



OFFICE OF INSPECTOR GENERAL

AUDIT OF USAID/MEXICO'S RULE OF LAW AND HUMAN RIGHTS PROGRAM

AUDIT REPORT NO. 1-523-11-001-P
JANUARY 12, 2011

SAN SALVADOR, EL SALVADOR



Office of Inspector General

January 12, 2011

MEMORANDUM

TO: Acting USAID/Mexico Director, Kay Freeman

FROM: Regional Inspector General/San Salvador, Catherine M. Trujillo /s/

SUBJECT: Audit of USAID/Mexico's Rule of Law and Human Rights Program
(Report Number 1-523-11-001-P)

This memorandum transmits our final report on the subject audit. We have considered management's comments on the draft report and have incorporated them into the final report as appropriate. We included management comments in their entirety in Appendix II.

The final report includes eight recommendations to strengthen USAID/Mexico's rule of law and human rights program. Based on management's comments, we deleted recommendation 4 in the draft report from the final report and renumbered draft report recommendations 4 through 8 in the final report accordingly. Based on management's comments, we consider that we reached management decisions on recommendations 1 and 2 and 4 through 8. Please provide the Office of Audit Performance and Compliance Division (M/CFO/APC) with the necessary documentation to achieve final action for these recommendations.

Regarding recommendation 3, we did not reach a management decision. Please provide within 30 days the additional information discussed within the evaluation of management comments under this recommendation.

I want to express my appreciation for the cooperation and courtesy extended to my staff during the audit

U.S. Agency for International Development
Embajada Americana
Urb. y Blvd Santa Elena
Antiguo Cuscatlan, Depto. La Libertad
San Salvador, El Salvador
Tel. (503) 2501-2999—Fax (503) 2228-5459
www.usaid.gov/oig

CONTENTS

Summary of Results	1
Audit Findings	4
Rule of Law Program Lacks Strategic Focus	4
Contracting Mechanism Used for Rule of Law Program is Not Appropriate	6
Performance Indicators and Targets Are Inappropriate Measures of Program Progress	8
Lack of Effective Program Oversight.....	11
Training Effectiveness is not Evaluated	12
TraiNet Reporting Not Accurate	12
Evaluation of Management Comments	14
Appendix I – Scope and Methodology	17
Appendix II – Management Comments	19
Appendix III - Statement of Work Comparisons	27

SUMMARY OF RESULTS

Only about 37 percent of the respondents to a survey of the Mexican public conducted in June 2007 expressed confidence in the country's judicial system. This lack of confidence is a major constraint on the country's continued democratic transition. The weaknesses of Mexico's criminal justice system contribute to high levels of criminal impunity, poor protections for individuals accused of a crime, and low public confidence in the judicial sector.

In response to the Mexican government's request for increased cooperation and assistance, the United States and Mexico announced the Merida Initiative, a multiyear proposal for \$1.4 billion in U.S. counterdrug and anticrime assistance to Mexico and Central America. One of the initiative's four primary goals is to improve the capacity of justice systems in the region.

In 2008, Mexico introduced a series of constitutional and legislative changes calling for reforms touching virtually all aspects of the judicial sector, including police, prosecutors, public defenders, the courts, and the penitentiary system. The new laws require the reforms' implementation by May 2016 at the state and federal levels.

To support the Government of Mexico's reform agenda, USAID focused its rule of law activities within the following areas:

- Continuing police education and training program
- Human rights training for police, prosecutors, and other officials
- Judicial exchanges
- Support to human rights nongovernment organizations and civil society
- Support for law schools and bar associations
- Financial support for United Nations Human Rights Office

In April 2009, USAID/Mexico amended its \$14.4 million rule of law contract awarded to Management Sciences for Development Inc., to add activities that would support the Merida Initiative and the criminal justice reforms. USAID/Mexico also awarded a 3-year, \$44.1 million cost-type contract to Management Systems International (MSI) in June 2009. The objectives of the program are to work with state and federal justice institutions to strengthen their capacity to improve transparency, public oversight, and public accountability, and better serve Mexican citizens under the new constitutional reforms that shape the police and criminal procedure codes. In August 2009, USAID/Mexico awarded the United Nations High Commissioner for Human Rights a 2-year, \$1 million grant to strengthen national and local government and civil society organizations in order to help bridge gaps in human rights implementation at the national level. As of June 30, 2010, cumulative obligations and expenditures for the three awards totaled approximately \$26 million and \$18 million, respectively.

The objectives of the audit were to determine if USAID/Mexico's rule of law and human rights program was achieving its main goals, which are to support the implementation of the criminal justice reforms at the federal and state levels and to strengthen civil society organizations' promotion and oversight of human rights. Furthermore, the audit also determined if the mission's program reporting was providing stakeholders with complete and accurate information on the progress and the results achieved.

Over the years, USAID/Mexico has supported a broad scope of activities in support of Mexico's justice reform. In the last few years, USAID/Mexico has facilitated exchanges between attorneys from the United States and other countries with members of the Mexican justice sector at the federal level, and has played a key role in helping to draft the federal code that focused on starting the justice reform. As well, USAID/Mexico provided technical assistance to support the judicial reforms in Chihuahua, by training judicial officials on oral advocacy, and supporting the state of Oaxaca to promote its mediation initiatives through stakeholder exchanges and the input of mediation experts.

However, the audit found that under the current awards-implementing activities to support the rule of law program, USAID/Mexico has not delivered technical advisory services in a strategic manner to reach maximum efficiency, effectiveness, and sustainability, mainly because it lacks a strategic focus (see page 4). As a result, USAID/Mexico's rule of law activities has had limited success in achieving their main goals: to support the implementation of the criminal justice reforms at the federal and state levels and to strengthen civil society organizations' promotion and oversight of human rights.

The audit found that USAID/Mexico generally provided accurate information related to standard indicators in its performance plan and report for fiscal year 2009. However, the performance indicators and their respective targets are not appropriate for measuring progress toward accomplishing the subobjectives (see page 8).

As well, the audit determined that the contract mechanism that USAID/Mexico used to award the task order to MSI was not in accordance with procurement regulations (see page 6).

In addition, the audit disclosed aspects of program management needing improvement. First, USAID/Mexico's technical officers responsible for the rule of law projects have not effectively carried out all their responsibilities in accordance with USAID policy and internal mission orders (see page 11). Second, USAID/Mexico's contractor has not developed systems for evaluating the effectiveness of the training it delivers (see page 12). Lastly, USAID/Mexico's reported numbers of beneficiaries trained are not accurate (see page 12).

To assist the mission in improving the efficiency and effectiveness of its rule of law program, this report recommends that USAID/Mexico:

- Exert technical control over the contract and require Management Systems International to develop an implementation strategy that outlines how it intends to identify the sites where it intends to work and the methodologies it intends to deploy for identifying the training needs and providing training (see page 6).

- Conduct a portfolio review to examine the strategic and operational issues and determine whether USAID-supported activities are supporting the implementation of the criminal justice reforms at the federal and state levels and strengthening civil society organizations' promotion and oversight of human rights (see page 6).
- Either re-compete the contract for technical services or prepare the appropriate justification required by the Competition in Contracting Act of 1984 for other than full and open competition (see page 8).
- Revise its current performance indicators and associated targets for the rule of law program so that they will assess progress toward the program's overall goals and objectives (see page 11).
- Update its performance management plan for the rule of law program (see page 12).
- Strengthen its internal controls so that technical officers implement their delegated duties in accordance with USAID policy (see page 12).
- Establish procedures for systematically following up with training participants to assess the impact and effectiveness of training (see page 12).
- Institute procedures to consistently collect and input training data into the USAID training network (see page 13).

Appendix I describes the audit's scope and methodology.

In its response to the draft audit report, USAID/Mexico agreed with 6 of 9 recommendations. Based on management's comments and further discussions with the mission, we deleted Recommendation 4 in the draft audit report from the final audit report and renumbered Recommendations 4 through 8 accordingly. We consider that we reached management decisions on recommendations 1 and 2 and 4 through 8. We did not reach a management decision on recommendation 3. The mission's comments are included, in their entirety, in appendix II.

AUDIT FINDINGS

Rule of Law Program Lacks Strategic Focus

Management Systems International's (MSI) technical proposal outlined a strategic approach for reaching maximum efficiency, effectiveness, and sustainability. MSI proposed to design activities to achieve synergies across project subcomponents, sharing information, products, and approaches. MSI's approach addressed establishing clearinghouses to identify, evaluate, and propagate best practices, while also building consensus within and across topical areas. Its proposed implementation strategy also addressed designating pilot sites for developing and testing methodologies and concrete products, supporting adjustments and corrections before expanding to other sites. MSI stated that support for implementation planning and sequencing of activities would enable its rule of law team and counterparts to anticipate and plan for financial and operational requirements from new legislation.

However, the audit found that MSI did not execute its activities as proposed—effectively identifying, evaluating, and propagating best practices, and designating pilot sites for developing and testing methodologies and concrete products, supporting adjustments and corrections before expanding to other sites. Rather, MSI has expended resources across a broad spectrum of activities in a majority of the Mexican states. As of August 2010, MSI had provided 223 training events in 21 states and the Federal District. However, only six states (Chihuahua, Nuevo León, Oaxaca, Morelos, Baja California, and Zacatecas) have advanced toward full implementation of the reforms, and each had implemented reforms prior to the passage of the federal reforms.

During one quarter, MSI reported the following accomplishments:

- MSI trained 6,018 justice officials across 23 states on trafficking in persons, criminal justice, alternative justice, human rights, and police training.
- Out of 6,018 officials trained, MSI trained 1,102 justice sector personnel from 12 different states on how to handle cases dealing with trafficking in persons.
- MSI trained 827 officials from nine different states on methods of alternative justice.

USAID/Mexico's rule of law program has lacked strategic focus in part because of the contractual statement of work. The broad nature of the statement of work makes it challenging to deliver technical support in a deliberate, methodical manner. USAID/Mexico's contract with MSI addresses two objectives: (1) support the implementation of the criminal justice reforms at the federal and state levels while strengthening transparency and accountability; and (2) strengthen justice sector institutions' ability to reduce violent and organized crime without violating human rights, and strengthen civil society organizations' promotion and oversight of human rights. MSI is required to be capable of providing technical assistance and services to all 33 jurisdictions,¹ giving priority to Chihuahua, Baja California, and Sonora. MSI's second level of priority is to support advisory and technical services to jurisdictions that have passed the justice reforms. MSI should also provide logistic support to other U.S.

¹ The 33 jurisdictions comprise 31 states, Mexico Federal District, and the federal government.

Government (USG) agencies, complementing rule of law activities through their experts, training facilities, and materials. These broad responsibilities prevent MSI from taking the more focused and deliberate approach envisioned in the technical proposal.

A second reason why USAID/Mexico's rule of law program lacks strategic focus is that during the first year of implementation, the contracting officer's technical representative did not exert technical control over the contractor, guiding decisions on how to respond effectively to the varying needs across the country (see page 11). At the onset of the rule of law program, USAID/Mexico determined that a contract was the most appropriate implementing mechanism due to the sensitive and changing political circumstances in Mexico, acknowledging that even though contracts are more management intensive, it needed to exert technical control over the program to respond to rapid fluctuations in the country's environment.

USAID/Mexico has not conducted a portfolio review to gauge the progress of the actions taken, as required by Automated Directives System (ADS) 203.3.7. Over the past year, USAID/Mexico's rule of law program has dedicated technical advisory services across many training venues to meet the deliverables for each of the award components. However, the training has covered such broad areas that it is difficult to draw any cause-and-effect relationships between the training and USAID/Mexico's rule of law goals.

Achieving the Government of Mexico's reform goals across all 33 jurisdictions in Mexico is ultimately the Government of Mexico's responsibility. The process to reach that goal is extremely complex because it involves all aspects of the judicial sector. An effective integrated approach for at least one jurisdiction is imperative if USAID/Mexico intends to contribute to the Government of Mexico's justice reform goals, which calls for the following:

1. Changes to criminal procedure by introducing new oral, adversarial procedures, alternative sentencing, and alternative dispute resolution mechanisms
2. Greater emphasis on the rights of the accused
3. Modifications to police agencies and their role in criminal investigations
4. Tougher measures for combating organized crime

USAID/Mexico could make a significant contribution by taking a strategic approach to reaching maximum efficiency, effectiveness, and sustainability. MSI's proposed approach to design pilot sites for developing and testing methodologies and concrete products, supporting adjustments and corrections before expanding to other sites, is sound. If USAID/Mexico works with MSI to focus its efforts in this direction, then it will better position itself to provide the Government of Mexico examples of a successful integrated approach to justice reform that the Government of Mexico can replicate across other states.

As of July 2010, MSI had billed USAID/Mexico approximately \$8.7 million for technical advisory services delivered within the first year. If the program continues without a strategic focus, then USAID/Mexico runs the risk of not demonstrating an effective sustainable impact at the end of its 3-year contract for estimated expenditures of \$44 million. USAID/Mexico will be able to demonstrate that it supported training throughout Mexico, but reform at all levels of the justice sector is questionable.

Recommendation 1. *We recommend that USAID/Mexico exert technical control over the contract and require Management Systems International to develop an implementation strategy that outlines how it intends to identify the sites where it intends to work and the methodologies it intends to deploy for identifying the training needs and execution of training.*

Recommendation 2. *We recommend that USAID/Mexico conduct a portfolio review to examine the strategic and operational issues and determine whether USAID-supported activities are supporting the implementation of criminal justice reforms at the federal and state levels and strengthening civil society organizations' promotion and oversight of human rights.*

Contracting Mechanism Used for Rule of Law Program is not Appropriate

In the absence of an indefinite quantity contract² (IQC) offering technical advisory services on rule of law areas, USAID/Mexico turned to an IQC that USAID/Washington awarded to provide services for encouraging global anticorruption and good governance efforts (ENGAGE). USAID/Washington awarded the ENGAGE IQC to provide a wide array of support services encompassing short- and long-term technical assistance and other support in innovative anticorruption, transparency, integrity, and accountability program areas. According to Federal Acquisition Regulation 16.505(a)(2), "orders shall be within the scope" of an indefinite-delivery contract. As well, USAID's supplemental policy to ADS 302, Indefinite Quantity Contract (IQC): Task Order Work Statement Development Checklist, states that the task order must fit within the scope of the IQC statement of work.

The audit determined that the statement of work negotiated with MSI did not adequately fit within the statement of work under the ENGAGE IQC. The areas that the ENGAGE IQC covers are materially different from the statement of work that USAID/Mexico designed for its rule of law program. Although USAID designed the ENGAGE IQC to support anticorruption reforms within the economic, political, and social sectors, the MSI contract supports the implementation of specific criminal justice reforms at the federal and state levels, while strengthening justice sector institutions' ability to reduce violent and organized crime without violating human rights (see specific language differences in appendix III).

Furthermore, there is a material difference between the tasks and deliverables required under the ENGAGE IQC and the vast majority of those that USAID/Mexico contracted with MSI. For example, the ENGAGE IQC requires the contractor to design tasks and deliverables centered on a broad range of technical assistance and other resources necessary to develop and implement strategies to curb corruption in economic, political,

² Federal acquisition regulation 16-504 (a) describes an indefinite quantity contract as one that provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period. The Government places orders for individual requirements. Quantity limits may be stated as number of units or as dollar values.

and social service sectors. By contrast, the task order calls for MSI to provide technical assistance and training in support of Mexican justice reform by assisting as many Mexican states as possible in all stages of code reforms, as well as strengthening the functioning of key justice sector institutions; assist Mexico's implementation of oral, adversarial reforms at the federal level; and support professional peer exchanges between Mexican federal and state judges with judges from the United States and other countries that practice oral, adversarial trials.

As required by USAID policy, the contracting officer technical representative (COTR) for the ENGAGE IQC reviewed USAID/Mexico's program description and initially determined that there was not a clear fit with the ENGAGE statement of work. The reason given was that the program description needed to address specifically its focus on anticorruption, transparency, and accountability. To rectify the issue and make the program description fit, the COTR recommended that USAID/Mexico consistently include the transparency, accountability, and anticorruption goal in the program. Second, the COTR recommended that the performance management plan include at least one indicator of overall anticorruption progress. With these minor changes, the COTR approved the use of the ENGAGE IQC.

The successful implementation of Mexico's criminal justice reforms with USAID technical support will ultimately improve the quality of public services and access to those services as well as eliminate corruption; however, the objectives of the rule of law contract are not solely to advise and train on anticorruption reforms within the economic, political, and social sectors.

One of the driving reasons why USAID/Mexico selected the ENGAGE contract was because it wanted to expedite the award and implementation of its rule of law program. When USAID/Mexico began the award process, it was under time pressure to issue a statement of work to the multiple contractors eligible to compete under the ENGAGE IQC because mission management wanted to report completed actions to members of the House Appropriations Committee. As a result, USAID/Mexico asked USAID/Washington to expedite review and approval of its program description to allow it to proceed under the ENGAGE IQC.

As a result, USAID did not comply Federal Acquisition Regulation 16.505(a)(2), that requires "orders shall be within the scope" of an indefinite-delivery contract in awarding a task order under the ENGAGE IQC. By limiting the contract selection only to contractors eligible to compete under the ENGAGE IQC, the mission may not have selected the most qualified contractor to perform the work. In prior protests, the Government Accountability Office (GAO) decided that awards of task orders for work outside the scope of an IQC are subject to the statutory requirement for full and open competition set forth in the Competition in Contracting Act of 1984³, absent a valid determination that the work is appropriate for procurement on a sole-source basis or with limited competition.

³ Public Law 98-369, as codified in 41 U.S.C. 253

Recommendation 3. *We recommend that USAID/Mexico either re-compete the contract for technical services or prepare the appropriate justification required by the Competition in Contracting Act of 1984 for other than full and open competition.*

Performance Indicators and Targets Are Inappropriate Measures of Program Progress

According to Automated Directives System (ADS) 203.3.5.1, data should be sufficiently precise to present a fair picture of performance and enable management decision-making at the appropriate levels. Stable and consistent data collection processes and analysis methods support reliability of data over time. Data should be timely enough to influence management decision-making at the appropriate levels. Furthermore, in establishing targets to measure progress, ADS 203.3.4.5 states that assistance objective teams should set targets that are ambitious but achievable given USAID (and other donor) inputs. Targets that are set too low are not useful for management and reporting purposes. Assistance objective teams are accountable for achieving the targets and should plan for the analysis and interpretation of actual performance data against the performance targets.

The Merida Initiative requires immediate results to demonstrate impact to both the Government of Mexico and the United States. USAID/Mexico designed the current rule of law contract under two different components with discreet subobjectives for MSI to achieve that support each of the Merida Initiative components. Under the contract component for “Federal and State Level Implementation of Criminal Justice”, MSI is required to design activities to support four subobjectives covering 1) institution building and rule of law, 2) judicial exchanges, 3) pre-trial case resolution alternatives, and 4) continuing police education. Under the contract component, for “Justice Sector and Civil Society Organizations Promotion of Human Rights”, MSI is required to design activities to support four subobjectives covering 1) victim restitution, 2) human rights training for police, prosecutors and other officials, 3) support for human rights nongovernmental organizations, and 4) support to citizen participation councils.

Under these subobjectives, MSI is required to design, implement, measure, and report on its activities across 44 specific performance indicators, some of which have quarterly targets and each of which has annual and life-of-project targets. USAID/Mexico’s grant agreement with the United Nations High Commissioner for Human Rights (UNHCHR) requires UNHCHR to design, implement, measure, and report on its activities across 116 indicators.

The performance indicators and their respective targets are not appropriate for measuring progress toward accomplishing the subobjectives. USAID/Mexico’s performance indicators and targets incorporated as requirements in its contract and grant are not sufficiently precise to present a fair picture of performance. The data required to measure performance against a number of the indicators are not available on a timely basis. Furthermore, the performance that USAID/Mexico desires to measure in a number of instances is not within the implementers’ or USAID/Mexico’s control. USAID/Mexico did not always establish targets in accordance with USAID policy. Based on an analysis of reported results and targets for the life of project and the first year (fiscal year 2010), the audit concludes that USAID/Mexico’s targets for MSI’s results are

not in all respects useful for measuring achievements. Additionally, USAID/Mexico has not developed targets for UNHCHR's indicators.

As of the end of third quarter 2010, MSI was able to report progress against only 13 of the 20 indicators on which it is required to report monthly and quarterly. MSI is required to track performance on 44 indicators, of which 20 are not under its direct control; therefore, MSI cannot control the quality and timeliness of the data required to report results. The following examples illustrate the inappropriateness of some of the indicators.

- Under the component Continuing Police Education and Training Program, MSI is required to measure progress against three indicators over which it has no control—number of police with basic education-level certificates, number of police enrolled in a university-level course, and number of jurisdictions with bachelor's degree programs as part of their continuing education program.
- MSI has not accurately defined seven performance indicators measuring the number of people trained. As a result, MSI may count the same individual attending multiple training sessions.
- MSI measures progress on 17 output indicators. According to USAID policy, outputs are lower-level steps that are essential in achieving changes that affect a broad segment of society. Outputs are generally under the direct control of an implementing entity (grantee or contract institution) using resources provided. In the case of MSI, not all output indicators have a direct link to the subobjective.

During project implementation, USAID/Mexico did not establish realistic targets and implementers lacked clear guidance on procedures for reporting on implementation activities and reviewing the resulting data. As the following table shows, as of June 30, 2010, MSI reported that it exceeded the fiscal year (FY) 2010 targets for 10 of the 13 indicators, reporting achievements significantly in excess of its year one targets. Moreover, MSI reported that as of third quarter 2010 it had exceeded the life-of-project targets on 5 of the 13 indicators.

Status of Indicator Results as of June 30, 2010

Performance Indicator	Year 1 FY 2010 Target	Achieved	Percentage Achieved	Life-of- Project Target
Number of Alternative Justice Centers strengthened	1	63	6,300	5
Number of Alternative Justice Centers created (for conciliation, mediation, and restorative justice)	2	6	300	20
Number of police who earn certificates in improved, transparent administrative functions, reporting, and other capabilities to reduce corruption	500	643	129	10,000

Performance Indicator	Year 1 FY 2010 Target	Achieved	Percentage Achieved	Life-of- Project Target
Number of local jurisdictions that implement state legislation concerning trafficking in persons, consistent with the new federal law against human trafficking	1	4	400	5
Number of jurisdictions in geographic strategic areas where law enforcement agencies are trained to identify victims and make service referrals to victims of trafficking in persons and other serious crimes	2	20	1,000	10
Number of federal or state departments that conduct information campaigns against trafficking in persons	1	5	500	5
Number of justice sector personnel trained to investigate trafficking in persons cases and other serious crimes	500	2,245	449	5,000
Number of justice sector personnel trained to handle victims of serious crimes, including torture and trafficking in persons	500	528	106	10,000
Number of police, prosecutors, and other officials trained in the new code of criminal procedures, the constitutional reforms, and alternative case resolution mechanisms (mediation, conciliation, and restorative justice) within the context of human rights	200	1,097	549	1,000
Number of human rights civil society organizations staff and volunteers trained in the context of human rights: the new code of criminal procedure and litigation in the new criminal justice system, constitutional reforms, and/or alternative mechanisms for resolution of case (mediation, conciliation, and restorative justice)	200	2,311	1,156	1,000

USAID/Mexico needs to know whether it is meeting its performance goals and must be able to articulate these achievements to external audiences, including Congress, the Office of Management and Budget, other USG agencies, the public, donors, multinational organizations, host country partners, and nongovernmental organizations. According to ADS 200.3.1.2, USAID measures progress by selecting performance measures and establishing performance targets for these measures before implementation takes place.

It is critical under its 3-year contract that MSI monitor and capture activity outputs that show a direct relationship to the subobjectives that USAID and the Government of Mexico intend to achieve. MSI has dedicated resources for monitoring and evaluation and has developed a system to collect, summarize, and report on the data per the terms of its contract. However, if USAID cannot rely on the information to make programmatic decisions or to determine if program resources are being expended in the most efficient and effective manner, then MSI's resources are not serving a useful purpose.

Recommendation 4. *We recommend that USAID/Mexico revise its current performance indicators and associated targets for the rule of law program so that they will assess progress toward the program's overall goals and objectives.*

Lack of Effective Program Oversight

The contracting officer's technical representative (COTR) and agreement officer's technical representative (AOTR) each have key oversight responsibilities for directing and administering contracts and grants. USAID's procedures⁴ for designating a COTR and AOTR outline those responsibilities. For example, the COTR serves as the technical liaison between the contracting officer and the contractor because of the COTR's unique responsibility to monitor the contractor's performance in achieving the contract's purpose. The AOTR is responsible for providing technical and administrative oversight to the implementer. USAID/Mexico imposed additional requirements with the issuance of USAID/Mexico Technical Officer—Administrative Notice 09/05, requiring technical officers to complete trip reports for all in- and out-of-country travel.

USAID/Mexico's technical officers responsible for the rule of law projects have not effectively carried out all their responsibilities in accordance with USAID policy and internal mission orders. During the audit, the Office of Inspector General identified the following deficiencies in program oversight:

- USAID/Mexico's performance management plan is not updated to accurately reflect what the current rule of law program is aiming to accomplish.
- The COTR for the Management Sciences for Development Inc. (MSD) contract did not adequately monitor MSD's request for reimbursements, approving vouchers for funds that exceeded the funding limitations.
- The COTR for the MSD contract could not explain or support any decisions permitting MSD to shift a significant amount of its direct costs away from direct activities to other direct costs. As a result, no explanation could be given why as of the end of the contract, MSD delivered 35 percent fewer workdays than originally contracted for, incurred a 33 percent increase in other direct costs above those initially negotiated, and did not deliver a number of the activities expected of it.
- UNHCHR has not consistently complied with USAID's branding policies. Despite knowledge of this fact, the AOTR has not directed UNHCHR to comply or assisted it with obtaining a waiver.
- The COTRs and AOTRs did not document site visits for most of the fieldtrips made. For example, the mission issued 29 travel orders for FY 2009; however, the mission had documented support for only 2 of the 29 site visits.
- The COTR had not formally approved work plans, reports and other deliverables required by the contract.

⁴ Mandatory reference for ADS 302-Procedures for Designating the COTR for Contracts and Task Orders, and an additional help for ADS 303- Agreement Officer's Technical Representative (AOTR) Designation – Cooperative Agreement Administration.

Mission management has not held the technical officers accountable for performing their responsibilities. As a result, the mission has put itself in a vulnerable position on a number of levels. Lack of approved life-of-project work plans and annual work plans places the mission at risk if an implementing partner makes a unilateral decision to take on activities that are outside the objectives of the award. With respect to contracts especially, COTRs' failure to carry out their duties and responsibilities effectively will impede the successor COTR's ability to manage the contract and possibly jeopardize the program for which it was awarded.

Recommendation 5. *We recommend that USAID/Mexico update its Performance Management Plan for the rule of law program.*

Recommendation 6. *We recommend that USAID/Mexico strengthen its internal controls so that technical officers implement their delegated duties in accordance with USAID policy.*

Training Effectiveness is not Evaluated

USAID policy ADS 253.3 requires missions that expend USAID funds for Participant Training design, implementation or evaluation activities to design and implement participant training for results and impact. Specifically, such missions must plan, track, manage for results, and report on their participant training activities as part of their broader performance measurement, evaluation, and reporting requirements. ADS 203.3.2 also states that missions are responsible for measuring progress toward the desired results identified in the planning stage to achieve foreign assistance objectives.

USAID/Mexico has not adhered to USAID policy with regard to assessing the degree of results and impact from the training funded through its contract with MSI. For example, as of August 30, 2010, MSI reported training 14,483 people in political processes, alternative justice, anticorruption, management skills, and legislative functions and processes. However, USAID/Mexico has not developed systems for evaluating the effectiveness of the training, primarily because it did not consider the development of a formal evaluation system during the design stage of the training.

Without some type of assessment of the effectiveness of training, USAID and its partners do not know if the training programs are having the desired impact or if they should better tailor the training to the needs of the participants. Assessing the impact of training may yield greater returns on training investments and provide management better information to determine future training needs.

Recommendation 7. *We recommend that USAID/Mexico establish procedures for systematically following up with training participants to assess the impact and effectiveness of training.*

TraNet Reporting⁵ Not Accurate

ADS 253.3 states that sponsoring units must—

⁵ Training Results and Information Network

- Design, implement, and track the training or program event for results and impact,
- Design training programs that support USAID objectives or other USG initiatives,
- Report on their participant training activities as part of their broader performance measurement, evaluation, and reporting requirements, and
- Design and carry out participant training activities with cost control and cost-sharing practices whenever possible.

ADS 253.3.4.5 (b) requires sponsoring units to enter data in Training Results and Information Network (TraiNet) for any in-country training programs or subprograms of 2 consecutive class days or more in duration, or 16 contact hours or more scheduled intermittently. The policy also states that sponsoring units should report any and all other in-country training events that are critical to their development efforts.

USAID/Mexico is not complying in all respects with the aforementioned policy. For example, the training data entered are incomplete and inconsistent. To illustrate, in its third quarter MSI reported 8,593 people trained; in contrast, the mission reported in TraiNet 4,068 people trained. USAID/Mexico includes in its operational plan the number of people trained reported by TraiNet.

These inconsistencies occurred because the mission and MSI do not have a consistent definition for what constitutes training. Furthermore, neither has applied consistent practices for collecting training data. As a result, USAID/Mexico's training database is incomplete and inaccurate, which has led to agency reporting of inaccurate results. Moreover, the mission cannot rely on this important tool for planning and management purposes.

Recommendation 8. *We recommend that USAID/Mexico institute procedures to consistently collect and input training data into the USAID training network.*

EVALUATION OF MANAGEMENT COMMENTS

In its response to the draft audit report, USAID/Mexico agreed with 6 of 9 recommendations. Based on management's comments and further discussions with the mission, we deleted Recommendation 4 in the draft audit report from the final audit report and renumbered Recommendations 4 through 8 accordingly. As well, we revised Recommendation 5 (previously Recommendation 6). Summarized below are the comments and the audit team's evaluation.

Regarding Recommendation 1, the draft report audit recommended that USAID/Mexico exert technical control over the contract and require Management Systems International to develop an implementation strategy that outlines how it intends to identify the sites where it intends to work and the methodologies it intends to deploy for identifying the training needs and execution of training. The mission concurred with the recommendation and addressed the measures it has already taken and plans to take to address the recommendation. The mission is adjusting the strategy that will result in a contract amendment, which it anticipates to complete by April 30, 2011. A significant change that the mission addressed is it plans to amend the current organizational structure by creating a Merida Initiative office. Pending authorization, the mission anticipates having this office operational by July 2011. Based on the mission's described actions we consider a management decision reached on Recommendation 1.

Regarding Recommendation 2, the draft report audit recommended that USAID/Mexico conduct a portfolio review to examine the strategic and operational issues and determine whether USAID-supported activities are supporting the implementation of criminal justice reforms at the federal and state levels and strengthening civil society organizations' promotion and oversight of human rights. The mission concurred with the recommendation to conduct a rule of law specific portfolio review. The mission anticipates completion of its review by June 30, 2011. Based on the mission's described actions we consider a management decision reached on Recommendation 2.

Regarding Recommendation 3, the draft report audit recommended that USAID/Mexico re-compete the contract for technical services or prepare the appropriate justification required by the Competition in Contracting Act of 1984 for other than full and open competition. The mission did not concur with this recommendation stating that the Regional Contracting Officer followed Agency procedures in determining the type of award mechanism to use. As well, the mission followed Agency policy in obtaining approval to use the ENGAGE IQC, which resulted in soliciting offers from the IQC holders. By providing all IQC holders, the opportunity to compete the mission states that it complied with the Federal Acquisition Regulations.

The audit does not dispute the fact that the mission awarded the task order through a competitive process amongst the ENGAGE IQC holders. The issue highlighted by the audit is that the ENGAGE IQC statement work awarded by the Office of Democracy and Governance was not the appropriate contract mechanism to use for purposes of contracting for the work required under USAID/Mexico's rule of law program.

The overarching EGNAGE IQC allows for work in three areas. The only area that could reasonably allow work in the rule of law sector is one that speaks to the incorporation of anticorruption promotion in "other" sectoral/sub-sectoral areas. Thus, rule of law activities funded under the ENGAGE IQC need to focus on the promotion of anticorruption.

The task order issued under this IQC for the work in Mexico did include a component that directly focused on promoting anticorruption. However, MSI only spent about 6 percent of its FY2010 funds on the activities directly related to anticorruption and, in FY2011, only plans to spend about 5 percent of its funding on these activities. The remainder of MSI's funds and efforts relate to activities that, at most, relate only minimally to promoting anticorruption. In summary, while a small element of this task order did focus on promoting anticorruption, the majority of the work did not.

Our conclusion remains that the differences in the work are material enough to question the Agency's compliance with Federal Acquisition Regulation 16.505(a)(2) and USAID's supplemental policy to ADS 302. Therefore, we request the mission seek an independent technical decision from either the Contract Review Board or the USAID Ombudsman to make a determination if USAID complied with the Federal Acquisition Regulations in approving the award of the MSI task order under the ENGAGE IQC. Provide the Regional Inspector General/Salvador the determination for our review and decision on this recommendation.

Regarding Recommendation 4 (Recommendation 5 previously), the draft report audit recommended that USAID/Mexico revise its current performance indicators and associated targets for the rule of law program so that they will assess progress toward the program's overall goals and objectives. The mission concurred with the recommendation further explaining that it was in the process of revising the program indicators. In addition, as part of the contract modification, the mission intends to reduce the number and refocus the indicators to assess more accurately the progress towards the program's overall goals and objectives. The mission anticipates having the revised indicators in place by April 30, 2011. Based on the mission's described actions we consider a management decision reached on Recommendation 4.

Regarding Recommendation 5 (Recommendation 6 previously), the draft report audit recommended that USAID/Mexico develop a Performance Management Plan (PMP) for the rule of law program. The mission did not concur with the recommendations. Considering the mission's comments and additional review of the evidence collected during the fieldwork, we revised this recommendation for USAID/Mexico to update its PMP. The mission concurred that its PMP did not include the full gamut of programs that flow in the broader strategy and did not incorporate the current rule of law programs. The mission plans to update the PMP in concert with its reorganization to stand-up a Merida Initiative office, which it anticipates to have operational by July 2011, discussed in response to Recommendation 1. Based on the mission's described actions we consider a management decision reached on the revised Recommendation 5.

Regarding Recommendation 6 (Recommendation 7 previously), the draft report audit recommended that USAID/Mexico strengthen its internal controls so that technical officers implement their delegated duties in accordance with USAID policy. The mission concurred with the recommendation explaining specific steps that it has taken to

strengthen its internal controls. The mission now intends to develop contingency policies to minimize adverse impacts as a result future shortages in staff and experience. The mission anticipates completing this action by July 31, 2011. Based on the mission's described actions we consider a management decision reached on Recommendation 6.

Regarding Recommendation 7 (Recommendation 8 previously), the draft report audit recommended that USAID/Mexico establish procedures for systematically following up with training participants to assess the impact and effectiveness of training. The mission concurred with the recommendation explaining how it is working internally to improve in this area as well as with the contractor to develop a formal system for evaluating the effectiveness of training. The mission anticipates having its plans implemented by June 30, 2011. Based on the mission's described actions we consider a management decision reached on Recommendation 7.

Regarding Recommendation 8 (Recommendation 9 previously), the draft report audit recommended USAID/Mexico institute procedures to consistently collect and input training data into the USAID training network. The mission concurred with the recommendation explaining what it has done thus far to guide the contractor to improve on its reporting practices. As well, the mission is requiring the contractor to make retroactive adjustments to prior training data submitted in accordance with USAID policy. The mission anticipates completion of this task by March 15, 2011. Based on the mission's described actions we consider a management decision reached on Recommendation 8.

SCOPE AND METHODOLOGY

Scope

The Regional Inspector General/San Salvador conducted this performance audit in accordance with generally accepted Government auditing standards⁶. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. The objective of the audit was to determine if USAID/Mexico's rule of law and human rights program was achieving its main goals and if its program reporting was providing stakeholders with complete and accurate information on the progress and the results achieved.

In planning and performing the audit, we assessed the mission's controls related to its rule of law program. The management controls identified included the mission performance management plan (PMP), mission data quality assessments, site visit reports by the contracting officer's technical representative (COTR), program progress reports, and e-mails and memos that documented decisions reached between mission staff and program implementers.

The audit covered the rule of law program's activities under the mission's strategic objective, "Ruling Justly: More Responsive, Transparent Governance." The Regional Inspector General conducted the audit in Mexico, in the cities of Mexico City, Oaxaca, Chihuahua, and Mexicali, from August 23 to September 10, 2010. Our audit focused on rule of law activities performed under the \$44 million contract with Management Systems International (MSI), implemented from July 1, 2009 through June 30, 2012, and the activities under the \$1 million grant with the United Nations High Commissioner for Human Rights (UNHCHR) implemented from August 3, 2009 to September 30, 2011. Additionally, the audit included the \$14.4 million contract with Management Sciences for Development (MSD) implemented from September 30, 2007 to March 31, 2010. As of June 30, 2010, USAID/Mexico Rule of Law and human right's program had obligated \$26 million expended \$18 million for these three awards. Our audit primarily focused on rule of law program activities implemented during fiscal years 2009 and 2010.

Methodology

To answer the first objective, we obtained an understanding of what the mission intended to accomplish under the rule of law and human rights program and its expected results as of the end of the audit period. We interviewed USAID/Mexico officials, including the Democracy and Governance COTRs and agreement officer's technical representatives, financial analysts, program officers, U.S. Embassy officials from the Departments of Justice and Homeland Security, implementing partners, and beneficiaries. We also interviewed MSI and UNHCHR officials. We reviewed the agreement and contract terms and applicable policies and procedures. We gained an understanding of how USAID/Mexico's program designed, monitored, and measured

⁶ *Government Auditing Standards*, July 2007 Revision (GAO-07-731G)

program results. Based on the collective results, we determined the progress of each major task toward the achievement of the main goals stated in the award documents.

In assessing the accuracy of reported results, we established a materiality threshold of 95 percent. If we could verify that the difference between reported and documented results was less than 5 percent, we considered the reported results accurate.

To answer the second objective, we focused primarily on the information that USAID/Mexico had reported to USAID/Washington in its performance reports. We determined the correlation between the indicators selected to report the results and the program's field-level activities. We traced reported results of projects to the relevant source documents to verify the number of people trained.

During site visits, we verified the accuracy of the reported project status, verified that the project site complied with USAID requirements, and observed and discussed the quality of the activities. We interviewed local officials to determine the impact of the activities. We also ascertained whether local officials and beneficiaries were aware of the source of funding for the projects.

We determined what monitoring was done by USAID/Mexico's designated technical representatives by reviewing site visit reports and interviewing officials of USAID/Mexico, MSI, and UNHCHR. To determine the impact of USAID/Mexico's rule of law program, we interviewed officials from USAID, implementing partners, beneficiaries, and the Government of Mexico.

MANAGEMENT COMMENTS



United States Embassy
Mexico City, Mexico

MEMORANDUM

DATE: December 22, 2010

TO: Regional Inspector General/San Salvador Catherine Trujillo

FROM: USAID/Mexico Acting Mission Director Kay Freeman /s/

SUBJECT: **Audit of USAID/Mexico's Rule of Law and Human Rights Program (Report Number 1-523-11-00X-P)**

Please find below USAID/Mexico's position on the recommendations contained in the subject audit report.

Recommendation 1. *We recommend that USAID/Mexico exert technical control over the contract and require Management Systems International to develop an implementation strategy that outlines how it intends to identify the sites where it intends to work and the methodologies it intends to deploy for identifying the training needs and execution of training.*

USAID/Mexico concurs with the recommendation and has already taken measures to increase technical control over the Contractor and to adjust the implementation strategy. The strategy adjustment is currently underway through ongoing guidance and a contractual amendment, and USAID/Mexico anticipates that final action to implement this recommendation will be completed by April 30, 2011.

With respect to increased technical control, in July 2010, USAID/Mexico designated a mid-level COTR to manage the program. The new COTR, who is also the Director of the Office of Democracy and Governance (DG), has over a decade of USAID experience in democracy and governance programming. Additionally, the DG staff's responsibilities were realigned to provide a greater focus on managing for results under each program component. Two members of the USAID/Mexico democracy team are now responsible for monitoring and evaluating the full range of rule of law training methodologies and ensuring that they contribute to effective and sustainable results.

Furthermore, the COTR is in the process of amending the contract with Management Systems International (MSI) to ensure that it has a strategic geographic and technical focus and that it targets sustainable measures to strengthen Mexican justice institutions rather than emphasizing training judicial operators. Also, the COTR has taken action on

key personnel, including replacing the Chief of Party (COP) of the Rule of Law III program. USAID/Mexico has consistently relayed the new strategic direction to the Contractor since August 2010 in regular meetings, in an email sent to MSI in September 2010 outlining the new technical direction, and in USAID/Mexico's official feedback to the proposed second-year workplan sent to the Contractor in October 2010.

Since assuming management duties of the contract, the COTR has also taken several measures to develop a more effective implementation strategy. The new direction includes specific criteria for identifying target sites where the program will work and has considerably reduced the abundance of activities implemented in non-target sites. USAID/Mexico has engaged with various stakeholders such as the Government of Mexico (GOM) at both the national and sub-national level, civil society experts, other donors, and academics and other sector experts to target needs and identify current gaps in the implementation process of Mexico's justice sector reform efforts. This will help USAID/Mexico measure the impact of past and current programming and exert greater technical control. At the federal level, the Rule of Law III program will focus on advancing the legislative and policy framework of justice sector reform. A summary of USAID's recommendations are included within the contract amendment currently circulating for approval and were relayed to MSI as part of the annual workplan review.

It is important to highlight that the MSI program was developed before several interagency partners were engaged in justice sector reform. As a result, the design was necessarily broad and covered a wide range of technical areas identified by the GOM and the USG to be addressed through the Merida Initiative to assist Mexico's efforts to adequately prevent and prosecute crimes. Because other USG agencies are now engaged in justice sector reform, USAID/Mexico has scaled back certain elements of its program and focused on specific challenges and in areas where USAID has a comparative advantage. As a result, the broader USG justice sector reform programming, as well as USAID's specific portion of it, are well-positioned for success.

As part of a strategic planning session in mid-December that included the participation of USAID/Washington regional leadership, USAID/Mexico has agreed (pending appropriate authorization) to amend its current organizational structure by creating and adequately staffing a Merida Initiative office. This office would increase both senior level technical advisors for rule of law as well as administrative and support staff to assist with labor intensive reporting requirements associated with the Merida Initiative. More adequate staffing levels will better position the Mission to exert even greater technical control over the Contract. USAID/Mexico anticipates that the new office will be fully operational by July 2011.

Recommendation 2. *We recommend that USAID/Mexico conduct a portfolio review to examine the strategic and operational issues and determine whether USAID-supported activities are supporting the implementation of criminal justice reforms at the federal and state levels and strengthening civil society organizations' promotion and oversight of human rights.*

USAID/Mexico conducted two regular portfolio reviews that closely examined rule of law programming in FY 2010, with the most recent one held on May 26-27, 2010. In addition, USAID/Mexico is providing opportunities for staff to discuss the development issues confronting Mexico, as well as Mission strategic and operational issues both in

formal (portfolio review) and informal (program coordination meetings) settings. In addition to internal portfolio reviews, USAID/Mexico frequently reviews the performance of its rule law program with interagency counterparts engaged in the sector.

While USAID/Mexico has conducted regular portfolio reviews of the program, the Mission concurs with conducting a ROL-specific portfolio review to examine strategic and operational issues associated with the program and to ensure that USAID-supported activities are addressing the implementation of criminal justice reforms at the federal and state levels, while strengthening civil society organizations' promotion and oversight of human rights.

The target date for completion of action on this recommendation is June 30, 2011, enabling time for the Contractor to demonstrate results under the amended contract.

Recommendation 3 (listed as 2 in draft audit report). *We recommend that USAID/Mexico either re-compete the contract for technical services or prepare the appropriate justification required by the Competition in Contracting Act of 1984 for other than full and open competition.*

USAID/Mexico does not concur with the findings and recommendation. The Regional Contracting Officer (RCO) followed Agency's procedures contained in ADS 304 and determined that Acquisition was the appropriate instrument because the work to be performed fell under the Merida Initiative and, due to the interagency and political sensitivities, USAID needed to be actively involved in directing the awardee's performance.

Once it was determined that Acquisition and not Assistance was required, the RCO worked with the DG Office and the Mission to determine how best to solicit the award. Based upon the March 6, 2009 email approval from the DCHA/DG CTO that the work to be performed under the task order was within the scope of the ENGAGE IQC, and in accordance with the ordering procedures of the IQC, the RCO determined that the ENGAGE IQC was the best contracting vehicle available to the Mission.

According to AAPD 02-12 and the Ordering Procedures of the subject IQC, once the CTO has determined that the work to be performed is within the scope of the IQC, the RCO is able to solicit offers from the IQC holders as a competitive task order.

The RCO acted in accordance with FAR 16.505 (b)(1) Fair Opportunity in providing all holders of the IQC an opportunity to compete for task order. As the task order was fully competed among the six IQC holders, the Mission disagrees with the recommendation that the task order should be re-competed or that a justification for other than full and open competition is required.

Additionally, the award was challenged by one interested party and the award decision and solicitation was upheld by the Agency's Ombudsman.

Therefore, based on the above explanation the Mission requests that the recommendation be closed on issuance.

Recommendation 4. *We recommend that the USAID/Mexico Mission Director facilitate agreements with interagency counterparts and with the Government of Mexico on how best to strategically coordinate resources and technical expertise to support the objectives of the Merida Initiative.*

USAID/Mexico does not concur with this recommendation.

Interagency coordination on the Merida Initiative at U.S. Embassy Mexico City, particularly in the area of justice sector reform, is frequently noted as a success story. It is the experience of USAID/Mexico that the interagency relationships in Mexico are strong, particularly between the Narcotics Affairs Section (NAS), the Department of Justice (DOJ) and USAID. Representatives from the Government of Mexico (GOM) and the Embassy Front Office regularly recognize and applaud USAID and the aforementioned agencies on our collective ability to coordinate and collaborate effectively at Post.

The following mechanisms exist to support coordination efforts at Post:

- Weekly Law Enforcement Working Group Meetings with several USG agencies involved in law enforcement activities including USAID, NAS, DOJ, Immigration and Customs Enforcement (ICE), Federal Bureau for Investigation (FBI), and several others. Meetings are held every Tuesday and are led by either the Ambassador or Deputy Chief of Mission.
- Weekly Merida Implementation Conference calls with USG counterparts in Washington, DC. Participants from U.S. Embassy Mexico City include USAID, NAS, DOJ, and the Political Section.
- Regular Merida implementation meetings and bilaterals between the USG and GOM to ensure program coordination and effectiveness.
- Interagency working groups that meet regularly (at least once a month and often several times per week) around issues such as the rule of law/justice reform, trafficking in persons, human rights and money laundering.

In addition to the aforementioned mechanisms to enhance coordination, USAID/Mexico is in frequent, regular contact with key GOM counterparts at the federal, state and local levels including the Police (SSP), Ministry of Justice (PGR), Office of the President (*Presidencia*), Ministry of Health, Ministry of Education etc. Frequently, USAID/Mexico meets with counterparts together with interagency partners. Further, USAID/Mexico provides weekly, monthly and quarterly activity reports to the U.S. Embassy's Merida Coordinator (NAS Section Chief), some of which are then submitted to the GOM's Ministry of Foreign Affairs (SRE). These reports include activity dates, descriptions and results, as well as information on participating USG and GOM agencies.

The Embassy's Interagency Justice Sector Reform group jointly led by USAID, DOJ and NAS has developed metrics and indicators to track the success of Merida activities. The three USG agencies work closely together to ensure that programs are complimentary and that assistance needs are met by the agency that demonstrates the greatest comparative advantage. As a result, each agency is responsible for implementing specific Merida Initiative line items that correspond to their comparative advantage. In November, each agency jointly submitted a proposal for how justice sector reform programming would be divided in the coming years, again focusing on needs and the

expertise of each USG institution. The three agencies meet independently on a regular and ad hoc basis, jointly with GOM counterparts, on specific matters and during quarterly Merida Initiative bilaterals and come to consensus on how resources will be invested to most effectively support Merida Initiative objectives. Differences are resolved in a timely, effective and collaborative manner for the collective good of the USG and GOM.

USAID/Mexico feels that the challenge in coordination is the manner in which the Merida Initiative has been funded, and the labor intensive reporting requirements that the funding mechanism has triggered. For example, in the recent FY 2010 supplemental bill, \$175 million was appropriated as INCLE funding. Although there was an understanding in Congress that some of this money would go to other agencies, including USAID, these agencies had to go through a labor intensive reporting process to explain and justify how much was needed and to what end. While negotiations in Washington become prolonged, the interagency team at Post quickly arrives at an agreement on the best way forward.

Under USAID's Interagency Agreements with DOJ and ICE, the AOTR is in the process of working with both agencies to ensure effective and timely program implementation and management.

In conclusion, interagency coordination is one of the greatest strengths of Merida Initiative implementation at Post. Thus, we request that this recommendation be removed from the audit report.

Recommendation 5. We recommend that USAID/Mexico revise its current performance indicators and associated targets for the rule of law program so that they will assess progress toward the program's overall goals and objectives.

USAID Mexico concurs with this recommendation.

USAID/Mexico is in the process of revising its ROL program indicators. Further, as part of the contract amendment process with the implementing partner, performance indicators are being significantly reduced in number and re-focused to assess more accurately progress towards the program's overall goals and objectives. The goal is to develop impact rather than output indicators.

In October 2010, USAID/Mexico initiated a formal process of working with the Contractor to identify appropriate indicators that are consistent with the program's new strategic direction referenced above and more adequately track results. Subsequently, while MSI may continue to use output indicators focused on numbers trained for their internal management needs, USAID/Mexico is currently working with them to develop measurable impact indicators that are within the control of Contractor and will assess progress toward the Program's overall goals and objectives.

The target date for completion of final action on this recommendation is April 30, 2011.

Recommendation 6. We recommend that USAID/Mexico develop a Performance Management Plan (PMP) for the rule of law program.

USAID/Mexico does not concur with this recommendation.

This recommendation does not appear to be consistent with the auditors' findings which are primarily related to contract management, oversight, and recommendation No. 7 which deals with internal controls.

The Democracy and Governance (DG) team has a Performance Management Plan (PMP) in place for the rule of law program, which was provided to the auditors. The democracy team is currently in the process of updating this PMP to include the full gamut of programs that flow into the broader DG office strategy and incorporating new rule of law programs. As mentioned above, USAID/Mexico has taken steps to amend the indicators used to track progress of the flagship ROL program. Conclusions from this exercise will be incorporated into the updated PMP.

The USAID/Mexico Mission Strategy was last updated in 2003 per Agency policy at the time. The operating environment within Mexico has changed significantly since then. As the Agency reintroduces the strategic planning process, it should be noted that USAID/Mexico is not currently designated as a pilot mission for the new CDCS. However, the DG Office, along with the rest of the Mission, is in the process of developing a more cohesive strategy and higher level framework within which to work. The DG office looks forward to identifying ways in which rule of law programming can support broader Mission goals and priorities. Measures have already been taken to develop a Mission-wide strategy on issues relevant to violence and security that crosscut interventions in rule of law. For example, a Merida Initiative Pillar IV strategic planning session was held in December, 2010, with staff from USAID/Mexico, USAID/Washington, GOM, and other USG agencies at the Embassy. Conclusions from this interagency and bi-national exercise will also be used to strengthen the rule of law PMP to ensure that programs contribute to broader Merida Initiative goals and facilitate optimal coordination amongst key actors. When the Merida Initiative Office is developed, USAID/Mexico will draft a new PMP reflecting the new office structure.

In conclusion, we do not concur with this recommendation as the DG team already has a PMP in place for the rule of law program. However, the DG team recognizes that the PMP needs to be updated to include the full gamut of programs that flow into the broader DG office strategy. As such, we request that the recommendation be modified to state that a revised PMP be developed.

Recommendation 7. *We recommend that USAID/Mexico strengthen its internal controls so that technical officers implement their delegated duties in accordance with USAID policy.*

USAID/Mexico concurs with this recommendation.

Some steps that USAID/Mexico has already taken and is in the process of taking to strengthen internal controls include:

- In July 2010, USAID began instituting weekly internal discussions between USAID/Mexico and Contractor on programmatic and operational issues.
- Completed a Data Quality Assessment for the ROL program in October 2010.

- Revamped the hard copy and electronic filing system.
- Updated and completed all Activity Checklists for DG office programs in October 2010 (which are now on file).
- Conduct site visits for programs managed by the DG office (guidance has been provided to the democracy team to complete all trip reports, including those covering prior site visits).
- More focused reporting from Contractor that tracks closely with Merida Initiative components.
- All AOTRs/COTRs now have the necessary training, which was completed in August 2010.
- Developed a “task list” that all DG staff contribute to in order to keep people apprised of what everyone is working on and to ensure that important actions do not fall through the cracks.
- Filled both the USDH Supervisory Democracy Officer and USDH Democracy Officer positions.
- The DG Office Director will oversee and ensure compliance with Mission policies for trip reports.
- Assigning administrative backstops to monitor, oversee and manage more effectively all components of rule of law programming.

The COTR for the ROL program provided timely feedback on the workplan and, at the request of the Regional Contracting Officer (RCO), is requiring and reviewing quarterly workplans until the contract amendment is finalized. As detailed above, USAID Mexico is currently in the process of implementing this recommendation. In addition, USAID/Mexico will hire additional staff and, at the recommendation of the RCO, plans to hire a USPSC or TCN to assist with programmatic management and oversight, including contract budget administration, compliance with branding requirements, etc. Experienced new staff would serve as the COTR for the ROL programs, enabling the Office Director to provide strategic technical direction, oversee implementation, mentor USAID/Mexico staff engaged in managing rule of law programming and ensure compliance to all internal processes and controls.

One of the issues facing USAID/Mexico over the past year has been difficulty filling USDH positions in a timely manner. The Office Director positions for both DG and EG remained vacant for almost a year. Since both incumbents of these positions arrived in early summer, the Mission has been able to make significant improvements in internal management. Given the pending dramatic staffing cuts of overseas positions in the LAC Bureau and the on-going need to staff other Bureaus, the Agency and the LAC Bureau will need to develop contingency policies to insure that management of LAC Missions is not adversely impacted by shortages of experienced staff.

The target date for completion of final action on this recommendation is July 31 2011.

Recommendation 8. *We recommend that USAID/Mexico establish procedures for systematically following up with training participants to assess the impact and effectiveness of training.*

USAID/Mexico concurs with this recommendation.

As part of the amendment process for the Rule of Law III Program, USAID/Mexico and the Contractor are working together to develop a formal system for evaluating the effectiveness of the trainings. The system will be applied exclusively to the ROL III program and will allow both USAID/Mexico and the Contractor to better determine whether the trainings are having their desired impact or if adjustments need to be made to better tailor the trainings to the needs of participants. Once the system is finalized, the Contractor will write up the procedures and USAID/Mexico will approve it.

To implement the new system, USAID/Mexico has designated two staff members in the DG office to work on monitoring and evaluation issues for this program and others. One staff member has a background in training and education, and is in the process of reviewing training methodologies and analyzing best practices from other Missions. Further, USAID/Mexico has been advocating to Rule of Law partners that all training activities require greater follow up to measure and guarantee programmatic impact. Rule of law programs will not rely on trainee evaluation forms, but rather follow up measures to ensure that training is effectively being applied. Based on language in the contract amendment, MSI will also build the capacity of state and federal judicial institutions to more effectively monitor and evaluate GOM-led reform efforts, which will help in the refinement of policy, interagency coordination and compilation of communications plans, as well as lead to a more sustainable approach to measuring results and impact of the reforms.

The target date for completion of final action on this recommendation is June 30, 2011.

Recommendation 9. *We recommend that USAID/Mexico institute procedures to consistently collect and input training data into the USAID training network.*

USAID/Mexico concurs with this recommendation.

The Mission has already provided verbal and written guidance to the Contractor instructing them to follow ADS 253.3.4.5 when reporting on training activities. This language has also been incorporated into the amendment.

The instruction given to the Contractor ensures that there is a shared, consistent definition for what constitutes training between USAID/Mexico and the Contractor, as well as a clear methodology for consistently collecting training data. This action will ensure that USAID/Mexico maintains a more complete and accurate training database, resulting in more accurate reports.

In December 2010, USAID/Mexico instructed the Contractor to retroactively adjust all training data submitted through quarterly reports to ensure consistency with USAID/Mexico criteria and ADS 253.3.4.5.

Target date for completion of final action is March 15th, 2011.

**Statement of Work Comparisons
ENGAGE Indefinite Quantity Contract (IQC)
USAID/Mexico’s Task Order with Management Systems
International**

ENGAGE IQC address three broad areas	MSI task order address two broad areas
<ul style="list-style-type: none"> • Public financial, administrative, and regulatory measures that promote transparency, accountability, and effective governance 	<p>Support the implementation of the criminal justice reforms at the federal and state levels while strengthening transparency and accountability. Activities will support—</p> <ul style="list-style-type: none"> • Adherence to the Mexican Federal Constitutional Reforms • Institution Building and Rule of Law • Judicial Exchanges • Pretrial Case Resolution Alternatives • Continuing Police Education
<ul style="list-style-type: none"> • Civil society advocacy on behalf of government integrity, implementation of anticorruption programs, and/or oversight of public functions and authorities 	<p>Strengthen justice sector institutions’ ability to reduce violent and organized crime without violating human rights and strengthen civil society organizations’ human rights oversight and promotion. Activities will support—</p> <ul style="list-style-type: none"> • Protecting, Prosecuting, and Preventing Trafficking in Persons • Victim Restitution • Human Rights Training for Police, Prosecutors and Other Officials • Support for Human Rights Nongovernmental Organizations • Support to Citizen Participation Councils
<ul style="list-style-type: none"> • Incorporation of anticorruption promotion into other sectoral and subsectoral areas, such as health and education, natural resource management, corporate governance, or into key aspects of democracy promotion such as rule of law, legislative oversight, or local government strengthening 	

U.S. Agency for International Development
Office of Inspector General
1300 Pennsylvania Avenue, NW
Washington, DC 20523
Tel: 202-712-1150
Fax: 202-216-3047
www.usaid.gov/oig