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Legal and judicial reform performance monitoring: the PNG approach

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This paper identifies the dramatic growth in legal and judicial reform across the world of international development assistance, and assesses the particular experience of measuring performance in a substantial reform programme in Papua New Guinea (PNG). The paper provides the case study of building capacity to monitor and evaluate legal and judicial reform in the development context. It offers some fundamental lessons for donors from the initial five years of practice which relate to strategic capacity, incentives, sustainability, resources, timeframe and design approach.

Cet article identifie un accroissement important de la réforme juridique et judiciaire dans la sphère de l'aide internationale au développement. Il évalue l'expérience bien particulière qui a consisté à mesurer la performance dans le cadre d'un important programme de réformes en Papouasie-Nouvelle-Guinée (PNG). L'article propose une étude de cas sur le renforcement des capacités pour faire le suivi et évaluer la réforme juridique et judiciaire dans le contexte du développement. Tiré de cinq années de pratiques, il adresse quelques leçons importantes aux donateurs relatives aux capacités stratégiques, aux motivations, à la durabilité, aux ressources, aux contraintes temporelles et aux buts poursuivis

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Introduction

Over the past 15 years, in particular, there has been a massive increase in overseas development assistance (ODA) in legal and judicial reform. This marks a general shift in foreign aid strategy into governance and democratisation, sometimes described as the 'rule of law revival', which has become all the more notable following the events of 11 September 2001 and realignment of development objectives with the foreign policy and national security goals of many 'donor' nations (Carothers 2006).¹

Judicial and legal reform is now recognised as foundational in all governance and economic development strategies, for four cardinal reasons:

- it consolidates state power by strengthening police capacity, law and order;
- it strengthens the legal framework and provides a secure investment environment;
- it consolidates judicial independence and the rule of law; and
- it promotes human rights, access to justice, and thereby community cohesion.

There are many more projects of legal and judicial reform than ever before. To illustrate the dimensions of this growth, the World Bank estimates that it is now financing some 600 projects relating to legal and judicial reform, ranging from Latin American

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to Mongolia, Togo, Zambia and Cambodia (World Bank 2004a). Other international development agencies at the multilateral level – such as the UNDP and Asian Development Bank (ADB) – and at the bilateral level – such as United States Agency for Development (USAID), UK's Department for International Development (DfID), Japanese International Cooperation Agency (JICA) and Germany's Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) – support innumerable legal and judicial reform programmes in developing, transitional and post-conflict jurisdictions. To illustrate the size of this growth, ADB has committed US\$350 million to rebuilding courts and related capacity-building in one country, Pakistan (ADB 2003–05). USAID has committed almost US\$50 million to promote the rule of law in two countries, Afghanistan and Cambodia. Globally, these projects perhaps treble the World Bank's estimate, and the size of the investment is substantial on any measure.²

In Papua New Guinea, this growth is equally significant. AusAID, the foreign assistance agency of the Government of Australia is Papua New Guinea's (PNG) lead donor, providing US\$250 million in development assistance annually. PNG is the largest recipient of Australian aid. It became independent in 1975 and is a developing nation ranked 132 on the human development index. At the present time, it is confronting a range of serious developmental challenges; amongst them are law and justice, where the prevalence of violent street crime causes its capital, Port Moresby, to be ranked lowest on the safety scale of world cities, and among the highest in corruption.

Australia's development assistance in the PNG Law and Justice Sector (LJS) began in earnest in the early 1990s with support focused primarily on the police service, the Royal Papua New Guinea Constabulary. That assistance was initially valued at around US\$7million. Since then, assistance has been extended, and now forms part of Australia's Law and Justice Sector Program (LJSP), valued at about US\$100million over a five-year period.

Australia's assistance to legal and judicial reform in Papua New Guinea has grown exponentially between 10 and 100 times in just one decade. Moreover, as governments in the developed world acknowledge their self-interest in the security of neighbours, this growth is likely to continue. This is witnessed at present by Australia, a small nation of just 20 million inhabitants, repeatedly mobilising its armed forces and police on a multilateral and bilateral basis within its region in East Timor, PNG and the Solomon Islands.

What is equally extraordinary across the development world is how recent has been equivalent recognition of the need to monitor and evaluate the effectiveness of these development investments in a methodologically sound and systematic manner.³

The challenges confronting legal and judicial reform are substantial and complex. Measuring the success of development efforts is invariably difficult, in part because the long term nature of their objectives (such as reforming the law, reducing street crime, training judges, improving court backlog, and raising awareness of human rights) requires significant elapsed time for results to become visible. Causal attribution is also difficult. It may be said that until recently development monitoring and evaluation was characterised by its formal observance only, with an emphasis on project-based output evaluation, resulting in a lack of any systematic evidence of effect or improvement. This has led to a mounting questioning by donors generally and their constituents on the relative value of their reform investments.

Over the past five years, AusAID has responded by restructuring its approach to development assistance in legal and judicial reform in two quite significant respects:

- a. moving from small institution-focused projects to larger sector-based programmes; and
- b. investing more importance and resources in developing capacity to monitor and evaluate development assistance.

This paper provides a case study of this important evolution in legal and judicial reform in Papua New Guinea, as it tracks the progress towards monitoring and evaluating the contribution of development support to legal and judicial performance.

Context

The Law and Justice Sector in PNG is made up of formal agencies that parallel those in Australia, which was responsible for administration of the country until independence in 1975. These agencies include the Royal Papua New Guinea Constabulary, the National Judicial Services (responsible for the National and Supreme Courts), Magisterial Services (responsible for District Courts), Ombudsman Commission, Correctional Service and Justice and Attorney General (also including the Public Prosecutor and the Public Solicitor's Offices). The sector is also seen to include community and non-government agencies that have a role in delivering service related to law and justice.

The driver for moving to a sector approach in the country is the National Law and Justice Policy and Plan of Action (NLJPPA) (Department of National Planning and Monitoring 2000), which contains an overall vision for the future. It is based on three pillars, or focus areas, and was endorsed by the Government of Papua New Guinea (GoPNG) in 2000. The three pillars are:

- improved functioning of the formal law and justice agencies to increase the effectiveness of the deterrence system;
- improved sectoral coordination to target priorities and improved operational performance; and
- increased focus on crime prevention and restorative justice.

A sector-wide review was undertaken as part of public sector review activities in 2000 (Mostyn et al. 2002). The findings of the report were fundamental in informing debate within the sector, with particular regard to effective coordination and accountability between and within departmental agencies. The report attempted to link the NLJPPA with potential implementation strategies in sector agencies.

As part of these reforms, the GoPNG established a National Coordinating Mechanism (NCM) in 2003 to provide strategic oversight of activity within the sector. The NCM comprises the heads of each sector agency, and is chaired by the secretary of the Department of National Planning and Monitoring. This body makes all policy and strategic decisions relating to coordinated sectoral activity. The NCM is supported by the Law and Justice Sector Secretariat (LJSS), a facility that also coordinates the work of the Law and Justice Sector Working Group (LJSWG).

The LJSWG comprises senior planning and operational officers from LJS agencies. It develops proposals for the sector, screens all reports, and provides a forum for discussing problems in depth. It is the engine room for managing and coordinating ongoing sector activity.

From 2003, donor support to Law and Justice services in Papua New Guinea moved away from an agency-specific project-based model to a sector approach. In addition to the earlier model of focusing on building the capacity of agencies, there is now a substantial emphasis on cooperative efforts amongst formal agencies and civil society, linked to the sectoral coordination pillar of the NLJPPA.

Donor support to the programme approach is provided through the Law and Justice Sector Program, responsible for operational support to agencies and the sector; and the Justice Advisory Group (JAG). Working as a secretariat and advisor to both the NCM and the LJSWG, one of the main roles of the JAG is to guide the sector's development and implementation of a performance monitoring and evaluation framework for the Law and Justice Sector as a whole. LJSP and JAG are AusAID-funded bodies employing both national and expatriate advisers.

This background is important to an understanding of monitoring in the sector in PNG, because it identifies two of the influences on the performance monitoring model that was chosen, namely the pillars that underpin the sector approach and the mechanisms for managing the approach. Both of these impact on the selection of measures and the nature of the engagement with agencies and committees in developing and operationalising the framework.

Why the focus on performance monitoring?

At the outset, the GoPNG made a commitment to a performance management approach in its development of the Law and Justice Sector, as against a historical inputs approach. Performance management in this context is an integrated cycle of planning, resourcing, implementing, monitoring and revision that fits within the broader public sector reform framework also underway in PNG.

The intention in developing and implementing a sector Performance Monitoring Framework was two-fold: to generate data from within the sector and feed this back to stakeholders for management and accountability purposes, so that the use of evidence in decision-making would become part of the culture of Law and Justice approaches in PNG; and in due course to have in place a sector-wide performance monitoring capability.

The work therefore was not to do with monitoring and evaluating progress in a project sense, or indeed with monitoring sector or agency growth by a managing contractor such as the JAG, but in collaboration with key members of participating agencies:

- developing a performance monitoring framework;
- working with agencies in developing their performance monitoring capability, including the provision of data; and
- producing the reports and documents on which accountability and performance management are based.

By operating in partnership and as much as possible within existing GoPNG systems, the likelihood of localisation of these functions in a sustainable way was enhanced.

Implementing this developmental and capacity building approach to performance monitoring requires ongoing expertise and support. This is provided through the JAG.

Lead-up activity

During 2003, the NCM and LJSWG prepared a sector strategy with the support of the JAG, outlining goals, objectives and strategies for action. They took the overall strategy and re-combined multiple strategic activities into 10 priorities. The final list of 10 priorities became the basis for planning and monitoring through to the end of 2004.

These priorities were not seen as a sufficient strategic basis for planning and monitoring in the long term. Feedback from the sector on them was limited; there was insufficient time to develop a more defined and comprehensive sector strategy; and the urgent need for

an initial sector monitoring led to the decision by the NCM that the initial focus for a sector Performance Monitoring Framework (PMF) should be on the 10 priorities.

Throughout 2004, the JAG worked with the LJSWG and other stakeholders in defining specific outcomes and performance measures for each of the 10 priorities, operationalising collection processes, developing several small surveys, working with agencies on the data they would contribute to the PMF, and commencing collection of data for inclusion in the first Annual Performance Report, which covered the 2004 calendar year. This report was published in mid-2005.

In early 2005 the LJSWG developed the Sector Strategic Framework (SSF) with the support of LJSP. The SSF is a framework that more comprehensively represents strategic intentions across the sector. It takes over from the 10 priorities as the basis for planning within the sector, although the priorities are embedded within the goals.

The draft SSF was completed in time for Law and Justice Sector agencies to use as the frame of reference for the development of their Corporate Plans for 2006–10. These Corporate Plans represent the first phase of planning within the sector based on the one strategic framework, and include performance measures by which the agencies will monitor their performance. The PNG Law and Justice Sector Strategic Framework is included in Table 1.

The PMF was redeveloped across 2005 in consultation with groups representing agencies and civil societies, with initial thoughts being fed back to stakeholders several times to ensure that the proposed measures were both understood and agreed. The resultant PMF then became the basis for annual performance reporting for 2005. The second Annual Performance Report covering 2005 was produced in mid-2006.

PMF design and approach

The central feature of the PMF is its relationship with the SSF, which ‘identifies a vision, and set of goals, strategies and priorities identified by the Law and Justice Sector to guide and integrate efforts to develop a more just, safe and secure society in Papua New Guinea’.⁴ The SSF, developed by the LJSWG, has been strongly influenced by the NLJPPA and experience to date. Figure 1, taken from the SSF documentation, demonstrates the relationship between the SSF and PMF, and at the same time shows the links between policy, planning and monitoring from the national level to sector and agency levels.

These links are crucial in ensuring an integrated planning, resourcing, implementing and monitoring cycle that coordinates the activities of agencies within a total Law and Justice Sector approach.

What is the Performance Monitoring Framework?

The PMF comprises a limited number of Key Performance Measures (KPM) for each goal, and sub-measures against which data is collected. KPMs are broad measures that provide information on sector progress, and which are of interest to a range of stakeholders. Considering how KPMs could be used in the sector was the initial step in deciding which ones were selected. Three core uses were envisaged.

- The Law and Justice Sector through the National Coordinating Mechanism must satisfy the government of the day that the public interest is being met and that public funds are being allocated to the purposes for which they were appropriated. Government will want to know that they are getting value for taxpayers’ money. Governments will also want to know if their policies are suitable, are being implemented effectively and whether resources are reaching the people for whom they are intended.

Table 1. The PNG law and justice – sector strategic framework.

Mission	A just, safe and secure society for all				
Our Goals	Improved policies, safety & crime prevention	Increased access to justice & just results	Improved reconciliation, reintegration & deterrence	Improved accountability & reduced corruption	Improved ability to provide law & justice services
Our Strategies	1. Rebuild a professional police service that meets all legitimate community expectations	1. Remove obstacles that prevent access to just results	1. Encourage and support communities to reconcile offenders & victims in a non-violent manner	1. Ensure accountability for corruption & the abuse and misuse of power	1. Strengthen formal agencies to use resources properly
	Strengthen structures to improve police accountability & discipline	Enhance community awareness of legitimate human rights & the operations of the legal system	Build capacity to support victims of crime	Regularly review & propose improvements to leadership, accountability & criminal laws	Strengthen control systems & processes
	Involve community in determining policing priorities	Simplify key laws	Develop & promote rehabilitation initiatives, including diversion	Reduce abuse of power & corruption by officials when dealing with the public	Reorganise agencies to meet service priorities
	Improve core operational & administrative practices	Improve access to legal, paralegal and community based advocacy services	Support reintegration of offenders into their communities	Increase the capacity of the state to detect, investigate, expose & prosecute corruption & the abuse & misuse of power	Monitor & report on performance at sector & agency level
	2. Increase support for community based crime prevention	Focus on resolving cases in courts & commissions quickly & fairly	2. Provide alternatives to imprisonment for less serious crimes & those awaiting trial	Enforce anti-corruption laws	2. Support & build capacity in civil society to contribute to sector development
	Increase support for local based initiatives	2. Strengthen locally based non-violent dispute resolution	Promote new national sentencing policies	Increase awareness & education about ethics, leadership values, roles & responsibilities	Encourage & strengthen civil society participation in planning & policy development

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Table 1 – *continued*

Mission	A just, safe and secure society for all				
Promote coordinated engagement with formal sector	Recognise, reinforce & support mediation & customary practices that restore harmony in relationships between people & in communities	Support increased use of the alternatives to imprisonment	2. Encourage civil society oversight of public administration	Build service delivery capacity	
3. Support selected high priority initiatives	Strengthen village courts to resolve cases quickly & fairly	3. Maintain a national correctional system for those who are a risk to society	Support civil society activities that expose corruption & the abuse & misuse of power	3. Foster & build enhanced sector cooperation & coordination	
Improve urban safety, especially Port Moresby	Support magistrates to work regularly in each district	Humanely & securely contain serious offenders	Encourage agencies to respond openly to public scrutiny	Work cooperatively within government, within the sector & with communities	
Improve highway & resource project safety, especially Highlands	Strongly focus on increasing capacity to resolve land disputes	Provide rehabilitation & reintegration for detainees	3. Reduce claims against the state	Support the implementation of a ‘bottom-up’ planning philosophy	
Reduce number & use of guns	3. Strongly support robust & independent courts & Commissions		Reduce opportunities for claims to be made against the state	Encourage & develop provincial & local level government engagement	
Reduce family & sexual violence	Guarantee independent judges, magistrates, law officers & Ombudsman		Improve agency capacity to defend claims	4. Integrate HIV/AIDS responses into the sector & agencies	
	Support courts & commissions to maintain due process & fairness			Capture lessons & experiences	
				Develop & promote appropriate responses to the epidemic	

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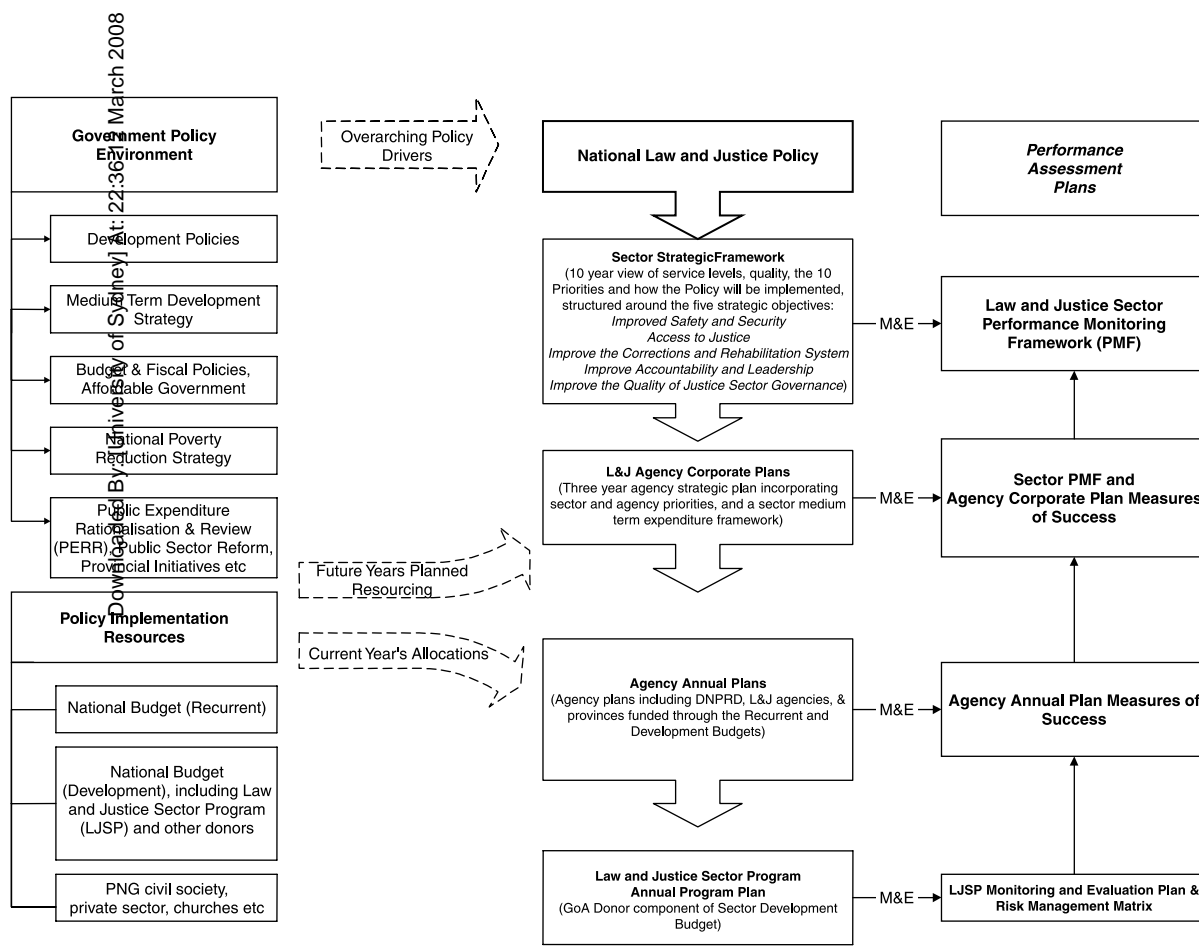


Figure 1. Policy, planning and monitoring relationships in the sector.

- Leaders in agencies at the provincial and national levels, as well as those responsible for sector coordination, need information on performance. This enables them to use information as the basis for analysis and planning, and to manage improvement on solid grounds.
- The sector needs to be responsive to civil society. The KPMs therefore should provide evidence on matters that are important to the community. The sector needs to provide a picture of its performance on these things in a way that the community can understand. This information will enable community representatives to discuss issues, priorities and future directions with public servants on an even footing, because everyone will have the same information from which to draw.

By identifying and embedding these three core uses in the framework – a Balanced Score Card approach (Kaplan and Norton 2001) – the PMF has created an incentive for a greater service orientation within the sector. This is a key driver for development in LJS within PNG, as these agencies tend not to see themselves at present as providers of services to civil society and to government.

The Key Performance Measures for the PMF represent the best initial set for measuring progress against the SSF. All Key Performance Measures are represented in bold in Table 2.

The selection of KPMs (and sub-measures) has been influenced by the literature on monitoring law and justice in development work, but the fundamental influence was the extent to which the measures reflected the Sector Strategic Framework and had local relevance. If the PMF was to drive performance management, then it needed to reflect the local context and emerge from local development processes.

Sub-measures

Each KPM has one or more sub-measures. KPMs use sub-measures to gather data from the Law and Justice Sector agencies, civil society and other stakeholders. Sub-measures are more specific, and in combination provide enough information to enable a judgement to be made about progress on the KPMs.

Sub-measures included in the revised PMF were derived on the basis of a number of criteria, as follows:

- they were as simple as possible;
- they were meaningful to the different stakeholders, i.e. GoPNG, formal agencies and civil society could obtain evidence from various sub-measures that was important from their particular perspective;
- they were part of the core business of public servants and, where possible, they were the same measures as those used within the agency Performance Monitoring Frameworks; they drew directly on information collected by agencies in the course of their work for the good administration of law and justice; rather than creating an additional workload; and they were considered to be useful to managers and leaders at provincial and national levels as diagnostic tools. At present some 60% of the sub-measures being used derive from agency information systems;
- they enabled continuation of a substantial number of the indicators from 2004 so that monitoring of annual trends could commence; and
- there was some capacity to compare data from different sources, as a way of confirming its reliability.

There are 64 sub-measures in all. These are also represented in Table 2.

Table 2. The PNG law and justice sector – performance monitoring framework.

Vision	A just, safe & secure society for all					
Our Goals	Improved Policing, Safety and Crime Prevention	Increased Access to Justice and Just Results	Improved Reconciliation, Reintegration and Deterrence	Improved Accountability & Reduced Corruption	Improved Ability to provide Law and Justice Services	Improved Ability to provide Law and Justice Services (cont.)
	1.1 The police service meets community expectations	2.1 All people have greater access to justice services	3.1 Increase in reconciliation of offenders and victims	4.1 Corruption and the abuse and misuse of power are addressed	5.1 Improvement in agency corporate governance	5.4 Improvement in cross sector coordination
	1.1.1 Improvement in RPNGC operational and administrative practices	2.1.1 Increase in the number of people receiving human rights awareness and services	3.1.1 Number of programs and activities that cater for victims of crime increases	4.1.1 Number of complaints against government officials registered and closed	5.1.1 Number of agencies that submit quarterly financial management and annual reports	5.4.1 Number of sector stakeholders meetings and attendance rates
	1.1.2 The number, duration and nature of disciplinary incidents addressed	2.1.2 Increase in the number of people receiving legal/paralegaland/or advocacy services	3.1.2 Number of courts that deal appropriately with victims of crime increases	4.1.2 The number of leaders who are referred by the Ombudsman Commission for prosecution	5.1.2 Number of agencies that have been audited in 2007	5.4.2 Percentage of civil society organisations that perceive the level of coordination across L&J sector agencies is increasing
	1.1.3 Public perception of police performance and discipline improves	2.1.3 Increased number of cases defended in court by the Public Solicitor	3.1.3 Agency policies and procedures address restorative justice	4.1.3 The number of leaders convicted of corruption	5.1.3 The number and duration of acting appointments in senior positions in agencies	5.4.3 Extent of cross-sector initiatives being implemented
	1.1.4 Increased police participation in community liaison	2.1.4 Reduction in the average time that remandees are detained	3.2 Increase in the use of alternatives to imprisonment	4.1.4 The extent of resourcing of the Ombudsman Commission	5.1.4 Agency annual plans are reflected in their recurrent and development budgets	5.5 HIV/AIDS strategies are implemented effectively
	1.2 Reduction in the level of crime	2.2 Improvement in the disposition of cases	3.3.1 More juveniles are diverted from prison	4.1.5 Papua New Guinea improves its position on the Transparency International Corruption Index	5.1.5 Agencies monitor progress against annual plans on a quarterly basis	5.5.1 Agency corporate and annual plans identify HIV/AIDS activities which are clearly linked to their core business

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Table 2 – continued

Vision	A just, safe & secure society for all					
1.2.1 Serious crime in provinces and major urban centres declines	2.2.1 The number, timeliness and disposition of criminal cases	3.2.2 There is an increase in the number of convicted persons subject to ‘non-custodial’ orders	4.1.6 The community perceives that corruption is decreasing in PNG	5.1.6 Number of agencies with effective consultation and communication processes	5.5.2 Agencies have HIV/AIDS workplace policies in place which are clearly linked to agency core business	
1.2.2 Community members experience a reduction in crime victimisation	2.2.2 The number, timeliness and disposition of civil cases	3.3 A correctional system is maintained and improved	4.2 Effective processes for overseeing public administration are in place	5.2 Improvement in the use of resources in the sector	5.6 Provincial engagement strategies are developed and implemented effectively	
1.2.3 Level of crime on the Highlands Highway is decreasing	2.2.3 Clients of the courts perceive that systems are improving	3.3.1 Number of prisons with satisfactory practices and procedures increases	4.2.1 Satisfaction of civil society organisations with agency communication and transparency	5.2.1 Share of total public expenditure by agency and sector	5.6.1 Law and Justice Sector and Agency planning and budgeting increasingly address provincial, district and LLG needs	
1.3 The Sector addresses high priority areas with improved outcomes	2.3 Non-violent dispute resolution processes achieve improved outcomes	3.3.2 Reduction in over-crowding and balanced distribution of prisoners across institutions	4.2.2 The community has increasing confidence in the system to detect and prosecute fraud	5.2.2 Extent of development budget alignment with the Sector Strategic Framework	5.6.2 Improved coordination of law and justice activities in selected provinces	
1.3.1 Businesses experience a reduction in crime victimisation	2.3.1 Village Courts are distributed equitably across PNG	3.3.3 Reduction in escapes from custody	4.3 Reduction in claims against the state	5.2.3 Extent of resourcing of across-sector initiatives	5.6.3 Improved law and justice activities planning and implementation occurs in selected provinces	
1.3.2 Reduction in the use of firearms in crime victimisation	2.3.2 Improvement in community confidence in Village Courts	3.3.4 Increase in the number of prisoners participating in rehabilitation programmes	4.3.1 The sector has clear guidelines in place for agency management of claims	5.3 Increase in civil society contribution to sector outcomes		

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Table 2 – *continued*

Vision	A just, safe & secure society for all			
1.3.3 Improvement in sector and agency responses to family and sexual violence	2.3.3 Number of land cases processed each year	4.3.2 Total number of new claims against the state	5.3.1 Percentage of civil society organisations that perceive agencies are meeting their service priorities increases	
		4.3.3 Total number of claims defended by the state	5.3.2 The extent to which agencies engage civil society organisations adequately in planning processes increases	
		4.3.4 Total cost of all claims	5.3.3 Number of civil society organisations involved in Law and Justice activities receiving financial support	
		4.3.5 Number of default judgments related to claims against the state is decreasing	5.3.4 Quantity of funding received by civil society organisations in Law and Justice activities	
			5.3.5 Increase in coverage of PNG by key civil society organisations	

Sources of data

The PMF uses several methods to gather data. Data is collected from Law and Justice agencies and other organisational records, broad scale periodic surveys commissioned through an external research agency, and surveys of Law and Justice Sector agencies and civil society organisations.

Wherever possible, agency data is used to feed the sub-measures, even where this may be less than optimal at this stage of agency development. For example, monitoring of improvement in police operational and administrative practices draws on an existing annual audit of divisions and units against a number of so-called key functions. While certain key practices are not examined in the audit, using the existing agency methodology creates the opportunity to improve the audit as a basis for agency and sector monitoring.

There are a number of sub-measures where this approach was taken, as the best way to support agency improvement, and sustainability of monitoring systems. The downside is that the quality of reporting varies directly with the quality of the agency information.

JAG in collaboration with the National Research Institute⁵ also carries out Community Crime Surveys⁶ in four large centres in PNG. These surveys were instituted to provide baseline data on victims of crime prior to the commencement of a major donor support programme in policing in the country that would support a number of sub-measures in the sector PMF.

The community surveys supplement official Law and Justice Sector quantitative data, and draw on the view that for the production of crime incidence data, victim self-report surveys are more accurate and representative than are official crime statistics based on the activity of formal criminal justice agencies (Findlay 2004). The surveys also report on community perception of other LJS agencies. They are replicated at present on an annual basis.

As agencies, the LJSS and the National Research Institute incorporate mechanisms for data collection within their operations, it is envisaged that management of the PMF and its data collection and reporting requirements will become sustainable within the systems of these organisations.

Availability of data

The PMF is a work in progress. Data is currently available for 60 of the 64 sub-measures. As with any developing system of performance monitoring, data quality varies substantially, because many of the systems and skills needed to provide good data are in the early stages of development.

The PMF acknowledges this variability, and has designated each sub-measure to an available, medium or long term data development timeframe category, according to when an acceptable data quality is likely to be reached. This staged development of data collection systems relates to the capacity of agencies and the sector to develop additional collections while at the same time maintaining or improving existing collections.

In addition, the PMF is subject to annual review to ensure that it remains responsive to the emerging capacity of the sector to think strategically about its information needs and to manage data.

Catering for everyone

The vision for the LJS is 'A just, safe and secure society for all'. An aim of the PMF is to enable collection of data about men and women, different age groups, and different geographic locations. This will enable the sector to know how policies and the distribution

of resources are affecting services and outcomes for the different groups. This is essential information for equitable access and participation for the people of PNG.

At present, very few of the data provided can be disaggregated to enable these comparisons to be made.

Reporting

The LJS has established two processes for reporting performance against the SSF. They are the Annual Performance Report (APR) which reports on performance against a yearly cycle, and the Quarterly Performance Report (QPR), which provides information on a three monthly cycle. These reports collate and analyse data in a form that enables agencies and the sector to use for management purposes, and are key mechanisms for accountability and transparency.

All sub-measures for which data are available will be reported on annually, whereas quarterly reporting will be limited to those sub-measures on which new data becomes available during the quarter in question.

Further developing the PMF

The Performance Monitoring Framework will continue to evolve as stakeholders discover the need for more or different data to support their decision-making. Experience internationally shows that all PMFs improve with the experience of implementation, indeed that it is important not to wait until stakeholders think it is 'right'. The experience of implementing is essential to learning what can be improved. This is being played out in PNG also, having taken three years to reach the point where relatively robust planning and monitoring frameworks have been developed and are operational.

Modifications to the PMF will be through two processes. In addition to the adjustments that are incorporated on an iterative basis, the LJSS with support from the JAG will be tasked with managing an annual process of review involving feedback from each agency, relevant civil society organisations and Law and Justice Sector committees. This process will ensure that the KPMs and sub-measures are meeting the needs of key stakeholders.

Lessons from practice

Six significant lessons are offered from the formative experience of JAG in performance monitoring and evaluation to date for the consideration of planners of other developments.

1. *Strategic capacity*: As with all organisations that start to monitor their performance in a structured way, the agencies within the LJS face large cultural and sustainability challenges. The use of evidence in decision-making and reporting represents a major shift in the way that traditional public sector organisations operate, in the move from input-focused to results-driven behaviour.

To become aware that there are direct links between what formal Law and Justice agencies do and social impacts of poverty alleviation, and reduction in HIV/AIDS, for example, requires a level of strategic thinking that is not typical of public servants in developing contexts. Similarly, using the information that becomes available through operating PMFs (such as the one in the Law and Justice Sector in PNG), requires a paradigm shift in how agencies carry out their annual planning and budgeting processes. There is substantial work underway in the sector in PNG in relation to this. This requires donors assisting those agencies to form

distinct parallel strategies to develop the information management and performance monitoring capacities of counterpart systems – in addition to building law and justice capacities – and to adopt realistic change-management timeframes.

2. *Incentives*: There are a number of incentives driving the engagement of stakeholders in sector performance monitoring. These are important in the take-up of information systems within agencies (World Bank 2004b), and relate back to core uses of the information obtained from sector performance monitoring. Performance reports are provided through the National Coordinating Mechanism to the Central Agency Coordinating Committee. This provides a direct accountability for the Law and Justice Sector to the Government of Papua New Guinea, and provides an incentive for agencies to have effective monitoring systems in place and to improve performance. Secondly, involving civil society organisations in the development of sub-measures and collection of data has created an incentive for formal agencies to be more responsive to civil society as important stakeholders, not merely passive recipients of services. Finally, the independent collation of reports based on these data, and fed back to stakeholders, has created a credibility for the reports that encourages a strong engagement with the information they contain.
3. *Sustainability*: The sector monitoring regime draws on data from constituent agencies for some 60% of its sub-measures. Working within agency systems makes for local management of the process, creating sustainability within the relatively short term. Other data draws on the surveys managed by JAG in conjunction with NRI. This is less sustainable, and it is anticipated that outside assistance will continue to be needed to manage these relatively major research exercises.
4. *Resources*: Providing a cost to the JAG investment in sector performance monitoring – and thereby evaluating its own contribution – is not altogether straightforward, but in simple terms if some 40% of the annual budget for JAG of about US\$2.25 million is compared with the budget of the Law and Justice Sector Program of about US\$15 million, then it is estimated at around 6%.
5. *Timeframe*: The time required to design, establish and develop a sector-based performance monitoring framework is relatively substantial. To date, this has required five years, and it was only after three years that the baseline data for key performance indicators was settled, gathered and available for measurement, enabling trend analysis. In addition to the time required to technically assess and build information management capacity, this time was required to undertake, integrate and harmonise a corresponding process of strategic planning for the sector. The fundamental interdependency between the planning and monitoring functions had not been fully appreciated from the outset.
6. *Design approach*: Perhaps most significant from a developmental design perspective has been the profound shift from the prevalent logistic framework (logframe) approach to a new sector-based performance paradigm. No longer is attention driven by the donor's own design approach; now, for the first time, all is directed to the impact of any development contribution on the overall performance of the sector. This is a whole new, and most welcome, approach.

Acknowledgements

The views expressed in this paper are those of the authors only, and do not in any way reflect the policies of AusAID or the Governments of Papua New Guinea or Australia. The authors gratefully acknowledge the generous assistance provided by AusAID in researching this paper

Notes

1. See also Jensen and Heller (2003), who describe this as being a fourth wave of the 'law and development movement' of the 1970s involving US technical assistance to Latin America, critiqued by Trubeck and Galanter (1974).
2. During the 1990s, it is estimated that nearly \$1 billion in financial support was forthcoming from the World Bank, the Inter-American Development Bank (IDB), the United Nations Development Program (UNDP), non-governmental institutions in Latin America alone (DeShazo 2006); of this total, a single agency, USAID, contributed almost \$400m. (Hammergren 2003, p. 295). As demonstrated above, these investments have already grown substantially.
3. There is recently an emerging literature on performance monitoring in legal and judicial reform in the development context (see: Hammergren 2002, 2003, p. 291; see also Shihata 1998, p. 120; Buscaglia and Dakolias 1999; Messick 2000; Golub 2003; Vera Institute of Justice 2003; Biebesheimer (now senior counsel at the World Bank but then of the IADB); and Bhansali 2006, p. 312 Dakolias, various; American Bar Association's Central European and Eurasian Law Initiative <http://www.abanet.org/ceeli/publications/jri/home.html>). USAID (1998) has undertaken a substantial body of work on performance monitoring and results-based management.
4. Sector Strategic Framework in support of the National Law and Justice Policy and Plan of Action towards Restorative Justice, Papua New Guinea, June 2006.
5. The National Research Institute in Papua New Guinea is a statutory authority which provides policy advice to government in the areas of economics, education, environment, politics and legal matters.
6. The Community Crime Surveys were developed specifically to scan a number of indicators relating to: (a) *exposure* to crime – respondent's actual experiences, (b) *confidence* in efficiency/effectiveness of law enforcement agencies – police, courts, etc, and (c) *perceptions* of corruption. Examples of other such surveys are the Australasian Centre for Policing Research, AC Nielsen National Survey of Community Satisfaction with Policing and the UN Victims of Crime approach. The survey also supplements official Law and Justice Sector quantitative data and is consistent with the developing sector-wide monitoring and evaluation indicators.

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Legal and judicial reform performance monitoring: the PNG approach

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Legal and judicial reform performance monitoring: the PNG approach

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This paper identifies the dramatic growth in legal and judicial reform across the world of international development assistance, and assesses the particular experience of measuring performance in a substantial reform programme in Papua New Guinea (PNG). The paper provides the case study of building capacity to monitor and evaluate legal and judicial reform in the development context. It offers some fundamental lessons for donors from the initial five years of practice which relate to strategic capacity, incentives, sustainability, resources, timeframe and design approach.

Cet article identifie un accroissement important de la réforme juridique et judiciaire dans la sphère de l'aide internationale au développement. Il évalue l'expérience bien particulière qui a consisté à mesurer la performance dans le cadre d'un important programme de réformes en Papouasie-Nouvelle-Guinée (PNG). L'article propose une étude de cas sur le renforcement des capacités pour faire le suivi et évaluer la réforme juridique et judiciaire dans le contexte du développement. Tiré de cinq années de pratiques, il adresse quelques leçons importantes aux donateurs relatives aux capacités stratégiques, aux motivations, à la durabilité, aux ressources, aux contraintes temporelles et aux buts poursuivis

Keywords: law; justice; reform; monitoring; evaluation; international; development; PNG

Introduction

Over the past 15 years, in particular, there has been a massive increase in overseas development assistance (ODA) in legal and judicial reform. This marks a general shift in foreign aid strategy into governance and democratisation, sometimes described as the 'rule of law revival', which has become all the more notable following the events of 11 September 2001 and realignment of development objectives with the foreign policy and national security goals of many 'donor' nations (Carothers 2006).¹

Judicial and legal reform is now recognised as foundational in all governance and economic development strategies, for four cardinal reasons:

- it consolidates state power by strengthening police capacity, law and order;
- it strengthens the legal framework and provides a secure investment environment;
- it consolidates judicial independence and the rule of law; and
- it promotes human rights, access to justice, and thereby community cohesion.

There are many more projects of legal and judicial reform than ever before. To illustrate the dimensions of this growth, the World Bank estimates that it is now financing some 600 projects relating to legal and judicial reform, ranging from Latin American

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to Mongolia, Togo, Zambia and Cambodia (World Bank 2004a). Other international development agencies at the multilateral level – such as the UNDP and Asian Development Bank (ADB) – and at the bilateral level – such as United States Agency for Development (USAID), UK's Department for International Development (DfID), Japanese International Cooperation Agency (JICA) and Germany's Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) – support innumerable legal and judicial reform programmes in developing, transitional and post-conflict jurisdictions. To illustrate the size of this growth, ADB has committed US\$350 million to rebuilding courts and related capacity-building in one country, Pakistan (ADB 2003–05). USAID has committed almost US\$50 million to promote the rule of law in two countries, Afghanistan and Cambodia. Globally, these projects perhaps treble the World Bank's estimate, and the size of the investment is substantial on any measure.²

In Papua New Guinea, this growth is equally significant. AusAID, the foreign assistance agency of the Government of Australia is Papua New Guinea's (PNG) lead donor, providing US\$250 million in development assistance annually. PNG is the largest recipient of Australian aid. It became independent in 1975 and is a developing nation ranked 132 on the human development index. At the present time, it is confronting a range of serious developmental challenges; amongst them are law and justice, where the prevalence of violent street crime causes its capital, Port Moresby, to be ranked lowest on the safety scale of world cities, and among the highest in corruption.

Australia's development assistance in the PNG Law and Justice Sector (LJS) began in earnest in the early 1990s with support focused primarily on the police service, the Royal Papua New Guinea Constabulary. That assistance was initially valued at around US\$7million. Since then, assistance has been extended, and now forms part of Australia's Law and Justice Sector Program (LJSP), valued at about US\$100million over a five-year period.

Australia's assistance to legal and judicial reform in Papua New Guinea has grown exponentially between 10 and 100 times in just one decade. Moreover, as governments in the developed world acknowledge their self-interest in the security of neighbours, this growth is likely to continue. This is witnessed at present by Australia, a small nation of just 20 million inhabitants, repeatedly mobilising its armed forces and police on a multilateral and bilateral basis within its region in East Timor, PNG and the Solomon Islands.

What is equally extraordinary across the development world is how recent has been equivalent recognition of the need to monitor and evaluate the effectiveness of these development investments in a methodologically sound and systematic manner.³

The challenges confronting legal and judicial reform are substantial and complex. Measuring the success of development efforts is invariably difficult, in part because the long term nature of their objectives (such as reforming the law, reducing street crime, training judges, improving court backlog, and raising awareness of human rights) requires significant elapsed time for results to become visible. Causal attribution is also difficult. It may be said that until recently development monitoring and evaluation was characterised by its formal observance only, with an emphasis on project-based output evaluation, resulting in a lack of any systematic evidence of effect or improvement. This has led to a mounting questioning by donors generally and their constituents on the relative value of their reform investments.

Over the past five years, AusAID has responded by restructuring its approach to development assistance in legal and judicial reform in two quite significant respects:

- a. moving from small institution-focused projects to larger sector-based programmes; and
- b. investing more importance and resources in developing capacity to monitor and evaluate development assistance.

This paper provides a case study of this important evolution in legal and judicial reform in Papua New Guinea, as it tracks the progress towards monitoring and evaluating the contribution of development support to legal and judicial performance.

Context

The Law and Justice Sector in PNG is made up of formal agencies that parallel those in Australia, which was responsible for administration of the country until independence in 1975. These agencies include the Royal Papua New Guinea Constabulary, the National Judicial Services (responsible for the National and Supreme Courts), Magisterial Services (responsible for District Courts), Ombudsman Commission, Correctional Service and Justice and Attorney General (also including the Public Prosecutor and the Public Solicitor's Offices). The sector is also seen to include community and non-government agencies that have a role in delivering service related to law and justice.

The driver for moving to a sector approach in the country is the National Law and Justice Policy and Plan of Action (NLJPPA) (Department of National Planning and Monitoring 2000), which contains an overall vision for the future. It is based on three pillars, or focus areas, and was endorsed by the Government of Papua New Guinea (GoPNG) in 2000. The three pillars are:

- improved functioning of the formal law and justice agencies to increase the effectiveness of the deterrence system;
- improved sectoral coordination to target priorities and improved operational performance; and
- increased focus on crime prevention and restorative justice.

A sector-wide review was undertaken as part of public sector review activities in 2000 (Mostyn et al. 2002). The findings of the report were fundamental in informing debate within the sector, with particular regard to effective coordination and accountability between and within departmental agencies. The report attempted to link the NLJPPA with potential implementation strategies in sector agencies.

As part of these reforms, the GoPNG established a National Coordinating Mechanism (NCM) in 2003 to provide strategic oversight of activity within the sector. The NCM comprises the heads of each sector agency, and is chaired by the secretary of the Department of National Planning and Monitoring. This body makes all policy and strategic decisions relating to coordinated sectoral activity. The NCM is supported by the Law and Justice Sector Secretariat (LJSS), a facility that also coordinates the work of the Law and Justice Sector Working Group (LJSWG).

The LJSWG comprises senior planning and operational officers from LJS agencies. It develops proposals for the sector, screens all reports, and provides a forum for discussing problems in depth. It is the engine room for managing and coordinating ongoing sector activity.

From 2003, donor support to Law and Justice services in Papua New Guinea moved away from an agency-specific project-based model to a sector approach. In addition to the earlier model of focusing on building the capacity of agencies, there is now a substantial emphasis on cooperative efforts amongst formal agencies and civil society, linked to the sectoral coordination pillar of the NLJPPA.

Donor support to the programme approach is provided through the Law and Justice Sector Program, responsible for operational support to agencies and the sector; and the Justice Advisory Group (JAG). Working as a secretariat and advisor to both the NCM and the LJSWG, one of the main roles of the JAG is to guide the sector's development and implementation of a performance monitoring and evaluation framework for the Law and Justice Sector as a whole. LJSP and JAG are AusAID-funded bodies employing both national and expatriate advisers.

This background is important to an understanding of monitoring in the sector in PNG, because it identifies two of the influences on the performance monitoring model that was chosen, namely the pillars that underpin the sector approach and the mechanisms for managing the approach. Both of these impact on the selection of measures and the nature of the engagement with agencies and committees in developing and operationalising the framework.

Why the focus on performance monitoring?

At the outset, the GoPNG made a commitment to a performance management approach in its development of the Law and Justice Sector, as against a historical inputs approach. Performance management in this context is an integrated cycle of planning, resourcing, implementing, monitoring and revision that fits within the broader public sector reform framework also underway in PNG.

The intention in developing and implementing a sector Performance Monitoring Framework was two-fold: to generate data from within the sector and feed this back to stakeholders for management and accountability purposes, so that the use of evidence in decision-making would become part of the culture of Law and Justice approaches in PNG; and in due course to have in place a sector-wide performance monitoring capability.

The work therefore was not to do with monitoring and evaluating progress in a project sense, or indeed with monitoring sector or agency growth by a managing contractor such as the JAG, but in collaboration with key members of participating agencies:

- developing a performance monitoring framework;
- working with agencies in developing their performance monitoring capability, including the provision of data; and
- producing the reports and documents on which accountability and performance management are based.

By operating in partnership and as much as possible within existing GoPNG systems, the likelihood of localisation of these functions in a sustainable way was enhanced.

Implementing this developmental and capacity building approach to performance monitoring requires ongoing expertise and support. This is provided through the JAG.

Lead-up activity

During 2003, the NCM and LJSWG prepared a sector strategy with the support of the JAG, outlining goals, objectives and strategies for action. They took the overall strategy and re-combined multiple strategic activities into 10 priorities. The final list of 10 priorities became the basis for planning and monitoring through to the end of 2004.

These priorities were not seen as a sufficient strategic basis for planning and monitoring in the long term. Feedback from the sector on them was limited; there was insufficient time to develop a more defined and comprehensive sector strategy; and the urgent need for

an initial sector monitoring led to the decision by the NCM that the initial focus for a sector Performance Monitoring Framework (PMF) should be on the 10 priorities.

Throughout 2004, the JAG worked with the LJSWG and other stakeholders in defining specific outcomes and performance measures for each of the 10 priorities, operationalising collection processes, developing several small surveys, working with agencies on the data they would contribute to the PMF, and commencing collection of data for inclusion in the first Annual Performance Report, which covered the 2004 calendar year. This report was published in mid-2005.

In early 2005 the LJSWG developed the Sector Strategic Framework (SSF) with the support of LJSP. The SSF is a framework that more comprehensively represents strategic intentions across the sector. It takes over from the 10 priorities as the basis for planning within the sector, although the priorities are embedded within the goals.

The draft SSF was completed in time for Law and Justice Sector agencies to use as the frame of reference for the development of their Corporate Plans for 2006–10. These Corporate Plans represent the first phase of planning within the sector based on the one strategic framework, and include performance measures by which the agencies will monitor their performance. The PNG Law and Justice Sector Strategic Framework is included in Table 1.

The PMF was redeveloped across 2005 in consultation with groups representing agencies and civil societies, with initial thoughts being fed back to stakeholders several times to ensure that the proposed measures were both understood and agreed. The resultant PMF then became the basis for annual performance reporting for 2005. The second Annual Performance Report covering 2005 was produced in mid-2006.

PMF design and approach

The central feature of the PMF is its relationship with the SSF, which ‘identifies a vision, and set of goals, strategies and priorities identified by the Law and Justice Sector to guide and integrate efforts to develop a more just, safe and secure society in Papua New Guinea’.⁴ The SSF, developed by the LJSWG, has been strongly influenced by the NLJPPA and experience to date. Figure 1, taken from the SSF documentation, demonstrates the relationship between the SSF and PMF, and at the same time shows the links between policy, planning and monitoring from the national level to sector and agency levels.

These links are crucial in ensuring an integrated planning, resourcing, implementing and monitoring cycle that coordinates the activities of agencies within a total Law and Justice Sector approach.

What is the Performance Monitoring Framework?

The PMF comprises a limited number of Key Performance Measures (KPM) for each goal, and sub-measures against which data is collected. KPMs are broad measures that provide information on sector progress, and which are of interest to a range of stakeholders. Considering how KPMs could be used in the sector was the initial step in deciding which ones were selected. Three core uses were envisaged.

- The Law and Justice Sector through the National Coordinating Mechanism must satisfy the government of the day that the public interest is being met and that public funds are being allocated to the purposes for which they were appropriated. Government will want to know that they are getting value for taxpayers’ money. Governments will also want to know if their policies are suitable, are being implemented effectively and whether resources are reaching the people for whom they are intended.

Table 1. The PNG law and justice – sector strategic framework.

Mission	A just, safe and secure society for all				
Our Goals	Improved policies, safety & crime prevention	Increased access to justice & just results	Improved reconciliation, reintegration & deterrence	Improved accountability & reduced corruption	Improved ability to provide law & justice services
Our Strategies	1. Rebuild a professional police service that meets all legitimate community expectations	1. Remove obstacles that prevent access to just results	1. Encourage and support communities to reconcile offenders & victims in a non-violent manner	1. Ensure accountability for corruption & the abuse and misuse of power	1. Strengthen formal agencies to use resources properly
	Strengthen structures to improve police accountability & discipline	Enhance community awareness of legitimate human rights & the operations of the legal system	Build capacity to support victims of crime	Regularly review & propose improvements to leadership, accountability & criminal laws	Strengthen control systems & processes
	Involve community in determining policing priorities	Simplify key laws	Develop & promote rehabilitation initiatives, including diversion	Reduce abuse of power & corruption by officials when dealing with the public	Reorganise agencies to meet service priorities
	Improve core operational & administrative practices	Improve access to legal, paralegal and community based advocacy services	Support reintegration of offenders into their communities	Increase the capacity of the state to detect, investigate, expose & prosecute corruption & the abuse & misuse of power	Monitor & report on performance at sector & agency level
	2. Increase support for community based crime prevention	Focus on resolving cases in courts & commissions quickly & fairly	2. Provide alternatives to imprisonment for less serious crimes & those awaiting trial	Enforce anti-corruption laws	2. Support & build capacity in civil society to contribute to sector development
	Increase support for local based initiatives	2. Strengthen locally based non-violent dispute resolution	Promote new national sentencing policies	Increase awareness & education about ethics, leadership values, roles & responsibilities	Encourage & strengthen civil society participation in planning & policy development

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Table 1 – *continued*

Mission	A just, safe and secure society for all				
Promote coordinated engagement with formal sector	Recognise, reinforce & support mediation & customary practices that restore harmony in relationships between people & in communities	Support increased use of the alternatives to imprisonment	2. Encourage civil society oversight of public administration	Build service delivery capacity	
3. Support selected high priority initiatives	Strengthen village courts to resolve cases quickly & fairly	3. Maintain a national correctional system for those who are a risk to society	Support civil society activities that expose corruption & the abuse & misuse of power	3. Foster & build enhanced sector cooperation & coordination	
Improve urban safety, especially Port Moresby	Support magistrates to work regularly in each district	Humanely & securely contain serious offenders	Encourage agencies to respond openly to public scrutiny	Work cooperatively within government, within the sector & with communities	
Improve highway & resource project safety, especially Highlands	Strongly focus on increasing capacity to resolve land disputes	Provide rehabilitation & reintegration for detainees	3. Reduce claims against the state	Support the implementation of a ‘bottom-up’ planning philosophy	
Reduce number & use of guns	3. Strongly support robust & independent courts & Commissions		Reduce opportunities for claims to be made against the state	Encourage & develop provincial & local level government engagement	
Reduce family & sexual violence	Guarantee independent judges, magistrates, law officers & Ombudsman		Improve agency capacity to defend claims	4. Integrate HIV/AIDS responses into the sector & agencies	
	Support courts & commissions to maintain due process & fairness			Capture lessons & experiences	
				Develop & promote appropriate responses to the epidemic	

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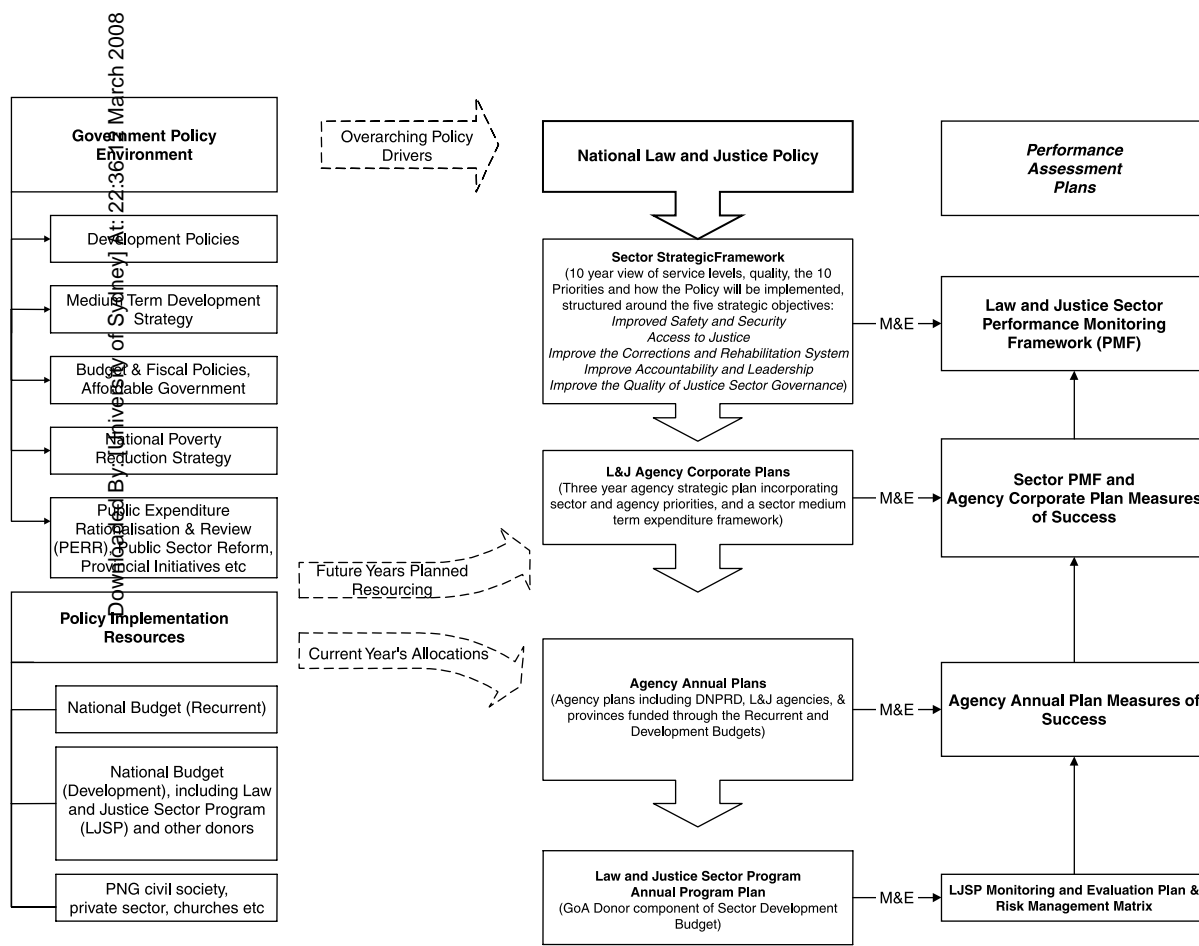


Figure 1. Policy, planning and monitoring relationships in the sector.

- Leaders in agencies at the provincial and national levels, as well as those responsible for sector coordination, need information on performance. This enables them to use information as the basis for analysis and planning, and to manage improvement on solid grounds.
- The sector needs to be responsive to civil society. The KPMs therefore should provide evidence on matters that are important to the community. The sector needs to provide a picture of its performance on these things in a way that the community can understand. This information will enable community representatives to discuss issues, priorities and future directions with public servants on an even footing, because everyone will have the same information from which to draw.

By identifying and embedding these three core uses in the framework – a Balanced Score Card approach (Kaplan and Norton 2001) – the PMF has created an incentive for a greater service orientation within the sector. This is a key driver for development in LJS within PNG, as these agencies tend not to see themselves at present as providers of services to civil society and to government.

The Key Performance Measures for the PMF represent the best initial set for measuring progress against the SSF. All Key Performance Measures are represented in bold in Table 2.

The selection of KPMs (and sub-measures) has been influenced by the literature on monitoring law and justice in development work, but the fundamental influence was the extent to which the measures reflected the Sector Strategic Framework and had local relevance. If the PMF was to drive performance management, then it needed to reflect the local context and emerge from local development processes.

Sub-measures

Each KPM has one or more sub-measures. KPMs use sub-measures to gather data from the Law and Justice Sector agencies, civil society and other stakeholders. Sub-measures are more specific, and in combination provide enough information to enable a judgement to be made about progress on the KPMs.

Sub-measures included in the revised PMF were derived on the basis of a number of criteria, as follows:

- they were as simple as possible;
- they were meaningful to the different stakeholders, i.e. GoPNG, formal agencies and civil society could obtain evidence from various sub-measures that was important from their particular perspective;
- they were part of the core business of public servants and, where possible, they were the same measures as those used within the agency Performance Monitoring Frameworks; they drew directly on information collected by agencies in the course of their work for the good administration of law and justice; rather than creating an additional workload; and they were considered to be useful to managers and leaders at provincial and national levels as diagnostic tools. At present some 60% of the sub-measures being used derive from agency information systems;
- they enabled continuation of a substantial number of the indicators from 2004 so that monitoring of annual trends could commence; and
- there was some capacity to compare data from different sources, as a way of confirming its reliability.

There are 64 sub-measures in all. These are also represented in Table 2.

Table 2. The PNG law and justice sector – performance monitoring framework.

Vision	A just, safe & secure society for all					
Our Goals	Improved Policing, Safety and Crime Prevention	Increased Access to Justice and Just Results	Improved Reconciliation, Reintegration and Deterrence	Improved Accountability & Reduced Corruption	Improved Ability to provide Law and Justice Services	Improved Ability to provide Law and Justice Services (cont.)
	1.1 The police service meets community expectations	2.1 All people have greater access to justice services	3.1 Increase in reconciliation of offenders and victims	4.1 Corruption and the abuse and misuse of power are addressed	5.1 Improvement in agency corporate governance	5.4 Improvement in cross sector coordination
	1.1.1 Improvement in RPNGC operational and administrative practices	2.1.1 Increase in the number of people receiving human rights awareness and services	3.1.1 Number of programs and activities that cater for victims of crime increases	4.1.1 Number of complaints against government officials registered and closed	5.1.1 Number of agencies that submit quarterly financial management and annual reports	5.4.1 Number of sector stakeholders meetings and attendance rates
	1.1.2 The number, duration and nature of disciplinary incidents addressed	2.1.2 Increase in the number of people receiving legal/paralegaland/or advocacy services	3.1.2 Number of courts that deal appropriately with victims of crime increases	4.1.2 The number of leaders who are referred by the Ombudsman Commission for prosecution	5.1.2 Number of agencies that have been audited in 2007	5.4.2 Percentage of civil society organisations that perceive the level of coordination across L&J sector agencies is increasing
	1.1.3 Public perception of police performance and discipline improves	2.1.3 Increased number of cases defended in court by the Public Solicitor	3.1.3 Agency policies and procedures address restorative justice	4.1.3 The number of leaders convicted of corruption	5.1.3 The number and duration of acting appointments in senior positions in agencies	5.4.3 Extent of cross-sector initiatives being implemented
	1.1.4 Increased police participation in community liaison	2.1.4 Reduction in the average time that remandees are detained	3.2 Increase in the use of alternatives to imprisonment	4.1.4 The extent of resourcing of the Ombudsman Commission	5.1.4 Agency annual plans are reflected in their recurrent and development budgets	5.5 HIV/AIDS strategies are implemented effectively
	1.2 Reduction in the level of crime	2.2 Improvement in the disposition of cases	3.3.1 More juveniles are diverted from prison	4.1.5 Papua New Guinea improves its position on the Transparency International Corruption Index	5.1.5 Agencies monitor progress against annual plans on a quarterly basis	5.5.1 Agency corporate and annual plans identify HIV/AIDS activities which are clearly linked to their core business

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Table 2 – continued

Vision	A just, safe & secure society for all					
1.2.1 Serious crime in provinces and major urban centres declines	2.2.1 The number, timeliness and disposition of criminal cases	3.2.2 There is an increase in the number of convicted persons subject to ‘non-custodial’ orders	4.1.6 The community perceives that corruption is decreasing in PNG	5.1.6 Number of agencies with effective consultation and communication processes	5.5.2 Agencies have HIV/AIDS workplace policies in place which are clearly linked to agency core business	
1.2.2 Community members experience a reduction in crime victimisation	2.2.2 The number, timeliness and disposition of civil cases	3.3 A correctional system is maintained and improved	4.2 Effective processes for overseeing public administration are in place	5.2 Improvement in the use of resources in the sector	5.6 Provincial engagement strategies are developed and implemented effectively	
1.2.3 Level of crime on the Highlands Highway is decreasing	2.2.3 Clients of the courts perceive that systems are improving	3.3.1 Number of prisons with satisfactory practices and procedures increases	4.2.1 Satisfaction of civil society organisations with agency communication and transparency	5.2.1 Share of total public expenditure by agency and sector	5.6.1 Law and Justice Sector and Agency planning and budgeting increasingly address provincial, district and LLG needs	
1.3 The Sector addresses high priority areas with improved outcomes	2.3 Non-violent dispute resolution processes achieve improved outcomes	3.3.2 Reduction in over-crowding and balanced distribution of prisoners across institutions	4.2.2 The community has increasing confidence in the system to detect and prosecute fraud	5.2.2 Extent of development budget alignment with the Sector Strategic Framework	5.6.2 Improved coordination of law and justice activities in selected provinces	
1.3.1 Businesses experience a reduction in crime victimisation	2.3.1 Village Courts are distributed equitably across PNG	3.3.3 Reduction in escapes from custody	4.3 Reduction in claims against the state	5.2.3 Extent of resourcing of across-sector initiatives	5.6.3 Improved law and justice activities planning and implementation occurs in selected provinces	
1.3.2 Reduction in the use of firearms in crime victimisation	2.3.2 Improvement in community confidence in Village Courts	3.3.4 Increase in the number of prisoners participating in rehabilitation programmes	4.3.1 The sector has clear guidelines in place for agency management of claims	5.3 Increase in civil society contribution to sector outcomes		

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Table 2 – *continued*

Vision	A just, safe & secure society for all			
1.3.3 Improvement in sector and agency responses to family and sexual violence	2.3.3 Number of land cases processed each year	4.3.2 Total number of new claims against the state	5.3.1 Percentage of civil society organisations that perceive agencies are meeting their service priorities increases	
		4.3.3 Total number of claims defended by the state	5.3.2 The extent to which agencies engage civil society organisations adequately in planning processes increases	
		4.3.4 Total cost of all claims	5.3.3 Number of civil society organisations involved in Law and Justice activities receiving financial support	
		4.3.5 Number of default judgments related to claims against the state is decreasing	5.3.4 Quantity of funding received by civil society organisations in Law and Justice activities	
			5.3.5 Increase in coverage of PNG by key civil society organisations	

Sources of data

The PMF uses several methods to gather data. Data is collected from Law and Justice agencies and other organisational records, broad scale periodic surveys commissioned through an external research agency, and surveys of Law and Justice Sector agencies and civil society organisations.

Wherever possible, agency data is used to feed the sub-measures, even where this may be less than optimal at this stage of agency development. For example, monitoring of improvement in police operational and administrative practices draws on an existing annual audit of divisions and units against a number of so-called key functions. While certain key practices are not examined in the audit, using the existing agency methodology creates the opportunity to improve the audit as a basis for agency and sector monitoring.

There are a number of sub-measures where this approach was taken, as the best way to support agency improvement, and sustainability of monitoring systems. The downside is that the quality of reporting varies directly with the quality of the agency information.

JAG in collaboration with the National Research Institute⁵ also carries out Community Crime Surveys⁶ in four large centres in PNG. These surveys were instituted to provide baseline data on victims of crime prior to the commencement of a major donor support programme in policing in the country that would support a number of sub-measures in the sector PMF.

The community surveys supplement official Law and Justice Sector quantitative data, and draw on the view that for the production of crime incidence data, victim self-report surveys are more accurate and representative than are official crime statistics based on the activity of formal criminal justice agencies (Findlay 2004). The surveys also report on community perception of other LJS agencies. They are replicated at present on an annual basis.

As agencies, the LJSS and the National Research Institute incorporate mechanisms for data collection within their operations, it is envisaged that management of the PMF and its data collection and reporting requirements will become sustainable within the systems of these organisations.

Availability of data

The PMF is a work in progress. Data is currently available for 60 of the 64 sub-measures. As with any developing system of performance monitoring, data quality varies substantially, because many of the systems and skills needed to provide good data are in the early stages of development.

The PMF acknowledges this variability, and has designated each sub-measure to an available, medium or long term data development timeframe category, according to when an acceptable data quality is likely to be reached. This staged development of data collection systems relates to the capacity of agencies and the sector to develop additional collections while at the same time maintaining or improving existing collections.

In addition, the PMF is subject to annual review to ensure that it remains responsive to the emerging capacity of the sector to think strategically about its information needs and to manage data.

Catering for everyone

The vision for the LJS is 'A just, safe and secure society for all'. An aim of the PMF is to enable collection of data about men and women, different age groups, and different geographic locations. This will enable the sector to know how policies and the distribution

of resources are affecting services and outcomes for the different groups. This is essential information for equitable access and participation for the people of PNG.

At present, very few of the data provided can be disaggregated to enable these comparisons to be made.

Reporting

The LJS has established two processes for reporting performance against the SSF. They are the Annual Performance Report (APR) which reports on performance against a yearly cycle, and the Quarterly Performance Report (QPR), which provides information on a three monthly cycle. These reports collate and analyse data in a form that enables agencies and the sector to use for management purposes, and are key mechanisms for accountability and transparency.

All sub-measures for which data are available will be reported on annually, whereas quarterly reporting will be limited to those sub-measures on which new data becomes available during the quarter in question.

Further developing the PMF

The Performance Monitoring Framework will continue to evolve as stakeholders discover the need for more or different data to support their decision-making. Experience internationally shows that all PMFs improve with the experience of implementation, indeed that it is important not to wait until stakeholders think it is 'right'. The experience of implementing is essential to learning what can be improved. This is being played out in PNG also, having taken three years to reach the point where relatively robust planning and monitoring frameworks have been developed and are operational.

Modifications to the PMF will be through two processes. In addition to the adjustments that are incorporated on an iterative basis, the LJSS with support from the JAG will be tasked with managing an annual process of review involving feedback from each agency, relevant civil society organisations and Law and Justice Sector committees. This process will ensure that the KPMs and sub-measures are meeting the needs of key stakeholders.

Lessons from practice

Six significant lessons are offered from the formative experience of JAG in performance monitoring and evaluation to date for the consideration of planners of other developments.

1. *Strategic capacity*: As with all organisations that start to monitor their performance in a structured way, the agencies within the LJS face large cultural and sustainability challenges. The use of evidence in decision-making and reporting represents a major shift in the way that traditional public sector organisations operate, in the move from input-focused to results-driven behaviour.

To become aware that there are direct links between what formal Law and Justice agencies do and social impacts of poverty alleviation, and reduction in HIV/AIDS, for example, requires a level of strategic thinking that is not typical of public servants in developing contexts. Similarly, using the information that becomes available through operating PMFs (such as the one in the Law and Justice Sector in PNG), requires a paradigm shift in how agencies carry out their annual planning and budgeting processes. There is substantial work underway in the sector in PNG in relation to this. This requires donors assisting those agencies to form

distinct parallel strategies to develop the information management and performance monitoring capacities of counterpart systems – in addition to building law and justice capacities – and to adopt realistic change-management timeframes.

2. *Incentives*: There are a number of incentives driving the engagement of stakeholders in sector performance monitoring. These are important in the take-up of information systems within agencies (World Bank 2004b), and relate back to core uses of the information obtained from sector performance monitoring. Performance reports are provided through the National Coordinating Mechanism to the Central Agency Coordinating Committee. This provides a direct accountability for the Law and Justice Sector to the Government of Papua New Guinea, and provides an incentive for agencies to have effective monitoring systems in place and to improve performance. Secondly, involving civil society organisations in the development of sub-measures and collection of data has created an incentive for formal agencies to be more responsive to civil society as important stakeholders, not merely passive recipients of services. Finally, the independent collation of reports based on these data, and fed back to stakeholders, has created a credibility for the reports that encourages a strong engagement with the information they contain.
3. *Sustainability*: The sector monitoring regime draws on data from constituent agencies for some 60% of its sub-measures. Working within agency systems makes for local management of the process, creating sustainability within the relatively short term. Other data draws on the surveys managed by JAG in conjunction with NRI. This is less sustainable, and it is anticipated that outside assistance will continue to be needed to manage these relatively major research exercises.
4. *Resources*: Providing a cost to the JAG investment in sector performance monitoring – and thereby evaluating its own contribution – is not altogether straightforward, but in simple terms if some 40% of the annual budget for JAG of about US\$2.25 million is compared with the budget of the Law and Justice Sector Program of about US\$15 million, then it is estimated at around 6%.
5. *Timeframe*: The time required to design, establish and develop a sector-based performance monitoring framework is relatively substantial. To date, this has required five years, and it was only after three years that the baseline data for key performance indicators was settled, gathered and available for measurement, enabling trend analysis. In addition to the time required to technically assess and build information management capacity, this time was required to undertake, integrate and harmonise a corresponding process of strategic planning for the sector. The fundamental interdependency between the planning and monitoring functions had not been fully appreciated from the outset.
6. *Design approach*: Perhaps most significant from a developmental design perspective has been the profound shift from the prevalent logistic framework (logframe) approach to a new sector-based performance paradigm. No longer is attention driven by the donor's own design approach; now, for the first time, all is directed to the impact of any development contribution on the overall performance of the sector. This is a whole new, and most welcome, approach.

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Notes

1. See also Jensen and Heller (2003), who describe this as being a fourth wave of the 'law and development movement' of the 1970s involving US technical assistance to Latin America, critiqued by Trubeck and Galanter (1974).
2. During the 1990s, it is estimated that nearly \$1 billion in financial support was forthcoming from the World Bank, the Inter-American Development Bank (IDB), the United Nations Development Program (UNDP), non-governmental institutions in Latin America alone (DeShazo 2006); of this total, a single agency, USAID, contributed almost \$400m. (Hammergren 2003, p. 295). As demonstrated above, these investments have already grown substantially.
3. There is recently an emerging literature on performance monitoring in legal and judicial reform in the development context (see: Hammergren 2002, 2003, p. 291; see also Shihata 1998, p. 120; Buscaglia and Dakolias 1999; Messick 2000; Golub 2003; Vera Institute of Justice 2003; Biebesheimer (now senior counsel at the World Bank but then of the IADB); and Bhansali 2006, p. 312 Dakolias, various; American Bar Association's Central European and Eurasian Law Initiative <http://www.abanet.org/ceeli/publications/jri/home.html>). USAID (1998) has undertaken a substantial body of work on performance monitoring and results-based management.
4. Sector Strategic Framework in support of the National Law and Justice Policy and Plan of Action towards Restorative Justice, Papua New Guinea, June 2006.
5. The National Research Institute in Papua New Guinea is a statutory authority which provides policy advice to government in the areas of economics, education, environment, politics and legal matters.
6. The Community Crime Surveys were developed specifically to scan a number of indicators relating to: (a) *exposure* to crime – respondent's actual experiences, (b) *confidence* in efficiency/effectiveness of law enforcement agencies – police, courts, etc, and (c) *perceptions* of corruption. Examples of other such surveys are the Australasian Centre for Policing Research, AC Nielsen National Survey of Community Satisfaction with Policing and the UN Victims of Crime approach. The survey also supplements official Law and Justice Sector quantitative data and is consistent with the developing sector-wide monitoring and evaluation indicators.

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