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PROGRAM ON RIGHTS AND JUSTICE (PRAJ) II USAID/CAMBODIA INTERIM EVALUATION REPORT

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PROGRAM ON RIGHTS AND JUSTICE (PRAJ) II USAID/CAMBODIA

INTERIM EVALUATION REPORT

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DISCLAIMER

The authors' views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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To all these people, we owe our gratitude and a vote of thanks. As usual, the content of this report is the responsibility of the Social Impact Evaluation team, Dr. Richard Blue and Mr. Panhavut Long.

ACRONYMS

ABA	American Bar Association
CEELI	Central European and Eurasian Law Initiative
ADHOC	Cambodian HR Association
AusAID	The Australian Agency for International Development
BAKC	Bar Association of the Kingdom of Cambodia
CBO	Community Based Organizations
CCC	Coordinating Committee for Cambodia
CCHR	Citizens Commission on HR
CCJAP	Cambodia Criminal Justice Assistance Program
CDP	Cambodian Defenders Project
CEDAC	Centre d'Etude et de Developpement Agricole Cambodgien
CHRAC	Cambodian HR Action Committee
CLEC	Community Legal Education Center (Cambodia)
CPN	Community Peace Building Network
DANIDA	Danish International Development Agency
ECCC	Extraordinary Chambers in the Courts of Cambodia
EWMI	East-West Management Institute
HR	Human Rights
IRAM	Indigenous Rights Active Members
IT	Information Technology
LAC	Legal Aid of Cambodia
LICADHO	The Cambodian League for the Promotion and Defense of HR
LSCW	Legal Support for Children and Women
MOI	Ministry of Interior
MOJ	Ministry of Justice
NGO	Non-Governmental Organization
PMP	Performance Management Plan
PRAJ I	First Phase of the Program on Rights and Justice
PRAJ II	Second Phase of the Program on Rights and Justice
PUC	Paññāsāstra University of Cambodia
RGC	Royal Government of Cambodia
ROL	Rule of Law
RULE	Royal University of Law and Economics of Phnom Penh
SIDA	Swedish International Development Cooperation Agency
SI	Social Impact
TAF	The Asia Foundation
USG	United States Government
WMC	Women's Media Center

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EXECUTIVE SUMMARY

This mid-term performance evaluation of the USAID-funded Program on Rights and Justice II (PRAJ II) implemented by East West Management Institute (EWMI), the American Bar Association (ABA) and in collaboration with The Asia Foundation (TAF), was conducted in February, 2011. The purpose of the evaluation, as stated in the USAID Statement of Work, was to “assess the performance and effectiveness of the program and policy strategies in contributing to the overall USAID goals and objectives, and to determine unexpected positive or negative consequences. . . .”

The research for this report was conducted by a two-person evaluation team consisting of Dr. Richard Blue and Mr. Panhavuth Long. The methodology included document review, interviews with USAID, the EWMI team, the Royal Government of Cambodia (RGC), civil society activists, and some regular Cambodian citizens. As a mid-term evaluation, the focus was on progress toward achievement of stated objectives, but beyond that, the team sought to develop explanatory factors that would account for some of the positive and negative findings developed during the conduct of the investigatory phase. Preliminary findings were presented to USAID and to EWMI team prior to the team’s departure, and a preliminary report was submitted shortly thereafter.

The purpose of the evaluation as stated in the Statement of Work is:

"To conduct an evaluation of the current USAID/Cambodia Human Rights and Rule of Law Program, PRAJ, in order to assess the performance and effectiveness of the program and policy strategies in contributing to overall USAID goals and objectives, and to determine unexpected positive or negative consequences or impacts from the activities that are conducted as a part of PRAJ."

General Conclusion

The evaluation team's findings support a general conclusion that PRAJ II is implementing a strategy that supports USAID's goal: "To strengthen the foundation of support for reform of the justice sector in Cambodia." By continuing support for human rights (HR) advocacy, as well as the more direct influence of providing legal aid, court monitoring, and improved information management systems for both civil society and the RGC justice sector institutions, PRAJ II is contributing to a stronger foundation of support. The development of the Sithi.Org web-site, the support for expanded networks of Non-Governmental Organizations (NGOs) beyond the established HR advocacy groups, the expanding investment in practical legal training, and the effort to expand the provision of legal services have all contributed to the USAID goal. PRAJ II has built on many years of USAID investment in Cambodian public interest NGOs, and this investment continues to bear fruit.

PRAJ II has also engaged the RGC judicial sector institutions, a process just begun under PRAJ I, but gathering momentum under PRAJ II. The engagement has made considerable use of the offer of assisting the sector to build a modern data based judicial management and information system, but has done so in a largely incremental and opportunistic way. This has had some success, especially with reference to RGC efforts to control

Trafficking in Persons (TIP), release of juvenile offenders who were being detained well beyond their sentencing dates, and in other more modest ways. More important has been PRAJ's development of working relationships with some officials in the Ministry of Justice (MOJ), the Ministry of Interior (MOI), and the courts. This has facilitated PRAJ's effort to facilitate and support meaningful dialogue on important legislative initiatives between the RGC and representatives of the NGO community, including but not limited to HR advocacy groups.

Whether the successes achieved by PRAJ II were unanticipated or simply the expected outcome of several years of investment and effort, the team is unable to determine. Improvements in the justice sector have been so difficult to achieve over the years, that any positive steps may come as a surprise to many, however modest these changes may be in the overall scheme of things. On the other hand, PRAJ's involvement with facilitating dialogue on difficult legislative issues such as the NGO law may have negative unanticipated consequences for PRAJ's relationship with the Rule of Law (ROL) advocacy community, especially with those leaders who tend to classify any dealing with the RGC as a threat to the independence of civil society. The role of "honest broker" is never an easy one, and PRAJ may suffer some loss of confidence because of the rising tide of anxiety over the proposed NGO law.

Specific Conclusions

The order by which conclusions are presented corresponds to the questions posed in the additional guidance provided by USAID Cambodia for this mid-term evaluation. The preamble to the listed questions states:

"Within the SOW, and to the extent time allows, generally we want to look at whether the program is going in the right direction, whether the work with civil society is well balanced with the work with the RGC, whether activities in a particular sector should be continued or altered, and/or whether there should be new activities to support USAID's objectives for PRAJ." (Article IV – Tasks)

Conclusions related to USAID's specific questions are, as follows:

1. Are program objectives achievable?

As currently written, the objectives are achievable. The more serious question, raised frequently in the comments to the first draft of this report, is whether the progress toward these objectives will have a positive effect on the overall goal of justice system reform? Based on the evidence gathered during this evaluation, the answer to this question is, No. The Cambodian political system, as described in other reports submitted to USAID in 2008 and 2010 is deeply rooted in a patronage structure that depends on a high level of rent seeking in order to sustain the system, and to retain the loyalty of persons necessary for regime survival. This patronage system is reinforced by a political economy model that depends on resource exploitation and monopolistic practices by members of the governing elite. It also depends on the selective use of the state's monopoly of the instruments of coercion to suppress opposition, while at the same time maintaining a façade of democratic accountability and tolerance. These practices are influenced as well

by the dominant political experience of the current leadership, found in the period of Khmer Rouge and Vietnamese control, and supported by an admiration for the success of both China and Vietnam in pursuing economic growth while repressing any demands for democratic accountability.

With regard to progress toward specific objectives (1-5), progress has been made in each of the original five objectives. However, the wording of several of these objectives, as well as the goal statement, is sufficiently broad to accept as progress almost anything positive or constructive happening through PRAJ. If one counts the students and professors involved in the various EWMI/ABA legal education activities as professionals, then it would be hard to conclude other than, “yes.” Similarly, Objectives 3, 4, and 5 simply state that organizations and activities will be strengthened. Again, progress towards strengthening in each of these sectors is apparent. The wording of Objective 1, Comprehensive and Accurate Information System Developed, is much less forgiving, and although much progress has been made, it is unlikely that this objective will be achieved by 2013 when the project ends. There is simply not enough time to install the pilot projects, demonstrate their value, and scale them up to system-wide application. The main achievements have been with respect to TIP information systems, and the release of juvenile prisoners detained long after their release date. Other IT investments are still in the pilot start up stage, as with the Phnom Penh Municipal Court. It is unlikely that a comprehensive system will be in place by the end of the project.

As documented in Section V, Progress Toward Objectives and Goal: Findings, progress toward achievement of each of the objectives confronts serious challenges that will either slow down or block further progress. Central among these challenges is the apparent lack of political commitment to thorough justice system reform, including the active protection of HR. The consequences of this lack of political commitment are many, including a reluctance to take seriously the judicial system’s budget needs; continued tolerance for inefficiency and failure to observe the procedural requirements of a working justice system; the contempt for and resistance to any advocacy group demanding reform; and the extremely cautious behavior of officials within the system who might otherwise be inclined and willing to effect reforms.

The evaluation team believes that the underlying assumptions and the program theory, while not well articulated in the project documentation, remains valid. The main tenets of the program theory are that, short of regime change, wholesale reform of the justice system is not likely and certainly will not be driven by any foreign assistance program. Moreover, as stated clearly in the AusAID Evaluation Report, efforts to develop a comprehensive and rational approach to correct the deficits in the Cambodian justice system will not, and have not, worked. The “strategic incrementalism” EWMI and partners employ may be the only alternative, short of withdrawal from the sector altogether.

For all the objectives, the question is whether the strengthening that has occurred collectively adds up to progress toward the strategic goal. At this point, achievement of the goal may depend more on exogenous factors than on the efforts of EWMI to implement the PRAJ II program. It is the judgment of the evaluation team that PRAJ II

can “strengthen the foundation of support” for reform, but it lacks sufficient power to drive the process of reform.

Recommendation

USAID and EWMI should begin a process whereby the underlying assumptions and theory of change are examined in the light of PRAJ II experience and what is known of the efforts to achieve serious progress toward justice reform. The overarching question must be what are the potential benefits for ROL reform for continued USG investment in this sector. EWMI in concert with USAID and Cambodian partners should revisit all project assumptions and the underlying theory of change with the purpose of establishing an articulation of the theory, unencumbered by the needs of Performance Monitoring Plans, etc. Following that, a critical examination of the accomplishments to date of PRAJ II should investigate whether the incremental approach offers any hope of influencing significant reform. Consider holding a retreat to focus on the overall goal of the project.

One possible approach is to define the objectives rather differently than the current formula. For example, Objective 5 can be summarized as, “increased legal aid.” Objective 4 has to do with “strengthening constituency for judicial sector reform”; Objective 2, “to enhance professional competence”. All of these objectives focus on the means to the end of judicial reform. A better starting point might be to deconstruct the goal statement into several key component indicators, such as “improved management of the trial process for persons accused of crimes”, or more “effective presentation and use of evidence”, and so forth. The disaggregation process would be informed by the already-observed deficits in the system with respect to ROL, and by doing so, USAID and EWMI would have clear benchmarks for assessing whether the reform process is proceeding, or not. For any one objective, all the means would be brought to bear, including HR advocacy, better information, training, public educational media, and the like. This approach would focus more on the causal linkage between constituency building and ROL than does the present “strengthening”-oriented objectives.

2. Relationship with NGO Partners

The evaluation team found that the relationship with NGO partners remains strong and generally supportive. Most of the Phnom Penh based NGOs supported by PRAJ II are highly experienced and sophisticated organizations, with support from a variety of international funding organizations. USAID or EWMI's ability to leverage the behavior of these organizations is limited, but not inconsequential. As with other civil society organizations, EWMI's direct NGO partners represent a newer breed of public interest leadership, while those supported through the TAF grant program include organizations which remain the instrument of the original and still in charge founder, and as such are a direct manifestation of the founder's commitment, leadership skills, and the ability to appeal to more distant funding organizations with an interest in helping Cambodia. EWMI also continues to support the development of networks and cooperation among local, community-based organizations (CBOs), which have become better organized and more sophisticated in their use of advocacy techniques.

There is some concern that EWMI's growing relationship with the Cambodian government may be at the cost of its continued support for Cambodian civil society, especially the HR advocacy groups. The evaluation team did not encounter this concern, but it no doubt does exist. However, the USG made a decision in 2006 to engage both the RGC and civil society on issues of common concern, and EWMI's efforts to use the information technology support as an entry point to that broader engagement is the most effective way to open doors, build some mutual trust, and to accomplish some important improvements. On the other hand, EWMI continues to work closely with a range of important Cambodian NGOs providing HR advocacy and support, as well as legal defense, judicial performance monitoring, and grass roots organization.

The "threat" of a potentially punitive new NGO registration law has brought together many NGOs that might not otherwise find it in their interest to cooperate. EWMI has been an instrumental player in providing support for this new level of cooperation.

As discussed in the Findings section of this report, the proposed NGO law has been widely criticized in the international community as well as within Cambodia. The USG, as well as other western countries, has been vocal in stating its opposition to the law, questioning the need for such a law, and pressuring for revisions in the law that would be supportive of civil society development. This rising tide of criticism has the potential to place EWMI's "honest broker" relationship with both the NGO community and the RGC into some jeopardy.

The main deficit that remains is the continued reluctance of advocacy NGOs to share information, especially databases and the results of systematic surveys, with CCHR, whom EWMI is supporting as a central node for producing and managing a comprehensive website for a variety of ROL and HR issues.

Recommendation

USAID and EWMI should examine the extent to which lack of cooperation among various advocacy NGOs actually inhibits the process of effective advocacy, including the efforts to improve the timeliness and accuracy of shared data on HR and ROL issues in Cambodia. In concert with leading NGOs, EWMI might want to consider ways to strengthen cooperation among NGOs, including so called "service NGOs" in the health and education field. The US consortium, InterAction, might be a model for encouraging cooperation. Cambodian NGO leaders might be supported to meet with InterAction leaders to gain a sense of how US NGOs have learned to cooperate, advocate, and promote their common interests.

With respect to the NGO law controversy, EWMI and USAID should continue to facilitate dialogue and open access to expertise and information about international best practices for all stakeholders. More reform minded interlocutors in the RGC might be provided the opportunity for a study tour to other countries identified as having progressive legislation with regard to NGO laws supporting the growth and legitimate role of civil society in democratic systems. Meanwhile, USG official and unofficial

expressions of concern and consequences should continue so long as the Cambodian government remains intransigent on this issue.

3. Budget Issues

In today's environment of deficit reduction, it is difficult to predict the extent to which there are "un-foreseen" budget constraints. As indicated in the Findings section, USAID would not be able to justify expanded USAID assistance to Cambodia should the RGC enact and implement legislation which substantially suppressed the independence of Cambodia's civil society sector, especially the public advocacy NGOs.

At a more normal level of concern, discussions with EWMI support the conclusion that EWMI is very much aware that the ROL program is labor intensive, especially with regard to the costs of sustaining a number of expatriate technical experts. As discussed in the Findings section below, EWMI is taking steps to reduce costs through various "part time foreign expatriate" arrangements.

If there were to be readjustments among the objectives, the report already suggests that the separate objective for information technology (IT) be dropped, and IT be recognized as a cross-cutting means to other objectives, which it has become, in fact.

Recommendations

Consider an objective centered on strengthening more explicitly the institutional capacity of both the courts and the MOJ—not in a general sense, but specifically with regard to (1) reducing inefficiencies and errors resulting from bad information management and (2) strengthening the capacity of both the courts and the MOJ to argue for and gain a greater level of budget support from the Cambodian government than they now receive. A more radical approach would be to reorganize all the objectives as recommended in question 1 above.

4. Sustainability

The PRAJ I and II activities, along with a variety of other USAID and donor efforts, have already had a sustainable impact on many Cambodian citizens. The level of organization, cooperation, networking, and sophisticated information, monitoring and advocacy efforts is testimony to this effect. The popularity of the Sithi.org website, as well as the Women's Media Center (WMC) law series is partial testimony to the interest of the Cambodian citizen at large. The more general, twenty-first century information technology revolution has not bypassed Cambodia, and the effects of the current political revolutions in the Arab world are not lost on educated Cambodians.

Based on the evidence we have from this evaluation, and informed by several earlier studies cited, the evaluation team is confident that PRAJ II's local NGO partners will continue to make progress towards their objectives. However, three major threats may undermine this forward progress: (1) the possibility of the passage of a repressive NGO registration law and (2) the failure of Cambodian NGOs to find ways to cooperate for

their common purposes, especially across specific sectors. A third, corresponding threat is the danger that foreign donors, government and private, may be severely constrained by the RGC from providing direct budgetary assistance to all but those NGOs that receive “safe passage” certification from the government.

Recommendation

The sustainability issue requires the active engagement of the USG at the diplomatic as well as the development assistance level. The United States has already made known its opposition to a new NGO law, but should the RGC forge ahead on this, as it appears to be doing, what options will then be available for development diplomacy? USAID intends to request additional funding for Cambodia but Mission Director Fuller has already signaled that any increase would be jeopardized by the passing of legislation restricting Cambodian civil society. A more severe option would be to cut off any support or engagement with the RGC with the exception of humanitarian assistance. This would be a return to the USG position during the 1997 to 2005 period. A reasonable course of action would be to continue to encourage dialogue, openness to other country experiences, and the encouragement of government appreciation of the role of civil society in democratic countries even if the USG chose a more punitive option of substantially reducing all development assistance. As we have seen in the civil rebellions in Tunisia, Egypt and elsewhere in the Middle East, maintaining a population’s exposure to the broader world through information technology and educational opportunities is one of the key drivers of the demand for political change. This kind of program should be supported by both the Department of State and USAID, regardless of the development assistance option chosen. A coordinated campaign using the resources of State and USAID might be mounted to fashion a “keep hope alive” strategy even if normal development assistance is severely curtailed.

I. PURPOSE

Beginning in late 2008, the Program on Rights and Justice II (PRAJ II) built on the achievements of and lessons learned from PRAJ I. Both phases have been implemented by the East West Management Institute (EWMI), in collaboration with The American Bar Association (ABA). Phase II also including The Asia Foundation (TAF) as a partner. This mid-term evaluation focuses on progress toward the achievement of objectives, opportunities for new or different directions, and recommendations for future programming in this sector.

This report conveys the evaluation team's findings, conclusions and recommendations. It is based on the initial evaluation work conducted prior to and during the field work for this assignment. The field work was conducted between February 8 and February 17, 2011 by a two person team from Social Impact under USAID Task Order No. AID-442-TO-10-00003, issued by the USAID Regional Office of Procurement, Bangkok, Thailand on September 30, 2010.

II. BACKGROUND

Efforts to convince the Royal Government of Cambodia (RGC) to control corruption, improve protection for human rights (HR), and establish a rule of law (ROL) have not been successful. In spite of investments by many donors, including AusAID, the Danish International Development Agency (DANIDA), the Swedish International Development Cooperation Agency (SIDA), and USAID and their international and local partners, ratings for Cambodia on various good governance and ROL indices have remained low over a number of years, with few signs of significant improvement. For example:

1. The World Trade Indicator for Cambodia ROL (-2.5 to + 2.5, best) was -1.15 in 2005 and -1.06 in 2008.
2. The World Bank composite index for Cambodian ROL shows almost no change from 1996 to 2009, with Cambodia consistently rated below the twentieth percentile line.
3. Transparency International's corruption index in 2006 gave Cambodia a ranking of 151st out of 178 countries. The 2010 ranking was 154 of 178 countries. Cambodia ranks well below Vietnam, which is 116th of 178, and Thailand, which is 78th out of 178.

At a more intermediate level, there have been improvements in various elements of a ROL system, including the introduction of comprehensive civil and criminal legal codes, better training regimes for new judges and prosecutors; better basic legal education for university students; the passing of an anti-corruption law; and internationally-recognized improvement by the RGC in controlling Trafficking in Persons (TIP). Civil society organizations have become better coordinated and more skillful in their advocacy efforts, including a growing interrelationship between old line HR groups based in Phnom Penh, and with emerging community based organizations (CBOs).

Still, significant movement toward ROL reform has remained elusive.

The failure to achieve systemic reform in rule of law has produced a growing frustration among donors and the United Nations. Australia, Denmark, and the UK have either withdrawn or substantially reduced their investment. The Independent Progress Report prepared for AusAID on its Cambodia Criminal Justice Assistance Project, Phase III, issued in May 2010, observed with respect to structural reform:

In practice, RGC has made little effort on tackling the major structural problems affecting the law and justice sector, such as the subordination of the judiciary to the executive or entrenched corruption across the courts, police and prisons, (AusAID) experience suggests that, while progress is achievable in certain areas where there are no strong political interests involved, a systematic approach to reform across the sector is not a present feasible.¹

This frustration with the lack of structural reform or lack of political commitment to making progress toward the establishment of a genuine ROL is shared by many in USAID. From the introduction of the HR Cambodia Project (2003) through PRAJ I (2005–2007) and now, at the mid-point of PRAJ II, USAID and its international and Cambodian partners have sought to find a strategy that would drive genuine progress towards the establishment of a ROL, including an efficient, effective and fair set of justice institutions, as well as an active citizenry knowledgeable about and willing to act to protect their basic HR.

PRAJ II builds on a long history of USAID support for organizations advocating for the protection of HR in Cambodia. Described in detail in the 2008 PRAJ I final evaluation, USAID support has evolved since 2006 to include efforts to work directly with the Cambodian government’s judicial institutions, including the courts, the Ministry of Justice (MOJ), the Ministry of Interior (MOI), and related institutions such as the Cambodian Bar.

PRAJ II continues its support for a more limited set of Cambodian NGOs that, in general, perform four important roles with respect to HR and the establishment of ROL. These are:

1. Continuing education of the Cambodian citizenry as to their rights under law
2. Advocating to government the need for better protection of HR and for judicial reform more generally
3. Providing social support services to families and persons accused and detained by the state
4. Providing legal counseling and representation to those accused of crimes

PRAJ II continues its partnership with the ABA, which takes the lead in providing support to law schools for improving the education and training of Cambodian students who enter into the legal profession.

¹ Cox, Marcus and Phallack Kong. “Independent Progress Report (ING 723) Cambodia Criminal Justice Assistance Project, Phase III,” AusAID , May 2010.

PRAJ II rejects the system change approach exemplified by the AusAID Cambodia Criminal Justice Assistance Program (CCJAP) program. Rather, PRAJ II has adopted an incremental, opportunistic approach using small, politically neutral interventions as a means for gaining access with government, while at the same time pushing for greater transparency, improved performance information and record keeping, and facilitating dialogue between the authorities and a better-informed civil society. There is a cross-cutting focus on improving the accuracy, timeliness and accessibility of information, on both the government and civil society sides.

III. METHODOLOGY

The methodology was limited to review of documents and one meeting with USAID Washington prior to arrival, and intensive meetings with USAID, EWMI, TAF, and a broadly representative sample of PRAJ II Cambodian partners in the RGC, civil society, the Cambodian Bar, and Cambodian universities. In particular, intensive meetings were held with EWMI professional staff, collectively and with each of the foreign advisors responsible for different aspects of the PRAJ II program. PRAJ II Cambodian staff also accompanied the team on selected interviews and provided additional information. In one field visit to Prey Veng, interviews were conducted with PRAJ II-supported legal aid professionals, and with the president of the provincial court. Another field visit to Boeng Kak Lake provided us with an up-close discussion about the difficulties of residents facing submersion by the infill of the lake.

Qualifiers and Potential for Bias

The methodology used was primarily key informant interviews, supported by review of EWMI quarterly reports and other documents submitted to the team. While every effort was made to check the factual basis for the findings and conclusions, it was not possible to use more rigorous data collection methods such as systematic surveys or other quantitative data-collection methods. No relevant pre-project baseline survey data was available, although end of project evaluations from PRAJ I were reviewed, as were Performance Monitoring Plan data. No attempt was made to advance evidence for a counter-factual hypothesis with respect to whether changes observed are directly attributable to PRAJ II interventions, or are in part explained by other contributing factors.

Another factor that could have biased responses was the presence of USAID officials when meeting with government officials. This did not appear to present a problem at most meetings, with the exception of the meeting with H.E. Om Yentieng at the Cambodian HR Commission, which took on the tone and structure of a high-level official meeting. The team leader, Dr. Richard Blue, has a long history of involvement with the development of Cambodian civil society and ROL that has helped to inform the analysis and conclusions reached in this report. Dr. Blue's Cambodian colleague for this evaluation was Mr. Panhavuth Long, whose legal education and interest in judicial reform has provided wide-ranging experience with both Cambodian and international programs, and a deep knowledge and insight into the realities of the Cambodian legal system.

IV. MANAGEMENT FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

A. FINDINGS

1. Management

EWMI has benefitted from more than seven years of experience with PRAJ I and II. The evaluation team did not conduct a thorough examination of PRAJ II management practices, but in the course of this evaluation, the team examined Performance Management Plan (PMP) reporting, as well as staff competence in providing assistance to the evaluation team in making appointments, scheduling, and providing transport when needed. On only one occasion was a mistake made, but overall the impression is that of a well-managed enterprise.

EWMI has a smaller cohort of directly-managed partners compared to its PRAJ I responsibilities, including six grantees, three contractual partners, and one Partner under Agreement (The Bar Association of the Kingdom of Cambodia, BAKC). EWMI also exercises a more general level of responsibility with The Asia Foundation, which directly manages another nine NGOs, including well known NGOs such as the Cambodian League for the Promotion and Defense of HR (LICADHO), the Cambodian HR and Development Association (ADHOC) and the Cambodian Center for HR (CCHR). USAID, when asked, stated that they had no issues with EWMI management of PRAJ II.

2. Personnel

The PRAJ II professional and administrative support staff is highly competent and respectful of other Cambodian stakeholders. This is commendable in light of an observed tendency in some organizations for the local staff to be patronizing or excessively bureaucratic in their dealings with other local partners.

At the professional level, the foreign staff is uniformly well-informed, expert in their subject matter, and unusually experienced in working in developing-country contexts. They demonstrate a high level of commitment without falling into the trap of taking the lead, taking control, or assuming responsibility for improvements that must come from the Cambodian side of the partnership. As such, they are facilitators, advisors, and partners with Cambodian counterparts in both the RGC and civil society. All but one of the expatriate staff are lawyers; however, their prior experience with organizations like ABA/CEELI and others has engendered the understanding that most problems and constraints they face are not specifically legal in nature, but rooted in the political economy of the country, and carry the priorities, or lack thereof, set by the highest level of the political structure. The long-term problem of the absence of any significant political will or commitment to judicial reform by Cambodia's high-level political leadership has frustrated the efforts of foreign donors for many years, and continues to be a problem with PRAJ II.

3. Budget

The EWMI budget is dedicated largely to personnel and establishment costs, including office administration and travel. The largest direct outlay is the budget for the grant

program which is used to support EWMI's Cambodian civil society partners. There are also funds available for supporting information technology investments with the RGC. The FY 2011 budget allocation presented in table 1 below is organized by main objectives and distinguishes between grant costs and direct program costs including EWMI and ABA advisor salaries and other operating costs.

Table 1: FY 2011 Budget Allocation

	Subaward Amounts (A)	Advisor LOE/ Program Activity Costs (B)	Total Amount (A+B)	% of all costs associated with Activity
MOJ Information Systems		\$281,643	\$281,643	8%
Legal Education		\$371,397	\$371,397	10%
MOI		\$234,501	\$234,501	6%
Judicial Systems (MOJ posters, CCHR, Supreme Court, CLJR)	\$55,000	\$254,301	\$309,301	8%
WMC (Scales of Justice TV)	\$99,629	\$46,964	\$146,593	4%
HR Grants (TAF)/Constituency Building	\$1,343,390	\$232,320	\$1,575,710	42%
Bar Association		\$132,567	\$132,567	4%
Legal Aid (Grants + TA)	\$524,182	\$144,976	\$669,158	18%
Total	\$2,022,201	\$1,698,669	\$3,720,870	100%

4. Relationships

In addition to having a good working relationship with USAID, the relationship between EWMI, TAF and ABA is reported by respondents from all three organizations as very positive and described as a partnership. Our interviews with Cambodian government and civil society leadership yielded the same general response. Only one established NGO expressed some frustration with their EWMI interlocutor.

The relationship between TAF and its grantee partners was not investigated. However, the one interview we had with two long time grantees did not yield anything negative or positive.

B. PRAJ II MANAGEMENT: CONCLUSIONS AND RECOMMENDATIONS

1. Conclusion

Based on interviews and interaction with EWMI over the two-week period, the evaluation team concludes that EWMI is a well-managed partner with USAID, with very high-quality staff and excellent relationships with other partners.

As is true for most ROL projects supported by USAID in many countries, PRAJ II is a labor-intensive enterprise, involving considerable direct engagement of its staff with local partners. Although two of the expatriate staff reside in Cambodia it remains that the cost of maintaining the PRAJ II establishment is high, although this is a very tentative conclusion and subject to revision after we analyze the PRAJ II budget submitted just before this report was drafted. PRAJ II leadership is aware of the high cost of maintaining full-time foreign experts and is taking some steps to alleviate this cost burden by (1) “regionalizing” the role of expatriates—like Mark West, who provides services to other EWMI contracts in the region, or former PRAJ staff like Brian Rohan, who continues to assist Samreth Law Group, an important PRAJ partner part time, even though his residence is in Geneva, Switzerland; and (2) investing in the development of Cambodian professional staff so that they can assume a greater and more independent share of the responsibility for advancing PRAJ objectives.

2. Recommendations

PRAJ II and USAID are encouraged to discuss constructive ways to reduce personnel costs while retaining access to the high-quality expertise represented by the current staff.

One idea to explore would be the creation of a PRAJ Expert Network at the international level, comprised of expatriates who have strong face-to-face personal relationships in Cambodia and who could be recruited to serve as advisors or mentors, either by coming to Cambodia or through IT means. This would be instead of the tendency of many USAID projects to bring in “parachute” experts with little direct country knowledge, a means that is rarely effective in most developing countries. Cambodian society exhibits little institutional trust, even within extended families, but interpersonal relationships are important, and once established, serve to reduce barriers to listening and to finding common ground for action.

The other part of this equation is to continue to strengthen the role of Cambodian professional staff, which has already demonstrated the ability to manage portfolios with clear objectives. The combination of strong Cambodian staff and the Cambodian Expert Network might be a cost-effective approach to what is inevitably a human-resource-intensive development process.

V. PROGRESS TOWARD OBJECTIVES AND GOAL: FINDINGS

A. PROGRAM THEORY AND STRATEGY

Information as Wedge for Change

The program theory for PRAJ II relies heavily on the transformative nature of information that is accurate, relevant to stakeholders, comprehensive, and accessible to all players. This kind of information has been in very short supply in Cambodia. This has contributed to—but is not the sole cause of—lack of trust and dialogue, or the hindered ability to reach compromise and agreement on the steps necessary to advance the ROL and HR process. The emergence of increasingly reliable power supplies and the utilization of ever more sophisticated and relatively inexpensive IT devices affords a powerful tool for collecting, organizing, analyzing, and utilizing both quantitative and qualitative information. Younger Cambodians know this, understand it and are eager to introduce data and information technologies into Cambodian organizations. Moreover, good data management is relatively non-controversial, even while transparent data sharing remains a culturally difficult value to inculcate.

Working with Supply and Demand

Another dimension of the PRAJ II program theory is the recognition that there is a “demand” and a “supply” side in the equation of support for and commitment to reform of the justice system in any country, and especially in Cambodia. As used in this analysis, the judicial establishment, including RGC Ministries of Justice, Interior, the Court System, the advocacy, and RGC Bar Association constitute the supply of judicial administration and the application of ROL for the Cambodian people, including the private sector, business associations, and a wide variety of civil society organizations, especially the advocacy organizations. The latter make up the organized aspect of the demand side, in addition to everyday citizens who have need of the judicial system to resolve disputes and advance justice. HR advocacy groups and local networks of less formal CBOs are especially important voices on the demand side, but other organizations that provide legal services and monitor court performance are also important elements of the demand for ROL.

Up to 2006, USAID assistance focused on the demand side, providing consistent and generous support to advocacy NGOs with regard to basic human rights and, by extension, demand for reform of the entire law and order apparatus, including the judiciary, the prisons, the behavior of police forces and the like. The possible exception to this was PRAJ I’s ABA program that introduced practical, legal education experience into the university law schools. By 2006, the USG reconsidered its relationship with the RGC, and subsequently began to focus support on the supply side. As might be expected, progress was slow and depended to some degree on the path cleared by other donors, notably DANIDA and AusAID. PRAJ I worked around the edges of the AusAID model court program, and had some success working to post legal administrative costs on signboards at the Kandal court and later every court in the country, a small but significant “mini-model” advance. PRAJ II, using information and data management as a wedge for gaining access, building trust and identifying opportunities for progress toward ROL, has

managed to establish working relationships with the Ministry of Interior, the Ministry of Justice, the Supreme Court, and the Phnom Penh Municipal Court, the latter being the busiest first-instance court in the land. These institutions represent major “supply-side” players, the performance of each which will be crucial for progress toward ROL in Cambodia.

Facilitating Dialogue

Working with both the supply and demand side offers opportunities to find ways to facilitate dialogue between the RGC judicial establishment and the civil society advocates for HR protection and ROL. Until recently, advocacy NGOs did not talk, let alone negotiate with government, and government neither understood nor accepted the role of advocacy organizations, preferring to see them as irresponsible critics who only represented the values and money supplied by foreign donors. While much of this attitude remains on both sides, PRAJ II has been able to facilitate constructive dialogue on several important legislative issues. These include dialogue on legislation on freedom of assembly as well as a new NGO registration law now under discussion.

The proposed NGO law is especially contentious, as both the early December 15, 2010 version as well as the revised March 24, 2011 version have been roundly criticized by both Cambodian and international NGOs, including the U.S.-based InterAction coalition, an association of U.S. NGOs active internationally, and by the International Center for Not for Profit Law, a U.S.-based technical advisory organization supported by USAID and others. The official U.S. Department of State’s position is to oppose the need for new NGO legislation, as was made clear in a discussion between the U.S. Ambassador and the evaluation team leader. Several high level Department of State officials have continued to voice public concern during visits to Cambodia. Most recently, USAID Mission Director Flynn Fuller issued a warning that US foreign assistance levels might be affected should the RGC pass legislation restricting civil society development in Cambodia². EWMI respondents interviewed for this evaluation were adamant that up to the time of the evaluation in February, 2011, their role in the NGO law issue has been to facilitate discussion and dialogue, in part by making available to all parties the experience of other countries legislative approach to this issue.³

Finding and Supporting Proto-Reformers

A fourth component of the PRAJ II theory is that the Cambodian governmental establishment is not monolithic, and that there are “proto-reformers” who understand the need for change. These persons are aware of the need for Cambodia to move towards internationally recognized standards of justice and ROL performance, and will act, however carefully and cautiously, to promote change. PRAJ professionals have begun to identify these individuals and, using a variety of skills and approaches, have begun to establish relationships of trust. Interviews with PRAJ staff have demonstrated an extraordinary appreciation for the risks these counterparts take, the respect for the limits

² Embassy of the United States of America. "Remarks by USAID Mission director Flynn Fuller at the Meeting of the Government Development Partners Coordination Committee. April 20,2011.

³ See www/icnl.org for a full and update discussion of the proposed legislation, including ICNL's in depth critique of the dangers posed to civil society and international NGOs working in Cambodia.

of what can be done, and the slow pace by which any change can take place. RGC respondents voiced similar appreciation for the objectivity and tact demonstrated by EWMI experts.

Building on What Is Familiar

Change is threatening for many people, especially in a hierarchical, centralized and authoritarian political system in which most decisions to do something different or new require high-level agreement. Many of the previous reform efforts introduced by DANIDA and by AusAID were too ambitious, forcing too much change based on the practices of developed nations, rather than starting with an understanding of how things were being done, and then building on what was known to introduce new approaches.

The approach taken by EWMI is very different from the “whole system reform” approach, characteristic of early reform efforts promoted by the Council for Legal and Judicial Reform. As stated forcefully in the December 2010 AusAID evaluation report provided to the evaluation team, the systems reform strategy assumed too much about the existence of political will and commitment to reform, and too much about the human, as well as the procedural, transformations and resource demands of wide-spread reform. The Model Court program supported by many donors now appears to be completely stuck, and there is little immediate support for its revival, according to interviews with RGC as well as some donor representatives.

Strategic Incrementalism

Taken together, PRAJ II has adopted a strategy of what the evaluation team has dubbed “Strategic Incrementalism.” This approach recognizes that every intervention really has two objectives, one may be the formal one of establishing a database, or improving the provision of legal aid, but the other is establishing relationships of trust and facilitation with the introduction of non-controversial but significant change vectors into a system that resists dramatic and far-reaching change.

The danger of the incremental approach is that it can lose sight of its strategic objectives and appear to outsiders as diffuse, shallow, and opportunistic. And of course at the beginning of such an approach, it is just that. PRAJ II is still a young project, and the process of linking up the opportunities is just beginning. But it is not too early to lay down clear strategic benchmarks that can measure progress beyond the establishment of a database here, a court monitoring program there.

Another challenge in strategic incrementalism is that it is labor intensive, requiring great energy and input for what sometimes appears to be relatively small gains. The fruits of this approach become apparent when it becomes possible to recognize and build upon the synergistic outcomes that begin to appear, as is starting to happen now in PRAJ II.

A Strategic Incrementalist Approach to Judicial Reform

Is it possible to make progress in the face of a lack of demonstrated political will? The theoretical answer is yes, but if the absence of political will remains a constant, or turns

into active opposition by the higher authorities to almost any changes, then the space for incremental reform may not exist, and an incremental strategy will not work. In this section, the theoretical justification for an incremental approach is discussed.

The determination of how much space there is for significant but incremental change is a matter best decided by those in USAID and EWMI who have the most experience. There is no single indicator that would provide the kind of certainty one would like to have in making a decision about whether to continue or to terminate the effort. In sections below, the report identifies the factors that need to be considered in making that determination, which, when combined, may portray a tipping point after which further efforts to induce reform may well be useless and should be terminated.

In Cambodia, the injustice served out by the entire system is substantially a product of systemic corruption, naked exploitation, and lack of concern for the rights of those exploited. This is particularly true in those cases where the average citizen comes up against the combined power of elite political and economic interests, as in many of the land cases involving state authorized concessions.

But for most cases in criminal courts, and indeed in those involving minor land disputes, the issue of who wins and who loses is of little interest to the ruling elite. See for example the data assembled by the PRAJ II-supported Cambodian Center for HR, which has developed the widely-used Sithi.org website displaying a variety of metrics and maps relevant to understanding HR abuses in Cambodia. Information on this point is based on discussions with Cambodian HR advocates and with EWMI staff. Still, even in cases where elite interests are not threatened, injustice and the denial of rights continues, in no small measure, because of two factors: (1) inefficiency fueled by poor data and information management and (2) petty corruption that feeds on poor data and information management, especially when the information that does exist is treated as a proprietary asset, rather than a part of the public domain.

The potential benefit of this approach relies on the proposition that one can move the system in the direction of improved performance with respect to ROL by making relatively non-controversial, incremental changes that have system-wide impact at some point. The point at which incremental reform begins to affect the interests of a regime that relies on patronage fueled by corruption and privileged status cannot be determined in advance. Incremental improvements in the level of efficiency, effectiveness and fairness (protection of rights) may generate the important long-term benefit of building respect for and trust in the ROL and HR, at least by the demand side, especially if civil society organizations are an integral part of the incremental change strategy and process.

An important consequence of this approach is to remove as many of the technical and management inefficiencies as possible which now serve as excuses for the denial of HR and effective justice by the justice system. When the government can no longer blame the failure to release juveniles and others from prison, way past their due date for release, on poor record keeping and monitoring, a step will have been taken in favor of judicial reform. When the government supports a system of providing competent legal aid to all indigent citizens accused of a crime, another excuse for the denial of rights will have

been removed. These are the strategic objectives of an incremental approach to reform now underway.

B. PROGRESS TOWARD OBJECTIVES

PRAJ II is currently organized into five objectives, each serving the strategic goal to strengthen the foundation of support for reform of the justice sector in Cambodia.

The goal statement, if carefully parsed, focuses on the justice sector, which encompasses both RGC institutions, including limited engagement with the police on TIP issues, and the prisons. The U.S. Department of Justice and the U.S. Department of Homeland Security does provide training and technical assistance as well. The main CGR institutions, exclusive of the Royal University of Law and Economics of Phnom Penh (RULE), MOJ, MOI, the courts, advocacy and the Bar Association, and the training and educational institutions that educate the people who man positions in the justice system. Other than those NGOs that provide direct services such as court monitoring, or legal defense, the role of civil society is largely in “strengthening the foundation of support,” if that is interpreted to mean tracking HR violations, educating citizens as to their rights under the law, and advocating for reform.⁴ Many of these functions in the past have been carried out by several well developed and highly visible Phnom Penh-based organizations.⁵ A relatively more recent trend, which PRAJ II supports through the work of Terry Parnell, is the emergence of grassroots and sub-regional organizations, increasingly organized into networks. These more or less formal organizations are motivated usually by livelihood issues, which have been frequently converted into criminal complaints against the poor and against those who try to help. Most of the latter type of NGO is supported through the TAF side of the PRAJ II partnership, while those more directly involved with justice reform are supported directly by EWMI.

It is important to reiterate the main premise of an incrementalist approach as we examine the various activities where PRAJ II appears to be making some progress; there is no direct or linear path to a reformed justice system or a broader establishment of ROL in Cambodia. As stated in the program theory section above, activities that contribute to one or more of the PRAJ II objectives are designed to build trust, support reform elements, and reduce the inefficiencies and poor institutional practices that characterize the justice system.

⁴ Regrettably, the long standing effort to educate Cambodian citizens as to their rights seems to have had little long term effect, perhaps in part because it is a very young population , most of whom have been born since the Khmer Rouge and Vietnamese periods. See Cambodian HR Action Committee (CHRAC) Report: "Legal Aid Services in Cambodia", Christoph Sperfelt, Oeng Judy, Daniel Hong, November, 2010.

⁵ The PRAJ I grant program was extensive, including organizations specializing in protection for abused women and children. See USAID Cambodia "Evaluation of the Program on Rights and Justice (PRAJ)", January 2008, by Richard Blue and Robert Underwood for Checchi International.

Objectives

Objective 1: Introducing IT/IM into the system

EWMI activities in this objective focus on improving database in the Ministry of Justice and the courts, and in supporting NGO database monitoring systems, most notably at CCHR, with its very popular Sithi.org website.

PRAJ II's success in introducing database systems seems to be strongest with the MOJ and the courts, with the MOI following suit. EWMI cites ten separate activity areas where progress has been made, and where challenges remain for some.

The most dramatic achievement has been the MOJ Trafficking Database, the establishment of which has improved Cambodia's ranking to Tier Two on the State Department's annual TIP Report which measures States on their efforts to combat trafficking. With PRAJ II facilitation, MOJ has begun collaborations with the Ministry of Women's Affairs, has trained and established data collection procedures with the various courts, and regularly shares information with the U.S. Embassy.

Another area where progress has been shown is the MOJ-MOI Common Code for Police and Prosecution, led by PRAJ II assistance to the MOJ. In addition, the MOJ now has a functioning intranet system. To the extent that a functioning intranet improves the efficiency of the Ministry of Justice, it may also increase the level of trust between the Ministry and EWMI, thereby leading to additional, and perhaps more consequential, opportunities to promote reform.

PRAJ has supported this move toward IT and database management by providing training to over 100 graduates in computer data management in the Ministry and in the courts.

Finally, in 2010 PRAJ II started a program of criminal case database management support for the Phnom Penh Municipal Court. Although still very new, this program is billed as a "pilot" program, with the assumption that it will be tested and if it works, will be rolled out to additional courts by 2013. If rollout does occur, this would be a significant outcome for PRAJ II. Again, the premise upon which these kinds of activities rest is that information management improvements lead to greater efficiency and better monitoring of system performance.

On the demand side, PRAJ II supports improved data collection, analysis, and sharing with respect to HR violations, court performance through the court monitoring activity, and through the Sithi.org website, the latter of which to date records 187,000 or more hits, with 3000 new users each month. This clearly indicates a demand for well-organized and accurate information about the Cambodian justice system's performance.

Challenges:

Among the many challenges to the introduction of data collection and management through advanced IT, several stand out:

1. Developing a corps of skilled IT managers and a broader corps of people who know how to use the system raises the issue of sustainability of the effort can only

- occur if the Ministry and the Courts take responsibility for managing and funding the training. Training is essential, ongoing, and must constantly be refreshed. This has to be the responsibility of the MOJ, etc.
2. Modern IT systems are relatively less expensive in terms of hardware, but they still require constant care and attention, as well as hardware and software maintenance and upgrading. Budgets must be allocated to meet both the personnel and physical maintenance costs of any IT/IM system. While PRAJ II staff is aware of these requirements, it is uncertain whether the Cambodian side has begun to give serious attention to this issue.
 3. Transparency in information sharing is perhaps the most difficult proposition for this government to accept. The trafficking data is made available to the USG, but not to anyone else outside government, except on a “permission” basis, and then only if the person comes to the MOJ and looks at the database there.
Transparency is also a problem on the NGO side, with NGOs reportedly reluctant to share data files with CCHR, even if the reports are provided. An example was an NGO Forum report on land conflicts in the courts, where CCHR received the descriptive data organized as tables and charts, but not the database.
 4. Utilizing data for analysis. While some of the MOJ data is organized to permit co relational analysis, the data shown on the Sithi.org site is not.
 5. The value of investments in improved data collection and management is in part a function of the ability to analyze the data for monitoring and policy-decision-making purposes. Most of the Cambodian data sets seen in this brief visit do not lend themselves to more sophisticated co-relational, or other, forms of statistical analysis.

Objective 2: Legal Education

A popular event, the Mock Trial Competition has spawned a similar Client Counseling Competition. Both competitions engage hundreds of students, mentors and judges as the schools go through the process of selecting the best candidates for the inter-university playoffs. The new competition has spawned a 48-hour accredited class at Paññāsāstra University of Cambodia (PUC). RULE, with support from PRAJ II, has established a model courtroom to encourage teaching of advocacy skills, and has also established a legal clinic simulation to improve the skills of law professors. Moreover, this program has advanced legal analysis through the establishment of the first law journal, and has developed the first text and class at RULE on Alternative Dispute Resolution. Much of this progress is a consequence of the energy, pedagogical and legal knowledge, and the five-year commitment of the PRAJ II ABA facilitator, Steve Austermiller. Meetings with PUC and RULE by the evaluation team confirmed the growing level of interest, support and commitment by these two schools to improving the quality and the practical dimensions of Cambodian legal education. PUC especially seems poised to be an innovation leader in this regard.

Challenges:

1. The PRAJ II effort to establish an effective, continuing legal education program at the RAJP is moribund, the cause of which remains unclear. Since the entire RAJP program had been suspended at the time of the evaluation, there is no basis for

- attributing the lack of cooperation with the ABA component of PRAJ. Interviews with EWMI staff were unable to explain the problem.
2. Finding the funds and leadership to continue the program without outside help from PRAJ is a challenge. A school committee has been founded, but a senior person at one school said the program could not continue without PRAJ II's organizational leadership and funding.
 3. Making more of the best and the brightest is a challenge beyond the immediate domain of this program, but should be an issue of interest to PRAJ II as it pursues its judicial reform efforts.

Objective 3: Justice System Strengthening

As already noted, much of the progress attained in Objective 1 applies equally to Objective 3. The introduction of modern IT/IM systems for the courts and the MOJ have served to offer the possibility of system-wide justice strengthening, but it is too early to tell whether the hope for system effects will take place.

PRAJ II has pursued this objective as well by working with the NGO community, an example of which is the work with CCHR in court monitoring. PRAJ II has developed a surprisingly effective relationship with the MOI, in large part because of the more progressive elements in that Ministry and the responsiveness of PRAJ II, beginning with the Law on Peaceful Demonstrations, the RGC acknowledgement of possession rights under the Land Law, and the more recent effort to facilitate NGO representation and dialogue with the MOI on the NGO law. PRAJ II's role has been clearly one of facilitation, and if technical advice has been given, it has been to the NGO coalition developing its position of advocacy in preparation for the joint meetings. PRAJ II experts have also provided the Ministry of Interior with technical information about the approach taken by other countries to the process of NGO registration and regulation. PRAJ II has made available the extensive experience of the U.S.-based International Center for Not for Profit Law to both the RGC and the HR community for this purpose. The less visible consequence of this newly developing pattern of dialogue is the emergence of an acceptance of the possibilities of NGO-government dialogue, without NGOs losing the independence necessary for civil society to carry out its watchdog and advocacy role.

Work with MOJ on this objective has centered on TIP issues, especially with regard to identification and resolution of differences that became apparent between the new penal code and the law on suppression of human trafficking and sexual exploitation. PRAJ II has had to harmonize its efforts in this crowded donor field with other stakeholders, and has had some success in doing so while retaining its leadership position.

After the Model Court Program moved to the MOJ, it appears to have become moribund, and PRAJ II does not plan to push this issue. As noted by discussions with experienced USAID staff, PRAJ II's role in this program was a relatively small one, and the blockage does not have a major impact on other activities. The court monitoring activity conducted by CCHR has focused on two courts, and has produced two highly regarded analytic monitoring reports in English and Khmer. The second annual report identifies both areas of improvement and continuing problems, especially with regard to pre-trial detention and treatment of juveniles.

PRAJ II has had some success, with support from the MOJ, in providing public information to Cambodian citizens through its public information signboards and public information posters, and with the widely viewed WMC Scale of Justice program.

Challenges:

1. The major challenge lies the weakness of the MOJ relative to the MOI. The fact that there are senior leaders in MOI willing to move the reform agenda explains the growing strength of the PRAJ/MOI relationship. On the other hand, MOJ officials are overburdened with multiple tasks, have difficulty focusing or advocating within the government, and do not enjoy strong leadership or access to the most senior levels of the power structure.
2. Efforts to facilitate NGO-MOI dialogue may result in better legislative drafts, but many steps remain between MOI's role and the actual content of the law, which may be substantially modified at the Council of Ministers level. Beyond that, much depends on the implementation guidelines, and the extent to which police, prosecutors and courts are trained and act accordingly.
3. MOJ weakness is reflected in the minimal government budget allocation to this ministry and to the courts. The MOJ budget is among the lowest-ranking through 2008, below the Ministry of Labor and the Ministry of Women's Affairs. Its share of the government budget is less than one percent, and has remained constant over much of the last decade. Any system change, including IT/IM, increases in funding of legal aid, putting more judges on the bench, or strengthening administrative support and monitoring systems will require additional funding. To date, it has been difficult for the MOJ to make its case.
4. As in many countries, the question of which organization is responsible for the administration of justice remains unresolved in Cambodia. Competition between the various judicial governance bodies is intense
5. The Women's Media Center (WMC) TV program is of very high quality, but interviews with WMC produced evidence of some tension between the advisory committee, on which PRAJ sits, and the WMC with respect to scripts and production content. WMC feels that its expertise in dramatizing the ROL points is somewhat challenged by the advisory committee's overwhelming interest in the legal education side of the equation. Another respondent opined that the program was in danger of becoming too much like a classroom lecture. Discussion with EWMI experts did acknowledge there was some difficulty, but referred to the scheduling of the advisory committee's input, rather than to any legal technical weaknesses in the program. WMC acknowledges the need for technical accuracy, but believes they are in the best position to make decisions about optimizing information communication in a manner that captures and holds the interest of an audience.
6. The court monitoring program in two courts is limited to the trial phase of a criminal case, and several interviewees have pointed out that there is little time or attention given to pre-trial investigation and counseling.⁶ While there is interest in the court monitoring report, little evidence shows there is as yet a system impact, or actions to redress the problems highlighted by the monitoring reports. The

⁶ See USAID Cambodia: "Legal Aid in Cambodian, Practices, Perceptions and Needs", prepared by EWMI, December 2006 on this point as well.

- second report was issued March 11 after the completion of the field work, but it has been reviewed for this evaluation. The report does point to several areas where progress has been made. Whether this program should continue as presently constituted or be revised to foster greater ownership of the monitoring process by the courts is an open question.
7. Corruption appears to be institutionalized, and is compounded by poor data management and utilization. To the extent that PRAJ can assist in developing more efficient and accurate data about court performance, a first step will be taken in the potential causal chain of information accuracy, accessibility, and transparency. On the assumption that accurate, easily accessed information is a critical part of any democratic reform effort, PRAJ II's investment could have far-reaching consequences.

Objective 4: Broad-based constituencies supporting judicial reform are strengthened

The PRAJ partnership with TAF encompasses many of the activities under this objective. The HR advocacy groups long supported by USAID and other donors continue to investigate reports of HR violations (1,052, of which 418 were major land disputes), and continue to help resolve disputes in favor of land returned, land swaps, or compensation.

In addition to the legal representation provided by PRAJ II grantees such as Legal Aid for Cambodia (LAC), grantees assisted over 300 individuals, succeeding in gaining the release of ninety-nine community leaders implicated in land disputes. ADHOC, CCHR, the Community Legal Education Center (CLEC), LICADHO, the Cambodian Criminal Justice Assistance Program (CHRAC) and other NGOs continue a variety of advocacy efforts, especially directed at the UN Periodic Review Board, the EU and, with respect to economic land concessions for sugar cane production, to foreign companies. As noted above, the CCHR website, Sithi.org, has become a very popular site for consolidated information about land disputes and HR violations in Cambodia, with a reported 81,000 visits in December 2010, a number that had increased to over 101,000 by the middle of February 2011.

Although the metrics for the major HR NGOs' activities remain impressive, these organizations have been maintaining a high level of activism for some time, having demonstrated their ability to respond to new challenges. From a development perspective, the growth of CBOs and related networks such as the Community Peace Building Network (CPN) and Indigenous Rights Active Members (IRAM) is even more encouraging. PRAJ II reports increasing sophistication, cooperation and discipline in the advocacy efforts of these groups. Moreover, cooperation between them and the major Phnom Penh based organizations continues to grow. If one is looking for big numbers of persons trained in rights awareness and advocacy skills, these are the organizations that can produce them.

As was noted in the earlier SI study, transaction costs for NGOs with multiple donors remain high, although USAID has taken steps to reduce these by moving to two- to three-year grants for selected, and tested, grantees.⁷ The team discussed the possibility of

⁷ See USAID Cambodia: "Political Competitiveness and Civil Society Assessment," Richard Blue, Harry Blair, and Lincoln Mitchell, Checchi Consulting, Dec. 2008; and Social Impact: "The Viable Civil Society

greater harmonization of donor support with representatives from SIDA, AusAID and DANIDA. Other evidence of interest in co-funding comes from the United Nations side.

Challenges

1. Local communities are still very reliant on national NGOs for support. Whether the local movements would survive if the national HR NGOs were to become suppressed or move on to other issues is an open question.
2. Interviews with network leaders as well as HR NGOs indicate that the objective of much of the advocacy work is broader than judicial reform. As one local leader put it, “we have given up on the courts.” Political action across a broad front is seen as the only means to confront the abuse of power. While this may be an accurate analysis, it does tend to reinforce the view held by political leaders currently in control that advocacy groups are political parties in disguise. The distinction between legitimate political *advocacy*, such as the activities of the Sierra Club in the United States, and a political *party* is lost on those in political power in Cambodia. Opposition is opposition; there are “good” and “bad” NGOs, as noted by one Excellency in a meeting attended by the evaluator, and clearly the “bad” NGOs are the ones that make trouble.
3. Although the major HR NGOs continue to do important advocacy and relief work, some donor observers are beginning to question whether these organizations hold a self-interest in perpetuating a perception that HR violations continue to be as numerous as they really are. An interesting report, published by NGO Forum, analyzed land dispute cases from 1991 to 2009 and demonstrated an upward trend through 2008, but a very sharp decline to 2001 levels in 2009. Moreover, of the 536 land-dispute cases analyzed, only forty-five were filed in provincial courts. Most of the complaints were filed in the “Provincial Hall.”⁸
4. As with previous attempts to unravel the statistical trends with respect to HR violations resulting from poor court performance versus violations perpetuated by broader state apparatus (police, military), it is extremely difficult to draw program decision relevant conclusions. Even the most critical HR NGO advocates now say that the judicial system has improved with regards to the application of procedural rules respecting rights, notwithstanding the need for continuing improvement. What data does exist, supported by fragmentary evidence from court monitoring and other reports, may suggest that the larger remedy for the protection of HR does not lie mainly in the courts, but in holding the coercive elements of state power accountable, which means holding the political regime accountable.
5. Building accurate, comprehensive and meaningful metrics and supporting database for guiding action as well as program decisions by donors remains a challenge. The CCHR success in gaining cooperation from 26 NGOs for the 2009 UN HR Council Period Review report was an achievement that needs replication in many areas.

for Good Governance Program: A USAID Cambodia Civil Society Strategy,” Richard Blue, Report submitted to USAID April, 2010.

⁸ NGO Forum Report. “Statistical Analysis of Land Disputes in Cambodia, 2009,” NGO Forum 02, February 2011. Provided to the team by CCHR.

Objective 5: Representation of Indigent Persons, especially Criminal Defendants and Juveniles Expanded

The activities under this objective focus on five main actors, or sets of actors. The first of these is the Council for Legal and Judicial Reform's effort to promote a national legal aid policy. Attempts to build on and repeat parts of a 2006 survey on legal aid requirements appear to be moving very slowly, as noted in PRAJ II's Dec. 2010 Quarterly Report.⁹ The second set of actors is the Land and the three Women and Children's lawyer working groups; PRAJ II organized seminars for about ten percent of the total number of Cambodian lawyers on the issue of the new penal code.

The third and perhaps most interesting actor is the Samreth Law Group, which has established itself as Cambodia's first public interest law firm. The firm continues with an effort begun under PRAJ I to identify and support what was then described as high-visibility legal cases, only now the visibility is kept deliberately low. Samreth's basic premise is to take on both public interest activities as well as selected cases such as the Phnom Voir case to defend community members "who were criminally charged with wrongful damage to property" and other crimes as their land was seized by a powerful businesswoman. Samreth is also building up a caseload of private clients as a means for providing income, which can then be used to cross subsidize its legal defense efforts. Samreth also works with the Cambodian Bar through the presence of a Samreth lawyer on the Bar Council to lower entrance "fees" to the Legal Training Center, reputed to be a main source of "off-budget" income for the Bar, and a major choke point in the production of certified lawyers in Cambodia.

The last set of actors receiving direct support from PRAJ II is the group of legal aid providers made up of LAC, Cambodian Defenders Project (CDP), Legal Support for Children and Women (LSCW), CLEC, Samreth, and BAKC. Other cases are defended by lawyers from ADHOC and LICADHO. LAC and, for cases involving trafficking and sex crimes, LSCW, are the major sources of legal defense. It is worth noting that the Cambodian Bar has moved from a position of active harassment of legal aid lawyers working under NGO auspices to one of cooperation and actual provision of some very limited legal aid through an internship program for six lawyer/trainees.

The number of cases defended in 2010 by PRAJ II-supported partners exceeded the Performance Management Plan (PMP) expectations by a good margin.

Challenges

1. Although PRAJ II PMP reports that 3803 indigent clients were defended in 2010 by various PRAJ II partners, it is difficult to determine whether this is a meaningful number in terms of the overall number of cases in the criminal courts brought against indigent persons. Field visits to Prey Veng during this evaluation raised some of the problems facing both legal aid lawyers and the courts with respect to the provision of effective defense for indigent clients. First, the small

⁹ USAID Cambodia: "Legal Aid in Cambodian, Practices, Perceptions and Needs", prepared by EWMI, December 2006.

- number of legal aid lawyers is stretched thin and in one case, the lawyer must cover cases in the adjoining province. There are no private lawyers in the province, so if the LAC or other legal aid lawyers are not available, the court has to either recommend to the defendant that he/she defend himself, or remand the defendant back to detention until such time as a lawyer becomes available.
2. The issue of sustainability of all legal defense and monitoring groups is a critical issue. At present, none of the groups would survive the wholesale withdrawal of foreign donor support. This may be an impossible standard to apply, however, as the same may be said of many NGOs in the developing countries. The Samreth Law Group is an experiment in sustainability through the combining of “billable” contract work with donor supported public interest efforts, such as providing legal defense. Discussions with Samreth did reveal that there are tensions between the two functions. Financial success is a priority mission, without which Samreth would be unable to carry out its public service mission without long term support from foreign donors. The danger, of course, is that the requirements of financial success in Cambodia could undermine the public interest role.
 3. Another issue is the extent to which overworked legal aid lawyers have the time or inclination to do much pre-trial consultation and investigation with the defendant. In the success stories reported by PRAJ II, much depends on the defending attorney’s ability to develop exculpatory evidence of the defendant’s innocence. This may be the exception, rather than the rule.
 4. In spite of earlier recognition that the provision of legal aid was ultimately the responsibility of the RGC, to date the government has not provided anywhere near the needed funding for this responsibility, and even if funding was available, the BAKC lacks the institutional capability to manage a national system. Coverage must be expanded, and a team approach developed so that front line legal aid lawyers have sufficient backup to sustain continuity when there are gaps in the availability of the front-line lawyers. The organizations providing legal aid vary greatly in their ability to retain lawyers and hence their own institutional capacity. Until these systemic problems are addressed, legal aid will remain “legal humanitarian assistance:” good to have, but not contributing to a sustainable solution.

C. SYNERGIES

With five objectives, there is a danger that each objective would be managed independent of the other, or without regard to the strategic goal of strengthening the justice system’s performance in delivering justice.

PRAJ II leadership is aware of the danger, and in discussions and later documentation has identified a number of synergistic outcomes that go beyond the performance indicators for each objective. In this report, it is possible to highlight only a few of the twenty-three examples provided by PRAJ II after our discussions. We present these examples by objective:

Objective 1: The new Criminal Case Database generates data that will support identification of cases where defendants are held in excessive pre-trial detention, facilitating legal aid efforts (Objective 5) to target these cases as well as strengthening judicial administration (Objective 3).

Objective 2: Students with advocacy skills improved by the legal clinic, mock trial and client counseling programs are flowing into the BAKC/Lawyer Training Center (Objective 5) and RAJP intake programs.

Objective 3: Engagement with MOI to produce posters describing land possession rights (a subject which had PRAJ II input), placed in every village, leads to villagers better informed about their land rights, which feeds into grassroots advocacy efforts and strengthens constituencies for reform (Objective 4).

Objective 4: Grassroots activism supported by PRAJ II partners often results in criminal charges being filed against the leaders, who then turn to legal aid organizations (Objective 5) for defense attorneys.

Objective 5: The CCHR court-monitoring project provides information and evidence of systematic procedural violations that can support reform efforts by BAKC and other reform minded elements (Objective 3).

As observed by the evaluation team, the synergies between the information objective and all others are especially strong, in that better information feeds into every aspect of the PRAJ justice system reform strategy.

A potential synergy may be found between the USAID support for PRAJ investments in justice reform, and the legacy of the Extraordinary Chambers in the Courts of Cambodia (ECCC), of which the USG is a significant sponsor and funder. The UN Office of the High Commission on HR (OHCHR) has been an active proponent of justice sector development and, in a "Concept Note" issued 31 January 2011, has proposed facilitating "activities which promote a sound legal and judicial legacy for the ECCC in partnership with key local actors - namely, the Ministry of Justice, the Council on Legal and Judicial Reform, the Bar Association, the legal and judicial training schools and law schools." The OHCHR paper proposes engaging the Cambodian judicial officials and judges active in the ECCC in a process by which the experience gained, skills attained, and lessons learned are "spread to their peers and other colleagues in the Cambodian courts." It goes to propose that "this process is intended to be primarily led by Cambodian judges, prosecutors and lawyers --- with the OHCHR encouraging, supporting and advising the process." ECCC foreign judges, prosecutors and lawyers will also be associated. This "legacy project" proposes a variety of activities and other means by which this "spread" will be accomplished.

Without making any attempt to judge this proposal on the merits, it does seem to offer a complimentary path to many of the objectives, activities and with many of the partners working with PRAJ.¹⁰

¹⁰ OHCHR: "Concept Note: A sound Legacy for the ECCC" . 31 January 2011. This note was provided by evaluation team member Panhavuth Long, who is associated with the ECCC. Other than calling it to the attention of USAID, the team makes no recommendation as to any USG actions.

V. GENERAL CONCLUSIONS AND RECOMMENDATIONS

The purpose of the evaluation as stated in the Statement of Work is:

"To conduct an evaluation of the current USAID/Cambodia HR and ROL Program, PRAJ, in order to assess the performance and effectiveness of the program and policy strategies in contributing to overall USAID goals and objectives, and to determine unexpected positive or negative consequences or impacts from the activities that are conducted as a part of PRAJ."

General Conclusion

The evaluation team's findings support a general conclusion that PRAJ II is implementing a strategy that supports USAID's goal: "To strengthen the foundation of support for reform of the justice sector in Cambodia." By continuing support for HR advocacy, as well as the more direct influence of providing legal aid, court monitoring, and improved information management systems for both civil society and the RGC justice sector institutions, PRAJ II is contributing to a stronger foundation of support.

The development of the Sithi.Org web-site, the support for expanded networks of NGOs beyond the established HR advocacy groups, the expanding investment in practical legal training, and the effort to expand the provision of legal services have all contributed to the USAID goal. PRAJ II has built on many years of USAID investment in Cambodian public interest NGOs, and this investment continues to bear fruit.

PRAJ II has also engaged the RGC judicial sector institutions, a process just begun under PRAJ I, but gathering momentum under PRAJ II. The engagement has made considerable use of the offer of assisting the sector build a modern data based judicial management and information system, but has done so in a largely incremental and opportunistic way. This has had some success, especially with reference to RGC efforts to control TIP, release of juvenile offenders who were being detained well beyond their sentencing dates, and in other more modest ways. More important has been PRAJ's development of working relationships with some officials in the MOJ, MOI, and the courts. This has facilitated PRAJ's effort to facilitate and support meaningful dialogue on important legislative initiatives between the RGC and representatives of the NGO community, including but not limited to HR advocacy groups.

Whether the successes achieved by PRAJ II were unanticipated or simply the expected outcome of several years of investment and effort, the team is unable to determine. Improvements in the justice sector have been so difficult to achieve over the years, that any positive steps may come as a surprise to many, however modest these changes may be in the overall scheme of things. On the other hand, PRAJ's involvement with facilitating dialogue on difficult legislative issues such as the NGO law may have negative unanticipated consequences for PRAJ's relationship with ROL advocacy community, especially with those leaders who tend to classify any dealing with the RGC as a threat to the independence of civil society. The role of "honest broker" is never an easy one, and PRAJ may suffer some loss of confidence because of the rising tide of anxiety over the proposed NGO law.

Specific Conclusions

The order by which conclusions are presented corresponds to the questions posed in the additional guidance provided by USAID Cambodia for this mid-term evaluation. The preamble to the listed questions states:

"Within the SOW, and to the extent time allows, generally we want to look at whether the program is going in the right direction, whether the work with civil society is well balanced with the work with the RGC, whether activities in a particular sector should be continued or altered, and/or whether there should be new activities to support USAID's objectives for PRAJ." (Article IV – Tasks)

Conclusions related to USAID's specific questions are, as follows:

1. Are program objectives achievable?

As currently written, the objectives are achievable. The more serious question, raised frequently in the comments to the first draft of this report, is whether the progress toward these objectives will have a positive effect on the overall goal of justice system reform? Based on the evidence gathered during this evaluation, the answer to this question is, No. The Cambodian political system, as described in other reports submitted to USAID in 2008 and 2010 is deeply rooted in a patronage structure that depends on a high level of rent seeking in order to sustain the system, and to retain the loyalty of persons necessary for regime survival. This patronage system is reinforced by a political economy model that depends on resource exploitation and monopolistic practices by members of the governing elite. It also depends on the selective use of the state's monopoly of the instruments of coercion to suppress opposition, while at the same time maintaining a façade of democratic accountability and tolerance. These practices are influenced as well by the dominant political experience of the current leadership, found in the period of Khmer Rouge and Vietnamese control, and supported by an admiration for the success of both China and Vietnam in pursuing economic growth while repressing any demands for democratic accountability.

With regard to progress toward specific objectives (1-5), progress has been made in each of the original five objectives. However, the wording of several of these objectives, as well as the goal statement, is sufficiently broad to accept as progress almost anything positive or constructive happening through PRAJ. If one counts the students and professors involved in the various EWMI/ABA legal education activities as professionals, then it would be hard to conclude other than, "yes." Similarly, Objectives 3, 4, and 5 simply state that organizations and activities will be strengthened. Again, progress towards strengthening in each of these sectors is apparent. The wording of Objective 1, Comprehensive and Accurate Information System Developed, is much less forgiving, and although much progress has been made, it is unlikely that this objective will be achieved by 2013 when the project ends. There is simply not enough time to install the pilot projects, demonstrate their value, and scale them up to system-wide application. The main achievements have been with respect to TIP information systems, and the release of juvenile prisoners detained long after their release date. Other IT investments are still in the pilot start up stage, as with the Phnom Penh Municipal Court. It is unlikely that a comprehensive system will be in place by the end of the project.

As documented in Section V, Progress Toward Objectives and Goal: Findings, progress toward achievement of each of the objectives confronts serious challenges that will either slow down or block further progress. Central among these challenges is the apparent lack of political commitment to thorough justice system reform, including the active protection of HR. The consequences of this lack of political commitment are many, including a reluctance to take seriously the judicial system's budget needs; continued tolerance for inefficiency and failure to observe the procedural requirements of a working justice system; the contempt for and resistance to any advocacy group demanding reform; and the extremely cautious behavior of officials within the system who might otherwise be inclined and willing to effect reforms.

The evaluation team believes that the underlying assumptions and the program theory, while not well articulated in the project documentation, remains valid. The main tenets of the program theory are that, short of regime change, wholesale reform of the justice system is not likely and certainly will not be driven by any foreign assistance program. Moreover, as stated clearly in the AusAID Evaluation Report, efforts to develop a comprehensive and rational approach to correct the deficits in the Cambodian justice system will not, and have not, worked. The "strategic incrementalism" EWMI and partners employ may be the only alternative, short of withdrawal from the sector altogether.

For all the objectives, the question is whether the strengthening that has occurred collectively adds up to progress toward the strategic goal. At this point, achievement of the goal may depend more on exogenous factors than on the efforts of EWMI to implement the PRAJ II program. It is the judgment of the evaluation team that PRAJ II can "strengthen the foundation of support" for reform, but it lacks sufficient power to drive the process of reform.

Recommendation

USAID and EWMI should begin a process whereby the underlying assumptions and theory of change are examined in the light of PRAJ II experience and what is known of the efforts to achieve serious progress toward justice reform. The overarching question must be what are the potential benefits for ROL reform for continued USG investment in this sector. EWMI in concert with USAID and Cambodian partners should revisit all project assumptions and the underlying theory of change with the purpose of establishing an articulation of the theory, unencumbered by the needs of Performance Monitoring Plans, etc. Following that, a critical examination of the accomplishments to date of PRAJ II should investigate whether the incremental approach offers any hope of influencing significant reform. Consider holding a retreat to focus on the overall goal of the project.

One possible approach is to define the objectives rather differently than the current formula. For example, Objective 5 can be summarized as, "increased legal aid." Objective 4 has to do with "strengthening constituency for judicial sector reform"; Objective 2, "to enhance professional competence". All of these objectives focus on the means to the end of judicial reform. A better starting point might be to deconstruct the goal statement into several key component indicators, such as "improved management of

the trial process for persons accused of crimes”, or more “effective presentation and use of evidence”, and so forth. The disaggregation process would be informed by the already-observed deficits in the system with respect to ROL, and by doing so, USAID and EWMI would have clear benchmarks for assessing whether the reform process is proceeding, or not. For any one objective, all the means would be brought to bear, including HR advocacy, better information, training, public educational media, and the like. This approach would focus more on the causal linkage between constituency building and ROL than does the present “strengthening”-oriented objectives.

2. Relationship with NGO Partners

The evaluation team found that the relationship with NGO partners remains strong and generally supportive. Most of the Phnom Penh based NGOs supported by PRAJ II are highly experienced and sophisticated organizations, with support from a variety of international funding organizations. USAID or EWMI's ability to leverage the behavior of these organizations is limited, but not inconsequential. As with other civil society organizations, EWMI's direct NGO partners represent a newer breed of public interest leadership, while those supported through the TAF grant program include organizations which remain the instrument of the original and still in charge founder, and as such are a direct manifestation of the founder's commitment, leadership skills, and the ability to appeal to more distant funding organizations with an interest in helping Cambodia. EWMI also continues to support the development of networks and cooperation among local, CBOs, which have become better organized and more sophisticated in their use of advocacy techniques.

There is some concern that EWMI's growing relationship with the Cambodian government may be at the cost of its continued support for Cambodian civil society, especially the HR advocacy groups. The evaluation team did not encounter this concern, but it no doubt does exist. However, the USG made a decision in 2006 to engage both the RGC and civil society on issues of common concern, and EWMI's efforts to use the information technology support as an entry point to that broader engagement is the most effective way to open doors, build some mutual trust, and to accomplish some important improvements. On the other hand, EWMI continues to work closely with a range of important Cambodian NGOs providing HR advocacy and support, as well as legal defense, judicial performance monitoring, and grass roots organization.

The "threat" of a potentially punitive new NGO registration law has brought together many NGOs that might not otherwise find it in their interest to cooperate. EWMI has been an instrumental player in providing support for this new level of cooperation.

As discussed in the Findings section of this report, the proposed NGO law has been widely criticized in the international community as well as within Cambodia. The USG, as well as other western countries, has been vocal in stating its opposition to the law, questioning the need for such a law, and pressuring for revisions in the law that would be supportive of civil society development. This rising tide of criticism has the potential to place EWMI's "honest broker" relationship with both the NGO community and the RGC into some jeopardy.

The main deficit that remains is the continued reluctance of advocacy NGOs to share information, especially databases and the results of systematic surveys, with CCHR, whom EWMI is supporting as a central node for producing and managing a comprehensive website for a variety of ROL and HR issues.

Recommendation

USAID and EWMI should examine the extent to which lack of cooperation among various advocacy NGOs actually inhibits the process of effective advocacy, including the efforts to improve the timeliness and accuracy of shared data on HR and ROL issues in Cambodia. In concert with leading NGOs, EWMI might want to consider ways to strengthen cooperation among NGOs, including so called "service NGOs" in the health and education field. The US consortium, InterAction, might be a model for encouraging cooperation. Cambodian NGO leaders might be supported to meet with InterAction leaders to gain a sense of how US NGOs have learned to cooperate, advocate, and promote their common interests.

With respect to the NGO law controversy, EWMI and USAID should continue to facilitate dialogue and open access to expertise and information about international best practices for all stakeholders. More reform minded interlocutors in the RGC might be provided the opportunity for a study tour to other countries identified as having progressive legislation with regard to NGO laws supporting the growth and legitimate role of civil society in democratic systems. Meanwhile, USG official and unofficial expressions of concern and consequences should continue so long as the Cambodian government remains intransigent on this issue.

3. Budget Issues

In today's environment of deficit reduction, it is difficult to predict the extent to which there are "un-foreseen" budget constraints. As indicated in the Findings section, USAID would not be able to justify expanded USAID assistance to Cambodia should the RGC enact and implement legislation which substantially suppressed the independence of Cambodia's civil society sector, especially the public advocacy NGOs.

At a more normal level of concern, discussions with EWMI support the conclusion that EWMI is very much aware that the ROL program is labor intensive, especially with regard to the costs of sustaining a number of expatriate technical experts. As discussed in the Findings section below, EWMI is taking steps to reduce costs through various "part time foreign expatriate" arrangements.

If there were to be readjustments among the objectives, the report already suggests that the separate objective for information technology (IT) be dropped, and IT be recognized as a cross-cutting means to other objectives, which it has become, in fact.

Recommendations

Consider an objective centered on strengthening more explicitly the institutional capacity of both the courts and the MOJ—not in a general sense, but specifically with regard to (1)

reducing inefficiencies and errors resulting from bad information management and (2) strengthening the capacity of both the courts and the MOJ to argue for and gain a greater level of budget support from the Cambodian government than they now receive. A more radical approach would be to reorganize all the objectives as recommended in question 1 above.

4. Sustainability

The PRAJ I and II activities, along with a variety of other USAID and donor efforts, have already had a sustainable impact on many Cambodian citizens. The level of organization, cooperation, networking, and sophisticated information, monitoring and advocacy efforts is testimony to this effect. The popularity of the Sithi.org website, as well as the WMC law series is partial testimony to the interest of the Cambodian citizen at large. The more general, twenty-first century information technology revolution has not bypassed Cambodia, and the effects of the current political revolutions in the Arab world are not lost on educated Cambodians.

Based on the evidence we have from this evaluation, and informed by several earlier studies cited, the evaluation team is confident that PRAJ II's local NGO partners will continue to make progress towards their objectives. However, three major threats may undermine this forward progress: (1) the possibility of the passage of a repressive NGO registration law and (2) the failure of Cambodian NGOs to find ways to cooperate for their common purposes, especially across specific sectors. A third, corresponding threat is the danger that foreign donors, government and private, may be severely constrained by the RGC from providing direct budgetary assistance to all but those NGOs that receive "safe passage" certification from the government.

Recommendation

The sustainability issue requires the active engagement of the USG at the diplomatic as well as the development assistance level. The United States has already made known its opposition to a new NGO law, but should the RGC forge ahead on this, as it appears to be doing, what options will then be available for development diplomacy? USAID intends to request additional funding for Cambodia but Mission Director Fuller has already signaled that any increase would be jeopardized by the passing of legislation restricting Cambodian civil society. A more severe option would be to cut off any support or engagement with the RGC with the exception of humanitarian assistance. This would be a return to the USG position during the 1997 to 2005 period. A reasonable course of action would be to continue to encourage dialogue, openness to other country experiences, and the encouragement of government appreciation of the role of civil society in democratic countries even if the USG chose a more punitive option of substantially reducing all development assistance. As we have seen in the civil rebellions in Tunisia, Egypt and elsewhere in the Middle East, maintaining a population's exposure to the broader world through information technology and educational opportunities is one of the key drivers of the demand for political change. This kind of program should be supported by both the Department of State and USAID, regardless of the development assistance option chosen. A coordinated campaign using the resources of State and

USAID might be mounted to fashion a "keep hope alive" strategy even if normal development assistance is severely curtailed.

APPENDICES

APPENDIX A. SCOPE OF WORK

1. TITLE

ARTICLE I – TITLE

Mid-Term Evaluation of USAID/Cambodia’s Program on Rights and Justice II

ARTICLE II – BACKGROUND

The USAID/Cambodia Office of General Development (OGD) currently funds the Program on Rights and Justice II (PRAJ), implemented by East West Management Institute (EWMI), which commenced on October 1, 2008 and will end on September 30, 2013. The cooperative agreement awarded to EWMI to implement PRAJ is for approximately \$20 million over five years.

Following decades of civil war and unrest, the RGC continues to rebuild and reform its various institutions. To date, progress in rebuilding and strengthening Cambodia’s justice sector has been incremental and by most accounts disappointing. While recognizing that Cambodia has suffered decades of political instability, war and recurrent violence which displaced populations, degraded national institutions and diminished capacity within the government – at all levels – expectations for progress have not been met. The excessive politicization that reverberates throughout all government decision-making, not only at the policy level, but deep into governmental operations within ministries and at the provincial level as well, is largely credited with retarding efforts to advance justice sector reform.

Still, important milestones have been achieved, albeit slowly, and a sense of forward movement exists. PRAJ has worked with the Ministry of Justice to develop and implement a database for collection of case information related to trafficking in persons, and has contributed to the development of the Model Courts program. In cooperation with The Asia Foundation, PRAJ has assisted the Ministry of Interior on Counter Trafficking in Persons. Along with the ABA, PRAJ has worked with the Royal Academy of Judicial Professions and the Royal University of Law and Economics in providing training of legal and judicial professionals and law students, and implemented a Client Counseling Competition and Mock Trial, both useful and practical educational experiences for students.

Through sub-grants, PRAJ has funded protection of HR, particularly in the area of land disputes, through trainings, network building and public interest advocacy. Funding has also been provided to legal aid providers in order to offer free legal representation to indigent criminal defendants and victims of domestic violence.

In 2009, USAID/Cambodia signed a Memorandum of Understanding with the Bar Association of the Kingdom of Cambodia (BAKC). Through this MOU, USAID has funded a HR-focused internship program where lawyers-in-training can spend a one-year internship representing defendants under the supervision of lawyers appointed by the BAKC. These and other activities under the program are contributing to the ongoing

efforts to reform the legal and judicial system and to enhance the HR environment in Cambodia.

ARTICLE III – OBJECTIVES

The objectives of this task order for two individual consultants are as follows:

- To conduct an evaluation of the current USAID/Cambodia HR and ROL Program, PRAJ, in order to assess the performance and effectiveness of the program and policy strategies in contributing to overall USAID goals and objectives, and to determine unexpected positive or negative consequences or impacts from the activities that are conducted as a part of PRAJ.

ARTICLE IV – TASKS

1. Research and Review Materials Prior to Arriving in Cambodia: Review and synthesize relevant HR and ROL literature, the USAID/Cambodia strategic plan, the Cooperative Agreement, work plan and activities for PRAJ, and assessments and evaluations of programs previously conducted by Checchi and Company Consulting, Inc., and others, on ROL, HR, Local Governance and Political Process to develop a base of information to commence evaluation of PRAJ.

Schedule: This task shall be conducted upon commencement of the contract prior to arrival in Cambodia and continue during the schedule for US-based work and Cambodia-based work, and is budgeted for 3 workdays per consultant.

2. Conduct Research and Evaluation In Cambodia:

- a. Meet with and receive technical direction from relevant USAID staff in Cambodia.
- b. Gather information via interviews from USAID/Cambodia staff, PRAJ Chief of Party, and PRAJ/EWMI staff and consultants, indigenous NGOs, including but not limited to USAID implementing partners and sub-grantees, Royal Government of Cambodia (RGC) counterparts and other donors. This may include field visits outside of Phnom Penh.
- c. Assess and evaluate PRAJ to identify lessons learned and identify any new areas of opportunity for new activities to reach the goals of the program and USAID overall goals and strategies.
- d. Analyze and synthesize information gathered and prepare draft evaluation to meet the task order objective, including recommendations on whether the program should be modified to address weaknesses and enhance strengths going forward with PRAJ.

Schedule: Task shall be completed within two weeks of arrival in country. Dates for in-country portion of evaluation should fall between Monday, February 4, 2011 and Saturday, March 5, 2011. (Six-day workweeks are permissible.)

3. Present draft evaluation and recommendations to USAID/Cambodia in Phnom Penh. Schedule: Task shall be completed on or before the last Embassy workday in Cambodia.

4. After receiving comment on the draft evaluation and recommendations from USAID/Cambodia, prepare final evaluation report on PRAJ to USAID/Cambodia.

Schedule: Task shall be completed within 4 business days of receipt of written comments from USAID/Cambodia and upon departure from Cambodia.

ARTICLE V – DELIVERABLES

1. No later than the contractors' second workday in Cambodia, the contractor shall submit to USAID a draft workplan for the evaluation period in country. USAID to provide comments and feedback on the workplan.

2. Based upon the contractors' evaluation of USAID/Cambodia's PRAJ, utilizing lessons learned, and under the technical direction of the USAID Office of General Development, the contractor shall prepare an evaluation, concluded with written Recommendations, which addresses the matters described in the Tasks section above and meet the objectives of this task order.

3. Prior to departing from Cambodia, the contractor shall present the draft evaluation and recommendations to USAID/Cambodia OGD, hold discussions and receive feedback, comments and instructions on the final draft from USAID/Cambodia.

4. The contractor shall submit a final written evaluation, which will address the matters described in the Tasks section above, with recommendations, to USAID/Cambodia OGD.

Additional Questions given to Team Leader by the COTR upon arrival in field.

A. PRAJ program activities may be evaluated according to the some of the following factors and questions:

1. Are program objectives achievable?
 - a. Do original objectives still seem realistic?
 - b. What challenges have been discovered?
 - c. Can challenges be overcome, and if so, what steps need to be taken?
 - d. Are different approaches needed for program to meet objectives?
 - e. Are any underlying assumptions incorrect, and if so, do they need to be re-assessed?
2. Relationship with NGO partners.
 - a. What challenges are faced in relationship with NGO partners?
 - b. What can USAID, EWMI and NGOs do to improve relationship in order to assure that objectives will be met?

3. Budget issues.
 - a. Are there any unforeseen budget constraints?
 - b. Should the budget be readjusted among the programs in order to meet objectives?
4. Sustainability.
 - a. Will results of activities have a sustainable impact on beneficiaries and civil society in general?
 - b. Are NGO partners on track to be able to carry out activities to completion of project?
 - c. What additional support, either budgetary or substantive, will increase likelihood of sustainability of results after PRAJ ends?
5. Recommendations.
 - a. Based on the findings from the foregoing evaluation, what steps need to be taken to ensure the activities will meet the program objectives?
 - b. What steps should be taken in order to assist partner NGOs to achieve their targets and responsibilities, including any modifications to sub-grants.
 - c. Should any objectives or program activities be re-evaluated to determine achievability?
 - d. Any other recommendations.

APPENDIX B. PERSONS CONTACTED

Persons and Groups Interviewed

Group Discussion

IDEA (Mr. Heng Sam Orn and 21 participants)

Boeung Kak Lake Association (Mr. Ek Yothin and nearly 30 participants)

Network Group (CPN, PAC, BCV, IPNN, IR4AM, IC SO, IDEA, NGO Forum, RFAPD, EISEI, with Terry Parnell)

RULE Mock Trial participants (4)

EWMI, ABA, TAF group (all program and senior management staff)

Individual Key Informants (listed in order of scheduled interviews)

Mr. Andrew Boname, EWMI

Mr. Ouk Vandeth, IBJ

Mr. Kim Hor Han, IBC

Mr. Run Saray, LAC

Mr. Mark West, EWMI

Prof. Kong Phallack, PUC

H.E. Ke Sokhan, PPMC

Ms Heng Bopphea, PPMC

Mr. Suon Visal, BAKC

Mr. Gavin Tritt, TAF

Ms. Pen Somethea, MOJ

Ms. Annette Dahlstrom, SIDA

Ms. Jennifer Lean, AusAID

H.E. Yuok Ngoy, RULE

Prof. Hor Peng, RULE

Mr. Steve Austermler, ABA/EWMI

Mr. Ly Ping, Samreth Law Group

H.E. Sieng Lapresse, MOI

Michael Engquist, DANIDA

H.E. Ith Rady, MOJ

Mr. Ou Virak, CCHR

H.E. Suy Mong Leang, Council for Legal and Judicial Reform

Ms. Terry Parnell, EWMI

H.E. Om Yuentieng, HR Commission

Mr. Suon Sareth, CHRAC

Ms. Naly Pilorge, LICADHO

Mr. In Kea, ADHOC

Ms. Chea Sundaneth, WMC

Ms. Uch Thavy, WMC

Ms. Ly Vichutta, LSCW

Mr. Neal Weinstein, EWMI

Mr. Max Howlett

APPENDIX C. REFERENCES

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