# ACHIEVEMENTS IN BUILDING AND MAINTAINING THE RULE OF LAW

## MSI's Studies in LAC, E&E, AFR, and ANE

November 2002

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**ABOUT THIS PUBLICATION**

This publication is a summary of regional syntheses produced by USAID's Office of Democracy and Governance. These syntheses look at achievements in the rule of law arena across Africa, Asia and the Near East, Latin America and the Caribbean, and Europe and Eurasia during the 1990s.

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**ABOUT THE DG OFFICE**

The Office of Democracy and Governance is the U.S. Agency for International Development's focal point for democracy and governance programming. The DG Office's role is to provide USAID and other development practitioners with the technical and intellectual expertise needed to support democratic development. It provides this expertise in the following areas:

- **Rule of Law**
- **Elections and Political Processes**
- **Civil Society**
- **Governance**

## ACKNOWLEDGMENTS

**Management Systems International**
Founded in 1981, MSI is a woman-owned consulting firm located in Washington, D.C. and serving clients worldwide. MSI provides management consulting services to organizations and agencies in a number of areas of expertise and application areas. In the DG sector, MSI continues to be a significant participant in the worldwide movement to promote democracy and good governance. The firm is a leading practitioner of innovative approaches for enhancing participation and transparency both inside and outside government and has helped a wide range of organizations shape and implement activities aimed at deepening and consolidating democratic governance.

This Occasional Paper was commissioned by the rule of law division of the Office of Democracy and Governance. MSI conducted the research, field study, and drafting. USAID's publication of this report has been undertaken so that its findings reach a wider audience; its content has not substantively changed from the document originally prepared by MSI. USAID is extremely grateful to MSI and the individual authors who researched and drafted these papers, as well as the considerable amount of work our implementing partners are doing to design and implement these programs.

# PREFACE

Although USAID has been involved in rule of law programming for almost half a century, our most concentrated efforts in this field have taken place in the last 17 years. In the 1950s and early 1960s such assistance was sporadic, mostly confined to Latin America, and generally designed and implemented in conjunction with other types of assistance programs.

During the 1970s, the Agency redirected its focus toward basic human needs. Relatively little rule of law programming took place during that period.

USAID's shift in the mid-1980s toward trade, investment, and indigenous private sector development brought attention to the enabling environment for private sector growth, and the Agency quickly recognized that the legal, regulatory, and institutional frameworks operating in target countries represented major barriers to foreign and domestic investment. At the same time, growing bipartisan support for democracy-building programs was reflected in a surge of new justice strengthening activities, primarily directed at reducing human rights abuses in Latin America. This program emphasis resulted from congressional interest and was in part a by-product of the national security threat then posed by communist or pro-communist regimes. The first such major justice sector program was established in El Salvador in 1984, with similar programs quickly following in the rest of Central America and much of South America. Justice sector programs in a select number of countries in Asia reflected both focuses, on development of legal, regulatory, and institutional frameworks, and on reduction of human rights abuses.

When the Berlin Wall came down in 1989, the stage was set for a major expansion of USAID's role in the rule of law area. Under the Support for Eastern European Democracy program, initiated in 1990, and the Freedom Support Act, enacted in 1991 to assist the New Independent States of the former Soviet Union, earlier trends came into sharp focus. Assistance to the countries of the region was provided to establish the legal and regulatory environment necessary for a market economy, under the rubric of economic growth. Other programs relating to constitutions, criminal law and procedure, civil codes, bar associations, judiciaries, courts, and criminal law enforcement institutions were carried out directly under democracy and governance objectives.

Rule of law programs in the Africa and Asia/Near East region have generally been less extensive than in the other two regions of the world, and somewhat more geared to country-specific issues in their design. This is due mostly to two inter-connected phenomena—fewer windows of opportunity available and relatively less funding. Nevertheless, the number and size of these programs continue to grow.

USAID is currently implementing rule of law and justice sector assistance programs in over 50 countries. In each case USAID works closely with implementing partner organizations from the private sector, including grantees and contractors. USAID and the U.S. foreign assistance program could not have achieved what it has without these many partners. Throughout the text these valued partners are not highlighted in order to simplify the narrative, but in no program was USAID working alone, and USAID wishes to acknowledge its debt to all those individuals and organizations that have contributed over the years to USAID's efforts in the field of rule of law and justice sector assistance.

As USAID's experience in promoting justice and the rule of law has grown and expanded to all regions in which we work, the programs themselves have come under close scrutiny. The efficacy of the programs has periodically been questioned by critics both inside and outside of USAID. However, these critics have often looked at the impact of individual activities from a somewhat narrow time perspective.

The objective of the study underlying this Occasional Paper was to take a step back, and look at the higher level, cumulative impacts that can only be measured over a longer time horizon, in as unbiased a manner as possible. The study looked at such issues as whether military officers have been prosecuted in countries where such prosecutions were inconceivable 20 years ago, and whether courts have been selected in a transparent, non-political fashion where that would have been equally inconceivable 20 or even ten years ago. This paper provides a comprehensive collection of the achievements that were found to be reasonably linked to USAID rule of law programs over their history, on a country-by-country and regional basis.

USAID believes that its record of achievement in promoting justice and the rule of law is an impressive one. We are confident that major transformations have taken place in rule of law and justice practices worldwide and that U.S. foreign assistance programs, implemented through USAID and its partners, have made a substantial contribution to those transformations. This is borne out by the regional syntheses and case studies provided as part of this document.

Sincerely,

Gail Lecce
Acting Deputy Director
Office of Democracy and Governance

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# 1 Regional Syntheses

## A. Latin America and the Caribbean

Over the past two decades the Latin America and Caribbean region (LAC) has undergone a major political transformation. All countries in the region now have elected civilian governments, with the sole exception of Cuba. With this political opening have come economic liberalization and increased opportunities for citizen participation. The region has moved beyond the formality of elections and is now confronting the more difficult challenge of reforming its other political, economic, and legal institutions.

This section looks at the contribution that USAID has made to helping the peoples of the LAC region establish the rule of law as an integral aspect of economic, social, and political development. It examines USAID's role and the changes it helped to bring about in 15 countries: Argentina, Bolivia, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, and Uruguay.

Latin America's transition to democracy began in the late 1970s. At that time, most of the region's judicial systems were not performing adequately. Few had been designed or operated in a manner that could meet the needs of modern democratic societies and market-based economies. With few exceptions (Costa Rica the most notable), the courts in these countries were treated as adjuncts to the regime in power. Judicial appointments were often acts of political patronage, and judges were subject to political influence. Laws were often antiquated and reflected European texts that had been adopted without much analysis of their relevance to local circumstances. Budgets were meager; procedures were inefficient; training was inadequate and in some cases almost non-existent; corruption and intimidation were widespread; and legal assistance and access to affordable justice were not readily available to the poor. Impunity for the powerful and the wealthy prevailed.

As the political transition gained momentum in the early 1980s, the rule of law became increasingly recognized as a necessary pillar of democracy. Over the same period, public opinion began to coalesce in a desire for fair and effective justice systems. A number of reformers and some regional organizations had begun working on these issues, but there was little expectation of early or substantial progress towards realizing a new kind of justice system. Resources were scarce and many other, more immediate issues were competing for attention. The administration of justice was not high on the list of priorities in most countries.

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

In 1983, the State Department (State) began to contemplate and discuss increasing support for the region's democratic transition. The rule of law figured prominently in these discussions. At about the same time, an intense political controversy erupted over U.S. policy and support to El Salvador. The credibility of U.S. policy declared to be in favor of democracy and human rights was being undermined by the inability and unwillingness of Salvadoran political and judicial institutions to respond to numerous political murders. These included the murders of six U.S. citizens: four churchwomen and two agrarian reform advisors.

In deliberations in late 1983, the U.S. National Bipartisan Commission on Central America, headed by former Secretary of State Henry Kissinger, considered the state of the region's judiciaries. The commission's January 1984 report recommended that the United States encourage democratic institutions, including "strong judicial systems to enhance the capacity to redress grievances concerning personal security, property rights and free speech." Federal legislation enacted later that year provided for assistance to El Salvador to modernize its laws, improve investigative capacities, and protect participants in criminal proceedings. In 1985, the U.S. Congress enacted legislation authorizing justice programs throughout the LAC region.

## 1. Strengthening the Rule of Law in Latin America and the Caribbean

Primary responsibility for implementing these new policy and legislative mandates fell to USAID. In accordance with the legislative directive, USAID/El Salvador mounted a new national program. In addition, USAID initiated a regional Central American program to strengthen the rule of law, placing a clear emphasis on human rights and criminal justice issues.

USAID began working in Central America in 1985 and extended its program to South America in 1986. The regional justice program had two principal elements:

- Sponsoring thorough assessments of national justice systems. These assessments were carried out primarily by local experts; USAID deliberately limited the involvement of U.S. nationals as part of a strategy to increase local ownership of and commitment to the reform process.

- Providing training and seminars, legal research materials, equipment, and technical assistance for the creation of broad-based national commissions to develop and set national priorities and strategies for justice reform. This assistance was provided for the most part through the U.N.-affiliated Latin American Institute for the Prevention of Crime and Treatment of the Offender (ILANUD), a regional justice organization headquartered in Costa Rica.

This regional program operated only in countries where elected civilian governments had expressed some real commitment to reform. It was intended to encourage long-term development of justice systems that could resolve conflicts fairly and protect fundamental rights. The program concentrated initially on criminal justice and human rights issues because of pressing problems throughout the region. Emphasis on these central themes, although now somewhat less pronounced, has continued in USAID ROL programs in the LAC region.

An important characteristic of USAID's program has been its treatment of law enforcement as a key component of criminal justice. The U.S. Congress had previously prohibited foreign assistance to police in response to problems that had arisen in the earlier public safety program. Yet, any effort to improve criminal justice had to take into account the need for competent, professional investigations and the collection of evidence that could be presented to the courts. To resolve this issue, the U.S. Congress in 1985 approved a limited waiver of the prohibition subject to the condition that the U.S. Department of Justice (DOJ) manage this component of the program. Accordingly, USAID funded the DOJ to develop a criminal investigative training project for Latin America; the International Criminal Investigative Training Assistance Program (ICITAP) was established for that purpose in 1986.

The USAID regional program was soon complemented by individual country-level programs throughout the LAC region. The 1980s were a time of program experimentation, sorting out priorities and strategies,

identifying potential partners, and building USAID's own capacities. By the early 1990s, the rule of law had been established as an important element of most USAID country strategies in the region.

A comparison of today's justice systems in the LAC region with those described in the early justice sector assessments of 10 to 15 years ago shows that much has changed. Judges and prosecutors are demonstrating greater independence and are more willing to challenge wrongdoing by the powerful. Disadvantaged groups have gained greater access to legal remedies and legal assistance. Within judicial systems, numbers of personnel have increased. Both judges and staff are better qualified, and more are selected pursuant to merit systems and receive specialized training. Procedures are more fair, transparent and efficient. Budgets are larger, productivity is higher, and backlogs are smaller. Corruption and impunity are no longer considered acceptable or inevitable, civil society is increasingly concerned with justice reform efforts and demands, and public awareness overall has increased. USAID has played an important role in focusing attention on these issues, in supporting successful reforms, and in promoting respect for the rule of law. Some highlights are described below.

### *a. Placing the Rule of Law on the Political Agenda*

USAID has been the catalyst for the justice reform movement in the LAC region. When USAID first began actively exploring cooperative programs to strengthen LAC judicial systems in the early 1980s, no other donors were working in the field and little effort was being made at national levels to improve flawed and neglected justice systems. USAID made pioneering efforts to recognize and establish the rule of law as a basic component of economic and political development, and was instrumental in placing it on the political agenda. A number of persons interviewed in the course of this review credited USAID with having "socialized" the issue. By that, they explained, they meant that USAID helped people to decide for themselves that the rule of law was an essential aspect of their development, that genuine progress in advancing the rule of law was achievable, and that international cooperation towards that end was useful and was not a threat to national sovereignty.

USAID's persistence in this area focused attention on the issue of justice. Ultimately, the importance of the rule of law was adopted as a universal concern and focus of democratic development. Other donors eventually followed the lead of USAID, often with greater financial commitments. The rule of law has evolved into a uniting theme for LAC development with a secure place on the political agenda. It has become a key theme in presidential campaigns, as in Colombia, Mexico, and Peru. It has been endorsed by the General Assembly of the Organization of American States and the Summit of the Americas. The rule of law was a prominent issue in peace negotiations in El Salvador and Guatemala and a major theme of subsequent U.N.-led peace building efforts in those countries. People interviewed in many of the countries studied emphasized the critical role that USAID played in drawing attention to and legitimizing the issue of the rule of law in their countries and in the region. The current high level of political, popular, and international concern about the rule of law in the LAC region can be traced to USAID's placement of the issue at the forefront of regional development.

### *b. Reforming Laws and Legal Procedures*

At the outset, USAID's efforts were focused on improving and securing full implementation of criminal laws already in existence in the countries of the LAC region. The desire and need for modernization and revision of those archaic laws soon became apparent, however, and criminal code reform became an integral part of USAID justice programs.

The legal systems of the United States and England are based on the common law tradition, while the civil law system is followed elsewhere in Europe and throughout most of the LAC region. Although similar in substantive legal provisions, civil and common law systems differ immensely in the procedures governing how civil and criminal cases are conducted. The civil law system is inquisitorial: investigation is controlled and conducted by a judge instead of a prosecutor; testimony and other evidence are normally presented in written form with little opportunity for cross-examination; a prosecutor's role is minimal; proceedings and trial are based primarily on documentary submissions; and juries are uncommon. The common law system is known as accusatorial or adversarial: investigation is controlled by the parties in opposition (in criminal cases, a prosecutor and defense attorney); a judge sits as a neutral decision-maker; testimony and other evidence are normally presented orally in open court with opportunity for complete cross-examination; public trials are customary; and juries are often impaneled to hear the evidence and decide the facts.

In recent decades, many western European countries have reformed their criminal procedural codes to move away from the written, inquisitorial methods of the civil law heritage and to incorporate oral, adversarial, and public procedures based on common law practices, thus creating hybrid systems. In the LAC region, however, the civil code system had generally failed to modernize; codes had largely become antiquated and anachronistic; and abuses stemming from the opacity of the inquisitorial system had been allowed to develop. Judges were overwhelmed with investigative duties, and cases frequently never reached judicial resolution. The lack of transparency and the concentration of functions in the judge allowed, and even encouraged, trial court judges to act arbitrarily or improperly, while well-intentioned and honest judges had little protection against intimidation. Reliance on written files for case development and disposition permitted the delegation of significant responsibilities to support staff, who were potentially susceptible to improper influences. Defendants had few rights or protections and were routinely held in pre-trial detention—often for years—before being convicted or released; many accused criminals were ultimately released without ever having been tried because they had already served the sentence they would have received had they been found guilty. Individuals with political or economic power regularly sidestepped formal legal processes. Justice systems were shielded from public scrutiny and lacked accountability, thus permitting and protecting widespread inequity and opportunities for corruption.

Over the past decade, a legal reform movement based on western European models and practices originated in Argentina and gained momentum throughout the LAC region. USAID began providing support very early on to the modernization initiatives of these LAC reformers and, as the reform movement progressed, USAID continued to reinforce and supplement their efforts with considerable technical assistance and training to help shape new laws and foster public education and debate. USAID also furnished information about best practices, provided opportunities for local experts to observe other systems in operation, and otherwise supported and promoted the progress of legal reforms throughout the region. In addition to the enactment of the reforms themselves, the process of developing the new laws provided a backdrop against which knowledge and skills were upgraded and institutions strengthened.

The predominant feature of LAC criminal code reform has been the introduction of public, oral, and adversarial motion hearings and trials where the judge serves as an impartial decision-maker who can act independently and ensure due process. Courtrooms and trials are opening to the public; judicial documents are accessible to interested parties; and defendants have the right to confront and challenge evidence and witness testimony in open court. The new adversarial systems separate and redefine the roles of the police, prosecutors, and judges in the investigation and prosecution of crimes. These changes break the monopoly of control that judges and judicial personnel previously had over their cases and decrease the opportunities for corruption. Prosecutors now direct case investigation and have greater control over police, reducing the likelihood of arbitrary arrests, detentions, or police misconduct. Cases are supposed to

proceed within defined time strictures, rather than defendants languishing in jail without any legal determination of guilt. These factors accelerate the legal process and increase its reliability, openness, and accountability, while decreasing the likelihood of impunity and abuse. Corresponding constitutional and substantive code revisions in numerous LAC countries have further added guarantees of due process, equality, fairness, rights against self-incrimination, presumption of innocence, prohibition against lengthy detentions without conviction or sentence, and have otherwise augmented individual rights *vis- -vis* the state.

The enactment of these legal reforms imposed enormous new demands on justice sector actors and institutions. Existing justice institutions required massive organizational and operational reforms to implement the new laws. Key players had significant new responsibilities to carry out in an unfamiliar process and setting. USAID's support of code reform did not end with the enactment of new laws, but went on to include extensive institutional strengthening and training to develop skills needed by judges, prosecutors, defense counsel, and court administrators to carry out their new roles. Concurrently, improvements in police and investigative practices have resulted from the DOJ's ICITAP programs. USAID's contributions were crucial to ensuring the successful implementation of these new laws.

All of the changes outlined above are relatively recent and are progressing, being accepted, and implemented at varying rates and stages. Notwithstanding, the criminal code reforms and revised procedures that are being widely adopted throughout the LAC region afford genuine opportunities and hope for due process and a fair trial, and have elevated the standards of individual rights, guarantees, accessibility, accountability, transparency, and public debate. They hold promise to achieve the goals of combating impunity while better protecting the rights of defendants.

### *c. Strengthening and Reforming the Judiciary and Judicial Institutions*

USAID has helped much of the region to develop new mechanisms and strengthen institutions aimed at producing a more independent, more capable, and more honest justice system. Prior to recent reforms, the selection process for judges in the LAC region in general was highly politicized, lacked transparency, and placed relatively little emphasis on merit. In most countries, political parties controlled the selection of supreme court judges, whose terms often coincided with presidential terms. Lower court judges were commonly named by the supreme court or by the executive. Judges were routinely removed or replaced for political reasons, thwarting judicial independence.

USAID has promoted changes that increase transparency and accountability, reduce political influence, and broaden participation in judicial selection processes. Many countries have now extended the terms in office of supreme court justices and have scheduled the expiration of their terms to avoid coinciding with presidential elections. In addition, many countries have established judicial councils to improve or oversee judicial selection, and often to administer courts and manage judicial personnel (including selection, training, and performance evaluation). The composition and role of these councils vary widely from country to country, but in general they are intended to shelter judicial selection and other aspects of court administration from direct political interference and to free supreme courts to concentrate on their judicial function. Changes in the appointment of lower court judges have also been made to require merit-based selection, judicial preparation and training in formal judicial academies, and formal performance evaluations against established standards. USAID has supported implementation of a variety of such reforms aimed at reducing opportunities for political cronyism and promoting judicial independence.

This ongoing process is far from complete, but is beginning to raise standards and expectations. The increasing transparency of judicial selection and performance has promoted public awareness and

visibility of judges, whose work before had largely been shielded from public scrutiny. The introduction of oral trial proceedings in many jurisdictions has also expanded judicial visibility, which in turn has raised public awareness, demands, and expectations of judicial performance. Judicial incompetence and corruption are becoming less tolerated, and judges are becoming better prepared, more confident, and more capable of applying the law equally and fairly.

Training has also been a major part of USAID's program in the region. USAID has assisted with the establishment and operation of judicial schools and other training institutions for judges, lawyers, and court administrators to improve basic knowledge and skills. In addition, USAID has itself provided training on a massive scale, often in connection with the entry into force of new procedural codes. As examples, all judges in Bolivia and Honduras received training through USAID programs in the criminal procedure codes recently adopted in those countries. USAID training has reached thousands of people in each of the countries where it has had major programs.

USAID has also provided substantial support for improving the operation and administration of courts throughout the LAC region. The document-intensive and time-sensitive operations of a court require good record-keeping and case flow management. Few countries have had systems in place or the capacity to effectively and efficiently handle the demands of heavy and increasing caseloads. Corruption has been pervasive, especially in lower paid clerical positions, and has permitted the mishandling of files and evidence. Case assignments to judges have often been guided by fees or favoritism. USAID programs introduced the concept of the professional court administrator, together with modern systems of case management, record keeping, and statistics, as well as the separation of judicial from administrative functions. These systems are now common throughout the region. As a consequence, the incidence of lost or stolen case files has been dramatically reduced while the preservation of physical evidence has markedly improved. Increasingly, cases are assigned to judges by computerized systems that eliminate opportunities for litigants to "shop" for friendly judges. Planning and budget units have become a normal part of the apparatus of court management, enabling judiciaries to analyze and support their requests for resources with data and analysis.

In many countries, prosecutors were few in number and performed largely formalistic duties. Competent and effective prosecutors are essential if the new systems are to function correctly, but LAC prosecutors found themselves largely unprepared for their newly expanded roles and responsibilities. USAID developed and supported extensive training programs that have increased knowledge, skills, and preparation of prosecutors throughout the LAC region. In many countries, USAID programs aided in the formation of professional prosecutorial offices where none had existed. Additionally, USAID supported new hiring and promotion practices based on merit; as a result, prosecutors have become more professional and less subject to political influence. These increasingly competent and independent prosecutors are better able and more likely to pursue wrongdoers who had previously enjoyed *de facto* immunity from prosecution. Indeed, various LAC countries have now witnessed cases being brought against politicians, military officers, and others whose actions until recently had been considered above the law. In several countries, USAID has also assisted prosecutors to establish public service and victim assistance centers that improve service and make the legal system more responsive to the needs of citizens.

Competent defense counsel are equally important to the functioning and success of the new adversarial processes, and to a fair and equitable criminal justice system overall. Full-time public defenders, however, are extraordinarily scarce in the countries of the LAC region, which instead rely heavily upon inexperienced contract attorneys and lawyers working *pro bono* or at minimal charge to fulfill the state's obligation to provide counsel to indigent defendants. As a result, poor people accused of crimes have had

scant access to meaningful legal assistance. The harm and inequities resulting from this failure have been magnified by the widespread incidence of and reliance upon lengthy pre-trial detentions for criminal defendants. In an effort to promote the protection of fundamental individual rights and balance the administration of criminal justice, USAID has helped establish or expand public defender offices in the region, train criminal defense attorneys representing poor people, coordinate defense networks, and create cadres of competent and professional public defenders. Although still inadequate to meet the overwhelming demands for representation, the quality and availability of legal defense through public defender offices in the region have improved dramatically.

*d. Increasing Public Awareness, Access, and Advocacy*

A promising phenomenon that USAID has supported in a number of countries is the rise of the justice center, or *casa de justicia* (literally, "house of justice"). USAID has supported the creation and operation of justice centers in a number of countries, including Colombia, Guatemala, and Peru. These centers bring together a variety of justice-related institutions and services in a single location in lower-income or marginalized neighborhoods, giving residents one-stop access to general legal help, social services, counseling, and referrals. *Casas de justicia* are designed to serve local needs and foster peaceable resolution of everyday problems. Although they vary in design and operation from country to country, and even within individual countries, justice centers commonly include offices for prosecutors, public defenders, police, legal aid, social workers, and psychologists. Many of them also incorporate victim assistance units in addition to the services of mediators, conciliators, and others who can assist and facilitate effective and efficient resolution of disputes. Often, cooperation among elements of the justice sector (e.g., police, courts, and prosecutors) that has proven elusive on a national scale is achieved at the community level through these centers. These busy and popular local centers are helping to make the rule of law more real for many who previously lacked practical access to the courts. This, in turn, is increasing public demand and expectations for access to justice.

USAID has also supported the development of national and regional NGOs and umbrella groups of civil society organizations (CSOs) that are now tackling law-related public policy issues, providing public education, and engaging in public advocacy and media campaigns on basic issues such as human rights, impunity, judicial independence, and corruption. In several cases, these organizations have influenced legal reforms and have also helped to anchor the demand for continuing reform more firmly in local culture. "Pro-justice" citizen movements have been founded and are operating in a number of countries, along with more technical think tanks and research institutes.

*e. Strengthening Legal Education*

A consequence of the substantial reforms of legal procedure and judicial reorganization in the region has been a need to revise law school curricula. In this process, a number of LAC universities have designed and are offering courses that incorporate broader and non-traditional issues such as professional ethics and alternative dispute resolution (ADR) mechanisms. In addition, several universities have created postgraduate programs that offer specialized study in criminal procedure and other fields relating to recent reforms. USAID has provided support to universities in a number of countries making such changes. USAID has in particular funded the development of law school clinical programs, which teach law students practical skills by allowing them to represent and assist real people in the resolution of their legal problems. USAID has also facilitated professional exchanges with university faculties in other countries.

## 2. USAID Strategies

In addition to highlighting the concrete program achievements outlined above and detailed in individual country reports, this study also elucidated regional patterns of strength and success that distinguish USAID's ROL programs and have effected broader change and impact on how people think about the rule of law over the long term. These changes in attitude and perception are vitally important, and have come about in part due to features that distinguish USAID's strategic approach to ROL programs. An understanding of what USAID has done most effectively with the greatest impact clarifies and often reveals how success was accomplished.

### *a. Bringing People to the Table*

USAID has placed substantial emphasis on facilitating discussion and cooperation between key figures with sometimes compatible and sometimes competing interests in their country's justice system. Participants have included representatives from the executive and judicial branches, academics, attorneys, and members of civil society groups. Divisions between various institutions and their leaders are often fueled by political differences, personal rivalries, bureaucratic isolation, or competition for power and resources. These divisions impede the operation of judicial systems. USAID has often brought together and encouraged dialogue and collaboration among justice sector actors, including other donors; at a minimum, USAID has convened meetings that bring people to the table and initiate some degree of interaction, even if simply to meet and confer or share basic information and viewpoints on issues of mutual concern. These beginnings have often led to continued contact and the development of professional relationships and productive working groups, despite political or other differences. This approach has been successful in countries such as Chile, Colombia, and Ecuador.

As a corollary to these facilitated discussions, USAID has further created or contributed to the evolution of national-level working groups or commissions for reform and long-term justice sector planning. These commissions have, often for the first time, brought together a variety of legal figures to coordinate positions and strategies for national judicial reform. Such national reform commissions have now been established in most Central American and Andean countries. As other donors have initiated ROL programs, these commissions have in some cases been effective in coordinating roles and avoiding duplication of effort.

### *b. Demonstrating Continuity and Flexibility*

Integrating the rule of law into the values and the institutions of a society is a long-term process involving gradual changes in culture, relationships, and behavior. Success is built on continuity of effort combined with flexibility in recognizing and adapting to changed circumstances. USAID has seen the best results when it has stayed the course. USAID's established and continuous presence in the countries of the LAC region has instilled familiarity with evolving circumstances, bolstered mutual understanding and collaborative relationships, afforded credibility, confirmed its long-term commitment, and otherwise facilitated a multi-year change process. USAID has achieved the greatest success and impact by being present; recognizing and adjusting to changes; knowing when, how, and with whom to engage; and being persistent. A good illustration is USAID's redirection of justice funding to Peruvian civil society human rights organizations when the judicial branch was subjected to manipulation and control by the executive. In El Salvador, USAID was able to contribute a great deal to impressive reforms in the early 1990s after the peace accords by having worked for years with an established base of known partners, strengthened institutions, and more capable personnel. In Guatemala, USAID revised its program to focus on the country's immediate need to prepare for the entry into force of a new criminal procedure code. In these

and other cases, USAID acted judiciously in recognizing and responding to local realities, evolving circumstances, and opportunities.

*c. Building the Role of Civil Society*

USAID justice sector programs have recognized the critical role that civil society can and should play in the development and application of the rule of law. Early USAID programs in the region concentrated on governmental and judicial entities. Over time, however, USAID increasingly sought out and incorporated CSOs into its programs, thereby bringing valuable new perspectives into the reform arena. This approach encouraged public awareness and interest in the law, broadened the scope and influenced the direction of reform efforts, and combated justice sector isolationism and secrecy.

At times, USAID has taken the bold step of supporting law-oriented CSOs as an alternative or counterbalance to cooperation with a government. An early example was USAID's groundbreaking work with a respected Chilean academic institution near the end of the Augusto Pinochet dictatorship. More recently, when it became apparent that the executive was undermining and manipulating the judiciary in Peru, USAID redirected funding to the national human rights coordinator and to individual human rights NGOs. This was a powerful statement that advanced human rights protections and kept the issue of the rule of law alive during an autocratic administration. Individuals and groups with which USAID worked during that period have since assumed leadership roles in Peru's democratic successor governments.

USAID has also supported important regional non-governmental entities and institutions to coordinate reform efforts and share information and experience among countries. The Inter-American Institute for Human Rights in Costa Rica began with USAID funding in 1980 and continues to coordinate and promote regional training, networking, and research. ILANUD, also in Costa Rica, similarly received early funding from USAID to study, publicize, and promote legal reform. The Peruvian Andean Commission of Jurists has received USAID backing to coordinate and advance justice in the Andean region. USAID has also worked with the Institute of Comparative Studies in Penal and Social Sciences (INECIP), based in Argentina, which has been a principal leader of the Latin American reform movement. The most recent addition has been the Justice Studies Center of the Americas (CEJA) of the Organization of American States, headquartered in Chile, which is intended to become a clearinghouse and training center for Latin American justice reform. The leadership of CEJA received key formative support from USAID. These organizations are all contributing to a growing regional network of political support and technical expertise.

*d. "Mixing the Cement" of Justice Systems*

USAID assistance throughout the LAC region has incorporated, at differing levels, justice sector training and institutional strengthening programs. The size, significance, and success of programs on a national scale vary widely among countries. When examined under a regional lens, however, the impact is enormous. Cumulatively, USAID has provided training to thousands of people in the justice sector, ranging from brief seminars or workshops to scholarships for graduate degrees. Over time, the cumulative effect of this training has contributed importantly to the creation of a critical mass of people capable of carrying out reforms and committed to doing so.

In addition, USAID programs in general have included all the "nuts and bolts" of managing judicial systems and institutions: strategic planning, budgeting, personnel systems, judicial schools and other training centers, filing systems, case tracking and management, automation, research and information technology, etc. The same approach has characterized USAID assistance to civil society. USAID has

focused on sustainable management of organizations (including fundraising, strategic planning, and financial management) and the practical aspects of programs and activities that provide information to the public, foster discussion, and increase popular participation in policy decisions.

An expert with experience in several LAC countries commented that USAID had invested in the cement of the justice system—human and institutional capacity—as distinguished from investments in the bricks of physical infrastructure and equipment. The overarching regional effect has been to build a stronger foundation and, in general, raise standards and expectations as to how judicial systems should perform.

*e. Supporting the Next Generation of Judicial Reformers*

USAID has sought out and worked with individuals and groups committed to establishing the rule of law in their societies. USAID support for progressive judicial thinkers—working with them and providing them with technical assistance and educational opportunities—has helped them to become competent, respected professionals able to turn reformist ideas into concrete action. Those individuals and groups have frequently gone on to contribute (far beyond the parameters of the original USAID projects) to further national and regional justice reform. For example, leaders of the USAID-supported CEJA in Chile ultimately succeeded in implementing Chilean criminal code reform and are now directing a regional clearinghouse for training and justice reform. In Colombia, beginning in the late 1980s, members of a USAID-assisted working group contributed to the justice reform platform of César Gaviria's presidential campaign, helped develop major constitutional and other legal reforms, and later served in Gaviria's government. Participants in the initial justice sector reform in Panama later became key counterparts in the elected government. The dean of the University of San Carlos, the national university of Guatemala, is a leader in the reform of law school curricula and teaching methods; as a young professor he received a USAID scholarship for graduate study at the University of Costa Rica. The current attorney general of El Salvador was a member of the staff of the Legal Reform Commission supported by USAID in the 1980s. Just as USAID's continuity has contributed to specific results, talented individuals and capable groups encouraged and supported by USAID throughout the LAC region have provided their own continuity as key agents of future reform.

Advancing the rule of law in a democratic society is a never-ending challenge. In many ways, the achievements identified in this study represent only the beginning of efforts to address that challenge in the LAC region. Many of the historical weaknesses remain, even as a gradual process of change is taking place. Too often, the powerful still escape responsibility for their acts. Too often, excessive delays and costs effectively deny access to justice. Many reforms have been adopted only recently; their implementation will not be easy and will take time. Although opportunities for corruption have been reduced, corruption continues to undermine public confidence in the institutions responsible for the administration of justice. Difficult economic conditions and increasing crime are diminishing the security of person and property that the rule of law is intended to protect and are contributing to dissatisfaction with reforms that seek to safeguard civil liberties, protect political rights, and ensure due process.

Yet, the people and the governments of the LAC region have clearly made the fundamental decision that the rule of law will prevail in their societies and, toward that end, have undertaken and accomplished significant improvements in the administration of justice. By any standard, the changes over the past 15 years are substantial. Impressive bodies of new laws provide the framework for more independent, accessible, fair, and efficient justice systems. A host of new and strengthened institutions is providing services and fostering efficiency and integrity in ways that are unprecedented. A network of national and regional CSOs is monitoring progress, informing the public, and engaging in an ongoing policy dialogue. Improvements in education and merit selection systems are changing the face of the legal system.

Dialogue extends beyond national boundaries through regional organizations and conferences that facilitate the exchange of experience and ideas among public sector and civil society representatives.

The practical results of these structural changes are important. No longer can the corrupt official or the violator of human rights be confident of evading accountability under the law. It is now less likely that a poor person accused of a crime will languish in jail for years, without a trial and without legal representation. Citizens increasingly demand and expect to be treated with respect by police, prosecutors, judges, and the legal system as a whole. The public is less tolerant of corruption and incompetence. Throughout the LAC region, the rule of law is no longer a mere aspiration. It has become an expectation. While systems often fall short of all that is expected or hoped for, incentives are now in place to encourage continued improvement.

This study leaves no doubt that the USAID contribution to these changes has been a major factor in the successes that have been achieved. Treating the political issues with sensitivity, fostering participation and local ownership of reforms, demonstrating both continuity and flexibility, building a critical mass of knowledge and competence, and supporting the next generation of reformers have all proven to be effective strategies.

At the present stage of what will always be a work in progress, USAID can take much satisfaction in its contribution to what the LAC region has achieved to date. It is important to recognize that progress remains fragile in a number of countries and that much remains to be done. At the same time, the record gives reason for confidence that the advances can be sustained and that the rule of law will become an increasingly important factor in the LAC region's economic, social, and political development, and its integration into the global community.

## B. Europe and Eurasia

In November 1989 the communist East German government announced that it would no longer prohibit the travel of its citizens to West Germany. This decision was followed by a spontaneous celebration during which citizens from both East and West Germany, armed with pick-axes and shovels, broke down the Berlin Wall. East and West Germany united, and the end of the Cold War had begun. In the next few years, communism collapsed and the Soviet Union and Yugoslavia fragmented into several separate countries. Most states in the region began to implement the political and economic reforms that would lead to democracy and a free market economy.

The process of democratizing has proved longer and more difficult than anyone, including citizens in the region, imagined. The challenges were formidable, particularly for those countries without any real historical experience of democracy. Some countries had no experience with independence. New systems needed to be designed and implemented from scratch; often precedents had to be drawn from other countries because there were no indigenous ones. Real progress has been made, although serious obstacles remain in most countries. Even those states that have slipped toward authoritarian governance are not as oppressive as they once were; political and civil rights are somewhat more respected.

### 1. USAID's Role in Making Change Happen

USAID has played an important role in helping many of the countries of the region establish new legal frameworks to establish and protect rights as well as the vast array of institutions needed to ensure that these new frameworks are implemented. This report highlights USAID contributions to developing the rule of law in seven countries of the Europe and Eurasia region: Albania, Armenia, Bulgaria, Georgia,

Macedonia, Russia, and Ukraine. Progress in these countries has been uneven; it appears most notable in Albania, Bulgaria, Georgia, Macedonia, and Russia, and most problematic in Armenia and Ukraine. None of these countries have found democratization easy or straightforward. They are not the highest achievers in the region (e.g., Poland, Czech Republic, Baltic countries), and there have been many missteps. However, even with the missteps and the backsliding, there has been positive change. Critical milestones have been passed, and reformers continue to fight for change.

The reforms needed to support a rule of law in the region were profound. Under communism, the state and party were all-powerful. Individual rights may have been enshrined in the constitutions of these states, but there were no means of enforcement. Judges were under the control of the Communist Party and were subservient to prosecutors or ministry of justice (MOJ) officials. The law and the justice system were tools of the state, used to advance state power and control the citizenry. Whole bodies of law did not exist or were used for other purposes. Commercial law was irrelevant, while administrative law, instead of protecting citizens from arbitrary government decision-making, was used to prosecute citizens for misdemeanors. Almost nothing present in the communist judicial institutions prepared legal practitioners for the magnitude of the change in roles and responsibilities and the enormous cultural shift implied in establishing a democratic system of justice. Laws needed to change; prosecutors needed to relinquish power to judges, who needed to become more independent; lawyers, judges, and prosecutors needed to know the new laws and how to apply them; the executive branch needed to refrain from interfering in cases; court processes needed to become fairer and more efficient; and even unpopular judgments needed to be enforced.

Working with a variety of reform-minded local and international partners, USAID has helped countries across the region draft constitutions and laws needed for democratic government and a free market economy. Together they seek to develop the courts and other institutions required to implement the law in a fair and equitable manner. Although all of the needed reforms are not currently in place and the region's justice systems are not working perfectly, many of the pieces of the puzzle are now in place and a clearer pattern is beginning to emerge. USAID has played an important in role in shaping the progress that has been made. As one reformer in Macedonia noted, the United States has really been at the forefront of urging these countries to undertake the reforms needed to establish a true rule of law.

USAID has helped the main judiciaries in the region to gain greater independence from the executive branch. Some judiciaries are choosing to exercise that independence by standing up to executive pressures or countering executive decisions. New courts, such as constitutional courts, and new institutions, such as judges' associations and judicial training centers, have been created and are functioning. Judges are becoming more active in pursuing greater independence and in advocating an array of system reforms. They are also gaining greater access to the body of law via legal information centers and law libraries and are becoming more knowledgeable about the law through more comprehensive training. Law students are obtaining better training as curriculum is reformed, teaching methods become more participatory, and practical legal clinics are established. NGOs are becoming active in educating citizens about their rights and providing legal aid to the indigent. Judges and lawyers are paying more attention to ethical issues and putting codes of conduct in place. New laws, such as civil and criminal codes, have been enacted, and these establish a firmer foundation for protecting rights. The sections below highlight in more detail the contributions of USAID programs, but they do not present an exhaustive or completely documented rendition of achievements:

### *a. Putting in Place a Legal Framework*

The cornerstone of a democracy and free market economy is an adequate legislative framework. No country in the region had such a framework in place at the start of the transition. USAID provided important assistance in drafting new constitutions as well as basic legislation such as criminal codes that would provide at least some procedural protections for those citizens accused of crimes. Also drawn up were new civil codes to establish the right to private property and rules for commerce, and new administrative codes to redefine the relationship between citizens and state agencies.

USAID helped six of the seven countries under review to prepare constitutions. These constitutions incorporate the fundamental ideals of democracy, including separation of powers and protection of essential rights and freedoms. They also call for the creation of new institutions, such as constitutional courts and ombudsman offices, to protect those rights. USAID's most significant work in this area was in the two countries that were slowest to adopt new constitutions: Ukraine and Albania. In the years after the transition, Ukraine was hamstrung by political infighting and moved only fitfully towards the adoption of a new constitution. USAID played a key role in breaking the logjam by convening a constitutional conference in 1996. Members of all branches of government, academics, legal experts, and political party leaders attended. For the first time, competing parties began to talk seriously to each other, and a consensus on important issues began to emerge. The constitution that was finally adopted later that year guarantees broad human rights and civil liberties and protects private property, fair competition in business, and the right to engage in free enterprise.

USAID played an even more important role in Albania. From 1991 to 1998, the Albanian government operated under a series of ad hoc constitutional laws. These laws represented an important break with the past but did not create a solid foundation. USAID provided drafting assistance in 1993-1994, resulting in a draft constitution containing provisions essential to the establishment of a parliamentary democracy. The two political parties were so divided on this draft that the population voted against ratification in the November 1994 referendum. When the issue of a constitution was reconsidered in 1997, USAID and other donors offered not only technical drafting assistance but also support for improving the transparency of the process. A key component of this support was the creation of a center to secure public participation in discussing provisions of a new constitution. Working through this center, USAID underwrote public symposia where the proposed constitution was discussed and public feedback was provided to the drafters. The center also disseminated information on the constitutional process through the media. The improved process led to greater consensus, helping ensure the adoption of a constitution in 1999. The new constitution provides a solid foundation for government based on democratic and free market norms.

USAID has also provided significant assistance in revising basic laws throughout the region. The Agency has been heavily engaged in the development of new criminal and civil codes. Of the seven countries under review, USAID has supported new or revised civil codes or civil procedures codes in Albania, Armenia, Bulgaria, Georgia, and Russia. For example, in 1999 USAID helped Bulgaria re-write its criminal procedure code to ensure the greater neutrality of judges and transfer the right to issue search and arrest warrants from prosecutors to judges. USAID has also worked broadly on commercial legislation to ensure a competitive and fair marketplace. This includes laws on bankruptcy, privatization, and taxes. New commercial codes are essential to encourage the private and foreign investment that these countries need to grow.

USAID also supported new freedom of information laws in three of the seven countries and, along with other donors, helped make major changes to Georgia's administrative law. In the former Soviet Union,

administrative law supplemented criminal law and allowed the state to prosecute citizens for a variety of misdemeanors. In the west, administrative law plays a different role and is a key method of ensuring government transparency, fairness, and responsiveness. Therefore, reforming the administrative code in Georgia required a radical change in the entire concept of administrative law: to permit citizens both to obtain information on and formally appeal government decisions. USAID support was especially important to the development of the law's freedom of information provisions, which give citizens broad access to government records. USAID has also supported public education about and government implementation of the new laws. Recently one journalist successfully sued the ministers of interior, defense, and state security to obtain copies of financial disclosure reports required by the code. While one decision is not a guarantee of full implementation, it is still an important milestone for what is a relatively new law.

As a result of new criminal codes and USAID-supported training for judges, the twin notions that the prosecution must prove its case and that defendants can be acquitted is gaining ground across the region. In Russia, where USAID helped draft laws instituting jury trials, the Agency then supported introduction of pilot jury trials for serious criminal matters in the nine regions. USAID helped develop benchbooks ("how-to" books explaining jury trials) for judges and defense attorneys. The changes have led to an increase in acquittal rates in those regions, an important gain for human rights change in a country where previously the chances of being found not guilty were almost non-existent.

Across eastern Europe and the former Soviet Union, USAID has not only provided substantive expert advice for writing new laws, but has also helped ensure transparency and public participation. Public participation in shaping the law was not a feature of the Communist era, and even in the early post-communist years, most legislation was prepared by ministry drafting groups that consulted with a select group of law professors. Throughout the region, USAID ROL programs have helped establish a process of consultation on new laws. In Bulgaria, for example, USAID contractors facilitated numerous roundtable discussions on a variety of draft laws, paving the way for full-scale legislative transparency. Parliament now operates an information center where the public can obtain copies of pending legislation, a rare accomplishment in this region. The legislature in Macedonia has also begun to operate with greater transparency; sessions are open and draft laws are made available to the public. The MOJ has invited USAID-supported civil society groups to comment on drafts of important laws (such as the criminal code), and USAID programs have helped organize broad-based seminars on a variety of commercial and other laws. As with the constitutions in Albania and Ukraine, USAID has often acted as a catalyst for change or has provided the forum in which difficult questions could be addressed and a consensus reached. Examples abound of USAID-supported roundtables providing the means by which legislation is finally enacted.

Legislative drafting is important, but new laws can often remain words on paper. USAID has built on its legislative drafting work by training the judges, lawyers, and other officials who must implement and enforce these laws. In Armenia, for example, USAID followed its drafting work on the civil code with workshops for lawyers and other professionals on code elements related to contract law and private property rights. In Russia, USAID still supports a series of bi-weekly, Russian-led, commercial law continuing education programs in Moscow. This periodic training has sparked separate Russian-led programs in other provinces. In many countries of the region, USAID trains lawyers and government officials on the evolving legislative framework.

### *b. Supporting Judicial Reform*

During the Communist era, judges were generally elected, with the approval of the Communist Party, to four-year terms. Once in office, their activities were overseen by the MOJ, which had budgetary and disciplinary control over judges. Judicial decisions were sometimes dictated by the party leadership and could be overturned by the general prosecutor. Prosecutors had the upper hand and could tell judges what their decisions should be. Judges were not independent.

USAID has made a critical contribution to help strengthen the independence of a number of judiciaries in the region. Independent self-governing bodies have been set up in four of the countries under review. Judiciaries are increasingly taking control of the courts, playing a dominant role in disciplining their own members and ensuring that those who are appointed to judgeships are appropriately qualified. Some, like Albania, are wresting control of their budgets from the executive branch.

In Georgia, USAID provided assistance for the enactment of the Law on the Courts, which created a department similar to the Administrative Office of the U.S. Courts for court system management. Georgia also created the Council of Justice, composed of representatives of the three branches of government and the public, to help implement the Laws on the Courts. This new body investigates complaints about unethical behavior by judges, administers judicial qualification examinations, and interviews successful candidates for judgeships. USAID then helped Georgia implement its first rounds of judicial qualification examinations in a fair and transparent manner.

USAID programs in Russia have helped establish significant partnerships between U.S. and Russian counterpart organizations. These include alliances between the Administrative Office of the U.S. Courts and the Russian Judicial Department, the Judicial Conference of the United States and the Russian Council of Judges, and between judges in particular regions. USAID advisors have worked closely with the designers of Russia's new judiciary, and the Russian legal system, with its three levels of courts and with the separate judicially-controlled body for court administration.

In Albania, USAID supports the National Judicial Conference (NJC), which includes all judges in the country. USAID helped to organize NJC committees, including one addressing the legislature, ethics, and court budgets. Through these committees, the judiciary has had an impact on the drafting of legislation, the use of NJC inspectors to investigate complaints of ethical violations, and the judiciary's emerging role in the budgeting process.

Judges, particularly those attached to the new constitutional courts, are asserting their independence and are beginning to check executive branch power. For example, Bulgaria's Constitutional Court not long ago ruled against the government in a high profile pension case. In Ukraine, the Constitutional Court struck down two proposed amendments to the constitution that would have strengthened already overwhelming presidential powers. In addition, the court ruled that the president did not have the authority to appoint deputy heads of local administration, an attempt to increase executive branch control over local government. It has also overruled decisions of the not-very-neutral electoral commission.

In Russia, the courts have overturned government decisions denying registration to religious groups. In one very important case, a Russian navy captain had been accused of revealing state secrets when he published a report on environmental hazards posed by naval installations. In court he was acquitted because he was charged on the basis of secret decrees that were not consistent with the constitution. When prosecutors appealed the case, the Supreme Court refused to overturn the lower court decision.

Protecting and expanding judicial independence also requires developing organizations that can represent judiciary concerns to other branches of government and provide other forms of support useful to judges. The need for such professional associations has been particularly important in post-communist societies because their judiciaries have typically been accorded less power, prestige, and resources than their western counterparts. USAID has made a very important contribution in helping develop judicial associations throughout the region.

In Macedonia, for example, USAID helped to establish what could be the leading association of judges in eastern Europe, the Macedonian Judges Association (MJA). First established in 1993, the MJA now has 600 members and is a member of the International Association of Judges and the European Association of Judges. It represents nearly all judges in the country and has been instrumental in lobbying parliament on matters of interest to the judiciary, such as the pending bill that would create an independent court budget.

The independent Association of Judges of the Republic of Armenia, composed of almost 90 percent of the judges in the nation, was formed in 1997 with USAID help and has since worked closely with the Agency to publish newsletters and conduct workshops. The association was responsible for the first full text publication of the decisions of the Court of Cassation (the highest appeals court), and it has adopted a code of ethics for its members. The group's workshops have covered such topics as ethics, the new civil code, pre-trial release of persons accused of crimes, and media relations.

The Bulgarian Judges Association (BJA), established in 1997 with USAID support, has played a strong role in promoting judicial ethics by establishing guidelines for its members and participating in a drafting group preparing a law on judicial ethics for Parliament. More importantly perhaps, the BJA has established itself as a voice for the judiciary, speaking out in the press against proposed amendments to the criminal procedure code that would restore to prosecutors some of the powers, such as the right to issue search and arrest warrants, that had previously been shifted to the judges. The BJA has also interjected itself into the legislative drafting process, and it is now represented on several legislative drafting working groups. This enhances the strength of the judiciary, improves the quality of the legislation, and represents a step forward in creating transparency in the legislative process. As one of the leaders of the BJA reported, "The magistrates and the public trust the views of the BJA. Its words are heard." This is an important change, considering that Bulgaria did not even have an association of judges until four years ago.

Attorney codes of conduct have also been adopted, with USAID support, in Bulgaria, Macedonia, and Russia.

Finally, U.S. assistance helped to establish the Russian Bailiff's Service, a permanent body within the Russian government with the responsibility of ensuring enforcement of civil judgments. The service has established procedures for the processing and collection of judgments, resulting in a substantial increase in the percentage of judgments successfully enforced.

### *c. Strengthening the Knowledge of Judges*

As organizational and legal reforms are put into place, judges must master the purposes and provisions of the new laws and institutions. USAID has played a leading role in establishing judicial training centers, many of which are independent of ministries of justice in the region. This is the case in four of the seven countries under review. The Agency has supported substantial judicial training in all seven countries and has played an important role in introducing courses on ethics. USAID has also helped set up legal information systems and public law libraries.

USAID supported the establishment of the Albanian Magistrate's School (AMS). While still partially sustained by donor support, the school is now receiving a regular budgetary allocation from parliament. The school provides a three-year practical curriculum for young judicial candidates who would otherwise proceed directly from practice to the bench. It also trains candidates for prosecutorial positions. The curriculum includes substantive legal topics as well as training in ethics and judicial skills. Young lawyers must pass a competitive and blindly administered examination before being admitted to the school, and they must also graduate from the school before being appointed to the bench. This means that judges with knowledge and skills are being appointed, rather than allowing the appointment process to be dominated by political affiliation. This will eventually result in a better-qualified and more independent judiciary.

Thanks to another ambitious USAID program, the Bulgarian judiciary is receiving expert training on a variety of new laws and concepts. The training is conducted by the Magistrates Training Center (MTC), a joint effort of the Bulgarian Association of Judges, the Alliance for Legal Cooperation, and the MOJ. USAID has helped to train judges as trainers, develop training materials, and organize training sessions. The MTC provides practical education for new judges on the basics of judging, including the themes of ethics, judicial demeanor, and opinion writing. Every new judge appointed in 2000 underwent this training, which lasted for a total of three weeks, and every experienced judge has participated in at least one in-service training session. Demand for this training is very high.

USAID also helped to establish the Macedonian Center for Continuing Education (CCE), which opened in 1999. The CCE, a part of the Macedonian Judges Association, offers a regular in-service training to judges and court clerks on civil, criminal, administrative, and trade law, as well as international human rights. While the CCE is supported by others donors, its executive director is convinced that the CCE would not have been established without USAID assistance in getting the center set up and functioning.

Working with the new Russian Judicial Department, USAID has helped to train almost 2,000 judges, court administrators, and court staff on Russian law; best practices related to judicial selection, ethics, and discipline; and modern pedagogical and court administration techniques. The Agency has also prepared more than 2,000 pages of training materials, including a manual on judicial ethics, selection, and discipline. With USAID's help, the Russian Academy of Justice, charged with training judges, is now including ethics in its curriculum for the first time.

### *d. Modernizing Legal Education*

Improving law school education has been an important feature of USAID programming in all seven countries. Agency assistance has been particularly important in developing more participatory methods of teaching and setting up law school clinics. Lecturing and rote memorization had been the sole method of teaching; with the introduction of participatory methods, students are being taught to think critically. Clinical programs enable law students, under the supervision of experienced lawyers and law professors, to provide advice to clients who cannot afford to hire a lawyer. The students not only provide needed services to the community, but they obtain practical experience and a taste for public service. As the leader of the USAID-supported clinic in Macedonia said, "Before, the students were walking encyclopedias rather than people who knew how to practice. The clinic gives them an opportunity to practice real skills, and to develop a sense of solidarity and humanity."

In Russia, there are now 80 such legal clinics, where in 1991, there were none. USAID, working with other donors such as the Ford Foundation and the Open Society Institute, has trained professors in clinical teaching skills, provided funding to help start up clinics, and developed manuals to guide law professors and schools in how to operate a legal clinic. Hundreds of law students and professors now

provide assistance to thousands of needy citizens on issues ranging from pension payments to domestic violence to environmental protection. In Ukraine, 20 law school clinics, supported by USAID and its partners, have developed over the last five years. Hundred of law students are providing counseling and advice to thousands of citizens who, absent the clinics, would have no place to turn for help on family law, environmental law, and human rights issues. For example, the clinic at the Donetsk State University Law School Faculty has grown from 10 to 120 students and handles over 500 cases annually.

In Bulgaria, USAID provided funding and training support to the Rousse University Law Faculty Clinic, which provides legal aid to the poor on family law issues. The clinic recently signed a contract to provide representation to those referred by the municipal office for social services. The clinic's popularity has led to expansion: a second clinic on administrative law (dealing with cases against the government) opened at Rousse in 2000, and clinics have opened at schools in two other cities as well.

*e. Increasing Access to Legal Counsel*

USAID has been active in helping provide access to legal aid beyond what is available through the law school clinics described above. The Agency's most extensive work in this area may be in Russia, where USAID supports seven public interest law centers around the country. These centers advise citizens on how to use the courts to obtain salaries and other benefits owed to them by their employers. The centers take on roughly 150 cases each month and provide over 500 consultations. In one two-month period, for example, they obtained judgments of almost $50,000 in back pay and collected over $70,000 in judgments. The Union of Jurists of Karelia, as a part of the USAID-funded Vermont—Karelia Rule of Law Project, is implementing a civil legal aid program to advise citizens on housing, pension, and alimony matters. In one year, this program handled almost 1,500 cases. These programs provide tangible results through the court system for some of the most needy members of Russian society.

USAID also supports two environmental public advocacy centers (EPACs) in Ukraine. The EPACs advise citizens and local civil society groups on environmental issues, bring high profile lawsuits to uphold environmental rights, publish materials on access to information and public participation, conduct seminars for environmental stakeholders, and train law students in advocacy skills through clinical programs operated in their offices. According to one independent evaluation, the EPACs "have won some notable victories against some well-heeled defendants and have not relied on or been defeated by bribery." Court victories include a 1997 High Arbitration Court decision blocking a proposal to build an industrial waste landfill near Kharkiv against the wishes of the local villagers. In addition, the EPACs educate citizens concerning their rights and their ability to use the court system to enforce those rights. The Kharkiv victory, for example, was used as the basis for a widely broadcast film (produced by a local media company under a USAID grant) on how to use the legal system to protect one's rights.

USAID has also supported three human rights centers in Ukraine, where citizens and NGOs come to register complaints and receive advice concerning human rights violations. As part of this program, a legal defense fund to facilitate the representation of people who have been tortured or brutalized by the police is being established. In Albania, USAID supported the creation of a new institution, the "advocate of the people." This ombudsman position, a post created with additional help from the Danish government, is responsible for inspecting citizens' complaints regarding the violation of their human rights. The ombudsman reported that when he first took office in 1998, he had no office, no staff, no equipment, but now, with the help of USAID and others in the donor community, he has a fully functional office with a growing caseload. One of these cases resulted in the successful prosecution of nine police officers for brutality, a result previously unheard of in Albania. "Ten years ago," he said, "it would have been very

difficult to take action against the police unless the party took an interest. But even then it would not have been public." He reported that the support of the donor community sent a signal to the parliament and the government that the international community regarded human rights as a vital concern, thereby enhancing his power and authority.

The Macedonian Ombudsman Office, a new institution created in 1998, has—with USAID support—provided legal recourse for citizens by investigating citizen complaints concerning police brutality as well as the failure of the administration to respond to requests for information and services.

Other USAID efforts to develop NGOs include the Albanian Women's Advocacy Center, which represents victims of domestic violence, and the Tirana Legal Advice Service, which served over 1,000 needy clients in the last year, helping them to obtain pensions and protect property rights. In Armenia, USAID provides assistance to NGOs such as the Mental Health Foundation, which furnishes legal services to mentally disabled persons; Family and New World, a regional program that offers legal consultations for the unemployed; and Araza, which organizes legal aid bureaus in refugee communities. Bar associations such as the Georgian Young Lawyers' Association, the Bar Association of the Republic of Armenia, and the International Union of Armenian Advocates receive USAID assistance to help build their institutions and provide legal services to socially vulnerable persons.

The foregoing provides some tangible examples of how USAID has contributed to the process of developing the rule of law in seven countries in eastern Europe and the former Soviet Union. More information may be found in the country-specific reports that provide the basis for this short synthesis, and many more examples of impact can be found in other countries in the region. But perhaps more important than these specific results are some less tangible impacts that derive from USAID assistance in the ROL area.

USAID is the leader in ROL reform in the region. The Agency was often the first donor organization in these countries to support programs aimed at enhancing the ROL. U.S. engagement in ROL reform conveys to opponents of reform that the world's most powerful democracy considers the rule of law to be a priority. This strengthens the hand of reformers. U.S. involvement has also paved the way for other donor organizations, such as the World Bank, to become more involved in legal and judicial reform.

USAID ROL advisors have provided a focal point for reform and facilitated the dialogues that must underlie true societal change. As one observer in Albania noted, they "make a difference by subtly changing attitudes." One Bulgarian judge pointed out that in the early transition years, USAID was able to persuade suspicious lawyers and judges to talk to each other for the first time, a dialogue that eventually resulted in an informal "network" for reform. A program implementer likewise noted that without USAID's presence, "people would be acting in a vacuum—we can help the government to plan better because we don't have political entanglements [and] we do have experience." This overall transfer of knowledge and experience is difficult to quantify, but is surely one of the greatest impacts of USAID's ROL programs in the region.

This work has paid dividends. At the most fundamental level, such previously foreign concepts as constitutionalism, separation of powers, and judicial independence have become a part of the regular vocabulary of judges, lawyers, and citizens of the region. The structural reforms and training programs supported by USAID are changing the way the law is administered. This means, in the end, not only substantially enhanced rights for citizens but also access to a peaceful means of resolving conflicts. While the transition to the rule of law remains incomplete, significant progress has been made, especially considering that only a decade has passed since these countries began their transitions to democracy,

most for the first time. By building on these foundations and working with local partners committed to reform, USAID expects to continue making important contributions to establishing the rule of law in this enormous region, thereby bringing greater peace and prosperity to the citizens of the emerging democracies of eastern Europe and the former Soviet Union.

## C. Africa

As recently as 1989, the promise of freedom that had animated independence movements across Africa three decades earlier seemed largely empty. Of 47 sub-Saharan African nations, only a handful were multi-party democracies and even those were plagued by weak and intimidated opposition movements, an absence of leadership, and a general pattern of corruption and personalistic politics. The remaining nations were governed by a variety of one-party systems, military oligarchies, or race-based regimes. Recognizing that in such a vast and diverse continent, the multitude of cultural, historic, and legal traditions makes identification of regional trends a challenge, it remains accurate to point out that in 1989 most citizens in most African countries had little or no experience electing governments, participating in civic affairs, or taking their disputes before impartial courts. Repressive regimes and a lack of meaningful political and legal rights reinforced the desperate poverty experienced by most Africans. Many African legal systems were characterized by ineffective or inefficient formal legal education, naked government interference in judicial appointments and rulings, corruption, and lack of basic infrastructure and resources. Liberia, Rwanda, and Sierra Leone, among others, were hobbled by having a generation of legal expertise wiped out through years of civil war. Many more nations suffered from a shortage of talent, with the most promising citizens emigrating to Europe or North America.

In the late 1980s, a continent-wide pattern of macro-economic failure, geo-strategic change brought about by the end of the Cold War, and popular discontent with the status quo contributed to reshaping power dynamics in many African states. A remarkable period of transition toward democratic rule followed; in some cases, the transition was successful, and, in others, it simply provided a brief respite. South Africa, a startling example, dismantled apartheid, adopted a liberal constitution, and elected representative government. Mozambique ended 15 years of civil war, while Malawi ended 25 years of dictatorship; both held multi-party elections. Mali and Benin both experienced democratic transitions that have endured, while Ghana provides a compelling example of military rule leading peacefully to democratic turnover of political power.

While the promise of constitutional democracy is being kept in some countries, the process of reform has not been uniform. In 1997, Liberia held elections conducted in an environment of fear and intimidation. Today, Liberia is effectively a kleptocracy—a front for illegal diamond smuggling from Sierra Leone. Ethiopia has been plagued by opposition party election boycotts and a once full-scale and now-simmering conflict with Eritrea. Uganda, despite its new constitution and noteworthy improvements in human rights, remains a one-party state. Rwanda has not yet fully recovered from its killing fields.

USAID's ROL programs in Africa developed during this relatively recent (post-1989) window of opportunity. Most are modest in scale and newer than those in eastern Europe, the former Soviet Union, Latin America, and the Caribbean. Programming initiatives have varied across the seven countries considered in this study because the factors affecting the rule of law in each country are different. The challenges facing South Africa, with its robust economy and sophisticated legal system, differ markedly from Rwanda, where only a handful of lawyers survived the genocide. USAID has, therefore, fashioned a ROL program individually tailored to each country. This paper examines USAID efforts to improve the rule of law in Ethiopia, Liberia, Malawi, Mozambique, Rwanda, South Africa, and Uganda. As it demonstrates, USAID played an important role in these countries by encouraging progress towards the realization of the rule of law and a rule-based culture.

## Towards the Rule of Law in Africa

USAID's democracy building programs have sometimes operated against the backdrops of dramatic and terrible political and social events. Its programs have provided support for the development and restoration of civil liberties, human rights, and functioning governments. From helping to rebuild Rwanda's judiciary after one in every 10 citizens was killed by genocide to challenging apartheid in South Africa, USAID has approached ROL programming through the drafting of new and better legal frameworks, the development of human resources and organizational and physical infrastructure, and the increase of public access to judicial systems.

### *a. Legal Frameworks*

Integral to USAID's ROL programming in the region is assistance in developing modern legal frameworks that protect rights and encourage the rule of law. USAID efforts have included support for drafting or amending constitutions and legislation, strengthening national legislatures in their law-making functions, publishing case law and legal codes, and standardizing and improving court rules, regulations, and procedures. The outcomes have ranged from far-reaching social gains to localized improvements in efficiency and transparency.

USAID's support for constitutional drafting processes has assisted several countries in the region. For example, the Rwandan Constitutional Drafting Committee has been assisted by USAID and is working now to produce a ratifiable document within the next two years. In other countries, USAID has been intimately involved in assisting governments to bring legal codes up to date and in making laws available. In Rwanda, USAID was involved in re-drafting the country's civil and criminal codes to align with current international norms. In countries where legal reform is more advanced, such as South Africa, USAID has provided expertise on particularly sophisticated issues related to asset forfeiture and witness protection during the re-drafting of the country's criminal procedure laws. In Mozambique, USAID advised on the passage of a law that established commercial arbitration, which will ease the resolution of disputes between businesses. The first arbitration center has now been set up in Maputo.

In Liberia, whose population has suffered through chaotic and oppressive government, the practice of determining guilt or innocence through a process of trial by ordeal, equivalent to official torture, was declared unlawful after extensive discussions between USAID and the Ministry of Justice (MOJ). In Ethiopia, where abuses such as lengthy pre-trial detention, closed proceedings, and little contact with legal counsel are common, USAID designed a major conference on international humanitarian law, which led to a common legal framework on genocide trials. USAID's efforts led also to a more fair and transparent process for the resolution of genocide cases resulting from the Derg government's Red Terror campaign of the late 1970s, when Mengistu Haile Mariam was in power. This common framework has helped the 80 judges assigned to these cases produce more consistent judgments and process cases more quickly.

In Uganda, USAID worked with the Law Commission to re-codify the entire body of existing law, which now gives judges, lawyers, and academics organized access to the basic laws of the land. In Liberia, prior to USAID's codification and publication program, only a small portion of the bench and bar had access to the rule of criminal and civil procedure and the entire body of statutory law. USAID's program helped to provide all judges and lawyers in Liberia with access to the rule and statutes. In Rwanda, USAID helped publish and distribute copies of the civil, criminal, and commercial codes. In Ethiopia, USAID also helped increase the access of legal professionals to the law by publishing codes, procedures, and selected court judgments.

### *b. Development of Human Resources and Organizational and Physical Infrastructure*

One of the single most important aspects of USAID's ROL work in Africa has been capacity building within the justice sector. This aspect of USAID's work is a uniting thread among the seven countries reviewed. Developing the human resources and infrastructure to make effective the rule of law has been a paramount component of USAID programs.

Following the genocide in Rwanda, USAID programs helped the government establish stability by training and equipping the newly formed police force. In Malawi, as a result of USAID training, a cadre of judges has emerged that is predisposed to apply the law. USAID-trained Malawian judges have handed down decisions upholding constitutional provisions protecting human rights. Despite political pressure on certain judges to decide in favor of the ruling party, judgments are being made based on the law, even when the decision goes against the government.

Where necessary, as in Ethiopia, Liberia, and Rwanda, USAID has been involved in emergency training for judges and court personnel in order to decrease case backlogs and increase the speed of case processing. In Rwanda, USAID also provided equipment and supplies needed to make courts operational again, following the genocide. Often in these countries, the accused face lengthy detentions without trial. Improving court operations is an important objective. In Ethiopia, USAID's efforts helped the judiciary clear old cases and settle an impressive 40 percent of the backlogged cases, freeing litigants who had long been awaiting trial. The High Court of Malawi, with USAID's assistance, brought more than 5,000 cases to conclusion in 2000, a 40-percent increase in the number of cases resolved the previous year. In South Africa, USAID also supported the work of fast-track courts, meant to clear old cases quickly. More than 2,000 such cases were resolved, allowing the litigants and defendants involved in these cases to move forward with their lives.

In addition to trying to get a shattered legal system up and running after the genocide, Rwanda justice system personnel were faced with an appalling caseload of 120,000 people detained on suspicion of involvement in the genocide. Many were held without charge sometimes for as long as seven years, in conditions described by the U.S. State Department (State) as "harsh and life threatening." Given estimates that it would take 200 years to process all prisoners' cases at the current pace, USAID made an enormous effort to assist prosecutors in opening case files for all prisoners through a program of nationwide training. As a result, more than 10,000 people were released from detention due to insufficient evidence, while the remaining cases were categorized according to four levels of severity, ranging from Category 1 for the architects of genocide to Category 4 for property crimes.

USAID is now supporting an indigenous, traditional community-based justice process, called "*gacaca*", to facilitate the resolution of those charged with lesser genocide crimes. USAID persuaded the reluctant international community to recognize that *gacaca* was the only way to cope with the large numbers of accused and that trial systems would take years, effectively denying justice to both victims and the accused. USAID has worked with the Rwandans to ensure that the *gacaca* process is fair and that certain basic due process requirements, such as right of appeal, are met. USAID continues to provide vital support to the *gacaca* process.

Helping to standardize court practices and provide a more transparent judicial process is one critical theme in USAID programming. For example, USAID assisted Malawi in creating a new court register system that will both simplify and standardize court information. This is one small part of a much larger judicial reform process USAID has supported in Malawi. In Mozambique, USAID worked with the Maputo City Court to develop benchbooks (handbooks for judges) and model forms to assist judges in

deciding debit and eviction cases. It also helped Mozambique develop a computerized case tracking system allowing judges, court officials, and lawyers to identify the procedural status of cases. That system, along with other efficiency improvements, is now being replicated in other provinces, with funding provided by other donors. Computerization has proved an effective tool for increasing efficiency and reducing corruption.

In Mozambique, USAID is assisting the attorney general to establish an anti-corruption coordinating unit under a collaborative program with USAID, DOJ, and State, after the attorney general decried the legal system as characterized by "a hair-raising absence of ethics, dedication, and professionalism….The known behavior of some judges, attorneys, prison officers and policemen only help…discredit our judicial system." In Liberia, USAID has ensured that lawyers and judges have access to a code of ethics.

USAID has also helped strengthen the prosecutorial function in some countries. Such assistance can be particularly important where escalating crime and growing citizen insecurity are factors, as in South Africa. In Rwanda, USAID provided an in-house advisor to the attorney general. The advisor focuses on Category 1 genocide trials and tries to ensure that the processes are consistent with international law. The advisor has trained prosecutors and helped them prepare case dossiers..

In South Africa, USAID provides an in-house legal advisor to the national director of the National Prosecuting Authority. He has constructed a prosecutor-driven approach to fighting organized crime. Recently the unit has made a number of high profile arrests, including a member of Parliament acting as the ruling party's chief whip. South Africa political elites now believe that a prosecutor-driven approach should be the model employed throughout the criminal justice system. In South Africa, USAID also supports the Justice College, which provides a comprehensive training program to aspirant prosecutors. In addition, USAID funds on-the-job prosecutorial training in South Africa by providing mentors to under-trained prosecutors.

USAID supported the establishment of permanent judicial training institutions in Ethiopia, Mozambique, Rwanda, and South Africa. These institutions have become repositories of local training expertise and skilled judicial officers. In some countries (i.e., Mozambique), law school graduates became judges and prosecutors without any specialized training, coming directly from university to the bench. For the first time, new judges and prosecutors are now obtaining training in how to be a judge or a prosecutor.

In Rwanda, USAID helped reestablish the law school on a modern footing. Now 100 lawyers are graduating each year in a country that had only 20 lawyers at the end of the genocide. In South Africa, to de-racialize the bar, USAID helped establish an internship project to assist the training of black legal practitioners and to place students with private firms and high-level corporate clients, formerly the preserve of white lawyers. While only 20 percent of South African attorneys are black, their numbers have doubled since the program's inception in 1989.

In Uganda, USAID's partnership with Makerere University resulted in the first and only graduate-level clinical legal education in east Africa. In Uganda, USAID funds Makerere University's Legal Informatics Center to provide Intranet and Internet access to faculty and students. USAID has also been involved in smaller, more individualized projects. It has, for example, enabled law students from various African countries to participate in international moot court competitions.

### *c. Increasing Public Access to Judicial Systems*

Also important to a functioning rule of law is the citizen's ability to access the judicial system. Many citizens in Africa have had no experience with settling their disputes in a court of law. Many are poor and cannot pay for legal services.

In helping South Africa recover from the ravages of apartheid, USAID repaired and re-opened courts in former bantustans, or homeland slums where black residents were forced to live, substantially increasing the community access to dispute resolution. Under apartheid, violence and lawlessness prevailed in many homelands, and access to the protection of the law as well as to mechanisms for peacefully resolving disagreements did not exist.

USAID has funded law clinics or programs that provide assistance to thousands of people in Liberia, Malawi, Rwanda, South Africa, and Uganda. In Rwanda, students being trained under USAID's program with the University of Rwanda are staffing legal clinics to learn practical skills and provide legal assistance to broader communities. USAID has also trained members of the bar and public defenders. In Liberia, USAID has provided training on such legal issues as trial advocacy, professional ethics, criminal procedure, and the rights of the accused to public defenders. In Uganda, USAID created training-of-trainers programs designed to enable experienced lawyers to train others to defend indigent clients and to assist juveniles.

In addition to training legal and judicial system personnel, USAID created programs that provide legal education and legal training to persons outside the formal legal system. In Liberia, Malawi, and South Africa, USAID has supported extensive programs to educate the public on human rights. These programs run in schools, universities, and parastatal companies. In a few years, the proportion of the population now aware of their rights has increased from 20 percent to 55 percent in South Africa, where USAID supported the establishment of 60 legal advice centers that operate through a consortium of NGOs and that are staffed by 128 trained paralegals. The centers, which offer both mediation and advice, have dealt with tens of thousands of cases in 47 case categories, including labor, crime, domestic violence, human rights, and debt. The centers also host outreach programs that educate local communities on issues ranging from voter education and social welfare issues to women's rights.

In Liberia, simplified and annotated versions of the constitution were provided to citizens free of charge. In Malawi, a USAID-funded NGO trained other community organizations to provide education on legal remedies and human rights. In Malawi, USAID gave significant support to the Center for Advice, Research and Education on Rights (CARER), which provides education and free legal advice through its paralegal program to poor, mainly rural people. In 2000, CARER served nearly 7,000 clients, more than 90 percent of whom were women.

As Rwandans will tell you, "it is early days yet." Many of the African nations with which USAID works are, at best, fragile democracies. Their legal systems are still flawed, but several have demonstrated marked improvement. This paper would be naïve if it did not acknowledge that the long-term prospects for USAID's various partner states in Africa appear to vary. However, USAID's work in Africa has enabled countries to begin to put in place the laws, structures, and practices necessary for creating a culture that sustains the rule of law. USAID has helped develop a cadre of legal personnel who are committed to reform. In all seven of these countries, USAID's ROL programs have left their respective legal sectors better equipped to deal with the challenges of developing and maintaining the rule of law.

## D. Asia and the Near East

Over the last decade, USAID has provided valuable assistance to ROL development in Bangladesh, Egypt, Mongolia, Nepal, and the Philippines. While these are not the only countries in the Asia and Near East (ANE) region where USAID has undertaken legal reform activities, these five were selected to highlight significant ROL program achievements. Synthesizing common themes across these five countries is difficult because their histories and legal traditions are very different. However, in each country, USAID's contributions stand out as significant and, at some level, as pioneering. USAID was frequently ahead of the curve in its efforts to improve the environment for justice in these regions, but it is important to note that USAID seldom acted alone. The Agency has collaborated with many partners, including U.S. NGOs, other international donors, and local NGOs.

The factors contributing to formation of a justice system are complex and varied. History, economics, geography, and culture are among the elements that shape the fairness and effectiveness of a legal system. For example, significant levels of extreme poverty may restrict access to the courts, while widespread corruption tends to erode judicial system credibility. In Asia and the Near East, poverty and corruption both have an impact on the rule of law and have influenced the course of USAID assistance efforts.

However, in regions where traditions of government and historical experience differ sharply from country to country, few other common threads are apparent. Bangladesh, Egypt, and the Philippines were subject to foreign influence as colonies or protectorates. The same might be said of Mongolia, which fell under Soviet control and whose development mirrored that of other less advanced republics in the USSR. Nepal purposely cultivated isolation and was ruled by absolute monarchs until 1990. Egypt has been governed for many years by an overly powerful executive branch. Attempts to democratize further in the early 1990s have been reversed. By contrast, the Philippines restored democracy with the ouster of Ferdinand Marcos in 1986, and Bangladesh, Mongolia, and Nepal all began the transition to a multi-party representative democracy in the early 1990s. It can be said in summary that all five countries share the common experience of dominance by authoritarian, repressive regimes for much of the 20$^{th}$ century. For the most part, these regimes systematically weakened the courts and marginalized the rule of law. Each of these countries needed assistance to strengthen the rule of law and rebuild the courts; yet, the level of political commitment to reform varied.

### 1. Assistance Efforts Backed by Regime Political Will

The presence or absence of political will influenced the course of USAID's ROL activities in each of the five countries. Without the requisite commitment for reform from appropriate government or court officials, USAID feared that working with formal justice system institutions risked failure. The absence of political will in the Philippines and Bangladesh discouraged USAID assistance to formal judicial institutions, although more positive conditions are now evolving in the Philippines. In Egypt and Mongolia, political will at the highest levels of the judiciary encouraged the Agency to work directly with the judiciary and its supporting institutions. In Nepal, USAID support for constitutional drafting helped lay an enduring framework for establishing the rule of law to replace an absolute monarchy.

#### *a. Nepal—Support for Constitutional Drafting*

When the king acceded to popular demand by suddenly ending decades of repressive, partyless government in 1990, USAID's long-standing presence in Nepal and well-developed contacts with key democracy movement leaders enabled quick response to rapidly developing events. As a direct result of

close interaction between USAID officers and leaders of the interim government, USAID provided support to the Constitutional Recommendations Commission. It facilitated access to information and expert advice needed to draft a well-conceived constitution. USAID also promoted broad participation and citizen input to the drafting process by sponsoring village surveys and town-hall meetings conducted by NGOs. The constitution USAID helped Nepal to draft establishes a solid governance framework, guarantees fundamental human rights and basic freedoms, and is revered as a source of national pride and symbol of hard-won democracy. Despite 10 years of political instability from turbulent parliamentary politics, recent assassinations of the royal family, and ongoing communist insurgency, Nepal's constitution—although threatened—remains intact.

*b. Mongolia—Charting a Course for Judicial Reform*

In Mongolia, 70 years of isolation within the Soviet bloc left little notion of how democratic institutions function. While courts existed in Mongolia, they had been completely subjugated to the Communist Party and thus stripped of any independence. In the early 1990s, USAID provided assistance to expose Mongolian leaders, including the judiciary, to democratic institutions as the first step toward conceiving structural changes to their government. Expanding the horizons of Mongolian leaders helped lay the foundation for more concrete reforms to follow. For judges, workshops, study tours, and short-term advisers began the process of re-thinking the purpose and role an independent judiciary plays in a democracy.

Thereafter, when progress on court reform seemed to lag despite active donor funding, the president of Mongolia requested U.S. assistance in 1998 to accelerate the pace of reform. With USAID support, Mongolians developed a strategic plan for judicial sector reform. USAID provided legal experts to facilitate Mongolian workshops and assist working groups to conceptualize and draft a comprehensive strategic plan for reform. Never before had representatives across governmental agencies joined together with non-governmental partners to articulate a vision for an independent Mongolian justice system. The Mongolian parliament unanimously adopted the "Strategic Plan for the Justice System," signaling its broad acceptance as the definitive document derived by Mongolians for charting the course of judicial and legal system reform. The strategic plan further serves as a blueprint to guide and coordinate donors' contributions, thereby helping to diminish the risk of piecemeal initiatives.

*c. Egypt—Improving Court Administration*

In Egypt, inefficient court services create enormous backlogs that deprive all Egyptians of timely dispute resolution. At the government's request, USAID partnered with the MOJ and the courts to increase the administrative capacity of the civil court system and improve judges' ability to decide civil-commercial cases. Over the course of six years, USAID funded a pilot project to automate case administration procedures and re-engineer court management at two important court systems. With an emphasis on improving court efficiency, every aspect of case filing and processing was revamped and modernized. With USAID assistance, case processing time for civil-commercial disputes at the pilot courts has been significantly reduced. Statistics indicate many routine disputes are now resolved in less than seven months. The combination of training, better management procedures, and increased use of computers successfully created a model for replication to improve court administration practices across Egypt. The Egyptian government now appears committed to devoting resources to expand the pilot project to other courts, and most chief justices express keen interest in participating. Ultimately, all Egyptians benefit when a system dispenses more timely justice. The Arabic-language case management software developed for Egyptian courts is also likely to be replicated elsewhere in the Arab world.

*d. The Philippines—Court Sanctioned Mediation*

In the early 1990s, USAID abandoned efforts to reform the Philippines judicial system after 10 years of assistance failed to produce meaningful change. Insufficient political will coupled with widespread tolerance of corruption and cronyism generally are cited as primary reasons for lack of success. Recently, however, political will for judicial system reform in the Philippines has begun to emerge. In the wake of the 1997 Asian financial crisis, tolerance for corruption and cronyism is diminishing. Moreover, commitment for reform now appears to exist at the highest levels with the appointment of a strong, progressive chief justice in 1998 and support for reform from President Gloria Macapagal-Arroyo who took office in 2001.

In response, donors have begun to shift assistance strategies. USAID is engaging in carefully targeted initiatives with the judiciary to complement the Supreme Court's Action Program for Reform, a comprehensive six-year project funded by the World Bank and the Asian Development Bank. USAID contributed to support for "settlement week," during which cases in three judicial districts were selected and assigned to mediation. When more than 80 percent of the cases were settled, widespread support for mediation was engendered throughout the judiciary. USAID's support for settlement week helped convince the judiciary of the potential value of court sanctioned mediation and led to including development of mediation in the Supreme Court's Action Program for Reform.

Egypt and Mongolia mustered the requisite political will for tackling judicial reform upon recognizing that a competent, credible justice system is necessary to encourage economic growth and investment. In Egypt, the inability to obtain timely dispute resolution was widely viewed as detrimental to economic development. Mongolia's government leaders understood (in part thanks to USAID) that prosperity requires a sound legal system. They became eager to accept donor assistance to modernize and enhance a thoroughly decrepit judicial system. Once Egypt and Mongolia committed to judicial reform as a high developmental priority, both specifically sought U.S. assistance. In the Philippines, economic considerations are influencing the evolution of political will, as the cost of cronyism and corruption perpetuated in the courts is being examined closely.

**2. Judicial Education to Augment Broader Reform Initiatives**

*a. Egypt—Strengthening the Judicial Academy*

To enhance the quality of judicial decision-making in commercial cases, USAID supported Egypt's National Center for Judicial Studies (NCJS) to increase judges' knowledge of commercial law and strengthen their ability to reach prompt decisions. By totally overhauling curriculum development, teaching methods, evaluation procedures, computerization, and staff responsibilities, USAID helped convert the NCJS into a proactive educational institution with improved capacity to provide more effective instruction on more subjects to more judges and court staff. According to NCJS's director, USAID opened a window to the world for a court system previously closed to the outside. Because Egypt is a leader in legal education for the Arab world, improvements USAID brought to NCJS will likely spread throughout the Middle East.

*b. Mongolia—Benchbook*

Communism left Mongolian judges unprepared to handle the responsibilities of a democratic state. In addition, Mongolia enacted dozens of new laws to establish the legal framework to support a free market economy. USAID funded preparation of a benchbook and a corresponding training program for all

Mongolian judges to upgrade their knowledge and improve their ability to deal with new and complex legal issues in a post-communist world. The benchbook is widely used and praised as a reference manual to guide decision-making under Mongolia's new civil law. It provides many Mongolian judges, especially those in rural areas, with the sole authoritative resource available to inform their understanding of these new laws. Moreover, creating the benchbook and corresponding training helped instill a sense of separateness from other branches of government by providing an opportunity for the judiciary to engage in its own development without direction from the former Communist Party.

It is of some interest to note that in Mongolia and Egypt, corruption among judges is not perceived as pervasive or particularly problematic so USAID felt that judicial education was a worthwhile investment because the new knowledge was likely to be used. In contrast, corruption is considered pervasive in Bangladesh and the Philippines. In the Philippines, corruption and cronyism permit powerful and moneyed interests to manipulate courts to the detriment of all, especially the disadvantaged. Millions of impoverished Bangladeshis are effectively denied access to the courts, which are slow and corrupt. Thus, the range and depth of problems within the judiciaries of Bangladesh and the Philippines are not susceptible to repair simply through judicial training. Until political will exists to address the entire range of deficiencies, including corruption, training is considered unlikely to have much impact.

### 3. Promoting More Responsive Justice in the Absence of Political Will

In Bangladesh and the Philippines, where political will for judicial system reform has been historically absent, formal legal institutions remain fairly unresponsive to the needs of marginalized populations. Extreme poverty and economic hardship affect the ability of ordinary citizens to gain access to the courts. For millions of disadvantaged Bangladeshis and Filipinos, the courts are not viable options for resolving personal disputes, as the courts are slow, costly, distant, and generally unsympathetic to their concerns. Women in Bangladesh are further restricted by social norms that render them powerless to press grievances. In response, USAID assisted community based efforts to advance alternative methods for obtaining and enforcing legal rights for the disadvantaged. In both Bangladesh and the Philippines, USAID supported successful programs aimed at promoting more responsive justice through innovative ADR programs and by funding legal service NGOs dedicated to using the law to combat injustices routinely visited on the poor and vulnerable.

#### *a. Bangladesh—Improving Traditional Dispute Resolution*

USAID supported improvements in village based practices for resolving disputes in rural Bangladesh. These indigenous practices, known as *shalish*, exist outside the formal judicial system to provide informal, inexpensive methods to resolve grievances, especially for disputes brought by women experiencing marriage related conflicts. In Bangladesh, USAID helped local NGOs increase awareness of legal rights, chip away at gender inequalities, introduce basic concepts of due process, and strengthen mediation techniques. While *shalish* cannot solve the complex array of problems affecting women and the poor in Bangladesh, USAID nonetheless has improved the quality of dispute resolution in thousands of villages and thereby advanced the only real option for redress available to vast numbers of aggrieved Bangladeshis.

#### *b. The Philippines—Neighborhood Mediation*

USAID pioneered support for a pilot program to develop community dispute mediation services in Philippines neighborhoods, known as *barangay*s. This pilot project to resolve small claims and petty crimes through mediation proved effective as a quick, inexpensive means to achieving "contracted peace"

and thereby provide viable access to justice for underserved sectors of society. Preliminary indications also suggest small claims mediation may help relieve over-crowded court dockets. The positive implications this program has for contributing to the improvement of judicial services has led the Philippines Supreme Court to support nationwide replication. USAID is a key participant in this endeavor endorsed by presidential executive order.

*c. The Philippines—Public Interest Law for the Disadvantaged*

When assistance to formal judicial administration activities proved largely unsuccessful, USAID turned to alternative avenues where assistance could make a difference in the lives of disadvantaged Filipinos. USAID support for a public interest law movement among civil society groups and grassroots organizations, known as alternative law groups (ALGs), contributed to advancing the interests of marginalized groups. ALGs target community-level rule-based systems that most directly impact the daily lives of ordinary Filipinos, particularly the urban poor, subsistence farmers, fishers, indigenous tribes, and women. Using a variety of methods, ALGs influenced the development and enforcement of local and national provisions to protect vital interests of these groups and empower them to use the system rather than be victimized by it. ALG contributions are widely viewed as integral to overall reform efforts.

*d. Bangladesh—Legal Services NGOs*

Two of Bangladesh's most notable legal services NGOs, the Bangladesh Environmental Lawyers Association (BELA) and the Bangladesh Legal Aid and Services Trust (BLAST), began with USAID funding. Their accomplishments on behalf of impoverished and exploited Bangladeshis continue today. BELA and BLAST pursue ground breaking work in public interest litigation and class actions. BELA won a landmark case granting standing to bring such suits. Since then, other legal services organizations are adopting public interest litigation as a powerful tool to challenge exploitative practices in both the public and private sectors. Now existing in 15 locations across Bangladesh, BLAST provides representation to poor and marginalized Bangladeshis, offering vulnerable Bangladeshis a place to turn for redress. BLAST's success also serves to deter government officials and powerful interests who no longer are assured of acting with impunity.

In both Bangladesh and the Philippines, USAID leveraged local strengths and targeted select opportunities to address needs unmet by the government or judiciary. Bangladesh and the Philippines boast vibrant, well-regarded NGO communities. The strength of civil society in these countries argued in favor of working outside the formal justice system and provided fertile ground for innovative programs aimed at promoting social justice. In the process, USAID fostered development of better legal advocacy and stronger legal services NGOs that have grown into important and influential institutions.

### 4. Intangible Impacts from USAID ROL Assistance

Not all USAID contributions to ROL development in Asia and the Near East can be documented in tangible achievements. USAID's active presence in ROL activities offers access to resources and expertise that are conveyed in subtle ways through daily contact with government officials and community leaders. In Nepal, upon recommendation of a USAID retained expert, a committee system patterned after the U.S. Congress was added to the parliamentary structure. In Egypt, long-term resident advisers worked tirelessly with Egyptian counterparts at the MOJ and within the courts to alter resistant attitudes and entrenched behaviors that were counterproductive to implementing and sustaining meaningful reform. The productive relationships forged with MOJ and court officials are cracking open additional doors to U.S. assistance initiatives. In the Philippines and Bangladesh, USAID helped establish

well-regarded legal services NGOs with active voices. For example, a coalition of ALGs, supported by USAID, has been incorporated into the Philippines Supreme Court Action Program for Reform. In Bangladesh, former USAID legal services grantees are now attracting to their ranks law graduates at the top of their class.

Ultimately, by funding programs to advance the rule of law, USAID draws attention to one of the most fundamental concepts undergirding the entire democratic structure. For the most part, judicial systems tend to be notoriously conservative and tradition bound where entrenched interests often balk at reform. Yet, in stepping forward to work in or around these systems, USAID often has paved the way for other donors to follow.

In Egypt, USAID was the first, and remains the only, donor active in the justice sector. USAID took considerable risk by working with institutions wary of change and insulated from outside influence. Some Egyptians believe the MOJ was unlikely to take this risk on its own. With USAID help, the ministry succeeded in forcing badly needed change on a moribund system and currently gives every indication of being willing to proceed using its own resources. Moreover, Egypt is sharing its successful experience with Arab countries throughout the Middle East.

In Mongolia, many donors were active in the judicial arena, but little real, discernible progress was occurring. At the request of Mongolia's president, USAID took the lead in assisting in the formation of a strategic plan for comprehensive reform of the justice system. This widely accepted document provides a blueprint for all donors to follow in directing assistance toward a systematic, coordinated agenda created by Mongolians.

In Nepal, USAID's longstanding presence and well-developed contacts with key leaders of the democracy movement enabled quick response to rapidly developing events. USAID was among a handful of donors actively communicating with the fledging democratic government. USAID responded within days to a call for immediate assistance in drafting a constitution. In little more than six months time, a new constitution was adopted that firmly establishes fundamental tenets of democracy and is well-respected, even revered, by the people of Nepal.

Within the donor community, USAID is credited with inaugurating the concept of democracy advocacy among Bangladeshi NGOs, including support for strengthening the rule of law. Several donors have since joined USAID in this strategy. By contributing initial funding to BLAST and BELA, two of Bangladesh's most innovative and successful legal service NGOs, USAID helped launch public interest litigation as a viable vehicle for challenging official wrongdoing and exposing abuses routinely visited on Bangladesh's most vulnerable citizens. The fact that these groups are attracting top level law graduates signals the legitimacy of their work and increases the supply of lawyers dedicated to pursuing social justice issues.

In the Philippines, USAID provided general institutional support to a core group of legal activist NGOs in the early years of their existence. As such, USAID was at the forefront of facilitating the growth and evolution of the alternative law movement and its contributions to advancing more responsive operation of the rule of law for disadvantaged and marginalized groups. Experienced development professionals cite the combined work of the ALGs as the most sophisticated and successful legal services operations in Asia and praise USAID support for its high impact, low cost promotion of the rule of law. USAID turned to these alternative community-based outlets after lack of political will frustrated mainstream reform efforts. In the face of improving political will, USAID is spearheading innovative initiatives with ADR by supporting small claims mediation in neighborhoods and court sanctioned mediation. Both programs appear well on their way to expansion having garnered strong interest from a reform-minded chief justice.

In Egypt, Bangladesh, Nepal, Mongolia, and the Philippines, USAID has served as a catalyst for advancing the rule of law. USAID assistance efforts—whether mainstream or alternative, supported by political will or not—have consistently pushed at the edge of the envelope. USAID has perceptively located entry points for innovative programs in the Philippines and Bangladesh and responded to official calls for assistance raised by Egypt, Mongolia and Nepal. Sometimes USAID has undertaken risky or experimental activities, while at other times USAID has incrementally built on successes. Sometimes USAID has led alone or joined with other donors. And while not every USAID project is successful, lessons learned from disappointing outcomes are absorbed to steer resources down more receptive paths. In whatever form USAID has contributed to the progress of the rule of law in Egypt, Bangladesh, Mongolia, Nepal and the Philippines, U.S. influence and participation are generally recognized as necessary components to advancing toward the goal of better justice for more people.

# 2 Country Studies: Latin America and the Caribbean

## A. Argentina

Argentina has been one of the largest, most populous, and most prosperous countries in Latin America. Argentina's 1853 Constitution was modeled after that of the United States. The Argentine judiciary followed early U.S. jurisprudence in asserting its own role in reviewing the acts of the executive and legislative branches. However, the subsequent evolution of a tradition of executive domination, including several wholesale dismissals of judges who supposedly enjoyed life tenure, eroded the judiciary's independence, competence, and public image over time.

In recent months, however, the nation has been plunged into a severe economic, social, and political crisis that has resonated throughout the country and the region. While distinct in its form and scope, the instability certainly points to a historical trend in Argentina, which has been plagued during much of the 20th century by a succession of economic crises and authoritarian governments that culminated in a harsh military dictatorship from 1976 until 1983. The legacy of authoritarian rule has been a continuing concentration of political power in the executive and a weak capacity by civil society to influence the directions of governmental policy.

Initial optimism at the return of civilian government in 1983 turned to disillusionment. The Raul Alfonsin government showed ambivalence about the prosecution of military officers and a willingness to use the judiciary as a bargaining chip in constitutional negotiations. Subsequently, the Carlos Menem government exhibited a blatantly political approach to judicial appointments, including the packing of the Supreme Court with additional judges.

A public opinion poll conducted shortly after USAID initiated its ROL program in 1991 showed that public confidence in the judicial system had fallen by 40 points in a decade—from a high of almost 60 percent in 1983 to less than 20 percent in 1992. In this context, the small USAID program (whose expenditures totaled about $2,000,000 over five years) had to choose its priorities and its operational approach carefully, recognizing its limited potential for influencing legal reform in Argentina.

USAID formulated the objective for its program as one of helping to achieve a more independent, effective, and accessible justice system. It pursued this objective through a variety of small activities that were identified through dialogue and that sought to reflect the following Argentine priorities:

- Judicial independence: the establishment of judicial conferences and selection mechanisms
- Effectiveness: strengthened court administration and judicial and legal education
- Access: the creation of ADR, and increased public knowledge and demand

Initially, USAID attempted to work with the Argentine Supreme Court. The Argentine federal courts had adopted a code of criminal procedure based on oral proceedings, and there was an evident need to strengthen the capacity of judges, prosecutors, defense counsel, and administrators to adapt to this new system. However, this need proved to be an inadequate incentive to overcome internal differences within the court. USAID's initial efforts, focused on judicial education, were unsuccessful but may have helped open the doors to cooperation with others.

USAID then turned to other partners. In particular, it worked with civil society to build constituencies for reform, with the Supreme Court of the province of Buenos Aires to strengthen court administration and judicial education, and with the MOJ to expand the use of ADR. These activities were managed primarily through Fundación La Ley, an NGO with particular interest in court administration and judicial education. The program ended in 1995.

### 1. Strengthening Judicial Independence

USAID supported Poder Ciudadano, an NGO that called public attention to official corruption, political favoritism, and other departures from sound public administration. Among other activities, Poder Ciudadano organized a consortium of NGOs to support judicial reform. The consortium played an active and effective role in publicizing information about the qualifications of judicial nominees. It also demanded greater transparency in the process of appointing judges. Public dissatisfaction with politicized judicial appointments led to a constitutional reform of the judicial system in 1994 and the subsequent creation of a judicial council intended to promote a merit system. USAID technical assistance in providing information about the experience of other nations with judicial councils helped to inform the debate. Eventually, legislation was enacted in 1998, after termination of the USAID program, but it has proven unwieldy in practice.

The 20-member judicial council is composed of judges, legislators, academics, and an executive branch representative. It has been difficult for this large body of people, all of whom have other full-time responsibilities, to formulate regulations and then act on creating lists of nominees to recommend to the president. As a result, the process is more transparent, but the number of federal judicial vacancies has increased to more than 100 in recent years.

A more modest but clearly useful contribution to judicial independence has been the initiation of judicial conferences, at which individual judges are able to participate in discussions on issues of professional concern. This participatory mechanism has weakened somewhat the hierarchical tradition that tended to inhibit the independence of individual judges. Judicial conferences were a part of USAID's work to strengthen court administration in the province of Buenos Aires. The practice was then extended to other provinces through the Center of Judicial Studies (CEJURA), an institution developed by Fundación La Ley and modeled after the National Center for State Courts. CEJURA provides technical support to the provincial courts through publications, research, training, and consulting services on judicial administration.

### 2. Improving Institutional Effectiveness

#### *a. Court Administration*

The Supreme Court of the province of Buenos Aires was keenly interested in improving services to the province's 14 million inhabitants. USAID initiated pilot efforts to test decentralization of administrative functions, introduced modern information and case reception and tracking systems, and provided technical assistance to strengthen planning capacity. These innovations were actively encouraged by senior judges, who noted that their budget was limited to ongoing operations and contained no funds for such experiments. Experience gained in the province of Buenos Aires was shared with other provinces through the research and dissemination activities of CEJURA, and the issues of court administration are now being addressed in an integrated program of judicial reform, involving both federal and provincial courts and supported by the Inter-American Development Bank. Documentation for the current project expressly recognizes the prior work by CEJURA.

*b. Judicial and Legal Education*

USAID's efforts were directed towards encouraging and assisting in the creation of judicial education programs. A judicial school was a prominent feature of its work with the province of Buenos Aires. A subsequent, USAID-sponsored conference engaged other provinces, and follow-up support was made available through CEJURA. As a result, two provinces established judicial training schools while the USAID program was still in operation, and an additional 10 provinces established judicial schools after the conclusion of the project.

Through another NGO, Foro de Estudios sobre la Administraci n de Justicia (FORES), USAID supported training and institutional strengthening for public defenders, especially in their new responsibilities in an oral system. FORES also worked with the National Conference of Public Defenders for legislative reform to increase the independence of public defenders. This work influenced subsequent legislation, enacted in 1998, that created the independent Public Ministry with two co-equal branches, one for prosecution and one for defense functions. Both branches, according to the law, are to be headed by Senate-confirmed presidential appointees chosen through a merit-based selection process.

**3. Broadening Public Access to Justice**

*a. Alternative Dispute Resolution*

In 1990, mediation was virtually unknown in Argentina, and USAID has had an extraordinary impact in changing this situation. USAID's initial effort, in 1991, involved the creation of four legal services centers in the city of Buenos Aires. Initial experience demonstrated the potential value of mediation to resolve disputes arising in the concerned communities. The program trained 30 mediators, who resolved many of the cases brought to the centers. This caused the MOJ to approve a pilot program of mediation annexed to commercial courts. Supported by an extensive USAID training program, the mediation centers resolved about three fourths of the cases presented to them. This second success then led to the enactment of a 1995 law on mandatory mediation of commercial disputes in federal courts.

Today, the MOJ web site lists a large number of public and private resources for mediation and other forms of ADR in Argentina, as well as links to an extensive array of international resources. ADR has permeated the Argentine legal system. Moreover, Fundación Libra, the NGO that managed the USAID program in this field, has co-hosted a number of international conferences. It has worked in Uruguay with the Inter-American Development Bank, in Bolivia with the Inter-American Bar Foundation, and with local entities in Chile, Colombia, Costa Rica, and El Salvador.

*b. Public Knowledge and Demand*

All of USAID's programs with CSOs included a component aimed at increasing public knowledge. Specific mention should be made of a consortium, led by Poder Ciudadano, that was specifically directed at increased transparency and integrity in the legal system. Poder Ciudadano continues to maintain a database of information concerning performance of judges. It also monitors the operation of the Judicial Council, disseminates information concerning the administration of justice under its Citizens for Justice program, and exercises leadership in a network of 18 organizations, the Social Forum for Justice. Also noteworthy is the collaboration with Conciencia, an organization devoted to citizen participation in the democratic process. Conciencia worked through municipalities, schools, women political leaders, and other elements of a national network of civic education. Conciencia has become a model for civic education and assists NGO networks in other countries.

USAID's program in Argentina demonstrates both the possibilities and the limitations of a small program of short duration in a large and advanced country where reform has been inhibited by the vestiges of an authoritarian political culture. USAID contributed to the process of transition in ways that went beyond the specific activities described above in this report. A number of individuals who were interviewed for the final evaluation of the program in 1995 credited USAID with having helped to shape the internal debate on judicial reform. This was accomplished through dialogue, responsiveness to Argentine priorities, encouragement of civil society involvement, and providing exposure to the experiences of other countries. In this regard, close coordination between USAID and U.S. Information Service international visitor and exchange programs significantly enhanced the impact of the policy dialogue. For example, visits to Argentina by two justices of the U.S. Supreme Court underlined the importance of judicial independence, performance and accountability in a democratic society. USAID's effectiveness was also enhanced by the continuity of a single long-term advisor throughout the duration of the program.

To a considerable extent, the USAID program, limited in size and duration, raised issues, helped to identify approaches for addressing them, and necessarily left at least a part of the implementation to others. USAID made important contributions by stimulating demand for greater transparency, strengthening court administration and judicial training, expanding the use of mediation, and fostering active participation by civil society. The USAID program helped Argentine jurists and opinion leaders to reach their own conclusions about the value and the feasibility of continuing reform. A number of the studies and activities initiated in the USAID program have informed and provided a foundation for follow-on projects by the World Bank and the Inter-American Development Bank. Thus, while the USAID program came to a close in 1995, the work it helped to initiate continues to strengthen the rule of law in Argentina even amid the turbulence of the current crisis.

## B. Bolivia

Bolivia is a poor, landlocked Andean country with a territory of more than one million square kilometers. The majority of its 8.3 million inhabitants are of indigenous origin, language, and culture. Since Bolivia gained independence from Spain in 1825, it has experienced almost 200 *coups d'etat* and counter-coups. The country's chronic instability has contributed to a weakness in the institutions of constitutional governance. Such weakness is evident in the country's judicial system.

All Bolivian constitutions have proclaimed the independence of the judiciary. During most of the nation's history, however, the courts were treated as political entities. Suspensions of constitutional order and failures to implement constitutional mandates were common. Judicial appointments were based on political considerations, no formal training programs existed, and personnel turnover was frequent. The lack of continuity is best shown by the existence of 17 separate supreme courts between 1950 and 1990.

Following a succession of six governments between 1978 and 1982, constitutional order was restored. After a difficult initial period of transition, successive elected governments have presided over an impressive process of economic and political reform.

The current Supreme Court consists of 12 magistrates organized in four chambers and is elected by Congress to a 10-year term. By tradition, magistrates are chosen in a manner that assures a balance of representation among geographic regions. The court oversees the judicial branch, including the appointment of judges in the nine intermediate appellate courts and superior district courts (one for each of the country's nine departments).

The district courts have had considerable autonomy and, in the past, exercised substantial control over the management of subordinate courts. However, their authority has diminished somewhat with the recent

creation of the National Judicial Council responsible for judicial selection, training, evaluation, and discipline, as well as other administrative matters. For example, all judicial appointments are now made from lists of candidates identified by the National Judicial Council as qualified for the vacant positions. This constrains the discretion of the district courts in the selection of lower court judges.

At the time of Bolivia's political transition, many of the nation's basic legal codes in force were the product of decrees proclaimed during the autocratic government of Hugo Bánzer Suárez in the 1970s. These included the law on court organization, criminal code, criminal procedure code, family code, civil code, and commercial code. The judicial system was generally seen as inefficient, politicized, and inadequate to meet the needs of a modernizing society.

USAID assistance to advance the rule of law in Bolivia began in 1986 with participation by Bolivia in training courses organized by ILANUD, acting in cooperation with the Supreme Court. This initial effort introduced Bolivians to an ongoing regional dialogue on the administration of justice, including such issues as oral court procedures.

There followed an initial bi-lateral program early in 1988. The 1988 agreement with USAID supported a joint diagnostic study of the judicial system in 1991, led by ILANUD. The study helped to build a consensus on the need for reform and on the priorities, direction, content, and organization of a strategy. The project also provided a number of law libraries, publications and technical assistance for improved court administration, legislative drafting, and planning for judicial training.

In May 1991, a presidential decree established the National Council for Reform and Modernization of the Judicial Power. The council was chaired by Bolivia's vice president and included representation from the major concerned institutions and political parties. Its agenda included the study of organic laws for the judiciary and the Public Ministry (prosecution service) as well as the criminal procedure code. USAID provided financial and technical support for the commission's work program.

The 1992 USAID program was undertaken with a planned duration of five years and an estimated cost of $10 million. It has subsequently been extended and the funding increased to exceed $15 million. This major effort has concentrated on three areas:

- Judicial efficiency and accountability, including administrative infrastructure and case processing systems
- Effective criminal prosecution, including professional investigation and preparation of cases
- ADR, modernized procedures, and other delay reduction measures

The project worked at both the national level (e.g., judicial training) and in three pilot zones at a local level (e.g., case tracking, oral procedures, mediation). The thrust of the 1992 program remains the framework for USAID ROL assistance to Bolivia, although the specific content of activities has evolved over time. For example, as new laws have been enacted, emphasis has been given to their implementation. USAID assistance has been complemented by a law enforcement assistance program through ICITAP. Other donors, particularly Germany, have also been active in supporting the rule of law in Bolivia, and donor coordination has generally been good.

## 1. Maintaining Overall Progress

Over the past decade, Bolivia has achieved remarkable progress in putting into place the human resource base and the institutional infrastructure of a modern justice system. Constitutional amendments in 1994 provided for a number of new institutions that are now beginning to function under legislative charters. Other institutions have been established without the need for constitutional authorization. The Constitutional Tribunal, the National Judicial Council, the independent Public Ministry, the Office of Public Defense, and the Office of the Human Rights Ombudsman have all been created in this period. Beyond the establishment and strengthening of institutions, Bolivia has embarked upon a fundamental reform of criminal procedure. It inaugurated in 2001 an oral, accusatory process, based on a U.N. model code designed for LAC countries. The adoption of oral trials has dramatically changed the roles and the requirements of judges, prosecutors, defense counsel, and police.

USAID has made a material contribution to all of these significant changes. From the 1991 diagnostic study of the justice system through the work program in 2000 of an inter-institutional mechanism created for implementing the new criminal procedure code, USAID has supported Bolivian reforms with policy dialogue, technical assistance, and training. The USAID program has demonstrated admirable flexibility in responding to needs and opportunities. As a particular example, it worked with a local software firm that developed a court tracking system for one of the pilot zones. Over time, this locally designed pilot system demonstrated its ability and is now being replicated in judicial districts throughout the country.
A strengthened institutional framework, increased human capacity, and modernized procedures are important, but they are not enough. The early experience of these new institutions has revealed implementation problems that need to be overcome. The Public Ministry has had difficulties with budget management and has had to resist efforts to fill vacancies with unqualified political appointees. The National Judicial Council has generated controversy by attempting to remove a judge for misconduct, only to be blocked by a decision of the Constitutional Tribunal. As with major structural reforms in any country, leadership and persistence will be needed to influence attitudes and to adapt practices to the new structures and procedures.

Another fundamental need for the continuation of Bolivia's impressive reforms is to broaden the base of participation. To date, the reform has been primarily one of elite opinion leaders. There have been efforts to build in public awareness, but there is little evidence of active engagement and demand from civil society.

## 2. Improving the Legal Framework and Judicial Organization

A broad array of constitutional and statutory enactments during the 1990s substantially transformed the underpinnings of the justice system. It is significant that this process continued through the administrations of two presidents of different political parties. In 1993, just two years after the completion of the ILANUD diagnostic study and the formation of the National Council for Reform and Modernization of the Judicial Power, the Congress enacted a new organic law for the judiciary, superseding a 1972 decree issued by General Bánzer. This was followed in 1994 by a constitutional amendment that provided the necessary legal basis for legislation establishing the Public Ministry (1994), the Human Rights Ombudsman (1997), the Constitutional Tribunal (1998), and the National Judicial Council (1998).

Recent Bolivian legislation affecting the justice system has extended beyond organizational matters. Substantive laws dealing with narcotics, money laundering, and criminal organizations have been enacted. A highly ambitious code of criminal procedure was enacted in 1999 and entered into effect in 2001. This new code introduces an oral, accusatory system that is already showing promise as a way to increase efficiency, transparency, and fairness.

That this extraordinary production of laws took place during the period of the USAID program is hardly coincidental. USAID technical assistance supported research, drafting, observation visits to other countries, consultation with regional experts in various fields, public education efforts, and other aspects of the Bolivian reform program. Particularly important was the financing of experts requested by Congress to help convert a generic procedural code into one specifically designed for Bolivia. In addition, justice system operators and legislators were able to pursue their legislative agenda with confidence that they could count on financial support, training, and other assistance from USAID to help achieve the sound implementation of this multitude of new laws. The legislative agenda remains as yet incomplete, given that a number of features in existing laws, such as ambiguities, excessive formalities, and multiple opportunities for appeal, remain under review.

### 3. Enhancing Judicial Independence, Competence, and Integrity

The creation of a judicial council that reviews the qualifications of judicial candidates and evaluates the performance of sitting judges has been a development of historic significance. It indicates a policy judgment that judges should be selected, retained, and advanced on the basis of their performance, rather than their political affiliations.

This concept also underlies the creation of a training institute that has begun to provide both initial training for judicial candidates and in-service courses for sitting judges. All Bolivian criminal court judges have received some training in the new criminal procedure code. This is unprecedented. Of course, professionalism, independence, accountability, and integrity will not immediately suffuse and transform the judiciary. The National Judicial Council needs to develop standards and procedures that will gain respect and acceptance. Practices will change only gradually, and perceptions of the judiciary will change even more slowly. However, a qualitative change has begun. Moreover, it has been accompanied by an increase in the number of judges, from about 400 in 1991 to more than 650 today. This expansion, together with the traditional high turnover in the judiciary, is providing an opportunity to bring more highly qualified and better trained individuals into the ranks of sitting judges.

#### *a. Organization and Operation of the Courts*

The USAID-supported pilot project in Santa Cruz has introduced a modern system of case management. It includes components for the reception and numbering of cases, assigning them to judges, and monitoring their progress until final deposition. The Public Ministry and the national police are using parallel versions of this system as management tools. As the use of the system is extended to additional judicial districts, it is expected to capture statistical data of importance for budgeting, planning and reporting on a national basis. The national police version, with assistance from ICITAP, is evolving into a national information system for criminal investigation.

#### *b. Legal Representation*

In 1991 there were only approximately 90 prosecutors in the entire country, and their role was not defined by organic legislation. They were untrained and underpaid political appointees, subordinate to the Ministry of Interior. Today, while internal management problems persist, the Public Ministry is an independent institution authorized by law, with about 300 *fiscales* (public prosecutors) appointed through a merit selection system and a training program in place.

Similarly, in 1991 there were only 11 public defenders in the country to represent indigent defendants in criminal cases. Some criminal defense assistance was provided by bar associations and university clinics.

For the most part, however, the constitutional right to counsel was not observed in practice. There are now about 200 public defenders in the MOJ's Office of Public Defense, which was created in 1995 with support from USAID. It is providing representation to the majority of defendants in the criminal justice system. USAID has provided extensive training, technical assistance, and commodity and financial support throughout the existence of this office. There have been issues about political interference in the selection of defenders. Nevertheless, a recent study shows that public defenders are the most successful applicants for vacant judicial and prosecutorial appointments. This might suggest that the office has attracted a professional staff of high quality.

More generally, the familiarity of Bolivian lawyers with the new oral system has been enhanced by extensive training. A core group of some 130 attorneys was selected for intensive training in oral procedures in Puerto Rico. They then became the nucleus of a USAID-sponsored training campaign in Bolivia that reached 9,000 lawyers.

*c. Institutional Linkages*

The 1991 National Council for Reform and Modernization of the Judicial Power is now no longer active. In its place, the more focused National Commission for Implementation of the Criminal Law Reform, along with a related executive committee and technical unit, are overseeing an extensive plan for institutions concerned with the entry into force and implementation of the new code of criminal procedure. This structure involves both public sector and civil society representatives.

Bolivia benefits from participation in the Andean Commission of Jurists, a regional entity founded in 1982 with headquarters in Lima, Peru. The commission is a valuable source of scholarly research, comparative studies, analysis, and statistics on many ROL themes. USAID is among the supporters of this regional institution.

**4. Increasing Public Awareness, Access, and Advocacy**

Public access to justice has improved through the establishment of the Office of Public Defense, described above. In addition, a U.S.-supported pilot project in court-annexed mediation is demonstrating the benefits of ADR. Mediation centers in Cochabamba have quickly resolved numerous civil disputes, such as small claims, while relieving court dockets of a considerable burden. This pilot effort is providing low-cost and timely access to justice. It is currently being considered for replication elsewhere. In addition, the new criminal procedure code expressly contemplates mediation as an alternative to criminal proceedings in circumstances involving minor offenses.

An important aspect of the work of the National Commission on Implementation of the Criminal Law Reform has been efforts made in public education and citizen involvement. One tool has been a USAID-supported web site that provides information about the new code and related matters. Another has been collaboration with civil society groups. USAID has helped several CSOs, including an NGO umbrella group, improve their institutional capacity to participate in this essential activity. With the new procedural code now in place, the commission is encouraging and USAID is supporting a broad network for citizen monitoring and education. The MOJ has also undertaken a wide ranging dialogue with civil society on themes of justice reform with support from USAID and the German development assistance program.

Bolivia has taken major steps over the past eight years to begin the transformation of its justice system. Experience since the 1994 constitutional amendments has shown how difficult it is to break with a legacy of regional competition and accommodation, political interference and neglect, and institutional weakness

and corruption within the justice system. The challenges are formidable and the achievements, therefore, are all the more impressive.

The outline of a structure for reform is now visible. Organic legislation is on the books for the judiciary, the National Judicial Council, the Constitutional Tribunal, the Office of the Human Rights Ombudsman and the Public Ministry. A public defender office and a judicial training institute have been established. A new criminal procedure code is in effect. Several features of the outline, however, still remain unclear. These include the question of how to convert several pilot projects for strengthening management systems and providing access to ADR into national programs. Another is how to assure that the national budget will accommodate new institutions that have depended upon external assistance in their formative years, such as the judicial training institute and the public defender office. The principal challenges now are ones of implementation.

The impediments are substantial. They include the understandable resistance of vested interests, the inherent difficulty of building new organizations like the National Judicial Council and inserting them into traditional relationships among justice system operators, and the complications of achieving citizen participation from a culturally diverse population. Nevertheless, impressive progress has been made in diminishing political influence, increasing professionalism, improving access, and engaging civil society in the reform dialogue.

USAID has played a key role in Bolivia's progress since it introduced the rule of law as a theme for international cooperation in 1986. USAID's support for the rule of law in Bolivia has followed the pattern of other major country programs in the region. It began with dialogue, access to knowledge and participatory analysis. It has concentrated on human and institutional capacity, both within the judicial system and in civil society. It can be said that international support, especially from USAID, has been instrumental in stimulating, supporting, and sustaining the reform process.

## C. Chile

Chile is Latin America's oldest democracy. This long, thin country stretches north to south along the Pacific coast of South America from the Atacama desert down to the Antarctic. It has a population of 15.2 million and is one of the most economically prosperous countries in Latin America. Chile won formal independence from Spain in 1818. From independence until 1973, the country functioned as a relatively stable constitutional democracy.

Chile's long history of civilian rule and democratically elected governments came to an abrupt end on September 11, 1973. On that date, the three-year old Marxist government of Salvador Allende was overthrown in a bloody *coup d'etat* led by General Augusto Pinochet. From 1973 to 1989, Pinochet headed a *junta* that dissolved Congress, outlawed leftist parties and suspended all others, prohibited nearly all political activities, and ruled by decree. Pinochet declared himself president as of 1974. His 17-year period of authoritarian rule was notorious for brutal repression, surveillance, torture, execution, and disappearances of suspected opposition members. In October 1988, Pinochet lost a plebiscite vote seeking to extend his presidency and stepped down under enormous national and international pressure in 1989. Since then, Chile has held free and fair elections and has tried to restore its lost democracy, whose institutions and practices were abolished or perverted during Pinochet's rule.

Pinochet allowed the judicial branch to continue to operate throughout the dictatorship. Although he manipulated the structure and composition of the courts, and rewrote legislation and the constitution to serve his purposes, the judiciary was the only branch of government that continued to function without

intervention or dissolution by Pinochet. Indeed, the *junta* declared that it would guarantee the full effectiveness of the power of the judiciary. This declaration could have permitted the judicial branch to assume a more active role in the defense of human rights and basic legal precepts, but instead it quietly acquiesced. This attitude was unexpected in a country accustomed to seeing the judiciary as a tenacious defender of the rule of law, and served to intensify the systematic violations of human rights by failing to protect the victims and affording impunity to criminal offenders. Public confidence in the efficacy and integrity of the justice system was significantly eroded during the Pinochet regime. One European diplomat famously described the Chilean judiciary of this era as "despicable and totally spineless", and the complete failure of the judicial branch to defend the rule of law has been a topic of concern and analysis since the country's return to democracy.

Late in 1988—after the plebiscite but before Pinochet had stepped down—USAID became interested in working to strengthen the rule of law in Chile in anticipation of the transition. The Chilean justice system had already plainly demonstrated its incapacity to protect its citizens from human rights abuses, and its ability to perform adequately in the context of free trade and the realities of the marketplace was questionable. Obviously, USAID could not work with the Pinochet government, but it received a special mandate from the U.S. Congress to assist a Chilean NGO developing a national consensus on the importance of an independent judiciary and the administration of justice in a democratic society. That organization, the Corporación de Promoción Universitaria (CPU), had a solid reputation and a 20-year history of public policy research on the promotion of economic, social, and governmental reform. The relationship started with a small project, but CPU quickly became USAID's main counterpart in Chile in the justice area, and its management of legal project activities continued until the USAID Mission closed in September 1996.

Initially, USAID's intent was to examine the role of the judiciary and lay the groundwork for a successful transition; it was thought that the judicial branch would or could play an important role in the return to democracy. Project components included studies, training, and court administration. Eventually, however, the project transformed itself into something much bigger and of much greater significance: it became the driving force behind the most important Chilean legal innovation in 100 years—the reform of the criminal procedures code, which overhauled the structure and institutions of the criminal justice system. It has been referred to as "*la reforma del siglo*," or the reform of the century. In addition, the training element of the project evolved into the creation of the Judicial Academy, which has contributed immeasurably to improving the quality and independence of the Chilean judiciary. After USAID's departure in 1996, CPU forged ahead with Chilean justice reform and has recently assumed a leadership role in an important new regional reform effort.

### 1. Strengthening the Legal Framework

Chile is known for its modernization in many areas, but the justice system is a glaring exception. The Chilean judiciary operates under a particularly rigid and antiquated system of civil law, based on codes that have not been amended significantly since the turn of the century. This is most true in the area of Chilean criminal procedures, which had achieved the reputation as being among the most conservative and oppressive in the hemisphere. The system is characterized by a plenipotentiary judge who investigates, accuses, determines guilt, and sentences the convicted. There is no prosecutor in the Chilean system (the Office of Prosecutor was abolished in 1927), and the entire criminal case can be completed on paper without the input or even appearance of a defense attorney. The defendant has no due process rights, no right against self-incrimination, no right to a public hearing, and no right to confront witnesses. The most a defense attorney can do is to file written motions and wait. The system has, however, insulated itself in a sort of self-perpetuating continuum: the judges have operated in a comfortable vacuum

outside the realm of public scrutiny, and have been content with their practices and therefore have had no motivation to change. As such, the judicial branch was very resistant and hostile to change in the early stages of this project, although it gradually became more receptive.

USAID was instrumental in helping to modernize the outmoded Chilean system. After sponsoring studies and analyses of the extant system, USAID's first major contribution was to create a forum for judicial development by bringing together the most important Chilean legal actors to convene a permanent round-table to discuss and debate criminal justice issues. This was the first time that sensitive justice issues had been discussed by all sides, and it was extremely problematic and controversial. One participant described the high levels of tension at these initial meetings as political opponents sat opposite one another, gritting their teeth, enduring the exercise "for the good of the country." This was also innovative insofar as justice reform was the goal of an effort initiated from outside the judicial branch, and the round-table grew to become a transparent, diverse, and dynamic working group with broad-based input. Gradually, the players were able to overcome their reluctance to work together as it became clear that they shared a genuine desire to improve their justice system. They eventually collaborated in the drafting of a revised criminal procedures code, which ultimately became the basis of the government's proposal for reform, passed by Congress in 2000.

USAID had demonstrated that even political opponents could set aside their differences and unite to promote a common democratic social goal without it becoming a political vehicle or lightning rod. The importance of this achievement, in and of itself, is amplified by the historical context, i.e., the extraordinary tension that prevailed during the political watershed of the transition. The participants in these working round-tables—many of whom have since gone on to become Supreme Court justices or high-level government officials—uniformly praised USAID for its skill and perseverance in making this process work.

The USAID project also helped generate a base of citizen support for the passage of the criminal procedures code. CPU was able to form an NGO coalition to develop public support for the reform. This popular support was a factor in convincing Congress that the reform was not politically-motivated, but rather was in the overall best interests of the country. Similarly, USAID was slowly forging alliances within the judicial branch through a host of activities, such as judicial exchange programs and international conferences. These activities were designed to expose the Chilean judges to a variety of modern international judicial practices, overcome their hostility to change, and gain their support for reform.

Although the criminal procedures code was not passed until after the USAID Mission closed, it is uniformly recognized that USAID did yeoman's work to develop and propel its passage. Absent USAID's efforts, reform would not have happened how and when it did. After USAID's departure, the U.S. Embassy and others continued to push the reform and, since its passage, have assumed responsibility for much of the training necessary to ensure its successful implementation.

The new system is a radical departure for judges, lawyers, police, defendants, witnesses, and victims. The revised code creates a prosecutorial function separate and independent of the judiciary through an independent prosecutor's office headed by a national prosecutor. It creates a new category of magistrate judges whose role is to ensure that procedures are carried out properly, to supervise investigations, and to enforce the defendant's right to a fair trial. Three-judge panels hear criminal cases, determine guilt or innocence, and pass sentence. Public, oral, and adversarial motion hearings and trials replace the closed, written, inquisitorial procedures. Evidence considered by the judge is presented in open court and subject to challenge. Defendants have meaningful access to counsel through a strengthened public defender's unit and are granted individual rights that include due process, presumption of innocence, right against

self-incrimination, faster case dispositions, and freedom from torture and illegal detention. The creation and strengthening of the Offices of the Prosecutor and the Public Defender are directly linked to USAID efforts and are designed to maintain the necessary balance to assure the system operates fairly.

The new criminal procedures code was passed in 2000, but its implementation is being staggered throughout the country. It went into effect in only two regions (Temuco and La Serena) in December 2000, and three more were added in 2001. Reports from those regions indicate that the system is working relatively well, despite problems that are to be expected and must still be ironed out. People who have been affected directly by the new procedures have generally been favorably impressed. A major improvement reported by La Serena's public defender is the increased participation of defendants in the preparation of their own defense; defendants "seem to care more and want more involvement in their cases" because the new procedures are meaningful and afford genuine opportunities and hope for due process and a fair trial. The La Serena prosecutor commented enthusiastically that the new procedures have elevated the standards of individual rights, guarantees, accessibility, transparency, and debate. Contact among the judges, parties, lawyers, and public has increased dramatically. People seem to be developing expectations that the legal system should serve to protect and enforce their rights, and they are increasing their interest and demands accordingly. At the few trials held to date, public attendance has often filled the courtrooms to capacity.

A comparison between the open courtrooms where the new code is in force and the old inquisitorial criminal tribunals in the center of Santiago reveals two starkly-contrasting worlds as different as night and day. The Santiago judge was cloistered behind a series of locked doors and sat at an elevated desk piled high with documents making decisions in isolation, based solely on written submissions, and invisible to the public. A La Serena judge under the new code was observed in open court conducting a hearing where he addressed the parties directly, accepted oral arguments and evidence from their counsel, and issued a public decision. Although the process did not run entirely smoothly and was not without its flaws, the hearing was completed, a decision was entered, and it basically worked.

The revised criminal procedures code is still in its infancy. The initial implementation stage has highlighted a number of shortcomings that need to be remedied before it can function optimally; there is a long road to go before ultimate impacts and definitive success can be established. Notwithstanding, it most assuredly is a big step forward for Chilean criminal justice and holds great promise to achieve the goals of more quickly, openly, and correctly solving and prosecuting crimes, while better protecting the rights of the defendant.

### 2. Supporting Judicial Independence and Improving the Quality of Judicial Training

USAID's project with CPU beginning in 1989 included a judicial training component. At that time, judicial selections were made by the executive and reputedly based largely on favoritism. CPU collaborated with the National Association of Magistrates and undertook to provide a series of judicial seminars, workshops, short courses, and other training projects that were highly successful and evolved into the creation of the national Judicial Academy in 1996. CPU conducted all judicial training and designed the law creating the academy. All judges are now required to complete a rigorous training program and pass a competitive selection process before taking the bench. This change has substantially improved the caliber of the judiciary and has increased transparency and accountability in the selection process, which is now out of the hands of the executive and less vulnerable to corruption. All persons interviewed reported that judicial selection and academy training have been major improvements and tremendous successes.

The legal reform initiative leading to the creation of the Judicial Academy aspired to develop broadminded judges with modern attitudes towards the law and the judicial role. First, they were expected to be open to

perceiving and understanding the problems of the judiciary without considering them as a personal attack or criticism. Second, judges should perceive the judiciary as a reflection of society and a source of dispute resolution for all social classes. Finally, they should have a higher level and quality of professionalism for having undergone a stringent training and selection process. The end result has been to attract a much better quality of applicants (in part because a judgeship is now more prestigious since it is merit-based) and to produce a young generation of progressive and committed judges receptive to new ideas. As one of the judges observed, "everybody in the system benefits."

The increasing transparency of the judicial process and selection has also served to elevate the public image of judges, who before were ensconced behind closed doors. Judicial independence has likewise increased because judges enjoy greater professional stature and self-confidence and, therefore, are more resistant to pressure. Much of the pressure on Chilean judges has in the past been generated from within the judicial branch itself. The Chilean judiciary is a very entrenched corporate bureaucratic hierarchy structured from the top down, making it hard to resist pressure from above. Now, judges are more capable of asserting themselves and more likely to do so if challenged. This positive result has reportedly emerged as a product of a fundamental change effected in the legal culture, not simply by the mere imposition of legal training requirements.

### 3. Encouraging Local Reform Efforts

USAID's Chilean justice assistance project had a significant broader benefit not contemplated at the time of the project design, nor evidenced in the project documents. Over the life of the project, USAID supported and built a cadre of progressive Chilean legal thinkers who sought to reform the system, and provided them with a theoretical and operational framework to accomplish that reform. USAID selected a group of dedicated young intellectuals from an established and reputable institution (CPU), and gave them technical assistance that helped shape their ideas and enabled them to fulfill their objectives. The former project director reported that the mere fact of having won USAID support gave an initial boost to their legitimacy and prestige in the legal community, and the technical assistance provided thereafter helped them to hone their skills and develop their professional reputations individually. USAID support garnered them an audience where they would otherwise not have been given the opportunity. This was the first USAID justice reform effort run entirely through a local NGO, and strong local political will and connections contributed greatly to its success.

Significantly, the reform efforts did not stop with the mission's departure, and USAID's investment continues to pay dividends. The same people who led these projects have continued to promote reform even after the closure of the USAID Mission, and they have become nationally and internationally recognized experts working on an even broader scale. The CPU principals are now directing the Justice Studies Center of the Americas, a regional repository network of legal information and training of the Organization of American States. The Justice Studies Center was formed in 1999 to support justice reform in the Americas. The director and site were selected through regional competitions. By that time, the former CPU principals were poised and prepared to undertake a project of this magnitude largely because of their experience developed through work with USAID. Thus, the USAID Chilean reform project provided both the venue and a competent organization to undertake larger regional reform projects and responsibilities thereafter.

USAID was a niche leader in Chile; no one else was working on justice reform in the political context of a dictatorship to prepare for the transition to democracy and an expanded role for the judicial branch. Moreover, no one was working with CSOs in hopes of reforming a resistant judicial branch from the outside. These methods were unproven and unpredictable, but led to significant successes and long-term

positive impacts. The project created a nexus between the Chilean justice system and legal actors and international legal culture, which broadened perspectives and enlarged possibilities for reform of the anachronistic inquisitorial Chilean system.

The result of USAID's work was not only to modernize the criminal justice system, but to re-establish the rule of law as a necessary and integral element of a stable democratic society. The judicial branch had lost credibility and relevance throughout the course of the Pinochet dictatorship, and it needed to be re-invigorated, validated, and brought into the current century to resume its place as a co-equal branch of government. USAID's assistance to Chilean legal reform efforts at a critical juncture helped to accomplish these goals.

## D. Colombia

Colombia has managed to avoid the extreme political swings between military dictatorships and unstable civilian rule suffered by most of its neighboring Andean countries during the last century. It declared independence from Spain in 1819 and established itself as a republic in 1886, after a long period of federal government as the Republic of *Gran Colombia* together with what are now the countries of Ecuador, Panama, and Venezuela. Other than a relatively brief period of military rule in the 1950s, Colombia has been governed by one of two parties—either Liberal or Conservative—since the mid-19$^{th}$ century. Until the mid-1990s, the country enjoyed a level of economic growth and success unusual to the region.

For the second half of the 20$^{th}$ century, Colombia has been marked by corrupt politics, left-wing guerrilla insurgencies, right-wing paramilitary violence, emergence of vicious drug cartels, gross human rights violations committed by all sides, and faltering economy. The assassination of a populist Liberal Party politician in 1948 sparked a decade of bloody civil war known as *la violencia*, in which 100,000 to 200,000 died. A four-year military government in the late 1950s was followed by a lengthy period of formal power-sharing agreements between Liberals and Conservatives that abrogated principles of representative democracy and stunted democratic political evolution. In protest, communist holdovers from the period of *la violencia* took up arms and launched guerrilla movements in the 1960s. Armed insurgency continues to the present, and fueled since the 1980s by a burgeoning narcotics industry and the emergence of paramilitary vigilante groups, has led to a degree of violence that has crippled social, political, and economic institutions.

Colombia has been the world's main supplier of cocaine for the past two decades and produces the majority of heroin consumed in the United States; its burgeoning poppy cultivation now rivals the production of Afghanistan. The civil war and the country's central role in the illicit drug market have created a wide breakdown in social order compounded by new forms of violence. The armed conflict has caused more than 35,000 deaths over the past decade as well as the forced internal displacement of an estimated 1.5 million Colombian citizens, most of whom have fled to the cities to escape massacres and rural violence. An additional one million Colombians have moved abroad since 1996 for security reasons. Even more alarming, however, are annual overall murder statistics: since 1990, between 23,000 and 30,000 Colombians have been killed each year in acts of crime or random violence unrelated to the war, giving the country the world's highest per capita murder rate. Colombia also leads the world in kidnappings. Extremist groups frequently kidnap and hold people for ransom to fund their operations. In 2000, the police documented over 3,700 kidnappings throughout the country (approximately 10 per day). As this report was being drafted in November 2001, roughly 1,500 people were being held for ransom in Colombia. The situation within the country is critical, and poses a substantial threat to regional stability; neighboring countries of Ecuador, Panama, and Venezuela have already complained of significant spill-over effects of assassinations, armed incursions, and floods of refugees.

The law has been unable to assert meaningful control or authority, and public security forces are weak or non-existent in a large part of the country. Colombia is a constitutional democracy governed by a civil law system based primarily on written submissions and legal codes. In practice, the juxtaposition of general lawlessness and legalistic formalism has often led to the imposition of "frontier justice", or self-help mechanisms including private vigilantism. The lack of judicial authority and effective public security has encouraged violence as a means of obtaining justice, and has discouraged individuals from seeking legal redress through the courts. The current defense minister characterizes Colombia's criminal system as "full of checks against tyranny, but … lax on crime." The justice system as a whole is slow, inefficient, and compromised by corruption, extortion, and escalating violence. Judges, prosecutors, investigators, and defense attorneys have long been the subject of threats and intimidation, particularly when dealing with cases involving narcotics or extremist organizations.[1] Weak justice institutions and a climate of impunity have gravely impaired the rule of law in Colombia.

Efforts to achieve enduring judicial reform are daunting under these circumstances. USAID made the first strategic foray into this area in 1986.[2] The Colombia justice program—one of USAID's first—produced noteworthy and even unexpected success in its early years, particularly in its evolution of a coordinated and comprehensive approach to judicial reform. Progress since the early 1990s, however, has been uneven and hobbled by a number of factors and untoward events in this volatile environment. The enthusiasm and push to modernize criminal justice processes diminished considerably, and efforts to establish oral adversarial trials were met with substantial opposition until recently. Program implementation and continuity were also seriously impaired by pendulum swings in support and funding: U.S. decertifications of Colombia due to lack of full cooperation on counternarcotics matters from 1996 to 1998 were accompanied by revocations of U.S. visas for a number of prominent Colombians and high officials, including President Ernesto Samper, for allegedly accepting drug cartel money. A national interest waiver of Colombia's decertification in 1998 improved the institutional climate for justice work, but was followed by the planned closure of the USAID Mission in late 1999 and reduced programming. The closure was deferred, and USAID programming was then ratcheted up enormously as a consequence of the passage of Plan Colombia (now a part of the Andean Regional Initiative) at the end of 2000.

Notwithstanding the above turbulence, USAID has managed to implement and maintain a program beginning in 1994 to increase access to justice at the local level. This program has been highly successful and is now being emulated by other LAC countries. More recent efforts to strengthen the Office of the Public Defender's representation of indigents and protection of human rights have also achieved significant success and hold future promise.

### 1. Building Civil Society to Contribute to Justice Reform

USAID began its justice sector assistance to Colombia in 1986 with a series of small grants managed by a private foundation, the Foundation for Higher Education (FES). At the time, the justice system was fragmented between the judicial branch and the MOJ in the executive branch; providing direct assistance, therefore, threatened to contribute to bureaucratic infighting and delays. Instead, USAID supported a series of small projects to compile research, diagnose judicial needs, modernize court systems, and conduct training. Toward that end, FES convened a roundtable of key figures in the judiciary, the executive branch, and the private sector to discuss and analyze issues of judicial reform. The roundtable discussion group was originally intended to bring together the main justice sector actors to approve subproject grants. In time, however, the roundtable (the Advisory Committee) developed into a functioning national commission of prominent representatives of key justice institutions working together to define priority reform activities. Even the MOJ, which had been notoriously obstructionist and resistant to any

reform that challenged its longstanding control, gradually changed its position and became more cooperative and receptive to the working consensus of the committee.

The Advisory Committee created a neutral arena in which key justice actors, most of whom had operated in isolation of one another, could meet to debate and develop ideas that went far beyond the parameters of mere subproject approval. FES provided an opportunity and incentive for justice system policymakers to come together, familiarize themselves with one another's problems, and work out differences between their agencies. Gradually, the Advisory Committee members overcame existing bureaucratic hostilities and aversion to collaboration and were able to relate to one another personally and on an institutional basis. This formation of a non-partisan committee, the existence of which did not depend on any governmental branch, provided stability and continuity despite changes in administration. The USAID project established a cohesive committee to address justice sector issues, and cultivated ongoing dialogue and analyses that led to the formulation of policy and important justice reform studies.

The ultimate impact of this Advisory Committee, however, far exceeded that contemplated by the original project design. The committee's work greatly influenced a restructuring of the Colombian justice system that culminated in 1991 in the first major constitutional revision in over a century. The 1991 Constitution helped establish an independent judiciary, provided measures to improve case proceedings and relieve court congestion, and promoted modern and independent methods of investigating and prosecuting criminal acts. In addition to this work on the constitutional reform, several Committee members went on to become key players in the 1990-1994 C sar Gaviria administration.

During his presidential campaign, Gaviria became aware of the existence of the Advisory Committee through discussions with the U.S. ambassador. Gaviria arranged meetings with the Advisory Committee to discuss its perceptions and conclusions regarding the needs of the Colombian justice system. He thereafter incorporated those ideas and recommendations into his campaign platform for justice reform. Upon his election, Gaviria called upon various Advisory Committee members and former FES employees to assist in drafting a new constitution and otherwise to serve in his administration. One of the Advisory Committee members was appointed minister of justice. Thus, USAID's support to the Advisory Committee had in essence contributed to the platform for Colombian judicial reform, created a transition team for the Gaviria presidency, and provided Gaviria with a pool of qualified candidates who had already analyzed pressing justice sector needs to fill positions in his new administration. Although fundamental structural reforms and revisions were obviously undertaken and carried through by Gaviria and his administration, USAID provided critical input for the 1991 Constitution and key aspects of subsequent legal reforms, and built the bridge for a transition into a larger scale reform program.

The initial phase of USAID's justice reform project had a profound national impact. First, it brought important members of the justice community together on a continuing basis to discuss common issues of concern, and established a competent group of key actors to promote progress. Encouraging the development of uniquely Colombian analyses and solutions was critical to the success of this effort. Through the Advisory Committee, USAID had invited Colombians to prove for themselves that through collaboration they could make real progress even in extraordinarily difficult political and social circumstances, and ultimately improve their justice system. Second, the project loosened the stranglehold of the MOJ on the judiciary through Advisory Committee negotiations that convinced the executive branch to relinquish administrative control over the judicial branch. By facilitating these meetings and the process of negotiation, USAID contributed to the separation of the executive and judicial branches, and promotion of judicial independence.

## 2. Increasing Access to Justice through *Casas de Justicia*

The most outstanding success of USAID's Colombia justice programs in recent years has been the creation of a system of local c*asas de justicia*. These centers are one-stop legal shops operating in marginalized, conflictive neighborhoods to provide rapid peaceful solutions to everyday disputes. The *casas de justicia* have helped to restore public confidence in state institutions and the rule of law that have for many years been absent from the communities served. The program's success has attracted regional attention and efforts to adapt the program elsewhere in the LAC region.

The idea for the c*asa de justicia* program grew out of a FES justice-sector working roundtable that met periodically during the second phase of the FES project in the 1990s. USAID was seeking to stimulate institutional cooperation by promoting a project wherein justice institutions would have to work together. Instead, individual institutions persisted in proposing solo projects. USAID then asked FES to develop a collaborative project, and, in 1994, FES responded with a pilot design for this program.

The first two *casas de justicia* were established in 1995 pursuant to an agreement between USAID and the Colombian MOJ. The program has grown in 2001 to include 18 *casas de justicia* and will expand to 40 throughout the country in 2005. Their purpose is to facilitate access to justice for poor people and to promote efficient, comprehensive, and peaceful resolution of everyday legal issues. The *casa de justicia* combines a variety of services in a single location in low-income marginalized neighborhoods, giving residents one-stop access to legal help, social services, counseling, and referrals. *Casas de justicia* are designed to solve common everyday problems, such as child support/custody issues, domestic violence, property disputes, misdemeanors, personal injuries, and administrative matters. Although they vary in design, *casas de justicia* normally incorporate offices of local prosecutors, public defenders, police investigation units, forensic medicine, document registration units, family defenders, legal aid, social workers, psychologists, and mediation services. As of mid-2001, Colombian *casas de justicia* had provided assistance to citizens in over one million matters.

*Casas de justicia* serve overwhelming local needs. The rise of narcotrafficking in the context of the war has generated substantial international pressure on the Colombian government to focus on combating serious high-profile crime. Most of the crime affecting the daily lives of Colombian citizens, however, arises from ordinary conflicts that can rapidly escalate into extraordinary violence in Colombia's climate of lawlessness. Such violence is fueled by the absence of security forces. Even minor disputes can create tragic results, e.g., two men died in the city of Barranquilla in July 2001 in a fight ignited by the theft of a saucepan. The majority of the country's murders are unrelated to the war or the illicit drug trade. The paramount failure of the law and public security in Colombia is much more mundane; the formal justice system has had little presence, authority, or relevance to everyday life. The *casas de justicia*—strategically placed in areas of significant conflict—were developed to channel peaceable resolution of everyday issues, and thereby stem the growing undercurrent of violence and lawlessness.

With respect to criminal matters, the c*asas de justicia* extend the range and presence of the formal national justice system to the local level. They incorporate prosecution, defense, and investigation offices, and help to filter cases that should more appropriately be resolved outside the criminal justice system. With respect to civil matters, the *casas de justicia* likewise act as an adjunct to the formal justice system, but they also promote informal dispute resolution through programs aimed at conflict prevention, community outreach and education, and mediation. Court is only one of several options. Such alternatives not only benefit the individuals and communities directly involved, but further help reduce caseloads of lower courts that tend to be clogged with small claims.

In addition to promoting access to legal services, the *casas de justicia* program facilitates and indeed compels cooperation between the state and civil society to benefit marginalized populations. The program constitutes the first serious state effort to address the legal needs of these populations, and it has thus reinserted and legitimized the role of the state and the law at the community level. Previously, "justice" to these communities meant "more police." Now, that perception is changing. The *casas de justicia* program has also fostered communication and cooperation between national and local governments. Although operated by the MOJ, the program's success has motivated local authorities to contribute to the *casas de justicia* and participate in their development. Mayors in communities where *casas de justicia* exist have now executed agreements to provide future operational support. National and local networks connect all agencies and authorities participating in the program. As a consequence, the *casas de justicia* and their clients have a greater storehouse of information and resources to draw upon in resolving individual and community issues, and the rule of law plays a bigger part in promoting social stability.

The growth of this program has been steady but measured to accommodate reality, recognize needs, and make appropriate changes. The ability to adapt to the community has clearly been an important factor in the program's success. Although there are relatively few *casas de justicia* currently in existence, they handle an impressive caseload effectively and have had an enormous positive impact on the communities they serve. Citizens are now often able to obtain complete information and redress for their legal problems in a single convenient location, rather than standing in line for hours at a government office before being told to go elsewhere. The presence and operation of the *casas de justicia* reinforce the rule of law, but also encourage innovative non-legal alternatives. Despite initial public skepticism, they have recognized and addressed community needs, have promoted stability by offering meaningful non-violent alternatives to self-help, and have set a standard of practice that has earned community respect and support. Indeed, one observer commented that had the *casas de justicia* not been accepted by or useful to these violence-prone Colombian neighborhoods, they would simply have been bombed. The projected expansion of the *casas de justicia* program within Colombia, and potential for replication in other countries, appears promising.

### 3. Strengthening the Public Defender's Office to Protect Individual Rights

The current constitution and laws of Colombia favor the prosecutorial function and grant enormous power to the national prosecutor, whose office is sizeable and relatively well-funded when compared to the Public Defender's Office, which is small and poorly-funded by any standard. Although the state is constitutionally obligated to provide counsel to indigents, it has not historically demonstrated any serious financial commitment to doing so, and it has relied primarily on inexperienced contract attorneys, or lawyers representing clients *pro bono*, to fulfill its obligation. At present, the budget allocated by the state to operate the Prosecutor's Office for 10 days equals the entire annual budget of the Public Defender's Office. This enormously skewed prosecutorial power has not and cannot support a fair and equitable criminal justice system, which must be balanced to avoid certain injustice.

USAID was the first donor to invest in strengthening the Colombian Public Defender's Office in an attempt to correct this imbalance and promote the protection of fundamental individual rights. Beginning in the mid-1990s, USAID provided institutional support to the Public Defender's Office, began a national training program for public defenders, and supported the creation of public defender associations to coordinate networks and general assistance for public defense attorneys. In essence, this program sought to teach basic skills and approaches to case analysis, planning strategies, and defense techniques to inexperienced lawyers who would be defending indigents in criminal prosecutions. This was revolutionary in Colombia. The state had never given any training or serious support either to the Public Defender's Office or to individual lawyers doing public defense work. The USAID program provided significant

support to develop the Public Defender's Office into a credible and viable institution, and to hire and train dedicated and competent criminal defense counsel. Now, the entire office has received essential training courses and, as a result, the quality of its representation has greatly improved. In addition to basic legal skills, public defenders have also gained legitimacy and have become more committed as professionals to their work and role in the criminal justice system. The total number of public defenders in Colombia has risen from 150 to 1,125 since the inception of USAID's program. Though still inadequately staffed and poorly funded, this represents a major institutional advance and contribution to improving the quality of legal defense and protection of individual human rights in Colombia.

Colombia exists in a persistent state of war compounded by massive underlying political, social, and economic problems. In September 2001, the U.N. secretary-general's special advisor on Colombia took the unusual step of conveying publicly the secretary-general's concern for the country's "deteriorating situation." Colombians are losing confidence in an ongoing peace process that has failed to produce any significant agreements, reduce violence, or increase political, social, or economic security in their daily lives. Against these odds and under these circumstances, the prospects of achieving a functioning equitable criminal justice system and establishing the rule of law are challenging.

Notwithstanding, USAID has made some important contributions in discrete areas that have demonstrated real impact. USAID justice programs have facilitated an exchange of ideas and have opened space for debate and a role for civil society. USAID has supported the growth of an influential legal sector highly critical of traditional conservative approaches. The justice system has become more open and receptive to reform possibilities, which are emerging as a result of increased consciousness and a groundswell of disaffection with the existing system. The *casas de justicia* Program has established a significant institutional presence and authority in poor and conflict-ridden communities, and has helped hundreds of thousands of Colombian citizens to resolve legal issues affecting their everyday lives. In part due to USAID support, poor people accused of crimes now have a stronger and more professional Public Defender's Office to turn to for representation and protection of their individual rights. Although these efforts have not and realistically cannot confront the underlying more serious issues that plague the country, they have afforded significant tangible benefits and recourse to many Colombian citizens and have made inroads into justice system reform.

## E. Costa Rica

Respect for the rule of law is an important part of Costa Rica's democratic tradition. While its neighbors to the north and south were enmeshed in conflict and social disorder for much of the latter half of the 20th century, this small, middle-income Central American country maintained significant guarantees protecting the civil liberties, political freedoms, and general social welfare for its 3.8 million inhabitants. In recent years, Costa Rica's stability and investment in environmental and human capital have attracted not only a large number of tourists and but also international corporations.

Costa Rica's unique history has influenced its relative social and political cohesion. From the earliest days of Spanish colonization, the "rich coast" was in fact almost a forgotten region of the Captaincy General of Guatemala and was thus spared the extreme class and oligarchic divides of colonial centers. Along with its regional neighbors, Costa Rica gained independence from Spain in 1821 and became a separate republic in 1848 with the demise of the Central American Federation. Since 1899 the country has enjoyed a stable, constitutional democracy with only brief interruptions in 1917 and 1948. The 1949 constitution, which returned the country to democracy, is noted for its abolition of the army, a factor often identified with the strength of Costa Rica's civilian institutions.

In the realm of rule of law, a modern code of criminal procedure incorporates elements of oral, accusatory trial proceedings with active roles for advocates representing the parties in the case. A new code of civil procedure, also based on oral proceedings, is under consideration. The Supreme Court has adopted a code of judicial ethics, and the judicial system enjoys wide public respect. Not surprisingly, the Costa Rican judicial school has been studied and followed as a model by other LAC countries.

The judiciary has enjoyed a guarantee of financial independence since 1957, when a constitutional amendment directed that six percent of the national budget be allocated to the judiciary. The judicial branch has oversight responsibility for prosecutors, public defenders, and investigative police—a total workforce of about 7,000. The volume of litigation continues to grow rapidly, with new cases filed at a rate of almost 800,000 per year. The budget allocation, therefore, is no longer as generous as it once was.

The USAID program in Costa Rica was initiated in 1985 and continued until 1996. In 1985, the judicial system was already working well. However, the country's economic difficulties had strained the national budget and inhibited modernization of training, legal research, and court management. More importantly, there was little discussion about increasingly urgent needs for reform. This constraint was accompanied by strong institutional loyalties and, in some cases, rigid views about separation of powers. Such a combination tended to limit research, debate, and inter-institutional planning in the justice sector.

An active Supreme Court leadership and a broadly representative national commission, which was formed in 1985 with support from the USAID regional administration of justice project, were able to identify specific priorities for which assistance was needed. A USAID bi-lateral program was inaugurated in 1988 to respond to these Costa Rican priorities. USAID concentrated its assistance to Costa Rica in four principal areas: fostering inter-institutional planning and coordination, strengthening of the Supreme Court's judicial school, improving facilities for legal research, and increasing efficiency of court management.

In addition to these specific areas of USAID program concentration, Costa Rica benefited from the presence of a number of justice-related regional entities that received U.S. assistance. Directly relevant examples include the Inter-American Institute for Human Rights and ILANUD. Both of these organizations were sources of research and training that enriched the work of national entities with regard to human rights and criminal justice issues. The presence in Costa Rica of the Inter-American Court for Human Rights also facilitated familiarity with and respect for international human rights law and standards. The USAID bi-lateral and regional programs in Costa Rica reinforced and sustained an already sound justice system and deepened its capacity to meet the growing and evolving needs of society. It also fostered a lively debate and an environment conducive to continuing reform. The impact of USAID-supported improvements extended beyond the immediate focus of specific projects and beyond the boundaries of Costa Rica. Internally, the policy dialogue initiated as a result of the USAID program has helped to institutionalize a spirit of reform and debate that continues today. Externally, reforms in neighboring countries have been influenced positively by exposure to and information exchange with Costa Rica's successful experience in sustaining a climate of respect for the rule of law.

### 1. Fostering Inter-institutional and International Coordination

The initial formation of a national commission in 1985, with USAID financial support, marked the beginning of a trend towards coherent planning. Previously, some had interpreted judicial independence as implying the avoidance of interaction by the judicial branch with other organs of government. The initial commission was supported by USAID and assisted by ILANUD in targeting the criminal justice system in a comprehensive assessment of the justice sector. USAID continued to support the national

commission under a bi-lateral project approved in 1988, and this commission has become a permanent feature of dialogue concerning the administration of justice in Costa Rica. However, the strength of the Supreme Court causes that institution to be dominant in inter-institutional coordination. The court has its own strategic planning operation and is currently working on the implementation of its thoughtful 2000-2005 plan for improving the operation of the courts.

In addition to increased internal cooperation, Costa Rican justice agencies have maintained mutually beneficial relations with Inter-American Institute for Human Rights, ILANUD, and other international organizations. These relationships have kept the Costa Rican legal community informed about international standards and developments. In turn, the international organizations and donors (including USAID) have drawn upon Costa Rican experience and expertise in programs to help strengthen the rule of law in other LAC countries.

**2. Strengthening the Judicial School**

The Supreme Court's Judicial School benefited substantially from USAID technical assistance and financial support for its courses involving participatory methods of instruction. The school developed the capacity to provide high-quality continuing education to help judges be currently informed and efficient not only at the time of their appointment but also throughout their careers. The judicial school increased its ability to train court administrators, prosecutors, public defenders and other personnel. Training programs provided by the DOJ's ICITAP benefited the judicial police and forensic laboratory. A further updating and restructuring of the Judicial School is underway with support from the Inter-American Development Bank. The positive image and credibility of the judiciary, the product in part of improved training, was undoubtedly a factor in assuring political and popular support for the adoption of additional reforms after USAID terminated its assistance.

**3. Improving Facilities for Legal Research**

The automation of access to legislative and judicial research materials has facilitated timely decisions based on an accurate understanding of the law. The research system supported by the USAID project is the foundation of a comprehensive research tool that is now available to anyone via Internet. This Costa Rican System of Juridical Information is found at http://www.poder-judicial.go.cr/scij

**4. Improving Organization and Operation of the Courts**

With USAID support, Costa Rica revised its case management practices in the Supreme Court, reducing by more than 50 percent the time for processing cases in the constitutional and criminal chamber. In 1989, the constitution was amended to provide for a constitutional chamber in the Supreme Court to which complaints of violations could be easily filed and rapidly decided. This formalized and gave impetus to an existing right of judicial review. The constitutional chamber has experienced extraordinary growth in the number of cases heard in the years since its creation.

In 1993, a judicial career law provided for the merit selection of judges on the basis of examinations. This law has confirmed the principle of a non-political judiciary. The high degree of professionalism and positive public image of Costa Rican judges, which USAID support helped to enhance, contributed to a favorable environment for this legislation.

USAID helped Costa Rica to establish the first professional trial court administrators in Latin America and to inaugurate a program of delay reduction in the trial courts. This provided valuable experience and

enhanced capabilities that are now being applied in a pilot effort in the country's largest judicial circuit, not involving USAID, to define clearly the division of responsibilities between judges and administrators and to increase the effective use of technology for more efficient case management.

### 5. Improving Public Access to Justice

One innovation introduced with USAID assistance was a computerized system to facilitate public access to information about cases pending before the Supreme Court. That concept has been followed in the current pilot modernization effort involving the second judicial circuit in San Jose. Information about pending cases is available to the public through a bank of computers in the reception area of the courthouse, increasing transparency and contributing to public confidence.

A more fundamental action was the introduction of ADR. This involved USAID support for a public opinion survey, new courses in law school curricula, and establishment of several dispute resolution centers—one in a university with law student participation, one in the San Jose chamber of commerce to resolve commercial disputes, and one to deal with child custody and other family disputes. The government of Costa Rica formally expressed support for ADR in 1992. In 1997, ADR was given official status through legislation. Since then, the number of dispute resolution centers has increased to 10. Also, a growing number of *casas de justicia* have been established and more are planned to make informal remedies more readily available to the public. These centers bring together a variety of justice-related institutions and services in a single location, often in lower-income or marginalized neighborhoods. They give residents one-stop access to general legal help, social services, counseling, and referrals.

Costa Ricans rightly consider their justice system a pillar of the country's democracy and its economic and social development. There is general agreement that the system is now more efficient, more transparent, more accessible, and more effective in making informed decisions based on the law. There is also broad agreement that the continuing process of reform and modernization owes much to the debate initiated by the USAID program and by the specific activities addressed in that program. USAID provided a vital stimulus to preserving and strengthening the rule of law in Costa Rica. One participant in the bi-lateral program observed that USAID had "socialized" the subject of international cooperation in judicial reform.

Problems do remain. High demands on the judicial system can be seen in the number, variety and growing complexity of cases it is asked to decide as well as resulting strains on personnel, management systems and budgets. These factors, together with the persistence of delay in achieving final decisions, are all cause for concern. On the other hand, there is considerable cause for hope. This is represented by a substantial cadre of reformers, their ability to work together in the public interest, and Costa Ricans' pride in their country's regional leadership in advancing the rule of law. A solid base of capable leaders, sound institutions, skilled personnel, and a vigilant civil society seems likely to assure the continued political will to invest the necessary intellectual and financial resources in a continuous process of judicial reform.

## F. Dominican Republic

The Dominican Republic has been a republic since 1844, when it became independent from Haiti. There is a constitution providing for three branches of government with power weighted towards the president. Political parties are very influential and are often an obstacle to reform. On the other hand, the public is politically active. Amendments to the constitution were passed in 1994, the most important of which established the National Judicial Council to change the method of selection of Supreme Court judges.

Until 1997, the Dominican Republic judiciary was not fair, was not efficient, was not accessible, and was biased against the poor. Dominicans had no confidence in the judiciary, its independence, or its willingness to serve as a neutral arbiter of conflicts and implementor of the law. The Senate appointed all judges, and the president controlled the Senate. The rich and politically powerful usually prevailed in litigation as the Senate and judiciary reinforced each other to maintain a corrupt base of influence and income. Big business and lawyers representing anti-reform forces exercised much influence on the judiciary. However, their power was weakened by the 1994 constitutional change in the selection process for Supreme Court justices as well as by the increased integration of the Dominican Republic in the international economy. Globalization led to diversification of economic activities and business ownership. It has increased positive foreign influences and created demand for better administration of justice.

USAID began to invest in strengthening the rule of law in the Dominican Republic in 1986. It initiated two programs—one to train justices of the peace and the other to build a computer database for criminal cases at the Supreme Court. Later, in 1990, it funded ILANUD to develop a public defenders program staffed by lawyers working part-time. While USAID was interested in pursuing ROL reform more broadly, there was little Dominican political will to support such efforts.

This changed in 1994, when a political crisis gave USAID the opportunity to support constitutional reform. USAID cultivated discussions among government policymakers and CSOs concerning the design of reforms and strategy for adoption. Many meetings were held with CSOs and the public generally to promote modifications by identifying needs and analyzing possible alternatives for constitutional changes. The refined recommendations were presented to the constituent assembly. The resulting constitutional reform because of public insistence bolstered judicial independence because it required that Supreme Court judges would be appointed by the new National Judicial Council (CNM). Supreme Court judges would in turn appoint lower court judges. The CNM was to be composed of seven members, including the president, key members of both houses of the legislature representing majority and minority parties, and members of the Supreme Court. As President Joaquin Balaguer declined to convene the CNM, these important constitutional provisions were implemented only in 1997, by Balaguer's successor.

### 1. Supporting Overall Systemic Change

The changes since 1997 brought about by the new transparent and public participatory procedure for appointment of judges, coupled with other reforms resulting from USAID assistance, were dramatic. Some 85 percent of sitting judges in 1997 were replaced, and 490 new and more qualified judges were appointed. Other changes, resulting in large part from USAID assistance to the justice sector, included more efficient court administration, coordination among justice sector bodies, establishment of performance standards for courts, strengthening the prosecutorial function, ADR, and development or enactment of important justice sector legislation.

USAID was deeply engaged in ROL reform work subsequent to 1997. Most officials and knowledgeable civil society leaders interviewed for this report gave USAID high marks for its sensitivity to the intensely political nature of some of the reforms, noting that USAID support was open and visible when that was of use but behind-the-scenes and invisible when required. Experts noted that more has been achieved in legal system reform in the past five years than in the previous 15 years. Attitudinal change has been significant, largely as a result of USAID programs. USAID's support to the Commission for Support for Reform and Modernization of Justice in strategic planning and training has resulted in several reforms, especially in the area of increasing the number and competence of public defenders and in developing new legislation.

As a result, it is generally recognized that the system of justice generally operates more objectively and is based on the law rather than on influence of the powerful. Court administration, judicial decisions, actions of prosecutors, and activities of public defenders are all much improved. The system is more transparent and more predictable. It operates more fairly and is more accessible, especially for the disadvantaged, who are now served by a growing cadre of highly qualified public defenders. As a result, human rights are more secure.

The system also operates more efficiently. The period of preventive detention has been reduced; ADR has decreased the backlog of court cases; and there is improved liaison among the courts, prosecutors, and police. Cases are resolved more expeditiously at the court of first instance in the jurisdictions targeted by USAID assistance as well as others and at the Supreme Court. Public relations campaigns by the courts and by CSOs have publicized the improvements in the administration of justice so there is increased public awareness of rights under law, particularly criminal law. In civil courts, judgments are generally respected, but despite initial progress, criminal courts' orders to police have been routinely ignored in recent years. The reforms have advanced national interests in public order and respect for the rights of others in the criminal sphere. The participation by civil society in the judicial selection process has been a marked change and should have enduring benefits for public participation in government affairs.

USAID was instrumental in the establishment in 1999 of two pilot project centers for ADR in Santo Domingo that have handled some 4,600 cases, mainly in the area of family law. As ADR grows, it will decrease the caseloads of the civil and criminal courts and lead to more efficient court disposition of cases before them.

### 2. Working toward Criminal Justice System Reform

In 1997, USAID began working more intensively with the criminal justice system, targeting improvements in the efficiency of the courts of first instance and the Prosecutor's Office of the National District by creating modern methods of case management; improving the capacity for analysis of statistics of criminal justice performance; developing systems of coordination among police, prosecutors, public defenders, and courts; reducing the number of prisoners held in preventive detention; strengthening the capacity for strategic planning; and improving operations for other institutions of the justice sector.

The court modernization project was focused on the criminal courts of first instance in the National District (Santo Domingo) and Santiago and also in the Prosecutor's Office of the National District. The project also led to related reforms in other justice sector institutions, including the Supreme Court and the attorney general of the republic. More efficient, modern court administration was established in these criminal courts, which process approximately 75 percent of all criminal cases. Work in these courts had a demonstration effect that resulted in important reforms not only in other criminal courts but also in the administration of the civil courts. The changes in the criminal courts involved appointment of a coordinating judge for administration (a development which later became enshrined in law); creation of a common secretariat and an administrative department in each court; development of a manual for human resource management; pooling and rationalization of the work of bailiffs and messengers to improve operational efficiency; and establishment of a new method of tracking cases. The latter is now used by both the courts and prosecutors.

The state of court records in many courts was chaotic. Records frequently were lost, destroyed, or not available on demand. There was inadequate security, and files could be stolen or falsified. USAID supported the development of modern computerized filing systems for court documents in the criminal

courts in the National District and Santiago; these practices were later replicated in other courts. The new systems helped clerks locate archived files, track the possession of physical evidence to be produced at trials, and generally augment the availability of information to facilitate trials.

For the first time, statistics of courts' actions are analyzed to provide a critical assessment of the performance of individual courts. A system of case triage was developed to improve efficiency by introducing specialization in case processing and by assigning cases to judges with subject matter expertise. One crucial innovation was a computer-generated system for random assignment of judges to particular cases. This not only helps eliminate corruption because litigants can no longer engage in judge-shopping, but it also contributes to a better distribution of the workload among judges and thus more efficient disposition of cases.

The reforms in the two key criminal courts also involved securing legal rights that previously had been violated in many cases. These included *habeas corpus*, or bringing an arrested person before a judge in 48 hours; respecting the proper roles of the judge, prosecutor, and police in criminal matters; and bringing proper charges against an accused within the required time. The creation of the Department of Investigations in the National District police department contributed initially to the proper investigative role of the police.

USAID also supported the preparation and publication of a manual to improve the investigative capability of the prosecutors in the National District and to ensure that rights of suspects were respected in the prosecutorial process. This manual is now applied nationwide and lays out the procedures that must be followed in investigations as well as the rules for developing evidence and for bringing charges in criminal matters. It is useful not only for prosecutors but for judges, lawyers, and civil society organizers. As a result, there is more emphasis placed on what is a violation of law as determined by prosecutors and less on what charges were brought by the police.

USAID also helped create a judicial database that identified prisoners in the National District, which prisons they were in, location of relevant records, and status of their situation. Each court was provided periodically with data on the status of cases before the court. Procedures were employed to process cases more efficiently. As a result, the number of prisoners in preventive detention (before being brought to trial) was reduced from 87 percent of all prisoners in 1996 to 73 percent in 1999. In the largest penitentiary, La Victoria, the percentage of preventive detention prisoners was reduced to 49 percent. The average time to trial in criminal cases was reduced from 24 months (1991) to around 14 months (1999).

Two deliberative bodies, created to coordinate efforts in criminal justice administration, have also led to improved efficiency. The Judges' Council for the criminal courts in the National District and Santiago was created to resolve administrative issues and to consult with the prosecutor's office to coordinate activities. In addition, the Judicial Sector Coordination Commission promoted cooperation among the prosecutor's offices, the Commission for Support for Reform and Modernization of Justice, the Supreme Court, and criminal court judges of the National District. The higher levels of coordination have led to more expeditious processing of criminal cases.

The number of decisions in criminal cases increased from 2,166 in 1998 to 2,481 in 1999. The number of cases adjourned due to procedural failures was reduced from 40 percent in 1998 to 14 percent in February 2000. This reduction was brought about in part by the more diligent pursuit of cases by judges and by greater efficiency in calling witnesses and transporting prisoners.

USAID also helped strengthen the skills of public defenders and helped put in place a testing and evaluation system that has led to the firing of some public defenders and their replacement with more qualified lawyers. USAID also recently advised the Supreme Court on replacing the inefficient system of part-time lawyers with a public defense program with full time professionals and with national presence. The court has now asked USAID for assistance in implementing this change.

USAID's court modernization program also helped establish a public information center in the Supreme Court of the National District and in the judicial center in Santiago. This center was supported by the Commission for Support for Reform and Modernization of Justice, the Prosecutor's Office of the National District, and criminal courts of first instance. It provides information to interested parties concerning the status of a case or investigation, the location of prisoners, and how to access files that are available to the public. For access to the courts, the information center also informs any interested person what documents and fees must be paid for bringing a lawsuit. For criminal defendants, the center explains how a public defender's services can be acquired.

With the technical assistance of USAID, reform of the criminal procedure code has progressed significantly. Two draft bills have been combined and the consolidated bill now includes the best elements of each. The bill was discussed in USAID-sponsored regional workshops by congressmen, civil society organizers, and judges, and the final version was drafted by the Criminal Procedures Code Reform commission of the Chamber of Deputies. The bill has had one public hearing in Congress, with justice sector and civil society participation.

### 3. Facilitating Court Modernization and Reform

USAID facilitated a dialogue that led to placing the role of the judiciary in the proper perspective. For the first time, objectives for fair and efficient court performance were established. These included a Supreme Court mission statement, which informs judges and court administrators what is expected of them by the public. Court staff and judges were made aware that court performance and judges' and administrators' actions should facilitate access to justice, expeditious procedures, impartiality and integrity, political independence, accountability, and public confidence in the judicial system.

The Supreme Court has primary responsibility for the administration of the lower courts. A new judicial inspectorate was established in the Supreme Court. As a result of its vigilance, some 10 judges have been dismissed for misconduct, while others have become more careful in their behavior. USAID was influential in promoting the idea of a proper inspectorate and in financing technical assistance for its creation.

Courts were established for juvenile justice, and, for the other courts, specialized chambers in civil and criminal matters were created. USAID played a key role in facilitation of governmental action in support of these structural changes. As a result, more specialized expertise has been brought to bear by judges in civil, criminal, and commercial matters, and cases were handled more expeditiously.
USAID also helped develop a 2000-2004 strategic plan for the Supreme Court, which is now being implemented. It calls for improvements in the areas of institutional reform, personnel training, and information-sharing with the public.

USAID helped develop modern administrative policies and procedures for the Supreme Court. This work included development and publication of an orientation manual on human resource policies and procedures for officials and employees of the court, and establishment of written procedures for procurement, facilities maintenance, and petty cash management. These new policies are not only being implemented

by the Supreme Court but, because of their broad applicability, they are being adopted by some lower level courts.

**4. Strengthening the Judiciary**

USAID assistance in 1997 helped the Supreme Court design a judicial career law system that affected judges, court clerks, and administrative staff. This included strengthening the judicial school, creating job classification manuals, and developing recruitment and selection processes. The judiciary is applying the system, including its standards for new entrants and evaluation of sitting judges, court clerks, and employees. In September of 2001, some 570 aspiring judges from thousands of applicants competed for judgeship training scholarships and participated in rigorous testing. Under this fully paid scholarship program, the court will pay full-time salaries to 31 aspirants to attend a full-time, nine-month, basic course for judges. A second group of 30 will start early next year. Successful graduates will be assigned as justices of the peace and will then be subject to performance review and the protections of tenure under the law.

A training school for judges was established in 1998 that is now supported largely by the national budget. USAID was instrumental in the creation of the school by contributing to the development of its strategic plan, providing office space and equipment, supporting the development of curricula and course materials, and determining the needs for library resources. The school, with USAID support, published a case management manual, targeting the criminal courts of the national district and the juvenile courts.

The school trains new judges and court administrators and provides continuing legal education and training of trainers for judges throughout the country. It also provides an Internet virtual campus for distance learning.

**5. Reforming Legislation**

In addition to the assistance provided for the enactment of the judicial career law and development of the criminal procedure code mentioned above, USAID assistance directed to legislation included the following:

*a. Police Reform*

USAID provided technical assistance to the Police Reform Commission of the Chamber of Deputies in 2001. As a result of this assistance, the six commission members modified three draft bills initiated by the executive branch, introducing novel concepts such as professional recruitment and evaluation, merit-based promotions, institutionalization of training, prohibitions on special police tribunals except for disciplinary actions, and community policing. The innovations would have been unimaginable any earlier.

*b. Ombudsman Statute*

A law establishing an ombudsman was enacted in 2001 with USAID assistance. However, the process for selecting this officer is still pending. USAID has supported local NGOs in their effort to promote establishment of a merit-based selection process and has provided a regional perspective to such an initiative. In this manner, participants in the debate and particularly the Congress, which is in charge of the selection process, have learned about the experiences of other countries in setting up such an office, and USAID is providing support to CSOs, which insist on the transparency of the pre-qualification process as well as public hearings for the candidates considered for final selection.

*c. Public Ministry Career Statute*

USAID provided support to Congress and to the Justice Sector Coalition (formed by CSOs) to promote development of a Public Ministry career statute. Different versions were presented by the (former) administration and the Attorney General's Office, and comments were provided by coalition members and international consultants. The draft bill prepared by the Attorney General's Office has been submitted to Congress and is awaiting public hearings.

*d. International Arbitration*

USAID provided support to assist legislators and business leaders in better understanding the importance of adopting the Convention for the Recognition and Enforcement of Foreign Arbitration Awards (often referred to as the New York Convention). This convention was ratified by the Congress in 2001. It should give foreign investors more confidence in the Dominican judicial system in relation to international financial and commercial transactions.

## G. Ecuador

In 1978, Ecuador became the first country in Latin America to lead the way back from military rule to democracy. Unfortunately, it has never attained real stability and has persisted as one of the weakest and most fragile LAC democracies. Ecuador has suffered extremes of political, social, economic, and natural disasters, and in 2000 teetered on the brink of becoming a failed state. That same year, Transparency International ranked Ecuador in first place as the "most corrupt" country in Latin America, while a parallel survey placed it last in "citizen support for democracy." The setting for democratic development is indeed grim, and the outlook for the rule of law has not been bright. Notwithstanding, there are glimmers of hope for the future and concrete advances in the present.

Ecuador declared independence from Spain in 1822. Numerous interrupted presidencies and military governments have marred its history. The most recent military regime gave way to civilian rule and a democratic constitution in 1978. The 1980s were far from a paradigm of stability, but pale relative to the calamities of recent years. In 1995, a border conflict with Peru escalated into military confrontation that was not resolved until 1999. The presidential election in 1996 was won by the flamboyant Abdala Bucarám, known as *El Loco*. Bucarám's administration immediately reached unprecedented levels of corruption, and massive country-wide demonstrations prompted Congress to depose him in 1997 on grounds of mental incapacity. Bucarám ransacked governmental accounts and fled the country with large amounts of cash. Congressional speaker Fabián Alarcón, Bucarám's interim successor, was investigated for corruption and eventually jailed after his presidency for misuse of public funds.

Ecuador's next president was elected in 1998. Under the leadership of Jamil Mahuad, the economy faced its worst crisis in decades, and rampant corruption in the financial community crippled the banking system and led to a state of emergency in March 1999. A governmental decree freezing all private savings accounts and deposits precipitated major social protests, and violent confrontations paralyzed the country for weeks at a time. Income distribution, unemployment, poverty, and inflation all reached record regional levels. To add to the misery, an oil spill in the Galapagos Islands, a severe drought, and the eruption of two volcanoes in tourist areas dealt further economic and environmental blows. The currency was devalued by 50 percent in just over one month, and Mahuad's approval rating plummeted to 9 percent.

In January 2000, a group of military officers, backed by thousands of impoverished indigenous people, took over Congress and forced Mahuad to flee. Vice President Gustavo Noboa was installed as his

replacement and took immediate action to "dollarize" the economy. Despite achieving a semblance of stability in contrast to prior years, the economy remains in crisis and public discontent is high. In addition, Ecuador has recently seen increased narcotics trafficking, money laundering, and violence along its northern border (widely perceived as incident to the Andean Regional Initiative, formerly Plan Colombia). Under these circumstances, surveys from recent years indicating that over half the population would prefer a return to military rule are hardly surprising.

Local institutions are generally corrupt and dysfunctional. Neither the executive nor the judicial branch has demonstrated political will to implement reforms or prosecute the political elite; even the banking industry that left the country's economy in shambles has largely escaped punishment. The justice sector is seen as corrupt, ineffective, and protective of those in power. *La ley es para los de poncho.* [3]

This tumultuous environment has proved exceptionally challenging for the accomplishment of any significant justice reform. Despite the failure of two justice efforts in the 1980s, USAID began an initiative in 1991 that appears to have taken root and succeeded in effecting some noteworthy improvements despite the persistent underlying turmoil. As in other countries where partnering with the judicial branch has been problematic, USAID approached reform primarily in collaboration with local CSOs. These organizations' efforts have been most successful in placing the issue of rule of law on the public agenda and developing concern and awareness for the need to have a strong and reliable justice system; influencing legal and constitutional reforms to increase the independence of the judiciary and improve judicial selection; aiding the preparation and passage of a new criminal procedures code that sets the stage for an oral adversarial process with an impartial judge and guaranteed due process; creating a national prisoner database to reduce the incidence of illegal detentions; and supporting a national program to protect and enforce the legal rights of women who have been victimized by abuse or violence. These achievements take on particular significance in the extraordinary Ecuadorian context.

### 1. Strengthening the Legal Framework

USAID began an in-depth study of the Ecuadorian justice system in 1990 and followed it with support for a major constitutional revision, which was adopted in 1992 and made significant strides towards addressing some of the fundamental concerns about the judiciary. The changes included expansion of the Supreme Court, eventual creation of the National Judicial Council to train and discipline judges, measures to depoliticize the judiciary, and increases in academic and professional requirements for judges. Subsequent reforms, also promoted by USAID, have included measures to increase judicial accountability, establish constitutional review of legislative enactments, implement competitive judicial selection procedures, guarantee due process and other individual rights, and provide for a more transparent adversarial judicial system. Although these reforms have not yet been fully or successfully implemented, their cumulative impact has been to define guiding principles and put in place a legal structure altering the fundamental balance of power and interrelationships among state actors; the judicial branch is no longer as vulnerable to manipulation by other branches. The quality, accountability, and independence of the judiciary have all increased as a consequence of these reforms.

The paramount contribution of USAID, however, was to create awareness of the importance of the rule of law to a functioning democracy and to stimulate public debate and concern over justice issues. Prior to USAID's efforts, a well-functioning legal system was never considered essential to democratic society and was never included in a political or social agenda. Rule of law was simply not an issue. USAID "put it on the table" for the first time in Ecuador. Thereafter, USAID kept it in the spotlight through media campaigns that publicized existing problems and potential solutions. This was unprecedented and, in addition to generating specific reforms, vested the issue with credibility and importance.

The strengthened constitutional framework could not, in and of itself, create a stronger justice system. The institutions that were strengthened legally had no real capacity or practical ability to fulfill their new roles. Available funding and technical assistance were woefully inadequate.

Toward that end, USAID supported the creation of a working roundtable of legal actors and representatives from all social and governmental sectors (e.g., judiciary, academia, civil society, executive and legislative branches, and international donors) to identify priorities, develop a process for implementing reform, and attract funding and technical assistance. This group became the Justice Sector Coordinating Committee and worked together to design a unified five-year plan for justice reform, the *Plan Integral de Reformas* (1995). The plan, the first of its kind in the hemisphere, mapped the state's strategy and priorities for judicial reform. Once designed, international donors and banks divided and coordinated responsibility for various components of the plan and negotiated funding agreements with the state. An executive unit known as *ProJusticia* (*Unidad de Coordinación para la Reforma de la Administración de Justicia en el Ecuador*) was formed to administer the projects and coordinate international support.[4] Five years later, the successful method of convening working roundtables was repeated and led to a new plan updating the country's justice reform strategy for 1999-2004. That process was also funded by USAID, which has been widely praised for its ability to bring people together to generate productive debate and accomplish reform strategy.

Most recently, USAID supported the enactment of a new criminal procedures code that took effect in July 2001. The new law replaces an inefficient inquisitorial judicial system with an oral adversarial system, and it incorporates basic principles of due process to safeguard the rights of the accused and permit more effective investigation and prosecution of crimes. It is expected that the new system will increase efficiency, transparency, and accountability in decision-making and reduce impunity. The code is far from perfect, however, and has many critics. Its passage was fraught with problems, and it will require significant amendment to resolve contradictory articles and other drafting flaws. Nevertheless, all persons interviewed agreed that a major substantive improvement effected by this new code is its transformation of the judge from a (largely ineffective) case investigator into an impartial decision-maker who can act independently and ensure due process. Despite its shortcomings, the system itself is basically sound and has potential, although its implementation remains to be tested. Ecuador is now taking steps to implement the new code in stages.

## 2. Protecting the Rights of Women

A project that became a bellwether in women's rights protection received crucial support, both financial and otherwise, from USAID at a critical juncture. Ecuador's justice system employs a number of c*omisarías*, which operate at a local level as a combination between legal clinic and misdemeanor court. These have historically been marginal centers in which barroom brawls, street fights, and similar altercations or issues have been resolved. In 1994, the Ministries of Government and Welfare designated five of the existing c*omisarías* as pilot centers specializing in women and family violence matters. The pilot design required joint operation of the c*omisarías* by the state and CSOs; the Ministry of Government agreed to provide some administrative/support staff if a partner NGO would provide technical staff for legal, social, and psychological services. Each of the c*omisarías* obtained the backing of a different civil society (women's rights) organization and began to function, albeit precariously. This plan was widely seen as a measure to placate women's rights organizations, which had been gaining force and momentum, as opposed to a serious governmental effort to aid women. As such, the c*omisarías* were likely and expected to fail. The designated sites were deplorable, rundown, and barely functional. One of the first was a decrepit office with no bathroom, a collapsed ceiling, leaky roof, and no security in a dangerous Quito neighborhood. Under these conditions, the c*omisaría* staff began serving dozens of women daily.

Financial support for services was minimal, and staff was paid miserably. Moreover, domestic violence was not yet illegal in Ecuador, so the c*omisarías* had little authority.

In 1995, 13 additional *comisaría* offices were established, but without money to operate them. That year, anti-domestic violence legislation was finally passed, and the *comisarías* had something real to enforce. The following year, the government declared that it could no longer provide financing to the program and that, unless NGOs took over support for the *comisarías*, they would be shut down. USAID then began its assistance to the *comisarías* program in 1997. USAID funds were channeled to the partner NGOs to strengthen the centers by improving working conditions, services, and training. The *comisarías* not only survived, but gained relevance and stature within the communities served, as well as to national and local governments. There are currently 31 *comisarías* whose mission is to access and administer justice in the area of family/domestic violence and to assist in the provision of medical, psychological, legal, and social services.[5] They have gained respect as a resource for women, and have become a source of gender expertise for the state, working with other agencies to consult and advise on the application of the anti-violence law. They have succeeded in opening new spaces to influence state policy and have become institutionalized as part of the Ministry of Government. The *comisarías* are now operated as a separate entity (the *Dirección de Comisarías de la Mujer y la Familia*) whose director cannot be terminated except for cause. In sum, protection and enforcement of women's rights have gained a place on the national agenda, largely through the efforts of the *comisarías* and their partner NGOs.

USAID support, which ended in 2000, was critical on a number of levels. It strengthened the basic operation of the centers themselves and transformed them into practical and accessible resource centers for women.[6] The mere fact of outside assistance also generated pressure on local governments to step up and provide some degree of economic and/or political support. Additionally, it fostered a groundbreaking alliance between the state and civil society, which was invaluable to informing and formulating public policy and laws promoting gender equity. Beyond that, it endowed the *comisarías* with international validation and recognition, which made the Ecuadorian government view the project more favorably and also protected the centers from arbitrary governmental action. The umbrella of international protection and support effectively limited the state's ability to act arbitrarily to shut down the program, and the vulnerable *comisarías* no longer had to devote themselves to fighting for their continued existence. As a consequence, and despite changes in political administrations that otherwise would likely have been fatal, the program and issue of protecting and promoting women's rights have gained a permanent and irreversible place on the national agenda. The *comisarías* and their partner NGOs not only provide support to impressive numbers of individual women, but they also have further coalesced power to represent women as a group in politics and at the policy-making level. USAID support contributed in large part to advance and solidify this process.

### 3. Creating a Judicial Database of Detained Suspects

As in many countries in the LAC region, Ecuador's prisons have housed a high percentage of individuals who have never been convicted or sentenced. Often, suspects have been kept in jail longer than their sentences would have been had they been convicted. Prior to 1995, no one monitored this situation or had any means to collect the information necessary to document and combat this practice. In 1994, USAID funded the creation of a national judicial database to collect and monitor information pertaining to those detained. In the course of developing and creating the initial database, many cases of illegal and lengthy incarcerations were discovered, and, as a direct result, some 1,200 illegally-detained prisoners have been released. The Supreme Court thereafter created the Unsentenced Prisoners' Unit, which assumed responsibility for monitoring and maintenance of the database in 1995. Now operated under the National Judicial Council as the Department of Registry and Control, it maintains a current national registry.

The objective of the project was to enforce compliance with deadlines and due process requirements to assure consistent legal treatment and protect the rights of detained individuals. Every month, each judicial district is sent a list of its detainees reported in the national registry, along with inquiries as to specific prisoners whose cases are flagged due to factors such as time elapsed without apparent case activity. Monitors also conduct monthly prison visits to "count heads" and compare registry data with what and who they find. In addition, inquiries are sometimes initiated by family members or human rights organizations aware of a detention that is not reported in the database. The absence of an entry raises a red flag of corruption or negligence and precipitates a demand for information by the Department of Registry to the judicial district where the "missing person" is purportedly being held. The demands afford extremely limited time for response, e.g., eight hours. If a satisfactory explanation of the detention is not forthcoming, the prisoner's release is ordered immediately. In addition, the Department of Registry has authority to impose sanctions on judges who have acted negligently or corruptly in these matters, up to and including their removal from the bench.

The database serves the further purpose of providing information for numerous statistical, human rights, management, and international reports. Although the registry process is certainly not perfect or immune to evasion or deception, it represents a substantial step in monitoring and combating corruption and human rights abuses.

### 4. Encouraging Local Reform Efforts

USAID turned to civil society to carry the standard of justice reform when judicial will to change was virtually nonexistent. This approach was pioneering. Never before had Ecuadorian civil society viewed itself as capable of, or even interested in, effecting legal reform. USAID encouraged CSOs to recognize the significance of the rule of law, motivated them to develop reformist attitudes and approaches, and provided technical assistance to formulate meaningful input. These efforts and organizations have continued their work even after the conclusion of USAID projects, thereby demonstrating a real and enduring impact.

Ecuador suffers from pervasive rampant corruption, impunity, and a seemingly endless cycle of political, economic, and social turmoil. Establishment of the rule of law and solid justice institutions will require long-term efforts and serious institutional change. Severe impediments persist and prevent citizens from obtaining effective and meaningful judicial protection. Regardless, some significant progress has indeed been made. The rule of law has been identified as a desirable and essential democratic social goal, strategies have been debated and developed, and important structural changes have been made to increase the independence of the judiciary and the rights afforded to individuals. The issues of transparency and corruption have been highlighted and can no longer be ignored. Civil society has been drawn into the justice arena and has played an important part in reforming and enforcing law and policy. Much remains to be accomplished, but important steps have been taken.

## H. El Salvador

El Salvador is a small, lower middle-income Central American country with a population of 6 million. High population density, severe concentrations of wealth and opportunity, authoritarianism and weak institutions of governance have contributed to a conflictive, often violent history. In its most recent past, El Salvador has begun a meaningful process of healing, rebuilding democratic institutions, and restoring human rights following twelve years of civil war. Since signing peace accords almost a decade ago, the country has made substantial progress in implementing political reforms. Judicial reforms have been part of this process, although these changes have been relatively slow paced.

After gaining independence from Spain in 1821, El Salvador left the Central American Federation to become a republic in 1839. The development of an economy dependent primarily on coffee led to the creation of an elite class of landowners, high levels of inequality and a resulting instability. Salvador was ruled in the first half of the 20th century by a series of authoritarian leaders who promised stability and delivered heavy-handed oppression.

Beginning in 1979, a 12-year civil war devastated the country and resulted in more than 70,000 deaths. Throughout the era of civil war, the deep divisions and distortions in Salvadoran society and its economy were reflected in the country's system of justice. The formal legal system was based on written constitutions and civil law codes similar to those found in other LAC countries. However, constitutional provisions were often left unimplemented. The judiciary was politicized and lacking in the most basic resources and management capacities. Formal training was unavailable to justice system operators. Corruption and intimidation were widespread. Extra-judicial executions were commonplace. Political and economic elites and the military were not held accountable under the law. By contrast, the vast majority of the prison population consisted of poor individuals accused of crimes and awaiting trial. Many remained in pre-trial detention for periods longer than the sentences that would have been imposed had they been brought to trial and found guilty. Interruptions of the constitutional order were frequent, subjecting the civilian population to the militarization of justice, including at times the exercise of military jurisdiction more harsh than meted out by civilian courts. For the elites, the system was largely irrelevant; for the majority, it represented an instrument of repression rather than a guarantor of justice.

The system lacked the political will and the technical competence to deal with a series of political murders that shocked the international community in the early years of El Salvador's civil war. The bishop of San Salvador, four American churchwomen, and two American labor and agrarian reform advisors were murdered with apparent impunity between 1980 and 1982. These deaths were only a small sample of the numerous murders of Salvadorans whose words or deeds were considered controversial or subversive. At that time, the United States had indicated broad interest in support for democratic countries making the transition from military to civilian rule throughout the LAC region. However, it was El Salvador that became the site of the first major USAID ROL assistance program.

In 1983, despite continuing violence, an elected assembly drafted a constitution, which included provisions to protect judicial independence and protect individual rights. President Jos  Napoleon Duarte was elected the following year, becoming the first freely elected president in over half a century.

In January 1984 the National Bipartisan Commission on Central America recommended U.S. encouragement of democratic institutions in the region, including "strong judicial systems to enhance the capacity to redress grievances concerning personal security, property rights and free speech." That same year, the U.S. Congress mandated that funds made available for assistance to El Salvador be used to modernize laws, improve investigative capacity, and protect participants in judicial proceedings. These objectives were included in the initial bi-lateral program signed in 1984, along with a component on court administration and training of judicial personnel. This assistance was complemented by USAID's Central American Regional program inaugurated in 1985. Under this program, ILANUD provided research facilities, library materials, technical assistance for a justice sector assessment and training courses.

In 1989, the presidency was peacefully transferred, for the first time in the history of El Salvador, to Alfredo Cristiani. Cristiani initiated a dialogue to promote peace, which was finally achieved in the Chapultepec Accords of 1992.

The rule of law was a major issue in the negotiations to end 12 years of civil war. The peace agreement created new hope and a political imperative for implementing reforms that had been long in preparation.

Post-1992 USAID assistance has concentrated on institution strengthening, increased public understanding and participation, and broadened access to justice. Related programs have supported demilitarization and professionalism of the police. Additional donors have entered the field, and the government of El Salvador has dramatically increased its budgets for the justice system.

The most fundamental transformations engendered by USAID relate to the way in which Salvadorans now think about the rule of law and the institutions of the judicial system. New ideas and new approaches, first introduced at a time of skepticism and despair, have taken hold in a time of peace, and the context of current reform efforts is dramatically different from the environment of the early 1980s. Moreover, current Salvadoran reformers credit initial USAID efforts with putting the rule of law on the political agenda and raising public confidence that genuine reform was possible.

### 1. Modernizing Laws and Strengthening Legal Institutions

The Law Revision Commission, formally established in 1985 with USAID support, was an early effort that concentrated on overcoming differences and resistance to change. It introduced nonpolitical research and public consultation to the formulation of legal policy and draft legislation on key themes such as criminal procedure and family law.

During the early years of USAID support, the availability of public legal defense was restored, the competence of both prosecutors and public defenders was increased, and budgets were substantially increased for these functions.

The initial seven years of USAID assistance also paved the way for the realization of a number of significant reforms made during the dynamic period that began in 1991, during the negotiation of the peace agreement. The 1992 peace agreement is notable for its specific treatment of judicial reform. Numerous constitutional amendments and statutes have been adopted in furtherance of commitments made in the course of negotiating the agreement. Additional legislative reforms not expressly called for by the agreement have been adopted in a climate that is more open to change. Technical capacity, public demand, and political will came together to produce a flood of long-needed reforms.

New organic laws were enacted for the judiciary (including the judicial career law), *Procuradoria* (public defenders), the Judicial School, and the Technical Unit of the Justice Sector Coordinating Commission. A new organic law for the prosecutors is still pending.
In addition, new legislation prepared with USAID technical support transformed the basic nature of the judicial process, primarily through new codes covering criminal law, criminal procedure, sentencing, juvenile delinquency, and family law. These codes have fundamentally changed the judicial process from an inquisitorial one, in which the judge made decisions on the basis of written records, to an accusatory procedure, in which advocates present evidence in continuous public hearings, and prosecutors, not judges, are responsible for directing investigations. USAID technical assistance and training were important contributions to the formulation of the foregoing legal norms and the steps towards their implementation.

### 2. Improving Investigative Capacity

In 1985 an investigative commission with a constituent special investigative unit and a forensic unit, introduced modern criminal investigation techniques. The United States provided intensive technical assistance, training, equipment, and other material support for techniques of crime scene preservation, examination of physical evidence, respectful but effective interviews, and respect for human rights. These

techniques were successful in solving a number of major crimes. Although the investigative commission—with institutional links to the army—was disbanded after the peace agreement, it raised standards and popular expectations for criminal investigation and police behavior, and it was a positive companion to criminal justice reform efforts elsewhere.

### 3. Increasing Judicial Independence, Competence, and Integrity

Reforms to the rules have been accompanied by significant structural changes in the operation of the justice system. USAID has encouraged capacity in a number of areas, building upon the legal reforms to institutionalize various successful management systems and training programs.

During the mid-1980s USAID support enabled the Supreme Court to resume the publication of laws and digests of its opinions for the information of judges and the public. Judges began to work full-time, closing their part-time private law practices. Justices of the peace obtained their first training in how best to perform their responsibilities and gained increased respect in the communities they served as their performance improved.

Since the peace accords, USAID has helped to facilitate the successful implementation of reforms by providing support to judges. Nomination of Supreme Court magistrates is now made by a multi-sectoral commission, tenures have been lengthened (from five to nine years, renewable), and a system of staggered appointments has been put in place to diminish politicization and foster continuity. These changes mark a sharp break with a system in which a new court was elected by the majority party after each national election. The newly constituted Supreme Court has demonstrated independence in its review of actions by the executive and legislative branches. The National Council of the Judiciary (all of whose six members are from outside the judicial branch) is increasing its capacity to select, train and evaluate judges on the basis of merit. The National Judicial School is becoming the principal and permanent organization for training of judicial system operators. New candidates for judicial offices are receiving extensive preparatory training.

### 4. Strengthening Legal Education

Significant and numerous changes in Salvadoran law and procedure also called for major changes in legal education. USAID scholarships sent some Salvadoran law professors to the University of Costa Rica for graduate studies. In the early 1990s, USAID supported textbook revision and faculty enrichment through visiting professors. More recently, the principal focus has been on training judicial system operators, and the program has not involved universities. However, the current USAID project includes a component on legal education that is helping Salvadoran law schools to update both teaching methods (e.g., clinical education) and curricula (e.g., application of new codes). Over time, this assistance may be the most important of all for assuring that reforms will continue.

### 5. Improving Organization and Operation of the Courts

With the assistance of USAID, major changes have occurred in the organization and operation of the courts. Modern codes of criminal procedure and family law have introduced oral proceedings and an active role for trial advocacy. The budget for the judiciary has multiplied several fold over the past 10 years. Innovations include the establishment of a single clerk's office to provide professional administrative support to six courts in San Salvador. This USAID-supported pilot project is achieving greater efficiency and objectivity in assigning cases to judges, case management, and filing and statistical systems, replacing traditional separate administrative offices for each judge.

Other advances include a center for jurisprudence in the Supreme Court, the purging of old cases and improved case assignment, and various tracking and management systems. Civil and criminal case backlogs have been reduced, including the dismissal of tens of thousands of dormant cases, and hundreds of prisoners have been released from lengthy pre-trial detention. These creative efforts are increasing both the productivity and the quality of the courts.

Access to legal representation has been improved through the restructuring of the *Fiscalia* (the Office of the Public Prosecutors) (including relations with the police) and of the *Procuradoria*. Restructuring has enhanced the capacities of those agencies to fulfill their expanded roles under the new criminal procedure code. Their budgets more than doubled in the latter half of the 1990s, and their operations are now nationwide in geographic scope, allowing them to serve a larger population than ever before.

It will take several years for these reforms to be fully implemented and absorbed. The structure of the criminal justice system has changed in fundamental ways, but the process of change is just beginning to increase the effectiveness of historically weak institutions. A number of judges, prosecutors, and police found to be corrupt or incompetent have been dismissed in an ongoing process. It is believed that many corrupt officials continue in office; this is a matter of intense public debate and the subject of a recent investigation and report by a special prosecutor.

### 6. Increasing Public Awareness, Access, and Advocacy

USAID has also been involved in cultivating and strengthening various institutional linkages. The Justice Sector Coordinating Commission and its supporting technical unit are providing a forum for inter-institutional discussion. However, the commission does not appear to be exercising the leadership many had expected. For example, it does not appear that it attempts to coordinate the activities of the various international donors operating in El Salvador. There is widespread disappointment that the technical unit has not been a more vigorous executive secretariat that could promote consensus on an agenda of major ROL objectives.

While the traditional bar associations have not been particularly active, a number of law-related CSOs have been formed and are taking part in active debate. A few of these are the Center for Judicial Studies, Foundation for Studies on the Application of the Law, Institute for Judicial Studies of El Salvador, Salvadoran Foundation for the Administration of Justice, Salvadoran Institute for Criminal Law, and Institute for Human Rights of the University of Central America. Broader efforts at law-related education and increasing access to justice through mediation, justice centers in rural areas, and other efforts are still at an early stage. USAID is providing support for the development and application of these important aspects of a justice system that will be responsive to the needs of the society it serves.

A new development is the inauguration of *casas de justicia*, informal centers for mediation and dispute resolution at the community level, initially in four cities outside San Salvador. These institutions are supported by USAID, which is working with local authorities, university officials, and others.

It would be premature to say that the rule of law prevails in El Salvador. But it would also be difficult to deny that the rule of law is gaining ground. Impunity, corruption, and intimidation remain serious problems. Too often, a privileged member of the political elite or a ruthless leader of a criminal gang can escape legal responsibility for wrongdoing. Yet, basic improvements are in evidence. The average citizen is far less likely than ever in the nation's history to be mistreated by agents of the government, to be jailed without charges, or to be denied due process if accused of a crime.

The structural changes of recent years are making an impact. The establishment of legal defense at public expense for persons accused of criminal acts has increased fairness. Fewer people are languishing in prison without trial. The purging of old cases and modernized administration have reduced delays. A new cadre of judges and other professionals is being selected, trained, and evaluated in ways that will enhance an independent judiciary. Military officers and members of the economic elite have been convicted of criminal offenses, holding them subject to the rule of law for the first time. CSOs are becoming reform advocates, broadening the base of debate and participation.

While the overall trend is positive, the transition in the justice system is fragile and vulnerable to risks of stagnation or reversal. The political momentum of the 1992 Chapultepec Accords is waning. There is a risk that the political will for reform may falter and that a high rate of violent crime may erode popular support. Yet there remain many positive indications that the reforms achieved will continue and will be consolidated. Among these are El Salvador's more open climate of democratic debate, several articulate NGOs, growing professional and technical proficiency in the administration of justice, and growing dynamism of its leading universities in both academic and popular education in the rule of law.

USAID programs have made a major contribution to the progress achieved to date. Through the 1980s, concern for the rule of law in El Salvador became an issue of growing importance. Many give credit to early USAID reform efforts for stimulating the prominent attention given to ROL issues in the peace negotiations. In the 1990s, USAID helped to strengthen public sector and civil society institutions that will be responsible for making structural changes of lasting benefit to the people of El Salvador.

The business of consolidating the rule of law in El Salvador remains unfinished. USAID will no longer be a principal source of financing for this task. The World Bank, the Inter-American Development Bank, and the Salvadoran government are now paying the far greater share of the costs. However, USAID's role remains to bring its experience to a collaborative effort with two principal aims: to help expand access to justice for more people, and to help Salvadoran institutions sustain a process of continuing improvement and strengthening of the rule of law as a basic feature of a more secure and just society.

## I. Guatemala

Five years after formal the end of 36 years of civil war, Guatemala continues to face a deeply divided society, with many frustrated by the slow pace of reform. Progress has clearly been made in opening a national dialogue and in improving the government's respect for human rights. Still, serious challenges remain in the form of public corruption, threats to judges and human rights activists, a high crime rate, and widespread poverty.

Guatemala was both the site of the Spanish colonial government of Central America and its pre-eminent center of culture. Upon independence from Spain in 1821, Guatemala became the capital of the short-lived Central American Federation. This historical leadership role continues to influence Guatemalan views regarding their position in the Central American region.

Guatemala's national history has been dominated by a series of *caudillos*, strong men who were supported by the army and who imposed their will by force. A small Spanish-descended elite control great wealth and power. More than one half of the population, of Mayan descent, have been excluded from the formal political and economic systems and subsist at very low levels of income, health, and education. Until the adoption of the 1985 Constitution, an elected president had served out his term and turned over power to an elected successor only twice in the nation's history. Civil conflict, accompanied by brutal repression and widespread political violence, wracked the country from 1960 until 1996, although at reduced levels after the return of elected civilian government in 1986.

Against this background of authoritarianism, violence, inequity, and social cleavages, the rule of law and the institutions of a fair, independent, and efficient judicial system were never priorities in Guatemala. Over the years, the court system reflected this broader reality. The judiciary was widely perceived to be corrupt, inefficient, and subordinate to the executive.

Under the 1985 Constitution, a number of reforms were introduced, including the creation of a new constitutional court with the power to issue decisions binding on other courts. The constitution also guaranteed a percentage of the national budget for the judicial branch, provided for right to counsel for those accused of crimes, and directed the establishment of a career judiciary.

USAID ROL assistance in Guatemala began in 1986, after the inauguration of the first elected civilian government under the new constitution. An extension of the regional project to Guatemala that year provided access to technical assistance and training, diagnostic analysis, and research and library materials. It also brought Guatemalans, for the first time, into an ongoing regional and international dialogue on judicial reform.

An intensified policy dialogue and the exploration of reforms through pilot courts were inaugurated in 1987 through a USAID agreement with the Harvard Law School's Center for Criminal Justice. An ambitious and complex 1988 bi-lateral program followed, but was never fully implemented. Both the Harvard agreement and the bi-lateral program were terminated before their scheduled completion dates, due to a climate of continued impunity for military and political leaders and to mutual frustration over directions.

Guatemala was among the first LAC countries to enact, in 1992, a modern code of criminal procedure based on an accusatory process, active advocacy by prosecution and defense counsel, and oral proceedings. Unfortunately, enactment of this legislation was not accompanied by timely measures to build the capacity to implement it. The need to prepare for implementation became the focus of dialogue with USAID about renewed cooperation. The code was designed to go into effect in 1994, so the timing was urgent.

A revised USAID program was inaugurated in 1993, as Guatemalan priorities became clear. The new program focused on preparing judicial system operators to carry out their responsibilities for investigation, prosecution, defense and the conduct of oral proceedings. In addition, USAID provided support for the national university, the University of San Carlos, in curriculum modernization and in increasing public awareness and understanding of the legal system.

The 1996 Peace Accords provided added momentum for judicial reform. One of the commitments in the accords was to create a broadly representative commission for the strengthening of justice, which was formed in 1997. The following year it filed a final report that remains a central feature of the reform agenda, even though a constitutional referendum to adopt a number of recommendations emerging from the peace process (such as lengthening the present five-year term of Supreme Court Magistrates) failed to gain the approval of the voters.

Guatemala's judiciary continues to be subject to criticism, and there remain many well-founded complaints of incompetence, inefficiency, corruption, and political favoritism. However, some significant breakthroughs have emerged as hopeful signs; in a landmark ruling in June 2001, three military officers were found guilty in the 1998 murder of human rights leader Bishop Juan José Gerardi. The sentencing was the first of its kind for high-ranking military officers, and an indicator of a changing climate, in which structural reforms are beginning to have a real impact on the provision of justice.

## 1. Improving Judicial Independence, Competency, and Integrity

The most dramatic changes in the administration of justice in Guatemala have been those that have resulted from Guatemala's enthusiastic embrace of an oral, accusatory process to replace the written, inquisitorial tradition. This process was initiated through the Harvard project, in which public oral proceedings were first introduced in pilot courts.

The accusatory system's advantages in efficiency, effectiveness, and reduced opportunities for corruption favorably impressed the practitioners involved with the pilot courts as well as those who became the architects of the 1992 criminal procedure code. The code's entry into force in 1994 created a demand for prosecutors and public defenders who could present cases to a judge, as well as a need for judges who could manage active participation by counsel. It also required improved inter-institutional coordination and better management systems to process and track cases. Since its inception, USAID assistance has been critical to enhancing the capacity of Guatemalan institutions to carry out new and challenging responsibilities under this charter for public, oral, accusatory proceedings.

The practical incentive of the new procedures code was reinforced by the political imperative of the 1996 Peace Accords, which specifically addresses several aspects of the judicial system, including the desirability of expanding the use of oral proceedings. As a result, the past five years have seen the enactment of a large number of organic laws for justice sector institutions. A new law established the Institute for Public Defense as a separate entity, independent of the executive, legislative, or judicial branches of government in the same manner as the Public Ministry (prosecution service) that had been created in 1994. Two additional statutes established a civil service status for judicial branch employees and created a judicial career council, a training unit, and a disciplinary tribunal for judges. Meanwhile, the judicial budget has increased to four percent of the national budget. USAID assistance has been material in the formulation of these structural reforms and even more so in their implementation. Providing judicial training support is one of the many ways USAID support has contributed to the practical implementation of recent reforms. Under the new judicial career law, candidates to be first instance judges and justices of the peace are being selected by examination. Those who pass the examination must then complete six months of specialized training at the judicial training school in order to become eligible for appointment as judges. Three classes have now completed this process; more than 75 first instance judges and more than 100 justices of the peace will begin to change the face of the Guatemalan judiciary.

USAID support has also led to the expansion of the number and geographic allocation of judges. Guatemala's present criminal justice system has changed significantly since the mid-1980s. In 1986 Guatemala had less than 50 first instance judges, less than 100 justices of the peace, some 30 prosecutors, and no public defenders. All were poorly paid, and none had access to formal training. In the space of 15 years, these numbers increased several times over. Today, courts with more than 120 first instance judges, 375 justices of the peace, 175 prosecutors, and 110 public defenders are operating in communities throughout the country. Salaries have increased, selection is less political, administration has been modernized, and professional training has become standardized.

The Public Ministry continues to struggle to overcome a legacy of low productivity, weak capacity, and corruption. Selection processes and training are improving. New public service and victims' assistance facilities have been established. However, the basic capacity to mount effective prosecutions generally remains inadequate. By contrast, the Institute for Public Defense is widely regarded as having developed a good capacity to provide legal defense and safeguard legal rights of the accused. This imbalance works to the detriment of an interdependent system based on the assumption of capable advocacy on both sides. USAID continues its support for capable prosecution and public defense institutions.

The reforms of recent years have compelled a thorough revision of a university law school curriculum that had not changed significantly for decades. USAID has been involved in the process of improving legal education by furthering the university capacity to implement new teaching methods and approach. With this support, San Carlos University, the national university, has designed and begun to put into place a revised curriculum, intended not only to update the technical content of courses but also to emphasize ethics and values. When members of the class of 2006 begin to graduate and enter the legal profession, public service, and academic life, they will be the beginning of a new generation of individuals responsible for improving the quality of the justice system.

One area in which USAID support has proved critical for the administrative implementation of the reforms of the mid-1990s is in the organization and operation of the courts. A common administrative center has been established with USAID assistance to support Guatemala City's 11 criminal courts. The center utilizes computerized systems for assigning and tracking cases and employs controls to protect the integrity of case files. The center is improving efficiency, increasing access to information, reducing judge shopping, and diminishing opportunities for tampering with court records. Similar administrative centers, on a smaller scale, are integral to the 10 USAID-supported justice centers operating outside the capital. In 1997, more than 1,000 case files had been "lost" in seven criminal courts in the capital. In 1999, only one case was lost, and the person responsible was identified and prosecuted.

## 2. Expanding Justice

USAID has been successful in working with Guatemalan public sector and non-governmental entities. Among the groups USAID has been actively supporting is the National Commission to Support the Strengthening of Justice, a successor to the commission established in 1997 under the peace accords. The commission is providing a forum for dialogue among justice system operators and leaders of civil society, and it has developed a strategic plan for continued improvement of the justice system. It is also dealing with inter-agency conflicts, such as a debilitating dispute between the Public Ministry and the National Civilian Police over the division of responsibility for the conduct of investigations and the collection of evidence. A smaller group made up only of public sector representatives has been less successful as a coordinating mechanism.

The composition of the National Commission to Support the Strengthening of Justice is paralleled at the community level in 10 justice centers, established and operated with USAID support, in widely dispersed cities. Judges, prosecutors, public defenders, police commanders, representatives of universities, members of the private bar, and other civil society actors are working together in the executive committees of the centers to make justice more efficient, accessible, and responsive to local needs. The attributes of civil society participation, inter-institutional coordination, sound management, and public service orientation represented by justice centers are changing public expectations and raising standards on the part of justice system operators. The justice centers are being replicated in additional locations with funding from USAID and other donors. As this model of justice as a service to the community becomes more deeply ingrained in an expanding number of population centers, it promises to change the basic relationship between citizens and public institutions, as well as relationships among the public institutions that administer justice.

USAID has also looked toward NGOs to increase public awareness, access, and advocacy. Seventeen NGOs representing a very broad range of views and interests have constituted themselves as the Pro-justice Movement and are engaged in dialogue with governmental actors and sophisticated public advocacy.

Also, mediation centers are now providing unprecedented access in indigenous communities, installing themselves as an acceptable mechanism for the informal resolution of disputes, including through the application of Mayan law principles when agreeable to the parties. Seven centers were established with direct USAID support and six were sponsored by the Guatemalan Supreme Court. USAID is working with local communities to set up an additional 10 mediation centers this year and 10 more in 2002. The centers resolve three quarters of all cases presented to them within one month.

Guatemala has embarked on a course toward justice reform. The gradual transition from a society that lacked accountability for those with economic and military power to one governed by a rule of law remains at an early and very fragile stage. Reform of the justice system is an integral part of this transition. A key element of reform, the adoption of an oral, accusatory procedure, occurred relatively early. But the institutional underpinnings necessary to make that reform effective and sustainable are only now being put into place. Political momentum for further steps to implement the peace accords has diminished, and thus the importance of improving access is all the more crucial, since individuals and local groups must begin to take ownership of their system in order to institutionalize reforms.

The transition is hampered by traditions that have not emphasized an independent judiciary, weak institutions, inadequate coordination, and limited political resolve. It is hindered further by a popular perception in some quarters that the rule of law is mainly a means for redressing past wrongs rather than an instrument for advancing a more competitive economy and a more democratic society in which the rights and opportunities of all are protected. Despite these obstacles, change continues. A growing number of Guatemalans are participating in the process, and expectations are changing.

Especially promising features of the ongoing transition are the merit selection and initial training of judges, the community justice centers and mediation centers in secondary cities and indigenous communities, and the reform of law school curricula. These programs are changing the source of decisions about the justice system from a few leaders in a centralized hierarchy to a broadly participatory structure with representatives from many national and local institutions.

Because they are in a nascent stage, their impact will become apparent only gradually, as more capable and better-trained judges enter the system, more communities experience and contribute to a concept of justice as a public service, as the analysis and debate within civil society achieve greater influence, and as more lawyers enter private practice and public service with solid academic and practical preparation for current challenges.

USAID programs introduced the debate over fundamental issues of the rule of law. While the early history of international cooperation was sometimes contentious, it is clear that USAID programs introduced new concepts and stimulated thinking about reforms that Guatemala has subsequently adopted. In addition, a number of currently active reformers were participants in the early USAID programs, where they found inspiration, gained technical capacity, and formed a vision of sustainable progress. As public expectations and institutional capacity have increased, a broader agenda has evolved in which USAID has worked with Guatemalan partners toward shared objectives.

USAID has played a major role in helping Guatemalan institutions respond to the need to reform, implement, and manage judicial change within a system affording great potential. It has supported the formulation and implementation of new organic laws for judges, judicial staff, prosecutors and public defenders—all of which have been enacted since 1994. It has supported institutional strengthening for these actors, including the development of greater training capacities. It has helped to establish modern management systems that increase efficiency, improve access to information by litigants and the public,

and reduce risks of corruption. It has also supported a stronger voice and a more active participation by civil society in an ongoing process to make the justice system more effective, efficient, fair, and accessible. New programs are now providing key technical assistance and training needed to implement and sustain the reforms that Guatemala has adopted. As the transition continues, so does the need for continued international cooperation, including the continued commitment by USAID to a long-term investment that is beginning to achieve valuable results.

## J. Honduras

The promising movement towards the rule of law in Honduras should be viewed in the context of the political instability, civil wars, and foreign economic influence that have characterized the post-colonial history of this low-income Central American nation with its 6.25 million inhabitants. Following independence from Spain in 1821 and short-lived participation in the Central American Federation, successive generations of Hondurans lived through 14 national constitutions and 98 changes of government during the 19th century. Military governments continued to dominate the political scene for much of the 20th century.

The current constitution, adopted in 1982, has reversed this trend by supporting consecutive elections for civilian governments for the last 20 years. However, the armed forces maintained substantial political influence during the intense regional conflicts of the 1980s and into the 1990s. Only in recent years have civilian authorities exercised effective jurisdiction over the military establishment. The national police force was only converted from a military to a civilian institution in 1999.

When the USAID regional justice program began in 1985, the judiciary in Honduras was operating under multiple handicaps. These included outdated legislation and procedures, lack of training and legal information for justice system operators, weak administrative capacity, inadequate budget, and low public esteem. A judicial career law was on the books but remained unimplemented. The judiciary was thoroughly politicized, with substantial turnover of judges and other personnel with every change in government. Prosecution was supported by a small and passive group of *fiscales*, and there was no body of full-time public defenders. Under such circumstances, the majority of reported crimes never resulted in court proceedings, and almost 90 percent of the prison population awaited trial under a slow and formalistic system of written procedures.

With support from the USAID regional program, Honduras established a national justice reform commission in 1985. This commission enlisted participation from the Supreme Court, government agencies, the national university, and the national bar association. It served as a coordinating body for reform proposals and as a focal point for dealing with USAID's implementing agency, ILANUD.

The regional program led to a USAID/Honduras bi-lateral project, which was approved in 1987 but not implemented until early 1989. There were four initial objectives: (1) to support a judicial career service to replace the patronage system with one based on merit; (2) to strengthen the administrative capacity of the judiciary by developing, justifying, and managing a more adequate budget; (3) to undertake a major training program for increased judicial professionalism; and (4) to increase public awareness, understanding, and use of the legal system.

These initial objectives, with some refinements, remain central to the current USAID program. There is now a stronger focus on helping Honduran institutions prepare for the implementation of a new criminal procedure code that took effect in early 2002.

USAID has played an important role in supporting Honduran reforms. Its training has reached thousands of Hondurans and has contributed to a critical mass of judicial competence. USAID technical assistance has helped the courts to improve their efficiency and command a larger budget. Beyond specific project results, USAID has facilitated Hondurans' interaction with legal reformers from neighboring countries and has provided opportunities for national public debate about the rule of law and administration of justice. The legal system is now firmly on the public policy agenda.

### 1. Supporting Merit-based Judicial Career Service and Training

In Honduras, judicial appointments have long been a matter of political patronage, and the existing judicial career system has not fundamentally changed this tradition. Currently pending in Congress are important new laws on the judiciary, including strengthened career status and a judicial council responsible for the selection and evaluation of judges. A 1980 judicial career law has been the subject of various implementing regulations over the years and a merit system is now in place. However, the existing system is not applied rigorously and does not yet assure civil service protection to judges or court employees. Still, USAID helped gain acceptance for the procedure of screening all applicants to ensure that they meet some minimum standards. This has helped improve the quality of recent appointees.

The judicial school—primarily sustained by international donors—seeks to strengthen professional capacities of both sitting judges and judicial candidates. USAID has sponsored extensive training to prepare judges for implementation of the criminal procedure code reform, and the election of a new, expanded, and less political Supreme Court is expected to improve the continuity of judicial service.

Nevertheless, complaints of judicial misconduct are still frequent. The Office of the Inspector General of the Supreme Court, an office developed with assistance from USAID, has processed more than 800 complaints of judicial misconduct this year. Some judges have been vulnerable to political influence, and several attempts to prosecute politicians have been frustrated by a broad cloak of statutory immunity. Still, some Honduran judges have shown the courage and independence to decide cases against military officers, economic elites, and political leaders.

The Public Ministry, the independent prosecution service established in 1994, has gained respect as a competent, professional organization with the courage to prosecute politically powerful defendants in several high-profile corruption and human rights cases. USAID technical assistance and training have contributed significantly to the strengthening of this institution and the readiness of its staff to undertake more demanding responsibilities under the new oral procedures about to be introduced. USAID support has included the full-time assignment of a DOJ advisor and trainer for the year leading up to implementation of the new criminal procedure code.

The effectiveness of the Public Ministry has been affected by changes in its relations with the investigative police force, the *Dirección Nacional de Investigaciones*. Oversight of the investigative police was vested in the chief prosecutor by the 1993 legislation that authorized the Public Ministry. When the rest of the national police force was transferred from the military to the Ministry of Security and Justice in 1999, the investigative police were also transferred to that ministry. This change adversely affected the investigation and prosecution of serious offenses. Indeed, there is some speculation that the 1999 transfer might have been consciously intended by its supporters to retard politically sensitive prosecutions. With the new criminal procedure code, the relationship between the investigative police and prosecutors is expected to be restored. Thus far, the Public Ministry has demonstrated committed leadership and good management. It has a capable and well-trained staff appointed under a merit system, and it has proven able to meet previous challenges.

Finally, a public defender service was created as a dependency of the judiciary with USAID support and encouragement. From modest beginnings in 1993, the public defense service now handles the vast majority of criminal defense work in Honduras. It is a smaller organization than the Public Ministry and lacks administrative or budgetary independence. Although pressures have moderated recently, the institution was vulnerable for several years to political influence in appointments. USAID has given focused attention to preparing public defenders for the new oral procedures, including through intensive training. The government has approved funding for appointing 70 additional public defenders, and the organization (with USAID encouragement) has been accepted as a member of the Inter-institutional Commission on Criminal Justice Reform. Thus the public defender service appears to be a new fixture in a Honduran criminal justice system that has traditionally relied heavily on extended pre-trial detention. This marks an important change in access to legal representation for poor Hondurans accused of crimes.

**2. Strengthening the Administration of the Courts and the Judiciary**

With support from USAID, the criminal courts have established practical systems for receiving cases and assigning them to judges, safeguarding documents and physical evidence, and managing judicial budgets, personnel, information, and statistics. Previously, such systems did not exist and each court improvised its administration. The new administrative procedures have been tested in USAID-supported pilot projects in four locations during the last two years. They have now been accepted as national standards and are being replicated in additional jurisdictions throughout Honduras.

A considerable backlog of pending cases includes many inactive proceedings that have remained on court dockets for years. USAID is providing technical assistance for purging these cases, which continue to consume the time of judges and administrators. Moreover, the backlog combines with slow, formalistic procedures and a recent surge in reported crimes; a disturbing 90 percent of the prison population is awaiting trial. This extraordinary percentage has persisted for many years, quite unaffected by any reforms implemented to date.

**3. Improving Legal Education**

Legal education has not been a primary focus of USAID programs or other reform efforts in Honduras until recently. However, the reform of criminal procedure has generated interest in modernizing the law school curriculum. There is a roundtable of law school deans who discuss these issues, as well as a student group for academic excellence that advocates reform. A promising development is the recent creation by the national university of post-graduate programs in criminal law and in criminal procedure. USAID is supporting these efforts to improve the quality of legal education through both financial and technical aid.

**4. Increasing Public Awareness and Supporting Civil Society ROL Advocates**

Honduras has experienced impressive growth in the number of CSOs in recent years. However, none has developed much strength in analyzing and stimulating public debate on specific ROL issues. The most encouraging progress is seen in the work of the Federation of Private Organizations for Development (FOPRIDEH), an umbrella organization. With USAID technical and financial support, FOPRIDEH has been working with a coalition of business, municipal, human rights, religious, and other organizations to increase public awareness of the recent constitutional reform, the new code of criminal procedure, and other related issues. This is an important first step in broadening participation for a reform process that has thus far been generated and sustained largely from institutions of government and the justice system.

FOPRIDEH has also worked with many community organizations to increase knowledge at the grassroots concerning public policy issues. While a few prominent themes, such as domestic violence, have emerged in this forum, efforts remain highly fragmented and there does not seem to be an emerging national vision or defined set of priorities for the rule of law. Nor are NGOs specifically focused on these themes. Given the growing legal framework and institutional will in Honduras, there is need for a regional network of NGOs to focus on rule of law, as others have in the areas of environment and human rights. USAID will certainly be an important supporter in such a process.

Honduras has made extraordinary progress and first steps towards establishing and strengthening the rule of law. It has adopted and is about to implement a number of reforms that are of historic importance. With support from USAID and other donors, Honduras has prepared extensively for a new era of legal development. While its progress seems fragile, its challenges substantial, and its momentum for continued reform uncertain, the country now possesses improved technical competence and efficiency to engage what lies ahead. A corps of reformers in government and the judiciary are at the forefront of national debate, and there are heightened public expectations. However, the sufficiency of the commitment and the capacity of political leadership, justice institutions, and civil society are about to be tested. A number of systemic decisions have been made only recently, and their implementation awaits the installation of a new government and a new Supreme Court in 2002.

Thus far, reform has depended largely on the commitment of a few leaders within the justice system and support from the international community. Civil society groups have shown increasing interest in ROL issues, but a more capable network of NGOs is needed to monitor, analyze, and disseminate information about reform issues. USAID is committed to work with CSOs, taking the initiative in establishing an agenda for public dialogue and creating strategies for strengthening the rule of law.

USAID introduced the administration of justice as a public policy issue in Honduras. It has promoted and sustained reform efforts over the years. Fortunately, it is no longer alone among the donors. The Inter-American Development Bank now surpasses USAID in program size, and other donors are also contributing. However, USAID's role has been and remains unique. As one participant observed, USAID has invested in capacities that form the cement of the system. It has trained thousands of individuals who work in the justice system and has helped to create new organizations and institutions. USAID has provided technical assistance to courts and other justice-related organizations as they seek to implement strategic planning, realistic budgeting and efficient management systems and administrative procedures. Now USAID has begun to do the same with CSOs. This will be crucial for establishing a broad base of informed support that will sustain momentum for a continuing process of legal reform.

For the most part, USAID has tried not to do things for Hondurans that Hondurans need to do for themselves. Rather, there has been a consistent policy of encouraging and supporting local commitment and local capacity. USAID has been consistent in its conscious effort to foster local ownership and to avoid proposing external solutions to local problems.

Honduras has made basic policy decisions that offer some hope for making the rule of law more of an integral part of a more democratic society. These decisions are exemplified by a new constitutional amendment that will (1) lengthen the term of Supreme Court magistrates from four to seven years; (2) increase the number of magistrates; (3) base appointments on nominations from interested professional, governmental and CSOs; (4) increase the judicial budget; and (5) separate the schedule for Supreme Court appointments from the highly politicized post-election period and subsequent government turnover. An equally impressive indication of reform is the decision to adopt a new oral, accusatory procedure in criminal cases.

While progress has been slow, concrete achievements are beginning to accumulate. The challenge remains in bringing a significant number of pending reforms into force and building on that foundation a more reliable, functioning justice system that enjoys public confidence and a broadly shared national vision for continuous improvement in strengthening the rule of law.

## K. Mexico

Mexico is the United States' second largest trading partner. It has a population approaching 100 million, shares a 2,000-mile border with our country, has enormous impact on U.S. environmental quality, and is the conduit for a huge percentage of illegal migrants and illicit drugs entering the United States. The United States' relationship with Mexico is without doubt one of the most direct and important of all our relationships in the LAC region.

Mexico won independence from Spain in 1810. Seven years after the Revolution of 1910, a new constitution was enacted under which Mexico became a federal republic comprised of 31 states and a federal district (Mexico City).[7] Since its founding in 1929 until recently, the Partido Revolucionario Institucional (PRI) dominated the country by means of its corporatist, authoritarian structure maintained to a great extent through patronage, repression, and corruption. The formal business of government took place largely outside the realm of public scrutiny and was shielded from serious legal challenge. In 1988, Carlos Salinas won the presidential election through what many believe to have been massive and systematic fraud. Under Salinas, Mexico experienced increasing levels of governmental corruption. The subsequent government of President Ernesto Zedillo (1994-2000) initiated a series of profound democratic institutional reforms designed to ensure free and fair elections, reduce corruption in the executive branch, and increase the independence and efficacy of the judiciary. On July 2, 2000, when voters elected opposition presidential candidate Vicente Fox, PRI's 71-year rule ended, and Mexico proved to the world that its reforms were working and that its commitment to democracy was sincere.

The democratization process began with the judicial branch in 1994, when the incoming Zedillo administration enacted a series of constitutional amendments that changed the composition, tenure, and judicial review powers of the Supreme Court, added a judicial council to take over administration and disciplinary control of the courts, and established a judicial career with new procedures for selection and appointment of federal judges. Mexico's economic development in recent years has spurred initiatives for additional judicial development. Further constitutional reforms are promised by the Fox administration, including the possible transformation of the Supreme Court into a true constitutional court. Judicial strengthening and improved access to justice, especially at the state and local levels, were key themes in the transition.

Mexico mixes U.S. constitutional theory with a civil law system based on a series of written codes. The trial process consists of a series of fact-gathering hearings at which the court receives documentary evidence or testimony. The constitution provides for the right of the accused to attend hearings and to challenge evidence presented. The judge reviews the file in chambers and then issues a final written ruling. The judiciary is increasingly independent, but has at times reportedly been influenced by the executive branch, mainly at the state level. Corruption, inefficiency, lack of training, inadequate resources, and disregard for the law are major problems. Reports of human rights violations within the justice system are widespread, as are violence and targeted assassinations related to the drug trade.[8] In recent years, the federal courts have benefited greatly from substantial increases in budgetary allocations. Funding for state courts, however, remains entirely inadequate. Public faith and confidence in the law and legal systems are extremely low.

Currently, only a few donor programs are working in the DG sector and even fewer with the judiciary. Historically, Mexico's judicial branch has been adamantly opposed to offers of assistance extended by foreign entities, especially the United States. This heightened sensitivity and resistance to offers of assistance has hampered and restricted possibilities of outside aid, especially at the federal level.

Taking into account all of the above factors and historical context, USAID made tentative inroads into the justice area in the mid-1990s, and initiated a formal but narrowly-targeted program in 1997 with relatively modest ambitions. USAID did not want to be seen as attempting to insert itself where it was not wanted, or imply that Mexico needed U.S. help to improve its courts, for fear that its good intentions would backfire. All offers of assistance had to be made with the clear understanding that representatives of the U.S. and Mexican judiciaries would work together, if at all, only as equals. Therefore, an important initial goal of USAID/Mexico's judicial program became the establishment of relationships and trust, primarily with members of the Mexican federal judiciary, in the hope that some of the barriers and resistance to U.S. assistance would be broken down. As a consequence of the foresight and discretion reflected in its steady but very low key approach, USAID has been the only international donor with any significant presence in Mexico over the last several years.

USAID's justice program in Mexico has included cross-border judicial conferences, judicial education and training, studies and evaluations, and ADR. All of these programs have had positive results and impacts. The main overarching goal and achievement, however, has been to overcome the insularity and hostility of the judicial branch to international assistance, forge productive and promising working relationships with Mexican justice officials, increase understanding of Mexican and U.S. judicial systems and topics of mutual concern, and pave the way for future cooperation between the courts of both countries.

### 1. Developing Cross-border Cooperation and Judicial Training

The main activities connected with USAID's program were the creation of the Judicial Exchange Advisory Committee and the planning and presentation of three cross-border conferences in 1998 and 1999 attended by federal and state judges from both countries. Overseen by the committee, the border conferences covered specific areas of bi-national interest at both the state and federal levels, provided opportunities for discussion and information exchange, and promoted initial relationships between both countries' judiciaries.

Significant advances in mutual understanding between Mexican and American jurists were achieved as a result of the border conferences. These sessions highlighted a panoply of themes and problems common to the judiciaries of each country, and they included the formation of working groups to analyze those issues and share approaches and information. The conferences provided a unique forum for American and Mexican judges to meet and discuss legal and administrative matters of mutual interest, many of which were applied to specific cases and in other legal settings thereafter. The conference participants later reported that the lessons learned have been put into practice in their professional lives, e.g., teaching, handling of individual cases and specific issues by attorneys as well as judges, research, training, and development of legal reforms and projects. As a result of those initial contacts, Mexican federal and state courts have since proposed cooperation and requested assistance from USAID in developing future court administration and judicial education projects.

In addition, USAID sponsored multiple smaller educational seminars, workshops, and training programs that have further contributed to foster greater understanding and cooperation between the judiciaries of both countries, form relationships between the courts and judicial actors, and share relevant and needed information about each other's laws, systems, and practices.

Another important contribution of USAID's justice program was the development of a master's degree program in judicial law to be replicated and offered at universities throughout Mexico. The objective of this program was to improve the quality of judicial decision-making by creating an intensive high-level course for sitting state court judges that could be reproduced and offered throughout the country at the state level. USAID worked with professors from the Universidad Nacional Autónoma de México to design a four-semester curriculum that included issues of Mexican state and federal law, judicial procedure, judicial governance, and court administration. The course was highly successful, and the first class of master's students (36 criminal judges from several states) was graduated in December 2000. The participant judges were positive about the program generally, as well as the professional networking incident to attendance. The course is currently being evaluated and redesigned for upgrades, improvements, and distance learning possibilities prior to a second offering. Members of Fox's transition team cited this program as a model for future judicial education initiatives.

Finally, USAID's justice program in Mexico has also achieved the compilation and publication of important and essential studies and tools regarding the systems of both countries. A bilingual publication summarizing and comparing U.S./Mexican judicial systems was completed, as well as a reference guide for American and Mexican attorneys and judges seeking to understand one another's legal systems. Perhaps most significant, USAID funded Universidad Nacional Autónoma de México legal researchers and scholars to prepare the first comprehensive review, investigation, and diagnostic of Mexican state courts. The goal of this study was to document and compare the current status of Mexican state judiciaries, identify trends and problem areas, and analyze and suggest solutions and alternatives to address those problems and promote judicial development. The resulting diagnostic provides a broad overview and baseline analysis of courts throughout the country, and lays the groundwork for evaluating future justice reform efforts. For the first time, Mexico has a diagnostic study compiling parallel and uniform information concerning the administration of justice in each of the state courts of Mexico. While still in draft form, the *Diagnóstico* was used as the key data source for Fox's transition team analyzing justice system issues. The final written work was published in 2001 for national and international distribution, and it will provide a springboard for further concrete projects to promote administration of justice in Mexico.

### 2. Establishing Alternative Methods of Dispute Resolution

USAID's ADR program was managed by a local partner, the Centro de Atención para Víctimas de Delito (CENAVID) in Guadalajara, Jalisco. The project was undertaken in cooperation with the Jalisco State Supreme Court and provided mediation training to court clerks who thereafter acted as mediators to resolve pending litigation. Additionally, CENAVID provided mediation training to the Jalisco *Defensoría de Oficio*, a state-run legal office that provides representation and other legal services to poor people in criminal, commercial, family, and other civil matters. CENAVID provided further mediation training to employees of the agency of the executive branch charged with pre-prosecution investigation and criminal prosecution to use in the resolution of misdemeanor cases. Lastly, CENAVID established and operated a community mediation program to publicize and promote the use of mediation in resolving neighborhood disputes, and it set up and oversaw several other small community centers.

The major achievement of the above efforts was to educate people about the benefits of mediation and to begin to socialize mediation into the culture of conflict resolution. Mediation is a relatively new process in Mexico and is little understood. Forming a strong base of support, knowledge, and trained mediators will be critical to its ultimate success. Reports about the training methods and mediation centers were all very positive, but the more significant overriding impact seems to have been in broadening attitudes and awareness within the legal and judicial community, as well as the public at large.

USAID has, to a great extent, overcome many of the initial sensitivities of the Mexican judiciaries and has forged significant links at both state and federal levels. USAID has established a good reputation in the justice community and has gained substantial knowledge of and familiarity with Mexican justice sector needs, issues, and key legal figures. This good will and positive working relationship has been a critical first step to designing and implementing future collaborative efforts, which are now being developed for the next phase of the program. These will include judicial education, strengthening of institutions and associations, and promotion of access, transparency, and accountability in judicial proceedings. Significantly, many such activities are being undertaken in response to specific requests and invitations extended by the Mexican judiciary. These invitations would have been beyond the realm of probability at the outset of USAID's justice program.

The Mexican justice sector's current openness is in marked contrast to the insular judicial environment documented in USAID's 1996 democracy assessment, *Strategic Assessment of Democracy and Governance in Mexico*. USAID's fledgling programs have contributed importantly to the increased receptivity of the Mexican judicial sector and have also paved the way for recent World Bank and Inter-American Development Bank initiatives. A solid foundation has been laid for the success of the forthcoming program.

## L. Panama

Moving towards the rule of law in contemporary Panama is best understood in light of the nation's unique geographic role and its political transition during the 20th century. Panama acts as a land bridge between two continents and a passage between two oceans. The southernmost country in the Central American isthmus, it became a department of Colombia after independence from Spain in 1821. A rebellion in 1903, carried out with U.S. support, gained Panama independence. In return, the United States was granted the Canal Zone "in perpetuity," along with the right to intervene in Panama's affairs. The canal and relations with the United States remained primary influences in Panama throughout the 20$^{th}$ century. A new chapter in this relationship began after December 1999, when the canal passed from U.S. to Panamanian control.

Several constitutions adopted in Panama since independence have incorporated a U.S. model, providing for separate legislative, executive, and judicial powers. However, the constitutional system has been undermined by periodic political instability. A 1968 coup by the populist National Guard commander, Omar Torrijos, led to a 21-year regime of military domination that was continued by General Manuel Noriega after Torrijos' mysterious death in 1981.

Elected government was restored in 1989, following U.S. military action in Operation Just Cause. Since that time, the most important change that has strengthened the rule of law in Panama has been the elimination of the Panama Defense Forces (PDF). By constitutional amendment, the PDF had become the fourth branch of Noriega's government. As a practical matter, it was the dominant political force in Panama from 1968 until 1989. The replacement of the PDF by a civilian national police force and the conversion of the investigative secret police into a judicial police removed a major impediment. But Panama still needed to build the institutions and culture of a justice system that acts under the rule of law.

USAID ROL assistance in Panama was initially explored in 1985. In hopes that President Nicolas Ardito Barletta's government might be able to move the nation towards a more democratic future, USAID chose Panama for the first sector assessment under a regional project promoting improved justice. However, Noriega forced Barletta from office when the assessment had been underway for only one month. As it became clear that necessary cooperation from judicial authorities would not be forthcoming,

USAID decided against any follow-up. Nevertheless, the assessment did provide useful background for developing a bi-lateral cooperation program when elected government was restored in 1989.

USAID sponsored a participatory democracy assessment in 1990 as a part of an interim project that helped the courts to restore operations. In 1992 USAID launched a $15 million, seven-year administration of justice project targeting the operators of the criminal justice system. Efforts supported improvements in the operation systems of the judiciary and prosecution service, development of training and legal materials, institutionalization and strengthening of the country's public defender system, and facilitation of coordination among the various institutions in the justice sector.

USAID was forced to revise its priorities in 1995 in the face of a severe budget reduction. The democracy-strengthening program for Panama was a casualty, leading to termination of the administration of justice project in 1997. This action was taken in anticipation of a scheduled closing of the USAID Mission in 2000.

In 1998, at the request of the secretary of state, USAID agreed to keep open the USAID Mission in Panama and resume work on reform of the judicial system. The mission commissioned a new assessment, which it used to formulate a new set of objectives for the justice sector, albeit with a much-reduced level of funds. As refined in 2001, the program will target civil society advocacy for judicial reform, court management and strengthened collaboration between prosecutors and police. The new USAID program is specifically designed to complement a $27 million- justice sector initiative by the Inter-American Development Bank.

The new institutions of the justice systems are still fragile, and problems remain. A vertical judicial hierarchy inhibits the independence of individual judges and contributes to low public confidence in the integrity of the courts. The judicial career system remains incomplete, and formalistic procedures cause excessive delays. The high number of prisoners in pre-trial detention gives rise to human rights concerns. Above all, what is needed in Panama is a coherent vision for reform. This implies both a readiness to view justice as a system and broad commitment to participation and coordination among concerned institutions and CSOs.

### 1. Supporting Judicial Independence, Competence, and Integrity

In 1990 there was no system in place for the merit selection of judges or for their training. Judicial career regulations adopted in 1991 provide objective criteria for judicial appointments. The rigor of the merit selection process is still not strong and these regulations do not provide for the evaluation and discipline of sitting judges, but the principle of a career judiciary is now firmly established.

A particular contribution of USAID's 1992 administration of justice project was the investment in training more than 7,000 members of the legal system. Courses included an impressive seven-week introduction for judges and a counterpart eight-week course for prosecutors. Both involved international faculties and deepened interaction between jurists from Panama and other LAC countries.

The Judicial School, inaugurated in 1993, initiated an extraordinary array of courses during the life of the 1992 USAID project. The school has since maintained a high volume and quality of courses with the support of other donors and collaboration with local universities. Moreover, the Judicial School has provided some level of training to all Panamanian judges, a significant achievement in its short life.

According to a 1997 evaluation, the increased knowledge, improved skills, and heightened expectations provided by USAID-supported programs prompted repeated references to a mystique that had developed: a widespread commitment to reform. In this climate of openness to change, important progress was made in establishing a modern structure for an efficient judicial system.

An effort by a previous president to expand the number of Supreme Court magistrates was widely seen as a move to influence the court's political orientation and was reversed by his successor. While doubts remain about judicial independence in cases involving significant political interests, there seems to be broad satisfaction that the quality of judicial performance has generally improved. USAID support through its 1992 project has been integral to this process.

**2. Improving Organization and Operation of the Courts**

USAID programs have targeted and affected the modernization and efficiency of the court system of Panama. Panamanian criminal courts have operated under an unusual mixed system of written pre-trial and oral trial procedures. This system grants to prosecutors some responsibilities—such as authorizing searches and detentions—that are reserved to judges in most countries. The inefficiency of the current system has been somewhat mitigated by the introduction of a uniform case management system, improved records management and a strengthened statistical capacity. These administrative improvements, all of which were supported by USAID, have helped to identify bottlenecks and encourage corrective action. This has contributed to increased productivity as demonstrated by annual growth in the number of cases completed.

**3. Extending Legal Representation and Law Enforcement**

USAID supported the creation of the new Institute of Public Defense to consolidate several public defenders operating at various locations under executive branch auspices. While the institute still labors with limited staffing (fewer than 50 public defenders), heavy caseloads, and inadequate facilities, this organizational change has facilitated increased professionalism and esprit de corps. Case management and training innovations made available to judges were extended to prosecutors, public defenders, and administrators. The Institute of Public Defense has made good use of these opportunities.

Rapid progress in the Public Ministry (prosecution service) was limited by an initial resistance to change along with the adverse effects of frequent turnover among senior level personnel. However, these difficulties have been overcome and prosecutors are now demonstrating increased professionalism and efficiency. The Public Ministry has encouraged the development of subject matter expertise by establishing several specialized offices to deal with particular kinds of crimes.

The important transformation from military to civilian police forces is generally considered a success. Working in close collaboration with USAID, ICITAP played a major role in raising the professional capacity of the police, the judicial technical police (PTJ), and the forensics laboratory. In particular, ICITAP's emphasis on physical evidence helped to diminish reliance on confessions. Training courses included judges and prosecutors along with PTJ investigators and national police agents. Such practice reinforced positive interaction among the various actors of Panama's criminal justice system.

An impressive example of collaboration between prosecutors and police investigators can be seen at the joint location of the Reception Center for Criminal Complaints and Center for Assistance to Victims of Crime in Panama City. Trained and equipped by USAID and ICITAP, these related offices are supervised by prosecutors from the Public Ministry and staffed primarily by detectives from the PTJ. Together, they

provide a valuable public service by assuring professional interviews that elicit useful information from those reporting crimes. They also inform crime victims of their rights, identify available measures of protection, and provide referrals for medical, social services, and other assistance. Their statistical database and other records are important tools for combating crime. These partner institutions will soon benefit from new, more adequate offices now under construction with Inter-American Bank financing. There are also plans to replicate such services in proposed consolidated justice centers to be established in secondary cities.

### 4. Building Institutional Linkages

There is still no formal mechanism for inter-agency coordination in the justice sector. In 1990 the national bar association recommended the creation of a national council on the judiciary. However, the Supreme Court declared in 1993 that such a council would be unconstitutional.

The most important institutional linkage developed in the last decade with USAID support has been the functional integration of the PTJ into the Public Ministry. This bond between police investigators and prosecutors facilitates legally sound investigation, preparation of evidence, compliance with procedural deadlines, and protection of the rights of accused persons. It also constitutes a safeguard against the exercise of unfettered authority that the police enjoyed under the previous authoritarian regime. The bond was somewhat attenuated by recent legislation that shifted to the Supreme Court the authority to name the head of the PTJ. While conflicts and communication difficulties continue among judges, prosecutors, and investigators, the basic role of PTJ investigators as agents of the prosecution seems to be well established.

Both the judiciary and the Public Ministry have established planning divisions. These units coordinate to some extent in budgeting and planning. The Institute for Public Defense is dependent on the judiciary for planning and budget and therefore lacks independent capacity. Inter-institutional coordination remains generally weak and bureaucratic rivalries impede a common vision.

### 5. Encouraging Public Awareness, Access, and Advocacy

USAID has paid increased attention to the development of Panamanian civil society. In the early 1990s the Foundation for the Promotion of Women provided training of trainers for community legal education. Building on this experience, the Citizens' Alliance for Justice was formed in 2000, bringing together 11 civil society advocacy organizations in an ambitious program of seminars, publications, and dialogue with judicial authorities. The alliance has formulated a strategic plan and established working groups on issues of concern. USAID supported an alliance-sponsored symposium on judicial reform in 2000 at which a number of organizations made thoughtful presentations that were subsequently published as a stimulus for further dialogue.

Panama has made important strides over the past decade in establishing the human and institutional infrastructure for a more efficient and effective judicial system. USAID provided timely and unique assistance in the period following the transition from military to elected civilian government. Building on a strong national human resource base, a great deal was accomplished in a short time, and functional individual institutions within the justice system benefited greatly from this assistance.

Unfortunately, the interruption of USAID's program in the second half of the 1990s occurred before such institutions began to work together as integrated components of a single system. Leaders in government, the judicial system, and civil society had still not coalesced around an agenda for continuing reform. As a result, a number of capable institutions share neither a common vision nor a set of agreed priorities.

Given these circumstances and the resources available from other organizations, the current USAID program seems particularly well focused on the role of civil society. The Citizens' Alliance for Justice is engaging political and judicial leaders in a wide-ranging dialogue. CSOs represented in the alliance have demonstrated both interest and competence in shaping a broadly based vision, a national agenda, and a sustainable strategy to advance the rule of law on a continuing basis.

## M. Paraguay

Paraguay is a landlocked country in the heart of South America, surrounded by Argentina, Bolivia, and Brazil. Its population of 5.5 million lives in an area slightly smaller than California. Following its independence from Spain in 1811, Paraguay was ruled by a succession of dictators and suffered a long history of war with its neighbors followed by subsequent extensive periods of isolation, authoritarianism, economic instability, and domestic unrest. A military *coup d'etat* in 1954 led to the dictatorship of General Alfredo Stroessner, which endured for 35 years. He imposed a state of siege almost continually throughout his rule, repressed and outlawed opposition parties, and imprisoned, exiled, tortured, "disappeared", or executed real and perceived opponents. Under Stroessner, the judiciary lacked independence and power; the law was as he declared; and judges served at his pleasure. A 1989 *coup d'etat* finally toppled Stroessner's dictatorship and paved the way for Paraguay's slow and unsteady road to democracy. Paraguay's first civilian president was elected in 1993.

Due to decades of isolation and stunted development, Paraguay is only now experiencing many of the trends that emerged years ago elsewhere in the LAC region. Paraguay has the least experience under democratic rule amongst its South American neighbors and is currently one of the weakest democracies in the hemisphere. Over the years, it has become a notorious center for smuggling contraband, money laundering, and narcotrafficking, and it has been rated by Transparency International as one of the world's most corrupt nations. Unlike most of its neighbors, Paraguay is not a country returning to a lost democracy after an interlude of authoritarianism; rather, it is discovering and constructing democracy for the first time in its history. That process has been fraught with enormous difficulties and setbacks.

An unsuccessful *coup d'etat* attempt in April 1996 led to the conviction and incarceration of Colorado Party populist leader General Lino Oviedo. In 1998, a candidate (Raul Cubas) handpicked by Oviedo was elected president and almost immediately pardoned Oviedo and released him from jail. The Supreme Court held that the president had acted unconstitutionally, and the court ordered that Oviedo be returned to jail. The president refused to obey the judicial order, and the Supreme Court refused to back down. The resulting standoff pitted the executive against the judicial branch and contributed to substantial political and social unrest. The conflict escalated and ultimately culminated with the gangland-style assassination of the vice president in March 1999, widely believed to have been orchestrated by Oviedo supporters. This led to massive public protests against the government (in which eight people were killed and at least 800 injured), the impeachment of Cubas, the fear of renewed military intervention, and the flight of both the president and Oviedo into exile. A new president was constitutionally installed to serve until the 2003 elections, but Paraguay's transition to democracy remains uneven, incomplete, and unpredictable.

Against this fragile democratic backdrop, Paraguay undertook the task of modernizing and reforming its judicial system in the early 1990s. The system in place was antiquated, secretive, corrupt, inefficient, and weak. Historically, the justice system had been a tool of the dictator and, consequently, had little relevance to Paraguayan politics or the general population. After Stroessner's fall, popular discontent with the status quo combined with judicial branch initiative to provide the impetus for change. A new constitution was adopted in 1992 incorporating basic rights and responsibilities associated with a modern democracy, affirming the independence of the judiciary, mandating the creation of the Council of Magistrates to

implement merit-based judicial selection, and encouraging Congress to move toward an oral criminal process. The constitution also expanded the size of the Supreme Court and granted it limited power to review the constitutionality of legislative enactments. The Council of Magistrates was formed in 1994, and the new Supreme Court was confirmed in 1995. The new court developed an action plan for reform that candidly described its major objective as establishing a state of law in Paraguay, and thus demonstrated genuine political will to profoundly remake the justice system.

USAID began to actively support judicial reform efforts in Paraguay shortly after the enactment of the 1992 Constitution. From 1992 to 1996, USAID's justice program worked on improving court administration, training judges and prosecutors, and establishing a human rights documentation and archive center to preserve records of human rights violations during the Stroessner regime (the "Archives of Terror"). In its early stages, USAID's greatest achievements were not so much in the details of programming, but in its role as a catalyst for change; USAID became a key facilitator in creating the climate and receptivity to the major legal reforms that ensued.

After the attempted *coup d'etat* of 1996, USAID redirected and focused its assistance on the reform of criminal laws and institutions. The overarching goals were to improve efficiency, transparency, and protection of human rights, while reducing impunity and corruption. In essence, USAID sought to instill authority and respect for the rule of law by creating good laws and reliable open enforcement mechanisms. USAID provided technical assistance, training, public education, and other support for the development and implementation of new criminal codes. USAID's assistance played a significant role in the passage of legislation that has dramatically changed the criminal justice system in Paraguay and has redefined the power of the state *vis vis* the rights of citizens.

### 1. Strengthening the Legal Framework

Paraguay's judicial system had been governed by civil law procedures that were last modified in the 1800s. The civil law system is inquisitorial, while the common law system (followed in the United States) is adversarial. The civil law system is based on written submissions that are not generally accessible to the public, while the common law system relies to a large extent on oral proceedings where evidence is presented and arguments are made in open court. The judge in a civil law system actively conducts investigation into the facts of each case, while the judge in a common law system plays no role in case investigation and acts instead as a neutral and impartial observer and decision-maker. The prosecutor in a civil law system contributes little substantively to case development other than to process documents; the prosecutor in a common law system controls and directs the police and the investigation of the facts.

Paraguay's prior inquisitorial criminal procedures had permitted unconscionable delays, abuse, illegal detentions, corruption, and inefficiency. Judges were overwhelmed with investigative duties, and most cases never reached judicial resolution. Paraguay was distinguished by one of the highest rates of pre-trial detention in the LAC region: well over 90 percent of defendants were in jail without having been tried, convicted, or sentenced. Indeed, the vast majority of those detained were ultimately released without ever having been tried because they had already served the sentence they would have received had they been found guilty. One judge reported that only one percent of cases were resolved through the judicial process.

The substantive criminal code was likewise antiquated and in serious need of reform. It was drafted in 1914 based on a model from the 1800s, and so did not incorporate modern crimes such as credit card fraud, intellectual property right protection, or money laundering. Moreover, it reflected a society in which power resided almost exclusively in the state and the individual enjoyed few rights. The inefficiency and

irrelevance of Paraguayan criminal laws encouraged people to resort to personal networks, favoritism, corruption, and domination by political bosses to resolve disputes, rather than the justice system.

With the assistance of USAID, Paraguay developed and adopted a new criminal code (November 1998) and a new criminal procedures code (March 2000). In addition, USAID supported the drafting of a transition law to facilitate the changeover to the new system; it took effect during the interim between the codes and was aimed at reducing backlogs in the new system and preparing judicial institutions to implement the new laws. It was an important piece of legislation because it prevented old pending criminal cases from congesting the new judicial system and allowed prisoners who had served their time to be released. Finally, USAID assisted in the development and passage of the new Public Ministry organic law (August 2000), which was revised to incorporate the new structural reforms and prosecutorial functions assigned to its office under the new system.

The new criminal codes dramatically change the legal landscape in Paraguay. The most significant change comes through the adoption of an adversarial system mixing attributes of civil and common law systems. Oral trial proceedings have been established and are widely perceived as an enormous advance in the administration of justice. They have contributed to efficiency and transparency, and they have provided a vehicle for the expression of debate and confrontation. As one private criminal attorney put it, the system went from *la oscuridad al sol* (darkness to sunlight). The courtrooms and trials are open to the public and have space reserved to accommodate the press. Victims of crime had never previously been able to access information concerning their cases. Now, victims of violent crime are kept aware and informed of case progress through a specialized prosecutorial unit and are able to attend and participate in judicial proceedings; these proceedings are no longer a secret of the state. All interested parties can have access to all documents reviewed by the judge, and defendants can confront and rebut witnesses.

The new adversarial system separates and redefines the roles of the police, prosecutors, and judges in the investigation and prosecution of crimes. Now, the police and prosecutors direct investigations, while the judge sits as an impartial decision-maker. These changes break the monopoly of control that judges previously had over their cases and decrease the opportunities for corruption. The prosecutor exercises much greater control over the police, reducing the likelihood of arbitrary arrests or corrupt dealings between the police and detainees. The police can no longer legally detain suspects without judicial order and, therefore, are not as free to exercise their authority arbitrarily. These factors accelerate the legal process and increase its reliability, openness, and accountability, while decreasing the likelihood of impunity. Cases are supposed to proceed within defined time strictures, rather than defendants languishing in jail without any legal determination of guilt. A recent report from the Supreme Court indicates that the average duration of a criminal case has dropped from three years to under one year, and the percentage of pre-trial detentions has been reduced to 70 percent-75 percent of the numbers prior to reform. Ultimately, this should reduce prison overcrowding, human rights abuses, and economic and social costs of pre-trial detention to the defendants' families and to the state.

The move to a system that guarantees individual freedoms, however, was often identified as the most profound positive impact of this collection of legal reforms. The new system guarantees individual rights and incorporates the concepts of guaranteed due process and a presumption of innocence, which radically departs from the past and entirely changes the focus of the law. Previously, abuse of authority was not only feared, but presumed. Now, there is a rising outcry against human rights violations in favor of individual freedoms. USAID was widely seen as instrumental in assuring a legal basis for the protection of fundamental human rights in the new legislation.

One of the senators who led the reform movement characterized the new criminal code as "the cable that directly ties the constitution to the public and thereby makes it relevant to the citizenry." He explained that

the average Paraguayan has no real understanding or experience of democracy or democratic values; the prior judicial system was based on fear, corruption, and personal favoritism. In his opinion, the impact of this reform goes far beyond a simple cataloging of rights and punishments: the process itself became a vehicle through which broad social policy was defined. Primarily, it generated an open and meaningful debate about modern democratic values and individual rights which had never before occurred in Paraguay. As a result of that process, significant power was transferred from the state to the individual via the creation of rights such as the presumption of innocence, freedom from unreasonable and arbitrary state action, and due process. These were revolutionary concepts in Paraguay, as was the idea of a citizen having the power to assert individual rights against the state. The process of reform precipitated debate over what Paraguayans expected from democracy, where power should reside, and how it should be applied. As such, Paraguay in effect constructed much of its democratic social policy and priorities in the course of defining and modernizing its criminal laws and procedures. USAID provided substantial support to this process.

### 2. Building Judicial Systems and Institutions

The mere enactment of new legislation does not assure its application or success. The public and judicial actors must be educated, supportive, and trained to apply the new laws to ensure successful implementation of revised codes. Toward that end, USAID provided important education and training for the critical actors in this new criminal justice system: judges, prosecutors, and public defenders. None of the criminal justice institutions were prepared to sponsor ongoing training to inform the leadership and staff or help them implement the new procedures. USAID helped create training institutes within the Supreme Court and the Public Ministry to provide an organizational focus for training activities, to train future trainers, and to schedule ongoing curricula and programs. Although USAID designed the framework and developed the future training programs and methods, financing was thereafter assumed by governmental ministries and other donors. USAID further sponsored workshops for the general public as well as the media, academia, and bar; developed operational manuals for each of the relevant actors; and presented mock trials to familiarize all with the new oral and adversarial process. The training was well received and helped to create a competent group of professionals to initiate the new procedures. A member of the private criminal defense bar suggested that the success to date of the new system was directly connected to the high quality of the USAID training provided to the key players.

USAID gave a great deal of support to the extremely weak Paraguayan Public Defender's Office in an attempt to balance the scales somewhat. The Public Defender's Office is legally obligated to provide free legal representation to indigents (the vast majority of all criminal defendants). Indigent defendants' right to counsel has, however, been largely illusory due to lack of funds for an effective public defense program. USAID essentially designed and constructed the office (created in 1992) and trained its attorneys. As a result of USAID training, the Public Defender's Office enjoys a very good reputation within the legal community and in general with the public; the chief public defender reported that the office has received requests even from non-indigent criminal defendants to represent them because of public defenders' superior expertise and experience under the new laws.

### 3. Creating the Archives of Terror

Although not as ubiquitous or as far-reaching as USAID's support to legal codes and institutions, the creation of the Archives of Terror repository represents a milestone in public acknowledgement of historical human rights abuses in Paraguay and consequently deserves mention.

The 1992 Constitution provides that individuals who have been detained are entitled to all pertinent information in the possession of the state. An attorney who had been detained and tortured by the

Stroessner government between 1974 and 1976 filed a petition seeking access to such documents late in 1992. The processes set in motion by the filing of that petition led to the discovery of thousands of documents maintained surreptitiously in police custody that documented decades of surveillance, detention, torture, extra-judicial killings, and other human rights abuses committed by the Paraguayan government against its citizens.[9]

At the request of the Supreme Court, USAID provided support for the creation of a repository for these documents in the Palace of Justice. The Human Rights Documentation Center (or the Archives of Terror) has been open and available as a public resource and educational facility since January 1994. The collection currently contains more than half a million documents, including surveillance reports of known or suspected communists and political opponents, photos, reports from civilian spies, declarations from detainees (many reportedly obtained through torture), lists of political detainees, "booking" cards, literature and newspapers labeled "subversive", etc. The judicial branch and the Public Ministry formed an oversight commission and appointed counsel to administer the archives, respond to requests for information, and evaluate the importance of the archives to human rights issues.[10] The creation and existence of the archive in and of itself have been important for discovering the truth, acknowledging and establishing the complicity of the state, understanding history, and aiding in the victims' recovery.

USAID is no longer providing assistance for additional specific judicial reforms in Paraguay, but it has taken the lead in encouraging the donor community to continue to work on reform and implementation by forming a justice group to coordinate efforts. It has thus maintained a leadership role in policy issues related to judicial reform, while passing on training and follow-up duties to the government of Paraguay, as well as to other donors. The USAID program was relatively small, but its efforts and results were well-respected and have been copied by other donors. In addition, many of the cadres of individual professionals who contributed to USAID's justice reform project maintain their commitment to improving Paraguay's legal system by working in other areas of needed reform.

None of the above is meant to imply that Paraguay's judicial reform has achieved everything that it set out to accomplish or that the justice system now functions smoothly and properly, or devoid of problems. To the contrary, significant problems persist, and many hurdles remain to be overcome. Nevertheless, significant improvements have already been seen, and the system in place has the structure and potential to permit the law to develop and be applied in an open, efficient, fair, and non-corrupt manner. Respect for the law and legal systems is increasingly accepted and viewed by the public as essential to a stable democracy.[11] USAID assistance, although modest, has contributed greatly to constructing and establishing the rule of law in Paraguay, and to creating a solid justice system for the future.

## N. Peru

The free and fair presidential elections held on June 3, 2001, have given Peru an opportunity not only to close an extraordinary and damaging chapter in its history, but also to rebuild its crippled democracy. The day's election of Alejandro Toledo as president was directly preceded by four elections and 18 months of political turmoil and economic stagnation, and ended more than 10 years of increasingly authoritarian rule. Peru's future democratic development, although far from certain, is certainly more promising.

Since Peru's independence in 1821, military and authoritarian governments have ruled for longer periods than constitutional governments. Peru's most recent military dictatorship ended after 12 years in 1980. The 1980s saw the beginning of two guerrilla movements that terrorized the country far into the 1990s and caused the deaths of over 30,000 people: the Maoist terrorist group known as the Shining Path and, to a lesser extent, the Tupac Amaru Revolutionary Movement. Alberto Fujimori, an engineer and political

novice, was elected president in 1990 after promising to restore law and order. His election reflected the country's desire for renewed social stability and a rejection of Peru's corrupt, elitist political establishment.

In 1992, Fujimori, with military backing, declared an *autogolpe* ("self-coup") suspending the constitution and dissolving Congress. He issued emergency decrees redefining and harshly punishing crimes of terrorism, expanding investigative and prosecutorial functions, permitting lengthy pre-trial detentions without right to counsel, and otherwise narrowly proscribing or eliminating due process and individual rights of suspected terrorists. Announcing his intent to combat corruption within the judiciary, he fired 13 Supreme Court justices, all members of the Constitutional Tribunal and national and district judiciary councils, the attorney general, and a vast number of other judges, prosecutors, and judicial personnel. He further reorganized the judicial branch and ceded control of judicial appointments and conditions of service to the executive. Although Fujimori did not formally abolish the judicial branch's independence, he virtually eliminated it through his decree and purge of the country's judicial actors. Remarkably, he maintained public support throughout because his actions were seen as efforts to end corruption and regain control of a society terrorized by the Shining Path.

Congress was reconstituted under closer executive control, and a new constitution was passed in 1993. New constitutional provisions further seriously impaired the independence and jurisdiction of the judiciary, and restricted individual legal rights and the opportunity for a fair trial. Thereafter, civilians accused of crimes of treason or terrorism were to be tried in military courts that did not adhere to basic precepts of independence, impartiality, or due process.

Fujimori was re-elected in 1995. In 1996, Congress passed a law allowing Fujimori to seek a third five-year term, despite a constitutional provision limiting the president to two terms. When the Constitutional Tribunal held in 1997 that the law was unconstitutional, Congress fired the judges responsible for that decision, leaving the court without a quorum to issue further decisions regarding the constitutionality of laws. The tribunal's president resigned, stating that "the rule of law has broken down in Peru." In 1998, as the National Judicial Council began a sensitive disciplinary inquiry in a case involving several Supreme Court judges, Congress passed a law effectively eliminating the council's authority to investigate and remove judges.[12] The National Judicial Council resigned *en masse*. Throughout, the executive was obviously controlling congressional actions.

Fujimori won his third presidential victory in May 2000 in an election that national and international observers concluded was significantly flawed. The public uproar caused by this and an unfolding bribery scandal led to the collapse of Fujimori's administration in November 2000 and his flight to exile in Japan.[13] A transitional government was in place until the election of Toledo and, in the interim, made significant strides to restore several dismantled judicial institutions and to initiate reform.

USAID's support to Peruvian justice began in 1986 with a broad menu of activities designed generally to modernize the courts, build institutions, and improve the administration of justice. That program continued to varying degrees into the early and mid-1990s, but suffered from the inability of the Peruvian judicial branch to maintain commitment to the program and follow through consistently, as well as arbitrary executive actions that affected the judiciary. Support for the creation of poverty legal clinics was one of the most successful program elements. Those clinics, however, were operated by the executive branch, for which USAID discontinued support after the 1992 *autogolpe*.

By 1995, it was clear that Fujimori's autocratic reign would not permit meaningful work with the government. USAID subsequently redirected much of its justice assistance to CSOs working to promote

human rights protection. USAID also supported the creation of a national ombudsman's office in 1996 and has since devoted substantial funding and assistance to that office. Finally, USAID resumed assistance to the poverty legal clinics in 1997 with an additional conciliation component. USAID's justice work, particularly in the promotion of human rights protections through CSOs, has been groundbreaking and extremely successful.

### 1. Protecting Human Rights

The centerpiece of USAID's human rights program has been its aid to the development of the Office of the Ombudsman, which established in 1996 and rose to become one of the most respected institutions in Peru and the only governmental entity to merit and maintain high levels of public credibility and legitimacy during the last years of Fujimori's rule. USAID provided initial critical support and financing to the ombudsman's office and has maintained a close assistance and working relationship throughout its existence. USAID support has also helped to attract attention and substantial financing to the office from others in the international donor community.

The 1993 Constitution provided for the creation of an official autonomous entity to "keep vigil over [citizens'] fundamental and constitutional rights," but conferred no corresponding enforcement mechanisms or authority. Peru's first national ombudsman was elected by congressional majority and opened his office in 1996. That ombudsman proved to be an impartial, independent, and effective promoter of citizens' rights, and he ultimately gained influence and real authority primarily from the strength of his honesty, courage, integrity, and commitment.

An ombudsman's role is to act as an intermediary between the state and its citizens to resolve disputes; the ombudsman builds a bridge between citizens and government. The issues an ombudsman addresses are the conflicts and issues that ordinary people face in everyday life, including mundane ones such as not having received a social security check. Cases often involve economic and social rights, i.e., pensions, child support, etc., as well as all types of complaints against the government. Ombudsman offices in the LAC region have taken on the additional function of protecting human rights against intrusions by the state; that role has become prominent in Peru. As a consequence of pervasive corruption and institutional disintegration, Peruvians had nowhere to turn for help if they felt they had been wronged, except perhaps to the Catholic Church. The existence of a non-corrupt effective governmental organization providing services and representation to citizens was previously unheard-of, and radically changed reality and public attitudes. The ombudsman's national and eventual local branches (also supported by USAID) educated citizens, increased respect for individual rights, counseled in public matters, and provided recourse and representation. Peruvians gained confidence that a non-corrupt authority other than the church could stand up for their individual rights. As one Peruvian human rights activist commented, "Now, you don't just have to rely on religious faith to protect your legal rights."

USAID funding also facilitated and encouraged the ombudsman's development of special assistance programs to marginalized groups, such as women and indigenous populations. For example, the Office of the Ombudsman investigated complaints that the state had been performing coerced sterilizations on poor rural women seeking birth control; the ombudsman issued a report and recommendations that led directly to a change in state policy and procedures. The ombudsman also established an indigenous community program dealing with issues such as property rights, protection, and violence.

USAID's initial efforts helped to set the stage for the ombudsman's success. Prior to the creation of the office, USAID had been working with the Andean Commission of Jurists, an organization dedicated to the protection of human rights and the rule of law in the Andean region. USAID funded a commission project

to pressure, prepare for, and assist in the anticipated creation of the ombudsman's office. First, the commission developed an informational campaign to educate and raise public awareness concerning the need to establish the office; the ombudsman's eventual appointment resulted in part from the commission's continued pressure on Congress to fulfill its constitutional mandate to do so. Meanwhile, the commission gathered research, documents, forms, and other legal and practical information about the structure, design, and functioning of an ombudsman's office in other countries. It then prepared a basic manual outlining and incorporating all of that information in a clear and usable fashion. When the ombudsman was finally named, the Andean Commission of Jurists presented him with a stack of materials in essence constituting a step-by-step instruction guide and manual on how to put together and manage the office. This guidebook was extremely useful and facilitated rapid and efficient institutional planning that allowed the ombudsman to develop the substantive aspect of his work without becoming mired in logistics or administrative matters. With unexpected speed, the office was created, consolidated, developed a capacity to persuade and resolve conflicts, functioned efficiently, and earned a high degree of citizen confidence. The commission has since used its successful work with the Peruvian ombudsman as the basis for similar projects in Bolivia, Chile, and Ecuador. Thus, the impact of USAID assistance has extended beyond the original project scope.

In addition to the duties described above, the ombudsman also presided over the Pardon Commission, which was established in 1996 to review cases and make recommendations to the president to grant pardons to persons found to have been unjustly accused or convicted of terrorism. Recent international publicity had focused public attention on the numerous cases of blatant injustice wherein Peruvians had been wrongfully convicted of terrorist activities and given lengthy jail sentences without credible evidence to support the conviction. Fujimori's zeal to combat terrorism had led to flagrant abusive prosecutions and incarceration of innocents, and his restrictions of due process had facilitated trials that predictably led to wrongful convictions. USAID and others supported the creation of a commission to review suspected errors. Under increasing international pressure, even Fujimori was forced to admit the likelihood of errors having occurred, and he acceded to the demand to form a commission to review cases and make recommendations for release. Fujimori named the ombudsman to preside over the Pardon Commission as one of his initial duties. The commission functioned well and performed thorough reviews that have led to date to the release of approximately 650 innocent people who had been unjustly convicted of terrorism and locked away for years without any proof or hope of release. The impact on these people and their families was immeasurable; the commission saved innocent lives and restored families. More broadly, however, the publicity surrounding these violations and the corrective proceedings raised public awareness of the importance of the law, due process, and requirements of proof. Eventually, this motivated reform of the laws that had provoked such rampant and obvious injustice.

USAID's support to CSOs promoting human rights complemented its aid to the Office of the Ombudsman and the Pardon Commission, and accomplished a broader policy goal, as well. In light of political reality, USAID redirected substantial assistance to develop CSOs that promoted human rights, provided oversight, and acted as a watchdog to government action. These organizations grew and kept human rights issues alive and at the forefront while democracy disintegrated. USAID's assistance helped to unite and strengthen that movement and to build national and international acceptance and prestige. USAID assisted several individual human rights NGOs, but also gave fundamental support for the institutional development and operation of the Office of the National Human Rights Coordinator, an umbrella organization founded in 1985 networking over 50 human rights organizations throughout the country.

The national human rights coordinator was seen by USAID as a vehicle to develop and influence policy and maximize individual and collective efforts. Through the coordinator's network, information could be shared and leadership could be developed within and between groups. The coordinator's office became

an increasingly important clearinghouse to promote human rights and has had a huge impact on civil society. The coordinator played a critical role focusing attention on human rights before and during the transition, and represented civil society in the discussion table organized by the Organization of American States after the fraudulent 2000 elections. Thereafter, the coordinator pressed for the creation of a truth commission to investigate all cases of human rights abuses since 1980, and the former executive secretary of the coordinator's office is now serving on that commission.

USAID also supported individual member organizations of the Office of the National Human Rights Coordinator to promote human rights in specific programs that fundamentally changed public perceptions and opinions regarding human rights. Beginning in 1993, the Innocence project supplied lawyers to assert human rights protections and defend persons accused of terrorism, both in civil and military tribunals. These attorneys succeeded in gaining the release of hundreds of people unjustly facing terrorism charges before the "faceless" civilian courts, military tribunals, and the Pardon Commission, and the attorneys educated the public about the unjust and draconian so-called "anti-terrorism" laws. Publicity campaigns were waged to educate the public and garner support for human rights efforts. Fujimori had effectively taught the public that human rights defenders were defenders of terrorists. Civic educational campaigns convinced the public that human rights are fundamental and that authoritarianism does not lead to organization and order, but rather, corruption. These efforts legitimized the entire sector and the concept of human rights defense. This change in public awareness and understanding was critical to mobilize opposition and create the groundswell of discontent and pressure that contributed to Fujimori's fall.

### 2. Refusing to Work with a Tainted Judiciary

Of equal importance to the programs that USAID supported during this period was USAID's refusal to support tainted efforts and institutions. Fujimori proposed a justice reform plan in 1995 that in reality constituted a veiled attempt to control the judiciary politically and subjugate it to the executive. USAID refused to support this charade in any way, despite assistance being offered by other international donors. This stance was significant for a number of reasons. In contrast to other LAC autocracies, Fujimori tried to legitimize his abuse of power and create an aura of legality by manipulating the judicial branch and claiming that his actions were governed and controlled by law. Other LAC dictators persecuted citizens through use of police and military authority; Fujimori used the judicial branch to punish his enemies politically, reinforce his behavior, and legitimize his abuse of power. Ironically, much of his popularity stemmed from his stated commitment to law and order. This manipulation of the judiciary magnified the importance of USAID's decision to withhold support from the judicial branch; any support would have been perceived or used as an endorsement of Fujimori's judicial machinations. USAID's decision not to fund the judicial branch or this reform effort sent a clear message of disapproval and condemnation. Ultimately, the U.S. position contributed practically to the loss of international cooperation for the proposed reform.[14] At present, USAID reportedly enjoys the highest credibility among international donors working in the justice area because of its refusal to participate in Fujimori's judicial scams and its steadfast support to justice sector actors seeking genuine reform.

### 3. Improving Access to Justice

USAID began supporting a system of government-sponsored legal clinics providing free legal representation to poor people in its initial project in 1986. This was the first significant effort to establish legal clinics and was aimed primarily at helping women assert their legal rights to child support. It also recognized and highlighted the Peruvian government's constitutional obligation to provide legal representation to the poor and drew attention to its failure and inability to allocate adequate resources. Assistance to the program stopped around the 1992 *autogolpe*.

USAID resumed its assistance to strengthen and support legal clinics in 1997 and later added a conciliation component. The MOJ is responsible for the operation of the 26 clinics that currently exist. The clinics provide free legal and conciliation services to the poor. The majority of cases involve domestic disputes over child custody, visitation, support, or domestic violence. Tens of thousands of cases have been handled as a result of this program. Although the number of clinics is very limited, they carry an enormous caseload and address a critical social and legal need. USAID's support to these clinics has protected the rights of poor women and their children, expanded access to justice, and promoted the role of mediation in dispute resolution.

USAID played a decisive role in mobilizing civil society to support human rights and, in doing so, dramatically increased Peruvian confidence in the United States as a partner in democratic development. Not so many years ago, the United States was criticized for its support to LAC dictatorships that had violated their citizens' human rights. In Peru, the United States proved to be an important and solid ally to civil society when government spaces and opportunities had deteriorated into authoritarianism. USAID selected outstanding organizations and individuals with whom to collaborate, and developed highly relevant and successful projects. The Peruvian human rights community currently perceives USAID as a positive and supporting actor; this transformation has opened doors to increase access to civil society and has established better working relationships. Many of USAID's civil society partners went on to fill the power vacuum left after Fujimori's collapse, and they have since assumed leadership roles in the government. USAID's ROL efforts and impact in this country have indeed been far-reaching and significant.

## O. Uruguay

Uruguay is a small and relatively prosperous country situated between Brazil and Argentina. It is known for its stable democracy, respect for the rule of law, and progressive social policies such as free, compulsory education.

In the struggles for independence of the early 19th century, Uruguay was annexed by Brazil, from which it declared independence in 1825. After a tumultuous initial period, it evolved into the country that became known as "the Switzerland of South America."

More recently, economic crisis and a violent insurgency in the 1960s led to military government from 1973 until 1985. During this period of authoritarian rule, the judiciary lost its status as an independent branch of government. The MOJ was made responsible for the courts, and military officers replaced some judges. The budget was reduced. Following the restoration of constitutional government in 1985, the judiciary regained not only its traditional independence but also its strong public reputation for professionalism and integrity.

U.S. support for the restoration of democracy in Uruguay specifically took into account the needs of the judiciary. USAID assistance to advance the rule of law began in 1986 with the participation of Uruguayan jurists in courses and workshops organized by ILANUD. This training primarily involved multi-national courses under the USAID regional program. At about the same time, the U.S. Information Agency initiated a number of justice-related exchanges that brought experts from the United States to Uruguay and provided Uruguayan jurists opportunities to observe the operation of courts and other institutions in the United States.

Participation in regional training and international exchanges helped to create a climate of openness to new ideas, policy debate, and exploration of possibilities for productive international cooperation. These initial experiences introduced Uruguayans to what a Supreme Court magistrate later described as "living comparative law."

An initial attempt at a bi-lateral project in 1986 was frustrated by confusion over the respective roles of the Uruguayan Governing Council and the U.N. Development Programme (UNDP), USAID's executing agent. A subsequent needs assessment and visits from ILANUD representatives, the USAID regional administration of justice officer, and others produced a dialogue in which Uruguayans identified specific priorities for a revised program. In particular, Uruguay enacted in 1988 the first civil procedure code in Latin America to be based on an oral process with active advocacy. This major innovation was accompanied by a one-third increase in the number of judges. These changes created an urgent need to train judges (and others) in the new oral procedures and a need to relieve the administrative burden on the Supreme Court of managing a growing and increasingly complex judiciary.

USAID developed a program to help improve the efficiency and quality of judicial decision-making through the administrative reform of the Supreme Court and the development of a judicial training center. The USAID program in Uruguay was terminated in 1995. It is significant that the total funding for the program from 1990 until 1995 was less than $1.5 million. This included the two principal activities mentioned above and a small initiative to develop a strategy for improving the juvenile justice system.

**1. Facilitating Administrative Reform**

Working with UNDP and a U.S. consultant, USAID engaged in a dialogue with the five-member Supreme Court (responsible for court administration policy) and the court's administrative office (responsible for operations). Through this collaborative arrangement, the Supreme Court established a new unified center for filing cases in Montevideo. It consolidated the offices of budget and planning and produced internal systems and manuals to improve the performance of the new office. It inaugurated a judicial statistics system and a management information system, through which lower courts could access the jurisprudence of the Supreme Court's decisions.

This effort benefited from supplementary funding from UNDP. The improvements in court administration enabled the Supreme Court magistrates to reduce from 70 percent to 10 percent the amount of time spent on administrative matters. Moreover, this activity left Uruguay with a modern administrative apparatus in place. That structure is providing continuing benefits in the form of increased efficiency, better information, and improved planning capacity.

**2. Strengthening the Judicial Studies Center**

The Centro de Estudios Judiciales Del Uruguray (CEJU) had been created in 1987 by agreement among the Supreme Court, the Ministry of Education, and the Law Faculty at the national university. It began with a volunteer work force. The 1990 grant from USAID enabled it to build a core professional staff and acquire basic educational materials and equipment. CEJU has developed a one-year training program that has come to be accepted as a prerequisite for appointment as a judge; over 90 percent of CEJU graduates were receiving judicial appointments by the time the USAID program ended. In addition, the Supreme Court has adopted a rule that completion of CEJU courses will be a factor in considering judges for promotion. CEJU also provides training for prosecutors, public defenders, and court administrators.

As with some other successful judicial schools, CEJU has employed faculty members on a course-by-course basis, minimizing permanent staff. It has drawn upon judges, law school professors, prosecutors, public defenders, mediators, and foreign consultants from the United States and Latin America.

Training provided by CEJU has been a major factor in assuring the capacity of the Uruguayan justice system to implement the new oral system of civil procedure. In the process, it has enhanced the overall

quality of judicial performance. There has been a dramatic reduction in complaints about the performance of judges in applying the new code. Most dramatic of all, the combination of the new oral procedures, improved administration of the courts, and an increased number of well trained judicial personnel has reduced the average time to obtain a decision in a civil case from five years to one year.

### 3. Strengthening the Juvenile Justice System

In 1993, a USAID grant of $66,000 enabled Partners of the Americas (a U.S. NGO) and its Uruguayan counterpart to develop a concrete action plan for strengthening the juvenile justice system, including the design of alternatives to incarceration. The plan was developed with the participation of juvenile court judges, police, and representatives from the National Institute of Minors and other concerned organizations. The framers of the plan benefited from the observation of the Minnesota juvenile justice system. This plan attracted funding of more than $750,000 from the European Union to finance the construction of five juvenile centers to serve as alternatives to prisons.

The Uruguayan experience reveals what can be achieved in favorable circumstances with a relatively small investment and a sound strategy. The Uruguayan judiciary offered a capable and highly professional collaborator committed to re-establishing its role in a democratic system. At the key point of transition, the USAID was able to offer programmatic support. Independently, a consensus had emerged in Uruguay on procedural reform, demonstrated by the enactment of the new civil procedure code. The desire by the Supreme Court to assure the successful implementation of that reform provided an incentive for a focused effort.

In this context, USAID engaged the Uruguayans in a regional dialogue and provided opportunities to learn about the experiences outside of Uruguay. USAID also worked through participatory dialogue to define program content, involved multi-lateral organizations (ILANUD and UNDP), and invested in human and institutional capacity. This combination was important to achieving practical, locally owned and sustainable results.

In addition, many observers credit USAID with having blazed a trail that has more recently been traveled by other donors in Uruguay. In addition to the European Union's grant for juvenile justice described above, the successful cooperation with USAID helped to encourage entry into ROL activity first by UNDP and later by the Inter-American Development Bank. For example, the bank has financed courses at CEJU in ADR, labor law, and commercial law. Those activities have provided valuable continuity of international support, building on the achievements realized through cooperation with USAID.

# 3 Country Studies: Europe and Eurasia

## A. Albania

Albania, the poorest country in Europe, suffered under Enver Hoxha one of the most extreme forms of Stalinist dictatorship of the countries that fell to communist domination at the end of World War II. It is unsurprising, then, that Albania has endured perhaps the most painful transition to a free market democracy in eastern Europe. Albania's first multi-party election, in 1992, resulted in Sali Berisha ascending to the presidency. Under Berisha's leadership, the country continued to stagnate economically and politically. Matters came to a head with the collapse of investment pyramid schemes in 1997, followed closely by a state of emergency and near anarchy throughout the country. Because of the violence and the threat of terrorist activities, USAID (which had supported a ROL program in the country, through CEELI and other organizations, since 1991) was forced to limit its activities and evacuate American personnel. With the support of western Europe and the United States, order was ultimately restored, new elections held, and reform re-prioritized.

USAID has played an important role in the positive developments that have ensued since 1997. Most importantly, its efforts were vital to the drafting and adoption of the country's new constitution, passed in 1998. Despite this and other accomplishments, as the USAID R4 for Albania recognizes, the country "has far to go before its legal system can support essential democratic processes and serve a market economy."

### 1. Developing a Legislative Framework

Hoxha, after a visit to China in 1967, determined to impose his own "cultural revolution" at home. Among other things, this resulted in the adoption in 1976 of the most hard-line Marxist constitution in the world, one that officially abolished religion, foreign investment, and any capitalist activities. Hoxha proclaimed that the new constitution was necessary to "complete the construction of socialism and the further development of our state of the dictatorship of the proletariat." Because law was unnecessary in a communist utopia, the MOJ and the practice of law were both abolished. As one observer has noted, "The 1976 Constitution did not recognize the institutions of pluralist democracy, nor permit the formation of a market economy….The constitution provided for a highly-centralized state that emphasized collectivism in all aspects."

Upon the end of the Communist era, Albania did not immediately adopt a new constitution. Rather, from April 1991 to November 1998, it operated under a series of constitutional laws that were passed with the two-thirds majority vote of the parliament. These constitutional laws marked a tremendous break with the past. They provided for the basic structure of a democratic government through the creation of the parliament, the presidency, and the constitutional and supreme courts. They also re-established the MOJ and re-introduced concepts essential to a free-market economy. Nevertheless, the laws were transitory in nature, and an effort was made to adopt a new constitution. USAID advised Albania on a new constitution in 1993 and 1994. These drafts contained provisions fundamental to the permanent establishment of a parliamentary democracy, but the "work was fraught with stoppages in a politically charged atmosphere." The extreme divisions between the two leading political parties, Berisha's Democratic Party and the opposition Socialist Party, resulted in the failure of the draft constitution to be ratified in a November 1994 referendum. Thereafter, the process of adopting a permanent constitution was postponed and not resurrected until after the collapse of the pyramid schemes, civil unrest, and the

elections of 1997. Those elections resulted in the center-left Socialist Party attaining a parliamentary majority and the general re-establishment of civil order.

When the issue of adopting a new constitution was reconsidered in 1997, USAID and others in the donor community offered both technical drafting assistance and advice and support on improving the transparency of the process. A key component of this support was the creation of the Administrative Center for the Coordination of Assistance and Public Participation (ACCAPP). Through ACCAPP, USAID and the others in the donor community underwrote public fora and symposia where the proposed constitution was discussed and public feedback provided to the drafters. ACCAPP also supported public information on the constitutional process through television, radio, and print media. In addition, a February 1998 U.S.-based training program was convened for the drafters, where a formal assessment of the draft constitution was provided.

Overcoming divisive political wrangling, the new constitution was adopted through a referendum held on November 22, 1999. The process for passing the new constitution was praised by international observers: "The referendum followed an open and transparent process where advice on the constitution was taken from many sources, domestically as well as internationally."

The adoption of the new constitution was an important achievement, both for Albania and USAID, on several grounds. Most fundamentally, it resulted in the permanent establishment in Albania of the framework for a government based on democratic and free-market principles. Among other rights, the constitution guarantees freedom to associate, freedom of the press, and access to state information. It prohibits discrimination based on gender, race, religion, ethnicity, and language, and it restricts the ability of the state to interfere with property rights. Moreover, it mandated the creation of institutions, such as an independent judiciary and an ombudsman, to protect such rights.

Perhaps even more importantly, however, the process of adopting the constitution provided an example for the Albanian people of democracy and transparency at work. This has had something of an overflow effect, so that now working groups in parliament more often consider the views of NGOs and others in the preparation of draft legislation.[15]

Both prior to and since the adoption of its new constitution, Albania, again with the technical advice provided through USAID and others in the donor community, has passed a series of laws also fundamental to democracy. These include new criminal and criminal procedure codes with basic due process protections, an administrative procedure code that makes government officials accountable to private individuals for their illegal acts or failures to act, a freedom of information act, a law on NGOs, an anti-corruption act, a law against trafficking of women, and laws on the ombudsman, the constitutional court, and the judiciary.[16] USAID also helped to introduce and implement the law on secured transactions, a key component of the commercial law framework. Together with the constitution, Albania now has what some have termed "a very good" legislative framework. Although the laws are certainly not all perfect (nor perfectly harmonized) and implementation and enforcement remain serious concerns, this framework, developed with key contributions by USAID, establishes the basic structure for the rule of law in Albania, some 10 years after the end of the most repressive post-war regime in Europe.

## 2. Contributing to Judicial Reform

The step most essential to implementing Albania's new legal framework is building an independent judiciary. This means having a judiciary that is subject neither to corruption nor political control, but one that makes its decisions based on its knowledge of the law and the facts specific to any given case.

Under the communist regime, judges were elected to four-year terms, concurrent to the election of the National Assembly. The elections, of course, were not multi-party; to be selected to run for a judgeship (or, for that matter, any other post) one had to be a member of the Communist Party. Once in office, the party controlled all decisions of a politically sensitive nature. During the Communist era, the judge had neither immunity nor status, but was seen as just another public official, another part of the enforcement bodies. Nor were they ever known to oppose the will of the prosecutors, although (because there were no defense lawyers) they were supposed to look out for the interests of the defendant. The new constitution provides for some protections for judges (including immunity and irremovability), but the permeation and control of the judiciary by political parties has continued into the post-Communist era. In particular, both the leading parties (the Democratic and Socialist) have sought, through a variety of political machinations, to replace judges appointed by prior administrations.[17]

USAID has supported several measures designed to improve the judiciary. The most successful of these efforts has been the support of the Albanian Magistrate's School (AMS). In 1996, meetings were organized among MOJ officials, leading judges, and judicial trainers from the United States and western Europe; these meetings resulted in the agreement to create the AMS, a decision that was subsequently confirmed by an act of parliament. With additional support from USAID, the Council of Europe, and other donors for the training of teachers and the acquisition of necessary equipment, the AMS became functional in 1997 and continues operations to this day. With the on-going support of USAID and others, the school provides a three-year practical curriculum for judicial candidates who would otherwise and very early in their careers proceed directly from practice to the bench. (Judges in civil law countries are not typically selected from amongst senior attorneys.) The curriculum includes not only substantive legal topics, but also training on ethics and judicial skills. Young lawyers must pass a competitive and blindly administered examination (monitored by members of the donor community) before being admitted to the school, and must also graduate from the school before being appointed to the bench. This is rare in a region where most examinations are not administered blindly and can be subject to corruption. Even more importantly, this process means that judges are being appointed based on their knowledge and skills rather than according to political affiliation, which should ultimately result in a judiciary that is better trained and more independent than in the past.[18]

USAID is also working with the AMS to train sitting judges. USAID and its partners have been helping the AMS since 1999 to train Albania's judges on a variety of commercial law topics, including on commercial transactions, basic accounting, international private law, and intellectual property. Over 140 judges have been trained in these programs.

It is important to note that although the AMS receives substantial assistance from the donor community, it is also supported by the government and receives a funding allocation directly from parliament.

USAID is also supporting the judiciary's independent governing bodies. The National Judicial Conference (NJC), consisting of all the judges in the country, held its first meeting, in December 1999. USAID support helped to organize NJC committees, including those on legislature, ethics, and court budgets. The judiciary, through these committees of the NJC, has had an impact on the drafting of legislation (seeking the advice of judges in legislative drafting is rare in the region, and something of a breakthrough here), the use of NJC inspectors to investigate complaints of ethical violations, and the implementation of the judiciary's new role in the budgeting process. In addition, USAID support facilitates periodic roundtables of the presidents of courts at which issues, such as protection for judges, are identified for discussion with the NJC and the MOJ.

The judiciary in Albania is not yet fully independent. The 2000 State Department Report on Human Rights, for example, found that "political instability, limited resources, political pressure, and endemic corruption weaken the judiciary's ability to function independently and officially." But progress is being made. Decisions by the Constitutional Court, for example, are respected by the other branches of power. The judiciary, through an independent court budget law enacted in 1999 (also passed with USAID support), is starting to control its own resources.[19] And certain high profile citizens, including some who were involved with the pyramid schemes that collapsed in 1997, are starting to be brought to justice, whereas previously they had acted with impunity.[20] These are important changes in a judicial system that, until relatively recently, was completely controlled by the Communist Party.

### 3. Improving Access to Justice

A new legal framework and an independent judiciary are devoid of meaning unless they are accessible to the public through the bar, an ombudsman, and other mechanisms. As noted above, the private practice of law was essentially outlawed in Albania from 1967 to 1990. Lawyers did not participate in criminal trials; there was only a prosecutor and a judge. Today, the constitution mandates that citizens charged with serious criminal offenses be represented by counsel, but the funds to provide for such representation are not always available.

USAID has undertaken some important work to improve access to justice in Albania. Most importantly, USAID has worked with four clinics in Albania that provide free or low-cost legal advice and representation to indigents and others in need. The first clinic, the Women's Advocacy Center, opened in 1996 and continues to represent victims of domestic violence. Another clinic, the Tirana Legal Advice Service, served over 1,000 needy clients in the last year, helping them to obtain pensions and protect property rights. In their formative stages, clinics were assisted by USAID providing expert advice and some equipment. "Everything is based on the American model," one clinic leader says, although most of the funding now comes from others in the donor community.

USAID is also improving access to justice through its support of the newly created institution of the Advocate of the People (the ombudsman). The ombudsman, a post created with the support of the Danish government, is elected by two-thirds vote of the parliament and is responsible for inspecting citizens' complaints regarding the violation of their human rights, such as police brutality. The ombudsman reported that when he first took office in 1998, he had no office, no staff, and no equipment, but now, with the support of USAID and others in the donor community, he has a fully functional office with a growing caseload.[21] One of these cases resulted in the successful prosecution of nine police officers for brutality, a result previously unheard of in Albania. "Ten years ago," he said, "it would have been very difficult to take action against the police, unless the party took an interest. But even then it would not have been public." He also reported that the support of the donor community sent an important signal to the parliament and the government that the international community considered protection of human rights to be a vital interest, thereby enhancing his power and authority.

Finally, USAID is seeking to raise awareness on the part of Albania's citizens concerning their legal rights by supporting the creation Albania's National Day of Justice. First observed in all of the country's judicial districts in 2000 were events including student visits to institutions of the legal system, moot court trials, writing contests, town hall meetings, and the wearing of white ribbons to symbolize law day. In addition, the East-West Management Institute has supported the creation of a public information center at the Tirana District Court.

At the beginning of the 1990s, Albania had no MOJ, no independent court system, no private bar, no ombudsman, and no constitutional court. Its constitution was based on communist ideology, enforced by Stalinist tactics. As one Albanian lawyer said, before 1990, "no one had heard of separation of powers." USAID, working with reformist leaders in Albania and others in the donor community, supported the efforts to draft a new constitution that provides for a parliamentary democracy and basic rights long unheard of in Albania, as well as the means to protect them through the ombudsman and an independent judiciary. Additionally, the efforts by USAID and the international community to ensure that the constitution be adopted in a transparent manner have led the parliament to be more open in its debates and the way it drafts legislation. And it has adopted several laws fundamental to democratic development, including laws on the ombudsman, freedom of information, and administrative procedure.

Albanian society is in the midst of a transformation. As the NIT report states, "Over the past two years, human rights groups have played a more prominent role in policy advocacy and monitoring abuses of the rule of law. They have participated actively in the drafting and review of the constitution, worked on legislation concerning the state police and security matters, oversaw the police and the court, and petitioned the Constitutional Court for repeals of laws." The ombudsman reported, "People in Albania now know their rights and freedoms, and the state tries to respect them. Human rights, political, social, and economic rights are generally being respected. And there is the freedom of election. No one tries to stop people from voting. No one comes to my office and claimed that he was denied the right to vote."

USAID support has impacted the development of legal institutions through the advice of long-term experts, training programs (almost all leading judges, lawyers, and NGO activists have participated in such trainings, either in Albania or abroad), and provision of equipment. The work of USAID not only supports the NGO and human rights communities directly, but it also serves to send a message to Albanian political leaders that the United States, and the rest of the donor community, consider these issues to be of vital importance and concern. USAID ROL advisors, moreover, provide a focal point for reform. As one observer said, they "make a difference by subtly shifting attitudes." It is perhaps in this less tangible manner that USAID's programs have had the greatest impact in Albania.

## B. Armenia

Rugged, landlocked, and beset by internal political violence and a 10-year old war with neighboring Azerbaijan, Armenia continues to struggle to create a ROL state. Traditional reliance on family ties and clan loyalties to resolve economic and political problems has helped Armenians survive both natural and man-made disasters, but it has also created significant barriers to achieving a free market economy and independent legal system. The disintegration of the Ottoman empire resulted in the ethnic cleansing of over one million Armenians, scattering much of the remainder of across the globe. In the late 1920s, the Soviets further fractured these people, whose embrace of Christianity dates to 4th century, by making the mountainous Armenian enclave of Nagorno-Karabakh a part of predominately Islamic Azerbaijan. The resulting religious disharmony broke into open conflict 70 years later when, at the height of perestroika, the Armenian capital of Yerevan saw mass demonstrations calling for return of the region. Azerbaijan responded with fierce anti-Armenian pogroms. Outright war between the two nations broke out in 1991. A frequently-breached ceasefire was negotiated in 1994, leaving the Armenian military in control of one fourth of Azerbaijan. All Azeris were expelled from the region. As a result, Armenia faces a trade embargo with Turkey and Azerbaijan and sees itself in a continuing state of hostilities that colors its political decisions and slows economic growth. Difficulty in resolving this ethnic strife has been compounded by internal political violence that culminated in the autumn 1999 massacre of eight leading politicians, including the prime minister and the speaker, while parliament was in session.

Armenian independence in 1991 brought an end to the centrally planned Soviet economic system. In a country still racked by the effects of a 1988 earthquake that killed over 25,000 people and left 500,000 homeless, the loss of guaranteed markets and subsidized energy and raw materials prices was devastating. Over half the population still lives below the poverty line. Only large-scale aid from the United States, other foreign donors, and its diaspora has helped the nation cope with this disaster.

Despite these hardships, legal reforms have been undertaken and a judicial system capable of resolving civil disputes and criminal cases is taking shape. When lack of political will has slowed progress by the government, USAID has directed assistance to CSOs, independent associations of judges and lawyers, and law faculties in a bottom-up effort to build a ROL society. Armenia's accession to the Council of Europe in 2001 will require a number of constitutional and legislative reforms and presents a unique opportunity to strengthen the rule of law.

### 1. Developing a Legal Framework

Independence from the Soviet Union meant Armenia needed to replace a legal structure designed not to ensure rule of law but to guarantee the dominance of the Communist Party and its ideology. This required drafting a new constitution and other laws that would limit the powers of prosecutors, enhance the independence of the judiciary, and protect both private property and human rights.

The Armenian constitution, adopted in 1995 with limited assistance of USAID, guarantees equal protection under the law, and protects human rights and private property rights. It prohibits torture and provides for searches of dwellings only by court order. Freedom of speech and association are protected. Citizens are entitled to "restore any rights" and "clear himself or herself of any accusations" at a public hearing before an independent and impartial court. However, the presence of the public and news media presence may be prohibited by law "for the purpose of safeguarding public morality, the social order, national security, the safety of the parties and the interests of justice." Persons accused of crimes are entitled to counsel from the time they are "arrested, detained or charged" and are presumed innocent until proven guilty.

USAID also played a three year role in the drafting and enactment of Armenia's new civil code, which forms the basis of all commercial transactions and promotes the transition to a market economy with private property ownership. Mission assistance was described as "huge" by the code's "father." USAID coordinated the involvement of American and European experts with local drafters to develop a code particularly designed to Armenia's needs. Implementation of the code began in 1999 and has been aided by USAID-funded workshops on topics such as contracts and private property rights.

USAID also worked closely with other international donors in efforts to revise Armenia's criminal law. While attempts to substantively change the Soviet-era criminal code have failed, a modified criminal procedure code, enacted in 1998, limits the right of prosecutors to issue search warrants on their own; now only court can issue warrants.

### 2. Contributing to Judicial Reform

The establishment and training of an independent judiciary is a key component of a nation governed by the rule of law. Under the Soviet legal system, the prosecutor's office retained significant administrative power over the courts in both civil and criminal cases, with the right to appeal decisions even if not a party to the case as well as the right to bring disciplinary proceedings against judges. While taking steps to

move towards the goal of complete independence, Armenia's legal system remains largely controlled by the executive, as well as plagued by corruption and widespread cynicism in the impartiality of the courts.

According to the constitution, the president is the "guarantor of the independence of judicial bodies" and heads the Judicial Council, which is empowered to propose the list of candidates for judgeships and key positions in the prosecutor general's office, and recommends disciplinary action against judges. The qualification examinations to become a judge are administered under regulations promulgated by the minister of justice, who then conducts interviews with successful candidates and recommends nominees to the Judicial Council, where he sits as vice chairman along with the prosecutor general. Final appointments are made by the president, who has the power of removal with or without cause.

These constitutional constraints on an independent judiciary have been subjected to public criticism and, in the face of Council of Europe accession, are being reexamined by a Commission on Constitutional Revision. USAID assistance has been provided to the commission, which developed a comprehensive set of amendments including revamping the membership of the Judicial Council to remove the president, minister of justice and prosecutor general and providing that the constitution, not the president, is the guarantor of judicial independence. One member of the commission noted that her consideration of the amendments was "constantly" affected by the information and assessments provided through USAID technical assistance contractors. The amendments have been reviewed by the European Commission for Democracy Through Law (the Venice Commission), created in 1990 by the Council of Europe to play a leading role in helping new democracies in central and eastern Europe conform their constitutions to European standards. The president has briefed parliamentary factions on the proposed changes and governmental officials, judges, lawyers and journalists expect a public debate, with USAID technical assistance, followed by a referendum.

USAID, through its work on the 1998 Law on the Judiciary, already has had a significant impact on judicial reform. That law limited the prosecutors' right to intervene in cases, created an intermediate appellate court (allowing for appellate modifications of first instance court rulings without a case having to be fully retried), and removed the budget and management of the courts from the MOJ to the new and independent Council of Court Chairs (CCC). USAID assistance has been crucial to the CCC's ability to develop budgetary and case management procedures and train court personnel. The CCC also supervises the work of its Judicial Training Center, which has received significant USAID help. This assistance has resulted in the center's development of a legal database and library, assessment of training needs through judicial surveys, and substantive legal training for judges and court personnel, both in Armenian law and in international human rights treaties and conventions which will now be open to judicial enforcement as a result of Council of Europe accession. With USAID assistance, these international laws have, for the first time, been translated into Armenian and bound into one volume, which has been certified by the Ministry of Foreign Affairs as the official translation for use in the Armenian court system. The CCC is also empowered to adopt a code of judicial ethics and USAID has provided technical assistance to the group's efforts to develop a working draft for its consideration.

The independent Association of Judges of Republic of Armenia, composed of almost ninety percent of all the judges in the nation, was formed with USAID help in 1997 and since then has worked closely with USAID technical assistance providers to publish newsletters and conduct workshops. The Association was responsible for the first full text publication of the decisions of the Court of Cassation and has adopted a code of ethics for its members, which it has proposed that the CCC adopt as the official judicial ethics code. The group's workshops have covered such topics as the Ethics Code, the civil code, pre-trial release of persons accused of crimes and media relations. A group of Association members has lectured to CSOs on the implementation of the civil code, and a working team of association judges has joined with

USAID technical assistance providers in developing amendments to the Bankruptcy code, which has proved especially problematic in practice.

Under the Soviet system, judges had little experience in reaching decisions based on the rational application of the law to the facts of the case. "The whole system has changed from Soviet times and the role of the judge has become much more important," noted a leading Armenian advocate. USAID has provided practical training in both Armenia and U.S. study tours to expose Armenian judges to the ideas of precedent, judicial rationale for decisions, and opinion writing. Application of the concepts is important not only for resolution of disputes under Armenian law but also for those cases arising under international treaties which may ultimately proceed to the European Court of Human Rights in Strasbourg. Those disputes are resolved by reference to the court's precedents and USAID has made Russian translations of the court's opinions available to Armenian judges, advocates and prosecutors to increase their familiarity both with international law and previous applications of that law to specific facts of a case.

### 3. Improving Legal Education

Beginning in 1997, USAID undertook a major effort to improve the legal education system in Armenia. While corruption and lack of political commitment may hamper current ROL reform efforts at the governmental level, this assistance reflects an investment in the next generation of judges, advocates and bureaucrats. Focusing on the law faculty at Yerevan State University, USAID developed a three-pronged program that provides material assistance, faculty training, and implementation of new teaching methodologies. In addition to a 17 station computer workspace and library at the University, USAID has helped establish a printing facility that reproduces texts of lectures, educational manuals and commentaries on substantive Armenian law. Eleven faculty members have been trained at the University of California/Berkeley and are now employing interactive teaching methods that replace Soviet-style rote lectures. The curriculum has been modified to include these methods in new substantive law classes, legal writing courses and moot court training. A course in trial advocacy skills, the first of its kind in Armenia, will be taught by an instructor who received USAID-funded training at Seton Hall University. Student interest in these classes is growing and the faculty's dean reports that the changes have had a "dramatic impact" on their legal education program. Efforts are underway to expand USAID assistance to other university law faculties and implement the planned system for law school accreditation.

### 4. Raising Public Awareness and Access to Legal Services

Technical and financial assistance to build an independent judiciary and increase the professionalism of attorneys must be accompanied by programs to improve the public's knowledge of legal rights and their access to the judicial system. USAID has funded television and radio programs designed to increase citizen awareness of both substantive law and the court system. A television program on the Law on Inspections, for example, provided information about the requirements of the law and the rights of the inspector and inspectee. USAID-trained journalists are writing legal columns in newspapers that not only detail on-going cases but also explain human rights laws. USAID is also funding the Association of Investigative Journalists, which aims to produce and broadcast a series of investigative films and radio programs covering both the positive and negative aspects of judicial practice in Armenia.

Secondary school students throughout Armenia participate in the USAID-funded Legal Olympiad, a mock trial competition that focuses on constitutional and human rights cases. Regional competitions produce 16 teams for the final round, attended by the minister of justice, judges of the Constitutional Court, and hundreds of school officials and relatives of the children. This program exposes not only the students, but also their families and friends, to information and materials that will improve their awareness of their

rights as citizens. A web site has been created to allow participants to review the previous year's case materials and post photographs of the competitions.

USAID is also supporting a wide array of NGOs in their efforts to provide legal services both in Yerevan and outside the capital. A conference of all legal services organizations was held with USAID assistance and a handbook detailing the name, location and type of services provided by each group has been published and distributed. Specific financial assistance has been provided to NGOs such as the Mental Health Foundation, which furnishes legal services to mentally disabled persons; Family and New World, a regional program that offers legal consultations for the unemployed; and Araza, which organizes legal aid bureaus in refugee communities. Bar associations such as the Armenian Young Lawyers' Association, the Bar Association of the Republic of Armenia, and the International Union of Armenian Advocates receive USAID assistance to both help build their institutions and provide legal services to socially vulnerable persons.

Armenia's progress towards a ROL society remains complicated by many factors that make a successful transition to a democratic state with a market economy a slow and sometimes painful process. Widespread corruption, internal political violence, lack of resources, the ongoing conflict in Nagorno-Karabakh, and the absence of political will for reform act together to suppress efforts to move the country towards a ROL society. Nevertheless, accession to the Council of Europe, together with a young generation that takes its cues from the larger world stage instead of traditional clan loyalties, may push Armenia forward. It is this next generation at whom many of USAID's ROL programs are aimed, and the effort to nurture and help grow this young, democratically minded force for change is showing some important signs of success.

## C. Bulgaria

Bulgaria is a country without long experience in democracy and the rule of law, but which has made remarkable progress, with the support of USAID and other donors, in the 10 years since its first free elections in 1991.[22]

The new rulers of Bulgaria were left with a legislative framework that was designed to support communist tyranny, a judiciary that was under the control of the party and the procuracy, and a bar that was run by the MOJ. Neither the laws nor the administrative agencies were geared towards supporting a modern free market economy. The early years of transition, moreover, were hampered by political gridlock and an economic crisis that came to a head with triple digit inflation in 1996 and the threat of complete economic breakdown and widespread civil unrest in 1997. Subsequent elections gave a clear parliamentary mandate to the reformist UDF party, which promised to provide stability and movement towards European Union accession, promises that have been largely kept. Indeed, since 1997, Bulgaria's NIT democratization rating has consistently improved, inflation has been tamed, and the country has even seen some economic growth. The NIT Report states that, "After 10 turbulent years of transition, Bulgaria has a stable, well-functioning multi-party system in which the transfer of power takes place through free and fair elections." In 1999, the EU found that Bulgaria had fulfilled the Copenhagen political criteria for accession, in other words that it had achieved "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities." Bulgaria's democratic development—and USAID's programs—may now be said to be at the next stage, one of consolidating gains made and enforcing laws enacted. In any event, USAID, starting with its funding of a CEELI program in 1991, has done much to bring about the current stability in Bulgaria. The impact of this work has ebbed and flowed with the political tides, but USAID's early work was essential to identifying partners and establishing a foundation for the successes that have occurred since 1997.

## 1. Developing a Legislative Framework

Bulgaria under communism, in the words of one local jurist, included "no recognition of the principles of the rule of law. There was no division of powers, and no independent judiciary. And we've needed 10 years to begin to understand these principles and begin to apply them."

USAID began its work in Bulgaria with constitutional drafting support through CEELI workshops and other programs. In 1991, Bulgaria became the first country in the region to adopt a new constitution. Pursuant to this constitution, the president and parliament are selected in free elections, the judiciary is established as an independent institution (including a new constitutional court), and basic human and civil rights are protected. The constitution bans discrimination based on race, nationality, ethnic identity, sex, or religion and protects freedom of speech. As the NIT report finds, "There is adequate provision for protection for fundamental human rights….There is explicit constitutional protection of the freedom of economic initiative…and a protection of the right to private property . . ."

Again with USAID support, Bulgaria has also revised some key pieces of legislation. Perhaps most importantly, in 1999 it re-wrote its criminal procedure code, removing the right to issue search and arrest warrants from the prosecutors and giving it to the judiciary, and more generally providing for the greater neutrality of the judges. In addition, if an arrest warrant cannot be obtained, a judge must review the arrest within 24 hours. Additional new laws include revisions to the civil code, the civil procedure code, and key commercial legislation, such as on bankruptcy, privatization, tax, and combating corruption. New laws on the civil service and administrative procedure (allowing for judicial review of administrative decisions) were also passed, as well as a law on access to information. In short, Bulgaria has established a fairly complete legislative framework that supports its democratic institutions and a free-market economy.[23]

USAID has played a role in the preparation of all of these laws, providing not only substantive advice but also helping to ensure that those affected by the changes would have a voice in the drafting process. For example, it has facilitated innumerable roundtable discussions on a variety of draft laws, paving the way for full-scale legislative transparency, the establishment of which is the goal of another USAID-supported program. Parliament, as a part of that process, has opened an information center where the public can obtain copies of pending legislation. Obviously, public comment was not solicited on legislation during the Communist era, and even in the early post-communist years most legislation was prepared by ministerial drafting groups that sought outside opinions of only a select group of law professors. Bulgaria now is at the forefront of opening up the process of legislative drafting in the region, a key advancement for its young democracy.

## 2. Contributing to Judicial Reform

Establishing an independent and yet accountable judiciary is a prerequisite to enforcing Bulgaria's new legislative framework. Previous to 1990, the courts in Bulgaria were beholden to the Communist Party. Judges were selected by the MOJ to run for five-year terms in elections which one judge termed "formalistic" because everyone knew that whomever was nominated by the Communist Party would win. More importantly, judges were perceived as being a part of the governmental enforcement organs, not as an independent branch of power. Today, after a three-year probationary period, judges enjoy life tenure and are appointed by the largely apolitical Supreme Judicial Council (between 1991 and 1998 they were selected by parliament). Court procedures include guarantees for a fair trial: "Hearings are open, the defense has a full opportunity to review evidence, develop the case, and defend it, and to appeal decisions. . ." (NIT Report). The Constitutional Court, an institution entirely new to Bulgaria, is active in

the political process, and its decisions are obeyed. Perhaps its most important act came in 1994 when it struck down a law that would otherwise have effectively terminated the tenure of all judges appointed after 1989.[24]

Problems with the judiciary continue, of course: corruption can mar the process, and the court procedures are universally acknowledged to be slow. But USAID has made important contributions to the establishment of an independent judiciary in Bulgaria, and is working to address some of these lingering concerns.

USAID's most important impact is in the area of judicial education. Thanks to USAID's ambitious program, the Bulgarian judiciary is receiving expert training on a variety of new laws and concepts, without which the successes in legislative drafting noted above would have little practical utility. One judge underscored the importance of training by estimating that 80 percent of the laws that judges must implement are new. The training is being conducted by the Magistrates Training Center (MTC), a quasi-NGO created in early 1999 by the Bulgarian Association of Judges, the Alliance for Legal Cooperation, and the MOJ. USAID supports the MTC through a program that has helped to train judges as trainers, develop the training materials, and organize the training sessions. The MTC provides practical training for new judges on the basics of judging, including on ethics, judicial demeanor, and opinion writing. Every new judge appointed in 2000 underwent this training, which lasted for a total of three weeks. The MTC also provides training to experienced judges on a variety of emerging topics, including EU law, company law, bankruptcy, and tax law. The trainings are conducted almost exclusively by senior Bulgarian judges and other local experts. Other organizations implement the judicial training components of their projects through the MTC. The MTC has trained over 1,700 judges (some of Bulgaria's approximately 1,500 judges attended more than one program), as well as some clerical staff. One judge said that the MTC's work was "absolutely necessary" and that USAID's support for it made USAID "the most helpful foreign agency" in Bulgaria.

The other important USAID success in the judicial area relates to court management. As noted above, one of the continuing problems in Bulgaria is the slow and cumbersome nature of its judicial administration. The system inherited from the Communist era included arcane procedures, files that were sewn together by hand, and a lack of strategic planning. The system was simply not prepared to handle the explosion in the number of cases that came with the conversion to a free market economy. The resulting delays have contributed to a loss of confidence in the system and an increase in corruption. This problem is being addressed through a pilot program that provides computer equipment, case tracking hardware, and simplified filing systems (together with training) for four model courts around the country, including a busy district court in Sofia. This program has been well received by judges, clerks, lawyers, and litigants, all of whom see an increase in efficiency; the program, accordingly, will likely be extended to several more courts in the coming year.

Another way to address court delay is to lower the caseload, which USAID efforts seek to do through the introduction of mediation and ADR. In particular, the Agency has helped the Bulgarian Industrial Association (BIA), comprised mainly of small and medium size businesses, to create arbitration and mediation "courts." USAID assistance included developing bylaws and rules for the courts, providing training for mediators and arbitrators who will serve on the courts, and providing a small grant to support initial operations. USAID is also helping develop arbitration and mediation programs for labor disputes.

Another important impact in the judicial arena is the establishment, with USAID assistance, of the Bulgarian Judges Association (BJA) in 1997. Besides being one of the founders of the MTC, the BJA is contributing to legal reform by working on judicial ethics, having established some basic ethical guidelines

for its members and participating in a drafting group that is preparing a law on judicial ethics to be submitted to parliament. More importantly perhaps, the BJA has established itself as a voice for the judiciary, speaking out in the press against proposed amendments to the criminal procedure code that would restore to the prosecutors some of the powers that had previously been shifted to the judges. Additionally, the BJA has interjected itself into the legislative drafting process, and it is now represented on several legislative drafting working groups. This serves to enhance the strength of the judiciary, improves the quality of the legislation, and represents a step forward in improving the overall transparency of the legislative process. As one of the leaders of the BJA reported, "The magistrates and the public trust the views of the BJA. Its words are heard." This is an important change, considering that Bulgaria did not even have an association of judges until four years ago.[25]

In addition to working with the judiciary, USAID is also helping to implement Bulgaria's new legal framework through its support of key agencies, such as the protection of competition board, the securities and exchange commission, and several agencies involved in concessions and procurement. Leading and mid-level officials at these agencies have been trained, and assistance has also provided long-term, in-house experts to work side-by-side with their Bulgarian counterparts. Through this process, Bulgarian policymakers are learning not only how to implement existing legislation, but also how it needs to be improved. One of the tangible results of these efforts was a crackdown on the production of pirated CDs in Bulgaria. USAID's efforts in this area are at the forefront of the process of implementation around the region, and provide an example for other countries and programs in the region.

### 3. Improving Access to Justice

Access to justice is not always seen as a serious issue in Bulgaria: one of the problems of its legal system is that it is over-used, and that people take recourse to the courts too quickly (USAID's efforts to address this problem, through court administration and mediation programs, are described above). True access to justice, however, requires that the public be informed of their rights and be represented by capable counsel. The inaccessibility of affordable and knowledgeable counsel remains a problem in Bulgaria.

USAID is helping to address this issue through its work to develop clinical programs at the law schools. Clinical programs enable law students, under the supervision of experienced lawyers and law professors, to provide advice to mostly indigent people who cannot afford to hire a lawyer. Clinical programs are important, however, not only because of the service they provide to the community and because of the practical experience that the law students obtain, but also because they inculcate into law students a sense of public service that will help to change society far into the future. Clinical programs were unheard of in Bulgaria (where the legal training has been almost entirely by lecture) until USAID's work in this area began in 1997.

The most developed law clinic is at the Rousse University Law Faculty, which provides advice and representation to the community's poor regarding family law issues such as divorce, domestic violence, and children's rights. USAID has helped the clinic by providing it with some indirect funding, as well as training for the teachers who operate it. The clinic opened in 1999, and six professors/lawyers and 24 students now work there. In the last year it advised approximately 120 clients, and represented another 60 in court cases. The clinic has signed a contract to provide representation to those referred to it by the municipal office for social services. The popularity of the clinic (amongst the students and end users) has resulted in an expansion: a second clinic on administrative law opened at Rousse in October 2000, and clinics have opened at other schools in Plovdiv and Sofia as well.

Access to justice also requires an active, well-trained and progressive bar. Although the legal profession has been privatized, the official Bulgarian bar has proved resistant to reform, failing to address issues such as ethics, re-training, and pro bono representation. USAID partners, however, are working with a progressive group of lawyers who have formed informal committees to work on continuing legal education (CLE), ethics, and a pending law on the legal profession. These efforts are starting to show results: one lawyer has organized a 15 class CLE program for new lawyers that has generated more interest than it can currently handle. This work may well provide the basis for establishing a more progressive bar in Bulgaria.

USAID's most important contribution to the democratization and establishment of the rule of law in Bulgaria has been its work with the judiciary. USAID's efforts in this area began with the advice provided to the drafters of Bulgaria's 1991 constitution that the new constitution provide safeguards for an independent judiciary. USAID followed up on this legislative drafting assistance through the establishment of the BJA in 1997 and the MTC in 1999. The judicial training programs (together with the pilot court programs) were consistently noted for having a vital impact on legal reform in Bulgaria.

USAID's work in Bulgaria has enhanced another fundamental aspect of rule of law and democracy: transparency of the legislative process. Working mostly on commercial law issues such as bankruptcy and intellectual property, USAID has supported public hearings on draft legislation, in partnership with the MOJ, the BJA, and other organizations. The MOJ and the government are now taking the lead in holding these hearings, and the parliament and the government, with USAID support, are moving towards institutionalizing the process, a development that would bring the transparency of legislative drafting to a level that is still largely unheard of in central Europe.

Finally, it should be noted that, as in other countries, USAID grantees and contractors also provide important but largely intangible support to the process of reform. One judge pointed out how an early liaison had been able to get suspicious judges and lawyers to talk amongst each other for the first time, which resulted in an informal network supporting reform. A program implementor likewise noted that without USAID's presence, "people would be acting in a vacuum—we can help the government to plan better because we don't have political entanglements but we do have experience." That transfer of knowledge and experience has contributed greatly to Bulgaria's emergence as a democratic leader in the region, and provides a firm foundation for the country's future full integration into the European Union.

## D. Georgia

Georgia stands at the crossroads of European and Eastern cultures, with an ethnically diverse population that relies almost exclusively on clan and family alliances to drive its economy and government. Neither the dictatorship of the czars nor 70 years of communist rule did much to change this basic way of life. The consolidation of Soviet power in the Caucasus region in the late 1920s led to the imposition of a legal structure which envisioned neither the private ownership of property nor the need to protect the rights of those accused of crimes. Instead of the rule of law, a system of prosecutors kept watch over the actions of both the administrative branches of government and the legal system. These prosecutors had supervisory power over the execution of laws by all ministries and could order the arrest and detention of citizens without court intervention.

The 1991 collapse of the Soviet Union resulted in independence for Georgia, but also saw a descent into civil war, economic ruin and political upheaval. Led at the outset by the region's leading dissident, Zviad Gamsakhurdia, the country soon found itself torn by ethnic strife fueled by his nationalistic policies and heavy-handed rule. The western region of Abkhazia was the site of bitter fighting between Georgian

troops and Russian-supported separatists, while South Ossetia, bordering Russia in the north, erupted into clan warfare against the central government. Into this maelstrom strode Eduard Shevardnadze, once Georgia's Communist Party boss and later Mikhail Gorbachev's foreign minister. At the urging of the military leaders who overthrew Gamsakhurdia in 1992, Shevardnadze returned home to head a new government. While his presence calmed political waters in the capital of Tbilisi, he was unable to defeat the separatists and both regions fell beyond the control of the central government. An uneasy truce, brokered in Moscow, is still regularly broken by kidnappings and attacks on government troops and police. Shevardnadze, however, did give the country instant name recognition in the west. He was regularly seen at the side of European and American leaders. To gain credibility, he was careful to include articulate young reformers, many of whom had been educated abroad, in his government. He quickly became the key factor in attracting a major infusion of international aid to his country and its accession to the Council of Europe and the World Trade Organization.

Since 1994, USAID has been a leader in providing assistance to ROL reform in Georgia. Its efforts are recognized by Georgians in and out of government as having led to significant judicial reform and new laws that provide for transparency in government and protect and encourage private enterprise. While the transition from communism remains incomplete, USAID's efforts have helped create a legal framework that provides the foundation for a free market economy based on the rule of law.

### 1. Developing a Legislative Framework

Georgia had only a brief earlier experience with independence in the period between the two world wars. Gaining independence again meant that it had to draft, enact and implement a constitution and other laws elemental to an independent, democratic state functioning on the basis of a free market rather than a centrally planned economy. Despite the delays in addressing these issues due to the civil war, Georgia has been largely successful—with the help of USAID and other donors—in meeting this challenge.

Georgia's constitution, for example, drafted with USAID assistance, protects universally recognized human rights and fundamental freedoms, such as the freedom of speech, freedom of religion, the right to public assembly and universal suffrage for all those over 18. It also includes significant restrictions on detaining accused persons prior to trial, a presumption of innocence in criminal cases, right to trial and appeal, and a prohibition on being tried twice for the same offense. All of these rights were largely unknown when Georgia was a part of the Soviet Union.

In terms of government structure, an elected parliament is an independent branch of government with the power to impeach the president. A constitutional court, a supreme court, and courts of general jurisdiction are also created as an independent branch of government. USAID assistance has strengthened public awareness of constitutional rights to help deter politically motivated attempts to undermine this structure.

In addition to helping with the constitution, USAID has played an important role in developing legislation crucial to a state functioning under the rule of law. USAID helped, for example, to fundamentally reform Georgia's administrative laws. Under the Soviet Union, these laws were essentially adjuncts to the criminal codes, whereby citizens could be held accountable for a variety of misdemeanors. Administrative law plays a very different role in the west, and is a key method of ensuring government transparency, fairness and responsiveness. Reform required a radical change in the entire concept of administrative law to one that met western standards, so that citizens could obtain information on government decisions and appeal those decisions to the court system. USAID support was especially important to the development of this law's comprehensive freedom of information (FOIA) provisions, which give media and citizens broad access to governmental records and decrees. In a clear victory for ROL reform, a 1999 effort by

the minister of Interior to delay implementation was rejected by Parliament. Members of Parliament, NGO leaders, journalists, and private lawyers all agree that theses codes would not have been adopted without USAID assistance.

The passage of these laws has resulted in visible changes in the way government operates and the public's perception of the bureaucracy. A central FOIA office at the MOJ with a hotline for FOIA officers in other ministries was opened, with all these officers being trained by USAID. The Georgian Young Lawyers Association (GYLA), with USAID assistance, is operating and publicizing a hotline for citizen and journalist questions concerning the new law. One USAID-trained journalist successfully sued the ministers of interior, defense, and state security to obtain copies of financial disclosure reports required by the code. GYLA-USAID trained civic activists have obtained budget reports from the Ministry of Interior and then published the figures, which showed discrepancies from previous statements of ministry officials. Presidential decrees, which have the force of law, are for the first time regularly printed and distributed to the media. A list of all executive officials housed in the central state office building, together with their phone numbers, is now posted outside the entrance. The FOIA officer at the Ministry of Interior is easily accessible to the public. In a major change from Soviet era secrecy, citizens have a growing sense that they can challenge arbitrary governmental actions, a reflection not only on progress in code implementation but on judicial reform as well.

USAID assistance has also played a substantial role in the drafting, enactment and/or implementation of a number of other major laws, including the civil code and civil procedure code, which provide a framework for contract law and the resolution of civil disputes in the courts. USAID supported reforms in the criminal code that make only intentional defamation a crime, thus helping protect the media in reporting on corruption and governmental inaction.

USAID training has also strengthened the overall capacity of Parliament and its committees to draft, discuss and enact legislation. It has helped the legislature undertake more oversight of other branches and to solicit public views. Parliament's Legal Affairs Committee recently conducted hearings involving the prosecutor general, demanding explanations of hiring decisions inconsistent with law. The hearings received widespread media attention and helped improve the public's confidence in Parliament.

### 2. Contributing to Judicial Reform

A vital aspect of creating a ROL state is the establishment of an independent judiciary. Under the Soviet Union, judges who had been pre-selected by the Communist Party were elected to four-year terms. In 1998, Georgia and USAID recognized the need to establish a more credible means for selecting judges and embarked on the implementation of a process for selecting judges unique to the region: they would be proposed for appointment only after they had passed a judicial qualification examination. Georgian experts, with USAID assistance, prepared the questions in secrecy, had them printed overseas, and then oversaw the fair and objective testing process, which was covered by the print media and was televised nationally. Since the first exam in 1998, Georgians have increasingly assumed responsibility for the examination while maintaining public confidence in the process. Moreover, the terms of sitting judges appointed prior to the passage of the examination law are coming to an end—those who cannot pass the exam will lose their posts. Georgian lawyers consistently identified these older judges as more prone to corrupt practices. Their replacement by younger judges who have passed the examination is cited as a key hope for continued reform.

Developing the corporate judicial structures independent from the other branches of government is another important goal of judicial reform. Previously, the MOJ was responsible for administering the

courts, including overseeing budgets and the disciplining of judges. USAID provided assistance with the enactment of the Law on Courts, which created a Department of Logistical Support of General Courts within the Supreme Court to help manage the court system much like the Administrative Office of the U.S. federal court system. Georgia also created the Council of Justice, composed of representatives of the three branches of government and the public, to administer judicial examinations, help implement the laws on the courts, investigate judicial discipline complaints, and interview candidates for judgeships once they have passed the qualifying examination.

USAID also supports the Conference of Judges (COJ) and a judicial association, Judges of Georgia (JOG). COJ, the independent governing body comprising the entire Georgian judiciary (except the Constitutional Court), relied heavily on USAID in conducting its plenary sessions, electing a disciplinary council to oversee judges' behavior, and adopting a code of ethics. The JOG is a voluntary association that combines members' dues with USAID assistance to publish a newsletter and conduct roundtables on legal issues. JOG constitutes an important non-governmental lobbying group for justice system reform. As one example, JOG recently published an open letter on the need to pay salaries regularly in order to deter corruption. It has also insisted on the duty of judges to avoid public comments on cases.

The Georgian judiciary still faces daunting problems. The government has not always been able to pay the increased salaries promised to judges who passed the judicial qualification examinations. Prosecutors remain both influential and a source for the corrupt resolution of criminal cases. The reliance on corruption and clan connections in dispute resolution overall is likely to linger for some time yet. The results of Georgia's efforts to reform its judiciary are nevertheless impressive. USAID assistance in the institution and administration of the judicial qualification examinations, coupled with programs designed to support the judiciary's independent institutions, has created a sustainable, self-governing system that is serving as a model in Moldova, Tajikistan, and other countries throughout the former Soviet Union.

### 3. Providing Legal Training and Assistance

USAID has also provided support to improve the competence of the legal profession. The practice of law in Georgia was open to anyone with a law-related diploma and was not subject to any disciplinary procedures or code of ethics. A USAID-assisted reform effort over two years recently resulted in enactment of a Law on the Bar, which provides for a bar examination and a national bar association with power to adopt an ethics code. In addition, USAID has helped GYLA build the nation's largest law library, with the ability to provide texts to lawyers around the country. GYLA has used USAID assistance to publish commentaries on the criminal code (which are in general use now by lawyers, judges and prosecutors) and a book on Basic Constitutional Law (the only one available on general Georgian constitutional law). It has also published materials on Federalism, Intellectual Property, the Tax code (a key textbook for business lawyers and Ministry of Revenue officials who must now pass examinations for their positions), and the Independence of the Judiciary. USAID has supported GYLA's Jessup International Moot Court team, which this year placed a remarkable sixth in the competition.

USAID is also helping improve lawyers' advocacy skills by providing training in techniques not previously used in the Soviet system. USAID-sponsored classes help law students gain basic skills needed to present a case in an adversarial system. Last year, the Supreme Court hosted a mock criminal trial conducted by these students, who presented opening and closing arguments and conducted cross-examination of witnesses, all skills not taught in the current legal education system. High school and university students also compete in the Legal Olympiad, a moot appeals court competition sponsored by the Constitutional Court. In four years, the number of teams has increased from 43 to 130 and the case materials, relating to various constitutional rights, expose students and their parents to the means for adjudication of these rights.

USAID has been successful in helping assist a network of NGOs to become a major force in insuring the protection of citizens' rights. The Medea Foundation for the Defense of Victims' Rights provides free legal consultations and forensic expertise. It so often successfully challenged prosecutors' forensic evidence that it director was recently appointed to reform the MOJ's Department of Forensic Expertise. The Union of Lawyers of Chokhatauri District in western Georgia has attempted to address the dire need for legal services in remote regions. With USAID assistance, this group provides free legal consultations every afternoon from Monday through Friday. The group has published articles in the local newspapers detailing citizens' legal rights and had a computerized legal database used by the lawyers and citizens.

In two regions, NGOs supported by USAID operate systems of letterboxes for citizen legal complaints and then published responses and legal information in free bulletins. One group runs a hot-line while the other published citizens' cases involving local officials in the media, resulting in marked improvement in police and executive responsiveness. The latter group also monitors local government expenditures and has been active in obtaining and publishing governmental budgets and decisions.

In a country struggling with major infrastructure deficiencies, USAID assistance to regional legal services significantly impacts citizens' awareness of their rights and their ability protect these rights against governmental abuses. In areas where local, regional and national governmental agencies have been unable or unwilling to act, USAID-assisted NGOs have stepped in help build a ROL society.

USAID ROL assistance has had a significant impact in Georgia. Although the country continues to be plagued by a large shadow economy, deteriorating infrastructure and corruption, this aid has been successfully channeled through Georgian organizations and targeted to address key societal reform issues. "Citizens and NGOs now know they have rights, the media is revealing improper government action and officials are thinking more carefully since their actions may become public knowledge. People are looking at closed processes and know they are wrong. So the process has started, the old system is breaking and the promise of change exists," explained a member of Parliament.

As noted, USAID's method of delivering assistance also wins high marks. "USAID can react quickly through its contractors working in Georgia to address key reform issues, then provide follow up and civic education. They support our priorities," noted Misha Saakashvili, the minister of justice, whose appointment in October 2000 has resulted in major reforms to the ministry and its assumption of a central role in governmental compliance with the administrative laws.

USAID has helped create the institutional framework within which major advances can be made towards a ROL society in Georgia. Equally important, it has fostered a growing cadre of young reformers working in all three branches of government as well as in CSOs. Sustained reform and the elimination of corrupt practices should come with the passage of time, as these reformers gradually replace the remnants of the Soviet bureaucracy, change the mentality of their country and move Georgia into the 21st century.

## E. Macedonia

Legal reform in Macedonia has proceeded in fits and starts, reflecting political realities beyond the borders and control of this new country, as well as the difficulties of establishing effective and independent legal institutions in a new state.

Establishing the baseline for Macedonia's transition requires addressing a number of contradictions. One advantage in Macedonia's favor is that before its independence, it was a part of Yugoslavia, perhaps the least repressive and most economically advanced country of the communist regimes in eastern Europe.

Yugoslavia had never totally done away with private commerce, and had a fairly well developed court system, including a constitutional court. On the other hand, Macedonia had never before known independence in its history, having been divided amongst Serbia, Bulgaria, Greece, and Albania, or under the domination of the Ottoman empire. In addition, it was the poorest region in Yugoslavia, Communist Party control had been paramount since the end of the World War II, and the legal system was not designed to support a modern free-market economy.

An advantage for Macedonia is that despite its multi-ethnic nature (a 1994 census reflected an ethnic Albanian population of 23 percent, a number that many today place at 30 percent), it was the only country that managed a peaceful secession from Yugoslavia, in 1991. At the same time, however, the first years of the country's independence were marked by an economic boycott led by Greece, which felt that the new country's name implied a claim to the Greek region of Macedonia. The boycott, and the on-going Balkan wars, caused Macedonia severe economic distress, with inflation and unemployment both running high. The boycott also meant that technical assistance was not as readily available as in other countries.[26] The dispute with Greece was finally resolved in 1995, with Macedonia becoming officially known as the Former Yugoslav Republic of Macedonia (FYROM). The country was hungry for international foreign assistance and advice, and USAID was well positioned to help it develop its legal infrastructure. These years also saw important economic advances. But Macedonia was again hit hard by the war in Kosovo in 1999, which brought a flood of refugees into the country. Although Macedonia officially supported NATO's campaign, the Slavic majority was fearful that the unrest to their north would spill over to Macedonia's own ethnic Albanians, a fear that recently has been proven to be well-founded. The country that for so long had been a model of stability in the former Yugoslavia now stands potentially on the brink of civil war.

Despite the current situation, the very fact of Macedonia's peaceful establishment and continued existence over the past 10 years in this tumultuous region should not go unrecognized. These 10 years, moreover, have seen the creation of many new state institutions—including a largely independent judiciary—under a new constitution. The outstanding issue is whether these new institutions will serve to resolve the crisis without resort to further violence, or whether they will become the tools for further division and repression in the central Balkans.

### 1. Developing a Legislative Framework

As noted, Macedonia inherited from Yugoslavia one of the more progressive legislative frameworks in the former Eastern Bloc. Nevertheless, as one senior lawyer pointed out, Macedonia had "no real experience in separation of powers and the rule of law. In a one horse race, you cannot have true rule of law, and without real elections you cannot have a real political science; our elections were just a ceremony." And although some commercial laws existed, they were not geared to a modern free-market economy. In addition, the country was entirely new and largely isolated due to the Greek-led boycott.

Macedonia accordingly went about drafting its new constitution, adopted in 1991, and many of the new basic laws, mostly on its own and without technical assistance. And, most observers would say, it did a reasonably good job. The new constitution, for example, recognizes freedom of speech, freedom of religion, and the right to privacy. There is a right to own and inherit property and a guarantee for "freedom of the market and entrepreneurship." Although the constitution provides some protections for minorities and women, the Albanian minority complains that it ratifies a pro-Slavic approach, making Macedonian the official language, and terming the country as officially a "Macedonian" state. These concerns are to be addressed as a part of the recent accord signed by the government and the ethnic Albanian rebels.

Some of the important legislative initiatives include the amendments of the criminal code in 1996 and criminal procedure code in 1997. Significant changes include a limit on interrogations by the police, who are now supposed to present a court order before questioning a suspect, in an effort to end past violations of civil rights. Also, defendants are now required to be arraigned before a judge within 24 hours of an arrest, and the maximum length of pre-trial detention is 180 days. In 1997, Macedonia passed a law, as mandated by the constitution, to establish the new office of the ombudsman, whose main function is to protect human and constitutional rights, and whose work began in 1998. Macedonia also recently enacted a new law on Public Administration, and has signed the International Convention on Human Rights and the European Council's Convention on Minority Rights. The International Foundation on Election Systems has helped with election laws, and the Urban Institute has helped to prepare laws on local self-government. In the commercial area, Macedonia has adopted or is working on, with USAID support, new laws on obligations, real property, trading companies, collateral, and bankruptcy.

In terms of process, the parliament has begun to operate with greater transparency—sessions are open and draft laws are made available, but the public is not encouraged to attend or to comment. On the other hand, the MOJ has invited USAID-supported NGOs to comment on drafts of important laws, such as the above noted revisions to the criminal codes, and USAID is helping to organize seminars with experts and members of parliament for a variety of commercial and other laws. USAID partners made a major effort, starting in 1998, with the Association for Emancipation, Solidarity, and Equality of Women (ESE) to improve laws relating to domestic violence. In June 1999, the working group completed a package of draft laws on domestic violence, based on U.S., Austrian, and U.N. models. The proposed revisions include changes to the criminal code providing for specific penalties for family violence crimes, and would introduce the use of protective orders in the civil procedure code. The draft revisions, currently being reviewed by the MOJ, are anticipated to be presented before parliament shortly.

The international community's work on the legislative framework has been evident. As one local reformer said, "Most of the pressure for legislative changes came from foreigners: either the World Bank or the IMF on commercial law, and the Council of Europe or the United States on rule of law."

### 2. Contributing to Judicial Reform

As in other countries, the establishment of an independent judiciary is vital to enforcing the legislative framework. Also as in other countries, USAID has played an important role in enhancing the strength and independence of the judiciary.

Perhaps USAID's most important impact to date has been its work with the Macedonian Judges Association (MJA), established in December 1993. USAID has provided the MJA with direct support grants, advice on institution building, and help in joining the International Association of Judges and the European Association of Judges. The MJA now has over 600 members, or 98 percent of Macedonian judges. Although the MJA is still funded largely by the donor community, it is also generating revenues through membership fees.

The MJA's signature achievement has been the introduction of a training program for judges. Judicial training became especially important because many of the new judges appointed in 1995 after the adoption of the new law on the courts had little experience as judges. In addition, the legislative framework was being revised, but the government was doing nothing to educate its judges concerning those revisions. USAID helped by providing funding for programs and by training judges to be trainers. The resulting MJA programs, conducted throughout the country, covered topics such as bankruptcy, judicial ethics, and civil procedure.

These programs led to a demand for a more permanent judicial training center, a demand that USAID met by helping the MJA, the MOJ, and the Republic Judicial Council (RJC)[27] establish the Macedonian Center for Continuing Education (CCE), which opened in March 1999. The CCE, a part of the MJA, offers a regular program of training to judges and clerks on civil, criminal, administrative, and trade law, as well as international human rights. The CCE uses local judges and other experts as trainers, and last year was able to reach approximately 1,400 judges (some, accordingly, were trained more than once). The CCE also has conducted some training for the clerical employees of the courts. The MOJ supports the CCE by providing it with work and training space (which will soon see a major expansion), and the prospects for the institution are good. While the CCE is supported by others donors, its executive Director is firmly of the view that the CCE could not have been established without USAID assistance.

USAID has also been instrumental in promoting more fundamental and potentially far-reaching changes in the structure of the judiciary. The Agency has long supported the MJA's efforts to secure the enactment of an independent court budget law. This law would give the judiciary, not the MOJ, direct control over its budget and establish an analogue to the Administrative Office of the U.S. Courts that would manage the court system. The MJA's lobbying and advocacy efforts have, over time, succeeded in getting this proposal on the government's priority agenda for new legislation and obtaining support for it both in the courts and the MOJ. The new law, which would be an important landmark in consolidating the independence of Macedonia's judiciary, is currently under consideration by parliament.

The MJA is one of the leading associations of judges in the region. In the words of a 1999 external evaluation of programs in the region, the MJA "has been a motor for positive changes....It features...a highly engaged and diverse board of directors, diverse sources of income, and other structural/institutional signs of sustainability."

In an effort to address complaints on the slowness of the Macedonian court process, USAID assistance has also been provided to begin to address issues relating to court administration and management. In the Fall 1997, CEELI helped the MJA to develop a pilot courts network, in which five courts on different levels were outfitted with computers, connected via the Internet, and given access to cases and laws on the Legal Source Web Page, an Internet-based system for accessing and distributing Macedonian Supreme and Constitutional Court opinions, laws, and other legal information. This was followed up in 1999 with a thorough assessment of court operations by a team of CEELI court administration experts who provided detailed recommendations for improvement of court procedures and practices.

Faster and better judicial decision-making also requires improved access to legal information. USAID has addressed this need through its support of a new NGO, the Macedonian Legal Resource Center (MLRC). The goal of the MLRC is to improve access to jurisprudence and legal information for the judiciary and other legal professionals through information technology. In addition to maintaining an on-line, searchable legal database of over 200 laws and supreme and constitutional court decisions, the MLRC also published a CD-ROM with all Macedonian laws enacted from 1991 to 2000. The Supreme Court, the courts of appeal, and some district courts now have Macedonian law available to them on computer, and they can more readily determine which provisions are in effect (under the old "system" they would have had to review and then cut and paste together copies of the Official Gazette).

While there remain concerns about continuing attempts to politicize the judiciary, there is evidence that the Macedonian courts are acting more independently. In November 1999, for example, the Supreme Court ordered a rerun of the presidential elections in ethnic Albanian areas. In another recent case, the Supreme Court ruled against the government in a high profile pension matter. State's Human Rights Report concludes that "the judiciary is generally independent, although at times inefficient." The inefficiency

issue must still be addressed, but the progress that has been made in establishing a largely independent judiciary in a totally new democracy is an impressive accomplishment. As indicated, U.S. ROL assistance has played a key role in helping to advance this process both by serving as a catalyst for reform and by providing the judiciary with the tools necessary to formulate and implement needed changes.

### 3. Improving Access to Justice

USAID has made significant progress in improving access to justice in Macedonia. Meaningful access to justice requires having an ethical and educated bar. As in most countries in the region, the bar initially proved resistant to change. Nevertheless, several Macedonian Bar Association (MBA) members were brought to the United States for a training program on bar activities in 1998. The results from this trip were not immediately apparent, but in the past year, two participants in the training have reached the pinnacle of the bar leadership in Macedonia. Based on what they had seen in the United States, they have started to make changes. Previously, the bar leadership had spent bar dues, which all lawyers with the right to appear in court had to pay, mostly on meals and entertainment for itself. The new leadership understood that a modern bar organization in a democratic society must provide services to its members as well as to the community at large. Accordingly, in coordination with ESE, the bar is beginning a hotline and a pro bono representation program for victims of domestic violence. This is a first for the region, and a key breakthrough for bar reform.

The MBA is also at the forefront of training lawyers in the region, and has instituted a regular program of continuing legal education (CLE). The chair of the CLE program reported: "I was told that I would offend the lawyers if I told them that they needed CLE, even though we were starting to work under a new system. And, at the first seminar, only eight people came. At the last one, we had 60 lawyers. And we are constantly being asked for new sessions. About 500 lawyers have now been trained, mostly on commercial law topics like project finance and intellectual property. A new horizon has appeared on how law should be practiced."

Finally, the MBA is preparing a new and enforceable law on ethics that it hopes to submit to parliament shortly. Its members are being invited to participate on legislative drafting committees, a new event within the past six months.

USAID is also improving access to justice, as well as changing the way law is taught, through support of a legal clinic at the Faculty of Law at the University of Sts. Cyril and Methodius (UKIM). As with the bar, changing a predominantly conservative law faculty is taking time and requires, as one observer said, "a transformation in the attitude of the faculty." The concept of clinical legal education was introduced by bringing to Macedonia a professor from the University of Idaho, training law faculty, and preparing materials. UKIM now hosts a full clinic that represents indigent clients in a variety of criminal and civil law cases, mostly on family issues such as domestic violence and divorce. Although the clinic provides important services to the community, it also allows students to develop practical skills, in a region where the traditional legal education has been purely theoretical. As the director of the clinic said, "Before, the students were walking encyclopedias rather than people who knew how to practice. The clinic gives them an opportunity to practice real skills, and to develop a sense of solidarity and humanity."[28]

The ombudsman, a new institution since 1998 whose office has received some support and training from USAID and others in the donor community, has helped improve access to justice by investigating citizen complaints concerning police brutality and the failure of the administration to respond to requests for information and services.

Finally, with USAID support, the Macedonian chapter of the European Law Students Association (ELSA) is increasing public awareness of legal rights through the production and distribution to the general public of 3,000 copies of a pamphlet explaining the role of the lawyer in a democracy, the work of the Constitutional Court, and the European Convention on Human Rights.

The key impact of USAID's ROL work is found in its efforts to support an independent judiciary in Macedonia. USAID's primary partner in this process has been the MJA. USAID has helped strengthen the MJA in critical ways, and it is now one of the strongest judicial associations in the region. Its membership includes virtually all of the judges in Macedonia, it has joined the International Association of Judges and the European Association of Judges, and it is working towards becoming self-sustaining. It was through USAID's support of the MJA that training of judges in Macedonia first began. Those initial training programs became the basis for a permanent training center for judges and court clerks that would likely not exist but for USAID ROL assistance.

The MJA also has been a key player in the efforts to pass a law giving the judiciary its own budget, in essence removing the judiciary out from under the control of the executive branch. If that bill passes, a major step will have been taken towards strengthening judicial independence in Macedonia.

Changing the mind-set at the MBA, which is now supporting pro bono programs, engaging in CLE, and voicing its views in the legislature, is a remarkable achievement. Likewise, the adoption of the legal clinic at the law school, changing the way law is taught in Macedonia and providing services to the needy, is an important accomplishment that should carry with it benefits far into the future.

Finally, the successful transfer of ideas, experience, skills, and information—although not a tangible result in and of itself—is another important result of USAID's ROL work in Macedonia over the past eight years. It is this "technology transfer" or dissemination of new information that has provoked an attitudinal change in the leadership of Macedonia's legal profession, a change that can help provide the basis for securing a stronger and more peaceful democracy in the heart of the Balkans.

## F. Russia

The collapse of the Soviet Union in December 1991 signaled not only the end of over 70 years of communist rule and 40 years of the Cold War, but also marked the beginning of Russia's first ever experiment with democracy. For over a thousand years, Russia, a country that spans 6.5 million square miles with a population of 147 million, had known only czarism, communism, and repression. The Communist Party had imposed upon the people an untenable economic theory, and Joseph Stalin had quite literally given tyranny a new name. In 1991, this huge nation was in financial ruin, moral decay, and lacked leadership experienced in democracy. It should not be surprising, then, that Russia's efforts to establish a free market economy based on the rule of law have been unsteady, at best. In 1993, President Boris Yeltsin summoned tanks to suppress the communist majority in parliament opposed to reform. The privatization of state assets fueled gangland violence and corruption. In 1998, the sudden devaluation of the ruble brought a crushing poverty to an already poor people. And the war in Chechnya has dragged on, fitfully but brutally, since 1994. There have been, nevertheless, some positive achievements. The 1993 constitution established the basis for a democratic state and a free market economy. Observers have concluded that national elections have been generally free and fair. And the economy in recent years has improved, with increases in GDP of 3.2 percent in 1999 and of 7.6 percent in 2000.

The rule of law is a key element to establishing democracy and a free market economy. Some legal reforms had been introduced under the czars, including the introduction of trials by jury in 1864, but the

communists, upon seizing power in 1917, revoked most of these advances. Communist Russia knew no rule of law as we conceive of it today: "As an authoritarian state with a largely state-owned and administered economy, the USSR treated law as simply one of a number of instruments of rule, and not even as the dominant one. Both political decisions and administrative regulations...took precedence over law, and even the application of regulations often took an ad hoc form and was strongly influenced by personal relationships." (Solomon and Foglesong) Judges were dependent on local party bosses, and party chiefs dictated to the courts decisions concerning politically sensitive cases through a system known as "telephone justice." As one defense attorney said, "Previously, we had to take into account the interests of the state because the state gave us our food and our apartment—so the government was more important than the client." The *glasnost* policies of Mikhail Gorbachev brought some changes beginning in 1988, but real reform of the system began only in 1992. The following describes some of the law reform achievements, as well as USAID's contributions, that have been made since that time. Again, reforms are incomplete, and problems—including unclear laws, corruption, and delays in the court system—remain. But significant steps forward have been taken, and should be recognized.

### 1. Developing a Legislative Framework

Russia's 1993 constitution provides the country's basic legal and governmental framework. It "meets world standards in its provisions for human and civil rights" (NIT Report), guarantees the right to use property for entrepreneurial activities, and the right to private property and inheritance. While USAID did offer some advice to the drafters of the constitution, its main impact has been in the drafting of other legislation vital to the establishment of a democratic, free market society. Perhaps the most important step was the adoption of the civil code and the civil procedure code, both drafted with the advice of USAID experts. The new civil code delineates fundamental individual and corporate relations, and covers matters such as contracts, bankruptcy, and inheritance. Also in the commercial area, USAID helped Russian experts to draft a law on collateral and helped the MOJ create a computerized registry for recording personal property security interests. A new criminal code, which USAID and other foreign advisors also worked on, was passed in 1997, replacing the criminal code of 1960. Among other changes, it added new crimes such as money laundering, tax evasion, and securities fraud. The old criminal procedure code, despite widespread amendment, is still in place, although American and other advisors are helping a parliamentary commission to prepare its replacement.

USAID is following up on this drafting work by training practicing attorneys concerning Russia's evolving legal framework. Beginning in 1997, a USAID partner instituted a bi-weekly commercial law CLE (continuing legal education) series in its Moscow office. Topics have included issues such as international commercial arbitration, taxation, intellectual property, real estate transactions, and securities regulation. The programs are taught by leading Russian commercial lawyers, commercial court judges and commercial law professors, and have consistently attracted 40 to 50 (and as many as 75) legal professionals to each CLE program. The Russian lawyers involved are currently developing an organization that will take over the administration of these programs. Stand-alone workshops have been conducted in regions throughout the country, leading to the formation of indigenous CLE programs in other cities such as Rostov-on-Don, Murmansk, and Samara. This program also has published manuals for practicing attorneys on dispute resolution, tax law, currency controls, and contracts. At least 1,500 (and up to 5,000) copies of these publications have been distributed are now available commercially.

### 2. Contributing to Judicial Reform

An essential step to implementing Russia's new legislative framework is building an independent judiciary. This means having a judiciary that is subject neither to corruption nor political control, but one that makes

its decisions based on its knowledge of the law and the facts specific to any given case. The task of creating an independent judiciary in Russia involves no less than transforming a subsection of the Soviet civil service that resolved mostly minor criminal, housing, and divorce disputes into a real third branch of government that is responsible for adjudicating important commercial, criminal, and administrative matters. With the help of USAID and others, Russia has indeed taken some impressive steps towards that goal.

The 1992 Law on Judges establishes the irremovability of judges (after a three-year probation) and provides for their disciplining and removal to be handled exclusively by the judiciary, through judicial qualification commissions. (The Putin administration, however, has proposed that non-judges be included on these commissions; this may not be a negative development if it results in improving the public perception and accountability of the courts.) In 1992, judges also "gained virtually unlimited power to review complaints against actions of government officials and the right to hear appeals of decisions on pre-trial detention rendered by the procurators." (Solomon and Foglesong) "A further achievement of the early 1990s was the development of corporate bodies of the judiciary, including the Council of Judges, the regional councils of judges, the Congresses of Judges, and the judicial qualification commissions." (Id.) Finally, and perhaps most importantly, the responsibility for managing the courts of general jurisdiction was shifted from the MOJ to the newly created Judicial Department of the Supreme Court in 1998. (The commercial courts had been self-managing since their inception.) The position of court administrator was created in 1999, and 2,500 administrators were hired in 2000 to help run individual courts. In 1999, the Duma also enacted a law requiring that funds be transferred to the court system in a timely manner, thereby addressing—to some extent—one of the key problems of the judiciary: insufficient funding from the federal government. The Putin administration has also expressed its intention to significantly increase judicial salaries in future years.

USAID has been supporting the re-organization of Russia's judiciary through programs such as the ARD/Checchi ROL program (1994-1997), the Chemonics/National Judicial College program (also known as the Russian-American Judicial Partnership; 1997-2000), the Vermont-Karelia Rule of Law project, and the CEELI program (active since 1992). These programs have trained judges, developed training manuals, and enabled Russian policy-makers to study the U.S. system on study tours to this country. While it is difficult to pinpoint specific linkages, the new Russian legal system, with its three levels of courts and a separate, judicially controlled, body for court administration, resembles its American counterpart in important ways. Notably, many of its designers have been exposed to American concepts of judicial independence through the study tours and programs noted above. For example Sergei Pashin, who led the early judicial reforms, worked closely with both ARD/Checchi and CEELI. Dmitri Kozak, charged with drafting the Putin administration's judicial reform proposals, and Elena Mazulina, the vice chairwoman of the Duma legislative committee working on changes to the criminal procedure code, have also been on study tours to the United States. It is also noteworthy that these programs have resulted in some significant partnerships between U.S. and Russian counterpart organizations, including the Administrative Office of the U.S. Courts and the Russian Judicial Department, the Judicial Conference of the United States and the Russian Council of Judges, and between judges in Maryland and St. Petersburg and counterparts in Vermont and Karelia.

One specific area of cooperation involved the effort to re-introduce jury trials for serious criminal matters. USAID advisors helped draft the laws and rules governing jury trials, trained judges and defense attorneys, and published manuals for judges and defense attorneys on how to administer jury trials. With USAID support and training, jury trials were introduced into nine regions, resulting in increased acquittal rates in those areas. As one lawyer reported, "The jury trials have broken down the idea that the prosecutor and the judge are everything and the defendant is nothing." She also noted that even in non-

jury trial regions, the idea of acquitting defendants and forcing the prosecution to prove its case is becoming more accepted. Although the expansion of jury trials stalled after 1996, it is unlikely that they would have survived even in the nine regions but for American support. The package of Kozak reforms recommends that jury trials be extended to the rest of the country, as mandated by the constitution, by January 2003.

USAID was instrumental in preparing the commercial courts to handle complex contract, tax, and other business disputes. In particular, it conducted extensive training programs on the new civil code, in part through producing a series of training films that were mass-produced on video and distributed nationwide.

More recently, USAID has provided extensive assistance to the new Judicial Department and the judges in the courts of general jurisdiction. The ROL program, for example, trained 1,855 Russian judges, court administrators, and court staff on Russian law, best practices related to judicial selection, ethics, and discipline, as well as modern pedagogical and court administration techniques. It also prepared more than 2,000 pages of material on Russian law, court procedure, judicial ethics, and court administration and a manual on judicial ethics, selection, and discipline. Due to USAID efforts, the Russian Academy of Justice, charged with training judges, is now including ethics in its curriculum for the first time. USAID also helped integrate the Russian judiciary into international bodies, such as the European Association of Judges. With an eye to improving the enforcement of judicial decisions, USAID advisors have also helped Russia to organize its system of bailiffs.

These structural reforms and training programs have changed the way the law is administered in Russia. In a country where previously there was no hope for exoneration, now the defense attorney plays an active role in the trial, the prosecutor is forced to prove his case, and a verdict of not guilty is possible. One high profile example involved Aleksandr Nikitin, a retired Soviet Navy captain arrested in 1996 for allegedly revealing state secrets in the publishing of a report on environmental hazards posed by naval nuclear installations in northwest Russia. The St. Petersburg City Court acquitted him in December 1999, finding that "the secret decrees used to charge Nikitin violated every citizen's right to access to the law and therefore was not binding under the constitution. Moreover, according to the ruling, investigators failed to adhere to the criminal code during the investigation and violated Nikitin's constitutional rights." (State HR Report). The procuracy appealed, but the Supreme Court refused to disturb the lower court ruling. On the civil side, the courts have overturned administrative decisions declining to register religious groups under the new law on religion.

In addition, in 1995 the Supreme Court instructed the lower courts to apply the constitution, including the individual rights guaranteed by it, to individual court cases. Defense lawyers can now argue—and win—cases on the grounds that the constitutional rights of their clients have been violated. Describing how a judge had suppressed the use of illegally obtained evidence, one USAID-trained lawyer said, "Before, we never even thought that the constitution could serve as a real mechanism for the protection of human rights. But now the constitution has come alive, people realize that, and they are seeking to apply constitutional standards to real cases." In 1999, the Constitutional Court ruled that the practice of repeatedly returning cases to the procuracy for further investigation was unconstitutional, thereby breaking another Soviet-era tradition. It has also ruled that defense attorneys have the right to be present at the interrogation of witnesses. Finally, the higher commercial court has decided important tax cases against the government. While the transition to an independent judiciary remains incomplete, and much will depend on the package of further reforms proposed by the Kozak Commission, these actions indicate that the judiciary in Russia is at least beginning to act as an independent third branch of power.

### 3. Improving Access to Justice

An independent judiciary has little significance if it is not generally accessible to the public. USAID has been working to improve access to justice in Russia through a number of substantive projects, including one that supports seven public interest law centers around the country. These centers support labor activists and advise citizens on how to use the courts to obtain salaries and other benefits owed to them by their employers. The centers have had remarkable success in the courts. In one case, for example, this program helped a woman labor activist who had been wrongfully committed to a psychiatric facility convince the Constitutional Court to annul a provision of a criminal procedure code that other courts had used to prevent her from challenging her confinement. The seven centers participate in over 150 cases and provide over 500 consultations per month. In one two month period, they obtained judgments of $43,888 for back pay and collected $72,792 in judgments. This program, then, is providing tangible results through the court system for some of the most needy members of Russian society.

The Public Center for Legal and Judicial Reform is supporting an initiative to help juvenile offenders have their cases mediated outside of court. Another program is supporting an environmental advocacy group with four offices around the country and a network of domestic violence crisis centers. The Union of Jurists of Karelia, as a part of a USAID-funded project, is implementing a civil legal aid program to advise citizens on housing, pension, and alimony matters. In one year, this program has handled approximately 1,500 cases. USAID is also funding the Russian-Helsinki organization to monitor human rights issues and to support human rights NGOs around the country.

USAID is helping under-represented members of society through its support of clinical legal education programs. Clinical programs use law students, under the supervision of experienced practitioners, to advise and represent individuals who cannot afford to hire their own attorneys. Clinical legal education is also important because it gives young law students an opportunity to obtain real life, practical experience and it teaches them to act as advocates. USAID, working in cooperation with the Ford Foundation and the Open Society Institute, has trained professors in clinical teaching skills, provided funding to help start up clinics, and developed manuals to guide law professors and schools in how to operate a legal clinic. The results have been impressive. There are now some 80 clinics in Russia whereas in 1991 there were none. Hundreds of law students and professors now provide assistance to thousands of needy citizens on issues ranging from pension payments to domestic violence to environmental protection. Although not all of the clinics that USAID has helped create will ultimately succeed, many will: the professors and the students are both intrinsically motivated, the clinics meet a community need, and they are already supported by the universities and local authorities. A method for training young lawyers that a few years ago was largely limited to the United States now has a strong hold in the Russian legal education system.

### 4. Addressing Gender Issues

One final area of legal reform in Russia bears mentioning. A cooperation among USAID grantees has focused since 1995 on gender related issues. As State's Human Rights Report for 2000 explains, "Domestic violence remains a major problem, since victims rarely have recourse to protection from the authorities….The underlying problem is that much of society, including some leaders in the human rights community, do not acknowledge domestic violence as a problem or do not believe it to be an area for concern outside the family….There is a general lack of understanding of these problems in the legal community, and there is no legal definition of domestic violence." Work on these issues is still at its preliminary stages. Much of USAID's current work is raising awareness of the problem with members of parliament, prosecutors, and local government authorities. Over the past two years alone, USAID assistance resulted in over 50 workshops relating to domestic violence, including training programs for

police, judges, and prosecutors, and at which copies of relevant Russian legislation and international treaties were distributed. These programs reached out to over 2,500 policymakers, local leaders, and community activists. In 2000, a manual on the appropriate legal, medical, and social responses to family violence was published, and a USAID partner was has consulted on the production of television public service announcements designed to raise awareness of the problem. Finally, USAID and others are supporting 36 crisis centers around the country at which lawyers, law students, and others advise clients on how to respond to domestic violence. These centers have handled over 10,000 consultations and trained over 4,200 individuals concerning domestic violence. In 1991, no such crisis centers existed, and the victims of domestic violence had, in essence, no place to turn for help.

Ten years since the end of the Soviet Union, Russia has seen some important advances towards establishing the rule of law. On the most fundamental level, previously foreign concepts such as constitutionalism, separation of powers, and human rights have become a part of the regular vocabulary among Russian lawyers, judges, and citizens. The new Judicial Department is forming the basis for an independent court system. Jury trials are forcing prosecutors to prove their cases, and clinical legal education and other programs are helping to make the legal system more accessible to citizens. USAID has been at the forefront of all these innovations. While the process of transition is clearly incomplete, these USAID programs have made important contributions to establishing the rule of law in Russia.

## G. Ukraine

Ukraine straddles western and eastern Europe, lying in the path of invasions between the two from the middle ages to World War II. While the western part has frequently been dominated by Polish and Lithuanian empires, eastern Ukraine has been dominated by Russia. The nation, although large—indeed, the second largest in Europe, with a population of over 49 million—did not know independence (except for a brief period between the wars) until the collapse of the Soviet Union in 1991. The divide between east and west persists in the post-communist period: the population in the west is largely Catholic and Ukrainian speaking, while in the east it is Orthodox and Russian speaking. This dichotomy has complicated what was bound, in any event, to be a difficult transition. History has asked Ukraine to change from a socialist republic of the Soviet Union, ruled by a communist dictatorship and based on Marxist economic theory, to an independent nation based on the rule of law and a free market economy.

Ukraine's painful transition reflects that, 10 years after independence, the nation is still a house divided. From 1991 to 1994, the country was led by a non-progressive president, and even the most fundamental reforms, such as the adoption of a constitution, were put on hold. Hopes were raised in 1994 with the election of President Leonid Kuchma, who presented himself as a western-oriented reformist, but advances remained slow (although a constitution was adopted in 1996), due largely to the successive electoral victories of non-progressive parliaments.

Ukraine, nevertheless, recently saw some advances under the leadership of Prime Minister Viktor Yushchenko, whose government was able to implement various reforms, pay off enormous wage and pension arrears, and even take steps to combat corruption. Today, however, the situation in Ukraine again looks grim. After 16 months in power, parliament voted Yushchenko out of office in May. Even worse, the country is enduring a scandal which "appears to connect President Leonid Kuchma and his closest aides to the surveillance of parliamentarians, the suborning of judges, interference in criminal investigations, massive graft, falsification of election results, and the harassment of journalists—including the September 2000 disappearance and murder of on-line reporter Heorhiy Gongadze." (Karatnycky)
Identifying ROL achievements in this context is challenging indeed. But there are some glimmers of hope: the judiciary, which has enjoyed significant support from USAID, has shown indications of becoming

more independent, and various NGOs, again with USAID support, are struggling to protect human rights in an increasingly oppressive environment.

### 1. Developing a Legislative Framework

As noted above, Ukraine—to the frustration of many outside observers—moved only fitfully towards the adoption of a constitution. USAID, in fact, may have played a key role in breaking the logjam that had contributed to the delay. Two USAID contractors convened a conference on the constitution in 1996 to which members of all three branches of power, academics, legal experts, and political party leaders were invited. It was at this conference that competing parties began to talk seriously to one other, and a consensus on important issues began to emerge. The constitution that was ultimately adopted in June 1996 "guarantees broad human rights and civil liberties, including political liberties, religious rights, and minority rights." It also "stipulates private property rights, and . . . guarantees the right to engage in free enterprise and provides for protection of fair competition in business." (NIT Report). Importantly, and as discussed below, the constitution called for the establishment of a constitutional court, which also was created in 1996.

One criticism of the constitution is that it did not address some basic issues, including the re-organization of the judiciary, leaving important matters to be determined by laws to be adopted later. Unlike in most other post-communist countries, Ukraine has yet to overhaul its legislative framework: new civil and civil procedure codes, administrative and administrative procedure codes, and a criminal procedure code, had yet to be passed as of June 2001. A new criminal code, however, which among other reforms does away with the death penalty as required by the Council of Europe, was passed in May.

Although Ukraine does not yet have a full legislative framework, one positive development, to which USAID has contributed, should be noted. The process of drafting legislation is reportedly becoming more transparent. In 1998, two USAID-supported projects, the environmental public advocacy centers (EPACs, described below) and the Parliamentary Development project (PDP), working in collaboration with the Environmental Committee of Parliament, organized one of the first open parliamentary hearings in the history of Ukraine to discuss a law on waste disposal. More recently, the EPACs helped establish the Aarhus Convention Working Group to make recommendations to parliament regarding the implementation and ratification of the convention, which aims to strengthen access to environmental information, public participation in environmental decision-making, and access to justice in environmental matters. This working group helped to organize another parliamentary hearing, co-sponsored by EU/TACIS, at which members of parliament, ministry officials, and NGO members spoke on the importance of ratification and implementation of the Aarhus Convention. USAID also helped to organize three conferences on a proposed land code and, through PDP, prepared a manual for the parliament on how to conduct public hearings. One assistance provider reported, "There is greater transparency and coordination in legislative drafting. Now you can actually get a copy of a draft, provide some comments, and see a later draft that has incorporated them."

### 2. Contributing to Judicial Reform

The baseline is low for judicial reform in Ukraine according to Judge Bogdan Futey of the U.S Court of Claims, who has been involved in legal reform in Ukraine since independence: "During the Soviet era, the law of command, as manifested through 'telephonic justice,' was preeminent. During that time, the judge was literally commanded to follow the decisions of the local Communist Party bosses and procurators; such a system relegated judges and defense attorneys, both employees of the state, to mere administrative roles." In addition, during the Soviet era, there was no constitutional court charged with

determining whether government actions or parliamentary acts comported with the constitution. Nor were courts charged with adjudicating commercial disputes.

During the course of 1993-1998, USAID partners arranged for study tours of senior judges to the United States, conducted training programs for judges in Ukraine, obtained equipment for the courts, and helped to organize the Judicial Training Center (JTC) at the Supreme Court. The work at the JTC was cited by the Supreme Court as particularly important because, before independence, any training for judges was "ideologically biased." After independence, the MOJ was supposed to be responsible for educating the judiciary, but its training budget was "reduced to zero." The JTC started working in 1997, and now has four employees who are continuing the efforts that began with the USAID program. Last year it held about 45 training events, many in conjunction with other international donors. It also continues to use the printing equipment that the ROL program funded, mostly for the publication of training materials. In addition to organizing the training center at the Supreme Court, the program also trained over 400 judges from the arbitration (commercial) courts on topics of land code, bankruptcy, and anti-monopoly law.

The judicial reform program also helped to build law libraries for the Supreme Court, the Supreme Arbitration Court, and the Constitutional Court, as well as a 10,000 volume library at the Ukrainian Legal Foundation, which last year had 15,000 readers, including judges, law professors, and members of parliament. USAID also helped to train the Constitutional Court on media relations and to fund the construction of a media room where reporters could follow court proceedings by closed circuit TV (the main courtroom is too small for all interested journalists). USAID partners and USIA have all worked together to coordinate visits to the United States for the entire Constitutional Court and many members of the Supreme Court. These visits were followed up by additional training sessions in Ukraine.

USAID also contributed to training programs to the lower courts in regions outside of Kyiv. In addition, the creation of regional judicial associations, of which there are now three, was fostered. The Ternopil Oblast Judicial Association recently won a lawsuit against the Ministry of Finance for failure to provide timely payments for the court's budget. Recently, CEELI, the Supreme Court, and the Council of Judges convened a conference on judicial self-governance, the first conference at which judges from all the oblasts met. This conference resulted in the highest judicial authorities approving the creation of additional judicial associations, and also in the judges expressing their views to parliament regarding the draft law on the judiciary.

Concepts of separation of powers and judicial independence, exposed to Ukrainian judges through the study tours and other programs described above, have positively affected their thinking. One Constitutional Court judge, for example, in explaining how the court is seeking to act as a counterbalance to the other branches of power, cited both Marbury v. Madison (holding that it is up to the courts, not the executive, to determine what the law provides) and the writings of Alexander Hamilton. A Supreme Court judge noted that, like the United States, Ukrainian courts should be managed by a separate administrative body and not by the MOJ. He added that judges need to understand that the citizen and the state are at the same level, and should not subordinate one to the other; decisions from the European Court for Human Rights in Strasbourg should be used to help spread this message.

Recent decisions taken by the courts reflect the emerging use of their new power, in particular at the Constitutional Court. In one case, it ruled that the president did not have the power to appoint deputy heads of local administrations. In another case, the plaintiff had been committed, by the state and against his will, to a psychiatric clinic, but had been unable to obtain the records needed to contest his confinement. The court ruled that the constitution guarantees the right to obtain information about oneself, and ordered the records released. The Constitutional Court has also ruled that the government's arbitrary

limiting of the budget of the primary court system was unconstitutional. In a more controversial matter, the court struck down two of six proposed constitutional amendments, mostly designed to enhance presidential powers, during a recent referendum (in which some feel that the court should have vitiated the entire process).

The Supreme Court has also been active, particularly in electoral cases where it has overruled decisions by the Central Election Commission, including—in a matter strongly criticized by President Kuchma—ordering the registration of seven candidates for president. More recently, the court found illegal an order to re-arrest Yulia Tymoshenko, a political opponent of the president and a minister in the Yushchenko government who had been charged with corruption.

Unfortunately, the executive branch continues to respond negatively to such acts. In May, for example, the police broke into and searched the chambers of Judge Mykola Zamkovenko, a Kyiv judge who has issued decisions adverse to the executive in the Gongadze and Tymoshenko cases. Whether these actions will galvanize and strengthen the judiciary—or intimidate it—remains to be seen. But it is clear that the judiciary is in the midst of a struggle to assert itself. As one long-time observer reported, "The judiciary has seen what judges are like in other countries, and they do not want to revert to being the low-level bureaucrats they were in Soviet times." This change in mentality, and the very struggle for independence, are in themselves important achievements.

### 3. Strengthening Advocacy

USAID has sought to leverage the increasing strength of the judiciary through support of advocacy programs that protect individual rights through the use of the courts in matters relating to free speech, human rights, and environmental law. Programs have contributed to the training of lawyers and judges on issues relating to media, free speech, and defamation. This is a particularly important area because politicians frequently seek to silence their critics and intimidate newspapers and reporters by obtaining large defamation verdicts against them. USAID partners continue to work in this area, training judges and lawyers on defamation law and encouraging them to apply Ukrainian constitutional protections in individual cases. USAID also supported the preparation and distribution of a two-volume book on defamation law to every judge in the country, but the heart of its program is supporting lawyers who argue free speech cases in court. The results so far have been impressive. Of the 25 cases that have been closed, 13 have resulted in verdicts for the defendants, 6 plaintiffs withdrew the complaint, 3 have been settled, and 3 plaintiffs won, although they were awarded far less damages than that was seeking. In the one case of criminal defamation, the court found for the defendant.

Two EPACs advise citizens and local NGOs on environmental issues, bring high profile lawsuits to uphold environmental rights, publish materials on access to information and public participation, conduct seminars for environmental stakeholders, and train law students in advocacy skills through clinical programs operated in their offices (discussed below). According to a 1999 USAID evaluation, the EPACs "have won some notable victories against some well-heeled defendants, and have not relied on or been defeated by bribery." As the program's country director said, "The EPACs run into corruption, but they just keep appealing." Court victories include a 1997 High Arbitration Court decision blocking a proposal to build an industrial waste landfill near Kharkiv against the wishes of the local villagers. More important than the victories, however, the EPACs educate citizens concerning their rights and their ability to use the court system to enforce those rights. The Kharkiv victory, accordingly, was used as the basis for a film (produced by a local media company) that was shown on national TV as well as 30—40 regional stations on how to use the legal system to protect one's rights.

USAID has also aided the organization of three human rights centers where citizens and NGOs may come to register complaints and receive advice concerning human rights violations. This initiative is also setting up a legal defense fund to facilitate the representation of people who have been tortured or brutalized by the police. The most advanced center is the Kharkiv Human Rights Group, which handles approximately 100 human rights complaints, accepts 50, and resolves successfully about 30 cases per month. It also publishes a monthly journal of activities and a quarterly journal on freedom of expression and privacy. The Kharkiv Human Rights Group also developed a list of human rights advocates to be part of a network connected by e-mail. Not only have over 130 addresses been added to the network, but the Kharkiv Human Rights Group was able to give several legal consultations via e-mail, including one that led to a victorious lawsuit against the Ministry of Defense after a malfunctioning missile destroyed an apartment, and another allowing a Chortkiv environmental NGO to obtain access to information on violations by a local utility company. The family of the murdered journalist Gongadze has also approached the group for help in that case.

On a related matter, the Agency has also helped conduct two human rights training seminars, with one on international standards and covenants, for about 100 judges, and is training lawyers in human rights advocacy so that cases can be referred to them by the human rights centers. These actions build on earlier work by USAID partners to train judges concerning the European Convention on the Protection of Human Rights.

It should be noted that one partner's regional institution building advisor works with the partner NGOs described above to help them address issues such as structure and organization, membership, and fundraising. These activities are key to ensuring that the NGOs are sustainable and able to continue their activities after the conclusion of USAID's program in Ukraine. The Lviv EPAC, for example, now has an international board of directors and an organization in the United States conducting fundraising there.

**4. Supporting Legal Education**

As in other countries in the region, the legal education system in Ukraine has been criticized for being too theoretical. USAID has sought to address this concern by supporting law clinics at which students gain practical experience, under the guidance of law professors and practitioners, by consulting with real clients with real cases. The clinics also provide assistance to the community, and instill students with an early understanding of the need to act as true advocates for their clients.

EPAC-Lviv created one of the first clinical legal education programs in Ukraine when it signed an agreement in June 1996 with the dean of the Lviv State University Law Faculty. Pursuant to this agreement, students have participated in an advocacy skills course taught by EPAC attorneys and have helped with the consultation work of the EPAC. In fall 1997, EPAC-Kharkiv began a clinical environmental law program for students from the Faculty of Law and Economics at the University of Internal Affairs and the National Academy of Law.

Other clinics followed. At Donetsk State, where a clinic was established with USAID assistance in 1997, students provide legal services in a variety of areas, such as family law, labor law, general civil cases, and minor criminal matters. In 1998, the Agency also helped establish live-client clinics at Lviv State University, Lviv Commercial Law Academy, and the Azov Regional Institute of Management. In 1999, USAID aided the establishment of clinical programs at the law faculties of the Academy of Labor and Social Relations, Taras Shevchenko National University, and Simferopol State University. The Crimean Law Students League at Simferopol University produces a weekly television show that presents information about current legal issues and the rights of citizens.

There are now approximately 20 law school clinics in Ukraine, whereas in 1995 there were none. Hundred of law students are providing counseling and advice to thousands of citizens who, absent the clinics, would have no place to turn for help on family law, environmental law, and human rights issues. More fundamentally, the law students are learning how to act as advocates for societal change, and that the law means more than mere words in a statute. Not all of the clinics will survive in the long-term, but several enjoy support from the community, the law school, and other donors, and are likely to provide meaningful education and community services far into the future.

Also relating to legal education, since 1997 CEELI and the Ukrainian Law Students' Association have conducted the pre-selection rounds of the Jessup International Law Moot Court Competition (held in Washington, DC each March) and the Telders International Law Moot Court Competition (held at The Hague each April). Participation in these competitions allows students to develop their written and oral advocacy skills, thereby improving their capacity as future legal professionals. In 1999, the team from the Kyiv Institute of International Relations finished in sixth place in the Jessup Competition, beating teams from more than 55 top U.S. and foreign law schools from over 45 countries. This was the first time in Jessup's 40-year history that a team from central and eastern Europe and the former Soviet Union finished in the top 10.

Clearly, Ukraine has far to go before it can claim to be a state governed by the rule of law. It will not reach that goal, moreover, until the executive power recognizes that it too must act pursuant to the rule of law. Nevertheless, the courts and advocacy groups are working with USAID to provide the basis for a future democratic Ukraine. The process is long-term, and a true ROL state may not emerge until the students who are now working in the law clinics and participating in the international moot court competitions finally have an opportunity to lead their country. In the meantime, it is important that USAID continue to support and educate them, as well as provide moral support and international contacts for the Ukrainian judges who are struggling to establish their independence.

# 4 Country Studies: Africa

## A. Ethiopia

Ethiopia, located in the Horn of Africa, is the oldest independent country in Africa and one of the oldest in the world. Like many African countries, it is heterogeneous; its 58 million people are divided into some 80 ethnic groups. Its recent history has been marred by authoritarian rule and civil war.

In 1974, Emperor Haile Selassie was deposed by a council of soldiers known as the Derg. In 1975, Mengistu Haile Mariam assumed power as head of state and Derg chairman. His years in office were marked by totalitarian government and a massive militarization financed by the Soviet Union. From 1977 through 1978, thousands of suspected enemies of the Derg were tortured or killed in a purge called the Red Terror campaign.

The Derg's collapse was hastened by drought and famine as well as by insurrections, particularly in the northern regions of Tigray and Eritrea. In 1989, the Tigrayan People's Liberation Front (TPLF) merged with other ethnically based opposition movements to form the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF). In 1991, the EPRDF, the Oromo Liberation Front (OLF), and others established the transitional government of Ethiopia (TGE), comprised of an 87-member Council of Representatives and guided by a national charter that functioned as a transitional constitution.

Ethiopian opposition unity was short lived. In May 1991, the Eritrean People's Liberation Front assumed control of Eritrea. In June 1992, the OLF withdrew from the TGE. Members of the Southern Ethiopia Peoples' Democratic Front followed suit in March 1993. In 1993, a U.N.-monitored referendum led to Eritrean independence.

President Meles Zenawi and members of the TGE pledged to oversee the formation of a multi-party democracy. The election for a constituent assembly was held in June 1994. This assembly adopted the constitution of the Federal Democratic Republic of Ethiopia in December 1994, providing for an executive branch, a bicameral parliament, and an independent judiciary divided into federal and regional courts. Elections for Ethiopia's first popularly chosen national parliament and regional legislatures were held in 1995. Most opposition parties chose to boycott these elections, causing a landslide victory for the EPRDF. The elections in May 2000 were similarly unsuccessful in creating a loyal opposition, failing to ensure the conditions for free and fair political association and engagement.

Contemporary Ethiopian political life has been shaped by the military struggle with Eritrea, which remained ongoing despite the independence referendum. In 1998, Eritrean-initiated border clashes erupted into a full-scale war. Although a cessation of hostilities agreement was brokered in June 2000, at the time of this writing, the dispute between the two countries has not been fully resolved.

Consistent with the constitution, the government continues to decentralize and restructure the judiciary along federal lines with the establishment of courts at the district, zonal, and regional levels. The judicial system faces manifold challenges, however, including local accountability to and compliance with higher authorities. The human resources base in Ethiopia is weak, and low government salaries tend to attract only inexperienced personnel. Officials estimate that the creation of a truly independent and skilled judicial apparatus will take decades.

Lengthy pre-trial detention is common, closed proceedings occur, and, at times, detainees are allowed little or no contact with legal counsel, medical practitioners, or family members—despite measures in the constitution providing for a choice of legal representation and public trails within a reasonable amount of time. The scope of the Public Defender's Office remains limited. More than 5,000 defendants charged by the Special Prosecutor's Office (SPO) with major human rights violations under the Derg and its officers in Red Terror campaign have had little contact with the Public Defender's Office. Many civilians sit in jail pending trial because they are not able to post bail. Authorities have also detained hundreds of persons without charge for supposed involvement with the OLF and the Oromo National Liberation Front.

Despite these problems, USAID's ROL programs have contributed to palpable, if modest, progress with respect to the creation of a viable court system and an independent judiciary committed to the protection of human rights:

**1. Training for the Judiciary**

USAID began its judicial training program for judges throughout Ethiopia in 1997, shortly after the creation of the Federal Democratic Republic of Ethiopia and the reorganization of the country's judiciary along federal and regional lines. This initial program focused on short-term, emergency training of an inexperienced and poorly trained judiciary. Despite an interregnum created by the Eritrean conflict, USAID went on to help establish the Judicial Training Unit in the Federal Supreme Court. In 2001, 880 judges underwent training. Another 1,500 judges, from the district and zonal courts all the way up to the high and supreme courts, are scheduled for training by the Judicial Training Unit in 2002. While it is not possible to draw firm conclusions about the training at this early juncture, it is important that for the first time, judges are receiving training. USAID also recently funded the creation of a system to help evaluate the progress of judges and lawyers in the judicial training program, so information about participant gains in knowledge should soon become available.

**2. Protecting Human Rights**

In 2000, USAID helped design and finance a major conference on international humanitarian law. The conference was established to allow countries that had shared similar traumas to those perpetrated by the Derg to communicate lessons learned about mechanisms that would ensure fair trials for those accused. It enabled the 80 Ethiopian judges presiding over Red Terror genocide trials to establish a common legal framework for rendering decisions. This framework has provided a more transparent and fair process and has also succeeded in accelerating the clearance of genocide cases.

**3. Eliminating Case Backlog**

USAID supported a short-term program funding judges and law school faculty to handle cases through the summer holidays to eliminate the significant backlog of cases and the many lengthy and unwarranted detentions without trial. As a result of this effort as much as 40 percent of litigants who had been caught up within the legal system saw their cases reach closure.

**4. Improving Access to Legal and Case Materials**

USAID provided significant assistance to the judiciary by publishing codes, procedures, government gazettes, law journals, and recorded versions of both federal and regional judgments and making them available to judges and lawyers, providing legal professionals with easy access to materials for research for the first time. Anecdotal evidence reports that these materials are in use.

Ethiopia's history is steeped in ethnic and religious conflicts, border struggles, harsh human rights violations, and weak, poorly trained judiciary. In this environment, USAID established important short- and long-term training for judges from the local and districts levels to the Supreme Court. It established an important forum for creating a common legal framework and transparent process for genocide cases. It made public the codes, procedures, and federal and regional judgments to bring in line federal and district courts and to encourage consistency in judicial proceedings. Together, USAID's accomplishments have helped provide early resources and frameworks to Ethiopia in establishing the rule of law.

## B. Liberia

Tucked among Sierra Leone, Guinea, and the Ivory Coast in west Africa, Liberia is an impoverished country that has yet to recover from the ravages of a prolonged civil war. Average per capita income is estimated at $171 per year, despite the country's rich natural resources and potential self-sufficiency for food. Civil war, bad government, current unemployment rate of 85 percent, 25-percent literacy rate, internal displacement of civilians, and absence of infrastructure throughout the country continue to depress productive capacity. Government officials and former combatants continue to exploit the country's natural resources and the diamonds of neighboring Sierra Leone for personal benefit. Whereas Sierra Leone was able to export only $30 million of its own diamonds in 2001, Liberia—as a front, a fence, and a middleman for the rebels in Sierra Leone—exported more than $300 million. With extortion at all levels of society, Liberia is effectively a kleptocracy.

Liberia was founded in 1821 by the American Colonization Society as a haven for freed American slaves. The first American settlers arrived in 1822, and some 15,000 eventually settled. The colony became independent in 1847. Constitutional issues, mounting foreign debts, and loss of disputed territory threatened the stability of the new nation, but independence was preserved. In 1930, revelations of government connivance in the slave trade resulted in the downfall of the regime and in calls for international control. Such action was averted by the leadership of Presidents Edwin Barclay and William Tubman. Tubman opened Liberia to international investment, gave tribal peoples a greater voice in the country's affairs, and improved living standards. In 1979, after years of political stability, a government proposal to increase the price of rice, the main staple, produced widespread violence. A year later, a coup led by African soldiers of African origin ended 100 years of rule by Americo-Liberians. A 28-year-old soldier, Samuel Doe, established a military government and assumed the presidency. Doe's tyrannical rule and cronyism precipitated a civil war in 1990. In late 1990, Doe was captured and executed by rebels, and fighting subsequently broke out among the rebel factions. Peacekeeping forces led by Nigeria ended the fighting, but progress toward peace stalled, as peacekeepers controlled the capital, and rebel forces controlled the better part of Liberia.

The 1996 Abuja Peace Accords established a ceasefire and an interim government and called for multi-party elections. In 1997, rebel leader Charles Taylor, who is of both indigenous and Americo-Liberian ancestry, won the presidential election, and his National Patriotic Party (NPP) won three quarters of the seats in the legislature. The elections were deemed administratively free and transparent, but were conducted in an atmosphere of fear and intimidation. The emergence of new, armed groups and civil war in Sierra Leone finally disrupted the ceasefire and effectively renewed Liberia's civil war.

Liberia today suffers under a near dictatorship. Most leaders of non-NPP parties and former warring factions have left the country. The bicameral legislature exercises little or no independence from the executive branch. From torture, ethnic discrimination, and forced labor to female genital mutilation (FGM), the government's human rights record is dismal. Lack of trained personnel, proper infrastructure, and adequate funding undermine all four levels of the judiciary. Indeed, these varied failings have led to a reversion to traditional forms of justice administered by clan chieftains in several locales.

These systemic failures in an autocratic society have led to widespread corruption of the judiciary, which is also subject to political influence and undue economic pressure. It is unable to ensure basic elements of due process and a fair trial. Courts receive bribes out of the damages they award in civil cases. Defense attorneys prompt their clients to pay a gratuity to court officers to secure favorable rulings. Under the constitution, defendants have due process rights and the right to timely consultation with an attorney; in practice these rights are not always observed.

Security incidents, human rights violations, corruption, and Liberia's assistance to the rebels of Sierra Leone have hardened the position of U.S. Congress toward Liberia. Since July 1989, Liberia has been under Brooke sanctions, which prohibit direct assistance to the government. Consequently, the $1.2 million earmarked for DG programs has been placed on hold by Congress, and ROL programs have been delayed or canceled. Given the current state of affairs in Liberia, the future focus of USAID's DG programs will likely be on strengthening the media, civic organizations, and human rights groups. Despite these constraints, USAID has made modest improvements to the conditions under which the rule of law might someday prosper:

**1. Publishing and Distributing Legal Documents**

Prior to USAID's codification and publication program, only a small portion of the bench and bar had access to the rules of criminal and civil procedures and the entire body of statutory law. USAID's program helped to provide all judges and lawyers in Liberia with access to the rules and statutes.

**2. Compiling Supreme Court Opinion**

Prior to the start of USAID's case report program, less than one percent of lawyers and judges in Liberia had access to case law from the last 30 years; the cases had not been reported or indexed for research purposes. Working with NGOs, USAID helped to distribute the body of case law throughout the country.

**3. Upholding Codes of Ethics**

USAID has provided all judges and lawyers access to their respective ethical codes. Prior to USAID's project, few members of the legal profession knew of Liberia's code of ethics for lawyers or the canons of judicial ethics. Today, all judges and lawyers have access to their respective ethical codes.

**4. Protecting Human Rights**

Sassywood is the Liberian traditional practice of trial by ordeal, or torture. After extensive discussions between USAID personnel and the MOJ, Sassywood trials were declared unlawful. The Supreme Court placed a halt on the use of Sassywood and expressly required all Liberian judges to employ the tools of justice under the rule of law—the constitution, statutes, and case law. The ruling represents a significant change in attitude for the judiciary and a material gain in human rights for citizens.

**5. Supporting a Right to Counsel**

USAID enabled the National Bar Association to establish a national legal aid program for indigent criminal defendants and other indigent victims. The program will provide 20 lawyers in the areas where they are most needed and will complement metro-Monrovia's legal rights program.

### 6. Explaining Constitutional Rights

USAID has supplied 25,000 Liberian families and schools with simplified explanations of the constitution. USAID has also sponsored at least two community-based legal education programs to inform Liberian citizens of their basic legal and constitutional rights.

As a result of these programs, a survey documented that more than 10,000 private Liberian citizens have exercised at least one of their fundamental rights: assembly, association, fair trial, freedom of religion, and free speech. Prior to these programs, the majority of these private citizens were not aware of their rights and had never seen their the constitution. Most notably, these USAID-sponsored programs have positively affected women's rights, with some women regained possession of property improperly taken away from them under traditional customs. In other places, young girls were permitted to attend school and were not forced to undergo FGM.

### 7. Training Legal Professionals

USAID has worked with members of the Supreme Court, the MOJ, legislature, and bar to develop a curriculum and to select a team of educators to train prosecutors, public defenders, and other bar members. The training has encompassed criminal procedure, fundamental rights of victims and the accused, trial advocacy and practice, professional responsibility, and ethics. The outcome of this training must be viewed as mixed. Members of the bar, including the bar's president and vice president, have been emboldened to criticize the current regime, but it is important to note that similar criticisms have been met with penal sanctions.

Despite constraints of political suppression, human rights violations, corruption, and embargoed aid funds, USAID has moved forward modest yet important developments in establishing the rule of law in Liberia. By empowering private citizens with education; helping standardize and make predictable the legal framework; upholding the code of ethics and human rights; and building the skills of legal professionals, USAID is building constituencies for reform and has helped plant the seeds for dramatic improvements.

## C. Malawi

Malawi is a small, impoverished, land-locked country of over 10 million people in southern Africa. It began a transition to democratic government in 1994, and is governed by a president elected for a five-year term and by a national assembly elected by direct universal suffrage, also for a five-year term. The latest national elections occurred in 1999, with the first local government elections taking place in 2000.

In 1891, the British government declared a protectorate over the area that came to be known as Nyasaland. In 1944, agrarian grievances led to the formation of the Nyasaland African Congress (NAC). In 1958, Hastings Kamuzu Banda assumed the leadership of the NAC. A period of civil unrest followed, and Banda and key founding members were imprisoned. During this period of detention, the Malawi Congress Party (MCP) was formed. The British government, faced with the choice of maintaining control by armed force or preparing the territory for independence, released Banda in 1960. Elections held in 1961 gave the MCP a decisive victory. Full self-government followed in 1963, and Banda became prime minister. In 1964, Nyasaland became the independent state of Malawi. Banda consolidated his power and became president-for-life in 1971, holding dictatorial power until the 1994 elections.

In 1994, following a referendum giving overwhelming support for the creation of a multi-party political system, Malawi held its first multi-party presidential and parliamentary elections. Constitutional power is

shared between a popularly elected president and the 193-member National Assembly. President Bakili Muluzi of the United Democratic Front (UDF) party was elected to serve a five-year term, and the UDF won a plurality but not an outright majority of parliamentary seats. In 1999, Muluzi was re-elected to a second term. Although independent observers concluded the election was free and substantially fair, the opposition had limited access to the media, and there were problems with voter registration.

The legal system is based on English common law and customary law. The constitution provides for a high court, a supreme court of appeal, and subordinate magistrate courts. The chief justice is appointed by the president and confirmed by the National Assembly. Recommendations for other judicial offices are made by the Judicial Service Commission (JSC). The president appoints members to the bench on the recommendation of the JSC. The Supreme Court of Appeal may undertake judicial review of legislative acts. The constitution provides for an independent judiciary, which in general has retained its independence.

The judiciary is severely hampered by logistical problems, including poor administration, a shortage of court officers, a caseload that outstrips capacity, and limited funding. In addition, most lawyers are based in the urban centers of Blantyre and Lilongwe with two or three operating in the northern capital, Mzuzu. There are insufficient lawyers overall—approximately 300 for a population of over 10 million. The result of such problems include extended pre-trial detentions under life-threatening prison conditions, extensive delays in trials, and failure to secure separate incarceration for juveniles.

Taking into account the limited resources available, the absence of democratic institutions prior to 1994, and the gradual nature of democratic consolidation, USAID's contributions towards strengthening democratic institutions since 1995 are noteworthy and have laid important foundations for the more difficult and long-term task of a genuine consolidation of the new democracy. Over the course of the last few years, the concept of democratic participation has become more entrenched. Turnout in the two general elections represented one of the highest levels of electoral participation in Africa, and it owed much to USAID support for civil society organizations (CSOs) carrying out civic and voter education. Consultation and participation of civil society groups now form an accepted stage in the development process. The law has increasingly been used as the means by which both the government is held accountable and individual human rights are protected. With the support of USAID, the conduct of the local government elections in 2000 demonstrated organizational improvements in the Electoral Commission. Again with USAID support, the Public Accounts Committee of Parliament conducted a thorough and public investigation into the report of the National Audit Office on organized fraud within the Ministry of Education, which resulted in the dismissal of three ministers from cabinet. The Anti-corruption Bureau is now pursuing prosecutions with respect to the fraud.

### 1. Supporting Rights Education and Legal Representation

USAID has provided significant support for the Center for Advice, Research, and Education on Rights (CARER), which provides education and free legal advice through its paralegal program to poor, mainly rural people. In 2000, CARER served nearly 7,000 clients, with more than 90 percent of beneficiaries being women. The total also represents a 3,000-person increase over 1999 and a 5,500-person increase over 1997, demonstrating there is not only a great need for the service provided, but also that CARER has been able to expand rapidly. Given the lack of available and affordable lawyers and ambivalence about what the formal legal system can provide in many cases, CARER's paralegals are filling an important gap in access to justice.

The increase in demand and number of cases handled also reflects the impact CARER's community-based educators (CBEs) are having on their clients. In 2000, CARER trained more than 200 CBEs to

undertake civic education on legal remedies and human rights and to mediate disputes at the local level. CBEs generally handle cases involving inheritance and land rights, and they refer complex cases to CARER's paralegal officers at the district level. People in districts not currently served by CBEs are asking that CARER train some members of their communities as CBEs. The organization receives and handles cases from all over the country.

**2. Increasing Judicial Efficiency and Constitutional Rights**

With training and administrative assistance provided by USAID, the High Court brought more than 5,000 cases to conclusion in 2000, an increase of 2,000 cases over the previous year. The increase is a result of both more efficient case listing and also increased commitment and productivity from the judiciary.

In addition to increased efficiency in the High Court, an emerging cadre of judges has made judgments that uphold constitutional provisions protecting human rights rather than the interests of those who hold political power. Despite political pressure on certain judges to make judgments in favor of the ruling party, judgments continue to be made based on constitutional and human rights, even against the government when the law dictates. USAID programs have helped to support this growing and uncompromising approach to the rule of law.

USAID sponsored an important study, the *Rose Report*, on improving the overall management of the formal court system, the responsibility for which lies with the High Court. The result was a comprehensive reform program comprising more than 60 activities fully endorsed by the judiciary. The key position of chief courts administrator has now been established in order to drive these reforms. The *Rose Report* is accepted within the judiciary and with other key stakeholders as the template for administrative and management reform of the court system. Some of the smaller and less costly recommendations have already been implemented by the judiciary, with modest support from USAID. An example is the court register system, which has been reformed according to the recommendations. New registers have been printed, which will simplify and standardize court information. This improvement is important not only for good management, but also is essential for transparency and accountability and for improving the quality of justice provided by the system. Relevant court users from judges to clerks have been trained on the improved system during workshops introducing the new forms and registers.

**3. Educating Lay Magistrates and Traditional Courts**

Through Malawi CARER, USAID supports the ongoing education of traditional leaders in how constitutional and legal rights can be applied in their informal decision-making processes. This is a significant contribution in a system where most disputes are still dealt with at an informal local level. The two other major donors in this sector, the European Union and British government, funded formal training for lay magistrates, while USAID concentrated on the efficiency of case management, an area where the United States enjoys a comparative advantage.

Over the course of the last few years, the concept of democratic participation in Malawi has become more entrenched. The law has increasingly been used as the means by which both the government is held accountable and individual human rights are protected, and USAID's critical assistance with CARER has addressed a sharp deficiency of lawyers and widened legal access for citizens. Perhaps above all, USAID programs helped support judges whose rulings increasingly uphold the rule of law.

## D. Mozambique

Mozambique gained its independence from Portugal in 1975 after a 10-year armed campaign by liberation movement Front for the Liberation of Mozambique (FRELIMO). The Portuguese had not expended adequate effort in developing the country or its people and at independence; 93 percent of the population was illiterate. FRELIMO set up a one-party state that supported other liberation movements in southern Africa and was almost immediately engulfed in a civil war with the Mozambique National Resistance (RENAMO), an opposition organization set up by the Smith regime in Rhodesia (now Zimbabwe). After majority rule was established in Zimbabwe in 1980, South Africa took over the funding and training of RENAMO. Despite RENAMO's brutal human rights record, it was able to mobilize significant support among Mozambicans dissatisfied with the nascent FRELIMO government.

The war had a devastating effect on the country. More than 1.7 million refugees fled Mozambique and another 4 million were displaced. Much of the countryside was mined. It was only in early 1990 that the two sides agreed to begin negotiations. A general peace accord was signed in 1992 and was accompanied by a ceasefire. A U.N. peacekeeping force oversaw the first democratic elections in 1994, which were pronounced free and fair by the international community, even though they sparked renewed clashes between the government and RENAMO during the election period. FRELIMO's presidential candidate was elected, and FRELIMO won a narrow majority in the National Assembly.

Mozambique held its second democratic election in 1999. Again, FRELIMO gained a narrow electoral victory, and the international community held that the elections were generally free and fair, although there were allegations of vote-counting irregularities. To protest, the RENAMO-led opposition boycotted the National Assembly for 10 months, until October 2000. RENAMO agreed to rejoin the National Assembly only after the ruling party agreed to create several *ad hoc* parliamentary committees to revise certain electoral laws and aspects of the constitution.

Although the United States was quick to recognize Mozambique's independence in 1975, the relationship between the two countries soured as Mozambique allied itself with the former Soviet Union. In the early 1990s, relations improved, with the United States playing a role in the peace negotiations that led to the 1994 elections.

In his 2001 annual report to Parliament, the Mozambican attorney general described the current state of the legal system: "What we witness today is a hair-raising absence of ethics, dedication, and professionalism in the various bodies that play a role in the administration of justice. A *modus vivendi* has been installed within it that is contrary to the most elementary principles of legality and justice. The known behavior of some judges, attorneys, lawyers, prison officers, policemen, and even high-ranking police officers only help cement this belief and discredit our judicial system." Such a strikingly blunt assessment from a key administration of justice official is encouraging for its candor, but it is sobering in its articulation of the challenges facing the justice sector and the establishment of the rule of law.

The Mozambican court system comprises the Supreme Court, provincial- and district-level courts, and the Administrative Court. A constitutional court, although required by the constitution, has never been established; the Supreme Court acts as the arbiter of constitutionality. Both the courts and the Office of the Attorney General are characterized by inefficiency and corruption, and have a large backlog of cases.

### 1. Training of Justice Sector Personnel

Poorly educated and ill-trained staff constitutes one of the most serious constraints on justice sector institutions in Mozambique. Consistent with the civil law tradition, judges and prosecutors enter the civil

service directly from undergraduate university, without benefit of a training period as a lawyer and with no specialized training in the judicial or prosecutorial role. Western European countries following the civil law tradition have addressed this problem by adding special multi-year schools to prepare judges after graduation from law school, but Mozambique cannot afford this luxury.

USAID has helped address this problem through training judges and court staff. In 1997, USAID funded a visit to Mozambique by a delegation from the National Center for State Courts (NCSC). The visitors assessed problems facing the legal sector and formed practical training seminars for members of the Supreme Court and the head of the Maputo City Court on issues such as case management. The visit was successful, and participating judges were enthusiastic. They asked USAID to provide further assistance to the judicial sector, this time focusing on the needs of the Maputo City Court. Although this is a district court, it is hugely important as all the major cases originate in this court. USAID performed a diagnostic and began an assistance program that frequently used local firms and people to provide training and technical assistance. USAID's assistance to the Maputo City Court included

- Developing benchbooks and model forms for debt and eviction cases to expedite the disposition of cases and to increase the consistency of results
- Developing a computerized case-tracking system, which allows judges, court officials, and lawyers to quickly identify the procedural status of cases, enhancing both access to information and transparency of court administration
- Providing periodic skills development courses on specific aspects of interpretation and application of the civil code
- Funding the office of a court administrator
- Providing equipment

As a result of USAID's successes with the Maputo City Court, other donors are replicating efficiency improvements and automated case tracking system in other provinces.

A more sustainable solution to the lack of training has emerged in the establishment of the National Judicial Training Center, with proposals to offer a three-month skills development course to new judicial and prosecutorial recruits. The center is also able to provide training that overlaps organizational jurisdictions. For example, a recent training course focused on case management techniques for judges, prosecutors, and police. USAID support to this institution will continue through 2003.

Another low-cost training initiative focused on the Administrative Court, which serves the external audit function in Mozambique and, thus, is charged with auditing expenditures against the national budget. As of June 2000, it had never conducted a single review of the state accounts. A USAID-funded training session for Administrative Court auditors gave the court confidence in conducting the first audit in the fall of 2000. A number of audit recommendations were made that translated into executive branch policy directives, which changed how ministries spend public funds. For instance, the audit determined that in certain ministries, moneys set aside for staff training and development were in fact being used to pay for the college and university education of ministry individuals, contrary to the provisions of the budget. USAID recognized, however, that a short training, while extremely valuable, was insufficient to provide the Administrative Court with all the auditing skills necessary to perform proper budgetary oversight. At no cost to USAID, the Agency made it a condition of its contracts with auditors in Mozambique to include an auditor from the Administrative Court whenever the contractors undertake an audit.

### 2. Developing Legal Frameworks

One of the important areas of reform identified in the assessment by NCSC was the need to update the local civil procedures code. USAID funded local lawyers to make the necessary suggested amendments, the majority of which aimed to assist the court in processing civil cases more efficiently, for example, by reducing the number of copies of documents that needed to be filed with the court.

USAID was also instrumental in the passage of alternative dispute resolution (ADR) legislation. The Agency was approached by a non-partisan group, the Confederation of Economic Associations (CTA), a chamber of commerce-type group, about the long delays and lack of adequate responsiveness to commercial disputes in the civil courts. USAID established a working group to manage a support program, the make up of which was critical given the political tensions. The program included individuals from both FRELIMO and RENAMO as well as from the private sector. The group developed an initial proposal for arbitration of commercial disputes, which was presented to various business and professional associations for their comments and input. A wide range of issues was canvassed, including methods of choosing arbitrators, costs, execution of arbitration orders, potential corruption issues, and whether arbitration should be compulsory or voluntary. In early 1999, arbitration legislation was introduced in the National Assembly by an opposition member of Parliament and passed quickly with the support of both parties—the only opposition bill passed by Parliament in the first five years of its existence. At this time, a local arbitration center has been established under the auspices of the CTA, and training of arbitrators is underway.

### 3. Strengthening Anti-corruption

As a result of relationships developed during USAID's court training programs, Agency assistance has expanded in the criminal justice arena. A former justice of the Supreme Court and judge president of the Maputo City Court was made attorney general of Mozambique in 2000, replacing an attorney general removed from office for failing to prosecute those involved in corruption. The office is critical in fighting corruption and criminality. USAID is providing technical assistance to the attorney general in establishing an anti-corruption coordinating unit. USAID is conceptualizing the role and functions of the unit and determining the actions, cost and time required to create the unit. Training has begun for prosecutors and investigators to staff the unit under a collaborative program with USAID, the DOJ, and State.

With a relatively small and new program, USAID has made a noticeable impact in strengthening institutions that support the rule of law. As a result of its work, USAID has contributed to ensuring that courts process cases more efficiently. It has also ensured that judges are better trained and thus are more skilled at deciding cases correctly and in carrying out other functions such as the national budget audit function. Through its ADR support, USAID has ensured that commercial disputes can be settled far more quickly. Its support for the attorney general poses positive results in the fight against corruption. The commitment of Mozambique to continued political reform seems strong when gauged by the standards of many other African countries, and likewise, USAID will continue its commitment.

## E. Rwanda

Rwanda is Africa's most densely populated country with more than 9 million people in an area of just over 10,100 square miles. The country gained its independence from Belgium in 1962, but its post-independence experience continued the colonial tradition of divisive ethnic policies. Colonial rule was characterized by preferences being given to the Tutsi minority in education and employment. After independence, the majority Hutus gained control of the country and established a repressive one-party

state that in turn favored the Hutus and discriminated against Tutsis. Tutsis repeatedly engaged in armed insurrection against the Hutu-dominated government. A slow peace process, which was moving towards a unity government including both Hutus and Tutsis, came to an halt when a plane carrying the main protagonists of the peace process was shot down in 1994.

From April to July 1994, Hutu extremists called the Interhamwe carried out a carefully planned and executed genocide of the Tutsi population. Rwanda was literally decimated; one in every 10 citizens—more than 850,000 people—were killed, most of them Tutsis but also moderate Hutus. By the end of 1994, the Tutsi-dominated Rwandan Patriotic Front (RPF) had gained control of Rwanda, and many Hutus fled into neighboring countries. By the time the fighting stopped, the country was shattered. Almost all government buildings had been razed or looted, and, worse, the human capacity of the country was destroyed. At the end of the war, more than 50 percent of the country's teachers had been killed or had fled the country. The fledging legal system collapsed, as only some 20 lawyers survived or remained in Rwanda.

After the war, a government of national unity was established by the RPF to encourage refugees to return home. In 1996, most of the Hutus returned to Rwanda. The government's immediate tasks were to try to rebuild the infrastructure of the country and to bring about reconciliation among the peoples of Rwanda. The new government insisted that, in order to end the culture of impunity that had developed in Rwanda, people who participated in the genocide had to be held accountable. The number of people detained on genocide charges mushroomed to more than 120,000, raising concerns about the government's own human rights record.

### 1. Re-establishing the Legal System

In the initial period after the genocide and war in Rwanda, USAID's programs focused on urgent humanitarian assistance. At the same time, it recognized the need to assist the government in bringing about stability and preventing further conflict. As part of its aim to assist in stabilizing the country, USAID helped train and equip the newly established police force. USAID soon began efforts to rebuild the shattered Rwandan legal system. The most obvious problem was that there were simply too few Rwandan lawyers.

The University of Rwanda was destroyed in the war and was re-established in the city of Butare. In 1997, USAID contracted with the University of Quebec at Montreal to train English-speaking lawyers at the University of Rwanda. The new expatriate faculty designed a legal curriculum for the university, one that tried to bring the Rwandan legal system in line with international legal norms. The Agency funded the writing of a textbook on Rwandan law and distributed this textbook to students, legal professionals, and government officials. In time, the project expanded, and copies of the civil, criminal, and commercial codes were also published in English and distributed. Recently the law faculty opened a legal aid clinic so that students can learn practical skills and provide legal assistance to the broader community.

Many Rwandan judges and government officials cite the training of Rwandan law graduates as one of the most important projects undertaken by USAID in Rwanda. Time and again, reference is made to how important the program has been in providing legally trained personnel who can take up positions as prosecutors, magistrates, and members of the small but growing private bar.

With respect to the general administration of justice, USAID identified strengthening the institutional capacity of the MOJ as essential. Initially this meant ensuring the ministry had buildings within which to work and equipping the ministry with basic supplies, such as filing cabinets and photocopiers. It also

meant encouraging the ministry to develop proper management practices in a number of key areas: finance, budget, personnel, and computer systems. A third aspect of this support was training personnel, especially the training of prosecutors and judges on basic issues such as case management.

## 2. Prosecuting Genocide Crimes

Another issue that USAID identified in the aftermath of the war and genocide was that more than 120,000 people suspected of taking part in the genocide were detained without trial. In 1996, Rwanda passed legislation dealing with the penalties for genocide. It established four categories of genocide offences: Category 1 for architects of genocide, including planners, leaders, and commiters of sexual torture; Categories 2 to 4 for persons who committed crimes ranging from murder to property crimes. Judges have discretion to determine punishment for crimes, including the death penalty for Category 1 offenses.

USAID supported the Rwandan government's desire to end the culture of impunity that had existed. However, the Agency also recognized that the human rights of many of the prisoners were being abused. Many people were held for up to seven years without being charged. State described the prison conditions as "harsh and life threatening" and noted "prisoners died from starvation, curable diseases, or abuse." Given the scant resources of the legal system, the pace of genocide trials was alarmingly slow. It was estimated that it would take 200 years to deal with all the prisoners' cases at the rate at which they were being heard.

USAID adopted a triage approach. It focused on assisting prosecutors to open case files for all the prisoners, which was an enormous task and required the nationwide training of prosecutors in, for example, taking witness statements. Where dossiers could not be compiled for lack of evidence, detainees were released. In the end, approximately 110,000 dossiers were compiled; 3,000 of these were Category 1 cases. This program has had a number of important results. First, some 10,000 people were released from detention where there was insufficient evidence of participation in genocide activities. Second, USAID's assistance ensured that the prosecution service was able to categorize all the remaining prisoners. This has been critical to enabling the prosecution service to determine how many people appear to have been involved in more serious genocidal crimes and what kinds of courts or tribunals will be adequate to deal with the different kinds of cases.

In 1998, Rwanda developed a homegrown response to the genocide cases that were overwhelming its legal system. *Gacaca* is a community-based conflict resolution mechanism that was traditionally used for settling land disputes. The government began to talk about using *gacaca* as a way of judging people accused of non-Category 1 genocide crimes. As envisaged by the Rwandan government, people of integrity and of all ethnicities would be elected to community tribunals that would operate at the local level. On October 4, 2001, 250,000 *gacaca* judges were elected to participate in 10,000 *gacaca* tribunals. These tribunals judge people accused of Categories 2 to 4 genocide crimes. It is intended that prisoners will be brought before tribunals, and the entire community will be present and will act as an assembly, discussing the crimes, providing evidence and arguments and counter evidence and arguments. The tribunals may impose the penalties applicable to the specific category of crime. Confessions will be encouraged through sentence reduction, including community service and quicker processing.

At first, the donor community was critical of the *gacaca* proposals. Donors pointed out that the *gacaca* system would compromise internationally accepted due process norms: no separation between prosecutor and judge; no legal counsel; self-incrimination would be encouraged; and no legally reasoned verdict. However, when the donor community posed alternatives, such as the right to legal counsel, they ultimately

reverted to a quasi-traditional trial mechanism that Rwanda was not in a position to implement. USAID, however, took the lead in supporting the *gacaca*. At the same time, USAID engaged the government on the problems posed by *gacaca* law, and a number of significant improvements to *gacaca* law were made, including a right to an appeal in all cases and a requirement that the accused be present before the tribunal.

USAID then adopted a two-prong approach to assisting prosecution of genocide cases. It aided the prosecutor general in preparing the Category 1 cases for trial and helped the MOJ in preparing Categories 2 to 4 cases for *gacaca* tribunals.

In a move that has won widespread praise in Rwanda, USAID entered into an inter-agency agreement with the DOJ to provide the prosecutor general with an in-house legal advisor. This advisor focuses solely on Category 1 genocide crimes and works closely with a number of prosecutors and the prosecutor general. The advisor's work involves not only giving legal advice but also training prosecutors and working with a prosecutorial task force to prepare accurate dossiers for trial. One of the advisor's projects has been to develop proper statistics and data collection on dossiers and trials, which has meant establishing proper reporting requirements for regional prosecutors.

The resulting day-to-day communication between the advisor and the prosecutorial service enables USAID to affect indirectly policy changes that go far beyond the normal results of institution strengthening. In one example, the advisor worked with State to revise the Rwandan visa questionnaires to stem the flow of genocide suspects into the United States. In return, the Rwandan prosecutor general provided his database of genocide suspects to the U.S. Embassy. More recently, the advisor suggested that an important nation-building exercise would be to honor heroes who opposed the genocide, for example, Hutus, Twa, and members of the international community who spoke out against the genocide of Tutsis. The government is taking up this idea as a way of building reconciliation between Tutsis and Hutus. The prosecutor general described the USAID advisor as "invaluable." Other donors have pointed to the success of the relationship and have described the in-house legal advisor model as being perfectly attuned to the Rwandan political climate: "The Rwandans are proud and sensitive—they do not take kindly to perceived interference."

In respect to *gacaca*, USAID's involvement has largely been limited to promoting public awareness. It contracted with Johns Hopkins University's Center for Health Communications (JHU) to work with the MOJ in producing a public communications campaign to inform Rwandans about the *gacaca* process. Through JHU, USAID has developed a public awareness strategy that targets three specific groups: the public, prisoners accused of genocide crimes, and genocide survivors. The strategy was based on an initial survey of attitudes, which found that people were concerned that *gacaca* was a mechanism for revenge, that tribunals would be biased, and that witnesses would lie or be intimidated. Survivors were afraid that *gacaca* was simply a general amnesty dressed up as a quasi-trial.

USAID has also provided training for the 250,000 elected *gacaca* tribunal judges. The *gacaca* tribunals began operating in June 2002. It is expected that the process will take at least five years to complete.

USAID's *gacaca* program has had a number of results. First, as people have become aware of the *gacaca* process and how it is intended to work, it appears that they are adopting the notion that *gacaca* can lead to reconciliation. Hutus as well as Tutsis have been involved in the publicity campaign, which has sought to assure Hutus they will not be targets of revenge and assure Tutsis they are entitled to justice. The elected *gacaca* judges are diverse and include both Tutsi and Hutu. This has dramatically improved the country's chances of avoiding violence while dealing with the legacy of the genocide in a manner that holds the perpetrators accountable.

Other USAID-supported programs have also improved the rule of law. At the Nyamata Church, a memorial to the genocide, identity cards attached to displayed skulls label the ethnicity of the genocide victims. USAID is also supporting the drafting of a new constitution for Rwanda.

People in Rwanda are the first to say, "it is early days yet." The genocide took place only seven years ago, and it is not possible to state definitively that Rwanda will become a peaceful, democratic country that respects its citizens and the rule of law. However, there is no doubt that USAID, through its DG programs, has significantly increased Rwanda's potential to develop a legal system that promotes judicial independence and the rule of law. Seven years ago there were a handful of lawyers left in Rwanda. Now there is a university that produces more than 100 law graduates a year. Seven years ago there was no police force, no prosecution service and no judiciary. Now they are in healthy development. Moreover, Rwanda is developing a legal regime to deal with the perpetrators of genocide in a way that is likely to promote a culture of accountability and encourage citizen participation, all encouraging to the promotion of the rule of law in the long term.

## F. South Africa

Since 1994, South Africa has had to overcome the legacy of apartheid. Simply put, apartheid (literally "separateness") was a policy that gave political, social, and economic power to the white minority. In the language of one of the early white prime ministers, the role of black people in South Africa was to be limited to "hewers of wood and drawers of water." Under a veneer of legality, whites had absolute power. The laws rigidly prescribed, on the basis of race, who people could marry and where they could live and work, own businesses, attend schools, obtain medical treatment, and be buried. There were separate buses, public toilets, and entrances to government buildings. Blacks were forced to carry passes to allow them into white areas. Job reservation meant they were largely forced to undertake menial work. Black education was so inadequate that few managed to attend universities. When their cheap labor was not needed in white areas, millions of blacks were forced into poor tribal bantustans, which were overcrowded rural slums, to manage livings as subsistence farmers. These areas, designed to support 86 percent of the population, comprised only 13 percent of the country.

Resistance to apartheid was crushed. The Truth and Reconciliation Commission, a post-apartheid body set up to enquire into gross human rights abuses during the apartheid era, has reported that thousands of people were subject to security force action, including house arrests, detentions, torture, and murder. Thousands more fled into exile.

The apartheid legal system was a paradox. South Africa has a well established and sophisticated legal system based on a variety of legal traditions, reflecting its colonial history. It is a common law system with mainly Roman-Dutch and English law influences. During the apartheid era, there was a racist form of the Westminster legal system in which (a white) parliament was supreme. The entire legal system and many of the political laws emanating from Parliament clearly violated universal human rights standards. At the same time, other parts of the law, such as the country's corporate law, were sophisticated and in line with western standards. As most of the lawyers and all of the judges were white, the legal system was generally supportive of apartheid. Nevertheless, the judiciary did operate as a separate branch of government, and the appearance of judicial independence was a powerful legitimating mechanism for the exercise of government authority.[29] This meant that it was possible for a handful of courageous judges and lawyers to operate within the legal system to some effect. Political trials were not show trials, and there were judges on the bench who could be counted on to throw out poorly drafted emergency regulations or order the release of detainees if they had been improperly detained.

The apartheid era did do tremendous damage to the long-term health of the criminal justice system. Apartheid laws made criminals of ordinary people if they left their passes at home, got on the wrong bus, or fell in love with a person of the wrong race. The concept of the rule of law was thoroughly undermined by apartheid, which used the law to legitimize inequality. The police were highly politicized, and most of their efforts were aimed at curbing resistance to apartheid, thereby alienating them from the black community. Ordinary crime-fighting and detection skills were underdeveloped and police resources were geared towards protecting the white community, leaving black areas, particularly rural areas, woefully underserved. Torture was widespread, and criminal procedure laws did not adequately protect people who "confessed" to crimes. (The majority of criminal convictions resulted from confessions.)

The South African government began to break with apartheid in 1990 after an explosion of political resistance in the country and of increased international isolation. In the early 1990s, during negotiations among the apartheid government and the African National Congress (ANC) and other important black organizations, it was agreed that the country's most promising step forward was to have a constitutional democracy with a bill of rights that would protect individual rights. South Africa became a constitutional democracy on April 27, 1994, the day that the first democratic elections were held and the day that the negotiated interim constitution came into force. In 1996, the final constitution was passed. Like the interim constitution, it provides for the separation of powers between the legislature, executive, and judiciary. The South African Bill of Rights expressly protects individual rights and lays particular emphasis on equality and dignity. It also contains detailed provisions regarding arrested, detained and accused persons, reflecting the country's desire to move away from the abuses of the past.

The constitution contains an entire chapter on the administration of justice and establishes various levels of courts. Appointments to the High Court, the Supreme Court of Appeal (the apex court on non-constitutional issues), and the Constitutional Court (the apex court on constitutional issues) require the participation of the JSC, a body designed to ensure judicial independence.

Upon being voted in, the first democratic government faced myriad challenges affecting the rule of law. These included transforming the legal sector through appointment of more blacks and women so that judges, magistrates, and prosecutors began to reflect the demographics of the country; an extremely high, violent crime rate; prosecutors with no real understanding of constitutional rights, who were accustomed to securing convictions on the basis of forced confessions; a poorly trained, often inexperienced police force;[30] and a population that lacked real understanding of their constitutional rights and the new legal order.

### 1. Challenging Apartheid

In the years prior to 1994, USAID focused on providing assistance to a number of legal-sector NGOs that operated in the country. Organizations such as Lawyers for Human Rights and the Legal Resources Center were key to ensuring that the South African legal system remained an arena in which to mount legal challenges to apartheid. USAID funded test cases and thereby ensured that poor communities with no ability to pay for legal counsel were represented by the country's top lawyers, sometimes with stunning successes.

### 2. Focusing on Transformation and Access

With the election of South Africa's first democratic government, USAID shifted focus to support the government's efforts to build a post-apartheid democracy. In the ROL arena, the focus was on improving and transforming the legal system. USAID's program included numerous projects:

- Constitutional, civil, and human rights education: USAID supported NGOs that worked with teachers, schools, universities, parastatal companies, and national administrators to integrate democracy and human rights education in the formal education system. USAID gave technical advice on curriculum and materials development, teacher training, policy analysis, research, and advocacy. USAID's work has had a significant impact: In 1996, only 20 to 30 percent of South Africans were aware of their fundamental rights. By 2000 this figure had increased to 55 percent. Curriculum 2005, the product of the Education Department's teacher training reform initiative, required trainee teachers to be taught human rights. NGOs lobby the South African Qualifications Authority to make democracy and human rights a necessary qualification for a teaching degree.

- Legal advice centers: USAID funded the establishment or continued operation of some 60 legal advice centers, which were operated through a consortium of NGOs and staffed by 128 trained paralegals. Centers, offering both mediation and advice, dealt with tens of thousands of cases in 47 case categories, including labor, crime, domestic violence, human rights, and debt. Through the clinics, USAID helped raise public awareness of constitutional and other legal rights. Further, the centers hosted outreach programs that educated local communities on issues ranging from voter education and social welfare issues to women's rights.

- Integrated bar project: In order to de-racialize the bar in South Africa, USAID funded an NGO coalition that operates an internship project to assist in the training and placement of black legal practitioners. While black law students are graduating in greater numbers, they are stymied by the difficulty of securing opportunities for professional training. Black lawyers are then able to have access to corporate clients and high-level corporate work, which had been formerly the preserve of white lawyers. More than 50 lawyers have taken part in the project. While only 20 percent of attorneys in South Africa are black, this represents a doubling of the number that existed at the start of the project in 1989.

- Transkei courts initiative: USAID partly funded the renovation of 19 dilapidated local court buildings in Transkei, a former bantustan and one of the poorest regions in the country. Transkei had suffered extreme repression under the apartheid government, and the courts in the area had little legitimacy. The initiative's aim was to challenge negative perceptions about the courts and transform the courts into centers of justice. Buildings were repaired, repainted, and rebuilt. Local communities were invited to participate in celebrating the new buildings, which include new facilities such as witness protection rooms. According to the chief director of the Administration of Courts in South Africa, the new courts helped change the attitudes of not only the public but also of prosecutors and magistrates working in them. He says the new courts "have had a huge impact on the administration of justice in the region."

- Family law pilot project: While the government has passed laws aimed at alleviating the plight of particularly poor women, many women report a lack of assistance from the courts, as court officers are not up to date with new legislation. USAID funded a family law pilot project at courts in five centers, which involved setting up specialist institutions in these centers such as domestic violence, divorce and child maintenance courts and the office of the family advocate. USAID also funded the training of regional magistrates on a range of family law issues.

### 3. Improving the Criminal Justice System

In 1999, USAID and the government of South Africa agreed that USAID's legal assistance should focus on criminal justice issues, an area of increasing concern given spiraling crime yet low conviction rates.

From 1994 to 1998, the prosecution service had been through major upheavals. All the separate prosecution services (each former bantustan had its own service) had been combined into one, the National Prosecuting Authority. Further, the process of ensuring inclusion of previously disadvantaged sectors in the prosecution service had been problematic. Skilled white prosecutors left in droves, believing their chances of advancement slim, and many of the black prosecutors employed to replace them were inexperienced. It was clear that a crisis was looming. In some areas, particularly rural areas, courts were operational for only two hours a day, there were reports that dockets were simply going missing, and there were tight budgetary constraints. USAID established its Criminal Justice Support program, comprising a number of different projects to assist the government's efforts:

- Justice College: The Justice College is responsible for training prosecutors and magistrates. In 1997, the Justice College experimented with giving aspirant prosecutors a period of hands-on or in-service training, supplying practical, individualized training or mentoring to trainee prosecutors in a court setting. The feedback was extremely positive, and it was clear that trainee prosecutors had benefited enormously from their exposure to experienced trainers while working. In 1999 it was decided to extend this program to give such in-service mentoring to prosecutors already in service, as it was estimated that some 800 prosecutors and 600 magistrates had been appointed in the former bantustans with little or no initial training and no follow-up training. Twelve tutors or mentors were appointed to work in six rural centers for a number of months. USAID and other donors agreed to fund the mentoring program, which would eventually be taken over by the government. These programs provide one-on-one training on a range of issues, including court and case-flow management, trial management, new legislation and the constitution, trial advocacy, and expert witnesses. USAID also stepped in to provide emergency funding, keeping the mentoring program operational for some months until the government was able to take it over. USAID has remained involved in the mentoring program and has agreed to fund 12 additional mentors to increase the numbers of centers at which such in-service mentors are available.

- Court management rescue missions: As a result of the enormous difficulties facing courts in rural areas, some courts simply ground to a halt, and huge backlogs of cases developed, overwhelming over-stretched prosecutors. USAID funded teams of skilled prosecutors, court managers, and secretaries to spend two weeks at courts that were in crisis. These teams worked around the clock with local prosecutors and administrators to clear more than 2,000 backlogged cases and to get the courts functioning effectively. This project was successful not only in dealing with the localized crises in those particular courts but also in making far-reaching recommendations to the South African MOJ for setting up additional courts in some regions, establishing procedures to ensure orderly court roll management and encouraging prosecutors to work with police in guiding the investigation of offenses. USAID further supported these recommendations by partly-funding the establishment of additional temporary regional courts in all nine provinces.

- National Prosecuting Authority support: In carrying out its Criminal Justice Support program, USAID worked most closely with the National Prosecuting Authority. USAID funded a range of important initiatives that resulted in the establishment of improved systems and processes. In addition, salary increases for prosecutors have stemmed the flood of experienced prosecutors to the private sector. USAID efforts also contributed to the establishment of the Sexual Offenses and Community Affairs Unit, which works with NGOs to increase public awareness of sexual offenses, domestic violence, and child support.

- National Prosecuting Authority: In a unique initiative, USAID undertook a joint project with the DOJ seconding a former U.S. federal prosecutor as in-house legal advisor to the National Director of the National Prosecuting Authority. In addition to acting as a point of contact with the DOJ, the American advisor has suggested amendments to criminal procedure and money-laundering legislation, which have been enacted. Thus far, the major focus of work has been to advise the operations of the Scorpions, an elite directorate established to fight organized crime and public corruption. Working with the prosecutorial side of the Scorpions, the advisor has helped to develop a model for prosecutorial-driven investigations. It is intended that this will become the model for all prosecutions in South Africa.

USAID operates a large program in South Africa and has made significant contributions to strengthening the rule of law. There is little doubt that overcoming the damage to the rule of law occasioned by apartheid is likely to take years. Nevertheless, by participating in a wide variety of programs, which have educated citizens on their rights and by funding NGOs that try to protect these rights, USAID is ensuring that more people experience the fruits of freedom. This is likely to cement the rights contained in the constitution and make it difficult for any future government to erode them.

In assisting the emerging democratic government, USAID has been responsive to the government's agenda in the justice sector. The Agency has astutely responded to the call for assistance in strengthening the criminal justice system, the aspect of the legal system requiring the most urgent attention. While the world celebrated the South African miracle, many ignored the looming criminal justice crisis. With USAID's intervention and support, prosecutors and magistrates are better trained and remunerated and the operations of local courts are vastly improved. The Agency's work with the Scorpions unit is widely hailed as a success, and, although it has been operating for only a short while, the unit has tackled a number of high-profile cases of both public and private criminality. In fact, a leading member of Parliament was arrested by the unit on public corruption charges, sending an important signal not only to those in power but also to citizens that criminal behavior will not be tolerated. The deputy national director of the National Prosecuting Authority describes USAID's role, "(USAID) came in first and has been the 'golden thread' running through the successes of our various strategies, both short and long term."

## G. Uganda

Uganda, with a population of 20 million people, sits on the ever-shifting boundaries of the Congo, Rwanda, Sudan, Kenya, and Tanzania. The country's numerous ethnic groups and religions and conflicts in bordering nations have led to an environment of almost perpetual ethnic and political struggle.

A British protectorate from 1894 to 1961, Uganda chose parliamentary democracy when it gained independence in 1961. In succeeding years, however, supporters of a centralized state vied with those in favor of a looser federation based on local tribal kingdoms. Political maneuvering in the young government climaxed in 1966, when Prime Minister Milton Obote suspended the constitution, assumed all government powers, and removed the president and vice president. In 1967, a new constitution proclaimed Uganda a republic, gave Obote even greater powers, and abolished the traditional kingdoms.

In 1971, Obote's government was ousted in a military coup led by armed forces commander Idi Amin. Amin declared himself president, dissolved parliament, and amended the constitution to give himself absolute power. Amin's eight-year rule produced economic decline, social disintegration, and massive human rights violations. Under Obote and Amin combined, more than 300,000 Ugandans were murdered.

In 1979, invading Tanzanian armed forces, backed by Ugandan exiles, captured the capital. A series of military rulers held power in brief succession. In 1980, Oboto returned to power through election and

again ruled with an iron fist until 1985. That year, a military government under former defense force commander Tito Okello assumed power but fell quickly to the insurgent forces of Yoweri Museveni's National Resistance Army, which organized a government with Museveni as president. After assuming political power, the group became known as the National Resistance Movement (NRM), which more recently has become simply "the movement."

Uganda is governed today by a president, prime minister, and parliament. The current government is ostensibly democratic. A new constitution was promulgated in 1995, and Uganda held its first presidential and parliamentary elections under this constitution in 1996. Although the constitution gives the president the dominant share of power, Parliament must still approve a range of presidential actions. Most parliamentarians come from the NRM.

To its credit, the NRM has largely put an end to the massive human rights abuses of earlier governments, overseen the successful efforts of a human rights commission established to investigate previous abuses, initiated substantial political liberalization and general press freedom, ratified a new constitution, and instituted broad economic reforms.

To its discredit, the NRM has completely and corruptly dominated the government since 1986. Opposition leaders have received only token appointments to the cabinet, and political parties are banned. Although the 1996 presidential and parliamentary elections were peaceful and orderly, conditions such as restrictions on political party activities led to a flawed election process. Domestically, the army of the NRM has undermined the rule of law by creating local defense units (LDUs), which are meant to assist the police in rural areas. However, the LDUs operate without a legal mandate, and the army, police, LDUs, and military intelligence have all committed serious human rights abuses.

The Ugandan constitution provides for an independent judiciary, but the president has extensive legal powers that influence the exercise of this independence. The president nominates, for the approval of Parliament, members of the Judicial Service Commission (JSC). The JSC, in turn, makes recommendations on appointments to the High Court, the Court of Appeal, and the Supreme Court. The lower courts—the Court of Appeal, which first addresses constitutional issues, the High Court, the Chief Magistrate's Court, local council courts, parish courts, and village courts—remain understaffed and weak. There are also a few specialized courts that deal with industrial, military, and other matters.

Although once considered a useful innovation, the lower courts are now thought to be a source of injustice due to factors such as bribery and male dominance. The lower courts have authority to settle civil disputes but frequently exceed their authority by hearing criminal cases, including murder and rape. Lower court decisions may be appealed to magistrate courts, but there are often no records made at the village level, and many defendants are not aware of their right to appeal. Though on paper the system offers many procedural safeguards, inadequate judicial administration and a lack of resources result in a significant backlog of cases. The government arrests and charges persons for treason—especially captured rebel fighters—in numbers greater than the judicial system can manage. Reports of numerous human rights abuses in connection with these treason cases continue, including political detention, detention without charge, torture, and detention in unregistered and unofficial places of remand.

Over the past four years, USAID's ROL program has helped to re-codify the country's laws, improve the quality of legal training, and create greater access to legal information:

## 1. Improving the Legal Framework

The re-codification process has made remarkable progress. By December 1999, with assistance from USAID, two thirds of Uganda's existing laws were reviewed, analyzed, and re-codified. The Ugandan Law Reform Commission and the William Mitchell College of Law in Minnesota undertook the extensive research, review, and editing that the process required and, by 2001, the initial re-codification was complete. The final re-codification phase was undertaken predominantly within Uganda so as to give Ugandans the capacity to continue to re-codify and update their laws as time and circumstance require. According to USAID personnel, the re-codification process has given the vast majority of judges, lawyers, and academics access to the basic laws of the land.

## 2. Strengthening Education

In 1999, Makerere University's Faculty of Law opened the USAID-funded Legal Informatics Centre. More than 200 students and 30 faculty members gained access to worldwide legal information. In 2001, the law school dean confirmed that Intranet and Internet access were a boon to the faculty and dramatically broadened the curriculum and learning methods for students.

USAID has also made it possible for Makerere University's Faculty of Law to establish the first and only graduate-level clinical legal education program in East Africa. The program is designed to provide graduate-level law students with hands-on experience and to protect juvenile rights, providing assistance to individuals charged with petty crimes awaiting trial. From March 1999 through March 2000, the clinic supplied representation to nearly 200 clients.

The clinic and its staff also initiated a USAID-sponsored training-of-trainers program, which trained faculty on incorporating clinical methods into general law school curriculum and trained law practitioners to better impart clinical methods to students.

Despite the civil wars that have ravaged central Africa, and a government that has been slow to adopt fair elections and multi-party democratic institutions, Uganda has moved ever so slowly towards establishing a ROL culture. It has been aided in its efforts by USAID. From re-codifying laws 35 years out of date to improving legal education, USAID has been pivotal to this process of change.

# 5 Country Studies: Asia and the Near East

## A. Bangladesh

Bangladesh, one of the most densely populated countries in the world, is mired in grinding poverty. Malnutrition, sanitation, and education lag behind most of Asia. Adult literacy hovers at around 40 percent. Transparency International consistently ranks Bangladesh among the world's most corrupt nations. A geography prone to epic catastrophe creates great hardship. The government of Bangladesh is ill equipped to address the myriad problems that prevent millions of its citizens from rising above the U.N. poverty line. Instead, poor people throughout Bangladesh rely on non-government sources for basic needs and services that the government cannot provide. An active NGO network, funded largely by international donors, has existed for over 25 years, and these are the institutions rural Bangladeshis see as most relevant to their lives.

In response to these conditions, USAID has supported a wide range of NGO activities aimed at serving the interests of the economically and socially disadvantaged. Among these activities are grassroots efforts designed to afford greater access to justice, especially for those residing in rural villages. By supporting the development of village based ADR and legal service NGOs, U.S. assistance has targeted injustices experienced by masses of ordinary Bangladeshis.

Bangladesh won independence from Pakistan in December 1971 in a brief but bloody civil war that killed millions of Bangladeshis. For the next 20 years, the new nation faced crippling difficulties. Devastating natural disasters were punctuated by frequent military coups, assassinations of political leaders, and repressive military governments. In 1991, this continual state of political instability ended after a popular mass uprising led to restoration of a democratically elected government. The return of representative democracy generated great optimism for progress in economic, political, and social development.

Over the last decade, Bangladesh has made progress in establishing a basic governance framework and putting key democratic institutions in place. A liberal constitution establishes basic civil rights. Political parties operate within a Westminster-style parliamentary system. Common law courts inherited from British colonialism are largely independent and respected at the higher levels,[31] although lower courts are wracked by corruption. Well-established principles of free speech support vibrant print media and accord civil society wide latitude to operate. National elections, which are reasonably free and fair, attract high voter turnout. Yet, these achievements have been diluted by the fact that Bangladesh's two major political parties are consistently at loggerheads. Bitter political infighting and abuse of the democratic rules of the game by both sides ensure a dysfunctional parliament. Government institutions are incapable of supporting a consistent democratic process where the rule of law operates to curtail government abuse while protecting individual freedoms, property rights, and security of its most vulnerable citizens. The sharp partisan polarization limits donors' ability to provide effective assistance at the national level.

While these deficiencies affect all Bangladeshis, they most severely hurt women and the poor, who remain largely on the fringe of the political system without a voice to champion their concerns. For these marginalized citizens, access to formal justice mechanisms to protect their interests and enforce their rights is simply unattainable. Women are especially victimized by their status in Bangladesh society.

Despite constitutional guarantees of equality, deeply engrained social customs perpetuate the subordination of women. Police and prosecutors routinely ignore crimes against women. Inadequate resources devoted to women's issues and rights cannot stem widespread violence against women, a high

maternal mortality rate, and serious problems with forced labor and trafficking. This pattern of discrimination effectively limits the access of women and girls to education, health, and financial resources. These practices render women powerless to seek redress through formal legal avenues. Given the pervasive impact of gender discrimination, improving access to justice is one of many fundamental needs. Meeting this need begins with educating women about their legal rights and, concomitantly, offering viable options to enforce those rights. Accordingly, USAID fashioned an assistance program to respond to these political, economic, and social realities.

### 1. Improving Traditional Dispute Resolution

In 1995, USAID launched the Democracy Partnership,[32] a broad based program grounded in Bangladesh's active NGO community. One of its many objectives was to promote a better justice system in rural areas, with women as a special focus. Through a series of subgrants to local NGOs, the Democracy Partnership increased awareness of legal rights and improved the quality of dispute resolution mechanisms in rural villages. The role of NGOs as service providers to the poor, combined with the negative political atmosphere at the national level, made working through local NGOs a more promising route for results. The unresponsiveness of formal legal institutions to the needs of women and the poor further recommend this strategy.

Women and the poor are largely excluded from access to the courts, which are primarily the province of Bangladesh's urban, educated, and business interests. Courts are slow, expensive, and geographically distant from remote villages. The poor can afford neither the travel nor the income loss resulting from repeated appearances in far away courts. Women are further restricted by the social mores that subjugate and dissuade them from pressing grievances. Moreover, women and the poor generally do not fare well before judges, who tend to be insensitive to their concerns. Consequently, for millions of Bangladeshis the formal judicial system is not a viable option for resolving disputes. Rather, informal, inexpensive methods of dispute resolution better serve their needs. To achieve more accessible and equitable justice for Bangladesh's most vulnerable groups, USAID expanded a successful program piloted by The Asia Foundation and pursued an approach that looked beyond the courts. USAID assistance, thus, served to strengthen pre-existing ADR mechanisms, known as "*shalish*".

*Shalish* is an indigenous practice in rural Bangladesh for resolving disputes arising within a family, between families, or between villages. *Shalish*, in existence for perhaps hundreds of years, is considered binding by locals even though it has no legal authority and exists outside the formal judicial system. With no defined structure, *shalish* occurs in various forms. It may be organized by a *union parishad*,[33] a village, or an NGO. When a dispute arises, *union parishad* officials or village elders (usually men) select five to nine arbiters (usually men) to hear both sides and reach a decision. Although *shalish* is more a combination of mediation and arbitration than an evidentiary trial, compromise solutions are not emphasized. For the most part, *shalish* leaders are unskilled in mediation techniques and untrained in the law.

USAID funded three experienced NGOs[34] through the Democracy Partnership to lead the effort to enhance the *shalish* process. These NGOs in turn provided training and seed money to more than 100 smaller NGOs to conduct dispute resolution programs throughout Bangladesh. By early 1999, USAID was supporting NGO activity to improve *shalish* practices in 438 *union parishads*—comprising more than 4,000 villages—across Bangladesh. These activities included teaching mediation techniques; improving knowledge of laws relevant to common issues; sensitizing decision-makers to gender concerns; increasing involvement of women as mediators; and organizing new mediation services in villages without active *shalish*es.

While no hard data exists, anecdotal accounts suggest that the traditional *shalish* process reflects the male biases evident throughout Bangladesh. USAID endeavored to make *shalish* more supportive of women's rights, in part, by raising awareness of and encouraging adherence to existing laws. The most common disputes arising in rural Bangladesh involve family, marriage, inheritance, and property. The most frequent *shalish* users are women experiencing marriage conflicts. Women resort to *shalish* most often for polygamy, illegal divorce, spousal abandonment, maintenance, dowry, and physical violence that frequently accompanies these other complaints.[35] In the villages, family matters are governed more by social norms and religious dictates than statutory regulation. Yet, reliance on the law often affords women more protection than local custom and interpretations of Islam. For example, dowries are prohibited by law, as is marriage under the age of 18; yet, both are common in rural areas.

With U.S. assistance, hundreds of *shalish* venues received training on relevant laws. USAID, through the Democracy Partnership, funded NGOs that worked with *union parishad* officials and appropriate village leaders to increase awareness of their roles and responsibilities as purveyors of justice and to instill basic notions of procedural fairness and sound dispute resolution techniques. Parallel work was supported by the European Union under the TransAtlantic Partnership, involving support to the Madaripur Legal Aid Association to formalize the role members play in adjudicating local conflict. In the process, these NGOs advanced fundamental ROL principles, such as

- The right of complainants to be present when their interests are at issue
- The opportunity for women to speak in their own behalf, rather than to rely on men to represent them
- An open, transparent process where *shalish* is conducted in public
- Gender equality by encouraging inclusion of women on *shalish* panels
- Consistency and uniformity by applying the law (rather than custom) in decision making

Introducing this modicum of due process has begun to instill confidence in a system lacking accountability. In a survey conducted by The Asia Foundation of women who used *shalish* and other USAID-supported dispute resolution mechanisms, 65 percent reported they were satisfied with the decision reached. Furthermore, assessments under the Democracy Partnership revealed that in villages where USAID-supported interventions occurred, 55 percent of the men and women said they had confidence in the local justice system. In contrast, villages surveyed outside the Democracy Partnership program areas reflected confidence levels of only 45 percent. Through the Democracy Partnership, USAID helped to foster better methods for resolving disputes in thousands of villages scattered throughout rural Bangladesh.

Chipping away at gender inequalities present in *shalish* contributes in important ways to enhancing the quality of justice for women. One foreign observer of the *shalish* system noted he has seen change over the years. In anecdotal accounts, he recalled early *shalish* sessions that he attended where a complaining wife would sit silently, alone or with a female companion, in a room full of men debating her problem. More recently, he has witnessed sessiones where women took part in the debate and served as decision-makers. Another *shalish* observer emphasized the unprecedented nature of women and men joining together to participate in *shalish* and remarked how truly impressive it was when viewed against the backdrop of conditions for women in Bangladesh.

Under the Women's Economic Legal Rights program, USAID supported, through The Asia Foundation, rights advocacy, public interest litigation, legislative reform, and women's associations to improve the rights and conditions of women workers in the formal and informal sectors.

Also, land rights advocacy and other community-based advocacy and legal awareness training and education complemented programs to ensure greater access to justice, all supported by USAID under the Democracy Partnership. As the Democracy Partnership concludes its work, other donors are stepping in to continue the positive contributions USAID made in transforming the only real option available to vast numbers of aggrieved Bangladeshis.

## 2. Strengthening Legal Service NGOs

Much of Bangladesh's NGO activity takes place at the local or regional level. Few strong organizations with national reach exist. Two that are most notable are BELA and BLAST; both have been USAID grantees.

USAID provided support to BELA, a pioneer in public interest litigation. In 1996, under Democracy Partnership support, BELA won a landmark case on behalf of people displaced as a result of government flood control measures. Besides achieving a successful outcome for its clients through resettlement and compensation, BELA established the legal right to bring such suits. The widespread impact of this Supreme Court precedent granting standing will continue to reverberate well into the future. Other legal services organizations, such as BLAST, are adopting public interest litigation as a powerful tool against exploitative practices in both the public and private sectors.

The founding of BLAST is a watershed event in expanding access to justice. USAID co-funded the initial grant under the Civic Participation program to launch BLAST in 1993.[36] Now existing in 15 locations across Bangladesh, BLAST provides representation to poor and marginalized Bangladeshi citizens and also engages in policy advocacy. BLAST has been instrumental in advancing causes germane to the lives of its clients through a variety of activities. Recognizing the benefits possible from improving *shalish*, BLAST contributed to developing better mediation practices through the Democracy Partnership. Lawsuits on behalf of women seeking maintenance payments from absent husbands are among BLAST's staple of cases.

Of special note, however, is BLAST's success in public interest litigation and class actions. For example, BLAST succeeded in obtaining two Supreme Court rulings against the police for abusive tactics and illegal detentions. These precedent setting cases threatened the police with sanctions for the type of corrupt and injurious behavior they engage in habitually without recourse. More important than the rulings, which themselves are highly significant, BLAST established the credibility of such suits, thus opening the door to continued challenges to police impunity.

Public interest litigation creates a viable vehicle for challenging official wrongdoing and exposing governmental abuse; it begins to erode injustices routinely visited on Bangladesh's most vulnerable citizens. Moreover, public interest litigation generates press coverage and exposes these abuses to the public. This in turn increases dialogue on the need for change and reform. Although USAID has not directed assistance specifically to support public interest litigation, as BLAST's founder and chairman of the board of trustees stated, USAID has contributed to the overall work and capacity building of the organization, and the very existence of BLAST offers vulnerable Bangladeshis some place to turn for redress. BLAST's success also serves as a deterrent to government officials and powerful interests who can no longer be assured of acting with impunity.

BLAST's pursuit of its ground-breaking work began with USAID's initial grant. BLAST's ongoing success hinges, in part, on its association with the mainstream legal community. BLAST grew out of a vision held by a prominent lawyer and respected Bar Council leader who pegged development and

expansion on attaching BLAST chapters to local bar associations. This lends an air of credibility to the causes BLAST undertakes and increases lawyers' exposure to issues of social justice and the need for legal reform. Reportedly, BLAST is now hiring law students within the top 10 percent of their class for positions in Dhaka. This is a sign of the legitimacy of its work and an encouraging sign for future success.

Donor assistance to strengthening democratic institutions is a relatively recent undertaking in Bangladesh. Within the donor community, USAID generally is recognized as inaugurating the concept of democracy advocacy among Bangladeshi NGOs—including support for strengthening the rule of law. Several donors, including the World Bank and UNDP, have since joined USAID in supporting the sector with programs just getting underway.

Without question, Bangladesh has far to go before its legal and other institutions are effective in meeting the overwhelming needs of its citizens. Until then, rural Bangladeshis will continue to rely on NGOs to provide services the government cannot. To counter a national process gripped by gridlock, USAID directed key assistance to grassroots efforts designed to afford greater access to justice for the economically and socially disadvantaged. USAID's contributions, while perhaps incremental when looking at the millions who continue to live in abject poverty, are nonetheless real for thousands of Bangladesh's most vulnerable citizens. These pockets of progress have been described as "patches of green" in an otherwise desolate landscape.

## B. Egypt

Over the last 25 years, development assistance to Egypt has served as a centerpiece of U.S. foreign policy in the Middle East. Much of this assistance has been directed to increasing agricultural production, constructing physical infrastructure, and improving public health. Since the early 1990s, however, assistance efforts have gravitated toward policy development, especially economic reforms aimed at achieving macroeconomic stabilization and encouraging higher growth. Recognizing that an environment conducive to economic growth and investment requires expeditious, fair, and predictable administration of justice, initiatives to improve the legal process (especially for commercial law) emerged as a key component of assistance to economic policy reforms.

Accordingly, more recent U.S. assistance efforts have expanded cautiously into areas of democracy strengthening through partnerships with Egypt's courts, parliament, and civil society groups. Among the most effective of these initiatives is the project for Administration of Justice Support (AOJS), which began a partnership with the MOJ in 1996 and is expected to conclude at the end of 2002. Under AOJS, USAID increased the administrative capacity of the civil court system;[37] and improved the ability of judges to apply the law in a fair, accurate, and timely manner. The project centered primarily within two institutions—the courts, specifically the courts of first instance in North Cairo and Ismailia; and the National Center for Judicial Studies, the judicial education arm of the MOJ.

Egypt's legal system is grounded in the French civil code system, where panels of judges, not juries, decide cases. A court of cassation sits atop courts of appeals, courts of first instance, and district or partial courts.[38] A supreme constitutional court rules on the constitutionality of legislation. Military and state security courts exist outside this system. All judges come from the ranks of prosecutors and are appointed by the president on recommendation of the MOJ. Apart from the appointment process, the judiciary remains relatively independent of executive influence, particularly in civil cases.[39]

## 1. Calling for Judicial Reform

Given its history of independence, which on occasion has been used to counter executive branch actions, Egypt's judiciary offered a solid footing for launching efforts to improve the administration of justice. Unlike many developing countries, corruption in Egyptian courts is not perceived as pervasive. Egyptians generally hold the judiciary in high regard. With so much of its population concentrated in urban areas along the Nile, access to the courts is generally good. Moreover, court costs are reasonable and lawyers plentiful. As a result, ordinary Egyptians tend to use the courts to resolve disputes, and yet, they consistently express disappointment and frustration with the quality of justice dispensed. Core deficiencies lie in the competency level of judges and the inordinate length of time it takes cases to move through the system. For the vast majority of Egyptians, the lack of finality in legal disputes proves true the aphorism "justice delayed is justice denied."

By the mid-1980s, enormous case backlogs clogged Egyptian courts; progress through the system was notoriously slow, and lawyers used delay as a common tactic. The inability to obtain timely dispute resolution stalled economic progress and impacted widely across all levels of society. Commercial ventures could not enforce contracts, protect property rights, or resolve legitimate differences. The lives of ordinary Egyptians could be devastated without timely resolution of routine, uncomplicated matters such as landlord-tenant disputes, land ownership issues, and inheritance claims. In 1986, a national Egyptian judicial conference called for change, targeting the courts' organizational and administrative functions. Concomitantly, international and domestic business interests recognized the drain on economic development posed by a backlogged judicial system and echoed these concerns over inefficient court services. Faced with universal frustration over an ineffective and unresponsive judicial system, the Egyptian government requested U.S. assistance to automate the commercial court system and modernize court management.

The magnitude of this request warrants emphasis. Never before had the MOJ accepted funding from an outside source. As a conservative, tradition-bound institution, the MOJ was wary of change. It had long insulated itself from outside influence of any sort (even Egyptian) and lacked any basis for interacting with donors or developing and implementing assistance projects. Despite little controversy over the goal, the particularly sensitive issue of allowing U.S. influence on the justice system led to five years of painstaking negotiations to design a comprehensive assistance program acceptable to both sides. The resulting AOJS project began in 1996.

## 2. Implementing USAID's AOJS Project

### *a. Increasing the Administrative Capacity of the Civil Court System*

The government of Egypt chose North Cairo and Ismailia, two commercially important court systems, to serve as laboratories for developing a prototype of improved administrative and case management functions for replication nationwide. North Cairo is Egypt's oldest and largest court system, serving approximately five million people and handling up to three quarters of all commercial cases in Egypt. Although much smaller, Ismailia lies on the Suez Canal; its courts preside over disputes arising from commerce and maritime law along the canal. Even before the techniques developed at the two pilot courts are replicated, commercial enterprises, maritime interests, and thousands of ordinary Egyptians will have benefited from more efficient courts at North Cairo and Ismailia.

Under AOJS, the procedures for initiating a case and processing it through the system were completely analyzed, overhauled, and streamlined in the two pilot courts. By re-engineering manual procedures for

case filing, fee collection, caseload management, scheduling, record keeping, and issuing judgments, some steps were eliminated, the entire process was made more efficient, and avoidable delay reduced. Much of this was accomplished by applying better management techniques to a system described as "chaotic," "illogical," and "torturous to the litigants." For example, prior to AOJS, initiating a lawsuit in North Cairo involved completing as many as 15 steps in multiple offices on six floors spread throughout two court buildings. The process in Ismailia entailed multiple floors in one building with no elevators. As a result of AOJS improvements, case filing procedures were relocated at each court to a single, ground floor "front counter" where processing occurred in a matter of minutes instead of hours. With an eye toward emphasizing efficiency, techniques, and practices for filing cases and moving them through the system were modernized, simplified, and made more user friendly. To support these changes, AOJS conducted extensive training programs for hundreds of judges and court personnel, many of whom expressed grateful enthusiasm for the new skills acquired.

To further equip Egyptian courts to manage caseloads more efficiently, AOJS introduced computerization. To streamline the case initiation process, AOJS designed and installed computer software to calculate the correct filing fee, randomly assign the case to a panel of judges, schedule a first hearing date, and issue a printed receipt. Combining and automating these manual tasks into a one-stop-shop increases efficiency, more equitably distributes case loads to judges, enables accurate financial accounting, and calendars a prompt hearing date.

Among AOJS's most significant contributions is development of a comprehensive Arabic language case management software program. By entering and maintaining data on each case as it progresses, court administrators, and chief judges will be able to obtain reliable case statistics, track causes of backlogs, and identify delay prone judges. The information will be vital to improving performance at all levels.[40] Moreover, creation of Arabic language software is an important tool for court administration reform throughout the Arab world. The World Bank and UNDP have expressed interest in using this software elsewhere in the Middle East.

AOJS procured 86 laptop computers as a test program for North Cairo judges.[41] The aim was to augment decision making by enabling legal research through Internet and CD ROM legal data bases and to hasten issuance of final judgments by improving word processing. The word processing aspect of the laptop experiment is producing greater results than anticipated. Through usage, training, and ongoing support provided by AOJS (and after overcoming the belief that typing was beneath them), many judges have found producing their own judgments easier, particularly in routine cases. The end result is that the MOJ is offering subsidized, interest free loans on computers to judges throughout Egypt. Reportedly, so far 1,500 judges have purchased computers.

As a direct result of USAID assistance, processing time for all civil cases at the pilot courts—from initiation to disposition—was reduced from 22.4 months in 1997 to 11.4 months in 2000. The average number of days it took to reach final decision for cases not requiring an expert decision[42] fell from 496 to 202 over three years. These statistics, based on a random sampling of cases, indicate many simple disputes are being resolved in less than seven months. These noteworthy numbers resulted from AOJS advisers tackling the litigation process from start to finish. For example, from 1997 to 2000: the average time for serving process was cut from 21 to 19.5 days; first hearings fell from 69 days after filling to 40; the number of days it took to issue a final opinion after the last hearing dropped from 44.5 to 29.4. These are just some of the improved efficiencies documented.[43] Moreover, the drastic changes have been greeted favorably by court users. An annual survey of lawyers who practice before North Cairo courts indicate confidence in court operations increased from 44 percent to 52 percent in 1998, to 61 percent in 1999, and again in 2000 to 64 percent. These achievements exceeded all expectations.

Statistical data alone cannot adequately capture the full extent of the project's positive impacts. While the level of judicial corruption is believed low, extra-legal payments to process servers and court clerks are not unheard of. At AOJS's urging, regulations were adopted to permit service of process by certified mail; if implemented properly, this should reduce opportunities for outside income. At the North Cairo court, stories are circulating about clerks complaining that the automatic case assignment system has eliminated "judge shopping" and, correspondingly, eliminated the illicit fees collected when litigants and lawyers requested assignment to particular judges.

*b. Improving the Ability of Judges to Apply the Law Fairly, Accurately, and Timely*

To improve individual judges' ability to handle and decide civil cases, AOJS worked to strengthen the NCJS, Egypt's training center for both sitting and newly appointed judges. Re-orienting NCJS as a proactive educational institution required a thorough overhaul, from developing a strategic plan to drafting a mission statement, creating an organizational chart, and preparing job descriptions. All were accomplished with AOJS assistance. To accommodate NCJS's expanded and upgraded mission, the MOJ unexpectedly financed major renovations of the physical space.

As with court administration, AOJS upgraded and automated NCJS operations. When AOJS began, NCJS had only two computers. AOJS assistance enabled computerization of NCJS functions beyond word processing to expand office productivity, enhance communications, and modernize course development, adding PowerPoint presentations, interactive lessons, and participant evaluations. Reportedly, these improvements not only increased overall efficiency, but enabled production of better curriculum and training courses for judges, while simultaneously elevating the skills of NCJS faculty and staff. As one AOJS adviser bluntly stated, judicial training no longer consists simply of meandering sessions where "old guys talk."

To date, more than 3,000 sitting judges and over 400 court support personnel have received training through the enhanced NCJS programs. In 2000, 300 newly appointed judges attended the new judge orientation program. Moreover, the foundation is in place for elevating the skills of the remainder of Egypt's 6,000 judges and all future incoming judges, as well as judiciaries throughout the Middle East who come to NCJS for training.

To gauge improvement in judges' knowledge of Egyptian civil law, participants in NCJS training programs took tests before and after completing courses. Averaged test scores of course participants reflected a 30 percent increase in substantive knowledge in 1998, a 19 percent increase in 1999, and 14 percent in 2000.[44] In addition, in AOJS's annual survey of North Cairo lawyers, respondents commented positively on judges' use of laptops and research acquired from legal data bases. According to these lawyers, judges were exhibiting better knowledge of the law. Through U.S. assistance, NCJS has begun to transform into a modern, useful educational center.

While there is no sure way to know the impact training has on actual decision-making,[45] without it, existing competency levels have little hope of improving. At the very least, the training capacity of NCJS has increased dramatically, and Egyptian judges and court staff are now able to acquire computer skills and attend courses that did not exist before AOJS. Quite simply, because of U.S. assistance, NCJS has the ability to train more judges and court personnel more effectively on more subjects. According to NCJS's director, by providing Internet access, overseas study tours, and updated courses, USAID opened a window to the world for a court system previously closed to the outside. As Egypt is a leader in legal education for the region, the ripple effect of these improvements will extend well beyond the Nile Valley.

*c. AOJS's Wider Impact*

Achieving radical transformation of court administration and judicial training required far more than making recommendations for streamlined procedures, redesigning curricula, and procuring state-of-the-art equipment. AOJS's more difficult and challenging task was changing people—their attitudes, self-images, and professional relationships. Prior to AOJS, a culture of malaise and mediocrity inhabited the courts and inhibited successful implementation of change. AOJS created a "can do" environment. The successes AOJS achieved resulted principally from the long-term presence of U.S. advisers working together with Egyptian counterparts. The strong relationships formed through constant and frequent interaction with judges, court personnel, and key ministry officials enabled building a constituency for change in order to alter entrenched behavior.

Persuading judges and court personnel to abandon engrained practices and adopt new patterns of behavior with regard to court administration was instrumental to achieving project objectives. Judges had to come to understand their role in time management and efficiency and to be convinced they were the single greatest variable in delay. The idea that judges could and should eliminate backlog by exercising control over their dockets and limiting postponements was startling to many. Nevertheless, the number of continuances granted per case was cut almost in half, from 9.4 in 1997 to 4.9 in 2000. Instilling respect for the work of administrative staff and encouraging their participation as agents of change elevated the professional status of these long-considered "lowly" bureaucrats. Bringing together judges and staff in structured fora to work together on changing the system broke down hierarchical barriers that enabled unprecedented cooperation on a more regular basis. AOJS choreographed these key changes in work habits and professional orientations. In the process, people changed and professional lives were altered.

Stories abound of staff testimonials enthusiastically proclaiming new found courage to approach a judge on an issue, renewed pride in previously mundane tasks, or increased self-esteem from taking part in improving Egypt's system of justice. Reportedly, virtually every chief judge throughout Egypt wants his court to be next to receive the case management improvements inaugurated by AOJS. This clearly signals AOJS has responded to real needs and has much to offer. Perhaps more importantly, it suggests marked changes taking root in the way judges are thinking about their role and responsibility in the overall scheme of justice. Such attitudes toward change were not readily evident at the start of the project.[46] The enthusiasm and interest expressed by the chief judges will be a powerful prod to the MOJ to continue and expand the gains already made.

### 3. Looking Ahead

While AOJS succeeded as intended to create a model for replication nationwide, in the end the government of Egypt and the judiciary must accept, support, and expand the practices and principles across Egypt. By most accounts, the Egyptian government appears committed to devoting resources to continue the techniques AOJS developed and honed at North Cairo and Ismailia. The MOJ has publicly stated its intention to do so and is discussing whether Alexandria, Suez, or Port Said will be next. Contracts have been let to Egyptian information technology firms to maintain the systems already in place. Using Egyptian resources, the Court of Appeals has begun designing and implementing a scaled down automation system based on AOJS. The ministry has increased NCJS's budget and acquired land outside Cairo for a new NCJS building. Finally, the MOJ has expressed keen interest in continuing to partner with USAID on a follow-on project.

To date, USAID remains the only donor actively assisting the justice sector in Egypt. Undeniably, by taking the lead, USAID took considerable risk. However, the USAID MOJ partnership succeeded in

forcing badly needed change on a moribund system and the ministry now appears willing to proceed using its own resources. The ministry is even actively touting AOJS throughout the region by sharing the experience with representatives from Jordan, Kuwait, Morocco, the Palestinian Authority, and Yemen.

The combination of training, better management procedures, and increased use of technology by judges and court personnel has made significant contributions to the overall administration of justice in Egypt. Due to U.S. assistance, case processing time for civil-commercial disputes at the pilot courts has shown significant reduction, and judges are improving their knowledge of Egyptian civil law through NCJS. Moreover, judges, court staff, and ministry officials are embracing new ways of thinking about the function and responsibilities of a justice system. The results to date presage wider impact as these improvements and advancements are adopted more broadly throughout Egypt. Decreasing the amount of time it takes to resolve civil disputes effectively increases access to justice for all Egyptians. Although impetus for the AOJS project was in large part to strengthen the environment for investment and economic growth, ultimately, all Egyptians benefit when a system dispenses more timely justice. Simple cases affecting small business owners and ordinary Egyptians languish for years in Egypt's courts, along with larger, more complicated, and costly disputes. Unquestionably, the documented improvements in judicial administration already impact positively across social and economic classes and, in all likelihood, will continue to do so as Egypt rolls out to all its courts the techniques and systems developed through USAID's AOJS project.

## C. Mongolia

Mongolia was one of the first Soviet satellite countries to declare its independence. Since its transition from a communist-led state to a multi-party representative democracy began in 1990, Mongolia has undergone a rapid transition, accomplishing many democratic reforms. Over the last decade, the country has made notable progress in establishing a basic governance framework and putting key democratic institutions in place. A liberal constitution guarantees basic civil rights. Well-established principles of free speech have spawned dozens of private newspapers representing diverse viewpoints. Respect for freedom of assembly and association accord civil society wide latitude to operate. A multi-party political system has succeeded in peacefully transferring power through reasonably free and fair elections attracting high voter turnout. Moreover, these significant achievements have been reached with little unrest or politically charged violence.

Yet, these achievements are somewhat fragile and have not yet had substantial impact on the quality of Mongolians' daily existence. Mongolian institutions are struggling to improve the conditions of a population plagued by severe economic hardship. Public expectations have been frustrated by governmental lack of capacity as a service provider. The transition is complicated by a bureaucracy inexperienced with governing under a democratic system and free market economy. Having become the world's second communist state in 1924, Mongolia had no institutional memory to which it could refer. Moreover, virtually all Mongolian officials were educated under the Soviet system and were grounded in Marxist ideology, and a significant number of lawyers were trained in the Soviet Union. Thus, judges and judicial system institutions were high on the list of sectors needing to be recast and reoriented.

During 70 years of Soviet influence, the Mongolian judiciary was fully controlled by the ruling Communist Party. As one Mongolian legal observer noted, judges were little more than clerks waiting by the phone for instructions on how to rule. Moreover, under the socialist regime, the business of courts consisted almost entirely of criminal matters. Ordinary Mongolians had little reason to use the courts to resolve personal disputes. Today, Mongolians are slowly coming to perceive the courts as a means to obtain redress for grievances. Yet, a largely rural and nomadic population still views courts primarily as punitive; outside of urban areas, criminal cases predominate.

Nevertheless, Mongolian government leaders recognize the importance an independent and competent judicial system plays in encouraging badly needed economic growth and investment. Experienced development professionals report genuine commitment within the Mongolian government to reform the judicial system and keen interest in acquiring knowledge and skills from other democratic nations. Mongolians welcome input from the west and seem less sensitive than many transitioning countries to issues attendant to outside influence. The existence of political will to strengthen and modernize the legal system has attracted widespread donor support.

### 1. Broadening Horizons

Mongolians emerged from isolation within the Soviet bloc with little notion of how democratic institutions function. In 1991, USAID supported a program designed to expose Mongolian leaders, including the judiciary, to democratic systems and institutions. Through a structured series of seminars in Mongolia, organized study tours abroad, short-term consultants, and targeted training, USAID assisted Mongolians in taking the first step toward conceiving structural changes to their own government. This necessary process of expanding the horizons of Mongolia's leaders helped lay the foundation for more concrete reforms to follow. For judges, it began the process of re-thinking the purpose and role an independent judiciary plays in a democracy.

### 2. Guiding Decision-making

When Mongolia broke from the Soviet yoke, few judges were experienced in or familiar with the legal ramifications of a market driven economy and democratic values. In addition, many new laws were enacted to establish the framework needed to support a free market economy. From 1990 to 1995, Parliament passed more than 100 pieces of legislation, including laws on property, contracts, fair competition, corporations, banking, tax, securities, and accounting. Judges were ill-equipped to handle cases involving these new and complex issues. To address the need to upgrade judges' knowledge and improve their ability to deal with legal issues in a post-communist commercial system, USAID funded preparation of a benchbook to serve as a reference manual to guide decision-making under Mongolia's new civil law. The benchbook also provided a basis for developing a USAID-funded training program for all Mongolian judges.

For many judges, especially those outside urban areas, the benchbook provides the sole authoritative resource available to inform their understanding of these new laws. Previously, these judges had relied on newspaper articles as the only printed version available of a new law. Reportedly, judges who use the benchbook widely praise it as a welcome and valuable tool. Visitors to Mongolian courts regularly observe the benchbook on judges' desks. In a legal system housed in crumbling buildings, lacking the most basic supplies and with only limited access to relevant legal information, the benchbook stands out as a key resource. In addition, the exercise of preparing the benchbook had value by instilling the judiciary with a sense of separateness from other branches of government. Involving high level judicial leaders in the process of creating the benchbook and corresponding training provided the judiciary with an opportunity to engage in its own development without direction from the former Communist Party.

### 3. Designing a Strategic Plan for the Judicial Sector

Despite the existence of political will and ample access to donor resources, by the late 1990s dissatisfaction existed with the progress of judicial sector reform. Because the needs were enormous and resources few, Mongolian officials tended to accept any offer of assistance which led to piecemeal, duplicative efforts and only modest progress. Roles and responsibilities among legal institutions were

poorly defined, and the concept of judicial independence remained vague. In 1998, President Natsagiyn Bagabandi requested U.S. assistance to accelerate the pace of change. After conducting an assessment of the status of the legal system and international donor efforts to date, USAID determined the best way forward was for Mongolians to develop a comprehensive strategic plan for judicial sector reform in order to better direct resources toward Mongolian driven needs and priorities.

Because Mongolians had little experience in strategic planning, USAID contracted to provide legal experts and facilitators to lead a three-day workshop attended by a broad swath of justice sector stakeholders, both within and outside of government. Never before had representatives across governmental agencies joined together, let alone with NGO partners, to discuss strengths and weaknesses in the legal system and, more importantly, to articulate a vision for how Mongolia's justice system should operate. Thus, the process itself had immense value as participants struggled with conceptualizing the goals and parameters of a justice system in a democratic society.

With little prior experience in such brainstorming sessions, Mongolians had limited ability to vigorously debate overall goals and difficulty incorporating goals into correcting day-to-day problems. Nevertheless, with the help of the USAID-funded experts and facilitators, Mongolians identified six fundamental values—independence, accountability, accessibility, fairness, effectiveness, and responsiveness—and outlined a preliminary draft of a strategic plan to achieve them. At the conclusion of the workshop, working groups were established to further flesh out the details. Mongolia had come a long way from the blank stares one development officer received when asking high-level court officials to explain the mission of Mongolia's justice system. Now, there were agreed goals and the beginnings of a strategy to achieve them.

Following the workshop, USAID continued to assist the working groups and other justice sector officials in finalizing the strategic plan. USAID funded legal experts to provide ongoing assistance as the working groups met over a period of months. By January 31, 2000, a final document was produced and accepted by the minister of justice. Thereafter, a more detailed action plan with priorities, benchmarks, and timelines was drawn up to augment the strategic plan, and a corresponding budget was prepared. Again, USAID retained advisors to review and comment on the action plan and budget experts to assist justice sector officials who were unfamiliar with project related budgeting.

The Strategic Plan for the Justice System of Mongolia and its companion action plan (collectively referred to as the "Strategic Plan") were submitted to and approved unanimously by Parliament in May 2000, signaling the importance of and support for this endeavor. After Parliament passed the Strategic Plan, USAID funded its publication and widespread distribution. Although the former Communist Party was voted back into power in multi-party elections held barely two months after the Strategic Plan was adopted, all indications suggest continued government commitment to pursuing its objectives. By all accounts, the Strategic Plan is well known and broadly accepted as the definitive document derived by Mongolians for charting the course of comprehensive judicial and legal system reform in Mongolia. Reportedly, when asked about legal system reform, Mongolian justice sector officials regularly refer to the Strategic Plan, often pointing to it on their desk or pulling it from a drawer.

While the Strategic Plan is intended to serve as a blueprint of reform activities with benchmarks and timelines to guide implementation, it is further intended to enable donors to coordinate their contributions and thereby avoid wasteful duplication and ineffective piecemeal activities. Assuaged over concerns that the Strategic Plan would lead to U.S. dominance of the reform agenda, donors have welcomed the Strategic Plan for providing a reasoned and more effective approach to addressing the vast problems plaguing the Mongolian justice system. In conformance with the Strategic Plan, USAID designed and

funded the Mongolia Judicial Reform program. This major five-year reform project began field operation in the spring of 2001. Having only recently gotten underway, it is still too early to gauge impact from this initiative.

Mongolian leaders appear to understand the path to prosperity lies, in part, in establishing a sound legal system, and thus, are eager to accept donor assistance to modernize and enhance a thoroughly decrepit system. The absence of financial resources to build responsive, credible institutions requires the government to rely heavily on foreign assistance. Without an overarching strategy for reform, economic considerations hold powerful sway over the course of Mongolia's development. The Strategic Plan seeks to avoid ad hoc opportunity driven initiatives by redirecting well-intentioned assistance toward a systematic, coordinated agenda created and supported by Mongolians.

USAID can reasonably claim credit for helping to maintain forward progress of Mongolia's march toward a democratic system anchored by an independent judiciary. Considering that in 1989 Mongolia was a country with a completely controlled economy, no democratic institutions, and a judicial system subjugated to the Communist Party, USAID's support for judicial training and study tours and preparation of a benchbook were logical precursors to more ambitious undertakings. According to recent State human rights reports, Mongolia's courts are considered reasonably free of political interference, and prosecutors no longer control the outcome of cases. By facilitating conceptualization and drafting of the Strategic Plan, USAID has contributed, along with other donors' activities, to more firmly grounding Mongolia's judiciary with a sense of functional independence. While Mongolia still has far to go, equipping all the major players with the same playbook is a crucial step toward victory.

## D. Nepal

Poised between China and India, the two most populous countries in the world, Nepal steered a careful course of self-imposed isolation for much of its history. The country avoided colonization but at the cost of a long tradition of absolute monarchs wielding repressive power without regard for the rule of law, human rights, or fundamental liberties. During a brief period of multi-party democracy in the 1950s, Nepal held its first-ever elections in 1959. Barely one year later, however, King Mahendra abruptly dissolved the elected parliament and banned all political parties. In its place the king installed "*panchayat*," a repressive, partyless system of government where decision-making was centrally controlled down to the village level.

With their being outlawed, political parties but moved underground. Thirty years later, a coalition of these parties succeeded in organizing broad-based pro-democracy demonstrations. Support for the Movement for the Restoration of Democracy (MRD) was fueled by increased economic hardship resulting from a border blockade by India and pressure for change arising from the growth of democracy after the fall of the Berlin Wall in 1989. As demonstrations opposing the panchayat system grew in strength, the government responded with press censorship, detention of intellectuals and activists, and brutality toward demonstrators. In April 1990, after the army fired on a crowd of demonstrators, killing as many as 50 and injuring hundreds, the king suddenly agreed to dismiss the panchayat government and allowed the MRD to form an interim government. The immediate goals of the new government were to promulgate a constitution and hold elections. By November 1990 a new constitution was in place. The following May, nationwide parliamentary elections were held in conformance with the new constitution. These ambitious achievements were accomplished in little more than a year with USAID as a key facilitator.

### 1. Strengthening the Legal Framework

When the king acceded to popular demand and ended decades of repressive, partyless government, Nepal witnessed a defining moment in its history. USAID's long-standing presence and well-developed contacts

with key MRD leaders enabled it to quickly respond to rapidly developing events. USAID officers immediately began to provide assistance to the Constitutional Recommendations Commission (CRC), facilitating access to information the CRC needed to draft a well-conceived constitution and promoting broad participation in the drafting process. USAID's contributions included providing information and technology resources to the CRC; funding study trips abroad for key MRD leaders to consult with constitutional experts and observe relevant institutions; retaining expert counsel for the CRC; sponsoring a series of town hall-type meetings organized by NGOs across Nepal to solicit input from citizens outside Kathmandu; and enabling NGOs to conduct village surveys to provide representative opinions on issues pertinent to rural needs and concerns.

The end result was a well-constructed, fairly liberal constitution that firmly establishes fundamental tenets of democracy. According to the constitution, Nepal is defined as a "multiethnic, multilingual, democratic, independent, indivisible, sovereign Hindu, and constitutional monarchical kingdom." As a constitutional monarchy, the king is head of state, and the power to govern is vested in a bicameral parliament modeled after the British system. As a direct result of recommendations from USAID, parliament adopted a committee system patterned after the U.S. Congress. Sovereignty resides in the people. The judiciary is set forth as an independent branch of government with the right of judicial review. Fundamental human rights and basic freedoms are guaranteed, including freedom of speech and association. All citizens are deemed equal before the law, and discrimination under the law is prohibited on account of race, sex, caste, ethnicity, or ideology. By all accounts, Nepal's constitution is well respected by the people.

## 2. Upholding the Constitution

While implementation and enforcement of Nepal's constitution has not always been smooth, so far the constitution has withstood challenges presented by turbulent politics. From 1994 to 1998, weak party leadership enabled small parties to wield considerable influence, forcing the formation of five governments in five years. Yet each transition proceeded constitutionally. Further, in 1995, the prime minister, facing a no-confidence vote, persuaded the king to dissolve parliament. Upon application to the courts, the Supreme Court rescinded the dissolution. The no-confidence vote went forward, the government lost, and a new government was formed. This important milestone signaled that the role of an independent judiciary was well accepted and considered largely free of political influence.

Constant changes in government have sidetracked efforts to tackle the severe problems that weaken this fledging democracy. These problems include widespread corruption, a Maoist insurgency movement that has killed more than 2,000 people since 1996, and pervasive poverty. Failure to alleviate Nepal's crushing poverty remains a formidable obstacle to democratic advancements. Furthermore, it feeds corruption and nurtures the Maoist rebels, whose stated goal is to replace the existing constitutional monarchy with a communist republic.

The recent upsurge of violence in late November 2001 ended a four-month cease fire and led the king to declare a state of emergency. As a result, basic civil liberties have been suspended, including freedom of speech, and sweeping detention powers have been instituted. Since the beginning of the Maoist insurgency, conditions have worsened for the press. Government interference has been reported by human rights groups involved in supporting the rights of Maoists or investigating abuses of suspected sympathizers. Moreover, concern exists that the current state of emergency may be used to justify further incursions on freedoms. Yet this declaration of a state of emergency proceeded according to carefully prescribed procedures in the constitution, which permits the king to declare a state of emergency with a two-thirds majority vote of parliament.

Time will tell whether the constitutional framework of this struggling democracy will withstand this latest challenge. However, the ability to arbitrarily abrogate freedoms has been largely eliminated. The path to protecting civil liberties and multi-party democracy—as well as the path for taking them away—lies in the constitution, where adequate procedures, if exercised, are in place to prevent a return to authoritarianism.

Eleven years after its drafting, Nepal's constitution is holding up under severe challenges. Constitutional procedures have been followed despite a decade of turbulent parliamentary politics, unprecedented political uncertainty caused by recent assassinations of the royal family, and a current state of emergency declared to quell increasing violence from a communist insurgency. When the current state of emergency expires, Nepalis will learn whether the fundamental freedoms now in check will be restored or whether the Maoist uprising will be used to justify continuation of repressive measures. At present, public opinion appears largely in favor of exchanging reduced freedoms for security. The constitution USAID helped Nepal to draft is revered as a source of national pride and a symbol of hard-won democracy. When the constitution was promulgated, Nepal had little experience with democracy, and how the new system would actually function was unknown. While Nepal still has far to go, on the whole, Nepal has thus far succeeded in holding onto the democratic principles articulated in its constitution.

## E. The Philippines

Twice within 15 years "people power" has toppled a corrupt and unpopular president in the Philippines. Through massive street protests aimed at effecting political change, ordinary Filipinos have accomplished what a weak and ineffective political and legal system could not—the ousting of Ferdinand Marcos in 1986 and the resignation of Joseph Estrada in 2001. The ability of the people to effect change in the Philippines is an enduring dynamic which USAID prudently has incorporated in assistance strategies seeking to strengthen the rule of law.

When assistance to formal judicial administration activities with government controlled institutions proved largely unsuccessful, USAID turned to alternative avenues where assistance could make a difference in the lives of disadvantaged Filipinos. USAID's support for a public interest law movement among civil society groups and grassroots organizations, known as alternative law groups (ALGs), made profound contributions to advancing the interests of marginalized and disadvantaged groups, particularly the urban poor, subsistence farmers, fishers, indigenous tribes, and women. More recently, USAID has supported an innovative pilot program to develop informal community dispute mediation services. Plans are underway for nationwide replication of this mediation project and for its inclusion in a comprehensive court reform project. Currently, USAID is exploring ways to meld support for alternative programs with more mainstream efforts, as prospects for judicial reform brighten under a new chief justice. Already, positive impacts are discernible. Recognizing the gains achieved from these assistance efforts requires understanding the context within which the rule of law operates in the Philippines.

In the Philippines, most citizens cannot vindicate their rights through the courts, which are backlogged,[47] expensive, and hard to access from remote areas. Moreover, the Philippines judicial system is not widely respected, as courts are perceived as largely corrupt.[48] The scope and complexity of the problem lie primarily in the fact that judicial decision-making is influenced not only by monetary bribes, but also by personal bonds, which are enormously important. These ties permeate society, influencing the way government delivers services and the legal system dispenses justice. When hiring a lawyer, Filipinos are less interested in a practitioner's legal skills than who the lawyer knows and what connections he or she has throughout the legal community. One prominent Filipino attorney explained that lawyers are often asked to serve as godparents to children who are likely at some time in the future to need the favors that lawyers can deliver. Tellingly, the term "crony capitalism" was coined to describe economic practices under Marcos.

In a system where the law is seen as negotiable, or manipulated by the rich and powerful to reach favorable outcomes, those without money or connections are decidedly less able to access justice and other desired government services. These problems exist at the national and local levels and extend to quasi-judicial bodies and executive agencies charged with decision-making authority. The harmful effects of corruption and cronyism are exacerbated for the disadvantaged.

USAID attempted to address judicial system deficiencies during most of the 1980s via training, technical assistance, international exchanges, and computerization. Those involved with these programs candidly admit they did not succeed due to insufficient political will and the corrosive influence of deeply ingrained habits of personal favoritism. Thereafter, despite high expectations for change following Marcos' fall from power, the climate for working with the formal justice system changed little. Without adequate commitment to reform, most Philippines legal experts viewed improving justice through assistance to the courts and related government institutions as unpromising.

Meanwhile, more promising opportunities for assistance were emerging, as CSOs mushroomed in the post-Marcos Philippines. Marcos's flagrant abuse of human rights and accumulation of personal wealth and power engendered deep distrust of central government and keen determination to decentralize. This experience, coupled with the unique needs of a sprawling archipelago, led to enactment of perhaps the most far reaching local government law in the developing world. USAID provided support to the drafting process by retaining experts to review and comment on various issues and implementing regulations. The 1991 Local Government Code devolves significant taxing and decision-making authority to local governments and authorizes civil society participation in local decision-making. Moreover, the 1987 Constitution protects non-governmental activism and requires the state to establish mechanisms for civil society input and consultation. These provisions, although unevenly implemented, have materially altered the political landscape and helped spawn a vibrant NGO community.

### 1. Promoting Justice for the Disadvantaged

ALGs, an umbrella term for approximately 20 legal services NGOs, are highly regarded as among the most effective contributors to a political environment that solicits civil society involvement. By providing general institutional support to a core group[49] in the early years of their existence, USAID was at the forefront of facilitating both the growth of the ALGs, and the evolution of their contributions to advancing more responsive operation of the rule of law for disadvantaged and marginalized groups.

ALGs produced widespread impact along the entire continuum of the legal process—from policy formation to enforcement. Working with the Philippines Congress, ministries, executive agencies, and provincial and local governments, ALGs have made substantial contributions to laws, regulations, administrative orders, and ordinances pertaining to the environment, the status of women, agrarian reform, indigenous peoples rights, fisheries, and the urban poor. ALGs also devised campaigns for better enforcement of provisions to protect vital interests of these groups. The hallmark of ALGs is their role as catalysts to empower disadvantaged populations to use the system rather than be victimized by it. Essentially, ALGs seek to enforce the rules of the game and thereby ameliorate the ability of power, money, and cronyism to trump equity, impartiality, and predictability.

After decentralization, a great many decisions affecting rights and property were delegated to local level administrative or regulatory action. While agency decisions are not always adversarial, they are nonetheless rule-based processes which must be fair, predictable, and transparent. Yet, as is common in the Philippines, such decisions are easily swayed by corruption and cronyism. With USAID support, the

ALGs targeted community level rule-based systems because they most directly impact the daily lives of ordinary Filipinos. Although ALG accomplishments are too many to list, a few examples follow:

- ALG assistance in creating regulatory frameworks to control illegal fishing and maintain adequate fish stock protects sustenance fishers, whose livelihoods are easily devastated by commercial fishing or unwise resource management practices.
- ALGs have empowered fishers to protect their interests through community enforcement mechanisms whereby trained paralegals and wardens act as watchdogs to monitor compliance with local regulations.
- ALG expertise played a key role in developing concrete rules requiring notice and due process in evictions and demolitions, thereby providing the urban poor with actionable rights.
- ALGs provide representation to defend against nuisance lawsuits and criminal actions brought by entrenched interests to harass law enforcement volunteers and discourage community activism.
- Through ALG work, tribal communities certified over 320,000 hectares of land under the Indigenous People's Rights Act. A by product of this effort is greater ability for local populations to halt illegal logging.
- ALG trained paralegals assist tenant farmers in processing claims under the Agrarian Reform Law. This enables subsistence farmers to obtain land ownership which tends to increase income, often as much as 50 percent.

Funding for ALGs in the early years was largely experimental, and the impact achieved on the range of issues tackled was not envisioned. By enabling ALGs to exist and flourish, USAID facilitated their growth and the evolution of productive interaction with a variety of governmental entities at the national and local level. In the process, many behaviors and practices grounded in legal procedures were altered to the benefit of the most vulnerable Filipinos. Experienced development professionals cite the combined work of the ALGs as the most sophisticated and successful legal services operations in Asia. These veteran observers praise USAID support to the ALG movement for its high impact, low cost promotion of the rule of law and suggest it serve as a model for community based ROL assistance programs.

Having become firmly established and well respected, ALGs now attract widespread financial support from other donors. Accordingly, USAID shifted its support to a formalized network officially registered as the Alternative Law Group, Inc. This networking mechanism enables the ALGs to combine efforts and share experiences. Although tangible results from regular interaction are difficult to document, a ripple effect is inevitable; as one member observed, by banding together "[we] create the energy for a better outcome."

### 2. Supporting ADR for the Disadvantaged

Building on its successful record of support for community-based ROL activities, in 1998, USAID provided ground breaking assistance to develop a neighborhood based dispute resolution system. By so doing, USAID entered a sort of middle ground between mainstream and alternative solutions for instituting better justice systems. USAID's *Barangay* Justice Service System (BJSS) project was an outgrowth of decentralization and USAID's emphasis on disadvantaged populations. It was grounded in a Local Government Code provision requiring mediation of petty crimes and small civil claims by a local *barangay* council[50] prior to filing suit in court.

*Barangay* mediation was underutilized and relatively ineffectual until USAID funded the Gerry Roxas Foundation to develop a pilot program of training and support to augment mediation services and strengthen *barangay* mediators. USAID's original grant supported work in 65 *barangay*s in five provinces. After the first year, the BJSS project recorded a 65 percent settlement rate, with only 6 percent of the unresolved cases subsequently taken to court. Examination of case loads in districts with successful *barangay* mediation programs indicated a marked decrease in the courts' backlog. This preliminary study suggests small claims mediation may positively affect court congestion. In addition, feedback from BJSS users consistently reflects a high degree of satisfaction obtained largely from achieving a sort of "contracted peace" in a convenient, affordable forum. Buoyed by these successes, BJSS expanded to 105 additional *barangay*s throughout the Philippines. In a tidy bit of project synergy, BJSS is implementing replication by partnering with seven centers for local governance previously established under USAID's Governance and Local Democracy (GOLD) project.[51] As partners in BJSS, the centers are serving as resources for ongoing training and support to *barangay* mediators and advocates.

The impact of this pilot project exceeded expectations. With USAID's support, the *Barangay* Justice System has proven an effective, quick, and inexpensive means of dispute resolution available to all *barangay* residents with minor grievances. Moreover, with a special focus on mediating family disputes, it provides viable access to justice for underserved sectors of society, particularly women and children. The Supreme Court has taken notice of the positive implications this program has for contributing to the improvement of judicial services and fully supports its expansion nationwide.[52] As a further indication of success, Nepal officials have visited the BJSS project and are exploring ways to adapt it for use in Nepal.

### 3. Moving from the Alternative to the Mainstream

USAID's ROL activities are gravitating back towards more traditional justice system initiatives in ways that build on continuing successes. The appointment of a strong, reform minded jurist as Supreme Court chief justice in 1998 has generated renewed attention to judicial system reform. In addition, Arroyo, in office since January 2001, is reform oriented. And the 1997 Asian financial crisis highlighted the costs of corruption and the importance of an impartial, predictable court system to economic growth and investment. Sensing that the requisite climate for reform may have arrived, USAID and other donors have begun to shift their assistance strategies accordingly. A major six-year court reform project, funded principally by the Asian Development Bank and the World Bank, is just getting underway. The Action Program for Judicial Reform seeks a comprehensive overhaul of the Philippines justice system and includes institutional strengthening, human resource development, infrastructure reassessment, technology upgrades, and administrative capacity building.

USAID is contributing to this reform effort in discrete, targeted ways that capitalize on past experience. As a direct result of a donor workshop USAID attended, access to justice for the poor was added to the action program as an additional primary objective. Undoubtedly, USAID's extensive support for improving the legal status of the disadvantaged helped form this imperative. In addition, USAID's pioneering support for strengthening the *Barangay* Justice System has drawn the chief justice's attention to the potential presented by *barangay* mediation as a tool to facilitate access to justice and decongest the courts. In support of the Supreme Court's Action Program for Reform, USAID funded a study on the effectiveness of the *Barangay* Justice System. As a result of this study, expanding, strengthening, and professionalizing the *Barangay* Justice System is now a priority within the Action Program as a key component in the pursuit of access to justice for the poor. To better coordinate this multifaceted effort, a high level interagency working group has been formed by executive order composed of the Department of the Interior and Local Government, the Department of Justice, the Supreme Court, the Integrated Bar, USAID, the World Bank, and the Gerry Roxas Foundation.

USAID further added to the Supreme Court's reform process by convincing the judiciary of the potential value of court sanctioned mediation. USAID contributed to support for "settlement week," during which cases in three judicial districts were selected and assigned to mediation. Remarkably, more than 80 percent of the cases settled. The overwhelming success of this activity significantly impacted the chief justice's view of mediation as a worthwhile mechanism for dispute resolution. It further engendered widespread support for mediation throughout the judiciary, making mediation one of few un-controversial reform endeavors. USAID's support for settlement week has spurred plans to organize mediation centers, train mediators at the Judicial Academy, develop a mediation manual, code of ethics and accreditation process, and, of course, schedule more settlement weeks.

Many factors contributed to the full court press now underway in the Philippines to fix a largely dysfunctional judicial system. However, few would disagree that the ALGs are among those factors. ALGs worked diligently to nudge the system toward transparency, equity, and accountability and are credited, in part, for continually shining a light on abuses and deficiencies now being addressed. It is widely recognized that incorporating the ALGs into the reform effort is essential to its ultimate success. ALG Inc., the formal network funded by USAID, serves as the contact point for interaction with the Supreme Court. This is the logical next step for the ALGs as they move toward a second generation of activities. Thus, the ALGs are taking an active role in the Action Program by participating in technical working groups. Already, collaboration with the Philippines Judicial Academy has produced an environmental law curriculum for judges. USAID's early and ongoing support for the ALGs helped this unique and creative public interest law movement establish a firm foundation from which it developed into a legitimate and influential force with a well-deserved seat at the table of mainstream reform efforts.

USAID support for development of the rule of law in the Philippines has circled back to efforts abandoned almost a decade ago to reform the formal judicial system. In between, as the reform climate in the Philippines shifted, USAID assistance strategies evolved to leverage select opportunities. Decentralization, coupled with a positive environment for NGO activity, led to support for the ALG movement and community based, rather than systemic, ROL initiatives. Assistance to *barangay* mediation grew out of ALG emphasis on utilizing law based mechanisms to benefit the disadvantaged. Support for court sanctioned mediation expanded the reach of ADR beyond the small claims focus of the *barangay* program. Now that political will seems to exist for a comprehensive overhaul of the judicial system, USAID is exploring ways in which its support for innovative programs can continue to contribute to the reform agenda. USAID's pursuit of what was considered an alternative route to improving the rule of law produced gains which for years were achieved community by community. Yet, the march forward was steady, and it appears that the mainstream may now be catching up. While speaking at the USAID-funded First Alternative Law Conference on Lawyering for the Public Interest, the Supreme Court chief justice noted it is time the alternative be considered the mainstream.

## Endnotes

[1] Many have also been assassinated or have fled the country under threat of death. The most notorious example occurred in 1986, when the entire membership of the Supreme Court, along with 250 judicial personnel, was murdered in an attack on the courthouse in downtown Bogotá by suspected narco-traffickers. An increased protection program implemented for a number of years subsequent to that attack—the so-called "faceless tribunals" wherein the identities of judges, prosecutors, and witnesses were concealed in sensitive litigation—failed to solve the problem and was ultimately ruled unconstitutional.

[2] In the 1970s and early 1980s, USAID had provided diffuse support to various legal education programs.

[3] "The law is for those who wear ponchos" is a common expression implying that the law is applied primarily to poor people, while the rich routinely circumvent its strictures.

[4] In 1998, *ProJusticia* was transferred to the judicial branch, and now operates under the Supreme Court.

[5] They were described by one director as "kind of an ER for women's rights." Examples of their clientele include women who have been horribly injured, shot, knifed, raped, or abused, or who have attempted suicide. The *comisaría* provides immediate legal and police protection, triage, investigation, and referrals. They train and work closely with the police and have an on-site team of professionals.

[6] Although the *comisarías* are intended to serve poor women primarily, they are available to all women and have gained citizen confidence such that middle and even upper-class women have used their services. Complaints have been received and addressed regarding violent behavior at all social and economic levels, thereby reducing impunity regardless of class or position.

[7] Mexico is one of only three Latin American countries that have both state and federal governments and corresponding judicial systems, as in the United States. The other two are Brazil and Argentina. The remaining Latin American countries have unitary governments and a single national court system.

[8] The legal and judicial communities have not escaped this culture of violence and recrimination that operates outside the rule of law. To illustrate, two federal judges were killed (November 2001) in a gangland style "hit", presumably connected to pending litigation involving drug trafficking and cartels. Just the week before, Mexico's most renowned human rights lawyer, Digna Ochoa, was gunned down in her office in Mexico city; her murder is widely suspected to be connected to her role representing peasant groups in opposition to influential logging concerns.

[9] Although the bulk of the documents pertain to the Stroessner dictatorship of 1954-1989, there are documents scattered over prior decades that date as far back as 1920.

[10] The 1992 Constitution provides for a reparations act to compensate victims of the dictatorship. The archives will obviously play an important future role in documenting those claims, but the process is not yet under way.

[11] Had the standoff between the executive and the judicial branch in March 1999 occurred 10 years earlier, the judiciary unquestionably would have backed down. As it played out, the Supreme Court held fast to its determination that the president could not use his position to violate the rule of law with impunity, and the president ultimately paid the price.

[12] The 1993 Constitution had conveyed authority to select, appoint, and investigate judges and prosecutors to the National Judicial Council, and had declared it to be independent of all branches of government.

[13] Dozens of legal cases have been filed in Peruvian courts against Fujimori and his former right-hand man, Vladimiro Montesinos, alleging massive corruption, fraud, and embezzlement of tens of millions of dollars from government coffers. Montesinos had also fled the country, but was returned to Peru by Venezuelan authorities and currently is in jail awaiting trial. Japan has so far refused to extradite Fujimori.

[14] As Fujimori's exploitation of the judicial branch became ever more apparent, the World Bank deferred a planned loan. The Peruvian government withdrew the loan request in September 1998 to avoid the embarrassment and certainty of outright rejection.

[15] In addition, USAID support helped Parliament to adopt new rules to improve transparency of parliamentary procedure.

[16] One lawyer, for example, reported that assessments of the criminal code, the criminal procedure code, and the FOIA were "wonderful".

[17] Recently, however, the process of removing judges, based on the new constitution, has been characterized by "greater respect for due process and legal procedures." (State Department *2000 Human Rights Report*).

[18] It will take a long time for this process to have sizeable impact because the school only trains 75 students, including judges and prosecutors, at a time. Twenty judges and one prosecutor have graduated so far. A corollary problem is that the university level legal training is substandard. Efforts to reform the state law faculty have not yet succeeded, although the World Bank has started a new program that focuses on the law school.

[19] The court system is still largely managed by the MOJ, but the chair of the Supreme Court and the Council of Justice now have a greater say in how funds allocated to the courts are spent.

[20] Zani, one of the key backers of the pyramid scheme, was tried in Tirana in 1998 but was not convicted due, it is widely believed, to corruption. He was re-tried in Vlora in late 1999, was convicted (which was upheld by the court of appeals in 2000), and is now in prison.

[21] In 2000, out of 600 complaints he was able to conclude 150 in favor of the complaining citizen. In 2001, the ombudsman expects to hear over 3,000 complaints.

[22] Bulgaria gained its independence from Ottoman empire on September 22, 1908, and was a constitutional monarchy through the World War II, after which it came under communist domination.

[23] Bulgaria has also adopted a variety of international conventions, such as the Convention on the Laundering, Search, Seizure and Confiscation of Proceeds from Crime, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Council of Europe Criminal Law Convention on Corruption, and the Framework Convention for the Protection of National Minorities of the Council of Europe. Some work remains, of course. Bulgaria, for example, is one of the few countries in the region that has not yet adopted a law providing for an ombudsman. In addition, the process of implementation is revealing deficiencies in the laws, requiring additional amendment. One other concern: at the time of preparing this report, the prosecutor general was pressing parliament to rescind the revised criminal procedure code and

return many of the powers now in the hands of judges to the prosecutors. The transfer of powers from the prosecutors to the courts was made largely under pressure from the EU, and a return of those powers to the prosecutors could result in a step backwards in the process of EU accession, which has been the guiding light for post-1997 reforms.

[24] Several interviewees remarked, however, that the structure of the Bulgarian judiciary is far from optimal because the judges are lumped together with the prosecutors and the investigators as "magistrates," all of whom have constitutional protections against being removed. The courts are administered by the MOJ, and unlike in other countries in the region, there does not seem to be a movement to organize a separate court budget or a separate body for administering the courts.

[25] The BJA also faces some problems. It has not been admitted to the two main European associations of judges because it does not have sufficient membership (only 500 out of Bulgaria's 1,500 judges are members).

[26] USAID began supporting a modest CEELI program in Macedonia in 1993.

[27] The seven-member RJC proposes judicial appointments to the parliament, which then confirms or rejects the recommendations. The RJC is also responsible for disciplining judges, although only parliament can remove them.

[28] With funding from State, the UKIM law school is also one of five law schools in the Balkans that have formed linkages with U.S. law schools that will include faculty and student exchanges. UKIM's partner institution is the University of Idaho.

[29] TRC Report.

[30] For example, in 1994, only one quarter of all detectives had participated in a formal investigation training course and only one tenth had more than six years experience.

[31] Twice during periods of political turbulence the Supreme Court chief justice was named to head a caretaker government.

[32] The Democracy Partnership programs concluded in 2001, and final reporting is in progress.

[33] *Union parishads* are elected local government councils. Approximately 25,000 people reside in a UP which is made up of 10-15 villages. UPs have authority to settle non-criminal disputes.

[34] Madaripur Legal Aid Association, Palli Shishu Foundation and Banchte Shekha.

[35] In its annual country report for 2000, the United Nations Fund for Population determined 47 percent of Bangladeshi women are subject to violence by male partners; this is the second highest rate of domestic violence in the world.

[36] The Asia Foundation and The Ford Foundation jointly negotiated, developed, and co-funded the initial grant to BLAST.

[37] Making changes to the criminal justice system presents a far more complicated and tangled situation politically. Therefore, it was carved out of the project from the start.

[38] District courts are courts of limited jurisdiction handling small claims with final appeal to the court of first instance.

[39] Indeed, the Constitutional Court ruled the election laws unfair to independent candidates in 1990 and forced new elections to the Peoples Assembly. Again in 1995, the high court declared the Peoples Assembly elections unconstitutional for ignoring constitutionally mandated monitoring procedures. However, criminal matters, especially those with political overtones, are often subject to manipulation. Many of these cases are heard in the separate military or state security courts.

[40] Due to years of planning, testing and training, the software was introduced late in the project, and it is still too early to gauge its impact.

[41] Judges in Egypt do not have individual offices at the court and so do much of their decision writing at home.

[42] Cases referred for an expert determination usually present more complicated fact issues. These cases tend to bog down for a variety of reasons, including inefficient practices and procedures in the Experts' Office.

[43] While these statistics represent the average of both pilot courts, generally cases move much more quickly through Ismailia's smaller and less congested court system.

[44] Course participants change each year, so that testing results portray increases for different groups of judges.

[45] Obviously, many factors contribute to creating a qualified judiciary, including the rigor of law school instruction and sufficient salaries to attract able candidates to the profession.

[46] On its own initiative, the Cairo court of appeals followed the lead of the North Cairo court of first instance by installing signs to inform and direct litigants. A small gesture reflecting progress toward changing previous attitudes.

[47] A 1995 survey of Manila businesses revealed 94 percent of the respondents felt courts did not resolve disputes expeditiously, as it took an average of 43 months for a decision to be handed down. Little has changed since then.

[48] In a Philippines Social Weather Station survey, 70 percent of respondents with experience before the courts believed levels of judicial corruption were significant.

[49] Although USAID has supported numerous ALGs, the activities discussed here were undertaken primarily by a core group: Environmental Legal Assistance Center (ELAC) – environmental issues; Sentro ng Alternatibong Lilngap Panlegal (Saligan) – labor, the urban poor, the status of women, agrarian issues and local governance; Tanggapang Panligal ng Katutubong Pilipino (Panlipi) – indigenous people's rights and related environmental issues; Tanggol Kalikasan (TK) – environmental issues; Women's Legal Bureau (WLB) – women's rights.

[50] A *barangay* is the smallest unit of local government in the Philippines. The requirements for *barangay* mediation were first enacted in 1978, but were largely ignored. Little changed after the provisions were codified in the Local Government code.

[51] The GOLD project was born out of decentralization after enactment of the Local Government code. The project goal was to bring about more responsive local institutions with greater citizen participation in local governance and development.

[52] To demonstrate his support, the chief justice flew to the project cite to swear in over 400 *barangay* volunteers.

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**DCHA/DG TECHNICAL PUBLICATION SERIES**

***Democracy and Governance: A Conceptual Framework*** **- November 1998** (PN-ACR-210)
This publication describes the DG Office's approach to democracy and governance assistance programs. It does so by presenting the strategic thinking underlying the DG Office's and USAID's worldwide involvement in the areas of rule of law, elections and political processes, civil society, and governance. This framework is also meant to set the foundation for other DG Office technical publications exploring specialized democracy and governance sector subject matter.

***Alternative Dispute Resolution Practitioners Guide*** **- March 1998** (PN-ACP-335)
This guide is intended to help practitioners make informed decisions with regard to incorporating alternative dispute resolution (ADR) in rule of law programs and other conflict management initiatives. While the primary focus is on the advantages and limitations of introducing ADR within rule of law programs, the guide also discusses how ADR can advance other development objectives.

***Civil-military Relations: USAID's Role*** **- July 1998** (PN-ACP-337)
This publication identifies areas in which USAID could contribute to civil-military relations programming, approaching the subject from a civilian vantage point and looking to broaden civil society participation. The report reviews past activities implemented with donor assistance and identifies current issues. Overall, the publication provides a better understanding of the contributions USAID can offer in this important field.

***Handbook of Democracy and Governance Program Indicators*** **- August 1998** (PN-ACR-211)
This handbook was prepared to help practitioners develop and manage their democracy and governance programs. It discusses the process of designing a performance monitoring system, offers some guidance on identifying performance indicators, and provides a number of illustrative examples (i.e., candidate indicators) which can be used to develop country-specific indicators for diverse democracy and governance programs. Although the primary audience is USAID democracy and governance officers and the organizations with which they work, the handbook may be of use to other development organizations.

***A Handbook on Fighting Corruption*** **- February 1999** (PN-ACR-212)
This handbook presents a framework to assist USAID Missions develop strategic responses to public corruption. The framework sets out root causes of corruption, identifies a range of institutional and societal reforms to address them, and introduces a methodology for selecting these measures. It also describes anti-corruption work carried out by USAID and other organizations.

***USAID Political Party Development Assistance*** **- April 1999** (PN-ACR-216)
The document provides a clearer understanding of the substance and breadth of USAID political party development assistance, the statutory and political constraints on such USAID-supported programming, the methods and approaches to political party assistance programming by the key implementing partners (IRI and NDI), and the limitations and possibilities for future political party development assistance around the world.

***The Role of Media in Democracy: A Strategic Approach*** **- June 1999** (PN-ACR-214)
This paper presents the four basic steps to developing a strategy for media sector support: defining the problem, finding targets of opportunity, assessing the feasibility of activities, and evaluating USAID's comparative advantage in carrying out these activities. It also outlines a 'menu of options' for media programming which should be chosen on the basis of country context.

***Managing Assistance in Support of Political and Electoral Processes*** **- January 2000** (PN-ACR-213)
This publication helps democracy and governance field officers anticipate and effectively deal with the myriad issues and challenges that arise with election assistance programs in changing environments. The practical manual guides users through defining the problem and assessing contextual factors; identifying stakeholders and their motives; selecting options for assistance; linking those options to the mission strategy; and managing electoral assistance. It is suggestive rather than directive, in recognition that, while a certain "conventional wisdom" based on years of experience exists about elections programming, the multitude of variables precludes a "one size fits all"

approach. The approaches suggested in this handbook are based on material gathered through a year-long assessment of electoral assistance activities carried out by USAID Missions and their partners over the past eight years.

***USAID Handbook on Legislative Strengthening*** - **February 2000** (PN-ACR-215)
The handbook is designed to assist USAID Missions in developing strategies to help legislatures function more effectively and to perform their functions more democratically and representatively. It explains the importance of legislatures in a democracy, describes factors that influence legislative behavior, and enumerates problems legislatures commonly face. It then presents an assessment framework that is designed to help USAID field officers pinpoint the weaknesses and understand the capabilities of their host-country legislatures. The paper identifies a number of assistance activities designed to address weaknesses and to capitalize on strengths discovered in the assessment. It concludes with guidance for implementing legislative programs and a presentation of emerging issues.

***Decentralization and Democratic Local Governance Programming Handbook*** - **May 2000** (PN-ACP-339)
This handbook serves as a practical guide to USAID officers who are faced with the task of developing program activities in the areas of decentralization and democratic local governance. Drawing on 15 years of USAID experience in democracy promotion and on four decades of municipal development work, this publication provides a conceptual framework; guidance for choosing successful programming strategies, for selecting entry points and tactics in program design and implementation, and for mission monitoring and evaluation; and a discussion of key lessons learned and future programming issues.

***Conducting a DG Assessment: A Framework for Strategy Development*** - **November 2000** (PN-ACP-338)
This handbook provides a framework for constructing donor, in particular USAID, democracy and governance (DG) strategies. It is not a step-by-step manual on how to develop a strategy, but a guide for how to undertake the assessment process that informs the final product. This framework incorporates what researchers and practitioners have learned from comparative experience.

***Case Tracking and Management Guide*** - **September 2001** (PN-ACP-336)
This manual provides practical guidance on successful tracking and management (CTM) improvement projects. Using this manual, rule of law offiers can make better-informed decisions about CTM system improvement interventions, oversee the design of programs that achieve results, and ensure and plan - to the extent possible - for long-term sustainability that would enable these programs to enhance the rule of law.

***Guidance for Promoting Judicial Independence and Impartiality*** - **January 2002** (PN-ACM-007)
The focus of this guide is judicial independence as a means toward achieving the goal of impartial decision-making. Without advocating any specific model of governance arrangement, the issues surrounding judicial independence are presented and guidance is given to USAID and other donors on the design and implementation of programs that effectively strengthen judicial independence.

***Approaches to Civic Education: Lessons Learned*** - **June 2002** (PN-ACP-331)
This document reports on lessons learned from a multi-part research investigation into USAID's civic education programming. In order to better understand how and under what conditions civic education contributes to the development of a more active and informed democratic citizenry, USAID initiated the study to measure the impact of both adult and school-based civic education programs on participants' democratic behaviors and attitudes.

## DCHA/DG OCCASIONAL PAPERS SERIES

***Understanding Representation: Implications for Legislative Strengthening*** **- November 2000** (PN-ACR-217)
This short report presents highlights from the Second International Conference on Legislative Strengthening. It address a number of dominant themes and issues which emerged - either from presenters or from those many conference participants who commented from the floor - in the conference sessions. Accordingly, it discusses (a) how legislatures can better reach out to constituents, civil society, and marginalized groups, (b) the manner in which globalization has influenced legislatures and legislative development, (c) a range of donor and service provider considerations, and (d) alternative approaches to legislative programming.

***Participation, Consultation, and Economic Reform in Africa: Economic Fora and the EG-DG Nexus*****-**
**October 2001** (PN-ACR-218)
This occasional paper examines four economic forum experiments in Africa: the Ugandan National Forum, the National Economic Forum (Ghana), the National Economic Development and Labor Council (South Africa), and the Tripartite Negotiating Forum and the National Economic Consultative Forum in Zimbabwe. Through these four examples, the paper will explore the connections between economic growth and development, and USAID's efforts to pursue those connections.

***The Enabling Environment for Free and Independent Media: Contribution to Transparent and Accountable Government*** **- January 2002** (PN-ACN-945)
This document identifies the main components of the legal environment that enable media to advance democratic goals. Interactions between the legal and media sectors significantly shape the degree of professional independence enjoyed by newspapers and broadcasters, allowing media to provide more accurate information to citizens and elites alike. Thus, a basic understanding of the most pertinent laws, enforcement and judicial practices, administrative processes, ownership structures, and other aspects of the enabling environment can help in the design of more effective strategies for developing free media. This, in turn, reinforces more broadly the effectiveness of democratic institutions.

## OTHER AGENCY DG PUBLICATIONS

***Constituencies for Reform: Strategic Approaches for Donor-Supported Civic Advocacy Programs*** **-**
**March 1996** (PN-ABS-544)
This CDIE-sponsored study analyzes the role of civil society in promoting democratic transitions. It includes information and analysis from civil society assessments conducted in Bangladesh, Chile, El Salvador, Kenya and Thailand. It also evaluates strategies for strengthening civil society and provides guidance in regards to sequencing interventions.

***Weighing in on the Scales of Justice: Strategic Approaches for Donor-Supported Rule of Law Programs*** **-**
**April 1994** (PN-ABG-033)
The document draws on assessments of donor-supported rule of law programs in Argentina, Colombia, Honduras, the Philippines, Sri Lanka, and Uruguay. It also presents criteria for gaging whether a country's environment is conducive to rule of law reform and a framework for rule of law strategy design.

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