

U.S. Rule of Law Assistance: A Guide for Judges

*Shawna Wilson, Supreme Court Fellow,
Federal Judicial Center 2008–2009*

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I. Introduction

Federal judges play an important role in many international rule of law projects carried out by the United States government. They provide commentary on constitutional law issues, assist with the drafting of judicial ethics codes, advise foreign judges on court management, and assist judicial councils with strategic planning. Judges usually become involved in these projects during program implementation—when an expert is needed for a conference, workshop, or evaluation. Many judges are unfamiliar with the process used to fund these projects. They also are rarely exposed to the lengthy preparations and bureaucratic hurdles that arise during the design and management phases of rule of law programming.

This guide provides an overview of how the U.S. government funds, designs, manages, and coordinates its rule of law initiatives, and describes the maze of U.S. agencies and programs in this field. The Department of Defense rule of law efforts in conflict and post-conflict states¹ are not addressed. While this publication offers helpful background for judges working on international rule of law projects, readers are encouraged to follow up directly with their partner organizations for more detailed information on agency protocols.

II. Rule of Law Defined

Many activities fall under the rubric “rule of law,” including legislation drafting, legal education reform, work with judicial associations and training centers, human rights training for the police, and the development of commercial courts. The Department of State (State) and the U.S. Agency for International Development (USAID) jointly developed a definition for their justice-sector foreign assistance programs:

“Rule of law” is a principle under which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced, independently adjudicated, and consistent with international human rights principles.²

This common vocabulary enables the staff of government agencies and other organizations to better coordinate their rule of law program development.

III. Principal U.S. Government Agencies Supporting International Rule of Law Reform

As the scope of activities that constitute rule of law programming has expanded, so too has the number of organizations supporting these programs. USAID and the Departments of State, Justice, and Commerce are the main government entities working on international rule of law initiatives. Other executive agencies have divisions that are involved in more

1. A good resource regarding the Defense Department’s rule of law work is the *Rule of Law Handbook: A Practitioner’s Guide for Judge Advocates 2010*, available at http://www.loc.gov/rr/frd/Military_Law/pdf/rule-of-law_2010.pdf.

2. U.S. Department of State & U.S. Agency for International Development’s Foreign Assistance Standardized Program Structure and Definitions, April 2010, at 22. This is the standard definition used within the current framework for U.S. foreign assistance. Activities that focus on peace and security projects, such as counter-narcotics and transnational crimes, are not included in this definition, even if they include training judges, lawyers, and prosecutors.

modest projects abroad (e.g., the Environmental Protection Agency). This guide focuses on the major funders and implementers.

A. U.S. Agency for International Development³

USAID is an independent agency that receives policy guidance from the U.S. Secretary of State. It is the government's primary development organization⁴ and works in a number of areas, including poverty reduction, promoting good governance, providing humanitarian assistance, and improving health care and educational systems.

USAID is responsible for rule of law program management and oversight, as well as ensuring that the programs meet the agency's development objectives. However, USAID does not actually implement rule of law programs. Rather, it provides funding to private contractors, nonprofit organizations, international organizations, and other government agencies to carry out projects based on goals identified by USAID development experts. The process USAID and other agencies use to fund rule of law projects is described later in this guide.

1. USAID Missions

USAID operates in a decentralized manner. USAID has "missions" in over fifty developing countries. Funding for rule of law programs comes primarily from the missions, not from USAID offices in Washington.

Missions may identify assistance priorities in consultation with the U.S. ambassador and State Department officials, and work collaboratively with embassy personnel assigned to rule of law matters. Missions may confer with USAID/ Washington during program design, but it is not mandatory that they do so. The degree of coordination between a mission and USAID/Washington varies.

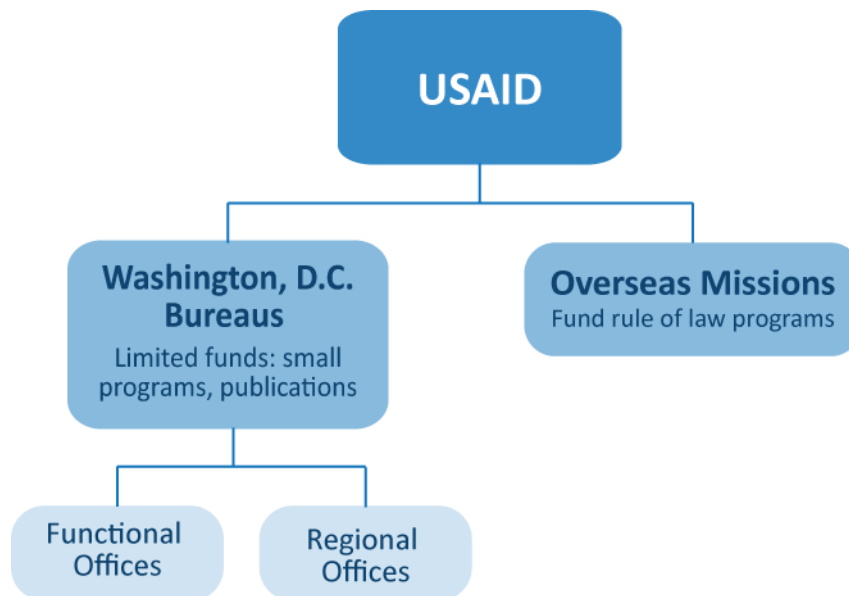
2. USAID Washington, D.C., Bureaus

In Washington, USAID has regional and functional bureaus. The regional bureaus monitor and coordinate activities in a specific country and/or region. The functional bureaus provide technical support and information to USAID missions and other U.S. government organizations on issues including democracy and humanitarian assistance, economic growth, and global health.

a. Bureau for Democracy, Conflict and Humanitarian Assistance (DCHA). The Office of Democracy and Governance (DG) is part of the DCHA Bureau and is responsible for work in the fields of civil society, political process, governance, and rule of law.

3. More detailed information about USAID, including its structure, internal doctrines, strategies, operational procedures, and program mechanisms, can be found at www.usaid.gov/about_usaid/primer.html.

4. The Foreign Assistance Act (Pub. L. No. 87-195, 75 Stat. 424, enacted Sept. 4, 1961, 22 U.S.C. § 2151 et seq.) reorganized U.S. foreign assistance programs and separated military and non-military aid.



The Rule of Law Division, staffed by lawyers and law enforcement officials with development experience, is the primary rule of law contact at USAID. This office provides support to rule of law programming throughout the world by helping USAID missions design and evaluate programs, preparing technical rule of law guides,⁵ conducting rule of law training for USAID field staff, and developing analytical tools for program evaluation. This division also has oversight responsibilities for the contracts awarded to outside organizations (private firms, nonprofits) that implement programs. Individual USAID missions request and purchase contractor services with their own funds; the USAID Rule of Law Division manages the contracts.

While funding for the vast majority of rule of law programs comes from the missions, the Rule of Law Division sometimes has funds for a limited number of narrowly focused programs and technical publications.

b. Bureau for Economic Growth, Agriculture & Trade (EGAT). While the bulk of rule of law activities are supported by the DCHA/DG Office, specific commercial law activities, such as programs focusing on property rights, contract law, and business issues (including bankruptcy), are coordinated, supported, and funded by the EGAT Bureau.⁶ There is a special office within the EGAT Bureau that is staffed with experienced commercial lawyers who also have development expertise. This team prepares policy papers, conducts training, and provides technical assistance to USAID missions interested in designing or evaluating commercial law programs.

5. Technical rule of law publications produced by this office include Guidance for Promoting Judicial Independence and Impartiality; Case Tracking and Management; and Alternative Dispute Resolution. They can be downloaded from <http://www.usaid.gov>.

6. For more information on the commercial law activities of the EGAT Bureau, see http://www.usaid.gov/our_work/economic_growth_and_trade/eg/commercial_legal_systems.htm.

c. Regional Bureaus. There are five regional bureaus within USAID—Asia, Europe and Eurasia, Latin America and the Caribbean, Middle East, and Sub-Saharan Africa. The regional bureaus work on a range of projects but do not fund rule of law technical assistance programs.

The only regional bureau with a dedicated rule of law advisor is the Europe and Eurasia Bureau. This advisor is an attorney with relevant experience in the region and is a resource for information about rule of law efforts in Europe and Eurasia. The other regional bureaus have one or two democracy generalists and sometimes also have staff with more specialized expertise who can provide guidance on rule of law initiatives.

B. U.S. Department of State

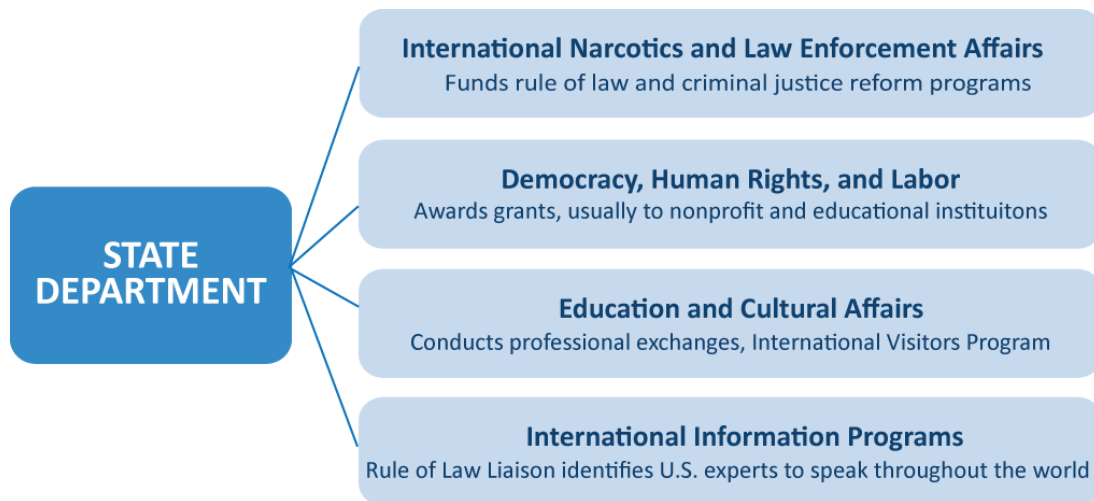
The U.S. Department of State (State) is the foreign affairs agency of the U.S. government. The department's role in rule of law work is twofold. First, State's international affairs budget funds the majority of U.S. foreign affairs activities, including foreign assistance programs.⁷ Second, through several of its bureaus, the State Department provides direct funding for foreign assistance activities, including rule of law programs.

There are a number of ways that State supports rule of law programs. It provides funding to other U.S. government agencies (e.g., the Department of Justice) and international organizations (e.g., the United Nations) that implement the projects. Like USAID, the State Department issues contracts to private contractors and awards grants to nonprofit entities and universities. The State Department's Office of the Coordinator for Reconstruction and Stabilization (S/CRS) is tasked with leading, coordinating, and implementing the U.S. government's civilian response to post-conflict situations—efforts that may include rule of law work. S/CRS supports the Civilian Response Corps (CRC), a pool of trained and ready-to-deploy civilian professionals who will assist in overseas reconstruction and stabilization operations. CRC includes lawyers and judges who may be deployed abroad. When CRC professionals are not commissioned overseas, many work in the rule of law field for U.S. agencies, such as USAID, the Department of Justice, and the Department of State.⁸

The State Department has bureaus and offices that fund and manage rule of law programs, coordinate visitor exchanges, and identify rule of law experts for specific projects.

7. The international affairs budget provides the funding to carry out U.S. foreign policy. This funding supports the worldwide operations of the Department of State, maintains American representation at embassies and posts in foreign countries, and funds USAID. This funding also supports a broad array of foreign assistance programs and other U.S. government activities to achieve foreign policy goals.

8. More information on S/CRS can be found at www.crs.state.gov.



1. Bureau of International Narcotics and Law Enforcement Affairs (INL)

INL formulates policies and develops programs to combat international narcotics and transnational crime. Within the U.S. Department of State, INL has expertise in the fields of international narcotics and law enforcement as well as overseas criminal justice sector reform. Its antinarcotics programs focus on building interdiction capabilities, eradication, sustainable alternative development, and programs to reduce drug use. Its criminal justice reform programs cover a diverse range of initiatives, including work with law enforcement officers, correction officials, court employees, and judges. INL implements its programs through contracts with private contracting firms and individuals, grants to nonprofits and universities, contributions to multilateral organizations, and agreements with other U.S. government agencies.⁹

Within the INL Bureau, there are regional and functional offices that may reach out to U.S. judges for assistance. The regional offices for INL currently include (1) Iraq; (2) Afghanistan and Pakistan; (3) the Americas; (4) Europe and Asia; and (5) Africa and Middle East. Each office develops and oversees its own programs.

The Criminal Justice Assistance and Partnership Office (CAP) is a functional office within INL that focuses on law enforcement, criminal justice, and corrections. INL/CAP employs senior technical specialists in law enforcement, justice, and corrections. CAP provides technical support to INL offices as well as comprehensive training to INL personnel sent to work abroad.

The Office of Anti-Crime at INL works on initiatives to combat transnational organized crime, high-level corruption, money laundering, terrorist financing, cyber- and intellectual property crimes, narcotics trafficking, and other smuggling and trafficking crimes. This of-

9. A good portion of INL's criminal justice work, which federal judges may come in contact with, is done in conjunction with the Department of Justice's Overseas Prosecutorial Development and Training program (OPDAT). Specifically, INL provides funding to DOJ/OPDAT for regional legal advisors. For more information on INL's programs, see www.state.gov/p/inl/narc or <http://www.state.gov/p/inl/cap>.

office develops new enforcement tools, conventions, and protocols that provide the United States with a comprehensive approach to facilitating international cooperation among nations combating transnational crime.

2. Bureau of Democracy, Human Rights, and Labor (DRL)

Through its Human Rights and Democracy Fund, DRL gives grants to U.S. organizations working on rule of law programs throughout the world, often through yearly grant competitions. DRL grants have been used to support human rights law clinics, women's rights programs, and legal education reform.

3. Bureau of Education and Cultural Affairs (ECA)

The Bureau of Education and Cultural Affairs promotes public diplomacy by funding academic, cultural, sports, and professional exchanges. For example, the Professional Exchanges division within ECA awards grants to U.S. nonprofit organizations and universities to carry out exchange programs. These exchanges support the professional development of participants through internships, study tours, or workshops in the United States and abroad. Participants come from a variety of professions, including judges, law professors, lawyers, prosecutors, and civic leaders.

ECA also supports rule-of-law-related professional exchanges and international visitor programs, including the Hubert H. Humphrey Fellowship Program, a 12-month academic study program for experienced professionals. The Humphrey Fellowship is administered by the Institute of International Education, a nonprofit organization based in Washington, D.C. Judges from around the world have come to the United States as part of this program.

The Office of International Visitors is the office within ECA responsible for coordinating the International Visitor Leadership Program (IVLP), a professional exchange program supporting the foreign policy goals of the United States. Participants are nominated by the U.S. Embassy in their country and have included legal, media, and medical professionals, as well as representatives from business and the arts. Groups and individuals participate in 1–3 week programs that include meetings with their professional counterparts and exposure to U.S. history and culture. IVLP often hosts judges and court administrators, arranging visits to state and federal courts as well as judicial branch agencies.

4. Bureau of International Information Programs (IIP)

The Bureau of International Information Programs' U.S. Speaker and Specialist Program sends U.S. experts to countries throughout the world at the request of the State Department's diplomatic missions. These experts participate in speaker programs and have included judges and court officials. IIP utilizes digital videoconference, web chat technology, and social media platforms, and produces publications, both print and electronic, in many languages. The bureau has a judicial liaison to facilitate the judiciary's work with the Department of State.

C. Millennium Challenge Corporation (MCC)

The Millennium Challenge Corporation is a U.S. government agency that provides development funds to countries demonstrating a "commitment" to reform. Like USAID and State, MCC funds, but does not implement, its own assistance programs. Before a country

is deemed eligible for assistance, MCC examines the country's performance in a variety of areas ("indicators"), including rule of law, control of corruption, primary education, and trade policy.

MCC gathers this information from the World Bank, the United Nations, Freedom House, and other sources. This information is used to develop an "indicator scorecard" for the country. A country that meets a minimum score may be eligible for a "compact"—a five-year award. A country that comes close to this minimum score and can show commitment to improving its performance may be considered for a smaller award called a "threshold program."

MCC's support of rule of law activities is usually provided through threshold programs used to help improve performance in specific areas, for example, judicial independence, access to justice, and court administration. MCC often provides funds to USAID to administer these programs; USAID, in turn, provides the funding to a nongovernmental organization (NGO) or a contracting firm to implement specific project activities or enters into interagency agreements with the U.S. Department of Justice.

IV. Principal U.S. Government Agencies Implementing Rule of Law Programs

The Departments of Justice and Commerce have extensive rule of law programs in countries throughout the world, as well as robust D.C.-based offices dedicated to supporting this work.

A. Department of Justice (DOJ)

DOJ has two offices that focus on international justice sector reform: the Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) and the International Criminal Investigative Training Assistance Program (ICITAP). These offices are funded through interagency agreements¹⁰ with the Department of State, USAID, or the Millennium Challenge Corporation. The majority of OPDAT and ICITAP programs are funded by the State Department through the INL Bureau.

1. Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT)

OPDAT develops and administers technical assistance related to criminal justice reform, including prosecutor training and court reform projects involving terrorism, human trafficking, organized crime, corruption, and money laundering. OPDAT usually deploys a regional legal advisor (RLA) to carry out programs in a country. These legal advisors are assistant U.S. attorneys on leave from their district and usually have offices in the U.S. Embassy of their assigned country. OPDAT's Washington, D.C., office manages its programs around the

10. An interagency agreement is a contractual obligation whereby one federal agency "buys" the services of another U.S. agency. This type of agreement was designed to be used when there is a need for highly specialized and unique expertise or experience. Contracting rules and regulations govern these agreements, but essentially they operate like a grant agreement, whereby an organization receives a certain amount of funding to carry out a specific program.

world and often reaches out to U.S. judges and others with relevant expertise to assist with training or conferences.

2. International Criminal Investigative Training Assistance Program (ICITAP)

ICITAP's mandate is to work with foreign governments to develop professional and transparent law enforcement institutions that protect human rights, combat corruption, and reduce the threat of transnational crime and terrorism. ICITAP focuses on law enforcement personnel and correctional institutions (whereas OPDAT works primarily with prosecutors and courts). ICITAP and OPDAT often coordinate their efforts and pursue a comprehensive approach to criminal justice reform in countries with both an RLA and an ICITAP advisor. ICITAP programs are implemented by a combination of federal employees and contractors.

B. Department of Commerce

1. Commercial Law Development Program (CLDP)

This program within the Office of General Counsel at the Department of Commerce provides commercial law technical assistance to governments and private-sector entities in developing and transitional countries. CLDP's areas of focus include World Trade Organization accession, trade policy, intellectual property rights, public procurement, product standards, electronic commerce, insurance regulation, and regional economic integration. CLDP draws on the expertise of U.S. government employees (including judges), as well as leading professionals from the private sector and international organizations. Through workshops, on-the-job skills training, and consultative tours in the United States and abroad, CLDP assists lawmakers, regulators, judges, lawyers, and educators from host countries in achieving their commercial law reform goals. Similar to OPDAT and ICITAP, CLDP does not have its own funding for programs. USAID and the State Department provide CLDP with funds to conduct its international programs.

2. United States Patent and Trademark Office (USPTO)

This office offers programs on intellectual property protection, enforcement, and capitalization through its Global Intellectual Property Academy (GIPA). GIPA was created to help foreign governments improve intellectual property programs through interaction and training with experts in the United States. It offers multilateral and country-specific programs tailored to address specific issues and areas of law relating to intellectual property rights. Many of the USPTO's GIPA programs are held in the United States, but it also conducts training in other countries. These programs are primarily funded through USPTO fee revenue. Some additional funding is provided by other federal agencies.

V. Other Rule of Law Implementers Funded by the U.S. Government

As discussed above, the U.S. government supports international rule of law initiatives in a number of ways, primarily through appropriations to government agencies. While some agencies implement their own rule of law programs, much of this work is carried out by quasi-governmental organizations, private firms, nonprofit organizations, and educational institutions. Some of these implementers receive funding through executive branch agencies, such as the Department of State or USAID; others are supported by legislative authorities.

A. Open World Leadership Center

The Open World Leadership Center carries out professional exchanges for “emerging leaders” from Russia, Eurasia, and the Baltic countries. The program is supported by congressional funds and is supplemented by private donations. The program’s U.S. community-based partners often provide meals, housing, transportation, and cultural or recreational activities.

One of Open World’s program themes is rule of law, an effort designed to support reform initiatives in participating countries. Rule of law delegations have included judges, court administrators, law school faculty, judicial educators, legal specialists from non-governmental organizations and the private sector, legislative experts, lawyers, court press officers, and journalists. Federal and state judges from all over the United States have hosted Open World delegations in cooperation with Open World grantees, such as local rotary clubs. The U.S. Embassy in each Open World country takes part in candidate selection, assists with program design, and facilitates the visa process for program participants. Embassy officials also often hold functions for alumni. The International Judicial Relations Committee of the Judicial Conference of the United States assists Open World with identifying federal judges interested in hosting delegations. On behalf of the committee, the Administrative Office of the U.S. Courts holds an orientation program for visiting groups in Washington, D.C.

B. United States Institute of Peace (USIP)

USIP conducts research and develops programs to make international conflict resolution practices, education, and training available to the government, private sector, and academia. USIP’s Rule of Law Center of Innovation identifies best practices and develops new tools for policymakers and practitioners working to promote the rule of law.

One of the most visible ways that USIP supports rule of law practitioners is through its International Network to Promote the Rule of Law (INPROL).¹¹ INPROL is a consortium of practitioners who work on rule of law issues throughout the world. This network allows practitioners to exchange documents, best practices, and lessons learned. Members include judges, prosecutors, defense attorneys, senior police officials, stability police commanders, corrections officials, legal advisors, monitors, and court administrators. There are over 1,400 active members in more than 70 countries. To become a member of INPROL, an applicant must be sponsored by a current member.

C. Private Contracting Firms

Numerous private contracting firms provide technical, management, and advisory services for the U.S. government’s international rule of law programs. Depending on the terms of the government contract, these firms may design and implement a justice reform initiative or provide subject-matter expertise for a particular project. Private firms usually compete for contract solicitations proffered by U.S. government agencies and multilateral institutions, such as the World Bank and the United Nations Development Program. Each firm has its own procedures for pursuing these opportunities. However, it is fairly common to have

11. For more information on INPROL or to join this network, see www.inprol.org.

a division that focuses on proposal development and another group of employees devoted to program implementation, both staffed by lawyers with international development expertise. The proposal development staff—sometimes called the “business development” office—usually has responsibility for monitoring government solicitations for new contracts, keeping in touch with agencies to find out their priorities for the year, and traveling abroad to gather information needed for drafting proposals. Program implementation staff provide support to the program once a contract is awarded. They help select experts to staff a project, draft reports to donors, and liaise with the funding agency.

D. Nonprofit Organizations and Educational Institutions

Nonprofit organizations and educational institutions (e.g., universities, law schools) also provide technical assistance and training for international rule of law programs. Unlike private contractors, nonprofits and universities seek out grants from the U.S. government, rather than contracts. Their work includes design and implementation of programs for lawyers, judges, and law students; analytical services for organizations working in this field; and the development of technical publications. While universities may have staff that assist with the grant application process, nonprofits usually rely on their technical experts to monitor solicitations and prepare grant applications.

While some nonprofit and university rule of law efforts are funded exclusively by government grants, others use both government assistance and private donations. A number of nonprofit organizations in this field rely solely on foundation grants and other fundraising.

VI. Funding International Rule of Law Assistance: The Process

A. The Federal Budget

Funding for the majority of the U.S. government’s rule of law programming comes from the Department of State, USAID, and the Millennium Challenge Corporation. These funds are allocated from the annual Foreign Operations Bill. The State Department’s Office of the Director of U.S. Foreign Assistance was created to coordinate and manage U.S. spending on foreign assistance, including rule of law programs. The Office created a website detailing appropriations and requests from government agencies for foreign assistance programs by country, initiative, and region.¹²

For State and USAID, the funding process starts with the development of operational plans by both the overseas missions and the agency bureaus in Washington. These operational plans provide a rationale for how resources will be divided among program sectors, such as rule of law, education, and health. The plans are reviewed by joint teams from State and USAID. A joint State–USAID foreign affairs budget request is sent to the Office of Management and Budget and ultimately included in the President’s budget transmitted to Congress.

The U.S. House of Representatives’ Committee on Foreign Affairs and the Senate Foreign Relations Committee, Subcommittee on International Development and Foreign Assis-

12. The website is located at www.foreignassistance.gov.

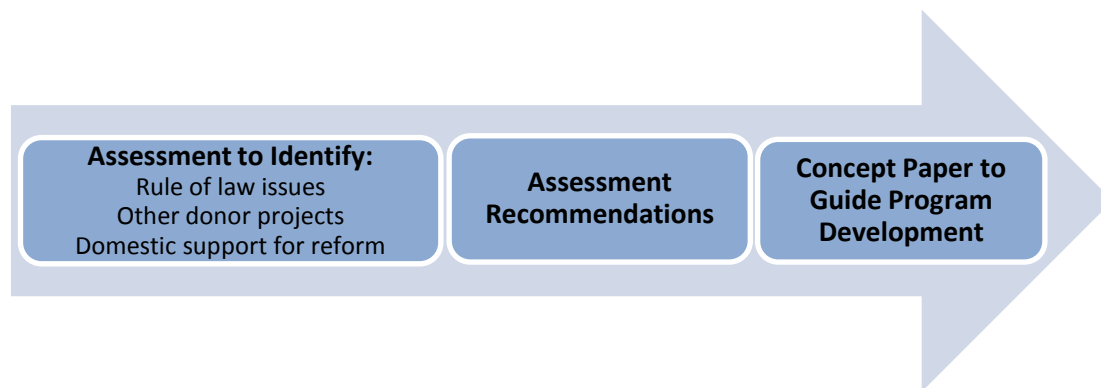
tance, Economic Affairs, and International Environmental Protection have oversight and funding responsibilities for foreign assistance. State, USAID, and MCC all submit a Congressional Budget Justification (CBJ) to Congress. The CBJ outlines the agencies' projects and expected costs and explains why the President has asked for the amount of funds specified in the budget. Congress reviews the CBJs in conjunction with the budget requests and adds to or subtracts from the President's proposed budget. Once Congress sets funding levels, has marked up the requests, and has agreed on funding levels, the Foreign Operations Appropriations Bill is sent to the President to sign. When State and USAID learn their final budget numbers, they can move forward with program planning and procurement.

While this budget process is standard for most executive agencies, there are a few noteworthy distinctions that apply to USAID, State, and MCC. Before these agencies can fund specified activities or activities for specific countries, they must notify Congress via their annual reports. Congress has placed prohibitions on assistance to certain countries, such as those that support international terrorism, engage in gross violations of internationally recognized human rights, or are in arrears on their loan repayments to the United States. Congress also makes use of earmarks to fund specific organizations, countries, or projects.



B. Program Development

Each U.S. government agency has its own rules for developing programs, and most agencies turn to other organizations for program implementation. USAID and the State Department follow a similar process for most program development. When considering a new rule of law activity or a follow-up project, they often send an expert to the country to conduct an assessment. The expert may be an agency employee or a private consultant. The assessment examines the rule of law projects being implemented by other donors (including other U.S. agencies), identifies the most pressing rule of law issues, evaluates the country's political will to support reform, and discusses how the agency can provide effective assistance. Assessment recommendations help guide project development. At USAID, once the general parameters of a project have been established, a concept paper and an activity approval document are prepared for review and discussion. This process is undertaken to ensure that projects are properly designed, do not duplicate the efforts of other donors, are coordinated with other U.S. government activities, and have a reasonable chance of meeting the stated objectives.



Other funding and implementing agencies may use somewhat different program development protocols, but with similar aims: an evaluation of the facts on the ground and careful consideration of appropriate programming.

C. Funding Mechanisms: Contracts and Grants

After the U.S. government agency identifies needs and designs the program, it implements the program by either entering into a contract with a private firm or releasing funds by way of a grant to an organization with relevant expertise. When deciding whether to implement a rule of law activity through a contract or through a grant, the agency will consider a number of factors, including the amount of funds available, whether the program must be initiated quickly, and how much oversight is needed.

Contract mechanisms—used most often with private firms—tend to take more time to procure and are more costly. They also allow for more government agency involvement through oversight of project implementation. For example, the project officer must approve all key contract personnel, including consultants, and review program spending and reports on a monthly basis. For larger contracts, some companies enter into subcontracts with other companies that have relevant areas of expertise.¹³

Grants fund rule of law projects through a process that allows for less agency involvement and oversight. These types of agreements are awarded when the government has general objectives but is looking for a creative way to achieve those goals. Grant competitions are usually held to solicit applications, and the best plan for meeting the agency’s program objectives is selected. Grant recipients submit program and financial reports.

A “cooperative agreement” is a type of grant that involves modest oversight, such as approval of work plans, key personnel, and quarterly reports. Cooperative agreements are often used to support programs implemented by U.S. nonprofit organizations and universities. Simple “grant agreements,” allowing for even more limited agency oversight, tend to be used to support programs implemented by international organizations, such as the

13. For example, a larger contracting company may be awarded a USAID contract in Country X to work with the courts; this company may in turn subcontract with a smaller organization that has specialized expertise with court automation.

United Nations Development Program or the Organization for Security and Cooperation in Europe—organizations with established programs and financial systems.

Once a funding method is selected, the U.S. agency usually prepares either a statement of work (for a contract) or a program description (for a grant). These documents outline the objectives of the program, provide illustrative activities, and explain the implementer’s administrative responsibilities. Interested organizations usually have one to three months to prepare a response to the solicitation, called an RFP (Request for Proposals) for contracts¹⁴ and an RFA (Request for Applications) for grants. Firms and organizations learn about these opportunities primarily through U.S. government websites.

At USAID and State, technical review committees are convened to evaluate applications and proposals. Factors considered during this process include (1) the technical approach of a project (how the organization plans to meet the overall objectives); (2) the expertise of proposed staff; and (3) prior experience in the sector or country, as well as past demonstrated success. Members of the technical review committees cannot speak to anyone about the evaluation (including other USAID or State staff). Strict rules surround this process, ensuring that each submission receives a fair review. After the agency identifies the best proposal or application, the successful bidder negotiates specifics with an agency contracting officer.

This procurement process, starting with the design of a new program and ending with a project agreement, can take about one year. For this reason, programs are usually planned two to three years ahead. However, if immediate action is needed to respond to an important new development, the funding agency can employ pre-competited grant and contract mechanisms, often through an indefinite quantity contract (IQC) process.¹⁵ Because IQCs have already met the competition requirements, project agreements using this mechanism can be negotiated in a relatively short period, often two or three months. For emergency situations, such as after a disaster or war, USAID and the State Department use other flexible contracting mechanisms to provide technical assistance on an expedited basis.

VII. Program Coordination

The sheer number of U.S. government-funded rule of law programs and the various agencies now involved in this sector sometimes result in duplication of efforts or failure to build upon another organization’s work. However, significant time and effort are devoted to the coordination of activities.

14. Contractors interested in submitting a bid often send a team to a country for a few weeks to gather information for their submission. Members of the team interview potential stakeholders, visit courts, and examine the conditions in the country. This information helps the contractor prepare its proposal.

15. There are two methods used to issue an RFP: open competition, whereby any organization can submit a proposal, and an “indefinite quantity contract” (IQC), whereby proposals from a limited pool of organizations are considered. When USAID bids out an IQC, contractors and organizations apply to provide a range of services in a particular sector, such as judicial reform, judicial education, and court management. IQCs may be issued for a specific country or may be “global” and available to USAID missions around the world. An IQC is awarded to two or more companies or organizations. When a relevant program need arises, the funding agency issues a statement of work only to the IQC holders—a far more limited pool of candidates than that for a general RFP. Because the funder is selecting among this smaller number of proposals, the procurement process takes less time.

Legislation requires EUR/ACE, an office within the State Department,¹⁶ to oversee the foreign assistance accounts funding efforts in Eastern Europe and the former Soviet Union. EUR/ACE brings together USAID, DOJ, ICITAP, and INL to coordinate their efforts in various countries. The EUR/ACE office also oversees the development of rule of law strategies and may carry out justice-sector assessments and evaluations.

In countries where there are several rule of law programs funded by the United States, there is usually a rule of law working group that meets regularly at the U.S. Embassy. This group is chaired by a high-ranking U.S. Embassy official (such as a deputy chief of mission or political section chief) and includes representatives from USAID, DOJ, and ICITAP, and sometimes also representatives from the FBI and DEA. The working group provides a venue for members to highlight upcoming activities, identify program challenges, and discuss relevant coordination. In some countries, the local embassy reaches out to representatives from other donor organizations, such as the Organization for Security and Cooperation in Europe or the World Bank, and invites them to give presentations on their justice-sector work. In countries with a large number of international donors, such as Kosovo or Afghanistan, an international rule of law working group may be formed. These efforts enable donors to stay informed and share information about their projects.

VIII. Multilateral Institutions Working on Rule of Law

While this guide is intended primarily to give an overview of United States-funded rule of law programs, it is important to discuss some of the work being done in this field by major multilateral institutions. These organizations often reach out to U.S. judges for assistance with their rule of law programming.

The World Bank provides financial and technical assistance to developing countries around the world, including, in some cases, rule of law reform. Justice sector development and anti-corruption activities are often critical to achieving the World Bank's economic and political development goals. The World Bank's rule of law initiatives are not centralized in one department. The Poverty Reduction and Economic Management Network; the World Bank Institute; Private Sector Development; Environmentally and Socially Sustainable Development; and the Legal Vice-Presidency all implement rule of law programs, sometimes collaboratively and other times independently. The World Bank's rule of law initiatives are developed in conjunction with the host country and are usually carried out through loan agreements setting forth the terms and conditions of support. The host country is responsible for meeting the terms and repaying the loan. In a small number of cases, the World Bank administers direct grants to countries for rule-of-law-related programs.

Other major multilateral organizations that support rule of law programs include the Organization for Security and Co-operation in Europe (OSCE) and the United Nations. OSCE comprises 56 countries from Europe, Central Asia, and North America. Through its Office for Democratic Institutions and Human Rights (ODIHR) in Warsaw, Poland, OSCE oversees rule of law projects funded by member states. The Rule of Law Unit of ODIHR focuses most-

16. EUR/ACE stands for Office of the Coordinator of U.S. Assistance to Europe and Eurasia, Bureau of European and Eurasian Affairs.

ly on the criminal justice sector but also supports projects related to judicial independence, legal profession reform, and administrative law.

The United Nations has over 40 entities engaged in rule of law activities, the majority of which are involved in human rights monitoring, research, and the dissemination of information. The United Nations Development Program (UNDP) is the development arm of the United Nations and is operational in 166 countries. UNDP's justice-sector program covers a number of areas, including judicial independence, legal aid, access to justice, and civic participation in legal and judicial reform. The ABA/UNDP International Legal Resource Center (ILRC)¹⁷ assists UNDP Country Offices in identifying qualified experts available to provide pro bono legal assistance to UNDP's justice-sector projects around the world.

IX. International Assistance Programs of Other Nations

Many other nations carry out international rule of law technical assistance. Donor nations may provide rule of law support to a country through their international development department, such as the Canadian International Development Agency (CIDA), the Department for International Development in the United Kingdom, and the Swedish International Development Cooperation Agency (Sida). Other countries, like the Netherlands and Finland, make available rule of law assistance through their Ministry of Foreign Affairs. Bilateral organizations and government ministries usually contract with organizations and individuals from their home country. In some cases, a program funded by the United States will coordinate with donors of other nations to maximize the efficiency and impact of its efforts.

X. Conclusion

This guide is intended to provide an introduction and overview of the organizations and institutions that U.S. judges may encounter as part of their work in the field of international rule of law. There are many resources and materials devoted to this field. Those interested in learning more may want to visit the International Judicial Relations Page on [FJC Online](#) and the web page of the International Judicial Relations Committee of the Judicial Conference of the United States on the [J-Net](#).

17. For more information on the ABA/UNDP Legal Resource Center, see www.abanet.org.