

Australia's assistance to criminal justice reform in Cambodia

Strategic Framework Document



Report of the Government of Australia Scoping Mission
Updated May 2007



Australian Government
AusAID

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Abbreviations

ADG	Attorney General’s Department (of the Australian Government)
AFP	Australian Federal Police
CATAF	Cambodia-Australia Technical Assistance Facility
CC1 & 2	Cambodia’s two main correctional centres outside Phnom Penh
CCJAP	Cambodia Criminal Justice Assistance Project
CLJR	Council for Legal & Judicial Reform
CMDG	Cambodia Millennium Development Goals
CPCS	Crime Prevention & Community Safety
CRA	Corruption Risk Assessment
D&D	Decentralisation and Deconcentration
EDP	External Development Partner
FOA	Forms of Aid
GAG	Gender Action Groups
GoA	Government of Australia
LJRS	Legal & Judicial Reform Strategy
M&E	Monitoring & Evaluation
MEF	Ministry of Economy & Finance
MOH	Ministry of Health
MoI	Ministry of Interior
MoJ	Ministry of Justice
MoP	Ministry of Planning
MOSAVY	Ministry of Social Affairs, Vocational Training and Youth Rehabilitation
NGO	Non-Government Organisation
PCB	Permanent Coordinating Body (of the CLJR)
PCP	Police Courts Prisons (provincial meetings)
PMU	Project Management Unit (of the CLJR)
RAJP	Royal Academy for Judicial Professions
RGoC	Royal Government of Cambodia
TA	Technical Assistance
TWG	Technical Working Group

Map of Cambodian Provinces



Executive summary

This document is an ‘update’ on the Strategic Framework Document (SFD) prepared in July 2003. It incorporates changes to the SFD endorsed by senior RGoC officials at a project retreat in Kompong Som in April 2007.

Topic	Summary Description
<p>1. Background</p>	<p>The Government of Australia (GoA) has been providing support to the Criminal Justice sector in Cambodia since 1997, when the first phase of the Cambodia Criminal Justice Assistance Project (CCJAP I) commenced. It subsequently provided a second phase of support (CCJAP II) which started in 2002 and is due for completion in May 2007. GoA has also been providing support to this sector through a range of other initiatives, including through:</p> <ul style="list-style-type: none"> • non-government agencies working on child protection and community safety issues, • a regional project to prevent trafficking in people; • initiatives delivered directly by GoA agencies such as the Australian Federal Police (e.g. Trans-national Crime Unit), the Attorney General’s Office (e.g. Counter-terrorism legislation) and the Department of Immigration and Multicultural Affairs (e.g. Border Protection); and • the Australian Youth Ambassadors scheme and the provision of training & educational scholarships. <p>The GoA has indicated its strong interest in continuing its support to this sector, including through the development and implementation of a further phase of the CCJAP project.</p> <p>A GoA Scoping mission therefore visited Cambodia in April 2006 to prepare a Strategic Framework document ‘<i>which in turn would inform an approach to design and implementation of a further phase of assistance to Cambodia’s criminal justice sector</i>’. Following peer review within AusAID and further discussions with stakeholders in Cambodia, an approved Strategic Framework Document (SFD) was produced in July 2006.</p> <p>A Managing Contractor was subsequently selected in late 2006 (through international tender) and the implementing team for CCJAP III mobilised in February 2007. A review of the SFD was carried out, and this document now provides the ‘updated SFD’ as at May 2007.</p>
<p>2. Strategy selection</p>	<p>In selecting an appropriate strategy to guide the next phase of support, the scoping mission was particularly mindful of the following strategic considerations:</p> <p><i>Aid effectiveness issues and GoA White Paper priorities.</i> The future strategy for GoA assistance explicitly addresses the need to:</p> <ul style="list-style-type: none"> • <u>take an integrated approach to law and justice issues, to address not only law and order issues but also improvements in the functioning of the courts and corrections systems.</u> The next phase of support will therefore continue to work with community safety initiatives, the police, the courts and corrections; • <u>integrate the work of AusAID with that of other GoA agencies working in the country and region, in particular the Australian Federal Police (AFP) and the Attorney General’s Department (AGD).</u> The next phase of support therefore includes an explicit role for the AFP to work with the Cambodian National Police as part of an integrated program of GoA support, and will also facilitate ongoing AGD engagement and

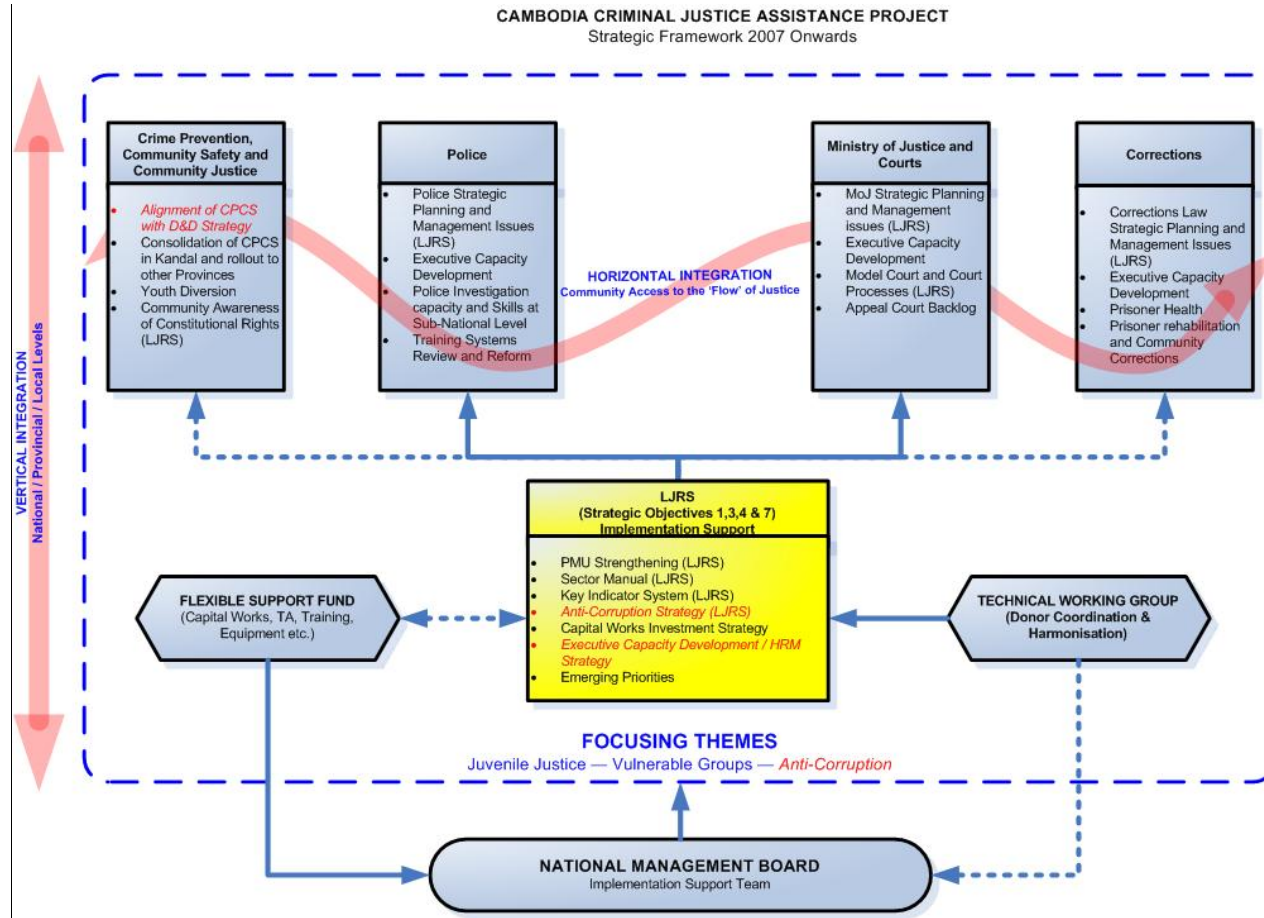
Topic	Summary Description
	<p>coordination with other elements of GoA support to the sector;</p> <ul style="list-style-type: none"> • <u>maximise opportunities to work collaboratively with other donors in order to improve donor coordination, reduce transaction costs to the partner government and increase aid effectiveness.</u> This will be supported through working with the Council for Legal & Judicial Reform (CLJR) and its associated bodies to develop its capacity to coordinate donor activities, through establishing a fund into which other donors can contribute financial resources, and by explicitly tasking the implementation support team to actively promote improved donor coordination and harmonisation objectives; • <u>work within the framework of the partner government’s policy, strategic planning and implementation mechanisms to promote ownership and prospects for the sustainability of benefit streams.</u> This will be supported through working with the CLJR and its associated planning, coordination and management bodies, by implementing initiatives through RGoC systems wherever possible, and by building strategic planning, management and budgeting capacity within the core partner institutions. • <u>take an incremental approach in the context of engaging with a ‘fragile state’, building on the experience of GoA support over the past 10 years and the productive working relationships that have been established with RGoC partners.</u> The strategy therefore supports the ongoing review, development and roll-out of successful initiatives such as the Crime Prevention and Community Safety (CPCS) work, improved investigation and crime scene management capacity within the police force, the model court concept and improved prison management systems. • <u>have an explicit strategy to appropriately address the issue of institutional corruption.</u> The next phase of support will therefore include the conduct of Corruption Risk Assessments and the preparation of Corruption Mitigation Plans. In summary, this approach involves: (i) the identification of opportunities for corruption within the concerned <u>institutions</u> (not the behaviour or practices of any specific individuals), (ii) formulation of strategies to limit those opportunities for corruption through changes in institutional arrangements, processes and systems; and (iii) implementation of those strategies and specific activities, including appropriate capacity building and training support. This work would be carried out primary by the RGoC institutions themselves, with technical advice and support from CCJAP III. It would therefore require high-level commitment from RGoC and agency heads. <p>The strategy recognises that CCJAP is just one important initiative within a broader framework of GoA support to improving access to justice in Cambodia. The strategic framework, and particularly the description of priorities outlined in Section 3 of the main document, nevertheless gives primary focus to scoping the work to be undertaken through a further phase of project based support (CCJAP Phase III).</p> <p>RGoC priorities. The priorities of the RGoC in addressing legal and judicial reform are set out in the National Strategic Development Plan (2006-11) and in the Legal and Judicial Reform Strategy (LJRS). The LJRS is complemented by a ‘Program of Action’ and a ‘Project Catalogue’ which outline implementation arrangements. Governance arrangements for the LJRS involve the Council for Legal and Judicial Reform, supported by a Permanent Coordinating body and a Program Management Unit. A Technical Working Group (to provide a forum for donor dialogue and coordination) has also been established. The RGoC would like donors to work with these structures (or as modified in the future) and within the framework of the NSDP and the LJRS.</p> <p>In the specific context of a future phase of GoA assistance, key RGoC</p>

Topic	Summary Description
	<p>representatives and officials also emphasised the following general points:</p> <ul style="list-style-type: none"> • Continue the ‘sectoral’ approach of working across justice institutions. The Police Courts Prisons meetings at Provincial level were seen as a tangible and very useful expression of this approach; • Continue to balance engagement at senior levels within core justice sector institutions with a focus on implementing practical initiatives ‘on-the-ground’; • Ensure a smooth transition between CCJAP Phase II and the next phase of support; • Build on achievements of CCJAP Phases I and II, including the trust and institutional relationships that have been developed; • Incorporate other provinces in the next phase including, as appropriate, CCJAP Phase I & II sites; and • Give additional focus to juvenile justice issues.
<p>3. Description of Strategic Framework</p>	<p>Duration and coverage. The strategic framework has a 5-year time horizon, although with an understanding that the reforms in the area of criminal justice will likely require ongoing donor support over a much longer timeframe.</p> <p>It is proposed that primary focus is initially given to consolidating gains made in Kandal (and at the central government level in Phnom Penh) and then supporting the roll-out of key initiatives to selected provinces. While the CCJAP I provinces would have several natural advantages, selection of these additional provinces should be based on clear criteria to be developed by the project’s National Management Board, including evidence of political will to progress improvements. The geographic coverage of the next phase of support must clearly take into account the resources available, not only from Australia but also from RGoC and other donors.</p> <p>The future project should thus also actively engage with the RGoC and other donors to identify opportunities to leverage other funding sources through the ‘marketing’ of successful models to interested stakeholders (such as with respect to the CPCS initiative, Model Court and improved prisons management practices and infrastructure).</p> <p>As part of the longer-term strategy, the project will also support the ongoing development of effective planning, coordination and management mechanisms required by the RGoC to lead a sector-wide approach to law and justice development.</p> <p>Scope of future support. The proposed scope of future support is outlined in Figure 1 (page viii). Key points to note include:</p> <ul style="list-style-type: none"> • increased focus on supporting selected key priorities within the <u>Legal and Judicial Reform Strategy</u>, with priorities potentially being: strengthening the capacity of the PMU, the development and use of a sector manual, a common indicator system and a code of ethics for judges and prosecutors; • a continued focus on the ‘<u>flow of justice</u>’ from the community response, through the state’s provisions of justice services by the police, courts and prisons (including support to institutionalising Police-Courts-Prisons meetings at Provincial level); • a continuation of the <u>vertical integration of initiatives</u> where appropriate - addressing national, provincial and local level perspectives and needs; • an increased thematic focus for the next phase of assistance on <u>juvenile</u>

Topic	Summary Description
	<p><u>justice</u> as well as access to justice by women, children and other vulnerable groups. Anti-corruption is another focusing theme;</p> <ul style="list-style-type: none"> • a commitment has been made in Phase III to increasing attention to gender issues through both mainstreamed and gender targeted efforts. In addition to the gender specific initiatives evident in each component which seek to scale up previous efforts, a gender mainstreaming strategy will be developed in year 1. The strategy will reflect both AusAID’s gender equity strategy and also support RGOc’s gender mainstreaming strategy, ensuring complementarity between the two strategies, and strengthening RGOc ownership of gender equity initiatives within the sector. • the review and, as appropriate, consolidation of the <u>Crime Prevention and Community Safety</u> pilot initiative in Kandal and gradual roll-out to selected provinces once a strategy for integrating CPCS into the RGOc’s Decentralisation and De-concentration (D&D) strategy is established. This would be complemented by initiatives to increase cooperation with citizen groups and NGOs, raise community awareness of fundamental constitutional rights and how to access justice, and support more responsive local police practices. There is also a need to engage with <u>MoSAVY</u> on youth diversion, rehabilitation and re-integration programs; • support to the <u>Cambodian National Police</u> would be led by an AFP appointed senior adviser, co-located within the CNP and working directly with a Deputy Commissioner General on strategic reform issues. This adviser would have a capacity building as well as advisory role, while also supporting donor coordination and harmonisation objectives. Following a period of needs and capacity assessment, it is likely that the focus of work would include support to the development of strategic planning, research and management capacity, the design and implementation of a justice sector executive development program (i.e. involving not only the police, but also senior MoJ and Corrections officials) and further assessment of legislative needs (e.g. a Police Powers Act). At the sub-national level, this component would also provide support (in targeted provinces) for further development of police capacity in such areas as investigation skills and crime scene management. Options for supporting training systems reform and development would also be considered; • renewed focus on supporting strategic planning and management capacity development within the <u>MoJ</u> (including executive development) and further development and testing of the <u>Model Court</u> concept in Kandal and subsequent roll-out to other provinces. There would also be support for the roll-out of the <u>Court Handbook</u> and investigation of options to support the operations of the <u>Court of Appeal</u> (to reduce the backlog of cases), including examination of regional/circuit appeal court options. Some engagement with the Supreme Court and Supreme Council of Magistracy may be appropriate; • support for the development of a <u>Corrections Strategy, Law and Management Framework</u>, additional focus on strategic planning and management capacity within the Corrections Department (including executive development), and support to the roll-out of initiatives that have impacted positively on <u>prisoner health and rehabilitation</u>; • establishment of a <u>Flexible Support Fund</u> which could be used to fund emerging priorities directly linked to achieving project objectives. The Fund would include a capital works element for funding small/medium scale initiatives (i.e. up to US\$100,000) that have a demonstrated impact on <u>prisoner health, juvenile justice or other vulnerable groups</u>. This Fund

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	<p>could also be used to accept financial contributions from other donors who wish to support project implementation. Conversely, it could also be used as a mechanism to disburse grants to other agencies (either government or non-government) which can implement targeted initiatives that directly support project objectives;</p> <ul style="list-style-type: none"> • establishment of <u>new project coordination and management arrangements</u> that would better link the next phase of GoA support to the LJRS and thus help support improved coordination and communication between key Justice Sector Institutions and other stakeholders. It is thus proposed that a National Management Board be established for CCJAP Phase III which would include not only the MOI (including Corrections) and MoJ, but also the CLJR and MOSAVY. Furthermore, it is proposed that the Technical Working Group (TWG) for Legal & Judicial Reform (and associated sub-groups) be used as the primary mechanism for donor coordination. <p><i>Costs.</i> AusAID has approved A\$30m for the next 5 year phase of GoA support. Mobilisation of additional funding to support project implementation from RGoC and other donors will also be pursued as an element of the strategy, plus promoting synergies with other GoA funded initiatives.</p>
<p>4. Approach to implementation</p>	<p>The next phase of support will incorporate a shift in aid delivery approach, namely to give greater focus to supporting local partners to do the work, particularly with respect to ‘rolling-out’ tested models (e.g. Crime Prevention, Model Court, improved prisons management practices and capital works design/implementation). Where appropriate arrangements are in place or can be established, some funding could be channelled through government systems, for example to support sub-national initiatives with respect to minor works, community safety initiatives, model court operations and improved prison management systems.</p> <p>Implementation will be based on a series of annual ‘rolling’ plans and budgets, developed within the scope of the strategic framework.</p>

Figure 1 – Scope of CCJAP III support



Note: Italics (red) show changes to the July 07 Strategic Framework Document diagram

1 Background

Australia has provided substantial assistance to Cambodia's criminal justice system since 1997, starting with the first phase of the Cambodia Criminal Justice Assistance Project (CCJAP I). CCJAP I was a four and a half year \$12.6 million project. The Project started from a very low baseline in 1997 when national procedures for the Police, Courts and Prisons were rudimentary and fell well below international standards. The first phase was instrumental in improving Cambodia's human rights record and provided much needed training, policy advice and infrastructure support.

Valued at A\$18 million over 5 years (2002-07), CCJAP-II builds on the achievements of the previous phase, with a strengthened focus on crime prevention and community safety, investigation capacity of police, trial and sentencing, and prisoner health and rehabilitation. This current phase has challenged traditional approaches to criminal justice by introducing the concept of crime prevention as opposed to crime suppression. The success of a provincial pilot in Kandal has led the Royal Government of Cambodia (RGC) to commit to the establishment of a crime prevention and community safety strategy at the national level. CCJAP has also continued its work in the prisons and has greatly improved the living conditions of prisoners through the establishment of improved prison management procedures (including prisoner classification), health clinics and rehabilitation programs. CCJAP II is due for completion in May 2007, with a majority of its technical support finishing at the end of 2006.

GoA has also been providing support to this sector through a range of other initiatives, including through:

- non-government agencies working on child protection and community safety issues,
- a regional project to prevent trafficking in people;
- initiatives delivered directly by GoA agencies such as the Australian Federal Police (e.g. Trans-national Crime Unit), the Attorney General's Office (e.g. Counter-terrorism legislation) and the Department of Immigration and Multicultural Affairs (e.g. Border Protection); and
- through the Australian Youth Ambassadors scheme and the provision of training & educational scholarships.

In order to prepare for a subsequent phase of support, AusAID prepared a background information paper in late 2005, and then contracted a Scoping Mission team which prepared an issues paper and then subsequently visited Cambodia between April 24th to May 5th 2006.¹ The mission's objective was 'to produce a Strategic Framework which in turn will inform an approach to design and implementation for a further phase of assistance to Cambodia's criminal justice sector'. The draft Strategic Framework Document (SFD) was Peer Reviewed and independently appraised by AusAID and feedback from RGoC partners was received during a verification mission to Cambodia in late June 2006.

The SFD was then reviewed and updated in April/May 2007 following mobilisation of the Managing Contractor.

¹ Mission Team members included: Jeremy Stringer (AusAID Canberra), Kathryn Elliott (AusAID Phnom Penh), Jonathan Hampshire (Design Specialist & Team Leader), Glenn Crannage (Deputy Team Leader and Law & Justice Specialist), Janet Ashby (Community Development Specialist), James McGovern (Justice Specialist), David Weeks & Kirsten McDonald (Infrastructure Specialists). The team was joined by Daniel Rowland (Law & Justice Adviser, AusAID) for the second week of the mission.

2 Situation analysis

2.1 Development context²

Political environment and governance

After more than two decades of internal conflict (including the genocidal Khmer Rouge regime, during which some 3 million people are estimated to have died and the country's physical, institutional and social infrastructure was largely destroyed), and subsequent to the Paris Peace Agreements of 1991, Cambodia is now at peace and making steady progress in its development efforts. Since the adoption of a new Constitution in 1993, the foundations of a multiparty liberal democratic state are being progressively established.

The formation of a new Government in July 2004 was a major step forward in the political development of Cambodia, given that dialogue was used to resolve differences between the 3 main political parties rather than violence. Also the commune elections of 2002 represented another important step in supporting political, administrative and financial decentralisation and reform. There are also positive signs that civil society groups and the media are increasingly able to play their vital role in questioning and contesting government actions.

Nevertheless, there remain concerns about the centralisation of political power (including a lack of effective separation of powers between the legislature, executive and judiciary) and weak governance continues to be a fundamental constraint to Cambodia's development. While progress has been made in re-building institutions (almost from scratch) since 1993, key areas for ongoing capacity building (and/or reform) include the legal and judicial system, public finance management, public administration and local governance.

Corruption also remains endemic, both in the public and private sectors. The causes of corruption in the public sector are various, but include a culture of patronage and impunity, lack of accountability as well as the extremely low salary levels of most public servants, which do not provide a 'living wage'.

In the context of working with 'fragile states' such as Cambodia, it is essential that donor partners understand the political incentives and institutions that affect the prospects for reform, and not merely judge them from either a technical perspective or from the 'moral high ground'. Identifying prospects for promoting change must be rooted in an understanding of the country's history and its people and how power is brokered and used both formally and informally.³ It must also take a long-term (generational) perspective and look for incremental change. As noted in Cambodia's National Strategic Development Plan, Angkor Wat was not built in a day.

The economy and aid

As with the system of government, the approach to economic management has also undergone radical transformations over the past 30 years, moving from an isolated and subsistence oriented economy to one based on the market and open to international trade.

Cambodia is considered to have established prudent macro-economic and fiscal policies, which have supported reasonable rates of economic growth (averaging some 7% per annum over the past 10 years) and helped keep inflation well below 4% per annum since 1999.

The main growth sectors have been tourism and the garment industry. While agricultural production staged a strong recovery since the droughts of 2002, it nevertheless lags behind

² Key parts of this section are drawn from the Country Assistance Strategy of the World Bank Group 2005-2008, the RGoC's National Strategic Development Plan 2006-10, and the Cambodia Poverty Assessment 2006.

³ 'Why we need to work more effectively in fragile states', DFID 2005

population growth rates, with corresponding implications for the livelihoods of the many rural poor.

Despite recent efforts to improve tax collection and administration, the Government's revenue collection performance declined in 2003, resulting in a fiscal deficit of 7% in that year and some decrease in government spending in priority sectors of health, education and agriculture. Large aid inflows continue to help finance these deficits (total of US\$550 estimated for 2005).⁴ Future prospects for any significant increase in public investment remain limited because of the very low government revenue base. Increases in private investment are also constrained by a number of factors, including a weak financial system, lack of skilled labour, a weak policy and regulatory environment, bureaucratic inefficiencies and corruption.

Given Cambodia's significant financial needs, its limited capacity to mobilise domestic revenues, and the narrow private sector base, it will continue to depend heavily on official development assistance over the medium term. The effective use of these resources is thus of significant importance, as recognised by both the RGoC and its key development partners.⁵ Further brief discussion of aid effectiveness issues is provided in Section 2.2 below.

Population, poverty and gender

Cambodia's total population was estimated to be around 14 million people in 2005. Some 40% of this total is estimated to be less than 15 years of age, 60% under the age of 25, and 36% in the 10-24 year age group. Youth issues therefore constitute a key concern and challenge, particularly as youth unemployment is rising and there are signs of increasing levels of youth risk behaviour including drug abuse and involvement in criminal activities.⁶

The latest household survey (2004) found that 35% of Cambodians live below the national poverty line, down from an estimated 47% a decade earlier. Significant progress has thus been made, largely thanks to the establishment of peace and security and the implementation of policies that have encouraged both trade and investment in infrastructure.⁷

Although all segments of society have benefited, it is those living in urban areas which have benefited the most. It is estimated that 91% of those living below the poverty line live in rural areas, with the highest rates being in remote locations with limited access to roads, markets and basic services. While overall the poor have experienced an improvement in living standards, inequality has also increased significantly. Part of this growth in inequality is due to urban/rural differences, but part also is due to growing differences within the rural population.

The causes of poverty are multi-dimensional and complex. However it is clear that governance issues – low capacity and unresponsive and ineffective state institutions – are some of the critical 'binding constraints'. Improvements in public financial management, establishing an effective legal and judicial system and addressing corruption in both the public and private sectors are identified as key to long-term poverty reduction. Corruption keeps poor people poor. They have to pay for services and are unfairly disadvantaged in official decisions (e.g. in dealing with police and the courts) when in conflict with individuals or groups who can afford to pay more.

While the poor (by definition) are disadvantaged as a group, poor women are doubly vulnerable. Cambodia has among the lowest levels of gender equity in Asia as measured by the gender related development index and gender empowerment index.⁸ Social attitudes and

⁴ National Strategic Development Plan, Cambodia at a glance, p xvi

⁵ Declaration by the RGoC and Development Partners on Enhancing Aid Effectiveness, March 2006

⁶ National Strategic Development Plan, p25-26

⁷ Cambodia Poverty Assessment 2006, Executive Summary

⁸ Human Development Report, UNDP, 2004

tradition deem women to be of a lower status, and this is reflected in their educational attainment, higher rates of child labour, inequities in access to services and representation in decision-making positions.

Domestic violence against women is believed to be widespread, and women and girls are the primary victims with respect to sexual exploitation and human trafficking.

2.2 Current policy and program context

RGoC strategic planning framework

Building on the Governance Action Plan of 2001, the National Poverty Reduction Strategy (NPRS) of 2002 and the establishment of Cambodia's Millennium Development Goals (CMDGs) in 2003, one of the first decisions of the RGoC on its election in 2004 was to adopt a 'comprehensive Rectangular Strategy for addressing governance and socio-economic development issues and efforts'.⁹ At its core, this Rectangular Strategy gives focus to good governance (fighting corruption, legal and judicial reform, public administrative reform and armed forces reform).

In December 2005, the government produced its National Strategic Development Plan (NSDP) 2006-10. This document synthesises and prioritises the RGoC's previously stated development goals and lays out the key strategies and actions required to achieve them over the next five years. The NSDP is intended to operationalise the Rectangular Strategy, align sector strategies and planning cycles to an overall long-term vision, as well as guide external development partners (EDPs) to align and harmonise their efforts towards greater development effectiveness.

The NSDP priorities for action under the heading 'good governance' are to:

- Reinforce and fast-track a multi-pronged attack on corruption;
- Carry out specific legal and judicial reforms;
- Speed up and pursue public administration reforms; and
- Add to and strengthen measures to make decentralisation and de-concentration more effective.

With respect to legal and judicial reform, the RGoC established the Council for Legal and Judicial Reform (CLJR) in June 2002 with a mission '*to initiate and encourage the process and to follow up the implementation of legal and judicial reform policy and programs in accordance with the objectives of the Supreme Council for State Reforms*'. It is supported by a Permanent Coordinating Body (PCB) made up of the key line-ministries and institutions of the justice sector, which is in turn supported by a Project Management Unit (PMU).

In June 2003 the RGoC approved a 'Legal and Judicial Reform Strategy' (LJRS), the goal of which is '*The establishment of a credible and stable legal and judicial sector upholding the principles of the rights of the individual, the rule of law and the separation of powers in a liberal democracy fostering private sector led economic growth*'. To support implementation of this strategy, a 'Plan of Action' was subsequently prepared and adopted by the RGoC in April 2005¹⁰. The Plan of Action identifies short, medium and long-term priorities under each of the LJRS strategic objectives. A (draft) Project Catalogue has also been prepared (by the Project Management Unit) with the aim of mapping current donor involvement in the sector, as well as to help identify where further/future donor support is required. In March 2006, the PMU also sent out a list of 'prioritised priorities' taken from the Plan of Action, in response to concerns expressed by some stakeholders that further focus on key actions was required. In

⁹ See diagram in National Strategic Development Plan 2006-2010, p iv

¹⁰ Plan of Action for implementing the LJRS, Council for Legal & Judicial Reform, April 2005

addition to the adoption of the 8 fundamental laws,¹¹ the immediate priorities specified are currently:

1. Improving the fundamentals for an efficient, effective and sustainable implementation of the Reform, through: (i) strengthening the PMU to fulfil its role; (ii) establishing a sector manual; and (iii) creating a common indicator system for measuring Reform progress.
2. Improving access to formal justice, through: (i) legal aid; (ii) code of ethics for judges and prosecutors; and (iii) expansion of the model court program.
3. Improving alternative dispute resolution and mediation mechanisms; and
4. Raising awareness of fundamental rights at the commune level.

While the scope of the LJRS does not currently explicitly cover all potential areas of need in the sector (for example with respect to the work of the Police and of the Corrections Department of the Ministry of Interior), and the coordination and implementation mechanisms are as yet not as effective as they might be, the scoping mission strongly believes that the LJRS and its governance and implementation mechanisms should be used as the principle guiding framework for the rolling design and implementation of the next phase of GoA support to the sector. This is in keeping with the principles of the ‘Declaration by the RGoC and Development Partners on Enhancing Aid Effectiveness’ of March 2006.

Other important policy initiatives of the RGoC (which will impact on developments in all sectors) include the ongoing work on Public Financial Management reform, Administrative reform and Decentralisation and Deconcentration (D&D). The future program of Australian assistance to criminal justice will need to take into account these other reforms, particularly in the context of strategic planning, the roles and responsibilities of different levels of government and sustainable financing of donor supported initiatives.

GoA priorities and programs

The Government of Australia’s recently released White Paper entitled ‘*Australian Aid: Promoting Growth and Stability*’ sets out a comprehensive plan for Australia’s overseas aid program for the next 10 years. The plan focuses on the fundamental pillars for poverty reduction and development, namely economic growth, sound governance and stability.

Support to sound governance (fostering functioning and effective states) is to be provided through:

- Building demand for better governance;
- Providing incentives to those countries able to achieve agreed improvements in areas such as governance and combating corruption; and
- Making more selective and effective use of technical assistance to promote reform, and undertaking an integrated approach to law and justice support.

Strengthening the effectiveness of the aid provided is also a key theme of the White Paper. To this end, Australia is committed to work towards the principles of the *Paris Declaration on Aid Effectiveness*, which includes maximising opportunities to work with and through partner systems in aid program delivery. Promoting gender equality is a consideration that will apply across all aspects of Australia’s aid program, as is the imperative to tackle major diseases, including HIV/AIDS.

¹¹ The 8 fundamental laws are: (i) Civil Code; (ii) Civil Procedure Code; (iii) Penal Code; (iv) Penal Procedure Code; (v) Law on the Statute of Judges; (vi) Law on the Organisation & Functioning of the Courts; (vii) Amendment to the Law on the Supreme Council of Magistracy; and (viii) Anti-Corruption law.

Strengthening opportunities for Australian Whole of Government engagement is another theme of the White Paper, and the future phase of assistance will thus promote an integrated approach between AusAID and other Australian agencies such as the Australian Federal Police (AFP).¹²

The GoA's current *Cambodia Country Assistance Strategy* seeks to 'strengthen the justice system and ensure transparency and equitable access to justice'. Three program outcomes are specified, namely:

1. Strengthening law enforcement, courts administration and prison systems;
2. Improved justice system practice in dealing with victims of crime and juvenile offenders; and
3. Increased community confidence in the justice system, and strengthened police-community cooperation.

The GoA has been supporting the achievement of these objectives since 1997 through implementation of the CCJAP Phases I and II, as well as through other complementary initiatives such as the Asia Regional Cooperation to Prevent People Trafficking project, initiatives funded through NGO Cooperation Agreements (e.g. on child protection) and work undertaken by other GoA agencies such as the AFP (on trans-national crime), the Department of Immigration and Multicultural Affairs (border protection) and the Attorney General's Department (anti-terrorism legislation).

Of particular note is the formal request (in October 2005) from the Deputy Prime Minister (Sar Kheng) for Australia to assist in assessing requirements for the reform of the Cambodia National Police and to develop a reform strategy. This resulted in an initial scoping mission being undertaken by the AFP in collaboration with the Attorney General's Department. It is now expected that follow-up work in this area will be integrated with the next phase of CCJAP support.

An overview of GoA's current support to criminal justice sector activities is provided at Attachment 1. This also includes a brief profile of other related assistance in such areas as public finance management reform.

Other donor programs

There are a number of other donors and development agencies supporting legal and judicial reform initiatives and access to justice in Cambodia. Some focus more on the 'supply side' (working with the formal justice institutions to improve their capacity and performance) and some on the 'demand side' (working with community and civil society to increase the demand for justice).

Donor supported initiatives worth highlighting include:

- France and Japan are the key donors providing support for legislative drafting and follow-up training. France is providing support for the drafting of the Criminal Code and Criminal Procedures code, while Japan is working on the Civil Code and Civil Procedures Code. Both donors are also providing support for the training of Judges, Prosecutors and Clerks through the Royal Academy for Judicial Professions, with Japan also working with the Bar Association to support the training of lawyers. France has also assisted the National Police with some equipment and training in areas of trans-national crime such as drug trafficking.

¹² Collaboration with the AFP will be in line with the Strategic Partnership Agreement between AusAID and the AFP signed in September 2004. This states, *inter-alia*, that 'The two agencies will liaise closely regarding criminal justice system programs to ensure these activities are managed and coordinated to maximise the impact of Australian assistance'.

- The World Bank was previously taking a lead role in designing and coordinating a Legal & Judicial Reform Program, but pulled out from this role in 2004 to focus more on supporting ‘demand’ for justice initiatives and undertaking research on access to justice with a sectoral focus (land, private sector and agriculture).
- The UNDP has also tried to take a role as lead donor in the sector, but has had limited success. It nevertheless remains engaged, and has recently concluded an agreement with the RGoC to fund four activities contained in the LJRS Project Catalogue. The overall objective is to improve access to justice, through raising awareness of fundamental rights at the commune level, improving the Official Gazette, publication of judicial decisions and conducting studies into Alternative Dispute Resolution mechanisms.
- The Danish Agency for International Development (DANIDA) has been funding the Danish Institute for Human Rights (DIHR) over the past four years, primarily to work with the Project Management Unit of the CLJR. There has been ongoing collaboration between the DIHR and CCJAP II, particularly on issues such as sector-wide planning and budgeting and donor coordination mechanisms.
- UNICEF has an ongoing program of activities relating to Child Justice, which it is undertaking in cooperation with the RGoC. The program includes: (i) Development of juvenile justice law; (ii) research and advocacy on juvenile justice; (iii) development of policies and procedures on child-friendly justice systems; (iv) capacity building/training for judges and prosecutors, police, lawyers and social workers; (v) legal representation; (vi) child-friendly facilities and services; (vii) diversion and alternatives to detention for children in conflict with the law; and (viii) development of judicial system case database. While wide-ranging in scope, it should be noted that some of these initiatives have only very little funding attached.
- USAID is providing support to two main programs (through the East-West Management Institute) which focus on: (i) Human Rights (e.g. through grant funding to Human Rights NGOs, legal training for lawyers and legal aid for poor and vulnerable groups; and (ii) Rule of Law (e.g. supporting education of Judges and Prosecutors, improving access to justice for special/vulnerable victims and improving the transparency and efficiency of the justice system).

The RGoC has established a donor matrix (linking donor initiatives to the objectives of the LJRS) which is currently in the process of being updated.

It is also important to note that China is now a significant donor to Cambodia, and together with Vietnam provides significant ongoing support in areas such as police training. However, China does not as yet formally participate in any of the established donor coordination forums and little specific information is publicly available on the detail of its program of support to Cambodia.

Donor coordination and harmonisation issues are discussed below.

Aid effectiveness issues

Promoting partner government ownership (of development policies, strategies and programs) is a key element of the aid effectiveness agenda. This requires that donors carefully consider how best to align their funding with government priorities and thus also promote government accountability for achieving results. Working through or within government systems (where appropriate) is a key way of promoting ownership. It is also fundamental to effective capacity building strategies.

Improved coordination of donor support by the RGoC, together with improved harmonisation of donor approaches and practices (donors collaborating among themselves to reduce transaction costs for ‘recipient’ governments) are also key elements of the effectiveness

agenda. Australia is committed to working with the RGoC and other donors to implement these principles.

Within the legal and judicial reform ‘sector’, the RGoC’s primary mechanism for promoting donor coordination is the Legal and Judicial Reform Strategy (including the Program of Action and the Project Catalogue), the Technical Working Group (TWG) for Legal and Judicial Reform, the Permanent Coordinating Body and the Project Management Unit (which acts as Secretariat to the PCB, and to some extent to the TWG). However, donor coordination has been problematic, and requires ongoing efforts by both the RGoC and donors. Working within the scope of the LJRS and providing capacity building support to the PMU (which has been specifically requested by the RGoC as a priority) would certainly support coordination and harmonisation objectives. This is therefore a key part of the proposed future strategy, and is discussed further in Section 2.4 below (Strategy Selection), along with an analysis of ‘forms of aid’ options for the future phase of Australian support to the criminal justice sector.

2.3 CCJAP revisited

Attachment 1 includes a brief summary of the scope of CCJAP Phases I and II (together with a profile of other GoA supported initiatives relevant to the criminal justice sector in Cambodia).

Attachment 2 provides: (i) a review and update of the problem analysis undertaken for CCJAP Phase II, (ii) a review of key stakeholders; and (iii) an overview of issues and lessons learned from the implementation of CCJAP Phase II.

A summary of most significant issues is provided below:

Problem analysis

A comprehensive problem analysis, undertaken with direct counterpart and stakeholder involvement underpinned the design of CCJAP II. Many of the identified problems - particularly those of an overarching nature - have long and complex histories and by their very nature may require generational change to resolve. This accords with AusAID’s perspective that reform and building capacity within fragile states, including in the justice sector, is a long-term endeavour.

A more detailed analysis of individual problems and a comparison of their status in 2002 with that of 2006 are provided at Attachment 2. They can be summarised as:

Economic, democratic and social issues:

Whilst there has been significant growth in the garment industry and tourism there has been no similar improvements in agricultural production, which is the basis for livelihood for the vast majority of Cambodian citizens. No other major income generating activities have come on stream and government revenues remain low, with donors providing around US\$550m to bridge the government’s ‘financing ‘gap’. Poverty levels have dropped nationally over the past 10 years (more so in urban than rural areas) but poverty remains at chronic levels. This overarching scenario continues to have serious implications for the funding of justice (and other government) services and the payment of justice sector employees. Cambodia has been relatively stable in political terms and factional fighting less overt during the life of CCJAP II when compared to that of CCJAP I. Disputes arising from the 2004 elections did not result in violence and whilst democratic systems are still ‘emerging’, progress is undoubtedly being made in establishing a more peaceful and secure environment in which political, economic and social development can continue to take place.

Performance of the justice sector:

The lack of sectoral performance objectives and a sector-wide performance monitoring framework make it very difficult to assess sectoral performance using empirical data. The development of such a framework will take some time, but is included as a priority in the

current Legal & Judicial Reform Strategy. The general current perception is that justice services are still difficult for most people to access and are largely unresponsive to stakeholder needs.

RGoC initiatives to improve the performance of key judicial actors include significant increases to Judicial salaries (some 400% in 2005), however others, including Court Clerks, Police and Prison Officers remain unchanged and well below the cost of living. Corruption continues to be an issue of general concern, despite some high-profile cases in 2005 and 2006 of judges and court officials being charged with corrupt behaviour. The establishment of the Royal Academy for Judicial Professions, enhanced donor focus on legal and judicial reform, increased salaries, and improved training should all contribute to a boost in the status of judges. However, community confidence remains low and the path to establishing it will be a long one. Justice agencies still await completion of the long overdue passage of new criminal and civil legislation that holds the key to many fundamental changes in the Cambodian justice system.

Conditions, opportunities and treatment of women, young people and vulnerable groups:

There is no clearly demonstrable improvement to the status of women in Cambodia in recent years. Cultural attitudes constrain the increased participation of women in meaningful justice sector roles, despite targeted initiatives (such as through CCJAP II) aimed at preparing police women for more active investigative roles (e.g. in Kandal and in the Anti-Human Trafficking & Juvenile Protection Department). Gender Action Groups have been established and are active in police and prisons, but there has been as yet little activity on gender issues in MOJ. Most gender initiatives have been as a result of donor funding and there is no clear evidence of increased RGoC contribution to gender and development actions outside of the operations of the Gender Action Groups.

The growing young population continues to challenge the justice sector and new policies and procedures to deal with young people are emerging too slowly. Finally, it is clear that women, youth, children and some other groups such as ethnic minorities are more vulnerable as victims of crime. There is an opportunity for the next phase of assistance to work with local groups, police and courts in developing better ways to protect and assist such people.

Changes and New Opportunities in the Stakeholder Community

This section highlights some of the major changes in stakeholder composition since 2002 and some of the new opportunities for engagement that have emerged.

Government

Since the commencement of CCJAP II in late 2002, national elections have been held and the Ministers of both MOI and MOJ are now from the leading Cambodia Peoples Party (whereas the MOJ Minister was previously from the FUNCINPEC political party). This provides an opportunity for greater synergy and collaboration between these two pivotal justice sector ministries

A separate Department of Prisons was established by Royal Decree in May 2000. This decree made provision for the separation of the Prison Service from the national police and established it as a new organisation under the control and direction of the General Department of Administration (MOI). GoA made a significant contribution to the separation of Prisons from Police, and the Prisons Department now strives to be established as a General Department in its own right. This would require considerable (donor) assistance, and GoA is the only external development partner with a history of commitment and relationships in this field.

The Royal Academy for Judicial Professions (RAJP) was established in 2005, with a broader role than the previous Royal School for Judges and Prosecutors (RSJP). The new entity now has divisions for the selection and training of Judges, Prosecutors and Court Clerks. Unlike its

predecessor, the RSJP is now also responsible for training not only Judges and Prosecutors, but also Court Clerks. Whilst there is still some lack of clarity, it seems that MOJ will no longer have a training delivery function. This will necessitate a range of structural, procedural and administrative changes within MOJ.

Since the design of CCJAP II, the RGOC has embarked upon its legal and judicial reform agenda. Pivotal to the pursuit of that agenda are 3 key bodies; the Council for Legal and Judicial Reform; the Permanent Coordinating Body (PCB); and the Program Management Unit (PMU). A separate Technical Working Group has also been established to enable greater RGOC-Donor harmonisation on legal and judicial reform initiatives, which are articulated in the Legal and Judicial Reform Strategy and Project Catalogue. The new phase of GoA assistance has an opportunity to engage through these bodies, particularly to support capacity building within the PMU and donor coordination and harmonisation through the TWG and PCB.

There has been a significant policy change which will impact on future assistance to the criminal justice sector. From 2002 - 2006, RGOC was implementing the multi-laterally funded, UNDP-led Seila Program, which was part of an overall rural development program implemented through the Ministry of Rural Development. In 2005 the RGOC established its Decentralisation and Deconcentration Program which replaces Seila. Decentralisation and Deconcentration will have more of a traditional 'local government' perspective and will provide a broader framework of village, commune and provincial activities than were addressed under Seila. This will provide a potential conduit for many locally delivered activities, particularly crime prevention, community safety and community awareness.

Non Government Partners

Whilst there has been no significant change to NGO profiles, CCJAP II has been increasingly engaged with some NGOs in the design and delivery of provincially based services. In Kandal Province the Provincial and District Crime Prevention Committees have become conduits for NGO activities in accordance with locally identified needs and locally developed plans and priorities.

Several key NGOs remain active in the justice sector (e.g. Licadho, Adhoc, Cambodian Defenders Project, Prison Fellowship, Red Cross) and as the new phase of GoA assistance increases its emphasis on juvenile justice, youth diversion and community access and rehabilitation, the opportunity to work with and through the NGO community will be enhanced. Collaboration with NGOs has the potential to offer a 'multiplier' effect for CCJAP supported initiatives. It will therefore be important to establish a clearly defined NGO engagement strategy for the next phase of GoA support. (nothing about this is reflected in the first annual work plan – is it planned future years??)

CCJAP II Achievements

CCJAP II has a high level of credibility, stakeholder confidence and local ownership which has engendered trust and respect within the justice sector. CCJAP II has been able to effectively access and engage with key institutions and stakeholders across the sector and has built a reputation for providing practical assistance rather than simply policy advice and criticism. This has enabled CCJAP II to undertake not only specified project activities, but also to fill a facilitation and communication role with and between various disparate parts of the Cambodian justice sector, and between government and non-government actors. Some of the more tangible achievements to which CCJAP II has directly contributed include the following:

Area of work	CCJAP's contribution to achievements/results
<i>Crime Prevention & Community Safety</i>	<ul style="list-style-type: none"> • Development of a National Crime Prevention Strategy is now on the agenda at the most senior levels of government (Council of Ministers). This has been a direct result of CCJAP II supported work. • Crime Prevention and Community Safety strategies, based on a structured community consultation process, are now in place both for Kandal province as a whole and for each of the 11 districts. • Kandal Provincial Government is now committing its own resources to support crime prevention and community safety activities. It has also mobilised private sector resources to support specific initiatives. This demonstrates significant local ownership and commitment. • 1,700 + beneficiaries (mostly juveniles 'at risk' and in conflict with the law) have so far been directly involved in community-based educational and vocational activities across all 11 districts in Kandal. • A strong perception is evident among members of the provincial and district CPCS committees that community safety is being effectively enhanced by their outreach activities. While the quality of crime reporting/statistics remains weak, evidence is quoted by CPCS committees of a reduction in crime. • Senior police officers in Kandal believe that the CPCS approach is improving police/community relations. Surveys of community opinion have been conducted (at the request of the police in Kandal), the results of which appear to support this perception.
<i>Investigation skills and capacity</i>	<ul style="list-style-type: none"> • Expert status has been established for crime scene, fingerprint, ballistics and document examinations officers as a result of an ongoing forensic specialist program. • Crime scene management and preservation is now being widely undertaken according to established protocols (according to senior Kandal police and based on feedback from surveys with district police). • The incorporation of scientific and technical evidence in case files for felonies has increased (as opposed to sole use of confessional evidence). This is based on periodic analysis of case files undertaken within the office of the Deputy Commissioner for Judicial Police, who then follows up with District commanders. • Increase in the reporting of sexual assaults in Kandal province (53 incident reports in 2005 as compared to 22 in 2004). While none of these appears to have resulted in charges being brought, this increase in reporting is believed to be a positive sign that the police increasingly recognise sexual assault as a serious crime.
<i>Trial and sentencing</i>	<ul style="list-style-type: none"> • Separation of the prosecution function from the courts adopted as policy by the RGoC in April 2005. This reform action was actively promoted by CCJAP II. • New Courts Procedures Handbook completed and published, led by key officials within the MoJ who have strong ownership of the product. • Incorporation in the new Handbook of model practices for dealing with juvenile offenders and victims of crime, as well as clear guidelines to improve case-load management practices.

Area of work	CCJAP's contribution to achievements/results
	<ul style="list-style-type: none"> • Adoption of the new Handbook as a core training resource/reference by the Royal Academy of Judicial Professions, with resulting potential to impact on court processes on a national scale. • Improved records management procedures trialled at Kandal court, including establishment of a records 'library'. • Model-court 'checklist' developed through a consultative process with MoJ and other key donors working in the sector.
<i>Prisoner health and rehabilitation</i>	<ul style="list-style-type: none"> • Improved prison security at those prisons with management plans and prisoner classification systems now in place. • Prison management plans with realistic objectives and performance indicators are now in place at Kandal, CC1 and CC2 prisons. • Prisoner classification systems are now fully established at 6 prisons (Kandal, CC1, CC2, Siem Reap, Kompong Speu and Kompong Cham). Preliminary training on these systems has been completed at 19 other prisons. • Significant improvements in prisoner health at Kandal, CC1 and CC2 as evidenced by data on the incidence of beriberi and scabies among the prisoner population. Increase in prison capacity to screen for and identify TB & HIV cases, and refer these cases to hospital. • Accreditation by the Ministry of Health of the 'Health Posts' at Kandal, CC1 and CC2 prisons – directly supported by CCJAP II. Accreditation of Kompong Cham and Speu expected shortly, and others in the pipeline. • Prisoner re-integration/release programs operating at CC1, CC2 and Kandal prisons, including vocational training and paid employment currently provided for 40 prisoners at Kandal.
<i>Institutional strengthening</i>	<ul style="list-style-type: none"> • Plan of Action for Legal & Judicial Reform approved by Council of Ministers in April 2005 following direct support from CCJAP II. • PMU project database established and Project Catalogue published. • Draft Sector Planning Manual produced. • Gender Action Groups established in MoJ and MoI, and to date over 2,180 police officers have received gender awareness training. • 96 staff of various justice sector agencies Certificate in Workplace Training IV, and 55 staff successfully completed Diploma in Workplace Training & Assessment. Police and MoJ now have enhanced capacity to design and deliver own training. • Capacity to develop competency based training modules effectively established among key staff in MoJ and Police training institutions.
<i>Project management & capital works</i>	<ul style="list-style-type: none"> • Baseline survey and ongoing performance evaluation reports produced, and plans in place to conduct follow-up victims of crime survey and Phase II completion report. • Improved water supplies established at CC1 and CC2 prisons • New model court building designed and under construction at Kandal (due for completion September 2006). • New prison facility designed, constructed and operational at Kandal.

Lessons learned

The implementation of CCJAP II has led to the identification of a number of key issues and lessons that will be important to factor into the rolling design and implementation of a future phase of assistance. The list of lessons is not intended to provide a comprehensive review of CCJAP II, but is provided as a brief summary to inform the scope of the strategic framework and guide future more detailed design. Further details are provided at Attachment 2.

Institutional Capacity

Criminal justice institutions remain weak and with the exception of some individuals, technical skills in most disciplines are quite limited. Whilst building capacity was a fundamental purpose of CCJAP II, the capacity of counterparts to undertake new and unfamiliar functions or to participate in broad conceptual debates requires constant reinforcement and ongoing investment of time and resources. Many criminal justice practices are responded to by rote with some stakeholders finding it very difficult to conceptualise new approaches that break with long standing bureaucratic practice. As these constraints are combined with poor systems, including little by way of strategic planning capacity, little accountability for outcomes, lack of opportunities for staff including few professional development opportunities, and lack of strategy and policy direction – it is clear that leadership and management capacity will continue to challenge future initiatives. Sound policy and planning for the introduction of program budgeting into the criminal justice agencies will also be essential to help ensure appropriate and sustainable recurrent funding. Even if funding is not immediately forthcoming from RGoC following such an initiative it will have the effect of fostering higher level thinking about linking outcomes to budgets, as evidenced in the Prisons Department and to a lesser extent in MOJ.

Ownership

Ownership can only be supported if Cambodian counterparts take the lead role in planning for and managing donor supported initiatives, and the donor takes a long-term approach of progressive and responsive engagement. This has been well demonstrated particularly with respect to the CPCS work in Kandal, the development of the Courts Handbook and the work on Prison management systems and prisoner health, all of which now continue to be driven forward by RGoC ‘champions’.

The design and implement approach used to commence CCJAP II was also a key to supporting genuine ownership from the highest to the lowest levels. This foundation was progressively built upon because of the quiet-diplomacy (non-confrontational) engagement model used. In working to promote counterpart ownership, it cannot be taken for granted that information provided at one level in RGoC will be passed upwards, shared horizontally, or cascaded downwards. In practice there is very little decision making power delegated to the lower levels of management creating time and approval constraints in achieving project objectives, inhibiting initiative and constraining problem solving capacity. Provincial level efforts are therefore much less likely to be effective in achieving the desired impact if they are undertaken in the absence of ‘high level’ approval or other instruction.

Sectoral Integration

There are a range of ‘cross-boundary’ issues which continue to go un-resolved unless there is an ‘honest 3rd party’ to mediate. For example, the Police-Courts-Prisons (PCP) meetings supported by CCJAP II have been successful in providing a forum for raising issues, exchanging information and problem solving on such issues as prison overcrowding, illegal pre-trial detention, prisoner release and dealing with juveniles in conflict with the law. Integrating the PCP process more formally into government structures could provide a means of national extension of the concept. With ongoing support and refinement the PCP concept could be expanded to eventually include non-government representatives. However experience has shown that whilst this appears to be an easy and cost-effective strategy for

sectoral integration, planning and support to the PCP process, particularly in its early days (1-12 months) carries a significant time and travel overhead. Early identification of ‘cross-boundary’ issues needs to be undertaken during the design phase and strategies developed with high level stakeholders to address them.

Continuity

The CCJAP II experience, reinforced by comments from very senior stakeholders, was that the significant hiatus between phases I and II created enormous tensions, loss of traction and loss of confidence in GoA which needed to be progressively re-built during Phase II. Counterparts widely expressed the very strong view that the extension and successful completion of many key CCJAP II initiatives (model court, prison health, crime prevention, etc) are dependent on a seamless, unbroken transition from phase II into the new phase of assistance.

Capital works

Some of the main strengths and weaknesses noted in the design and implementation of the CCJAP II capital works program include:

STRENGTHS	WEAKNESSES
<ul style="list-style-type: none"> • Close linkages between organisational change and new infrastructure • Extensive and deep design consultations • Reduced operating costs • Involvement of NGOs • Prisoner rehabilitation opportunities • Improved Prisoner Health • Improved Prisoner Human Rights • Use of Cambodian building forms, materials and techniques • High quality, durable, low maintenance construction • Detailed Performance Monitoring Framework • Increased involvement of counterparts 	<ul style="list-style-type: none"> • Infrastructure component not strategised in the original project design • Logic of design not well documented • Sites selected for investment without feasibility studies • Location of infrastructure team in Australia • Little engagement with the Cambodian professional private sector • Model facilities may represent ‘a bridge too far’ & perceived as unattainable (over-engineered) • Infrastructure process at times divorced from institutional strengthening process • Apparent weak connection between MC and infrastructure sub-contractor

These points are taken into account in the proposed capital works strategy for the next phase of GoA support. Attachment 3 provides a summary of the capital works strategy.

Performance Assessment (monitoring and evaluation)

Some lessons learned from CCJAP II with respect to performance assessment include:

- Attributing outcomes and impact specifically to a donor funded program or project is sometimes possible, but often highly problematic given the huge range of external factors, multiple stakeholders involved, weak institutional capacities to collect and use data and complex cause-effect relationships. Measuring aid effectiveness is complex anyway, and particularly so in a sector such as law and justice and in a fragile states context. In this light it is often futile to fixate on trying to measure attribution, and may also be inappropriate in the context of supporting partner ownership of, and accountability for, results.
- Some clear and useful quantitative data can be collected and used to measure outcomes and impact. Prisoner health is one such example.

- Availability of reliable and timely data from police and the courts remains very patchy, and even when available must be interpreted with caution. Creating a demand for useful and timely management information among key managers is the key challenge, in parallel with developing the institutional systems required to collect and analyse such information.
- The conduct of relatively simple community opinion/attitude surveys can be an extremely valuable way of promoting more of a ‘service culture’ among agencies such as the police and courts. It can also have the effect of building confidence/trust between the community and government agencies, if it is seen as a genuine attempt to collect, consider and use the views of the community to help support decision making on key issues.
- The best monitoring systems (meaning the most useful and sustainable) are those that are locally owned and driven (e.g. prisoner health). Parallel program/project systems have no particular developmental benefit (although do help meet accountability requirements back to the donor).
- Anecdote may in many cases be the only source of information available on an important issue. This is useful information, but must clearly be treated with an appropriate degree of caution, and should be validated wherever possible from more than one source. In the same vein, information should be collected from various sources, including from NGOs and other donors, to help gain a clear and objective picture of what is happening on the ground (principle of triangulation).
- Some formal reporting is of course required by both Government partners and donors. These should be harmonised wherever possible, with necessary reporting formats being kept clear, concise and suitably structured.

2.4 Strategy selection for future assistance

Key considerations

In the process of determining an appropriate strategy for the next phase of GoA assistance to the criminal justice sector, the Scoping Mission has kept in mind the need to:

- Be consistent with GoA priorities and aid delivery strategies as laid out in the recent White Paper, including the need to innovate to actively promote donor coordination and harmonisation objectives, take an integrated approach to law and justice, work collaboratively with Australian whole of government partners and formulate clear strategies for addressing corruption.
- Recognise the ‘fragile state’ context, and therefore the need to take a long-term, incremental, flexible and responsive approach to the provision of development assistance.
- Build on the achievements of CCJAP Phases I and II (and lessons learned), while giving additional focus to issues impacting on juvenile justice and the needs of other vulnerable groups such as women and children; and
- Promote the key principles of the aid effectiveness agenda, including working within the scope of RGoC priorities and using local systems to plan for and (wherever possible) deliver donor supported activities.

The strategy also recognises that while the CCJAP project has been only one of a number of GoA supported initiatives in the sector, it has established a particularly high and positive profile within the RGoC and should therefore be continued as a core part of GoA’s future program under the same ‘brand’ name.

Issues and options

During the Scoping Mission, the following significant issues were identified, options considered and conclusions reached regarding the scope of the next phase of GoA support:

Issue	Options considered and conclusions reached
<p>1. Increased focus on juvenile justice, victims of crime and vulnerable groups, particularly women and children</p>	<p>The main option considered was whether or not to include a specific component(s) focusing on juvenile justice, victims of crime and/or other vulnerable groups. The team concluded that this would be inappropriate – and that instead these issues should be embedded (mainstreamed) into all core components of the next phase of support.</p> <p>Strategies to <u>increase</u> the focus on these groups were considered, and the view reached that these should include stronger engagement with MOSAVY, UNICEF and with NGOs working on related issues (particularly at the community/commune level). In addition, key ‘result’ indicators would ensure a juvenile/vulnerable groups focus.</p>
<p>2. Focus on <u>criminal justice</u></p>	<p>Questions were raised as to whether or not the next phase of support should continue to focus on <u>criminal</u> justice, or justice more generally, given that some of the core institutional capacity building needs of key justice institutions and agencies are not exclusive to either civil or criminal issues (e.g. support to the Model Court concept, strengthening the PMU, and providing support to Strategic Planning and Management capacity development in the National Police, MOJ & Corrections). It was felt that while the overall program would continue to support some issues outside the direct purview of criminal justice matters, the focus of the next phase of CCJAP support should remain on criminal justice.</p>
<p>3. Horizontal and Vertical ‘spread’ and depth of support for different elements</p>	<p>In line with the approach taken during CCJAP Phase II, and consistent with the White Paper focus on taking an integrated approach to law and justice, it is believed that the next phase of support should continue to have a broad horizontal spread that covers the ‘flow of justice’ from community engagement (crime prevention), through the police, courts, prisons and again with the community. This approach has also been highly appreciated by RGoC counterparts.</p> <p>Also, based on experience to date, it is clear that CCJAP’s ability to work at both national and provincial levels (vertical integration) has been highly valued and effective. Piloting initiatives at Provincial level has allowed ideas to be trialled and tested, and based on evidence/achievements, national level decision makers have then been able to make informed decisions about extending/expanding the implementation of successful initiatives. Similarly, through having strategic engagement with senior officials at national level, provincial initiatives have been provided the necessary ‘approvals’ and support.</p> <p>Nevertheless, the ‘depth’ of support that can be provided across all future project components, as well as at National, Provincial or local levels, will clearly vary depending on ongoing assessment of specific needs and on resource availability. However, it should be clear that the new phase of GoA assistance to Cambodia’s justice sector is not the only source of resources. Leveraging other donor resources, as well as providing ‘models’ that the RGoC can subsequently fund/roll-out, is also part of the strategy.</p>
<p>4. Geographic spread/expansion</p>	<p>Various options were considered with respect to the possible geographic spread of the next phase of support, none of which are mutually exclusive. These included a continued focus on Kandal, renewed engagement with the CCJAP Phase I sites and a spread to a number of other provinces in other areas of the country. RGoC officials made various suggestions as to other possible priority provinces, including those located along the border with Thailand, those with the highest reported crime rates and prison populations, etc. Clearly the extent to which other provinces can be brought within the scope of the next phase of support will depend partly on the resources available, not only from the GoA, but maybe more importantly from the RGoC itself and from other interested donors.</p> <p>The team believes that the most appropriate strategy would be to combine</p>

Issue	Options considered and conclusions reached
	<p>elements of all approaches in a phased manner, namely to:</p> <ul style="list-style-type: none"> • Continue to provide some focus in Kandal, particularly to ensure that the pilot initiatives/models that have been started are properly established, tested and then (as appropriate) prepared for ‘roll-out’. The Crime Prevention & Community Safety work, the Model Court and ‘Model’ Prison are cases in point; and • Expand selected activities into a number of other provinces (starting in around 2008), which would be chosen on the basis of criteria to be agreed by the new National Management Board.
<p>5. Demand and supply side approaches to improving access to justice</p>	<p>Access to justice requires that both the formal system ‘supplies’ justice, and that the community/civil society is in a position to ‘demand’ justice.</p> <p>In considering the appropriate balance of support to be provided (to the supply and demand sides) through the next phase of GoA assistance, the scoping mission was mindful of the following:</p> <ul style="list-style-type: none"> • CCJAP has to date worked primarily on the supply side through its support to key justice sector institutions. It has established a comparative advantage in this area (over many other donors/development agencies) which has allowed CCJAP to facilitate communication between non-institutional players (e.g. NGOs) and key RGoC officials in the justice sector; and • Many other donors/development agencies, particularly NGOs but also larger institutional players such as the World Bank and UNDP, are focusing more on demand side issues. <p>For these reasons, the mission believes that a future phase of support should continue to focus primarily on working ‘within’ the formal system to enhance the provision of justice services through capacity building (to respond effectively to demands for justice), while also strengthening the project’s own capacity to selectively support demand side initiatives, for example through establishing a more pro-active NGO engagement strategy (particularly as part of the Crime Prevention & Community Safety pilot and community awareness initiatives). The establishment of a flexible fund (see further below) would also allow the next phase of support to directly support relevant NGO initiatives in this area.</p> <p>This approach is consistent with views recently expressed in a paper prepared by the Development Assistance Committee’s (DAC) Network on Conflict, Peace and Development Cooperation entitled ‘Enhancing the delivery of justice and security in fragile states’ (May 2006). This notes that a multi-layered approach is required, with donors targeting both state and non-state actors at multiple points at which day to day service delivery occurs.</p>
<p>6. Key stakeholders and engagement strategies</p>	<p>Given the need to bring the next phase of support more in line with the scope of the LJRS, and also given the desire to incorporate an increased focus on juvenile justice issues, it is believed that the ‘core stakeholder’ base needs to be expanded.</p> <p>While the MOJ and MOI would remain key players, it is proposed that the bodies directly responsible for overseeing the implementation of the LJRS (e.g. the Permanent Coordinating Body and the Project Management Unit) become key stakeholders (e.g. through representation on the National Management Board). It is also believed that MOSAVY should be more directly engaged (and as appropriate supported) given their key mandate with respect to juvenile justice and child welfare.</p> <p>With respect to NGOs, the next phase of support should establish a more pro-active engagement strategy. In relation to other donors working in the justice sector, the next phase of support should continue to promote coordination and harmonisation through providing support to the PMU, working within the priorities of the LJRS and, wherever possible, ensuring that RGoC transaction costs in dealing with different donor requirements are kept to the minimum.</p>

Issue	Options considered and conclusions reached
<p>7. <i>Forms of aid</i></p>	<p>AusAID’s Guidelines on ‘Forms of Aid’ (FoA) provide a clear framework for assessing FoA issues and options. In the context of the Cambodian justice sector, the key issues are as follows:</p> <p><u>Partnership Strategy.</u> Main points to note being: (i) the RGoC has a key role in providing access to justice for its citizens, (ii) the RGoC’s capacity to plan and manage public finances and to be held accountable for results is weak, and corruption a significant concern; (iii) the aid ‘market’ is crowded, but donor coordination systems are currently weak; and (iv) Australia is a relatively minor (through influential) player in contributing to aid flows and supporting Cambodia’s development. These considerations suggest that support should be given to the RGoC to develop its capacity to plan & manage public finances (particularly in this case in the justice ‘sector’) and improve donor coordination, and that GoA should only allocate all resources directly <u>through</u> RGoC systems in cases where clearly established accountability systems have been effectively established. A long-term ‘graduation’ strategy should also be part of the strategic plan, with ongoing support being provided to RGoC to further strengthen the building blocks for taking a sector approach.</p> <p><u>Choice of mechanism.</u> The 4 main generic ‘choices’ are Macro-policy support; support to Partner Programs; Project Support; and Stand-alone TA/training. Of these options, the first two focus more on working <u>through</u> partner government systems (using all their systems and processes for planning, resource allocation and management) while the latter two choices are designed to work more ‘outside’ those systems. Key issues to be considered in choosing an appropriate option (or mix) include the quality of: (i) macro-economic management; (ii) poverty reduction and sector strategies; (iii) medium-term expenditure plans; (iv) donor coordination arrangements; (v) public finance management and accountability systems; and (vi) performance management and monitoring systems. Even a fairly cursory assessment of the current conditions in the criminal justice sector in Cambodia indicate that aid delivery mechanisms should at present remain more on the project end of the balance, although with clear prospects for moving towards providing sector/programmatic support to the RGoC over time, as its capacity develops.</p> <p><u>Management arrangements.</u> There are many potential players who could take a role in the management of GoA support to the justice sector, particularly given that GoA is untied. However, as current conditions are not considered to be suitable for direct financing (e.g. budget support) of the RGoC, it is believed that some form of contract with a managing contractor/agency would be required. In addition, given the proposed role of the AFP in providing strategic planning and management advice to the Cambodian National Police, there would need to be a letter of agreement/understanding established between AusAID and the AFP to formally establish their respective roles and responsibilities. Direct funding of one of the multilaterals is not considered to be an appropriate option at this point in time, given that the two key players in the sector (World Bank and UNDP) currently only have limited programs of support, and are not covering key areas of work already initiated through CCJAP Phases I and II. Nevertheless, in order to maximise opportunities for different stakeholders to be involved in the future phase of GoA support, it is proposed that the Request For Tender be advertised globally, and that the selection process be managed/held in Cambodia.</p> <p><u>Financing Arrangements.</u> Given the considerations profiled above, it is believed that a commercial contract is likely to be the most appropriate financing arrangement for the next phase of support. However, this would not exclude the option of GoA making some direct payments to other Australian agencies to undertake complementary work, such as through the Australian Federal Police, the Department of Immigration or the Attorney General’s office. Also, it is recommended that there be a Flexible Support Fund (under the management of the ‘contractor’) that could provide accountable cash grants to RGoC agencies or NGOs. It is also possible that this could be used to disburse funds provided by</p>

Issue	Options considered and conclusions reached
	<p>other donors who wish to contribute to project implementation.</p> <p>In choosing an appropriate FoA and contracting approach, it must also be taken into account that the CCJAP II model is viewed as a successful one by RGoC, its design approach was rated as ‘best practice’ by AusAID with good counterpart ownership and involvements, and that there is a high priority need to ensure a smooth and timely transition to the next phase.</p>
<p>8. Addressing corruption</p>	<p>Addressing corruption is a key concern (given its impact, <i>inter alia</i>, on economic development, access to justice and addressing poverty), is a priority in the GoA’s White Paper on the aid program and will require far-reaching reforms not only in criminal justice but also in areas such as Public Finance Management and Public Administration reform.</p> <p>With respect to how donors can best help address corruption, the main challenge is finding appropriate ‘entry points’ and then appropriate ‘approaches’ which have a reasonable chance of actually making an impact over the longer term. Subsequent to mobilising the CCJAP III implementation support team in February 2007, a draft anti-corruption strategy has been developed which proposes the following approach: (i) the identification of opportunities for corruption within the concerned <u>institutions</u> (not the behaviour or practices of any specific individuals), (ii) formulation of strategies to limit those opportunities for corruption through changes in institutional arrangements, processes and systems; and (iii) implementation of those strategies and specific activities, including appropriate capacity building and training support. This work would be carried out primarily by the RGoC institutions themselves, with technical advice and support from CCJAP III. It would therefore require high-level commitment from RGoC and agency heads. This approach has since been endorsed at the Kompong Som workshop in April 2007.</p> <p>The capital works strategy (see Attachments 3) also specifically addresses corruption issues, namely how any opportunities for corrupt practices in managing capital works monies can be minimised.</p>
<p>9. Coordination of GoA program & Whole of Government issues</p>	<p>The scoping mission was specifically asked to consider how the future phase of support might be designed/used to allow AusAID to more effectively coordinate and integrate all of its activities impacting on access to justice in Cambodia. (See Section 2.2 and Attachment 1 for a description of relevant GoA programs and projects).</p> <p>The mission discussed the idea of an ‘umbrella program’ under a unified management structure (e.g. to include regional trafficking, NGO activities, ongoing CCJAP initiatives, Scholarships, CATAF, other WoG partner activities such as those undertaken by AFP, etc) but concluded that this would be inappropriate and impractical, at least in the short to medium term. This is primarily because:</p> <ul style="list-style-type: none"> • Existing contracts are either in place or being negotiated for many of these other initiatives, with funding coming from other AusAID programs (e.g. regional program, NGO program, etc). Agreement would first need to be reached within AusAID on a strategy to phase out or novate all contracts into one. • It would not be a good risk management strategy for AusAID to put all its ‘eggs in one basket’ (i.e. design a much larger program and contract to one overall ‘supplier’). There are also comparative advantages that different players bring to the current ‘mix’, for example the NGO programs which are better placed to work more at the community level and in association with other local NGO/civil society groups. • CATAF currently funds some law and justice TA requirements, but also supports many other sectors. It is highly valued by RGoC stakeholders for its responsiveness and flexibility, and should therefore not be subsumed into a

Issue	Options considered and conclusions reached
	<p>law and justice only program. The same applies to the scholarships/training program.</p> <ul style="list-style-type: none"> Some of the related initiatives being undertaken by other GoA agencies (such as by the AFP or by the Department of Immigration) have a narrower and more technical and operational focus. While ongoing communication/consultation between these agencies and AusAID is vital (to ensure complementarity), that is quite different from trying to bring all such activities under one management umbrella. There is nevertheless scope for some direct AFP/AusAID collaboration in the next phase of CCJAP support, and this has been designed into the proposed scope. <p>The scoping mission therefore recommends that AusAID should continue to manage a range of complementary initiatives, and be provided with additional resources at Post to provide oversight and coordination (this could include a specific staff post to take on a technical advisory and coordination role). In addition, it should continue to be made more explicit to all concerned agencies and contractors that part of their responsibility is to regularly meet, share information and identify opportunities for increasing the range of collaborative/synergistic actions. Finally, given CCJAP’s historic role in this sector as a ‘go-to’ point for information, insight and access, this should continue to be an explicit role for the next phase of CCJAP support.</p>
<p>10. GoA role in donor coordination and harmonisation</p>	<p>With respect to donor <u>coordination</u>, this is primarily the RGoC’s responsibility, and is not a role that a donor should try to take a lead on, unless specifically requested by the government, and with a clearly described role/mandate. Other donors have tried to do this (e.g. the World Bank and UNDP) and have met with little success to date. The most appropriate way to support donor coordination is to support the government’s capacity to do this – using its established mechanisms (in the current context - the Permanent Coordination Body, the PMU, the Technical Working Group for LJR, etc).</p> <p>With respect to donor <u>harmonisation</u> (donors working more effectively together to minimise transaction costs to government) – there is certainly plenty of scope for more effective collaboration between key donors, and for individual donors to reduce burdens on RGoC management resources (e.g. numerous different meetings, coordinating committees, reporting formats and timelines, etc).</p> <p>For the next phase of GoA assistance to the law and justice sector, specific initiatives that are incorporated in the strategy (and which should be further elaborated in the subsequent inception phase) therefore include:</p> <ul style="list-style-type: none"> Working more within the context and priorities of the Legal & Judicial Reform Strategy –maximising the use of its coordination and implementation mechanisms Undertaking joint studies/reviews of the sector with the RGoC and other donors Actively seeking opportunities for other donors to contribute to CCJAP supported initiatives (co-financing), as well as where GoA (including CCJAP) might direct resources through other joint donor programs Ensuring reporting on program/project progress is in line with RGoC requirements and information needs, not just the GoA’s; and Providing direct capacity building support to RGoC bodies in those areas/skills that support their ability to strategically plan and budget, monitor and coordinate an increasingly sectoral approach.
<p>11. Project Governance & Management arrangements,</p>	<p>The scoping team discussed possible changes/refinements that might be made to the current project’s coordination and management arrangements for the next phase of support. While the CCJAP II Project Coordinating Committee (PCC) has generally worked well, membership (on the RGoC side) has been restricted to</p>

Issue	Options considered and conclusions reached
<p><i>including payment of RGoC counterparts</i></p>	<p>the MOI and MOJ and the committee has acted primarily as a forum for formal briefings on project progress and issues arising, rather than as a discussion forum and decision making body about future plans and resource allocation. The team therefore recommended that these arrangements be reviewed, and consideration given to including representation from the Council for Legal and Judicial Reform, and possibly from MOSAVY. In addition, with the proposed inclusion of a Flexible Fund in the next phase of support, there is scope for RGoC partners to take on a more active decision making role in the allocation/use of these resources. It is therefore proposed that a new National Management Board be established (with a slightly expanded membership), but that the current chair of the existing PCC continue (at least initially) to chair this new board. It is also proposed that the Technical Working Group for Legal and Judicial Reform take on a more active role in donor coordination through the establishment of a sub-group focusing specifically on criminal justice.</p> <p>On the issue of paying salary supplements to RGoC counterparts, this also needs to be carefully reviewed during the inception phase. It is proposed that such payments (currently to 1 senior officer within each of the Police, Justice and Prisons agencies) be stopped, but that opportunities for supporting RGoC salary supplement mechanisms (such as the Priority Mission Groups or Merit-Based Pay Initiative) be considered instead.</p>
<p>12. Capital works & a Flexible Support Fund</p>	<p>Attachment 3 provides a Summary of the capital works strategy.</p> <p>The main issues considered by the scoping mission were: (i) how to balance the demand for additional large scale capital works (e.g. additional new court buildings and/or prisons) with the option of spreading the available funds around more widely, through implementing a larger number of smaller scale capital works activities; and (ii) how a capital works Fund should be managed to help ensure any approved works directly contributed to clear and sustainable development outcomes.</p> <p>The main conclusions reached by the team were that:</p> <ul style="list-style-type: none"> • Building additional ‘model’ court or prison facilities would not be the best use of the available resources, primarily because the Kandal models are just that – models that others can look at, learnt from and subsequently be implemented by others (with adaptations as required). It is therefore proposed that future capital works funds be for minor works (e.g. up to US\$100,000 in value each) that can demonstrate a clear contribution to desired developmental outcomes (such as improved community confidence in the police, appropriate treatment of juveniles and victims of crime by the police and courts, and prisoner health and rehabilitation). Also, through implementing a program of smaller works, the intention is to make greater use of local contractors, build more to local standards, and get greater cost efficiencies and effectiveness from the resources available; and • A fund for financing capital works should be incorporated into a general Flexible Support Fund, and not be established as a ‘stand-alone’ element. While some different management arrangements would be required to deal with capital works planning, approvals and implementation (as compared say to selecting and mobilising TA) – the principle should be that capital works is not a separate component of the future phase of support – but rather an integrated element.

Recommended focus

The recommended focus for GoA support through the next phase of CCJAP is described in Section 3 below.

3 Description of GoA support through CCJAP III

3.1 Duration, phasing and location

The Strategic Framework has a 5 year perspective, although with the understanding that legal and judicial reform in Cambodia is likely to require ongoing donor support over a much longer time horizon.

It is proposed that for the next 5 years, primary focus is initially given to consolidating gains made in Kandal (and at the central government level in Phnom Penh) and supporting the roll-out of key initiatives to selected provinces. While the CCJAP I provinces would have several natural advantages, selection of these additional provinces should be based on clear criteria to be developed by the new National Management Board, including evidence of political will to progress improvements and commitment of counterpart funding. It is anticipated that the expansion to selected other provinces could commence from early 2008 onwards.

The future phase of the project should also engage with the RGoC and other donors to identify opportunities to leverage other funding sources through the ‘marketing’ of successful models to interested stakeholders (such as with respect to the CPCS initiative, Model Court and improved prisons management practices and infrastructure).

As part of the strategy, the project will also aim to support the ongoing development of effective management mechanisms and tools required by the RGoC to lead a sector-wide approach to law and justice development. Any future phases of support (e.g. from 2012 onwards) might therefore be expected to require different management and financing arrangements, assuming the basic ‘requirements’ for funding a sector support program had been developed and put in place.

3.2 Objectives and component scope

It is proposed that the goal and purpose for the next phase of support be:

Goal: To contribute to a prosperous, safe and secure environment in Cambodia

Purpose: To support the RGoC and other stakeholders to provide equitable access to a high standard of justice, with a particular focus on the needs of juveniles and other vulnerable groups

In particular, the next phase will support the following strategic objectives of the RGoC’s Legal and Judicial Reform Strategy:

1. Improve the protection of personal rights and freedoms
3. Provide better access to legal and judicial information
4. Enhance quality of legal processes and related services
7. Strengthen Legal and Judicial sector institutions to fulfil their mandates

The following section outlines the context, objectives, areas of focus and potential resource implications for the 6 proposed components of the next phase of CCJAP support.

Figure 2 summarises the proposed hierarchy of strategic objectives.

Figure 2 – Objective Hierarchy

Component 1 - Legal & Judicial Reform Strategy capacity building

Overview:

When CCJAP II was designed in 2002, the Legal & Judicial Reform Strategy, including its governance and implementation mechanisms, had not been established. Nevertheless, thanks to the flexible annual planning approach included in the design, the project was able to respond to emerging needs, including requests for institutional capacity building support from the Project Management Unit of the CLJR. During 2004/05 (in particular), CCJAP II consequently assisted with work on: donor coordination mechanisms (including establishing the Technical Working Group); facilitating discussions between MoI and MoJ to resolve critical operational issues (with respect to CCJAP II implementation); preparing a project database (the Project Catalogue); and preliminary development of a Sector Planning Manual.

With the approval of the LJR Action Plan in April 2005, there is now a need for renewed efforts, and a long-term commitment by key donors, to support the RGoC's desire to develop and implement a sector-wide program. This is in-line with RGoC and donor commitments to improving aid effectiveness (as contained in the 'Declaration by the RGoC and Development Partners on Enhancing Aid Effectiveness', March 2006).

Component Objectives

The objective of this component would be 'to support the capacity of the RGoC to effectively develop, coordinate and monitor the implementation of a sector-wide legal and judicial reform strategy'.

Core Areas of Focus:

The initial core areas of focus would be in-line with the RGoC's current articulated priorities, namely:

PMU Strengthening. The PMU plays a critical role in supporting the ongoing development and implementation of the LJRS. Building on assistance already provided by CCJAP II, and in close collaboration with other donors (particularly the Danish Institute for Human Rights), the next phase would support the PMU (and through them the TWG and PCB) in their ability to: develop and manage their own program of work; conduct analytical work on LJRS policy and performance issues, and thus contribute to the review and updating of the strategy; develop and update a Medium Term Expenditure Framework for the sector; develop and disseminate sector planning, implementation and monitoring tools; promote awareness and understanding of sector wide approaches, including the requirement for improved cross-agency consultation and communication mechanisms; and coordinate RGoC and donor activities in the sector.

Sector Manual. As part of strengthening PMU capacity, specific support would be provided to the further development and then progressive implementation of a sector planning and management manual. The purpose of such a manual is to facilitate cooperation and coordination within the sector, including the use of consistent planning and budgeting processes. It will provide guidance on common planning and budgeting frameworks and tools, as well as monitoring and reporting requirements. This work would need to be managed and implemented as a collaborative activity with key justice sector agencies (e.g. MoI, MoJ the Supreme Council of the Magistracy and the Supreme Court) as well as with the Ministry of Economy and Finance and the Ministry of Planning. Implications of the Decentralisation and Deconcentration Strategy would need to be accounted for, as well as ongoing work in the area of Administrative and Public Finance Management reforms.

Key indicator System. Establishing a commonly agreed indicator system for legal and judicial reform is a high priority for both the RGoC and donors. This is not a one-off activity, but rather an ongoing process of collaboratively identifying appropriate indicators and the means by which they can be verified, developing the capacity to collect, analyse and use the information, reviewing and refining the systems and building in links to performance management approaches. Such a system would not only help the RGoC manage its reform strategy, but also promote donor engagement and coordination. Particular focus would be given to ensuring that issues of access to justice by juveniles, other vulnerable groups and victims of crime were captured in the indicator/monitoring system.

Anti-corruption strategy. In summary, this strategy will involve: (i) the identification of opportunities for corruption within the concerned institutions (not the behaviour or practices of any specific individuals), (ii) formulation of strategies to limit those opportunities for corruption through changes in institutional arrangements, processes and systems; and (iii) implementation of those strategies and specific activities, including appropriate capacity building and training support. This work would be carried out primarily by the RGoC institutions themselves, with technical advice and support from CCJAP III. It would therefore require high-level commitment from RGoC and agency heads.

Capital Works Investment. The capital works investment strategy in Phase III will represent a fundamental shift in approach to that followed in Phase II. Small scale works will be supported (up to a value of some US\$100,000), and design and implementation will be carried out in Cambodia through local implementing partners. Funding will be allocated through the Flexible Support Fund (to a total value of not more than A\$4m), based on a set of ‘implementation menus’ ??? – note that here they are called “implementation menus” and in the SFD summary and AP doc they are called “investment menus”) that will be developed for CPCS, Police, Courts and Prisons. In addition to the disbursement of FSF funds, the Capital Works program will also work to help the RGoC develop broader capital works policies and strategies, to help ensure that all capital work spending (not just from the FSF) is aligned with RGoC policies and priorities. The first step in this process will be the development of implementation menus. It will be particularly important to ensure that the investment menus reflect informed projections of demand taking into account gender differentials and the needs of juvenile victims and offenders in the utilization of some facilities. Later steps may include an audit of all facilities, determining a functional and sustainable size for the total inventory of built assets, and plans for both growing and maintaining the system. Such an audit will take into account gender and age differentials in the utilisation of services and facilities. Attachment 3 provides further summary detail of the capital works strategy.

Executive Capacity Development. The focus of support provided through the project is expected to be on helping senior executives within Police, MOJ and the Prisons Department understand and comply with the RGoC’s own planning, budgeting and performance reporting requirements, and using the management tools and processes contained in the Sector Planning Manual. However, the first step must be to undertake an assessment of how any executive development will fit with and support each agency’s organisational development and HRM needs. The first year of project implementation will therefore involve a needs analysis (including a gender analysis of needs) and the preparation of an executive capacity development strategy and implementation plan.

Emerging issues/priorities. As the PMU (through the council and the PCB) identify other emerging issues and priorities, the next phase of GoA support would be in a position to provide assistance through access to resources from the Flexible Support Fund.

Indicative scope of inputs:

The inputs required for this component will include a long-term international adviser to provide capacity building support and technical assistance with respect to capacity building and aid effectiveness issues. This adviser would not work exclusively with the PMU, but also in support of other project components, in a similar manner to the approach used in CCJAP

Phase II through the Institutional Strengthening Adviser. A locally engaged Capacity Building Project Officer will also be required for the new phase of support. A short-term executive capacity development/HR specialist, an anti-corruption specialist and capital works technical inputs will also be provided under this component. Short term gender expertise may be required to assist in the development of key indicators, capital works, and the executive development activities. This component would also be able to access specific short-term technical inputs through the Flexible Support Fund. It is also proposed that some operational resources would also be needed, for example to support workshop/training events and other collaborative planning, monitoring and review activities. Financial support to PMU as a 'Priority Mission Group' may also need to be considered under the next phase of GoA assistance (currently supported by the Danish project managed by the Danish Institute of Human Rights).

Component 2 - Crime Prevention, Community Safety and Community Justice

Overview:

The concepts of crime prevention and community safety (CPCS) were new to the justice sector as recently as 2003, and the notion that justice agencies would proactively engage with communities (and each other) in efforts to prevent crime and create safer communities was similarly unfamiliar. Indeed at the commencement of CCJAP II, justice agencies, and police in particular, equated prevention with suppression - perhaps not surprising given the recent post-conflict history of Cambodia. Since that time the new concept has become widely understood and practiced in Kandal Province, with strong leadership from government officials at provincial and district levels and with community engagement and participation down to village level. The concept is now also well understood by individuals (if not corporately) within individual ministries, particularly Interior, Information and Justice. The future phase of assistance would continue to leverage the comparative advantage that CCJAP II has established in this field. A key area of the CPCS focus in Kandal under CCJAP II has been young people and vulnerable groups, and this would be extended under a future phase of assistance. Also, additional focus would be given to working collaboratively with NGO's and civil society groups on promoting community awareness of their fundamental rights and how to access legal and social support services to order to attain justice (e.g. for victims of crime and for suspects of crime).

Component Objective:

The objective of this component would be 'to establish sustainable collaborative crime prevention and community safety initiatives'.

Core Areas of Focus:

From 2007, support should be focussed on four main areas of work:

Alignment of CPCS with the Decentralisation and De-concentration Strategy: Rather than continuing to focus on the development of a separate national CPCS strategy (as in Phase II) the project will instead promote CPCS integration into the RGoC's Decentralisation and De-concentration (D&D) strategy. This provides an opportunity to integrate CPCS concepts into planning and resource allocation at the sub-national level, thereby promoting ownership and the prospects for sustainability. Noting the lessons learned in Phase II, provincial, district and commune level implementation needs to be predicated on national authority and directives to do so and accordingly wider provincial roll out of CPCS (see below) must be supported by concurrent activities at the national level.

Provincial Crime Prevention and Community Safety: This would have two parts, Kandal Province and other provinces. Support in Kandal would be for the refinement and institutionalisation of crime prevention and community safety plans and implementation modalities. This will increasingly focus on the independent viability and sustainability of crime prevention efforts. Particular emphasis will be given to integration with existing

structures going down to the commune level - in a manner consistent with the RGOC Decentralisation and Deconcentration (D&D) Strategy, so that separate CPCS committees and funding would not necessarily be needed in the future. The identification, planning, implementation and management of various crime prevention initiatives in provinces and municipalities beyond Kandal would comprise the second part. Kandal provincial and district government officials and justice agency personnel would be used to support the dissemination of CPCS lessons, share implementation experiences from Kandal and establish localised approaches in neighbouring provinces and to provide ongoing peer-to-peer support.

Youth diversion: Whilst the focus on juvenile justice will be a cross-cutting theme for the new phase of assistance, this area of focus under the first component will provide a catalyst for a primary focus on initiatives which aim to help keep juveniles out of the courts and the prisons. The primary point of engagement in the short to medium term will be MOSAVY and the ‘Youth Rehabilitation Centre’ outside Phnom Penh. Maintaining a focus on vertical and horizontal integration, CCJAP could support policy development and capacity building at the national level, including the development of agreed operating protocols with police and courts; and capacity building, institutional strengthening and training at the local level within the Centre, and subsequently in other provincial areas (as an integrated element of the CPCS program). It is anticipated that support for delivering direct services to youth, such as counselling and vocation training, would be through arrangements with qualified institutions with expertise in these fields in Cambodia.

Community awareness of constitutional rights: Awareness of Fundamental Rights is a priority in the LJR Strategy. While community work and human rights work are in general not areas of comparative advantage for CCJAP, there is some opportunity to build community awareness of their constitutional rights into future support for CPCS efforts. This would include: (i) ensuring that CPCS members themselves are aware of the human rights of the citizens they are serving, and of the legal basis for those rights; (ii) ensuring that gender, domestic violence, and corruption issues are part of CPCS considerations; and (iii) ensuring that CPCS outreach to the community, and particularly to persons who are vulnerable as either victims or perpetrators of human rights violations, are provided information about the role and responsibilities of the law and justice system and how to access their services.

In addition, there could be a small ‘Community Justice Support’ element of work which would capitalize on and extend CCJAP’s strategic advantage in understanding and having the respect of the criminal justice agencies. CCJAP could proactively offer to support NGOs, and particularly GoA NGO partners, in developing effective working relationships with the local police, courts, and prisons in their target areas. This would include orientation to and information about the work of the criminal justice agencies, facilitation and problem solving at higher levels if this were appropriate, and provision of support for those NGOs to do community awareness raising in their own areas. As above, the core of this work would be the roles and responsibilities of the law and justice agencies in preventing and redressing human rights violations, and how to gain access to their services.

Indicative scope of inputs:

This component would be supported by an international adviser working predominantly at the national level, with assistance to provincial activities being provided from time to time. Provincial level activities would largely become the responsibility of the CPCS Technical Assistant and the locally engaged CPCS Coordinator, a dedicated CPCS counterpart from RGOC and RGOC personnel from Kandal Province who have several years of experience in CPCS implementation. One locally engaged Community Justice staff member is likely to be needed, at least for a period of two or three years, to provide expertise in participatory community development issues and methods to the CPCS and to develop the Community Justice support element. Short-term technical inputs or other resources to support specific initiatives with MoSAVY could be provided through the Flexible Support Fund, as could other emerging CPCS support needs.

Component 3 - Cambodia National Police

Overview:

Under CCJAP I and II, with the exception of national forensic support, GoA assistance to the police has predominantly focussed on the enhancement of operational techniques, investigative processes, training, operational policies and procedures. Despite some demonstrable improvements in operational and investigative practices in Kandal (and to a lesser extent former CCJAP I sites) there are a number of operational issues at various stages of the 'justice flow', the amelioration of which is dependent upon policy decisions at central agency, and even ministerial level. The GoA policy of ongoing constructive engagement with the Cambodian National Police (CNP) now positions the next phase of support to have a valuable influence on policy and decision-making at a high level. Indeed, a direct request for GoA assistance to help assess the requirements necessary for the reform of the CNP was made by Deputy Prime Minister Sar Kheng in October 2005. This resulted in an initial scoping mission undertaken by the AFP and Attorney General's Department in early 2006.

In addition, the Commissioner General of the CNP, Police General Hok Lundy, recently confirmed (to the scoping mission) his invitation for a senior adviser to be co-located within the CNP to work directly with one of his Deputies on a range of strategic and policy related initiatives.

In light of the Strategic Partnership Agreement between AusAID and the AFP, the personal contact already established between the AFP Police Commissioner and his Cambodian counterpart, and the AFP's comparative advantage in providing strategic analysis and advice on police reform issues, it is anticipated that this component will be led by an AFP identified and appointed adviser. As noted in the GoA's White Paper on Australian Aid, the AFP is now required to take on a broader role in law and order beyond enforcement activities to longer-term institutional capacity building.

Component Objective:

The objective of this component would be 'to strengthen the strategic, executive and technical capacity of the Cambodia National Police to enable it to identify and respond to community, national and regional priorities in a considered manner'.

Core Areas of Focus:

From 2007, there are four proposed areas of focus for engagement with the police:

Strategic Policing Issues: Development of a 'future directions' strategy for policing to align with and compliment the legal and judicial reform strategy would be a central aspect of this area of focus. This would also become a hinge-point to encourage closer collaboration between MOI and MOJ (where appropriate to do so) on 'cross-boundary' issues. The development of a future directions strategy would be underpinned by the conduct of critical issues forums and consultations with ministry officials, senior police officers, donors and key community stakeholders to support the process of identifying and agreeing national policing priorities, potentially over a 5 year horizon. The strategic framework would then provide the foundation and framework for the development of a National Police Strategic Plan which, over time would support the rationalisation of policing services and enable better alignment of provincial level plans, human resources and budgets. This area of focus would also support the development and/or refinement of MOI and national police policies on a range of issues including crime prevention, juvenile justice, community engagement and inter-agency collaboration.

Executive Capacity Development: Linked closely to the work on strategic policing issues, support could very usefully be provided to executive capacity development. Professional development opportunities in contemporary, competency based management and leadership disciplines for middle and senior ranked officers in the national police are almost non-existent. Yet these officers exert a significant influence on the directions of policing at

provincial levels. Accordingly the program would focus on the development and delivery of structured workplace training and professional development programs for selected officers. This work would focus not only on the executive capacity development needs of the police, but also on the Corrections Department and the MoJ. An integrated approach to executive capacity development across these agencies would therefore be supported. Gender analysis and sensitisation training will be integrated into this activity.

Focus in this area would be complimented by work on corruption risk assessments within the police and the development of corruption mitigation plans which are aligned with the national police strategic development plan, the Cambodia National Strategic Development Plan, the Legal & Judicial Reform Strategy and the pending anti-corruption law. This would underpin the executive decision making process on a range of issues.

Crime scene investigation capacity and skills at sub-national level: This area of focus would build on the achievements of CCJAP II, and provide support to targeted provinces to build police crime scene investigation capacity at provincial, district and police post levels. Specifically, the focus would be for support to the establishment of processes and practices to assist with victim management, particularly victims of sexual and domestic assault. Whilst provincial and district police would be key stakeholders in terms of mainstream crime scene investigation, specific capacity building and procedural development would also be directed to the MOH and district medical officers in terms of victim assistance across the boundaries of police, prosecutors and courts, exhibit protocols, professional evidence preparation and case continuity. These would also link with the model court operations and with the assistance provided by others to the police Department of Anti-Human Trafficking and Juvenile Protection.

Training Systems Review and Reform. As outlined in the overview, the training focus of CCJAP to date (both I and II) has been predominantly at the technical and operational levels of policing and largely confined to the judicial police. In the scoping of CCJAP II, it was intended to provide capacity building to the Royal Police Training School, however this was not pursued when other donors committed to do the same. That donor support was not forthcoming however and capacity building at the recruit, middle and upper management/leadership levels has not been undertaken in any cohesive and structured manner. This shortcoming could be addressed with technical assistance to help the CNP review and reform its overall training system, which currently lacks any strategic coherence. Assistance to review and reform training systems in Police offers great opportunities for gender based analysis and training, identification of gaps and challenges related to gender issues, and nurturing of potential champions at an early stage in their careers and at different levels of the organisation. Successful reform would have two impacts: first to have a greater influence on the kind of police officer who is graduating and thus the quality of service they provide to the community; and second on the skills and abilities of the senior officers that are driving and influencing the overall operation on the national police.

Indicative scope of inputs:

This component would be supported by a senior adviser working at the executive level of the national police and co-located there. The adviser would be identified and recruited by the AFP in consultation with AusAID and the CNP leadership. The adviser would be part of the CCJAP team, and work collaboratively to support CCJAP's integrated approach to law and justice reform. Executive capacity development support would also be provided through resources provided across the Police, MOJ and Prisons components. Support to crime scene investigation will be delivered in the same flexible part-time manner as undertaken in CCJAP II by part-time international advisory inputs. The technical resources would be supported by programmed training funds and via access to the Flexible Support Fund if necessary. The adviser would thus play a key role in helping to identify flexible part time training needs for key CNP staff who are working on CCJAP priority initiatives. Resources that might be

needed for support to reviewing and reforming the police training system, including specialist gender expertise, should be provisionally built into the Flexible Support Fund.

Component 4 – Ministry of Justice and the Courts

Overview

When CCJAP II commenced, MOJ was headed by a Minister from the FUNCINPEC political party, was poorly funded and had limited influence within government. It was also the subject of a flurry of donor activity related, amongst other things, to the development of the new penal and civil codes. Some donors were paying generous allowances and per diem payments to secure the attendance of key MOJ personnel at their workshops and consequently, with its policy of not paying for the attendance at workshops relating directly to their daily duties, attendance of key participants to CCJAP II related activities was sporadic at first. As opportunities for attendance at other donor funded workshops dried up and the value of CCJAP II support became increasingly obvious, attendance and commitment increased and traction improved. Engagement and outcomes took another step forward when MOJ became a CPP controlled ministry. The stage is now set for meaningful engagement with MOJ on all levels under a new phase of assistance. At the same time, while the courts are now the subject of intense interest (and criticism), there is not much direct assistance for them, and the model court concept developed with CCJAP II support is seen as a welcome vehicle for a progressing a range of practical improvements in provincial court operations.

Component Objectives

The component objective would be ‘to strengthen the capacity of the MOJ to effectively support the courts in delivering equitable and timely access to justice’. This will be achieved through the establishment of clear strategic directions and the efficient operation of court processes and administrative systems.

During the next phase of assistance, this component would have 4 core areas of focus.

Strategic Justice & Court Issues: Consistent with the support provided to the police, the first area of focus for this component would include capacity building for strategic planning and budgeting in the MOJ. This would build upon the activities undertaken by CCJAP II in 2005 and the activities undertaken via CATAF in 2006 and would seek to ensure better alignment between plans and budgets, including working more closely with MOEF in the preparation of budget estimates consistent with planned whole-of-government approaches. It would facilitate the development of a clear and long term strategic focus for the Ministry and more effective cooperation with the courts and the MOI on a range of activities including policy dialogue, priority setting, cross-agency records management, etc. This area of focus would address the linkages between the MOJ and the RAJP, particularly the support for inculcation of the Court Procedures Handbook into the core RAJP curricula for Judges, Prosecutors and Court Clerks.

Executive Capacity Development: As is the situation with the police, opportunities for professional development in contemporary, competency based management and leadership disciplines in the middle and upper echelons of the MOJ have been very limited. Much of the donor activity to date has focussed on technical capacity and the development of laws and, apart from overseas trips for some selected individuals, little has been done to develop managerial and leadership capacity. Under this area of focus CCJAP would give attention to the development of delivery of structured workplace training and professional development programs for ministry staff. There is potential during more detailed design work to examine support for the development of a justice sector wide executive development program which could serve the concurrent purposes of more fully preparing justice sector personnel for leadership and executive management roles; and enhancing cooperation between the ministries of justice and interior. A sector wide development programme would provide an excellent opportunity to address gender based differentials in the delivery of and access to justice sector services, that would highlight the cumulative impact of gender based

discrimination across the sector. Gender differentials taken on their own and isolated in individual agencies appear insignificant and tend to obscure the cumulative effect and resultant inequities in relation to access to justice. A cross sectoral approach will shed light on the total impact of these inequities.

Model Court and Court Processes: The third area of focus for this component would be to consolidate the national approach to the development and roll out of the ‘model court concept’ commenced by CCJAP II and adopted into the legal and judicial agenda as a key element of justice sector reform. This would include ensuring the alignment of physical, process, systems, training and procedural dimensions of a ‘model court’ into a comprehensive package capable of progressive roll out (both progressive in terms of geography and comprehensiveness of the model). It would also involve coordinating other donor involvement in the model court concept in partnership with the MOJ and ensuring that the new procedures for juvenile justice and victim support are fully operationalised in the courts. Finally, this area of focus would support capacity building for the effective operation and administration of the courts to complement the capacity of new judges and prosecutors graduating from the RAJP. In conjunction with the establishment of the ‘model court’ this would include providing capacity building to support enhanced list management, document flows, archiving and general file management of the courts. This would be done in conjunction with the national dissemination and adoption of the Court Procedures Handbook and will also assist with the revision and updating of the procedures when the new criminal and civil codes are adopted.

Appeal Court: With the large majority of the court case back log in Cambodia attributable to the Appeal Court, the fourth area of focus under the new phase of assistance would be to support the enhancement of the systems, structures and capacity of the Appeal Court. In the early stages this would involve a feasibility assessment of the options, including establishment of regional courts of appeal, introduction of circuit appeal courts, etc. In the medium to longer term CCJAP would then assist RGOC to implement the options that provide the most feasible, accessible, equitable and cost effective mode of operation for the Appeal Court.

Indicative scope of inputs:

This component would be supported by a long-term adviser who has skills in strategic planning and management, judicial administration and court operations. In addition, the continued availability of a locally engaged courts technical assistant will be important to continuity with MOJ across the transition from CCJAP II to the new phase of support. Specific additional short-term TA is envisioned to continue to support the work on MOJ’s planning and budgeting systems and thus the effectiveness with which it can work with and influence MoEF processes. The technical resources would be supported by programmed training funds (including for executive capacity development and for specific gender expertise) and via access to the Flexible Support Fund, potentially including small funding grants for the enhancement of court infrastructure, particularly where the Appeal Court may operate – in preference to building a separate new Appeal Court facility.

Component 5 - Corrections

Overview:

The objective of CCJAP II assistance to corrections was to improve the mental and physical health of prisoners and in so doing contribute to a reduction in recidivism. While current project support for the reduction of recidivism has not yet been institutionalised, CCJAP II has enjoyed some remarkable successes in working with Prisons Department to improve the health and well-being of prisoners. The certification of three prison health clinics by MOH (CC1, CC2 and Kandal) and the upgraded skills of prison medical staff is a fundamental achievement of the prison management team with support afforded by CCJAP II. Other than GoA, donors have traditionally been reluctant to undertake mainstream capacity building and

institutional strengthening in prisons and this has been another factor which has significantly enhanced GoA credibility in the sector with RGOC. A side benefit of achievements in prisons to date is the increased willingness of other donors and NGOs to support various aspects of prison reform. Ongoing improvements in prisoner management, implementation of holistic rehabilitation programs and strategic planning and budgeting, while incremental, are also evident. Importantly, advances in these areas have been rolled out to varying degrees across the country rather than being confined to Kandal Province.

Component Objectives

The objective of this component would be ‘to strengthen the strategic and executive capacity of the Prison Department to enable it to identify and respond to prison management priorities, the physical and mental health needs of prisoners, and to identify and implement options for community based corrections’.

Core Areas of Focus:

During the next phase of assistance the Corrections Component would have 4 core areas of focus.

Strategic Correctional Issues: The first area of focus would be to assist the Prisons Department to continue the transition of the department from a custodial framework to one of a corrective and rehabilitative nature. This would include the development of a correctional framework and strategic plan that integrates with the legal and judicial reform strategy and plan of action, and becomes a core mechanism for donor (and NGO) coordination and synchronisation. Support would also be given to build upon earlier work to align prison plans with an open and transparent budget development and budget execution process, with appropriate linkages being made to MoEF. Further, whilst the development of criminal and civil legislation (started pre-CCJAP II and not yet complete) has been a notoriously slow undertaking, GoA has the capacity and credibility to assist with the timely development of model corrections laws which RGOC has expressed commitment to moving through quickly. The corrections law is not controversial, has few parties with a vested interest, and would provide a critical underpinning foundation for the future management and operation of correctional systems in Cambodia. Accordingly the development of such law would be included in this component.

Executive capacity development. As is the situation with the police and courts, opportunities for professional development in contemporary, competency based management and leadership disciplines in the middle and upper levels of the Corrections Department have been very limited. Under this area of focus CCJAP would thus give attention to the development and delivery of structured workplace training and professional development programs for mid and senior level Departmental staff. This would be part of a justice sector wide executive development program which could serve the concurrent purposes of more fully preparing justice sector personnel for leadership and executive management roles; and enhancing cooperation between the ministries of justice and interior. Again opportunities arise for gender based training and analysis.

Prisoner Health: The meaningful contribution of CCJAP II to improved prisoner health in CC1, CC2, Kandal (certified) and other nearby prisons (uncertified) has been a hallmark of GoA assistance to the justice sector of Cambodia. Collaborative working arrangements have been established between MOI and MOH, however much of it is based on goodwill and trust. From sustainability points of view, from 2007 there is significant advantage to be gained from the development of a national strategy to institutionalise the MOI-MOH linkage and roll out prison health clinics (with attendant training and equipment) to other provincial and municipal prisons. This would be linked to an expanded prison health officer training program facilitated through MOH. Specific attention may need to be paid to the health issues of women prisoners.

Rehabilitation and Community Corrections: Prisoner rehabilitation has been the least effective aspect of CCJAP II support to the Prisons Department. This has been as a consequence of the failure of new criminal laws and criminal procedures to be implemented, but also because a holistic strategy for community corrections (both adult and juvenile) does not yet exist. The alignment of crime prevention, community oriented courts and a correctional framework for prisons needs to be undertaken within the context of a strategy that establishes complimentary community justice objectives that accord with the intent of the National Strategic Development Plan and the Legal and Judicial Reform Strategy. Then assistance would be provided to the identification and implementation of rehabilitation (pre-release), reintegration (pre and post release) and community (non-custodial) based initiatives for juveniles and vulnerable groups (primary focus) as well as mainstream prisoners (secondary focus).

Indicative scope of inputs:

This component would be supported by a locally engaged Prison Health Technical Assistant and a locally engaged Prisons Technical Assistant, as is currently the case under CCJAP II. Short-term international technical assistance in the area of prison planning, legislation and financial management will be required to supplement the local team, as may short term locally recruited gender expertise in the areas of executive capacity building, prisoner health, rehabilitation/reintegration and possibly capital works - the specific details of which should be refined during detailed design. Further, the MOH should be encouraged by RGoC to provide a Liaison Officer (possibly full-time from 2007) to support the development of systems and health procedures within prisons, which provides a valuable and effective linkage between various professional health groups and prisons.

The Prisons Department has been the biggest recipient of capital works funding in CCJAP I and II, with major prison renovations, minor renovations and new constructions being undertaken over the past 9 years. However, whilst the management team would welcome more new buildings, they recognise that improvements in practice need not necessarily be linked to a new facility, and that infrastructure is only one element of a model prison system. Accordingly, access to flexible CW funds for key remediation work is likely to yield a higher return on investment.

Component 6 – Management Support Team & Flexible Support Fund

Overview:

CCJAP II established a central project management office at the Ministry of Interior, with some project staff also co-located within the Ministry of Justice and the National Police. This approach has been successful in providing both a single administrative and logistic support ‘hub’ while at the same time having some key advisers and technical assistants working in the same buildings/offices as their Cambodian government counterparts. It is proposed that a similar approach should be continued.

The use of a significant number of locally engaged Cambodian ‘technical assistants’ as part of the management team has been extremely important to the success of the project to date. This should also be continued. Indeed it is hoped that in the next phase of support there may be opportunities to employ Cambodians in either short and/or long term ‘adviser’ (rather than assistant) roles.

With respect to the appointment of a small number of ‘official’ counterparts by the RGoC, while this has worked fairly well to date, it is thought that a new approach should be taken. Rather than having one official counterpart in each key agency, and paying them a salary supplement, it could be more effective to be less prescriptive as to who counterparts should be, and rather allow the project to work with a broader range of counterparts based on the needs of the work in hand. With respect to paying individual salary supplements, it is felt that this practice should be discontinued and that (if appropriate) alternative RGoC mechanisms (such as the Priority Mission Groups) should be used.

While a reasonable amount of flexibility was allowed for in the design of CCJAP II (namely through the annual planning process), this could be significantly enhanced by inclusion of a Flexible Support Fund. Such a mechanism is widely used in other AusAID programs and projects – and has demonstrated benefits.

CCJAP II had a capital works program focused primarily on providing two large pieces infrastructure, namely the new court and prison buildings in Kandal (although a number of other minor works were funded at CC I and CC II prisons). This was an important part of the strategy to support the development of ‘model’ operating practices (with their supporting physical facilities). It is now felt that a new approach would be more cost-effective in spreading the benefits of capital works more broadly, including greater use of local contractors and building more to local standards. This would be done through funding a larger number of smaller-scale (but strategically selected) works at more locations.

The issue of future project coordination mechanisms is discussed in Section 4.1 below.

Component Objectives

The objective of this component would be ‘to support effective project implementation, achievement of results, accountability for resource use and the sustainability of benefits’.

Core Areas of Focus:

The core areas of focus for this component would include:

Ongoing planning and risk management. The management team would have responsibility for ongoing forward planning (e.g. an annual ‘strategic’ work planning process as well as on a more regular operational basis) to ensure that plans remain relevant to need and are demonstrably contributing to achieving development results. Linked to this planning function would be ongoing risk management, aimed at ensuring a pro-active approach to identifying and addressing key risks that might impact negatively on the achievement of desired results. This would include a specific anti-corruption strategy for the project.

Human resource and relationship management. The human resources provided through the project must be professionally selected and managed. This is likely to continue to be a major cost element (particularly for expatriate expertise) and it is critical that the best available personnel be selected for project funded positions, that they are effectively supported in doing their job, that their efforts are appropriately coordinated and that their performance is assessed on an ongoing basis. Where there is clear evidence of non-performance, the systems must also be able to address such problems in a timely and professional manner. As well as managing the team of advisers, assistants and other staff, there is also a need to establish relationship management strategies and protocols to provide clear guidance as to how the team should engage with other partners (NGOs, RGoC staff and other donors).

Gender issues. CCJAP III will contribute to AusAID’s gender equity policy goal of reducing poverty by advancing gender equality and empowering woman as described in “*Gender Equality in Australia’s Aid Program — Why and How*” of March 2007. Through efforts to foster functioning and effective states, by enhancing the capacity of justice sector agencies, CCJAP III will assist and support counterpart agencies and partners to meet, protect and promote the human rights of women and girls.

A commitment has been made in Phase III to increasing attention to gender issues through both mainstreamed and gender targeted efforts. In addition to the gender specific initiatives evident in each component which seek to scale up previous efforts, a gender mainstreaming strategy will be developed in year 1. The strategy will reflect both AusAID’s gender equity strategy and also support RGoC’s gender mainstreaming strategy, ensuring complementarity between the two strategies, and strengthening RGoC ownership of gender equity initiatives within the sector.

Initial priorities will be to:

- clarify RGOC's mainstreaming mechanisms and how they relate to justice sector agencies e.g. how do counterpart agencies engage with the key gender equity mechanisms and processes
- make an initial assessment of counterpart agency performance through these mechanisms
- identify ways to enhance counterpart agency performance with the objective of not only improving counterpart agency monitoring and performance but to ultimately assist agencies model and showcase successful practices in gender equity reform.

A relevant strategy that:

- supports and strengthens existing RGOC policy and established mechanisms;
- seeks to achieve continuous improvement over the life of the project (rather than short term quantitative outputs);and
- coupled with component specific initiatives,

offers the best opportunity for sustained improvement in the longer term.

Obviously, increased engagement of local partners, inside and outside government, to champion these objectives is required. With a dearth of female staff in all justice sector agencies, initial steps may be focussed not only on identifying, supporting and encouraging females within the agencies, but identifying the legal, institutional, policy and practice hurdles to female participation particularly in decision making positions, and identifying and supporting champions throughout the sector.

Administrative support and financial management. Effective programs and projects require sound administrative support. The value of this cannot be overestimated. The project will need to continue to ensure that team members get timely access to the required resources, that this is done in a transparent and accountable way and that all financial management systems meet best practice standards.

Flexible Fund and contract management. The purpose of having a Flexible Support Fund as part of the project is primarily to allow flexibility in the allocation of funds (we do not know what all the priority activities are at this point in time) and to promote partner government involvement in decision making over resource allocation (ownership). The project will need to establish the systems and procedures for managing this Fund, including the governance arrangements and criteria to be used for prioritising the use of funds. These criteria will make it clear what the Fund will and will not fund, and help ensure that expectations are realistic.

The criteria and procedures for capital works selection, design & implementation will be particularly important (see Attachment 3). Further specification of Flexible Support Fund management arrangements will be undertaken during the mobilisation phase in early 2007.

Monitoring and reporting. The management team will be responsible for ensuring that effective monitoring and reporting systems are in place and used. This should give particular focus to generating reliable and useful management information for key RGoC stakeholders, as well as for the GoA and other donors. To this end, joint monitoring and reporting activities should be the norm using existing or evolving RGoC systems. Similarly, opportunities to harmonise monitoring and reporting activities with other donors will be actively sought and implemented.

Indicative scope of inputs:

It is anticipated that a long-term (probably expatriate) ‘Project Manager/Team Coordinator’ would be required, together with a locally recruited Administration Manager, Accounts Manager, Capital Works Manager and other appropriate administrative/secretarial support. Other operational inputs would be required to maintain offices, equipment (including vehicles), communications and to enable monitoring and reporting functions to be effectively carried out. The Flexible Support Fund is provided for under this component and is indicatively valued at A\$7.5m.

3.3 Cost parameters

Based on initial costing prepared by the Scoping Mission in June 2007, the GoA has allocated A\$30m to the project over a 5 year period (2007-12).

It is also important to emphasise that the project will actively seek opportunities to mobilise RGoC and other donors funding to implement high priority activities. Areas of focus will include ongoing development of a sector-wide approach, the CPCS initiative and the model court.

Cambodia Criminal Justice Assistance Project (CCJAP III)
 Indicative Costs - 5 years: Jan 2007 - Dec 2011 (Australian Dollars)

Component	Title	Indicative Inputs	Indicative Cost 5 years	Sub-Totals \$AUD '000
1	Legal and Judicial Reform	International & Local TA	\$1,698.00	
		Equipment	\$75.00	
		Training	\$75.00	
		Other (general operational support)	\$75.00	
		Sub-Total		\$1,923.00
2	Crime Prevention, Community Safety, Community Justice	International & Local TA	\$1,740.00	
		Equipment	\$75.00	
		Training	\$75.00	
		Other (Community initiatives)	\$600.00	
		Sub-Total		\$2,490.00
3	Police	International & Local TA	\$1,876.00	
		Equipment	\$75.00	
		Training	\$75.00	
		Other (general operational support)	\$75.00	
		Sub-Total		\$2,101.00
4	MoJ and the Courts	International & Local TA	\$1,936.00	
		Equipment	\$75.00	
		Training	\$75.00	
		Other	\$75.00	
		Sub-Total		\$2,161.00
5	Corrections	International & Local TA	\$1,406.00	
		Equipment	\$120.00	
		Training	\$75.00	
		Other	\$75.00	
		Sub-Total		\$1,676.00
6	Program Management and Flexible Fund	International & Local TA	\$3,866.00	
		Equipment	\$1,000.00	
		Training	\$750.00	
		Flexible Fund	\$7,500.00	
		Management	\$1,050.00	
		Other	\$150.00	
		Sub-Total		\$14,316.00

Total	\$24,667.00
Contingency @ 10%	\$2,466.70
Escalation @ 3% pa on base cost	\$3,000.00
Total with contingency and escalator	\$30,133.70

4 Management, financing and monitoring frameworks

4.1 Project coordination and management

It is proposed that the coordination arrangements for the next phase of support be modified from those used under CCJAP II. New arrangements should better reflect the core role of the CLJR (and its associated support bodies) in leading and coordinating the RGoC’s Legal and Reform Strategy. Using or building on existing (or emerging) RGoC coordination mechanisms (such as the PCB, PMU and TWG) would also support donor coordination and harmonisation objectives, and potentially reduce transaction costs for government.

It is therefore proposed that the TWG for legal and judicial reform be used as the primary coordination mechanism for the next phase of support, although through the establishment of a sub-group which focuses particularly on criminal justice issues. It is also proposed that the

Project Coordination Committee be renamed the ‘National Management Board’, to better reflect its role in approving annual plans, reviewing project performance and making strategic resource allocation decisions (including with respect to the broad parameters for allocation of funds from the Flexible Support Fund to different project components and to different types of expenditure, including for capital works). It is further proposed that both the CLJR and MOSAVY be represented on the National Management Board.

The decision to modify project coordination and management arrangement needs to be carefully considered by the existing CCJAP II Project Coordination Committee members, and the practical implications fully discussed and reviewed. Ongoing high-level commitment and engagement directly from the MoI and from the MoJ is certainly critical in supporting a future phase of GoA support.

As noted in the description of Component 6 (in Section 3.2 above), it is proposed that the project’s operational management arrangements be similar to those currently being used under CCJAP II. This involves the use of a managing contractor tasked with mobilising and managing the required resources to support project implementation, working in partnership with local counterpart agencies. Maximising the use of Cambodian-sourced resources, co-locating advisers within counterpart agencies and ensuring an appropriately balanced skill set within the management support team will remain vital. The main change to these arrangements will be that the police adviser for component 3 will be recruited by the AFP and will be primarily accountable to them. It is nevertheless essential that this adviser work collaboratively as part of the broader CCJAP adviser team, and that operational arrangements be clearly spelt out in a formal agreement between AusAID and the AFP.

It is also proposed that the ‘official counterpart’ arrangement be reviewed and an alternative approach be defined. The new approach should seek to recognise the reality that advisers work with multiple counterparts depending on the focus of particular pieces of work, and that the payment of salary supplements to three or four senior individuals is an in-equitable and unsustainable practice. This again needs to be discussed among senior stakeholders prior to the commencement of detailed design work.

With respect to promoting effective coordination of GoA activities in the sector, it is recommended that additional resources be provided to the Post to allow them to effectively undertake their responsibilities in this regard. CCJAP management would also play an active support role, through for example looking for candidates for Australian Scholarships (targeting future leaders), using Australian Youth Ambassadors, supporting other Australian government agencies to effectively engage with senior officials in MoI and MoJ, and ensuring that information on sector issues is effectively shared.

4.2 Monitoring and evaluation

Purpose and principles

The purpose of establishing and implementing an effective Monitoring & Evaluation (M&E) system is threefold, namely:

1. to support effective and timely decision making by program/project managers and those making decisions about resource allocation (e.g. the National Management Board) based on reliable information about project progress, achievement of results and problems arising;
2. to help ensure transparency and accountability for the use of project resources; and
3. to support learning among stakeholder groups about what works, what doesn’t and why.

Principles underpinning the design of a Monitoring & Evaluation system for the next phase of support should be that it:

- focuses on assessing the effectiveness of the support provided, in line with requirements of the White Paper on Australian aid;¹³
- promotes local ownership and participation by using/building on local systems wherever possible – not parallel ‘project/program’ systems;
- produces information in a format which is useful to Cambodian stakeholder managers;
- provides for a balance of quantitative and qualitative data to be collected and used, and is primarily focused on analysis of information (from a range of sources) rather than simply meeting specific quantified targets;
- does not focus on trying to directly attribute outcomes to just the GoA funded project, given the reality that many stakeholders are involved in supporting outcome achievement and that the lead responsibility for such achievements is vested primarily with Cambodian counterparts. This is particularly important in that a key development principle is to promote partner ‘ownership’ of results (not Australia’s or other donors);
- is appropriately harmonised with the activities of other donors – including for example through organising joint review/monitoring activities; and
- aims to give ‘voice’ to vulnerable groups, including the poor, women and juveniles, through for example the conduct of independent surveys by civil society organisations.

Key indicators

It is important that key indicators, particularly for monitoring sector outcomes, are jointly developed and agreed by key stakeholders, namely the relevant RGoC institutions (in consultation with the main donors to the sector).

Part of the proposed GoA support (under component 1) will directly support the development of jointly agreed key indicators. However, areas of interest in which ‘result’ level indicators are likely to be required, and which would be of direct relevance to the next phase of GoA support, include:

Area of interest	Indicator type
<i>LJRS</i>	<ul style="list-style-type: none"> • Improved donor coordination and confidence in the RGoC’s capacity to plan, budget for, implement, monitor and periodically update/improve the LJRS (key conditions for moving more towards a Sector Wide Approach) • Establishment and use of a common approach to sector planning among core justice sector agencies, consistent with MEF and MoP requirements • Establishment and use of a common indicator system for the sector • Adoption of a code of ethics by judges and prosecutors and establishment of means by which they can be held accountable to this code
<i>CPCS and community awareness</i>	<ul style="list-style-type: none"> • Community confidence in the police & courts, and specifically among juveniles and women • Community fear of crime, and specifically among juveniles and women reduced

¹³ This would involve some form of ‘contribution analysis’, based on participatory qualitative enquiry methods to solicit stakeholder opinions. However, as noted in the White Paper, building capacity in fragile states may take generations and expectations must be realistic.

Area of interest	Indicator type
	<ul style="list-style-type: none"> • Community (including police) awareness of alternatives to imprisonment for juveniles and other vulnerable groups in conflict with the law • Reported crime statistics – type and trends, gender and age disaggregated
Police	<ul style="list-style-type: none"> • Quality of strategic plans and link to budgets and manpower • Quality of training designed and delivered and impact on staff performance, including their ethics and integrity • Quality of crime scene investigation and case files prepared, including the use of forensic evidence for crimes against women (rape, assault, etc) • Appropriate treatment of juvenile offenders and victims of crime (particularly women) by police
MoJ	<ul style="list-style-type: none"> • Quality of strategic plans and link to budgets and staffing levels; • Quality of training designed and delivered and impact on staff performance, including their ethics and integrity; • Application of improved court processes and practices in line with Model-Court concept and principles, particularly in the treatment of juveniles and female (victims and offenders) of crime and in the transparency and accessibility of court records; • Use of alternatives to imprisonment, particularly for juveniles • Reduction in the backlog of cases, particularly in the court of Appeal.
Corrections	<ul style="list-style-type: none"> • Quality of strategic plans and link to budgets and staffing levels • Quality of training designed and delivered and impact on staff performance, including their ethics and integrity • Implementation of Prisoner Classification systems and other improved prison management practices • Prisoner health • Establishment of effective rehabilitation and re-integration programs in prisons, particularly for juveniles and other vulnerable groups
Project Management & Flexible Fund	<ul style="list-style-type: none"> • Quality of project staff and HR management • Project responsiveness and risk management • Quality of project monitoring activities • Quality and timeliness of reporting, communication and stakeholder engagement strategies • Quality of capital works provision

A number of useful monitoring tools have been developed and used during CCJAP Phase II, including for example the use of community attitude surveys (to the police), improved crime statistics analysis and use by provincial police, analysis of the quality of case files, and a number of key monitoring tools being effectively used by the Prisons Department. These achievements need to be built on and incorporated into the next phase of design work.

External’ monitoring

It is proposed that the use of some form of ‘Technical Advisory Group’ be considered for the next phase of support, to help provide opportunities for some ‘external’ review and verification of project performance. However, the composition and working methods of such a team should be carefully reviewed, and consideration given to directly involving RGoC and other key donors in such a process. This could be seen as an important step in building a more sectoral and harmonised approach to monitoring and review.

It is suggested that the frequency with which such a group undertakes its ‘reviews’ should generally be no more than once a year, unless there are specific concerns that the National Management Board feel need to be addressed as a matter of some urgency.

The other ‘external’ monitoring that should be included in the next phase of support is the use of local NGOs, Research or Academic Bodies to conduct specific surveys/investigations on such topics as community perceptions of the police, attitudes to community safety, use of alternatives to imprisonment for juveniles by the courts, treatment of women victims and offenders of crime by the police and courts, etc. This was planned as a part of CCJAP II but was only partly implemented.

5 Risk management and sustainability and considerations

Whilst a comprehensive risk assessment should be undertaken and a risk management plan developed as a feature of the more detailed design during the mobilisation phase, key high-level risks are outlined below:

5.1 Risks

Financial Risks

External: CCJAP II was particularly challenged by very variable Australian Dollar and United States Dollar cross-rates (used for major transactions in Cambodia). It impacted adversely on the capital works program in particular where monthly draw-downs with a declining cross-rate resulting in some desirable capital works being cut from the program. The original CCJAP II design identified a key risk being that the “cost of construction could increase to the extent that the current cost estimates are inadequate and the amount of construction noticeably reduced”. Despite all available risk mitigation strategies being implemented, this assessment was fundamentally correct and huge increases in international steel prices saw the fixed capital work budget reduced by approximately 20% in real terms which also resulted in capital works cut backs which severely tested counterpart relationships.

Internal: Salaries within the justice sector remain below the cost of living and accordingly most justice sector personnel must work more than one job and/or are engaged in corrupt activities to supplement their incomes (that is not to suggest the cost of living is the sole motivation for corruption). However in practice this means that 100% attendance will not be achieved in the foreseeable future and programs must be structured around an attendance rate more likely to be in the order of 20 – 50%.

Political

National elections are due again in 2008. During the last elections, a huge hiatus occurred with few high-level government decisions being made for almost one year. Many activities that were in-train were delayed as a consequence of the inability of the parties to form government. Whilst the military action emanating from the events of 1997 have not been repeated in the life of CCJAP II, civil unrest has been ongoing. In 2004 considerable damage was done to Thai interests in Cambodia, including the Royal Thai Embassy as a result of rioting. Also, political patronage remains a feature of all aspects of government service which must be considered in the design of future assistance.

Institutional

Whilst commitment and support for CCJAP II has remained consistently strong and pledges of continued support are clearly genuine, changes in priorities, largely based on changes to the positions of highly placed sponsors within the target agencies pose continuity risks. A relatively small pool of key counterparts hold a great deal of the CCJAP ‘corporate memory’ and going forward, broadening of the counterpart base and liberalising the governance arrangements will be needed to minimise these risks.

Human Resources

The capacity, education level and skills of individuals within the justice sector with whom CCJAP II has dealt, whilst improved from 2002 are still variable. Specifically, there is often limited capacity to conceptualise new concepts and approaches, and socialisation of new ideas can take a great deal of time. The risk variables include two dimensions, the first being the availability and capacity of Cambodian Government Counterparts who provide more than fleeting engagement; and the availability of Locally Engaged Staff and Stakeholders who will support implementation of activities under a new phase of assistance.

Gender risks

Activities that seek to enhance the role of women working in the criminal justice sector are impacted by the prevailing attitudes of both men and women. The sector is male dominated and while there is an acknowledgment by senior officials that the role of women must change there is a risk posed by uncertainty about the extent to which they will champion this, and by the attitudes of those employed in the middle and lower levels across the partner agencies. For example, despite an intensive effort with training, mentoring and direct engagement and training for their male counterparts, efforts to include more women into operational police roles have largely been unsuccessful. Individual gender action groups in police and prisons have made some advances in inculcating gender sensitive approaches to activities however the impact in MOJ has been negligible. A risk predicted in the CCJAP II design was “the likelihood of women not presenting themselves for inclusion in training or other activities and not seeking deployment in management and operational positions”. This occurred and was overcome with direct invitation and tailored programs. However, interventions at the strategic level in police, courts and prisons will be required in the future. Increased inclusion of female technical staff in CCJAP, and an advisory group including GAG and NGO representatives could reduce the risk that CCJAP activities either perpetuate or fail to mitigate gender inequities.

5.2 Factors to promote Sustainability

There are a range of factors that will affect the sustainability of initiatives introduced under a future phase of assistance. Those factors, along with high level approaches to promote sustainability are listed hereunder. The development of a sustainability strategy, which includes alignment and integration of the strategy with the annual planning process would be included as a feature of the next phase of support.

Policy and Legal Framework

The proposed scope takes account of, and supports, the Legal and Judicial Reform Strategy and Plan of Action and the Gender Action Plan. A considered approach has been taken to inclusive development of the National Crime Prevention and Community Safety Strategy to inform provincial activities to ensure it accords with the objectives of the National Strategic Development Plan and have the pre-requisite support and approval to be successful. AusAID’s priority objectives for economic growth, fostering functioning and effective states, investing in people, and promoting regional stability and cooperation have also been taken in to account and would be further considered during more detailed design during the mobilisation phase.

The strategic framework provides sufficient flexibility to accommodate the proposed introduction of the new criminal and civil legislation which is currently being considered by the Council of Ministers. Likely impact of approval will include (but not be limited to) needs for amendment to police, court and prison operating procedures, revision of strategic plans, and focussed effort to address alternative sentencing, diversion, juvenile justice and community based justice within a new legislative framework.

Ownership and Participation

An underpinning principle of the strategic framework is that it supports an increased collaborative effort between RGoC, civil society and donor agencies to improve access to justice, the protection of human rights and the enhanced responsiveness and efficiency of the justice sector. A key initiative to support RGoC ownership of the future phase of assistance is the use of a rolling design and implement approach, which was specifically requested by RGoC stakeholders and counterparts. The design and implement approach of CCJAP II has led to a degree of collaborative development and ownership not often seen in development projects. The strategic framework anticipates the increased use of Cambodian staff in the implementation of future project activities and this includes not only the locally engaged project staff, but non government and civil society groups and local employees.

Management and Organisation

An underlying principle of the strategic framework is that Cambodians take primary responsibility for achieving agreed objectives. The expansion of the Provincial Police Courts Prisons meetings, MOI-MOJ cooperation activities and modified governance arrangements are all intended to support local decision making. By fostering local ownership of decision making, sustainability of benefits is expected to be enhanced.

Financial

Whilst CCJAP II operated on a calendar year basis, the future phase of the project would be built upon this strategic framework and operate on the basis of a flexible annual planning process based on a July to June cycle, linked to key RGoC planning and budgeting events. This will allow for the identification of key RGoC priorities and potential contributions as these become more clearly evident. Specific focus is also given within the strategic framework to improving the planning and ultimately the budgeting capacity within police, courts and prisons, so that the actual costs of service delivery are more clearly identified and specified, and budget submissions to the MOEF can therefore be more coherently justified and argued.

The preparation of a sustainability strategy during the next phase (see above) will identify more clearly the recurrent cost implications of sustaining benefits supported by the future phase of assistance.

Awareness and Training

Sustainability of benefits will depend significantly on the extent to which attitudes are changed, and knowledge and skills are developed among Cambodian personnel and within the wider community. The strategic framework makes provision for training to be targeted at higher levels than was the case in CCJAP I and II. Predominantly, in each of the participating agencies this will be at the mid and executive levels.

The Crime Prevention, Community Safety and Community Justice Component will give particular emphasis to community engagement and awareness activities, through social marketing, production awareness materials and the involvement of a wide range of stakeholders in the provincial activities. During the mobilisation phase, a communication strategy that is expected to support the production of a range of information and materials on community justice related issues will be developed and it will be periodically revised during the next phase of the project.

Environmental impact

Any capital works proposed under the future phase of the project would be designed and supervised to ensure environmental impacts are assessed and appropriate mitigation measures taken. Environmental management plans will be prepared for all works, and would become a criterion for any applications made to the Flexible Support Fund.

Conflict Impact

Any activities envisioned and planned under CCJAP III would be designed to ensure that they do not create barriers to peace and harmony e.g. by directing benefits to one part of a community at the expense of others and where possible promote and enhance community and official peace building capacities, and promote linkages and partnerships between formal/informal agencies within the sector.

Attachments

ATTACHMENT 1 – SUMMARY OF GOA PROGRAMS AND PROJECTS IN THE SECTOR

ATTACHMENT 2 - CCJAP II REVISITED (PROBLEMS, STAKEHOLDERS AND LESSONS)

ATTACHMENT 3 –CAPITAL WORKS STRATEGY (SUMMARY)

ATTACHMENT 4 – ANTI-CORRUPTION STRATEGY (SUMMARY)

Attachment 1 – Summary of GoA programs and projects in the sector

Cambodia Criminal Justice Assistance Project (CCJAP) Phase I & II

The Cambodia Criminal Justice Assistance Project (Phase I and II) has supported the National Police, Ministry of Justice and Courts and the Prisons Department, since April 1997, to strengthen the criminal justice system and improve adherence to international human rights standards. The first phase of CCJAP was a four and a half year \$12.6 million project. The Project started from a very low baseline in 1997 where no national procedures existed for the Police, Court or Prisons. The first phase was instrumental in improving Cambodia's human rights record and provided much needed training, policy advice and infrastructure support.

Valued at A\$18 million, CCJAP II builds on the achievements of the previous phase, with a strengthened focus on crime prevention and community safety, investigation capacity of police and courts, trial and sentencing, and prisoner health and rehabilitation. This current phase has challenged traditional approaches to criminal justice by introducing the concept of crime prevention as opposed to crime suppression. The success of a provincial pilot in Kandal has led to RGoC's commitment to establish a crime prevention and community safety strategy at the national level. CCJAP has also continued its work in the prisons and has greatly improved the living conditions of prisoners through the establishment of health clinics and rehabilitation programs.

Future Support: CCJAP II is due for completion in mid-2007 and planning is underway for a future program of support. AusAID is proposing to explore a strengthened focus on victims of crime, crime prevention, and juvenile offenders, building on the integrated approach and strong relationships with police, courts and prisons established during earlier phases of assistance. The focus on juvenile offenders will help address one of the possible negative consequences of the "youth bulge" problem in Cambodia.

Australia - Cambodia NGO Cooperation Agreements:

Crime Prevention and Community Safety: International Women's Development Agency, together with its three local partners (Ad Hoc, Bantay Seri and GAD) has been selected to develop a 5-year program valued at around a\$1.5 million.

The design of a Crime prevention and community safety program will aim to assist communities to work proactively to reduce crime and to reduce the fear of crime. IWDA has been encouraged to explore innovative crime prevention approaches at the community level as well as approaches that complement the current AusAID-funded Cambodia Criminal Justice Assistance Project (CCJAP).

Child Protection: Save the Children Australia and World Vision, together with Child wise, have each been selected to develop a 5-year child protection program. Both programs are will be valued at around \$1.5 million over 5 years.

SCA and WV/CW have been tasked to design programs that will enhance the capacity of government, local NGOs and civil society organisations, including the private sector, to reduce the vulnerability of children to sexual exploitation within Cambodia. They will use their combined expertise to assist Ingo's and Logos working in Cambodia to develop and implement child protection policies and will also undertake initiatives which raise awareness of and address the problems of child sex tourism and sexual abuse of children, at a community level, which include;

- improving knowledge about the incidence and nature of child sexual abuse, including child sex tourism, and how it is dealt with in communities;
- involving and empowering children and families in addressing the issues;
- implementing community strategies to reduce risk/incidence of abuse; and

- changing attitudes to child victims of sexual abuse, and encouraging community support to help victims heal.

Child Wise Tourism Program

Australia has provided A\$590,000 to support a second phase of the Child Wise Tourism program which is working with the tourism industry across Asia to develop programs and actions to prevent child sex tourism. The objective of the Child Wise Tourism program is to build capacity of National Tourism Administration staff and trainers, to help them develop regional policy options on international standards and tourism industry guidelines, on the protection of children from sexual exploitation in ASEAN tourism destinations. The project also seeks to contribute to longer-term improvement in the protection of children in participating countries (Burma, Cambodia, Indonesia, Lao PDR, the Philippines, Thailand and Vietnam) and more generally across the region.

Australia Regional Cooperation to Prevent People Trafficking (ARCPPT)

The goal of the Project is to contribute to the prevention of people trafficking by facilitating a more effective and coordinated approach by the criminal justice systems of the governments in the South East Asia region. This can improve victims' access to justice, increase security in society, and end impunity for traffickers. The Project:

- Supports a specialist police response to trafficking - this is primarily the Department of Anti-Trafficking and Juvenile Protection of the police, under the Ministry of Interior;
- Strengthens the broader criminal justice response - in Cambodia this focuses on training judges and prosecutors on specific issues and strategies to deal with trafficking, and improving cooperation between the police and the courts;
- Builds relations between the criminal justice system and agencies that support victims - in Cambodia this includes facilitating the development of in-country agreements between the relevant Ministries and NGOs on procedures for cooperation; and
- Promotes regional cooperation; the Project has offices also in Thailand, Laos, and Myanmar (Burma), and supports the development of regional specialist police cooperation procedures, broader regional Memoranda of Understanding, and development of cross-border relations between victim support agencies that cooperate with the criminal justice system.

Timeframe: the Project began in March 2003 and will end its first phase in March 2006; a second phase has been designed and has recently gone to tender.

Funding: this Project is currently operating under regional funding of approximately A\$ 8 million for three years; there is not a specific designated budget for Cambodia, but rather an annual planning process that takes into account the priorities of each of the Project countries and the regional activities.

Cambodia Australia Technical Assistance Facility (CATAF)

CATAF provides technical and advisory services to Cambodia to address governance constraints in areas relevant to AusAID's strategic objectives. Criminal justice (including transnational crime and counter-terrorism initiatives) has been included as one of the four focus areas for this financial year (July 05-June 06). CATAF has facilitated cooperation between Australia's Attorney General's Department and the Royal Government of Cambodia to prepare draft counter-terrorism legislation consistent with international standards, enabling Cambodia to participate effectively in international counter-terrorism efforts.

CATAF offers a flexible and responsive mechanism to provide short-term assistance in key areas that will position AusAID for our next phase of criminal justice assistance. The facility is currently being reviewed (June 2006), although it appears likely that it will be continued in some form.

Public Finance Management Program (Australia is contributing \$3m over 3yrs)

Background: Improved revenue collection and budget execution is essential to the attainment of Cambodia's National Poverty Reduction Strategy targets. The PFM program design incorporates the introduction of merit based pay linked to performance. This will operate as a pilot for civil administration reform with the support of the Council for Administration Reform who recognise the initiative as a breakthrough in a major issue constraining reform of the civil service. The PFM program is due to commence in early 2005. Australian funds will go to a WB Trust Fund to be jointly executed by the MEF and the WB. Public Financial Management (PFM) is a priority.

Objective(s) / Outcomes(s): The PFM program aims to achieve: i) a more credible budget; ii) effective financial accountability; iii) fully affordable and prioritised RGC policy agenda; and iv) full accountability by RGC managers for program performance. The program is planned to run until 2015 and is built on a series of interim objectives (platforms) that recognise the low capacity and technical base of implementing officials. Program funds will support untied technical assistance to build capacity of local training institutions and MEF staff and the procurement of IT systems required to achieve and maintain transparency of budget processes and accountability for expenditures. A comprehensive capacity building strategy will be developed to ensure greater effectiveness of TA and long-term sustainability. A merit-based pay initiative for key MEF officials as well as line Ministry and provincial officials responsible for finance will contribute to civil service reform. The government will provide an increasing contribution to the MBPI over the life of the program.

Public Administration Reform

AusAID, together with Danida, UNDP and the World Bank, form a core group of donors working closely with the Council for Administrative Reform Secretariat (CARS) to develop a joint-action plan to help progress civil service reform. The first step in this process has been the joint funding of a resource person for the Technical Working Group, of which the World Bank and AusAID are the lead donor facilitators. The placement of this resource within CARS has improved dialogue and established a shared understanding of priorities. This has included the development and approval of a strategy to phase out salary supplementation (attached). CARS has recently conducted the survey on current salary supplementation practices and each TWG is now working on their sector's action plan. CARS has also provided the core group of donors with a request for additional resources to implement the joint-workplan for this year. AusAID are currently considering this request, with the option of AusAID providing support for a Capacity Development Strategy which will guide RGC on how to better coordinate technical assistance and other forms of CD support.

This has been an incremental process to date and we are a long way off from having a multi-donor support program for CAR in implementing the reform agenda.

GoA Whole of Government Partners

The Australian Federal Police are funding a Transnational Crime Team located in Phnom Penh. This work started in 2002 and the team presently consists of 8 Cambodian police officers, led by an AFP officer. This is an operational activity, undertaking work on priorities identified by the AFP. The AFP has also recently paid a one week visit to Cambodia to look at issues of police reform (together with the Attorney General's office).

Department of Immigration are about to complete 2 projects, which both have a focus on immigration management (computerisation of check-points and a Tactical Intelligence Unit within the Department of Foreigners)

The Attorney General's Office has been providing some support to the Cambodian Government on the drafting of Counter-Terrorism Legislation and has also recently participated in a mission with the AFP to look at police reform issues.

Attachment 2 – CCJAP II revisited (problems, stakeholders and lessons)

Problem analysis

A comprehensive problem analysis, undertaken with direct counterpart and stakeholder involvement underpins the design of CCJAP II. The project set out to contribute to the resolution of problems which can be categorised as ‘high-order’ or ‘overarching’ problems; and ‘underlying’ problems. These are profiled below and will need to be taken into consideration during detailed design deliberations for the next phase support:

Problem analysis of 2002	Update of May 2006
Overarching Problems	
<i>Low level of economic and human resource development – limited government revenues and widespread poverty</i>	There has been significant growth in the garment industry and tourism, but not in agricultural production. Poverty levels have dropped (more in urban areas) over the past 10 years, but the problem remains chronic. Government revenues remain low, with donors providing around US\$550m to bridge the government’s ‘financing ‘gap’.
<i>Emerging democratic systems and governance structures following legacy of civil war and factional fighting</i>	Government has been stable and factional fighting less overt. Disputes arising from the 2004 elections did not result in violence. Democratic systems are still ‘emerging’ – but undoubted progress being made.
<i>Breakdown in community and family values and cohesion due to legacy of drugs, urban life, etc</i>	Drug abuse appears to be increasing, as does gang related activity consistent with a burgeoning youth population (which is perhaps the reason for recent government ‘crack downs’ on crime.
<i>Low status of women within Cambodian society</i>	No demonstrable change
<i>Low salaries of public servants and implications for corruption</i>	Judicial salaries were significantly increased (some 400% in 2005) but others – Court Clerks, Police and Prison Officers remain unchanged and well below the cost of living. In terms of corruption implications, there have been high-profile cases in 2005 and 2006 of judges and court officials being charged with corrupt behaviour, although.
<i>Low status of judges</i>	The introduction of the Royal Academy for Judicial Professions, enhanced donor focus on legal and judicial reform, increased salaries, and improved training should all contribute to a boost in the status of judges, however community confidence remains low
<i>CJS personnel influenced by politicians (undermining independence);</i>	No demonstrable change
<i>Inadequate criminal laws</i>	The Criminal and Civil Codes have been under development (France and Japan respectively) since 2002 and are now before the Council of Ministers. Rapid endorsement is not anticipated.
<i>People mistrust the justice system</i>	No demonstrable change overall, however improvements in confidence and the quality of community-police interaction have been cited in Kandal Province
<i>Centralised decision making and management systems</i>	Largely unchanged however the Decentralisation and De-concentration Strategy predicts significant progressive devolution of decision making to provincial, district and commune levels over the coming 5 years

Problem analysis of 2002	Update of May 2006
Underlying Problems	
<i>Major organisational reform constrained by slow legal/legislative process</i>	Largely unchanged, however strong relationships, access and better understanding of the justice agencies enables some initiatives to be ‘moved along’ in a timely manner, depending on the attendant political implications
<i>Lack of planning, budgeting and management capacity (and delegated authority) within CJS institutions (strategic, organisational, operational)</i>	Basic planning mechanisms introduced into the Prisons Department and MOJ. Efforts to align plans and budgets in Prisons and MOJ are ongoing. No progress has been made in this regard within national police. Delegation is largely unchanged
<i>Lack of up to date CJS systems and documented operating procedures, consistent with amended and new (emerging) laws</i>	Police procedures manual completed, court procedures manual completed, prison management procedures completed – all consistent with existing laws. Amendments will be required when new laws and developed and local capacity exists to support that activity.
<i>Limited access to relevant, reliable and timely information within the CJS</i>	Crime recording and court information management in Kandal has improved. Crime recording at national level was not adopted because of vested interests by counterparts and national police executives have agreed to personnel changes in a future program of assistance
<i>Donor support not effectively coordinated</i>	The establishment of the Technical Working Group has provided a more cohesive mechanism for donor harmonisation but there is still much fragmentation at the operational levels. CCJAP II has nevertheless been a key ‘go-to’ point for information on both government and donor activities in the sector.
<i>Lack of suitably experienced, appropriately educated and trained people available within the CJS</i>	Improvement in police operational performance at Kandal (e.g. in crime scene preservation), prison operational performance in Kandal, CC1 and CC2, and prison health staff performance generally has been demonstrated. Capacity at mid and executive levels across the CJS was not a feature of CCJAP II and shows little demonstrable improvement.
<i>Lack of equipment, facilities and operational resources within CJS institutions, particularly at Provincial and District levels</i>	No demonstrable change other than donor funded improvements, although there has been some new ‘land swap’ prisons introduced.
<i>Women not adequately represented within the CJS at all level</i>	No demonstrable improvement despite significant CCJAP II focus on preparing women police for more investigative roles in Kandal and the Anti-Human Trafficking department.
<i>No specific gender policies and strategies within each institution</i>	Gender Action Groups have been established and very active in police and prisons, but there has been no demonstrable change in MOJ. Most gender initiatives have been as a result of donor (including CCJAP II) funding and there is no evidence of increased RGOC contribution to gender and development outside of the GAG’s.
<i>Inability of the CJS to deal appropriately with juveniles</i>	Procedure for dealing with juveniles have been developed and adopted by MOJ and included in the Court procedures Handbook. Evidence of impact is yet to be demonstrated.
<i>Inadequate linkages, understanding and quality of contact between the community and the CJS</i>	Significant improvements have been identified in most districts of Kandal Province amongst those groups that have had exposure to the CPCS concept and pilot activities. Significant improvement in high-level understanding of and commitment to CPCS has been identified in MOI and to a lesser extent, in MOJ.

Key stakeholders

This section provides a brief overview of key stakeholders and stakeholder institutions, with an emphasis on identifying changes which have occurred since CCJAP Phase II commenced in late 2002.

Royal Government of Cambodia

Prior to CCJAP II commencing various Ministries were divided between the two coalition parties (FUNCINPEC and the CPP) with the CPP leading the ‘power’ Ministries of Interior (MOI), Defence (MOD) Economy and Finance (MOEF) and Foreign Affairs (MFA). These ministries are known for their control of government policy and for expenditure of much of the RGOC budget. FUNCINPEC was left to control less influential and less well resourced Ministries such as Justice (MOJ), Women’s and Veterans Affairs (MOWVA), and the (then named) Ministry of Social Affairs, Labour, Vocational Education and Youth Rehabilitation (MOSALVY).

Following the 2004 national elections, CPP increased its ministerial domination, with a CPP Minister controlling MOI, MOD, MOJ, and MOEF and with no co-ministerial appointments being made. The CPP control of both MOI and MOJ provides potential opportunity for greater synergy across the justice sector, and least until the 2008 national election.

Key Cambodian Ministries, Agencies and Departments

Ministry of Interior

Within the parameters of the MOI, three key ‘institutions’ will be particularly important stakeholders in the context of future assistance to the criminal justice system: Provincial Government, Police, and Prisons.

Provincial Government administration falls under the responsibility of MOI. Provincial Governors are appointed by the national government and they are supported by Deputy Governors. Traditionally the First Deputy Governor is responsible for the administration of provincial law and justice issues and holds significant influence on these matters. That said, there is still a significant controlling influence exerted over provincial affairs by national government. In practice this means provincial police, courts and prisons officials often have dual reporting responsibilities to the provincial and central agency levels which sometimes have diverging priorities. Provincial Governments have their own budget allocations and during 2005-2006, the Kandal Provincial Government has been making province-wide contributions to crime prevention and community safety initiatives.

There has been a significant policy change which will impact on future assistance to the criminal justice sector. From 2002 - 2006, RGOC was implementing the multi-laterally funded, UNDP-led Seila Program, which was part of an overall rural development program implemented through the Ministry of Rural Development. The focus was primarily on rural infrastructure, education, and water supply and sanitation. In 2005, as a feature of its (then draft) National Strategic Development Plan, the RGOC established its Decentralisation and Deconcentration Program which replaces Seila. D+D will have more of a traditional ‘local government’ perspective. The growing decentralisation of government services from the national level to provincial and commune levels has implications for GoA criminal justice program ‘engagement points’, and could provide a source of counterpart funding to further develop and sustain such initiatives as the Crime Prevention & Community Safety program piloted in Kandal.

The Cambodian Police essentially comprises two key institutions: the Gendarmerie and the Cambodian National Police (CNP). The Gendarmerie traditionally had a military policing function - not the rural policing function that the Gendarmerie plays in many other Francophone countries. However in recent years there has been a significant ‘blurring’ of Gendarmerie and CNP roles, with Gendarmerie regularly visible on street corners performing

‘national security’ roles, and there has been recent moves to provide Judicial Police powers of arrest to gendarmerie (although this has not yet occurred).

Activities within the CNP are undertaken within a number of ‘central departments’ and other entities which often have an apparent duplicate or overlapping role, however the leadership of the CNP has remained relatively stable over recent years with few ‘senior’ officers being moved. That notwithstanding, role clarity between these many bodies is definitely a problem and one which the RGOC has recently started to consider. Some of the key central departments include Traffic; Means; Training; Scientific and Technical; Human Trafficking and Child Protection; Public Order Police; Border Police; Security Police and Judicial Police. The Judicial Police includes the Central Department of Criminal Police and is perhaps the agency that most closely undertakes functions familiar to western observers (mediation, complaint handling, investigations, and arrests). GoA support to the criminal justice system has traditionally been to the Judicial Police however this has limited engagement in some areas critical to sustainable capacity building and institutional strengthening of the CNP. This particularly includes Training; Means; and Executive Leaders.

CNP has a consistent structure down to commune level (Police Post) in all Provinces. However, this is complicated by structures that require the Provincial Police Commissioner to report to a CNP senior at central level, whilst concurrently reporting to a Deputy Governor at provincial level. Provincial Commissioners are bound to comply with national policy and procedures as directed by MOI, while taking direction from the Deputy Governor on provincial priorities. Salaried and operating expenses are funded by MOI whilst in theory the Provincial Government should assist with infrastructure and other resources (in practice this does not happen very often). Whilst the strength of the CNP is variously cited as being up to 70,000 and therefore significantly over strength, the reality is that because of salaries averaging US\$20/month, full day attendance can be as low as 20% as police officers must work 2 or 3 jobs to survive. Salaries have not changed over the years that CCJAP II has been operating and this has significant implications for future GOA assistance to the criminal justice sector.

A separate Department of Prisons was established by Royal Decree in May 2000. This decree made provision for the separation of the Prison Service from the CNP and established it as a new organisation under the control and direction of the General Department of Administration of the MOI. GoA support made a significant contribution to the separation of Prisons from Police and the Prison Service is now hoping to be established as a General Department in its own right, in part because it currently has no direct control over its own budget or financial management.

In addition to the three national prisons (CCI – Male; CCII – Female and Juvenile; CCIII – Appeal), there are twenty-two provincial prisons in Cambodia. Each is controlled by a Chief Prison Officer who has similar concurrent reporting relationships to the Prison Department and to the Provincial Deputy Governor, as outlined above for the CNP.

Under the stewardship of a very committed and capable Director, the Prison Department has been progressively evolving itself from an institution primarily focussed on custodial management to one of a corrective nature. Whilst the Prison Department is much smaller than CNP and operates within a much narrower policy and operational mandate, it suffers from many of the same institutional challenges as the CNP.

Ministry of Justice

The Ministry of Justice (MOJ) is delegated authority by RGOC to perform the mission of guidance and administration of Justice in the Kingdom of Cambodia. One of the most significant recent changes is that MOJ is now led by a CPP Minister and this is providing opportunities for greater synergy with MOI, but also is enabling a number of previously inactive issues to be resurrected and for more innovative options to justice sector reform to be

considered, such as the model court concept and juvenile justice procedures. Promulgated MOJ functions and duties are to:

- (i) Protect the independence of judges during the course of their duties;
- (ii) Ensure the functioning of the courts and all prosecutors and prepare various laws governing these institutions;
- (iii) Educate and disseminate laws concerning judicial affairs;
- (iv) Ensure proper application of orders and judgments of levels of courts and prosecutors;
- (v) Follow up the execution of judgments, in particular, inspection of detention centres and prisons for the purpose of law enforcement; and
- (vi) Conduct international relationships associated with justice and relevant laws.

The institutional capacity of MOJ however has not grown substantially in recent years and there is a constant reliance by donors on a small number of key counterparts.

Courts

There is a court in each of the provinces of Cambodia and in the municipalities of Phnom Penh and Sihanoukville. Kandal, and to a much lesser extent the former Phase I sites have been the only real focus of CCJAP II and this needs to be extended under future assistance. The Cambodian judicial system operates on a civil system which has, and continues to be strongly influenced by the French judicial system. That said, a recent development which may have implications for future assistance is that the current draft of the Civil Procedures Code has been developed with Japanese development assistance and has a common law system 'leaning'. If endorsed it will add complexity to the training of court actors and the procedures within courts.

The recently created Royal Academy for Judicial Professions (RAJP) is responsible for the selection and training of new Judges and Prosecutors in Cambodia (see below).

There is still no Chief Judge or Chief Prosecutor with responsibility for the administration of the entire provincial court system, and provincial courts are thus semi-autonomous. The Court President and Chief Prosecutor of each Provincial Court have considerable power, a great deal of discretion and are subjected to little oversight, which regularly leads to claims of corruption. However lack of community understanding of the law also sees allegations of corruption levelled at the courts when defendants are released on bail, or when convicted and given minimal sentences.

Other Justice Institutions

At the national level there are several institutions with a role in the administration or dispensing of justice.

The Supreme Council of Magistracy

Under the Constitution the Supreme Council of Magistracy (SCOM) has limited powers and is charged with assisting the King to guarantee the independence of the judiciary. Under the provisions of Article 133 of the Constitution the SCOM has authority to take action against judges (but rarely exercises its authority to do so). Under Article 134 it has authority to make proposals to the King on the appointment of judges. Allegations of corruption in the process of appointing judges have variously been made over the years however the establishment of the RAJP is intended to formalise selection and make selection processes more transparent. The SCOM does not have a role in the administration of the courts or judicial process, nor in regard to education and training.

Court of Appeal

The Appeal Court which was established in 1993, sits only in Phnom Penh and does not travel on circuit. It has nine judges and four prosecutors. Its mandate is to hear appeals on any matters adjudicated in provincial and municipal courts. The Court of Appeal is now an acknowledged ‘bottleneck’ in the delivery of justice, with the backlog of appeal cases dating back several years and is a logical candidate for support from 2007.

The Supreme Court

The Supreme Court is the highest court in Cambodia and sits only in Phnom Penh. Comprising nine judges and four prosecutors, it is the ultimate Court of Appeal and is empowered to hear appeals against the decision of the Appeal Court. CCJAP II has had nothing noteworthy to do with the Supreme Court.

Royal Academy for Judicial Professions

The Royal Academy for Judicial Professions (RAJP) was established in 2005 as a replacement for the Royal School for Judges and Prosecutors (RSJP). The new entity now has divisions for the selection and training of Judges, Prosecutors and Court Clerks. Established under the Council of Ministers, the RAJP is charged by sub-decree with the selection through competitive entry, and the formal training of Judges and Prosecutors. Unlike its predecessor, the RSJP, the ROJP is now also responsible for training of Court Clerks. The Royal Academy currently has a judicial training program underway and is looking to commence Court Clerk training (using the Court procedures Handbook developed by MOJ with CCJAP assistance as the core of its curriculum).

Ministry of Health

The Ministry of Health (MOH) is responsible for providing health services to the community. Provincial and municipal authorities are tasked with providing health services in their geographic areas of responsibility down to commune level. In theory this includes the provision of health services to provincial prisons but in reality this does not occur as a matter of course. A very functional partnership has been brokered between MOI and MOH by CCJAP over the past few years and this is leading to the progressive establishment of prison health centres by MOI and the delivery of training to prison health staff to achieve ‘accreditation’ of prison health clinics by MOH. Accredited centres are then provided with basic medicines by MOH under similar arrangements to rural health centres.

Ministry of Social Affairs, Vocational Education and Youth Rehabilitation

Ministry of Social Affairs, Vocational Education and Youth Rehabilitation (MOSAVY) is responsible for child welfare in Cambodia. It operates child centres (mainly orphanages) in the provinces and one youth ‘rehabilitation centre’ on the outskirts of Phnom Penh. The centre however has no ‘legal’ basis and operates largely on an inmate ‘volunteer’ basis. MOSAVY has very limited institutional capacity and operational resources. MOSAVY also has a mandate for prisoner rehabilitation programs, although it has undertaken very little, and nothing structured, in this field. This institution nevertheless has potential to be a stakeholder of growing importance in providing greater access to justice for children and juveniles.

Cambodian Non-Government Organisations

NGOs are active in virtually all sectors in Cambodia and there are several working on criminal justice system issues, engaging in human rights monitoring, training, legal representation, advocacy and public education campaigns. Past participants in NGO training include judges, court clerks, police, and prisons officers.

Among the most active and influential NGOs in the justice sector are: (i) LICADHO, (ii) Adhoc; and (iii) Cambodian Defenders Project. Agencies such as ‘Friends’ (street kids) and ‘Gender & Development Cambodia’ also are key potential partners in addressing juvenile and gender justice issues. .

Lessons learned

The implementation of CCJAP II has led to the identification of a number of key issues and lessons that will be important in the rolling design and implementation of a future program of assistance. Key issues that should help inform the strategy for the next phase of assistance include the following:

Issue	Lesson and implications for future assistance
<p>Authorisation Levels: Availability of counterparts who are committed and authorised (or even see the need to) develop policy on a range of criminal justice issues, particularly those related to external engagement and service provision</p>	<p>The mainstreaming of initiatives (such as CPCS) within the broader strategic plans of RGOC offers a greater likelihood of sustainability but also increases coordination and integration challenges. There must also be a continued focus on initiatives that build police, court, government, and community trust. A revised problem analysis will need to refresh the list of underlying constraints to effective adoption of CPCS and other national agendas outside of Kandal. Opportunities to channel NGO and other donor efforts through new and existing structures will need to be examined during the mobilisation phase (and on an ongoing basis).</p>
<p>Pilots: The use of pilots has allowed CCJAP II to provide immediate support whilst still allowing for refinement of approaches based on practical experience.</p>	<p>Opportunities exist to use the pilot concept to introduce a range of new activities. Support for the development of alternative sentencing options, new crime prevention initiatives, and diversion programs (to name a few) exist.</p>
<p>Communication: It cannot be taken for granted that information provided at one level in RGOC will be passed upwards, shared horizontally, or cascaded downwards. In practice there is very little decision making power delegated to the lower levels of management. This is not only a product of hierarchy but appears also to be associated with ‘protection’ of information to generate real and perceived personal ‘power’ and for other ‘pecuniary’ benefit.</p>	<p>Collaboration across agencies is almost non-existent and should not be anticipated unless facilitated support is provided.</p> <p>CCJAP II has been seen as an ‘honest broker’ between agencies such as MOI and MOJ. Concepts, ideas and information must be targeted and ‘socialised’ slowly and repeatedly. ‘Marketing’ across the stakeholder spectrum should also be increased in the future and any future initiative must link the policy, strategy, and approval levels with the implementation and delivery levels.</p>
<p>Supply and Demand: There is very broad demand for assistance from CCJAP II, both in the actual delivery of its activities, but also as a source of donor ‘information’, as a point of informal criminal justice sector coordination and as a provider of assistance to other projects and missions.</p>	<p>The future program of assistance has the very real potential to play a valuable coordination role that would be respected by donors and criminal justice agencies alike. Inclusion of a Flexible Support Fund would be an effective and responsive mechanism for dealing with ad hoc requests for assistance between annual planning cycles. Expectation management and broad-based communications will need to be extended in the future and opportunities for donor collaboration and piloting of joint activities should be explored during the mobilisation phase. However this needs to also consider the mechanism for doing so in practice.</p>
<p>Institutional Capacity: Criminal justice institutions remain weak and with the exception of some individuals, technical skills in most disciplines are quite limited. Whilst building capacity in this regard was a fundamental purpose of CCJAP II, the capacity of counterparts to undertake new and unfamiliar functions or to participate in</p>	<p>Sound policy and planning for the introduction of program budgeting into the criminal justice agencies remains essential to ensure appropriate funding to justice sector institutions. Even if funding is not immediately forthcoming from RGOC, this initiative has the effect of fostering higher level thinking about linking outcomes to budgets, as evidenced in the</p>

Issue	Lesson and implications for future assistance
<p>broad conceptual debates requires constant reinforcement and ongoing investment of time and resources. Combined with poor systems, including little by way of strategic planning capacity, little accountability for outcomes, lack of professional development opportunities for staff, the lack of strategy and policy direction - leadership and management capacity will continue to challenge future initiatives.</p>	<p>Prisons Department and to a lesser extent in MOJ. An integrated strategy providing as much depth as possible will need to be built into the subsequent design (strategic planning links to budgets, budgets links to human resource management, human resource management links to performance, and so on). No outputs should be constructed as ‘stand alone’ interventions which are unrelated to others unless there is very good rationale.</p>
<p>Relationships: Relationship building with key stakeholders – inside and outside of the formal system - has proved to be time consuming but is recognised as critical to successful achievement of CCJAP I and II outcomes. Similar experiences have occurred with other ‘third party’ stakeholders.</p>	<p>Future activities must be paced to take account of the realities of the time it takes to build and then maintain relationships in Cambodia in order to successfully achieve outcomes, ownership and sustainability</p>
<p>Gender: Despite the provision of gender awareness training and CCJAP II efforts to encourage a greater involvement of women in meaningful justice sector roles, government agencies still tend to neglect this issue. Affirmative action, if agreed upon in the planning stages can assist in promoting gender equity and empowering women. There is also little evidence that the traditional role of women in policing is changing and that more women are deployed to support investigations involving women and children notwithstanding the considerable focus on this issue throughout CCJAP II.</p>	<p>Early commitment by senior RGOC stakeholders to specific gender initiatives should be inculcated into any future assistance. Nominations of senior males (where the power resides) should be sought from RGOC officials to champion mainstreamed gender initiatives.</p>
<p>Inter-Agency Issues: There are a range of ‘boundary’ issues which continue to go unresolved unless there is an ‘honest 3rd party’ to mediate. CCJAP II successfully facilitated an MOI-MOJ issues workshop in 2005 which resulted in moving forward on a number of stalled issues. Similarly the Police-Courts-Prisons (PCP) meetings supported by CCJAP II have been successful and continue to offer further potential for success. Integrating the PCP into government structures could provide a means of national extension of the concept.</p>	<p>With ongoing support and refinement the PCP concept could be expanded (eventually) to include non-government representatives. However experience has shown that whilst this appears to be an easy and cost-effective strategy for sectoral integration, planning and support to the PCP process, particularly in its early days (1-12 months) carries a significant time and travel overhead. Early identification of ‘cross-boundary’ issues needs to be undertaken and strategies developed with high level stakeholders during the mobilisation/design phase to address them.</p>
<p>Flexibility: Flexible annual planning has allowed CCJAP II to remain responsive and relevant in a rapidly evolving environment. This flexibility was only inhibited by the too rigid structure of the original Project Design Document - particularly the budget which had unit allocations projected for 5 years.</p>	<p>Flexible annual planning and annual budgeting should be a feature of future assistance.</p>
<p>Counterparts: Choice of counterparts is important. Counterparts (and advisers) need</p>	<p>The notion of counterpart payment should be revisited (with a view to removing it) and a more collaborative</p>

Issue	Lesson and implications for future assistance
<p>to be able to operate at both the policy/managerial and implementation/technical levels. CCJAP II has had mixed success with counterparts who in some cases after being nominated by RGOC have received counterpart payments for virtually zero input.</p>	<p>(GoA/RGOC) selection of future counterparts introduced. Also, increasing the span of future engagement beyond the notion of a single counterpart for each of the police, courts and prisons is important to leveraging future assistance.</p>
<p>Prison Overcrowding: Even with the best procedures, prison management regimes and good infrastructure, RCOG policy (effectively ‘zero tolerance’), is resulting in significant prison population growth (20+% in 2005) and further in 2006. Most prisons in the country are running 100%+ over capacity. MOI scrutiny (at very high levels) of judicial decisions and a directive from the Prime Minister to crack down on crime are apparently key reasons for (in some cases quite significant) increases in prison sentences, often for minor crimes</p>	<p>The subsequent project design will need to look seriously at the underpinning issues for the increase in custodial sentences and the options available through formal and informal systems to reduce the burgeoning prison population. The corrupt and inefficient appeals process provides no relief once a prison sentence is given and a focus on the appeals process should be a feature of future assistance.</p>
<p>Community Awareness: Not only do communities lack awareness of their rights, both police and communities need to be made aware that non-custodial sentences do not mean ‘get out of gaol free cards’. Many people perceive (often with extremely good reason) that release of a guilty party from court without prison is the result of corruption and they do not consider that there could be legitimate non-custodial (non-corrupt) options. Similarly the reintegration of prisoners into society requires community education to promote the prospects of being successful.</p>	<p>Any future focus needs to ensure, that both government officials and communities alike, either directly or via implementation partners such as NGO’s, are aware that there are legitimate non-custodial options available.</p>
<p>Continuity: The inputs of the majority of locally engaged staff are scheduled to end in early 2007 and this will be further reduced when staff takes accrued leave. Whilst retention of locally engaged staff will permit counterpart contacts and corporate knowledge of the CJS to be maintained, expectations of LES capacity needs to be tempered with reality. LES skills are quite variable and in some cases their capacity to step up to so called ‘technical assistant’ level is limited.</p>	<p>Expectations of the roles to be played by the current LES, if retained (which in many cases would be highly desirable for the future program of assistance), should be given careful consideration. Care also needs to be taken that any future intervention should not be ‘designed around’ any particular individuals who may leave at any time.</p>

Attachment 3 – Capital works strategy (summary)

“Capital Works” means built structures, and changes to structures. Examples might include a prison water supply, a community meeting room in a police station, new rooms for young witnesses or female victims in a courthouse, facilities for female offenders, or renovating an orphanage to serve as a centre for young people at risk.

The Capital Works program is part of the Flexible Support Facility. Within FSF’s overall AUD\$7.5m, no more than \$4.0m may be spent on Capital Works. This is to ensure a balance between Capital Works, which is always in high demand, and institutional development, which often involves more difficult decisions.

The process for allocating money for Capital Works is the same as allocating money from the FSF. However, Capital Works has additional conditions and support, because of the complexities and risks involved.

Each Component will prepare an “Implementation Menu”, consisting of the types of Capital Works that are suitable to supporting the Goals, Purpose of the Project, and the Focusing Themes of the Project, as well as the Objectives of the Component. For example, if the Prisons Department intends to roll out the policy of prisoner segregation, then the Implementation Menu will include all those works that are needed in a prison in order to manage segregation.

The starting point for the Implementation Menus will be the lessons learned from the Model Prison, Model Court, and the un-built Model Police Station. New models will have to be developed for Community Safety, for which no building work has yet been done.

Agencies within the Project’s target area will then be invited to submit expressions of interest to the FSF for proposals, including Capital Works. These will be given a preliminary assessment, and short-listed expressions of interest will be provided with training and support to put together a fully planned proposal. Some of these will then be selected for funding.

There will be a certain level of funding guaranteed to each Component, to ensure that every Component gets some practice and capacity building in doing this kind of work. However, the bulk of the funding will be competitively bid for by Agencies, with quality of proposal being the only criterion for funding.

Once funded, Agencies will be expected to sign a Grant Agreement, which spells out very clearly the conditions of the Grant. The conditions of the Grant are there to ensure the resulting works are of good quality, do the job that they were expected to do, and that the process of delivery provides good value for money, and is free of corruption. Release of funds to agencies will be tightly controlled, to ensure that projects are kept on track.

Two Project Officers have been assigned both to monitor compliance, and to provide advice and training to Agencies. During the implementation of the Grants, the Project Officers will provide, or arrange the provision of:

- training for Agency managers and staff
- design services from local firms
- training for contractors awarded work by the Agency
- regular monitoring and inspections
- resources for use by the Agency, such as manuals, form, standard contractor agreements, and quality checklists.

All work will be subject to independent audit at the end of each year.

It is anticipated that most of the Capital Works will be done in years 2, 3, and 4. Year 1 will be devoted to preparation, but will include 8-10 select projects, to test the system. Year 5 will be focus on wrapping up activities, compiling lessons learned, and implementing an exit strategy.

Each year will be divided into two phases: selection, planning and design during the wet season; construction during the dry.

In addition to the disbursement of FSF funds, the Capital Works program will also work to help the RoGC develop broader capital works policies and strategies, to help ensure that all capital work spending — not just from the FSF — is aligned with RoGC policies and priorities. The first step in this process will be the development of implementation menus. Later steps may include an audit of all facilities, determining a functional and sustainable size for the total inventory of built assets, and plans for both growing and maintaining the system.

Every time a building is designed and financed is an opportunity for managers to think through “why are we doing this” and “how will we operate”. By exploring these questions when planning each project, Capital Works activities can help managers refine their strategies and operational planning, and support the RoGC’s reforms.

Attachment 4 – Anti Corruption Strategy (summary)

Corruption Risk Assessments

Methodology:

The Corruption Risk Assessments (CRA) are focused on where weaknesses exist within specific sectors (crime prevention and community justice; law enforcement; courts; corrections and capital works) and institutions (judiciary, local government, police, courts administration etc.) that allow corruption to occur. It is an expert based self assessment that will rely on practitioners who know the sector best and who have long-term experience and first hand knowledge of the sector.

It will be conducted through:

- an examination of the steps that occur within the institutions or business processes
- a policy and procedure review for the sector that will identify gaps in the regulatory framework that provide opportunities for corruption
- a series of individual and group expert interviews with practitioners and specialists in the sectors (coming from governmental, non-governmental (including the private sector) and international agencies) that will identify where the possibilities for corruption exist within their sector
- these identified opportunities will be verified through a participatory process (discussions) with the governmental regulators/administrators for the sectors as well as other stakeholders.
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The main outputs of the diagnostics will be:

- an expert assessment of risks in the sector,
- a gap analysis of the procedures and regulations,
- a compilation of indicative questionnaire or checklist of the possible risks presence,
- a corruption risk management plan.
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Once a list of the opportunities for malfeasance (or gaps in the system) has been compiled, a number of drafting sessions (facilitated by an anti-corruption expert) will be conducted to formulate the indicative questionnaire. The checklist will give yes or no questions that indicate if the corruption risk exists in the examined institution. The questionnaire/checklist thus will serve as a benchmarking instrument which allows the measurement of corruption risk levels. It will be able to do this through the monitoring of changes (reductions or increases) to the prevalence of corruption risks or their mitigation.

After the initial assessment of corruption risks by the selected experts, further consultations will be held with other stakeholders such as civil society groups and international organizations. Additionally, sector and thematic experts including personnel of related Ministries/institutions will be conferred with throughout the assessment process. The RGoC counterparts will then be able to take the results of the CRAs and develop a Corruption Risk Management Plan (CRMP) to reduce the opportunities for corruption in their respective agency. These CRMPs will address the current administrative environment as well as any possible future risks. A comprehensive Corruption Risk Management Plan can serve as a public policy for the elimination corruption risks. The entire CRA process will allow a series of assessments to be conducted of the progress made in reducing corruption as well as showing weakness that still need to be addressed.

Implementation:

Corrupt practices can occur at any stage of the ‘flow of justice’ and each institution that will be assessed will first need to map out the chain of events during the ‘business process’ in the

area of interest/sector. For example: within the court system this would involve the entire arch of activities that occur between the opening of a case and its resolution.

Each of the individual components of CCJAP III: Crime Prevention and Community Justice; Police; Courts; Corrections and Capital Works will have its own Vulnerability to Corruption Assessment conducted and these assessments will examine where, when and how in the individual sector corruption risks occur. Additionally, the level of risk to the operations of the sector will be assessed and how this risk endangers the core function of the sector.

During the CRA, the participants will be asked to identify all the opportunities for corruption in their sector throughout each phase of the business process cycle. The Corruption Risk Assessment will be conducted in the following manner:

Identification Phase

- Beginning with an internal (i.e. CCJAP III staff) group of experts and lead by a facilitator (expert in corruption risk assessments) interviews will be conducted to gather an initial 'snapshot' of the opportunities for corruption in the sector. During this stage a member of the internal team may be trained to work with the facilitator (corruption risk expert) for the additional stages.
- Following on these initial lists of vulnerabilities in the sector; the facilitator will gather together groups (between 4 to 10) of sector experts/practitioners who will be drawn from governmental, non-governmental, private sector and international organizations to formulate a complete list of opportunities for corruption within the sector and covering the entire cycle of operations in the sector. Those interviewed will be selected on the basis of the in-depth knowledge and first-hand experience of the sector.

As an example: within the police there are a significant number of factors that lead to opportunities for corruption. These can include 'constant' factors within policing, including discretion, low visibility, peer group and managerial secrecy, status problems and association with lawbreakers or a number of 'variable' factors, including the community environment, the police organisation, legal opportunities for corruption, corruption controls, the social organisation of corruption, and 'moral cynicism'¹⁴.

- In a parallel process a sector expert will analyze the business process, policies and procedures for the Institution/Agency/Ministry to identify gaps within the regulatory framework that allow corruption to occur.
- Once individual sessions of the various groups have been conducted a fairly complete list of opportunities for corruption within the sector will exist. This should be analyzed and those opportunities which all stakeholders agree to should be incorporated into a single list. Divergent points should be discussed and either incorporated or dismissed at joint meetings of all stakeholders.

Indicative Questionnaire/Checklist

- Once the opportunities for corruption in the sector are identified, the corresponding indicative questionnaire (checklist) will be developed in order to provide a self assessment tool for the relevant agencies working in the sector. This should be done

¹⁴ Joel Miller. Police Corruption in England and Wales: An assessment of current evidence Home Office U.K. November 2003

in close cooperation with the relevant Ministries/agencies so that the methodology is internalized within the agency.

- This questionnaire will be used in a separate exercise with selected relevant Government personnel and other sector specialists who have not been involved in its development. The resulting completed questionnaire combined with analysis and the business process review of policies and practices will constitute the Corruption Risk Assessment (CRA).

Corruption Risk Mitigation Plan

- Once the CRA is completed a detailed Corruption Risk Management Plan (CRMP) that outlines the steps necessary to mitigate the identified opportunities for corruption will be developed in cooperation with relevant authorities from the sector.
- This CRMP will be undertaken by those authorities that will be responsible for implementing the systems corrections that will prevent corruption.

Timeframe and Sequencing

- The Diagnostic Phase (Corruption Risk Assessments) of the CCJAP III Anti-Corruption Strategy should be conducted at the beginning of the Project in the first year 2007 – 2008.
- Each sector CRA will take between 2 – 3 months depending on the complexities of the operations in the sector.
- The Corruption Mitigation Plans will be dependent on the schedule and level of input of the officials and experts who develop it.
- The CRAs can occur concurrently or sequentially depending on the Project priorities not necessarily on the ‘flow of justice’. For example, if corrections are deemed to be an entry point then they can be undertaken first instead of prevention or law enforcement.
- The timing of the initial CRA will be preceded by a significant amount of sensitization among all the stakeholders especially the Government counterparts.