



**Australian Government**

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## Cambodia Case Study

EVALUATION OF AUSTRALIAN LAW AND JUSTICE ASSISTANCE



DECEMBER 2012



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**Marcus Cox**

**Ok Serei Sopheak**

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For further information, contact:

Office of Development Effectiveness

AusAID

GPO Box 887

Canberra ACT 2601

Phone (02) 6206 4000

Facsimile (02) 6206 4880

Internet [www.ausaid.gov.au](http://www.ausaid.gov.au)

[www.ode.ausaid.gov.au](http://www.ode.ausaid.gov.au)

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## Abbreviations

AFP	Australian Federal Police
AusAID	Australian Agency for International Development
CCJAP	Cambodia Criminal Justice Assistance Project
CNP	Cambodian National Police
CPP	Cambodia People's Party
ECCC	Extraordinary Chambers in the Courts of Cambodia
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
ICRC	International Committee of the Red Cross
NGO	Non-government organisation
ODE	Office of Development Effectiveness
RGC	Royal Government of Cambodia
SNDD	National Program on Sub-National Democratic Development
TB	Tuberculosis
UN	United Nations
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund

## Executive summary

This case study of Cambodia forms part of a thematic evaluation by the Office of Development Effectiveness of Australian law and justice assistance. The objective of the evaluation is to assess the relevance and effectiveness of current Australian Government strategies and approaches to this important area of the Australian aid program, and to identify lessons to inform future programming choices. The evaluation also aims to promote improved coherence among the various Australian Government agencies involved in providing law and justice assistance (including AusAID, the Australian Federal Police, the Attorney-General's Department and others) by contributing to a shared understanding of the role that law and justice assistance plays within the Australian aid program.

This is one of three country case studies being conducted as part of the evaluation, alongside Indonesia and Solomon Islands. The case studies were selected in consultation with the relevant Australian Government stakeholders to reflect a diversity of country conditions. The evaluation was conducted during a 2-week mission to Cambodia from 24 January to 5 February 2011.

### **The national context**

Cambodia offers a unique and complex environment for providing law and justice assistance. It emerged in the early 1990s from two decades of conflict and genocide with its justice institutions almost entirely destroyed. The subsequent 20 years has seen a long and often slow process of postconflict state building. Cambodia's political system has been described as a 'one party plus' system: there is enough political openness to allow for competitive elections, but the ruling party has succeeded in absorbing or splintering its main rivals. The ruling party's success in 'winning the peace' has improved the law and order situation by reducing the level of political violence, but greater stability has come at the expense of tight control by the ruling party over all branches of government, including the judiciary. This control is exercised through complex systems of patronage that dominate the formal institutions and make reform very difficult to achieve.

Cambodia's law and justice institutions emerged from the conflict with low status and little capacity, with only a handful of trained lawyers left in the country. Improvements since then have been gradual. There are still significant gaps in the legal framework. Rent-seeking within the justice system is rife, with public opinion surveys regularly ranking the judiciary as among the most corrupt institutions in the country. The Cambodian National Police has taken some visible measures to reduce criminality within its ranks, but still act as a servant of the regime rather than the public. Both the judiciary and the police are reported to support the political elite in ventures such as land seizure and illegal logging. The prison system has proved to be the most open to reform, but is constrained by inadequate budgets, poor infrastructure and a growing problem with overcrowding. Overall, international ranking systems put Cambodia in the bottom 20 per cent of countries for rule of law.

## **Achievements of the Australian assistance**

Australia has been providing assistance to the criminal justice system in Cambodia since 1997, through three phases of the Cambodia Criminal Justice Assistance Project (CCJAP), some support to civil society organisations and a range of activities by the Australian Federal Police and the Attorney-General's Department on transnational crime. Australia is also the second-largest funder of the Khmer Rouge Tribunal. The bulk of the assistance has been a 'systemic approach' to supporting criminal justice through parallel support to the judiciary, police and corrections system, together with assistance for implementing a national reform strategy for the justice system as a whole. The assistance has included a substantial capital works program and a Flexible Support Fund which provides funding for new initiatives by counterparts and non-government organisations (NGOs).

The effectiveness of the assistance has varied substantially across different components. The work with the corrections system has been the most impressive. The General Department of Prisons has proved to be an excellent counterpart, with a genuine interest in developing a modern corrections system. The Australian assistance has provided an effective combination of support for top-down reforms processes, practical problem-solving and carefully targeted capital investments. Investments such as developing new security fencing in partner prisons have delivered excellent value for money, enabling the prisoners to spend much more time out of their cells, with immediate benefits for their physical and mental health. CCJAP has also helped improve the services offered to prisoners, including health, education, legal aid, counselling and rehabilitation. Overall, there has been good progress towards the goal of reducing human rights violations and protecting the vulnerable within the corrections system.

By contrast, the work with the judicial system has made little progress. The centrepiece of the assistance has been an attempt to develop a number of 'model courts' as a testing ground and showcase for judicial reform. However, ownership of the initiative among the counterparts has been patchy and implementation has been beset by difficulties. The work with the Cambodian National Police, delivered by the Australian Federal Police, presents a mixed picture. A number of capacity-building initiatives, including training in forensics, are yet to make a measurable impact on the quality of policing services. However, there has been recent progress on developing a national system of crime statistics and piloting a new policy on community safety.

The most innovative aspect of the assistance has been a series of small-scale pilot activities on crime prevention and community safety. CCJAP has been providing small amounts of funding to partner districts to implement local initiatives on community safety and gender equality, with the activities identified by the communities themselves through a participatory planning process and implemented by local authorities, police and communities working in partnership. There have been initiatives on drug and alcohol addiction, human trafficking, child rights and domestic violence, as well as vocational training for youth in conflict with the law. Early monitoring and feedback from local communities suggest that these pilots have produced some impressive results, helping to improve relations between police and the community, increase the community's capacity to manage conflict and even reduce the severity of domestic violence. The assistance has been integrated into the Royal Government of Cambodia's (RGC)

decentralisation and local democratisation program, which provides an avenue for scaling up the pilots in the future.

## **Conclusions and recommendations**

Australia's experience with 14 years of criminal justice assistance in Cambodia presents some clear lessons as to what is achievable in a difficult political environment. Many of the higher level objectives in the law and justice agenda—such as creating an independent judiciary or a democratic and accountable police service—run counter to the fundamental interests of the ruling party and are unlikely to progress. However, progress has proved possible in areas like prison reform, where there is a willing counterpart and no strong political interests at stake. The RGC has also shown an interest in improving relations between the state and local communities and in acquiring the capacity to manage emerging social problems like youth delinquency. While this may seem a fairly modest agenda, it is nonetheless a significant one in the Cambodian context. The criminal justice system is the sharp end of relations between the state and the citizen and improving the way it interacts with communities is an important part of postconflict state building. Most observers would agree that, for the foreseeable future, the best prospects for improving governance in Cambodia come not from major changes to the political system, but from the desire of the ruling party to legitimise itself by becoming more responsive to the needs of its constituents. Through its law and justice assistance, Australia is well positioned to contribute to that process of political evolution. It has, however, taken a long time for AusAID to identify a viable law and justice agenda for Cambodia. Greater political analysis was required at the outset to identify the potential for change.

In the Cambodian context, ambitious institutional reforms and capacity-building programs have not proved very productive, in the absence of either political support or strong managerial capacity. Some of the change processes promoted by CCJAP, particularly the model courts, were too sophisticated for the counterparts to manage. More fundamentally, they assumed that a lack of institutional capacity was the binding constraint on improving the justice system. In fact, the constraints are largely political and there is no reason to believe that capacity building alone will improve the quality of justice services delivered to the public. A better approach in the Cambodian context is to look for opportunities to support incremental change. The most successful elements of CCJAP have been where the project has worked with its counterparts to resolve practical issues around service delivery and access to justice, and then looked for ways to institutionalise the solutions. We would recommend that this be the primary way of working in the future. Another useful approach would be to focus on thematic issues—such as reducing prison overcrowding or promoting juvenile justice—that require cooperation among the different law and justice agencies, to promote a cohesive justice system around the resolution of concrete problems.

CCJAP has demonstrated some positive learning around the integration of capital investments into law and justice assistance. An earlier phase of the project invested heavily in a model court and model prison, ostensibly as demonstration projects. However, they were built to such a high standard that the lessons they generated were not readily applicable to the broader Cambodian context. The gap between the model prison and the rest of the corrections

system also caused significant distortions. CCJAP then shifted to funding renovations or additions to existing facilities with a much lower unit cost. These proved much easier to link to institutional change processes, and delivered much better value for money.

The evaluation team recommends that Australia continues to provide law and justice assistance to Cambodia, making use of the comparative advantage it has built up, but with substantial differences in emphasis. We suggest that the focus should be on the interaction between the justice system and the public and addressing practical constraints on the delivery of justice services, rather than top-down institutional reforms or capacity-building initiatives. Rather than working with the different law and justice agencies in separate components, we recommend that future assistance be organised along thematic lines, focusing on areas that (a) offer direct benefits to poor communities and vulnerable individuals, (b) have the potential to attract government ownership and leadership, (c) build on the achievements of CCJAP III, and (d) offer the potential to promote collaborative working across the law and justice agencies. Three such themes have emerged from CCJAP III:

1. justice in the community, focusing on crime prevention and community safety, community policing, legal aid for the poor and community education
2. addressing prison overcrowding including through non-custodial sentencing, bail arrangements and legal services to prisons, and improving prison conditions through systemic reforms and improvements in facilities
3. strengthening the collection and use of data within the justice system, to promote an understanding of how data can be used to improve service delivery. Investing in data systems can also make a significant contribution to identifying and improving the experiences of women and children within the justice system.

# 1. Introduction

This case study of Australia's support for law and justice in Cambodia was undertaken as part of a thematic evaluation by the Office of Development Effectiveness (ODE) of law and justice assistance within the Australian aid program. The objective of the evaluation is to assess the relevance and effectiveness of current Australian Government strategies and approaches to law and justice assistance and to identify lessons to inform future programming choices. The evaluation also aims to promote improved coherence among the Australian Government agencies active in the area by contributing to a shared understanding of the nature and role of law and justice assistance in the Australian aid program.

This is one of three country case studies being conducted as part of the evaluation, alongside Indonesia and Solomon Islands. Each country case study examines the full range of Australian Official Development Assistance in the law and justice field to the country in question.

The evaluation team for the Cambodia case study consisted of Marcus Cox and Ok Serei Sopheak,<sup>1</sup> with support from Glyn Lewis of the Australian Federal Police (AFP), Tanya Pridannikoff, Law and Justice Manager from AusAID Canberra and Samantha Keech-Marx, ODE Evaluation Manager. The research was carried out during a 2-week mission to Cambodia between 24 January and 5 February 2011. It included key informant interviews with AusAID, the AFP, Cambodia Criminal Justice Assistance Project (CCJAP) staff, all the relevant counterpart agencies, other donors and civil society representatives. Various team members conducted provincial visits to Kratie, Kampong Cham, Kampong Chhnang, Pursat, Battambang, Bantey Meanchey and Prey Veng, visiting provincial governments, provincial police headquarters, local police posts, courthouses and prisons, including both beneficiary and non-beneficiary agencies of Australian Government law and justice support. A focus group discussion was held with a small group of law professors, practising lawyers and civil society representatives. The case study also includes a review of documentation and results data produced by the project.

## Box 1: The Office of Development Effectiveness

Established in 2006, ODE reports directly to the Director General of AusAID as Chair of the Development Effectiveness Steering Committee, an inter-departmental oversight committee for Australian aid. ODE's primary role is to monitor the quality and evaluate the impact of Australian aid. It undertakes in-depth evaluations of selected country programs and thematic areas. Its findings are used to guide the design and management of aid programs, to inform aid allocation decisions within a growing aid budget and to inform the wider community of Australia's contribution to international development and poverty reduction.

[www.ode.ausaid.gov.au](http://www.ode.ausaid.gov.au)

The case study is organised as follows. Section 2 looks at the national context and the state of the Cambodian law and justice sector. Section 3 provides an overview of Australian law and justice assistance. Section 4 considers the relevance and coherence of Australia's objectives in

<sup>1</sup> Other Cambodian experts were involved with the study, but have asked that their names not be used in this report.

the sector. Section 5 reviews the assistance strategies that have been used, and assesses how effective they have been in producing the intended outputs. Section 6 assesses to what extent the assistance has produced sustainable results for the beneficiaries. Section 7 considers whether the activities have been efficiently delivered and whether they represent value for money. Section 8 assesses whether the cross-cutting policy objectives in Australia's aid program (gender equality, HIV/AIDS, disability, anti-corruption) have been pursued adequately. Section 9 summarises the findings and offers some recommendations.

## 2. Country context

### 2.1 State building in Cambodia

Cambodia emerged in the early 1990s from two decades of conflict and genocide with its institutions and infrastructure largely destroyed and almost an entire generation of educated people lost. The institutional vacuum has been gradually filled through the rebuilding of the state and its institutions, including the legal system. Although it is now 20 years since the Paris Peace Accords, the complex dynamics of the postconflict state-building process continue to shape Cambodia's development path.

Cambodia's political system has been described as a "one party plus" system.<sup>2</sup> There is enough political openness to allow for competitive elections, but there is no immediate prospect of a successful challenge to the ruling Cambodia People's Party (CPP). In the early postconflict period, the CPP was forced into a series of unwieldy power-sharing arrangements with its political rivals, while retaining control of key institutions like the security services. Political competition during this period was marked by widespread political violence. In advance of the 1998 elections, however, the Constitution was amended to allow governments to be formed with a simple majority in parliament, rather than the enhanced majorities required under the Paris Accords. This changed the political dynamic, allowing the CPP to gain a monopoly on power by splintering and absorbing its rivals. Ironically, the CPP's success in "winning the peace"<sup>3</sup> has considerably improved the law and order situation. Political violence has declined and the CPP has moved to secure its long-term position through more legitimate and sustainable means—amounting to a shift to 'rule by law', rather than lawlessness. However, this stability comes at the expense of tight control by the ruling party over all branches of government, including the judiciary.<sup>4</sup>

Patronage has been central to the post-war development of the Cambodia state. In the postconflict environment, rapid inflation rendered official salaries almost worthless and rent-seeking became the main source of remuneration. In a heavily divided society with little reason for loyalty to the state, patronage provided the 'glue' that held the public administration together. Patron-client relations have become highly institutionalised, creating parallel systems to which the formal administration is subordinate. The state allocates economic opportunities around the privatisation of state assets, land concessions, logging and public works contracts to senior officials and military leaders in exchange for their allegiance. Interests in illegal logging are said to be connected to the very highest levels of the state.<sup>5</sup>

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<sup>2</sup> USAID, "Political competitiveness and civil society assessment", December 2008, p. 3.

<sup>3</sup> Craig, D. & D. Porter, "Winning the peace: re-institutionalising conflict in Cambodia's politics and governance", Paper for Oxford University *Workshop on critical approaches to post-conflict policy: post-conflict development or development for conflict?*, July 2008.

<sup>4</sup> According to one source, CPP parliamentarians sign undated resignation letters before taking up their seats: Calavan, Michael, Sergio Briquets & Jerald O'Brien, "Cambodian corruption assessment", USAID, 2004.

<sup>5</sup> Global Witness, "Cambodia's family trees: illegal logging and the stripping of public assets by Cambodia's elite", June 2007.

Within the administration, most officials continue to receive less than a subsistence wage<sup>6</sup> and officials survive through second jobs and/or corrupt practices. A wide range of posts, from primary school teachers through to judges, can be purchased for a price determined by the rent-seeking opportunities they offer, locking the incumbents into a cycle of debt and obligation from which it is very difficult to escape. While there are competent and motivated public servants, their ability to function independently depends upon access to income from other sources.

The patronage system works against institutional change. From the outside, the regime appears monolithic, with a high concentration of power at the centre and numerous resources at its disposal for resisting challenge. Inside, however, factional struggles are intense and powerful figures must constantly work to build and maintain the alliances on which their authority depends. They have little choice but to turn a blind eye to malpractice within their networks. Reforms that would challenge the system—e.g. public sector pay reform, transparent budget processes, accountable public financial management or an independent judiciary—meet strong resistance. Accountability institutions like the Anti-Corruption Commission may do some good at the margins, but they are working against the logic of the political system. While there have been some high profile prosecutions, informed observers believe they are usually the result of factional power struggles, rather than a genuine attempt to change the system.

The patronage system does not entirely block Cambodia's development prospects. In the decade 1997–2007, Cambodia achieved high levels of growth, with per capita incomes increasing at an average of 7.6 per cent per annum. This strong economic performance was due to a reduction of political instability, a stable macroeconomic environment and reintegration with the global economy, leading to rapid expansion of the garment and tourist industries and a major construction boom.<sup>7</sup> Poverty rates fell from an estimated 47 per cent in the mid-1990s to 30 per cent in 2007. There has been progress towards some of the Millennium Development Goals, particularly on infant and child mortality (a 30 per cent reduction between 2000 and 2005), and Cambodia is on track to achieve universal primary school enrolment, although completion rates and quality standards are low. However, nearly half of all children below the age of 5 are underweight, and maternal mortality is among the worst in Asia (472 per 100 000 live births). Only 42 per cent of the population has access to safe drinking water and only 16 per cent to adequate sanitation.<sup>8</sup> Overall, Cambodia remains at 124 of 169 countries on the 2010 United Nations Development Programme's (UNDP) Human Development Index.<sup>9</sup>

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<sup>6</sup> In 2006, Freedom House reported that civil service salaries are typically less than 20 per cent of a living wage, making corruption essential for survival: Freedom House, "Cambodia at the crossroads", 2006.

<sup>7</sup> World Bank, "Cambodia: sustaining rapid growth in a challenging environment – country economic memorandum", January 2009.

<sup>8</sup> Royal Government of Cambodia, "National strategic development plan 2006–2010", Phnom Penh, 2006, p. 39.

<sup>9</sup> <http://hdr.undp.org/en/reports/global/hdr2010/>

Because economic opportunities are linked to connections with the state, the benefits of economic growth are distributed very unevenly. Control of land has become a major source of inequality. Since private property rights were granted to the rural population in 1989, Cambodia has gone from a very equal distribution of land to highly unequal, with the poorest 40 per cent of the population occupying only 10 per cent of the land.<sup>10</sup> The elites have taken advantage of insecure, informal tenure arrangements<sup>11</sup> to dispossess the rural poor, particularly around the major urban centres, leading to a rapid social stratification.

There has nonetheless been progress in areas like extending basic health and education services, where the political environment is permissive. Progress has generally come from tightly controlled donor programs, which provide additional financial benefits to motivate the participation of public servants. There is also a uniquely Cambodian system of development, where business people who have benefited from CPP largesse are expected to return the favour by sponsoring local development projects (e.g. schools, roads, irrigation schemes, pagodas) in rural electorates loyal to the CPP, particularly during pre-election periods.<sup>12</sup> These projects, which in aggregate are thought to far outstrip development spending by the state, help to shore up the support base of the CPP.<sup>13</sup>

Semi-authoritarian political systems of the Cambodian type can be very durable and there is little prospect of serious challenge to the authority of the CPP in the short to medium term. However, neither is the system static. With the consolidation of power by the CPP, some analysts have seen a shift towards a more populist or mass-based form of patronage, where the CPP seeks to cement its position as benefactor of the Cambodian people. The most visible forms of corruption and predatory behaviour, particularly at local and provincial levels, have become a political embarrassment and are gradually being curtailed. The CPP has reportedly made efforts to clean up local politics by marginalising its most notorious local leaders. Similar changes are visible within the Cambodian National Police (CNP), which not long ago was allegedly linked at high levels to criminal enterprises, but now has a much more progressive leadership with an evident desire to improve the public image of the force.

The shift to mass-based patronage provides the political logic for the most ambitious governance reform currently underway in Cambodia—decentralisation and local democratisation, known as the National Program on Sub-National Democratic Development (SNDD). The Royal Government of Cambodia (RGC) is in the process of shifting a large share of

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<sup>10</sup> Hughes, Caroline, "Good governance reform in Cambodia" in *The elephant in the room: politics and the development problem*, Conference proceedings, Asia Research Centre, Murdoch University, Perth, Australia, 13–14 December 2010.

<sup>11</sup> The World Bank has a major land titling project that was cancelled by the Royal Government of Cambodia (RGC) in 2009 following objections by NGOs to continuing malpractices in the land sector which the World Bank project had been unable to address: World Bank, "Management report and recommendation in response to the inspection panel investigative report – Cambodia land administration project", January 2011.

<sup>12</sup> This is known as the 'meritorious benefactor' (in Khmer, *saboraschon*) system: DFID, "Cambodia country governance analysis", January 2009 update.

<sup>13</sup> Hughes, Caroline, "Good governance reform in Cambodia" in *The elephant in the room: politics and the development problem*, Conference proceedings, Asia Research Centre, Murdoch University, Perth, Australia, 13–14 December 2010, p. 73.

its functions and budgetary resources down to local level,<sup>14</sup> in an apparent attempt to make government more responsive to the electorate. In 2007, the first elections were held for commune, district and municipal councils (provincial governors continue to be appointed by the executive). Communities are now being given more say in resource allocation through participatory planning processes. This is a limited form of democratisation; it allows public input into some pre-defined issues, without opening up space for political competition. Nonetheless, informed observers see it as a significant step in the state-building process, with unpredictable results over the longer term. It is also a complex reform to implement in a system with limited capacity to absorb change. For all these reasons, decentralisation makes it less likely that the ruling party will risk compromising its levers of power through other governance reforms, such as reforming public financial management, the public administration or the judiciary.

## 2.2 Law and justice in Cambodia

The law and justice system in Cambodia is an unusual mixture of sources and influences. In traditional Cambodian society, communities were highly self-reliant, and the state played a limited role in dispute resolution and maintaining law and order. As Broadhurst writes:

*“Traditional concepts of order and authority are contextualised in patron–client relationships within a communitarian society governed by the ideals of Buddhist conduct. Peacekeeping and crime prevention are not usually externalised as activities of agencies such as the police, but remain, at least in rural areas, in the domain of village and commune chiefs. Social order and peacekeeping functions through social gossip, natural surveillance, reciprocal relations based on kin and village and long-standing practices of mediation and reparation. Only the most serious criminal matters gravitate to district and provincial centres and, therefore, to outside scrutiny.”<sup>15</sup>*

During the colonial period (1863–1953), the French legislative and judicial systems were introduced, and elements of civil law (such as investigative judges) have continued through to the present. However, the colonial institutions were thoroughly destroyed by the Khmer Rouge, who abolished courts, converted the buildings to other purposes and killed or displaced a large majority of lawyers and professional people. During the Vietnamese occupation, the courts were re-established and attempts were made to introduce Soviet-style concepts of socialist legality. However, the Cambodian state proved too weak to implement the more ambitious parts of the communist agenda, such as the collectivisation of farms. Following the Paris Peace Accords, the United Nations (UN) administration was confronted with a major vacuum in laws and legal institutions. Many key pieces of legislation (including criminal laws

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<sup>14</sup> In rural areas, provinces are divided into districts, communes and villages. In urban centres, the municipalities are divided into wards (*sangkat*).

<sup>15</sup> Broadhurst, Rod & Thierry Bouhours, “Policing in Cambodia: legitimacy in the making?”, *Policing and Society*, 19:2, 174–190, p. 175.

and procedures, family law and the law on property rights) were adopted by decree<sup>16</sup> prior to the first election in 1993. Since then, donors have invested considerable sums in legislative development, with Japan supporting new Civil and Civil Procedure Codes and France supporting the Criminal and Criminal Procedure Codes. However, developing new legislation in Cambodia is a slow process, and there are still many gaps to fill.

The law and justice agencies emerged from the conflict with low status and little capacity. Few judges had full legal training; according to one account, there were only five fully trained lawyers in Cambodia in 1992.<sup>17</sup> The judiciary has no jurisdiction to review legislation, and remains tightly controlled by the executive through the Supreme Council of Magistracy. In cases where the ruling party has a direct interest, such as land cases or criminal defamation against political opponents, outcomes are reportedly directed by the executive.<sup>18</sup> In 2003, the salaries of judges and prosecutors were increased substantially, making them among the most highly paid public servants. However, rent-seeking remains endemic, with judges and prosecutors paying to enter the profession and secure the most lucrative postings. Petty corruption is also rife. Court procedures are cumbersome and non-transparent, and court clerks extract payments from litigants to move cases forward. Public opinion surveys regularly rank the judiciary as among the most corrupt institutions in the country.<sup>19</sup>

There is no national legal aid system in Cambodia. According to a recent survey,<sup>20</sup> there are 109 lawyers offering legal aid services in Cambodia, mostly on a part-time or occasional basis. The largest program is operated by the Bar Association with support from the French-funded *Advocats Sans Frontières*,<sup>21</sup> in which 22 private lawyers receive a retainer of US\$400 to take on 3–10 pro bono cases per month. Other legal aid services are provided by non-government organisations (NGOs) with donor funding. Geographical coverage is mainly limited to the major cities and remote areas are poorly serviced.

Policing capacity is gradually improving, against a low base. Following the 1991 Paris Peace Accords, conflict among Cambodia's warring parties continued until 1997. Local military and police commanders acted with impunity in the territories under their control, engaging in various rent-seeking activities like illegal logging. During this period, the ready availability of weapons led to high rates of political violence and violent crime, including extra-judicial killings by police.<sup>22</sup> Since the 1998 elections, law and order has been restored and the number

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<sup>16</sup> Decrees were adopted by UN Transitional Administration in Cambodia (UNTAC), on the advice of a 4-member Supreme National Council.

<sup>17</sup> Donovan, Dolores, "Cambodia: building a legal system from scratch", *The International Lawyer*, 27:2, Summer 1998, 445–454, p. 445.

<sup>18</sup> According to the 2006 Bertelsmann Index, political interference affected 30 per cent of cases filed at the Phnom Penh Municipal Courts: [www.bertelsmann-transformation-index.de/121.0.html?L=1](http://www.bertelsmann-transformation-index.de/121.0.html?L=1).

<sup>19</sup> Centre for Social Development, "Report on corruption perception barometer (CPB)", November 2005.

<sup>20</sup> Cambodian Human Rights Action Committee, "Legal aid services in Cambodia: report of a survey among legal aid providers", November 2010.

<sup>21</sup> The RGC also contributes around US\$50 000 per annum.

<sup>22</sup> As late as 1998, 32 per cent of homicides reported in the press were committed by the security forces, militia or vigilantes: Broadhurst, Rod & Thierry Bouhours, "Policing in Cambodia: legitimacy in the making?", *Policing and Society*, 19:2, 174–190, p. 179.

of small arms in circulation has reduced substantially. While the security forces remain fundamentally in the service of the regime rather than the general public, their behaviour has modified substantially. However, the police remain poorly trained and equipped, with very little budget for operations. Local police have very little fuel for their vehicles. They tend to remain in their posts until a criminal matter is reported to them, when the person bringing the complaint is expected to contribute to the cost of the investigation. In keeping with Cambodian traditions, police often treat minor crime as a civil matter, negotiating restitution between the parties and taking a small cut of the compensation payment. Where more serious criminal matters are brought to court, prosecutions are typically based on confessions, rather than physical evidence. While evidence from forced confessions is inadmissible in court, the heavy reliance on confessions continues to raise human rights concerns.

At the beginning of the Australian assistance, the Prisons Department was a section of the CNP, staffed by police officers without special training. Prisons were treated solely as places of incarceration, with no correctional role. Many of the facilities dated back to the colonial era, and lack of effective security meant that prisoners were confined in their cells for upwards of twenty hours a day.<sup>23</sup> However, inhumane conditions in the prisons were widely considered as appropriate by the Cambodian public, which continues to expect prisoners to be treated harshly as punishment for their crimes. Prison guards are now regarded as a separate occupation, but are trained in and by police academies. With extensive assistance from Australia, the General Department of Prisons has introduced a wide range of reforms designed to develop a modern correctional system, including improving living conditions and services for prisoners and their families. As a result, the human rights situation has improved significantly. However, the scope for reform is constrained by inadequate budgets and infrastructure, and prison overcrowding has substantially increased, which threatens the progress to date.

Overall, composite governance indicators suggest that Cambodia remains in the bottom 20 per cent of countries globally for rule of law.<sup>24</sup> The trajectory shows gradual improvement until 2000, followed by a declining trend until 2006, and then more recently a slightly positive trend. Indicators on control of corruption show a steadily declining trend from 2000 to 2009 (the long-delayed adoption of an Anti-Corruption Law in 2010 is not yet reflected in the data). These indicators average out a number of distinct trends: a steady improvement in law and order as armed conflict was brought to an end and access to weapons reduced; a reduction in impunity and overtly predatory behaviour by police and security forces; an increase in dispossession of property; a lack of protection of civil and political rights; a tightening of executive control over the judiciary; and continuing high levels of corruption within the justice system.

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<sup>23</sup> CCJAP Phase I Project Completion Report noted that the average prisoner spent 3.3 hours each day out of the cell.

<sup>24</sup> World Bank Institute, "Worldwide governance indicators: country data report for Cambodia, 1996-2009": <http://info.worldbank.org/governance/wgi/pdf/c118.pdf>.

## 3. Overview of Australian law and justice assistance

### 3.1 AusAID Cambodia Criminal Justice Assistance Project

Australia has been providing assistance to the criminal justice system in Cambodia since 1997, through three phases of the Cambodia Criminal Justice Assistance Project (CCJAP). All three phases involved assistance to the police, courts and prisons, with a combination of technical advice, capacity development and capital works, focused on partner provinces.

**CCJAP Phase I** ran from April 1997 for 4.5 years at a total cost of A\$12.6 million, with the goal ‘to improve operational, managerial, institutional and human rights conditions within the criminal justice system of Cambodia’. It provided support to the Judicial Police (police officers responsible for criminal investigations) to promote greater professionalism and efficiency, and to improve respect for human rights. It worked with courts on accountability systems around arrest, detention and imprisonment. It worked with the Prisons Department to improve prison management and systems, treatment of women and juvenile prisoners and health services. It also supported the separation of the prison system from the CNP and its establishment as a General Department within the Ministry of Interior. It funded capital works in four provinces, including two new police stations, a new courthouse, accommodation for women and children in five prisons and a new prison training school, at a total cost of A\$1.6 million. The Project Completion Report concludes that the project helped alleviate some pressing humanitarian concerns within the justice system, but made little overall contribution to sustainable development of the justice system. However, it also noted that this was understandable given the unstable environment in which the project was delivered.

**CCJAP Phase II** was a 5-year project running from May 2002, with a budget of A\$18 million. While still concentrated on criminal justice, the focus shifted slightly from human rights to access to justice, with the purpose ‘to strengthen the capacity of the RGC’s criminal justice system, in partnership with civil society, to more effectively provide equitable access to justice’. It brought crime prevention and community safety activities, as well as working with the formal justice system. It tightened the geographical focus, working mainly in Kandal Province, where it constructed a model court and model prison. The capital works provided an opportunity to work with the General Department of Prisons on the development of a new ‘prison model’. However, by the end of the project the new prison was already experiencing considerable overcrowding, ‘partly due to prisoners bribing their way into what is clearly considered to be the country’s best correctional facility’.<sup>25</sup> The construction of a model court was not clearly linked to judicial reform. The project produced a number of outputs, such as a new courts handbook, but without lasting impact on judicial conduct. A plan to introduce non-custodial sentencing made no headway. There was extensive training and capacity

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<sup>25</sup> AusAID, “Cambodia Criminal Justice Assistance Project CCJAP II: independent completion report”, July 2007, p. 8.

development with the CNP, much of it focused on basic investigative techniques and respect for human rights, but the Project Completion Report concluded that there was “little evidence that much has changed in terms of policing practices or attitudes”.<sup>26</sup> A pilot of crime prevention and community safety activities in Kandal working with communities and ‘at risk’ youths attracted strong support from both communities and the provincial authorities, and was considered a good foundation for future crime prevention work.

During Phase II, the RGC produced a Legal and Judicial Reform Strategy. **CCJAP Phase III** was therefore designed to align with that strategy, supporting three of its seven objectives.<sup>27</sup> CCJAP Phase III is a 5-year project running from February 2007 with a budget of A\$30 million. Its purpose is ‘to support the RGC 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’. It continues to work with all the main agencies in the criminal justice system, focusing its activities in six target provinces. Like Phases I and II, CCJAP Phase III is delivered by a managing contractor, but with the AFP providing an adviser for the policing component. The project is structured around five substantive components, together with a capital works program, as follows.

1. **Component 1** supports the capacity of the **Council on Legal and Judicial Reform** and its General Secretariat to coordinate implementation of the Legal and Judicial Reform Strategy. Its activities include producing a planning manual for law and justice institutions, developing a monitoring system, public outreach and consultations, developing the concept for a model courts pilot and providing technical support to the RGC/development partner Technical Working Group on Legal and Judicial Reform.
2. **Component 2** is a continuation of **pilot crime prevention and community safety** activities in a selection of districts in the six partner provinces. It makes use of participatory planning processes at the commune level (already established through the SNDD program) to identify low-cost interventions on community safety and gender, such as awareness raising on traffic laws, women’s and children’s rights, domestic violence, anti-trafficking and diversion programs for youths in conflict with the law. Activities are delivered by district officials, with support from the provincial level.
3. **Component 3 supports the CNP** through a package of planning and management support, including the introduction of a strategic plan and annual action plans, the development of forensics capacity through Crime Scene Kits and associated training, the development of a national system of crime statistics and support to a Gender Mainstreaming Action Group.
4. **Component 4** works with the **Ministry of Justice and courts**, assisting the Ministry of Justice with the development of a strategic plan, providing technical support to various

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<sup>26</sup> Ibid.

<sup>27</sup> The three objectives supported by CCJAP Phase III were (1) improve the protection of personal rights and freedoms, (4) enhancement of the quality of legal processes and related services, and (7) strengthening of legal and judicial sector institutions to fulfil their mandates by strengthening management, planning and monitoring. It did not support Legal and Judicial Reform Strategy objectives on legislative development, access to legal information, strengthening judicial and prosecutorial services and alternative dispute resolution.

policy and legislative initiatives such as developing a Juvenile Justice Law, support to the Court of Appeal on case registration and data management, support to the introduction of police-court-prison meetings at provincial level and preparation of a model courts pilot project.

5. **Component 5** works with the **General Department of Prisons** on developing policies, regulations, systems and management structures; planning processes; developing health services in prisons; improving conditions for women and children; developing partnerships between prison management and NGOs around service delivery for prisoners; and using small-scale capital works (such as new security fences, ventilation, water and sanitation) to improve conditions in the partner prisons.
6. A quarter of CCJAP funds (around A\$7 million) were set aside for allocation through a **Flexible Support Fund**, through which a committee of counterparts together with AusAID allocated funds to NGOs for associated activities. This includes a capital works program (A\$4 million, or 13 per cent of total project funds) focused on small construction and renovation works in courthouses, prisons and police posts, with an individual value of up to A\$100 000.

### 3.2 Other AusAID assistance

Beyond CCJAP, AusAID also provides funding to a range of NGOs for activities in human rights and access to justice. Examples include:

- support to the International Women’s Development Agency and local partners for crime prevention and community safety activities
- support to Save the Children Australia, World Vision and Child Wise for a program on child protection, including a range of activities to protect children against sexual abuse and sex tourism
- support to a number of Cambodian NGOs providing legal assistance to vulnerable people, particularly women prisoners.

AusAID has also supported the Extraordinary Chambers in the Courts of Cambodia (ECCC, also known as the Khmer Rouge Tribunal), which is conducting trials of crimes against humanity committed during the Pol Pot period. The ECCC is a hybrid court established by a 2003 agreement between the RGC and the UN, forming part of the Cambodian judicial system but with extensive international participation and funding.<sup>28</sup> Australia has contributed a total of A\$16 million, making it the second-largest donor after Japan.

AusAID has supported various regional programs on trafficking in persons, most recently the Asia Regional Trafficking in Persons Project 2006–2011 (ARTIP).<sup>29</sup> Covering Cambodia,

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<sup>28</sup> The Pre-Trial and Trial Chambers are composed of three Cambodian and two international judges, while the Supreme Court Chamber is made of four Cambodian judges and three international judges. Half of the 12 prosecutors are international. Australia provides one judge and one prosecutor.

<sup>29</sup> Its predecessor was the Asia Regional Cooperation to Prevent People Trafficking (ARCPPT) project, which received \$11 million between 2003 and 2006.

Thailand, Vietnam, Indonesia, Lao PDR, the Philippines and Myanmar (Burma), the Asia Regional Trafficking in Persons Project provides A\$21 million in specialist training and assistance to national police forces for anti-trafficking and juvenile protection, training to judges and prosecutors, support for NGOs for victim support, and regional cooperation. There is also a number of other smaller regional programs dedicated to people trafficking.

### **3.3 Attorney-General's Department and the Australian Federal Police**

The Attorney-General's Department has a cooperative arrangement with the RGC to combat transnational crime, including people smuggling, people trafficking, sexual exploitation, money laundering, narcotics and environmental crime. It has supported the development of legislation on trafficking in persons, counter-terrorism and money laundering. In conjunction with CCJAP, it is supporting the preparation of a new Police Act.

Both the Attorney-General's Department and the AFP support the work of a Joint Transnational Crime Team in the CNP, first established in 2002 at the request of the Minister of Interior. The team has 10 CNP officers, supported by a full-time AFP adviser and the AFP International Liaison Officer stationed at the Embassy. The team engages in operations against transnational crime, particularly child sex tourism and drug trafficking. Australia supports the unit with training, vehicles, fuel and salary supplements.

### **3.4 Other donor support**

Australia is one of the largest donors to the law and justice system in Cambodia, and the only one focusing on criminal law. In fact, there has been a gradual exodus of donors from the sector, owing to widespread scepticism about the potential for progress on rule of law.

CCJAP's main bilateral partner has been Danida. Danida has invested in supporting the Legal and Judicial Reform Strategy and the Council for Legal and Judicial Reform, with a view to preparing the way for programmatic funding of the strategy as a whole. It has supported the model courts process through a US\$1 million contribution channelled through the CCJAP Flexible Support Fund. However, this process has encountered a range of implementation difficulties, and at the time of the review mission the future of this support was in doubt. Danida also supports various international and Cambodian NGOs for human rights activities and legal assistance. However, Danida recently announced that it was phasing out of Cambodia, with existing activities due to come to an end in 2013.

USAID has a number of law and justice activities, mostly implemented by NGOs. It has supported the Ministry of Justice with the development of a database system for human trafficking cases, to assist with international reporting. It provides support to the Cambodian Bar Association, and a range of legal education activities such as mock trial competitions and the development of a text book on alternative dispute resolution. It has a competitive grant mechanism for human rights work administered by The Asia Foundation, providing

US\$2 million in grants to Cambodian NGOs of up to US\$200 000 each, and a second funding mechanism for rule of law activities (primarily legal assistance and public interest advocacy) administered by a contractor. It has also provided extensive support on anti-corruption, primarily through civil society-based research and advocacy campaigns.

UNDP has supported a local network of alternative dispute resolution centres, known as *Maisons de Justice*. This project has now come to an end, and UNDP is no longer active in the sector. In juvenile justice, Australia works closely with UNICEF, which leads the international engagement in the Technical Working Group on juvenile justice and has been promoting 'child-friendly courts' through technical assistance and material (screens, video conferencing facilities). In the prisons component, AusAID works with Office of the High Commissioner for Human Rights (OHCHR) and International Committee of the Red Cross (ICRC) on various issues relating to prison conditions. ICRC is the only other international partner undertaking capital investments in the prison system, with a series of water and sanitation projects.

Most other donor assistance has been on legislative drafting. The French supported the drafting of the Criminal Code and Criminal Procedure Code, but provided no follow-up support for implementation, with the result that many elements of the new law, which came into force in 2009–10, are yet to be implemented. Japan financed the drafting the Civil Code and Civil Procedure Code, which was supported by follow-up training for judges.

## 4. Is Australia pursuing the right objectives?

This section of the evaluation looks at the objectives of Australian law and justice assistance in Cambodia, their coherence and how relevant they are to the Cambodian context.

The objectives behind Australia's law and justice assistance in Cambodia have never been very clearly articulated. Documents suggest that Australia first entered the criminal justice area in recognition that it was an important part of postconflict state building that had been neglected by other donors. Australia's willingness to engage with the Ministry of Interior and the CNP, two powerful but opaque institutions that other donors have been reluctant to work with, gave it a comparative advantage in the criminal justice field. Its activities have rolled over from one project cycle to the next, building on these relationships and the opportunities they offer.

The CCJAP goals focus on human rights and the protection of vulnerable people within the criminal justice system. One of the four pillars of Australia's Country Program Strategy 2010–2015 is 'to strengthen the law and justice system'. The objective of CCJAP III is 'to support the RGC 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'. Yet in the program design documents, there is no analysis of the specific problems facing juveniles and vulnerable groups within the criminal justice system, nor of the nature and extent of the crime problem in Cambodia. Furthermore, the emphasis on juveniles and vulnerable groups has not been carried through systematically into the design and implementation of the activities.

Formally speaking, the assistance is aligned with the RGC's policies and strategies. Cambodia's national development vision was first set out in the 2004 Rectangular Strategy for Growth, Employment, Equity and Efficiency. The core of the Rectangular Strategy is 'good governance', which includes legal and judicial reform. Its objectives include enhancing judicial independence to promote the rule of law, reducing corruption and impunity, and promoting social justice. It includes commitments to the passage of eight fundamental laws, together with initiatives on model courts, judicial training and legal aid. These objectives were reaffirmed in the National Strategic Development Plan Update 2009–2013. In June 2003, the government approved the Legal and Judicial Reform Strategy, which has stated intention of implementing the provisions of the Cambodian Constitution on individual rights, liberal democracy, the separation of powers and the rule of law. It contains seven strategic objectives, of which CCJAP supports three:

- improving the protection of personal rights and freedoms
- enhancing the quality of legal processes and related services
- strengthening legal and judicial sector institutions to fulfil their mandates by strengthening management, planning and monitoring.<sup>30</sup>

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<sup>30</sup> Strategic objectives of the Legal and Judicial Reform Strategy not directly supported by CCJAP include Strategic Objective 2: Modernisation of the legal framework (although CCJAP has supported legislative development in various areas), Strategic Objective 3: Provision of better access to legal and judicial information, Strategic Objective 5:

While formally aligned to these national strategies, there are questions as to whether the project's focus areas are genuine priorities for the RGC. The Legal and Judicial Reform Strategy does not have a strong emphasis on criminal justice and makes only passing reference to juveniles and vulnerable groups. More importantly, the separation of powers and the rule of law do not appear to be genuine priorities for the government. Like many Cambodian strategies, the Legal and Judicial Reform Strategy appears to have been written to meet the expectations of donors, without any real commitment to its implementation. The Council for Legal and Judicial Reform, which owns the strategy, has not met for two years. One recent study notes the "difficulty of challenging a government which presents countless action plans and policy statements that conform to donor stipulations, and follows this with endless plausible excuses for [its] inability to implement these".<sup>31</sup>

The question of whether Australia's objectives in law and justice in Cambodia are appropriate is therefore fundamentally a political one: what types of change are feasible in the Cambodian political context? It is only now, 15 years into the assistance, that a realistic picture is beginning to emerge. Many of the higher level objectives in the law and justice agenda—such as creating an independent judiciary or a democratic and accountable police service—run counter to the fundamental interests of the ruling party and are unlikely to progress. Similarly, donor attempts to engage in land reform, which touches on key economic interests of the political elite, have failed. However, progress has been possible in areas like prison reform where there is a willing counterpart and no strong political interests at stake. The government and the CNP also show an apparent interest in improving their relations with the community and in building a capacity to respond to emerging social problems like youth delinquency. To this end, the project has developed some promising pilot activities with partner provinces and the CNP on crime prevention and community safety.

While this may seem a fairly modest agenda, it is nonetheless a significant one in the Cambodian context. Most observers would agree that the best prospects for improving governance in Cambodia in the medium term come not from major changes to the political system, but from the desire of the ruling party to strengthen its support base by becoming more responsive to the needs of its constituents, particularly in its rural heartland. For this reason, donors have been keen to support the government's decentralisation and local democratisation agenda. It offers the prospect of a gradual shift in the relationship between state and community.

The Australian law and justice assistance is well placed to contribute to this process. The criminal justice system represents the sharp end of the interaction between the state and the citizen. Law enforcement agencies have traditionally been seen by the Cambodian public as remote or even hostile. Improving their interaction with the public is an important part of Cambodia's lengthy process of postconflict state building. In the short term, it can help to

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Strengthening of judicial and prosecutorial services, and Strategic Objective 6: Introduction of alternative dispute resolution mechanisms.

<sup>31</sup> Hughes, Caroline, "Good governance reform in Cambodia" in *The elephant in the room: politics and the development problem*, Conference proceedings, Asia Research Centre, Murdoch University, Perth, Australia, 13–14 December 2010.

reduce the level of injustice suffered by the community. Over the longer term, it can help government to become more responsive to the community.

Some observers might question whether it is appropriate for Australia to support the law and justice institutions under these circumstances. Certainly, they have led other donors to stay away from the sector. However, if Australia wants to support the long-term process of state building in Cambodia, it has to be willing to engage with Cambodian institutions as they are now, and to support change processes that are feasible in the Cambodian context.

How relevant is the criminal justice work to the needs of the beneficiaries? Opinion poll evidence suggests that Cambodians rate safety from crime as a concern, but not a critical one. Crime rates in Cambodia have improved substantially in recent years, due to factors such as greater political stability and fewer small arms in circulation. In an International Republican Institute poll from August 2009,<sup>32</sup> satisfaction with 'security from crime' was ahead of health care, electricity, and water and sanitation. But when asked to nominate areas where they would like to see government services improve, 17 per cent chose security from crime, second only to transport (21 per cent). One of the law and justice issues most commonly raised by Cambodians is youth delinquency (often mislabelled as 'gangsterism'). Given that Cambodia's demographic bubble is delivering large numbers of young people into the workforce each year with little prospect of gainful employment, youth delinquency is likely to become a more serious problem over time. At present, the RGC has a tendency to respond to any signs of social unrest with a heavy-handed, law and order approach. Developing new policy responses on crime prevention and community safety would therefore seem to be a prudent investment in conflict management.

There are also Australian national interests at play in the law and justice sector. Both the Department of Foreign Affairs and Trade (DFAT) and the AFP informed the evaluation team that the close relationship Australia has built up with the Ministry of Interior through CCJAP is useful to Australia for many reasons, from fighting trafficking and sex tourism to delivering consular services. Cambodia is a source or transit country for precursors to synthetic drugs, and Australia finds it more cost-effective to work with the CNP to intercept these precursors in Cambodia rather than waiting for them to reach the Australian border. To that end, the AFP's International Network has invested in building up an elite Transnational Crime Unit within the CNP to provide an effective partner for joint operations. There is no direct link between this assistance and the AFP's contribution to CCJAP. However, any contribution that CCJAP can make to boost the professionalism and operational capacity of the CNP also serves Australia's bilateral interests.

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<sup>32</sup> International Republican Institute, "Survey of Cambodian public opinion", July/August 2009.

## 5. How effective are the assistance strategies?

This section of the evaluation examines the different assistance strategies used in the CCJAP program, and how effective they have been in advancing the project's objectives.

### 5.1 Engaging systematically with criminal justice

CCJAP seeks to engage systematically with the criminal justice system, through parallel activities with the police, courts and corrections system. This systematic approach reflects the view that there is no benefit to the public in improving any one element of the criminal justice system without strengthening the system as a whole. The CCJAP design therefore anticipates capacity-building activities with each of the CNP, Ministry of Justice/courts and the General Department of Prisons, together with some small-scale pilots on crime prevention and community safety. There is also support for the coordination of the sector as a whole, through the Council on Legal and Judicial Reform. The project is designed around these five components, with a number of themes, particularly juvenile justice, to be pursued across the components. The activities are agreed with counterparts through an annual work-planning process.

CCJAP also encompasses a Flexible Support Fund, from which funds are allocated for capital works, small initiatives by the counterparts and activities by NGOs. The body allocating these funds is the National Management Board, with representatives of each counterpart, together with AusAID. It was hoped that involving the counterparts in a joint decision-making process would help them identify common interests and ways of working, as well as demonstrating the value of partnerships with NGOs.

CCJAP's activities are concentrated in six partner provinces (Kandal, Battambang, Prey Veng, Banteay Meanchey, Kampong Thom and Kampong Cham). The strategy uses pilot projects in particular geographic areas to demonstrate the value of reform. This is a well-established assistance modality in Cambodia, as the RGC often likes to see the results of pilot projects before committing itself to national initiatives. It also enables donors to concentrate their resources. The challenge, however, is finding a mechanism through which successful pilots can be taken to scale.

The CCJAP design is therefore remarkably broad in scope, encompassing support for the sector as a whole, top-down capacity building with three major counterparts, coordination of the sector, some thematic issues across the sector, a capital works program and a small grants mechanism. In principle, this allows the project to address capacity constraints within individual law and justice agencies, while also giving the project scope to engage with systemic issues in criminal justice.

However, this systemic approach has not proved successful at overcoming Cambodia's highly fragmented criminal justice system. The two main ministries—Interior and Justice—have very

different interests, and do not work together well at either a policy or a practical level. In any inter-agency initiative launched by one ministry, the other participates half-heartedly, if at all. While they can work together within the National Management Board to the extent of deciding on the division of Flexible Support Fund money among the agencies, they have not chosen to allocate the funds to any joint or inter-agency activities.

The project has provided a range of support to the General Secretariat of the Council on Legal and Judicial Reform, which is an independent body led by a Deputy Prime Minister and mandated to coordinate and monitor implementation of the Legal and Judicial Reform Strategy. The council advocates for policy and legislative reform on law and justice issues, while its General Secretariat invests in developing planning and implementation capacity within individual law and justice agencies. CCJAP has supported the General Secretariat with the development of a sector planning guide and related management tools, designed to introduce standard planning and project management techniques across the sector. Two thousand copies of the guide were produced and distributed, and the guide has been included by CCJAP in training courses for the CNP and General Department of Prisons. CCJAP has supported the General Secretariat with a series of communications and outreach activities around the Legal and Judicial Reform Strategy, including regional workshops for consultation with civil society and the general public. It has also supported the General Secretariat with donor coordination in its role as secretariat to the Legal and Judicial Reform Technical Working Group, which is part of Cambodia's aid coordination architecture.

CCJAP has also supported the development of a monitoring system to track implementation of the Legal and Judicial Reform Strategy. It includes an Indicator Monitoring System to track the 97 short-, medium- and long-term activities identified in the Legal and Judicial Reform Strategy Implementation Plan. The 97 activities have been divided into 470 steps, enabling the General Secretariat to report that the Implementation Plan had been 58 per cent implemented (as at December 2009). However, these steps are mostly preparatory in nature (e.g. convening working groups, developing terms of reference), while the outstanding steps include items like 'implement action plan'. The monitoring system does not include any outcome indicators, and provides little useful information on implementation of the Legal and Judicial Reform Strategy, which the council acknowledges has been disappointing. The General Secretariat has no authority with the law and justice agencies, even to require them to report on their activities. It consists of only seven or eight staff who (like other Cambodian public servants) are paid inadequately and hold other jobs to survive. Overall, the lack of serious investment in Legal and Judicial Reform Strategy implementation indicates that it has not been a political priority.

CCJAP has also struggled with the fragmentation of the law and justice sector at other levels. In each of its partner provinces, CCJAP has supported police-court-prison meetings. These are designed to address basic operational issues, such as the transport of prisoners to court or the execution of warrants. They also provide a forum for NGOs and UN human rights agencies to raise concerns on individual cases. According to CCJAP reporting, these meetings have had some success in reducing the number of people facing excessive pre-trial detention in the partner prisons, by providing a venue where the project or its NGO partners can push for the resolution of individual cases. However, police-court-prison meetings are held irregularly and,

despite a Ministry of Justice decree requiring them to be held, do not appear to have become self-sustaining without ongoing support and pressure from the project. One of the difficulties has been a dispute as to which agency has the authority to convene a police-court-prison meeting. The judges and prosecutors decline to attend meetings called by the Ministry of Interior or CNP, due to concerns over judicial independence, while the court presidents have no authority to convene executive agencies. These disagreements have dragged on for some years, indicating that the agencies have no strong interest in making the justice system more efficient. Indeed, some observers pointed out that the inefficiencies within the system create rent-seeking opportunities for officials in all the agencies.<sup>33</sup>

With the systemic elements of the strategy largely unsuccessful, CCJAP has defaulted back to working separately with its counterparts, with the components operating as projects in their own right. This has left it poorly positioned to pursue system-wide or thematic issues, including its original purpose of protecting juveniles and other vulnerable groups. The project itself has come to reflect the fragmentation of the Cambodian criminal justice system.

The design anticipated a standard package of capacity-building support across the counterparts, including strategic planning, executive development and human resource management. In practice, this package proved to be both over-ambitious and poorly matched to the needs and priorities of the counterparts. It was unrealistic to expect a project on this scale to address these fundamental issues across three counterpart agencies with very different starting points and institutional cultures. It is possible that, at the time when the project was designed, horizontal reforms in public administration and public finance appeared to have greater prospect of success, which would have helped CCJAP. However, these reforms are now widely regarded as stalled. The project eventually settled on a narrower package of capacity-building support through a process of elimination, as initiatives that were not supported by the counterparts progressively fell away.

In sum, while the project design had a balance of different types of engagement, it was simply too large and ambitious for the country context. In such a difficult political environment, we would have expected the project to have focused on a careful selection of themes or issues where there was political space to work, and which offered entry points for a more limited set of institutional reforms. We would also have expected the focus to be more on the experiences of ordinary Cambodians in the criminal justice system, rather than on top-down reforms with uncertain political support. It is notable that the most important achievements of the project have come about by working on the interaction between local institutions and the public.

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<sup>33</sup> An example offered to the evaluation team is the requirement that prisoners at the completion of their sentences are required to receive a 'final judgment' from the court before release, and are generally required to pay off various agencies to have this judgment issued and communicated to the prison.

## 5.2 Model courts

The concept of the ‘model court’ as a strategy for judicial reform has been RGC policy for many years, appearing in the 2004 Rectangular Strategy and the Legal and Judicial Reform Strategy. It was taken up as one of the components of the second phase of CCJAP (2002–07). CCJAP II constructed a new courthouse in Kandal Province, with a view to creating a model court that would demonstrate new systems and procedures that could be taken up across the judicial system. To that end, it produced a ‘model court checklist’, together with a new court procedures handbook. However, the capital works were delayed as a result of technical difficulties, and were eventually delivered without any direct link to institutional reform. The court procedures handbook set out improved procedures for dealing with offenders and victims, as well as new case-management processes. It was extensively distributed, and was reported to be one of the project’s successes,<sup>34</sup> although no evidence was generated as to its impact beyond Kandal Province. The subsequent passage of new Civil and Criminal Procedure Codes rendered the initiative quickly out of date. More fundamentally, however, the Independent Completion Report found that there had been little awareness or understanding among the counterparts of the model courts concept as a judicial reform strategy.<sup>35</sup>

The model courts initiative was nonetheless taken forward into CCJAP III, with funding from both AusAID and Danida,<sup>36</sup> who agreed that matching funds were also required from the national budget. A model courts concept was developed by the Council on Legal and Judicial Reform, and then passed to the Ministry of Justice for implementation. Ownership of the initiative within the Ministry of Justice, however, has been weak, and four years into CCJAP III implementation has yet to commence for most of the initiative. Four courts were chosen to participate (Kandal, Kampong Cham, Phnom Penh and Banteay Meanchey<sup>37</sup>), with each president tasked with preparing a plan of activities. The plans contain an organisational chart for the court administration (which includes the prosecutor’s office), a mission statement and a list of the functions performed by the court. They are weak documents with no analysis as to what has to change and no budgetary information. They were nonetheless used as the basis for budget submissions, but were twice rejected by the Ministry of Finance. Without matching funds, the model courts initiative was substantially stalled at the time of the review mission, although the Ministry of Justice was pressing ahead with one element, the development of a new court register.

The experience suggests that there are a number of problems with the model courts initiative as a model for judicial reform. First, the concept is not well understood among the stakeholders. None of the Cambodian stakeholders interviewed by the evaluation team were able to articulate how a process of experimentation with the physical layout and procedures in the model courts could be used to identify successful innovations for introduction across the

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<sup>34</sup> AusAID, “Cambodia Criminal Justice Assistance Project CCJAP II: independent completion report”, July 2007, p. 16.

<sup>35</sup> *Ibid.*, p. 17.

<sup>36</sup> Danida has also made funds available for the model courts initiative via CCJAP’s Flexible Support Fund.

<sup>37</sup> These overlap with but are not the same as the CCJAP III partner provinces.

court system as a whole. Second, the initiative fell victim to rivalries within and between institutions, causing implementation to stall. Third, the initiative was seen by the presidents of the four courts as an opportunity to bid for more budgetary resources, rather than identify simple, cost-effective reforms. One court president informed the evaluation team that implementing the model court plan would require a tripling of the court's budget. It is therefore not surprising that it failed to convince the Ministry of Finance. Finally, the model courts initiative is too sophisticated a model of institutional change for the Cambodian context. The plan developed by the Council on Legal and Judicial Reform requires careful monitoring of service standards within the model courts, and a flexible management response to performance data. Neither the courts nor the Ministry of Justice have this capacity. The Ministry of Justice has no coherent institutional structure for engaging with the courts on administrative matters. Court management is solely the domain of the court presidents who have no management training and vary considerably in their interest in reform. They also rotate positions every few years. As a result, despite more than a decade of work on the model courts initiative, no credible process has emerged.

The most concrete achievements of this component of CCJAP have come from fairly small-scale support to the Court of Appeal, which has a very competent president. The Court of Appeal used to be a major cause of delay in the criminal justice system, as appeals from first instance courts required a complete retrial in the Court of Appeal before a panel of three judges. CCJAP helped the court to develop new systems for case management, including an 'alert system' for excessive pre-trial detention. It also undertook some minor renovations to the court to boost efficiency, including introducing air conditioning which enabled the court to sit in the afternoons and doubled its productivity. The project is now constructing a new annex for the court, which will further boost its capacity. As result, the backlog of criminal cases has reduced from 2226 in 2007 to 1136 at the end of 2010, while the number of cases of people imprisoned for more than a year while awaiting an appeal has reduced from 354 in 2008 to zero today.<sup>38</sup>

### 5.3 Prison reform

In contrast to judicial reform, CCJAP's work with the corrections system has been very successful. At inception, the prison system was a junior department within the CNP, with no budgetary autonomy and little management capacity. There were no established procedures for managing prisons, and no training for prison guards. Much of the infrastructure dated from the colonial era, and corruption and human rights abuses were reportedly widespread.

The General Department of Prisons has proved to be an excellent counterpart, with a genuine interest in reforming and modernising the system. CCJAP has offered a combination of support for top-down reform processes, practical problem-solving and carefully targeted capital investments. It supported the development of a vision statement and 5-year strategic plan, which for the first time defined the function of the corrections system, together with an annual planning process involving consultations with prison officials and external stakeholders,

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<sup>38</sup> Figures provided to the evaluation team by the President of the Court of Appeal, February 2011.

including NGOs. It helped with the drafting of a law on corrections, which is awaiting adoption. It carried out a training needs analysis and developed curricula for new prison guards. It has supported the development of a prisoner database and archive system. It has also helped to introduce an Office of Inspections for accountability purposes.

These reform initiatives have accompanied and benefited from a series of practical interventions to address specific problems in partner prisons, many of them accompanied by small-scale capital works. For example, the project has built new security fencing in a number of prisons, enabling prisoners to spend more time outside. This has enabled a shift from a static to a dynamic approach to security, which is being implemented across the prison system wherever the facilities allow. According to the General Department of Prisons, this produced immediate benefits in terms of improved physical and mental health of prisoners and a reduction in conflict and security incidents. The project has also constructed health posts in four partner prisons, and helped broker an agreement with the Ministry of Health that 25 prison health posts would be accredited by the national health system. This agreement provides prisoners with access to drugs through the national system on the same basis as the rest of the population, as well as referrals to the hospital system. The project has helped with the detection and treatment of HIV and Tuberculosis (TB) cases, including by constructing isolation wards in certain prisons. It has constructed a number of prison workshops, to support the introduction of vocational training and prison industry. It has helped promote partnerships between prison management and NGOs, giving NGOs access to prisoners to provide legal aid, health, education, counselling and rehabilitation services.

This is an area where piloting has been very successful, with CCJAP-supported innovations in partner prisons then introduced at the national level. Furthermore, CCJAP's capital works program in the prison system has led to the development of new national minimum standards on prison design and construction, with an emphasis on dynamic security and rehabilitation, which are now being implemented by the General Department of Prisons across the country.

Both the second and third phases of CCJAP contained the objective of developing a system of community-based corrections, but no progress has been made. Project reporting cites the lack of a supportive legal and policy framework. However, this also indicates the difficulty the project has faced in engaging with issues that cross over the jurisdiction of different law and justice agencies.

The other major reservation regarding the effectiveness of this component has been its inability to deal with the issue of prison overcrowding. The prison population in Cambodia has grown from 2490 (969 on remand) in 1995<sup>39</sup> to around 14 200 currently (over 4000 on remand)<sup>40</sup>—an average increase of over 12 per cent per year. This leaves the prison system at 167 per cent of its 8500-inmate capacity. Interestingly, the expansion in the prison population

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<sup>39</sup> APCCA figures, cited in Egger, S., "An assessment of the situation of children in conflict with the law in the Kingdom of Cambodia", Research Centre for Asia and the Pacific, University of Sydney & UNICEF, 2005.

<sup>40</sup> Figures provided by the General Department of Prisons.

has corresponded with a substantial fall in overall crime rates in Cambodia, from 5691 criminal 'events' in 2003<sup>41</sup> to 3087 in 2010.<sup>42</sup>

If this trend continues, it has the potential to undermine many of the achievements within the corrections component. It is therefore surprising that there has been no serious analysis of the causes of the overcrowding problem. (Only in 2011, CCJAP commissioned ICRC to carry out a study, but this was limited to the regulatory framework.) This raises the obvious concern that the project may have pushed ahead with its planned deliverables while taking its eye off the larger strategic picture.

## 5.4 Police development

CCJAP has been working with the CNP for more than 10 years, with the main focus on improving the quality of criminal investigations. Phase II set out to improve investigative techniques, strengthen case file preparation and management, improve crime reporting and criminal intelligence, and introduce new forensic capabilities. The inputs were mainly in the form of training, with unclear outcomes. There was some anecdotal evidence of improvement in brief quality and presentation of evidence, but this was limited to the target province of Kandal. Even in Kandal, of 53 complaints of sexual assault made in 2005 (at the project mid-point), no charges were ever brought. The Independent Completion Report criticised the training approach, noting that lack of knowledge and skills within the CNP was only one factor in its level of performance, and that "organisational culture, workplace behaviour, poor supervision and management, and deeply ingrained prejudices and biases all play a part in underperformance and resistance to change".<sup>43</sup> Overall, this was assessed as the least successful element of CCJAP II.

Following the design of CCJAP III, while procurement of the managing contractor was underway, the Australian Government made a decision that policing assistance should be delivered by the AFP, rather than contractors. An AFP policing adviser was therefore inserted into the project, with an unusual dual reporting line to the contractor and to the AFP. Although the AFP and the managing contractor have done their best to make this unusual arrangement work, both indicated that it was not ideal. Apart from the confused lines of responsibility, it inhibits the development of a direct relationship between the AFP and the CNP, which is one of the benefits of whole-of-government delivery of policing assistance.

Several of the capacity-building initiatives anticipated in the CCJAP III project design were discontinued due to lack of support from the CNP. Executive development programs and human resource management were deferred pending the adoption of a new Police Act (under preparation, but with an uncertain future). A set of anti-corruption activities was discontinued

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<sup>41</sup> Official crime statistics, cited in Chenda, K., unpublished Ph.D. research, Australian National University.

<sup>42</sup> Official crime statistics collected from CNP by CCJAP. Note that, until recently, CNP statistics only captured the number of crimes committed, not the number of perpetrators or victims.

<sup>43</sup> AusAID, "Cambodia Criminal Justice Assistance Project CCJAP II: independent completion report", July 2007, p. 14.

at the direction of the Ministry of Interior, pending adoption of an Anti-Corruption Law (which was finally adopted in 2010 after many years delay). The capacity-building focus has therefore narrowed to strategic planning. With CCJAP support, the CNP developed a mission statement and 5-year strategic plan, which for the first time set out explicitly the roles and responsibilities of the Cambodian police. An annual planning cycle was introduced in 2008. Initially the annual plans were not linked to the budget process (the CNP is not an autonomous budgetary entity, and receives its funding via the Ministry of Interior). From 2010, they were used as a basis for budgetary submissions, even though many activities in the plan remained unfunded. There is no monitoring of the strategic plan or annual plans, but the provincial police headquarters visited by the evaluation team were aware of the annual planning process and could accurately describe some of the content of the plans.

The largest activity in this component has been the delivery of forensic equipment and associated training. This was intended to reduce the reliance on confessions in criminal justice trials, thereby improving the quality of justice and reducing the risk of human rights violations. CCJAP provided around 200 Crime Scene Kits and associated consumables for use in provincial and selected district posts. It also provided some more sophisticated equipment (including a ballistic microscope donated by the Western Australian police) to the national forensic laboratory. It trained a group of science and technical trainers (training of trainers), and provided equipment, materials and financial support for the training of around 1000 officers across 22 provinces. The CNP has continued this training program beyond the period of direct CCJAP support, and extended it to include basic crime scene preservation courses to police posts. The CNP is reportedly developing a system to monitor the use of forensic evidence in criminal prosecutions, but this is yet to yield any data. The evaluation team's interviews with judges and prosecutors produced mixed views as to whether there had been any improvement in the quality of case files. Most reported that the use of physical evidence in criminal trials remains rare, and that the police still struggle with accurately recording basic information such as witness details. It appears that the real need is not for sophisticated forensic techniques but for training in basic policing skills. This training would have to be delivered on a wider and more sustained basis to produce lasting impact.

In 2005, a request was received from the Minister of Interior for Australian assistance with the drafting of a new Police Act, which was taken up by CCJAP in 2008. CCJAP coordinated drafting assistance from an expert consultant engaged by the AFP and the Australian Attorney-General's Department. The draft Act that was produced would require some major reforms to the CNP, including merit-based recruitment and promotions, a new ranking system, ethical standards, disciplinary procedures and greater transparency. Inevitably, the draft touches on highly sensitive political issues, including the authority of some of the most powerful individuals within the Cambodian state. Some informed observers were of the view that the political context had moved on since the original request, and were sceptical that the law had any prospect of adoption, although there has since been a request for further assistance to revise the draft. The episode shows the difficulty of trying to offer technical inputs to a highly political reform process.

There has been recent progress with helping the CNP develop a national system for crime statistics. CCJAP provided technical support to the development of a Crime Data Collection and Analysis system, which has been piloted and is now being implemented nationally. CCJAP has also provided training of trainers to develop the necessary technical capacity at provincial level. The system has the potential to strengthen both the operational and management capacity of the CNP.

CCJAP has also supported the CNP to develop a pilot community policing initiative. Although labelled as ‘community policing’ in CCJAP’s documentation, the term proved not to translate well into Khmer, and the pilot was instead given the title ‘Strengthening of Post Police for Community Safety’, reflecting the RGC’s policy interest in the area of community safety. It consists of a number of basic activities designed to make local police more responsive to the community, such as training of police in community outreach, organising forums with local communities to discuss policing needs, introducing a system for community feedback on police performance, regular participation by police in commune council meetings on community safety issues, and some small joint projects with young people and other target groups.<sup>44</sup> This is more about basic policing methods than the (widely contested) concept of ‘community policing’ as developed in Western countries, and it is a positive initiative for the Cambodian context. CCJAP helped the CNP to prepare an action plan, and developed training materials for local police in two pilot districts in Kampong Cham. The CNP then moved quickly to scale up the pilot to additional districts. Although the pilots remain at an early stage, the evaluation team visited one of the districts and was informed that local police had initiated some joint patrols with community volunteers and had begun attending community celebrations, which sometimes end in disorderly behaviour. As a result of these basic measures, there had been improvements in relations between the police and the community. Whether this is just a short-term effect remains to be seen. Some senior Ministry of Interior officials noted the danger of raising community expectations which the police, without additional resources, would be unable to satisfy. Overall, however, the pilots suggest that, with minimal investment, the police could begin to play a more active role in crime prevention and community safety, to the benefit of the public.

## 5.5 Crime prevention and community safety

Since Phase II, CCJAP has been implementing a series of small-scale pilot activities on crime prevention and community safety, initially just in Kandal Province and then in a number of partner districts. The pilots are linked to the RGC’s decentralisation and de-concentration program, called the National Program on Sub-National Democratic Development (SNDD). The SNDD program was first developed by the government as a means of channelling development resources to the commune level for local infrastructure projects, with communities developing their own Commune Investment Plans through a participatory planning process. CCJAP offers small amounts of funding to partner districts and communes to fund activities on community safety and gender equality identified by the communities through their Commune Investment

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<sup>44</sup> Ministry of Interior, “Action plan on strengthening of post police for community safety pilot program”, 2010.

Plans. The activities have included community awareness raising on issues such as traffic laws, drugs and alcohol addiction, human trafficking, child rights and domestic violence. There has been vocational training for youth in conflict with the law, in the form of apprenticeships with local businesses in areas like motorcycle maintenance, dressmaking and cosmetics. CCJAP has sponsored local initiatives such as village security groups which bring together village heads, local police and commune officials, and related public meetings. It has also provided courses to community members on managing conflict in the community and the family.

In 2010, each partner province was allocated between A\$60 000 and A\$75 000 for crime prevention and community safety activities in selected districts, with 25 per cent going to capacity building and 75 per cent to the activities themselves. By the end of 2010, CCJAP had supported nearly a thousand individual initiatives, reaching around 100 000 beneficiaries. To monitor the impact, the project has commissioned community surveys on crime and community safety in the target districts and control areas with similar characteristics. The final results will be available later in 2011. Some early monitoring results and feedback from local authorities and community members suggest the impact has been positive. Improved communications between local police, commune and district authorities and communities have led to a perception among communities that they are better able to meet emerging social challenges like youth delinquency. Anecdotal evidence also suggests some impressive early results on domestic violence. According to community members interviewed for a 2010 review, domestic violence (often linked to alcohol abuse) is usually treated as an internal family matter. Since the CCJAP activities on domestic violence and conflict management, it is now more likely that local police, village leaders or neighbours will intervene in domestic disputes before they result in serious injury.

A key question with any piloting work is how to take successful pilots to scale. To this end, the integration of the crime prevention and community safety component with the national SNDD system offers interesting lessons. At present, the pilots are partially aligned with the SNDD mechanisms developed by the RGC and donors for delivering development assistance to the local level. The project makes use of the established participatory planning process at communal level and the supporting structure at provincial level for planning, implementation and reporting. CCJAP advisers are co-located with provincial Rural Development Committees, and assist them in supporting activities at the district and commune level. However, the project does not make use of the SNDD funding channels. Instead, a separate project bank account is established by each of the partner provinces.

The SNDD system is developing rapidly, and several of Cambodia's major donors are preparing to provide a form of local budget support through the system. CCJAP has succeeded in demonstrating that crime prevention and community safety activities can be supported through this system. In the future, it may therefore be possible to attract a share of the total SNDD funding pool into crime prevention and community safety activities, providing a means of scaling up the pilots to the national level.

One of the issues the project will face in scaling up is what level of external support and facilitation is required for communities to implement successful crime prevention and

community safety activities. So far, the activities have been kept very simple in nature, so that they can be delivered with the limited capacity already in place within local government. Previous reviews have commented that there is very little capacity at the local government level to deal with more complex social issues such as youth delinquency or drug addiction, and that the quality of interventions delivered through the crime prevention and community safety pilots is not very high.<sup>45</sup> However, there are obvious trade-offs involved. More sophisticated interventions would involve higher unit costs and a more elaborate supporting structure, making it more difficult to scale up. The strength of CCJAP's approach has been the simplicity of its interventions, making them easier to replicate. There is already anecdotal evidence that districts neighbouring CCJAP pilot areas have picked up some of the initiatives and implemented them without external support.

## 5.6 Juvenile justice

Juvenile justice was ostensibly one of the key themes of CCJAP, included in the project's purpose statement. Yet the lack of detailed analysis of juvenile justice issues in the project's design documents suggests that the theme was included in the purpose statement at the last minute, rather than integrated into the design of the components.

It was not until March 2009 that CCJAP engaged a short-term international adviser to develop a Juvenile Justice Strategy. The strategy contains the missing analysis of how juveniles are treated within the Cambodian justice system. However, it then proposed a very broad range of initiatives that were not well integrated with the existing components. As a result, the strategy has not been followed very closely.

The project has provided some expert input into the drafting of a Juvenile Justice Law, through the Child Justice Working Group. Among other things, the draft would introduce the option of non-custodial sentencing for juvenile offenders. UNICEF, which takes the lead role on this issue, told the evaluation team that the presence of CCJAP advisers in the Ministry of Justice provided a useful entry point for its own advocacy work. However, the draft law has been many years under development (the new Criminal Code and Criminal Procedure Code were adopted in the meantime, which meant that much of the technical work on the draft had to be repeated). The Ministry of Justice does not have a department responsible for juvenile issues, and the policy initiative is all from the international side. Work is underway on a new court registry system that will enable the identification of juvenile cases, but this is still under development. As a result, there has been no progress on improving the treatment of juveniles within the court system. Attempts by UNICEF to introduce equipment for child-friendly courts, including screens and video conferencing facilities, have not been very successful, with UNICEF finding on follow-up visits that the equipment was not being properly used.<sup>46</sup>

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<sup>45</sup> Cox, Marcus & Kong Phallack, "Cambodia Criminal Justice Assistance Project Phase III: independent progress report", May 2010, p. 14.

<sup>46</sup> Interview with UNICEF staff.

There has been some progress within the corrections component. The new minimum standards for design and construction of prisons mandate separate accommodation for women and juveniles. Juvenile issues have been addressed in the training received by new prison guards, and CCJAP has provided funding for NGOs to provide education and other services to juvenile prisoners. The crime prevention and community safety component has introduced diversion programs for youth in conflict with the law. However, the main form of diversion program is apprenticeships, which at a unit cost of between US\$300 and \$900 would seem to be too expensive to be scaled up.

## 5.7 Flexible Support Fund

A quarter of total CCJAP funds, totalling around US\$8.5 million, was set aside for allocation through the Flexible Support Fund. Around US\$3.1 million of that was allocated to capital works, US\$4.7 million to counterparts for initiatives identified during the annual planning process, including short-term technical assistance, and the balance (US\$633 000) for NGO activities.

The funding mechanism was designed to build counterpart ownership of the support. The National Management Board approves the allocation of Flexible Support Fund money through an annual planning process, and the National Management Board chair (a senior Ministry of Interior official) also has the authority to approve additional grants in-year based on recommendations by a screening team (including representatives of the National Management Board and AusAID). See Table 1 for a sample of the kinds of activities that have been supported. Early project reviews suggest that there were many teething problems with this mechanism in the early years, including attempts to allocate funds inappropriately that were resisted by the project. In time, however, the process became better understood, and stakeholders report that proposals are now subject to a good level of scrutiny by the National Management Board.

It is not uncommon for donors in Cambodia to use funding mechanisms of this kind to 'buy' good relations with their counterparts, and to some extent the Flexible Support Fund has played this role. There were some early criticisms to the effect that the Flexible Support Fund money was not being allocated very strategically. Over time, however, the project succeeded in educating its counterparts on the need for a more strategic approach. It has tried to improve the focus by linking each grant to a specific outcome in the annual plan.

Table 1: Flexible Support Fund overview		
Component	Activities	Appr. exp. to Dec 2010 (USD)
<b>Sectoral coordination</b>	<b>Total approved funding</b>	<b>\$650,000</b>
<i>Indicative activities</i>	<i>Development of the model courts concept</i>	\$100,000
	<i>Performance indicator system for law and justice reform</i>	\$150,000
	<i>Implementation of law and justice reform communication strategy</i>	\$20,000
<b>Crime prevention &amp; community safety</b>	<b>Total approved funding</b>	<b>\$1,280,000</b>
<i>Indicative activities</i>	<i>Grants to partner provinces for crime prevention and community safety activities</i>	<i>Per province: \$60–800,000</i>
	<i>Purchase of motorcycles for Provincial Rural Development Committee facilitators</i>	\$20,000
<b>Police</b>	<b>Total approved funding</b>	<b>\$794,000</b>
<i>Indicative activities</i>	<i>CNP strategic planning process</i>	\$54,000
	<i>Drafting of CNP Police Law</i>	\$178,000
	<i>Conducting a National Police Women's Forum</i>	\$10,500
	<i>Posters to disseminate CNP vision, mission and values</i>	\$6,000
<b>Ministry of Justice/ courts</b>	<b>Total approved funding</b>	<b>\$903,000</b>
<i>Indicative activities</i>	<i>Model courts project</i>	<i>Danida funds: \$150,000</i>
	<i>Monitoring of implementation of the Legal and Judicial Reform Strategy</i>	<i>Danida funds: \$560,000</i>
	<i>Court of Appeal case-management systems</i>	\$28,000
	<i>Alternative sentencing pilot program</i>	\$25,000
<b>Corrections</b>	<b>Total approved funding</b>	<b>\$477,000</b>
<i>Indicative activities</i>	<i>Drafting of the Correction Law</i>	\$87,000
	<i>Short-term international corrections training adviser</i>	\$29,000
	<i>Annual National Prison NGO Forum</i>	\$3,500
	<i>Support for prison industry and farming program</i>	\$10,000
	<i>General Department of Prisons attendance at Asia Pacific Corrections Conference</i>	\$15,000
<b>Management</b>	<b>Total expenditure</b>	<b>\$639,000</b>
<i>Indicative activities</i>	<i>Development of Criminal Justice Sector Executive Development Strategy</i>	\$130,000
	<i>Community Access to Justice Perception surveys</i>	\$63,000
	<i>Study tour to Western Australia for National Management Board executive</i>	\$17,000
<b>Capital works</b>	<b>Total expenditure</b>	<b>\$3,122,740</b>
<i>Indicative activities</i>	<i>Battambang prison upgrade</i>	\$245,000
	<i>Prey Veng prison upgrade</i>	\$263,000
	<i>Prey Veng court upgrade</i>	\$175,000
	<i>Court of Appeal annex</i>	\$400,000
<b>NGO grants</b>	<b>Total funding</b>	<b>\$633,000</b>
<i>Indicative activities</i>	<i>Legal aid for women</i>	\$50,000
	<i>TV drama on access to justice</i>	\$100,000
	<i>Prison fellowship program</i>	\$50,000
	<i>Transition home for former women prisoners</i>	\$9,000

Source: CCJAP, 'Annual Performance Report January to December 2010', February 2011, Annex E

By involving counterparts in grant making to NGOs, it was hoped to educate them on the role played by NGOs in the sector. This may have been achieved to some limited extent, but it is only within the corrections component that active partnerships have emerged between a counterpart and NGOs around service delivery. Several observers noted that donor funding to NGOs for legal aid services has been ad hoc and unreliable. Several donors are now discussing the possibility of a joint funding instrument for legal aid, initially through NGOs but with a view to developing a national legal system involving the government.

One possible criticism of the Flexible Support Fund is that the funding has been parcelled out between the agencies, and has not succeeded in promoting joint approaches among the law and justice agencies. Had a proportion of the funding been set aside for inter-agency initiatives, it might have helped to address the fragmentation of the sector.

## 5.8 Capital works

CCJAP's approach to capital works has improved substantially over successive phases. In Phase I, there was a series of capital projects without obvious links to capacity development or institutional reform. In Phase II, the strategy was to concentrate on major demonstration projects in a single partner province—namely the model court and prison in Kandal. As mentioned, the model court was not linked in to any process of institutional reform that was comprehensible to the counterparts. The model prison was more successful, helping to demonstrate to stakeholders the practical implications of a shift from a system of incarceration to corrections. However, concentrating resources into a single, high-quality facility led to various distortions. With the Kandal prison offering much better conditions than other prisons, an immediate effect was that prisoners began to bribe their way into the Kandal prison. By the end of the project, a facility built for 290 persons held 656,<sup>47</sup> which undermined the attempt to introduce new systems and procedures. Similar distortions occurred in the current phase with the construction of new cell blocks in Battambang prison, where prison guards are reportedly sleeping in the cells as they are of higher quality than the guards' own quarters. This shows the danger of constructing new facilities to international standards in a system that lags far behind those standards.

In contrast, Phase III of CCJAP has concentrated on renovations and additions to existing facilities, and as a result has managed both better value for money and tighter integration between capital works and institutional reform—at least in the corrections component. The addition of new facilities in existing prisons—like security fences, health posts and workshop facilities—has helped the partner prisons with implementing key elements of the national prison reform program, without distorting the system as a whole. The capital works program also led to the development of new national standards for prison design and construction, which will have benefits beyond CCJAP's investments. It is notable that none of the counterpart institutions has any regular budget for maintenance of facilities. Like other government agencies, law and justice institutions have to be quite entrepreneurial in seeking ad hoc

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<sup>47</sup> AusAID, "Cambodia Criminal Justice Assistance Project CCJAP II: independent completion report", July 2007, p. 18.

contributions from national or provincial budgets and other sources (e.g. income from prison industry programs) for construction or maintenance. It is therefore important not to invest in facilities with excessive maintenance costs.

## 5.9 War crimes trials

The Australian contribution to the ECCC (Khmer Rouge Tribunal) is not primarily about developing Cambodia's justice system, but rather about transitional justice and Australia's broader policy interest in international criminal law. The Department of Foreign Affairs and Trade (DFAT) sees the support as a natural extension to Australia's extensive involvement in the Cambodian peace process.

The ECCC process has had its critics, mainly due to the time elapsed since the offences (1975–79) and the resulting age of the defendants. The ECCC had a long and difficult genesis, marred by allegations of mismanagement and corruption. The narrow jurisdiction of the ECCC (limited to 'senior leaders' of the Khmer Rouge and 'those most responsible' for the genocide<sup>48</sup>) means that only five defendants have been identified so far (one has been sentenced and four are awaiting trial). Some commentators (including Human Rights Watch) have criticised this as a partial and arbitrary form of justice, when so many other Khmer Rouge officials remain free. It is also an extremely costly form of justice, coming in at more than US\$20 million per defendant.<sup>49</sup>

Despite these limitations, opinion polls indicate that more than 80 per cent of the Cambodian population are in favour of the process. A 2009 survey by the International Republican Institute found that 82 per cent of Cambodians were aware of the trials, 60 per cent had watched the television broadcasts and 70 per cent thought they were providing justice.<sup>50</sup> It is often said that Cambodia's young people know very little about the Khmer Rouge period. The trials are important because of this lack of knowledge, as well as their ability to provide some form of justice (however limited) to the victims of genocide.

Because the ECCC are formally a part of the Cambodian judiciary, the process has potential benefits for the judicial system as a whole. While the ECCC apply international humanitarian law, they use Cambodian procedures and laws of evidence, and are developing new jurisprudence in these areas. The Cambodians involved in the process as judges, prosecutors and defence lawyers gain the experience of participating in highly complex trials, and are able to learn from the rigorous processes and high ethical standards applied by the international participants. These standards will be taken back into the judicial system (the President of the Court of Appeal is one of the ECCC investigative judges). There are also outreach activities to wider stakeholders—the international prosecutors give lectures at law schools, while students

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<sup>48</sup> Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea, Arts. 1 and 2.

<sup>49</sup> [http://www.unakrt-online.org/09\\_Finances.htm](http://www.unakrt-online.org/09_Finances.htm).

<sup>50</sup> International Republican Institute, "Survey of Cambodian public opinion", July/August 2009.

in the judicial training college visit the ECCC to learn about its work. On the whole, however, in the context of the wider challenges facing the Cambodian judiciary, the ECCC makes only a minor contribution to strengthening the system.

## 6. Is the Australian assistance producing sustainable results?

Monitoring of results has been a consistent weakness of Australian law and justice assistance in Cambodia. Despite a number of interventions by AusAID to try to address the issue, CCJAP has largely failed to establish a credible monitoring framework. Of the 19 indicators in the monitoring framework, nine relate to project outputs, three to intermediate outcomes (i.e. improvements in institutional capacity), and only five to results (i.e. improvements in services delivered to the public), while two do not generate any useful performance data.

As a result, the monitoring framework gives a poor picture of the achievements of the project. There are no results indicators for the support to the police, although CCJAP support for the CNP's crime database might provide a source of results indicators in the future. In the courts component, there have been mixed results on the incidence of excessive pre-trial detention, with the number of adult male cases nearly doubling but a substantial reduction in the number of juvenile cases.<sup>51</sup> According to the project's own reporting, the reduction in juvenile cases came about through ad hoc interventions on individual cases, rather than systemic changes. There has, however, been real improvement in the efficiency of the Court of Appeal. The number of individuals in prison for more than 12 months while awaiting retrial in the Court of Appeal has reduced from 374 in 2007 to zero in 2010, as a result of improved listing procedures and an alert system for cases of excessive detention. There is no other data on performance of the courts, as monitoring was supposed to be linked to the model courts process. The launch of a new court register planned for May 2011 may provide a basis for monitoring in the future.

<b>Table 2: Number of cases of excessive pre-trial detention</b>		
	<i>2007</i>	<i>2010</i>
Adult males	79	153
Adult females	25	21
Juvenile males	85	21
Juvenile females	0	1
<b>Total</b>	<b>189</b>	<b>196</b>

In the corrections component, there are two indicators on service standards. The number of Ministry of Health-accredited health posts in prisons increased from 4 to 25, while the number of prisoners accessing rehabilitation programs (including vocational training and prison industry) increased from 1610 to 3217. The project keeps statistics on the number of HIV and TB cases detected in the prisons and the total number of deaths, but neither of these numbers provides useful information on the performance of CCJAP.

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<sup>51</sup> During the period 2007–2010, the length of permitted pre-trial detention was extended from 12 to 18 months for most adult cases, which means that the picture is worse than the indicator suggests.

One of the monitoring tools used by the project is a stakeholder survey carried out by a local firm. The baseline research involved semi-structured interviews with 73 stakeholders (including CCJAP staff members), who were asked their perceptions of the project and its activities. Around two-thirds of the stakeholders identified the activities they were involved in as 'good', and 35 per cent as 'very good'. While the survey produces some interesting information on the attitudes of stakeholders, it is not a reliable way of measuring project performance, as stakeholders have a clear interest in providing positive feedback. When asked to identify 'systemic changes' in their organisations as a result of the assistance, most of the respondents simply described CCJAP activities, rather than organisational changes.

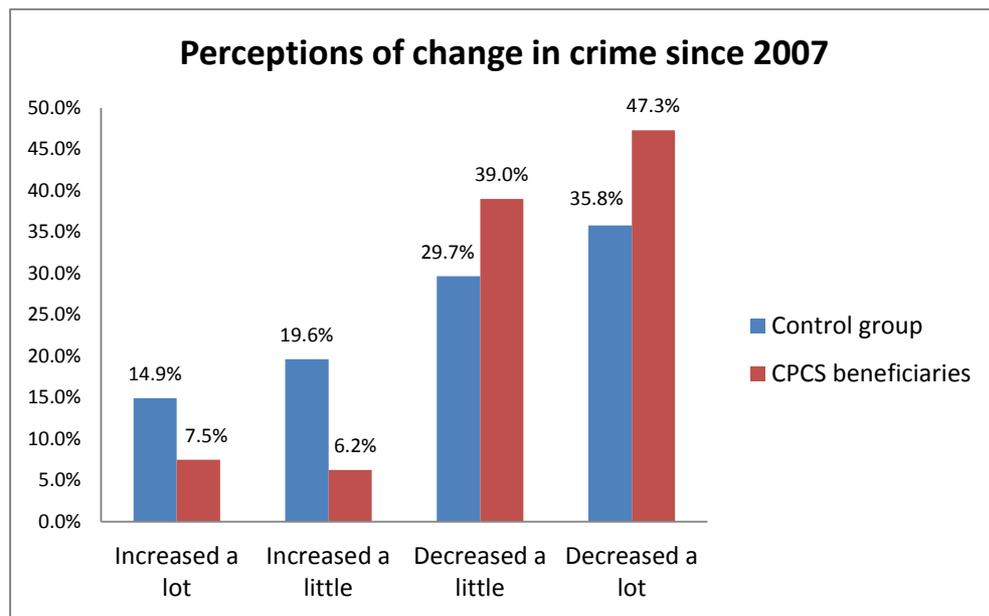
The project does have excellent monitoring arrangements in place for the crime prevention and community safety component. It engaged a local company to carry out surveys of community perceptions on crime and community safety in each of the partner districts, plus a set of control districts with similar demographic characteristics. The use of professionally designed surveys and control groups is best practice for monitoring community-level interventions. While the final results will not be available until later in 2011, a mid-point survey was done in late 2009 covering 48 villages in three provinces.<sup>52</sup>

The survey found that crime was perceived as decreasing in both frequency and severity across the board, but with faster improvement in CCJAP project areas. In crime prevention and community safety villages, 86 per cent of respondents reported a decrease in crime, compared to 65 per cent in the control areas. The main reasons offered for the improvement were that police had become more responsive, and that local authorities were more involved in educating the public and mediating conflict. Compared to the control group, respondents in crime prevention and community safety villages felt safer in their communities, and expressed greater satisfaction with the police. Changes identified by community members included more frequent police patrols, greater police presence at community celebrations and a reduction in corrupt behaviour by police. Crime prevention and community safety beneficiaries also reported that, as a result of public education programs, they were better able to manage conflict in the family and community, resulting in lower rates of domestic violence and fewer problems with youth delinquency.

The survey shows that trends on perceptions of crime and community safety are positive in both crime prevention and community safety and control areas, but that crime prevention and community safety villages are improving more quickly. All the communities, however, had fairly low crime rates. Fewer than one household in five reported being victim of a theft (in most cases very minor, particularly theft of chickens), one in 22 households had experienced property damage and one in 50 households had been victim of a crime of violence.

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<sup>52</sup> Domrei Research and Consulting, "Cambodia Criminal Justice Assistance Project Phase III: Report on the community policing and community safety impact study", Nov 2009 – Jan 2010.



One of the reasons CCJAP failed to establish effective monitoring arrangements in other areas was a somewhat misguided attempt to align with counterpart monitoring systems. While this was an appropriate goal under the Paris Declaration on Aid Effectiveness, it needs to be achieved over time. The CCJAP monitoring framework anticipated using police crime statistics and data from the model courts for monitoring its assistance. These data sources did not exist at inception, and had to be developed with support from the project. This took much longer than anticipated, with the result that, four years into the project, there is still no useable data, leaving the project without meaningful monitoring of key elements of its work. In the circumstances, a better approach to alignment would have been to invest upfront in developing data sources that would both serve the project's own monitoring needs and contribute to the development of counterpart systems.

Overall, the most important results of the Australian assistance are in two areas:

1. improved conditions in prisons, including a shift to dynamic security allowing prisoners more time outside their cells, improved health services to prisoners, the introduction of vocational training and other rehabilitation services, and increased access to legal aid for women and juvenile prisoners
2. improved crime prevention and community safety in target communities, including better relations between communities and local police and some promising early results on gender-based violence.

Other components are yet to produce demonstrated results for the Cambodian public.

Sustainability is a difficult concept in the Cambodian context. Very few donor programs are sustainable in the financial sense, given the weak budgetary processes and inadequate public sector salaries. None of the counterpart institutions has sufficient budgets to support their operations or maintain their facilities (the same could be said for other areas of service delivery in Cambodia). Sustainability in this context therefore means maximising the prospect

that initiatives will be carried forward beyond the life of the project, generally through a mixture of national funding and external assistance. There are some good examples of strategies to this end:

- the shift from large-scale capital works in Phase II to small-scale renovations and additions to existing facilities in Phase III
- linking capital works in the prisons to the development of minimum prison design and construction standards
- the promotion of partnerships between the prisons and NGOs on service delivery to prisoners
- use of 'training of trainers' methods in several components
- the integration of crime prevention and community safety activities with the SNDD system, which potentially offers a means of attracting both RGC and donor funds into the area and enabling the pilots to be scaled up to the national level.

However, a major barrier to sustainability has been the lack of sustained attention to the problem of prison overcrowding, which has the potential to undermine many of the project's achievements.

## 7. Does the Australian assistance represent value for money?

What then can be said about the overall value for money offered by Australia's law and justice assistance in Cambodia? While value for money is an increasingly important concept for the Australian aid program, no standard metrics or assessment tools have yet emerged. For the purposes of this evaluation, we have developed our own assessment method, which takes into account:

- the expected development returns, including both positive returns and the avoidance of negative outcomes such as conflict
- the level of financial investment
- the level of risk/likelihood of achieving the intended outcomes.

Of these, only the level of investment can be quantified, but the concepts can still be used to make a qualitative assessment as to whether the assistance is maximising value for money.

The three phases of CCJAP have involved total investments of around A\$60 million over a 14-year period. With average spending of \$6 million per year during CCJAP III, this represents just over ten per cent of the country program.

The direct returns on the investment have been the launch of a successful national prison reform process, leading to improved conditions and a reduction in human rights violations within prisons, in particular for women and juveniles. The project has also demonstrated some promising approaches towards crime prevention and community safety, with the potential to make an important contribution to the development of the Cambodian state and its relations with citizens through the SNDD program. While more ambitious reforms—such as the rule of law and an independent judiciary—are beyond the reach of the project, the achievements are nonetheless significant.

It has proved to be a fairly high-risk investment, with several of the components failing to achieve their objectives. This is not uncommon in law and justice programs, which often involve a level of experimentation in searching for the best entry points. However, in the case of CCJAP, there seems to have been a lack of sound upfront political analysis as to what was achievable in the country context. As a result, the project has taken a long time to identify areas of productive engagement. This fairly slow process of focusing the assistance represents the major constraint on value for money.

It also indicates weaknesses in the way that AusAID has managed the assistance. For most of CCJAP III, AusAID has had persistent concerns over the direction of the project and has been frequently drawn into management issues (now largely resolved). The more difficult relations became with the contractor, the less AusAID was able to influence the strategic direction of the assistance. In the past, AusAID also failed to allocate sufficient advisory resources to enable

effective oversight. As a result, the project was allowed to drift for long periods. This may be indicative of a general problem AusAID has faced in managing the delivery by contractors of complex law and justice programs requiring a high level of flexibility.

Another value for money issue concerns the use of international advisers. Over the life of the assistance, there have been problems with utilising short-term technical advisers. Advisers were brought in to work on specific issues, such as HIV/AIDS, juvenile justice, gender, and monitoring and evaluation. These were then treated as stand-alone processes or discrete deliverables and not well integrated into the design of the assistance.

In recent years there has been a major shift in the composition of the project team, from heavy reliance on international experts towards promoting Cambodian staff into advisory roles. At present, only the team leader position is held by an international. This has resulted in greater value for money, better tailored advisory inputs and improved relationships with the RGC.

## 8. Are cross-cutting policy objectives being addressed?

As discussed, the division of CCJAP into parallel components has made it difficult for the project to pursue cross-cutting themes consistently. While the project produced thematic strategies on HIV/AIDS, gender, juvenile justice and anti-corruption, they were treated as once-off outputs produced by short-term specialists, and were not well integrated across the components. Nonetheless, the project has engaged in some useful activities, particularly on gender.

A proposed strategy on anti-corruption was abandoned in the face of opposition from the Ministry of Interior. The plan had been to carry out Corruption Risk Assessments in each counterpart, identify weaknesses in systems that created opportunities for corruption, and then develop Corruption Mitigation Plans. In the first year of the project, the Ministry of Interior directed that this be shelved, pending passage of the national Anti-Corruption Law. After more than a decade in the pipeline, the Anti-Corruption Law was finally passed in 2010, but came too late in the life of the project for any new activities to be developed.

The project developed an HIV/AIDS Strategy in 2008–09, focusing mainly on the prisons component. While ICRC had the technical lead on the issue, CCJAP advisers helped facilitate their work. CCJAP supported the training of prison staff on HIV awareness, care and treatment, and included universal precaution and TB counselling skills in basic training for new prison guards. CCJAP also upgraded four prison posts, making them eligible for Ministry of Health training and equipment on diagnosis, treatment and care of TB, HIV and other sexually transmitted diseases, as well as supporting the development of a database on health in prisons.

There is no specific strategy on disability. However, in 2010, in the final round of its capital works program, CCJAP began to include access ramps and public toilet access into the design of its police posts and court buildings.

CCJAP adopted a Gender Mainstreaming Strategy in May 2008, and gender is well integrated into the crime prevention and community safety and corrections components. The crime prevention and community safety work supports initiatives on gender proposed by local communities as one of its two thematic areas. The project trained its crime prevention and community safety advisers on how to identify and implement gender-related activities. It has tracked the number of female beneficiaries of its activities (459 in 2008, 7251 in 2009 and 11 136 in 2010). It has helped to develop interventions on gender-based violence in the target areas. Preliminary survey results suggest that these interventions are beginning to change attitudes to domestic violence, to the extent that it is no longer treated as an internal family matter. This makes it more likely that local police, village leaders and neighbours will intervene in domestic disputes before they lead to serious violence.

In its capital works program, CCJAP has built separate holding cells, interview rooms and toilet facilities for women and juveniles in several courthouses, and provided the facilities for separate accommodation for women and juveniles in its partner prisons. This is now mandated in the national minimum standards for design and construction of prisons. In partner prisons, women with infant children can now be accommodated with their children.

CCJAP has engaged NGOs to provide a range of services to women prisoners, and has initiated a quarterly working group between NGOs and the management of one national prison (CC3) on gender issues. It commissioned research from NGOs into issues facing women in prison, and produced a gender and imprisonment manual for inclusion in basic training for prison guards. It has developed a pre-release program for women, concentrating on skills development and reconnection to families, and has supported a community-based facility for reintegrating former women prisoners. It provided legal aid services to women on remand, resulting in a reduction in the number of women facing excessive pre-trial detention from 25 in 2007 to zero by 2009. However, this was a result of interventions on individual cases, rather than systemic changes, and when the NGO support was discontinued the number of cases climbed back up to 21 in 2010. While there are obviously some issues over the sustainability of services delivered by NGOs, overall the prisons component has delivered significant improvements to the welfare of women in detention.

Gender mainstreaming has been less effective in the courts and police components. In both ministries, CCJAP provided a budget for activities by the Gender Mainstreaming Action Group (such groups are mandated under RGC rules). It developed a gender and policing manual, and funded a training-of-trainers program for group members to disseminate the manual. It has funded three national CNP women's forums, facilitated by local NGOs, to discuss issues facing women police officers. In 2010, CCJAP commissioned a survey on attitudes towards police as a baseline for its community policing pilot. The survey revealed that 97 per cent of respondents (both male and female) would like to see a woman police officer in their community, for various reasons (women show greater empathy, do not drink or gamble, are not violent and are better at dealing with female victims). These data were reported to the CNP senior command. Whether or not this was causal, shortly afterwards the CNP announced the creation of 23 positions for female Provincial Deputy Commissioners. CCJAP is proposing to provide a 2-day leadership training course for these women, once appointed.

While there has been some good progress on internal issues in the CNP, wider issues of gender equality within the criminal justice system have been neglected. An early attempt to pilot an integrated response to victims of rape, sexual assault and domestic violence in Kandal Province was discontinued due to the lack of wider support services to which victims could be referred. The capacity of forensic health examiners to deal with cases of sexual violence remains very weak.<sup>53</sup> The CNP informed the review team that the incidence of rape and sexual violence appears to be on the increase, in contrast to other violent crimes which are reducing. CCJAP should have been monitoring and analysing this trend, and raising it prominently in policy dialogue with the CNP.

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<sup>53</sup> Interview with UNICEF staff.

## 9. Conclusions and recommendations

### 9.1 Summary of findings

The experience of Australian law and justice assistance in Cambodia over the past 15 years offers an unusually clear picture of what goals are achievable in the political context, and which are out of reach. It also shows that incremental progress on improving the justice system is possible even in very difficult environments.

The first lesson must be that the influence gained from external assistance, even with a long-term commitment like this one, is necessarily modest. There is no prospect of moving forward with the more ambitious elements of the law and justice agenda—such as promoting the separation of powers—if they run counter to the fundamental interests of the political elite. Australia’s strong relationships with the Cambodian law and justice agencies give it more influence than other donors, but it still needs to work with, rather than against, the prevailing political currents.

However, there are areas of law and justice reform that do not attract strong political interests, where progress is possible. Prison reform—an area that Cambodian politicians prefer to stay away from—is the most obvious example. Similarly, crime prevention and community safety has proved to be an area where the RGC is open to support.

Furthermore, the political situation in Cambodia is not static, and there are interests with which Australia can align. The CNP has an apparent interest in improving public perceptions of the police, which makes it open to certain types of reform. The government is investing much of its political capital in local democratisation, to make the state more responsive to community needs. SNDD is the only governance reform at present with any momentum behind it, and it is therefore a strategic area for Australian engagement. AusAID can work with local authorities to help them develop the capacity to respond to new social challenges like youth delinquency.

It has taken a long time for AusAID to identify a realistic set of goals for its law and justice assistance in Cambodia. It appears that more political analysis was needed during the design of the assistance, to produce a clearer set of objectives that were meaningful in the country context. There also needed to be a strong link between the objectives and the activities that were chosen.

The case study offers some important lessons on capacity development. Ambitious top-down institutional reforms have not proved very productive in the absence of either political support or strong managerial capacity. The change processes promoted through external assistance must be appropriate to the organisational context. The model courts initiative, for example, was far too sophisticated a reform process for the counterparts to manage. The CCJAP design also started with a standard package of capacity-building support that was not tailored to the

specific needs of the beneficiaries. More fundamentally, a capacity-building approach assumes that a lack of institutional capacity is the binding constraint on improving the quality of the justice system. In fact, outside a few niche areas like prison reform, the binding constraints are political, and some of the law and justice institutions appear to have been kept deliberately weak as a political strategy. In such an environment, there is no reason to believe that top-down managerial reforms to formal justice institutions will have a positive impact on service delivery.

An alternative is to look for opportunities to support incremental change. The most successful elements of CCJAP have been where the project has worked with its counterparts to identify and resolve concrete problems that matter to national stakeholders, and then looked for ways to institutionalise the solutions. This has been done particularly well in the corrections component. For example, combining capital investment in prison health posts with brokering an agreement between the General Department of Prisons and the Ministry of Health resulted in a major breakthrough in the health care available to prisoners. There might have been opportunities to work this way in other components. For example, the project could have worked with the Ministry of Justice on the practical question of how to track juvenile justice cases through the court system, and used that as an entry point for new initiatives on court registries and juvenile justice. In a difficult political environment, it is often more productive to focus on points of interaction between the justice institutions and the public.

CCJAP set out to engage systematically in criminal justice, by working with all the major players in the system. The intention was good—investing all the resources into only one counterpart would not have produced better justice outcomes for the public. However, experience shows that the type of systemic engagement employed in CCJAP (parallel capacity building for all the institutions combined with support for implementation of the Legal and Judicial Reform Strategy) was unrealistic for the Cambodian context. The project was unable to overcome the fragmentation of the law and justice system, and ended up falling victim to the problem it was trying to address. It ended up with five components acting for all practical purposes like parallel projects, leaving CCJAP poorly positioned to address systemic issues.

An alternative approach to engaging systemically with the law and justice sector is to focus on thematic issues that span the jurisdiction of the different agencies. For example, issues like reducing time spent on remand, addressing prison overcrowding, introducing non-custodial sentencing or simply finding ways to execute court warrants all involve collaboration across the agencies. Focusing on practical issues of this type might be a more productive way to promote inter-agency cooperation. It might also have been appropriate to reserve a portion of the Flexible Support Fund specifically for inter-agency activities.

The CCJAP experience shows that piloting is a credible strategy. However, a successful pilot is only the first step. The results then have to be institutionalised. The CCJAP experience with linking its crime prevention and community safety pilots to the SNDD program is therefore particularly interesting. The potential for using a community development program to roll out crime prevention and community safety activities on a national basis is clearly there, and might also be feasible in other countries (including Indonesia). CCJAP has been careful to keep

its crime prevention and community safety activities simple and inexpensive, making it more likely that they can be replicated on a national basis with minimal external facilitation.

Capital works are always difficult to integrate into law and justice assistance. Many donors simply use capital works to buy influence with the counterparts, without expecting them to deliver institutional change. However, it is far better if they can be used to support a reform process. The experience over three phases of CCJAP is therefore instructive. The first phase invested in infrastructure without any obvious institutional objectives. The second phase invested heavily in a model court and model prison, ostensibly as demonstrations of how courts and prisons should be run. However, the two model facilities were built to such a high standard that the lessons they generated were not readily applicable to the court or corrections system as a whole. The gap between the Kandal prison and the rest of the corrections system also caused significant distortions. The third phase of CCJAP therefore shifted the approach to renovations or additions to existing facilities at a cost of no more than US\$100 000 per item. These small-scale works are less likely to cause distortions and are easier to link to institutional change processes. They therefore deliver far better value for money. However, this approach has really only been effective in the prisons component, where there were wider processes of institutional reform to which the capital works program could contribute.

There appear to be issues with the way AusAID manages its contractors. AusAID had difficult relations with its managing contractor for much of the life of CCJAP, although these have now improved significantly. On many occasions it was drawn into resolving management issues that should have been the domain of the contractor. However, despite persistent concerns over the strategic direction of the project, AusAID seems to have been unable to correct its course. AusAID sometimes seems more focused on ensuring that contractual milestones are delivered, rather than providing effective strategic oversight. Law and justice assistance requires a high degree of flexibility in delivery. This in turn requires both flexible programming processes (which CCJAP had through its annual work plans and the Flexible Support Fund), and a much closer engagement by AusAID in guiding the evolution of the assistance.

Like many law and justice programs, CCJAP has struggled with measuring results. The selection of results indicators should have been better integrated into the design of the project, rather than left to a monitoring and evaluation adviser to develop down the track. The top-down institutional reform processes supported by CCJAP were inherently difficult to monitor. Four years into the assistance, many of them are still at the preparatory stage, and therefore cannot have contributed to improving service delivery. Had the project been more focused on promoting immediate improvements to the quality of services, it would have been much easier to demonstrate results.

The project also went about aligning with counterpart monitoring systems in quite the wrong way. Its monitoring framework relied on counterpart data systems that did not yet exist at the inception of the project, and which have taken many years to develop. As a result, no baselines were established for key elements of the assistance. In these circumstances, the project should have worked towards aligned monitoring processes by investing in forms of data collection

that would both help the counterparts develop their systems and serve the project's own monitoring needs.

## 9.2 Operational recommendations

This section provides operational recommendations for the development of Australian law and justice assistance in Cambodia. General recommendations for AusAID's law and justice portfolio as a whole can be found in the Synthesis Report—Building on local strengths: Evaluation of Australian law and justice assistance<sup>54</sup>.

The evaluation team concludes that, despite the various shortcomings discussed here, there is a good case for continuing Australian assistance to the law and justice sector in Cambodia beyond the life of the current project, for a number of reasons.

CCJAP has developed a promising line of support for community-based justice. As well as making a direct contribution to the human rights and welfare of poor people, this support could make a potentially important contribution to the long-term process of postconflict state building in Cambodia, by helping to improve relations between the state and citizens. This is consistent with the RGC's reform agenda, as demonstrated by its ambitious program to strengthen local institutions through decentralisation and local democratisation. By supporting community-based justice through the SNDD system, Australia can complement the efforts of other donors and help shape the new joint donor funding mechanisms for sub-national government so that it includes support for social issues.

However, we would recommend that future support be substantially different in form to CCJAP III. Rather than attempting to support all the law and justice agencies in parallel through a component structure, we recommend that future assistance be organised along thematic lines, focusing on areas that (a) offer direct benefits to poor communities and vulnerable individuals, (b) have the potential to attract government ownership and leadership, (c) build on the achievements of CCJAP III, and (d) offer the potential to promote collaborative working across the law and justice agencies. Three such themes have emerged from CCJAP III:

1. justice in the community, focusing on crime prevention and community safety, community policing, legal aid for the poor and community education
2. addressing prison overcrowding including through non-custodial sentencing, bail arrangements and legal services to prisons, and improving prison conditions through systemic reforms and improvements in facilities
3. strengthening the collection and use of data within the justice system, to promote an understanding of how data can be used to improve service delivery. Investing in data systems can also make a significant contribution to identifying and improving the experiences of women and children within the justice system.

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<sup>54</sup> <http://www.ode.ausaid.gov.au/>

One additional thematic area might be sexual violence, which appears to be on the increase. This could include programs against trafficking, child prostitution, domestic violence and rape. Activities could include improving the policy and legal framework, community awareness raising, crime prevention, prosecution and victim services. If the AFP chooses to continue its assistance to the CNP, this might be an appropriate area of focus. It would provide a thematic focus for continuing support on investigative techniques, small-scale capital works and developing linkages between the CNP and other agencies.

More detailed recommendations have been provided separately to AusAID Cambodia.

## Annex 1: List of people consulted

AFP Cambodia	Phil Hunter
Anti-Corruption Unit	HE Om Yith Tieng HE Nuon Bophal
AusAID Cambodia	Megan Anderson Jennifer Lean Ros Chayy
Australian National University	Roderic Broadhurst Thierry Bouhours
Battambang Court	Nov Yaroat
Battambang NGOs—LAC, ADHOC, Banteay Srei	Seminar with NGO representatives
Battambang Prison	Kong Saren and colleagues
Battambang Provincial Government	HE El Soy Teav Chulong
Cambodian National Police	HE Gen Mao Chandara
CCJAP Project Team	Eak Khun Ky Bunnal Duong Vanna
Chhup and Chiro Communes, Kampong Cham	Meetings with local police and members of the local community
Council for Legal and Judicial Reform	HE Soy Mong Leang
Court of Appeal	HE You Bun Leng
Danida	Michael Engquist
Department of Foreign Affairs and Trade (DFAT) Cambodia	Ambassador Penny Richards
General Department of Prisons	HE Kuy Bun Sorn
ICRC	Nicolas Oliver
Kampong Cham Court	Hout Vuthy, Deputy Prosecutor
Kampong Cham Police	Br. Gen. Nuon Samin and colleagues
Kampong Cham Provincial Government	Deputy Governor HE Lorn Limthay and colleagues
Kratie Court	Touch Sakhoeun and colleagues
Kratie Police	Gen. Choung Sieng
Kratie Prison	Kva Saran and colleagues
LICADHO	Naly Pilorge
Ministry of Interior	HE Prum Sokha

Ministry of Justice	Ung Sophean HE Ang Vong Vathana HE Ith Rady
National Committee to Support Sub-National Democratic Development (SNDD) through decentralisation and deconcentration (D&D)	HE Sak Sitha HE Ngan Cham Roeun
Pursat Prison	Ngourn Lay and colleagues
Pursat Prison Farm	Hin Sophal and colleagues
Save the Children Australia	Nigel Trick Henk van Beer
The Asia Foundation	Gavin Tritt
UNDP	Sophie
UNICEF	Ana-Janet Sunga
World Bank	Noel Matthews Daniel Adler

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