

Annual Thematic Performance Report: Law and Justice 2008-09

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Australian Government

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Preface

This Annual Thematic Performance Report provides an assessment of Australian law and justice development assistance delivered in financial year (FY) 2008-09.

The report has been prepared by AusAID's Canberra-based Law and Justice Advisers. Information is drawn from AusAID reporting, including peer-reviewed self-assessments at country and regional program level (annual program performance reports), sector level (sector performance reports) and activity level (quality at entry, quality at implementation and quality at completion). The findings of relevant mid-term and independent completion reviews were also considered in the preparation of this report. Information about law and justice assistance provided by other government departments was drawn from annual reports and internal reporting provided by those departments.

A consultation draft of this report was peer reviewed by AusAID thematic and country program specialists and representatives from the Australian Federal Police, the Australian Government Attorney-General's Department and the Commonwealth Ombudsman.

Abbreviations

AFP	Australian Federal Police
AGD	Attorney-General's Department
APPR	Annual Program Performance Report
ATPR	Annual Thematic Performance Report
AusAID	Australian Agency for International Development
DFAT	Department of Foreign Affairs and Trade
DFID	Department for International Development (United Kingdom)
NZAID	New Zealand's International Aid & Development Agency
ODA	Official Development Assistance
ODE	Office of Development Effectiveness
OECD	Organisation for Economic Co-operation and Development
PIF	Pacific Islands Forum
PNG	Papua New Guinea
PPD	Pacific Partnership for Development
QAI	Quality at Implementation
PPF	Participating Police Force
RAMSI	Regional Assistance Mission to Solomon Islands
UN	United Nations
UNMIT	United Nations Integrated Mission in Timor-Leste

Executive summary

This report provides an overview of Australia's international development assistance in the law and justice sector last financial year (2008-09), which amounted to approximately \$292 million. This represents eight per cent of total Official Development Assistance, compared to 10 per cent in 2007-08. Of this amount, AusAID, the Australian Government's overseas aid agency, delivered 40 per cent, the Australian Federal Police 60 per cent (more than half of this was for the Regional Assistance Mission to Solomon Islands Participating Police Force) and the Attorney General's Department one per cent. A number of other Australian law and justice agencies (e.g., the Federal Court and the Commonwealth Ombudsman) were involved in the provision of technical assistance as part of AusAID's law and justice programming.

Achievements are highlighted across the types of aid modalities used to deliver Australia's assistance in this sector. This includes two large-scale, sector-based responses (Papua New Guinea and Solomon Islands), five smaller, less integrated (but, arguably, emerging sector-based) responses (Timor-Leste, Indonesia, Cambodia, Vanuatu and Samoa), and a broad range of relatively small-scale activities providing specialist technical assistance across the region, including as part of institutional partnerships between Australian Government law and justice agencies and their regional counterparts.

Key achievements that Australian assistance contributed to in 2008-09 include:

Sector-based responses:

- > Papua New Guinea: stronger management capacity within core law and justice agencies leading to improvements in service delivery in legal aid, district and village courts and local level crime prevention; and the establishment of a new policing partnership.
- > Solomon Islands: improved security and community confidence; the processing of a large number of criminal cases through the High Court; and the re-establishment of priority court and prison infrastructure.

Emerging sector-based responses:

- > Timor-Leste: finalisation of a new criminal code, juvenile justice legislation and police law; the instalment of 10 probationary judges, prosecutors and public defenders; the opening of four district courts; and improved workforce planning, salaries and conditions for police.
- > Indonesia: introduction of a fee-waiver system for the poor and remote area circuits by the Religious Courts; launch of new judicial guidelines for domestic violence-related cases; and enhanced operations of the Indonesian Transnational Crime Coordination Centre.
- > Cambodia: development of new legislative and strategic planning tools to drive improved management within the police, corrections and the courts; and commencement of a new community safety pilot program through sub-national government processes.
- > Vanuatu: increased police presence in the capital and target provincial locations; improved financial management performance, leading to better budget outcomes for government

legal offices; and in both Vanuatu and Samoa, the development of a new government-led law and justice reform agenda.

Targeted, specialised responses:

- > Across South-East Asia: enhanced access to training and technical assistance for judges and prosecutors dealing with trafficking in persons; and, across the Pacific, for legal and policing counterparts dealing with money-laundering, proceeds of crime and extradition, which, over time, is intended to build regional capacity to respond to transnational crime.
- > Across the Pacific: stronger professional networks, including operational and technical assistance for the establishment of the Pacific Ombudsman Alliance and for the ongoing work programs of the Pacific Judicial Conference, Pacific Island Chiefs of Police, Pacific Transnational Crime Network and Pacific Islands Law Officers Network.

The quality of the law and justice portfolio remains variable. Monitoring the contribution that Australian assistance is making to development outcomes remains a challenge, particularly where Australia is providing relatively small scale and specialised assistance. This is also linked to the dearth of law and justice sector performance data at the sector and country level, and the need to build local capacity to address this. In this context, although activity-level implementation is on track, the complexities of the systems being supported, and the breadth of social, economic and political factors that affect law and justice outcomes, continue to raise questions about the longer term sustainability of Australia's work in this sector.

Australia's engagement in the law and justice sector is increasingly linked to broader security-related cooperation in the Asia-Pacific region. This trend adds to the complexity of delivering a coordinated and coherent Australian aid program. In the last year AusAID and other Australian Government implementing partners have taken steps to strengthen coordination and coherence of the approach to law and justice assistance. This is particularly the case for Papua New Guinea and the Pacific, with additional impetus provided by broader Australian Government commitments under the Cairns Compact and Pacific Partnerships for Development and Security. Similar mechanisms for Australia's engagement in Asia are yet to emerge, although early work is underway in the case of Indonesia.

This report identifies a number of opportunities for improving the effectiveness of Australia's development assistance in the law and justice sector:

Australian agencies could do more to ensure assistance is well targeted and fits the local context, including by:

- > building a stronger, common understanding about the nature and relative priority of law and justice issues in partner countries (in terms of contributing to development objectives)
- > identifying and agreeing on how the Australian aid program can assist, if at all, and the best way of doing so
- > collaborating more closely so that short-term, specialised assistance is integrated with broader reform programs and supported by longer-term institutional partnerships and networks.

Australian agencies could be clearer and more realistic about what Australian assistance can achieve, including by:

- > ensuring that the all development assistance being provided by Australian agencies in the law and justice sector is reflected clearly in the aid program's country and regional strategies

- > articulating how Australian law and justice assistance is contributing to broader development objectives, particularly to the achievement of the internationally-agreed Millennium Development Goals
- > supporting efforts to track the effectiveness of government agencies working in a joined-up way.

Australian agencies could do more to support partner country ownership of law and justice reforms, including by:

- > ensuring that the combined approach of Australian Government agencies supports local partners to take the lead and make decisions about their own reform agenda and use of external assistance
- > making more strategic use of Australia's regional and institutional partnerships in the law and justice sector to foster local leadership
- > supporting analytical work that can help stimulate partner country policy development and priority setting (the Office of Development Effectiveness Violence Against Women analysis is a good example of this).

In 2010, the Office of Development Effectiveness will undertake an evaluation of Australian aid program support for law and justice, to guide current and future assistance. This process will identify key principles and lessons learned.

Introduction

The increasing scale and profile of international development assistance in the law and justice sector reflects the widespread recognition that functioning and effective state and non-state justice systems play an integral role in state-building and stability, both in contributing to the enabling environment for growth and as a fundamental area of service delivery in their own right.¹ The institutions of the law and justice sector support governments and citizens to regulate and adjudicate their rights, responsibilities and access to resources.² In this sense, effective law and justice systems enable the achievement of all other development goals and, as such, are now understood as a defining element of poverty reduction and increased wellbeing.³

Efforts to strengthen law and justice are particularly important in fragile and post-conflict settings, where improved community safety and non-violent dispute resolution creates a supporting environment within which peace-building and broader development objectives can be achieved.⁴ The increasing focus on the relationship between law and justice and security and development extends beyond national boundaries to also include greater attention on the impacts of transnational crime and other cross-border threats. The prospect of state failure, previously viewed in terms of its dire developmental and humanitarian consequences, is now also understood as a significant threat to regional and international security.⁵

Consistent with international trends, the Australian aid program's development assistance to the law and justice sector supports a range of objectives, which are linked to the priorities and commitments of partner countries. In some cases, Australian assistance supports system-wide law and justice reform efforts (including strengthening capacity across state and non-state justice systems), while elsewhere it is more narrowly defined and directed towards improvements in specialised areas of the justice system. To bolster these efforts, Australian development assistance also targets the strengthening of cross-regional policy dialogue and collaboration by supporting a range of government networks and institutional partnerships.

This report draws primarily on performance information relating to AusAID-administered programs. However, in recognition of the range of Australian Government agencies involved in

¹ See, for example, DFID (United Kingdom), *Eliminating World Poverty: Building our Common Future* 2009, Chapter 4; and Ismail, O & Hendrickson, D, *What is the case for a security and justice focus in development assistance programming?*, Global Facilitation Network for Security Sector Reform Literature Review, 2009. The existence and nature of any direct causal link between justice and development remains contested, such that it might be more accurate to view the relationship as one of interdependence, the characteristics of which vary over time and according to country context: see Cox M, *Security and justice: measuring the development returns* (2008), available at: <http://www.agulhas.co.uk/cms_files/14/Agulhas_S&J_Development_Returns_Aug_08.pdf>; and Governance and Social Development Resource Centre, *Helpdesk Research Report: Organised Crime and Development* (2008).

² The term 'institutions' is used here in a broad sense to mean the 'rules of the game', including state and non-state systems and actors that shape and operate within them. See, for example, Decker, K et al, *Law or Justice: Building Equitable Legal Institutions*, prepared as a background paper for the World Development Report 2006.

³ World Bank, *World Development Report 2000/1Attacking Poverty*; Narayan, D et al, *Voices of the Poor: can anyone hear us?* World Bank 2000; Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone: Volume One, Report of the Commission on Legal Empowerment of the poor*, 2008.

⁴ *Enhancing the Delivery of Justice and Security*, OECD Journal on Development 2008, vol. 8, no. 3, p. 115.

⁵ *The First National Security Statement to the Parliament*, Address by the Prime Minister of Australia, the Hon Kevin Rudd MP, 4 December 2008.

the provision of development assistance to the law and justice sector, and in an attempt to present a more complete assessment of Australia's total engagement, the report also addresses the contributions of these agencies.⁶

The first section of the report sets out the scale and scope of Australia's law and justice development assistance. Section two deals with the results of that assistance over the last year and section three considers the quality of Australian Government agencies approaches to overseas development assistance. Section four looks at priorities emerging from the interrelated fields of justice and security system reform, and considers how these are affecting the way Australia works. In concluding, the report highlights three opportunities to strengthen the effectiveness of Australia's development assistance in the law and justice sector.

⁶ A broad range of Australia Government agencies, at both federal and state levels, are involved in the delivery of law and justice development assistance. However, this report focuses on contributions made by AusAID's key implementing partners in terms of the scale of their engagement and the level of integration with the broader aid program (i.e., AFP, AGD and the Commonwealth Ombudsman).

1 Scale and scope of Australia's law and justice assistance

What is law and justice assistance?

For the purposes of this report, Australian Official Development Assistance (ODA) to the law and justice sector is taken to cover activities primarily targeting law and justice system functions and institutions, including state and non-state systems, in post-conflict, fragile and more stable development settings. This definition captures activities that, in accordance with Organisation for Economic and Co-operation Development (OECD) guidelines, Australia reports under a range of relevant ODA categories. Australia must therefore report on legal and judicial development, including courts. It must also report on the law and justice aspects of:

- > government administration (defined as including policing and corrections)
- > human rights
- > United Nations (UN) post-conflict peace-building
- > security system management and reform.⁷

A broader set of initiatives supporting civilian peace-building, conflict prevention (including armed violence reduction) and security issues (such as border management, immigration and transport security) are not included within the definition of law and justice for the purposes of this report, but will be referred to where relevant.

The definitions of governance and the sub-sector of law and justice have evolved in AusAID's annual reporting, requiring a degree of caution in making year-on-year expenditure comparisons. However, the data suggests a general trend toward increasing Australian expenditure on law and justice as a percentage of total spending on governance, from around 10 per cent of total governance spending (or two per cent of total ODA) in 2000-01, up to about 25 per cent of estimated total governance expenditure (or six per cent of total ODA) in 2009-10. The rate of increase has not been steady, with a significant spike in law and justice expenditure occurring from 2003-04 due to the commencement of Australia's contribution to stabilisation and enhanced capacity building missions in Solomon Islands and also in Papua New Guinea (PNG).⁸

Who provides Australia's assistance?

There is significant variation in the scale and scope of Australian development assistance activities across the law and justice sector. This variation reflects the range of development

⁷ In 2008-09, the breakdown of expenditure across these categories was: legal and judicial development 41%; government administration 38% (the bulk of which accounts for the AFP's contribution to RAMSI's PPF); human rights 5%; UN post-conflict peace-building 5%; and security system management and reform 2%. The remaining 9% of Australia's 2008-09 law and justice expenditure was split across a range of related areas.

⁸ See relevant AusAID Budget Statements and annual reports: <<http://www.aisaid.gov.au/publications/default.cfm>>

contexts and priorities across the countries in which the Australian aid program is working, as well as the range of Australian Government agencies involved in the delivery of this assistance.

AusAID and the Australian Federal Police (AFP) are the most significant Australian Government providers of development assistance in the sector. In 2008-09, total Australian Government ODA expenditure on law and justice was around \$292 million. This amount comprised expenditure of about \$114 million (40 per cent) on the part of AusAID and \$175 million (60 per cent) on the part of the AFP.⁹ It also included \$3 million (one per cent) administered by the Attorney-General's Department (AGD) in law and justice assistance.¹⁰

It is important to note that these expenditure figures do not capture the scale of activities funded under AusAID-administered programs, but implemented by Australian Government agencies *other* than AusAID, such as the AFP and AGD, as well as other agencies including the Federal Court of Australia and the Commonwealth Ombudsman. Examples of activities of this kind are discussed in Section 2. An approximate breakdown of Australian Government expenditure for 2008-09 across the main ODA-funding agencies in the law and justice sector (i.e., AusAID, AFP, AGD and the Department of Foreign Affairs and Trade (DFAT)), and by region is set out in Table 1.

Table 1: FY 2008-09 law and justice sector expenditure by agency and region

Region	Australian Government agency	FY 2008-09 expenditure
Pacific		
	AusAID	\$71 million
	AFP	\$111 million
	AGD	\$2 million
	Total	\$183 million
Asia		
	AusAID	\$33 million
	AFP	\$23 million
	AGD	<\$1 million
	DFAT	<\$1 million
	Total	\$58 million
Other regions, cross-regional and global		
	AusAID	\$10 million
	AFP	\$41 million
	Total	\$51 million
Grand total		\$292 million

Note: For a breakdown of expenditure on a country-by-country basis, see Section 2.

Source: AusAID.

Both the AFP and AGD provide development assistance through a range of mechanisms. The AFP's International Deployment Group manages Australian overseas police deployments to capacity building missions, regional post-conflict reconstruction missions and

⁹ It is important to note that the bulk of the AFP's expenditure (\$103 million) relates to the RAMSI's PPF, with a further \$14 million for UN peacekeeping missions in Timor-Leste and Sudan. These figures are comparable to 2007-08 expenditure of: \$128 million, AusAID; \$170 million, AFP (of which approximately \$119 million was for RAMSI's PPF and a further \$18 million for UN peacekeeping missions in Sudan and Timor-Leste); and \$3.5 million, AGD.

¹⁰ This year, AGD also contributed around \$5.3 million in support of broader security-related programs, targeting improved border control and customs management. DFAT spent just over \$0.45 million in support of law and justice initiatives, including support for prison reform in Indonesia and human rights initiatives in China.

UN peace-keeping missions, with approximately 350 staff deployed offshore.¹¹ In addition, assistance through the AFP's International Network focuses on building local policing capacities to combat transnational crime, including support for police-to-police collaboration, intelligence gathering in support of international law enforcement efforts and the provision of training and other technical assistance.¹² On a smaller scale, the AFP's Forensic and Data Centre provides a range of other specialised assistance.

Similarly, the AGD has several avenues through which ODA is delivered, with international legal assistance teams focusing both on geographic regions (e.g., Asia, Pacific and Africa) as well as technical issues (e.g., anti-money laundering). The work of the Australian aid program is also complemented by the efforts of other parts of the AGD involved in international legal cooperation activities incidental to their core business, in areas such as human rights and child protection.¹³

This report is organised around three broad categories of assistance: sector-based responses; emerging sector-based responses; and targeted and specialised assistance (including bilateral, regional and global responses). While these categories do not bear internationally recognised significance, they do provide a practical framework within which to consider Australia's law and justice sector assistance, which currently ranges in scale and scope from comprehensive and integrated programs at one end, to small-scale, relatively discrete interventions at the other end. An estimated breakdown of Australian Government expenditure for 2008-09 across each of these categories (and by region and agency) is set out in Table 2.

Table 2: FY 2008-09 law and justice sector expenditure by category of response

Category of response	Australian Government agency	FY 2008-09 expenditure
Sector-based responses		
	AusAID (100% Pacific)	\$56 million
	AFP (100% Pacific)	\$109 million
	Total	\$165 million
Emerging sector-based response		
	AusAID (29% Pacific, 71% Asia)	\$35 million
	AFP (8% Pacific, 92% Asia)	\$13 million
	DFAT (100% Asia)	<\$1 million
	Total	\$47 million
Targeted and specialised responses—bilateral, regional, global		
	AusAID (21% Pacific, 38% Asia, 41% other)	\$24 million
	AFP (4% Pacific, 20% Asia, 76% other)	\$54 million
	AGD (69% Pacific, 29% Asia, 2% other)	\$3 million
	DFAT (100% Asia)	<\$1 million
	Total	\$80 million
	Grand total	\$292 million

¹¹ The AFP is currently contributing to three UN operations—in Timor-Leste, Sudan and Cyprus. The AFP has a long-term strategic relationship with the UN, including a leadership role in policing issues within the Special Committee on Peacekeeping (C34), and serving as the chair of the police working group for the United Nations African Mission in Darfur. However, key challenges remain in relation to the UN capacity to form police contingents in significant numbers, with appropriate skills and experience. Evaluations of these missions, including Australia's contribution, are undertaken as part of regular UN processes: AFP, internal reporting.

¹² AFP, internal reporting.

¹³ AGD, internal reporting.

Note: For a breakdown of expenditure on a country-by-country basis, see Section 2.

'Other' includes other regions, cross-regional and global.

Source: AusAID.

2 Results of Australian development assistance

This section summarises the major results of Australia's development assistance to the law and justice sector achieved in 2008-09. As Australia does not have a single, overarching set of development assistance objectives for the law and justice sector, performance is assessed against objectives from relevant program and country-level strategies. Results are presented on a country and regional basis and are organised around three broad categories of assistance: sector-based responses; emerging sector-based responses; and targeted and specialised assistance.

This report relies on information about progress and challenges in the sector drawn from country-generated sources, where they exist, and information obtained as part of the monitoring and evaluation processes within Australian-funded law and justice programs. These sources include a range of internal quality reporting from AusAID and other Australian Government partners, as well as mid-term and independent completion reviews and community-based surveys undertaken throughout 2008-09. Further discussion of higher order sector performance information, particularly as it relates to Australia's region, is in Appendix A.

Sector-based responses

In PNG and Solomon Islands, commensurate with broader bilateral engagement strategies, Australia provides large-scale and comprehensive sector-based responses to law and justice, in support of agreed, country-led reform programs, and Australia works across a range of institutions. While significant law and justice challenges remain in both PNG and Solomon Islands, success is being measured in terms of effective long-term engagement and measureable, incremental progress, as set out below.

PNG – Australian ODA FY 2008-09 expenditure: \$42 million

Australia's law and justice sector objectives: *Government of PNG demonstrating open, accountable democratic behaviours and adherence to the rule of law and improved ability to provide law and justice services.*

In the last year, Australia's assistance to PNG contributed to improvements in service delivery in a number of areas across PNG's five sector goals (improved policing, safety and crime prevention; increased access to justice and just results; improved reconciliation, reintegration and deterrence; improved accountability and reduced corruption; and improved ability to deliver law and justice services).¹⁴ Examples include:

¹⁴ AusAID, *PNG Annual Program Performance Report 2008*.

- > Port Moresby's *Yumi Lukautim Mosbi* crime prevention initiative has continued to strengthen its services for victims of domestic and sexual violence and received the UN 2008 Habitat Award in recognition of excellence in urban safety and youth crime prevention.¹⁵
- > Country-wide, 350 new women village court magistrates were recruited and trained in 2008, a significant increase from 18 in 2007.¹⁶
- > Legal aid services were established in six new provinces which are now providing legal, paralegal and advocacy services at provincial and district levels. This has contributed to an overall increase in the number of criminal (up by 26 per cent compared to 2007) and civil (up by 194 per cent compared to 2007) cases opened by the public solicitor in 2008.¹⁷
- > Ongoing infrastructure work resulted in substantially improved conditions for detainees in correctional institutions in three provinces.¹⁸

The law and justice sector in PNG continues to serve as a model for locally led reform, in a sector where coordinated effort across a range of agencies is needed to improve service delivery.¹⁹

However, notwithstanding areas of progress, the scale of law and justice challenges in PNG remains significant, with serious crime rates appearing unchanged, police performance (and community confidence in policing) persistently poor and access to justice remaining unequal, particularly for women.²⁰ Expectations about the pace of change are necessarily modest.

In 2008, a new policing partnership between the AFP and the Royal PNG Constabulary (RPNGC) was agreed to, the scope of which is now under development. Australia's re-engagement with the RPNGC offers the prospect of supporting improvements in that agency, which in recent times has generated the greatest risks to the achievement of PNG's sector objectives.²¹ Together with the ongoing support to the law and justice sector under the *Strongim Gavman Program*²², this new relationship with the RPNGC will form part of the broader Australia – PNG Law and Justice Partnership, the new five-year phase of which commenced in early 2009.

Solomon Islands – Australian ODA FY 2008-09 expenditure: \$123 million

Australia's law and justice sector objectives: *Contribute to the maintenance of a safe and stable environment in Solomon Islands that is underpinned by an effective, affordable and culturally appropriate law and justice system accessible to all Solomon Islanders.*

Australia's contribution to the Regional Assistance Mission to Solomon Islands (RAMSI) Law and Justice Program and the RAMSI Participating Police Force (PPF) operates under the Solomon Islands Government – RAMSI Law and Justice Strategic Framework. Notable achievements over the last year included:

- > Improved security and community confidence, with the 2008 People's Survey, initiated by RAMSI, finding that 88 per cent of respondents felt law and order had improved or remained the same (although there was significant variation across provinces).²³

¹⁵ AusAID, *PNG Annual Program Performance Report 2008*.

¹⁶ Government of PNG, *Law and Justice Sector, Annual Performance Report 2008*.

¹⁷ Government of PNG, *Law and Justice Sector, Annual Performance Report 2008*.

¹⁸ AusAID, *PNG Annual Program Performance Report 2008*.

¹⁹ Dixon G, Gene M & Walter N, *Joint review of the Enhanced Cooperation Program (ECP)*, Report prepared for the governments of PNG and Australia, March 2008, p. 23.

²⁰ AusAID, *PNG Annual Program Performance Report 2008*. See also PNG Justice Advisory Group, *Law and Justice Sector, Urban Crime Victimization in Papua New Guinea, 2004-2008: A Synthesis* 2009.

²¹ See Murphy, P & Gramckow, H, *PNG Law and Justice Sector Program—Independent Completion Report* 2009.

²² In 2008-09, up to 11 deployments were in place under the law and justice component of the *Strongim Gavman Program*, contributing to capacity building efforts within the Department of Justice and Attorney-General, Office of the Public Prosecutor and Correctional Services: AusAID, *PNG Law & Justice Sector Performance Report 2008*.

²³ RAMSI, *People's Survey 2008—Summary*, p. 8.

- > The processing of a large number of criminal cases through the High Court, and the re-establishment of priority court and prison infrastructure.²⁴
- > With the assistance of the PPF, the Royal Solomon Islands Police Force (RSIPF) has maintained law and order, with no major security incidents in Honiara since the April 2006 riots.²⁵ An improved approach to operational policing by RSIPF officers is now emerging, particularly in the planning and staging of major operations and investigating serious or complex crime.²⁶
- > For the first time since 2003, all heads of agencies supported by RAMSI, with the exception of the police, are held by Solomon Islanders. This is considered to be a significant achievement, demonstrating an increased level of leadership confidence and financial discipline on the part of the Solomon Islands Government.²⁷

Progress in building a sustainable law and justice sector is being hampered by a lack of human resource capacity and resources in critical areas, as well as instability at the political level. Stronger collaboration across the sector, including the component parts of RAMSI, is also needed to improve service delivery.²⁸ The roles and capacities of non-government and community partners in the delivery of law and justice services, particularly at local levels, requires greater attention and support, and land-related issues, youth unemployment and gender-based violence remain key challenges.²⁹

Emerging sector-based responses

Elsewhere in the Asia-Pacific region, there are countries where law and justice is currently a development priority, but where the partner country's articulation of the reform agenda is in its early stages, or where local leadership and ownership of reform is nascent. In these circumstances, Australian assistance can be characterised as an emerging sector-based response. In these countries, Australia typically provides technical and financial assistance to build core operational capacities within more than one law and justice institution, working in collaboration with other donors who may be targeting other parts of the system. Concurrently in these countries Australia is assisting partner governments to develop clearer, more integrated policy responses to law and justice challenges. It is intended that this approach will help foster stronger, locally led reform processes that are necessary, ultimately, to drive and sustain law and justice service delivery improvements in the longer term. In the last year, some progress in this regard has been made in Indonesia, Cambodia, Timor-Leste, Vanuatu and Samoa.

Timor-Leste – Australian ODA FY 2008-09 expenditure: \$21 million (or \$32 million if the AFP's contribution to the UN Integrated Mission in Timor-Leste (UNMIT) is included)

Australia's law and justice sector objectives: *Contribute to the development of a more effective, accessible and accountable justice system and build the foundations of a more effective and accountable police service.*

Australia currently provides development assistance across a range of law and justice sector agencies

²⁴ AusAID, *Solomon Islands Annual Program Performance Report 2008*

²⁵ AusAID, *Solomon Islands Annual Program Performance Report 2008*.

²⁶ *RAMSI Annual Performance Review and People's Survey 2008*. In addition to the People's Survey, the PPF commissioned an independent review in 2008 to examine the effectiveness of capacity development efforts to date. Findings will inform future policies and programs: AFP, internal reporting.

²⁷ AusAID, *RAMSI Law and Justice Program Mid Term Review 2008*.

²⁸ AusAID, *RAMSI Law and Justice Program Mid Term Review 2008*.

²⁹ AusAID, *RAMSI Law and Justice Program Mid Term Review 2008*, ODE, *Violence Against Women in Melanesia and Timor Leste: Building on Global and Regional Promising Approaches 2008*.

in Timor-Leste, both directly, through the Justice Sector Support Facility, and indirectly, through contributions to the United Nations Development Programme's (UNDP) Strengthening the Justice System Program. The AFP leads Australia's support to policing, through the Timor-Leste Police Development Program, as well as through its contribution of 50 officers to the United Nations Police, the security and police capacity building component of the UNMIT. In the past year, Australian development assistance in law and justice has contributed to:

- > Improved security and community confidence. A survey of community-police perceptions found that 53 per cent of the national public surveyed felt the security situation in their locality had improved compared to one year ago, while 41 per cent felt it had stayed the same.³⁰
- > Finalisation of a new criminal code, juvenile justice legislation and police law, a further 10 judges, prosecutors and public defenders taking up probationary positions, and improved services in the districts with four courts being opened (although operations have been sporadic).³¹
- > Provision of police training and introduction of operational changes to address workforce planning, salaries and conditions.³²

Challenges in the law and justice sector remain significant. The pool of external donors is crowded, local human resource capacity remains limited and foreign advisers continue to occupy a significant number of in-line roles across the system.³³ In the case of policing, the preference expressed by the Government of Timor-Leste for a para-military, rather than a community-based model, is also a key challenge, as is harmonisation of assistance across a range of donors.³⁴

These factors bring into question the likely, longer-term impact of Australia's assistance in this sector. While Australia's support to the Timorese police is thought to be on track to reach its objectives, this is only the case if viewed in isolation from the broader law and justice system. While improvements to policing are a significant and valuable achievement, weak coordination across the law and justice institutions is significantly hampering overall progress.³⁵

In 2008-09, there were signs that stronger local ownership of the law and justice reform agenda is beginning to emerge. A new strategic policy framework for the justice sector is under development and the Minister of Justice is now leading coordination. The Secretary of State-Security has finalised a Five Year Strategic Plan and National Security Policy, setting the framework for security sector reform. Although at a very early stage, these signs of stronger strategic leadership on the part of the Government of Timor-Leste will be a critical factor underpinning the effectiveness of future development assistance in this sector.

³⁰ Asia Foundation, *A Survey of Community Police Perceptions—Timor Leste in 2009*, p. 7. Public confidence in the police was also high, with 84 per cent of the national public reporting that they had 'great confidence' in the commitment of the police to prevent crime. In contrast, among civil society organisations and the international community, there is growing concern about police performance, including endemic corruption, a poor human rights record.'

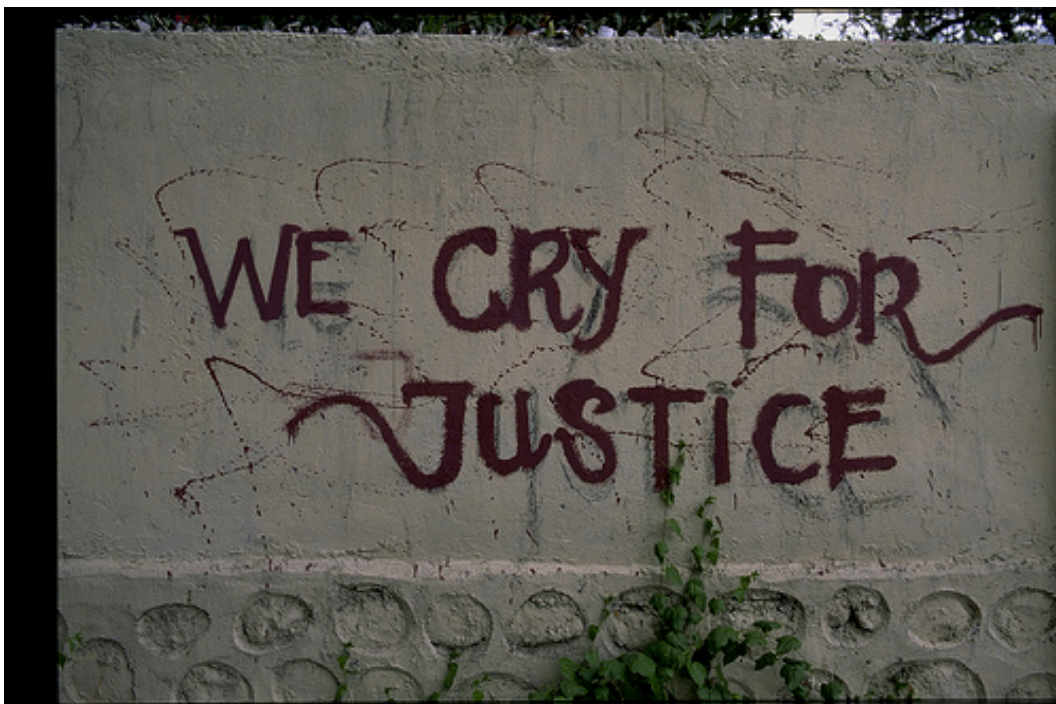
³¹ AusAID, *Timor Leste Annual Program Performance Report 2008*.

³² AusAID, *Timor Leste Annual Program Performance Report 2008*.

³³ AusAID, *Timor Leste Annual Program Performance Report 2008*.

³⁴ Keith Biddle, *Independent 'Health Check' of TLPDP*, February 2009.

³⁵ AusAID, *East Timor Annual Program Performance Report 2008*. See also International Crisis Group, *Timor Leste: No Time for Complacency*, February 2009.



Graffiti in the streets shows the long struggle for freedom for East Timor. Photo by David Haigh.

Indonesia – Australian ODA FY 2008-09 expenditure: \$8 million

Australia's law and justice sector objectives: *Improved capacity, accountability and responsiveness of legal, democratic and oversight institutions and processes and improved capacity to ensure transport safety and security to counter threats from transnational crime.*

The aid program continues to support the long-term institutional ties between Australian and Indonesian courts under the Indonesia Australia Legal Development Facility. In addition, Australian development assistance delivered by the AFP and other Australian Government agencies, is focused on improving capacity of Indonesia's law enforcement agencies to detect and disrupt crime, prosecute offenders and to counter threats from transnational crime.³⁶ Australia's contributions to achievements in 2008-09, included:

- > Progress in reducing case backlog, increased access for marginalised groups to Islamic family law courts and greater judicial transparency on the part of the Supreme Court.³⁷
- > Improved budgeting in the Religious Courts, leading to the introduction of fee-waivers for the poor and the holding of circuit courts in remote areas (an initial 300 cases were heard with fees waived and more than 1000 remote location court sessions held in the last year).
- > Launch of a reference book on domestic violence by the National Commission on Violence Against Women, which provides practical guidelines and a legal basis for action by judges dealing with domestic violence-related cases.³⁸
- > Enhanced access to technical assistance and training support for the Indonesian Transnational

³⁶ Australia-Indonesia Partnership Country Strategy 2008-13, Pillar 4.

³⁷ AusAID, *Indonesia Annual Program Performance Report 2008*.

³⁸ AusAID, *Indonesia Annual Program Performance Report 2008*. Through the Australia Indonesia Partnership for Reconstruction and Development Government Partnerships Fund, the AGD is also working with Indonesian Government agencies to improve legislative quality. In the last year, Australia co-hosted an Interactive Dialogue Forum on Interpretation of Laws with the Indonesian Ministry of Law and Human Rights. The Commonwealth Ombudsman is also supporting the establishment of the newly established National Ombudsman Commission.

Crime Coordination Centre.³⁹

Notwithstanding pockets of progress within the law and justice sector, overall there remains a lack of public confidence in the judiciary, institutional reform continues to be largely contingent on key individuals, and progress is hampered by systemic obstacles such as corruption at all levels. The lack of an overall government justice sector strategy also undermines the coherence of reform (and development assistance) efforts.⁴⁰

However, in the last year, the Government of Indonesia has taken steps to address these issues, having developed a new National Strategy on Access to Justice. Although these are very early days, and the extent of line ministry support for the strategy is unclear, this new policy platform has the potential to better target and coordinate resources, whether government or donor, toward agreed reform priorities.

Cambodia – Australian ODA FY 2008-09 expenditure: \$8 million

Australia's law and justice sector objectives: *Increased individual rights and responsibilities in the justice system for juveniles and vulnerable groups [focusing on] improved capacity and commitment of courts, prisons, police and provincial authorities to function effectively and equitably (particularly in dealing with vulnerable groups).*

After more than 10 years involvement in the law and justice sector, Australia's support under the Cambodia Criminal Justice Assistance Project is shifting from its initial focus on capital works and project-specific outputs to support for national-level reforms seen as necessary to drive longer-term change.

In line with the Cambodian Government's reform strategy, a more integrated approach is now being pursued, working with police, courts, prisons and the Council for Legal and Judicial Reform. Greater attention is also being given to issues of public financial, civil service and decentralisation reform.⁴¹ In the last year, support for these reforms has contributed to:

- > Progress being made in fundamental regulatory and organisational reforms, such as the development of new legislative and strategic planning tools to drive improved management within police, corrections and the courts.
- > Community safety initiatives being piloted through sub-national government processes in select provinces, with a particular focus on issues affecting women and young people.⁴²

The scale and complexity of challenges facing the law and justice sector in Cambodia are vast. The Royal Government of Cambodia's Legal and Judicial Reform Strategy prioritises access to justice, the establishment of legal frameworks and the reform of security institutions. However, progress is slow and has been hampered by a lack of political will, particularly with respect to judicial independence and perceptions of impunity.⁴³

Although support to law and justice remains a central pillar of Australia's development assistance to Cambodia, concerns about the pace of change and the overall impact of external support require further consideration, particularly in light of the broader political context and the significance of law and justice to the achievement of broader development priorities.

³⁹ AFP, internal reporting.

⁴⁰ AusAID, *Indonesia Annual Program Performance Report 2008*.

⁴¹ AusAID, *Cambodia Annual Program Performance Report 2008*.

⁴² AusAID, *Cambodia Annual Program Performance Report 2008*. Australian assistance under this project also draws on targeted expertise from the AFP and the AGD.

⁴³ AusAID, *Cambodia Annual Program Performance Report 2008*.

Vanuatu – Australian ODA FY 2008-09 expenditure: \$7 million

Australia's law and justice sector objectives: *More effective legal institutions and improved police services.*

Australian assistance to the law and justice sector in Vanuatu is primarily delivered through two projects: the Legal Sector Strengthening Project; and the Vanuatu Police Force Capacity Building Project. In the last year, this assistance contributed to:

- > Increased access to legal services for the general public on Efate Island (mainly in Port Vila).⁴⁴
- > Increased budget allocations to the three public law offices in the 2009 budget as a result of improved financial policies and procedures.⁴⁵
- > Increased police presence in the capital, Port Vila, and in targeted provincial locations and the implementation of the workforce renewal program, which enabled a third intake of new recruits (39 per cent women) and the managed retirement of long-serving officers.⁴⁶

The law and justice sector in Vanuatu faces a range of constraints. Human resource capacity across the sector remains weak and leadership has been limited. Without substantial change in the governance and management across the law and justice sector, there is little prospect that the gains made to date will be sustained.⁴⁷

However the newly appointed Director General for the Ministry of Justice and Social Welfare is leading a reinvigoration of the reform agenda and in the last year has been driving the development of a new Law and Justice Sector Strategy. Should this emerging leadership lead to a more coordinated and clear whole-of-government policy position, new opportunities may arise for re-positioning Australian (and other donor) assistance in the sector. To maximise the effectiveness of any such efforts, cooperation with New Zealand will be particularly important given its current role in supporting corrections and the judiciary.⁴⁸



Sargeant Ephraim Kalarib teaching at Vanuatu Police College. Photo by Rob Maccoll.

⁴⁴ AusAID, *Vanuatu Annual Program Performance Report 2008*.

⁴⁵ AusAID, *Vanuatu Annual Program Performance Report 2008*.

⁴⁶ AusAID, *Vanuatu Annual Program Performance Report 2008*.

⁴⁷ See *Vanuatu Legal Sector Strengthening Project Mid-Term Review 2008* and *Vanuatu Police Force Capacity Building Project Mid-Term Review 2008*.

⁴⁸ AusAID, *Vanuatu Annual Program Performance Report 2008*.

Samoa – Australian ODA FY 2008-09 expenditure: \$2 million

Australia's law and justice sector objective: *Improved law and justice.*

Australia's assistance to Samoa is undergoing a transition, in line with the evolution of the Government of Samoa's policy framework and priorities, from a focus on policing to a sector-based approach to law and justice. In this context, a key outcome of Australia's assistance over the last year was the development of a new Law and Justice Sector Plan, the product of a Government of Samoa-led and government-owned reform agenda. At completion, the AusAID-funded Samoa Police Project was assessed as having contributed to improved operational effectiveness and increased community confidence in the police, although gender equity remained a challenge despite increased numbers of female recruits.⁴⁹

With the Government of Samoa's policy framework as the driver, the scale and scope of future Australian assistance to the law and justice sector will be determined, including the AFP's support to the Samoan Police Service under the Pacific Police Development Program, as an agreed priority under the new Samoa – Australia Partnership for Development.⁵⁰ As is the case with Vanuatu, New Zealand is a key development partner in this sector, with a particular focus on assistance to the courts. Close collaboration with will be required to ensure the development of an effective, sector-based response.

Targeted and specialised responses—bilateral, regional and global

In addition to sector-based responses, Australia also provides a range of smaller-scale, targeted and specialised assistance through a mix of bilateral, regional and global programs. In the Pacific, this assistance focuses on the priorities articulated in The Pacific Plan for Strengthening Regional Cooperation and Integration adopted by leaders of Pacific Islands Forum (PIF) countries, including Australia, at the 2005 forum.⁵¹ In the last year, this assistance has helped to strengthen legal, judicial and police capacity, particularly in relation to issues of cross-regional significance such as transnational crime. In Asia, Australian assistance primarily focuses on the region's capacity to respond to emerging and transnational law and justice issues, such as people trafficking, terrorism and other security threats.

To help strengthen the collective response to shared development challenges, the aid program also supports a range of institutional partnerships and networks across the Asia-Pacific region. In the last year, this assistance has helped to foster regional collaboration, coordination and resource sharing, and has helped to further embed linkages between Australian institutions and their regional counterparts.⁵²

⁴⁹ AusAID, *Samoa Police Project Independent Completion Review 2009*. The leadership of Australia's assistance to policing was transferred to the AFP at the end of 2008 as part of the new Pacific Police Development Program.

⁵⁰ AusAID, *Samoa Annual Program Performance Report 2008*.

⁵¹ See: <<http://www.forumsec.org.fj/pages.cfm/about-us/the-pacific-plan/>>

⁵² Institutional partnerships and regional networks are also supported, on a competitive, demand-driven basis, through the aid program's International Seminar Support Scheme (ISSS), which sponsors attendance of developing country partners at international development-oriented seminars in Australia and overseas. In the last year, the ISSS supported a range of seminars in the law and justice sector, including: Annual Conference of the Australian Association of Crown Prosecutors; Asia Pacific Judicial Reform Forum; AsianLII Conference—Building Capacity for Free Access to Law in Asia; Working Together—National Access to Justice and Pro Bono Conference; and International Association of Women Police—Annual Training Conference.

Pacific

Australian ODA FY 2008-09 expenditure: \$9 million

Australia's law and justice sector objectives: *More effective, accountable and democratic government, and improved law and justice.*

Box 1: Pacific Ombudsman Alliance

The Pacific Ombudsman Alliance is a peer support mechanism established to strengthen accountability and good governance in the Pacific. It provides the institutional form, capacity and resources needed to coordinate and deliver additional services to all PIF countries. The alliance facilitates coordination between the Pacific Island Ombudsmen and countries working to establish ombudsman functions and like agencies. In the last year, Australia, through its Commonwealth Ombudsman, has supported the consolidation of alliance activities into a program formally directed by a newly established board. The board is weighted to Pacific Island membership and thus Pacific Island decision-making—a major step toward sustainability. These regional efforts are complemented by a long-term twinning arrangement between Australia's Commonwealth Ombudsman and the PNG Ombudsman Commission, a new phase of which commenced in early 2009. The twinning arrangement is supported as part of Australia's bilateral partnership with the law and justice sector in PNG.⁵³

- > Australia is assisting legal and judicial development across the Pacific through a range of mechanisms and partnerships. With New Zealand, training and other technical assistance is strengthening the capacity of the region's judiciary and court officers through the **Pacific Judicial Development Program**.⁵⁴ Under the Pacific Public Sector Linkages Program⁵⁵, the Federal Court of Australia has supported the development of court mediation processes in selected Pacific jurisdictions.⁵⁶ The AGD is helping to strengthen legislative frameworks and access to legal information and management of legal resources through programs of technical assistance, training and mentoring for legislative drafters⁵⁷ and government law libraries.⁵⁸
- > These efforts are complemented by Australian support to the **Pacific Legal Information Institute** (PacLII), which provides a free, electronic database of legislation and judgements from Pacific jurisdictions. Australia also provides core funding for the Pacific Regional Rights Resource Team, a training and technical resource organisation based in Suva and specialising in human rights advocacy, law and education relevant to the Pacific region.

⁵³ AusAID, *Pacific Governance Support Program, Activity Progress Report, 2009*.

⁵⁴ Results in the last year have been limited due to contract-related issues currently being managed by NZAID.

⁵⁵ The Pacific Public Sector Linkages Program, formerly known as the Pacific Governance Support Program, aims to develop public sector expertise in Pacific states, strengthen regional approaches to shared problems and increase the scope and depth of whole-of-government engagement in the Pacific. An independent review of the first phase of the program found that activities had been well received by Pacific counterparts, and that the program provided appropriate systems, procedures, policies and skills development: AusAID, *Pacific Governance Support Program Independent Completion Report 2008*.

⁵⁶ AusAID, *Pacific Regional Annual Program Performance Report 2009*.

⁵⁷ The AGD's Office of Legislative Drafting and Publishing (OLDP) delivers a Pacific Island Legislative Drafting Pairing Program, which pairs a drafter from the Pacific with an OLDP counterpart for three months. Placements are currently offered twice a year: AGD, *internal reporting*.

⁵⁸ The Pacific Law Library Twinning Program facilitates the establishment of long-term partnerships between Australian and Pacific government law libraries. In 2009, a Pacific Islands Law Library Community Group was established and a new online communication and information sharing platform developed: AGD, *internal reporting*.

- > Through the **Pacific Public Sector Linkages Program** the aid program has supported the efforts of the Commonwealth Ombudsman (Box 1) and the Director of Public Prosecutions in the establishment of regional networks to enable the exchange of ideas, advice and access to technical assistance from Australian counterparts. The AGD is supporting the Pacific Islands Law Officers Network, providing secretariat services on an interim basis, while longer-term, Pacific-based arrangements are established.⁵⁹
- > Australian regional assistance to policing has been in transition over the last 12 months. The **Pacific Regional Policing Initiative** concluded in late 2008 and was assessed by an independent review as being of good quality overall. Major achievements included strengthened planning and budgeting systems, increased leadership and management skills, and improvements in basic investigation skills.⁶⁰
- > In 2008-09, a new program of support for regional policing has been under development, involving the AFP and the AGD, in partnership with policing and other law and justice sector agencies across the Pacific. Building on existing institutional relationships, the new **Pacific Police Development Program** is expected to focus on building national-level capacities through a combination of targeted bilateral assistance and strengthened regional collaboration.
- > Key regional partners will include the Pacific Island Chiefs of Police and Pacific Transnational Crime Network⁶¹, complementing other assistance provided to these organisations by the AFP's International Network (located in Fiji, PNG, Solomon Islands and Vanuatu), as well as related assistance provided by the **AGD's Anti-Money Laundering Assistance Team (AMLAT)** (Box 2), and New Zealand police development programs. A program of transitional support was provided in 2008-09, including the implementation of the regional recruit course with participating countries and support for criminal justice and police legislative reform processes in Kiribati, Nauru and Tonga.⁶²

Box 2: Anti-Money Laundering Assistance Team

The AGD's AMLAT is assisting PIF countries to meet international anti-money laundering and counter-financing of terrorism standards, including through Financial Intelligence Units (now established in all PIF countries) and increased capacity among law enforcement officials and legal officers to investigate and prosecute financial crimes and proceeds of crime actions. Technical assistance and training is provided through regional and bilateral workshops and ongoing mentoring, including a Prosecutor Pairing Program under which Pacific Island prosecutors undertake two month placements within the Criminal Assets Branch of the Commonwealth Director of Public Prosecutions. Prosecutors from PNG, Vanuatu, Solomon Islands and Samoa have undertaken placements to date. Shortly after the workshop in Solomon Islands, the Director of Public Prosecutions succeeded in taking the country's first proceeds of crime action, effectively restraining more than \$1 million Solomon Island dollars.⁶³

⁵⁹ AGD, internal reporting.

⁶⁰ AusAID, *Pacific Regional Policing Initiative Independent Completion Review 2009*.

⁶¹ The Pacific Transnational Crime Network includes a Pacific Transnational Crime Coordination Centre based in Samoa and has series of Transnational Crime Units in Fiji, Tonga, Samoa, Vanuatu, PNG and the Federated States of Micronesia. It also has smaller outposts in the Marshall Islands, the Commonwealth of the Northern Mariana Islands, Kiribati and Palau. The AFP's International Network provides financial and technical assistance to support the operations of the Pacific Transnational Crime Network, the Pacific Islands Chiefs of Police Secretariat, and the participation of Pacific police officers in a range of domestic and international training programs: AFP, internal reporting.

⁶² *Biannual Performance Evaluation Report PPDP January and June 2009*, prepared for the AFP by Global Justice Solutions; AGD, *Pacific Police Development Program, Quality-at-Implementation Report 2009*.

⁶³ AGD, internal reporting.

- > Relatively small-scale, bilateral assistance forms part of Australia's targeted and specialised law and justice assistance in several countries in the Pacific. For example, in Tonga, as part of efforts aimed at strengthening governance and accountability, Australia provides targeted assistance to the law and justice sector, particularly to enable the engagement of a Supreme Court Judge and Senior Crown Counsel. The trilateral, Australia – New Zealand – Tonga Police Development Program complements these efforts by focusing on increasing the capacity of the Tonga Police Force.⁶⁴

Asia

Australian ODA FY 2008-09 expenditure: *\$9 million, or \$20 million if the AFP contribution to UNMIT included*

Australia's law and justice sector objectives: *Strengthened capacity to combat and respond to multi-jurisdictional threats to safety and security, including terrorism, people trafficking and other forms of transnational crime.*

- > The AGD's **International Legal Assistance Asia Section** plays a key role in the delivery of Australia's regional development assistance to law and justice in South-East Asia. This has included technical assistance and training provided through close institution-to-institution links, and has resulted in the development of more effective policy and legal frameworks and increased capacity for international legal cooperation, particularly mutual legal assistance and extradition. In the last year, efforts have focused on capacity building support to government agencies in Indonesia, Cambodia and Vietnam.⁶⁵
- > Through the **Asia Regional Trafficking in Persons Project**, Australia supports governments to strengthen their criminal justice response to trafficking in persons, including the development of common standards and approaches to policy and practice, and the implementation of the Association of Southeast Asian Nations Declaration Against Trafficking in Persons Particularly Women and Children. This assistance also targets specialist and front-line police, judges and government prosecutors and, in the past year, has seen the completion of the first round of basic awareness training for judges and prosecutors across the region, as well as a pilot of advanced training in Cambodia. Increased technical capacity, in areas such as case analysis, is now evident in Burma, Indonesia and Cambodia.⁶⁶
- > Across Asia (Bangladesh, Burma, Cambodia, China, Indonesia, Malaysia, Philippines, Thailand, Timor-Leste and Vietnam), the **AFP's International Network** provides a range of discrete, bilateral policing assistance, including financial support, technical advice and training to the Royal Thai Police and the Thai Transnational Crime Coordination Network, the Cambodian National Police Transnational Crime Team, and the Ministry of Public Security National Narcotics Control Bureau (in Guangzhou and Fujian provinces) in the area of case management intelligence systems.⁶⁷

⁶⁴ AusAID, *Tonga Annual Program Performance Report 2008*.

⁶⁵ AGD, internal reporting.

⁶⁶ AusAID, *Asia Regional Trafficking in Persons Project, Quality-at-Implementation Report 2009*.

⁶⁷ AFP, internal reporting.

Other regions, cross-regional and global responses

Australian ODA FY 2008-09 expenditure: \$51 million

- > In the last year, AusAID and the AFP provided targeted and specialised law and justice assistance to countries outside the Asia-Pacific region, through cross-regional and global programs, as well as bilaterally. For example:
 - **AFP International Liaison Network:** currently located in Colombia, Lebanon, Pakistan, Serbia and South Africa this network is helping to build local policing capacities to combat transnational crime.⁶⁸
 - **AFP International Deployment Group:** has been providing mentoring and capacity building assistance as part of the UN Mission in Sudan and high-level advisory and mentoring support to senior members of the Afghanistan National Police.⁶⁹
 - **AFP Forensic and Data Centre:** contributed training and equipment to support increased forensic and management capacity within police and forensic law enforcement agencies in Pakistan, Iraq and Africa.⁷⁰
- > On a cross-regional basis, AusAID provides relatively small-scale financial support to a range of initiatives targeting **human rights**, including in China. In the last year, AusAID has also commenced a new research-based partnership with the World Bank's **Justice for the Poor** program aimed at increasing cross-regional (East Asia and Pacific) understanding of the role and significance of non-state, local level justice mechanisms in supporting the achievement of broader development goals.

⁶⁸ AFP, internal reporting.

⁶⁹ Operational successes are being hampered by limited local capacity, a lack of clear political will and risks to deployed personnel due to the broader security situation: AFP, internal reporting.

⁷⁰ These efforts are part of Australia's whole-of-government engagement programs in Pakistan, Iraq and across Africa: AFP, internal reporting.

3 Quality of Australian development assistance

This section summarises the quality of Australia's development assistance to the law and justice sector. In terms of value, if the large-scale investment in RAMSI's PPF is excluded, the bulk of Australia's development assistance to the law and justice sector is currently provided through AusAID-administered programs. In this context, although this reports draws on performance information provided by a range of government departments to present a comprehensive view of Australian development assistance efforts, this section focuses only on AusAID-administered programs.⁷¹

There are currently more than 50 law and justice related initiatives administered by AusAID, across more than 15 countries. As noted earlier in this report, these range significantly in scale and scope. Due to the size and variation across AusAID's portfolio, and the availability of performance information, assessments in this report are based on the 17 initiatives which each have a total value of at least \$3 million and were the subject of AusAID's Quality at Implementation (QAI) reporting in 2008-09. This reporting assesses performance in four areas: implementation progress; meeting objectives; monitoring and evaluation; and sustainability. A table showing the ratings for each of the 17 initiatives, in each of the four QAI performance areas, is in Appendix B.

Aid program performance at activity level

Across the four QAI assessment categories, performance was most strong in achieving objectives (around 76 per cent of initiatives were rated at satisfactory or above), with comparably favourable results in implementation progress (around 88 per cent were rated satisfactory or above). However, as was the case in 2007-08, quality reporting indicates that monitoring and evaluation and issues of sustainability are areas of weakness across AusAID's law and justice portfolio. These findings are consistent with the experience across governance interventions more broadly⁷², but also highlight the particular challenges posed by the dearth of law and justice sector performance data, including gender-disaggregated data (discussed in Appendix A), as well as the challenges of supporting sustainable change in what is a complex and often highly sensitive and politicised sector.⁷³

At the activity level, a range of work is underway to address these issues, including through design processes that were completed (PNG) or commenced (Indonesia, RAMSI) in the last year. Programs are working to articulate more clearly the objectives of Australia's aid program contribution to the law and justice sector, and to align this to broader country program objectives and the policy frameworks of partner governments. Additional resources have also

⁷¹ Quality reporting procedures for Australia's ODA vary across agencies, however, efforts to increase harmonisation of reporting are underway: as is outlined in Section 4.

⁷² AusAID, *Annual Thematic Performance Report—Governance 2007-2008*.

⁷³ See Governance and Social Development Resource Centre, *Helpdesk Research Report: The Politics of Justice Reform* (2008).

been applied to enable further development of activity-level monitoring and evaluation frameworks, for example in Vanuatu and Cambodia.

In the last year mid-term reviews were conducted for AusAID's law and justice programs in Solomon Islands and Vanuatu, while independent completion reviews were conducted for AusAID-funded policing programs in Samoa and the Pacific region, and for programs in PNG (Box 3). The findings of these reviews have informed activity and country level performance reporting drawn on throughout this report, and are referred to, where relevant in Section 1. Recommendations are now being addressed through program implementation.

Box 3: Independent Completion Reviews in FY 2008-09

- > The **PNG Justice Advisory Group** (a six-year, \$14-million initiative supporting PNG law and justice sector capacity to monitor and report on sector performance) was found to have provided valuable independent support to the law and justice sector during its transition to a sector-wide approach. Community crime surveys, annual performance reports, independent reviews of the annual development budgeting process and strategic policy perspectives were highly valued outputs for PNG stakeholders, and were found to have contributed to the outcome of more efficient sector planning, budgeting and implementation.⁷⁴
- > The **PNG Law and Justice Sector Program** (a six-year, \$150-million initiative supporting the PNG law and justice sector to implement its five sector goals) was found to have been an innovative approach to justice sector support that both pre-dated and aligned well with the Paris Declaration on Aid Effectiveness:
 - The program was very successful in facilitating the development of coordination structures and translating the meaning of a sector wide approach to agency planning, operations, management and policy. However, the translation of these efforts into tangible results was mixed. More visible impacts could have been obtained by providing more support for strengthening service delivery at the same time as support for corporate areas.
 - The use of the PNG's budget systems for all program planning and funding was an effective mechanism for operationalising the use of government systems in line with the Paris Declaration, however it may have encouraged agencies to view change as applying only to their administrative rather than their core service delivery activities.
 - A thorough gender analysis in the design process, the recruitment of full-time local personnel as gender and HIV/AIDS advisers, the identification of male champions in senior positions and the allocation of adequate resources, were found to be key factors that enabled effective integration of gender equality and HIV/AIDS across the program.
 - Monitoring and evaluation was a weakness, including in relation to gender-disaggregated data. More attention could have been given early on to helping agencies identify their target beneficiaries, evaluate their service delivery needs and to develop systems for monitoring and reporting meaningfully on service delivery improvements.⁷⁵
- > The **Pacific Regional Policing Initiative** (a five-year, \$22-million, joint New Zealand's International Aid & Development Agency (NZAID) – AusAID initiative supporting police capacity across the Pacific) was found to be a highly relevant regional program and effective in preparing the ground for further support to policing in the Pacific. Although it suffered from the limitations normally associated with a regional program—namely criticisms of a one-size-fits-all approach—any perceived limitations were made up for by the commitment, competence, flexibility and responsiveness of the program's long-term advisory team. While the program integrated gender issues within its approach,

⁷⁴ Teese, I., Clarkson, J & McGovern, J, *Independent Completion Report Papua New Guinea Justice Advisory Group*, 2009.

⁷⁵ Murphy, P & Gramckow, H, *PNG Law and Justice Sector Program—Independent Completion Report* 2009.

opportunities were missed to support the Women's Advisory Network—the peak advisory body to Pacific Chiefs of Police.⁷⁶

- > The **Samoa Police Project** (a five-year, \$9-million initiative supporting the strengthening of the Samoa Police Service) was found to have contributed to improved management and operational capacity within the Samoa Police Service. A good foundation was established for ongoing organisational reform however, a number of the changes introduced were relatively new and would need ongoing support to ensure sustainability. Although there was a visible increase in the number of female officers, gender and equity would remain an ongoing focus for support.⁷⁷

Aid program performance at country program level

The impact of external political factors, including variable and often fragile leadership at both bureaucratic and ministerial levels, is a common factor affecting the quality (particularly in terms of sustainability) of all Australian assistance in the law and justice sector⁷⁸, as highlighted in Section 2 and as evident in the ratings against relevant law and justice sector objectives in AusAID's country level Annual Program Performance Reports (Appendix C). For example, notwithstanding relatively strong assessments of performance at activity level, longer-term progress towards sector and country-level objectives in the more crowded donor environments of Timor-Leste and Cambodia is less certain.⁷⁹

The ODE has noted that AusAID's law and justice programs are:

... the most evenly split of the sectors in terms of performance, suggesting the riskiness of engagement in this sector—in turn a reflection of how dependent performance is on the level of ownership and commitment of partner governments.⁸⁰

The absence of clear ownership and strategic guidance from partner governments (particularly in post-conflict settings), coupled with weak human resource capacity (particularly in small island states), tends to result in a reliance on external technical assistance personnel and a short-term pattern of capacity supplementation, rather than capacity building.⁸¹ Duplication of effort and difficulties in aligning donor and partner country resources behind the key priorities are further challenges.

Notwithstanding these issues, the last year has seen signs of an emerging local leadership across several of Australia's partner countries, in the form of new law and justice sector policy formulation and planning efforts (Section 2 provides more detail). If sustained, and strategically supported by donors, this trend has the potential to significantly increase the effectiveness of external assistance to this sector in the short to medium term. However, it is important to be realistic about the pace of change. In PNG—where bureaucratic leadership within the law and justice sector is relatively strong and stable, where Australia is the largest of only a small number of donors, and assistance is delivered through a highly integrated planning and budgeting process—the capacity of the justice system to make use of increased

⁷⁶ Bysouth, K et al, *Pacific Regional Policing Initiative Independent Completion Review* 2008.

⁷⁷ Wright, J & Ey, F, *Samoa Police Project Independent Completion Report* 2008.

⁷⁸ Fragility in the political environment also significantly affected the impact of Australia's development assistance to Fiji's law and justice sector. Following the 2006 coup, Australia ceased its assistance to key law and justice agencies in Fiji, as such assistance was considered compromised and made ineffective by the actions of the military and interim government. At the time, the Government of Fiji had taken significant steps to develop a more integrated approach to law and justice reform, with a sector reform agenda in its early stages: AusAID, *Fiji Law and Justice Program Independent Completion Review* (forthcoming).

⁷⁹ See Appendix 2 and AusAID, *Cambodia Annual Program Performance Report 2008* and *East Timor Annual Program Performance Report 2008* and ODE, *Annual Review of Development Effectiveness* 2008, p. 25.

⁸⁰ ODE, *Third Quarterly Update on Development Effectiveness*, September 2008.

⁸¹ See ODE, *Annual Review of Development Effectiveness* 2008, p. 33.

funding remains limited, and overall progress toward service delivery improvements at the local level remains modest.⁸²

⁸² Murphy, P & Gramckow, H, *PNG Law and Justice Sector Program – Independent Completion Report 2009*.

4 Justice and security sector linkages

This section looks at priorities emerging from the interrelated fields of justice and security system reform, and considers how these are affecting the way Australia and AusAID work.

Avoiding and responding to conflict and instability

While there is broad consensus that a strong association exists between justice and development, the precise nature of the causal relationship remains contested and can be seen variously as an enabling element of poverty alleviation, market efficiency, social change and governance more broadly. The role of law and justice in development is likely to vary over time and will depend on the nature of the development and security context in question.⁸³

However, as noted earlier, the last 10 years has seen an increasing focus on law and justice, driven in particular by the prevalence of international engagement in post-conflict and fragile settings, where law and justice challenges manifest most starkly, as well as the emerging prominence of cross-border security threats such as transnational crime and terrorism.⁸⁴

Over the last 10 years, international engagement in the sector evolved from an emphasis on discrete institutional capacities to an emphasis on whole-of-system approaches taking into account the interdependence across the institutions involved in the law and justice sector.⁸⁵

In addition, early investment in strengthening law and justice institutions, particularly in fragile settings, is now seen as a relatively low cost contribution to conflict prevention and stability when compared to the high cost of post-conflict stabilisation interventions.⁸⁶ These trends have expanded the way international donors view the law and justice sector. There are now increasing linkages between development, military, intelligence and diplomatic actors, resulting in a convergence of policy and programming across the justice and security sectors.⁸⁷

⁸³ See Cox, M, *Security and justice: measuring the development returns* 2008.

⁸⁴ See, for example, DFID, *Eliminating World Poverty: Building our Common Future* 2009, Chapter 4; and Ismail O. & Hendrickson D., *What is the case for a security and justice focus in development assistance programming?*, Global Facilitation Network for Security Sector Reform Literature Review, 2009.

⁸⁵ See, for example, DfID, *Safety, Security and Accessible Justice—Putting policy into practice* 2002; and Stone, C et al, *Supporting Security, Justice and Development: Lessons for a New Era* 2005, p.7, available at: <http://webarchive.nationalarchives.gov.uk/+/http://www.dfid.gov.uk/Pubs/files/security-justice-development.pdf>

⁸⁶ *Enhancing the Delivery of Justice and Security*, OECD Journal on Development 2008, vol. 8, no. 3, p. 119. In turn, expenditure on long-term UN peace-keeping missions is also argued to be a cost-effective investment strategy when compared to the cost of conflict: Collier P & Hoeffler A., *The Challenge of Reducing the Global Incidence of Civil War*, Center for the Study of African Economies, Department of Economics, Oxford University, March 2004; see also: <http://www.un.org/Depts/dpko/dpko/faq/q3.htm> Strengthening the role of law and justice institutions in conflict prevention is also at the heart of the UN Bureau of Crisis Prevention and Recovery's *Global UNDP Programme for Justice and Security*, which Australia is part funding.

⁸⁷ OECD Development Assistance Committee *Handbook on Security System Reform, Supporting Security and Justice* (2007); and *Whole-of-Government Approaches to Fragile States*, OECD Journal on Development 2008, vol. 8, no. 3, p. 185. See also Hendrickson D, *Key Challenges Facing Security Sector Reform: A Case for Reframing the Donor Policy Debate*, Global Facilitation Network for Security Sector Reform Working Paper, 2009, available at: <http://www.ssrnetwork.net/publications/reframing.php> Internationally, there are a range of different terms used to describe the operations of legal, judicial, law enforcement and security institutions, including 'security sector', 'security and justice sector', 'rule of law', and 'law and justice sector'. These terms often mean different things to different people. In a broad sense, the 'security system' can be taken to include the full range of security and justice institutions and 'sectors' (e.g., core government security actors, security management and oversight bodies,

A crowded field

In this context, and given the particular geopolitical characteristics and development challenges of countries across the region, it is not surprising that the Australian aid program is now also extensively and increasingly engaged across the justice and security sectors. Apart from AusAID, a range of other Australian Government agencies are involved in the provision of security-related development assistance, covering diplomatic, defence, legal and law enforcement fields.⁸⁸

As highlighted in AusAID's *Annual Thematic Performance Report—Governance 2007-2008*⁸⁹, effective coordination and coherence across Australia's development assistance programming in the law and justice sector is a fundamental aspect of Australia's international aid effectiveness commitments under the Paris Declaration on Aid Effectiveness, the Accra Agenda for Action and, more recently in the region, the Cairns Compact for Strengthening Development Coordination in the Pacific. Compliance with these commitments is a challenge given the range of Australian agencies involved in providing law and justice assistance and the practicalities of managing effective cross-government coordination within and between headquarter and field level operations. These issues are made more complex by the convergence of justice and security concerns, as there is significant overlap and interface between Australia's development cooperation and other engagement as part of security, legal, law enforcement cooperation mechanisms in the region and more widely.

As noted in Section 1, there is also considerable variation in the scale and scope of Australia's justice and security engagement between countries and regions and between different Australian agencies—depending on the nature and relative priority of broader development and security objectives. Ideally, these efforts should be complementary, however, there is a significant risk that divergent objectives and competing priorities may undermine the overall impact.⁹⁰ Australia's efforts are further complicated by its engagement in multi-donor environments, where international experience suggests it is harder to foster country ownership and leadership, and, in turn, harder to coordinate the contributions of external partners.

It is these challenges, and the impact they have on development outcomes, that underlie increasing calls at the international level for better coordination and coherence within and across donors supporting justice and security system reform. In his 2008 report, the UN Secretary General noted:

justice and law enforcement institutions, including customary and community-based systems, and non-state security forces). However, to ensure that justice (i.e., civilian aspects) is not implicitly subordinate to security (i.e., military aspects), this report uses the terms 'justice and security system' or 'justice and security system reform'.

⁸⁸ Where this assistance involves core law and justice sector institutions and processes, such activities have been included in the assessments in sections 2 and 3. Where this assistance involves a broader group of institutions and processes focused on the management of national and transnational stability and threats (e.g., border control, customs, immigration and transport), such activities have not been included in the assessments made. In addition to the range of security-related work captured under the 'targeted and specialised' law and justice assistance discussed in sections 2 and 3, other security-related assistance includes: support for the development and implementation of national frameworks for maritime and transport security through the Philippines Counter Terrorism Initiative, with the Department of Infrastructure, Transport, Regional Development and Local Government the lead implementing partner; maritime and transport security assistance provided under the *Strongim Gavman* Program in PNG, involving the AGD, the Australian Customs and Border Protection Service and the Department of Immigration and Citizenship; regional assistance through the Secretariat of the Pacific Community's Pacific Regional Maritime Security Program; and other targeted engagement led by the DFAT.

⁸⁹ Available online at: <<http://www.ausaid.gov.au/publications/pdf/CairnsCompact.pdf>>

⁹⁰ The risks associated with the integration of national security and development objectives, and arguments in favour of greater transparency around this interface are highlighted in Hendrickson D, *Key Challenges Facing Security Sector Reform: A Case for Reframing the Donor Policy Debate*, Global Facilitation Network for Security Sector Reform Working Paper, 2009 <<http://www.ssrnetwork.net/publications/reframing.php>>

Rule of law assistance has often been piecemeal and donor-driven, resulting in contradictory development of justice and security institutions and short-term, superficial gains at the cost of longer-term, sustainable reform. Competition and even rivalry among major bilateral donors advocating for their own national models and solutions continue to damage the impact and credibility of rule of law efforts. Experience illustrates that country-level coordination is harder where global leadership, coordination and coherence are lacking.⁹¹

Increasing coordination and coherence

In Australia, these issues have been recognised at the highest level in the Prime Minister's *First National Security Statement to the Parliament*.⁹² In response, Australian Government agencies are now working to increase strategic coherence and operational integration across Australia's engagement in justice and security reform. Building on existing inter-agency Strategic Partnership Agreements, these efforts include increased communication, information-sharing, joint analysis and planning.

For example, agencies are meeting regularly to provide strategic oversight of law and justice assistance in PNG and the Pacific, and are now finalising a framework for Australia's law and justice engagement in the Pacific that will provide a link between the Partnerships for Development⁹³ and forthcoming Partnerships for Security. The framework will help foster improved coordination and strategic coherence not only among Australia government partners at national and state levels, but also those engaged in law and justice assistance within the non-government and private sector. Agencies are also working to develop a similar framework to guide Australia's law and justice engagement in Indonesia.

A number of inter-agency secondments among AusAID, the AFP and Department of Defence are continuing and cross-agency participation in design and evaluation processes is increasing. For example, in the last year, AFP representatives served as team members in one out of five AusAID-commissioned independent completion reviews and one out of three mid-term review processes in the law and justice sector. The establishment of the Asia Pacific Civil-Military Centre of Excellence in late 2008 is another example of efforts in the last year to strengthen Australia's policy and operational approach to security and development challenges, which will be further complemented by the forthcoming Australian Civilian Corps.

While these improvements to Australia's coordination efforts are important, the key test will be how they translate to improved policy and programming choices, and more effective development assistance on the ground. Flexibility will be needed to address short, medium and long term objectives, as well as the specific requirements and realities of the different operating environments Australia is involved in, from (post-) conflict, through to fragile and more stable development settings.⁹⁴ A key challenge will be to ensure that an increasingly

⁹¹ UN Secretary General Report A-63-226, *Strengthening and coordinating United Nations rule of law activities* (2008), paragraph 67. These sentiments are echoed in the related OECD-led dialogue on security system reform, and are addressed directly in the *OECD DAC Handbook on Security System Reform, Supporting Security and Justice* (2007).

⁹² *The First National Security Statement to the Parliament*, Address by the Prime Minister of Australia, the Hon Kevin Rudd MP, 4 December 2008. Principles of improved coordination across security, justice and development efforts have most recently been reiterated in the *Port Moresby Declaration* and the *Cairns Compact*.

⁹³ In 2008-09 five new Pacific Partnerships for Development (PPDs) were signed, with PNG, Samoa, Solomon Islands, Kiribati and Vanuatu. Three additional PPDs were signed at the Pacific Islands Forum in August 2009, with Tuvalu, Tonga and Nauru. Law and justice have been identified as a priority outcome under the PPD for Samoa, as an enabling outcome for Nauru, and as a priority outcome for future negotiation under the PNG, Vanuatu and Tonga PPDs. In Solomon Islands, a further four-year phase of Australian assistance to the RAMSI law and justice component was agreed to in May 2009.

⁹⁴ See also, UN Secretary General Report A-63-226, *Strengthening and coordinating United Nations rule of law activities* (2008), paragraph 44 (emphasis added): 'As the United Nations strengthens its capacities to meet Member States' requests for rule of

joined-up justice and security response from Australia does not inadvertently crowd out or overwhelm its partners, but rather fosters and strengthens local ownership and leadership of the development agenda.

Conclusion

The performance of Australia's development assistance in the law and justice sector reflects the diversity in the scale of its support and the range of Australian agencies involved in its delivery. This annual review highlights various challenges of delivering effective development assistance in the law and justice sector and the mixed results from investments made to date. While these challenges should not preclude engagement, the 'approach to programming and expectations should reflect this experience'.⁹⁵ Based on the analysis in this report, and consistent with recommendations from the ODE's most recent *Annual Review of Development Effectiveness*, three opportunities to strengthen the effectiveness of Australia's law and justice assistance have been identified.

Ensuring assistance is well targeted and fits the local context

Australian and international experience suggests that to be effective, the type of assistance provided needs to match the local context and development needs being addressed. In this regard, Australia's larger, sector-based responses, in PNG and Solomon Islands, demonstrate the strongest signs of incremental progress being made. However, much of Australia's assistance is more targeted and specialised, often provided by federal-level law and justice agencies, and, necessarily, in the form of relatively short-term, narrowly focused technical assistance. Reflecting the comparative expertise of the Australian agencies involved, this assistance is often directed toward priorities of a more regional or transnational nature.

In this context, there is a risk that other, equally significant aspects of the law and justice system that fall outside these areas of focus—such as corrections, local level crime prevention, and customary and community-based justice systems—will receive less direct government-to-government attention. Similarly, chronic underlying weaknesses in capacity that hamper the application of technical skills and constrain improvements to service delivery (in areas such as annual planning and budgeting, human and financial resource management, procurement and asset management) will often fall outside the scope of Australia's more narrow engagement.

- > A holistic assessment of the local context, including the nature of law and justice sector challenges and their relationship to broader development priorities, should inform decisions about where Australia's law and justice assistance is most appropriately directed, how best to coordinate this assistance with other donors and how to integrate this engagement within broader reform programs and partner country budget processes wherever possible. Such an approach will also help to avoid unnecessary proliferation of Australian aid activities—a key risk in this sector given the range of Australian implementing partners involved.

law assistance, ensuring appropriately balanced and responsive engagement is imperative. The Organization has recognized that integrated criminal justice reform requires not only policing but also judicial and corrections assistance; and more focus on security institutions must be coupled with equal emphasis on interlinked justice issues. It is increasingly apparent that our rule of law approach needs to be consistent and continuous throughout our engagement, from peacemaking to peace-building to long-term development. Ensuring early and appropriate engagement on the rule of law in a country context is the cornerstone of coherent, strategic intervention and long-term success, particularly in conflict and post-conflict environments.'

⁹⁵ ODE, *Third Quarterly Update on Development Effectiveness*, September 2008.

- > Country situational analysis processes intended to inform all Australian development assistance strategies and programs, as well as subsequent design processes, are two important entry points for AusAID and other Australian Government partners. This will help build a common understanding of the development context and the relative significance of law and justice priorities, and as well as help identify and agree on how Australia can assist, if at all.
- > To enable more sustainable and demand-driven access to Australian technical expertise and resources, efforts to complement short-term assistance by building and embedding longer-term institutional partnerships and regional networks should be prioritised, appropriately positioned and resourced as part of Australia's overall engagement strategy in the law and justice sector.

Being clear and realistic about what Australian assistance can achieve

To make decisions about the appropriate scale and scope of Australia's development assistance in the law and justice sector, it is important to be clear and realistic about the likely impact of Australian aid. As noted above, this requires an understanding of how assistance is positioned within the context of the justice system as a whole, including the nature of law and justice challenges, how these relate to the development setting in question (post-conflict, fragile or stable), and the relevant reform priorities of partner governments.

When partner governments are yet to articulate their development priorities as they relate to law and justice, or in situations where underlying capacity constraints within the justice system remain unaddressed, there is a need to be realistic about the overall impact of relatively small-scale, technically-focused support. Where Australian assistance is more targeted and specialised, it also becomes more difficult to assess results, particularly at an outcome level. Even where relevant sector-level performance information exists, the discrete nature and relatively small scale of this type of assistance make attribution and assessment of the overall impact engagement very difficult. These issues are exacerbated in countries where the overall scale and scope of Australia's development assistance is relatively insignificant (e.g., middle-income, large and/or multi-donor environments).

- > A clearer articulation (within both bilateral and regional development assistance strategies) of the full range of Australian development assistance in the law and justice sector and the relative significance and strategic positioning of this assistance in the context of broader development objectives (particularly the achievement of the Millennium Development Goals) and national security objectives—as is being proposed under the forthcoming Framework for Law and Justice Engagement with the Pacific—would help to strengthen the overall coherence of Australia's efforts.
- > Increased coordination and dedicated resources across Australian agencies involved in the provision of law and justice assistance to track and report on performance should be prioritised to improve understanding of the relative effectiveness of Australia's assistance, both on an agency-by-agency basis and overall.
- > Where possible, the aid program should also support partner government processes for measuring law and justice sector performance and reporting on results, with a particular focus on ensuring all data is gender-disaggregated. This information is essential

to assess the relevance and effectiveness of Australia's contribution to broader, outcome-level change.

Supporting partner country ownership

Australia's experience in supporting the law and justice sector reflects development experience more broadly in that the impact of assistance at activity level is relatively limited where high-level, partner government leadership and commitment for reform is weak or yet to emerge. This has been evident in the recent performance assessments of Australia's support to law and justice in Cambodia, Timor-Leste and Vanuatu. The absence of strong partner country ownership of an integrated reform agenda for law and justice also compounds the negative effects of poor coordination among donors—again, as evidenced by Australia's experience in Cambodia and Timor-Leste. However, in the last year there are early signs this may be changing, with a locally-driven, comprehensive reform agenda for law and justice now emerging in a number of countries across the region.

- > Australia should seek opportunities to foster partner country ownership by supporting the exercise of local leadership and decision-making roles in the law and justice sector. This is particularly important in post-conflict settings (Timor-Leste and Solomon Islands) where Australia has made significant investments in the justice and security system to date, but where the transition from the current focus on short-term stability to longer-term development objectives now looms as the next main challenge.
- > Consideration should be given to how Australia's engagement in and support for institutional partnerships and regional networks in the law and justice sector can be positioned more effectively to foster partner country leadership of law and justice reform efforts at the national level and regionally.
- > Building on successful experiences in other sectors, these efforts could include increased support for high-quality analytical work to help partner governments develop sound policy and budget settings, to drive reform and provide clearer direction for donor partners. For example, Australia should integrate ODE analytical work on violence against women in Timor-Leste and Melanesia, which includes a specific focus on issues affecting the law and justice sector, into relevant policy dialogue processes as a matter of priority.

Box 4: Office of Development Effectiveness evaluation of law and justice assistance

During the course of 2010, to support Australia's engagement in the law and justice sector, particularly to provide a stronger analytical basis for the justice-security-development nexus that underpins the work of key Australian agencies, ODE will undertake an evaluation of Australian aid program support for law and justice. This will identify key principles and lessons to guide current and future assistance under the Australian aid program, and highlight strategic issues that should be addressed in country analysis and design processes. It will also identify opportunities for strengthening Australian whole-of-government coordination and coherence.

A key issue for consideration will be the extent to which Australia is successfully supporting and harnessing local leadership and ownership of reform. The evaluation will also address the extent of Australia's engagement with and support for non-state, customary and community-based justice and security systems, including its efforts to support constructive partnerships between these systems and state-provided services. While this latter issue has not been explored in any detail within this report, it represents a significant challenge. The failure by partner governments and donors to recognise, engage with and support non-state, customary and community-based justice and security systems is now recognised internationally as an issue that is hampering overall improvements in justice and security, that undermines the impact of development assistance in the sector and the extent to which such assistance supports broader poverty reduction and development efforts.⁹⁶

⁹⁶ Most recently, see, for example, Scheye, E, *Pragmatic Realism in Justice and Security Development: Supporting Improvement in the Performance of Non-State/Local Justice and Security Networks*, Netherlands Institute of International Relations (Clingendael) Conflict Research Unit, 2009; and Olonisakin, F et al, *The Future of Security and Justice for the Poor: A 'Blue Sky' Think-Piece*, King's College London, Conflict, Security & Development Group, 2009. For earlier analysis, see DFID, *Non-state Justice and Security Systems* (2004); Chirayath, L et al, *Customary Law and Policy Reform: Engaging with the Plurality of Justice Systems*, prepared as a background paper for the World Development Report 2006; Wojkowska, E, *Doing Justice, How informal systems can contribute*, UNDP (2006); and Baker, B & Scheye, E, *Multi-Layered Justice and Security Service Delivery in Post-Conflict and Fragile States*, Conflict, Security & Development 2007, vol. 7, no. 4, pp. 503–528.

Appendix

A Assessing law and justice sector performance

Assessing the performance of the law and justice sector is an important but notoriously difficult task. The process of governance reform, including the development and reform of law and justice institutions, is in transformation within very specific social, cultural and political contexts. It is often contested and is highly sensitive to the level of ownership by governments. Weak capacity within partner country information management systems also contributes to the dearth of country-level data and the challenge of comparative performance assessments (Box A1). An overview of current efforts to assess the law and justice situation within and across the countries where Australia's aid program is most active is set out in Appendixes B and C.

World Bank Governance Indicators

A range of tools have been developed to measure governance performance, with the World Bank's Governance Indicators (WGI) being the most well known. The WGI remain a work in progress, with the variation in data sources and methodologies used, and the relatively limited amount of information available for many of the smaller countries, resulting in very significant and acknowledged margins of error.⁹⁷ Therefore, although the WGI can provide a starting point for individual country-to-country benchmarking, any conclusions drawn must be treated with caution and should be tested against other country-specific assessments.⁹⁸

The Rule of Law dimension of the WGI captures perceptions about the extent to which stakeholders have confidence in and abide by the rules of society, in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence. Over the last 10 years, the WGI Rule of Law data suggests improvements in countries such as Georgia, Liberia, Rwanda and Estonia, contrasting with declines in countries such as Cote D'Ivoire, Ecuador, Bolivia and Zimbabwe. None of the Asia-Pacific countries that are the focus of Australia's law and justice sector assistance show statistically significant, evidence-based improvement or deterioration in the Rule of Law indicators over the same period.⁹⁹

⁹⁷ Arndt, C & Oman, C *Uses and abuses of governance indicators*, OECD 2006, Chapter 4; World Bank, *Governance Matters* 2009, available at: <<http://info.worldbank.org/governance/wgi/faq.htm>> 'The margins of error associated with levels of governance are substantial. Since changes over time are in most cases small relative to levels of governance, it is safe to assume that most of the observed changes over time are neither statistically nor practically significant. However, there are some cases where the changes over time are large enough that the 90% confidence intervals in the two periods do not overlap. This rule of thumb helps to identify cases of changes over time that are likely to be of practical significance.'

⁹⁸ OECD 2006, p. 29: 'Unavoidable measurement errors mean, however, that the indicators often cannot be used reliably to differentiate between levels of governance quality across countries.'

⁹⁹ Analysis of the Rule of Law indicators over the period 1998 to 2008 reveals that only 17 of 211 countries covered showed any significant change, positive or negative. See: Kaufman D, Kraay A & Mastruzzi M, *Governance Matters VIII: Aggregate and Individual Governance Indicators 1996-2008*, World Bank Policy Research Working Paper 4978, table 5, p. 35.

Rule of Law rankings are generally low and fairly stable across the Pacific, although the data highlight some variability. For example, PNG's percentile rank in 2008 was 18, more or less the same as it had been since 2002, but with some decline since 1996 (when it was 32). Solomon Islands ranked 24 in 2008, consistent with recent years, but an improvement on 2002 when it ranked 2. However, the number of data sources for the Rule of Law dimension for Solomon Islands is small—seven in 2008 and only 2 in 2002—so conclusions should be treated with particular caution. The general trend across the Pacific suggests that the weakest Rule of Law performance is in the Melanesian countries (although Vanuatu is an exception) and the strongest rankings in Polynesia (Samoa and Tuvalu). In Asia, Timor-Leste and Cambodia ranked low in 2008. Vietnam and Philippines performed more strongly.

Box A5: United Nations Rule of Law Indicators Project

To assist in the development of more effective measurement tools for law and justice sector performance, the Australian Government is contributing to the United Nations Rule of Law Indicators Project. This project seeks to identify the strengths and challenges of the law and justice sector in particular countries in order to assist national authorities in their reform efforts. The project is not designed to rate, rank or compare countries in terms of performance of their rule of law institutions and legal frameworks. Rather, the project aims to assist national authorities in developing and implementing their criminal justice strategies in a comprehensive manner, in line with international human rights standards, so as to ensure criminal justice systems are fair and effective. The development of country-level indicators is also intended to assist donors and other stakeholders in better planning their law and justice sector assistance. The first stage of the project is due for completion in 2010.¹⁰⁰

Global Integrity Index

The Global Integrity Index, which is one of the data sources for the WGI Rule of Law dimension, also provides an overall 'governance' score, which, in theory, could be used for cross-regional comparisons. However, the authors of the Index stress that it is the component indicators and accompanying qualitative analysis, identifying country-specific strengths and weaknesses and the gaps between policy and implementation, which should be used to inform policy choices and stimulate evidence-based debate, *not* overall ratings.¹⁰¹

For example, the overall rating for Solomon Islands in the 2008 assessment was 'very weak', but in the 'Oversight and Regulation' category, the 'National Ombudsman' score, which aggregates the scores from three questions about the existence of the office, its effectiveness and citizens' access, was 'strong'.¹⁰² Similarly, in the 2007 assessment the overall rating for PNG was 'weak', with significant concerns in the area of 'Government accountability', particularly in the legislative branch. However, performance in 'Oversight and Regulation' and 'Anti-corruption and Rule of law' ranged from 'moderate' through to 'very strong'.¹⁰³ In the most recent Global Integrity Report for Indonesia, the 'implementation gap'—the gap between

¹⁰⁰ UN, *Rule of Law Indicators Project—Frequently Asked Questions*.

¹⁰¹ Global Integrity Report assessments have been undertaken in a range of countries, including Cambodia, Timor-Leste, Fiji, Indonesia, PNG, Philippines, Solomon Islands, Tonga and Vanuatu: <<http://report.globalintegrity.org/>>

¹⁰² This rating was qualified by the assessment that '... there remains confusion about whether the Ombudsman's Office is answerable to Parliament or government, and there is sometimes poor responsiveness from within the executive to investigations.' <<http://report.globalintegrity.org/Solomon%20Islands/2008>>

¹⁰³ <<http://report.globalintegrity.org/Papua%20New%20Guinea/2007>>

the legal framework and its actual implementation—was rated as ‘very large’. In the areas of governance and anti-corruption, performance was mixed. Government accountability, the civil service and the media’s ability to report on corruption received ‘weak’ ratings. However, the anti-corruption agency and national ombudsman were rated as ‘strong’, and the enforcement of tax and customs laws and regulations was rated as ‘very strong’.¹⁰⁴

Given the lack of reliable, comparable data about law and justice sector performance at country and regional levels, this report relies on information about progress and challenges in the sector drawn from country-specific sources, where they exist, and information obtained as part of the monitoring and evaluation processes within Australian-funded law and justice programs.

Underlying causes and trends affecting law and justice sector performance

This report does not include detailed analysis of underlying causes or trends in law and justice sector performance globally or in the Asia-Pacific region. However, a number of key drivers inform the overview of Australia’s development assistance in this sector provided in this report.

Fragility and conflict: Attempts to assess the state of the law and justice sector in partner countries should also be informed by analysis addressing issues of fragility and conflict. Fragile and conflict-affected states are those facing particularly grave poverty and development challenges and that are at high risk of further decline. In these settings, government and state structures lack the capacity (and, in some cases, the political will) to provide public safety, security and basic services for their citizens. According to the OECD-sponsored International Network on Conflict and Fragility, 48 countries were considered to be fragile in 2008.¹⁰⁵ The bulk of Australian Government development assistance in the law and justice sector is targeted towards countries falling within this list.¹⁰⁶

Violence against women: Issues of gender equality also need to be understood in any assessment of law and justice sector performance, including the extent to which men and women have equal access to the justice system and receive equitable treatment before the law. In 2008, ODE released its report on violence against women in Melanesia and Timor-Leste.¹⁰⁷ The report highlighted that although there are pockets of good practice across the region, more work is needed to stop violence against women. In particular, the report found that women’s access to justice across the region, whether through formal, customary or community-based systems, remained relatively limited. It concluded that this would need to be addressed to provide protection for women against violence, act as a deterrent to possible offenders and impose consequences on those who commit domestic violence and sexual assault. Australia’s

¹⁰⁴ Three Global Integrity Reports have been conducted in Indonesia, in 2004, 2006 and 2008. Overall scores for these three years were 66, 68 and 69 respectively, all ‘weak’ ratings: <<http://report.globalintegrity.org/Indonesia/2008>>.

¹⁰⁵ The International Network for Children and Families list of fragile and conflict-affected states for 2008 is a compilation of three lists: the bottom two quintiles of the World Bank’s Country Policy and Institutional Assessment for 2007; the Brookings Index of State Weakness in the Developing World 2008; and the Carleton University Country Indicators for Foreign Policy 2007 index. See OECD, *Resource Flows to Fragile and Conflict-Affected States*, Annual Report 2008, available at: <<http://www.oecd.org/dataoecd/14/14/43293581.pdf>>.

¹⁰⁶ Countries classed as fragile and in receipt of significant Australian law and justice sector assistance include: Cambodia, Timor-Leste, Indonesia, PNG, Solomon Islands, Tonga and Vanuatu.

¹⁰⁷ ODE, *Violence Against Women in Melanesia and East Timor: Building on Global and Regional Promising Approaches 2008*.

response to these findings will have implications across the law and justice sector portfolio (Box A2).

Box A6: Violence against women—Australia's response

In its response to ODE's report, *Stop Violence: Responding to violence against women in Melanesia and East Timor*, released in August 2009, Australia has committed to supporting its country partners to address violence against women in an integrated way, with specific areas of focus for law and justice assistance, including supporting:

- > governments to review, implement and monitor laws and policies that address violence against women, including through formal, customary and community-based justice systems
- > civil society organisations that assist women to access justice, including by increasing women's knowledge of their rights and of the legal system
- > improved police practices in responding to violence against women.¹⁰⁸

Other factors: The recent global recession, and its likely impact on development outcomes due to declining government revenues and resources available for front-line service delivery, is also predicted to have a negative impact on crime levels. There are also concerns that the flow-on affects of the recession may contribute to the re-emergence of underlying conflicts, as vulnerable groups face increased economic pressure and social exclusion.¹⁰⁹ The predicted impacts of climate change, such as increasing resource scarcity and environmental migration, are also recognised as likely triggers for civil unrest into the future, particularly for countries already affected by conflict and fragility.¹¹⁰ In this context and to meet these demands, there is a need for ongoing assessment and re-positioning of policy and programming priorities in the law and justice sector.

¹⁰⁸ AusAID, *Stop Violence: Responding to violence against women in Melanesia and East Timor* 2009.

¹⁰⁹ See AusAID, *The Global Recession: An Action Plan for the Australian aid program* (2009), available at: <http://www.ausaid.gov.au/makediff/pdf/action_plan.pdf>. 'The global recession is having severe effects on developing countries—directly threatening progress in poverty reduction and achievements against the Millennium Development Goals. Developing countries are facing multiple economic and social impacts including: ... social unrest ... particular vulnerabilities for women and children ... increased risks of trafficking, prostitution and other forms of exploitation.'

¹¹⁰ See, for example, Heltberg, R, 'Conflict, displacement and pro-poor adaptation', World Bank. <<http://beta.worldbank.org/node/3587>>; DFID, *Eliminating World Poverty: Building our Common Future* 2009, Chapter 4.

Appendix

B AusAID QAI reporting: Ratings for law and justice programs

Table B1: Ratings for law and justice programs

Initiative	2006-07				2007-08				2008-09			
	Implementation progress	Achieving objectives	Monitoring and evaluation	Sustainability	Implementation progress	Achieving objectives	Monitoring and evaluation	Sustainability	Implementation progress	Achieving objectives	Monitoring and evaluation	Sustainability
Asia Regional Return and Reintegration of Trafficked Victims	2	2	3	4	3	2	3	2	COMPLETION STAGE			
Asia Regional Trafficking in Persons	0	0	0	0	4	4	4	3	3	5	3	4
Cambodia Criminal Justice Assistance Project	ENTRY STAGE				4	4	3	4	4	3	3	3
Cambodia NGO Cooperation Agreements	4	4	4	4	5	5	4	4	4	3	3	3
Human Rights Technical Cooperation	6	5	4	4	6	5	4	4	5	5	5	4
East Timor Justice Sector Development Program	0	0	0	0	ENTRY STAGE				5	5	5	5
East Timor Law and Justice Development Program	4	4	4	4	5	4	4	3	4	5	4	4
East Timor Police Development Program	COMPLETION STAGE				0	0	0	0	0	0	0	0
Fiji Law and Justice Program	4	4	3	2	4	4	5	3	4	3	3	4
Indonesia Legal Development Facility	4	4	4	5	5	4	4	5	5	4	4	4
Pacific Judicial Development Program	0	0	0	0	5	4	4	4	3	3	3	3
Pacific Regional Policing Initiative	5	5	5	3	5	5	5	3	5	5	5	3
Philippines Counter Terrorism Initiative	5	5	3	4	4	5	4	3	4	4	4	3
PNG Justice Advisory Group	5	5	5	4	4	5	4	4	4	5	5	3
PNG Law and Justice Sector Program	5	5	5	4	5	5	4	5	COMPLETION STAGE			
PNG Law and Justice Initiative (Enhanced Cooperation Program)	5	5	3	3	3	5	2	3	COMPLETION STAGE			
PNG Strongim Gavman Program	0	0	0	0	0	0	0	0	ENTRY STAGE			
Samoa Police Institutional Strengthening Project	3	4	3	4	3	4	3	4	COMPLETION STAGE			
Solomon Islands RAMSI Law and Justice Program	4	5	5	4	5	5	4	4	4	4	5	4
Vanuatu Legal Sector Strengthening Program	4	4	2	3	4	4	4	3	4	4	2	3
Vanuatu Police Force Capacity Building	4	4	4	4	3	3	4	4	4	4	3	4
Global Rule of Law Program UNDP	0	0	0	0	0	0	0	0	4	4	4	4
East-Asia and the Pacific Justice for the Poor	0	0	0	0	0	0	0	0	4	4	3	3

Note: Definitions of rating scale

Satisfactory (4, 5 and 6)

6	Very high quality
5	Good quality
4	Adequate quality; needs some work to improve

Less than satisfactory (1, 2 and 3)

3	Less than adequate quality; needs significant work
2	Poor quality; needs major work to improve
1	Very poor quality; needs major overhaul

Appendix

C AusAID annual program performance reporting (APPR): Ratings for law and justice programs

Table C2: Ratings for law and justice programs

Country/region	Law and justice objectives	Rating 2007-08	Rating 2008-09	Change
Cambodia	Improved capacity and commitment of courts, prisons, police and provincial authorities to function effectively and equitably (particularly in dealing with vulnerable groups).	N/A	Amber	N/A
Indonesia	Improved capacity, accountability and responsiveness of legal, democratic and oversight institutions and processes: > legal reform.	Green	Green	Unchanged
	Improved capacity to ensure transport safety and security to counter threats from transnational crime.	N/A	N/A	N/A
Pacific regional	More effective, accountable and democratic government.*	N/A	Amber	N/A
	Improved law and justice and security.	N/A	Amber	N/A
Papua New Guinea	Government of PNG demonstrating open, accountable democratic behaviours and adherence to the rule of law.*	Amber	Red	Declined
	Improved ability to provide law and justice services.	Amber	Amber	Unchanged
Samoa	Improved law and justice.	Green	Amber	Declined
Solomon Islands	Contribute to the maintenance of a safe and stable environment in Solomon Islands that is underpinned by an effective, affordable and culturally appropriate law and justice system accessible to all Solomon Islanders.	Green	Green	Unchanged
Timor-Leste	Contribute to the development of a more effective, accessible and accountable justice system.	N/A	Red	N/A
	Build the foundations of a more effective and accountable police service.	N/A	Green	N/A – objective refocused
Tonga	Strengthening governance and accountability through the strengthening of key institutions.*	Green	Green	Unchanged
Vanuatu	More effective legal institutions.	Amber	Amber	Unchanged
	Improved police services.	Green	Green	Unchanged

Ratings:

Green	The objective is on track to be fully achieved within the timeframe of the strategy.
Amber	The objective will be partly achieved within the timeframe of the strategy.
Red	The objective will not be achieved within the timeframe of the strategy.
N/A	No rating given and therefore no year-on-year comparison possible.

Note: Law and justice is only one element of these broader governance objectives. Therefore, the overall rating does not necessarily reflect the quality of the law and justice components that contribute to the objective. Information about the quality of the law and justice aspects of broader governance objectives can be found in the body of this report and within the relevant Annual Program Performance Report.