



JUSTRAC

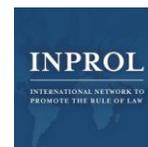
JUSTICE SECTOR TRAINING, RESEARCH
& COORDINATION PROGRAM

JUSTRAC Interagency Civil Law Training Program

April 4-5, 2018

Convened by the Rule of Law Collaborative at the University of South Carolina
In coordination with The United States Institute of Peace

United States Institute of Peace
2301 Constitution Avenue, N.W.
Washington, D.C.





JUSTRAC
JUSTICE SECTOR TRAINING, RESEARCH
& COORDINATION PROGRAM

Rule of Law Collaborative
U.S. DEPARTMENT OF STATE (INL)
JUSTRAC Interagency Civil Law Training Program

Course Objectives

This course will explore the unique features of the most widespread legal system in the world – the Civil Law system (sometimes also referred to as the inquisitorial system). On the first day, the course will introduce participants to the underpinnings and structure of the Civil Law system – its history, sources of law, codification process, legal education system, court structure, and actors. Next, it will explore how the system has been implemented in countries from different regions around the world. On Day 2, the course will use examples from specific program experiences to explore the role of different actors – the U.S. Government, multilateral organizations, foreign donors, and NGOs – in justice sector and rule of law programming in countries with Civil Law traditions. The second day of the course will include a specific session devoted to the transition from the inquisitorial to the adversarial model of litigation that has been undertaken in many countries in recent years to understand the lessons from efforts to assist in that transition. Finally, the course will conclude by looking to other trends in Civil Law systems in transition. All of the sessions in Day 2 will focus on practical applications and will discuss specific programs from Africa, Asia, Eastern Europe and post-Soviet states, Latin America, and the Middle East.

The goals of this training program are to: (1) improve the skills and knowledge of individuals funding, designing, managing and/or implementing justice sector programs in states with Civil Law systems; (2) introduce participants to the underlying principles, mechanisms, and actors of the Civil Law system; (3) provide practical lessons of the Civil Law system in action; (4) increase opportunities for coordination and collaboration among USG donors, implementers, nongovernmental organizations, academic institutions, international organizations, foreign governments and multilateral institutions; (5) strengthen justice sector programming so as to have real impacts on host countries' ability to reform their legal systems; and (6) provide stakeholders the opportunity to share their experiences and lessons regarding justice sector programming in countries with Civil Law systems through in-class exchanges and exercises.



Day 1: Wednesday, April 4, 2018

8:30AM-9:00AM **Registration**

9:00AM-9:30AM **Welcoming Remarks, Overview of JUSTRAC and the Training Program**

Joel H. Samuels, *Professor of Law, Director, Rule of Law Collaborative, Univ. of South Carolina*

Andrew Solomon, *Senior Rule of Law Advisor, Center of Excellence on Democracy, Rights, and Governance, USAID*

Shawna Wilson, *Senior Rule of Law Advisor, Bureau of Counterterrorism and Countering Violent Extremism, Dept. of State*

An overview of the JUSTRAC Program, as well as of the Rule of Law Collaborative. Discussion of takeaways from the course. Participants introduce themselves and share their past experiences and challenges working within Civil Law systems. Practitioners explain how the modules of the course connect to their field experiences.

9:30AM-10:45AM

SESSION 1: UNDERSTANDING THE FOUNDATIONS OF THE CIVIL LAW SYSTEM

Mathias Reimann, *Hessel E. Yntema Professor of Law, Univ. of Michigan*

Joel H. Samuels, *Rule of Law Collaborative, Univ. of South Carolina*

This opening session will introduce participants to the underpinnings of the Civil Law system, including the historical and philosophical bases for the system. It will examine the historical foundations of the oldest legal system in the world by emphasizing the genesis of this system from the Justinian Code to its contemporary variations, including the Napoleonic Code and its Germanic influences. This session will provide the background necessary to understand different aspects of the system itself including a basis for comparison to the common law system. The session will include a small group exercise designed to encourage interactive learning, networking, and interagency communication.

***Suggested reading/references: (see footnote regarding access):**

- [Dr. Vivienne O'Connor, "Practitioner's Guide: Common Law and Civil Law Traditions," USIP/INPROL, 2012, sections I-III](#)
- [John Merryman and Rogelio Pérez-Perdomo, *The Civil Law Tradition*, 3rd ed. \(Stanford University Press, 2007\), chap. I-III](#)
 - NOTE: [Chap. I-III are available via Google Books.](#)

10:45AM-11:00AM

Break

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11:00AM-12:15PM

SESSION 2: SOURCES OF LAW AND MAKING THE LAW

Mathias Reimann, *Univ. of Michigan*

Joel H. Samuels, *Rule of Law Collaborative, Univ. of South Carolina*

This session will explore the sources of law in the Civil Law system. One of the fundamental features of the Civil Law system is its codification process. Therefore, this session will address both the sources of law themselves and how the law is made in Civil Law countries, exploring the process of creating and using a code of laws and the role of case law. The presenters will consider these questions by looking at the Civil Law system on its own and by comparing it to the common law system. This session will include a small group exercise designed to encourage interactive learning, networking, and interagency communication.

***Suggested reading/references:**

- [Dr. Vivienne O'Connor, "Practitioner's Guide: Common Law and Civil Law Traditions," USIP/INPROL, 2012, section IV](#)
- [John Merryman and Rogelio Pérez-Perdomo, *The Civil Law Tradition*, 3rd ed. \(Stanford University Press, 2007\), chap. IV](#)

12:15PM-1:15PM

LUNCH BREAK AND NETWORKING

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1:15PM-2:30PM

SESSION 3: LEGAL EDUCATION AND LEGAL ACTORS IN CIVIL LAW SYSTEMS

Martín Böhmer, *Professor of Legal Theory, University of Buenos Aires Law School and National Director, Academic Community and Civil Society Relations, Ministry of Justice and Human Rights of Argentina*

Mathias Reimann, *Univ. of Michigan*

Joel H. Samuels, *Rule of Law Collaborative, Univ. of South Carolina*

This session will explore two important structural pieces that undergird the Civil Law system. First, participants will be introduced to the legal education system of Civil Law countries. Understanding how lawyers and judges are educated sheds important light on the actors who run the system itself. Second, this session will introduce the role of police, lawyers, prosecutors, notaries, and judges (including investigating judges, sitting judges and magistrates) in the Civil Law system both in direct terms and by reference to the roles of their counterparts in the common law system. The session will include a small group exercise designed to encourage interactive learning, networking, and interagency communication.

***Suggested reading/references:**

- [Dr. Vivienne O'Connor, "Practitioner's Guide: Common Law and Civil Law Traditions," USIP/INPROL, 2012, section V, VII](#)

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2:30PM-3:30PM

**SESSION 4: THE STRUCTURE OF COURTS AND THE ROLE OF PROCEDURE
IN THE CIVIL LAW**

Mathias Reimann, *Univ. of Michigan*

Joel H. Samuels, *Rule of Law Collaborative, Univ. of South Carolina*

This session will provide an overview of the structure of the courts in Civil Law systems in order to appreciate the overlay of the legal system itself and to understand the purpose and operation of specialized tribunals, such as constitutional and commercial courts. Next, this session will address the role of procedure in the civil law system (to include civil procedure, criminal procedure, and administrative procedure), contrasting directly with the common law system.

***Suggested reading/references:**

- [Dr. Vivienne O'Connor, "Practitioner's Guide: Common Law and Civil Law Traditions," USIP/INPROL, 2012, section VI](#)
- [John Merryman and Rogelio Pérez-Perdomo, *The Civil Law Tradition*, 3rd ed. \(Stanford University Press, 2007\), chap. VI](#)

3:30PM-3:45PM

BREAK

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3:45PM-5:00PM

SESSION 5: VARIATIONS IN THE CIVIL LAW SYSTEM

Steven Austermiller, *Senior Int'l Development Expert, Rule of Law Collaborative, Univ. of South Carolina (Moderator)*

Suren Avanesyan, *Senior Advisor, Rule of Law, Governance and Anti-Corruption, Bureau for Europe and Eurasia, USAID*

Martín Böhmer, *University of Buenos Aires, Ministry of Justice and Human Rights of Argentina*

Hamid Khan, *Deputy Director, Rule of Law Collaborative, Univ. of South Carolina*

In the developing world, legal systems do not follow a single model. The Civil Law system has been adopted – and adapted – across the world in a variety of different ways. This panel will offer insights into some of the geographic variations of the Civil Law system found in Latin America, the former Soviet Union, and the Middle East. Panelists will address specific countries, including Argentina, Jordan, and Russia. The panel will cover differences in the roles and strengths of various actors and sources of law that are seen when Civil Law systems are adapted in country-specific settings. This final session of Day 1 will explore four different variations from Asia, Latin America, and the Middle East.

*Suggested reading/references:

- [John Henry Merryman, David S. Clark, and John Owen Haley: *The Contemporary Civil Law Tradition: Europe, Latin America, and East Asia* \(Carolina Academic Press, 2015\), chap. 1\(A\)](#)
 - NOTE: Chap. 1(A) is available by clicking the hyperlink above and then clicking “View a sample of this title using the ReadNow feature.”
- [Noah Feldman, *The Fall and Rise of the Islamic State* \(Princeton University Press, 2012\), pp. 61-102](#)
- [Peter H. Solomon, Jr. and Todd S. Foglesong, *Courts and Transition in Russia: The Challenge of Judicial Reform*, 1st ed. \(Westview Press, 2000\)](#)
- [Kathryn Hendley, *Everyday Law in Russia*, 1st ed. \(Cornell University Press, 2017\)](#)

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Day 2: Thursday, April 5, 2018

8:30AM-9:00AM **Registration**

9:00AM-9:05AM **Overview to Day 2**

9:05AM-10:30AM **SESSION 6: HOW TO STRUCTURE U.S. GOVERNMENT PROGRAMS IN CIVIL LAW SYSTEMS**

Joel H. Samuels, *Rule of Law Collaborative, Univ. of South Carolina (Moderator)*

Angela Girard, *Program Manager for North America, INL, Dept. of State*

Jennifer Lewis, *Senior Governance and Rule of Law Advisor, Center of Excellence on Democracy, Rights, and Governance, USAID*

Paul Vaky, *Regional Director, Central and Eastern Europe/Near East, OPDAT, Dept. of Justice*

Shawna Wilson, *Bureau of Counterterrorism and Countering Violent Extremism, Dept. of State*

Presenters from a range of U.S. Government agencies will discuss how to plan, design, and implement justice sector/rule of law programs in Civil Law countries. They will discuss both successes and failures from their own experiences, focusing on the particular challenges faced when working in countries with a Civil Law system. This session will look to programs in Latin America, the former Soviet Union, and Southeast Asia.

***Suggested reading/references:**

- [“USAID Mexico Legal Education Program Performance Evaluation: Final Report,” USAID, 2016](#)
- [“Mexico Rule of Law Program II: Final Report,” USAID/MSD, 2010](#)
- [“Colombia Administration of Justice Program: Final Report,” USAID/Checchi Consulting, 2006](#)
- [Heike Gramckow, “Can US-Type Court Management Approaches Work in Civil Law Systems? Experiences from the Balkans and Beyond,” *European Journal on Criminal Policy and Research*, vol. 11, 2005](#)

10:30AM-10:45AM **BREAK**

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10:45AM-12:15PM

SESSION 7: THE ROLE OF MULTILATERAL AGENCIES, FOREIGN DONORS, AND NGOs IN CIVIL LAW STATES

Steven Austermler, *Rule of Law Collaborative, Univ. of South Carolina (Moderator)*

Greg Gisvold, *Senior Fellow, Rule of Law Collaborative, Univ. of South Carolina*

Mary Adele Greer, *Senior Criminal Law Advisor, ABA-ROLI*

Corrado Quinto, *Programs Advisor, L'Osservatorio Research Center for Civilian Victims of Conflict*

This panel will offer case studies on the role that the World Bank, UNDP, foreign donor agencies, and international NGOs play in justice sector and rule of law programming in Civil Law countries. Panelists will consider successes and failures and will offer insights into the challenges of donor coordination and opportunities for increased collaboration on the ground. This session will look to programs in Asia and the former Soviet Union.

***Suggested reading/references:**

- [“Criminal Justice Assessment Toolkit,” UNODC, 2017](#)

12:15PM-1:15PM

LUNCH BREAK

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1:15PM-2:45PM

SESSION 8: EXPLORING THE TRANSITION FROM THE INQUISITORIAL TO THE ADVERSARIAL MODEL

Hamid Khan, *Rule of Law Collaborative, Univ. of South Carolina (Moderator)*

Martín Böhmer, *University of Buenos Aires, Ministry of Justice and Human Rights of Argentina*

Greg Gisvold, *Rule of Law Collaborative, Univ. of South Carolina*

Paul Vaky, *OPDAT, Dept. of Justice*

In recent years, a number of states, particularly in Latin America, have undergone (or explored) a transition from the inquisitorial to the adversarial model of litigation, both criminal and civil. Through case studies taken from Eastern Europe, Latin America, and Southeast Asia, this panel will explore these transitions and evaluate the challenges and potential benefits of such a shift while offering lessons learned.

***Suggested reading/references:**

- [Nancy G. Cortés, Octavio Rodríguez Ferreira, and David A. Shirk, “Perspectives on Mexico’s Criminal Justice System: What Do Its Operators Think?” University of San Diego/MacArthur Foundation, 2016](#)
- [J.D. King, “The Public Defender as International Transplant,” University of Pennsylvania Journal of International Law, vol. 38, issue 3, 2017](#)

2:45PM-3:00PM

BREAK

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3:00PM-4:30PM

SESSION 9: FUTURE TRENDS IN THE CIVIL LAW SYSTEMS IN TRANSITION

Steven Austermiller, *Rule of Law Collaborative, Univ. of South Carolina (Moderator)*

Greg Gisvold, *Rule of Law Collaborative, Univ. of South Carolina*

Aparna Polavarapu, *Assistant Professor of Law, University of South Carolina*

This final session will build on the previous session and will focus on other reform trends in Civil Law states. While the previous session focused specifically on one aspect of the legal system that has been undergoing significant change in some countries, this panel will look at other areas where a transition from Civil Law principles is taking place or may occur in the near future. Panelists will focus on concrete examples from a range of different countries and regions. Topics of this session may include the introduction of prosecutor-led investigations and the practical implications of this (more ambiguity in their roles, for example). Another topic that may be discussed in this session expands on the discussion from the previous session and asks how the change from inquisitorial to adversarial approaches has affected the roles of justice sector actors and how traditional justice sector programs (like skills training) need to better adapt to address those role changes. This session will look to trends in Africa, Latin America, and the former Soviet Union. The session will include a small group exercise designed to encourage interactive learning, networking, and interagency communication.

***Suggested reading/references:**

- [Dr. Vivienne O'Connor, "Practitioner's Guide: Common Law and Civil Law Traditions," USIP/INPROL, 2012, section VIII](#)
- [John Merryman and Rogelio Pérez-Perdomo, *The Civil Law Tradition*, 3rd ed. \(Stanford University Press, 2007\), chap. XX](#)

4:30PM-5:00PM

Wrap-up and Feedback

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