



# JUSTRAC

## Comparative Law

April 30 – May 1, 2024

**Virtual Platform:**

Blackboard Collaborate Ultra

Participants will receive instructions regarding access closer to the dates of the program.

**Additional information:**

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# JUSTRAC

## U.S. DEPARTMENT OF STATE (INL) JUSTRAC Training - Comparative Law

### Course Objectives

Governance and rule of law practitioners work in and with a variety of legal systems to support developing country partners in their reform efforts. Globally, legal systems vary widely and can be generally categorized as belonging to a “common law” or “civil law” family of legal systems. However, most countries are to varying degrees hybrid systems that employ features of both. In addition, most countries are also legally “plural,” meaning that disputants can pursue resolution either through the formal (and likely hybrid) system or through a traditional or customary legal process. Indeed, some estimates are that such informal justice systems resolve nearly 80% of civil disputes globally.

Religious law also plays an important part in the legal systems of many countries. Knowing how a country’s justice system operates, identifying key players, and tracking how the institutions cooperate (or not) to investigate and prosecute crime and resolve civil conflict is critical for designing and implementing interventions to strengthen a county’s adherence to international norms, increase compliance with their international legal obligations, improve citizen access to justice, and bolster the ability to combat cross-border or transnational crime. Doing so effectively is strengthened by a solid understanding of comparative law and the distinctions and similarities between legal systems.

Understanding how to employ comparative law as a practical tool will advance your understanding of a broad range of legal and development issues. Most professionals come to understand their country’s legal system without a deep appreciation of how other country’s legal systems function. The absence of comparative law awareness can invite inadvertent missteps during the design and implementation phases of rule of law and good governance development assistance programming.

This two-day learning event will introduce participants to the main legal systems employed globally. An overview of the features of common law and civil law will be provided, in addition to salient aspects of Islamic law. Informal justice systems – although highly variable, and with some countries using multiple informal mechanisms – have certain common characteristics that are also important to understand.

This event will provide practitioners with an overview of these common characteristics, and how rule of law programming can work with informal justice systems to meet outcomes that complement work done with formal or state systems. Participants will be challenged to broaden the way in which they think about how legal systems operate in general and will leave the training with a more sophisticated understanding of the varied legal systems employed globally, what resources are available to get information about a country’s legal system, and how different legal systems provide due process and achieve justice outcomes using comparable but not identical means.



# JUSTRAC

## DAY ONE: UNDERSTANDING COMPARATIVE LAW

Morning Session, April 30<sup>th</sup>, 2024

### 9:00AM – 9:05AM LOGIN AND TECHNOLOGY CHECK

Participants should sign on to the platform a little early to receive help or a brief introduction to the platform to mitigate any technology issues.

### 9:05AM – 9:15AM INTRODUCTIONS AND WELCOME

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

This session will provide an overview of the JUSTRAC 3 Program, the Rule of Law Collaborative, the program agenda, and ground rules and logistics.

### 9:15AM – 10:30AM THE ROLE OF COMPARATIVE LAW IN RULE OF LAW PROGRAMMING

Scott Ciment, *Senior Rule of Law Expert, Rule of Law Collaborative, University of South Carolina*

In this session, participants will explore different definitions of the rule of law, focusing on the attributes of the rule of law most important to average citizens, notwithstanding the legal system of their country. The session will then turn to a discussion of how justice more broadly is pursued in countries using different legal paradigms and the importance of identifying those attributes of a justice system that provide procedural justice. Relevant terms will be defined to help frame further discussions on the major legal traditions in use worldwide.

#### Learning objectives

- Participants will understand various definitions of the rule of law.
- Participants will learn important terminology and the common attributes of different legal systems.
- Participants will learn why it is important to assess how the different features of a country's justice system enhance its legitimacy.
- Attributes of legitimacy in justice systems will be discussed

#### Resources

- Asynchronous Learning Module, "Rule of Law: Attributes and Definitions"
- Public Service Video: "Small Claims Courts in the Philippines"

### 10:30AM – 10:45AM BREAK

**10:45AM – 12:00PM      Overview of Civil and Common Law Systems**

Scott Ciment, *Senior Rule of Law Expert, Rule of Law Collaborative, University of South Carolina*

In this session, participants will explore the key distinguishing features of common law and civil law legal systems, and how the global trend towards convergence is producing more hybrid systems that combine aspects of both civil and common law to produce more efficient and equitable justice outcomes. Participants will also learn how the trend toward hybridization of common law and civil law practices affects rule of law programming. Finally, participants will discuss the lessons learned from efforts to introduce features of common law – notably adversarial processes of criminal litigation – into civil law legal systems in Mexico and SE Asia.

**Learning objectives**

- Participants will learn how civil and common law systems work in comparison to each other.
- Participants will discuss several country examples of hybrid common law/civil law jurisdictions.
- Participants will have awareness of the strengths and weaknesses of efforts to incorporate adversarial criminal justice processes into countries with civil law traditions.

**Resources**

- Asynchronous Learning Module, “Civil Law: Key Features, Actors, and Consequences to Remember”
- Asynchronous Learning Module, “Origins of the Common Law and Civil Law”
- Video of Panel Discussion: “Introducing Adversarial Criminal Justice in Mexico”

**12:00PM – 1:30PM      LUNCH BREAK**

**Afternoon Session, April 30<sup>th</sup>, 2024**

**1:30PM – 2:30PM      RELIGIOUS LEGAL SYSTEMS**

Asma Peracha, Program Officer, *Rule of Law Collaborative, University of South Carolina*

In this session, participants will learn of the fundamentals of Islamic Law and Shari’a Law and how religious law has influenced the legal systems of predominantly Muslim population countries. Participants will also have a brief

introduction to Hindu and Canon law and how they influence legal systems for a large percentage of the global population.

### **Learning objectives**

- Participants will learn how Islamic religious texts play important roles in the justice systems of Muslim-majority countries.
- Participants will be exposed to how Canon law influenced both common and civil law traditions, and how Hindu law shapes justice outcomes for the world's most populated country.

### **Resources**

- Asynchronous Learning Module, “Islamic Law: Sources, Principles, and Schools of Thought”

**2:30PM – 2:45PM**

**BREAK**

**2:45PM – 4:00PM**

**INFORMAL JUSTICE SYSTEMS, LEGAL PLURALISM AND REBEL COURTS**

Scott Ciment, Senior Rule of Law Expert, *Rule of Law Collaborative, University of South Carolina*

In this session, participants will discuss the variety of informal justice systems used in many countries. Participants will explore what types of disputes are commonly addressed by tribal, customary law and community dispute resolution practices, and how most countries have pluralistic informal and formal justice systems operating in tandem. The session will also cover courts created by non-state actors during war time, and how their legitimacy is viewed by the population and international actors.

### **Learning objectives**

- Participants will learn about the scope, scale, and types of IJS practiced globally, and how they establish their legitimacy alongside the formal justice system as arbiters of personal and community disputes.
- Participants will learn about rule of law interventions implemented in different countries that intersected with IJS.
- Participants will be exposed to different IJS processes in post-conflict countries, ranging from tribal or clan led IJS to justice services provided by armed insurgencies.

### **Resources**

- “Indigenous Peace Making” Native American Rights Fund
- “Informal Justice in a Fragile State: Somalia”
- “Rebel court fills void amid Syrian civil war”



## DAY TWO: COMPARATIVE CRIMINAL LAW AND COUNTRY SPECIFIC EXAMPLES

Morning Session, May 1<sup>st</sup>, 2024

### 9:00AM – 10:30AM COMPARATIVE CRIMINAL LAW

Karen Hall, *Deputy Director, Rule of Law Collaborative, University of South Carolina*

In this session, participants will be introduced to the key differences of how crimes are investigated and adjudicated in common law and civil law countries, and how each system assigns distinct and various levels of authority. This session will also cover substantive, procedural, and punitive law.

#### Learning objectives

- Participants will have a better appreciation of how countries take varying approaches to providing due process and checks and balances during criminal investigations and prosecutions.
- Participants will learn the distinction of key roles of criminal justice actors in common and civil law countries.

### 10:30AM – 10:45AM BREAK

### 10:45AM – 12:00PM Comparative Legal Systems in Context: The People’s Republic of China

Kiel Downey, *Director of Research and Resilience Initiatives, Rule of Law Collaborative, University of South Carolina*

Participants will learn about salient features of the legal system of the People’s Republic of China (PRC), as well as relevant justice sector actors, and how they compare to those in other legal systems. Participants will receive an overview of how the PRC’s legal system operates in the context of one-Party rule, as well as an overview of selected aspects of the PRC’s approach to international development activities.

#### Learning objectives

- Be able to identify key features and actors in the PRC’s legal system, as well as understand how they are similar or different from those in other legal systems.
- Understand selected aspects of the PRC’s approach to international development activities.

### 12:00PM – 1:30PM LUNCH BREAK

**1:30PM – 2:30PM**      **COMPARATIVE JUDICIAL SYSTEMS**

**2:30PM – 3:00PM**      **PANEL PRESENTATION ON APPLIED COMPARATIVE LAW + Q&A**

Sharan Parmar, President, *Glasshouse Initiatives*

Erin Lane, Asst. U.S. Attorney, *Eastern District of Michigan*

Steven Austermler, *Deputy Director, Rule of Law Collaborative, University of South Carolina*

Moderated by Abby Natividad, *Program Officer, Rule of Law Collaborative, University of South Carolina*

Participants will hear from three rule of law practitioners about their experience working in different legal systems to implement justice sector support programming, the challenges and lessons learned. Three regions will be covered, including Central and Eastern Europe, East Africa, and Latin America.

**3:00PM-3:15PM**      **BREAK**

**3:15PM-4:00PM**      **INTERACTIVE LEARNING REVIEW**