

Project Design of Law and Justice Assistance for Enhancing People's Access to Justice in Fragile States

**Lessons Learned from the Experiences of Australian Law and
Justice Assistance to Solomon Islands**

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Abstract

How can donors design effective law and justice assistance projects for enhancing access to justice? Law and justice assistance is defined as one kind of international development assistance which is conducted by donor organizations, including multilateral and bilateral development agencies, for assisting developing countries in establishing efficient and effective justice systems. To effectively provide aid to a recipient country, donor organizations must formulate a tangible blueprint for legal reform that accounts for the recipient's needs, social context, and economic conditions while meeting global standards. However, it is difficult to evaluate the impact which is caused by international aid from external donors regarding how it works and functions in the recipient society. Even if donors believe they are supporting the recipient, aid brings with it the possibility of unintended negative consequences. There is a paradox with development aid. How should aid donors take and handle these risks in law and justice assistance? Through analysis of an empirical case, this project studies the impact of social constant, which means factors and related conditions consist of the society and cannot be changed eternally, such as geography and social infrastructure. This thesis also explores a role of project management method in law and justice assistance, which can be related to aid effectiveness for enhancing the right of access to justice in fragile states.

As an empirical case, this thesis explores the series of law and justice assistance which was deployed in Solomon Islands during 2003 to 2017. In order to consider both internal and external influence of aid project, this research also examines the Australian way for designing development assistance and its policy as a leading donor in the region. This thesis explores law and justice assistance under the Regional Assistance Mission to the Solomon Islands (RAMSI) as a regional collective mission and following a bilateral assistance project by the Australian government, the Solomon Islands Justice Program (SIJP). RAMSI is the first regional collective mission in the post-conflict Solomon Islands to rebuild the nation-state after the Tension, which was an ethnic conflict on Guadalcanal Island. RAMSI has already been studied and evaluated comprehensively in various dimensions as an unusual world case. Previous researches on RAMSI have given a focus regarding not only huge and comprehensive approach but also peacekeeping mission to restore law and order. As one of the major parts of RAMSI, donors implemented law and justice assistance to enhance the court and judicial system. Law and justice pillar of RAMSI have been significance as a long-term commitment after the transition to the bilateral program. This thesis focuses on law and justice assistance for judicial system mainly to consider and evaluate the impact of the aid program upon the society of Solomon Islands.

Also, since the research destination of this thesis is Solomon Islands, this research considers social context and characteristics of the state to determine a scope of this research. In light of the criteria, Solomon Islands is classified into fragile states due to some conditions which are Least Developed Country (LDC), post-conflict, and Small Island Developing States (SIDS) in the Pacific region. Fragile states have significant definitions and causes which distinguish as specific countries. Among those, SIDS share common features and have to live under a range of resource constraints. Geography and related conditions are unchangeable because geography itself is a constant component consisting of a society. Therefore, aid

providers have to give special attention to such features.

To answer the main research question of “How should donor organizations deal with social constants to design and implement law and justice assistance for enhancing the right of access to justice in fragile states?,” this research analyzes effective method of designing law and justice assistance based on three key concepts, which are law and justice assistance, fragile states as a significant target of law and justice assistance, and project management as a method of implementation. Also, to clarify the gap between two major actors, which are a donor and a recipient, this thesis demonstrates with regard to program impact on the case for both actors, through empirical case analysis. This thesis incorporates a range of different methodological approaches, but mostly qualitative analysis based on socio-legal and empirical approach.

This thesis has been broken down into seven chapters. Chapter one provides an overview of this research methodology, including the research background and approach, conceptual framework underpinning it, the data collection and fieldwork process, research constraints, and matters relating to the validity of the findings. Chapter two clarifies a core conceptual framework for this whole research project, based on three key concepts and their definitions, which are law and justice assistance, fragile states as a major recipient of law and justice assistance, and project management. The method of designing law and justice assistance in fragile states context is a substantial one extending beyond the focus on development assistance as well as law and development study taken in this thesis. Chapter two also break down each key concept into details and provide insight and approach of each in this thesis.

Chapter three examines the Australian law and justice effort as a part of Official Development Assistance (ODA) and its fundamental strategy as a foreign policy, in order to clarify the main features of the Australian approach of law and justice assistance. The main purpose of the chapter is to clarify uniqueness the Australian law and justice assistance, compared with other bilateral donor organizations. This chapter analyzes the policy framework of Australian aid on law and justice within two decades with a comparative perspective, based on Schimmelfenning’s framework for the rule of law assistance as well as Nicholson and Hinderling’s analysis of donor’s role as previous research. Also, through exploring Australian strategy on aid as well as law and justice assistance, this chapter described the Australian law and justice assistance narrative which has been figured based on the regional security interest and geographical contiguity. Then this chapter implied future pathways of Australian law and justice assistance under the new aid paradigm which emphasis on economic development for Australia as principle legitimacy for Australian aid and can influence on law and justice assistance narrative regarding traditional objectives for peace and stability in post-conflict states.

Chapter four explores one empirical case of law and justice assistance, the Regional Assistance Mission to Solomon Islands (RAMSI), and follows the Solomon Islands Justice Program (SIJP) and it's implementation process to consider how both the primary actors, Australia and Solomon Islands, were engaged in the process. This thesis focuses on experiences of receiving huge aid program in Solomon Islands. On the other hand, this chapter considers how Australia engaged in RAMSI's implementation process. This chapter reviewed the series of law and justice assistance in Solomon Islands, after the Tension during 1998 to 2003. RAMSI often attracts attention as a regional collective intervention to the

failed states; however, it was not simply a peacekeeping mission but a more substantial package of development assistance programs designed to achieve a restoration of the rule of law and governance. This empirical case presented the world unexemplified aid program on law and justice assistance itself, which covered comprehensive justice system in a pluralistic country. In order to examine the impact of law and justice assistance in Solomon Islands, this chapter looks at the key factors of law and justice assistance under RAMSI and SIJP.

Chapter five analyzes RAMSI and SIJP's impact towards donors based on how Australia implemented RAMSI and three key viewpoints of aid effectiveness. This chapter also explores the extent Australian approach to law, and justice assistance was appropriate by the social and geographical context of the Solomon Islands. Then this chapter aims to clarify the progression of the Australian experience and RAMSI's unclear term and characteristics in Australian aid history. Since the terrorist attack in the USA in 2001 and Bali in 2002 had happened, non-traditional terrorism has come to the forefront in the world security. Australia had started to consider the policy for Australia's war on Terror. The tension in Solomon Islands, which might be a threat to jeopardize regional security, also triggered a reconsideration of Australia's strategy for regional security and a concept of intervention in a post-conflict state. This chapter highlights the transition phases of law and justice pillar of RAMSI and following SIJP, as a critical point in the process of project implementation. This chapter applied the perspective of consistency in the process of project transition to Australian experiences, to consider how a challenge of law and justice assistance led to an appropriate method to overcome the problem of fit for establishing project coherence and consistency through drawing lessons learned from the Australian experiences.

Chapter six turns to analysis of law and justice assistance in the Solomon Islands from a broader perspective, including the recipient's viewpoint and comprehensive evaluation of RAMSI and SIJP, and actual condition of access to justice and judicial fragility after the deployment of RAMSI in Honiara city. The author explored the real situation of current Honiara from the end-user's perspective, regarding the context of access to justice among people. Chapter six analyzes how the policy approach of RAMSI and SIJP suited the context of Solomon Islands. Through analyzing interview responses and the author's own personal observations from fieldwork in Honiara as primary data, this chapter considers how the policy approach of RAMSI and SIJP are appropriate in Solomon Islands. Also, this chapter examines the fact of paradox. There are still many problems with law and justice at the local level, while RAMSI achieved a big success on restoring law and order in Solomon Islands. This chapter lead suggestions connected with core elements of accessibility of justice for people. This chapter also highlights how people are feeling about RAMSI's legacy, which is hard to find out through literature and evaluation from the donor side. Suggestions based on data also give some indications toward the appropriate method of project design. From these perspectives, the main purpose of this chapter is to clarify the answer to the question of appropriateness for the project approach.

Chapter seven reflects on these ongoing development assistance programs on law and justice by the Australian government in Solomon Islands and considers the pathways of project design methods for enhancing local people's right of access to justice. Chapter Seven offers reflections on how the approach of

designing law and justice assistance project may involve law and justice practitioners, project managers and scholars on law and justice assistance. By conducting field research in Solomon Islands, interview responses presented the fact of paradox. There are still many problems with access to justice in the local level, especially a remaining gap for poor and remote people, although RAMSI achieved a big success on restoring law and order in Solomon Islands. Based on this case, this chapter argues that due consideration of social context influences the probability of success of law and justice assistance, and aid impact can work in negative ways in a recipient society. Especially, fragile states have limited alternative ways which could affect respond to the social changes and unexpected conditions, and this limitation could encompass fatal situations in the state. By bringing the conditions of access to justice in fragile states context to the fore, this thesis also argues the necessity of consideration and monitoring for geography as a social constant should. This thesis also presumes geography as an inevitable risk factor for aid effectiveness and aid impact. In access to justice context, donors should clarify a route of access both internally and externally as well as physical and mental distance among local people for justice service and legislation. Then this thesis concludes that proper project management methods could be a guidepost for aid effectiveness as well as help guarantee basic human rights for local people in the law and justice assistance context. Project management method also can manage aid impact on the society, which is the box contains both risks for reversion and hope for development.

Regarding limitations and future research, this thesis examines only one series of case studies of law and justice assistance in a state. Therefore, it might be difficult to generalize the lessons learned from this case to all forms of law and justice assistance in post-conflict states. RAMSI and SIJP are quite a unique case of a comprehensive approach to law and justice system in one single country. However, to undertake detailed research into each case is necessary, due to the pluralistic legal culture and social context of recipient countries. Further, this research focuses on the method of project management, and lessons can be applicable for other cases from this perspective. This research hopefully can provide useful insight for future project designers of law and justice assistance. As future agenda for this perspective, the author would like to utilize this case analysis for further comparative research with other law and justice assistance cases in similar contexts, including access to justice, SIDS, and a post-conflict state.

Also, RAMSI and SIJP finalized in July 2017, and law and justice assistance in Solomon Islands entered into a new phase under Australia's long-term commitment. While many opinions from Australia have admired RAMSI's huge success on the restoration of law and order in the country, global society should also see what is a real situation and how local people are living in their society. In fact, the capacity of local people is still not enough, and Solomon Islands still need to receive external assistance for their society. Field research data in this thesis also presented a lacked or biased local capacity in judicial institutions for access to justice. In this context, RAMSI's goal was achieved by halves, and still far from self-reliance. Therefore, what happens next has been a critical issue for Solomon Islanders after the full-withdrawal of RAMSI. After 2017, the Australian law and justice assistance will again transition to a new bilateral project under the new structure, in which the Attorney General's Department will be engaged as one of the major bodies responsible for implementation. Australian law and justice assistance to

Solomon Islands also will continue, and their long-term aid may strongly affect the relationship between the two countries. RAMSI's farewell probably was not just an end but brought new start-line for relationships on the dependency between stakeholders of the aid program.

In this journey toward a comprehensive understanding of the proper method of law and justice assistance, the process of restoring justice in a post-conflict society and roles of development assistance become significance to examine external aid impact. In the context of the current development assistance situation under SDGs, in line with the growing importance of the concept of the rule of law and access to justice, global demands on law and justice assistance will increase. Donors will have to engage in more consideration of effective methods for project management in international development assistance. In this context, the Australian challenge provides lessons not only for the Solomon Islands but also more broadly for global law and justice assistance in post-conflict societies.

Declaration

This thesis contains no material which has been accepted for the award of any other degree or diploma in any University. To the best of the author's knowledge, it contains no material previously published or written by another person, except where due reference is made in the text.

Mana Takahashi

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Acronyms and Abbreviations

ADB	Asian Development Bank
ADF	The Australian Defense Force
AFP	Australian Federal Police
AGD	Attorney-General's Department
ALP	Australian Labor Party
ANU	The Australian National University
ASEAN	Association of Southeast Asian Nations
AUD	Australian Dollar
AusAID	Australian Agency for International Development
CO	Community Officer
CSF	Critical Success Factor
DAC	Development Assistance Committee
DCD	Development Co-operation Directorate
DFAT	Department Foreign Affairs and Trade
DFID	Department of International Development
EU	European Union
FIA	The Facilitation of International Assistance Act
FY	Fiscal Year
GRA	Guadalcanal Revolutionary Army
ICAAD	International Center for Advocates Against Discrimination
ICAI	Independent Commission for Aid Impact
ICBR	International Project Management Association Competence Baseline
IDLO	International Development Law Organization
IMF	International Monetary Fund
INPROL	The International Network to Promote the Rule of Law
INTERFET	International Force East Timor
ISO	International Organization for Standardization
JDL	Justice Delivered Locally
JICA	Japan International Cooperation Agency
JIMS	Justice Information Management System
JSPL	Journal of South Pacific Law
JSS4D	Justice Service and Stability for Development
J4P	Justice for the Poor
LDC	Least Developed Country
LDM	Law and Development Movement

LFA	Logical Framework Approach
MCA	Ministry of Communication and Aviation
MDPAC	Ministry of Development Planning and Aid Coordination
MEF	Malaitan Eagle Force
MEL	Monitoring, Evaluation and Learning
MP	Member of Parliament
NGO	Non-Governmental Organization
NLDM	New Law and Development Movement
NZ	New Zealand
ODA	Official Development Assistance
ODE	Office of Development Effectiveness
OECD	The Organisation for Economic Co-operation and Development
OVTA	Overseas Vocational Training Association
PacLII	Pacific Legal Information Institute
PAF	Performance Assessment Framework
PALJP	Papua New Guinea Australia Law and Justice Partnership
Ph.D.	Doctor of Philosophy
PIF	Pacific Islands Forum
PJDP	Pacific Judicial Development Program
PKO	Peacekeeping Operations
PMBOK	Project Management Body of Knowledge
PMD Pro	Project Management for Development Professionals
PM4NGOs	Project Management for Non-Governmental Organizations
PNG	Papua New Guinea
PPF	Participating Police Force
PSO	Public Solicitor's Office
RAMSI	Regional Assistance Mission to Solomon Islands
RSIPF	Royal Solomon Islands Police Force
SBD	Solomon Islands Dollar
SDGs	Sustainable Development Goals
SIDS	Small Island Developing States
SIG	Solomon Islands Government
SIJP	Solomon Islands Justice Program
SSGM	State, Society and Governance in Melanesia Program
TPA	Townsville Peace Agreement
UK	United Kingdom
UN	United Nations

UNCED	United Nations Conference on Environment and Development
UNCI	United Nations Commission for Indonesia
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNTAC	United Nations Transitional Authority in Cambodia
UNTAET	United Nations Transitional Administration in East Timor
USA	United States of America
USAID	United States Agency for International Development
USD	US Dollar
USP	The University of the South Pacific

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Chapter I: Introduction

The gift is therefore at one and the same time what should be done, what should be received, and yet what is dangerous to take. This is because the thing that is given itself forges a bilateral, irrevocable bond, above all when it consists of food. The recipient is dependent upon the anger of the donor, and each is even dependent on the other. Thus one must not eat in the home of one's enemy.

(Mauss, Marcel. *The Gift: the form and reason of exchange in archaic societies*. English ed. Routledge, 1990.)

1.1 Introduction

If a person has been damaged and fractured your leg, what usually people do? Does the person apply a band-aid to his leg? Probably, not. The person might go to a hospital to see a doctor and have got appropriate medical treatment on his broken leg. After an acute stage, the person will move to undergo rehabilitation, which is aiming to walk with his own leg and to gradually go back to own daily life. By the process, the person should consider the therapeutic approach, treatment, duration and policy for quick recovery. Treatment process should not be too long or too short, but be an appropriate length for the patient. The whole process of recovery would influence the patient's future life including after effect of the disease.

A state also needs assistance for recovery if a crucial incident damaged them, such as conflict, natural disaster, or any other occasions. In the acute stage after a conflict, for example, a state and people need aid. However, the state itself, as well as people who are living there gradually, needs to move to assistance for self-reliance, which is enough capacity to walk with their legs, in diverse fields such as education, economic activities, health, and governance.

There is a country where has been struggling for a long time to achieve self-reliance, after their internal conflict; Solomon Islands. Solomon Islands consisted of the archipelago and located in the Pacific region. The island country has the critical turning point in July 2017. Due to the tension between two ethnic groups in 1998, and the related deterioration of the social order, regional security in the Pacific was

endangered. In response to this regional destabilization, the Australian government raised a proposal for a regional assistance program for rebuilding Solomon Islands. The Pacific Islands Forum Secretariat (PIFS) and its member countries accepted the proposal and decided to implement the regional assistance, named Regional Assistance Mission to Solomon Islands (RAMSI). After the 14 years commitment of RAMSI for state reconstruction in the post-conflict stage, Solomon Islands is standing at a new start-line for self-reliance. In reality, RAMSI's effort was not only for restoration after the ethnic conflict. During the 14 years, aid program shifts the focuses in accordance with the situation of the state, and gradually transited to aid for development. Therefore, RAMSI had been a long-range of the process with a comprehensive approach, from the first-aid stage to the rehabilitation stage for further development.

However, if the aid program is implemented in full-commitment and long-term, the recipient can achieve effective development? Unfortunately, the answer is often no. The case of Solomon Islands after RAMSI is not an exception; while RAMSI achieved successful restoration of law and order in the state, the capacity of local institutions is still not enough, and Solomon Islands still needs to receive external assistance to supplement their own society.¹ There is a profound sense of frustration and disappointment with the results of long-term aid in Solomon Islands. This situation might be developed by dominant by donors.

Many states need international aid program in diverse occasions for development or reconstruction. And it influences upon the recipient state more or less. Aid can have both positive and negative impacts. From this point of view, donors must know the reality that there is always a risk of the recipient's situation deteriorating, and they have a responsibility to avoid such a situation in the process of project implementation. Based on these situations, this thesis explores a recipe for success for effective international aid program, and project designing process which is a donor's responsibility for project implementation.

This introductory chapter explores the map of this whole research project. This chapter begins by

¹ Batley, James. "RAMSI chapter ends in Australia's Pacific story." East Asia Forum, May 25, 2017. Accessed April 20, 2018. <http://www.eastasiaforum.org/2017/05/25/ramsi-chapter-ends-in-australias-pacific-story/>.

discussing the background concept for the paradox of aid, and methodological approach of this research. Also, this chapter discusses some practical aspects of my research project, including my fieldwork method, the choice of the data collection site, some of the methodological and ethical constrain of my project. Finally, the chapter makes some comments about the validity and broader applicability of the findings.

1.2 Background: The Paradox of Aid in Law and Justice Assistance Context

This section introduces background facts and ideas of this overall research project. To consider donor's responsibility for implementation in law and justice assistance context, this section highlights a relationship between a donor and a recipient, and also significant features of law and justice assistance as a field of international development aid.

1.2.1 Donor's Responsibility for Aid Project

To define success and failure of the aid program is quite difficult. In accordance with positions, criteria, viewpoints, and processes, the goals of aid program inevitably have been changing. Therefore, the result of the aid program is not always proportional to the amount of investment. For example, the more budget does not always bring more success. Even if donors believe they are supporting the recipient, aid can bring other risks of deterioration or another unexpected situation. There is often a paradox of development aid.

States in conflict or post-conflict situations like Solomon Islands are especially instable to aid impact. Mary B Anderson, in this context, mentioned a limitation of aid and a significance of measurement of aid impact at each stage.² Anderson developed "Do No Harm" Framework to measure the impacts of aid. The framework examines the impact based on Tensions / Dividers of the state and Connectors / Local

² Aderson, Mary B. *Do No Harm: How Aid Can Support Peace-Or War*, Translated by Tsuyoshi Ohira. Japanese Translation ed. (Tokyo, Japan: Akashi Shoten, 2006). 141-144.

Capacities for Peace (LCPs) on conflict.³ This framework stands upon the concept which development assistance influences both negative triggers and positive solutions for conflict. In this context, development assistance refers to a range of elements including the mandate, fund, donors and their speculations. Also, this framework is designed to lead continuous redesigning assistance programs with response to the after effect of aid impacts and social changes.⁴

This thesis agrees with the standpoint that development aid is NOT versatileness. Since the international development sector is project-oriented and consists of two primary stakeholders, the donor, and the recipient, development assistance has a certain influence brought from outside of the recipient states.⁵ Therefore, there is always a feeling of strangeness to some extent. Gunther Teubner describes the influence as a fundamental irritation which triggers a whole series of new and unexpected events.⁶ Also, Marcel Mauss explains the aid as a gift which has power for connecting two stakeholders of aid. According to Mauss, development assistance as a gift or a legacy from a developed country is not always the right thing or just for the recipients, and may not always suit their local cultures and traditions. Western donors believe development assistance is a good thing. However, the assistance possibly throws it away, twisted, and put self-enrichment of the political elite in the recipient state. Therefore, donors should consider how they can fill in the gap between both stakeholders and the shape of assistance toward the effective development of recipient states.⁷ Mauss also pointed out the gift creates three obligations between two stakeholders, which are to give, to receive, and to reciprocate.⁸ The relationship of the two becomes more

³ Ibid.

⁴ Ibid.

⁵ Ika, Lavagnon A., Amadou Diallo, and Denis Thuillier. "Ptoject Management in the International Development Industry." *International Journal of Managing Projects in Business* 3, no. 1 (2010): 63.

⁶Teubner, Gunther. "Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences." *The Modern law Review* 61, no. 1 (January 1998): 12.

⁷ Mauss, Marcel. *The Gift: the form and reason of exchange in archaic societies*, English ed. (The United Kingdom: Routledge, 1990). 10-23.

⁸ Ibid., 50-55.

prolonged, and the meaning of gift as well as the relationship itself, get more complex.⁹ Thus, the receiver thinks of the gift as debt, and it might encompass dependency, and even distract the recipients from their self-reliance.

The impact of development assistance inevitably affects the relationship between the two primary stakeholders to some extent. Thus, it is still hard to control the impact through project implementation and design. As Anderson mentioned, Do No Harm Framework is quite useful to analyze the impact of aid in conflict states. However, implication for tangible actions is difficult to be lead.¹⁰ Each donor and recipient has different social contexts and backgrounds. Therefore aid projects need to be designed both individually and specifically. This context might be a reason for difficulties. However, not only the impact itself but also controlling the potential impact is significant for aid effectiveness. Donors should be expected to take responsibility for how they implement and design aid projects.

1.2.2 Law and Justice Assistance: Significance of the Rule of Law in Practice

From both history and experience, aid donors have learned the fact that development assistance can fail. Law and justice assistance is not an exception. Law and justice assistance is defined as one kind of international development assistance conducted by donor organizations including multilateral and bilateral development agencies. Law and justice assistance is aiming for assisting developing countries in establishing efficient and effective justice systems. However, law and justice assistance are not always aiming at harmonization of the legal system under the globalization. This aiming goal is different from the world economic context.¹¹ Law and justice assistance always become entangled with the social context of a recipient country. From past experiences, international donors have learned that individual approach is required for law and justice assistance.

⁹ Ibid.

¹⁰Aderson, Mary B. *Do No Harm: How Aid Can Support Peace-Or War*, Translated by Tsuyoshi Ohira. Japanese Translation ed. (Tokyo, Japan: Akashi Shoten, 2006). 141-144.

¹¹Sarkar, Rumu. *International Development Law: Rule of Law, Human Rights, and Global Finance*, 1st ed. (Oxford, The United Kingdom: Oxford University Press, 2009). 75-78.

The initial conception of law and justice assistance dates back to the 1960s. In the 1960s and '70s, the United States and Europe led the Law and Development Movement (LDM), which aimed to apply Western legal norms to Latin America and other developing countries in order to achieve economic growth.¹² The primary goal of the movement was to transform legal culture and institutions through educational reform and select transplantation of modern institutions.¹³ However, the movement was insufficiently responsive to local contexts. For example, enforcement was ineffective in part because the adaptation of rules was inappropriate to specific national contexts and thus the rules were easily ignored.¹⁴ Following the end of the Cold War, the LDM was succeeded by the New Law and Development Movement (NLDM). NLDM is distinguished from its predecessor and focuses on multidimensional legal systems, including transitional regimes, international cooperation, and conflict management.¹⁵ The goal of NLDM is to establish the rule of law in society as an essential element of good governance, enhancing human rights, and democratization. The end of the Cold War also brought an expansion of demand for legal reform as well as law and justice assistance. Countries in diverse conditions, which includes in conflict and post-conflict and also in transition to market economy and democracy, have demand in current global context.

The failure of the LDM and the birth of the NLDM had triggered a re-consideration in the international community of official views of legal reform and technical assistance. David Trubek explains that through the experiences of the LDM's failure and the following rule of law movement, international donors changed development policies to stress the need for a context-specific project development model

¹² Trubek, David M. "The "Rule of Law" in Development Assistance: Past, Present, and Future." In *The Role of Law in Development Past, Present, and Future*, edited by Yoshiharu Matsuura (Japan: Nagoya University, 2005). 1-2.

¹³ Ibid., 3.

¹⁴ Ibid., 1-2.

¹⁵ Sato, Yasunobu. "The International Cooperation Law under Globalisation: Cooperation for Peace Building." *Forum of International Development Studies* 18 (2001). Accessed February 5, 2015.

<http://www.gsid.nagoya-u.ac.jp/bpub/research/public/forum/18/04.pdf>. 72-73.

based on consultation with all stakeholders.¹⁶ Thus, international donors should understand that the target of the rule of law is not only a theoretical concept but also as a practice. In other words, a way of the rule of law promotion, a method of project design for law and justice assistance, and necessary donor's effort in this context is required to be considered, for avoiding potential risks and unexpected negative impact of law and justice assistance.

1.3 Methodological Approach and Research Questions

In the law and justice assistance context, donor organizations should design a tangible blueprint for legal reform in a recipient country, with comprehensive viewpoints including the recipient's needs, global standards, and the social context, culture, and economic conditions. This thesis explores the designing method of law and justice assistance for enhancing access to justice effectively through empirical case analysis. Throughout the process, this thesis also aims to consider elements of access to justice which is one of the component of a fundamental right for local people in a recipient state.

The decision to adopt a case study approach and to focus on the experiences of a single country reflects the author's belief in the significance of examining a specific case to consider the method and effect on the specific society to lead lessons learned from each case, based on the characteristics of law and justice assistance. This thesis has picked up a series of the projects in Solomon Islands as a research destination. Solomon Islands is a 900-mile archipelago of more than 27 islands about 1,200 miles northeast of Australia and became self-governing from British colonial rule in 1976, and fully independent two years later. After World War II, the British colonial rulers returned, and thousands of villagers from the poor, overcrowded island of Malaita migrated in search of jobs to the more developed island of Guadalcanal.¹⁷

¹⁶ Trubek, David M. "The "Rule of Law" in Development Assistance: Past, Present, and Future." In *The Role of Law in Development Past, Present, and Future*, edited by Yoshiharu Matsuura (Japan: Nagoya University, 2005).11-15.

¹⁷ "Freedom in the World 2003: Solomon Islands." The Freedom House.2003. Accessed April 20, 2018. <https://freedomhouse.org/report/freedom-world/2003/solomon-islands>.

From 1998 to 1999, internal conflicts began in Solomon Islands between people in Malaita and Guadalcanal, and were described by local people as “the Tension.” In response to the incident, the PIF Secretariat set restoration of social order and peacebuilding in Solomon Islands as a priority issue for regional security.¹⁸ Following this, Solomon Islands Prime Minister Sir Allan Kemakeza officially requested international support for post-conflict social reconstruction and to re-establish national and regional stability, security and prosperity.¹⁹ The PIF and the Ministers from the Member States agreed to the Australian proposal for an assistance package to Solomon Islands, including rebuilding institutions and establishing conditions under which the country could achieve social and economic recovery.²⁰ As a result, regional member states began to participate in regional peacekeeping and stabilization operations, and military and police forces from each member state had engaged in the activities.²¹ This regional collective action for Solomon Islands is called the “Regional Assistance Mission to Solomon Islands (RAMSI)”.

RAMSI is the first case of collective action toward regional security in the Pacific, and RAMSI consists of three major components. Law and justice assistance are one of them. RAMSI has generally been recognized as a collective peacekeeping operation in the Pacific region. However, RAMSI also has a significant element of law and justice assistance in the post-conflict process. RAMSI approached the judicial system of Solomon Islands comprehensively. Due to the size of the project including budget and coverage area, RAMSI is described as an unusual instance of law and justice assistance. RAMSI and its uniqueness is a significant project to examine law and justice assistance in the Pacific region.

¹⁸ Japanese Government, Ministry of Foreign Affairs. *The Evaluation Report on the Pacific Islands States* (Japan: The Japanese Government, Ministry of Foreign Affairs. 2009). 11-13.

¹⁹ Regional Assistance Mission in Solomon Islands. Accessed May 12, 2018. <http://www.ramsi.org/>.

²⁰ "Forum Foreign Affairs Ministers Meeting: Outcome Statement." Australian Government, Department of Foreign Affairs and Trade, June 30, 2003. Accessed April 20, 2018.

http://www.operationspaix.net/DATA/DOCUMENT/3618~v~Declaration_des_Ministres_des_Affaires_Etrangeres_du_Forum_des_iles_du_Pacifique.pdf.

²¹ "Fulltext of Biketawa Declaration". Accessed April 20, 2018.

<http://www.forumsec.org/resources/uploads/attachments/documents/Biketawa Declaration, 28 October 20002.pdf>.

Law and justice pillar under the RAMSI was ended in 2013. After that, following project named the Solomon Islands Justice Program (SIJP) has started as a bilateral program by the Australian government.²² The Australian government, which is a leading donor of RAMSI, conducted an overall evaluation project of law and justice assistance in RAMSI. And the evaluation result influenced the SIJP's approach. In this process, the evaluation result pointed out the significance of enhancing access to justice and the necessities for an approach to access to justice in the following project, while RAMSI and the Australian government had not implemented tangible actions for access to justice at the moment.²³

This research, therefore, explores a case of the long-term commitment of law and justice assistance in the Pacific, and how this comprehensive approach impact on law and justice system for local people over ten years to draw up lessons learned from the experiences. As a scope, this thesis focuses on enhancing access to justice in Solomon Islands under the project series of law and justice assistance, and look at the transition of the Australian government strategy toward Solomon Islands. This research also considers the role of Australia as a donor in the Pacific region and evaluates the failure and success of their aid approach.

The standpoint of this thesis does not discuss merits and demerits of modernization of judicial system. RAMSI's intervention tilted introduction of Western and formal legal system for enhancing judicial

²²Australian Government, Department of Foreign Affairs and Trade, *Delivery Strategy Solomon Islands Justice Program (SIJP) July 2013 to June 2017* (Canberra, Australia: Australian Government, 2013). Accessed April 20, 2018.

<http://dfat.gov.au/about-us/publications/Documents/solomon-islands-justice-program-delivery-strategy-2013-17.pdf>. 1-2.

²³Australian Government, AusAID, Office of Development Effectiveness. *Solomon Islands Case Study Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Government, 2012). Accessed April 20, 2018.

<http://dfat.gov.au/aid/how-we-measure-performance/ode/Documents/lawjustice-solomon-islands-case-study.pdf>. 76-78.; Regional Assistance Mission in Solomon Islands. Accessed May 12, 2018. <http://www.ramsi.org/>; Australian Government, Department of Foreign Affairs and Trade, *Delivery Strategy Solomon Islands Justice Program (SIJP) July 2013 to June 2017* (Canberra, Australia: Australian Government, 2013). Accessed April 20, 2018.

<http://dfat.gov.au/about-us/publications/Documents/solomon-islands-justice-program-delivery-strategy-2013-17.pdf>. 1-2.

mechanism in Solomon Islands. Thus this research does not deny modernization of legal system in a recipient state, rather than that, it supports that law and justice assistance should achieve a condition which can guarantee the right of access to justice among people substantively. The condition of the judicial system should determine a level of achievement of substantive justice. Thus the approach should not have a bias regarding the way including just a formal, informal or both, but consider the appropriateness and proper designing method for a recipient state individually in accordance with the social context. In this context, donors should take a responsibility to decide a project direction. This research will consider a process of determination to achieve the substantive condition for access to justice through law and justice assistance, from mainly a donor's perspective as a project designer.

Also, looking at the social context of Solomon Islands is inevitable to consider the project designing process and aid effectiveness. The United Nations categorized Solomon Islands into small island developing states (SIDS) which are recognized as a distinct group of fragile developing countries. According to the UN, SIDS is generally facing specific social, economic and environmental vulnerabilities.²⁴ Also, there are diversified situations within SIDS in the Pacific region. Most of the Polynesian states are quite small and hard to survive by themselves, and mostly they have a stronger relationship with a point where they can rely on such as migrant families in abroad. However, most of the Melanesian states such as Papua New Guinea (PNG), Fiji, and Solomon Islands have a bigger economic system, resources, and land. Therefore they usually have less point of dependent and have to have an independent system within their states.²⁵ In this context, Melanesian countries seem to have a unique difficulty as a “jail,” and they need to have an independent system on their own.²⁶

²⁴ SIDS have special fragilities under unique geographical conditions, and the United Nations has classified 57 countries and territories. Solomon Islands is categorized into SIDS under the UN definition, as one of 20 SIDS in the Pacific region. “Country Profiles.” United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLS). Accessed April 20, 2018. <http://unohrlls.org/about-lldc/country-profiles/>.

²⁵ Interviewee AE1, Interview by author. Personal interview. Canberra, August 31, 2016. For the list of interviews, see the Appendix.

²⁶ Ibid.

This project approaches the main research questions which are how donor organization should deal with social constants to design and implement the law and justice assistance for enhancing the right of access to justice in fragile states through leading lessons learned from an empirical case. This thesis also aims to contribute to a better understanding of the relevance of development assistance and social constant in law and justice in the fragile states. As supportive research questions, this thesis also examines (1) to what extent the society has been changed for both donor and recipient after the deployment of RAMSI; (2) how characteristics of social constant in fragile states reflect on law and justice assistance and its sustainability; and (3) what are required considerations for fragile states including SIDS in project designing process.

1.4 The Geographical and Historical Boundaries of This Study

The scope of this thesis will focus on law and justice assistance in Solomon Islands but mainly look at two projects. They are the Regional Assistance Mission to Solomon Islands (RAMSI: 2004 to 2013) which is a regional collective mission, and the Solomon Islands Justice Program (SIJP: 2013 to 2017) which is a bilateral program conducted by the Australian government. Since RAMSI was mainly lead by Australia, this research will deal with the Australian development assistance policy in the field of law and their experiences in Solomon Islands. Also, this thesis looks at RAMSI's impact on Australian aid history and policy to consider for both internal and external influence of the aid project.

This research will look at the Australian development assistance strategy toward the Pacific region over two decades. In accordance with the global trend of ODA and also the Australian domestic regime change, the Australian government was required to change their ODA policy and strategy significantly during the period. In RAMSI's context, both terrorist attack in the United States in 2001 and Bali in 2002 triggered Australian awareness of the regional security and stability had happened during John Howard's government. Since then the emergence of non-states actors became new threats for Australia, and then military and police force intervention become an important measure of ODA toward the non-traditional

global threat.²⁷ RAMSI was deployed under such a condition. And the PIF enacted the Biketawa Declaration which constitutes a framework for coordinating the response to regional crises in 2000. Hereby, the PIF legitimated the intervention to the member states more or less, and boosted up the deployment of RAMSI. This research will explore the transition and focus of Australian development assistance strategy for the Pacific region and the experiences of law and justice assistance in Solomon Islands since 1997 as a time scope.

Additionally, this thesis analyzes the cases based on Solomon Islands' characteristics of SIDS as a social constant. Although most of the countries in the Pacific region have had some experiences of receiving law and justice assistance, such as Papua New Guinea, Vanuatu, and Samoa,²⁸ this research focuses on the experiences of Solomon Islands to consider the characteristics of project implementation in SIDS because law and justice assistance as it was implemented in Solomon Islands had special features as a symbolic mission in the region.

1.5 Data Collection Sites and Fieldwork Methods

As the primary data source, this research examines documents including publications by the Australian Parliament, Parliamentary house conference record, political speeches and policy statement of PIFS, Australia, and Solomon Islands, legislation, project report; the United Nations report, NGO report; media release, and newspaper. This approach seeks to shed light on the Australian method of designing law and justice assistance, and its diplomatic policy for the Pacific islands in regards to programs and projects

²⁷ Hawksleya, Charles. "Australia's Aid Diplomacy and the Pacific Islands: Change and Continuity in Middle Power Foreign Policy." *Global Change, Peace & Security: Formerly Pacifica Review: Peace, Security & Global Change*, 21, no. 1 (March 02, 2009): 117-118.

²⁸ In this research, the Pacific island countries are defined as following 14 countries: Fiji, Papua New Guinea, Solomon Islands, Vanuatu, Cook Islands, Samoa, Tonga, Niue, Palau, Nauru, Marshall Islands, Federation states of Micronesia, Tuvalu, Kiribati. These countries are both categorized into SIDS defined by the United Nation, and member states of the regional organization, the Pacific Islands Forum Secretariat (PIFS).

in the field of law.

This research also conducted field interviews and field research for a total of five months in both Australia and Solomon Islands. Most of my field research in August – September 2015 and August – November 2016 was conducted in Canberra which is the center of governance in Australia. The targets of my interviews were the Australian government officers at Department of Foreign Affairs and Trade (DFAT) including the former Australian Agency for International Development (AusAID), Attorney General's Department, researchers and officers at the Parliament House and Library, and Parliament members who got engaged in law and justice assistance project including RAMSI, specialists of Solomon Island legislation, and legal practitioners.

Also, the methodology for Chapter Six involves an analysis of the result of field research in Honiara, the capital city of Solomon Islands. Data includes interview responses, historical presentations after the Tension and post-conflict period in Solomon Islands, and the author's own personal observations from the fieldwork conducted in November 2016. As this thesis mentioned previously, Solomon Islands consists of the archipelago with the various ethnic group. Thus reliability and trust which has been built up among communities, as well as individuals, are significant to conduct a research project. During the field research, this project relied upon "Snowball method"²⁹ which haul in a line of people's network and friendship to reach the target of interviews. This snowball method was effective to collect reliable data in Honiara.

The second method of data collection was to review previous studies on justice system including the local situation of access to justice in Solomon Islands. The significant sources were findings and an official report of the World Bank. The World Bank implemented a research project "Justice for the Poor (J4P)", and conducted huge and comprehensive field research in Solomon Islands including the rural justice system, traditional customary law, and dispute resolution mechanisms.³⁰ These findings and methodologies were helpful for this research to understand the real situation and social context in Solomon

²⁹ Interviewee AE6, Interview by author. Personal interview. Canberra, October 7, 2016.

³⁰ "Justice for the Poor: Solomon Islands Program." The World Bank. December 11, 2013. Accessed April 20, 2018. <http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/SolomonIslandsWebsiteDownload.pdf>.

Islands.

1.6 Methodological Constraints

Some methodological issues arose during the research. First, this research mainly focuses on a donor's perspective. Chapter Six touches upon the recipient's perspective based on field research in Honiara; however, there were ethical and physical constraints to hear voices from local people. Snowball method is effective and essential to collect data and people's voices in Solomon Islands. Due to the multi-ethnic structure of Solomon Islands, this research had to rely on human networks. Otherwise, it was too tough to build trust with local people to draw their voices and overcome people's skepticism for foreign donors. Additionally, the author has found that people in Honiara have mixed and complicated feelings toward Australian aid projects including RAMSI. It was also difficult to judge local people's impression for each donor, including Australia, New Zealand, Taiwan, and Japan. The author comes from Japan which is one of the biggest donors in the Pacific, therefore, sometimes people were reluctant to say their real feelings. Also, Solomon Islands is a multi-ethnic society with more than 800 languages, and usually it is hard to visit peripheral islands within the territory. Therefore, this research concentrated to Honiara, where is located in the Guadalcanal, and conducted interviews with people based in Honiara. This social context of Solomon Islands is also the reason why this research relied on the previous research findings of the World Bank's Justice for the Poor projects. Especially, this research refers findings regarding the social and judicial contexts of Solomon Islands and justice situation of each smaller community on remote islands as a supplement.

This research examines only one case study of law and justice assistance. Although RAMSI was a regional collective mission, this research focuses on Australia as a leading donor of target project and does not look at other major donors such as New Zealand. In general, RAMSI has been recognized as a peacekeeping operation in post-conflict states. However, this research project will look at RAMSI's law and justice part mainly.

1.7 Reliability, Validity, and Broader Applicability of Research Findings

A key practical aim of this exploration throughout the thesis is to use empirical case analysis to offer suggestions on project designing methods for law and justice assistance. This thesis makes two distinctive contributions. Firstly, this whole research project is a challenge for leading lessons for the rule of law promotion in practice, as a significant interdisciplinary area of law and development. Development assistance in the field of law and its process have become a new area of study since the end of Cold War in 1989, and demands for the assistance of this area are significantly increasing in accordance with globalization. Global society has acknowledged a concept of the rule of law as a goal in the process of development.³¹ However, opposing viewpoints both in theory and in practice toward law and development also exist.³² Rumu Sarkar developed a legal reform analytical framework for understanding and developing a rule of law regime. His study highlights the relationship between law and a process of development and the distinction of development concept in practice and theory. He also states the significance of ethical considerations in the development law process, which comes from the substantive principle, not the theory.³³ The International Network to Promote the Rule of Law (INPROL) also acknowledges the practical perspective of the rule of law, and has published a range of practitioner's guide for introducing the basic idea and best practices for practitioners on the rule of law assistance.³⁴ This thesis tries to follow these current trends and viewpoints for exploring the rule of law in practice and substance, as well as acknowledge the significant role of the idea of the rule of law from such a standpoint

³¹ Matsuo, Hiroshi. *Basis Theory of Law and Development Jurisprudence for Good Governance* (Tokyo, Japan: Keisoshobo, 2012). 185-200.

³² Sarkar, Rumu. *International Development Law: Rule of Law, Human Rights, and Global Finance*, 1st ed. (Oxford, The United Kingdom: Oxford University Press, 2009). 33-73.

³³ Ibid.

³⁴ "INPROL: International Network To Promote The Rule Of Law." International Network to Promote the Rule of Law. Accessed April 20, 2018. <https://www.inprol.org/>.

as an ethical reflection in the society. Then this thesis aims to contribute further discussion of the practical insight into the rule of law and its method, as well as law and justice assistance to connect with development assistance theory, history, and current issues in practice as a hybrid.

Also, with regard to project management and design, while some scholars have examined the effective method of project management and develop a global standard which is majority utilized in diverse sectors, fewer studies as yet have explored the method in development assistance field. Victor Hermano et al. explained the reasons of the primitive situation of project management method in international development field which was resulted from the special features of the project in the international development field. According to them, these conditions make harder to examine a proper method in this field. The first feature is that project goal are complex and intangible since they are concerned with poverty alleviation or social transformation. The second is international development projects have a social and political nature which attracts a complex web of stakeholders. The third is that the operating environment is unique since it is surrounded by sociopolitical instability, geographic and cultural separation among actors. And the fourth is knowledge transfer to beneficiaries is a priority during every phase of the project.³⁵ Moreover, there is far less analysis of the ways on law and justice assistance field, and its implementation, risk management, and transition management, to contribute the project effectiveness and success. However, history of project management method in other sectors, such as infrastructure and information technology, evident that proper management model can contribute to project effectiveness and efficiency. From the point of view, project management can play a significant role as a strong tool and knowledge base to lead successful implementation.³⁶ Based on these facts, this thesis

³⁵ Hermanoa, Víctor, Adolfo López-Paredesb, Natalia Martín-Cruza, and Javier Pajares. "How to manage international development (ID) projects successfully. Is the PMD Pro1 Guide going to the right direction?" *International Journal of Project Management* 31, no. 1 (January 2013). August 2, 2012. Accessed November 13, 2017.

https://ac.els-cdn.com/S0263786312000889/1-s2.0-S0263786312000889-main.pdf?_tid=ddc5ba33-b92c-4d84-a c1a-b48de639e5ce&acdnat=1524376721_1dd36f4e651cb2c2e01313ecd448f980.23.

³⁶ Azzopardi, Sandro. "The Evolution of Project Management." *Project Smart*. Accessed April 20, 2018. <https://www.projectsmart.co.uk/evolution-of-project-management.php>.

concentrates on law and justice assistance to clarify the uniqueness and difficulties of designing and managing a proper project. This thesis also seeks to develop new implications for project management in law and justice assistance.

Secondly, through dealing with Solomon Islands as a case, this research focuses on their characteristics as a fragile state both from their post-conflict situation and from geographical factors as a developing small island state in the Pacific region. Conceptually, this thesis explores the relationship between law and geography in the society in law and justice assistance context. In previous studies, most researchers on law and geography have agreed that the relationship between law and space significantly exists.³⁷ However, how the relationship between the two is interrelated and how it affects societies is controversial. Through the discussion on the relationship between law and geography, as well as the fragility of SIDS as a social constant, this thesis examines the hypothesis that due consideration of social context, including geographical and spatial context, influences the probability of success of law and justice assistance by comparing those countries in which these considerations were present with those countries where it was absent. This thesis will further discuss the connection between law and geography in Chapter Two.

Although this research and its findings are specific to Solomon Islands, this concentration does not negate broader applicability of leading lessons. This research project undertakes a critical, multilayered analysis of experiences of Solomon Islands as a recipient, and Australia as a donor, with multiple sources of data and methods to support the findings. Through these processes, the author checked the research coherence and justification with viewpoints of project design and transition. Solomon Islands and Australian case is just one. Thus it might be difficult to generalize the lessons learned to all forms of law and justice assistance in fragile states. RAMSI and SIJP is a unique case of a comprehensive approach to law and justice system in one single country. However, in the law and justice assistance context, the author needed to undertake detailed research into each case due to the pluralistic legal culture and social context

³⁷ Delaney, David. "Beyond the word: law as a thing of this world". In *Law and Geography*, edited by Holder, Jane., Harrison, Carolyn (The United Kingdom: Oxford University Press, 2002). 67-70.

of recipient countries. Furthermore, this research focused on the project management and design method on law and justice assistance for access to justice in fragile states. Suggestions of this research hopefully can provide an applicable model and useful insight for future project designers of law and justice assistance, through a detailed exploration of the issue.

1.8 Map of This Research

This thesis has been broken down into seven chapters including this introductory chapter. Chapter Two clarifies a core conceptual framework for this whole research project, based on three key concepts and their definitions, which are law and justice assistance, fragile states as a major recipient of law and justice assistance, and project management. The topic of the method of designing law and justice assistance in fragile states context is a substantial one extending beyond the focus on development assistance as well as law and development study undertaken in this thesis. Chapter Two also breaks down each key concept into detailed areas of the target and provides insight and approach to each concept in this thesis.

Chapter Three examines the Australian law and justice effort as a part of ODA and its fundamental strategy as a foreign policy, to clarify the main features of the Australian approach of law and justice assistance. The main question that the Chapter Three addresses are how the Australian law and justice assistance is identified, compared with other bilateral donor organizations. This chapter analyzes policy framework of the Australian aid on law and justice within two decades in comparative perspective. The analysis is based on two previous studies, which are Schimmelfenning's framework for the rule of law assistance and Nicholson and Hinderling's analysis of donor's role. Also, through exploring Australian strategy on aid and law and justice assistance, this chapter described the fact that the regional security interest and geographical contiguity have figured current Australian law and justice assistance narrative. Then the chapter implied future pathways of Australian law and justice assistance under the new aid paradigm which emphasize economic development for Australia as principle legitimacy. Also, this chapter clarified the new aid paradigm could influence law and justice assistance narrative on traditional objectives

for peace and stability in post-conflict states.

The next three chapters of this thesis explore an empirical case of law and justice assistance, which was conducted by the Australian government in Solomon Islands. Then chapters analyze the aid impact for both a donor and a recipient, from the series of law and justice assistance.

Chapter Four explores one empirical case of law and justice assistance, the Regional Assistance Mission to Solomon Islands (RAMSI) and follows the Solomon Islands Justice Program (SIJP) and its implementation process to consider how both primary actors, Australia and Solomon Islands, were engaged in this process. In this context, this thesis focuses on a pathway of experiences of receiving huge aid program from Solomon Islands side on the one hand. On the other hand, this chapter considers how Australia interacts with RAMSI's implementation process and their changes along with the process, from the Australian side. This chapter overviewed the series of law and justice assistance in Solomon Islands, after the Tension during 1998 to 2003. RAMSI often attracts attention as a regional collective intervention to the failed states, Solomon Islands. However, it was not simply a peacekeeping mission but a more substantial package of development assistance programs designed to achieve a restoration of the rule of law and governance. This case presents the world unexemplified aid program on law and justice assistance, which covers justice system in a pluralistic legal country comprehensively. In order to examine the impact of law and justice assistance in Solomon Islands, this chapter looks at what the key factors of law and justice assistance are under RAMSI and follows the bilateral program of Australia.

Chapter Five analyzes project impact for donors, based on how Australia implemented RAMSI and Australian approach's aid effectiveness based on three key viewpoints. Chapter Five also explores to what extent the Australian approach to law and justice assistance were appropriate in accordance with the social context of Solomon Islands, including geographical features as small island states. Then this chapter aims to clarify the progression of the Australian experience and RAMSI's standing point and characteristics in history of Australian aid policy. Like the terrorist attack in the USA and Bali caused by non-traditional terrorists, the contextual change happened in the world, and the Australian government has considered a policy for Australia's war on terror. The Tension in Solomon Islands, which may become a threat to

jeopardize regional security, also triggered a reconsidering the Australian strategy for regional security and a concept of intervention in a post-conflict state. Also, this chapter highlights transition phases of law and justice pillar in RAMSI and following the bilateral law and justice assistance program, SIJP, as a critical point of project implementation process. To consider how law and justice assistance overcome the “problem of fit” for establishing project coherence and consistency, this chapter has applied to Australian experiences the perspective of consistency within a process of project transition. Also, this chapter aims to draw lessons learned from the Australian experiences.

The Chapter Six turns to analysis of law and justice assistance in Solomon Islands from a broader perspective, including recipient's viewpoint and comprehensive evaluation of RAMSI and SIJP. To consider how the policy approach of RAMSI and SIJP suited for the context of Solomon Islands, this chapter explores field conditions of access to justice and judicial fragility after the deployment of RAMSI in Honiara city. Through analyzing interview responses and the author's own personal observations from fieldwork in Honiara as a primary data, this chapter examines the fact that there are still many problems on law and justice in the local level, which exist behind a big success of RAMSI on restoring law and order in Solomon Islands. Suggestions which the data presented also give some indications toward the appropriate method of project design. From these perspectives, the main purpose of this chapter is to clarify the answer to the question of appropriateness for the project approach, and the breeder of “mixed evaluation results”.

Chapter Seven reflects on these ongoing development assistance programs on law and justice by the Australian government in Solomon Islands and considers the pathways of project design method for enhancing the right of access to justice for local people. This chapter offers reflections on what approach on project design for law and justice assistance may entail for practitioners, project managers, and scholars. It is essential for fragile states including states in post-conflict to receive foreign aid. However, its impact on the society is the box of Pandora which contains risk for reversion and hope for development. The conclusion suggests proper project management method can be a guidepost for aid effectiveness as well as guarantee the basic human rights of local people.

1.9 Conclusion

In sum, this thesis aims to draw lessons learned from the case analysis for a method of designing law and justice assistance for enhancing people's access to justice in the fragile state context. Through a detailed and thick exploration of these issues, this study also aims to contribute to a better understanding of these issues on the social constant of a recipient country in the process of project management and design for achieving aid effectiveness. Subsequent chapter will explore the core conceptual frameworks and approaches of this thesis.

Chapter II: Core Conceptual Framework

Geographies," said the geographer, "are the books which, of all books, are most concerned with matters of consequence. They never become old-fashioned. It is very rarely that a mountain changes its position. It is very rarely that an ocean empties itself of its waters. We write of eternal things."

"But extinct volcanoes may come to life again," the little prince interrupted. "What does that mean-- 'ephemeral'?"

"Whether volcanoes are extinct or alive, it comes to the same thing for us," said the geographer. "The thing that matters to us is the mountain. It does not change.

(De Saint-Exupéry, Antoine. *The Little Prince*. 1943.)

2.1 Introduction

As previous chapter discussed, the ethnic tension of 1999 which happened in two small islands of Solomon Islands triggered raising awareness for peace and security and the role of justice system in the region. The incident in a small island state, called the Tension had entangled not only the whole states but also a whole region. Then the Tension jeopardized the regional security. Yet, the series of development assistance in Solomon Islands became an unprecedented scale project for restoring peace and order. In the process of peacebuilding, aid donors implemented law and justice assistance broadly in post-conflict states as a significant pillar of development assistance elements to support state building.

How a donor, who is “a designer of the project”, design the law and justice assistance in this context? To analyze how a donor, who is a designer of the project, design the law and justice assistance, this chapter aims to clarify and explain the core conceptual framework and approach of this thesis and also, a standpoint toward the problem. This chapter outlines the core conceptual framework and approach of the thesis. Next section introduces an overall map of conceptual framework and approach which consists of three major concepts. Then following three sections explores definitions and components of each key concept, which are law and justice assistance, fragile states, and project management. The last section highlights features of the empirical research destination in this thesis, which is Australia as an aid donor for

Solomon Islands.

2.2 Core Theoretical Framework

This section explains the overall conceptual context and definitions of each key idea which consists of the thesis to unfold in. The position of this study is to be set at that substantive principles, and empirical cases of law and development may provide insight into how aid donors should promote the concept of the rule of law for better understanding and take root in society through law and justice assistance. Law and justice assistance could contribute to the recovery of legal capacity in fragile states and guarantee basic human rights. Thus people can benefit from proper legal services. Fragile states have major demands for law and justice assistance. Unlike short-term aid or emergency humanitarian aid,³⁸ law and justice assistance aim to develop enough capacity, for which are drafting, enforcement, legal service, and education. Therefore, it needs mid- or long-term for implementation. In this context, law and justice assistance are not just applying a band-aid to a damaged state, more likely a whole process for rehabilitation of the state. Therefore aid practitioners should design and implement based on such whole characteristics and processes.

Substantive projects of law and justice assistance cover broad targets and approaches. Rumu Sarkar designed the Rule of Law Matrix to describe three structural elements and tangible activities for achieving each element. These are (1) good governance which includes building a civil society and parliamentary reform; (2) structural legal reform which includes commercial law reform, privatization, capital market development, decentralization, and microfinance; and (3) administration of justice which includes legislative drafting, legal education, improve court administration, criminal justice reform, and judicial

³⁸ Humanitarian aid is defined as to save lives, alleviate suffering and maintain human dignity during and after man-made crises and disasters caused by natural hazards, as well as to prevent and strengthen preparedness for when such situations occur. Development Initiatives. "Defining humanitarian assistance." *Development Initiatives*. Accessed April 20, 2018. <http://devinit.org/defining-humanitarian-assistance/#>.

capacity building.³⁹

While the United Nations recognized a global consensus toward enhancing the rule of law as a fundamental goal of law and justice assistance described it in Millennium Development Goals (MDGs) and Sustainable Development Goals (SDGs), aid donors should design a project goal as well as approach along with a social context and each demand of a recipient country individually. This situation means the overall goal of law and justice in the global context, legal concept and systems such as a way of interpretation, understanding, and enforcement exist differently in accordance with the individual social context. Such legal pluralism can influence the implementation and effect of law and justice assistance. Therefore, aid donors need to design the project goal of the assistance individually along with social context. This thesis explores social context as a critical factor in the process of project design. Also, this thesis focus on the right of access to justice which global society aim to achieve in law and justice assistance context as a fundamental right and essential idea for lasting peace. To consider the way of designing law and justice assistance, this thesis also examines a condition of access to justice in a recipient society.

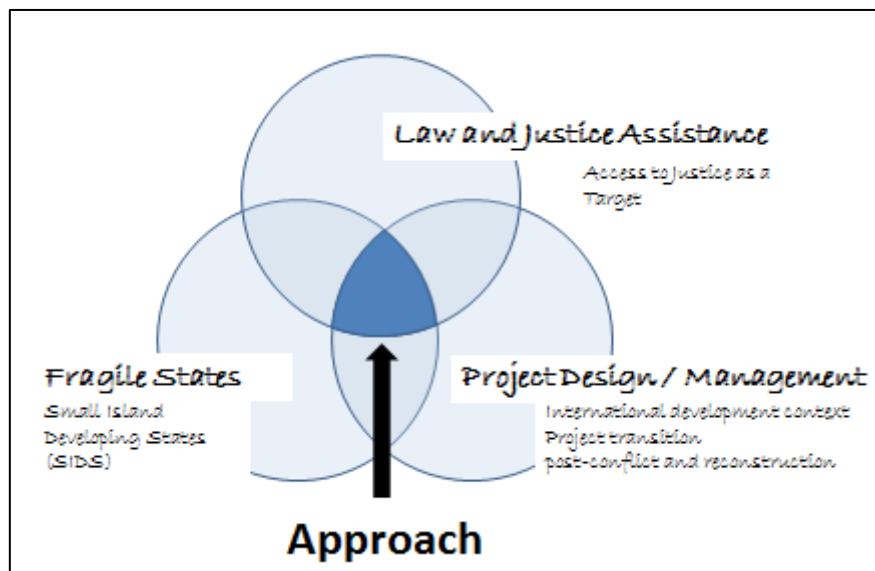
Since the research destination of this thesis is Solomon Islands as a recipient, thus this research considers social context and characteristics of the state. In the light of the criteria, Solomon Islands is classified into fragile states due to some conditions, such as Least Developed Country (LDC), post-conflict, and Small Island Developing States (SIDS). Fragile states have significant definitions and causes which distinguish some countries into fragile states. And among those, SIDS have commonalities of features as small island states. SIDS have to live under a range of resource constrains caused by smallness and remoteness. Since geography is a constant and unchangeable factor for the society, the fact related to geography is also difficult to change. Therefore, aid providers have to give special attention to these facts related to unchangeable factor. This thesis addresses the relationship of geography as an eternal factor of the society and law and justice assistance. To consider the primordial factor of the assistance project, this

³⁹ Sarkar, Rumu. *International Development Law: Rule of Law, Human Rights, and Global Finance*, 1st ed. (Oxford, The United Kingdom: Oxford University Press, 2009). 68-73.

thesis also explores how law and geography are related each other. This research noteworthy gives attention to the social constant of geography to consider aid effectiveness and impact on the recipient society.

Thus as one of the key concepts, this thesis focuses on fragile states in order to shed light on how to deal with social constants like geographical characteristics in the context of law and justice assistance.

(Figure 1: Core conceptual framework of this thesis)



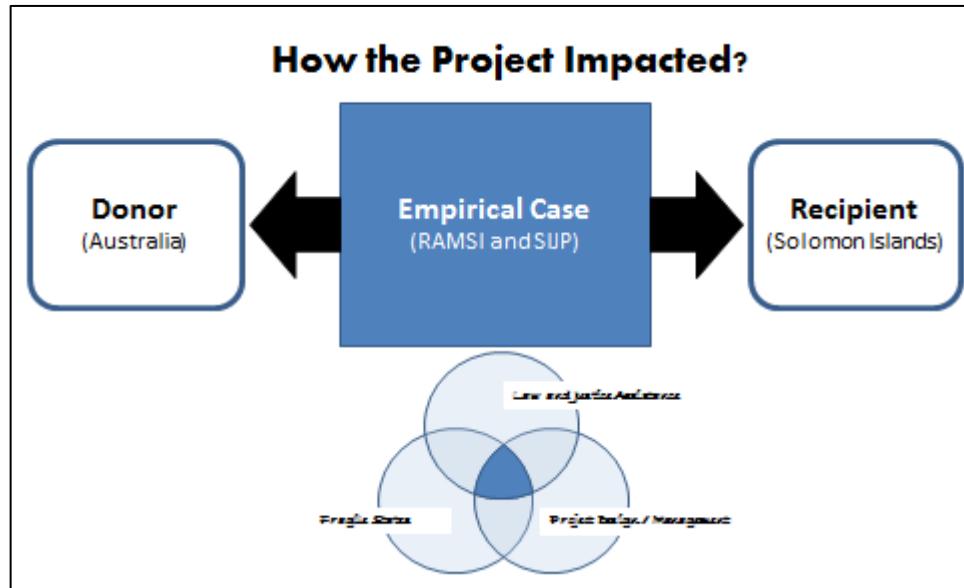
(Source: Developed by author)

This thesis placed the concept of law and justice assistance in the center of this project and combined with two other key concepts, which are fragile states as a significant target of law and justice assistance and project management as a method of implementation. Based on the main framework, this research aims to answer the main research question of how should donor organizations deal with social constants to design and implement the law and justice assistance for enhancing the right of access to justice in fragile states. Also, this thesis demonstrates aid impact for both a donor and a recipient, through empirical case analysis.

Figure 1 describes the whole conceptual structure of this research. This project approaches the

overlap part among three key concepts. Based on these three key concepts, as Figure 2 shows, this thesis considers how the law and justice assistance project influenced both actors through the series of project cases in Solomon Islands. The following sections will explain deeper explanations and definitions of each three key concepts.

(Figure 2: Approach for the empirical case to analyze in this thesis)



(Source: Developed by author)

2.3 Key Concepts and Definitions 1: Law and Justice Assistance

The legal field includes many definitions for such terms as law and justice assistance. This section defines law and justice assistance and its features. This section also highlights the right of access to justice, as a significant target of law and justice assistance.

2.3.1 Definition of Law and Justice Assistance

Law and justice assistance⁴⁰ is defined as a type of international development assistance for legal reform for assisting developing countries in establishing efficient and effective justice systems. As mentioned previously, the initial law and justice assistance started as LDM in the 1960s. However, current law and justice assistance has been set forth as technical assistance to aim to establish the rule of law, economic growth, and good governance in the post-Cold War era. This thesis also utilizes the term law and justice assistance under the definition as the current technical aid after 1989. Since the end of the Cold War, the demand for law and justice assistance has been increasing among countries in a transition economy and the regime, in conflict or post-conflict, and newly independent states. In accordance with demands, a range of donor organizations including multilateral and bilateral development agencies conducted law and justice assistance for these countries. The term law and justice assistance also covers diverse activities related to legal reform, such as drafting law; enhancing legal enforcement and institutions; enhancing legal education system; and enhancing legal aid and access to justice.

Under the law and justice assistance, donor organizations should design a tangible blueprint for legal reform in a recipient country from a comprehensive perspective encompassing recipients' needs, global standards, history, culture, and economic conditions. Currently, the international recognition of the significance of promoting law and justice has matured in the development assistance context. In fact, one of the SDGs of the 2030 Agenda for Sustainable Development, Goal 16, is to "promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels".⁴¹

⁴⁰ The terminology of "rule of law promotion" unfolds in the stance of each donor and there is a diversity of terms used to describe development assistance; however this research project uses "law and justice assistance" to mean development assistance in the field of law. The Australian government uses the term "law and justice assistance" officially to describe its assistance projects in this sector and this thesis follows the Australian official terminology to describe.

⁴¹ "United Nations Sustainable Development Knowledge Platform". The United Nations. Accessed April 20, 2018. <https://sustainabledevelopment.un.org/sdgs>.

2.3.2 Law and Justice Assistance as a Long-term Project

From past global experiences, donors now understand that law and justice assistance necessitates a long-term process and structure which can contribute to stability. For example, if one country is suffering from a scarcity of foods or famine, donor organizations offer food relief as short-term emergency aid. By contrast, in order to combat rooted social issues, the country should plan fundamental provisions and precautions toward causes of food scarcity such as infrastructure improvement, capacity building, and agricultural development in a long-term process. Law and justice assistance have a common feature which needs long-term aid, regarding addressing social infrastructure of a recipient country.

According to Brian Tamanaha, as the law matures, like the process of enforcement and adjudication in society, the recipients even redefine the significance of law itself along with their social contexts.⁴² The United Nations Development Program (UNDP), for example, states that a long-term process for justice and security programs is essential for long-lasting stability. Such efforts can also impact on perceptions of and social support for a law and justice system progressively taking root in a recipient society.⁴³ In the bilateral aid space, donor agencies are also taking note of the significance of long-term commitments to law and justice assistance. One example is Japan's law and justice assistance. The Japanese government first began assistance in the field of law and justice in 1996 to Vietnam, subsequently expanding its target countries gradually throughout Asia and Africa.⁴⁴ Japan has tried to establish a

⁴² Tamanaha, Brian Z. "A Battle Between Law and Society in Micronesia: An Example of Originalism Gone Away." *Pacific Rim Law & Policy Journal* 21, no. 2 (2012): 295-325. Accessed April 20, 2018. <https://digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/1118/21PRLPJ295.pdf?sequence=1>. 295-296.

⁴³ United Nations Development Program. *Strengthening the Rule of Law in Conflict- and Post- Conflict Situations* (The United States of America: UNDP, 2008). Accessed April 20, 2018. https://www.un.org/ruleoflaw/files/rol_final_apr09.pdf. 31-33.

⁴⁴ Japan International Cooperation Agency, JICA. *Transition of Legal Technical Assistance* (Tokyo, Japan: April 1, 2016). Accessed April 20, 2018. [http://gwweb.jica.go.jp/km/FSubject0401.nsf/3b8a2d403517ae4549256f2d002e1dcc/172563f227bf87c449257bc60010b4bb/\\$FILE/【最新版】20160401 法整備案件リスト（和文）.pdf](http://gwweb.jica.go.jp/km/FSubject0401.nsf/3b8a2d403517ae4549256f2d002e1dcc/172563f227bf87c449257bc60010b4bb/$FILE/【最新版】20160401 法整備案件リスト（和文）.pdf). 1-2.

Japanese-style of law and justice assistance centered on a self-help and request-based approach to establish a long-standing justice system.⁴⁵ As a result, Japanese projects have emphasized medium- and long-term commitments.⁴⁶

2.3.3 Law and Justice Assistance as a Substantive Project

In law and development contexts and processes, the goal of law and justice assistance is to achieve economic growth and good governance in a recipient country. Law and justice assistance include the element of “legal transplant” so its methodology is also under the debate. For a long period, cross-border reception of law was happened both by colonial domination and by voluntary.⁴⁷ Law and justice assistance are related to the reception of law, and historically, the idea of “one-size fits all” is a major strategy of law and justice assistance. The idea of one-size fits all is defined as the best practice of legal institution can apply to the whole legal system. The idea has presupposed elements. Firstly, the one-size fits all is based on the concept that acknowledges the existence of an applicable single model for the whole world.⁴⁸ The one-size fits all always postulate the existence of the best practice or universal model system which is applicable. Secondly, the one-size fits all should be the top-down approach in legal transplant. If a donor premises the best practice, the assistance project needs to approach the top level or global standard, not local context. Since formerly policymakers believed that best practices could improve the legal system of every country. Also, the strategies were usually designed based on Western development paradigm.

Regarding approaches of Western donors of law and justice assistance as leading developed countries, Frank Schimmelfenning researched the comparative analysis of the rule of law aid policy among

⁴⁵ Japanese Government, *Japan's ODA White Paper 2003* (Japan: The Japanese Government, 2003).

Accessed April 20, 2018. http://www.mofa.go.jp/policy/oda/white/2003/part1_2_1_2.html. Chapter 2, Section 1.

⁴⁶ “Basic Principle of Japan’s Legal Technical Assistance.” The Japanese Government. May 2013. Accessed April 20, 2018. http://www.mofa.go.jp/mofaj/gaiko/oda/bunya/governance/hoshin_1305.html.

⁴⁷ Matsuo, Hiroshi. *Basis Theory of Law and Development Jurisprudence for Good Governance* (Tokyo, Japan: Keisoshobo, 2012). 168.

⁴⁸ Trubek, David M. "The "Rule of Law" in Development Assistance: Past, Present, and Future." In *The Role of Law in Development Past, Present, and Future*, edited by Yoshiharu Matsuura (Japan: Nagoya University, 2005).11.

major Western donors. He explored how far the international rule of law consensus goes and to what extent it is undermined by diverging domestic understandings and solutions.⁴⁹ Schimmelfenning distinguished the definition of the rule of law promotion into two categories. They are “thin” which focus on formal or institution such as constitutions, laws, courts, and law enforcement agencies, and “thick” which is substantive definition includes legal culture, such as the values and attitudes of the judiciary, human rights, equality, and justice. Schimmelfenning also mentioned generally international rule of law promotion has been based on the thin definition.⁵⁰ Also, substantive domains can reflect on the rule of law promotion policy, which are economic, criminal or political context, economic reform and development or liberalization, democratization and human rights, good governance, and post-conflict state building.⁵¹ Schimmelfenning also pointed out that the Western rule of law consensus extends to thin general principles in common with all liberal democracies, such as the independence of the judiciary, and the principle of legality. The general principle also holds for the predominantly formal, institutional focus of the rule of law promotion. He also mentioned when it comes to concrete legal norms and institutions. However, the externalization of domestic solutions brings different outcome or impact depending on countries to the fore.⁵²

How the approach for the rule of law promotion should be interpreted in the context of law and justice assistance? Historically, the idea of one-size fits all originally supported the major strategy of law and justice assistance; however, through the experiences and failures of law and development movements in the 1960s, donors realized the need to shift and change their development strategy to a context-specific approach. In this process, the idea of one-size fits all had been gradually rejected. Since then, the

⁴⁹ Schimmelfennig, Frank. “A Comparison of the Rule of Law Promotion Policies of Major Western Powers.” In *Rule of Law Dynamics: In an Era of International and Transnational Governance*, edited by Michael Zurn, Andre Nollkaemper, and Randy Peerenboom (Cambridge, The United Kingdom: Cambridge University Press, 2012).113.

⁵⁰ Ibid.

⁵¹ Ibid., 113-114.

⁵² Ibid., 116-117.

mainstream of law and justice assistance has derived from the idea of one-size fits all, but the global trend is driven to shift to context-specific or tailor-made style since the 1980s. In 2004, the World Bank suggested that the idea of one-size can fit all is significant in law reform in the first annual Doing Business reports.⁵³ According to the World Bank, the idea of the formal legal institution is an essential implication for legal reform. The World Bank also mentioned that one-size is possible to fit for all and adjustable along with the recipients.⁵⁴ Also, according to Ralf Michaels, the idea of one-size fits all is not just a copy and paste but should include more sophisticated account. Ralf Michael refers to “IKEA theory of legal transplants” by Frankenberg in this context.⁵⁵ Frankenberg takes in his paper the idea of one-size fits all more seriously and develops an IKEA theory as an alternative way and expanded the idea of one-size fits all for adapting the idea of Constitution to another legal system.⁵⁶ The IKEA theory demonstrates a way of adapting law to another another legal system in an orderly sequence of four steps. The first step is to determine the original point of law, and “decontextualize” to the empty law for isolation from the circumstances of its procedure, and preparation for transfer. The second step is globalization, which is the transfer process from the local context to the global knowledge reservoir. The third step is localization, which is the transfer process to re-adapt the globalized context into a local context. The fourth step is recontextualization to adapt to a new environment of the adapted country.⁵⁷

However, even based on the IKEA theory, there are still difficulties to follow the idea of one-size fits all as a fundamental idea of legal reform. To determine the legal origin of legal transplant and the

⁵³ International Finance Corporation and The World Bank, *Doing Business in 2004: Understanding Regulation* (The United States of America: The World Bank, 2004), Accessed April 20, 2018.

<http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB04-FullReport.pdf>. Xvi.

⁵⁴ Ibid.

⁵⁵ Ralf, Micheals, "One Size Can Fit All" – Some Heretical Thoughts on the Mass Production of Legal Transplants, In *Order from Transfer: Comparative Constitutional Design and Legal Culture Law*, edited by Günter Frankenberg (The United Kingdom: Edward Elgar Pub, 2013).58-59.

⁵⁶ Frankenberg, Gunter. "Constitutional Transfer: The IKEA Theory Revisited." *Journal of International Constitutional Law* 8, no. 3 (2010): 571-575.

⁵⁷ Ibid., 570-575.

interpretation of legal origin are not easy, while recipients should consider how the borrowed legal system will work in a recipient's society. Thus legal practitioners and donors should consider the relationship between legal system and society in the target society. Also, donors need to consider how the law has been created, what is the origin of the law, and how transplanted legal system function in recipient's society.

Relatedly, Tamanaha posits that law is a mirror of society. Further, the perception of a gap between law and society is dependent on the expectations of how the mirror reflects the society.⁵⁸ Therefore, the significance of law is defined not by its origins, but rather by society itself. In his research, Tamanaha details the experience of the Federated States of Micronesia and the Micronesian Constitution and Bill of Rights. The Micronesian Constitution is modeled on United States law but has developed and become settled within the Micronesian social context. Through a process of adaptation, the origin of the Constitutions and Bill of Rights are reinterpreted to be identified with Micronesian culture.⁵⁹ The conceptualization of the origins of law and how a given society responds to those legal origins depends on its legal system since each nation's legal system is strongly related to its society. Also, Tamanaha mentioned that legal pluralism exists and there are many layers of law including local contexts and global standards, and it is difficult to unify them.⁶⁰ Sarkar also emphasizes that law is an expression of culture in much the same way as art, music, or dance, and that law is the organic expression of the underlying mores and legal norms that a people or society live by.⁶¹ Therefore, under the trend for legal harmonization for global economics, the concept of globalization can be an opponent toward the destruction of traditional

⁵⁸ Tamanaha, Brian Z. "A Battle Between Law and Society in Micronesia: An Example of Originalism Gone Away." *Pacific Rim Law & Policy Journal* 21, no. 2 (2012). Accessed April 20, 2018.
<https://digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/1118/21PRLPJ295.pdf?sequence=1>.
295-296.

⁵⁹ Ibid., 301-316.

⁶⁰ Tamanaha, Brian Z. "Understanding Legal Pluralism: Past to Present, Local to Global." *Legal Studies Research Paper Series*, 2008, 57-61.

⁶¹ Sarkar, Rumu. *International Development Law: Rule of Law, Human Rights, and Global Finance*, 1st ed. (Oxford, The United Kingdom: Oxford University Press, 2009). 28.

legal norms, customs as well as local legal solutions.⁶²

Therefore, a golden model which has the possibility of application to any legal system does not exist. Regarding the idea of one-size fits all, the core value of the idea should have universally-applicable models based on the premise of legal transplant. However, this core premise has a jeopardous aspect. Donors should notice that working legal institutions must be embedded in pluralistic social context.⁶³ The one-size fits all has effects on the main development policy, and more effective and alternative development strategy should supersede the one-size fits all approach. Thus, donors should reconsider the one-size fits all and IKEA theory within the relationship between law and society, and with a view of the context-specific way in each society.

Although this thesis agrees with Sarkar and Tamanaha's argument, the author has the slightly different insight to support that the approach of law and justice assistance should have enough space for flexibility. The approach looks like the dichotomy between the idea of one-size fits all and the idea of tailor-made style. However, this debate should not be simple. Even if the mainstream of current law and justice assistance is tailor-made style and global society learned many lessons from past experiences of failure of law and development movement, still the idea of one-size fits all is undeniable. The important thing is to understand the significance of the rule of law and the function of law in a society and to make decision appropriately about the method of law and justice assistance which can work more effectively in a recipient country.

Current law and justice assistance become more multifaceted. This phenomenon is an opposite to the general trend of advancing globalization which enhances harmonization and unification of the world. Donor organizations need to consider many dimensions of law and their significance in a recipient society. Thus context-specific approach for law and justice assistance has become more essential for project implementation. Now aid donors need to consider many aspects, including not only global standard and

⁶² Ibid., 28-30.

⁶³ Tamanaha, Brian Z. "Understanding Legal Pluralism: Past to Present, Local to Global." *Legal Studies Research Paper Series*, 2008, 57-61.

regional standard, but also local standard including legal pluralism and legal culture.

There are some cases which were designed as a context-specific method. One example case is a series of projects for Post-Tsunami Legal Assistance Initiative for Indonesia & Sri Lanka conducted by International Development Law Organization (IDLO).⁶⁴ Indeed this IDLO's project was the case that brought the modern legal concept into traditional society as an alternative way for the solution of legal matters but also gave ample space for traditional way regarding interpretation, enforcement, and procedures. In this context, this project is not just forcing modern way but respect the pluralistic legal culture and customized the approach along with a social context of a recipient state. From 2006 to 2009, IDLO implemented four major projects in Sri Lanka and Indonesia as part of post-tsunami reconstruction in 2004.⁶⁵ Especially in Aceh province of Indonesia, customary law, indigenous order, and religious law are deeply rooted in the society. As part of the project, IDLO dealt with women's rights in post-tsunami era.⁶⁶ In Aceh, traditionally women's rights are weak and limited to some extent compared to men. This understanding regarding women's rights is traditional for local people in Aceh, but this situation

⁶⁴ IDLO is the intergovernmental organization with an exclusive mandate to promote the rule of law.

"International Development Law Organization (IDLO)." Accessed February 5, 2015. <http://www.idlo.int/>.

⁶⁵ IDLO conducted following 4 projects: 1) IDLO's Post-Tsunami Legal Assistance Initiative for Indonesia [Aceh Province] & Sri Lanka (2006-2007), 2) Protecting and Promoting the Legal Rights of Tsunami Children without Primary Caregivers and / or Living with Extended Family members in Nanggroe Aceh Darussalam Project(2007), 3) Supporting The Development of the Justice Sector in Aceh(2007-2008); and 4) Justice Education Training (JET) Programme for Formal Justice Providers(2008-2009). Sources are International Development Law Organization, IDLO. *Protecting And Promoting the Legal Rights of Tsunami Children without Primary Caregivers and / or Living with Extended Family Members in Nanggroe Aceh Darussalam (NAD) Final Report* (Sydney, Australia: IDLO, 2007). Accessed April 21, 2018.

www.idlo.org/publications/16.pdf; International Development Law Organization, IDLO. *Final Narrative Report IDLO's Post-Tsunami Legal Assistance Initiative For Indonesia (Aceh Province) & Sri Lanka* (Sydney, Australia: IDLO, 2008); and International Development Law Organization, IDLO. *Technical Proposal for Justice Education Training (JET)* (Sydney, Australia: IDLO, 2008)

⁶⁶ International Development Law Organization, IDLO. *Protecting And Promoting the Legal Rights of Tsunami Children without Primary Caregivers and / or Living with Extended Family Members in Nanggroe Aceh Darussalam (NAD) Final Report* (Sydney, Australia: IDLO, 2007). Accessed April 21, 2018.

www.idlo.org/publications/16.pdf. 5-14.

contradicts the global criteria of gender-equality. However, since a tsunami hit their area, local people happened to have diverse legal issues. Under such a situation, the limitation of women's rights become destructive for some issues such as inheritance, adoption of orphans, and guardianship. IDLO collaborated with local NGO which is active in enhancing women's right and found the way to respect traditional order and also make people understand the necessity of women's rights in post-tsunami society.⁶⁷

For instance, some children without parental care had been facing risks and problems associated with their inheritable assets due to lack of awareness regarding the responsibilities of guardians in post-tsunami Ache. Guardians are predominantly appointed through informal methods in Ache, and generally, blood-related males from the father's side take the position of guardian of the children, and female blood relations and mother's side relatives are appointed only as caregivers.⁶⁸ However, since many children lost their fathers or male relatives in the tsunami, no one could become a guardian of the children, and this system had left such children vulnerable to having their legal rights violated. IDLO's project clarified the problem of lack of legal knowledge and interpretation of the society. Therefore, IDLO conducted projects for dissemination of information and resources explaining guardianship and inheritance laws as well as women's rights in both informal and formal law as they apply in Ache through training programs and media tools such as films, and the provision of external assistance to assist in submitting applications to Syar'iyah court which can give legal rights as a guardian of orphan to women. In this process, IDLO could not just bring a modern idea of guardianship but had to acknowledge religion and customs to bring a new interpretation of the law for solving legal issues from Indonesian law as a supplement option in order to give further responsibility to women.⁶⁹ In other words, their project brought the solution of hybridity based on respect for legal pluralism in Ache. IDLO also has combined approach designed not only based on global standard and modern legal system but local context to obtain people's reliance to the judicial system and the project itself.

⁶⁷ Ibid.

⁶⁸ Ibid., 15-22.

⁶⁹ Ibid.

For achieving aid effectiveness, donors must often set goals which are sometimes contrary to global standards. Otherwise, law and justice assistance itself will not work in societies effectively, and local people will be loath to accept the new judicial system. These IDLO projects are not based on the idea of one-size fits all. Alternatively, IDLO implemented the project based on context-specific method. Currently, some donors have started to implement their law and justice assistance projects with the context-specific and tailor-made method. Some donors even have a specific policy for employing tailor-made styles. As mentioned above, the main idea of law and justice assistance shifts to a tailor-made method based on historical background and experience of failures. This trend also comes from an advance and diversification of law and justice assistance, and donors have responded various aiming goal on the legal system in a recipient country individually, through law and justice assistance designed based on tailor-made style.

However, donors also should not ignore the importance of the idea of one-size fits all. Depending on the area of law, donors need to set a goal and judge proper methods for the recipient state. In some areas of law, donors should apply the best practice directly to a recipient like as the idea of one-size fits all. The international private law is the significance area where is better to follow the global and unified standard, and donors should consider such circumstances in the process of law and justice assistance. The one tangible example of one-size fits all approach is a case of e-commerce law in ASEAN, since 2009, the United Nations Conference in Trade and Development (UNCTAD) has conducted a project named “Review of e-commerce legislation harmonization in the Association of Southeast Asian Nations” together with the Association of Southeast Asian Nations (ASEAN).⁷⁰ This project focuses on the unification and harmonization of e-commerce law among ASEAN countries. ASEAN was the first developing region to prepare a harmonized e-commerce legal framework consistent across jurisdictions, providing guidelines to develop common objectives and principles for electronic (e-commerce) legal infrastructure. UNCTAD

⁷⁰ United Nations Conference on Trade and Development, *Review of E-commerce legislation Harmonization in the Association of Southeast Asian Nations* (New York, The United States of America: United Nations Publication, 2013). ix-xv.

supports the implementation of the project. The fundamental idea is that legal unification in the field of international trade law, including e-commerce law, can contribute to stable and smooth economic transactions among the region. ASEAN and UNCTAD have adopted the Model Law on Electronic Commerce in 1996 developed by the United Nations Commission on International Trade Law (UNCITRAL) as a unified model, and under the support of some donor organizations, ASEAN countries successfully harmonized their legal system for e-commerce law and advanced their legal reforms until 2013.⁷¹ This method of law and justice assistance also could complement the legislative capability of recipient countries by saving money and time.

The method which was used in the UNCTAD and ASEAN project is exactly based on the idea of one-size fits all and functioned well in the recipient countries. Since the goal of this project was legal harmonization, this case showed the idea that one-size fits all become more important and effective depending on the targeted legal issue and legal area. However, to utilize the golden model also has risks to some extent which make a recipient reluctant to accept the provided legal system. In the international trade law field especially, aid recipients may not yet be fully aware of the benefits associated with trade law reform or may have vested interests in preserving the existing system due to differences of legal culture and background. Thus the capacity to support effective application is limited in a recipient country, while adoption and application of uniform law are necessary for economic development.⁷² On the other hand, such a unified model can supplement a lack of capacity for drafting new legislation in a recipient country once the recipient has accepted the model law. IDLO's project in Ache and the UNCTAD and ASEAN's project have different goals and approaches to establishing the rule of law in the recipient countries through law and justice assistance. Donors should consider and define what kind of system for the rule of law is the most appropriate and necessary for recipients in the long term.

Here, this thesis suggests two things to interpret the current standpoint of the approach to law and

⁷¹ Ibid., xi.

⁷² Castellani, Luca G. "The contribution of uniform trade law to economic development and regional integration in East Asia and the Pacific: A view from UNCITRAL." *DONG-A Journal of IBT Law* 8 (2014): 40-41.

justice assistance. Firstly, the idea of one-size fits all should not be the only way for designing projects for legal issues. Especially after the end of the Cold War, realistically the approach of law and justice assistance cannot help becoming diversified with progress in diversification of demands. Therefore it is impossible to have a unified and applicable model for all kinds of legal system in the world. Also, the lesson from the failure of LDM implies the importance of dialogue with a recipient, rather than an imposition of receiving a donor's model of law. Therefore donors should not become entrenched in just a unified model or successful model in the developed county's context, but acknowledge individual goals and needs of recipients for legal reform in the process of implementation of law and justice assistance to achieve aid effectiveness. Secondly, as mentioned above, the idea of one-size fits all should be used as an option or part of a tailor-made method of approach. This approach will be able to achieve diverse goals in accordance with demands of recipient countries. In the progress of globalization, harmonized or unified legal mechanisms can also support economic development and the rule of law, depending on the area of law. In this context, donors should make aware of recipient's needs and goal properly. Then donors also need to define the core value of the rule of law at each stage of development, legal issue, legal culture, and social context in a recipient country. Through the process, donors also should choose the method of law and justice assistance. In the process of designing law and justice assistance, thus donors should make ample room to choose a method based on the idea of one-size fits all, but should not stand on only the idea of one-size fits all.

2.3.4 Access to Justice as a Significant Target

While individual law and justice assistance project aims to achieve the individual goal of a recipient country as a project target, the fundamental goal has converged on realizing the rule of law in the global context. For instance, the Goal 16 of the SDGs is a significant criterion, which describes the rule of law as the center of the aiming goal of the 2030 Agenda for Sustainable Development. As a part of the significant target, law and justice context aim to achieve access to justice as a fundamental right. The United Nations recognized a significance of access to justice in development assistance context as a World

Summit Outcome in October 2005. The World Summit Outcome report determined the rule of law and access to justice as an essential idea for lasting peace and achieving Millennium Development Goals (MDGs), and the general assembly adopted the resolution.⁷³ As the Goal 16 of the SDGs explicitly sets the aim of ensuring the rule of law and equal access to justice by 2030, the international recognition of the importance of promoting access to justice has also reached maturity in current development assistance contexts.⁷⁴ In fact, there are many cases of development assistance which focus on enhancing access to justice for vulnerable and marginalized people in the recipient country. However, while access to justice is recognized as a basic human right and international standards guarantee the rights for people universally, the definition and understanding of the concept of access to justice is broad and covers diverse aspects based on each social context.⁷⁵ Therefore, donors also should design the project goal as well as the approach for enhancing access to justice in accordance with a situation in a target society. In the process of implementing the development assistance project in the field of law, therefore, donor organizations must determine the meaning of access to justice along with the social context of target society, including history, culture, religion and geography as well as priority issues, scope, objectives, and target as a significant part of designing the assistance project and policy.

According to the United Nation's practitioner's guide, access to justice is defined as "the ability of people to seek and obtain a remedy through a formal or informal institution of justice for grievances, in conformity with human rights standards."⁷⁶ Access to justice also encompasses all elements to enable

⁷³ United Nations, General Assembly. "Resolution Adopted by the General Assembly [without Reference to a Main Committee (A/60/L.1)] 60/1. 2005 World Summit Outcome." 2005. Accessed April 20, 2018. <http://www.ifrc.org/docs/idrl/I520EN.pdf>.

⁷⁴ "United Nations Sustainable Development Knowledge Platform". The United Nations. Accessed April 20, 2018. <https://sustainabledevelopment.un.org/sdgs>.

⁷⁵ As global human rights standard, The Universal Declaration of Human Rights, Article 8 states "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." This article recognized as describing the rights of access to justice.

⁷⁶ United Nations Development Program. *Programming for Justice: Access for All: A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice* (The United States of America: UNDP, 2005). Accessed April 20, 2018.

citizens to seek redress for their grievances and to demand that their rights are upheld, and people can obtain a decision from the justice system for starting the remedy which the court decision entitled the person to receive.⁷⁷ Regarding “access”, the International Network to Promote the Rule of Law (INPROL)’s practitioner’s guide suggests five key barriers to access to justice to consider further elements of individual rights, which are financial and legal representation barriers; geographic barriers; linguistic barriers; fear and intimidation barriers, and knowledge barriers.⁷⁸

The scope of access to justice which means to what extent the right covers is also a significant issue. Traditionally, the term refers to opening up the formal systems and structures of the law to disadvantaged groups in society by removing social barriers among people.⁷⁹ Currently, the scope of justice has been understood as an enlarged definition, and the scope includes informal justice or individuals.⁸⁰ However, the understanding of informal justice, which means non-states justice system such as customary courts or local courts,⁸¹ has been controversial. Definition of informal justice is quite vague, especially regarding the power of enforcement. Also under the international human rights standard, usually a state provides accessible justice to people as an obligation. UNDP currently states that the provision of

<http://www.apjrf.com/APJRF%20Content/UNDP%20-%20Programming%20For%20Justice%20-%20Access%20For%20All.pdf>. 1-7.

⁷⁷ Marchiori, Teresa. *A Framework for Measuring Access to Justice Including Specific Challenges Facing Women* (The United States of America: UN women, October 2015). Accessed April 20, 2018.

<https://rm.coe.int/1680593e83>. 5-7.

⁷⁸ O'Connor, Vivienne. *Defining the Rule of Law and Related Concepts* (The United States of America: International Network to Promote the Rule of Law, 2015). 20-21.

⁷⁹ "Access to Justice Program." The Global Alliance Against Traffic in Women (GAATW). Accessed April 20, 2018. <http://gaatw.org/asia/himrights/157-what-we-do/what-we-do/446-access-to-justice>.

⁸⁰ Baumgartner, Samuel P. "Does Access to Justice Improve Countries' Compliance with Human Rights Norms? -An Empirical Study." *Cornell International Law Journal* 41, (2011): 441-91.; "Access to Justice Program." The Global Alliance Against Traffic in Women (GAATW). Accessed April 20, 2018.

<http://gaatw.org/asia/himrights/157-what-we-do/what-we-do/446-access-to-justice>.

⁸¹ United Nations Development Program. *Informal Justice Systems Charting a Course for Human Rights-Based Engagement-*, The United States of America: UNDP, 2012. Accessed April 20, 2018.

[http://www.undp.org/content/dam/undp/library/Democratic Governance/Access to Justice and Rule of Law/Informal-Justice-Systems-Charting-a-Course-for-Human-Rights-Based-Engagement.pdf](http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Access%20to%20Justice%20and%20Rule%20of%20Law/Informal-Justice-Systems-Charting-a-Course-for-Human-Rights-Based-Engagement.pdf). 10-11.

the informal justice system can be a mechanism to enhance the fulfillment of human rights,⁸² and the UN set informal justice system as a major targeted goal of law and justice assistance for enhancing access to justice. International donors recognized informal and customary justice systems as a possible supplement to barriers of access, which are commonly located closer, cheaper, and based on local language and culture.⁸³

Sally Engle Merry has given another insight. According to Merry, the concept of “popular justice” function to support state building and exists depending on each tradition and cultural condition of society.⁸⁴ Popular justice is the best consideration as a legal institution located on the boundary between state law and indigenous or local law and works as an intersect on between two.⁸⁵ Legal institutions which are labeled as popular justice also have certain features. The characteristics are including the application of local standards and rules and commonsense form of reasoning rather than state laws. Also, popular justice utilizes procedure in the local language with low cost, needs not to hire specialists, and functions typically as the bottom tier of state law.⁸⁶ From this insight, the right of access to justice should be considered and understood based on a situation of the justice system, a way of functioning in individual society, people’s trust including liaison or hybrid mechanism of justice. Thus access to justice is not a concept just based on formal or informal category.

Each society needs to evaluate the degree of access to justice, and the indicators for evaluation is not an easy issue. While access to justice is probably easier to define, it is hard to measure the situation and determine achievement. Also, a situation of access to justice is strongly related to individual social context, including traditional justice concept. Under the broad concept of access to justice, many organizations

⁸² Ibid., 11.

⁸³ O'Connor, Vivienne. *Defining the Rule of Law and Related Concepts* (The United States of America: International Network to Promote the Rule of Law, 2015). 20-12.

⁸⁴ Merry, Sally Engle, “Sorting out Popular Justice.” Chapter. In *The Possibility of Popular Justice*, edited by Sally Engle Merry and Neal Milner (The United States of America: The University of Michigan Press, 1994). 31-38.

⁸⁵ Ibid.

⁸⁶ Ibid.

developed indicators of access to justice from diverse perspectives. Therefore, the sense for culling decision for the appropriate indicator is necessary, in accordance with the social context of a target country. However, there are three core lines which could be a base of designing indicators for measurement of access to justice.

The first component of access to justice is quality.⁸⁷ As the point of access, the existence of justice system and laws are essential. This justice system and laws must be functioning timely, effectively, efficiently, impartially, fairly, consistently, and legitimately. The Tilburg Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution System (TISCO) explains that cost of justice is mutually related to the quality of procedures and quality of outcomes.⁸⁸ These viewpoints could constitute pathways for access to justice indicators.⁸⁹ The second component is equity.⁹⁰ Equity of access to justice is related to the way of access and its obstacles. As introducing above, there are five common and potential barriers, of access to justice. Equity can be measured to what extent these barriers are removed by proper services which are equality available for people. In order to guarantee the structural inequities under the concept of access, people need to have tangible systems, such as legal aid or accessible ADR mechanism. The third component is people's satisfaction and trust toward access to justice.⁹¹ Satisfaction and trust are based on

⁸⁷ United Nations Development Program. *Access to justice assessments in the Asia Pacific: A review of experiences and tools from the region* (Bangkok, Thailand: Inis Communication, 2012). 11-17.; Barendrecht, Maurits, José Mulder, and Ivo Giesen. *How to Measure the Price and Quality of Access to Justice?* (Hague: Hague Institute for the Internationalisation of Law, November 2006), 1-24.; Galanter, Marc. "Access to Justice in a World of Expanding Social Capability." *Fordham Urban Law Journal* 37, no. 1 (2009): 115-28.

⁸⁸ Tilburg Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution Systems, TISCO. A *Handbook for Measuring the Costs and Quality of Access to Justice* (The United States of America: Maklu, 2009). 9-15.

⁸⁹ Ibid.

⁹⁰ United Nations Development Program. *Access to justice assessments in the Asia Pacific: A review of experiences and tools from the region* (Bangkok, Thailand: Inis Communication, 2012). 11-17.

⁹¹ Marchiori, Teresa. *A Framework for Measuring Access to Justice Including Specific Challenges Facing Women* (The United States of America: UN women, October 2015). Accessed April 20, 2018.

<https://rm.coe.int/1680593e83.11-12.>; "Access to Justice." OECD, DAC. Accessed April 20, 2018.

<http://www.oecd.org/gov/access-to-justice.htm>.

the viewpoints of all people, including the poor, vulnerable, and marginalized. To gain trust and satisfaction of people, society must guarantee a legitimate decision, compensation, and rehabilitation, and also eliminate corruption of justice service. Through these actions, people must be relieved from suffering from legal matters.

2.4 Key Concepts and Definitions 2: the Fragile States as a Target of Law and Justice Assistance

This section is going to define the second key concept, fragile states as a major recipient of law and justice assistance. This section also explores why these countries need to receive law and justice assistance, and how donors should design tangible aid projects to achieve aid effectiveness in these countries.

2.4.1 Definition of Fragile States as a Significant Target of Law and Justice Assistance

Many donors have considered that fragile states are significant targets of development assistance including law and justice assistance. Donors also consider the definition of fragile states can give insights for causes, costs, and responses from international communities for fragile countries.⁹² The meaning of terminology “fragile” in the Cambridge dictionary is easily damaged, broken, or harmed.⁹³ However, there is no internationally agreed definition of the term fragile state, and in fact, the definitions of fragile states are diverse. The OECD DAC’s definition, which is one of the most well-known, is “states are fragile when state structures lack the political will and/or capacity to provide the basic functions needed for poverty reduction, development and to safeguard the security and human rights of their population.”⁹⁴ Regarding the OECD’s definition, Claire McLoughlin appraised that their definition reflects the prevailing

⁹² Naudé, Wim, Amelia U. Santos-Paulino, and Mark McGillivray, eds. *Fragile States: Causes, Costs, and Responses* (Oxford, The United Kingdom: Oxford University Press, 2012).2-5.

⁹³ Vale, David, Stephen Mullaney, and Leo Hartas. *The Cambridge dictionary* (Cambridge, The United Kingdom: Cambridge University Press, 1996).

⁹⁴ OECD, DAC. *The Principles for Good International Engagement in Fragile States and Situations* (Paris, France: OECD, DAC, 2007). 19.

characterization of state fragility as the failure of states to perform certain functions to meet citizens' basic needs and expectations.⁹⁵ The Asia Development Bank (ADB)'s definition touches upon more causes and social background as "countries or situations with unique development challenges that have resulted from fragility and conflict including weak institutional capacities and poor governance, economic and geographic isolation, economic disruption, social disruption, and insecurity".⁹⁶ Also, some donor organizations define fragile states based on indicators. The World Bank, for example, refers their ranking of state fragility in the Country Policy and Institutional Assessment.⁹⁷ The Fund for Peace, which is a US-based non-governmental research institute, issues the fragile state's index every year, based on a mixed approach of quantitative, qualitative, and content analysis data with diverse perspectives including political, social, and economic indicators to determine the fragile states.⁹⁸

Wim Naude et al. pointed out important contexts for considering the definition of fragile states. Firstly, the meaning of fragile states is different depending on when it is defined. According to Naude et al., most of the definitions of fragile states define fragility after the fact.⁹⁹ Naude et al. also emphasize a necessity of forward-looking definition and predictive measures of state fragility.¹⁰⁰ Secondly, Naude et al. countenance the position the state fragility is degree oriented matter and various level of fragility exist

⁹⁵ McLoughlin, Claire, and Iffat Idris. *Fragile states: Topic guide*. Publication. GSDRC (The United Kingdom: University of Birmingham, 2016). 5-6.

⁹⁶ "About Fragility." Asian Development Bank. 2017. Accessed April 20, 2018.
<https://www.adb.org/sectors/governance/fragile-situations/about>.

⁹⁷ "Harmonized List of Fragile Situations." The World Bank. Accessed April 20, 2018.
<http://www.worldbank.org/en/topic/fragilityconflictviolence/brief/harmonized-list-of-fragile-situations>.

⁹⁸ Messner, J. J., ed. *Fragile States Index Annual Report 2017* (Washington, D.C., The United States of America: The Fund for Peace, 2017). Accessed April 20, 2018.
<http://fundforpeace.org/fsi/2017/05/14/fragile-states-index-2017-annual-report/951171705-fragile-states-index-a nnual-report-2017/>. 24-25.

⁹⁹ Naudé, Wim, Amelia U. Santos-Paulino, and Mark McGillivray, eds. *Fragile States: Causes, Costs, and Responses* (Oxford, The United Kingdom: Oxford University Press, 2012). 6-7.

¹⁰⁰ Ibid.

together in one society.¹⁰¹ Naudé et al. suggested four major classifications of causes for fragile states which are conflict, low development status, vulnerability, and non-developmental states.¹⁰²

Since fragile states have demands for law and justice assistance, aid donors need to understand the meaning of state fragility. However, demands for law and justice assistance and causes of fragile states are not always linked, and even aid project may function differently. In light of the major four causes of fragile states which Naudé et al. suggested, on the one hand, conflict, low development status, and non-developmental states can be a direct trigger for demands of law and justice assistance. On the other hand, the vulnerability of fragile states, which is a more forward-looking idea, is a considerable social context or potential risk factors in project implementation for aid effectiveness.

2.4.2 Vulnerability of Small Island Developing States

The Small Island Developing States (SIDS) are categorized as a distinct group of fragile states facing specific social, economic, and environmental vulnerabilities. Historically, people in remote and small islands live together with their own suffering, which comes from their geographical character. While small island states tend to develop their own culture, language, and society in an isolated environment,

¹⁰¹ Naudé, Wim, Amelia U. Santos-Paulino, and Mark McGillivray, eds. *Fragile States: Causes, Costs, and Responses* (Oxford, The United Kingdom: Oxford University Press, 2012). 6-7.; Engberg-Pedersen, Lars, Louise Andersen, and Finn Stepputat. *Fragile Situations: Current Debates and Central Dilemmas*. DIIS Report 2008:9 (Copenhagen, Denmark: Danish Institute for International Studies), 2008. Accessed April 20, 2018. http://pure.diis.dk/ws/files/61273/R2008_9_Fragile_Situations.pdf.

Feeny, Simon, and Mark McGillivray. "Aid and Growth in Small Island Developing States." *Journal of Development Studies* 46, no. 5 (2010): 897-917.

¹⁰² In Naudé et al.'s definitions of each category, Conflict is that states in the presence of conflict or the potential for conflict possibly into failure, including revolutionary wars, ethnic conflict, adverse regime changes, and genocides and politicides; Low development status are such as LDCs or LLDCs which are facing to fuel conflict or create vicious cycle of underdevelopment because of low-income situation; Vulnerability is different from state's development level and means which are vulnerable to poverty or external shocks including natural hazards and economic shocks, such as SIDS, ; and A non-developmental state are that states who have not achieved particular development including economic development and good-governance due to the lack of abilities and capacities. Naudé, Wim, Amelia U. Santos-Paulino, and Mark McGillivray, eds. *Fragile States: Causes, Costs, and Responses* (Oxford, The United Kingdom: Oxford University Press, 2012). 10-18.

they also have common risks and disadvantages in a range of areas. The UN recognized the category of SIDS for the first time at the Conference on Environment and Development (UNCED) held in Rio de Janeiro, 1992.¹⁰³ Following, the UN has classified 57 countries and territories including 20 in the Pacific as SIDS.¹⁰⁴ Since then, international recognition and efforts for sustainable development of SIDS have been increased.¹⁰⁵

This section explores critical features for SIDS as a distinct group of vulnerability, especially SIDS in the Pacific region. Firstly, SIDS are facing physical distance which means from a national land distance to the continent, and the national land is dispersed within the territory. Nilson explains the physical distance as “two- distance” of SIDS.¹⁰⁶ This situation influences diverse aspects of the society. For instance, due to the distances from the main continent and other islands, islands are inevitably far from everything, and it makes transportation costs high and economic activities difficult. Thus economic activities of SIDS sometimes become restricted due to the distance from the big and rich market. Also, the distance can effect on a process of building the nation-states, and the physical distance cause isolation, due to the dispersal and distance causes. The isolation of individual islands can develop their own culture and custom strongly in the island. On the other hand, the physical distance also makes building nation-state and centralization difficult.

¹⁰³ “About SIDS.” United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLS). Accessed April 20, 2018. <http://unohrlls.org/about-sids/>.

¹⁰⁴ “Country Profiles.” United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLS). Accessed April 20, 2018. <http://unohrlls.org/about-lldcs/country-profiles/>.

¹⁰⁵ As recent example, the United Nations mandated 2014 as an International Year of Small Island Developing States, for pursuing further effort of Mauritius Strategy for sustainable development among SIDS. United Nations, Official Record of United Nations General Assembly Resolution (A/67/437/Add.2) of 21 December 2012. (New York, The United States of America: The United Nations, 2012). Accessed April 20, 2018. http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/206.

¹⁰⁶ Lars, Nilson. "Coping with Distance: A Framework for Studying Distance Strategies of Archipelago States." *Hiroshima Peace Science* 17 (1994): 6.

Secondly, the Pacific region is mostly covered by the sea and has very small lands. The area of ocean is 300 times exceed the area of land in the region.¹⁰⁷ This characteristic influences industrial structure and economic activities on these islands. Major industries of the most of the island states are first industry, such as agriculture, fishery, and tourism. Thus manufacture is generally less in the Pacific region. In fact, the huge ocean becomes an obstacle and creates isolation. On the other hand, people in the Pacific islands can also receive benefits from the big ocean, such as rich fishery. This environment creates advanced experiences of fishery management in the Pacific region, including coral reef conservation and coastal fishery.¹⁰⁸ Also, the small island states have an extreme vulnerability to disaster and climate changes. Some of the states in the Pacific, especially Kiribati, Vanuatu, and Tuvalu, are in critical situations, and climate change is one of the top priority issues in the Pacific.¹⁰⁹

Lastly, not only the land, but also size of the economy, market, resource, and capacity are quite small, and this situation causes a secondary problem in the society. The lack of employment makes high population fluidity to seek jobs outside of the state, and also, most small island states tend to highly depend on international aid and remittance.¹¹⁰ However these countries have a less alternative way to combat problems of smallness. Therefore they are very vulnerable to external shocks, such as economic and environmental shocks.

¹⁰⁷ "The Ocean to Pacific Island People." The World Bank. Accessed April 20, 2018.

<http://siteresources.worldbank.org/INTPACIFICISLANDS/Resources/3-chapter%2B1.pdf>.

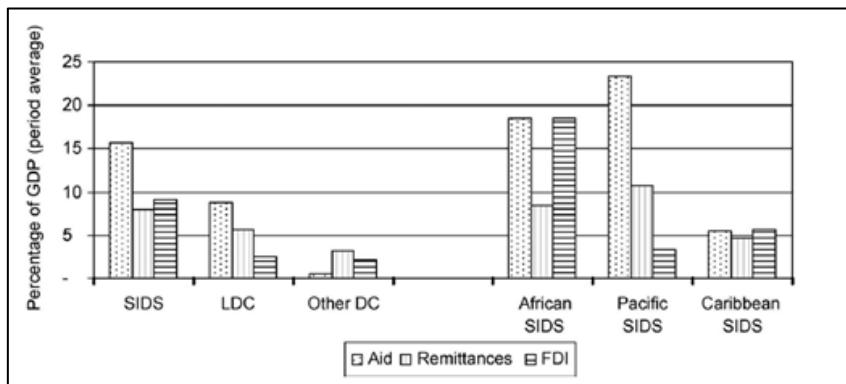
¹⁰⁸ As fishery management case in the Pacific region, Secretariat of the Pacific Community (SPC) implemented regional cooperative projects like the Pacific Islands Oceanic Fisheries Management Programme (OFMP). For the details, see <http://www.spc.int/oceanfish/en/major-projects/ofm>.

¹⁰⁹ Climate change issues were discussed at the 21st Conference of the Parties (COP21) in Paris in November to December 2015 and new global climate change agreement has been adopted. For the details of the conference, see

<http://www.undp.org/content/undp/en/home/presscenter/events/2015/december/COP21-paris-climate-conference.html>.

¹¹⁰ Feeny, Simon, and Mark McGillivray. "Aid and Growth in Small Island Developing States." *Journal of Development Studies* 46, no. 5 (2010): 897-898.; McGillivray, Mark, Wim Naude, and Amelia U Santos-Paulino. "Vulnerability, Trade, Financial Flows and State Failure in Small Island Developing States." *Journal of Development Studies* 46, no. 5 (2010). 815-816.

(Figure 3: Aid, remittances and FDI, 1980 to 2006)



(Source: McGillivray, Mark, Wim Naude, and Amelia U Santos-Paulino. "Vulnerability, Trade, Financial Flows and State Failure in Small Island Developing States." *Journal of Development Studies* 46, no. 5 (2010). 819.)

Additionally, the percentage of aid dependency of the Pacific island states is enormous, compared to other SIDS nations (see Figure 3).¹¹¹ Geoff Bertram and Ray Watters described Pacific economy as MIRAB framework, because their economy highly depends on Migration, Remittance, Aid, and Bureaucracy, and is hard to run their state independently.¹¹² Regarding international aid context, many donors have concerns that the aid impact in SIDS is less effective than aid in other states.¹¹³ The study by Simon Feeny and Mark McGillivray in 2010 explains the reason why the aid in fragile states including SIDS becomes less effective. According to Fenny and McGillivray, SIDS are facing the greater absorptive capacity constraints in the society, which means the impact of aid on growth in SIDS is contingent on the quality of policies and performance of their institution.¹¹⁴ Also, due to heavy dependency on external aid,

¹¹¹ Feeny, Simon, and Mark McGillivray. "Aid and Growth in Small Island Developing States." *Journal of Development Studies* 46, no. 5 (2010): 897-898.

¹¹² Bertram, Geoff, and Ray F. Watters. "The MIRAB economy in South Pacific Microstates." *Asia Pacific Viewpoint* 26, no. 3 (January 1985): 497-519.

¹¹³ Feeny, Simon, and Mark McGillivray. "Aid and Growth in Small Island Developing States." *Journal of Development Studies* 46, no. 5 (2010): 903-905.

¹¹⁴ Ibid.

international aid become a primary axis of states economy in some Pacific island states.¹¹⁵ Donor's policy generally reflects on these international aid. Therefore, the Pacific island states are easily swayed by the interest of donors. As a whole, it is still quite difficult for the Pacific island states to achieve sustainable development even though they have already received a lot of assistance.

However, under these critical conditions which are unlikely to change, SIDS still has a huge possibility to achieve sustainable development. According to Nilsson Lars in 1994, the small island states historically developed their political strategy to overcome the physical distance because of awareness of limitation. There are major four categories of the strategy which are an attraction, self-independence, cooperation, and discrimination. This framework can be applicable for small island states.¹¹⁶ Also, the previous research by Nik Soni in 2011 and following research by Joel Negin in 2012 pointed out that the degree of economic growth correlates with the distance from large and rich markets. From this perspective, small African island states have similarities with the Pacific small island states and can be a model for them more than the Caribbean island states.¹¹⁷ Also, Negin mentioned in his research that some of the small African island countries could achieve economic growth despite their harsh geographical conditions.¹¹⁸

One good example of successful economic growth in SIDS is the Republic of Cape Verde, which is a small island state located in the Atlantic ocean, offshore of North Africa. Once Cape Verde was categorized into the Least Developed Country (LDC) but has graduated from LDC since 2007 on the

¹¹⁵ Institute of Oceania study. *International Cooperation of Financial Support* (Tokyo, Japan: Gakuyo-Shobo, 1993). 43-44.

¹¹⁶ Lars, Nilson. "Coping with Distance: A Framework for Studying Distance Strategies of Archipelago States." *Hiroshima Peace Science* 17 (1994): 9-14.

¹¹⁷ Negin, Joel. "What the Pacific Can Learn from African Small Island States." *Devpolicy Blog*. January 12, 2012. Accessed April 20, 2018. http://devpolicy.org/pacific_africa_small_island_states20120119/; Soni, Nik. "The Pacific Is Not the Caribbean, and Other Tales from Suva." *Devpolicy Blog*. November 21, 2011. Accessed April 20, 2018. <http://devpolicy.org/the-pacific-is-not-the-caribbean-and-other-tales-from-suva20111121/>.

¹¹⁸ Negin, Joel. "What the Pacific Can Learn from African Small Island States." *Devpolicy Blog*. January 12, 2012. Accessed April 20, 2018. http://devpolicy.org/pacific_africa_small_island_states20120119/.

grounds of stable economic growth.¹¹⁹ According to Bruce Baker, good governance is a key for the success of Cape Verde's development, and the establishment of good governance can even be a marketable product to attract foreign investors, instead of resources.¹²⁰ Cape Verde's strategy does not rely on only one industry but tries to improve multi-industry. This strategy can contribute to reduce poverty and achieve stable growth.¹²¹ Hence the government of Cape Verde noticed their weakness and danger and designed their policies based on their characteristics and related crisis prevention. This case is just one example, and also about one dimension of economic development. However, the example implies the good strategy of aid effectiveness in SIDS in project designing process.

(Table 1: African and Pacific Small Island States)

Country	Population	GDP per capita (current US\$)	Life Expectancy	Arable Land (hectares)
Mauritius	1,280,000	7,593	73	87,000
Sao Tome and Principe	160,000	1,190	64	10,000
Seychelles	870,000	10,825	73	1,000
Cape Verde	500,000	3,323	74	60,000
Fiji	861,000	3,706	69	160,000
Tonga	100,000	3,347	72	16,000
Solomon Islands	540,000	1,261	67	16,000
Federated States of Micronesia	111,000	2,678	69	2,000

(Source: Negin, Joel. "What the Pacific Can Learn from African Small Island States." *Devpolicy Blog*. January 12, 2012. Accessed April 20, 2018.
http://devpolicy.org/pacific_africa_small_island_states20120119/.)

There is truly the fact that SIDS are facing difficulties and they can hardly to solve their problem

¹¹⁹ "Cape Verde's Graduation from the LDC Category." SWACNEWS. June 1, 2007. Accessed April 20, 2018.
<http://www.oecd.org/swac/publications/39457756.pdf>.

¹²⁰ Bruce, Baker. "Cape Verde: Marketing Good Governance." Africa Spectrum 44, no. 2 (2009): 143-45. Accessed December 14, 2015.

<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.470.1553&rep=rep1&type=pdf>.

¹²¹ Ibid., 143.

within the context of their own internal autonomy.¹²² However, this fact does not mean SIDS cannot achieve economic growth and social stability. Probably for aid program designers, perceptual changes are needed in accordance with the social context of the target island state for overcoming these geographical features. Due to these critical constraints, successful universal cases for development cannot be applied to island states. Instead, if donors and SIDS recipients try to achieve sustainable development without destroying fragile island societies and culture, they could make an island method based on their geographical constraints in the project designing process.

2.4.3 How the Social Constant as SIDS Should Be Considered in Legal Context?

The social constant is factors and related conditions which consist of the society. The social constant is also cannot be changed eternally. Conditions of SIDS are attributable to a social constant of their country, which is a geographical condition. How then geography should be considered and how it influenced upon their society?

As the opening sentence of this chapter mentioned, the geographer whom the little prince met in one planet described that geography always focuses on “the eternal”. The geographical element should be dealt with as social constant, and define “space” conceptually depends on how it is understood and utilized in the society. As a leading researcher on spatial dimensions in society, Doreen Massey shed light on the relationship of space and spatial division.¹²³ According to Massey, social relationship of labor and production activities are influenced by the spatial division which is recognized as city or region, and these two has an inevitable mutual relationship.¹²⁴ Massey also explains that the economy influence on the tendency of rapid globalization and spatial breadth. However, the economy is not only a factor which

¹²² Fred, Constant. "Alternative Forms of Decolonization in the East Caribbean: The Comparative Politics of the Non-sovereign Islands." In *The Political Economy of Small Tropical Islands: The Importance of Being Small*, edited by Hintjens, Helen and Newitt, Malyn (The United Kingdom: University of Exeter Press, 1992). 59.

¹²³ Massey, Doreen. *Spatial Divisions of Labour: Social Structures and the Geography of Production*. 2nd ed. (The United Kingdom, Palgrave Macmillan, 1995). 12-17.

¹²⁴ Ibid.

determines our experiences of space and place. Massey mentions that social context including gender, the human race, and identity also becomes a significant factor.¹²⁵

For thinking about law and justice assistance, donors need to notice an influence of an eternal social constant as SIDS in a legal context, and the interrelationship between law and geography as well as correlation effects on the society. David Delaney suggested a discrepancy between the two concepts to consider the relationship, which is “Law-in-Space” and “Space-in-Law”¹²⁶. According to Delaney, the initial concerns of Law-in-Space are the law itself and a way of impact in the space. “Space-in-Law” is on the other hand, a space created by the judiciary, in terms of boundaries, autonomy, and separation.¹²⁷ This idea distinct between law and space, and also this idea can invite a restrictive view of the relationship between law and space.¹²⁸ This perspective is however hard to apply to the pluralistic legal society. Keebet Benda-Beckman shows the complexity of law and space relationship under legal pluralism. Benda-Beckman pointed out the problem of contradictory notions and boundaries due to the conflict between colonial rules and indigenous customs.¹²⁹

Nicholas Blomley shows another perspective. His concept of law and geography in 2002 explains the binary, which captures the two concepts are entangled importantly. According to Bromley, both concepts of law and space are related to society. Much spatial orderings is simultaneously legal orderings

¹²⁵ Massey, Doreen. *Space, Place and Gender* (The United States of America, University of Minnesota Press, 1994). Accessed April 20, 2018.

https://selforganizedseminar.files.wordpress.com/2011/07/massey_space_place_gender.pdf. 11-17.

¹²⁶ Delaney, David. “Beyond the word: law as a thing of this world”. In *Law and Geography*, edited by Holder, Jane., Harrison, Carolyn (The United Kingdom: Oxford University Press, 2002). 67-70.

¹²⁷ Ibid.

¹²⁸ Blomley, Nicholas, and Joshua Labove. "Law and Geography." *International Encyclopedia of the Social & Behavioral Science*, 13 (2015). 476.

¹²⁹ Benda-Beckmann, Keebet Von. "Anthropological Perspectives on Law and Geography." *Political and Legal Anthropology Review* 32, no. 2 (2009): 265-67.

and vice-versa. The typical example of divisiveness is a relationship between alien and citizens.¹³⁰ This ordering framework also defines appropriate behavior among people.¹³¹ He also describes the entangled relationship as “Splicing” and “Resplicing” which means legal categories and identities contain an expansionary or transformative potential. Thus legal geography can be splicing, but can unravel and resplicing under new ordering.¹³² Also, Blomley and Labove’s research suggested a view that the relationship between law and space should be described as “recursively interrelated”.¹³³ Blomley and Labove explain that the legal concept is irreducibly spatial, and the one is tracing the effect of one upon the other. Therefore the relationship between law and space is changing and keep influencing the society. Blomley and Labove ironically concluded that legal uniformity is the ultimate ideal situation.¹³⁴ However, it is out of touch with reality.

How the society and people capture the space under their rule and how they are changing always has high impact on their life. As premises for that people and society are flexibly and spontaneously adjusting to the changes, law and space could be respliced mutually. However, law and justice assistance, which is development assistance as an external impact of the country, have always certain power to influence on social constants in the recipient society. The social changes caused by law and justice assistance sometimes are unpredictable. If this external impact brings unintentional changes to redefine the space in the society, people’s reaction in the recipient country is also hard to expect. There is a doubt about the resplicing, once the relationship between law and space is unraveled by an external power.

Here I turn back to the context of SIDS to consider the possibility of resplicing if they receive international aid and impact on the relationship between legal system and geography. SIDS have limited

¹³⁰ Blomley, Nicholas. “From ‘What?’ to ‘So What?’: Law and Geography in Retrospect”. In *Law and Geography*, edited by Holder, Jane., Harrison, Carolyn (The United Kingdom: Oxford University Press, 2002). 29.

¹³¹ Ibid.

¹³² Ibid., 32.

¹³³ Blomley, Nicholas, and Joshua Labove. "Law and Geography." *International Encyclopedia of the Social & Behavioral Science*, 13 (2015). 476-477.

¹³⁴ Ibid., 477.

resources, space as well as alternative ways. Thus SIDS becomes hard to adjust their situation to social changes. These constant facts influence their society and create fragility. The Pacific small island states consist of multi-ethnic societies which have different cultures, languages, and customs. Therefore, there is truly a significance risk of multi-layers of rule and customs as well as the gap between law and what is justice for each ethnic group and people.¹³⁵

2.5 Key Concepts and Definitions 3: Project Management in Development Assistance

This section introduces the third key concept, project management. The following subsection starts from the general definition of project management and then is going to focus on project management in international development assistance field. Since this thesis explores law and justice assistance, subsection two and three explores specific components of project management in accordance with characteristics of law and justice assistance.

2.5.1 Definition of Project Management and its Context in International Development Assistance

Development assistance is usually implemented in a project-oriented style. The term “project” is so widely used in various occasion. According to the Project Management Institute (PMI), the project is defined as a temporary endeavor undertaken to create a unique product, service, or result, and it has a defined beginning and end in time, and therefore defined scope and resources.¹³⁶ Projects are not routine work and are always temporary. For achieving a unique goal within a limited time, scope, cost, and resources, the project needs proper technique and knowledge is essential for management. As a global well-known standard for project management, there are diverse methodologies and frameworks such as the

¹³⁵ Dinnen, Sinclair. “Building Bridges – Law and Justice Reform in Papua New Guinea.” In *Passage of Change: Law, Society and Governance in the Pacific*, edited by Anita Jowitt and Tess Newton (Canberra, Australia: ANU Press, 2010).278-283.

¹³⁶ Project Management Institute. *A Guide to the Project Management Body of Knowledge (PMBOK GUIDE)*. 5th ed. (The United States of America: Project Management Inst, 2013). Chapter 1, Section 2.

Guide to the Project Management Body of Knowledge (PMBOK® Guide), the International Project Management Association Competence Baseline (ICB®), Design Thinking, and Agile Approach. While there are common processes of project management under these methods, each methodology has own and unique approaches and also both merits and demerits. Therefore, project implementers and project managers are must decide applicable methods for their own projects.

In the development assistance field, historically, the logical framework approach (LFA)¹³⁷ was the first applicable methodology developed by the United States Agency for International Development (USAID) at the end of 1960's, and LFA has been widely used in the field.¹³⁸ LFA was also evaluated as well-designed, objective-described and evaluable for the international development industry. However, the limitations of LFA are also pointed out, which is especially lacking evaluation of aid efficiency. Thus donor agencies have modified or developed their own model for project management in international development. According to Paul Crawford and Paul Bryce, limitations of LFA are (1) the absence of a time dimension; (2) the inappropriateness of assigning efficiency-level objectively verifiable indicators; (3) the inadequacy of the means of verification; and (4) the static nature of the log frame.¹³⁹ Victor Hermano et al. acknowledged this limitation of LFA as well as the enhanced applicability of the Project Management for Development Professionals (PMD Pro) as an alternative method which has been developed by the Project Management for Non-Governmental Organizations (PM4NGOs). PM4NGOs raised the significance of critical success factor (CSF) as further insights of project management and evaluation in international

¹³⁷ The LFA is a methodology which is using the form of a four-by-four project table. The rows represent types of events that take place as a project is implemented, including Activities, Outputs, Purpose and Goal. The columns represent types of information about the events such as a Narrative description, Objectively Verifiable Indicators, Means of Verification and Assumptions.

¹³⁸ The Norwegian Agency for Development Cooperation, NORAD. *Results Management in Norwegian Development Cooperation A practical guide* (Oslo, Norway: NORAD, 2008). 13.

¹³⁹ Crawford, Paul, and Paul Bryce. "Project monitoring and evaluation: a method for enhancing the efficiency and effectiveness of aid project implementation." *International Journal of Project Management* 21, no. 5 (2003): 363-73.

development.¹⁴⁰ Hermano et al. explained that CSFs are schedule management, budget management, quality management, quality of project management process, feedback and monitoring, stakeholders/clients satisfaction, and top management support. Hermano et al. also pointed out CSFs value a function of PMD Pro, because PMD Pro can cover all CSF items based on mixed characteristics of LFA, PMBOK, and ICB.¹⁴¹

Therefore, a field of development assistance has an industrial uniqueness, and these features become a critical point of project management in an international context for choosing proper method for development assistance. Also, project management methods are not well-established in the international development sector, and the relationship between project management theory and international development practice is quite complex, compared to other sectors like manufacturing and infrastructure.¹⁴² As introduced previously, Hermano et al. describe the special features of the project in the international development field, and these features become critical barriers to enhance project management method in this field.¹⁴³

Development assistance projects invariably involve an element of risk-taking regarding external

¹⁴⁰ Hermanoa, Víctor, Adolfo López-Paredesb, Natalia Martín-Cruza, and Javier Pajares. "How to manage international development (ID) projects successfully. Is the PMD Pro1 Guide going to the right direction?" *International Journal of Project Management* 31, no. 1 (January 2013): 22-30. August 2, 2012. Accessed November 13, 2017.

https://ac.els-cdn.com/S0263786312000889/1-s2.0-S0263786312000889-main.pdf?_tid=ddc5ba33-b92c-4d84-ac1a-b48de639e5ce&acdnat=1524376721_1dd36f4e651cb2c2e01313ecd448f980.27-29.

¹⁴¹ Ibid.

¹⁴² Ika, Lavagnon A., Amadou Diallo, and Denis Thuillier. "Project Management in the International Development Industry." *International Journal of Managing Projects in Business* 3, no. 1 (2010): 63.; Castillo, Vanessa M., and Freddy L. Salgado. *The SUITED Framework for International Development Project Management* (Sweden: Umea University, 2015). 1-4.

¹⁴³ Hermanoa, Víctor, Adolfo López-Paredesb, Natalia Martín-Cruza, and Javier Pajares. "How to manage international development (ID) projects successfully. Is the PMD Pro1 Guide going to the right direction?" *International Journal of Project Management* 31, no. 1 (January 2013): 22-30. August 2, 2012. Accessed November 13, 2017.

https://ac.els-cdn.com/S0263786312000889/1-s2.0-S0263786312000889-main.pdf?_tid=ddc5ba33-b92c-4d84-ac1a-b48de639e5ce&acdnat=1524376721_1dd36f4e651cb2c2e01313ecd448f980.23.

impacts.¹⁴⁴ Risk management is defined in PMBOK 5th edition, as the identification, assessment, and prioritization of risks followed by coordinated and economical application of resources to minimize, monitor, and control the probability and/or impact of unfortunate events or to maximize the realization of opportunities.¹⁴⁵ Also, regarding an objective of risk management, there are two kinds of risks. One is “risk” as the effect of uncertainty on objectives in a broad sense, and the other is “A risk” as a single action or event component that potentially contributes to a project’s timeline, performance, or budget.¹⁴⁶ Therefore the external impact of development assistance potentially is working as “risk” because of its uncertainty.

Regarding potential risks of the international development project, development assistance is somewhat two-faced, impacting both positively and negatively on the society of the recipient country. Thus international aid introduces new ideas into recipient societies from abroad, which in turn can create friction with more established social norms in the areas of culture, history, traditions, and religion. The interaction between new ideas introduced by the donor country through assistance, and established ideas in a recipient society, can be a source of friction. As a result, aid providers must consider how to minimize the negative aspects of this interaction, and capitalize on the more positive aspects, in accordance with the condition of the recipient society. In project management processes, such frictions and negative impact should be dealt with as potential risks of an international development project. This phenomena of risk are a clearly unique feature of an international development project which is influenced by social and political nature as well as instability of the recipient country. These situations are far less common in other sectors such as construction or information technology which is often implemented within a country and have less impact on less external influence and the social constant of a counterpart.

¹⁴⁴ Ika, Lavagnon A., Amadou Diallo, and Denis Thuillier. "Project Management in the International Development Industry." *International Journal of Managing Projects in Business* 3, no. 1 (2010): 63.

¹⁴⁵ Project Management Institute. *A Guide to the Project Management Body of Knowledge (PMBOK GUIDE)*. 5th ed. (The United States of America: Project Management Inst, 2013). Chapter 11, Section 2.

¹⁴⁶ "ISO 31000 - Risk management." International Organization for Standardization, ISO. Accessed April 20, 2018. <https://www.iso.org/iso-31000-risk-management.html>.

2.5.2 Project Transitional Management in Long-term Processes

Law and justice assistance is a type of aid which needs long-term commitment in a recipient country. Thus projects need to shift to further phases in accordance with conditions of both a donor and a recipient. Projects need to refer a level of development, progress and social change on the recipient side, as well as internal changes such as project duration, budgeting, goals, targets and member structure on the donor side. In this context, project transition and transition management become a critical “A risk” which can potentially be critical if it is actualized. The definition of transition management is the method of policy design for adjusting the project definition to achieve sustainable, long-term engagement, responding to social changes in the recipient country. For project management in the long-term process generally, the significance of transition management has been long recognized. If project transition is implemented successfully, the result may impact on the sustainable development of long-term projects.¹⁴⁷ Indeed, project outcomes and achievements depend greatly on effective transitions in the project design and management process. Therefore, the method of project management is applicable for long-term projects in the international development industry.

In project transition process, the coherence-consistency duality of a project is closely related to the social impact of individual development assistance project. Definitions of coherence and consistency in a development assistance context are the continuity of individual development assistance projects in a recipient country depending on the level of social development, development process, and requests for assistance. To achieve sustainability in long-term engagement, donors need to adjust the overall project to make each subsequent project consistent with the prior and succeeding project, for overarching development narrative in a recipient country. Depending on project implementation process, project transition becomes not only a risk but also an opportunity to change project components and targets. Therefore, the transition period can be a critical milestone for risk management and also for adjustment to

¹⁴⁷ Vob, Jan-Peter, Adrian Smith, and John Grin. "Designing Long-term Policy: Rethinking Transition Management." *Policy Science* 42, no. 4 (November 2009): 281-282.

ensure project coherence and consistency.

The link between policy and project targets is a critical point for transition management. Implementers of the transition process should consider how project targets maintain consistency and coherence of conceptualization, policy, and components. Jan-Peter Vob et al. (2009) and Frolian Kern and Michael Howlett (2009) describe the issue as a “problem of fit” which means how the process of transition management fits the policy context for achieving sustainable development.¹⁴⁸ In development assistance projects, the social context and demands of a recipient country, and overall development assistance policy are also deeply related to project design. In the transition process of development assistance, therefore, consistency between project component and policy, project component and project component, and project component and social context are keys for sustainable development and for realizing successful outcomes.

The concept of transition management is often discussed as a socio-technical issue because the concept is multi-level perspectives which look at the dynamic transition of projects.¹⁴⁹ According to Vob et al., the transition is the result of “nonlinear interactions” between three levels of the social system, which are the macro-level (landscape), meso-level (regimes), and micro-level (niches).¹⁵⁰ In this framework, the landscape consists of broader societal patterns and development that provide structural gradients and policies of possibility for socio-technical change.¹⁵¹ Regimes mean the dominant structure, culture, and practice in the provision of a social need, and niches are defined as social provision for needs

¹⁴⁸ Vob, Jan-Peter, Adrian Smith, and John Grin. "Designing Long-term Policy: Rethinking Transition Management." *Policy Science* 42, no. 4 (November 2009): 287-288.; Kern, Florian, and Michael Howlett. "Implementing Transition Management as Policy Reforms: A Case Study of the Dutch Energy Sector." *Policy Science* 42, no. 4 (November 2009): 396-397.

¹⁴⁹ Vob, Jan-Peter, Adrian Smith, and John Grin. "Designing Long-term Policy: Rethinking Transition Management." *Policy Science* 42, no. 4 (November 2009): 282-283.; Porter, Nadia, Maarten Claassen, and Jos Timmermans. "Transition Experiments in Amsterdam: Conceptual and Empirical Analysis of Two Transition Experiments in the WATERgraafsmeer Program." *Technological Forecasting & Social Change* 90 (2015): 527-528.

¹⁵⁰ Vob, Jan-Peter, Adrian Smith, and John Grin. "Designing Long-term Policy: Rethinking Transition Management." *Policy Science* 42, no. 4 (November 2009): 283-284.

¹⁵¹ Ibid.

and provide a context for experimenting with new, sustainable practices and the related culture.¹⁵² In terms of coherence and consistency, project implementers should consider how they maintain consistency beyond two or more projects in transition. As a tangible study regarding maintaining consistency, Kern and Howlett analyze the policy reform process in the Dutch energy sector to draw lessons about how to achieve project goals and coherence, focusing on policy goals and policy means.¹⁵³

Nadia Porter et al. (2015) utilized a multi-level perspective in their research to evaluate the project transition experience of “WATERgraafsmeer”, a water management project in Watergraafsmeer in the Netherlands.¹⁵⁴ In their research, they evaluated the social impact of 11 components to the societal challenge based on three levels of transition management, and also suggested new project guidelines based on the transition experience.¹⁵⁵ For example, they defined macro-level action as “action aimed at embedding the experiment in dominant ways of thinking, doing and organizing” at the WATERgraafsmeer project, and looked at how the key concept and strategy of the project filtered through to each component activity.¹⁵⁶ Their research clarifies the process of how a new policy or project transition works. For example, they observed that replacing specific elements or mixing with pre-existing policy, as well as consideration of social context, could be the key to avoiding the incoherence between social conditions and overarching goals of the project during the transition process.¹⁵⁷ Therefore, consideration of the problem

¹⁵² Ibid.

¹⁵³ Kern, Frolian, and Michael Howlett. "Implementing Transition Management as Policy Reforms: A Case Study of the Dutch Energy Sector." *Policy Science* 42, no. 4 (November 2009): 396-402.

¹⁵⁴ Porter, Nadia, Maarten Claassen, and Jos Timmermans. "Transition Experiments in Amsterdam: Conceptual and Empirical Analysis of Two Transition Experiments in the WATERgraafsmeer Program." *Technological Forecasting & Social Change* 90 (2015): 528-529.; "Water Management: Watergraafsmeer." *Gemeente Amsterdam*. I amsterdam. Accessed April 20, 2018.

<https://www.amsterdam.nl/bestuur-organisatie/organisatie/ruimte-economie/ruimte-duurzaamheid/making-amsterdam/portfolio/water-management/>.

¹⁵⁵ Ibid., 528-535.

¹⁵⁶ Ibid.

¹⁵⁷ Kern, Frolian, and Michael Howlett. "Implementing Transition Management as Policy Reforms: A Case Study of the Dutch Energy Sector." *Policy Science* 42, no. 4 (November 2009): 396-397.

of fit involved in the transition management process could influence project efficacy and work to predict potential risks.

Kern and Howlett have also examined the issues of goal coherence and consistency of implementation in policy reform. According to them, coherent policy goals and consistent means are linked in a congruent fashion with established policies as a result of the reform effort.¹⁵⁸ Therefore, project implementers and designers need to evaluate the transition management with the project coherence and consistency as criteria to achieve overarching goals of the project for the purpose of project sustainability. Thus the method how the goal coherency and instrument consistency is achieved has a significant meaning in transition management process.

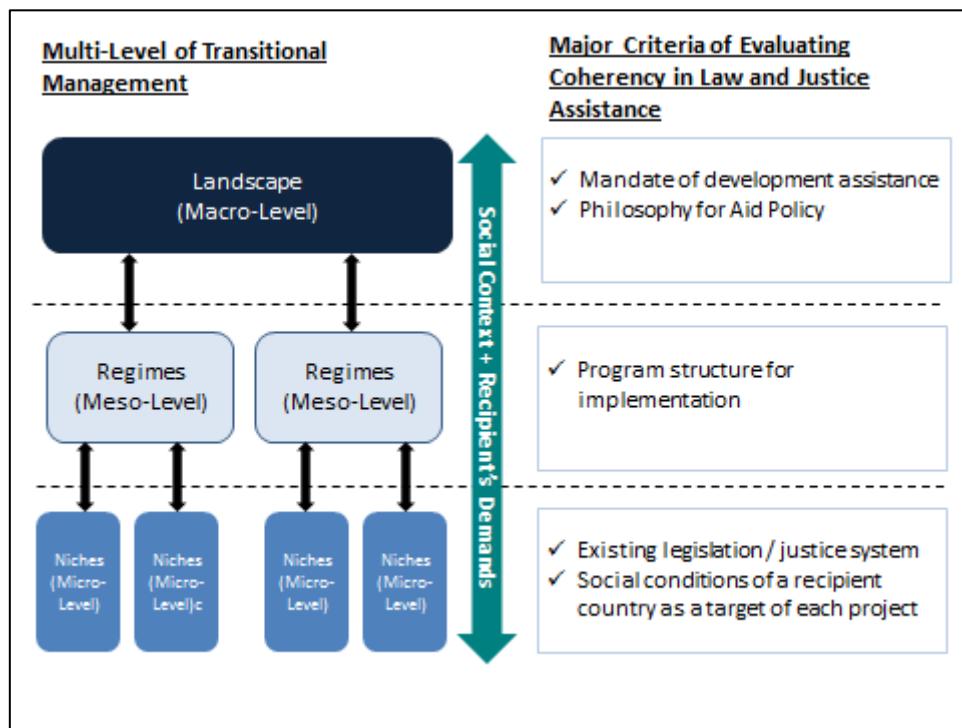
Law and justice assistance should achieve the establishment of new law and justice systems in a recipient society. Currently, many donors have acknowledged the overall goal. In a long-term project, project transition could present potential risks in terms of project coherence, and donors should consider how they can overcome such risks and achieve the overall goal of a project. Throughout the whole process of project implementation of law and justice assistance, such project coherence and consistency influences project sustainability in a recipient country. Based on the concept of transition management, Figure 4 describes a framework of law and justice assistance to evaluate project coherence in a transitional process. In this framework, “landscape” explains a donor’s overall concept and the goal of law and justice assistance in the targeted recipient country, while “regimes” are represented by individual programs and its structure for implementation. “niches” mean each local condition as a project target and current legislation and justice system of a recipient country. Depending on the individual project, a donor should define the criteria to evaluate the coherency and consistency in the transition process, along with the level of development in the recipient country.

Moreover, transition management in development assistance is strongly related to the social context of a given recipient country. In project implementation, donors must consider how social change is

¹⁵⁸ Ibid., 395.

wrought by development assistance as an external impact. Similarly, these processes are essential to predicting social reactions and potential incoherence of projects as applied to the recipient society. Therefore, in considering transition management, project implementers should deal with the social context of a recipient country at all level of the transition process. At lower levels of the framework, such as niches within regimes of project implementation, local conditions in the recipient country can also impact individual project components.

(Figure 4: Framework for the evaluation of coherency of law and justice assistance in the transitional process)



(Source: Author applied law and justice assistance context to Porter, Nadia, Maarten Claassen, and Jos Timmermans. "Transition Experiments in Amsterdam: Conceptual and Empirical Analysis of Two Transition Experiments in the WATERgraafsmeer Program." *Technological Forecasting & Social Change* 90 (2015): 527-28.)

2.5.3 Project Management in Fragile States Context

As mentioned previously, states in conflict or post-conflict become one of the core categories of

recipients of law and justice assistance. In fact, demands for law and justice assistance from these countries are huge. Also, many countries in post-conflict conditions or the reconstruction process are receiving technical assistance on law and justice, such as Afghanistan, Myanmar, Cambodia, and Iraq. When donors implement the aid project in conflict post or post-conflict states, recipient states, as well as donors, need to face extraordinary conditions after the conflict, and both the recipient and the donor need to consider how to reconstruct the states. Under such conditions in the recipient state, project impact and function in a society become unpredictable, and it is hard to apply a successful model for development into these states. Especially, the fragility of governance in a recipient state, such as lack of enough capacity and corruption, can become a critical obstacle for project implementation and aid effectiveness, and also influence on a process of development. However, research since 2000 clarified that post-conflict states could achieve economic development and democratization through external assistance projects if such projects comply with the recipient's society and environment.¹⁵⁹ Therefore, proper project design and management can highly influence on project result and aid effectiveness in post-conflict states. Since donors have a responsibility of project planning, implementation, and evaluation, they have power to some extent to control the project achievement.

To overcome difficult condition for aid effectiveness, clarification of conditions in conflict or post-conflict states is necessary. Firstly, post-conflict states do not have the absorptive capacity for aid in their societies. Alastair McKechnie pointed out at the World Bank report that a conflict-affected country's ability to utilize aid is low immediately after the conflict due to institutional and physical constraints.¹⁶⁰ States usually have been damaged after the conflict, and have also lost their capacity in multi-dimensions, such as economics, techniques, politics, and social. In order to ride a wave of development process, therefore, states in post-conflict situations have to accept foreign intervention to some extent.

¹⁵⁹ Burnside, Craig, and David Dollar. "Aid, Policies, and Growth." *The American Economic Review* 90, no. 4 (September 2000): 847-68.

¹⁶⁰ McKechnie, Alastair J. "Building capacity in post-conflict countries." *Capacity Enhancement: Sharing best practices and lessons learned*, no. 5 (March 2004). March 2004. Accessed April 20, 2018.
<http://siteresources.worldbank.org/INTCDRC/Resources/CDBrief05.pdf>. 1-4.

The second point seems to conflict with the first point. However both conditions can happen at once. While states in post-conflict have lost their ability for the absorptive capacity of the aid, they also have some space and potential for development. In this regards, however, development assistance should be suitable, and a donor must implement a project properly in accordance with their situation, social context, and level of development. Lisa Chauvet et al. mentioned aid volumes should build up gradually during the first years of peace and then gradually revert to normal levels after around a decade. This idea is based on suggestions by Collier and Hoeffler, which explained there is a window of opportunity for higher than normal aid effectiveness in terms of growth in post-conflict situations. Lisa Chauvet et al. also mentioned the that donors intervene following a suitable sequence.¹⁶¹ Donors need to examine the ability for the absorptive capacity of the aid properly, to determine project designing method to utilize. Donors also should notice the fact that the process of development and reconstruction in the post-conflict situation has a certain pattern. Lastly, proper risk management is significant and essential in project implementation process in post-conflict states. Fragile states must consider diverse risks, which are not only general one and specific one in international development, but also particular risks which stem from conditions of state fragility, due to lack of information and capacity as well as ambiguity in the states.

Definition of project risk management is an unforeseen event or activity that can impact the project's progress, result, or outcome in a positive or negative way. Impact and probability can assess risk, as a. significant factors. Project risk management is one of ten key knowledge areas of project management.¹⁶² Thus, this research lay special stress on project risk management because of two reasons. Firstly, fragile states are prone to have risks. Secondly, they are hard to predict the risks including aid reaction or impact. Therefore, fragile states need the range of risk management broadly in the implementation process of an aid project.

¹⁶¹ Chauvet, Lisa, Paul Collier, and Marguerite Duponchel. *What Explains Aid Projects Success in Post-conflict Situations?* (Washington DC, The United States of America: The World Bank, 2010). 11-16.

¹⁶² Project Management Institute. *A Guide to the Project Management Body of Knowledge (PMBOK GUIDE)*. 5th ed. (The United States of America: Project Management Inst, 2013). Chapter 1, Section 3.

How donor should reduce the risk is another critical challenge for both donors and recipients. According to Chauvet et al., post-conflict peace is fragile, and the risk of renewed violence after a civil war is around 40%.¹⁶³ In this context, donors should consider how development assistance could be used for both risk reduction and overcoming the potential risks of foreign aid. Additionally, appropriate contingency plans for recovery and overcoming potential risks are essential to the project management and designing process. Aid programs must re-establish or reconfigure the function of a state; therefore, in accord with these factors of post-conflict states, donors should pay special consideration to potential risks and predictability in these fragile conditions. A project's impact often depends on how much project planners and implementers understand the conditions of recipients.

2.6 Key Actor of the Empirical Case: Australia as a Primary Donor and Its Features of ODA

Although RAMSI in Solomon Islands was a regional collective action, Australia was a primary donor of the program. Following SIJP is also a bilateral law and justice assistance between Australia and Solomon Islands. Therefore, a standpoint of Australia as a donor has been a significant target of analysis in this thesis. This thesis also highlights Australian ODA policy and the features of Australian approach to the post-conflict states. Australia has had a long history of influencing global affairs as an ODA donor. Since Australian ODA policy was designed based on the Colombo plan in 1950, the prior destination of aid is Asia and the Pacific region.¹⁶⁴ While Australian contribution of ODA was ranked No.13 in 2016, around 60% of the total amount of ODA went to Asia and the Pacific region.¹⁶⁵ Such an Australian ODA approach has determined Australian position in global society as a Middle Power at the international stage, while

¹⁶³ Chauvet, Lisa, Paul Collier, and Marguerite Duponchel. *What Explains Aid Projects Success in Post-conflict Situations?* (Washington DC, The United States of America: The World Bank, 2010). 11-16.

¹⁶⁴ Overseas Vocational Training Association, OVTA. *Transition and present condition of Australian ODA* (Japan: OVTA, March 2006).1-4.

¹⁶⁵ "Development Co-operation Directorate (DCD-DAC)." OECD, DAC. Accessed April 20, 2018.

<http://www.oecd.org/dac/financing-sustainable-development/datavisualisations/>.

Australia has influenced on more within the region as a “big-brother”.¹⁶⁶ This national strategy of ODA reveals the importance of involvement in their neighbor’s incident.

2.7 Conclusion

This chapter overviewed the conceptual framework and approach of this thesis, which consists of three major concepts, law and justice assistance, fragile states, and project management. The topic of the method of designing law and justice assistance project in fragile states is a substantial one extending beyond the focus on development assistance as well as law and development study taken in this thesis. Understanding and dealing with the practical methodology and its consequences is a relatively newly emerging field. Therefore, from the following chapters, this research aims to play a modest role in stimulating further thought toward important challenges of the rule of law promotion in practice based on these three core concepts.

The next four chapters of the thesis explore an empirical case of law and justice assistance conducted by the Australian government in Solomon Islands and analyzes its impact on the Australian aid context as well as the society of Solomon Islands. Chapter three begins to explore the narratives of the Australian law and justice effort as a part of ODA and its fundamental strategy as a foreign policy in order to clarify the main features of the Australian approach of law and justice assistance.

¹⁶⁶ Scott, David. "Australia as a Middle Power: Ambiguities of Role and Identity." *Seton Hall Journal of Diplomacy and International Relations* Summer 2013, 111-22. Accessed April 20, 2018. 111-122.

Chapter III: Australian Law and Justice Assistance Narratives

The Coalition Government is making bold changes to the aid program. We are deeply aware that a \$5 billion aid program is a substantial contribution to the needs of our neighbors and that's why our aid program must be responsible, affordable and sustainable. Aid is in our national interest because it builds a safer more secure region.

(The New Aid Paradigm Speech by Julie Bishop, on 18 June 2014 at National Press Club, Canberra)

3.1 Introduction

Australia has had a long history of influencing global affairs as an ODA donor. Indeed, Australia has played a significant role as a middle power at the international stage, and especially influenced within the region.¹⁶⁷ Law and justice assistance may have the same context with this standpoint of Australia. Australia has provided broad law and justice assistance since the 1980s, mainly targeting the Asia-Pacific region. The Australian Department of Foreign Affairs and Trade (DFAT) defines Australian Official Development Assistance (ODA) through law and justice assistance projects as “activities primarily targeting law and justice system functions and institutions, including state and non-state systems, in post-conflict, fragile and more stable development settings”.¹⁶⁸ Australian law and justice assistance targets fragile and post-conflict societies and focuses on government administration, human rights, United Nations (UN) post-conflict peace-building, and security system management reform.¹⁶⁹

¹⁶⁷ Scott, David. "Australia as a Middle Power: Ambiguities of Role and Identity." *Seton Hall Journal of Diplomacy and International Relations* Summer 2013, 111-22. Accessed April 20, 2018.

<https://dscottcom.files.wordpress.com/2017/03/australia-middlepower.pdf>. 111-122.

¹⁶⁸ Australian Government, Department of Foreign Affairs and Trade. *Building on Local Strengths: Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Agency for International Development (AusAID), 2012). 6.

¹⁶⁹ Australian Government, Department of Foreign Affairs and Trade, *Annual Thematic Performance Report: Law and Justice 2008 -09* (Canberra, Australia: The Australian Government, January 2010). Accessed April 20, 2018. <https://dfat.gov.au/about-us/publications/Documents/atpr-lawjustice-0809.pdf>. 11-12.

The rule of law promotion has become a major industry of aid especially since the end of Cold War, and currently, diverse multilateral and bilateral donors like Australia are engaged in the aid program. However, the rule of law concept in development assistance is complicated and diverse depending on the donor's foreign policy. Such a complication of the interpretation of the rule of law concept, as well as the cultural diversity among donors, analyzing in comparative perspective is not easy, according to the unified criteria.

Frank Schimmelfenning conducted valuable research on comparative analyses of the rule of law aid policy among major Western donors, which comprise the United States, the European Union, Germany, France and the United Kingdom.¹⁷⁰ In his research, the matrix for the rule of law assistance policy has been drawn for comparative analysis of the role of each major bilateral donor for the rule of law promotion as well as the potential source of variation toward aid. The matrix consists of four components, which are content that is concepts and components of the rule of law promotion policies, organizational setup and institutional context, strategies and instruments, budget and expenses and target regions and countries.¹⁷¹

Based on Schimmelfenning's matrix, Pip Nicholson and Samantha Hinderling's research in 2013 gave further insights on the role of bilateral donors on the rule of law assistance.¹⁷² Through their analysis on Japan as a target donor, Nicholson and Hinderling's research found out the marginalized but significant concept in the Schimmelfenning's matrix for analysis and pointed out additional viewpoints which could influence the result of comparative analysis on the rule of law assistance plurally. The first point is aid dependency and its impact on aid conception and delivery. The second is the variability of donor activities

¹⁷⁰ Schimmelfennig, Frank. "A Comparison of the Rule of Law Promotion Policies of Major Western Powers." In *Rule of Law Dynamics: In an Era of International and Transnational Governance*, edited by Michael Zurn, Andre Nollkaemper, and Randy Peerenboom (Cambridge, The United Kingdom: Cambridge University Press, 2012). 111-113.

¹⁷¹ Ibid.

¹⁷² The reason why Nicholson and Hinderling focused Japan is that they saw Japan as an emerging East Asian donor and potential alternative of the traditional Western donor, and aimed to clarify the differences of role comparing to the Western donors. Nicholson, Pip, and Samantha Hinderling. "Japanese Aid in Comparative Perspective." *Hague Journal on the Rule of Law* 5, no. 2 (2013): 274–309.

in different contexts. The third is the local experience of aid.¹⁷³ These two pieces of research presented a significant framework for evaluating policy for the rule of law assistance, and clarify the differences among bilateral donors. This insight contributed an applicable model in development aid practice not only into normative evaluation but also the substantive rule of law promotion.

This chapter is going to identify features of the Australian law and justice assistance, and the standpoint of the Middle Power of aid donor in law and justice assistance context. This chapter examines the Australian law and justice effort as a part of ODA and its fundamental strategy as a foreign policy, in order to clarify the main features of the Australian approach of law and justice assistance. The main question to be addressed is how the Australian law and justice assistance could be identified compared to other bilateral donor organizations. This chapter analyzes a policy framework of the Australian aid on law and justice within two decades in comparative perspective, based on Schimmelfenning's framework for the rule of law assistance as well as Nicholson and Hinderling's analysis on donor's role as previous research.

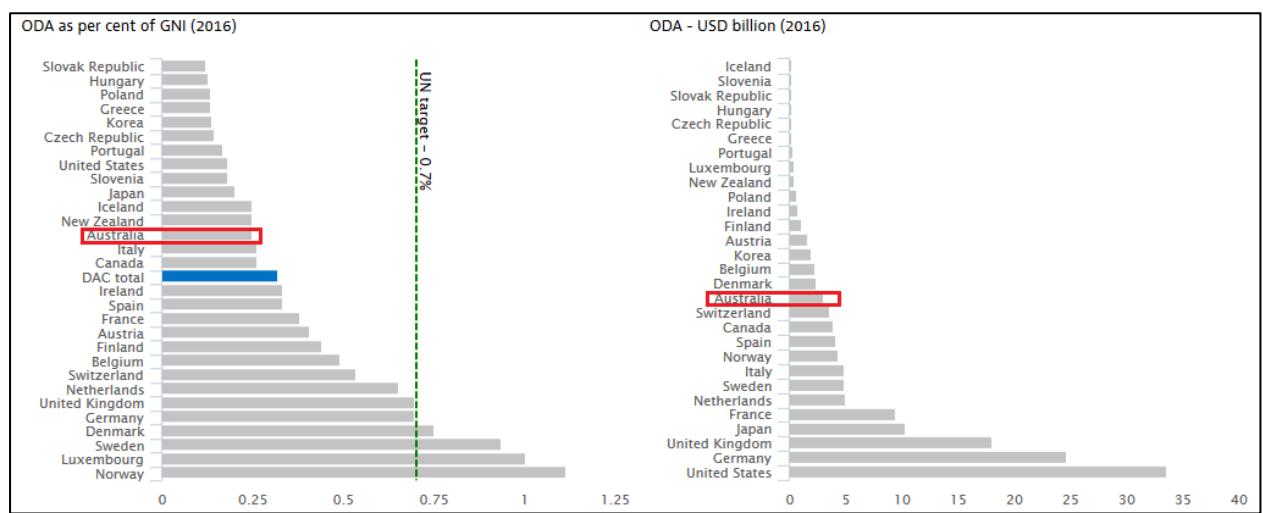
This chapter consists of a four-part structure. The chapter commences with an overview of the Australian strategy for ODA and especially the structural change of the aid body of the Australian government. In order to consider the philosophy and its characteristics of the Australian law and justice assistance, the third section explores the Australian efforts and approach, in accordance with the Schimmelfenning's framework for the rule of law assistance. The fourth section analyzes and summarizes the Australian position as a donor for law and justice assistance, in comparative perspectives. Then the fifth section considers comparative viewpoints of analysis for aid effectiveness in the law and justice assistance context and adds some comments on Nicholson and Hinderling's suggested three points, before crystallizing characteristics of Australian law and justice assistance in the concluding section.

¹⁷³ Ibid., 279-280.

3.2 Australian Aid Policy and The New Aid Paradigm

As Australians, especially the Members of Parliament (MP) in Liberal Party, have accepted to describe themselves as the Middle Power, the amount of Australian ODA among DAC countries is positioned at the “middle” place, ranked 13 in 2016 (see figure 5). However, the Australian presence as a donor country is quite huge in Asia and the Pacific region.

(Figure 5: Official Development Assistance of OECD DAC Countries in 2016)



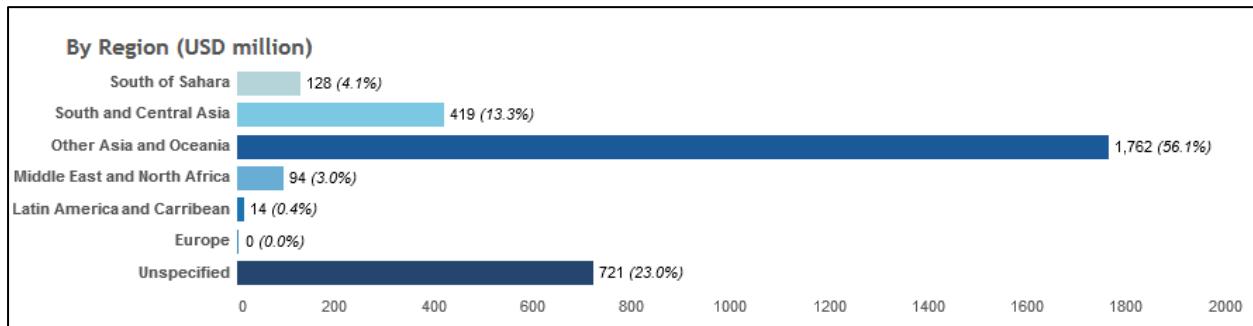
(Source: "Development Co-operation Directorate (DCD-DAC)." OECD, DAC. Accessed April 20, 2018. <http://www.oecd.org/dac/financing-sustainable-development/datavisualisations/>. (marked in red by author))

Australia's ODA history commenced with the Colombo Plan in 1950. Since then, Australia has made an important contribution to development cooperation as a significant measure for foreign policy.¹⁷⁴ The Australian government believed Communization in Asia could be a threat to the region after World War Two; the Australian government set security as a principal axis of their ODA strategy. Therefore, since then the priority of Australian ODA is the Asia and the Pacific region, due to geographical contiguity.¹⁷⁵

¹⁷⁴ Hawksleya, Charles. "Australia's Aid Diplomacy and the Pacific Islands: Change and Continuity in Middle Power Foreign Policy." *Global Change, Peace & Security: Formerly Pacifica Review: Peace, Security & Global Change*, 2009th ser., 21, no. 1 (March 02, 2009): 115-116.

¹⁷⁵ Overseas Vocational Training Association, OVTA. *Transition and present condition of Australian ODA* (Japan: OVTA, March 2006). 1-4.

(Figure 6: Gross ODA by region of Australia in 2014)



(Source: "Development Co-operation Directorate (DCD-DAC)." OECD, DAC. Accessed April 20, 2018.

[http://www.oecd.org/dac/financing-sustainable-development/datavisualisations/."\)](http://www.oecd.org/dac/financing-sustainable-development/datavisualisations/.)

In accordance with the global trend of ODA, the objectives of Australian ODA have been readjusted, such as the concept of Basic Human Needs and the United Nations Millennium Development Goals.¹⁷⁶ Additionally, Australian aid policy is designed based on mainly three competing agendas, which are the neo-liberal agenda, social justice agenda, and the government-of-the-day's diplomatic and security agenda. The major political party's influence on the priority of the aid policy and prior objectives at each stage.¹⁷⁷ Australian ODA strategy drastically changed its orientation, especially within the last two decades. Since 1997, the Liberal Party of Australia focused on the reacknowledgement of the significance of ODA as a foreign and security policy as well as the awareness of the interrelationship between security and development.¹⁷⁸ Under the John Howard's government, military and police force intervention was an important measure of ODA toward the emergence of non-traditional global threat in the Pacific region. For instance, the Australian government decided to be involved in the Regional Assistance Mission to Solomon Islands (RAMSI) in this period under the whole-of-government approach, which refers to the joint

¹⁷⁶ Corbett, Jack, and Sinclair Dinnen. "Examining recent shifts in Australia's foreign aid policy: new paradigm or more incremental change?" *Australian Journal of International Affairs* 70, no. 1 (2016): 89-94.

¹⁷⁷ Rosser, Andrew. "Asia's rise and the politics of Australian aid policy." *The Pacific Review* 29, no. 1 (2016): 117-120.

¹⁷⁸ Corbett, Jack, and Sinclair Dinnen. "Examining recent shifts in Australia's foreign aid policy: new paradigm or more incremental change?" *Australian Journal of International Affairs* 70, no. 1 (2016): 96-98.

activities performed by diverse Ministries and public institutions. The Australian government also provided financial and logical support to resolve the conflict on Bougainville Islands in Papua New Guinea (PNG) after the Sandline affairs in 1997.¹⁷⁹ After the regime change to the Australian Labor Party (ALP) in 2007, the ruling party kept focusing on the significance of ODA continuously, especially ODA for the Pacific region which was typified the Port Moresby Declaration in 2008 under Kevin Rudd's Government. This regime change revitalized the Australia-Pacific cooperation and development, based on the partnership.¹⁸⁰ Also, the ODA budget of Australia was gradually increased and reached 3.95 Billion (US\$) in Fiscal Year of 2012/13.¹⁸¹

(Figure 7: Top Ten Recipients of Gross ODA of Australia in 2014)

Top Ten Recipients of Gross ODA (USD million)		
1	Papua New Guinea	417
2	Indonesia	414
3	Solomon Islands	130
4	Viet Nam	115
5	Afghanistan	114
6	Philippines	112
7	Timor-Leste	76
8	Vanuatu	73
9	Myanmar	72
10	Bangladesh	67

(Source: "Development Co-operation Directorate (DCD-DAC)." OECD, DAC. Accessed April 20, 2018. <http://www.oecd.org/dac/financing-sustainable-development/datavisualisations/.>)

¹⁷⁹ The Sandline affair was a political scandal which brought down the government of Sir Julius Chan, and took Papua New Guinea to the verge of a military revolt. This incident became a driver to resolve the conflict in Bougainville using military force, not by diplomatic means. Hawksleya, Charles. "Australia's Aid Diplomacy and the Pacific Islands: Change and Continuity in Middle Power Foreign Policy." *Global Change, Peace & Security: Formerly Pacifica Review: Peace, Security & Global Change*, 2009th ser., 21, no. 1 (March 02, 2009): 116-117.

¹⁸⁰ Australian Government, Department of Foreign Affairs and Trade. *Annual Report 2007-2008* (Canberra, Australia: Australian Government, 2008). Accessed April 20, 2018.

<https://dfat.gov.au/about-us/publications/corporate/annual-reports/australian-agency-for-international-development-annual-report-2007-2008/section02b.html>. Section2.

¹⁸¹ "Development Co-operation Directorate (DCD-DAC)." OECD, DAC. Accessed April 20, 2018. <http://www.oecd.org/dac/financing-sustainable-development/datavisualisations/.>

However, the Australian aid strategy reached another critical turning point in 2013. The new coalition government brought significant structural changes to the aid body of the Australian government. The Australian Agency for International Development (AusAID) which is the government aid agency, was abolished and integrated into a part of DFAT.¹⁸² All former AusAID staff, which included 1,724 Australian Public Service employees and 651 locally engaged staff, became DFAT employees, and the new DFAT unified corporate structure, which is a single budget from 2014–15, human resources, property services, and financial policies and systems.¹⁸³ New aid paradigm states that the primary purpose of the Australian aid program is to promote Australia's national interests by contributing to sustainable economic growth and poverty reduction. Its aid program aims to promote prosperity, reduce poverty and enhance stability by focusing on achieving two development outcomes, which are strengthening private sector development and enabling human development.¹⁸⁴ Australia set six core priority areas for investment to achieve these purposes. The first core is infrastructure, trade facilitation and international competitiveness. The second core is agriculture, fisheries, and water. The third core is effective governance: policies, institutions and functioning economies. The fourth core is education and health. The fifth core is building resilience: humanitarian assistance, disaster risk reduction, and social protection. The last core is gender equality and empowering women and girls.¹⁸⁵ Australian Minister for Foreign Affairs Julie Bishop mentioned regarding the new aid paradigm at her speech.¹⁸⁶ Julie Bishop talked in her speech that “— those are our six

¹⁸² Australian Government, Department of Foreign Affairs and Trade. *Annual Report 2013-2014* (Canberra, Australia: Australian Government, 2014). Accessed April 20, 2018.

<http://dfat.gov.au/about-us/publications/corporate/annual-reports/annual-report-2013-2014/dfat-annual-report-2013-14.pdf>. 19-23.

¹⁸³ Ibid.

¹⁸⁴ Australian Government, Department of Foreign Affairs and Trade. *Australian aid: promoting prosperity, reducing poverty, enhancing stability* (Canberra, Australia: Australian Government, 2014. June 2014). Accessed April 20, 2018. <http://dfat.gov.au/about-us/publications/Documents/australian-aid-development-policy.pdf>. 1-5.

¹⁸⁵ Ibid., 10-26.

¹⁸⁶ Bishop, Julie. "The new aid paradigm." (Speech on 18 June 2014, National Press Club, Canberra, Australia). Accessed April 20, 2018. http://foreignminister.gov.au/speeches/Pages/2014/jb_sp_140618.aspx.

priority areas to promote economic growth and reduce poverty in our region underpinned – I say it again – by private sector support.”¹⁸⁷ Jack Corbett and Sinclair Dinnen conceptualized this turn of Australia’s aid policy which was initiated by the Tony Abbott’s government as “paradigm shift”.¹⁸⁸ According to Corbett and Dinnen, behind the restructuring as well as the new aid paradigm which was proclaimed, there had been a narrative that this paradigm shift on Australian aid could be a primary means to realize the aid objective as a form of economic diplomacy for Australia.¹⁸⁹

Since Julie Bishop’s speech, the Australian government has focused on private-sector-led growth development in order to achieve the goal under the new paradigm. However, this recent focus is pointed out that it is no longer new and pushes back the growth-oriented policy in the early 1990s.¹⁹⁰ This paradigm shift, therefore, emphasis on economic development for Australia as principle legitimacy for Australian aid. This context seems the backset of aid policy to more conservative thinking.

The paradigm changes of the Australian aid by the Coalition influenced on Australian approach. The most important and critical change was the full integration of AusAID into the DFAT. The Australian think tank for Australian aid policy, the Development Policy Center at the Australian National University (ANU), conducted a broad survey entitled “Australian Aid: Signs of Risk” on aid effectiveness for the Australian aid stakeholders regarding the awareness of change after the AusAID mergers in 2013 and 2015.¹⁹¹ According to the survey, there was the negative impact on both consciousness for policy and the leadership of government and also substantive work in practice, while major practitioners evaluated the

¹⁸⁷ Bishop, Julie. "The new aid paradigm." (Speech on 18 June 2014, National Press Club, Canberra, Australia). Accessed April 20, 2018. http://foreignminister.gov.au/speeches/Pages/2014/jb_sp_140618.aspx.

¹⁸⁸ Corbett, Jack, and Sinclair Dinnen. "Examining recent shifts in Australia's foreign aid policy: new paradigm or more incremental change?" *Australian Journal of International Affairs* 70, no. 1 (2016): 87.

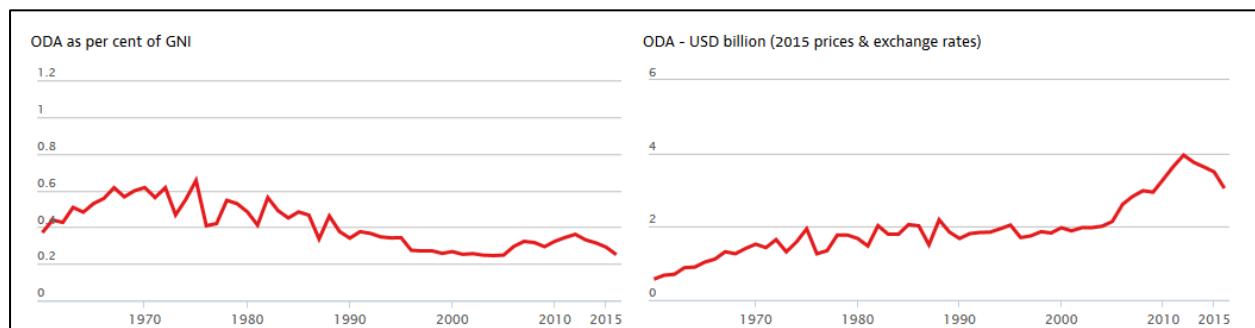
¹⁸⁹ Ibid., 88.

¹⁹⁰ Corbett, Jack, and Sinclair Dinnen. "Examining recent shifts in Australia's foreign aid policy: new paradigm or more incremental change?" *Australian Journal of International Affairs* 70, no. 1 (2016): 93-94.

¹⁹¹ Wood, Terence, Camilla Burkot, and Stephen Howes. *Australian aid: signs of risk – the 2015 Australian aid stakeholder survey*, *Australian aid: signs of risk – the 2015 Australian aid stakeholder survey* (Canberra, Australia: The Development Policy Center, 2016). 2-3.

Australian aid was effective or very effective.¹⁹² Especially negative impacts on staff effectiveness such as less number of expertise, rapid turnover of staffs, and leaving of senior staffs and experts were pointed out.¹⁹³ This situation clearly draws influence from the merger of two organizations, who have different values and cultures on aid programs. This situation also influenced on the aid effectiveness negatively.¹⁹⁴ Also, Stephen Howes and Joel Negin mentioned that new aid paradigm lacks attention to components for aid management and performance framework.¹⁹⁵ Staff restructuring beyond organizations possibly brought a range of risks in project management level, such as the decision-making process, report chain, budget flow, and evaluation system. These difficulties also could impact on aid effectiveness in practice.

(Figure 8: ODA Trends 1960-2016 of Australia)



(Source: "Development Co-operation Directorate (DCD-DAC)." OECD, DAC. Accessed April 20, 2018.

<http://www.oecd.org/dac/financing-sustainable-development/datavisualisations/.>)

Another significant change is the amount of budget. The paradigm shift brought funding cuts, and aid expenditure has continuously decreased since its peak in 2012. Since then, budget cuts for ODA have never stopped. The Australian government decided to reduce ODA budget grossly until 2017. Especially

¹⁹² Ibid., 2-10.

¹⁹³ Ibid., 24-36.

¹⁹⁴ Interviewee AG7, Interview by author. Personal interview. Canberra, September 15, 2016.

¹⁹⁵ Howes, Stephen, and Joel Negin. "The new aid paradigm: is it new, and what does it do for aid reform?"

DevPolicy Blog. June 19, 2014. Accessed April 20, 2018.

<http://devpolicy.org/the-new-aid-paradigm-is-it-new-and-what-does-it-do-for-aid-reform-20140619/>.

the Coalition reduced over 30% of the ODA budget since they came into power.¹⁹⁶ The criticisms toward the discount of ODA in their foreign affairs pointed out that the story behind the new aid paradigm for the huge budget cut is not convincing enough. According to the article by Matthew Dornan, these reasons came from the budget emergency, prioritized domestic charity than foreign aid, and lack of aid effectiveness. However, these points are not supporting the budget cut due to the small amount of aid in the whole budget and priority change to the domestic problems.¹⁹⁷ Also, regarding the lack of aid effectiveness, the article pointed out that trade cannot replace foreign aid as a measure for poverty reduction and economic growth, especially at the micro level of aid projects, such as education, immunization, and medicines.¹⁹⁸ From this insight, the criticisms toward the budget cut with colorable excuses place an ultimate question about the meaning of aid both for objective, responsibility and national interest on the new aid paradigm.

3.3 The Australian Way of Law and Justice Assistance

Law and justice assistance have become a major part of the Australian aid program since 2003, due to the security threat around the neighboring states of Australia.¹⁹⁹ In order to consider the objective of Australia, this section explores the Australian efforts and approach for law and justice assistance over the past decade, according to the Schimmelfenning's framework for the rule of law aid.

¹⁹⁶ Australian Government, Department of Foreign Affairs and Trade. *Australian Aid Budget Summary 2016-2017* (Canberra, Australia: Australian Government, 2016). Accessed April 20, 2018. <http://dfat.gov.au/about-us/corporate/portfolio-budget-statements/Documents/2016-17-australian-aid-budget-summary.pdf>. 1-11.; Dornan, Matthew. "Why has the Coalition cut foreign aid (again)?" *DevPolicy Blog*. May 10, 2017. Accessed April 20, 2018. <http://devpolicy.org/why-has-coalition-cut-foreign-aid-again-20170510/>.

¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

¹⁹⁹ Australian Government, Department of Foreign Affairs and Trade. *Building on Local Strengths: Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Agency for International Development (AusAID), 2012). 8.

3.3.1 Development Assistance in the Field of Law: Basic Principles

As introduced in Chapter Two, Schimmelfenning explains there are two definitions of the rule of law promotion, which are thin and thick, and notes the Western rule of law consensus extends to thin general principles in common which is shared to all liberal democracies. While major Western donors have a similar consensus on the rule of law assistance as Schimmelfenning suggested, there is a divergence of policy, approach, scope among donor countries. For example, U.S. Agency for International Development's (USAID) the rule of law assistance has a similar context with the United Nations in their approaches to promote domestic solutions.²⁰⁰ The United Kingdom Department of International Development (DFID) focuses on security as the priority issue, due to the Colombo Plan.²⁰¹

The policy of Australian law and justice assistance covers activities primarily targeting law and justice institutions and functions, including state and informal providers, in post-conflict, fragile, and more stable settings. Law and justice institutions include police, courts and corrections systems, legal aid, government legal offices, specialized law enforcement functions and national human rights institutions.²⁰² Four core aspects of Australian law and justice assistance are government administration (defined as including policing and corrections), human rights, UN post-conflict peace-building, and security system management and reform.²⁰³

From the definition, Australian law and justice assistance set a quite broad scope of aid, and the

²⁰⁰ Ibid., 115.

²⁰¹ Independent Commission for Aid Impact, ICAI. *Review of UK Development Assistance for Security and Justice*. 2015 (The United Kingdom: ICAI, March 2015). Accessed April 20, 2018. <https://icai.independent.gov.uk/wp-content/uploads/ICAI-Report-UK-Development-Assistance-for-Security-and-Justice..pdf>. 2-8.

²⁰² Australian Government, Department of Foreign Affairs and Trade. *Building on Local Strengths: Evaluation of Australian Law and Justice Assistance*. (Canberra, Australia: Australian Agency for International Development (AusAID), 2012). 6.

²⁰³ Australian Government, Department of Foreign Affairs and Trade, *Annual Thematic Performance Report: Law and Justice 2008 -09* (Canberra, Australia: The Australian Government, January 2010). Accessed April 20, 2018. <https://dfat.gov.au/about-us/publications/Documents/atpr-lawjustice-0809.pdf>. 11.

context is primarily post-conflict and state building, because of Australia's national interest on regional security. Australian law and justice assistance target on neighboring states in Asia and the Pacific region specifically, and since the late 2000s, more than 50% of all law and justice assistance expenditures go to two countries in Melanesia, PNG, and Solomon Islands.²⁰⁴ Australian law and justice assistance also focus on enhancing formal institutions in the process of centralization and building nation states after their independence, and this is based on not only the recipient's demands but also the colonial legacy of Australia, due to the commonality of legal systems. In this context, Australia has a similar approach of thin with traditional Western donors on bringing "domestic solutions" of Australia to these countries. However, most Pacific countries, including Melanesian states, have pluralistic societies with different legal cultures. Therefore, Australia is also required to give some thick effort to informal legal systems, which are rooted in traditional societies in most of Melanesia. This situation may reflect on the broad scope and definition of Australian law and justice assistance. Likewise, internal evaluation by the Australian government commented on a future challenge. The evaluation said that the Australian law and justice assistance is not tailored to specific drivers of conflict. These aid projects do not address specific sources of insecurity and currently engagement with questions around the nature and structure of the state or its relations with society, due to the lack of project design of law and justice assistance based on detailed conflict analysis.²⁰⁵ The evaluation shows that the Australian experiences also proved that externalization of domestic solutions could not always become a solution in the recipient country. Thus law and justice assistance need to have a thick based approach. As a key feature of Australian law and justice assistance, Australia's agenda currently need to have a significant ideological shift which is addressing the gap between thin approach and conditions of the targeted recipients. For example, Australia currently is conducting a capacity building program for national agencies and judicial system to give effective legal service in PNG. The project

²⁰⁴ Australian Government, Department of Foreign Affairs and Trade. *Building on Local Strengths: Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Agency for International Development (AusAID), 2012). 7.

²⁰⁵ Ibid., 15.

approaches both formal justice system and community-based legal service, while their main counterpart is the PNG central government.²⁰⁶

3.3.2 Legitimacy and Strategy of Law and Justice Assistance

The motivation of Australian law and justice assistance seems very clear. The Australian Office of Development Effectiveness (ODE) pointed out that Australia's law and justice assistance tightly focuses on two specific objectives: stabilizing conflict-affected societies and promoting access to justice as a development goal in its own right. In contrast, international law and justice assistance tend to reflect the theoretical uncertainty which explains the rationales behind each different context.²⁰⁷ Since the current fear of instability in the Pacific region has been the most critical driver for the expansion of Australian law and justice assistance in the last decade, Australia has concentrated on fragile states, post-conflict states, and failed states in South-East Asia and the Pacific. Australia also insists on aid objectives based on justice and security sector linkages, in accordance with the current global trend on aid which is resulting in a convergence of policy and programming across the justice and security sectors.²⁰⁸ Thus security as a prior objective reflects on the funding for law and justice assistance, as well as the Australian national interest for regional security. This situation and the way of targeting of aid describes Australian specific legitimacy of law and justice assistance.

Schimmelfennig describes the matrix for strategies of the rule of law promotion, which consists of

²⁰⁶ Australian Government, Department of Foreign Affairs and Trade. 2015. "An Australian Investment to Support Law and Justice in Papua New Guinea -Justice Services and Stability for Development Investment Design-." Publication. *An Australian Investment to Support Law and Justice in Papua New Guinea -Justice Services and Stability for Development Investment Design-* (Canberra, Australia: Australian Government, 2014. June 2014). Accessed April 20, 2018.

<http://dfat.gov.au/about-us/publications/Documents/png-law-and-justice-jss4d-design.pdf>. 23-25.

²⁰⁷ Ibid., 14.

²⁰⁸ Australian Government, Department of Foreign Affairs and Trade, *Annual Thematic Performance Report: Law and Justice 2008 -09* (Canberra, Australia: The Australian Government, January 2010). Accessed April 20, 2018. <https://dfat.gov.au/about-us/publications/Documents/atpr-lawjustice-0809.pdf>. 31-32.

insights of channels and modes of interaction. According to Schimmelfennig, there are three modes of interaction to distinguish the channel for rule of law promotion: imposition, which generally requires military occupation and international administration of the target country; conditionality, which can have both negative and positive impacts based on the incentives of the target country; and socialization, which is based on providing the target state with the attitudes, knowledge, and capacity to implement the rule of law.²⁰⁹ Also, Schimmelfennig mentioned there are two levels of the rule of law promotion, which are top-down or intergovernmental and bottom-up, or transnational, and theoretically these channels and modes of interaction can be combined in various ways.²¹⁰ Schimmelfennig analyzes major Western countries with the matrix and points out that the commonality in the rule of law is giving priority to work with the state and the government, and the socialization strategies focusing on capacity-building and training activities enjoyed the support of traditional development bureaucracies.²¹¹

Regarding the Australian context, Australian law and justice assistance strategy have all the elements of interaction, imposition, conditionality, and socialization. Also, Australia pursues a strong top-down approach. Australia prioritizes the capacity building of government and key institutes including the police, courts, and magistrates in the target country. Therefore, the major counterpart is the state or government, with the idea that law and justice institutions emerge from political processes in any society.²¹²

As mentioned previously, most of the targeted countries of Australia are post-conflict or fragile states, due to the security reasons. Since the definition of Australian law and justice assistance is broad,

²⁰⁹ Schimmelfennig, Frank. "A Comparison of the Rule of Law Promotion Policies of Major Western Powers." In *Rule of Law Dynamics: In an Era of International and Transnational Governance*, edited by Michael Zurn, Andre Nollkaemper, and Randy Peerenboom (Cambridge, The United Kingdom: Cambridge University Press, 2012). 122-123.

²¹⁰ Ibid., 123.

²¹¹ Ibid., 127.

²¹² Australian Government, Department of Foreign Affairs and Trade, *Annual Thematic Performance Report: Law and Justice 2008 -09* (Canberra, Australia: The Australian Government, January 2010). Accessed April 20, 2018. <https://dfat.gov.au/about-us/publications/Documents/atpr-lawjustice-0809.pdf>. 17.18.

Australia's strategy requires post-conflict intervention, including peacekeeping operations and imposition as their aid approach to some extent, as well as socialization for capacity building of the target country. In case of PNG, for example, a police program implemented by the Australian Federal Police (AFP) in Bougainville was deployed for stabilization purpose in the 2000s.²¹³ Australian law and justice assistance also default to attempting to put in place a standard set of institutional arrangements, without taking care to identify credible pathways for change. In this way, Australia can work towards a justice system that meets international standards in the long-term; however, in the short-term, Australian assistance needs to promote change processes that are feasible in the political context.²¹⁴

Regarding conditionality, Australia utilizes the concept of conditionality historically for enhancing policy reform and ownership in the recipient country. Currently, there is the point that conditionality in Australian aid context should be explained as a new form of conditionality rather than the traditional idea of conditionality in 1980-1990s. The former conditionality in 20th-century approaches to the relationship relies on a broader partnership entailing acceptance of the respective roles of the partners and sharing of responsibilities, especially in the Pacific region.²¹⁵ Australia utilizes the conditionality as a new context in broader or regional issue and assistance for policy reform, however, each Australian law and justice assistance seems not so much to rely on conditionality, such as democracy or economic development.

3.3.3 Who is Implementing Law and Justice Assistance?

Schimmelfenning analyzed the organizational structure for the rule of law promotion under each donor country and indicated three major dimensions of the organization: centralization, concentration, and

²¹³ Downer, Alexander. "Australian Police for Bougainville." (Australia, Joint Media Release, December 11, 2003). Accessed April 20, 2018. http://foreignminister.gov.au/releases/2003/joint_ellison_bougainville.html.

²¹⁴ Australian Government, Department of Foreign Affairs and Trade. *Building on Local Strengths: Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Agency for International Development (AusAID), 2012). 17-18.

²¹⁵ Dornan, Matthew. "How new is 'new conditionality'?" *DevPolicy Blog*. March 9, 2017. Accessed April 20, 2018. <http://devpolicy.org/new-conditionality-20170309/>.

specialization.²¹⁶ Centralization refers to the level of government predominantly dealing with international rule of law promotion; concentration refers to the dispersion of authority across agencies; specialization refers to the degree to which these agencies and their relevant units specialized in the rule of law promotion.²¹⁷ In accordance with Schimmelfenning's three major dimensions, each bilateral donor has a different approach to the rule of law promotion, while there is a commonality of the concept of the rule of law. For instance, US and France represent the extreme cases. The US has a highly specialized but decentralized system, and France has a predominantly ministerial level system, but specialization is low. Other countries fall in-between.²¹⁸ Schimmelfenning evaluated that these tendencies show the degree of importance of the rule of law assistance in each country's aid policy in general.²¹⁹ Thus, the US seems to have given high priority to the rule of law promotion with broad professionals, while France has less interest in the field of aid.

Regarding Australian law and justice assistance, major actors are DFAT (former AusAID), the Australian Federal Police (AFP), and the Attorney-General's Department (AGD), and also other institutions including the Federal Court of Australia and the Commonwealth Ombudsman.²²⁰ However, funding is more concentrated on two institutions, which are the AusAID and the AFP. In 2007-2008, AU\$170 million (56%) went to AusAID, and AU\$128 million (42%) went to the AFP under total AU\$301.5 million. In 2008-2009, AU\$3.5 million went to the AGD (1%), AU\$114 million (40%) went to AusAID, AU\$175 million went to the AFP (60%), and AU\$ 3 million went to the AGD under total

²¹⁶ Schimmelfennig, Frank. "A Comparison of the Rule of Law Promotion Policies of Major Western Powers." In *Rule of Law Dynamics: In an Era of International and Transnational Governance*, edited by Michael Zurn, Andre Nollkaemper, and Randy Peerenboom (Cambridge, The United Kingdom: Cambridge University Press, 2012). 117.

²¹⁷ Ibid.

²¹⁸ Ibid., 117-120.

²¹⁹ Ibid.

²²⁰ Australian Government, Department of Foreign Affairs and Trade, *Annual Thematic Performance Report: Law and Justice 2008 -09* (Canberra, Australia: The Australian Government, January 2010). Accessed April 20, 2018. <https://dfat.gov.au/about-us/publications/Documents/atpr-lawjustice-0809.pdf>. 11-14.

AU\$292 million.²²¹ Also, the amount of expenditures does not capture the scale of activities. The AFP's budget includes a range of activities including RAMSI's Participating Police Force (PPF) and peacekeeping operations.²²² Budget flow goes to these major three institutions; however, substantial budget allocations are also distributed to other project implementers depending on each activity and target country. For example, the AGD has a multi-budgeting flow on law and justice assistance in 2015-16, and they have a different source of funds depending on region and country as well as a separate program or joint program beyond institutions, such as the Pacific Islands Law Officers Network (see figure 9).²²³

This approach comes from the concept of Australian whole-of-government approach for delivering aid programs, which harnesses specific experience, skills, and knowledge across diverse Australian government agencies.²²⁴ Under the system, for example, related agencies have a meeting regularly to share strategic oversight and create a comprehensive framework together for increasing coordination and strategic coherence.²²⁵ This insight seems to guarantee the multi-approach for aid programs but also predominant government in only a fine line.

The AusAID merger caused a circumstance change of structure and implementation of the law and justice assistance. The merger brought a significant change of internal processes, such as the process of decision-making, report-chain, and the position of implementation unit. However, practitioners do not feel substantial changes within the process of working.²²⁶ The reason is the Australian government merged related functions and divisions in whole into the DFAT structure, while the budgeting flow has been unified.

²²¹ Ibid., 11.

²²² Ibid., 11-14.

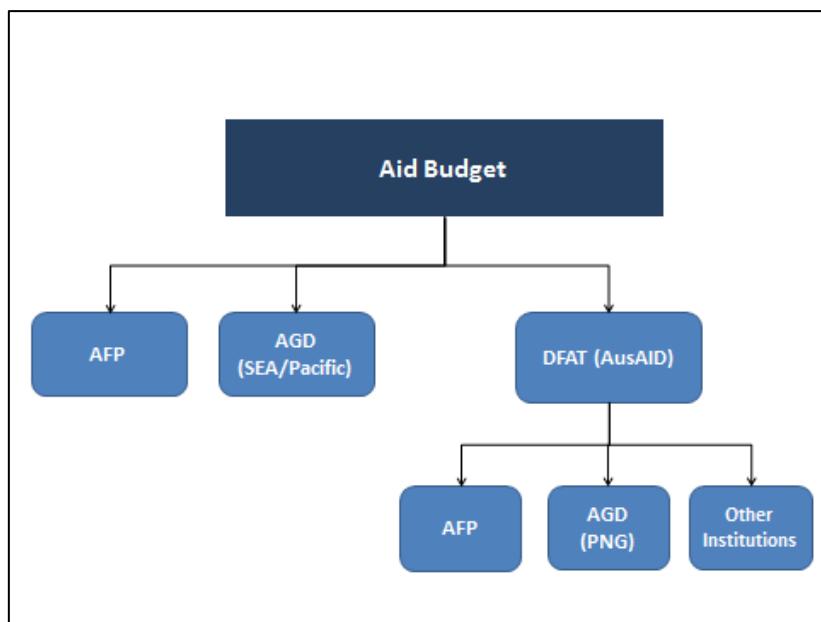
²²³ Interviewee AG6, Interview by author. Personal interview. Canberra, October 6, 2016.

²²⁴ "Whole of Government." Australian Government, Department of Foreign Affairs and Trade. Accessed April 20, 2018. <http://dfat.gov.au/aid/who-we-work-with/whole-of-government/Pages/whole-of-government.aspx>.

²²⁵ Australian Government, Department of Foreign Affairs and Trade, *Annual Thematic Performance Report: Law and Justice 2008 -09* (Canberra, Australia: The Australian Government, January 2010). Accessed April 20, 2018. <https://dfat.gov.au/about-us/publications/Documents/atpr-lawjustice-0809.pdf>. 33.

²²⁶ Interviewee AG2 and AG3, Interview by author. Personal interview. Canberra, August 25, 2016.

(Figure 9: Budget Flow on Law and Justice Assistance in 2016-2017)



(Source: Created by Author, based on Interviewee AG6 Interview by author. Canberra, October 6, 2016.)

Various branch and section engaged in implementation process of law and justice assistance under the DFAT. Under the current structure, the law and justice section, Governance and Fragility Branch under the Development Policy Branch has specialized in law and justice assistance mainly. Country and regional sections and branches for each target countries work for law and justice assistance, such as PNG development and Solomon Islands Branch under the Pacific Division. There are also specialized division for project design and evaluation under the DFAT, and individual specialized divisions deal with supporting project implementation, such as the Aid Management and Performance Branch under the Contracting and Aid Management Division and the Office of Development Effectiveness (ODE). Especially the ODE, which is an operationally independent unit to measure and report on the effectiveness of the Australian aid program, has a significant role for aid assessment for effectiveness, and conducted a comprehensive evaluation project on Australian law and justice assistance in 2012.²²⁷

²²⁷ Australian Government, Department of Foreign Affairs and Trade. *Building on Local Strengths: Evaluation of Australian Law and Justice Assistance*. (Canberra, Australia: Australian Agency for International

In sum, the role of law and justice assistance in Australia is highly centralized in budget and actors within the predominantly ministerial level. The approach is highly specialized, while diverse sections under the whole-of-government system. The degree of centralization has been even increased since the AusAID merger. The implementation structure concentrates on three major government bodies as well as other institutions, which is evaluated into low category. Since the prior importance of law and justice assistance in the Australian aid context, the correlation between specialization and importance attributed to the rule of law promotion become applicable. Such a circumstance creates an enabling environment for Australia implementing professional aid programs, and Australia gives high priority to law and justice assistance and democratization in their aid agenda. On the other hand, compared to the US's condition, Australia's approach is overconcentration of the ministerial level, and have less diversity of aid actors.

3.3.4 Destination of Australian Law and Justice Assistance

As Schimmelfenning pointed out, major Western donor's foci and priorities of the assistance destination, as well as reasons for decision making, are diverse. In its process of determining the project destination, Schimmelfenning supports Gary Crawford's idea in 2001 that democracy and the rule of law promotion conform to traditional geographic patterns and development policy rather than to an issue-oriented functional logic, and the rule of law promotion follows general development cooperation.²²⁸ As examples, the USA targeted Latin America in the 1980s and Central and Eastern Europe in 1990s for

Development (AusAID), 2012). 7.; "The Office of Development Effectiveness." Australian Government, Department of Foreign Affairs and Trade. Accessed April 20, 2018.

<http://dfat.gov.au/aid/how-we-measure-performance/ode/pages/the-office-of-development-effectiveness.aspx>.

²²⁸ Crawford, Gary. *Foreign Aid and Political Reform: A Comparative Analysis of Democracy Assistance and Political Conditionality* (United Kingdom: Palgrave Macmillan, 2001). 106.; Schimmelfennig, Frank. "A Comparison of the Rule of Law Promotion Policies of Major Western Powers." In *Rule of Law Dynamics: In an Era of International and Transnational Governance*, edited by Michael Zurn, Andre Nollkaemper, and Randy Peerenboom (Cambridge, The United Kingdom: Cambridge University Press, 2012). 129.; Ibid., 300.

geopolitical reasons, while the EU targeted Sub-Saharan Africa as a colonial legacy.²²⁹ Nicholson and Hinderling's research also offered additional patterns of deciding the target recipient based on historical background, foreign policy, and conditions for development assistance implementation.²³⁰

(Table 2: Australian law and justice ODA by recipient country)

Recipients	Spend by financial year (million AUD)				Total 2007-2011	
	07/08	08/09	09/10	10/11	million AUD	%
Regional/International	89.2	61.3	71.0	91.3	312.8	22.4%
Country Programs						
Solomon Islands	149.7	112.6	155.6	143.3	561.2	40.1%
PNG	39.1	40.0	44.2	39.4	162.9	11.6%
East Timor	26.0	31.8	43.3	29.2	130.2	9.3%
Indonesia	4.9	7.0	17.5	12.3	41.7	3.0%
Cambodia	8.8	11.7	8.0	9.0	37.5	2.7%
Vanuatu	6.2	6.7	8.3	10.0	31.3	2.2%
Afghanistan	1.7	1.4	3.2	15.4	21.7	1.6%
Philippines	8.0	7.6	0.7	0.3	16.6	1.2%
Nauru	2.6	1.6	3.5	4.3	12.0	0.9%
Iraq	1.4	2.0	4.4	3.6	11.3	0.8%
Samoa	3.4	1.9	2.0	3.1	10.4	0.7%
Sudan	2.3	2.7	2.6	0.9	8.5	0.6%
China	2.2	2.3	2.4	0.4	7.3	0.5%
Tonga	1.3	1.8	2.0	2.0	7.1	0.5%
Zimbabwe			4.0	3.0	7.0	0.5%
Fiji	4.2	1.3			5.6	0.4%
Lao PDR	1.7	1.7			3.4	0.2%
Sri Lanka			2.5	0.5	3.0	0.2%
Vietnam	0.1	1.2	0.5	0.6	2.5	0.2%
Pakistan			8.0	1.5	2.4	0.2%
Other	0.6	0.9	0.5	0.8	2.8	0.2%
Total	353.5	297.6	377.0	370.8	1399.0	

(Source: Australian Government, Department of Foreign Affairs and Trade. *Building on Local Strengths: Evaluation of Australian Law and Justice Assistance*. (Canberra: Australian Agency for International Development (AusAID), 2012). 7.)

In this context, Australia has similar tendencies. Except for some of the involvements of peacekeeping operations, Australian law and justice assistance almost unalterably goes to Asia and the Pacific region based upon geographical contiguity rather than issue-oriented objectives. This approach is because of the Australian aid history and the Colombo Plan as well as current security concerns in the

²²⁹ Schimmelfennig, Frank. "A Comparison of the Rule of Law Promotion Policies of Major Western Powers." In *Rule of Law Dynamics: In an Era of International and Transnational Governance*, edited by Michael Zurn, Andre Nollkaemper, and Randy Peerenboom (Cambridge, The United Kingdom: Cambridge University Press, 2012). 129.

²³⁰ Nicholson, Pip, and Samantha Hinderling. "Japanese Aid in Comparative Perspective." *Hague Journal on the Rule of Law* 5, no. 2 (2013): 300-302.

Pacific region and national interest. From 2007 to 2011, more than 50% of the entire budget for law and justice assistance was spent on two huge countries in Melanesia, which are Papua New Guinea (PNG) and Solomon Islands.²³¹ The critical trigger which made Australia one of the top donors on law and justice assistance was an involvement of the RAMSI and the huge contribution to the law and justice pillar.

PNG is the second largest recipient of Australian law and justice assistance, and substantively the history of Australian law and justice assistance had started from PNG in the 1980s, especially for their police force. Before independence in 1975, the decentralized native administration governed by the “kiap” who were appointed by Australia and acted simultaneously as administrator, policeman, magistrate, and jailer at the local level and worked effectively under the Commonwealth of Australia.²³² Since independence, institutional modernization and centralization made progress following the endorsement of Derham Report in 1960. This report influenced on a lack of respect for the indigenous legal system, and the belief in the superiority of British justice and a clear notion of what was desirable for the colonial administration.²³³ This background reflects on current law and justice objectives in PNG, and most of the assistance primary focuses on the centrality of the state and capacity building at state institutes.²³⁴ However, people’s frustration, as well as awareness gap between formal law and their notion of justice, remains in the recipient state. Sinclair Dinnen mentioned that development assistance challenge for capacity building of not only formal and informal sectors but also hybrid systems become quite

²³¹ Australian Government, Department of Foreign Affairs and Trade. *Building on Local Strengths: Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Agency for International Development (AusAID), 2012). 7.

²³² Dinnen, Sinclair. “Building Bridges – Law and Justice Reform in Papua New Guinea.” In *Passage of Change: Law, Society and Governance in the Pacific*, edited by Anita Jowitt and Tess Newton (Canberra, Australia: ANU Press, 2010). 280-282.

²³³ Huber, Barbara. "A Note on Village Courts in Papua-New Guinea." *Journal of Legal Pluralism* 19 (1981): 161-63. Accessed April 20, 2018. <http://commission-on-legal-pluralism.com/volumes/19/huber-art.pdf>. 161-163.

²³⁴ Dinnen, Sinclair. “Building Bridges – Law and Justice Reform in Papua New Guinea.” In *Passage of Change: Law, Society and Governance in the Pacific*, edited by Anita Jowitt and Tess Newton (Canberra, Australia: ANU Press, 2010). 284-285.

significant.²³⁵ Due to the historical bindings since the colonial period, the Australian government has been giving continuous support to PNG until recently as the second largest recipient, and invested approximately AU\$83.5 million in the law and justice sector in 2015-2016.²³⁶ As the major programs, Australia implemented Papua New Guinea Australia Law and Justice Partnership (PALJP), whose budget was approximately AU\$116 million from 2009 to January 2014, and substitute four year program called Justice Services and Stability for Development (JSS4D), whose budget was AU\$90 million program for law and justice field.²³⁷ The JSS4D targets a range of issues broadly, and aims to achieve four key outcomes, which are community safety, addressing family and sexual violence, effective law and justice services, and anti-corruption.²³⁸

Other than large-scale and comprehensive sector-based assistance, like in PNG and Solomon Islands, Australia provides also smaller programs as emerging sector-based responses as well as targeted and specialized responses in Asia and the Pacific. Regarding the emerging sector-based responses, this category of Australian law and justice assistance targeted partner countries where its articulation of the reform agenda is in the earlier stage or local leadership and ownership of reform is nascent.²³⁹ Scale of emerging sector-based assistance covers broad range, which is from AU\$21 million program for strengthening accessible and accountable justice system and police service in Timor-Leste to AU\$2 million

²³⁵ Ibid.

²³⁶ "Promoting effective governance in Papua New Guinea." Australian Government, Department of Foreign Affairs and Trade. Accessed April 20, 2018.

<http://dfat.gov.au/geo/papua-new-guinea/development-assistance/Pages/governance-assistance-png.aspx>.

²³⁷ Australian Government, Department of Foreign Affairs and Trade. 2015. "An Australian Investment to Support Law and Justice in Papua New Guinea -Justice Services and Stability for Development Investment Design-." Publication. *An Australian Investment to Support Law and Justice in Papua New Guinea -Justice Services and Stability for Development Investment Design-* (Canberra, Australia: Australian Government, 2014. June 2014). Accessed April 20, 2018.

<http://dfat.gov.au/about-us/publications/Documents/png-law-and-justice-jss4d-design.pdf>. 86-88.

²³⁸ Ibid.

²³⁹ Australian Government, Department of Foreign Affairs and Trade, *Annual Thematic Performance Report: Law and Justice 2008 -09* (Canberra, Australia: The Australian Government, January 2010). Accessed April 20, 2018. <https://dfat.gov.au/about-us/publications/Documents/atpr-lawjustice-0809.pdf>. 17.

for development of the government of Samoa-led new law and justice sector plan for future Australia-fund law and justice assistance in Samoa.²⁴⁰ These programs under this category deal solely and specific with the issue of law and justice in each project. Additionally Australia also provides a range of smaller-scale targeted and specialized responses in the Asia and the Pacific region. This category includes broad and diverse types of assistance on not only specific legal issues but also cross-cutting or cross-regional issues, such as human trafficking, cross-regional crimes, and regional level programs such as the Pacific Legal Information Institute (PacLII), and the Pacific Judicial Development Program (PJDP).²⁴¹

3.3.5 Cost of Australian Law and Justice Assistance

Australian funding flow for law and justice assistance clearly presented the gradual heightening of the significance of law and justice assistance in Australian aid. After starting on a modest scale in the 1990s, Australian law and justice assistance expanded rapidly with RAMSI's intervention and the scaling up of assistance to PNG.²⁴² In reality, the intervention of RAMSI and Australia's involvement have made Australia one of the top donors of law and justice assistance in the world.²⁴³ OECD DAC statistics show that the Australian expenditure for law and justice assistance in 2010-11, AU\$371 million, was the second largest following in the United States.²⁴⁴

²⁴⁰ Ibid., 17-22.

²⁴¹ Ibid., 22-26.

²⁴² Australian Government, Department of Foreign Affairs and Trade. *Building on Local Strengths: Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Agency for International Development (AusAID), 2012). 5. Also, according to OECD DAC statistics, ODA expenditure for the Government & Civil Society sector was US\$150.02 million in 2002-2003, and scaled up to US\$650.11 million in 2007-2008.

²⁴³ Australian Government, Department of Foreign Affairs and Trade. *Building on Local Strengths: Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Agency for International Development (AusAID), 2012). 8.

²⁴⁴ "Development Co-operation Directorate (DCD-DAC)." OECD, DAC. Accessed April 20, 2018.

<http://www.oecd.org/dac/financing-sustainable-development/datavisualisations/>.

(Table 3: Australian law and justice assistance by year (2007-2011))

	2007-08	2008-09	2009-10	2010-11
Law and justice (million AUD)	353	298	377	371
Bilateral ODA (million AUD) ¹⁵	1,739	2,125	2,400	2,518
Percentage of bilateral ODA	20.3%	14.0%	15.7%	14.7%

(Source: Australian Government, Department of Foreign Affairs and Trade. *Building on Local Strengths: Evaluation of Australian Law and Justice Assistance*. (Canberra: Australian Agency for International Development (AusAID), 2012), 5.)

According to Schimmelfenning, however, it is notoriously difficult to find reliable data of budgets and expenses for the rule of law promotion because these budgets are often hidden in large categories such as democracy promotion.²⁴⁵ Therefore, depending on the donors, to find a proper and separate number of expenditure on law and justice assistance separately is difficult, due to the organizational structure and culture, and also a method of calculating.²⁴⁶ Also, to understand components of the expenditure of law and justice assistance is also different depending on each donor organization. Therefore, to find an appropriate number of the expenditure for law and justice assistance is also extremely hard in order to compare among donor organizations properly.

Under such circumstances, the potential criteria for comparison of the expenditure is to see the number of larger category of aid, such as Governance or Human Rights. The other methodology is to see

²⁴⁵ Schimmelfennig, Frank. "A Comparison of the Rule of Law Promotion Policies of Major Western Powers." In *Rule of Law Dynamics: In an Era of International and Transnational Governance*, edited by Michael Zurn, Andre Nollkaemper, and Randy Peerenboom (Cambridge, The United Kingdom: Cambridge University Press, 2012). 127.

²⁴⁶ As one example, in Japan, it is impossible to find a proper number of expenditure on legal technical assistance separately, due to the organizational structure and culture, and also a method of calculating. The Japan International Cooperation Agency (JICA), which has the ultimate responsibility for implementation of ODA projects including legal technical assistance, has generally divided into each department including field office or each project unit, and each department has a responsibility to decide the budget to use, therefore the budget for legal technical assistance would be always managed by the department or each project.

the number of each project unit on law and justice assistance.

(Table 4: Relative share of Government and Civil Society Aid)

Aid by Sector Share (%)	Government & Civil Society									
	Year	2006	2007	2008	2009	2010	2011	2012	2013	2014
Australia	24.70%	28.66%	23.05%	22.56%	22.81%	20.53%	21.23%	19.34%	18.47%	18.66%
United States	11.14%	18.62%	15.56%	18.59%	19.16%	19.27%	17.61%	15.34%	15.81%	12.40%
New Zealand	12.73%	14.23%	14.70%	14.38%	16.82%	12.13%	12.03%	9.11%	9.87%	9.96%
Japan	2.79%	2.25%	1.54%	2.30%	3.02%	3.80%	2.27%	2.37%	1.96%	
France	1.39%	1.24%	1.55%	1.58%	1.85%	2.30%	1.22%	2.11%	1.99%	1.63%
Germany	7.14%	10.20%	9.65%	14.72%	13.21%	11.21%	11.81%	11.60%	11.11%	8.89%
United Kingdom	14.55%	14.92%	17.38%	15.68%	13.56%	14.81%	14.00%	10.25%	9.99%	11.01%

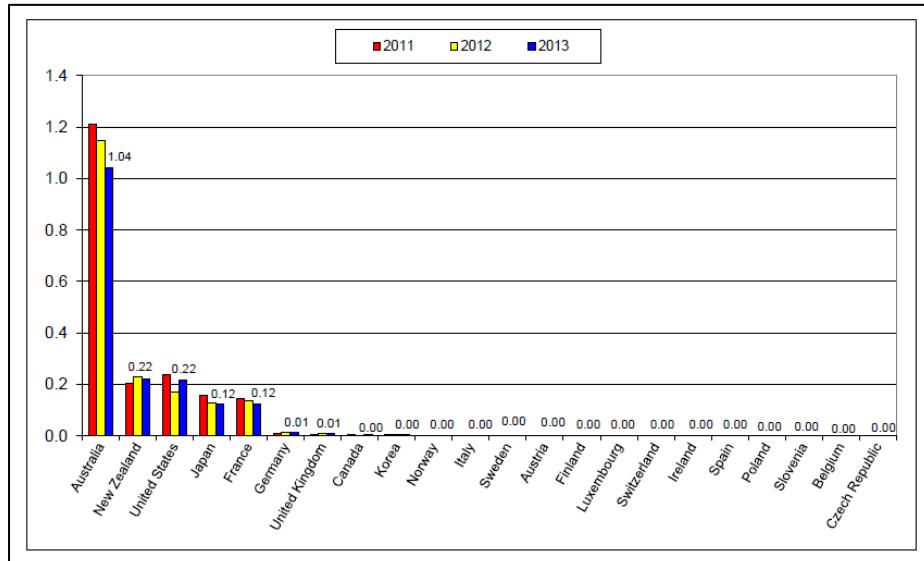
(Source: Calculated by the author based on OECD DAC Data Accessed April 20, 2018.

<http://www.oecd.org/development/stats/idsonline.htm>)

Regarding a larger category of aid, Table 4 shows a relative share for government and civic society within overall ODA of bilateral donor countries. The percent of share does not mean the specific amount of expenditure for law and justice assistance. For comparison with Australia, the table also shows seven countries including four Western bilateral donor countries which Schimmelfenning described, the United States, France, Germany, and United Kingdom, and also Japan and New Zealand (NZ) which are top DAC donor countries in the Asia and the Pacific region to Oceania (See figure 10).²⁴⁷ For comparative and illustrative reasons, this research uses data from OECD DAC statistics (total amount of ODA and government and civic society sector in US\$ million) due to the diversity of components as well as the method of calculation among donor countries. Therefore, the share of law and justice assistance comparable inevitably roughly, however, the table presents that the pattern of strategy in law and justice assistance of each country. Each country has had minor changes in the number of shares, but they mostly remain the same level of the share.

²⁴⁷ OECD, DAC. "ODA to Oceania." *Development aid at a glance Statistics by Region*, 2017. Accessed April 20, 2018. <http://www.oecd.org/dac/stats/documentupload/Oceania-Development-Aid-at-a-Glance.pdf>. 2-8.

(Figure 10: DAC donor countries' aid to Oceania: 2011-2013)



(Source: OECD, DAC. "ODA to Oceania." *Development aid at a glance Statistics by Region*, 2017. Accessed April 20, 2018.

<http://www.oecd.org/dac/stats/documentupload/Oceania-Development-Aid-at-a-Glance.pdf>. 4.)

The share of Australian law and justice assistance is extremely high, compared to other major donor countries. Regarding Australian law and justice assistance, the share of government and civic society sector remains around 50%. The number was even increasing during 2007 to 2011. For example, in 2007-08, the expenditure was US\$257.69 million, and the cost for Government and Civil society sector was US\$689.32 million. The amount of law and justice assistance was approximately 51% under the sector.²⁴⁸ New Zealand, which is the second largest contributor for RAMSI in the Pacific region, has had a large number of share for law and justice assistance, while their amount of ODA is not so big, comparing to other countries. The NZ's expenditure for the government and civil society sector was US\$38.84 million

²⁴⁸ Australian Government, Department of Foreign Affairs and Trade. *Building on Local Strengths: Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Agency for International Development (AusAID), 2012). 5.; "Development Co-operation Directorate (DCD-DAC)." OECD, DAC. Accessed April 20, 2018. <http://www.oecd.org/dac/financing-sustainable-development/datavisualisations/>.

in 2007-08 and US\$46.12 million in 2008-09.²⁴⁹ The reason for the NZ's huge expenditure is the intervention for RAMSI as a regional mission. This engagement influenced their aid direction as well as a heightening of the significance of law and justice assistance.

Another possible criterion is to see the expenditure of each project unit. However, it is also hard to have a proper number for comparison, due to the complexity and diversity of components and methodologies, as well as the different approaches depending on each donor country. As a snapshot, for example, Australia had conducted a project for strengthening the justice system for juveniles and vulnerable groups in Cambodia, and the expenditure was approximately AU\$8 million in 2008-09. During the same period, Japan, which is one of the largest for Cambodia in the rule of law promotion, was also conducting a project in Cambodia named the Legal and Judicial Development Project and cost only AU\$4.72 million for four years from 2008 to 2012.²⁵⁰ This is just an example to see the expenditure per project unit; however, it could be a guide to assume the relevance between the share and the amount of budget allocation and to examine each country's priority of law and justice assistance to some extent.

3.4 Australian Law and Justice Assistance in Comparative Context

As Schimmelfenning pointed out, there are conflicts of both commonalities vs. convergent as well as variety vs. divergent of policy for the rule of law promotion, among major donor countries. According to him, there are no consistent patterns across the dimensions of the rule of law promotion policies. However, organizational structures, strategies, budgets, and recipients do not seem to be systematically correlated,

²⁴⁹ "Development Co-operation Directorate (DCD-DAC)." OECD, DAC. Accessed April 20, 2018.

<http://www.oecd.org/dac/financing-sustainable-development/datavisualisations/>.

²⁵⁰ Australian Government, Department of Foreign Affairs and Trade, *Annual Thematic Performance Report: Law and Justice 2008 -09* (Canberra, Australia: The Australian Government, January 2010). Accessed April 20, 2018. <https://dfat.gov.au/about-us/publications/Documents/atpr-lawjustice-0809.pdf>. 22.; "Pre Evaluation Report." *JICA Knowledge Site*. Japan International Cooperation Agency, JICA. February 2008. Accessed June 21, 2017. http://gwweb.jica.go.jp/KM/KM_Frame.nsf/NaviIndex?OpenNavigator.

and there are also some commonalities and policy consensus on rule of law promotion.²⁵¹ Schimmelfenning acknowledged specific components of commonalities. For example, one common feature is that the end of Cold War in 1980s and the 9/11 event generated rule of law promotion. There are similar set of rule of law principle and similar set of strategies and instruments. These approaches generally are top-down and have intergovernmental socialization policy, which focus on institutional capacity building. Rule of law promotion also focuses on liberalizing and democratizing countries.²⁵²

Australian law and justice assistance also have similar background, policy and elements of commonality with other traditional Western donors. Although there are some different approaches, Australia and other Western donors have generally old-fashioned style of law and justice assistance in common, comparing to emerging donors. However, comparing to other donor countries, Australian law and justice assistance have several features as an independent path to color their own approach to identify themselves.

Firstly, Australian law and justice assistance strongly support of the security purpose in the region, as an Australian national interest. The aid objective is the fundamental legitimacy of delivering the aid. Based on the objective, Australia has determined the target countries, policy, context, and strategies to design the project. Colombo plan and Australian aid history also influenced on current policy. Therefore, Australian law and justice assistance approach based on geographic contiguity and thin definition which is a formal or institutional focus on constitutions, laws, courts, and law enforcement agencies. Australia has targeted on mostly fragile states and post-conflict states as recipients. However, there is a gap between Australian approach and social context of the most recipient countries in the Pacific, where consist of a multi-ethnic society and pluralistic legal culture. Australian law and justice assistance include informal justice systems in its scope; however, how to deal with the issue of legal pluralism in the law and justice assistance context

²⁵¹ Schimmelfennig, Frank. "A Comparison of the Rule of Law Promotion Policies of Major Western Powers." In *Rule of Law Dynamics: In an Era of International and Transnational Governance*, edited by Michael Zurn, Andre Nollkaemper, and Randy Peerenboom (Cambridge, The United Kingdom: Cambridge University Press, 2012). 130-132.

²⁵² Ibid.

is still a critical challenge, and Australian efforts toward the issue is required.

Secondly, compared to other major donor countries, Australia's share of law and justice assistance of whole aid programs is huge, even though it is currently gradually decreasing. In fact, the scope of Australian law and justice assistance covers broad areas, including peacekeeping operations, and it is hard to compare the divergence among donors in this context, due to a range of contents and definitions depending on each donor country. However, still, it is evident that Australia has given higher priority to law and justice assistance or its larger category of aid, "effective governance".²⁵³

Lastly, Australian law and justice assistance have two major target countries, which are PNG and Solomon Islands. Australia has committed to these two neighboring countries more than 50% of its law and justice assistance budget. This Australia's comprehensive commitment have made an image of Australian law and justice assistance as a whole. In reality, the intervention of RAMSI and Australia's involvement in Solomon Islands have made Australia as one of the top donors of law and justice assistance in the world.²⁵⁴

In sum, Australia has a strong presence as a donor in the Pacific region in law and justice assistance context. The situation shows Australia's presence is even great power rather than middle power in the Pacific region, while Australian approach seems to follow the Western model. The reason for this situation is that Australia can implement law and justice assistance in the neighboring countries especially in Melanesia, where have Australia's colonial linkage and legacies. Australian aid history, as well as commonality of legal system with the British Common Law, also support of making Australia's huge presence. Therefore, Australia has the rich experiences of aid in the region, and these situations have influenced on the aid achievements and aid effectiveness. This unique condition influenced on Australia's

²⁵³ Australian Government, Department of Foreign Affairs and Trade. *Australian aid: promoting prosperity, reducing poverty, enhancing stability* (Canberra, Australia: Australian Government, 2014. June 2014). Accessed April 20, 2018. <http://dfat.gov.au/about-us/publications/Documents/australian-aid-development-policy.pdf>. 5-9.

²⁵⁴ Australian Government, Department of Foreign Affairs and Trade. *Building on Local Strengths: Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Agency for International Development (AusAID), 2012). 8.

ideological shift of approach. On the other hand, Australia faces a limitation of applicability of aid pattern to the outside of the region. This Australian way is working as a tool for keeping their hegemon position in the Pacific region. Thus, the Australian approach is close to the Western approach and hard to function as an alternative of traditional donors like the emerging donors. However, there are also unique features of Australian approaches, which are the aid objectives and the target recipients.

3.5 Further Viewpoints of Comparative Analysis for Aid Effectiveness

As I discussed previously, Nicholson and Hinderling's research raised further insights which could influence the result of a comparative analysis on the rule of law assistance: (1) aid dependency and its impact on aid conception and delivery; (2) the variability of donor activities in different contexts; and (3) the local experience of aid.²⁵⁵ Nicholson and Hinderling raised these points as limitations of the rule of law promotion analysis of Schimmelfenning's matrix, which is normative and prescriptive.²⁵⁶ This thesis generally supports Nicholson and Hinderling's three points for aid effectiveness, and also these criteria significantly can influence upon the evaluation result of the rule of law promotion activities in comparative perspective. However, these insights are not applicable to Australia's case. The evaluation result would be different depending on the individual project. For a reason that whole approaches of Australian law and justice assistance specifically concentrate to the small number of recipients in their region and have given strong influence to these recipients. This environment creates dominant of aid, which is beyond the limitation of implementation as a normative and prescriptive approach as same as Nicholson and Hinderling's points.

If donor's influence becomes huge, still Nicholson and Hinderling's three points and its close approach to the recipient's position, would be inevitably significant. To measure the aid effectiveness, the degree of interaction between a donor and a recipient, as well as donor's effort for getting closer to the

²⁵⁵ Ibid., 279-280.

²⁵⁶ Nicholson, Pip, and Samantha Hinderling. "Japanese Aid in Comparative Perspective." *Hague Journal on the Rule of Law* 5, no. 2 (2013): 279–280.

recipient are essential. However, as a critical limitation, the necessity of having qualitative approach influences on making general criteria for the rule of law promotion activities. In any case, however, comparative analysis for identifying characteristics of each donor can give significant insights for aid recipients. Recipients have a right to choose their best aid providers and should understand their available options as well as potential risks and impacts.

3.6 Conclusion

Following Schimmelfenning's framework for rule of law assistance as well as Nicholson and Hinderling's analysis of donor's role, this chapter examined the Australian law and justice effort as a part of ODA and its fundamental strategy as a foreign policy, in order to clarify the main features of the Australian approach of law and justice assistance. Through exploring Australian strategy on aid and law and justice assistance, the chapter described the Australian law and justice assistance narrative which has been figured based upon regional security interests and geographical contiguity. In the future pathways of Australian law and justice assistance, however, policy and strategies are in the process of change under the new aid paradigm which takes priority to economic development. As I mentioned previously, Australian aid strategy has reached a critical point, and currently, Australian aid context has been changed significantly, including the structure and budget. Thus the paradigm shift emphasis upon economic development for Australia as principle legitimacy for Australian aid and this situation also can influence on law and justice assistance narrative on traditional objectives for peace and stability in post-conflict states.

As a current notable donor of law and justice assistance in the Pacific region, New Zealand's efforts also should be focused. New Zealand is the second largest donor in the Pacific, and also the share of law and justice assistance of their whole aid programs is significant because of RAMSI's intervention. For example, in Solomon Islands, RAMSI's activities on law and justice were concluded in 2013 and transited to bilateral aid programs. The Australian government has deployed further comprehensive law and justice programs. In this process, contrastingly the Solomon Islands Government (SIG) raised requests for law and

justice assistance, especially in the field of policing at the community level to the New Zealand government in appreciation for the NZ's effort for community level justice in post-conflict society in Melanesia including Solomon Islands and Bougainville.²⁵⁷ In the future of Solomon Islands, two major donors will part company their role in law and justice assistance context. Thus inter-donor coordination becomes a significant issue in practice for effective development in the region.

²⁵⁷ Interviewee AE1, Interview by author. Personal interview. Canberra, August 31, 2016.

Chapter IV: Exploring the Case: Australian Law and Justice Assistance in Solomon Islands

Ministers received a formal presentation from the Hon Laurie Chan, Minister for Foreign Affairs, Solomon Islands, on the current situation in Solomon Islands and the need for external assistance to address the law and order problem in Solomon Islands.

(Outcome Statement at Forum Foreign Affairs Ministers Meeting, 30 June 2003)

4.1 Introduction

Due to the ethnic tension in Solomon Islands in 1998 and the related deterioration of the social order, the regional security of the Pacific was endangered. In response to this regional destabilization, the Australian government raised a proposal for the regional assistance mission to Solomon Islands, and the Pacific Islands Forum Secretariat and its member countries accepted the proposal and decided to implement the regional assistance. This decision is the starting point of the Regional Assistance Mission to Solomon Islands (RAMSI).

RAMSI, or Operation Helpem Fren, is a partnership between the people and the government of Solomon Islands and fifteen contributing countries of the Pacific region. The Mission is majority-funded and led by Australia.²⁵⁸ RAMSI had been deployed as a regional collective program since 2003, in response to the request by the Solomon Islands Government (SIG) for international aid directed at the restoration of social order and peacebuilding.²⁵⁹

In 2013, law and justice assistance in Solomon Islands reached another critical stage of project transition. That year, the law and justice component of RAMSI concluded and transitioned to a bilateral aid program administered by the Australian government. After concluding the law and justice assistance project under RAMSI, the Australian Government commenced a new bilateral aid program in 2014 as a successor to the former program. The new Solomon Islands Justice Program (SIJP) is a four-year aid

²⁵⁸ Regional Assistance Mission in Solomon Islands. Accessed May 12, 2018. <http://www.ramsi.org/>.

²⁵⁹ Ibid.

program which comprehensively covers justice sector strengthening. Additionally, SIJP has been designed based on analysis of the project outcomes of RAMSI in order to secure a seamless transition from its predecessor.²⁶⁰

RAMSI itself is not just only a law and justice assistance effort, but a broader package of development assistance toward one single country. The mission consists of three pillars: law and Justice; economic governance; and machinery of government. The law and justice pillar is the largest field of assistance under RAMSI, accounting for over 80% of Australian expenditures for the Mission. It consists primarily of a law and order component (in the form of a permanent police presence), and a law and justice assistance component. RAMSI involves diverse elements such as aid programs, peace-building, restoration of order, economic development, the rule of law, and good governance in post-conflict society. Also, law and justice assistance under RAMSI contains components such as strengthening police, prisons, and the justice system. Police and prison systems was a major focus because the main objective of RAMSI is a restoration of law and order of Solomon Islands. However, the component of strengthening the justice system has been gradually focused on as an aid target.

In order to examine the impact of RAMSI's implementation for both Australia and Solomon Islands, this chapter overviews the implementation process of RAMSI and follows SIJP, and considers how Australia and Solomon Islands were engaged in its process. The main objective of this chapter is to explore the empirical case in order to identify unprecedented factors of law and justice assistance, based on experiences and efforts of Solomon Islands. In this context, this thesis focuses on a pathway of experiences of receiving huge aid program in Solomon Islands as a donor, and how Australia interacts with RAMSI's implementation process and their changes as a donor.

²⁶⁰ Australian Government, Department of Foreign Affairs and Trade, *Delivery Strategy Solomon Islands Justice Program (SIJP) July 2013 to June 2017* (Canberra, Australia: Australian Government, 2013). Accessed April 20, 2018.

<http://dfat.gov.au/about-us/publications/Documents/solomon-islands-justice-program-delivery-strategy-2013-17.pdf>. 7-9.

4.2 Experience of Solomon Islands: Pathway for Rebuilding the States

This section is going to overviews the way in which Solomon Islands experienced to accept comprehensive aid program, which includes the background of RAMSI and its components of the program; law and justice assistance from RAMSI period to current; and current bilateral aid project by the Australian government to clarify the influences of RAMSI to current.

4.2.1 Background of RAMSI

The current situation of Solomon Islands has its roots in “the not massive but nasty conflict”. In 1998 to 1999, internal conflicts began in Solomon Islands and were described by local people as “the Tension”. The Tension erupted between the two main ethnic groups based on the islands of Malaita and Guadalcanal regarding land issues on the latter island. There has been a long history between two islands. People in two islands have continuously grudged their land issue which is related to kinship, inheritance, migration, and job market since the 1960s.²⁶¹ At the moment, the majority of Solomon Islanders are illiterate or semi-literate, and education and communication tools, as well as media, are not well developed.²⁶² Decentralization of government to local jurisdictions was not enough, and local government did not function well. Conflicts reached a crisis point around the capital city of Solomon Islands located on Guadalcanal, as different groups moved there to seek employment, education, and economic opportunities.²⁶³ According to Sir Allan Kemakeza, the Prime Minister of Solomon Islands from 2001 to 2006, “The Tension is more about the unfair distribution of wealth.”²⁶⁴ In 1998, an indigenous uprising on Guadalcanal by a group calling itself the Guadalcanal Revolutionary Army (GRA) evicted and harassed

²⁶¹ Interviewee SC5, Interview by author. Personal interview. Honiara, November 7, 2016.

²⁶² Moore, Clive. *Happy Isles in Crisis: The Historical Causes for a Failing State in Solomon Islands, 1998-2004* (Canberra, Australia: Asia Pacific Press, 2004). 94-95.

²⁶³ Ruddock, Kirsty. "Marginalisation of some Solomon Islanders by the Australian intervention." *Australian Journal of Human Rights*, 2nd ser., 12, no. 1 (2007): 142.

²⁶⁴ Tuhanuku, Qila. *Helpem Fren: Rebuilding a Pacific Nation*, DVD. (Australia: 2013).

around 25,000 migrant settlers on Guadalcanal, most of whom were from the neighboring island of Malaita.²⁶⁵ In response to the GRA, the Malaitans formed the Malaitan Eagle Force (MEF) and requested to the SIG regarding their lack of actions to resolve the problem.²⁶⁶ On 15th October 2000, a peace agreement, called the Townsville Peace Agreement (TPA), was signed in Townsville, Australia between the GRA, the MEF, the SIG, and various provincial governments.²⁶⁷ However, the execution of the TPA did not end the conflict completely. The availability of guns led to continual law and order issues and the situation entered into a more criminalized phase.²⁶⁸ Therefore, Solomon Islands continued to be plagued by lawlessness in some areas two years after the peace deal ended fighting. The subsequent deterioration of the social order soon jeopardized regional security. As a direct result of the Tension and related violence, business declined as much as 50 percent; tourism, a key source of government revenue, was especially hard hit.²⁶⁹

In response, the Pacific Islands Forum (PIF) Secretariat set restoration of social order and peacebuilding in Solomon Islands as a priority issue for regional security.²⁷⁰ Following this, Solomon Islands Prime Minister Sir Allan Kemakeza officially requested international support for post-conflict

²⁶⁵ Braithwaite, John. *Pillars and Shadows: Statebuilding as Peacebuilding in Solomon Islands* (Canberra, ACT, Australia: ANU E Press, 2010).13-23.; Moore, Clive. *Happy Isles in Crisis: The Historical Causes for a Failing State in Solomon Islands, 1998-2004* (Canberra, Australia: Asia Pacific Press, 2004). 93-108.

²⁶⁶ Fraenkel, Jon, Joni Madraiwiwi, and Henry Okole. *The RAMSI Decade: A Review of the Regional Assistance Mission to Solomon Islands, 2003-2013* (Hawaii, The United States of America: Pacific Islands Development Program, July 14, 2014). 15-17.

²⁶⁷ Downer, Alexander. "Media Release: Solomon Islands: Signature of the Townsville Peace Agreement." Media Release (Australia, October 15, 2000). Accessed April 20, 2018.
http://foreignminister.gov.au/releases/2000/fa117a_2000.html.

²⁶⁸ Ruddock, Kirsty. "Marginalisation of some Solomon Islanders by the Australian intervention." *Australian Journal of Human Rights*, 2nd ser., 12, no. 1 (2007): 142.; Fraenkel, Jon, Joni Madraiwiwi, and Henry Okole. *The RAMSI Decade: A Review of the Regional Assistance Mission to Solomon Islands, 2003-2013* (Hawaii, The United States of America: Pacific Islands Development Program, July 14, 2014). 15-17.

²⁶⁹ "Freedom in the World 1999: Solomon Islands." The Freedom House. 1999. Accessed April 20, 2018.
<https://freedomhouse.org/report/freedom-world/1999/solomon-islands>.

²⁷⁰ The Japanese Government, Ministry of Foreign Affairs. "The Evaluation Report on the Pacific Islands States." Japanese Government, Ministry of Foreign Affairs. 2009. 11-13.

social reconstruction and to re-establish national and regional stability, security and prosperity.²⁷¹ In 2000, the Biketawa Declaration was agreed to at the 31st Leader's Summit of the PIF, representing a new framework for coordinating responses to regional crises. At the Forum's Foreign Affairs Ministers Meeting on 30 June 2003, responding to the request by the SIG, the PIF and the Ministers from member states agreed to the Australian proposal for an assistance package to Solomon Islands, including rebuilding Solomon Islands institutions and establishing conditions under which the country could achieve social and economic recovery.²⁷² As a result, regional member states began to participate in peacekeeping and stabilization operations, including the military and police forces.²⁷³ According to its mandate, RAMSI aimed to build up long-term stability and prosperity in Solomon Islands.²⁷⁴ The major purposes are to restore civil order in Honiara and throughout the rest of the country, to rebuild and reform the machinery of government, improve government accountability and improve the delivery of services in urban and provincial areas, to stabilize government finances, balance the budget and fight corruption, and to help rebuild the economy and encourage sustainable broad-based growth.

For Australia's part, concerns over regional security were a strong motivation for intervention. On 1 July 2003, then Prime Minister John Howard stated that "We know that a failed state in our region, on our doorstep, will jeopardize our own security."²⁷⁵ While RAMSI is a partnership between the people and

²⁷¹ Regional Assistance Mission in Solomon Islands. Accessed May 12, 2018. <http://www.ramsi.org/>.

²⁷² "Forum Foreign Affairs Ministers Meeting: Outcome Statement." Australian Government, Department of Foreign Affairs and Trade, June 30, 2003. Accessed April 20, 2018.

http://www.operationspaix.net/DATA/DOCUMENT/3618~v~Declaration_des_Ministres_des_Affaires_Etrangeres_du_Forum_des_iles_du_Pacifique.pdf.

²⁷³ "Fulltext of Biketawa Declaration". Accessed April 20, 2018.

<http://www.forumsec.org/resources/uploads/attachments/documents/Biketawa Declaration, 28 October 20002.pdf>.

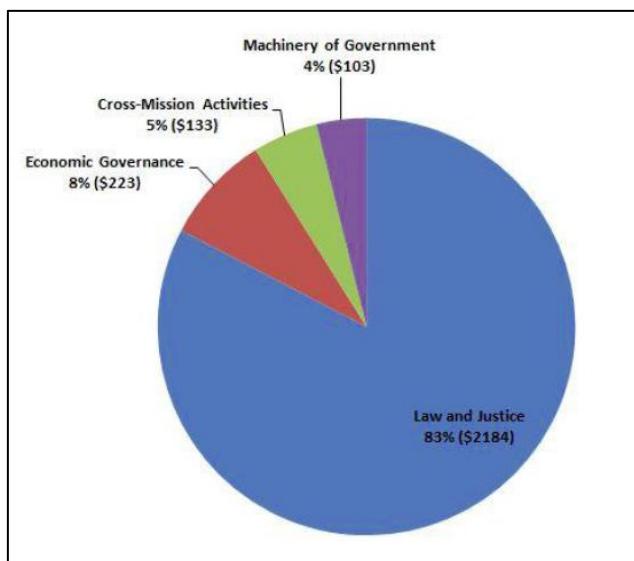
²⁷⁴ Regional Assistance Mission in Solomon Islands. Accessed May 12, 2018. <http://www.ramsi.org/>.

²⁷⁵ "Australian Government Rationale for RAMSI." Nautilus Institute for Security and Sustainability. Nautilus Institute for Security and Sustainability. Accessed April 20, 2018.

<http://nautilus.org/publications/books/australian-forces-abroad/solomon-islands/australian-government-rationale-for-ramsi/>.

the government of Solomon Islands and fifteen contributing countries of the Pacific region in the original mandate, the mission is, in fact, majority-funded and led by the Australian government.²⁷⁶

(Figure 11: Australian Expenditure on RAMSI, 2003-2013 (AUD million, constant prices 2013))



(Source: Hayward-Jones, Jenny. *Australia's Costly Investment in Solomon Islands: The Lessons of RAMSI*. (Sydney, Australia: The lowy institute, 2014). Accessed April 20, 2018. <http://www.lowyinstitute.org/publications/lessons-ramsi. 6.>)

The expenditure of the law and justice section accounts for the vast majority of the total budget. The Australian Defense Force and the Australian Federal Police (AFP), in cooperation with the defense forces of New Zealand, Papua New Guinea, Fiji and Tonga and the police forces of the Pacific Islands Forum member states are charged with implementation, working alongside the Royal Solomon Islands Police Force (RSIPF).²⁷⁷ This activity constitutes most of the expenditure on law and justice. Furthermore, this expenditure came almost entirely from the Australian ODA from 2003 to 2013.²⁷⁸ This situation is also based on the Australian international assistance strategy, which identifies regional security as a

²⁷⁶ Regional Assistance Mission in Solomon Islands. Accessed May 12, 2018. <http://www.ramsi.org/>.

²⁷⁷ Hayward-Jones, Jenny. *Australia's Costly Investment in Solomon Islands: The Lessons of RAMSI* (Sydney, Australia: The lowy institute, 2014). Accessed April 20, 2018.

<http://www.lowyinstitute.org/publications/lessons-ramsi. 9-10.>

²⁷⁸ Ibid., 4-7.

priority issue in the Pacific region due to Australia's geographical context.²⁷⁹

4.2.2 Deployment of RAMSI

RAMSI is described as "not simply a peacekeeping mission" but a more substantial package of development assistance programs designed to achieve a restoration of the rule of law and governance.²⁸⁰ Under the Biketawa Declaration, the main objective of RAMSI was to restore security and stability in Solomon Islands. While many small programs were absorbed into RAMSI, bilateral aid projects were also conducted in parallel under each donor organization and government, such as the Australian High Commissioner.

The mission was led by a special coordinator who was directly accountable to Canberra, and the Australian government assigned a director for each pillar. Beyond the management of all activities under each of the pillars of RAMSI, the role of the special coordinator also extended to liaison to coordinate overall development assistance strategy with other stakeholders and the Australian High Commissioner, who had the responsibility for Australian bilateral assistance. The role of a director and team of each pillar is to design a concept of aid direction, and this activity could contribute to making an aid policy of Solomon Islands in each stage of development.²⁸¹ Therefore, although RAMSI was a regional collective mission, the Australian government had a huge influence and also played a significant role in implementation, not only financially but also conceptually.

One of the significant aspects which made RAMSI an unexemplified aid program is that RAMSI was a regional intervention in a regional crisis and as a Mission outside the United Nations (UN) umbrella.

²⁷⁹ Australian Government, Department of Foreign Affairs and Trade. *Australian aid: promoting prosperity, reducing poverty, enhancing stability* (Canberra, Australia: Australian Government, 2014. June 2014). Accessed April 20, 2018. <http://dfat.gov.au/about-us/publications/Documents/australian-aid-development-policy.pdf>. 1-5.

²⁸⁰ Fraenkel, Jon, Joni Madraiwiwi, and Henry Okole. *The RAMSI Decade: A Review of the Regional Assistance Mission to Solomon Islands, 2003-2013* (Hawaii, The United States of America: Pacific Islands Development Program, July 14, 2014). 14-15.

²⁸¹ Interviewee AE5, Interview by author. Personal interview. Canberra, September 22, 2016.

RAMSI was a regional intervention mission in a post-conflict society by the regional agreement and its mandate which legitimate RAMSI's intervention was based on the Biketawa Declaration.²⁸² The independent review report in 2014 pointed out that the appointment of a special coordinator is a factor to clarify the differences with a special representative of an international organization. This structure shows the legal framing of RAMSI was detached from the UN's command structure and makes firm bilateral control enabled the Australian government to retain close supervision of RAMSI's series of the comprehensive aid package.²⁸³

RAMSI's initial objectives were the restoration of order and building the rule of law through humanitarian aid and peacebuilding which combined with military components; however, RAMSI also raised 'institutional building' as a long-term goal.²⁸⁴ Solomon Islands were fragile states with less capacity of the government and high dependency on aid. Therefore, it was quite hard for the SIG to raise proper requests to donors, and they could just ask some help, without tangible requests.²⁸⁵ At the initial stage of RAMSI, therefore, the most important factor of the mission was to start up the system and build up the cornerstone for institutional building. This was what people demanded the long-lasting development of their country.

²⁸² "Forum Foreign Affairs Ministers Meeting: Outcome Statement." Australian Government, Department of Foreign Affairs and Trade, June 30, 2003. Accessed April 20, 2018.

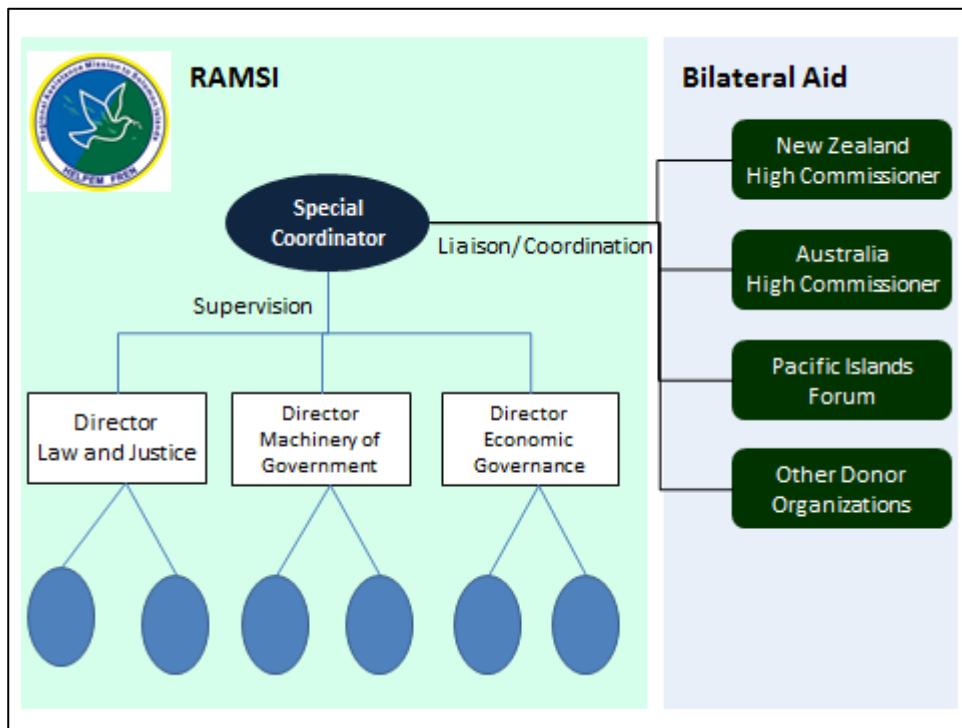
http://www.operationspaix.net/DATA/DOCUMENT/3618~v~Declaration_des_Ministres_des_Affaires_Etrangères_du_Forum_des_îles_du_Pacifique.pdf.

²⁸³ Fraenkel, Jon, Joni Madraiwiwi, and Henry Okole. *The RAMSI Decade: A Review of the Regional Assistance Mission to Solomon Islands, 2003-2013* (Hawaii, The United States of America: Pacific Islands Development Program, July 14, 2014). 8.

²⁸⁴ Moore, Clive. *Happy Isles in Crisis: The Historical Causes for a Failing State in Solomon Islands, 1998-2004* (Canberra, Australia: Asia Pacific Press, 2004). 212-215.

²⁸⁵ Interviewee AG5, Interview by author. Personal interview. Canberra, August 29, 2016.

(Figure 12: Structure of aid organization at the early stage of RAMSI in Solomon Islands)



(Source: Developed by author)

4.2.3 Law and Justice Assistance in Solomon Islands

Law and justice is one of the major pillars of RAMSI's activity. The law and justice pillar consist of strengthening police, prisons, and the justice system as project components. Since the main objective of RAMSI is to restore law and order, police and prisons were a major target of law and justice assistance in the early stage of RAMSI; however, the Solomon Islands government recognized the demand for enhancing the justice system from the middle stage of RAMSI. This section narrows down the scope and explores the background and pathways of demand for law and justice assistance toward strengthening dispute resolution system in Solomon Islands from the RAMSI period to the current bilateral commitment by the Australian Government.

4.2.3.1 Justice System in Solomon Islands

Solomon Islands consist of multi-ethnic groups within the country, and there was no concept of a

unified society.²⁸⁶ Each community and each ethnic group lives separately under each village or community leader, even on the same island. Also, each community regulates itself in accordance with its own traditions and practices and in accordance with the wishes and policies of its leaders.²⁸⁷ Solomon Islands became a British colony in 1893. Under eighty-five years of the British protectorate, native courts system was informally allowed to function by the British administration in Solomon Islands, and eventually, they were given powers to deal with matters related to native customs.²⁸⁸ The church system also has a significant role in dispute resolution in Solomon Islands. The Christian church system is the center of village life in most rural Solomon Islands communities, and people use church-based dispute resolution processes to solve marital and family conflicts.²⁸⁹ Historically, there have been three types of justice systems to resolve and mediate people's disputes at the local level, which are native courts, state institutions, and the church. Usually, native courts or the church is the initial institution for dispute resolution.

During the colonial period, the British established a colonial district in cooperation with the administrative district in the country. The colonial administrators permitted most indigenous customs to continue to be applied by customary leaders to people of their communities as forms of social control.²⁹⁰ Each administrative district has a head man and police, and they played a role as a mediator of dispute

²⁸⁶ Corrin, Jennifer, and Paterson, Donald Edgar. *Introduction to South Pacific law*. 3rd ed. (United Kingdom: Palgrave Macmillan, 2011). 1-3.

²⁸⁷ Ibid., 1.

²⁸⁸ The World Bank. *Institutional and Fiscal Analysis of Lower-level Courts in Solomon Islands* (Washington, DC.: The World Bank, 2015). Accessed April 20, 2018.

<https://openknowledge.worldbank.org/handle/10986/21494>. 9-10.

²⁸⁹ Allen, Matthew, Sinclair Dinnen, Daniel Evans, and Rebecca Monson. *Justice Delivered Locally: Systems, Challenges and Innovations in Solomon Islands* (Washington DC, The United States of America: The World Bank, 2013), Accessed April 20, 2018.

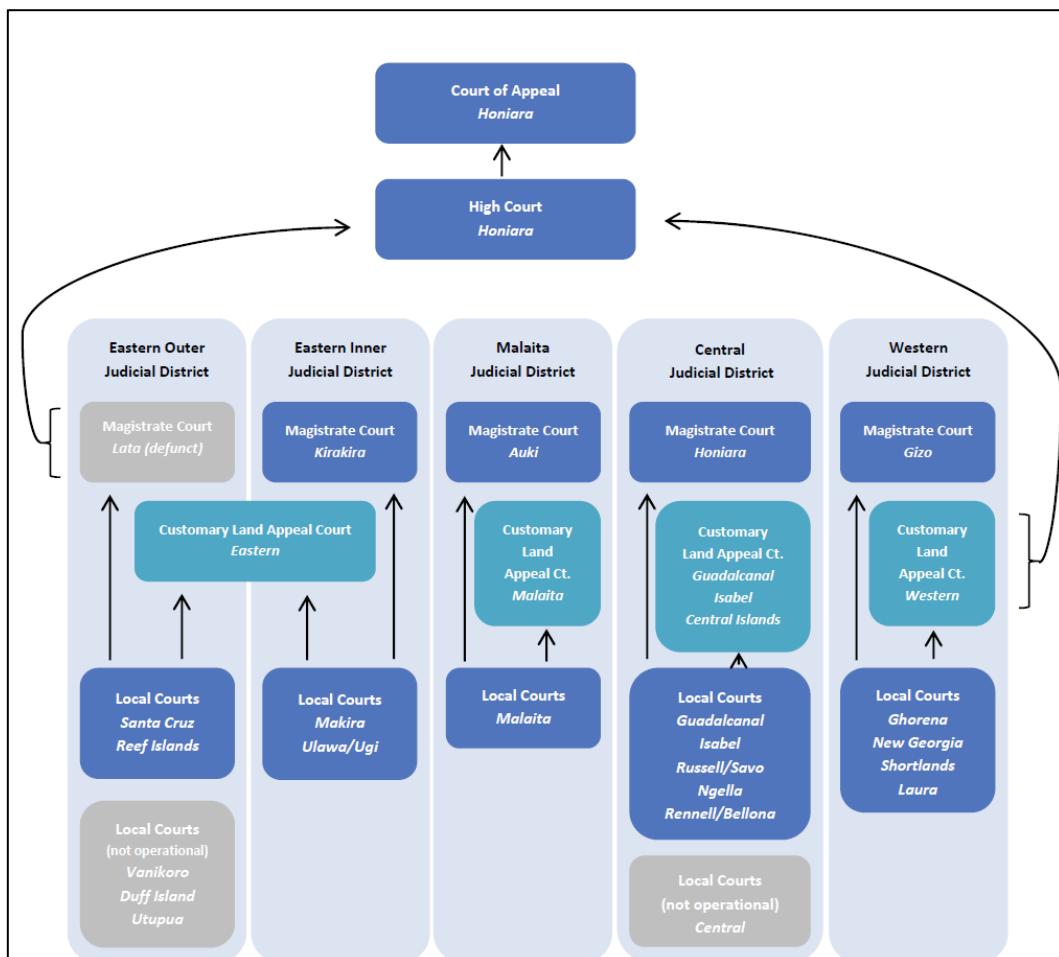
http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/JDL_July_2013_Final_Online_Report.pdf.

59-61.

²⁹⁰ Ibid., 40-42.

resolution in each district, and people could easily access to utilize the services in their own district.²⁹¹ These dispute resolution systems were suited for a multi-ethnic archipelago nation where people are highly localized.

(Figure 13: Court Hierarchy and Locations)



(Source: The World Bank. *Institutional and Fiscal Analysis of Lower-level Courts in Solomon Islands*, (Washington, DC.: The World Bank, 2015). Accessed April 20, 2018. [https://openknowledge.worldbank.org/handle/10986/21494.6. \)](https://openknowledge.worldbank.org/handle/10986/21494.6.)

Independence in 1978 retreats to the state justice system. Since then the Solomon Islands dispute resolution system consolidated and centralized from a traditional system to a formal governmental system. However, the restructuring does not mean that the British system proscribed the indigenous system. The

²⁹¹ Interviewee SI4, Interview by author. Personal interview. Honiara, November 7, 2016.

Constitution of Solomon Islands 1978 express the provision for customs or customary as a part of the law in the state by all courts. The Constitution of Solomon Islands 1978, Schedule 3 to the Constitution says that “Application of Laws [3] Subject to this paragraph, the customary law shall affect part of the law of Solomon Islands.”²⁹² After independence, native courts were changed in name to local courts, but they still encompassed minor legal matters related to customs and each village.

However by 1985, the Solomon Islands government promoted a process of the centralization of responsibility, and local councils had returned their responsibilities for the management of the courts to the National Judiciary, due to staff shortages at local courts.²⁹³ Since then, it became difficult for national judiciaries to manage their systems and keep the quality of the legal services by the courts, and they decided to diminish the number of the local courts.²⁹⁴ This situation made people difficult to access to the courts, and even cost for accessing to dispute resolution system became high. Therefore, people lost their traditional justice system to solve legal matters.²⁹⁵

4.2.3.2 Implementation of Law and Justice Assistance during RAMSI Period

When RAMSI arrived, many Solomon Islanders welcomed the mission. Local people were ravaged by the social destabilization caused by the Tension and had hopes toward RAMSI’s support for rebuilding the states. Many people in Solomon Islands did not have any hopes and trusts in their government as well as public institutions and police. Thus people expected positive changes in the society.²⁹⁶ The SIG,

²⁹² The Constitution of Solomon Islands 1978, Schedule 3 to the Constitution.

²⁹³ The World Bank. *Institutional and Fiscal Analysis of Lower-level Courts in Solomon Islands* (Washington, DC.: The World Bank, 2015). Accessed April 20, 2018.

<https://openknowledge.worldbank.org/handle/10986/21494>. 9-10.

²⁹⁴ Ibid.

²⁹⁵ Douglas, Porter, Deborah Isser, and Philipp Venning. *Toward More Effective and Legitimate Institutions to Handle Problems of Justice in Solomon Islands* (Washington DC, The United States of America: The World Bank, 2015). Accessed April 20, 2018. <https://openknowledge.worldbank.org/handle/10986/21598>. 5.

²⁹⁶ Kabutaulaka, Tarcisius. ““Failed State” and the War on Terror: Intervention in Solomon Islands.” *Asia Pacific Issues* 72 (March 2004). Accessed April 20, 2018.

therefore, raised a request for enhancing the central government system and formal justice system as a focus of RAMSI. The SIG was considering the transfer of the major dispute resolution system from the existing community-based system to a formal justice system.²⁹⁷ At that time, the function of the formal justice system was not effective to deal with cases properly and did not have enough lawyers. Most court procedures and administrative works were paper-based and had many logistical problems between the central court in Honiara and local courts in remote areas, such as Gizo, Auki, Kirakira and Western Malaita.²⁹⁸ The Australian government, as a major donor of RAMSI, had a high-level consultation meeting with the SIG regularly and heard the requests and opinions from the SIG.²⁹⁹ In response, initial law and justice assistance under RAMSI was designed to focus on the central justice system as a target of the aid program. The reason behind the state-centered approach of RAMSI in the early stage was related to the choice of target of the assistance.³⁰⁰ The program before the central government's request which directed to formal and central judicial system, not to a community-based judicial system which is based on multi-ethnic society and archipelagos. Thus based on these requests from the SIG, RAMSI's approach was designed into enhancing state-centered bases.

Since phase 2 of RAMSI, RAMSI had started to recognize the importance of rethinking of the target and demands toward informal justice system. After completion of the initial stage of the aid program, people did not have alternative ways of dispute resolution.³⁰¹ According to the research by Douglas Porter et al., the number of both courts and cases are still extremely small at the mid-point of RAMSI in 2012.³⁰²

<https://www.eastwestcenter.org/system/tdf/private/api072.pdf?file=1&type=node&id=31980>. 2-6.; Tuhanuku, Qila. *Helpem Fren: Rebuilding a Pacific Nation*, DVD. (Australia: 2013).

²⁹⁷ Interviewee AE4, Interview by author. Personal interview. Canberra, August 28, 2015.

²⁹⁸ Interviewee SI4, Interview by author. Personal interview. Honiara, November 7, 2016.

²⁹⁹ Interviewee AG1, Interview by author. Personal interview. Canberra, August 19, 2015.

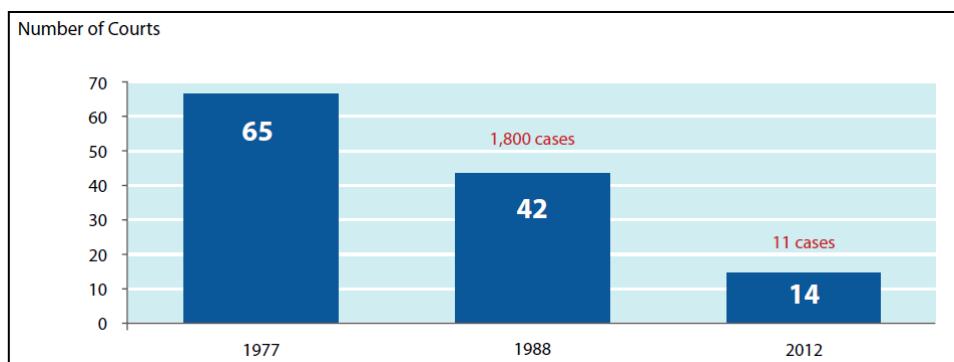
³⁰⁰ Interviewee AG5, Interview by author. Personal interview. Canberra, August 29, 2016.

³⁰¹ Douglas, Porter, Deborah Isser, and Philipp Venning. *Toward More Effective and Legitimate Institutions to Handle Problems of Justice in Solomon Islands* (Washington DC, The United States of America: The World Bank, 2015). Accessed April 20, 2018. <https://openknowledge.worldbank.org/handle/10986/21598>. 5.

³⁰² Ibid.

Behind the situation, there is the critical obstacle to access to justice among people. Research by the World Bank clarified that people had three set of legal matters at that time, which were (1) disputes arising from land and natural resource transactions, (2) social order problems including gender, family, and drug problems; and (3) inequities in development spending, and these issues arose after independence during the process of modernization in that post-conflict society.³⁰³ Australia's projects successfully strengthened the national judiciary's capacity to handle these issues; however, people who are mostly localized and in a remote area had still lost their accessibility to the justice system.

(Figure 14: Transition of the number of courts)



(Source: The World Bank. *Institutional and Fiscal Analysis of Lower-level Courts in Solomon Islands*, (Washington, DC.: The World Bank, 2015). Accessed April 20, 2018. <https://openknowledge.worldbank.org/handle/10986/21494.5.>)

The Australian Agency for International Development (AusAID), the Office of Development Effectiveness (ODE), conducted a thematic evaluation of Australian law and justice assistance in Solomon Islands in 2012. The evaluation pointed out that the Australian approach to the informal justice sector in Solomon Islands is small, and Australia mainly focused on central government and justice system like as other donors, and attention to local law and justice system was lacked.³⁰⁴ Therefore, Australian presence

³⁰³ Douglas, Porter, Deborah Isser, and Philipp Venning. *Toward More Effective and Legitimate Institutions to Handle Problems of Justice in Solomon Islands* (Washington DC, The United States of America: The World Bank, 2015). Accessed April 20, 2018. <https://openknowledge.worldbank.org/handle/10986/21598.1-3.>

³⁰⁴ Australian Government, Department of Foreign Affairs and Trade. *Building on Local Strengths: Evaluation*

and relationship with local stakeholders were limited.

In response to this situation, the World Bank collaborated with AusAID and started to implement the East-Asia and Pacific Justice for the Poor (J4P) Initiative to identify substantive justice outcomes through research, analysis, and dialogue.³⁰⁵ The project, which includes Solomon Islands as a target country, conducted comprehensive research projects on justice systems in Solomon Islands. The research target included the informal justice system and lower-court systems, in accordance with the critics toward the limitation of capacity-building and the technical approaches that focus on restoring central justice sector agencies under RAMSI's aid.³⁰⁶ The major research project under the J4P initiative, the Justice Delivered Locally (JDL), was implemented as a two year project. The JDL project, funded by AusAID, conducted qualitative research to explore the contemporary justice demands and experiences of rural Solomon Islanders in five of the nine provinces in Solomon Islands.³⁰⁷ The JDL project identified the substantial demands and impression of the local justice system for ordinary people as well as the real concerns toward current justice system and main provider of justice. Then the project lead significant lessons for shifting the focus in the future to the local dispute resolution system which ordinary people are daily using.³⁰⁸

In sum, the law and justice pillar as a core component of the mission included diverse areas of

of Australian Law and Justice Assistance (Canberra, Australia: Australian Agency for International Development (AusAID), 2012). 19-20.

³⁰⁵ "About Justice for the Poor." The World Bank. Accessed April 20, 2018.

<http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/JusticeforthePoor-TwoPager.pdf>.

³⁰⁶ Douglas, Porter, Deborah Isser, and Philipp Venning. *Toward More Effective and Legitimate Institutions to Handle Problems of Justice in Solomon Islands* (Washington DC, The United States of America: The World Bank, 2015). Accessed April 20, 2018. <https://openknowledge.worldbank.org/handle/10986/21598>. 1-3.

³⁰⁷ Allen, Matthew, Sinclair Dinnen, Daniel Evans, and Rebecca Monson. *Justice Delivered Locally: Systems, Challenges and Innovations in Solomon Islands* (Washington DC, The United States of America: The World Bank, 2013), Accessed April 20, 2018.

http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/JDL_July_2013_Final_Online_Report.pdf.
1-10.

³⁰⁸ Ibid.

justice at the initial stage, which was not only the policing and military but also the assistance to judiciary and prisons. In accordance with the people's demand for the future assistance, donors also need to understand the real situation of utilizing the justice system among people and shift the focus into closer to local people's justice.

4.2.3.3 Transitional Process to the Australian Bilateral Program in Law and Justice Assistance

RAMSI consisted of three main phases. At the early stage between 2003 and 2004, RAMSI focused on stabilization, with the restoration of law and order being imperative after the conflict.³⁰⁹ Subsequently, under the second phase during 2004–2009, the Australian government initiated development assistance and institution building, shifting the priority of the program into the initial redevelopment of Solomon Islands society. In 2009, RAMSI reached a critical stage of project transition and progression to the development stage. To this end, the “Partnership Framework between Solomon Islands Government and Regional Assistance Mission to Solomon Islands”, was concluded in April 2009.³¹⁰ This framework created a vision of transition for RAMSI and Solomon Islands until 2013 through consensus between RAMSI and the SIG regarding the overall goal of development.³¹¹ The goal set for the law and justice section was “a secure,

³⁰⁹ Australian Government, AusAID, Office of Development Effectiveness. *Solomon Islands Case Study Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Government, 2012). Accessed April 20, 2018.

<http://dfat.gov.au/aid/how-we-measure-performance/ode/Documents/lawjustice-solomon-islands-case-study.pdf>. 21-22.

³¹⁰ Forum Ministerial Standing Committee, Australia. *Partnership Framework Between Solomon Islands Government and Regional Assistance Mission to Solomon Islands* (Canberra, Australia: April 2009). Accessed April 20, 2018.

http://www.operationspaix.net/DATA/DOCUMENT/32~v~Cadre_de_partenariat_entre_le_gouvernement_des_Iles_Salomon_et_la_RAMSI.pdf. 4-5.

³¹¹ Australian Government, AusAID, Office of Development Effectiveness. *Solomon Islands Case Study Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Government, 2012). Accessed April 20, 2018.

<http://dfat.gov.au/aid/how-we-measure-performance/ode/Documents/lawjustice-solomon-islands-case-study.pdf>. 24-26.; Forum Ministerial Standing Committee, Australia. *Partnership Framework Between Solomon Islands*

safe, ordered and just Solomon Islands society where laws are administered fairly regardless of position or status, giving due recognition to traditional values and customs.” Deadlines were set for each component of the law and justice section, including police and emergency services, the judicial system, and border security.³¹²

This partnership framework was a significant milestone of the transition process under RAMSI. With the drawing up of the framework, the program context shifted from peacekeeping to development assistance in a post-conflict society. Until the conclusion of the law and justice section under RAMSI in 2013, projects were implemented especially targeting capacity development in the judicial sector, while RAMSI’s performance assessment project was also conducted in this period.³¹³ Moreover, concurrent to this, the ODE at the Department of Foreign Affairs and Trade (DFAT), an independent body for monitoring and evaluation, undertook an evaluation program to assess the relevance and effectiveness of law and justice assistance and drew up recommendations regarding law and justice assistance not only for RAMSI but also for Australian aid more generally.³¹⁴

Then in 2013, law and justice assistance in Solomon Islands underwent a critical transition. In July, the law and justice section under RAMSI was concluded, and the Australian government commenced a

Government and Regional Assistance Mission to Solomon Islands (Canberra, Australia: April 2009). Accessed April 20, 2018.

http://www.operationspaix.net/DATA/DOCUMENT/32~v~Cadre_de_partenariat_entre_le_gouvernement_des_Iles_Salomon_et_la_RAMSI.pdf. 4-5.

³¹² Forum Ministerial Standing Committee, Australia. *Partnership Framework Between Solomon Islands Government and Regional Assistance Mission to Solomon Islands* (Canberra, Australia: April 2009). Accessed April 20, 2018.

http://www.operationspaix.net/DATA/DOCUMENT/32~v~Cadre_de_partenariat_entre_le_gouvernement_des_Iles_Salomon_et_la_RAMSI.pdf. 13-47.

³¹³ Ibid.; Interviewee AG5, Interview by author. Personal interview. Canberra, August 29, 2016.

³¹⁴ Australian Government, AusAID, Office of Development Effectiveness. *Solomon Islands Case Study Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Government, 2012). Accessed April 20, 2018.

<http://dfat.gov.au/aid/how-we-measure-performance/ode/Documents/lawjustice-solomon-islands-case-study.pdf>. 9-12.

new bilateral project, the “Solomon Islands Justice Program (SIJP)”, as its successor.³¹⁵ SIJP was designed to be a four-year program, based on a roadmap for a projected more than thirty-year engagement for capacity building of the justice sector in Solomon Islands.³¹⁶ SIJP is separate from its predecessor and forms part of the Australian bilateral aid program supervised by the Australian High Commission in Honiara. SIJP has also set five targets based on the achievements and results of RAMSI. The SIJP’s five targets are enumerated in “Solomon Islands – Australia Partnership for Development 2013-14 Performance Assessment Framework and Implementation Schedule Partnership Priority Outcome 2: Improved Justice Service”, and consist of the following: (1) courts and justice agencies are better able to deliver their core functions; (2) courts and justice agencies are better able to manage their financial and human resources; (3) the delivery of a range of justice services to rural communities is expanded; (4) strengthened laws and increased services to address violence against women and gender equality in the workplace; and (5) improved correctional centre management and sustained focus on rehabilitation.³¹⁷

One of the significant changes between the two programs is the aid objectives. According to Tim Vistarini, RAMSI Law and Justice Program Director, RAMSI commenced with the aim of restoring law and order led by donors, but the main objective had shifted to focus more on self-reliance of Solomon Islands by the later stage of the mission.³¹⁸ The change of the main target, from intervention to self-reliance, posed new challenges and changed the character of the aid. Thus, as RAMSI moved towards a more capacity building-focused approach, the Australian government responded by designing the bilateral program as a follow-up.

³¹⁵ Australian Government, Department of Foreign Affairs and Trade, *Delivery Strategy Solomon Islands Justice Program (SIJP) July 2013 to June 2017* (Canberra, Australia: Australian Government, 2013). Accessed April 20, 2018.

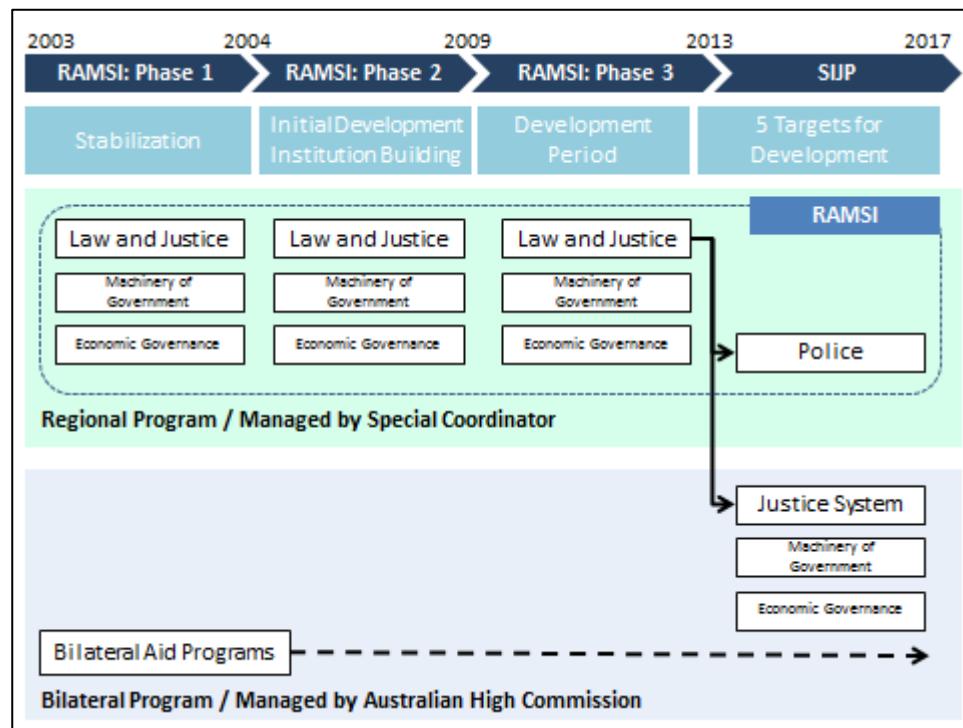
<http://dfat.gov.au/about-us/publications/Documents/solomon-islands-justice-program-delivery-strategy-2013-17.pdf>. 1-9.

³¹⁶ Ibid., 7-10.

³¹⁷ Ibid., 26.

³¹⁸ Interviewee AG5, Interview by author. Personal interview. Canberra, August 29, 2016.

(Figure 15: Program Flow from RAMSI to SIJP)



(Source: Developed by author)

A significant factor influencing the changes between the two programs was the social context of the Solomon Islands. At first, the law and justice sector under RAMSI was more focused on strengthening the formal justice system. The formal court system was a primary target in the early stages of RAMSI, but starting from Phase 2, the project focus broadened to include local and traditional justice systems as targets of assistance.³¹⁹ This adjustment was affected by not only the selection of project priorities but also by the

³¹⁹ Forum Ministerial Standing Committee, Australia. *Partnership Framework Between Solomon Islands Government and Regional Assistance Mission to Solomon Islands* (Canberra, Australia: April 2009). Accessed April 20, 2018.

http://www.operationspaix.net/DATA/DOCUMENT/32~v~Cadre_de_partenariat_entre_le_gouvernement_des_Iles_Salomon_et_la_RAMSI.pdf. 9.; Australian Government, Department of Foreign Affairs and Trade, *Delivery Strategy Solomon Islands Justice Program (SIJP) July 2013 to June 2017* (Canberra, Australia: Australian Government, 2013). Accessed April 20, 2018.

<http://dfat.gov.au/about-us/publications/Documents/solomon-islands-justice-program-delivery-strategy-2013-17.pdf>. 1-6.

social context of Solomon Islands. Solomon Islands is an archipelagic country and is a legally pluralistic society, consisting of a diversity of laws and customs in each community group. Local justice systems, such as traditional dispute resolution systems, remained deeply rooted in society, with many people living in remote areas still depending on indigenous justice systems.³²⁰ Therefore, an approach focusing both on the formal justice system, as well as local systems, was essential to guarantee access to justice for local people. Still, this dualism of formal and local justice systems also complicated and constrained project implementation for law and justice assistance. While the formal court system had been strengthened by law and justice assistance, these informal and diverse dispute resolution systems were suited for a multi-ethnic and archipelagic nation where people are highly localized. This situation has created a pluralistic law and justice system in Solomon Islands, rendering it somewhat difficult to understand the local context. According to the 2013/14 performance report of Australian aid to Solomon Islands, improved justice services were priority target areas.³²¹ Each target was assessed against a Performance Assessment Framework (PAF). However, PAF in the justice sector did not function well due to the lack of appropriate sources and information for assessment.³²² This situation was largely due to the social complexity and legal pluralism unique to Solomon Islands.

4.2.4 Bilateral-Law and Justice Assistance Era in Solomon Islands

The Solomon Islands Justice Program (SIJP) which is a first five years of post-RAMSI, has been implemented for overarching objective to improve delivery of justice services as a bilateral ODA by the Australian government. The Australian government conducted overall evaluation project of law and justice assistance in RAMSI and reflected the result upon the components of SIJP. In this process, the significance

³²⁰ Interviewee AE2, Interview by author. Personal interview. Canberra, September 20, 2016.

³²¹ Forum Ministerial Standing Committee, Australia. *Partnership Framework Between Solomon Islands Government and Regional Assistance Mission to Solomon Islands* (Canberra, Australia: April 2009). Accessed April 20, 2018.

http://www.operationspaix.net/DATA/DOCUMENT/32~v~Cadre_de_partenariat_entre_le_gouvernement_des_Iles_Salomon_et_la_RAMSI.pdf. 9-10.

³²² Ibid., 10-14.

of enhancing access to justice was pointed out and the SIJP focus on the field of access to justice.³²³ The SIJP targets for 2017 for strengthening the legal system and increase access to justice for communities across Solomon Islands were (1) courts and justice agencies are better able to deliver their core functions; (2) courts and justice agencies are better able to manage their financial and human resources; (3) the delivery of a range of justice services to rural communities is expanded; (4) strengthened laws, increased services and focus on violence against women and gender equality in the workplace; and (5) improved correctional centre management and sustained focus on rehabilitation.³²⁴

The Australian government and the Solomon Islands government had discussed the aid strategy and transition process during 2009 to 2013. At that moment, not only RAMSI but also other bilateral donors including Australia and New Zealand, and international organization including the World Bank, the ADB, and IMF were implementing assistance projects.³²⁵ Therefore, the inter-donor coordination was quite significant to designing the SIJP strategy and its components. In the process of designing the bilateral aid program, the donor agencies faced another critical problem for how to deal with the most critical problems at that stage. At RAMSI, donors were allowed political intervention under the Biketawa Declaration; however, the bilateral aid program had to be careful dealing with the power balance and

³²³ Australian Government, AusAID, Office of Development Effectiveness. *Solomon Islands Case Study Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Government, 2012). Accessed April 20, 2018.

<http://dfat.gov.au/aid/how-we-measure-performance/ode/Documents/lawjustice-solomon-islands-case-study.pdf>.; Regional Assistance Mission in Solomon Islands. Accessed May 12, 2018. <http://www.ramsi.org/>; Australian Government, Department of Foreign Affairs and Trade, *Delivery Strategy Solomon Islands Justice Program (SIJP) July 2013 to June 2017* (Canberra, Australia: Australian Government, 2013). Accessed April 20, 2018. <http://dfat.gov.au/about-us/publications/Documents/solomon-islands-justice-program-delivery-strategy-2013-17.pdf>. 1-2.

³²⁴ Australian Government, Department of Foreign Affairs and Trade, *Delivery Strategy Solomon Islands Justice Program (SIJP) July 2013 to June 2017* (Canberra, Australia: Australian Government, 2013). Accessed April 20, 2018.

<http://dfat.gov.au/about-us/publications/Documents/solomon-islands-justice-program-delivery-strategy-2013-17.pdf>. 8-9.

³²⁵ Interviewee AG5, Interview by author. Personal interview. Canberra, August 29, 2016.

relationship with local stakeholders. Since the late stage of RAMSI, for example, corruption had become a serious barrier to implementing assistance. Therefore, even though the restoration of law and order was for common interests, these activities and clean government threaten individual interest of the government members.³²⁶ Aid practitioners of the Australian government, therefore, cooperated with other major donors such as the World Bank, which was implementing the Community Officer project under the J4P. They decided the targets of project based on a query of received related information regarding related stakeholders as well as provincial situations.³²⁷ Also, the situation of each province and its social context was complicated. While each province has different social context, different donor organization also had different function and context. Therefore, donors also needed to coordinate the context of the relationship both with the recipients and the other donors. Therefore, it was not easy for donors and should be careful to design aid programs in post-RAMSI.³²⁸

Under the SIJP, the project on establishing the Justice Information Management System (JIMS) currently has a significant role in enhancing access to justice and improving work effectiveness in the judicial field.³²⁹ The JIMS, which is an integrated case tracking and data management system, supplements the weakness of data collection and management of the SIG regarding basic data on numbers of court cases heard and also links related stakeholders such as the Magistrates Court, High Court, RSIPF, PPD and PSO through sharing the data.³³⁰ This IT system can be accessed from the court remotely and can share judicial information across Solomon Islands systematically.

In 2015, SIJP implemented a mid-term independent review of the project. The subsequent report

³²⁶ Wainwright, Elsina. "How is RAMSI faring? Progress, challenges, and lessons learned." *Strategic Insights*, April 2005, Accessed June 21, 2017. https://www.aspi.org.au/publications/how-is-ramsi-faring/SI_solomons.pdf. 1-11.

³²⁷ Dinnen, Sinclair, and Nicole Haley. *Evaluation of the Community Officer Project in Solomon Islands* (Washington DC, The United States of America: The World Bank, 2012). 1-3.

³²⁸ Interviewee AG5, Interview by author. Personal interview. Canberra, August 29, 2016.

³²⁹ Interviewee SI4, Interview by author. Personal interview. Honiara, November 7, 2016.

³³⁰ Australian Government, Department of Foreign Affairs and Trade. *Solomon Islands Justice Program Design Document July 2017 to June 2021* (Canberra, Australia: Australian Government, 2016). 74-75.

pointed out that there was still room for improvement of the approach to the provincial justice system to facilitate people's access to justice.³³¹ Also, RAMSI officially concluded on 30 June 2017, and assistance to policing which was the last component under the law and justice pillar had also been transferred to a bilateral aid by the Australian government. This turning point brought another structural change of law and justice assistance of Australia. ³³²

According to the SIJP design document, from 2017 to 2021, the second phase of SIJP had been designed in conjunction with the Solomon Islands Economic and Public Sector Governance Program and the Australian Federal Police's bilateral Police Development Program that will succeed RAMSI.³³³ The following phase was designed adheres to the successful part of the previous phase, such as the JIMS. The second phase of SIJP aimed to achieve four major outcomes which align with the SIG's Justice Sector Strategic Framework.³³⁴ The four major outcomes are (1) justice sector agencies are increasingly capable of delivering core services; (2) Legislation is supported by sound policy development, is clearly written and well understood; (3) Access to justice for Solomon Islanders is improved; and (4) Good practice in leadership, decision making, public sector management and community engagement is increasingly demonstrated in the justice sector. The Monitoring, Evaluation, and Learning (MEL) framework has also been designed in accordance with these four components under the strategic framework to measure the performances of the project.

³³¹ Kelly, Linda, Daniel Woods, and Ali Tuhanuku. *The Mid-term Review of the Solomon Islands Justice Program* (Canberra, Australia: The Australian Government, August 2015). Accessed April 20, 2018. <http://dfat.gov.au/about-us/publications/Documents/solomon-islands-justice-program-mid-term-review-2015-man-resp.pdf>. 25.

³³² Interviewee AG2 and AG3, Interview by author. Personal interview. Canberra, August 25, 2016.

³³³ Australian Government, Department of Foreign Affairs and Trade. *Solomon Islands Justice Program Design Document July 2017 to June 2021* (Canberra, Australia: Australian Government, 2016). 1.

³³⁴ Ibid., 18-20.

4.3 Engagement of Australia: As a Primary Donor in Solomon Islands

While RAMSI and SIJP influenced upon a society of Solomon Islands in the post-conflict stage, this huge engagement of the program also impacted on Australia as a donor side. These aid experiences are related to Australian aid policy and implementation process. This section explores RAMSI's impact on both policy dimension and project implementation dimension of Australia. At the policy dimension, the experience of RAMSI brought a chance to Australia to reconsider the aid approach to post-conflict states. This context has been discussed as “intervention” in Australian aid policy. This section also explores the road of transition and interpretation of Australian intervention.

4.3.1 Background of Australia' Involvement in Peacekeeping Operation

Australia has had a long history of involvement in peacekeeping operation since 1947. The first involvement was assistance in supervising a ceasefire between Dutch force and those of the newly-established Indonesian Republic, which had been the UN Commission for Indonesia (UNCI) in 1949.³³⁵ In accordance with changing the international circumstance, the Australian government shaped up and reconsidered the way of involvement in a peacekeeping operation.³³⁶ Australia is an active supporter of the United Nations in its peacekeeping operations, and the Australian Defense Force have been engaged in small-, medium- and large-scale peacekeeping operations since 1947. In the post-Cold War era, the demand and expectation for the peacekeeping operation had been changed and been getting complexed. In 1992, Brahimi Report provided new insights for the peacekeeping operation, which focus on not only cease-fire surveillance and post-war rebuilding as existing style, but also disarmament in and activities in peacemaking, peacekeeping, and peace-building process.³³⁷

³³⁵ The Senate, Commonwealth of Australia. *Standing Committee on Foreign Affairs, Defence and Trade: Australia's involvement in peacekeeping operations*, Senate Committee Report. (Canberra, Australia: The Senate Printing Unit, Parliament House, 2008). 13.

³³⁶ Ibid.

³³⁷ United Nations, Department of Peacekeeping Operations. *United Nations Peacekeeping Operations Principles and Guidelines* (New York, The United States of America: United Nations Secretariat, 2008).

Regional security has been a significant issue for Australia and they have had substantial experiences of leadership at complicated and huge peacekeeping operations, such as the United Nations Transitional Authority in Cambodia (UNTAC) in 1992-1993, International Force East Timor (INTERFET) in 1999-2000, and the United Nations Transitional Administration in East Timor (UNTAET) in 2000-2002.³³⁸ Especially the experience of UNTAC which was the largest and the most complicated peacekeeping operation marked a turning point for the UN peacekeeping operation as well as Australia's involvement in the mission.³³⁹ The Australian Defense Force (ADF) sent approximately 1,215 Australians to UNTAC, and this experience along with the statements of the Brahimi Report influenced Australian policy and ideas on peacekeeping operations for regional security. In November 2006, Senate inquiry referred to the matter of Australia's involvement in peacekeeping operations to the Senate Standing Committee. The committee reconsidered Australia's further challenge to adapt a change of international doctrine and practice in the process of a peacekeeping operation. The committee also stated the recommendations for future white paper regarding peacekeeping of Australia, which is based on a whole-of-government approach.³⁴⁰ This report included further issues on the peacekeeping operation, such as Civil-Military Cooperation, personal engagement for PKO, and the mission under the non-UN mandate.

4.3.2 Legitimacy of Intervention under a Non-UN Mandate and Australian Policy

Australia's involvement in RAMSI brought the further discussion on the missions under non-UN mandates. As the Senate Committee report touched upon, the commitment for non-UN missions was a

Accessed April 20, 2018. http://www.un.org/en/peacekeeping/documents/capstone_eng.pdf. 17-30.

³³⁸ Williams, Brad, and Andrew Newman, eds. *Japan, Australia and Asia-Pacific Security* (The United Kingdom: Routledge, 2006). 174-175.

³³⁹ United Nations, Archives and Records Management Section. *Summary of AG-007 United Nations Transitional Authority in Cambodia (UNTAC) (1992-1993)* (The United States of America: The United Nations, 2015). Accessed April 20, 2018.

https://archives.un.org/sites/archives.un.org/files/files/Finding%20Aids/2015_Finding_Aids/AG-007.pdf. 1.

³⁴⁰ The Senate, Commonwealth of Australia. *Standing Committee on Foreign Affairs, Defence and Trade: Australia's involvement in peacekeeping operations*, Senate Committee Report. (Canberra, Australia: The Senate Printing Unit, Parliament House, 2008). 1-5.

significant issue to legitimate Australia's involvement. Especially, under the UN Charter, regional peacekeeping operation can be legitimate for its deployment as a non-UN mission. According to the United Nations charter, "Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided."³⁴¹

RAMSI is a regional intervention in a regional crisis and a mission outside the UN umbrella. RAMSI also was a mission in a post-conflict society by the regional agreement and its mandate which legitimate RAMSI's intervention legally based on the Biketawa Declaration.³⁴² Also, there are some complementary legal frameworks which support the deployment of RAMSI. The Solomon Islands government passed the Facilitation of International Assistance Act (FIA) 2003 which supported the intervention and authorized the presence of external personnel.³⁴³ The FIA said that "An Act to Make Provisions for the Requesting of International Assistance for the Restoration of Law and Order in Solomon Islands, and for Matters Connected Therewith or Incidental Thereto, Enacted by the National Parliament of Solomon Islands."³⁴⁴ Also, although RAMSI is a non-UN mission, the Security Council provided the key legal document which authorized the intervention.³⁴⁵ In September 2004, the Security Council recognized

³⁴¹ Charter of the United Nations, Chapter VIII: Regional Arrangement: Article 52, Section 1.

³⁴² "Forum Foreign Affairs Ministers Meeting: Outcome Statement." Australian Government, Department of Foreign Affairs and Trade, June 30, 2003. Accessed April 20, 2018.

http://www.operationspaix.net/DATA/DOCUMENT/3618~v~Declaration_des_Ministres_des_Affaires_Etrangres_du_Forum_des_iles_du_Pacifique.pdf.

³⁴³ "Legal mandate – ADF and AFP in Solomon Islands." Nautilus Institute for Security and Sustainability. Accessed April 20, 2018.

<http://nautilus.org/publications/books/australian-forces-abroad/solomon-islands/legal-mandate-adf-and-afp-in-solomon-islands/>.

³⁴⁴ The Facilitation of International Assistance Act (No. 1 of 2003), 17 July 2003.

³⁴⁵ The Senate, Commonwealth of Australia. *Standing Committee on Foreign Affairs, Defence and Trade: Australia's involvement in peacekeeping operations*, Senate Committee Report. (Canberra, Australia: The Senate Printing Unit, Parliament House, 2008). 75-76.

RAMSI's intervention and endorsed the operation.³⁴⁶

In response to these facts, the Senate standing committee on Foreign Affairs, Defense, and Trade considered the conditions and requirements for involvement in non-UN missions. The Australian government also agreed on the importance of the conditions. The conditions are (1) proper authorisation of the Security Council and the mandate is sufficient to meet the circumstances; and (2) in the absence of Security Council authorization, an agreement and commitment between all parties to end a conflict. ³⁴⁷

For Australia, RAMSI was the first experience of substantial intervention to their neighboring regional country. The cost was approximately 2643 million AU\$ during 2003 to 2013 for the one-single country.³⁴⁸ In fact, Australia's ODA for Solomon Islands have drastically increased since RAMSI's deployment. The most significant factor which triggered Australia's decision to invest such huge money in one single and the small country was the threat of a non-traditional security risk.³⁴⁹ Since the terrorist attacks on the United States in September 2001, the Bali terrorist attacks in 2002, and the re-emergence of the so-called "Arc of Instability" stretching from East Timor to Melanesia, Australia has been facing a challenging regional security environment.³⁵⁰ The Tension in Solomon Islands and the destabilization of the country jeopardized regional security, and the decision for intervention corresponded to Australia's own interest for regional security. Later, this incident, the threat in Solomon Islands, and RAMSI's experience

³⁴⁶ United Nations General Assembly, Report of the Secretary-General, *Cooperation between the United Nations and regional and other organizations*, A/59/303. (New York, The United States of America: The United Nations, 1 September 2004). paragraph 83, page.19.

³⁴⁷ The Senate, Commonwealth of Australia. *Standing Committee on Foreign Affairs, Defence and Trade: Australia's involvement in peacekeeping operations*, Senate Committee Report. (Canberra, Australia: The Senate Printing Unit, Parliament House, 2008). 71.

³⁴⁸ Hayward-Jones, Jenny. *Australia's Costly Investment in Solomon Islands: The Lessons of RAMSI* (Sydney, Australia: The lowy institute, 2014). Accessed April 20, 2018.

<http://www.lowyinstitute.org/publications/lessons-ramsi>. 5.

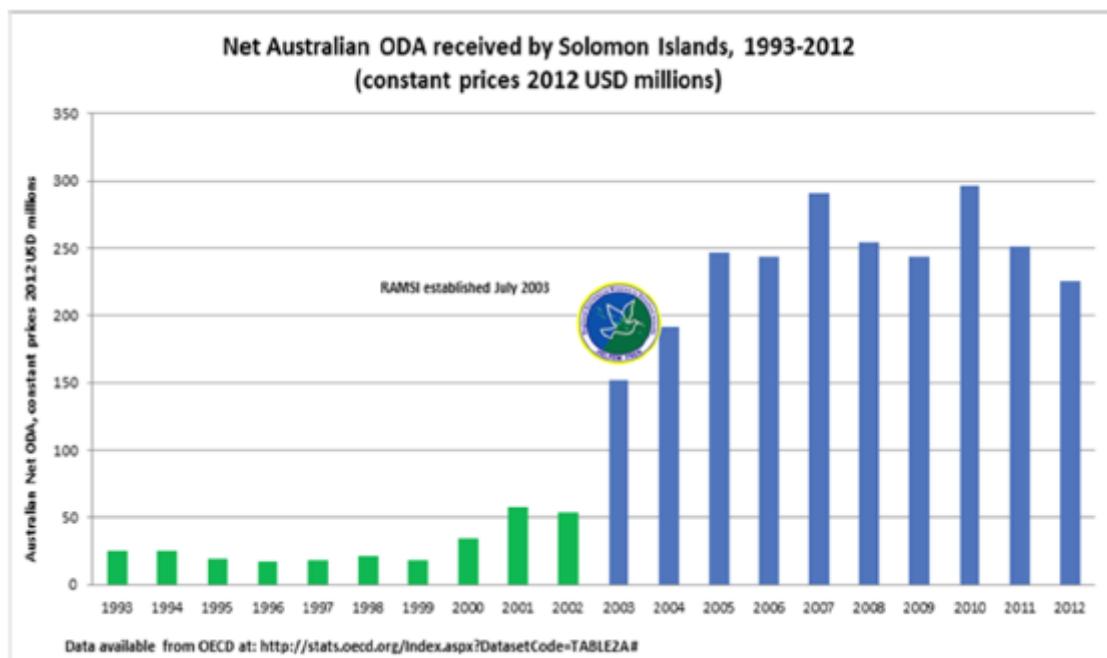
³⁴⁹ Australian Government, Department of Defence. *Defence White Paper 2009: Defending Australia in the Asia Pacific Century: Force 2030* (Canberra, Australia: Commonwealth of Australia, 2009). 16.

³⁵⁰ Wallis, Joanne. "The Pacific: From 'arc of Instability' to 'arc of Opportunity'?" *The Strategist*. December 10, 2012. Accessed April 20, 2018.

<http://www.aspistrategist.org.au/the-pacific-from-arc-of-instability-to-arc-of-opportunity/>.

as a responded action for the failed state influenced on the Australian diplomatic and security agenda and the Australian aid policy-making process. Andrew Rosser pointed out in his article that the Australian security agenda stated that aid policy is aligned with security policy, and they have coherence.³⁵¹ Since the incident, the security policy had become a prior interest for the aid. This narrative also has made the Australian style of aid policy.

(Figure 16: Net Australian ODA received by Solomon Islands, 1993-2012)



(Source: Hayward-Jones, Jenny. *Australia's Costly Investment in Solomon Islands: The Lessons of RAMSI*. (Sydney, Australia: The lowy institute, 2014). Accessed April 20, 2018. <http://www.lowyinstitute.org/publications/lessons-ramsi. 7.>)

4.3.3 Idea of Cooperative Intervention

As mentioned above, for Australia, RAMSI was the first experience of substantial intervention to neighboring states in the region. Indeed, Australia's role in past experiences of overseas missions was

³⁵¹ Rosser, Andrew. "Asia's rise and the politics of Australian aid policy." *The Pacific Review* 29, no. 1 (2016): 115-36.; Ruddock, Kirsty. "Marginalisation of some Solomon Islanders by the Australian intervention." *Australian Journal of Human Rights*, 2nd ser., 12, no. 1 (2007): 117-120.

tactical but occurred under UN auspices.³⁵² Therefore, RAMSI's character as a regional intervention mission in a post-conflict society was a new and unique challenge for Australia. The Australian way of intervention is characterized by developments in humanitarian-based intervention in relation to the concepts of state, sovereignty, governance, and the notion of weak states.³⁵³ Former Australian Foreign Minister Alexander Downer named his government's new policy on intervention "cooperative intervention" to legitimate the deployment of RAMSI to Solomon Islands.³⁵⁴

RAMSI was deployed because the SIG officially requested external intervention, and in fact, this action achieved successful and quick restoration of law and order.³⁵⁵ Furthermore, Solomon Islands society had been left fragmented by the unrest, so the SIG lacked sufficient capacity to raise a proper and specific request for the tangible components of law and justice assistance under RAMSI.³⁵⁶ For Solomon

³⁵² Australia's experiences in Bosnia, Rwanda or Iraq were limited on its scope, and UNTAET and UNTAC in East-Timor and UNTAC in Cambodia were deployed under the UN mandate.; Fraenkel, Jon, Joni Madraiwiwi, and Henry Okole. *The RAMSI Decade: A Review of the Regional Assistance Mission to Solomon Islands, 2003-2013* (Hawaii, The United States of America: Pacific Islands Development Program, July 14, 2014). 13.

³⁵³ Jones, Luka Charles. "Assessing Australia's Regional Interventions: The Solomon Islands 2003 and East Timor 2006." *Centre for Defence and Strategic Studies Australian Defence College*, March 2011. Accessed April 20, 2018.

http://www.defence.gov.au/ADC/Publications/Shedden/2011/Publcns_ShedPaper_110530_TheSolomonIslands2003andEastTimor2006.pdf. 4-5.; Moore, Clive. "The RAMSI Intervention in the Solomon Islands Crisis." *The Journal of Pacific Studies* 28, no. 1 (2005): 73-74.

³⁵⁴ Jones, Luka Charles. "Assessing Australia's Regional Interventions: The Solomon Islands 2003 and East Timor 2006." *Centre for Defence and Strategic Studies Australian Defence College*, March 2011. Accessed April 20, 2018.

http://www.defence.gov.au/ADC/Publications/Shedden/2011/Publcns_ShedPaper_110530_TheSolomonIslands2003andEastTimor2006.pdf. 5-6.; Downer, Alexander. "Our failing Neighbor: Australia and the Future of the Solomon Islands." (Speech at the Launch of the Australian Strategic Policy Institute Report, Australia, June 10, 2003). Accessed April 20, 2018. http://foreignminister.gov.au/speeches/2003/030610_solomonislands.html.

³⁵⁵ Jones, Luka Charles. "Assessing Australia's Regional Interventions: The Solomon Islands 2003 and East Timor 2006." *Centre for Defence and Strategic Studies Australian Defence College*, March 2011. Accessed April 20, 2018.

http://www.defence.gov.au/ADC/Publications/Shedden/2011/Publcns_ShedPaper_110530_TheSolomonIslands2003andEastTimor2006.pdf. 4-5.

³⁵⁶ Interviewee AG5, Interview by author. Personal interview. Canberra, August 29, 2016.

Islands, RAMSI constituted the first experience of accepting a regional peacekeeping operation as well as a large-scale law and justice assistance package directed towards their justice system. In light of the field of law and justice, RAMSI decided to implement assistance based on dialogue with the SIG regarding project focus, criteria, and components. Moreover, major donor countries under RAMSI, especially Australia and New Zealand, share a common law legal system with Solomon Islands, so there are no issues of inter-donor conflict with other organizations or institutes. Similarly, the approach under RAMSI created a unified implementation system of law and justice assistance, which was further facilitated by the legal and cultural proximity between aid-donating and receiving countries. The Australian-led approach of cooperative intervention functioned well in Solomon Islands.

Although RAMSI was described the intervention to failed states, Solomon Islands were not failed states when RAMSI arrived. More likely Solomon Islands were the state facing the threat to break away from the crisis but not disintegrated yet.³⁵⁷ The auspices of the Biketawa declaration allowed intervention but did not allow RAMSI to assume executive authority, which differs from the intervention in East-Timor and Kosovo.³⁵⁸ The mission still has been described as a cooperative intervention because Australia appreciate working with other partner countries, even if Australia had the strongest and biggest leadership in the mission. Thus the word cooperative intervention is appropriate and such facts also shaped up the concept of itself in Australia.

4.3.4 Project Management of RAMSI: Program Structure

The Australian aid program has been characterized by a whole-of-government approach which diverse departments involved in Australia's international aid efforts altogether. The Australian government devotes to contribute to the long-term strengthening of law and justice in the Pacific region based on the approach.³⁵⁹ The experience of RAMSI is one of the leading cases implemented under the approach in

³⁵⁷ Fraenkel, Jon. "Looking to a future without RAMSI." *DevPolicy Blog*. August 1, 2014. Accessed April 20, 2018. <http://devpolicy.org/looking-to-a-future-without-ramsi-20140801-2/>.

³⁵⁸ Ibid.

³⁵⁹ The Senate the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs Defense

Australia. Although the leadership of implementation was taken by Australia, the personnel under RAMSI was also diverse and complexed, which consisted of 15 countries in the Pacific region.³⁶⁰ In Solomon Islands, there were two major bodies of donor institution substantially, which are the High Commissioner of Australia and RAMSI. While RAMSI was taking a comprehensive approach for restoration of law and order, the High Commissioner of Australia took responsibility for implementing bilateral aid projects. In practice, bilateral projects and RAMSI had separated decision-making processes as well as budgets even though both bodies were sponsored and implemented mainly by Australia. This two-body structure was sometimes a barrier to mutual cooperation and smooth implementation of programs.³⁶¹ However, beyond the management of all activities under each of the pillars of RAMSI, the role of the special coordinator extended to liaison to coordinate overall development assistance strategy with other stakeholders and the Australian High Commissioner. While the special coordinator's role ostensibly appeared to be a symbolic position,³⁶² it, in fact, played a central role in substantially unifying aid policy in Solomon Islands under the umbrella of RAMSI. The special coordinator has to be nominated by the government of Australia, and his or her term is usually two or three years.³⁶³ The Deputy Special Coordinators were appointed from New Zealand and Fiji to maintain the power balance among the participating countries in the Pacific. According to Mr. James Batley, a former Special Coordinator of RAMSI in 2004-2006, the main role of the Special Coordinator is to coordinate a range of stakeholders to make coherence of the program objectives. Major stakeholders are military, police, representatives of 15 participating countries, as well as

and Trade, Commonwealth of Australia. *The Senate report on the impact of Australian aid to the Pacific in promoting and enhancing human rights and security in the region, the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs Defense and Trade*, Senate Committee Report. (Canberra, Australia: The Senate Printing Unit, Parliament House, 2006). 10-12.

³⁶⁰ Participating countries of RAMSI are Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, The Republic of the Marshall Islands, Nauru, New Zealand, Niue, Republic of Palau, Papua New Guinea, Samoa, Tonga, Tuvalu, and Vanuatu. Regional Assistance Mission in Solomon Islands. Accessed May 12, 2018. <http://www.ramsi.org/>.

³⁶¹ Interviewee AG2 and AG3, Interview by author. Personal interview. Canberra, August 25, 2016.

³⁶² Interviewee AG4, Interview by author. Personal interview. Canberra, August 23, 2016.

³⁶³ RAMSI Treaty, Article 4, July 2003, Townsville.

the SIG.³⁶⁴ Interaction with the SIG is a significant role for the Special Coordinator. In order to hear the recipient's needs and demands, the special coordinator also traveled to province regularly and had a public meeting with provincial government and community leaders.³⁶⁵ Australia's major partner was the SIG; however people did not trust the central government at that time. Therefore, dialogue with local stakeholders was significant to understand the real voices across Solomon Islands. This need to communicate with locals became a springboard to start broadcasting a talk radio program called "Talking Truth" to promote RAMSI's activities.³⁶⁶

The major decision-making body under the Australian government for RAMSI was DFAT in Canberra. RAMSI, DFAT, a former AusAID and related bodies had a meeting for internal consultation of RAMSI every six months, to ensure the strategic direction of RAMSI. According to DFAT, at least five to six officials were also appointed from DFAT in Canberra to field offices in Solomon Islands on a steady basis, and they have been rotated every two or three years. As a result, there were no officials who were constantly engaged in a field office for a decade.³⁶⁷ This personnel rotation could be an obstacle for a smooth transition of the job, and actually the constant turnover of RAMSI personnel is causing problems through a lack of ability and awareness in local contexts.³⁶⁸ Thus Australia's personnel toward RAMSI had lost substance for implementation of RAMSI, even though their contribution, as well as influence, was huge. However, the special coordinator also could be a key person for making coherence of the project components and being a supplement for under-staffing.

Under the law and justice pillar, the Australian government appointed a director to RAMSI Law and Justice Program. The Law and Justice Program director took responsibility for all activities under the pillar. The Australian government also relegated law and justice programs to the private law firms in

³⁶⁴ Interviewee AG4, Interview by author. Personal interview. Canberra, August 23, 2016.

³⁶⁵ Ibid.

³⁶⁶ Ibid.

³⁶⁷ Interviewee AG1, Interview by author. Personal interview. Canberra, August 19, 2015.

³⁶⁸ Moore, Clive. *Happy Isles in Crisis: The Historical Causes for a Failing State in Solomon Islands, 1998-2004* (Canberra, Australia: Asia Pacific Press, 2004). 215.

Australia, and around 30 to 40 private lawyers were appointed to the field office in Solomon Islands.³⁶⁹ Lawyers from outsourcing law firms worked a range of projects with defense forces, the police, the prosecutor's office, the attorney general's office, the courts, and the government. Jon Fraenkel criticized this situation as a "boomerang aid" which means large sums of expenditures going to overseas private contractors of Australia, not to the recipients.³⁷⁰ In fact, at the very early stage of RAMSI, the contracted private lawyers were mostly Australians; however, since 2005, RAMSI started to hire lawyers from other participating countries, such as New Zealand, Fiji, Samoa, Tonga, and Papua New Guinea.³⁷¹ Under the law and justice pillar, some projects were conducted for local capacity building with contracted lawyers, and RAMSI also recruited local lawyers of Solomon Islands for capacity building purposes. These projects involved local lawyers contributed to not only resolving sufficient skill of legal experts but also creating local jobs.³⁷²

From these situations, therefore, RAMSI involved in massive scale of people and staffs including local entities. The program structure constantly changed, depending on the stage and process of the project. The Australian government assigned a director for each of the three pillars, and usually, each pillar had hundreds of staff members and approximately 1,000 staff in total were working for.³⁷³ Figure 17 presents the comprehensive correlative relationship of donors and recipients in Solomon Islands during RAMSI's period.

³⁶⁹ Interviewee AE4, Interview by author. Personal interview. Canberra, August 28, 2015.

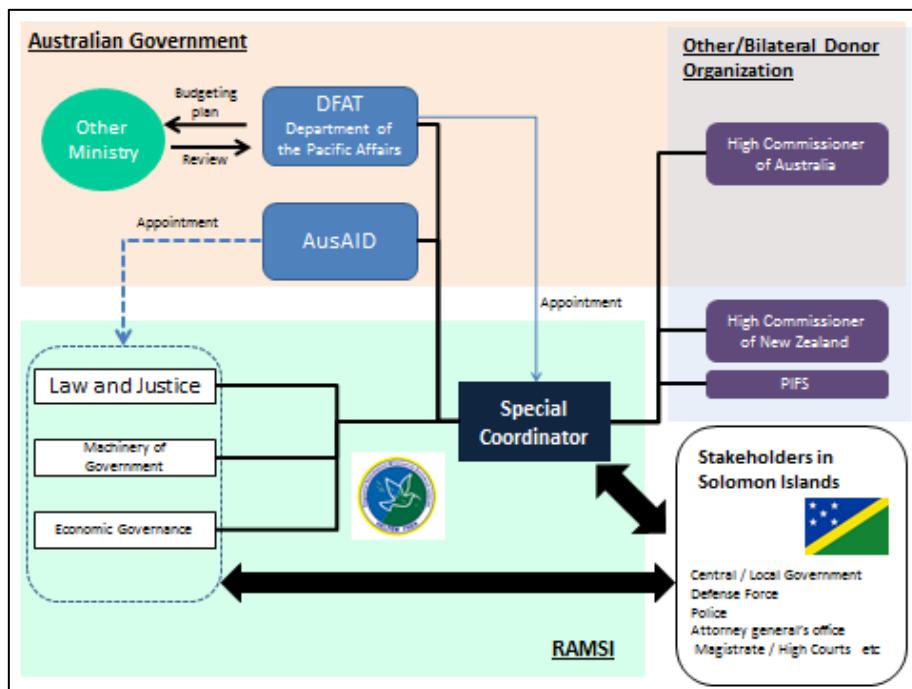
³⁷⁰ Fraenkel, Jon. "Looking to a future without RAMSI." *DevPolicy Blog*. August 1, 2014. Accessed April 20, 2018. <http://devpolicy.org/looking-to-a-future-without-ramsi-20140801-2/>.

³⁷¹ Interviewee AE4, Interview by author. Personal interview. Canberra, August 28, 2015.

³⁷² Interviewee AG5, Interview by author. Personal interview. Canberra, August 29, 2016.

³⁷³ Interviewee AG4, Interview by author. Personal interview. Canberra, August 23, 2016.

(Figure 17: Comprehensive Mapping of Correlative Relationship of Aid Bodies in Solomon Islands)



(Source: Developed by author)

Regarding budgeting, there were two major bodies for budgeting of RAMSI. One major body was the PIFS. The PIFS reviewed RAMSI's activities at the PIFS Leader's meeting which consists of the Head and Government of each member states and decided on endorsement of the evaluation report including budgeting.³⁷⁴ The other significant institution was, of course, the Australian government, who contributed to RAMSI approximately 2.6 billion AU\$ during 2003 to 2013, and substantially had power for decision-making process due to this huge amount of expenditure.³⁷⁵ The Australian government took a cross-institutional way for decision making. The budget plan was usually reviewed and taken feedback

³⁷⁴ Interviewee AG1, Interview by author. Personal interview. Canberra, August 19, 2015.

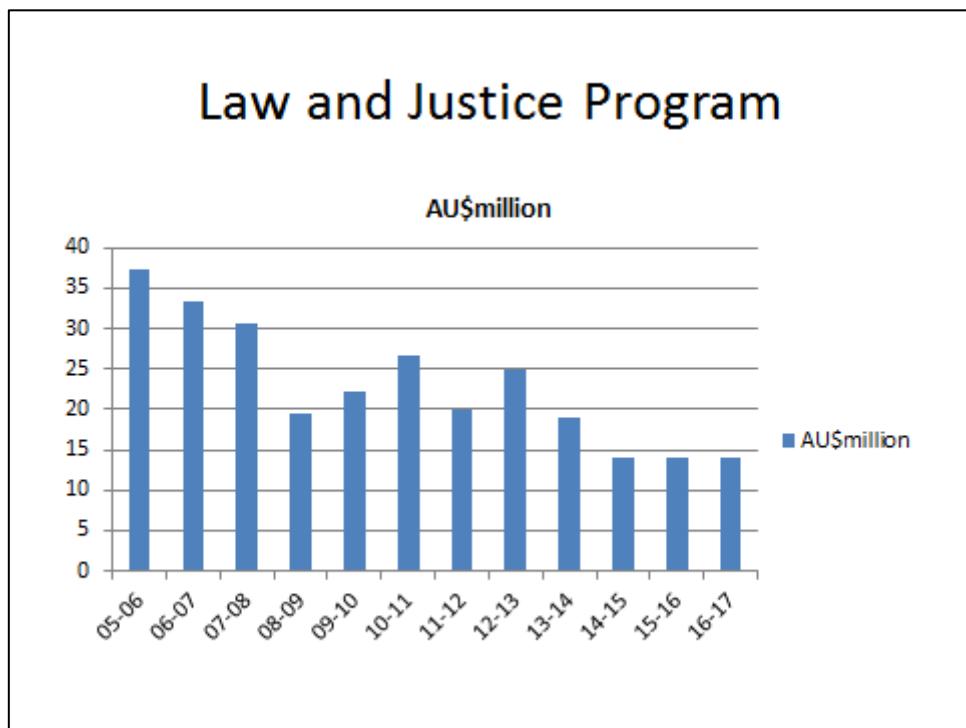
³⁷⁵ Garrett, Jemima. "Australia's Regional Assistance Mission to Solomon Islands cost \$2.6 billion: report."

ABC News Online, May 8, 2014. Accessed April 20, 2018.

<http://www.abc.net.au/news/2014-05-08/an-ramsi-cost/5439424>.

from across the ministry or department.³⁷⁶ Usually, the budget plan was drafted by DFAT and reviewed and approved by other ministries or departments every four years, based on a range of information including the situation in the field as well as interviews of the special coordinator, PIFS, and the governments of other participating countries.³⁷⁷ This whole-of-government approach of the Australian government for budgeting contributed to the transparency of the system, and also, this process proved that the Australian government inevitably grabbed a power of influence on RAMSI's strategy and decision-making process.

(Figure 18: Spending on Law and Justice Program in Solomon Islands)



(Source: Developed by author, based on Interviewee AG5, Interview by author. Personal interview. Canberra, August 26, 2016.; Australian Government, AusAID, Office of Development Effectiveness. *Solomon Islands Case Study Evaluation of Australian Law and Justice Assistance*, (Canberra, Australia: Australian Government, 2012). Accessed April 20, 2018.
<http://dfat.gov.au/aid/how-we-measure-performance/ode/Documents/lawjustice-solomon-islands-case-study.pdf>.)

³⁷⁶ Interviewee AG1, Interview by author. Personal interview. Canberra, August 19, 2015.

³⁷⁷ Ibid.

Regarding sub-components of RAMSI, each pillar has been allocated a budget in accordance with comprehensive objectives and priorities, but contents, objectives, and usage depend on the demand for aid from the field at each stage of development.³⁷⁸ This process could give some flexibility to aid practitioners under each pillar, and aid practitioners had responsibility for tangible components of projects. Figure 18 shows the Australian government's RAMSI spending on the law and justice program. One can see the larger allocation of budget in the post-conflict phase for the restoration of law and order as a prior objective of RAMSI.

4.3.5 Project Framework and Evaluation

Due to the frequent restructuring of RAMSI, it was quite hard for donors to take a proper leadership to draw up the strategy for pathways of development in Solomon Islands. In light of such a situation, the Australian government, especially the special coordinator's office, assumed a significant role at the strategic level. Especially, the leadership of Australia in the process of designing a comprehensive framework for development contributed to the transitional phase.

In the field of law and justice pillar under RAMSI, the SIG-RAMSI Law and Justice Sector Strategic Framework 2005-2010 had been designed in August 2005, which supported strategically to transitional process from post-conflict phase to development phase under RAMSI with seven strategic objectives. The seven strategic objectives are (a)To build justice sector's capacity to plan, budget for and implement the policies, strategies, structures, and infrastructure necessary to meet the current and future needs of Solomon Islands; (b)To enhance the capacity of the justice sector to consult on, reform and introduce new laws, procedures and practices that reflect contemporary requirements and to support widespread freedom of access by all Solomon Islanders to laws (including statutes, and case law) and legal information; (c)To contribute to the creation of safe, stable and prosperous communities through the implementation of collaborative crime reduction, community safety and proactive security initiatives;

³⁷⁸ Interviewee AG5, Interview by author. Personal interview. Canberra, August 29, 2016.

(d)To improve the timeliness, efficiency and effectiveness of civil and criminal court practices and procedures and the operations of government legal services; (e)To introduce new diversionary practices, sentencing options and justice sector procedures that support the use of imprisonment as a sentence of last resort; (f)Within a culturally appropriate corrections system, ensure acceptable standards of prisoner safety and welfare, address recidivism, strengthen the rehabilitative impact of the corrections system and further develop the sector's physical infrastructure to instill community confidence in the security of the corrections service; (g) To develop SIPS capacity to build a professional, respected and sustainable corrections service.³⁷⁹ The Australian ODE evaluated that the framework on law and justice sector, which was developed between the SIG and the Australian government officials, as a clear guide for the transition process moving away from initial stabilization objective to development.³⁸⁰

The first comprehensive framework for development in Solomon Islands was designed in 2006. At that time, the SIG was a turf-minded bureaucratic system, and most of premiers preferred to have one-on-one interaction with a donor, and did not communicate mutually across bureaucracy.³⁸¹ Therefore, the special coordinator office of RAMSI decided to design the comprehensive plan which included three pillars of activities as well as cross-cutting issues as formal mechanism drawing the roadmap of development. Based on this first partnership framework in 2006, the “Partnership Framework between Solomon Islands Government and Regional Assistance Mission to Solomon Islands”, was finalized and endorsed by the PIF in April 2009.³⁸² This framework created a vision of transition for RAMSI and

³⁷⁹ Remobatu, James. *Submission to the Parliamentary Foreign Relations Standing Committee* (Canberra, Australia: Australian Government, Ministry of Justice and Legal Affairs). Accessed April 20, 2018. http://www.parliament.gov.sb/files/committees/foreignrelations/James_Remobatu.pdf.

³⁸⁰ Australian Government, AusAID, Office of Development Effectiveness. *Solomon Islands Case Study Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Government, 2012). Accessed April 20, 2018. <http://dfat.gov.au/aid/how-we-measure-performance/ode/Documents/lawjustice-solomon-islands-case-study.pdf>. 21-22.

³⁸¹ Interviewee AG4, Interview by author. Personal interview. Canberra, August 23, 2016.

³⁸² Forum Ministerial Standing Committee, Australia. *Partnership Framework Between Solomon Islands Government and Regional Assistance Mission to Solomon Islands* (Canberra, Australia: April 2009). Accessed

Solomon Islands until 2013 through consensus between RAMSI and the SIG regarding the overall goal of development.³⁸³ This partnership framework, which contained issues of development as well as measures and assessment, was a significant milestone of the transition process not only under RAMSI but also from RAMSI to the SIJP. With the drawing up of the framework, the program context shifted from peace-keeping to development assistance in a post-conflict society.³⁸⁴ The components of the Partnership Framework also influenced on the target and approach of the following bilateral programs. Throughout the process, an expected role of Australia under RAMSI was to take leadership, to have a dialogue with a recipient for drawing up a foreseeable future for Solomon Islands.

Regarding the law and justice pillar, programs under RAMSI concluded, and all the aid programs on law and justice transited into the bilateral program. RAMSI reviewed the program components and target in 2013 for following projects.³⁸⁵ The Australian government and RAMSI did not only a strategic framework to draw up the pathways, but also a multifaceted evaluation mechanism. As a major tool of evaluation, DFAT issues an annual performance report for major recipients of Australian aid with regard to

April 20, 2018.

http://www.operationspaix.net/DATA/DOCUMENT/32~v~Cadre_de_partenariat_entre_le_gouvernement_des_Iles_Salomon_et_la_RAMSI.pdf. 4-8.

³⁸³ Australian Government, AusAID, Office of Development Effectiveness. *Solomon Islands Case Study Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Government, 2012). Accessed April 20, 2018.

<http://dfat.gov.au/aid/how-we-measure-performance/ode/Documents/lawjustice-solomon-islands-case-study.pdf>. 24-26.; Forum Ministerial Standing Committee, Australia. *Partnership Framework Between Solomon Islands Government and Regional Assistance Mission to Solomon Islands* (Canberra, Australia: April 2009). Accessed April 20, 2018.

http://www.operationspaix.net/DATA/DOCUMENT/32~v~Cadre_de_partenariat_entre_le_gouvernement_des_Iles_Salomon_et_la_RAMSI.pdf. 4-5.

³⁸⁴ Wilson, Graeme. "The Solomon Islands Government -RAMSI Partnership Framework: Towards a secure and sustainable Solomon Islands." *Regional Assistance Mission to Solomon Islands*. December 17, 2009. Accessed April 20, 2018.

<http://www.ramsi.org/wp-content/uploads/2014/07/091217-State-Society-and-Governance-in-Mework-Towards-a-secure-and-sustainable-SI-Address-at-ANU-by-SC-Graeme-Wilson.pdf?COLLCC=299333603&>.

³⁸⁵ Interviewee AG5, Interview by author. Personal interview. Canberra, August 29, 2016.

the evaluation of aid program and its effectiveness.³⁸⁶ As mentioned above, PIFS' annual leader's meeting is also a significant place to evaluate the development progress for further decision making on its strategy. PIFS leaders meeting refers the People's Survey for measuring Solomon Islander's views toward aid programs.³⁸⁷ The People's Survey is an independent annual survey which focuses on insight into the opinions of Solomon Islanders across the country to understand the real voices and evaluation of locals toward aid programs.³⁸⁸ Moreover, concurrent to this, the ODE undertook an evaluation program to assess the relevance and effectiveness of law and justice assistance and draw up recommendations regarding law and justice assistance not only for RAMSI but also for Australian aid more generally.³⁸⁹

Prior to the transition in 2013, the initial phase of RAMSI for post-conflict armed intervention was going to be settled. Thus the partnership framework was prepared in 2009, and comprehensive assessment for project performance had been implemented for two years since then. This two years assessment had become a springboard of revising components as well as development strategy of RAMSI. RAMSI decided to move some part of development assistance into the Australian bilateral aid under the High Commissioner.³⁹⁰ RAMSI also decided to transition most of the components, which is except for police, under the law and justice pillar into the bilateral programs.

In sum, the process of designing a comprehensive framework, as well as a multifaceted evaluation, supported a range of dimensions in the transitional phase of RAMSI. Since RAMSI approached to failed

³⁸⁶ Australian Government, Department of Foreign Affairs and Trade, *Aid Program Performance Reports* (Canberra, Australia: The Australian Government, September 1, 2016). Accessed April 20, 2018.
<http://dfat.gov.au/about-us/publications/Pages/aid-program-performance-reports.aspx>.

³⁸⁷ "People's Survey." Office of the Special Coordinator, Regional Assistance Mission to Solomon Islands. Accessed April 20, 2018. <http://www.ramsi.org/media/peoples-survey/>.

³⁸⁸ Ibid.

³⁸⁹ Australian Government, AusAID, Office of Development Effectiveness. *Solomon Islands Case Study Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Government, 2012). Accessed April 20, 2018.

<http://dfat.gov.au/aid/how-we-measure-performance/ode/Documents/lawjustice-solomon-islands-case-study.pdf>.
9-12.

³⁹⁰ Interviewee AG5, Interview by author. Personal interview. Canberra, August 29, 2016.

society based on complicated project components, these “guideposts” of aid direction contributed to making coherence of development pathways in Solomon Islands.

4.4 Conclusion

RAMSI often attracts attention as a regional collective intervention in failed states. Regarding the access to justice context, people’s situation has been influenced by the social situation. Before independence, the outcome of the dispute resolution depended on the place and leader, and it could not guarantee the quality and fairness of the decision. However, people at least could access to the dispute resolution system. The independence and related social changes made worse the situation of access to justice among people. Since the middle stage of RAMSI, gradually the Australian government was focusing on the right. Throughout the pathways of law and justice assistance in Solomon Islands, the donors were changing and adjusting the project targets, components, and processes based on the demand for aid as well as the level of development of Solomon Islands. This whole process seems a trial-and-error method for the donor.

Meanwhile, this chapter also considered how Australia has got engaged in the series of aid programs in Solomon Islands as a leading policy designer. The Tension triggered to reconsider the Australian strategy for regional security and a concept of intervention in a post-conflict state. The progression of paradigm shift through the process of intervention and peacekeeping operation of RAMSI has also opened up the discussion on the further way of approaching for new era’s threat and global issues on peace and security.

In order to evaluate Australian aid project as an aid provider, subsequence chapter of this thesis will consider the further Australian way of development assistance and its strengthening and weakness in the context of designing law and justice assistance project as a donor.

Chapter V: Thinking the Australian Way: Stimulation by Projects in Solomon Islands

If you can, imagine a country where hospitals, schools and medical clinics have simply ceased to function for a lack of funds, imagine a nation where public servants go weeks without pay – not surprisingly, some turn up to work, but many do not – imagine roads that are literally falling apart, public thoroughfares that are the preserve of drunks and thieves. Then, to complete the picture, add to the mix guns, ethnic tensions, rogue police, corrupt politicians and business people, and armed criminals.

This is the nation that greeted RAMSI in the early hours of 24 July last year when the first elements of an Australian-led, Pacific peacemaking and nation building operation began arriving in Solomon Islands.

(Speech by Nick Warner, RAMSI Special Coordinator to National Security Conference, 23 March 2004)

5.1 Introduction

The incident of 2003 in Solomon Islands made Australia reconsidering aid policy critically. Since then, the Australian government had got into the long engagement of law and justice assistance for their neighboring islands states, Solomon Islands. Since Australia was a leading donor of RAMSI, inevitably its power of influence on RAMSI's implementation was huge. On the other hand, the experience of RAMSI and the transition process reflect on the Australian aid policy, and the Australia's involvement to RAMSI have made Australia as one of the top donor of law and justice assistance in the world.³⁹¹

This chapter analyzes project impact for a donor side based on Australia's involvement in RAMSI. This chapter also considers a relationship between implementation process and aid effectiveness, based on three key viewpoints which are law and justice assistance, fragile state as a recipient, and project management method. In order to draw implications for project design of law and justice assistance for donors, this chapter also aims to clarify the progression of the Australian experience and crystallize

³⁹¹ Australian Government, Department of Foreign Affairs and Trade. *Building on Local Strengths: Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Agency for International Development (AusAID), 2012).8.

RAMSI's impact in the Australian aid history. This chapter also considers to what extent the Australian approach to law and justice assistance were appropriate in accordance with the social context of Solomon Islands, including geographical features as a SIDS.

Since Australia engaged in long-term aid programs including RAMSI, the Australian government climaxed critical phase for transition, in accordance with the development process. Even if the transition of programs was happening gradually, the donors need to prepare and adjust the program direction in accordance with each milestone for the transition. These milestones, for donors, could be both a risk for project coherence and an opportunity to change the aid strategy. This chapter takes particular note of transition processes to consider how the Australian government overcame the critical phase of transition in the long-term process.

Law and justice pillar under RAMSI has been separated into two. Police component has remained under RAMSI, and other components have transitioned to the bilateral project, SIJP in 2013. The transition from RAMSI to SIJP has brought significant changes to the structure and focus of overall law and justice assistance and Canberra's approach to its commitment to Honiara. The law and justice pillar under RAMSI has been incorporated into SIJP under the Australian High Commissioner, while personnel, budgets, and implementation methods have also been separated from the former system.³⁹² A critical issue in this process has been to ensure the coherence of law and justice assistance for Solomon Islands, especially the readjustment of project targets in order to sustain the quality of outcomes. To this end, the Australian government implemented diverse and significant evaluation projects to review the project focus on law and justice assistance.³⁹³ The Australian government considered the relationship between

³⁹² Interviewee AG4, Interview by author. Personal interview. Canberra, August 23, 2016.; Interviewee AG5, Interview by author. Personal interview. Canberra, August 29, 2016.

³⁹³ Australian Government, AusAID, Office of Development Effectiveness. *Solomon Islands Case Study Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Government, 2012). Accessed April 20, 2018.

<http://dfat.gov.au/aid/how-we-measure-performance/ode/Documents/lawjustice-solomon-islands-case-study.pdf>.
9-13.; Australian Government, Department of Foreign Affairs and Trade, *Delivery Strategy Solomon Islands Justice Program (SIJP) July 2013 to June 2017* (Canberra, Australia: Australian Government, 2013). Accessed

Australia's development assistance policy and the series of projects in this process.

As explained in Chapter Two, the link between policy and project targets is a critical point for transition management. Implementers of the transition process should consider how the project targets maintain consistency and coherence of conceptualization, policy, and components. Jan-Peter Vob et al., Florian Kern, and Michael Howlett describe the issue as a problem of fit which means how the process of transition management fits the policy context for achieving sustainable development.³⁹⁴ In development assistance projects, the social context and demands of a recipient country, and overall development assistance policy are also deeply related to project design. In the transition process of development assistance, therefore, consistency between (1) project component and policy, (2) project component and project component, and (3) project component and social context are key for sustainable development and for realizing successful outcomes. This chapter applies the perspective of consistency to Australian experiences of project transition to consider an appropriate method to overcome the problem of fit for establishing project coherence and consistency, through drawing lessons learned from the Australian experiences.

The second section and third section are followed by an introduction to the evaluation of implementation process of law and justice assistance in Solomon Islands by Australia. Section four highlights the approach toward Solomon Islands as a fragile state and consideration of social contexts in the project designing process. Section five focuses on the case study of project transition in long-term aid program as “a risk”. This section also focuses on predictable event and action for project implementation, not uncertain risk in a recipient society. Then section six draws lessons learned from the experiences of the

April 20, 2018.

<http://dfat.gov.au/about-us/publications/Documents/solomon-islands-justice-program-delivery-strategy-2013-17.pdf>. 63-65.

³⁹⁴ Vob, Jan-Peter, Adrian Smith, and John Grin. "Designing Long-term Policy: Rethinking Transition Management." *Policy Science* 42, no. 4 (November 2009): 287-388.; Kern, Florian, and Michael Howlett. "Implementing Transition Management as Policy Reforms: A Case Study of the Dutch Energy Sector." *Policy Science* 42, no. 4 (November 2009): 396-397.

series of law and justice assistance for aid donors as a conclusion.

5.2 Experiences of Law and Justice Assistance in Solomon Islands for Australia: Unique Dimensions of RAMSI

The Australian way of interaction or engagement in RAMSI itself crystallized the features of RAMSI's law and justice assistance. This section highlights the substantive impact of the Australian method of law and justice assistance, in order to draw lessons from the Australian approach of development assistance for the world law and justice assistance.

After the deployment of RAMSI, social conditions and order in Solomon Islands drastically improved. Especially at the post-conflict stage in the early phase of RAMSI, RAMSI support made the situation in Solomon Islands stabilized and restored the function of law and order restored rapidly.³⁹⁵ RAMSI also became the largest body of development assistance to the Solomon Islands, thereby increasing its impact on the recipient society. RAMSI is often described as “unique”, regarding program scale, integrated state-building operations, intervention in a regional crisis, and as a mission outside the United Nations (UN) umbrella. This section identifies three unique features of the mission from the perspective of law and justice assistance.

First, as a law and justice assistance project, RAMSI's project scale was huge. During 2007-2011, the Australian ODA budget for law and justice assistance to the Solomon Islands accounted for 40.1% (AU\$561.2 million) of total law and justice assistance funding under Australian ODA.³⁹⁶ This aid package

³⁹⁵ Australian Government, AusAID, Office of Development Effectiveness. *Solomon Islands Case Study Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Government, 2012). Accessed April 20, 2018.

<http://dfat.gov.au/aid/how-we-measure-performance/ode/Documents/lawjustice-solomon-islands-case-study.pdf>. 21-22.

³⁹⁶ Australian Government, Department of Foreign Affairs and Trade. *Building on Local Strengths: Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Agency for International Development (AusAID), 2012). 7.

far exceeded the amount of law and justice assistance delivered to other recipients of Australian aid.³⁹⁷

Besides budget expenditure, the number of stakeholders was also large-scale and diverse. RAMSI was a collective regional action directed at Solomon Islands and engaged many stakeholders from across Oceania, including Australia, New Zealand, Fiji and Tonga, and consisted of a collaboration between government entities, the private sector, and NGOs. Additionally, the donors integrated law and justice assistance projects into RAMSI's law and justice section in Solomon Islands. Besides this RAMSI's implementation, bilateral assistance projects were also implemented in various other sectors, such as education and infrastructure.³⁹⁸ As a result of diverse donor's engagement, the project structure for implementation was quite complicated.

Beyond the management of all activities under each of the pillars of RAMSI, the role of the special coordinator from Australia also extended to liaison to coordinate overall development assistance strategy with other stakeholders and the Australian High Commissioner. While the special coordinator role ostensibly appeared to be a symbolic position,³⁹⁹ it, in fact, played a central role in substantially unifying aid policy in Solomon Islands under the umbrella of RAMSI. The implementation of the law and justice section was also led by the section director and a team of coordinators from the Australian government, in turn cooperating with the special coordinator.

Secondly, the law and justice assistance strategy of RAMSI does not place the concept of human rights at the center of its mandate. It might be related to the fact that RAMSI is a mission outside the UN umbrella, but the process of implementation of RAMSI is not based on the UN peacekeeping core concept, which has always been center stage since the 1990s and put human rights to the center of the mission.⁴⁰⁰

³⁹⁷ For reference, according to JICA (Japan International Cooperation Agency), Japan's Annual Budget for Law and Justice in 2015 is approximately \$AU45.3 million. (at the Annual Meeting on Japanese Legal Technical Assistance on 23 January, the Ministry of Justice, International Cooperation Department). In addition, according to OECD data, Australian's ODA for government and civil society during 2003-2013 is was US\$6376.58 million, compare to US\$3974.2 million for Japanese ODA in the same sector.

³⁹⁸ Interviewee AE3, Interview by author. Personal interview. Canberra, September 15, 2016.

³⁹⁹ Interviewee AG4, Interview by author. Personal interview. Canberra, August 23, 2016.

⁴⁰⁰ Marega Castellan, Patrick. *Human Rights and Peace Keeping* (The United States of America: The United

The fact is also related to the issue of the main actor, who should take responsibility of aid program. At the RAMSI, the fact justified that the SIG officially request the mission to the PIF and the mission was implemented under the auspices of the Biketawa Declaration which allows intervention to the member states. However, there is also the negative opinion regarding the possible human rights violation caused by RAMSI. According to Kirsty Ruddock, for example, RAMSI's assistance for prison system caused depreciating the prisoner's right and created marginalized group among people.⁴⁰¹ It is quite difficult to prove the causal association between the actual situations and the mandate, and all aid program and peacekeeping operation do not need to follow the UN mandate. Donors should always appreciate demanding and will of the recipient country for aid primarily. On the other hand, this situation raised another significant question for donors that how donors should take responsibility for the consequence of the aid program.

Lastly, RAMSI was characterized by a comprehensive approach towards the Solomon Islands judicial system, covering a broad target of law and justice assistance, as part of the package of development assistance. Law and justice assistance under RAMSI had a different character to general assistance, functioning broadly as a substitute reform of the local justice system.

Under RAMSI, the law and justice section encompassed strengthening police, prisons, and the justice system, including courts and dispute resolution systems.⁴⁰² The Australian government also conducted small projects for law and justice in parallel, such as capacity building for the Truth and Reconciliation Commission Community Officers, and a joint research project with the World Bank, "Justice for the Poor".

⁴⁰³ Such a comprehensive approach applied to a single country for a decade has both risks and benefits.

Nations Peace Operations Training Institute, 2012). 9-27.

⁴⁰¹ Ruddock, Kirsty. "Marginalisation of some Solomon Islanders by the Australian intervention." *Australian Journal of Human Rights*, 2nd ser., 12, no. 1 (2007): 141-146.

⁴⁰² Regional Assistance Mission in Solomon Islands. Accessed May 12, 2018. <http://www.ramsi.org/>.

⁴⁰³ Australian Government, AusAID, Office of Development Effectiveness. *Solomon Islands Case Study Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Government, 2012). Accessed April 20, 2018.

Positively, the development assistance project package directed towards law and justice was implemented effectively under a unified aid strategy, without inter-donor conflict.⁴⁰⁴ Since law and justice assistance requires a long-term commitment to ensuring the functioning of new legislative and justice systems in an aid recipient society, RAMSI and Australia's contribution to the judicial capacity building in Solomon Islands from almost zero capacity following the crisis facilitated a rapid recovery. On the other hand, intervention always carries the substantial risk of negatively impacting the recipient society. The Australian policy avoided the tag of neo-colonialism, instead of establishing a model of the cooperative intervention of development assistance. However, in terms of law and justice assistance, donors should not forget the failure of LDMs in the 1960s which focused on the legal transplantation of the Western model of a modern legal system based on the notion of legal formalism.⁴⁰⁵ Therefore dialogue with local stakeholders and aid recipients about how to implement the project is crucial.

5.3 Pathways to New Approach of Law and Justice Assistance in Post-Conflict Society

In 2000, as mentioned above, the Biketawa Declaration was agreed to at the 31st Leader's Summit of the PIF, representing a new framework for coordinating responses to regional crises. As a result, regional member states began to participate in regional peacekeeping and stabilization operations, including military and police forces.⁴⁰⁶ Evidently, the significance of regional security and stability has

<http://dfat.gov.au/aid/how-we-measure-performance/ode/Documents/lawjustice-solomon-islands-case-study.pdf>. 20-27.; Regional Assistance Mission in Solomon Islands. Accessed May 12, 2018. <http://www.ramsi.org/>.

⁴⁰⁴ Some south-east Asian countries such as Vietnam, Cambodia and Myanmar have a long history of accepting development assistance for rule of law and justice system, and they receive assistance projects from a diverse range of agencies, both bilateral and multilateral. For example, in Cambodia, UNDP, France, Japan, United States and China are currently implementing law and justice assistance.

⁴⁰⁵ Trubek, David M. "The "Rule of Law" in Development Assistance: Past, Present, and Future." In *The Role of Law in Development Past, Present, and Future*, edited by Yoshiharu Matsuura (Japan: Nagoya University, 2005). 1-2.

⁴⁰⁶ "Fulltext of Biketawa Declaration". Accessed April 20, 2018.

<http://www.forumsec.org/resources/uploads/attachments/documents/Biketawa Declaration, 28 October>

become intertwined with aid strategy on Australian law and justice assistance. Reflecting this background, law, and justice assistance accounts for a significant part of Australian ODA to this region.

Although Solomon Islands after the Tension was considered as a failed state, the main objective of aid was security, rather than humanitarian aid. In fact, the prior objective of the intervention was to build up long-term security, stability, and prosperity in Solomon Islands. Australia's contribution to RAMSI achieved for restoring law and order right after the Tension quite successfully. The Senate Standing Committee on Foreign Affairs and Trade described RAMSI as a successful case because of the well-established partnership between the Australian Defense Force and local stakeholders. Based on this case experience, the Senate report stated the importance of effective partnership with local stakeholders for the inquiry on the peacekeeping operation. The report mentioned that "Working effectively with the host country and partner countries in peacekeeping operations means having personnel able to cooperate and coordinate their activities with a wide range of people in often very difficult circumstances."⁴⁰⁷ However, the ODE's comprehensive evaluation project of Australian law and justice assistance in Solomon Islands reported that "law and justice support initiatives have not maintained high levels of effectiveness and value for money as the context evolved."⁴⁰⁸

In case of Solomon Islands, due to the main objective of institution building, the main focus of law and justice assistance under RAMSI was to the central justice system, and RAMSI tried to strengthen the formal justice system. At the late stage of RAMSI, the program focus was shifting to mature development phase. However, still, local court played a major role as an entry point of dispute resolution for local

20002.pdf.

⁴⁰⁷ The Senate, Commonwealth of Australia. *Standing Committee on Foreign Affairs, Defence and Trade: Australia's involvement in peacekeeping operations*, Senate Committee Report. (Canberra, Australia: The Senate Printing Unit, Parliament House, 2008). 247-254.

⁴⁰⁸ Australian Government, AusAID, Office of Development Effectiveness. *Solomon Islands Case Study Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Government, 2012). Accessed April 20, 2018.

<http://dfat.gov.au/aid/how-we-measure-performance/ode/Documents/lawjustice-solomon-islands-case-study.pdf>.

people in pluralistic legal society. Australian aid practitioners faced a critical point to reconsider the project focus and decided to shift from a restorative approach in peacekeeping operations to enhance the local justice system.⁴⁰⁹ This focus change from the central to the local justice system brought critical problems for aid practitioners in the process of designing law and justice assistance projects. One is that intervention of government become a potential risk to lead further dispute, poverty, and disorder, due to the tension of the central authority. The other is that project implementation needs more cost, due to the geographical situation.⁴¹⁰ For aid practitioners, to maintain the balance between the central target and local or provincial target become a huge dilemma. Under the pluralistic legal society, the central justice cannot guarantee everyone's justice and even become an obstacle for the objective of institution building. However, the method which people really utilize and trust in their society is important. Since the point of cognition, the character of RAMSI in law and justice assistance shifted from the central focused under the peacekeeping operation to more development aid for local people. In fact, the Justice for the Poor (J4P) program, and the following Australian bilateral program, the SIJP paid more attention to the local justice system.

The establishing concept of the cooperative intervention of development assistance is different from one-size fits all and a tailor-made style, more likely become a third way of approach. Australian approach of RAMSI and SIJP did not bring formulated model to the recipient country. Australia rather tried to design a proper model based on the recipient's demand. However, it was not a tailor-made, because the donor had a certain amount of force toward the recipient. In fact, the ODE team evaluated that there is a tendency for Australian programs to have objectives that are too general in nature and not well tailored to each country's context.⁴¹¹

⁴⁰⁹ Interviewee AG5, Interview by author. Personal interview. Canberra, August 29, 2016.

⁴¹⁰ Ibid.

⁴¹¹ Australian Government, AusAID, Office of Development Effectiveness. *Solomon Islands Case Study Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Government, 2012). Accessed April 20, 2018.

<http://dfat.gov.au/aid/how-we-measure-performance/ode/Documents/lawjustice-solomon-islands-case-study.pdf>.

47.

The approach of cooperative intervention, as well as the force of a donor, can work effectively in failed states to supplement the recipient's lack of capacity for state building. In this context, this approach is applicable for fragile states including post-conflict states. However, this approach also becomes definitive. Since a donor has a force to a recipient country under this approach, a donor should interpret the implementation methodology carefully for other major recipients of law and justice assistance, such as transitional regime states and newly independent states.

5.4 Australian Approach to Fragility of the Target State

In a development assistance project, not only the situation of the recipient but also project implementer's working environment may influence the project result in either direct or indirect way. Thus a condition of donor become a critical factor for the project in a fragile state. In fact, during the RAMSI period, Australia faced the problem of establishing a sustainable legal system, due to the geographical character of Solomon Islands as SIDS.⁴¹²

As mentioned in the previous chapter, a few people engaged in the whole process of RAMSI, and most of the staffs who are assigned from Australia were rotated every two or three years. This structural issue came from donor's convenience for project implementation. However, such a condition also influenced on the aid effectiveness and cost, due to the lack of knowledge of Solomon Islands.

Project practitioners of DFAT recognized the significance of local and traditional context of the justice system as a project target. The evaluation paper by the ODE in 2012 mentioned that Australia made efforts for enhancing a meaningful partnership with civil society actors.⁴¹³ Mid-term report of SIJP in 2015 also touched upon the significance of partnership with a local partner, and the issue has reflected on

⁴¹² Australian Government, Department of Foreign Affairs and Trade. *Building on Local Strengths: Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Agency for International Development (AusAID), 2012). 41-43.

⁴¹³ Ibid., 17-18.

suggestions as for a further program.⁴¹⁴ This situation shows the continuous challenges to fill in the gap between common law system and indigenous system, and also between central and local justice system which have been built on the archipelago.⁴¹⁵

However, there are no tangible achievements in the context of enhancing local justice system. In other words, Australia's suggestions and issues have been just suggestions and never been implemented. There are local partnerships. However they also include many shallow relationships with local stakeholders.⁴¹⁶ Frequent staff rotation of law and justice assistance practitioners spurred on the lack of understanding of the local context in project designing process. After the AusAID merger in 2013, the staff rotation within the institutions became more frequent, and many of the professional staff were rotating every two or three years. During the AusAID period, the professional staff of each target region and country were trained well. However, anchoring of professional knowledge and understanding regarding each local context of target countries become harder since 2013.⁴¹⁷

This donor's structure also influenced on oversight of vulnerabilities as SIDS in Solomon Islands. Donors did not consider enough regarding an approach for the social fragility of SIDS as a potential risk factor in the process of project design. Donors also lacked consideration regarding an impact on the right of access to justice. The lacking views on social fragility based on forward-looking viewpoints in judicial system impacted negatively on aid effectiveness. However, this result was avoidable if the structure and staff handovers worked properly. Thus, mature local experiences of aid project by Australia did not support aid effectiveness. The structure of implementers under both RAMSI and SIJP was not a recipient friendly style. Most likely, frequent rotation may lead further cost and risks by additional taking over, staff training,

⁴¹⁴ Kelly, Linda, Daniel Woods, and Ali Tuhanuku. *The Mid-term Review of the Solomon Islands Justice Program* (Canberra, Australia: The Australian Government, August 2015). Accessed April 20, 2018. <http://dfat.gov.au/about-us/publications/Documents/solomon-islands-justice-program-mid-term-review-2015-main-resp.pdf>. 24-33.

⁴¹⁵ Interviewee AG2 and AG3, Interview by author. Personal interview. Canberra, August 25, 2016.

⁴¹⁶ Interviewee AG7, Interview by author. Personal interview. Canberra, September 15, 2016.

⁴¹⁷ Ibid.

a misreading of context, and time. In sum, in light of consideration of fragility of the target state, the Australian approach was weak for achieving aid effectiveness.

5.5 Australian Way of Project Management in Law and Justice Assistance: Transitional Process

Since RAMSI was a long-term and comprehensive commitment toward Solomon Islands, Australia had to take diverse risks in the project implementation process of law and justice assistance. Especially, Australia was required to manage a series of projects and to ensure coherence according to a level of development in a post-conflict situation. Also as discussed in Chapter Four, law and justice assistance in Solomon Islands underwent a critical transition in 2013.⁴¹⁸ Therefore, Australia inevitably faced a risk as huge project transition in the implementation process.

Law and justice pillar under RAMSI was separated into two. Police component remained in RAMSI after 2013, and other components transitioned to bilateral aid program. According to Tim Vistarini, RAMSI Law and Justice Program Director, RAMSI commenced with the aim of restoring law and order led by donors, but by the later stage of the mission, the main objective shifted to focus more on self-reliance of Solomon Islands.⁴¹⁹ The change of the main target between the two, from intervention to self-reliance, posed new challenges and changed the character of aid. Thus, as RAMSI moved towards a more capacity building-focused approach, the Australian government responded by designing the bilateral program as a follow-up.

At the macro level of project transition, the “fit” between project components and the transition of Australian aid policy should be critical. In this case, the fundamental philosophy of Australian law and

⁴¹⁸ Australian Government, Department of Foreign Affairs and Trade, *Delivery Strategy Solomon Islands Justice Program (SIJP) July 2013 to June 2017* (Canberra, Australia: Australian Government, 2013). Accessed April 20, 2018.

<http://dfat.gov.au/about-us/publications/Documents/solomon-islands-justice-program-delivery-strategy-2013-17.pdf>. 1-25.

⁴¹⁹ Ibid.

justice assistance, and the mandate of RAMSI become significant to transition and make consistency in the process. The restoration of law and order in Solomon Islands was a major objective of RAMSI and this overall goal, as well as the mandate of the mission, was well-implemented and successfully transferred to the succeeding SIJP. In particular, the development assistance component of RAMSI was designed within the mission's initial mandate and the RAMSI treaty, which covers both civil order and the economy, even though the project context subsequently transitioned to a development phase, and did not expand RAMSI's scope.⁴²⁰ During the design phase of the SIJP, the donors clarified the SIG's request for development assistance in a working paper of RAMSI's law and justice assistance project, which in turn created baselines for SIJP's subsequent project components.⁴²¹ Project designers in the transition process, therefore, based their approach on the SIG's requests and the prior experiences of RAMSI. Through this process, in 2013-14 they eventually clarified the real needs for development from the perspective of the aid recipients. This effort successfully ensured consistency between the two projects. The substantial presence of Australia in RAMSI has also contributed to the implementation and the fit of the Australian philosophy of law and justice assistance. Development assistance regimes also changed at the meso-level during 2013. The project structure is no longer consistent, as SIJP is now a bilateral project. As such, project components were subsequently adjusted at the micro level.

In the structural change at the meso level, major activities of three pillars under RAMSI, except the police component, integrated into the SIJP, supervised by the Australian High Commissioner. At the field level, there had been two major independent bodies for implementation, which were RAMSI with a special coordinator, and the SIJP with the Australian High Commissioner. Since SIJP had commenced

⁴²⁰ "Framework for Strengthened Assistance to Solomon Islands: Proposed Scope and Requirements." SI Government's Policy Statement on the offer by the Government of Australia for strengthened assistance to Solomon Islands, June 5, 2008.

⁴²¹ Australian Government, Department of Foreign Affairs and Trade, *Delivery Strategy Solomon Islands Justice Program (SIJP) July 2013 to June 2017* (Canberra, Australia: Australian Government, 2013). Accessed April 20, 2018.

<http://dfat.gov.au/about-us/publications/Documents/solomon-islands-justice-program-delivery-strategy-2013-17.pdf>. 41-46.

under the Australian High Commissioner, RAMSI and SIJP had become two independent bodies in terms of project implementation. This structural change also brought the major change of project implementation, such as report-chain, budgeting, decision-making process, and member structure. Through this process, the Australian aid structure in Solomon Islands had been unusual since two major bodies existed for aid practitioners. According to aid practitioners at DFAT, they had faced some difficulties in project implementation following the transition.⁴²² This situation confused the chain of reporting and decision-making process in practice. Based on these facts, thus, the situation caused by transition made the potential risks for creating implementation costs and burdens among the project team in the transition process of the meso level.

On the other hand, project components at the micro level had played a complementary role in the transition process. Beginning in Phase 3 of RAMSI, the Australian government conducted small breakdown projects based on the demands and developmental situation. The design process at the micro level considered the fit of project components and outcomes to local conditions. Therefore, these breakdown components under RAMSI were able to facilitate the clear definition of the separate roles for each of the two new aid structures.

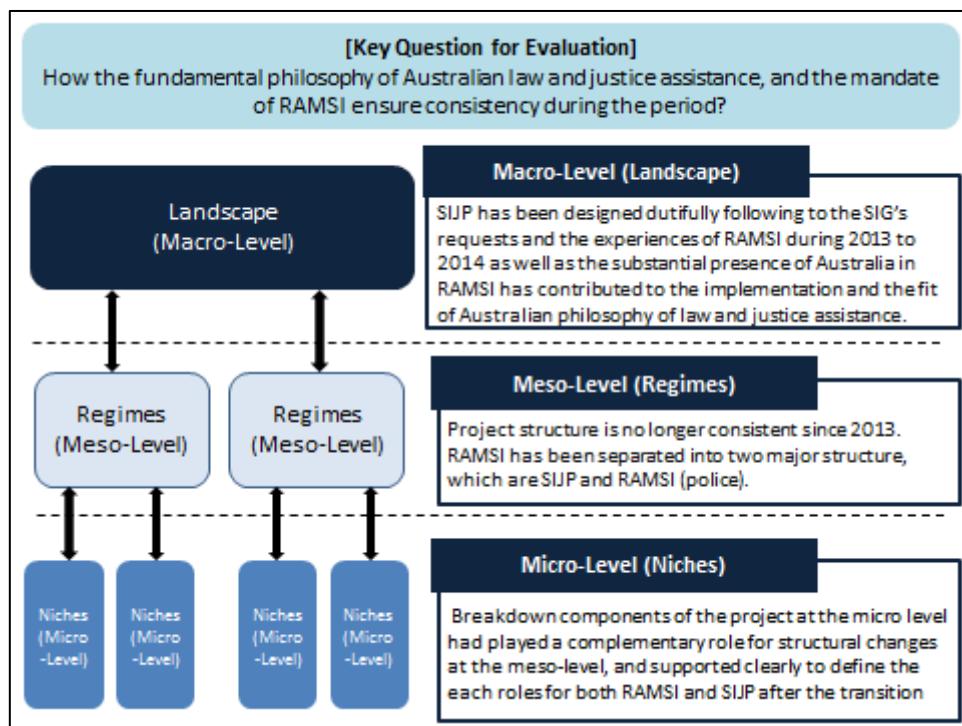
Figure 19 provides a summary of the framework of transition management applied to law and justice assistance in Solomon Islands. These observations can be brought together to generate a simple model of considering the problem of fit in the transition process. This Australian case seems complementary with regime changes based on the coherency of the macro and micro levels to make the whole project transition consistent.

DFAT and RAMSI also conducted diverse evaluation projects both internally and externally from early on, to clarify the demands and impact of the project in Solomon Islands at each stage. The results of these evaluations reflect on projects at the micro level. This transition-aware cognizance of local conditions also contributes to avoiding potential risks. This series of evaluation projects arguably

⁴²² Interviewee AG2 and AG3, Interview by author. Personal interview. Canberra, August 25, 2016.

constituted a consideration of local conditions of the recipient country. Since justice systems are rooted in society, project implementers should understand how the justice system functions and each breakdown component of a project must be evaluated for its suitability to the transition process at the micro level. In the Australian case, the local conditions in Solomon Islands were a critical trigger for transition management. The integration was a difficult task for donors, and donors should reflect the local context, traditions, social change and requests on the project components appropriately.

(Figure 19: Evaluation of project transition in the Australian case from a multi-level perspective)



(Source: Developed by author)

At some points in the project, the complex and pluralist justice system in Solomon Islands became an obstacle to understanding their society and project effectiveness, and this situation increased the difficulty of project implementation.⁴²³ Some evaluation reports pointed out that Australia should make

⁴²³ Kelly, Linda, Daniel Woods, and Ali Tuhanuku. *The Mid-term Review of the Solomon Islands Justice Program* (Canberra, Australia: The Australian Government, August 2015). Accessed April 20, 2018.

greater efforts towards consideration of social contexts and the local justice systems, and these issues have transitioned as unsolved issues in later phases.⁴²⁴ Therefore, aid effectiveness is still a critical challenge for the Australian law and justice assistance in Solomon Islands.

In sum, the Australian project has been designed and implemented with a conscious awareness of project transition at each phase to create a functioning law and justice system in the recipient country. The Australian project implementers have clearly been aware that social change wrought by development assistance requires project adjustment and evaluation of detailed components. Therefore, they have taken aim at the project transition period as a critical milestone, and evaluated and adjusted the framework of the project in advance. On the one hand, the Australian case study demonstrates a smooth transition at the policy level. On the other hand, however, donors should consider input from project implementers in the field regarding project transition more at the lower level of management.

5.6 Lessons Learned from the Australian Experience: From Intervention to Independence

Australia experienced to conduct a range of aid programs in Solomon Islands, which lead unique lessons and policy changes of foreign aid. The Australian case of project management and transition management in the development assistance field in a post-conflict state reflects the complexities of project objectives, as well as the characteristics of law and justice assistance.

Throughout the process of transition, the most critical source of potential risks is how donors understand and reflect local conditions in project design. In this case, there was a measure of uncertainty in

<http://dfat.gov.au/about-us/publications/Documents/solomon-islands-justice-program-mid-term-review-2015-man-resp.pdf>. 9-21.

⁴²⁴ Ibid.; Australian Government, AusAID, Office of Development Effectiveness. *Solomon Islands Case Study Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Government, 2012). Accessed April 20, 2018.

<http://dfat.gov.au/aid/how-we-measure-performance/ode/Documents/lawjustice-solomon-islands-case-study.pdf>. 77-78.

2013. Regardless, this case seems to have achieved a successful and seamless transition from RAMSI to the bilateral project, SIJP. As Chapter Two discussed, proper risk management is significant and essential in project implementation processes in fragile states like Solomon Islands, and the proper risk management can expose potential risks from general project implementation process and also from a situation based on lack of capacity from state fragility. The Australian case successfully overcame and avoided potential risks in the transition process. In the process, Australia predicted and considered “an unforeseen event or activity” at the critical stage of the project. This section points out two critical points and makes suggestions, drawing from the Australian case.

Firstly, awareness of transition has worked well in the long-term project process and transition. At the current case, the donors set goals in niches along a time line and decided on its project focus with a consideration of reasonability of each stage of development.⁴²⁵ Similarly, a long-term perspective of project implementation through a series of projects stand on sustainable stability in Solomon Islands as an overall goal. Donors also conducted working groups to anticipate the future situation in Solomon Islands.⁴²⁶ This work may improve predictability, and such an approach is significant for the effectiveness of law and justice assistance.

The second point is that the Australian case successfully secured the flexibility of project implementation in transition. Flexibility in a project is described as responsiveness to uncertainty, ambiguity, managing risk from threats and opportunities, project context, turbulence, and unpredictability.

⁴²⁵ Forum Ministerial Standing Committee, Australia. *Partnership Framework Between Solomon Islands Government and Regional Assistance Mission to Solomon Islands* (Canberra, Australia: April 2009). Accessed April 20, 2018.

http://www.operationspaix.net/DATA/DOCUMENT/32~v~Cadre_de_partenariat_entre_le_gouvernement_des_Iles_Salomon_et_la_RAMSI.pdf. 13-47.

⁴²⁶ Australian Government, Department of Foreign Affairs and Trade, *Delivery Strategy Solomon Islands Justice Program (SIJP) July 2013 to June 2017* (Canberra, Australia: Australian Government, 2013). Accessed April 20, 2018.

<http://dfat.gov.au/about-us/publications/Documents/solomon-islands-justice-program-delivery-strategy-2013-17.pdf>. 41-45.

From this point of view, flexibility is a fundamental component of project risk management.⁴²⁷ In the process of project transition, the concept of flexibility, which maintains some space to adjust to contingencies, is significant for the avoidance of potential risks. In the Australian case, RAMSI began after a conflict, and as mentioned above, Solomon Islands lacked sufficient capacity to raise proper and specific requests for development, even at the later stage of the mission. As a result of lacking enough capacity, the series of projects were implemented based on dialogue between donors and recipients. Thereby this situation of “lack of capacity” spontaneously provided flexibility in project implementation and the transition process to donors. There was space for adjustment of the project during the transition process, and this situation contributed to the consistency of project goals and components. Moreover, this flexibility could contribute to the complexity of Solomon Islands’ social context and local conditions, and the information deficit in the transition process. This situation illustrates a method of manipulating the situation to create flexibility through project management methods.

As for creating flexibility, diverse stakeholders also influenced the project structure for implementation. As mentioned above, RAMSI was a regional collective action consisting of multi-national donors. SIJP also involved in diverse stakeholders from local and central entities related to the law and justice system in Solomon Islands.⁴²⁸ Such diversity allowed a broad understanding of the social context of the recipient country, facilitating the implementation of a comprehensive approach towards the law and justice system. However, feedback from diverse stakeholders could influence the functions of flexibility. To take advantage of diversity, a proper method of project management and risk management is

⁴²⁷ Castillo, Vanessa M., and Freddy L. Salgado. *The SUITED Framework for International Development Project Management* (Sweden: Umea University, 2015). 33-34.; Caron, Franco. *Managing the Continuum: Certainty, Uncertainty, Unpredictability in Large Engineering Projects* (Germany: SpringerBriefs, 2013). 35-37.

⁴²⁸ Kelly, Linda, Daniel Woods, and Ali Tuhanuku. *The Mid-term Review of the Solomon Islands Justice Program* (Canberra, Australia: The Australian Government, August 2015). Accessed April 20, 2018. <http://dfat.gov.au/about-us/publications/Documents/solomon-islands-justice-program-mid-term-review-2015-main-resp.pdf>. 49-54.

essential.⁴²⁹ Therefore, in the transitional phase, some space for donors is necessary to consider their relationship with stakeholders along with the time line in each phase and plan.

5.7 Conclusion

This chapter analyzes the Australian way of engagement in RAMSI and SIJP as a donor, to examine aid effectiveness and adequacy of the Australian approach toward Solomon Islands, from the perspectives of three key concepts of this thesis. The features of the Australian approach colored the uniqueness of the RAMSI and the law and justice assistance under the mission. The way of engagement for the Australian government offered numerous suggestions to reconsider the project implementation method in a huge and complicated program for a post-conflict state.

The series of law and justice assistance projects in Solomon Islands have successfully achieved stability and a seamless transition between projects. Perhaps the most important line of this research is that project transition has been planned and evaluated with forethought. This awareness and proper risk management for future contingencies in the transition stage have been the key to project success. The empirical case study has shown thus the conditions of how to develop law and justice assistance from a donor's perspective and the possibility of managing transitions in the context of a post-conflict state. Nevertheless, achieving project consistency is not an easy task in the transition management process. The managerial task involves tough political struggles about the relative importance of different policy goals as well as the design and implementation of suitable instruments.⁴³⁰ Therefore, transition management efforts are essential to ensure the sustainability and efficiency of development assistance projects. More importantly, donors need to rethink what is real justice for people in a recipient country, and what efforts

⁴²⁹ Castillo, Vanessa M., and Freddy L. Salgado. *The SUITED Framework for International Development Project Management* (Sweden: Umea University, 2015). 35-36.

⁴³⁰ Kern, Florian, and Michael Howlett. "Implementing Transition Management as Policy Reforms: A Case Study of the Dutch Energy Sector." *Policy Science* 42, no. 4 (November 2009): 404-405.

are needed for project management in the transitional process to achieve it.

Chapter VI: Light and Shadow: Another Perspective for the Situation of Access to Justice in Solomon Islands

Since RAMSI arrived at Solomon Islands, everything changed. Some parts seem to be getting better, but many things were getting worse. Access to justice is one of the things which become worse.

(Interviewee AE3, Canberra, 15 September 2016)

6.1 Introduction

One-year before the full withdrawal of RAMSI, in November 2016, the author walked through the city center of Honiara. The market has been vibrant, people have been enjoying their life, and Honiara seems to be filling with peace and security. The Pacific Casino Hotel, which was gutted by the huge riot in 2006,⁴³¹ has been fully renovated and there is the new beautiful building in the town. The current situation has made difficult to feel the Tension was happened on this island, in this city. This is what RAMSI achieved.

After 14 years of deployment, RAMSI officially concluded on 30 June 2017. At the last stage of withdrawal, the situation of Honiara proved surely to achieve that RAMSI restored order and brought peace and stability. However, due to the huge size and diverse components of the project, the evaluation of RAMSI has been mixed. Some research project, including the World Bank “Justice for the Poor” project, evaluated the pillar of law and justice under RAMSI. The project evaluation system of the Australian government has multiple bodies to find out the convincing result of the evaluation. The Office of Development Effectiveness, Department of Foreign Affairs and Trade (DFAT), play a significant role as an independent body for monitoring and evaluation.⁴³² Under the implementation of RAMSI, the Australian

⁴³¹ Tuhanuku, Qila. *Helpem Fren: Rebuilding a Pacific Nation*, DVD. (Australia: 2013).

⁴³² "The Office of Development Effectiveness." Australian Government, Department of Foreign Affairs and Trade. Accessed April 20, 2018.

<http://dfat.gov.au/aid/how-we-measure-performance/ode/pages/the-office-of-development-effectiveness.aspx>.

government implemented diverse and significant evaluation projects to review the project focus on law and justice assistance, which involved local stakeholders and outside organizations such as the World Bank.⁴³³

Development assistance projects always have a high possibility of giving the impact on the society.⁴³⁴ RAMSI has been evaluated from a range of perspectives including not only the donors but also many outside organizations and scholars, and individual viewpoint of evaluation lead different results of the project. Especially since RAMSI covered comprehensive social rebuilding process in the post-conflict era of Solomon Islands, evaluation result also becomes diverse. Such diverse result illustrated the gap between the point of views and the gap between the donor's approach and people's demand for the project. This mixture of negative and positive evaluation result describes the light and shadow of development assistance project, including law and justice assistance under RAMSI and SIJP.

This chapter analyzes law and justice assistance in Solomon Islands from a broader perspective, including the recipient's viewpoints, features of SIDS as geographical conditions and the comprehensive evaluation result of RAMSI and SIJP. This chapter also explores the real situation of current Honiara from the end-user's perspective, regarding the context of access to justice among people based on conditions related to geographical features. The main research question of this chapter is how the policy and the approach of RAMSI and SIJP suited for the context of Solomon Islands. This chapter introduce mixed evaluation result of RAMSI, however, aims not to clarify good and bad points, but the critical problem in project design process. In other words, this chapter considers how aid practitioners could fill in the gap

⁴³³ Australian Government, AusAID, Office of Development Effectiveness. *Solomon Islands Case Study Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Government, 2012). Accessed April 20, 2018.

<http://dfat.gov.au/aid/how-we-measure-performance/ode/Documents/lawjustice-solomon-islands-case-study.pdf>. 20-27.; Australian Government, Department of Foreign Affairs and Trade, *Delivery Strategy Solomon Islands Justice Program (SIJP) July 2013 to June 2017* (Canberra, Australia: Australian Government, 2013). Accessed April 20, 2018.

<http://dfat.gov.au/about-us/publications/Documents/solomon-islands-justice-program-delivery-strategy-2013-17.pdf>. 63-65.

⁴³⁴ Teubner, Gunther. "Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences." *The Modern law Review* 61, no. 1 (January 1998): 11-32.

between a current situation and a project goal effectively, and what are the possible missing elements in project designing process. This chapter also illustrates remaining judicial fragility in the current Solomon Islands, to consider how law and justice assistance caused changes on the justice system and ways of accessing among local people in Honiara.

As primary data, this chapter used interview responses, historical presentations after the Tension and post-conflict period in Solomon Islands, and the author's own personal observations from field work in Honiara during November 2016. This data presents the real situation of justice system both in the city and suburban area of Honiara. This chapter then leads suggestions connected with core elements of accessibility of justice for people which are a number of services, satisfaction, and quality.

In this chapter, I also illustrate how field interviews helped the argument on the mixed evaluation of RAMSI and related projects by the Australian government. The author's personal observation and real voices of people in Honiara suggested how people are feeling about RAMSI's legacy, which is hard to find out through literature. These suggestions which the data presented also give some indications toward the appropriate method of project design, especially law and justice assistance as a substance of the rule of law in a state. From these perspectives, the main purpose of this chapter is to clarify the answer to the question of appropriateness for the project approach.

6.2 Mixed Evaluation Results of RAMSI

RAMSI's huge, long-term intervention brought about drastic changes on Solomon Island society. Many local people's daily lives were influenced. Local people told a personal story which related to RAMSI's intervention and influence in their daily life. One single mother in Honiara told her story that "I worked for RAMSI, as a staff coordinator. I moved to Honiara for my job. I usually took care of foreign guests or staffs who are engaged in RAMSI temporally. I was in charge of various staffs from Australia, Fiji, and Japan. It was fun. My contract expired because of RAMSI's withdrawal, and now I am working at

the guest house in Honiara as a cleaning staff for growing up my kids.”⁴³⁵ To engage in the regional mission, many foreigners also came to Solomon Islands during the period of RAMSI. The former Fijian military told that “I came to Honiara as a Fijian troop in 2006 to join RAMSI and engaged in RAMSI’s activities for a couple of years. After finishing my mission, I decided not to go back to Fiji and start a new business by myself in Honiara.”⁴³⁶ During RAMSI’s period, many people engaged in various roles, and from various places across the Pacific region. The withdrawal of RAMSI also brought the second stage of life to people both in Solomon Islands and the Pacific region. RAMSI is often described as “unusual project” mostly in terms of its size and approach. Generally, RAMSI’s office evaluated that Australia contributed to the rapid restoration of law and order, and truly brought a huge positive change to the society.⁴³⁷ Meanwhile, many scholars criticized RAMSI from diverse perspectives.

Evaluating RAMSI is not easy. RAMSI was not only a comprehensive package of the development assistance program, but also a peace operation by the regional mission, and there was a transition period. Also, since RAMSI came, some small assistance projects and donor organizations were withdrawn or integrated into RAMSI.⁴³⁸ Therefore, tasks, ways of allocation, and criteria for evaluation became complicated. This complexity may cause a mixture of evaluation result, including failure and success.

Many scholars evaluated RAMSI quite positively, due to a huge success of restoring law and order rapidly.⁴³⁹ Since the main objective of RAMSI is to restore security and stability in Solomon Islands under the Biketawa Declaration, the current situation of Honiara is evident of the success of RAMSI, as a

⁴³⁵ Interviewee SC2, Interview by author. Personal interview. Canberra, November 4, 2016.

⁴³⁶ Interviewee SC4, Interview by author. Personal interview. Canberra, November 6, 2016.

⁴³⁷ "RAMSI - A Pacific success story." Office of the Special Coordinator, Regional Assistance Mission to Solomon Islands. Accessed April 20, 2018. <http://www.ramsi.org/ramsi-a-pacific-success-story/>.

⁴³⁸ Interviewee AE3, Interview by author. Personal interview. Canberra, September 15, 2016.

⁴³⁹ Kabutaulaka, Tarcisius Tara. "Australian Foreign Policy and the RAMSI Intervention in Solomon Islands." *The Contemporary Pacific* 17, no. 2 (2005): 302-303.; Hayward-Jones, Jenny. *Australia's Costly Investment in Solomon Islands: The Lessons of RAMSI* (Sydney, Australia: The lowy institute, 2014). Accessed April 20, 2018. <http://www.lowyinstitute.org/publications/lessons-ramsi>. 6.

peacekeeping program. The element of success is notably the intervention of overwhelming policing and military force at the time of entry in Solomon Islands where is absent of security after the Tension.⁴⁴⁰ Under the law and justice pillar, according to the Pacific Judicial Development Programme (PJDP),⁴⁴¹ the function of the judicial system within the Pacific region including Solomon Islands has been enhanced comprehensively since 2011.⁴⁴² Michael Fullilove described that RAMSI's way of communication with Solomon Islanders is “diligent and largely successful efforts”.⁴⁴³ A part of RAMSI, the mission titled “Operation Helpem Fren⁴⁴⁴” used by Solomon Islands pidgin for communication. RAMSI had broadcast a talkback radio program called “Talking Truth.”⁴⁴⁵ This unique activity was efficient to promote RAMSI’s activities across the archipelago. This activity opened the door for communication between local people in the remote area and senior RAMSI officials and Solomon Islands politicians on air.⁴⁴⁶ As discussed in the

⁴⁴⁰ Fraenkel, Jon, Joni Madraiwiwi, and Henry Okole. *The RAMSI Decade: A Review of the Regional Assistance Mission to Solomon Islands, 2003-2013* (Hawaii, The United States of America: Pacific Islands Development Program, July 14, 2014). 27-32.

⁴⁴¹ The Pacific Judicial Development Programme (PJDP) is a multi-country regional programme of assistance with a shared vision and agreed goals for strengthening the judicial system as a central pillar of good governance and the rule of law, conducted by the Government of New Zealand. The Programme operates in the Pacific Islands Forum countries, and its focus includes both meeting the educational and professional development needs of judicial officers and court officers; and providing support for process and system improvement.

⁴⁴² Turnbull, Beverley. *Evaluation Report for Pacific Judicial Development Programme* (New Zealand: The New Zealand Government, Department of Foreign Affairs and Trade, 2013). May 15, 2013. Accessed April 20, 2018.

https://www.mfat.govt.nz/assets/_securedfiles/Aid-Prog-docs/Evaluations/backup_from_uat/Evaluation-Report-for-Pacific-Judicial-Development-Programme.pdf. 32-38.

⁴⁴³ Fullilove, Michael. "RAMSI and Statebuilding in Solomon Islands." *Defender*, Autumn 2006. Accessed April 20, 2018.

https://www.lowyinstitute.org/sites/default/files/pubfiles/Fullilove,_RAMSI_and_State_Building_1.pdf. 34.

⁴⁴⁴ It means “Help a Friend” in Solomon Islands Pidgin.

⁴⁴⁵ Interviewee AG4, Interview by author. Personal interview. Canberra, August 23, 2016.

⁴⁴⁶ Fullilove, Michael. "RAMSI and Statebuilding in Solomon Islands." *Defender*, Autumn 2006. Accessed April 20, 2018.

https://www.lowyinstitute.org/sites/default/files/pubfiles/Fullilove,_RAMSI_and_State_Building_1.pdf. 34.

previous chapter, the Australian government had a great power to control RAMSI. Such RAMSI's structure made realize the coherence and consistency of the project, from phase to phase as well as from RAMSI to SIJP. This structure contributed to design a comprehensive aid strategy of Solomon Islands, such as "Partnership Framework Between Solomon Islands Government and Regional Assistance Mission to Solomon Islands" in both 2006 and 2009.

On the other hand, some scholars pointed out stinging criticisms toward RAMSI at some dimensions of the project, in terms of law and justice. The report by the Lowy Institute in 2014 criticized the cost-effectiveness of RAMSI to consider the aid-effectiveness of the Australian government approach.⁴⁴⁷ According to this report, the achievement of RAMSI was weakened and the commitment was disproportionate, comparing to other recipients, regarding its long-length of commitment and the size of cost.⁴⁴⁸ As responses to the report by the Lowy Institute, there are also counter-opinions regarding the way of measurement of cost against project objectives and understanding constant factors of Solomon Islands.⁴⁴⁹ This report presented a critical question on the fundamental significance of RAMSI's intervention. Regarding the law and justice pillar, the report stated that the military and police contribution to the mission, including PPF's massive policing exercise in Honiara, was a success in the early stage of RAMSI but not long-lasting, and local people did not trust their police system.⁴⁵⁰

Another critical issue of RAMSI is causing "aid-trauma".⁴⁵¹ According to the paper by Tim

⁴⁴⁷ Hayward-Jones, Jenny. *Australia's Costly Investment in Solomon Islands: The Lessons of RAMSI* (Sydney, Australia: The Lowy Institute, 2014). Accessed April 20, 2018. <http://www.lowyinstitute.org/publications/lessons-ramsi>. 7-9.

⁴⁴⁸ Ibid.

⁴⁴⁹ Haque, Tobias, and Doug Porter. "Solomon Islands: Was RAMSI worth it?" *The Interpreter*. May 21, 2014. Accessed April 20, 2018. <https://www.lowyinstitute.org/the-interpreter/solomon-islands-was-ramsi-worth-it;>; Fraenkel, Jon. "Looking to a future without RAMSI." *DevPolicy Blog*. August 1, 2014. Accessed April 20, 2018. <http://devpolicy.org/looking-to-a-future-without-ramsi-20140801-2/>.

⁴⁵⁰ Hayward-Jones, Jenny. *Australia's Costly Investment in Solomon Islands: The Lessons of RAMSI* (Sydney, Australia: The Lowy Institute, 2014). Accessed April 20, 2018.

<http://www.lowyinstitute.org/publications/lessons-ramsi>. 9-11.

⁴⁵¹ Anderson, Tim. *The Limits of RAMSI* (Sydney, Australia: Aid Watch, 2008). August 2008. Accessed April 20,

Anderson in 2008, aid-trauma is an inflationary bubble economy with failures in human and institutional capacity building and relative deprivation brought by the large aid-caravans, such as RAMSI.⁴⁵² In Solomon Islands case, RAMSI, as a huge aid caravan, occupied key positions of the SIG, including the Solicitor-General and the Director of Public Prosecutions, and many foreigners who were working for RAMSI settled down in Honiara and were paying more money than local people to live there.⁴⁵³ This situation of domination brought an enclave bubble economy as well as problems of training and handing over to local people. In fact, this inflation made people struggle to continue their daily life in Honiara. One local Solomon Islander wanted to help local people and decided to start a new business. He said that “I was working at the five-star hotel in Honiara before, but local people were gradually not able to stay in Honiara because everything was getting expensive since RAMSI came. They could not find appropriate accommodation in Honiara. I decided to open a new and reasonable guest house in Honiara as my own business. I bought the property and renovated it. Most of our guests are now local people in Solomon Islands.”⁴⁵⁴

The vicious cycle as “aid trauma,” also might influence the pathway to self-reliance of Solomon Islands.⁴⁵⁵ RAMSI’s structure was top-down, and even the series of RAMSI projects transformed

2018.

http://www.operationspaix.net/DATA/DOCUMENT/5358~v~The_Limits_of_RAMSI.pdf.
http://www.operationspaix.net/DATA/DOCUMENT/5358~v~The_Limits_of_RAMSI.pdf. 9-11.

⁴⁵² Ibid.

⁴⁵³ Ibid.; Kabutaulaka, Tarcisius. ““Failed State” and the War on Terror: Intervention in Solomon Islands.” *Asia Pacific Issues* 72 (March 2004). Accessed April 20, 2018.

<https://www.eastwestcenter.org/system/tdf/private/api072.pdf?file=1&type=node&id=31980.>; Hameiri, Shahar. “State Building or Crisis Management? A critical analysis of the social and political implications of the Regional Assistance Mission to Solomon Islands.” *Third World Quarterly* 30, no. 1 (2009): 40-41.

⁴⁵⁴ Interviewee SC1, Interview by author. Personal interview. Canberra, November 4, 2016.

⁴⁵⁵ Hameiri, Shahar. “State Building or Crisis Management? A critical analysis of the social and political implications of the Regional Assistance Mission to Solomon Islands.” *Third World Quarterly* 30, no. 1 (2009): 53-63.

Solomon Islands into one of the most aid-dependent countries in the world, due to enormous investment.⁴⁵⁶ Democracy level also has become diminished. According to the Freedom House, the democracy level of Solomon Islands was ranked in “partly free” in 2003, and still in the same rank in 2016, due to the weakness of political process and participation, the function of governance, and low level of the rule of law.⁴⁵⁷ Shahar Hameiri criticized that RAMSI’s activities are doubtful to say as a program for state-building but rather just crisis management, due to the failure of capacity building for long-lasting sustainability and development. Hemeiri also mentioned the lack of focus on society itself and building up state-society relations.⁴⁵⁸ Julian Barbara also pointed out the way of interventions by Australia shaped up the process of normalization. Barbara also criticized that Australia’s supply-driven way as interveners created a condition of high aid dependency, less demand for normalization, and disturbing self-reliance of Solomon Islands.⁴⁵⁹

Regarding formal justice systems, there are positive evaluations of RAMSI. At the law and justice pillar, for example, formal judicial capacity has been enhanced during RAMSI’s period.⁴⁶⁰ However, by contrast, many reports and evaluations pointed out that RAMSI was inconsiderate of the social context in law and justice assistance, such as the traditional and customary system of justice in Solomon Islands. The research by the World Bank clarified Australia’s projects successfully strengthen national judiciary’s

⁴⁵⁶ Hayward-Jones, Jenny. *Australia's Costly Investment in Solomon Islands: The Lessons of RAMSI* (Sydney, Australia: The lowy institute, 2014). Accessed April 20, 2018.

<http://www.lowyinstitute.org/publications/lessons-ramsi>. 6-8.

⁴⁵⁷ "Freedom in the World 2016: Solomon Islands." The Freedom House. 2016. Accessed April 20, 2018.

<https://freedomhouse.org/report/freedom-world/2016/solomon-islands>.

⁴⁵⁸ Hameiri, Shahar. "State Building or Crisis Management? A critical analysis of the social and political implications of the Regional Assistance Mission to Solomon Islands." *Third World Quarterly* 30, no. 1 (2009): 41-49.

⁴⁵⁹ Barbara, Julien. "Post-Statebuilding and the Australian Experience in Timor-Leste and Solomon Islands." *Routledge Handbook of International Statebuilding*, March 2013, 333-337.

⁴⁶⁰ Douglas, Porter, Deborah Isser, and Philipp Venning. *Toward More Effective and Legitimate Institutions to Handle Problems of Justice in Solomon Islands* (Washington DC, The United States of America: The World Bank, 2015). Accessed April 20, 2018. <https://openknowledge.worldbank.org/handle/10986/21598>. 5.

capacity toward these issues, however, people who are mostly localized have still lost their accessibility to the justice system.⁴⁶¹ According to the research by Hambergren and Issuer, the number of the court and cases are still extremely small when RAMSI's half-finished moment in 2012.⁴⁶² The ODE conducted a thematic evaluation of Australian law and justice assistance in Solomon Islands in 2012. At first, the law and justice sector under RAMSI was more focused on strengthening the formal justice system. The formal court system became a primary target in the early stage of RAMSI, but since Phase 2, the project focus broadened to include local and traditional justice systems as targets of assistance.⁴⁶³ The evaluation of 2014 regarding projects in Solomon Islands pointed out that Australian approach to the informal justice sector in a recipient country is small, and they mainly focus on central government and justice system like as other donors, and the attention to local law and justice system is lacked.⁴⁶⁴ Tarcisius Kabutaulaka mentioned the significance of the involvement of non-state institutions including churches, community leaders, nongovernmental organizations and other special interest groups in Solomon Islands context, where there have always been multiple centers of power, with the state not always being the most important one.⁴⁶⁵ Therefore, the gradual shift to non-state institutions in a later stage of RAMSI was

⁴⁶¹ Ibid.

⁴⁶² Ibid.

⁴⁶³ Forum Ministerial Standing Committee, Australia. *Partnership Framework Between Solomon Islands Government and Regional Assistance Mission to Solomon Islands* (Canberra, Australia: April 2009). Accessed April 20, 2018.

http://www.operationspaix.net/DATA/DOCUMENT/32~v~Cadre_de_partenariat_entre_le_gouvernement_des_Iles_Salomon_et_la_RAMSI.pdf. 9.; Australian Government, Department of Foreign Affairs and Trade, *Delivery Strategy Solomon Islands Justice Program (SIJP) July 2013 to June 2017* (Canberra, Australia: Australian Government, 2013). Accessed April 20, 2018.

<http://dfat.gov.au/about-us/publications/Documents/solomon-islands-justice-program-delivery-strategy-2013-17.pdf>. 1-6.

⁴⁶⁴ Australian Government, Department of Foreign Affairs and Trade. *Building on Local Strengths: Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Agency for International Development (AusAID), 2012). 19-20.

⁴⁶⁵ Kabutaulaka, Tarcisius Tara. "Australian Foreign Policy and the RAMSI Intervention in Solomon Islands." *The Contemporary Pacific* 17, no. 2 (2005): 297-303.

reasonable. This point of view for aid target which influenced the significant changes from RAMSI to the bilateral programs is the social context of Solomon Islands.

6.3 Evaluation of Access to Justice: SIDS Context

Regarding the experiences of RAMSI for enhancing access to justice, however, McDougall's paper gave an acerbic opinion, which described the "miserable failure" of connecting people with the justice system. McDougall also criticized the current system does not function, while The Provincial Government Act of 1981 as revised in 1997 refers that a system of local government as a lower level of the legislative and judicial system should link rural people to the state.⁴⁶⁶ In SIDS, geographical conditions may influence the link between rural people and state center, and even such conditions can bring negative evaluations. In order to consider a geographical feature of Solomon Islands as a SIDS and related situations of access to justice, this section explores situations of access to justice in SIDS and their uniqueness and difficulties. Due to the research destination, this section confines SIDS in the Pacific region context to consider the situation and features of SIDS especially.

6.3.1 Access to Justice in the Pacific Small Islands States

The Pacific Island societies consist of archipelagos, and these states produced significant cultural pluralism. Meanwhile, many island states in the Pacific region have received a range of introduced systems of law as a colonial legacy. Most of these states were the ordering of the pluralism under new political authorities.⁴⁶⁷ Thus the post-colonial states of the Pacific are living in a pluralistic situation. These states

⁴⁶⁶ McDougall, Debra. "Sub -national governance in post - RAMSI Solomon Islands." *SSGM Working Paper Series 3* (2014): 1-10. Accessed April 20, 2018.

http://ssgm.bellschool.anu.edu.au/sites/default/files/publications/attachments/2015-12/WP_2014_3_McDougall_0.pdf. 4-6.

⁴⁶⁷ Hassall, Graham, and Cheryl Saunders. *Asia-Pacific constitutional systems* (Cambridge, The United Kingdom: Cambridge University Press, 2006). 230-231.

seek their identity in the tensions between traditional customs and introduced systems of law and politics, which are sometimes open to synthesis but just as often resistant to it.⁴⁶⁸ Under such a situation, newly established nation governments built government services in many scattered islands since independence.⁴⁶⁹ In Solomon Islands, for instance, provincial governments and their councils have power for local administration under the Provincial Government Act of 1997. The non-state justice system in provincial level also plays an important role for local people, which was introduced in Chapter Four. At the local level, customs and customary law also are recognized as a significant judicial mechanism for local people.

There are also some critical constraints of SIDS (vis-à-vis Pacific island states) which can be obstacles to access to justice. According to Don Paterson, most Pacific small island states are facing the lack of judicial capacity in both quantity and quality, and these factors influenced the issue of access to justice.⁴⁷⁰ Most of SIDS in the Pacific lack human resources and institutions. In many countries, there are formal courts or dispute resolution systems only on the main islands or around a capital city, not in peripheral islands within the states. Even if there is a dispute resolution system, there are sometimes no qualified lawyers or administration staffs.⁴⁷¹ For these conditions, in some countries, court appeals fall outside of the country, like the Supreme Court of New Zealand or the High Court of Australia, and also judges are appointed from overseas.⁴⁷² Low quality of the judicial system is another obstacle to access to justice. Due to the lack of qualified lawyers, impartiality and transparency are not guaranteed, and some local justice officials and magistrates collude with witnesses or stakeholders to manipulate the performance of the judiciary.⁴⁷³

⁴⁶⁸ Ibid.

⁴⁶⁹ Ibid.

⁴⁷⁰ Paterson, Donald Edgar. "Legal Challenges for Small Jurisdictions in Relation to Privacy, Freedom of Information and Access to Justice." *Journal of South Pacific Law (JSPL)* 4 (2000): 6-10.

⁴⁷¹ Ibid.

⁴⁷² Jeniffer, Corrin, and Paterson, Donald Edgar. "State Courts." In *Introduction to South Pacific Law*, 3rd ed. (The United Kingdom: Palgrave Macmillan, 2011). 315-316.

⁴⁷³ Paterson, Don. "Legal Challenges for Small Jurisdictions in Relation to Privacy, Freedom of Information and Access to Justice." *Journal of South Pacific Law (JSPL)* 4 (2000): 7.

The right of access to justice is, however, guaranteed by the constitutions of most Pacific island states, as they were introduced by their colonial rulers.⁴⁷⁴ Still, the Pacific island nations are facing the issue of pluralism of justice. Customs and traditions are deeply rooted in the societies, and people usually trust their customary order. Thus central government cannot ignore such traditional and customary system. In fact, the state laws in many Pacific states include provisions for the recognition of customary law, such as Cook Islands, Fiji, Kiribati, Nauru, Niue, Solomon Islands, Tuvalu, and Vanuatu.⁴⁷⁵

As mentioned previously, due to the geographical distance, many island states tend to be isolated, and such a circumstance develops their individual culture strongly. Therefore, customary law and order have to be recognized as supplemental tools of state law, even under current global context and extremely centralized nation which is aimed at process of establishing a nation-state. However, local people still believe that customary laws and traditional legal systems are their own law, and states laws and official legal systems are foreign law.⁴⁷⁶ Majority people are on isolated islands where do not have a formal justice system. In Solomon Islands, for example, most qualified lawyers are in Honiara, but at least 85% of Solomon Islanders are living in rural areas or outside of Guadalcanal Island. People in rural areas cannot receive proper legal advice and information due to the high cost of not only the legal service itself, but also for traveling to main land.⁴⁷⁷

The traditional judicial system is vital for people in remote islands. The significance of non-state

⁴⁷⁴ The written constitution of each country of the region except Niue describes and protects fundamental rights and freedoms of the people of the country in the Constitution, and in the constitutions of Kiribati, Nauru, Samoa, Solomon Islands and Tuvalu, the provisions follow the style of the Universal Declaration of Human Rights by the United Nations in 1948 and of the European Convention for the Protection of Human Rights and Fundamental Freedoms by the Council of Europe in 1950 which contains the description of access to justice.

Corrin, Jennifer, and Paterson, Donald Edgar. "Constitutional law." In *Introduction to South Pacific law*. 3rd ed. (The United Kingdom: Palgrave Macmillan, 2011). 72-73.

⁴⁷⁵ Jeniffer, Corrin, and Paterson, Donald Edgar. "Customary law." In *Introduction to South Pacific Law*, 3rd ed. (The United Kingdom: Palgrave Macmillan, 2011). 42.

⁴⁷⁶ Jowitt, Anita. "The Future of Law in the South Pacific." *Journal of South Pacific Law* 12, no. (1) (2008): 43-45.

⁴⁷⁷ Interviewee AE6, Interview by author. Personal interview. Canberra, October 7, 2016.

justice system generally has been understood, because non-state justice system can provide an accessible way to justice for marginalized or impoverished communities. These people may otherwise have no other options for redress. However, there is another risk for marginalized people. Customary and religious systems are fraught with the danger of violating human rights. They often discriminate against women and minorities, and informal dispute resolution mechanisms are often controlled by local elites or religious leaders, and women, the poor, and ethnic minorities are unlikely to get equal access or fair treatment.⁴⁷⁸

Such a double-layered legal standard and stronger influence of customary law created the potential risk for the Pacific Islanders. According to Anita Jowitt, this situation could create a “double-marginalized situation,” especially among vulnerable people in remote areas. She describes the situation where “some people are not able to access justice either through the customary law system or the court system.”⁴⁷⁹ This situation means that vulnerable groups, including women in remote areas, tend to be marginalized due to customary law or for other reasons related to each community and traditional system. In addition, they have no power or knowledge about the judicial system and no way to utilize formal justice.

However, recently the Pacific island states are also facing the limitation of the traditional justice system. Indeed, International Center for Advocates Against Discrimination (ICAAD) shows the insight of limitation regarding gender stereotypes and customary forms of reconciliation. ICAAD introduced survey result by the UN women who said 74% of women in Solomon Islands recognized the court system is the best forum for redress for gender-based violence.⁴⁸⁰ Blaise Kuemlangan also explains the significant role of law for regional development in the Pacific island context is that law reform effort at the national level

⁴⁷⁸ International Development Law Organization, IDLO. *Customary Justice: Challenges, Innovations and the Role of the UN* (The United States of America: The World Justice Project, 2012). 55-57.

⁴⁷⁹ Jowitt, Anita. "Barriers to Accessing Justice - the Vanuatu experience". Chapter. In *Promoting Access to Justice, Voices from the Asia Pacific Experience*, edited by Asia Pacific Judicial Reform Forum (The United Kingdom: Oxford University Press, 2008). 142-143.

⁴⁸⁰ "Access to Justice for Women and Girls in the Pacific Islands." International Center for Advocates Against Discrimination, (ICAAD). Accessed April 20, 2018.

<https://icaad.ngo/access-to-justice-for-women-and-girls-in-the-pacific/>.

is necessary for individual actions and sustainable development based on international formulation.⁴⁸¹

Therefore, in individual legal issues, people in the Pacific region recognized the limitations of customary or traditional ways, and have a certain demand for law and justice assistance in a formal or modern judicial system. As a result, this effort for trying to accept modern law system contributes to enhancing the right of access to justice. In gender-based problem's dispute resolution case, for instance, knowledge and proper physical access to the court can make women having a further way for access to the formal court system.

This empowerment can contribute to breaking the barrier of traditional idea and customs.

However, this demand for formal justice system does not deny the significance of traditional system. Rather, dual dimensions of the non-justice system should be considered, depending on the area of legal issues. The Pacific island states context need to have options of the modern and traditional justice system in individual issues. Both systems should work mutually as an alternative, and such a whole concept of coexistence and the pathway to both formal and informal court system should be sought as a challenge to guarantee the right of access to justice.

6.3.2 Thinking the Island Style of Access to Justice

This section is going to pick up one empirical example to consider how the concept of “splicing” and “resplicing” is construed in the relationship between geography and judicial system in SIDS. One example which introduces an island style of the justice system and its vulnerability is Niue. Niue, called “The Rock of Polynesia”, is a self-governing state in free association with New Zealand, and was originally part of the Cook Islands until the island achieved self-governing status in 1974. Currently, New Zealand conducts most of Niue’s diplomatic relations on its behalf. Niue consists of only one island, with one ethnic group, sharing common customs, culture, and language. At this part, Niue has a different social context from other Pacific islands states, which consists of pluralism. Niue is also the smallest sovereign

⁴⁸¹Kuemlangan, Blaise. “Law Reform and Development for Nation-Building in the Pacific.” In *Pacific futures*, edited by Powles, Michael (Canberra, Australia: Pandanus, 2006). 53-60.

state in the world and currently is facing a critical issue of serious depopulation.⁴⁸² From these conditions and sizes, dependence on the outside of the country is essential and significant for Niuean. More likely, their smallness functions well to organize justice system in Niue.

Niue has a customary law system which is established by long-use, especially for regulating transactions relating to land, and legal matters of personal status and relationships within a family and community.⁴⁸³ Niue also has legislation called ordinances, made by an island council with the assent of the Resident Commissioner and the Niue Island Assembly.⁴⁸⁴ Legal practices were introduced by New Zealand, but historically the written laws were directly introduced from the British Law and the law of England as existing as of 14 January, 1840 was stated to be in force, and later New Zealand Acts of Parliament that had been applied specifically to Niue and were in force in Niue in 1974.⁴⁸⁵ Under these circumstances, Niue's legislation also gives a provision of the recognition of the customary law of Niue.⁴⁸⁶ Therefore, customary legislation and introduced legislation are co-existing in present-day Niue.

Currently, the Niuean justice system is mainly run by the New Zealand Government; one judge and three consultants come to Niue to offer judicial services as kind of "Court-Circuit" system.⁴⁸⁷ Since New Zealand has enacted current Niuean legislation, the procedures become more efficient. However, New Zealanders who are main actors of the judicial system in Niue are not familiar with Niuean custom. Therefore, it still takes very long time for dispute resolutions on traditional issues, such as land and family

⁴⁸² According to Worldometers Database, Niue has approximately 1600 population in 2017. "Countries in the world by population (2017)." "Countries in the world by population (2017)." Worldometers. Accessed April 20, 2018. <http://www.worldometers.info/world-population/population-by-country/>.

⁴⁸³ Pacific Judicial Development Program, PJDP. *Niue Responsive Fund Materials Land Courts Bench Book* (New Zealand: The New Zealand Government, 2012).16.

⁴⁸⁴ Jeniffer, Corrin, and Paterson, Donald Edgar. "State Law." In *Introduction to South Pacific Law*, 3rd ed. (The United Kingdom: Palgrave Macmillan, 2011). 14-15.

⁴⁸⁵ Ibid., 19-20.

⁴⁸⁶ Niue Amendment Act (No2) 1968(NZ), s23: Every title to and estate or interest in Niuean land shall be determined according to Niuean custom and any Ordinance or other enactment affecting Niuean custom.

⁴⁸⁷ Interviewee NU3, Interview by author. Personal interview. Alofi, July 18, 2016.

disputes.⁴⁸⁸ Niue has also very limited human resources, having only three lawyers for parliament and government, one private lawyer, and two pro-bono legal consultants in the state. The Department of Justice offers a consultation counter for local people and can set up a meeting for dispute resolution if needed. People can use the service and refer to legal documents.⁴⁸⁹ Pro-bono consultants are significant actors who can offer free legal service, and they contribute to support people's access to legal service supplementally, as other official lawyers are too expensive for locals.⁴⁹⁰ Mr. Maru Taragi, who is a retired prosecutor and current pro-bono legal consultant of Niue, offers free legal consultation services for local people and deals with a range of cases including civil cases, criminal cases, and land disputes.⁴⁹¹ Many local people rely on the services. However, these services are not sustainable and stable. Currently retired legal professions offer free legal service with the voluntary base. Thus Niuean may lose the system if current pro-bono lawyers close their legal services and have no successors of them.

This situation presents Niue's limitation of resources and capacities as well as alternative measures of legal service. However, still, Niuean's satisfaction for legal service is high. Such a small size of legal system suits for Niue's smallness and people have understood the value of common law system from their colonial owner. New Zealand common law highly impact on Niuean legal system, due to the colonial legacy and current relationship. While Niuean understands that the transplanted New Zealand laws are different from their customary laws, Niuean acknowledge the current common law systems. Modern procedures and documentations are easy, and the Court Circuit is helpful to receive proper legal judgment and consultation for most of Niuean.⁴⁹² Also, because of Niue's smallness and serious depopulation, the system of mutual surveillance functions well in the society, and this system among people contributes to preventing corruption, serious legal problems, and crimes.⁴⁹³ In sum, although Niuean knows their current

⁴⁸⁸ Ibid.

⁴⁸⁹ Ibid.

⁴⁹⁰ Interviewee NU2, Interview by author. Personal interview. Alofi, July 14, 2016.

⁴⁹¹ Ibid.

⁴⁹² Ibid.

⁴⁹³ Interviewee NU4, Interview by author. Personal interview. Alofi, July 18, 2016.

legal system is different from Niuean customs, they do not see that as a critical obstacle to utilizing the judicial system. As a result, the situation guarantees the right of people's access to justice in this small island.

In Niue's context, there are the customs and customary legislations based on Niue's situation. These traditional legislations define Niue's identity in a state, and the boundary and such tradition, culture, language as well as a legal system are spliced mutually. In conformity to the theory of law and geography which Chapter Two discussed since the New Zealand's autonomy influenced Niue's society and legal system, the splicing of Niue was unraveled, and the NZ government have brought "redefining" their judicial model system and practice. The new brought system and relationship of dependency have been "respliced" into Niue's context. In this process, Niue understood and accepted not only the Western judicial system but also the occasion of dependency on the external institution in a positive way. On the contrary, Melanesian countries including Solomon Islands have different context from Niue within SIDS. Countries in Melanesia consist of archipelagoes and multi-ethnic society, which have diverse customs and cultures. The context of Space-in-Law and Law-in-Space are not equally applicable in Melanesia. The Space-in-Law, such as the boundary of the state is defined in accordance with their colonial legacy. The concept is not defined based on ethnic group and its spectrum. Law-in-Space is, on the other hand, functions at the multi-layered situation. Melanesian states have a unified central legal system, while each ethnic group has their indigenous customs. Many people still rely on such customs and traditional law. The balance between social structure and law are influenced by external impact, including foreign aid and intervention. Such external impact is possible to unravel the splicing. In Solomon Islands case, law and justice assistance focused on strengthening the central judicial system, and this aid impact effected on the usual judicial system and balances. These changes were hard to "resplicing" under the multi-layered judicial system. Additionally, SIDS have critical problems of transportation and physical distance for access, especially for people in remote islands. The collapse of balance for "splicing" between law and geography and securement of alternatives could be a critical factor for the guarantee of the right of access to justice. The former Solomon Islands government member mentioned at the interview that "Since

RAMSI came, many daily life of Solomon Islands were changed. I don't think current system can guarantee access to justice, because resources are not enough and no pathway to access to central judicial systems for people in remote islands. The ideal style for access to justice in Solomon Islands is probably, the situation before the Tension. There was a good court circuit system by assigned judges and legal specialists from PNG.⁴⁹⁴

As the current situation of Honiara presented, the role of the sub-national justice system is significant as accessible justice system for local people. Sub-national justice systems mean alternative dispute resolution and function under local courts. Thus due consideration of social context including geographical constraints may highly impact on the aid effectiveness on law and justice assistance. Otherwise, deformation of usability of the judicial system will appear in the society. As touched upon above, most of the island states in the Pacific region, including Niue and Solomon Islands, provide for the recognition of customs and customary law in their written legislations,⁴⁹⁵ and customary law and introduced legislations coexist. International donors must avoid causing a negative impact on the pluralistic legal system and the balance through law and justice assistance as an external impact. Thus donors should notice what system is functioning in the real recipient society during the process of project design. Aid designers always need to consider such as the real route of access both internally and externally, physical and mental distance for judicial service, and how law and judicial system is splicing with geography, irrespective of donor's own objective and interest.

6.4 Evaluation of Access to Justice Condition in Solomon Islands

This section turns to analyze the adequacy of law and justice assistance under RAMSI and SIJP in Solomon Islands. As mentioned above, the report by the PJDP indicated that the situation of access to

⁴⁹⁴ Interviewee AE3, Interview by author. Personal interview. Canberra, September 15, 2016.

⁴⁹⁵ At the countries in the region except Tonga, the written law makes express provision for customs or customary law. Jeniffer, Corrin, and Paterson, Donald Edgar. "Customary Law." In *Introduction to South Pacific Law*, 3rd ed. (The United Kingdom: Palgrave Macmillan, 2011). 41-42.

justice and judicial system in the Pacific region had been improved comprehensively, and RAMSI's influences on Solomon Islands seems to contribute to this achievement well, from the viewpoint of the research timeframe.⁴⁹⁶ This section explores the viewpoints of local people along with the three major functions of access to justice, which are quality, equity, and satisfaction and trust, in order to examine local people's impressions regarding the situation of access to justice in Honiara.

Regarding the quality of justice system, the situation of the center of the city drastically improved, compared to before RAMSI came. In Honiara, there are well-functioning courts, public solicitor's office, and ombudsman office. RAMSI offered diverse training projects for judicial experts, and trained judicial experts are currently training their juniors or other legal staffs. The number of qualified lawyers was also growing under RAMSI's support.⁴⁹⁷ RAMSI's projects created a positive growth cycle of capacity building in Solomon Islands, and this system has contributed to improving quality of legal services. However, the case management and service management in judicial system have still problems. Some administrative works at the court are still manual and paper-based, and they need continuous support. The JIMS (Justice Information Management System) project under SIJP is currently on-going, and this project is one of the solutions for the issue. Although some efforts continue in the Solomon Islands, Solomon Islands gave tangible institutes or places for people both in Honiara and in remote islands to access for enjoying the proper and qualified judicial system.

The quality and quantity of justice have been improved. However, responses from field interviews

⁴⁹⁶ Turnbull, Beverley. *Evaluation Report for Pacific Judicial Development Programme* (New Zealand: The New Zealand Government, Department of Foreign Affairs and Trade, 2013). May 15, 2013. Accessed April 20, 2018.

https://www.mfat.govt.nz/assets/_securedfiles/Aid-Prog-docs/Evaluations/backup_from_uat/Evaluation-Report-for-Pacific-Judicial-Development-Programme.pdf. 11-37.; New Zealand Government, Ministry of Foreign Affairs and Trade. *Pacific Judicial Development Programme: Annual Court Reporting Toolkit* (New Zealand: The New Zealand Government, November 2014). Accessed April 20, 2018.

<http://www.fedcourt.gov.au/pjsi/resources/toolkits/Annual-Court-Reporting-Toolkit.pdf>. 1-5.

⁴⁹⁷ Fraenkel, Jon, Joni Madraiwiwi, and Henry Okole. *The RAMSI Decade: A Review of the Regional Assistance Mission to Solomon Islands, 2003-2013* (Hawaii, The United States of America: Pacific Islands Development Program, July 14, 2014). 53-61.

gave different viewpoints. According to interview responses, still, people's capacity of accessing to justice and tangible pathways to justice system are not equal, due to the lack of lawyers.⁴⁹⁸ In reality, RAMSI's capacity building projects enhanced the number of judges and legal officers. According to the public solicitor of Solomon Islands, the total number of a public solicitor has increased from 3 to 15 after RAMSI's deployment, whose breakdown is 2 for civil cases and 13 for criminal cases.⁴⁹⁹ The local public solicitor also mentioned "RAMSI's capacity development projects for lawyers were quite successful. Many lawyers could learn and experience diverse cases, and be developed. However, such trained lawyers already moved to the private law firm which gives a higher salary, after taking RAMSI's training program. Still, public solicitor's office is suffering from a lack of staffs, and local people cannot use both judicial services."⁵⁰⁰ In fact, there is only one public solicitor's office in Honiara, and many people come flooding in there. According to the public solicitor's office, usually, people have to wait for around three weeks to get a consultation due to the lack of capacity at the public solicitor's office.⁵⁰¹ Travel costs to use judicial services are another problem. The public solicitor's office is located only in Honiara. Thus geographical distance becomes a critical obstacle to access for people in the remote area. Further, even if people can come to Honiara to enjoy legal services, still they have to wait for three weeks after applying to the service. A former Solomon Islands government official mentioned that "People in remote islands cannot go to Honiara easily, and they can only solve small problems in their local system. However, what should they do when they have very serious legal problems? Who can help them? They don't have a solution when they really need help."⁵⁰²

⁴⁹⁸ Interviewee SI3, Interview by author. Personal interview. Honiara, November 6, 2016.; Interviewee SC5, Interview by author. Personal interview. Honiara, November 7, 2016.; Interviewee AE6, Interview by author. Personal interview. Canberra, October 7, 2016.

⁴⁹⁹ Interviewee SC6, Interview by author. Personal interview. Honiara, November 8, 2016.

⁵⁰⁰ Ibid.

⁵⁰¹ Ibid.

⁵⁰² Interviewee AE3, Interview by author. Personal interview. Canberra, September 15, 2016.

(Table 5: Criminal Calendar for Circuit, Solomon Islands 2016)

2016												
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
GIZO	GIZO	GIZO	GIZO	GIZO			GIZO	GIZO				
	AUKI						AUKI	AUKI	AUKI	AUKI		
		KIRA KIRA							KIRA KIRA			
			LATA				LATA					

(Source: Developed by author, based on 2016 Criminal Calendar of Solomon Islands)

Solomon Islands have to overcome such geographical barriers. Solomon Islands have an existing system to supplement local judicial capacity called the Court Circuit system. The Court Circuit is a system that justice or arbitrators from the Magistrates and Legal Counsels in the central circulate into the rural area for dealing with local cases in the community level, in order to supplement local capacity regarding judicial matters. Solomon Islands employ this system and implement based on official calendar designed in each year. In 2016, for example, judges from the Magistrates Courts in Honiara traveled around the provincial capitals in the remote islands of Gizo (Western province), Auki (Malaita province), KiraKira (Makila-Ulawa province), and Lata (Temotu province). From 2017, the court circuit started to circulate into Malu'u in North Malaita, and local people welcomed this judicial assistance.⁵⁰³ This system is a practical way to fulfill the role of guaranteeing the right of access to justice for local or remote people in a country of archipelagos. The court circuit can be very helpful; however still many people are hard to access these services. Also judicial capacity of Solomon Islands is also still difficult to offer proper legal aid for poor people. The Solomon Islander scholar told that “Isolated area in Solomon Islands does not mean

⁵⁰³ Kwaimani, Lensley. "North Malaita people happy with court circuit." *The Island Sun*. March 16, 2017. Accessed June 30, 2017. <http://theislandsun.com/north-malaita-people-happy-with-court-circuit/>.

outside of Honiara. The isolated area, as well as the center area, exist in most of the major islands, and the court circuit services are visiting the center area in each island. The problem and situation are not simple.”⁵⁰⁴

Also, the cost for legal services is still extremely expensive. As mentioned above, trained lawyers moved to private law firms whose salaries are much higher than public legal offices soon after taking RAMSI’s training. There are five major private law firms in Honiara; however, most of their clients are foreign companies or investors, not local people.⁵⁰⁵ A pro-bono lawyer and former government lawyer of Solomon Islands mentioned during the interview that “Basically, private law firms costs approximately 1000 SBD (130US\$) per hour.⁵⁰⁶ Of course very few individuals can pay for those legal services, and many people in Honiara often end up in disadvantageous positions on their legal problems. Therefore, I decided to start pro-bono activities which help people who are suffering from poverty as well as legal matters without any payment.”⁵⁰⁷ Thus still there is a huge gap between poor people and rich people, and between people in Honiara and people in remote islands. Also legal aid in Solomon Islands is inadequacy to fill in the gap among people. Invisible and marginalized people from proper judicial system and service must be diverse places within the country.

⁵⁰⁴ Interviewee AE2, Interview by author. Personal interview. Canberra, September 20, 2016.

⁵⁰⁵ Interviewee SC5, Interview by author. Personal interview. Honiara, November 7, 2016.

⁵⁰⁶ According to the United Nations Data, GDP per capita of Solomon Islands is 1927.2US\$, and household income is around 1830US\$ in 2014. "Solomon Islands." The United Nations, UN Data. Accessed April 20, 2018. <http://data.un.org/CountryProfile.aspx?crName=solomon%20islands>.

⁵⁰⁷ Interviewee SC5, Interview by author. Personal interview. Honiara, November 7, 2016.

(Figure 20: Map of the Court Circuit (Red points are the place where the court circulate))



(Source: Developed by author)

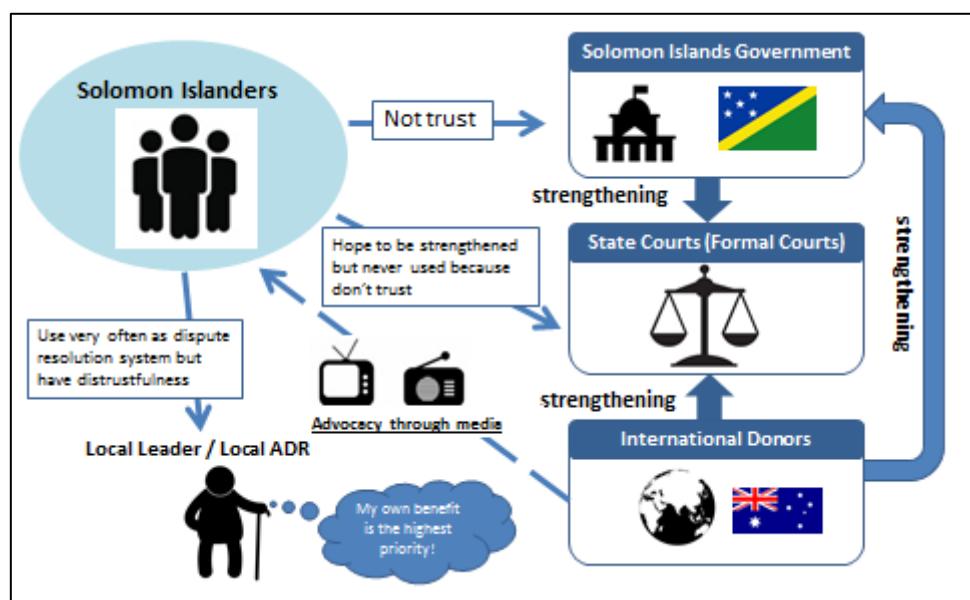
The third major dimension of access to justice is people's satisfaction and trust toward judicial institutions and procedures. However, to build up the trust for judicial system has been still difficult. Solomon Islanders do not trust the Solomon Islands government, which the most influential stakeholder. This situation has been an obstacle to establish people's satisfaction and trust for the judicial system. At the early stage of RAMSI, people clearly had a big hope for change of the society. However, people did not trust their government as well as local dispute resolution system which people use the most often. RAMSI's approach was to enhance the SIG and formal justice system, and RAMSI tried to let people know what they were doing through media, and make local people aware of their real needs. However, still the contradiction which is the conflict of will between government and people remains, due to remaining corruption among main providers or actors of judicial service in Solomon Islands. Therefore, the position of RAMSI as a coordinator was difficult and unstable.⁵⁰⁸ Figure 21 summarizes the situation of Solomon Islands when RAMSI was conducted.

Thus there is a gap between the local situation and the global standard, and the situation implies the difficult situation of eliciting aid effect. As a further remedy for this situation, currently the SIG has shifted

⁵⁰⁸ Interviewee AG4, Interview by author. Personal interview. Canberra, August 23, 2016.

their focus to anti-corruption provisions and activities.⁵⁰⁹ This current effort for anti-corruption can contribute to enter the position of trust and source of people's satisfaction toward the SIG as well as their judicial system. Under the situation, informal dispute resolution system is also significant as a supplement tool, which is rooted in Solomon Islands society to guarantee the right of access to justice. As discussed previously, the potential for enhancing the current Circuit Court was able to be a further solution at the equity dimension. To receive proper legal service and aid in remote islands, donors should be better to shift the assistance focus from formal court system to informal system. However, donors should consider the fact that more than 80 percent people are living in remote islands, and they still highly rely on local courts and alternative dispute resolution. In this context, the target of building trust should be not only in formal institutions, but also in the informal justice system. The Solomon Islands may be still on the process of development, in a long way for making people satisfied with legal services.

(Figure 21 “A Twisted Situation” in Solomon Islands: Time of RAMSI)



(Source: Developed by author)

⁵⁰⁹ Teika, Altaj. "Anti-Corruption Strategy." *Solomon Star*, March 14, 2017. Accessed June 30, 2017.

<http://www.solomonstarnews.com/viewpoint/letters-to-the-editor/12470-anti-corruption-strategy>.

6.5 Implications for Policy and Practice: Enhancing Access to Justice in SIDS through Law and Justice Assistance Project

Although RAMSI made a huge contribution to Solomon Islands since the deployment, still many problems regarding access to justice remain. The project design and implementation process and elements influenced upon the result. Donors must consider significant factors for aid design in SIDS context. Experiences of Solomon Islands implies important lessons. This section aims to draw implications for development assistance on access to justice in SIDS from the perspective of project design and implementation. As mentioned previously, there are diverse styles and models of justice system even among SIDS. SIDS in the Pacific region are hard to accept the world successful case as well as the Western model of law and justice system, due to the social constant. Regarding the experiences of RAMSI for enhancing access to justice, this section is going to suggest two critical factors of negative evaluation, which was derived from vulnerability of Solomon Islands.

6.5.1 Misalignments for Considering Access to Justice in Project Implementation Process

First critical point is the lack of attention to access to justice in early stage of law and justice assistance. It had been 14 years since the RAMSI's deployment, however, RAMSI started to approach to the insight and issues for conditions of people's access to justice from the very late stage. Most of tangible actions and objectives for access to justice had been considered after the transition to bilateral programs.⁵¹⁰ Until then, most of law and justice assistance went to central, and local context was marginalized. Therefore, long-term approaches to law and justice system had wind people around donor's finger. There is

⁵¹⁰ Australian Government, AusAID, Office of Development Effectiveness. *Solomon Islands Case Study Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Government, 2012). Accessed April 20, 2018.

<http://dfat.gov.au/aid/how-we-measure-performance/ode/Documents/lawjustice-solomon-islands-case-study.pdf>.
76-78.; Regional Assistance Mission in Solomon Islands. Accessed May 12, 2018. <http://www.ramsi.org/>.

the doubt that the right of access to justice as a target was deprecated in Solomon Islands.

According to the Australian DFAT, the legitimacy of how to deal with the access to justice context is more likely related to the priority of field in law and justice assistance.⁵¹¹ DFAT mentioned that the formal courts always need to have enough capacity to response to people's demands as the most primary institution. Also, all significant actors and elements of law and justice such as judges, police, as well as logistics, infrastructure and capacity receive diverse demands in different context, since each role in the society is different. Therefore, the Australian government considered the particular needs for law and justice in Solomon Islands, and decided the priority of aid approach.⁵¹² Another reason why donors put off the approach to local and traditional justice system within the whole process of project is that donor's interest tends to be less-visible in law and justice assistance for local or traditional justice system, due to the complicated and different situation of each local community and leader.⁵¹³ Additionally, the characteristics of law and justice assistance needs political processes in its strategy, and such a political support can impact on the scope as well as the approach of assistance.⁵¹⁴

Donor's policy and interest are significant, however, the process and approach produced a blank period and space for consideration of local people's access to justice. Tanja Chopra and Deborah Isser presented cases in Somalia, Afghanistan, and Ache where an inaccessible formal judicial system had little impact on people who were unable to access the system due to social conditions.⁵¹⁵ These cases are about women's rights, but this research pointed out the situation of promoting inaccessible formal justice system for local people in both mentally and physically. This situation was happened quite similar context in Solomon Islands. In Solomon Islands case, it was hard for donors to decide the individual target of the

⁵¹¹ Interviewee AG5, Interview by author. Personal interview. Canberra, August 29, 2016.

⁵¹² Ibid.

⁵¹³ Ibid.

⁵¹⁴ Australian Government, Department of Foreign Affairs and Trade. *Building on Local Strengths: Evaluation of Australian Law and Justice Assistance* (Canberra, Australia: Australian Agency for International Development (AusAID), 2012). 17-18.

⁵¹⁵ Chopra, Tanja, and Deborah Isser. "Access to Justice and Legal Pluralism in Fragile States: The Case of Women's Rights." *Hague Journal on the Rule of Law* 4, no. 2 (September 2012): 344.

project due to the condition of archipelago. Their geographical distance and pluralistic social system influenced upon people's recognition of a main actor of the aid program. In Solomon Islands, the most persuasive person for local people is depending on each community group and location, especially in remote area. The central government was also less powerful and invisible for remote island people. Thus RAMSI's approach which focused mainly on the central judicial system was difficult to reach people in remote area, if donors did not focus on individual leaders under each community of the state. Therefore, if a donor targets on the main actor of aid project properly in a long-term process, this issue of inaccessibility is not happened. Solomon Islands case presented that approaching to the powerful actor such as a community leader or a person who has a role of intermediary could be important for aid effectiveness. However, foreign donors are less ability to understand people's demand and will than local actors.

On the contrary, RAMSI's activities for restoration of order achieved rapid social stability, not only in Honiara but also at the local level. This achievement is because the process of project implementation was open to local people, and it gave some space for decision making to each local community to solve their own issues within the community, and not force some unified solution from the central government.⁵¹⁶ In this context, donors should consider the social reaction, and the social distance both in physically and in mentally among people. Also, Debra McDougall suggested the expansion of the justice system at the lower level, such as local magistrate courts for ordinary people, as an urgent matter in Solomon Islands.⁵¹⁷ These facts can question whether the risk management and the donor's approach was proper. The choice of project itself and a project target is always significant meaning for aid effectiveness. On the other hand, donor's effort for risk management as well as detailed research regarding current system can prevent the issue and marginalization. Thus donors must properly understand how justice systems function and how people use them in the country.

⁵¹⁶ Interviewee AE6, Interview by author. Personal interview. Canberra, October 7, 2016.

⁵¹⁷ McDougall, Debra. "Sub -national governance in post - RAMSI Solomon Islands." *SSGM Working Paper Series 3* (2014) 1-10. Accessed April 20, 2018.

http://ssgm.bellschool.anu.edu.au/sites/default/files/publications/attachments/2015-12/WP_2014_3_McDougall_0.pdf. 8.

6.5.2 Risk Management and Analysis for Social Reaction

The second critical factor is that donors must take into consideration regarding proper risk management for social reaction from law and justice assistance. In other words, donors need to follow expected potential impact to be happened in each stage of aid project. This issue of significance of understanding social reaction as a risk can be more broadly applicable to not only access to justice dimension, but also whole law and justice assistance. As mentioned in Chapter One and Two, law and justice assistance as external aid may cause social reaction both positively and negatively, and this risk is uncertain. Thus donor's considerable prediction and control of potential risks have power for irritation among people's daily life and basic human rights. The backwater situation of access to justice in current Solomon Islands is an example of being influenced by the risk from a condition of archipelago.

In Solomon Islands context, such a negative social reaction has been created behind the rapid restoration of law and order. At the process of restoration of order, for instance, just sending crimes one after another into jail could not be a solution. According to Kirsty Ruddock, RAMSI's intervention has marginalized people and even deprecated the human rights of criminals including juvenile and minor offenders, culminating with harsh sentencing.⁵¹⁸ There were also no systems as a safety-net for family or community member of prisoners. Prisoners and their families have to suffer from income lost, and they did not have ways to ask some support for regenerating, including for daily life and judicial support.⁵¹⁹ RAMSI's intervention and assistance lacked the viewpoint which gives back criminals to the community as normal member.⁵²⁰

Proper risk management and broader viewpoint could avoid these negative social reactions in people's daily life. In this case of Solomon Islands, restoration of order was not enough to achieve social stabilization, but a comprehensive project design which covers whole transition and reform mechanism

⁵¹⁸ Ruddock, Kirsty. "Marginalisation of some Solomon Islanders by the Australian intervention." *Australian Journal of Human Rights*, 2nd ser., 12, no. 1 (2007): 145-151.

⁵¹⁹ Interviewee AG7, Interview by author. Personal interview. Canberra, September 15, 2016.

⁵²⁰ Ibid.

was required. For example, recipients needed further training program for released prisoners and families as well as building up some safety-net systems for poor people. Further, in order to ensure the access route to services, risk analysis regarding potential obstacles is essential for aid effectiveness and sustainability. A country where consists of archipelago highly influence on the route issue, thus donors must consider critically how potential risks of projects irritant the condition of current situation.

This situation implies that donors should know what are the fundamental problems of details in each community. Donors must analyze project risks, including contingency plan toward potential social reaction.

6.6 Further Issues on a Development Assistance Project

The Solomon Islands has a quite complicated and pluralistic society. However, the approach of development assistance irritated the recipient society. This section is going to suggest the possible obstructive factors, which may influence on improving access to justice in the society, from a development assistance perspective.

Firstly, local Solomon Islanders might feel psychological allergy toward the Australian aid including RAMSI. One local people said at the interview that “Donors came to our country, and did what they want.”⁵²¹ Of course RAMSI and following projects achieved development and restoring law and order in the state, and these projects surely contributed to Solomon Islands. On the other hand, people tend to feel that all projects of RAMSI were implemented under the strong Australian leadership. Psychological feelings among people caused this situation, and such people’s impression become a crucial obstacle against building up trusts on the SIG, major state institutes, and foreign donor organizations. The personnel structure of the SIG was a part of the background, especially at the early stage of RAMSI, when the Australians occupied key positions of the SIG. Kirsty Ruddock criticized that Australian intervention toward occupying key positions made Solomon Islands farer from self-reliance in terms of long-term

⁵²¹ Interviewee SC7, Interview by author. Personal interview. Honiara, November 8, 2016.

development.⁵²² This situation in fact looks like calling back the colonialism in the chaotic society after the Tension. Local people in the recipient country have to wonder regarding the fundamental value of ODA. However, understanding the real goal of ODA projects is hard from the viewpoint of local people. The Solomon Islands has moved to a post-RAMSI stage of development, and they will need further development assistance on basic needs and issues, such as education, economic development, and urbanization. Under this situation, local people will face the dilemmatic feelings for accepting aid. To clear away the psychological barriers among people become a critical proposition for donors.

Secondly, the power balance among donor organization was not maintained during the long period of RAMSI, from peacekeeping to development. Thus the way of inter-donor management did not function well, or even huge and long-term dominant of RAMSI made inter-donor management unnecessary. At the RAMSI's era, RAMSI's special coordinator and the Australian High Commissioner were playing a role of coordinator among stakeholders. However, due to the Australia's huge presence, one development assistance practitioner mentioned that "It was hard to criticize or tell our opinion to RAMSI and the Australian government."⁵²³ In current Solomon Islands, UNDP is in charge of organizing inter-donor meeting every month.⁵²⁴ Also, government staffs from the Ministry of Development Planning and Aid Coordination (MDPAC) Solomon Islands also join the meeting for inter-donor coordination as representatives of the recipient.

Lastly, national character of the recipient country is also an important factor in the process of designing projects. Discussions over the national character of a specific country should be a field of cultural anthropology, regional study, or history. Following points show the viewpoint of development

⁵²² Ruddock, Kirsty. "Marginalisation of some Solomon Islanders by the Australian intervention." *Australian Journal of Human Rights*, 2nd ser., 12, no. 1 (2007): 151-53.

⁵²³ Interviewee SI5, Interview by author. Personal interview. Honiara, November 7, 2016.

⁵²⁴ Interviewee SI1, Interview by author. Personal interview. Honiara, November 4, 2016. In 2016, around 90 development assistance practitioners from Australia, Japan, New Zealand, the United Kingdom, the United States of America, the World Bank, the Asia Development Bank (ADB) and the United Nations are participating.

assistance toward the factor and how donors should deal with its context. Local people talked at the interview that RAMSI created the vicious cycle. As mentioned above, living cost and commodity price became extremely high, and people' lifestyle changed drastically since RAMSI arrived. Currently many people have moved to Honiara for seeking jobs under rapid urbanization of the capital city.⁵²⁵ The interview responses proved that the existence of "aid trauma" is still there. According to the local lady of Honiara, "We generally have 2SBD biscuits and tea for breakfast, instant noodle for lunch, and rice and a tin of tuna for dinner. However, most of houses in Honiara hold many spongers who came to Honiara for seeking their jobs. So usually family have to share only one tin of tuna together. This is typical meals for people in Honiara."⁵²⁶

Under this situation, therefore, it is hard to find middle class people, and the gap of income between rich and poor is getting larger. For development assistance practitioners, this situation makes it difficult to build up human relationships or friendships with local people due to the extreme economic gap among them. Thus to hear real voices from local people in Honiara become also hard. Additionally, rooted culture and the way of thinking of local people could influence the process of project design and management. Donors should involve local people in development assistance projects for the purpose of capacity development and self-reliance. Engagement of local people can contribute to achieve efficiency and effectiveness of the aid projects. However, development assistance practitioners in Solomon Islands mentioned that Solomon Islanders do not have a sense of basic project management, which is a sense of inverse operation. International practitioner of development assistance in Solomon Islands described Solomon Islander's national character as "If mango is fallen from the tree today, eat it today without a single thought for tomorrow."⁵²⁷ This is one example. However Solomon Islander's way of thinking come from the idea of hand-to-mouth life. Such way of thinking made hard to progress the project, based

⁵²⁵ Regarding urbanization of Honiara, see as reference to Keen, Meg, Julien Barbara, Jessica Carpenter, Daniel Evans, and Joseph Foukona. *Urban Development in Honiara: Harnessing Opportunities, Embracing Change* (Canberra, Australia: State, Society and Governance in Melanesia, 2017).

⁵²⁶ Interviewee SC3, Interview by author. Personal interview. Honiara, November 6, 2016.

⁵²⁷ Interviewee SI6, Interview by author. Personal interview. Honiara, November 8, 2016.

on planned schedule. National character and customs of Solomon Islanders should be fully appreciated, but such condition may also an obstacle of project management for development.

In sum, although diverse donors implemented many bilateral and international aid projects, RAMSI's impact was extremely huge and this structure gave an impression of dictatorship as an aid donor. RAMSI concluded on 30 June 2017 officially, and Solomon Islands entered into the next stage of development after 14 years of RAMSI. Another turning point is coming, and most of the development assistance projects will shift to bilateral aid. The former member of the Solomon Islands government mentioned that "I welcome the era of bilateral aid. It can be much easier to have proper dialogues over development assistance policy between donors and the recipient. Regarding law and justice, the Solomon Islands government has raised requests to both Australia and New Zealand."⁵²⁸ In order to aim at long-lasting development and sustainability of Solomon Islands, future bilateral projects have to pay more attention to the pathway to self-reliance.

6.7 Evaluation of Law and Justice Assistance for Access to Justice in Solomon Islands

Although Australian-led law and justice assistance under RAMSI and following SIJP implemented comprehensive approach, current justice system and way of access do not satisfy people's appetite for law and justice, due to the lack of attention to social context. This gap implies significant messages to aid stakeholders. Through unpacking the current situations in Solomon Islands, this final section considers appropriate point and missing processes of the Australian way of project design for enhancing access to justice in SIDS.

Basically Australian way of project design and comprehensive approach based on the framework were well-organized. The transition from RAMSI to SIJP was implemented smoothly and achieved to make coherence of development strategy in whole story of law and justice assistance in Solomon Islands. However, this fine-looking project appearance is not enough to achieve an overall project goal in a range

⁵²⁸ Interviewee AE3, Interview by author. Personal interview. Canberra, September 15, 2016.

of dimension. More specifically, the transition process in long-term process successfully achieved coherence and consistency, while project evaluations contain both negative and positive opinions from the recipient. Successful restoration of order was not enough to improve individual element of society, including a condition of access to justice.

In the first place, development assistance may not be able to change the whole country. Although RAMSI's approach was comprehensive, the whole package for development assistance impacted on a part of society, and not enough for changing everything. Regarding risk, there is the gap between a risk management from a donor's side and risk management from a recipient view. The gap shows that individual viewpoints bring different context and the result of aid effectiveness. However, donors should take responsibility to cover both kinds of risks and conduct comprehensive risk management. This experience of risk management therefore, gives critical lessons for scope of proper risk management in the development assistance process, and also the difficulties to predict social reaction of a recipient country under stimulations and uncertainty of the foreign aid as external impact.

Also, from Australia's viewpoint, the current judicial system in Solomon Islands is not wrong or bad, but just different from their own system. In this context of access to justice in Solomon Islands, resplicing of legal system and geographical constant did not work well. The Australian aid approach as an external impact influenced on unraveling of a relationship between legal system and geography. The case of Solomon Islands shows that legal system which is rooted SIDS have hardly been resplicing. Due to the gap between a donor's viewpoint and a recipient's social context, Australian approach brought more or less negative impact into Solomon Islands, which includes imperiling a guarantee of human rights. This way of approaching became a trigger of causing risks from international aid. Geographical elements in a society and the related fragility are primordial constants. Especially in SIDS case, the fragility functions significantly on people's daily life, and creates a range of limitations. These social elements of geography are eternal, therefore, approaches and considerations toward social constant and fragility of a recipient country influence on aid effectiveness.

Further, since Australia's commitment was like a hegemony in Solomon Islands. The power of
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aid greatly influenced the society in Solomon Islands. Therefore, if donor's presence to local stakeholders is small, people's right for access to justice would lead to get left behind. Additionally, such an approach also may bring more cost on the donor side. Australian approach was lacking to take into consideration of social constant. This case and current situation of Solomon Islands implies that donors should take the measure of existing system in the recipient country in process of project design, in order to fix or make use of the society. In sum, the cases in Solomon Islands is evident that vulnerability of fragile states is a considerable social context and a potential risk factor, and this lesson can give suggestion that donors should capture the vulnerability properly as a forward-looking idea.

SIDS are facing unique disadvantages and fragility due to their smallness and remoteness. Judicial systems are also influenced by such geographical constraints, and judicial systems in SIDS are also developed as island style to guarantee people's rights in accordance with social context. However, international assistance, including law and justice assistance, has the power to change and influence such societies. Therefore, project designers of law and justice assistance need to consider how justice exist in the target country or community based on social and geographical context. Also, how the target state was build up and how a nation state exists also influence on the project result. Donors must consider the appropriate way of risk management and planning in project implementation process. Donors also should ensure contingency plan to avoid fatal situation under fragile conditions as well as protect the right of access to justice for local people in SIDS.

6.8 Conclusion

This chapter analyzed how the policy approach of law and justice assistance suited for the context of Solomon Islands to clarify the gap between a donor's approach and a recipient reaction, through exploring the situation of current Honiara. Interview responses presented the fact of paradox that there are still many problems on law and justice in local level, while RAMSI achieved a big success on restoring law and order. Thus, current the SIG and donor organizations need to consider the issue on not only development but also

how do we keeps order as future issues in Solomon Islands.

Regarding the situation of access to justice, there are institutes or physical places which offer judicial services including court circuit in Solomon Islands, however, it is still hard to access to such a places and services especially for poor or remote people. Even Solomon Islands experienced to receive huge law and justice assistance, still the issues of access to justice are remained. Here, there is an ample room to reconsider the way of approach in project designing process.

The most crucial fact is that there are improved and trained justice systems, but they are located where people are hard to access physically, mentally, and costly. From this situation, the approaches of initial law and justice assistance projects were inconsiderable of an existing and rooted system in their society, and did not focus on the life style of local people. Therefore, diverse viewpoints of evaluation could lead different results of the project, but donor's interest tends to have prior influences in this context, and the voice of local people could be less-visible.

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By all accounts the conference was an unqualified success. For the scientists it was the first time that they had personally met those whom they had always dismissed as poseurs and crackpots. Although they would not be parted from their reservations, they openly admitted that without traditional curers the vast majority of the world's population would have no medical attention whatsoever. It was too expensive for modern medicine to cater for everyone. It was good therefore to know that the poor were looking after the poor. This must be encouraged. Different classes and groups of people must find their own levels in everything, including medicine.

(Hau'ofa, Epeli. Kisses in the Nederends. Paperback ed. Hawai`i, The United States of America: University of Hawai`i Press, 1995.29.)

7.1 Introduction

There is a masterpiece named "*Kisses in the Nederends*" written originally in 1987 by Epeli Hau'ofa, a distinguished Tongan anthropologist. The story describes the Pacific island's culture, traditions, characters, historical struggles, pluralistic society, and their beliefs heartwarmingly, ironically, and full of humor. The story is about an island man named Oilei, who has got serious hemorrhoids and his struggle to cure his nasty condition. Through the processes and challenges of overcoming his hemorrhoids, Hau'ofa describes a typical island society where a mixture of traditional ways and Western colonial influence coexists. This complicated society as well as a conflict between traditional and indigenous treatment and Western medical care confused Oilei and furthered his suffering.

The opening sentences of this concluding chapter which is from Hau'ofa's book describe a moment which Western medical doctors acknowledge a traditional way. This story does not mention that poor people should use a service for poor, but that a modern method is not always universal and available options for everyone. Regardless of classes and incomes, people can choose their own solutions among diverse options including Modern Western ways and traditional ways in a society where such diverse options coexist. This situation can also guarantee people's rights for access to service, and the same context applies to the judicial system and the right of access to justice.

This concluding chapter aims to reconsider the pathways of project designing method for enhancing the right of access to justice for local people and the role of project design in development assistance context. Based on analysis of cases in Solomon Islands by Australia, this chapter explains difficulties of respecting the social context in the implementation process of development assistance, especially in fragile states such as SIDS. From the viewpoint of people's basic human rights, this concluding chapter will also state some required efforts for donors, including considerations and compromises. Then the conclusion will try to deliver a message especially for law and justice practitioners as a suggested recipe for success on law and justice assistance for access to justice. Lastly, this chapter will highlight limitations and possible future research on law and justice assistance and future reflections of RAMSI and past related aid programs.

7.2 Rethinking The Paradox of Aid in Project Implementation

This section is going to explain the suggestions which this research draw through exploring the empirical cases. Then this section turns back to the main research question of this thesis to answer, "how donor organization should deal with social constants to design and implement the law and justice assistance for enhancing the right of access to justice in fragile states."

7.2.1 Why Aid Program Is Still Failed?

Under pluralistic legal society in the world, there are still no principles or primary ways to implement aid project successfully. The project always can be failed. Therefore donors might be not only aiming to be a success but better to make an effort for avoiding going to the dead-end of the situation as a flipside. Based on lessons learned from the series of cases of law and justice assistance in Solomon Islands, this subsection will point out two major crucial difficulties for project implementation.

Firstly, to find alternatives to project focus are always critical under limited resources. In the field of development aid, mingled interests of stakeholders always exist. Also, the goal of law and justice

assistance does not always become a unification of law globally but respond to diverse demands individually. Under such a circumstance, donors have to take responsibility for determination of target for the recipient. The issue is also related to the gap between theory and practice of the rule of law assistance. Diversification of legal system and the approach of law and justice assistance are required to consider by individual case. The theory is not always applicable to the practice. In this space, there is a necessity to consider not only rule of law in theory but also the rule of law in practice, which is how to promote the rule of law and guarantee the human rights of each local context, and the method of law and justice assistance.

The other difficulty is to capture the social context properly and reflect it on the project design. In Solomon Islands case, the causes of fragility are quite complex, and the factor of vulnerability should be understood based on forward-looking perspective. Thus the current situation of Solomon Islands is evident that aid effects work differently, even among fragile states. RAMSI and SIJP's approach functioned very well to post-conflict context, but on the contrary, made the situation of access to justice worse. Since legal system is related to the society, the situation was critical to deciphering potential risk factors from fragile context. However, the state vulnerability does not always influence the society negatively. The important thing is that absolutely the appropriate way of approach and project design, with due consideration of social constant itself and the fact how vulnerability is caused and exist in the society.

Further, overall of the scheme and condition of states also influence upon the project result. For example, Melanesian countries where consists of a pluralistic society, are hard to approach in this context, and tailor-made style is essential not only for a state but each community. The important thing is not just going forward, but sometimes going to backways, in order to achieve development in a better way for local people, with a forward-looking view. This is also related to the fundamental principle of ODA which means, what is ODA, what is the objective, and what are potential influences to achieve goals. If donors and recipients aim to achieve a certain goal through ODA, philosophy, approach, and legitimacy of ODA should be changed by what is the real demand for the end-users.

7.2.2 Suggested Recipe for Designers on Law and Justice Assistance

Anderson's "Do No Harm" Framework has given a significant implication for evaluation of the social impact of aid and reevaluation model flow for project approach in a conflict state. This framework has great applicability for further fragile states context. However, project implementation process requires more complicated factors to consider for achieving aid effectiveness, such as determination, proper design, and structure and environment of aid providers. Therefore, donors need a supplement framework for a reinterpretation of social impact in the tangible area of activities. From this point of view, substantive conditions of existing access to justice system should be considered for reflection to an implementation framework.

The answer to the main research question is that donors should consider and monitor social constants as an inevitable risk factor based on forward-looking perspective for aid effectiveness and aid impact, from the initial stage of project design. In access to justice context, donors should clarify a route of access both internally and externally. Donors also need to understand physical and mental distance among local people toward justice service and legislation in the states. These donor's efforts will be able to make accessible justice system adequately for people in the fragile situation.

Law and justice assistance, which is an encouragement to change the legislation system in a recipient state, may exert a significant degree of influence over the society. Especially alternative resources, which can provide response to the social changes, are limited in fragile states. For example, there is a SIDS where people on a remote island usually are using the traditional justice system to solve their dispute. If external assistance introduced new justice system and abolished the traditional system, people cannot easily access to judicial service in a capital city, due to their limited resources and distance. From this point of view, the external social impact becomes huge and even may encompass fatal situations in the remote area. Therefore, the approach and the method of project design affect the outcomes and results in the recipient society, after the implementation of the law and justice assistance.

(Table 6: Assessment Matrix of Law and Justice Assistance for Access to Justice)

Project Name				Version.	
Date/Last Update		Target		Phase	
General Factors of Law and Justice Assistance	Conditions	Project Duration	Category of Target Country	Social Context	
				Constant	Non-Constant
	Potential Risks				
Potential risk(1) and Counter-measure(2) (related to each general factors for implementation)					
Access to Justice	Equity	(1)		(1)	
		(2)		(2)	
	Quality	(1)		(1)	
		(2)		(2)	
	Trust & Satisfaction	(1)		(1)	
		(2)		(2)	

(Source: Developed by Author)

How can we avoid a negative impact for a right of access to justice by law and justice assistance?

Table 6 shows one suggested model framework to map and assess a situation of access to justice including a route to justice for local people, to avoid negative impact. This model framework offers an assessment matrix which gives a suggestion for project target and potential risks for people's access to justice in law and justice assistance, based on the social context of the state. Also, this framework refers to access to justice as an issue. Under the comprehensive law and justice assistance like RAMSI, access to justice becomes a specific issue or area of the target. According to PDM Pro Guide, the issue control process is closely related to project monitoring, evaluation and control activities. The process should include establishing and tracking a plan for getting issues resolved. The most important control tool is also the issues log, which summarizes the issues, describes their current status and identifies who is responsible for

addressing the issue.⁵²⁹ This base matrix itself is simplified for making easier handover and coherence for donor side and donors can utilize for any stage of development assistance as well as conditions of a recipient state. Also, this matrix is designed based on three elements of access to justice, characteristics of law and justice assistance, and potential project transition.

(Table 7: Simulation of Access to Justice Mapping for Law and Justice Assistance in the island of Tipota)

Project Name: Enhancing access to justice for local people project				Version. 0.5	
Date/Last Update December 2017		Target: Island of Tipota		Phase 1	
General factors of Law and Justice Assistance	Conditions	Project Duration	Category of Target Country	Social Context	
				Constant	Non-Constant
	Potential Risks	Project Transition	Human and financial resources are limited	Serious isolation	People's allergy toward western culture
Potential risk(1) and Counter-measure(2) (related to each general factors for implementation)					
Access to Justice	Equity	(1) Project take over	(1) Area gap	(1) Changing access routes	(1) Changing access routes
		(2) Making transition plan	(2) Plan circuit system	(2) Utilization of informal system	(2) Utilization of informal system
	Quality	(1) Project take over	(1) Can not to ensure the number	(1) Area gap	(1) Corruption
		(2) Making transition plan	(2) Need capacity building strategy	(2) Utilization of informal system	(2) Need capacity building strategy
	Trust & Satisfaction	(1) Project take over	(1) Can not to ensure the number	(1) Area gap	(1) People's allergy toward western culture
		(2) Making transition plan	(2) Need capacity building strategy	(2) Utilization of informal system	(2) Need capacity building strategy

(Source: Developed by Author)

Table 7 is a simulation of an imaginary island state using this matrix; the state is based on the island of Tipota in the Pacific region from *Kisses in the Nederends* where the main character Oilei lives.⁵³⁰ The simulation supposes a law and justice assistance project that will be implemented in the island of Tipota and is pre-research for an upcoming technical assistance project. Likewise, in SIDS, such as the

⁵²⁹ Project Management for Non-Governmental Organizations, PM4NGO. *Project Management for Development Professionals Guide (PMD Pro Guide)*. 1st ed. Ver. 1.9. PM4NGOs, 2017. 58-60.

⁵³⁰ Hau'ofa, Epeli. *Kisses in the Nederends*, Paperback ed. (Hawai'i, The United States of America: University of Hawai'i Press, 1995). 1-5.

island of Tipota, which has limited resources and a pluralistic legal system, effectiveness and sustainability of development assistance become critical. In the process of project design, the donor should notice that there are diverse options and maps for the suitable justice system in the society and people, which includes not only formal and informal system but also a liaison system between the formal court and informal. The simulation can give insights into the direction of law and justice assistance and potential risks.

From this perspective, the way of ensuring the access route to justice becomes a significant key to guarantee the rights of access to justice. Needless to say, capacity development of the legislation system in the country is essential. However, independence of the legislation as a state is not necessary in some cases in fragile states including SIDS context. The important things are how the legislation system surely guarantees the access route to reliable justice system, without regard to inside or outside of the country. Under such a circumstance, people must not feel any physical and mental obstacles for the justice system. To understand these real situations of a recipient state, application of project management method in development assistance would be valuable to work as a guidepost for achieving real aid effectiveness for people.

7.3 Limitations and Future Research

This thesis examines only one series of case studies of law and justice assistance. Therefore, it might be difficult to generalize the lessons learned to all forms of law and justice assistance in post-conflict states. RAMSI and SIJP is quite a unique case of a comprehensive approach to law and justice system in one single country; however, to undertake detailed research into each case is necessary, due to the pluralistic legal culture and social context of recipient countries. This research hopes that this empirical analysis for the method of project management gives useful insight for future aid practitioners on law and justice assistance. And as future agenda for this perspective, the author will utilize this case analysis for further comparative research with other law and justice assistance cases in similar context, including access to justice and fragile states including SIDS.

This research mainly focuses on the donor's perspective, and less on the recipients' viewpoints, especially in remote areas. In Melanesian states including Solomon Islands, the coexistence of Western legal system and traditional justice system is a critical issue in their society. This research mainly followed RAMSI and SIJP and how they were implemented and did not focus on the individual influence of local people at each community level in Solomon Islands. Under legal pluralism, local people's reaction and impact are possibly different in accordance with each community and their customs. This research, however, could not cover such an individual impact. This research also did not touch upon the establishment of informal justice system under pluralistic legal society, and consideration toward a way of coexistence of legal systems. Future research should focus on better understanding the recipient's voice toward their informal legal systems and influences of law and justice assistance.

RAMSI and SIJP finalized in July 2017, and law and justice assistance in Solomon Islands have entered into a new phase under Australia's long-term commitment since then. Field research data in this thesis also presented a lacked or biased local capacity in judicial institutions for access to justice. In this context, RAMSI's goal was achieved by halves, and still far from self-reliance. Therefore, what happens next has been a critical issue for Solomon Islanders after the full-withdrawal of RAMSI. After 2017, the Australian law and justice assistance will again transition to a new bilateral project under the new structure, in which the Attorney General's Department will be engaged as one of the major bodies responsible for implementation.⁵³¹ Australian law and justice assistance to Solomon Islands also will continue, and their long-term aid may strongly affect the relationship between the two countries. RAMSI's farewell probably was not just an end but brought new start-line for relationships on the dependency between stakeholders of the aid program.

Without RAMSI, Solomon Islanders may face a potential risk to return to the Tension period again. Thus, external intervention to Solomon Islands will continue. However, by a stage of development, issues for Solomon Islands have been changing. In the current Solomon Islands, people are facing new social

⁵³¹ Interviewee AG6, Interview by author. Personal interview. Canberra, October 6, 2016.

problems such as drug, urbanization, infrastructure, natural resources, and labor market, which were caused by long-term centralization in Honiara as a negative impact of RAMSI.

Another significant change of aid environment since 2003 is emerging new global donors for not only Solomon Islands but for the whole Pacific region. Especially China as a donor has blazed onto a stage of aid diplomacy in the Pacific region. China's aid budget, as well as influence, have even been close to the leading donor of the Pacific region, Australia.⁵³² In this context, inter-donor coordination becomes more significant. In fact, new issues of development after RAMSI has been another battle field among donors, and new problems among donors have already caused. Undersea Cable project by the Chinese contractor is one of the controversial cases regarding infrastructure in Honiara, which has been caused from foreign aid and investment in Solomon Islands as a new issue with a rising donor after RAMSI.⁵³³

In law and justice assistance context, not only the Australian government but the New Zealand government will also play a significant role especially in the field of community justice and community policing in the remote area. While Australia continues to work on judicial institutions mainly in Honiara, NZ will be able to make use of their project experiences regarding local and community level justice system. After the withdrawal of RAMSI, donors will be diverse, and current power balance and structure of role among donors in Solomon Islands have been changed drastically. This new environment of aid project can make realize a finely tuned response to the recipient's demand. However, the inter-donor dialogue will be essential to achieve aid effectiveness.

In this journey toward a comprehensive understanding of the proper method of designing law and justice assistance, the process of restoring justice in a post-conflict society and roles of development assistance become significance to examine external aid impact. In the context of the current development

⁵³² Flitton, Daniel. "China's aid splurge in the Pacific." *The Sydney Morning Herald*, March 4, 2015. Accessed April 20, 2018. <http://www.smh.com.au/world/chinas-aid-splurge-in-the-pacific-20150304-13unn3.html>.

⁵³³ Pacific Islands Report, Editorial Team. "Undersea Cable From Australia To Solomon Islands In Limbo Over Chinese Contractor." *Pacific Islands Report*, July 25, 2017. Accessed April 20, 2018. <http://www.pireport.org/articles/2017/07/25/undersea-cable-australia-solomon-islands-limbo-over-chinese-contractor>.

assistance situation under SDGs, in line with the growing importance of the concept of the rule of law and access to justice, global demands on law and justice assistance will increase. Donors will have to engage in more consideration of effective methods for project management in international development assistance. In this context, the Australian challenge provides lessons not only for the Solomon Islands but also more broadly for global law and justice assistance in post-conflict societies.

7.4 Conclusion: Small but Mighty

This concluding chapter offered reflections on what approach on project design for law and justice assistance may entail for law and justice practitioners, project managers and scholars on law and justice assistance, as a suggested recipe for success. To receive foreign aid is essential for fragile states, including post-conflict states and SIDS. However, the impact on the society is the box of Pandora which contains risk for reversion and hope for development. In this context, therefore, the conclusion states that proper project management method can be a guidepost for aid effectiveness as well as to guarantee the basic human rights for local people in law and justice assistance context.

Lastly, Mary B Anderson describes significant actions to understand further and develop a role of outsider aid providers in her book in 1999 that “we must continue to explore and learn how best to play the outsider role. ----- How this is best done in each setting, by different kinds of aid and different aid workers, requires further experience and reflections.”⁵³⁴ More or less, international aid works as a gift between a donor and a recipient. As a responsibility of aid donors, external aid providers should confront the issue that how they can contribute as long as they engage in development assistance. Ultimately, the ideal world must be the world without international aid, which has no inequality, bias, poverty, and conflict. Until that day, international aid practitioners and academia should continue to accumulate our daily research and reflections. Each our research efforts might be still small to contribute, but people’s dignity which will

⁵³⁴ Anderson, Mary B. *Do No Harm: How Aid Can Support Peace-Or War* (Colorado, The United States of America: Lynne Rienner Pub, 1999). 147.

enjoy law and justice assistance in a recipient country is mighty. Even if the target society is a fragile state such as a Small Island Developing State, regardless donors and recipients, equally people's dignity is mighty. Donors should never forget the fact. Such small efforts and passions can build up better aid and future in the world.

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Appendix 1: Map of Oceania



Appendix 2: Map of Solomon Islands



Appendix 3: List of RAMSI Special Coordinators

Special Coordinators (Australia)	
Nick Warner	July 2003 – August 2004
James Batley	August 2004 – November 2006
Tim George	November 2006 – December 2008
Graeme Wilson	January 2009 – April 2011
Nicholas Coppel	March 2011 – October 2013
Justine Braithwaite	November 2013 – December 2015
Quinton Devlin	December 2015 – July 2017

Deputy Special Coordinators (New Zealand)	
Paul Ash	2005-2007
Jonathan Austin	2007-2009
Justin Fepuleal	2009-2011
Mary Thurston	2011-2012
Wayne Higgens	2012-2013
Richard Griffith	2013-2015
Alex Cameron	2015-2017

Assistant Special Coordinators (Fiji)	
Sekove Naqiolevu	2003-2005
Mataiasi Masi Lomaloma	2005-2017

Appendix 4: List of interviewees

During my fieldwork in Australia, Solomon Islands and Niue, I conducted a total of 31 semi-structured interviews, listed in the following tables. Most of participants were promised confidentiality. For this reason, I only list their general position, the general location of the interview, and the date of the interview, with an identifying code.

	Code	Position	Interview date
The Australian Government (Canberra, Australia)			
1	AG1	The Australian Government, Department of Foreign Affairs and Trade	19 August 2015
2	AG2	The Australian Government, Department of Foreign Affairs and Trade	25 August 2016
3	AG3	The Australian Government, Department of Foreign Affairs and Trade	25 August 2016
4	AG4	Former Special Coordinator of RAMSI	25 August 2015
5	AG5	Former RAMSI Law and Justice Program Director	29 August 2016
6	AG6	Attorney General's Department	6 October 2016
7	AG7	Australia Parliament House Library	15 September 2016 20 October 2016
Experts (Canberra, Australia)			
8	AE1	Expert, The Australian National University	18 August 2015
9	AE2	University of South Pacific	20 September 2016
10	AE3	Solomon Islander, Former the SIG member	15 September 2016
11	AE4	Former Legal Expert of the World Bank	28 August 2015 4 November 2016
12	AE5	Former RAMSI expert, The Australian National University	19 August 2016 22 September 2016
13	AE6	Solomon Islander, The Australian National University	7 October 2016
14	AE7	Solomon Islander, The Australian National University	7 October 2016
Experts and International Aid Agency (Honiara, Solomon Islands)			
15	SI1	Embassy of Japan in Solomon Islands	4 November 2016
16	SI2	The World Bank, Solomon Islands Office	4 November 2016
17	SI3	Expert, University of Hawaii	6 November 2016
18	SI4	Court Co-ordination Adviser, SIJP	7 November 2016
19	SI5	Consultant of SIG on Anti-Corruption Project	7 November 2016

20	SI6	UNDP Solomon Islands	8 November 2016
Civil Society (Honiara, Solomon Islands)			
21	SC1	Owner of the guest house	4 November 2016
22	SC2	Lady from West-Malaita, a cleaning staff of the guest hotel in Honiara, single-mother of two kids	4 November 2016
23	SC3	Local staff of a hotel	6 November 2016
24	SC4	Former Fijian military and current business owner of a company in Honiara	6 November 2016
25	SC5	Local private Lawyer	7 November 2016
26	SC6	Public Solicitor of Solomon Islands	8 November 2016
27	SC7	Small business owner from Malaita province	8 November 2016
Legal Expert and Practitioners (Alofi, Niue)			
28	NU1	Chief of Department of Justice	13 July 2016
29	NU2	Former prosecutor ,Pro-bono Lawyer of Niue	14 July 2016
30	NU3	Staff of Department of Justice	18 July 2016
31	NU4	Local Private Lawyer	18 July 2016

Appendix 5: Scenes of Honiara (November 2016)



Left: The Magistrate Court of Solomon Islands, Right: The High Court & The Court of Appeal in Honiara



Left: Building of public solicitor's office / Right: Entrance of public solicitor's office



Renovated the Pacific Casino Hotel, November 2016

(Photo credit by the author)