

EVALUATION OF DIHR'S PARTNERSHIP  
PROGRAMME WITH THE GENERAL  
SECRETARIAT – COUNCIL OF LEGAL  
AND JUDICIAL REFORM (GS-CLJR)

# 'IMPLEMENTATION OF LEGAL AND JUDICIAL REFORM IN CAMBODIA'

SEPTEMBER 2012

DR. KARIN BUHMANN  
LAW AND JUDICIAL SECTOR REFORM  
EXPERT, UNIVERSITY OF COPENHAGEN

FRANCESCO CASTELLANI  
MA IN HISTORY & MASTER IN  
EVALUATION, DANISH INSTITUTE FOR  
HUMAN RIGHTS

ISBN:

Layout: Hedda Bank

Print: Handy-Print

© 2012 The Danish Institute for Human Rights

Denmark's National Human Rights Institution

Strandgade 56

DK - 1401 Copenhagen K

Phone +45 3269 8888

[www.humanrights.dk](http://www.humanrights.dk)

This publication, or parts of it, may be reproduced if author and source are quoted. At DIHR we aim to make our publications as accessible as possible. We use large font size, short (hyphen-free) lines, left-aligned text and strong contrast for maximum legibility. We are seeking to increase the number of accessible pdfs on our website, as well as to provide easy-to-read summaries for selected publications.

# CONTENTS

<b>ACRONYMS:</b>	<b>6</b>
<b>I EXECUTIVE SUMMARY</b>	<b>7</b>
I.I SUMMARY OF OVERALL CONCLUSIONS & RECOMMENDATIONS	8
I.II SUMMARY OF CONCLUSIONS ON FIRST PHASE OF THE PROGRAMME	10
I.II.I Technical advice to the RGC	10
I.II.II Advice to the LJR management structures	10
I.III SUMMARY OF CONCLUSIONS ON SECOND PHASE OF THE PROGRAMME	11
I.III.I Technical advice to the RGC	11
I.III.II Advice to the LJR management structures	11
I.IV SUMMARY OF CONCLUSIONS ON THIRD PHASE OF THE PROGRAMME	11
I.IV.I Technical advice to the RGC	14
I.IV.II Advice to the LJR management structures	15
I.V SHORT SUMMARY OF SUGGESTED THEMATIC DIRECTIONS AND ACTIONS	16
I.V.I Immediate implementation	17
I.V.II Implementation as soon as possible	17
<b>1 BACKGROUND TO THE EVALUATION</b>	<b>18</b>
<b>2 SCOPE OF THE EVALUATION</b>	<b>21</b>
<b>3 OBJECTIVES OF THE EVALUATION</b>	<b>22</b>
<b>4 METHOD</b>	<b>24</b>
<b>5 THE COMPONENTS OF THE PROGRAMME THEORY/RATIONALE</b>	<b>27</b>

<b>6 THE FIRST PHASE: DEVELOPMENT OF THE LEGAL AND JUDICIAL REFORM STRATEGY</b>	<b>34</b>
6.1 THE CONTEXT	34
6.2 INPUT	35
6.3 MODERATORS	35
6.4 EXTERNAL VARIABLES	38
6.5 PROCESS VARIABLES	38
6.6 OUTPUTS	39
6.7 OUTCOMES	40
6.8 CONCLUSIONS	40
6.8.1 Technical advice to the RGC	41
6.8.2 Advice to the LJR management structures	41
6.8.3 The theory of action and theory of change	41
<b>7. THE SECOND PHASE: PLAN OF ACTION OF THE LJRS (2004–2005)</b>	<b>42</b>
7.1 THE CONTEXT	42
7.2 DIHR INPUT	42
7.3. MODERATORS	42
7.4. EXTERNAL VARIABLES	43
7.5 PROCESS VARIABLES	44
7.6 OUTPUTS	46
7.7 OUTCOMES	46
7.8 CONCLUSIONS	47
7.8.1 Technical advice to the RGC	47
7.8.2 Advice to the LJR management structures	47
7.8.3 Theory of action and theory of change	48
<b>8 THE THIRD PHASE: IMPLEMENTATION OF THE LJRS, 2005–12</b>	<b>49</b>
8.1 THE CONTEXT	49
8.2 DIHR INPUT	50
8.3. MODERATORS	51
8.4. EXTERNAL VARIABLES	59
8.5 PROCESS VARIABLES	60
8.6 OUTPUTS	64
8.7 OUTCOMES	67
8.8 CONCLUSIONS	69

8.8.1 The theory of action and theory of change for the third phase	69
8.8.2 Conclusions to the third phase	71
8.8.3 Technical advice to the RGC	76
8.8.4 Advice to the LJR management structures	78
<b>9 GENERAL CONCLUSIONS &amp; RECOMMENDATIONS</b>	<b>80</b>
9.1 SUGGESTED THEMATIC DIRECTIONS AND ACTIONS	84
9.2 FOR IMMEDIATE IMPLEMENTATION	88
9.3 FOR IMPLEMENTATION SHORTLY	89
<b>NOTES</b>	<b>90</b>
<b>ANNEX 1: WORKSHOP</b>	<b>91</b>
<b>ANNEX 2: PEOPLE MET</b>	<b>93</b>
<b>ANNEX 3: MISSION PROGRAMME</b>	<b>95</b>
<b>ANNEX 4: RELEVANT PROJECT DOCUMENTS</b>	<b>103</b>

# ACRONYMS

<b>CDP:</b>	Cambodian Defenders Project
<b>CLJR:</b>	Council for Legal and Judicial Reform
<b>COM:</b>	Council of Ministers
<b>CPP:</b>	Cambodian People's Party
<b>DIHR:</b>	Danish Institute for Human Rights
<b>ECCC:</b>	Extraordinary Chambers in the Courts of Cambodia
<b>FUNCINPEC:</b>	United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia
<b>GS-CLJR:</b>	General Secretariat of the Council for Legal and Judicial Reform
<b>HRA:</b>	Human Rights Advisor
<b>IC:</b>	International Community (governmental cooperation agencies and donors)
<b>LJR:</b>	Legal and Judicial Reform
<b>LJRS:</b>	Legal and Judicial Reform Strategy
<b>NPRS:</b>	National Poverty Reduction Strategy
<b>NGO:</b>	Non-Governmental Organisation
<b>PCB:</b>	Permanent Coordination Body
<b>PMU:</b>	Project Management Unit
<b>POC:</b>	Priority Operating Costs system
<b>RGC:</b>	Royal Government of Cambodia
<b>ToR:</b>	Terms of Reference
<b>TWG-LJR:</b>	Technical Working Group for the Legal and Judicial Reform
<b>UN:</b>	United Nations
<b>UNTAC:</b>	United Nation's Transitional Authority in Cambodia

# I EXECUTIVE SUMMARY

The Danish Institute for Human Rights (DIHR) has worked with the Royal Government of Cambodia (RGC) since 2001 when the Legal and Judicial Reform (LJR) was initiated. The DIHR has provided support to 1) the efforts of RGC in elaborating a **value document** for Justice and a Legal and Judicial Reform Strategy; which was adopted by the Council of Ministers in 2003; to 2) the efforts of the Permanent Coordination Body (PCB) and Project Management Unit (PMU) in developing the **LJR Plan of Action in 2005** as a tool for implementation of the LJR Strategy; and to 3) the development of a **draft project catalogue** document, which provides details about the priority actions from the LJR Plan of Action. DIHR has been the advisor to the PCB and the PMU and, later, to their successor the general secretariat of the Council for Legal and Judicial Reform (GS-CLJR). In its capacity as advisor, DIHR has further provided support to the PMU/PCB and to the GS-CLJR with regard to the management of the reform and the development of new initiatives, methods and concepts in accordance with the reform strategy.

The objectives of the evaluation are to:

- 1) evaluate DIHR's technical support to the Royal Government of Cambodia regarding the development of the three core legal and judicial reform documents;
- 2) evaluate the effectiveness and the sustainability of DIHR's technical support provided to the GS-CLJR staff in relation to the management and coordination of the LJR;
- 3) make recommendations on how the partnership programme between DIHR and the GS-CLJR could be continued over a five year time frame (2012–2017) to ensure the sustainability of the partnership programme and its adaptation, if needed, to the current situation in Cambodian society.

The evaluation methodology is founded on the theory-based, realist approach to evaluation, which is especially conducive for evaluation of development projects, whereby implicit or explicit rationales are examined through the mapping and examination of all the elements of the result-producing activities in the so called 'black box'.

The 11-year programme can be divided into three phases: the first phase 2001–3 entailed the establishment of the programme and development of LJR Strategy; the second phase 2003–5 entailed the development of the plan of action and project catalogue and the third, longer phase, from 2005–11, focused on the DIHR support to the implementation of the LJRS.

### **I.1 SUMMARY OF OVERALL CONCLUSIONS & RECOMMENDATIONS**

The evaluation team recommends that the partnership programme be continued for a period of five years (2012 to 2017) based on the following suggestions intended to revitalise the partnership programme and update it in relation to the current situation of Cambodia with regard to the strategic objectives of the legal and judicial sector as noted in the Legal and Judicial Reform Strategy (2003). Thus it is recommended that the partnership programme revitalisation and update be undertaken with the original focus on the 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 economic growth. The evaluation team finds that such continuation is not only feasible based on the commitment of the RGC already demonstrated, but also that discontinuing the partnership at the current stage would be irresponsible on the part of the DIHR as it might put important elements of the legal and judicial reform process at risk, as well as the further dissemination of capacity built during the

partnership so far. In making this observation, the evaluation team has had regard to DIHR's overall mandate as a National Human Rights Institution and to the value foundation of the LJRS, including the principle of rule of law drawn from the Constitution of Cambodia.

In view of the historically-based need to not only build institutions and capacities within these, but also to train legal and judicial professionals to work in the public and private sectors as well as in civil society and to build a culture in accordance with the values entrenched in the constitution, the team finds that the progress made under the Legal and Judicial Reform Strategy and its sub-documents until now is convincing of the relevance, the pertinence and the effects of the programme.

In view of the fluid situation that marks much of public life in Cambodia and recognised limitations of human resources for the sector, the team finds that discontinuing the partnership programme at the current time would be untimely as well as unwise. Discontinuing the programme would risk undoing much of the progress that has been achieved by withdrawing support before the Legal and Judicial Sector Strategy has been fully internalised into relevant institutions and processes. The team finds that the non-implementation of the three statutes concerning the judiciary does not in itself warrant discontinuing the programme. Rather, this calls for taking a step back to reconsider



the way in which the reform has been implemented, and to draw on what has been learnt so far in the process, to revitalise the programme and ensure ownership as well as accordance with the fundamental concepts.

DIHR and its Cambodian partners should reflect on the possibility and/or need for a revision and rejuvenation of the almost ten-year-old LJRS and its strategic objectives. The idea is not to reinvent the LJR but to apply an incremental approach to the updating process. Thus the reinvigoration of the process should be **founded in the existing agreement, on a strategy based on the constitutional concepts. It should assess implementation needs in view of what has been accomplished and the lessons learned so far, identify and assess gaps and unintended effects in relation to accordance with the fundamental concepts, and revise the action plans accordingly.**

A process of launching a revised LJR Plan of Action should be used to mobilise all stakeholders from governmental structures and civil society, hence creating ownership of the process by a new as well as the emerging generation of decision makers. The 2013 election may be an opportunity in this regard, as interest in positive publicity for the reform effort may ensure the process becomes a focus for all parties.

The evaluation team could find no overall fault with the rationale behind DIHR support of the LJR in Cambodia, so it can therefore

be taken as still valid and applicable. The partner-based approach with dialogue, advice, counselling, but also the insistence on keeping the Cambodian partner solidly in the responsible driver's seat, has been shown to work well when the needs for support are closely monitored and DIHR remains closely sensitive and responsive to the evolving situation. The overall sector approach has also proven its worthiness when properly adapted to the Cambodian context, with the necessary advice, coaching and guidance for instilling an understanding of the horizontal flow of justice through various governmental institutions and hence also of the need for inter-ministerial institutional cooperation, joint planning and coordination. The methodologies applied in creating the appropriate implementing structures and monitoring systems based on advanced reporting and indicator systems have also proven to be valid in Cambodia. The tools that have been transferred to the implementing bodies in terms of strategic planning, project management tools, fact based dialogue and participatory approaches have also worked well in Cambodia. The expertise provided by DIHR to support the LJR has also proven to be to the point and appreciated by the partners. In fact the process has, over the span of a decade, proven that these advanced methodologies and approaches can be transferred and also used in a context as complex as that of Cambodia provided they are appropriately adapted.

However, a few flaws have been found by the evaluators, which are the result of

implementation faults. Hence the evaluation found unexpected negative results in relation to lack of quality control of output contents; lack of appropriate and adequate publicity in relation to law reform initiatives, which again is connected to another gap related to lack of sufficient inclusion of civil society; and lack of overall coherence about which legal traditions have been applied to the reforming legislation. These gaps need to be addressed in future planning.

Other non-positive results that had not been part of the planning such as the standstill of the Model Court Project, dissatisfaction or frustration among donors, the slowing down of the implementation process in recent years and a certain element of fatigue at the GS-CLJR are implementation problems that could have been addressed more proactively by DIHR, and which should be taken into consideration for future programmes.

## **I.II SUMMARY OF CONCLUSIONS ON FIRST PHASE OF THE PROGRAMME**

The first phase of the DIHR intervention in relation to the LJR was a success. The expected output not only met, it exceeded, expectations. It is notable that during the entire process leading to the adoption of the LJRS programme DIHR was able to impact both on the strategic level (funding and political guidance) as well as on the tactical level (concrete implementation). At the strategic level DIHR provided the funding for its activities and also enjoyed warm welcome extended to the project by the IC. On the strategic

level DIHR enjoyed the advantages of having excellent connections with the RGC, and hence was able to secure the support and political commitment and protection for the LRJ that it needed. The specific DIHR partnership approach combined with a high level of responsiveness to the contextual political and capacity needs of the partner, ensured that the ownership of the process was placed where it belonged, squarely with the RGC.

The initial process of the DIHR support to the LJRS programme was carried out as planned and achieved the expected results, and even managed to exceed expectations: manifested in the 'semi-unexpected' positive result that the Value/Vision Document evolved into an LJRS that was adopted by the RGC.

### **I.II.I TECHNICAL ADVICE TO THE RGC**

The technical input provided by DIHR did impact on the entire beginning of the LJR in Cambodia. It is reasonable to conclude that DIHR impacted heavily on the design of the process for an LJR and through the dialogue with governmental structures at high level, DIHR managed to secure both the positive constant attention of RGC for the process and to ensure that RGC had the actual ownership of the process.

### **I.II.II ADVICE TO THE LJR MANAGEMENT STRUCTURES**

DIHR provided the necessary methodological expertise for the development of the LJRS and supported the development of the skills and capacities for managing the programme

at this stage. The PMU was heavily involved in the strategic planning and their understanding of how public institutional strategic planning should be done was advanced.

### **I.III SUMMARY OF CONCLUSIONS ON SECOND PHASE OF THE PROGRAMME**

The second phase of the DIHR intervention in relation to the LJR continued the success of the first phase. As a matter of fact the general comments to the first phase also apply to the second phase. The expected output was met in accordance with expectations and DIHR was able to impact both on the strategic level (funding and political guidance) as well as on the tactical level (concrete implementation). The IC supported the process, with the unexpected result of getting the TWG-LJR established. The establishment of the TWG-LJR was a very important element for the future of the LJR as it marked a more coordinated approach among members of the IC.

#### **I.III.I TECHNICAL ADVICE TO THE RGC**

DIHR enjoyed the advantages of having good connections with the RGC, and it is still worthwhile noticing that the specific partnership approach, combined with a high level of responsiveness to the contextual political and capacity needs of the partner, ensured the continued RGC ownership of the process.

#### **I.III.II ADVICE TO THE LJR MANAGEMENT STRUCTURES**

The technical input during this phase focused on promoting and inspiring the PCB and the

PMU on how to progress with the LJR and planning the delivery of expected outputs. The efforts of DIHR during this period followed a pattern of providing the necessary advice and ideas, and strengthening the cross-departmental networking in the PCB whenever needed. This methodology entails close monitoring of the development and readiness to intervene whenever needed.

The development of the LJR Plan of Action and the project catalogue involved the various ministries represented in the PCB and the process seems to have been able to successfully coordinate the ministries and to promote the support of all the stakeholders. In this context, the DIHR and the PMU managed to maintain very close connections to the political top level through a high-ranking official who was the chairman of the CLJR

### **I.IV SUMMARY OF CONCLUSIONS ON THIRD PHASE OF THE PROGRAMME**

The implementation of the LRJ Plan of Action is progressing and the DIHR input to the process has been crucial for reaching the present stage.

It is, however, cause for concern that international donors may pull out prematurely.

Beside the benefits for Cambodia in having the legal and judicial sector reformed, the DIHR partnership with the RGC has produced a valuable example of how a third world country can apply modern New Public Management-inspired techniques and

approaches to ensure effective conduct and performance of administrative structures. Hence the pertinence of the LJR programme is twofold: one element is the actual realisation of the LJR and the benefits it may provide to Cambodian society, and the other element concerns the implementing structures and the methodologies and approaches that have been applied and that are new for Cambodia. The learning from this experience will last beyond the actual LJR process, but it requires that the LJRS be fully implemented to prove its worthiness in a Cambodian context. Especially in light of the perspective of the pulling out of the most important international donors, it would be irresponsible if DIHR decided to exit the programme leaving the Cambodian government with a semi-finished process and without the necessary know-how to ensure its further conduct.

According to information from the GS-CLJR, around 70% of the planned activities under the strategy have been implemented. Part of the reform strategy was the reform of legislation according to the plan of action and the monitoring hereof. Important laws have been passed as part of the implementation: the Law on Media /Press; the Law on Domestic Violence; the Civil Code; Civil Procedures Code; Penal Code; Penal Procedures Code; the Law on the Penitentiary System and Correctional Services, the Law on Provinces and Municipalities; the Anti-Corruption Law; the Land Law; and Law on Commercial Arbitration. The adopted legislation is enacted and has been

implemented (for instance the Penal Code and Penal Procedures Code). Other legislation is under preparation in areas such as an NGO Law; Access to Information; an Administrative Code; an Administrative Procedures Code; a Law on the Organisation and the Functioning of Courts; a Law on Police; Amendments to the Law on the Supreme Council of Magistracy; a Statute of Magistrates; a Law on the Organisation of the National Congress; a Law on Demonstrations; Legislation to Ensure the Protection of Human Rights and Rights for Vulnerable Groups; and a Code of Ethics/Conduct for Judges, Prosecutors, and Other Judicial Staff. It should be mentioned in this context that the new legislation developed through this process tends to represent the legal traditions and principles of the country of origin of the donating agency, i.e. civil law or common law traditions, as Cambodia has not taken an overall decision on which legal tradition its future legal and judicial sector should be based.

Other elements of the LJR Plan of Action have been completed. Training at community level on basic rights of citizens; inclusion of human rights in the school curriculum; education of all law enforcement agencies in citizens and human rights; development of high-level human rights training at universities and professional schools; establishment of a training centre for lawyers; capacity building of the Council of Ethics within the Bar Association; development of a code of ethics for civil servants and strengthening of a council for discipline of civil servants; capacity building of the School of Magistrates and judicial

staff; establishment of council of discipline for law enforcement officers; setting of minimum standards for obtaining a degree in law and public administration; monitoring system of the justice sector to measure its overall performance as a guiding line for overall reform; and integration of the justice sector institutions at the policy level, especially in sharing information.

During the long period of implementation of the third phase of the programme the relation between DIHR and the Cambodian partners changed – from the overall detailed DIHR support and monitoring of the building up of the LJRS implementing, monitoring and coordinating structures – to become a more punctual attention to focal or strategic aspects of implementation. This tendency was exacerbated after the withdrawal of the post of resident HRA, reaching a low point at a period of funding uncertainty in 2009 and the period of transition from the output-based remuneration system to the less effective priority operating costs system. The period of funding insecurity when the donor community decided to tender the support programme for the LJRS implementation and the transition from output-based remuneration to the Priority Operating Costs System (POC) system caused difficulties for DIHR's efforts to build up an effective infrastructure for the LJRS implementation. It was caused by decisions taken beyond the control of DIHR and the Cambodian partners. However, these contextual issues concerning temporary funding uncertainty and the backlash on the

remuneration system did coincide with a degree of loosening of DIHR's strategic grip on the situation. It is a paramount feature of the DIHR approach that DIHR is always on top of the situation and able to provide its support on a 'just in time basis'. The lack of a DIHR contribution to the management of the increasing frustration in the donor community with the perceived slow implementation of the LJRS in this period is an example of the loosening grip. The trouble with the lack of success of the model court programme added further to the sense of gradual slowing down of the process. Without the close support of DIHR, the GS-CLJR did not manage to use its own structures such as the CLJR, or to establish new connections to the top layer of Cambodian politics. Hence the GS-CLJR became more reactive to the increasing critique from the IC and the difficulties of keeping the Ministry of Justice in line with the LJR Plan of Action.

During the field mission's many interviews the evaluation team had some discussions concerning the impact of the 2008 elections on the programme. The evaluators are not experts in Cambodian politics, but in our view not much formally changed after the 2008 elections in relation to the LJR, which remains a key result area of governmental politics. The team did not find anything more than speculations and uncertain impressions on any change concerning the RGC's determination to carry on the reform process.

It has been crucial for the implementation of the LJRS that it has been successful in raising funds among the international community. In this context the assistance of DIHR to bridge IC donors and LJR through active promotion and networking has been an extremely important part of the good results. However, the last part of the period from 2009 is characterised by increased frustration among donors for what they perceive as a slow implementation of the LJRS. The announcement by major donors of their intention to pull out of Cambodia in the near future is concerning as the LJR has not been completed, even though major results have been achieved. This situation will affect the implementation of the remainder of the LJRS. Without the support of these partners, the continuation of the implementation of the LJRS will rely mainly on the remaining IC donating agencies but also heavily on the strength and capacities of the RGC. This could also be an opportunity for the LJRS to re-launch itself on more Cambodian terms and to ensure the consolidation of the achieved results on Cambodian terms. With the upcoming national election in 2013 and the uncertainties that this entails, it will be extremely important for the implementation of the LJRS that it retains direct international support for its capacity development and close daily monitoring of the progress or lack of progress in order to ensure a strong standing for the implementing structures and the reinforcement, if possible, of their connection to the political top level of the country.

The evaluation found unexpected results due to implementation problems. The lack of quality control of proposed new legislation brought about legislative measures that are questionable. Lack of timely and adequate publicity in relation to law reform initiatives brought about awkward situations of people unknowingly acting in breach of new legislation. The latter may also be seen as a result of lack of sufficient inclusion of civil society in the reform process. Finally, also, a lack of overall coherence in the legal traditions applied in the reforming legislation may become a problem for Cambodia in the future. Other unexpected results such as the standstill of the Model Court project, dissatisfaction or frustration among donors, the slowing down of the implementation process in recent years and a certain element of fatigue at the GS-CLJR are the result of errors of implementation.

#### I.IV.I TECHNICAL ADVICE TO THE RGC

DIHR support has provided a significant and timely input to the operationalization of the policy of LJR of the RGC, which the government has pursued throughout the period. DIHR input has encompassed both the facilitation of the overall process, supporting the development of a realistic overall reform strategy, which has become part of RGC policy, but also the continuous and effective provision of know-how to solve practical and structural problems for the LJR Strategy and plan of action development and subsequent implementation.

A mechanism for ensuring coherence and standard quality control of draft legislation is missing. Hence the legislation passed presents a mixture of different legal traditions reflecting the legal systems of key bilateral development partner countries. In addition, there is no quality control of laws and their implementation in relation to the rule of law and broader human rights standards. The DIHR suggestion to develop a system of quality control over the years of implementation should be followed up.

The evaluation team's findings suggest that support from DIHR could have more precisely targeted the need for ensuring public knowledge of legislation before it entered into force.

The role of civil society in the LJRS has been disregarded. In fact, the lack of ensuring public knowledge of legislation before it enters into force also reflects the lack of effectively using participatory approaches involving civil society in order to ensure a societal dialogue on the LJRS.

#### I.IV.II ADVICE TO THE LJR MANAGEMENT STRUCTURES

The partnership between the DIHR and the Council of Ministers in relation to the LJR has been smooth and forthcoming with a general positive approach, which is founded on mutual trust throughout the period of implementation. Hence the DIHR efforts have had positive impact on the development of rule of law in Cambodia.

That the RGC has taken ownership of the reform process is evidenced by the government's adoption of the strategy, establishing of the CLJR and the GS-CLJR, the drafting and passing of a number of new statutes, and the provision of human, financial and institutional resources. However, due to the emergence of new legal professionals and politicians, there is a need to revitalise the reform process to ensure that ownership and detailed understanding of the reform is found also with the new generation of leaders and legal and judicial professionals.

The LJRS and its implementation have been hinged on a few key individuals within the RGC. While this demonstrated the ability to make use of fortunate conditions at the inception of the process, hinging a reform process on particular individuals in the longer run makes it vulnerable. Given the maturation of the reform process with, now, more than ten years passed since its inception, a revitalisation offers an opportunity to connect the process to institutions rather than individuals, and to involve a larger number of the emerging decision makers.

In particular the revision of the three fundamental laws on the judiciary (the draft law on the Organisation and the Functioning of Courts; the Statute of Magistrates; the draft Law on the Organisation and the Functioning of the Supreme Council of the Magistrates) has suffered from delays and has become a process that diverges from the open approach taken

at earlier stages of the reform process. The revision process takes place in a closed hearing forum involving key government institutions. There is a need to invigorate the process and ensure broad communication, information sharing and stakeholder participation to cater for essential ownership and commitment within involved institutions, including the Ministry of Justice.

The new Penal Law (Criminal Law), which was adopted as part of the LJR process, established a large number of new crimes and offences and entered into force in 2010. Dissemination of information to the legal sector and the public was planned to follow the law's entry into force. Due to the withdrawal of expected support from a bilateral development partner, awareness raising targeting the public has not been possible.

#### **I.V SHORT SUMMARY OF SUGGESTED THEMATIC DIRECTIONS AND ACTIONS**

The following directions are suggested for collaboration 2012 to 2017, with a view to either closing the programme in relation to each specific issue, or to prepare for further collaboration:

- Spreading capacity already built and to be built in order to prepare emerging leaders and professionals to take over planning and management of the legal and judicial sector reform.
- Building rule of law awareness and a rule of law culture with particular emphasis on (but not limited to) legal predictability, and including (but not limited to) the ways in which the rule of law interacts with the separation of powers.
- Mapping land development and environmental issues, with a particular emphasis on (but not limited to) property rights of individuals and economic stakeholders throughout the country, the environmental impact of economic development in the market-based economy, and options for ensuring the sustainable development of Cambodia in the current regional context.
- Networking with civil society, including Cambodian NGOs, about future steps of the LJR.
- Investigating options for public-private partnerships in support of the LJR Strategy as updated/revitalised.
- Establishing a pool of experts for the GS-CLJR in the further development and implementation of the reform.
- Holding an LJR Strategy revitalisation seminar in the second half of 2012 with the participation of stakeholders from implementing institutions, civil society, development partners and academic experts.
- Holding an annual LJR Action Planning Seminar with participation of stakeholders from implementing institutions, civil society, development partners and academic experts.



- Conduct a series of workshops on the rule of law, targeting the GS-GLJR and implementing institutions.
- Systematic training of managers from institutions or organisations in the justice system (including civil society organisations) to apply the management model on which the DIHR-supported process and documents build.
- Analysis and workshops to further develop insight into options and needs for adjusting the LJR Plan of Action and to develop new requests for support to expand LJR to correspond to the current situation in Cambodia.
- Development of a Human Rights Documentation Centre which is enabled to provide rule of law training and awareness to the Cambodian public sector, including – but not limited to – students and graduates from the Royal Academy of Judicial Professions and the Royal Academy of Management Sciences.
- Development of capacity within the justice system to analyse and assess qualitative impact of activities undertaken under the legal and judicial reform, and to analytically identify gaps in relation to fundamental concepts drawn from the Constitution and propose remedial measures.
- Staff exchanges among different Cambodian institutions in the justice system to exchange approaches and experience.

#### I.V.I IMMEDIATE IMPLEMENTATION

Plan and execute a public awareness raising campaign on the new Penal Law.

#### I.V.II IMPLEMENTATION AS SOON AS POSSIBLE

Two local experts are posted full time with the GS-CLJR to assist in the implementation of the revitalised reform process.

## BACKGROUND TO THE EVALUATION

The Danish Institute for Human Rights (DIHR) has worked with the Royal Government of Cambodia (RGC) since 2001 when the Legal and Judicial Reform (LJR) was initiated. The DIHR support has consisted of providing support to:

1. The efforts of RGC in elaborating a **value document** for Justice and a Legal and Judicial Reform Strategy. **The intended outcome** of the value document was to provide input consisting of a framework of overall values and of result indicators regarding Rule of Law, individual rights, democracy and separation of powers to the Legal and Judicial Reform Strategy.
2. **The Legal and Judicial Reform Strategy**, which was adopted by the Council of Ministers in 2003, defines the strategic objectives of a justice sector reform and the strategies to achieve the objectives based on the constitution and fundamental justice values as expressed in the value document within the framework of the National Poverty Reduction Strategy. **The intended outcome** of the Legal and Judicial Reform Strategy is the implementation of a Legal and Judicial Reform within the frame of human rights, rule of law and the principle of separation of powers.
3. The efforts of the Permanent Coordination Body (PCB) and Project Management Unit (PMU) in developing the **LJR Plan of Action in 2005** as a tool for implementation of the LJR Strategy. **The intended outcome** of the LJR Plan of Action was to provide a global overview on the activities required to implement the Legal and Judicial Reform strategy and to enable the authorities to take concrete steps toward a transparent implementation of the LJR Strategy.
4. The development of a **draft project catalogue** document, which provides details about the priority actions from the LJR Plan of Action. **The intended outcome** of the project catalogue document is to provide funding for the various individual elements of the implementation of the LJR Plan of Action hence accelerating the implementation, while donors have overview of the overall programme

During the partnership, DIHR has been advisor to the Permanent Coordination Body (PCB) and Project Management Unit (PMU), which, as of 27 March 2009, were replaced by the General Secretariat of the Council for Legal and Judicial Reform (GS-CLJR). In its capacity of advisor, DIHR **has further** provided support to the PMU/PCB and later on to the GS-CLJR with regard to **the management of the reform and the development of new initiatives, methods and concepts in accordance with the reform strategy, hence aiming at building up the capacity of the LJR implementing structures to perform adequately.**

As part of the partnership programme, at various periods from 1999 to 2011 DIHR placed five human rights officers/advisors in Cambodia in order to strengthen the overall process of establishing rule of law in Cambodia.

During the project period DIHR engaged in cooperation with a Cambodian Defenders Project (a Cambodian NGO) with the aim of creating a planning base for further comprehensive cooperation in the area of rule of law. During the project period CDP provided advice, guidance and information to DIHR on

all aspects of and developments in the area of legal and justice reform.

DIHR's Cambodia programme has received funding under DIHR's framework agreement with the Danish Ministry of Foreign Affairs. In 2003 and 2007 the programme also received funding from Danida. The table on the next page shows the consumption of DIHR support to the LJR in Cambodia:

### BUDGET COVERING DIHR CONSUMPTION IN CAMBODIA IN RELATION TO LJR+IMS

Per year	Total consumption (DDK)
2000 (Project no. 66121)*	1,111,473.14
2001 (Project no. 66122)*	796,653.99
2002 (Project no. 66123)	1,548,960.77
2003 (Project no. 66131)	545,897.19
2004 (Project no. 66126)	1,305,383.00
2005 (Projects no. 661201 & 661202)	2,686,885.00
2006 (Projects no. 661202 & 661203)	2,146,620.00
2007 (Projects no. 661202, 661204, 661205 & 661301)	2,172,859.96
2008 (Project no. 661206)	1,263,396.00
2009 (Project no. 661207)	1,022,401.47
2010 (Project no. 661209)	1,384,181.00
2011 (Project no. 901260 - only Cambodia exp.)	1,444,325.41
2012 (Project no. 711222 - only Cambodia exp.)	835,092.20
<b>Total</b>	<b>18,264,129.13</b>

\*Due to the fact that the pilot activities conducted in 2000 and 2001 created an important planning base for DIHR's future legal and judicial reform activities, this overview of DIHR's total consumption in Cambodia includes these project activity costs – although DIHR's involvement in the legal and judicial reform was initiated in 2002. The pilot activities conducted in 2000 and 2001 primarily focused on the police reform and DIHR provided support to stakeholders in the Ministry of Interior and the NGO 'Cambodian Defenders Project'.

## SCOPE OF THE EVALUATION

This evaluation report concerns the DIHR partnership programme with the Permanent Coordination Body (PCB), Project Management Unit (PMU) and the GS-CLJR 'Implementation of legal and judicial reform in Cambodia'. Its focus is on the programme rationale, effectiveness and sustainability, with specific regard to continuation or discontinuation of the partnership programme as well as on the learning that the experience of programme implementation has provided about the programme rationale and its implementation through DIHR support. The time span of 12 years of programme implementation does call for an overall assessment of the benefits of continuing the programme and also for preliminary indications for its future direction, if it is deemed worthwhile to proceed.

In order to conduct an evaluation which uncovers the underlying programme rationale and its functionality in light of contextual conditionality, DIHR fielded an evaluation mission to Cambodia 16 July–3 August 2012. The mission comprised Mr Francesco Castellani, evaluation expert, DIHR, and Dr Karin Buhmann, external law and judicial sector reform expert (team leader). Mr Bent Vase

(DIHR), Ms Mette Appel Pallesen, Mr Phallack Kong and Mr Chor Siek Veng served as resource persons to the mission. The evaluation team wishes to thank the resource persons and all individuals met during the mission for their valuable support and information.

The evaluation team recognises that the legal and judiciary institutions in Cambodia do yet not fully meet the conditions for DIHR's usage of the 'justice sector' terminology. Where this terminology has been used in the current report, it indicates recognition of a long-term development towards a sector structure, as well as the role of the civil society in relation to a number of tasks and function related to the Rule of Law.

## OBJECTIVES OF THE EVALUATION

The Terms of Reference (ToR) for the evaluation define three objectives.

The first objective is to evaluate DIHR's technical support to the Royal Government of Cambodia regarding the development of the three core legal and judicial reform documents as outlined above and the implementation hereof. The evaluation will focus on DIHR's role and input to the process of designing and structuring of the legal and judicial reform (i.e. the core framework) and on expected and unexpected outcomes/effects within the legal and judicial reform as well as the sustainability of the LJR.

The second objective is to evaluate the effectiveness and the sustainability of DIHR's technical support provided to the GS-CLJR staff in relation to the management and coordination of the LJR. The evaluation will focus on DIHR's role and input to the process of building up the capacity of the GS-CLJR to meet the needs for management and coordination of the LJR.

The third objective is to make recommendations on how the partnership

programme between DIHR and the GS-CLJR could be continued. This objective includes operational recommendations for topical areas where the programme may be continued or expanded, as well as feasibility of continued cooperation. Recommendations should be based on, but not limited to, an outline of suggested directions and actions across a five-year time frame (2012–2017) to ensure the sustainability of the partnership programme and its adaptation, if needed, to the current situation in Cambodian society.

Hence, the emphases of the evaluation is on the question of the adequacy of the input provided by DIHR and on the outcome of the interaction between DIHR and the partners in their common strive for achieving results in relation to the realisation of an LJR in Cambodia. This will implicitly necessitate an assessment of the results achieved during the realisation of an LJR in Cambodia as the outcome of the LJR will provide the overall understanding of the impact of the effects that the DIHR input may have had on the Cambodian capacity and willingness to realise the LJR. So in the chain: DIHR ↔ RGC → LJR the evaluation will focus on the relation

between DIHR and RGC, while the realisation of the LJR serves both as a measure for the quality of the working relation between DIHR and RGC and as an indication of the appropriateness of a possible continuation of the partnership. However, the realisation of the LJR is not in itself sufficient to evaluate the working relation between DIHR and the RGC, as LJR theoretically could also have been realised to the assessed degree without the input of DIHR. Hence the evaluation requires a methodology that can cast light on the process itself (the so-called 'black box') between the various inputs and the achieved results.

Part of the implementation of the LJR also entails the DIHR efforts to support the establishment of model courts (MC) as test cases of established criteria for the functions of an independent court system, but this part of the third phase is not part of the evaluation ToR and will only be commented on intermittently, as these activities can be viewed as separate processes. However, as it is difficult to completely disentangle these activities from the other activities of the DIHR support to the LJR implementation they will occasionally be commented upon.

## METHOD

The technical support provided by the DIHR to the implementation of legal and judicial reform in Cambodia has been delivered on the current basis over a span of almost 11 years. The four core targets of the support i.e. the value document, the legal and judicial reform strategy, the plan of action and the project catalogue are all core elements in interlinked and interdependent processes for the establishment of an adequate infrastructural framework for the Legal and Judicial Reform, as well as a process of ensuring the continued political will to carry through the reform and for fostering the interest of donors to provide financial support by ensuring their understanding of the pertinence of the reform process. Hence the evaluation of the DIHR technical support to the Royal Government of Cambodia and the effectiveness and sustainability of the technical support, which DIHR has provided to the organisational infrastructure of the reform process will have to take into account the entire process which the DIHR support has fed into, as well as to assess the actual results of the process. The evaluation of the technical support regarding the development of the four core legal and judicial reform documents and the evaluation of the

effectiveness and the sustainability of the DIHR technical support to the organisational reform infrastructure naturally leads to reflection on the third objective of the evaluation i.e. the development of recommendations on the possible continuation of the partnership programme and related suggestions.

An assessment of the feasibility and the suggested directions for continued support must be based on a deeper understanding of the DIHR programme than just a superficial assessment of results and of the possible needs for further support. It must also be based on the understanding of the specific characteristics of the DIHR support and of its expected and unexpected results and how they work in the context of Cambodia, hence ensuring that the recommendations of the evaluation are based on an understanding of the rationale of the DIHR programming in relation to the context and not just on assumptions and general needs assessments. In addition, it must take into account the specific circumstances of the partnership programme, including the situation in Cambodia at the start of the programme with regard to the general situation and the



precarious number of legally-trained human resources, as well as the situation at the time of the evaluation.

The evaluation hence aims at uncovering the implicit and/or explicit rationales for the process, leading from the initial stages throughout the process in order to provide insights into intended mechanisms of change in the specific context of the programme. The evaluation process thus entails two distinct phases. The first phase is the establishment of the programme rationale through studies of all the core documents of the project and interviews with core personnel attached to the programme and the second phase is one of verification and disproving of the rationale, which is conducted through semi-structured interviews with key stakeholders. Some of the interviews were conducted as group interviews, reflecting the issues and relation between the interviewees. The many interviews conducted during the evaluation have given good access to triangulable information, hence validating the information used for the evaluation. It is the ambition of the present evaluation to fulfil one fundamental criterion of good evaluation practice; namely that the findings

of the evaluations will be repeated if another team of evaluators are tasked to do the same evaluation, using the same methodology.

The development of the rationale of the programme is really the uncovering of the programme theory that explicitly or implicitly has been used during the implementation of the programme. A very good source to understand the programme rationale in a project is the logical framework that most projects use as a standard planning tool. The logical framework is however also a problematic source, as project logical frameworks seldom replicate the rationale of programmes and the actual context of implementation but rather reflect the need of implementers to create a suitable wording for their projects to make them fundable among donors with different requirements about aims and contents. This has not been the case with the present programme. Rather, for the current programme the problem has very much been the relation between project documents with attached logical frameworks and the 11-year-long implementation of eleven projects, which actually constitute an entire programme, combined with the absence of any document

viewing the programme as a long term affair. Hence the development of the rationale of this programme had to discover the long-term rationale of the programme without neglecting the important short-term mechanisms to make it work.

The applied methodology is based on what Pawson and Tilley call the 'realist approach to evaluation'.<sup>1</sup> In contrast to more common methodologies, this methodology is especially conducive for evaluation of development projects. A realist approach assumes that programmes are expressions and implementations of theories. Hence, whenever a programme is implemented, it is testing a theory about what 'might cause change', even though that theory may not be explicit. One of the tasks of a realist evaluation is therefore to make the theories within a programme explicit, by developing clear rationales about how, and for whom, programmes might 'work'. The core of a theory of change can be expressed by the configuration: context + mechanism for change = outcome (CMO). This means that the realist approach will not just collect data about programme impacts or the processes of programme implementation, but also about the specific aspects of programme context that might impact on outcomes and about the mechanisms that might create change.

A practical 'hands on' way of developing the programme theory is to develop a flow chart for the entire programme with its internal and external variables, the context elements that

impact on the programme, and moderating elements that may hinder or further the achievement of results. The flow chart should hence be read through an 'if – then' logic between the variables, which should be as closely connected as possible to make the relation between cause and effect between each variable as immediate and evident as possible. The challenge here is to make the theory sufficiently concrete to generate cause and effect relations that are as measurable and evident as possible, but on the other hand sufficiently general to retain an overview and overall understanding of a very complex reality.

## THE COMPONENTS OF THE PROGRAMME THEORY/RATIONALE

A programme theory is a plausible and reasonable model for how a programme is believed to function. It is constructed from the following elements: context, input, process variables, external variables, moderators, outputs and outcomes.

**Context:** The context is the totality of the environment framing and conditioning the programme activities. The context sets the scene and the conditions for the activities.

**Input:** Input is the resource that enables the implementation of the programme.

**Variables:** In this evaluation variables are called 'process variables'. This is to stress the fact that the relation between variables is always a relation between 'causing variables' and 'effect variables'. Hence, each variable that is the result of the activity of a previous variable is an effect variable that again becomes a causing variable for the next effect variable (if B is the effect of A, it is also the cause of C). The process variables are all part of the programme and are ultimately intended to bring about the outputs and outcomes. However, sometimes variables impact on a programme without being

part of the programme. These variables coming from outside the programme may impact on the process variables of the programme, without having been part of the planning of the programme. These variables are called **external variables**.

**Moderators:** Moderators are elements that qualitatively and/or quantitatively regulate the strength and direction of the relation between variables. Moderators can strengthen the causal relation between variables or they may hinder it (when the moderator  $M = 1$ , then X causes Y; when the moderator  $M = 0$  then X will not cause Y, where 1 and 0 are arbitrary values for M).

**Outputs:** Outputs are the deliveries created through the activities/causal relations between variables.

**Outcomes:** Outcomes are the effects that are caused by the output deliveries.

**Action theory:** How the intervention is constructed to activate the theory of change

**Change theory:** The process by which the change comes about.

The uncovering of the programme theory/ rationale of a programme which has been implemented over so many years immediately poses the question of periodization. The generic definition of a project is that it is a time-bound, one-off process in order to provide change, development and/or innovation. The activity of DIHR in relation to the LJR in Cambodia has been to facilitate and support the development of an LJR for Cambodia and subsequently to support the implementation hereof. Even though the project material does not make any explicit distinction between the phases, it becomes natural to distinguish between an initial phase of development of a strategy for LJR and an implementation phase of the LJR Strategy. However by studying the material it also becomes evident that the initial phase of development of the LJR Strategy can be divided into two projects: the first concerning a 'value/vision document' to anchor an LJR Strategy in the constitutional values of Cambodia and a second phase concerning the development of a plan of action and a project catalogue for the implementation of the LJR Strategy. Hence, we actually have three distinct phases where the first two phases regarding the value/vision document and the plan of action and catalogue cover the first four years of implementation up to 2005, while the third phase concerning the implementation covers the period 2005–2012. However, it is important to take into consideration that the distinction between the three phases is based on the logic of the programme guided by the different goals that each phase pursued. The

actual implementation was more 'messy' in the sense that there was an element of overlapping between phases. The 'project catalogue' that logically is part of the concretisation of the Legal and Justice Reform strategy, which was done through the development of a plan of action, was only finished in 2007.

As the third implementation phase encompasses a number of activities (or sub-projects) that are implemented quite simultaneously in parallel flows it could have made some sense to make separate theories for each of the various sub-projects. However, as the project of supporting the implementation of the LJR Strategy has been perceived and actually understood by all involved as one general effort with a number of components and different processes to support the implementation of the LJR Strategy, it would not be possible to understand the complexity and the mutual interrelation between the various activities of the process if it were fragmented into a number of individual projects. Such an approach would tend to have repetitive elements that can be avoided by viewing the process in its entire magnitude. It could also be discussed whether a periodisation could support an effort in making the overview less complicated, however this would be contrary to the logic of the project development.

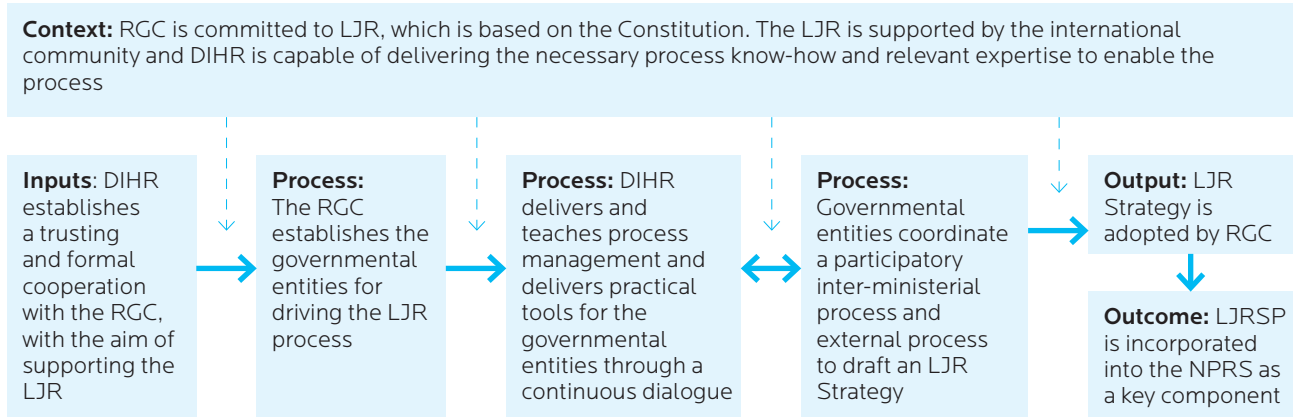
It is a characteristic of the programme that there is no overall programme document describing the process in its entirety. On the

contrary, the programme has tended to evolve incrementally over years based on year-by-year programmes, each with quite narrow time horizons. During the first phases the goals of establishing the structures and the strategy for an LJR process did frame the process firmly, while the support of the implementation of the LJR Strategy 2005–12 tends to have a looser frame where external factors such as the relation between the RGC and its LJR Strategy-implementing structures and the international community (IC), which is outside the control of the DIHR programme, gradually tends to impact strategically on the process and its direction. The loosening of strategic control over the process is, however, also the result of the decision to terminate the posting of a DIHR advisor on a permanent basis in Cambodia. The rationale behind the entire programme can be summarised in distinct phases:

The initial phase is a general preparatory phase for the Legal and Judicial Reform strategy, where DIHR and the RGC collaborate in bringing about two things: a strategy and a plan of action for the LJR and establishing the adequate administrative infrastructure to manage and monitor the entire LJR process and to coordinate the inter-ministerial planning and activities and to coordinate the support to the process from the international community. This phase can further meaningfully be broken down into distinct phases: the first one, **'Phase 1'**, is where the cooperation between DIHR and RGC is becoming operative, the administrative entities are established, and

a strategy for the LJR is developed through a participatory process and adopted by the government. The second phase, **'Phase 2'**, is one where DIHR supports the administrative entities to consolidate the inter-ministerial coordination, a comprehensive plan of action is being developed and adopted by the RGC and the RGC starts coordinating the international support. The preconditions for these processes are that: firstly, the RGC is committed to carry through an LJR, which is based upon the concept of Rule of Law and human rights standards as stated in the constitution of the country. The second precondition is that the LJR is supported by the international community. Finally, the third precondition is that DIHR is capable of delivering the necessary process know-how and the relevant expertise required to enable the process.

**FIGURE 1**



**The logic model of Phase 1** can be illustrated as in Figure 1.

**The Action theory is:** That provided the context is favourable, **and if** the long-term interaction between DIHR and the governmental entities in providing the necessary know-how on strategic planning processes, participatory processes, on how to coordinate inter-ministerial cooperation in practice and external participation is carried out, **then it** will enable the RGC to develop its LJR Strategy.

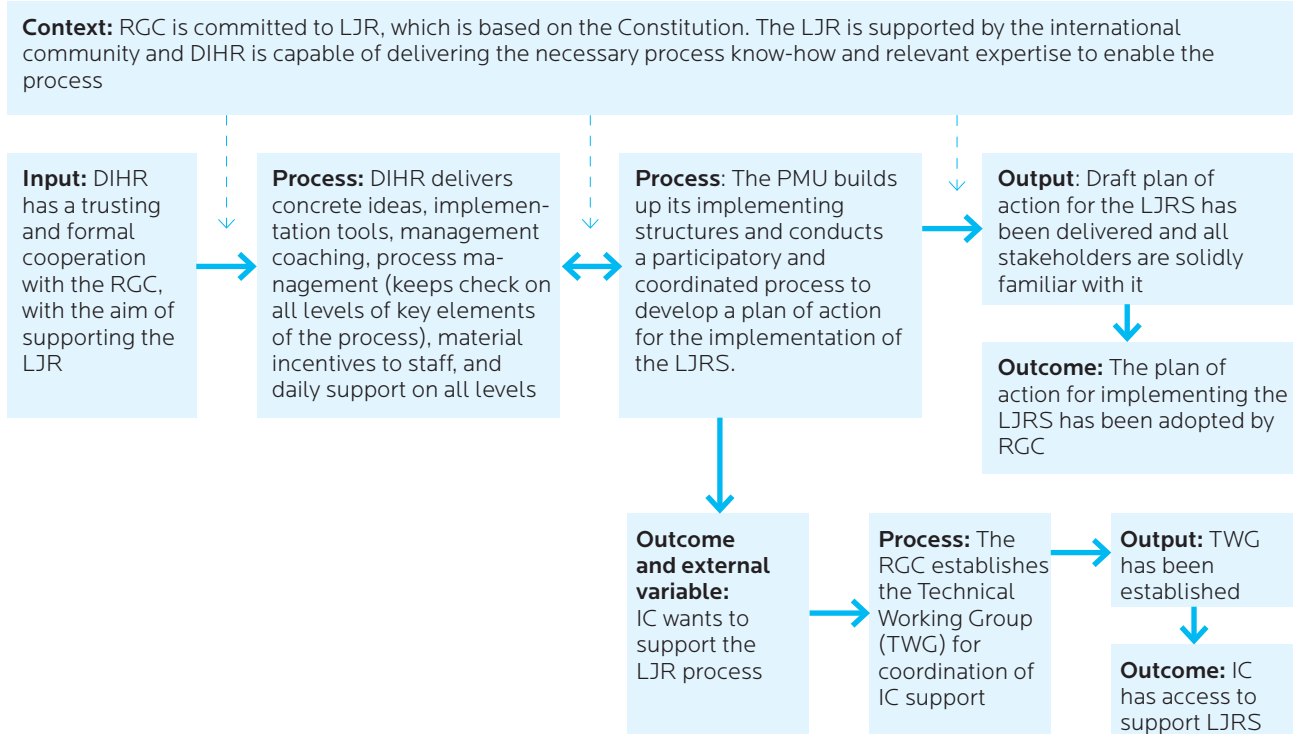
**The Change theory is:** That provided the RGC is committed to carrying out an LJR, **and if** the interaction between governmental entities and DIHR will engage the entities in coordinating a participatory process involving all relevant

stakeholders **then a** formulated LJR Strategy will be realised.

**The logic model of phase 2** can be illustrated as in Figure 2.

**The Action Theory is:** That provided the context is favourable, **and if** the long-term, trust-based interaction between DIHR and the governmental entities in providing the necessary know-how in terms of participatory planning and the process management tools for implementation,<sup>2</sup> material incentives to staff and daily support at all levels continues, **then** the PMU will be able to coordinate and develop a convincing and credible plan of action for the LJR.

**FIGURE 2**



**The Change Theory is:** That provided the RGC is committed to carry out an LJR, and if the interaction between PCB/PMU and DIHR will engage the PMU in coordinating a participatory process involving all relevant stakeholders then a convincing and credible plan of action will be formulated. If the process of developing the plan of action is going well, then it will stimulate the interest of the IC to support and trigger a coordinated approach from their side.

The third phase is considerably more complicated than the two first phases as it covers the period from 2005 to 2011 and the support delivered by DIHR to the implementation of the LJR Strategy. Hence the Phase 3 of the process, in reality, entails a conglomerate of various different support initiatives that each could be summarised into specific theories of change. The DIHR support during this period covers the following intervention areas:

1. Continuous support for the PCB/PMU and later the GS-CLJR in process managing, planning, coordination and monitoring the implementation of the LJR Strategy
2. DIHR supports the coordination between CLJR – PCB – PMU and IC donating agencies
3. DIHR supports the development of monitoring tools for the PMU
4. DIHR supports a legal aid policy development in GS-CLJR
5. DIHR supports pertinent projects of the plan of action relating to the law reform process

Part of the third phase also entails the DIHR efforts to support the establishment of model courts as test cases of established criteria for the functions of an independent court system, but this part of the third phase is not part of the evaluation ToR and will only be commented on, on a fragmented basis (as mentioned in section 3).

In essence the rationale of the third phase can be formulated as follows. Under the precondition **that 1)** the RGC, regardless of any possible political changes over time due to the democratic processes, upholds its firm and vigorous commitment to implement the LJR Strategy and its plan of action, and under the precondition **that 2)** the international community continues to commit itself to providing support for the implementation of the plan of action; and under the precondition **that 3)** DIHR delivers the necessary support

in terms of monitoring, capacity building and expert assistance **then:** if the DIHR continues capacity building of the coordinating process of the facilitating and the monitoring structures of the LJR Strategy, and if DIHR continues to provide crucial expertise when needed to the process by supporting key elements of the plan of action, **then** the CLJR, PCB and the PMU (and later GS-CLJR) will support, coordinate, facilitate and monitor the implementation of the LJR Strategy and by doing so also drive the overall process of actually implementing the LJR Strategy.

**Hence, the logic model for Phase 3: the implementation phase 2005–2011** could look like illustrated in Figure 3.

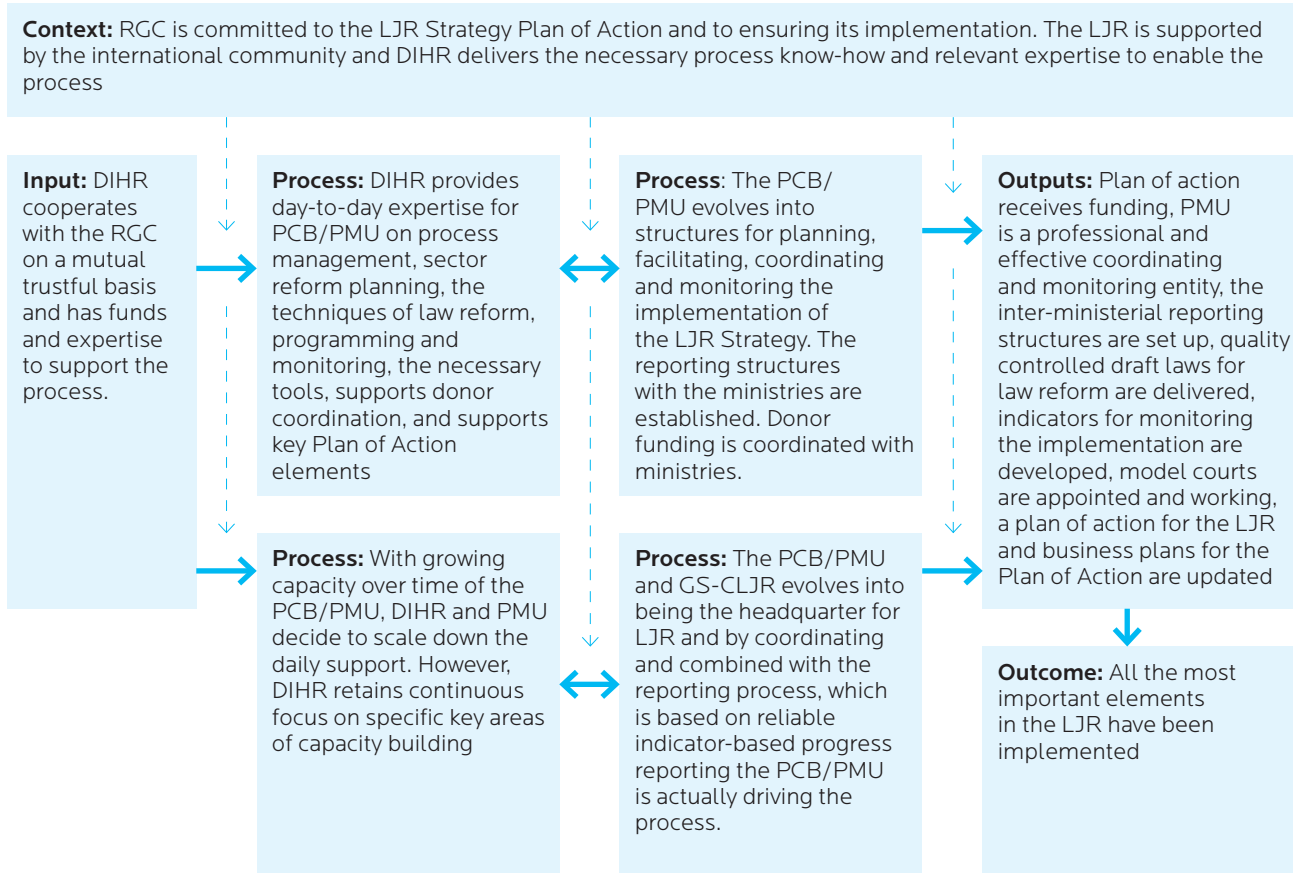
**The Action Theory is:** That provided the context continues to be favourable, **and if** the delivery of thorough capacity building in terms of sector reform planning, process management, programming, monitoring, key tools, donor coordination and support of key actions is effective, **then** the PCB/PMU will be able to coordinate, monitor and drive the LJR process.

**The Change Theory is:** That provided the context continues to be favourable, **and if** PCB/PMU coordinates monitors and drives the LJR process, **then** the most important elements of the LJR Plan of Action will be implemented.

The logic of the three phases of the programme will be discussed in detail in the



**FIGURE 3**



following sections. Here, flow charts will try to capture how things actually evolved during the implementation. These flow charts will be considerably more 'messy' than the logic models above, but that is due to the fact that they are not logic models, but represent the actual interaction of the various variables during the implementation of the programme.

## THE FIRST PHASE: DEVELOPMENT OF THE LEGAL AND JUDICIAL REFORM STRATEGY

The first phase encompasses the initial DIHR initiatives in relation to LJR in Cambodia including the incorporation of the LJR Strategy into the National Poverty Reduction Strategy (NPRS) of the RGC. The logical sequence of events is quite straightforward during this phase, and the effect of DIHR advice on the RGC is pronounced.

### 6.1 THE CONTEXT

Cambodia's recent past has been tumultuous and is marked by a number of events which have had a catastrophic impact on the legal and judicial sectors as well as on Cambodian society in general. After the Khmer Rouge regime 1975–1979 was brought to an end and a prolonged invasion by Vietnam ended in 1989, not much remained of the formal legal system that had been in place before the Khmer Rouge regime, or of legal and judicial sector human resources. The brutality of the Khmer Rouge regime had severely affected trust as well as a rule of law culture basis. The 1991 Paris Agreements were followed by a United Nations (UN) Peacekeeping mission, the UN Transitional Authority in Cambodia (UNTAC) which was tasked with preparing the ground for democratically-held elections

and being in charge of the administration of the country pending the institution of a democratically-elected government. After the 1993 elections a government was formed, and a new Constitution, which in principle caters for the Rule of Law, was drafted and adopted. However, human rights problems remained, some elements in the Constitution were not sufficiently implemented and the separation of governmental powers was not carried out. During the remainder of the 1990s a range of strategies and proposals for development and/or reforms of legal and judicial institutions were created by a number of international donor agencies, UN agencies and international experts.

Most of these proposals were developed without significant participation of the government or other public institutions. There was a lack of coordination, and individual donor countries took a strong point of departure in their national legal systems as models, leading to a dispersal of the legal systems that were proposed to become part of the legal system of the new Cambodia. From 2000 the IC had pushed for a comprehensive legal and judicial reform but the preparatory work done by IC was

not applicable by the RGC, probably because the work had been done without sufficient participation of governmental experts.

However, on a more positive note, the government was actually very interested in reforming the system, but any cooperation between IC and the government was strained by the lack of effectiveness. From the outside it was not easy to discern whether the lack of proactive initiatives from the government for LJR was due to political lack of interest or due to ineffective administration. Anyway, an indication of positive interest by the government for LJR was the fact that the RGC did engage in dialogue with the IC on the issue and did expect to include the LJR in the development of the National Poverty Reduction Strategy (NPRS), which the government wanted to develop in these years.

For the DIHR programme it is important to note that the lack of effectiveness of the public administration is, to some extent, caused by the low salary levels of public officials that leads to public officials spending public working hours on external income-generating tasks.

At the initial phase of the programme DIHR was already well prepared for the tasks, as DIHR had been present in Cambodia for almost two years implementing a civil society project and had carried out four assessment missions to Cambodia to study the justice sector, achieve an understanding of the political context and to get an overall understanding of the policies of

the IC. Beside the growing context awareness of DIHR, the institute also possessed the knowledge and the experience in developing justice sector reform strategies and in carrying them out. The theory, methodologies and practical experiences of DIHR in this field and which have been applied to the situation in Cambodia are presented in an extensive DIHR publication, which is presently being translated into English.<sup>3</sup>

## 6.2 INPUT

Based on its experience in justice and legal reform programmes as mentioned above, and based on its experience and practice in how to establish partnerships,<sup>4</sup> DIHR found it had comparative advantages to offer for the strengthening of rule of law in Cambodia and hence also the improvement of the protection of human rights. In this spirit DIHR set aside Danida Framework Agreement funds to support law and good governance in Cambodia. As outlined in section 1 of this evaluation, the Danida funding is the foundation of the DIHR input to the programme throughout the entire period.

## 6.3 MODERATORS

During this first phase of the programme, two main moderators can be discerned.

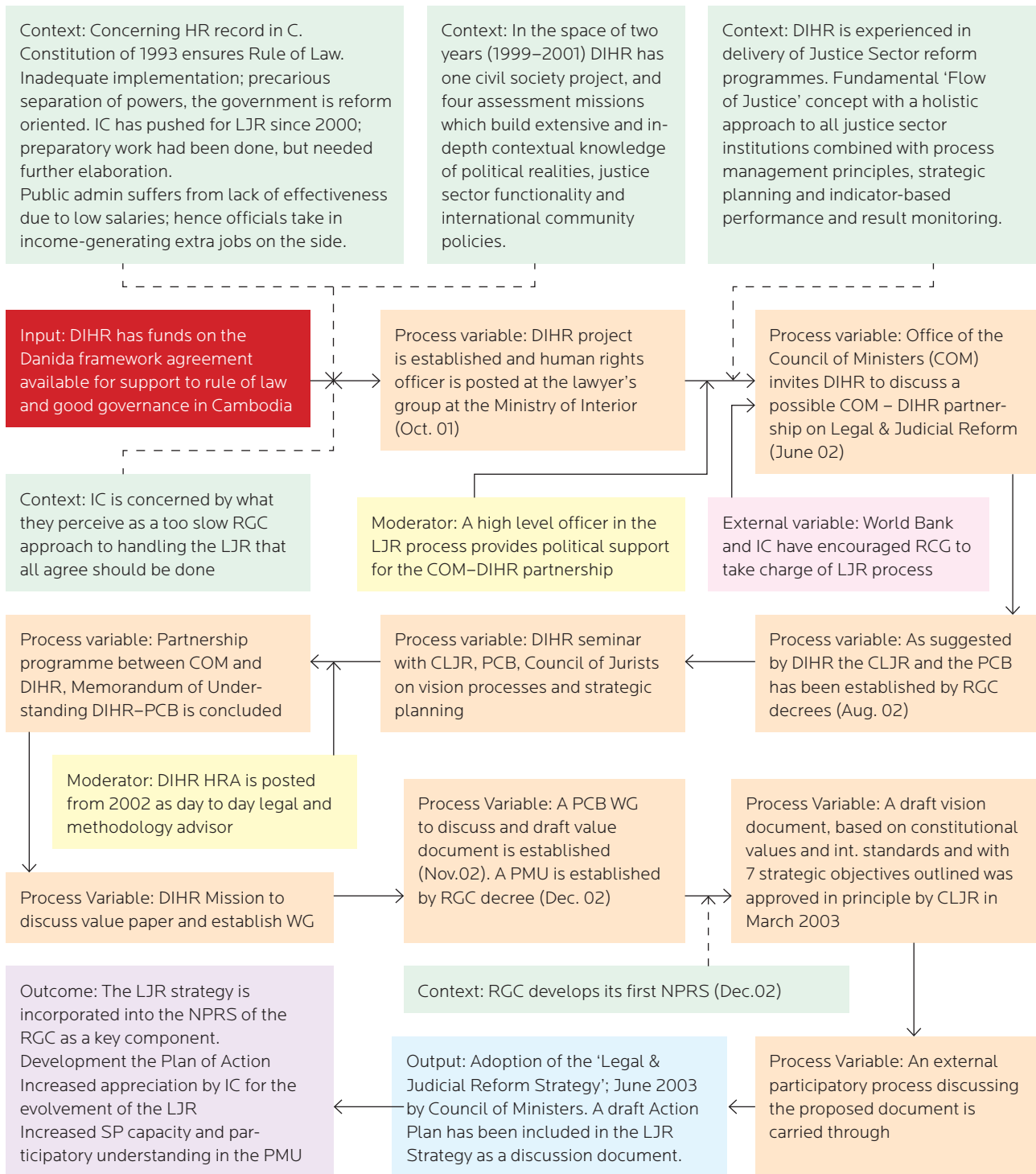
According to all people interviewed with knowledge of the first phase, a particular high ranking official, who was Secretary to the Prime Minister, very strongly supported a cooperation between RGC and DIHR and he was probably

even instrumental for reaching an agreement of partnership between DIHR and the Council of Ministers (COM) of the RGC. The protection and positive interest of relevant high-ranking officials is extremely important in a Cambodian context if one wants to work with issues related to public sector reform. One thing is winning the general positive interest and political will to reform; another matter is the concrete connectivity this gives to people in the system with sufficient influence to ensure day-to-day-advocacy of government ministers for the protection of the concrete necessary reform initiatives. DIHR managed to establish this connectivity to the government, which enabled the start up and the implementations of the programme in the years to follow.

Another important element or moderator for the implementation of the DIHR programme was the posting of a resident DIHR Human Rights Advisor (HRA) in Cambodia. All interviewed Cambodian officials with knowledge of the programme strongly praised and recommended the posting of an HRA. Basically the HRA fulfilled four important tasks: they provided the necessary legal and methodological expertise on matters relating to LJR; they performed as process managers ensuring the daily progress of the programme; they became the core of a network of all stakeholders in the RGC and external stakeholders with stakes in the LJR; and they conducted a close monitoring of the progress of the programme, identifying the needs for support on an ongoing basis. Hence

the HRA played a crucial role in facilitating the first phases of the implementation of the programme. The monitoring element has to be seen in connection with the relation to DIHR headquarters in Copenhagen, as monitoring missions were carried out from Copenhagen on a fairly regular basis. The monitoring consisted throughout the programme of assessing progress; filling out gaps in terms of methodological or legal expert knowledge that may have emerged as needs during implementation; and in the constant care and maintenance of the crucial liaisons with the RGC on behalf of DIHR.

**FLOW CHART FOR DIHR ROLE IN THE LEGAL AND JUDICIAL REFORM STRATEGY DEVELOPMENT IN CAMBODIA  
1ST GOAL: VALUE/VISION DOCUMENT (LEGAL & JUDICIAL REFORM STRATEGY) 2001-03**



The monitoring missions together with the efforts of the HRA are a process variable that during the implementation of the programme have led to positive progress effects

#### **6.4 EXTERNAL VARIABLES**

In 2001, the World Bank and IC did advocate for the RGC to take charge of the implementation of the necessary LJR. However, the RGC and the IC had difficulties in agreeing on the appropriate structures for supporting and managing the implementation of the LJR. This disagreement became a very important external variable, which impacted directly on the dialogue between RGC and DIHR. This is a very important external variable that created the 'hook' for DIHR to enter into real dialogue with the RGC, where the specific DIHR brand of partnership became crucial for establishing a structure for supporting the development and subsequent implementation of an LJR which would ensure that the political guidance of the process would be firmly anchored with the RGC and the implementing structures would become governmental bodies that would be supported by DIHR through a cooperation process based on joint planning, commonly agreed objectives and shared values. The DIHR-proposed structure with the establishment of a Council for Legal and Judicial Reform (CLJR) and a Permanent Coordination Body (PCB) to support the process of developing an LJR values/vision document for the LJR was acceptable both to the RGC and to the IC.

#### **6.5 PROCESS VARIABLES**

The actual start date of the LJR programme was June 2002 with the establishment of a partnership between the RGC and DIHR. This phase of the programme ended with the adoption of the LJR Strategy (LJRS) one year later. During this first year the combined efforts of DIHR and the RGC were targeting the establishment of structures for the development and the possible implementation of the LJRS. Hence, the CLJR and the PCB were established and shortly after, in December 2002, a proper secretariat was also established for the process. The CLJR functioned as a political guiding body, the PCB as a coordination body with representatives of interested ministries and governmental entities, and from December the Project Management Unit (PMU) functioned as the secretariat that was responsible for coordinating the implementation and supporting the CLJR. During this first phase the goal was to develop a value/vision paper for an LJR process. The idea was to anchor the LJR solidly in the values of the Constitution of Cambodia, hence ensuring that the future implementation of an LJR would be strongly connected to the Constitution. By anchoring the vision and value paper in the Constitution, the positive commitment of the RGC to develop the LJR became indisputable. At the same time such a document would ensure that the LJR would indeed be aligned with the legal hierarchy, necessary for ensuring rule of law.

The value document was developed through a participatory process engaging the legal and judicial institutions. The value document set out four concepts drawn from the Cambodian Constitution – the rights of the individual, liberal democracy, the separation of powers, and the rule of law – and elaborated a set of values forming key elements for each of the concepts. The document became the point of departure for the subsequent immediate drawing up of the Legal and Judicial Reform Strategy (LJRS). The government of Cambodia decided to include the LJRS into the first National Poverty Reduction Strategy (NPRS) in 2003.

Following the process of variables in the flow chart, and especially through the many interviews conducted with key personnel, it becomes evident how the development of the LJRS emerges as the result of a combined effort between DIHR and the CLJR/PMU where DIHR delivers methodological input and, occasionally, juridical expertise, while the RGC structures deliver the contextual knowledge and the expertise on Cambodian legislation and politics. It is a process designed to ensure ownership by the structures of the RGC and to guarantee the alignment and connectedness between the LJRS, the Constitution and the conditions for realistic public justice sector performance in Cambodia.

## 6.6 OUTPUTS

As mentioned above, the process of developing a value/vision document was successful and it evolved during the period into a proper

LJRS with a draft for possible actions to be carried out in order to implement the LJRS. During interviews all interviewees view this first period of implementation as a fast-paced period, where the LJRS actually came out as a more advanced document than expected, which seems to be the result of a combination of thorough contextualisation of the process, firm political will of RGC to implement an LJR, real Cambodian ownership of the process, high DIHR sensitivity to partner needs and partner visions, and a favourable IC attitude to the process.

The LJRS was adopted by the Council of Ministers in June 2003 and has since served as the guiding document for the LJR reform. In addition to the basic aim of building sustainable legal and judicial institutions, the strategy was motivated by a perceived need to bring about better commitment to funding and better coordination among donors as well as strengthened communication and coordination within relevant ministries and other public bodies in the country.

The LJRS comprises seven strategic objectives:

- 1: Improving the protection of personal rights and freedoms
- 2: Modernisation of the legislative framework
- 3: Providing better access to legal and judicial information
- 4: Enhancing quality of legal processes and related services
- 5: Strengthening judicial services, i.e. the judicial power and the prosecution services

- 6: Introducing alternative dispute resolution methods, and
- 7: Strengthening legal and judicial sector institutions to fulfil their mandates.

Reform in the legal and judicial sector is paralleled by a limited number of other comprehensive reforms, notably of the public administration coordinated by the Council on Administrative Reform (CAR).

A draft action plan that sets out a set of strategies, priority actions, interventions and specific activities intended to achieve the full and comprehensive implementation of the LJRS was attached to the LJRS and the implementing LJRS structures were tasked by RGC to develop a full plan of action.

### 6.7 OUTCOMES

When the RGC adopted the LJRS and included it in the governmental NPRS, the implementing structure got the legitimate basis required for starting the implementation of the LJRS, where the first step would be to develop a plan of action detailing how the LJRS could be implemented and by whom.

During the interviews it was also stated that the IC started to appreciate the process and to acknowledge that the RGC had actually taken charge of the development of an LJRS.

At the same time, the structures for implementation of the LJRS, notably the PMU, started increasing their understanding of how

to develop strategic plans and of how important the participatory aspect of such an exercise really is for the outcome.

### 6.8 CONCLUSIONS

In general it must be concluded that the first phase of the DIHR intervention in relation to the LJR was a success. The expected output was not only met, it actually exceeded the expectations. It is notable that during the entire process leading to the adoption of the LJR programme, DIHR was able to impact both on the strategic level (funding and political guidance) as well as on the tactical level (concrete implementation).

At the strategic level, DIHR provided the funding for its activities, and also enjoyed the fact that the IC welcomed the project. On the strategic level DIHR enjoyed the advantages of having excellent connections with the RGC, hence being able to secure the support and political protection for the LJR that it needed.

It is important to note that the specific partnership approach combined with a high level of responsiveness to the contextual political and capacity needs of the partner, ensured that the ownership of the process was placed where it belonged, in the hands of the RGC.

The initial process of the DIHR support to the LJRS programme was carried out as planned and attained the expected results, indeed even managed to surpass the expectations,



hence the fact that the Value/Vision document evolved into an LJRS that was adopted by the RGC can be seen as a 'semi-unexpected' positive result.

**6.8.1 TECHNICAL ADVICE TO THE RGC**

The technical input provided by DIHR did impact on the entire beginning of the LJR in Cambodia. It is reasonable to conclude that DIHR impacted heavily on the design of the process for an LJR and, through the dialogue with governmental structures at high level, the DIHR managed to secure both the constant positive attention of the RGC to the process and to ensure that the RGC had the actual ownership of the process.

The IC was also satisfied with the input provided by DIHR to the process and supported the process of strategising the LJR at this stage.

**6.8.2 ADVICE TO THE LJR MANAGEMENT STRUCTURES**

DIHR provided the necessary methodological expertise for the development of the LJRS and did support the development of the skills and capacities for managing the programme at this stage. The PMU was heavily involved in the strategic planning and their understanding of how public institutional strategic planning should be done was the one advanced.

**6.8.3 THE THEORY OF ACTION AND THEORY OF CHANGE**

With a good implementation and the expected results being achieved, the theories of action and of change were not disproved and hence must be regarded as being valid.

	<b>Results of theory of action</b>	<b>Results of theory of change</b>
<b>Implementation was perfect<sup>5</sup></b>	Yes, the results were delivered	Yes, the results were delivered
<b>Implementation was not perfect</b>	Not relevant	Not relevant

## THE SECOND PHASE: PLAN OF ACTION OF THE LJRS (2004–2005)

The second phase encompasses the development of a final plan of action and a project catalogue for the implementation of the LJRS. Also in the second phase the logic sequence of events is quite straightforward and as during the first phase the relation between DIHR and the implementing LJRS structures are characterised by the principles connected to the DIHR partnership process.

### 7.1 THE CONTEXT

The elections in July 2003 brought a new coalition government of Cambodian People's Party and the FUNCINPEC to power. The negotiations to form the government took almost a year, and the new government was only in place in July 2004. Overall this did not change the continued support by the government for the LJR, but a year without a government takes its toll and in early 2004 the performance of the PMU started slowing down waiting for a government to be formed.

The effect of the first phase of the LJR process was increased expectations by the IC to the implementation of the LJRS. However, the period was marked by internal disagreements among donors and it could not be taken for

granted that the increased expectations would ensure a more positive approach from the IC to the LJR.

The context was very much the same as during the first phase.

### 7.2 DIHR INPUT

DIHR was able to continue its support through the yearly funding from the Danida Framework agreement.

### 7.3. MODERATORS

In relation to facilitating the process DIHR still enjoyed the support of an influential key official that was chairman of the PCB, and DIHR still had a resident DIHR advisor to rely on that was capable to act as a process facilitator and a legal expert for the PMU. In this relation it should be mentioned that the PMU at this point was established under the leadership of H.E. Suy Mong Leang and a deputy head of PMU H.E. Soung Leang Hay, who were both crucial for the success in building up PMU as an effective entity.

The role of the resident DIHR HRA was very important at this point, even though there

was a period in 2004 – 2005 where DIHR did not appoint a HRA. The primary task at this stage was to keep the process on track i.e. to ensure the coordination and information among the most important stakeholders. These were the ministries and agencies mandated to perform in the legal and judicial system, where communications between the entities were low or not existing. The HRA also had an important task in trying to coordinate the IC that also suffered from lack of communication and coordination. Beside this it was also important to promote communication between governmental bodies involved in the implementation of the LJR and IC agencies. Beside these important tasks the HRA also had the tasks of providing capacity building of the PCB and the PMU to ensure proper routines, project management skills and administrative policies.

In 2005, DIHR decided to install an output-based remuneration system. The system was designed to meet the need of public employees working in the PMU to take in income generating extra jobs during ordinary working hours in order to reach an income level, which would be sufficient to pay for living expenses in Phnom Penh. The output based remuneration system met the need to increase income by providing bonuses for delivery of concrete outputs for the implementation process. The need for such a system in Cambodia is generally accepted by the IC and a Merit Based Performance Incentive system had been put in place by the RGC with the support of major donors. However, Danida was not part

of that system, and the system did not cover the employees in the PMU. Hence, DIHR installed the output-based system to achieve the same result as the MBPI did in other bodies of government. The DIHR system was much more rational and simple than the MBPI and through a participatory process for the development of the system it became strongly contextualised and led to a very concrete and clear definition of all the tasks, activities and responsibilities of the office. During interviews it emerged that the system indeed had a very positive effect on the effectiveness of the PMU and the employees of PMU had been satisfied with the system.

It has to be stressed that the system is not a “topping up” of salaries. The Cambodian salary system is built as a system where the salary level is below actual costs of living, hence the salary is in fact at a part time level, but employment is full time and it is expected (or accepted) that employees take up consultancies for the IC during office hours in order to reach a reasonable income level. Hence the output based remuneration system replaced simply the need to take up extra-curricular jobs and it was officially recognised in a governmental decree. Once the administrative reform was implemented, the system would be replaced.

#### **7.4. EXTERNAL VARIABLES**

During this phase the IC took the initiative of establishing a Technical Working Group for the IC and for LJR engaged governmental agencies. The RGC responded to this call

through the Cambodian Development Council by deciding on November 2004 to establish a Technical Working Group on Legal and Judicial Reform (TWG-LJR). This output of this sequence of external events was the establishment of the TWG-LJR, where donating agencies and implementing institutions that on by-monthly basis could coordinate the implementation of the LJRS. The important outcome of these external variables was the establishment of a close link between donors and implementers that in the TWG-LJR would be supported by the PMU. Hence, the TWG-LJR was the channel through which the LJRS could find financial support for implementation.

### 7.5 PROCESS VARIABLES

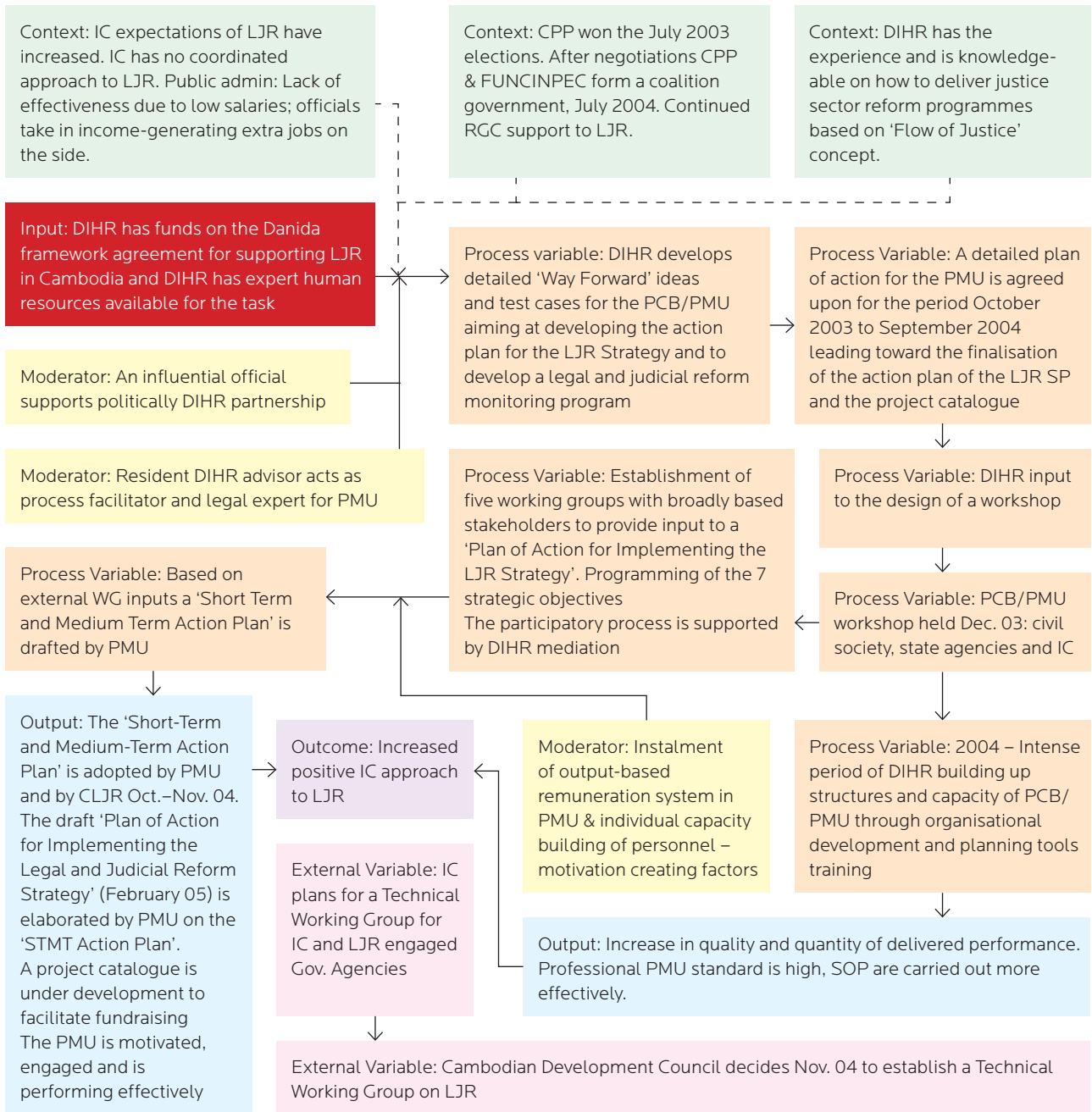
The sequence of process variables illustrates quite clearly the close relation between DIHR input to the PMU and the effects it had on the achievements of the PMU. The core of the process here was characterised by the development of the LJR Plan of Action and an intense capacity building of the PMU. As a new entity, the PMU needed literally everything ranging from the understanding on how to use Terms of Reference, Gant charts to all other issues related to planning the work. The DIHR held a number of internal workshops introducing the fundamental management tools and putting them into practice. As explained to the evaluators, this period really meant building up a well-functioning governmental office from scratch, where everything had to be introduced, accepted and put into practice.

Through the DIHR input such as a detailed “way forward” collection of ideas, work shop design, and capacity building of the PMU and the PCB in using planning tools and participatory approaches, the PMU managed to develop a very participatory process for developing the plan of action for the LJRS and a project catalogue based on the LJR Plan of Action for concrete fund raising through the TWG-LJR.

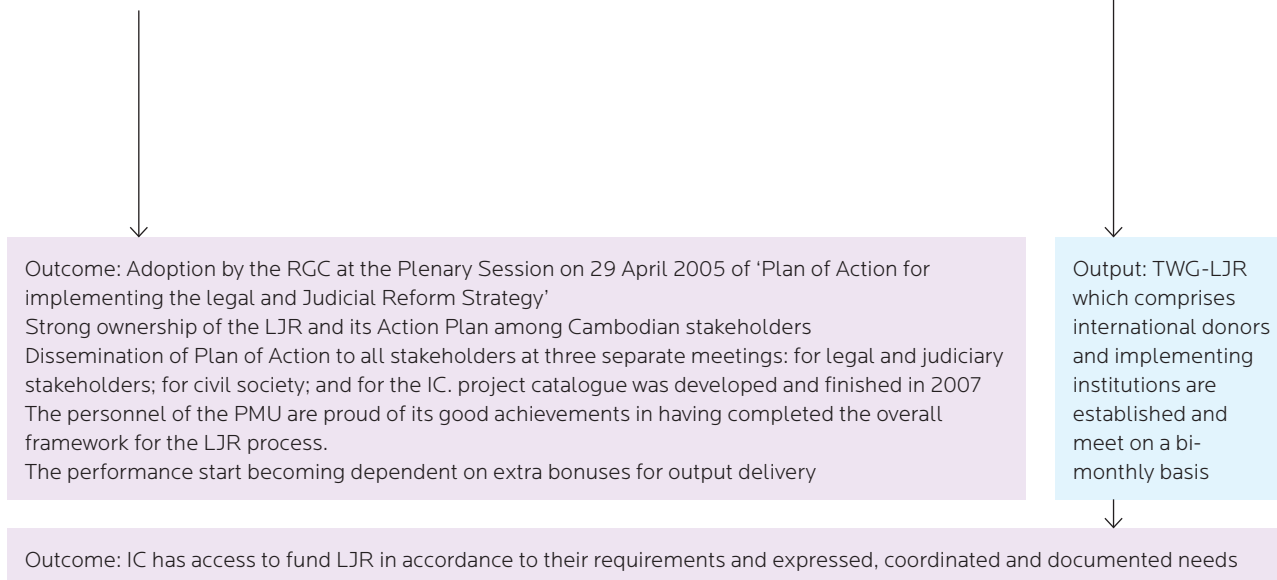
The participatory process was important but also difficult as the result of the dialogues in the working groups for providing input to the plan of action did not necessarily aligned easily with the priorities of the government and other reform processes i.e. administrative reform that was under way. Hence the role of DIHR was to ensure that the results of the participatory process were reflected in the final plan of action. This was done through mediation, where DIHR mediated between the outputs of the participatory process and the development of government reform policies. The mediation was carried out through a number of informal meetings with some high level officials in the most important ministries.

The deliveries of DIHR debriefing notes are important for ensuring the outreach of the DIHR interventions. The debriefing notes are summaries of agreements that have been reached during a meeting or a number of meetings and formulated intentionally to avoid implicating partners and individuals. All involved have to accept these debriefing notes and then they are broadly disseminated and used as the basis for further discussions.

**FLOW CHART FOR THE DIHR ROLE IN LEGAL AND JUDICIAL REFORM STRATEGY DEVELOPMENT IN CAMBODIA  
2ND GOAL: PLAN OF ACTION OF THE LEGAL & JUDICIAL REFORM STRATEGY (2004–2005)**



## 'IMPLEMENTATION OF LEGAL AND JUDICIAL REFORM IN CAMBODIA'



### 7.6 OUTPUTS

All interviewees seem to be in agreement that the 2004–2005 period should be seen as a crucial period of development of the implementation plans for the LJRS and the building of the capacity of the PCB and PMU. The period saw introduced a remuneration system that could ensure more consistent dedication to the tasks by the staff, and the capacity building of DIHR led to setting up standard procedures for the activities of the PMU and PCB. It is claimed that the professional standard of the outputs was raised during this period.

By 2005 the PMU had emerged as an engaged and motivated structure for effective performance.

By the end of 2004 the CLJR and the PMU adopted a set of short-term and medium-term action plans which were elaborated by PMU into the final plan of action in February 2005. In addition to the plan of action the PMU also

developed a project catalogue, which was meant for fundraising among the IC.

### 7.7 OUTCOMES

The most important outcome of the development of the LJR Plan of Action was the adoption of the LJR Plan of Action by the RGC at its Plenary Session in April 2005. With this adoption the way was officially opened for the concrete implementation of the LJRS by the administrative structures and with foreign support. At the same time the adoption marked the strong ownership of the government of the LJRS and its LJR Plan of Action as well as ensuring ownership of the programme throughout the public institutions that were stakeholders of the LJR. Hence three meetings were held to disseminate the LJR Plan of Action to the stakeholders: among the judiciary, civil society and IC.

The LJR Plan of Action and later in 2007 the project catalogue served to make it very clear for all governmental agencies what their role

was expected to be during the implementation of the LJRS. Hence the plan and the catalogue ensured that ministries were involved in building up the implementation structure for the LJRS, which would be the various ministries and agencies with the PMU as the coordinating and monitoring entity.

Reaching this result supported the development of team spirit at the PMU that had been the entity responsible for ensuring the result.

## 7.8 CONCLUSIONS

In general it must be concluded that the second phase of the DIHR intervention in relation to the LJR continued the success of the first phase. As a matter of fact the general comments to the first phase also apply to the second phase. The expected output was met in accordance with the expectations and DIHR was able to impact both on the strategic level (funding and political guidance) as well as on the tactical level (concrete implementation). The process was supported by the IC, and produced the unexpected result of getting the TWG-LJR established.

The establishment of the TWG-LJR must be seen as a very important element for the future of the LJR as it marked a more coordinated approach among the IC than the past mutual disagreements could have permitted to hope for.

### 7.8.1 TECHNICAL ADVICE TO THE RGC

Also during this phase DIHR enjoyed the advantages of having good connections with the RGC, and it is still worthwhile noticing that the specific partnership approach combined with a high level of responsiveness to the contextual political and capacity needs of the partner, ensured that the ownership of the process was placed where it belonged, with the RGC.

However the introduction of the output-based remuneration system was a double-edged sword. Based on the findings during interviews it seems to be a fact that the system did increase the effectiveness of delivery and engagement of the staff in providing results of good quality. However, it also seems reasonable to state that interviews with the staff indicated that the process became quite dependent on this remuneration, as it would be very difficult if not to say impossible to continue progressing if or when such an extra bonus system should be terminated. In other words the short-term immediate benefits of the remuneration system are potentially counterproductive for the long-term sustainability of the established structures.

### 7.8.2 ADVICE TO THE LJR MANAGEMENT STRUCTURES

The technical input during this phase focused on promoting and inspiring the PCB and the PMU on how to progress with the LJR and planning the delivery of expected outputs. The efforts of the DIHR during this period

seem to follow a pattern of providing the necessary advice, ideas and strengthening the cross-departmental networking in the PCB for progressing, whenever needed. This methodology entails close monitoring of the development and readiness to intervene whenever needed.

The development of the LJR Plan of Action and the project catalogue involved the various ministries represented in the PCB and the process seems to have been able to coordinate the ministries and to promote the support of all the stakeholders successfully. In this context, the DIHR and the PMU managed to maintain very close connections to the political top-level through a high-ranking official who was the chairman of the CLJR.

### 7.8.3 THEORY OF ACTION AND THEORY OF CHANGE

With a good implementation and achieved expected results, the theories of action and of change were not disproved and hence must be regarded as being valid. The final results also encompassed other issues than those covered in the programme theory. These can't be regarded as unexpected results; rather, they form part of the global results as they derive directly as consequences of applying the specific methodology of partnership which was used here.

	<b>Results of theory of action</b>	<b>Results of theory of change</b>
<b>Implementation was perfect<sup>6</sup></b>	Yes, the results were delivered	Yes, the results were delivered
<b>Implementation was not perfect</b>	Not relevant	Not relevant



## THE THIRD PHASE: IMPLEMENTATION OF THE LJRS, 2005–12

The third phase of the programme, which entails the implementation of the LJRS, is somewhat more complicated than the previous phases as it covers a span of nearly seven years of implementation and contains a more differentiated effort on the part of the DIHR. The third phase is characterised by those efforts related to the coordination of the implementation of the LJR through the various relevant ministries, the monitoring of the progress, the support and capacity building of the PMU and PCB to fulfil their tasks and the efforts of raising funds for the realisation of the plan of action. On top of this DIHR also decided to support selected activities of LJRS implementation.

### 8.1 THE CONTEXT

The political support of the RGC remained unchanged during the period, albeit under changed political realities. In 2006 the Constitution was amended through the Parliament with a provision stipulating that the government can be formed based on a simple majority instead of the previous requirement of obtaining the support of a two-thirds majority. With this simple majority provision future governments would be less dependent on the ability to form extremely broad coalitions across political and ideological differences. In

July 2008, five years after the previous election, a general election took place. The result was a strong victory for the CPP, which achieved 58.11% of the votes and 90 of the 123 seats in the National Assembly. The main opposition party after the elections was the Sam Rainsy Party, a liberal party that gained 26 seats in the National Assembly. The former coalition partner in government, FUNCINPEC, achieved only about 5% of the votes and two seats in the National Assembly. Thus, since 2008 Cambodia has been governed by a CPP-majority government.

Hence the political context did change in 2008, but it did not impact on the overall governmental policies and strategies in relation to the LJRS. During interviews it was from time to time indicated to the evaluators that the government after 2008 was pursuing the implementation of the LJRS less energetically than had the previous, coalition, government. However, the evaluation team found it difficult to assess whether this perception had any real substance or whether it was (more likely) part of the 'blame game', which invariably seems to be part of the exit of IC cooperation and development donating agencies, when missions approach their end and unfulfilled ambitions perhaps have to be explained.

The IC was expected to support the implementation of the LJRS and it met with the key governmental stakeholders on a bi-monthly basis in the TWG-LJR. In 2005 the IC was positive towards the efforts of the RGC of taking charge of the LJR and started supporting the plan of action and the suggestions in the project catalogue based on the coordination provided by the PMU. However it is important to notice that the implementation of the LJR was not entirely dependent on foreign support as the RGC did finance substantial parts of the implementation out of the state budget. During the period 2005–12 the main bilateral donors for the LJR were USA, Japan, France, Australia, Germany and Denmark. Also intergovernmental agencies such as the World Bank, UNICEF and UNDP provided substantial contributions to the implementation of LJR. However, also many other countries and intergovernmental agencies provided funds for the implementation of the LJRS. During the period 2009–12 the IC gradually became increasingly frustrated by what they perceived to be a too slow implementation of the LJRS.

In 2012 several IC development agencies announced that they would pull out of Cambodia in the near future. However, Japan, Korea, Singapore and Vietnam have expressed commitment to continue to support the LJR. The support for the LJR has been crucial because the justice sector in Cambodia is undeniably weak and characterised by every possible aspect of needs. Lack of competent human resources, however, is one problem that has gradually eased as new generations of

young, ambitious and competent people are coming out of law schools. However, it is also a problem that corruption is said to be widespread and weakening the justice sector. Low salaries, that probably partly explain the corruption, also leads to 'double jobbing' in order to increase incomes of individual employees.

Civil society rights-based organisations and legal aid providers in Cambodia are characterised by strong dependency on foreign aid. This has led to a strong focus on service delivery, which has had a limited impact on the national agenda. However, the foreign aid to civil society has nevertheless been conducive to momentarily strengthening the civil society organisation advocacy, including in the legal and judicial sphere, but a societal dialogue between civil society and authorities mandated to perform in the justice sector has not been taking place. Some of the interviewees stated that the lack of dialogue between civil society and the governmental structures was due to the fact that civil society, with the foreign support, has become disproportionately strong in comparison with the governmental agencies that suffer from all the problems mentioned above. In this situation it was difficult to conduct a dialogue, as the governmental structures would be concerned about protecting themselves by avoiding confrontations.

## 8.2 DIHR INPUT

As in previous phases DIHR had provided funding for its efforts and for the support of the LJRS implementing structures through its annual Danida Framework Agreement.

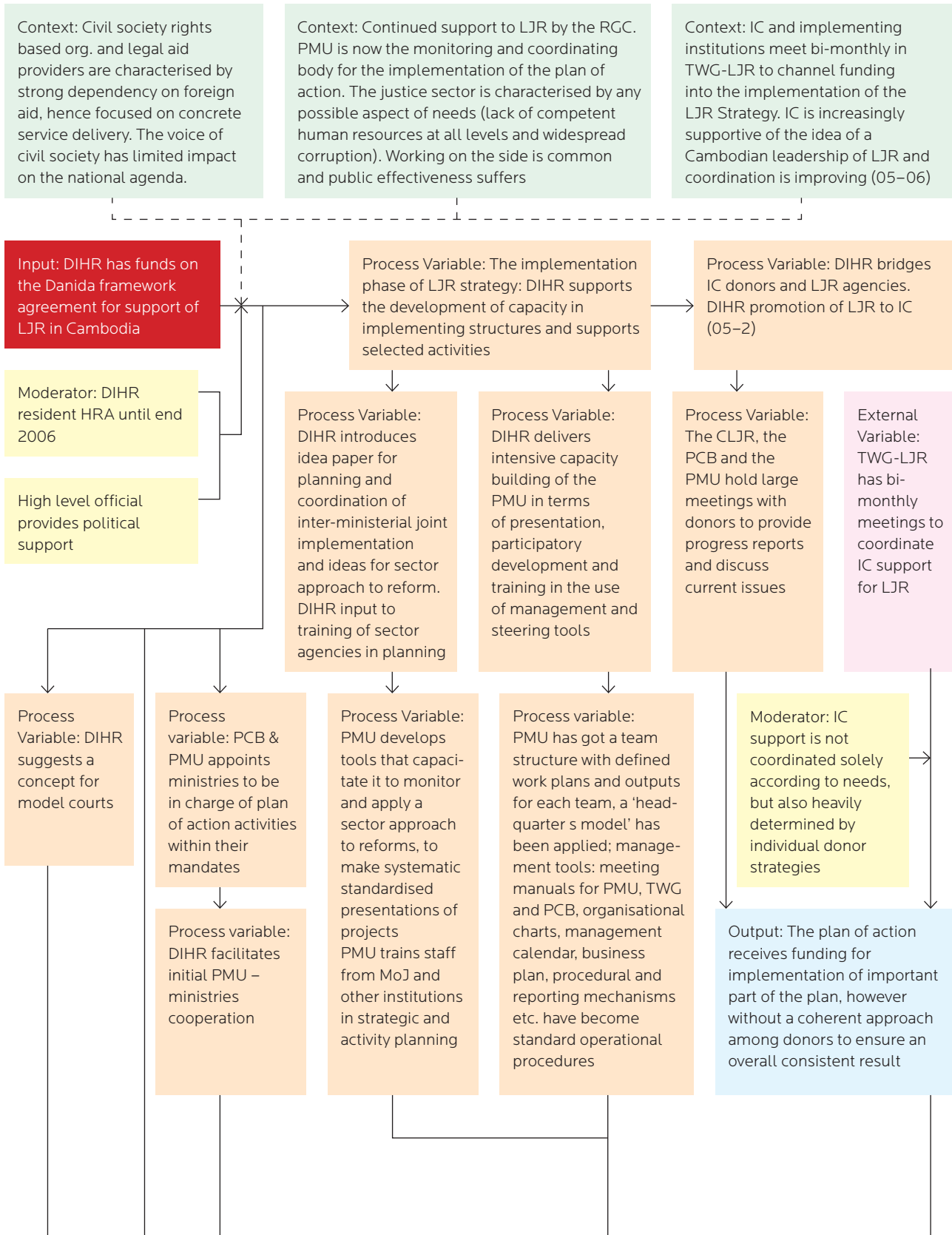
### 8.3. MODERATORS

In previous phases the posting of a DIHR HRA at the PMU was an important moderator, which facilitated the progress of the LJR process. Hence the system was continued during the initial part of the implementation phase of the LJRS. However, at the end of 2006 the last resident HRA ended his term and was not replaced by a new one. The role of the HRA advisor had been crucial for the building up of the capacity of the PMU. All the routines related to work plan adjustments, weekly staff meetings, discussions on next initiatives, the structure of the reform process, information sharing, project management skills, improvement of draft papers, arrangement of capacity building internal seminars and thematic sessions were all issues which the HRA addressed. Besides that, the HRA also performed as the legal expert on issues about and quality control of documents produced by the PMU. The HRA also had an important role in networking with the IC and promoting the LJRS among potential donors. However, the PMU management and DIHR agreed at the time that the PMU did not need a resident DIHR HRA and could manage with the support provided during the monitoring visits of the DIHR project manager and advisors.

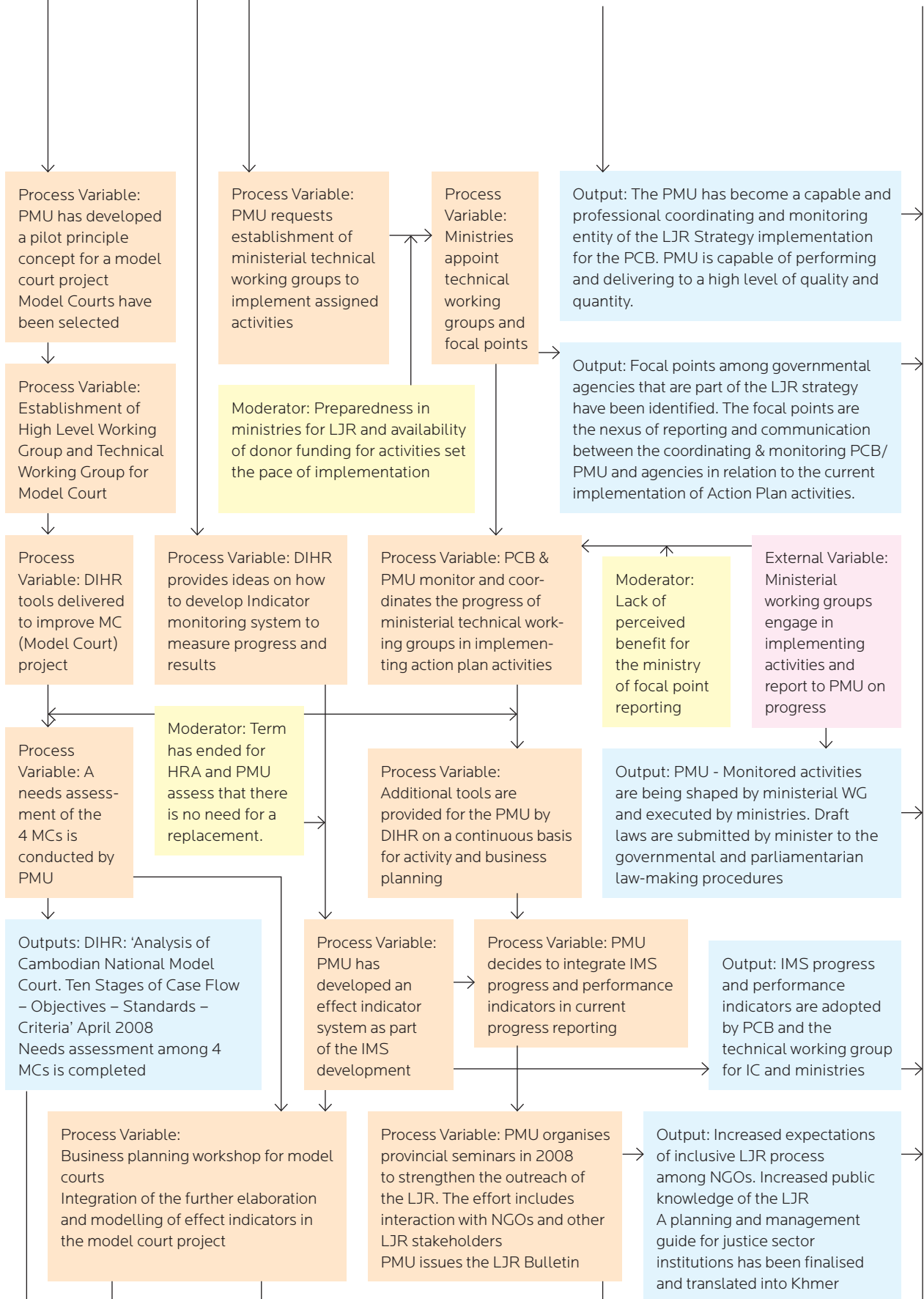
The decision did not seem to harm the continued performance of the PMU and in this way the decision may have been wise at the time but, for DIHR, it did somehow loosen the connectedness as it did away with the daily monitoring of the performance of the PMU, which as time went on did gradually create

some discrepancy between the emerging gaps and needs for capacity building at the PMU and the connectedness and availability of DIHR to step in. As the DIHR project manager from the period of 2007/2008 stated, the PMU seemed to do fine by itself and was not under the close attention of DIHR at the time. Probably DIHR was satisfied by the fact that Australia, during the period of 2007/2008, funded an excellent Australian specialist to support the PMU and who, in practice together with a Cambodian expert, took over some of the tasks that had previously been done by DIHR on top of his other tasks. Hence, at the time, the PMU performed excellently without the DIHR support; it was regarded by all local structures and international agencies as the core unit for the implementation of the LJRS and it delivered its planned outputs. In this way the ending of posting an HRA may have strengthened the immediate ability of the PMU to perform on its own without DIHR supervision and advice, but may also, in the longer term, have slowed down its ability to perform as the care, maintenance and further development was not so immediately to hand as before. In June 2010 DIHR and the GS-CLJR decided again to have an HRA posted for a nine month period, but the HRA was intended to focus on one specific programme and not the overall implementation. However, the HRA did get involved in many other issues at the secretariat, as it was strongly needed.

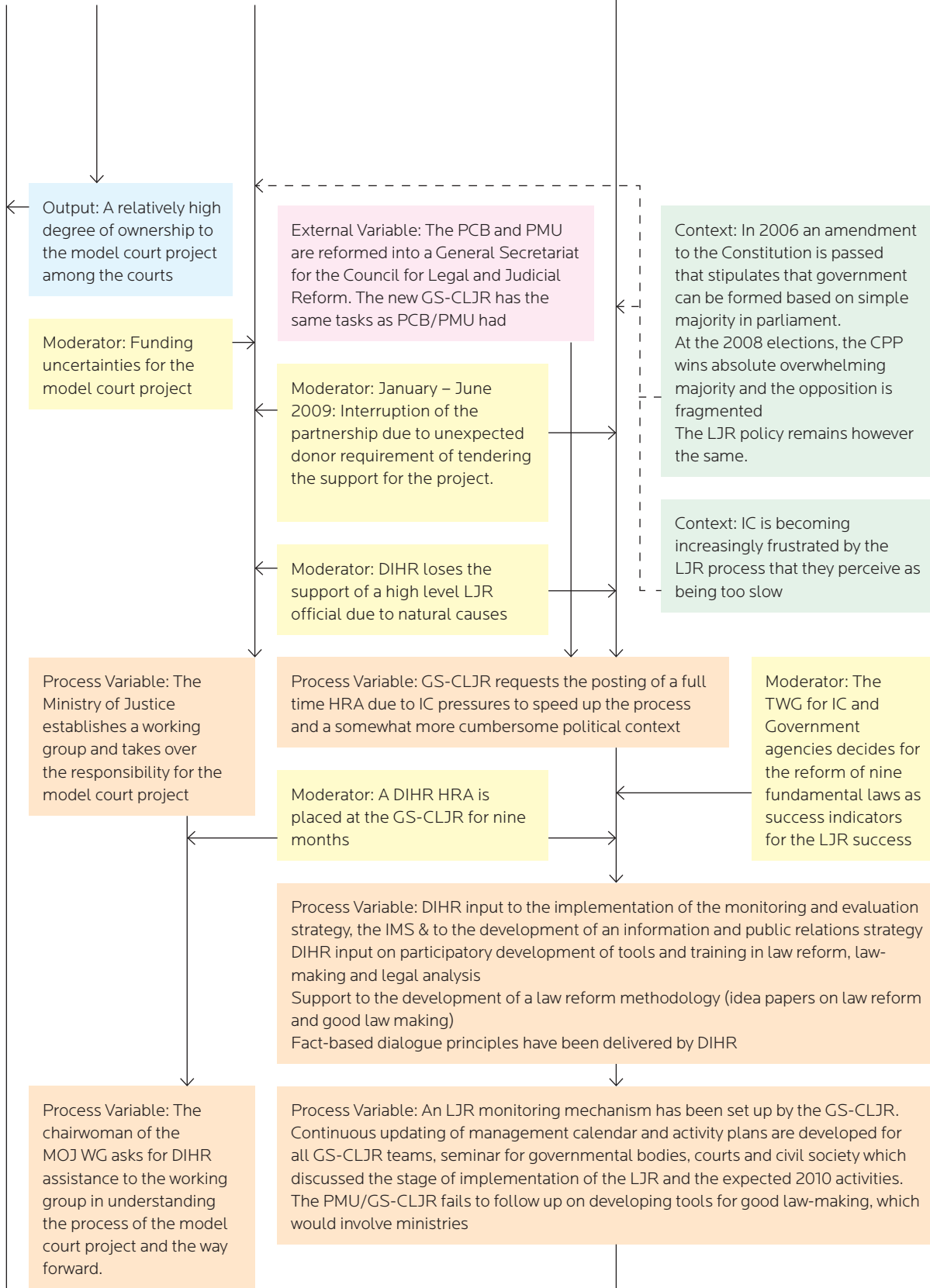
**FLOW CHART FOR DIHR ROLE IN LEGAL AND JUDICIAL REFORM STRATEGY DEVELOPMENT IN CAMBODIA**  
**3RD GOAL: SUPPORT THE IMPLEMENTATION OF LJR STRATEGY 2005-2012**

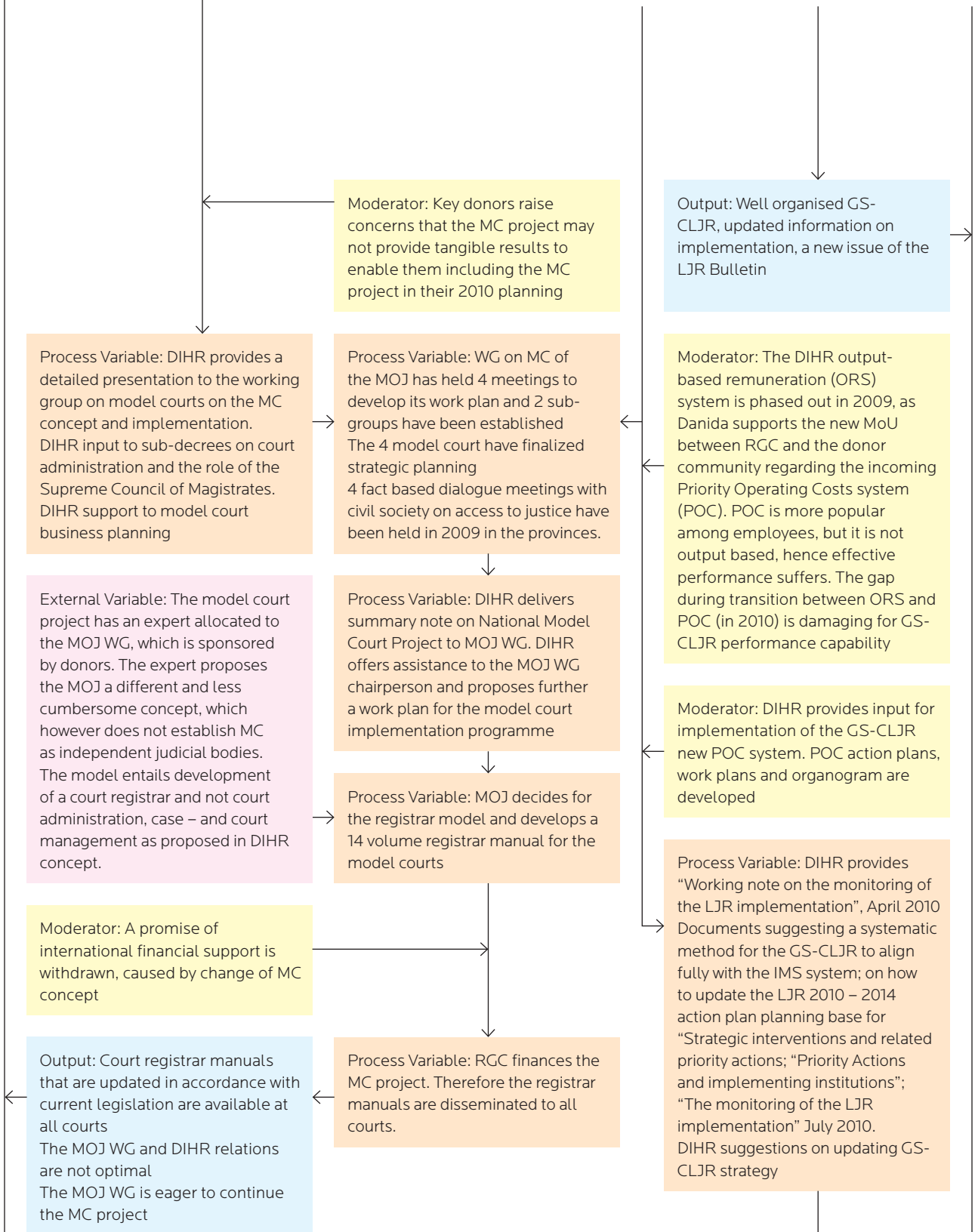


'IMPLEMENTATION OF LEGAL AND JUDICIAL REFORM IN CAMBODIA'

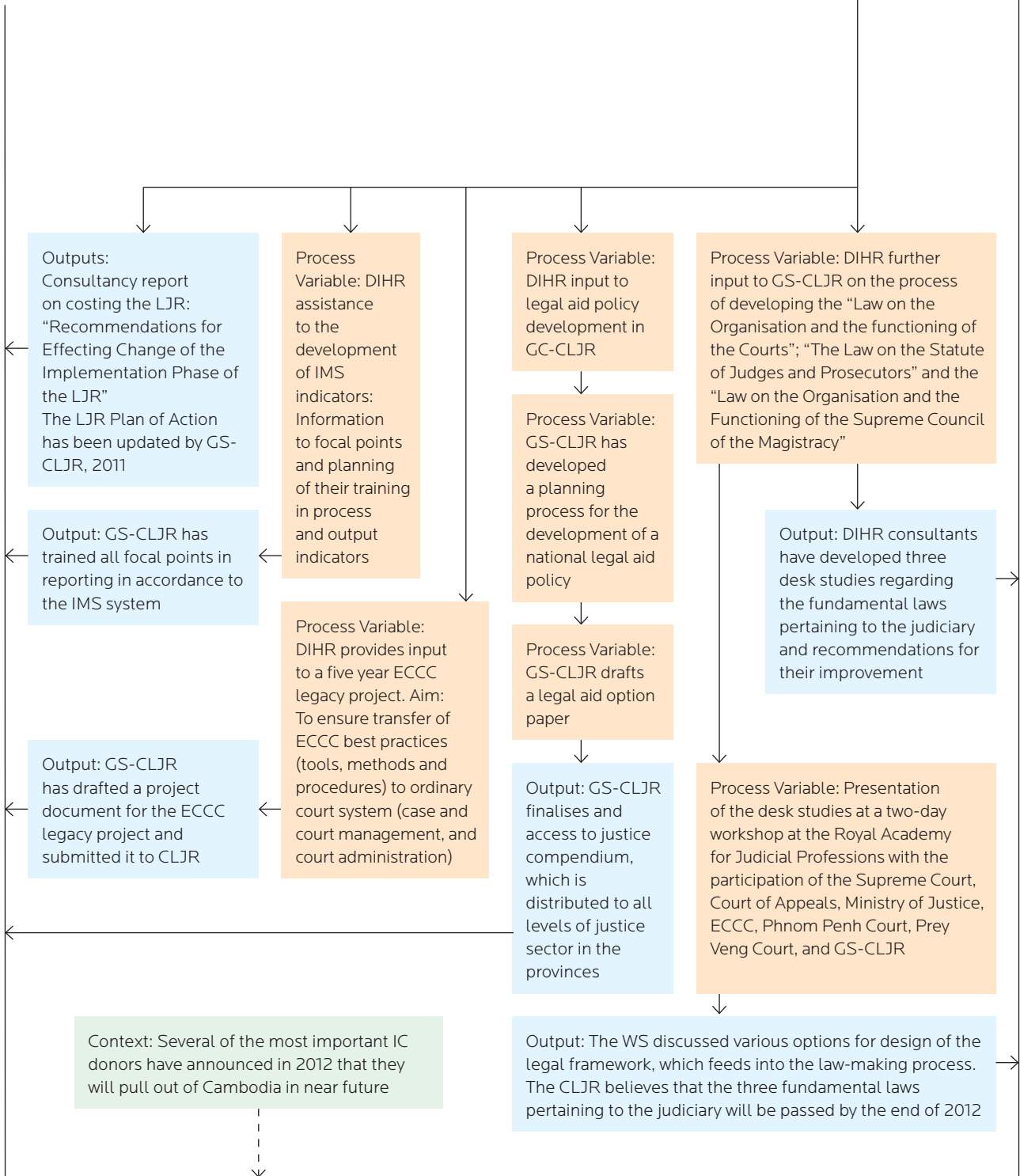


'IMPLEMENTATION OF LEGAL AND JUDICIAL REFORM IN CAMBODIA'





'IMPLEMENTATION OF LEGAL AND JUDICIAL REFORM IN CAMBODIA'





Outcomes:

LJRS managed to receive sufficient funding for realising most of the planned activities. The relation between IC and the LJRS structures was at times difficult, but only started to deteriorate in 2009, when the IC was becoming frustrated by a perceived too slow implementation of the LJR.

The RGC and governmental administration are applying a sector approach to the LJR process and are capable of applying monitoring and coordination of the process to the highest international standards. Over the period, the GS-CLJR seems to have lost some of its pro-activeness capacity and started to become increasingly reactive.

The results of LJR are impacting positively on the development of rule of law, which is also needed in the business sector.

Much of the legislation required by the LJR has been drafted, passed and adopted and most of the non-law reform oriented parts of the LJR Strategy have been implemented. The three fundamental laws, The Law on the Organisation and the Functioning of the Courts; Statute of Judges and Prosecutors; Law on the Organisation and the Functioning of the Supreme Council of the Magistracy have not been presented to the legislative bodies as they are in process of finalisation by the Council of Jurists Under the Council of Ministers. This has created a somewhat unfair negative judgment by the international community of the LJR. However, the government seems still to be committed to reform the court system.

Despite coordination of donor support and ensuring coherence in the development of Cambodian legislation being one of the reasons for the development of the value document and the LJRS, development partner support for legal and judicial reform has been somewhat scattered and uncoordinated, and imprints from specific legal systems on specific branches of legislation have remained a feature of the lawmaking process.

The setup of implementing structures, the sector approach, the monitoring methodologies, implementing rationales, and the inter-ministerial cooperation and communication are standard setting for the public administration, which is important and rare in developing countries. The implementing structures have become attractive postings for public employees, not because of salaries, which are not different from other postings, but because of the learning and experience that can be achieved at the GS-CLJR.

However, the monitoring system is based on quantitative process data and not on assessment of the quality of the deliveries.

The passing of new legislation in order to strengthen the rule of law requires popular participation. The passing of a new Penal Code for instance did not fulfil this requirement.

The preparatory work on the model court project led to nowhere as the concept of model courts was abandoned. However, the development of court registrar manuals has been appreciated by the courts. As this evolution of the project diverts from the original GS-CLJR concept and planning, the MoJ had to implement this project without any foreign assistance. However, this has created a strong ownership by the MoJ of the model court project.

During the implementation of the LJRS the process enjoyed the continuous support of a high-ranking official, the Secretary to the Prime Minister, who was also charged with the task of chairing the Permanent Coordination Body, PCB. In early 2009 this official passed away. This may have affected the implementation pace of the LJRS, as the event occurred soon after the Secretary at the Ministry of Justice also passed away. The latter had formed part of the power network, which the chairman of the PCB drew on for the LJR when needed. Hence, the death of the former chairman of the PCB marked the fracture of a chain of informal communication between the LJR and the top layer of Cambodian politics.

The relation between the LJRS implementing structures became more opaque still after the death of the chairman of the CLJR and with that the diminished direct knowledge in the top LJR structures of the considerations of the inner circles of government. The CPP government, which was established after 2008, is composed of different internal factions that cover different power-sharing and sometimes mutually counterproductive positions in government, which is difficult for outsiders to understand.

The pace of delivery of IC support is another important moderator. The coordination by PMU and in the LJR-TWG was made difficult by the fact that the IC was not a coherent and homogenous assembly of supporters but on the contrary was very heterogeneous and the specific and differentiated donor strategies of

each donor set the conditions for support rather than a coordinated and collected approach to ensure a smooth implementation of the LJR plan of action and the project catalogue. Hence, the donor support was characterised to some extent by a 'buy in' approach, where each donor could support the elements of the LJR Strategy that fitted to the specific requirements of the donor. This situation was even more complicated by the fact that the availability of donor funding, on the other hand, also depended on the preparedness of the Cambodian LJR stakeholders among ministries to receive funding for implementation of their tasks. In spite of these difficulties the LJRS managed to receive funding for the main bulk of the LJRS that hence could be implemented.

The PMU was the core monitoring entity for the entire LJRS implementation. Hence the governmental bodies that were involved in the implementation were expected to establish working groups that would be responsible for the implementation of the part of the LJR plan of action involving their specific governmental body. In order to monitor progress the ministerial working groups were requested to report regularly to the PMU about progress. However, a negative moderator for this procedure was detected during interviews as the system did not provide any specific motivation or benefit for the governmental agencies to report on progress, which consequently was perceived as a resource-demanding activity of no vital interest for the implementing working group. At the same time

the ministerial working groups needed expert support, which could have been a positive moderator if delivered through the monitoring system. However, this service was not available.

In 2009 the partnership between DIHR and RGC was interrupted for a six-month period (January–June) due to unexpected donor requirement of tendering the support for the programme. This did create a somewhat alienated relationship between the PMU and DIHR. The relation improved later when the DIHR posted an HRA at the project for a period of nine months.

The increased frustration from 2009 onwards among the IC about what is perceived as a slow pace of LJRS implementation brought about a move by the LJR-TWG to label nine laws in the LJRS as fundamental and to take their reform as an indicator for the success of the entire process. This moderator is important as three laws of the nine that relate to the separation of powers have not been passed yet, which substantiates the arguments for those who blame the LJRS for not being effectively implemented.

In 2009 the DIHR output-based remuneration system was phased out as Danida supported a new MoU between RGC and the IC regarding the establishment of a new system, called the Priority Operation Cost system (POC). POC is different from the output-based system in the way that it is not entirely based on delivery of concrete outputs but also on merit. It is more

popular among the employees than the output-based system because it provides a regular and foreseeable income, but it is less conducive for ensuring the prompt delivery of results. The transition period between the phasing out of the output-based remuneration system in 2009 and the introduction of the new POC system in 2010 marked a decrease in effective delivery of results, which probably has impacted on the coordination of the TWG-LJR and hence exacerbated the frustration among donors about the slow pace of LJRS implementation. Today the POC system is integrated in the PMU/GS-CLJR, but will be phased out during 2012.

During this period DIHR provided support finalisation of model court activity plans.

This proved to be a challenge and an important obstacle for its implementation were difficulties in raising funds for the project due to a cumbersome preparatory process and later disagreements on the course and aims of the project. Hence Danida withdrew promised funding for the project when the Cambodian Ministry of Justice changed the entire concept of the project.

#### **8.4. EXTERNAL VARIABLES**

The most important external variable for the implementation of the LJRS has been the establishment of the ministerial implementing working groups. These working groups are in practice outside the control of the programme even though they were established for

implementation of parts of the LJRS and are responsible for delivering progress reports the PMU as the monitoring agency. However, besides monitoring progress, there is no element ensuring the methodology and the quality of the performance. So in relation, for instance, to developing new legislation, the system does not ensure that the quality of the proposed law is adequate and that it is publicised to the public before passing through parliament and being made into law. Through focal points connected to the working groups the PMU is able to assess progress and results. However, the process of adoption of the penal code, the penal procedure code, the civil code and the civil procedure code does not provide assurance that legislation is in accordance with human rights nor that the legislation is well known by the public before being enacted. Hence, the Penal (Criminal) code was passed fairly unnoticed by the public and entered into force before an information campaign targeting the public was conducted. This has created problems for people being arrested for offences/crimes they unaware of.

Another important external variable is the reform of the PMU and PCB, which was carried out in 2009. Basically the two entities were merged into one, the General Secretariat of the Council of the Legal and Judicial Reform (GS-CLJR). The aim was neither to weaken the structure nor to change its tasks but to align the LJRS structures with other reform structures of the RGC. Basically the PCB with its representatives of governmental bodies was

replaced by the system with focal points, which is one with a liaison officer appointed in each ministry to communicate with the GS-CLJR. The reform of PMU does not seem to have had any lasting effect on its performance and its tasks.

A third important external variable during this phase was an expert who was funded by IC and allocated to the Ministry of Justice. He proposed a different and less cumbersome approach to the model court project that changed the whole concept for the project as developed by DIHR. This variable caused the Ministry to decide for the proposed concept, which again led to the loss of promised Danida funding, but also to the delivery of much-needed court registrars to all courts in Cambodia.

### **8.5 PROCESS VARIABLES**

The third phase of the programme basically consisted of five elements: supporting the PMU/GS-CLJR in its tasks of coordinating and monitoring the implementation of the LJR Plan of Action; supporting the coordination between the CLJR-PCB-PMU and IC donating agencies; supporting the development of monitoring tools for the PMU; supporting the development of a legal aid policy and support for pertinent projects of the LJR plan of action relating to the LJR. The implementation of the strategy and action plan is coordinated and monitored through mechanisms, which have been created through the dialogue between DIHR concepts and methodology and high-level local

contextual expertise, some of whom have been connected to the GS on a short-term basis.

A selected project for DIHR support was part of Strategic Objective 7 and Strategic Objective 5 of the LJR plan of action, regarding the strengthening of the legal and judicial sector institutions to fulfil their mandates and the introduction of a model court approach. The objectives entail the crucial issue of independence of judicial powers from the executive powers. The DIHR approach was to establish four model courts that could serve as test cases for Cambodia on how a well-functioning court system could work in a Cambodian context. The idea was to accomplish the passing of the necessary legislation regarding case management, court administration and court management that would guarantee the independence of the court system. These three legislative provisions (the draft Law on the Organisation and the Functioning of Courts; Statute of Magistrates; Amendments Law on the Organisation and the Functioning of the Supreme Council of Magistrates) were part of the nine fundamental laws that the LJR technical working group (TWG) set as success indicators for the LJR. This part of the programme is not part of the evaluation but although it is not in itself evaluated, it is anyhow included in the flow chart and sporadically commented upon as part of the total picture.

Within the efforts for supporting the PMU/ GS-CLJR in their task of monitoring the

implementation of the LJR, DIHR focuses on supporting the development of an indicator monitoring system, which should enable the PMU/GS-CLJR to systematically monitor the implementation of the plan of action by measuring progress through progress and result indicators for all activities. This was considered of strategic importance to the implementation.

A third area of DIHR attention was to ensure that donors would provide funding for the LJRS implementation and DIHR promoted the LJRS among donors, and supported the CLJR and the PMU to hold large meetings with donors, to provide progress reporting and discuss current issues.

At the initial stage of the third phase DIHR had to continue very vigorously the process of capacity building of the PMU and the PCB, which had started during the previous phases. Focus was on the installation of adequate management and steering tools for the PMU through presentation, training sessions and practical support during implementation of the tools as part of the daily operational procedures. This capacity building entailed organisational development, where the PMU were organised in team structures, with defined work plans, manuals for meetings, organisational charts, management calendars, business plans and reporting mechanisms. This development focused on the PMU that was labelled and functioned as the core headquarter entity for the entire process,

although the PCB and the TWG-LJR were also part of the capacity building to ensure well-functioning structures and coherent approaches.

At the same time DIHR was focusing a great deal on coordinating the inter-ministerial joint planning and implementation of the LJR, based on an understanding at government level of the importance of applying a sector approach and not just focusing on particular areas or issues. Based on the DIHR training of the PMU staff, it further trained the staff of ministries in strategic and activity planning of the implementation of the LJR Plan of Action. Besides the training, the entire structure had to be built for the LJRS implementation. Ministries were appointed as being in charge of their respective parts within their mandated areas of the LJR Plan of Action, and technical working groups in each ministry were set up with an appointed focal point or liaison person for relating to the PMU.

DIHR recommended the establishment not only of monitoring structures, but also of structures for assessing the quality of proposed new legislation. DIHR proposed the development of a law reform manual and a manual for good lawmaking. This component was aimed at providing the necessary quality new law-making in relation to Rule of Law. The aim of developing this tool was to enable the LJRS process to come out with reformed legislation of high quality. The manual for law reform and for good law-making was on the annual working programme from 2007. In

2008 and 2009 DIHR delivered idea papers on this matter. The PMU/GS-CLJR agreed on the need for such tools, and requested the idea papers. The intended implementation of the initiative on the part of PMU/GS-CLJR entailed involvement of the ministries in charge of drafting the pertinent legislation. However, the initiative to ensure quality of law-making failed to be implemented.

The lack of implementation of the development of a law reform manual and a manual for good law-making happened to coincide with the period of implementation after the DIHR HRA had been withdrawn from Cambodia as mentioned above under the section regarding moderators (51). It is not possible to create a direct causal link between the decreased DIHR day-to-day presence and the lack of implementation of this item, but a stronger DIHR attention and presence could probably have had a positive moderating effect on the fulfilment of this activity.

Much of the continued coordination of the LJR Plan of Action implementation was executed by the PMU/GS-CLJR. The DIHR efforts concentrated on supporting the creation of a system of progress and performance indicators (indicator monitoring system) that were integrated as a monitoring mechanism of the implementation by the GS-CLJR. The development and integration of the system required a considerable effort from both the DIHR and the partner in Cambodia, both in terms of defining indicators that were

operational in a Cambodian context and in terms of effective measuring of the progress. The implementation of the IMS required widespread training both of the GS-CLJR staff and of the implementing structures at ministerial working group level. Today the mechanism functions as an excellent tool for assessing the progress of the LJR Plan of Action and it has been accepted by all involved in the implementation.

DIHR also prioritised the development of model courts for strengthening the path towards a society where the judicial powers and the executive powers are separated. Through the delivery of a concept for a model court project, and the establishment of a high-level working group for the model court project to coordinate the process, the process of implementation was starting. A needs assessment of the model courts was delivered by the PMU/GS-CLJR and business planning workshops for the selected four model courts were carried out. Each of the model courts developed strategic plans for their development and meetings of dissemination of fact based information with civil society were held in the provinces. This created expectations, a great sense of ownership of the project among the selected courts, and provided an overview of the needs of the courts. At this point the project was delivered to the Ministry of Justice which established a working group for implementation of their part of the plan of action. An intense dialogue between DIHR and the Ministry of Justice was conducted

in order to make as smooth a transfer as possible. However, while the DIHR and GS-CLJR model court project focused on setting new standards through the selected courts, the Ministry of Justice was more focused on the general concrete and pressing issues of the judicial system in Cambodia such as backlog of cases, extended pre-trial detentions, and lack of access to information about progress in case handling.

The working group of the Ministry of Justice based its reform on developing court registrars and not on developing court administration and court and case management as proposed by DIHR in its model court concept. Hence, the continuation of the programme focused on the development of court registrar manuals which were delivered in 14 volumes based on all the latest legislation on Civil Code and Civil Procedures Code with 8 volumes based on the Penal Code and Penal Procedures Code. International donors have promised to provide an electronic version.

During the process the ministry lost the donation promised to them by Danida because the changed project was not the same as the model court project that Danida had promised to support. However, the government financed the publication and the dissemination of the court registrar manuals. Hence, they have been disseminated to all courts in Cambodia as the government wanted to include all courts in the dissemination of the court manuals.

However, DIHR continued to push forward the development of the three fundamental laws regarding the court system, and provided three expert desk studies. These studies served as the basis for a two-day presentation at a workshop with the participation of the Supreme Court, Court of Appeals, Ministry of Justice, ECCC, Phnom Penh Court, Prey Veng Court and the GS-CLJR, which is believed to have been a step forward towards the adoption of the three laws by the end of 2012.

In summary: while DIHR did not succeed in implementing the part of the project regarding model courts, even though expectations had been raised, DIHR continued to pursue the passing of the three legislative provisions. As this process can not be regarded as terminated, it is still an open question whether it will succeed, which partly depends on the assumption that the participants of the two-day presentation workshop (members of the Supreme Court, Court of Appeals, Ministry of Justice, ECCC, Phnom Penh Court, Prey Veng Court) have influence on governmental politics.

In 2010 DIHR suggested the updating of the LJR Plan of Action and provided a number of working notes on monitoring, alignment of the monitoring with the IMS, and methodology on how to update the GS-CLJR strategy, plan of action and annual work plans. This development led to the development of a consultancy report on costing of the LJR and the updating of the LJR Plan of Action.

DIHR provided input to the development of a legal aid policy in GS-CLJR. The GS-CLJR developed a legal aid option paper. Furthermore, the GS-CLJR put together an 'Access to Justice' compendium, which today is disseminated to all levels of the justice sector in the provinces.

DIHR has also provided input to a five-year ECCC (Khmer Rouge Tribunal) legacy project, where the idea is to ensure transfer of ECCC best practices in terms of tools, methods and procedures to the ordinary court system in Cambodia. This has led to a draft project document produced by GS-CLJR, which has been submitted to CLJR.

## 8.6 OUTPUTS

- I. The LJR Plan of Action and the project catalogue succeeded in raising substantial funding for implementation. The donor approach was less coherent than could be desired and it turned out to be not an easy task to coordinate and ensure funding and readiness to receive funding for implementation at the same time. But overall the fundraising was successful.
- II. During this phase the PMU/GS-CLJR became a capable and very professional coordinating and monitoring entity of the LJRS implementation. The office was and still is the core headquarters for the coordination and monitoring of the implementation process at it is capable at all times of delivering an updated status



overview of the progress. Today GS-CLJR is a very up-to-date and professional body, which is capable of performing at a high level of quality by using 'New Public Management' inspired tools of process and performance monitoring.

- III. The entire implementing structure was set up with technical working groups at ministerial level, appointed focal points to function as the nexus of reporting and communication between the coordinating and monitoring PCB and PMU and the implementers of the plan of action. The monitored activities are being shaped by the working groups and executed through the ministries. According to the information provided by the GS-CLJR and the supporting documentation, about 70% of the LJRS has been implemented. Although the method for reaching this figure is not completely clear, the evaluation team finds that the GS (and its predecessors) have indeed succeeded in carrying out a substantial number of the planned activities.
- IV. Part of the reform strategy was the reform of legislation according to the LJR Plan of Action and the monitoring hereof. Important laws have been passed as part of the implementation: the Law on Media/Press; Law on Domestic Violence; Civil Code; Civil Procedures Code; Penal Code; Penal Procedures Code; Law on the Penitentiary System and Correctional

Services, Law on Provinces and Municipalities; Anti-Corruption Law; Land Law; and Law on Commercial Arbitration. The adopted legislation is enacted and has been implemented (for instance the Penal Code and Penal Procedures Code). Other legislation is under preparation in areas such as an NGO Law; Access to Information; Administrative Code; Administrative Procedures Code; Law on the Organisation and Functioning of Courts; Law on Court Administration; Law on Police; Amendment to the Law on the Organisation and Functioning of the Supreme Council of Magistracy; Statute of Magistrates; Law on the Organisation of the National Congress; Law on Demonstrations; Legislation to ensure the protection of human rights and rights for vulnerable groups; and Code of Ethics/Conduct for Judges, Prosecutors, and other Judicial Staff. It should in this context be mentioned that the new legislation developed through this process tends to represent the legal traditions and principles of the country of origin of the donating agency, i.e. civil law or common law traditions as Cambodia has not taken an overall decision on which legal tradition its future legal and judicial sector should be based.

- V. Other elements of the LJR Plan of Action have been completed. Training at community level in basic rights of citizens; inclusion of human rights in the

school curriculum; education of all law enforcement agencies in citizens' and human rights; development of high-level human rights training at universities and professional schools; establishment of a training centre for lawyers; capacity building of the Council of Ethics within the Bar Association; development of a code of ethics for civil servants and strengthening of a council for discipline of civil servants; capacity building of the School of Magistrates and judicial staff; establishment of Council of Discipline for law enforcement officers; minimum standards for obtaining a degree in law and public administration; monitoring system of the justice sector to measure its overall performance as a guiding line for overall reform; and integration of the justice sector institutions at the policy level especially in sharing information.

- VI. Beside these outputs many other elements of the LJR Plan of Action are under implementation while only a minor part remains non-initiated, mainly due to lack of financial support.
- VII. With intensive DIHR support the PMU/GS-CLJR developed an indicator monitoring system (IMS) that has been integrated into the monitoring of the entire LJR Plan of Action implementation. The system has required some training and both the staff of the GS-CLJR and of the implementing structures have been trained and the

system is functioning well for assessing progress.

- VIII. Four of the most important courts were assessed for needs and trained in business planning, the aim being that the four courts should become model courts for piloting the future court system in Cambodia. However the course of the programme was fundamentally changed by the Ministry of Justice into one where 22 court registrar manuals were developed and disseminated through the court system in Cambodia.
- IX. Three expert desk studies regarding the three laws: 'Law on the Organisation and the Functioning of the Courts'; 'Law on the Statute of Magistrates' and 'Law on the Organisation and the Functioning of the Supreme Council of the Magistracy'.
- X. A workshop with the participation of the Supreme Court, Court of Appeals, Ministry of Justice, ECCC, Phnom Penh Court, Prey Veng Court and the GS-CLJR discussed the three desk studies.
- XI. DIHR provided working notes on monitoring; on alignment of the monitoring with the IMS; and on methodology of how to update the LJR Plan of Action. A consultancy report on costing of the full LJR implementation was developed by the GS-CLJR with support from Danida and the process of

updating the LJR Plan of Action has been initiated.

- XII. A draft project document produced by GS-CLJR, which has been submitted to CLJR for a five-year ECCC (Khmer Rouge Tribunal) legacy project, where the idea is to ensure transfer of ECCC best practices in terms of tools, methods and procedures to the ordinary court system in Cambodia.
- XIII. An access to justice compendium has been publicised and disseminated to all levels of the justice sector in the provinces.

## 8.7 OUTCOMES

- I. LJRS managed to receive sufficient funding to realise most of the planned activities. The relation between IC and the LJRS structures was at times difficult, but started only to deteriorate in 2009, when the IC was becoming frustrated by a perceived too slow implementation of the LJR.
- II. The RGC and government administration are applying a sector approach to the LJR process and are capable of applying monitoring and coordination of the process to the highest international standards. However over time the thin layer of gained capacity becomes evident as staff turnover requires constant re-empowerment of the structures as new incoming staff at all levels are not

familiar with the rationale behind the applied methodologies and use of tools. At the same time, seasoned staffs over time tends to lose some of its energy by carrying the heavy load of the structures and needs new input and inspiration. Over the period the GS-CLJR seems to have lost some of its proactive capacity and started to become increasingly reactive.

- III. The result that has been achieved through the implementation of the LJRS is the gradual normalising of the justice sector in Cambodia. It is beyond doubt that the LJR is needed and that the results are impacting positively on combatting crime and there is a gradually strengthening sense of rule of law, which is especially needed in the business sector. The process of implementation of the LJRS is far from accomplished and it would have very damaging effects on the Cambodian society if the implementation were to be abandoned prematurely. The judicial sector in particular needs to have the LJR pushed forward to achieve the independence of the judicial power.
- IV. Much of the legislation required by the LJR has been drafted, passed and adopted and most of the non-law reform oriented parts of the LJR Strategy have been implemented.
- V. Despite coordination of donor support and ensuring coherence in the development

of Cambodian legislation being one of the reasons for the development of the value document and the LJRS, development partner support for legal and judicial reform has been somewhat scattered and uncoordinated, and imprints from specific legal systems on specific branches of legislation have remained a feature of the lawmaking process.

- VI. The setup of implementing structures, the sector approach, the monitoring methodologies, implementing rationales, and the inter-ministerial cooperation and communication are standard setting for the public administration, which is important and rare in developing countries. The implementing structures have become attractive postings for public employees, not because of salaries, which are no different from other postings, but because of the learning and experience that can be achieved at the GS-CLJR.
- VII. However, the monitoring system is based on quantitative process data and not on assessment of the quality of the deliveries. Hence, the quality of the adopted legislation has not been assessed and the evaluators heard critical remarks concerning some of the provisions of new legislation that potentially could violate human rights. The programme for implementation of law reform did entail the establishment of quality control of draft laws, but this device was never implemented.
- VIII. The passing of new legislation in order to strengthen the rule of law requires a much more planned and thorough popular participation that the evaluators could assess as having been done in Cambodia. The passing of a new Penal Code, for instance, with a nearly threefold increase in defined criminal acts without a widespread campaign informing people about the new legislation did result in people unintentionally trespassing the new provisions by performing actions that did not previously constitute an offence/crime; and so they were arrested for offences/crimes they had no idea or intention of committing.
- IX. The preparatory work on the model court project (needs assessment and business planning training) led to nowhere as the concept for model courts that supported these activities was later abandoned. The expectations that had been raised and the ownership that seemed to have been created for the model court project were disappointed. However, the development of court registrar manuals has been appreciated by the courts, as they provided concrete solutions to immediate problems and, at least at the model court visited by the evaluators, they were appreciated for their effect of increasing the management of cases and ensuring the rights of people involved in court cases. As this evolution of the project diverts from the original GS-CLJR concept

and planning, the MoJ had to implement this project without any foreign assistance. The Ministry of Justice is interested in establishing relations to DIHR to receive support in the future in relation to the development of subsidiary legislation for the fundamental laws regarding the legal and judicial sector, once they have been adopted.

- X. The three desk studies regarding the three fundamental laws pertaining to the judiciary and the subsequent workshops did create some dialogue, and it is possible that the three laws will be passed before the end of 2012.
- XI. The DIHR counselling kept the GS-CLJR updated in relation to strategy, improved their knowledge about the actual costs of the LJR and ensured the GS-CLJR updating of the LJR Plan of Action.
- XII. None of the people interviewed about the issue of transferring ECCC best practices in term of tools, methods and procedures to the court system in Cambodia found it realistic to expect any such transfer could happen in practice, as the ECCC was seen as a foreign-implemented system, that required in general and in all details human, intellectual and financial resources that are very far beyond the reach of the Cambodian realities and will be for any foreseeable future.

## 8.8 CONCLUSIONS

### 8.8.1 THE THEORY OF ACTION AND THEORY OF CHANGE FOR THE THIRD PHASE

The matrix on the next page shows that neither the theory of action nor the theory of change were disproved by the events and hence must be considered as valid for the process. This conclusion can be drawn from the fact that the results were mainly achieved. So the negative elements listed under the unexpected results are not discrediting the rationale but are to be considered as a point of implementation learning and hence to be addressed when an additional and possibly final phase of the programme is planned. Hence, the implementation was not flawless; the withdrawal of the DIHR advisor and the consequent loss of DIHR capacity to deliver prompt responsiveness to evolving situations is one of the decisions that could be revisited in order to draw some lessons; for instance in relation to the important function of bridging the relation between RGC and IC and supporting the inter-ministerial cooperation. The lack of implementation of the quality assurance of new proposed legislation did also bring about the unexpected negative result of new legislation.

The negative unexpected results in term of lack of information to the public on new legislation and lack of control over the quality of draft laws are also significant points of learning for the future.

	<b>Results of theory of action</b>	<b>Results of theory of change</b>
<b>Implementation was perfect<sup>7</sup></b>	Most results are delivered	Results were mainly delivered (70%). Unexpected results: - The monitoring structure tends to stress implementers.
<b>Implementation was not perfect</b>	<ul style="list-style-type: none"> <li>- Weakened DIHR on-the-spot support to partners.</li> <li>- Law quality control mechanism never implemented.</li> <li>- Lack of public information on new legislation.</li> </ul> <p>Unexpected results:</p> <ul style="list-style-type: none"> <li>- Loss of detailed DIHR overview and responsiveness.</li> <li>- Non-inclusion of civil society</li> <li>- Loosening coordination of IC support.</li> <li>- Legislation of a questionable quality gets passed.</li> </ul>	<p>Loss of direct channel of contact to top level of Cambodian politics.</p> <p>Unexpected negative results of some law reforms.</p> <p>No quality control of new laws, lack of information.</p> <p>Citizens are not properly informed about new legislation.</p>
<b>Context changes</b>	<p>New government in 2008.</p> <p>Key channel of connection to government disappears.</p> <p>Periodic funding issues.</p> <p>Change in the crucial remuneration system.</p>	<p>Loss of connectedness to top-level politics</p> <p>Growing donor fatigue in the last three years.</p>

The loss of a direct channel of influence to the top level of Cambodian politics is a serious problem for such a programme. On an immediate level, the loss was due to natural causes beyond the possibilities of the programme to change. However, on the level of sustainability of the programme, the issues were probably not promptly addressed with a convincing effectiveness and vigour by DIHR, in particular, as one could have expected.

The context did encounter changes during the years. As context is a main precondition for implementing theory of action and change, it will always be possible to discuss how much context changes influenced the final global outcome of the programme and how much they influenced aspects of the programme. However, the learning points listed above are not out of reach of implementers and should be seen as mainly theory or implementing shortcomings. The evaluation team had some discussions during the many interviews concerning the impact of the 2008 elections on the programme. The evaluators are not experts in Cambodian politics, but in their view not much formally changed after the 2008 elections, as the LJR remains a key result area of governmental politics. So we did not find anything beyond speculations and uncertain impressions on change concerning the RGC's determination of carrying on the reform process. However, at this point the issue of timing is important to discuss: how fast do we expect such an ambitious programme as the LJR to be implemented? IC was concerned

as they are expected to report to their governments on success as well as on failures to consider. For the Cambodian government the priorities at hand may look different and require a different pace of implementation of the LJR. That, however, is not the same as abandoning the process.

### 8.8.2 CONCLUSIONS TO THE THIRD PHASE

I. The implementation of the LRJ Plan of Action is progressing. The DIHR input to the process has been crucial for reaching the present stage. It is concerning that international donors may pull out prematurely. Beside the benefits for Cambodia in having the justice sector reformed, the DIHR partnership with the RGC has produced a valuable example of how a country with as complex a context as that found in Cambodia for the development of a modern Rule of Law-based legal system can apply modern 'New Public Management'-inspired techniques and approaches to ensure an effective conduct and performance of administrative structures. The Cambodian context and the findings of the evaluation underscore that adaptations are necessary to the 'justice sector' reform model applied in countries with a larger resource pool of legally-trained individuals than that which was present in Cambodia at the outset of the programme. It also underscores that adaptations may be necessary and particular attention needs to be paid by DIHR to the implementation

of the Rule of Law and related values in such a context.

- II. The pertinence of the LJR programme is twofold: one part is the actual realisation of the LJR and the benefits it may provide Cambodian society, and the other part is the ensemble of implementing structures and methodologies and approaches that have been applied and that are new for Cambodia. The learning from this experience will last beyond the actual LJR process, but it requires that the LJRS be fully implemented to prove its worthiness in a Cambodian context. Especially in light of the pulling out of the most important international donors, it would be irresponsible if DIHR decided to exit the programme leaving the Cambodian government with a semi-finished process and without the necessary knowhow to ensure its further conduct.
- III. According to information from the GS-CLJR, around 70% of the planned activities under the strategy have been implemented. Part of the reform strategy was the reform of legislation according to the plan of action and the monitoring hereof. Important laws have been passed as part of the implementation: Law on Media/Press; Law on Domestic Violence; Civil Code; Civil Procedures Code; Penal Code; Penal Procedures Code; Law on the Penitentiary System and Correctional Services, Law on Provinces and

Municipalities; Anti-Corruption Law; Land Law; and Law on Commercial Arbitration. The adopted legislation is enacted and has been implemented (for instance the Penal Code and Penal Procedures Code). Other legislation is under preparation in areas such as an NGO Law; Access to Information; Administrative Code; Administrative Procedures Code; Law on the Organisation and the Functioning of Courts; Law on Police; Amendments to the Law on the Organisation and Functioning of the Supreme Council of Magistracy; Statute of Magistrates; Law on the Organisation of the National Congress; Law on Demonstrations; Legislation to ensure the protection of human rights and rights for vulnerable groups; and Code of Ethics/Conduct for Judges, Prosecutors, and other Judicial Staff. It should in this context be mentioned that the new legislation developed through this process tends to represent the legal traditions and principles of the country of origin of the donating agency, i.e. civil law or common law traditions, as Cambodia has not taken an overall decision regarding which legal tradition its future legal and judicial sector should be based on.

- IV. Other elements of the plan of action have been completed: training at community level on basic rights of citizens; inclusion of human rights in the school curriculum; education of all law enforcement agencies in citizens' and



human rights; development of high level human rights training at universities and professional schools; establishment of a training centre for lawyers; capacity building of the Council of Ethics within the Bar Association; development of a code of ethics for civil servants and strengthening of a council for discipline of civil servants; capacity building of the school of magistrates and judicial staff; establishment of a disciplinary council for law enforcement officers; minimum standards set for obtaining a degree in law and public administration; monitoring system of the justice sector to measure its overall performance as a guideline for overall reform; and integration of the justice sector institutions at policy level, especially in sharing information.

- V. During the long period of implementation of the third phase of the programme, the relations between DIHR and the Cambodian partners changed. The overall, detailed, DIHR 'continuous on-the-spot support and monitoring' of the build-up of the LJRS implementing, monitoring and coordinating structures shifted towards a more distant and punctual attention to focal or strategic aspects of implementation. This tendency was exacerbated after the withdrawal of the post of resident HRA, reaching a low point at the period of funding uncertainty in 2009 and the period of transition from the output-based remuneration system to

the less effective priority operating costs system.

The period of funding insecurity where the donor community decided to tender the support programme for the LJRS implementation and the transition from output-based remuneration to the POC system caused difficulties for DIHR's efforts to build up an effective infrastructure for the LJRS implementation. It was caused by decisions taken beyond the control of DIHR and the Cambodian partners. However, these contextual issues concerning temporary funding uncertainty and the backlash on the remuneration system did coincide with a degree of loosening of DIHR's strategic grip on the situation. It is a paramount feature of the DIHR approach that DIHR is always on top of the situation and able to provide its support on a 'just in time basis'. The lack of a DIHR contribution to the management of the increasing frustration in the donor community with the perceived slow implementation of the LJRS in this period is an example of the loosening grip. The trouble with the lack of success with the model court programme added further to the sense of gradual slowing down of the process. Without the close support of DIHR the GS-CLJR did not manage to use its own structures such as the CLJR and to establish new connections to the top layer of Cambodian politics. Hence

the GS-CLJR became more reactive to the increasing critique from the IC and the difficulties of keeping the Ministry of Justice in line with the LJR Plan of Action.

- VI. During the field mission's many interviews the evaluation team had some discussions concerning the impact of the 2008 elections on the programme. The evaluators are not experts in Cambodian politics, but in our view not much formally changed after the 2008 elections in relation to the LJR, which remains a key result area of governmental politics. The team did not find anything beyond speculation and uncertain impressions of any change concerning the RGC's determination to carry forward the reform process.
- VII. It has been crucial for the implementation of the LJRS that it has been successful in raising funds among the international community. In this context the assistance of DIHR to bridge IC donors and LJR through active promotion and networking has been an extremely important factor in the good results. However, the last part of the period from 2009 is characterised by increased frustration among donors for what they perceive as a slow implementation of the LJRS. The announcement by major donors of their intention to pull out of Cambodia in the near future is concerning, as the LJR is not fulfilled, even though major results have

been achieved. This situation will affect the implementation of the remainder of the LJRS. Without the support of these partners the LJRS will have to rely mainly on the remaining IC donating agencies but also more heavily on the strength and capacities of the RGC. This could also be an opportunity for the LJRS to re-launch itself on more Cambodian terms and to ensure the consolidation of the achieved results on Cambodian terms. With the upcoming national elections in 2013 and the uncertainties that this entails, it will be extremely important for the implementation of the LJRS that it retains direct international support for its capacity development and close daily monitoring of the progress or lack of progress in order to ensure the strong standing of the implementing structures and the reinforcement, if possible, of their connection to the political top level of the country.

- VIII. The evaluation found unexpected results due to implementation problems. The lack of quality control of proposed new legislation brought about legislative measures that are questionable. Lack of timely and adequate publicity in relation to law reform initiatives brought about an awkward situation of people unknowingly acting in breach of new legislation. The latter may also be seen as a result of lack of sufficient inclusion of civil society in the reform process. Finally, also, lack of

overall coherence in which legal traditions are applied to the reforming legislation may become a problem for Cambodia in the future. Other unexpected results such as the standstill of the model court project, dissatisfaction or frustration among donors, the slowdown of the implementation process in recent years and a certain element of fatigue at the GS-CLJR are the result of errors of implementation.

- IX. The withdrawal of a resident DIHR HRA position from the PMU was probably a good decision at the time, but it did cause unexpected effects in terms of a too loose supervision and monitoring of the development of the LJRS implementation by the DIHR and hence a lack of a full appreciation of the actual situation. The PMU was capable of conducting its activities as a monitoring body for the LJRS, but needed further support to establish and strengthen the position of the LJRS with the new government after 2008, a situation that was further exacerbated by the death of the well-connected, high ranking official who held the position as chairman of the CLJR until early 2009, hence losing the connectedness and insightful influence with the top level of the government.
- X. The main bulk of the LJRS was supported by the IC donating agencies. However, the support was not coherently coordinated

in relation to the need to carry through an effective implementation but rather support was given in relation to donor strategies and priorities. At the same time the delivery of donor support was determined by the preparedness of receiving agencies to start concrete implementation.

- XI. The implementing working groups in the ministries and governmental bodies are reporting to the PMU as the monitoring agency. However, the implementers do not see the reporting as beneficial for their activities and sometimes they are stressed by the fact that reporting is resource-demanding and they need further support, for instance in terms of expert assistance.
- XII. The output-based remuneration system has been very important to ensure an effective monitoring and coordination of the implementation of the LJRS. The effectiveness of the role of the GS-CLJR depends partly on such extra remuneration systems and the POC has to some extent replaced the output-based system, even though it is less productive as a system to promote effectiveness.
- XIII. It is a weakness of the monitoring system that it does not provide a coherent quality control of the implementation in relation to ensuring that new legislation is systematically reviewed for being in accordance with international

human rights standards, and that new legislation is thoroughly publicised and communicated to the entire population before being enacted.

### 8.8.3 TECHNICAL ADVICE TO THE RGC

- I. DIHR support has provided a significant and timely input to the operationalisation of the policy of LJR of the RGC, which the government has pursued throughout the period. DIHR input has encompassed both the facilitation of the overall process, supporting the development of a realistic overall reform strategy, which has become part of RGC policy, but also the continuous and effective provision of know-how to solve practical and structural problems for the LJR strategy and action plan development and subsequent implementation.
- II. Still, the evaluation team observes that a mechanism for ensuring coherence and standard quality control of drafted laws is missing. Hence legislation passed presents a mixture of different legal traditions reflecting the legal systems of key bilateral development partner countries. The DIHR suggestion of implementing a system for law reform and a system for good law-making to ensure quality control should be followed up.
- III. In addition, there is no quality control of laws and their implementation in relation to the rule of law and broader human rights standards. Hence the new Penal Code (Criminal Code) includes provisions that may endanger freedom of expression through, for instance, prohibition of defamation, contempt of court, etc. Despite the new Penal Law's institution of a large number (300+) of new crimes and offences, its implementation and its entry into force in 2010 has not been preceded by awareness raising targeting the public. As a result, individuals engaging in a large number of activities that used to be legal may be detained. In addition to the discord with the rule of law element of predictability and the general principle of legal certainty, an adverse human rights impact may follow. For example, for the detained person's enjoyment of employment and, in the case of detention of breadwinners, on the family's access to food and shelter and other social rights.
- IV. The evaluation team notes that on the part of the RGC implementation has been in accordance with the LJRS.
- V. The team also notes in this context that the LJRS emphasises the adoption of new legislation, publication of existing and new laws and dissemination of information to legal professionals. Thus, while the RGC has generally implemented according to the strategy, the evaluation team's findings suggest that support from DIHR could have more precisely targeted not only technical capacity building in relation

to planning of the reform process in terms of objectives, interventions and activity steps, but also could have analytically appraised the needs for a fully-fledged implementation of the rule of law, such as ensuring public foreknowledge of legislation before it enters into force.

terms of ensuring ongoing coherence between assumed knowledge, formulated strategies and action plans, and practical implementation. Such expertise could be brought to use through coaching partners on the details of the rule of law as a value in specific legislative contexts.

- VI. The team has also noted a disregard for the role of civil society in the LJRS. In fact the lack of ensuring public knowledge of legislation before it enters into force also reflects the lack of using effective participatory approaches involving civil society in order to ensure a societal dialogue on the LJRS.
- VII. The general strategy under the LJRS strategic objective 1 to provide training and awareness programmes on human rights and fundamental rights at the community level has not been sufficient to deal with the population's need for information on the new legislation, most likely because a connection has not been made in the strategy between human and fundamental rights, and the very new legislation (such as the Penal Law). This is an important lesson for DIHR, given the Institute's overall mandate.
- VIII. Another lesson in this respect for DIHR is to consider the role of locally-placed advisors/human rights officers (whether long-term or short-term) in relation to bringing their expertise to bear in
- IX. The action planning related to the new penal code also shows a gap of a different sort in the procedure for public information about new legislative provisions. The public is placed as last in the list of those who should be informed of new legal provisions, while ideally, to ensure coherence with the principle of transparency, the public should be thoroughly informed preferably before or when a draft law is presented in parliament and at any rate before it is enacted.
- X. The team also notes that the LJRS emphasis on discipline and monitoring within law enforcement may on the one hand contribute to law enforcement professionals eagerly pursuing the enforcement of new legislation and, on the other, not be met by equal knowledge on the part of the population of their rights and obligations. Again, this provides lessons for the RGC for the adjustment of the LJRS and future action plans, as well as for DIHR in its future endeavours beyond support to the RGC LJRS.

XI. Despite being an implementing agency charged with important elements of the reform process, the Ministry of Justice perceives the GS-CLJR as a 'one way' monitoring and reporting system with no real benefit or feedback to the ministry, rather than as a information-sharing and solution-providing mechanism.

#### 8.8.4 ADVICE TO THE LJR MANAGEMENT STRUCTURES

- I. The partnership between the DIHR and the Council of Ministers in relation to the LJR has been smooth and forthcoming with a general positive approach, which is founded on mutual trust throughout the period of implementation. Hence the DIHR efforts have had a positive impact on the development of rule of law in Cambodia.
- II. The RGC has taken ownership of the reform process as evidenced by the Government's adoption of the strategy, establishing of the CLJR and the GS-CLJR, the drafting and passing of a number of new statutes, and the provision of human, financial and institutional resources. However, due to the emergence of new legal professionals and politicians, there is a need to revitalise the reform process to ensure that ownership and detailed understanding of the reform is found also with the new generation of leaders and legal and judicial professionals.
- III. The LJRS and its implementation have hinged on a few key individuals within the RGC. While this demonstrated the ability to make use of fortunate conditions at the inception of the process, hinging a reform process on particular individuals in the longer run makes it vulnerable. Given the maturation of the reform process with now more than ten years passed since its inception, a revitalisation offers an opportunity to connect the process to institutions rather than individuals, and to involve a larger number of the emerging decision makers.
- IV. In particular the revision of the three fundamental laws on the judiciary has suffered from delays and has been diverged from the open approach taken at earlier stages of the reform process. The revision process takes place in a closed hearing forum involving key government institutions. There is a need to invigorate the process and ensure broad communication, information sharing and stakeholder participation to ensure the essential ownership and commitment within involved institutions, including the Ministry of Justice.
- V. The new Penal Law (Criminal Law), which was adopted as part of the LJR process, established a large number of new crimes and offences and entered into force in 2010. Dissemination of information to the legal sector and the public was planned

to follow the law's entry into force. Due to the withdrawal of expected support from a bilateral development partner, awareness raising targeting the public has not been possible. The chain of events surrounding the new penal law entails a number of significant lessons for DIHR as well as the GS-CLJR. To accord with the elements of the rule of law noted in the LJR Strategy, entry into force of new legislation should be timed so that awareness raising targets justice sector professionals as well as the public. This is the case especially in the case of legislation that may lead to the deprivation of an individual's liberty or property due to formerly legal actions becoming illegal, or the introduction of new sanctions. This important learning should feed into the future capacity building as well as planning of implementation of the LJR.

## GENERAL CONCLUSIONS & RECOMMENDATIONS

The evaluation team finds that the rationale applied to the DIHR support of the LJR in Cambodia has proved to be valid on the overall level. The partner-based approach with dialogue, advice, counselling, but also the insistence on keeping the Cambodian partner solidly in the responsible driver's seat, has proven to work well when the needs for support are closely monitored and DIHR remains closely sensitive and responsive to the evolving situation. The overall sector approach has also proven its worthiness when properly adapted to the Cambodian context with the necessary advice, coaching and guidance for instilling the understanding of the horizontal flow of justice through the various governmental institutions and hence the need for inter-ministerial institutional cooperation, joint planning and coordination. The applied methodologies in creating the appropriate implementing structures and monitoring systems based on advanced reporting and indicator systems have also proven to be valid in Cambodia. The tools that have been transferred to the implementing bodies in term of strategic planning, project management tools, fact based dialogue and participatory approaches have also worked well in Cambodia. The expertise provided by DIHR

to support the LJR has also proven to be to the point and appreciated by the partners. In fact the process has, over the span of a decade, proven that the most advanced methodologies and approaches can be transferred and used also in third world context, provided they are appropriately adapted.

However, the evaluators did find a few flaws, which are the result of implementation faults. Hence, the evaluation found unexpected results in relation to lack of quality control of output contents; lack of appropriate and adequate publicity in relation to law reform initiatives, which again is connected to another gap related to lack of sufficient inclusion of civil society; and lack of overall coherence in which legal traditions are applied to the reforming legislation. These gaps need to be addressed in the rationale of future planning.

Other unexpected results such as the changed course of the model court project, dissatisfaction or frustration among donors, the slowing down of the implementation process in recent years and a certain element of fatigue at the GS-CLJR, are implementation problems that could have been addressed



more proactively by DIHR. These points should be taken into consideration for this and future programmes:

- The model court project basically suffers from lack of mutual trust and vision between DIHR/PMU on the one side and the Ministry of Justice on the other side. As it happened, the approach taken by the Ministry of Justice was understandable. The DIHR methodology builds essentially on a high degree of mutual trust and credibility among involved partners and stakeholders, but these key elements were not in place in the relation between DIHR/PMU and the Ministry of Justice in the model court project. Here the project was initiated before the main stakeholder, the Ministry of Justice, was fully on board as an active partner. It is always a problem to start a project without having the main stakeholder and its assigned personnel engaged at the initial stage.
- Concerning the evolving fatigue trend in the GS-CLJR, it could have been addressed at an early stage by ensuring that the capacity level of the staff would remain at the same level even with a certain natural flow, and ensuring that young, upcoming staff would be attached to the entity to ensure continuity.
- The evolving frustration among donors might have been moderated by a stronger direct commitment by DIHR to bridging donor expectations and implementing capacities and possibilities more effectively as it had

done earlier in the initial stages. The relation to IC is a basic key concern in a programme of this magnitude, which is highly dependent on excellent relations to IC

- Problems related to legal certainty of the Cambodian population with regard to the implementation of the new penal code could have been apprehended by DIHR attention to the timing of the training and information schedule related to the revised code. DIHR, including the HRA, might consider actively engaging with partners to turn timing schedules into exercises in how to consider and ensure legal certainty and other elements of the rule of law are a part of the process of implementation. Provision of information and training by DIHR or other experts could have served as an opportunity for the GS/Cambodian partners to take action to amend the implementation schedule to ensure that the public would be informed of the new code prior to its entering into force.

The period of funding insecurity, when the donor decided to tender the support programme for the LJRS implementation, and the transition from output-based remuneration to the POC system, was harmful to the efforts of DIHR to build up an effective infrastructure for the LJRS implementation. It was caused by decisions taken beyond the control of DIHR and the Cambodian partners.

Nevertheless there is such consistent connectedness between the flow of variables

during the implementation, their close connection to the outputs, and the outcomes' clear relation to the outputs, that it can be stated that the results achieved with the LJR have been reached as the direct effect of the DIHR partnership with RGC.

Taking the magnitude and ambitions of the LJRS into consideration, the evaluators do not share the frustration of some of the IC about a too slow implementation. Considering the socioeconomic realities of Cambodia and the need for additional competent human resources the evaluators find the pace of the LJRS implementation process quite reasonable. The LJRS process is progressing all the time and it is still a key governmental priority.

The evaluation team recommends that the partnership programme be continued for a period of five years (2012–2017) based on the subsequent suggestions intended to revitalise the partnership programme and update it in relation to the current situation of Cambodia in relation to the strategic objectives of the legal and justice sector as noted in the Legal and Judicial Reform Strategy (2003). Thus, it is recommended that the partnership programme revitalisation and update be undertaken with the original focus on the establishment of a credible and stable legal and judicial system 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 economic growth. The evaluation team

finds that such continuation is not only feasible based on the commitment of the RGC already demonstrated but also that discontinuing the partnership at the current stage would be irresponsible on the part of DIHR as it might put at risk important elements of the legal and justice reform process as well as the further dissemination of capacity built during the partnership so far. In making this observation, the evaluation team has had regard to DIHR's overall mandate as an international human rights institution and to the value foundation of the LJRS, including the principle of rule of law drawn from the Constitution of Cambodia.

In view of the historically-based need to not only build institutions and capacities within these, but also to train legal professionals and professionals within the court system to work in the public and private sectors as well as in civil society and to build a culture in accordance with the values entrenched in the constitution, the team finds that the progress made under the Legal and Judicial Reform Strategy and its sub-documents until now is convincing of the relevance, pertinence and effects of the programme.

In view of the fluid situation that marks much of public life in Cambodia and the recognised limitations of human resources for the sector, the team finds that discontinuing the partnership programme at the current time would be untimely as well as unwise. Discontinuing the programme would risk undoing much of the progress that has been

achieved, as it would mean withdrawing support before the Legal and Judicial Sector Strategy is fully internalised into relevant institutions and processes. The team finds that the non-implementation of the three statutes concerning the judiciary does not in itself warrant discontinuing the programme. Rather, this calls for taking a step back to reconsider the way that the reform has been implemented, and to draw on lessons of the process to revitalise the programme and ensure ownership as well as accordance with the fundamental concepts.

DIHR and its Cambodian partners should reflect on the possibility and/or need for a revision and rejuvenation of the almost ten-year-old LJRS and its strategic objectives. The idea is not to reinvent the LJR but to apply an incremental approach to the updating process. Thus, the reinvigoration of the process should be **based in the existing agreement on the strategy founded on the constitutional concepts. It should assess implementation needs in view of what has been accomplished and the lessons learned so far, identify and assess gaps and unintended effects in relation to accordance with the fundamental concepts, and revise the action plans accordingly.**

A process of launching a revised LJR Plan of Action should be used to mobilise all stakeholders among governmental structures and civil society and hence create ownership of the process by a new as well as the emerging generation of decision makers. The 2013

election may be an opportunity in this regard as political interest in positive publicity for the reform effort may ensure political awareness and engagement.

In fact, a longer implementation period for the three fundamental statutes allows for planning and execution of training of the judicial profession and dissemination to the public prior to the entry into force of the new provisions, thus reinforcing coherence of rule of law with particular regard to predictability and legal certainty. It also allows for drawing on the experience developed within the quite active (Labour) Arbitration Council and its staff, for example in terms of rolling out a system of an independently working dispute resolution system and disseminating knowledge to the public. Human resource capacity building might also be developed through exchanges and seminars with the Arbitration Council, with due regard being paid to the preservation of the independence of that institution, as well as its workload.

Continuing the programme 2012–2017 thus provides an option to increase its sustainability by strengthening Cambodian ownership and further building the capacity to ensure coherence of all activities with the fundamental concepts, not least the rule of law, including through building capacity for learning loops and the ability to analyse the legal certainty effects and take steps to mitigate any unintended outcomes and revise action plans accordingly. Continuing the programme

2012–2017 also allows the RGC to analyse specific issues or topics for which continued or expanded partnership cooperation could further promote development in accordance with the fundamental concepts of the legal and judicial sector, and to develop detailed applications. Continuation of the programme in accordance with the directions and actions set out below will allow the DIHR to make an informed decision on whether to discontinue the partnership or to continue collaboration in certain areas, based on requests from the RGC, or to deal with unintended outcomes that clash with the fundamental concepts underlying the LJR Strategy.

### 9.1 SUGGESTED THEMATIC DIRECTIONS AND ACTIONS

The recommendations are based on suggested thematic directions for issues to be addressed to update the programme in relation to the current situation in Cambodia in terms of the basic concepts of the legal and judicial sector noted in the Legal and Judicial Reform Strategy as well as in the informing value document, and actions to revitalise the programme and ensure its sustainability through national ownership.

The suggested thematic directions are drawn from the vision statement for the legal and judicial sector, with particular emphasis on the following visions:

- Expanding legal and judicial reform with particular emphasis on personal freedom and rights, including property rights of all

individuals throughout the country through timely, effective and fair delivery of justice

- Upholding the rule of law in a market-based economy
- Ensuring a credible and stable legal and judicial framework within a system of separation of powers, including an independent and capable judiciary
- Ensuring effective access to justice for all in the due process of law before a court or other conflict resolution mechanisms in all settlement of disputes between the State and individuals, and between individuals, and
- Transparency and promotion of awareness among citizens of their rights and obligations.

In accordance with this, the following directions are suggested for collaboration 2012–2017, with a view to either closing the programme in relation to each specific issue, or to prepare for further collaboration:

- Spreading capacity already built and to be built over the coming years in order to prepare emerging leaders and professionals to take over the planning and management of the legal and judicial sector reform and ongoing revision and implementation during and after remaining DIHR collaboration.
- Building rule of law awareness and a rule of law culture with particular emphasis on (but not limited to) legal certainty, and including (but not limited to) the ways in which the rule of law interlinks with the separation of powers.

- Mapping land development and environmental issues, with a particular emphasis on (but not limited to) property rights of individuals and economic organisations throughout the country, the environmental impact of economic development in the market-based economy, and options for ensuring the sustainable development of Cambodia in the current regional context. Given the current economic and regional context as well as the realisation that has come about since the LJR Strategy was first drafted of the environmental impact on general society and the role of the 'justice sector' to ensure sustainable economic growth, the team recommends that RGC considers taking steps in this direction as a modality towards building regional competitiveness. Prime Minister Hun Sen's recent Executive Order and call for a study to review the social impact of economic land concessions (ELC) to be finalised in late 2012 could provide a timely option for exploring how the LJR could expand in this field. It also offers an opportunity for DIHR to explore options to support broad consultation (including with civil society) to feed into the study in response to the Prime Minister's call.
- Networking with civil society, including Cambodian NGOs, in future steps of the LJR.
- Investigating options for public-private partnerships in support of the LJR Strategy as updated/revitalised; for example in the area of an electronic legal information database

comprising not only statutes (currently communicated through the Gazette) but also regulations and other legal documents and judgments (not currently communicated in a comprehensive manner). In the same vein, exchanges may be considered to allow the Arbitration Council to liaise with Danish labour organisations, and with the Danish garment and shoe industry to explore issues of shared interest.

- Establishing a pool of experts for the GS-CLJR in the further development and implementation of the reform. As a point of departure, local expertise should be deployed. When local expertise is not available, regional or international expertise may be drawn upon. Such a pool of experts would be able to support line ministries and other implementing bodies according to need, and at the same time assist the GS in being not only a monitoring body but also able to provide technical expertise.

In order to revitalise the partnership and the Legal and Judicial Reform process, the evaluation team recommends a number of actions be taken. For all of these, a key objective is to achieve a 'Khmerization' of the LJR process and to link it to the emerging Cambodian leaders across society. As a result, expert participants should, where at all possible, be Cambodians residing in the country, documents should be drafted by Cambodians from implementing institutions with external drafting assistance in the form

of coaching rather than actual drafting, and capacity building should target developing capacity within participating institutions and organisations in a way that is internally replicable and institutionally sustainable across institutions and organisations in Cambodian society.

It is understood that the types of actions are not exclusive but intended as a source of inspiration to be expanded by current and future Cambodian partners within the 'justice sector' and the DIHR. In order to ensure the sustainable building of capacity with emerging leaders and legal and judicial employees as well as local ownership, the evaluation team recommends that detailed elaboration of any revisions or development of new objectives and activities be made by the GS in collaboration with other Cambodian stakeholders, including implementing agencies for the specific objectives. The evaluation team recommends the following actions be taken:

- Staging a seminar to revitalise implementation of the LJR Strategy in the second half of 2012 with the participation of stakeholders from implementing institutions, civil society, development partners and academic experts. The objective is to ensure ownership and commitment to the strategy among current implementing institutions and current and emerging key individuals, and to make the strategy and its implementation less dependent on specific individuals within the RGC. DIHR capacity building and

technical support should take the form of high-level corporate management expertise and rule of law expertise from an expert who has followed the LJR reform from its inception or early implementation and who has extensive on-site experience from Cambodia.

- Holding an annual action planning seminar with participation of stakeholders from implementing institutions, civil society, development partners and academic experts. The objective is to revisit the past year's/ years' implementation of the strategy, detect gaps in implementation or outcomes that may conflict with the fundamental informing concepts, in particular the rule of law, ensure coherence between the strategy implementation and past and planned actions, and develop the next 12 month action plan accordingly. DIHR capacity building should be in the form of coaching and technical corporate management or legal expertise, based on the needs expressed in advance by Cambodian partners. The first action planning seminar should particularly focus on (but need not be limited to) dissemination of awareness of the new penal code to the public and further action on the three fundamental laws on the judiciary, including dissemination to the public and legal professionals prior to the laws' entry into force.
- A series of workshops on the rule of law, targeting the GS-GLJR. The objective

is to build awareness of the rule of law and its elements, including predictability (including fairness/equity), due process and transparency as qualitative elements to be ensured throughout the LJR Strategy and its implementation, and to build capacity within the GS, with all functions to identify rule of law issues that may arise during the implementation of the strategy. In particular this aims to identify any rule of law gaps or risks that result from the implementation, whether in accordance with plan or whether any disruptions occur, so that these can be brought to the attention of the GS management with regard to imminent revision of the LJR plan of action to avoid or at least mitigate adverse effects, pending reversal to ensure the particular rule of law elements and impact from a broad human rights perspective. This recommendation also includes a reversal and revitalisation of the existing component on good law-making. Capacity developed should include, but not be limited to, understanding of the effects of problems in one limited field within the reform process on the general enjoyment of human rights on the part of the population. DIHR support should take the form of provision of legal expertise with emphasis on the rule of law, and should be preferably provided by an expert with at least five years of expertise of governmental legal drafting and revision bodies charged with ensuring the rule of law and its elements. Regional experts familiar with the Cambodian LJR process, including new laws that have been drafted

during the reform process, should provide some expertise.

- Workshops to systematically train managers from institutions or organisations in the 'justice sector' (including civil society organisations) to apply the management model on which the DIHR-supported process and documents build. This may be done in collaboration with the Royal Academy of the Judicial Professions and the Royal Academy of Management Sciences.
- Theme-specific analysis and workshops to further develop insight into options and needs for adjusting the Action Plan and developing new requests for support to expand LJR to correspond to the current situation in Cambodia. Participants should be from public institutions, civil society and, if relevant, the private sector, with an emphasis on existing and emerging Cambodian human resources. DIHR support may be in the form of funding for expertise, or technical assistance to build capacity to conduct analysis, coach workshops and coach the development of project descriptions and informed requests for support from development partners. Analytical expertise may be built in collaboration with relevant national and regional institutions, for example the Cambodian Development Research Institute (CDRI), as well as regional development partners (such as ADB and EU).

- Development of a human rights documentation centre, which is enabled to provide rule of law training and awareness to the Cambodian public sector, including – but not limited to – students and graduates of the Royal Academy of Judicial Professions and the Royal Academy of Management Sciences. The Human Rights Documentation Centre should be trained in human rights monitoring focusing in the initial period on current legislation and practises in the 'justice sector' and suggested draft laws. Such an entity could become a quality assessment unit for legislative processes and be designed with the aim of becoming integrated or connected to a future Ombudsman institution. In order to make such a centre sustainable and not entirely dependent on support from development partners and public funds, DIHR could support its development of human rights courses based on local expertise, but also drawing from the wider South East Asian region in order to provide training beyond Cambodia.
- Development of capacity within the 'justice sector' to analyse and assess qualitative impact of activities undertaken under the legal and judicial reform, and to analytically identify gaps in relation to fundamental concepts drawn from the Constitution and propose remedial measures. DIHR support could comprise collaboration with the DIHR research department and DIHR research partners globally, as well as planning and management of technical assistance to build local capacity.
- Exchanges within Cambodia through different institutions in the legal and justice sector to exchange approaches and experience. In particular, the (Labour) Arbitration Council and its staff may provide interesting lessons in terms of management as well as the rule of law (including independence and transparency) to other institutions.

## 9.2 FOR IMMEDIATE IMPLEMENTATION

- Awareness raising among the public on the new Penal Law is planned and carried out. Pending the long-term building of resources (including human and financial) within the legal and judicial institutions to carry out dissemination on its own, the urgent need for countrywide awareness raising to all parts of the population and to the private sector on new crimes and offences established by the new Penal Law offers an opportunity for the GS and other public institutions to collaborate with civil society in this important endeavour. The evaluation team recommends that awareness raising be conducted in collaboration with Cambodian advertising and publicity specialists that can design an awareness campaign or advertising that with the strongest outreach taking the socio-economic situation in Cambodia into consideration. DIHR support could encompass technical assistance to analyse knowledge needs and plan dissemination in close collaboration with the GS and the 'justice sector' (including civil society). DIHR assistance should also encompass technical assistance to prepare applications



to development partners (bilateral as well as multilateral, public as well as private) to fund and implement large-scale awareness raising and liaising with such partners to general fast financial and technical support. Due to the imminence of the task to ensure that application of the new Penal Law by the judiciary, investigation, prosecutorial and law enforcement institutions is speedily brought into accordance with the Rule of Law element of predictability on the part of the population, the team recommends that financial support from DIHR be also considered pending the provision of funding from other development partners.

### **9.3 FOR IMPLEMENTATION SHORTLY**

- Two local experts be posted full time with the GS to assist in the implementation of the revitalised reform process. One expert should be charged with management and planning. The other should be charged with strategic planning and communication between the GS and stakeholders, including implementing institutions as well as politicians. While one expert may be senior (40+ years), the evaluation team recommends that the other be a junior 'justice sector' professional. Both postings will by themselves constitute a significant element of long-term capacity building to ensure sustainability of the reform process. If in the long term both experts will not stay with the GS, they will be enabled to bring along and share expertise with new employers in the 'justice sector'.

# NOTES

1 Ray Pawson & Nick Tilley: "Realistic Evaluation" London – New Delhi 2000, ISBN 0 7619 5009 5.

2 Process management should, in this evaluation, be understood as the art of constructively monitoring, supporting and influencing all the key elements in a process including all internal and external stakeholders, planning efforts, implementation, 360 degree communication, coordination and interaction.

3 Bent Vase: "Konceptet – Om Institut for Menneskerettigheders arbejde med retsforløbet", København 2011, ISBN 978-87-91836-38-1. The Chapter on the Cambodian process is in English in the original Danish publication too.

4 DIHR Partnership is a cooperation based on joint planning, commonly agreed objectives and shared values for the promotion and protection of human rights, and rule of law. The partnership builds essentially on dialogue, coaching and advice, where DIHR is the centre of various form of technical expertise that it channels to the partner's in accordance to evolving needs through a twinning principle, where the DIHR expert centre delivers necessary and adequate expertise in relation to the needs for achievement of common set goals.

5 Perfect in this context means: 'at least reasonably well conducted'.

6 Perfect in this context means: 'at least reasonably well conducted'.

7 Perfect in this context means: 'at least reasonably well conducted'.

# ANNEX 1

## WORKSHOP

### PREPARATION FOR THE EVALUATION OF THE DIHR CAMBODIA PROGRAM 2002-2012 'IMPLEMENTATION OF LEGAL AND JUDICIAL REFORM IN CAMBODIA'

TIME AND VENUE: 25TH JUNE 2012 IN 'NORDSKOV' AT DIHR.

The purpose of the workshop is to introduce our two evaluators, Karin Buhmann og Francesco Castellani to the Cambodia-program.

#### PROGRAM FOR THE WORKSHOP

8:00 – 8:15	Welcome by Bent Vase and Anders Folmer Buhelt
8:15 – 8:35	Introduction to the Cambodja program rationale by Bent Vase
8:35 – 8:55	Presentation by Jon Ebsen Hvam
8:55 – 9:15	Presentation by Anders Folmer Buhelt
9:15 – 9:35	Presentation by Mikkel Hesselgren
9:35 – 9:55	Presentation by Thomas Martin
9:55 – 10:15	Presentation by Lise Garkier Hendriksen
10:15 – 10:35	Presentation by Mette Appel Pallesen
10:35 – 11:05	Coffee break
11:05 – 12:40	Discussion in plenum: Moderators Francesco Castellani and Karin Buhmann
12:40 – 13:00	End of Workshop

---

**THE 6 POINTS TO BE ADDRESSED BY EACH PRESENTATION**

---

1. Period of involvement in the Cambodia program.
  2. Description of main tasks
  3. Deliveries made during the period of involvement
  4. Outcomes that were achieved by the processes and deliveries
  5. Mention pertinent issues regarding the context:
    - a. Political tensions,
    - b. Rule of law/Human rights issues,
    - c. The relation to the international community
    - d. The Cambodian society
  6. Main challenges during the period of involvement
-

## ANNEX 2

### PEOPLE MET

#### LIST OF PERSONS MET IN COPENHAGEN BEFORE FIELD VISIT IN CAMBODIA

Bent Vase, Corporate Management Adviser to DIHR.  
Anders Folmer Buhelt, Department Director at DIHR's Justice Department.  
Jon Ebsen Hvam, Legal Senior Advisor at Viborg Country Court.  
Mikkel Hesselgren, Legal Director at Vaekstfonden.  
Dr. Thomas Martin, Researcher at DIHR.  
Lise Garkier Hendriksen, Project manager at DIHR.  
Mette Appel Pallesen, Project manager at DIHR.

#### LIST OF PERSONS MET DURING FIELD MISSION IN CAMBODIA

H.E. Alain Benizy, Government Advisor in Charge of Administrative Reform  
Ben Schultz, Manager, Development Services, Coffey International, Phnom Penh  
Chheng Leap, WMC, Business and External Relation Unit Manager  
Chor Siek Veng, National Advisor, CCJAP  
Dann Chantreawatey, Chief Court Clerk  
In Van Vigol, President, Kandal Court  
Keng Somarith, Judge/Investigator  
Kai Hauerstein, GiZ Advisor to the Council for Legal and Judicial Reform  
Koen Everaert, Attaché, Natural Resources Management – Climate Change, EU Delegation to Cambodia  
Kong Phallack, Dean and Professor of Law at Paññāsāstra University of Cambodia, Chief Arbitrator and former PMU staff member  
Max Howlett (former CCJAP and EWMI)  
Michael Engquist, Human Rights and Good Governance Advisor, Danida, Phnom Penh  
Oeung Jeudy, KRT Programme Officer, Cambodian Human Rights Action  
Phok Phira, Programme Officer, JICA, Cambodia Office

Rethy Seng, Esq., Rule of Law Specialist,  
Office of Democracy and Governance, USAID  
Cambodia

Ros Chhay, Governance Programme Advisor,  
AusAID

Run Saray, Executive Director, Legal Aid  
Cambodia, TWG member representing civil  
society.

Sok Lor, Executive Director, Arbitration Council  
Foundation

Sok Sam Oeun, Executive Director, Cambodian  
Defenders Project

Sonya Kim, Technical Advisor, Arbitration  
Council Foundation

H.E. Soung Leang Hay, Deputy Secretary-  
General, GS-CLJR

Sum Sokamphon, Director of RAJP

Suon Bunsak, Executive Secretary/Chief of  
Secretariat, Cambodian Human Rights Action  
Committee (CHRAC)

H.E. Suy Mong Leang, Secretary-General of the  
CLJR

H.E Thong Chenda, Vice-President of RAJP

Touch Socheata, WMC, Business and External  
Relations Unit Manager

The entire staff of the GS-CLJR

## ANNEX 3

# MISSION PROGRAMME

PROGRAMME FOR  
MISSION TO CAMBODIA TO CONDUCT INTERVIEWS AS PART OF THE EVALUATION OF DIHR'S  
SUPPORT TO THE LJR PROGRAMME

Francesco Castellani (FCA) arrives on 17 July and departs on 26 July 2012  
Karin Buhmann (KBU) arrives on 23 July and departs on 2 August 2012  
Overlapping programme dates: 24-25-26 July 2012

DATE: TUESDAY 17/07/12

FCA arrives at Phnom Penh Airport 9:05. Day off.

DATE: WEDNESDAY 18/07/12  
FCA carries out the interviews.

Mette Pallesen (MAP) arrives at Phnom Penh.

Meeting  
Time: 9:00–11:00  
Venue: at SG-CLJR's office, No. 41 Russian Federation Boulevard.  
**CONFIRMED**  
Meeting with:  
H.E. Suy Mong Leang, Secretary-General of the CLJR.  
H.E. Soung Leang Hay, Deputy Secretary-General.

Meeting  
Time: 15:00–17:00  
Venue: at the GS-CLJR, No. 41 Russian Federation Boulevard.  
**CONFIRMED**  
Round table meeting with:  
H.E. Suy Mong Leang  
H.E. Soung Leang Hay  
Mr. Pen Bun CHHEA  
Mr. Phay SOKHENG and Chhe Ly (Judicial Reform Department and Council of Jurists)

<p>Focus area but not limited to:</p> <ul style="list-style-type: none"> <li>- Presentation of Francesco Castellani from DIHR and evaluation's theory expert</li> <li>- DIHR's role in designing and supporting the LJR and DIHR's input to the process of developing the capacity of the GS-CLJR</li> </ul>	<p>To be discussed (but not limited to):</p> <ul style="list-style-type: none"> <li>- DIHR's role in the process of designing LJR strategy, plan of action and project catalogue</li> <li>- DIHR's input to process of support for the PMU and later on the GS-CLJR</li> <li>- The structural changes in the LJR management and coordination with the establishment of the GS-CLJR (previously the PCB and the PMU) in 2009.</li> <li>- Expected and unexpected outcomes/effects within the legal and judicial reform as well as the sustainability of the LJR</li> </ul>
--	---

**DATE: THURSDAY 19/07/12**

FCA carries out the interviews.

<p>Meeting Time: 9:00–11:00 Venue: Café Living Room, No. 9, St. 306</p> <p><b>CONFIRMED</b> Round table meeting with: Mr Chor Siek Veng, National Advisor, CCJAP. Mr. Ben Schultz, Manager, Development Services, Coffey International, Phnom Penh. To be discussed but not limited to</p>	<p>Meeting Time: 12:00–13:00 Venue: Café Living Room, No. 9, St. 306</p> <p><b>CONFIRMED</b> Meeting with: Mr. Max Howlett (former CCJAP and EWMI)</p> <p>To be discussed but not limited to: - Expected and unexpected outcomes/effects within the legal and judicial reform as well as the sustainability of the LJR</p>	<p>Meeting Time: 13:00–14:00 Venue: Café Living Room, No. 9, St. 306</p> <p><b>CONFIRMED</b> Mr. Kai Hauerstein GiZ Advisor to the Council for Legal and Judicial Reform</p>	<p>Meeting Time: 14:00–15:00 Venue: Café Living Room, No. 9, St. 306</p> <p><b>CONFIRMED</b> Mr. Kong Phallack, Dean and Professor of Law at Paññāstra University of Cambodia, Chief Arbitrator and former PMU staff member</p>
--	--	--	---



<ul style="list-style-type: none"> <li>- DIHR's role in designing and supporting the LJR and DIHR's input to the process of developing the capacity of the GS-CLJR</li> <li>- Expected and unexpected outcomes/effects within the legal and judicial reform as well as the sustainability of the LJR</li> </ul>	<ul style="list-style-type: none"> <li>- DIHR's role in the process of designing LJR Strategy, plan of action and project catalogue</li> </ul>		
<p><b>DATE: FRIDAY 20/07/12</b> FCA carries out the interviews.</p>			
<p>Meeting: Time: 10:00–12:00 Venue: #557, Street #450, Sangkat Toul Tum Pong II, Phnom Penh, Cambodia.</p> <p><b>CONFIRMED</b> Mr. Sok Sam Oeun, Executive Director, Cambodian Defenders Project.</p> <p>To be discussed but not limited to:</p> <ul style="list-style-type: none"> <li>- The process of developing core LJR documents and DIHR's role in designing and supporting the LJR</li> <li>- Expected and unexpected outcomes/effects within the legal and judicial reform as well as the sustainability of the LJR</li> </ul>	<p>Meeting: GS-CLJR staff. Time: 14:00–17.00. Venue: GS-CLJR, No. 41 Russian Federation Boulevard.</p> <p><b>CONFIRMED</b> Individual interviews with staff at the GS-CLJR (following up on the meetings held with GS-CLJR staff on July 18 2012):</p> <p>Mr. Boun SOMONY: 14:00-15:00 Mr. Chhong HOUT &amp; Ms. Phan PISEYNOLEAK: 15:00-16:00 Mr. Chung Peng SROY and Mrs. Srey BUNARATH: 16:00-17:00</p> <p>To be discussed but not limited to:</p> <ul style="list-style-type: none"> <li>- DIHR's input to the process of developing the capacity of the GS-CLJR and</li> <li>- DIHR's role in designing and supporting the LJR</li> </ul>		

				<ul style="list-style-type: none"> <li>- Which projects with DIHR should be continued?</li> <li>- Expected and unexpected outcomes/effects within the legal and judicial reform as well as the sustainability of the LJR</li> </ul>
<b>SATURDAY 21/07/12</b> FCA carries out the interviews.				
Meeting				
--	--	--	--	--
<b>SUNDAY 22/07/12</b> FCA carries out the interviews.				
Meeting (time, title and venue)				
--	--	--	--	--
<b>MONDAY 23/07/12</b> FCA carries out the interviews.				
KBU arrives at Phnom Penh Airport at 19:25. Bent Vase (BVA) arrives at Phnom Penh Airport at 9:05				
Meeting: Civil Society Organisations. Time: 9:00-11:00 Venue: Himawari				
<b>CONFIRMED</b> <b>Round table meeting with:</b> Mr. Run Saray, Executive Director, Legal Aid Cambodia, TWG member representing civil society Mr. Oeung Jeudy, KRT Programme Officer, Cambodian Human Rights Action Mr Suon Bunsak, Executive Secretary/Chief of Secretariat, Cambodian Human Rights Action Committee (CHRAC) Mr Chheng Leap and Touch Socheata, WMC, Business and External Relation Unit Manager				Debriefing between FCA and KBU
To be discussed but not limited to: - Expected and unexpected outcomes/effects within the legal and judicial reform as well as the sustainability of the LJR.				

<b>TUESDAY 24/07/12</b> FCA and KBU carry out the interviews.	
Meeting Time: 14:00–15:00 Venue: RAJP, No. 17, street 466, Sangkat Tonle Bassac, Khan Chamkarmon.  <b>CONFIRMED</b> Visit to the Royal Academy for Judicial Professions (RAJP): - H.E Thong Chenda, Vice President of RAJP -Mr Sum Sokamphon, Director of RAJP  To be discussed but not limited to: - Expected and unexpected outcomes/effects within the legal and judicial reform as well as the sustainability of the LJR.	Meeting Time: 16:00–17:00 Venue: SG-CLJR No. 41 Russian Federation Boulevard, Phnom Penh  Presentation of Dr Karin Buhmann, team leader of the evaluation to:  H.E. Suy Mong Leang, Secretary-General of the CLJR H.E. Soung Leang Hay, Deputy Secretary-General
<b>WEDNESDAY 25/07/12</b> FCA and KBU carry out the interviews.	
Visit to Kandal Court. Time: 10:00–17:00 Venue: Kandal Provincial Court  <b>CONFIRMED</b> Visit to Kandal Provincial Court Mr In Van Vigol, President, Kandal Court Ms Dann Chantreawatey, Chief Court Clerk Mr Keng Somarith, Judge/Investigator  To be discussed but not limited to: - Expected and unexpected outcomes/effects within the legal and judicial reform as well as the sustainability of the LJR.	

THURSDAY 26/07/12	
FCA and KBU carry out the interviews.	
<p>FCA and MAP depart from Phnom Penh Airport at 20:25</p> <p>Meeting</p> <p>Time: 8.30–10:00</p> <p>Venue: CAR, No. 41 Russian Federation Boulevard, Phnom Penh</p> <p>H.E. Alain Benizy, Government Advisor in charge of Administrative Reform</p> <p>To be discussed but not limited to:</p> <ul style="list-style-type: none"> <li>- Background of the LJR, process of designing the reform.</li> <li>- Expected and unexpected outcomes/effects within the legal and judicial reform</li> </ul>	<p>Meeting with development partners and OHCHR:</p> <p>Time: 14:00–16:00</p> <p>Venue: The Representation Office of Denmark, No. 8 Street 352</p> <p><b>CONFIRMED</b></p> <p>Round table meeting with:</p> <ul style="list-style-type: none"> <li>- Mr. Michael Engquist, Human Rights and Good Governance Advisor, Danida,</li> <li>- Mr Ros Chhay, AusAID</li> <li>- Mr. Rethy Seng, USAID</li> <li>- Mr Phok Phira, JICA</li> </ul> <p>To be discussed but not limited to:</p> <ul style="list-style-type: none"> <li>- DIHR's role in supporting the LJR and DIHR's input to the process of developing the capacity of the GS-CLJR.</li> </ul> <p>Expected and unexpected outcomes/effects within the legal and judicial reform as well as the sustainability of the LJR.</p>
FRIDAY 27/07/12	
KBU carries out the interviews.	
<p>Meeting</p> <p>Time: 10.30–12:00</p> <p>Venue: CAR, No. 41 Russian Federation Boulevard, Phnom Penh</p> <p>H.E. Alain Benizy, Government Advisor in charge of Administrative Reform</p> <p>To be discussed but not limited to:</p> <ul style="list-style-type: none"> <li>- Background of the LJR, process of designing the reform.</li> </ul> <p>Expected and unexpected outcomes/effects within the legal and judicial reform</p>	<p>Meeting</p>

SATURDAY 28/07/12			
--	--	--	--
SUNDAY 29/07/12			
--	--	--	--
MONDAY 30/07/12: KBU carries out the interviews.			
BVA departs from Phnom Penh Airport at 19:30. 10:30-12:00 H.E. Suy Mong Leang, Secretary-General of the CLJR H.E. Soung Leang Hay, Deputy Secretary-General.  Debriefing about general findings during the mission.			
TUESDAY 31/07/12 KBU carries out the interviews.			
Meeting EU Delegation Mr Koen Everaerts Time: 11:00–12:00 Venue: EU Delegation	Meeting GS-CLJR H.E. Soung Leang Hay, Deputy Secretary- General. Time: 15:00–16:30 Venue: GS-CLJR	Meeting Ben Schultz Time: 17:00–18:30 Venue: Himawari	Meeting Time: Venue:

- Preparation of extended debriefing note.

**WEDNESDAY 01/08/12**

KBU carries out the interviews.

<p>Meeting : Bar Association of the Kingdom of Cambodia Time: Venue:</p>	<p>Meeting : Arbitration Council &amp; Arbitration Council Foundation Time: 14:00-15:30 Venue: No. 72, Street 592 (corner of St. 327), Sangkat Boeung Kak II, Khan Tuol Kork</p>
<ul style="list-style-type: none"> <li>- H.E Chiv Songhak (President) and H.E Suon Visal (Secretary General)</li> <li>- Ms Sin Kim Sean: Lawyer &amp; Arbitrator</li> <li>- Mr Liv Sovanna, lawyer, arbitrator and member of Council of Jurists or the Arbitration Council of Cambodia.</li> </ul>	<p><b>CONFIRMED:</b></p> <ul style="list-style-type: none"> <li>- Mr Sok Lor, Executive Director of Arbitration Council Foundation</li> <li>- Ms Sonya Kim, Technical Advisor</li> </ul> <p>To be discussed but not limited to Expected and unexpected outcomes/effects within the legal and judicial reform as well as the sustainability of the LJR.</p>

**THURSDAY 02/08/12**

<p>Meeting: GS-CLJR Time: 10:00–11:00 Venue: GS-CLJR No. 41 Russian Federation Boulevard, Phnom Penh Meeting with: H.E. Suy Mong Leang, Secretary-General of the CLJR H.E. Soung Leang Hay, Deputy Secretary-General</p>
<p>Follow-up to debriefing meeting</p>
<p>Meeting : Phallack Kong Time: 12:45–14:00 Venue: Himawari</p>
<p>Meeting: EU Delegation Time: 15:00 (?) Venue:</p>

**FRIDAY 03/08/12**

End of evaluation mission.

## RELEVANT PROJECT DOCUMENTS

### **Documents developed for the evaluation:**

- 1 Draft Terms of Reference for the evaluation.
- 2 Minutes from preparatory meetings.
- 3 Overview of DIHR staff etc. involved in the LJR from 1999–2011.
- 4 Draft logbook providing an overview of missions conducted, deliveries and comments.

### **Documents for the first objective to evaluate DIHR's technical support to RGC regarding the development of the three core legal and judicial reform documents:**

- 5 The Legal and Judicial Reform Strategy adopted by the Council of Ministers 20 June 2003.
- 6 The plan of action for the implementation of the Legal and Judicial Reform Strategy adopted by the Royal Government of Cambodia (RGC) on 29 April 2005.
- 7 The draft project catalogue for the implementation of the Legal and Judicial Reform Strategy prepared by the CLJR on August 2005.
- 8 Recommendation for the Effecting Change in the Implementation Phase of the Legal and Judicial Reform, prepared in May (?) 2010 with assistance from Danida and AusAID (Ben Schultz).
- 9 Legal and Judicial Reform Plan of Action update, December 2010. Prepared with assistance from DIHR.
- 10 The National Strategic Development Plan Update 2009-13 (only the part relevant for LJR)

### **Documents for the evaluation's second objective to evaluate the effectiveness and the sustainability of DIHR's technical support to the GS-CLJR's staff in relation to the management and coordination of the LJR:**

- 11 Sub-decree no. 88 on the establishment of the Council of the Legal and Judicial Reform (CLJR). August 21 2002.
- 12 Sub-decree no. 87 adopted on August 21 2002 on the establishment of the Permanent Coordination Body (PCB) of the Council for Legal and Judicial Reform (CLJR). The PCB's has the duties as a secretariat for the CLJR.
- 13 Sub-decree no. 128 adopted on December 26 2002 on the establishment of the Project Management Unit (PMU) to assist the PCB in performing the duties as secretariat to the CLJR.

- 14 Sub-decree no. 52 adopted on April 6 2009 on the establishment of the General Secretariat for the Council for Legal and Judicial Reform. As of April 6 2009, the GS-CLJR replaces the Permanent Coordination Body (PCB) and the Project Management Unit (PMU)
- 15 The Strategic Plan of the GS-CLJR 2009-13. Updated in December 2010 with support from DIHR to bring it in line with Sub-decree no. 52.
- 16 The GS-CLJR's action plan 2011-2014. Updated with support from DIHR.
- 17 The GS-CLJR's work plan 2011. Updated with support from DIHR.
18. The GS-CLJR's Indicator and Monitoring System (IMS), October 13 2009. Developed with support from DIHR.
19. The Planning Guide for Justice Sector Institutions incl. annexes a-d prepared by the Council for Legal and Judicial Reform in 2010.
- 20 Analysis of the Cambodian National Model Court (NMC) containing the NMC criteria developed on April 29 2008 with support from DIHR.
- 21 The Indicator and monitoring (IMS) system project: Documents for the GS-CLJR developed with support from the consultancy firm Domrei:
- 22 Closing report.
- 23 IMR user's manual

**Documents for the evaluation's third objective to have recommendations on how the partnership programme between DIHR and the GS-CLJR should be continued and need for an exit strategy:**

- 24 A description of project outputs from the project document 2011-2012.
- 25 DIHR's exit strategy.

**DIHR's project documents with the GS-CLJR /PCB/PMU:**

- 26 Project document covering 2011 -2012, Implementation of Legal and Judicial Reform in Cambodia.
- 27 Project document covering 2010, Implementation of Legal and Judicial Reform in Cambodia.
- 28 Project document covering 2009, Implementation of Legal and Judicial Reform in Cambodia.
- 29 Project document covering 2008, Implementation of Legal and Judicial Reform in Cambodia.
- 30 Project document covering 2007, Implementation of Legal and Judicial Reform in Cambodia.
- 31 Project document covering 2006, Implementation of Legal and Judicial Reform in Cambodia.
- 32 Project document covering 2005, Implementation of Legal and Judicial Reform in Cambodia.
- 33 Project document covering 2004, Implementation of Legal and Judicial Reform in Cambodia.
- 34 Project document covering 2003, Implementation of Legal and Judicial Reform in Cambodia.
- 35 Project document covering 2002, Implementation of Legal and Judicial Reform in Cambodia.