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# USAID RULE OF LAW POLICY

A Renewed Commitment to Justice, Rights, and  
Security for All

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# USAID Rule of Law Policy

A Renewed Commitment to Justice, Rights, and Security for All

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## Executive Summary

The rule of law is fundamental to USAID's development mission. Not only is it a core American value, but the rule of law also serves as the foundation to democracy, provides the guardrails of good governance, and is a primary means to combat corruption and make human rights actionable, enforceable, and realizable for all members of society. Indeed, it is inextricably linked to all aspects of development. Yet, the rule of law remains hard to define and a challenge to promote and sustain. Building upon a clear-eyed review of USAID's decades-long effort to promote the rule of law and ensure justice, rights, and security for all, this Policy serves to elevate the rule of law within USAID's development mission, equip and empower staff who promote it, and leverage our comparative advantages to sustain it. And, in addition to dispelling prevailing myths, it provides a basis to improve our efforts and achieve durable results based on what we and our partners have learned. To this end, we have taken several steps.

First, this Policy clearly promulgates a definition of the rule of law by adopting the now standard United Nations definition. USAID recognizes that such a definition is essential because we can only measure what we can define, and we will only achieve what we can measure. However, the rule of law will always remain an unfinished effort. Societies change and so do their challenges, obstacles, and values; the rule of law reflects and affects these, so it too must evolve. Any collection of government institutions exercising authority and providing services related to a deeply held and respected belief – justice – will change only slowly.

Second, with this Policy, USAID sets forth a new paradigm for its programming to advance the rule of law in partner countries: people-centered justice. This is an explicit change in how we think and will work. This Policy re-conceptualizes and re-organizes our efforts; it will require fundamental changes in our perspective--from the institutional to the individual. People-centered justice places the person affected by the law, whether in civil, criminal, or administrative matters, at the core of the policies, processes and practices that comprise justice and related systems. Going forward, USAID rule of law programs will improve the problem-solving capability of justice service providers, the outcome focus of justice institutions, the safety and security of all individuals, and respect for fundamental rights and freedoms. Doing so will help USAID and its country partners to move beyond reforming parts of large, complex systems and aim instead to transform them and the institutions, actors, and processes therein.

Third, this Policy formally prioritizes knowledge and evidence. User-friendly and problem-solving justice, rights, and security interventions will be driven by data – about users, societies, needs, problems, processes, experiences, outcomes, etc. In promoting the rule of law, as in other development assistance efforts, lack of data and other forms of evidence begets failure. USAID's processes and our support for our partners' goals requires that more diligent attention be paid to what we know, what we want to learn, and how we share and together act upon both.

USAID is distinctively suited to promote the rule of law abroad. USAID's strength is in our people and the accountable, results-oriented system they operate. Our subject matter expertise is bolstered by experts on contracting, finance, measurement, and managing a comprehensive administrative system. Our Missions engage with their counterparts on the many varied challenges facing modernizing societies while recognizing their intimate linkages. As our local systems approach reminds us, there is always a system. With support from our rule of law experts, USAID's diverse development professionals assist our partners in their efforts to develop and improve their own rule of law systems, not to replicate ours or any other.

## The Case for Rule of Law Promotion, Restated

Rule of law promotion is integral to USAID's overall mission and values as a premier international development agency and catalytic actor driving development results around the world. For USAID, the rule of law serves as an essential means to achieving sustainable development goals. It is also an important development outcome itself, inextricably linked to ensuring more peaceful, just, and inclusive societies as set forth in United Nations Sustainable Development Goal 16. Development results are more durable to the extent they occur within a democratic, inclusive framework that facilitates participatory governance and fulfills fundamental rights and freedoms protected by the rule of law. In promoting the rule of law, USAID advances our own development agenda and those of our partner countries and the international community, in a way that directly improves people's lives in a demonstrable manner.

The longstanding case and value proposition for USAID investments in the rule of law endures. The rule of law serves as the foundation of democracy, provides the guardrails of good governance, and is a primary means to combat corruption and make human rights values and norms actionable, enforceable, and realizable for all members of society. Where the rule of law prevails, individuals, communities, and societies flourish. Key pillars of a democratic society, including independent media, civilian control of military and police forces, free expression and association, fair political competition, and nondiscrimination and gender equality as well as civic engagement and public participation and oversight are respected and protected by the rule of law. The rule of law is also fundamental to the fight against corruption and impunity. It codifies standards, protects norms, and establishes networks of accountability structures and transparency obligations – those necessary and independent checks on the use of delegated authority. The rule of law substantiates individual rights and protects the role of advocacy and the process of societal change. It is under color of law that power is tempered, abuses are investigated, and future misdeeds deterred.

The reality that the rule of law is foundational for development is more than assertion. Just as the rule of law is vital to combating crime and corruption, so too is it crucial to preventing and responding to conflict and atrocities--antitheses of development. Indeed, feelings of injustice and insecurity can be core drivers of instability and violent extremism.<sup>1</sup>

Moreover, the rule of law enables economic growth, facilitates trade and investment, and enhances livelihoods. Under the law, businesses are constituted, and commerce is regulated. It also guarantees access to, prevents abuse of, and ensures inclusivity in the distribution and accessibility of public goods and services, such as health care, education, and the environment. In other words, sustainable development is *'just development,'* based upon the rule of law.

Because of its importance, donor-led rule of law promotion efforts must evolve and adapt. Significant resources have rightly been dedicated to supporting the values underpinning, and the selfless advocates pushing for justice, rights, and security. Key institutions designed to uphold these values against denial, discrimination, and exclusion must continually be strengthened to improve their effective operation. Such evolution is natural: as countries develop, they evolve law and practice. Today, developed and developing countries alike struggle against an undeniable reality: billions of people around the world live

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<sup>1</sup> See e.g. *Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict*, United Nations and World Bank and United Nations, 2018

outside the protection of the law. How people experience the law and its institutions, formal or informal, is vital.<sup>2</sup> For too many, the law and justice institutions are too distant, exclusionary, costly, and complex. For others, insecurity and injustice are an ever-present reality, often with their very identity and ability to be recognized by the state in question. The measure of these legal problems unsolved and justice needs unsatisfied is the “Global Justice Gap.”<sup>3</sup>

Working to close the justice gap is vital to USAID’s mission because law and justice are necessary to all aspects of human development. Being outside the protection of the law is a form of exclusion, estranging individuals and groups from the positive roles government should play in their lives and to which they should rise in the civic life of their communities.

The values of the rule of law – independence, impartiality, integrity, inclusion, and accountability – are primarily operationalized through institutions: legal frameworks, social

protections, and security and justice organizations. Justice institutions and services, inclusive of both formal and informal processes, are society’s safety valves, enabling those with grievances to seek redress and those with justice needs or legal problems to seek resolution and satisfaction. The rule of law and justice are not only at the core of democracy; they are – they must be – an everyday reality. They are the means and mechanisms through which people peacefully shape their futures and transform their communities and countries. These are the realities of the rule of law and why its promotion is nothing short of an imperative for USAID and our partners around the world.

Success in rule of law promotion will always be difficult. The rule of law is neither inevitable nor entirely durable; it is forever a work in progress. Rule of law and justice institutions don’t work until they do, and then only until they don’t. It takes time, commitment, and patience to build well-functioning justice systems, transform the institutions, improve the services, and empower people. In some cases, particularly post-conflict, effective justice, and security reforms can take between 15-30 years to raise institutional performance. Hard-won gains and sustainability therefore only endure with continuous attention and support. It is all too easy to erode, degrade, and roll back the rule of law if the balance

#### ***Leading and Learning***

USAID has been a global leader promoting the rule of law. Our programming has included, but not been limited to:

- Strengthening judicial independence and self-governance
- Court administration and case management
- Legal education and preparation for practice
- Legal profession modernization
- Access to justice and legal empowerment
- Citizen security and criminal justice

As such, USAID has a wealth of experience to draw upon; experience which, when examined carefully, indicates we can do better.

Millions of people live in conditions of extreme injustice; over a billion people experience a new justice problem each year, but over 60% of such problems worldwide go unaddressed. A sense of justice is core to how citizens value their government and, sadly, the lack of meaningful justice is fueling a global legitimacy crisis, which in turn is accelerating democratic backsliding, corruption, and state fragility.

The clarity and enormity of these challenges undergirds this policy.

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<sup>2</sup> See, e.g., Tom Tyler, *Why People Obey the Law*, 2006 (experience with legal institutions, process, and officials plays a substantial role in whether they view the law as legitimate and merit their compliance with it).

<sup>3</sup> *Measuring the Justice Gap: A People-Centered Assessment of Unmet Justice Needs Around the World 5* (World Justice Project 2019)

that it represents is not properly tended to and reinforced over time. And in far too many countries, in addition to its inherent fragility, the rule of law is under direct assault.

Many previous efforts to promote and sustain the rule of law have not necessarily yielded the durable results sought. The approach employed for roughly two decades – reproducing specific institutional forms, practices, and powers as well as reforming constitutional and legal frameworks – has been helpful, but not comprehensive, and it is not well suited to addressing contemporary challenges and needs. Considering the expanding justice gap as well as emerging learning on the connections between service delivery and legitimacy, our approach needs to evolve. As many developed and developing countries now recognize, the priority for rule of law promotion and related justice and security reforms needs to be people and their problems.<sup>4</sup> In recognition of the existence of multiple challenges and threats to the rule of law, as well as the opportunities and benefits deriving from it, and of the required investment of time, resources, and partnership to implement it, USAID affirms the value of these efforts.

This Policy therefore reaffirms rule of law promotion as an enduring priority of USAID development assistance and renews an Agency-wide commitment to evolving ways of advancing justice, rights, and security for all in partner countries. Considering all that has been learned over the past two decades, USAID now shifts its rule of law paradigm from its previous focus on institutions and their needs to one that focuses on how they engage and address the needs of the people and communities they are mandated to serve.

This Policy also affirms USAID’s leadership, on behalf of the United States government and in coordination with the interagency and international community, to promote the rule of law on a global scale. In this regard, we will continue to design and implement flexible, evidence-based, and data-driven rule of law programming that assists partner countries to safeguard democracy, improve justice and security outcomes for their people, close the justice gap, and achieve sustainable development goals.

## A Common Understanding of the Rule of Law

One of the challenges of rule of law promotion is that it is too often avoided. “It’s too complicated.” “Results take too long.” “Other agencies or donors will do this.” The rationales differ, but the problem remains, and so too the negative impacts of the lack of rule of law on all aspects of development. Societies

### **What is the rule of law?**

[T]he rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.

- United Nations, The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, Report of the Secretary-General, 2004, S/2004/616.

<sup>4</sup> See *Pathfinders Task Force on Justice, Justice for All – Final Report*, Center on International Cooperation, 2019, <https://www.justice.sdg16.plus/>; *Equal Access to Justice for Inclusive Growth: Putting People at the Centre*, OECD 2019; Lee, C.G., F. Cheesman, D. Rottman, R. Swaner, S. Lambson, M. Rempel & R. Curtis, *A Community Court Grows in Brooklyn: A Comprehensive Evaluation of the Red Hook Community Justice Center*. Williamsburg VA: National Center for State Courts, 2013

that are more conducive to that development if they are governed by responsive, predictable, and open systems of justice; societies in which rights are protected, crime and corruption are investigated and punished, and power is checked.

Accordingly, one of the primary goals of this Policy is to clarify what rule of law reform is and expand understanding of the means of achieving it.

Years of effort notwithstanding, the rule of law continues to be poorly understood by, and elusive in the daily lives of, too many. Indeed, some authoritarian governments claim to be acting under the law, corrupting the rule of law into rule by law. The abuse and weaponization of the law and justice systems by powerful elites is anathema to the building of peaceful, just, and inclusive societies that enjoy democratic and accountable governance under the rule of law. To safeguard against democratic backsliding, to close the expanding justice gap, to empower people and communities, to provide safety and security to individuals and communities, and to combat crime and corruption, we must redouble our efforts beginning with articulating a common understanding of the rule of law.

#### **Dispelling Myths about Rule of Law Assistance**

**Myth: "Rule of Law is for lawyers."**

**Reality:** For USAID rule of law assistance to be effective, program design and implementation must be interdisciplinary. Effective people-centered justice systems rely on expertise in sociology, public and mental health, economics, political science, communications, and many disciplines in addition to law.

**Myth: "Rule of Law assistance supports formal justice institutions."**

**Reality:** USAID rule of law assistance can and should reach far beyond engaging ministries of justice, judicial self-governance bodies, courts, prosecutors, the legal profession and other formal justice institutions. It encompasses support for non-state justice systems and actors, including community justice advocates, and customary justice mechanisms.

**Myth: "Other agencies lead on criminal justice activities and working with police."**

**Reality:** USAID rule of law assistance strengthens criminal justice systems and democratic and community-oriented policing, in coordination with the Departments of State and Justice as well as independently. With the necessary and appropriate legal authorities, USAID works to ensure policing is a public service that is transparent, accountable to civilian authority, and responsive to the needs of the public.

**Myth: "Rule of Law assistance is strictly for democracy, rights, and governance portfolios."**

**Reality:** USAID rule of law assistance is **everyone's** job because it provides tools for the success of **all** USAID assistance. Every sector in which USAID works, such as health, education, economic growth, and the environment, has rule of law as a core, necessary assumption that is crucial to success.

**Myth: "Rule of Law assistance is too regimented and prone to legal transplantation."**

**Reality:** USAID rule of law assistance eschews "one size fits all" models. Instead, USAID employs politically smart and adaptive approaches that first seek to understand local realities and tailor rule of law assistance accordingly. Activities are rooted in experimentation, iteration, and adaptation, using mechanisms appropriate to our partner countries, their legal traditions and culture, and the needs of local justice system users.

This Policy marks an evolution, an enhancement, and a renewal of USAID’s efforts to advance the rule of law by elaborating what the rule of law is and what the rule of law is for. First, USAID recognizes and incorporates the definition of the rule of law promulgated by the United Nations in 2004 that is now subscribed to by the U.S. government and widely among the international rule of law community of practice.

In addition, this Policy reaffirms the intrinsic value and utility of the five essential elements of the rule of law identified and articulated by USAID in 2008: 1) Order and Security, 2) Legitimacy, 3) Checks and Balances, 4) Fairness, and 5) Effective Application of the Law.<sup>5</sup> Outlining these elements helped to operationalize a definition, provide necessary clarity and useful guidance, and build a foundation upon which we can examine and improve the rigor of our own rule of law promotion efforts and those of others.

Since then, USAID has recognized that reform efforts within these initial parameters too readily viewed rule of law as an end state reached by strengthening certain institutions and actors without sufficient regard to systems, services, and society.

Justice institutions —judiciaries, police and prosecutorial services, legal aid commissions and public defender offices, and bar associations — have too often failed to effectively address the needs and experience of justice seekers and communities. As such, the number of people around the world living outside the protection of the law, and experiencing the resulting injustice and insecurity, has increased instead of declined. Public trust in the possibility of justice and confidence in justice institutions have lessened.<sup>6</sup>

Accordingly, USAID will shift the rule of law paradigm. This Policy pivots USAID toward the **transformation of the institutions**, formal and informal, to ensure justice, rights, and security for all. And, we will widen our aperture to see the whole: **the systems that support and manage, the services that define, and the society that, broadly, engages, demands, and benefits from the rule of law.**

#### Rule of Law is *Personal*

In Mexico, 75% of the adult population fears becoming the victim of a violent crime. With USAID support, nine Mexican states took a data-driven approach to deterring such crimes by using data to better allocate resources and to detect criminal patterns and guide investigations.

These nine states successfully dismantled subsidiary organizations of transnational criminal groups by systematically prioritizing criminal investigations based on local dynamics and citizen priorities. For example, data informed justice institutions decided to prioritize the role of first responders for petty crimes and dedicate specialized resources to more complex or serious crimes like homicide.

In Zacatecas, a USAID-supported unit used homicide data to identify and target 50 suspects belonging to six distinct groups, all tied to the Jalisco Cartel. Another data-centric effort targeted 350 unsolved robbery cases in Coahuila and resulted in a 30% drop in auto-parts and vehicle robbery.

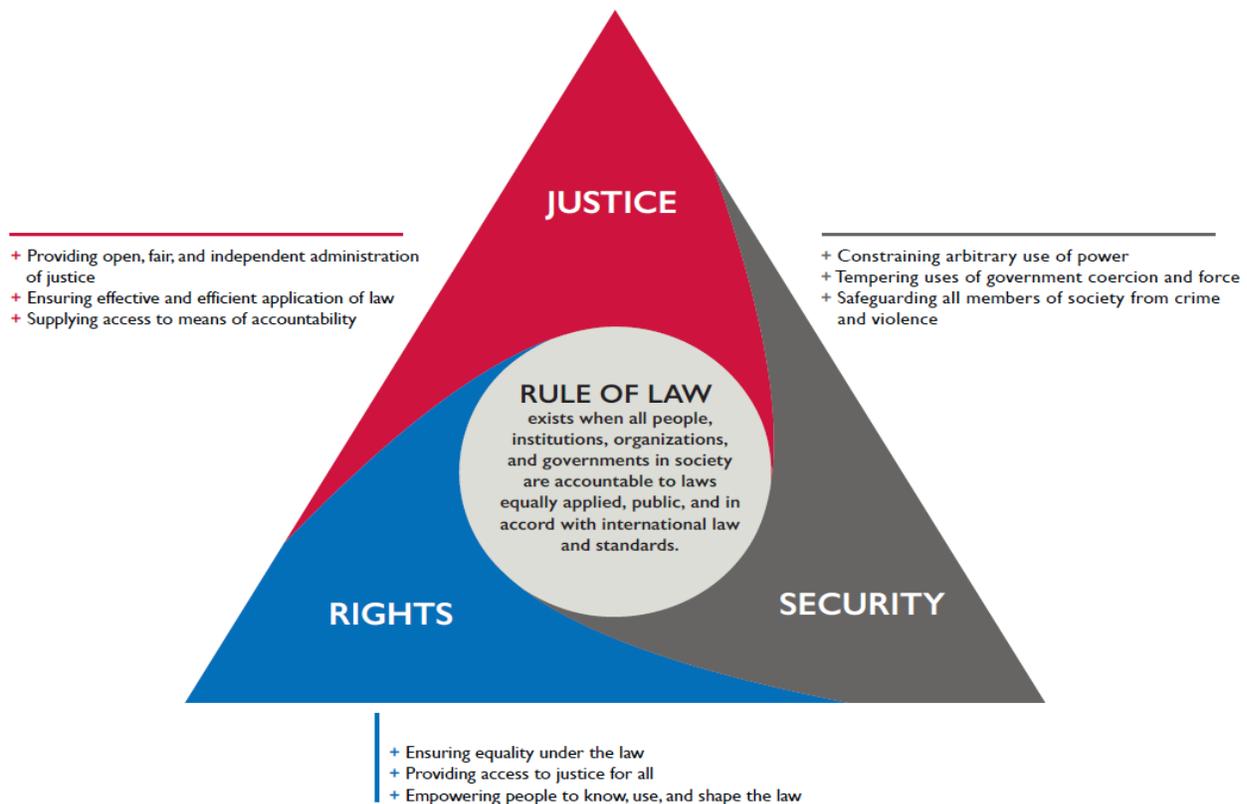
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<sup>5</sup> [Guide To Rule of Law Country Analysis: The Rule of Law Strategic Framework](#), USAID, 2010.

<sup>6</sup> USAID uses the term “justice” to stand in for the complex array of historical, political, social, and personal mores that each society uses to define what is, and what is not, fair and just. The “rule of law” describes the system of institutions and norms that aims to provide outcomes – justice – that are legitimate in and to a societal context.

In shifting the paradigm, USAID prioritizes:

- **Promoting Justice** by ensuring the independent, open, accessible, and efficient administration of justice; guaranteeing the impartial and effective application of the law; improving justice seeker experiences and outcomes; strengthening effective checks and balances; and deterring crime, corruption, and abuse of fundamental rights by prioritizing accountability within and among government institutions and private actors.
- **Protecting Rights** by giving effect to the core promises of the rule of law, including equality under the law and equitable access to justice for all; empowering people to know, use, and shape the law in their daily lives; bolstering the space for civil society and the media to monitor and report on crime, corruption, and rights abuse; and facilitating the work of national human rights institutions, community justice advocates, and human rights defenders.
- **Providing Security** by constraining arbitrary and/or corrupt exercise of power and tempering the use of force; fostering the professionalism and accountability of police and other security actors; improving security sector governance; and safeguarding all members of society from crime and violence, including sexual and gender-based violence, so they may recognize their full potential.



To accomplish these goals, USAID will seek appropriate balances in context. Promoting justice, protecting rights, and providing security present no easy binary choices, no straightforward supply and demand equation. Rather, these collective action goals involve the weight of the rights and obligations of individuals within a society and reflect the difficult choices that must be made to bind diverse communities together into a cohesive society. Such balancing is continuous because no society is static

and each society is unique. As such, rule of law promotion is always a work in progress that must be contextualized.

USAID supports the capacities of partner countries to strengthen the rule of law so that it will be accepted as legitimate by the people it is intended to benefit. While this Policy recognizes that there is no single or perfect system for promoting justice, protecting rights, and providing security, a common understanding of the rule of law is a good starting point. The United Nations definition provides that start. From there, USAID believes the next appropriate question is to focus on *whom the law and its institutions serve: communities and the people that comprise them.*

Promoting the rule of law means more than “improving” the independence, accountability, and efficiency of justice institutions; it requires transforming them. How? By working to make these vital public institutions, the varied services they provide, and the systems they comprise data-driven, user-friendly, data-driven, solution-focused, and prevention-oriented – i.e., more people-centered.

## Shifting the Rule of Law Paradigm to People-Centered Justice

The future of USAID rule of law promotion is people-centered. For USAID, the rule of law is for and about people: to guarantee their rights, resolve their legal problems, to satisfy their justice needs, to safeguard their security, and otherwise empower them in their daily lives and in holding authority to account. Its legitimacy is grounded in how people are treated when subject to government action or coercion. Its value to society lies in the ability to solve individual problems before they devolve into collective challenges.

People-centered justice is an approach to rule of law promotion that *starts with what people need and want when they seek justice.* It seeks to remove the obstacles people face when doing so, improve their justice-seeking experience, and enhance the outcomes they might receive. Simply put, people-centered justice puts people, and their justice needs and legal problems, at the center of the justice system.<sup>7</sup>

A people-centered approach does not reject the importance of justice institutions and their independence, accountability, and efficiency. Indeed, a justice system cannot be truly people-centered without them. Formal and informal institutions remain the primary managers of delivery mechanisms for, and points of entry into the administration of justice, safety and security. As previously noted, people-centered justice is data-driven, user-friendly, and solution-focused justice. It also aims to prevent as well as remedy injustice and insecurity by establishing multiple pathways— for a people-centered justice system, a “day in court” is not necessarily the goal; solving the problem is.

### ***The People-Centered Justice Theory of Change***

IF we put people at the center of the justice system, and

IF we transform justice institutions and services to be more data-driven, user-friendly, solution-focused, and prevention-oriented, and

IF we empower people to know, use, and shape then law in their daily lives,

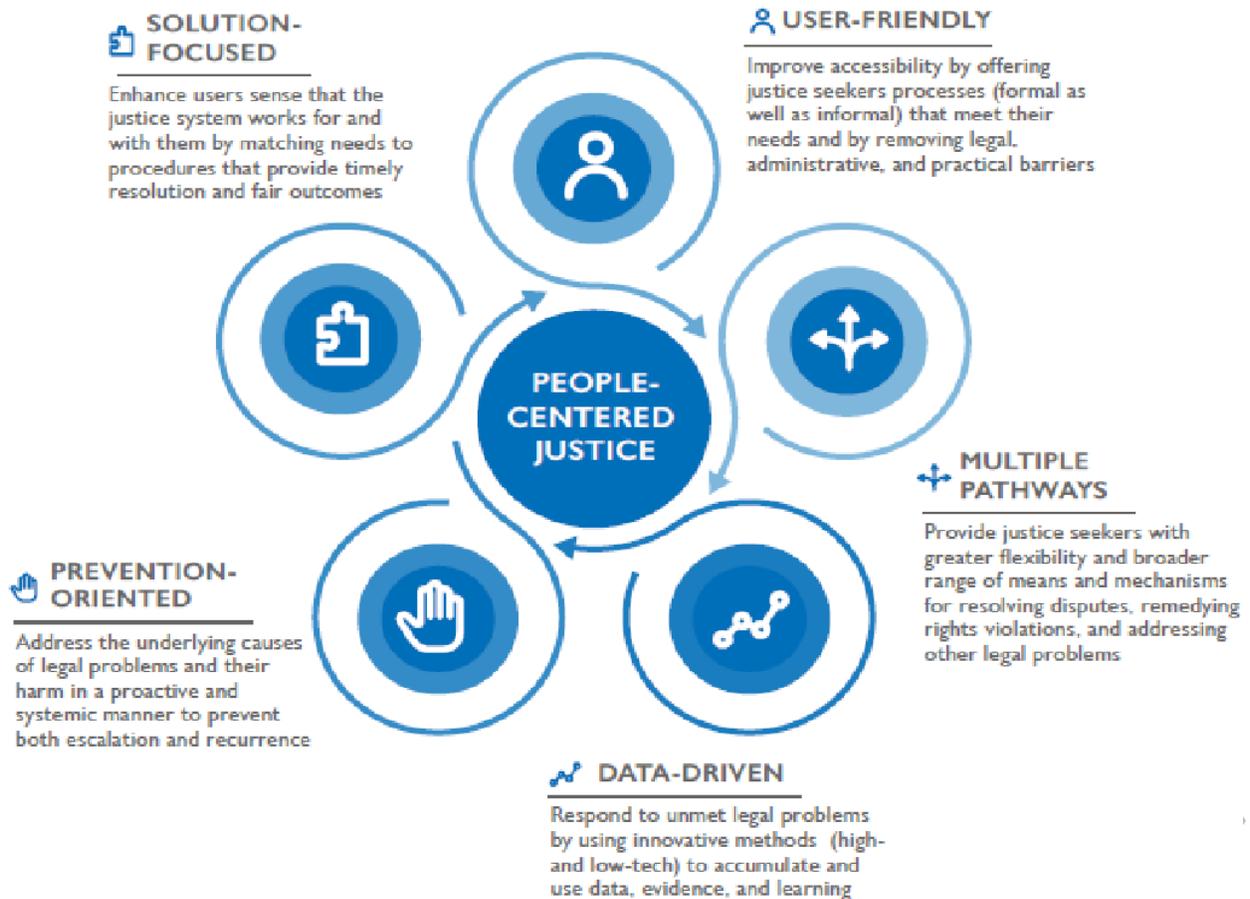
THEN we will improve outcomes that enhance the legitimacy of and trust in the rule of law.

<sup>7</sup> See *Hague Declaration on Equal Access to Justice for All by 2030*, adopted at the Ministerial Roundtable on Access to Justice in The Hague, February 7, 2019.

A people-centered approach requires a mindset shift. Instead of predominantly thinking about institutions and their needs, USAID rule of law activities will shift their focus to people’s needs and experiences. In this regard, a people-centered approach represents a renewal of the core notions of the social contract, updated for the complexity of 21<sup>st</sup> century rule of law challenges.

Emphasizing people-centered justice as an approach to rule of law promotion acts on USAID’s recognition that public trust in justice institutions and other public authorities has declined for years. Negative and unsatisfactory experiences with core government services, or the unavailability of justice and other services altogether, has too often led to alienation, disengagement, self-help, violence and even extremism. By empowering people to know, use, and shape the law and by facilitating multiple pathways for resolving legal problems and satisfying justice needs, people-centered justice enables an environment of opportunities in which human creativity and entrepreneurship can flourish, people can thrive and prosper, and more inclusive and just social contracts can rebuild trust.

## PEOPLE-FOCUSED REFORM



Finally, people-centered approaches provide new and more effective means to foster justice integration, enable cross-sectoral cooperation, and build the resiliency of people, households, communities, and countries to respond to and overcome complex development challenges. In addition to strengthening justice systems and service delivery, these approaches can help ensure that other vital services – such as health care, education, and housing – are more accessible and responsive to the specific needs of underserved communities and populations at risk of social and economic disadvantage and exclusion.

## Persistent Rule of Law Challenges

The impetus for change in USAID’s rule of law promotion efforts could not be timelier and more pressing. Illiberal threats to societal systems that depend on consent – compliance with the law, representative government, protections for minority rights and racial equity – abound. Consent is ephemeral and hard to sustain. Technology, especially social media platforms, has underlined this instability as our more networked world has divided nations, creating alternate “trust realities.”<sup>8</sup> Whether rising or falling, rule of law, trust between individuals and governments, and legitimacy are bound together. Decades of USAID democracy, rights, and governance programming confirm this reality: collective commitments that knit free societies together and strengthen social contracts, such as respect for the rule of law, are at risk of unraveling. Manifestations vary, but include:

**Democratic Recession.** The concept of democracy as the organizing principle for society is under duress; its popularity is undermined; and it is now in a state of “malaise.”<sup>9</sup> Satisfaction with democracy has been dropping since 1995. The number of people dissatisfied with the performance of their respective democracies has been growing too rapidly. The expanding justice gap only contributes to this weakening of trust in democracy and confidence in democratic and accountable governance. By improving delivery of those justice and security services that recipients view as essential to basic fairness—such as policing—democratic governments can improve the legitimacy of democracy as a governing system.

**Development Backsliding.** Across nearly every metric of the core development challenges – from food security to maternal and child health to basic education – the COVID-19 pandemic exacerbated existing injustices, overwhelmed extant capabilities, erased progress, and devastated faith in systems, further undermining future reform and renewal. These already devastating impacts further complicate

### Experience Affects Perception: Responsiveness Matters

Research indicates that ordinary people are more likely to trust systems that respond to their needs, a goal USAID has extensive experience pursuing.

Procedural justice focuses on the transparency and consistency of citizens’ experience with courts. In Kosovo, USAID supported court user satisfaction surveys throughout the country’s courts. Results showed citizens’ frustration with their inability to access information about their cases and their lack of knowledge of court operations. USAID responded with websites and media explaining the work of courts and introduced an online court fees calculator to help citizens anticipate fees for civil cases, eliminating the need to rely on an attorney to determine costs.

Making the justice system more accessible, cognizable, and accountable to the public not only increased the efficiency and effectiveness of the courts, it also improved the public’s perception of the courts and trust in them and other institutions.

<sup>8</sup> 20 Years of Trust (Edelman.com 2020) (accessed at <https://www.edelman.com/20yearsoftrust/>).

<sup>9</sup> *The Global Satisfaction with Democracy Report 2020*, Centre for the Future of Democracy, 2020.

the state of democracy, rule of law, and good governance: elections postponed, states of emergency declared, and established accountability mechanisms and processes ignored. By focusing on rule of law and justice systems - and engaging service delivery-level government actors and citizens in improving design and implementation - donors and other actors can address and solve complex development problems from multiple directions.

**Resurgent Authoritarianism.** Some leaders use instability and uncertainty to advance their authoritarian reach. Weaponizing fear as well as corruption as tools of political influence and subversion, authoritarian and populist leaders often seek first to undermine accountability institutions and actors, including courts, legislatures, media, and civil society. Too often, these actions are couched in the language of "law and order," undermining the rule of law by transforming it into the rule of one person or group. Impunity has a solidifying effect, enabling authoritarians to castigate efforts to restore checks and balances as a return to instability and chaos. By engaging the public in justice system design and delivery, justice actors can demonstrate that participatory, rather than top-down authority-driven, processes are more effective and more legitimate.

**Persistent Corruption.** Combating corruption is a national security priority, not just for the United States but a priority for the international community as well. From maintaining elites in power against the will of the people to the undermining of the promise of self-governance, corruption is a scourge on every aspect of development. It is core to would-be authoritarian arguments against democracy and is increasingly utilized and exported by malign actors on a global scale. The rule of law is the means by which standards of fair play and open competition are established; justice institutions and actors are the guardians of the rules that protect access, ensure openness to advocacy, and provide accountability for all. The promotion of the rule of law, the protection of rights and security, and the prevention of corruption cannot remain siloed efforts. Justice, anti-corruption, and other actors must cooperate to improve accountability and create multiple pathways to dispute resolution and problem solving.<sup>10</sup>

Even as the rule of law is under direct assault, other long-standing development obstacles remain. As inexorable as it is predictable, climate change continues--impeding economic development, disrupting livelihoods, and creating a litany of inequalities and inequities. Discrimination and exclusion continue to

#### **Rule of Law Provides Accountability**

In the Philippines, USAID supported the Office of the Ombudsman (the principal anticorruption agency at the central level) to oversee corruption prosecutions in the lower courts.

In Ukraine, USAID played a leading role in the joint Ukrainian-international efforts that created the High Anti-Corruption Court (HACC). USAID's New Justice program developed recommendations on anti-corruption legislation; helped establish procedures for competitive selection of HACC judges; and supported the National School of Judges of Ukraine to launch judicial orientation for newly appointed HACC judges. Training sessions for HACC judges, assistants, and court staff were held on leadership, strategic communications, professional ethics and judicial opinion writing. In addition, New Justice facilitated strategic planning to develop the HACC's mission statement and action plan.

In Bosnia and Herzegovina, USAID supported the High Judicial and Prosecutorial Council to mandate Integrity Plans, crucial corruption and integrity risk management instruments used by every public institution in Bosnia. With USAID support, the Council worked with all 98 judicial institutions in the country to support creation and adoption of the plans.

<sup>10</sup> *Community Justice: Putting People First*, Open Government Partnership, 2021.

rise, especially for women in all their diversity decades following the Beijing Declaration. In addition, according to the World Bank, nearly 50% of the world's poor suffer situations affected by conflict and violence. These obstacles can exacerbate unmet grievances and societal fault lines, increasing the challenge to development. But they also underscore the benefits provided by functional democratic, justice, and accountability systems.

USAID has established policies, sound analytical tools, and evidence-driven approaches to meet these and other persistent challenges. Each relies on the rule of law, which in turn emphasizes the importance of integrating rule of law promotion with other development efforts. A people-centered approach for rule of law promotion will help in this regard, as will the Agency's long-standing organizational capabilities as a leading catalyst of development results.

## USAID's Comparative Advantages in Promoting the Rule of Law

Just as the rule of law requires a collective commitment from society as well as individuals, so too is promoting it abroad a collaborative endeavor of the United States government. USAID works alongside its interagency partners from the Departments of State, Justice, Defense, Treasury, Commerce, the U.S. judiciary,<sup>11</sup> and other actors to integrate and amplify the expertise and capacities of the entire federal government.<sup>12</sup> While the rule of law is foundational to United States foreign policy and national security, its promotion abroad is fundamentally a development challenge, rather than an additional defense or diplomatic responsibility. In this regard, USAID's capabilities for leading in the promotion of the rule of law rests on many inherent strengths and capacities, including:

**A Wider Development Perspective and Agenda.** The rule of law is not simply a system for maintaining law and order; it is a societal commitment to peaceably resolve disputes and grievances within a locally legitimate system. Such disputes may involve health or education; citizenship or taxation; discrimination or exclusion; and crime or corruption. USAID's development mission and agenda widens our rule of law aperture, enabling a deep and broad understanding of the societies within which we promote rule of law systems and elements of justice, rights, and security. Moreover, this wider development perspective enables USAID rule of law efforts to leverage policies, frameworks and evidence on issues ranging from gender equality and equity to the important role youth play in development to the rights of indigenous peoples, persons with disabilities, LGBTQI+ persons, those forcibly displaced from their communities and countries, and other individuals and groups.<sup>13</sup> This enables our assistance to effectively engage the needs and voices of the poor, underserved,

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<sup>11</sup> See, *Memorandum of Understanding of Mutual Cooperation Between the United States Agency of International Development and the United States Judicial Conference Committee on International Relations* (2014). USAID also collaborates with the International Judicial Relations Office of the Federal Judicial Center.

<sup>12</sup> From fiscal years 2014 through 2018, State and USAID allocated \$2.7 billion for rule of law assistance, with annual allocations increasing from \$496 million in fiscal year 2014 to \$551 million in fiscal year 2018, or 11 percent. Within this time period, allocations fluctuated. Specifically, allocations increased by 20 percent from fiscal years 2014 through 2016, and subsequently decreased by 7 percent from fiscal years 2016 through 2018. GAO-20-393

<sup>13</sup> See USAID's *LGBT Vision for Action; Disability Policy Paper; Child, Early, and Forced Marriage Resource Guide; and the Women, Peace, and Security Implementation Plan*.

disadvantaged, and marginalized contributing to the sustainable development of justice systems that effectively protect and empower all of members of society.

**An Emphasis on Local Systems and Solutions.** USAID’s field-focused model of Mission-led programming, supported by experienced, trusted implementers, and backed by expert local staff, ensures that USAID rule of law programming is never “off-the-shelf.” As noted in several USAID policies, there is always a local system, and durable results are possible only when programming occurs within it. Identifying, analyzing, understanding, and engaging this system in order to find local solutions is fundamental to our approach. In addition, USAID recognizes that durable rule of law reform generally occurs only as local political and institutional equilibria shift, a generational enterprise requiring stubborn determination and informed by a long-term view.

The USAID Applied Political Economy Analysis (APEA) framework and similar tools enable our staff to be mindful of the influence of history, conflict, and competition when designing and implementing rule of law programming. We incorporate an understanding of the political, social, and economic context at the local level into our programming so we can respect the incentives (or disincentives) as well as the power and influence of local actors. Thereby, our programs capitalize on institutional opportunities and avoid constraining issues. An emphasis on “Thinking and Working Politically” allows our rule of law programs to identify and navigate the political dynamics, underlying power structures, and diverse interests and incentives that drive behavior in and around the justice system and how they can impact inclusive justice agendas and equitable rule of law outcomes.

#### **USAID Rule of Law Guidance**

[Rule of Law Practitioners Guide](#)

[Rule of Law and Security Sector Governance Indicators Guide](#)

[Designing and Implementing Court Automation Projects Guide](#)

[Non-State Justice System Programming: Practitioners Guide](#)

[Crime and Prevention Field Guide](#)

[Assistance to Civilian Law Enforcement in Developing Countries: A Field Guide](#)

[Integrating Rule of Law and Global Development: Food Security, Climate Change, and Global Health](#)

**A Framework for Evidence, Learning, and Innovation.** USAID carries out its rule of law work drawing upon a long-standing open culture of rigorous monitoring, evaluation and learning that has guided the development and refinement of our approaches and activities as well as the formulation and testing of policies and strategies. The dissemination of evidence, learning, and guidance ensures that USAID missions design and implement their programming in accord with widely recognized tenets of good development work.

Recent investments have also created a culture of innovation to recognize and accommodate trial and error and enable our rule of law programming to generate data and subsequently integrate learning throughout the implementation of our programming. Moreover, the engagement of local actors in the implementation of iterative learning provides a platform for the shared creation, analysis, and dissemination of knowledge that deepens our partnerships with local actors and enables greater local agency in the ongoing development of our evidence base.

**An Adaptive Programming Approach.** Development assistance and rule of law promotion are grounded in complexity, as they revolve around people: their societies, their jobs, their health, and ultimately their justice, rights, and security. Taking this truth seriously has driven USAID to develop tools to reflect it.

Our Collaborating, Learning, and Adapting (CLA) framework, for instance, is built directly into our program management cycle and systems, providing staff with the guidance, encouragement, and freedom to work closely with our partners, to learn even when the result is less than desired, and to adapt to refocus and redouble our efforts. A range of adaptive tools empower field staff and implementing partners to engage with this learning, adapt and surmount unexpected challenges to the rule of law.

And, critically, our human-centered design tools, such as co-creation, enable us to share decision-making power, innovation and ideation, and implementation responsibility with our local partners, deepening our collaboration and impact in rule of law promotion.

**An Accountable Structure and System.** Implementation at USAID is managed for results. Approximately 600 Democracy, Rights, and Governance staff worldwide create and execute multi-year Country Development Cooperation Strategies (CDCS) that provide umbrella direction to the development of rule of law and other sub-sector strategies, results frameworks, and theories of change. The integration of rule of law experts and programming into this comprehensive effort requires USAID rule of law programming to consider and address how rule of law challenges fit within the wider development context of a country, encouraging programming that is both adapted to context and accountable for results within that context.

Within this system, USAID rule of law program design and implementation utilizes interdisciplinary team-based approaches that harness rigor to avoid duplication and encourage innovation. USAID avoids sacrificing cost to quality, preferring instead to balance these twin challenges in procurement to further leverage competition to better meet the complex challenge that is rule of law reform.

USAID's reliance on competitive processes enables it to focus procurement on the selection of partners and technical approaches that best address the diverse, multifaceted and dynamic rule of law challenge that is rule of law reform. USAID rule of law awards are managed by a highly trained cadre, who are certified to manage federal contracts and grants and are subject to continuous learning requirements. In addition, USAID's program cycle emphasizes rigorous learning, monitoring and evaluation, and the engagement of experts in these areas to ensure quality control and effective application of learning.

#### ***Alternative Legal Service Providers***

The sound of the gavel is authoritative but solving legal problems does not always require a lawyer.

In Liberia, USAID trained dozens of individuals from various communities as Community Justice Advisors (paralegals) and deployed them to over 470 communities in 8 counties across the country. Leveraging their existing networks, these trusted local community members quickly established effective relationships with magistrates, police, and traditional leaders which enabled them to help individuals seek justice to monitor the process to ensure their clients received fair outcomes.

## The Change We Seek: Core Objectives and Desired Outcomes of Rule of Law Promotion

Rule of law program design, implementation, and measurement are an exercise in navigation from an identified problem set through obstacles, resistance to change, and the incremental reality of change itself to achieve milestones and eventually results. In this regard, there is no one “model” to achieve and sustain the rule of law and, thus, **there is no single path towards improved rule of law.**

USAID uses available evidence – qualitative and quantitative – along with international standards and comparative practice to identify entry points and pathways for reform. We adapt to obstacles and setbacks. Each of our partner countries' journeys toward the rule of law will be unique, as will be the obstacles, difficulties, and challenges along the way. Their systems, like our own, will evolve over time.

USAID emphasizes that the rule of law has no finish line; it is an unfolding process defined as much by a joint aspiration between USAID and its partners to improve as it is by a recognition of current imperfections. The outcomes we seek together will necessarily be aspirational and broad. They are the unknowns that are part of every democratic experiment. They outline the destination of and illuminate the core imperative of our programming: to contribute to the continual improvement of the evolving, unfinished construct that is rule of law.

In this regard, key outcomes we seek through our rule of law work, and their attributes, include:

### Justice for All

USAID rule of law activities will transform institutions, actors, and processes that provide justice for the powerful few into systems that provide equal justice for all, inclusive of the poor, underserved, disadvantaged, and marginalized. Laws, policies, and practices that distance or exclude people from addressing justice needs, solving legal problems, and protecting fundamental freedoms can contribute to the expanding justice gap that exists in far too many societies.

This estrangement may create fear of the law as well as an overall lack of trust and confidence among justice seekers, such that they are unable or unwilling to participate meaningfully in pursuing and

#### Multiple Pathways to Justice

Justice is a plural concept. For too long, justice sector reform has viewed legal systems through a dichotomous lens: providers were either part of the ‘state’ or ‘non-state’ justice systems. Usually, reality is more complicated, especially in fragile states.

USAID’s Expanding Access to Justice (EAJ) Programme in Somalia meets the socio-political reality of justice seeking where it is, using political economy analysis to understand the different normative orders that prevail. From this starting point, EAJ embarked on supporting justice seekers to make informed choices and navigate the available justice institutions and authorities with an eye towards the most optimal outcome.

Deploying ‘Justice Promoters’ (a type of community-based paralegal), EAJ works to enable each justice seeker to access concrete advice based on their local context. The Justice Promoters may acknowledge statutory or religious norms alongside locally prevailing behavioral norms. Such a localized approach not only facilitates resolution of problems, but also can influence social norms change toward more rights-based justice.

In this regard, EAJ is creating Court User Committees to raise up local voices, experiences, and needs to inform the building of a state-wide justice service that is legitimate in the eyes of its potential users.

producing equitable justice outcomes or in the worst-case scenario, resort to violence to channel grievances against the state and other members of society.

USAID understands that closing the justice gap and realizing the goal of justice for all requires bringing law and justice closer to people in their daily lives. In turn, rule of law activities--taking a broader view of justice that captures both formal and informal systems--will remove barriers to accessing justice services, expand legal literacy and identity, empower people to know, use, and shape the law, and improve public engagement and civic oversight of justice institutions, actors, and processes and participation in justice reforms.

### Safe and Secure Communities

USAID recognizes public safety as a complex and challenging goal that is possible only with institutions and actors capable of exercising a delegated monopoly on use of force within the bounds of professionalism, accountability and oversight, and service. USAID also understands that safety is a collective endeavor that begins with the community as a stakeholder in, and often the architect of, its own security and that of its members. Safety is also more than protection from crime and violence; it is the freedom to enjoy the rights of the individual protected by law.

Strengthening community law enforcement relationships requires trust-building activities, including strengthening local resilience structures and networks, improving security actors' understanding of and response to crime, violence, and insecurity facing individuals and communities, continued advocacy, and combating impunity. Unaddressed violence — whether by the state, criminal organizations, or non-state actors — undermines community and public trust in government and justice systems.

USAID will work with partners to prevent, de-escalate, and recover from crime and violence no matter the cause or perpetrator by improving policing, investigation, prosecution, defense services, adjudication of cases, and corrections systems, providing effective alternatives to gang or extremist group membership, and supporting survivors of crime and violence and systematic rights violations and atrocity crimes through specialized services and mechanisms.

### Democratic and Accountable Governance

The rule of law is foundational to ensuring democratic and accountable governance as government entities endeavor to address problems faced by those within their jurisdiction. Accordingly, rule of law activities will support the transformation of governance systems, and the institutions, actors, and

#### **Collaborative Law Enforcement and Violence Prevention**

At its core, people-centered justice seeks to foster a collaborative partnership between and among citizens, the private sector, and government. For example, in the Democratic Republic of Congo and Central African Republic, USAID programs developed a community-based approach to combating wildlife trafficking.

Communities in the region have endured decades of violent conflict as armed groups exploit poor governance structures to extract wealth by trafficking in natural resources and terrorizing citizens. USAID helped establish common ground for diverse actors to work together toward mutually valued results. Community members use USAID-provided radios to operate an early warning system for threats to wildlife and communities at risk, allowing law enforcement and park rangers to respond quickly. Government, citizen groups, and private sector actors use mobile cinema and other social and behavior change tools to reduce the market for trafficked wildlife.

Recognizing that changing behavior requires effective deterrence as well, USAID works with justice system actors to improve the investigation and prosecution of wildlife crime. Strengthened by USAID investments, Malawi and Zambia seized more than 3.65 tons of ivory in FY 2018, resulting in 148 arrests.

processes that comprise them, to become more open and participatory, administratively competent, and engaged with and responsive to their constituencies. In addition, rule of law activities will limit the otherwise capacious power of government by establishing safeguards – such as the separation of powers and the establishment of checks and balances in intra-governmental interactions and accountability.

Rule of law activities will also strengthen judicial independence and self-governance, both of which are pillars of democratic and accountable governance. They will endeavor to empower individuals, groups, and communities to use and change law and policy and to oversee the collection, management, and expenditure of public funds. In addition, they will deter corruption by protecting good governance through mandates for transparency, access to information, oversight, and investigation and prosecution. Rule of law programs will similarly empower people--as individuals, communities, or social movements--to hold their leaders and institutions accountable. At the same time, these and other rule of law activities help to build resilient governance systems, guard against democratic backsliding, protect civic space, and combat resurgent authoritarian influence as well as corruption in all its pernicious forms.

#### **Justice for Women and Girls**

For the promise of the rule of law to be fully realized, to be genuinely people centered, it must be about *and with* women and girls in all their diversity. Progress toward gender justice, equality and equity, and empowerment continues. Yet, the rule of law and justice remain abstractions for millions of women and girls around the world who live outside the protection of the law. For instance:

- Discriminatory codes, personal status laws, and court decisions, continue to deny women education, sexual and reproductive health, employment and entrepreneurship, property ownership, inheritance, and other fundamental rights and freedoms.
- Violence against women, female genital cutting, early and forced marriages, and sextortion and other forms of sexual exploitation and abuse plague the safety, well-being, and lives of millions.
- Barriers based on gender, sex, and group affiliation prevent and limit access to justice and other public goods and services, including lack of legal gender recognition for transgender and intersex individuals
- Customary, informal, and religion-based justice and dispute resolution mechanisms fail to adequately protect women and promote gender equity and equality.
- Career pathways, representation, and decision-making and leadership roles for women in justice and security providers, including judiciaries and police departments, are woefully lacking.

USAID rule of law assistance will emphasize promoting and protecting the rights of women and girls to close the justice gap that exists for women, ensure gender equality and equity, and empower women in their daily lives and professions. It will employ gender, female empowerment, and social inclusion analyses and other tools to integrate gender to address challenges and opportunities related to legal frameworks, justice and security institutions and legal-related professions, and access to justice.

## Prosperous and Healthy Societies

USAID rule of law activities will enable the development of more prosperous and healthy societies by improving legal and regulatory frameworks and related administrative procedures and mechanisms that secure land and property rights, ensure fair housing, protect consumers, and advance labor rights and decent work worldwide. Rule of law activities will also strengthen business registration, contract formation and enforcement and facilitate dispute resolution to stimulate commerce, investment, and trade as foundations to inclusive and equitable economic growth. Similar efforts underpin governmental, non-governmental, and private sector services that provide health, education, sanitation, and other public goods.

In addition, rule of law activities will make responses to environmental crimes and corruption more effective and contribute to environmental protection and resilience, including in areas of biodiversity and natural resource management. Rule of law activities will also be proactive as well as responsive in addressing the causes and effects of climate change, particularly by ensuring public participation and non-discrimination in promulgating laws and policies and practices that harm the climate and natural environment and the peoples and wildlife that inhabit them.

## Evidence: Understanding the Work of Rule of Law in Progress

Like all systems involving human behavior and interaction, justice systems exhibit a tension between performance and improvement. As people's expectations and circumstances change, so too must relevant institutional processes and procedures. This complexity – and the shifting definitions of what the rule of law is and what it is for – has long complicated efforts to build an evidence base to improve the field of practice. For too long, donors and implementers assumed they could formulate a basic template or recipe to underpin rule of law efforts everywhere.

With this Policy, we demonstrate our intent to avoid one-size-fits-all approaches as well as to eschew legal transplantation. This goal pushes us to identify what we know, what we do not, and what we will do. The latter includes articulating how we will learn and improve.

### What We Know

In development assistance, we are bound to imperfect knowledge. Definitions, myths, and misconceptions, as well as the lack of a system-oriented view of the problems facing rule of law promotion, have challenged programming. Feedback loops have been too few and narrow — usually limited to individual projects — and the data produced are neither widely shared nor closely examined. There has been insufficient emphasis on what we do know and how we can better use that knowledge and learning. This Policy therefore effects multiple changes in our approach to rule of law programming, including prioritizing systematic evidence collection, wide dissemination, and increased learning.

Because the rule of law directly implicates every individual's calculus of whether to comply with the rules and conform their behavior to the law, it is connected to all levels of society. The views and expectations of stakeholders in partner countries – which are diverse and potentially contradictory – comprise the core of rule of law promotion; they cannot be absent. It is, after all, their rule of law system. Local ownership and legitimacy are demonstrated through direct involvement in creating and deploying changes to law, policy, process, and practice. Tools such as human-centered design, co-

creation, and journey-mapping matter and will continue to be integrated into our rule of law promotion efforts.

### What We Do Not Know

Strengthening the rule of law takes time and patience. We do not know what will work until we try. As noted above, there are no linear, easy pathways to rule of law and justice system reform. We know, for instance, that preventing corruption and demonstrating good, best-fit governance are unlikely without the rule of law, but we need to know more about how to combine aspects of each type of program effectively. There remains much to learn about cross-sectoral approaches, from the linkages between rule of law and education or health programming to how violence prevention and rights protection can work together.

We need to try more and learn faster – even when it means admitting an idea or an activity did not work. We will not fear the failure of a specific approach but instead treat it as an opportunity to improve. We will emphasize the importance and prioritize the use of tools that facilitate learning, local collaboration, and adaptation in our rule of law programming. Moreover, while U.S. foreign and development assistance strives to be evidence-driven, the actionable connection between evidence and implementation must be discovered and understood. The evidence we have often points in multiple directions simultaneously. Finding what works will require more emphasis on iterative programs and multidisciplinary team efforts involving field staff, monitoring, evaluation, and learning (MEL) and collaboration, learning, and adaptation (CLA) input, and rule of law experts, as well as a range of adaptive tools, from political economy analysis to human-centered design.

#### Justice Matters...and has Costs

One of the major challenges facing democratic reforms is the lack of sufficient attention to rule of law. Recently, international justice reform support has decreased by 40%. While “justice” may have many meanings, it remains highly desired and has very specific costs.

One of the core challenges to rule of law is judicial independence; in turn, among the most significant challenges facing judiciaries seeking to become and stay independent is the formulation and management of a budget allocation from the executive or legislative branch of government.

In Kyrgyzstan, USAID rule of law assistance has helped the Council of Judges and the Supreme Court become budget savvy. Council and Court staff now develop budgets, advocate for funding allocations, and execute spending against drafted budgets, reversing a two-decade trend of declining judicial budgets. As a percentage of the national budget, the judiciary managed to significantly increase its budget allocation (from .42% in 2013 to 1.80% in 2020). Control over spending has allowed the judiciary to enhance the quality of judicial education, allocated resources to court automation and transparency, and incentivized retention with increased salaries

### What We Will Do: Three Agendas

Focusing on the rule of law is not alone a panacea to meeting development challenges. Not every problem facing individuals in low- and middle-income countries is a legal problem, nor can justice systems solve every problem. But legal problems and the systems and services to solve them do have a disproportionate and direct impact on perceptions and realities of injustice, violence, loss of livelihoods, and deficiencies in health and education. Under this Policy, USAID will pursue three related goals concerning the evidence this important work requires and deserves.

**Know.** We will pursue a “Knowledge Agenda,” deepening our commitment to ground rule of law programs in relevant available evidence. A major step in this agenda is the development of USAID’s first-ever Rule of Law Evidence Gap Map (EGM) to inform program design and implementation.

decisions. This EGM complements a foundation of tools and guidance to support field-based staff with technical knowledge and programmatic learning. Moving forward, we will continue to invest in developing similar resources, integrating information received through improved feedback loops, disseminating knowledge widely, and delivering innovative training and professional development opportunities focused on the core competencies of rule of law programming.

**Learn.** Second, we will continue to promulgate and elevate the coordination of a “Learning and Analytic Agenda” for rule of law promotion. USAID will build upon existing knowledge to ensure rule of law questions are researched and that gaps are ameliorated as the work proceeds. In this regard, we anticipate exploring existing assumptions – such as how an effective justice system supports a successful health or education system – as well as understanding how a justice system can become more “people-centered.” With this Policy, USAID recognizes the importance of exploring the use of new tools for planning and feedback, such as co-creation and a Rule of Law Innovations Lab, to ensure that our evidence base and our guidance for rule of law programs are informed by quantitative research and by the qualitative observations of our local partners — those who own, operate, and aim to improve their systems and services of justice.

**Cooperate.** Third, we will work closely with our partners and counterparts to enhance our “Cooperation Agenda.” The work of rule of law reform is simply too broad for one agency or one government. USAID recognizes that many donor-funded rule of law interventions fall into three areas: building more effective and integrated systems, improving the quality and accessibility of services, and empowering and being responsive to needs and priorities of society. Colleagues throughout the U.S. government contribute to reform efforts in these areas, and USAID is an important partner to each. None will succeed separately. Accordingly, under this Policy, USAID will continue to cooperate and coordinate with interagency partners in Washington DC and in the field to ensure a unity of effort and effectiveness in promoting the rule of law. Similarly, cooperation and partnership with the international community, including engagement with bilateral donors, multilateral platforms, and international and regional organizations, will continue to be prioritized.

#### **Rule of Law Reform Supports Doing Business**

In Kosovo, USAID’s Contract Law Enforcement and Commercial Justice activities work at the intersection of rule of law and commerce improving and promoting arbitration and mediation and creating a bailiff system to improve contract enforcement.

The project also developed a comprehensive bankruptcy law to support the country’s on-going transition to a free market economy. It helped close the loopholes in company formation requirements. Currently, it is working with the Government of Kosovo to establish a standalone Commercial Court which will provide an efficient mechanism for resolving commercial cases.

## **Operational Guidance: Applying Policy to Programming**

The following principles will guide decisions for conceptualizing, designing, and implementing USAID’s rule of law programming:

### **Employ People-Centered Approaches**

USAID’s rule of law activities will employ people-centered approaches to promote justice for all, as opposed to perpetuating justice for the few. As stated above, this approach prioritizes people and the transformation of institutions to be more responsive to their justice needs and legal problems in addition to making services more accessible as well as user-friendly, problem-solving, solution-focused,

and prevention-oriented. USAID will invest in data to understand what people need when they seek justice, how they seek to resolve their legal problems, and the obstacles and costs they face along the way. Priority will be given to establishing feedback loops among users, institutions, and service providers, including but not limited to justice needs and satisfaction surveys and journey mapping, to contribute to continuous learning and evidence-based decision-making that will drive justice reforms and make the law work for everyone in their daily lives.

USAID assistance will facilitate multiple pathways to justice based on the recognition that many legal problems and justice needs can be resolved outside of court equitably and expeditiously. Expanding the use of collaborative initiatives such as alternative dispute resolution, restorative justice processes, community policing, and place-based crime and violence prevention—where the local context is supportive and can create best-fit solutions that protect all within a society—will decrease the burden on the formal system and enable reinvestment of scarce resources.

Where appropriate, rule of law activities will strengthen informal and customary justice systems, which USAID recognizes have an important place in many rule of law ecosystems, and ensure they adhere to international norms and frameworks. Particular attention will be given to developing localized strategies and establishing community justice mechanisms that engage both formal and informal systems as appropriate. In addition, USAID will seek to unlock monopolies on legal and justice services by supporting alternative service providers such as paralegals and community justice advocates, process navigators, and mediators. We will also make greater use of and improve access of justice seekers to online services and digital tools for legal problem-solving.

### Support Open Justice Initiatives and Commitments

Openness is as essential to the rule of law and people-centered justice systems and services as it is to democratic governance. USAID rule of law activities will therefore continue to support open justice initiatives that enhance transparency and accountability of justice institutions, actors, and processes. Working with a broad spectrum of stakeholders, including civil society, USAID will make justice data and information accessible to the public, facilitate transparent decision-making, including in selection and appointment of personnel by judicial governance bodies, courts, and other institutions, and improve internal and external accountability mechanisms and integrity systems.

Rule of law activities will remove barriers between justice providers and communities and encourage direct dialogue, feedback loops, and other forms of engagement and communication. They will prioritize facilitating inclusive and equitable public participation in and oversight of justice reform and policy-making processes. They will also support wider collaboration between executive and legislative

#### Rule of Law Protects **EVERYONE**

USAID *people-centered* approaches address practical barriers to access justice and resolve disputes.

For example, in Colombia, USAID-supported community justice houses help citizens with their day-to-day justice needs, including for survivors of gender-based violence (GBV). In addition to increasing meaningful access and support for survivors, the program also reported that access to justice houses correlated with decreases in GBV incidences and violent dispute resolution in communities.

Similarly, in the Dominican Republic, community justice houses provide centralized legal services in high crime neighborhoods. By meeting people's legal needs and resolving disputes that might escalate into further violence, these houses increase pathways to justice. Over a decade, more than 500,000 individuals sought legal and support services that otherwise have been inaccessible.

authorities, judiciaries, security providers, civil society and human rights defenders, and other stakeholders in the context of the Open Government Partnership (OGP) and other initiatives for the co-creation of national action plans and justice sector strategies.

### Advance Inclusion, and Equality, and Equity

Local solutions and participatory methods to strengthen the rule of law and ensure justice, rights, and security for all demand attention to inclusion, equality, and equity. Throughout our program cycle, we will remain attuned to those individuals, groups, and communities most likely to be excluded from the protection of the law, who cannot rely on the law in their daily lives, and who may lack the capacity and capability to effectively engage the law and access justice and other public services.

USAID recognizes that the legal problems and justice needs of the poor and other people and populations at risk of marginalization and discrimination can be more frequent and complex than those experienced by others. They often give rise to related social and economic needs and problems as well. Rule of law activities will prioritize remedying these problems and preventing legal exclusion and inequality within society. They will also employ the power of the law, including use of strategic litigation, to facilitate more socially and economically just and inclusive societies. Similarly, our efforts will work to ensure all regardless of status within a society or polity are recognized by the law and their rights to legal identity and capacity are respected. Pursuing these goals will include removing administrative and discriminatory barriers to accessing public services, including but not limited to justice and security.

### Advance Peace with Justice

More than half of the countries where USAID operates suffer from armed conflict or other forms of generalized violence, often the result of serious crime or violent extremism. While most forms of violence do not degenerate into traditional warfare, casualties resulting from non-combat violence including homicide, terrorism, domestic abuse, sexual and gender-based violence, forced disappearances and kidnapping, outpace deaths associated with conflict zones by a three-to-one margin. Although the specific settings, targets, motivations, and levels of organization may vary, all types of violence pose a significant challenge to our partners and to our own national security. Indeed, crime and violence affect one in every six people across the globe.

Historically, USAID has treated peacebuilding and rule of law as distinct disciplines only linking them in some cases of crisis response. The evidence base for preventing crime, conflict and violence shows significant overlap.<sup>14</sup> Fundamentally, the same factors - justice, trust, accountability, and inclusion - animate both concepts.

USAID will prioritize conflict and violence prevention by integrating rule of law efforts with strategies to reduce individual and community vulnerabilities, address the factors that drive conflict and violence, strengthen community cohesion and advance positive peace.<sup>15</sup> This more holistic and people-centered framework will provide a structure for examining the links among all forms of violence, identifying the common features that motivate them, and designing deliberate, evidence-based foreign assistance interventions to prevent or deter them.

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<sup>14</sup> J-Pal, *Governance, Crime, and Conflict Initiative Evidence Wrap-up: Lessons from randomized evaluations on managing and preventing crime, violence, and conflict*, 2021.

<sup>15</sup> Institute for Economics and Peace, [Positive Peace Report 2020](#), Sydney, 2020.

## Catalyze Cross-Sectoral Integration and Joint Action

USAID rule of law activities will move beyond exclusive and parochial engagements with judiciaries and related rule of law institutions and actors. Rule of law principles and practices are important to address complex social and economic development challenges beyond the courtroom and litigation. The law is omnipresent in every life in every society as the interaction between society's rules and ordinary adversity creates legal problems – such as labor disputes, land inheritance, evictions, debt, contract enforcement, or business registration – that can deleteriously impact a country's overall development as well as the lives and livelihoods of individuals.

USAID also recognizes that such problems when unmet can fester with devastating results.

Rule of law issues surface in many aspects of USAID's work: health and education; economic growth and private sector engagement; environmental protection and climate change; and conflict and violence prevention. Where appropriate, USAID teams will work across sectors to understand the linkages between development and rule of law problems, develop solutions, and improve prevention mechanisms. For example, medical-legal partnerships provide legal, social, and other supportive services at a single site of care, putting the power of law in the hands of those with poor health to protect their access to legally required care. Festering problems with possible legal solutions can stress health, exacerbate financial issues, and magnify everyday challenges. Often problems have civil justice or administrative law solutions that need not be pursued in court; instead, the public can, with support, make use of complaint lines, paraprofessional "navigators," or advice centers to help them use bureaucracy effectively, to demand services, call out impunity, or promote change.

Such practical barriers can have dramatic impacts: the direct costs of unmet legal problems along with the resulting costs these problems can impose on health, employment, and income exceed .5% of GDP in most countries, and can reach up to 3% in some cases. A people-centered justice approach to solving the legal problems that people encounter in their daily lives will have real benefits.

## Facilitate Innovation and Digital Solutions

USAID recognizes the inextricable linkages of innovation, including automation, digitization, algorithmic systems, and predictive analysis as well as procedural reforms and non-technological initiatives, to assisting rule of law institutions and justice providers in achieving their goals and adapting to better serve the public. Technology can improve government service-delivery systems, save time, cut costs, and increase transparency.<sup>16</sup> And yet, technology is not always the answer. In some forms, it can introduce bias and hinder equity in the pursuit of efficiency. Recognizing the difference requires trial and error, feedback, and engagement.

### The Clear Value of Shared Learning

USAID has deeply engaged with, and values, innovative and on-going interagency cooperation project. The State/INL-funded Justice Sector Training, Research, and Coordination Plus program provides a useful example. The JUSTRAC platform provides USAID and other interagency partners in justice reform a forum to share experience, learning, tools, and approaches. For example, recently, USAID joined the United Nations Office on Drugs and Crime and the American Bar Association to share recent research and discuss perspectives on combatting corruption and transnational organized crime.

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<sup>16</sup> [Digital Strategy 2020 – 2024](#) (USAID 2020)

Accordingly, USAID rule of law activities will establish innovation platforms, to provide space for cultures of experimentation, the acceleration of locally driven innovations to improve institutional performance, solve people’s legal problems, and enhance user experiences. Interventions will foster solutions that ease access to services on user-friendly platforms and, where appropriate, in partnerships that expand access to justice and the quality, efficiency, and effectiveness of justice system processes. USAID rule of law activities will embed flexible models and participatory approaches throughout the program cycle to ensure sufficient processes of testing, learning, and iteration to find effective solutions to justice needs and legal problems and take innovations to scale. They will also introduce regulatory and other safeguards, including adequate consultation and feedback from civil society and other stakeholders to ensure proper use of emerging technologies and digital tools.

## Conclusion

With this Policy, USAID renews a longstanding commitment to promote the rule of law and with it: justice, rights, and security for all. This renewal entails conscious action to elevate rule of law promotion within USAID’s mission, vision, and values by demonstrating leadership, devoting resources, developing tools, and designing and implementing assistance activities to address contemporary rule of law challenges around the world more effectively. And it reflects USAID’s resolve to stay the course, recognizing that promoting the rule of law takes time and perseverance. This Rule of Law Policy provides a basis and guidance to undertake the commitment and succeed in doing so.

### People-Centered Justice Technology

Informed by extensive research and the needs of court end-users, USAID projects leverage information technology to expand access to justice and civic oversight.

In Kyrgyzstan, USAID support saw creation of a wide range of e-justice initiatives that have improved the efficiency, transparency, and accountability of the judiciary. Now, 90% of court decisions are published; audio-video transcription technology is in 77 courts. Case management software enables online judicial calendars and instant access to case statistics.

In Jordan, USAID helped automate the entire court system and digitized it from scratch, a decade-long process that connected 74 courts with a state of art court management and case management system. Chief justices now distribute cases evenly between judges, limiting opportunity for corruption. Lawyers can access cases online from offices and submit pleadings and filing online. Government and civil society can review data on specific cases and research specific crimes over time.

In the Philippines, court information management technology enabled courts to reduce case backlogs by 25%. Technology was joined up with a management solution – speedy trial guidelines – that limited postponements and required disposition plans to resolve new cases within established timelines.

In Sri Lanka, USAID supported development of a mobile application to provide lawyers with online legal resources and court calendars -- a first for the Sri Lankan bar – to help ensure cases proceed without delay.