

**IMPLEMENTATION OF STATE REFORM:
Challenges to Legal and Judicial Reform
in Cambodia**

By

Dara KHLOK

Matrikel-Nr: 733676
darakhlok@yahoo.com

A Thesis

Submitted to

University of Potsdam

In Partial Fulfillment of the Requirements for the Degree

Master of Public Management (MPM)

First Supervisor: **Prof. Dr. Werner Jann**

Second Supervisor: **Prof. Dr. Dieter Wagner**

April 2007
Potsdam, Germany

Acknowledgements

The author first of all gratefully acknowledges the study program organizers and InWent for making this program possible and for giving me the opportunity to join this International Master Program on Public Management (MPM) at the University of Potsdam of the Federal Republic of Germany.

My sincere gratitude and appreciation are also due to **Prof. Dr. Werner Jann**, chair for Political Science, Administration and Organization of the Faculty of Economics and Social Sciences of University of Potsdam and **Prof. Dr. Dieter Wagner**, Vice President of University of Potsdam, for their invaluable guidance and technical inputs for the thesis writing.

My thanks also go to my all dear friends in MPM program for their kind supports, assistances, encouragement, understanding and aspiration during the course of the program.

My studies would have not been possible without approval, financial and moral support from my family, friends and colleagues in Cambodia. They then deserve special respect and acknowledgement from me. My special sincere gratitude is due to my mother, **Touch TO** for her moral and financial supports.

Dara KHLOK

Potsdam, 18 April 2007

List of Figures

Figure 1: A Model of Instrument Preferences	9
Figure 2: Relationship between LJR and infant mortality and income growth ..	19
Figure 3: Coordination Mechanisms.....	27

List of Tables

Table 1: Comparison between Top-Down and Bottom-Up Approaches	9
Table 2: Recent Development in Legal and Judicial Reform.....	33
Table 3: Budget Allocations for Priority Sectors: 2002-2007.....	42

List of Appendices

Appendix I: The Legal System in Cambodia from 1953-1993.....	56
Appendix II: Judicial System in Cambodia.....	57
Appendix III: The Model of Public Management Reform	57
Appendix IV: Joint Budget Allocation Model.....	58
Appendix V: Summary of Plan of Action for Implementation of LJR	59
Appendix VI: Overall Legal and Judicial Reform.....	70
Appendix VII: Structure of the Implementation of Legal and Judicial Reform .	71
Appendix VIII: Joint Sector Implementation	72
Appendix IX: Rectangular Strategy Diagram.....	73

List of Abbreviations

ADB	Asian Development Bank
CDC	Council of the Development of Cambodia
CG Meeting	Consultative Group Meeting for Cambodia
CLJR	Council for Legal and Judicial Reform
CoM	Office of the Council of Minister
CPP	Cambodian People Party
DANIDA	Danish International Development Agency
DIHR	Danish Institute of Human Rights
GTZ	Deutsche Gesellschaft fuer Technische Zusammenarbeit GmbH
IAB	Inter-American Bank
IMF	International Monetary Fund
JSRP	Justice Sector Reform Program
KAF	Konrad Adenauer Foundation
KR	Khmer Rouge
LJR	Legal and Judicial Reform
LJRS	Legal and Judicial Reform Strategy
LJS	Legal and Judicial System
MFAIC	Ministry of Foreign Affairs and International Cooperation
MOI	Ministry of Interior
MOJ	Ministry of Justice
MTEF	Medium Term Expenditure Framework
NGOs	Non-Governmental Organizations
PCB	Permanent Coordination Body of Legal and Judicial reform
PMR	Public Management Reform
PMU/LJR	Project Management Unit of Legal and Judicial reform
RGC	Royal Government of Cambodia
SCM	Supreme Council of Magistracy
SO	Strategic Objective
TWG	Technical Working Group
UNDP	United Nations Development Program
UNTAC	United Nations Transitional Authority in Cambodia
WB	World Bank

Table of Contents

Acknowledgements	ii
List of Figures, Tables and Appendices	iii
List of Abbreviations	iv
Chapter One: Introduction	1
1.1 Overview.....	1
1.2 Objectives, Research Questions and Methodology of the Study.....	2
1.3 Structure of Thesis	4
Chapter Two: Theoretical Perspectives and Conceptions	5
2.1 Theoretical Perspective of Public Policy and Policy Implementation.....	5
2.1.1 Public Policy Definition	5
2.1.2 Policy Process.....	6
2.2.3 Approach to Policy Implementation.....	7
2.2.4 Variables for Policy Effectiveness	10
2.2 Conceptual Framework of Legal and Judicial Reform.....	11
Chapter Three: Legal and Judicial Reform in Cambodia	15
3.1 Overview of Legal and Judicial System	15
3.2 Driving Force to Justice Sector Reform	18
3.3 Formulation of Justice Sector Reform Program	21
3.3.1 Initiative of Justice Sector Reform Program	21
3.3.2 Vision, Goal and Strategic Objectives.....	23
3.4 Implementation Mechanisms of the Reform Agenda.....	24
3.4.1 Implementation Structure	24
3.4.2 Implementation Framework	29
3.5 Current Progress of the Reform Agenda.....	30
Chapter Four: Challenges to Implementation of Reforms	34
4.1 Nature of Legal and Judicial Reform Problems Themselves	34
4.2 Inter-Organizational Relationships and Coordination	36
4.3 Lack of Human Resources and Sound Management.....	39
4.4 Financial Support.....	41
4.5 Lack of Commitment	42
Chapter Five: Conclusions and Recommendations	44
5.1 Conclusions.....	44
5.2 General Recommendations	45
5.3 Specific Recommendations.....	47
Bibliography	49
Appendices	56

Chapter One: Introduction

1.1 Overview

State reform is an imperative need for all countries, whether advanced industrial nations or developing countries to improve and strengthen state performance for sustainable development. Such emphasis grew out of a realization that the development process must be comprehensive, and that legal and judicial reforms (LJR) are critical components of that process (WB, 2003, pp. 11-20). According to several studies found out that an effective legal framework, as well as a well-performing judiciary, is a key to promote other state reforms in terms of economic growth and in particular, poverty reduction (WB, 2002, pp. 2-3; McAuslan, 1997, pp. 25) (see figure 2). As Cambodia opened its economy, the sound of legal and judicial system will be important for strengthening and improving the rule of law, liberal democracy and human rights, and reinforcing the separation of power in order to enhance economic growth for the society where the justice system is weak and lacks legal framework (ADB, 2004; Fernando, 1998; WB, 2004c).

Recognizing this, in 1998, the government developed “The Triangle Strategy¹” in which “Legal and Judicial Reform” became established as a core strategic reform. Later, in June 2003, the government adopted the Justice Sector Reform Program after a long process of formulation since 2000. The overall objective to build a credible, predictable and transparent legal framework together with an independent and capable judiciary will help Cambodia’s democracy-based government to make its other reform agenda successful, achieved in the right direction for poverty reduction and sustainable economic growth through the vision of enhancing democracy, improving human rights, strengthening the rule of law, and building a stable of legal and judicial sector.

So far, this reform program has been implemented by different government agencies with the support from donor and international organizations. Some results has been produced, such as the adoption of the Plan of Action for Implementing LJR

¹ It is a program of the second legislative mandate of the government of Cambodia. It composed of three components: building security and stability, international and regional integration and key state reform program for socioeconomic development

describing the short term and medium term actions for the LJR in 2005; improvement has been made in the area of judicial infrastructure; and some important laws and regulations was developed. However, progress on the reform program remains slow and few actions have been taken (IMF, 2004, pp. 10; CDC, 2007a, pp. 3; EIC, 2006, pp. 80). Most priorities and timelines were not yet finished on time comparing to the timeframe set in the Plan of Action for Implementing LJR (see appendix V). For instance, key laws supporting the justice sector were expected to be ready at the end of 2006. These important laws that serve as Joint Monitoring Indicators² (JMIs) for assessing progress on the LJR have yet to be completed. Worst affected is the draft law on anti-corruption that represents a government commitment since 2001. Deficiency in the legal and judicial reform program will lead the country to the weak state of law where social and economic welfare cannot prosper as citizen and investor's confidence in state governance is not secured.

In this regard, the paper intends to examine the constraints and challenges to implementing this reform in a public policy implementation approach using empirical research on implementation of judicial reform under programs supported by WB, DANIDA, GTZ and AUSAID and other development agencies.

1.2 Objectives, Research Questions and Methodology of the Study

The main objective of this paper is to explore the factors influencing the implementation of LJR and challenges faced by the government implementing agencies in its implementation. The study will look at the main driving forces and structural mechanism for the LJRS implementation as well as strengths and

² It is a joint monitoring indicator between Cambodia government and international donor community in assessing the progress of the good governance policy implementation in which LJR is one of the good governance policies of government. In the Consultative Group Meeting for Cambodia (CG meeting), international donor community required government of Cambodia to finish 8 fundamental laws. Those laws are the benchmarks of the progress assessment of international donor community to the LJR policy implementation. The 8 fundamental laws are (i) penal code, (ii) code of penal procedures, (iii) civil code, (iv) code of civil procedures, (v) organic law on the organization and functioning of courts, (vi) law on the amendment of the Supreme Council of Magistracy (reflecting transparency in appointment, promotion, transfer, remuneration and disciplining of judges and prosecutors, and ensuring the independence of Judges and Prosecutors), (vii) law on the status of judges and prosecutors, and (viii) law on anti-corruption. In the CG meeting in September, 2006, the JMIs was added two more items: (i) develop a clear policy framework for access to information-end 2006, and (ii) complete the draft law against trafficking in persons and sexual exploitation and submit to CoM-end 2006 (CDC, 2006, pp. 38).

weaknesses of the strategies and implementation mechanisms/structures. Based on the findings, the author will make recommendations on how to improve and strengthen the implementation process aiming at successful legal and judicial reforms and achieving the goal of ensuring justice for the people, creating and sustaining a credible justice system and promoting private sector-led economic growth.

Research Questions

As mentioned above, the main research objective is to investigate constraints and challenges to the legal and judicial reform implementation in Cambodia. In order to achieve the research objective, a number of relevant and leading questions will be answered first in this paper. The questions include as follow:

- Why did government choose to reform the legal and judicial sectors?
- How was the Legal and Judicial Reform agenda formulated?
- What is the structure for implementation of the reform?
- What are the achievements and mismatches of the reforms so far?

Following this, answers will be presented to the questions of “what are the constraints and challenges of legal and judicial reforms implementation” and “how the reform implementation process can be improved and strengthened”.

Methodology

To answer the above research questions, the concept of public policy, especially the approaches to policy implementation and the key variable for successful implementation and the conceptional framework of legal and judicial reform, will be illustrated in order to make more conceptual understanding on public policy implementation approaches and its factors leading to effective implementation, and also the concept of rule of law reform and its experiences in other countries.

This research basically focuses on the policy implementation and its implications to the reform program of the legal and judicial agenda in Cambodia where a priority for the country is. This research is mainly based on secondary sources available in the university library and websites and primary sources such as relevant laws and regulations, policy and strategy documents as well as reports on the implementation

of the reform. The research also draws on the personal experiences and observations of the author, who has worked in the PMU/LJR since 2003.

1.3 Structure of Thesis

This thesis is divided into five chapters on key issues of LJR implementation in Cambodia.

Chapter One serves as the introduction and provides a basic understanding of the problems statement of the reform. It will introduce the objective and the purpose of the paper. The methodology and the structure of the paper will be introduced too.

Chapter Two will illustrate the theoretical perspectives of the approach to policy implementation and its key successful factors by highlighting also the policy process and its definition. The conceptual framework of LJR, including some lesson learned from other LJR implementation from other countries supported by various international organizations will also be reviewed.

Chapter Three will focus on the case study of LJR in Cambodia related to the driving force to the reform, policy formulation and its implementation, also highlighting the current development of the reform.

Chapter Four intends to analyze the constraints and challenges of the reform policy implementation of the justice sector. It begins with analyzing the implications to the reform policy implementation in Cambodia by illustrating the constraints from among others, the nature of policy itself, external and internal factors, political and economical aspects, and organizational aspects. This chapter will provide more information on why the reform of the justice sector in Cambodia is slow and difficult to achieve.

Chapter Five aims to provide a summary of the key findings from the study and the way forward for the policy implementation in the reform program of Cambodia. The experiences of the policy implementation in the justice sector in Cambodia can be an appropriate lesson to apply to other country, which has similar experiences. Indeed, the paper will provide some ideas for future trend or opportunity and recommendations for improving the current reform policy implementation for the justice sector in Cambodia.

Chapter Two: Theoretical Perspectives and Conceptions

This chapter intends to discuss the theoretical approach of the public policy by focusing on the concept of the public policy as a reform program or strategy and the approach to the policy implementation process together with factors for effective policy implementation to apply to the case study of LJR in Cambodia. The policy process will be highlight also as a basic to analyze the driving force and the formulation process of Cambodian LJR. The second part of this chapter will illustrate the conceptual perspectives of the rule of law, which is a closed interlinked to the legal and judicial reform, the components of the reform and the experiences and lessons learned of LJR implementation from other countries.

2.1 Theoretical Perspective of Public Policy and Policy Implementation

2.1.1 Public Policy Definition

Public policy is a broad term. According to Theodoulou and Cahn (1995, pp. 2), public policy is what government intends to do with involved all actors in the society including formal actors and informal actors to set up national program to accomplish end goal as its objective in both long short term and long term process with a subsequent action of implementation, enforcement and evaluation. They argued that the policy is not only the regulations or laws but also other reform program or strategy or action plan of the government to achieve end goal for the public is also a policy. Thus, LJR is a public policy. This argument was agreed by William Jenkin (quoted in Howlett and Ramesh, 2003, pp.6), he defined policy as “a set of interrelated decisions taken by a political actor or group of actors concerning the selection of goals and the means of achieving them within a specified situation where those decisions should, in principle, be within the power of those actors”. This definition is taken as a basic analysis of this study in order to reflect the current situation of the LJR policy in Cambodia where this policy was set by government with active contribution from different stakeholders in the justice system. Since the LJR policy is a set of objectives to achieve a credible and stable LJR, it is more or less concerned very much to what government agencies and other relevant social actors to do for assisting people for accessing to justice. This policy is involved all actors in the society to carry out.

Since policy will affect all stakeholders in the society especially to the people as a whole, therefore, what are the processes of the public policy and when does the policy process finish?

2.1.2 Policy Process

The concept framework of the policy process was defined as a sequence of concrete stage of policy. It was developed in seven stages (intelligence, promotion, prescription, invocation, application, termination, and appraisal) (quoted in Jann and Wegrich, 2005, pp. 2) since 1956. Eventually, the initial idea is a basic idea for all political science scholars to study on the policy process. Subsequently, the policy process was restructured into five stages in which are agenda-setting, policy formulation, decision-making, implementation, and evaluation that eventually leads to determination (Jann and Wegrich, 2005, pp. 2).

First, Agenda-setting is a list of actions that government will implement in order to achieve a specific goal of objective of policy. To be an institutional agenda, it needs first to diagnose issues, specify solutions, and strong support of these solutions (quoted in Howlett and Ramesh, 2003, pp. 133; Kingdon, 1984, pp. 3-4). According to Howlett and Ramesh (2003, pp. 132-141), there are four models for agenda-setting: *Outside Initiative Model*, which agenda comes from the actors outside of the government; *Inside Initiative Model*, which initiation occur from the group of government agencies; *Mobilization Model*, which agenda was established the situation where the government initiated and required the support from the outside actors or public in order to move the formal strategy to be more public agenda; and *Consolidation Model* in which the agenda was initiated already by social actors and required the consolidation from the government into the formal agenda. The mobilization model is used in this study.

Second, the policy formulation and decision making starts when the agenda-setting was developed into the formal agenda. It requires a clear and specific goal for different alternative agenda, which is a complex activity that involves four major sets of functional activities: formulation alternative; choosing one alternative for possible ratification through collecting, analyzing, and disseminating; advocacy in order to seek the support; and compromising and negotiation process in order to adopt the agenda (McCool, 1995, pp. 159). Then it leads to decision making, which policy

alternative will be chosen from the most potential solution options (quoted in Howlett and Ramesh, 2003, pp. 162).

Third, implementation is broadly defined as “what happen between the establishment of an apparent intention on the part of the government to do something or to stop doing something, the ultimate impact in the world of action” (quoted in Jann and Wegrich, 2005, pp. 20). As the paper will focus more the implementation stage, the approach of this stage will discuss more in 2.2.3 below.

Finally, the evaluation might lead policy to the determination phase or program review again for further improvement. The evaluation should be assessed from the agenda-setting to implementation stage (Jann and Wegrich, 2005, pp. 23). Since evaluation is a complex process, it requires both the extent to which a particular policy is implemented according to its set guideline and the effect of the policy implementation in the intended direction to assess by all stakeholders (quoted in Theodoulou, 1995, pp. 91).

2.2.3 Approach to Policy Implementation

Implementation means bringing the policy into practice (Howlett and Ramesh, 1995, pp. 153). As the implementation requires more attention in variety perspectives in management system in order to achieve the goal set by the policy, specific criteria of different ideas type for policy implementation process should be considered. In this regard, specification of program detail by which defines implementing agencies and specific actions, defining allocation of resources, and making decision on how to carry out action should be taken into account (Jann and Wegrich, 2005, pp. 20),

Basically, there are two main perspectives in the policy implementation approach top-down and bottom-up, where the paper will use for this study. The study of the policy implementation is emphasizing the policy design referring to the top-down approach as main subject (Howlett and Ramesh, 1995, pp. 156). Top-down is a process where the overall goal was developed by the national level and the implementation procedures or guidelines were initiated by the national level authority in order to put the policy implementation into action to all level of the government from the higher level to lower level (Howlett and Ramesh, 1995, pp. 156-157) (see table 1).

The objective of top-down approach provided clear direction for implementation strategy to all implementers (see table 1). It emphasizes the specific rules, and indicators on how to achieve the goal set by government. However, it is more focusing on the senior decision-makers who often played only the marginal role in the implementation process compared to other lower level officials and members of the public (see table 1). The argument is the success or failure of programs often depends on the commitment and skills of the actors at the subsystem directly involved in implementation program (Howlett and Ramesh, 1995, pp. 157). Indeed, Jann and Wegrich (2005, pp. 23) stressed also that there are three factors leading to apply bottom-up approach, in which are (i) the acknowledge of implementation agencies and its staffs to solve the complex problem, (ii) the effective outcome of the policy implementation comes from the interaction of different actors and programs; and (iii) increasing widespread recognition of linkages and networks between a number of actors, including government agencies and social actors within a particular policy domain, cutting across the implementation/policy formulation borderline, provided the ground for the eventual abandonment of the hierarchical understanding of state/society interaction.

Several studies showed that the political outcomes did not always sufficiently related to the policy objective only, it would have causal link to other factors in the policy implementation. Since the top-down was just prepared only from the national level and the policy makers did not know clearly on the real problems situation where the policy strategy should set in order to solve the problems (see table 1). The bottom-up approach take more attention focusing the real cause analyzing on how to solve the policy implementation on the ground more effective than the top-down. It rejects the ideas the policy decision and implementation were identified from the central level and the implementation is stick only to the objective of the program without taking into account the subsystem implementers which they seem to be much nearer to the real problems than the central makers (Pülzl and Treib, 2006, pp. 5-6) (see table 1).

However both approaches have different disadvantage and advantage features in term of initial focus, goal of analysis, model of policy process, character of implementation process, underlying model of democracy, identification of major actors in the process, evaluation criteria, and the overall focus (see table 1). Thus, both should bring together in common comprehensive approach in order to eliminate the weakness of the policy implementation (Howlett and Ramesh, 1995, pp. 157).

Table 1: Comparison between Top-Down and Bottom-Up Approaches

	Top-down	Bottom-up
Initial focus	(Central) government decision	Local implementation structure (network) involved in a policy area.
Goal of analysis	Prediction/policy recommendation	Description/explanation
Model of policy process	Stagist	Fusionist
Character of implementation process	Hierarchical guidance	Decentralized problem-solving
Underlying model of democracy	Elitist	Participatory
Identification of major actors in the process	From top-down and from government out to private sector (although important attached to causal theory also calls for accurate understanding of target group's incentive structure)	
Evaluation criteria	Focus on extends of attainment of formal objectives (carefully analyzed). May look at other politically significant criteria and unintended consequences, but these are optional.	Much less clear. Basically anything the analysis chooses which is somehow relevant to the policy issues or problem. Certainly does not require any careful analysis of official government decision (s).
Overall focus	How does one steer system to achieve (top) policy-makers' intended policy result?	Strategic interaction among multiple actors in a policy network.

Source: adapted from Sabatier, 1997, pp. 282-283; Pülzl and Treib, 2006, pp. 7-8)

Both top-down and bottom-up approaches require policy instruments to implementing the program or policy. Policy instrument is very important for implementers to achieve the goal. Howlett and Ramesh (1995, 162-163) developed a model of instrument references in which composed of four alternatives: (1) Market-based instruments, (2) volunteer, family or community-based instrument, (3) regulatory public enterprise or direct provision instrument, and (4) mixed instrument. The ideas of the instrument requires interlink between two general variables in which are (i) the capacity of government or organization and the complexity of policy subsystem and (ii) the number and type of the policy actors in the implementation process.

Figure 1: A Model of Instrument Preferences

		Policy Subsystem Complexity	
		High	Low
State Capacity	High	(i) Market Instruments	(iii) Regulatory Public Enterprise, or Direct Provision Instruments
	Low	(ii) Voluntary, Community or Family Based Instruments	(iv) Mixed Instruments

Source: Based on Howlett and Ramesh, adapted from Linder and Peter (1989) in: Howlett and Ramesh, 1995, pp. 163

According to the figure, this model argued that when both capacity of the state and the complexity of policy subsystem are high, the market-based instrument is the best choice to apply in implementing the policy. If the capacity of the state is high, two best alternative choices of market based instrument and regulatory public enterprise or direct provision instrument should be utilized. In contrary, when the capacity of the state is weak, two alternatives choices of community based instruments and mixed instruments should be taken into account for implementation. Seeing from another variable of complexity of the policy subsystem, if the complexity is high, two alternatives of market based instrument and community-based instruments should be utilized while the complexity is low, regulatory public enterprise or direct provision instruments and mixed instruments should be applied (see figure 1).

In sum, public policy is an action or reform program or strategy, which involved all actors in the society to participate all stage of policy process as mentioned above to set up and meet a specific short and long goal. There are two main approaches to policy implementation top-down and bottom-up approach where the study focuses on how to make the policy implementation more effective and successful. To implement policy, one of four policy instruments mentioned above should be chosen in order to make more effective implementation. However the effective implementation will require other factors beside these approaches and instruments. Therefore, what are the factors to make policy implementation effective?

2.2.4 Variables for Policy Effectiveness

The transformation from policy into practice is difficult. The effective policy implementation is a core concerned for all government or organization. According to the practice and experiments by Gunn in 1978 and subsequently was elaborated by Hogwood and Gun in 1984 (Gunn and Hogwood, 1997, p. 217-223; Hill, 1997, pp. 130-131; Hill and Hupe, 2002, pp. 50-51). For effective policy implementation, they defined ten preconditions, which are: “

- 1- Circumstance external to the implementation agency do not impose crippling constraints
- 2- Adequate time and sufficient resources are made available to the program
- 3- Not only are there no constraints in term of overall resources but also, at each stage in the implementation process, the required combination of resources is actually available.
- 4- The policy to be implemented is based upon available theory of cause and effect.

- 5- The relation between cause and effect is direct and there are few, if any, intervening links.
- 6- There is a single implementing agency, which need not depend upon other agencies for success, or, if other agencies must be involved, the dependency relationships are minimal in number and importance.
- 7- There is complete understanding of, and agreement upon, the objectives to be achieved; and these conditions persist throughout the implementation process.
- 8- In moving towards agreed objectives it is possible to specify, in complete detail and perfect sequence, the task to be performed by each participant.
- 9- There is perfect communication among, and co-ordination of, the various elements involved in the programme.
- 10- Those in authority can demand and obtain perfect obedience”.

Sabatier and Marmanian have developed similar work on the effective implementation. First they identified a variety of legal, political and tractability variables affecting the different stage of the policy process (See annex 1). Then they synthesized all variables into six criteria for the effective implementation. Their six criteria are: (1) policy objective should be clear and consistent; (2) adequate causal theory; (3) implementation process is structured adequately; (4) committed and skilful implementing officials; (5) support form interest groups and sovereign institutions (executive and legislative); and (6) there are no detrimental changes in the socioeconomic framework condition (Sabatier, 1997, pp. 274-275).

2.2 Conceptual Framework of Legal and Judicial Reform

LJR is one crucial sector among the other sector of the public sector. There are many studies on LJRP, mostly, from different international organizations (WB, 2002; 2003; 2004a; Toope, 1997; Faundez, 1997) on the interrelation between law and development since 1960's accompanied with the structural adjustment of the state (Faundez, 1997, pp. 8). LJRP of the state is to modernize the structure of law and judiciary system of the country in order to make more effective justice sector, transparent, and accountable and due process for the rule of law providing opportunity investment to make economic growth.

What is legal and judicial reform?

It is a necessary to reform the legal and judicial sector. A sound legal and judicial system is properly aligned with the rule of law (Toope, 1997, pp. 8; Lutter, 2002, pp. 6; WB, 2003, pp. 1). The meaning of the rule of the law is very broad. According to Toope (1997, pp. 8), the Rule of Law was defined as the fact that government should

be conducted according to the objective legal principles. The authority should be lawful when exercising power and, furthermore, that law exists to protect and guide all elements of society. Similar meaning was defined by UN Secretary General's report on the Rule of Law (quoted in Samuels, 2006, pp. 2) as "a principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. Its requires, as well, measure to ensure adherence to the principle of supremacy of law, equality before the law, accountability to the law, fairness in the application of law, separation of powers, participation in decision making, legal certainty, avoidance of arbitrariness and procedural and legal transparency".

What are the rationales for the legal and judicial reform?

There are four rationales for rule of law reform (Samuels, 2006, pp. 3). (i) Rule of law is essential to Economic Development focus on the need for predictable and enforceable laws for contract enforcement and foreign investment (WB, 2002, pp. 2). (ii) Democratization: the protection of human rights and mechanism holding government accountable are essential for liberal democracy and inherent the rule of law (DFID, 2000, pp. 1). (iii) Poverty Reduction: rule of law reform is considered essential to poverty reduction as the poor suffer more from crime, which effected to their livelihood and they are less access to justice (DFID, 2000, pp. 1; WB, 2002, pp. 3). And (iv) Peace building: the rule of law reform created court and other alternative dispute resolution mechanisms to solve conflict (Secretary General, 2004).

What are the elements of the legal and judicial reform?

To achieve the rule of law needs to fulfill the objective of legal principles from the government when enact laws or regulations. Indeed, the enforcement of authority should be lawful. Law should be considered as the guideline for all element of the society for development. Everybody should respect the law. Moreover, Toope (1997, pp. 9-11) said that to fulfill the rule of law, some element should be identified like accountability, anti-corruption, efficacy, equality before and under the law, equality of access, internal value preferences (openness and transparency, fairness, consistency, predictability), legitimacy, no retroactive rules, stability yet flexibility, timeliness, and understandable and reasonable parameters for the legal system.

Indeed, these elements of the well-functioning of LJR will allow the state for sustainable development. To reach the goal, the entire legal and judicial sector (LJS) should function more effectively, transparently and due process. According to WB (2003, pp. 2), the entire legal and judicial sector should follow independent, impartial and effective judiciary; appropriated legal framework for all, and access to justice.

In this regard, three pillars for LJR process should be focused. The first pillar is judicial reform program that comprises of improving the independency of judiciary system, providing judicial training, improving court management and case management, fighting corruption in judicial system, improving the procedure for appointment of judge, improving criminal justice, improving accountability of government and strengthening alternative dispute resolution mechanism. The second pillar is legal reform. This sector needs to reform on law reform, legal training, and bar association. The third pillar is access to justice which comprises (1) improving access to existing services, (2) expending access to expanding access to facilitate or encourage the use of dispute resolution mechanisms by non-traditional users (marginalized groups); and (3) creating new legal standing to advance the interests of classes of individuals (WB, 2003, pp. 4-7).

What are some experiences from LJR implementation?

Successful LJR demands long term commitment from the government and other relevant stakeholders in implementation. The implementation of LJR is very difficult to assess whether it is success or not. Time is needed to measure the effects of the implementation of the program. However for the short-term program, mostly, it seems easier to evaluate the success than long-term agenda. According to Puymbroeck in order to make the reform successful, it needs the political will within the target country, and the participation from all local and global nongovernmental organization to work together. Initiative from the government side and strong commitment to restructure of LJR is a key because these are highly sensitive sectors in the fight against corruption in a situation in which most developing countries are unwilling to reform their LJS (Puymbroeck, 1999, pp. 13). Biebesheimer and Payne (2001, pp. 38) agreed this argument. However, they added one more factor: sound coordination where it is a very important condition in rule of law reform implementation because this reform area is a crosscutting issue. In addition, they said that “The complexity of coordinating execution among institutions from different

branches of government, private sector entities and civil society organizations; the sometimes negative consequences of changing political administrations or leaders; and waning support for a project from one branch or another of the government”.

A similar argument was stressed also by Messick (2002, pp. 6-7). Effective implementation of LJR needs (i) strong commitment, (ii) sound grasp of incentives, and (iii) clear understanding of how the system operating. Certainly, the successful LJR implementation not requires only political commitment, coordination, clear understanding of objective, incentives, and participation of all stakeholders in the justice sector, but according to the experiences from the implementation for more than ten years in many developing countries in the world of World Bank, the implementation of LJR requires also partnership building among other implementing agencies, participatory approach implementation, and responsive program for the specific needs (WB, 2004a, pp. 12-14)

In sum, LJR is a core factor of all sector development in the country. LJR means to improve and strengthen the rule of law where it is very closed interrelated to improving democracy, human rights and separation of power. To improve and strengthen legal and judicial sector means to modernize the institutional structure of the government to be more effective and efficient in enhancing the economic growth. To achieve the goal, the implementation of the program needs to take serious consideration the constraints and challenges experienced from international organizations (WB, ADB, USAID, DANIDA) such as commitment, participation, coordination, partnership, coordination between development institution, long term program, and consistent of program to the country situation.

Having discussed policy process, approach to policy implementation, factors for its effectiveness, and the concept of LJR, author will now turn to examining the case study of this thesis after presenting some background information on LJS, driving force to set up justice sector reform, formulation of the reform and its implementation, including current development of LJR in Cambodia, which influenced to the ineffectiveness of reform implementation.

Chapter Three: Legal and Judicial Reform in Cambodia

This chapter aims to illustrate the background and implications of the legal and judicial system in Cambodia, which affected to the LJR implementation. The driving force and the formulations process, including current progress and mismatch of the reform will be highlighted. The implementation process of the reform, including structure and framework of the policy implementation will be stressed as a basic analysis of the implications to the reform implementation.

3.1 Overview of Legal and Judicial System

Since independence in 1953 from the colonization of France, Cambodia has had many different experiences in the operation of the legal and judicial system (Wescott, 2001, pp. 5) (see appendix I). This led the justice system of the country more complex to improve, in particular, during the Khmer Rouge regime.

Legal System

The entire legal system and framework, including the judicial system, was destroyed during the Khmer Rouge (KR) regime³ (ADB, 2004, pp. 58). In 1976, Democratic Kampuchea, as the KR Regime called itself, adopted a constitution, but this constitution was not apply or implemented by the KR government. KR dismantled all government institutions, including legal and judicial systems by replacing them with rules of terror. The Constitution of 1976 referred to tribunals and judges but a court system was never established (constitution of Democratic Kampuchea, 1976, art. 9). There were neither written laws nor courts. As result, eighty percent of the 400 to 500 lawyers and legal experts living in that time was killed or died of starvation and disease after the Khmer took the power (Sok and Sarin, 1998, pp. 20). From 1979-1989, Cambodia under the name of People's Republic of Kampuchea, implemented the communist system. Most of the laws and regulations were adopted from Soviet Union and Vietnam (Wescott, 2001, p. 6-7; Fernando, 1998) (see appendix I).

From 1989, Cambodia opened their free market economy. The most changing of the legal system in Cambodia in that time is that state of Cambodia allowed people for own private property (constitution of the State of Cambodia, 1989). But most of

³ It is a regime called Kampuchea democratic. This regime took power from 1975-1979 and more than one million Cambodian people was killed during that time. It is an extremist communist regime.

these laws and regulations were abandoned when starting to implement policy based on the principles of liberal democracy and pluralism (constitution of Cambodia, 1993, art. 1). However, the constitution defined that all laws and regulations that are not conflicting with the principles of liberal democracy and free market of the country can be applied (constitution of Cambodia, 1993, art. 19). This unclear statement made a challenge for all legal practitioners to interpret even member of the Constitutional Council, national authority who has the full rights to interpret law.

Today, Cambodia is a parliamentary monarchy. The king reigns but does not govern the country. According to the constitution in 1993 (art. 51) the power was divided into three branches: Executive, Legislative and Judiciary. All the power is in the hand of the national assembly, senate and government. However, in practice, most of the power is in the hands of the executive branch and held mostly by the ruling party: Cambodian People's Party (CPP). This was reflected from the analyzing of the powers and functions did by the Team of the GTZ Decentralization and Administration Reform Project (GTZ, 2005). Indeed, Executive has full legislative powers to make laws and regulation without approval from parliament. The law on the Organization and Functioning of the Council of Ministers provided much power to the Prime Ministers to propose a Reach Kret (Royal Decree) to create authority or council or committee and high ranking officials without passing to the parliament.

So far, the legal system of Cambodia is primarily a civil law mixture of French-influenced codes (ADB, 2004; Fernando, 1998). From the United Nations Transitional Authority in Cambodia (UNTAC) period, royal decrees, and acts of the legislature got influences from customary law and legacy from communist legal theory and increasingly got influence from common law in recent years (see appendix I).

Judicial System

The judiciary system is generally structured along socialist lines. Socialist legal principles and processes defined both the institutions and the system of the court procedures of Cambodia in the 1980s (Fernando, 1998; ADB, 2004) (see appendix I). The system of the judiciary remains operational today. The Ministry of Justice gains judicial power in hand as there was not enough legal experts, lawyers and law

enforcement officers and the implementation of the centralized communist system policy. The legacy of implementation of experiences and principle still persist today despite there was some reform of judicial structure (Toshiyasu et al. 2000, pp. 24).

The judicial branch is comprised of the Supreme Council of the Magistracy (SCM), responsible for controlling the performance of magistrates, the Supreme Court, appeal court and lower courts (ADB, 2004; Fernando, 1998) (see appendix II). At lower court, there are two different courts: (1) municipal/provincial court where all cases including administrative, commerce, labor or family cases is in the competence of this court, and (2) military court which is under control of Ministry of Defense (ADB, 2004) (see appendix II). The powers of prosecution rest with the Department of Public Prosecution in the ministry of justice. SCM includes the minister of justice (from the executive branch) as vice chairman, the king as a chairman, and other judges and prosecutors (law on the organization and activities of the adjudicate court on 25 January 1993 and the law on organization and functioning of SCM in 1994).

According to the constitution of Cambodia in 1993 (art. 109), the judicial power is independent. However, it was dominated by other branch, especially Executive (EIC, 2005a; Toshiyasu et al., 2000a). The impartial judicial and protects the rights and freedoms of citizens role of the judiciary system have not been met since there is an influence from other branch of power and massive corruption in the judicial system (EIC, 2005, pp. 77; ADB, 2004). Trials should be conducted in accordance with the laws, regulations, and costumes. Indeed, SCM chaired by the King have the power to appoint and discipline judges and prosecutors but today the improving and strengthening of this Council has not yet been done (EIC, 2005a, pp. 77). The King is made the guarantor of judicial independence, assisted by this Council. With respect to powers of judicial review, citizens are given the rights to make complaints or file claims against the state, and the courts are given competence to deal with these (constitution of Cambodia in 1993, art. 39).

In sum, Cambodian LJS passed many experiences from different regimes (see appendix I). Most of the laws and regulations came from the legacy of France and later from Vietnam and Soviet Union. The legal system is a mixture between common law system and civil law system that leads to the challenges to the law drafters and other legal practitioners. Meanwhile, the judicial system is still weak

since the system passed many regimes that were not taken into account to improve, and judicial independence and impartiality has not been met because of the influence from other powers, especially the Executive. Indeed, there is only one ordinary court, which is responsible all cases even commerce, labor or family. Many specialized courts should be considered. The complexity of system made the reform difficult.

3.2 Driving Force to Justice Sector Reform

The public management reform was emerged from many factors like the new trend for building good governance for sound management, international pressure and globalization. According to Pollit and Bouckaert (2004, pp. 25-37), they defined four forces leading to public management reform called “Model of Public Management Reform” (PMR) in which are socio-economic, political systems, elite decision-making, and administration system. The four categories are interacted each other in PMR process (see appendix III).

Similar situation, in the framework of LJRP, the driving forces to this reform policy is more or less the same as public management reform driving forces. Without doubt, the driving forces to reform of the legal and judicial sectors in Cambodia were emerged from similar forces as the model of public management reform.

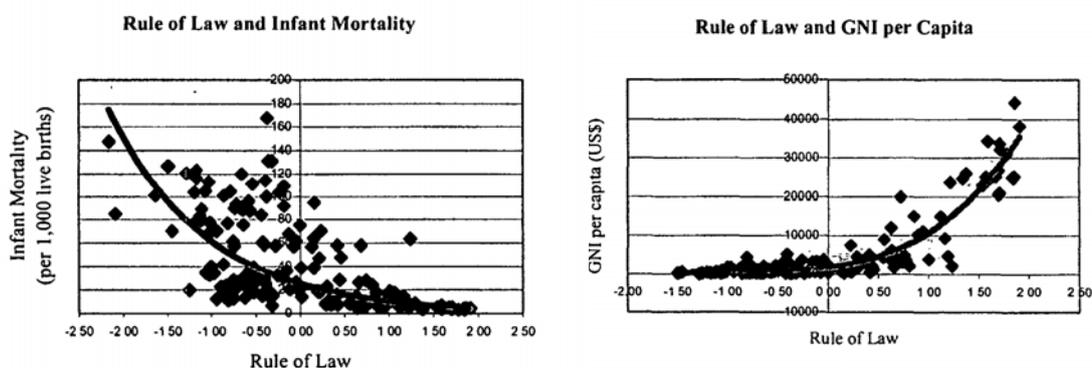
First argument is politico-administrative system change (EIC, 2006, pp. 81). Cambodia has to improve their LJS from socialist/communist to liberal democracy, since Cambodia changed their political system in 1991 from socialist/communist to liberal democracy (constitution of state of Cambodia, 1989; constitution of Cambodia, 1993). However a comprehensive strategy for justice reform did not yet take into account by government in that time. The re-establishment of the Rule of Law became a most priority in the reconstruction of the state after Paris Peace Agreement in 1991. A new coalition government based on democratic and rule of law principles (constitution of Cambodia, 1993) was set up from the general election sponsored by United Nations Transitional Authority in Cambodia (UNTAC) in 1993.

Second is the weakness of LJS (ADB, 2004; Fernando, 1998; WB, 2004c). LJS suffered from the shortage of the financial and human resource supports (Danida, 2005, pp. 17). There were only 11 judges and 5 prosecutors in the lower court who had bachelor degree in law where there was only one judge in Supreme Court hold bachelor

degree in law. Most of lower court judges and prosecutors just finished high school compared to other level of study (Danida, 2005; Toshiyasu et al., 2000b, pp. 84; ADB, 2005, pp. 5; ADB, 2004; Fernando, 1998). People in the rural area have to travel a long distance to get the provincial court due to the lack of court outside the province. Corruption is endemic and many cases were decided with insufficient evidence or investigations in unfair where the accused was not offered proper consultation (Toshiyasu et al., 2000b; Danida, 2005, 2005, pp.16; ADB, 2005, pp. 5; ADB, 2004; Fernando, 1998). Human rights violation, freedom of information, access to justice, fundamental individual rights and freedom remains a serious issue in justice system where it is a strong complaint from international community (HRW, 1999; Amnesty International, 1999, Secretary General, 1999, Fernando, 1998). Indeed, law enforcement, over-reliance on sub-decree, impunity of public officials, judicial independence and impartiality, absence of transparency at critical points in the criminal process, weakness of consistency of law drafting, weakness inter-ministerial coordination have been the issues facing LJS (Toshiyasu et al., 2000a, pp. 19, 27-29; RGC, 2000) (see more in chapter 3.1 above).

Third reason is because of widely recognition of the interrelation between the rule of law reform and the economic growth and poverty reduction from government (RGC, 1999; ADB, 2005, pp. 5). Many studies argued that justice system improvement will enhance economic growth and poverty reduction (WB, 2003, p. 16; Toshiyasu et al., 2000a, pp. 2; Armytage, 2006, pp. 1) (see figure 2).

Figure 2: Relationship between LJR and infant mortality and income growth



Source: WB, 2002, pp. 2-3

Fourth, the international and regional integration is a precondition for government to enable encouraging investors and compete with other countries in the world as well as in the region (Sok, 2001, pp. 1; IFC, 2005). The legal and judicial structure is a main

requirement of each state who want to be a member of the international and regional organization (EIC, 2004, pp. 1; IFC, 2005). Existing laws need to be improved and more new laws need also to be established to ensure credibility, predictability and transparency in the economic and social development. For instance, gaining membership of the World Trade Organization (WTO) is a priority action for the RGC in order to get more benefit from the member of the WTO like the free trade, free tax for export, and so on (IFC, 2005, pp. 1). Thus, the government must fulfill many requirements and the improvement of legal and judicial system is one core factor in which more than 47 laws and regulations should be established, in addition to the commercial court and arbitration council (WB4, 2007; IFC, 2005, pp. 1).

Last argument is the pressure from the international community, which was noticed that it is a main driving force to LJRS (Sok, 2001). Recognizing the weakness of the justice system and the international and regional integration, the international community at the Consultative Group (CG) meeting in Japan in 1999 urged the government of Cambodia to improve and strengthen their justice system in order to provide more justice to Cambodian people and give more rooms for investments in order to enhance economic growth and poverty reduction. In fact, the justice reform was initiated already by the Government and it was stressed clearly in the “Triangle Strategy” in 1998 (RGC, 1998), but nothing has been done by the government related to formulating a full national strategy for justice reform. It still lacks a full-fledged strategy that is integrated in the overall country development strategy. In order to maximize the benefits of any future legal reform program WB urged the government again to adopt a sector-wide or partnership approach to LJR (Sok, 2001, pp. 1). Later, in April 2000 government established the Council of Judicial Reform in charge of judicial reform, later it became CLJR (Kret⁵ on the Establishment of the Council of Judicial Reform, 2000). LJRS preparation was initiated in early 2000 with a commission of LJR diagnostic study under the WB Technical Assistant Project.

In brief, the factors forcing LJR in Cambodia can be seen as five main factors: (1) politico-administrative system change, (2) international and regional integration, (3) urgent need for to enhance good governance for economic growth and poverty

⁴ <http://siteresources.worldbank.org/INTCAMBODIA/Resources/WTO.pdf>, checked on 27 January 2007

⁵ Decree: a highest Norm, which may be enacted by the Executive Power, within the framework of its Regulatory Power. Signed by the King or, in His absence, by the acting Chief of State; generally countersigned by the Prime Minister and the interested Minister.

reduction, (4) weakness of LJS, and (5) Pressure from international donor community. The pressure from international community is a main driving force to LJR. Thus, how does the LJRS formulate? And what are the core components of the agenda to make justice sector more credible and stable?

3.3 Formulation of Justice Sector Reform Program

3.3.1 Initiative of Justice Sector Reform Program

As mentioned above even LJR was put in the Triangle Strategy but the real preparation of LJR begun in 2000 starting from Several Diagnose Studies in mid-2000. With recommendations from this diagnose study and the study of ADB on “Cambodia: Enhancing governance for sustainable development (Toshiyasu et al., 2000b), the first draft of the LJR policy was finished in September 2000 by the Cambodian government (Sok, 2001, pp. 2). Then, it was supported from WB in 2001 by setting up the project of “strengthening legal and judicial reform” but this project was not working smoothly (WB, 2001). Subsequently, the draft was presented in the Consultative Group Meeting (CG). The program took about three year to finish in 2003. Since there was a pressure from globalization integration and international communities, the policy was reformulated by the government with the technical support from the Danish Institute of Human Rights (DIHR) (Danida, 2005, pp. 23).

After the LJR policy was formulated in the first draft, the process of elaborating a shared vision (the Value Document), including consensus-building among all stakeholders was initiated in the autumn 2002 and later lead to the elaboration of Legal and Judicial Reform Strategy (LJRS). There are many phases in the policy formulation where the government introduced the consolidation model of agenda setting in order to have a specific comprehensive reform program in the sense to improve and strengthen justice system to be responsive to the needs of the people. In brief, there are three phases of the formulation process (CLJR, 2006, pp. 3-4):

Phase 1: Drafting Justice Sector Reform Program (JSRP): The reform program of the justice sector was drafted by Steering Committee for LJR, chaired by deputy of the Council of Jurists. The first draft focused on three main concepts: (i) making LJR as one of the competitive advantages for gain more investments and assistances, (ii) emphasizing partnership with civil society and private sector in the framework of promoting LJR, and (iii) capacity building support to state and non-state institutions

to ensure the appreciation of the rights, respect legal obligation incurred as a result of Cambodia's admission to regional and world organization (Sok, 2001, pp.3).

Phase 2: Reformulation of JSRP and LJR: The CLJR reviewed a draft value document through its reform units and on the basis of a draft LJRS based on the point of departure of which was the Cambodian Constitution, the international treaties ratified by Cambodia, and all available information about the existing structures and practices, reform initiatives, and challenges of the individual justice sector institutions. A draft value document and a draft LJRS were adopted in principle by the CLJR in January 2003 (CLJR, 2006, pp. 2) (see appendix VI).

Phase 2: Internal Consultation Process: The internal consultation process on the draft Value Document and LJRS draft was carried out encompassing all justice sector institutions. This led to the elaboration and approval of a Justice Sector Reform Program (JSRP) in March 2003, which is an addition to the draft value document and the draft LJRS included a draft Action Plan as well, as a discussion document (CLJR, 2006, pp. 2).

Phase 3: External Consultation Process: The approved JSRP was distributed for extensive consultation among all stakeholders, including civil society organizations and international donors. Based on the contributions made by the stakeholders and subject to the final political considerations, the value document and the LJRS were adopted by the RGC on June 2003. Further, a draft Action Plan was publicized with the view to further elaboration and consideration among government agencies, civil society and international organization and It was approval from the government in 2005 (CLJR, 2006, pp. 2).

Meanwhile RGC paved the way for an integrated process by reestablishing a integrated unit "Council for Legal and Judicial Reform" (CLJR) from the existing units of Council on Judicial Reform and the Legal Reform Unit, which were established since 2000 (NGO statement, 2000, pp. 37). Subsequently, the Permanent Coordination Body (PCB) consisting of representatives of the relevant justice sector institutions was set up and the Project Management Unit (PMU/LJR) were set up also to assist the CLJR and PCB to strategize and follow up on implementation (CLJR, 2006, pp. 3).

3.3.2 Vision, Goal and Strategic Objectives

The concept of the LJR policy is based on the values enshrined in the Constitution of 1993 and the principles of international laws as adhered to by Cambodia. From this concept, the main idea of the vision of the LJR is to enhance democracy, human rights, rule of law and credible and stable of legal and judicial sector (see appendix V, VI). Indeed, the vision aims certainly to: (1) secure the personal freedom and rights, including property rights, of all individuals throughout country through the timely, effective and fair delivery of justice; (2) protect the existence of a liberal democracy within the sovereign Kingdom of Cambodia; (3) ensure a credible and stable legal and judicial framework within a system of Separation of Powers, including an independent and capable judiciary; and (4) uphold the rule of law in a market-based economy (RGC, 2003, pp. 3-4) (appendix VI).

Through the vision and four values enshrined from constitution of Cambodia in 1993 on (i) individual rights, (ii) liberal democracy, (iii) separation of powers, and (iv) the rule of law, the overall goal of the LJR policy is defined as “establishment of a credible and stable legal and judicial sectors upholding the principles of the rights of the individual, the rule of law and the separation of powers in a liberal democracy fostering private sector led economic growth” (RGC, 2003, p. 5).

To reach this goal, this policy set up seven Strategic Objectives (S.O):

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

Outcome: Capacity and means provided in fields of planning and budgeting, monitoring and reporting in order to ensure effective, efficient and accountable enforcement. (RGC, 2003, pp. 5) (See more appendix V)

Within the 7 strategic objectives, there are a number of strategies to attain the goal of the reform policy; and among the strategies there are interventions. In total there are more than 90 main interventions in which a number of project/programs will be taken action in order to reach to the ultimate goal of the LJR policy (see appendix V). This is a priority national strategy of the government of Cambodia beside other three main state reform policies: administrative reform, Arm forces reform, and financial and economic reform.

In sum, even it is a comprehensive justice sector reform program where the government provided more rooms for other relevant actors to contribute but other stakeholders in the justice sector did not integrate a number of other justice sector reform program. Some agenda is overlapping even within the government agency.

3.4 Implementation Mechanisms of the Reform Agenda

Having perfect implementation of LJR policy, it needs more appropriated national mechanisms with active participation from all stakeholders in the justice sector to look after the process. Since the draft of LJR was adopted by RGC, many projects and programs were implemented by different agencies of government and nongovernmental organization with closed collaboration with the involved government agencies.

3.4.1 Implementation Structure⁶

In implementation process of LJR policy, mostly, top-down processes have greater influence than bottom-up approaches (see appendix VII). The argument are that first in the framework of policy formulation, even there were contribution from all relevant stakeholders including RGC agencies and civil society/NGOs⁷, but those stakeholders came only from national level. This analysis is reflected from the experiences of author who has worked in PMU/LJR since 2003. Indeed, in stead of organizing the participation from subsystem agency in order to get more needs from the local people in the policy formulation stage, the PMU/LJR organized an

⁶ See more appendix VII, VIII

⁷ Civil Society/NGOs in this study refers to all international community, donor community, international organizations, national organizations, research institutions, and professional group working in the justice sector in Cambodia.

awareness of the adopted LJRS to provincial and district level officials in late 2005 and early 2006 in nine provinces⁸ (PMU/LJR, 2006, pp. 2). Secondly, government set up its central level agencies (CLJR, PCB and PMU/LJR) to coordinate and implement the LJR (see figure 3, appendix VII, VIII). They make decision for implementation to other relevant government agencies through those responsible agencies. In this regard, it was said clearly in the sub-decree on the functions and missions of the CLJR article 2 that “CLJR has functions and missions:... 3. Take necessary action to implement LJR... 4. Make necessary decision and guideline to all ministries/institutions and government agencies in the justice sector to manage and promote LJR implementation...” Indeed, according to the Sub-Decree of the establishment of PMU/LJR, PMU/LJR will carry out some project also.

Although all the decision to implement program requires the approval from the CLJR through PMU/LJR and PCB but in term of implementation framework, the real implementers are subsystem agencies in the provincial, district and commune level officials. For instant, the program of access to justice focusing on establishing the traditional alternative dispute resolution mechanism (ADR)⁹ in the rural area has been implemented by Ministry of Justice (MOJ) and Ministry of Interior (MOI) under the sponsorship from UNDP. MOI and MOJ organized action plan according to the survey did by UNDP (UNDP, 2005a). All actions will be implemented by district and commune level officials in the subsystem level (UNDP, 2005). PMU/LJR and PCB have the role to coordinate and facilitate program with UNDP and government agencies (MOI and MOJ) to implement and then to monitor the program without interfering in the implementation management (PMU/LJR, 2006a).

Institutional Arrangements

To succeed the ultimate goal of establishing the credible and stable of the justice sector, stronger institutions are needed to be responsible for and coordinate all the interventions of all action plans of LJR with other agencies in the justice sector,

⁸ After awareness program of LJRS to relevant ministries, PMU/LJR had begun awareness of LJRS to nine provinces where the participants were from provincial and district level officials. The nine provinces are Takeo, Kampt, Kampong Speu provinces and city of Kep in 2005 and in Koh Kong, Kratie, Battambang provinces and the city of Sihanu Ville in early 2006.

⁹ This action is in strategic objective 6 and strategy 2 of LJRS. It is in number 6.2.1: Investigate into, build upon and strengthen other alternative and traditional methods of alternative dispute resolution (see more in appendix I). It scheduled to finish at the end of 2005 but the program was just finish first stage of investigation of ADR in 2005, which was implemented by UNDP cooperation with PMU/LJR and MOJ. The survey report was officially published in 2005.

including NGOs operating in the justice system reform, since the justice reform is a cross-cutting issues, which will involve all actors in the society to participate actively together in the implementation process (see figure 3, appendix VII, VIII). LJRS should be integrated into institutions' strategy in order to avoid the duplicating program.

The RGC has established a national council called CLJR composing of 8 members, 6 members from executive branch and 2 members from judicial branch. This council is jointly headed by the Minister of the office of the Council of Ministers and the President of the Supreme Court (Royal Decree¹⁰ on establishment of CLJR, 2002). The role of CLJR is to make political decisions on the LJR program or action plan, monitor the LJR implementation of government agencies, and report the progressive progress to the government and even to the donor CG Meeting. However, this council more or less was influenced by the executive power due to 80% of member came from government side (Royal Decree, 2002, art. 1-2).

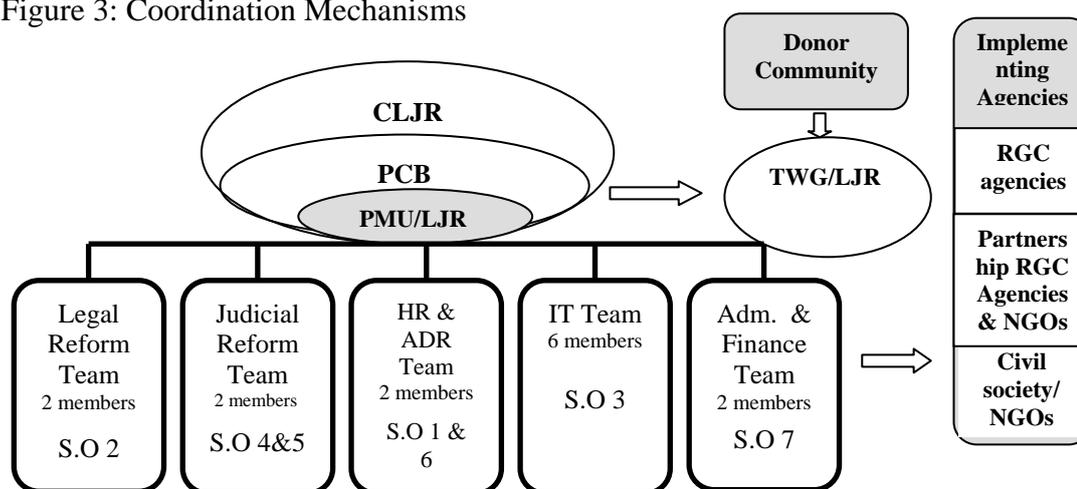
The Council was supported by Permanent Coordinating Body (PCB), which is a secretariat of the Council to coordinate with all government agencies and international donor communities and NGOs to implement LJR and to develop strategy and action plan for improving the justice system (sub decree on the establishment of PCB, 2002, art. 2, 3, & 4). According to this sub-decree, all members come from eight relevant justice sector institutions in Executive¹¹ with high ranging officials (up from under secretary general). There is no member coming from the judicial branch even this reform is cover court system. To support PCB, Project Management Unit (PMU/LJR) was established in 2002 to assist the PCB and CLJR in coordinating and implementing the policy, in which is composed of 17 officials including one director and two deputy directors (Sub-Decree on establishment of PMU/LJR, 2002). PMU/LJR is responsible for coordinating and monitoring the implementation of the reforms program of all government agencies, donors, and NGOs in the whole justice system in the country (see figure 3).

¹⁰ It is a higher regulation than sub-decree and decree of the government. It is promulgated by the king by the proposal from prime minister.

¹¹ PCB composed of a member of CLJR as a chairman, under secretary of state of MOJ, secretary general of CDC, vice chairman of COJ, undersecretary of state of MOEF, member of CSM, member of COJ, undersecretary of state of MOC, and representative from Bar association of Cambodia (sub-decree on the establishment of PCB, 2002, art. 5).

PMU/LJR was structured into five Teams according to S.O of the LJR program. Each Team is in charge of relevant S.O and coordinate with relevant both government implementing agencies and NGOs in the justice sector. However each Team composed of only two members in which they have to coordinate with all implementing agencies in the whole justice system in the country within their responsibility, except Administration and Financial Team which composed of 6 officials (PMU/LJR, 2005) (see figure 3).

Figure 3: Coordination Mechanisms



Source: Adapted from sub-decree on the establishment of PMU/LJR, PCB in 2002; sub-decree on roles and missions of CLJR in 2002; Royal Decree on establishment of CLJR in 2002; CLJR, 2006.

Inter-Government Coordination Mechanism: In order to build an effective coordination with government agencies, *focal point* from each relevant RGC agencies had been organized and established as a mechanism of coordination network. The focal point in the RGC agencies will play a role as a contact official from PMU/LJR in order to facilitate and monitor the LJR implementation in its agency where the LJRS should be integrated into its agency strategy or its strategy should be integrated into LJRS. This coordination mechanism has been introduced since 2004 through a decision of CLJR to all relevant ministries. However so far focal point is not created yet by relevant government agencies even focal point from the government agency where there is a representative in PCB like ministry of Economy and Finance, except five government agencies¹² (PMU/LJR, 2006, pp. 2). Indeed, until now, this focal point mechanism has not yet been well organized and

¹² Five focal point send by ministry of Education, Youth and Sport in 2006; MOJ in 2006; MOI in 2006; Ministry of Commerce in 2006; and Supreme Court in 2006

structured. Even there is some formal communication but it seems not work well. Indeed, most of information sharing with government agencies was conducted in informal communication through informal relationship. It becomes more useful than the formal one in the framework of coordination and sharing information. It was reflected from the experiences of author who has been working since 2003.

Donor-Government Coordination Mechanism: Joint Technical Working Group on LJR (TWG/LJR), a donor-government working group for supporting institutional implementation, was created for fund harmonizing and coordinating duplicated program in donor and NGOs sector in the CG meeting 2004 (CDC, 2007a) in which it was lead by CLJR representing for government¹³ and UNDP and France embassy representing for donor community¹⁴. It is a forum for the mobilization of partnerships (Partnership Groups) and funds required for the implementation of projects (see figure 3, appendix IV, VII, VIII). The Partnership Groups have the purpose to design, plan, provide funding for, give support to, and monitor bilateral (and multilateral) projects. However in practice, the TWG/LJR focuses only on reviewing and pressuring government to achieve JMIs without take into account on mobilizing fund and project integration to avoid the overlapping program implementation among implementing agencies. Therefore, other priority program of LJRS should be taken consideration as well. It was reflected from the experiences of author who has been working there since 2003.

The aim would also be to further improve information-sharing mechanisms between the PCB/CLJR and the donor community, thus better enabling interested donors to plan their activities around the LJR priorities in a manner in which funds can be channeled in accordance with the specificities of the reform program. This would also help to avoid duplication of efforts on all sides. It is envisaged that the PCB-PMU/LJR will produce a semi-annual LJR progress report for the TWG/LJR (CLJR, 2006, pp. 8) (See figure 3) (See appendix IV, VII, VIII). However the coordination condition of the TWG/LJR was not clearly defined, related to the fund mobilization

¹³ Chaired by Vice Chairman of the Council of Jurists and member of the PCB, H.E Sam Sok Phal and its members: Ministry of Commerce, Ministry of Education, Youth and Sports, Ministry of Justice, Ministry of Women's Affairs, Anti Corruption Unit, Council for Legal and Judicial Reform, Cambodian Bar Association, National Police Commission, Royal School of Administration, Supreme Council of Magistrate, and Supreme Court (CDC, 2005a, pp. 43).

¹⁴ Chaired by Mr. Douglas Gardner from UNDP and Mr. Dominique Dordain from France embassy and its members: representative from Australia, EC, France, COHCHR, Japan, UNDP, and USA, including NGOs representative from Pact Cambodia (CDC, 2005a, pp. 43).

and integration of justice program operated by donor or civil society/NGOs into a common LJRS of Government. Indeed, so far there is no clear coordination mechanism between donor and donor or among civil society/NGOs and civil society/NGOs and even UNDP and the French embassy represented as a donor partners in the TWG/LJR (CDC, 2005a, pp. 43). They intend to protect their own interest or priority program.

3.4.2 Implementation Framework

According to the implementation framework set by government, the LJRP has set up some frameworks to facilitate and coordinate the complex work of the Sector Wide Approaches (SWAPs)¹⁵, as legal and judicial issues are cross cutting problems requiring the involvement of all sectors in their resolution (CLJR, 2006, pp. 8-11) (see annex VII, VIII, IX). The frameworks are:

- (i) ***Joint Sector Implementation*** where the PMU/LJR and PCB will play the role of coordination and monitoring of the program. Of course, PMU/LJR will carry out LJR program as well. Mostly, each program will be implemented by LJR sector agency or as part of a clustering of actions that requires coordinated sectoral efforts. Other agencies/individuals can serve as resource persons when necessary. The PMU/LJR as coordinators will be represented in each of those project teams. According to the model, LJR will be implemented by government agencies, donor or civil society/NGOs, and mixed partnership agencies between government agencies and donor or civil society/NGOs (see appendix IV, VII, VIII);
- (ii) ***Joint Budget Allocation Model*** where the budget from government, mostly, Medium Term Expenditure Framework (MTEF) will joint together with the donors or NGOs fund to implement LJR through PCB and PMU/LJR. PMU/LJR and PCB serve a role as a coordinator between donor and implementing agencies (see appendix IV);

¹⁵ A Swap is a process in which funding for the sector – whether internal or from donors – supports a single policy and expenditure program, under government leadership, and adopting common approaches across the sector. It is generally accompanied by efforts to strengthen government procedures for disbursement and accountability. A Swaps should ideally involve broad stakeholder consultation in the design of a coherent sector program at micro, meso and macro levels, and strong co-ordination among donors and between donors and government (Farrington, J., 2001, pp.1).

- (iii) *Sectoral Manual*: PMU/LJR and PCB have been developing the sectoral manual such as monitoring, evaluation, project management, reporting mechanism manuals and so on for effective implementing in the LJR as a common manual for justice sector reform but none of them was finished;
- (iv) *Project Catalogue*: Each project has been designed to carry out a priority action identified in the Plan of Action. This implementation mechanism serves for a dynamic instrument for dialogue between RGC and donor or NGOs in relating to design the funding. Indeed, the Project Catalogue will continuously updated and CLJR welcomes also additional projects proposals from donors and/or suggesting to adjusting, clustering or splitting already identified project (CLJR, 2006, pp. 6). So far a Project Catalogue has been developed in which there are 44 priority actions for implementation. The project catalogue was distributed for international donors and relevant international and local NGOs (PMU/LJR, 2006, pp. 2).

These instruments mentioned above are a catalyst to promote and push the degree of the implementation; however those tools and models need more time to develop, improve, and understand among implementing agencies in the justice sector. Nevertheless, so far the development of sectoral manual is not yet completed (PMU/LJR, 2006). Currently, some reform strategy actions have been implementing by government agencies and NGOs under supporting from donor community, for instance, the program of access to justice focusing on Alternative Dispute Resolution Mechanisms (ADR), Legal awareness at local level and publish official gazette and legal database by UNDP starting from 2006 (UNDP, 2005a). In this regard, what are the current developments of the LJR and do the outputs scheduled in Plan of Action for Implementing LJR meet?

3.5 Current Progress of the Reform Agenda

Some progress has been made to reform the country's LJS since establishment of CLR, PCB and PMU/LJR in 2002. Yet, the Government is determined to accelerate the pace now that key foundations are in place. LJRS has been approved by RGC in June 2003 and Short and Medium Term of Plan of Action for Implementing LJR was adopted in 2005. Important laws were enacted to complement the legal framework, from laws relating to human rights to laws on investment, trade and commerce and

laws in support for natural resources management. Starting from January 2003, the government increased remuneration of judges and prosecutors. The Civil Code and the Penal Code and Procedures are ready for submission to the National Assembly and Senate. The Royal School of Magistracy and the Lawyer Training Center are operational. A pilot court was established in Kandal province in order to introduce some best practices in handling cases and upgrade the court needs. Its improvement measures have also been identified to improve its performance. Preparation is underway to establish court of commerce; a juvenile court and administrative court are underway. Core support institutions such as the Supreme Council of the Magistracy (SCM), the Council of Jurists, the Ministry of Justice (MOJ) and support mechanisms to CLJR are being strengthened. Resources are being mobilized to undertake projects in order to significantly improve access to legal and judicial services. But so far most of the resources are coming from the government budget (PMU/LJR, 2005, 2006a; and EIC, 2004, 2005a, 2005b, 2006) (see appendix IV).

In term of regional and global integration, the parliament has ratified and adopted 16 out of 47 laws and regulation for compliance with WTO regulations and signed a numbers of agreements within the ASEAN framework. Indeed, other laws and regulations to compliance with the regional and international integration have been drafted within specialized ministries, in particular the Ministry of Commerce (EIC, 2005a, pp. 69 and PMU/LJR, 2006a, pp. 6-9).

Furthermore, most of 8 fundamental laws as JMIs have been drafted by different government agencies. Some of them have been sent to the Council of Ministers and some have been tabled with Parliament (CDC, 2005 and RGC, 2006, pp. 15-16) (see more table 2).

Despite achieving the partial progress, the results made is generally marked by a relative tardiness and leave some critical action to repeatedly remain within the agenda if compared to what has been promised and set in the action plan of LJR (see appendix V). Some activity should be completed based on schedule but it did not yet implemented, for instance, the law on anti-corruption which supposed to finish by the government since 2001 but until now this law is still under review at the Council of Jurists in the office of the Council of Ministers (EIC, 2005a, pp. 74).

Certainly, the implementation of the LJR policy did not get the satisfaction from the public, in particular, from the international donor communities. The progress of LJR is slow as remarked by H.E. Yvon ROE D'ALBERT, Ambassador of France in his statement in the meeting of donor-government coordination committee on February 2007 (CDC, 2007b). Indeed, in the report of the International Monetary Fund (IMF) stressed that despite closed attention from the government, LJR has taken many years to implement. Progress on the reform policy is still slow and the reform is substantially behind schedule set in the Plan of Action (see appendix V), constituting a major impediment to private sector growth and foreign investment (IMF, 2004, pp. 21). The eight laws as JMIs of RGC and donors, expected to finish by the end of 2006, are not yet completed. The only exception is the civil procedure code, which was adopted by parliament in July 6, 2006 (CDC, 2007a, pp. 44).

The deficiency in the legal framework together with slowness of the legal reform in the judicial area unavoidable leaves the government to directly intervene in the judicial reform process. For example in 2005, with an emergency campaign called “Iron Fist”, government vowed to re-arrest armed robbers who not in prison as a result of bribery, and arrest corrupt judges and prosecutors (EIC, 2005b, pp. 73). However this action was short-lived. Such actions should be managed within an appropriate timeframe, proper resources and priorities and systematic implementation.

Some activities planned to carry out for short term from 2005-2006 were not accomplished within the expected timeframe, for example, the action relation to survey on current training of fundamental human rights for law enforcement officials in order to find out the gap to improve, and establish human right training university and inclusion of human rights in university curriculum (PMU/LJR, 2006a, pp. 10-11) (see more table 1.3) (see appendix V).

In fact, slow progress of the law drafting is certainly because of long and complexity of the law drafting process, limited capacity to manage and implement the legislative reform agenda, and the total absence of any coordination mechanism in the law drafting process (Sok, 2001, p. 5-6). Currently, there is no a clear law or regulation or government guideline on how to draft a bill, even government recognized its importance to have a formal manual to speed up the legal drafting. In 2003, project

for this purpose was sponsored by Konrad Adenauer Foundation (KAF), but progress has been held up in the Office of the Council of Ministers (EIC, 2005b, pp. 72).

Table 2: Recent Development in Legal and judicial reform

Progress	Remain Issues
<ul style="list-style-type: none"> ✓ Public procurement is a competitively bid for all ministries except for the royal palace ministry. ✓ The National Assembly ratified and adopted nineteen laws regulations to compliance with WTO regulations. ✓ A total 45 laws was approval by National Assembly in 2005. ✓ Establish of Professional Training Center for lawyers and Royal School of Legal Profession ✓ Separation of budget of judiciary from ministry of Justice. ✓ A rotation system was introduced for judges, prosecutors and court officials across the country every four years. 	<ul style="list-style-type: none"> • Failure to adopt anti-corruption law. It is a long unmet pledge since Tokyo CG 2001. • Fundamental legal framework in short term action plan (2005-2006) such as civil code, penal code and code of penal procedures has not yet submitted yet to the National Assembly. • Twenty-eight laws and regulations promised to finish by the end of 2006 need to be ratified and adopted for compliance with WTO. • The draft law on statute of judges and prosecutors has not been approved yet by CoM. • The draft law on organization of court has not been send yet to CoM. • The law on organization and functioning of Supreme Council of Magistracy (SCM) has not passed; hence the SCM has not been structured. • No specialized court has been established and the municipal/provincial courts still overlap concerning dispute resolution in most areas. • Some of Short Term Priority actions (2004-2006) in the Plan of Action are unmet to the timeframe set (see more in appendix V).

Source: Adapted from PMU/LJR, 2006a, pp. 1-11; EIC, 2006, pp. 77-82; CDC, 2007a, pp.44-46; and RGC, 2006, pp. 15-16

In general, the LJR progress is slow compared to commitments made and the expected timeframe in the Plan of Action, which was scheduled to finish from 2004-2006 for short-term actions. Importantly, the fundamental laws, which RGC agreed with donor community as JMIs and supposed to finish by the end of 2006, are not yet finished so far. These laws are the basic laws for justice system and other state reform. Why is it slow either less action? Why is the implementation of LJR so difficult to achieve?

Chapter Four: Challenges to Implementation of Reforms

The policy of LJR is one of the rectangular strategies of the government of Cambodia (RGC, 2004a, pp.7). Although there are some progress in the process of the LJR policy implementation of Cambodia as mentioned above, but the result of the policy implementation seem not meet the objective set in the Plan of Action for Implementing LJR (see table 2 and appendix V). Hence, this section below intends to discuss on the implications made the LJR policy slow and less action.

4.1 Nature of Legal and Judicial Reform Problems Themselves

The ideology policy will affect the successful policy implementation and is used because the policy is expected to realize a multitude of goal at the same time in an ambiguous program with no clear measurements to indicate results (Grindle, 1980, pp. 41-43). The establishment of credible and stable legal and judicial sectors for upholding democracy, rule of law, individual rights and freedom to let economic growth is a very broad goal and an ideological platform for politicians to get more support from the donor community and especially support from the public for their own interest (Sok, 2001, pp. 2). Indeed, it is an ideological framework applying an “ambitious result-oriented approach” where the politicians and even the donor community expected to realize very broad objectives in the justice sector by forming a broad strategic goal with other seven strategic objectives, in which most of the strategic objectives cover all complex social problem in society (EIC, 2006, pp. 80; RGC, 2005) (see appendix V). From more than a decade of experiences, it seems time for both the government and the donor community to change their approach and identify concrete programs rather than focus only on ambitious result-oriented policy. Otherwise it will take decade to realize this ambitious goal.

Moreover, the delay of the LJR implementation is because of the underestimation of timeframe of the priority action without take consideration of their complexity, important dimension and the resources for appropriated implementation (EIC, 2005a, pp. 80). For instance, the RGC scheduled some priority actions for completion in 2004-2006 in which some action is a complex issues and needs more time to achieve like intervention “6.2.1 investigate into, build upon and strengthen other alternative and traditional methods of alternative dispute resolution” (see appendix V). In fact,

the implementation of investigation on the alternative and traditional methods of ADR was finished already in the end of 2005 by UNDP (PMU/LJR, 2005) but the building and strengthening of ADR is just starting to implement in 2006 by MOI and MOJ under sponsorship by UNDP (UNDP, 2006). According to the Plan of Action, this intervention expected to finish by the end of 2005. Thus the implementation will take long time and it is very complex works to reach the goal (CDC, 2002; WB, 2002, pp. 27). However this intervention need to deal with even there is no clear cut goal. It is an indispensable work of the government and all stakeholders to achieve the strategic goal (CDC, 2004b).

With huge issues including diversified target groups in society, the policy implementation will not attain their success even there is a perfect implementation (Howlett and Ramesh, 1995, pp. 154). In this regard, as mentioned above the policy of LJR comprised all ground issues in the society. The reforms are complicated further by the social context in Cambodia. Three decades of destructive war, torment and internal struggle have left deep psychological scars and underlying tensions. A growing youth population and rapid social change being encouraged by technology and greater integration into regional and global trends has challenged traditional values and virtues.

In fact, the strategy comprised more than 90 main interventions relating all social issues since the justice issues involved all problems in the society and needs to plan in long term perspective with long term commitment from all stakeholders to realize the goal of justice for all (WB, 2002, pp. 8, 11, 27 & 62) (see appendix V). For example, an intervention on domestic violence program¹⁶, it is a very complex program to deal with many root causes of the domestic violence and too many target groups of people in society. In that point, the program has to form many other subprojects like creation of law against domestic violence, awareness program, and establishment of mechanisms to deal with the problem. Another example is the program on fighting against corruption. It is a very complex issue involving many target groups. There are many root causes to deal with. This program will involve many actors and target group in the society.

¹⁶ Intervention in strategic objective 1 in strategy 7 and intervention 1 in the Plan of Action for Implementing of LJR

4.2 Inter-Organizational Relationships and Coordination

The perfect communication and coordination is very important for the successful implementation of all program or policy even a simple or complex program. Since the LJR is a complex policy to deal, it of course requires an effective coordination and communication among all relevant actors in the implementation process to work together in achieving the common goal of the rule of law. This will lead to ineffective of the reform implementation (Sok, 2001, pp. 5-6). To resolve this, a strong central coordination agency (CLJR, PCB, and PMU/LJR) is needed with effective coordination mechanisms.

Conversely, as mentioned above, PMU/LJR comprised only 17 officials, including director and two other deputy directors, who are in charge of coordination and monitoring of many actions of the whole justice reform (see figure 3). Their role is not only deal with all government agencies from national level to local level, but they have to coordinate also with all international communities, international organizations, local NGOs and other professional institutions to facilitate all financial support and program to make sure that all projects or programs of LJR are not overlapping each other (Sub-decree on the establishment of PMU/LJR, 2002, art. 2). It is very difficult to coordinate and monitor all justice reform programs with this number of officials comparing to the Plan of Action (see figure 3; appendix V). The progress report (2005) stated that an inadequate staff is a constraint of ineffectiveness of coordination of the LJR policy. Even there are some qualified staffs in PMU/LJR, but it is not sufficient for this huge national reform. The scope of the coordination role is really big for a small PMU/LJR with insufficient facility and low salary. Actually the salary of the Cambodian official is about US\$ 40 per month whereas the minimum cost of living for an average family in Phnom Penh ¹⁷ is around US\$ 200 per month (Wescott, 2003, pp. 244). Indeed, in term of facilities for coordination and monitoring mechanism, there is not enough for effective communication and coordination. The facilities such as Internet, telephone, and other office support are inadequate (PMU/LJR, 2005), for instance, Internet access is very slow and interrupted and there is the same problem for telephone access.

¹⁷ Phnom Penh is a capital of Cambodia

Indeed, all members of PCB are high-ranking officials (up from under secretary of state¹⁸) and have another responsibility in other government agency, thus they have no time to perform as coordinators according to functions said in the sub-decree (sub-decree on the establishment of PCB, 2002, art. 5). According to the sub-decree (2002, art.6), they will meet at least one time a month in order to review and plan the performance of the coordination with relevant stakeholders, including RGC agencies, donor and civil society/NGOs for implementing LJR but the meeting is rarely organized and they never prepared documents before meeting. The most challenge is because of the conflict of interest as well as stressed by EIC (2006. pp. 80) that “each individual ministry tends to protect its own interests”.

Relationship and Coordination with RGC Agencies

The argument is that coordination in LJR reform implementation with some of the ministries and government institutions is very difficult because of differences in official ranking. It is difficult for PMU/LJR to communicate with high ranking or older officials in relevant government agencies in the justice system. Traditionally, the culture of the seniority of the government official, even in the society in Cambodia is a factor made the coordination and facilitation more difficult (WB, 2004a, pp. 26). Even though there are some orders like official letters from the top level (CLJR or PCB) asking for cooperation with PMU/LJR to implement LJR, but a few cooperation or coordination with PMU/LJR officials has been created. They just follow at the time of order issued.

Indeed, Cambodian people give more respects for high-ranking people than laws or regulations. The study of the CDRI sponsored by ADB showed that the idea of law as a real power to enforce the implementation was a little accepted among Cambodian people whereas they respect high ranking officials than respecting laws or regulations (Toshiyasu et al., 2000a, pp. 28-29).

Individual government agencies seem unwilling to cooperate with PMU/LJR and more inclined to protect their own individual institution or group interests. They are unwilling to see a justice reform program integrated into their individual institution

¹⁸ It is a one high level of the government official in Cambodia. The hierarchy of government official in Cambodia is first prime minister, second deputy prime minister, third secretary of state, and forth under secretary of state. All this level is considered as a politician.

strategy as they are afraid the program will not be implemented under their responsibility or their program might not have financial assistance from donor or NGOs. This analysis reflected from the observations and experiences of the authors worked in PMU/LJR since 2003. As some of the public officials depend very much on the supplementary finance from the project sponsored by donors or NGOs as their salary is very low (40USD a month) whereas the average partner supplements is about US\$194 (Wescott, 2003, pp. 244).

Recognizing this, PCB asked relevant RGC agencies for creating a “focal point” in each relevant government agencies in order to improve the effective coordination among RGC agencies in LJR implementation. However the appointment of the “focal point” from relevant agencies has not been taken consideration and the legal support for this framework has not been yet developed. The argument is so far, there were only five government institutions created their focal point to coordinate with PCB and PMU/LJR (PMU/LJR, 2006, pp. 2).

In addition, the full information sharing among government agencies is very difficult even access to the law or regulation information within the same government institution (Adler, 2005, pp. 4). This leads the LJR policy not getting the unity policy and unity action even the government tried to integrate all LJR agenda in one national Plan of Action for Implementing LJR adopted by government in April 2005 through workshops and number of consultative meetings (CLJR, 2006, pp. 2). Each of those ministries and government institutions made their own plan without reviewing the existing national action plan leading overlap program with the national program of LJR. For example, the ministry of justices made their own plan of action for LJR, in which some intervention was overlapping to the plan of action of the LJR. This is reflected from the experiences of author who has worked in PMU/LJR since 2003. The challenge for program integration is the problem of conflict of interest of each ministry or government agency (EIC, 2005b, pp. 72).

Relationship and Coordination with Donor Community/NGOs

To achieve faster, more effective progress in the LJR, it requires not only an effective coordination among the government agencies or government agencies with international donors/NGOs, but also an effective coordination among donors and

civil society/NGOs, since the donors and civil society/NGOs are a crucial role in LJR. Conversely the relationship between government and donors were not fully coordinated even there is a TWG/LJR as government-donor coordination mechanism but more or less the tasks of the mechanism focuses only on JMIs reviewing from donor community rather than fund mobilization and program integration with LJRS to avoid overlapping action. This analysis reflected from the observations and experiences of author who have worked in PMU/LJR since 2003. This is partly because of insufficient time and partly because of reluctance on the part of most members to “put others on the spot” or to be perceived as confrontational. All programs should be integrated or cooperated in a common agenda implementation to avoid the overlapping program but some program implementation was overlapped. For instance, the program on the survey of access to justice was conducted by three agencies: UNDP, ADB and WB in 2005 (Danida, 2005, pp. 25).

In addition, even donor themselves clearly acknowledged from their study in the “Country Assistance Plan for Cambodia” in 2005 that inefficient coordination among donors and INGOs will leading the ineffective reform strategy (Rectangle Strategy) implementation (DFID, 2005, pp. 14). But the coordination mechanism between government and donors, even donor-donor seem not working well. Apparently, there is not clear coordination mechanism of donor-donor and either NGOs. They intend to focus on only their own priority program (DFID, 2005).

4.3 Lack of Human Resources and Sound Management

As Cambodia passed so many years of civil war and conflict and human resource development has not been seriously taken consideration. To build a sound legal and judicial framework for a country where most of the justice system was nearly destroyed (see appendix I), it requires a lot of legal professional staffs to solve challenge of the justice reform, which are a most priority for building good government and enhancing economic growth for Cambodia (Wescott, 2001, pp. 244). Most of the country’s judges either fled the country or were killed, for example, from a legal profession of 400-600 people prior to 1975; some 10 remained in the country in five years later. So far the number of skilled human resource remains a challenge for the Cambodian justice system. Only one in six of Cambodia’s 130 judges have a law degree, and only one of nine Supreme Court

judges (WB, 2004c, pp. 5). Even though the Royal Academy of Legal Profession was established in 2003 but only first generation with 55 judges was just finished in 2006. The number of the judges and prosecutors is still facing to build a sound judicial system with more than 13 million people to enable accessing to justice. In the country there are 21 provincial/municipal courts to cover 24 provinces. Some courts cover more than one province (UNDP, 2005, pp. 179). This is one of the obstacles to access to justice, the geographical issues in accessing the courts. There are 68 prosecutors only one is a woman; and 11 women among 130 judges. There are 737 clerk courts: 607 men and 130 women. The education level of judges, prosecutors and court clerks varies. Some have been appointed for a length of time and have limited formal training. There are very few with postgraduate studies (UNDP, 2005).

The implementation of LJR agenda is a challenge for 17 PMU/LJR officials with limited capacity to manage the whole implementation process with all government agencies, professional institutions, international communities, and nongovernmental organizations; even there is support from Danish Institute of Human Rights (DIHR) and unstable support from AUSAID for capacity building (PMU/LJR, 2005). This capacity building program is insufficient, since the program was not well organized.

Insufficient qualified human resource and poor management will influence to the process of the reform implementation. These two factors are interlinked together. Thus, it requires more specific rules of the game in which actors of the justice sector should have adequate qualified human resources and sound management, especially strong leadership factor that is the catalyst to speed up the progress of the reform implementation as mentioned by WB study (2004c, pp. 12). The PCB and PMU/LJR should be strengthen as a strong national coordination government agency to facilitate the agenda implementation among government agencies and international communities, including NGOs on one hand and on another hand to mobilize financial support from other stakeholders especially from international donor community to get reach the goal of LJR. Apparently, the member of the PCB¹⁹ came from different relevant government agencies but some key important government institution related to justice sector was not included in the key leading

¹⁹ There are nine members from seven justice institutions

coordination/implementation institution, especially MOI and the court system (sub-decree on the establishment of PCB, 2002).

Sound management is a condition for effective implementation. Since the management and technical skills of the government institutions are weak and absenteeism of civil servants is prevalent, it made the reform programs slow either less action (Danida, 2005, pp. 17; WB, 2004c, pp. 8). The lacking of technical and skill management and absenteeism of public employees were noticed that because of the poor salary and incentive from government. Civil servants are underpaid and poorly managed (WB, 2004c, pp. 8). Apparently, this is big challenge led most of the skilled human resource leaving the public sector to work for private or NGOs in which salary and incentive are high (200 US\$ a month) whereas the minimum salary of the public sector is about 40 US\$ (CCC, 2004). Even the salary has been increased for civil servants but it remains inadequate. Functional allowances increases only benefit marginally those in middle and senior management, which are already better off, and two priority sectors. A large number of civil servants are suffering from low salaries, which forces them to become involved in corruption and inefficient service delivery (EIC, 2005, pp. 62).

4.4 Financial Support

Many reports indicate that the delay of the LJR program is because of lack of financial support even government itself (EIC, 2005a, pp. 75; 2005b, pp. 72; and 2006a, pp. 80; IMF, 2004, pp. 10; PMU/LJR, 2006). Less than one percent of the national budget is allocated to the justice sector (HRW, 2003). Apparently, the budget for the justice sector is a lowest comparing to other priority sector in the country even government initiated a new financial reform system to finance the priority action plan of the government through MTEF²⁰ (See the table 3). Government considered LJR is second priority in the state reform program for good governance in the Rectangular strategy, which is the national political platform of the government of the third legislative

²⁰ Medium Term Expenditure Framework (MTEF) has been introduced since 2002 along with Priority Action Plan (PAP) to link public expenditure to a long-term development program, but the intended performance-based budgeting has not been introduced. Lack of capacity and low morale of officials to undertake systematic reforms across ministries are also grave challenges. Moreover, weak enforcement of public procurement procedures, absence of stricter financial and performance auditing caused the wastage of public funds (EIC, 2005).

(RGC, 2004a, pp. 5, 7) while other priority, for instance, women affairs, which is less priority than LJR was financed more than LJR (see appendix IX and table 3). In this regard, the budget allocation for the justice sector in 2005 is 19 billion riels whereas women's affaires sector is 116 billion riels, for instance.

Table 3: Budget Allocations for Priority Sectors: 2002-2007, (in Billion Riels)

	2002	2003	2004	2005	2006	2007
Current expenditure	1,582.00	1,765.00	1,891.00	2,258.00	2,534.00	2,866.00
Health	164.51	202.56	227.60	255.00	298.00	337.00
Education	289.86	322.41	355.10	397.00	449.00	505.00
Defense and security	407.37	413.56	432.49	461.00	490.00	535.00
Agricultural sector	70.50	78.77	87.35	110.00	135.00	158.00
a. Agriculture	39.17	43.34	47.70	60.00	70.00	80.00
b. Rural development	18.80	21.00	23.60	30.00	35.00	40.00
c. Water Resources	12.53	14.43	16.05	20.00	30.00	38.00
Public Works and Transport	12.53	15.03	15.29	19.00	27.00	34.00
Women's Affairs	64.24	65.97	72.53	82.00	102.00	116.00
Justice	7.19	9.65	12.78	19.00	21.00	24.00

Source: Ministry of Economy and Finance, available in Ministry of economy and Finance of Cambodia website: <http://www.mef.gov.kh/hnaron/mtf-2004/mtf3.htm>,

The inadequate funding from international community has been clearly shown although all the donors realize the importance of the reform of the LJS by TWG/LJR to mobilize funding for the reform. Only a few has provided financial support for the reform and even most of this budget was spent for their experts and consultant rather, which recently both government and donor realized that up to half of all aid has gone to technical assistant (TA) (RGC, 2004b, pp. 56-57; Ear, S. 2005, pp. 17). In addition, their efforts are more focus on criticism rather than concrete actions. Apparently most of financial support to the LJR policy in Cambodia is from the governmental side where it more and less was focused on administrative cost rather than operational cost (RGC, 2004b, pp. 56). Thus, government needs more assistance from international donor community. Justice reform requires all stakeholders working together with sufficient financial support to get effective implementation.

4.5 Lack of Commitment

Although the Cambodian government adopted the Action Plan in June 2003, on the practical level the government is apparently unwilling to make this implementation

progress faster. Government intervention on the LJR policy is not strong enough to push this critical problem even the government itself also recognized the successful policy implementation needs strong political will (Sen, 2004). This is also claimed by the HRW report to the Cambodian's donors regarding benchmarks for international assistance for Cambodia in February 2006 (HRW, 2006).

Moreover, it is clear that even though government has promised to reform LJS, the government has fared poorly in fulfilling its promises. For example, government promised with the donor communities and international organizations in the CG meeting in 2001 to finish the draft law on anti-corruption in 2003, but until now the bill remains in preparation phase by government (Ear, 2005, p. 30; ABC Radio Australia, 2007). This can be claimed as the inability or unwillingness of the government to confront problems concerning the rule of law. The Anti-Corruption law is a sensitive issue for the international community as well as investors in a country where corruption problems present crucial issues for development.

The success of the implementation of the reform policy on justice sectors needs not only the full commitment from the government part, but also the active participation and willingness of the international community, civil society/NGOs to fulfill the goal of the rule of law letting economic growth. As the paper mentioned already the financial support is very important for all policy implementation, particularly, LJRP where it needs many years to achieve the goal of the reform if financial support is insufficient. Unfortunately, donor countries and international organizations did not showing clear intention to finance the justice reform program unless the government showed the strong intention to reform and implement on time (IMF, 2004, pp. 20).

In sum, the challenges for LJR implementation, currently, are influenced by four main factors: the nature of LJR itself, coordination and inter-relationship, strong commitment from all stakeholders, and political resources of both funding and qualified staffs, including sound management. Better human resource, better coordination, strong political commitment and more donor support are the need to improve the reform implementation. All of these have to tie together in a way that supports the overall legal reform process.

Chapter Five: Conclusions and Recommendations

5.1 Conclusions

The LJR in Cambodia is a priority strategy of the government. Officially, the reform agenda was initiated in 2001 as a result of internal and external pressures, especially from the international community. The LJR was also integrated in the Triangle Strategy, but the development of the full fledged strategy did not begin until 2000 with WB support, since the government faced many challenges such as modernization of state according to free liberal democratic system, economic growth, and globalization. The reform agenda took many years to formulate then it was officially adopted by the government in June 2003. The formulation process was conducted in a participatory approach, which was appreciated by many donor communities and civil society/NGOs. However this approach was not successful in integrating a full-fledged strategy as a national comprehensive strategy from all stakeholders, especially from its government agencies. In the implementation process, mostly, the top-down approach had greater influence than the bottom-up approach, as the study found out. It leads RGC applying out, mostly, direct provision instrument for implementing the reform process in the situation where the government capacity is weak and LJR is complex issues.

So far, the government has made notable progress in the legal and judicial area. In mid-2002, CLJR was established to initiate, encourage and implement the reform process with the support from PCB and PMU/LJR as a secretariat. The Justice Sector Reform Strategy was adopted by the government in 2003, followed by a Plan of Action in April 2005. Some program in the priority action has been implemented by different government agencies, civil society/NGOs, including the partnership agency between government and donor or NGOs. However, the reform program has seen slow progress and much remains to be finished according to the timeframe set in the Plan of Action and the benchmarks with donor community. The study found out that less effectiveness and slowness of the reform agenda is due to four main challenges. First is the nature of the LJR itself, which has slowed the reform program since the problems in the justice sector are complex crosscutting issues involving all sectors of the society. Timeframes for some action were underestimated, not taking into account of available resources, their complexity and dimension of problems.

Second is lack of effective inter-relationship and coordination mechanisms with both government implementation agencies and donor community, including civil society/NGOs and even inside PMU/LJR and PCB. Apparently, there are some

mechanisms for effective coordination to implement the reform, but in practice, the mechanisms are hampered by inadequate resources, constraints of cooperation culture, seniority perceptions, individual institution interests, and issues of commitment.

Third, the commitment of all stakeholders in the reform process, especially from the government side, is not clearly defined even when given emphasis in country strategies, including in the LJRS itself. The achievement made is generally marked by a relative tardiness and leaves some critical actions to which repeatedly remain within the reform agenda if compared to what has been promised in both JMIs and the Plan of Action. This is the reason why priority for the period of 2005-2006 is currently given to the adoption of eight draft laws, most of which represent long unmet commitments of the government since the Tokyo CG meeting in 2001, in particular, draft law on anti-corruption.

Last is the policy resource, where the lack of financial assistance and human resources, including the sound management in RGC are challenges, especially for PMU/LJR as a leading government agency for initiating, coordinating and implementing LJR. Due to many years of civil wars and conflicts, the government faces serious challenges in the area of qualified human resources for all sectors, and especially the legal profession. The management and technical skills of the government institutions are weak and absenteeism of civil servants is prevalent due to low salaries, which encourages qualified officials to abandon the public sector for better opportunities in the private sector or NGOs. Indeed, even government acknowledged that the justice reform is a priority for the state reform but its budget allocation is less than other sectors. It is less than one percent of national budget.

So, what should RGC and other stakeholders do to establish conditions for effectiveness of LJR process? In the following, the author will provide general and specific recommendations based on the findings of the study.

5.2 General Recommendations

According to the study and challenges of the reform implementation process, number of recommendations will be stressed as a contribution to improve the legal and judicial reform process in Cambodia.

First, government must ensure genuine political commitment to reform the justice system rather than promises made on paper in order to get popularity from the people

and comply with the requirements from the international community for the sake of donor support. Indeed, the effective reform implementation requires more commitment from all stakeholders in the policy process, especially from donor community to support both technical and financial assistances.

Second, effective policy implementation cannot work without effective coordination mechanisms to facilitate and communicate all agencies to active participation in implementation process from the beginning of the policy process. Coordination mechanisms among all stakeholders in the justice system, especially all concerned development institutions, multilateral and bilateral should be improved. Such coordination is important to avoid duplication of efforts, ensure consistent advice, and optimize the use of available resource. The successful experiences from aid coordination in the education and health program of government should be considered, since the nature of program is similar with LJR program. The five effective mechanisms, which are (a) overall coordination among the government, donors and NGOs, (b) coordination within the government, (c) coordination among donors, (d) coordination among NGOs, and (e) core task force or secretariat should be considered to apply (CDC, 2004a, pp. 24).

Third, it is necessary to have a clear and specific strategy and goal of the reform since the justice reform is a complex issues involving all problems in the society. To avoid duplication of effort and maximize use of resources, the full comprehensive integrated strategy should be created by including all relevant LJR program into one comprehensive strategy. In this regard, comprehensive strategy of LJR should be integrated into the strategy of the relevant stakeholders, or the stakeholders' strategies should be integrated into LJRS. The timeframe of the strategy should be consistent and appropriated to the available resources and the complexity of the issues. It seems time for both government and donor communities to change their approach and identify concrete programs rather than focus only on ambitious result-oriented policies.

Fourth, the government and donor community should give proper consideration to the financial support necessary to implement the ambitious reform. Even though the government has set up the MTEF for the priority programs, budget allocations are not appropriated to the priority actions. Also, donor community should take more account to finance LJR rather pressure and criticizing government, since the paper found out most of the program implementation is funded by government so far. The MTEF from the government side, including funding from donors, should be allocated directly to

PMU/LJR and PMU/LJR will allocate the budget to finance the program to the government agencies according to the program. This will avoid duplicated programs and optimize the use of resources.

Fifth, because the lack of qualified human resources is a constraint to the reform process, government should give more consideration for capacity building, especially for the legal profession in all relevant government agencies. The leading coordination institution like PCB and PMU/LJR should be given more special consideration. Furthermore, sound management within the government agencies, including leading institutions should be strengthened and improved. The ‘performance-based output’ should be introduced in order to make more effective performance in the public sector and motivate them to perform well.

Sixth, the exclusive use of top-down approach for implementing the reform process needs to be reexamined. Top-down is more appropriate with adopting of laws or other priority action. Bottom-up approach is more appropriate because the justice problem is inter-related to all issues of other sectors in the society in the grassroots level. Therefore, both approaches should be applied together according to the issues of the program. Indeed, RGC should focus on community based instrument rather than mixed instrument or direct provision instruments since the capacity of state is weak and the LJR is a complex issues. In this regard, RGC should encourage donors and civil society/NGOs to involve more in this reform process.

Seventh, successful legal and judicial reform is impossible without other state reform. All core important reform of the state should be coherent and inter-related with each other. Reform of the legal and judicial sector is the core of all state reform. Without the LJR, other sector cannot develop smoothly.

5.3 Specific Recommendations

- The deficiency in the legal framework combined with the slow progress in legal reform in the judicial area unavoidably leads the government to directly intervene in the judicial reform process. Thus, fundamental laws and regulations to improve the judicial system should be established first, such as Organic Law on the Organization and Functioning of the Court, Penal and Procedure of Penal Codes, Civil Code, Law on Statute of Judges and Prosecutors, and anti-corruption law. To support this, first priority should be given to completion of the Law Drafting Guidelines in order to facilitate the law drafting procedure,

- TWG/LJR should be restructured and strengthened in order to be more effective in mobilizing funds and coordinating justice programs among donors or civil society/NGOs integrated into LJRS in order to avoid program duplication,
- Promote information sharing among donor or civil society/NGOs or government agencies. In this regard, the comprehensive database of donor assistance, and justice reform database among government agencies or donor or civil society/NGOs should be established,
- PMU/LJR should be strengthened and more qualified human resources and financial assistance from both the government and donor community should support PMU/LJR. The technical assistance from donor community is priority for PMU/LJR. Indeed, the leadership roles with sound management should be strong to manage and measure the performance of the PMU/LJR officials. The incentive model for staffs should be introduced in order to motivate staffs to achieve higher levels of performance,
- Inter-government coordination mechanism should be strengthened and restructured. The sound management of the mechanism should be created by regulations in order to encourage all focal point(s) from relevant government agencies more attention and perform properly together to improve LJR,
- Incentive for focal points should be considered to motivate the performance as the officials salaries are very low,
- Mechanism among donor or civil society/NGOs should be clearly set up in order to assist the coordination in justice reform in order to integrate all programs into a national justice sector reform program avoiding duplicated program,
- Working procedure of PCB should be improved. Each member of PCB should have one official, at least, to assist since they are busy with other responsibilities besides PCB. The members should be included more from other key relevant ministries, such as the Ministry of Education, Labor, MOI, Women's Affairs, Royal Academy of Legal Profession, CAR, courts, and prosecutors, and
- MTEF for Plan of Action of LJRS should be increased and should allocate directly to the PMU to finance project in the Plan of Action to the government agencies as implementers. The idea of principal-agent model should be introduced, in which PMU/LJR can do as principal to contract out program for government agencies, for instance.

Bibliography

A. Constitutions, Strategy, and Laws and Regulations

CLJR (2006): *Overview of Legal and Judicial Reform and Implementation Mechanisms in Cambodia*. PMU/LJR

Constitution of Cambodia in 1993

Constitution of State of Cambodia 1989

Law on organization and functioning of the Supreme Council of Magistracy in 1994

Law on the organization and activities of the adjudicate court on 25 January 1993

RGC (2000): *Governance Action Plan I from 2000-2005 (GAP I)*.

RGC (2003): *Justice Sector Reform Program of Cambodia*.

RGC (2004a): *Rectangular Strategy for Growth, Employment, Equity, and Efficiency in Cambodia in 2003*

RGC (2005a): *Governance Action Plan II from 2005-2008 (GAP II)*.

RGC (2005b): *Plan of Action for Implementing the Legal and Judicial Reform Strategy of Cambodia*. The Council for Legal and Judicial Reform

Royal Decree on the Establishment of the Council for Legal and Judicial Reform in 2002

RGC (1998): *Triangle Strategy of the Government of Cambodia in the second legislative mandate in 1998*

RGC (2006): *Enhancing Development Cooperation Effectiveness to Implement the National Strategic Development Plan: 2006-2010*.

Sub-Decree on Establishment of Permanent Coordination Body of the Legal and Judicial Reform, 2002. (Cambodian document)

Sub-Decree on Establishment of Project Management Unit of the Legal and Judicial Reform, 2002. (Cambodian document)

Sub-Decree on the functions and missions of the Council for Legal and Judicial Reform, 2002 (Cambodian document)

B. Cambodian Government Reports

CDC (2004a): *Practices and lessons learned in the Management of Development cooperation: Cases Study in Cambodia*. Government-Donor Partnership Working Group, Sub-Working Group No. 3

CDC (2005): *First quarterly progress report of the joint technical working group.*

CDC (2005a): *Summary of TWGs Progress Report for the Period of December 2004-May 2005.* Third GDCC Meeting June 14, 2005.

CDC (2007a): *Overview of the Technical Working Groups Progress from March 2006 to February 2007, GDCC.* Available at: http://www.cdc-crdb.gov.kh/cdc/gdcc/ninth/ninth_overview_progress.htm

PMU/LJR (2005): *Progressive Report on the Implementation of Legal and Judicial Reform Strategy.* (Cambodian document)

PMU/LJR (2006a): *Progressive Report on the Implementation of Legal and Judicial Reform Strategy, first semester of 2006.*

RGC (2004): *Cambodia: Poverty Reduction Strategy Paper Progress Report in 2004.*

RGC (2004b): *Implementing the Rectangular Strategy and Development Assistance Needs: Prepared for 2004 the Consultative Group Meeting for Cambodia.*

Sen, H (2004): *opening remarks at the national conference on strengthening good governance for poverty reduction and development, 2004.* Available at: www.mfaic.gov.kh/bulletindetail.php?contentid=625,

C. Books and Journals

ADB (2004): *Law and Policy Reform at the Asian Development Bank.*

ADB (2005): *Country Strategy and Program 2005-2009: Kingdom of Cambodia.*

Adler, D. (2005): *Access to Legal Information in Cambodia: Initial Steps, Future Possibilities? The Journal of Information, Law and Technology (JILT).* 2005 Issues 2&3.

Armytage, L. (2006): *Monitoring Performance of Legal and Judicial Reform in International Development Assistance: Early Lessons from Port Moresby & Phnom Penh.* International Bar Association, Chicago. Available at: <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/MonitoringImpact.pdf>

Biebesheimer, C. and Payne, M. J (2001): *IDB Experience in Justice Reform: Lessons Learned and Elements for Policy Formulation,* Interamerican Development Bank, Washington, D.C.

Cooperation Committee for Cambodia CCC (2004): *Survey of Salary and Benefits for National Staff of International and Cambodian NGOs in 2004.*

Danida (2005): *Supporting Access to Justice in Cambodia.* Available at: <http://www.phnompenh.um.dk/NR/rdonlyres/BF1B06B9-4F1C-42DE-852B-2FD769239ABB/0/MappingReportFinalJuly29passw.pdf>

Department of International Development (DFID) of ODI (2005): *Country Assistance Plan for Cambodia*, ODI. Available at:
<http://www2.dfid.gov.uk/pubs/files/capcambodia.pdf>

DFID (2000): *Justice and Poverty Reduction*. Available at:
<http://www.gsdrc.org/docs/open/SSAJ35.pdf>

Ear, S. (2005): Governance and Economic Performance: Credibility, Political Will, and Reform. *Cambodia Economic Review* May 2005: 17-51

Economic Institute of Cambodia (EIC) (2004): Legal and Judicial Reform to Improve Governance. *Cambodia Economic Watch* October 2004.

EIC (2004): Long Term Prospects of the Cambodian Economy: A Quantitative Assessment of the WTO Membership. *Economic Review* Volume 1 no. 3 (January-March, 2004)

EIC (2005a): Legal and Judicial Reform to Improve Governance. *Cambodia Economic Watch* April 2005.

EIC (2005b): Legal and Judicial Reform to Improve Governance. *Cambodia Economic Watch* October 2005.

EIC (2006): Legal and Judicial Reform to Improve Governance. *Cambodia Economic Watch* April 2006.

Farrington, John (2001): *Sector Wide Approaches (SWAPs)*, Department of International Development (DFID), ODI. Available at:
http://www.keysheets.org/red_7_swaps_rev.pdf

Faundez, J. (1997): *Good Governance and Law: Law and Institutional in Developing Countries*. Macmillan Press LTD, London, Great Britain.

Fernando, B. (1998): *Problems Facing the Cambodian Legal System*. The Asian Human Rights Commission, Hong Kong.

Grindle S. M. (1980): *Politics and Policy Implementation in the Third World*, Princeton University Press.

GTZ (2005): *The Powers and Functions Database of the Royal Government of Cambodia*. CD database of the GTZ Decentralization and Administration Reform Project under the German-Cambodian cooperation project to support Decentralization and Deconcentration of the Government of Cambodia.

Hogwood, B. W. and Gunn, L. A. (1997): *Why 'perfect implementation is unattainable*. In: Hill, M. (1997): *The Policy Process: A Reader*. Prentice Hall/Harvester Wheat sheaf. P. 217-225.

Hogwood, B.W. and Gunn, L.A. (1984): *Policy Analysis for the Real World*, Oxford University Press.

Howlett, M and Ramesh, M. (2003): *Studying Public Policy, Policy Cycles and Policy Subsystems*. Oxford.

Howlett, M. and Ramesh, M. 1995, *Studying Public Policy: Policy Cycles and Policy Subsystems*, Oxford University Press.

IFC (2005): Cambodia's WTO Agreements: A Review of Legislative Commitments. *Business Issues Bulletin: Cambodia*. No. 1

IMF (2004): *Cambodia: 2004 article IV Consultation*. Country Report No. 04/328, Washington D.C: International Monetary Fund. 22 October 2004. Available at: <http://www.imf.org/external/pubs/ft/scr/2004/cr04328.pdf>

IMF (2004): *Cambodia: Poverty Reduction Strategy Paper Progress Report*. Available at: <http://www.imf.org/external/pubs/ft/scr/2004/cr04333.pdf>

Jann, W. and Wegrich, K. (2005): *Theories of the Policy Cycle*, in: Fischer, Frank/Miller, Gerald/Sidney, Mera (eds.): *Handbook of Public Policy Analysis: Theory, Politics, and Methods* (Routledge), forthcoming. Available at: http://www.uni-potsdam.de/u/ls_verwaltung/mitarbeiter/ehemalige/wegrich.htm

Kingdon, J. W. (1984): *Agendas, alternatives and public policies*. New York: Harper Collins.

Legal Vice Presidency of WB (2002): *Legal and Judicial Reform: Observations, Experiences, and Approach of the Legal Vice Presidency*. The International Bank for Reconstruction and Development / The World Bank, Washington, D.C. Available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2002/12/06/000094946_0211260401346/Rendered/PDF/multi0page.pdf

Lutter, N. (2002): Legal and judicial reform in development cooperation. Federal Ministry for Economic Cooperation and Development, division of "Development Education and Information". Available at: <http://www.bmz.de/en/service/infothek/fach/spezial/spezial064/90.pdf>

McAuslan, P. (1997): Law, Governance and the Development of the Market: Practical Problems and Possible Solutions. In: Faundez, J. (1997): *Good Governance and Law: Law and Institutional in Developing Countries*. Macmillan Press LTD, London, Great Britain.

McCool, Daniel C. (1995): *Public Policy and Theories, Models, and Concepts*. Prentice Hall, Englewood Cliffs, New Jersey.

Messick, R. E. (2002): *Judicial Reform: The Why, the What, the How*. Prepared for delivery at a conference on Strategies for Modernizing the Judicial Sector in the Arab World on March 15-17, 2002, Marrakech, Morocco

NGO statement (2002): *NGO Statement to the 2002 Consultative Meeting Group Meeting on Cambodia*. From 19-21 June 2002 in Phnom Penh, Cambodia. Available at: http://www.cdc-crdb.gov.kh/cdc/ngo_statement.htm#content

Pollit, C. and Bouckaert, G. (2004): *Public Management Reform: A Comparative Analysis*, Second edition, Oxford University Press.

Puymbroeck, R. V. V. (1999): *Comprehensive legal and judicial Development: Toward an Agenda for a Just and Equitable Society in the 21st Century*, WB, Washington, D.C.

Sabatier, P. A. (1997): *Top-Down and Bottom-Up Approaches to Implementation Research*, in: Hill, Michael (1997): *The Policy Process: A Reader*, Prentice Hall/Harvester Wheat sheaf.

Samuels, K. (2006): *Rule of Law Reform in Post-Conflict Countries: Operational Initiatives and Lessons Learned*. WB. Available at: <http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1164107274725/3182370-1164110717447/WP37.pdf?resourceurlname=WP37.pdf>

Secretary General (2005): *The Rule of Law and transitional Justice in Conflict and Post-Conflict Societies*. Report of Secretary-General, S/2004/616, August. Available at: <http://daccessdds.un.org/doc/UNDOC/GEN/N04/395/29/PDF/N0439529.pdf?OpenElement>

Secretary General of UN (1999): *Situation of Human Rights in Cambodia 1999*. Report of the Secretary General of the United Nations. Available at: <http://daccessdds.un.org/doc/UNDOC/GEN/N99/267/60/PDF/N9926760.pdf?OpenElement>

Sok, S. (2001): *Legal and Judicial Reform Strategy for Cambodia*. Available at: http://www.moc.gov.kh/laws_regulation/legal_reform_strategy-fnal_draft.htm#dvm

Theodoulou, Z. S. and Cahn, A. M. (1995): *Public Policy: The Essential Readings*, Prentice-Hall, Inc., New Jersey.

Toope, J. S. (1997): *Program in Legal and Judicial Reform: An Analytical Framework for CIDA Engagement*, Canada International Development Agency, Quebec, Canada. Available at: [http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/HRDG/\\$file/ProRefJur-e.pdf](http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/HRDG/$file/ProRefJur-e.pdf)

Toshiyasu K., T.; Kaplan A. J.; Sophal, C. and Sopheap, R. (2000a): *Cambodia: Enhancing Governance for Sustainable Development*, first edition (May 2000), Cambodia for Development Resource Institute (CDRI).

Toshiyasu K., T.; Kaplan A. J.; Sophal, C. and Sopheap, R. (2000b): *Cambodia: Enhancing Governance for Sustainable Development*, second edition (October 2000), ADB. Available at: http://www.adb.org/Documents/Books/Cambodia_Enhancing_Governance/default.asp

UNDP (2005): *Pathway to justice, access to justice with a focus on poor women and indigenous peoples.*

UNDP (2005): *Project Summary of the Access to Justice in Cambodia.*

Van Meter, D.S. and Van Horn, C.E (1975): *The Policy Implementation Process: A Conceptual Framework.* Administration & Society, Vol.16.No.4

WB (2001): *Cambodia-Legal and Judicial Reform Project.* Report No. PID10086.
Available at: http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2001/03/26/000094946_01032309511010/Rendered/PDF/multi0page.pdf,

Wescott, C. (2003): *Combating Corruption in Southeast Asia.* in Kidd J B & Richter F-J, eds. *Fighting Corruption In Asia: Causes, Effects and Remedies.* Singapore, World Scientific Press. Available at:
http://www.adb.org/Governance/combating_corruption.pdf

Wescott, G. C. (2001): *Key government issues in Cambodia, Lao PDR, Thailand and Vietnam,* Asia Development Bank. Available at:
http://www.adb.org/Documents/Books/Key_Governance_Issues/default.asp?p=govpub

World Bank (2003): *Legal and Judicial Reform: Strategic Direction,* WB. Available at:
http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2003/10/24/000160016_20031024092948/Rendered/PDF/269160Legal0101e0also0250780SCODE09.pdf

World Bank (2004a): *Initiatives in Legal and Judicial Reform.* Legal Vice Presidency. Available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2004/03/01/000012009_20040301142827/Rendered/PDF/250820040Edition.pdf

World Bank (2004b): *Seizing Global Opportunity: Investment Climate Assessment & Reform Strategy for Cambodia.* Available at:
<http://siteresources.worldbank.org/INTCAMBODIA/Resources/Global-opportunity.pdf>

World Bank (2004c): *Cambodia at the Crossroads: Strengthening Accountability to Reduce Poverty.* East Asia and the Pacific Region, World Bank.

D. Website sources

Amnesty International (1999), “Report of Cambodia. In: Amnesty International Report 1999”, < <http://www.amnesty.org/ailib/aireport/ar99/asa23.htm>>, checked on 5 February 2007.

Cambodia government, “government ministries/institutions”, <<http://www.cambodia.gov.kh>>, checked on March 13, 2007.

Government Donor Coordination Committee (GDCC) (2007), “ Legal and Judicial Reform: Statement By H. E. Mr Yvon ROE D’ALBERT, Ambassador of France,

February 12 2007”, <http://www.cdc-crdb.gov.kh/cdc/gdcc/ninth/ninth_france_eng.htm>, checked on 7 March 2007.

Human Rights Watch (HRW) (2003), “Cambodia. In: HRW World Report 2003”, <<http://hrw.org/wr2k3/asia3.html>>, checked on 2 March 2007.

HRW (1999), “Cambodia. In: HRW World Report 1999”, <<http://www.hrw.org/worldreport99/asia/cambodia3.html>>, checked on 12 March 2007.

HRW (2006), “Letters to Cambodia’s Donors Regarding Benchmarks for International Assistance”, <<http://hrw.org/English/doc/2006/02/22/cambod127002.htm>>, checked on 12 March 2007.

HRW (2006), “Letters to Cambodia’s Donors Regarding Benchmarks for International Assistance”, <<http://hrw.org/English/doc/2006/02/22/cambod127002.htm>>, checked on 27 January 2007.

Ministry of economy and Finance of Cambodia, “Budget Allocations for Priority Sectors: 2002-2007”, <<http://www.mef.gov.kh/hnaron/mtef-2004/mtef3.htm>>, Checked on 31 January 2007.

CDC (2007b), “Speech of H.E Yvon ROE D’ALBERT, Ambassador of France in the statement in the meeting of donor-government coordination committee on February 2007”, <http://www.cdc-crdb.gov.kh/cdc/pre_cg2004_judicial-reform_eng.htm>, checked on 6 April 2007

CDC (2004b), “Speech of ambassador of France, M. Yvon ROLE D’ALBERT in the preparatory meeting of the Consultative Group on LJR at Cambodia Development center on September 10, 2004 in Phnom Penh in Cambodia”, <http://www.cdc-crdb.gov.kh/cdc/pre_cg2004_judicial-reform_eng.htm>, checked on 6 April, 2007.

ABC Radio Australia (2007), “12/02/2007, Radio Australia-News-Foreign frustrated at Cambodia corruption”, <<http://www.radioaustralia.net.au/news/stories/s1846114.htm>>, checked on February 12, 2007

Important information on Cambodian LJR from Website:

www.bigpond.com.kh/Council_of_Jurists/somg.htm

www.cdc-crdb.gov.kh/default.htm

www.cljrkmer.org (in Cambodian language and will be in English version soon)

www.cdri.org.kh/

www.car.gov.kh

<http://www.cambodia.gov.kh/unisql1/egov/english/home.view.html>

Appendices

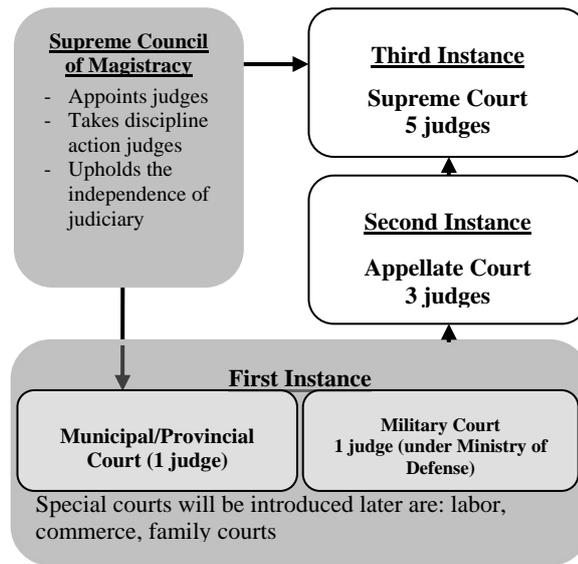
Appendix I: The legal system in Cambodia from 1953-1993

Year	Legal system	Political system	Political power	Econ. System
Before 1953	French-based civil code and judiciary	Under French protectorate	Held by French	Colonial
1953-1970 1 st kingdom	French-based civil code and judiciary	Constitutional monarchy	Prince Norodom Sihanuk as prime minister	Market and then nationalization
1970-75 Khmer republic	French-based civil code and judiciary	Republic	Held by Lon Nol	Market, war economic
1975-79 Democratic Kampuchea	Legal and judicial system destroy	All powers systems abolished, extreme Maoist agrocommunism	Khmer Rouge	Agrarian, centralized planned
1979-89 People's republic of Kampuchea	Vietnam communist model	Communist party, central committee, and local committee	Cambodian people party (Vietnamese based)	Soviet style, central planning
1989-93 State of Cambodia	Greater economic rights	Communist party, Central committee, and local committee	Cambodian people party (Vietnamese based)	Liberalized central planning
1993-present 2ed kingdom	French based civil code combined with common law in certain sector	Constitutional monarchy	Shared between FUNCINPEC ²¹ and Cambodian People's Party	Transition to a market economy

Source: Wescott, 2001, pp. 5

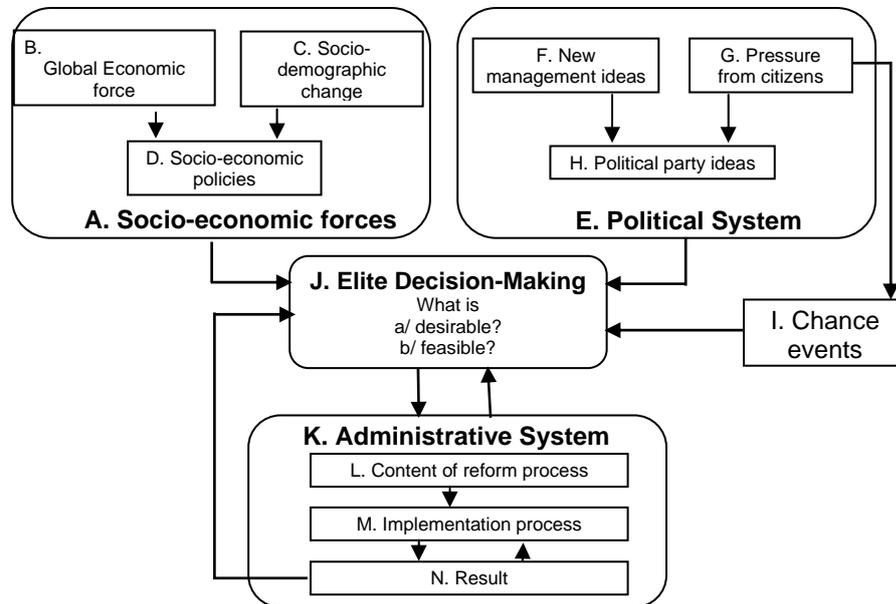
²¹ National United Front for an Independence, Neutral, Peaceful and Cooperation Cambodia

Appendix II: Judicial System in Cambodia



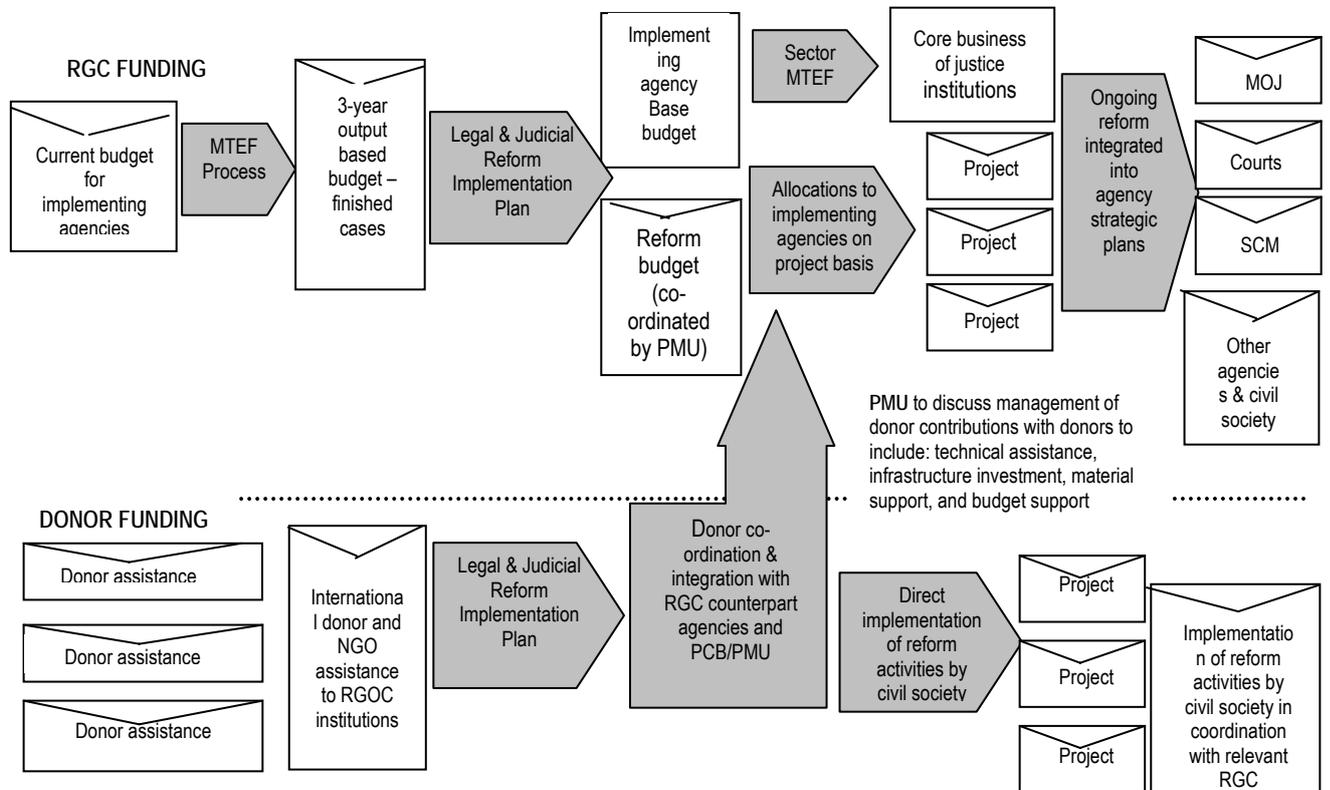
Source: Adapted from law on the organization and activities of the adjudicate court on 25 January 1993 and the law on organization and functioning of the Supreme Council of Magistracy in 1994.

Appendix III: The model of Public Management Reform



Source: Pollit and Bouckaert, 2004, pp. 25

Appendix IV: Joint Budget Allocation Model



Source: CLJR, 2006, pp. 7 & 11

Appendix V: Summary of Plan of Action for Implementation of LJR

1. Improving the protection of fundamental rights and freedoms by developing and supporting measures to safeguard rights and raise awareness among the people and all institutions involved aiming to promote equitable and sustainable development as a simultaneous and integrated part of the fulfillment of rights.

- 1.1. Provide training and awareness programs on human rights and fundamental rights, including basic civil rights, primarily at the community level, taking women, children, minorities and disadvantaged, including disabled people into special consideration, including establishment of and awareness on registration of rights and complaint mechanisms.
- 1.2. Provide training and awareness to officials in law enforcement agencies on fundamental rights, including basic civil rights, and human rights as provided for by the Constitution of the Royal Government of Cambodia, including the ability to apply international standards in the absence of national laws or in case of conflicting rules.
- 1.3. Establishment of guidelines and standard procedures to ensure the promotion of individual rights by law enforcement agencies.
- 1.4. Enact and review legislation to safeguard the rights of the individual to organize, associate, express an opinion, and receive information, ensure that the media, research institutions, and civil society are enabled to exercise effective monitoring of the state apparatus, and to report on it, including to provide input to the political processes, and provide knowledge by law enforcement officers to safeguard the protection of these rights.
- 1.5. The existence of procedures within an effective and independent institutional framework for the registration of property rights.
- 1.6. The existence of the function of an ombudsman
- 1.7. Measures to combat crime

2. Modernizing the legislative framework by developing a comprehensive framework of laws through an efficient, coherent and participatory law-making process ensuring balanced legislation and the implementation of the rule of law.

- 2.1. Complete the legislative framework pertaining to the justice sector, including organic laws for the justice sector institutions and law provided for in the Constitution, thereby implementing a division of functions between distinct government branches.
- 2.2. Finalize pending legislation and – by using a participatory methodology and a sector approach – identify gaps in the legislative framework and fill such gaps with the purpose of implementing the rule of law.
- 2.3. Provide an effective, coherent, and participatory lawmaking process founded in the hierarchy of laws with specified law formulation guidelines and a standardized technical review, including with regard to implementation of international standards, and strengthen the entities involved in passing of new laws and amendments to laws, including the provision of training in legislative drafting to officials involved in such activities throughout the government

2.4. the existence of legislation to ensure that court proceedings as well as information on government administration is publicly accessible, unless clearly defined by a law that stipulated well-founded exceptions

3. Providing better access to legal and judicial information by promoting dissemination of basic legal knowledge through official publications, electronic media and information folders and ensuring easy accessibility to all legal and judicial information for legal practitioners and any other interested party.

3.1 Publish existing laws, all subsidiary legislation, including guidelines and common practices in Khmer, establish the comprehensive, timely, official publication of all new laws and subsidiary legislation, e.g. official gazette, and ensure the availability of any legislative enactment to judges, lawyers, law students, government officials, the private sector, civil society and any other interested party.

3.2 Publish existing judgments and establish a case law digest for the printing and dissemination of verdicts, decisions and rulings of the courts and ensure that court judgments are available upon request.

3.3 Promote provision of relevant information and guidance to the public and users of as well the courts as administrative bodies by the respective institutions.

3.4 Ensure that the professional role players of the courts have adequate access to the law of the country, the body of international law, professional literature and precedence.

4. Enhancing quality of legal processes and related services by strengthening the legal profession, enhancing access to legal assistance and streamlining judicial procedures in order to ensure fair justice and due process for the people

4.1 Provide high quality and easily accessible legal aid services according to the needs of the people.

4.2 Increase number of lawyers according to established criteria to provide legal advice and other services to litigants and other clients covering the total population of the country and foreigners involved in Cambodia. This would include the provision of efficient training to law students as well as continuing professional development programs to ensure highest possible quality of legal advice is provided to clients.

4.3 Strategy: Ensure that due process is defined by law and followed by judges, lawyers, court staff and other law enforcement officials and that the involved are sufficiently informed on how due process is conducted.

5. Strengthening judicial services, i.e. the judicial power and the prosecutorial services by introducing the necessary legislative, procedural, structural and educational measures to ensure access to justice within fair, credible and independent judicial institutions enjoying broad respect.

5.1 Promote a credible and independent judiciary, which has well-defined functions and duties in accordance with its Constitutional mandate and is protected by law from interference (organizational, functional, personal) from other branches, including ensuring well-defined roles between the individual actors within the judiciary, and which is enabled to conduct their judicial duties on a high professional level in accordance with a comprehensive set of laws.

- 5.2 Establish accountability by ensuring by access to reasoned judgments with reference to relevant laws that can be appealed and ensuring a transparent system on appointment, remuneration of judges, prosecutors and other court staff and disciplinary action against prosecutors and judges and other court staff based on rules and criteria stipulated by law and carried out through an independent body with adequate resources, including establish codes of ethics and rules on conflicts of interests for all judges, prosecutors and other court staff coupled with related disciplinary actions.
- 5.3 Introduce uniform case management and court management techniques to ensure timely and transparent processing, including streamlined appeal
- 5.4 Provide sufficient means to make the judicial system accessible to the people of Cambodia, including ensuring an adequate remuneration of all court staff, providing a quality education and necessary additional training, making sufficient courthouses with basic facilities and adequately manning throughout the country available, and establishing of special courts with the necessary specialist knowledge.
- 5.5 Ensure enforcement of court decisions and the independence of the judiciary by providing the requisite legal and institutional framework, supplemented by necessary resources and training to enforce judgments, enforcement mechanisms to sanction lack of enforcement as well enforcement mechanism to sanction interference with the duties of individual actors in the justice system.

6. Introducing and reinforcing alternative resolution mechanisms to enable quick, informal and easy dispute resolution to the benefit of involved parties and to ease the burden on the established judicial system.

- 6.1 Introduce commercial arbitration and other alternative resolution methods, including mediation, to solve commercial disputes
- 6.2 Streamline mechanisms for resolving minor disputes through mediation

7. Strengthening justice sector institutions to fulfill their mandates by strengthening management, planning and monitoring mechanisms and capacity in general in order to enable the provision of public services and to ensure decision-making in accordance with principles of good governance and their efficient enforcement

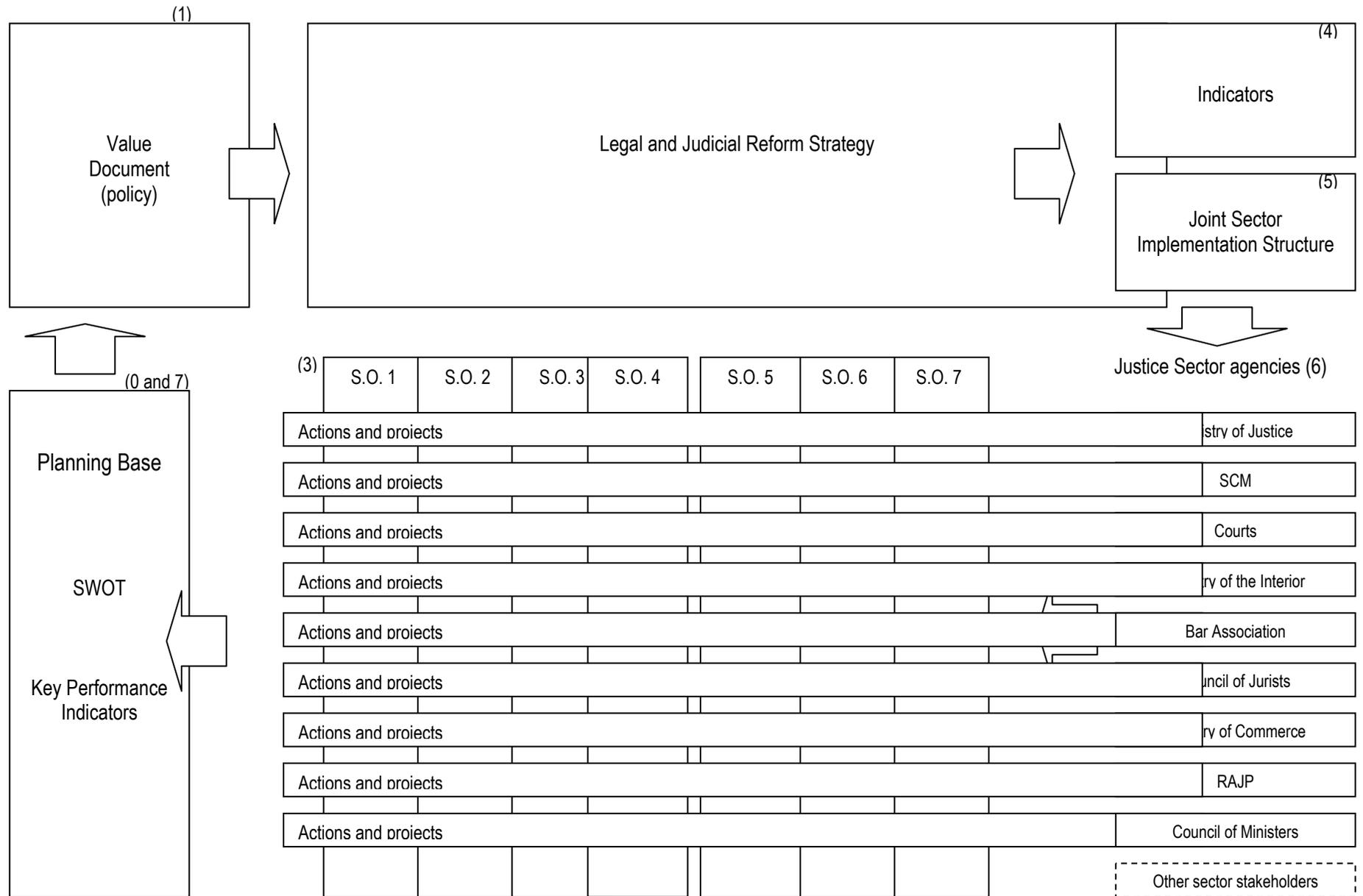
- 7.1 To establish a legislative framework defining the justice sector institutions and structures and the exact mandates and responsibilities of each institution by carefully avoiding any overlap herein has to be enacted. The sector has to coordinate in regard to and in accordance with the individual mandates. The mandates and structures should fully comply with the justice sector values.
- 7.2 To provide the legislative framework to ensure that the procedures, decisions and appeal mechanisms of the justice sector institutions are public and transparent. Further, institutions ensuring independent securitization should be established by law and have adequate mandates and resources.
- 7.3 Ensure enforcement of the law, subsidiary legislation and court decisions by all justice sector institutions according to their legal mandates and duties through providing the legal and institutional framework supplemented with necessary resources and training. Further, enforcement mechanisms to sanction lack of enforcement, including sanctioning a violation of the relevant code of ethics or the rules on conflicts on interests should be established.
- 7.4 The sector should develop a monitoring system that can measure how justice is done (including by which rules, processes, institutions and enforcement mechanisms justice is carried out) and at the same time the system should identify problems and bottlenecks in the administration of justice.

- 1.1.3 A systematic information, publication of folders etc. on basic rights and procedures etc. by the involved ministries within their jurisdictions, including on reporting mechanisms
- 1.2.1 Systematic education and training of officials of all law enforcement agencies
- 1.2.4 Establishment of special sections at police station to handle women's and children's complaints
- 1.3.1 Administrative procedural code, indulging rules for court appeal
- 1.3.2 By using a participatory methodology and through training develop standard procedures to be followed in rights cases underpinned by guidelines in accordance with the Administrative procedural Code
- 1.4.3 Law on access to information
- 1.4.4 Systematic review of existing laws to ensure the upholding and promotion of the rights to exercise freedom of expression in all aspects
- 2.2.1 Systematic review of existing laws and law reform program.
- 2.2.3 Passing of laws to ensure protection of human rights and rights for vulnerable groups as women, juveniles etc.
- 2.3.2 Ensuring a consistent law formulation, and strengthening the technical review
- 2.3.3 On-going training programmes (basic, specialised, long-tem, short- term) in legislative drafting to officials involved throughout the government
- 3.1.1 Law on access to information and policy on dissemination of information in relation to the justice sector, including examining ways to disseminate targeting all parts of the society
- 3.2.1 Establishment of a periodic legal digest published through a board of independent experts
- 3.2.3 Legislative provisions on access to court decisions, including through the court information desks
- 3.3.1 Policy on dissemination of information within the administration
- 3.4.1 Establish a library and reference system for the courts, including systems to ensure regular update
- 4.2.4 Adjusting the curricula for obtaining degree in law to needs for legal advice
- 4.1.2 Survey on the availability and need for legal aid with the view to fill the gaps
- 4.3.1 Establishing legal provisions in the relevant laws (administrative procedural code, civil and criminal procedural codes, organic law on organization of the courts, law on the Constitutional Council etc.) to define due process
- 4.3.2 Ensure access to information on due process through legislative provisions (Administrative Code, law on access to information, civil and criminal procedural code
- 4.3.3 The existence of the function of an Ombudsman office
- 5.1.1 Passing of laws pertaining to the judiciary and the mandate and the duties of its role players (Organic law on the organization of courts, law to ensure independence of the prosecutorial services, law on judges and on prosecutors, civil and criminal codes and Civil and Criminal Procedural Code, Statute for Court officers, law on notaries)
- 5.1.2 Code of ethics for civil servants and the strengthening of a council for discipline of civil servants
- 5.2.1 Establishment of legal provisions within the procedural codes ensuring access to all court decisions and appeal hereof
- 5.2.3 Establishment of a Council for judicial services
- 5.2.5 Legal provisions and guidelines on conflicts of interests
- 5.3.1 Law on administration of courts

- 5.5.3 Codes of ethics/conduct for all law enforcement officers, including police, prison officers, civil servants and relevant judicial personnel
- 5.5.4 Councils of discipline for all law enforcement officers
- 6.1.2 Mediation and other dispute resolution methods to solve commercial disputes developed established and necessary training provided
- 7.1.1 Passing of organic laws on the administrative and judicial institutions (court organization, Supreme Council of Magistracy, Constitutional Council, ministries and other executive bodies, police, penitentiary system and councils of discipline) that ensures coordination of the mandates of the institutions in accordance with the Constitution
- 7.2.1 Passing of procedural codes, including administrative procedural code, law on an ombudsman, laws on access to information, including administrative Code, with special focus on ensuring transparency in the justice sector institutions
- 7.3.1 Codes of ethics for police, prison officers and other civil servants and for judicial personnel (judges, prosecutors, and judicial staff) supplemented by a fully functioning Supreme Council of Magistracy, a Council of Judicial Service, a Council for discipline of police officers, Council of discipline for civil servants to ensure enforcement
- 7.3.2 Legal provision and guidelines on conflicts of interest
- 7.3.3 Establishing of minimum standards for obtaining a degree in law or public administration
- 7.3.4 Schools for the magistrates, judicial staff, police, penitentiary system and for basic education of civil servants, including ongoing training
- 7.3.5 Anti-corruption measures, including a law on anti-corruption
- 7.3.6 The existence of the function of an Ombudsman office
- 7.8.1 Legal provisions on the elaboration of annual reports for the services within the justice sector

Source: Adapted from CLJR, 2005

Appendix VI: Overall Legal and Judicial Reform Framework (Source: CLJR, 2006)



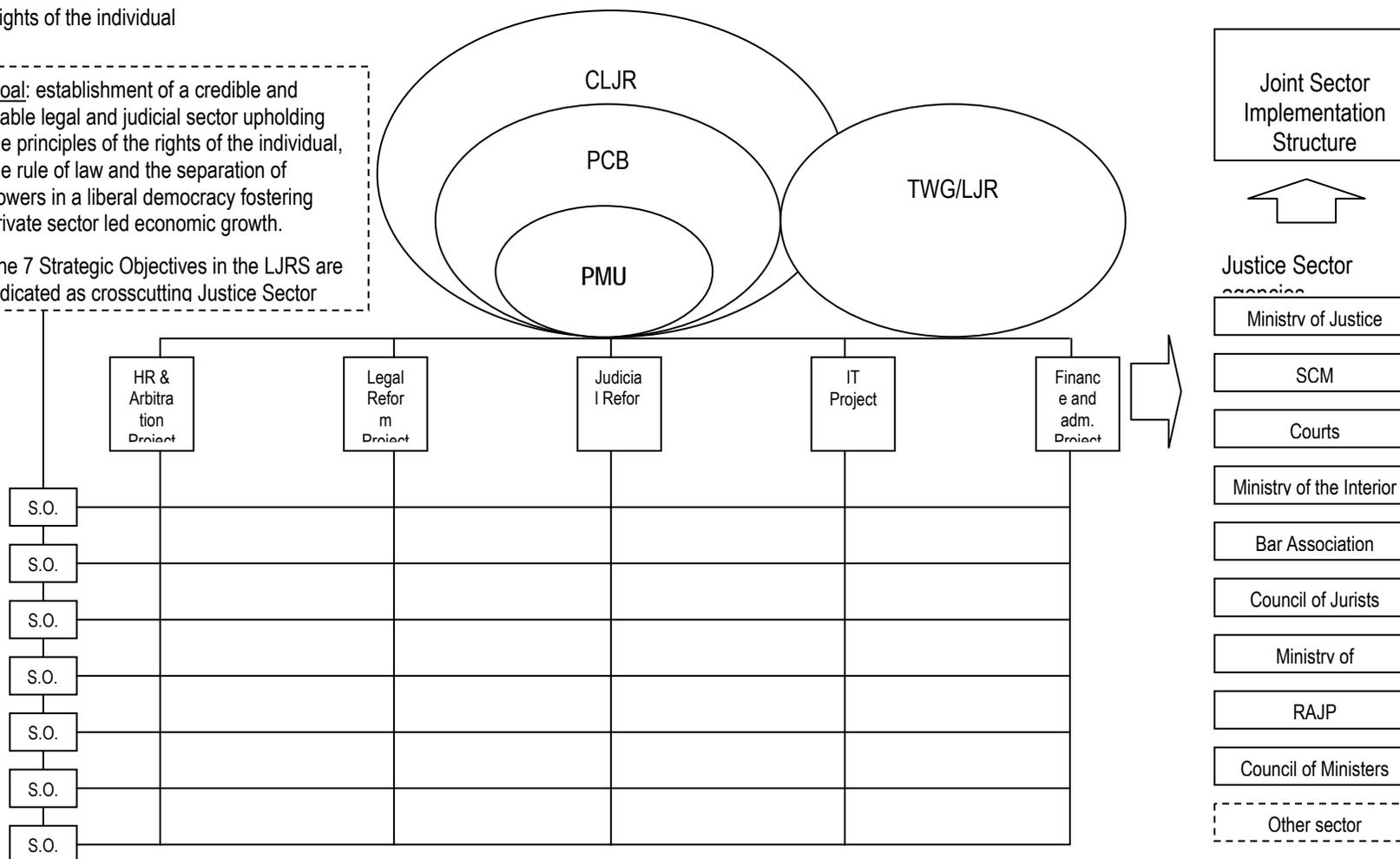
Appendix VII: Structure of the Implementation of LJR institutions (Source: CLJR, 2006)

Value Base

- Liberal democracy
- Separation of powers
- Rule of law
- The rights of the individual

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

The 7 Strategic Objectives in the LJRS are indicated as crosscutting Justice Sector

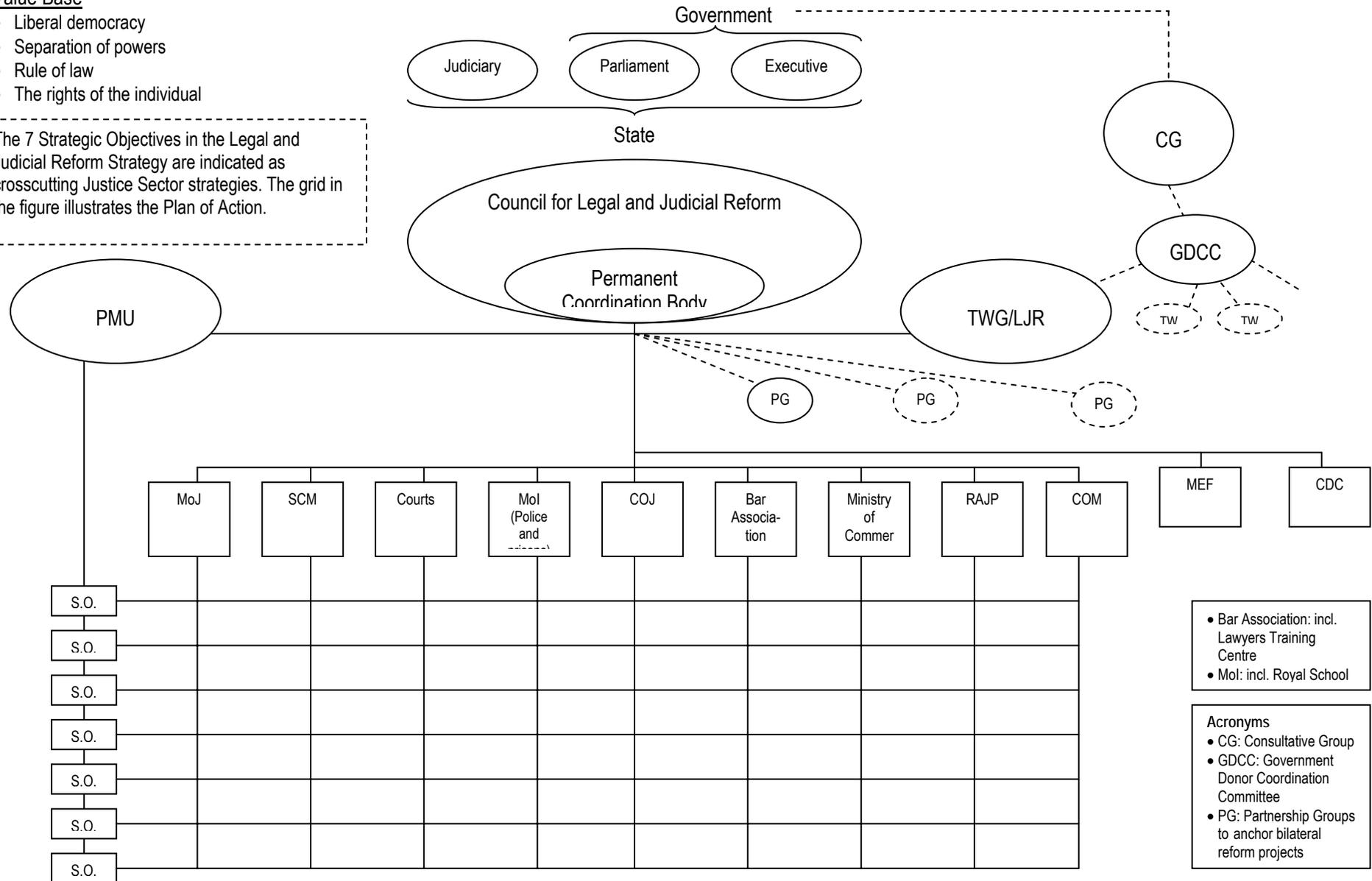


Appendix VIII: Joint Sector Implementation (Source: CLJR, 2006)

Value Base

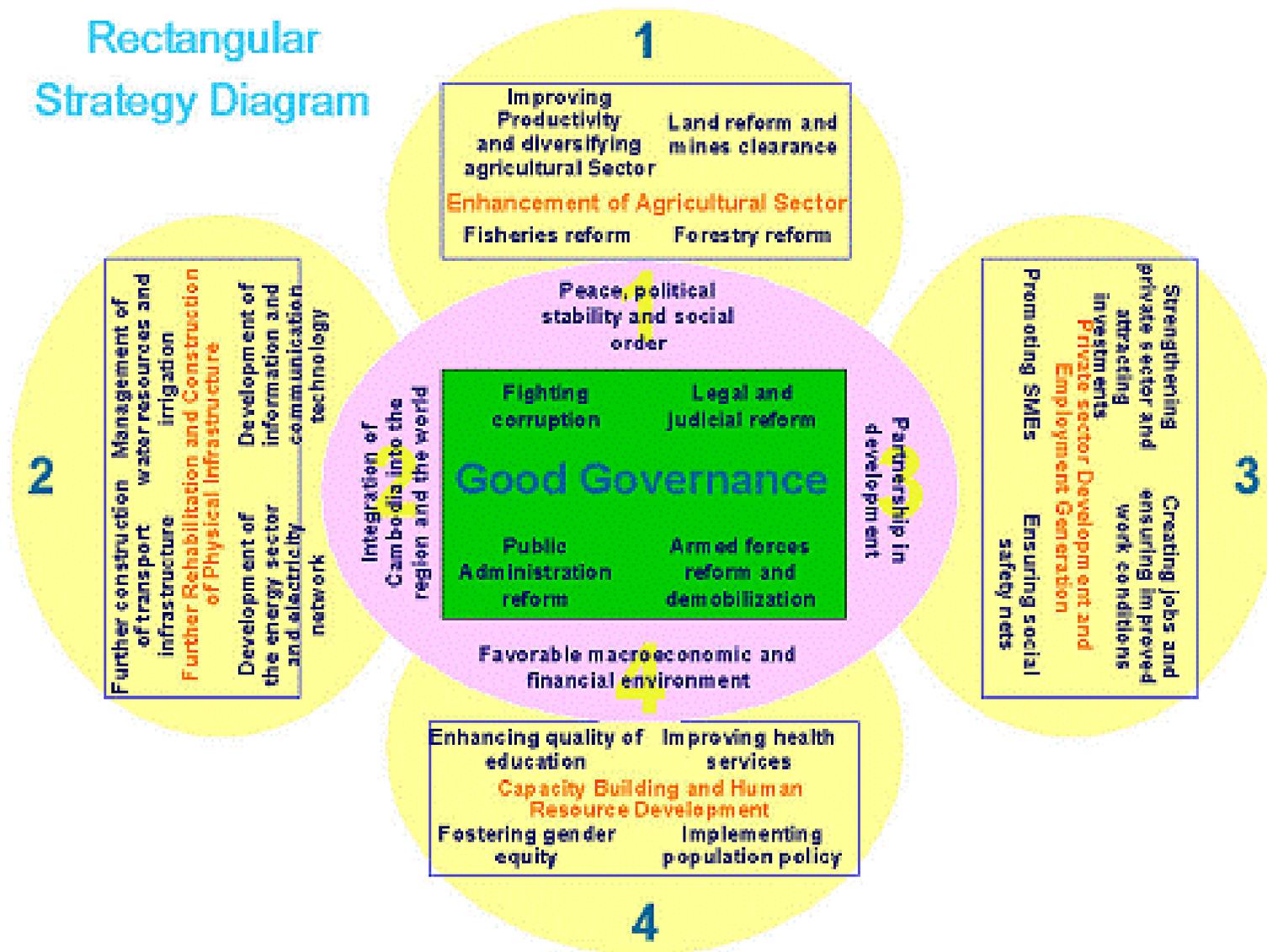
- Liberal democracy
- Separation of powers
- Rule of law
- The rights of the individual

The 7 Strategic Objectives in the Legal and Judicial Reform Strategy are indicated as crosscutting Justice Sector strategies. The grid in the figure illustrates the Plan of Action.



Appendix IX: Rectangular Strategy Diagram

Rectangular Strategy Diagram



Source: RGC, 2004a