



JUSTRAC

JUSTICE SECTOR TRAINING, RESEARCH
& COORDINATION PROGRAM

“Lessons from the Field: Innovation in Rule of Law Programming”

A Justice Sector Training, Research and Coordination (JUSTRAC)
Symposium

JUSTRAC is a Cooperative Agreement between the
Rule of Law Collaborative at the University of South Carolina and the
Bureau of International Narcotics and Law Enforcement Affairs, U.S. Department of State

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REPORT



Table of Contents

| | |
|----------------------------------|---|
| Background | 2 |
| Opening | 2 |
| Holistic Approaches | 3 |
| Adaptation..... | 5 |
| Lunch Speaker | 7 |
| Sustainability..... | 7 |
| Appendix: Symposium Program..... | 8 |

Background

On June 28, 2016, the U.S. Department of State’s Bureau of International Narcotics and Law Enforcement Affairs (INL) and the University of South Carolina’s Rule of Law Collaborative (USC-ROLC) held the sixth JUSTRAC symposium, at the Woodrow Wilson International Center for Scholars, in Washington, DC. The symposium, “Lessons from the Field: Innovation in Rule of Law Programming,” brought together U.S. Government officials, academics, rule of law practitioners, and civil society representatives to discuss various aspects of innovation in rule of law programming. Underscoring the focus on innovation, the symposium took a novel approach by structuring discussion around aspects of programming—holistic approaches, adaptation, and sustainability—rather than specific countries, regions, or thematic areas. Panelists incorporated specific examples and case studies as appropriate. Panels were organized as discussions surrounding key questions, instead of individual presentations. Question-and-answer sessions, as well as an interactive platform called Poll Everywhere, engaged audience members and integrated them into the discussions. Poll Everywhere allowed audience members to answer survey questions on their mobile phones during the panels and view results in real time.

Opening

ROLC Director Joel Samuels and Will Pomeranz, Deputy Director of the Wilson Center’s Kennan Institute, delivered opening remarks. Pomeranz mentioned how most countries need some assistance with rule of law developments and that it was important to bring together both practitioners and academics to discuss these wide-ranging issues. Samuels challenged the participants to help define innovation (and its components) and consider whether it was always good to focus on innovation. Samuels and Pomeranz both emphasized the importance of sharing experiences in an open and frank environment. They encouraged the audience to speak out during the question and answer sessions and provide additional comments where relevant.

During the Opening Keynote Session, INL Deputy Assistant Secretary Alexander A. Arvizu explained the need for innovative rule of law programming to overcome challenges such as evolving extremist and criminal threats, and he provided an overview of innovation in INL’s rule of law programming.

Arvizu felt that rule of law programming requires adaptation to unexpected challenges. He outlined three key trends that INL has recently experienced: increasingly global and fluid extremist and criminal organizations; new technologies that provide both opportunities and threats to the rule of law; and the availability of new data and information. Arvizu indicated that innovation is at the center of everything INL tries to do, and he provided some examples of programmatic innovation in INL activities:

- New technology is helping the fight against corruption in criminal justice systems through automatic court docket digitalized case tracking systems and electronic public disclosure systems;
- In Nigeria, INL sponsored a code-athon to help Nigerians locate police stations and report incidents through a new “Find a Cop” mobile phone app; and
- Mexican NGOs and the Mexican Attorney General have partnered to develop platforms to help citizens quickly obtain information on their rights and hold ministries accountable.

Arvizu noted that these developments are particularly encouraging because local partners were primarily responsible for the development of these tools. When local partners are able to assess the need and play a larger role in the development of rule of law (ROL) tools, they stand a better chance at success. He emphasized that INL supports JUSTRAC to enable this kind of information sharing so that people who are designing programs can learn more about innovative solutions to which they would not ordinarily have access.

Following the opening remarks Samuels engaged the three moderators for the day (Steve Austermler, Radha Friedman, and Andrew Solomon) in a brief discussion of the key themes of the symposium. Samuels first asked for comments on the state of ROL innovation. Solomon indicated a need for better defined principles and doctrines relating to practices in ROL programming. Friedman felt it was very important to use interdisciplinary approaches with a greater diversity of perspectives. She referenced projects engaging female athletes in Brazil advocating for gender equality and health workers in Cameroon advocating for anti-corruption and transparency in government. Austermler was concerned that as the ROL industry becomes more professional and institutionalized, it may become less innovative. When immediate and measureable results are required, implementers and donors may not feel comfortable taking risks. It will be incumbent on all parties to build in mechanisms that incentivize some amount of innovative risk-taking. The moderators were also asked which area had the greatest need of innovation, and they agreed that local ownership was the top priority.

Holistic Approaches

In this session, speakers examined comprehensive and inclusive rule of law program designs, looking beyond the traditional focus on formal institutions. They discussed ways that they have incorporated informal systems and a variety of non-traditional stakeholders into their approaches. Moderator Andrew Solomon, Senior Rule of Law Advisor, USAID, indicated that USAID has incorporated holistic design approaches in recent years. Evidence of this can be found in the various USAID field practitioner guides. Moreover, USAID has also linked rule of law programming to other sectors to widen the design approach. Examples can be found with health or economic programs and their relevance to rule of law. Solomon also referenced the fact that the UN’s Sustainable Development Goals implicitly endorse holistic approaches to rule of law programming.

Benjamin Roth, Assistant Professor, College of Social Work, University of South Carolina, discussed the push and pull factors for immigration from El Salvador. He described the efforts to design a comprehensive program that addressed all important push factors that lead young Salvadorans, even minors, to emigrate. The holistic design had to give these young people reasons to stay.

Jin Ho Verdonschot, HiiL Rechtwijzer Technology & Justice Technology Architect, HiiL Innovating Justice, discussed ways that his organization had gathered extensive stakeholder information prior to program implementation. Having this information allowed his team to more effectively address a wide range of issues that were important to their local partners. The information was gained through household surveys and interviews with teachers, village leaders and other citizens. Usually, these surveys polled 10,000 people to make sure that all views were heard. This led to better, more holistic rule of law designs in Africa and Asia.

Chris Jochnick, President & CEO, Landesa, discussed how holistic approaches to rule of law should always consider land. Land is central to many rule of law issues because it is most peoples' main asset, there is a need to feel secure at home, land addresses gender problems since women spend more time on home lands, and land is linked with peace and environmental concerns. In Rwanda and Kenya, he found that a holistic approach that included informal, non-traditional authorities worked best.

The discussion focused on several key points:

- Holistic approaches should include both **supply-side and demand-side** programming. In an example of supply-side programming, a Kenyan court was provided assistance in cleaning out its dirty, unsafe basement so that old case files would not be lost. This led to improved transparency and efficiency and reduced corruption. Successful demand-side programming included helping building local networks and NGOs to advocate for land rights or conservation.
- Partners should include **non-traditional actors** such as local tribal chiefs, primary school teachers, churches and even local gang members. One successful program in India involved training community youth leaders on land rights. These non-traditional partners cannot always be counted on but when addressing youth issues, they are important actors. One speaker discussed how churches and gang leaders were essential partners when trying to work in poor urban areas of Latin America.
- Even if the rule of law program is designed to work only with **traditional actors**, a holistic approach among these actors can still succeed. For instance, one rule of law program in Indonesia included access to justice, legal aid, and even biodiversity elements, alongside the traditional justice sector partners.
- **Informal justice systems** also need to be addressed. Examples include tribal justice, religious rules, local traditions, and alternative dispute resolution mechanisms. One successful program in Africa involved local women serving as mediators in land disputes and helped bridge the gap between the formal and informal justice systems.
- **Flexibility** should ideally be built into the designs. The ability to change tactics in the middle of a program was identified by several speakers as a key to success.
- When possible, **data-based decision making** should be included in rule of law programming. Holistic design means, among other things, gathering data and using it to set priorities.

- **Technology** was also identified as an increasingly important tool to reach stakeholders, especially youth. Examples included mobile money platforms, a text-a-lawyer app, as well as a Google “heat map” in Mali. On the other hand, it was acknowledged that technology has its limitations.
- The speakers also agreed that it was important to **keep citizens engaged** with formal institutions in the developing world. One example was a biometric ID initiative in India that gives all participants a formal bank account.
- Holistic design should also incorporate the **private sector**, when possible. International businesses can be an important source of leverage when attempting to persuade local leaders to adopt international standards in areas such as environment, labor standards, and transparency. While businesses will support these efforts, they usually shy away from getting involved directly in local politics.
- **Local priorities** should be considered paramount. Although donor priorities are usually followed, given the realities of funding, local priorities need to be assessed, understood and incorporated into project design as much as possible.

Adaptation

This session explored ways in which rule of law practitioners have adjusted or redesigned programming when faced with unforeseen challenges during implementation. Understanding rule of law as a system of change, speakers considered a variety of real-world challenges that they faced in the field, such as changes in a host country’s political environment, changes in donor policy priorities, changes in available resources and even natural disasters.

Moderator Radha Friedman, Director of Programs, World Justice Project, introduced her work in Nepal and framed the discussion about adaptation as a challenge to all rule of law implementers. She mentioned that in the fast-paced and ever-changing development field, the circumstances under which programs are implemented are in a constant state of flux. She asked the panelists how they were able to adapt to these changing circumstances.

David Alpher, Washington Associate, Saferworld, discussed adaptation to changing circumstances in the Anbar Province of Iraq. In Anbar, security was an ever-present concern during the implementation of his program. The population included local villagers as well as internally displaced persons (IDPs). The first challenge was that the already-bad security became worse. The next challenge was that the local population actually needed more help than the IDPs, because the local population was not getting any assistance, unlike the IDPs. The third challenge was due to the realization that tribal lines of conflict were deeper and more profound than religious divisions. These challenges required significant adaptation over the course of the program.

Heike Gramckow, Lead Counsel, the World Bank, discussed a program she has worked on in Mongolia, which focused on improving the justice sector. At the start of the program in 1999, 40% of the Mongolian population was nomadic. It had a very poor state sector and low levels of civic participation. Over the course of the program, Mongolia underwent a massive change. Resource extraction industries became major players in the Mongolian economy and led to numerous challenges for rule of law implementers. Implementers also discovered that while a great deal of modernization

was required, the Mongolian justice sector institutions had an unexpected asset—large amounts of data were compiled, thanks to communist traditions.

Karen Hall, Assistant Professor, Ohio Northern University, introduced her extensive rule of law experience in running Afghanistan programs. The programs were fairly small at the beginning (around \$10 million in total funding), but then eventually ballooned to over \$100 million. Although conditions on the ground were always changing, including security issues, this quantum leap in funding required adaptation on a very large scale.

The main conclusions reached by the panel included the following:

- When **security declines** in the target country, adaptation may require a greater burn rate of funds. Ideally, the donor and implementer should prepare for this, but usually, the need arises after implementation has already begun. It is very important to document these security costs as comprehensively as possible and show how they will help meet program goals.
- Donor-implementer **communication** is important. The implementer can set itself up for easier mid-course changes if lines of communication have been open from the start. This way, the proposed adaptation is not a big surprise and is more likely to be acceptable. One implementer felt that European donors were especially good at adaptation.
- When the **scale** of funding changes (as in the Afghan case), the adaptation might require structural reform. In that case, programming was sub-divided into several lines, such as institution building, gender, civil society, and legal education.
- Several panelists recommended building in agility at the program **design** phase. Designing agility is not easy, but it is essential if the larger goals are going to be met in an unstable environment. At INL, this was explicitly addressed in Afghan programs. The World Bank also designed for this in Mongolia.
- Several panelists promoted the idea of **contingency funding**. This kind of funding consists of small-scale assistance to complement existing programs. This allows for adaptation in cases where the donor does not have additional funds for the proposed change. One example is the Open Road Alliance.
- Adaptation is sometimes required due to limited **absorptive capacity**. In these cases, it is important to try to adapt new activities that remain focused on the ultimate goal. For example, an international legal LLM program for women was found to be too advanced, so the implementers adapted by changing the activity to a legal English program. In another example, a Nepal anti-trafficking program planned to enroll affected women in a paralegal course but when it proved to be too advanced, the women were successfully transferred to a hospitality program.
- Successful adaptation sometimes means **combining programs** across donors or implementers. In an Afghanistan program, the security situation declined and the local leaders lost interest, so the U.S. implementers merged their programming with the UN's programs. This requires strong inter-donor relations.
- **Creative** responses to change can sometimes yield surprising results. In a prisoner security program, progress was limited for a variety of reasons. In response, the implementers changed

the program to focus more on prisoners' rights. As a result, security actually improved and it appeared that prisoners became less violent when they were able to address their rights and be heard.

Lunch Speaker

Neil Levine, Director of the Center of Excellence on Democracy, Human Rights and Governance at USAID, provided Distinguished Remarks during lunch on USAID's approach to innovation in rule of law programming. He discussed the challenges to innovation faced by U.S. Government agencies, as well as opportunities for engagement with the public and private sector on these issues. He also commented on key trends that will affect rule of law programming in the future. Those trends include limited rule of law resource allocation, security concerns, a continuing focus on technology and STEM development, and collaboration with the private sector. Levine was optimistic that innovation would play a key role in future rule of law programming and was supportive of this symposium and its efforts to foster greater information sharing.

Sustainability

In this session, panelists discussed strategies for extending the life of a program beyond the initial funding period and the associated challenges. They emphasized that sustainability is often dependent on local ownership, and they related lessons from various projects and provided success stories on innovative approaches to sustainability.

Steven Austermler, Program Officer, Rule of Law Collaborative, served as moderator and introduced sustainability as a ubiquitous challenge in rule of law work. He returned to the local ownership concept that was mentioned earlier and asked the panelists to provide some examples of incorporating local ownership in their sustainability efforts.

Hamid Khan, Deputy Director, Rule of Law Collaborative, discussed the sustainability of a gender program in Afghanistan. While training and education were important, they needed to find a way to sustain the advances in gender rights after the program ended. They decided to use marriage contracts as a way to enshrine gender-related rights, thereby ensuring sustainability.

Lelia Mooney, Director, International Network to Promote the Rule of Law, United States Institute of Peace, detailed her work on a USAID-funded women's legal rights program in Guatemala. The program was sustainable because of the multi-sectoral approach and the involvement of large numbers of stakeholders.

Reinford Mwangonde, Founder, Citizens for Justice, Malawi, discussed the sustainability of a criminal justice program his organization has developed in Malawi. The key to sustainability in Malawi was to find incentives for all parties. Here, the criminal courts could not afford to keep petty criminals in jail for extended time periods, so a community service program would save money. It also had the advantage of helping rehabilitate the criminals. This system benefitted everybody, so it was maintained over time.

The main conclusions reached by the panel included the following:

- **Local ownership** is the most important aspect of sustainability. Local ownership makes actors feel that they have a stake in the continuing success of the program, even after the funding ends. Local ownership is considered the gold standard in sustainability theory.
- Local ownership should be built in at the **design stage**. It is important to discuss all affected groups when assessing the needs. In Malawi, this involved discussing needs with defendants, court personnel, counselors, and judges, among others. In Guatemala, this involved discussing gender issues with a wide range of society, including psychologists. In Afghanistan, this involved talking to youth groups as well as tribal leaders.
- **“Localizing” the context and framing** can be important. For instance, in Afghanistan, instead of framing gender rights as an international right, the implementers framed the issue as an effort to incorporate Islamic and tribal traditions. Local actors will often be skeptical of foreign implementers’ and donors’ intentions, and localizing can neutralize some of that concern. Once partners understood the effort as trying to obey Islamic law, they were eager to sustain the program.
- Furthermore, when framing an issue as “local,” several panelists pointed out that the host country in question has usually signed a number of **international agreements**, such as CEDAW or the UDHR. The issue then can be framed as an effort to promote the legal goals or standards already adopted by the government.
- It is important to avoid the **transplant trap**. There was much discussion about how legal and social transplants are dangerous and less likely to be sustainable. Part of this is framing, as mentioned above, and it is important not to sell an idea as something imported from elsewhere. But more fundamentally, it is better to first assess the local needs and then consider interventions that best address these needs.
- In the context of the transplant trap, there was further discussion of how gender equality can sometimes be framed as a tradition within the host country.
- Another set of comments related to sustainability in **rural areas**, outside of the capital cities. Panelists felt that this was one of the biggest challenges but also an extremely important aspect of development work since so much rule of law funding and attention gets concentrated in the main urban areas. In Guatemala, implementers were able to tap into key, pre-existing rural networks to find solutions. In Afghanistan, tribal leaders and youth groups were available, while in Malawi, local community leaders were important.
- Several comments reflected the efficacy of taking people out of their **comfort zones** and giving them a wider understanding of the issue. In Malawi, this meant taking judges to the prisons to see the conditions. In Central America, this meant having partners talk to psychologists. In Afghanistan, this meant discussing written marriage contracts, with clearly-defined obligations, even though most partners were not familiar with this.
- **Champions** were often identified as key players in sustaining a program. All panelists agreed that even with the best design and execution, it often requires a few highly motivated local actors to keep programs running after the formal end of funding.

- It was also agreed that the **incentives** played an important role in sustainability. In Afghanistan, local religious leaders were incentivized to maintain the program because it promoted religious connection and community. In Malawi, judges and others were incentivized by cost savings and lower recidivism rates.
- Sustainability should also be **defined** in appropriate ways. Rule of law programming often entails generational change. If small changes can be sustained, over time, they can have large impacts on society.
- Local, informal **power relationships** should be taken into account, when trying to achieve long-term sustainability. The panelists agreed that rule of law programming involves changing the power dynamics—gender, linguistic, ethnic or even commercial. These dynamics take time to manifest and usually threaten the socio-economic order. For true long-term sustainability, implementers need to design a plan that will allow for this change to become durable



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LESSONS FROM THE FIELD:

INNOVATION IN RULE OF LAW PROGRAMMING

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A JUSTRAC Symposium

The Rule of Law Collaborative at the University of South Carolina
In coordination with the Woodrow Wilson International Center for Scholars



Wilson Center, Main Auditorium

Ronald Reagan Building and International Trade Center

One Woodrow Wilson Plaza

1300 Pennsylvania Ave. NW

Washington, DC 20004-3027



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Summary

In recent years, as resources for rule of law programming have shifted elsewhere, innovative rule of law programs have become indispensable. This symposium will focus on three particular aspects of innovation: developing holistic approaches, adapting to unexpected developments, and building sustainable programs. It will also look at ways to incorporate various actors to allow for more realistic approaches to rule of law, considering ways in which citizens resolve their day-to-day problems. To ensure that the symposium itself matches the programs it seeks to highlight, the symposium will adopt interactive components for all parts of the day-long session, allowing participants to actively engage with symposium speakers.

Program

8:45 – 9:15 **Registration and Light Breakfast**

9:15 – 9:30 **Welcoming Remarks and Symposium Objectives**

Will Pomeranz

Deputy Director, Kennan Institute

Joel Samuels

Director, Rule of Law Collaborative, University of South Carolina

9:30 – 10:00 **Opening Keynote Session: The Challenges of Innovation in Rule of Law Programming**

Alexander A. Arvizu

Deputy Assistant Secretary, INL, U.S. Department of State

Deputy Assistant Secretary (DAS) Arvizu will give an overview of innovation in INL's rule of law programming.

Following DAS Arvizu's remarks, session moderators Steve Austermiller, Radha Friedman, and Andrew Solomon will engage in a discussion about key themes of the symposium. The moderators will highlight cross-cutting issues, raise important questions of the day, and introduce the audience to the interactive technology component of the symposium.

10:00 – 11:30 **Session 2: Holistic Approaches**

Andrew Solomon, Moderator (Indonesia)

Senior Rule of Law Advisor, USAID

Benjamin Roth (El Salvador)

Assistant Professor, College of Social Work, University of South Carolina

Chris Jochnick (Rwanda, Kenya)

President & CEO, Landesa

Jin Ho Verdonschot (Kenya)

Director, HiiL Rechtwijzer Technology & Justice Technology Architect, HiiL Innovating Justice

This session will examine comprehensive and inclusive approaches to rule of law programming, looking beyond more traditional focuses on formal, state institutions. Drawing from their experiences, speakers will discuss lessons learned from rule of law programming that incorporate a variety of stakeholders, treat rule of law as a complex system, and include informal justice systems in its approach.

11:30 – 11:45 **Break**

11:45 – 1:15 **Session 3: Adaptation**

Radha Friedman, Moderator (Nepal)

Director of Programs, World Justice Project

David Alpher (Iraq)

Washington Associate, Saferworld

Heike Gramckow (Mongolia)

Lead Counsel, The World Bank

Karen Hall (Afghanistan)

Assistant Professor, Ohio Northern University

This session will explore ways in which rule of law practitioners have adjusted or redesigned programming when faced with unforeseen challenges during implementation. Understanding rule of law as a system of change, speakers will consider a variety of real-world challenges that they have faced in the field, such as changes in a host country's political environment, changes in donor policy priorities, changes in available resources and even natural disasters.

1:15 – 2:15 **Lunch and Distinguished Remarks**

Neil Levine

Director, Center of Excellence on Democracy, Human Rights and Governance, USAID

Over lunch, Neil Levine, Director of the Center of Excellence on Democracy, Human Rights and Governance at USAID will reflect on USAID's approach to innovation in rule of law programming. He will also discuss the challenges to innovation faced by U.S. Government agencies as well as opportunities for engagement with the public and private sector on these issues.

2:15 – 3:45 **Session 4: Sustainability**

Steve Austermiller, Moderator (Georgia)

Program Officer, Rule of Law Collaborative

Hamid Khan (Afghanistan)

Deputy Director, Rule of Law Collaborative

Lelia Mooney (Latin America)

Director, International Network to Promote the Rule of Law, United States Institute of Peace

Reinford Mwangonde (Malawi)

Founder, Citizens for Justice (Malawi)

This session will focus on strategies for extending the life of a program beyond its initial horizon. Speakers will discuss examples of rule of law programs that achieved longevity as a result of innovative design and flexibility, as well as obstacles to sustainability. In particular, speakers will draw on lessons from the discussion in the previous two sessions to address ways in which holistic approaches and adaptability can contribute to sustainability.

3:45 – 4:15 **Closing Session**

Joel Samuels will lead an interactive session with the audience to connect the topics discussed throughout the day and identify key themes that have emerged from the symposium.