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A Synthesis of Eight Country Impact Assessments

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EXECUTIVE SUMMARY

More than a decade later, it is hard to remember the euphoria that greeted the fall of the Berlin Wall and the implosion of the Soviet Union. Many saw that period as an opportunity to create free market democracies where none had existed before. It was the duty of the Western democracies to diagnose for these countries the error of their Communist ways, to graft onto their political, economic and social structures the lacking elements of free market democracies, and then to step back as the patients rapidly began to recover.

Events in Eastern Europe and the former Soviet Union generated enormous U.S. support. Huge amounts of funding were provided from both U.S. government and private sources. New institutions were created to address the needs of these countries. Amid the chaos of the early years, USAID (which had no institutional experience in the region) sought to create rule of law programs that balanced hard-headed analyses of country needs with domestic and international pressures. In many countries, and in many respects, USAID and other donor-financed rule of law programs have begun to transform the legal structures of these societies in significant ways. The reality that many of these efforts have yet to produce broader impact derives from some key factors: too little early attention to the civil law traditions of the countries involved; misunderstanding of the motives of key “reformers”; underestimation of the power of vested interests in resisting reform; and less than keen understanding of how post-Communist power structures, coupled with economic collapse, could give rise to strongmen, oligarchs, mafias, and other shadowy elements, whose emergence would significantly dampen individual countries’ abilities to embrace democratic ideals and market reforms.

The Western concept of rule of law grew out of centuries of efforts by mostly European or Eurocentric thinkers to level the playing field for citizens of monarchies, empires and republics. It sought to create a social contract between the government and the governed on the rules of political, economic and social interaction, and to provide checks and balances on the exercise of power within the country. Viewed through this historical prism, it should not be surprising that the majority of countries assessed have not come very far along the spectrum from “rule of men” to “rule of law.” Their great upheavals are too recent and, in many cases, still in progress. Independence and/or freedom from the Soviet orbit have unleashed forces, e.g., ethnic strife, the “grabbing” of national assets by well-connected oligarchs, which complicate their trajectories. The citizenry is cynical, focused on day-to-day economic struggles, badly informed and often apathetic about how the rule of law underpins market democracies.

In early 2000, the Bureau for Europe and Eurasia (E&E) initiated development of a new strategic framework for democracy and governance (DG) programming for the coming decade, including an in-depth look at the assistance challenges in each of the principal sub-sectors of E&E DG assistance (civil society, political processes and elections, media, rule of law and local government). With respect to the rule of law (ROL), it quickly became obvious that few formal evaluations or assessments had been done, either by USAID or other donors. A decision was made to carry out impact assessments of past rule of law programming in selected countries to facilitate cross-country comparisons and identify key lessons for program strategy and activity development over the next decade. Each country assessment ultimately focused on a set of programs and issues mutually agreed upon by E&E, participating missions and assessment teams.

Of the countries assessed, only in Bulgaria where, after many twists and turns, the government and the populace now seem committed to the changes necessary for EU accession, is there hope for increasingly rapid adoption of the rule of law. Even there the path is unlikely to be smooth. Bulgaria’s experience (as well as that of other Central and Eastern European countries which have moved more rapidly along the rule of law spectrum) seems to suggest that even countries with relatively little recent history or experience of independence, democracy and capitalism can be drawn along faster by the carrot of

European integration. Where prospects for full European integration or other similarly strong incentives are lacking, progress is much slower and much more difficult.

This synthesis of the eight country assessments is designed to identify and analyze common experiences in designing and implementing ROL strategies and programs, and to draw some conclusions as to which factors contributed to program impact or lack thereof. It also looks at the impact and effectiveness of particular types of ROL programming. Unlike conventional evaluations, the individual country assessments did not directly assess the performance of agency activity designers and managers or activity implementers, be they contractors or grantees. Rather, the assessments focus on what was done, with what results, what worked or didn't work, why, and how future efforts can be developed, sequenced and implemented more effectively to enhance future impact.

To facilitate comparisons, assessment findings are organized by the three major categories of ROL assistance: developing and implementing the legal framework, developing and/or assisting legal institutions, and law and civil society.

Implementing the Legal Framework: The eight assessments found that USAID's support for the development of new constitutions, laws and regulations contributed significantly to the creation of national legal frameworks essential for the ultimate evolution of these countries into market democracies. However, many of these efforts have not yet produced broader impact, which they originally targeted. These results derive from: some measure of imperfect program design and administration; and a large measure of political, economic and social resistance to the changes embodied in these new constitutions, laws and regulations. Program design and implementation inadequacies, particularly in the early years, included: 1) slowness in appreciating the differences between U.S. common law practices and the civil law system under which post-Communist countries operate, with the result that a number of new laws are only now being aligned with national civil codes and other civil law foundations; 2) the inaccurate assumption that implementation of new constitutions, laws and regulations would follow quickly upon their enactment, without requiring substantial investments in public education or implementation practices.

Political, economic and social resistance to the concepts involved in these new legal frameworks has taken many forms, ranging from the inability of the Ukrainian Parliament to enact a new civil code (primarily because of a lack of national consensus on land reform), to flat-out refusal by still-authoritarian governments to implement some or all of the provisions of newly-enacted laws because these laws, if properly implemented, would begin to change the political, economic and social landscapes of these societies.

The assessments conclude that, in the future, the most effective packages of support for legislative drafting and implementation should involve: early participatory processes sponsored by the drafting institution with USAID support; early discussion and/or collaboration among various elements of USAID and USAID partners, other donors and other relevant U.S. agencies; strong reliance on non-American civil law experts for actual drafting advice; some measure of USAID and other donor involvement or guidance during the enactment process; careful attention to the roles and incentives for those groups upon which implementation depends; the development of local "trainers of trainers" capable of ensuring that a critical mass of magistrates and judges throughout the country receives quality training on how to interpret and apply the new law; and the flexibility to back off immediate objectives, if necessary, and focus resources on key barriers to effective implementation, e.g. insufficient judicial independence, entrenched corruption, or lack of national financial capacity for effective implementation. Together with other donors, efforts should also ensure the development of local institutional capacity for future legislative drafting. Finally, in light of the civil law context of these countries, ROL programs may provide unusual opportunities for co-financing or parallel financing with other bilateral or multilateral donors.

Developing and/or Assisting Legal Institutions: USAID-financed efforts focused heavily on providing institutional support to judiciaries. Assessment teams found that, at least partially as a result of USAID and other donor efforts, many of the countries assessed have instituted some important judicial reforms, and there is some evidence that some of these earlier programs may be leading toward some important impacts. Nevertheless, some assessments suggest that USAID may have focused too heavily on judiciaries, when, due to existing incentive structures and political conditions, real reforms were unlikely in the short- or medium-term. Experience in Georgia, in particular, where judicial reform has gone the farthest, as well as in other countries, indicates that real progress on judicial reform, and ultimately ROL, can only happen when other elements of the legal system, notably the procuracy and law enforcement, are also reforming. Unfortunately, USAID-financed ROL programs in E&E have not worked extensively with these agencies, and other USG agencies have been assigned leadership roles for this work. If USG ROL efforts are to be effective, the various interested agencies will need to find better ways to coordinate and collaborate on synchronized efforts in individual countries.

Over the last decade, USAID has also attempted to create integrated bar associations and judicial associations as constituencies for further legal reform. In most countries these efforts have met with little success, largely because vestiges of Communist-era professional associations have continued to stymie their reform efforts. Where these efforts have had more success, they are generally focused on local organizations that are self-selected from groups, e.g. young lawyers, which have organized themselves to accomplish specific reforms.

Programs of assistance to parliaments (Ukraine), for court administration (Bulgaria) and legal education (Armenia) were each assessed only in one country. While each program has produced some interesting outcomes, none yet appears to have produced substantial impact. With only one program in each category for comparison, each set of findings and recommendations is necessarily tentative, and its application to other countries potentially useful, but as yet unclear.

Law and Civil Society: Although democracy ROL programmers did not, in the early years, appreciate the need for the type of larger-scale public education programs that were routinely built into agency commercial law development efforts, they nevertheless recognized the need to expand public knowledge of the new laws and decrees operative in each country. As a result, they made small grants, particularly in Russia, Ukraine and the Central Asian Republics, either to establish legal information centers or to assist the private sector to develop products and services that would expand access to and knowledge of the evolving legal systems. The Central Asia Mission supported a wide range of legal information centers, all of which have generated significant interest and usage, and most of which appear to have reached financial viability. Central Asia's experience suggests that these types of centers may be an effective investment of relatively small amounts of funding, particularly if sponsored by strong local partners and provided sufficient time and funding in which to establish financial sustainability. In addition, civic education programs such as "Street Law" now being implemented in Central Asia and in Georgia have significant potential for impact if they can reach regional or national scale.

A number of Missions fund legal aid programs to simultaneously foster NGO development, improve the quality of clinical legal education and expand access to justice. While each of these objectives has value, in the view of the assessment teams their multiplicity of objectives has probably limited their impact. While some new NGOs have been created, some law students have gained critical experience, and some citizens have received more and better legal advice than they would have otherwise received, relatively few of these efforts yet appears positioned to have significant impact beyond their immediate outputs. The assessment teams found that the most successful of these programs are those which emphasize specific types of legal issues, e.g., ABA/CEELI's Environmental Public Action Center, IREX's media law center and the American Center for International Labor Solidarity's center for labor law issues.

Assessment team findings in certain countries, suggest that more and better assistance in three important areas could contribute to greater impact for future ROL programs: support for independent media, which allows broader and deeper public dialogue on ROL concepts and concerns; carefully targeted efforts to ensure that law enforcement groups adhere to the provisions of new constitutions, laws and regulations, thereby enabling average citizens to see firsthand how legal structures are changing and supporting the rights of citizens as well as the state; and, finally, greater support of anti-corruption efforts, as well as diplomatic pressure from the U.S. and other donors to encourage governments to take action against corrupt elements within their societies.

Assessment teams were also asked to determine whether certain program modalities were more effective than others in producing impact. The Russia assessment, in particular, had a narrow and very explicit focus on partnerships as an assistance mechanism. No one type of assistance seems to have produced greater results than another. What outputs and impact have been achieved result from an effective mix of program modalities. Perhaps most surprising is the extent to which participants valued long-term training and/or study tours to the U.S. or third countries, often calling these “life-changing experiences.” The teams also concluded that, because of the economic situation in most of the countries reviewed, USAID and other donors should not push too quickly for local NGO financial sustainability; this can negatively impact the quantity and quality of programs delivered.

Beyond program targets, content and implementation modalities, the assessment teams looked at political events in the target countries over the last decade, and attempted to draw some conclusions as to how political trends in these countries may have affected the impact of ROL programs. Assessment findings show a clear but probably immeasurable relationship between positive and negative movement on the political side and the strength or weakness of ROL reforms. Moreover, the findings of the assessment teams show how experience in E&E over the last decade reinforces some of Blair and Hansen’s 1994 strategic recommendations for ROL programs. In many E&E countries, particularly to the east, political leadership for ROL reforms was weak and fragmented; efforts in these countries should probably have focused first on constituency and coalition building, rather than on structural reform or institutional development. In this context, decisions by the Central Asia and Ukraine Missions to step back to more “grassroots” strategies were appropriate, and offer important strategic lessons for other Missions in the region.

More broadly, the assessment teams found strong evidence in E&E countries supporting Blair and Hansen’s earlier definition of ROL reform as “a political process that cannot simply be reduced to conventional technical assistance or to institutional development strategies.” In some of the E&E countries assessed, USAID has developed and administered ROL programs as if they are merely technical formulas that will achieve their targeted impact if effectively delivered. Experience in the region and elsewhere shows how large are the political dimensions of ROL programs and how USAID ROL programmers need to integrate politics into their programming.

Finally, the assessments uniformly confirm that ROL reform is a much longer-term process than generally anticipated in USAID’s results frameworks, and strongly urge USAID to take a much longer view with respect to the achievement of program outputs and measurement of longer-term impact. Most assessments identify interventions made early on which were thought to have failed but are once again showing promise. In Bulgaria and Georgia, investments made in earlier years have potential for much greater impact now that political conditions are more favorable and national leadership is committed to ROL reform. These cases offer hope that in other, more problematic countries, investments already made could also pay off significantly at a later date.

The final sections of this synthesis attempt to put these findings into an analytical framework that offers some strategic guidelines for E&E purposes. Neither the model used, nor the data reflected in it, is

perfect. It is hoped, however, that the simplicity of the model, coupled with data from a relatively wide range of sources, will limit argumentation about its implications.

In brief, the model uses available data to place countries along a spectrum ranging from Consolidated Authoritarian States to Unconsolidated Authoritarian States, Stuck States, Unconsolidated Democracies and Consolidated Democracies. Seven of the eight countries assessed fall largely into the Consolidated or Unconsolidated Authoritarian categories. Only Bulgaria ranks higher; even it is largely within the Stuck State category, although recent progress appears to be moving it more quickly toward an Unconsolidated Democracy. The penultimate section of this paper suggests a focus on coalition and constituency building in Consolidated Authoritarian countries, coupled with additional attention to training and study tours for potential future leaders. For Unconsolidated Authoritarian countries, the breadth of strategic choices will depend on the direction of political movement: if the country is moving backward toward the Consolidated Authoritarian category, Missions may most often need to fall back to a Consolidated Authoritarian strategy of coalition and constituency building. Where, however, there appears to be positive change toward a Stuck State or Unconsolidated Democracy, Missions may wish to expand their ROL efforts to include some elements of structural and/or institutional reform, particularly in concert with key local or national reform elements. For Stuck States, particularly those such as Bulgaria which appear to be making forward progress, Missions will probably want to expand their ROL efforts even further, to include a full panoply of efforts at both local and national levels.

Ultimately, four key concepts should be drawn from this assessment effort. First, ROL reform is as much a political as technical process. It cannot be separated from its political environment. Second, sequencing matters. This paper provides some guidance on sequencing decisions, but recognizes that other dimensions may nevertheless radically affect Mission choices. Third, the ultimate success or failure of ROL programs is in the hands of the countries in which they are being implemented. USAID can only do so much to make ROL reform possible. The countries will have to carry it to the end. Finally, we should not be too hasty in declaring success or failure. The countries we work with have longer histories than we; many are much less comfortable with rapid change than we might wish. Those who work to bring the rule of law to these countries will need intelligence, courage, and patience in ample supply.

I. INTRODUCTION

A. Study Objectives

In early 2000, the Bureau for Europe and Eurasia (E&E) began an effort to develop a new strategic framework to guide democracy and governance (DG) programming in the region for the coming decade. Part of this process included an in-depth look at the assistance challenges in each of the principal sub-sectors of traditional E&E DG assistance programming (civil society, political processes and elections, media, rule of law and local government). As this process unfolded, it became quickly apparent that the development of effective strategies for the future required a closer look at progress achieved to-date and lessons, if any, to be learned from the substantial amount of assistance already provided to countries in the region.

With respect to rule of law (ROL) assistance, it became obvious that, despite a substantial amount of rule of law programming since the inception of assistance programs in the region, few formal evaluations or assessments of this programming had been done, either by USAID or other donors. Rule of law specialists within the Bureau were unanimous in the view that further knowledge was needed about what had been undertaken in individual countries, and that assessment of assistance impact could provide a better basis for future strategy and activity design efforts. Consequently, a decision was made to carry out an impact assessment program in the region, based upon country-specific assessments of a variety of rule of law assistance activities that had been carried out in selected countries in the region. It was anticipated that this multi-country, multi-faceted approach would facilitate cross-country comparisons and identify key lessons that could be applied to program strategy and activity development throughout the region.

A limited ten-day pilot assessment effort in Armenia was conducted in the spring of 2000 by a two-person contractor team. The lessons of this pilot regarding the approach and methodology to be used in country analysis were incorporated into the later, more comprehensive scope of work to which this synthesis responds. Although the Armenia assessment was done under somewhat different conditions than the later assessments, the substantive findings and conclusions of that assessment have been incorporated into the analysis in this report.

The scope of work for the impact assessment program more specifically describes the objectives of the program as follows:

The objective of this assessment is to determine the effectiveness of ROL assistance in promoting reform in the law and legal institutions in selected countries in the E&E region over the past ten years; to identify the various factors and conditions which have enhanced or limited the effectiveness of ROL assistance in those countries; and to determine the relative effectiveness of various types of ROL assistance provided in the region in strengthening law and legal institutions.

The findings and conclusions generated as the result of this assessment are intended to assist rule of law strategists and mission DG officers to formulate more effective rule of law strategies, both regionally and on a country-specific basis, based on experience gained and lessons learned from past programming in the region. The principal aim of the assessment is to determine what has worked and what has not worked and why, and whether certain means of delivering assistance have been more effective than others in achieving change in participants and institutions in the legal system.

The assessment is also intended to serve as a tool to assist ROL activity designers to:

- Decide what their best investments are likely to be when putting new ROL projects together;
- Make appropriate adjustments in ongoing programming as required; and
- Better evaluate whether proposals put forward for ROL programming (whether from internal or external sources) are likely to produce results and what level of results can be expected.

It is important to note that, as described above and as carried out, the series of impact assessments was designed as a results assessment activity. It was not a more traditional evaluation (or series of evaluations) of specific activities or projects, which usually covers both results and implementer performance. The assessment program concentrated on the impact of assistance provided; it looked at questions such as program targeting, sequencing of activities, and assistance effectiveness (as measured by results). It did not look at the quality of performance of specific contractors and grantees. In this latter respect it assumes that activities were, in general, implemented reasonably well, or that any implementation problems that occurred were quickly addressed and remedied without unduly affecting achievement of results. In fact, individual country studies did not identify serious or widespread cases of poor implementation.

While failure to achieve results can be the result of poor implementation of an otherwise sound strategy, determining the extent to which poor implementation, rather than an inappropriate strategic approach, caused poor results is difficult to determine considerably after the fact and probably requires the completion of in-depth activity-specific evaluations. This underlines the need for more and more timely evaluations of project activities. In cases in which activities have been carried out under assistance arrangements (grants or cooperative agreements) where the grantee/recipient was largely responsible for both choice of program interventions and implementation, poor results may suggest that the implementer's own program strategy or approach needs reexamination.

Although not specifically called for in the scope, a subsequent decision was made to include in this synthesis some comparison of the E&E Bureau findings with those of the USAID Democracy Center's earlier ROL assessment effort, which focused on countries in Asia and Latin America.¹

B. Country Selection And Scope of Assessments

Countries included in this study were selected on rolling basis. At the outset, the study team identified a number of criteria for deciding whether experience in a specific country warranted examination. These included the size of the rule of law program carried out in the country; the onset and duration of rule of law programming; whether, over a roughly ten year period, rule of law improvements were an explicit program focus (i.e., a Strategic Objective or the equivalent, or an intended by-product of efforts focused more directly on strengthening civil society); the variety of rule of law activities carried out; and the anticipated utility of the country assessment to ongoing and future programs. Somewhat less consideration was also given, for the purposes of later comparison and analysis, to where countries fit within the E&E regime typology (discussed below). In practice, country selection was strongly influenced by the receptivity of individual Missions to the proposed scope of work, the proposed timing of the assessments, and the availability of Mission and key host country personnel to participate in assessments.

The group of countries ultimately selected did not include an even distribution between Eastern Europe and Eurasia. While it might have been desirable to have had a nominal balance, including among identifiable sub-regions (e.g. Central and Eastern Europe, the Balkans, Caucasus, Central Asia etc.) the reality was that a significant amount of funding for rule of law related development activities over the previous decade has gone to the Eurasian countries. Funding for substantial rule of law efforts in the European part of the region has only recently increased substantially, and among these countries only Bulgaria's program could be considered far enough along and sufficiently large and varied to be analytically useful.

Despite the range of factors involved in country selection for this assessment, the set of countries ultimately included offers some key advantages. It ranges from Bulgaria, which, while still in the throes of major transformation, appears to be solidly on track for entry into the European Union, to countries that are struggling to meet the minimum standards of the Council of Europe (Russia, Ukraine, Georgia,

¹USAID Program and Operations Assessment Report No. 7, "Weighing in on the Scales of Justice: Strategic Approaches to Donor-Supported Rule of Law Programs," Harry Blair and Gary Hansen, February 1994.

Armenia) and finally to those where the development of the rule of law is so embryonic (e.g. Kazakhstan, Kyrgyzstan, and Uzbekistan) that formal relationships with European institutions are not under discussion, and thus do not serve as an external stimuli for reform.

Within the countries where assessments were undertaken, an effort to understand broad trends with respect to rule of law improvements, or the lack thereof, was balanced with more direct efforts to ascertain the impact of USAID programming. While teams that carried out these studies always assessed the state of the rule of law, often using a country's independence as a starting point, the selection of specific USAID –funded ROL activities for examination involved an iterative process, with the final choice being by mutual agreement between the Mission, USAID's assessment program manager, and the team that carried out the country study. In no country did available time and resources afford a comprehensive examination of all the rule of law activities funded over the course of the previous decade.

Types of activities selected for examination in particular countries depended heavily upon whether they had been underway for a sufficiently long period to be instructive for analytical purposes. Selection also depended in part upon the availability of informed interlocutors. Some early programs that were considered for examination before teams arrived in country could not, in the end, be assessed in a meaningful way on the ground. In addition, certain types of programming unique to a particular country and without an exact counterpart in other countries in the region (e.g., administrative law reform activities in Georgia and ROL partnerships in Russia) were nevertheless assessed, primarily because of strong interest in both the field and in Washington in the potential of such activities for future programming.

Pursuant to the scope of work, the evaluative work in each country focused principally on activities under the rubric of democracy and governance. That is, the teams focused their analytical attention on programs that had as their primary purpose the strengthening of the legal structure and institutions generally, rather than on law-related components of activities designed primarily to accomplish commercial, environmental, energy or health sector objectives. Examination of those types of activities was encouraged, however, when it was feasible to do so as part of other assessment work (e.g., surveys on the impact of training activities elicited information on training provided under both DG and EG programs). In some instances, activities assessed included those funded from other than ROL assistance resources but which contributed to common goals. Among these activities was judicial training on commercial topics and legal advocacy programs undertaken as a part of a broader civil society development effort.

To the extent possible, the various country assessment teams also sought to identify and review ROL-related activities carried out by other U.S. Government agencies as well as relevant activities and experiences of other donors working in collaboration with or in parallel to USAID. Given time constraints on in-country work, the amount of data collected and incorporated in country assessments from these sources were limited, though at times quite valuable.

C. Methodology

1. Country Studies

The E&E Bureau's Scope of Work for this project called for the development of a Common Assessment Methodology prior to initiation of country desk reviews and fieldwork. From a methodological perspective the challenge inherent in this requirement lay in defining a protocol that would allow teams to address the central questions posed in the assessment SOW through the optic of programs which themselves differed significantly, in countries that are far from homogeneous in terms of their historical experiences, present conditions and outlooks, despite a shared legacy of decades of communist rule.

The protocol MSI developed had two distinct but complementary elements that informed the country analysis. Employing them in tandem was a way to capture their respective advantages while minimizing their shortcomings.

- The first part of the protocol focused on key rule of law characteristics (e.g., legislative framework, including the capacity to draft laws; functioning of the judiciary; status of civil society, and other structural characteristics that could be examined across countries), and the degree to which they had evolved over the previous decade or so. Where informants in chosen countries asserted and provided evidence of change, the protocol called on team members to probe causal factors in bringing it about. Teams sought to determine the relative influence of the various external and internal factors, including assistance programs, in stimulating change. In this way, it seeks a more integrated understanding of array of relevant forces shaping observed outcomes. This is a perspective not easily gained from employing more conventional program evaluation techniques, which start from activities and attempt to determine impact.
- The second aspect of the protocol, which MSI envisioned as being of equal importance, much more closely paralleled conventional program evaluation. This involved selecting specific USAID-funded activities in each country and attempting to determine their impact.

By approaching changes in the rule of law situation from two different perspectives, MSI believed that a few candidate “cause and effect” relationships would stand out in reasonably sharp relief. Further, MSI anticipated that:

- Large programs, which hold out the promise of significant impact, could be more accurately assessed as to their prospective role while also identifying other factors that served to abet or impede improvement in the rule of law.
- Small, even seemingly insignificant activities, might, by matching up these two evaluation perspectives, be found to have had a substantial impact on changes in the rule of law.

Simply put, the two-pronged methodology was intended to yield insights into the key factors inhibiting and promoting rule of law development in the region, rather than to validate that most USAID activities had achieved, to some extent, results called for in contracts or cooperative agreements.

As part of the start up phase of the assessment, MSI codified these approaches, at USAID’s request, in detailed charts that identified the aspects of rule of law that teams would consider; interview guides and other methodological aids. This set of tools was brought together in an Assessment Handbook for teams that would carry out these studies. The document also functioned as a record of the discussions between MSI and USAID, in advance of fieldwork, about how teams would apply the two different evaluation perspectives outlined above.

MSI’s initial expectations concerning the application of its dual approach for examining rule of law changes and the impact of USAID programs was that teams would seek to identify and determine the underlying causes of major rule of law changes in part by conducting interviews and organizing focus groups with a broad array of knowledgeable actors, including executive branch officials, judges, NGO representatives; bilateral and multilateral donors; print and broadcast journalists and others. Teams would also undertake a rigorous examination of USAID activities using more conventional evaluation techniques to assess their results and impact.

In practice, even during the first field visits, which were expected to “pilot test” the methodology, a number of things became apparent. The first was that a systematic effort to develop a broad picture of change could, if not carefully managed, consume all of the team’s available time. Likewise, meeting with

a broad array of experts to produce a deeper understanding of causal factors at play can be extremely labor intensive. These realities took away time from carrying out “mini-evaluations” of specific USAID-funded activities, which in some cases were Missions’ principal interest rather than the broader assessment that the teams viewed as their primary responsibility.

How the methodology was applied evolved over time. In part because of time constraints, successive teams during their fieldwork abandoned the notion that the two aspects of the methodology could be carried out sequentially (hence somewhat independently) and instead simultaneously examined underlying causes of change or stasis and the impact of specific USAID-funded activities.² The downside of this change, however, was that teams proved somewhat less able to pull together the “big picture” sufficiently early in their fieldwork so as to inform the way they approached their assessment of USAID programs. Equally important, from an analytic standpoint, where teams had a relatively short amount of time in country, it became more difficult to keep the two perspectives distinct, thereby raising some concerns about their independence in reaching conclusions.

Country differences and the specific USAID-funded activities that teams examined also had an impact on the kinds of questions they addressed. While all of the teams utilized the core set of questions developed at the start of the study as a guide for their work, teams that looked more closely at the workings of the judiciary and the results of training programs for judges, for example, found that they needed to add to the generic set of information gathering tools developed for this study. Additions of this sort, while often quite necessary and useful on the “mini-evaluation” side of the protocol, also created differences in the focus and coverage of the various country reports.

Balancing out some of these differences in focus was the effort by MSI to ensure a degree of team member continuity and learning. A small group of MSI staff and closely affiliated consultants participated on more than one team, ensuring that insights gained during the early assessments informed the work of subsequent ones. For example, the initial three-country pilot included one individual who covered all three countries and two others who switched off in the middle, one of whom subsequently went on to lead the second round of country studies. Subsequent country studies always included one seasoned team member wherever a new team member came on board.

While this transfer of methodological understanding helped to unite the studies MSI carried out, teams did not have sufficient time to immerse themselves in the substantive findings of the preceding studies. This inhibited more systematic diffusion of lessons learned across cases. Teams did spend time on “desk research” before going to the field, but it generally focused on the country they would visit rather than on previous studies in the series. In retrospect a rolling synthesis, rather than one carried out only at the end, might have led to more effective mid-course corrections and yielded more comparative findings along the way, including generation and empirical testing of causal hypotheses surrounding rule of law reform.

Among the other challenges confronting assessment teams on the E&E Rule of Law Project, data collection/reliability was one of the most formidable. The nature of the subject under inquiry does not lend itself to straightforward quantitative analysis. Promotion of the rule of law involves a constellation of material and ideational processes interacting in complex ways. It is not altogether clear what data is required to explicate causal linkages in order to understand under what conditions particular interventions are likely to prove efficacious in strengthening the rule of law.

² The actual amount of time teams had for their fieldwork varied from 9-10 days in some countries to three weeks in others. The Kyrgyzstan and Armenia studies, the latter that the Assessment Project “inherited” because of its similar scope, but did not actually conduct, were the shortest studies in terms of total time. Those done in Uzbekistan and Kazakhstan had a slightly longer period, while studies in Bulgaria, Ukraine, Georgia and Russia each involved roughly three weeks of field work.

Moreover, in several of the countries in this study, hard, reliable data in relevant areas such as administration of justice are hard to come by, if they exist at all. Performance data provided by governments needed to be carefully scrutinized, as institutions remain weak and their capacity to produce reliable statistics remains uneven. In the case of the Bulgaria and Russia assessments, the teams undertook to generate their own data through mini-surveys or questionnaires.

The preponderance of data used by the teams in analyzing rule of law conditions came from interviews with a wide array of informed interlocutors drawn from government, advocacy NGOs, think tanks, media and other sectors. Team members were extremely diligent in trying to corroborate information and judgments from interviews and focus groups. Of course, most of what interviewees provided were subjective judgments about events and the causes of political outcomes rather than quantitative data. It was up to team members, drawing on multiple sources, to piece together the most compelling interpretation of cause and effect relationships, including those concerning the impact of USAID-funded programs. Formulating generalizable conclusions based on the perceptions of interlocutors is fraught with methodological risks but expanding the number and types of informants in a planned and systematic way can reduce them to acceptable levels.

It should be noted that in the case of Russia, the assessment team employed a different methodology, although it still followed many of the same steps previously outlined to ensure analytical integrity. The team focused more narrowly on U.S.-Russian partnerships and an impressive network consisting of judges and other legal experts that had been erected with funding support from USAID. One must be particularly careful in drawing broadly applicable conclusions based on a single case but the Russia study does offer some compelling lessons with respect to assistance modalities, discussed in later sections.

2. Synthesis

In a perfect world, all data would be comparable, all researchers would have similar biases, and all synthesizers would be able to say, “all other things being equal, five of eight cases show clearly that X is the proper conclusion.” Alas, these perfect circumstances rarely occur, and the body of country studies upon which this synthesis is based is no exception. The activities compared, although often similarly named, with similar objectives, and perhaps even implemented by some of the same organizations, each operated in a different political or bureaucratic environment. The authors of the country program impact assessments have valiantly attempted to organize their findings to facilitate maximum data comparability. The author is grateful for their Herculean efforts in this regard. It is nevertheless clear that, in reviewing the breadth and depth of their output, some topics mattered more to some assessment teams than others, and that even with many similar findings, there is by no means full consensus on their implications.

Absent fully comparable data and clear consensus on findings and recommendations for more than the most generic of issues, this synthesis is necessarily a combination of empirical data selected and organized by the author to focus and simplify the myriad issues addressed in the country assessments, and what are, perhaps ultimately, impressionistic conclusions and recommendations drawing on the findings of the various assessment teams. It is possible that the author has interpreted these findings somewhat differently than the assessors. Some, although not all, of the conclusions of this synthesis have been shared with key members of the country assessment teams; to the extent possible, their responses have been incorporated. The author takes full responsibility for any errors in this report.

D. Caveats

1. Country Studies

It should be understood at the outset that resource limitations did not allow for equal thoroughness in country assessments. Field visits ranged from nine days in Armenia and Kyrgyzstan to 13

days (Kazakhstan and Uzbekistan) and three weeks each in Bulgaria, Ukraine, Georgia and Russia. Time limitations and scheduling difficulties hampered the teams' abilities to acquire available host country data in a number of countries or to schedule interviews with high profile individuals. In some cases, the data provided by host countries, and even by Missions, was unaggregated, error-prone, and not terribly useful. The decision to limit the scope of activities assessed in some countries due to time limitations or specific interests of individual Missions or the Bureau in certain programming areas reduced the teams' abilities to fully address comparable programs. A broader assessment of the Russia ROL program – generally considered the “mother lode” of experience in E&E ROL programs – would have provided a much stronger basis for comparative analyses. As it is, several assessments included programs for review, e.g., in court administration (Bulgaria) or administrative law (Georgia), for which there is no equivalent elsewhere in other countries assessed. Findings and recommendations for these activities, while thought provoking and useful to the individual Missions, are *sui generis* and might have changed if other comparable programs had been reviewed. As a result, while this effort is broadly similar to the earlier Blair/Hansen effort, its approach is by no means as consistent or as thorough in scope as their product, which allowed more time and attention to comparability of programs under review.

2. Synthesis

Over the course of this assessment, various participants have identified and urged the adoption of a range of analytical frameworks for organization of the findings and conclusions of this synthesis. Each of these has advantages as well as disadvantages. Some are too complex and/or theoretical for easy reference by practitioners. Others are insufficiently nuanced for effective decision-making. Still others are relatively static, and make little or no provision for environments where relatively rapid change is the rule rather than the exception.

Adding to this dilemma is the need to use independent data sources to plot comparative country status and performance over the period under examination. This is necessary to clarify the comparative environment for ROL efforts in the various countries and to enable some general conclusions about what types of programs work best in certain environments, which types of programs should be minimized in others, and how practitioners will know when strategic changes are required. Unfortunately, given the complex nature of the analytical process, there is no scale that is so commonly accepted as to preclude future argument. To reduce, if not fully eliminate, these arguments, this synthesis relies on available data, but also uses some margins of error in recognition of the reality that ranking country performance on any scale remains as much art as science.

The analytical framework used in the later sections of this paper is not new, nor is it original with the author. It was developed in the Office of Democracy and Governance of the Bureau for Europe and Newly Independent States (the predecessor to the current Europe & Eurasia Bureau) in the mid-1990s, and used with a number of Missions for strategy development at that time. It, too, is imperfect, but it has the advantages of relative simplicity, some capacity for nuance, and the ability to reflect change over time. The data used in the model – again, imperfect, but arguably the best available -- is drawn primarily from publications by Freedom House³, but statistical compilations from the World Bank, Transparency International and the Heritage Foundation have also been incorporated for reference to demonstrate how related but different data sources reflect relatively similar ranking results.

In the interest of full disclosure, it is appropriate to note that the author was Director of the Bureau for Europe and New Independent States' Office of Democracy and Governance for several years during the 1990s, and was Mission Director, USAID/Caucasus, covering Armenia, Georgia and Azerbaijan from 1996-1998. In these capacities, she managed the design and implementation of a number of ROL as well

³ “Freedom in the World” and “Nations in Transit”, 1994-2003.

as other programs, and was privy to a number of USAID, State Department and other agency decisions regarding the initiation, magnitude and composition of programs herein assessed. She was, however, neither a participant in nor an interviewee for any of the country assessments synthesized in this paper, although she did discuss some of the findings with individual authors in preparation for this synthesis. While she would prefer to be considered rigidly objective in the evaluation of data presented by country assessment teams, she admits to biases largely in sympathy with overworked practitioners seeking to achieve the maximum impact in difficult country environments. To the extent that the author's own experiences are relevant to the study at hand, she has used them to provide context to conclusions reached by the various country assessment teams, and to fill in background information which may have been forgotten with the passage of time.

II. PROGRAM RESULTS

A. Background

More than a decade after the fact, it is hard to remember the shock and euphoria that greeted the fall of the Berlin Wall and the ensuing implosion of the Soviet Union. Many, both inside and outside the U.S. Government, saw that period as an opportunity to reshape the post-Communist world in our own image, i.e., to create free market democracies where none had existed before. History had ended, argued Francis Fukayama, with the victory of Western ideals. Once the vestiges of Communism were removed, it was believed, Eastern Europeans and former Soviets would behave much like us, reacting to similar incentives in similar ways. It was the duty of the Western democracies to diagnose for these countries the error of their Communist ways, to graft onto their political, economic and social structures the lacking elements of free market democracies, and then step back as the patients rapidly began to recover.

In the U.S., the events in Eastern Europe and the former Soviet Union generated enormous interest and outpouring of support. Relatively huge amounts of funding were made available from both U.S. government and private sources. Whole new institutions, such as ABA/CEELI, were created to address the needs of these countries. It seemed, at times, as if every citizen or citizens group had ideas on how these resources should be spent. At one time, USAID's New Independent States Task Force estimated that it had received unsolicited proposals for over \$6 billion in program activities. Many of these proposals were supported publicly or privately by powerful players on the U.S. or international scene. Amid the chaos of these early years, USAID (which had no institutional experience in the region) sought to create program portfolios in these countries, which balanced hard-headed analyses of key country needs with domestic and international pressures.

The set of programs now known as Rule of Law was no exception to this pattern. Some of the programs identified in the country assessments as poorly timed or misguided were those funded in response to various pressures. At the same time, some of the programs developed by USAID and its key partners were also flawed. A review of some of these efforts reveals some common mistakes: too many common-law oriented Americans lecturing former Communists on ways to change their historically civil law systems; misunderstanding of the motives of key "reformers"; underestimation of the power of vested interests in resisting reform; and less than keen understanding of how post-Communist power structures, coupled with economic collapse, could give rise to strongmen, oligarchs, mafias, and other shadowy elements, whose emergence would significantly dampen individual countries' abilities to embrace democratic ideals and market reforms.

While there may be some benefit for analytical and activity design purposes in agreeing on a definition of ROL and its constituent elements, for purposes of this synthesis it is easier to define ROL in the context of what it should **not** be, i.e., "rule of men." The Communist system embodied the "rule of men." In this

it was hardly alone; authoritarian governments of all stripes generally embody the “rule of men” by using state institutions not for the public good, but for their own good and that of their patron-client networks. Those connected to the power source are protected, and act with impunity, while those without connections are generally subject to the whims of those with authority or influence.

The concept of rule of law grew out of centuries of efforts by mostly European or Eurocentric thinkers to level the playing field for citizens of monarchies, empires and republics. It sought to create a social contract between the government and the governed on the rules of political, economic and social interaction, and to provide checks and balances on the exercise of power within the country. Viewed through this historical prism, it should not be surprising that the majority of countries assessed have not come very far along the spectrum from “rule of men” to “rule of law.” Their great upheavals are too recent and, in many cases, still in progress. Independence and/or freedom from the Soviet orbit have unleashed forces, e.g., ethnic strife, the “grabbing” of national assets by well-connected groups and individuals, which complicate their trajectories. The citizenry is cynical, focused on day-to-day economic struggles, badly informed and often apathetic about the steps needed to move toward rule of law as a key element of market democracy.

Of the countries assessed, only in Bulgaria where, after many political twists and turns, the government and the populace now seem committed to the changes necessary for EU accession, is there real hope for increasingly rapid adoption of the rule of law. Even there the path is unlikely to be smooth. The experience of Bulgaria, as well as that of other Central and Eastern European countries which have moved more rapidly along the rule of law spectrum, seems to suggest that even countries with relatively little recent history or experience of independence, democracy and capitalism can be drawn along faster by the carrot of European integration. In the case of Bulgaria, sustained pressure from NGOs (many of which were supported by USAID) combined with external stimuli provided by the prospect of EU membership helped to generate the requisite political will on the part of national decision makers to undertake far-reaching legal reforms.

The specter of relatively imminent European integration appears to offer two main advantages: the promise of “normalcy”, i.e. that accession to the EU will bring political, economic and social benefits that will erase the vestiges of the recent past; and a relatively specific roadmap for achieving these goals. While accession to the Council of Europe has undoubtedly produced some superficial changes in other countries and the raising of the COE flag has generated a “feel good” mentality, it is increasingly clear that the lack of tangible benefits offered for COE membership, coupled with relatively lax enforcement of the promises made by countries seeking accession, limits the value of COE membership as a carrot for reform.

In summary, the assessment teams found that while USAID and other donor programs have made substantial contributions toward transforming the legal structures of these countries in significant ways, the job is incomplete in all. If USAID ROL programs are to achieve greater impact, they need to be more strategic, more politically “savvy” and designed and implemented with more care and precision. Moreover, USAID program managers must avoid over-promising short-to-medium term impact in what history shows is ultimately a much longer-term process.

The following discussion is organized by key categories of ongoing or potential program targets. It incorporates references to many, although not all, of the programs assessed.

B. Focusing Down

1. Legal Framework: Developing and Implementing Constitutions, Laws, and Regulations

In all countries assessed USAID Missions financed some measure of legislative drafting both as part of the democracy and governance effort and as a key element of their economic restructuring program. These programs met with varying degrees of success. Contrary to some reports, there was from the beginning something of a gentlemen's agreement between the DG and Economic Restructuring (ER) (now called Economic Growth (EG) sectors: DG would concentrate on laws relating to political, civil and human rights and on the structure of the legal system, while ER would focus on implementing legislation required for the transition to private property, the creation of financial structures such as banks and stock markets and laws required for implementation of these concepts. In theory (particularly from a common law perspective), this made sense. In practice, however, it proved to be somewhat more complicated.

Early on, neither group adequately appreciated the mismatch between hordes of eager American experts based in common law traditions and a relatively thin cadre of civil law experts within these countries. Civil law countries do not practice *stare decisis*, the common law practice that establishes and follows legal precedent, over time enabling courts to fill in gaps in the law or address inconsistencies or weaknesses in the statute. Rather, in civil law countries the language of the statute is paramount, coupled with extensive commentaries by legal scholars that complete the body of law applied by judges in the civil law system. Moreover, whereas the structure of the legislative framework in common law countries can be relatively fluid, in civil law countries each piece has its place.

These differences were perhaps most obvious with respect to civil codes. While armies of American lawyers, bankers, accountants, and securities experts were marching into countries and attempting to draft relevant laws which would fill in the gaps of the Communist system, civil law experts within these countries were scratching their heads, not only over the new concepts being introduced, but also over how to put these new laws into the appropriate civil law structure, i.e., as implementing legislation for revisions to national civil codes. The DG side was first to realize the importance of resolving this dilemma. With a mandate for civil law reform (which in common law generally involves family law, torts and contract enforcement) DG contractors and grantees found themselves involved in the revision of civil codes, which, in the civil law system, essentially serve as broad economic constitutions.

Realizing that their civil law expertise was inadequate, they began to reach out to the Dutch (who had recent, relevant experience with developing a new civil code), the Germans and other members of the EU and COE for support in this effort. It was, perhaps, at this point that programmatic alarm bells should have sounded. With 20/20 hindsight, it may have been preferable for USAID and many, if not all, of its partners to have stepped back and used the key process of civil code development to encourage public education and national dialogue on the concepts contained therein and the institutional changes required for their implementation. Absent this kind of support, some countries, e.g., Ukraine, have to this day been unable to form a political consensus on the adoption of key code elements, i.e., the status of land. As a result, civil code enactment and implementation have been held in abeyance, which continues to hamper the broader range of political and market reform efforts. Even in countries which have already enacted new civil codes, e.g., Armenia, Georgia, many of the concepts remain alien to the general population, and implementation suffers from lack of national consensus on the need for specific provisions and the institutions required for their implementation. Unfortunately, by the time USAID and its partners began to understand these issues, substantial resources and efforts had already gone into the development of various pieces of implementing legislation, which, in many instances, are inconsistent with the national civil codes that followed. These inconsistencies are now being addressed in a number of countries.

Similar problems plagued assistance in drafting other types of legislation as well. Recognizing that the content of criminal procedure codes directly impacts the protection of human rights and the fairness of political processes, a number of USAID program activities offered support for the re-drafting of these codes. Unfortunately, a multiplicity of U.S. government interests in these countries considerably muddied the waters of criminal justice reform. While some elements of State, USIA and USAID were primarily interested in creating more independent judiciaries, better rules of evidence, and diminished prosecutorial power, U.S. law enforcement agencies saw opportunities to expand post-Communist criminal codes to include provision for economic crimes, and to establish relationships with the procuracies and police in these countries which could facilitate the capture of international criminals.

The multiplicity of U.S. interests in post-Communist criminal justice systems played out in budget allocations as well as implementation modes, and made it difficult for the U.S. government as a whole to undertake a more comprehensive approach to assistance with criminal and criminal procedure codes. Again, with 20/20 hindsight, broad-based public education and discussion of some of the critical issues contained within these codes, e.g. limits on pre-trial detention, the rules of evidence, the need for a more adversarial criminal justice system, the key role of judicial independence, might have allowed citizens, judges, procurators, the police and the media to better understand how critical these elements are to the creation of democratic systems and the rule of law.⁴

USAID's experience in Armenia and Georgia with the introduction of administrative law is also instructive. Believing, with other donors, that the concepts of administrative law could be used effectively to curb the power of national bureaucracies still staffed primarily with Soviet holdovers, USAID offered similar packages of assistance to both countries, including training drafters at European law schools, and assistance in adapting European concepts of administrative law into the local context. Armenian civil law experts, trained in the Soviet system, demurred, either not understanding the utility of administrative law or preferring not to challenge existing bureaucratic power structures.

But Georgia's young reformers quickly understood the value of the concepts under discussion, accepted the assistance offered, and ultimately pushed through the Georgian Parliament a package of laws, including a Freedom of Information Act, which could provide a basis for future action.

Unfortunately, both USAID program designers and Georgian reformers gave too little attention to planning for the implementation of new administrative laws, perhaps underestimating old-line bureaucrats in key ministries. The Freedom of Information Act, however, seems to be growing in popularity, particularly among journalists and civic groups that understand how to invoke it, and its implementation appears to be proceeding along a faster track. To USAID/Georgia's considerable credit, it has devoted considerable resources and efforts to redressing the shortcomings of the original program design.

The Georgian experience may ultimately prove useful for other Missions seeking to create better mechanisms for citizens' ability to hold their governments accountable, but more attention needs to be given in all cases to creating and training the organizations and personnel needed for effective longer-term implementation.

Despite these and other documented missteps along the way, the country impact assessments almost universally agree that USAID's support for the development of new constitutions, laws and regulations contributed significantly to the creation of national legal frameworks essential for the ultimate evolution of these countries into market democracies. However, many of these efforts have not yet produced the lasting impact that they originally targeted. The reasons for this finding are myriad:

⁴ ABA/CEELI's landmark jury trial effort in Russia, while not a part of this review, stands alone as the most effective effort to deal with these issues. Its implications are still unfolding as the jury system is expanded to other parts of the Russian Federation.

- USAID’s legal drafting efforts worked, of necessity, primarily with urban elite civil law experts whose education and experience was firmly based in the Soviet system. Although this was probably unavoidable, particularly in the early days, in retrospect it is clear that a broader range of voices should have been brought into these processes from the beginning, i.e., prosecutors, judges, sociologists, journalists.
- In many cases, well-drafted laws were revised significantly during the enactment process. This was fully predictable, but in most instances USAID and its partners could not affect the enactment process either from a technical or political perspective.⁵ (It is questionable whether any donor should be involved in the political deliberations of national legislative bodies.) More time and attention should perhaps have been given to providing technical support to legislatures on the implications of proposed changes.
- Relying on Western experience, USAID and its partners simply did not anticipate the chasm between enactment and implementation of laws in post-Communist societies. In the West, implementation generally follows fairly rapidly on the heels of enactment. In the countries reviewed, this is rarely the case:
 - The Communist system enacted many laws, but in the end these laws were twisted to meet the needs of the Party through “telephone justice.” As a result, there is a depth of cynicism among all players in these countries regarding the implementation of new laws and ultimate reluctance to get too far out ahead of the power structure.
 - With respect to criminal laws, the balance of institutional power remains in most countries in the hands of the procuracy, which retains significant latitude in the interpretation of laws for prosecution purposes, and generally controls the rules of evidence. Neither judges nor defense attorneys generally have the status to counterbalance the power of the procuracy, even where newly enacted laws support their action.
 - With respect to civil issues, many lower court judges are simply unprepared to apply new laws. In many countries, these judges are young, recent law school graduates. Even with the best of intentions, they are not experienced enough to apply new laws in resolving relatively simple disputes. Moreover, because in many instances judicial housing and other benefits are provided by the local administration, there may be strong incentives for judges to decide cases in favor of the patron-client networks of that administration.
 - Finally, because of history and culture, each of these countries has traditions of relying on contacts, clans and bribery to resolve disputes. These factors are particularly pervasive in the Caucasus and Central Asia, but are hardly unknown in Bulgaria, Russia and Ukraine as well.

As a result of their lack of understanding of the historical context, USAID and its partners gave insufficient attention to, and provided insufficient funding for, implementation of new laws. This was perhaps a less pervasive phenomenon with respect to implementing legislation developed in furtherance of economic growth objectives. There, in most instances, it was recognized that new laws on bankruptcy, securities, banking regulation, etc. reflected wholly new concepts, and in many cases, required the creation of new institutions or new capacities within existing institutions – processes for which USAID provided significant funds through large implementing contracts and grants. On the DG side, however, many people believed that DG programs did not require similar investments in implementation because once key concepts were understood, local partners could take them and run. The post-Soviet experience in

⁵ The author was present for a humorous, if telling, incident in Armenia. The primary drafter of the new civil code, a former procurator-general of Armenia, asked AMEX’s staff, with something of a twinkle: “How much of a parliamentary majority do you want for enactment of the code -- 90 percent? 95 percent?” The contractor put his head in his hands. “Oh no,” he said, a simple majority will do.”

countries under review belies this view. Many DG-financed legislative drafting efforts might have achieved much greater impact if combined with significant public education, institutional strengthening, and consideration of the existing incentive structures.

In sum, the country impact assessments support a number of key findings and recommendations regarding future USAID-supported work on legal frameworks:

- Before supporting work on new or revised legislation, USAID and its partners must have a firm grasp of the type of legal system operative in the country, and its primary characteristics. Where countries rely heavily on civil law traditions, USAID and its partners should rarely, if ever, go it alone. Failure to involve civil law experts from other countries will significantly diminish the value of assistance provided, as well as the credibility of U.S. experts. In fact, for countries seeking accession to the EU, and perhaps even the Council of Europe, the U.S. may have relatively little comparative advantage in legislative drafting *per se*, except, perhaps, in some of the more arcane types of legislation where worldwide practice generally follows U.S. models, e.g., securities regulation, money laundering, RICO statutes, etc.
- Now that the rush to rapid implementation has ended in E&E, USAID and its partners can afford, and should take, the time to broaden participation in legislative drafting to include key stakeholders, including interested non-governmental organizations and the media. This will: initiate the public education process; root legislative changes more firmly in national political processes; produce legislation more relevant to the country context; and surface key implementation issues which need to be addressed over the longer term.
- The country assessments suggest that in-country U.S.-sponsored training for judges and others on the provisions of new laws has been valued by the countries reviewed more highly than that of other donors because of the U.S. emphasis on practical applications. Where appropriate, this type of training might be usefully expanded.
- Relatively little attention has been given in any of the countries assessed to institutionalization of legal drafting capacity. Where it has been addressed, e.g., Ukraine, it may have been addressed in the wrong place, i.e., in Parliament, when in fact most key legislation in parliamentary systems is initially drafted in the executive branch. While the decision to focus drafting capacity assistance on parliaments was well intentioned---to strengthen weak legislatures against strong executives and thereby promote a real separation of powers---it was not effective in practice in systems in which the leadership on development of new legislation was seen to lie with the executive branch. The appropriate locus for institutionalization of legislative drafting capacity will probably differ by country, but institutionalization is a key element of a successful long-term program, and should not be ignored by the donors.
- Some of USAID's efforts have suffered from insufficient coordination between the DG and EG sides of the house on legal reform issues. This tendency is more pronounced in Missions with multi-country and multi-sector responsibilities, but is observable in some measure in most countries assessed. As a result, it appears that few lessons learned have been shared between the sectors. On the positive side, some relatively successful activities financed under the rubric of ROL, e.g., ABA/CEELI's Environmental Public Advocacy Centers, have clearly advanced both USAID environmental and ROL objectives. The rigid split in funding among sectors appears to be a primary cause of this "stove piping;" however, the press of business in both sectors is undoubtedly a key factor as well. At a minimum, Missions should encourage regular ROL roundtables at which USAID, its partners, and perhaps other donors can share information regarding on-going or planned programs and concerns. At a maximum, some Missions should

probably consider joint programming of DG and other Mission resources for more effective ROL activity design and implementation.

- Happily, most programs assessed have undertaken a significant measure of donor coordination, and at least in recent years there is little evidence of overlap or competing donor priorities. A number of country programs, e.g., Bulgaria, Georgia, Armenia, are positioned to capitalize on good donor coordination for joint or parallel financing.
- Probably too little attention has been given in most countries assessed to criminal law and procedure. This issue was not a key part of the scope of work of this analytical package and is only tangentially addressed in the country impact reports. However, some of the findings (particularly in the Caucasus and Central Asia) suggest that citizen perceptions of the effectiveness or rate of change in the legal system are largely based on how the country deals with criminal law and corruption. Where human rights are regularly violated by the criminal justice system, e.g., through extended pre-trial detention, or legal processes clearly biased against the accused, citizens are unlikely to see progress, even if a significant portion of the rest of the legal framework has changed. It is thus questionable whether legal public education programs can be effective unless some of the more egregious aspects of the criminal justice system are changed. Addressing these issues will not be easy in the best of circumstances. It will be impossible unless the range of U.S. Government agencies with interests in the criminal justice sector can find ways to work together in developing criminal justice programs which support basic human rights as well as more effective ways of tracking international terrorism or mafias.
- The failure of most ROL legal framework programs to produce significant ultimate impacts largely derives from failure to address implementation capacity and incentives, or to take into account political realities associated with new laws. Judicial training is necessary but insufficient to produce the desired outcomes, particularly if judicial independence is largely lacking. Much broader public education and training efforts, and possibly institutional development activities, need to be incorporated if new or revised laws are to be effectively implemented. This implies significantly more expense and longer-term focus than has been the case in the past. As a result, Missions will probably need to be much more selective in their legislative drafting targets than they have been in the past.

These findings suggest that the most effective packages of support for legislative drafting and implementation would involve: early participatory processes sponsored by the drafting institution with USAID support; early discussion and/or collaboration among various elements of USAID and USAID partners, other donors and other relevant U.S. agencies; strong reliance on non-American civil law experts for actual drafting advice; some measure of USAID and other donor involvement or guidance during the enactment process; careful attention to the roles and incentives for those groups upon which implementation depends; the development of local “trainers of trainers” capable of ensuring that a critical mass of magistrates and judges throughout the country receives quality training on how to interpret and apply the new law; and the flexibility to back off immediate objectives, if necessary, and focus resources on key barriers to effective implementation, e.g., lack of political will, insufficient judicial independence, entrenched corruption, or lack of national financial capacity for effective implementation. Together with other donors, USAID should seek to ensure that some institutional capacity for future legislative drafting is being developed. Finally, in light of the civil law context of these countries, ROL programs provide unusual opportunities for co-financing or parallel financing with other bilateral or multilateral donors.

2. Developing and/or Assisting Legal Institutions

a. Parliaments

Over the course of the Eastern European and former Soviet Union programs, assistance was provided to Parliaments for various reasons: improvement of political processes, improved governance, and rule of law. In fact, most of these programs straddled all three objectives. The Ukraine Parliamentary Development Program (PDP) – the only such program covered in the country assessments⁶ – was no different. In its early days, this joint venture of a Ukrainian Diaspora organization and Indiana University focused heavily on improving the knowledge base of parliamentarians and helping to organize parliamentary processes and make them more open and transparent. Moreover, PDP appears to have been an important participant in getting the Constitution adopted, and developing laws on the judiciary and local self-government. Its influence on Parliamentary operations is somewhat more questionable. Since 2000, a smaller program has focused on promoting reform legislation.

The assessment team's primary findings and conclusions with regard to this program is that it went in too early, with too many resources, in support of a parliament that was still dominated by the Communists. This is probably a fair criticism⁷, and should encourage future caution in the targeting of similar programs. It is also unclear the extent to which the Ukrainian Parliament is an appropriate locus for legislative drafting assistance. While MPs do submit a higher percentage of laws for enactment, the assessment team determined that most of the important laws, and a higher percentage of laws which are actually passed, are submitted by the president or the cabinet of ministers.

Extrapolating from the Ukraine and, to a much lesser extent, the Georgia experience, as well as some experience in other Eastern European countries which were not targets of these assessments, e.g., Romania, it is possible to draw some tentative conclusions. Missions considering parliamentary assistance programs (for whatever purpose) need to understand the political make-up of the parliament before committing to such assistance, and have a relatively firm grasp of the parliament's real role in the political structure. More importantly, they should not assume that parliaments in post-Communist countries are, or should be, clones of the U.S. Congress, which functions quite differently than most parliamentary systems. Given significant differences in U.S. legislative organizations and practices, it may be that the U.S. has relatively little comparative advantage in parliamentary assistance, and should leave such assistance to more qualified donors. The more appropriate role for U.S. assistance may be on the "demand side", i.e. working with NGOs and other citizen groups to encourage increased parliamentary openness, transparency, effectiveness in representing the electorate, and action on specific pieces of legislation.

b. Judiciaries

By far the bulk of USAID institutional support in ROL has been provided to the judiciaries of the countries assessed. Whether this should have been the case is an open question. Coming from a tradition of strong judicial independence – "the third branch of government" – and judicial activism, USAID and its partners simply did not understand the relatively limited role of judges under the Communist system. On the other hand, since magistrates and judges had the most to gain from changes in national legal systems and collaboration with donors, in many countries it was the judges who were first to reach out for or respond to donor interest. It was not, therefore, surprising that judiciaries became a primary program focus, particularly once program designers and implementers began to understand how the lack of judicial independence would hamper even the best ROL efforts.

The assessment teams found that, at least partially as a result of USAID and other donor efforts, many of the countries assessed have instituted some important judicial structural reforms. Most, for example, have

⁶ A much smaller and more limited activity connecting the Georgian Parliament to the Internet was undertaken with dramatic success in the early 1990s, but was not a focus of this assessment.

⁷ It should be noted that neither the timing nor the magnitude of the program was the Mission's decision.

removed management responsibility for the courts from the ministries of justice; some have separated the budgets of the judiciary from that of the ministries of justice as well. At least from an American perspective, these are key steps toward judicial independence.⁸ In addition, many countries have adopted ethical guidelines for their judges, albeit mostly with relatively poor enforcement. Finally, with USAID and other donor support, many countries have undertaken major efforts to enhance the technical and administrative capacity of judges, particularly for the application of new or revised legislation. Of the countries reviewed, Georgia has done the most, changing the way its judges are selected, improving judicial salaries and infrastructure, and expanding access to information and the transparency of judicial proceedings. Unfortunately, the positive effect of these changes is hampered by the Government of Georgia's inability to pay judicial salaries in a timely fashion, as well as continuing resistance by the procuracy and other elements of the executive to full implementation. Georgia's new, reformist government, which is populated by many of those who promoted these changes, will need to focus significant efforts on removing the continuing barriers to growing judicial independence.

Some countries have established judicial training centers with donor support, generally with positive, if incomplete, results. The USAID-supported Magistrates Training Center in Bulgaria appears to be the most successful. All new judges receive basic training at the center, and the group surveyed was enthusiastic about the value of the training provided, believing it was fully appropriate for their level of skills. The EU-financed Judicial Training Center in Georgia offers additional opportunities to improve the quality of Georgian judges if appropriate longer-term financing arrangements can be developed. The success of EG-financed judicial training programs in Kazakhstan and Kyrgyzstan also demonstrates that even under difficult political and institutional conditions well-targeted, effectively run judicial training programs can have a notable impact, particularly in terms of understanding and application of new laws.

Another effective and less conventional program that helped to bolster the capacity of judges has been the Russian-American Rule of Law Consortium. While not a training program per se, these partnerships, which now boast "sister region" relationships involving several U.S. states, provide a mechanism for the diffusion of knowledge and information that directly benefited individual participants and through them influenced the evolution of judicial institutions.

There is some evidence that programs focused on judges may be leading toward some important longer-term impacts. The supreme courts of both Ukraine and Georgia have made some key decisions antithetical to the interests of the executive branch, which imply a growing measure of judicial independence. In several countries, acquittal rates in criminal cases are increasing, although not dramatically. Finally, judicial caseloads are rising in many of the countries surveyed, which may imply greater faith in the legal system, including the effectiveness of judges. Unfortunately, the preponderance of the evidence indicates that most judiciaries in the countries assessed remain, as during the Communist era, heavily dependent upon executive power and beholden to national and local political interests. In addition, surveys undertaken by various local civic groups, some with USAID funding, indicate that many judiciaries are still perceived to be inconsistent, if not fully mistaken, in their application of the laws, and generally corrupt and inefficient in their decision-making processes.

In most of the countries assessed, USAID also made a significant effort to support judicial associations, both as a means of getting to know the players and in the hope that over time these associations might become allies in the reform process. The results of these programs have so far been disappointing; few of these organizations yet see themselves as advocates on behalf of the judiciary. The association in Georgia conducts roundtables and claimed some influence on the drafting of the law on social protection, but other members lamented that the association was not more active. The associations in the Central Asian

⁸ A number of European countries have not fully adopted these practices but nevertheless have found ways of ensuring a strong measure of judicial independence. It may be that some of these European models would find more fertile ground in post-Communist countries.

Republics have adopted codes of conduct but are not enforcing them. Only the association in Uzbekistan was credited with a significant role in the movement for judicial reform there, but its leader was subsequently removed and replaced by a Ministry of Justice employee, which bodes ill for the future independence of the association. Despite the weaknesses of these organizations, the teams did not recommend severing relations with them. Rather, they concluded that USAID needs to do a better job of helping these organizations to define their purpose and core causes around which their membership can be mobilized.

The country impact assessments suggest that USAID probably focused too much programming on judiciaries when, due to existing incentive structures and political conditions, real reforms were unlikely early on in the process. Under the Communist system, the procuracies creamed off the best and brightest graduates in law, provided some of the best training available, and made procurators key actors in the political as well as legal system. Judges, by contrast, had relatively low status and were perceived as mere cogs in the wheel of the legal system. It should not be surprising that while judges are eager to gain higher status, procurators are loathe to let go of their prerogatives, and their patron-client networks, particularly within the executive branches of more authoritarian countries, are unwilling to let them.

c. Procuracies

In the countries assessed, relatively little programmatic effort has gone into working with the procuracies.⁹ It is possible that DOJ or other U.S. law enforcement agencies have had significantly more dealings with local procuracies than is reflected in the country impact assessments; relatively little information on these other U.S. government programs was obtained. Clearly, in retrospect, USAID should have given more attention to the procuracies as key actors in the rule of law equation. In most places, this would have been difficult; for the most part, the procuracies of the countries assessed are staffed by the most conservative elements of the legal system. Nevertheless, the lack of reaching out to the procuracies probably limited the likely effectiveness of programs focusing on the judiciary and other legal institutions. At a minimum, USAID Missions addressing judicial independence and the imbalance of power within post-Soviet legal systems may want to consider using U.S. or third country-based study tours to expose local procurators to their counterparts in more adversarial systems. (The value of study tours is more fully addressed in the section on Modalities, below.) At a maximum, USAID and DOJ together perhaps need to find a way to collaborate on programs with the procuracies, not just with study tours, but perhaps with institutional work, e.g., encouraging the more effective use of forensic evidence for arrest and trial purposes, which could encourage more balanced prosecutorial action.

d. The Bar

Since the beginning of its programs in post-Communist countries, USAID has sought to encourage the bars in the region to improve their licensing, qualification, and admissions standards, to provide training for lawyers, and to adopt more ethical practices. It was also hoped that bar associations would become keen advocates for legal reform. The primary means of addressing these objectives has been through the creation of new or support to existing bar associations, either at the national (Bulgaria, Ukraine, Georgia, Armenia, Kyrgyzstan) or regional (Kazakhstan) level.

In the countries under review, these efforts have met with little success. An early effort in Ukraine to create a new U.S.-style bar association including advocates, in-house lawyers, judges, etc. fell apart in the face of opposition from the traditional collegium. Similar opposition at the national level in Kazakhstan forced the Mission to support sub-regional bar associations providing public access to information and training for local lawyers, an effort which looked hopeful for some time, but has since declined. The

⁹ Some early work in Russia created links between Russian prosecutors and the U.S. Prosecutorial Training Academy in Texas. Activities were in the design stage in Armenia and Georgia, but dropped when the senior AMEX contractor was killed in an accident and the reformist Armenian Procurator General was murdered in his office shortly thereafter.

Association of Kyrgyzstan Attorneys, in comparison, seems to be having an impact through lobbying on draft legislation and providing training to its members. The Bar Association of the Republic of Armenia also lobbies on draft legislation and conducts training programs, but does not seem to be as active a force for reform as originally hoped. In Georgia, the Mission is supporting efforts to enact a new law on the bar that would impose stringent admission standards on all law school graduates. Although this effort has the strong support of some elements of the legal community, it too is opposed by the traditional collegium.

In summary, the country impact assessments suggest that most of these efforts relied too heavily on U.S. experience, underestimated the divisions between the various elements of the legal community in post-Communist societies and, in some cases, pushed too hard and fast for institutional financial sustainability when this was impractical or unlikely. While it would be an overstatement to conclude that USAID should avoid working with local bar associations in the future, experience clearly warrants caution and selectivity in funding these programs. It may be preferable for USAID to support the efforts of lawyers' organizations which, having organized themselves initially for a cause, better understand the needs and avenues for reform and are already pursuing these ends. (This is more fully discussed below in the section on Law and Civil Society.)

e. Courts

Bulgaria is the only country where a major effort at improvement of court administration and management was extensively assessed,¹⁰ although the assessment of the Russian-American Rule of Law Consortium noted the development of modern informatics for court administration as one of its accomplishments. The Bulgaria activity is designed to support the government's efforts to improve judicial administration in preparation for EU accession. The USAID court program focuses on strengthening professional qualifications of judges through the aforementioned Magistrates Training Center, targeting of pilot courts for the introduction of better case management through information technology, better customer service, improvement of court executions, and better training and code of conduct for court administrative staff. The Magistrates Training Center gets high marks in a country where the preponderance of judges are young, inexperienced and prone to rapid turnover. The impact of other program elements ranges from substantial (introduction of information technology into pilot courts with slow but significant spread elsewhere) to limited (improving court executions and capacity of administrative staff). Progress on related issues identified by the Government of Bulgaria, e.g., increasing the budget for the courts, is currently caught up in debate between the parliament and the constitutional court.

With only one program for analysis, any conclusions are necessarily tentative. Experience with the Bulgarian court program seems to indicate that even with reasonably strong political will, as evidenced by the Government of Bulgaria's "Strategy for Reform of the Bulgarian Judiciary, 2002," court reform remains an holistic process which requires relatively simultaneous movement on many fronts, including changes in the rules of procedure, basic training for all types of court employees, and provision of the financial and managerial wherewithal to achieve project goals. Data obtained by the impact assessment team on the efficiency of the Bulgarian courts in civil cases also raise some questions about whether a court administration program was the most appropriate intervention. While the Bulgarian "street" felt strongly that the court system was inefficient with rapidly growing caseloads, some more recent official data shows that a relatively high percentage of cases (74%) are being resolved fairly quickly (in less than three months), and that case filings are relatively steady. The accuracy, reliability and significance of this official data have been questioned, however, and there are still reports of cases lasting for many years.¹¹

¹⁰ In Kazakhstan and Kyrgyzstan USAID provided some useful training in court administration, but not a full program.

¹¹ There was considerable pressure on the courts during this time to improve disposition rates and some concern that cases were either being hurried to completion, perhaps inappropriately, or that simpler cases were being given

The assessment team found little difference in disposition rates between project pilot courts and non-pilot courts, although it was unclear whether this due to the fact that both pilot and non-pilot court judges were trained under the project (and training may have been the most significant determinant of improved case management by judges), or because the project had simply not been going on long enough to yet see significant impacts in the pilot courts.

f. Legal Education

Relatively few programs in the countries assessed have undertaken activities in legal education; these have generally met with limited success. In the earliest days of the programs in Russia and Ukraine, ARD/Checchi provided equipment and some materials to encourage curriculum revisions in a few targeted Russian and Ukrainian law schools, and sought, with ABA/CEELI, to introduce these schools to the American Association of Law Schools with an eye toward encouraging the formation of Russian and Ukrainian equivalents. Although these “goodies” were accepted gratefully (and continue to be used very productively, at least at the Kharkiv Law Academy), and an Association of Ukrainian Law Schools was actually formed, relatively little more enduring emerged from these activities. More recently, however, the assessment team uncovered a move afoot to revitalize the Ukrainian association, with the objectives of exchanging experiences among members, providing assistance in developing teaching methodologies and becoming involved in licensing and accreditation. Although the association faces significant challenges, it may yet demonstrate that a supposedly unsuccessful early intervention may eventually have longer-term impact.

Similarly, the institutionalized legal partnerships involving U.S. and Russian jurists and other legal professionals have registered some success in fostering curriculum reform in selected law schools, probably owing to the leadership and commitment of Russian participants with the help of U.S. counterparts and modest but well-utilized resources from USAID.

USAID’s reluctance to support major programs in post-Soviet law schools is fully understandable in light of the problems evident in these countries. For the most part, the senior management of the law schools (and most of the instructors) benefited substantially from the old system, and had little exposure to alternative systems. Moreover, corruption in admissions is historically endemic, and has only grown with the increased popularity of law studies among the younger population. The well-connected will get in cheaply or for free whether or not they are qualified. The not-so-well-connected who can pay will also likely get in, again whether or not they are qualified. Those who are highly qualified but lack connections or money may or may not get in depending on the circumstances. Law school professors work part time in public law schools for prestige, and part time in the growing number of private law schools for money to live on. Curricula (which were not generally revised over the last ten years except to incorporate some commercial topics) are highly dependent upon lectures and include little practical experience. In the face of these realities, USAID and other donors have generally¹² chosen only to support legal clinics, which not only provide practical experience for law students, but also provide legal advice and support to groups and areas that might not otherwise have access to these services. This set of activities is more fully discussed below under Access to Justice.

The only significant law school program undertaken in the countries reviewed was in Armenia. There USAID provided substantial resources to Yerevan State University (and separately provides budget support to the American University of Armenia (AUA), which administers a Master of Laws program). There were a number of reasons for pursuing a program with Yerevan State. At least in the early days,

priority in order to meet quotas, while more complex and older cases were being further delayed. The assessment did not have sufficient information available to determine whether either of these were the case.

¹² The Central Asia Mission has supported a small program of faculty training and study tours that provided law school faculty with exposure to interactive U.S. teaching methodologies, and is engaged in dialogue with law school rectors on curriculum reform.

AUA's Master of Laws program drew almost exclusively on graduates of Yerevan State's Law School. Moreover, a number of key USAID counterparts in the legal arena were eager to see a program there. Finally, the Dean of YSU's law school (a former procurator) was open about his own dilemma. "I am a dinosaur," he said, "and I am probably too old to change. But I want my sons and other young people to be able to function in this new world."

Under its program with YSU, USAID provided a computer lab connected to legal bases such as Lexis and Westlaw, a law library, more than 25 new law lecture packets for use by professors, students and judges, along with a printing machine to produce more. USAID also sponsored support by New York University's legal research faculty to designated YSU staff, funded post-graduate training for several superior students in the U.S. and Europe, and funded study tours for key faculty. Unfortunately, the assessment team found that all of this assistance had produced relatively little change in the basic law school curriculum; although young professors returned from training abroad appear to be making inroads in revising the curriculum and teaching methods used for post-graduate legal education. The Mission has halted assistance to the YSU law school pending further movement on reform of its curriculum and teaching methods. It is unclear why the effort has stalled. Perhaps the Dean has met resistance within the University. Perhaps, like many Armenians, he has lost faith in the possibility of reform. In any event, the short-term impact of this investment appears to be relatively limited. It remains an open question whether it will, over time, produce longer-term change.

In light of the failure of legal education activities to produce significant results to date, it is tempting to conclude that USAID Missions should avoid these types of activities. This conclusion would, however, be mistaken. Legal education is the sustainability element of all ROL programs. If new lawyers, judges, and procurators are not trained in new legislation and the key elements of the rule of law, their countries' transition to democratic governance and the rule of law will be that much harder and longer. Having said this, the assessments offer relatively few guidelines for effective legal education programs. In Armenia, as well as in other countries, the assessment teams recommended that USAID consider supporting programs in some of the private law schools which have sprung up throughout the region over the last decade, rather than focusing resources on perhaps more problematic state schools. Beyond this, the Armenia example may argue for more clearly delineating at the outset of the program what is expected of the law school in return for each type of assistance, and perhaps tranching assistance accordingly.

3. Law and Civil Society

a. Public Education

Under the Soviet system it was generally assumed that, with the exception of family law, government would prevail in any case in which it took an interest. Average citizens did not, therefore, need to know a great deal about the law. Independence, the adoption of new constitutions and new laws and a significant degree of privatization changed all that. Early USAID ROL programs recognized the need to expand public knowledge of the laws and decrees operative in each country, and made small grants in Russia, Ukraine and the Central Asian Republics, either to establish legal information centers or to assist the private sector to develop products and services that would expand access to and knowledge of the evolving legal systems. In Russia, and to a lesser extent in Ukraine, as of several years ago a few small businesses appeared to be meeting some of the demand for legal information, particularly in urban areas.

The Central Asia Mission took a different approach, supporting the creation of legal information centers in Almaty and Shymkent, Kazakhstan, Osh, Kyrgyzstan and Tashkent, Uzbekistan, with plans for a new center in Oskamen, Kazakhstan. USIA also provided substantial support to the Almaty center. All appear to have generated significant interest and usage. All but the center in Shymkent, an adjunct of the local bar association, which is unable to bear the monthly cost of access to the legal database (the center's most popular feature), appear to be financially viable, with strong and supportive partners. The Central Asia experience suggests that support for legal information centers may be an effective investment of relatively

small amounts of funding, particularly if such centers are sponsored by strong local partners and provided sufficient time and funding in which to establish financial sustainability.

Central Asia has also been something of a pioneer for the region in funding civic education programs. In Kazakhstan, USAID supports a project with the Department of Education for development of a new secondary school curriculum for democracy issues. As a part of this curriculum, USAID and the Soros Foundation are supporting “Street Law” programs at various sites, using both student bar associations and regular teachers who have received “Street Law” training. These latter programs are too new to have produced measurable impact, and to some extent there remains a question as to whether the Street Law program is designed to provide a project for law students or to serve as a prototype for a national legal education effort. The assessment team concluded that the impact of these efforts will only be felt if the program can be ramped up to regional or even national scale. The Georgian Young Lawyers Association is also attempting with multi-donor funding to introduce “Street Law” programs for children younger than high school age. Without support from the Ministry of Education, it is negotiating separately with each school (currently 23) to offer the program, a process that will also make it difficult for the program to reach sufficient scale for national impact in Georgia as well.

Only in Georgia has USAID undertaken significant public education efforts involving the media. With USAID funding, the Association for Legal and Public Education (ALPE) (founded by the Georgian Council of Justice, the Georgian Young Lawyers Association (GYLA) and the Soros Foundation, with World Bank funding) and Internews produce programming, which is broadcast and recorded for rebroadcast throughout the country. Programs include “talk shows”, courtroom TV dramas followed by live audience discussion, and public service announcements, each focused on specific legal issues, e.g., land use, the rights of internally displaced persons, criminal detention rights, and inheritance law. ALPE also sponsors phone-in and studio discussion radio programs and monthly publications, and monitors the media for references to courts and legal issues. The assessment team concluded that these programs are too new to have had any measurable impact, but that this is an effort that bears watching, and could provide some interesting lessons for future ROL programming.

b. Access to Justice

Around the world, USAID-funded programs relating to access to justice generally fall into four categories: improved court efficiency; support for public defender services, ombudsmen or paralegals; alternative dispute resolution; and legal aid clinics. As discussed above, only in Bulgaria did the assessment teams find a major program focused on improving court efficiency, and while that effort has some significant intermediate impacts, it is unclear yet whether it will have substantial long-term impact either in improving the functioning of the courts themselves, or in enhancing access to justice. Given the status and condition of court systems in other countries assessed, it appears that USAID’s general avoidance of substantial court efficiency programs in those countries is appropriate. No alternative dispute resolution programs were evaluated by the assessment teams. Beyond this, in none of the countries assessed did USAID provide support for public defender services, ombudsmen or paralegals, although at least arguably, the level of justice in most of these countries might benefit from such approaches. The lack of such programs may reflect E&E’s general reluctance to-date to focus too strongly on criminal justice concerns.

USAID has, however, in a number of countries supported the establishment of a plethora of legal aid clinics, most run either by local NGOs or as part of an effort to enhance the practical element of legal education in these countries. In fact, legal aid clinics have become fashionable among the donors in post-Communist countries because they can be designed simultaneously to foster NGO development, improve the quality of legal education and expand access to justice. While each of these objectives is of value, and together they form an attractive package, the assessments conclude that the multiplicity of objectives probably limits impact. Some NGOs undoubtedly have been created which would not have otherwise existed. Some law school students are gaining critical experience that they would not otherwise have had.

Some citizens are receiving more and better legal advice and guidance than would otherwise have been provided. As a whole, however, relatively few of these efforts seem to be positioned to have significant impact beyond their immediate outputs.

Achieving more significant impact probably requires a focus on one objective, and ancillary program interventions. For example, if improving the quality of legal education is the objective, support for a legal clinic employing law students should probably be supplemented by work with the law school to ensure that the clinic is a recognized part of a revised curriculum, with credit given for participation and broad participation encouraged. (Where this has been attempted, programs have been adversely affected by the failure of partner law schools to acquire sufficient budget or approvals from the university and/or Ministry of Education for the changes required, demonstrating again the depth of resistance to institutional reform which can be found in these conservative institutions.) If NGO development is the objective, the organization should probably receive many of the same types of training in financial management, fundraising, use of the media, etc. that other NGOs receive. If access to justice is the objective, there should be either a clear emphasis on specific types of legal issues, or on regional or national coverage.

The programs deemed most successful by the assessment teams illustrate these principles. In Ukraine, ABA/CEELI's Environmental Public Action Center, IREX and the American Center for International Labor Solidarity have provided representation in environmental, media and labor matters respectively. Their successes, as measured by growing caseloads and court victories in critical test cases, derive from their focus on popular issues and their determination to hold the Government of Ukraine to recognized international standards. In Georgia, GYLA, Article 42 and the Center for Protection of Constitutional Rights supply legal representation in Tbilisi, Kutaisi, Telavi and Gori. GYLA is clearly reaching an expanding number of people with its representation and consultation work. According to its March, 2001 report, GYLA had provided 4,083 mostly telephone consultations and twenty-one actual representations during the previous three-month period. In the team's view, these organizations are doing an exceptional and much needed job in providing counsel and representation on a wide range of topics, but their approach nevertheless appears somewhat scattershot, and could perhaps benefit from more focus and coordination. Moreover, the assessment team noted that ultimately, providing improved access to justice is a national responsibility and one that the government will need to address, perhaps in concert with active NGOs. For both the NGOs and bankrupt post-Communist governments such as Georgia, there remains the key question of longer-term financial sustainability for these efforts. In the teams' view, USAID has wisely chosen not to insist that these NGOs become financially independent of the donor community faster than can possibly occur.

c. Legal Reform NGOs

NGOs involved in legal reform generally fall into three categories: associations of legal professionals, organizations providing legal counsel and representation to those who would otherwise not receive legal services, and legal advocacy groups. Some of the bigger, more successful organizations in the region, e.g., GYLA, fit all three categories. A self-selected membership organization for lawyers and law students, GYLA operates a range of successful legal clinics, and provides public education and advocacy on a broad spectrum of legal issues. In the view of the assessment team, GYLA could perhaps benefit from a narrowing of its focus, and may yet prove too overextended for the amount of donor resources it is now generating. Nevertheless, it is useful to trace some of the factors in GYLA's success:

- It is a purely Georgian creation, formed in response to perceived Georgian needs;
- By calling itself a "young" lawyers association, it avoided turf battles with mandatory professional associations created under the Communist system, or even with the new versions which USAID and other donors attempted to energize;
- Although it now receives substantial donor funding, it was initiated with local resources, including volunteers;

- It developed its own reform agenda, and then sought funding to meet that agenda;
- Because members self-select, those who join tend to be pro-reform, thus avoiding much of the internal wrangling which characterizes other professional associations;
- GYLA represents the younger generation in Georgia, which is determined to bring Georgian justice in line with Western standards and practices; and finally,
- The donors, including USAID, have restrained themselves from pushing GYLA too quickly toward financial sustainability, instead using the ability of GYLA to generate additional donor resources and the quality of its programs as measures of ultimate sustainability.

While not many legal reform NGOs in the region will grow as fast or as effectively as GYLA, the assessments suggest that the more successful NGOs in promoting the rule of law will share some similar characteristics. As USAID's experience with bar and judicial associations attests, locally grown associations of legal professionals fare better than those which are largely donor creations. Moreover, to the extent that the membership of these associations and other NGOs can avoid internal clashes with entrenched institutional interests, they stand a better chance of identifying and implementing a program agenda, whether on behalf of their membership, in support of expanded access to justice, or in advocacy for a set of focal issues.

Ultimately, the assessments suggest that for legal reform NGOs at least, it may be time for USAID to focus on quality rather than quantity. In the early days of the program there was clearly a need to encourage a thousand non-governmental flowers to grow. In the process, a number of weeds were fertilized as well. Focusing on providing support to fewer but better, more focused legal reform NGOs will also allow USAID and other donors to provide consistent financial support to the most effective organizations until such time as it is realistic to begin to shift them over toward longer-term financial sustainability. Moreover, it will enable Missions to focus on how these NGOs can assist in promoting national ROL objectives rather than merely supporting the expansion of groups working in this sphere.

4. Missing Pieces to the Puzzle

a. Media

Assessment of the media situation in these eight countries was not an element of the scope of work, except to the extent those individual ROL activities involved the use of the media. As a result, the assessments are relatively silent on the status of the media in the countries reviewed¹³, or on the amount of parallel USAID and other donor financing of programs in support of independent media. While this approach allowed for better focusing of a relatively small amount of analytical resources on ROL topics, it may have nevertheless left an important hole in the analysis.

Blair and Hansen's 1994 paper offered some important observations from their earlier review of six countries:

...because ROL reforms are political, donors must often devote more attention to designing strategies that facilitate host country demand for reform instead of the more supply-side assistance strategies....From the countries' limited experience with constituency and coalition building strategies....several important lessons can be drawn. First, this strategy is critically important for generating demand for reform, and donors must emphasize more activities in this area. Second, potential constituencies, such as bar associations and the commercial sector, vary considerably as sources for reform. **Third, free and effective media are needed to implement a successful coalition and constituency building effort.**¹⁴ (Emphasis added.)

¹³ But a rough comparison of the eight countries can be found in Figure 10 of this document.

¹⁴ Blair and Hansen, *supra*.

Few would deny that, after a decade in pursuit of mostly supply-side ROL strategies, there remains a real need in most, if not all, of the countries assessed to apply constituency and coalition building strategies in facilitating host country demand for ROL reforms.¹⁵ In Central Asia and, to a somewhat lesser extent, Ukraine, Missions discouraged by the lack of progress with supply-side ROL efforts have stepped back to the “grassroots” for ROL activities. In Armenia and Georgia, work continues on both “top down” and “bottom up” approaches. While the Central Asian and Ukrainian “grassroots” approaches and the Caucasian “bottom up” efforts are comprised of many of the appropriate elements for constituency and coalition building strategies, it is unclear from the assessments whether they amount to focused efforts to build demand for ROL reform.

Beyond this, however, it is questionable if the media in these countries are free enough and effective enough to support such strategies. Interestingly, beyond Bulgaria, where the media is free and increasingly effective, some of the countries that have had the highest profile attacks on the media, i.e., Ukraine and Georgia, probably have freer and more effective media than Armenia or the Central Asian Republics where media self-censorship remains the rule. Missions engaged in ROL constituency and coalition-building strategies may need to consider offering expanded media assistance as a key element of their ROL efforts.

b. Law Enforcement

In the eight countries assessed, none offered examples of law enforcement assistance.¹⁶ However, the Georgia assessment, in particular, offers food for thought on the difficulty of promoting systemic change in the legal system when reform efforts focus only on the courts, with relatively little change within the procuracy or in law enforcement. Simply put, the Georgia experience shows that even with strong local support for judicial reform, without simultaneous change in the structure and techniques of law enforcement, judicial reform cannot carry the full burden of creating a society based in the rule of law. Georgia’s young reformers brought about the most sweeping changes in the region in terms of judicial qualifications, appointments, training and transformation of the supporting legal framework. But they were unable to open the procuracy to reform, or to affect the operations of the police and security services. Without changes in these organizations, most Georgians continue to see the justice system as corrupt, and allowing impunity for well-connected criminal elements. Georgia’s new government thus has a huge task ahead in bringing law enforcement reform to the same level as judicial reform.

For many years, USAID program planners considered law enforcement issues to be the “third rail” of ROL programming. More recently, in attempting to resuscitate failed states around the world, USAID and others have recognized the importance of effective policing to the emergence of democratic structures and functioning market economies, and Congress repealed the Foreign Assistance Act’s total ban on police assistance. But where failed states generally lack police forces, post-Communist countries such as Georgia suffer from a surfeit of policing: bloated Ministries of Internal Affairs, re-organized but still shady and well-connected security services, military police, border police, customs police, and the ever-present traffic police, looking to supplement their meager incomes with “fines” paid by innocent passersby. Given their history and the fact that the police are often the only part of the legal system that people see, it should not be surprising that opinion polls in many of the countries assessed repeatedly show an extremely low level of popular confidence in the legal system, even where new laws are enacted and institutional changes are occurring.

Activities to improve post-Soviet policing are obviously sensitive, and should be pursued with great care. Donors need to understand the organizations they propose to work with, and to be comfortable that

¹⁵ Bulgaria may be an exception, although even there failure to move quickly on ROL reforms needed for EU accession may imply a need for constituency and coalition building there as well.

¹⁶ Georgia has an ongoing USG-financed program of assistance to the border patrol, which is outside the scope of this review.

counterpart organizations share their objectives before providing substantial assistance. The multiplicity of U.S. interests in criminal justice reform within these countries, as well as the sheer number of U.S. agencies with roles to play, may make it difficult for the U.S. government to set priorities and coordinate the many efforts required. But a successful holistic approach to promoting the rule of law in post-Communist countries requires attention to law enforcement practices as well as judicial reform. U.S. law enforcement agencies have a clear role to play in these efforts, as do U.S., third country and local NGOs that USAID can mobilize to assist with these reforms.

Finally, the process of implementing new legislation in many of the countries assessed appears to have stalled out at least partially because new enforcement systems have not yet been created. In the U.S. and Europe, court orders in civil judgments are carried out by a whole host of implementers: marshals, bailiffs, etc. In the countries studied, relatively little attention appears to have been given to the development of these types of law enforcers.¹⁷ Missions seeking more effective ways of ensuring that newly enacted laws are implemented may wish to consider programs focused on these services.

c. Corruption

In all of the countries assessed, endemic and institutionalized corruption perverts the reform process, saps the will and the purses of the populace, and holds back the transition from rule of men to rule of law. While donors promote codes of ethics for lawyers, judges and journalists, and some professional associations even adopt them, enforcement is rare in environments where even highly respected professionals cannot feed their families on their official salaries. In most countries, local mafias control key industries, organize protection rackets, and undertake trafficking in narcotics, illegal immigration and women and girls. Unless these countries find the political will to tackle corruption, most efforts to promote the rule of law will fail. But how is political will to be found in places where corruption is rampant at the highest levels of the executive or in their patron-client networks of clans, colleagues, and friends? Even Bulgaria's pro-reform governments have found it politically inexpedient to clamp down on corruption despite domestic and international pressure.

Anti-corruption efforts in the countries assessed are growing rapidly, but are as yet too new to have produced real outputs, much less impact. Corruption is very difficult for donors to address. The politics of local corruption are too opaque for outsiders to understand, much less manipulate. Often those groups which would appear to be natural allies in donor-sponsored anti-corruption efforts – current and potential international investors – find it easier simply to take advantage of local practices. The most obvious anti-corruption role for donors appears to be constituency and coalition building within the populace and among NGOs to generate grassroots demand for reform. A relatively new program in Ukraine to support the business community with hotline and legal “ambulance” services (arriving while shakedowns are still occurring) may provide a model that can be extended elsewhere. Again, such programs can only be expected to achieve real impact if they are ramped up to regional or national scale. Finally, corruption is one area where USAID programs could continue to benefit from the support of the U.S. country team and other bilateral and multilateral donors in jawboning governments to take action against corruption, or conditioning assistance on measures to address it.

5. Assistance Modalities

The scope of work called for impact assessment teams to look carefully at whether certain types of modalities were more effective than others in producing impact. As a general rule, the teams felt that no one type of assistance produced greater results than another. What outputs and impact have been achieved result from a seemingly effective mix of program modalities.

¹⁷ The Russia Mission has administered a reputedly successful program with marshals and bailiffs, but this program (which was discontinued several years ago due to funding limitations) was not evaluated as part of the Russia assessment.

a. Technical Assistance

The assessment teams generally found no real differences in impact among the types of technical assistance provided. While the general pattern is long-term expatriate teams, supplemented by short-term technical assistance, in some cases substantial progress was made, particularly in legislative drafting, using only repeat visits from the same technical experts. What clearly comes across in the teams' findings, however, is the importance of using the right kind of technical assistance. A number of legal drafting and institutional development programs were clearly hampered by over-reliance on experts who only understood U.S. models and had little experience in European law and practice.

b. Training

Similarly, most training programs reviewed seem to have produced positive impacts, although neither the data nor methodology existed in any country to measure actual behavioral change as a result of training. Perhaps the most interesting finding is the number of individuals in all countries reporting that long-term training or study tours to the U.S. or third countries had been "life-changing" experiences. This is certainly what was hoped for when these programs were designed, but their value has perhaps diminished in the minds of USAID programmers since the early days of E&E programs. While these types of programs are expensive in comparison with training of trainers and in-country follow-up, it may be that they provide at least as great a bang for the buck as cheaper efforts. Close in-country coordination with State's Public Diplomacy programs may point to areas where U.S. government resources can be pooled in support of ROL objectives, or where USAID is particularly positioned to provide such support.

A majority of in-country trainees surveyed strongly approved of USAID's use of local trainers for the conduct of their courses, and felt that the content of courses attended was useful and appropriate. Again, with no real way of measuring behavioral change as a result of these courses, the teams' conclusions largely reflect the subjective views of the respondents.

c. Commodities

Over the last decade, USAID provided an enormous amount of commodity support to E&E countries, most of it in the form of computers and other types of information technology. The country impact assessments confirm that most of this equipment is still being used, in some cases, avidly. In a number of cases, particularly in more rural areas, its utility may be limited by lack of funding for Internet connections. Most probably, the era of computer drops has come and gone in these countries. However, given that many ROL issues can only be effectively addressed if large numbers of people and groups can communicate with each other over extended areas, USAID should still be prepared to provide computers, internet connections and other information technologies where needed.

d. Sustainability Support

In light of the various teams' findings regarding the importance of not pushing too fast, particularly in the poorer countries, for NGO financial sustainability, it may be useful for Missions to extend the timeline of their funding for key NGOs, or to encourage them to seek expanded funding from other donors. For some of the most mature of these organizations, block grants might encourage their expansion of existing programs to achieve wider coverage for key strategic targets.

e. Partnerships

As previously stated, the Russia assessment focused directly on the partnership mechanism as a modality for delivering assistance. In general, the study concluded that partnerships of the quality forged between Russian and U.S. jurists and other legal professionals served not only as a conduit for technical know-how but more importantly, were instrumental in influencing the broader and longer-term process of changing the nature of relationships among the various actors in the Russian legal system. By exposing their Russian counterparts to different models and different ways of approaching various challenges in

reforming the country's legal system, and by investing substantial time and energy in erecting and sustaining these partnerships, U.S. participants helped make these mechanisms effective instruments in the development of a rule of law society. The partnerships also gave additional credibility and stature to the Russian participants who in many cases proved adroit and forceful agents of change in their respective regions. Perhaps most importantly, these partnerships were possible because of an impressive commitment of time and resources on both sides and a strong sense of ownership on the part of the Russian participants. U.S. partners responded to their counterparts' articulation of needs and decision-making was generally collaborative.

Partnership is but one modality and its effectiveness is likely to vary according to circumstances. In the case of Russia, partnerships helped to generate stronger impetus for reform as well as concrete ideas (e.g. legal clinics, curriculum reform in law schools, preparation of the profession for the advent of jury trials) that easily lend themselves to more conventional donor-supported activities.

III. EXPLAINING PROGRAM RESULTS

Despite substantial progress on many fronts, USAID-supported ROL activities in all eight countries reviewed have yet to produce broad-reaching change. To be sure, a single decade is insufficient for changes that, in Western countries, have taken centuries to consolidate and even now remain imperfectly implemented. A number of factors affecting these outcomes were discussed above in sections devoted to specific program objectives or program targets. But the country reports also allude to some broader issues that have limited impact as well.

A. Political Background and Political Will

The Blair and Hansen study¹⁸ is generally remembered for its emphasis on the need for host country political will for ROL reforms. This characterization is, however, an oversimplification. In fact, Blair and Hansen outlined a four-point framework for strategic choices in ROL programming. Specifically, they argued that where host country political leadership is weak and fragmented, donors should support constituency and coalition building strategies to strengthen political and public pressure for reform. Where sufficient political support exists but legal structures are weak, donors should emphasize structural reform. Where political will and legal structures are relatively adequate but accessibility and equity of the legal system are deficient, donors should focus on access creation strategies. Finally, only when the first three strategic conditions are met should emphasis be placed on improving the institutional capacity of existing legal structures to perform their intended functions. Experience outside E&E since 1994 in countries which have attempted to apply the Blair and Hansen framework seems to indicate that, while the framework is highly useful for analytical purposes, in practice it is difficult to apply in individual country situations. The reasons for this finding are outside the scope of this paper, but are reflected, in some measure, in the E&E experience.

Although the Blair and Hansen paper was released just as major ROL programs were being initiated in the former Soviet Union, its recommendations were never fully applied to ROL program design and implementation there. First, their relatively leisurely multi-step framework was simply not an option in an environment that demanded fast action. Second, high expectations for rapid change in countries with well-educated and relatively sophisticated populations led program planners to make assumptions for the region which have not been borne out over time.

Looking back over the last decade, it is now possible to say that much of the Blair and Hansen framework could have usefully been applied in the region. In many E&E countries, particularly to the east, political leadership in support of ROL reforms was weak and fragmented, and efforts in these countries should

¹⁸ Blair and Hansen, *supra*.

probably first have focused more on constituency and coalition building. In one or two instances, notably Georgia in the mid-90s, there appeared to be strong political will for ROL reforms, and USAID and other donors appropriately began to focus on structural reforms. But for the most part, USAID ROL efforts in the countries assessed included a mishmash of activities designed to advance on all strategic fronts, when more strategic selectivity was probably required.

A key foundation of the Blair and Hansen framework is their definition of ROL reform as “a political process that cannot simply be reduced to conventional technical assistance or to institutional development strategies.” This is an essential point that the E&E country assessments suggest needs to be emphasized more strongly. Development is an ultimately political process because it shifts power from the hands of the few into the hands of the many. Within this context, ROL reform is a key element. In too many countries, ROL programs have been developed and administered as if they are merely technical formulas that can achieve impact if only they are effectively delivered. Experience in Latin America and Asia, as well as in E&E, clearly supports the need for assistance programmers to become much more sophisticated in recognizing how large are the political dimensions of ROL programs and how USAID ROL programmers need to integrate politics into their programming.

This is in direct contradiction to USAID’s traditional posture of providing only technical advice and support. To be more effective in the political dimension of ROL programs, ROL program managers need to be much more politically savvy about local political forces. This argues for close coordination with Embassy political sections as well as maintaining contact with a broad swathe of political actors within the country. Ultimately, it may also imply that lawyers are not necessarily the most appropriate ROL program managers, who should perhaps be selected more for their local knowledge and political acumen than for their legal credentials.

B. Knowing the Players

The author’s personal experience in Armenia and Georgia, as well as the experience of other U.S. staff in the Caucasus region, emphasizes just how important it is to develop personal relationships with key players on the local legal scene before committing to longer-term programs that are heavily dependent upon their support. But knowing the local players is particularly difficult where ROL program managers do not have local language capacity and must rely on newspaper and other translations to understand how the actions of USAID and its counterparts are perceived by the population at large. Moreover, overworked program managers often find themselves with little time for meeting local groups, particularly in rural areas. Finally, the Foreign Service assignment cycle works against in-depth local knowledge; just as individuals are becoming conversant with local politics they are ready to move on to the next assignment. As a result, Missions seeking to implement politically sensitive rule of law programs may need to rely much more heavily on the advice of key Foreign Service Nationals, while ensuring that the advice received represents an adequate range of local opinions.

C. Program Choices and Sequencing

As alluded to earlier, many of the country assessments conclude that, given the political situation in the various countries, E&E Missions may have invested in the wrong ROL programs, or implemented them in the wrong order, for maximum impact. Again, these judgments are much easier to make with 20/20 hindsight than in the heat of a massive program buildup in countries where USAID had never previously worked. In fact, many of these seeming mistakes are now being rectified, either with revised ROL program strategies, or with new and different types of activities. However, some practical questions remain which have not been addressed by these eight assessments: 1) How effective can grassroots constituency and coalition building really be, particularly in authoritarian or semi-authoritarian states with historically weak civil societies substantially under the thumb of the ruling authorities? 2) If it is determined that these strategies can have impact, what is the likely timeframe? 3) To what extent should

Missions retain some fingers in the national level pie for the duration of these primarily constituency and coalition building periods?

Both the Central Asia Mission, covering Kazakhstan, Kyrgyzstan and Uzbekistan, and USAID/Ukraine made strategic choices over the last decade to step back from most active involvement with the central governments in their democracy programming, including ROL, and to emphasize constituency and coalition-building efforts. In Ukraine, the Mission has been somewhat less severe in this posture, probably because the political situation in Ukraine has been significantly more fluid, and because there is a strong opposition movement. Moreover, although it is probably too soon to tell for sure, there are some indications that the Mission strategy for Ukraine is having positive impact, particularly in building constituencies for reform. Should significant changes occur on the national political scene, the Mission's investments in coalition and constituency building could be positioned to bear fruit.

Central Asia is much more problematic. In Kazakhstan, Kyrgyzstan and, to the maximum extent in Uzbekistan, ROL efforts that seem reasonably effective at the local level have fewer mid-term prospects for success at the national level, largely because of the increasingly authoritarian postures of the central governments. But geopolitics will probably support the continuation of USAID programs in Kazakhstan and Uzbekistan for some years to come, somewhat irrespective of the authoritarian nature of these governments. Thus, although progress may be more incremental and significantly slower than in Ukraine, USAID may have the patience and resources for a longer time frame for implementation of grassroots strategies in these countries. The E&E country assessments suggest the utility of some continued measure of "top down" interventions in countries focusing primarily on coalition and constituency building strategies, but they are silent on which types of interventions might be most appropriate. It is likely that these will differ in individual countries, deriving more from personalities and specific country situations. The sections that follow on program strategy analysis attempt to provide some guidance on these and other issues.

D. Expectations

USAID's results framework system was adopted several years ago as a means of measuring the worldwide impact of foreign assistance programs. To some degree it has succeeded, particularly in aggregating worldwide activities focused on specific program objectives. Unfortunately, its relatively rigid structure often forces activities into boxes where they should never appear, or where substantial caveats should be applied. Moreover, as in any bureaucracy, incentives are to aim high and project rapid progress, as those activities that project the greatest and quickest impact garner the maximum amount of funding. As a result of these realities, many ROL programs have been oversold, projecting entirely too much impact in relatively limited periods of time. More than a decade after initiation of these programs, it is important to recognize that they are much longer-term efforts than originally conceived, and that while donors can nudge countries, the countries themselves will set the pace of ROL reform. In the best of all possible worlds, recognizing the long-term nature of the commitment should not diminish the willingness to provide resources, particularly if these resources facilitate steady progress, if not major impact. Beyond this, it is also important that Missions be given flexibility within their results frameworks to experiment with ROL activities that may not amount to logical steps in meeting their strategic objectives. Such activities may be the price of getting to know the players, or of keeping a hand in "top down" programming. Moreover, as some of the country assessments report, it is entirely possible that some of these "throwaway" activities ultimately produce an unanticipated level of positive change.

E. U.S. Government Dimensions

As alluded to in the individual assessments and in other parts of this synthesis, the multiplicity of U.S. Government interests in individual countries often results in a balancing act that can affect the selection, design and implementation of individual ROL activities within each country. This is only natural. ROL programmers must be prepared to engage actively in developing the overall USG approach as well as in

working with other USG agencies to forge the best possible activities for their country situation. This is particularly true in countries where ROL budgets are relatively small, or where significant portions of the country budget are allocated to other USG agencies for ROL-related activities, e.g., law enforcement. Similarly, experience over the last decade in Ukraine and Armenia has demonstrated that even the most politically motivated program activities can bear fruit if Missions work carefully to ensure that they are designed and implemented in a manner which integrates them with on-going programs and allows them to build on their own comparative advantages, e.g. extensive in-country contacts, local language capacity, or access to U.S. expertise not traditionally available through USAID's procurement processes.

Experience in Georgia and Armenia also shows that ROL programs can benefit enormously from close collaboration with other elements of the U.S. country team. Ambassadors can open doors to individuals and groups, which might be otherwise difficult to access. Political sections can provide nuanced assessments of the role of individuals and organizations in affecting change, or in influencing public opinion within the country. Public Diplomacy sections can provide much needed support for ROL objectives and resources, e.g. Muskie Fellowships or International Visitor programs, which can effectively supplement USAID's grant and contract efforts.

The downside to these collaborative efforts, unfortunately, is that some Embassies come to be perceived by the local population as too close to unpopular elements of the local power structure. Where this is the case, USAID Missions can be tarred with the same brush, at some cost to program participation and, ultimately, effectiveness. This appears to have been the case in Armenia for some portion of the last decade, as the Embassy's support of the relatively unpopular chairman of the constitutional court seems to have damaged relations with other elements of the legal establishment. Ultimately, there is a fine line that must be drawn carefully in some instances. While Embassy priorities may focus on maintaining good relations with a broad range of actors within the country, USAID's programmatic interests may require maintaining a posture as an honest broker rather than a captive of elements within the existing power structure.

Finally, as stated elsewhere in this synthesis, ROL programs should not be thought of as primarily technical programs and should be recognized for the political programs they are. This will require some new and different staffing capabilities, and may have implications for the way programs are designed and reported on and how procurements are structured.

IV. POLITICAL CHANGE IN COUNTRIES UNDER REVIEW

The above sections provide a retrospective of the various experiences in the eight countries and attempt to identify some of the reasons why the programs assessed have not achieved greater impact. The sections which follow attempt to put these findings into an analytical framework and offer some strategic guidelines for E&E purposes.

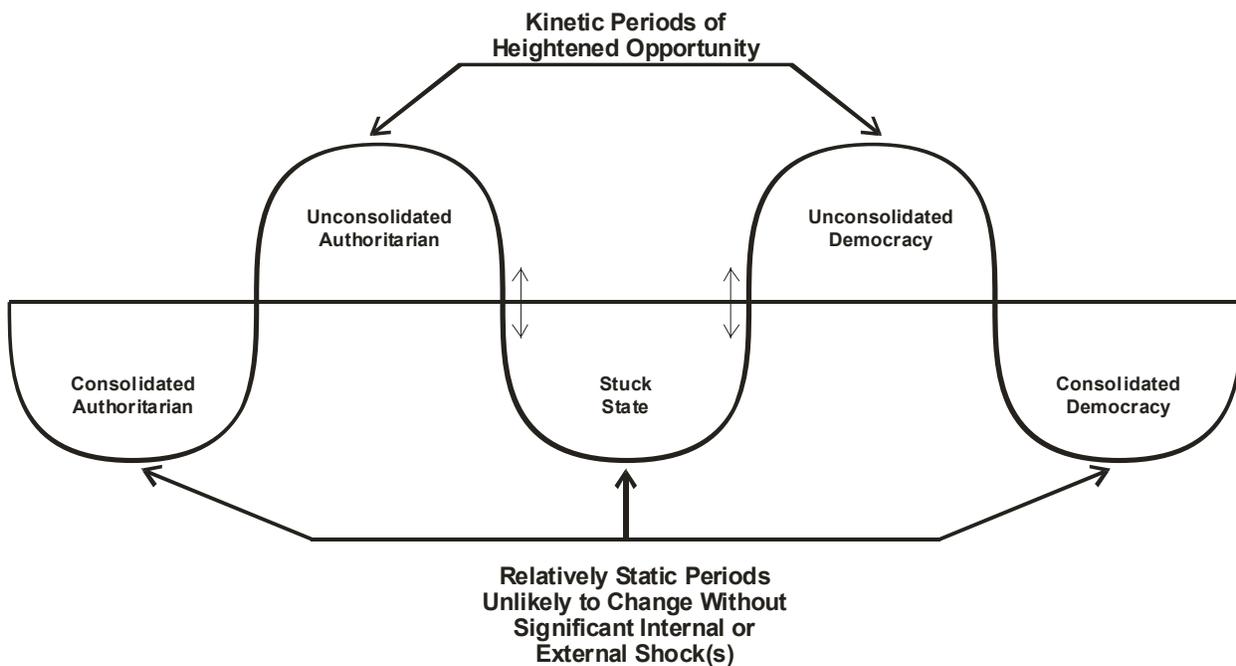
A. Analytical Framework

Figure 1 illustrates the basic analytical framework used for this synthesis. For reasons that should be obvious, the framework has generally been called the "roller coaster." It encompasses some basic assumptions:

- Over time, countries will move along the spectrum ranging from Consolidated Authoritarian to Consolidated Democracy;
- Country movements can be plotted using relevant data sources;
- Plotting over a multi-year period demonstrates the trajectory of country progress;
- Empirically observed country progress or regression within a single year can be noted, although not with the same rigor as multi-year movement;

- Areas below the line represent relatively static periods where abrupt change is unlikely absent a significant internal or external shock, e.g., an actual or attempted assassination, a watershed election, or a major change in the national or regional balance of power;
- Areas above the line represent periods in flux which provide heightened opportunity for either positive or negative change, e.g., the period immediately following a significant internal or external shock, the ascension to power of trusted reform elements or of representatives of the old guard;
- Because they are kinetic, areas above the line may be of shorter duration than those below the line;
- For analysis and program design purposes, a country's trajectory along the roller coaster is at least as important as its placement along the spectrum;
- Conceivably, but rarely, a major internal or external shock causes a country to move rapidly from Unconsolidated Authoritarian to Unconsolidated Democracy, essentially bypassing the Stuck State period.

Figure 1 The Roller Coaster



The following definitions are offered for clarification purposes. They are, of course, arguable, by no means exhaustive, and may require further refinement for effective application.

- **Consolidated Democracy:** A country which, over a period of at least several years, has demonstrated strong and/or increasing commitment to open and transparent political processes, the protection of civil liberties, and application of the rule of law. By and large, it is assumed that countries reaching this status will have graduated from USAID support.
- **Unconsolidated Democracy:** A country which has many of the hallmarks of a consolidated democracy, but where such progress is relatively short-lived, or remains vulnerable to internal or external shocks. Such countries are likely to have relatively free and independent media outlets, a reasonably engaged populace and, at least in some key quarters, what is generally referred to as “political will” for additional reform. Countries in this category will generally be optimal partners for most types of democracy and governance activities, including ROL, and because this is a kinetic period, significant progress can happen in a relatively shorter period of time.
- **Stuck State:** A country which, for whatever reasons, appears incapable of making and/or implementing the steps required for significant movement toward either the democratic or authoritarian ends of the spectrum. Such countries are often characterized by historic or ethnic fissures, which inhibit the ability of pro-reform elements to enact and/or implement a reform agenda. Countries in this category may have varying levels of open and transparent political processes, respect for civil liberties and commitment to the rule of law. They are appropriate candidates for significant democracy and governance support, including rule of law activities, but activities should be selected based upon a careful analysis of political realities, and anticipated timeframes for program impact are likely to be significantly longer than USAID’s results frameworks can generally accommodate.
- **Unconsolidated Authoritarian:** A country that still has, or may be returning to, many of the hallmarks of a consolidated authoritarian state, but where internal or external shocks could produce accelerated movement toward either end of the spectrum. These countries also may have varying levels of open and transparent political processes, respect for civil liberties and

commitment to the rule of law, but these will generally be lower, or more imperiled, than those observed in stuck states. Countries in this category are also appropriate partners for significant USAID democracy and governance assistance, including ROL. However, activities must be carefully selected based upon careful analysis of political realities, and attention given to whether or not these activities, possibly in conjunction with diplomatic pressures and the efforts of other donors, can form the critical mass needed either to push the country toward the democratic end of the spectrum or reverse the slide into consolidated authoritarianism. Again, because this is a relatively kinetic period, significant change (either positive or negative) can be expected to result in a relatively short period of time.

- **Consolidated Authoritarian:** A country which, over a significant period, has demonstrated unfree and unfair political processes, poor performance in the protection of civil liberties, and limited application of the rule of law. Consolidated authoritarian states also generally suppress independent media. As a result, the population generally receives only that information which the central government chooses to allow. Such a state could be characterized as having the “rule of men” rather than the rule of law. While some would argue that the U.S. should not be providing assistance to consolidated authoritarian states, in practice the multiplicity of U.S. interests in various countries results in the initiation and continuation of USAID programs in many such countries. In these instances, the more useful question is how best to undertake programs which, over time, can form the critical mass required to shock such countries out of their consolidated authoritarian trough and into the more potentially positive unconsolidated authoritarian mode.

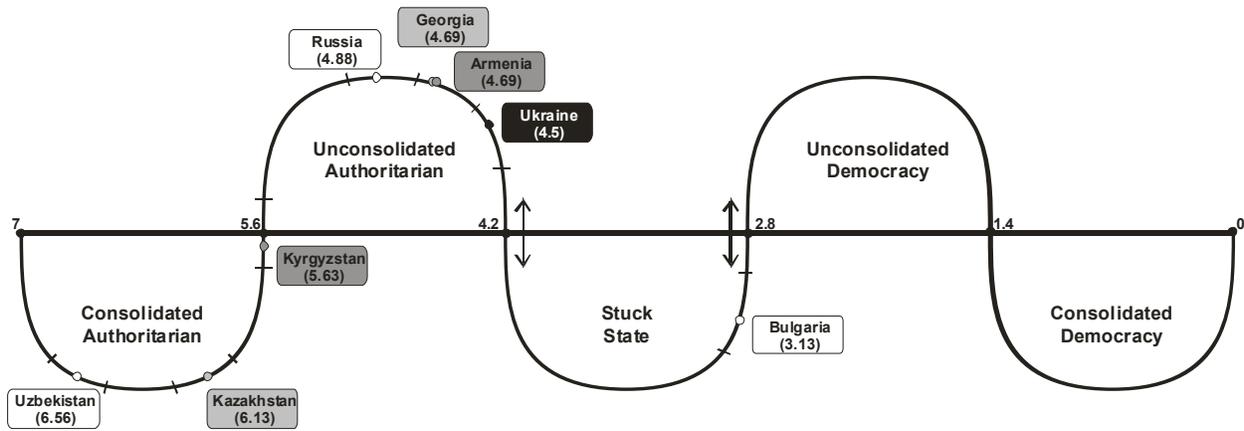
V. RELATIONSHIP BETWEEN POLITICAL CHANGE AND CHANGE IN RULE OF LAW STATUS

Figures 2-9 demonstrate some possible applications of the model for countries assessed using various relevant data sources. Where possible, a margin of error or standard deviation has been incorporated to control in some measure for the subjectivity of the data.

Figures 2 through 5 provide an examination of country ROL rankings¹⁹ in comparison with country democratization rankings. Democratization rankings are a composite of scores for electoral processes, civil society development, independent media and governance, but not rule of law *per se*. ROL rankings are a composite of scores for the constitutional, legislative and judicial framework, and for corruption. Figure 2 shows 2003 democratization scores with an attributed margin of error. Figure 3 shows relative movement on democratization between 1997 and 2003. Figure 4 provides 2003 rule of law scores with an attributed margin of error, while Figure 5 provides relative movement on rule of law between 1997 and 2003. An analysis of the data suggests that there may be an as-yet-unmeasured correlation between these areas.

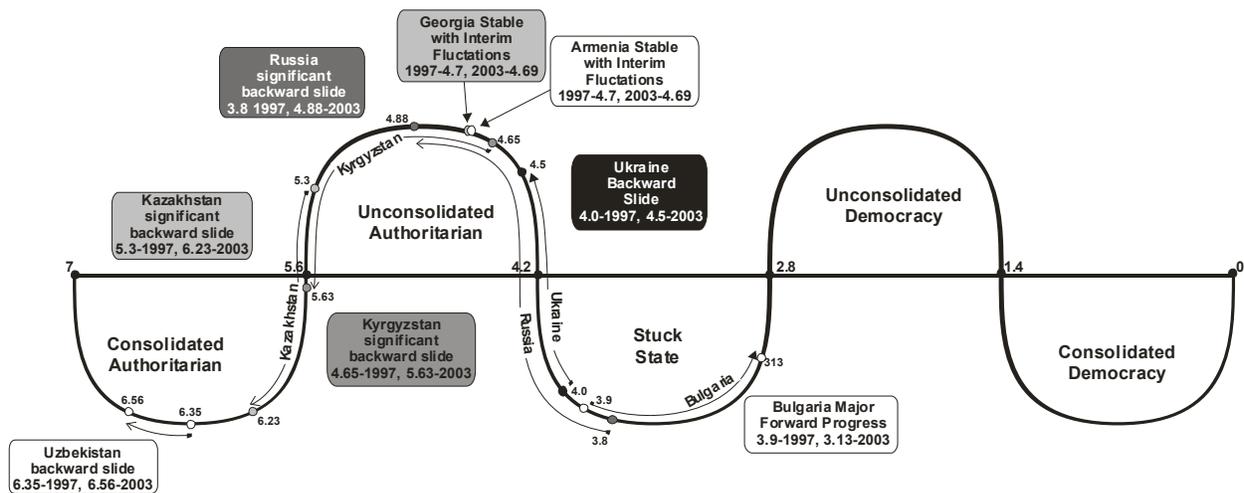
¹⁹ Freedom House “Nations in Transit, 2003.”

Figure 2. Countries Assessed – 2003 – Democratization*



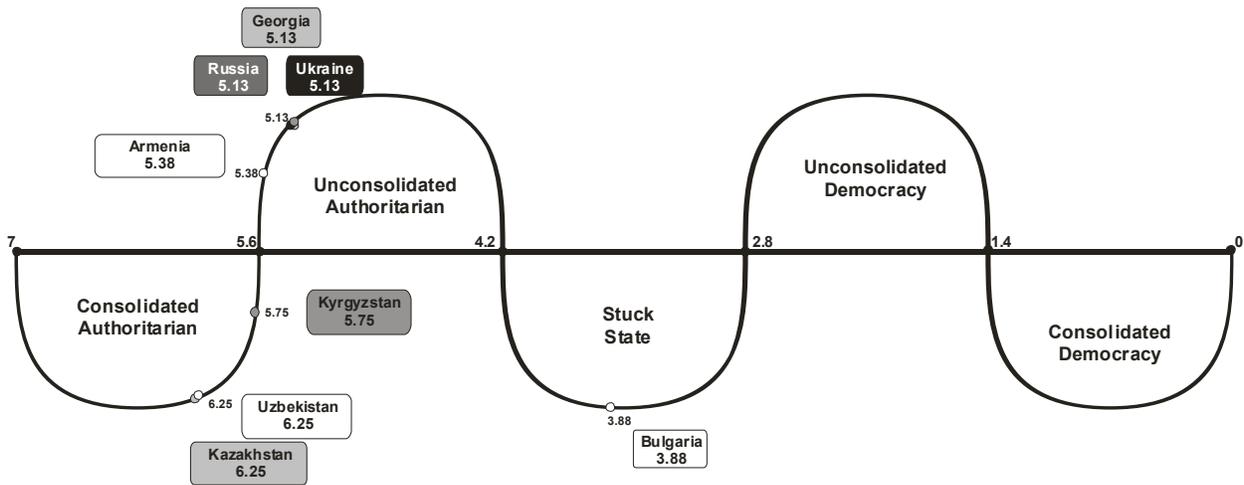
*Uses Freedom House's "Nations In Transit scores. Democratization scores are a composite of scores on various dimensions including electoral process, media, governance etc.

Figure 3. Countries Assessed Movement: 1997 to 2003 Democratization*



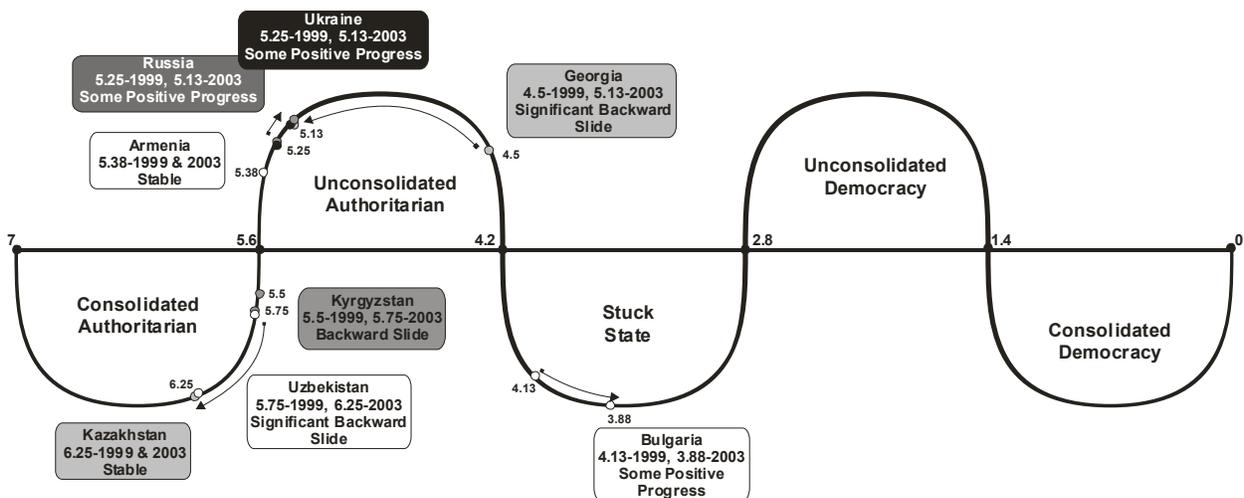
*Using FH NIT scores. No margin of error applied

Figure 4. Countries Assessed 2003 – Rule of Law*



*Using FH NIT scores with .25 margin of error applied.

Figure 5. Countries Assessed 1999-2003 – Rule of Law*



*Using FH NIT scores with .25 margin of error applied.

In five of the eight countries assessed, ROL scores track or trail behind those for political rights and civil liberties. Where this is not fully the case, i.e., for Russia and Ukraine²⁰ in 2003, it is possible that the differences may be statistically insignificant, or that some other unidentified factors may be at work. Data for Georgia suggests that, at least until recently, a backward slide in ROL (possibly attributable to corruption scoring) may have been out ahead of a backward slide in democratization. The data is not detailed enough to warrant either firm or sweeping conclusions. However, some evidence shows that a measure of positive or negative ROL change follows fairly quickly upon positive or negative political change. In some cases, a decline in ROL may be a barometer of future decline in democratization. Some evidence also indicates that major positive ROL change may lag significantly behind positive political change.

These findings, while highly tentative and based upon data rather than specific assessment findings, may indicate some important potential programmatic implications:

- First and foremost, they support the view that the success or failure of ROL programs is inextricably tied to progress on the political front, and that a pure or heavily technocratic approach that ignores external political realities is probably doomed to failure.
- Second, they suggest that, particularly during periods of rapid change, programs need to be administered with a maximum amount of flexibility so that they can be ramped up quickly after major positive political events, e.g., the recent “Rose Revolution” in Georgia, which occurred some months after the assessment, or ramped downward and/or redirected relatively quickly in response to negative political changes as have occurred incrementally over the last several years in Kazakhstan and, particularly, Kyrgyzstan. This is difficult to do in a timely fashion given the intricacies of the USAID procurement process. It may require some creative thinking in RFAs and RFPs to create contract options, which can be exercised by Missions and partners upon certification that circumstances have triggered the need for optional programs.
- Third, they raise difficult questions regarding programming in countries experiencing significant backward slides in both democratization and ROL. In these cases, neither DG nor ROL programming alone, no matter how large and complex, is likely to affect the magnitude or timing of the backsliding. In some cases, however, it may be possible for diplomatic pressure from the U.S. and other countries, coupled with U.S. and other donor programming, to have the desired effect. The case of Georgia is particularly instructive here. Significant earlier investments in the range of democracy and governance programming, coupled with adroit U.S. and other donor handling of an extremely fluid political situation, appear to have contributed in a major way to an ultimately positive political outcome. Given that Georgia’s new president and his political allies were the predominant supporters of earlier judicial reform efforts, their recent rise to power should set the stage for even greater future ROL reforms.
- Finally, they suggest that even where programs are implemented “successfully” in countries experiencing relatively strong positive political change, there may be a significant lag between ROL activity implementation and the ultimate impact of the effort. Given historical and cultural traditions, this is probably truer the further one travels to the east within the E&E region.

VI. A FRAMEWORK FOR FUTURE PROGRAMMING

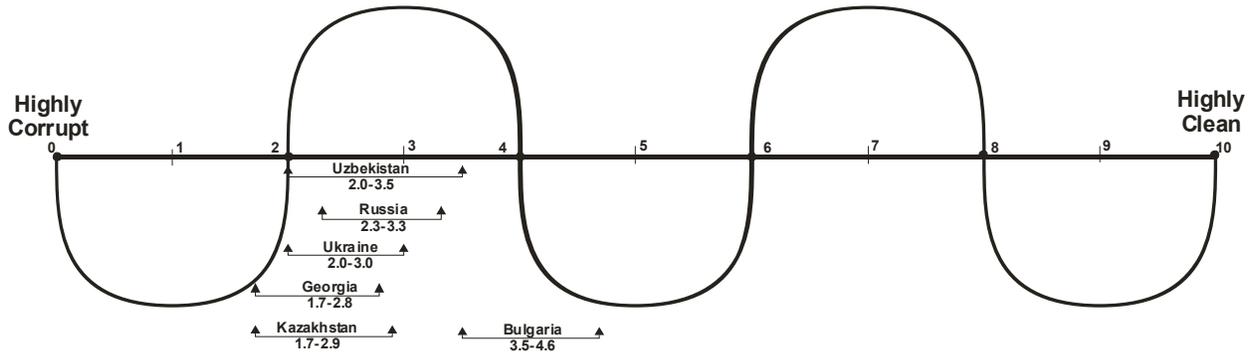
Where Figures 2 through 5 show Freedom House data²¹ on democratization, Figures 6 through 10 show data drawn from other sources on issues relevant to this discussion. Figure 6 presents countries assessed as ranked on Transparency International’s 2002 Corruption Perceptions Index. Figure 7 plots countries

²⁰ Both show significant backward slides in democratization but slight forward progress in ROL for the period 1996-2003; for the period 1996-2002, the difference is less prominent.

²¹ Freedom House, “Nations in Transit”, 2003, *supra*.

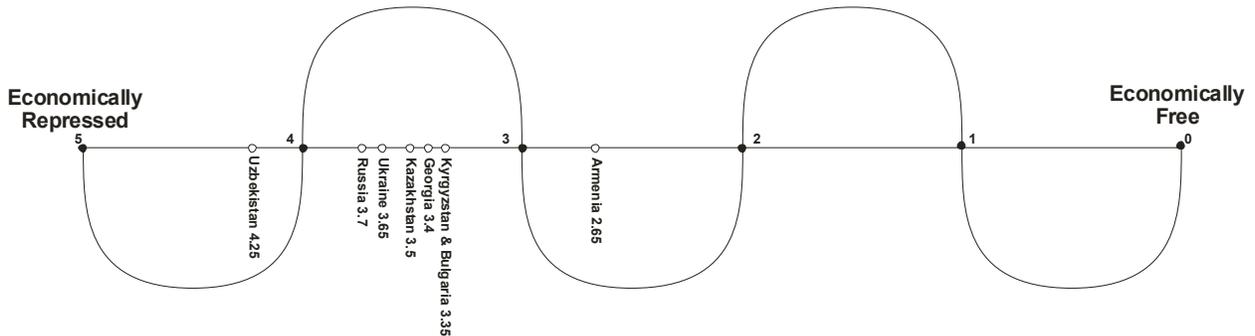
assessed using the Heritage Foundation's 2003 Index of Economic Freedom (which incorporates a governance element), while Figures 8 (2002) and 9 (1996-2002) plot ROL in the countries assessed using World Bank Governance Indicators. Finally, Figure 10 shows the 2003 status of independent media in the countries assessed, again using Freedom House data.

Figure 6. Corruption Perceptions Index Countries Assessed – 2002*



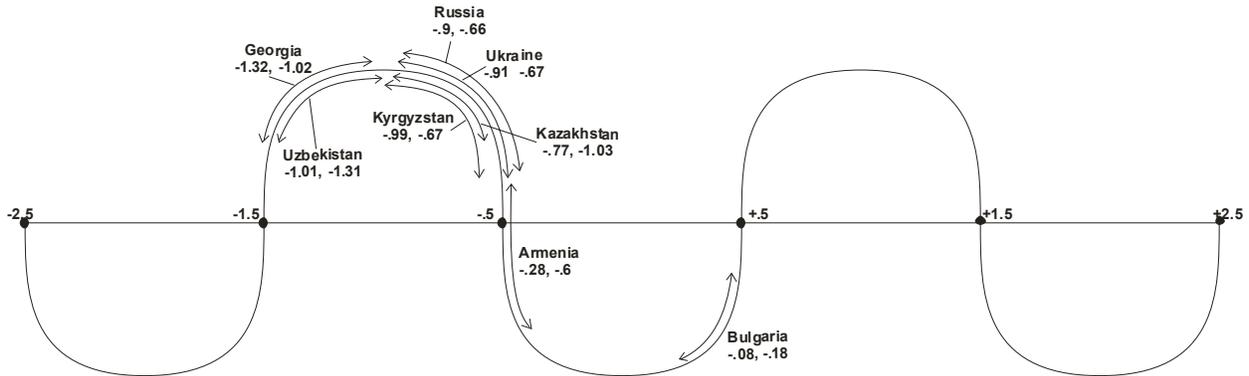
*Transparency International.

Figure 7. Index of Economic Freedom Countries Assessed -- 2003*



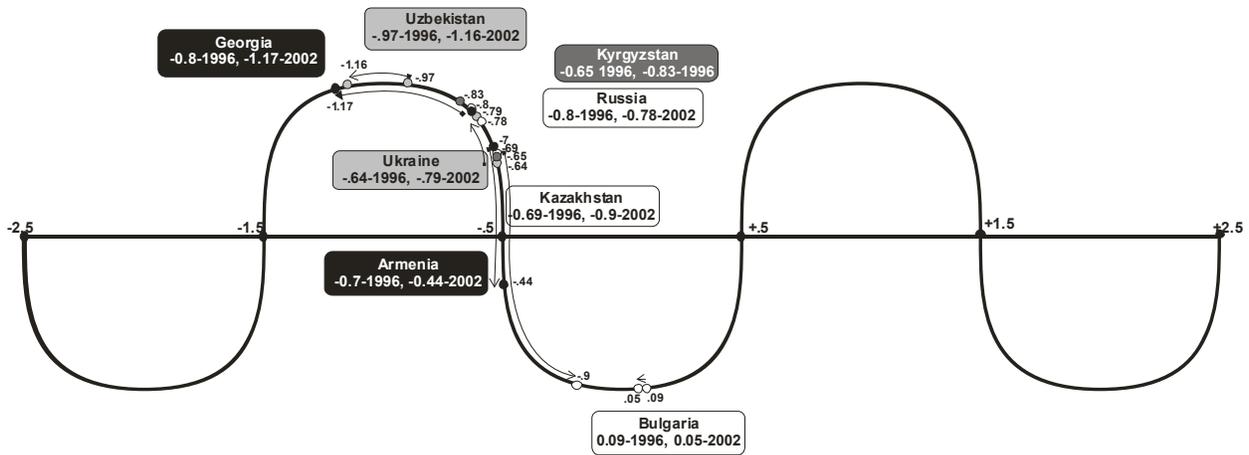
*Heritage Foundation; composite score based on 10 key factors; including trade policy, fiscal burden, government intervention, monetary policy, and foreign investment.

Figure 8. Rule of Law Countries Assessed – 2002*



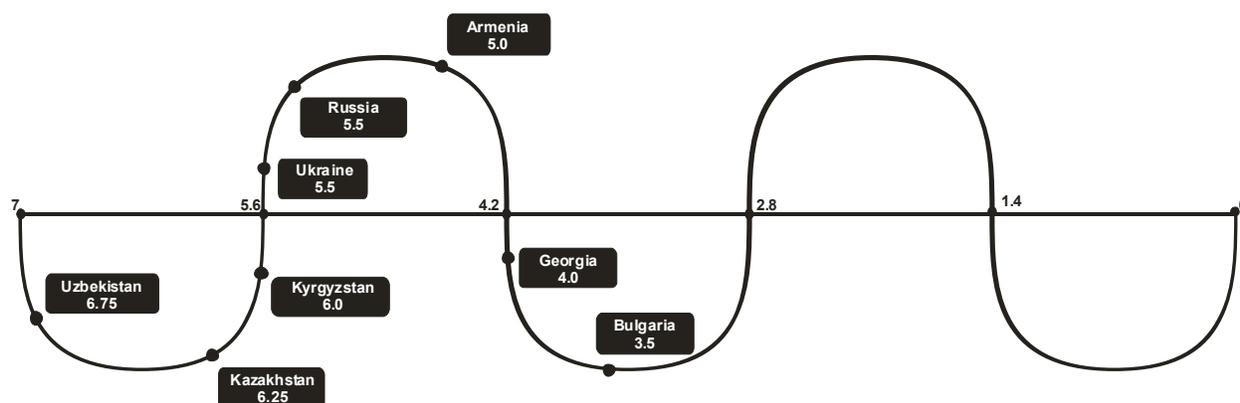
*World Bank, D. Kauffmann, A. Kraay, and M. Mastrozzi 2003: Governance Matters III Governance Indicators for 1996-2002, including standard deviation.

Figure 9. Rule of Law Countries Assessed – 1996-2003*



* World Bank, D. Kauffmann, A. Kraay, and M. Mastrozzi 2003: Governance Matters III Governance Indicators for 1996-2002.

Figure 10. Independent Media Countries Assessed – 2003*



*Based on Nations In Transit, 2003.

While each individual data source has its quirks, and even indices measuring analogous phenomena, e.g. Freedom House and the World Bank (which is much more forgiving), do not fully agree on relative country status or progress, taken together, the data are relatively consistent. The preponderance of the countries assessed (Russia, Ukraine, Armenia and Georgia as well as Kyrgyzstan) fall into the Unconsolidated Authoritarian category on most indicators. Kyrgyzstan, however, appears to be slipping toward Consolidated Authoritarian status. Kazakhstan and Uzbekistan are, at best, at the lower end of the Unconsolidated Authoritarian category, and at worst, firmly in the Consolidated Authoritarian trough. Bulgaria, by contrast, is currently a Stuck State, but is moving toward the Unconsolidated Democracy category.

What does this mean for the ROL practitioner? Blair and Hansen concluded that constituency and coalition building strategies, which may depend in large part on some measure of media independence, are needed to build the political will for structural reform, and that access creation and institutional development efforts are generally not appropriate until structural reform has occurred and political will for future changes is relatively strong. Their conclusions, based on Asian and Latin American experience, appear generally relevant to E&E countries, but the more dynamic nature of E&E countries probably requires greater flexibility and attention to region-specific nuance. The following offers some general and specific guidance for strategic programming in the various categories used in the model.

A. Consolidated Authoritarian

In Consolidated Authoritarian countries where USAID maintains programs, it is highly unlikely that governments will have political will for real legal reform. As a result, ROL activities should generally have constituency and coalition building for ROL reform as their strategic focus. These efforts may not all be purely ROL activities. They should include support to NGOs at the national and local levels that are addressing human rights issues (including networking them with international counterparts), providing legal advocacy on issues of key concern within the country, or providing counsel and representation to groups which might otherwise not receive such services. Assistance to NGOs of legal professionals may also be appropriate if such groups are ready to advocate for specific changes in legislation or legal structural reform. Assistance to these latter groups will probably be most successful if such groups are not too closely tied to the authoritarian power structure. Finally, ROL practitioners should support programs designed to improve the professionalism and enhance the independence of the media, as well as specific

activities, which can help media professionals to understand and adequately cover legal issues within the country.

It should be emphasized that the strategic focus of these efforts is to broaden and deepen legal-oriented civil society, and to encourage key groups to mobilize constituencies for reform. The success of these activities should be measured against this objective, and not against the programmatic focus of the groups supported, e.g., protection of human rights, provision of greater access to justice, etc. To the extent that the number and capacity of legal-oriented NGOs can be expanded under a consolidated authoritarian regime, there will be that many more players ready to push for, and take advantage of, any unforeseen movement toward an Unconsolidated Authoritarian regime.

As a general rule, in Consolidated Authoritarian regimes, Missions will probably want to minimize work with government officials on ROL issues. This does not mean, however, that USAID and other government agencies should ignore opportunities to identify promising young leaders (both within and outside the government) who may be more open to Western values and ROL principles. Study tours, short- and long-term training in the U.S. and third countries could well prove to be life-changing experiences for these individuals, who are then likely to become allies for real ROL reform at a later date. In some circumstances, Missions may also wish to consider limited programming with local or regional governments, which have demonstrated some capacity for and commitment to ROL reform. These would probably be in the nature of pilot programs, possibly in collaboration with local or regional NGOs. Their focus would also be on expanding “grassroots” support for ROL reforms rather than on the specific programmatic objective. Finally, Missions may wish to consider funding “grassroots” legal education programs, not only in the schools, through “Street Law” or other groups, but also among the broader population. Some elements of the local media may be particularly useful in fashioning and disseminating these efforts.

Ultimately, it must be understood that in Consolidated Authoritarian regimes, there are no short-term strategies. Work at the “grassroots” with NGOs, local governments and the media can take many years to produce real results; in many E&E countries, NGO financial sustainability is improbable, and donors will need to carry much of the burden of keeping these groups alive. Young people receiving training may take years to rise to positions where their influence can be felt. Missions working in these countries must be prepared to stay the course and continue their support even where short-term results are lacking and change appears impossible.

B. Unconsolidated Authoritarian

By definition, Unconsolidated Authoritarian regimes are in flux; both rapid forward and rapid backward progress are possible. In this dynamic period, there may be glimmers of growing political will for reform among some key government players. Opposition movements may be strengthening, and key NGOs aligning themselves with these groups. Some elements of the media are likely to be taking on national targets with relative impunity, and encouraging popular participation in these discussions. Given these openings, Missions should engage in shorter-term strategies designed to maximize the ability of pro-reform groups to effect positive change.

During an Unconsolidated Authoritarian period, investments made in constituency and coalition building will likely produce some positive impacts. ROL practitioners should thus consider expanding their strategic focus on coalition and constituency building during these periods. It may be possible to identify those NGOs, local governments and media operations which have the best prospects for encouraging real ROL reform, and to provide them with additional resources. Missions may wish to consider financing more networking among local groups and groups in third countries which have successfully encouraged ROL reforms.

At this point, ROL practitioners will also want to consider undertaking some additional efforts with those elements of the central government which appear open to ROL reform. These targets will differ in each country depending upon the personalities and backgrounds of the individuals. While there may be a temptation to develop full-blown activities with one or more elements of the central government, at this stage this temptation should probably be resisted, at least in the initial stages. The objective is to get to know the players and to assess if and how they can be brought into the ROL reform effort. In this sense, the composition of the effort may be less important than that it is effectively managed, and closely monitored to determine whether local counterparts are likely to become effective allies in longer-term reform.

Where an Unconsolidated Authoritarian regime appears to be backsliding toward Consolidated Authoritarian status, Missions face difficult strategic choices. In some countries, the emerging situation may be so problematic that it will make sense for the Mission to batten down the hatches and retreat to a fully “grassroots” long-term constituency and coalition building strategy, possibly, but not necessarily, including legal-oriented “grassroots” organizations. In others, there may yet be hope that the backward slide can be halted, or even reversed, in response to the actions of key elements within the country, or to external pressures. In these latter cases, Missions may choose to gamble with expanded program activities designed to support local groups in resisting the slide toward greater authoritarianism. While donor programs alone are rarely of sufficient critical mass to halt or reverse a country’s slide into consolidated authoritarianism, such programs can sometimes have positive impact if combined with pressures from the donor community, or from key historical allies.

Where an Unconsolidated Authoritarian regime appears to be moving toward reform, Missions should consider significantly expanding their efforts in ROL coalition and constituency building, as well as support to elements of the central government, which have proven more progressive in support of ROL reform. Educational programs for the general populace may also be particularly effective at this point, particularly where they can enhance public demand for key constitutional and legislative changes, or for structural reform.

C. Stuck State

As mentioned earlier, it is not inevitable that countries emerging from Unconsolidated Authoritarian status come to rest as Stuck States. A very few may be able to bypass this phase, particularly if their emergence from the Unconsolidated Authoritarian phase results from a popular revolution led by pro-democracy forces who can push the country quickly into the Unconsolidated Democracy category. In E&E, however, history, culture, and economic retrenchment generally work together to produce a situation where reforms progress only so far before running into resistance from more conservative, still well-entrenched elements. At this point, a state becomes “stuck”, i.e. unable to form a clear consensus on its future path.

Choosing the right mix of ROL programming is particularly difficult in Stuck States. By definition, a Stuck State includes a sizeable reform element that evidences some measure of political will for reform. However the power of reformers to carry out and consolidate needed reforms is seriously limited by the unwillingness of the old guard to support their enactment or implementation. This dynamic can last for many years unless an internal or external shock causes the country to move toward the authoritarian or democracy side. As a result, ROL strategies in Stuck States are necessarily long-term strategies.

Many of the ROL activities assessed in these eight country impact studies were designed and implemented when the countries appeared to be Stuck States. Laws were enacted, structural reforms initiated, and substantial “grassroots” support for reform was engendered. While some mistakes were undoubtedly made in program choices and timing, the limited success of most of these efforts derives at least equally from the “stuck” nature of the countries in which they were implemented. Some measure of

political will can get reforms initiated; a lot more is needed to complete them. Although more than a decade has passed since many of these activities were initiated, it is still too early to tell if earlier investments will ultimately pay off in widespread impact.

Recognizing these realities, some Missions will choose to maintain their focus on coalition and constituency building, and eschew substantial investments in further revising the legal framework or in initiating structural reform. This is an honorable choice, particularly where financial resources are limited. More activist, and perhaps better funded, Missions will choose to take advantage of the amount of political will which exists to initiate additional revisions to the legal framework, promote important structural reforms, and expand access to justice. In the latter view, it may be better to accomplish what can be accomplished, even if the ultimate impact is questionable or substantially delayed, than to wait for more fortuitous circumstances. Again, the Georgia case may offer useful lessons in this regard.

In either case, it is important to emphasize once again the long-term nature of these strategies. Except where countries are clearly moving forward toward Unconsolidated Democracy status, impact is unlikely to be measured in USAID's favored five-year strategy periods, much less in the annual "what have you done for me lately" reports.

D. Unconsolidated Democracy

Unconsolidated Democracies are a ROL programmer's dream, if a budgeter's nightmare, as they present enormous opportunities for rapid impact. In most of these countries, civil society is vibrant, the media is largely independent, and political will for ROL reforms abounds. With many potentially effective programming targets, it will be difficult to choose among them. Blair and Hansen's earlier programming framework may help in making these choices.

In their view, where structural reforms, including gaps in the constitutional and legal framework, are still required to promote judicial independence and support openness and transparency of the legal system, these should be undertaken first. Some of these structural reforms may also require investments in institutional development, e.g. to encourage or support effective implementation of structural changes. Once structural reforms are largely in place, Missions should consider focusing on access creation issues, perhaps with some additional effort to develop institutions critical to meeting these expanded demands on the legal system. Investments in a broad range of institutional development should probably be made only when structural reforms are complete and access concerns are being increasingly addressed. While these sequencing recommendations have been criticized, particularly by those concerned that access creation efforts will build demand that institutions are not yet capable of meeting, thus leading to popular frustration and disenchantment, it is important to note that they are offered as guidelines, and not carved in stone. Individual Missions will need to evaluate their own situations carefully, including the tolerance of their counterparts for a more drawn-out strategic process, but should have the freedom to experiment with different mixes of activities to meet their individual program needs.

E. Consolidated Democracy

Generally, countries that are Consolidated Democracies will no longer have active U.S. democracy or ROL assistance programs.

VII. FINAL WORDS

This synthesis, as well as the eight country impact assessments upon which it was based, incorporates a number of findings and recommendations which contravene some of the conventional wisdom of E&E ROL programming to date. This should not be surprising. Over the last decade, our knowledge of these countries has grown substantially, as has our experience in implementing ROL activities. Where once a blindfolded group eagerly felt for various parts of the elephant, the blindfolds have fallen away, and the animal can now be seen clearly by all. As a result, it should be possible to calibrate ROL programming with greater precision, and to adjust expectations accordingly.

Four key concepts embedded in these documents bear repeating. First, ROL reform is as much as political as technical process. It cannot be effectively undertaken without reference to the political environment around it. Second, it matters when and in what order, activities are undertaken. This paper has attempted to provide some detailed guidance on how these decisions should be made, but recognizes that dimensions that have not been captured here may nevertheless radically affect Mission choices. Third, the ultimate success or failure of ROL programs is in the hands of the countries in which they have been implemented. As a donor, we can only do so much to make ROL reform possible. The countries will have to carry it to the end. Finally, we should not be too hasty in declaring success or failure. To our young American eyes, a decade is a long time for impact to be felt. But the countries we have worked with, and their people, have much longer histories than we. Many of them are much less comfortable with change than we would wish. Those who work to bring the rule of law to these countries will need intelligence, courage, and patience in ample supply.