

# IMPROVING ACCESS TO JUSTICE IN DEVELOPING AND POST-CONFLICT COUNTRIES: PRACTICAL EXAMPLES FROM THE FIELD

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## I. INTRODUCTION

Accessible, fair, and efficient justice systems are key to effective governance and the rule of law. Without access to justice, people – especially the poor and disenfranchised – are unable to realize their rights, challenge discrimination, or hold decision-makers accountable. As a necessary precondition for both justice and security, therefore, the rule of law is key to sustainable development. For this reason, access to justice recently assumed its rightful place in the United Nations (UN) Sustainable Development Goals.<sup>1</sup>

The purpose of many rule-of-law assistance projects is to help make justice systems accessible and worthy of public confidence. This article reviews several donor-funded rule-of-law projects implemented in various parts of the world, offering some empirical insights into how they build trust in the judicial system and facilitate access to courts. Because international donors are in a unique position to shape planned interventions to improve access to justice and the rule of law, they need access to information about initiatives undertaken and lessons learned. This article is intended to share experiences implementing access-to-justice activities in developing countries and countries in transition. We first define the rule of law and access to justice; we then profile projects implemented

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1. G.A. Res 70/1, Transforming Our World: The 2030 Agenda for Sustainable Development (Sept. 25, 2015), [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/70/1](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/1). [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/70/1](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/1).

around the world that use various methods to build public trust in the judicial system; and finally we review different strategies, from the complex to the straightforward, that have been implemented to remove barriers to accessing the judicial system. It is our view that the rule-of-law projects examined here demonstrate ways to provide robust and long-lasting positive effects on people's lives.

## II. THE RULE OF LAW IN HISTORY AND INTERNATIONAL LAW

The notion of the rule of law has a long history and is intertwined with the evolution of the law itself. One example of an early attempt to establish the rule of law is the Babylonian King Hammurabi's Code (circa 1760 BCE), which was carved on a black stone monument and clearly intended to be presented to and read by the public. With regard to the judicial system, the Code specifically provided that a judge who blundered in a case would be expelled from the court and would be heavily fined. Even more dramatic, a witness who falsely testified in court would be slain,<sup>2</sup> signaling the grave importance of fair court proceedings. Other early notions of rule of law and governance – namely, that the people are the source of the government's power and the government exists to serve the people<sup>3</sup> – can be identified in Confucianism, an Eastern system of sociopolitical-ethical teachings.

The European rule-of-law tradition can be traced back to the teachings of Aristotle, who said that “the rule of law is better than that of any individual.” Other foundational documents include the Magna Carta of 1215, which is the basis of today's concepts of judicial independence and judicial process – two of the most important elements of the rule of law. Evolving from a rich history of varying definitions, the modern concept of the rule of law refers to a system founded on non-arbitrary rules, where justice is based on ideals of fairness and accountability and is expected to protect rights and prevent capricious or unjust punishment.

Although the concept of the rule of law has been in existence in one form or another for much of recorded history, its formal role in international law can be traced to the Charter of the United Nations of 1945. Its preamble states that it seeks “to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained . . . .”<sup>4</sup> One primary purpose of the UN is “to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.”<sup>5</sup> Similarly, the Universal Declaration of Human Rights of 1948, a historic statement that human beings have fundamental rights and freedoms, recognizes that human rights should be protected by the rule of law.<sup>6</sup>

The UN has incorporated the principle of rule of law into its agenda for

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2. PERCY HANDCOCK, *THE CODE OF HAMMURABI*, 9 (Caroline A.J. Skeel et al., eds., 1920).

3. MARY ALICE HADDAD, *BUILDING DEMOCRACY IN JAPAN*, 25 (2012).

4. U.N. Charter preamble, <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>.

5. *Id.* at art. 1, ¶ 1.

6. G.A. Res. 217 (III), Universal Declaration of Human Rights, at preamble (Dec. 10, 1948) [http://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf).

development, now embodied in the Sustainable Development Goals. Goal 16 states: “The rule of law and development have a significant interrelation and are mutually reinforcing, making it essential for sustainable development at the national and international level.”<sup>7</sup> Targets under this Goal include:

Promoting the rule of law at the national and international levels and ensuring equal access to justice for all;

Developing effective, accountable, and transparent institutions at all levels;

Ensuring responsive, inclusive, participatory, and representative decision-making at all levels;

Ensuring public access to information and protecting fundamental freedoms;

Promoting and enforcing non-discriminatory laws and policies for sustainable development.<sup>8</sup>

The international community has worked to ensure that the rule of law applies both domestically and internationally. For example, the Preamble of the Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance With the Charter of the UN highlights “the paramount importance of the Charter of the United Nations in the promotion of the rule of law among nations.”<sup>9</sup> The Declaration draws from existing commitments in international law and reiterates principles of state sovereignty, peaceful resolution of disputes, and protection of human rights and fundamental freedoms. The document recognizes the fundamental and mutually reinforcing links among peace and security, development, human rights, the rule of law, and democracy.

### III. DEFINING THE RULE OF LAW

The rule of law is essential for democracy and economic growth, and according to the UN is the backbone of human rights, peace and security, and development.<sup>10</sup> The UN defines the rule of law as “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.”<sup>11</sup> The US Government has a similar vision, with the US Agency for International Development (USAID) defining the rule of law as: “adherence to the principles of supremacy of law,

7. G.A. Res. 70/1, *supra* note 1, at 21–22.

8. *Id.*

9. G.A. Res. 25/2625, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations at 1 (Oct. 24, 1970), <http://www.un-documents.net/a25r2625.htm>.

10. G.A. Res. 67/1, Declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels (Nov. 30, 2012), [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/67/1](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/1).

11. U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, ¶ 6, S/2004/616 (Aug. 23, 2004), [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2004/616](http://www.un.org/ga/search/view_doc.asp?symbol=S/2004/616).

equality before the law, fairness in application, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”<sup>12</sup> The US State Department notes that rule of law “protects fundamental political, social, and economic rights and reminds us that tyranny and lawlessness are not the only alternatives.”<sup>13</sup>

UN Secretary-General Kofi Annan however noted that “while freedom from want and fear are essential they are not enough. All human beings have the right to be treated with dignity and respect.”<sup>14</sup> The rule of law protects human rights through international humanitarian law, international criminal law, and international refugee law. It is also a tool for promoting and protecting this common normative framework, as “[i]t provides a structure through which the exercise of power is subjected to agreed rules, guaranteeing the protection of all human rights.”<sup>15</sup>

The rule of law can be considered the mechanism to turn principles of human rights into reality. This is because the rule of law requires that institutions, legal processes, and core norms be consistent with principles of equality under the law, accountability, and protection and vindication of rights.<sup>16</sup> In other words, states cannot protect human rights without a properly functioning legal system. As stated in the Universal Declaration of Human Rights, “it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.”<sup>17</sup> Especially in post-conflict environments, “establishing rule of law institutions is vital to ensuring immediate security and the necessary stability for peacebuilding to take root.”<sup>18</sup> Promptly establishing or re-establishing the rule of law helps restore peace and security because the threat and the reality of bringing perpetrators of crimes to justice restores trust and social cohesion.

Definitions of the rule of law can diverge and privilege certain nuances over others. However, there is no disagreement over the general need – particularly in post-conflict and underdeveloped states – to confer greater rights on citizens, implement and enforce laws consistently, and encourage citizens to know their rights and utilize the legal tools available to them.

#### IV. RULE OF LAW, DEVELOPMENT, AND JUSTICE

UN member states have acknowledged that “the rule of law and development are strongly interrelated and mutually reinforcing” and that “the

12. U.S. AGENCY FOR INT’L DEV., OFFICE OF DEMOCRACY AND GOVERNANCE, *GUIDE TO RULE OF LAW COUNTRY ANALYSIS: THE RULE OF LAW STRATEGIC FRAMEWORK*, 5 (2008), [http://pdf.usaid.gov/pdf\\_docs/Pnadm700.pdf](http://pdf.usaid.gov/pdf_docs/Pnadm700.pdf). [hereinafter Strategic Framework].

13. U.S. Dep’t of State, *Principles of Democracy: The Rule of Law*, <http://www.4uth.gov.ua/usa/english/politics/princip1/law.htm> (last visited April 1, 2016).

14. G.A. Res. 59/2005, annex, In larger freedom: towards development, security and human rights for all, ¶ 27 (May 26, 2005), <http://www.ohchr.org/Documents/Publications/A.59.2005.Add.3.pdf>.

15. U.N., *Rule of Law and Human Rights*, <https://www.un.org/ruleoflaw/rule-of-law-and-human-rights/> (last visited April 1, 2016).

16. See, e.g., U.N. Secretary-General, *supra* note 11, at ¶6.

17. G.A. Res. 217 (III), *supra* note 6.

18. U.N. Secretary-General, *supra* note 11, at ¶6.

advancement of the rule of law at the national and international levels is essential for sustained and inclusive economic growth, sustainable development, the eradication of poverty and hunger and the full realization of all human rights and fundamental freedoms, including the right to development, all of which in turn reinforce the rule of law.”<sup>19</sup> The UN has called for the rule of law to be at the forefront of international and domestic agendas.

International organizations, including those working on trade, finance, or the environment, are responsible for implementing agreed-upon standards to support sustainable development. At the national level, the rule of law is necessary to foster sustainable livelihoods and eradicate poverty. This is because “security of livelihoods, shelter, tenure and contracts can enable and empower the poor to defend themselves against violations of their rights.”<sup>20</sup> Where the rule of law is implemented consistently with established principles of human rights, it also provides for development that is inclusive and sustainable.<sup>21</sup>

Although the rule of law relies on all parts of the government functioning properly, the justice sector is the most important branch of government in this regard.<sup>22</sup> This is because “the legitimacy of any government depends on the fair and impartial administration of laws.”<sup>23</sup> The legal apparatus of a state, which encompasses criminal, civil, and commercial sectors of the justice system, can implement the rule of law through either formal (state-run), informal (customary) dispute resolution mechanisms, or both. The judiciary must work with various government branches, as well as other public and private institutions, to reach all levels of society.<sup>24</sup>

Post-conflict societies in particular need a strong focus on the rule of law, access to justice, and a properly functioning justice system. Where violence is pervasive and citizens are taking the law into their own hands, the state must provide courts to resolve disputes, mitigate conflict, and reduce crime. The government must also guarantee enforcement and implementation of judicial decisions for all citizens regardless of their gender, identity, ethnicity, or geographical location. In a post-conflict situation, the proper functioning of the justice system can be undermined by spoilers and opposition forces.<sup>25</sup> Where the law has been “a tool to exercise power, used only for the benefit of the elite and inaccessible to the majority of the population,”<sup>26</sup> elites in the public and private

19. G.A. Res. 67/1, *supra* note 10, at ¶ 7.

20. U.N. and the Rule of Law, *Rule of Law and Development*, <https://www.un.org/ruleoflaw/rule-of-law-and-development/> (last visited April 1, 2016).

21. *Id.*

22. Justice, as conceived by the U.N., is viewed as a universal concept that can be found among all national cultures and traditions. The U.N. defines justice as an “ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs.” U.N. Secretary-General, *supra* note 11, at ¶ 7.

23. *Rule of Law Paves the Way for Development: Chief Justice*, THE FRONTIER POST, Mar. 17, 2013 (quoting Pakistan’s then-Chief Justice Iftikhar Muhammad Chaudhry).

24. Some of these actors include ministries, law enforcement, prosecutors, public defenders, prisons, bar associations, legal assistance providers, law schools, non-governmental organizations, advocacy organizations, and traditional dispute resolution mechanisms. STRATEGIC FRAMEWORK, *supra* note 12, at 13, 13–16 (2008).

25. DEP’T OF DEFENSE, *RULE OF LAW HANDBOOK* 218 (3d ed. 2009)

26. Giovanni Bassu, *Law Overruled: Strengthening the Rule of Law in Postconflict States*, 14 GLOBAL

sectors may resist efforts that could negatively affect their political influence, social status, or financial interests. Spoilers can include formal opposition groups (political parties, non-governmental organizations (NGOs), religious groups), organized crime and corruption networks, government officials, or public servants.

Official embrace of the rule of law and commitment to provide effective judicial services increase citizens' confidence in the justice system and willingness to bring disputes to court. Projects working in this context help governments regain popular trust, especially in the justice system. Indeed, the lack of trust and weak relationship between the state and society are key targets of rule-of-law assistance. Widespread information campaigns regarding rights and responsibilities are therefore a basic strategy to improve the legal environment, with the goal of simultaneously increasing access to the justice system and improving public perceptions of it. Next, dismantling legal, economic, and physical barriers to justice empowers the vulnerable and disenfranchised, reinforcing and strengthening the rule of law in a virtuous cycle. Finally, simultaneously engaging state institutions, civil society, and the public at large ensures that proposed activities are not only nationally appropriate but have the widespread buy-in and ownership needed to sustain interest during and beyond the donor-funded time horizon.

Designing rule-of-law interventions in a particular country requires a thorough understanding of the real and perceived problems in the justice system at national, sub-national, and local levels. Thorough involvement of local actors is essential.<sup>27</sup> Marrying this local knowledge with comparative experience from other similar environments and legal systems is key to formulating appropriate projects and activities to advance the rule of law. The next section analyzes experiences from a number of US Government-funded rule-of-law projects implemented around the world to create change and improve people's lives. The discussion first examines public awareness and education initiatives and then efforts to remove barriers to accessing justice.

## V. PUBLIC INFORMATION AND AWARENESS

Throughout much of the world, poor communities are distrustful, unfamiliar, or uncomfortable with the formal legal system. Researcher Beatrice Pouligny writes, "[I]n many contexts, the local law is no more than a paper somewhere which has nothing to do (*sic*) with the reality and the informal rules that have been developed, along the[ir] history, by the population."<sup>28</sup> Various cultural factors, often accreting over generations, contribute to perceptions that law enforcement and judicial officials are threats rather than protectors of the poor. Studies show that "[p]eople of higher socioeconomic status are usually found to be more likely . . . to take an action involving law than are poor or other

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GOVERNANCE 21, 23 (2008).

27. JULIO FAUNDEZ, COMPREHENSIVE LEGAL AND JUDICIAL DEVELOPMENT: LEGAL REFORM IN DEVELOPING AND TRANSITION COUNTRIES 369, 388 (Rudolf V. Van Puymbroeck, ed., 2000).

28. Beatrice Pouligny, *UN Peace Operations, INGOs, NGOs, and Promoting the Rule of Law: Exploring the Intersection of International and Local Norms in Different Postwar Contexts*, 2 JOURNAL OF HUMAN RIGHTS 359, 373 (2003).

lower status people.”<sup>29</sup> The latter choose to avoid the formal court system because they are more comfortable with customary justice systems or because they fear and distrust the formal system or both. The presence of corruption frequently reinforces these negative perceptions. In post-conflict settings, animosity can stem from even greater abuses of trust. In Afghanistan, “the police’s and judiciary’s subservience to powerful local warlords and commanders, whose approval they need to remain in their positions . . . [results in] members of local militia committing crimes with impunity.”<sup>30</sup> If police and courts have a reputation not only for corruption but also complicity in criminal abuses against civilians, the public neither trusts nor uses the justice system, crippling the rule of law.

For these reasons, many international projects include public information campaigns and public awareness activities alongside judicial reforms. These activities are implemented to honor the concept that all persons and institutions – public and private – are accountable to laws publicly promulgated, equally enforced, independently adjudicated, and consistent with international human rights law.<sup>31</sup> Outreach efforts foster positive perceptions of the legal system and ensure that poor and vulnerable populations understand how to exercise their legal rights through the courts.

Some examples follow, first of large-scale awareness campaigns, then of smaller, community-level public information programs, and finally of courts’ own public information efforts that aim to demystify the legal system, its personnel, and its processes.

### A. Large-Scale Awareness Campaigns

In many countries, a large proportion of the population lacks basic knowledge of the legal system, including about its structure and functions, the role of judicial personnel, and the available legal services. In rural Afghanistan, for instance, “Illiteracy potentially deters people from using the state justice system, which is based on written law. The customary legal system, which is based on a widely understood oral tradition, is probably less intimidating for illiterate Afghans.”<sup>32</sup> Although television is the dominant medium for young people – and adults – around the world (according to UNICEF),<sup>33</sup> “[r]adio remains the most powerful, and yet the cheapest, mass medium for reaching large numbers of people in isolated areas.”<sup>34</sup> Poor communities in rural and

29. Rebecca L. Sandefur, *Access to Civil Justice and Race, Class, and Gender Inequality*, 34 ANNUAL REVIEW OF SOCIOLOGY 339, 346 (2008) (citing Genn et al. 1999, table B1; Genn & Paterson 2001, table B1; Miller & Sarat 1980/1981, table 4; Michelson 2007a, table 1; Pleasence 2006, p. 88; Sander 2007a, table 1; Silberman 1985, tables 3.11 and 5.6).

30. Kara Jensen, *Obstacles to Accessing the State Justice System in Rural Afghanistan*, 18 INDIANA JOURNAL OF GLOBAL LEGAL STUDIES 929, 942 (2011).

31. This definition is widely applied, including in official U.S. Government documents by the Departments of State and Defense.

32. Jensen, *supra* note 30, at 941.

33. SUSAN GIGLI, CHILDREN, YOUTH AND MEDIA AROUND THE WORLD: AN OVERVIEW OF TRENDS & ISSUES (2004), [http://www.unicef.org/videoaudio/intermedia\\_revised.pdf](http://www.unicef.org/videoaudio/intermedia_revised.pdf).

34. Economic and Social Development Department, U.N. Food and Agriculture Organization, *Communications Approaches – Mass Media*, <http://www.fao.org/docrep/x2550e/x2550e04.htm> (last

remote areas rely heavily on radio broadcasts, making radio essential to any public awareness campaign. “Thanks to the revolution of the transistor, even the remotest villages have access to rural radio, which builds on the oral tradition of rural populations.”<sup>35</sup>

The USAID-funded Rule of Law Stabilization (RLS) Program partnered with the government radio authority to broadcast public service announcements to raise awareness of basic legal rights in Afghanistan’s provinces.<sup>36</sup> The announcements covered the rights of women to own property and inheritance, the rights of children to education, and how citizens can access the Ministry of Justice (MOJ)’s legal aid offices. The RLS project also worked directly with the MOJ and Supreme Court to improve the communication skills of government staff. The project trained public outreach staff at the Supreme Court on professional video editing techniques, script writing, sound effects, and graphic design, to build a corps of professionals with the expertise to implement public information campaigns about the country’s justice system. The overall goal was to increase public confidence in the formal justice system and encourage people to access it.

After the project-supported trainings, the MOJ broadcast two television dramas and two television spots in prime time on local Afghan television. Twenty-minute dramas which were aired across 13 provinces in two local languages addressed violence against women and inheritance rights while one-minute segments provided information on child labor. The RLS project also launched a public awareness campaign for International Human Rights Day, covering the property and inheritance rights of women, the rights of girls to receive equal education and treatment, and information about the MOJ’s telephone hotline for citizens to report violations of their rights.

Although print media has less appeal for younger generations, it remains another important tool of communication. UNICEF notes that “the publications in strongest demand among young people are those that appeal to their specialized interests – comic books and popular specialized magazines on computers, fashion, sports, science, business and music.”<sup>37</sup> The RLS project distributed rule-of-law-themed comic books to thousands of boys and girls between the ages of 7 and 17 in various districts of Kabul. The five-series comic book campaign focused on children’s rights, women’s rights, criminal laws, anti-corruption, the functions of courts, and the roles of police, prosecutors, and judges in the justice system. The campaign’s objective was to teach young people and their families fundamental facts about their country’s legal system and their basic legal rights as citizens. Information programs aimed at youth, writes researcher Susan Gigli, can have positive impacts including “broadening their world outlook and destroying stereotypes, increasing communication and access to diverse ideas, and promoting critical thinking and participation in social and

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visited May 3, 2016).

35. *Id.*

36. USAID, AFGHANISTAN RULE OF LAW STABILIZATION PROGRAM (FORMAL COMPONENT), FINAL REPORT (Jan. 2015).

37. Gigli, *supra* note 33, at 6.



political life.”<sup>38</sup>

In the West Bank and Gaza, the US Government-funded Netham Rule of Law Program helped establish a Media and Public Relations Department at the High Judicial Council (HJC) to promote public awareness of and respect for the judiciary.<sup>39</sup> Netham worked closely with the department to update HJC’s website, publish press releases, produce newsletters in Arabic and English, create television and radio spots, hold regular meetings with the editors of daily newspapers, and provide greater court access to journalists. Netham trained staff and judges in public relations and assisted the HJC in organizing a visit to several courthouses for about 20 journalists representing various print, radio, and television media outlets, with the goal of educating journalists on the role and function of the judiciary and encouraging local press coverage of the courts.

The USAID-funded Access to Justice Program in Iraq worked to build the capacity of local NGOs to better serve vulnerable populations.<sup>40</sup> The importance of presenting information in a user-friendly manner for the disenfranchised led the program to develop a Strategic Communication Plan for local NGOs. The plan outlined a step-by step approach for organizations to analyze their target groups, develop tailored slogans and messages, and select the appropriate media and communication tools and channels to disseminate their messages most effectively in awareness-raising programs.

Recognizing that women and children are a particularly vulnerable segment of the population, Jordan’s USAID-funded Rule of Law Program (ROLP) issued grants to local organizations to educate the population on the rights of women and young people.<sup>41</sup> One of the project’s local grantee organizations held 24 community workshops on children’s rights and the prevention of domestic violence and later unveiled a children’s storybook, “The City of Children.” It was the first story of its kind to be published in Jordan that is targeted directly at children to educate them on their rights.

These projects took into account the local culture, legal system, and populations in designing large-scale interventions to increase the public’s knowledge and awareness of legal services and individual rights. They also simultaneously involved governmental and non-governmental actors in formulating and implementing the activities. The next section explores initiatives undertaken at the local level, using similar methodologies to achieve the same goals.

## **B. Community-Level Education Programs**

Studies show that “litigants who use ‘powerless language,’ a style characterized by ‘deference, subordination and nonassertiveness’ are ‘believed significantly less often than their powerful counterparts.”<sup>42</sup> Thus, a primary

38. *Id.*

39. USAID, WEST BANK AND GAZA NETHAM RULE OF LAW PROGRAM – JUSTICE AND ENFORCEMENT, FINAL REPORT (Sept. 2010) [hereinafter WBG REPORT].

40. USAID, IRAQ ACCESS TO JUSTICE PROGRAM, ANNUAL REPORT (Dec. 2012).

41. USAID, JORDAN RULE OF LAW PROGRAM, FINAL REPORT (Oct. 2013) [hereinafter JORDAN REPORT].

42. Sandefur, *supra* note 29, at 348 (citing Conley & O’Barr 2005, p. 65).

objective of access-to-justice efforts involves educating populations to better understand and advocate for their interests. Like large-scale awareness activities, community-based educational programs can improve understanding of laws, court processes, and rules.

In Haiti, the USAID-funded PROJUSTICE project has provided civic and legal education to residents of poor areas of Port-au-Prince and towns in the northern part of the country.<sup>43</sup> Due to outdated statutes from the colonial era and prolonged periods of time with dysfunctional courts, research shows “most people view the law as unfair and working only for the benefit of the rich and powerful, not the poor and the ordinary citizens of Haiti.”<sup>44</sup> The PROJUSTICE project held civic education forums in local language on a variety of topics, including women’s rights, the role of the police, the law on divorce, civil status documents, and children’s rights. The project also introduced local communities to the work of the Kay Jistis (“houses of justice”), which provide legal aid, mediation, and other support in underprivileged areas. To raise awareness, Kay Jistis facilities host “open house days” to invite local people to learn more about the available services.

In many countries, such as the Democratic Republic of Congo (DRC), literacy gaps hinder awareness-raising activities on legal issues. UNICEF cites the total adult literacy rate in the DRC at 61.2 percent.<sup>45</sup> Mass electronic media is largely inaccessible to rural populations: television is “essentially an urban phenomenon, given the lack of access to electricity.”<sup>46</sup> For this reason, the USAID-funded ProJustice project issued a grant to a local organization to develop a gender-based violence pictorial flipchart, to be used during in-person awareness programs in schools, churches, hospitals, markets, and other public locations.<sup>47</sup> The Ministry of Gender, Family, and Youth officially certified the chart which is now being used for state-run community awareness activities throughout the country.

Several recent access-to-justice projects have shown that information activities led by local grantees can communicate legal issues invitingly and effectively. A grants program was key to implementing outreach, networking, and citizen engagement activities in the West Bank and Gaza in the Netham project, for example.<sup>48</sup> The grants were meant to both increase public understanding of legal issues and encourage public oversight of the judiciary. The project awarded 14 grants to civil society organizations (CSOs) such as youth organizations, advocacy groups, research institutes, and media outlets. Some grantees employed creative programs such as “Conveying Law Through Art,”

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43. USAID, IMPROVING JUSTICE SERVICE DELIVERY AND SECTOR REFORM IN HAITI PROJECT, QUARTERLY REPORT (Dec. 2011).

44. HANS JOERG ALBRECHT, LOUIS AUCOIN, & VIVIENNE O’CONNOR, BUILDING THE RULE OF LAW IN HAITI: NEW LAWS FOR A NEW ERA 1 (2009), [http://www.usip.org/sites/default/files/haiti\\_rol.pdf](http://www.usip.org/sites/default/files/haiti_rol.pdf).

45. UNICEF, *Congo Statistics* (Dec. 24, 2013), [http://www.unicef.org/infobycountry/drcongo\\_statistics.html](http://www.unicef.org/infobycountry/drcongo_statistics.html).

46. MARIE-SOLEIL FRÈRE, MAP MEDIA PROJECT, THE DEMOCRATIC REPUBLIC OF THE CONGO: CASE STUDY ON DONOR SUPPORT TO INDEPENDENT MEDIA, 1990-2010 6 (Nov. 2011).

47. USAID, DEMOCRATIC REPUBLIC OF THE CONGO PROJUSTICE PROJECT, FINAL REPORT (Nov. 2013) [hereinafter DRC REPORT].

48. WBG REPORT, *supra* note 39.

which called on children ages 12 to 15 to express their understanding of the rule of law through art projects. Another grantee organization conducted performances of a play for more than 8,500 children ages 7 to 14 to develop their knowledge of basic concepts related to rule of law, justice, non-violence, and children's rights. The play's performances followed the "shadow theater" format, whereby the show stopped at certain points to draw the audience's attention to critical points. Lawyers and civil society activists led discussions at the end of the performance on the themes raised, including students' and teachers' roles in school, child labor rules, and general principles of the rule of law.

### C. Court-Led Information Programs

In some states emerging from conflict or authoritarian rule, a history of judicial abuse can generate a lasting aversion to formal authority among the population. "The courts that exist or are reinstated [in post-conflict states] are often politicized, corrupt, or the judges have little independence and are subject to a high level of executive intervention," notes one study.<sup>49</sup> A society's poor perception of judges and court administrators can cripple a legal system despite tangible improvements in judicial practice. Thus, many international projects help courts design and implement their own information programs to reverse negative perceptions. Activities can include developing accessible court websites, holding information clinics for litigants, hosting open house days at court, installing information booths in courthouses, and preparing and distributing brochures at courts to explain their functions and the services available.

Regrettably, the lack of information and low level of development in the DRC has created opportunities for state officials to take advantage of court users. One author notes that "court staff exploit the population's ignorance of court processes and fees by charging litigants 'fees' that are substantially different from what is mandated."<sup>50</sup> To counter this negative consequence of a lack of information, the ProJustice project in the DRC installed glass-enclosed bulletin boards outside the courthouses with schedules of court hearings and applicable fees.<sup>51</sup> A USAID-funded project in Côte d'Ivoire printed hundreds of posters with judicial fees which are now posted in the project's pilot courts, and the Ministry of Justice will shortly install them throughout the country. The projects in both the DRC and Côte d'Ivoire also supported open house days at targeted courts to familiarize the population with the legal structures and services available to them.

The Jordan ROLP conducted the first-ever workshop for Jordanian judges on media relations, which began a transformation of the judiciary's outreach activities.<sup>52</sup> The judges and administrators created a press office, developed

49. Kirsti Samuels, *Rule of Law Reform in Post-Conflict Countries: Operational Initiatives and Lessons Learnt* (Oct. 2006), [http://siteresources.worldbank.org/INTCPR/Resources/WP37\\_web.pdf](http://siteresources.worldbank.org/INTCPR/Resources/WP37_web.pdf).

50. Jessica Vapnek, *Cultural Factors and Ethical Integrity*, 39 HASTINGS INT'L & COMP. L. REV., 123, 129 (2016).

51. The author also reports that several of these were vandalized – presumably by the court staff – but that is an issue for another day.

52. USAID, JORDAN RULE OF LAW PROGRAM, QUARTERLY REPORT (Oct. 2010).

policies for interactions with the media, and instituted media training for judges and journalists alike. To support the Judicial Council, the project helped establish a Media and Communications Unit and held training sessions on monitoring judicial news, report writing, and effective communication. These initiatives helped build public confidence in the judiciary and promoted greater transparency and openness about Jordan's judicial procedures. At the close of the project, the court's new media unit took the lead in developing and implementing public awareness and education activities, which included offering facilitated court visits for journalists and drafting a protocol for media accreditation.

The Iraq Access to Justice Program worked with Iraqi Government representatives from various ministries to design activities to raise citizens' awareness of their legal rights and entitlements.<sup>53</sup> The resulting strategy relied on cooperation with local organizations. One of these, the Soran Association for the Care of the Handicapped (SACH), developed and implemented a series of advocacy and communication activities on behalf of persons with disabilities. SACH answered hotline calls, held legal consultations, worked on legal cases, printed and distributed posters, and produced radio programs promoting positive images of persons with disabilities. SACH was later awarded an additional grant to establish a legal aid center in the Kurdistan Regional Governorate to promote awareness of and to advise on the rights of disabled persons. A massive grants program supported a variety of other local organizations and networks which then took the lead in raising awareness of the government's obligations, citizens' rights, and the available services.

Improving the reputation of the legal system also involves raising the quality of services provided by legal professionals. Access-to-justice projects have supported exchanges through which legal professionals in developing and post-conflict states can learn best practices by visiting systems in other countries. Julio Faundez writes, "These links provide a lively and relatively inexpensive mechanism with immediate practical benefits – such as updating and facilitating curriculum development – as well as long-term intellectual benefits as they enable legal academics to organize conferences and launch joint research projects on topics of mutual interest."<sup>54</sup>

On a smaller scale, USAID's Judicial Strengthening Project (JSP) in Macedonia sponsored student visits to a number of courts during the life of the project.<sup>55</sup> During the court visit, the judge explains the structure of the court and presides over a mock trial, with students playing the roles of judge, public prosecutor, and public defender. JSP also teamed up with the European Law Students Association to produce an informational brochure which describes the judicial branch, including the structure of the Macedonian courts, court functions,

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53. USAID, IRAQ ACCESS TO JUSTICE PROGRAM, ANNUAL REPORT (Dec. 2013) [hereinafter IRAQ REPORT].

54. JULIO FAUNDEZ, COMPREHENSIVE LEGAL AND JUDICIAL DEVELOPMENT: LEGAL REFORM IN DEVELOPING AND TRANSITION COUNTRIES 369, 394 (Rudolf V. Van Puymbroeck, ed., 2000), <http://siteresources.worldbank.org/BRAZILINPOREXTN/Resources/3817166-1185895645304/4044168-1186409169154/02ConferenceProceedings.pdf>.

55. USAID, MACEDONIA JUDICIAL STRENGTHENING PROJECT: QUARTERLY REPORT (Oct. 2013), [http://pdf.usaid.gov/pdf\\_docs/PA00KFWF.pdf](http://pdf.usaid.gov/pdf_docs/PA00KFWF.pdf).

and jurisdictions. The project printed the brochure and distributed it to high school students visiting the courts as well as to members of the general public.

## VI. CLEARING AND CREATING PATHWAYS TO JUSTICE

Recognizing that increased public awareness of legal services and better perceptions of the justice system generate greater interest in using the courts, access-to-justice programs also focus on reducing barriers to access and delivering better services. The next sections outline practical approaches to removing legal, economic, physical, and psychological hurdles preventing vulnerable populations – including the poor, widows, those without identification cards, internally displaced persons, children, crime victims, and the accused – from accessing the courts.

### A. Legal Barriers to Access

Legal barriers to access to justice derive from the existing legislative framework in two respects. First, gaps or omissions in a country's existing laws can translate into denial of important legal rights for disenfranchised communities. Second, existing laws that are outdated or poorly written can impose limits on access to justice for certain populations. A key feature of many technical assistance projects is therefore a comprehensive review of the country's legal framework to identify gaps and areas of attention for legal reform. Changes to national constitutions can provide individuals with fundamental rights such as equality, due process, the right to counsel, and the right to a criminal trial. Amendments to existing statutes can make targeted improvements to law and justice. A few examples follow.

Haiti suffers from extreme poverty, official corruption, and high levels of crime. Poor communities suffer disproportionately from legal gaps in the country's outdated criminal and criminal procedure codes. "Particularly in areas like arrest and detention, [ambiguities in the law] have granted broad discretion to police and other justice actors which has at times been abused."<sup>56</sup> To reduce legal barriers to access to justice for poor defendants, the PROJUSTICE project in Haiti supported the Ministerial Commission tasked with revising the criminal procedure code and criminal code which date back to the 19<sup>th</sup> century.<sup>57</sup> Revamping the codes involved streamlining arraignment procedures, introducing plea bargaining, and encouraging alternative sentencing options.<sup>58</sup> Upon request of the Ministry of Justice and Public Security, the project continued to support reforming the Haitian legislative framework by helping draft laws to establish a national legal aid system to expand court access for indigent defendants.

With support from the US Government-funded Justice Project, the Government of the Dominican Republic implemented justice reform by

56. ALBRECHT ET AL., *supra* note 44, 2.

57. USAID, IMPROVING JUSTICE SERVICE DELIVERY AND SECTOR REFORM IN HAITI: QUARTERLY REPORT (Dec. 2012) [hereinafter HAITI REPORT].

58. At the time of publication, the revised Criminal Procedure Code and Criminal Code were still under review by the Government of Haiti.

introducing a new criminal procedure law that prioritized representation of indigent defendants.<sup>59</sup> The government also developed an official public defense service in 2004, which was formalized in the national constitution in 2010. The Justice Project provided key technical assistance to the new public defense service, including management, budgeting, and training, with an eye to improving the justice services provided to criminal defendants, especially the poor.

Jordan's ROLP carried out a comprehensive assessment of all the domestic legislation implicating access to justice<sup>60</sup> and found that some existing laws were not being implemented while others were missing key features that could improve access. The project formulated recommendations based on the findings, including one proposed amendment to legislation on court fees that would reduce costs for the poor and another to the criminal procedure law that would guarantee the right to counsel from the moment of arrest. The same issue was identified in the ProJustice program in Côte d'Ivoire, where the public legal aid system only comes into effect after the defendant appears in court.<sup>61</sup> Among other things, this can mean that poor defendants – innocent or guilty – might languish in pretrial detention for an extended period of time before seeing a magistrate for the first time. Changing the laws on these key criminal procedural steps can have transformative effects on access to justice.

The Iraq Access to Justice Program pursued a comprehensive strategy to improve access to legal assistance and government services, working not only on revisions to the substantive laws on services and rights but also on the laws governing legal practice.<sup>62</sup> The former included supporting the enactment of laws on the rights of the disabled and widening coverage and improving governance of the social safety net. The project also pursued amendments to laws on the rights of women and persons without identity cards with the goal of removing provisions limiting access to justice. To improve the legal framework on law practice, the project worked with the Iraqi Bar Association to introduce new provisions into the draft Law on Lawyers that would require Iraq's 50,000 licensed legal professionals to provide pro bono legal representation in at least two cases involving vulnerable or disadvantaged Iraqis each year. Other proposed provisions would require admitted attorneys to attend continuing education courses on human rights.

Even where legal change is not possible or is delayed, governments can implement policy changes to improve access to justice. For example, mandating closed session hearings to enable women to testify about sexual violence can increase the numbers of victims willing to pursue legal cases, as can increasing the numbers of female police officers. The United Nations has cited the correlation between the presence of women police officers and increased reporting of sexual assaults.<sup>63</sup> For example, in post-conflict Liberia, an all-female

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59. USAID, DOMINICAN REPUBLIC JUSTICE PROJECT: FINAL REPORT (July 2012).

60. JORDAN REPORT, *supra* note 41.

61. USAID, JUSTICE SECTOR SUPPORT PROGRAM IN CÔTE D'IVOIRE (PROJUSTICE): ANNUAL PROGRESS REPORT (Sept. 2015).

62. IRAQ REPORT, *supra* note 53.

63. UN WOMEN, PROGRESS OF THE WORLD'S WOMEN: IN PURSUIT OF JUSTICE 2011-2012 (2011),

United Nations Police brigade saw more reporting of sexual violence and more female recruits, a positive cycle of reinforcement which improves access to justice for women.<sup>64</sup>

The USAID-funded Program Against Violence and Impunity (PAVI) project in Guatemala worked to implement procedural and policy changes that came into effect with the enactment of the new Law Against Sexual Violence, Exploitation, and Human Trafficking.<sup>65</sup> The law dictated changes to specific sections of the criminal procedure code, including new standards for the treatment of victims. The improved provisions modified the procedure for receiving sexual violence complaints; it also institutionalized coordination among relevant government units to speed the issuance of protection orders and arrest warrants.<sup>66</sup> The PAVI project also helped advocate for and implement other important changes to the criminal justice system such as using psychologists to interview victims of sexual crimes and permitting friends and family members to be present during the delivery of a victim's official statement.

## B. Economic Barriers

The costs of litigation and attorney's fees, in addition to lost wages during the time spent in court, can be a major impediment to the poor accessing the formal justice system. Vulnerable populations can find the costs prohibitive and therefore choose other avenues of resolution, even if these are less compliant with modern conceptions of rights. Some solutions to the issue of costs include reducing court fees, providing childcare or transportation for indigent court users, and supplying free or reduced-cost legal services to vulnerable populations, either directly or through NGOs. One-stop shops for justice services can also lower economic barriers to accessing justice. This is because when a litigant has to complete several steps and visit numerous agencies or offices to introduce a case, the costs in time and money can lead them to abandon their pursuit of justice.

From 2009 to 2016, the Haiti PROJUSTICE project provided legal services to the poor in impoverished areas.<sup>67</sup> The project worked through the bar associations of Port-au-Prince, Saint-Marc, and poor areas of the northern corridor to fund legal assistants to work alongside qualified lawyers representing indigent defendants in court and at trials. Provision of legal aid has an additional benefit beyond the assistance provided to the disadvantaged: project-funded trainees and legal assistants working under the supervision of qualified attorneys gain useful practical experience and skills.

The ProJustice project in the DRC also established a grants program to

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<http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2011/progressoftheworldswomen-2011-en.pdf>.

64. *Id.*

65. USAID, PROGRAM AGAINST VIOLENCE AND IMPUNITY IN GUATEMALA: MONITORING AND EVALUATION FINAL REPORT (July 2012), [http://pdf.usaid.gov/pdf\\_docs/pdacu761.pdf](http://pdf.usaid.gov/pdf_docs/pdacu761.pdf).

66. PAVI also worked with government staff on outreach activities to encourage victims of crime to file reports.

67. See HAITI REPORT, *supra* note 57.

encourage local NGOs to provide free legal assistance to those in need.<sup>68</sup> The grantee NGOs advised and represented vulnerable populations, namely, women and minors, who had been victims of sexual or domestic violence. The clinics also handled cases that involved land conflicts, custody battles, and inheritance disputes. Through its partnership with NGOs, the ProJustice project strengthened many legal clinics serving vulnerable populations. ProJustice also created and distributed a *Practical Guide on Access to Justice* for use by paralegals working in legal clinics throughout the country.

Another approach to improving access to justice for the poor involves expanding the pool of lawyers able and willing to serve indigent clients. Rule-of-law projects can achieve this by attracting future legal professionals to legal aid work and building the number of NGOs capable of providing legal services to the poor. To increase the availability of legal professionals in the service of vulnerable populations, the Iraq Access to Justice Program worked to strengthen local NGOs.<sup>69</sup> The program assessed the capacities of a variety of Iraqi non-profit organizations and provided them with training on financial and administrative management. The program trained Iraqi NGO partners on key subjects such as how to represent clients from vulnerable groups and how to operate a legal clinic. In this connection, the program produced a standardized Access to Justice Operations Manual for legal clinics. The project also issued grants to free legal clinics to create new pathways for poor populations to access the benefits of the legal system. One clinic successfully helped a 16-year-old mother legally register her marriage so that she and her disabled daughter could access their state benefits.

### C. Physical Barriers

Reducing physical barriers to justice consists of ensuring that courthouses and other public administrative buildings are accessible to the population. This involves making physical changes to buildings, providing Braille and sign language interpretation, building courthouses closer to disenfranchised communities, and establishing reliable and affordable transportation if litigants must travel to proceedings. ROLP in Jordan renovated the West Amman Courthouse to address some of these physical barriers,<sup>70</sup> constructing a separate entrance with disabled access as well as a comfortable and secure waiting area for victims and witnesses.

The location of courthouses can also be a barrier to justice. Courts in many developing countries are located in the main cities and towns, but their jurisdictions may cover vast territories where roads are impassable or nonexistent. These physical obstacles require parties to travel by air, all-terrain vehicle, or boat to resolve their disputes. Convening court personnel, litigants, and witnesses from distant locales and through treacherous routes can be so time-consuming and difficult that rural cases are frequently backlogged.

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68. USAID, PROJUSTICE PROGRAM IN THE DEMOCRATIC REPUBLIC OF THE CONGO: FINAL EVALUATION (Jan. 22, 2014), <http://www.dmeforpeace.org/sites/default/files/USAID%20Projustice%20DRC%20July%2029.pdf>.

69. IRAQ REPORT, *supra* note 53.

70. JORDAN REPORT, *supra* note 41.



Electricity and supplies can be limited, as can the number of staff. Referring to the court system in Pakistan, which is representative of many nations in the region, one judge writes,

“Indeed some of the courts have to operate in dismal conditions. There is a chronic shortage of judicial officers and administrative staff... There is a problem of lack of adequate courtrooms and residential accommodation for judges and court staff. They lack adequate equipment and have no access to modern technology. They do not possess even the essential law books in their libraries.”<sup>71</sup>

Recent access-to-justice initiatives have addressed this issue. One solution is to use mobile court hearings to supply essential legal services to disenfranchised persons outside of urban areas. The DRC ProJustice project helped transport judges, staff, and witnesses to remote areas, where some hearings were held in the open air.<sup>72</sup> Public education campaigns notified the rural populations of the dates and locations of the planned mobile court hearings and encouraged wide participation. Haiti’s ProJustice project also provided logistical and material support to *assize* hearings, which are local proceedings over criminal defendants accused of major felonies or indictable offenses.<sup>73</sup>

The US State Department-funded Mitigating Local Disputes in Liberia Program (MLDL) has supported alternative, local means of resolving disputes so that disputants need not travel to urban areas to access justice.<sup>74</sup> Due to widespread distrust of the formal legal system, disputes in Liberia are more often settled by custom in any event. MLDL helped create Community Forums in key regions where disputants are invited to mediate free of charge under the auspices of local leaders trained in alternative dispute resolution techniques. The Community Forums found immediate success in the community by vesting respected local leaders with decision-making authority and professionalizing and standardizing the dispute resolution and reporting procedures.

## VII. CONCLUSION

Drawing on experience gained around the world, donors are in a unique position to share comparative lessons learned on how to improve access to justice. Working hand in hand with governmental and non-governmental actors to ensure that local knowledge is reflected in the design of the interventions, the implementers of the access-to-justice projects highlighted in this article distributed vital legal information to the public and worked to reduce social, political, economic, and physical barriers to justice. The projects employed initiatives tailored to the unique cultural and legal features of their host countries, and in most cases worked with and through local organizations, building capacity where needed.

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71. IRSHAD HASAN KHAN, COMPREHENSIVE LEGAL AND JUDICIAL DEVELOPMENT: THE JUDICIAL SYSTEM OF PAKISTAN 241, 257 (Rudolf V. Van Puymbroeck, ed., 2000).

72. DRC REPORT, *supra* note 47.

73. USAID, IMPROVING JUSTICE SERVICE DELIVERY AND SECTOR REFORM IN HAITI: ANNUAL REPORT (Nov. 2013).

74. US DEP’T OF STATE, MITIGATING LOCAL DISPUTES IN LIBERIA PROGRAM: QUARTERLY REPORT (July 2013).

Nations with the technology and communication infrastructure to reach wide audiences benefited from large-scale media campaigns. Projects in countries with little media capacity employed smaller community-based educational initiatives to build awareness in schools, churches, hospitals, markets, and other community centers. Each program with a public information dimension emphasized reaching younger generations with the understanding that negative stereotypes, including those against the formal legal system, are easiest to combat early in life. These projects used the latest techniques of interactive learning to engage children and teenagers.

Outreach initiatives decoupled from improvements to the court system have limited impact. Once people understand their rights and how to access the justice system, they must not then face additional legal, economic, or physical barriers to justice. The highlighted projects identified and tackled a wide variety of conditions that impaired people's access to justice, including poorly written statutes, absent laws on fundamental rights, inadequate road systems, volatile political climates, prohibitive costs, and psychological deterrents to seeking justice. Further research into local conditions will assist in continuing innovation in access-to-justice projects. In particular, there is vast potential in technology-based approaches to legal services, such as smart forms, mobile banking applications to pay fines, electronic case filing, and mobile alert systems that litigants in rural areas could use to confirm hearing dates prior to travel to courts in distant cities.

Donor funding supported the initiatives profiled here, but it is not essential. Governmental and non-governmental organizations in developing and post-conflict environments can make simple changes to improve the legal system. Posting court fees outside the courthouse can increase transparency and reduce corruption; hosting open house days can introduce first-time users to the courts; and broadcasting public radio spots can raise awareness and educate the public on legal rights and procedures. Initiatives that come from within are perhaps more likely to withstand the test of time. Our experience suggests that these locally developed strategies, supported with targeted international assistance where available, can have measurable, sustainable, and lasting impacts.