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**MONITORING PERFORMANCE
OF LEGAL AND JUDICIAL REFORM IN
INTERNATIONAL DEVELOPMENT ASSISTANCE**

*Early Lessons
from Port Moresby & Phnom Penh*

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Abstract

Many of us working in judicial and legal reform around the world confront recurring challenges which boil down to one haunting question: *Does our work really make any difference and, if so, what difference does it make?*

This paper argues for the international community to substantially increase investment in performance monitoring and evaluation of legal and judicial reform efforts around the world. There is an imperative to develop a more serious research-based understanding of what works and what does not. This will require a fundamental transition from monitoring implementation of reform activities to refocus on developing frameworks that are capable of monitoring the impact of those activities on sector performance.

There has been a massive growth in overseas development assistance (ODA) in legal and judicial reform over the past fifteen years, described as ‘the rule of law revival’. These reforms are widely seen as being foundational to all governance and economic development strategies because they:

- consolidate state capacity to provide public order, safety and security
- build the legal framework to secure the investment environment
- strengthen judicial independence and the rule of law; and
- promote human rights, access to justice and (it is hoped) alleviates poverty.

Yet, there is a lack of any corresponding consensus of understanding on whether these reforms actually work and, if so, when and how. As observed by one commentator, *We know how to do a lot of things, but deep down we don't really know what we are doing.*

Investing in performance monitoring is imperative because it provides answers to two key governance questions: *“How do we measure the law and justice situation?”* and *“How do we know if the reform efforts are working to improve the law and justice situation?”* It develops three capabilities: to generate performance data, develop a reliable reporting system, and enable evidence-based decision-making. These capabilities:

- a. enable stakeholders to monitor the performance of the justice sector, and
- b. monitor the impact of legal and judicial reform to improving performance;
- c. provide governments with performance data for policy and managerial decision-making;
- d. provide donors with data on the effectiveness of their support for the sector.

The first signs of serious investment in performance monitoring have started to emerge over the past five years led by thinking in organizations like the World Bank, ABA-CEELI and the Vera Institute. This paper examines the application of this thinking in two developing countries: Papua New Guinea and Cambodia. While early days, practical experience is now emerging that offers potentially significant lessons on the needs for a shift in design paradigm, strengthening change management strategies, refocusing on sustainability, and extending timeframes and resources.

The foundations for systematic and reliable systems for monitoring performance in law and justice are now being laid in some developing countries. This is a potentially significant step towards transforming the capacity of governments to direct, oversee and reform their law and justice situations, and for donors to monitor the value of their assistance. Experience already indicates that this will require substantial and sustained commitments from the international community in the years ahead.¹

¹ The author served as Senior Counsel, UNDP, Cambodia in 2005/6, and as Project Director, Justice Advisory Group, Papua New Guinea in 2003/5. The views expressed are those of the author only, and do not necessarily reflect the policy of UNDP or AusAID. The paper builds in part on *“Legal and Judicial Reform Performance Monitoring: the PNG Approach”*, Miller S and Armytage L (2006; under publication).

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Early Lessons from Port Moresby & Phnom Penh

Introduction

This paper argues for the international community to substantially increase investment in performance monitoring and evaluation of legal and judicial reform efforts around the world. There is an imperative to develop a more serious research-based understanding of what works and what does not. This will require a fundamental transition from monitoring implementation of reform activities to refocus on developing frameworks that are capable of monitoring the impact of those activities on sector performance.

The legal and judicial reform premise

Over the past fifteen 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, 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.

The rationale for this growth is because judicial and legal reform is widely seen as being foundational to all governance and economic development strategies, for four cardinal reasons:

- it consolidates state stability and 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
- promotes human rights, access to justice and (it is hoped) alleviates poverty.

Indeed, this rationale takes on something of the orthodoxy of a mantra seen in one configuration or another in the specifications for countless development project around the world. Some donors, usually the multilateral banks – place and emphasis on economic development, while others, notably UN agencies place an emphasis on the development of human capital and, more particularly, human rights.

For these reasons, 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 Mongolia to Guatemala, Togo, Zambia and Cambodia². Other international development agencies at the multilateral level - such as the UNDP and Asian Development Bank - and at the bilateral level - such as USAID, DFID, JICA and GTZ - support innumerable legal and judicial reform programs in developing jurisdictions. To illustrate the size of this growth, ADB has committed USD350m to rebuilding courts and related capacity-building in one country, Pakistan. USAID has committed almost USD50 million to promote the rule of law in two countries, Afghanistan and Cambodia. Globally,

² World Bank (2004) Initiatives in Legal and Judicial Reform.

these projects perhaps treble the World Bank's estimate, and the size of the investment is substantial on any measure.

This growth has been heightened by the events of 11 September 2001 which have led to significantly increased investments in international assistance to law and justice and, more particularly, law and order.³

As an example, 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 USD300 million in development assistance annually. PNG is the largest recipient of Australian aid. PNG 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 is 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.⁴

Australia's development assistance in the PNG law and justice sector began in earnest in the early 1990's with support focused primarily on the police service, the Royal Papua New Guinea Constabulary. That assistance was initially valued at around USD7million. Since then, assistance has been extended, and now forms part of Australia's *Law & Justice Sector Program*, valued at about USD75million over a five year period.

Australia's assistance to legal and judicial reform in Papua New Guinea has grown exponentially between ten and one hundred times in this decade. Moreover, as governments in the developed world acknowledge a self-interest in the security of neighbours, this growth is likely to continue. This is again exemplified in Australia, a relatively small developed nation of 20 million inhabitants, mobilizing its armed forces and police on multilateral and bilateral interventions within its region in East Timor, PNG and the Solomon Islands on an unprecedented basis.

This has been described as 'the rule of law revival'. Carothers defines rule of law as a system in which the laws are public knowledge, clear in meaning, and apply equally to all. They define civil and political liberties, which are upheld by institutions of the legal system which are fair competent and efficient within a legal framework to which all are accountable. The relationship between the rule of law and liberal democracy is profound, making possible individual rights that are the core of democracy; a government's respect for the sovereignty authority of the people and a constitution depends on its acceptance of law. These notions are hardly new; yet, they enjoy a new currency by donor institutions of developed countries that see the rule of law as enabling transitional and developing states to move beyond the early stages of political and economic reform to consolidate both democracy and market economics. He observes:

*For these reasons – political, economic and social – western policy makers and commentators have seized on the rule-of-law as an elixir for countries in transition.*⁵

³Two examples are provided here from the author's personal experience: the Asian Development Bank increased its assistance to the reforms in Pakistan from USD80m to 350m shortly after 9/11 to assist strengthen institutional capacities of the Government of Pakistan immediately after 9/11. Similarly, the Government of Australia supplemented its assistance to legal and judicial reform in Papua New Guinea from AUD100m to a variously estimated AUD1-2 Billion in the Enhanced Cooperation Package to strengthen the policing capacity of the Royal PNG Constabulary, as part of Australia's investment to stabilizing its region following 9/11.

⁴ The Economist, Safest Cities Survey, 2003.

⁵ Carothers T, Promoting the Rule of Law Abroad – in search of knowledge, Carnegie Endowment, Washington, 2006, 7.

But, does it work?

To answer this question, let's review the international experience.

A survey of the international experience initially discloses numerous public reports of the major development agencies which are commonly filled with assertions of success, for understandable reasons. But, not far beneath this glossy surface, another discourse is emerging within these institutions and among commentators. There are now mounting concerns about underwhelming evidence of success and the emergence of troubling unresolved questions.

The experience reveals three major findings: (a) the lack of researched-based experience yet available, (b) an emerging recognition of the imperative to introduce and increase the monitoring, measurement and evaluation of legal and judicial performance and the impact of reform efforts, and (c) the beginning of what commentators describe as a 'serious' commitment to developing the capacity as a yardstick to guide ongoing work.

Carothers recounts that a colleague who had worked closely in promoting the rule-of-law in Latin America for many years told him recently, "*we know how to do a lot of things, but deep down we don't really know what we are doing.*" He argues that there is a lack of systematic, well-grounded knowledge about how external aid can be used to promote the rule of law. The rapidly growing field of rule-of-law assistance is operating from what he describes as a disturbingly thin base of knowledge at every level—with respect to the core rationale of the work, the question of where the essence of the rule of law actually resides in different societies, how change in the rule of law occurs, and what the real effects are of changes that are produced. The judicial and legal reform around the world is still faces a lack of knowledge at many levels of conception, operation, and evaluation. There is a shortage of knowledge about how the rule of law and reform efforts strengthen societies. Although aid institutions engaged in rule-of-law assistance do attempt some "lessons learned" exercises, many of the lessons produced are superficial and even those are often not really learned. He identifies several obstacles to greater knowledge including: the complexity of the task of promoting the rule of law, the particularity of legal systems, the unwillingness of aid organizations to invest sufficient resources in evaluations, and the tendency of both academics and lawyers not to pursue systematic empirical research on rule-of-law aid programs.⁶

Golub argues that what he describes as the "rule-of-law orthodoxy" - that is, major state-centered and top-down legal and judicial reform projects often funded by major donors such as the World Bank and USAID around the world - is flawed and incomplete because of its questionable assumptions, unproven impact and insufficient attention to the legal needs of the disadvantaged. This malaise he attributes in part to the lack of virtually any research on the impact of legal reform programs.⁷

Bhansali and Biebersheimer of the World Bank build on this argument about the lack of scientific data and evaluation of judicial and legal reform effort by observing that the need to be able to measure the changes generated by rule-of-law reform programs in developing countries is becoming increasingly acute. They argue that after 20 years of work around the world, it is no longer possible to claim that reform experience is too recent to stand up to critical analysis. Serious assessments of the impact of rule-of-law reform efforts are lacking and pressingly required. They advocate the need to measure results and impact, and comments on the ongoing lack of availability of reliable data. Despite this, it is still possible to start measuring some positive

⁶ Carothers T, *Promoting the Rule of Law Abroad – in search of knowledge*, Carnegie Endowment, Washington, 2006; and *Rule of Law Project*, 34 of 2003. See also: Jensen E and Heller T, *Beyond Common Knowledge: Empirical Approaches to the Rule of Law*, Stanford, 2003.

⁷ Golub S, *Beyond the Rule of Law Orthodoxy: The Legal Empowerment Alternative*, Carnegie Paper no 41, 2003.

evidence of change, in criminal justice reform in Latin America, notably preventative detention, speed of trials, structural changes and use of alternative sentencing. Measurement is still partial and basic. Significantly, she identifies the major difficulty as being the lack of reliable pre-reform data with which to compare post-reform statistics, and what is described as the dearth of initial baseline data.⁸ They conclude:

Statistics currently available show that the reforms have had positive impact on due process indicators. Now countries and donors alike need to invest more concretely in collecting the statistics that will allow them to measure the overall impact of systematic reform on the effectiveness of the justice system and to better explain what factors contribute to a successful change process.⁹

The evidence of personal experience – what works, what doesn't

Over the past twelve years, I have been fortunate enough to have lived in three developing countries: Pakistan, Papua New Guinea and Cambodia, and worked in many others including Afghanistan, Bangladesh, Haiti, Mongolia, Nepal and Palestine. Each of these countries is struggling with various challenges of conflict, transition and development. I and most of my colleagues working in the field work in all manner of places usually at the bottom-end of the UN's Human Development Index. Our work is invariably engaging, interesting and challenging. We believe in our work, and we hope that it is worthwhile.

During this time, I have worked hard to produce many advices, appraisals, assessments, analyses, diagnoses, strategies, plans, designs, curricula, lesson-plans, guidelines, manuals, papers, policy proposals, reports, evaluations, reviews. I've facilitated countless workshops, presented seminars, organized conferences, and managed study tours, and faculty development activities. I've conducted literally hundreds of interviews and consultations; building relationships, and of course I've traveled all around. This has been stimulating privileged work; most of it has been appreciated by my various clients, the international development agencies, and some of it has doubtless been useful.

At the same time, I have struggled - as many of us do - with a number of recurrent challenges:

- *Lack of counterpart ownership and engagement* – we often question why counterparts lack enthusiasm for reform work. Yet this should not be surprising: whose reform agenda is it, anyway? Our contracts are normally donor-centred and require that we work for the donors, and with the counterparts not for them. We take our instructions from the donor, and report to the donor.
- *Donor dependence* - We may struggle to avoid developing parallel systems, but the transaction often creates this reality, and why should this be surprising, when it is more compelling to build new systems that work rather than fix old ones that don't.
- *Over-emphasis on technical outputs* – So much of what we do is about delivering 'outputs', producing technically sound advices in reports, that often go unread and unacted upon. We find ourselves surrounded by the evidence of *wastage*: of our own best work, and that of our predecessors, through a lack of any system for ongoing oversight and aftercare.
- *Unrealistic timeframes* – Developing institutional capacities, changing organizational cultures operating practice and systems, training people all takes time; sometimes the changes being targeted require decades, even generations; yet invariably, we are given

⁸ Bhansali L and Biebersheimer C – the latter is Chief Counsel, Judicial Reform Practice Group, World Bank in Carothers T, Promoting the Rule of Law, 2006, 310-318.

⁹ Bhansali L and Biebersheimer C, 301.

1-3 years to do the job. This is seldom credible. Once the project is finished, support and assistance is withdrawn; and we wonder years later why so little was sustained.

- *Elite capture* – We wonder whether it is really possible to make any real and visible difference to ordinary people when all we deal with are senior bureaucrats, paid to meet us among their many other duties.

Each of these challenges does of course have a solution, and on each job we work both personally and institutionally to pursue those. The recent trend in technical assistance away from stand-alone projects teams towards embedding advisors, and from institutional projects to sector programs are encouraging developments. But, at the heart of the matter lies one haunting question: *Does our work really make any difference and, if so, what difference does it make?*

To answer this question we have, at best, our anecdotes of accomplishment, our personal relationships and expressions of mutual trust and respect, our beliefs and our hopes. These are hardly the foundations for billion dollar investments.

Why, I ask, has the international community been so uninterested in investing in monitoring and evaluation? Why do the same old tired defects in project design get recycled time and again? Why do donors invariably focus on monitoring the implementation of activities in their project 'log-frames' (logical frameworks), rather than their results, if any, and their broader impact?

For some of us working in the field, it may seem that there is an institutional preoccupation with keeping busy 'moving the money' - developing new loans, writing new grants - but a mystifying and disturbing oblivion to the effectiveness of current endeavours and the return on current investments.

Why is that? One explanation is that the challenges confronting legal and judicial reform are substantial and complex. Measuring the success of development efforts is characteristically 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 characterized 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 on the value of reform investments – not because they necessarily lack value, but because donors have been unable to provide any evidence to demonstrate value.¹⁰

Towards a solution – in search of evidence

Perhaps, things are starting to change.

There are emerging signs of recognition by a number of institutions and commentators of the need to develop conceptual frameworks of performance indicators with which to monitor and evaluate the effectiveness of these development investments in a methodologically sound and systematic manner. These notably include the World Bank, ABA-CEELI and the Vera Institute.

¹⁰ This may provide an explanation for the recent flight from developing formal justice systems into community-based, traditional and alternative justice in the informal sector. It may also explain some moves to deliver assistance on what is described as 'an agency basis', that is, side-stepping the mainstream assistance agencies because they have lost credibility to their stakeholders – viz central agencies with treasury responsibility seeking evidence of return on investment.

World Bank

The World Bank, in particular, has been refocusing its endeavour to address these concerns. Hammergren, for example, proposes a checklist for evaluating judicial performance by three principal factors of (a) institutional integrity, (b) independence and (c) transparency/accountability using six key criteria: selection of judges, management of the judicial “career”, internal administration, resources, judicial processes, and the legal profession.¹¹ Details are annexed to this paper.

Messick similarly proposes a checklist to assess the performance of the judicial system using opinion and quantitative data. This comprises a combination of opinions evidence about performance, with quantitative measures relating to performance of the courts, independence and accountability; competence of personnel, judges, clerks and lawyers; efficiency and effectiveness of proceedings, and access to justice, the courts and remedies.¹²

Shihata identifies a number of elements for evaluating and identifying problems in judicial systems, including:

- a. the legal framework of the country and the role of judges within this framework
- b. positions of judges in society and the perception of the system of administration of justice by the community
- c. the integrity of the justice system
- d. the administration of the judicial system
- e. the economic cost of justice in the country
- f. access to justice
- g. the availability of legal information
- h. legal education and training
- i. the actual functioning of legal procedures
- j. physical facilities of courts
- k. the impact of court decision on society; and
- l. alternative dispute resolution mechanisms.¹³

Other institutions and commentators support these initiatives. USAID has undertaken a substantial body of work on performance monitoring and results-based management.¹⁴ AusAID has recently collaborated with the government of Papua New Guinea to innovate a major new commitment to monitoring and evaluating development in law and justice.¹⁵ DFID, Britain’s foreign aid body is also innovating a new policy approach to working in this area.¹⁶

Other commentators, for example, Blackton have developed a judicial report card to assess performance of a justice system, which consists of the core indicators relating to judicial

¹¹ Hammergren L, World Bank Senior Public Sector Management Specialist, *Diagnosing Judicial Performance – towards a tool to help guide judicial reform programs*, World Bank, 2002. See also: Buscaglia E and Dakolias M, "Comparative International Study of Court Performance Indicators: A Descriptive and Analytical Account." Working Document, Legal and Judicial Reform Unit, World Bank. 1999. While this analysis is inconclusive, it may provide something of a conceptual starting point.

¹² Messick R, *Checklist for Institutional Evaluation of Judiciary*, World Bank, 2000

¹³ Ibrahim Shihata, “The World Bank” in Edmundo Jarquin and Fernando Carrillo, editors, *Justice Delayed: Judicial Reform in Latin America*. Inter-American Development Bank, 1998, p. 120.

¹⁴ USAID, Center for Democracy and Governance (1998), *Handbook of Democracy and Governance Program Indicators*. Washington, August

¹⁵ <http://www.pc.gov.au/gsp/reports/rogs/compendium2006/preliminaries.pdf>, +

<http://www.lawandjustice.gov.pg/www/html/61-justice-advisory-group.asp>.

¹⁶ <http://www.enterprise-impact.org.uk/approaches/Policydivision.shtml>; see also: Anderson M, <http://www.undp.org/governance/cd/documents/53.ppt#19>

independence, judicial administration, procedural processes, access to justice, legal and judicial education, professional association.¹⁷

ABA/CEELI's Justice Reform Index

Significant work has been developed in this regard by the Central European and Eurasian Law Initiative of the American Bar Association (ABA CEELI), which has developed a universal index of judicial performance with which to measure and compare systems, notably in the post-Soviet bloc. This index is weighted towards core notions of measuring performance and consolidating judicial independence in emerging democracies and transitional states. Its objective is to promote a reliable means to target judicial performance and monitor progress towards establishing more accountable, effective and independent judiciaries.¹⁸ The index comprises 30 factors, outlined below, and annexed in greater detail to this paper:

- | | |
|-----------|---|
| Factor 1 | Judicial Qualification and Preparation |
| Factor 2 | Selection/Appointment Process |
| Factor 3 | Continuing Legal Education |
| Factor 4 | Minority and Gender Representation |
| Factor 5 | Judicial Review of Legislation |
| Factor 6 | Judicial Oversight of Administrative Practice |
| Factor 7 | Judicial Jurisdiction over Civil Liberties |
| Factor 8 | System of Appellate Review |
| Factor 9 | Contempt/Subpoena/ Enforcement |
| Factor 10 | Budgetary Input |
| Factor 11 | Adequacy of Judicial Salaries |
| Factor 12 | Judicial Buildings |
| Factor 13 | Judicial Security |
| Factor 14 | Guaranteed Tenure |
| Factor 15 | Objective Judicial Advancement Criteria |
| Factor 16 | Judicial Immunity for Official Actions |
| Factor 17 | Removal and Discipline of Judges |
| Factor 18 | Case Assignment |
| Factor 19 | Judicial Associations |
| Factor 20 | Judicial Decisions and Improper Influence |
| Factor 21 | Code of Ethics |
| Factor 22 | Judicial Conduct Complaint Process |
| Factor 23 | Public and Media Access to Proceedings |
| Factor 24 | Publication of Judicial Decisions |
| Factor 25 | Maintenance of Trial Records |
| Factor 26 | Court Support Staff |
| Factor 27 | Judicial Positions |
| Factor 28 | Case Filing and Tracking Systems |
| Factor 29 | Computers and Office Equipment |
| Factor 30 | Distribution and Indexing of Current Law. |

¹⁷ Judicial Report Card, Blackton J, Amideast

¹⁸ American Bar Association's Central European and Eurasian Law Initiative
<http://www.abanet.org/ceeli/publications/jri/home.html>

Vera Institute

The Vera Institute has developed a most thorough and practical guide to designing a performance monitoring framework (PMF) for the purpose of assisting those responsible for improving the delivery of safety, security, and access to justice in any part of the world.

The guide does not prescribe the use of particular indicators for measuring progress toward safety and justice. The choice of appropriate indicators must be the result of a process undertaken in each country and programme. This guide describes that process, explaining the principles that should inform the choice of indicators, and provides detailed modelling for possible indicators.

*Guidelines for Developing Indicator Framework*¹⁹

1. Start with the outcome, not the indicator.
2. Measure outcomes with balanced baskets of indicators.
3. Test your indicators for their sensitivity to the changes you hope to make.
4. Design indicators that allow you to isolate the experiences of relatively powerless groups, such as people living in poverty.
5. Avoid creating perverse incentives.
6. Use the simplest and least expensive indicators that you can.
7. Build confidence in indicators among stakeholders
8. Design indicators that make sense to most people. The less you need to explain the indicators, the more readily they will be accepted.

The guide provides a checklist for developing indicators outlining eight criteria: Validity, balance, sensitivity, equality, motivation, practicality, ownership and clarity²⁰ It then provides a range of models for the development of sector-wide strategic indicators, a sample of which are outlined below.

¹⁹ Vera Institute of Justice 2003; *Measuring Progress Toward Safety and Justice: A Global Guide to the Design of Performance Indicators across the Justice System*, www.vera.org/indicators, 17.

²⁰ Vera Institute, 19.

For an example of the application of this guide to the development of suggested outcomes, Indicators, and data sources in a sample table of indicators to monitor access to justice: ²¹:

Strategic purpose	Potential indicators	Possible data sources
Minimize pre-trial detention	Change in the rate at which people are remanded in custody or fail to post bail following first court appearance	<ul style="list-style-type: none"> • Prison statistics • Court statistics
	Change in the mean and median duration of pre-trial detention	<ul style="list-style-type: none"> • Prison statistics • Court statistics
Expand awareness of rights to assistance and access	Change in the amount and quality of information available to victims, witnesses, complainants, and accused persons about their rights to assistance and access to institutions that can resolve their disputes	<ul style="list-style-type: none"> • Institutional visitors' reports • Court users survey • Survey of facility managers • Victim survey
	Change in the awareness of victims, witnesses, complainants, and accused persons about their rights to assistance and access to institutions that can resolve their disputes	<ul style="list-style-type: none"> • Perception survey • Small group interviews
Reduce bias throughout the justice system	Change in diversity (by gender, ethnicity, geography, religion, or other relevant group) of professional staff of justice sector institutions	<ul style="list-style-type: none"> • Government personnel records • Institutional manager survey
	Change in index of perceived bias within justice institutions	<ul style="list-style-type: none"> • Perception survey • Small group interviews
Reduce corruption throughout the justice system	Change in index of perceived corruption	<ul style="list-style-type: none"> • Perception survey • Small group interviews • Formal complaints registered

²¹ Vera Institute, 30.

Another example of the application of this guide to development of suggested outcomes, Indicators, and data sources for the courts:²²

Institutional outcome	Potential indicators	Possible data sources
Improve public access to and confidence in the courts, especially among women, the poor, and other disadvantaged populations	Change in proportion of plaintiffs who have had no prior contact with the courts	<ul style="list-style-type: none"> • Intake survey/filing form, disaggregated by income, gender, race, ethnicity
	Change in the spectrum of small claims poor plaintiffs file	<ul style="list-style-type: none"> • Intake survey/filing form, disaggregated by income, gender, race, ethnicity
	Change in level of respect for the judiciary, comparing poor litigants who 'win' in court with those who 'lose'	<ul style="list-style-type: none"> • Exit polls and satisfaction surveys, disaggregated by income, gender, race, ethnicity
Provide a more timely response to public needs for court services, especially among women, the poor, and other disadvantaged populations	Change in time between filing and first hearing	<ul style="list-style-type: none"> • Administrative data, disaggregated by income, gender, race, ethnicity
	Change in time from filing to disposition in cases of small financial value	<ul style="list-style-type: none"> • Administrative data, disaggregated by income, gender, race, ethnicity
	Change in duration of postponements	<ul style="list-style-type: none"> • Administrative data, disaggregated by income, gender, race, ethnicity
	Change in proportion of judgments implemented within 30 days of the court's decision	<ul style="list-style-type: none"> • Survey of litigants involved in recently completed cases, disaggregated by income, gender, race, ethnicity
Produce more outcomes that contribute to the well-being of the community the court serves	Change in ratio of perception of problems solved to problems exacerbated among litigants	<ul style="list-style-type: none"> • Survey of litigants involved in recently completed cases, disaggregated by income, gender, race, ethnicity
	Change in perception about whether the courts contribute to community safety	<ul style="list-style-type: none"> • Exit polls and satisfaction surveys, disaggregated by income, gender, race, ethnicity

The guide provides model indicators for non-state institutions, that is, the informal sector which may be highly relevant in numerous development contexts, such as Papua New Guinea or Cambodia both of which have highly devolved community-based alternative dispute resolution processes.²³

²² Vera Institute, 50.

²³ Vera Institute, 73.

Institutional Outcome	Potential indicators	Possible data sources
Increase transparency of process and results	Change in proportion of non-state institutions that have systems for recording actions and documenting decisions	<ul style="list-style-type: none"> • Special visits • Administrative data, when available
	Change in proportion of non-state proceedings to resolve disputes where information about the parties, claims, and resolution is recorded	<ul style="list-style-type: none"> • Special visits • Administrative data, when available
	Change in proportion of people who understand how to access services	<ul style="list-style-type: none"> • Expert or public surveys
Improve rights protection	Change in proportion of women who express confidence in non-state institutions	<ul style="list-style-type: none"> • Public surveys and interviews
	Change in proportion of disputes resolved through mediation	<ul style="list-style-type: none"> • Expert surveys or administrative data
	Change in perceived consistency of decisions and actions	<ul style="list-style-type: none"> • Special visits • Expert surveys
	Change in perceptions of equal and dignified treatment	<ul style="list-style-type: none"> • Expert or public surveys and exit interviews, disaggregated by gender, age, social status, occupation, etc.
Enhance cooperation between state and non-state institutions	Proportion of disputes received or arrests made by non-state institutions that are referred to state institutions	<ul style="list-style-type: none"> • Special visits • Administrative data
	Proportion of disputes received or arrests made by state institutions that are referred to non-state institutions	<ul style="list-style-type: none"> • Special visits • Administrative data
	Proportion of non-state decisions that are appealed to state courts and other agencies (including ombudsmen)	<ul style="list-style-type: none"> • Special visits • Administrative data

The guide additionally provides models for the other major components of law and justice sector performance, for example:

- public safety and security, policing and law enforcement,
- prosecution,
- legal aid,
- prisons,
- non-custodial sentencing
- accountability mechanisms.

Developing the performance monitoring framework

There is now a pressing imperative – indeed, arguably a self-interest - for the international community of donors to find answers to the unresolved questions identified earlier and to create systematic mechanisms to capture the evidence of the results of its investments in legal and judicial reform. In essence, this requires the development of a more scientific approach through investing in performance monitoring framework which capture accessible, relevant, reliable and replicable data of (a) performance and (b) impact and results of reform endeavour.

Introducing a systematic and reliable system of performance monitoring is a significant and substantial step towards transforming the capacity of stakeholders to direct, oversee and evaluate the law and justice performance and reform.

As we have seen, legal and judicial reform is seen as being foundational to all governance and economic development strategies; monitoring and evaluation is now becoming recognized as being imperative for stakeholders in the law and justice sector because it will:

- a. enable stakeholders to monitor the performance of the justice sector, and
- b. monitor the impact of legal and judicial reform to improving performance;
- c. provide RGC with performance data for policy and managerial decision-making;
- d. provide donors with data on the effectiveness of their support for the sector.

The rationale for establishing a PMF will provide answers to two crucial governance questions:

“How do we measure the law and justice situation?”

and,

“How do we know if reform efforts are working to improve the law and justice situation?”

Performance monitoring will enable both counterpart governments and the donor community to make better informed decisions in its policy and management of the law and justice sector. These decisions have been based on the best available information in the past, which has often been anecdotal, intuitive, fragmentary, incomplete and unreliable. Once established, the PMF will provide accessible *relevant, comprehensive* and *reliable* information on the performance of the law and justice sector and the impact of reform efforts. This information will then enable better decisions to be made on directing law and justice, and on refining the support of reform efforts to improving sector performance.

Investment in the development of performance monitoring and evaluation capacity is now indispensable for all stakeholders in the law and justice sector because it will:

- a. enable stakeholders to monitor the performance of the justice sector, and

- b. monitor the impact of legal and judicial reform to improving performance;
- c. provide RGC with performance data for policy and managerial decision-making;
- d. provide donors with data on the effectiveness of their support for the sector.

Of fundamental importance, the PMF should monitor the performance of the law and justice sector generally, as well as the impact of implementation of reform efforts to improving that performance, specifically – because without the former, the latter lacks context and will not be possible. This usually require considerable capacity-building in data collection, reporting systems and training throughout the sector and, additionally, in collaboration with civil society alternative dispute resolution in the informal sector.

In order to develop a PMF, stakeholders – counterpart governments, civil society and the international community - must collaborate to reach consensus on a number of core issues:

- ratify the objectives of the PMF – discussed above
- assess information management capacity
 - availability of reliable data
 - access and reporting capacity
 - managerial decision-making
- select performance indicators and baseline measures – to be discussed below
- determine measurement methodologies – to be discussed below
- appraise and support capacity-building needs – to be discussed below.

Key performance indicators

A critical element of the design of a PMF is the selection of key performance indicators (KPI's). An indicator is a measure that helps 'answer the question of how much, or whether, progress is being made toward a certain objective.'²⁴ KPI's are those things on which data will be systematically collected and reported that will enable measurements to be made and evaluated by policy-makers, sector managers and other stakeholders. These indicators can be selected to describe (a) activity *outputs*, that is, completion of implementation of project activities, and (b) activity *outcomes*, that is, its impact on sector performance.

In due course, stakeholders will be required to consider how they want to measure the sector, in other words, which indicators to monitor. Various models from the international experience have been outlined above. These provide a multitude of possible indicators for the sector, including: law-making, law enforcement, access to justice, delay, judicial administration, pretrial detention and human rights, prisons and rehabilitation, accountability and complaints, alternative dispute resolution and community-based justice, public confidence generally and confidence of the bar, donors and NGO's specifically. But, in essence, each system should identify its own priorities.

Two examples are annexed, from Papua New Guinea and Cambodia, respectively. It is interesting to compare these frameworks, designed as they have been to measure implementation of their respective reform strategies. In PNG, crime prevention is a primary objective. Compare this to Cambodia where access to justice and rebuilding the judiciary after the genocide that only 6 law professional survived.

Commonly, government leaders, the media and public generally, seize on a configuration of the following core values:

²⁴ This definition comes from the *Handbook of Democracy and Governance Program Indicators* (Washington, DC: U.S. Agency for International Development, 1998). The World Bank defines an indicator as 'information [that] can be used...to assess performance and assist in planning for the future.' (Judicial Sector Indicators (JSI), a World Bank Information System available on the web at http://www4.worldbank.org/legal/legop_judicial/whatisjsi.html.)

- crime/safety – offences, arrests, prosecutions, convictions, punishment
- justice – rights, empowerment, access, cost, timeliness
- integrity – complaints, corruption, accountability
- public confidence - is often seen as an aggregation of the above.

Development indicators should also be selected having regard for the following principles:

- Viability in terms of accessibility, reliability and cost of data
- Extent of capacity-building required to consolidate sustainable reporting systems
- Avoidance of creating parallel systems and the risks of donor-dependency.
- As with all indicators, they should be smart.²⁵

Case-studies in establishing performance monitoring frameworks

Evidently, the survey of international experience reveals that these are early days. The first signs of serious investment in performance monitoring have started to emerge over the past five years led by thinking in organizations like the World Bank, ABA-CEELI and the Vera Institute. In this section, the paper examines the application of this thinking in two developing countries: Papua New Guinea and Cambodia. Both countries require considerable assistance in legal and judicial reform, and both countries are presently grappling with the challenges of investing seriously in performance monitoring frameworks.²⁶

Papua New Guinea

Over the past five years, the Government of Papua New Guinea (GoPNG) has adopted a sector-wide approach to law and justice as part of public sector review activities in 2000 in its National Law and Justice Policy and Plan of Action (NLJPPA)²⁷, which builds on three pillars:

- 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.²⁸

²⁵ S-specific; M-easurable; A-accurate; R-reliable; T-timebound.

²⁶ Listed 130 and 137 on the UN's Human Development Index, respectively; interestingly, both countries rank equally at 130 on Transparency International's Corruption Perception Index.

²⁷ Department of National Planning and Monitoring (2000) *National Law and Justice Policy and Plan of Action Toward Restorative Justice*, Papua New Guinea; see also: Mostyn, G. et al, (2002) *Review of the Law and Justice Sector Agencies in PNG*.

²⁸ The policy does not explicitly define this central notion of *restorative justice*. There are many different definitions of restorative justice, as well as an almost infinite range of restorative justice practices. Those advising the government generally understand it to mean, in essence: restorative justice is a process that aims to repair the damage caused by a particular offence or dispute rather than simply focus on the punishment of offenders. Ideally, it involves direct participation by both victims and offenders in the resolution of disputes and offences. Victims have a say in what happens to the offender, while the offender is encouraged to appreciate the consequences of his/her actions and the harm(s) these have caused. Stakeholders in restorative justice processes include the victim, offender AND the community most directly affected by the offence or dispute. An important object is to reintegrate offenders back into the community after appropriate reparation has been made. The fundamental principles of restorative justice as developed in the Western justice context are as follows: (1) Crime is fundamentally a violation of people and interpersonal relationships. (2) Violations create obligations and liabilities. (3) Restorative justice seeks to heal and put right the wrongs. Dinnen S, Working Paper on Restorative Justice and Community-Oriented Approaches to Crime Prevention and Dispute Resolution, Justice Advisory Group, PNG, 2004. See also:

Simultaneously, donor support to Law and Justice services in Papua New Guinea moved away from an agency-specific project-based model to a sector approach.²⁹

The GoPNG made a commitment to a performance management approach in its development of the law and justice sector, as against an 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 to have in place a sector-wide performance monitoring capability in due course.³⁰

In the development stage, technical assistance focused on the following:

- in 2003, preparing a sector strategy which defined the goals, objectives and strategies for action, and identifying ten priorities as the basis for immediate planning and monitoring
- in 2004, development of the sector PMF on key performance indicators for attainment of the priorities³¹ This involved working with 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 baseline data for inclusion in the first Annual Performance Report for 2004.
- In mid-2005, publishing the first Annual Performance Report for 2004, and developing the Sector Strategic Framework (SSF) which is a framework that more comprehensively represents strategic intentions across the sector. The SSF was completed in time for agencies to use as the frame of reference for the development of their Corporate Plans for 2006-2010, which 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.³²
- The baseline and annual performance measurements also include a Community Crime Surveys³³ 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 both more accurate and representative than are official crime statistics based on the activity of formal criminal justice agencies³⁴.
- In 2005, the PMF was then redeveloped in consultation with 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

Howard Zehr and Harry Mika, 'Fundamental Principles of Restorative Justice', *The Contemporary Justice Review*, Vol.1, No.1 (1998), 47-55.

²⁹ Predominantly from AusAID, lead-donor to PNG.

³⁰ Miller and Armytage, 6.

³¹ 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.

³² See table, annexed.

³³ 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 Victim's of Crime approach. The survey also supplements official law and justice sector quantitative data and is consistent with the developing sector-wide M&E indicators.

³⁴ Findlay, M,(2004) Appraisal of UNDP Safer Cities Survey initiative in PNG

annual performance reporting for 2005. The second Annual Performance Report covering 2005 was produced in mid-2006.

The central feature of this PMF approach is its relationship with the Sector Strategic Framework (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'³⁵. The SSF is strongly influenced by the National Law and Justice Policy and Plan of Action and experience to date. The following diagram, 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. By identifying and embedding these three core uses in the framework – a Balanced Score Card approach³⁶ -, the PMF created an incentive for a greater service orientation within the sector. This is seen as being a key driver for development 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 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. 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 judgment to be made about progress on the KPMs.³⁷

The foundational work in establishing the PMF has now been laid. That said, refinement of the framework, data collection and reporting systems remain works in progress that will continue to evolve and refine with experience over coming years. The extent of ongoing technical assistance from the international community remains an open question.

Cambodia

Over about the same period, the Royal Government of Cambodia (RGC) has invested considerable effort in elaborating a comprehensive agenda for legal and judicial reform. First, it approved *the Legal and Judicial Reform Strategy (LJRS)* on 20 June 2003. Then, following its inclusion in the Rectangular Strategy, the Government adopted the *Plan of Action for Implementing the LJRS* on 29 April 2005. Next, the *Draft Project Catalogues* for implementing the strategy was circulated for comment in January 2006. Most recently, RGC has drafted *Project Profiles* for priority projects required to be supported by the international community, to supplement the ongoing reform activity of RGC's implementing agencies. Among these, Activity Plan 7.4.1 of the Project Catalogue for the LJRS proposes the development of a "(M)onitoring system of the justice sector to measure its overall performance, including the administration of justice, as a guiding line for overall reform."

Work has focused on, first, developing and, secondly, initiating implementation of the legal and judicial reform strategy. Interestingly, this hierarchy of goals and objectives differs in some significant respects markedly from those in PNG, obviously reflecting different needs and priorities. The *vision* of this strategy is drawn on the foundation of the fundamental concepts and values enshrined in the Constitution, notably: the rights of the individual, liberal democracy,

³⁵ Sector Strategic Framework in support of the National Law and Justice Policy and Plan of Action towards Restorative Justice, Papua New Guinea, June 2006

³⁶ Kaplan R.S. and Norton D.P. (2001) *The Strategy Focused Organization*: Harvard Business School Press.

³⁷ Miller and Armytage.

separation of state powers, and the rule of law with poverty alleviation being the overall political focus.³⁸ The *goal* is stated to be: “The establishment of a credible and stable legal and judicial sector upholding the principles of the rights of the individual, the rule of law and the separation of powers in a liberal democracy fostering private sector led economic growth.”

The LJRS comprises seven strategic objectives each of which has a stated outcome, which is significant for purposes of monitoring because it nominates a measure of performance.³⁹

- *Strategic objective 1*
Improve the protection of personal rights and freedoms
Outcome: Personal rights and freedoms promoted and enabled
- *Strategic objective 2*
Modernisation of the legislative framework
Outcome: The lawmaking process and legislative framework modernized with the purpose of implementing the rule of law based upon a hierarchical system of laws and regulations
- *Strategic objective 3*
Provide better access to legal and judicial information
Outcome: Public awareness promoted and knowledge about and access to legal and judicial information enhanced
- *Strategic objective 4*
Enhance quality of legal processes and related services
Outcome: Due processes before administrative bodies and the courts of law and the right of appeal of all persons ensured
- *Strategic objective 5*
Strengthen judicial services, i.e. the judicial power and the prosecutorial services
Outcome: A well-functioning and independent judiciary ensured
Strategies
- *Strategic objective 6*
Introduce alternative dispute resolution methods
Outcome: Well-functioning alternative dispute resolution and mediation mechanisms established with regard to commercial disputes and minor disputes on community level
- *Strategic objective 7*
Strengthen Legal and Judicial sector institutions to fulfill their mandates
Outcome: Capacity and means provided in fields of planning and budgeting, monitoring and reporting in order to ensure effective, efficient and accountable enforcement.

Establishment of performance monitoring capacity initially focused on developing an output indicator framework to measure implementation of the government strategy reform activities. Efforts are currently being made to refocus attention on building a more comprehensive performance monitoring strategy that monitors outcomes, results and impact of the strategy on the overall performance of the sector. This approach builds on an appraisal of the needs for performance monitoring and the existing capacity for information management, that is, those

³⁸ LJRS, 2 + 6-12.

³⁹ LJRS, 14-15. These are yet to be refined sufficiently to become 'smart' indicators amenable to measurement. The LJRS identifies four key areas of reform and development, being: improved access to justice, modernised legislative framework, an independent and well functioning judiciary, and a coordinated and well functioning Legal and Judicial sector. These key areas, or themes, are supported by 63 interventions to fulfill the values and implement the objectives.

systems which exist for the collecting, reporting and using of data, relating to the performance of the law and justice sector and the impact of reform activities.

It may not be surprising that this appraisal found major deficits in information management capacity, including:

- fragmentation and numerous gaps in the collection and reporting of data,
- much of what data is available has been collected for other purposes and is of limited relevance or value for the purpose of monitoring sector performance and the impact of reform activities,
- reliability of data is questionable,
- there is a sector-wide lack of uniformity or harmonisation of data, data-streams and reporting – there is no linkage between police, prosecution, court and prisons data;
- consequently, most data and reports are unusable and unused.

Building information management capacity is integral to establishing the foundations for the PMF. This will require considerable capacity-building in data collection, reporting systems and training throughout the sector and linkages with related sectors.

Additionally, efforts are now being made to involve civil society which can play two significant roles in (a) articulating users' and non-users' satisfaction with the justice services of the formal sector and (b) collecting data and reports relating to what centralists term "alternative dispute resolution" (ADR), but what much more significantly are traditional and community-based justice within the informal sector, which is particularly significant in Cambodia community.⁴⁰

This re-gearing to a more substantial approach will build a performance monitoring framework for the sector at large which integrates with the Legal & Judicial Reform Strategy to link two core management reform functions: planning and monitoring.

This marks a fundamental transition from focusing predominantly on monitoring reform outputs to refocus on developing comprehensive frameworks which are capable of monitoring and measuring results and impact in sector performance. The effect of this move is that the PMF should monitor the performance of the law and justice sector generally, as well as the impact of implementation of the LJRS to improving that performance, specifically – because without the former, the latter will not be possible.

This exercise is like building a bridge: it needs to be started from both directions at once, and meet in the middle in an integrated design to links planned strategic targets with visible and agreed results and outcomes. Alternatively, this may be described as building '*bottom-up*' from monitoring indicators of activity implementation of the LJRS, and as building '*top-down*' from monitoring indicators of impact on sector performance. Both are required, and they need to be integrated within a comprehensive PMF.

This will require more resources and involve longer term commitments from both counterparts and donors. Whether the government and the international community are ready to make these commitments is presently another open question.

⁴⁰ UNDP's *Pathways to Justice Report*, 2005, found that most disputes are handled outside the formal sector: it estimated that some 12,000 are disposed by the courts annually, compared with 40,000 informally, principally at village and commune levels beyond the reach of provincial courts.

Emerging experience from practice

While it is still early days embracing the challenge to ‘get serious’ about performance monitoring in legal and judicial reform, practical experience is starting to emerge from developing countries like PNG and Cambodia that offers potentially significant lessons for the international community on the needs for a shift in design paradigm, strengthening change management strategies, refocusing on sustainability, and extending timeframes and resources.

1. *Shift in design paradigm*

Most significantly, the development of a performance monitoring frame requires what is becoming recognized as a profound shift towards increasingly sector-based performance monitoring and away from the prevalent focus on monitoring completion of project-based donor activities. Visibly, this becomes apparent in attention moving to monitoring the impact of any development contribution on the overall performance of the sector, and beyond the intermediate preoccupation with whether reform activities have been completed in a timely and efficient manner. This shift is driven by formalizing the critical relationship between two core development functions: planning and monitoring. The fundamental interdependency between these core functions, and also between monitoring and information management, has not always been adequately appreciated in earlier support strategies. The reform strategy provides the ‘*front-end*’ planning engine of change for the sector, and identifies the objectives and outcomes to be targeted in reform activities; the PMF should be linked to those activity targets in order to provide the ‘*back-end*’, that is, the means to monitor and measure their attainment in due course. Together, they comprise the two-sides of the change-management coin – planning and monitoring. It is to be hoped that this shift will in due course herald departure from the logistical framework as being the prevalent donor-centric design approach to a new paradigm of sector performance and how donor assistance may visibly promote government reform strategies.

Building on this experience, it would be useful to refine support design guidelines to include:

- a. Link the development of the performance monitoring framework with the government’s reform strategy for the law and justice sector, and develop both together.
- b. assess the sector’s needs for information management, monitoring and evaluation, specifically including the capacity-building needs of (a) implementing agencies in data collection and reporting systems, and (b) central agencies to coordinate and administer the PMF.
- c. design the PMF to measure (a) the performance of the sector generally, and (b) the impact of reform activities to improve the law and justice situation, specifically.
- d. build an index of high-level key performance indicators to monitor and measure (a) implementation of reform activities (output/result-focused), linked to (b) sector performance (outcome/impact-focused).
- e. monitor performance in both the formal and informal hemispheres of the law and justice sector.
- f. engage and collaborate with civil society in monitoring, specifically including conducting public confidence surveys, having regard to the *International Crime Victim Survey* among other instruments.
- g. guide the design and development of the PMF applying principles of sustainability: viability, building counterpart capacity, and minimizing donor dependency.

2. *Change management strategy*

Establishing performance monitoring frameworks requires a transition in leadership and management to collect and use evidence in decision making. This requires a fundamental shift in organizational culture and behaviour, and the development of foundational capacities in

information management – to systematically collect, report and use relevant, reliable and measurable performance information. This transition involves many aspects but, perhaps most importantly at the outset, it requires education and awareness-raising in the leadership to ground ongoing technical capacity-building and the development of operational systems and procedures. Incentives are an important element of this strategy. Given the size of this transition, any change management strategy should specifically provide appropriate incentives to stimulate the engagement of stakeholders. Without this, experience from practice indicates that key actors in collecting and reporting the data – often far down the management chain at remote service delivery points - may lack the understanding, motivation and support to adopt new practices and, accept the additional workload.⁴¹

3. *Sustainability*

The sector monitoring regime draws on data from constituent agencies for many of its measures. Working within existing agency systems consolidates local management of the process, creating sustainability within the relatively short term. Inevitably, some data will however be drawn from other sources – previously unreported indicators, surveys, civil society. These are inherently less sustainable, and some ongoing technical assistance will be required in the post-establishment phase to develop and entrench capacity to manage and refine collection, reporting and evaluation.

4. *Timeframe*

Experience indicates that establishing a PMF will require sustained commitments from both counterparts and the international community, and will take more time than might be expected from the outset. There are three reasons for needing this time: (a) developing awareness and a consensus-approach among stakeholders, (b) building foundational capacities in information management, and (c) developing systems and procedures.

It is estimated that establishing a systematic outcomes-focused PMF for law and justice sectors may take about 3 years – sometimes a little more, or less. This is because it is in the interests of sustainability essential to develop an inclusive participatory process among stakeholders. The technical work can be completed more quickly, but if stakeholders do not understand or see its benefits, it will be wasted. The evidence of the PMF is likely to start becoming visible from about Year 3 on completion of baseline measures. More elapsed time will then be required to generate meaningful comparative monitoring amenable to evaluation that will inform policy-based and managerial decision-making, from about Year 5 onwards. At that stage, it will become possible to build an evidence-based approach to decision-making for legal and judicial administrators. This is usually a major culture change and cannot be rushed if it is to be successful. Once the full capacity-building process, training, systems development and refinement, and fine-tuning is taken into account, it is expected that a sound and working process of performance monitoring for the sector will be firmly established during the decade.

A tentative timeframe to assist in planning frameworks is:

- a. Educate stakeholders and raise awareness – Year 1
- b. Establish consensus on sector boundaries and kpi's – Year 1
- c. Develop indicator framework for implementation of the LJRS – Year 1
- d. Appraise needs for information management and capacity-building – Year 1/2
- e. Design PMF, linking with LJRS, and refine LJRS – Year 1/2
- f. Collect baseline data and community confidence survey(s) – Year 2
- g. Commence annual performance reporting – Year 3
- h. Ongoing annual performance reporting and evaluation – Year 4+.

⁴¹ World Bank (2004) *Administrative and Civil Service Reform*.

The initial 3-year establishment phase is readily supportable through technical assistance from the international community, subject to possible extension by mutual agreement.

Once established, this PMF will deliver regular and reliable performance data on both the sector and the impact of the LJRS that will rapidly become indispensable for policy-makers, justice administrators and donors.

5. *Resources*

It is not altogether straightforward to assess the costs of establishing and servicing a PMF – the needs for monitoring, and the objectives and scope of the PMF will vary. Clearly, it will be more than the earlier investment in output monitoring. Interestingly, in PNG, this has been estimated at around 6% of the reform investment in the establishment phase. Thereafter, this may be expected to reduce, possibly markedly.⁴²

⁴² Miller and Armytage, 2006.

Table 1: The PNG Law and Justice Sector Strategic Framework

Vision					
A Just, Safe & Secure Society for All					
Our Goals					
	Improved Policing, 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 & support communities to reconcile offenders & victims in a non-violent manner	1. Ensure accountability for corruption & the abuse & 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 operation 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	Reorganize agencies to meet service priorities
	Improve core operational & administrative practices	Improve access to legal, paralegal & community based advocacy services	Support integration 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 & strength civil society participation in planning & policy development
	Promote coordinated engagement with formal sector	Recognize, reinforce & support mediation & customary practices that	Support increased use of the alternatives to imprisonment	2. Encourage civil society oversight of public administration	Build service delivery capacity
	3. Select high priority initiatives	Strengthen Village Courts to resolve cases quickly & fairly	3. Maintain a national correctional system for persons 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 & within communities
	Improve Highway & resource project safety, especially Highways	Strongly focus on increasing capacity to resolve l& 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, state law officers & Ombudsmen		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	

Table 2: The PNG Law and Justice Sector Performance Monitoring Framework

Vision						
A Just, Safe & Secure Society for All						
Our Goals						
	Improved Policing, Safety & Crime Prevention	Increased Access to Justice & Just Results	Improved Reconciliation, Reintegration & Deterrence	Improved Accountability & Reduced Corruption	Improved Ability to Provide Law & Justice Services	Improved Ability to Provide Law & Justice Services (cont.)
Our Strategies	1.1 Improvement in RPNGC operational & administrative practices	2.1 All people have greater access to justice services	3.1 Increase in the use of restorative justice processes	4.1 Community perceives that fraud, corruption & abuse of power is reducing	5.1 Improvement in agency corporate governance	5.4 Improvement in stakeholder perception of cross-sector coordination
	1.1.1 RPNGC divisions show increased productivity in key functions	2.1.1 Increase in the number of people receiving human rights awareness & services from CSOs & formal agencies	3.1.1 Number of programs & activities in agencies that cater for victims of crime increases	4.1.1 Satisfaction of CSOs with agency communication & transparency	5.1.1 Agency compliance with key GoPNG financial management requirements	5.3.1 %age of CSOs that perceive agencies are meeting their service priorities increases
	1.1.2 The number of disciplinary incidents	2.1.2 Increase in the number of people receiving legal/paralegal &/or advocacy services from CSOs & formal agencies	3.1.2 Number of courts that deal appropriately with victims of crime increases	4.1.2 The community perceives that corruption is decreasing in PNG	5.1.2 Extent to which agency corporate & annual plans are aligned with the Sector Strategic Framework	5.3.2 The extent to which agencies engage CSOs adequately in planning processes increases
	1.2 Improvement in community confidence in RPNGC	2.1.3 Number of cases accepted by the Public Solicitor	3.1.3 Agency policies & procedures address restorative justice	4.1.3 The community has increasing confidence in the system to detect & prosecute fraud	5.1.3 Number of agencies that complete quarterly & annual reporting processes	5.3.3 Number of CSOs involved in Law & Justice activities receiving financial support
	1.2.1 Public perception of police performance & discipline improves	2.1.4 Increase in the number of 'Alternative Dispute Resolution' decisions	3.2 Increase in non-custodial outcomes	4.1.4 Papua New Guinea improves its position on the Transparency International Corruption Index	5.1.4 Number of agencies with an effective consultation & communication plan	5.3.4 Quantity of funding received by CSOs
	1.2.2 Increased police participation in community liaison	2.2 Improvement in the disposition of cases	3.2.1 Increase in the number of convicted persons subject to 'non-custodial orders'	4.2 Decrease in the level of fraud & corruption prosecutions	5.2 Improvement in the use of resources in the sector	5.3.5 Increase in coverage of PNG by key CSOs
	1.3 Reduction in the level of crime	2.2.1 Reduction in the average time that remandees are detained	3.2.2 More juveniles are diverted from prison	4.2.1 Number of complaints against government officials registered & closed	5.2.1 Share of total public expenditure by agency & sector	
	1.3.1 Serious crime in provinces & major urban centres declines	2.2.1 The number of criminal cases completed each year	3.2.3 Total number of juveniles in prison is decreasing	4.2.2 The number of leader subject to conviction on corruption charges	5.2.2 Extent of development budget alignment with the SSF	
	1.3.2 Community members experience a reduction in crime victimization	2.2.2 The number of civil cases completed each year	3.2.4 Number of breaches of 'non-custodial orders' is decreasing	4.3 Reduction in claims against the state	5.2.3 The extent of resourcing of across-sector initiatives	

CAMBODIA LEGAL & JUDICIAL REFORM STRATEGY

GOAL
The establishment of a credible and stable legal and judicial sector upholding the principles of the individual, the rule of law and the separation of powers in a liberal democracy fostering private sector led economic growth

