UNITED STATES FOREIGN ASSISTANCE:
BEYOND GOOD INTENTIONS AND TOWARD
ACCOUNTABILITY

James Filpi* and Luke Murry**

The United States is ushering in a new era of foreign assistance unparalleled in its history. Similar to the end of World War II (WWII), the United States, after over ten years of active combat efforts in Afghanistan and Iraq, is enthralled in a growing economic and legal development effort to restore equilibrium in the war-torn areas and the world at large. The cost to the U.S. budget spent on U.S. foreign assistance for post-war reconstruction in this decade will eclipse the equivalent (adjusted for time) expenditures the decade after WWII that rebuilt Europe.¹ As U.S. allies and interests around the globe are increasingly connected, this decade of foreign assistance will be much costlier and far-reaching. U.S. foreign assistance must not only incorporate economic growth in the Middle East and South Asia, but also incorporate U.S. allies in the Americas and Europe, as well as economic rivals in Eastern Europe and Asia. Bracing for high foreign operations and assistance expenditures, Congress has responded by introducing legislation.² This legislation was designed to require higher reporting for U.S. foreign assistance expenditures.³ In the next decade, U.S. foreign assistance will need to be more than good intentions, and instead will need to be proven effective in achieving its goals. Driven by recent legislative action to require increased monitoring and evaluation for U.S. foreign assistance, implementers of

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U.S.-funded foreign assistance will be required to identify their achievements with much more detail and accuracy. Since 2013, the Congressional Research Service (CRS) has targeted the monitoring and evaluation of U.S. foreign assistance, chronicling years of unabated foreign assistance expenditures without adequate monitoring and evaluation. In the past decade, while U.S. foreign assistance expenditures have risen, reporting to Congress regarding assistance activity has decreased.

In May of 2015, the American Bar Association (ABA) conducted programming in its International Section Spring Meeting to address the current state of supervision and evaluation of U.S. foreign assistance. The panel of speakers from the United States Government, Congressional Staff, and prominent Non-Governmental Organizations (NGOs) presented the theory and practice of selected types of U.S. foreign assistance and up-to-date assessment programs. Panelists addressed the importance and techniques of monitoring, and especially evaluating, rule of law development programs and other aspects of U.S. foreign assistance. The panel also addressed how to measure the value of foreign assistance activity and how to proceed when the value cannot be measured immediately. Policy makers and assistance attorneys analyzed current economic and legal indicators, assessing not only present, but also future techniques to measure economic and rule of law success. Although growing in complexity and ubiquity in the international assistance community, these measurement techniques are relatively nascent in the past ten years and are as much an art as a science. Pending U.S. foreign assistance expenditures will continue to leave the American people asking, "[w]hat are we getting for our money?" Policy makers and technocrats in the international assistance community will soon need answers to debate the usefulness and direction of U.S. assistance expenditures.

Before evaluating the mechanisms to measure foreign assistance, it is useful to establish the historical scope of the next decade of expenditures.

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transparency of its foreign assistance.\textsuperscript{20} It has done so for a number of reasons, but there are three that are important enough to highlight here. First, as a representative democracy, it is in the interest of the United States to have a well-informed public. Polls have shown that the less Americans know about how much the United States spends on foreign assistance, the less likely they are to support foreign assistance.\textsuperscript{21} For example, one poll showed that most Americans think the United States spends upwards of thirty percent of its budget on foreign assistance, but when those surveyed found out it was actually less than one percent of the budget, some were more likely to support foreign assistance.\textsuperscript{22} Second, posting information online is critical to coordinating U.S. efforts with other donor countries that are offering foreign assistance in the same countries. U.S. federal agencies have had a hard time coordinating foreign assistance amongst each other.\textsuperscript{23} Even coordinating with fellow donor governments working in the same country has proven extremely difficult.\textsuperscript{24} Even recipient governments have a hard time keeping track of foreign assistance dollars being spent within their own borders.\textsuperscript{25} Making information publicly available can give donor governments and recipient governments the ability to see how the United States is spending its dollars. That in turn could reduce duplication and spark new ways for the United States to work with both donor and recipient governments. Finally, transparency can be a key component in accountability. Even if the most rigorous evaluations are performed, they will mean little if they are hidden behind layers of bureaucracy by those who have a vested interest in keeping a struggling program going. The


more transparent a foreign assistance program is, the less likely there will be waste, fraud and abuse.

To increase transparency of foreign assistance, the United States administration launched the Foreign Assistance Dashboard in 2010.\textsuperscript{26} The goal was to allow users to examine foreign assistance in an accessible and easy-to-understand format, but the United States administration has struggled to populate the Dashboard.\textsuperscript{27} Over four years after its establishment, only ten of the twenty federal agencies that were involved in foreign assistance had posted any information at all.\textsuperscript{28} A majority of the agencies that had published information had only posted partial information.\textsuperscript{29} According to an October 2014 study, three of the six major U.S. government agencies involved in foreign assistance were placed under the category of “poor” when it came to transparency.\textsuperscript{30}

Rigorous evaluations are critical to making transparency meaningful. The State Department and the United States Agency for International Development (USAID)—the two largest foreign assistance implementers—agree that approximately three to five percent of program funds should be spent on evaluations, but, like transparency efforts, the agencies are still far from meeting their own goals.\textsuperscript{31} The State Department does not yet have a system set up to track how much it spends on evaluations each year. USAID has such a system, but it spent 0.1% of program funds on evaluations in fiscal year 2014 compared to its minimum three percent mark.\textsuperscript{32} Of the evaluations that are being done, the United States administration has struggled to deliver high-quality evaluations. Impact evaluations are known for being one of the most rigorous types of evaluation because they can track causality.\textsuperscript{33} At the time of this writing,
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the State Department has not done a single impact evaluation while USAID has completed six.\textsuperscript{34}

The lack of sufficient progress on transparency and evaluation of foreign assistance has caught Congress’ attention.\textsuperscript{35} For the past five years, Congress has been working on the Foreign Assistance Transparency and Accountability Act, a bill that would require agencies by law to make more information publically available and perform rigorous evaluations.\textsuperscript{36} The bill could save the government millions of dollars by identifying waste in current programs and making good programs better.

Therefore, with foreign assistance expenditures rising and evaluation of foreign assistance efforts remaining insufficient, congressional demand for transparent and effective analysis of foreign assistance dollars is growing.\textsuperscript{37} In this environment, the international development community will endure increasing pressure from Congress to provide measurements that indicate the impact of foreign assistance. Over the past decade, measurement mechanisms have grown in both quantity as well as complexity, providing mechanisms to the assistance community to measure the impact of their efforts.\textsuperscript{38}

For the sake of this discussion, the authors present three development measurement indicators, representative of the type and complexity of foreign assistance measurement mechanisms. Introduced in 1995, the first and oldest development measurement indicator is Transparency International’s (TI) CPI that measures the level of perceived corruption in a jurisdiction.\textsuperscript{39} The CPI has been well respected in the international rule of law development community for many years, and most assistance implementation evaluators trust the CPI as concrete evidence of impact of assistance programming. The CPI is a relatively straightforward indicator that ranks countries by the perception of corruption in the public sector.\textsuperscript{40} A country is ranked from zero, highly corrupt, to one hundred, not corrupt, based on a survey of independent institutions.\textsuperscript{41} A country receives a number for its perceived level of corruption based upon TI’s methodology of measuring specific components of the country’s government.\textsuperscript{42} For example, in 2014, Denmark was considered the least corrupt country by the CPI with the score of ninety-two, the highest total score in the index.\textsuperscript{43} Therefore, Denmark is ranked number one of 174 countries. In 2013, Denmark’s score was ninety-one, and in 2012, Denmark’s score was ninety.\textsuperscript{44} Therefore, Denmark has improved in combating corruption from 2012 to 2014. Afghanistan is ranked 172 of 174 countries, and improved from a score of eight to twelve from 2012 to 2014.\textsuperscript{45} An anti-corruption assistance implementer in Afghanistan should accept that Afghanistan corruption is relatively high, but can stake stock in the fact that Afghanistan is at least improving in combating corruption.\textsuperscript{46}

In 2004, the World Bank (WB) introduced another type of development measurement and indicator of assistance success - the World Bank Doing Business Indicators (DBI).\textsuperscript{47} DBIs are designed to assess the ease of doing business in a country.\textsuperscript{48} This index has been particularly popular with economic assistance providers. Different than the CPI in substance and in scope, the DBIs not only give a single ranking for each country assessed in ease of doing business, but also break down the score into a series of sub-scores based on component parts of the ease of doing business.\textsuperscript{49} Therefore each country obtains an overall Ease of Doing Business Rank, but also receives rankings in the following categories:

1) Starting a Business  
2) Dealing with Construction Permits  
3) Getting Electricity  
4) Registering Property  
5) Getting Credit  
6) Protecting Minority Investors

\textsuperscript{34} Private conversations between U.S. State Department officials and Staff of the Committee on Foreign Affairs, U.S. House of Representatives (2015).

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\textsuperscript{42} Id. at 2.

\textsuperscript{43} Id.

\textsuperscript{44} Corruption Perceptions Index 2014: In Detail, supra note 41.

\textsuperscript{45} Id.

\textsuperscript{46} Id.


\textsuperscript{48} See generally, supra note 38, ¶ 5 (shows how the indicator sets have grown in quantity and complexity, growing from five in 2003 to eleven in 2015).

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the State Department has not done a single impact evaluation while USAID has completed six.\textsuperscript{34} The lack of sufficient progress on transparency and evaluation of foreign assistance has caught Congress’ attention.\textsuperscript{35} For the past five years, Congress has been working on the Foreign Assistance Transparency and Accountability Act, a bill that would require agencies by law to make more information publically available and perform rigorous evaluations.\textsuperscript{36} The bill could save the government millions of dollars by identifying waste in current programs and making good programs better.

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7) Paying Taxes
8) Trading Across Borders
9) Enforcing Contracts, and
10) Resolving Insolvency.\textsuperscript{50}

Each of these subcategories are considered by the WB to be integral to the overall ease of doing business in each country. For example, Singapore is ranked number one in the overall Ease of Doing Business.\textsuperscript{51} However, Singapore does not rank number one in everything. See below Singapore’s ranking in each sub-category.\textsuperscript{52}

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New Zealand is ranked number two in overall Ease of Doing Business.\textsuperscript{53} New Zealand has however a better ranking than Singapore in some categories, such as Starting a Business, where New Zealand ranks number one.\textsuperscript{54} Therefore, the lower the combined score, the lower the ranking, which indicates the highest ease of doing business. The WB DBIs not only compare rankings year-to-year, but also region-by-region.\textsuperscript{55} This is valuable to economic rule of law assistance implementers who want to compare countries with similar economic and cultural conditions to identify how a particular country is progressing compared to the world, but also compared to its peer countries. For example, Morocco in 2016 ranked seventy-five in the world.\textsuperscript{56} Morocco, nonetheless ranked sixth out of twenty countries in the Middle East Region.\textsuperscript{57} Also, Morocco went down in ranking from 2015 to 2016 by five points, going from a score of eighty to seventy-five in one year.\textsuperscript{58} More importantly, Morocco had a sub-score in Registering Property improving from 103 in 2015 to seventy-six in 2016, an improvement of twenty-seven points, which is a significant change.\textsuperscript{59} Rule of law implementers of U.S. foreign assistance in Morocco should recognize that overall Morocco is improving in the ease of doing business, and doing particularly well in the ease of registering property. The implementers who worked on property law can take stock that the goal to improve the process of registering property is succeeding.

In 2006, the World Justice Project (WJP) launched an even more advanced development measuring system, the Rule of Law Index (RLI).\textsuperscript{60} The RLI is designed to measure a country's overall rule of law effectiveness.\textsuperscript{61} The RLI is a complex, multi-dimensional process that includes econometrics and applied statistics to test reliability and wean out biases.\textsuperscript{62} RLI has nine factors and forty-seven sub-factors to determine the rule of law score for a country.\textsuperscript{63} RLI measures the following nine factors:

1) Constraints on Government
2) Absence of Corruption
3) Order and Security
4) Fundamental Rights
5) Open Government
6) Regulatory Enforcement
7) Civil Justice
8) Criminal Justice, and
9) Informal Justice.\textsuperscript{64}

WJP has been particularly progressive about presenting the RLI information, providing visual interpretation of the overall rule of law score.
7) Paying Taxes
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Each of these subcategories are considered by the WB to be integral to the overall ease of doing business in each country. For example, Singapore is ranked number one in the overall Ease of Doing Business.\(^51\) However, Singapore does not rank number one in everything. See below Singapore's ranking in each sub-category.\(^52\)

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\(^{55}\) Economy Rankings, supra note 50.
\(^{56}\) Id.
\(^{57}\) Id.
\(^{58}\) Id.
\(^{60}\) Who We Are, WORLD JUSTICE PROJECT, http://worldjusticeproject.org/who-we-are (last visited Feb. 8, 2016).
\(^{61}\) Id.
\(^{63}\) Id. at Methodology.
\(^{64}\) Id.
in a country.\textsuperscript{65} WJP also provides an application to track information about RLI on any device.\textsuperscript{66} Below is a visualization of the RLI score for El Salvador.\textsuperscript{67} 

As you can see, the visual presentation appears quite complex, yet once mastered, this presentation is very informative. For example, for El Salvador one can see a spike near Order and Security, which demonstrates that in the one specific sub-factor, Absence of Civil Conflict in this case, El Salvador scores a complete one.\textsuperscript{68} Absence of Civil Conflict is the best rule of law score for a sub-factor.\textsuperscript{69} The closer the internal shape is to filling the circle, the better the rule of law score.\textsuperscript{70} The highest overall score, 0.87 for Denmark and Norway, are almost complete circles.\textsuperscript{71} A rule of law implemenfer working in El Salvador can quickly surmise from the presentation that El Salvador's overall rule of law effectiveness is worse than most of the world, and implementers may want to focus on criminal justice as a more dire need than civil justice. Criminal Justice scored a very low 0.34 in El Salvador, whereas Civil Justice scored a much more average 0.51.\textsuperscript{72} All this can be quickly visualized through the shape presentation. RLI is an example of the advancement in sophistication of rule of law development measurements have become.

What does the U.S. foreign assistance spending, congressional scrutiny, and rule of law indicators mean for the international rule of law assistance implemenfer? First, international rule of law development is a growing field, as funding in the form of U.S. foreign assistance expected to be high for the foreseeable future. Second, congressional scrutiny will rise with expenditures, and therefore, rule of law implementers spending U.S. foreign assistance funds, can expect to be more transparent, report more to Congress, and be more results oriented. Third, international rule of law implementers will need to identify impact measurements to demonstrate the effectiveness of their work. Finally, prudent implementers will begin to incorporate the growing rule of law indicators in their programming and reporting in order to objectively and independently measure their impact.

\textsuperscript{65} Id. at Factors.


\textsuperscript{67} See, WJP Rule of Law Index 2015, supra note 62, at ¶ 5. See chart on last page.

\textsuperscript{68} El Salvador, \textit{WORLD JUSTICE PROJECT}, http://data.worldjusticeproject.org/

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