

GAO

Testimony

House Committee on Government Reform,
Subcommittee on National Security, Veterans Affairs,
and International Relations

For Release on Delivery
Expected at 11:00 a.m., EST
Thursday, May 17, 2001

FORMER SOVIET UNION

U.S. Rule of Law Assistance Has Had Limited Impact and Sustainability

Statement of Jess T. Ford, Director, International Affairs
and Trade



G A O

Accountability * Integrity * Reliability

Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss the U.S. rule of law program in the new independent states (NIS) of the former Soviet Union.¹ My testimony will highlight some of the major points that we made in the report we are releasing today.²

Since 1991, the new independent states of the former Soviet Union have been struggling to overcome a long tradition of totalitarian rule marked by an arbitrary system of justice and state suppression of human rights. To support these states' transition to a more open and democratic style of government, the U.S. government has committed about \$216 million in assistance from fiscal years 1992 through 2000 to help them develop the sustainable institutions, traditions, and legal foundations for establishing a strong rule of law. The U.S. Agency for International Development (USAID) has administered about 49 percent of this funding while Justice (25 percent), State (22 percent), and Treasury (4 percent) administer the rest.³

What do we mean by the term "rule of law"? According to the U.S. Agency for International Development, the rule of law is premised on a government being able to provide a predictable and transparent legal system. Fair and effective judicial and law enforcement institutions to protect citizens against the arbitrary use of state authority and lawless acts are also a basic part of such a system.

My discussion of whether the U.S. government's rule of law program in the new independent states has been effective will focus on (1) our assessment of the extent to which the program has had an impact on the development of the rule of law and whether program results were

¹These nations are Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

²See *U.S. Rule of Law Assistance Has Had Limited Impact* (GAO-01-354, Apr. 17, 2001).

³Almost all funding for rule of law assistance in the new independent states of the former Soviet Union, authorized under the Freedom Support Act of 1992, is appropriated to USAID and the Department of State. A portion of this money is allocated to the Departments of Justice and the Treasury through interagency fund transfers.

sustainable⁴ and (2) our identification of factors affecting the program's impact and sustainability.

Our review focused primarily on Russia, Ukraine, Armenia, and Georgia, countries where the U.S. Agency for International Development has defined the development of the rule of law as a strategic objective.⁵ We conducted fieldwork in Russia and Ukraine, which have received about half of the total U.S. rule of law assistance to this region, and interviewed numerous U.S. government and host-country officials, as well as representatives of many nongovernmental organizations and other project beneficiaries.

Summary

The U.S. government's rule of law assistance efforts in the new independent states of the former Soviet Union have had limited impact so far, and results may not be sustainable in many cases. U.S. agencies have had some success in introducing a variety of innovative legal concepts and practices in these countries. For example, the United States helped establish legal education clinics in Russian and Ukrainian law schools to provide practical training for future lawyers as well as greater access by the poor to legal remedies for their problems. However, the U.S. assistance has not often had a major, long-term impact on the evolution of the rule of law in these countries. In some cases, countries have not clearly adopted on a wide scale the new concepts and practices that the United States has advocated. In other cases, continuation or expansion of the innovations depends on further funding from the U.S. government or other donors. In fact, the rule of law appears to have actually deteriorated in recent years in several of these countries, including Russia and Ukraine, according to data used to measure the results of U.S. development assistance in the region and a host of U.S. government and foreign officials we interviewed during our study.

It is clear that establishing the rule of law is a complex and long-term undertaking in the new independent states, where laws and institutions were designed to further the power of the state. In our review, we found that the impact and sustainability of U.S. rule of law programs have been

⁴Sustainability is the extent to which the benefits of a program extend beyond the program's life span.

⁵According to the agency, a strategic objective is the most ambitious result that a U.S. Agency for International Development operating unit, such as a country mission, can materially affect, and for which it is willing to be held accountable.

affected by a number of factors, including a limited political consensus for reform, foreign government budget constraints to institutionalize some of the more expensive innovations, and weaknesses in how the U.S. agencies designed and implemented these programs. The first two factors have created a very difficult environment in which to foster rule of law development. As a result, many key legal and institutional improvements have yet to be made, including the passage of some post-Soviet-era criminal and civil codes and procedures. Achieving real progress in this area is likely to take many more years and will be highly dependent on host country willingness to undertake meaningful political reforms.

Moreover, U.S. agencies have not always designed and implemented these aid projects with an emphasis on achieving sustainable outcomes and monitoring program impact and sustainability. The Departments of State, Justice, and the Treasury have not developed specific strategies for achieving long-term objectives, or desired “outcomes,” of their assistance projects, such as reforming national law enforcement practices. Instead, efforts have focused on achieving short-term “outputs,” such as training a finite number of people. Further, none of the agencies, including USAID, have effective monitoring and evaluation systems in place to fully assess the longer-term results and sustainability of their efforts. Recently, U.S. agencies have begun to pay increased attention to improving project planning and evaluation and are in the process of making program reforms. However, the U.S. government has committed, but not yet spent, approximately \$30 million for law enforcement training projects, many of which still have these management weaknesses. Unless these funds are reprogrammed for other purposes or the projects are redesigned, these projects may have limited impact and sustainability.

In our report on this program we recommended that the Secretary of State, the Attorney General, the Secretary of the Treasury, and the USAID Administrator require that each rule of law project that their agencies implement be designed with (1) specific strategies for achieving impact and sustainable results and (2) a provision for monitoring and evaluating outcomes. In commenting on a draft of our report, State, Justice, and USAID generally agreed with our recommendations and indicated that they have begun to undertake some management improvements.⁶ However, these agencies were concerned that we measured program success by too high a standard given the complex and long-term task of

⁶The Department of Treasury did not comment on the report draft.

establishing the rule of law and that we did not adequately acknowledge some of the program's positive accomplishments. We modified our report, as appropriate, to address these and other agency comments, but our conclusions remain essentially unchanged.

U.S. Assistance Has Had; Limited Results Project Sustainability in Question

Despite some positive developments, U.S. rule of law assistance in the new independent states of the former Soviet Union has achieved limited results, and the sustainability of those results is uncertain. Experience has shown that establishing the rule of law in the new independent states is a complex undertaking and is likely to take many years to accomplish. Although the United States has succeeded in exposing these countries to innovative legal concepts and practices that could lead to a stronger rule of law in the future, we could not find evidence that many of these concepts and practices have been widely adopted. At this point, many of the U.S.-assisted reforms in the new independent states are dependent on continued donor funding to be sustained.

Rule of Law Remains Elusive in the New Independent States

Despite nearly a decade of work to reform the systems of justice in the new independent states of the former Soviet Union, progress in establishing the rule of law in the region has been slow overall, and serious obstacles remain. As shown in table 1, according to Freedom House, a U.S. research organization that tracks political developments around the world, the new independent states score poorly in the development of the rule of law, and, as a whole, are growing worse over time. These data, among others, have been used by USAID and the State Department to measure the results of U.S. development assistance in this region.

Table 1: Rule of Law Ratings for the New Independent States, 1997-2000

Country	1997	1998	1999-2000	Trend
Armenia	4.75	5.00	5.00	Worse
Azerbaijan	5.50	5.50	5.50	No change
Belarus	6.00	6.25	6.50	Worse
Georgia	5.00	4.75	4.00	Better
Kazakhstan	5.00	5.25	5.50	Worse
Kyrgyzstan	4.50	4.50	5.00	Worse
Moldova	4.25	4.00	4.00	Better
Russia	4.00	4.25	4.25	Worse
Tajikistan	6.25	6.00	5.75	Better
Turkmenistan	6.75	6.75	6.75	No change
Ukraine	3.75	4.00	4.50	Worse
Uzbekistan	6.50	6.50	6.50	No change
Average for new independent states	5.19	5.23	5.27	Worse
Average for other post-Communist states	3.04	3.39	3.28	Worse

Note: Ratings are based on a scale from 1 to 7, with 1 as the best rating.

Source: Freedom House, Nations in Transit (Washington, D.C.: Freedom House, 1997, 1998, 1999-2000).

In the two new independent states where the United States has devoted the largest amount of rule of law funding—Russia and Ukraine—the situation appears to have deteriorated in recent years. The scores have improved in only one of the four countries (Georgia) in which USAID has made development of the rule of law one of its strategic objectives and the United States has devoted a large portion of its rule of law assistance funding.

I want to emphasize that we did not use these aggregate measures alone to reach our conclusions about the impact and sustainability of U.S. assistance. Rather, we reviewed many of the projects in each of the key elements of U.S. assistance. We examined the results of these projects, assessing the impact they have had as well as the likelihood that that impact would continue beyond U.S. involvement in the projects.

Five Elements of the U.S. Rule of Law Assistance Program

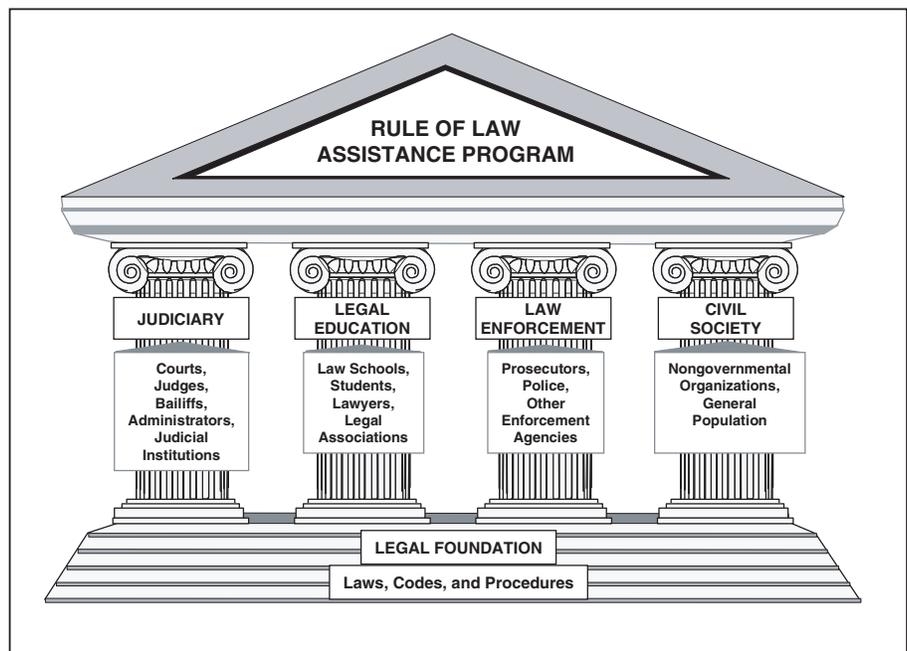
The U.S. government funds a broad range of activities as part of its rule of law assistance. This includes efforts aimed at helping countries develop five elements of a modern legal system (see Fig. 1):

1. a post-communist foundation for the administration of justice,

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2. an efficient, effective, and independent judiciary,
 3. practical legal education for legal professionals,
 4. effective law enforcement that is respectful of human rights, and
 5. broad public access to and participation in the legal system.

In general, USAID implements assistance projects primarily aimed at development of the judiciary, legislative reform, legal education, and civil society. The Departments of State, Justice, and the Treasury provide assistance for criminal law reform and law enforcement projects.

Figure 1: Key Elements of U.S. Rule of Law Assistance Program



Source: GAO

Legal Foundation; Some Key Reforms Have Been Passed, but Others Remain Unfinished

A key focus of the U.S. rule of law assistance program has been the development of a legal foundation for reform of the justice system in the new independent states. U.S. projects in legislative assistance have been fruitful in Russia, Georgia, and Armenia, according to several evaluations of this assistance, which point to progress in passing key new laws. For example, according to a 1996 independent evaluation of the legal reform assistance program, major advances in Russian legal reform occurred in

areas that USAID programs had targeted for support, including a new civil code and a series of commercial laws and laws reforming the judiciary.⁷

Despite considerable progress in a few countries, major gaps persist in the legal foundation for reform. In particular, Ukraine, a major beneficiary of U.S. rule of law assistance, has not yet passed a new law on the judiciary or new criminal, civil, administrative, or procedure codes since a new constitution was passed in 1996. Furthermore, a major assistance project aimed at making the Ukrainian parliament more active, informed, and transparent has not been successful, according to U.S. and foreign officials we interviewed. In Russia, the government has still not adopted a revised criminal procedure code, a key component of the overall judicial reform effort, despite assistance from the Department of Justice in developing legislative proposals. According to a senior Justice official, Russia is still using the autocratic 1963 version of the procedure code that violates fundamental human rights.

Judiciary: Greater Independence Achieved in Some Respects, but Continued Reform and Retraining Needed

The second element in the U.S. government's rule of law program has been to foster an independent judiciary with strong judicial institutions and well-trained judges and court officers who administer decisions fairly and efficiently. The United States has contributed to greater independence and integrity of the judiciary by supporting key new judicial institutions and innovations in the administration of justice and by helping to train or retrain many judges and court officials. For example, in Russia, USAID provided training, educational materials, and other technical assistance to strengthen the Judicial Department of the Supreme Court. This new independent institution was created in 1998 to assume the administrative and financial responsibility for court management previously held by the Ministry of Justice. USAID and the Department of Justice have also supported the introduction of jury trials in 9 of Russia's 89 regions for the first time since 1917. Although the jury trial system has not expanded beyond a pilot phase, administration of criminal justice has been transformed in these regions—acquittals, unheard of during the Soviet era, are increasing under this system (up to 16.5 percent of all jury trials by the most recent count).

However, U.S. efforts we reviewed to help retool the judiciary have had limited impact so far. USAID assistance efforts aimed at improving

⁷ *USAID Programs Supporting Commercial Law and Other Legal Reform in the Russian Federation* (Washington, D.C.: Georgetown University, Sept. 1996).

training for judges have had relatively little long-term impact. Governments in Russia and Ukraine, for example, have not yet developed judicial training programs with adequate capacity to reach the huge numbers of judges and court officials who operate the judiciaries in these nations. In Russia, the capacity for training judges remains extremely low. The judiciary can train each of its 15,000 judges only about once every 10 years. In Ukraine, the two judicial training centers we visited that had been established with USAID assistance were functioning at far below capacity; in fact one center had been dismantled entirely. Courts still lack full independence, efficiency, and effectiveness. Throughout the region, much of the former structure that enabled the Soviet government to control judges' decisions still exists, and citizens remain suspicious of the judiciary.

Legal Education: More Practical Methods Introduced but Not Widely Practiced

The third element of the U.S. assistance program has been to modernize the system of legal education in the new independent states to make it more practical and relevant. The United States has sponsored a variety of special efforts to introduce new legal educational methods and topics for both law students and existing lawyers. Notably, USAID has introduced legal clinics into several law schools throughout Russia and Ukraine. These clinics allow law students to get practical training in helping clients exercise their legal rights. They also provide a service to the community by facilitating access to the legal system by the poor and disadvantaged. With the training, encouragement, and financing provided by USAID, there are about 30 legal clinics in law schools in Russia and about 20 in Ukraine. USAID has also provided a great deal of high-quality continuing education for legal professionals, particularly in the emerging field of commercial law. Traditionally, little training of this type was available to lawyers in the former Soviet Union.

However, the impact and sustainability of these initiatives are in doubt, as indigenous institutions have not yet demonstrated the ability or inclination to support the efforts after U.S. and other donor funding ends. For example, in Russia, we could not identify any organizations that were engaged in reprinting legal texts and manuals developed with U.S. assistance. In Ukraine, U.S. assistance has not been successful in stimulating law school reforms, and legal education remains rigidly theoretical and outmoded by western standards. Students are not routinely taught many skills important to the practice of law, such as advocacy, interviewing, case investigation, negotiation techniques and legal writing. The United States has largely been unsuccessful at fostering the development of legal associations, such as bar associations, national judges associations, and law school associations, to carry on this

educational work in both Russia and Ukraine. U.S. officials had viewed the development of such associations as key to institutionalizing modern legal principles and practices and professional standards on a national scale as well as serving as conduits for continuing legal education for their members.

**Law Enforcement:
Training, Models, and
Research
Provided, but Routine
Application Is Not Evident**

The fourth component of the U.S. government's rule of law program involves introducing modern criminal justice techniques to local law enforcement organizations. As part of this effort, the United States has provided many training courses to law enforcement officials throughout the new independent states of the former Soviet Union, shared professional experiences through international exchanges and study tours, implemented several model law enforcement projects, and funded scholarly research into organized crime. These programs have fostered international cooperation among law enforcement officials, according to the Department of Justice. U.S. law enforcement officials we spoke to have reported that, as a result of these training courses, there is a greater appreciation among Russians and Ukrainians of criminal legal issues for international crimes of great concern in the United States, such as organized crime, money laundering, and narcotics and human trafficking. They have also reported a greater willingness of law enforcement officials to work with their U.S. and other foreign counterparts on solving international crimes.

However, we found little evidence that the new information disseminated through these activities has been routinely applied in law enforcement in the new independent states. In Russia and Ukraine we could not identify any full-scale effort in local law enforcement training institutions to replicate or adapt the training for routine application. Nor could we find clear evidence that the U.S. techniques have been widely embraced by training participants. Furthermore, though the United States has sponsored significant amounts of research on organized crime in Russia and Ukraine, we could not determine whether the results of this research had been applied by law enforcement agencies.

Civil Society: Awareness and Involvement Have Increased, but Many Nongovernmental Organizations' Activities Depend on Continued International Donor Support

The fifth element of the rule of law assistance program is the expansion of access by the general population to the justice system. In both Russia and Ukraine, the United States has fostered the development of a number of nongovernmental organizations that have been active in promoting the interests of groups, increasing citizens' awareness of their legal rights, and helping poor and traditionally disadvantaged people gain access to the courts to resolve their problems. For example, in Russia, USAID has sponsored a project that has helped trade unions and their members gain greater access to the legal system, leading to court decisions that have bolstered the legal rights of millions of workers. In Ukraine, environmental advocacy organizations sponsored by USAID have actively and successfully sued for citizens' rights and greater environmental protection.

Despite their high level of activity in recent years, these nongovernmental organizations still face questionable long-term viability. Most nongovernmental organizations we visited received very little funding from domestic sources and were largely dependent upon foreign donor contributions to operate. The sustainability of even some of the most accomplished organizations we visited remains to be seen.

Limits on Impact and Sustainability Stem From Political, Economic, and Program Management Issues

At least three factors have constrained the impact and sustainability of U.S. rule of law assistance: (1) a limited political consensus on the need to reform laws and institutions, (2) a shortage of domestic resources to finance many of the reforms on a large scale, and (3) a number of shortcomings in U.S. program management. The first two factors, in particular, have created a very challenging climate for U.S. programs to have major, long-term impact in these states, but have also underscored the importance of effective management of U.S. programs.

Political Consensus on Reform Slow in Forming

In key areas in need of legal reform, U.S. advocates have met some steep political resistance to change. In Ukraine and Russia, lawmakers have not been able to reach consensus on critical new legal codes upon which reform of the judiciary could be based. In particular, Ukrainian government officials are deadlocked on legislation reforming the judiciary, despite a provision in the country's constitution to do so by June 2001. Numerous versions of this legislation have been drafted by parties in the parliament, the executive branch, and the judiciary with various political and other agendas. Lack of progress on this legislation has stymied reforms throughout the justice system. In Russia's Duma (parliament), where the civil and the criminal codes were passed in the mid-1990s, the criminal procedure code remains in draft form. According to a senior

Department of Justice official, the Russian prosecutor's office is reluctant to support major reforms, since many would require that institution to relinquish a significant amount of the power it has had in operating the criminal justice system. While U.S. officials help Russian groups to lobby for legislative reforms, adoption of such reforms remains in the sovereign domain of the host country.

In the legal education system as well, resistance to institutional reform has thwarted U.S. assistance efforts. USAID officials in Russia told us that Russian law professors and other university officials are often the most conservative in the legal community and the slowest to reform. A USAID-sponsored assessment of legal education in Ukraine found that there was little likelihood for reform in the short term due to entrenched interests among the school administration and faculty who were resisting change.⁸

Policymakers have not reached political consensus on how or whether to address the legal impediments to the development of sustainable nongovernmental organizations. Legislation could be adopted that would make it easier for these organizations to raise domestic funds and thus gain independence from foreign donors.

Weak Economic Conditions Make Funding Reforms Difficult

Historically slow economic growth in the new independent states has meant limited government budgets and low wages for legal professionals and thus limited resources available to fund new initiatives. While Russia has enjoyed a recent improvement in its public finances stemming largely from increases in the prices of energy exports, public funds in the new independent states have been constrained. Continuation or expansion of legal programs initially financed by the United States and other donors has not been provided for in government budgets. For example, in Russia, the system of jury trials could not be broadened beyond 9 initial regions, according to a senior judiciary official, because it was considered too expensive to administer in the other 89 regions. In Ukraine, according to a senior police official we spoke to, police forces often lack funds for vehicles, computers, and communications equipment needed to implement some of the law enforcement techniques that were presented in the U.S.-sponsored training.

⁸ *Ukraine Rule of Law Assessment and Strategy Recommendations* (Washington D.C.: Management Systems International, 1999).

Program Management Weaknesses Affect Impact and Sustainability of Aid

U.S. agencies implementing the rule of law assistance program have not always managed their projects with an explicit focus on achieving sustainable results, that is, (1) developing and implementing strategies to achieve sustainable results and (2) monitoring projects results over time to ensure that sustainable impact was being achieved. These are important steps in designing and implementing development assistance projects, according to guidance developed by USAID.⁹

We found that, in general, USAID projects were designed with strategies for achieving sustainability, including assistance activities intended to develop indigenous institutions that would adopt the concepts and practices USAID was promoting. However, at the Departments of State, Justice, and the Treasury, rule of law projects we reviewed often did not establish specific strategies for achieving sustainable development results. In particular, the law enforcement-related training efforts we reviewed were generally focused on achieving short-term objectives, such as conducting training courses or providing equipment and educational materials; they did not include an explicit approach for longer-term objectives, such as promoting sustainable institutional changes and reform of national law enforcement practices. According to senior U.S. Embassy officials in Russia and Ukraine, these projects rarely included follow-up activities to help ensure that the concepts taught were being institutionalized or having long-term impact after the U.S. trainers left the country.

We did not find clear evidence that U.S. agencies systematically monitored and evaluated the impact and sustainability of the projects they implemented under the rule of law assistance program. Developing and monitoring performance indicators is important for making programmatic decisions and learning from past experience, according to USAID. We found that the Departments of State, Justice, and Treasury have not routinely assessed the results of their rule of law projects. In particular, according to U.S. agency and embassy officials we spoke to, there was usually little monitoring or evaluation of the law enforcement training courses after they were conducted to determine their impact. Although USAID has a more extensive process for assessing its programs, we found

⁹For more information, see “Results-Oriented Assistance: a USAID Sourcebook,” available on the World Wide Web at www.usaid.gov. Although this guidance has not been formally adopted by other government agencies, it reflects the expertise of the U.S. government’s most experienced development agency and is instructive to all agencies involved in development assistance.

that the results of its rule of law projects in the new independent states of the former Soviet Union were not always apparent. The results of most USAID projects we reviewed were reported in terms of project outputs, such as the number of USAID-sponsored conferences or training courses held, the number and types of publications produced with project funding, or the amount of computer and other equipment provided to courts. Measures of impact and sustainability were rarely used.

State has recently recognized the shortcomings of its training-oriented approach to law enforcement reforms. As a result, it has mandated a new approach for implementing agencies to focus more on sustainable projects. Instead of administering discrete training courses, for example, agencies and embassies will be expected to develop longer-term projects. Justice has also developed new guidelines for the planning and evaluation of some of its projects to better ensure that these projects are aimed at achieving concrete and sustainable results.¹⁰ These reform initiatives are still in very early stages of implementation.

It remains to be seen whether future projects will be more explicitly designed and carried out to achieve verifiably sustainable results. One factor that may delay the implementation of these new approaches is a significant backlog in training courses that State has already approved under this program. As of February 2001, about \$30 million in funding for fiscal years 1995 through 2000 has been obligated for law enforcement training that has not yet been conducted.¹¹ U.S. law enforcement agencies, principally the Departments of Justice and the Treasury, plan to continue to use these funds for a number of years to pay for their training activities, even though many of these activities have the same management weaknesses as the earlier ones we reviewed. Unless these funds are reprogrammed for other purposes or the projects are redesigned to reflect the program reforms that State and Justice are putting in place, projects may have limited impact and sustainability.

¹⁰These guidelines govern projects implemented by Justice's Criminal Division and do not extend to other agencies within the Department that implement law enforcement training, such as the Federal Bureau of Investigation, the Drug Enforcement Administration, and the Immigration and Naturalization Service.

¹¹The precise amount of funding is unclear as State program officials believe that the implementing agencies may have actually conducted some unknown amount of this training but not yet submitted necessary documentation to State for reimbursement.

To help improve the impact and sustainability of the U.S. rule of law program in the new independent states, we have recommended that the Secretary of State, the Attorney General, the Secretary of the Treasury, and the USAID Administrator, who together control almost all of the program's funding, require that new rule of law projects be designed with (1) specific strategies for achieving impact and sustainable results and (2) a provision for monitoring and evaluating outcomes. Furthermore, to improve the likelihood that project funds currently budgeted but not yet spent achieve sustainable results, the Secretary of State, the Attorney General, and the Secretary of the Treasury should jointly review the current pipeline of projects to ensure that all projects meet the above criteria, including reprogramming of unspent assistance funds, as necessary.

In commenting on a draft of our report, State, Justice, and USAID generally agreed with us that the program management improvements we recommended are needed and, in some cases, have already begun to take actions consistent with these recommendations. However, USAID and State also expressed concern that our assessment set too high a standard for program success and did not adequately recognize the complex and long-term nature of this development process. Also, the agencies indicated that we did not adequately recognize some significant program activities, achievements, and evaluation efforts. State and USAID also expressed concern that we did not rank the three factors that have limited the impact and sustainability of the program in order of importance; they believe that program management weaknesses are the least important factor and the lack of political consensus is the most important. In the final version of our report we made revisions, where appropriate, to address the agencies' comments. However, our overall conclusions remain essentially unchanged.

Mr. Chairman, this concludes my prepared testimony. I would be very happy to respond to any questions you or other members may have.

Contact and Acknowledgment

For future contacts regarding this testimony, please contact me on (202) 512-4128. Individuals making key contributions to this testimony included Stephen M. Lord, Jim Michels, Janey Cohen, and Mary Moutsos.