

FINAL DRAFT FINAL DRAFT FINAL DRAFT

AN EVALUATION OF THE CAMBODIAN DEFENDERS PROJECT
AND THE CAMBODIAN COURT TRAINING PROJECT:
ACCOMPLISHMENTS, LESSONS LEARNED AND RECOMMENDATIONS
FOR FUTURE PROGRAMMING IN CAMBODIA AND ELSEWHERE

Stephen Golub

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Prepared for the International Human Rights Law Group
and the United States Agency for International Development

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Of course, any errors of fact or opinion are my own responsibility.

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EXECUTIVE SUMMARY

How can the International Human Rights Law Group (IHLRG or the Law Group) and the United States Agency for International Development (USAID or the Agency) best help to build an equitable legal system in a shattered society? How can they do so in Cambodia, a nation racked by war, genocide and foreign occupation for over two decades, and where endemic poverty, politicization and corruption hamper the legal system's operations? Such questions underlie this evaluation of IHLRG's Cambodian Defenders Project (CDP) and Cambodian Court Training Project (CCTP). The evaluation is based mainly on my January 29-February 12, 1997 visit to Cambodia. It benefits from extensive and very useful feedback from the Law Group regarding two earlier drafts of this report.

I try to make the evaluation as forward-looking as possible, while addressing the many items raised by the December 1996 "CCTP/CDP/USAID Evaluation" Terms of Reference provided by the Law Group. I also address additional matters that IHLRG or USAID suggested I review.

One important way of appreciating the work of CDP and CCTP is to put it in the context of the collective achievements of

Cambodian and international actors. While still problematic in many respects (including widespread corruption and police and military impunity), the legal system has improved in some ways according to Cambodian human rights NGOs and other sources I interviewed. Courts in some provinces not only recognize the right to counsel, they actually contact NGOs to help implement it. Similarly, there is reason to believe that the six-month limit on pre-trial detention is more widely respected than before. The same applies to the requirement that within forty-eight hours of arrest police produce accused individuals for interviews by investigating judges. Some prison conditions have improved.

What's more, the presence of legal aid representatives, human rights NGOs and foreign court advisers in many provinces has added a very rudimentary element of accountability to the legal system's operations--at least for some courts under some circumstances. It also has expanded the skills and perspectives of those involved with the system to varying degrees. CDP and CCTP have been significant players in the panoply of actors that have contributed to the positive changes that have taken place.

More specifically, CDP has helped introduce the notion and reality of legal aid to the Cambodian legal system at a crucially formative stage in its development. By dispatching advocates to handle cases at the request of courts and human rights offices in several provinces, CDP has established the right to counsel in practice where in many instances it only existed in theory. A number of sources volunteered that CDP also has affected the evolving legal community by helping to improve the process by which participants in yearly Lawyer Training Classes (which graduate individuals eligible to become members of the Bar) are selected.

CDP also has made a mark regarding a number of noteworthy cases with national implications. These include press prosecutions. Finally, some provincial developments fostered by CDP may provide the basis for national replication.

I commend CDP for expanding into civil work. Its Women's Litigation Unit is a very worthwhile initiative that could contribute greatly to the legal lot of half of the country's population over the long run. Similarly, the central importance

of land issues for stability and equity in a post-war society merits attention. It is therefore significant that 60 percent of CDP's civil cases involve land disputes. The potential for CDP to address civil matters outside the court system is addressed in this report.

For its part, CCTP has obtained Ministry of Justice endorsements for the formation of a Judicial Education Committee, the preparation of a bench book and training of selected judges and prosecutors who in turn will train their colleagues. In addition, the Minister has expressed interest in an education advisor for his staff.

A number of observations by CCTP's provincially-based Resident Legal Advisors (RLA) indicate that court personnel are responding to their advice in some ways. CCTP also has improved the basic physical infrastructure of certain courts. This has included rudimentary repairs, furniture and file cabinets.

Some of CCTP's most interesting results have occurred outside the court system. For example, its Kampot-based RLA seems to have made a singular contribution to local prison conditions. Local offices of human rights NGOs volunteer that she has helped strengthen their operations. This has included providing advice on the law and on how to prepare files for submission to the courts. She also has coordinated court cooperation with the NGOs in arranging defense counsel for the accused in the province.

Almost all sources I consulted feel that, after periods of problematic management, CCTP appears to have settled in to a phase of stable, competent leadership. With the recent arrival of a new director, CDP seems to be making similar progress.

Though managerial and reporting issues at times complicated the USAID-IHRLG relationship in the past, the two have worked together to forge a productive partnership. CCTP is now on an even keel both internally and in terms of relating to the Agency's Cambodia Mission. With the arrival of its director, CDP's improving relationship with the Mission promises to be the same. It is to the Mission's credit that it has maintained support for the projects through their managerially hard times.

It is to the Law Group's credit that its projects ultimately have been productive in the face of numerous obstacles. This includes starting projects from scratch in a very difficult operating environment.

Where, on a strategic level, do IHRLG and USAID go from here in Cambodia? I recommend that the two focus mainly on what I would call a civil society approach and that USAID sometimes calls the "demand" side of rule of law work. This includes continued support for CDP. It could also include assistance for related activities such as strengthening investigative journalism capacities.

With continued support, CDP should continue its efforts to decentralize its program, become a purely Cambodian NGO and work on civil litigation. It also should try to become more of a general resource for the Cambodians in general and the NGO community in particular. Though litigation would remain an important component of its work, its personnel might also address crucial legal needs by becoming involved in non-judicial dispute resolution, land issues and the status of women.

I am more hesitant about recommending future support for the "supply side" activities represented by CCTP. This is by no means a criticism of the clear dedication and skill of the current CCTP staff, or of their progress to date. But I wonder whether obstacles to reform are rooted in problems that a civil society approach better attacks, and whether even large, direct investments in the courts can translate into significant improvements in the quality of Cambodian justice.

The considerations that underlie the proposed civil society strategy include: the need for modest, long-term expectations; the possibility that United Nations Centre for Human Rights may more appropriately work intensively with the courts; the fact that it may not be in the interest of very corrupt and politicized court personnel to promote respect for human rights, increased access to legal representation and dispute resolution consistent with the law; the likelihood that the best programming opportunities accordingly lie in civil society; other Asian experience in which a civil society approach has been far more successful than working directly with the courts; USAID's own guidance paper, Weighing in on the Scales of Justice, which

strongly favors a civil society (or "demand side") approach in situations resembling Cambodia's; cost effectiveness; and political, managerial and institutional identity considerations facing the Law Group.

One final consideration reflects the distinction between legal system reform and technical improvement. The former consists of genuine government efforts to combat court corruption and politicization. These include concrete actions that punish corruption, limit political influence and evince real commitment to an honest, independent and fair court system. Raising court personnel's meager salaries might be part of this process, but cannot stand alone in a legal system in which patterns of corrupt conduct are deeply ingrained. The carrot of increased compensation may help, but not without the stick of enforcement.

In the absence of strong pro-reform actions, then, technical improvements in court personnel's or judicial institution's capacities have limited utility. The distinction merits emphasis because reform and technical improvement are sometimes confused and because the level of foreign aid for court improvement can and should hinge on the difference. If and when the Cambodian court system experiences genuine reform, substantial levels of support may be justified. Until then, a reform-promoting civil society strategy makes the most sense.

Nevertheless, there might be some possible value in USAID and/or IHRLG pursuing a modest continuation of CCTP. Though I heard a variety of arguments for and against this, several thoughtful sources whom I very much respect maintained that such a program might be worthwhile. I am accordingly reluctant to offer any absolute recommendation against further assistance for educating court personnel, especially based on a short consulting assignment.

What are some arguments for continued support for CCTP? A modest investment might be justified by the possibility that at least a small percentage of court personnel would capitalize on training to decide some cases more fairly and competently. Continued CCTP operations also might supplement the strategy of strengthening legal aid, human rights and other civil society forces, so that they occasionally encounter more knowledgeable audiences in pressing their cases. And it might modestly and

informally affect some attitudes among MOJ and court personnel, making them slightly more receptive to these NGOs. CCTP might supplement and fortify a civil society strategy, then.

The issue of project sustainability pertains to these projects in particular and to similar projects down the road. It might be most appropriate to think in terms of sustainability of impact rather than of the projects themselves. [Whether an NGO such as CDP endures is less important than whether it has lasting effects on populations, policies and practices] In addition, even in the United States and other Western countries, most human rights, legal services and public interest groups are not truly self-supporting. They depend on funding from domestic foundations, donations by relatively affluent and progressive citizens, or government grants. Such sources are limited or nonexistent outside the West. What we accordingly might expect from effective NGOs is that they try to diversify their foreign funding sources over time, not that they become self-sustaining. *Good point*

Considerations regarding impact sustainability as opposed to organizational sustainability apply even more to CCTP. Will its expatriate provincial advisors' impact on court personnel's behavior and other local conditions continue after they depart? Time may tell, in the form of observations by legal aid and human rights NGOs, and possibly the data collection discussed in this report.

The sustainability of CCTP's training (as opposed to provincial mentoring) functions hinges on the MOJ and/or another body taking over such work. A continuation of CCTP should see MOJ begin to assume the costs of court training and related work, while benefitting from expatriate advice. Financial sustainability would stem from this assumption of costs. Technical sustainability would flow from the transfer of training and related skills from the expatriates to Cambodians.

Regarding future legal aid and court training projects in other countries, USAID and the Law Group should consider personnel selection and retention policies that draw in individuals with development experience, and that place at least as much emphasis on personal style as technical skills. Managerial style and experience also are important for project directors. The Law Group merits considerable praise for bringing

in women to work at all levels of its projects.

Also in a more general vein, the most effective approach to training and mentoring seems to be a problem-centered one that addresses the specific issues that actually arise as judges, court personnel, legal aid representatives and NGO workers do their jobs. Such an approach focuses on informal advice, basic lessons, a country's own laws and in-country personnel. It places less emphasis on structured and ambitious training, detailed attention to comparative and international law and short-term visiting trainers. Future court assistance and legal aid projects also should look to coordinate carefully regarding common results, indicators, province-level activities and training.

Finally, the Law Group should continue its internal review through which it is learning from its experience in Cambodia. The review should result in a short guidance paper for internal use. IHRLG occupies a unique and potentially vital niche in the international legal community, in that it has one programmatic foot in the human rights field and the other in development. This evaluation hopefully will feed into its internal review and fortify its evolving role in legal systems development.

I. INTRODUCTION

How can the International Human Rights Law Group (IHRLG or the Law Group) and the United States Agency for International Development (USAID or the Agency) best help to build an equitable legal system in a shattered society? How can they do so in Cambodia, a nation racked by war, genocide and foreign occupation for over two decades, and where endemic poverty, politicization and corruption hamper the legal system's operations? Such questions underlie this evaluation of IHRLG's Cambodian Defenders Project (CDP) and Cambodian Court Training Project (CCTP).

The evaluation is based mainly on my January 29-February 12, 1997 visit to Cambodia. That visit included field trips to review the work of CCTP's office in Kampot province and CDP's office in Kampong Thom province. I also observed a criminal trial and an appellate hearing in Phnom Penh.

During, before and after the Cambodia visit, I conducted approximately 70 interviews with approximately 130 persons currently or formerly involved with the two projects, otherwise familiar with them, or more generally knowledgeable about Cambodia. This included a two useful and extended discussions with the IHRLG's Program Director, during which he offered feedback on two previous drafts of this report. The report also draws on extensive documentation provided by the Law Group and other sources.

I try to make this evaluation as forward-looking as possible, for a combination of reasons. First, a useful short-term consultant brings to any country a comparative, fresh

perspective on possible future directions. This report hopefully will help IHRLG and USAID, both in Phnom Penh and Washington, think through the difficult questions posed above. The questions of course pertain to Cambodia. But they may also arise in future situations spawned by the New World Disorder.

Second, by mainly focusing on the future I hope to frame the analysis constructively. This is particularly important in view of the histories of CDP and CCTP. It is no secret that both have had their managerial ups and downs--though their main problems seem to be behind them. Rather than rehash in detail what went right or wrong, and who was responsible, the report more usefully concentrates on lessons learned and future directions.

Finally, a consultant promises too much and delivers too little if he or she passes firm, final judgement on a series of decisions and actions stretching back for years and involving a complex array of actors and factors. Two weeks in-country, or even two months, do not substitute for the experience of those based there. I accordingly see evaluation as part of an ongoing learning process, whether or not a given project continues.

The focus on the future is a matter of emphasis rather than exclusion. I do address the major items raised by the December 1996 "CCTP/CDP/USAID Evaluation" Terms of Reference provided by the Law Group. I also address the many other items in the Terms of Reference, as well as additional matters that IHRLG or USAID suggested I review. And this does involve reaching some conclusions and impressions about the projects' accomplishments and where they stand. But I pay more attention to where the Law Group and the Agency go from here.

The evaluation treats CDP and CCTP separately where possible. But where it seems more useful to discuss the two together regarding certain issues, I do so.

II. BACKGROUND ON THE PROJECTS

Though very different projects, both CDP and CCTP grew out of a recognition by the Law Group and USAID of the multi-faceted problems afflicting the Cambodian legal system. In part, these insights stemmed from the work of another Law Group project, the Human Rights Task Force on Cambodia (the Task Force).¹ The Task Force, staffed partly by foreigners with relevant experience, advises and assists Cambodian human rights NGOs.

¹ The Task Force is not funded by USAID.

A. Funding

The Law Group launched CDP in 1993 through a \$350,000 subgrant from The Asia Foundation (TAF). This subgrant (TAF Grant No. 05-0001-05201) drew on funds that USAID had awarded TAF for a series of democracy-related projects. It began November 15, 1993. CDP also received early funding from the Swedish International Development Agency and, in 1995, from the Dutch nongovernmental body NOVIB.

Starting in 1995, the two projects were funded by two successive USAID cooperative agreements: No. 442-0110-A-00-5501-00 (Provincial Court Reform Project, awarded Feb. 10, 1995), which was authorized for \$2,487,427 (subsequently amended to \$2,644,878); and 493-A-00-96-00002-00 (Cambodian Court Training Project, awarded May 21, 1996), which was authorized for \$3,000,000.² USAID funding under the second agreement is slated to end on December 31, 1997. Understandably, not all of the line items in the cooperative agreements distinguish support for CDP from support for CCTP.³ But the latter received approximately two-thirds of the funds.. Of the line items that are attached to one project or the other, \$2,881,398 was specified for CCTP and \$1,428,525 for CDP. Of the cooperative agreements' combined, amended budgets of \$5,644,878, the remaining \$1,334,955 was for general and indirect costs not broken down by project in the agreements.

B. Cambodian Defenders Project (CDP)

The work in the early 1990's of the Task Force, its Cambodian partner NGOs and the Human Rights Component of the United Nations Transitional Authority in Cambodia (UNTAC) made clear that there existed a need for defense counsel for accused

² These figures are exclusive of the Law Group's counterpart contributions. For the first cooperative agreement, that contribution was \$829,142. It was \$450,000 for the second.

³ Even though the Law Group's original proposal and the first USAID cooperative agreement refer to a "Provincial Court Reform Project," the more politic and accurate "Cambodian Court Training Project" was soon adopted.

individuals, many of whom languished in appalling prisons indefinitely before trial. This helped result in the founding of CDP.

The organization's work in 1994 mainly consisted of classroom and practical instruction for twenty-five carefully selected Cambodians to serve as public defenders in criminal cases. These individuals were not lawyers. But in a nation whose population of attorneys was almost completely wiped out during the 1975-79 Khmer Rouge regime, their legal knowledge and skills are relatively sophisticated. Their training and subsequent supervision, as well as management of the project, was undertaken by expatriate technical advisors (mainly but not exclusively American) recruited by the Law Group.

The defenders, as they are known, began representing clients in Phnom Penh in January 1995 and in the provinces the next month. A split within the expatriate leadership of the organization shortly thereafter hampered operations for part of the year. It also led to eight of the defenders joining CDP's former Director to found another NGO, Legal Aid of Cambodia (LAC). Despite the unfortunate circumstances accompanying this event, most observers feel that for both substantive and political reasons Cambodia actually is better off with two major legal aid organizations.⁴

With fifteen defenders remaining, CDP bolstered its staff in 1996 by bringing on fifteen 1995 graduates of a nearly year-long Lawyer Training Class (LTC) required for admission to the Bar. (This report uses the term "advocates" to refer to the CDP defenders and lawyers alike.) Under a special arrangement with the Cambodian Bar Association (CBA), however, these lawyers were selected and are paid by the CBA during their two-year contracts.

According to the head of the CDP-affiliated Cambodia Public Advocates (discussed below), CDP's staff of advocates is composed

⁴ There also are two smaller legal aid NGOs. In addition, there are at least three major Cambodian human rights NGOs. However, for the most part these are not staffed by lawyers or defenders. They instead turn to legal aid groups to provide court representation in cases with which they are concerned.

of sixteen lawyers and fifteen defenders. CDP recently hired five of the lawyers from among the graduates of the 1996 LTC. The majority of the defenders are enrolled in the 1997 LTC or in night classes at the Faculty of Law and Economic Sciences.⁵

It is crucial for defenders to become lawyers for two reasons. First, only lawyers are allowed to represent clients in court in civil cases. CDP has become increasingly involved in such cases. Second, under current law only lawyers may appear in court in criminal cases after December 31, 1997.

The civil work into which CDP has expanded includes land cases and those pertaining to the status of women. In fact, it has launched a fledgling Women's Litigation Unit that is working with another Cambodian NGO, the Project Against Domestic Violence. CDP also has moved beyond its original types of defense work to take on higher profile criminal cases, such as appeals and press-related prosecutions. It currently has offices operating in three provinces, and dispatches advocates from Phnom Penh to serve eleven others.

The defenders formed a separate Cambodian organization, Cambodian Public Advocates (CPA) in January 1996. CDP anticipates that its expatriate management will cease and that it will give way to CPA in the next two to three years. It had referred to this process as "Khmerization," but now utilizes the term "localization." Its expatriate staffing now consists of one director and three technical advisors, all attorneys. The expatriates are based in Phnom Penh, but make regular visits to provincial sites to advise and assist advocates in their work.

C. Cambodian Court Training Project (CCTP)

Just as CDP was partly an outgrowth of the Law Group's Human Rights Task Force, CCTP was partly an outgrowth of CDP.

⁵ The Faculty of Law and Economic Sciences is Cambodia's only law school. It offers three-year bachelor's degree and subsequent two-year master's degree programs (though the duration of these programs may be altered). With the 1997 LTC slated to be the last in the series, starting in 1998 the Faculty will become the only institution producing lawyers.

Experience with the legal system exposed IHRLG and USAID to the lack of training and resources plaguing Cambodian courts. They accordingly started CCTP in February 1995 to train judges, prosecutors and other court personnel; mentor court personnel from selected provinces; and provide minor repairs, renovations, materials and furniture to court houses.

Though the Law Group's June 3, 1995 proposed project work plan described a four-stage project lasting from February 1995 to March 1996, a number of factors came together to convert it into a more realistic three-phase project scheduled to last through 1997. It became evident, for example, that a longer-term presence would benefit CCTP's effectiveness. USAID appropriately responded with the second aforementioned cooperative agreement. Personnel turnover and other factors also contributed to a stretched-out implementation period.

Phase I included setting up the project and deploying expatriate Resident Legal Advisors (RLAs) and Cambodian personnel to five provincial capitals. The RLAs consisted of relatively senior legal personnel (called Senior Legal Advisors) and junior lawyers (called Legal Advisors or Judicial Assistants). In addition to providing advice in the locations where they were based, the RLAs also serviced from one to three additional courts in neighboring provinces. CCTP also recruited an expatriate Court Administration Advisor to develop recommendations regarding judicial administration and oversee the material assistance provided to the courts through the project.

CCTP also involved considerable training activity by personnel based in Phnom Penh and the provinces, and by short-term trainers brought in mainly from abroad. The latter's voluntary work for the project comprised part of the Law Group's counterpart contribution. The courses ranged over a wide variety of topics, including homicide investigation, criminal procedure, examination of a witness, judicial ethics, family law and court administration. Though Phase I funding actually extended past the first cooperative agreement's original termination date of March 31, 1996, for reporting purposes the Law Group confined Phase I reporting to that date.

Funded by the Law Group's current cooperative agreement, Phases II and III build on Phase I's work. They do so through

continued training, and through continued deployment of provincial RLAs through June 1997. With the September 1996 Congressional waiver for Cambodia of a general U.S. ban on foreign aid for police training, CCTP has begun to include police in its educational activities. CCTP currently has four RLAs based in the provinces, though one will cease working for the project by the end of March.

Phase III in particular is seeking to assist the Ministry of Justice (MOJ) in taking initiatives that will sustain the project's work. This assistance includes help for a new Judicial Education Committee, training for selected judges and prosecutors who could in turn train their colleagues, and preparation of a bench book.

III. THE PROJECTS' ACCOMPLISHMENTS

This section first briefly presents the methodology employed for evaluating CDP and CCTP. It then provides a description of positive changes to which the projects have contributed in combination with the work of other foreign and Cambodian groups. Finally, it offers more specific examples of accomplishments of the two projects.

A. Methodology

I generally try to evaluate NGOs on three levels:

National/Policy Level Impact: respects in which an NGO favorably affects governmental decisions with national implications, or otherwise influences national developments. In the case of CDP and CCTP, the impact includes actual or likely widespread effects on court capacities, decisions and policies.

Provincial/Local Level Impact: respects in which an NGO favorably affects government decisions or other developments on a

local level. Again, court capacities, decisions or policies are part of this picture.

Organizational Progress: the NGO's own evolution, in terms of reach, sophistication and overcoming obstacles.

Wherever possible, I try to verify and supplement information provided by NGOs themselves by consulting independent sources and documents that tend to confirm or provide additional evidence of their accomplishments.

My general evaluation methodology also addresses problems and challenges confronting NGOs whose work I am reviewing. I do so in this paper, but in the context of discussing broader issues in subsequent sections.

One additional perspective that pertains to NGO operations in some societies, and that certainly embraces law-oriented groups in Cambodia, is the big picture of how such groups have contributed to overall progress regarding the rule of law (ROL). The evaluation of CDP and CCTP starts with this overview.

B. The Two Projects' Contributions to Overall ROL Progress

One important way of appreciating the work of CDP and CCTP is to put it in the context of the collective achievements of Cambodian and international actors. When UNTAC's Human Rights Component began its work several years ago, it encountered an abysmal human rights situation. Politically motivated arrests were common. In at least some parts of the country, the government basically locked up prisoners of all stripes (whether their alleged offenses were political or more mundane) and threw away the key. Beatings, torture and other inhumane treatment of prisoners were practically the norm. Secret jails existed, in which military officials detained prisoners for ransom.

While the notion of representation for defendants existed, it was honored sporadically at best. And those defending prisoners were untrained. Similarly, judges, prosecutors and other court personnel had little useful training. Indefinite detention of suspects for weeks before arraignment and more than a year before trial occurred frequently.

This situation has improved, according to Cambodian human rights NGOs and other sources I interviewed. Courts in some provinces not only recognize the right to counsel, they actually reach out to NGOs to help implement it. Similarly, there is reason to believe that six-month limit on pre-trial detention is more widely respected than before. The same applies to the requirement that within forty-eight hours of arrest police produce accused individuals for interviews by investigating judges.

Some prison conditions have improved. Politically motivated arrests have not disappeared, but are less common. It may be overly optimistic to suggest high profile court cases have begun to set firm boundaries on what the Government can legally or politically do. But they have at least added positive elements to the calculation it must undertake in mounting prosecutions.

What's more, the presence of legal aid representatives, human rights NGOs and foreign court advisers in many provinces has added a very rudimentary element of accountability to the legal system's operations--at least for some courts under some circumstances. It also has expanded the skills and perspectives of those involved with the system to varying degrees.

Of course, the rule of law by no means reigns in Cambodia. As discussed in greater detail below, corruption and politicization saturate the legal system. Police and military officers operate with virtual impunity, regardless of the degree of human rights abuses they commit. The enhanced skills and perspectives of some involved with the legal system do not automatically translate into actual impact on the lives of Cambodians enmeshed in the system. But the fact that Cambodia has a long way to go does not negate that fact that it has come a long way.

CDP and CCTP have been significant players in the panoply of actors that have contributed to the positive changes that have taken place. UNTAC, the United Nations Centre for Human Rights (UNCHR), USAID, USAID-supported organizations, the Law Group's own (non-USAID funded) Human Rights Task Force, other foreign organizations and, most of all, Cambodian NGOs all merit recognition. Would the aforementioned positive developments taken place without CDP and CCTP? To varying extends. But would

the progress have been more substantively and geographically restricted? Yes.

C. Cambodian Defenders Project

1. National/Policy Level Impact

Most fundamentally, CDP has helped introduce the notion and reality of legal aid to the Cambodian legal system at a crucially formative stage in its development. It is not the only such organization providing the service, but it has been the most significant one. I am reluctant to grant too much credence to comparative statistics so early in CDP's evolution, particularly in view of the problems that hampered its operations in 1995. Still, it may be significant that the percentage of its cases stemming from court referrals increased from 19.8 in 1995 to 33.8 in the first nine months of 1996 (according to its December 1996 Semi-Annual Report).

In citing CDP case work as an example of impact, I am not saying that USAID and IHRLG simply created an accomplishment by funding the project. Rather, they have entered the picture at a time when the Cambodian legal community's attitudes toward NGOs and legal aid are more malleable than they might be even a few years down the line. The Government may not be welcoming NGO legal aid with open arms, and the Cambodian Bar Association may have some ambivalence about NGO independence. But at least CDP has established itself before such attitudes become too harsh and ossified. NGO legal aid is becoming part of the definition of the legal system, unlike in other societies.

More concretely, by dispatching advocates to handle cases at the request of courts and human rights offices in several provinces, CDP has established the right to counsel in practice where in many instances it only existed in theory.

A number of sources volunteered that CDP also has affected the evolving legal community by improving the quality of the 1996 and 1997 Lawyer Training Classes relative to the 1995 LTC. Of course, its positive impact on the selection process was partly to ensure that its own defenders could have fair access to opportunities to become lawyers--which is itself a legitimate goal, given their legal knowledge and skills. But it has a wider

impact. By all accounts, the quality of those selected and the process by which they were selected has improved.

CDP also has made a mark regarding a number of noteworthy cases with national implications. As verified by two Western journalists who cover the court system, these include press prosecutions. In one instance, for example, it mounted a spirited defense of a Cambodian journalist. Though he was convicted, the public attention CDP helped generate contributed to his receiving an amnesty a week later.

It would be stretching matters to claim that favorable decisions CDP has obtained constitute legally binding precedents. But these at least constitute the bases for informing a cautious court system that greater attention to citizens' rights is permissible. They constitute a kind of political precedent.

Ironically, CDP is in effect responsible for the launching of LAC, the aforementioned NGO that split off from CDP in 1995. In noting this, I do not want to put too positive a spin on a very unfortunate, acrimonious episode. But the fact is that Cambodia is better off with two major legal aid NGOs than with one. It means that not all of the society's legal aid eggs are in one basket.

Finally, some provincial developments fostered by CDP may provide the basis for national replication. They may have significant implications for recognition of due process rights. One example is a January 24, 1997 letter of instruction issued by the Kampong Cham court president to police, requesting production of evidence for the court to use in trial. This is discussed in further detail below.

2. Provincial/Local Level Impact

By virtue of its representation of significant numbers of defendants, CDP is bringing some degree of accountability to courts that heretofore have felt free to treat defendants' rights with minimal respect. As CDP itself recognizes, however, it needs to keep working at upgrading the skills and assertiveness of its personnel.

Another provincial level accomplishment of CDP pertains to

how the courts interact with law enforcement officials. A particularly promising accomplishment in this regard is the aforementioned issuance of instructions by the Kampong Cham court president to such officials in his province. Very soon after hearing a case in which CDP raised the issue of the lack of evidence brought forward at trial, he sent a memo to provincial law enforcement officials, requesting the production of such evidence. What is especially noteworthy about this event is that the judge has been hostile to CDP, both in general and specifically (and quite vocally) in the case in question. Whether he and the provincial law enforcement authorities will follow through on his letter is another matter. But given that he did not have to issue it to begin with, there are grounds for cautious optimism.

CDP provides encouraging statistics regarding such matters as acquittal rates, dismissal rates and forced confessions in the provinces in which it operates. Its December 1996 Semi-Annual Report cites respective acquittal and dismissal rates of 18.8 percent and 15.3 percent (for a combined total of 34.1 percent) for the first nine months of 1996, and (coincidentally) the same rate for reduced sentences for those clients found guilty. While providing grounds for cautious optimism, I am not at all certain that they provide a reliable comparative basis for documenting impact. I address this point in a subsequent section.

3. Organizational Progress

CDP has made considerable progress since starting from scratch and suffering a debilitating split in its early going. Many managerial challenges await the new, recently arrived director, not least of which is helping CPA to get up and running. But the expatriate team with whom she will work seems quite competent and extremely dedicated. It is commendable that the team recognized the need for intensive training for CDP advocates earlier this year, and acted on this recognition. CDP also has recognized that CPA needs further strengthening before it is ready to operate completely independently.

Renewed training of advocates and strengthening of CPA could be interpreted to reflect respects in which CDP's earlier efforts in these regards fell short. But at least with regard to training, the fact is that lawyers everywhere require ongoing

efforts to hone their skills. Cambodia and CDP certainly are not exceptions to this rule.

In addition, the renewed training and institution-building more meaningfully indicate an ability to acknowledge and deal with organizational difficulties. CDP's expatriate staff's own internal problems hopefully in the past, the organization now is meaningfully grappling with a very difficult operating environment.

I commend CDP for expanding into civil work. I recognize that there is a balance to be struck. There is the danger of spreading itself too thin. But its Women's Litigation Unit is a very worthwhile initiative that could contribute greatly to the legal lot of half of the country's population over the long run. Similarly, the central importance of land issues for stability and equity in a post-war society merits attention. It is therefore significant that 60 percent of CDP's civil cases involve land disputes. The potential for CDP to address civil matters outside the court system is addressed later in this report.

Again, it can be misleading to rely too much on statistics, particularly in the early stages of an organization's development and CDP's own problematic experience during 1995. But there has been an increase in 1996 in the absolute number of (combined civil and criminal) cases handled to disposition and the number of cases per advocate. Of course, with the latter standing at one disposed case per advocate per month, there remains room for significant improvement.

Finally, the legal knowledge of defenders compared to lawyers and other individuals was cited by several sources I interviewed. For example, defenders tended to score the best on exams they took in connection with a University of San Francisco continuing legal education class. This does not mean that their knowledge of the law is very deep or sophisticated yet. Nor does it signify that most yet evince a level of assertiveness that may be necessary for vigorous legal representation (even allowing for the fact that Cambodian legal culture will always be far less adversarial than that of the United States). But the CDP training and experience has in effect made them relative experts in a society where nearly everyone is starting from scratch.

D. Cambodian Court Training Project

1. National/Policy Level Impact

A February 12, 1997 memo from CCTP's Consulting Judicial Educator summarizes recent successes stemming from a February 7 meeting with the Minister of Justice. CCTP obtained endorsements for the formation of a Judicial Education Committee, the preparation of a bench book and training of selected judges and prosecutors who in turn will train their colleagues. In addition, the Minister expressed interest in an education advisor for his staff.

These clearly are noteworthy steps forward. As explained below, whether these will translate into likely impact on the courts' operations is another matter involving political will and a host of other factors. At the very least, though, the project deserves credit for at least sparking some preliminary governmental interest in upgrading court personnel's skills.

A more modest potential breakthrough by CCTP came late last year when the Minister agreed to change the physical set-up of court rooms. He agreed to instruct courts to arrange for defense advocates tables to be placed at the same (raised) levels as prosecutors. Though this had not occurred by the time of my visit, it could be that the change will yet be implemented. If so, it will both cause and reflect enhanced stature for the advocates.

2. Provincial/Local Level Impact

Though CCTP has begun to gather statistics, most are not yet at a point where they provide a sound comparative basis for assessing changes in court practices and procedures. For understandable reasons discussed below, testing its impact on the knowledge and skills of court personnel has proven difficult.

The project does provide a number of observations by its Resident Legal Advisors that tend to indicate that court personnel are responding to their advice in some ways. On November 6, 1996 in Kratie for example, a judge dismissed a case against a defendant because, in violation of the law, the police had detained him for more than forty-eight hours before bringing

him before the court. This seemed to affect police conduct in a subsequent case. On November 9 they brought a suspect to court on a Saturday, apparently to act in accordance with the law. Similarly, following a CCTP pre-trial detention training program in Kampot, all seven prisoners who had languished in jail for more than the legal maximum of six months were either released from prison or brought to trial.

CCTP also has improved the basic physical infrastructure of certain courts. This has included rudimentary repairs, furniture and file cabinets.

Some of CCTP's most interesting results have occurred outside the court system. For example, its Kampot-based Legal Adviser seems to have made a singular contribution to local prison conditions. Her dedication to this is evinced in the fact that her name appears more than any other in the prison register of visitors. But her impact extends far beyond de facto monitoring of conditions. Working with an apparently open-minded prison director, she has helped improve the inmates' living and working conditions.

Local offices of human rights NGOs volunteer that she has helped strengthen their operations. This has included providing advice on the law and on how to prepare files for submission to the courts. She also has coordinated court cooperation with the NGOs in arranging defense counsel for the accused in the province.

Furthermore, her work with her local staff has helped two individuals to become extremely knowledgeable resource persons for the government or the NGO community, should they decide to remain involved in legal affairs. Moving closer to her formal mandate, she has made her computer available to the local prosecutor for him to upgrade his computer skills. CCTP will donate the machinery to the court when she departs Kampot.

On the other hand, without even knowing about my visit to Kampot, two well informed sources (one foreign, one Cambodian) cited its courts as among the most corrupt in the country. Even if true, this is by no means a criticism of the RLA. She has been quite clear about her opposition to graft. Nor does it diminish what local court personnel cite as her contribution to

their technical knowledge. But it does put that contribution in perspective.

It could well be, then, that her considerable impact on the local legal system will consist more of improving aspects that fall at the periphery of work with the courts, such as her work with the prison, local NGO offices and her own staff. If this is in fact the case, there is nothing wrong with this turn of events. As discussed later in this report, such unanticipated results lie at the heart of many democratic and legal systems development projects.

Furthermore, though I place this impact at the periphery of her work with the courts, it is by no means at the periphery of CCTP's program. It is to the project's credit that it has given its RLAs the leeway to seize all opportunities to make a difference.

Of course, it is difficult to assess the degree to which the Kampot RLA was representative of CCTP. She was far more plugged into her local community than some other advisors, and stayed quite a bit longer than average.

3. Organizational Progress

Almost all sources I consulted feel that, after periods of problematic management, CCTP appears to have settled in to a final phase of stable, competent leadership. That leadership exhibits a good blend of Western administrative knowledge and sensitivity to Third World operating realities. It seems ready and able to make concrete contributions to the MOJ's future judicial education efforts, if in fact the Ministry is prepared to seriously pursue such efforts.

IV. THE DONOR-GRANTEE RELATIONSHIP

My terms of reference specifically ask that I "evaluate the donor/grantee relationship." This section briefly and constructively reviews the current and recent relationship between USAID and the Law Group. This includes assessing factors that have affected the relationship, mainly in order to look toward positive future interaction between the two organizations in Cambodia and beyond.

As per other parts of the terms of reference, the discussion goes on to review considerations pertaining to the two projects' results frameworks and customer service plans. It then proposes ways of most usefully employing these and related devices in the future.

A. A Productive Partnership

Though managerial and reporting issues at times complicated the USAID-IHRLG relationship in the past, the bottom line is that the two have worked together to forge a productive partnership. CCTP is now on an even keel both internally and in terms of relating to the Agency's Cambodia Mission. With the arrival of a new director, CDP's improving relationship to the Mission promises to be the same. It is to the Mission's credit that it has maintained support for the projects through managerially hard times.

It is to the Law Group's credit that its projects ultimately have been productive in the face of numerous obstacles. One is starting projects from scratch in a very difficult environment. The human resource base in Cambodia is very limited. Political, economic, cultural and historical factors presented significant constraints not encountered in many other countries.

A related challenge has been the need to recruit skilled

legal professionals to work in this difficult environment. Coupled with the fact that lawyers can be strong-willed, and litigators especially so, it was perhaps inevitable that personalities and opinions might clash while IHRLG refined its personnel recruitment and retention practices.

The Law Group has benefitted from this experience. Relatively new to working with USAID and projects this large, IHRLG presumably has acquired greater expertise in relating to the Agency regarding such matters as reporting, preparing work plans, planning budgets and identifying counterpart contributions.

In subsequent sections of this report I offer various suggestions on how future projects could benefit from the Law Group's experience in Cambodia.

The experience with IHRLG also may be educational for USAID. The Law Group is by no means an unsophisticated outfit when it comes to relating to funding sources, including bilateral donors. Many systems and policies the Agency has in place consume considerable amounts of its partner organizations' time and effort. This can be regardless of the nature of the organizations or the identities of USAID personnel involved. The Agency needs to work with NGOs such as the Law Group because of the skills, perspectives and credibility they bring to democratic and legal systems development. As the Agency continues its reengineering process, it hopefully will consider ways of streamlining its operations and making them more flexible. This report touches on one respect, evaluation, in which it could start to do so.

B. Results Frameworks and Customer Service Plans

As I advised the Law Group at the outset of my assignment. I am not delving into detailed recommendations regarding the two projects' results frameworks and customer service plans. This is partly because of the limited time available for preparing the report. In addition, not all of the data associated with these processes has yet been collected or analyzed.

Of greater significance, however, is the fact that the Law Group, USAID/Cambodia, USAID/Washington, Management Systems

International (the consulting firm that has advised CCTP and the Cambodia Mission on results and indicators) and the March 1996 Cambodia Rule of Law Assessment Team already have invested considerable time, effort and, in effect, U.S. Government funds, in framework construction and reconstruction. Much of this effort has been devoted to the two projects.

Added to these other inputs, detailed recommendations from me at the point could push the process to the point where too many cooks spoil the broth. Such comments might work at cross-purposes to the sensible MSI recommendations contained in an October 2, 1996 memo to CCTP and to CCTP's equally sensible November 21, 1996 response.

Furthermore, dealing with detailed recommendations might distract the two projects from more important tasks at hand, which involve pursuing their results rather than refining means of determining them. Results frameworks and customer service plans are tools that can only consume a certain amount of USAID, grantee and consulting firm time before they become counterproductive. This is not due to the Mission or its grantees, but rather to the nature of the process.

In addition, USAID/Cambodia may well revise its rule of law programming in the coming year. This could be a wise move. But it may obviate the utility of some of the data generated by the results framework and customer service processes.

Finally, these tools' utility also is limited by the unpredictable nature of legal and democratic development work. The best development projects I have seen yielded results that could not have been predicted in results frameworks (had the frameworks existed at the time). In the end, we must assess democratic development projects such as CCTP and CDP by analyzing results that reach beyond frameworks; by weighing their relative significance; and by taking into account the societal contexts at play. In other words, our assessments come down to inevitably subjective judgments--hopefully well informed, but subjective nonetheless.

Generally, then, I endorse the results and indicators currently in place. Looking toward at least one of these projects possibly continuing into 1998, however, I suggest the

following steps.

1. Identify Comparative Data

How can we know whether either project has made a difference in the provinces in which it operates? Two basic mechanisms are comparative. One would assess progress over time in such provinces. Another would compare progress with provinces where the Law Group does not have a presence.

What I propose here is a variation on a very good idea put forth by the USAID/Cambodia Democracy and Governance Office in a December 10, 1996 memo to the Law Group. Instead, however, of a comprehensive classification of the provincial courts nationwide (as suggested by that memo), USAID and/or the Law Group would collect data in those provinces where the latter has a presence and a limited number of "control" provinces where it does not.

And instead of the considerable list of items that the memo identifies as bases for classification, a narrower range would be scrutinized. I would place a higher priority on bottom line considerations such as police conduct, detention practices and prison conditions. These are more important than intermediary improvements such as refurbished physical facilities and filing systems.

2. Coordination with Other Organizations

The whole process of identifying data that merits comparison should include (as the memo suggests) UNCHR and other international agencies. It also should include other local human rights and legal aid NGOs. Depending on the outcome of such discussions, USAID and the Law Group can then proceed to gather data on their own or in cooperation with other organizations.

3. The Limits and Usefulness of Data Collection

I do not suggest that such identification of comparative data provides a conclusive scientific approach to assessing what does and does not work in promoting the rule of law in Cambodia. This observation applies to any indicators employed by a results framework anywhere. Too many external actors and factors affect the impact of any project and how that impact can be ascertained.

The presence of the UNCHR Judicial Mentor Program (which is vaguely similar to CCTP) and the NGO Legal Aid of Cambodia in certain provinces, for example, affect the comparative data that could be gathered. So do a host of imponderable local political conditions.

What this comparative data can yield, however, are trends or tendencies regarding how given projects and activities affect delivery of justice. It could, for example, reveal how the presence of a legal aid advocate affects key indicators over time or relative to a province lacking one. Similarly, the imminent departure of CCTP legal advisors from provincial bases provides an opportunity to assess whether changes they help put in place last long after they leave the scene.

Of course, actually collecting data is even more of a challenge than deciding which data to collect. CCTP's difficult experience with gathering information based on attending investigations and on pre-and post-training tests for judges attests to this. I touch on these specific problems below. For now, I just emphasize that this issue needs to be addressed in preparing to gather comparative data.

4. Issues Regarding Data Collection in 1997

If at all, possible, the above process should begin in 1997. Whether and to what extent information already collected by USAID and the Law Group provides a basis for useful future comparison hinges on decisions the Agency makes regarding the future of its law program. To the extent that it decides on the direction, it can act accordingly.

USAID may find that it needs to start collecting data outside the realm of the Law Group's projects. To the extent that the Agency might start focusing on alternative dispute resolution, for example, this calls for information that lies beyond the formal court system's operations.

Another issue is who does the data collection. The Law Group already may be stretched thin by existing responsibilities. My review of USAID-IHRLG correspondence and other documents indicates that funds are available for a joint CDP/CCTP program officer for results documentation. For example, the Mission's

September 25, 1996 letter to the Law Group identifies \$29,000 available for customer survey expenditures and points out that delays in filling staff slots presumably opens up further funding to hire a "reports writer/results monitor."

The Law Group might want to use these funds to contract with an independent Cambodia-based organization to gather information. This may have the advantages of greater objectivity and of avoiding the complications that arise when an organization reports on its own progress. Should the IHRLG feel that it already is stretched enough with its other responsibilities, or should USAID feel that it needs to gather information that reaches beyond Law Group operations, perhaps these funds could be re-programmed to allow independent contracting by the Mission.

5. Results Memos

CCTP provided me with two short memos regarding specific examples of the results of its work. These are very useful devices for evaluation. They tend to capture the many unpredictable ways in which project progress inevitably unfolds. Many of these cannot be easily captured in results frameworks, if at all. But they should be taken into account by USAID in assessing the impact of the Law Group or other grantees.

The one strong suggestion I have regarding these "results memos" is that they should not just draw on the observations and impressions of Law Group personnel. They should draw on third party verification whenever possible. These can be written sources, such as newspaper reports or the aforementioned memo from the Kampong Cham court to local police. They also can be statements by other persons involved or familiar with a given situation. Depending on the situation, these persons could be human rights activists, journalists, local officials, families of victims or defendants, or even representatives of foreign NGOs.

Such third party verification raises the results memos above the level of anecdotes, so that they constitute simple case studies. Enough confirmed examples of impact begin to comprise a pattern of overall project success.

Of course, the memos will not be wholly objective in any event. But they will be at least minimally verifiable. As such,

they will represent more than beauty in the eye of the beholder.

6. Implications for 1998: Simplifying and Supplementing the Results Framework

The 1998 strategic objective and results framework embracing USAID rule of law programs in Cambodia should draw on the comparative data collection proposed here. I suggest that the framework itself and the process of constructing it be as simple as possible. This may well mean fewer indicators and levels of intermediate results. It should involve minimal involvement by USAID/Washington.

Again, I return to the point that the frameworks are a tool. They are a product of a commendable Agency immersion in reengineering, which is substantially about streamlining processes and empowering line personnel. They become unwieldy if they consume excessive time and effort.

To supplement this simplified structure and process, however, the Mission should solicit the aforementioned results memos from the Law Group and other grantees. Though I have thus far described them with respect to qualitative data, they also could summarize the findings and importance of quantifiable results (whether gathered for frameworks or other purposes).

The results memos would serve grantees by communicating effectively to the Mission what they are accomplishing, regardless of whether the achievements had been anticipated in the result framework. They would serve the Mission by providing information that it could easily process and forward to USAID/Washington. And they would serve USAID/Washington by providing examples of Agency success that Congress and other outside audiences could much more easily grasp than some of the information packaged for a results framework.

7. Problematic Data Collection Techniques

The terms of reference asked me to comment on the legitimate difficulties that CCTP has had with two data collection techniques: attending investigations and asking reluctant judges to take pre- and post-training tests. CCTP's analyses of these difficulties strike me as quite sound. In fact, the use of post-

training tests may be even more problematic here than even CCTP realizes, in that the really useful tests need to be employed six or twelve months after training, to determine whether information is retained.

What I would propose, then, is that greater use of results memos could reduce the need for these techniques.

One other problematic evaluation device that merits scrutiny is asking trainees for feedback on the quality of the training. Even rave reviews may only reflect politeness. Furthermore, even sincere appreciation does not indicate whether participants learned much from training activities. And it says nothing about whether participants utilize any new knowledge on the job. Feedback of this sort can be useful if it generates information that improves future activities. But it says nothing about the training's effectiveness.

8. Implications for Customer Surveys

Management issues and differences of opinion seem to have delayed preparation of customer service plans and surveys for both projects. Again, for the reasons previously cited I am not going to delve into most details of the plans prepared by CDP and CCTP. I will provide some selective comments, however.

The first is that both customer service plans strike me as sincere efforts to respond to the needs of target populations. Furthermore, they in effect are implementing these plans in an effort to achieve the overlapping results set forth in their results frameworks. Two undated CDP documents, for example--one a "Customer Service Plan", the other a one page sheet titled "Cambodian Defenders Project" and listing intermediate results--both identify localization of CDP and facilitation of Bar eligibility for defenders as outcomes they are pursuing. They have made progress in both regards, though the latter more than the former.

At least as of my visit, though, neither project had customer surveys to share. Whatever the reasons for this delay, we perhaps can make the best of this situation.

How? I suggest that CDP and CCTP undertake a combined customer service survey. This suggestion stems from the belief that they are pursuing common goals regarding improved access to justice for Cambodians. This could chart the course for future work by one or both projects. It also builds on a very good idea floated by the President of the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) at a meeting I attended of legal aid and human rights NGOs. Her suggestion was to identify Cambodians' greatest legal problems and needs. The customer service survey could do that.

I realize that this suggestion runs counter to the thoughtful arguments presented in CCTP's Customer Service Plan. Those assert that court personnel, rather than the general public, constitute the Project's "customers." CCTP accordingly focused on court personnel to determine what the Project's objectives and activities should be.

These are well grounded points. They make sense in the context of a CCTP that was up and running. But as USAID and the Law Group decide where to go from here, they need to open up the field of possibilities again. A court system exhibiting technical improvements is not an end in itself.

There accordingly is a need to step back and determine whether such improvements, even if achieved, address Cambodians' greatest legal needs. A survey may indicate that they perceive corruption as the greatest obstacle to access to justice. Or it may point toward dispute resolution through non-judicial structures for legal problems that arise most frequently. In effect, then, the customer survey could serve as a baseline survey for future work.

V. STRATEGIC DIRECTIONS: PROJECT-SPECIFIC CONSIDERATIONS

Where, on a strategic level, do IHRIG and USAID go from here to promote the rule of law (ROL) in Cambodia? I heard many points of view from many people I deeply respect. I recommend that the two mainly focus on what I would call a civil society

strategy. (In USAID parlance, this is the "demand" side of ROL.) CDP, human rights NGOs and potential related activities embody this strategy.

I hesitate to recommend substantial future support for government-focused ("supply side") activities represented by CCTP. I do not question the clear dedication and skill of the current CCTP staff, or their progress to date. Quite the contrary. The project has made progress despite deep structural obstacles stemming from the corruption and politicization pervading the legal system. But I wonder whether those obstacles are rooted in problems that a civil society approach better attacks. I am concerned about whether even large, direct investments in the courts can translate into significant improvements in the quality of Cambodian justice.

Still, I heard several good arguments from several thoughtful sources to the effect that a scaled-back court training program could yield modest but worthwhile results. An investment in such a program might supplement and fortify a civil society strategy. I address whether and how to make such an investment below.

The issue of supply and/or demand programming lies at the heart of much rule of law work in Cambodia and beyond. It also holds implications for more general democratization assistance. I do not pretend that I do it justice in the brief discussion below. But my terms of reference ask for advice for the future. It is hard to provide such advice without at least sketching a strategic vision of what the Law Group and the Agency can and cannot accomplish. Here, then, are some of the considerations that inform this recommendation.

A. Modest, Long-Term Expectations

Cambodia obviously will take a long time to recover after more than twenty years of war, genocide, foreign occupation, repression and more war. The same applies to its legal system. I do not know what four years of Khmer Rouge terror, not to mention the trauma that many Cambodians suffered before and afterwards, does to a nation of survivors. But I do not doubt that a legacy of caution guides citizens, advocates and jurists who might otherwise be inclined to assert, defend and uphold

human rights.

The point certainly is not to give up on Cambodia despite whatever travails it may experience over the next few years. Rather, it is to keep our expectations modest and look toward the long term. We really are still at the stage of planting and nurturing the seeds of development that might grow into a rule of law eventually.

B. Other International Organizations' Work

I should emphasize that my questions about American support for court training beyond 1997 do not translate into an across the board condemnation of work with the Cambodian court system. I am not firm enough in my conclusions to assert that the work of the UNCHR or the French Government in this regard do not have merit (though CCTP informs me that the latter's in-country advisor frowns on the prospects for significant impact regarding current court personnel).

Nevertheless, my own analysis leads to a recommendation that USAID and IHRLG mainly focus their resources on building up those elements in the legal system that are most likely to be reform-oriented over the long run. Given what all sources report is an extremely corrupt and politicized court system, those reform-minded elements are mainly outside the Government.

In fact, there may be merit to the UNCHR pursuing its approach that involves judicial mentoring, while the Agency and the Law Group focus more on legal aid and related activities. The UN carries particular authority and credibility that may leverage more influence over judicial personnel. And the challenge of building up a legal culture that can affect justice over the long run is itself enough of a multi-faceted challenge for the latter two to focus on.

C. Interest-Based Programming

One lesson that emerges from development experience in general and democratization assistance in particular is that development projects are much more likely to succeed if participants and beneficiaries have a real interest (be it

economic, attitudinal or otherwise) in their doing so. This sometimes translates into an analysis of their incentive structures, and to what extent a foreign aid project can affect those structures.

Certainly, most Cambodians have an interest in the current versions of USAID/Cambodia Strategic Objective #1 (which includes "Respect for Human Rights"), Intermediate Result #3 ("Increased Access to Fair Representation in the Courts") and Intermediate Result #4 ("Property Rights Respected and Disputes Resolved Consistent with the Law in the Northwest"). The same applies to Cambodian human rights NGOs and to some or most CDP advocates. And with the inevitable sorting out and evolution of the legal aid community, it will likely apply even more so in the future. In time, evidence of dedication will become easier to discern among selected members of the growing legal community.

Is it in the interest of very corrupt and politicized court personnel to promote respect for human rights, increased access to fair representation and dispute resolution consistent with the law? It seems that such reforms cut against ingrained attitudinal obstacles and incentive structures largely resistant to training and advice.

As noted earlier in this report, two well-informed and independent sources cited one provincial court in which CCTP has been very active as among the most corrupt in the country. Another knowledgeable observer provided the example, not related to CCTP's program, of a police official who was castigated and suspended by his superiors for implementing modest reforms. These phenomena seem to reflect the justice system's underlying realities.

My point is not that we throw up our hands in dismay over such events. But a legal system is the product of the society in which it operates. A host of economic, political, cultural, social and historical forces shape the system much more powerfully than technical constraints on knowledge or skills. A focus on those underlying interests and incentives in Cambodia points toward a greater emphasis on civil society programming that can affect them over time.

This is not to dismiss the modest accomplishments of CCTP in

a very difficult operating environment. But by the end of 1997 CCTP will have put in place mechanisms that the Ministry of Justice can largely pursue with its own budget and resources if it has a sincere interest in addressing the intertwined problems of corruption, politicization, inadequate salaries and untrained personnel.

In fact, the terminating (or limiting and carefully conditioning) outside support might even have a salutary effect on the MOJ. Perhaps it will come to understand that such support hinges on its taking significant steps against corruption and politicization in the courts. If it does not act on this understanding, we face the question of its political will and the possibility that foreign aid targeted directly at the courts may have very little impact on the delivery of justice.

D. Opportunity-Based Programming

If in fact the array of political, institutional and economic interests within the Government cut against meaningful reform efforts, where could USAID and IHR LG focus their efforts to maximize impact on the legal system? I suggest that the best opportunities lie in nurturing current and potential trends in civil society.

I emphasize what I call opportunity-based programming because in the democratic development field we sometimes take an institution-based approach. The latter involves identifying the key institution(s) and pursuing programs aimed at strengthening them. In Cambodia, however, the central institution whose behavior we want to influence is a very corrupt and politicized court system. The aforementioned interest-based analysis weighs against relying on it to reform itself, even with considerable advice, training and material assistance.

Opportunity-based programming, in contrast, places a premium on identifying those individuals and institutions most likely to evince a commitment to reform. It also focuses on forces that may bring about change over the long haul. Whether those forces control key institutions today is far less important than the influence they could exert tomorrow.

E. Other Asian Experience

What does other Asian experience with court training and legal aid tell us about their prospects in Cambodia? I cannot present a comprehensive array of experiences here. But I believe that there are some lessons to be learned, based on countries where I have had some exposure.

Basically, efforts by TAF, USAID and other donors to bolster legal aid in a number of Asian nations have met with considerable success, in terms of benefitting specific policies, practices, communities and individuals. The Philippines (Golub 1993a and 1997) and Bangladesh (Golub 1993b and 1996) are the two examples with which I have the greatest familiarity, but they are by no means the only ones. In contrast, these same organizations' interest in improving judicial performance in these countries, Pakistan, Nepal and others have bumped up against corruption and lack of political will. The efforts were wisely abandoned as a result.

The experience I can speak to the most is the Philippines, where I was based from 1987 through 1993. There, the Asia and Ford Foundations and USAID found that legal services NGOs represented the best opportunities to affect the array of legal issues confronting most Filipinos. These groups ended up having significant impact on number of levels. Most basically, they concretely improved the knowledge and economic circumstances of an array of communities. In a few instances, they operated on a province-wide basis to affect governmental policies and practices. More frequently, they affected many national policies favorably. (In certain instances, in fact, they did so as consultants to USAID policy reform projects.) Finally, the very experience of some of these NGO leaders has enabled them to enter government in high positions, with significant ripple effects for policies and communities.

In combination with support for these legal services NGOs, donors began funding other civil society initiatives such as an investigative journalism center. The focus of that center ranged across a variety of issues, many of which had few legal implications. But it did develop some ground-breaking law-oriented stories. One expose revealed corrupt conduct by a Supreme Court justice. He resigned the following day.

I do not want to oversell these groups' accomplishments.

There are large stretches of the Philippine legal and geographical landscapes that they have not yet affected. In addition, the legal services NGOs generally have not focused on the court system per se. Their work concentrates on agrarian, aquatic, environmental and other resource allocation concerns, as well as gender issues. Some such matters are addressed by the courts, but more frequently they fall within the purviews of executive agencies and local governments. But these issues and governmental bodies affect far more Filipinos than the courts, and hold important implications for overall societal development. And the cumulative cost of funding these groups over several years came to considerably less than that expended on CCTP.

In contrast, experience with judicial administration and training was decidedly negative. The Asia Foundation engaged in literally a decade of intensive efforts to cultivate judicial support for these initiatives. It employed in-country training and research, numerous trips by Filipino jurists to the United States and American consultants to the Philippines, and Asian regional conferences for which Manila was the hub.

Of equal importance, the effort involved building up an array of high level personal contacts within the Philippine judicial and executive branches, up to and including the Chief Justice and Secretary of Justice. TAF succeeded superficially, in terms of establishing an institute of judicial administration, launching training projects and preparing bench books. But these did not translate into improved performance in terms of integrity or case-processing. In fact, by most accounts and despite pay raises, judicial corruption increased during the years of TAF's most intensive activities.

What's more, the obstacles to improved court performance ran far deeper than corruption, as widespread as it was (and remains). From top to bottom, personalism, patronage and an overall lack of dedication to real reform pervade the system even where money does not change hands. TAF staff and consultants could persuade judicial leaders to sign on to proposed reforms and initiatives, but could not convince them to pursue reform in a way that reflected local ownership of the projects. Judges trained to improve court administration were quite articulate regarding the need to attack such problems as court delay. Similarly, they praised the value of their training. But this

did not translate into changes in their conduct or impact on the problems. Such delay, for example, flowed far more from the aforementioned corruption, patronage, personalism and indifference than from lack of technical skills.

Though I focus for the moment on the Philippines, I could provide similar impressions and observations regarding other Asian nations. The point here is not to criticize well-intended donor initiatives that did not pan out. Rather, it is to learn from experience.

F. Worldwide Experience

The brief analysis of Asian experience is borne out by USAID's more general experience and findings regarding legal systems development. The Agency has had some difficulty in the past with programs that tend to be institution-based rather than interest-based or opportunity-based, and that accordingly may have taken insufficient account of political will (Carothers 1991 and United States General Accounting Office 1993, 2-4).

A more detailed analysis that points toward a constructive solution to this problem is offered by the policy guidance contained in a USAID Center for Development Information and Evaluation (CDIE) report. Weighing in on the Scales of Justice (Blair and Hansen 1994) concludes that in situations such as Cambodia, it would make most sense to build up the civil society institutions that could push for improved access to justice.

The one respect in which I might differ with the very good guidance embodied in the CDIE report is that it may be overly optimistic (though still worthwhile). I do not think that the "demand-side" pressure it advocates necessarily will bring about wholesale reform in a given country's legal system--at least not in the short or medium term, or solely by virtue of donor input. But, as with the Philippines experience on which it partly is based, such a strategy can yield significant, concrete benefits in terms of specific policies, practices, sectors and communities. And along with other actors and factors, it can contribute to widespread reform over the long term.

G. Cost Effectiveness

Another consideration that weighs in favor of a civil society strategy is cost effectiveness. We have seen instances of both CDP advocates and CCTP advisors/trainers having some impact on court operations. But even by a conservative estimate, approximately ten advocates can be maintained for a year at the same cost as one CCTP RLA. The cost factor accordingly weighs in favor of legal aid and other activities discussed below.

H. Considerations Regarding IHRLG's Institutional Identity

Substantive considerations (such as those laid out above) should primarily sway programming priorities. Nevertheless, the International Human Rights Law Group also may want to reflect on the extent to which projects like CCTP are consistent with its institutional identity.

More specifically, to what extent does the Law Group wish to constructively engage with individuals who are generally corrupt, who typically condone human rights abuses and who even perpetrate such abuses through misapplication of their powers? Though there certainly are exceptions to this rule, a court-focused strategy mainly would work with such individuals.

I express some doubts above about whether such constructive engagement yields long-term impact. But even if it does, does IHRLG see itself as an organization that partners with persons who evince a very questionable commitment to human rights? The Law Group is, after all, a human rights organization. Might such programs, to whatever extent they are worthwhile, better be left to international bodies that by their very nature engage with government officials (such as UNCHR)?

I. Political Considerations for IHRLG

A related matter for the Law Group is the extent to which it wants to be identified with the Cambodian government as elections approach and human rights problems likely intensify during 1998. Again, the bottom line is whether doing so makes substantive sense in terms of building a better legal system. But if substantive considerations tip the scale in the same direction as political ones, the latter become more salient.

J. Managerial Considerations

The Law Group also should consider the degree to which it wants to manage three complex projects in Cambodia. Continued judicial education work might be the most managerially complicated of the three. This is because it would involve the greatest amount of flexibility, responsiveness and prodding regarding a Ministry of Justice that is, at best, ambivalent about judicial reform.

K. Distinguishing Reform from Technical Improvement

One final consideration that weighs in favor of a civil society strategy is the distinction between ROL reform and technical improvement. The former consists of genuine government efforts to combat court corruption and politicization. It involves more than just making pronouncements, passing appropriate laws and establishing anti-graft bodies. Certainly, development experience indicates that laws are not necessarily enforced or institutions empowered.

The real test is concrete actions that punish corruption, limit political influence and evince a real commitment to an honest, independent and fair court system. Raising court personnel's meager salaries might well be part of this process, but cannot stand alone. Many sources in Cambodia feel that (as in the Philippines) patterns of corruption become difficult to break once they take hold. The carrot of increased compensation may help, but not without the stick of enforcement.

In the absence of strong pro-reform actions, then, technical improvements in court personnel's or institution's capacities have limited utility. The distinction merits emphasis because reform and technical improvement are sometimes confused and because the level of foreign aid for court improvement can and should hinge on the difference. If and when the Cambodian court system experiences genuine reform, substantial levels of support may be justified. Until then, a reform-promoting civil society strategy makes the most sense.

L. A Caveat

Having run through the above analysis, I now take a half step back to acknowledge the possible value of USAID and/or IHRLG pursuing a modest Phase IV for CCTP. As noted at the outset of

this section, I heard several good arguments from several thoughtful sources, to the effect that such a program might be worthwhile. Though I also heard others argue to the contrary, I respect these sources enough to conclude that they might have a point. I am accordingly reluctant to offer any absolute recommendation against further assistance for educating court personnel, especially based on a short consulting assignment.

What are these arguments? Even if a small percentage of court personnel capitalize on training to decide some cases more fairly and competently, it might justify a modest investment. It also might supplement the strategy of strengthening legal aid, human rights and other civil society forces, so that they occasionally encounter more knowledgeable audiences in pressing their cases. A CCTP Phase IV also would build on the project's success at eliciting MOJ interest in court training. As 1997 progresses, it may become clearer whether such interest translates into an MOJ commitment to educate court personnel (though I again emphasize that even acting on such a commitment does not address the deeper obstacles to ROL reform in Cambodia).

One additional argument that I did not hear, but that is plausible, is based on the prospect of attitudinal change. As discussed in Section VIII below, CCTP Phase IV could modestly and informally nudge the MOJ and court personnel toward being more receptive to legal and human rights NGOs, as well as other civil society groups. This aspect of the project would move beyond supplementing a civil society strategy. It would be a part of that strategy.

M. Ramifications and Recommendations for Cambodia Programming

The same considerations that favor a civil society strategy elsewhere seem to apply to Cambodia--perhaps even more so. Corruption, politicization and a lack of political will run even more deeply in Cambodia than in other societies where court training and administration efforts have failed. For example, judges and other court personnel are almost all loyal members of the Cambodian People's Party.

At the same time, the very fact that the country's first lawyers are entering the profession creates unusual opportunities for USAID and IHRLG to help shape their perspectives in ways that

could yield long-term impact. Finally, the rise of other promising components of civil society offers opportunities for NGOs and other organizations to favorably affect the legal system.

I do not mean to set up an analysis that pits CDP against CCTP, or that sees a civil society focus as excluding direct court assistance. In fact, the two projects have benefitted from one another's presence, to the extent that coordination has occurred. And there may well be situations where intensively pursuing both over the long term makes sense. (Later in this report, I address how coordination could be maximized in such situations.) It seems, though, that at this point Cambodia would benefit much more from a civil society strategy. IHRLG and USAID each need to decide whether continuing but modest attention to court training might supplement and fortify that strategy.

Sections VI, VII and VIII of this report build in part on the above analysis by addressing possible future directions for the Law Group's projects and potential related activities. Section VI focuses on CDP, Section VII on potential complementary programs and Section VIII on CCTP.

VI. FUTURE DIRECTIONS FOR CDP

In discussing a number of new directions regarding CDP, I am mindful of the organization potentially stretching itself too thin. I of course leave it to CDP to decide which ideas make sense, particularly in view of this factor. To the extent that these ideas have merit, but not for CDP at this stage, USAID might want to consider initiatives of its own.

A. Decentralization

CDP has had considerable difficulty deploying personnel to

staff provincial offices. By and large, they much prefer to remain based in Phnom Penh. The result is that it has only three provincial offices operating. And in at least one of these instances, the commitment of the personnel in place is unclear. In contrast, UNCHR and LAC reported that they have not had difficulty staffing provincial offices (though I should emphasize that I am in no position to assess the skills or dedication of their provincial personnel).

CDP compensates for this problem by dispatching Phnom Penh-based personnel to the provinces on a fairly regular basis. They go for periods as short as a few days. This is an expedient response to a difficult situation. In some instances, it may have the additional value of ensuring that CDP does not unnecessarily base an advocate in a province where he or she would be needed for criminal defense on only a part-time basis.

Nevertheless, there are significant disadvantages to this set-up. First, it is far more costly to ferry advocates back and forth to the provinces. Second, they may not have the same level of preparation for any given case if they are not based near the defendant, local government offices, potential witnesses and the like. They lack access to both formal, official sources of information, as well as knowledge of the local political and legal scene. Finally, they are not available to contribute to the larger legal aid and human rights needs of the province.

How can CDP address this situation? It should consider dispatching more than one advocate to any given provincial office, or basing the advocate in the office of a human rights organization if possible. Either course could counter the fact that it may be very physically and psychologically difficult to work alone in a relatively isolated setting.

CDP also should set up a regular schedule for provincial consultation with the Phnom Penh office. One reason why personnel may be hesitant to move to the provinces may be that they fear being outside of the informational loop. There remains a lot for them to learn, and they need mechanisms to address questions that inevitably arise.

If personnel remain reluctant to do provincial work without good reason, CDP should dismiss them. Its obligation is to the

general public in Cambodia, not to specific staff members. In this vein, it should renegotiate the arrangement through which the Cambodia Bar Association pays many CDP lawyers. If the Bar Association is reluctant to do so, it may be a significant indicator regarding that organization's commitment to legal aid. This fact should not be lost on USAID or on CDP in any future relations with CBA.

Finally, CDP and more generally USAID may need to press for mechanisms whereby more individuals from the provinces could become lawyers. This should include a fourth Lawyer Training Class. It also might include scholarships to the Faculty of Law, which, with the end of LTCs, becomes the only vehicle for preparation to enter the Bar. Either direction could include special encouragement for persons currently associated with human rights groups and other NGOs to become lawyers, since some have already evinced some interest in legal aid issues.

B. Evolution of CDP/CPA

How should CDP/CPA proceed with localization, the process by which expatriate involvement ends and the organization becomes a wholly Cambodian NGO?⁶ I do not want to claim any great comparative perspective on this matter, because most of my experience with developing nations' legal services NGOs is with those that were indigenously run from the outset. There may be a lesson, here, though, in that sooner or later CPA will sink or swim regardless of what the Law Group does. There is no magic formula for creating an independent indigenous entity.

Nevertheless, my best guess on how localization could proceed foresees the following steps.

1. 1998: Continuation of Current Structure

Because CPA's leadership will be taking the LTC through much of 1997, it is not practical to assume that they can create an independent entity this year. Next year should proceed along the same lines, then, with the local staff taking on increased

⁶ As previously noted, CDP formerly called this process Khmerization.

programmatic, managerial and financial responsibilities. The expatriate presence should decrease over the course of the year, dropping to three foreigners from the current four.

2. 1999: Reduced Expatriate Management and Presence

Come 1999, CPA should basically be Cambodian-run, except that major expenditures should be subject to a sign-off by an expatriate advisor. The expatriate presence should drop to two foreigners at most.

3. 2000: Solely Advisory Role

By 2000, CPA should be totally managed by Cambodians. The only possible foreign role, if the CPA leadership is so inclined, would be for one foreigner to remain as an advisor. His or her duties would include operational advice, as well as writing reports and proposals for foreign consumption.

4. A Focus on NGO Management

Even more than imparting legal expertise to its staff, the Law Group should make sure that CPA is on firm managerial footing as it becomes an independent organization. If in fact CDP's new director feels comfortable taking on this responsibility, fine. If not, she may want to bring in advisors who have experience regarding NGO management, even if it means taking up one of the budget's expatriate slots.

5. Other Considerations

I would not be surprised if CPA experiences significant staff turnover during the coming years, whether through voluntary departures or through the termination of members who do not prove productive. In fact, some such turnover may prove necessary as CPA gets on its feet.

Similarly, one or more new NGOs conceivably could branch off of CPA as its members become more sophisticated. As they become more confident and have increased international exposure, they will discover that it may suit their own needs as well as Cambodia's for NGOs to be launched that focus on women's legal problems, or land disputes, or environmental issues. We should

not be disappointed if this takes place. Rather, we should view the organization as an incubator for legal aid and public interest law in Cambodia, whatever form these take. Whether CPA itself survives and thrives is less important than whether it contributes to the emergence of a vibrant legal services community.

One final consideration pertains to the fact that the leadership of CPA is supposed to be elected on an annual basis. I do not know of any other legal services NGOs that operate this way. Whether one final election is warranted or not I cannot say. Regardless, this provision of its by-laws should be changed.

C. Selecting New Staff

1. An Expanding Pool of Lawyers

In a sense, the new crops of law graduates (from the country's Faculty of Law) that will enter the labor force each year starting in 1997 mean that CDP is operating in a "buyers' market." I fully hope that all of its advocates prove to be worthwhile members of the organization, and applaud the recent staff training that aimed to upgrade their skills. But to the extent that some do not pan out, it should seize opportunities to replace them with persons who evince a greater commitment to legal aid.

2. Hiring Potential Provincial Attorneys

One possible criterion for staff retention and replacement is the willingness of attorneys to be based outside Phnom Penh. This has been a problem for the Law Group, through no fault of its own. A basis of future recruitment, then, could be the availability for provincial postings.

3. Law Student Internships

At the close of their last year at the Faculty of Law, Cambodian law students are required to spend the several months involved in practical legal work. For CDP to take on such

interns would serve multiple purposes. All of these would be served by the fact that it could be quite selective in picking them.

First, the interns would provide CDP with a potential pool of future members, should the organization expand or replace any current staff. Second, properly constructed internships would give the students exposure to the work of other NGOs. They might subsequently work with such organizations on a volunteer, part-time or full-time basis.

Finally, I think there is a value in exposing future members of the legal profession to the notions of legal aid, public service, human rights and nongovernmental work, even if they take their careers in totally different directions. They may prove more sympathetic to such concerns as they enter government, private business and/or the Cambodian Bar Association. What's more, personal connections with such individuals could prove useful for CDP in the long run.

D. Revising CDP's Operations

1. Substantive Focus

CDP's focus on defendants' rights is an important one. It springs in part from UNTAC's discovery of appalling detention conditions and practices when it entered Cambodia. But as CDP gains experience, puts a dent in this problem and branches into civil work, it may want to consider supplementing this focus in a planned, deliberate manner.

One way to do so is to pick up on idea articulated by the head of LICADHO at February 7, 1997 meeting of legal aid and human rights NGOs. A survey of Cambodians' greatest legal problems might reveal that criminal defense, as vital as it is, does not necessarily affect the largest segments of the population. Such a survey, whether conducted independently or as part of a USAID-funded customer survey, would help clarify additional issues on which CDP (as well as other organizations) could focus.

Based on my initial exposure to the Cambodian legal scene, I suspect that the most prominent issues will in fact involve land

disputes and the status of women. CDP already has dipped into these aspects of legal practice. It may want to do so in a more structured way.

A structured approach might involve CDP limiting itself to two or three key fields (e.g., gender and land issues) above and beyond criminal defense, for the sake of effectiveness. It also could mean attaching specific advocates to NGOs such as the Project Against Domestic Violence. This would help them develop both knowledge of the legal issues and sensitivity to clients' concerns.

This recommendation both broadens and focuses CDP's work. On the one hand, it attaches importance to developing expertise in areas beyond criminal defense--which CDP already is doing by virtue of its increasing civil litigation. On the other, it confines such focus to a limited range of fields, so as to deepen CDP's expertise and impact.

2. Operational Focus

Hand in hand with a more defined focus on selected civil issues, CDP should explore how its advocates (and possibly interns) could carry out operations that complement litigation. Particularly in the civil arena, it could be that Cambodians could benefit from popular education regarding land and gender issues. CDP advocates need not organize such sessions themselves in order to play useful roles in seminars put together by other NGOs. Perhaps especially in the provinces, such roles would increase the exposure of CDP advocates and provide useful vehicles for them to use their time when court cases are not taking place.

Similarly, CDP also might explore how it could affect the knowledge and behavior of local government officials who mediate or (in effect) adjudicate such issues. It would need to do so in the context of at least modifying the power relationships at the local level. Though this may sound like a tall order, legal services NGOs in other countries have been able to do so by acting as agents of accountability that encourage local authority figures to apply laws fairly. They do so through education (which affects local knowledge and attitudes), informal oversight (which acts as a kind of accountability mechanism) and the

possibility of litigation (which creates an incentive for both the mediators and the parties opposing the NGOs' clients to settle a dispute).

3. A Legal Resource Perspective

CDP also should take a broader view of its advocates' work. Such as perspective would cut across its decentralization, substantive focus and operational focus. It should view them as community legal resources rather than attorneys whose efforts necessarily revolve around trials. If they become more involved in informal consultation, nonformal community legal education, prison visits, alternative dispute resolution and civil matters, they will both serve the community and remove the potential problem of idle time between court cases.

This proposed conception of CDP personnel as community resource persons does not reduce them to just being general advisors. They retain their current litigation and other responsibilities. But those responsibilities blend into and benefit from greater CDP capacities to address an array of community legal needs. Third World legal services NGOs tend to survive and thrive to the extent that they are development organizations that evolve to meet legal needs identified by the communities they serve. Defined and launched with good intentions and insights by foreigners, CDP/CPA can and should take on a life and orientation of its own as it learns more about what Cambodians most want from it. The legal resource orientation facilitates that learning process and makes CDP/CPA a more responsive development organization.

E. Documentation of Results

1. Results Memos

CDP should establish a system through which it can document particular instances of success. The system should operate regardless of whether the examples fit into the organization's USAID results framework.

Perhaps the simplest mechanism would be the aforementioned results memo. Where the Kampong Cham judge issued a favorable order requiring the production of evidence in court, for example,

it would have been useful for CDP to prepare a short memo describing the move, its significance and its chronological connection to CDP representatives' appearance in his court the previous day.

2. Quantitative Data

In a more quantitative vein, CDP should track basic information that may indicate that it is having a favorable impact on the legal system in a given province. Possible indicators would be the percentage of defendants detained fewer than six months before trial, average periods of pre-trial detention and percentage of defendants produced before an investigating judge within 48 hours of arrest. Analogous data could be developed for civil work within and outside the court system, particularly as it pertains to disputes regarding land and the status of women.

Two large caveats attach to gathering reliable quantitative data. First, CDP may need additional resources from USAID to generate this information. Otherwise, the organization will stretch itself to document success at the cost of achieving success.

3. Cautious Use of Statistics

Of more crucial importance, CDP needs to review with a self-critical eye whatever data it does generate. A number of sources I consulted questioned the information it has compiled in the past concerning increases in acquittals and dismissals on the one hand (as reported by CDP and local newspapers in 1996) and reductions in forced confessions on the other (as cited in CDP's January 28, 1997 submission to the Minister of Justice and other government officials). It is good for CDP to take a constructive approach to assessing the legal system's problems and progress. But such information could be trumpeted by the Government to herald an improved human rights situation where the real facts indicate otherwise.

It does not serve any useful purpose at this point to delve into rehashing a debate about past information-gathering methodologies. A more constructive approach would involve working with UNCHR to develop ways of gathering reliable

statistical information. It also would be beneficial to check any data with UNCHR before reporting it to the Government or the general public.

VII. POTENTIAL COMPLEMENTARY PROGRAMS IN CAMBODIA

Perhaps in combination with the Law Group, USAID could take a number of other steps to bolster a civil society approach to legal systems development. I identify a few here.

A. Asian Exposure

At a time when the Cambodian legal community in general and the legal aid community in particular is in the early stages of formation, exposure to the work of Asian legal services NGOs could open up new horizons for CDP and other organizations. What I propose here is a variation on the excellent idea which I understand the American Bar Association is putting into effect, which would include a visit for the head of the Cambodian Bar Association and others to Canada and possibly Asian nations such as the Philippines.

The tour I suggest is not mutually exclusive with that being put together by the American Bar Association. It would differ somewhat in that it would be more Asia-specific. The Cambodians involved, which I see representing legal aid and human rights NGOs, would visit such countries as the Philippines, Sri Lanka and Thailand. Conversely, it also might be worthwhile to bring together in Cambodia representatives of Asian legal services NGOs to discuss their work and philosophies with CDP, other Cambodian NGOs and law students.

The purpose of such exposure would be to open up current and future advocates to the possibilities offered by legal services work elsewhere in Asia. Right now CDP and others are operating within a relatively narrow spectrum shaped mainly by Western attorneys. This has been all well and good as a starting point

for criminal defense. But Asian exposure offers a rich vein of experience and contacts to mine. The results would only gradually unfold, as individuals take away their own lessons and ideas, and eventually try them out in Cambodia.

B. Support for Investigative Journalism

I understand that, through TAF, USAID has supported efforts to strengthen the Cambodian media. In a related vein, a focus on investigative journalism could relate directly to legal system reform. The overlap would be far from complete, but in any event would contribute to a larger goal of governmental accountability. It would be consistent with the strategy suggested by the aforementioned CDIE report, Weighing in on the Scales of Justice, which praised investigative journalism as one component of a demand-side approach to improving legal system performance and accountability.

What form(s) might such support take? One possibility is a center for investigative journalism, along the lines of what has been established in the Philippines and Thailand, and which is being launched in Nepal. If that is too politically sensitive for USAID, it could nevertheless support training and international exchanges that might enhance the investigative capabilities of Cambodian journalists.

I realize that most news outlets in Cambodia have political links that call reporters' objectivity into question. This could make support for investigative journalism particularly sensitive. But an across the board training approach that reaches most outlets' journalists and/or funding for activities carried out by an independent NGO could obviate this potential problem.

C. Mobilize Reform Constituencies

The above activities could be complemented by devices such as public opinion polling regarding the legal system and organization of business interests that have an interest in honest and competent courts. But I can only speculate on these possibilities. I am not in a position to assess whether such survey capacities and business interests yet exist in Cambodia. Nor can I address whether mobilizing them would necessarily bring the desired pro-reform influence to bear.

D. Relationship with the Cambodian Bar Association

There was widespread concern among individuals I interviewed about the possibility that the Cambodian Bar Association might become a dominant player in the legal aid field. It is commendable for CBA to encourage its members to provide legal aid. Furthermore, by all accounts the current American Bar Association Representative has contributed to a more open and progressive CBA stance regarding legal aid in the country.

Nevertheless, the concerns remain. They include whether CBA has a real commitment to legal aid, and whether the leading force (if any) in the legal aid community should be a body whose main focus is not legal aid. From a more comparative perspective, I would add that bar associations are not automatically progressive forces that advance social justice in developing societies or even in the West. They can be guilds whose members originate in and serve a narrow range of interests. This includes confining court representation privileges to members of the profession, when others can do the job equally well. They have not played a dynamic or leading role in the Asian societies to which I have been exposed. "An Assessment of USAID Rule of Law Activities in Cambodia," prepared for the Mission in March 1996, specifically expresses concerns about guild interests in discussing CBA (Hammergren, Scott and Kem 1996, 36).

How to address such concerns? As a sign of good faith, CBA could renegotiate its agreement with CDP through which many CDP lawyers are paid by CBA. It also could play a pivotal role in lobbying to change the law that terminates the right of non-lawyers to represent Cambodians in court as of the end of 1997. Given the low skill levels of new lawyers and the very basic needs of Cambodians, lay persons can and should be allowed in court for the foreseeable future. Finally, to encourage greater membership of provincial residents and NGO personnel in the legal profession, it should create at least one more LTC for new lawyers.

More generally, USAID and IHRLG strategy regarding CBA should be to encourage it to open up to influence by legal aid personnel, rather than vice versa. Of course, there is the argument that a bar association represents an independent center of power that can be a building block of a pluralist society.

But a bar association is not an end in itself. Thus, its orientation determines whether it merits foreign aid support.

VIII. FUTURE DIRECTIONS FOR CCTP

The preceding three sections detail considerations and activities regarding a civil society strategy for future rule of law programming in Cambodia. Nevertheless, also as discussed above, certain court-centered initiatives could supplement and

fortify that strategy. This section discusses such initiatives as a possible CCTP Phase IV.

A. Strategic Considerations

One strategic consideration in discussing these possible initiatives and lessons is that they be oriented toward promoting whatever pro-reform individuals and forces may emerge in Cambodia down the line. If the focus is simply technical assistance and improvement for their own sake, we run the risk of pursuing tactics without strategy. The bottom line is not whether technical capabilities are improved, but whether they translate into improvements in average Cambodians' experience with the legal system.

The other consideration to emphasize is that Phase IV CCTP assistance remain modest. It is very tempting to scale up limited projects to major proportions based on expressions of interest by high level officials who may lack a commitment to genuine reform (and not just training and other technical assistance per se). But Cambodia, USAID and IHRLG are best served by concentrating most resources on a civil society strategy that seeks to affect the forces at play over the long haul.

This means concentrating any CCTP funding on in-country activities (mainly the work of the advisors). It precludes exposure to foreign court training institutes. Arranging such exposure has proven costly, staff-intensive and ineffective for ROL programs in other countries.

Whether and to what extent Phase IV proceeds probably should hinge on an MOJ investment of resources to cover training costs. This would be evidence of commitment to improving court personnel's knowledge and skills. It would demonstrate the start of Cambodian ownership of the project.

B. Advice on Court Education

MOJ might benefit from the presence of one or more advisors who could help any court education and related efforts that it might mount. Their formal roles would include offering assistance and suggestions regarding a number of activities:

training, developing Cambodian capabilities to conduct court training themselves, preparation and subsequent updating of a judicial bench book, and organization of national and regional conferences.

However, such individuals also might have great value in other, more informal ways. These could pertain to identifying officials who evince a real commitment to improvements in the delivery of justice, broadening MOJ's perspectives on legal education, and making it more aware of the value of legal aid and human rights NGOs.

I am not suggesting that this informal role would alter prevailing attitudes or interests in a fundamental manner. But to the extent that it could nudge some issues in a positive direction, it would be worthwhile.

C. Cambodia Law Newsletter

One recommendation that is specific to Cambodia, but could apply elsewhere, is the publication in Khmer of a regular newsletter with specific updates regarding legal decisions and initiatives that uphold human rights. The audience would be judges, prosecutors, police, advocates and human rights groups. The newsletter would, for example, highlight developments such as the aforementioned Kampong Cham letter of instruction regarding producing evidence at trials. For the sake of credibility with judges and prosecutors, it should be put out by CCTP. To some extent, it could be prepared in conjunction with bench book updates.

The publication would serve at least two purposes. First, it would disseminate problem-oriented information that shows inherently cautious judges and other legal personnel that colleagues elsewhere in the country have taken praiseworthy steps. Technically, the precedential significance of such steps may be negligible. They are not legally binding on other courts. But such initiatives may set political and attitudinal precedents that advocates and court personnel alike could draw on.

The second purpose is to set up an incentive structure that affords positive recognition to court personnel. Such a structure does not of itself overcome the deep-seated interests

and attitudes that govern their conduct. But it may influence some individuals in a modest and cost-effective manner.

D. Substantive Coordination with a Civil Society Strategy

If CDP in particular and a civil society strategy in general receive support in the future, it could well make sense for CCTP to focus much of its effort on the specific legal issues they address. For example, if CDP particularly works on criminal defense, land issues and gender issues, CCTP-assisted training also could devote the most attention to these. Similarly, a civil society approach that looks to improve nonjudicial dispute resolution might find that the possibility of going to court acts as an incentive for settlement at the nonjudicial level. If so, some coordination with court training might benefit both judicial and nonjudicial processes.

E. Other Forms of Coordination

More general forms of possible CCTP coordination with CDP and/or a civil society strategy are addressed in Section XII below.

IX. SUSTAINABILITY: PROJECT-SPECIFIC AND GENERAL RECOMMENDATIONS

Project sustainability is a legitimate consideration for any funding organization. This section seeks to present a perspective that holds that even if a project is not sustainable in the sense that it can become self-supporting in the foreseeable future, it may nevertheless merit funding.

A. Cambodian Defenders Project and Other NGOs

Four important considerations pertain to CDP's (or CPA's) sustainability. First, it will not become self-sustaining over the course of five years. Neither will it become sustainable for a good deal of time after that, if ever. But these factors do not weigh against continued support, given the financial realities affecting NGOs in Cambodia, other developing countries and even the West. Most fundamentally, we should view this matter in terms of sustainable impact rather than sustainable organizations.

Some may feel that USAID funding for an NGO is wasted if the recipient cannot sustain itself once that support inevitably ends. Organizational sustainability thereby becomes a central

concern. This is a legitimate perspective. But I beg to differ.

As a preliminary point, it is doubtful that legal aid NGOs can become truly self-sustaining in most developing countries. CDP/CPA's costs may decrease as the role of foreign personnel fades, but basic costs such as staff salaries, rent and transportation will remain. Even in the United States and other Western countries, most human rights, legal services and public interest groups are not truly self-supporting. They depend on funding from domestic foundations, donations by relatively affluent and progressive citizens, or government grants. (This last category suffers from politically motivated cutbacks even in the United States). Such sources are limited or nonexistent outside the West. In many societies, certainly including Cambodia, a legal aid NGO would be foolish to rely on government support even if it were forthcoming. Too many strings would be attached. And many wealthy individuals may see a local legal aid group as threatening their economic interests, or may legitimately fear government retaliation for supporting it.

The bottom line, then, is that often there are no alternatives to international donors as sources of support for legal aid. A joint Danish/Dutch paper that summarized evaluations of human rights projects accordingly concluded that we should not expect indigenous organizations to become self-sustaining, because they lack marketable products. The report recommends that they be viewed as providing an essential public service that should not be interrupted (IOV/DGIS 1994, 9). The same could be said for CDP and other legal aid organizations.

But the argument for donor support goes deeper. On a macro level, whether a given NGO survives and thrives is less important than that USAID and other agencies strengthen the array of organizations that collectively constitute important elements of civil society and, regarding CDP, an equitable justice system. Just as the Agency may want to assist certain local government or environmental projects for many years, it may similarly wish to view extended funding for effective NGOs as necessary to achieve the societal impact it desires.

This long-term view is important because Third World legal services NGOs typically take a number of years to hit their stride. And even after achieving noticeable impact and momentum,

they continue to evolve. My own experience is that Philippine legal services groups founded in the 1980s typically took five or more years of gradually increasing impact to reach a point where they individually and collectively contributed to major policy reforms, secured better economic or environmental conditions for a considerable array of communities, and in fact began to place their leaders in important government posts through which they could affect yet more policies and communities. Similarly, the leading rural legal aid NGO in Bangladesh pursued rather conventional litigation strategies for over a decade before shifting to what has proven to be a more effective and replicable mediation-centered approach to securing the rights of women and farmers. A diversity of other Bangladeshi NGOs have adopted this approach.

Even though these NGOs remain reliant on foreign support, their impact is sustainable. Policies and communities are permanently affected. Some NGO leaders draw on their legal services experience even after moving on to government or other positions. The donors' investment (by USAID, TAF, the Ford Foundation and European agencies) is justified, even if these NGOs disappear today.

There is no guarantee that CDP/CPA will evolve in similar directions. The organization could even divide or give rise to new entities, as was the case with LAC. But its track record provides sufficient grounds for optimism that, whatever course it takes, continued support will yield sustainable impact.

B. Cambodian Court Training Project

Considerations regarding impact sustainability as opposed to organizational sustainability apply even more to CCTP than CDP. Will its RLAs' impact on court personnel's behavior and other local conditions endure after these expatriates depart? Time will tell, in the form of observations by legal aid and human rights NGOs, and possibly the data collection discussed earlier in this paper. Such observations and data might suggest whether court personnel are only temporarily responding to the temporary presence of foreign professionals in their midst, or whether their perspectives are permanently altered by that presence.

The sustainability of CCTP's training (as opposed to

mentoring) functions hinges on the MOJ and/or another body such as UNCHR taking over such work. Whether that work is worth sustaining in the current Cambodian context depends on how the Law Group and USAID each assess the considerations presented in Section V of this report. But to the extent that it merits continued support, it could take the form of the aforementioned Phase IV for CCTP. That phase would see MOJ begin to assume the costs of court training and related work, while befitting from expatriate advice. Financial sustainability would stem from this assumption of costs. Technical sustainability would flow from the transfer of training and related skills from the expatriates to Cambodians.

X. EXPATRIATE PERSONNEL SELECTION AND RETENTION:
RECOMMENDATIONS FOR FUTURE PROGRAMS

Selection and retention of expatriates have been significant issues for CDP and CCTP. This section explores factors that may contribute to success in these regards in future projects.

A. Development Experience

There clearly is no magic formula for identifying persons most appropriate for projects such as CCTP and CDP. Nevertheless, factors that might tend to contribute to success did emerge over the course of my interviews.

One is a development background. Each country is different. But individuals with previous experience based in a developing country are more likely to pitch their expectations and strategies appropriately.

This plays out in manifold ways. On a mundane, daily level, it can involve speaking slowly and giving one's interpreter time to translate everything said. On a managerial level, it involves walking the fine line between setting clear standards for local staff and making demands that alienate them. On a programmatic/strategic level, it implies assessing how far and fast to push, and taking a long-term perspective on projects.

Finally, development professionals are more likely to be available indefinitely, or at least for longer stretches of time. They are less likely to be interrupting their regular careers at home for relatively short overseas stints.

Other overseas experience also is useful, though perhaps not to the same degree as actual work on development projects.

Yet another related factor is cultural affinity. The Law Group's Human Rights Task Force on Cambodia is a case in point. I am in no position to assess its overall performance. But it

reportedly benefited from recruiting Filipinos to assist and advise Cambodia's fledgling human rights groups. Similarly, UNCHR reportedly has had favorable experiences utilizing Asian jurists in its Judicial Mentor Program.

Recruiting individuals with a cultural affinity for the society in question has the added potential virtue of reducing costs. They may be accustomed to lower salaries than Western lawyers and judges.

Some of these considerations translate into personality type. At least for some societies, there are advantages to recruiting persons who are conciliatory rather than combative, easygoing rather than intense. Of course, there is a balance to be struck. One does not want foreign legal aid or human rights advisors who are shrinking violets. But especially because their backgrounds and orientations may tend toward the adversarial, keeping in mind the above factors becomes all the more important.

An emphasis on development, overseas experience or cultural affinity obviously can involve trade-offs in terms of other skills. Knowledge of legal aid or court training is important, of course. But given the very basic needs and skill levels of local advocates and court personnel, it is not necessary to recruit leading experts in these fields. And as described above, a problem-oriented approach rooted in the local situation may prove more useful than a more comprehensive strategy for training and mentoring.

None of this implies criticism of current IHRLG staff, who strike me as an impressive lot. Nor are these hard and fast rules. I present these factors as considerations to weigh, not strictures to blindly follow.

B. Female Staff

The Law Group merits considerable praise for integrating foreign and Cambodian women into both projects at all levels. This is significant because an issue that arises in many male-dominated societies is the role that women can play in development projects. The concern sometimes translates into a hiring preference for expatriate or local men. But the experience of CCTP, CDP and other organizations suggests that

females are at least as effective as males.

Expatriate women have been among the most capable personnel in CDP, CCTP and UNCHR's Judicial Mentor Program. Similarly, Cambodian females have been among the best CDP advocates. Casting the analysis more broadly, The Asia Foundation's experience has been similar regarding societies far more male-dominated than Cambodia. It has fruitfully employed American women in senior field positions regarding Bangladesh, Afghanistan and Pakistan, with the last office taking particular initiatives to bring local females into positions of responsibility.

This is not to deny the sexist barriers that these women overcome. But the point is that they do overcome them.

What's more, the hiring of local and expatriate women sends significant messages to the men and other women with whom they professionally interact. Whatever additional difficulties they face, then, are at the very least balanced by the educational value of their positions and actions.

C. Seniority Considerations

Another issue that sometimes affects hiring decisions is the extent to which senior expatriates (usually men) are necessary to gain credibility with judges and other officials. Again, in Cambodia at least, this preference does not prove well founded. Experience does indicate that persons in their twenties may carry less weight--though even here there are significant exceptions to the rule. Certainly, persons in their forties and even in some in their thirties seem to carry the authority to perform effectively.

D. Management Experience

A very desirable quality in overseeing a project such as CDP might be management experience. To be a superb public defender is one thing; to run an office staffed by such individuals is another. The latter quality may be of greater utility in managing a development project.

E. Civil Law Backgrounds

A number of persons identified familiarity with civil law systems as one criterion in staff selection for future projects in countries that have those systems. The civil law system concept of the investigating judge, for example, is alien to attorneys from common law countries.

F. Duration of Assignments

One issue that pertains to USAID and the Law Group alike is the fact that expatriate personnel are much more likely to be effective if they are in a country for at least two years or three years. This gives them time to become familiar with the culture, the politics and the individuals with whom they work. It gives them time to even make and learn from mistakes.

Even though neither organization can necessarily make a firm commitment to this at the outset of the project, personnel should be recruited with the understanding that they will stay for extended periods if funding is available. The operating assumption should be that if USAID and the Law Group can give them sufficient advance notice, they will be expected to stay for at least two or three years. This of course creates the need to put in place organizational procedures that can ensure such notice.

G. Cost Effective Recruitment

One possible option that might save money and assure extended commitments in the future is the use of other nations' Peace Corps-like programs to recruit legal professionals. UNCHR apparently is making use of these to good effect. I am told that Ireland, Australia, the United Kingdom and Sweden have such programs, and that lawyers sometimes participate.

One key consideration, though, would be whether the Law Group could screen and select such persons. Another would be whether their participation in these programs implies that they lack previous overseas experience.

XI. PROBLEM-ORIENTED INFORMATION DISSEMINATION:
RECOMMENDATIONS FOR FUTURE PROGRAMS

Some lessons that emerge from the Law Group's experience in Cambodia span the two projects. A number of sources suggested to me that Cambodian judges and court personnel are more likely to make use of problem-oriented information dissemination than of comprehensive training that covers a broad array of subject matter. As a matter of attitude, aptitude and need, they are more likely to absorb guidance that pertains to specific legal problems that crop up.

These sources' suggestions echo more general insights that inform work in the development field. That is, people are most likely to retain information that pertains directly to their needs. Thus, judges are most likely to make use of information that focuses on specific problems that arise on the job. Citizens best understand legal lessons regarding the rights that national laws afford them as farmers or women, as opposed to general instruction regarding international human rights instruments.

The Law Group reports that it has begun to incorporate these insights into its work in Cambodia and beyond. The operational ramifications are at least fivefold.

A. Mentoring

Much of the Law Group's work in Cambodia has wisely focused on mentoring, which includes offering informal advice as problems arise. This has been true of all three of its projects: CCTP, CDP and the Human Rights Task Force. Future attempts to rebuild other nations' legal systems similarly should emphasize the role of mentoring.

Of course, this does not obviate the importance of interest-based and opportunity-based analyses in determining whether such advice will fall on welcoming or deaf ears. Programming priorities should be set appropriately.

B. Problem-Specific Training

The problem-oriented approach resonates for training in that it is more effective and efficient than one that presents audiences with everything there is to know about criminal investigation, property law or family law. It saves a tremendous

amount of time for trainers, in that it does not involve nearly the same degree of material preparation as they must put into developing curricula that can run 100 pages or more.

C. The Ambit of Resident Legal Advisors

As the above discussion of CCTP's Kampot experience demonstrates, court advisors can play many useful roles above and beyond advising courts. It could be, for example, that the lasting impact of CCTP's advisor in Kampot may center on local prison reform and institutionalizing court/NGO systems for arranging criminal defense. This broad definition of their responsibilities should be formalized in future programs in which provincial court advisors are deployed.

Furthermore, it should be taken into account regarding recruitment. Such a local advisor may most effectively take on tasks that range beyond advising the courts. And as discussed above, expertise regarding training, laws and procedures may be less important than a more general range of skills. Accordingly, future recruitment of advisors may take into account the broad array of activities in which they likely will engage.

D. A Focus on National Law

Another ramification of a problem-oriented approach is that national law usually should be the primary focus of training. It is of course useful to provide trainees with perspectives on the laws of other nations and international human rights law. But for a given legal issue, a judge, a legal aid lawyer, an NGO worker and a client all best benefit from training that focuses on how best to apply national laws. To the extent that an international or comparative perspective make them appreciate more progressive norms, that of course is good. But such a perspective can complicate lessons that already are difficult to convey.

A partial but important exception to this rule is where provisions of national law defy rather than reflect international human rights norms. Even here, it is crucial to know how to make the best of the national laws on the books and to illuminate

specific problems in their application. This involves keeping instruction simple regarding comparative and international norms.

For better or worse, judges and lawyers usually will operate within the parameters set by national laws. But where these laws violate fundamental freedoms, it is important to expand all parties' perspectives on the issues at hand.

The current application of Cambodian law regarding violence and divorce, for example, bars a woman from having an advocate during a lengthy, mandated period of attempted reconciliation with her husband. In order to obtain a divorce, she then must prove that he has "cruelly and badly" beaten her. Drawing on international norms, CDP and CCTP have commendably and respectively tried to press claims and educate court personnel in efforts to obtain more enlightened treatment of domestic violence cases.

E. Limited Utility of Short-Term Trainers

Given that the best information dissemination is problem-oriented, the use of short-term foreign trainers is likely ineffective and certainly not cost effective. Their expertise is not rooted in the specific problems that Cambodian judges, prosecutors, legal aid advocates and NGO personnel encounter. In addition, considerable time and effort goes into arranging their visits and acquainting them with Cambodia. This could be much better devoted to purely in-country activities.

XII. COORDINATION OF LEGAL AID AND COURT TRAINING PROJECTS:
RECOMMENDATIONS FOR FUTURE PROGRAMS

IHRLG and USAID should be lauded for putting two very different ROL projects under one institutional roof. In most countries, foreign aid to strengthen legal systems does not integrate assistance to governmental and nongovernmental bodies in any way. For the Law Group to take on both sides of the equation was a noteworthy innovation.

The important question for the future is how the innovation can reach beyond design to implementation. I heard a diversity of perspectives on the degree to which CCTP and CDP coordinated their work. Certainly, there has been considerable informal contact among expatriates working for the two projects. Are there ways in which future projects could formalize such contact to the projects' mutual benefit?

A. Concurrence Regarding Desired Results

On a basic, strategic level, future court training and legal aid projects can seek to agree on the respects in which their desired results overlap. These would seem to include strengthening the protection of human rights and due process.

B. Concurrence Regarding Desired Indicators

If in fact the two can agree on desired results, they also should explore common indicators for measuring progress. This is a variation on the aforementioned theme suggested by the USAID/Cambodia Democracy and Governance Office, in which international agencies involved with legal systems development would arrive at common indicators for measuring progress on a provincial level.

C. Coordination of Province-Level Activities

In those provinces where legal aid and court projects both operate, they could seek to coordinate their work so that it addresses a diversity of local actors. The two projects conceivably could be seen as adopting "good cop/bad cop," "supply/demand" or "inside/outside" roles. But these caricature a complex reality in which either project could coordinate various roles at different times in different places. The spectrum of possibilities ranges from pure cooperation to exerting external pressure on governmental institutions.

D. Training Coordination

Particularly in societies where judges and court personnel look askance at legal aid attorneys, one experiment worth trying is joint training activities. These might begin to break down the personal and professional barriers that inhibit cooperation. Furthermore, appropriate simulation exercises might demonstrate to judges and prosecutors that agreeing with legal aid attorneys' points of law is permissible and even desirable. It also could help the attorneys' formulate strategies for diplomatically raising such points in court.

XIII. LOOKING TOWARD THE FUTURE: LAW GROUP MANAGEMENT REVIEW

IHRLG occupies a unique and potentially vital niche in the international legal community, in that it has one programmatic foot in the human rights field and the other in development. It already has initiated an internal review to learn from its Cambodia experience. I strongly encourage it to maintain that effort. This evaluation hopefully will feed into that process.

I hope and believe that the main management and personnel problems that affected CCTP and CDP are now behind them. Nevertheless, the Law Group's review needs to include what went wrong in order to determine what to do right in the future.

To whatever extent the Law Group has not yet done so, its review should involve consultation in the United States with current and former Law Group personnel, as well as colleagues familiar with its law program. It also should involve discussions by the Program Director with a similar range of persons in Cambodia. The consultations should include attention to such matters as recruitment and retention, training, inter-project coordination, relations with USAID, cooperation with other development organizations, and ways of expediting communications and decision-making involving Washington and Phnom Penh.

This report has offered suggestions on some steps to take "next time around"--wherever that is and whatever form that takes. It hopefully can contribute to IHRLG's internal review. I am far less concerned with individuals agreeing with me than with the hope that the report generates a greater Law Group understanding of how and whether to carry out future projects along the lines of CDP, CCTP and even the Human Rights Task Force. The product of this effort could be a short guidance paper for internal use, unless the Law Group decides to disseminate it. Like this report, the paper should look to the future rather than dwelling on the past.

APPENDIX 1: GLOSSARY

Agency: United States Agency for International Development
CBA: Cambodian Bar Association
CCTP: Cambodian Court Training Project
CDIE: (USAID) Center for Development Information and Evaluation
CDP: Cambodian Defenders Project
CPA: Cambodia Public Advocates
IHRLG: International Human Rights Law Group
LAC: Legal Aid of Cambodia
Law Group: International Human Rights Law Group
LICADHO: Cambodian League for the Promotion and Defense of Human Rights
LTC: Lawyer Training Class
MOJ: Ministry of Justice
NGO: Nongovernmental Organization
RLA: Resident Legal Advisor
ROL: Rule of Law
TAF: The Asia Foundation
UNTAC: United Nations Transitional Authority in Cambodia
USAID: United States Agency for International Development

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APPENDIX 3: ABOUT THE AUTHOR

Stephen Golub is an attorney and international development consultant who has been exclusively involved with overseas legal services, judicial administration, human rights, NGOs, the status of women and democratic development since graduating from Harvard Law School in 1985. Mr. Golub's Cambodia experience includes visiting refugee camps along the Thai border in 1983 and 1985; preparing a 1986 report for the U.S. Committee for Refugees, regarding refugee processing; preparing a 1987 report for the Lawyers Committee for Human Rights, regarding human rights and humanitarian law violations concerning the camps; and visiting Cambodia in 1995 in connection with a consulting assignment for USAID's Office of Transition Initiatives, regarding international human rights operations in nations undergoing democratic transitions.

His international consulting and research projects have also

addressed legal systems development, civil society, local government, the environment, elections and humanitarian emergencies. The projects have included a Fulbright Senior Research Fellowship and work with the Carnegie Endowment for International Peace, as well as previous assignments for the International Human Rights Law Group and the U.S. Agency for International Development (as team leader). Mr. Golub has prepared journal articles and reports on project evaluation, legal services, democratization, natural resources management, and strategies for legal systems and democratic development. He has field experience in all major regions, and particular expertise regarding evaluation.

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