUSMA and French military forces. Finally, U.S. funding, training, and political support would be required to energize traditional justice mechanisms and, in the long term, promote the return of the formal justice system to the region.

This would require refocusing the current Bamako-centric, U.S. rule of law assistance program that is engaged in a number of initiatives without focusing on issues that are critical for Mali's national survival. The Strategic Governance Initiative is coordinating Malian interagency implementation of selected assistance programs under a 2015 Joint Country Action Plan. The three rule of law programs involved are: (1) developing a police personnel resources management manual on merit-based recruiting as a first step toward recruiting 5,000 new officers; (2) helping the Justice Ministry set standards for hiring legal professionals; and (3) assisting the Malians in creating a National Security Council.⁷⁹ State/INL is administering programs focused on making the Malian police more professional, accountable, and community-oriented as a means of promoting stability and preventing radicalization. State/CT is advising the Mali government on creating an interagency crisis response capability and has funded the State Department Anti-Terrorism Assistance Program to train and equip a police rapid reaction unit to respond to terrorist attacks on hotels.

Mali is participating in a regional United States Institute of Peace, Justice, and Security Dialogue project to improve police-community relations. INL's corrections program is focused on security in prisons by: (1) improving prison academy curriculum; (2) developing emergency response units; (3) avoiding housing inmates in inappropriate facilities; and (4) improving the effectiveness of prison searches for contraband, drugs, and weapons.⁸⁰ USAID's Mali Justice program is projected to spend \$22 million over 2016–2020 in three program areas: (1) hosting forums to identify training needs of judges and magistrates; (2) training paralegals throughout the country, especially in underserved rural communities; and (3) reducing corruption along internal trade corridors by providing legal support to businessmen.⁸¹

Kleptocracies are states where governments have morphed into organized criminal enterprises that have systematically stolen public funds on a vast scale.

Kleptocracies

Kleptocracies are states where governments have morphed into organized criminal enterprises that have seized control of banking, natural resources, and other economic assets, and systematically stolen public funds on a vast scale. Kleptocrats mask their looting of public wealth and accumulation of personal fortunes behind xenophobia and populist rhetoric backed by the strong-arm tactics of authoritarian rule. Misappropriation of government revenues and exploitation of national resources retards economic growth, allows infrastructure to crumble, and weakens national power and resolve. It also spawns popular opposition as citizens come to view the government as a criminal racket rather than a legitimate provider of goods and services.

Kleptocracies divide the population between those who benefit from the government's patronage system and those appalled by the spectacle of social elites flaunting their ill-gotten gains. They suppress civil society groups and the media, and pervert democratic norms. Kleptocracies co-opt the security services by providing access to illicit revenues in return for officer loyalty, enriching security officials in the process. Kleptocracies are enabled by captive judiciaries, weak or intimidated civil society, and bureaucracies based on criminal and political patronage rather than merit and skill.⁸²

Beyond their internal impact, Kleptocracies pose a threat beyond their borders. Vladimir Putin used

Russian banks to fund authoritarian political parties and media outlets throughout Europe. Kleptocrats in Eastern Europe have used the international banking system to launder the proceeds from narcotics trafficking, which they have invested in multi-million dollar properties and businesses abroad. They have also used their positions as representatives of member states to protect against human rights violation investigations, undermining efforts by the Council of Europe and the United Nations.⁸³

Kleptocracies cover the political and geographic spectrum from populist regimes in South America to hard-right regimes in Eastern Europe and the former Soviet republics. On August 18, 2017, Venezuela's pro-regime Constituent Assembly formally assumed the powers of the opposition-dominated Congress, completing a power grab that placed all branches of the government under the control of President Maduro.⁸⁴ The move was followed by a spike in opposition protests, a rise in street crime, and the virtual collapse of the country's economy. On January 5, 2018, Maduro announced a government plan to replace Venezuela's worthless national currency with a new cryptocurrency, the "petro," backed by the country's oil and natural resources.⁸⁵ Simultaneously, Nicaragua, under President Daniel Ortega, continues to move in an authoritarian direction. Ortega was elected to a third term in November 2016, running unopposed with his wife, Rosario Murillo, on the ballot as vice president. Ortega's party, the Sandinista Front, controls Congress, nearly all other state institutions and elected offices, and the Supreme Court and judiciary. All meaningful opposition parties are banned. The private sector has been co-opted via a tacit understanding that business leaders have free reign as long as they do not criticize the government.⁸⁶

In Eastern Europe and the former Soviet Republics, divisions in the North Atlantic Treaty Organization

(NATO) alliance and the reduced appeal of European Union (EU) membership has moderated pressure on political leaders to govern according to democratic precepts, protect human rights, and fight corruption. This has created a trend toward corrupt authoritarian rulers that govern through patronage systems and repression.⁸⁷ In Poland and Hungary elected populist regimes have controlled the media, politicized the civil service, intimidated civil society, and compromised judicial independence, reversing the democratic revolution in Central Europe that followed the Soviet Union's collapse. Most recently, the Romanian parliament has followed suit by enacting a series of measures to curtail the powers of the country's anticorruption agency and significantly weaken the independence and authority of the justice sector. Parliament's majority party has called for changes in the criminal code that would shield corrupt politicians and limit the ability of police and prosecutors to investigate the country's endemic corruption. These actions have been challenged by a year of street protests, but the autocrats appear to have historical trends on their side.⁸⁸

To evaluate U.S. rule of law programs in kleptocracies, the project team visited Azerbaijan and made an extensive study of events in Venezuela where a State Department travel ban discouraged travel.

Azerbaijan

In Azerbaijan, President Ilham Aliyev has held power since 2003 when he succeeded his father, Heydar Aliyev, a former Soviet KGB officer who had ruled the country with an iron fist since its independence from the Soviet Union. Recently, the president's wife was named First Vice President, apparently to ensure the family's continued hold on political power. The president does not have the right to dissolve the National Assembly, but he has the right to veto its decisions. The National Assembly is a unicameral legislature comprised of 125 members all of whom

belong to the ruling party.⁸⁹ Azerbaijani journalists, bloggers, lawyers, and human rights activists have been rounded up and jailed for their criticism of President Aliyev and government authorities. A resolution adopted by the European Parliament in September 2015 described Azerbaijan as “having suffered the greatest decline in democratic governance in all of Eurasia over the past ten years.”⁹⁰ There is no academic freedom in the country—indeed; a leading academic was recently fired from Baku University for protesting government policies. The population lives in fear and dissent is not tolerated.

The government controls all major economic activity. Oil and gas resources are the base of the country’s wealth. Contracts with foreign petroleum companies are approved by the government-controlled parliament. There is no transparency and no information available on the terms of the contracts. Outside of the energy sector, the government discriminates against foreign companies. No non-Azerbaijani banks are permitted to directly operate in the country. Many U.S. companies are present but only through franchise arrangements. The government controls the entire market and doesn’t want competition. Pasha Holdings, which belongs to the President’s wife, has 70% of the market in Azerbaijan and restricts competition. Car loan rates are 24–25% and the real estate interest rate is 60%.⁹¹

In meetings with opposition figures, political activists, academics, think tanks, legal personnel, and NGOs, those interviewed agreed unanimously that the absence of the rule of law in Azerbaijan was directly linked to the demise of Azerbaijani democracy. The autocratic nature of the Aliyev regime made a mockery of the law, and U.S. rule of law programs had failed to acknowledge the broader ramifications of this reality.⁹² U.S. officials publicly praised the deputy interior minister for his cooperation with U.S. anti-trafficking-in-persons programs. This same deputy minister

was notorious for supporting torture and extra-judicial executions. The National Democratic Institute (NDI) and the International Republican Institute (IRI) left the country because of the government’s restrictions on working with opposition political parties.⁹³ Numerous civil society leaders said that the international community had failed Azerbaijan. When the country joined the Council of Europe (COE), many believed that the government would be held to the COE’s democratic standards but the rule of law situation deteriorated even further. Most believe that the West has closed its eyes to human rights violations and authoritarianism in Azerbaijan, clearing the way for further repressive measures.⁹⁴

Venezuela

In 2017, Venezuela was described by the Oslo Freedom Forum as “a geographic area terrorized by a criminal enterprise that pretends to govern, with a civil society made up of two sets of people: accomplices and victims.”⁹⁵ The Organized Crime and Corruption Reporting Project (OCCRP), gave Venezuelan President Nicolas Maduro its *Person of the Year Award* “recognizing the individual who has done the most to advance organized criminal activity and corruption.”⁹⁶ OCCRP chose Maduro for the award because his oil-rich nation’s population was literally starving while he stole millions to fund the patronage system that kept him in power. The plunder of Venezuela began under the administration of President Hugo Chavez in 2000, when the country’s public sector succumbed to systematic bribery, graft, and looting. Government ministries were populated with “phantom employees” and phony government programs siphoned off millions of dollars from the treasury. The perpetrators raided Venezuela’s gold reserves and profited from a bold currency-exchange scam. More than one trillion dollars in wealth was strip-mined by the country’s ruling elite, some was wasted on ineffective social programs and a staggering amount deposited in foreign banks. Massive graft and corruption turned

Venezuela into a wasteland with shortages of food and basic necessities; diseases once eradicated returned with a vengeance and a crime wave gave Caracas the highest murder rate in the world.⁹⁷

In 2017, Maduro dismantled the last vestiges of Venezuela's democratic institutions and replaced them with bodies packed with regime-supporters. On July 30, 2017, Maduro orchestrated the election of a Constituent Assembly to draft a new constitution that would authorize autocratic rule. The Assembly, which was elected from a government-supplied list of candidates, quickly assumed full governing powers, replacing the democratically-elected, opposition-controlled Congress.⁹⁸ Public opposition to the Maduro government increased, marked by violent confrontations between protestors and police, and the detention of opposition leaders. In December 2017, Maduro laid out a plan to expand his control of the economy by creating a digital currency known as the Petro, similar to Bitcoin, backed by the nation's oil reserves.⁹⁹ Venezuela's military might be able to challenge the regime, but the generals have remained loyal because Maduro has allowed them to profit from drug trafficking.¹⁰⁰

Historically, USAID's Venezuela assistance program supported civil society, promoted human rights, and attempted to shore-up democratic governance by encouraging greater participation in public affairs by civil society and expanding dialogue among democratic groups. This programming stressed the rights of citizens to be informed by independent media. It provided judicial training, supported research on democratic norms, and sponsored exchanges with other Latin American countries. USAID also worked on building the capacity of the National Assembly to be a more viable democratic institution that represented all Venezuelans. These efforts were brushed aside as President Chavez led the country from representative democracy to authoritarian rule.

In 2010, the United States recalled its ambassador from Caracas and bilateral relations reached a nadir. The United States no longer has a rule of law program in Venezuela but monitors Venezuela closely for involvement in narcotics trafficking, money laundering, and other international criminal activities. U.S. rule of law assistance could return to Venezuela if President Maduro leaves office and is succeeded by a government that restores Venezuela's democratic institutions.

Rule of Law Program Methodology

In discussing U.S. rule of law assistance, it is important to consider how assistance programs should be implemented. Fortunately, there is rich literature on this subject; a body of principles and guidelines that confirm the importance of the rule of law and provide directives on implementing international assistance programs. These directives stress the importance of: (1) achieving local ownership and aligning international assistance efforts with national strategies and procedures; (2) developing local capacity through institutional development and personnel education and training; (3) working with civil society groups to mobilize support among reform-minded constituencies to support program objectives; and (4) ensuring donor coordination to avoid overlapping and conflicting activities.

Yet knowing what should be done is not the same as knowing how to do it. Asserting the importance of local ownership still requires a follow-on set of instructions on how to identify and convince local leaders to help design and support rule of law programs. A second tranche of principles and guidelines, based upon studies of programmatic success and failure, is devoted to that effort. This body of work provides pragmatic, experience-based suggestions for improving the implementation of rule of law programming.

These approaches begin with taking the time to thoroughly understand the political context in which programs will be undertaken. Rule of law programs must have a political focus and consider the interests of local elites. Clingendael Senior Research Fellow Erwin van Veen notes that “where justice and security initiatives are perceived by elites to threaten their interest they are almost guaranteed to fail.”¹⁰¹ Thus, rule of law development should focus on the political rather than judicial arena. Emphasis should be placed on strengthening executive authority to create stability, clarifying the rules for stabilizing the power competition among elites, and allowing the emergence of greater popular participation over time. To have an opportunity for success, rule of law programs must enable local elites to participate in planning and implementation and be seen publically as responsible for their success.

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Rule of law programs should not be overly linear in design nor expect that implementation will occur in a prescribed order consistent with a predetermined timetable. They must have extended timelines, include change management, and allow for programmatic adjustments in response to opportunities or negative developments. Rachel Kleinfeld writes that “most evaluation systems are set to measure the equivalent of a train progressing down a track; a straight line with clear checkpoints along the route that should be hit at specified times. In contrast, social and political reforms look like a sailboat tacking towards its destination.”¹⁰² Rule of law assistance programs are most likely to experience spurts and setbacks and can change direction in the course of reaching their objectives.

Finally, rule of law is a core feature of good governance which provides security and justice.

Rule of law assistance programs should adopt a problem-solving approach rather than assuming that international best practice will work everywhere. Diana Ohlbaum, former deputy director of USAID’s Office of Transition Initiatives, writes that the idea of transferring know-how should be replaced by discovering what has worked in the local context and then using external experience to support such efforts going forward.¹⁰³ Assistance programs must have sufficient financial resources, appropriately skilled staff, flexibility, and evident commitment to promote trust between implementers and host country recipients. Programs should start by focusing on short-term accomplishments that demonstrate effectiveness. Successful projects require building broad-based coalitions that engage large constituencies. This does not

look like a single NGO in the capital, but rather marshalling forces to address issues of public concern.

Finally, rule of law is a core feature of good governance which provides security and justice. Rule of law assistance programs should utilize the host government bureaucracy as much as possible and operate programs in rural areas to reach members of populations most critically in need. This requires the development of accountable, host-government procurement agencies to handle contractual relations with foreign donors and ensure that international assistance is used for its intended purpose. Initially, that may require international oversight and the participation of foreign accounting firms in building local capacity before transitioning exclusive responsibility to government counterparts.¹⁰⁴

U.S. rule of law assistance programs do not always reflect these guidelines for reasons that are systemic and beyond the control of the implementing agencies. Many problems arise from congressional restrictions that cause U.S. agencies to buy American, honor earmarks, and spend money rapidly. USAID-funded programs are authorized for 3–5 years, but Congress provides funding on an annual budget cycle with no guarantee that projects will be fully funded. This causes problems in project planning and in relations with local partners. Staff can be hired only one year at a time and projects cannot make long-term financial commitments.¹⁰⁵ Single-year funding enables a ‘flavor-of-the-month’ approach where priorities can shift quickly in response to political considerations in Washington, even if ongoing projects are abandoned in the process.

The competitive bidding process among NGOs and private firms for rule of law assistance contracts discourages learning from local sources, experimentation, and problem solving. In response to requests for proposals from U.S. government departments, implementers base

their bids on models that were successful elsewhere. Monitoring and evaluation protocols are premised on projects meeting predetermined benchmarks on a prearranged schedule. London School of Economics Fellow Geoffery Swenson writes that USAID demands control over the scope, content, and implementation of projects it supports. This level of micromanagement is a bad fit for dynamic situations that demand flexibility.¹⁰⁶ A project proposal that advocated investigating local conditions and supporting ongoing local initiatives would be rejected out of hand. Only government staff could follow the recommended route of examining the local context, identifying successful efforts, and supporting them. U.S. government departments, however, no longer have the personnel to directly undertake rule of law programs.

Conclusions

The study highlights two important problem sets that limit the effectiveness of U.S. rule of law assistance in crisis states. These shortcomings reflect a reduction in priority and resources that has occurred in recent years. They also reflect a failure to maximize the authorities, resources, and opportunities that are available both in Washington and in the field.

- **U.S. rule of law assistance lacks a strategic policy, organizing mechanism, and funding coordination.** From the Washington perspective, U.S. rule of law assistance lacks a common policy, doctrine, and strategy. There are no agreed upon goals and objectives. There is no central administrative coordinating mechanism. Instead, agencies offer a collection of projects that reflect the annual choices of Washington policy makers, embassy officers, and partner governments. There is no identifiable, confirmed number for the total amount of money the United States spends on rule of law assistance each year. Funding authority is spread among a collection of congressional committees and legislative funding sources. Money is allocated to the State and Defense Departments and USAID, which reallocate the money to implementing agencies. These agencies in turn reallocate the money to NGOs and commercial contractors. This multilayered process defeats accurate accounting and results in high administrative costs and delays
- program implementation. Finally, Washington agencies have a shortage of personnel with law enforcement and judicial experience and regional, cultural, and linguistic expertise.
- **U.S. rule of law assistance lacks priority, a strategic focus, concentrated funding, and effective personnel.** In the field, U.S. representatives do not strategically utilize rule of law programming. Embassies fail to provide leadership, build consensus, coordinate donor support, and use diplomatic leverage. They fail to recognize that state-building programs are primarily political not technical exercises. Assistance programs are not strategically focused and designed to produce sustainable change. Funding is spread among programs ensuring that individual programs are under resourced and unable to effectively mobilize external support. In some cases, host governments utilize U.S. assistance to maintain base-level justice and security institutions while diverting local resources for personal gain. As in Washington, there is a lack of U.S. government rule of law experts in the field. Moreover, U.S. personnel are often constrained by risk-averse State Department personnel policies that restrict the travel of American officials to rural areas, prevent meetings with counterparts, and impede direct observation of projects in the field.

Recommendations

A New Policy Paradigm

To effectively promote the rule of law in crisis states, the United States requires a new paradigm that would implement the portion of the President's 2017 National Security Strategy that deals with dismantling transnational organized crime. The Strategy notes that these organizations threaten U.S. national security by undermining democratic institutions in partner states, enabling terrorist organizations, and cooperating with corrupt authoritarian regimes. The new paradigm would highlight the critical role that the justice sector plays in countering all forms of organized criminal activity. It would highlight the fact that the justice sector is an integral part of the democratic process, essential for the protection of human rights and the basis for good governance. It would also acknowledge that the justice sector is among the primary targets of criminal organizations and thus, requires political, financial, and technical support.

The new paradigm would acknowledge that international organized crime, Islamist terrorism, and kleptocracy share common characteristics and cooperate to subvert governments and gain political power. They convert governing institutions into Mafia-like structures to divert public resources to benefit the ruling elite. They exploit illicit revenue

streams from trafficking in narcotics, weapons, and migrants, the sale of artifacts, and the expropriation of national resources for their own purposes. They mask their activities with nationalist, populist, or religious rhetoric to recruit supporters and dissuade opponents. They transform the judicial system—police, courts, and prisons—into instruments of repression that protect and ensure continued control by the ruling elite.

The new paradigm for U.S. rule of law assistance would abandon last-century definitions for terms like organized crime, terrorism, corruption, and authoritarian rule, replacing them with understandings that fit the realities of the Twenty-First Century. International organized crime is no longer focused on racketeering in U.S. cities but on creating global trafficking networks that earn billions of dollars and provide revenue streams that support political corruption and terrorist groups. Islamist terrorism is not focused on taking over existing governments or establishing a more just society but on seizing territory and establishing a totalitarian theocracy based on extreme interpretations of Shariah law. Corruption is now understood as the operating system of authoritarian regimes, not the isolated work of “a few bad apples” or a “virus” attacking otherwise healthy institutions.

Under the new paradigm, establishing the rule of law would be viewed as a political process. It would involve a normative system of accepted principles and institutions under which the exercise of power is regulated and constrained, and conflicts are resolved by non-violent means.¹⁰⁷ It would focus on governance and the use of political and diplomatic power to reform and empower judicial sector institutions. It would enhance traditional justice mechanisms in areas where they are the primary instruments for peaceful dispute resolution. It would establish political and programmatic priorities, and marshal resources to achieve defined goals.

The new paradigm would prioritize U.S. rule of law assistance as a means of dealing with threats posed to U.S. national security interests by organized crime, terrorism, and corrupt authoritarianism. This approach would utilize a comprehensive, whole-of-government, and whole-of-society approach to understanding challenges and developing solutions. It would acknowledge that all forms of development assistance require engagement in the realms of policy, power, and politics. It would emphasize promoting social and institutional reforms over providing equipment and training to judicial officials and security forces. The long-term goal would be to realign forces within society to create a culture of lawfulness.

Implementing the new approach would start with creating a common policy, doctrine, and strategy for rule of law assistance. It would also require establishing a high-level, central coordinating mechanism with sufficient authority to marshal all available resources and direct inter-agency program development. Implementing the new paradigm would necessitate empowering the relevant U.S. government agencies to develop new policy options and design programs. It would also involve recruiting a cadre of government personnel with appropriate expertise and experience. This would enable U.S. government agencies to

effectively oversee—if not directly implement—rule of law assistance programs.

The new approach for implementing programs would take a problem solving approach and avoid imposing U.S. models or “international best practice.” Programs would focus on what works indigenously and include partner country input in program planning. Implementation would be viewed as a political rather than a technocratic process that would marshal support from political elites and influential groups. Increased attention would be given to supporting traditional justice and security mechanisms and determining ways that these entities could be linked to the formal justice system.

First Steps

Implementing the new rule of law policy paradigm would require the following steps:

- **A high-level rule of law assistance coordinating mechanism.**

Implementing this approach would require a National Security Presidential Memorandum that would establish a National Security Council-directed rule of law assistance policy process. The process would be led by an NSC-chaired, Policy Coordinating Committee (PCC) responsible for policy formulation, program and project selection, and funding allocation. The PCC would emphasize the essentially civilian nature of rule of law institutions but recognize the importance of Defense Department and U.S. military involvement, especially in areas such as border control and coordination of cross-border security initiatives. The PCC would develop results-based systems to evaluate rule of law programs. It would formulate a strategy for engaging with Congress and soliciting its support for this initiative.

- **A comprehensive policy, doctrine, and strategy for U.S. rule of law assistance.**

Following precepts outlined in the presidential directive, the PCC would prepare a U.S. rule of law assistance policy, doctrine, and strategy with defined goals and objectives. The new policy would recognize the political nature of development assistance and focus on the importance of utilizing U.S. political and diplomatic leverage to advance the establishment of rule of law in countries receiving U.S. aid. The new policy would focus on institutional development and capacity building of supervising institutions and carry this focus over into training and equipping police, judicial, and corrections personnel where necessary. It would focus on governance and on reforming and empowering judicial sector institutions in countries that are vital to U.S. national security. It would include empowering traditional justice systems in countries where such systems are relied upon by local populations for non-violent dispute resolutions. The new policy would seek to build on locally-inspired, whole-of-society solutions to provide security and justice in recipient countries that reflect popular support.

- **Recruitment of a cadre of experienced rule of law professionals to supervise and implement U.S. assistance programs.**

Implementing the new paradigm would require recruiting a cadre of senior government personnel with an understanding of the overall political, economic, and social dynamics in target countries and how legal, law enforcement, and corrections expertise can be translated into successful rule of law programs. This would ensure that programs are conceived and managed in the context of a comprehensive overview of goals and objectives in a given country and supported by skills tailored to these proposed reforms. It would also reduce

dependence upon NGOs and commercial contractors for program implementation and evaluation.

- **Exercise ambassadorial leadership.**

U.S. ambassadors would use their considerable authority to ensure better program coordination in the rule of law area both within their missions and with like-minded donor countries that administer similar programs. Ambassadors would take the lead in foreign donor coordination to eliminate program duplication among the donor community and with international organizations like the World Bank, regional development banks, United Nations agencies, and the European Union. The outcome of such coordination would make programming more strategic in that it would focus resources on the host country's most critical rule of law needs.

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This document is the summary of the complete report that contains additional information and analysis on the findings of the study and its recommendations. Both versions of the report will be available on the Public International Law and Policy Group website:

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