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## RULE OF LAW TERRAIN ANALYSIS

### A LITERATURE REVIEW



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## A LITERATURE REVIEW

**Cover photo:** A local artist illustrates the work of the April 2018 conference “Effective Delivery of Justice as a Means to Increase Public Trust and Confidence in the Judiciary” organized by the USAID New Justice Program jointly with High Council of Justice, Council of Judges of Ukraine and State Judicial Administration in Kyiv, Ukraine. The conference explored key elements that constitute public perception of the judiciary and developed recommendations for implementing judicial reforms, improving judicial conduct, and advancing the use of modern communications strategies and tools in promoting greater public trust and confidence in the judiciary. (Credit: Ukraine New Justice Program/Chemonics)

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# ACRONYMS

ACE	Anti-Corruption Evidence Program
ANTICORRP	Anticorruption Policies Revisited: Global Trends and European Responses to the Challenge of Corruption
BRICS	Brazil, Russia, India, China, and South Africa
CLA	collaboration, learning, and adapting
CSO	civil society organization
DANIDA	Danish International Development Agency
DFAT	Department of Foreign Affairs and Trade (Australia)
DFID	Department for International Development (United Kingdom)
EU	European Union
HCD	human-centered design
OECD	Organization for Economic Co-operation and Development
POP	Problem Oriented Policing
ROL	rule of law
SDG	Sustainable Development Goal
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNODC	United Nations Office on Drugs and Crime
USAID	United States Agency for International Development

# EXECUTIVE SUMMARY

The justice gap is widening; trust is declining, corruption is widespread; justice reforms are incomplete; and many feel that justice systems are broken. Despite significant investments to consolidate rule of law and strengthen justice institutions, a new rule of law vision is possible to address these complex, deeply-rooted development constraints. This vision presupposes embracing a new paradigm that defines justice as a “service” designed and delivered with people – i.e., justice users – in mind. Taking this new people-centered approach to justice, innovative rule of law programming revisits old assumptions that emphasized top-down, institution-focused, lawyer-centric solutions, prioritizing instead legal and non-legal strategies built from the bottom-up, delivered through collaboration between justice operators, paralegals, and community actors. While this directly impacts the rule of law environment – measured in terms of greater legitimacy of the system, increased public trust, and solid integrity networks to combat pervasive corruption – this new vision brings higher cross-sectoral development outcomes, to advance Sustainable Development Goal 16.3 and the broader 2030 Agenda for Sustainable Development.

**Key findings.** This terrain analysis, based upon a review of relevant literature, introduces key findings about rule of law best practices, innovations, and lessons learned from scholars, practitioners, and academics, making the case for a new rule of law vision that takes a people-centered lens through a reconciliation of new theories and empirical evidence. Effective lines of effort include:

- **Rule of law and legitimacy.** Legitimacy-based approaches, grounded in procedural justice principles, offer new avenues to reconcile law enforcement, crime and violence prevention, and access to justice, to achieve greater legitimacy of security and justice systems, and public trust. This suggests reframing rule of law through a people-centered, problem-solving lens to improve people’s experience and perceptions of justice.
- **Rule of law and service delivery.** By rethinking justice as a service, it is possible to adopt new justice solutions defined with users in mind and implemented systemically by engaging legal and non-legal actors, through formal and informal justice systems. Service design thinking, employing human-centered design tactics, and leveraging behavioral science can help deliver a continuum of user-friendly, inclusive, and accessible services that match people’s justice problems, needs, values, aspirations, and improve their experience with justice.
- **Rule of law and anti-corruption.** New rule of law activities that integrate anti-corruption strategies and activities that take a politically-aware systems lens to define and guide new integrity networks engaging individuals, civil society, the private sector, and governments condition a new culture of integrity that enhance rule of law outcomes. Effective rule of law and anti-corruption solutions are grounded in evidence and data, incorporating behavioral insights and risk-based approaches to “harness the human factor.”
- **Rule of law and other cross-sectoral development outcomes.** The 2030 Agenda for Sustainable Development provides a new framework to build cross-sectoral

bridges that scale up development successes at the expense of traditional siloed approaches. Rule of law is no longer merely an end goal in and of itself; it catalyzes social and economic inclusion and can contribute to environmental conservation and green growth.

**Conditions, constraints, assumptions.** The literature review notes empirical advances that highlight conditions, constraints, and assumptions to factor in when attempting to scale up “people-centered justice.” First, politically-aware solutions help avoid isomorphic mimicry – or “one size fits all solutions” – and can point to correct levers of change, accounting for contextual differences. Secondly, as a young field of study, there is an opportunity to expand the knowledge base on rule of law, embracing USAID’s Collaboration, Learning, and Adapting (CLA) framework, to close knowledge gaps, facilitate knowledge-transfer, and empower local actors throughout.

**Programming implications.** The literature review sheds light on learning from programmatic failures and interventions with limited impact. For example, top-down, institution-centric programming enables important justice reforms but does not necessarily help close the justice gap. This literature review emphasizes the following key innovations to help counterparts embrace people-centered justice:

- **Employ user-centered design and implementation tactics.**<sup>1</sup> User-centered design tactics can help get people-centered justice right, taking advantage of tight feedback loops for participatory design, testing, and refinement of service solutions that consider behaviors, environments, and psychology of the intended beneficiaries. This can bolster e-justice and help justice become more user-friendly, legitimate, and fair.
- **Solve justice problems.** Through problem-solving courts, problem-oriented policing, and focused deterrence, security and justice institutions can target human and financial resources more effectively.<sup>2</sup> This is feasible provided that legal, institutional, financial, and skills barriers are overcome.<sup>3</sup>
- **“Harness the human factor” and address behaviors.** Consistent with procedural justice, designing solutions informed by behavioral insights is helping improve justice outcomes, setting up an innovative pathway to operationalize people-centered and problem-solving justice. This vision can help improve both victims’ and offenders’ experience of justice, while breaking deeply entrenched discriminatory, inquisitorial, and corrupt behaviors.
- **Embrace the “political” nature of rule of law.** Politically smart and adaptive approaches – particularly problem-driven iterative and adaptive approaches – are best suited to embrace and address the highly political nature of rule of law.
- **Engage new actors.** Multi-stakeholder collaboration, engaging lawyers and non-legal actors, and other human services can improve access to justice through a continuum of services. Solutions bridging lawyers, paralegals, mediators, and facilitators are

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<sup>1</sup> HiiL, *Understanding Justice Needs: The Elephant in the Courtroom*, The Hague (2018): <https://www.hiil.org/wp-content/uploads/2018/11/HiiL-Understanding-Justice-Needs-The-Elephant-in-the-Courtroom.pdf>.

<sup>2</sup> Wolf, Roberto V., *Principles of Problem-Solving Justice*, Center for Court Innovation (2007).

<sup>3</sup> HiiL, *Understanding Justice Needs*.

highly promising to achieve a fair solution and ground justice locally. The private sector is slowly emerging as a viable partner to boost innovations at-scale, enable targeted justice service delivery, make justice more affordable, and help diversify funding streams for rule of law programming.



# INTRODUCTION

## LITERATURE REVIEW ORGANIZATION AND STRUCTURE

This literature review introduces key findings about rule of law best practices, innovations, and lessons learned from scholars, practitioners, and academics. It serves as a compilation of primary and secondary writings from rule of law academics and social scientists in an attempt to frame future rule of law programming through a people-centered lens, reconciling new theories and empirical evidence.

Considering the complex and multidimensional nature of “rule of law,” this literature review is thematically structured to discuss new findings across a spectrum of relevant technical areas, shedding light on the nexus between rule of law, broader governance, and cross-sectoral development priorities. It covers such themes as: 1) rule of law, legitimacy, and public trust; 2) rule of law and government service delivery; 3) rule of law and anti-corruption; and 4) rule of law and cross-sectoral development outcomes (including economic growth, health, education, and the environment).

## DEFINITIONS AND KEY CLARIFICATIONS AND FRAMING

Rule of law can be understood as a “durable system of laws, institutions, norms, and community commitment that delivers accountability, just laws, open government, and accessible justice” (see box).<sup>4</sup> At the heart of this system lie people, whose problems, needs, and experiences are increasingly recognized as the driving force of justice and rule of law transformations. In fact, it is widely acknowledged that people-centricity – putting people at the heart of the development and justice agenda – helps frame legal and justice interventions and develop responsive, integrated approaches and services that meet the needs of all, including traditionally marginalized or disadvantaged populations.

### Four Principles of “rule of law”

**Accountability.** Governments and private actors are accountable under the law.

**Just laws.** Laws are clear, publicized, and stable; are applied evenly and protect fundamental rights, including the security of persons and contract, property, and human rights.

**Open government.** Process by which laws are enacted, administered, and enforced; are accessible, fair, and efficient.

**Accessible justice.** Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are accessible, have adequate resources, and reflect the makeup of the communities they serve.

Source: World Justice Project

## BRIEF HISTORY OF ROL LITERATURE SINCE 2009

In the 1990s and early 2000s, rule of law programming mainly favored top-down, supply-driven approaches that prioritized, for example, justice reforms driven from within the formal justice system. Strategies were based upon assumptions rather than on people’s

<sup>4</sup> See also the UN definition of the rule of law at <https://www.un.org/ruleoflaw/what-is-the-rule-of-law/>.

views and experiences. In fact, most traditional rule of law programming has mainly enabled court reform and institution-building, leaving the needs and problems of the poor and disadvantaged groups largely unaddressed.<sup>5</sup> An initial shift towards people-centricity occurred in the late 1990s; two decades later, due to innovations and growing empirical evidence, rule of law is now consistently understood as a system centered around people.<sup>6</sup>

A people-centric approach to rule of law improves systemic accountability, bolstering legitimacy of and trust in government, empowering citizens whose voices are heard and whose actions guide policies, through purposeful dialogue and collaboration. Evidence shows that strategies centered around procedural justice enable justice fairness and improve justice users' experiences.<sup>7</sup> Section 2 "Rule of Law and Legitimacy/Public Trust" presents some of these most salient findings. Systemic accountability and the imperative of legitimacy is largely connected with governments' capacity to deliver services responsive to the problems and needs of users, tailoring solutions to their experience accessing such services. Section 3 "Rule of Law and Government Service Delivery" sheds light on new evidence-informed trends that integrate human-centered design tactics to optimize service delivery (including accessible justice) and increase users' satisfaction.

Drawing from the four universal principles that guide rule of law – which are mutually-reinforcing and closely interconnected – open government agendas have grown to combat pervasive corruption, bolster integrity and accountability, facilitate people's access to information and decision-making. The future of rule of law rests in country's capacity to build vertical and horizontal integrity systems aligned with peoples' demands. Section 4, "Rule of Law and Combating Corruption," presents the latest state of the art, drawing important conclusions to advance integrity systems and consolidate open government and accountability.

At the center of rule of law programming lies "justice." While the justice gap is widening, rule of law is both an end goal and catalyst of social and economic change, as discussed in Section 5, "Rule of Law and Cross-Sector Development Outcomes." Making laws more just, accessible, equitable, applicable, understood by all, and accessible to all remains an imperative.<sup>8</sup> The future of justice (as detailed in the conclusion) rests on countries' and donors' capacity to apply a new mindset through laws and justice services that achieve individual, community, and societal transformations centered on timely, systemic, problem-solving approaches designed with people in mind and delivered through formal and informal justice settings. This, in turn, will yield greater legitimacy and public trust, reduce the likelihood of corruption, and improve inclusion of traditionally marginalized groups. The

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<sup>5</sup> Botero, Juan Carlos, et al., "Innovations in Rule of Law: Vision for Policy Makers," HiIL and the World Justice Project, 2012, <https://www.hiil.org/wp-content/uploads/2018/09/Innovations-in-rule-of-law-concise-version.pdf>.

<sup>6</sup> OECD, *Equal Access to Justice for Inclusive Growth: Putting People at the Centre*, (OECD Publishing: Paris, 2019), <https://doi.org/10.1787/597f5b7f-en>.

<sup>7</sup> Lagratta, Emily Gold & Phil Bowen, "To Be Fair: Procedural Fairness in Courts," Criminal Justice Alliance, 2014, <https://justiceinnovation.org/sites/default/files/media/documents/2019-03/to-be-fair-procedural-fairness-in-courts.pdf>.

<sup>8</sup> Task Force on Justice, *Justice for All – Final Report*. (New York: Center on International Cooperation, 2019), [https://bf889554-6857-4cfe-8d55-8770007b8841.filesusr.com/ugd/90b3d6\\_746fc8e4f9404abeb994928d3fe85c9e.pdf](https://bf889554-6857-4cfe-8d55-8770007b8841.filesusr.com/ugd/90b3d6_746fc8e4f9404abeb994928d3fe85c9e.pdf).

adoption of the 2030 Agenda for Sustainable Development is a unique opportunity to reframe rule of law programming to address the strong, complex, and multidimensional nexus between rule of law and the sustainable development agenda, recognizing that rule of law can no longer be viewed as an end in and of itself only, but as a channel to unleash broader, cross-sectoral development outcomes.<sup>9</sup>

## CURRENT TRENDS

The literature and empirical evidence converge towards a series of new trends:

**People-centered justice that solves justice problems and delivers fair and inclusive justice solutions.** Practitioners and scholars agree: to bridge the justice gap, justice solutions designed with justice users in mind and delivered through both formal and informal justice systems – not only courts – boost inclusive access to justice. People-centered justice aims to solve justice problems, avoiding “one size fits all solutions” and isomorphic mimicry. It relies on new partnerships between justice operators, paralegals, and community actors helping solve justice problems at the root while empowering the disenfranchised along the way.

**Bottom-up approaches and legal empowerment.** Existing literature and data suggest that building top-down institutions alone is insufficient. Successful bottom-up approaches, which have also integrated informal justice mechanisms, are equally critical to consolidate the rule of law.<sup>10</sup> Practitioners emphasize legal empowerment of the poor as an effective pathway to both improve rule of law standards and support social and economic inclusiveness. To bridge the justice gap, practitioners recommend building bridges between formal justice operators and paralegals and communities to increase equitability and accessibility of justice.

**Politically smart and adaptive rule of law programming.** Undeniably, rule of law is highly political in nature, both as a process and an end in and of itself. In this regard, it is important to rethink rule of law programming adopting politically smart and adaptive approaches that feed off experimentation and political economy analyses.<sup>11</sup> This presupposes an in-depth understanding of underlying problems hindering the rule of law to avoid “one size fits all” solutions. Problem-driven iterative and adaptive approaches can expand the knowledge base on what works to consolidate rule of law in diverse contexts, acknowledging that the “rule of law” as a field of study is fairly new. Furthermore, this requires diving deeper into the political processes that shape the functional aspects of rule of law, paying special attention to the “political economy of legal development.”<sup>12</sup>

**Use of technology, IT, and social media.** The boom of IT technology and social media has yielded incredible innovations amidst growing enthusiasm for e-government strategies, including e-justice. While not a “silver bullet,” people-centric design of e-government solutions can help overcome initial barriers to technology adoption in the rule of law space

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<sup>9</sup> OECD (2019), *Equal Access to Justice for Inclusive Growth*.

<sup>10</sup> Botero, et al., “Innovations in Rule of Law.”

<sup>11</sup> Domingo, Pilar, “Rule of Law, Politics, and Development: The Politics of Rule of Law Reform,” Overseas Development Institute, 2016, <https://www.odi.org/sites/odi.org.uk/files/resource-documents/10420.pdf>.

<sup>12</sup> Ibid.

and speed up service delivery, bolster transparency and integrity, and legal empowerment.<sup>13</sup> Similarly, IT solutions and social media have catalyzed citizen engagement and provide solid ground to further the application of the four universal principles of the rule of law.<sup>14</sup>

**Private sector engagement.** Rule of law is not only the matter of governments. Aligned with USAID’s Private Sector Engagement Policy, practitioners recognize the need to diversify funding sources to invest in people-centered approaches, leveraging new resources from philanthropy, impact investing, and the private sector to reduce access-to-services costs, bring innovations to scale, and/or invest in social, labor, or environmental rights to reduce reputational risks.<sup>15</sup> Additionally, the private sector can further the rule of law by bolstering systemic integrity – including business integrity, mobilizing to help improve the legal environment and security conditions that, in turn, will improve the business climate of countries where they operate.<sup>16</sup> Lastly, legal empowerment can offer new avenues to boost economic growth, generating new opportunities for small and medium enterprises to shine through a more robust rule of law framework, proving the interconnectedness of rule of law with the larger sustainable development agenda.

## SECTION 2

# RULE OF LAW AND LEGITIMACY

## SUMMARY

An effective and sustainable rule of law depends on the legitimacy of legal authorities understood as the public belief that there is a responsibility and obligation to accept and defer voluntarily to the decisions made by authorities.<sup>17</sup> A robust body of evidence suggests that legal authorities seeking the cooperation of the public need to distinguish the lawful use of authority from their procedurally fair behavior in the eye of the public. For this distinction to take place, it is crucial that authorities provide opportunities for the public to be listened to; that their decisions are based on facts and not on personal opinions; that the public perceives a respectful treatment from authorities; and that the perception that authorities are sincere and caring about the issue at hand. The way members of the public perceive legal authorities and evaluate their practices shapes their views and behaviors in regard to being compliant with the law. Because of the subjectivity of individual citizens’ perceptions, this evidence is, in many ways, counterintuitive to the established dynamics and

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<sup>13</sup> The Law Society, “Technology, Access to Justice, and the Rule of Law: Is Technology the Key to Unlocking Access to Justice Innovation?”, last modified September 16, 2019, <https://www.lawsociety.org.uk/topics/research/technology-access-to-justice-and-the-rule-of-law-report>.

<sup>14</sup> Getachew, A. & T. Beshah (2019), “The Role of Social Media in Citizen’s Political Participation” in: *ICT Unbounded, Social Impact of Bright ICT Adoption*, eds. Y. Dwivedi, E. Ayaburi, R. Boateng, J. Effah. (TDIT 2019).

<sup>15</sup> [https://www.usaid.gov/sites/default/files/documents/1865/USAIDPSEPolicy\\_ExecutiveSummary.pdf](https://www.usaid.gov/sites/default/files/documents/1865/USAIDPSEPolicy_ExecutiveSummary.pdf); Task Force on Justice, *Justice for All*.

<sup>16</sup> OECD, “Anti-corruption and Integrity Hub,” <https://www.oecd.org/corruption-integrity/explore/topics/business-integrity.html>.

<sup>17</sup> Tyler, T.R., “Enhancing police legitimacy,” *The Annals of the American Academy of Political and Social Science* no 593, (2004): 84–99.

roles that courts, police, and other legal authorities assume for themselves. These authorities need to expand the capacity to integrate evidence coming from behavioral science into their decision-making processes.

## WHERE ROL AND LEGITIMACY HAS BEEN

The relationship between rule of law and legitimacy is intrinsic and mutually reinforcing. The simultaneous presence of these variables is considered a condition for good governance.<sup>18</sup> This section explores how the relationship between them takes place and why it is important that policies and actions focused on strengthening the rule of law are informed by legitimacy-based approaches in order to enable sustainability and increase effectiveness.

Legal authorities understand that the key to their effectiveness lies in their ability to make the public behave in accordance with the laws and the decisions that emanate from it.<sup>19</sup> Theoretical and practical models of rule of law have traditionally been dominated by deterrence-based approaches that anchor the relationship between citizens and the law in the balanced dosage of incentives and penalties to comply. The most fundamental assumption underlying deterrence-based approaches is that the public, collectively and individually, will rationally behave in their self-interest. In this sense, the severity of punishment and the certainty that the undesired behavior would be penalized are the key variables that shape social behavior.<sup>20</sup> Deterrence posits that if the consequences for incurring an unlawful behavior, and the chances of being punished for it are too high, the public will then recognize this cost and avoid the unlawful behavior. The dominance of this thinking and doing rests in economic theory supporting the idea of rational choice and public choice for individuals and social groups, respectively.

The case for deterrence is a strong one. At the end of the day, the criminal justice system, ineffective as it may seem, has an important deterrent effect.<sup>21</sup> A rigorous body of evidence that includes controlled experiments suggests the impact of deterrence in a number of behaviors ranging from illegal possession of firearms, robberies in public transport, to drunk driving.<sup>22</sup> The fact that most citizens do not commit serious crimes is often seen as an effect of deterrence. Nevertheless, even paradigmatic cases where lawful deterrence approaches have yielded desired outcomes fail to galvanize legitimacy and trust in courts, police, and other actors of the justice system. New York City is a good example where deterrence-based tactics (informed by the “broken windows” theory) are associated with unprecedented gains in crime reduction.<sup>23</sup> Despite the fact that these deterrence-based tactics were lawful at the time of their implementation, and that these efforts included

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<sup>18</sup> Franck, Thomas M., “Democracy, Legitimacy and the Rule of Law: Linkages,” NYU Law School, Public Law and Legal Theory Working Paper No. 2, <https://ssrn.com/abstract=201054> or <http://dx.doi.org/10.2139/ssrn.201054>.

<sup>19</sup> Tyler, T. R., *Why people obey the Law*, (Princeton: Princeton University Press, 2006).

<sup>20</sup> Ibid.

<sup>21</sup> Cook, Philip, “Research in Criminal Deterrence: Laying the Ground for the Second Decade,” *Crime and Justice* no. 2 (1980): 213.

<sup>22</sup> Kennedy, David M., *Deterrence and Crime Prevention: Reconsidering the prospect of sanction*, (London and New York: Routledge, 2009).

<sup>23</sup> Kelling, George and James Wilson, “Broken Windows: policing and neighborhood safety,” *The Atlantic*, 1982, <https://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/>.

community policing and data driven approaches, it is well documented that the failure to be perceived as fair undermined the legitimacy of, and public trust in legal authorities.<sup>24</sup> The consequence of failing to connect effectiveness with fair procedure is mistrust and increased fragility. Can crime reduction, adherence to the rule of law, and stronger legitimacy happen simultaneously?

## WHERE ROL AND LEGITIMACY IS HEADED

A growing body of evidence suggests that reducing impunity and crime can coexist with legitimacy, and that this combination is a necessary condition for long-term sustainable effectiveness. New developments in behavioral science are making their way across different policy areas and intersecting with the work of multidisciplinary researchers in the criminal justice and rule of law space.<sup>25</sup>

These breakthroughs challenge the dominance of rational choice by adding a perspective based on the subjective processes through which the public distinguishes authorities and their actions as legitimate. This work also suggests the importance of addressing factors beyond those written in law that have an impact in the way the public behaves and relates to authority. Legitimacy-based approaches assume that individuals “are more likely to comply with the law when they believe that the law and its agents are legitimate and act in ways that seem inherently ‘fair’ and ‘just.’”<sup>26</sup>

**Procedural Justice.** The evidence around legitimacy-based approaches in courts and particularly police (as the authority that interacts the most with the public) now abound.<sup>27</sup> This research revolves around the concept of procedural justice which suggests that “how individuals regard the justice system is tied more to the perceived fairness of the process and how they were treated rather than to the perceived fairness of the outcome.”<sup>28</sup> Procedural justice speaks

### Principles of Procedural Justice

**Voice.** People want an opportunity to tell their side of the story in their own voice.

**Neutrality.** People need to perceive legal authorities and the justice system as neutral and principled. They need to perceive that decisions are made based on facts and rules instead of personal opinions and that these rules are applied consistently across people and over cases.

**Respect.** Citizens’ concerns are being taken seriously and their right acknowledged resulting in a perception of being respected.

**Trust.** Studies consistently show that the central attribute influencing public evaluations of authorities is an assessment of the character of the decision maker (if the authority is sincere and caring about the issue at hand), and the perception that they are trying to do what is right for people in this situation and not only in their own interest.

*Source:* Center for Court Innovation

<sup>24</sup> Tyler, *Why people obey the law*.

<sup>25</sup> Daniel Khaneman, *Thinking Fast and Slow*, (Farrar, Straus, and Giroux, 2011).

<sup>26</sup> Andrew Papachristos, et al., “Desistance and Legitimacy: The Impact of Offender Notification Meetings on Recidivism among High Risk Offenders,” *Justice Quarterly* no. 33 (2016): 1237–1264.

<sup>27</sup> Mazerolle, Lorraine et al., “Procedural justice and police legitimacy: a systematic review of the research evidence,” *Journal of Experimental Criminology* no. 9 (2013): 245.

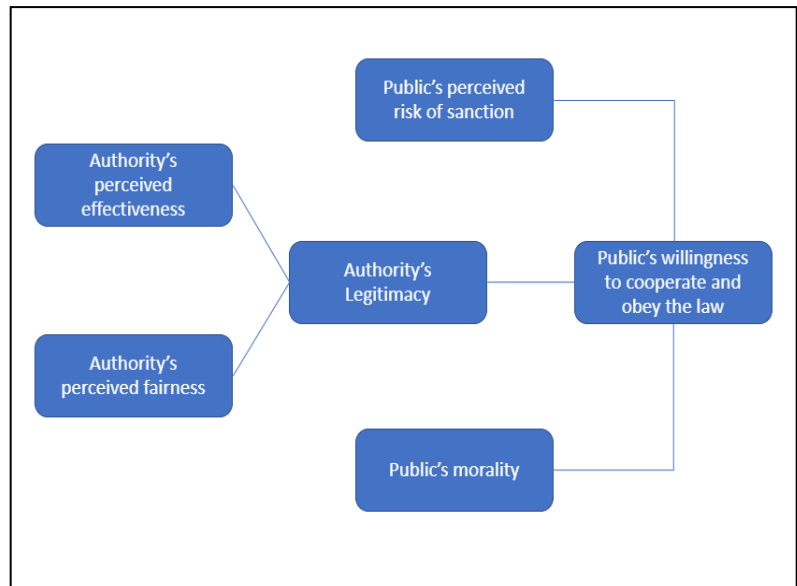
<sup>28</sup> GOLD, EMILY, “THE CASE FOR PROCEDURAL JUSTICE: FAIRNESS AS A CRIME PREVENTION TOOL,” *THE E-NEWSLETTER OF THE COPS OFFICE* 6, NO. 9 (SEPTEMBER 2013),

to the application of four principles in the experience of the public while interacting with legal authorities. Each of these principles has clear paths of implementation that bridge the concept with actionable solutions (see box).<sup>29</sup>

Even though the focus on procedural justice might seem counterintuitive, the amount of evidence that shows that the applications of these principles in the daily interactions that the courts or police have with citizens lead to stronger legitimacy is rigorous and robust.<sup>30</sup> People typically care more about how authorities treat them than about the outcome of the interaction.

EXHIBIT 1 – THE PROCEDURAL JUSTICE MODEL

Literature suggests that Exhibit 1 represents the most relevant summary of findings.<sup>31</sup> A theoretical virtual cycle is a process centered in a process of legitimacy building through the perceived degree of effectiveness (deterrence-based) and the degree of fairness (legitimacy-based) in legal authorities. This legitimacy is then translated into willingness of the public to cooperate with authorities and obey the law in ways that contribute to increased perceived effectiveness and fairness.



A systematic review on legitimacy in policing concludes that “police can achieve positive changes in citizen attitudes to police through adopting procedural justice dialogue as a component part of any type of police intervention. We conclude that the type of police intervention (the vehicle for delivering a procedurally just encounter) is secondary to the procedurally just dialogue that underpins the intervention.”<sup>32</sup>

Legitimacy-based principles have informed a series of innovations both in court systems and police. Under the label of problem-solving justice, these efforts focus on addressing the underlying conditions that fuel crime and institutional distrust with a community lens.

[HTTPS://COPS.USDOJ.GOV/HTML/DISPATCH/09-2013/FAIRNESS AS A CRIME PREVENTION TOOL.ASP#:~:TEXT=PROCEDURAL%20JUSTICE%20\(SOMETIMES%20CALLED%20PROCEDURAL,PERCEIVED%20FAIRNESS%20OF%20THE%20OUTCOME.](https://cops.usdoj.gov/html/dispatch/09-2013/fairness-as-a-crime-prevention-tool.asp#:~:text=PROCEDURAL%20JUSTICE%20(SOMETIMES%20CALLED%20PROCEDURAL,PERCEIVED%20FAIRNESS%20OF%20THE%20OUTCOME.)

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Wheller, Levin, et al., “The Greater Manchester Police procedural justice training experiment: Technical Report,” (2013).

<sup>32</sup> Mazerolle, Lorraine, et al., “Legitimacy in Policing: A Systematic Review,” *Campbell Systematic Reviews* 9 (2013): 147.

## Legitimacy-based Approaches in Practice

### Problem-solving courts

The application of procedural justice to court systems can take place in either traditional court settings, or in the growing number of specialized (drug, community, mental health, family) courts. Evidence shows that problem solving courts “when executed properly, are capable of changing offender’s behavior, improving victim’s safety, reducing crime and enhancing public confidence in justice.”<sup>33</sup>

### Problem Oriented Policing (POP)

Policing has embraced procedural justice principles and promoted a new model that, just like courts, have focused on addressing underlying community dynamics. POP assumes that the police function is broader than merely enforcing the law, and that understanding how police should respond to problems requires more than merely knowing what conduct is unlawful; it requires understanding the varying interests at stake as they relate to how police handle the problems. POP can be characterized as policing that seeks effectiveness built on top of public trust.<sup>34</sup>

### Focused Deterrence

Also dubbed as “pulling levers,” focused deterrence encompasses a number of principles centered on balancing incentives and consequences to deter specific undesired behaviors. It differs from traditional deterrence by establishing the enhancement of legitimacy as one core principle. This way, focused deterrence is able to blend in both the effectiveness of deterrence-based and legitimacy-based approaches. A systematic review shows strong evidence of its impact on crime and violence reduction and suggests the potential for focused deterrence policing to be implemented in ways that are likely to increase legitimacy among offenders.<sup>35</sup>

## CONCLUSIONS: RECONCILIATION OF THEORY AND EMPIRICAL EVIDENCE

The body of evidence supporting legitimacy-based approaches is counterintuitive to the practices and traditions, established dynamics and perceived roles that courts, and police assume for themselves. Legal authorities need to strengthen their effectiveness based on enhanced legitimacy to sustained improvements in the public’s adherence to the rule of law. Doing this requires embracing and integrating behavioral science into their decision-making processes (see Exhibit 2).

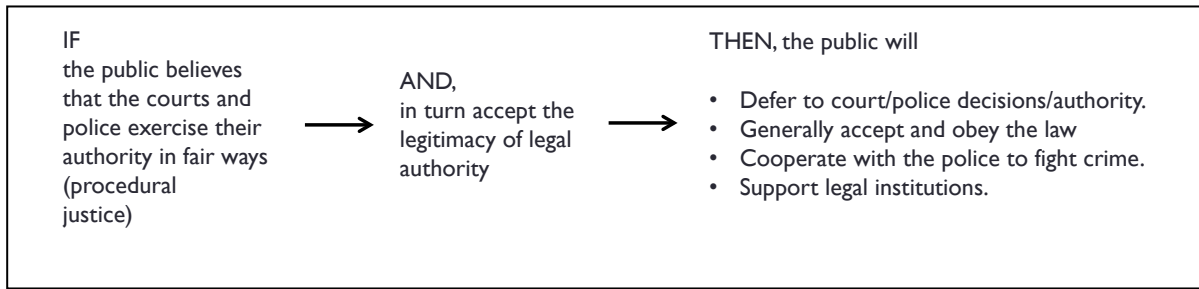
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<sup>33</sup> Berman, Greg, et al., eds., *A Problem-Solving Revolution: Making Change Happen in State Courts* (New York: Center for Court Innovation, 2004).

<sup>34</sup> “Problem Oriented Policing in Depth,” Rand Corporation, <https://www.rand.org/pubs/tools/TL261/better-policing-toolkit/all-strategies/problem-oriented-policing/in-depth.html>.

<sup>35</sup> Braga, Anthony A., et al., “Focused deterrence strategies effects on crime: A systematic review,” *Campbell Systemic Reviews* no. 15 (2019), <https://doi.org/10.1002/cl2.1051>.





Rule of law practitioners need to enhance two aspects of authority’s relationship with the public. **To improve the quality of decision-making**, authorities need to enable legal processes that incorporate moments where the public can share their side of the story, and grant access to the public regarding relevant information about their processes in a way that is intelligible and transparent. Similarly, **to improve the quality of treatment and experience**, authorities need to be trained to adopt a “customer service” perspective that includes providing opportunities to complain, show that the public’s voice has been listened to and acknowledged, and show how authorities are considering the public’s arguments to arrive at a decision and how they are following rules.

Finally, rule of law programming should acknowledge the limits of norms and complement approaches with a deeper understanding of the science behind individual and social behavior.

SECTION 3

# RULE OF LAW AND GOVERNMENT SERVICE DELIVERY

## SUMMARY

In the decades since international development programs began supporting reform of justice systems to improve justice services in host countries, the focus has overwhelmingly been on strengthening laws, policies, processes, and procedures within formal justice institutions – courts, prosecutors, police – and emphasizing efficiency, accountability, and enforcement. These activities have consistently been developed by and for legal professionals with little or no direct input from service users, and with only relatively modest investments in civil society organization (CSO) monitoring, legal aid provision, incorporating customary law,

<sup>36</sup> Tyler, T.R. Presentation at Conference of State Court Administrators (COSCA), December 2011, San Antonio, Texas.

etc. Studies show that these efforts have had limited impact on improving the rule of law; however, Sustainable Development Goal (SDG) 16<sup>37</sup> has provided a platform for international donors and justice partners to rethink the rule of law -- to see justice as both a right and a public service that needs to be focused on individual and community well-being, and designed not by and for legal professionals, but for the users who have to navigate the system. Service design thinking has great potential to improve justice systems to ensure they deliver justice services aligned to meet people's needs, values, and aspirations, and engage users in the iterative design, testing and implementation of solutions to complex justice problems.

## WHERE ROL AND GOVERNMENT SERVICE DELIVERY HAS BEEN

Since USAID rule of law programming began in the mid-to-late 1980s, it focused on reforming justice 'systems' worldwide, specifically improving court, prosecutorial, police, and legal services in terms of their efficiency, accountability, respect for human rights, and fair application of the law.<sup>38</sup> The 2008 USAID Rule of Law Strategic Framework Assessment Guide specifically introduced justice as a service as a third priority element in assessing justice systems, and, as other donors such as DFID have also done, views rule of law as the underpinning of economic growth, development and prosperity.<sup>39</sup> The 2000s also saw a broadening of focus to support the 'demand' part of the justice system, including CSO monitoring of justice service, and provision of legal aid services, which DANIDA among others promoted in its 'how to note' on justice reform.<sup>40</sup>

**Failures of 'first generation' ROL programming.** In the late 2000s, academic criticism of donor ROL projects came to the fore, categorizing efforts as being state-centered and top-down, heavy on institutions and processes where lawyers play a central role, and largely determined by legal professions.<sup>41</sup> Reviewing these 'first generation' reform programs, Rachel Kleinfeld concluded they were too circumscribed, as they failed to view rule of law within the broader relationships between the state and society, and thus, had limited

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<sup>37</sup> United Nations, Sustainable Development Goal 16.3 "Promote the rule of law at the national and international levels and ensure equal access to justice for all,"

<https://www.un.org/sustainabledevelopment/peace-justice/>

<sup>38</sup> United States Department of State, *INL Guide to Justice Sector Assistance* (2013): 2, <https://2009-2017.state.gov/documents/organization/222048.pdf>; United States Agency for International Development, *Guide to Rule of Law Country Analysis: The Rule of Law Strategic Framework: A guide for USAID Democracy and Governance Officers* (2008): 8, [https://pdf.usaid.gov/pdf\\_docs/Pnadm700.pdf](https://pdf.usaid.gov/pdf_docs/Pnadm700.pdf).

<sup>39</sup> Ibid, 24; United Kingdom Department for International Development, *Rule of Law Policy Approach* (2014), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/306396/policy-approach-rule-of-law.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/306396/policy-approach-rule-of-law.pdf).

<sup>40</sup> Ministry of Foreign Affairs of Denmark, "Evaluation of Rule of Law and Better Access to Justice," *Evaluation of Danish Support to Promotion and Protection of Human Rights 2006-2016* (2018), <http://www.netpublikationer.dk/um/evaluation-danish-support-promotion-and-protection-human-rights-2006-2016/html/kap06.html>; and Ministry of Foreign Affairs of Denmark, "How to Note on Justice Sector Reform" (2010), <http://um.dk/en/~media/UM/English-site/Documents/Danida/Activitie/Strategic/Human%20rights%20and%20democracy/Human%20rights/Justice%20Sector%20Reform%20final%20print.ashx>.

<sup>41</sup> Golub, Stephen, "A House without a Foundation," *Promoting the Rule of Law Abroad: In Search of Knowledge*, Thomas Carothers, ed., (Washington, D.C., Carnegie Endowment for International Peace, 2006): 107.

impact.<sup>42</sup> Therefore, power and culture are the roots of a rule of law state – it is a critical part of the social contract.

**From system to society and service focus.** In the 2010s, there was a notable shift in policies and approaches away from legal estrangement and a detachment of people from the law and its enforcers, towards legal empowerment, which take a more bottom-up, broader view of law –including processes, agreements and traditional justice systems that constitute law for the disadvantaged – and that serves as the connective social tissue upon which government service delivery is built.<sup>43</sup> DFID, DFAT, the EU and others began to couch their rule of law approaches in terms of rule of law being the backbone of lasting peace, security, and state legitimacy, emphasizing equity in service delivery (distributive justice), the rights of the poor to access justice, and people’s trust of the justice system.<sup>44</sup> This echoes an older yet frequently cited piece, “People, service and trust: is there a public sector service value chain?” by Ralph Heintzman and Brian Marson, which states that “overall trust in government is a product of

#### Measuring the Justice Gap (2019)

- 1.5 billion people cannot obtain justice for civil, administrative, or criminal justice problems
- 4.5 billion are excluded from the opportunities the law provides
- 253 million live in extreme conditions of injustice.

Source: World Justice Project

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<sup>42</sup> Kleinfeld, Rachel, “Advancing the Rule of Law: Next Generation Reform,” *Promoting the Rule of Law Abroad: In Search of Knowledge*, Thomas Carothers, ed., (Washington, D.C., Carnegie Endowment for International Peace, 2006); United States General Accounting Office, “U.S. Democracy Programs in Six Latin American Countries Have Yielded Modest Results,” *Foreign Assistance*, <https://www.gao.gov/assets/160/157413.pdf>; and United States Agency for International Development, *Africa Regional Rule of Law Status Review* (2009), [https://pdf.usaid.gov/pdf\\_docs/PNADO804.pdf](https://pdf.usaid.gov/pdf_docs/PNADO804.pdf).

<sup>43</sup> Bell, Monica, C., “Police Reform and the Dismantling of Legal Estrangement,” *YALE LAW JOURNAL*, 126, (2017), <https://digitalcommons.law.yale.edu/ylij/vol126/iss7/2>, [https://digitalcommons.law.yale.edu/fss\\_papers/5135/](https://digitalcommons.law.yale.edu/fss_papers/5135/); International Development Law Organization, “What is Legal Empowerment: An Introduction,” *Legal Empowerment Working Papers*, ed. Golub, Stephen (2010), [https://www.files.ethz.ch/isn/138100/Golub\\_Introduction.pdf](https://www.files.ethz.ch/isn/138100/Golub_Introduction.pdf).

<sup>44</sup> Australia Government Department of Foreign Affairs and Trade, “Promoting Good Governance and Stronger Democratic Institutions Everywhere,” <https://www.dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/pillars-and-priorities/Pages/promoting-good-governance-and-stronger-democratic-institutions-everywhere>; Directorate – General for International Cooperation and Development (European Commission), “Inspiring Change: EU support to rule of law, justice, and security sector reform,” 2013, <https://op.europa.eu/en/publication-detail/-/publication/3e0bfef3-a5bb-4a5c-839e-e722cb9b0db2/language-en/format-PDF>; Tyler, T.R., “Procedural Justice, Legitimacy, and the Rule of Law,” *Crime and Justice, a Review of Research*, ed. Michael Tonry (Chicago and London: University of Chicago Press, 2003): 306, <https://www.ncjrs.gov/pdffiles1/Digitization/202743-202750NCJRS.pdf>; McLoughlin, Claire, “When Does Service Delivery Improve the Legitimacy of a Fragile or Conflict-Affected State?” *Governance* 28 no. 3 (2015), <https://onlinelibrary.wiley.com/doi/full/10.1111/gove.12091>.

satisfaction with perceived performance of both the political realm and of service delivery, with service delivery apparently having the larger effect on trust in government.”<sup>45</sup>

## WHERE ROL AND SERVICE DELIVERY IS HEADED

**SDG 16: Global commitment to inclusive, accessible justice services.** The official launching of the SDGs, and in particular SDG 16.3, gave rise to the justice for all movement, with a singular focus on providing people with the means to access justice, using data to understand the service delivery gap (see box above) and break down barriers that people face to accessing justice services.<sup>46</sup> Various donors and international partners have signed on to a shared strategy on how to address these challenges (see box).<sup>47</sup>

**People at the center of justice service continuum.** In 2019, the OECD developed a framework to rethink traditional approaches and focus on justice services that are personalized and responsive to the individual and the situation.<sup>48</sup> Justice is both a right and a public service, focused on enhanced individual and community well-being. People-centered justice services encompass a spectrum of processes and procedures in addition to formal judicial and non-judicial proceedings, including: alternative mechanisms for dispute resolution such as mediation, online dispute resolution, paralegals, public legal education providers, community advocates, collaborative service provision from legally-trained and other professionals, and pre- and post-resolution support.<sup>49</sup> Such community and user-centered approaches have long been the focus of work for the Center for Court Innovation in the US, for example, as well as more recently for

### Pathfinders for Peaceful, Just and Inclusive Societies

#### Spearheading Action in 2020

Pathfinders is a multi-stakeholder partnership of UN member states, international organizations, civil society, and private sector to accelerate delivery of the SDG targets for peace, justice and inclusion. Their shared strategy is to broaden an alliance of justice partners; increase funding to support people-centered justice; empower people to take advantage of their rights and a focus on specific priority areas such as crime and violence; money and debt; housing and land; access to public services; family disputes; as well as work and business.

Source:

<https://cic.nyu.edu/programs/sdg16plus>

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<sup>45</sup> Heintzman, Ralph and Brian Marson, “People, service and trust: is there a public sector service value chain?” *International Review of Administrative Sciences* 71 no. 4 (2005): 557, <https://journals.sagepub.com/doi/pdf/10.1177/0020852305059599>.

<sup>46</sup> “Declaration on Equal Access to Justice for All by 2030,” (2019), [https://docs.wixstatic.com/ugd/6c192f\\_675b9f2c57bd452696e4b315b5312add.pdf](https://docs.wixstatic.com/ugd/6c192f_675b9f2c57bd452696e4b315b5312add.pdf); Task Force on Justice, *Justice for All*.

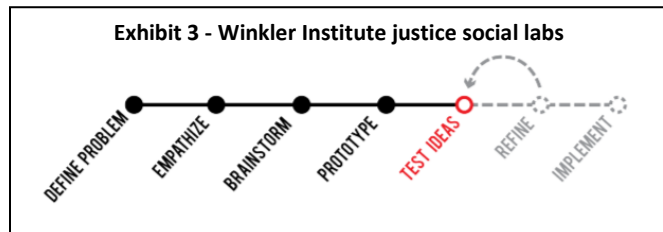
<sup>47</sup> Task Force on Justice, “A Decade of Action for Justice for All: Shared strategy for 2020-2023,” <https://www.justice.sdg16.plus/strategy>; Torres, Liv, “Pathfinders spearheading action in 2020,” last modified February 19, 2020, <https://medium.com/sdg16plus/pathfinders-demanding-action-in-2020-aa21f6ce8152>.

<sup>48</sup> OECD (2019), *Equal Access to Justice for Inclusive Growth*.

<sup>49</sup> *Ibid*, page 104.

the National Center for State Courts and its Justice for All Initiative.<sup>50</sup> The key is a participatory design process that puts users at the center of defining complex problems and developing, testing, refining, and implementing solutions for them to better access and effectively use justice services.

**Service design in the justice system.** There is a growing international movement to use design thinking to fundamentally change the practice of law.<sup>51</sup> Margaret Hagan at Stanford University views Human Centered Design (HCD) as a promising way to flip our view of the justice system from that of legal professionals to that of laypeople who have to navigate the systems.<sup>52</sup> Based on work in California state courts' Self-Help Centers, she looks at the user's journey through the justice system vis-à-vis their needs, values, and aspirations. The Stanford Legal Design Lab that Hagan leads is also exploring the use of participatory design tools – such as visioning design workshops, co-design jams, and the living lab model – to engage service users, providers, and design facilitators to identify key problems of the current system, map out their experiences and ideas for improvement, and draft new concepts for possible implementation.<sup>53</sup> The Canadian Forum and Civil Justice and the Winkler Institute are also using HCD to ensure that those who are experiencing the problem with justice services are the experts, and not those in the legal profession. They are using social labs to develop pilot projects that improve family justice and mental health services (see Exhibit 3).<sup>54</sup>



**Evidence base for User-Centered Services.** While data and evidence of the effectiveness of a design thinking approach is still limited, the OECD report notes several ways to potentially measure the effectiveness of legal services and access to justice, in addition to more traditional approaches such as program evaluations of specific services, justice pathway evaluation, cost-benefit analysis, and others. These include the most significant change technique, survey research, case design approach, and participatory action research among others.<sup>55</sup> The OECD calls for coordination and a common measurement and evaluation methodology aligned with an equal access to justice research agenda.

<sup>50</sup> Center for Court Innovation, “Community Justice,” <https://www.courtinnovation.org/areas-of-focus/community-justice>; NSCS, *NSCS Justice for All Initiative Guidance Materials*, 2019, [https://www.ncsc.org/\\_data/assets/pdf\\_file/0021/25464/pdf-jfa-guidance-materials.pdf](https://www.ncsc.org/_data/assets/pdf_file/0021/25464/pdf-jfa-guidance-materials.pdf).

<sup>51</sup> Legal Design Summit, “Design Thinking Will Change the Practice of Law,” <http://www.legaldesignsummit.com/home>.

<sup>52</sup> Hagan, Margaret D., “A Human-Centered Design Approach to Access to Justice: Generating New Prototypes and Hypotheses for Intervention to Make Courts User-Friendly,” *Indiana Journal of Law and Social Equality* 6 (2): 237-239, <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1083&context=ijlse>.

<sup>53</sup> Hagan, Margaret D., “Participatory Design for Innovation in Access to Justice,” *Daedalus*, Winter 2019, <https://www.amacad.org/publication/participatory-design-innovation-access-justice>.

<sup>54</sup> Task Force on Justice, *Justice for All*; The Winkler Institute for Dispute Resolution, “Family Justice & Mental Health Social Lab,” <https://winklerinstitute.ca/wp-content/uploads/2017/08/FJMH-Lab-One-Pager-final.pdf>.

<sup>55</sup> OECD (2019), *Equal Access to Justice for Inclusive Growth*, pp. 175-186.

## CONCLUSIONS: RECONCILIATION OF THEORY AND EMPIRICAL EVIDENCE

Moving international rule of law programming from a process-and-legal-professional focus within the traditional justice system institutions to one of people-centered justice service provision has taken several decades, but thanks in great part to the platform SDG 16 has provided, this is now a mainstream concept in line with the broader goals of peace, justice and inclusion. A law enforced does not necessarily mean justice was served; we need to dig deeper in each context into the existing social contract and the relationship between state and its citizens, considering power, culture, equity, and inclusion. Service design thinking – HCD in particular, with its tight feedback loops for participatory design, testing and refinement of service solutions – presents a promising approach to improve justice systems to ensure they are in the service of the people, and not the other way around. This will take a mindset shift for donors and implementing partners, which have long populated justice strengthening projects with lawyers, engaged formal justice actors as primary clients, and focused on internal court and prosecutorial processes, procedures, and systems. International trailblazers such as Pathfinders and OECD have set out a clear theory of change and ways that we can transform justice service provision. And, the global COVID-19 pandemic has clearly shown that justice services can indeed be delivered in innovative ways, using technology and other means. Thus, USAID has the opportunity to transform the way the rule of law is conceived and how justice services are supported in partner countries, through changes in its own policies, models, and approaches.

### SECTION 4

# RULE OF LAW AND COMBATING CORRUPTION

## SUMMARY

The connection between corruption and weak rule of law is widely acknowledged. Justice systems, institutions and actors, and processes serve as both a source of corruption and key instruments to combat corruption. It is a critical issue for justice users, limiting the ability of many to effectively engage and resolve their issues through the justice system. Notably, corruption also persists because it can be a tool for solving problems in some contexts.<sup>56</sup> These realities require addressing root causes for sustained reduction of corrupt practices.<sup>57</sup> There is growing recognition that to be effective, rule of law and anti-corruption strategies need to take a broader systems lens and consider the political dimensions of

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<sup>56</sup> Marquette, H. and Peiffer, C., “Corruption and Collective Action,” Development Leadership Program and U4 Anti-Corruption Resource Centre (U4) Research Paper 32 (2015), accessed July 7, 2020, <https://www.u4.no/publications/corruption-and-collective-action.pdf>.

<sup>57</sup> Camargo, C., “Bribery, Gift-giving and Social Norms: Understanding Corruption in the Tanzanian Health Sector,” Global Integrity Anti-Corruption Evidence Program blog, <https://ace.globalintegrity.org/giftgiving/>, accessed July 2020; Marquette, H. and Peiffer, C. (2018). “Grappling with the “Real Politics” of Systemic Corruption: Theoretical Debates Versus “Real-World Functions.” *Governance*, 31(3): 499-514, accessed July 9, 2020, <https://onlinelibrary.wiley.com/doi/full/10.1111/gove.12311>.

entrenched corruption specific to the context. The causes and dynamics of corruption vary from country to country; therefore, evidence of effective approaches is limited or disputed. This section focuses on aspects of corruption as related to the rule of law and looks more broadly at recent literature on combating corruption and building a system of integrity.

## WHERE ROL AND COMBATING CORRUPTION HAS BEEN

The past 20 years have seen significant advances in efforts to address corruption, including the ratification of the UN Convention against Corruption in 2003 and more recently the incorporation of SDG 16 on peace, justice, and strong institutions and indicator 16:5.<sup>58</sup> Several recent pieces have summarized past anti-corruption programming and evidence, including U4's 20 Years with Anti-corruption Report, DFID's 2015 evidence paper on corruption, and the European Commission's Anti-corruption Policies Revisited (ANTICORRP) research project.<sup>59</sup> These note that despite significant efforts, corruption persists, calling into question dominant theories and practice for combating corruption as highlighted below.

**Rational Decision-Making Model and Principal-Agent Theory.** Past efforts have taken a strong focus on the rational decision-making model which centers on increasing the costs and lowering the benefits of undesired behaviors (i.e., unethical, corrupt practices).<sup>60</sup> As Marquette and Peiffer point out, this relates to the principal-agent theory, which posits that corruption occurs when public officials with discretion over the provision of public services are not held accountable.<sup>61</sup> Based on this, rule of law oriented activities have focused on control, sanctions, and reducing the discretion of decision makers as the primary methods to mitigate opportunities for corrupt conduct inside and outside the justice system. This has at times led to over-regulation and has not increased trust in public administration.<sup>62</sup>

**Collective Action Theory.** Corruption has also been viewed as a collective action problem, recognizing the influence of group behavior (real or perceived) on individuals' choices. If corruption is perceived as standard practice, individuals will likely be less willing to refrain from corrupt behavior or initiate reforms.<sup>63</sup> Marquette and Peiffer point to Transparency International's Integrity Pacts as a prime example of an anti-corruption approach based on

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<sup>58</sup> Indicator 16:5: Substantially reduce corruption and bribery in all their forms.

<sup>59</sup> Mason OBE, P., "Twenty Years with Anti-corruption (Part 1)" U4 Practitioner Experience Note 2020:1, (2020), <https://www.u4.no/publications/twenty-years-with-anti-corruption-part-1-old-issue-new-concern> and Mason OBE, P., "Twenty Years with Anti-corruption (Part 2)" U4 Practitioner Experience Note 2020:2, (2020), <https://www.u4.no/publications/twenty-years-with-anti-corruption-part-2.pdf>; UK Department for International Development, "Why Corruption Matters; Understanding Causes, Effects and How to Address Them: Evidence Paper on Corruption," 2015, accessed July 10, 2020, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/406346/corruption-evidence-paper-why-corruption-matters.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/406346/corruption-evidence-paper-why-corruption-matters.pdf); ANTICORRP, "Anti-corruption Policies Revisited, Publications," accessed July 2020, <https://anticorrrp.eu/anticorrrp-publications/>.

<sup>60</sup> OECD, "Behavioral Insights for Public Integrity: Harnessing the Human Factor to Counter Corruption." 2018, accessed July 7, 2020, <https://www.oecd.org/governance/ethics/behavioural-insights-integrity/>.

<sup>61</sup> Marquette H. and Peiffer C. (2018).

<sup>62</sup> OECD, "Behavioral Insights for Public Integrity."

<sup>63</sup> Marquette, H. and Peiffer, C. (2015). pp 2-3.

collective action theory.<sup>64</sup> They argue that the effectiveness of an Integrity Pact will be limited if other enabling conditions are not in place, including transparency, space for social accountability and monitoring, consistency of the actors involved, and political will.<sup>65</sup>

## WHERE ROL AND COMBATING CORRUPTION IS HEADED

The shortcomings of the predominant perspectives on corruption have led to several forward-looking rule of law related anti-corruption theories and strategies, including taking a systems approach, emphasizing the behavioral aspects of corruption, legal empowerment strategies, and tailoring efforts to the context based on an understanding of the underlying political economy aspects.

**Systems Lens.** Several studies call for a rethinking of anti-corruption and public integrity from a systems lens. The OECD has developed a series of resources on public integrity framed on three pillars: fostering a **system** to reduce opportunities for corrupt behavior; creating a **culture** where corruption is socially unacceptable; and ensuring **accountability** for people's actions.<sup>66</sup> These pillars underpin what the OECD refers to as a "public integrity strategy" (see box) which takes a whole of society approach engaging individuals, civil society, the private sector, and government across the system to promote a culture of integrity (through both controls and incentives).<sup>67</sup>

Related to this, the UK Aid-funded Anti-Corruption Evidence (ACE) Program suggests shifting anti-corruption strategies from individuals to networks, looking at ways to target embedded collective behavior and informal practices. They are testing the hypothesis that many rule of law programs targeting legislation and court processes to curb corruption are not effective because in "network-governed" contexts, they "neglect the legal system's sociopolitical realities."<sup>68</sup> These informal governing networks use "the rules and procedures (and the way they operate) that formally structure and organize everything from government and the bureaucracy (including the justice system and judiciary) to companies and business contracts" to work "through the law" rather than around it.<sup>69</sup>

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<sup>64</sup> Integrity Pacts are written agreements between government and bidders outlining commitments to transparency and monitoring (typically by a civil society organization) intended to curb corruption in public contracting. See <https://www.transparency.org/en/tool-integrity-pacts>.

<sup>65</sup> Marquette and Peiffer (2018).

<sup>66</sup> OECD, "Recommendation on Public Integrity," accessed July 7, 2020, <http://www.oecd.org/gov/ethics/OECD-Recommendation-Public-Integrity.pdf>; OECD, "OECD Public Integrity Handbook," accessed July 7, 2020, [https://read.oecd-ilibrary.org/governance/oecd-public-integrity-handbook\\_ac8ed8e8-en#page1](https://read.oecd-ilibrary.org/governance/oecd-public-integrity-handbook_ac8ed8e8-en#page1).

<sup>67</sup> OECD, "OECD Public Integrity Handbook."

<sup>68</sup> Newton, Scott, "Informal Practices and Informal (Governing) Networks," Global Integrity Anti-Corruption Evidence Program (blog), March 11, 2020, <https://ace.globalintegrity.org/informalpractices/>.

<sup>69</sup> Ibid.



**Behavioral and Values Focus.** A 2018 OECD study focused on “harnessing the human factor” to counter corruption offers a human-centered perspective on integrity systems.<sup>70</sup> The report notes that we must consider the social environment in which individual choices are made. It argues for the use of behavioral insights to rethink integrity policies and systems and to design interventions that target specific behaviors through use of “moral reminders” or nudges, positive commitments, etc.<sup>71</sup>

Accountability Lab’s Integrity Icon applies a similar focus on behavior and positive recognition. It “names and fames honest government officials” to promote integrity, accountability, and effective public servants. A 2018 survey noted the model is “changing perceptions of public service ... building a community of people with integrity,” inspires youth, and serves as “novel approach to tackling a lack of integrity in their societies.”<sup>72</sup>

**Legal Empowerment and Social Accountability.** Stephen Golub’s study on using legal empowerment to curb corruption highlights the importance of equipping justice users to claim their rights and promote accountability in the justice system and across areas of service delivery (education, health, etc.).<sup>73</sup> The study references several country cases as evidence for the approach, from community monitoring to identify embezzlement in Uganda to the use of legal empowerment to build people’s knowledge of their rights to hold health service providers accountable in Guatemala. These “community health defenders” serve as de facto paralegals for indigenous communities dealing with corruption or inadequate health services.

**Political Economy Dimensions.** The influence of power and politics in addressing corruption has also emerged as a key aspect, reinforcing that those strategies successful in one context may not work as effectively elsewhere. Marquette and Peiffer’s 2018 study points to the “black box of political will” and calls for a more explicit focus on political dimensions to understand both principal-agent and collective action problems underpinning corruption. The authors emphasize the importance of addressing the underlying root causes of corruption like poverty, weak political institutions, and weak leadership, particularly since corruption is often perpetuated because it serves a problem-solving function. As they note, “if corruption is reduced, but the functions it fulfills are not addressed, at best any reduction

### Applying a Systems Lens to Rule of Law and Anti-corruption

The OECD’s public integrity strategy “shifts the focus from ad hoc integrity policies to a context dependent, behavioural, risk-based approach with an emphasis on cultivating a culture of integrity across the whole of society.”

Source: OECD Recommendation on Public Integrity

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<sup>70</sup> OECD, (2018), “Behavioral Insights for Public Integrity.”

<sup>71</sup> Ibid.

<sup>72</sup> Accountability Lab, “Integrity Idol Learning Survey,” last modified April 2018, accessed July 10, 2020, <https://www.accountabilitylab.org/wp-content/uploads/2020/01/Integrity-Idol-Learning-Report-2018-2.pdf>.

<sup>73</sup> Golub, S., “Using Legal Empowerment to Curb Corruption and Advance Accountability.” U4 Issue 2020:4, (2020), accessed July 2020, <https://www.u4.no/publications/using-legal-empowerment-to-curb-corruption-and-advance-accountability>.

is likely to be temporary; at worst, the effect could be destabilizing.<sup>74</sup> Similarly, the ACE program promotes a rents and political settlement approach to anti-corruption.<sup>75</sup> The rents and political settlement approach recognizes that depending on the political settlement and nature of rents across sectors in a context, there are different—and overlapping—types of corruption requiring different responses. In an ACE study, Mushtaq Khan argues that all anti-corruption efforts inherently try to reconfigure incentives, but they typically don't ask two key questions which are particularly critical in contexts with weak rule of law: Who will enforce the new rules? Will the new rules be distorted by the interests of those whose behavior you are seeking to change? To address this, ACE proposes four anti-corruption strategies or clusters (see box) as part of an approach to determining feasible, high-impact strategies.

### A Rents and Political Settlements Approach to Anti-Corruption

Aligning/restructuring incentives based on the self-interests of key players;

Designing for differences in individuals and organizations in a sector or activity;

Building coalitions for collective action and enforcement of rules; and

Resolving conflicts around areas of overlapping and contested rights of different parties.

*Source: SOAS ACE*

## CONCLUSIONS: RECONCILIATION OF THEORY AND EMPIRICAL EVIDENCE

The literature points to the need for approaches that address the complexity and entrenched nature of corruption. Strategies informed by the dynamics and relationship between corruption, the rule of law, and political economy dimensions in specific contexts are particularly promising. In sum, rather than focus on one approach, evidence suggests that programming should draw on a range of strategies that:

- Recognize the nature of the political settlement, rents, and underlying root causes of corruption in that context (country, organization, sector/activity, etc.);
- Understand that corruption is a problem but can also serve a problem-solving function;
- Draw on both compliance and values-based approaches;
- Emphasize the role of citizens, civil society, and the private sector in partnering with government to address corruption (building on aligning incentives);
- Strengthen institutions but also consider informal networks and individuals to promote ethical values across the system; and

<sup>74</sup> Marquette and Peiffer (2018).

<sup>75</sup> Khan, M., et al., "Anti-corruption in Adverse Contexts: Strategies for Improving Implementation," Anti-Corruption Evidence Program Working Paper 013 (2019), accessed July 10, 2020, <https://ace.soas.ac.uk/publication/anti-corruption-in-adverse-contexts-strategies-for-improving-implementation/>.

- Use a range of formal and informal tools, recognizing the role of enabling factors such as behavior, culture, and social norms.<sup>76</sup>

These strategies and related learning from U4, Heather Marquette (and other scholars), the OECD, and the ACE Program will be important as USAID looks toward future rule of law and anti-corruption programs with a focus on justice users and strengthening justice and integrity systems, particularly considering the prevalence of corruption globally and risks and implications of COVID-19.<sup>77</sup>

## SECTION 5

# RULE OF LAW AND CROSS-SECTORAL DEVELOPMENT OUTCOMES

## SUMMARY

Access to justice is at the center radiating out onto many inclusive growth policies and programs not because it is the outcome or end-goal, but because it is an integral part of facilitating the laws, policies, and programs that in turn enable growth, prosperity, and individual and community well-being. Access to justice is the inescapable “AND”: health and justice, employment and justice, gender and justice, education, and justice, etc.<sup>78</sup> A growing body of evidence establishes a nexus between rule of law and other development outcomes, including economic growth, health, and education, suggesting that rule of law lies at the heart of development agendas. Per the 2030 Agenda for Sustainable Development, the 17 SDGs are “integrated and indivisible:” target 16.3 is a step forward in recognizing this cross-sectoral integrality.<sup>79</sup> Looking ahead, this vision should guide rule of law programming.

## WHERE ROL AND DEVELOPMENT OUTCOMES HAS BEEN

Prior to the adoption of the 2030 Agenda for Sustainable Development, rule of law was absent from the international development agenda as both an end goal and a means to other cross-sectoral development outcomes. This siloed view of rule of law hindered integrality and cross-sectoral progress, yielding limited, uneven development outcomes.

<sup>76</sup> Strategies draw on the resources noted in the section and Heywood, Paul M., et al., “Academic Report on Integrity Management,” *ANTICORRP Anti-Corruption Policies Revisited*, 2017: 36-37, [https://anticorrrp.eu/wp-content/uploads/2017/08/D11\\_4-FINAL-combined.pdf](https://anticorrrp.eu/wp-content/uploads/2017/08/D11_4-FINAL-combined.pdf).

<sup>77</sup> According to the 2020 World Justice Project Rule of Law Index, the corruption score declined for 40% of the 128 countries studied and improved for 21%. See also: World Justice Project policy brief, “Corruption and the COVID-19 Pandemic,” <https://worldjusticeproject.org/sites/default/files/documents/Corruption%20Design%20File%20V4.pdf>.

<sup>78</sup> OECD (2019), *Equal Access to Justice for Inclusive Growth*.

<sup>79</sup> United Nations, “Transforming our world: the 2030 Agenda for Sustainable Development,” 2015, <https://sustainabledevelopment.un.org/post2015/transformingourworld>.

## WHERE ROL AND CROSS-SECTORAL DEVELOPMENT OUTCOMES IS HEADED

The OECD points out that “while income inequality can be a major contributor to inequality in access to justice, unequal access to justice may perpetuate existing inequalities in other non-income outcomes, including educational attainment, health conditions, and employment opportunities.”<sup>80</sup> Aligned with the OECD’s Inclusive Growth Framework for Policy Action, experts and practitioners now believe that the provision of people-centered legal and justice services yields three types of measurable impacts: effects on the legal and justice systems, sectoral impacts or benefits, and high-level socio-economic impacts.<sup>81</sup>

**Rule of law and socio-economic outcomes.** Despite considerable evidence on the correlation between rule of law and economic development, elements of this relationship are understudied, and it is still not possible to determine with exactitude the extent to which rule of law influences economic growth.<sup>82</sup> In fact, the empirical literature raises important caveats to factor in.<sup>83</sup> Hence, the nexus between rule of law and other development priorities is complex, multidimensional, in some contexts uncertain.<sup>84</sup> In fact, recent surveys and country experiences indicate that people living in disadvantaged circumstances are particularly prone to legal problems, stuck in what the OECD calls a “cycle of decline:” unmet legal needs bear several indirect social and economic costs hindering growth and development.<sup>85</sup> People-centered justice and rule of law – through legal literacy initiatives, public legal education programs, primary and secondary legal aid programs, initiatives to facilitate resolutions of disputes, community paralegal initiatives, integrated approaches to deliver justice and other human and business services, legal services provided by non-legal organizations, restorative justice, specialized courts – can break this “cycle of decline” by increasing trust in legal and justice services; generating savings and enhanced productivity and efficiency for the justice system; and increasing client satisfaction, yielding higher cross-sectoral development returns.<sup>86</sup>

Regarding health, findings suggest a strong correlation between a country’s level of adherence to rule of law and health indicators.<sup>87</sup> In other words, addressing a country’s adherence to the rule of law can bring significant health improvements: an important finding for rule of law and cross-sectoral programming. The correlation between the rule of law and health becomes even more evident in the context of the COVID-19 pandemic which

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<sup>80</sup> Ibid.

<sup>81</sup> OECD, *The Framework for Policy Action on Inclusive Growth*, May 2018, <http://www.oecd.org/mcm/documents/C-MIN-2018-5-EN.pdf>.

<sup>82</sup> Louis-Alexandre Berg & Deval Desai, *Overview on the Rule of Law and Sustainable Development for the Global Dialogue on Rule of Law and the Post-2015 Development Agenda*, (2013).

<sup>83</sup> Ibid.

<sup>84</sup> Haggard, Stephen & Lydia Tiede, “The Rule of Law and Economic Growth: Where are We?” *World Development*, 39, no. 5(2011): 673-685, <https://doi.org/10.1016/j.worlddev.2010.10.007>.

<sup>85</sup> UNDP, *Legal Empowerment Strategies at Work: Lessons in Inclusion from Country Experiences*, (2014); OECD (2019), *Equal Access to Justice for Inclusive Growth*.

<sup>86</sup> Ibid.

<sup>87</sup> Pinzon-Rondon, A.M., et al., *Association of rule of law and health outcomes: an ecological study*, *BMJ Open* 2015, 5:e007004. doi: 10.1136/bmjopen-2014-007004.

exacerbates constraints on government power, fundamental rights and discrimination, corruption, and widens the justice gap.<sup>88</sup>

Against this background, innovations built on people-centered, bottom-up strategies that integrate rule of law and other development priorities unveil new pathways out of poverty (see box).<sup>89</sup>

**Rule of law and education.** In addition to the strong correlation between the rule of law and other socio-economic outcomes (including education), practitioners agree that education is an important medium to strengthen the rule of law; yet education professionals often misunderstand how this can be achieved. This offers new opportunities to leverage the transformational power of the education sector by framing education programming with a rule of law umbrella. Such interventions can take complementary forms: from helping develop policies, programs, and curriculum that support the rule of law and a culture of lawfulness, to training educators and staff to recognize and change biases in pedagogy and practices that do not model the rule of law, to engaging teachers, parents, community members, cultural leaders, governments, businesses, and civil society to ensure learning takes place in and outside of schools.<sup>90</sup> To reach this goal, UNODC and UNESCO have partnered under the “Global Citizenship Education for the Rule of Law”: this partnership will yield new guidance materials to help educate professionals on the meaning of rule of law and its implication for education; develop toolkits for education professionals, and prevent violence and violent extremism through education.<sup>91</sup> These will provide new resources to respond to the nexus between rule of law and education moving forward.

**Environmental rule of law.** Consensus is also growing regarding environmental rule of law, an emerging and evolving concept closely associated with SDG 16. For UNEP, “environmental rule of law provides an important entry point for considering how to govern development so that it is sustainable;” the agency further recommends framing

#### Notable Innovations in Integration

**India.** Tech platform Haqdarshak connects citizens with eligible welfare schemes, empowering them in rural and urban areas to access what is theirs.

**Uganda.** Lawyers for Farmers and Puliida help farmers access legal tools to raise productivity and profitability.

**Bangladesh.** The BRAC Property Rights Initiative empowers poor and underdeveloped communities by informing them about property rights, enabling them to stake their claim on property, with emphasis on women.

Source: HiiL (2020)

<sup>88</sup> World Justice Project, *The Twin Crises of Public Health and the Rule of Law*, last modified June 25, 2020, <https://worldjusticeproject.org/news/twin-crises-public-health-and-rule-law>.

<sup>89</sup> Juan Carlos Botero, et al., *Innovations in Rule of Law: A Compilation of Concise Essays*, HiiL and the World Justice Project (2012), <https://www.hiil.org/wp-content/uploads/2018/09/Innovations-in-Rule-of-Law.pdf>.

<sup>90</sup> UNESCO & United Nations Office on Drugs and Crime, *Strengthening the Rule of Law Through Education: A Guide for Policymakers*, (2019), <https://unesdoc.unesco.org/ark:/48223/pf0000366771>.

<sup>91</sup> United Nations Office on Drug and Crime, *Global Citizenship Education for the Rule of Law: Doing the right thing*, [https://www.unodc.org/documents/e4j/2503\\_18\\_UNODC\\_UNESSO\\_Partnership\\_Flyer\\_web.pdf](https://www.unodc.org/documents/e4j/2503_18_UNODC_UNESSO_Partnership_Flyer_web.pdf).

green growth under the rule of law umbrella to ensure that rules are clear, fair, and evenly applied, reducing the likelihood of negative environmental and social practices.<sup>92</sup> With rising environmental crimes and climate change-induced crises worldwide, environmental rule of law can prevent and mitigate violence, conflict, instability, and disasters linked to poor environmental resources management.<sup>93</sup> This is an important view to reconcile disconnected environmental conservation, work-in-crisis, and rule of law programming.

## **CONCLUSIONS: RECONCILIATION OF THEORY AND EMPIRICAL EVIDENCE**

Framing rule of law as a cornerstone of other cross-sectoral programming is critical to advance both rule of law and contribute to sustainable development – taking into account local contexts, including adjusting programming to environments where growth and development have occurred despite the absence of rule of law, as is the case in some BRICS countries. This also requires the adoption of problem-solving approaches that place people at the heart of the agenda and enable access to justice pathways that offer avenues for growth and development. It means understanding rule of law not as an end in and of itself, but rather a catalyst to achieve a broader range of development outcomes while consolidating cross-sectoral strategies that, in turn, help consolidate the rule of law.<sup>94</sup>

### SECTION 6

# CONCLUSION AND THE FUTURE OF JUSTICE

Despite extensive investment and commitments to consolidate the rule of law worldwide, the access to justice gap is widening, corruption is widespread, justice reforms are incomplete, and many feel that justice systems are broken. To overcome these deeply-rooted development challenges, significant justice reforms achievements can be furthered by adopting a new perspective to rule of law programming. In the last decade, new theories have emerged regarding rule of law and justice that revisit old assumptions that emphasized top-down, institution-focused, lawyer-centric solutions. These new theories are increasingly backed up by empirical evidence which suggests that institutional strengthening efforts coupled with bottom-up approaches, legal and non-legal justice solutions designed with people and communities in mind and implemented through collaboration between justice operators, paralegals, and community actors actually bring higher development outcomes – both in terms of improved rule of law conditions and cross-sectoral sustainable

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<sup>92</sup>United Nations Environment Programme, *Environmental Rule of Law: First Global Report*, (2019), [https://wedocs.unep.org/bitstream/handle/20.500.11822/27279/Environmental\\_rule\\_of\\_law.pdf?sequence=1&isAllowed=y](https://wedocs.unep.org/bitstream/handle/20.500.11822/27279/Environmental_rule_of_law.pdf?sequence=1&isAllowed=y).

<sup>93</sup> Barreira, Ana, *Environmental Rule of Law: An Analysis of Data Availability*, GGKP Working Paper on Green Growth and the Law (2019), [https://www.greengrowthknowledge.org/sites/default/files/downloads/resource/GGKP\\_Environmental\\_Rule\\_of\\_Law.pdf](https://www.greengrowthknowledge.org/sites/default/files/downloads/resource/GGKP_Environmental_Rule_of_Law.pdf).

<sup>94</sup> Berg, Louis-Alexandre & Deval Desai, *Overview on the Rule of Law and Sustainable Development for the Global Dialogue on Rule of Law and the Post-2015 Development Agenda* (2013).

development. Rather than focusing on justice institutions, new theories and evidence also emphasize the need to bolster behavioral transformations of security and justice operators, and of government officials more broadly, to break systemic patterns of corruption, inquisitorial and discriminatory practices.

## CONDITIONS, CONSTRAINTS, AND ASSUMPTIONS

People-centered justice is a concept that can easily be translated into practice through new rule of law programming, assuming the political context is understood and certain conditions are in place.

**Avoid “one size fits all solutions.”** As the empirical evidence suggests, *politically-aware solutions* are more likely to help donors, implementing partners, and local counterparts strike the right balance between what is desirable and what is achievable, and what is technically sound and realistically feasible. What this suggests is that new justice paradigms will only deliver real-life results through *contextualized interventions* that: a) integrate local norms and traditions, b) are commensurate with local security and justice capacities, and c) embrace local citizens’ and communities’ problems, needs, and perceptions. Furthermore, rule of law as defined in this literature review may not fit the definition of what is lawful across all continents: some groups and/or actors may resist what they associate with “Western” views of “justice, security, and human rights.” Politically astute solutions become all the more important to use the right levers to advance inclusive justice agendas worldwide, using traditional and non-traditional justice channels that will yield acceptance across a larger number of communities.

**Learn, adapt, and expand the body of evidence.** “Rule of law” is a young field of study and while the body of evidence of what works and why – or what does not work – is growing, some grey areas remain – e.g., the nexus between rule of law and economic growth is complex and the causal relation can be questioned when assessing how and why economies rise under authoritarian regimes. Multiple innovations are promising: testing and validation of the empirical evidence, considering specific country nuances, is a critical condition to expand the existing knowledge base. Consistent with USAID’s CLA framework, future rule of law programming can help close knowledge gaps, bolster knowledge-transfer, and empower local counterparts in the process.

## EFFECTIVE LINES OF EFFORT

This literature review shed light on effective lines of efforts, summarized by theme below:

**Rule of law, legitimacy, and public trust.** Legitimacy-based approaches offer new avenues to reconcile law enforcement, crime and violence prevention, and access to justice. Section 2 pointed to the importance of grounding principles of procedural justice – i.e., give a voice to those in conflict with the law; ensure neutrality; demonstrate respect; be fair to build trust – in daily prevention, law enforcement, and justice operations, to achieve greater legitimacy of security and justice systems, and public trust. Evidently, this suggests reframing rule of law through a people-centered, problem-solving lens to improve people’s experience and perceptions of justice.

**Rule of law and service delivery.** Top-down, lawyer-centric approaches yielded significant justice reform advances – e.g., improved court efficiencies, transition to accusatorial systems

– but have not moved the needle in terms of access to justice and provision of justice services. Section 2 highlighted how donors and practitioners are rethinking justice as a service, encouraging the adoption of new justice solutions defined with users in mind and implemented systemically by engaging legal and non-legal actors, through formal and informal justice systems.

To achieve the ambitious SDG 16.3, it is imperative to help set up new justice systems that place people – men, women, children – at the heart of inclusive, collaborative, and evidence-informed reform agendas, creating conditions – through people and community empowerment – making fair justice accessible to all.<sup>95</sup> Data-driven targeted justice investments can address the most urgent justice needs, directing resources to lower-cost approaches that deliver justice solutions in response to justice problems that matter most to people. Service design thinking, employing human-centered design tactics and leveraging behavioral science, can help justice operators – with non-legal actors – deliver a continuum of user-friendly, inclusive, and accessible services that match people’s justice problems, needs, values, aspirations, and improve their experience with justice.

**Rule of law and anti-corruption.** Section 4 presented the latest findings to address the root causes and dynamics of corruption as it relates to rule of law. New anti-corruption strategies that work are highly political in nature: they are contextualized to best address country nuances; they are systemic to build integrity networks advancing internal and external accountability; they look at the power dynamics that affect public and business integrity.

Taking this politically-aware systems lens, forward-looking anti-corruption theories and practices enable the definition and action of new integrity networks engaging individuals, civil society, the private sector, and governments who all play their part in conditioning a new culture of integrity. Effective anti-corruption solutions are also grounded in evidence and data, incorporating behavioral insights and risk-based approaches. As a common thread across all rule of law themes, behavioral science is increasingly explaining the importance of influencing moral behaviors to “harness the human factor” and break corruption practices and patterns. To further “harness the human factor,” people-centered approaches offer new avenues to equip justice users – through legal empowerment, communities, and social accountability strategies – with new tools and processes to actively influence integrity networks.

**Rule of law and other cross-sectoral development outcomes.** The 2030 Agenda for Sustainable Development provides a new framework to build cross-sectoral bridges that scale up development successes, at the expense of traditional siloed approaches. Section 5 laid out this new vision that defines rule of law as both an end goal in itself and a catalyst to boost social and economic inclusion and contribute to environmental conservation and green growth. While it is important to acknowledge that the nexus between rule of law and other development priorities is complex, multidimensional and highly contextualized, this mindset shift offers an opportunity to re-think rule of law programming to incorporate strategies that improve cross-sectoral service delivery – including health, education, economic empowerment of marginalized populations, and lawful business climates. At the

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<sup>95</sup> Task Force on Justice, *Justice for All*.



heart of this new vision lie people, whose problems, needs, and experiences shape redesigned cross-sectoral development solutions through inclusive, problem-solving justice.

## WHAT IS NOT SUCCESSFUL

Programmatic failures or lessons learned provide additional evidence of what does not work, or yields limited results, to inform future rule of law programming:

***Institution-centric programming enabled important justice reforms without facilitating access to justice for all.*** Rule of law programming took off in the 1990s: since, justice reforms have focused on strengthening justice institutions – through needed judicial training, legislative reform, and physical infrastructure projects. Yet, as the literature suggests, increasing capacity of courts and legal systems taking a lawyer-centric, supply-side approach alone has been insufficient to yield tangible and long-lasting justice transformations.<sup>96</sup> Evidence suggests important advances in terms of strengthening institutional and human capacities for the administration of justice; yet, excessive delays in delivering justice, a widening justice gap, and mounting corruption, indicate the limits of top-down programming. Political impediments to justice reforms are also partly to blame.<sup>97</sup> Some analysts argue that top-down approaches have yielded mixed results because they are ill-suited to local contexts and too rigid, leading to scenarios of isomorphic mimicry.<sup>98</sup>

### ***Rational decision-making models and principal-agent theories overlook behaviors.***

Rational decision-making models have defined most anti-corruption and justice institutional-strengthening strategies up until now, focused on control and sanction. This led to over-regulation, not to increased legitimacy of justice and security institutions or the broader public administration. By overlooking behaviors and subjective incentives, many justice users continue to perceive the system as being unfair, discriminatory, and widely corrupt.

## PROGRAMMING IMPLICATIONS AND NEXT STEPS: WHAT IS THE FUTURE OF JUSTICE REFORM?

This literature review shed light on a series of common themes and threads to advance people-centered justice through evidence-informed rule of law programming. A new justice pathway is possible (see Exhibit 4), through the adoption of prevention strategies to build or rebuild people's trust in justice systems and secure new partnerships with non-traditional

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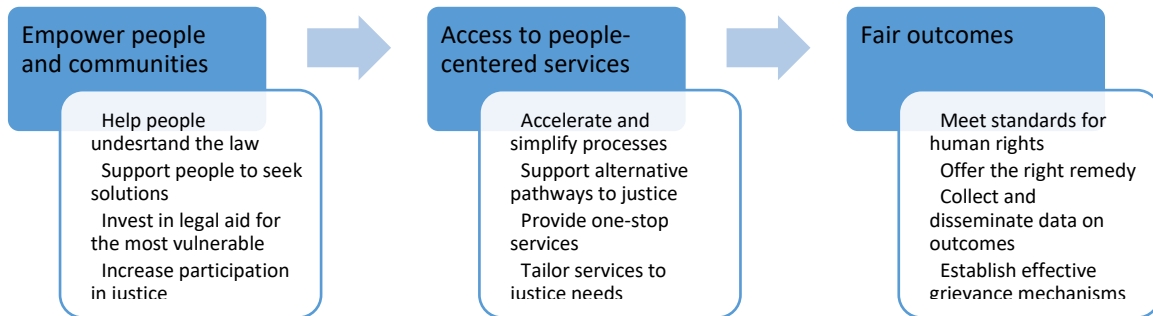
<sup>96</sup> Management Systems International, *Achievements in Building and Maintaining the Rule of Law: MSI's Studies in LAC, E&E, AFR, and ANE*, (Washington, DC, USAID, 2002), [https://pdf.usaid.gov/pdf\\_docs/pnacr220.pdf](https://pdf.usaid.gov/pdf_docs/pnacr220.pdf).

<sup>97</sup> Klaus Decker, et al., *Improving the Performance of Justice Institutions: Recent experiences from selected OECD countries relevant for Latin America*, (Washington, DC: World Bank, 2011), <http://documents.worldbank.org/curated/en/244521468230960192/Improving-the-performance-of-justice-institutions>.

<sup>98</sup> Domingo, "Rule of law, politics and development;" Matt Andrews, et al., *Building State Capability: Evidence, Analysis, Action*, (Oxford, Oxford Scholarship Online, 2017), <https://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780198747482.001.0001/acprof-9780198747482-chapter-3?print=pdf>.

actors that span across multiple sectors – not just justice institutions – to address the root causes of disputes and avert conflict, violence, and human rights abuses.<sup>99</sup>

EXHIBIT 4. THE FUTURE OF JUSTICE



**Employ user-centered design and implementation tactics.**<sup>100</sup> User-centered design tactics can help to get people-centered justice right. In fact, legal design thinking is emerging as a viable entry point to improve access to justice in a human-centered way that integrates different viewpoints that extend beyond the traditional legal perspectives. Notably, there are important benefits of utilizing human-centered design principles – with their tight feedback loops for participatory design, testing, and refinement of service solutions – when engaging with the civil justice system, considering the behavior, environments, and psychology of the intended beneficiaries; in turn, this will advance procedural justice that differentiates between the justice experience and the justice outcomes, achieving greater fairness, accuracy, effectiveness, and legitimacy.<sup>101</sup> With the rise of new technologies and the boom of e-government strategies, “e-justice” has gained a lot of traction as a potential catalyst of access to justice through the design of new, simple e-justice solutions that target a critical mass of users and respond to their most salient justice problems and needs. Evidence suggests tangible benefits of accessibility and simplicity.<sup>102</sup> To be effective, e-justice must rely on system flexibility and adaptability – what scholars describe as “modularization,” striking the right balance between technological effectiveness and legality of “online” justice initiatives.<sup>103</sup> Human-centered design strategies seem to be a best fit to test and modulate e-justice initiatives, allowing developers and justice operators to incorporate feedback from relevant stakeholders and users as these tools and processes are developed iteratively.

<sup>99</sup> Task Force on Justice, *Justice for All*.

<sup>100</sup> HiiL, *Understanding Justice Needs*.

<sup>101</sup> Victor D. Quintanilla, & Michael A. Yontz, Human-Centered Civil Justice Design: Procedural Justice and Process Value Pluralism, 54 *Tulsa L. Rev.* 113 (2018), <https://digitalcommons.law.utulsa.edu/tlr/vol54/iss1/7>.

<sup>102</sup> Giampiero, Lupo & Jane Bailey, “Designing and Implementing E-Justice Systems: Some Lessons Learned from EU and Canadian Examples,” *Laws* (3), 2015:353-387, <https://doi.org/10.3390/laws3020353>

<sup>103</sup> Hanseth, Ole and Kalle Lyytinen, “Design Theory for Dynamic Complexity in Information Infrastructures: The Case of Building Internet,” *Journal of Information Technology* 25 (2010): 1–19

**Solve justice problems.** Through problem-solving courts, inspired by problem-oriented policing, and focused deterrence, security and justice institutions target human and financial resources more effectively.<sup>104</sup> By delivering security and justice services defined in response to specific justice users’ problems, such methods also prove more likely to achieve positive changes in citizen attitudes towards police, prosecutors, judges, in turn improving systems’ legitimacy and public trust in fair, inclusive justice, regardless of the outcome. This supposes introducing legitimacy-based approaches in police and courts, helping justice operators embrace principles of procedural justice. This is feasible provided that legal, institutional, financial, and skills barriers are overcome.<sup>105</sup>

**“Harness the human factor” and address behaviors.** Consistent with procedural justice, designing solutions informed by behavioral insights are helping improve justice outcomes, setting up an innovative pathway to operationalize people-centered and problem-solving justice (see box, previous page).<sup>106</sup> On the side of victims and offenders, it enables more user-friendly justice experiences, facilitates innovative, quick justice solutions. On the side of justice institutions, it can help unpack and target the root causes of deeply entrenched discriminatory, inquisitorial, and corrupt behaviors to help shift operators’ mindsets more effectively.

#### Applying Behavioral Insights to People-Centered Justice in New York

By redesigning NYC summons form using behavioral redesign methods, the failure to appear (FTA) rate fell by 13%. Using RCTs, reminder messaging reduced FTA by 26% relative to receiving no message. Looking 30 days after the court date, the most effective messaging reduced open warrants by 32% relative to receiving no messages. The form has been scaled to all criminal court summonses.

Source: Chicago Crime Lab & Ideas

**Embrace the “political” nature of rule of law.** Politically smart and adaptive approaches – particularly problem-driven iterative and adaptive approaches – are best suited to embrace and address the highly political nature of rule of law. This brings significant programmatic benefits: it helps avoid isomorphic mimicry by contextualizing solutions; it helps test, validate, and replicate justice solutions that work, expanding the knowledge base on rule of law; it allows to analyze and respond to systemic power dynamics that govern rule of law in a given setting to determine optimal levers to achieve systemic justice transformations.

**Engage new actors.** This literature review highlighted the importance of multi-stakeholder collaboration, engaging lawyers and non-legal actors, and other human services (including health, education, and housing) to improve access to justice through a continuum of services.<sup>107</sup> Solutions bridging lawyers, paralegals, mediators, and facilitators are highly promising to achieve a fair solution and ground justice locally, employing diverse strategies

<sup>104</sup> Wolf, *Principles of Problem-Solving Justice*.

<sup>105</sup> HiiL, *Understanding Justice Needs*.

<sup>106</sup> Brice Cooke, et al., *Using Behavioral Science to Improve Criminal Justice Outcomes*, 42 (Chicago, University of Chicago Crime Lab & Ideas, 42 (2018), [https://www.ncsc.org/data/assets/pdf\\_file/0027/27099/using-behavioral-science-to-improve-criminal-justice-outcomes.pdf](https://www.ncsc.org/data/assets/pdf_file/0027/27099/using-behavioral-science-to-improve-criminal-justice-outcomes.pdf)).

<sup>107</sup> OECD (2019), *Equal Access to Justice for Inclusive Growth*.

(e.g., alternative mechanisms for dispute resolution, paralegals, public legal education providers, community advocates).<sup>108</sup>

Slowly, the private sector is emerging as a viable partner to boost innovations at-scale, either to close the knowledge gap on what works and what does not to solve complex justice problems, enable targeted justice service delivery or even support juvenile justice reforms.<sup>109</sup> Important lessons can be drawn from the “Pay-for-Success” model and could open a new chapter to support civil legal aid and expand access to justice.<sup>110</sup> An increased investment in people-centered approaches, leveraging resources from philanthropists, impact investors, and private firms can also make justice more affordable and help diversify funding sources amidst a sharp 40 percent decline in donor investment in justice since 2015.<sup>111</sup>

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<sup>108</sup> The Law and Development Partnership Ltd., “Developing a portfolio of financially sustainable, scalable basic legal service models, 2015, <https://idl-bnc-idrc.dspacedirect.org/bitstream/handle/10625/56930/IDL-56930.pdf>.

<sup>109</sup> Urban Institute, “Ventura County Project to Support Reentry, <https://pfs.urban.org/pfs-project-fact-sheets/content/ventura-county-project-support-reentry>; <https://nff.org/pay-success-projects>; <http://www.thirdsectorcap.org/wp-content/uploads/2015/03/MA-JJ-PFS-Fact-Sheet-Revised-Final.pdf>.

<sup>110</sup> von Geldern, Will, “What’s Next in Pay-for-Success? Lessons Learned and the Future of ‘Social Impact Bonds, in the US,” *Cornell Policy Review*, 2017, [www.cornellpolicyreview.com/whats-next-pay-success-lessons-learned-future-social-impact-bonds-u-s/](http://www.cornellpolicyreview.com/whats-next-pay-success-lessons-learned-future-social-impact-bonds-u-s/); Bal, Navjeet, et al., “Expanding Access to Justice with Social Impact Financing,” *Social Finance*, (2019), [https://socialfinance.org/wp-content/uploads/2019\\_Expanding-Access-to-Justice-with-Social-Impact-Financing.pdf](https://socialfinance.org/wp-content/uploads/2019_Expanding-Access-to-Justice-with-Social-Impact-Financing.pdf).

<sup>111</sup> The Task Force on Justice, *Justice for All*.

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