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Office of Development Effectiveness

Building on Local Strengths

EVALUATION OF AUSTRALIAN LAW AND JUSTICE ASSISTANCE



ODE EVALUATIONS & REVIEWS

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Australian Government

AusAID

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EVALUATION OF AUSTRALIAN LAW AND JUSTICE ASSISTANCE

Marcus Cox | Emele Duituturaga | Eric Scheye

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Cover image: Police from across the Pacific stand with their country's flag, at RAMSI's Headquarters in 2007.
Photo courtesy of RAMSI.

Office of Development Effectiveness

The Office of Development Effectiveness (ODE) at AusAID builds stronger evidence for more effective aid. ODE monitors the performance of the Australian aid program, evaluates its impact and contributes to international evidence and debate about aid and development effectiveness. Visit ODE at www.ode.ausaid.gov.au.

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The evaluation team

The evaluation team comprised three principal members, together with national consultants engaged to support the Cambodian and Indonesian case studies.

The team leader, Dr. Marcus Cox (Australia/UK), is an international lawyer and development consultant specialising in aid effectiveness and governance, with a broad range of policy development, program design, research and analysis and evaluation experience. He is a Director of Agulhas Applied Knowledge—specialist development consultants based in London. He is one of the lead evaluators for the UK's Independent Commission for Aid Impact. He specialises in political economy analysis and has led drivers of change studies for AusAID in Vanuatu and Tonga and for DFID in Bosnia. Dr. Cox led the team of consultants, facilitated the design of the evaluation methodology and was lead author of the Indonesian and Cambodian case studies and the synthesis report.

The Gender and Social Policy Expert, Ms. Emele Duituturaga (Fiji), is a former senior civil servant from Fiji and now an independent consultant, with extensive experience of a wide range of public policy issues in the Pacific. As a former Chief Executive Officer of the Ministry of Women, Social Welfare and Poverty Alleviation in the Government of Fiji, she had responsibility for a number of law and justice areas, including juvenile justice and probation services, and chaired Fiji's Law and Justice Strategic Advisory Group. She currently serves as Gender Adviser to the RAMSI law and justice program in Solomon Islands. Ms. Duituturaga participated in the Indonesia and Cambodia case studies, where she advised on gender and social policy issues, and also served as adviser on Pacific regional issues.

The Policing Adviser, Dr. Eric Scheye (USA), is one of the leading practitioners and researchers internationally on security and justice. A political scientist by training, he has helped design and implement security and justice programs around the world for a range of bilateral donors, the European Union, United Nations and World Bank. Among his many publications on law and justice, Dr. Scheye helped to draft the OECD DAC Handbook on Security Sector Reform. He was the team adviser on police assistance and monitoring and evaluation. He was the lead author of the Solomon Islands case study.

The Cambodian case study was supported by Mr. Ok Serei Sopheak (political governance adviser), Mr. Kong Phallack (lawyer) and Mr. Ok Serey Sophak (infrastructure adviser). The Indonesia case study was supported by Mr. Nur Sholikin (lawyer and civil society activist).

All effort has been taken to ensure the independence of the evaluation team. Neither Dr. Cox nor Dr. Scheye had previously been involved in the design or implementation of any Australian law and justice assistance. Ms. Duituturaga had served as gender adviser on the RAMSI law and justice design mission. Mr. Nur Sholikin was employed by the Indonesian NGO Pusat Studi Hukum & Kebijakan (PSHK), a former grantee of the AusAID Indonesia law and justice program. Any potential conflict of interest raised by these connections was managed by assigning the lead authorship of the Solomon Islands case study to Dr. Scheye and the Indonesian case study to Dr. Cox.

Abbreviations

AFP	Australian Federal Police
AGD	Attorney-General's Department
AUD	Australian dollars
AusAID	Australian Agency for International Development
CCJAP	Cambodia Criminal Justice Assistance Project
DAC	Development Assistance Committee
DFAT	Department for Foreign Affairs and Trade
IDG	International Deployment Group
M&E	Monitoring and evaluation
NGO	Non-government organisation
ODA	Official Development Assistance
ODE	Office for Development Effectiveness
OECD	Organisation for Economic Co-operation and Development
PNG	Papua New Guinea
PPDP	Pacific Police Development Program
RAMSI	Regional Assistance Mission to Solomon Islands
RSIPF	Royal Solomon Islands Police Force
UN	United Nations
UNODC	United Nations Office on Drugs and Crime

Executive summary

Evaluation of Australian law and justice assistance

Australia is one of the leading donors in the field of law and justice assistance, providing A\$370 million in assistance in 2010–11 or nearly 15 per cent of its bilateral aid program. The law and justice portfolio includes support for police; courts and corrections systems; government legal offices; specialised law enforcement agencies (e.g. customs, immigration control, anti-money laundering); national human rights institutions; and civil society organisations. In recent years, nearly a third of the portfolio's expenditure has gone towards a major postconflict intervention in Solomon Islands. Other major recipients are Papua New Guinea (PNG), East Timor, Cambodia, Vanuatu and Afghanistan, and there are substantial international and regional programs in areas such as trafficking in persons and drug control. The assistance is delivered through a whole-of-government approach, with the Australian Federal Police (AFP) spending just over half. The AFP's International Deployment Group (IDG) provides a standing capacity for policing assistance for postconflict interventions and police development programs. Outside Solomon Islands, AusAID is the lead provider of assistance (29 per cent) with the balance provided by a range of other agencies, including the Department of Immigration and Citizenship and the Attorney-General's Department (AGD).

AusAID's Office of Development Effectiveness (ODE) commissioned this thematic evaluation of Australian law and justice assistance in order to assess its relevance and effectiveness and to generate lessons to guide future programming choices. The evaluation involved mapping the main drivers, trends and patterns in Australian law and justice assistance, and three detailed country case studies (Cambodia, Indonesia and Solomon Islands). It has been designed and implemented in a consultative fashion with the various Australian Government agencies involved in law and justice assistance, and the findings were debated at a whole-of-government workshop in September 2011. This synthesis report draws together the most important findings from the case studies and addresses the evaluation questions. It accompanies the three case study reports and a number of 'think pieces', all of which can be found on the ODE website.¹

Is Australia pursuing the right objectives?

Law and justice assistance plays an important role in the Australian aid program, serving two main development objectives. The greater part of the assistance goes towards stabilising conflict-affected societies and strengthening fragile states—an important goal in the Asia and Pacific region. As the 2011 World Development Report² argued, ensuring basic law and order and an ability to resolve disputes peacefully may be a precondition for other development assistance. The assistance is also intended to improve access to justice for the poor and for marginalised groups. Although not explicitly recognised in the Millennium Development Goals, this is an important development objective that complements Australia's support for public service delivery; it also reflects the concern for justice and human rights that Australia brings to its aid program.

1 <http://www.ode.usaid.gov.au>

2 World Bank, *Conflict, Security, and Development: World Development Report 2011*, World Bank: Washington D.C., 2011.

We found that the objectives for Australian law and justice assistance are relevant and important in the Asia and Pacific region. However, there is a tendency for individual programs to set objectives that are too ambitious, too generalised and not well adapted to the specific country context. The assistance would benefit from stronger assessment of what is achievable in each country given the political, economic and social context. In particular, Australia should avoid promoting a standard set of institutional arrangements based on Australian or international models. Law and justice institutions emerge from protracted processes of contestation and accommodation. In difficult political environments, Australia needs to be modest and realistic in setting its objectives, and be willing to work with national actors (e.g. business associations, trade unions and non-government organisations (NGOs) that are working for change).

“A safe environment is a fundamental prerequisite for development and poverty reduction to occur. Access to justice is vital for promoting human rights. Girls cannot attend school if they fear violence or intimidation. Businesses will not invest if they do not have confidence in the enforceability of contracts or if the costs of security are too high. We will support safer communities, and promote equitable access to law and justice services for poor people. Our law and justice programs will highlight important Australian priorities, including addressing violence against women, particularly in the Pacific, and promoting access to justice.”

Government of Australia, “An Effective Aid Program for Australia: Making a real difference—Delivering real results”, 2011, p. 37

The emphasis on conflict reduction means that the majority of Australian law and justice assistance is invested in criminal justice. This has led to the relative neglect of a number of other areas that might strengthen the contribution of law and justice assistance to Australia’s broader development goals. Investments in civil, administrative and labour law could be tailored so as to improve access to public services and development programs for marginalised groups. Law and justice assistance could also be used to promote broader social goals such as reducing violence against women, promoting gender equality in family law or managing urbanisation in the Pacific. Land rights, a significant driver of conflict in the Asia and Pacific region, could also be a stronger programming focus.

In the countries where Australia provides law and justice assistance, the main providers of justice for the majority of the population are often informal institutions. However, like other donors in the law and justice arena, Australia has very little engagement with them. The reasons for this include their inherent complexity, the difficulty of finding appropriate entry points for assistance and fear of associating Australia with local practices that may not meet international human rights standards. The evaluation team’s view is that Australia is justifiably cautious about engaging with informal actors in the justice system, but that this caution should not prohibit experimentation and innovation. While informal justice has only limited capacity to absorb financial or technical support, Australia could do more to support these informal systems and their linkages with the formal justice system, and to support intermediaries (e.g. churches, women’s groups) to raise awareness among local justice providers about constitutional principles, human rights and gender equality.

Is Australian law and justice assistance delivered effectively?

We found many examples of effective approaches in Australian law and justice programs. A notable feature of Australian assistance is its flexibility, responsiveness and willingness to innovate. The quality of advisory input is often high and the support is well regarded by both counterparts and peers. Nevertheless, given the importance of the law and justice portfolio within the Australian aid program, AusAID needs to provide more technical support to its country teams.

Despite some impressive achievements at the activity level, there is a level of frustration apparent regarding the pace and extent of achievement of the assistance. This is by no means unique to Australian assistance, but reflects a widespread crisis of confidence among law and justice practitioners internationally.

The core challenge in law and justice assistance—as in many other development fields—is how external interventions can help to bring about institutional change. We found that the weakest aspect of Australian law and justice programs is often their underlying theories of change. The core of the Australian assistance is organisational capacity building—that is, training and equipping formal law and justice agencies and their staff, and supporting management systems and processes. Organisational capacity building typically begins with a needs assessment to identify institutional deficits and capacity constraints, followed by the development of a package of capacity-building inputs designed to rectify them. Much of the effort goes into central functions like planning, policy making, budgeting and human resource management.

This kind of support has produced patchy results—*islands of capacity* in discrete technical areas—without necessarily delivering overall improvement in the quality of justice received by citizens. The case studies suggest a number of reasons why this is the case. First, shortage of capacity is not always the binding constraint on institutional performance. There may be more immediate factors driving poor institutional performance, including, in all of the case study countries, a dense network of informal institutions and practices overlaying the formal justice system. Increased capacity may be a necessary but not sufficient condition for improvements in service delivery. Second, capacity-building programs are often overambitious in scope, attempting to address too many fundamental problems simultaneously. In low capacity environments, there may be limited ability to implement major reforms due to weaknesses in planning, budgeting and change-management capacities. Finally, capacity-building approaches often work towards international best practice and imported institutional models, which are a poor fit in the local environment. As a result, when Australian law and justice programs focus solely on top-down organisational capacity building, they struggle to demonstrate real results for their intended beneficiaries.

The case studies also revealed some promising strategies for bringing about institutional change that shared a number of common features. They included:

- taking an incremental rather than comprehensive approach to improving existing capacities and functions.
- seeking a flexible, localised, ‘good enough’ solutions, rather than relying on institutional templates
- focusing on issues for which there were local constituencies for change, who could be mobilised and supported
- working directly at the point of interaction between law and justice institutions and citizens (so that the causal link between the intervention and benefits for citizens was short and direct and so the impacts could be captured easily through monitoring and evaluation (M&E) systems).

To try to capture what differentiates more and less successful elements of Australian law and justice assistance, we have sketched out four different approaches to bringing about institutional change: (i) an organisational capacity-building approach; (ii) a service-delivery approach; (iii) a problem-solving approach; and (iv) a thematic approach. (For more on these approaches see the full report.) Our conclusion is that Australian assistance is at its best when it combines these approaches in a strategic manner. It is at its least convincing when it defaults to a one-dimensional organisational capacity-building approach.

One of the challenges for the law and justice area is that it comprises a number of autonomous agencies. It nonetheless needs to function as a coherent system. Improvements in the capacity of any one agency will not lead to improved services without corresponding improvements in the other agencies and in their ability to function as components of an integrated system. In practice, law and justice systems tend to be highly fragmented, with individual agencies jealous of their autonomy and in competition for resources.

To address this problem, Australia adopts a “sector-based approach”,³ providing assistance to a range of law and justice agencies. However, we found that Australia has struggled to engage effectively at the sectoral level. Its assistance often ends up resembling multiple parallel projects, making it poorly equipped to address issues like juvenile justice, which requires agencies to collaborate. One of the strategies used to address fragmentation has been to promote sectoral committees to oversee and coordinate Australian assistance. While this looks like good aid effectiveness practice, it was apparent from the case studies that these coordination bodies were focused on extracting and distributing external assistance, at the expense of engaging in genuine policy dialogue or coordinating concrete justice services. We concluded that the incentives resulting from a move towards more ‘programmatically’ assistance were not always helpful.

One of the distinctive features of Australian law and justice assistance is a whole-of-government approach to delivery (involving AusAID, the AFP’s International Deployment Group, AGD and some Australian courts and justice agencies). There are potential advantages to whole-of-government delivery: law and justice officials often respond better to advice from their peers in other countries than to contracted advisers, and it encourages the emergence of long-term relationships between Australian law and justice agencies and their counterparts in the region, with benefits for both sides.

However, a whole-of-government approach also carries the risk that Australian assistance may fragment into large numbers of small-scale and often supply-driven activities—a risk noted in the 2011 Independent Review of Aid Effectiveness.⁴ We found more examples of unhelpful competition for resources between the Australian agencies than of genuine collaboration in setting assistance strategies and priorities. To enable effective whole-of-government delivery, there needs to be significantly greater investment in joint planning and coordination, with AusAID taking overall responsibility for ensuring Australian law and justice assistance is coherent and effective.

3 AusAID, “Annual Thematic Performance Report: Law and Justice 2008–09”, January 2010.

4 Holloway, Sandy, Stephen Howes, Margaret Reid, Bill Farmer & John W.H. Denton, “Independent Review of Aid Effectiveness”, Canberra, April 2011.

We found a number of examples of Australian law and justice programs contributing to cross-cutting policy objectives on gender equality, disability and HIV/AIDS. For example, in Indonesia, Australia has worked with the religious courts to help women from poor communities to access the justice system, while in Cambodia, Australia has developed promising pilots on community safety, which have produced some impressive early results on domestic violence. In general, however, mainstreaming of gender has been relatively weak. Gender mainstreaming strategies are often treated as one-off contractual requirements rather than active management tools, and the extent to which gender goals are pursued depends on the interests and skills of individual advisers. We conclude that gender equality and gender-based violence deserve greater prominence within Australia's law and justice assistance, given their impact on individuals and families and their significance in achieving other development goals.

Is Australian law and justice assistance delivering sustainable results?

Results measurement is an acknowledged weakness of Australian law and justice assistance. While all AusAID programs have formal M&E arrangements, they tend to track activities and outputs while generating little usable data on results. In large part, this is due to difficulties in measuring the results of programs that focus predominantly on organisational capacity building, where the causal linkages between program outputs and improvements in law and justice services are highly attenuated.

The weakness of results measurement makes it difficult to tell an overall story about the impact of Australian assistance, but it appears to be delivering results in a number of specific but limited areas. These include improvements in the efficiency of the administration of justice, a reduction in human rights violations within criminal justice systems, some notable improvements in access to justice for specific groups (e.g. women heads of household in Indonesia), and the restoration and maintenance of law and order in conflict-affected societies such as Solomon Islands.

There are important questions around the sustainability of Australian law and justice assistance that call for further examination and debate. We found some good examples of sustainability at the activity level, such as the shift from large- to small-scale capital investments in Cambodia. However, in small Pacific Island states, in the face of limited financial and human resources, it is very difficult to develop capacity on a sustainable basis. Australian assistance therefore involves significant elements of capacity substitution. In Solomon Islands, in particular, where Australia currently carries 65–70 per cent of the recurrent costs of justice and policing, it is likely that the level of law and justice services required to guarantee peace and public order exceeds what the government will be able to afford over the long term. In such circumstances, a long-term Australian commitment to sustaining basic law and order capacity may be appropriate, and would probably be more cost-effective than a succession of postcrisis interventions. Whether it is willing to make such a commitment is a policy decision for the Australian Government. At the least, Australia should clarify where it is aiming for sustainable results and where it is willing to play a capacity substitution role, and make sure that the design of its assistance reflects this distinction.

Recommendations

We make a number of recommendations for strengthening Australian law and justice assistance, focusing on the strategic level. These include:

1. **Setting objectives:** That Australian law and justice assistance adopts more modest and specific goals, based on analysis of what is achievable in the political, economic, social and geographical context. Where the overarching goal is stabilisation and conflict reduction, the starting point should be conflict analysis to identify drivers of conflict and instability, leading to a package of support for the institutions and processes best suited for managing them (whether or not in the formal justice system). Where the objective is promoting human rights and access to justice as development goals in their own right, the design should begin from an analysis of the types and sources of injustice or denial of human rights in the society in question, with a package of support to address those issues where Australia is best placed to make a difference.
2. **Capacity-building strategies:** That Australia avoids working towards idealised institutional forms or offering standardised packages of support. Instead, it should take existing law and justice services and the financial constraints within the recipient countries as its starting point and support incremental improvement, building on the strengths of existing providers. To maximise its impact, Australia should take a multi-dimensional approach to promoting institutional change, using top-down capacity building in combination with service-delivery, problem-solving and thematic approaches.
3. **Cross-cutting issues:** That Australia gives higher priority to addressing violence against women within its law and justice assistance, helping to develop services and law enforcement approaches better suited to the needs of women. It should also invest in analysis of the needs of people with disability and other marginalised groups, assessing both their level of access to law and justice services and whether law and justice interventions could help promote their rights to other services and programs. AusAID should consider options for reorganising country teams to improve the integration of law and justice assistance with other elements of the country program.
4. **Development of justice systems:** That Australia looks for opportunities to promote collaboration on specific, substantive issues, rather than on aid management, when seeking to address fragmentation in the law and justice sector. Programmatic assistance is appropriate only where genuine country leadership is in place and institutionalised.
5. **Transition from stabilisation to development:** That Australia plans its stabilisation and development efforts in postconflict situations in parallel, rather than sequentially, to enable better management of the inevitable tensions between the two phases. In an immediate postconflict situation, Australia may need to support a higher level of justice and security provision than would be sustainable over the longer term. However, this form of support should be provided in such a way as to avoid distorting local institutions and spending patterns, and should be drawn down as soon as feasible, bearing in mind the need to offset the risks of renewed conflict with the risks of long-term dependency. At the same time, longer term development efforts should focus on restoring law and justice services to preconflict levels and building them up in a sustainable way, paying particular attention to long-term recurrent costs and their affordability.
6. **Whole-of-government delivery:** That whole-of-government delivery of law and justice assistance is preserved, and its effectiveness ensured. This requires significantly greater investment by AusAID and the other Australian government agencies involved. It requires agreement on overarching goals and approaches, aid effectiveness principles, joint indicators of progress and a clear division of labour, with agency leads on particular themes or areas. Effective whole-of-government delivery requires funds allocation processes that minimise

unhelpful competition for resources. It calls for genuine collaboration in developing assistance strategies and priorities in countries where Australia provides substantial law and justice assistance. It would also benefit from closer institutional linkages, including mutual secondments (as already occur between AusAID and the AFP) and stationing representatives from other agencies in AusAID's Law and Justice Unit.

For AusAID, this means:

- investing more in developing policies and technical guidance for law and justice assistance
- opening up its processes for preparing country plans and designing law and justice programs to allow more effective participation by other agencies
- providing support to other agencies to help them build their capacity in development assistance and understand the principles of aid effectiveness
- providing greater technical support to other agencies in program design, implementation and M&E.

For other agencies, it means:

- acknowledging that entering into the international development sphere involves a commitment to building up expertise on development assistance and a willingness to follow AusAID's guidance on aid effectiveness
 - providing active input into AusAID-led processes for developing country strategies and program design
 - committing to reducing fragmentation of aid by ensuring that all support is tailored to the country context and supports agreed priorities—avoiding off-the-shelf or supply-driven assistance
 - investing in rigorous M&E systems, or becoming part of AusAID-led M&E processes
 - ensuring a high level of transparency in all external assistance.
7. **Sustainability:** That Australia considers whether there is a case for providing long-term financial and technical support in small Pacific Island states to support basic law and order capability and for the more advanced functions needed for effective international law enforcement cooperation. If so, it may be appropriate to move away from short-term project cycles to more sustainable delivery arrangements.
 8. **Scaling up:** That Australia takes a gradual approach to scaling up its law and justice programs, based on proven successes, avoiding investments that might distort institutional development and national resource allocation.
 9. **Results management:** That AusAID's Law and Justice Unit invests in developing more detailed guidance for results management in law and justice programs. It should increase the level of technical support available for advisers and program managers in country posts. It should ensure that M&E expertise is included in all design teams and should play an active role in quality assuring the design of results frameworks. Results frameworks should track country-level results, project outcomes and management data, using quantitative and qualitative data, to enable a more holistic picture of the results of Australian law and justice assistance to emerge. Projects should, as far as possible, align with counterpart monitoring systems, making sure that investments in monitoring data are also useful to counterpart institutions, and making efforts to demonstrate to counterparts the practical value of quality results data.

AusAID management response

Australian government agencies delivering law and justice assistance welcome the findings and recommendations of the Office of Development Effectiveness (ODE) in its evaluation of Australian law and justice assistance for developing countries. The evaluation confirms that Australia's aid program plays a valuable role in supporting safer communities and promoting equitable access to law and justice services for poor people. The evaluation also provides useful guidance on how to further strengthen the impact of the aid program.

Australia's law and justice assistance is delivered by a range of Australian government agencies, including AusAID, AFP and AGD. The ODE evaluation, which involved extensive consultations with these agencies, describes the many advantages of this whole-of-government approach and identifies opportunities to make the whole-of-government delivery of Australia's law and justice assistance more effective.

The Government's aid policy, *An Effective Aid Program for Australia*, makes effective governance one of the five strategic goals of the aid program and explains that safer communities and access to justice are critical objectives under this goal. The evaluation provides practical guidance on how Australian aid can best achieve these objectives. This includes:

- maximising the impact of law and justice assistance through a mixture of building capacity, improving service delivery and focusing on solving the problems that poor people have accessing justice;
- improving integration of law and justice assistance with other development work, particularly to help end violence against women and improve the lives of people with disability and other marginalised groups; and
- increasing the focus on measuring performance of law and justice programs and coordinating Australia's law and justice assistance across government.

Australian government agencies delivering law and justice development assistance agree or agree in principle with the evaluation's recommendations and are well positioned to implement them. The evaluation team shared emerging findings in 2011 and these findings have begun to be built into programing. In many cases, the aid program is already achieving results in line with the evaluation's recommendations. For example:

- in Solomon Islands, Australia is supporting both organisational change in formal law and justice institutions and the deployment of officers in communities across the country's nine provinces to improve the management of local disputes and the responsiveness of the state to local communities;
- ending violence against women is an increasingly important focus of Australia's law and justice programs. In Papua New Guinea, for example, Australia's law and justice program has contributed to creating a safer environment for women by helping to introduce Interim Protection Orders and establishing Family and Sexual Violence Units in eight police stations. Australia has also supported the effective prosecution of family and sexual offences – the Australian Attorney General's Department, through the Strongim Gavman Program, has helped the PNG Office of the Public Prosecutor to create a family and sexual offences unit;

- Australia's law and justice investments in Indonesia have promoted broader social justice goals by supporting fee waivers and mobile court hearings in isolated areas which is an important step towards helping poor women get official documentation including birth and divorce certificates which allow them to access healthcare and education for themselves and their children; and
- the Government is investing heavily in results management and whole-of-government coordination, both a high priority under *Australia's Comprehensive Aid Policy Framework to 2015–16*. AusAID has established dedicated branches to work across government to strengthen results management and whole-of-government coordination.

Peter Baxter
AusAID
November 2012

Response to Evaluation Recommendations

<p>Recommendation 1</p> <p>That Australian law and justice assistance adopts more modest and specific goals, based on analysis of what is achievable in the political, economic, social and geographical context. Where the overarching goal is stabilisation and conflict reduction, the starting point should be conflict analysis to identify drivers of conflict and instability, leading to a package of support for the institutions and processes best suited for managing them (whether or not in the formal justice system). Where the objective is promoting human rights and access to justice as development goals in their own right, the design should begin from an analysis of the types and sources of injustice or denial of human rights in the society in question, with a package of support to address those issues where Australia is best placed to make a difference.</p>	<p>Agree in principle</p>	<p>The Government's aid policy, <i>An Effective Aid Program for Australia (Effective Aid)</i>, sets out the overarching objectives for Australia's law and justice assistance to developing countries: supporting safer communities and promoting equitable access to law and justice services for poor people. At the country level, the aid program will support initiatives with specific and achievable goals, negotiated with partner countries and based on rigorous analysis, particularly in fragile and conflict-affected situations.</p> <p>Australia may be required to respond rapidly to an immediate crisis. In that case, assistance may be provided to help ensure basic security and save lives. This type of intervention may then transition to longer term development assistance if appropriate.</p>
<p>Recommendation 2</p> <p>That Australia avoids working towards idealised institutional forms or offering standardised packages of support. Instead, it should take existing law and justice services and the financial constraints within the recipient countries as its starting point and support incremental improvement, building on the strengths of existing providers. To maximise its impact, Australia should take a multi-dimensional approach to promoting institutional change, using top-down capacity building in combination with service-delivery, problem-solving and thematic approaches.</p>	<p>Agree</p>	<p>In <i>Effective Aid</i>, the Government has committed to 'tailor our delivery systems to individual country circumstances and concrete evidence of what works best on the ground to produce results'. This commitment will build on progress already made by AusAID, AFP, AGD and other Australian government agencies to manage law and justice assistance based on advice from in-country teams and experts with deep understanding of local contexts and existing services. Australian assistance will support activities which directly enhance service delivery and will continue to support successful institutional reform and capacity building activities.</p>

Response to Evaluation Recommendations

Recommendation 3

That Australia gives higher priority to addressing violence against women within its law and justice assistance, helping to develop services and law enforcement approaches better suited to the needs of women. It should also invest in analysis of the needs of people with disability and other marginalised groups, assessing both their level of access to law and justice services and whether law and justice interventions could help promote their rights to other services and programs. AusAID should consider options for reorganising country teams to improve the integration of law and justice assistance with other elements of the country program.

Agree

Australian assistance will continue to promote access to justice for women and will increasingly focus on ending violence against women in countries—particularly in the Pacific—where this is a major problem and where Australia can make a difference.

Australia's commitment is demonstrated by the Pacific Gender Equality Initiative. The Initiative—*Pacific Women Shaping Pacific Development*—includes a focus on identifying and supporting activities that increase access to justice for survivors of violence. This includes both formal and, where appropriate, traditional forms of justice. A key early activity of the Initiative will be to support research and evaluation of existing efforts in this area in order to build a deeper understanding of successful interventions which can be expanded. The Initiative will also support the expansion of services for the survivors of violence, including legal counselling. An example of Australia's gender-related work in Afghanistan is \$17.7 million over 3 years to support national efforts to prevent violence against women and improve services for those affected. In Indonesia, Australia is assisting up to three million poor women with jobs, family planning and increased leadership against domestic violence.

The Government will continue to increase investments in law and justice assistance for people with disability and other marginalised groups. For example, in Indonesia, Australia's law and justice program is being guided by a comprehensive analytical review which AusAID commissioned on access to justice for people with disability in Indonesia (available on AusAID's website).⁵

AusAID has taken steps to improve the integration of law and justice assistance with its broader program including the intersection between various cross-cutting themes. This has included restructuring its Policy and Sectoral Division to integrate the work of this division with country programs.

⁵ http://www.ausaid.gov.au/publications/Pages/4427_8283_7546_8132_1077.aspx

Response to Evaluation Recommendations		
<p>Recommendation 4</p> <p>That Australia looks for opportunities to promote collaboration on specific, substantive issues, rather than on aid management, when seeking to address fragmentation in the law and justice sector. Programmatic assistance is appropriate only where genuine country leadership is in place and institutionalised.</p>	<p>Agree</p>	<p>Australia's <i>Comprehensive Aid Policy Framework 2012 (CAPF)</i> states that the delivery of Australia's aid will be 'informed by strategies that are based on a detailed analysis of the operating environment and consultations with our partners'. This will support Australia to work collaboratively with partners on substantive issues while ensuring mutual accountability for results. All law and justice programs will be based on analysis that identifies where Australian assistance can have the most impact on supporting safer communities and promoting equitable access to law and justice services for poor people.</p>
<p>Recommendation 5</p> <p>That Australia plans its stabilisation and development efforts in postconflict situations in parallel, rather than sequentially, to enable better management of the inevitable tensions between the two phases. In an immediate postconflict situation, Australia may need to support a higher level of justice and security provision than would be sustainable over the longer term. However, this form of support should be provided in such a way as to avoid distorting local institutions and spending patterns, and should be drawn down as soon as feasible, bearing in mind the need to offset the risks of renewed conflict with the risks of long-term dependency. At the same time, longer term development efforts should focus on restoring law and justice services to preconflict levels and building them up in a sustainable way, paying particular attention to long-term recurrent costs and their affordability.</p>	<p>Agree</p>	<p>AusAID has developed a <i>Framework for Working in Fragile and Conflict-affected States (Framework)</i>. This Framework provides guidance for aid officials on how to prevent violent conflict and build more responsive states and resilient communities, in order to support long-term peace, stability, and opportunities for development and poverty reduction. Both the <i>Framework and the New Deal for Engagement in Fragile States</i>, which Australia has endorsed, provide guidance on integrated approaches to supporting transitions out of conflict. Longer-term development efforts will be based on an analysis of the appropriate levels of law and justice services in each context.</p> <p>Agencies across the Australian government will work together to ensure that postconflict interventions are coordinated, complementary and mutually supportive in line with the above policy documents.</p>

Response to Evaluation Recommendations

<p>Recommendation 6</p> <p>That whole-of-government delivery of law and justice assistance is preserved, and its effectiveness ensured. This requires significantly greater investment by AusAID and the other Australian government agencies involved. It requires agreement on overarching goals and approaches, aid effectiveness principles, joint indicators of progress and a clear division of labour, with agency leads on particular themes or areas. Effective whole-of-government delivery requires funds allocation processes that minimise unhelpful competition for resources. It calls for genuine collaboration in developing assistance strategies and priorities in countries where Australia provides substantial law and justice assistance. It would also benefit from closer institutional linkages, including mutual secondments (as already occur between AusAID and the AFP) and stationing representatives from other agencies in AusAID’s Law and Justice Unit.⁶</p>	<p>Agree</p>	<p>The CAPF introduces a four-year budget strategy encompassing the aid spending of all Australian government agencies, and guides aid expenditure from 2012-13 to 2015-16. This government endorsed approach ensures a joint effort in delivering aid across all areas, including law and justice.</p> <p>The CAPF further supports a joint effort by AusAID and other Australian government agencies in the delivery of a whole-of-government <i>Annual Review of Aid Effectiveness for Cabinet</i> (the Review). The Review reports on the performance of the aid program, encompassing the aid spending of all Australian overseas development assistance.</p> <p>Where appropriate, relevant agencies will continue to support secondments, such as those which currently take place between the AFP and AusAID, and will consider supporting short-term placements to develop closer institutional linkages.</p>
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⁶ Recommendation 6 also contains guidance for AusAID and other government departments on what this means. This includes suggestions that AusAID invest more resources in leading processes for developing country strategies and law and justice program designs, and that other agencies which deliver law and justice assistance commit to building up expertise on development assistance.

Response to Evaluation Recommendations		
<p>Recommendation 7</p> <p>That Australia considers whether there is a case for providing long-term financial and technical support in small Pacific Island states to support basic law and order capability and for the more advanced functions needed for effective international law enforcement cooperation. If so, it may be appropriate to move away from short-term project cycles to more sustainable delivery arrangements.</p>	<p>Agree in principle</p>	<p>Through the whole-of-government country strategy process Australia is committing to longer term agreements on overseas development assistance funding. Support for law and order capability and other priorities such as health and education are considered through the country strategy process with the partner government. Allocations are based on meeting the four aid criteria articulated in the CAPF, and are subject to the annual budget process.</p> <p>Australian support will also help build advanced capability within national police services for effective law enforcement cooperation. Australian government agencies providing law and justice assistance recognise that this requires mid to long-term support.</p>
<p>Recommendation 8</p> <p>That Australia takes a gradual approach to scaling up its law and justice programs, based on proven successes, avoiding investments that might distort institutional development and national resource allocation.</p>	<p>Agree</p>	<p>Government has agreed to the CAPF, which sets indicative regional and country-level budget targets, rather than indicative sectoral budget targets for the aid program. Australia's law and justice assistance in specific locations will be guided by whole-of-government country and regional strategies. Individual program decisions will be based on proven successes and the aid program's track record at supporting safer communities and promoting equitable access to law and justice services for poor people.</p>

Response to Evaluation Recommendations

Recommendation 9

That AusAID’s Law and Justice Unit invests in developing more detailed guidance for results management in law and justice programs. It should increase the level of technical support available for advisers and program managers in country posts. It should ensure that M&E expertise is included in all design teams and should play an active role in quality assuring the design of results frameworks. Results frameworks should track country-level results, project outcomes and management data, using quantitative and qualitative data, to enable a more holistic picture of the results of Australian law and justice assistance to emerge. Projects should, as far as possible, align with counterpart monitoring systems, making sure that investments in monitoring data are also useful to counterpart institutions, and making efforts to demonstrate to counterparts the practical value of quality results data.

Agree

AusAID, in consultation with whole-of-government partners, is currently developing a *Performance Assessment Framework* to guide results management across all investments in effective governance, including law and justice programs. This will complement whole-of-government efforts to report against the headline results in the CAPF.

AusAID’s quality assurance processes require comprehensive monitoring and evaluation input into the design of individual programs. The monitoring systems for Australia’s law and justice programs will increasingly align with counterpart monitoring systems and look to utilise both qualitative and quantitative data across different levels of results. Where required, Australian support will help to establish and build these systems. AusAID’s Law and Justice Policy Section will provide guidance to AusAID programs, Australian whole-of-government and partner countries to help improve monitoring and evaluating law and justice assistance.



Solomon Islanders walk away from guns during a gun amnesty in 2003. Photo courtesy of RAMSI

CHAPTER 1: Introduction

Law and justice is an increasingly important area of international development assistance. According to OECD Development Assistance Committee (DAC) data, aid from OECD donors for ‘legal and judicial development’ has quadrupled in recent years, from US\$450 million in 2005 to US\$2116 million in 2009.⁷ As a result of postconflict interventions in the Pacific region and its decision to build a standing capacity for policing assistance within the Australian Federal Police (AFP), Australia has emerged as one of the largest donors in the law and justice field.⁸ Its law and justice expenditure of A\$370 million⁹ in 2010–11 represented nearly 15 per cent of the bilateral aid program.¹⁰

Yet there is no consensus internationally on how exactly law and justice assistance contributes to the development process. In theory, investments in law and justice can lead to a wide range of benefits, including more efficient markets, the empowerment of poor communities, improved access to public services, more accountable government and reduced levels of conflict. But beyond the theories, we know relatively little about the causal linkages between more effective justice institutions and broader development goals, and how they might vary in different country contexts. Moreover, this is an area where results have proved slow to eventuate—or at least difficult to measure—giving rise to some scepticism as to whether the ambitious goals set for law and justice assistance are really achievable.¹¹

Against this background, AusAID’s Office of Development Effectiveness (ODE) decided to commission a thematic evaluation of Australian law and justice assistance. The evaluation assesses the relevance and effectiveness of Australia’s assistance across the various Australian Government agencies—AusAID, AFP, Attorney-General’s Department (AGD) and others—involved in its delivery. It is a forward-looking evaluation, designed to generate lessons to guide future programming choices. Recognising that the various Australian Government agencies bring different assumptions to the field of law and justice assistance, it is also hoped that the evaluation will promote common understanding and greater coherence.

This synthesis report draws together the most important findings from the case studies and addresses the evaluation questions at a strategic or thematic level. It is accompanied by a number of other outputs from the evaluation, including detailed reports on each of the three case study countries (Indonesia, Cambodia and Solomon Islands) and a number of ‘think pieces’ produced by members of the reference panel. These documents can all be found on the ODE website.¹²

The report is organised as follows.

Chapter 1 introduces the evaluation and describes its scope and methodology.

Chapter 2 offers an overview of Australian law and justice assistance, including a mapping of the funding flows and a discussion of the policy and institutional context.

7 Taken from OECD Development Assistance Committee (DAC) International Development Statistics: <http://www.oecd.org/dataoecd/50/17/5037721.htm>.

8 According to OECD DAC figures, in 2010 the United States was the largest bilateral donor for ‘legal and judicial development’, at US\$1.6 billion, followed by Australia at US\$172 million, the European Union at US\$156 million and Germany at US\$142 million.

9 All spending figures in this paper are in Australian dollars, unless otherwise indicated.

10 Figures provided by AusAID.

11 Eric Scheye, “Some thoughts on law and justice: what to do about the ‘crisis of confidence’?” August 2011: <http://www.ode.ausaid.gov.au>

12 <http://www.ode.ausaid.gov.au>

Chapter 3 summarises the most important findings from the case studies and presents the evaluation team's answers to the evaluation questions. These are organised under four overarching questions:

- Is Australia pursuing the right objectives?
- Is Australian law and justice being delivered effectively?
- Is Australian law and justice achieving sustainable results?
- Should Australian law and justice be scaled up?

Chapter 4 draws together the conclusions and offers recommendations for the future development of Australian law and justice assistance.

1.1 Scope and methodology

This is a thematic evaluation looking across the Australian Government's portfolio of law and justice assistance and focusing on strategic issues relating to its relevance and effectiveness.

The evaluation was designed in a consultative manner, beginning with an evaluation concept note prepared by ODE as a basis for discussion with Australian Government stakeholders. We produced an issues note (November 2010) at the beginning of the inception phase, followed by interviews with stakeholders and a one-day inception workshop with Australian Government partners in Canberra on 23 November 2010. We also shared our evaluation plan (January 2011) with stakeholders for comment.

There were a number of components to the methodology. We carried out a mapping of the main drivers, trends and patterns in Australian law and justice assistance, based on analysis of spending data, program documentation and interviews in person or by telephone with many of the officials involved in the delivery of programs. This included extensive discussions with each of the main Australian Government agencies in Canberra on their activities, strategies and approaches, and their views on whole-of-government coordination. We also carried out a review of international literature on law and justice assistance to inform the design of the evaluation, with the results summarised in the issues note.

We carried out detailed case studies of law and justice programming in three countries: Cambodia, Indonesia and Solomon Islands. We also undertook brief visits to Wellington and Suva to take into account regional institutions and programs. Each of our case studies has been written up as a separate report and reviewed by stakeholders. As this synthesis report cannot capture all the detail from the case studies, the case study reports are an integral part of the findings of this evaluation.

The choice of case studies was made following extensive consultation with AusAID country posts and other stakeholders. The sample was not a random one, but a purposive selection chosen to represent the different country conditions in which Australia provides law and justice assistance. We also took account of the needs of and constraints on AusAID country teams. The sample provided us an opportunity to examine Australian assistance in three very different contexts, raising a wide range of challenges and issues confronting the law and justice portfolio.

A notable exclusion from the sample is Papua New Guinea (PNG), which as Australia's longest running law and justice program, has been the site of a lot of learning. This case was excluded because the experience has already been extensively reviewed and documented. However, we interviewed a number of AusAID and AFP officials with detailed knowledge of the PNG program and have taken into account many of the lessons.

Each case study involved a 10- to 14-day country visit by members of the evaluation team, accompanied in Cambodia and Indonesia by national consultants. The visits included:

- reviews of program documentation, results data and external reviews
- reviews of literature on the country context

- discussions with Australian Government officials to identify objectives and theories of change and discuss program design and performance
- key informant interviews with other partner country counterparts (including ministries of interior and justice, aid coordination agencies, senior members of the judiciary, police and corrections services, government legal offices, national human rights institutions) other development agencies and civil society organisations, to collect counterpart and external views on the quality of Australian law and justice programs
- site visits (both announced and unannounced) to courthouses, prisons and police stations that had benefited from Australian assistance (and for comparison, some facilities that had not received direct support), which afforded opportunities for feedback from staff and members of the public
- roundtables in Cambodia and Indonesia with civil society representatives, and interviews with a number of politicians and community leaders in Solomon Islands.

Altogether, we consulted with over 250 individuals in six countries. We would like to thank the AusAID country teams in each country for their extensive support and the many stakeholders who made time to talk to us.

The evaluation methodology was not designed to generate fresh empirical data on the results of Australian law and justice programming. Rather, it collected and analysed results data generated through the M&E of individual projects and used site visits and stakeholder consultations to verify and challenge the data. For reasons described in this report, the results data available on individual projects was often inadequate and we supplemented it as required through our own observations. Nonetheless, as a thematic or strategic evaluation, our main focus was on qualitative assessment of the factors influencing the relevance and effectiveness of Australian law and justice assistance, rather than on empirical investigation of its impact.

The findings of the evaluation are based upon our interpretation of what we saw in the field and learned through our consultations, which were tested and refined through feedback from a wide range of stakeholders. Many of the issues discussed in this report are open to different interpretations, and our interpretation is necessarily influenced by our own knowledge and past experience. We saw our role as one of challenging and provoking new thinking in an area of development assistance with more questions than certainties.

We chose not to begin the evaluation with a fixed definition of law and justice assistance. We wished to keep an open mind as to whether law and justice should be considered a sector of development assistance with defined organisational counterparts, like health or education, or a cross-cutting theme. Our evaluation plan noted that law and justice assistance might encompass:

- support for the development of substantive law
- support for the institutions responsible for law and justice services and functions
- promotion of specific normative content or outcomes within the legal system (justice).

As it transpired, the majority of Australian law and justice assistance is technical and managerial support for the core state institutions involved in delivering justice services, particularly the criminal justice chain (policing, prosecutorial and defence services, the judiciary, and the corrections system) and government legal offices (e.g. AGD). While there is some support to NGOs involved in the delivery of justice services, such as health services in prisons or support for victims of violence against women, partnerships with civil society are not a major feature of the law and justice portfolio.

The evaluation was overseen by a high-level reference group, comprising Otwin Marenin, Adrian Leftwich, Michael Woolcock, Gillian Brown and Patricia Rogers. On the request of ODE, two members of the reference group produced ‘think pieces’ to inform the evaluation.¹³

¹³ Otwin Marenin, “Eight steps for finding law and justice gold”, August 2011; Adrian Leftwich, “The political approach to the law and justice sector”, August 2011. See also Eric Scheye, “Some thoughts on law and justice: what to do about the ‘crisis of confidence’?” August 2011. These documents are available at <http://www.ode.ausaid.gov.au>



Photo description: A security fence funded by AusAID at Kandal Province Prison, Cambodia, allows prisoners to spend more time outside participating in exercise and rehabilitation activities. Photo courtesy of Chhay Ros, Senior Program Manager, AusAID

CHAPTER 2: Overview of Australian law and justice assistance

2.1 Mapping the funding flows

Over the past decade, Australia has emerged as one of the leading players internationally in the field of law and justice assistance. Its total law and justice expenditure for 2010–11 was A\$371 million, representing 14.7 per cent of Australia’s bilateral aid budget. According to OECD DAC aid statistics, only the United States spends more in the law and justice field.¹⁴

After starting on a modest scale in the 1990s, Australian law and justice assistance expanded rapidly from 2003 with the Regional Assistance Mission to Solomon Islands (RAMSI) and the scaling up of assistance to PNG. Since 2007–08, however, expenditure has remained steady despite an increase of 45 per cent in the bilateral aid budget.

A distinctive feature of Australian law and justice assistance is the whole-of-government approach, whereby assistance is delivered by a range of Australian Government agencies. Of A\$371 million in law and justice assistance, A\$109 million (29 per cent) was from AusAID appropriations, while A\$261 million was from the budgets of other departments. In addition, other departments may be involved as delivery partners in AusAID-funded assistance, adding another A\$15 million to the assistance provided by other departments. In a few instances, other agencies have even bid against commercial providers in AusAID tenders.

Table 1: Australian law and justice assistance by year

	2007–08	2008–09	2009–10	2010–11
Law and justice (million AUD)	353	298	377	371
Bilateral ODA (million AUD) ¹⁵	1,739	2,125	2,400	2,518
Percentage of bilateral ODA	20.3%	14.0%	15.7%	14.7%

The largest provider of Australian law and justice assistance is the AFP. Its annual Official Development Assistance (ODA) expenditure of A\$206 million accounts for 55 per cent of the total. Of this, around A\$117 million is the AFP’s contribution to the policing component of RAMSI. The Department of Immigration and Citizenship spends A\$44 million, while AGD, the Australian Federal courts, the Commonwealth Ombudsman and other domestic law and justice agencies together spend around A\$9 million.

¹⁴ OECD Development Assistance Committee (DAC) International Development Statistics: <http://www.oecd.org/dataoecd/50/17/5037721.htm>.

¹⁵ http://www.usaid.gov/anrep/rep11/appendix_c.cfm

Box 1: Definition of law and justice assistance

There is no agreed definition internationally of law and justice assistance. In common AusAID usage, it covers activities primarily targeting law and justice institutions and functions, including state and informal providers. Law and justice institutions include police, courts and corrections systems (and their responsible ministries), legal aid, government legal offices (such as ADG), specialised law enforcement functions (e.g. customs, immigration control, anti-money laundering, anti-corruption) and national human rights institutions. Aspects of civil society funding are also included. The statistics in this section also cover Australia's contribution to postconflict interventions and peacekeeping missions, and Australia's voluntary (i.e. non-assessed) funding for UN agencies with a law and justice focus, such as the UN Office on Drugs and Crime. Changes in the way AusAID and other Australian agencies have identified law and justice assistance over the years may result in some discrepancies in annual spending figures.

Looking at the country allocations over the past four financial years, Solomon Islands has been the largest recipient of Australian law and justice assistance, with 40 per cent of total expenditure. PNG and East Timor are next with 11.6 and 9.3 per cent respectively, while Indonesia, Cambodia, Vanuatu and Afghanistan all have substantial country allocations. Police training operations in Iraq, Afghanistan and the Sudan have accounted for around 3 per cent of assistance. Regional and international expenditure on law and justice, at 22.4 per cent of the total, includes Australia's contribution to UN peacekeeping missions and voluntary contributions to UN organisations such as the UN Office for Drugs and Crime as well as a number of regional AusAID and AFP programs such as the Asia Regional Trafficking in Persons Program, the World Bank's Justice for the Poor initiative and the Pacific Police Development Program.

Recipient	Spend by financial year (million AUD)				Total 2007-2011	
	07/08	08/09	08/09	10/11	million AUD	%
Regional/international	89.2	61.3	71.0	91.3	312.8	22.4%
Country programs						
Solomon Islands	149.7	112.6	155.6	143.3	561.2	40.1%
PNG	39.1	40.0	44.2	39.4	162.9	11.6%
East Timor	26.0	31.8	43.3	29.2	130.2	9.3%
Indonesia	4.9	7.0	17.5	12.3	41.7	3.0%
Cambodia	8.8	11.7	8.0	9.0	37.5	2.7%
Vanuatu	6.2	6.7	8.3	10.0	31.3	2.2%
Afghanistan	1.7	1.4	3.2	15.4	21.7	1.6%
Philippines	8.0	7.6	0.7	0.3	16.6	1.2%
Nauru	2.6	1.6	3.5	4.3	12.0	0.9%
Iraq	1.4	2.0	4.4	3.6	11.3	0.8%
Samoa	3.4	1.9	2.0	3.1	10.4	0.7%
Sudan	2.3	2.7	2.6	0.9	8.5	0.6%
China	2.2	2.3	2.4	0.4	7.3	0.5%
Tonga	1.3	1.8	2.0	2.0	7.1	0.5%
Zimbabwe			4.0	3.0	7.0	0.5%
Fiji	4.2	1.3			5.6	0.4%
Lao PDR	1.7	1.7			3.4	0.2%
Sri Lanka			2.5	0.5	3.0	0.2%
Vietnam	.1	1.2	.5	0.6	2.5	0.2%
Pakistan			.8	1.5	2.4	0.2%
Other	.6	.9	.5	0.8	2.8	0.2%
Total	353.5	297.6	377.0	370.8	1,399.0	

2.2 Policy and institutional context

Over the past decade, Australia's law and justice assistance—which in 2002–03 was spent on small-scale projects, totalling under A\$30 million—has become a major part of the aid program. The expansion corresponded with a heightened concern over state fragility in Australia's neighbourhood. Following 9/11 and terrorist attacks in Bali in 2001 and Jakarta in 2003, state fragility in the Asia-Pacific region was seen as a significant threat to Australian security. A potential breeding ground for transnational terrorism and organised crime, fragile states became both a foreign policy and a development priority.

With conflict in Solomon Islands and East Timor, successive coups in Fiji and concerns about the political stability of other Pacific Island countries, there were fears that Australia was surrounded by an 'arc of instability'.¹⁶ This in turn was Australia's 'arc of responsibility'¹⁷—an arena in which the international community looked to Australia to maintain order. This led Australia to take a more assertive line with its Pacific neighbours and seek to strengthen the political and security functions of the Pacific Islands Forum.

Australia's response to the deterioration of public order in Solomon Islands from 1998 onwards indicates this shift in attitudes. Initially, Australia was very reluctant to intervene, declining a number of requests to do so from the Solomon Islands Government. In January 2003, then Foreign Minister Alexander Downer wrote:

“Sending in Australian troops to occupy Solomon Islands would be folly in the extreme. It would be widely resented in the Pacific region. It would be very difficult to justify to Australian taxpayers. And for how many years would such an occupation have to continue? And what would be the exit strategy? The real show-stopper, however, is that it would not work—no matter how it was dressed up, whether as an Australian or a Commonwealth or a Pacific Islands Forum initiative. The fundamental problem is that foreigners do not have answers for the deep-seated problems afflicting Solomon Islands.”¹⁸

By June of that year, Australia had agreed to a large scale intervention, provided that it was at the request of the Solomon Islands Government and with a mandate from the Pacific Islands Forum. The shift in approach has been attributed to various factors, including fears of spill-over effects from Solomon Islands into Bougainville and PNG, and the need to demonstrate internationally that Australia was capable of meeting its regional responsibilities. The rapid success of the RAMSI mission in restoring law and order was seen as a vindication of this more robust Australian role in the region and led to a ramping up of the Australian investment in law and order in PNG through the Enhanced Cooperation Program.

16 The term was coined by academic writers in the 1990s and used by then Australian Defence Minister Brendan Nelson in a speech to parliament in August 2006: Dobell, Graeme, “The Pacific ‘arc of instability’”, *Correspondent's Report*, 20 August 2006: <http://www.abc.net.au/correspondents/content/2006/s1719019.htm>.

17 Boege, Volker, “Australian approaches to state fragility in the South Pacific region”, Paper presented at the 49th Annual ISA Convention, March 2008.

18 Alexander Downer, “Neighbours cannot be recolonised”, *The Australian*, 8 January 2003.

Another policy shift at this time was the move towards whole-of-government participation in postconflict interventions and in the delivery of law and justice assistance—part of a broader emphasis on whole-of-government approaches under the Howard Government.¹⁹ Instability in the Pacific was seen by policy makers as demonstrating the failure of traditional approaches to development.²⁰ Indeed, some 16 years of Australian policing support in PNG had corresponded with more or less continuous deterioration in the law and order situation. Whole-of-government approaches to regional instability were seen as a way of bypassing the slow route of development projects implemented by contractors in favour of a more direct, robust and integrated approach to state building.²¹

Under RAMSI in Solomon Islands and the Enhanced Cooperation Program in PNG, a range of Australian Government personnel (including police,²² government lawyers and Treasury officials) were assigned directly to institutions for a combination of in-line and capacity-building work. As well as accelerating institutional development, it was anticipated that this approach would lead to the development of permanent institutional links between Australian law and justice institutions and their counterparts around the region, to the benefit of regional stability. The 2009 Beale Report into Australian policing capabilities noted:

“There are some obvious long-term benefits of AFP operations in the region, including direct benefits for the AFP itself, such as the opportunity to develop and strengthen bilateral working relationships with foreign law enforcement agencies. Extensive regional engagement by the AFP demonstrates Australia’s commitment to assisting our neighbours, whether in circumstances of civil unrest, or more generally in enhancing policing capacities across the region. As a result, there is less likelihood that neighbouring countries will need to rely upon support from major powers outside the region.”²³

A major institutional innovation to support whole-of-government delivery was the creation of an International Deployment Group (IDG) within the AFP in early 2004. Up to and including the RAMSI intervention, Australian policing contributions to international peacekeeping missions and other interventions were organised on a ‘ramp up, ramp down’ model—that is, personnel were drawn from other AFP units for deployment overseas, with ad hoc support structures created for each mission. With the scale of the 2003 RAMSI intervention, however, this became too burdensome, and the IDG was created to provide a standing capacity for the deployment abroad.

19 A 2004 Government Management Advisory Committee report stated: “Whole of government denotes public service agencies working across portfolio boundaries to achieve a shared goal and an integrated government response to particular issues. Approaches can be formal and informal. They can focus on policy development, program management and service delivery.”

20 Dinnen, Sinclair and Abby McLeod, “The quest for integration: Australian approaches to security and development in the Pacific Islands”, *Security Challenges*, Vol. 4, No. 2, 2008, pp. 23–43 at p. 26.

21 Elsinia Wainwright, ‘Responding to state failure—the case of Australia and Solomon Islands’, *Australian Journal of International Affairs*, vol. 57, no. 3 November 2003; Volker Boege, *Australian approaches to state fragility in the South Pacific Region*, a paper presented at the 49th Annual International Studies Association Convention, San Francisco, California, 26–29 March 2008—Panel: ‘Donor perspectives on state fragility’; Dr Michael Fullilove, *The Testament of Solomons: RAMSI and International State-Building*, Lowy Institute for International Policy, March 2006.

22 Much of the policing component of 210 officers was removed following a 2005 ruling by the PNG Supreme Court that legislation granting Australian police immunity from criminal prosecution in PNG was unconstitutional: <http://www.dfat.gov.au/geo/png/sgp.html>.

23 Roger Beale, “New Realities: National Policing in the 21st Century—Federal Audit of Police Capabilities”, June 2009, p. 143.

Under the IDG's Future Strategy (a new policy proposal approved by the Australian Government in 2006), the IDG was to have a capacity of 1200 sworn and unsworn personnel, with 750 deployable overseas, 200 for a rapid deployment capability (the Operations Response Group) and 250 for Australia-based support services. This staffing level was never fully achieved, partly because experience demonstrated that more senior staff were required for overseas mission than originally anticipated, and the current capacity stands at just under 1000 staff. The Future Strategy anticipates that this is sufficient to support one major long-term mission, three medium-sized missions and six small deployments. The core budget for the IDG is supplemented by a series of mission-specific new policy proposals, for a total budget of around A\$280 million per year.²⁴

The IDG is unique in the field of law and justice assistance internationally. Its establishment reflects the changing nature of international peacekeeping, with the emphasis moving away from peace enforcement through military means to rapid development of domestic institutions to provide security and justice. A police deployment capable of building domestic policing capacity while helping restore law and order, as the IDG has done in Solomon Islands, is potentially a very powerful tool. However, the creation of the IDG has also been a major institution-building challenge in its own right. In its early years of operation, it was focused mainly on providing personnel for in-line policing work in Solomon Islands, only shifting to capacity building from around 2005/06. Since then, it has been on a steep learning curve, gradually developing a small core of sworn and unsworn staff skilled in capacity building (a very different skill set than policing), together with program design and monitoring support. Working with AGD, the IDG has developed the Pacific Police Development Program as a vehicle for providing capacity-building support right across the Pacific.

However, as the IDG increases its focus on capacity building, it encounters the same set of issues and challenges as those facing AusAID with its traditional law and justice projects. Indeed, research produced by IDG makes an eloquent case for the long-term nature of capacity building, the danger of trying to export Western institutional models and the interrelationship of policing with broader political and socio-economic trends.²⁵ While this demonstrates the learning that has taken place within IDG, it also undermines the premise that a whole-of-government approach to law and justice assistance offers a means of shortcutting the slow pace of traditional development approaches.

The political and policy environments in Australia have moved on since the creation of the IDG. The 'arc of instability' language has fallen away and the usefulness of a 'failed states' lens in explaining events in the Pacific is widely questioned. With the RAMSI mission now drawing down and moving into a transitional phase, it may become more difficult to justify retaining IDG at its current strength.

However, concern with instability in the Pacific remains real. Through a combination of rapid population growth, urbanisation, low economic growth, climate change, governance deficits and the shallow roots of democratic systems in many Pacific Island states, political instability and breakdowns in law and order are almost certain to recur sporadically for the foreseeable future. The Australia Government will therefore wish to retain the capacity to intervene where necessary, principally through policing operations. It is also likely to recognise a continuing need to strengthen national institutions in the Pacific to maintain law and order. Budget constraints aside, there would seem to be an objective need to retain the IDG's capacity to deploy overseas as well as contribute to capacity building. However, the question of how best to integrate it with the delivery of other Australian law and justice assistance remains an open one.

²⁴ Roger Beale, "New Realities: National Policing in the 21st Century—Federal Audit of Police Capabilities", June 2009, p. 140.

²⁵ Murney, Tony, Sue-Ellen Crawford & Andie Hider, "Transnational Policing and International Human Development—A Rule of Law Perspective", *Journal of International Peacekeeping* 15 (2011), pp. 39–71.



The General Court of Stabat in North Sumatra, Indonesia, holds a circuit court in Gebang district in 2012. Australian assistance has increased access to circuit courts which provide a one-stop service to parents who cannot afford to travel to the city to obtain a birth certificate for their children. Photo courtesy of Hilda Suherman

CHAPTER 3: Evaluation findings

This chapter presents the most important findings from the case studies and our conclusions against the evaluation questions. It is grouped under four main questions:

- Is Australia pursuing the right objectives?
- Is Australian law and justice assistance delivered effectively?
- Is Australian law and justice assistance delivering sustainable results?
- Should Australian law and justice be scaled up?

3.1 Is Australia pursuing the right objectives?

This section examines whether the objectives behind Australian law and justice assistance are relevant and appropriate: it begins by examining what Australia's objectives are, both on paper and in practice; it assesses what Australian national interests are at play in the law and justice arena, and whether they conflict with development goals; it considers whether Australian support is appropriate to the diverse political, economic, social and geographical environments in which it is delivered; and finally, it considers whether there are alternative areas where Australia should engage, looking in particular at the relative neglect of informal justice.

What is Australia trying to achieve through its law and justice assistance?

Why does Australia devote a high proportion of its aid program to law and justice assistance? Are its goals coherent, relevant and realistic?

Law and justice is a field where donor investments have been driven as much by theory as evidence, and the theories have changed markedly over time. Some of the earliest assistance by the World Bank and the United States emphasised the importance of law to the efficient functioning of markets, through the enforcement of contracts and property rights.²⁶ Other possible linkages include empowering the poor to escape poverty traps through legal empowerment²⁷ and to assert their legal identity in order to participate in the formal economy,²⁸ and make productive use of their assets.²⁹ While law and justice were not included in the Millennium Development Goals, some donors see improving personal security as creating an enabling environment for expanded public service delivery. In recent years there has been a strong emphasis on security and justice as central to the state-building and peace-building agenda, being a “core public function”³⁰ that enables states to establish their legitimacy³¹ and a means of managing conflict.³²

26 North, Douglass, *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990); Ogus, Anthony, “The importance of legal infrastructure for regulation (and deregulation) in developing countries”, Centre on Regulation and Competition, University of Manchester, Working Paper No. 65, June 2004.

27 Golub, S., “Beyond Rule of Law Orthodoxy. The Legal Empowerment Alternative”, Rule of Law Series Working Papers No. 41, Carnegie Endowment for International Peace, Washington D.C., 2003.

28 Commission on Legal Empowerment of the Poor, “Making the Law Work for Everyone”, Vol. I, Report of the Commission on Legal Empowerment of the Poor, UNDP, 2008.

29 Hernando de Soto, *The Other Path: The Invisible Revolution in the Third World*, trans. June Abbott (New York: Harper & Row, 1989).

30 DFID, “Building peaceful states and societies: A DFID Practice Paper”,

31 World Bank, *Conflict, Security, and Development: World Development Report 2011*, World Bank: Washington D.C., 2011, p. 84.

32 Adrian Leftwich, “The political approach to the law and justice sector”, August 2011.

In these instances, law and justice is seen as instrumental to the achievement of broader development goals. But law and justice can also be seen as a development goal in its own right. Nobel Prize-winning economist Amartya Sen has argued that justice is intrinsic to the development process, and that an unjust society can no more be considered developed than one that is unable to feed its citizens.³³

Law and justice assistance internationally tends to reflect this theoretical uncertainty. When setting out their objectives, many programs offer several high-level rationales for working in the justice arena (e.g. improved governance, better markets, reduced conflict) without specifying exactly how the specific interventions that are planned (e.g. investing in a more efficient court system) will lead to those objectives. When objectives are vague or at too high a level, it can be difficult to understand the logic and theory of change behind the choice of one set of activities over another, and as a consequence, difficult to assess whether the assistance is having its intended impact.

By contrast, Australia's law and justice assistance is quite tightly focused on two specific objectives—stabilising conflict-affected societies and promoting access to justice as a development goal in its own right. Both objectives are highly relevant to the countries in which they are pursued.

For most of the period covered by this evaluation, there was no overarching policy statement or strategy for Australian law and justice assistance. However, in the past twelve months there have been a number of relevant policy statements. In its response to the 2011 Independent Review of Aid Effectiveness, the Government stated:

“A safe environment is a fundamental prerequisite for development and poverty reduction to occur. Access to justice is vital for promoting human rights. Girls cannot attend school if they fear violence or intimidation. Businesses will not invest if they do not have confidence in the enforceability of contracts or if the costs of security are too high.

We will support safer communities, and promote equitable access to law and justice services for poor people. Our law and justice programs will highlight important Australian priorities, including addressing violence against women, particularly in the Pacific, and promoting access to justice.”³⁴

A recent AusAID policy note³⁵ names “improved security and enhanced justice” and “enhanced human rights” as two of the three pillars of Australia's support for “Effective Governance” (one of the strategic goals of the aid program). It notes that security and justice are both fundamental to achieving development outcomes and vital to Australia's national interest.³⁶ The priorities include combating transnational crime; ending violence against women, children and marginalised people; providing basic security and stability; and strengthening criminal justice systems.

33 Sen, Amartya, “What is the role of legal and judicial reform in the development process?” World Bank Legal Conference, Washington D.C., 2000.

34 Government of Australia, “An Effective Aid Program for Australia: Making a real difference – Delivering real results”, 2011, p. 37.

35 AusAID, “Effective governance”, November 2011.

36 Note that the 2011 Independent Review of Aid Effectiveness stated that, while it is legitimate for the Australian aid program to focus in geographical areas where Australia's foreign policy, security and economic interests are concentrated, individual programming decisions should rarely be made on the basis of national interest: Holloway, Sandy, Stephen Howes, Margaret Reid, Bill Farmer & John W.H. Denton, “Independent Review of Aid Effectiveness”, Canberra, April 2011, p. 8.

“Insecurity... has become a primary development challenge of our time. One-and-a-half billion people live in areas affected by fragility, conflict, or large-scale, organized criminal violence, and no low-income fragile or conflict-affected country has yet to achieve a single United Nations Millennium Development Goal... While much of the world has made rapid progress in reducing poverty in the past 60 years, areas characterized by repeated cycles of political and criminal violence are being left far behind, their economic growth compromised and their human indicators stagnant.”

World Bank, *Conflict, Security, and Development: World Development Report 2011*, World Bank: Washington D.C., 2011, p. 1

Looking at how these translate into practice, there are different rationales at play in Australian law and justice assistance. First, by far the greater part by expenditure of the Australian assistance goes towards stabilising conflict-affected societies and strengthening institutions in fragile states. Australia’s largest single investment in law and justice is its contribution to RAMSI. Programs in PNG, East Timor and Cambodia all have important conflict-reduction goals. Fear of instability in Pacific Island countries has been the most important driver for the expansion of Australia’s law and justice assistance in recent years—including the decision to create a standing capacity for international policing assistance through the AFP’s International Deployment Group. The relevance of this assistance to the development needs of the recipient countries is clear. Conflict undermines all other development goals, and where there is substantial risk, strengthening law and order and enabling peaceful dispute resolution are clearly highly relevant goals.

We note, however, that where stabilisation is the primary goal, we would expect to see the design of the assistance based on careful conflict analysis, to enable the assistance to be focused on addressing the specific drivers of conflict that pose the greatest risk to stability. We did not see examples of this kind of detailed conflict analysis being used to inform programming choices. In the case of Solomon Islands, although there is plenty of good conflict analysis available in the literature, Australian law and justice assistance is not tailored around specific drivers of conflict; does not address specific sources of insecurity, such as land disputes or violence against women; and does not currently engage with questions around the nature and structure of the state or its relations with society.³⁷

Second, Australian law and justice assistance focuses on promoting access to justice as a development goal in its own right, focusing on women, children and the marginalised. Injustice and personal insecurity are central to poor people’s experience of poverty. Across the world, being poor means being vulnerable to crime, dispossession or exploitation by more powerful economic interests and unfair dealings at the hands of the state. In the Pacific and other developing regions, rapid social and economic change is triggering conflict within families and communities. These conflicts—and the way they are managed by communities and legal systems—are causes of instability and vulnerability for particular groups within society.

Australian law and justice assistance seeks to alleviate this dimension of poverty by improving access to justice for those who are mostly likely to be excluded. For example, in Cambodia there has been a strong focus on improving standards in prisons, particularly for women and juveniles. Until very recently, there has been little overt reference to human rights in the Australian aid program, but it is apparent that a belief in justice and human rights is one of the core values that Australia brings to its international assistance. As the 2011 Independent Review of Aid Effectiveness put it, the Australian aid program should reflect the values of the Australian people.³⁸

37 A 2009 Enquiry by the Solomon Islands Parliament into the 2006 Honiara Riots noted that little progress had been made into addressing the root causes of the Tensions, particularly land disputes, and that RAMSI did not regard it as part of its mission: Solomon Islands Government, “Commission of Inquiry into the April 2006 Honiara Civil Unrest in Honiara: Recommendations, Conclusions and Finding”, March 2009.

38 Holloway, Sandy, Stephen Howes, Margaret Reid, Bill Farmer & John W.H. Denton, “Independent Review of Aid Effectiveness”, Canberra, April 2011, pp. 3 and 108.

What Australian national interests are involved?

Until 2011, the overall objective of the Australian aid program was “to assist developing countries to reduce poverty and achieve sustainable development, in line with Australia’s national interest”. The 2011 Independent Review of Aid Effectiveness considered it legitimate to focus the aid program in Australia’s immediate neighbourhood, where its foreign policy, security and economic interests are concentrated, but expressed the view that the design of individual programs should rarely be made on the basis of national interest. All Australian aid must pass the poverty alleviation test, but not all aid should promote a specific national interest.³⁹ The Australian Government agreed, revising the purpose statement of the aid program to make it clear that Australia’s interests lie in promoting stability and prosperity in the region and beyond.⁴⁰

In practice, there are more direct Australian national interests at play in the law and justice field in the Pacific and South-East Asia than in most parts of the aid program. As a result of the global threats of transnational crime and terrorism, many aspects of law enforcement have become internationalised. As members of the international community, all states are expected to have in place, the laws and institutional capacity that enable them to cooperate in combating these threats, from banking supervision and tracking financial flows to effective immigration systems and the ability to control the illicit movement of goods. Where neighbouring states are deficient in these areas, it can pose a threat to Australian interests.

The AFP’s International Network (police officers stationed in Australian embassies and high commissions) combines operational functions with support to national police forces to help them cooperate effectively on international criminal issues. Some of this support is classified as ODA. For example, in Cambodia the AFP funds a Transnational Crime Unit within the Cambodian National Police to participate in joint international operations to combat the smuggling of illicit goods, such as synthetic drug precursors. In the Pacific, the AFP runs a Transnational Crime Coordination Centre based in Samoa. Much of AGD’s assistance goes towards helping partner countries meet their commitments on international criminal cooperation, such as through developing legislation on anti-money laundering. Some elements of AusAID law and justice programs also focus on international criminal cooperation. In Indonesia, the Legal Development Facility that ran from 2003 to 2009 included fighting transnational crime as one of its four objectives. The other three were supporting legislative drafting on money laundering, people trafficking and counter-terrorism, and helping to develop cooperative procedures for extradition and exchange of prisoners.

We found no sign that specific national interests were detracting from the developmental orientation of Australian law and justice assistance. In Indonesia, for example, there are many Australian interests at play in the justice system, including dealing with the threat of terrorism (95 Australians have lost their lives in terrorists attacks in Indonesia) control of people trafficking and the interests of Australian companies and individuals before the Indonesian courts. However, AusAID takes care to keep specific Australian interests separate from its assistance. Likewise, the Department of Foreign Affairs and Trade has a project supporting the Indonesian prison system. While improving the management of terrorist prisoners was part of the original rationale for the support, this goal has been pursued through general support for management systems across the corrections service. While the AFP’s International Network focuses on operational needs, it is managed separately from IDG.

39 Holloway, Sandy, Stephen Howes, Margaret Reid, Bill Farmer & John W.H. Denton, “Independent Review of Aid Effectiveness”, Canberra, April 2011, p. 8.

40 Australian Government, “An effective aid program for Australia: making a real difference—delivering real results”, 2011, p. 1.

However, there are still some tensions that need to be managed, particularly when dealing with small Pacific Island countries. By investing in the laws and capacities required for effective law enforcement cooperation, Australia is promoting a regional public good—that is, a common interest shared by all the countries involved calling for joint action. However, it is a rather asymmetrical shared interest, in that Australia, as the largest country, is more exposed to the harms of transnational crime and has far greater capacity to meet the costs of fighting it. Conversely, for Pacific Island countries, fighting transnational crime may not be a high priority. In small countries with limited financial and human resources, there is a risk that Australian support for transnational criminal cooperation—often involving elite agencies with sophisticated capabilities—will draw resources away from more basic, internal law and justice needs and priorities.

Is Australian support appropriate to the country context?

The objectives and entry points for law and justice assistance should emerge from analysis of what is most needed and what is achievable in the specific country context. There is likely to be a whole range of political, economic, social and geographical factors that determine what is achievable in the short to medium term.

Australian law and justice programs are generally well aligned with the objectives of the partner countries. Where there is a law and justice development strategy or a section of the national development strategy dealing with justice, Australia matches its objectives with that strategy. Where there is no such strategy, Australia supports its counterparts with policy and strategy development.

Alignment, however, is only one part of the relevance question. Law and justice strategies in the partner countries, where they exist, generally contain very broad and ambitious goals based on familiar international norms. In some cases—Cambodia is a notable example—the strategies appear to have been written primarily for donor consumption, without genuine political commitment. In other cases, the goals are so distant from current realities that they offer little guidance as to how to get there. While the principle of country ownership is critical in law and justice assistance, as in all other development assistance, it means more than just aligning with the preferences of government. In many societies, law and justice systems support the interests of the powerful at the expense of the majority. While taking due account of government policies and preferences, supporting genuine country ownership may also mean working with and helping to build constituencies for change within society, even though these may be at odds with the interests of government.

While aligning with partner country needs and preferences, Australia needs to adopt objectives that are achievable in the country context. We saw some indications that Australian law and justice assistance can default to attempting to put in place a standard set of institutional arrangements, without taking enough care to identify credible pathways for change. In some of the cases we examined, this led to overambitious programs, which were gradually whittled down to a set of goals that were achievable in the country context. For example, the Cambodia project began as a very ambitious, systemic approach spanning all the major service providers (courts; police; corrections) while supporting the government with the implementation of a sector-wide

reform strategy. When it became clear that there was little political support for many aspects of this agenda, there was a progressive abandonment of activities in favour of a narrower focus on a couple of areas (improvements in prison conditions and community-level justice initiatives) where there was political space to work. While it is positive that such a learning process took place, it was very protracted. Stronger political and institutional analysis at the outset might have led to more productive areas of assistance being identified earlier.

In any society, law and justice institutions emerge from political processes. As Adrian Leftwich writes:

“stable institutions of law and justice (especially new ones) can only be established through a process of political contestation and negotiation, and can seldom be technically or exogenously designed.”⁴¹

Where some common ground has emerged on the principles, purpose, function and form of law, and justice institutions, international support can help with putting those institutions in place. Where there is no consensus, the emphasis may need to shift to supporting particular actors or interests that are working for change. This may mean focusing on processes like representation, consultation, networking and information flows, and on the organisations through which different interests are expressed (e.g. business associations, trade unions and NGOs).⁴² While we saw some good examples of this kind of support in Indonesia, we also noted that Australian law and justice programs in the Pacific, including in Solomon Islands and PNG, have struggled to develop meaningful partnerships with civil society actors.

While the long-term goal may be to work towards justice systems that meet international standards, in the short term Australian assistance needs to promote change processes that are feasible in the political context. In societies where the police and judiciary serve the regime rather than the public, introducing democratic policing or an independent judiciary involves transforming power structures and values. This will come about only through protracted, home-grown political processes. It cannot be achieved simply by changing legislation or organisational forms. In fact, organisational change without corresponding changes in power and values produces only temporary advances that are soon undermined.⁴³ The practical implication is that, in difficult political and social environments, Australia needs to be more modest and realistic in the short-term objectives it sets for its law and justice assistance.

In addition to the political context, law and justice systems need to be adapted to the available financial and human resources and the constraints imposed by the geographical and social context. In Pacific Island countries, in particular, resource constraints mean that hard choices have to be made—for example, between concentrating on the needs of urban areas or scattered rural communities, or between basic, community-level justice and more advanced functions and capacities. It is notable that Australia has been engaged in capacity building of justice institutions in Solomon Islands since around 2005/06 (when the focus of RAMSI shifted from restoring law and order to institution building) without having a service-delivery model to work towards. It was only in 2011 that the first economic analysis of the justice system was undertaken, in order to begin a dialogue on options with the Solomon Islands Government.

⁴¹ Adrian Leftwich, “The political approach to the law and justice sector”, August 2011, pp. 11–12.

⁴² Adrian Leftwich, *op. cit.*

⁴³ Research by staff at the AFP’s International Deployment Group demonstrates the strong association between the rule of law and human development outcomes across the world, to the extent neither appears to be achievable without the other. Improvements in law and justice institutions without corresponding increases in human development result in ‘push-back’ from elite vested interests and a regression to the previous status quo. Murney, Tony, Sue-Ellen Crawford & Andie Hider, “Transnational Policing and International Human Development – A Rule of Law Perspective”, *Journal of International Peacekeeping*, vol. 15, 2011, pp. 39–71.

Are there alternative areas where Australia could usefully engage?

The emphasis on stabilisation of conflict means that the majority of Australian law and justice assistance is invested in criminal justice. This leads to relative neglect of a number of other areas that could strengthen the linkages between law and justice assistance and Australia's development goals.

There is very little attention given to family, civil and administrative law. One notable exception was in Indonesia, where one strand of the Australian assistance is helping to improve access and equity to public services and social programs. Australia has helped women heads of households from poor communities to assert their legal identity and thereby to access health and education services (see Box 4 below). This approach nicely complements Australia's support for service delivery. This theme may be best suited to a middle-income country like Indonesia, which has extensive social protection programs but struggles to ensure equitable access. However, it would also merit further exploration in other countries.

We found few instances of Australia using its law and justice assistance to advance broader social goals. Tackling violence against women is given strong emphasis in Australian policy documents, but in practice forms only a minor part of the assistance.⁴⁴ We did not see much sign of an integrated approach to the issue—for example, by linking criminal justice to health and other protective services. There are other social agendas with important law and justice dimensions, such as ending discrimination against people with disability, managing urbanisation in the Pacific or protecting vulnerable groups such as slum dwellers or garment workers in South-East Asia. By broadening out from criminal justice, Australia could potentially use its law and justice assistance as an entry point for tackling such issues.

Land rights is another area of relative neglect. Australia has a few projects on land titling (in the Philippines, Laos and PNG) and supports the World Bank's Justice for the Poor engaging in some research on land rights in the Pacific but in our three case study countries, it stays away from the area altogether. We acknowledge, however, that this is very politically sensitive terrain. Any intervention would have to be based on careful analysis of the political interests at play and Australia's potential to make a difference.

Australia also provides very little support for informal justice. Many of the countries where Australia provides law and justice assistance—including Indonesia and the Pacific Island countries—display a vibrant legal pluralism, with informal or traditional justice providers operating alongside the formal system.⁴⁵ In the Pacific, in particular, there is a spectrum of justice institutions from formal to informal that defies easy characterisation. Formal courts may have jurisdiction to apply *kastom* (tradition) as a source of law, while decisions by informal institutions such as chiefs may be recognised in some instances as legally binding.

⁴⁴ One example is Australian support (A\$4.2 million over 5 years) to the Vanuatu Women's Centre and its work on violence against women, which combines counselling with community education and legal advocacy.

⁴⁵ See, for example, Bruce Baker. *Security in Post-Conflict Africa: The Role of Nonstate Policing*. (Boca Raton: CRC Press, 2009); Bruce Baker and Eric Scheye. Multi-layered Justice and Security Delivery in Post-Conflict and Fragile States. *Conflict, Security & Development*, Vol. 7. No. 4, (2007), p. 508; Leila Chirayath, et. al. *Customary Law and Policy Reform: Engaging with the Plurality of Justice Systems*. (Washington D.C.: World Bank, 2005); DFID, Non-state Justice and Security Systems. (London: DFID, 2004); Deborah Isser, et. al. (eds.), *Looking for Justice: Liberian Experiences and Perceptions of Local Justice Options* (Washington, DC: USIP, 2009); OECD, *Enhancing the Delivery of Justice and Security in Fragile States*. (OECD: Paris, 2007); Eric Scheye, *Pragmatic Realism in Justice and Security Development: Supporting Improvement in the Performance of Non-State/Local Justice and Security Networks*, (Hague: Clingendael Institute, 2009); UNDP, *Doing Justice: How Informal Justice Systems can Contribute*. (Oslo: Oslo Governance Centre, 2006).

In practice, informal institutions—being more accessible for geographical, financial and cultural reasons—are often the main providers of justice. In Solomon Islands, for example, the formal law and justice institutions (including police) have a permanent presence only in the capital and a few other locations, and are not accessible by the majority of the population. In Indonesia, research indicates that people are more likely to seek justice through the informal system.⁴⁶ Indeed, Indonesians make less use of the formal courts now than they did in the colonial period although this may be a result of practical barriers to accessing formal justice rather than an active preference. Even in Cambodia, where there is no traditional justice system as such, communities are highly self-reliant and deal with law and order issues internally for all but the most serious crimes.⁴⁷

But while they are more accessible, informal justice services also display a range of shortcomings (many of which they share with the formal justice system). They can reflect and reinforce local power relations and patterns of exclusion, working to the disadvantage of weaker members of the community. World Bank research in Indonesia found a significant element of coercion of weaker parties in local justice fora, together with corruption.⁴⁸ Informal institutions can be poorly equipped to manage certain issues, such as sexual violence. In the Pacific, trends such as urbanisation, the spread of electronic communications and the penetration of the cash economy into village life are challenging the authority of traditional leaders.

Apart from some research activities, Australia engaged very little with informal justice providers. This stems from a number of causes, including fear of the complexity of the informal system and difficulty in finding appropriate entry points; a prejudice on the part of Pacific governments and formal justice agencies against the informal system; and a fear of associating Australia with local practices that may not meet international human rights standards. Nevertheless, this lack of engagement with informal justice providers raises the question of whether Australian support is relevant to the majority of the population.

Our view is that Australia is justifiably cautious about engaging with informal actors in the justice system. Informal justice systems are diverse and often highly fluid, calling for detailed knowledge of complex local political and cultural relationships and taking most law and justice practitioners well outside their comfort zone. Informal justice has only limited capacity to absorb financial or technical support, and poorly designed external interventions can easily do more harm than good. There are also good reasons why formal justice should be the priority, given its centrality to building a modern and stable state.

However, caution should not mean refusing to engage, and there is clearly scope for Australia to do more in this area. Where informal and local actors are the primary providers of justice services, they should be factored into the design of Australian assistance. Careful study and analysis is required to identify effective entry points. There are various approaches that could be pursued: one is to strengthen the linkages between non-state providers and the formal justice system. In PNG, for example, AusAID has worked effectively with village courts, significantly increasing the number of women magistrates. In Solomon Islands, RAMSI is considering how to scale up a pilot initiative that placed non-sworn community officers in villages, who can work alongside local authorities to help resolve various types of dispute. Among the many issues still to be resolved is how these community officers will engage with local and provincial authorities and the court system, and whether and how the Royal Solomon Islands Police Force (RSIPF) should support their activities.

46 Sebastiaan Pompe & Dian Rosita, “Indonesian Legal Sector Analysis”, July 2008; World Bank Justice for the Poor, “Forging the Middle Ground: Engaging Non-State Justice in Indonesia”, May 2008.

47 Broadhurst, Rod & Thierry Bouhours, “Policing in Cambodia: legitimacy in the making?”, *Policing and Society*, 19:2, 174–190, p. 175.

48 World Bank Justice for the Poor, “Forging the Middle Ground: Engaging Non-State Justice in Indonesia”, May 2008.

Strategies that give communities more choice can help build accountability by reducing the scope for arbitrary or unfair behaviour by informal justice providers. Australia could also be providing more support to civil society intermediaries (community-based organisation, women's groups, churches) to raise awareness among local justice providers on constitutional principles, human rights and gender equality, to improve the quality of local justice.

3.2 Is Australian law and justice assistance delivered effectively?

This chapter looks at patterns in the design and delivery of Australian law and justice assistance that influence its overall effectiveness: it identifies organisational capacity building as the dominant theory of change behind Australian assistance, and critiques its effectiveness in bringing about real change to the quality of law and justice services; it assesses how well Australia engages with law and justice systems and sector-wide issues; it examines how Australia has managed postconflict transition in Solomon Islands and the tensions between stabilisation and development objectives; it assesses the level of coherence and coordination of whole-of-government delivery of law and justice assistance; and finally, it considers how well Australian law and justice programming advances cross-cutting policy objectives in the Australian aid programs, including promoting gender equality, reducing violence against women and supporting people with disability and HIV/AIDS.

At the activity level, we found many examples of effective approaches. In general, Australian law and justice assistance is flexible, responsive and willing to innovate. Australian support is usually highly regarded by counterparts and peers. A particular feature is the strong relationships that are built up with counterparts—assisted by the fact that Australia is willing to engage in areas where few other donors operate. Some of the more innovative aspects of the assistance are summarised in Box 2.

However, despite some impressive achievements at the activity level, there is a level of frustration apparent regarding the extent and pace of achievement of Australian law and justice assistance. There are questions about whether the pockets of achievement observable in the case studies are delivering overall improvements in the delivery of justice.

These questions are by no means unique to Australian assistance. There are few examples internationally of law and justice programs that have succeeded in producing better justice outcomes in more than niche areas,⁴⁹ leading to a widespread crisis of confidence about whether we know what works and what does not in the field of law and justice assistance.⁵⁰

49 For reviews of the track record, see Charles Call & Elizabeth Cousens, *Ending Wars and Building Peace. Coping With Crisis Working Paper Series* (New York: International Peace Academy, 2007); K. Decker, C. Sage and M. Stefanova, *Law or Justice: Building Equitable Legal Institutions* (Washington, DC: World Bank, 2005); Jamal Benomar, *Rule of Law Assistance: Lessons Learned from International Experience*, Rule of Law Unit, Office of the Deputy Secretary-General, United Nations, 2007; P. Englebert and D. Tull, "Postconflict Reconstruction in Africa: Flawed Ideas about Failed State", *International Security*, vol. 32, no. 4, 2008; Caroline Sage and Michael Woolcock, "Breaking Legal Inequality Traps: New Approaches to Building Justice Systems for the Poor in Developing Countries" in A. Dani and A. de Han (eds.), *Inclusive States: Social Policy and Structural Inequalities* (Washington, DC: World Bank, 2008); Livingston Armytage, "Judicial Reform in Asia Case Study of ADB's Experience: 1990–2007", *Hague Journal on the Rule of Law*, Vol. 3, 2011.

50 Stephen Golub, "What is Legal Empowerment? An Introduction" in Stephen Golub (ed.), *Legal Empowerment: Practitioners' Perspectives* (Rome: International Development Law Organization, 2010), p. 21.

Box 2: Innovative elements in Australian law and justice assistance

In Indonesia, Australia responded to the opportunities emerging from political transition by putting in place a flexible funding instrument, capable of mobilising assistance quickly in response to opportunities to support the reform process. This flexibility compared very favourably to some other donors, whose rigid approaches to programming left them unable to adapt to a dynamic political environment. Australia's flexibility and responsiveness, and its investment in skilled advisers with strong cultural and language skills, enabled it to forge strong relationships with key reform agents in the Indonesian justice institutions. Australia also supported 'triangulation' between Indonesia's justice institutions and its strong community of legal NGOs, by funding a Judicial Reform Team staffed by NGO experts from the Supreme Court and Attorney-General's Office. As well as increasing the policy capacity of the counterpart institutions at a key point in their reform process, Australia helped the NGOs to gain a detailed understanding of the reform challenges, improving their advocacy capacity.

In Indonesia, a twinning relationship between the Federal and Family Courts of Australia with the Indonesian Supreme Court—developed with the support of AusAID over the past seven years—has increased Australia's level of access and policy influence. Australian judges and court officials are able to regard their Indonesian counterparts as peers, allowing them to provide advice in sensitive areas that would normally be closed to contracted experts.

In Indonesia, Australia has promoted transparency within the judicial system as a means of increasing accountability and tackling corruption. Judgments of the Supreme Court and High Religious Courts are now published online allowing, for the first time, legal NGOs and academics to debate their merits as well as giving the President of the Court greater oversight of judicial productivity. Publication of court procedures and fee rates are helping to reduce the informal payments, while lower courts are required to publish data on the collection and disposal of fee income, increasing accountability. While it is still early to judge the impact of these initiatives, the approach seems a promising one.

In Cambodia, Australia has supported a series of local pilots on crime prevention and community safety, helping to improve collaboration between local authorities, police and communities. Surveys have suggested that these small-scale, low-cost initiatives have had immediate results in improving relationships between police and their communities and in encouraging local communities to take action against violence against women.

In Cambodia, Australia constructed health posts in its partner prisons and helped broker an agreement with the Ministry of Health to have the posts accredited under the national health system, giving prisoners access to medicines on the same basis as the rest of the population.

In Cambodia, prisoners were spending up to 23 hours a day in their cells due to the lack of secure exercise facilities. Some small-scale Australian investments in security fencing enabled partners' prisons to shift to a 'dynamic security' approach, allowing prisoners more time outside of their cells and facilitating the introduction of vocational training and income generation programs. The result was immediate and lasting improvements in the physical and mental health of prisoners and a reduction in levels of conflict.

In Solomon Islands, Australia supported the introduction of pretrial conferences in which prosecutors and public solicitors meet to discuss their cases in advance of trial. This has proved an efficient and cost-effective means of expediting proceedings.

In Solomon Islands, the annual People's Survey collects a wealth of information on public perceptions of a range of matters, including public safety and security, the performance of law and justice institutions and views towards the RAMSI mission itself. This represents best practice in impact monitoring in a postconflict context.

How well does Australia promote capacity building and institutional change?

A core question for law and justice assistance—and, indeed, many other development programs—is how external interventions can help to bring about improvements in the quality of services. Law and justice institutions are part of the fabric of any society, embedded within its political and economic structures. Like all social institutions, they are continually evolving and adapting. We know relatively little, however, about what factors bring about improvements in law and justice and how interventions by external actors can help promote those factors. The weakest part of law and justice programs is often their underlying theories of change—that is, the assumptions about how particular inputs and activities will bring about the desired outcomes and impact.

We found that Australian law and justice programs have been relatively poor at articulating credible theories of change. They have a tendency to see weaknesses in law and justice systems solely in terms of capacity constraints in particular organisations, for which the remedy is a fairly standard set of capacity-building activities, such as the provision of training and equipment and or the introduction of new management systems and procedures. The assumption is that poor performance of justice institutions is a product of internal capacity constraints helped only by technical fixes and the deployment of technical advisers. This assumption is by no means unique to Australia, but reflects the conventional approach to law and justice assistance set out in OECD DAC guidance.⁵¹

The case studies demonstrate the limitations of conventional capacity-building approaches in bringing about changes in institutional performance. For example, in Cambodia the third phase of the Cambodia Criminal Justice Assistance Project (CCJAP), running from 2007 to 2012, set out to deliver a fairly standard package of capacity-building support to the police, corrections system and the Ministry of Justice/courts. The package included support for strategic planning, budgeting, executive training, human resource management and gender mainstreaming. The approach proved poorly adapted to the different needs of the counterparts, each of which had very different organisational structures and cultures. In the case of the Ministry of Justice and the police, the support struggled to achieve sufficient traction to make any appreciable difference to organisational performance, and many individual activities were abandoned over time.⁵² In Cambodia, the binding constraints on institutional performance are primarily political—the Cambodian government sees it as imperative to retain tight control over the police and judiciary. There is evidence that the Ministry of Justice, in particular, has been kept deliberately weak in order to minimise its influence over the courts, frustrating attempts at capacity building. Corruption is another binding constraint—the justice sector is overlaid by highly developed systems for extracting rents that work against reform. In this environment, capacity building risks treating the symptoms rather than the cause.

In Indonesia, Australia has been providing organisational capacity-building support to a number of justice institutions, particularly the Supreme Court. Early in Indonesia’s democratic transition, a progressive Chief Justice was appointed to the Court but faced major challenges in reforming a large and unwieldy institution of over 30 000 staff. Australia provided the Chief Justice with technical and financial support for the development of a ‘blueprint for reform’. There were a number of strong features of the Australian support, which took the form of a ‘facility’—a flexible funding instrument able to mobilise small amounts of funding rapidly to support new initiatives or opportunities. During the delicate, early phase of a complex reform process, this flexibility

51 OECD DAC, “Handbook on Security Sector Reform: Supporting Security and Justice”, 2007.

52 Marcus Cox and Kong Phallack, “Cambodia Criminal Justice Assistance Project Phase III: Independent Progress Report”, May 2010.

was highly valued by the counterparts, enabling the project to “punch above its weight”.⁵³ Australia funded a team of experts drawn from the NGO community to act as resource people for the reform processes. The assistance also benefited from an effective three-way twinning arrangement with the Federal and Family Courts of Australia, giving rise to “close, multi-layered and subtle relationships” among the courts that helped secure access and influence for the Australian assistance.

The Indonesian support is in many respects a well-designed and implemented capacity-building program. It has delivered a number of useful reforms, including improved case management and greater transparency in court management. Yet despite these islands of achievement, it is hard to conclude that this ambitious, top-down capacity-building program has led to an overall improvement in the quality of services delivered to the Indonesian public. Public distrust of the judiciary (built up under 30 years of Soeharto’s rule) and continuing problems with corruption mean that court-utilisation rates (other than for family law matters) remain very low.

The case studies suggest that there are limits to how much real institutional change can be delivered through top-down capacity building. First, shortage of capacity is not always the binding constraint on institutional performance. There may be other incentives driving poor institutional performance—including, in all the case studies, a dense network of informal institutions overlaying the justice system. The relationship between provider and recipient is mediated by a host of other phenomena, in particular the social and political standing of different groups of clients seeking to access justice services.

Second, the scope of capacity-building assistance is often overambitious. It typically begins with a needs assessment identifying organisational shortcomings, thereby starting from existing weaknesses rather than building on strengths. In low-capacity environments, the list of shortcomings is likely to be very long. A capacity-building approach that tackles too many fundamental issues at once is unlikely to succeed. By contrast, an approach that starts with an existing set of functions or capabilities and aims for incremental improvements is more likely to deliver results. The Solomon Islands case study notes the tendency of RAMSI advisers to cite the extreme lack of capacity within the Solomon Islands Government as an explanation for the lack of progress. They should instead focus on how to do more with the capacity that already exists.

Third, the institutional-change processes promoted through Australian capacity-building assistance may be too sophisticated for the counterparts: the weaker the organisation, the lower its capacity to manage change. Major reform initiatives generally depend upon sophisticated planning, budgeting and change-management functions that are not present at the outset. The focus therefore shifts to building these high-level capacities at the centre of the organisation, as a precondition for reform. If, as is often the case, building these capacities is a long-term endeavour, there is a real danger that the assistance ends up concentrating on central functions at the expense of service delivery. This was apparent in the ‘model courts’ initiative promoted by Australia and other donors in Cambodia. It was a model of institutional change that assumed levels of managerial and monitoring capacity within the Ministry of Justice and the courts that were not present; therefore it made little headway.

Finally, there is a danger that organisational capacity building leads towards the promotion of institutional templates. Needs assessments are usually based on some idea of organisational best practice, whether or not explicitly acknowledged. This is particularly so in the law and justice field, where practitioners (whether lawyers, police or corrections officers) bring with them strong normative standards based on their professional training and experience from their own systems. These templates may not be appropriate to the political, economic or social context. As one of

53 Sebastiaan Pompe, Paul Crawford and Daniel Rowland, “Indonesia-Australia Legal Development Facility (IALDF) Mid Term Review”, March 2007, p. 4.

our interlocutors in the AFP put it, we have a tendency to treat police in developing countries as “broken versions” of our own system. This can lead to a bias towards capital-intensive solutions (e.g. use of expensive vehicles, as in Solomon Islands) and building sophisticated capacities at the expense of supporting adaptations and compromises that work in the local environment.

However, the case studies also indicate that there are other approaches available for promoting institutional development, and utilising different entry points and change processes. For example, one of the most successful features of Australian support in Indonesia has been its work on access to justice (described in Box 4). The program succeeded in extending an existing service (marriage and divorce certificates) to a group that had been excluded from it (women heads of households from poor communities). It included research to identify the nature and scale of the problem, mobilising constituencies in favour of change, identifying practical solutions and building those solutions into permanent organisational forms. The entry point for the assistance was the point of interaction between the law and justice institution and the public, rather than a top-down reform initiative. It succeeded in delivering significant benefits for a specific group of people.

In Cambodia, the most successful element of the assistance has been with the corrections service, which saw significant overall improvements in capacity over the life of the assistance. In part, the success reflected a more permissive political environment for prison reform, compared to police or judicial reform. We were also struck by the practical, problem-solving approach adopted by the project. For example, it identified that prisoners were spending excessive time locked in their cells (up to 23 hours a day) owing to inadequate security arrangements. It therefore used its capital works budget to construct new fencing in its partner prisons. This small-scale intervention led to immediate improvements in prison conditions and opened the way for the project to move onto the introduction of new services for prisoners, such as vocational training and income generation. The project also helped broker an agreement with the Ministry of Health on accreditation of prison health posts in the public health service, giving prisoners access to medicines and hospital referrals. The project worked by brokering solutions to practical problems and then institutionalising them. For example, improvements in prison conditions in partner prisons were incorporated into new prison construction standards and training programs for prison guards. Practical interventions at service-delivery level helped support and reinforce improvements in planning and management capacity at the central level, creating a virtuous circle of organisational development.

These more successful approaches share a number of features including:

- taking an incremental rather than comprehensive approach to improving existing capacities and functions
- seeking flexible, localised, ‘good enough’ solutions, rather than relying on institutional templates
- focusing on issues for which there were local constituencies for change, who could be mobilised and supported
- working directly at the point of interaction between law and justice institutions and citizens (so that the causal link between the intervention and benefits for citizens was short and direct and so the impacts could be captured easily through M&E systems).

To help capture what differentiates more and less successful elements of Australian law and justice assistance, we have sketched out four different approaches to bringing about institutional change (see Box 3):

- the organisational capacity-building approach
- the service-delivery approach
- the problem-solving approach
- the thematic approach.

These are not self-contained models for the design of assistance projects. Rather, they are different ways of thinking about how to support institutional change. Organisational capacity building takes as its starting point deficiencies in the competencies of particular organisations and tries to address them. In doing so, it tends to treat the organisation as the beneficiary, rather than the public. Service delivery focuses on the point of delivery of law and justice services and the interactions between providers and recipients, and works towards incremental improvements. Problem solving takes specific issues within the law and justice system (e.g. court backlogs; excessive pretrial detention; a spike in a particular crime) and works with stakeholders to craft pragmatic solutions. Thematic approaches take a broader social challenge (e.g. violence against women; rapid urbanisation; unsustainable exploitation of natural resources) and assess whether initiatives within the law and justice sector can help to address them.

All four approaches aim to deliver institutional development, including increased capacity. However, while the first approach defines capacity building as an end in itself, in the latter cases it is a by-product of efforts to achieve more immediate, tangible benefits.

Our conclusion is that Australian assistance is at its best when it combines these approaches in a strategic manner. It is at its least convincing when it defaults to a one-dimensional organisational capacity-building approach.

Box 3: Models of change in the justice sector

For the purposes of this evaluation, we identified four different approaches to law and justice assistance.

1. **Organisational capacity building** centres on training and equipping formal law and justice agencies and their staff, together with support for management systems and processes. It typically begins with a needs assessment, to identify institutional deficits and weaknesses, and then a package of capacity-building inputs is designed to rectify them. The underlying program logic is that increases in institutional capacity, particularly core functions like planning, budgeting and human resource management will translate into improvements in the delivery of justice services.
2. **A service-delivery approach** starts from the point of delivery of justice services and the relationship between provider and user, rather than the deficiencies or needs of justice institutions. It begins with an analysis of what justice services are currently provided, taking into account both formal and informal justice. For example, if a project is interested in tackling youth delinquency, it would map the actors involved in providing justice services to young people (families, communities, schools, police, courts, government agencies) and work towards incremental improvement in the coverage and quality of those services, building on existing strengths and capacities. By making service delivery the focus, it is more likely to generate measurable results in the short term.
3. **A problem-solving approach** takes as its starting point issues or challenges with the delivery of justice, and applies a problem-solving methodology to resolving them. It progresses from problem identification, through formulation of options, implementation of a chosen solution and measurement of results. For organisations without strong planning, budgeting and management capacity, problem solving may be an approach to institutional change that is easier to implement than comprehensive reform or top-down capacity building. The approach is flexible in the actors it works with, whether central ministries or agencies, local or non-state providers. Solutions will often involve more than one actor, and may therefore also be useful for addressing fragmentation within the law and justice sector. For example, solving problems such as prison overcrowding or excessive remand times requires joint efforts across a number of agencies, helping to introduce habits of collaborative working.
4. **A thematic approach** sees law and justice interventions as part of a broader strategy for addressing a social issue. For example, one might take mismanagement of natural resources, uncontrolled urbanisation or gender violence as the theme, and develop initiatives within the law and justice sector that complement a broader range of development assistance on this theme. While all these issues have important legal dimensions to them, a credible approach must involve action on several fronts, and with a range of government agencies and non-government actors. An advantage of thematic approaches is that they can help introduce partner countries to the possibilities of using legislation and justice institutions as tools of social policy. However, most donors find it difficult to work thematically, because their programming is done on a sectoral basis.

How well does Australia engage with law and justice systems?

One of the challenges of law and justice assistance is that there is no single lead institution, as in sectors like health or education, but a series of agencies, each operating autonomously of each other for sound constitutional reasons. While law and justice may not be a ‘sector’ in organisational terms, it certainly needs to function as a system. Improvements in the capacity of any one agency will not lead to improved service standards without corresponding improvements in other agencies and in their ability to function as components of an integrated system. Law and justice agencies also cannot operate successfully in isolation from other actors. Addressing issues like violence against women involves building linkages between law and justice agencies, other government bodies and a range of non-state actors.

In each of the case study countries, the law and justice system is highly fragmented. The individual agencies are often in competition for resources, which can be exacerbated through external assistance. They are jealous of their autonomy (understandable where there has been a history of executive interference in the judiciary) and reluctant to allow any single agency to take on a coordinating role for development of the system.

In many of its programs, Australia has adopted what it calls a “sector-based approach”⁵⁴ by providing assistance to a range of law and justice agencies. Both Solomon Islands and PNG programs engage with all the major actors in the justice system, while Cambodia, Indonesia, East Timor, Vanuatu and Samoa have been described as ‘emerging sector-based approaches’, in that support is offered to several agencies.

Nonetheless, we found that Australia has struggled to engage effectively at the sectoral or systemic level. This was most apparent in the Cambodian case where CCJAP, in attempting to engage right across the criminal justice chain, ended up resembling multiple parallel projects. While its purpose was to help juveniles within the criminal justice system, the project in fact found it very difficult to make progress on an issue like juvenile justice, which requires collaboration across the agencies.

One of the strategies used to address fragmentation has been the promotion of sectoral committees to oversee Australian assistance and promote aid coordination. On paper, this looks like good aid practice, allowing for a gradual move towards what the Paris Declaration calls a ‘program-based approach’. In a program-based approach, funds are allocated for the implementation of an agreed sector strategy or program of activities, with the partner country given some flexibility to allocate the funds to specific activities according to its own budgetary process.⁵⁵

The most advanced arrangement is in PNG, where part of the Australia support goes into a pooled fund (together with an allocation from the national budget) and is programmed through a national coordinating mechanism, although without using country systems for disbursement. This system was established at the initiative of the PNG government. While PNG was not one of our case studies, a recent evaluation found that the funds were not being programmed in a strategic or coherent way, and that the mechanism did not lead to better policies, implementable strategic plans or a more coordinated approach to service delivery.⁵⁶ In our case study countries, it was also apparent that the sectoral bodies had become focused on the extraction and distribution of external assistance, at the expense of genuine policy dialogue. It appeared that the incentives created by more programmatic approaches were actually unhelpful to genuine coordination.

54 AusAID, “Annual Thematic Performance Report: Law and Justice 2008–09”, January 2010. This should not be confused with a ‘Sector-Wide Approach’, where several donors pool funds in support of a sectoral strategy. In the case study countries, Australia’s coordination with other donors has been left on an informal basis.

55 In principle this is also a means of harmonising support from several donors, although in practice Australia does not provide law and justice support jointly with other donors. However, in Cambodia Danida has provided part of its law and justice funding to CCJAP for allocation through its funding processes.

56 Armytage, Livingstone, James Laki and Eric Scheye, “PNG–Australia Law and Justice Partnership (PALJP): Independent Progress Report”, March 2012.

For example, in Cambodia an interagency ‘national management board’ was created to decide on the priorities for the Australian assistance. The hope was that involving the counterparts in a joint decision-making process would help them identify common interests and ways of working. However, in practice the board has simply divvied up the resources among the various law and justice agencies according to their relative bargaining power, without encouraging joint initiatives. In Solomon Islands, we were informed that an interagency committee, chaired by the Chief Justice on occasion, refused to meet unless RAMSI/AusAID were present—suggesting that the real focus was on the funding flows (although this has now changed).

This suggests to us that sectoral aid coordination structures may not be the right mechanism for addressing fragmented law and justice systems. It may be more productive to bring together law and justice agencies around concrete, practical issues affecting the delivery of justice. Issues such as broadening access to justice, reducing remand times, avoiding prison overcrowding or reducing court backlogs all call for practical cooperation across the agencies. Genuine interagency coordination is more likely to emerge from a search for practical solutions, rather than from discussions of aid coordination. It might be possible for Australia to use its assistance to create incentives for such joint initiatives. For example, in Cambodia there is an objective need for capital investment in the prison systems in the near future, but any major capital support from Australia would make sense only if a credible approach were in place to reverse the trend of prison overcrowding. A two-phase project that first worked on the systemic causes of overcrowding and, if successful, led to a capital investment program might therefore generate helpful incentives. It would need to be accompanied by analytical work to assist with identifying solutions, support for local NGOs campaigning for change and advocacy with a range of government officials. The overarching idea here is that a package of support aimed at addressing systemic issues from several angles would seem to offer the best prospect for addressing the fragmentation problem.

Problem-solving approaches can also be used effectively to tackle fragmentation in law and justice systems. For example, in Solomon Islands, poor communication between the public prosecutor and the police results in prosecutors routinely rejecting police case files as inadequate. Rather than dialogue at the sectoral level, this calls for targeted interventions to identify common shortcomings in police case files and to address the deficiencies—together with monitoring tailored to track improvements in this specific area.

Another approach is to treat the law and justice system as an entry point for engaging with a particular social issue—which we have termed here a ‘thematic approach’ (see Box 3). This means approaching the law and justice system as a political space where new social challenges are addressed and conflicts mediated. An obvious example, and one to which the Australian Government is committed at the policy level, is ending violence against women, particularly given the high prevalence rate in much of the Pacific. A concerted campaign in this area would involve various legal dimensions including legislative development; strengthening criminal justice services; sensitising police, judges and justice officials; and empowering women and women’s groups to access the legal system, together with many other dimensions beyond the justice system. In Solomon Islands, a Parliamentary Inquiry into the 2006 Honiara riots recommended that RAMSI pursue the development of an ‘urban policy’ for Honiara, which would combine policing, town planning, land tenure and administrative law into a package of measures designed to respond to the social pressures generated by urbanisation. Other areas that might benefit from a thematic focus are responding to sex tourism in Cambodia or labour migration in Indonesia. When designing interventions to promote a more integrated justice system, we would recommend that Australia consider whether a thematic issue of this type offers the best entry point.

Under a thematic approach, the focus is on getting the law and justice agencies to work together in support of the resolution of a particular social issue. Law and justice systems tend to be conservative in nature, reflecting and reinforcing existing economic and social relations. The key is therefore to choose issues around which there is already a level of political mobilisation and to structure the intervention as a sustained campaign to mobilise support for change. If the issue acquires genuine political salience, it creates incentives for the justice agencies to work together in the search for solutions.

How well does Australia manage postconflict transition?

Australia's contribution to stabilising Solomon Islands through RAMSI is widely recognised as highly successful. The creation of the AFP's International Deployment Group (IDG) has given Australia a postconflict response capacity that is exceptional among donor countries, and an extremely valuable resource in a region prone to fragility. Whole-of-government coordination around the initial RAMSI deployment was also very effective.

Where RAMSI has been most problematic has been in the transition from stabilisation to development—a widely recognised challenge internationally. Australian and regional police became involved in the delivery of policing services—directly in the immediate postconflict period, and then through gap filling of personnel to the RSIPF and extensive material support and financial subsidies. This accustomed the public to a level of service provision that could not be sustained by the national institutions. As one government official explained, “RAMSI has created false expectations”, making it more difficult to restore public trust in the RSIPF—a key state-building objective. It has made the RSIPF accustomed to certain modes of operating—in particular, a heavy dependence on vehicles that are operationally and tactically inappropriate, as well as financially unsustainable. There is cause for concern that this has led the RSIPF away from its traditional, hands-on style of community policing, based on face-to-face interactions, reducing its effectiveness. There is also evidence that RAMSI's extensive role in the law and justice sector has crowded out national leadership, making it less likely that the government would take its own policy initiatives or increase its budgetary allocations. This illustrates that the relationship between stabilisation and development cannot be understood purely in terms of a transition from one to the other.

Australia lacks a coherent approach to managing the relationship and transition between stabilisation and development. It took more than seven years for RAMSI to initiate a process of analysis into what types and levels of law and justice provision would be sustainable by Solomon Islands institutions over the long term. What is needed, therefore, is a concerted effort to plan and implement activities that pertain to both phases in parallel, rather than sequentially. Doing so will enable the inevitable tensions between the two phases to be identified in advance and better managed. In an immediate postconflict situation, Australia may need to support a higher level of justice and security provision than would be sustainable over the longer term—in the Solomon Islands case, this included enhanced police capacity to maintain law and order in the capital and enhanced capacity in the judicial system to deal with the additional case load generated by the conflict. At the same time, Australia should keep in mind the level of service provision that is likely to be sustainable over the longer term, given financial and human resource constraints and historical patterns, as a guide to capacity-building efforts. Where Australian assistance (police, advisers and funds) is required to meet short-term, postconflict needs, it should be delivered in such a way as to avoid distorting local institutions and spending patterns. It should be withdrawn as soon as feasible, bearing in mind the need to offset the risks of renewed conflict with the risks of creating long-term dependency. At the same time, longer term development efforts should focus on restoring law and justice services to preconflict levels and building them up in a sustainable way, paying particular attention to long-term recurrent costs and their affordability.

How effective is whole-of-government delivery?

The Australian Government follows a policy of whole-of-government delivery of law and justice assistance. This means that assistance that would once have been provided by contractors engaged under AusAID projects is now delivered by other Australian Government agencies, including the AFP's International Deployment Group, ADG and a number of Australian courts and justice agencies. Expertise is also sourced from state government agencies. For example, the New South Wales Department of Corrective Services is helping deliver a Department of Foreign Affairs and Trade prison reform program in Indonesia.

There are a number of potential advantages to whole-of-government delivery of law and justice assistance. Judges, court officials and police officers in partner countries all appear to be more open to advice from their Australian peers than from contracted advisers. Peer relationships based on equality of status are less burdened by the hierarchies implicit in traditional technical assistance. In Indonesia, for example, judges from the Federal Court of Australia are able to offer advice in sensitive areas (such as judicial performance management) that would be closed to contractors. Whole-of-government delivery also allows the development of long-term relationships between Australian law and justice agencies and their counterparts in the region, which carries advantages for both sides.

The downside, however, is the risk of fragmented programming, leading to less effective support and poor value for money—an outcome criticised in the 2011 Independent Review of Aid Effectiveness. Rather than genuine whole-of-government collaboration, we found more instances of parallel support by different agencies, with poor coordination and elements of interagency rivalry. While mutual understanding between AusAID and the AFP is clearly better than it has been in the past, the level of collaboration in the design and delivery of assistance is still low.

Another problem is the proliferation of small-scale assistance, delivered remotely or through short missions, such as training courses, regional meetings, studies or legislative drafting. The practice of other government agencies making ad hoc funding requests to AusAID under regional programs such as the Pacific Public Sector Linkages Program and the International Seminar Support Scheme has fed this proliferation. We have significant concerns about the effectiveness of support of this kind when offered in isolation from a broader package of law and justice assistance. It can easily become supply-driven, even when formally agreed with the partner institution. When only a single type of assistance is on offer, the incentives of the partner institution are to accept the offer, whether or not it accords with national priorities. Coordination among these different activities tends to be poor with many reports of duplication and overlap. A common complaint is that law and justice officials in Pacific Island countries receive so many offers to participate in training programs and international events that it amounts to a significant drain on their capacity.

The nub of the problem seems to be the lack of a single budgetary process for allocating law and justice assistance, with other agencies sometimes acquiring funding directly through new policy proposals and sometimes via AusAID. According to some of the stakeholders, the strong budgetary incentive for other agencies to gain access to ODA funding has led to unhelpful interagency competition and a proliferation of small-scale assistance. As a result of the 2011 Independent Review of Aid Effectiveness, the budgeting process for the Australian aid program is now being consolidated.

It also appears that AusAID has not invested sufficient resources in exercising leadership in this area. There is no overarching policy or set of goals and no single agency has leadership or oversight of the portfolio as a whole. AusAID has recently begun to open up its country strategy and program design processes to participation by other departments, but they report finding the processes opaque and difficult to engage with. For its part, AusAID informed us that it has

difficulty attracting substantive input from other agencies. A Framework for Law and Justice Engagement with the Pacific was agreed in 2010, primarily at the initiative of AGD. The framework is very broad in scope, stating a general case for law and justice assistance to the Pacific and listing all the areas in which Australian agencies currently engage. Ownership of the framework appears to be limited to AGD, and coordination has so far not progressed beyond exchange of information.

To prevent whole-of-government delivery being a source of fragmentation, the different agencies need to work within the framework of a joint strategy for each of the countries in which there is substantial Australian law and justice assistance. AusAID would need to invest in developing common policies and strategies, joint priorities at the country level, practical coordination arrangements and shared results frameworks. This would entail substantial additional management costs for AusAID. For the other agencies, it means investing in developing skills in development assistance—a different skillset from their core expertise. It would mean acquiring an understanding of the principles of aid effectiveness, to which the Australian Government as a whole is committed, and accepting AusAID's leadership in this area. It would also mean either developing capacity for program design and M&E, or making arrangements with AusAID to make use of its capacity.

Overall, it is clear that effective whole-of-government delivery requires significant greater investment in coordination, which needs to be offset against the benefits of a whole-of-government approach. Our view is that it is worth pursuing in the policing field, where IDG represents a unique resource, and in areas of international criminal cooperation where there is a high value in building permanent relationships between Australian law and justice agencies and their counterparts in the region. However, AusAID must exercise clear overall responsibility for ensuring the coherence and effectiveness of development support across the entire law and justice portfolio.

Does the assistance support Australia's cross-cutting policy objectives?

Promoting gender equality and ending violence against women are long-standing commitments of the Australian aid program. In the case study countries, we found a range of law and justice initiatives specifically designed to benefit women, some of which were very impressive.

Solomon Islands

- AusAID has been funding Oxfam to work with a Family Support Centre in Honiara and the Western Province Council of Women on gender-based violence.

Indonesia

- AusAID and the Family Court of Australia provide assistance to enable women heads of households from poor communities to formalise their marriages and divorces, which improves their access to public services and programs (see Box 4).
- Core funding from AusAID to the Indonesia Commission on Violence Against Women, enables it to carry out its mandate for research, advocacy and awareness raising (including with law enforcement agencies) on violence against women.

Cambodia

- AusAID commissioned research into issues facing women in prison by NGOs, who produced a Gender and Imprisonment Manual for inclusion in basic training for prison guards. This helped to broker agreements between the General Department of Corrections and NGOs on the delivery of a range of services to women prisoners, including legal aid, skills development and reintegration programs.
- As a result of awareness raising on violence against women, local communities report that they are better able to manage conflict in the family and community, resulting in lower rates of domestic violence.
- AusAID commissioned a survey on attitudes towards police as part of a pilot program on community policing. The survey revealed that 97 per cent of respondents (both male and female) would like to see a woman police officer in their community for various reasons. (Respondents believe women show greater empathy, do not drink or gamble, are not violent and are better at dealing with victims of crime). The survey results were reported to the Cambodian National Police and—whether or not this was causally linked—shortly afterward the police announced the creation of 23 new positions for female Provincial Deputy Commissioners.

Box 4: Legal empowerment for women

One of the success stories of Australian assistance in Indonesia has been an initiative with the religious courts to help women from poor communities access the justice system. The religious courts in Indonesia have jurisdiction in family law matters for the Muslim population, administering statute rather than religious law. The intervention addressed a specific problem facing female-headed households. To access a number of government social programs, including cash transfers, rice subsidies and free health insurance, the women in question have to establish that they are in fact the head of their household. This requires proof of divorce and/or marriage. However, research has shown that around 50 per cent of marriages and 86 per cent of divorces in poor communities are never formalised, due to the costs involved. As a result, these women face a denial of their legal identity with very direct economic consequences. It can also affect their ability to obtain birth certificates for their children and enrol them in school.

The AusAID program and the Family Court of Australia have worked together with PEKKA, an Indonesian NGO representing female heads of household. It began in 2007–08 with some small-scale research by PEKKA into barriers facing village women in accessing justice. This research identified the nature of the problem and brought it to the attention of the authorities. This was followed by Indonesia's first ever study into access and equity in the legal system, carried out collaboratively with the Supreme Court and religious courts with the support of the Family Court of Australia. The study set out to identify the level of satisfaction of court users, and the practical barriers poor communities faced in accessing justice. PEKKA assisted with identifying women heads of household to participate in the study. The research found that the barriers to accessing the courts for formalising marriages and divorces were predominantly economic, with both travel costs and court fees prohibitively high.

The research led to a commitment by the Chief Justice of the Supreme Court to improve access to justice through court fee waiver schemes and circuit court hearings, where religious court judges and clerks travel to villages to hear cases. Over successive years, a total of US\$3.5 million in additional budgetary resources was made available to fund fee waivers and circuit courts, representing an 18-fold increase. A web-based system for tracking the number of individuals receiving fee waivers and having their cases heard on circuit was introduced, using simple SMS technology. It found that the number of poor people benefiting from court fee waivers in the religious courts increased 10-fold between 2007 and 2010, and the number of people in remote areas benefiting from circuit court hearings increased 4-fold over the same period. The overwhelming majority of people benefiting from these access-to-justice initiatives were women.

Various information services and outreach programs were introduced to improve transparency and access, including publicising information on court fees inside the courthouses. In addition, the fee system was changed so that payments were made at a bank, rather than in cash at the court house, to reduce opportunities for corruption. PEKKA continues to work with the Religious Court Division of the Supreme Court to identify the demand from female heads of household for their family law cases to be heard in the Indonesia Courts. The PEKKA data assists the courts to direct budgetary resources where the demand for cases is highest. In addition, PEKKA provides paralegal services to women to help them through the process.

This demonstrates a number of the most effective elements of the Australian assistance. It was based on a three-way relationship between an Indonesian justice institution, an Australian justice institution (through the memorandum of understanding on judicial cooperation) and an advocacy NGO. It demonstrated how good-quality empirical research could be used to support policy development and improve service delivery. It illustrated how a bottom-up approach (research into the realities facing poor women in accessing justice) and top-down institutional reform partnerships can reinforce each other. We note, however, that these results may be difficult to replicate within the general courts, which compared to the religious courts have less of a service orientation and more entrenched problems with corruption.

Despite these success stories, the case studies suggest that the use of gender analysis and the application of gender mainstreaming are generally weak. In Cambodia, for example, national crime statistics suggest that, while the incidence of violent crime is generally decreasing, rape and sexual violence have been increasing sharply. Given that Australia is the leading donor to the criminal justice system, we would have expected that this data would produce an immediate response in the form of detailed analysis and high-level policy dialogue with counterparts. However, we saw no signs of such a response. In Solomon Islands, police informed us that violence against women was one of the two most common complaints brought to police stations by citizens. Yet the issue clearly did not have a commensurate level of priority in RAMSI's support to the police.

There are a number of possible reasons for the relative weakness of gender mainstreaming. AusAID programs typically require implementing partners to produce gender mainstreaming strategies, but these are often treated as one-off contractual requirements rather than active management tools for shaping the design and delivery of the assistance. The extent to which gender activities are mainstreamed depends largely on the interests and skills of individual advisers. The use of gender-disaggregated data in monitoring frameworks is becoming more widespread, but again seems to be treated as a formal requirement rather than a tool for sharpening the gender focus of activities.

Another factor may be the difficulty of integrating cross-cutting issues into traditional organisational capacity-building programs. Developing capacity on gender mainstreaming in a counterpart agency is very difficult if it is not a recognised priority area for the agency. In Cambodia, for example, AusAID has supported Gender Mainstreaming Action Groups in its partner organisations (such groups are mandated under Cambodian government rules). With the benefit of Australian funding, these groups carried out various activities (e.g. developing a Gender and Policing Manual and conducting annual forums for women police officers) but without much apparent impact. Service-delivery, problem-solving or thematic approaches, by contrast, offer greater potential for addressing gender equity and violence against women, by allowing for a multi-dimensional approach or campaign on a particular issue or problem.

We believe that gender equality and gender-based violence deserves much greater prominence within Australia's law and justice assistance, in keeping with the Australian Government's response to the 2011 Independent Review of Aid Effectiveness⁵⁷ The evidence from the case studies, borne out by other research,⁵⁸ is that, among the various harms that Australian law and justice assistance seeks to prevent, gender-based and family violence may have the most widespread impact on the well-being of the community, families and individuals. It also represents one of the largest caseloads for law and justice agencies, suggesting that effective and timely responses to complaints brought by women are key to the efficient functioning of the law and justice system. In Solomon Islands, for example, domestic violence represents a major share of the caseload for police and justice officials, yet cases are rarely taken to completion because the limited remedies available (divorce; criminal prosecutions; injunctions) usually do not address the needs of the complainants.

57 Government of Australia, "An Effective Aid Program for Australia: Making a real difference—Delivering real results", 2011, p. 37.

58 AusAID Office of Development Effectiveness, "Violence Against Women in Melanesia and East Timor: Building on Global and Regional Promising Approaches", 2008.

AusAID's policy on HIV/AIDS states that HIV should be mainstreamed within non-health sectors, including law and justice.⁵⁹ It makes a commitment to supporting partner countries to review and improve their laws and policies to prevent discrimination on the basis of HIV status or at-risk behaviours such as intravenous drug use. We found little integration of HIV programming in the case study countries, perhaps because the countries in question do not have generalised HIV epidemics.⁶⁰ In Indonesia, there has been no specific programming on HIV to date, but there are plans for initiatives under the new design to combat discrimination against people living with HIV. In Cambodia, an HIV/AIDS Strategy was developed in 2008, focusing mainly on ensuring prevention and treatment in prisons. CCJAP supported the training of prison staff on HIV awareness, care and treatment, including introducing universal precaution training into basic training for prison guards. The project has helped to ensure that HIV-positive prisoners have access to anti-retroviral medication on the same basis as the rest of the population.

AusAID's cross-cutting policy on disability⁶¹ includes commitments to undertake targeted initiatives to meet the needs of people with disability, ensuring that service-delivery programs respond to their needs and helping to build leadership skills for people with disability and their organisations. The policy is too recent (November 2008) to be fully integrated into the design of current law and justice programs. In Cambodia, the project adapted to the new policy by including access ramps and disabled toilets into the design of several new police posts and court buildings. In Indonesia, as part of the design of a new phase of assistance, AusAID commissioned a study on the rights of people with disability within the Indonesian legal system⁶² and plans to make the new program a flagship initiative in this area.

We find that AusAID has not yet begun to think seriously about how to use law and justice as an entry point for advancing cross-cutting policy objectives. Ensuring that people with disability or HIV are treated fairly within the legal system is just the starting point. The wider goals include ensuring that rights for groups subject to discrimination are incorporated into law and can be enforced through the courts and administrative processes. Through such initiatives, law and justice assistance could reinforce anti-discrimination efforts in other parts of the aid program.

It is also apparent that the almost total absence of reliable data on the numbers and distribution of people with disability and their experiences in dealing with government makes it very difficult to come up with credible initiatives in this area. A major push on data collection, research and analysis, together with seeking views from local stakeholders, such as disabled persons organisations, are therefore important to inform more serious engagement in this area.

Cross-cutting issues such as gender equality, violence against women, disability or HIV cannot be resolved by the law and justice system alone being part of the social and cultural fabric of society. If Australia wishes to engage seriously in these issues, mainstreaming them into existing programming approaches may not be sufficient. It calls for a thematic approach—that is, a concerted campaign involving a range of government agencies and non-government actors. Law and justice assistance offers a promising entry point, but needs to be combined with initiatives with education and health systems, parliaments, traditional leaders and civil society. Meeting the Australian Government commitment in this area means breaking out of the strict sectoral silos in which the Australian aid program is currently organised.

59 AusAID, "Intensifying the response: Halting the spread of HIV", 2009.

60 Prevalence rates are 0.5% in Cambodia (2009), 0.2% in Indonesia and 0.002% in Solomon Islands. Sources: USAID, "Cambodia HIV/AIDS Health Profile", December 2010; UNICEF published statistics at www.unicef.org/infobycountry/indonesia_statistics.html#76; Solomon Islands National AIDS Committee, "UNGASS Country Progress Report 2010", March 2010.

61 AusAID, "Development for All: Towards a disability-inclusive Australian aid program 2009-2014", November 2008.

62 Colbran, Nicola, "Access to Justice for Persons with Disabilities Indonesia: Background Assessment Report", October 2010.

3.3 Is Australian law and justice assistance delivering sustainable results?

This section examines the results of Australian law and justice assistance and their sustainability. It begins by assessing how well Australian law and justice programs measure results. It reviews the levels and types of impact that emerged from the case studies. Finally, it assesses whether the results are sustainable and whether sustainability is achievable or necessary, given the environments in which Australia provides its assistance.

How well do Australian law and justice programs measure results?

Managing for results is an acknowledged weakness of Australian law and justice assistance.⁶³ The AFP's International Deployment Group has made substantial investments in the development of a new monitoring framework for policing assistance, which is currently being piloted, but does not have a practice of rigorous external evaluation. IDG's results management would be strengthened by a higher level of transparency around its operations. AGD still needs to develop regular M&E procedures and its reporting is currently limited to a description of activities.

All AusAID law and justice programs have formal M&E arrangements, but they often appear to be treated by implementing agencies as stand-alone contractual requirements, rather than as an integral part of program management. We came across few examples where sound M&E mechanisms had been made an integral part of program design. In both Cambodia and Indonesia, weaknesses in M&E had been a source of tension between AusAID and its contractors at various points, with AusAID demanding results data that the M&E systems were not able to deliver. Most performance frameworks are made of output indicators, with few true measures of results. For example, of 20 indicators in the Cambodian CCJAP monitoring framework, only 5 provide data on results (i.e. improvements in the timeliness or quality of services).⁶⁴ The same is true of monitoring frameworks used by RAMSI. As a result, Australian law and justice programs are finding it difficult to tell a convincing story about impact.

As with other areas of governance programming, there are challenges to measuring results in the law and justice arena. There are no standard methods for measuring the level of justice in a particular community.⁶⁵ Unlike in other service sectors like education, where educational attainment (i.e. literacy and numeracy) can be measured separately from the volume of services delivered, in the justice arena only service delivery itself can be measured. We can measure the type, geographical coverage and timeliness of law and justice services, but appraising their intrinsic quality or fairness requires more subjective assessments, such as public perceptions surveys and user and/or peer group evaluations. Levels of crime or disputes in a community are generally causally linked to wider political, social or economic factors, rather than the effectiveness of law and justice agencies.

In the short term, improvements in policing are likely to lead to higher rates of reported crime as community/police relations improve. Public perceptions of community safety and of law and justice agencies are an important indicator, but can be volatile and move in unexpected ways. Finally, many law and justice programs have a preventative rationale (i.e. reducing state fragility and avoiding conflict). Preventative outcomes are difficult to measure and tend to be under-valued by

63 AusAID, "Annual Thematic Performance Report: Law and Justice 2008-09", January 2010, p. 30.

64 These include the numbers of prisoners suffering excessive pretrial detention, court backlogs and the delivery of health and rehabilitation programs to prisoners.

65 See for example Rynn, Simon & Duncan Hiscock, "Evaluating for security and justice: challenges and opportunities for improved monitoring and evaluation of security system reform programs", Saferworld Research Report, October 2009; Livingston Armytage, *Reforming Justice: A Journey to Fairness in Asia* (Cambridge: Cambridge University Press, forthcoming 2011).

donor organisations. For all these reasons, measuring change and attributing it to law and justice assistance is particularly difficult.

The best strategy is therefore to select a range of indicators that allow an overall picture of the performance of law and justice institutions to emerge, combining quantitative data with qualitative analysis. Monitoring frameworks should track changes at various levels and along differing M&E dimensions, from the outputs for which projects can be held directly to account to national-level outcomes to which they contribute only indirectly (see section 4.9 below). This should provide enough information for managers to draw reasonable inferences about whether the assistance is making a difference.

While the cost of regular public surveys can be substantial, it is an essential element of monitoring in the law and justice field. In Solomon Islands, RAMSI has invested in annual People’s Surveys since 2007 (see Table 3). These nationwide surveys capture citizens’ experiences with a range of public services, their perceptions of safety and security and their levels of confidence in RAMSI and government institutions. In Cambodia, AusAID has excellent monitoring arrangements in place for its pilot program on crime prevention and community safety. The project engaged a local company to carry out surveys of community perceptions and attitudes in each of the pilot districts, plus a set of control districts with similar demographic characteristics. This quasi-experimental method enabled the project to demonstrate that low-cost interventions could have rapid and important results, although further research is needed to determine whether the effects will be sustained.

A further factor for poor results management in the Australian law and justice portfolio comes from poorly executed attempts to align with the information systems of counterpart institutions. Under the Paris Declaration, donors are committed to using partner monitoring frameworks and systems as far as possible. However, this is a goal that needs to be achieved over time. In Cambodia, the CCJAP monitoring framework anticipated using police crime statistics and data from the Model Court initiative for monitoring its impact. These data sources did not exist at inception and had to be developed with support from the project, which took much longer than anticipated. As a result, four years into the project, the project had not even been able to establish baselines for key aspects of its work. In such circumstances, a better approach is to invest in interim arrangements for data collection that serve the needs of both the counterpart institution and the project, while moving towards an integrated monitoring system over a longer period. Australian projects should be helping to foster demand by their counterparts for good results data by demonstrating how it can be used to improve institutional performance.

Indicator	2007	2008	2009	2010
% people reporting RSIPF treat people fairly and with respect	44%	32%	31%	38%
% people reporting RSIPF do not treat people fairly and with respect	16%	21%	26%	≈19%
% people describing their community as safe and peaceful	51%	37%	30%	31%
% people believing violence would return if RAMSI left soon	52%	49%	53%	49%

Law and justice programs also need to be designed from the outset with a view to facilitating results management. At present, the objectives of Australian law and justice programs are often formulated at a very high level, while activities focus on capacity building for formal justice institutions. In such cases, it is always going to be difficult to demonstrate a causal link between activities and results.

By contrast, service-delivery or problem-solving approaches lend themselves to more effective results management. They begin by identifying (jointly with counterpart) practical issues that need resolution or areas where there is scope to make incremental improvements in service delivery. In such cases, it is much easier to set in place monitoring arrangements to capture these specific outcomes. For example, in Indonesia the suite of activities to improve women's access to justice could be monitored very effectively through various measures, including budgetary allocations and administrative data for circuit courts and fee waivers. In Cambodia, the project identified delays in hearing appeal cases as a major cause of excessive pretrial detention. The project was then able to demonstrate that a set of activities designed to improve the efficiency of the Court of Appeal resulted in the numbers of individuals spending more than 12 months in prison while waiting for an appeal to be heard dropping from 374 in 2007 to zero in 2010. In a well-balanced law and justice program, it should be possible to combine data on the overall performance of the justice system with specific outcomes for particular groups of people.

What impact has Australian law and justice assistance achieved?

In part because of weaknesses in M&E, it is difficult to tell an overall story about the impact of Australian law and justice assistance. Results are apparent in a number of specific areas. First, there have been improvements in efficiency in the administration of justice, through investments in improved case management and registry processes. This may have a direct impact on the services provided to the public—justice delayed may be justice denied and excessive pretrial detention is a common problem. In Indonesia, for example, the number of Supreme Court cases more than two years old fell from 55 per cent of the caseload in 2006 to 17 per cent in 2009—a substantial reduction in waiting times.⁶⁶ In Solomon Islands, the introduction of pretrial conferences between prosecutors and public defenders reduced the number of adjournments of criminal trials. Even in Cambodia, where reforms within the judiciary have made little progress, Australian support for NGOs to provide legal aid services has helped expedite justice for remandees. Overall, this is a promising area for short-term, measurable impact.

Australian assistance has helped improve human rights standards within prison systems. This was particularly apparent in Cambodia, where human rights violations within the prison system were related to substandard infrastructure, poorly trained prison officers and a lack of basic services. A mixture of well-chosen capital investments and institutional reform has led to significant and apparent lasting improvements in prison conditions, initially in partner prisons and increasingly across the system as a whole.

The Indonesian program's most impressive results have been around access to justice. Through the introduction of fee waivers and circuit courts, the access of poor communities to the religious courts (dealing with family law matters) has increased. This in turn has had impact on the ability of women heads of households to access public services and social programs.

66 GRM International Pty Ltd., "Facility Completion Report", January 2010, pp. 6–7.

The impact of the Australian assistance on corruption, both within the law and justice system and more broadly across government, has been fairly limited (note that AusAID has other anti-corruption programming outside the law and justice arena). In Indonesia, Australian assistance has helped build the investigative capacity of the Corruption Eradication Commission, with a 100 per cent success rate in the prosecution of over one hundred high-profile cases. Overall, however, corruption within the Indonesian legal system remains endemic.⁶⁷ In Cambodia, a set of activities on anti-corruption were abandoned for lack of support by the counterparts.

Box 5: Overview of impact in the case study countries

Cambodia presents a compelling picture of what is achievable through law and justice assistance in a difficult political environment. There is at present no political interest in reforms going towards independence of the judiciary or strengthening the rule of law at the constitutional level. However, Australian assistance was able to make very good progress in the corrections field, where no strong political interests are at play and where the underfunded department of corrections proved to be a very good counterpart. As a result, Australian assistance can claim to have made significant improvements in human rights conditions in Cambodian prisons. The project has also carried out some innovative and successful pilots on community safety and crime prevention, drawing on an apparent desire on the part of the government and the Cambodian National Police to improve relations between law enforcement agencies and the community.

In Indonesia, Australia's law and justice assistance has corresponded with a period of major democratic transition. Australia has provided technical and financial support to reform-minded leaders within the justice institutions. However, it has been difficult to demonstrate consequent improvements in service delivery, owing to the huge scale of Indonesian institutions, the uncertain political environment and the existence of strong vested interests in the status quo. However, there have been some important areas of impact. Australia has supported the Corruption Eradication Commission, which now has a very impressive record of corruption prosecutions, including against senior figures in the administration. It has helped remove barriers on access to justice for women in poor communities through the introduction of fee waivers and circuit courts.

Australian assistance in Solomon Islands raises the difficulty of moving from a major postconflict intervention with an executive policing function into a capacity-building role. Through its leading role in RAMSI, Australia succeeded in restoring law and order very rapidly and providing the additional policing and justice functions required to deal with the aftermath of the conflict, along the way shoring up national law and justice institutions that had substantially collapsed. However, it has been, in some ways, a victim of its own success, establishing a level of law and justice services through direct provision, gap filling and financial subsidies that Solomon Islands institutions will be unable to sustain. Only now, eight years into the engagement, is RAMSI engaging in serious analytical work and dialogue to identify a package of services appropriate to the geographical, social and economic profile of the country. This corresponds with a planned scaling down of RAMSI.

67 Kemitraan, "Mapping report on state of play of anti-corruption reforms in the law and justice sector in Indonesia", 2010.

There have been improvements in international criminal cooperation in both Indonesia and Cambodia, which appear to be valued highly on both sides. In Cambodia, AFP support for an elite Transnational Crime Unit has made the Cambodian National Police into a more effective partner for joint operations, reportedly enabling the interception of illicit goods (particularly synthetic drug precursors) in Cambodia that may be destined for the Australian market. According to the AFP, this is more cost-effective than waiting for the illicit goods to reach the Australian border.

Perhaps hardest of all to measure is the preventative effects of the Australian assistance. Many of the countries where Australia provides law and justice assistance are vulnerable to conflict or political instability. The Australian assistance forms part of a broader state-building process, designed to build law-enforcement and conflict-management processes that will make the state more robust. In Solomon Islands, Australia has successfully restored law and order and begun the long process of rebuilding national law and justice institutions. Over this period, periodic outbreaks of unrest have been contained without triggering more widespread conflict or threatening the fragile political order. Preventative achievements of this kind are impossible to quantify, but are nonetheless extremely important. The experience of Solomon Islands shows the high cost if civil disturbance is allowed to escalate into open conflict.

Are the results sustainable, and does it matter?

The literature suggests that there are a number of different elements to the sustainability of law and justice reforms.

- **Personnel**—Are reform goals matched to the quantity and quality of available staff?
- **Financial**—Are reforms matched to feasible budgetary resources?
- **Cultural**—Do reform goals reflect local cultural values?
- **Structural**—Are the proposed reforms suited to wider institutional and bureaucratic context?
- **Ownership**—Has enough been done to generate support from politicians and other elites, and to explain the nature and purpose of reforms to the public?

Given the limited evidence on impact, it is hard to draw general conclusions about the sustainability of the achievements of Australian assistance. In our discussions with those involved in the delivery of the Australian assistance, there was widespread questioning of whether financial sustainability was a realistic or appropriate goal.

We found good examples of sustainable approaches at the activity level. Much of the Australian assistance is comprised of small-scale investments that rate well on sustainability. There has been an important process of lesson learning in Cambodia. In earlier phases of the assistance, AusAID invested large capital sums into the construction of a new prison and courthouse, with the idea of producing model facilities to guide a wider reform process. This was largely unsuccessful. The major capital investments proved difficult to integrate with institutional reforms and the idea of model institutions was not well understood by the counterparts. The investments also tended to produce distortions. The model prison was so far above the Cambodian norm that prisoners from across the country bribed their way into the new facility, resulting in rapid overcrowding.

Later phases of the assistance moved from building new facilities towards small-scale capital works in existing facilities, such as new security fences, health posts or workshops. These proved much easier to link to institutional reforms and resulted in more sustainable outcomes. However, the case study also found that the project had been paying insufficient attention to addressing the systemic causes of prison overcrowding, putting sustainability at risk.

In small Pacific Island states, there are more fundamental questions around sustainability across each of the dimensions. In Solomon Islands, it is clear that little that has been achieved to date in the law and justice arena is sustainable. By some estimates, RAMSI subsidises the police and judiciary to the extent of 65–70 per cent of their recurrent budgets—including by providing transport for agencies to operate outside the capital.⁶⁸ It has also undertaken major new capital investments—courthouses, prisons, police housing—without any guarantee that the Solomon Islands Government will be able to cover the costs of operations and maintenance. Government revenues in Solomon Islands are dependent on an unsustainable forestry industry and are predicted to decline over time.

This poses a real dilemma for Australia. It is likely that the level of law and justice service provision required to keep peace and public order in Solomon Islands exceeds what the government will be able to afford, giving rise to a case for long-term and quite possibly permanent external support. It is very difficult to know what model of law and justice to work towards without having a clear commitment from Australia as to the level of that support. But making such a commitment also carries risks. Large external subsidies into the law and justice system creates disincentives for the government either to invest its own limited budgetary resources or to scale back unsustainable services. In the coming period, the law and justice system in Solomon Islands will need to be ‘weaned off’ external support to allow a more realistic level of services to be achieved. Yet Australia and the regional mission will need to retain the capacity to intervene quickly in the event of a major civil disturbance.

Versions of this dilemma can be found in all of the small Pacific Island states. With limited financial and human resources, they struggle to maintain full functionality in their justice systems without external support. In Vanuatu, for example, Australia has been providing advisory support to the government legal offices (public solicitor, public prosecutor and attorney-general’s office) over many years. For a relatively modest expenditure, this support has helped the country navigate periods of fragility. Not only is it better equipped to handle major criminal prosecutions fairly and expeditiously, but also to uphold the rule of law within the administration. Australian advisers, for example, helped with the privatisation of telecommunications—an area where a modest Australian contribution could help avert potentially far more costly problems.

While the Australian assistance has been strategic, it has certainly not been sustainable. There is a constant cycle of young lawyers trained through the program moving out of government and into the private sector. Australian advisers sent in to build capacity in these institutions have inevitably been drawn into supporting their core functions. With little sustainable capacity being built, one AusAID document notes: “We have... accepted that the main role for the advisers in the three legal offices is one of capacity substitution, with capacity building a secondary activity.”⁶⁹ However, continued advisory support into key elements of the justice system, though unsustainable, may be a cost effective way of reducing state fragility.

Similar issues emerge in the area of international criminal cooperation. It is in Australia’s interest for Pacific Island countries to have in place a certain minimum set of capacities to control the illicit movement of goods, people and finance through the region. This calls for developing elite capacity within the law and justice system which, while of some benefit to the countries concerned, may not be a high priority from a development perspective, and may draw limited human and financial resources away from law and justice services that are more directly relevant to the local population. Given that Australia is more exposed to the harms associated with international crime, it is not unreasonable for Australia to make a long-term—or indeed permanent—commitment to building up and sustaining the capacities required for international criminal cooperation.

68 RAMSI, “True Cost of Policing”, 2011. No similar study has been done for the judiciary, but RAMSI advisers estimate the level of subsidy to be similar.

69 AusAID, “Annual Program Performance Report for Vanuatu”, January 2011, p. 10.

Whether it is willing to make such a commitment is a policy decision for the Australian government. At the least, Australia should clarify where it is aiming for sustainable results and where it is willing to play a capacity substitution role, and make sure that the design of its assistance reflects this distinction.

3.4 Should Australian law and justice assistance be scaled up?

This section considers the question of what is the appropriate scale for Australian law and justice assistance within an expanding aid program. It begins by assessing the value for money offered by Australian law and justice programs.

What is the value for money of Australian assistance?

While value for money is an increasingly important concept for the Australian aid program, no standard metrics or assessment tools have yet emerged. In our evaluation methodology, we defined value for money across a portfolio of assistance by reference to three factors: expected development returns (including preventative results like conflict avoidance), the level of investment and the risk of non-achievement of intended outcomes. Of these terms, only the level of investment can be quantified. But while we cannot calculate a rate of return on the investment, we can make some general observations on the value for money of Australian law and justice assistance and the case for scaling up the portfolio within an expanding aid program.

Based on these criteria, Australia's law and justice programs offer potentially high rates of return on fairly modest investments (outside RAMSI), but with relatively high risk of failure. The same could be said of other governance investments with a significant political dimension. In our view, while investments in law and justice offer uncertain returns, they make good sense as part of a balanced portfolio of risk and return within AusAID country programs. In Indonesia, for example, Australia's largest investments are in service delivery, particularly education, where the returns are more certain. Law and justice assistance, on the other hand, constitutes only 2.5 per cent of the Indonesian country program. However, if successful, it will help to reduce the risks to Indonesia's stability and therefore to the achievement of Australia's other development goals. As an investment in risk mitigation for the Indonesian program as a whole, there is a strong value-for-money case to be made for the law and justice work.

We note that many of the potential returns to law and justice assistance are preventative in nature, to do with reducing conflict risk and state fragility. The enormous cost to Australia of the Solomon Islands intervention suggests that investments in conflict prevention represent good value for money. In the field of international conflict, it is often observed that prevention is much more cost effective than cure, in both human and financial terms. Yet there is systematic underinvestment in conflict prevention, in large part because the investments are uncertain in nature and the returns impossible to quantify. The development of the IDG and AusAID's law and justice portfolio should be seen as a corrective to that tendency.

Should the assistance be scaled up?

The question of what weight should be given to law and justice within an expanding Australian aid program is, however, a difficult one to answer. We observed no obvious correlation between impact and scale of expenditure in Australian law and justice assistance. Impact seems to relate not to funds expended but to the ability of programs to identify key entry points and respond rapidly when opportunities emerge. Many of the Australian law and justice programs have elements of a ‘facility’—that is, a flexible funding instrument capable of responding quickly to opportunities. This makes them more responsive than many other donor programs—an aspect of Australian law and justice assistance that is clearly appreciated by counterparts. In the words of one reviewer of the Indonesian program, it allows Australian assistance to “punch above its weight”.⁷⁰ By contrast, some of the larger spending activities we examined, including major capital investments and large-scale capacity-building initiatives, seemed to offer less value for money.

Flexible assistance of this type is not without its critics—there have been recurrent suggestions in a number of programs that it comes at the price of strategic direction. The facility in Indonesia supported more than 150 separate activities between 2004 and 2009,⁷¹ some of which were quite ad hoc in nature. It also requires high-quality management and technical input, either through AusAID or a contractor. Advisers need the skills to identify strategic opportunities in a complex and dynamic political and institutional landscape. For this reason, law and justice programs often appear to have heavy overheads. However, this may be a necessary aspect of well-managed, flexible assistance. It would be a shame if pressure to ‘do more with less’ within an expanding Australian aid program led to a loss of this flexibility.

Scaling up of Australian law and justice assistance needs to be approached with some care. We have concluded that capacity building should be incremental in nature. We would therefore be concerned if a need for larger scale programs pushed Australia back towards comprehensive capacity-building approaches. We would also caution against providing unacknowledged subsidies, such as RAMSI’s provision of transport for the RSIPF, which is both unsustainable and distorting. Across all of the case study countries, there is an objective need for capital investments. However, expensive new facilities (e.g. prisons and courthouses) are difficult to integrate with credible institutional change processes. We were more impressed with the approach taken by CCJAP in Cambodia, where the capital works component focused on making small but strategic additions to existing facilities (e.g. health posts in prisons) to improve service delivery. This could potentially be delivered on a larger scale. Also in Cambodia, Australia is considering working with other donors to fund NGO delivery of legal aid, which could be provided at a substantial scale. In general, however, we would recommend only a gradual scaling up of Australian law and justice programs, based on proven successes.

However, to demonstrate value for money, there needs to be a capacity to take successful pilots to scale. In Indonesia, Australian support for circuit courts and fee waivers resulted in an allocation of an additional A\$4.5 million to the budget of the religious courts to implement these initiatives on a national scale.⁷² In Cambodia, some successful pilots on community safety and crime prevention are being scaled up by integrating them into the government’s decentralisation program, which is supported by a multi-donor trust fund. In both these cases, the mechanism for taking successful pilots to scale is to leverage funds from government or other donors, rather than increasing Australia’s contribution.

70 Sebastiaan Pompe, Paul Crawford and Daniel Rowland, “Indonesia-Australia Legal Development Facility (IALDF) Mid Term Review”, March 2007, p. 4.

71 GRM International Pty Ltd., “Facility Completion Report”, January 2010, p. 1.

72 Sumner, Cate and Tim Lindsay, “Courting Reform: Indonesia’s Islamic Courts and Justice for the Poor”, Lowy Institute Paper 31, 2010, p. 30.

There are particular value for money challenges associated with regional programs, such as the IDG's Pacific Police Development Program and the Pacific Judicial Development Program (originally co-financed by Australia and New Zealand, and at the time of writing awaiting a decision on further AusAID funding). Regional programs of this kind are used for providing a more or less standard package of assistance (such as training) across multiple countries, without the need for a permanent presence in-country. The activities are therefore relatively low-cost. However, it is very difficult to provide assistance on a regional basis that has genuine strategic significance at the country level. The Pacific Police Development Program has attempted to overcome this problem by investing in analytical work to help governments and police chiefs identify their needs and then select from a range of different types of support.⁷³ The design of this regional program looks promising but further research into its operation is needed to determine whether it has achieved value for money and is a useful example for regional programs more generally.

73 Such as legislative development, mentoring and management training for senior police, right-sizing of police forces, basic skills training and community relations.



Royal Solomon Islands Police female officers march down the main street of Honiara on International Women's Day 2010.
Photo courtesy of RAMSI

CHAPTER 4: Conclusions and recommendations

This section extracts a few of the most important conclusions from the evaluation, and draws out a number of strategic recommendations.

4.1 The goals of Australian law and justice assistance

Law and justice assistance plays an important role in the Australian aid program. It can be indispensable in countries emerging from conflict or that face conflict risk. Ensuring a minimum standard of law and order and an ability to resolve disputes fairly and peacefully is a precondition for other development assistance. Investing in law and justice, including core legal functions at the centre of government such as the office of the Attorney-General, also helps to make Pacific Island states less fragile. We welcome the commitment to improving access to justice for the poor and marginalised, which is a good complement to Australia's focus on service delivery and reflects the values that Australia brings to its aid program. We also recognise that Australia's support for law enforcement cooperation is an investment in a regional public good—although care needs to be taken to make sure that it does not draw scarce resources from the needs of local communities.

While there is a convincing rationale for Australian law and justice assistance, we noted a tendency for Australian programs to have objectives that are too general in nature and not well tailored to each country context. The assistance would benefit from stronger assessment of what is achievable in each country, given the political environment, economic base and social and geographical realities. The task of Australian law and justice assistance is not to replicate Australian or international models of law and justice, but to help partner countries craft solutions that are appropriate to the challenges they face in the law and justice arena.

Often, this involves navigating a difficult political environment. We cannot assume that country ownership of law and justice reforms will be forthcoming. An understanding of the political-economy context is needed to identify goals and approaches that are feasible. The case studies demonstrate that there are opportunities to make progress even in the most difficult of political environments, provided the assistance is flexible and adaptive.

Recommendation

1. That Australian law and justice assistance adopts more modest and specific goals, based on analysis of what is achievable in the political, economic, social and geographical context. Where the overarching goal is stabilisation and conflict reduction, the starting point should be conflict analysis to identify drivers of conflict and instability, leading to a package of support for the institutions and processes best suited for managing them (whether or not in the formal justice system). Where the objective is promoting human rights and access to justice as development goals in their own right, the design should begin from an analysis of the types and sources of injustice or denial of human rights in the society in question, with a package of support to address those issues where Australia is best placed to make a difference.

4.2 Strategies for achieving institutional change

We found many strong elements to Australian law and justice assistance that were valued by counterparts, including its flexibility, high-quality technical advice and strong relationship building. Yet overall, the effectiveness of the Australian law and justice assistance examined in this evaluation has been patchy, producing islands of success without necessarily delivering significant overall change to the quality of justice services provided to the population. Generally, Australia is investing in long and slow processes of institutional change with uncertain returns and high risks of setback and reversal.

Institutional change and capacity building is a necessary part of improving law and justice provision. However, we would like to see Australia thinking more creatively about how to promote institutional change. Australian law and justice assistance is at its weakest when it defaults to a standard set of top-down organisational capacity-building activities. This approach has various shortcomings: it begins from institutional weaknesses rather than strengths, works towards institutional templates and assumes levels of change management capacity that may not be present.

The assistance would benefit from a wider range of entry points and approaches (including service-delivery, problem-solving and thematic approaches) used in strategic combinations. This is more likely to generate meaningful change, particularly in low capacity environments, and would enable the Australian programs to tell a clearer story about how they are delivering results for the intended beneficiaries.

Recommendation

2. That Australia avoids working towards idealised institutional forms or offering standardised packages of support. Instead, it should take existing law and justice services and the financial constraints within the recipient countries as its starting point and support incremental improvement, building on the strengths of existing providers. To maximise its impact, Australia should take a multi-dimensional approach to promoting institutional change, using top-down capacity building in combination with service-delivery, problem-solving and thematic approaches.

4.3 Investing in cross-cutting issues

The law and justice programs we examined are making efforts to integrate Australian cross-cutting policy objectives and have adopted a range of useful activities. However, the law and justice arena offers considerably more scope for advancing the needs of women, people with disability and other marginalised groups.

Violence against women deserves greater prominence within Australian law and justice assistance, particularly in Pacific Island countries where prevalence rates exceed 50 per cent. Violence against women and violence within the family have a major impact on the victims, their families and their ability to benefit from other forms of development such as health and education. Furthermore, violence-against-women cases make up one of the largest caseloads for law and justice agencies in each of the jurisdictions we visited. With the available legal remedies poorly suited to the needs of victims, law and justice institutions are responding to this caseload both ineffectively and inefficiently. The linkages between law and justice services and other services, such as medical help and counselling, are poorly developed. This is clearly an area where a thematic approach, with law and justice initiatives conducted in tandem with other strategies, would be appropriate.

Regarding Australian policy commitments on disability and HIV, recent AusAID programs are beginning to respond to the needs of people with disability or HIV within the law and justice system, for example through supporting health services in prisons and disabled access to court buildings. Beyond this immediate set of needs, the law and justice arena can also serve as an entry point for a more holistic engagement with the wider needs of disadvantaged groups. Australian assistance could help to ensure that the rights of these groups are adequately articulated in national laws and administrative processes, with enforcement mechanisms. People with disability and the groups that represent them may need assistance with asserting their rights with the legal system. There may also be scope for joining up thematic approaches within the law and justice sector with other service delivery areas. For example, if there is an issue surrounding access to education for children with disability, there may be scope for combining a rights-based approach within the justice arena with interventions in the education sector (infrastructure, transport, sensitisation of teachers etc.).

This would entail some organisational challenges for AusAID itself. It would need to find ways of breaking down the strict sectoral organisation of country programs and building cross-sectoral or thematic objectives into the design of individual programs.

Recommendation

3. That Australia gives higher priority to addressing violence against women within its law and justice assistance, helping to develop services and law enforcement approaches better suited to the needs of women. It should also invest in analysis of the needs of people with disability and other marginalised groups, assessing both their level of access to law and justice services and whether law and justice interventions could help promote their rights to other services and programs. AusAID should consider options for reorganising country teams to improve the integration of law and justice assistance with other elements of the country program.

4.4 Dealing with justice systems

AusAID has correctly identified that it needs to engage with justice as a system, rather than only with individual justice agencies. However, the evaluation raises questions of how go about engaging at the systemic level. The tendency has been to promote interagency cooperation around the management of Australian assistance, or aid flows in general. This approach might be suitable where there is a strong, nationally owned law and justice reform agenda and a functional set of coordination processes. In such cases, moving towards programmatic assistance would be appropriate (that is, placing funds for law and justice initiatives into a single pot, with an agreed, country-led process for determining priorities and allocating funds to the different agencies). Where these conditions are not in place, the evidence that we have examined suggests that moving too quickly towards a programmatic approach is unlikely to overcome the fragmentation of the sector. At best, it leads to a crude division of the funds between the law and justice agencies according to their bargaining power; at worst, it leads to unhelpful competition over access to funds.

The alternative is to dedicate resources to the achievement of practical, cross-sectoral objectives, to encourage the emergence of interagency policy dialogue and practical coordination. For example, in Cambodia, Australia might indicate that it is willing to make further capital investments into the prison system provided that a credible approach emerges for addressing the systemic drivers of prison overcrowding. Funds could then be set aside to support interagency initiatives in this area.

Recommendation

4. That Australia looks for opportunities to promote collaboration on specific, substantive issues, rather than on aid management, when seeking to address fragmentation in the law and justice sector. Programmatic assistance is appropriate only where genuine country leadership is in place and institutionalised.

4.5 Planning stabilisation and development

Australia's experience with RAMSI, although exemplary in many respects, suggests a failure to plan for the inevitable tensions between the stabilisation and long-term development aspects of the mission. In the immediate postconflict period, Australia provided financial and personnel support for a higher level of justice and security provision than would be sustainable over the long term. This level of support had the effect of distorting local institutions and spending patterns, with the result that Australia found itself financing 65–70 per cent of the recurrent costs of the justice and security system, as well as all of its capital investment needs. It was not until seven years into RAMSI that Australia began a process of financial analysis and dialogue to identify a level of law and justice provision that would be sustainable over the longer term. By that point, the transition process had become much more difficult. Had stabilisation and development been planned in parallel from the outset, Australia could have begun supporting the restoration of basic law and justice services in a sustainable way sooner.

Recommendation

5. That Australia plans its stabilisation and development efforts in postconflict situations in parallel, rather than sequentially, to enable better management of the inevitable tensions between the two phases. In an immediate postconflict situation, Australia may need to support a higher level of justice and security provision than would be sustainable over the longer term. However, this form of support should be provided in such a way as to avoid distorting local institutions and spending patterns, and should be drawn down as soon as feasible, bearing in mind the need to offset the risks of renewed conflict with the risks of long-term dependency. At the same time, longer term development efforts should focus on restoring law and justice services to preconflict levels and building them up in a sustainable way, paying particular attention to long-term recurrent costs and their affordability.

4.6 Whole-of-government delivery

One of the most distinctive features of Australian assistance is the whole-of-government approach and in particular the standing capacity for policing assistance that has been built up in the IDG. It offers a number of potential benefits, including the higher quality interaction that comes from peer-to-peer relationships and the value of building permanent institutional linkages between Australian law and justice institutions and their counterparts in the region.

However, the shortcomings of this approach are also apparent. There is little collaboration between departments on the design and implementation of assistance. Competition over access to the ODA budget, the lack of a common policy framework and an absence of joint country-planning processes have led to a proliferation of small-scale and often supply-driven activities, at the expense of effectiveness and value for money. Effective whole-of-government support requires significant investments by the participating agencies in developing expertise in and management processes appropriate to development assistance. It also requires a much more active approach

by AusAID to assuming its responsibility for overseeing and coordinating the portfolio as a whole. These costs need to be set against the benefits of whole-of-government delivery.

Our view is that whole-of-government delivery is worth preserving in the policing field, where IDG represents a unique resource, and in areas of international criminal cooperation where there is a high value in building permanent links between Australian law and justice institutions and their counterparts abroad. However, AusAID must exercise its overall responsibility for ensuring the coherence and effectiveness of the assistance.

Recommendation

6. That whole-of-government delivery of law and justice assistance is preserved, and its effectiveness ensured. This requires significantly greater investment by AusAID and the other Australian government agencies involved. It requires agreement on overarching goals and approaches, aid effectiveness principles, joint indicators of progress and a clear division of labour, with agency leads on particular themes or areas. Effective whole-of-government delivery requires funds allocation processes that minimise unhelpful competition for resources. It calls for genuine collaboration in developing assistance strategies and priorities in countries where Australia provides substantial law and justice assistance. It would also benefit from closer institutional linkages, including mutual secondments (as already occur between AusAID and the AFP) and stationing representatives from other agencies in AusAID's Law and Justice Unit.

For AusAID, this means:

- investing more in developing policies and technical guidance for law and justice assistance
- opening up its processes for preparing country plans and designing law and justice programs to allow more effective participation by other agencies
- providing support to other agencies to help them build their capacity in development assistance and understand the principles of aid effectiveness
- providing greater technical support to other agencies in program design, implementation and M&E.

For other agencies, it means:

- acknowledging that entering into the international development sphere involves a commitment to building up expertise on development assistance and a willingness to follow AusAID's guidance on aid effectiveness
- providing active input into AusAID-led processes for developing country strategies and program design
- committing to reducing fragmentation of aid by ensuring that all support is tailored to the country context and supports agreed priorities—avoiding off-the-shelf or supply-driven assistance
- investing in rigorous M&E systems, or becoming part of AusAID-led M&E processes
- ensuring a high level of transparency in all external assistance.

4.7 Sustainability

There are fundamental questions around the sustainability of much Australian law and justice assistance, particularly in small Pacific Island countries. Most of those involved in delivering the assistance acknowledge that sustainability is not achievable, at least in financial terms. Australia may need to make a long-term commitment to providing a security guarantee in Solomon Islands. In other Pacific Islands countries, long-term or even permanent provision of financial and advisory support into key law and justice institutions may be a cost-effective way of reducing state fragility, even if it does not lead to sustainable improvements in capacity. This raises dilemmas for Australia that call for further analysis and debate. Permanent subsidies into law and justice systems in the Pacific might create disincentives for government either to invest its own limited budgetary resources or to scale back unsustainable services. However, it might also open the door to more effective ways of organising the assistance, particularly in the field of law enforcement cooperation.

Recommendation

7. That Australia considers whether there is a case for providing long-term financial and technical support in small Pacific Island states to support basic law and order capability and for the more advanced functions needed for effective international law enforcement cooperation. If so, it may be appropriate to move away from short-term project cycles to more sustainable delivery arrangements.

4.8 Scaling up

There is no necessary correlation between impact and scale of expenditure in Australian law and justice assistance. Impact seems to relate not to funds expended but to the ability of programs to identify key entry points and respond rapidly when opportunities emerge. This flexibility is one of the strengths of Australian law and justice programming. It calls for high-quality managerial and technical input and therefore entails relatively high overheads. It would be a shame if pressure to do more with less within an expanding Australian aid program led to a loss of this flexibility.

Any scaling up of Australian law and justice assistance needs to be approached gradually and with care, building on proven successes. We would caution against large-scale capital investments or unacknowledged subsidies into national law and justice systems, as these are prone to creating distortions. However, small but strategic additions to existing facilities (e.g. health posts in prisons) to improve service delivery, as has been done in Cambodia, can be effective on a larger scale.

Recommendation

8. That Australia takes a gradual approach to scaling up its law and justice programs, based on proven successes, avoiding investments that might distort institutional development and national resource allocation.

4.9 Results management

Measuring results is an acknowledged area of weakness in Australian law and justice assistance, making it difficult to tell a convincing story about results in individual projects or across the portfolio as a whole. In large part, this is because M&E has not been routinely integrated into the design of law and justice programs. Where projects are designed around the delivery of capacity building to law and justice agencies, rather than improved service delivery for citizens, it is very difficult to link project outputs with high-level goals. Consequently, implementing partners often approach M&E as an additional contractual requirement, rather than an integral part of the management of the assistance.

AusAID needs to invest resources into developing more sophisticated results frameworks for its law and justice programs. Indicators are needed that track progress across several different dimensions and levels of results, with different levels of attribution to the support. Results frameworks should combine quantitative and qualitative data to allow an overall picture to emerge on the performance of law and justice institutions and the contribution made by the Australian assistance.

We would suggest building results frameworks around four different dimensions: (1) country-level; (2) project-level; (3) active management of the organisation being supported; and (4) implementation efficiency.

Country-level results: These are the highest level results at national level, not directly attributable to external assistance. Where positive change is identified at this level, qualitative analysis is needed as to whether the Australian assistance has made a plausible contribution (i.e. whether the outputs delivered by a project could have led to systemic change). This level of monitoring is also used to identify emerging issues and periodically reassess whether the support is strategic in nature. Indicators at this level should track:

- changes in the overall type, coverage and timeliness of law and justice services (e.g. average number of days of individuals in pretrial detention)
- changes in public perceptions of law and justice institutions (through surveys)
- changes in levels of crime, public safety and conflict (through both objective and subjective measures—e.g. official crime statistics; victim surveys)
- periodic qualitative studies on crime, conflict and human rights within the community to detect emerging issues requiring a response within the law and justice system. In countries with high levels of conflict risk, this might include periodic conflict analysis to identify drivers of conflict and the performance of institutions for conflict management, and the tracking of specific risk factors identified through such studies.

Project-level outcomes: This level tracks the achievements of specific programmatic activities and the outcomes to which they contribute. Here, direct attribution to the project is possible, although other causal factors may also be at play. The data should, as far as practicable, be disaggregated by geographical area, age and sex (and in appropriate cases by ethnicity and religion) to identify whether outcomes are being delivered equitably. Indicators must be specific to the design of each project and could cover areas such as:

- reduction in specific injustices experienced with the law and justice system (e.g. children detained with adults; health of the incarcerated)
- removal of barriers to justice access (e.g. costs to poor communities and vulnerable groups of accessing justice)
- changes in the scope and coverage of specific law and justice services (e.g. police response time; youth diversion programs; legal aid services; support for women victims of violence)

- changes in knowledge, attitudes, practices and capacities within target organisations (e.g. increased budgetary allocations; understanding of human rights among police; improved crime scene management; introduction of juvenile justice procedures in courts)
- evidence of improvements in collaboration across the law and justice system (e.g. percentage of police files accepted by prosecutors).

Active management data. This level tracks the capacity of counterpart organisations to make decisions and deploy resources to improve their performance. These indicators are usually proxies, covering such areas as:

- police attendance rates (proxy for human resource development within the police)
- average number of days police vehicles are out of service (proxy for financial and asset management)
- percentage of case files returned to the police by prosecutors (proxy for police criminal investigation capacity)
- percentage of cases presented in court by police prosecutors that are dismissed due to procedural error (proxy for capacity building of police prosecutors).

Project implementation data. This level tracks the delivery of project inputs, processes, activities and the achievement of direct outputs. This might include:

- rate of expenditure
- delivery of goods, services and capital investments
- participation by counterparts in project management
- ratings by counterparts of the quality of project advisory services and activities
- proportion of project adviser time spent on in-line delivery versus capacity building
- tracking of risks to the delivery of project outcomes, such as level of turnover of counterpart staff.

Where possible, project monitoring arrangements should be aligned with counterpart monitoring systems by making use of existing data sources and monitoring arrangements where available.

When selecting indicators and investing in new data sources, these should serve the needs of the counterpart institutions as well as the project. Where there is no existing practice of using results data, the first step towards meaningful alignment may be developing initiatives to demonstrate to the counterparts how data can support more effective management—for example, demonstrating to national police commanders how national crime statistics can inform resource allocation and tactical decisions.

Recommendation

9. That AusAID's Law and Justice Unit invests in developing more detailed guidance for results management in law and justice programs. It should increase the level of technical support available for advisers and program managers in country posts. It should ensure that M&E expertise is included in all design teams and should play an active role in quality assuring the design of results frameworks. Results frameworks should track country-level results, project outcomes and management data, using quantitative and qualitative data, to enable a more holistic picture of the results of Australian law and justice assistance to emerge. Projects should, as far as possible, align with counterpart monitoring systems, making sure that investments in monitoring data are also useful to counterpart institutions, and making efforts to demonstrate to counterparts the practical value of quality results data.

