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AN ASSESSMENT OF USAID RULE OF LAW ACTIVITIES
IN CAMBODIA

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LIST OF ACRONYMS USED

ABA	American Bar Association
AAFLI	Asian American Free Labor Institute
ASEAN	Association of South East Asian Nations
BAKC	Bar Association of the Kingdom of Cambodia
CCTP	Cambodia Court Training Project
CDC	Council for the Development of Cambodia
CDP	Cambodia Defenders Project
CGR	Center for General Research(NA)
CLE	Continuing Legal Education
CLRD	Center for Research and Documentation(NA)
COJ	Council of Jurists
COM	Council of Ministers
FOB	Faculty of Business
FOD	Faculte de Droit
FOL	Faculty of Law
IBL	Institute of Business and Law
IHRLG	International Human Rights Law Group
IMF	International Monetary Fund
IR	Intermediate Result
KJA	Khmer Journalists Association
LAC	Legal Aid of Cambodia
LLM	Master of Laws
LTA	Long term advisor
MOC	Ministry of Commerce
MOF	Ministry of Finance
MOJ	Ministry of Justice
MOL	Ministry of Labor
NIR	New intermediate result
NGO	Non-governmental organization
PSC	Personal Services Contractor
RCG	Royal Cambodian Government
RF	Results framework
ROL	Rule of Law
SCM	Supreme Council of the Magistracy
SO	Strategic Objective
SOC	State of Cambodia
SSO	Strategic sub-objective
STA	Short term advisor
TAF	The Asia Foundation
UNCHR	UN Center for Human Rights
UNDP	United Nations Development Program
UNTAC	United Nations Transitional Authority for Cambodia
USAID	U S AID Mission to Cambodia
USF	University of San Francisco

EXECUTIVE SUMMARY

Following its reinitiation of bilateral assistance to Cambodia, USAID began a Rule of Law Program. Like the rest of its assistance, the program has evolved, in this case from series of exploratory activities to an integrated package aimed at rebuilding and in some instances creating key institutions, producing immediate tangible results, and setting the basis for longer term sustainable development. The current strategy was laid out in 1995 as part of USAID/Cambodia's revised Democracy/Governance Program, further revisions affected the ROL strategy through the addition of legal development and legislative strengthening activities which had initially represented separate elements. In late 1995, the Mission elaborated a draft Results Framework intended to encompass and guide its ROL activities over the next two years. As a subsequent step in this process, the Mission contracted a team of external consultants to review the ROL strategy and Framework and produce recommendations as to future actions.

The three-member team spent five weeks of the effort, producing the present document. Like the project, its findings reflect the unusual challenges facing ROL efforts in Cambodia and the consequent need to adapt methodologies and expectations to a special set of national and institutional realities. After the institutional and human resource base for the sector was virtually eliminated by decades of internal and external strife, rebuilding began in the early 1980s. What exists now is a rudimentary legal, judicial and regulatory system, although it hardly meets international standards, it has created or revived some traditions worth preserving. Furthermore, since financial and human resource problems continue to be critical, donor-assisted rehabilitation and development will necessarily proceed slowly and cannot be expected to resolve even the highest priority problems immediately. The basic challenges -- increasing judicial independence, respect for human rights, faith in and access to the system, and efficiency and effectiveness, reducing corruption, and establishing a basis for an open political system and economy -- are unusual both in their dimensions and in their dependence on simultaneous or preliminary rehabilitative work. A failure to take these factors into account may lie behind some misunderstandings of the ROL program. Other misunderstandings stem from certain false issues, several of them revolving around presumably "unbridgeable differences" between the civil and common law traditions.

The team found that all on-going activities respond to real needs and that each has developed a sharper focus over time. The program is less dispersed than many observers have claimed, and a

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tighter Results Framework and better accompanying explanation of the current and evolving strategy will help the critics recognize this. We have thus suggested a revised framework focusing on only four intermediate results and recommend that a broader range of institutional development and law revision efforts be postponed pending advances in more fundamental rehabilitative and elementary development goals. We also suggest that certain intermediate results be "racheted" downwards to reflect what can be accomplished over the next two to three years, and to avoid dispersing efforts too widely. The revised framework is more narrowly focused on improving judicial performance and respect for human and legal rights in the criminal justice area, and creating local capacity in human rights advocacy, education, and monitoring. Its secondary focus, setting the stage for future development, is improvement of the human resource base and the creation of a few key institutions.

6/21/12
Legal Rights
Institution

In response to specific questions raised by the Mission, we have recommended seeking a waiver to incorporate police in training programs, discouraged more explicit immediate attention to such non-criminal legal issues as land, family, and contract law, and suggested that the equivalent of a full-time PSC or direct hire slot be allotted to the project. We note that over the shorter run, the Mission will need additional assistance in implementing many of our recommendations and strongly urge that AID/W facilitate their obtaining it. We have also stressed the need for more donor coordination in light of the actual and potential problems resulting from duplicative, parallel, or competitive efforts. This is especially important now that the RCG is preparing its own plan for donor assistance, our final recommendation is that USAID become more directly involved in this effort and not depend solely on input from its grantees.

Shalley?

The advances made to date within the strategic objective are important, however much remains to be done. Grantee performance has varied, and some confusion and discoordination has been added by the shift from a single grant with the Asia Foundation to implementation through five separate NGO grantees, three of whom had been TAF subgrantees. We have indicated where more coordination among, or even within, grantee programs is called for, and have also recommended a better definition of AID and grantee roles in strategic coordination with other donors and with the RCG. While recommending that all grants be continued, we have suggested restructuring and refocusing for several of them and an almost universal effort to lower administrative costs and reduce administrative staff. Generally, the grantees, like the project, have set their aspirations too high and consequently suffered a dispersion of efforts. A more intensive focus on a narrower, and less ambitious set of immediate goals seems more likely to produce real and lasting results.

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I INTRODUCTION

The present report responds to USAID/Cambodia's request that a team of external consultants review its "revised results framework (RF) for the Rule of Law (ROL) strategic objective (SO) to better ensure that the mix of activities (1) is logical, coherent, and cohesive, (2) focuses and concentrates the Mission's program on those results which are most likely to have the greatest impact on respect for and adherence to the rule of law in Cambodia, and (3) minimizes the program spread and management burden on the Mission and the SC team " The actual Scope of Work, which also requests a focus on grantee performance, recommendations on the elimination or addition of activities, and suggestions as to a modified Results Framework, is included as Annex 1

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The assessment team included three individuals a team leader with ten years experience as a Personal Services Contractor (PSC) managing AID ROL projects in Latin America, a former AID lawyer with most recent experience as manager for ROL projects in Indonesia and Russia, and a Cambodia affairs advisor, a Khmer-American who had worked extensively with AID and the U S Embassy in Cambodia The first two members spent one week in the United States reviewing documents and interviewing AID and grantee representatives, and one month in country doing field work (observation of activities and interviews with AID and grantee staff, project clients, other donors, and knowledgeable observers -- See Annex 11) and writing The Cambodia affairs advisor accompanied them for the first two weeks of the in-country stay to provide background and in-depth interpretation of relevant political and cultural factors and to add a customer service focus References to the team's views in the body of this report most directly incorporate those of the first two members, since the third member was unavailable for the writing stage While the time was short, the information collected was considerable, recognizing that reader interest in the details will vary, we have provided an executive summary, a lengthier narrative, and a set of substantive annexes

II BACKGROUND AND POLITICO-HISTORICAL CONTEXT

In view of the authors' lesser familiarity with these topics than that of many of the likely readers, we are eliminating the usual introductory section on the "land and the people " Instead we briefly summarize a few considerations important in shaping any assistance strategy in the Cambodian context Here too we are likely preaching to the converted, but we do so to establish a set of common assumptions critical to understanding the Mission's current strategy and our own comments and recommendations

Perhaps the most important factor shaping an assistance program in Cambodia is the country's material poverty and the impoverished state of its institutional and human resource base. Cambodia is one of the world's poorest nations, and this condition is compounded by the effects of the strife and civil war characterizing the post World War II period, and especially of the Khmer Rouge regime (1975-79), during which between one and two million citizens, including a majority of the intellectual and professional classes, perished and its political and economic institutions were systematically destroyed. Almost an entire generation of survivors, those currently between the ages of 18 and 36, was deprived of an education and the chance to learn the basic skills required for development of a modern economy, society, and polity. The country not only lacks lawyers, doctors, engineers, managers, administrators and other professionals, but also masses of skilled and semi-skilled workers.

*opportunities
to
be
worn?
well?*

Those private and public sector institutions which reemerged in the post-Khmer Rouge period thus depend on incumbents with a drastically inadequate educational, behavioral, and attitudinal base,¹ and will have to do so for some time to come. Recreation of institutions was itself erratic, falling under three very differently oriented regimes, the Vietnamese backed government of the 1980s, the transitional UNTAC administration, and the current, constitutionally elected government. This has produced further confusion as to the basic rules of the game governing their operations. The experience has only tended to retrench certain attitudes and practices inconsistent with democratic modernization: a tendency to see government's role as controlling rather than serving society, lack of transparency and accountability, corruption, a distrust of participation, and a perception of competition and opposition as inherent threats.

Since the 1991 Peace Accords, and the 1993 elections, the political situation has been characterized as "post-transitional," out of a crisis mode and toward greater stability with some democratic opening. However, it remains extremely fluid, shaped both at the top and the base by strong authoritarian tendencies, and consequently unlikely to tolerate or withstand a rapid acceleration of the process. This is not just a traditional culture, but a culture of survivors, where such traits as trust in others and acceptance of differences are hardly the rule. Donors and other observers often speak of a "window of opportunity" extending to the upcoming 1998 elections, during which time the benefits of a more open economy and polity

G/WIP?

¹While work habits are always a problem in Third World settings, the notion that jobs are always part-time is a particular problem in Cambodia, even when workers are paid a reasonable wage (as compared to the usual pittance), they frequently expect to have ample time for a second or third job.

must touch a critical mass of citizens. Whether this strategy works or not, it will necessarily be based on improvements far less dramatic than those promoted by national and foreign reformers and thus will also require their acceptance of the inherent limitations on more rapid change.

Political volatility, the insecurity even of those holding positions of power, and the continuing evolution of political institutions, resources, and the rules of the political game pose additional difficulties for external assistance programs. Potential allies are still shaping their own agendas, uncertain as to how donors will figure in them, and consequently inclined to keep their options open. This makes long-term commitments to programs difficult to secure and means that those obtained may have a different significance for the various parties. Since some commitments are essential, donors will have to be selective about what they go after and conservative in interpreting the results. In short, political will is not absent, but expectations should be set lower than in other operating environments. Expecting or demanding too much too soon is a likely recipe for disaster, the art lies in determining how much is possible.

III STATE OF RULE OF LAW IN CAMBODIA

Description of the Sector For a country of its size, Cambodia's legal and judicial sector institutions are remarkably small and underdeveloped. While most basic institutions now exist, in their current form they have a short history and limited operational capacity and organizational depth. To perform their basic functions they must over time grow in size and develop internal complexity. However, resource limitations, only part of which are financial, will prevent this occurring very rapidly.

Most narrowly defined, the institutions included in the sector are the court system (judicial and prosecutorial organs), the Ministry of Justice, the prison system, the police, recently introduced and largely donor funded public defense organizations, a still non operative Supreme Magistrates Council and Constitutional Court, the private bar, and a newly created Bar Association of the Kingdom of Cambodia. More widely interpreted one could include a series of NGOs which address legal matters (advocacy and legal defense and assistance), the Faculte de Droit (at the moment the sole law school), the military in its law enforcement role, and the National Assembly and executive agencies other than the Ministry of Justice in their legislative and regulatory roles. To this should be added the legislation defining the sector's organization and operation and that which it is expected to apply, and legal culture, both internal to the sector and embodied in mass and elite attitudes, beliefs, and practices.

If on paper the sector's composition is not unusual, a closer examination reveals some unique characteristics. Much of its formal institutional structure was destroyed by the Khmer Rouge regime and that existing today was recreated post 1980. The process has been difficult because most trained professionals had either fled the country or been killed during the Khmer Rouge period. The current court system dates back to 1982, except for the addition of clerkships, its personnel has been remarkably stable since that time. Those appointed as judges and prosecutors generally had little or no legal training and have for the most part, learned on the job. There are currently twenty-one first instance courts, one for every province, with 80 judges, 40 prosecutors, and 492 clerks. There is a single seven-member Appeal Court and a Supreme Court with ten justices. The 1993 Constitution creates two new bodies -- a Supreme Magistrates Council and Constitutional Council -- neither of which is operational. Although the Supreme Magistrates Council has been named, it has not been convened and until this happens, the Constitutional Council's members cannot be appointed. The reasons for the delay are apparently political, but the official explanation is the prolonged absence of the King who is also its

President The instatement of 42 new judges, recent graduates of a French sponsored Magistrates School, has also been delayed pending the meeting of the Council

The number of judicial personnel and their geographic concentration (the lowest level courts are located in the provincial capitals) suggest that their ability to serve the entire population is fairly limited. These facts, combined with the actual caseload, lend support to the claim that traditional or simply alternative systems for dispute resolution and social control continue to be more important for the majority of the population. While this argument has brought suggestions that such alternative systems be reinforced, little is known about them, and it seems likely that at least some would be a still less appropriate base for a modernizing, and democratizing country. In any case, and whatever is eventually done to encourage "appropriate" alternative mechanisms, demands on the formal system are increasing and these, along with complaints about its performance, provide the rationale for reform efforts.

Judicial organization and operating procedures still follow the French style model in effect before the Kmer Rouge period, however, the scant legal training of sector "professionals," the persistence and strength of popular and elite culture based on other notions of justice and the place and role of the courts, and the judiciary's creation and maintenance as a body dependent on the national or subnational executive agencies are strong factors modifying its formal and informal operations. To this should be added the fairly chaotic state of national legislation, both as it governs judicial operations and provides the basis for judicial decisions. In some cases, the problem is one of insufficient law (for example in the criminal area where a frequent complaint is that some "crimes" are not illegal), in others (eg criminal procedures, land law) the problem is one of multiple if often incomplete laws and an uncertainty as to which prevails. The Constitution provides some guidance in stipulating

¹It is worth stating that separation of powers and judicial independence traditionally take different forms in the civil and common law tradition, and in neither are absolute. However, while a greater role for the Ministry of Justice in managing court affairs may not be incompatible with the former, both its intervention and that of other national and subnational executive actors in functional operations (ie judicial decisions) is clearly not desirable. Surprisingly, this has not taken the form, as it has in other regions, of the frequent replacement of judges and prosecutors who do not prove sufficiently responsive to external pressures or who lack political patrons. This may simply be unnecessary given the other options for influencing decisions or the lesser attractiveness of judgeships and prosecutorial positions as patronage appointments.

that earlier legislation not in violation of its "spirit" still applies, but absent the Constitutional Council, definitive answers are supplied, if at all, through executive circulars issued by the Ministry of Justice. Efforts to update or rewrite legislation have introduced additional influences, including some concepts borrowed from Anglo-American law. Thus while the Cambodian legal and judicial system still lie within the civil law tradition, they have their own special character both in content and in the problems they now confront.

While typical of Third World systems, the resource poverty of the courts and of other sector institutions also reaches unusual extremes in Cambodia, contributing to a pattern of not only institutionalized but also virtually mandatory corruption. Judicial salaries, and those of police, prison guards, ministry and legislative staff are extraordinarily low. Judges earn between \$20 and \$30 monthly, salaries for other officials and budgets for materials and operating expenses are proportionately low. Since these are not living wages, employees must either hold other jobs, or, if they do not, charge extraofficial fees for their services, or simply accept bribes. It has been estimated that salaries would have to be increased at least ten fold to make such practices unnecessary, and considerably more to reduce the temptation they pose.

Given its history and these additional disincentives, it is surprising that the judiciary and other sector institutions maintain any semblance of a functionality. Whether this phenomenon is the result of post-1991 reform efforts or of some independent cultural factor, it is a positive sign that further improvements are possible within the existing institutional context. While corruption, political pressures, and threats take their toll on judicial decisions, many judges and prosecutors maintain some sense of professional integrity and vocation and a concern with at least appearing to follow and apply legal norms. They frequently show an apparently sincere interest in receiving further training to improve their understanding of the law and their professional skills and have been accepting of such innovations as the mandatory appointment of defense counsel. While aided by a still low workload, their delays in processing cases are not exceptional -- the rule that unsentenced prisoners should not be held in pretrial detention for over six months, if routinely violated, is done so by weeks or months, not, as in other countries, by years. The prison population is not large (roughly 2,000) and unsentenced prisoners represent less than forty percent of the total. This compares favorably with a Latin American regional average of upwards of seventy percent. Prison conditions are poor, but prisoners are at least fed, if not always adequately, and are not subject to the extreme overcrowding, torture and abuses documented in prisons in other regions of the Third World. Even the police, arguably the least professional and most routinely abusive sector officials, have

Women
Can't
bribe -
no
assaults

Arguably and before much movement can be made in any of these dimensions, there are more pressing immediate needs for rehabilitation of the existing system and its endowment with a greater financial resource base. The latter is a problem which donors can affect only indirectly. The principal issue is salaries and operating budgets. While the team does not recommend that this become a precondition for immediate or future assistance, it is an obvious constraint on the impact of most assistance programs. This is true even of those which are currently wholly donor financed (training, the public defenders efforts, NGO grants). Trained personnel will be lost to the public sector and perhaps to the country if salaries remain so ridiculously low, reform pressures originating with NGOs will meet little response if public officials do not have the resource capabilities to provide it. Judicial personnel who for the moment seem to respond to increased attention and a chance to do their job better will eventually lose their enthusiasm for reform if their compensation and operating budgets are not raised toward more realistic levels. Thus, while short term rehabilitation and catch-up programs can be expected to have immediate impact, there is another "window" for Rule of Law reform. Whatever the size of that opening, short term impact will not be maintained and longer term programs are unrealistic until some move is made toward solving this problem. A final solution, and a decent salary for judges and other public sector personnel is a long way off, but more reasonable compensation (even \$200 to \$300/mo) would open that window considerably wider.

This issue, and a number of less transcendental ones (affecting specific program activities -- e.g. the December, 1997 cut-off point for lay public defenders to represent clients in court) cannot be resolved by one donor alone and will require a coordinated strategy. While in other countries, a demand-driven solution has sometimes emerged (ie programs become so popular that there is a public demand for government support) we doubt this is feasible in present-day Cambodia. We also doubt the government will simply provide solutions (as has been suggested by participants in some programs) without concerted outside pressure. Hence there is a critical need to identify these issues and develop a strategy for dealing with them before they emerge as obstacles to further progress.

Red Herrings and Caveats Before concluding this chapter, we'd like to address a series of additional issues, some false and some real, we feel are essential to any Rule of Law strategy in Cambodia. This discussion is motivated by questions raised in Washington which we believe have unduly complicated the Mission's task of designing an acceptable program. The list has grown with our in-country investigations. The first issue, that of the civil versus common law dispute is the most important, but the others are also critical to our own recommendations.

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Red Herring One Cambodia must choose between civil and common law before assistance programs can go forward³

The fact of the matter is that much of Cambodia's current legal system is based on the French civil law, in both substance and procedure (particularly on the criminal law side) and is likely to remain so for the foreseeable future. Over time, however, substantive provisions of law which are common features of Anglo-American law are gradually being adopted. All indications are that the system will continue to develop as a hybrid and that the Cambodians see (we believe correctly) no imperative to make a "choice" between systems.

Corollary One Cambodia's civil law tradition poses limitations on U.S. based technical assistance and gives an automatic advantage to civil law practitioners.

While this may hold in some areas (eg. teaching courses or legal doctrine and theory as part of a traditional degree program), much of the skill training and other assistance now needed is sufficiently basic to make the difference irrelevant. Clearly, advisors must realize that the law and its practice are different here, and thus make the appropriate accommodations, but experience in-country and that in ROL programs elsewhere suggest that appropriately sensitized advisors from common law systems are quite adequate to the challenge. Furthermore, they may have the advantage of expecting things to operate differently. Civil law systems vary considerably in their substantive laws, procedures, and level of sophistication. Many of them have departed from the traditional Napoleonic model (to the extent of eliminating the investigating judge, for example), and Cambodia itself is already a hybrid model. A French instructor who comes prepared to teach French law, will find, as many have already, that Cambodians themselves make a distinction between the law of France and the law of their own country.

Corollary Two Recent developments signify a choice of civil law for the criminal justice system and common law for the commercial side.

Much has been made by USAID grantees of a recent cabinet pronouncement on this issue and of the Minister of Justice's statement that he supports the idea of an ASEAN Law School based on Anglo-American commercial law. We suggest, however, that they may be reading more into these events than is warranted, and that the devil lies in the details. No one, including AID's staff and grantees, seems terribly clear as to what ASEAN membership really requires in the way of legal change, seeming to forget that ASEAN

³This and several other red herrings are discussed in much greater detail in the annexes.

includes countries with a civil law tradition. Evidently, after several decades of neglect and some recent patching up, Cambodia's legal, regulatory and judicial system requires modernization, but that can be accomplished within either legal tradition and is most likely to draw from both.

Red Herring Two Because an activity involves law, it belongs in SO1

Were this true, all of AID's portfolio could be placed here. In most cases, including activities within SO1, law revision is complementary to other changes, and even when it is a primary goal, little will be accomplished absent support for implementation. Consequently, the modification or introduction of new laws requires an accompanying strategy and objectives, it is the nature of those objectives, not the legal component, that determines whether this is a ROL activity or some other kind.

Red Herring Three Cambodia needs everything, ergo any activity is worthwhile

Precisely because everything is needed, prioritization and strategic planning are essential. Neither is a panacea, but with limited resources and unlimited needs, one is cautioned to be very selective about how one uses the former to fill the latter. Here the question is not whether an activity fits within the ROL category, but where it fits hierarchically and sequentially.

Red Herring Four Everyone is corrupt, hence reform is impossible

Even AID's experience to date indicates that while the former may hold in many cases, the latter is not true. There are degrees of corruption and degrees of will to change. The Court Training Project suggests that even judges, whose token salaries guarantee a certain level of "irregular" behavior, are often interested in doing their jobs better and in making just decisions. The Defenders Project indicates that with a living wage (\$300/mo), dedicated people can be found who will do their jobs well. In short, improvement is possible even under current conditions, if the salary issue can be resolved, corruption can become a luxury rather than a necessity.

Caveat One While needs are extremely basic in Cambodia, there is also a level of sophistication about that limitation itself. Trainees and other program participants have already criticized what they see as inappropriate technology (whether highly theoretical courses on legal concepts or advice from inexperienced lawyers with little courtroom time). It is well to remember that Cambodia's judges and prosecutors, whatever their lack of formal legal training, have in most cases almost fifteen years of time in service, furthermore, while they often have

questions about legal interpretations, they do know the law. They are busy people with a well developed understanding of their professional needs, thus any assistance program which does not meet those needs is likely to be seen as a waste of time.

Caveat Two The fluid situation makes it necessary, but very difficult to get commitments essential to program success. The upcoming elections are already complicating alliances among the Cambodian political actors, the introduction of new institutions and strengthening of others have added potential resources which those controlling or competing for them are still exploring. Thus, it remains unclear whether the person making a commitment will be able to carry it out, or, even if they can, will find some pretext for avoiding doing so as they continue to weigh consequences and benefits. This implies more caution than usual in identifying critical points of agreement, securing commitments (ideally in writing), and making sure that the parties understand the implications. The problem is compounded because not only the Cambodians but also many of AID's grantees are new to the foreign assistance business and thus less than fully understanding of this concept. The frequent optimistic statements that things will work themselves out, or the tendency to take a Minister's expression of interest as a pledge of support may only lead to future disappointments. This does not mean that programs should not be attempted but rather calls for better risk analysis and development of alternative scenarios and contingency plans.

Caveat Three Unlike other geographic regions where AID has worked alone in ROL programs, other donors are very much present here. This may be an advantage, given the dimensions of the task, but it also calls for more up-front coordination to eliminate duplicative or even competitive programs and possibly to help in eliminating the bottle-necks of unsecured commitments.

IV ROL STRATEGY AND PROGRAM

The USG Country and Sector Strategy The May 1994 Statement of USAID 1994-1997 Assistance Strategy for Cambodia highlights three strategic goals "Strengthening Pluralism and Governance," "Supporting Broad-Based Economic Growth," and "Meeting Basic Needs " ROL activities are included under the first goal The statement further notes that since 1992, in-country assistance has evolved from a "rapid response program" toward one addressing rehabilitation and growth Special characteristics dictated by the country's current situation include "target[ed] assistance in a limited number of areas [and] visible, high impact activities that can be completed over the next three years," an effort to promote stability and build on recent gains while laying the basis for sustainable development, consideration of other donor activity and AID's comparative advantage in certain areas, and a reliance on NGO implementers consistent with broader agency policy and with the RCG's limited accountability and implementation capacity

USAID's ROL strategy is further elaborated in its 1995-1998 Democracy and Governance Strategy This again emphasizes the long term nature of the task and the practical need for immediate assistance "to shore up fledgling institutions " While the political environment is slightly more settled and more democratic than three years earlier, it remains highly volatile Thus efforts depending for their success on long term commitments by both the donors and the RCG represent a very high risk On the other hand activities producing immediate, visible improvements, may help to consolidate democratic trends

After three years of an open-ended exploratory approach, USAID can now focus its ROL and DI activities more narrowly and more strategically, shifting to "an integrated assistance package " One change in this direction, effected in 1995, was the elimination of several separate elements of its Democracy and Governance program and the transfer of some activities included in them (legal assistance to the National Assembly and key economic and financial ministries) to the ROL program

The current ROL strategy builds on experience with a three-year, \$9.3 million dollar grant to the Asia Foundation (TAF) A series of pilot activities in such areas as strengthening of the National Assembly, support for civic training and human rights, court reform, continuing legal education, drafting of new laws, and creation of public defense, many of them implemented through subgrants to U.S. based NGOs, evolved into a program of separate cooperative agreements The five principal grantees are TAF, the International Human Rights Law Group (IHRLG), the American Bar Association (ABA), the University of San Francisco Law School,

and the Asian-American Free Labor Institute (AAFLI) Their activities are described and analyzed in section six

While the evolution of the project is consistent with the statement of strategy (from exploratory pilot programs in a wide variety of areas, to a more focused emphasis on a few of them), it continues to be criticized for being driven more by the grantees' interests and perspectives than by any unifying vision. Whether or not the depiction is accurate, it does not preclude the development of a satisfactory final product. The assessment team found that all on-going activities respond to real needs and that each has developed a sharper focus over time. The more important question is whether they collectively make the best use of scarce financial, human, and institutional resources in producing tangible, significant results over the short run and providing the basis for longer term, sustainable development. As further elaborated, there is some reason for concern here, both as regards discrete activities within single grants, and the over-all thrust of others. There is a second question, also discussed below, as to whether the grantees' activities optimize the potential for coordination and mutual reinforcement. There have been some notable successes in this area, but there is considerable room for improvement.

To address these concerns, and to comply with the Agency's reengineering directives, the Mission recently produced a draft Rule of Law Strategic Framework which supersedes the earlier documents as the basic statement of project strategy and the yardstick for measuring results. We agree with the Mission that the Framework has shortcomings in both respects, however, its joint elaboration by Mission and grantee staff represents an important step in examining project aims and performance, and identifying areas where modifications may be in order. In the course of our own discussion we also note where the framework itself may require modification, and in the next section provide a suggested revised version.

The Strategic Framework The ROL Strategic Framework (see Annex 2) proposes to further the objective of building "a legal and judicial system that has greater compliance with international standards" through five intermediate results, discussed in detail below. Since it was developed in late 1995, it obviously followed rather than preceded the formulation of an initial project strategy and the placement of on-going activities. The Framework at best succeeds in encompassing rather than shaping what already existed, criticisms that it is both too broad and too narrow (and thus not reflective of what is really happening) are indicative of problems both in the underlying project strategy and the framework methodology itself. It should thus be seen as a first cut at putting a sharper strategic focus on the project, to the extent it includes all activities and subgoals and attempts to interrelate them, it provides a context for reexamining the

merits of each, assigning priorities, and identifying gaps and areas for greater or lesser emphasis

The framework can be criticized for the openness of its intermediate results and a certain ambiguity as to the significance of the performance indicators -- ie whether they represent measures of improvement or actions necessary to attain it. For example, the indicators for IR2 seem to be in the latter category (things that must be done if sector professionals are to be more knowledgeable about the law). Those for IR3 tend more to the former, representing actual elements of an improved court management system. At both levels, acceptable progress toward the desired result remains unspecified, more is better, but how much is sufficient? This fact, combined with the breadth of the changes encompassed in the five intermediate results underlies the complaint that the strategy and framework are too broad and insufficiently focused, running the risk of producing a lot of little changes, but no substantial improvement -- in short that they are less a strategy than a compendium of tactics.

This impression may be exacerbated by the framework's two dimensional nature and consequent inability to convey sequences and priorities. By appearing to give equal emphasis to all activities, it implies that the project is attempting more and achieving less than may really be the case. Its less than ideal origins (after, not before the design of grantee activities) also makes it an inconvenient basis for addressing some of the questions put to the team about grantee performance. Hence, the latter will be specifically discussed in a later chapter and is only partially treated here.

Intermediate Result 1 Legal and Procedural Reforms Supportive of Business Development and Human Rights are Approved

We assume this is placed first to follow the sequence recommended in AID's ROL strategy paper, but in the case of the Cambodia project, it is an unfortunate choice. This is the catch-all category and the one with the most problematic content. Except for the ABA's focus on crafting new commercial and economic legislation, AAFLI's promotion of a new labor law, and the TAF efforts with the press law, a new legal framework has not been a major thrust of the Mission's ROL efforts. The promotion of new legislation has been complementary to efforts to create institutions like the Cambodian Bar Association and Public Defenders, given the unresolved problems for both, it will

¹Conversations during workshops on the results package methodology suggest that it may be necessary to add more layers of preliminary results (or outcomes) and indicators. The current two-step model is simply not complex enough to reflect the causal links underlying strategic interventions.

continue to be so. More generally, where legislation is involved, the Mission's main effort has been in promoting enforcement of what already exists. This may be reflected in IR1's mention of new procedures, but we believe this element is really a part of IR 2.

The result's placement does allow immediate entry into one of the critical strategic issues: the extent to which changes in the legal framework are to be regarded as stand-alone or primary goals, or to which they should be subsumed in broader institutional change goals (and perhaps in other strategic objectives). The assessment team is not entirely of one mind on the answer, but we do agree that legal change, absent an ability to implement and enforce new norms could be a major waste of resources. It also could be detrimental to the objective of encouraging a respect for the Rule of Law.

We acknowledge that the current confusion as to which of Cambodia's laws are applicable, the gaps remaining even within this context, and the likely absence of legislation supportive of modern economic and commercial policies pose strong arguments for a greater emphasis here. We also acknowledge the RCG's interest in rewriting its entire legal corpus. However, given limited resources, the lack of local preparation for even drafting let alone executing the products, the many other urgent needs, and the currently ad hoc identification of legislative obstacles to change and development, we believe it is highly inadvisable to leave this as an independent and open-ended intermediate result. Either it should be restricted over the short to medium run to those areas where activities have already been initiated (labor law, further attempts to amend the press law, and a small package of legislation for the Ministry of Commerce), folded into other results packages (strengthening of key institutions -- most notably public defense and the bar association -- and formation of legal professionals), or passed to SO2. In support of this argument, we note that the two performance indicators most crucial to successful activities here -- the identification of problems and key reforms -- remain remarkably undeveloped (unless one considers the identification of a missing law adequate justification for writing it).

We also register a certain discomfort with this result's tendency to provide a backdoor entrance to a major program of economic and commercial reform, which clearly involves more than new legislation, and arguably should not start there. If other donors, in cooperation with the RCG, are preparing such an endeavor, and the only missing element is law, then the approach makes sense, absent these conditions, one wonders what, for example, is the purpose of a new banking law. Contrary to what has been argued, most of these laws are not self-enforcing. At the very least they require complementary educational and training programs, if not the creation of new offices,

procedures, forms, registries, data collection systems, etc. In addition to an accompanying development strategy, they also require studies of possible unintended effects, phase-in plans, and similar kinds of preparation. Delayed execution is not the only consequence of a law whose time has not come, it could be implemented in a fashion to produce still less desirable results.² In short, this Intermediate Result represents the most problematic component of the framework, and the one where the Mission needs to reexamine its objectives and capabilities, as well as those of the host government and other donors. At the very least it requires much sharper focus, at most it should be dropped, as a desirable goal, but one which AID cannot afford to promote at the present time.

Intermediate Result 2 Lawyers, Public Defenders, judges, prosecutors, and court staff more knowledgeable about the law and more skillful in applying it.

While this result encompasses a major part of the project's activities, we believe it unnecessarily condenses at least two discrete goals and purposes. One of them, centered in the court training program (IHRLG1), emphasizes on-the-job training of sector professionals in their current responsibilities, combining a resident advisor or mentor's program with more formal workshops and classroom training provided by mobile teams. As discussed in the section on the IHRLG program, we are concerned that the composite methodology may not be the most appropriate to what has been described as helping judges, prosecutors and clerks "do their job better." However, and especially in conjunction with the separate program aimed at on-the-job training and deployment of a defenders service, the effort has achieved some important breakthroughs in improving the participants' understanding of the criminal justice process and of their individual and shared roles in it. It has fostered an acceptance of the right to defense and the participation of the defenders service on the part of judges and prosecutors. While the impact has been uneven, and much remains to be done, in a number of courts, there is actually a demand for more defenders and an effort to assign them to individual cases. Statistics provided by the Cambodian Defenders project (IHRLG2) indicate a quite impressive performance in securing acquittals or dismissals of cases, and of forcing more timely hearings (and shorter pretrial detention).

We would argue, however, that this goal is significantly different -- in terms of its time horizon, immediate impact, and implementation methodology -- from other activities included in

²it occurs to us for example, that the new law on registry of corporations, if enforced with a bureaucratic, control-oriented outlook, could pose a major obstacle to the free entrance and exit of economic entities.

IR2 While it also relies on training, it is best separated from programs aimed at human resource development in the legal area through a series of more formal temporary or permanent training programs. The latter's participants are a more disparate group who will fill a variety of private and public sector positions where a more general understanding of legal concepts is desirable. Whereas the purpose of the IHRLG1 element is to improve the immediate performance of an existing institution and its incumbents, these other programs aim at providing a skilled human resource base whose eventual destination or deployment is considerably more open-ended, but undeniably essential to legal, economic, and social development.

The longer time horizon of at least some of the efforts and their intended impacts and the open-ended targets recommend further examination, both as regards specific objectives and the means most appropriate for attaining them. This implies identifying and prioritizing the kinds of knowledge required, defining and possibly differentiating the various target groups, and evaluating the alternative means for delivering the former to the latter. As just one example, if a few highly trained legal professionals are needed to facilitate entrance into international commercial agreements and arrangements, it may be more cost effective to send them outside the country for training, as opposed to developing a training facility in Cambodia. Where masses of people require less sophisticated knowledge, in-country programs make more sense. There is also the question of the permanence of the in-country programs and the decision as to whether the goal ends with developing the human resources or extends to creating mechanisms to continue the process. As will be noted in the sections on the specific grant programs, we believe satisfactory progress to have been made in setting up training activities, but that more attention should now be turned to these other questions, as well as to the better coordination of existing efforts.

Intermediate Result 3 Court Management Improved

This is the most self-contained result, the most reflective of real activities, and the least controversial in terms of the cost benefit ratio. However, its promotion to equal status with the other broader objectives may be misleading as regards the effort and emphasis it will receive. In our revised framework, it is subsumed in a larger intermediate result, the improved performance of the existing trial courts, and we believe this placement is a more adequate reflection of its strategic importance. The Mission is not proposing a major court administration effort, but rather the introduction of some simple procedures and innovations which will help the judges do their job. Development, testing, and implantation of these procedures in the resident advisor courts (and possibly system wide) should take twelve to eighteen months and require the efforts of one to

two full time advisors, and a modest investment (under \$250,000) in equipment and materials. The limited nature of the activity is made clear in the performance indicators, but the stated result appears more ambitious, and is likely to add unnecessarily to the impression that the project is attempting to do too much.

Progress on this result has been spotty to date but has generated an important knowledge base for future action. With the addition of a court administration advisor to the IHRG1 team, it seems likely to take off and reach satisfactory completion within the grant's time frame. Any extension of the grant, or decision to do a follow up with the trial court improvement program, might include efforts to reinforce the initial system, and perhaps to improve the MOJ's capacity to supervise its maintenance and utilize the reports it generates.

who?
Intermediate Result IV* Public more knowledgeable about Rights (especially vulnerable groups)

afw D

Here too while the result is important we believe it should be folded into another category (IR 5) or vice versa, in this case because it is the flip side of a single coin. While acknowledging that the same activity may serve several purposes, the current configuration only makes the project look more complicated than it really is. Whether the result is described as increased public knowledge about human rights and sensitivity to their abuse, or the introduction of mechanisms for education and monitoring of human rights, it essentially uses the same means, and will in the end probably rely on the same or similar indicators (thus the indicators 4 2 and 5 3 are identical). The overriding goal, however, is less the presence of mechanisms or knowledge than their impact on the system -- does this produce a difference in the way legal cases are handled, in the incidence of abuses, or in the willingness of the target groups to pursue their newly defined interests? None of the indicators really get at this (and in this sense are less indicators of improvement than hypothesized preconditions). This is unfortunate since more anecdotal evidence suggests some slight changes in this direction (whether they are the result of the project activities, or other independent factors, is another question).

Still because progress here will be very slow, more attention is required to testing linkages between first order interventions and impact, to defining feasible goals, and to identifying promising methodologies. The assessment team was told, for example, that much of the human rights education is pitched too high for the target groups -- rather than focusing on the Constitution and the Declaration of Human Rights, one source recommended the use of dramatic presentations of every day events. Even if the audiences absorb the formal lessons, there remains the question of impact on individual and system behavior. While a part of this impact depends on system disposition, it

arguably could be increased by focusing on a more limited set of rights and a greater coordination among the groups participating. The efforts should also be more closely coordinated with the other intermediate results, and especially those focusing on influencing the attitudes and capabilities of government actors to provide a positive response.

Activities with the media in this area and the following intermediate result suffer their own peculiar complications. The press, like the human rights NGOs remains very weak, its independence is also constrained because many newspapers depend for their livelihood on political contributions. After some initial successes (the formation of a journalists' association, some apparent improvements in coverage of political and human rights issues produced through training programs), further progress has been blocked by internal political divisions and external political pressures. The team frankly has no solution to offer, except to suggest that operating support to the now multiple journalist associations may be less productive than short courses and other activities which develop basic professional skills and fora where they can be exercised to less overtly political ends. This may mean encouraging neutrality first, and advocacy later, but this apparent step backward may be the most direct route to improving media performance. However, we also would discourage efforts to create a formal journalism school, as premature.

Intermediate Result 5 Improved monitoring and defense of human rights, especially on behalf of women and minorities

Most of the comments addressed to the previous Result are also applicable here. Nonetheless, the impact of the monitoring and defense efforts has been more visible, as witnessed in apparent improvements in such specific areas as prison conditions, greater attention to time limits on pretrial detention and presentation of detainees to judicial authorities, provision of legal counsel to defendants, and the defenders' successes in securing acquittals or dismissals of cases on the basis of insufficient evidence or violation of due process. Still, most of the successes are the result of direct interventions in specific cases, broader changes of attitudes among judicial officials tend to be limited to a few courts and are generally acknowledged to be precarious victories. Since women and minorities represent a smaller portion of defendants and detainees, and since most efforts continue to be directed at criminal cases, it is difficult to tell whether the special attention proposed for them has been affected and if so, has had an impact. Given the proportions of the general problems in the criminal justice sector, it may be too early to single out these groups for special attention -- in some sense, that might undercut the broader purpose of promoting a greater respect for human and legal rights.

A further question relates to the evaluation of local NGO capacity and to what criteria should be used to identify advances in viability and impact, or whether in fact both dimensions should receive equal attention in the short run. Concern has been raised not only because of visible differences in the performance of groups, but also because of a tendency to cover the same geographic areas, and in the worst of cases (the various defenders groups) compete for the same staff and occasionally even for the same clients. The competition is not just among groups funded by AID, NGO leaders noted that the policies of various donors have occasionally led to a bidding war for staff. While higher salaries are a way of attracting good people and protecting them from the temptation of corruption, there are serious concerns as to the sustainability of these efforts once the donors begin to lessen funding. This is a particular concern, as will be addressed below, in the case of the Public Defenders Project, but it clearly touches the entire NGO community. What appears to be a programmatic detail goes back to the larger question of the longer term purpose in supporting local NGOs -- whether this is a temporary, limited effort to improve respect for human rights or whether there is some aspiration for permanence, and if so, on what basis. In brief, the result like IR4, is short on strategy, given the current weakness of most local NGOs, immediate attention to capacity building and more focused impact may produce more sustainable results than a less discriminate support for whatever is on the ground. TAF may want to consider adding a long term advisor to deal with these issues.

General Conclusions The Results Framework is a useful tool, but both it and the underlying strategy require more refinement, a better definition of results and time horizons for their attainment, and a clearer distinction between output and impact indicators. Some of this implies a rethinking of the framework methodology itself. Its current limitation to broad (and probably unattainable) results and a series of concrete indicators of progress obscures the causal links between the two levels. Furthermore, where results are stated most concretely (eg court management), they may trivialize the strategy, where stated more broadly (eg IR1), they provide little guidance for prioritizing activities. Our preference is a more complex hierarchy which includes an intermediate level of "critical activities" between the intermediate results and the performance indicators.

The Mission's emphasis on producing short term results within a longer term development strategy (which it may or may not choose to pursue) is also inadequately captured because the framework lacks a temporal dimension. What can be achieved in three years is clearly not the desired endstate, but rather a means to the latter. Without suggesting it is wedded to a long term project, the Mission needs to clarify this part of its strategic thinking, both to itself and to its various audiences.

The Framework does highlight several problems with the strategic focus of on-going activities. The first of these is the disjuncture between results two, three, four and five as they relate to strengthening legal and human rights and the current justice system's ability to enforce them, and the commercial and economic modernization elements of results one and two. While we accept the latter's importance we are concerned that the subobjective is too open-ended and that its eventual success depends less on legal mechanisms than on activities more appropriate to the Mission's second strategic objective. Absent very close coordination with SO 2, which in fact does not appear to be driving the selection of legal interventions, the latter's impact is likely to be truncated.

Open-endedness or simply overambitious aims relative to institutional capabilities and resource constraints also characterize some of the training activities in intermediate result two and the human rights focus of results three and four. In regard to the former, we suggest a greater immediate emphasis on human resource development and a lesser one on more costly permanent training programs. Materials and techniques developed in conjunction with short courses and continuing legal education curricula may provide the basis for eventual permanent programs but we believe a commitment to a long term investment in the latter is still premature. In the case of the human and legal rights activities, the enormous needs combined with limited institutional capabilities would also seem to dictate much greater precision of goals and means. If efforts are to have any impact at all. More emphasis should be placed on helping local NGOs to develop their own strategies and methodologies.

Finally, there is the issue of coordination. This remains a critical problem and the Framework suggests more coordination than is actually occurring. Activities included in the same performance indicator box may have little other concrete relationship. Perhaps their juxtaposition is a good place to start in asking questions about consolidation or at least closer cooperation, but here the Framework is merely the starting point.

V A REVISED ROL STRATEGY AND FRAMEWORK

Having noted our dissatisfaction with the existing results framework, and some concern about the current strategy it more or less reflects, we are obliged to suggest something better. What we are recommending departs from the framework and, if to a lesser degree, the current project in two respects. First it attempts to tighten the focus by redefining some objectives or results, consolidating and coordinating activities within them, and suggesting the elimination or reduction of a few of them. Second, it operates in two phases, a first immediate stage of rehabilitation and the preparation of groundwork for further development, and a second stage of exit tactics or follow ups, leaving the Mission a choice of how or whether it will continue.

We believe this sequential approach, endorsed by the Mission in its Country and Sector strategies, best responds to institutional and political realities. The institutional realities dictate further rehabilitation or catch-up before a longer term development program is begun. This will produce some immediate impacts and improvements, provide a base for more ambitious change, and, it is hoped, may spur more interest in the latter. It thus uses the selective, rudimentary strengthening of institutions to build a constituency for change within and around them. The political realities include the fluidity of the current situation, the uncertainties as to the depth of governmental interest in and political will toward the programs, and possibly a certain lack of understanding on the part of key RCG actors as to the full implications of what is being proposed or what commitments they are being asked to make. At the moment, they may be, very wisely, refusing nothing, but that tactic may mislead donors into thinking they have reached more agreement than is really the case. More specific comments on how grant activities could be tailored to this revised strategy are incorporated in the section on their programs.

The revised strategy focuses on four rather than five results packages. The new intermediate results (NIRs, discussed below) lie in the following more general areas or strategic subobjectives (SSOs)

¹Although AID's ROL paper and CDIE's *Weighing in on the Scales of Justice* advocate beginning with constituency building, it is our experience that a demonstration effect and a little demand building are more effective mechanisms than simple dialogue.

- SSO 1 Justice sector performance conforms to legal norms
- SSO 2 Recognition of and respect for human rights widens and underlies the operations of the judicial, legal and regulatory system
- SSO 3 An adequate human resource base exists for further rule of law development
- SSO 4 Legal and institutional infrastructure for a modern legal system is developed

We believe that by identifying the broader subobjective behind each intermediate result, the project's logic is made more evident (and some questions about relevance of short term aims may be automatically answered) Our scheme also distinguishes between "critical activities" and "performance indicators" both of which are folded into the latter category in the Mission's draft ROL Framework While our suggestions deviate from current Agency practice, they are consistent with on-going discussions on the need to refine the framework methodology Should the Mission wish, it may eliminate the subobjectives and critical activities in its final table but they should be included in any narrative discussion (or in an accompanying expanded framework) to capture the logical and causal linkages informing its strategic plan

Before addressing the specific content of the results packages, a comment on the relationship between the proposed first and second phases is in order It is the team's belief that present activities should be scaled back from what is implied in the results framework to emphasize more rehabilitation or catch-up and preparation of foundations for further development In effect the scaling back may be more cosmetic than real, as we noted the current Results Framework may overstate what is actually being attempted Still, we are recommending that certain results and activities be considered for possible elimination or at least postponement A more radical minimal program would focus on SSOs and NIRs 1 and 2, and the Defenders Program (NIR 4) which have a higher priority because of their human rights emphasis and mutual reinforcement Results three and four set the basis for longer term improvements and could be pursued still more selectively, or simply postponed Although we have incorporated the legislative and commercial law programs, we have reservations about their advisability and impact absent adequate follow-up programs Since the bar association will probably require donor support for years, AID should reconsider the amount and nature of assistance provided in the first phase

After the first phase, the Mission has several options We have provided an exit strategy for each results package and the major activities under it, thus total or selective exit is one option The two other alternatives are selective deepening of activities in one or more of the areas, or a full scale strategy with follow up in each of the results dimensions While we can't outline all the possibilities, we have indicated those which seem most likely

and most feasible. At present, recommendations as to the second phase necessarily remain as options, since the direction taken depends on such factors as AID resource levels, other donor activity, and the interest and political will of the Cambodian Government.

Intermediate Result 1 Trial courts improve their compliance with legal norms in the area of criminal justice

Critical Activities

- Resident advisors in key courts to provide guidance or problem solving and on-the job training (IHRLG1)
- Training programs in investigative methods, criminal procedures, new criminal legislation for court personnel (IHRLG1)
- Benchmanuals and training materials developed (IHRLG1)
- Improved court management system developed, tested, and introduced in target courts, UN mentored courts, and eventually nation-wide (IHRLG1 with UN)
- Defenders available for all courts (IHRLG2, TAF in coordination with other donors)
- Human rights groups continue prison visits to monitor conditions and pretrial detention, secure defenders for detainees, and educate public on legal rights and procedures (TAF, other NGOs)
- Meetings and workshops with judges to identify key problem areas and suggest solutions, including those to be introduced by MOJ (IHRLG 1 and 2, TAF, and other NGOs)

Performance Indicators

- Percentage of prisoners in pretrial detention and average time held decline
- More defendants represented by public defenders
- Defenders increase number of acquittals, dismissals and early releases for lack of evidence (over time this should decline, but initially, it is an indication of progress)
- Prosecutors become more selective about the cases in which they bring charges, rejecting those with insufficient evidence (same comment as above)
- Average time for processing cases and backlog reduced
- Random observations of hearings indicates improved quality of arguments, use of evidence (fewer confessions, more witnesses during the trial and physical evidence), and better judgments, more in accord with the law

Exit Strategy Once the original IHRLG grant ends, the training materials and those on the case management and administrative systems are turned over to the MOJ for its follow-up. In the last year of the project, the IHRLG identifies and works with judges and other MOJ employees who can become trainers and helps the MOJ develop a training department and group of roving advisors.

Follow-up Options Assistance could be provided to the MOJ in

establishing entry-level and on-the-job training programs, a few pilot courts could be selected for similar programs in civil procedures, intensified efforts in criminal law, or court administration. A program to establish a commercial court or to assist the appellate court could also be adopted as a follow-up.

Intermediate Result 2 Mechanisms (institutions and procedures) for Human Rights Education, Monitoring, and Advocacy are introduced and strategies for augmenting their impact developed

Critical Activities

- Inventory of Human Rights groups funded by AID and other donors to determine geographic coverage, areas of focus and of duplication of efforts, and groups, rights and areas not adequately covered (AID, other donors)
- Evaluation of efficacy of groups and methodologies used (AID, TAF?, AAFLI, other donors)
- Technical assistance and workshops provided to teach new methodologies, better management techniques to local NGOs
- Workshops for NGOs to define common strategies and their own intermediate goals

Performance Indicators

- Funding of groups maintained but groups added or deleted per outcome of inventory and evaluation (TAF)
- Most effective methodologies adopted for human rights education (TAF, AAFLI)
- Coordination of advocacy efforts and establishment of mechanisms (a clearing house on results, an umbrella federation, a publication to enhance it (AID, TAF, other donors)
- Increase in cases reported and documented and conveyed to courts
- Financial management improved, total donor funding increased

Exit Strategy Total exit from this area seems unlikely, like the bar association, this is a long term commitment. However, as groups become more effective, they should attract funding from other donors and reduce their dependence on AID.

Follow-Up Options Success in the first phase (development of mechanisms) should allow a greater emphasis on funding "activities" rather than institutional strengthening, broadening geographic coverage, and emphasizing more vulnerable groups. It may also allow direct funding or the development and use of a local umbrella organization.

Intermediate Result Three The group of trained lawyers, paralegals, and legally "literate" professionals is enlarged

Critical Activities

- Study or studies of human resource needs, with alternative

strategies (AID, grantees, other donors, RCG)

- Support and technical assistance for continuing legal education program for public and private sector functionaries (USF, ABA, TAF)

- Support and technical assistance for enrichment of business school curricula with commercial law courses (USF, ABA, TAF)

- Support and technical assistance for Bar Association's certification course (USF, ABA)

Performance Indicators

- Number of students graduated in each program, and their continuation or placement in positions using their new training
- Demand for courses (ie applicants for entry) increases
- Most institutions develop plans for continuing programs, for providing Khmer instructors, and for self-financing

Exit Strategy over two years, the materials developed for the courses are left with the collaborating local institutions, trainers are trained, and some assistance is given in preparing a plan for local continuation of at least a part of the courses. Other donor funding may also be sought for some or all of them.

Follow-Up Strategy These range from the minimal option of some continued support for the Bar Association's course and/or the Business Faculty's day courses or continuing legal education program (perhaps limited only to paying for visiting faculty or grants to local teaching staff for additional training) to long term support for the development of a law school or joint business and law program.

Intermediate Result 4 Key Legal Institutions are introduced or strengthened

Critical Activities

- Technical and financial assistance to bar association to help it develop its program of activities (and possibly find ways to reduce what appears to be an overly ambitious mandate) (ABA, USF)

- Technical and financial support to Defenders Program (IHRG2, TAF?), Khmer staff trained for management roles

- Labor Code approved and Ministry of Labor, local NGOs, and selected public prepared for implementation (AAFLI)

- Technical assistance to MOC to finish preparation of critical commercial laws and provide on-the-job training for legal staff, implementation plan (ABA)

- Efforts to modify press law continue, journalists training and workshops on management skills for media

- Assistance to Assembly's Legal Research Service, development of plan for Policy Studies Department and involvement of other donors, technical assistance for Assembly's Secretariat in administrative areas and general organization

Performance Indicators

- Bar Council formed, meets regularly and establishes internal development program
- By third year, international advisors to Defenders Program cut back and more Khmers in management positions
- Critical issues on Defenders sustainability (cut-off for lay representation in courts, longer term financing) resolved at least on temporary basis
- Defenders' caseload increases and coordination with other defenders organizations increased to take care of excess
- Labor code approved and MOL introduces departments and/or mechanisms for enforcement
- Key commercial laws drafted and passed or under discussion in Assembly, MOC staff active in lobbying for them
- Assembly discusses new legislation, drawing on services of Legal Research Service
- More newspapers develop non-political funding sources, apolitical professional fora and/or organizations emerge

Exit Strategy With the exception of the activities with the bar and the defenders program, the results pursued can simply end when the agreements supporting them run out. If a viable strategy for media development can be forged, exit should be postponed here. In some cases (and for the bar and defenders as well), the Mission may want to help the beneficiaries and grantees seek other funding for follow-up.

Follow-up Strategies We are assuming a continuing relationship, although at low funding levels, with the bar association since it seems unlikely to persist without it. If the long term advisor is effective, this may take the form of periodic visits to reinforce his achievements and provide the bar and its board with new ideas and methods for developing their program. It also will likely involve some continued financing of their operating expenses and of the certification course (under NIR 3). The total dependence of the Defenders Program on external financing also suggests that walking away from it may be impossible. Efforts should begin to identify other donor funding for operating expenses, effective Khmerization of the service will allow the cut-back or elimination of long and short-term technical assistance. Some continued assistance to the Assembly seems advisable as a means of maintaining contact with it, however, a program of full scale institutional development is not recommended because of costs and institutional and political constraints. Similar considerations apply to the media. Any follow-up with the MOC or MOL should be limited to short term assistance, in the former case, any further work is best incorporated under SO2.

Some Conclusions and Further Considerations

The team was asked to address several other questions which do

not fit easily into the results framework. Thus they are added here as additional considerations affecting the overall strategy.

Police Program Experience with other ROL programs, and just plain common sense, suggest that efforts to improve court performance, human rights, and related areas cannot progress far without attention to the police. Conceivably, Cambodia is an ideal country for a full-blown police development program. However, were the USG to undertake that, it would inevitably mean cutting back on other critical ROL activities. The usual alternative, to engage ICITAP in the development of a civilian police force, could cost in the tens of millions of dollars, and usually seems to be an all or nothing proposition. In the case of its police force, like that of its lawyers and judges, Cambodia may simply have to settle for something more basic over the short run. For this reason, it seems preferable to seek a waiver to allow AID to include police in already planned judicial training programs, and possibly to design separate programs for them. Emphasis would be placed on legal and human rights issues, investigative techniques, and relations with judges, prosecutors and defenders. Courses should include both judicial and administrative police, since the division of functions between the two is often muddled. Expenditures on forensics labs, police academies, and administrative reorganizations should probably be left for other donors.

Judicial Training in Non-criminal Matters If it has made more sense to start the court training project with an emphasis on criminal justice, there has been an interest among project staff and judges themselves, in a number of non-criminal issues, especially land-law, contracts law, and family law. Aside from the principle of keeping things simple, another reason for not rushing into these areas is their inclusion of highly political and still very much unresolved issues. It is one thing to stress respect for human and legal rights in criminal cases, it is another to attempt a position on what interest rates should be charged (the legal ones or the realistic ones), what should be the basis of ownership of land, or who has a right to inherit. Cambodian law gives unclear or unsatisfactory answers to all these questions, but it is doubtful that legal advisors with at most a year's exposure to the local situation can provide them. The answers will ultimately depend on more than legal principles, and if not completely subject to political resolution, should also entail economic, sociological and cultural considerations. Hence, to avoid creating unnecessary conflicts for the project it seems advisable to enter the civil area more slowly, and to focus on generic procedures, standards of evidence, a better definition of the roles of the parties.

Donor Coordination and Related Issues Coordination among the various grantees in the project has already been discussed as an issue. Coordination between them, or the project as a whole

with other donors, and with RCG strategies is an equally perplexing problem. The principal responsibility for these latter areas of coordination rests with AID, but as in the case of inter-grantee cooperation, it will only be effective if all parties (grantees, AID, other donors, and the RCG) are sensitive to the issue and assign it a high priority. This point is brought home by the two most frequently cited cases of "inter donor" conflict -- the French-American debates over the law schools and the division among the defenders projects -- where disputes at the grantee level may have exacerbated any initial differences among the donors themselves. There are clearly areas where donor cooperation might be used to resolve problems (the various permutations of the salary issue, the legal fate of the lay defenders) not susceptible to resolution by any one of them. Perhaps more serious, but of still unknown proportions, are the potential conflicts or redundancies arising from on-going parallel efforts. AID is not the only donor to have resident advisors in various ministries, and it is worrisome that they so far seem to be working in isolation from each other. It is also of concern that AID's own advisors have not kept the Mission informed of this situation.

Just prior to the finalization of the team's draft report, we learned, rather coincidentally, that the Ministry of Commerce and the Cambodian Development Council (CDC) had prepared a workshop and document on the "Legal and Institutional Framework for the Strengthening of the Market Economy." The work was sponsored by the JNDP but benefitted from input from representatives of AID grantees. A second document and workshop on reform of the Judicial Sector are in the offing, and are said to involve proposed changes in areas of direct significance for AID's ROL efforts with the courts, judiciary, and defenders. Both documents have been prepared for the upcoming Consultative Group Meetings and attempt to provide the goals and assignment of responsibilities for future donor assistance in their respective areas. We will leave comments on the quality of the proposals or attempts to assess their likely real impact for others, noting only that they are extraordinarily ambitious, and, although unaccompanied by a budget in the version we saw, far beyond the scope of even the most generous combined assistance package.

The presence of these documents and their potential for a major impact on the future orientation and content of AID's ROL program, not to mention the efficacy of all donor assistance, does raise several concerns. First while some AID-funded activities figure specifically in the plan, and some AID advisors have contributed directly or indirectly to its content, it is unclear at what point AID's own strategic plan will be or has been considered, or alternatively, at what point AID's strategy will take the plan into consideration. If either meeting of the minds is to occur only at the stage of the Consultative Group meetings, much of AID's present and prior strategic exercises may

be rendered pointless. Second, and while recognizing the delicate position of advisors assigned to ministries, but working, if indirectly, for AID, we are concerned that they may operate as less than effective representatives of AID's point of view. Third, we are puzzled that we were not pointed to this document earlier. If AID's strategy is to take into account other donor activities and RCG priorities, then the UNDP-RCG effort represents an obvious point of departure. We have reservations about the recommendations and orientations of the plan, but ignoring it will not make them disappear.

All of the above leads to several further recommendations on coordination:

1. That, however difficult, more in-country coordination with other donors be attempted. At the very least better information on what others are doing could eliminate duplicative or conflicting efforts, at most it could enhance individual and mutual impact.

2. That grantees and AID reach a better and more explicit understanding on how coordination with other donors and with the RCG will be handled, and specifically on the duties and responsibilities of individual grantees and their staff in this regard.

3. That as soon as it is officially permissible, the RCG documents be discussed by AID and its grantees as another input to their formulation of an overall strategy for their mutual ROL efforts. On the basis of these discussions, AID can then take whatever steps it feels necessary to enter into discussions with the RCG and its planning groups.

Implications for Mission Management Unless the Mission opts for a truly minimal policy (NIRs 1 and 2 and the Defenders project), eliminating other training and institutional development activities (and one or two grantees), the strategy requires the services of a full time PSC or direct hire (or some equivalent combination) with a substantive background in legal development or ROL, and a full time PSC or local hire assistant with strong administrative skills. Recommended modifications of some grantee activities (cut backs in staff, elimination of the IHRIG's mobile trainers, a restriction of the ABA's technical assistance to the entities where it is already operating) may simplify some of the purely administrative work, but not the demand for substantive involvement in donor and grantee coordination, and in the refinement of strategic plans in such areas as human rights and human resource development. While the strategy also increases the demands on the grantees to think and operate strategically, coordination and oversight of the entire process, and of its linkages to other donor and RCG activity will require someone's full time attention. Finally, to implement many of the

recommendations made here, and especially as they involve tightening up of the strategy and grantee programs, the Mission will need additional short-term assistance. We strongly recommend that AID/W facilitate this, either by providing TDYs or making whatever provisions are required to allow Mission contracting of outside consultants.

VI DISCUSSION OF GRANTEE PROGRAMS

Individual Analysis of the Programs. This section responds to the Mission's request to review these programs in terms of their performance and contributions to the overall ROL strategy. We were also asked to suggest restructurings, reorganizations, and possible additions or eliminations of specific activities or entire areas of work. The following are summary discussions of these points, for more complex programs, additional, lengthier discussions are provided in the Annexes.

A International Human Rights Law Group Court Training Project

Summary Description This program grew out of an experimental activity conducted in one provincial court under the initial TAF grant. It currently has three components: a resident advisors program, whereby a two person advisor team is stationed in each of five provincial hubs to provide technical assistance, training, and project liaison activities for the local and two nearby courts; a permanent training program directed out of the Pnom Penh office and providing materials and roving training teams to the provincial centers and their advisors, and a mobile training program utilizing the services of short term experts who conduct courses on more specialized materials. Technical assistance focuses on legal topics and on administration and organization, it is aimed at court personnel including judges, prosecutors and clerks. With the recent addition of a court administration expert to the Pnom Penh staff, the project will develop model administrative and case management systems for broader implementation. The program also provides some material assistance to the courts, used in repairing court buildings and providing basic supplies (including those required for the court administration efforts).

Project Achievements The project faced several major and unavoidable obstacles during its first year: the absence of adequate information on the operations and problems of the Cambodian judicial system (much of which had to be generated by the project itself), the novelty of the resident advisor or mentors methodology which consequently had to be developed on the ground, and the fact that its principal beneficiaries -- the court staff and the Ministry of Justice -- had no prior experience with foreign programs beyond periodic, centralized training programs provided by other donors over the past fifteen years. These obstacles, combined with generally difficult working conditions mean that progress to date has been less than anticipated and fairly uneven. Some advisors developed excellent relations with their courts and can point to small but significant changes in performance within them, others never achieved acceptance and had

to modify their work plans. A few left in frustration. The two training elements (permanent and mobile teams) met similarly mixed results. Nevertheless, the project has made significant advances in clarifying the nature of the problem, defining more realistic (and less ambitious) goals, and field testing a variety of assistance methodologies. On this basis, it should be able to augment and universalize its impacts over the next twenty-one months, and to exit leaving concrete improvements and a locally organized and staffed mechanism for maintaining and extending them. It should be noted that an apparent trend toward a focus on generic and basic court administration and organization, and on the legal side, on criminal justice seems advisable in light of system needs and beneficiary interests. Any sustained focus on issues like family, land, or contracts law should be secondary, and arguably left for a second phase or a second project.

Problems Encountered Even given the difficulty of its charge, the project faced an unusual number of problems, not the least of which was an exaggerated amount of internal conflict which clearly hindered overall performance. Among our more specific findings are the following:

Resident advisors were often not appropriately matched with their task. Local judges and prosecutors complained, as we also observed, that many advisors had too little (or no) judicial and prosecutorial experience to be accepted as mentors or even instructors (a role to which they were often shifted).

The short term instructors were almost universally categorized as a failure because of their total unfamiliarity with local law and practices. Managing them consumed time and other resources that might have been used more profitably.

Training even by long term advisors and instructors was often pitched too high, emphasizing theory rather than practice.

The ratio of administrative to program positions and expenses is too high. Administrative and managerial positions should be reduced and if possible, combined with functional roles.

The problems with the mentoring component seems to have encouraged a tendency to emphasize more formal training. We believe this is an error. More, but better mentoring is needed.

There is also a tendency to introduce more training on more subjects which we also feel is a mistake. A continued emphasis on a few areas, combining basic with more in-depth focus on a few issues, and lots of repetition and practical cases is more likely to produce results.

The project has been plagued by interpersonal strife, as well as some logistical and technical problems. Leadership has not dealt with them adequately, but has allowed them to fester and multiply to the point where they are seriously affecting morale. It must take a more proactive stance, especially as regards personnel problems, if the project is to make any headway.

in its second year

Recommendations We first stress that this and the Defenders Project (also implemented by the IHRIG) offer the most important potential for immediate impacts, thus our primary concern is making it work. We believe that the mentor or resident advisor concept is critical, our most important recommendation is the selection of appropriate personnel for this role. Selection begins with a profile which includes at least eight to ten years courtroom experience, preferably as a judge, and overseas experience or whatever personal qualities it takes to adjust to different environments. We do not specify a civil law background (which can be the source of its own rigidities) but rather sufficient intellectual flexibility and curiosity to learn and teach in a system that is not one's own. See Annex for more specific suggestions. The number of pilot courts depends on the number of suitable advisors found, one good mentor can probably cover two courts. Resources can be stretched by eliminating the "baby lawyer" assistants and by coordinating the project with the UN mentors program. To the extent higher salaries will attract more qualified mentors, savings effected through cuts in management (see below) can be used to this end.

The mobile teams of short-term instructors should be eliminated. If some other form of easily manageable counterpart cannot be found, the counterpart contribution should be waived. What training remains can be conducted by the mentors, the Phnom Penh staff, and a few, carefully chosen short term experts (if possible those who have already worked on the project). The primary need seems to be experts in investigative techniques.

Core Phnom Penh professionals could be limited to a director, a court management advisor, a specialist/trainer in criminal law, and a curriculum assistant (to produce materials generated by mentors and advisor/specialists for more general distribution). Additional training or other needs could entail another long-term advisor, but would be better met by specialists contracted (and thus paid) for two to three month periods. The position of deputy director should be jointly held by one of the long-term advisors, or rotated among them. Assuming, the selection of more qualified mentors and specialists, and the elimination of the short-term trainers, a separate curriculum director is not necessary. Coordination of on-going training and curriculum can be managed by the mentors and trainer/specialists working as a team, monthly meetings for this purpose are recommended. We suggest that Washington and Phnom Penh administrative staff also be reduced. Elimination of the mobile teams will also decrease their

¹We note that one of the most successful advisors had no prior overseas experience, so we are not dogmatic on this criterion.

workload. Money should be left in the budget for renovation of selected courts and some materials purchases.

Even successful mentors lose efficacy over time. Thus during the second year, a process of assigning them to other courts or other, necessary duties should begin. In any case, in the nine months of the project, emphasis should shift to producing materials and training local trainers. If the latter cannot be done by existing staff (either from the Phnom Penh office or from among the mentors), there may be a need to bring in a short term training expert. A subsequent project might be mounted focusing on non-criminal justice or supporting the MOJ in establishing its own training program, but the immediate goal should be producing highly focused, sustainable impact within its current limits. The experiment is worthwhile not only for Cambodia but as a possible model for projects in other post-crisis situations.

B. Cambodian Defenders Project (IHR LG)

Project Description This project also originated in a TAF subgrant and has its own checkered history, having spawned a competitor organization (Legal AID of Cambodia) now financed by a Dutch NGO and guided by the director of the initial IHR LG effort. The occasionally difficult relations between the two organizations do not appear to create major problems for either, the CDP's twenty-eight defenders and lawyers, and the LAC's fifteen hardly fill the current need or demand. The CDP's staff comprises a director, three expat advisors, thirteen lay defenders and the fifteen lawyers recently added at the request of the bar association. After initial training, which in the case of the defenders took one year, activities focus on advising the defenders and lawyers in the handling of their cases. The staff to defender/lawyer ratio is high (and the project is requesting one more advisor), but has clearly paid off in the quality of the work done, and the outside recognition of and demand for their services. Success is also indicated by the fact that judges and prosecutors have requested that more defenders be assigned to their courts.

The CDP has established two regional offices, but still lacks nation-wide coverage. However, further expansion may be limited by costs, AID financing covers all expenses, including salaries. The project has made an effort to train some of its staff in managerial roles with an eye toward the eventual transfer of the service to Cambodian control. Cambodian funding however will remain problematic, especially given the relatively high salaries (\$300/mo for ordinary defenders) now being paid.

Project Achievements Some of these have already been mentioned, but it bears repeating that in terms of internal organization, functional operations, and broader impact on the justice system (i.e. creating a space for public defense and discouraging some

traditional abuses of legal rights), the project has been highly successful. While the budget may not extend to providing more defenders, it is anticipated that the normal caseload will grow and the service become more efficient. The project also seems to provide a model for other indigenous defenders services and possibly has improved their services.

Problems The principal problem is sustainability, first in terms of financing and second as regards certain legal obstacles. The latter revolve around the changing requirements for acceptance to the bar and the current prohibition on courtroom representation by lay defenders after 1997. To avoid losing the services of the current thirteen defenders some way must be found to extend the deadline and/or expedite their admission to the bar. The financial problem is a longer term one and seems unlikely to find a final solution for years. However, unless AID proposes to continue funding the project at its current level, alternative funding must be identified, and most probably will have to come from other donors. Khmerization of the project may help that search, but salaries are likely to pose an obstacle.

Recommendations In terms of wider immediate impact and its own internal operations, this is unquestionably the most successful of the ROL activities. Both threats to sustainability need more attention now, this will involve conversations and negotiations with other donors, the RCG, and the Bar Association, all of whom have rather complicated vested interests in the issue.² Although the cost of the operation and the defenders' salaries contribute to the problem of financial sustainability, cost cutting is probably not advisable since it would adversely affect the strongest argument for preserving the program -- its efficacy. There is in any case, little fat in the program, and if the defenders' salaries are high that is only as compared to the unrealistically low pay received by public sector personnel. Current discussions by the Bar Association and the RCG about the former's assuming responsibility for legal assistance seem critical to the program's future and thus warrant more attention.

C The Asia Foundation Program

Description As noted, the grant with the Asia Foundation (TAF) was the source of many of the activities now incorporated in other cooperative agreements. As the program grew, and it became more practical to manage these through separate grantees, TAF's responsibility was narrowed to a smaller list of programs. These included a legal training activity (a Contracts Law Course, a

²Other donors must be convinced this is more than a problem affecting one U.S. project, the Bar Association, and possibly the RCG, may already be defending guild interests against paralegal usurption of functions.

business and legal English course, and a publications program) a project to strengthen media professionalism (training and support of a journalists association), a legislative strengthening activity, an NGO program in civic education and human rights, and a new activity to encourage transparency and accountability in governance. While not part of a separate activity, special attention to women's issues is incorporated throughout. In addition to its office staff and local hire administrative and line staff, the grant has three long term advisors - one for the legal education program, one for the media program, and one for the Assembly. Additional funding goes to subgrants to NGOs (program and core operating costs in some cases), observational trips, and purchase of materials and equipment for the courses and subgrantees.

The initial \$9.3 million grant has been followed by second \$8 million dollar cooperative agreement covering the period from October, 1995 through September 1998. It covers essentially the same areas and types of activities - legislative development, human rights, public policy NGOs and media, what remains of legal training is now in the public policy component. Over half of the program funds are earmarked for human rights.

Progress The gradual evolution of the program, from a grant with TAF, through passage of several activities to subgrantees, to the latter's independent assumption of these programs will doubtless inspire long debates as to who takes the credit for successes or the blame for problems emerging in each of them. The team in its short time in country has been unable to add any clarification, but would simply note that TAF's achievements include more than what is in its current portfolio. Arguably the programs it now manages includes those areas (media, legislature, and NGOs) where conceptualization and design had been weakest. However, with funding levels almost equivalent to its initial grant and the opportunity to focus its attention more narrowly, the more important question is whether TAF will be able to develop and implement a new set of strategies with their own independent contribution to overall ROL efforts.

Having said this, we don't wish to underplay the importance of its current activities or the progress it has made with them. Several of the human rights groups it has supported (and LICADHO in particular) have already had a measurable impact on attention to the human rights situation in Cambodia, and made visible improvements in at least some aspects of it. The work with journalists has created a consciousness of their role that did not exist before, and a desire, at least among some members, to perform it more responsibly. The contracts law course represents an important experiment in legal training. Work with the Assembly has improved aspects of the latter's operations, and likewise aroused discussions and interest as to the role it should play. Given the dimensions of the problems posed in each

of these areas, TAF's programs could not be reasonably expected to produce major changes, but they have been significant as exploratory and experimental exercises, and in establishing and maintaining contacts with key private and public institutions

Problems The principal challenge facing TAF is its own movement from this exploratory stage to more focused programs, with less ambitious but more feasible goals. This is true of all four areas, but most critical in its human rights program, both because of its intrinsic importance and the concentration of funding here. Faced with the enormity of the underlying problems and the weak, underdeveloped state of its NGO subgrantees, the \$2.7 million earmarked for human rights will accomplish very little unless the investments are more narrowly and strategically focused than currently appears to be the case. We are pleased that TAF is sponsoring an external evaluation of this program, this should provide essential information on such issues as the relative strengths and weaknesses of funded NGOs and their programs, and recommendations for improving both, and the real and potential impact of alternative programs and methodologies.

One critical question is the optimal distribution of efforts between institutional strengthening and programmatic activities. Problems already encountered with subgrantees suggest that they may need much more help in reordering their internal administrative, managerial, and planning capabilities, TAF has so far not provided technical assistance in these areas but it may have to do so. Another issue is the relative value of sponsoring separate activities for women and especially, for minorities. Where rampant violation of basic rights affects almost the entire population, we are dubious about the wisdom of making such distinctions before more general improvements are achieved. In the case of women, who represent sixty percent of the population, this argument may be less valid, but we still recommend attempts to target inclusive rather than exclusive rights and groups.

Recommendations TAF's work over the next three years should place a heavy emphasis on the elaboration and testing of strategies in its four program areas. We suggest, as already appears effected in the distribution of funds, that media, legislative strengthening and public policy programs, be given a lesser emphasis and that efforts here revolve among a series of short, experimental interventions rather than longer term commitments to institutionalized programs, this is not because they are intrinsically less important, but rather because substantial improvements in all of them are beyond the financial possibilities of the current grant.

For the legislative and media programs, the most productive approach may be the use of a long-term advisor as an institutional mentor. This is more difficult for media because of the dubious future of the initial institutional target, the

KJA, and the current proliferation of competing associations. The most practical tactic may be the Mission's suggestion that only representative associations be funded, and that any operational or program support be tied to the extent of representation (i.e. the proportion of all media each includes in its membership). We believe, however, that sponsorship of professional associations per se is inherently less productive than sponsorship of activities in which a wide variety of journalists can participate. In the case of the Assembly, TAF should probably declare the Legislative Research Service a victory and move on to other activities. Efforts to promote a Policy Research Center seem more interesting, especially if other donors can be convinced to participate. One other promising short term effort is the construction of a data base on all existing legislation, although this should be coordinated with similar efforts begun by the RCG and/or other donors. Finally, we believe that the public policy area requires reexamination, anti-corruption campaigns have often proved another source of corruption in countries where they have been introduced, and thus should be entered with caution.³

With the predominant emphasis on human rights and human rights NGOs, TAF's major goal is the development, implementation and testing of a viable strategy. This should prioritize the rights package it seeks to promote and define the characteristics it will try to develop in the NGO implementers. One subgoal is to help them find alternative funding or other means of sustainability. There should be room here for considerable experimentation, but always within the strategic parameters. One more specific recommendation for this and the other areas is to deemphasize or eliminate trips and ceremonial conferences in favor of activities with more concrete products. While some funding of core budgets may be necessary (as with the media), we agree with the Mission that this must be gradually eliminated, most probably by moving to a system of funding projects with some kind of overhead allowance.

D Asian American Free Labor Institute

Description This small (\$1,250,000) five-year grant is focused on the introduction and implementation of a new Labor Code and improved labor practices in Cambodia. The grant finances a local office and resident advisor, short-term technical assistance and

³As an anecdotal illustration, there is the case of Ecuador where the local president of Transparency International, and the Vice President of the Country, fled into exile when an investigation of his use of government funds almost brought down the government. Transparency and other such organizations tend to get local NGOs into the international jet set too rapidly, and often too literally.

related materials and other expenses

Progress As regards the labor code, which was the principal topic of our discussions, the work is extraordinarily focused and the methodology exemplary. At least per the discussions, AAFLI has provided assistance with and minimal conditions for the code, but has encouraged a participatory locally driven effort. This sets an important model for a country and program where legislation is most often drafted by a very limited group of people and revealed only at the last possible moment. We were also impressed by their approach to implementation, which according to their descriptions, has already involved meetings with Ministry of Labor staff to discuss changes that will be required to enforce the new law. The latter has not been passed yet, but AAFLI seemed confident that after the usual delays it would be approved and in a form satisfactory to its own requirements, we note that other observers are not as optimistic.

Problems In our brief review we were unable to identify any significant problems, except for uncertainties as to the eventual fate and content of the Labor Code. If the code is not approved, or omits some important labor rights, the implications for AAFLI's program are also unclear.

Recommendations The Mission may want to consider some of the activities related to the preparation for the law's implementation as a possible model for work in other areas. If AAFLI's methodology works as it suggests, it may be worth replication. Furthermore coordination between AAFLI's training programs and TAF's NGO work might also be productive as a way of interchanging techniques, AAFLI's work on children and women's labor programs and its judicial seminars and labor court training might likewise offer some useful comparisons. Without getting in AAFLI's way, the Mission may want to do some independent checking on the status of the draft code and on its broader content. Perhaps the ABA could be helpful in content analysis.

E. ABA Cambodia Law and Democracy Project

Description The ABA is currently implementing what was originally a one year (4/1/95-3/30/96), \$1.1 million program which has been subsequently extended to September 30, 1996. Under the cooperative agreement for the program, the ABA is to provide long and short-term legal advisors to Cambodian government ministries and other institutions, provide legal commentary on draft legislation by U.S. legal experts, and on request to provide legal information and publications to Cambodian government and other institutions. The ABA is responsible for identifying needs and designing appropriate assistance interventions and, once AID has concurred with the ABA's overall program design and implementation plan, for implementing all program activities.

Project Achievements An ABA legal Needs Assessment was done in May 1995 which identified a need for long-term advisors (LTAs) in four institutions (Ministries of Justice and Commerce, the National Bank and the National Assembly) and for one LTA at the Bar Association, if and when it was created. Short term assistance in the areas of border disputes and Penal Code drafting was also identified as a need.

To-date, the project has fielded three advisors, one (at the MOJ who was already in place when the grant was made in March 1995, one at the Ministry of Commerce, who arrived in early September 1995, and one to the Cambodian Bar Association, who had only been in Phnom Penh for about a month at the time the assessment began. The LTA at the MOJ has served as a personal advisor to the Minister of Justice, has been directly involved in drafting several important criminal and commercial laws, and has facilitated the process of review of new law drafts within the government. The advisor to the Ministry of Commerce has established an office at the ministry and is working with a ministry law drafting group on a draft of a new corporations law. The new Bar Association advisor is currently establishing working relationships there and developing a work plan.

Approximately 30 person days of short-term assistance was provided by three advisors in several areas. One advisor drafted a commercial arbitration law which it appears likely will be enacted. The ABA has also responded to over 16 major requests for information and legal commentary and provided large numbers of publications and documents requested by Cambodian institutions.

Problems Encountered The project has experienced some difficulties in quickly establishing long-term advisor positions, and only three of the originally planned five are currently in place. The advisor position for the National Assembly did not materialize and recruitment of the advisor for the National Bank has taken such a long time without producing a strong candidate, that the Mission has decided against the proposal. There are no firmly identified needs for additional positions at this time.

With the exception of the advisor at the MOJ, the other advisors have been on the ground a relatively short period of time and an assessment of their effectiveness is very difficult. Both appear appropriately qualified and motivated, although we are concerned that their plans may be overly ambitious given the extremely limited absorptive capacity of the institutions they are working with. The Mission needs to closely monitor this to make sure that these advisors are not getting out ahead of what can be reasonably implemented or creating demands which will require further assistance than is

likely to be available in the future

With regard to law drafting by the advisors, we are concerned that too much attention is being focused on the act of writing the law itself, and not enough on the implementation implications. Because laws which are not effectively enforced are effectively no laws at all, and inadequate implementation of even good laws can have a serious adverse impact on achievement of rule of law objectives, doing less but better law drafting should be the objective. This would strongly argue for limiting the law drafting agenda as much as possible and putting more resources into supporting the work of existing advisors rather than using resources to move into more and more areas.

We are also concerned that insufficient attention during law drafting is devoted to the necessity of making the process itself participative, by involving affected groups in the process.

The project's commercial law drafting components are primarily aimed at achievement of the mission's economic development strategic objective and can be expected to have considerably less overall impact on achieving the rule of law objectives than other more direct and substantive institution building assistance. To the extent commercial law drafting is done, the amount of resources available for activities which will be more effective in achieving rule of law objectives are reduced. At present this allocation is effectively being done by the ABA when they decide what requests for assistance to respond to.

Finally, the Project is not as effective as it should be in supporting the institutional development of the legal system. Outside of the work with the Bar Association, the project does not appear to be effectively engaged in judicial reform and other institutional development matters. Other than the support provided through the resident MOJ advisor, the project is not effectively engaged with that ministry on these issues and opportunities for impact in this important area are not being created. We also think that the current advisor at the MOJ could use additional support and that this may provide the opportunity and vehicle for engaging the ministry more broadly on legal reform issues.

Recommendations

(1) Assistance activities should focus on areas which have the prospect of greatest impact on strengthening Cambodian legal institutions (i.e., less law drafting, more human resource and institutional development),

(2) The Resident Director should work much more closely with the LTA currently at the MOJ and give more priority to assisting that advisor in drafting legislation and identifying areas where both he and the ABA project could more effectively assist the MOJ in dealing with issues relating to the judicial system, including appropriate short-term consultancies

(3) Law drafting efforts should fully consider the implementation implications of the new law and provide a clear plan for addressing implementation constraints through complementary assistance or otherwise. If implementation requirements cannot be addressed within the life of the activity, drafting assistance should not, as a rule, be provided. Advisors providing drafting assistance should also encourage participation in the drafting process by affected parties as much as possible.

(4) No further assistance for commercial law development should be provided until such time as the Mission is able to define its priorities under its economic strategic objective and concludes that further drafting is important to achieving that objective. If that is the case, then the activity should be funded from that strategic objective and through another mechanism if projected activities have substantial policy and implementation components. If the current ABA agreement is to be used for that, then clear funding limitations or other control mechanisms need to be put into the agreement to assure proper allocation of effort.

(5) The LTA at the Ministry of Commerce should be continued through March 1997, but should not move into areas beyond the current MOC "eight books" agenda (such as into stock market development) until the Mission has settled on its economic development objectives and assistance strategy.

(6) Because of the difficulty in identifying suitable LTA positions, no further efforts should be made to establish such positions, and the project should focus instead on the provision of quality short-term assistance targeted on legal institutional strengthening and directly supporting the work of the LTAs already in the field. The current grant through September 30, 1996, should be extended six months, primarily to accommodate the LTA at BAKC. If, by the end of this year, the ABA can come up with a clear strategic plan for fielding long-term advisors in key areas of legal institutional strengthening, then consideration can be given to restoring funding for additional LTAs.

(7) As a corollary to (6), cooperative agreement administration costs should be substantially reduced through reduction of project support costs in the field. Administration costs are currently high relative to the costs

of program assistance actually delivered due in large part to delays in fielding LTAs) and it does not appear that is likely to change in the future

F University of San Francisco Cambodian Law Program

Summary Description In November 1995, AID approved a two-year, \$3.0 million USF program which includes funding for a wide variety of legal education activities in Cambodia. An initial grant of \$1.5 million was made for the first year of the program, with the understanding that the remaining funding would be provided contingent on progress in achieving program milestones and benchmarks.

The primary objective of the program is to create a new Faculty of Law offering a four-year combined law-business program leading to a degree in either law or business. USF is also to teach two law courses per academic year in the Faculty of Business, prepare and conduct two CLE courses on Family Law and Commercial Law, provide training support to the Cambodian Bar Association's lawyer training activities, provide short-term training to prospective Cambodian faculty members, develop a training program for defenders, and renovate facilities at the Faculty of Business.

Project Achievements The activities funded under the current cooperative agreement are a continuation of activities started originally under a subgrant to USF from the Asia Foundation, followed by a direct AID grant and then the current grant. During the current agreement period, USF has succeeded in fielding 3 full-time U.S. teachers and has successfully recruited one other who will arrive in April. Two teachers have been provided by the Australian Government and have been integrated into the program. Three courses, Introduction to Law, Introduction to Legal Systems, and Introduction to Business Law, have been taught at the FOB through two cycles and will have been taught to over 1000 students by September 1996. Work is underway on three additional courses (Family Law, Commercial Law, and Administrative Law). Potential Khmer trainers have been involved in these classes as translator/summarizers and have begun to move into co-teaching roles. Those associated with FOB have indicated that the teaching quality has been excellent and the courses well-received.

Course materials for a Family Law CLE Course and a Commercial Law CLE course are partially completed and are expected to be completed by May 15, and a teacher from the U.S. has been recruited to come out on a short-term basis to teach the latter course. USF staff have provided critically needed administrative assistance to the Bar Association in setting up its Lawyer Training Course and one USF professor is currently teaching an international criminal law segment of the course.

Materials being developed for the CLE course will also be used to teach a commercial law segment of the Bar Association course

Renovations have also been nearly completed on the fourth floor of a building at the FOB which will be used as faculty offices and meeting/small class rooms (and which was visited by the team) and work is underway on improvement of classroom space as well as exterior painting

All indications are that the assistance provided above is being effectively delivered and USF is adequately managing the process

Work toward the creation of the new Faculty of Law/Institute of Business and Law (FOL/IBL) is proceeding more slowly, but that is to be expected because of the number of novel, complex and potentially sensitive issues raised by the proposal, which would introduce not only a new law school but also a number of major innovations into the Cambodian educational system, including course fees, retention of fees by the institution, credit-based degree programs, and increased faculty salaries. USF has developed a four year curriculum plan for the new FOL/IBL, which appropriately emphasizes both substantive law as well as practical skills training. Progress in getting necessary approvals and agreements from the RCG on the specifics of the proposal have not proceeded very far to-date, in part because of the decision by USAID Cambodia to halt further consultations until completion of this assessment. The creation of an "American"-style law school has been strongly endorsed in principle by the Ministers of Education and Justice, and there are reports that the idea has been discussed with and endorsed by the Council of Ministers. The Minister of Justice has indicated that law graduates of the new school would be permitted to take the bar exam and enter the bar. While some of the features of the new school have been discussed with the Minister of Education, detailed proposals have not yet been submitted to him for approval.

Problems Encountered With the exception of the efforts to create a new law school, the remainder of the program is progressing well and those program components (undergraduate training, CLE training, teacher training, and Bar Association training) are judged to be of very high priority in terms of accomplishing the mission's strategic objective.

Estimates of projected lawyer needs in Cambodia, while very rough, nevertheless show that over the next 5-6 years Cambodia could have something less than half the lawyers it needs to meet its legal requirements. Existing legal training institutions are not likely to produce sufficient graduates to fill this gap, because few of their prospective graduates are

likely to enter the practice of law. Also, current training is not being focused on building the kinds of knowledge and skills (commercial law and English language instruction) that will be important for lawyers to have in order to service Cambodia's future legal needs. Creation of a new law school would also provide the opportunity to obtain a law degree to defenders who may not make the December 31, 1997, deadline for transitional admission to the bar and to Cambodians that USF has already begun to train to be law teachers. From the point of view strictly of need for legal trained personnel, the creation of a new law school potentially has great value.

While there may be cogent arguments in favor of starting a new law school, however, the effort is a very long-term one (far beyond the current 4 year curriculum timeframe, in our view) and may be very costly in terms of the effort that USF and the AID would have to invest to properly manage the creation and continued operation of the new institution. Such an investment should not be considered to be of first priority until such time that it becomes clear that a new law school can be structured in a way that substantial, long-term investments of AID funding and management resources are not required to make it happen. Current USF thinking seems to contemplate a major involvement by AID in the creation and operation of the new school and is based upon assumptions about the ability to find and train sufficient faculty and raise sufficient funding to cover capital and operating costs which are largely untested at this time. There may be other less management intensive ways to address these problems such as handling the financing arrangements through the existing cooperative agreement), but dealing with those issues, as well as some of the more basic issues with the government, will still take a great deal of AID and USF management time.

The first step in addressing this problem would be the preparation by USF of a multi-year institutional/business development plan for the new law school which would address needs and sources of assistance from start to point of relative self-sufficiency, which may well be 8-10 years from now. Also, USF needs to explore other alternative scenarios for legally and organizationally structuring a new school that will not include AID in the management of the organization or its finances.

Among the various other training options for USF, in-country training programs which can be put rapidly into place and are targeted at improving legal skills and expertise of persons already in the workforce or who will enter the workforce in the very near future will make the greatest contribution to the immediate achievement of the ROL objectives. This argues for continuation and expansion of bar training programs, CLE courses, and increased assistance to the Faculty of Business

in the introduction of new law courses and the recently proposed two year business-law associate degree program, including a night division (provided those programs do not get into tuition and trust fund issues that contemplate substantial AID involvement)

USF has been actively developing new course and training programs beyond those included in the current program, some of which entail additional funding. While the proposals we have seen (more CLE courses, LLM training for Cambodian staff) make sense and are of high priority, it is unclear whether the current project structure and budget can accommodate them. The Mission and USF need to meet and work out an acceptable implementation plan for the remainder of the project. We have also found that coordination between USF and Georgetown at the Phnom Penh level on development of new training courses other issues has not been working well in all cases. Such cooperation is essential to delivering quality legal training programs.

Recommendations

- a) That the Mission should, in the immediate term, redirect the USF program to concentrate on the continuation and expansion of current training programs and make the creation of a new law school a secondary objective. Should USF be able to establish that the creation of a new school is feasible and sustainable, and will not require major commitments of AID resources both in the short and long-term to make it happen, AID should consider supporting the establishment of a new law school as a funding priority.
- b) That the current program of USF assistance to the FOB be continued and expanded to include additional law course offerings. This could include, in cooperation with Georgetown, the establishment of an Institute of Business and Law or Department of Law within the FOB (the team has no view or recommendation on the advantages of an IBL over a Department, as any degree in either case would have to be awarded by the Faculty of Business), which could offer a two year combined business/law associate degree evening program similar to that USF has proposed for the Night Program.
- c) USF should continue to develop, and expand to the extent appropriate, its current program of assistance to the Cambodian Bar Association, Continuing Legal Education Courses and support for training of Cambodian law faculty.
- d) USAID and USF should meet to review USF's workplan, additional proposals for funding and for a night division, and agree to a firm workplan for the remainder of the grant period.

e) USAID needs to better facilitate and manage the process of cocorperation between USF and Georgetown

Some General Considerations and Comments As the foregoing suggests there are some concerns and issues commor to all of these analyses which we believe deserve additional comment. Most of these involve the Mission's relationship with its grantees and the latter's performance in implementation of their programs. We have noted already that the choice of NGOs as implementers coincides with broader Agency policy and, to the extent the alternative was direct host-country implementation, with current national realities. However, its adoption here, and at the Agency wide level is also posited on certain assumptions about the comparative advantages of NGOs that they are less expensive, have more appropriate skills and knowledge, and possibly are more dedicated to these projects than private contractors. We suggest that at least some of the ROL experience raises questions about the validity of these assumptions, and in this sense jeopardizes not only the program, but the Agency policy at the widest levels. At stake here is not just an agreement, or even a sectoral program, but a special relationship between AID and its NGO partners.

This rather dramatic statement stems from a series of more precise observations as they relate to the notion of comparative advantage. First there is the notion that the NGOs will do better work because they have more experience in relevant areas. Rule of Law in Cambodia may be a special case, but it is patently one where the assumption about greater experience does not hold. The NGOs were at a disadvantage, but admittedly no more than any contractor, in terms of knowledge of the Cambodian situation. Most of them were also at a disadvantage in that their prior experience did not include *development* projects in Third World countries, or arguably elsewhere. As a result, their in-house expertise was not transferable, and they were usually forced to draw on outside advisors and experts who might have been equally available to any private consulting firm. (This is true even of the ABA and USF's use of their own members.) While some of the initial mistakes in identifying staff might have been made by anyone, several of the institutions seemed remarkably unwilling to admit their error and remove people who were not working out, or simply not working.

This raises a second concern, that of the quality of management. When consulting firms make errors, AID can intervene directly to demand changes. The special relationship dictated by grants and cooperative agreements gives AID far less leverage here, but in turn requires much better management on the part of the grantee. The difference is not more or less management, but who exercises it, and it appears that some of the grantees have not assumed the

responsibility entrusted to them. The result in some, not all, cases has been lower levels of performance than might have been expected, and in a few of them, the exacerbation of problems that should have been eliminated rather than ignored.

A third concern is cost. Where projects underperform, they are inherently more costly. This is less true if underperformance or more accurately underexpenditure is equally distributed among administrative and program line items. However, in many cases, an administrative structure continued to draw on funds intended to help it deal with a much larger program. As noted above, in some cases this has meant that the ratio of administrative and indirect costs to program costs doubled, putting the effective overhead in the range of that charged by for-profit firms. Even where this was not the case, many of the projects have what appears to be an excessive amount of administrative staff, usually spread between a U.S. and in-country office. In the era of flat hierarchies and reengineering this is not very defensible. For organizations claiming to be more cost effective, it seems out of place.

To be fair, not all the relational problems originate with the grantees. The latter have complained that AID has "indulged" in frequent policy shifts, often with very little warning. They also express concern as to the uncertainties of future funding (whether and when it will arrive) and the obstacles that poses for planning and making their own commitments. To the extent the complaints are valid, most of them arise in problems that are beyond the Mission's control. However, the malaise might be lessened with a better explanation of the difficulties it and the Agency as a whole are facing. The Mission has already improved communication by instituting monthly dinner meetings with all grantees, and these themes could simply be added to the agenda. On the other hand, to discourage grantees' jumping the gun (see below), some ideas about possible new directions might better be kept under wraps until the Mission is sure it wants to pursue them.

Project Planning Horizons Management of the ROL program by both grantees and AID is being negatively effected by the short funding timeframes which have been established for some of the activities, i.e. essentially year-to-year funding. This creates expectations that grantees will deliver results faster than what should reasonably be expected and also puts them into an almost constant next proposal preparation mode. It has also fed a propensity for some grantees to submit out of cycle proposals for new programs and more funding. This has taken time away from monitoring of activities and information gathering necessary for the Mission to better understand what is going on in the sector, devising appropriate adjustments to sector strategy, and otherwise

managing the portfolio. We do not recommend cutting the number of grantees, but constructing programs with a minimum two year life and holding grantees within their approved programs will substantially improve overall management of the program.

VII LESSONS LEARNED, CONCLUSIONS AND SUMMARY RECOMMENDATIONS

In the interest of saving time and space, we will not repeat in detail comments made earlier in the document, but rather offer the present section as a summary on these points.

Lessons Learned Since the assessment sought to draw on ROL experience and experts from a non-Cambodian background, one of the additional questions it tests is the transferability of this kind of knowledge across projects and across regions. We will leave the readers to evaluate the relevance of our own remarks to the Cambodian setting, but will focus here on what we think the Cambodian experiment adds to the general ROL methodology. The following are thus the lessons emerging from or reinforced by the project under review. The first set are general comments, the second refer to post crisis programming in particular.

(1) *Although ROL programs, like any development activity, are long-term undertakings, efforts should be made to break long term objectives into a progressive series of shorter term impacts.* This is the apparent philosophy behind the results package methodology, although if misused, the latter can also lead to a string of tactical maneuvers with no overarching strategy. The ideal, not always attainable, is a series of measurable steps toward a long term goal, which not only allows an evaluation of progress, but also can build support by producing immediate improvements.

(2) *Constituency building may be most effectively done through actual change programs.* References to the importance of political will, and coalition and constituency building often give the impression that this is a question of dialogue and discussion. However, abstract discussions can also harden abstract opposition, and they often don't affect the right actors. In most concrete terms, judges' and prosecutors resistance to the defenders program was overcome, not by discussion, but by putting defenders on the ground and letting their utility be seen.

(3) *Pressures for change should be accompanied by measures creating a response capacity and vice versa.* While occasionally a problem is the result of pure vested interests or sheer incapacity, most often a combination of the two is to blame. Thus attacking it from both sides is more likely to produce results. The interaction of the Court Training program with work by the Defenders and NGO programs is a case in point.

(4) *Judicial training and that of other sector professionals is most effective when it focuses on skills and practical applications, not theory.* This was highlighted in Cambodia where

sector professionals have already learned on the job and are thus less tolerant of theoretical training. However, it is arguably a more general principle of the education of adult professionals. Perhaps five percent will be drawn in by theoretical discussions, the rest want to know what they can take back to their offices.

(5) Donor coordination is far more important in current ROL projects than it has been in the past. AID's past experience sets a poor precedent here, since at least in Latin America we were first on the scene and operated in isolation for years. Not only in Cambodia, but in other countries, this is less frequently the case, and thus requires more attention to the theme. This is important not only to eliminate project redundancy or competition, but also to help leverage policy changes of common interest.

(6) ROL programs remain an area where it is especially difficult to identify appropriate implementing agencies and advisors. Any effort to define a profile is likely to find immediate exceptions, and the qualities most sought in both are extremely difficult to capture on paper. Even when an entity or individual has the appropriate substantive skill, they may be unable to apply it in the country setting. Trial periods and attention to early performance are thus very important.

(7) While there is a growing body of knowledge and experience on the details of ROL efforts -- eg. how to set up a defense program -- at the level of overall strategies much more needs to be done. A ROL program which aims at some of the most difficult kinds of inter and intra institutional change is necessarily more than a collection of activities however well executed individually. In terms of the framework methodology, the sequential selection and prioritization of intermediate results thus requires more attention to assure a coherent and realistic overall strategy.

(8) Because of the two previous points, whether working with NGOs or for-profit firms, it is especially important to be clear on objectives and expectations, this seems to argue for contractual arrangements even with NGOs to avoid nonproductive uses of resources. Whether or not NGOs have certain comparative advantages in the ROL area (and we have expressed some doubts on that point), the Cambodian experience and that in other countries suggests that "just letting them do their thing" is not apt to maximize the potential for change. Opportunities for coordination and interaction are likely to be lost, and activities may wander off into areas where critical follow-up is not possible. This does not mean micromanaging, but rather a very clear initial agreement on what will be done, and constant communication and discussion of problems and results as programs evolve.

Post-crisis Situations

(1) In a post crisis setting, the sense of urgency often encourages efforts to do much more than the political and institutional context will allow. While the desire to change may be great, the unsettled political situation, actors uncertain of their own agendas or capabilities, the shifting rules of the game, and the absence or destruction of organizational and human infrastructure make ambitious institutional development strategies very risky.

(2) In such situations, rehabilitation or catch-up programs should come first, to produce immediate impacts and provide a base for future development. The actual need will of course vary by situation, but where institutions have been destroyed, or the human resource base is lacking, it is more practical to effect quick fixes before proceeding to longer term efforts. This can both produce immediate, if limited improvements, create more interest in reform, and prepare a base for its enactment.

(3) As programs move out of the catch-up stage the perennial choice between further institution building and programmatic impact comes into play. The Cambodian case only illustrates the dilemma, but doesn't provide much of a solution. Our only suggestion is that program designers be aware of the likely conflict, and of the possibility that pushing for too much impact too fast, may further weaken already fragile institutions and thus work against both goals. On the other hand, a single minded focus on institution building can turn an assistance effort into a job creation program, further removing institutional incumbents from contact with their targeted clients.

(4) In post-crisis settings, donor coordination may be particularly difficult, and especially essential because of the quantity of resources, the variety of possibilities for their investment, and limited institutional capacity. The limited choice of appropriate counterparts, whether in the public or private sector, may encourage non-productive competition among donors and thus ways must be found to avoid this. Also, unless donors coordinate their over-all strategies, they may well go off in too many directions. Finally, as expressed to us by one interviewee, the beneficiaries often feel they must arbitrate between donors, which is one more role than they need.

Conclusions:

(1) The over-all program is making an evolution from an open-ended approach to a more focused strategy, and has several interesting and potentially productive activities on the ground. However, more work needs to be done for further tightening up.

(2) The grantees are participating in the process and have made important strides themselves, but they still need to think more strategically. One results framework exercise is not enough, and

more of this needs to be done. Grantees should duplicate the process within their own programs and internalize the methodology.

(3) The program is less dispersed than many observers have claimed, and a tighter results framework and better accompanying explanation of the current and evolving strategy will help the critics recognize this.

(4) The strategy seems to be working in high priority areas, and for the most part needs only refocusing within them. However, the entrance into law drafting in the commercial and other non-judicial areas should be reconsidered since it implies a major investment of additional resources in follow-up.

(5) Discussions and activities revolving around the creation of whole new institutions (eg. the Law School) may already have involved AID in more of a commitment than it believes it has made. It is not too late to back out, but this, or a decision to "postpone the decision," will require better, clearer communication with all parties than has been the case to date.

(6) Coordination and communication has improved, but also needs more work. We found areas where not only the AID strategy but the RCG strategy is in danger of being grantee-driven, which may push AID in directions it might prefer not to enter.

(7) Donor coordination is an emerging problem, requiring much more attention from AID.

Recommendations These are general recommendations. Thus specific to individual grant programs are not repeated here.

(1) That USAID, in coordination with its grantees, simplify its immediate results packages, focusing on a smaller number of less ambitious immediate results, but do this in the context of a longer term strategy. The latter does not imply that USAID or the grantees will implement that strategy directly, and thus requires both exit and follow-up contingency plans.

(2) That USAID and its grantees analyze their strategies to identify areas requiring more coordination among the different grantee programs, more coordination with other donors, and policy dialogue with the government to remove critical obstacles to progress.

(3) That grantees, in coordination with USAID, develop their own internal strategies and results packages, which should be structured into future agreements.

(4) That grantees reexamine their administrative structures and attempt to trim it to reasonable levels in terms of both staff positions and costs. Flatter hierarchies and more team work should be stressed.

(5) That grantees strengthen their management role vis a vis long term advisors and instructors and NGO subgrantees.

(6) That grants or contracts have a longer duration, but that expected results and benchmarks be more explicitly stated within them. Mechanisms should also be introduced to allow modifications if the initial plans require them, but ad hoc additions should be avoided.

(7) That USAID and grantees develop clearer understandings as to how coordination with counterparts will be managed, and who is responsible for what part of it. If AID is to take a lead role here, it must also become more immersed in the substance and develop more expertise.

(8) The project has developed some excellent materials on the Cambodian RCL situation. These should be made more widely available, perhaps in different forms, to groups in Washington, other donors, and other Cambodian institutions.

9. Those projects characterized by internal and external strife may want to do some self-examination, this is adversely affecting in-country actions and willingness to work with them.