

Australia Indonesia Partnership for Justice (AIPJ)

Design Document

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Attachment 1
to the
Request for Tender

Table of Contents

ACRONYMS, ABBREVIATIONS AND KEY CONCEPTS.....	IV
1. INTRODUCTION.....	1
1.1 PURPOSE AND STRUCTURE OF THIS DOCUMENT	1
1.2 DESIGN METHODOLOGY	1
2. ANALYSIS AND STRATEGIC CONTEXT.....	2
2.1 COUNTRY AND SECTOR ISSUES	2
2.1.1 <i>Indonesia's Development Context</i>	2
2.1.2 <i>The Current State of Indonesia's Law and Justice Sector and Priorities for Engagement</i>	3
2.1.3 <i>Working with Key Justice Sector Actors</i>	9
2.2 AUSTRALIA AND INDONESIA'S FRAMEWORK FOR DEVELOPMENT COOPERATION AND LAW AND JUSTICE SECTOR REFORM	11
2.2.1 <i>Relevant Indonesian Laws</i>	12
2.2.2 <i>Paris Declaration and Jakarta Commitment</i>	12
2.2.3 <i>The Australia Indonesia Partnership Country Strategy 2008-13 and Indonesia's National Medium-Term Development Plan (RPJMN) 2010-14</i>	12
2.2.4 <i>The Anti-Corruption Policy Framework</i>	13
2.2.5 <i>Indonesia's National Access to Justice Strategy</i>	14
2.2.6 <i>Indonesia's Institutional Blueprints</i>	14
2.2.7 <i>Indonesian Government Engagement with Donors in the Sector</i>	15
2.3 AUSTRALIA'S NATIONAL INTERESTS	15
2.4 OVERVIEW OF LESSONS LEARNED FROM AUSTRALIA AND INDONESIA WORKING TOGETHER IN THE SECTOR	16
3. SCOPE AND GOALS OF AIPJ	18
3.1 CONCEPTUAL FRAMEWORK AND SCOPE	18
3.2 ALIGNMENT OF AIPJ GOALS AND OBJECTIVE WITH GOI POLICIES	18
3.2.1 <i>Long-term (20 Year) Goal</i>	19
3.2.2 <i>Medium-term (5-10 Year) Goal</i>	19
3.2.3 <i>Objective and Expected Outcomes</i>	19
3.2.4 <i>Cross-cutting Issues</i>	27
3.2.5 <i>Partner Organisations</i>	29
3.3 FORM OF AID PROPOSED	29
3.3.1 <i>A Flexible Program</i>	29
3.3.2 <i>AIPJ Approach to Working in Partner Systems</i>	30
3.3.3 <i>AIPJ Approach to Capacity Development</i>	32
3.3.4 <i>Types of Assistance</i>	34
3.4 OPERATING PRINCIPLES	34
3.5 SUSTAINABILITY	35
3.6 TIMING AND BUDGETARY ISSUES.....	35
3.7 COORDINATION AND COHERENCE WITH EXISTING AUSTRALIAN AND OTHER DONOR/MULTILATERAL PROGRAMS	36
3.7.1 <i>Synergies with Other AusAID-funded Programs</i>	36
3.7.2 <i>Relationship to other Government of Australia Assistance to Indonesia's Law & Justice Sector</i>	36
3.7.3 <i>Harmonisation with Other Donor & Multilateral Programs</i>	37
4. IMPLEMENTATION ARRANGEMENTS	38
4.1 GOVERNANCE AND MANAGEMENT ARRANGEMENTS	38
4.1.1 <i>The Australia Indonesia Partnership for Justice Board (Partnership Board)</i>	38
4.1.2 <i>Australia Indonesia Partnership for Justice Working Committee (Working Committee)</i>	39
4.1.3 <i>GoI Managing Agency</i>	39
4.1.4 <i>GoA Managing Agency</i>	39
4.1.5 <i>Implementation Service Provider</i>	40
4.1.6 <i>Technical Support Pool</i>	40
4.2 IMPLEMENTATION APPROACH	40
4.2.1 <i>Program Planning and Priority Setting</i>	40
4.2.2 <i>Annual Work Plan</i>	41
4.2.3 <i>Selection Criteria for activities</i>	41

4.2.4	<i>Partnership and Emerging Issues Fund</i>	42
4.2.5	<i>Work Plan Implementation</i>	43
4.2.6	<i>Work Plan Monitoring and Review</i>	43
4.3	PARTNERSHIP REVIEW AND REPORTING REQUIREMENTS	43
4.3.1	<i>AIPJ Inception Report</i>	43
4.3.2	<i>AIPJ Annual Work Plans</i>	44
4.3.3	<i>AIPJ Program Progress Reports</i>	44
4.3.4	<i>Assessment of Strategic Engagement</i>	44
4.3.5	<i>Independent AIPJ Reviews</i>	45
4.3.6	<i>Activity Completion Report</i>	45
4.4	MONITORING AND EVALUATION APPROACH - SUMMARY	45
4.5	PROCUREMENT AND FINANCIAL MANAGEMENT ARRANGEMENTS	46
4.6	OVERARCHING POLICY ISSUES	46
4.6.1	<i>Gender Equality</i>	46
4.6.2	<i>Anti-corruption</i>	47
4.6.3	<i>Sub-national Governance</i>	47
4.6.4	<i>Disability-inclusive Development</i>	47
4.6.5	<i>HIV</i>	48
4.6.6	<i>Combating Transnational Crime</i>	48
4.6.7	<i>Environment (including compliance with Environment Protection & Biodiversity Conservation Act)</i>	48
4.6.8	<i>Disaster Risk Reduction</i>	48
4.6.9	<i>Child Protection</i>	49
4.7	COMMUNICATIONS AND PARTNERSHIP STRATEGY	49
4.8	CRITICAL RISKS AND RISK MANAGEMENT STRATEGIES.....	49
4.9	TRANSITION ARRANGEMENTS	49
4.9.1	<i>Australia Indonesia Partnership for Justice – transition (AIPJt)</i>	49
4.9.2	<i>Key Changes, New Features and Enhancements</i>	50
5.	ANNEXES.....	51
5.1	DESIGN PROCESS AND SUMMARY OF CONSULTATIONS	51
5.2	LIKELY IMPACTS OF LAW AND JUSTICE SECTOR REFORM IN INDONESIA ON POVERTY ALLEVIATION AND SUSTAINABLE DEVELOPMENT	53
5.3	KEY INDONESIAN LAWS RELATING TO LAW AND JUSTICE SECTOR REFORM	55
5.4	AIPJ STAKEHOLDER ANALYSIS.....	57
5.5	DETAILED ANALYSIS OF LESSONS LEARNED FROM PREVIOUS ASSISTANCE.....	67
5.6	AIPJ PROBLEM ANALYSIS MATRIX.....	71
5.7	SYNERGIES BETWEEN AIPJ AND OTHER AUSTRALIAN ODA-FUNDED PROGRAMS	79
5.8	MONITORING & EVALUATION APPROACH.....	81
5.9	GUIDELINES FOR ASSISTANCE TO CIVIL SOCIETY UNDER AIPJ	88
5.10	RISK MATRICES.....	89
5.11	POSITION DESCRIPTIONS	92

Acronyms, Abbreviations and Key Concepts

ACLEI	Australian Commission for Law Enforcement Integrity
AFP	Australian Federal Police
AGD	Australian Attorney General's Department
AGO	Indonesian Attorney General's Office
AIP	Australia Indonesia Partnership
AIPD	Australia Indonesia Partnership for Decentralisation
APSC	Australian Public Service Commission
AusAID	Australian Agency for International Development
Bappenas	Indonesian National Development Planning Agency
CSO	Civil society organisation
DFAT	Australian Department of Foreign Affairs and Trade
DIAC	Australian Department of Immigration and Citizenship
DIPA	List of Activities Funded through the Indonesian State Budget
Ditjen HAM	Directorate General for Human Rights, Indonesian Ministry of Law and Human Rights
Ditjen PP	Directorate General for Legislation, Indonesian Ministry of Law and Human Rights
DPR	National Parliament
EC	European Commission
ELSAM	Institute for Social Advocacy (an NGO)
GoA	Government of Australia
GoI	Government of Indonesia
GPF	Government Partnerships Fund
ICW	Indonesia Corruption Watch
IMF	International Monetary Fund
ISP	Implementation Service Provider
Kabupaten	District. A <i>kabupaten</i> is the same level as a municipality (<i>kotamadya</i>) – the difference in terminology is simply to indicate whether the economy of the particular region is predominately rural (district) or urban (municipality).
Kecamatan	Sub-district. Sub-districts do not have their own parliaments or executive governments; they are simply an extension of the <i>kabupaten/kotamadya</i> government.
Kepala Daerah	Head of a sub-national executive government.
Komnas HAM	National Commission on Human Rights
Komnas Perempuan	National Commission on the Elimination of Violence Against Women
Kotamadya	Municipality. A <i>kotamadya</i> is the same level as a district (<i>kabupaten</i>) – the difference in terminology is simply to indicate whether the economy of the particular region is predominately rural (district) or urban (municipality).
KPK	Indonesian Corruption Eradication Commission
KPP	Coalition of Court Observers (an NGO)
KTP	Indonesian Identity Card
LBH	Legal Aid Organisation
LDF	Australia-Indonesia Legal Development Facility
LeIP	Independent Court Analysis Institute (an NGO)

LRP	Legal Reform Program
M&E	Monitoring and evaluation
MaPPI	Justice Sector Monitoring Community (an NGO forum)
MCC	Millennium Challenge Corporation
MTI	Indonesian Transparency Society (an NGO)
MTR	Mid Term Review
Musrenbang	Community consultations for budget planning
ODA	Overseas Development Assistance: “Flows of official financing administered with the promotion of the economic development and welfare of developing countries as the main objective, and which are concessional in character”.
Pemda	Sub-national executive government
Perda	Regional Regulation (law passed by a sub-national parliament and approved by the relevant <i>kepala daerah</i>)
Perpres	Presidential Regulation
PPP	Purchasing Power Parity
PRIP	Program Review and Implementation Plan
PSHK	Indonesian Law and Policy Study Centre (an NGO)
RAN-PK	National Action Plan on Corruption Eradication
RKP	Annual Government of Indonesia Work Plan
RPJMN	Government of Indonesia National Medium-Term (five-year) Development Plan, formulated by Bappenas. The next RPJMN is due to be endorsed in a Presidential Regulation in January 2010.
RPJPN	Government of Indonesia National Long-Term (twenty-year) Development Plan, formulated by Bappenas. The current RPJPN is for 2005-25 and was endorsed by Parliament and the President in 2007.
SAKIP	Government of Indonesia’s Bureaucratic Accountability and Effectiveness System
Stratnas PK	National Strategy on Corruption Eradication
TII	Transparency International – Indonesia (an NGO)
TSP	Technical Support Pool
UNCAC	United Nations Convention Against Corruption
UNDP	United Nations Development Program
UNODC	United Nations Office on Drugs and Crime
USAID	United States Agency for International Development
WGLC	Australia Indonesia Working Group on Legal Cooperation
YLBHI	Indonesian Legal Aid Foundation

‘Law and justice sector’

The Government of Indonesia’s *National Long-Term Development Plan 2005-25* describes ‘legal development’ as including:

- improving the quality of legislation;
- improving the quality of state legal institutions and infrastructure;
- efforts to bring about the rule of law through developing a culture of law and an improved awareness of legal issues within the community; and
- efforts to bring about fair and democratic civic life.

The term ‘law and justice sector’ will be used throughout this design document as a catch-all term to refer to all actors engaged in the above activities.¹ Within this sector, AIPJ’s primary focus will be on the judiciary, prosecutorial agencies and the national human rights institutions. While acknowledging the importance of informal and traditional actors, and the impact these have on state-based law and justice, the term ‘law and justice sector’ is not intended in this document to incorporate references to these actors.

‘Rule of law’

The rule of law is the principle whereby individuals, organisations and the state are regulated by law rather than arbitrary action. It underpins social and economic development, enabling people to plan and live their life as they choose.² The Government of Indonesia (GoI) defines rule of law as involving the ‘supremacy of the law and the constitution; the constitutional separation of powers; enshrined human rights; a free and independent judiciary which guarantees that all citizens are treated equally before the law; and a guarantee of justice for all people in relation to the misuse of power.’³ This document adopts the same definition of ‘rule of law’.

‘Access to justice’

Access to justice underpins the rule of law, and is therefore an essential component of democracy.⁴ Indonesia’s *National Access to Justice Strategy* defines access to justice as the ‘means and ends by which the state guarantees the fulfilment of basic rights according to the *Constitution of the Republic of Indonesia 1945* and international human rights principles, and guarantees access to every claim holder to know, understand, be aware of and make use of these rights through formal and non-formal institutions, supported by fair and responsive public complaint mechanisms, in order to obtain optimal outcomes and improve the quality of their life.’⁵ This document adopts the same definition of ‘access to justice’.

‘Legal services’ and ‘legal information’

The term ‘legal services’ will be used to refer to the broad range of services provided by law and justice sector institutions to justice-seekers and the community at large. These services include:

- court-based dispute resolution;
- legal advice and legal representation (including legal aid);
- the prosecution of individuals charged with corruption; and
- monitoring undertaken by human rights commissions and civil society to ensure law and justice institutions are accountable to the public.

The term ‘legal information’ will be used to refer to all information relating to both the corporate management (finances, human resources, caseloads, etc) and technical functions (judicial decisions, prosecution briefs, etc) of law and justice sector institutions.

¹ These actors, as described in the Stakeholder Analysis at Annex 5.4, include the judiciary, government agencies with legal system mandates (e.g. the Ministry of Law and Human Rights), prosecutorial agencies (e.g. the Attorney-General’s Office and the Corruption Eradication Commission), oversight commissions, relevant NGOs, the legal profession, law schools, the police, the corrections system and parliaments (at national and sub-national levels).

² Australian Attorney-General’s Department, *A Strategic Framework for Access to Justice in the Federal Civil Justice System* (September 2009), p.1.

³ National Legal Development Agency (BPHN), *Summary and Recommendations from the 2008 National Law Convention*, p.1. See also *Elucidation to the Constitution of the Republic of Indonesia 1945*, which states that the rule of law means that ‘the Indonesian state is based on laws not power, and the government is based on constitutionalism and not absolutism’.

⁴ Australian Attorney-General’s Department, *op. cit.*, p.1.

⁵ Government of Indonesia, *National Access to Justice Strategy*, Part 1.4.

Executive Summary

Indonesia has undergone a remarkable transformation into a democratic and emerging middle-income country in the past decade. However this transformation is not yet complete – further efforts are required to entrench the rule of law and improve the performance of the law and justice sector. President Yudhoyono has himself acknowledged law and justice sector reform as a major national priority during his second term. Without such reform, sustainable economic growth will be impeded, public confidence in legal institutions will remain weak, and corruption will undermine governance and service delivery. The Australian Indonesia Partnership for Justice is designed to enable Australia to assist Indonesia in this reform effort over the next five years.

Significant positive structural reforms to the Indonesian law and justice sector have been undertaken over the past ten years, including the separation of the judiciary from the executive arm of government, the recognition of a broad range of basic human rights and the establishment of a number of new specialized and supervisory institutions. However, the sector continues to face a range of challenges, resulting in a severe lack of public trust in key sectoral institutions. The crisis of public confidence in the law and justice sector is self-fulfilling: without adequate public support, the sector will not be able to attract the personnel, resources and constructive engagement with civil society required in order to make positive reforms.

The significance of the law and justice sector to strengthening the rule of law and democratic gains as well as contributing to Indonesia's broader development goals, the recent high-level commitments to reform in the sector, and the existence of important relationships with Australian counterparts are the primary reasons Australia plans to continue assistance to the sector.

Target Areas

The focus of the AIPJ will be primarily on working with national-level law and justice institutions to transform the high-level reform commitments made over the past ten years into concrete improvements to the way the community interacts with the sector. This focus aligns with the next phase in the trajectory of Indonesia's law and justice sector reform, which has developed from a period of little reform (pre-1998), to a focus on designing new standards and institutions (1998-2003) and then through an emphasis on establishing and 'road-testing' institutions (2004-2009).

In order to support this next phase in the development of Indonesia's law and justice sector, Australian assistance through AIPJ will be targeted at priorities which Indonesia has identified as being of critical importance to the sector and for which assistance is likely to bring about sustainable and meaningful impacts. These priorities are:

1. improving court-based dispute resolution systems for marginalised groups (including increasing the use of circuit courts and fee waiver cases);
2. improving the capacity of public prosecutors to conduct prosecutions and communicate with the community in relation to corruption-related crimes;
3. increasing the publication and usefulness of judicial decisions and the annual reports of key justice institutions;
4. improving legislative frameworks for the provision of legal aid (including supporting public participation in the drafting of a Legal Aid Bill);
5. supporting the capacity of civil society and human rights commissions to support law and justice sector reform.

Partnership with Indonesia

AIPJ will build on the assistance AusAID has provided to Indonesia's law and justice sector over the past ten years, continuing the gradual scaling up of Australia's engagement in this vital sector. While AIPJ will utilise the relationships and expertise formed throughout the last decade, its implementation will differ from previous assistance in several important ways.

AIPJ will be closely aligned with the Indonesian Government's priorities in the law and justice sector, including the priorities highlighted in the Medium Term Development Plan 2010-14. Although there are limited overarching sector-wide reform policies, a range of laws and policy frameworks demonstrate a clear commitment and emerging set of priorities for reform of the sector. Australia's assistance to the sector will represent only a small fraction of the total resources in the sector, but a significant portion of funds dedicated solely to the reform in the sector as the Indonesian Government's budget is almost entirely spent on routine expenditures and many key civil society organisations operate largely on donor funding. In order to support such reform, AIPJ will focus on bringing about sustainable change through contributing to the abovementioned priorities – including, where possible, supporting constructive engagement on these priorities between state institutions and civil society.

AIPJ's approach to working in the areas identified will involve a strong commitment to developing partnerships and promoting policy dialogue between Indonesian and Australian law and justice institutions. This is in recognition of the growing Australian whole-of-government interest in building partnerships with counterparts in Indonesia, and the fact that some of the most successful activities under previous Australian assistance to the sector involved peer-to-peer linkages. AIPJ's approach will also involve efforts to improve the ability of key Indonesian law and justice sector institutions to monitor and evaluate activities (including donor funded initiatives such as AIPJ) and policies relevant to the sector.

AIPJ-funded activities will be both focused, in the sense that they will directly address the objective and outcomes of the program, and responsive to the fast-changing legal environment in Indonesia.

AIPJ's governance arrangements will reflect the importance both governments place on genuine partnerships in the sector. The governance arrangements will involve a Partnership Board comprising ex-officio⁶ representatives from a range of Indonesian and Australian partner bodies. This Board will promote whole-of-government engagement between the two countries and ensure that AIPJ activities are aligned with the Indonesian Government's priorities in the law and justice sector. In addition, AIPJ will be managed by an AusAID Program Director to promote the sustainability of relationships formed between Australian and Indonesian partners under AIPJ beyond the term of a managing contractor.

Expected Results

By the end of the AIPJ, it is expected that Indonesia's courts, prosecutors and human rights institutions will be better able to supply quality legal services and information to the community. Such improvements will likely involve, for example, the introduction of court policies (such as fee waivers and circuit courts) to provide dispute resolution services to a greater number and diversity of justice-seekers; the regular publication of clear reasons for executing or dropping corruption prosecutions; online access to the annual reports of key institutions and to decisions in individual cases; less dependency on donor funding for legal aid; and greater levels of robust scrutiny and analysis of the extent to which relevant institutions guarantee the rights of the poor and marginalised.

⁶ Ex-officio means "by virtue of one's office". It confers membership to officials in particular positions.

These outcomes will contribute to greater levels of public trust in the ability of the Indonesian formal legal system to offer fair, accessible, transparent and predictable decisions and rules for all. This is a pre-requisite for the achievement of Indonesia's long-term goal of entrenching the rule of law and upholding human rights – and, therefore, a pre-requisite for the consolidation of democracy, and sustainable and inclusive development in the country more broadly.

1. INTRODUCTION

1.1 Purpose and structure of this document

This design document advocates for continuation of the partnership between Australia and Indonesia in the justice sector through a new program of assistance: the Australia Indonesia Partnership for Justice (AIPJ) over the next five years. AIPJ's ultimate goal is to support Indonesia to achieve its long-term goal – as articulated in its *National Long-Term Development Plan 2005-25* – of entrenching the rule of law and upholding human rights. Well-functioning law and justice institutions and a government bound by the rule of law are important to economic, political and social development and the consolidation of democracy.

This document recognises that the Indonesian law and justice sector is diverse, complex and has only recently emerged from a range of historical constraints to its development.⁷ As such, AIPJ has been designed based on the premise that progress reforming the sector will be both complex and incremental. AIPJ is also designed with consideration to the fact that the sector's needs far outweigh what a single donor can address, and that entrenching the rule of law and upholding human rights in Indonesia will require significant Indonesian Government investment as well as international assistance and partnerships beyond this five-year program.

The purposes of this design document are to: (i) provide the basis for a decision to commit funds; (ii) provide the overarching framework for activity implementation; and (iii) provide the principal reference point for performance reviews.

The document is structured as follows:

- Part 2 describes the in-country context and contains an analysis of the rationales for continued Australian assistance to the sector and the particular problems such assistance should target;
- Part 3 describes the scope and goals of the AIPJ, including the expected outcomes and proposed approaches for attaining them; and
- Part 4 outlines the implementation arrangements, including the mechanisms for the governance and management of AIPJ.

The annexes to this document provide readers with additional information relating to this design. Further, deeper analyses of the sector are contained in the AIPJ Background Information Pack.⁸

1.2 Design methodology

This design commenced in mid-2008 with the commissioning of two experts on Indonesia's legal development – one international expert and one Indonesian expert – to conduct a range of stakeholder consultations and develop a comprehensive *Indonesian Legal Sector Analysis*.⁹ This analysis, followed by further consultations with a range of stakeholders in Indonesia, informed the development of an AIPJ Concept Note which passed peer review on 1 June 2009.

Following the concept peer review, an AIPJ Design Team was formed. This team comprised AusAID and Bappenas officials¹⁰ reflecting the importance of partnership as a key theme of the AIPJ. The Design Team held a number of workshops and consultations with government and non-

⁷ The judiciary was only granted full independence from the executive arm of government with the passing of *Law No. 4 of 2004 on Judicial Power*.

⁸ The Background Analysis Pack was produced to inform the design and implementation of AIPJ, but does not constitute a formal part of the design document.

⁹ Sebastiaan Pompe and Dian Rosita, *Indonesian Legal Sector Analysis* (2008).

¹⁰ The AIPJ Design Team included Co-Team Leaders from AusAID Jakarta and Bappenas.

government stakeholders in both Australia and Indonesia (details at Annex 5.1) and sought specialist inputs from design, monitoring and evaluation, and costings experts.

2. ANALYSIS AND STRATEGIC CONTEXT

2.1 Country and Sector Issues

2.1.1 Indonesia's Development Context

In 2008, Indonesia transitioned out of the World Bank's International Development Association of least developed countries.¹¹ The fact that Indonesia is now a (lower) middle-income country is reflected in the relatively small portion of its Gross Domestic Product generated by development assistance – approximately 0.5 per cent of the total GDP and only 2.5 per cent of government spending.

Recent economic growth and increased social spending has seen the number of Indonesians living below the national poverty line¹² reduced to 32.5 million (14.5 per cent of the population).¹³ However, a large number remain very vulnerable to poverty; although 14.5 per cent of the population live below the national poverty line (US\$1.55 per day on a PPP basis¹⁴), 42.6 per cent live on less than US\$2 per day (PPP). Indonesia's poverty alleviation progress at a national level also hides significant sub-national disparities. For example, 4.3 per cent of people in Jakarta are currently living under the national poverty line compared to 37.1 per cent in Papua Province.

Indonesia is on track to achieve the MDGs relating to universal primary education, gender equality and the empowerment of women and reducing child mortality. It is making progress towards halving the proportion of people without sustainable access to safe drinking water. However, the country is unlikely to achieve the MDG of reducing by three-quarters the maternal mortality ratio and is struggling to reach MDG targets relating to malnutrition, access to basic sanitation, reducing the prevalence of HIV/AIDS and tuberculosis and reversing the loss of environmental resources.

Indonesia's development achievements and challenges point to the need for donors to assist Indonesia to cement its position as a middle-income country, transition within this category from a lower-middle to an upper-middle income country, and to ensure that such growth is inclusive.

The law and justice sector has an important role to play in this transition. A well-functioning law and justice sector creates an enabling environment for the achievement of the MDGs and would play an important role in alleviating poverty and promoting sustainable development in Indonesia by:¹⁵

- building confidence in the capacity of state institutions to ensure security and reducing the need to resort to violence to resolve disputes;
- enabling the poor and the marginalised to address their grievances;
- guaranteeing certainty to domestic and international investors;
- reducing corruption; and
- strengthening democracy and supporting the development of a robust, pluralist civil society.

¹¹ Indonesia originally “graduated” from the IDA in 1980, then “reverse graduated” following the economic crisis in 1998.

¹² In 2009, Indonesia defined someone living as poverty if their expenditure was less than IDR 222,000 per month in an urban area or less than IDR 180,000 per month in a rural area (with regional differences taken into account).

¹³ See various 2009 reports by the Indonesian Central Bureau of Statistics (BPS) and the World Bank.

¹⁴ Purchasing Power Parity. PPP takes into account the relative cost of living and the inflation rates of the countries, rather than using just exchange rates which may distort the real differences in income.

¹⁵ Further analysis of the role Indonesia's law and justice sector can play in promoting poverty alleviation and sustainable development can be found at Annex 5.2.

2.1.2 The Current State of Indonesia's Law and Justice Sector and Priorities for Engagement

In 2008, AusAID commissioned a comprehensive analysis of Indonesia's law and justice sector for the purposes of informing this design.¹⁶ This analysis described three periods in the reform trajectory of the Indonesian law and justice sector:

1. **Pre-1998** when little commitment was made to the rule of law and human rights;
2. **1998-2004** when entirely new legal and institutional frameworks were established;¹⁷ and
3. **2004-present** during which the focus of reform has begun to shift toward implementing the new frameworks. This present period can be seen as 'road testing' and consolidation of the new frameworks.

The law and justice sector now appears ready to enter a new phase in which the high-level reforms made since 1998 are implemented in ways that improve the transparency, accountability and accessibility of relevant institutions and result in concrete changes to the way the community interacts with key institutions in the sector.¹⁸ Australian assistance will support efforts in this direction to improve the effectiveness of the sector as a whole. Australia's assistance to Indonesia will prioritise funding to strengthen the *supply* of accessible and high-quality legal services, while also assisting communities to articulate more effective *demand* for such services in order to encourage the provision of better quality services by the formal sector. These two aspects will be fundamental to achieving the objective of the program:

Increased access to better quality legal information and services

This objective is consistent with an acknowledgement that translating high-level reforms into concrete changes which meet the law and justice needs of the community will involve processes which are both:

- *technical*, involving stakeholders learning and developing improved responses to law and justice challenges; and
- *political*, involving the content and legitimacy of law and justice institutions being "subjected to intense scrutiny from a broad cross-section of stakeholders, with all of the compromises, disappointments and 'messiness' that this inherently entails."¹⁹

Analytical overview of the Indonesian law and justice sector

According to the World Bank's *2008 Worldwide Governance Indicators*, Indonesia's law and justice sector has made slow but positive progress since 1998, from a very low base. At present, Indonesia ranks in the bottom 28.7 per cent of countries for 'rule of law', up from a rank of 23.8 in 1999.²⁰ Similarly, Indonesia's 'control of corruption' percentile ranking has increased from 9.2 in

¹⁶ Sebastiaan Pompe and Dian Rosita, *op. cit.*

¹⁷ These included, for example, the enshrinement of basic human rights in the Constitution, the transfer of court management from the executive government to the judiciary and the establishment of a range of new specialised agencies (such as the Constitutional Court, the KPK and the Judicial Commission).

¹⁸ In a meeting between the AIPJ Design Team and Deputy Chief Justice Paulus Lotulung in January 2010, for example, his Honour described how the reform dynamics have begun "to move away from setting up independent institutions to ensuring that institutions are both independent as well as transparent and accountable", as reflected by the differences between the 2004 Judiciary Law (which emphasised only the status of courts) and the 2009 Judiciary Law which has revoked it (which emphasises transparency and accountability).

¹⁹ Daniel Adler, Caroline Sage and Michael Woolcock, 'Interim Institutions and the Development Process: Opening Spaces for Reform in Cambodia and Indonesia', *BWPI Working Paper* 86, March 2009, p.15.

²⁰ World Bank, *2008 Worldwide Governance Indicators* (2009), <http://info.worldbank.org/governance/wgi/sc_chart.asp>.

1998 to 31.4 in 2008.²¹ However, Indonesia still lags behind other lower middle-income countries, which average 9.1 and 7.1 percentile points above Indonesia for the ‘rule of law’ and ‘control of corruption’ indices respectively. This indicates that, without meaningful and sustainable reform to the sector, law and justice issues may act as a bottleneck to Indonesia’s efforts to entrench and progress its status as a middle-income country.

The Indonesian Government’s own system for measuring bureaucratic effectiveness, the SAKIP,²² assesses the country’s law and justice institutions as among the least effective. For example, the most recent national SAKIP assessment, which assessed the effectiveness of 74 national government agencies, ranked the Judicial Commission, Supreme Court,²³ Attorney-General’s Office (AGO) and Ministry of Law and Human Rights at numbers 74, 73, 68 and 64 respectively.²⁴ Reformers within the sector acknowledge the challenges – former Chief Justice Bagir Manan has stated in relation to the Supreme Court’s reform efforts, for example, that “every clear-thinking person must admit that this is very difficult work” and that “the significant amount of time required to achieve court reform does not receive sufficient acknowledgement”.²⁵ As discussed below, all of these institutions remain centralised, unlike institutions in many other sectors following recent moves toward greater levels of decentralised governance.

Significant positive reforms have been undertaken at a structural level throughout the past ten years, including the separation of the judiciary from the executive arm of government and the recognition of a broad range of basic human rights. The establishment of a Constitutional Court with full review powers has emerged as a powerful and highly respected vehicle for the rule of law, and as a model for a well-run court and a financially clean and accountable institution. In addition, a new Anti-Corruption Commission (KPK) is focusing on attacking high-level corruption, including in the legal system. Supervisory bodies have also been established for the courts (Judicial Commission), prosecution (Prosecutorial Services Commission), the delivery of public services (Ombudsman) and the protection of women’s rights (Commission for the Elimination of Violence Against Women). A recently passed Freedom of Information Law is due to come into effect in 2010, which will work to encourage greater transparency within the law and justice sector.

The courts and public prosecution, however, are failing to translate these high-level reforms into services that meet community needs. This is reflected by the fact that Indonesian citizens and businesses rarely make use of Indonesian courts. The Supreme Court has reported, for example, that less than 19,000 civil disputes (excluding family law cases involving Muslims²⁶) were registered at first instance and intermediate level throughout the entire country in 2009.²⁷ This is a rate of less than one case per 10,000 citizens, which is significantly lower than other countries in the region.²⁸

²¹ Indonesia was placed in 121st position out of 180 countries surveyed by Transparency International (TI) according to TI’s latest Corruption Perception Index report released on 17 November, 2008. Indonesia’s scored only 0.2 higher than the previous year on this index. The ranking places Indonesia in the company of countries such as Algeria, Egypt, Mali, and the Solomon Islands.

²² *Sistem Akuntabilitas dan Kinerja Instansi Pemerintah*.

²³ The SAKIP focused on the administrative and bureaucratic functions of the Supreme Court rather than its judicial functions.

²⁴ Ministry for State Administrative Reform, *Peringkat Evaluasi Implementasi Sistem AKIP Pusat 2008* (February 2009).

²⁵ Chief Justice Bagir Manan, *Speech Presenting the Supreme Court’s 2007 Annual Report* (2008).

²⁶ These cases are handled by the Family Court and in many cases are involuntary, in that parties are required to attend court even if the parties have reached a private settlement.

²⁷ Supreme Court Directorate for General Court Administrative Development (Direktorat Pembinaan Administrasi Peradilan Umum), *Table II Data Set for 1 January - 31 Desember 2009* (2010). This has not changed significantly from previous years: see, eg, Supreme Court Directorate General for General Judicial Affairs, *Annual Report 2007* (25,000 civil cases, excluding family law cases for Muslims).

²⁸ In Cambodia, for example, the court system over the past ten years has averaged one civil case per 3,000 citizens annually. The court system in the Philippines, with a population of just over one-third of Indonesia’s, processes

In fact, it appears that the total number of civil disputes before Indonesian courts has changed little since independence, despite a large increase in the population. Most Indonesians instead resolve disputes through informal means, which can often lead to discriminatory, unpredictable and/or unsustainable outcomes.²⁹ As extensive research has shown, the quality of informal dispute resolution is strongly influenced by the existence of formal alternatives.³⁰ Therefore, in order to improve informal mechanisms, Indonesia's formal law and justice system needs to offer a credible alternative by complying with international standards and adequately addressing the legal rights and legitimate expectations of Indonesian citizens.

Many Indonesians are unable to **access** the formal legal system due to:³¹

- the costs associated with registering cases and difficulties in obtaining legal aid and physically accessing court buildings (due mainly to high transport costs); and
- the lack of user-friendly mechanisms within courts, prosecutorial agencies and the national human rights institutions for registering grievances.

There is also general lack of faith in capacity of the country's law and justice institutions to deliver **quality** legal service.³² The reasons for this are complex, varied and inter-related. They include:

- *Lack of certainty in judicial and prosecutorial decision-making.* Court judgements are often unavailable or inexplicable, resolution of disputes (particularly commercial disputes) is highly unpredictable, grounds for prosecution and case dismissal are opaque and enforcement of judicial decisions is weak.
- *Lack of consistency in legislation and case law.* Indonesians are often unclear about their rights in particular situations due to inconsistencies in case law and, in particular, between local regulations and national laws (including Indonesia's Constitution and international human rights obligations).
- *Corruption.* Corruption is a key reason for the lack of public trust in law and justice institutions. In the *Global Corruption Barometer 2009*, for example, Indonesians ranked the judiciary as the second-most corrupt institution in the country, following Parliament.³³
- *Marginalisation.* Some groups, such as women and people with disability experience particular difficulties in obtaining just outcomes, as discussed below.

approximately the same total number of cases (data on the civil-criminal split is unavailable) as the Indonesian court system – in the vicinity of 400,000 per year, excluding administrative infringements.

²⁹ See for example case studies undertaken by the Justice for the Poor Project. See also Sebastiaan Pompe and Dian Rosita, *op. cit.*, p.9 (discussing how informal mechanisms often reflect local norms, prioritising the harmony of the community over the rights of the individual and marginalising the poor and disadvantaged in the community).

³⁰ See, for example, Marc Galanter, 'The Legal Malaise: Or Justice Observed' (1985) 19 *Law & Society Review* 537. See also Robert H Mnookin and Lewis Kornhauser, 'Bargaining in the Shadow of the Law: The Case of Divorce' (1979) 88 *Yale Law Journal* 950.

³¹ The analyses upon which this is based can be found in several places, including:

- Sebastiaan Pompe and Dian Rosita, *op. cit.*;
- analytical papers produced by the AIPJ Design Team (available on request);
- the background to the Indonesian Government's *National Access to Justice Strategy (2009)*;
- the Mid-Term Review of the LDF (2006);
- the Gender Review of the LDF (May 2009); and
- various reports by the World Bank's Justice for the Poor Project.

³² For example, a recent survey conducted by Lembaga Survei Indonesia found that only 60.5 and 59.7 per cent of respondents had positive views of the judiciary and the Attorney-General's Office respectively (compared with 89 and 83.3 per cent approval of the President and the Armed Forces respectively): Lembaga Survei Indonesia, 'Kinerja Lembaga Tinggi' (Effectiveness of Key Institutions), *Evaluasi Publik Terhadap DPR dan Ketua DPR Pilihan Masyarakat* (September 2009), p.25.

³³ See Transparency International Indonesia, *Barometer Korupsi Global 2009*. The judiciary received an average score of 4.1 on a scale of 1 to 5 (1 being 'not corrupt' and 5 being 'very corrupt').

When Indonesians do bring cases to court, the types of cases generally reflect the main sources of conflict in the country generally – criminal offences, family related disputes and land conflicts.³⁴ Key issues in relation to court cases in these areas include:

- Approximately 93 per cent of cases registered before Indonesian courts are in relation to **criminal offences**. Of these, around 89 per cent involve minor infringements, such as traffic offences.³⁵ A smaller number involve what the Indonesian legal system has classified as ‘special crimes’ (*tindak pidana khusus*). These crimes, which include corruption, illegal logging and child abuse, are **crimes which Indonesia regards as requiring special attention** due to their potential to have broader social impacts. Of all ‘special crimes’, **corruption** has become the main focus of the Indonesian Government in recent years, due in part to its capacity to undermine the legal system as a whole and the ability of authorities to recuperate investigation costs through asset seizures. Anti-corruption assistance, including efforts to enhance judicial transparency, is also one of the areas of law and justice sector reform where donor funding appears to be most welcome and most able to have an impact.
 - **Transnational criminal activity** also falls into the category of ‘special crimes’. Indonesia is both a target and a transit point for a range of transnational crimes, including terrorism, human trafficking, narcotics trafficking and people smuggling. These crimes are fundamentally a consequence of the weak status of the rule of law and the relative infancy of Indonesia’s civil society. Despite its high profile, transnational crime is an area that generally has a lesser impact on Indonesian citizens as a whole relative to domestic corruption and other criminal and civil matters.³⁶
- The majority of **family related disputes**, which make up approximately seven per cent of the court system’s total caseload (or around 60 per cent of the total caseload excluding administrative infringements), involve divorce, inheritance and domestic violence cases. In the formal system, the majority of family related disputes are addressed through the religious court system.³⁷ Substantial inroads have been made in recent years, in part with Australia’s assistance, to improve the religious court system, which is now one of the most respected areas of the law and justice sector. Further improvements in this area will help to consolidate this system and provide an example to the other sectors of what can be done.
- Little statistical information is available on **land disputes**, but they are consistently reported as both the most difficult to resolve and the most likely to trigger violence. Land disputes often result in environmental degradation, poverty and violent conflict. The resolution of land disputes is severely hindered by an unclear legal framework and a lack of recognition of the rights of disenfranchised communities. The legal system has a role to play in improving access to land dispute resolution for poor and marginalised groups, which could involve learning from the positive examples set by the religious courts. However, the systemic problems underpinning many land disputes will require further high-level reforms to the legislative and institutional framework regulating real property in Indonesia.

³⁴ For a typology of the most common conflicts experienced by Indonesian citizens, see Matt Stephens and Samuel Clark, *Forging the Middle Ground: Engaging Non-state Justice in Indonesia* (2009), p.25.

³⁵ *Supreme Court Annual Report 2008*.

³⁶ In some cases, however, there is an artificial distinction between domestic and transnational crime. Money laundering, for example, though also a transnational crime, is often linked to *domestic* criminal activity in Indonesia, such as illegal logging or corruption of state funds.

³⁷ The main function of the religious court system is to hear family law cases (primarily concerning divorce, custody and inheritance) involving Muslim litigants.

Opportunities for and constraints to development in the sector

Key supply-side issues

The overarching constraint in the law and justice sector is the **lack of organisational and personnel capacity** within key institutions. The sector is very large; in addition to their Jakarta-based headquarters, the General Courts, the Religious Courts and the Attorney-General's Office, for example, each have intermediate offices in all of Indonesia's 33 provinces and local offices in almost all of the approximately 500 districts and municipalities.³⁸ Basic management capacity (including strategic planning, budgeting and evaluation) throughout this vast sector is lacking, while human resource capacity of the country's 6,000 judges and other key law and justice sector personnel is exacerbated by the low quality of tertiary legal education and the inability of professional associations to train, monitor and discipline members. This reinforces a low regard for legal professionals. Efforts to improve this situation, including through a re-assessment of resource allocation to the sector,³⁹ are hampered by the fact that Indonesian policy-makers have faced obstacles in **developing and implementing whole-of-government policies for law and justice sector reform**. In the absence of an overarching reform policy with clear incentives to support its implementation, it has been difficult to mobilise full political and societal support for reform. This situation 'basically leaves it to each legal institution individually to tackle reform, and indeed, whether to reform at all.'⁴⁰ No Indonesian Government policy currently exists on budget reforms, internal structures, personnel or strategic planning of the law and justice sector as a whole. Related to this is the lack of overarching monitoring data for the sector.

Although institutions are currently struggling to translate high-level reforms into services and information at the local level, there is growing momentum in Indonesia, as demonstrated by the National Access to Justice Strategy, to strengthen formal dispute resolution mechanisms at the local level and increase the supply of **legal aid**, particularly for poor and marginalised groups. Australia has already been assisting courts, governments and civil society in these areas,⁴¹ and opportunities to improve access to courts are increasing, with the substantial reduction in case backlogs (also supported by Australian assistance). In 2008, Indonesian courts (excluding the Constitutional Court) decided 99 per cent of first instance cases registered and 96.25 per cent of appeals cases. The progress made in reducing backlogs represents the first step in improving the effectiveness of court-based dispute resolution. The next step is to focus on improving the quality of these services and the public's access to them (including access by poor and marginalised litigants).

The **prosecution of crimes involving powerful individuals**, particularly those implicated in corruption, is falling short of public expectations. The greater the public distrust in the Attorney-General's Office, which is the country's primary public prosecution agency, the greater the likelihood that it will continue to engage in the corrupt practices which led to the distrust in the first place. Corrupt practices continue to thrive in an arena where information on the progress of prosecutions is not systematically available. Furthermore, public prosecution agencies which are able to receive advice from the public and communicate the extent to which they are following-up on such advice are likely to gain public trust and generate **demand for continued improvements in formulating and executing prosecutions**. This calls for the need to **improve the transparency of prosecutorial processing** and the responsiveness of the AGO in its interactions with the public.

³⁸ There are a total of 734 first instance courts, approximately 500 first instance prosecution offices, 67 appeal courts 33 intermediate prosecution offices.

³⁹ Although the issue requires greater analysis, it appears that Indonesia's court system is under-resourced. The Supreme Court's 2008 budget, covering the management of the entire court system (excluding the Constitutional Court) amounted to approximately only US\$2.60 per citizen. By comparison, the combined annual court budget in Papua New Guinea, for example, usually amounts to approximately US\$4.30 per citizen. Australia's combined annual court budget (excluding the High Court) usually amounts to approximately US\$67 per citizen. Indonesia's court budget is, however, larger per capita than that of the Philippines and Cambodia.

⁴⁰ Sebastiaan Pompe and Dian Rosita, *op. cit.*, pp. 13-18.

⁴¹ For an analysis of this issue, see AIPJ Background Analysis Paper 2.

Key demand-side issues

While the capacity for the supply of quality legal services is weak, capacity for sustained public demand for improved legal services is also weak. This calls for the need to **strengthen public pressure for access to quality legal services and information**. Public participation in the selection of judges and prosecutors, in the drafting of legislation and in commenting on the quality of laws and their enforcement remains largely tokenistic.⁴² Knowledge of legal rights, particularly basic human rights, is still very low and public outreach is poor. This is not helped by the fact that many of the NGOs that played a strong role in the initial push for legal reforms after 1998 are currently struggling to redefine their role in the new phase of reform. The most dynamic NGOs have transformed themselves from oppositional forces into either organisations from which Indonesian Government and judicial institutions can draw technical assistance and/or into policy monitoring and advocacy organisations. However, the **capacity of NGOs to articulate community concerns, contribute to debates in society and advise policy-makers** is often undermined by the practice of donors using them as service providers. This will require donors to work with NGOs in ways which strengthen their internal management, including personnel and financial, so they can perform important accountability functions and retain talent.

Demand for effective legal services is also constrained by the lack of information available in key areas. One key constraint to improving the management of Indonesian courts as well as the quality of their decisions is the lack of access to both corporate information (such as transparent user-fees and detailed annual reports at all levels of the judiciary on court finances, human resource management, caseloads, etc.) and judicial decisions.⁴³ This reduces the level of scrutiny of key institutions by, for example, academics, NGOs and the media, and in doing so weakens the accountability of these institutions to the public at large. In response to this, the Supreme Court has indicated a commitment to **improving access to judicial information**, as articulated in *Supreme Court Regulation 144 of 2007 concerning Access to Judicial Information*⁴⁴ and reaffirmed in the Supreme Court's 2008 Annual Report. Australia plans to significantly increase its assistance to this priority area, which is likely to: enhance the consistency of judicial decision-making by allowing courts to access decisions of other courts; improve access to courts by reducing the levying of inflated user-fees; and minimise the extent of corruption by ensuring greater accountability of Indonesian courts to academics, the media and ultimately the Indonesian public.

An effective legal sector is one that is **accessible to all people and able to provide fair decisions and rules for all people**. Despite its impressive record of ratifying all but two of the major international human rights conventions⁴⁵ and enacting several national laws on human rights (including one that ensures the independence of the National Human Rights Commission), Indonesia is struggling to reconcile and resolve past violations of human rights⁴⁶ and to meet

⁴² This, in turn, is due to a combination of weak systems (such as unclear consultation processes in legislative development), a lack political will to engage broad audience in key decision-making processes and the generally low capacity of civil society – particularly at the local level – to constructively engage in policy dialogue.

⁴³ For an analysis of this issue, see AIPJ Background Analysis Paper 1.

⁴⁴ Australian development assistance paid for local advisers to assist the Supreme Court to draft this regulation, which makes strong commitments to allowing the public to access both corporate information on court management as well as judicial decisions.

⁴⁵ Indonesia is a State Party to CERD, ICESCR, ICCPR, CEDAW, CAT; CRC. It has signed, but not yet ratified, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) and the Convention on the Rights of Persons with Disabilities (CRPD).

⁴⁶ No progress has been made on any cases of impunity: e.g., human rights activist Munir poisoned with arsenic on board Garuda flight from Jakarta to Amsterdam in Sept 2004; justice for victims of the May 1988 riots, including the student demonstrators shot dead by police outside Trisakti University in Jakarta and claims of arson, rape and murder against the Chinese-Indonesian community. A national law on establishing a national Truth and Reconciliation Commission long foreshadowed has still not been developed.

several of its international human rights commitments. The main human rights issues facing Indonesia today include: religious freedom; freedom of expression; torture and ill-treatment of detainees; sexual harassment, exploitation and human trafficking; land rights; and environmental degradation. Assistance to the National Human Rights Commission and the National Commission for the Elimination of Violence Against Women, will address the **organisational constraints these national human rights institutions face in conducting public outreach activities, particularly from their offices outside Jakarta**. These independent, government-funded institutions act as crucial bridges between state and non-state actors in the sector.

Groups that are particularly disadvantaged with respect to the law, include:

- **Women and the law:** Women, including women with disability, have difficulties accessing formal and informal dispute resolution processes, and in obtaining just outcomes from these processes. Substantive constraints for women include: gender biased and conflicting laws and regulations; judicial interpretations and rulings (including customary law); and the lack of available, accessible and affordable legal services.⁴⁷ This calls for a continuation of Australian support to the National Commission for the Elimination of Violence Against Women and meaningful attempts to integrate the rights of women to access justice into all other initiatives in the sector.
- **Rights of people with a disability:** The incidence and prevalence of disability in Indonesia is largely unknown, and issues faced by people with disability in enforcing their rights remain largely unmapped. There is also little general public awareness on the rights of people with a disability in Indonesia. To the extent that research has been conducted on these issues, it suggests that Indonesians with disability experience discrimination in a range of contexts and face significant challenges to accessing dispute resolution mechanisms and other legal services.⁴⁸ The need to address this situation aligns closely with Australian policy⁴⁹ and whole-of-government experience⁵⁰ in the area, as well as an emerging recognition in Indonesia of the importance of this issue.⁵¹
- **Employment and workers rights:** Workers, particularly in the informal sector, face many problems enforcing their employment rights. Children and migrant workers remain particularly vulnerable under the current system. This warrants continued assistance to address some of the systemic issues discussed above, including improving complaint handling systems within national human rights institutions and the transparency and effectiveness of the court and prosecutorial systems.

2.1.3 Working with Key Justice Sector Actors

Given the above analysis, Australia's priority for assistance under AIPJ will be to support the Indonesian Government's efforts to develop and implement an overarching government policy to support service delivery within the legal sector, if momentum for the formulation of such a policy emerges during the life of AIPJ. In the absence of such an overarching policy, Australia will

⁴⁷ See AIPJ Background Analysis Paper 5 for a gender analysis of the Indonesian law and justice sector, including suggested approaches for incorporating gender into the AIPJ. See also Maria Platt, 'Not Just A Piece of Paper', *Inside Indonesia*, July 2009 <<http://insideindonesia.org/content/view/1232/47/>>.

⁴⁸ See, eg, Eva Rahmi Kasim, 'Equal Access?', *Inside Indonesia*, July 2009, <<http://insideindonesia.org/content/view/1227/47/>>. On the role donors can play in this area, see Katherine Guernsey, Marco Nicoli, and Alberto Ninio, *Convention on the Rights of Persons with Disabilities: Its Implementation and Relevance for the World Bank* (2007).

⁴⁹ See below at 4.6 (Overarching Policy Issues) (discussing the Australian Government's *Development for All* policy).

⁵⁰ Australia has recently ratified the International Convention on the Rights of Persons with Disabilities and has ensured that its provisions are reflected in domestic law and policy. The Australian Attorney-General's Department has expressed interest in sharing this experience with Indonesia.

⁵¹ The *National Access to Justice Strategy*, for example, speaks to importance of the rights of people with disability to access legal aid (p.40).

provide assistance to strengthen individual institutions on the issues that are most likely to assist the law and justice sector to translate recent reforms into concrete outcomes for the community as a whole, including the most vulnerable groups in society.

The purpose of AIPJ will be **to assist Indonesian law and justice institutions to improve the provision of quality legal services and information**, particularly at the local level. As the justice sector has not been decentralised, local level bodies have little or no financial or policy-making autonomy. Courts, prosecutorial agencies and executive government agencies at the local level are a direct extension of the Supreme Court, Attorney-General's Office and Ministry of Law and Human Rights respectively.⁵² AIPJ will therefore work primarily with these central institutions, with a view to bringing about measurable outcomes at the local level.

In determining which institutions will receive direct assistance through AIPJ, Indonesian law and justice sector actors were assessed according to their ability to impact on the wide-ranging issues outlined above, their capacity and commitment to reform, and the extent to which they fit Australia's comparative advantage as a donor (particularly in terms of existing relationships and policy directions).⁵³ The inclusion of non-state actors as primary stakeholders is based on the fact that several national-level justice sector organisations are highly technically proficient and are regularly approached by reformers within state institutions to provide important technical and political support. Although a much broader range of actors could have been classified as worthy of AIPJ support, this process was designed to limit AIPJ's interaction to a manageable number of institutions.

Based on this assessment, priority stakeholders for engagement under the AIPJ are listed below, according to whether they will be primary partners (with which AIPJ will engage very closely), secondary partners (with which AIPJ will seek some engagement) and other key stakeholders (which AIPJ will monitor and engage with in dialogue where possible). In addition to these partners, Bappenas, as Indonesia's development planning and donor coordination agency, will play a key role in coordinating AIPJ assistance to the sector.⁵⁴

⁵² In fact, *Supreme Court Circular No. 6 of 2008*, which was promulgated in order to ensure the Supreme Court's independence, prohibits the Supreme Court from receiving any funds from sub-national governments.

⁵³ This involved undertaking a general stakeholder analysis of each institution (see Annex 5.4) and then applying this to the scope of the AIPJ through a problem analysis matrix (see Annex 5.6).

⁵⁴ Bappenas' strong commitment to this role is evidenced by the role Bappenas has played in the AIPJ design.

The following table summarises the findings of this assessment.

Primary partners	Secondary partners	Other key stakeholders
<ul style="list-style-type: none"> • Supreme Court – General Courts Division • Supreme Court – Religious Courts Division • Attorney-General’s Office • National Human Rights Commission (Komnas HAM) • Commission on the Elimination of Violence Against Women (Komnas Perempuan) • Corruption Eradication Commission (KPK) • Directorate General for Human Rights, Ministry of Law and Human Rights • University of Indonesia Centre for Disability Studies • Targeted non-state justice sector organisations⁵⁵ 	<ul style="list-style-type: none"> • Directorate General for Legislation • National Legal Development Board (BPHN) • Coordinating Ministry for Political, Legal and Security Affairs • Indonesian Bar Association (PERADI)⁵⁶ • Law schools • Supreme Court – Administrative Courts system (PTUN) • Judicial Commission 	<ul style="list-style-type: none"> • Constitutional Court⁵⁷ • Ombudsman • Media • National parliament • Sub-national parliaments • Sub-national executive governments

This categorisation will be reviewed when developing the Draft Annual Work Plan throughout the life of the program to ensure AIPJ is responsive to the sector’s institutional reform dynamics.

2.2 *Australia and Indonesia’s Framework for Development Cooperation and Law and Justice Sector Reform*

Reform in Indonesia’s legal system is only sustainable if it is driven and led by internal commitment to reform on the part of the Indonesian state and civil society organisations. As described above, Indonesia has made a range of policy commitments which indicate a significant degree of political will to bring about the changes required to meet the law and justice needs of the community. In addition, President Yudhoyono demonstrated a strong commitment to rule of law and human rights during his first term and appears willing to further enhance his administration’s prioritisation of these issues in his second term by closely monitoring the law and justice components of Indonesia’s *Medium Term Development Plan 2010-14* and supporting champions of change in the sector at ministerial and senior public servant levels. Australian priorities squarely align with these directions.

⁵⁵ These will likely include several participants in the AIPJ civil society consultative roundtables held in Jakarta in January 2010. See Annex 5.1 below.

⁵⁶ Depending on the implementation of a number of Constitutional Court decisions relating to the accreditation of Indonesian bar associations, assistance may also need to incorporate other bar associations such as Kongres Advokat Indonesia.

⁵⁷ While the Court is a key law and justice institution in Indonesia it has not sought international donor assistance and has expressed the view that doing so could be interpreted as interference in its independence.

2.2.1 Relevant Indonesian Laws

The ultimate framework for the AIPJ is the *Constitution of the Republic of Indonesia 1945*, which now recognises the pre-eminence of the rule of law and enshrines a significant number of internationally recognised human rights. The Indonesian Government recognises that these provisions are still largely aspirational, and has therefore included them in its *National Long-Term Development Plan (RPJPN) 2005-25*. As described in Part 3 below, the Indonesian Government's long-term goal in relation to the rule of law and human rights will also form the long-term goal of the AIPJ. A range of other laws, the key ones of which are listed in Annex 5.3, also contain Indonesian Government priorities in the law and justice sector.

2.2.2 Paris Declaration and Jakarta Commitment

In January 2009, Australia and several other donors endorsed the *Jakarta Commitment: Aid for Development Effectiveness – Indonesia's Road Map to 2014*. This policy promotes Indonesia's ownership over development assistance to the country and commits donors to adhere to the principles stipulated in the *Paris Declaration on Aid Effectiveness* (2005). As discussed below in Part 4, AIPJ will use Indonesian Government systems to the extent possible, and attempt to strengthen such systems. This will support incremental movement towards greater use of such systems in future.

2.2.3 The Australia Indonesia Partnership Country Strategy 2008-13 and Indonesia's National Medium-Term Development Plan (RPJMN) 2010-14

The RPJMN is designed to be the primary guiding policy outlining Indonesia's medium-term (five-year) development priorities. The RPJMN process is synchronised with the presidential election cycle, such that each five-year RPJMN is required to be finalised and incorporated into a Presidential Regulation in the January following the October inauguration of the new (or incumbent) president. The RPJMN 2010-14, as approved by *Presidential Regulation No. 5 of 2010*, outlines the key priorities for President Yudhoyono's second (and final) term in office.

The five "development agenda items" of the RPJMN 2010-14 are:

1. Economic Growth and the Improvement of People's Welfare;
2. Improved Governance Systems;
3. Upholding the Pillars of Democracy;
4. Law Enforcement and the Eradication of Corruption; and
5. Inclusive and Just Development.

Fundamental progress on reform in the law and justice sector is one of the cross-cutting "development challenges" identified in the RPJMN, which states that "law must be at the forefront in a democratic system. If law is enforced in a consistent manner, with the eradication of corruption, it is capable of ensuring security, fairness and business certainty. Much has been done to improve the legal system, yet at present much needs to be done to improve the role law plays in the day-to-day regulation of Indonesian society".⁵⁸ The strategies outlined in the RPJMN to achieve this have informed the development of AIPJ's objective and expected outcomes, as discussed in Part 3 below.

Consistent with the Paris Declaration and the Jakarta Commitment, the *Australia Indonesia Partnership Country Strategy 2008-13* is currently aligned with RPJMN 2005-2009 and will be reviewed in 2010 to ensure alignment with the RPJMN 2010-14. The purpose of the Strategy is to articulate key priorities for the bilateral development cooperation relationship. The third of its four pillars is a commitment to "Democracy, Justice and Good Governance",⁵⁹ which in turn includes

⁵⁸ RPJMN Book I, p.19.

⁵⁹ The other three pillars are: Sustainable Growth and Economic Management; Investing in People; and Safety and Peace.

amongst its objectives that Australia will work with Indonesia to improve the capacity, accountability and responsiveness of legal, democratic and oversight institutions and processes.⁶⁰ It is intended that AIPJ be a flagship program under this objective.

Although AIPJ will also support the Pillar 4 objective of ‘Improved capacity to ensure transport safety and security and to counter threats from transnational crime’ over the long-term,⁶¹ it is unlikely to support individual activities under this pillar. Combining a systemic, “building blocks” approach to law and justice sector reforms with a more narrow focus on transnational crime under the Australia Indonesia Legal Development Facility (LDF) led to comparatively less traction for the transnational crime components. This is because – despite the quality of the individual outputs under this component – there were few direct synergies between activities designed to combat transnational crime and activities in support of broader reform, and much greater levels of demand from the Indonesian Government for the latter.

The AIP Country Strategy states that the AIP will:

- support improved institutional capacity in the courts and in key government partners and law-making processes at all levels of government;
- seek to improve access to justice for poor and marginalised communities;
- continue to support human rights and women’s rights institutions; and
- continue to assist Indonesia to implement its National Action Plan on Corruption Eradication (RAN-PK), including ongoing support to key institutions in the legal sector, including the Corruption Eradication Commission (KPK).

The AIP Country strategy also outlines four cross-cutting high priority issues for the AIP: gender, anti-corruption, partnership and performance orientation. These will be addressed under the four AIPJ cross-cutting issues.

2.2.4 The Anti-Corruption Policy Framework

The *Australia Indonesia Partnership Anti-Corruption for Development Plan 2008-13* outlines the ways in which Australia and Indonesia will work together to protect Australian funds in Indonesia and to combat corruption throughout the country more generally. The Plan builds upon Australia’s anti-corruption for development policy, *Tackling Corruption for Development and Growth*, and emphasises the importance of mainstreaming anti-corruption throughout all AusAID programs. The Plan also outlines specific areas where Australia will assist Indonesia to combat corruption through prevention, enforcement and monitoring and evaluation. AIPJ’s direct anti-corruption activities will focus on the first two commitments under the Plan’s Enforcement Pillar: (a) improving investigation and prosecution of corruption crimes; and (b) strengthening enforcement institutions such as the KPK and AGO. However, as an AIPJ cross-cutting issue, anti-corruption will also be a feature of all AIPJ activities. By increasing the opportunities for academics, the media and NGOs to hold key law and justice institutions accountable, activities in relation to improving the transparency of legal institutions, for example, will also contribute to the Australia-Indonesia anti-corruption agenda as outlined in the Plan.

AIPJ’s anti-corruption activities will be informed by the Indonesian Government’s *National Strategy on Corruption Eradication* (Stranas PK) released in December 2009. The Stranas PK replaces the concluded *National Action Plan on the Eradication of Corruption 2004-2009* in shaping whole-of-government approaches, both preventative and repressive, to the eradication of corruption. It is also designed to ensure that Indonesia complies with the UN Convention Against Corruption, which it ratified in 2006 and which Australia has also ratified. Among Stranas PK’s objectives are several commitments with which AIPJ will seek

⁶⁰ Pillar 3, Objective 6.

⁶¹ See below at 4.6 (Overarching Policy Issues).

to align due to their close synergies with the broader scope of AIPJ and Australia's comparative advantages as a donor. These commitments include:

- implementing public administration transparency, effectiveness of public reports and improving public access to information on public administration through supervision;
- accelerating corruption case management and strengthening coordination among law enforcement agencies;
- strengthening law enforcement institutionally through improving the transparency and accountability of prosecutorial and other judicial institutions;
- harmonising and synchronising UNCAC provisions with existing laws and regulations relating to corruption eradication; and
- establishing a national monitoring and evaluation mechanism on corruption eradication, including information on the implementation of UNCAC in Indonesia.

AIPJ's assistance to Indonesia to combat corruption will also seek to support the 2009 Memorandum of Understanding (MoU) between the KPK and the Australian Attorney-General's Department (AGD), the Australian Public Service Commission and the Australian Commission for Law Enforcement Integrity. This MoU seeks to strengthen practical cooperation between the parties and to develop institutional capacity to prevent and combat corruption.

2.2.5 Indonesia's National Access to Justice Strategy

The *National Access to Justice Strategy* states the Indonesian Government's view that there is a clear link between poverty alleviation and access to justice. Its aim is to position Indonesia at the forefront of promoting human rights, justice and legal empowerment of the poor in the Asia region. It proposes a set of broad and ambitious action plans relating to eight themes on accessibility in the law and justice sector (legal and judicial reform; legal aid; local governance; land and natural resources; women; children; workers; and poor and disadvantaged groups).⁶²

The *National Access to Justice Strategy* will provide a useful reference point for AIPJ. As the Strategy is not intended to be the overarching policy for reform of the sector, and is not being driven directly by law and justice institutions (courts, AGO, Ministry of Law and Human Rights, etc), it will not be the sole policy with which AIPJ seeks to align. The action plans formulated under the 'legal and judicial reform', 'legal aid' and 'women' themes, however, will inform AIPJ activities in these areas. In addition, it is likely that certain other components of the Strategy will be incorporated into the *RPJMN 2010-14* and will therefore necessarily shape the strategic direction of AIPJ.

2.2.6 Indonesia's Institutional Blueprints

Many key Indonesian law and justice institutions have, or are developing their own individual reform strategies. In 2010, the Supreme Court, for example, is due to release the *Supreme Court Strategic Plan 2010-2014* and the *Supreme Court Blue Print for Reform 2010-2025*. Where AIPJ is working with a partner that has such a strategy in place, AIPJ's assistance will focus on supporting the priorities outlined in the strategy.

⁶² The Strategy also proposes a "synthesis" of all these plans, which involves a focus on six core strategies: (1) a change of paradigm in legal development and the role of legal education in Indonesia; (2) acknowledgment and support for legal aid activities and development of paralegalism in Indonesia; (3) improvement of legislation and budgetary politics to support access to justice; (4) formulation and implementation of Minimum Service Standards in public services; (5) development of public complaint and dispute settlement mechanisms for claims holders of public services; and (6) strengthening and empowering community-based justice systems.

2.2.7 Indonesian Government Engagement with Donors in the Sector

The Indonesian Government is presently encouraging donors to play an active role in assisting it to implement the commitments outlined above. Other donors in the sector include USAID, IMF (through the National Legal Reform Program), the EC, the World Bank and UNDP. Donors are not being asked to contribute to directly shaping the content of specific laws or the form of specific institutions, but to fund activities which can play a catalytic role – through, for example, exposing relevant actors to knowledge and best practice (from both within and outside Indonesia) or funding civil society organisations to support the reform agenda within parts of the government and judiciary – in improving the accessibility, transparency and accountability of the law and justice sector and the extent to which the community values and demands such improvements. In this way, donors have a role to play in assisting Indonesia to translate existing resources into better development outcomes. Development assistance to this sector is therefore not intended to simply supplement domestic resources, but to complement them.

As this demonstrates, there is a clear and defined role for AIPJ to build on existing relationships and respond to these reform opportunities while they exist in Indonesia.

2.3 *Australia's National Interests*

Support for Indonesia's law and justice sector will further Australia's national interests by facilitating poverty alleviation and sustainable development in Indonesia and, more specifically, by:

- **Entrenching democratic, rule-based governance in Indonesia.** Strengthening the rule of law will reinforce the value of democratic, rule-based governance to a critical mass of Indonesian citizens. This will ensure that the democratic reforms Indonesia has undertaken over the last decade become irreversible and, as a result, will facilitate continued strengthening of government-to-government and people-to-people links between Australia and Indonesia.
- **Improving the experience of Australians using the Indonesian legal system.** As people-to-people links between Australia and Indonesia strengthen, more Australians will make use of the Indonesian legal system in a personal capacity (as both complainants and defendants) – in relation to, for example, custody disputes, inheritance, defamation, consumer protection and criminal offences. Improving the accessibility, transparency and accountability of the legal system will benefit Australian users as well as Indonesians.
- **Facilitating strategic policy dialogue.** Australia's readiness to support key institutions in Indonesia's law and justice sector is likely to support existing court-to-court and government-to-government relationships between the two countries and open new opportunities for engagement in strategic policy dialogue on bilateral and regional legal issues.
- **Creating certainty for Indonesian and Australian investors.** Improving the accessibility, transparency and accountability of the legal system will lead to greater long-term certainty for both Indonesian and Australian businesses in Indonesia. This is likely to produce "win-win" outcomes for Indonesian investors, foreign investors and Indonesian jobseekers.
- **Combating long-term factors which contribute to transnational crime.** These factors include, for example, weak capacity and transparency of prosecutorial institutions and a lack of avenues for citizens to have their grievances addressed in an accessible, transparent and accountable manner.
- **Assisting Indonesia to set an example of Islam coexisting with human rights, including gender equality.** Indonesia's law and justice sector is critical to underpinning its commitment to become a model to other majority Muslim countries of Islam coexisting with internationally recognised human rights.
- **Discouraging instability and radicalisation by supporting the existence of a robust, pluralist civil society.** Evidence suggests that broad-based civil society is likely to thrive in

countries with strong rule of law and protection of human rights, and that this in turn is likely to discourage local conflicts and the emergence of violence-based radical ideologies.

2.4 Overview of Lessons Learned from Australia and Indonesia Working Together in the Sector

Since 1999 Australia has been steadily increasing its assistance to Indonesia's law and justice sector. Assistance began with judicial training activities commenced under the Government Sector Linkages Program (now PSLP), and was followed by the \$4.6m Legal Reform Program (2002-2003) which began to extend technical assistance to several other institutions in the sector. Most recently, the \$24.6m (2004–2009) Australia Indonesia Legal Development Facility (LDF), continued to build relationships and has begun to provide strategic assistance in the sector.⁶³

Some of the key lessons to emerge from this assistance include:

- The need to **maintain flexibility**, as institutions and individuals can gain or lose reform momentum within short periods of time.
- The importance of **not spreading activities too thinly**. A 'critical mass' is required in order to bring about sustainable reforms.
- The need to set **coherent objectives** so that constituent parts of Australian assistance are complementary and mutually reinforcing.
- The need to ensure that governance arrangements involve the **primary stakeholders**. It is important that strategic directions be set by individuals representing law and justice sector institutions.
- The importance of **genuine partnerships**. The most successful component of LDF was its work on access to justice and judicial reform, largely because it utilised a genuine partnership building upon existing Australia-Indonesia court-to-court relationships and aligned with the strategic plans of the Indonesian courts.
- The importance of **working with both state and non-state institutions**. Working at the intersection of state and non-state institutions appears to be an area in which Australia is developing a comparative advantage vis-à-vis other donors.
- The importance of using **in-country expertise**, in particular to reduce costs and build local capacity.
- The importance of **AusAID playing an active role** in ensuring that flexibility is matched by a strategic approach to assistance; that partnerships are developed between Indonesian and Australian institutions, rather than between Indonesian institutions and Australian managing contractors; and incorporating these roles into governance and management arrangements.

Australia's experience assisting Indonesia's law and justice sector has resulted in growing expertise on how to provide assistance to this complex sector and the development of partnerships between key actors in Indonesia and their Australian counterparts.⁶⁴ Australia's longstanding support to the sector, the existence of institutional partnerships and the strength of the broader bilateral relationship have combined to make Australia a trusted donor in what is a very sensitive sector for external assistance. Indonesian law and justice actors generally perceive Australian assistance to Indonesia's law and justice sector as being supportive of Indonesia's long-term needs and interests.⁶⁵ It was for this reason that the Mid Term Review of the LDF (2007) found that

⁶³ A detailed description of previous Australian assistance to Indonesia's law and justice sector, and lessons learned from this, is attached as Annex 5.5.

⁶⁴ For example, strong partnerships exist between the Federal Court of Australia and the Supreme Court of Indonesia and between the Family Court of Australia and the Religious Court of Indonesia (under the auspices of the Supreme Court of Indonesia). The Australian Attorney-General's Department also has relationships with a range of key institutions in Indonesia.

⁶⁵ Design team meeting with Deputy Chief Justice Paulus Lotulung, 15 January 2010.

Australia's assistance to the sector was among the most strategic vis-à-vis other donors, and why our continued assistance is welcomed by the Indonesian Government.⁶⁶

⁶⁶ Based on the aide memoire and first draft of the LDF Independent Completion Report, many of these lessons are likely to be reiterated in the finding of an independent review of LDF currently underway by legal reform specialists John Mooney and Budi Soedarsono.

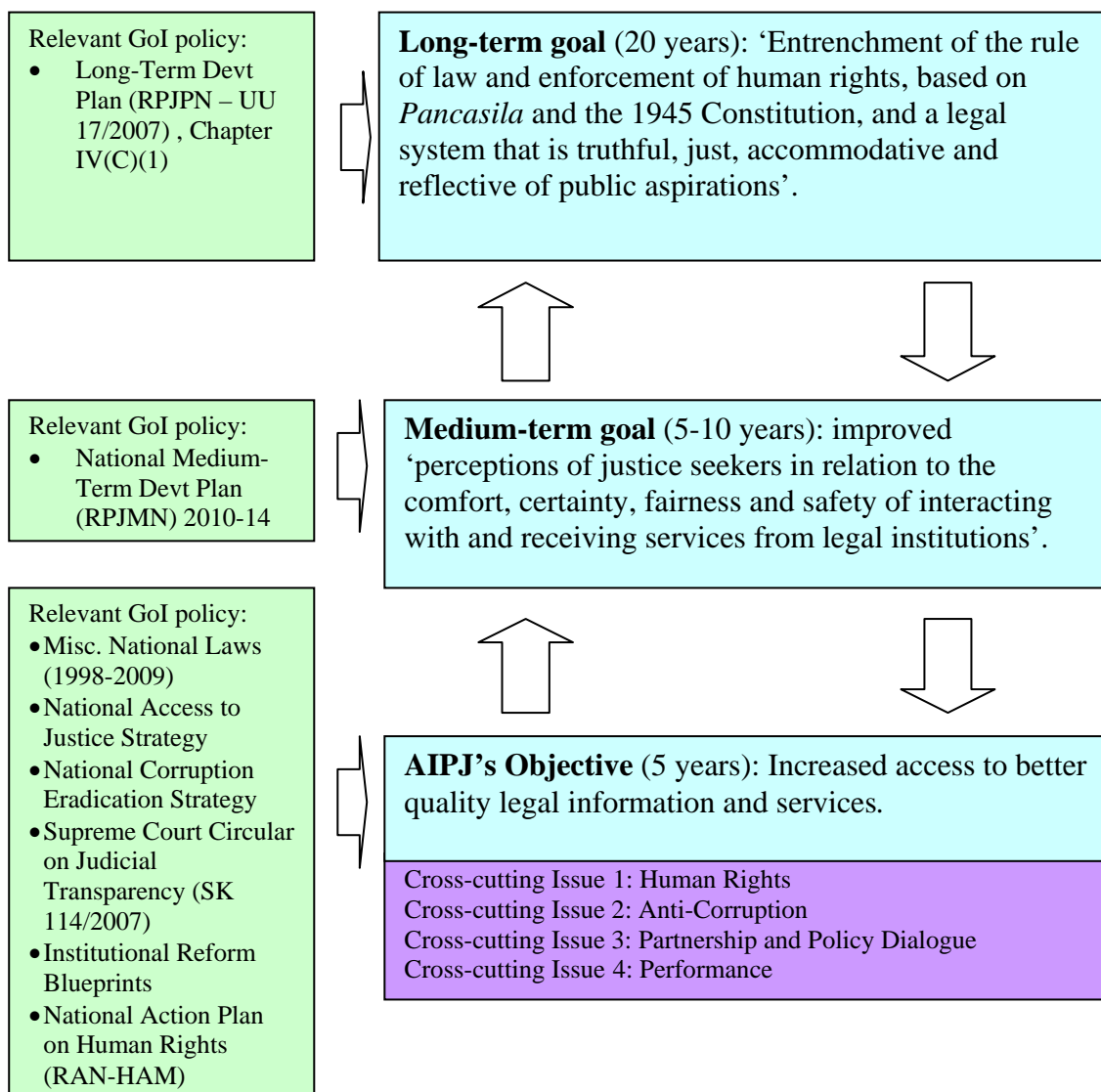
3. SCOPE AND GOALS OF AIPJ

3.1 Conceptual Framework and Scope

As discussed in Part 2, the AIPJ has been developed in the context of the Indonesian Government's long-term goals of 'entrenched rule of law and the enforcement of human rights'. This recognises the widely accepted view that governance reform, including of the law and justice sector, is a long-term endeavour and that substantive and sustainable change requires long timeframes and local ownership by both state and civil society organisations. It also recognises the fact that the capacities and partnerships established under AIPJ are expected to continue beyond the life of this initiative. AIPJ has therefore been developed in partnership with the Indonesian Government, coordinated through Bappenas, and will align with key Indonesian laws, policies and programs. Although AIPJ's ultimate success will be the extent to which it contributes to the Indonesian Government's long-term goal, this design identifies five outcomes which AIPJ itself will seek to achieve over its five-year duration. These outcomes are all closely aligned to current Indonesian laws and policies.

3.2 Alignment of AIPJ goals and objective with GoI policies

Figure 1: AIPJ goals, objectives and alignment with GoI policies



3.2.1 Long-term (20 Year) Goal

As discussed in Part 2 above, the AIPJ is set within the context of Indonesia's stated long-term goal for the law and justice sector. The Indonesian Government's long-term goal in the sector, as described in the RPJPN and endorsed by both Parliament and the President through *Law No. 17 of 2007*, is "entrenchment of the rule of law and enforcement of human rights, based on *Pancasila*⁶⁷ and the 1945 Constitution, and a legal system that is truthful, just, accommodative and reflective of public aspirations".⁶⁸ This will also form AIPJ's long-term goal.

3.2.2 Medium-term (5-10 Year) Goal

AIPJ's medium-term goal is taken directly from one the Indonesian Government's medium-term "key targets", as articulated in the RPJPN 2010-14: "[improved] perceptions of justice seekers in relation to the comfort, certainty, fairness and safety of interacting with and receiving services from legal institutions."⁶⁹

A key weakness in Indonesia's law and justice system is the gap between high-level commitments and on-the-ground implementation of these commitments. One of the most important pre-conditions for the achievement of the joint AIPJ-Indonesian Government long-term goal is the bridging of this gap. This in turn will require the implementation of reforms in a manner that builds the community's trust and confidence in the formal legal system's capacity to meet the needs of Indonesians. As such, achieving the medium-term goal is critical to enabling the Indonesian Government to meet its stated long-term goal.

3.2.3 Objective and Expected Outcomes

AIPJ will have one objective that is aligned with the Indonesian Government's priorities and matches Australia's comparative advantages as a donor, and five outcomes which contribute to this objective. The outcomes under AIPJ's objective are considered to be the main areas where changes must occur in order to achieve the objective, but they are also separate, important outcomes in and of themselves. Each outcome is closely related to the other outcomes; they are mutually reinforcing and strengthen opportunities for synergies and overall coherence.⁷⁰

Potential activities under each outcome are proposed below, and may form the basis for engagement during the program's first year. It is expected, however, that the actual program of activities will be finalised each year through an activity plan approved by GoA with GoI's concurrence. Activities will be proposed in line with defined selection criteria, and indicators will be developed in coordination with GoI under each outcome area to assist in tracking progress towards AIPJ's objective. Further details regarding implementation arrangements are provided in Part 4. In preparation for the expected mobilisation of AIPJ in late 2010, an interim transition program has been prepared, which will lay the groundwork for much of the work under AIPJ. This program, called the Australia Indonesia Partnership for Justice – transition (AIPJt), is discussed under the relevant outcome headings and further details are provided at section 4.9 below. Inception work under AIPJ is expected to focus heavily on institutional assessments of key partner institutions (or use existing assessments) to ensure that assistance is appropriately targeted to achieve maximum benefit for the institution.

⁶⁷ *Pancasila* is the national ideology upon which the Indonesian state is based. In context of the Long-Term Development Plan, the term it is used to indicate a commitment to ethnic and religious pluralism.

⁶⁸ RPJPN, Chapter IV(C)(1).

⁶⁹ RPJMN, Book I, p.43.

⁷⁰ The exact weighting of each AIPJ outcome in terms of budget allocation and M&E does not necessarily need to be equal. This will depend on the priorities expressed by the various governance bodies and may change over time in line with the dynamics of the sector and AIPJ's engagement with it.

The objective and the outcomes which AIPJ will seek to achieve are as follows:

Objective: Increased access to better quality legal information and services.
<i>Outcome 1</i> <i>Improved judicial dispute resolution systems for marginalised groups (including the poor, women and people with a disability).</i>
<i>Outcome 2</i> <i>Prosecutorial agencies better able to process corruption cases.</i>
<i>Outcome 3</i> <i>Increased public access to and use of legal information, particularly relating to human rights (including women's rights) and anti-corruption.</i>
<i>Outcome 4</i> <i>Improved framework and delivery of a legal aid system.</i>
<i>Outcome 5</i> <i>Increased capacity of civil society organisations and national commissions to support Indonesian law and justice sector reform efforts.</i>

OBJECTIVE: Increased access to better quality legal information and services.

The end of program objective focuses on strengthening Indonesia's leading law and justice sector institutions to become more effective and eventually provide more cost-effective, accessible and predictable legal services and information. AIPJ recognises that the most effective way to strengthen these services is to work with both those demanding improved services, and those tasked with supplying these services. It recognises that poor and marginalised groups face particular problems in accessing services, and focuses particularly on the obstacles facing women and people with disability.

The objective supports greater accessibility and accountability of key law and justice sector institutions, with a focus on the courts, prosecutorial agencies (AGO and KPK), and human rights commissions (Komnas HAM and Komnas Perempuan). Accessibility will be supported by improving the capacity of the courts to provide services to as broad a range of potential court-users as possible and the capacity of prosecutorial agencies and human rights commissions to improve their complaint lodgement systems to receive complaints from throughout the community. Efforts to improve accessibility will involve a focus on women and people with disability who face particular obstacles in accessing justice, such as through being unaware of their rights and how to assert them and/or being unable to afford the court fees and transportation costs associated with settling disputes through the formal legal system. Accountability will be supported by working at the interface between these organisations and the community (e.g., complaints processing systems) and by assisting prosecutorial agencies to combat corruption both in the law and justice sector and more broadly. Where possible, efforts to support the accountability of relevant law and justice institutions will be linked to Indonesia's commitments under international treaties and benchmarks.

In line with the Indonesian Government's priorities, AIPJ will prioritise assistance to improve the flow of legal information as a key to enabling civil society to engage in the law and justice sector, and to enabling legal institutions to monitor and act on their own weaknesses. Improvements to systems within law and justice institutions will be based on comprehensive capacity assessments, which will be carried out during the transition to and at the commencement of AIPJ. While the objective is primarily concerned with the direct interface between these institutions and the community, this does not preclude activities in support of enhanced leadership and management of

these institutions where a capacity assessment points to these factors being key blockages to the institution's ability to deliver basic services to the community.⁷¹

Outcome 1

Improved judicial dispute resolution systems for marginalised groups (including the poor, vulnerable women and people with a disability).

AusAID, through the LDF, has made significant progress in increasing access to Indonesia's courts in the family law jurisdiction. Access and equity studies conducted on Indonesia's Religious Court and General Court in relation to family law demonstrate that whilst there is generally high satisfaction amongst court clients with court services, significant barriers remain for the poor and people in remote communities accessing court services. The main barriers include court fees and the transportation costs to travel to court. Key achievements under LDF included working with the Religious Court to obtain budget increases to pay for fee waivers in family law cases involving poor court clients and for circuit courts (*sidang keliling*) in remote areas.

AIPJ's initial focus under this outcome will be to build on the achievements and relationships formed under LDF and AIPJt. It will conduct analysis, share best practices (e.g. from the Religious Court system) and facilitate policy development to increase the community's access to court-based dispute resolution. This will include support for the courts to utilise and expand budget allocations for pro deo (pro bono) cases and circuit courts, and assistance to improve their monitoring and evaluation systems in relation to access for poor and marginalised groups, such as women who fall within this category, people with disability and people living with HIV/AIDS. Given the increasingly important role of the administrative courts (*pengadilan tata usaha negara*) in supporting freedom of information, guaranteeing public service delivery and protecting citizens against unlawful state action, AIPJ will seek to extend existing relationships with the Indonesian judiciary to these courts and assist them to socialise their role in upholding democratic values and expand their services to marginalised groups.

If feasible and subject to Supreme Court priorities, Outcome 1 will include assisting the Supreme Court to establish innovative pilot projects at the district level for the purpose of informing central government policy and resource allocation. This could involve, for example, establishing pilot small-claims tribunals (for civil disputes involving relatively low amounts) attached to District Courts.⁷² Work under this outcome will also build on support to the Supreme Court's blueprint for reform, efforts to improve judicial transparency and the strong relationship between the Indonesian Supreme Court and Australia's Family and Federal Courts, which are a focus of AIPJt during 2010.

Survey research will be used to assess the satisfaction of court users and inform future work in this area. Progress against this outcome over the longer term will be measured primarily by the number and diversity of individuals choosing to make use of court-based dispute resolution.

The Supreme Court's Judicial Reform Team Office will receive assistance to strengthen relevant law and justice institutions by identifying constraints to their capacity to deliver services at the local level (for example, constraints on the capacity of the Supreme Court to deliver effective and inclusive services through *Pengadilan Negeri*). These constraints may include, for example, internal

⁷¹ To the extent that leadership and management assistance for Indonesian judicial and government institutions is funded under AIPJ, it will therefore need to focus on the role national organisations have as administrators of *local* service delivery (rather than, for example, the Supreme Court's role as an *appellate* court).

⁷² In other developing countries, such as Brazil, South Africa, and the Philippines, small-claims tribunals have played an important role in bridging the gap between formal and informal dispute resolution. See, eg, Peter J Messitte, 'Judicial Reform in Central Europe and Latin America' (2005) 4 *Washington University Global Studies Law Review* 617, 620, which includes the quote that, "Small claims courts in Brazil are really the jewel in the crown of Brazilian justice these days.")

monitoring and disciplinary processes, budget allocations, financial systems, organisational structures, recruitment practices, salary structures or promotion and transfer policies agencies to review reform ideas, to incorporate relevant proposals into their institutional plans and policies.

AIPJ will assist the Office to undertake objective diagnostics and then to formulate, articulate and engage in constructive policy dialogue around costed recommendations to address any constraints identified. Where necessary, these diagnostics could be undertaken by universities, think tanks or independent management consultants under the direction of the reform office.

Outcome 2

Prosecutorial agencies better able to process corruption cases.

Indonesia's prosecutorial agencies – the AGO and the KPK – are key to eliminating corruption within the law and justice sector and more broadly. Their staff need to continue to develop technical skills in investigating and prosecuting corruption-related crimes. Achieving Indonesia's anti-corruption goals will also require these institutions to put in place systems for ensuring that prosecutions are carried out effectively and that these institutions themselves are free from corrupt practices. Such systems could publish clear reasons for dropping prosecutions, and establishing mechanisms whereby the public is able to easily interact with prosecutorial agencies and be regularly informed on the progress prosecutors have made in responding to their concerns.

The Indonesian Government's *National Strategy on Corruption Eradication* highlights several measures which these institutions should take to achieve these goals, and AIPJ will use this Strategy to inform activities under Outcome 2. In particular, AIPJ will focus on assistance to 'Prevention Strategy 2' of the Strategy, which relates to improving the transparency and accountability of prosecutorial and judicial institutions, and which is closely linked to AIPJ's objective and other outcomes.

The needs of the AGO and KPK differ greatly so AIPJ – while not attempting to address the totality of the needs of these institutions – will be required to tailor its support accordingly. The KPK, for example, is now capable of designing and delivering training modules to junior staff itself. Its focus during the duration of AIPJ will therefore likely be on capacity building mid-to senior level staff through peer-to-peer links with other anti-corruption commissions, assessing options for enhancing its performance at sub-national levels and engaging in policy dialogue and analysis in relation to proposed anti-corruption legislation. The AGO's needs include strengthening communication and interaction with the community (such as through the development of information systems on case management and the handling of complaints against prosecutors) and developing its capacity to monitor the quality of prosecutors (such as through the establishment of an assessment centre and performance evaluation system). AIPJ could support key priorities in these areas, subject to engagement by senior officials.

Activities under AIPJ Outcome 2 will take into account the central importance of building capacity for international legal cooperation in combating corruption. This could include supporting international cooperation with the AGO, the KPK, and the Ministry of Law and Human Rights to strengthen the impact of UNCAC and other international anti-corruption commitments, including in areas relating to money laundering and asset restraint, confiscation and recovery.

AIPJ will also assist the Indonesian Government to monitor and evaluate relevant sections of the National Strategy on Corruption Eradication, which links to the Performance cross-cutting issue. In the lead-up to the mobilisation of the AIPJ, AIPJt will be working with the Indonesian Attorney General's Office Reform Team to improve human resource systems and web-based complaints handling systems. Together with planned analytical work to assess where ongoing assistance will be

best placed to support GoI's anti-corruption agenda, AIPJ is expected to provide a strong basis for ongoing work under this outcome.

Under this outcome, support will be provided to Attorney-General's Program Management Office for similar activities to those undertaken by the Supreme Court's Judicial Reform Team office under Outcome 1. In particular such funding will be provided to assist the Office to analyse and address constraints to providing services at the local level . It will also assist the Office to review reform ideas, to incorporate relevant proposals into the AGO's institutional plans and policies, and to implement reforms relating to AIPJ.

Outcome 3

Increased public access to and use of legal information, particularly relating to human rights (including women's rights) and anti-corruption.

Australia has been supporting Indonesia's efforts to achieve greater transparency of court information for several years in line with the Supreme Court Blue Print 2004-2009. A focus on publication of court decisions resulted in an increase in the number of General Court and Religious Court decisions available on the internet. The relatively recent release of key laws (such as *Law No. 14/2008 concerning Freedom of Information*, or "UU KIP") and administrative directives (*Supreme Court Decree No. 144 of 2007 concerning Access to Court Information*, or "SK 144") on this matter provide the basis to continue and expand this work and increase transparency of the law and justice sector.

AIPJ will continue to support the publication of judicial decisions. Over the course of AIPJ, a significant increase in the number of decisions available on the internet (together with a reduction in the time taken to upload them) is expected. AIPJ will assist the Supreme Court to "socialise" SK 144 and UU KIP so that court officers at Intermediate Courts (*Pengadilan Tinggi*) and District Courts (*Pengadilan Negeri*) are aware of their obligations to provide court information to the public.

Other ways AIPJ may support greater public access to and use of legal information include:

- assisting with the establishment of Information Desks at Intermediate and District Courts, as required by law, and to monitor their use;
- assisting with the establishment of legal aid posts as required under *Law No. 48 of 2009*;
- working with courts and civil society to develop visual and audio-visual tools to explain court processes to court users (including court users with visual impairment) and display of court fee information at courts;
- working with the Supreme Court to expand the level of information made available to the public through its annual report (including information on court finances and case load management), and with civil society organisations to understand and analyse this information;
- working with the Directorate General for Human Rights, relevant NGOs (such as legal aid providers and HIV/AIDS organisations) and the Disability Centre at the University of Indonesia to facilitate greater provision of primary information and analysis on human rights issues to the public;
- working with the KPK to support its outreach programs at the national and sub-national level to inform the community about corruption and how to report it;
- supporting civil society at both national and subnational levels to analyse and act upon available legal information; and
- consolidating and expanding online access to judicial decisions and/or legislation.

It is expected that timely and comprehensive public access to both sources of law (judicial decisions and legislation) as well as corporate information about law and justice sector institutions (such as

financial and human resource management) will have an important impact on strengthening anti-corruption efforts. With greater access to information, academics, the media, NGOs and government institutions themselves will be in a better position to identify and respond to corruption. Access to information will also assist stakeholders to identify and reward champions of change in the sector.

Access to judicial decisions and legislation is difficult, particularly when such information has been generated from local level courts and parliaments. Moreover, much of the country's lower level judicial decisions are inconsistent with each other and sub-national legislation often conflicts with higher sources of law.⁷³ AIPJ could explore ways of working with government and non-government agencies to support the establishment of systems for standardising judicial decisions and/or judicially reviewing sub-national legislation, particularly those relating to human and women's rights (in line with Indonesia's international obligations) and anti-corruption. In anticipation of AIPJ work under this outcome, in 2010 AIPJ will conduct an assessment of the possibilities for assistance in reconciling local regulations and laws (*perda*) with national laws, the constitution and Indonesia's international legal obligations (particularly in relation to anti-corruption, human rights, women's rights), including through judicial review.

Outcome 4

Improved framework and delivery of a legal aid system.

There is currently no formal legal aid regime in Indonesia. Whilst there are some legislative instruments which encourage the provision of pro bono legal services to the poor,⁷⁴ there is no overarching legislative framework which supports the community's right to legal aid. Currently legal aid services are provided predominately by legal aid institutions (LBHs) and university law centres which have limited or no government funding. The *National Access to Justice Strategy* outlines the Indonesian Government's commitment to address this situation and acknowledges that the "community's demand for legal aid services exceeds the existing capacity of civil society organisations to provide such services".⁷⁵ It states that government involvement in providing services and administering legal aid, as well as empowering existing legal aid organisations and university legal centres, is of high importance.

To assist the Indonesian Government to achieve its objectives regarding legal aid, AIPJ will support enhanced levels of policy dialogue between the Government, the National Parliament (DPR) and relevant civil society organisations on the issue. This may include, for example, assisting the Ministry of Law and Human Rights to 'socialise' a comprehensive *Legal Aid Bill* in conjunction with relevant NGOs, bar associations and/or law schools. The passing of such a law will not be an AIPJ outcome; rather, AIPJ will support the process for the development of a draft law which is inclusive and responsive to community concerns, and which is based on sound contextual and comparative analysis. If a legal aid law is passed, AIPJ will support policy dialogue in relation to its implementing regulations and budget allocation. AIPJ could also support the development and implementation of initiatives relating to legal aid more broadly, such as pro bono advice systems and paralegal movements.

Activities under this outcome will include support to facilitate dialogue between the Indonesian Government and civil society organisations, including disabled peoples' organisations, about how

⁷³ The fact that Indonesia's legal system currently does not draw on precedent to the same extent as common law jurisdictions in no way negates the need for the legal community to be able to access a comprehensive body of jurisprudence – as is the case in many other jurisdictions commonly categorised as "civil law" jurisdictions (including the Netherlands, from where Indonesia's legal system derives).

⁷⁴ For example, *Government Regulation No. 83 of 2008 concerning Requirements and Mechanisms for the Provision of Pro-bono Legal Services by Advocates*.

⁷⁵ *National Access to Justice Strategy*, p.6.

legal aid can be more effectively provided to women in need, people with disability and people living with HIV/AIDS. It is anticipated that this outcome will evolve over time, in particular if the Legal Aid Bill is passed by the DPR.

Pending the establishment of a comprehensive state-funded legal aid system, AIPJ will also consider providing core and/or grant funding to legal aid NGOs in Indonesia.

Outcome 5

Increased capacity of civil society organisations and national commissions to support Indonesian law and justice sector reform efforts.

Civil society can and should be supported to engage successfully with formal government agencies while at the same time maintaining their own organisational advocacy activities.⁷⁶ AIPJ will support the achievement of this outcome in three ways:

1. improving civil society's capacity to monitor law and justice institutions and conduct analytical work; and
2. supporting national human rights commissions (particularly Komnas HAM and Komnas Perempuan).

AIPJ support to civil society will be administered in line with the guidelines set out at Annex 5.9.

Outcome 5, Component 1: Improving civil society's capacity to monitor law and justice institutions and conduct analytical work

The Indonesian Government has made it clear through a range of policies that the capacity of civil society organisations to conduct analytical work and monitor – including engaging in dialogue with relevant stakeholders on – access to and quality of legal services is critical to improving the supply of these services. The *National Access to Justice Strategy* includes amongst its strategies for legal and judicial sector reform, “strengthening community awareness and participation in the formulation and supervision of implementation of public policy”.⁷⁷ The Strategy explicitly states that both government and non-government actors are critical to facilitating greater access to justice.

AIPJ will build the capacity of civil society organisations (particularly NGOs, law schools and bar associations) in the law and justice sector to monitor the access to, and quality of, public prosecutions and court-based dispute resolution. This will be crucial to ensuring the sustainability of institutional reforms supported by AIPJ.

AIPJ will consider supporting civil society organisations in the law and justice sector to:

- put in place effective management and leadership strategies, including strategies which facilitate greater participation by marginalised groups in civil society organisations;
- research and monitor the processing and management of anti-corruption cases by the judiciary, the AGO and the KPK, including contributing to the Indonesian Government's monitoring and evaluation of the proposed *National Strategy on Corruption Eradication*;
- research and monitor progress on improving access to court-based dispute resolution for marginalised groups (especially poor and vulnerable women, people with disability and people living with HIV/AIDS), to feed into monitoring and evaluation of the Supreme Court's Strategic Plan and the *National Access to Justice Strategy*;
- understand and promote domestic and international best practice with regard to combating corruption and promoting access to justice for women (including through gender disaggregated policy monitoring), people with disability and people living with HIV/AIDS;

⁷⁶ Mooney & Soedarsono, *Draft LDF Independent Completion Report*, 15 January 2010, p. 42-43.

⁷⁷ *National Access to Justice Strategy*, p.5.

- conduct research and analyses, socialisation and policy dialogue on issues relating to draft laws (*rancangan undang-undang*)⁷⁸ and subnational regulations (*perda*) concerning human rights, women's rights and anti-corruption;
- introduce and implement robust systems within bar associations for handling public complaints and disciplining corrupt members; and
- promote successful reforms made under AIPJ and other reform programs.

Under AIPJt, preliminary baseline analytical work will be conducted regarding people with a disability, to assess key barriers facing their ability to access the justice system. This work will bring together key institutions to develop an approach for supporting the mainstreaming of disability and building an understanding of people with disability in the legal and justice sector in Indonesia. This work will be built on under AIPJ.

Outcome 5, Component 2: Supporting national human rights commissions

Outcome 4 will involve strengthening the capacity of national human rights commissions, such as the National Human Rights Commission (Komnas HAM) and the National Commission for the Elimination of Violence Against Women (Komnas Perempuan), to play a 'bridging' role between civil society and the state. These organisations work at the interface between the supply of and the demand for justice, and therefore have significant potential to incorporate community aspirations into the institutional reform process – particularly in the area of human rights, where the Indonesian Government has made high-level commitments to human rights but as yet lacks capacity to respond effectively to human rights complaints from the community.

Needs assessments of Komnas HAM undertaken by AusAID and UNDP,⁷⁹ indicate that its capacity to receive and manage human rights complaints from the community is low. This challenge is particularly acute outside Jakarta. AIPJ will therefore consider assisting Komnas HAM to strengthen the capacity of its regional offices (located in Aceh, Papua, West Sumatera, West Kalimantan and Maluku) to respond to community expectations. Assistance for these regional offices may take the form of, for example, developing strategic plans and organisational performance indicators.

AIPJ will continue to work with Komnas Perempuan to develop its capacity to protect and promote the rights of women. Australia has an existing partnership with Komnas Perempuan which supports a mix of institutional capacity building, and focuses on assistance for its core activities. AIPJ's support for Komnas Perempuan will assist efforts to access and utilise state budget funds, with the ultimate outcome of Komnas Perempuan becoming less dependent on donor funding by the end of the program. AIPJ will also focus its assistance to Komnas Perempuan on implementing recommendations from the needs assessment undertaken by UNFPA in 2008⁸⁰ that link most closely to the objective and outcomes of AIPJ.

AIPJ will consider supporting the work of the national commissions responsible for monitoring and reporting on Indonesia's compliance with international human rights instruments to which it is a party, and assisting relevant justice institutions to ensure such compliance, including through the review of existing legislation and the drafting of implementing legislation."⁸¹

⁷⁸ Including, for example, draft laws relating to the Civil Procedure Code (KUHP), the Criminal Code (KUHP), the Civil Code (KUHPer), law enforcement surveillance, money laundering, the constitutive statutes of the Attorney-General's Office and a proposed constitutive statute for National Human Rights Commission.

⁷⁹ *Indonesia Legal Sector Analysis* (2008) and *Komnas HAM Needs Assessment* (2008) respectively.

⁸⁰ Peter Hosking and Agung Ayu Ratih, *Komnas Perempuan: A Needs Assessment* (2008).

⁸¹ This could include, for example, supporting Komnas HAM monitor Indonesia's compliance with the Convention on the Elimination of All Forms of Racial Discrimination (CERD) as mandated under Law No. 40/2008.

3.2.4 Cross-cutting Issues

Human rights, anti-corruption, partnerships and performance are AIPJ cross-cutting issues. Activities funded under the five AIPJ outcomes will be expected to explicitly highlight their approach to these cross-cutting issues, and separate monitoring will be established and resourced from AIPJ funds for each cross-cutting issue that will track and report progress separately as part of the formal reporting processes. The program will be expected to respond to, and build on, opportunities for engagement in these areas. In addition to informing activities under the AIPJ outcomes, discrete activities may be funded under AIPJ in order to support the latter two cross-cutting issues (partnerships and performance).

Cross-cutting Issue 1: Human Rights (particularly women's rights and the rights of people with disability)

One of AIPJ's key aims will be to support Indonesia to ensure the promotion, protection, and fulfilment of the rights of the most marginalised, particularly poor and vulnerable women and people with disability.⁸² Human rights have been integrated into the majority of outcomes under AIPJ's objective, including outcomes relating to: enhancing access to justice and legal aid for poor and marginalised groups; improving the capacity of key national human rights institutions to act as a 'bridge' between civil society and the state; and expanding access to legal information relating to human rights.

Cross-cutting Issue 2: Anti-Corruption

Anti-corruption has been incorporated into a range of outcomes under AIPJ's objective, including outcomes relating to: improving the capacity of prosecutorial agencies to process corruption cases (both in their own ranks and more broadly); enhancing the transparency of law and justice institutions; and increasing the capacity of civil society to monitor the availability and quality of key legal services. AIPJ's activities in support of this cross-cutting issue will involve the judiciary, the Attorney-General's Office, the Anti-Corruption Commission (KPK), the Ministry for Law and Justice and civil society, with the level of engagement with each depending on ongoing assessments of their relative reform momentum.

Cross-cutting Issue 3: Partnerships and Policy Dialogue: *To facilitate the achievement of AIPJ's objective by enhanced partnerships and policy dialogue between Indonesian and Australian law and justice institutions.*

The importance of partnerships to development is recognised both in the *AIP Country Strategy 2008-13* and as a specific Millennium Development Goal (Goal 8: Global Partnership). The AIPJ design process has involved a genuine partnership between the Indonesian and Australian Governments, with a jointly led design team and jointly managed consultations. Previous Australian assistance to the Indonesian law and justice sector has also supported the development of a significant number of partnerships between Australian and Indonesian institutions, particularly between the Supreme Court of Indonesia and the Federal and Family Courts of Australia.⁸³ Experience has shown that these types of partnerships have significant potential in terms of developing both technical capacity and political will in Indonesia to support necessary law and justice sector reforms.⁸⁴

⁸² The reasons why these particular groups have been selected are discussed throughout this document. See also AIPJ Background Analysis Paper 3.

⁸³ See, for example, the Memorandum of Understanding between the Federal Court of Australia, the Family Court of Australia and the Supreme Court of Indonesia.

⁸⁴ See, for example, Mooney & Soedarsono, *Draft LDF Independent Completion Report*, 15 January 2010.

The Program Director, in conjunction with AusAID and Bappenas, will identify potential Australian and Indonesian counterpart institutions and activities to support this cross-cutting issue. Such activities could involve, for example:

- continued cooperation between the Supreme Court of Indonesia and the Federal and Family Courts of Australia in relation to judicial transparency, access to justice and court leadership;
- cooperation between the Indonesian Bar Association and the Law Council of Australia in relation to ‘developing a code of ethics, informing the public of their rights to lodge complaints against lawyers and rolling out... local disciplinary tribunals’;⁸⁵
- cooperation between the Indonesian Directorate General for Human Rights, the Australian Human Rights Commission and the Attorney-General’s Department Social Inclusion Division in relation to developing disability rights policy and efforts towards the ratification of the Convention on the Rights of Persons with Disability;
- cooperation between the Indonesian National Legal Development Agency (BPHN) and the Australian Law Reform Commission to strengthen BPHN’s capacity to analyse priority reform areas in Indonesia’s law and justice sector;
- cooperation between the Indonesian Legal Resource Centre, the Indonesian Directorate General for Tertiary Education⁸⁶ and the Council of Australian Law Deans on comprehensively assessing the needs of the Indonesian formal legal education sector;
- cooperation between the Indonesian Directorate General for Legislation and the Australian AGD’s Office of Legislative Drafting and Publishing in relation to electronic publishing;
- cooperation between Komnas HAM and Komnas Perempuan and the Australian Human Rights Commission (Disability Discrimination Commissioner) in relation to processing complaints by people with disability or advocating on behalf of people with disability; and/or
- policy dialogue between relevant institutions on leadership, budget allocation and emerging international best practices in the law and justice sector.

All partnerships will be expected to contribute to AIPJ’s objective. Where proposed partnership activities do not contribute directly to a specific AIPJ outcome, they may be funded through AIPJ’s Partnership and Emerging Issues Fund, as discussed at 4.2.4 below. The strength of the partnerships and policy dialogue supported under AIPJ will be measured according to the monitoring and evaluation framework established under AIPJ.

It is expected that the Australian Federal Attorney-General’s Department will play a key role in linking Indonesian institutions with their counterpart Australian institutions. AIPJ will also consider recommendations from the Australia Indonesia Working Group on Legal Cooperation (WGLC)⁸⁷ on possible areas for the development of peer-to-peer relationships in the sector.⁸⁸

⁸⁵ *Report of the Fourth Joint Meeting of the Working Group on Legal Cooperation Between Australia and Indonesia* (November 2008), p.21.

⁸⁶ The Indonesian *National Access to Justice Strategy* names these two organisations as having primary responsibility under the strategy for reforming the formal legal education system in Indonesia, which is mentioned as a key objective of the strategy.

⁸⁷ The WGLC is an existing framework that provides for the wider legal sectors of Indonesia and Australia to discuss and progress matters of mutual interest across the legal sector. The WGLC is established under the Australia-Indonesia Ministerial Forum and its work is also underpinned by a bilateral MoU on Legal Cooperation executed at ministerial level in 2000. It is jointly chaired by Indonesia’s Ministry of Law and Human Rights and Australia’s Attorney-General’s Department.

⁸⁸ The Draft LDF Independent Completion Report notes that “The cultural environment of courts, anti-corruption commission, public prosecutors...[in Indonesia] is such that they are most comfortable dealing with like bodies”, p.43

Cross-cutting Issue 4: Performance: *To improve the systems and capacity of key law and justice sector institutions to monitor and evaluate activities, strategies and policies.*

Performance is an important focus of the *AIP Country Strategy 2008-13* and a major focus for the Indonesian Government as evidenced by the *Jakarta Commitment on Aid Effectiveness*.

AIPJ's approach to performance will involve:

- relying on, supporting and strengthening the Indonesian Government's performance systems where possible, thereby avoiding duplication and the establishment of parallel systems for performance evaluation;⁸⁹ and
- employing best practice in relation to measurement of AIPJ's own contribution to AIPJ's objective, outcomes and cross-cutting issues, and ultimately the joint Indonesian Government-AIPJ long-term goal.

Where possible, AIPJ will utilise survey research to measure the impact of AIPJ's activities and to feed into program learning. This could include baseline surveys to be conducted at the commencement of AIPJ.

A specific amount of funds will be reserved under AIPJ to promote improved aid effectiveness in line with the Jakarta Commitment. This fund will be used to conduct monitoring and evaluation of AIPJ's performance and also to support the Indonesian Government in efforts to improve monitoring and evaluation mechanisms in the law and justice sector, should it request such assistance.

3.2.5 Partner Organisations

In section 2.1.3 (Working with Key Justice Sector Actors) above, the range of Indonesian law and justice sector actors were categorised according to the extent to which AIPJ will seek to engage with them. Reform in this sector is dynamic and is often dependent upon the strength and commitment of key individuals within each of these organisations. AIPJ therefore needs the flexibility to support opportunities for reform as they emerge, and to re-direct resources between potential partners as their commitment and drive to reform ebbs and flows. As such, the categorisation of stakeholders undertaken above should not be seen as final. Rather, ongoing analysis and re-categorisation of stakeholders will be expected, and assessed as part of the independent AIPJ reviews.

3.3 Form of Aid Proposed

3.3.1 A Flexible Program

Analysis undertaken to date and previous experience working in the sector have highlighted core areas where AIPJ can make a difference. Consequently, AIPJ will be based around core areas of activity in support of the objective and five outcomes as discussed above. At the same time, the need to remain flexible in a rapidly changing environment is clearly recognised. The reasons for adopting a flexible approach are based on a range of lessons learned about assistance to this sector, which have shown that:

- in a dynamic and highly complex institutional and policy context,⁹⁰ Australia's cooperation needs to remain responsive and in a position to build on existing relationships where traction for doing so exists (and to downscale activities where there is little traction);

⁸⁹ For example, the Indonesian Government aims to establish a monitoring and evaluation framework for the proposed *National Strategy on Corruption Eradication*. AIPJ could support the collection of data under this framework and, depending on the robustness of the framework, utilise the data it generates to assess the achievement of other relevant AIPJ Outcomes

- flexibility is required in order to properly harmonise with other donors, several of which are currently planning new, large-scale activities;
- the Indonesian Government has requested in several consultations that Australia's assistance to this sector remain capable of quickly adapting to changes in reform momentum;
- the law and justice sector comprises a range of disparate institutions, each of which has different financial and performance systems and priorities, meaning that there is no single financial/performance system or policy behind which AIPJ can align;
- the sector is highly political and vulnerable to a range of risks that require flexibility to move assistance as priorities change;
- AIPJ's small investment relative to the size of the sector requires that it act as a catalyst for better utilisation of Indonesian resources rather than as a supplement to those resources, which in the current context requires strategic directions to be set on an ongoing basis; and
- the latest academic thinking on law and justice reform emphasises the need for donors to refrain from over-specifying end states and developing plans *ex ante*.⁹¹

Flexibility will be maintained through specific outputs that will be determined through an annual workplan (described further in section 4.2.2 below) within agreed parameters and according to agreed selection criteria. Each activity will have its own objective and a small number of outputs which will contribute to achieving the relevant AIPJ outcome. In addition, the Partnership and Emerging Issues Fund will enable the program to respond rapidly and respond to opportunities as they arise in this rapidly changing sector (see section 4.2.4). The Fund will enable the program to respond to emerging opportunities as they arise.

The facility approach of LDF was criticised for funding too wide a range of activities and lacking coherence. AIPJ will address these concerns by specifying end of program outcomes to which all activities funded under the program will be expected to contribute. Indicative activities are expected to clearly identify their contribution to the outcomes upfront. While indicative activities for the first year of this program are provided above, further activities will be developed during an annual planning process and specified in an annual workplan. Flexibility for a small range of activities in support of each outcome remains, but in order to have greater impact AIPJ will aim for a critical mass rather than the very wide range of small activities implemented under LDF.

The underlying partnership principles will also ensure that leadership will come from the Australian and Indonesian Governments, and the Indonesian law reform community and other relevant stakeholders, all of whom will be active in ensuring activities align with Indonesian Government and Indonesian justice sector reform priorities – particularly through improvements to the governance arrangements under AIPJ. The model applied for the AIPJ will involve a clear set of operating principles (see below section 3.4), a coherent conceptual approach to capacity and capacity development (see below section 3.3.3) and a set of selection criteria for individual activities (see below section 4.2.3).

3.3.2 AIPJ Approach to Working in Partner Systems

The Governments of Australia and Indonesia are committed to principles included in the *Paris Declaration on Aid Effectiveness* (2005), the *Accra Agenda for Action* (2008) and the *Jakarta Commitments for Aid Effectiveness* (2009). There are a number of ways in which AIPJ will be moving towards greater use of Indonesian Government systems to enhance aid effectiveness.

⁹⁰ As discussed in Part 2 above, institutionally there continues to be sharp changes – both positive and negative – in the capacity and commitment of most actors to reform and, policy-wise, there is no overarching set of detailed priorities for law and justice sector reform.

⁹¹ See, eg, Daniel Adler, Caroline Sage and Michael Woolcock, 'Interim Institutions and the Development Process: Opening Spaces for Reform in Cambodia and Indonesia', *BWPI Working Paper 86*, March 2009.

Alignment

AIPJ will be **aligned with Indonesian Government policies and strategies**, including the law and justice components of the RPJMN 2010-15 and the framework set out in Part 2.

As an indication of the extent of this alignment, the Indonesian Government has already drawn up four ‘good governance goals’ under its 2010 Government Work Plan (RKP) to support priorities under the RPJMN 2010-14. As described in Figure 2 below, the AIPJ objective and cross-cutting issues largely mirror these goals. The AIPJ focus is on improving the supply of quality legal services, which acknowledges and supports increased access to services and enhanced legal awareness in the community.

Figure 2: Alignment of AIPJ with 2010 Indonesian Government Work Plan

2010 Government Work Plan (RKP): Book II, Good Governance Goals	AIPJ
1. Improved law enforcement, particularly in relation to human rights and anti-corruption.	AIPJ Cross-cutting Issues: Human Rights and Anti-Corruption
2. Increased capacity of legal institutions.	
3. Increased access to legal services and legal aid.	AIPJ Objective: Increased access to better quality legal information and services
4. Enhanced legal awareness in the community.	

This degree of alignment is likely to continue given the fact that AIPJ’s objective, outcomes and cross-cutting issues are closely aligned with three of the six “priority focus areas” articulated in the “Law and Machinery of State” chapter in the RPJMN 2010-14:

1. improving the effectiveness of legislation;
2. *improving the performance of legal sector institutions;*
3. *improving respect for human rights;*
4. *improving the implementation of good governance, free from corruption, collusion and nepotism;*
5. improving the quality of public services; and
6. improving the capacity, accountability and performance of the bureaucracy.

AIPJ’s focus on support for improving the capacity of courts, prosecutors and human rights institutions to deliver quality legal services and information, while being a worthy goal in and of

itself, is only one of many improvements required in the sector in order to improve the rule of law and protection of human rights. Other areas of the law and justice sector will not fall within the scope of AIPJ, but may still receive assistance from other Australian Government agencies,⁹² other donors⁹³ or internal Indonesian Government reform programs. This is in response to the lessons learned from previous programs that assistance to the sector should not be spread too thinly, should build on existing relationships and success stories, and should involve mutually reinforcing outcomes.

Other ways of working in partner systems

Other ways AIPJ will move Australian assistance in this sector towards greater use of Indonesian Government systems include:

- a) Greater **ownership** by the Indonesian Government: AIPJ has been designed in partnership with the Indonesian Government. The Indonesian Government has been highly involved in the development of the concept and design for AIPJ, including joint Australian and Indonesian Government consultations with in-country stakeholders to inform the design. The governance arrangements for AIPJ also reflect an increased level of ownership by the Indonesian Government, for example the Partnership Board is co-chaired by and comprises key Indonesian Government counterparts – in contrast to the Advisory Board under LDF which comprised external experts.
- b) Being **on budget** (but off treasury): AIPJ will be registered in the Indonesian Government's blue book and green book for development programs. Counterparts will be required to report AIPJ funding through the List of Budget Implementation process (DIPA).
- c) Focus on **performance** and strengthening Indonesian Government performance evaluation systems: Working in partner systems includes using and strengthening local evaluation, procurement, and audit systems. AIPJ will focus on working through and strengthening the Indonesian Government's performance evaluation systems. AIPJ will evaluate and if necessary provide assistance to strengthen the Indonesian Government's performance evaluation systems, beginning with assisting the Indonesian Government to establish and implement monitoring and evaluation systems for the key strategies it will support.
- d) Working with Indonesia's **civil society** to support reforms to the law and justice sector, including in ways which empower rather than weaken the long-term sustainability of civil society organisations.

3.3.3 AIPJ Approach to Capacity Development

In order to achieve AIPJ's objective, activities will need to address organisation and structural constraints to improved performance, but also human capacity constraints. In the justice sector in Indonesia, it is already well documented that many of the constraints on effectiveness relate to weak management capacity, although technical capacity also remains an issue.⁹⁴ As such, for any desired service delivery improvement, AIPJ will need to critically assess the human resource constraints within the context of overall institutional effectiveness, and develop a long-term approach to address these constraints. Addressing human capacity needs is considered a key factor in achieving greater institutional effectiveness.

⁹² Policing, corrections and counter-terrorism are receiving assistance from AFP and/or DFAT.

⁹³ Legal education is likely to be a key focus of USAID and Dutch programs in the sector, and the informal justice sector is the focus of the World Bank's Justice for the Poor Project.

⁹⁴ Sebastiaan Pompe and Dian Rosita, *op. cit.* p.14.

It will not be feasible (or appropriate) to conduct comprehensive capacity assessments for all AIPJ partners. However, in engaging with each partner, AIPJ will need to consider at least the following issues:⁹⁵

Area	Questions
Mandate	Does the organisation have the perceived and actual mandate to perform the functions being supported? Which external stakeholders influence the legitimacy of that mandate? <i>A strong mandate is essential if the organisation is to generate effective results. It is a prerequisite for the provision of support, as there is typically little that an external donor can do to generate this mandate.</i>
Leadership	Does the organisation have leadership that drives reform? Does the leadership support the specific area of reform or improvement being targeted?
Technical capacity	What technical capacity is required to deliver the desired performance improvements? What skills do individuals need to develop? What systems, procedures or policies does the organisation need? What strengths already exist that can be further built on?
Enabling management capacity	What underlying management issues currently constrain the effective performance of the functions being examined? Consider in particular: human resource management practices (including staff supervision), financial management practices, or general management practices (such as planning or performance management). What strengths already exist that can be further built on?
Incentives	What incentives can be leveraged by AIPJ to reinforce capacity development? Who provides those incentives? How can AIPJ work with them to maximize the effect of those incentives?

Based on the above analysis, a decision will need to be made about whether the proposed performance improvements are feasible, and, if so, a capacity development strategy should be adopted for each partner agency that:

- describes the performance improvements to be achieved;
- identifies the nature of the capacity constraints to be addressed in order to achieve those performance improvements – both immediate and underlying;
- defines what ‘improved capacity’ would look like (which will subsequently be used for monitoring and evaluation); and
- identifies which strategies will be used to deliver improved performance – incorporating both the responsibilities of AIPJ and of the partner agency.

AIPJ should not support isolated capacity development activities such as training or study tours that are not integrated into a broader capacity development approach. Evidence suggests that the best outcomes are achieved when capacity development for *individuals* and the *organisation* are used in combination.⁹⁶

⁹⁵ This will need to be carried out in a way that is appropriate to the relationship that AusAID has with each partner agency. It may in many cases simply be a matter of drawing on information already available from other sources. The focus is on ensuring the feasibility of performance improvement objectives, and that appropriate capacity development strategies are adopted.

⁹⁶ There are many different models for assessing institutional capacity, undertaking capacity assessments and implementing capacity development activities. The specific model to be used by AIPJ will be developed during the inception phase. Two possible models are:

- the Six Box Model. This model examines an organisation’s strategy; leadership; internal relationships; helpful mechanisms (eg management practices); rewards; and structures; and
- the Core Capabilities Model. This model involves examining an organisation’s five core capabilities: the capability to act; to generate results; to relate; to adapt and self renew; and to achieve coherence. See, eg, Peter Morgan, *The Concept of Capacity* (2006).

3.3.4 Types of Assistance

Consistent with the approach outlined above, AIPJ will not invest in infrastructure on behalf of Indonesian partners. AIPJ will be open to all other forms of assistance permitted under the Australia Indonesia Partnership, including:

- support for peer-to-peer relationships between Indonesian agencies and counterparts;
- grants to civil society for dissemination, monitoring and other activities;
- analysis and diagnostics, particularly those undertaken by Indonesian organisations;
- core funding for reform offices, human rights commissions and other key organisations;
- one-off and/or ongoing technical assistance to state and non-state institutions, particularly from Indonesians or persons with a long-term commitment to working in Indonesia; and
- training, particularly by Indonesian organisations and where there is evidence of sustainability.

3.4 Operating Principles

When considering activity proposals, the AIPJ Partnership Board (as discussed in Part 4 below) must ensure that all AIPJ funds are administered in accordance with the following principles:

Partnership

In a broad sense, AIPJ is a partnership insofar as it reflects both Australian and Indonesian Government priorities and includes various joint decision-making bodies, as described in Part 4 below. The partnership principle reflects the fact that cooperation is most effective when it takes place in the context of a sound relationship; AIPJ is not simply about the provision of technical assistance – it is about developing the relationships that will give rise to effective cooperation over the long-term. This will require the Australian Government to play a key role in the governance of AIPJ and for AusAID in particular to be actively engaged in its delivery. The development of long-term relationships between Australian and Indonesian government agencies provides a strong basis for policy dialogue on justice sector issues, as well as a useful framework for capacity development.

Effective Demand

As has already been discussed, one of the central features of this design is the inclusion of an objective to build demand for quality legal services. At the operational level, the term ‘effective demand’ will be used to refer to demand from agencies for assistance through the AIPJ. Facilities are most effective when their programming is driven by partner demand. However, *expressed* demand is different from, and less important than, *effective* demand. To be effective, requests for assistance from partner organisations need to align with AIPJ’s objectives, be accompanied by the capacity of the partner organisation to actually deliver the proposed benefits and be responsive to the needs of the requesting organisation rather than the individuals working for it. AIPJ needs to address the concept of effective demand through:

- communicating information about AIPJ’s objectives clearly amongst stakeholders;
- ensuring all partners have the capacity to deliver sustainable benefits from AIPJ-funded activities;
- promoting demand by communicating information about successes; and
- understanding the incentives that influence different actors at both individual and institutional levels, and leveraging these incentives to encourage constructive engagement with AIPJ.

Critical Mass

AIPJ should attempt to maintain a balance between assisting a range of different organisations and ensuring that its assistance does not become ‘drops in the ocean’ by adhering to the principle of ‘critical mass’. This means that, prior to funding any activity, a preliminary analysis will be undertaken by the Program Director (or sub-contractor), to understand the full range of elements

that are critical to its success and make available this analysis to the Partnership Board for consideration in assessing proposed activities. If the minimum level of funding needed to address these elements comprehensively is greater than the amount to be allocated to the proposed activity, the activity should not proceed.

Incremental Engagement

‘Incremental engagement’ involves providing an initial level of support and then expanding this based on success. The intention is to avoid being over-ambitious and to build gradually on demonstrated success. This principle also has a useful incentivising effect – when partners understand that continued or additional support is contingent on success, there is a greater likelihood of achieving that success. An important part of giving meaningful effect to this principle will be to determine the most effective sequencing for activities.

Use of Indonesian Expertise

AIPJ will look to prioritise use of Indonesian expertise in all program activities. This reflects recognition that Indonesia holds a wealth of technical knowledge and expertise that can be both utilised and supported more effectively by donors.

3.5 Sustainability

The AIPJ design contains a number of specific strategies to maximize the likelihood of sustainability. AIPJ’s objective captures both supply- and demand-side factors influencing the accessibility and quality of legal services; the outcomes are intended to be mutually reinforcing. AIPJ’s focus on both state and civil society actors means that its activities have the potential to generate longer term benefits beyond their immediate results.

Second, AIPJ’s approach to capacity development provides a strong basis for sustainability. It aims to:

- ensure that capacity development activities are based on sound analysis and are appropriate to their institutional context; and
- adopt strategic, multi-faceted approaches to capacity development, rather than ad hoc, one-off interventions.

Third, the Operating Principles enunciated at Section 3.4 above all seek to maximize sustainability:

- *Partnership* recognises that to be sustainable, AIPJ must be implemented within the context of Indonesian Government priorities, and on the basis of strong institutional relationships between Indonesian and Australian law and justice sector institutions;
- *Effective demand* recognises that change is most effective when it is driven by informed demand from partners who have the commitment and capacity to deliver on the reform agenda;
- *Critical mass* recognises that the minimum level of support required for any desired change to be sustained must be properly understood; and
- The approach of *incremental engagement* will encourage AIPJ to build on activities that have successfully leveraged Indonesian resources, thereby ensuring sustainable outcomes.

Finally, AIPJ’s governance and management arrangements support sustainability through their emphasis on joint decision-making. This provides a mechanism for ensuring *ongoing* alignment to Indonesian Government priorities, and for adjusting to changes in the implementation environment.

3.6 Timing and budgetary issues

AIPJ will commence in late 2010 and will continue for five years.

It is estimated that approximately 10 per cent of the overall budget will be dedicated to the Performance cross-cutting issue, which will involve performance evaluation as well as funds for

strengthening Indonesian performance systems upon request from the Indonesian Government. Up to up to ten per cent of the overall budget may be spent on Partnership and Emerging Issues activities.

AIPJ expects to be ‘on budget’, which means it will be registered in the Indonesian Government’s green and blue books of annual and five-year development programs and that Indonesian Government partners will register AIPJ commitments alongside the state budget. AIPJ will therefore have a DIPA number and will be recorded in the DIPA.

3.7 Coordination and Coherence with Existing Australian and Other Donor/Multilateral Programs

3.7.1 Synergies with Other AusAID-funded Programs

There are a number of programs being funded under the AIP and AusAID’s East Asia Regional Program which have the potential to support and/or be strengthened by AIPJ. A list of these programs, and their synergies with AIPJ, is included at Annex 5.7.

3.7.2 Relationship to other Government of Australia Assistance to Indonesia’s Law & Justice Sector

In addition to AusAID, a range of other Australian Government agencies and departments administer ODA to Indonesia’s law and justice sector. These initiatives include, for example, a \$1.3 million two-year program of assistance managed by DFAT in conjunction with The Asia Foundation to support improvements to the administration of corrective services in Indonesia. AIPJ’s design minimises the risk of overlap, however, this is in the absence of a whole-of-government of Australia framework and mechanism for coordinating this assistance. AusAID is currently working with the AGD⁹⁷ and Department of Foreign Affairs and Trade (DFAT) to develop an Australian Government Framework for Assistance to Indonesia’s Law and Justice Sector. Other relevant agencies, such as the AFP, DIAC and Customs and Border Security, have also been invited to participate in the development of this framework. It is also envisaged that the Federal Court of Australia and the Family Court of Australia will be involved in this process.

The proposed whole-of-government framework is expected to assist agencies and departments ODA initiatives to provide complementary assistance to Indonesia’s law and justice sector by:

- articulating the overarching goals and core business of each agency in providing assistance to Indonesia’s law and justice sector.
- establishing a coordination mechanism to ensure that there is no overlap between the activities undertaken by relevant Australian agencies in Indonesia and, increasingly, that there are clear synergies between such activities;
- establishing a mechanism for reporting to the Indonesian Government on Australian ODA to Indonesia’s law and justice sector; and
- reiterating support for the Jakarta Commitment, particularly an undertaking by Australian Government agencies assisting Indonesia’s law and justice sector to align with relevant Indonesian Government policy priorities and harmonise with other donors in the sector.

⁹⁷ As discussed above at 2.2.4, the AGD and two other Australian Government agencies have recently signed a Memorandum of Understanding with the KPK.

3.7.3 Harmonisation with Other Donor & Multilateral Programs

There have been, and still are, a large number of donor supported programs aimed at supporting Indonesia's law and justice sector. It is therefore imperative that AIPJ assistance be delivered in close collaboration with these donor partners. In particular, many donors are involved in providing support to the courts and to the Anti-Corruption Commission (KPK).

The Indonesian Government's forthcoming *National Medium-Term Development Plan* (RPJMN) may provide a basis for facilitating stronger Bappenas-led coordination of donor activities in the sector. In the meantime current informal donor coordination mechanisms should be sufficient to ensure there is not duplication of assistance and opportunities for strengthening collaboration identified.

Key donor partners will include (but not be limited to): USAID, IMF (through their National Legal Reform Program), the EC (focused on supply-side assistance) and the World Bank (through its Justice for the Poor Program) and UNDP (focused on demand-side assistance).

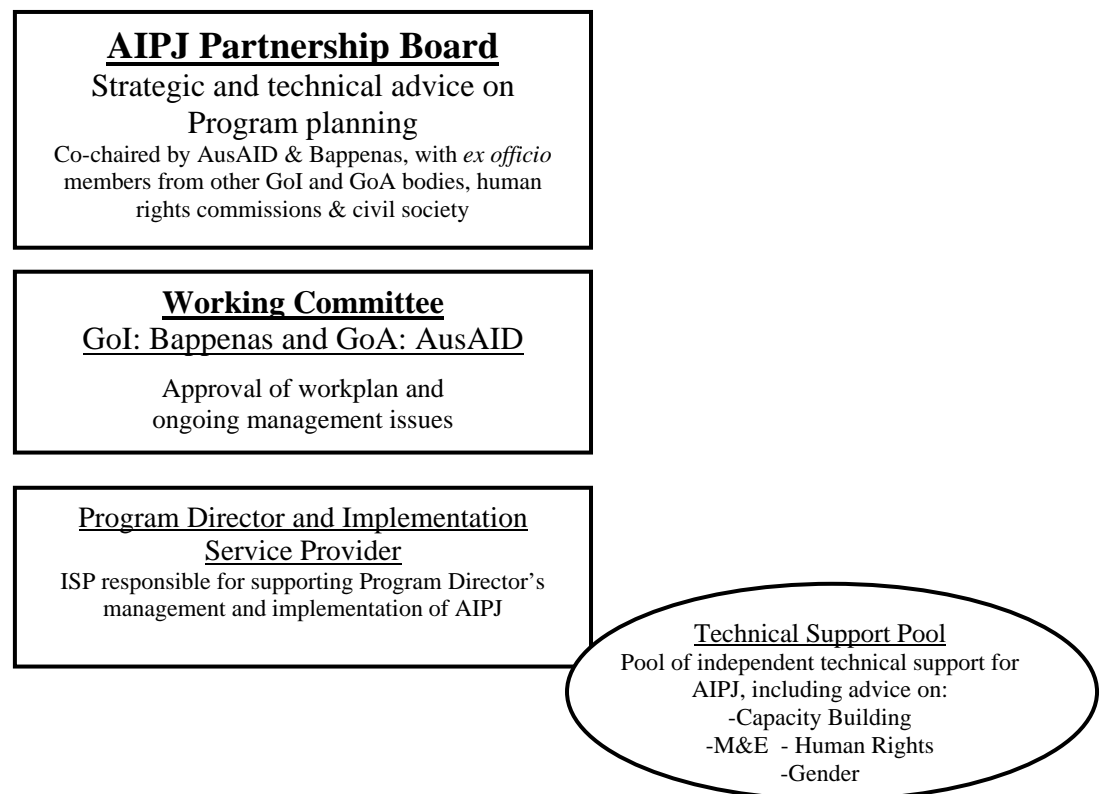
4. IMPLEMENTATION ARRANGEMENTS

The implementation arrangements for AIPJ reflect the maturing partnership between GoI and GoA. The governance and implementation arrangements reflect the following shared commitments and principles including: joint decision-making, increasing GoI leadership and ownership of AIPJ supported work; transitioning towards use of GoI systems over the life of the Partnership, including monitoring and evaluation and procurement systems; focussed engagement rather than attempts to be all-encompassing; and preference for using Indonesian national consultants and service providers where possible.

4.1 Governance and Management Arrangements

Figure 1 below describes the basic governance and management structure for AIPJ.

Figure 1: AIPJ governance and management structure



Ideally AIPJ would be overseen by a GoI led sectoral coordinating mechanism or overarching strategic reform plan that discusses sectoral needs, priorities and coordinates donor assistance.⁹⁸ Such a mechanism or plan does not currently exist. AIPJ will encourage and support GoI to establish such a mechanism during the period of the program. If such a mechanism emerged, AIPJ's oversight governance arrangements would need to be revised.

4.1.1 The Australia Indonesia Partnership for Justice Board (Partnership Board)

An AIPJ Partnership Board will be co-chaired by AusAID's Minister-Counsellor and a senior representative of Bappenas. The Partnership Board will comprise *ex officio* representatives of the

⁹⁸ An Australia – Indonesia Working Group on Legal Cooperation meets around the margins of the Australia Indonesia Ministerial Forum (AIMF). However there are few links between discussions by this Working Group and practical cooperation, ongoing liaison or follow-up.

Indonesian judiciary, GoI,⁹⁹ GoA (including Attorney-General's Department and DFAT), the Indonesian National Human Rights Commissions and Indonesian civil society. It will be responsible for providing overall strategic direction for the AIPJ, including by considering and providing comments on the draft Annual Work Plan of activities. It will consider the balance of annual funding based on a review of institutional progress and commitment towards AIPJ's objective.

The Partnership Board will meet annually to assess the progress of AIPJ, based on the annual program progress reports provided by the Program Director. The co-Chairs of the Board will actively encourage its members to use the findings in these reports as a basis for providing advice on the future direction of AIPJ. The primary purpose of the Partnership Board meetings is intended to be the opportunity for frank discussions about the political dynamics and current reform directions in the Indonesian law and justice sector to inform the direction of AIPJ.

Documentation provided to members of the Partnership Board will be brief (unless more detailed documentation has been specifically requested) and provided in both English and Bahasa Indonesia, with proceedings also being conducted simultaneously in English and Bahasa Indonesia where possible. While strategic advice around the majority of program priorities, directions and activities will be provided in these formal meetings, it is expected that decisions around complementary activities can and will be made by AusAID, in consultation with Bappenas, outside of the formal sessions.

4.1.2 Australia Indonesia Partnership for Justice Working Committee (Working Committee)

The AIPJ Working Committee will provide key stakeholder input to the Annual Work Plan before the annual meeting of the Partnership Board. The Working Committee will be co-chaired by Bappenas and AusAID, and will be responsible for key decisions relating to the management and implementation of AIPJ. The Working Committee will formally meet twice a year: three weeks after the annual Partnership Board meeting to endorse the Annual Work Plan (following AusAID's approval and Bappenas' concurrence); and six months later to review and endorse the program progress report.

4.1.3 GoI Managing Agency

Bappenas has been a key partner in the development of AIPJ and will be the Managing Agency representing GoI, including as the Joint Signatory of the AIPJ Subsidiary Arrangement and Co-Chair of the Partnership Board. Although Bappenas is not a law and justice sector institution, it will play a key facilitation and coordination role for Australia's engagement with Indonesia's law and justice institutions given its role to coordinate ODA.

4.1.4 GoA Managing Agency

AusAID will be AIPJ's Managing Agency on behalf of GoA. AusAID will play an active role in the partnership, co-chairing the Partnership Board and being a decision-maker on the Working Committee. AusAID will have the sole authority to make final approvals of AIPJ spending, but will do so with Bappenas' concurrence. To enhance AusAID's ability to facilitate the development of genuine partnerships between Indonesian and Australian law and justice actors, AIPJ's Program Director will be directly engaged by AusAID.¹⁰⁰ The Program Director will be responsible for managing the strategic direction and overseeing the implementation of the AIPJ. Terms of Reference for the Program Director are attached as Annex 5.11.

⁹⁹ This could include, for example, the Attorney-General's Office; the Ministry of Law and Human Rights; the Coordinating Ministry for Political, Legal and Security Affairs; and/or the Ministry of Home Affairs.

¹⁰⁰ AusAID will directly engage a Program Director through a transparent process.

4.1.5 Implementation Service Provider

An Implementation Service Provider (ISP) will be appointed by AusAID following a competitive process.¹⁰¹ On most program matters, the AIPJ ISP will report to the Program Director and be responsible for providing direct assistance to the Program Director in order to facilitate his/her management of the AIPJ implementation on behalf of AusAID. The ISP will be responsible for the day-to-day management of ISP staff and the technical assistance personnel that it recruits. The ISP will be responsible for its obligations under its contract with AusAID including, among other things, the provision of logistics, secretarial and administrative support, the recruitment of staff and technical assistants, financial management, procurement, secretariat services for the Partnership Board, monitoring and reporting to AusAID and any other services necessary to support the Program Director's management and implementation of AIPJ.

The ISP will support the Program Director to develop the Draft Annual Work Plan, including detailed costed activity proposals for submission and endorsement by the Partnership Board. For approval of out-of-cycle activity proposals, the Program Director and ISP must seek Bappenas endorsement and submit proposals to AusAID for approval at the appropriate level.

The ISP will be facilitative in nature, responding to the priorities and directions of GoA and GoI.

4.1.6 Technical Support Pool

The ISP will also be responsible for coordinating inputs of a Technical Support Pool (TSP) which will be built up and maintained over the life of the Partnership. The TSP will comprise a selection of national and international specialists in key areas including: gender analysis, capacity development, monitoring and evaluation, human rights, people with disability (particularly Indonesian people with a disability) and other technical specialist areas identified over the life of the Partnership. These specialists will be drawn upon at relatively short notice as required by AusAID, the ISP and AIPJ partners, and preferably will be given repeat roles reflecting the value of continuity in ongoing relationships for effective capacity development.

TSP members should be selected on the basis of specialist skills; the extent to which they will be based in Indonesia for the duration of AIPJ (and, where relevant, beyond); their openness to learning; and their capacity to facilitate long-term partnerships between Australia and Indonesia. There will be a strong focus on utilising Indonesian expertise, where appropriate.

4.2 Implementation Approach

Program implementation will be based on an activity cycle approach that will be described in detail in the Operations Handbook to be developed by the ISP. The ISP will be responsible for managing the activity cycle. As a general guide, the cycle will have the following characteristics.

4.2.1 Program Planning and Priority Setting

This design sets out core program objectives that the program will look to achieve. These objectives will form the criteria from which the Annual Work Plan and planned activities will be developed. Within the framework of these outcomes, the Partnership Board will provide further guidance around annual program planning and priority setting through its annual meetings. It is anticipated that analysis and recommendations flowing from the six month and annual Program Progress Reports will also be considered by the Partnership Board in setting and reaffirming these priorities.

¹⁰¹ A Bappenas representative will be invited to sit on the Technical Assistance Panel that will select the ISP.

4.2.2 Annual Work Plan

The Program Director, together with the ISP, will be responsible for developing a consolidated Annual Work Plan that seeks to progress change against AIPJ's objective. The forward work programs will align with GoI planning and implementation schedules and therefore capitalise on opportunities and complementarities provided by planning alongside GoI program cycles (such as leveraging on national budget and planning priorities and being able to 'complement' GoI program activities in AIPJ priority areas if the national budget is not sufficient for this purpose).

The Draft Annual Work Plan (i.e. the Work Plan prior to final approval) will comprise activities developed by proposing agencies with support from the Program Director and the ISP (namely, drawing on design, gender and M&E expertise), in accordance with the activity selection criteria described below (section 4.2.3). It is expected that all significant proposed activities will be developed using gender analysis and have meaningful M&E/performance indicators. All proposals will need to adopt approaches consistent with the AIPJ's operating principles. Furthermore:

- If the activity proposed is the first activity under AIPJ for a given institution, it must be accompanied by a capacity assessment and capacity development plan (as described in section 3.3.3 on AIPJ's approach to capacity development) before it can be endorsed by the Partnership Board.
- If the activity is not the first AIPJ activity for a given institution, the proposal must demonstrate consistency with the principle of *incremental engagement*, and must also include updating (as necessary) the institution's capacity development plan.

The Annual Work Plan will give conscious consideration to facilitating **Government to Government** engagement. It will also specifically include activities dedicated to supporting **monitoring and evaluation** program objectives described at 4.4 (Monitoring and Evaluation Approach). An indicative target of 10 per cent of program funding should be used as a guide to strengthen GoI monitoring and evaluation systems and monitor and evaluate AIPJ itself (as described at 4.4 Monitoring and Evaluation Approach). The Work Plan will also look to analyse and strengthen GoI systems, particularly those relating to M&E. Where possible, this should result in greater use of GoI systems during AIPJ and through any successor programs in this sector.

The Draft Annual Work Plan will be presented to the AIPJ Partnership Board for consultation and discussion. Following the Partnership Board meeting, the Annual Work Plan will go to the Working Committee for endorsement.

4.2.3 Selection Criteria for activities

The following criteria will be applied by the Program Director in assessing activities that will be presented to the Partnership Board and Working Committee on an annual basis:

Mandatory Criteria

- a) demonstrates alignment with the priorities of Indonesia's executive government and judiciary;
- b) is based on genuine demand from relevant Indonesian stakeholders;
- c) supports the achievement of the AIPJ Medium Term Goal;
- d) makes a direct contribution to AIPJ's objective or a cross-cutting issue;
- e) complies with the AIPJ Operating Principles, as outlined in Part 3, including being capable of demonstrating sustainable impacts beyond AIPJ;
- f) applies AIPJ's approach to capacity development, as described in Part 3 (where appropriate);
- g) has a well-defined and measurable activity-level objective (a statement about the expected change at the end of the activity);

- h) has a number of well-defined and practical output-level objectives (statements about what the activity will actually deliver within the life of the activity);
- i) considers the roles of women and men in decision-making and the different impact of activities on men and women;
- j) recognises and responds to the differential roles and responsibilities of men and women and describes the expected participation of and benefits to men and women;
- k) complies with the policies outlined in Part 4, including those in relation to environmental sustainability;
- l) includes an analysis of risks to successful implementation and identification of strategies to mitigate and manage risks as appropriate to the context; and
- m) includes a set of performance indicators against each output and the overall objective which will provide valid and reliable sources of information for monitoring.

Desirable Criteria

- n) uses and/or strengthens Indonesian Government systems, particularly monitoring and evaluation systems;
- o) builds relationships between Indonesian and Australian law and justice sector institutions and/or has been developed in consultation with relevant Indonesian and Australian stakeholders;
- p) supports the objectives of other AIPJ activities; and
- q) supports the objectives of other AusAID-funded initiatives, such as those relating to decentralised governance.

In addition to complying with the above criteria, proposed activities which involve overseas visits will also require:

- o the delegation to produce a clear terms of reference in advance of the visit, stating the reasons for the visit and the expected outcomes;
- o the delegation to produce and publish a brief online report (1-2 pages) describing the visit and possible outcomes; and
- o the relevant organisation(s) to demonstrate transparent processes for selecting members of the delegation.

4.2.4 Partnership and Emerging Issues Fund

A Partnership and Emerging Issues Fund of up to ten per cent of AIPJ funds will be created. This Fund recognises that unforeseen opportunities may not always fit neatly under the existing workplan. This Fund will allow the program flexibility, while ensuring that funding is not diverted from core activities. It is envisaged that the Fund will support in particular the establishment and development of partnerships between Australian and Indonesian law and justice sector institutions, and allow the program to support emerging reform opportunities. Funding proposals will be shortlisted by the Program Director and considered by the Working Committee on a quarterly basis.

All Australian and Indonesian law and justice institutions – both state and non-state – will be permitted to submit pro-forma funding applications. Applications will be assessed on the basis of their alignment with Indonesian and Australian Government priorities, and their potential for sustainability following the conclusion of AIPJ. The management of approved activities will be split between AusAID, the Program Director and ISP, depending on whether the implementer is an Australian Government agency or not. Achievements of activities under the Fund will be monitored separately from the AIPJ as a whole, reflecting the different aims of the fund. The strength of any partnerships supported by the Partnerships and Emerging Issues Fund will be measured as part of monitoring of the partnership cross-cutting issue.

4.2.5 Work Plan Implementation

Once the Annual Work Plan is approved, the ISP will recruit and engage service providers, and monitor implementation, including providing technical or strategic oversight where necessary.

The ISP will develop and implement the work plan under the direction of the Program Director. The ISP will be reimbursed for costs including, but not limited to, the costs of technical assistance through the TSP and any other required technical assistance, as well as activities approved under the AIPJ Annual Plan, costs related to the Working Committee and the Partnership Board, grant funds for NGOs (in accordance with agreed guidelines), funds for activities identified and supported under the Partnership and Emerging Issues Fund and funds for the performance monitoring component of the AIPJ.

The ISP will develop financial management guidelines as part of an AIPJ Operations Manual to be approved by AusAID which will stipulate reporting arrangements.

AusAID may provide funding to support other donor programs if agreed by the Partnership Board, and if the other donor financial procedures allow.

4.2.6 Work Plan Monitoring and Review

The ISP will monitor the progress of activities and their achievements under the direction of the Program Director. At a minimum, an analysis of their achievements will be conducted following their completion. Depending on the size, scope and significance of the activities, the ISP may undertake more in-depth analysis of activity outcomes. The objectives of such analysis should be captured in progress reporting to inform analysis about overall progress toward outcomes and AIPJ's objective, as well as to inform decisions about future strategic direction. A consolidated report of achievements and issues will be provided as part of the six-monthly and annual progress reports to the Partnership Board, and the Working Committee.

4.3 *Partnership Review and Reporting Requirements*

Reporting and review requirements for AIPJ include the components outlined below.

4.3.1 AIPJ Inception Report

An Inception Report is to be prepared for the Program Director by the ISP three months after the commencement of AIPJ for approval by AusAID. The Inception Report will report on the early establishment phase and draft the first work plan. When the ISP is mobilised it will determine the period of the first Annual Work Plan that should align with GoI planning processes. The Inception Report will be accompanied by the following:

- a) An **Operations Handbook** that will outline the management, financial management, procurement and other processes and issues required for AIPJ operations. Financial management guidelines, development of the Technical Support Pool, and the selection criteria for activities will be included as part of the Operations Handbook.
- b) A Preliminary **Work Plan** that will outline the activities in the period while the first Annual Workplan is being developed to align with GoI processes.
- c) An **M&E Framework** for the life of the program.
- d) A **Gender Strategy** and Action Plan for the AIPJ that will be updated annually by a member of the TSP with specific gender expertise.
- e) A **Capacity Development Strategy** to be updated annually by a member of the TSP with specific capacity development expertise.
- f) A **Communications and Partnerships Strategy** that will outline how AIPJ will communicate with stakeholders (both state and non-state) and the general public (in both Indonesia and Australia) on AIPJ implementation. The Communications and Partnership Strategy will be reviewed annually. It will describe how the ISP will engage with AusAID and Bappenas, and

other government stakeholders on ongoing management and implementation issues. This will be drafted in consultation with the Program Director and AusAID's Public Diplomacy team in Jakarta. See 4.7 below for further information.

4.3.2 AIPJ Annual Work Plans

The ISP will, under the direction of the Program Director, prepare a Draft Annual Work Plan for submission to the Partnership Board every year. The Draft Annual Work Plan will:

- set out the strategic direction for AIPJ for the coming year under AIPJ's objective;
- articulate the approach and strategies to address cross-cutting and policy issues over the coming 12 month period;
- provide indicative activities against the outcomes;
- provide an indicative budget breakdown against the outcomes;
- set out how the Program will report against the M&E framework, as well as actions that will be taken to improve M&E over the forthcoming period;
- set out how the Program is monitoring and addressing key risks identified in the risk management framework; and
- provide an environmental analysis specific to the outcomes and proposed activities that addresses any constraints.

The Partnership Board will either make recommendations for amendment or endorse the Annual Work Plan.

4.3.3 AIPJ Program Progress Reports

Six month and annual program progress reports will be jointly developed by the Program Director and the ISP, together with inputs from the TSP and will be submitted to the Working Committee and Partnership Board for review. Information arising from the M&E framework will form the basis for these reports. These progress reports will help AusAID meet Quality at Implementation reporting requirements and will contain at least the following:

- a) An update on the operating context i.e., constraints or opportunities the program is working within/with and how the program is managing any actual or potential risks, particularly those outlined in the risk management framework;
- b) Implementation progress: including updates on each outcome, broken down by activities;
- c) Key Results: analysis on how program activities are contributing, or otherwise, to AIPJ's objective and broader program outcomes; including distillation of the key results achieved in the program period;
- d) Report on use and effectiveness of M&E framework, together with recommendations for M&E framework improvements;
- e) Updates on progress against broader program strategies and plans such as gender, capacity building, and communication;
- f) An assessment of the effectiveness of coordination and oversight mechanisms and recommendations for improvement;
- g) Recommendations for program improvement, broader sharing of lessons learned/progress, and ways to achieve broader program impacts that may not be captured in other ways through the program; and
- h) A financial report.

4.3.4 Assessment of Strategic Engagement

AusAID, through its democratic governance advisor, will conduct a six-monthly review of the progress of the AIPJ in the broader sectoral context. This will be conducted in parallel with the bi-annual progress report for the Working Committee, and the annual progress report for the Partnership Board.

4.3.5 Independent AIPJ Reviews

Independent Reviews will take place over the life of the program. It is envisaged that the first review be conducted two years into the AIPJ, with a second independent review to take place two years following that. A team comprised of independent reviewers and a representative from AusAID and Bappenas will conduct these reviews. Where possible this should align with any reviews planned of key GoI policies or strategies. They will look at the efficiency and effectiveness of the implementation, management and governance arrangements for AIPJ. They will also undertake a review of the content and implementation of the Gender and Capacity Development Strategies developed for AIPJ.

4.3.6 Activity Completion Report

An **Activity Completion Report** will be prepared by the ISP prior to the end of AIPJ in accordance with stipulated guidelines.

4.4 *Monitoring and Evaluation Approach - Summary*

This section provides a summary of a more detailed approach to monitoring and evaluation under AIPJ given at Annex 5.8. The purpose of this section is to identify key principles and issues that the full monitoring and evaluation framework will be expected to address when it is developed during the inception phase of AIPJ.

Guiding principles for monitoring and evaluation activities will include:

- working with, and through, Indonesian systems and building on those systems where appropriate;
- all data collected will be gender disaggregated, and pay special attention to people with a disability;
- information collected will be reported in a way that can be directly used by managers at the operational, forward planning and strategic levels to inform ongoing decision-making; and
- regular reviews of the MEF itself to ensure that it incorporates best practice developments of monitoring in the legal sector, and ensure it is meeting the needs of stakeholders.

The Monitoring and Evaluation Framework (MEF) developed during the inception phase will specify, as a minimum, performance expectations, means of verification, stakeholders who will use the information and indicators to track performance. It will also track follow-up responses and actions to issues raised under the following headings:

1. **ISP performance** in meeting the requirements set out in its Scope of Services;
2. **Governance arrangements** and their effectiveness;
3. **Activity delivery** that is in accordance with the Operations Handbook, and, in particular, that meets the needs of stakeholders;
4. **Assessment of progress against the AIPJ outcomes and AIPJ's objective**, that takes into account the broader context in which the AIPJ is operating; and
5. **Cross-cutting Issues** – human rights, anti-corruption, performance management and partnerships.

At the outcome level, M&E will address both *capacity* and *performance*. As has been discussed above, a key focus on AIPJ is the development of the capacity of law and justice institutions to deliver services to the community.

AIPJ is expected to include the strong engagement of several Australian Government agencies. During the development of the MEF, the provider will engage with the relevant Australian Government agencies to discuss appropriate ways of capturing their contribution to AIPJ.

During the inception phase, the Monitoring & Evaluation Specialist will be expected to conduct an evaluability assessment of the AIPJ with full stakeholder participation. This assessment will include a review of the program logic and confirm a shared understanding of end-of-program outcomes. It will also examine potential data sources, particularly those in partner government systems, and areas where AIPJ should conduct further baseline analytical work (including through survey-based data generation), building on that already proposed under AIPJt. It is expected that a core means of tracking the performance of AIPJ will be through the use of an expert survey analysing public perceptions in areas that AIPJ is directly seeking to influence. The development of the initial baseline survey would be one of the first tasks of the AIPJ management team. Results would be expected to measure the impact of AIPJ's activities and feed into program learning.

4.5 Procurement and Financial Management Arrangements

AusAID will conduct a public and open tender in accordance with the *Commonwealth Procurement Guidelines* to appoint an ISP to manage the implementation of AIPJ in accordance with this design document and the proposed Scope of Services. The ISP tender will be open to any potential bidder including private contractors, and international not-for-profit organisations.

The ISP will be responsible for sub-contracting companies and individual personnel for the implementation of activities, providing grants to CSOs, and procuring goods and services for the realisation of the AIPJ. The ISP must implement procurement procedures that are consistent with the principles of the *Commonwealth Procurement Guidelines*. As mentioned above, the ISP must prepare an Operations Handbook which will set out, among other things, the financial management and procurement processes applicable to AIPJ, including management of Activity costs. Grants to CSOs must comply with the GoA and GoI requirements that will also be detailed in the Operations Handbook.

4.6 Overarching Policy Issues

The implementation of AIPJ will be informed by a number of overarching principles which GoA has put in place to ensure the quality and effectiveness of the aid program. In all cases, these principles are consistent with GoI policy. These overarching principles concern:

- gender equality;
- anti-corruption;
- sub-national governance;
- disability-inclusive development;
- combating transnational crime;
- disaster risk reduction;
- environmental sustainability (including compliance with Australia's *Environment Protection & Biodiversity Conservation Act 1999*); and
- child protection.

4.6.1 Gender Equality

The extent to which the Indonesian law and justice sector can deliver just outcomes to both women and men will play a critical role in determining the extent to which AIPJ's long-term, medium-term and end of partnership goals can be met.

Indonesia has put in place a comprehensive range of constitutional, legal and policy provisions for the advancement of gender equality.¹⁰² These provisions, together with consultations which the

¹⁰² Gender is also a high priority cross-cutting issue in the *AIP Country Strategy 2008-13*.

AIPJ Design Team, the LDF Gender Review Team and the AusAID Legal Sector Analysis Team have conducted with a range of women's organisations and women and men in legal institutions,¹⁰³ will shape AIPJ's implementation with regard to gender.

In addition to the incorporation of gender equality into AIPJ's objective and women's rights as a cross-cutting issue to ensure sufficient funds go to progressing gender related activities, the implementation of AIPJ will strengthen gender equality by:

- including a gender specialist in the TSP to ensure all significant proposed activities will be developed using gender analysis and have meaningful M&E indicators;
- developing a Gender Strategy and Action Plan as part of the Inception Report that is reviewed annually;
- undertaking a gender review in conjunction with the AIPJ Mid Term Review; and
- program progress reports being required to report on gender equality measures undertaken during implementation.

4.6.2 Anti-corruption

Assisting Indonesia to combat corruption is central to the AIPJ. As discussed above, the design of AIPJ has been informed by the *AIP Anti-Corruption for Development Plan 2008-13* and GoA's *Tackling Corruption for Development and Growth* policy. AIPJ will support the implementation of these policies by:

- specifying outcomes under the AIPJ objective which align with key GoI anti-corruption policies which over the long-term are likely to contribute to the reduction of corruption in Indonesia;
- seeking regular input from the Partnership Board on how Australia can best support the continuation of Indonesia's anti-corruption drive;
- funding activities that directly support the abovementioned Plan's Enforcement Pillar, through improving investigation and prosecution of corruption crimes and strengthening enforcement institutions such as the KPK and AGO; and
- ensuring that safeguards have been put in place to detect and address corruption in the use of GoA funding to Indonesia's law and justice sector.

4.6.3 Sub-national Governance

AIPJ will ensure it is coherent with the key principles in the *Sub-National Level Engagement in Indonesia – A Framework for AusAID 2010-15* to guide programming decisions including focusing on service delivery, maintaining flexibility and ensuring coherence between initiatives operating at the sub-national level.

Consistent with these principles, AIPJ will concentrate foremost on improving the delivery of legal services to communities, namely by strengthening the capacity of law and justice institutions to supply high quality services and of communities to demand the provision of appropriate services.

4.6.4 Disability-inclusive Development

AIPJ has been developed in line with the principles espoused in *Development for All: Towards a Disability-inclusive Australian Aid Program 2009-2014*. This is GoA's strategy for ensuring that people with disability are comprehensively included and supported in improving their quality of life through all aspects of the Australian aid program.

AIPJ will be one of the AusAID Indonesia Program's flagship initiatives in support of *Development for All* outcome 1 – improved quality of life for people with disability and Guiding Principle 2 – recognising, respecting and promoting the rights of people with disability – as AIPJ will seek to:

¹⁰³ See, eg, Anne Lockey and Lidwina Inge Nurtjahyo, *Report of the Gender Review of the Indonesia-Australia Legal Development Facility* (July 2009), Sebastiaan Pompe and Dian Rosita, *Indonesian Legal Sector Analysis* (July 2008)).

improve awareness of rights of people with disability to service providers, courts, judiciary, NGOs, the wider community and people with disability themselves; and enable better access for people with disability to mechanisms to complain and seek redress when rights are breached, and courts and human rights commissions strengthened to provide better access and to deal with complaints.

AIPJ will also be directed by the other guiding principles in *Development for All*, particularly around promoting active participation of people with disability, acknowledging the interaction of gender and disability, and strengthening people-to-people links and partnerships involving people with disability.

4.6.5 HIV

AIPJ will support the Australian Government's international development strategy for HIV, *Intensifying the Response: Halting the Spread* (2009). As is made clear in the strategy, discrimination against people living with HIV undermines the public health efforts that encourage people to undergo HIV testing. This phenomenon is one of the key constraints to halting the spread of HIV in Indonesia. Activities under AIPJ outcomes 1 (concerning access to courts and legal aid), 3 (concerning access to legal information) and 4 (concerning civil society capacity) will support efforts of the Indonesian judiciary, national human rights commissions and civil society to combat discrimination within their own ranks and also to promote avenues for pursuing grievances against other parties which discriminate against people living with HIV.

4.6.6 Combating Transnational Crime

The AIPJ will be one of an important suite of Australia's whole-of-government activities in support of partner country efforts to combat transnational crime. AIPJ's contribution will focus on the long-term strengthening of the building blocks of Indonesia's law and justice system and supporting the continued development of a robust, pluralist civil society in Indonesia. This will complement the efforts of the Government of Indonesia and other Australian initiatives by strengthening public trust in key state institutions – particularly the judiciary and prosecutorial agencies – involved in combating transnational crimes such as terrorism, money laundering and the trafficking of firearms, narcotics and humans. By facilitating improved access to justice, AIPJ will also be combating transnational crime by strengthening disincentives for individuals to resort to violence.

4.6.7 Environment (including compliance with Environment Protection & Biodiversity Conservation Act)

As a Commonwealth agency, all AusAID activity must comply with the *Environment Protection and Biodiversity Conservation Act 1999*. While efforts will be made to reduce any negative environmental impacts of AIPJ activities, there is no need for a comprehensive environmental impact assessment to be undertaken in relation to AIPJ as it will not involve an environmentally sensitive location or sector.¹⁰⁴ It is envisaged, however, that in strengthening the rule of law and human rights in Indonesia, AIPJ will have an indirect positive impact on the environmental concerns which Indonesia has signalled are the country's most pressing, such as deforestation, climate change and the loss of marine biodiversity.

4.6.8 Disaster Risk Reduction

GoA's disaster risk reduction policy, *Investing in a Safer Future*, states that disaster risk reduction will be integrated into the Australian aid program. The policy identifies several factors which exacerbate disaster impacts, including poor land-use management and inadequate enforcement of

¹⁰⁴ The activities envisaged under AIPJ would also evoke negative responses to all other preliminary questions in the 'Questions to assess environmental impacts and determine next steps' section of AusAID Guideline 163 (Integrating Environment into Aid Activity Design).

building codes. These factors are closely linked to governance and the quality of the law and justice sector as a whole. As such, AIPJ will indirectly contribute to disaster risk reduction in Indonesia.

4.6.9 Child Protection

AusAID's *Child Protection Policy* states that the agency has zero tolerance for child abuse. While AIPJ may involve activities in support of the rights of children, it is not envisaged that any AIPJ activities will involve AusAID staff or contractors working directly with children. If any activities are developed that involve working with children, AusAID and the ISP will identify the personnel positions involved and implement risk management measures in accordance with the *Child Protection Policy*.

4.7 Communications and Partnership Strategy

As mentioned above at 4.3 (Review and Reporting Requirements), the ISP will be required to prepare a Communications Strategy for AIPJ. The Communications Strategy will be updated annually and will cover communication with a wide range of stakeholders, including but not limited to:

1. **AusAID.** The Communications Strategy should include a clear framework for regular communication with AusAID Activity Managers and Management, including the types of issues that will be brought to the attention of AusAID for consideration;
2. **Other AIPJ Stakeholders.** The Communications Strategy should describe how and with what frequency AIPJ will update Partnership Board members, and other key partners on relevant information concerning AIPJ activities and issues;
3. **External stakeholders.** The Communications Strategy should describe how AIPJ will communicate its activities and achievements with the public. The public diplomacy elements of the Communications Strategy will be developed in conjunction with AusAID's Public Diplomacy team in Jakarta. AIPJ's public diplomacy should look to be creative in using different forms of media (such as 'Radio KBR68H') to promote AIPJ activities; and
4. **Other AIP Activities.** As noted above, AIPJ is required to communicate and coordinate with other AIP implemented and funded activities. The Communications Strategy will outline how AIPJ will communicate and coordinate with other AIP activities.

4.8 Critical Risks and Risk Management Strategies

Annex 5.10 provides details on the risks to AIPJ's success arising from the design model chosen and the broader context in which AIPJ will be implemented. The ISP will update this risk management framework following program mobilisation, including assigning responsibility to risk mitigation strategies, and report against these in Annual Progress Reports.

4.9 Transition Arrangements

4.9.1 Australia Indonesia Partnership for Justice – transition (AIPJt)

There will not be a full overlap of the management teams of LDF and AIPJ given LDF concluded in December 2009 and AIPJ is expected to commence in late 2010. AusAID has put in place a transition program – the Australia-Indonesia Partnership for Justice – transition (AIPJt) – that will run until the end of 2010 to primarily continue court-to-court activities and act as a bridge between activities. Activities under AIPJt may need to be moved across to AIPJ if they have not been fully implemented within the transition period. In particular, the Program Director and ISP will facilitate an inception workshop to be hosted by Bappenas where AusAID will introduce relevant stakeholders to AIPJ and the new Management and Implementation Team.

Upon mobilisation AusAID will facilitate a workshop with the incoming Management and Implementation Team to discuss the LDF **Facility Completion Report (FCR)** and **Independent Completion Report (ICR)**, as well as the outcomes of the 2010 AIPJt.

4.9.2 Key Changes, New Features and Enhancements

- **Stronger government-to-government partnerships, coordination and collaboration.** AIPJ envisages and will support stronger GoI-GoA partnerships, including through:
 - establishing a Partnership Board (to be co-Chaired by the AusAID Minister-Counsellor in Jakarta and a senior representative of Bappenas) comprising a range of GoA and GoI representatives that have joint control over the direction of AIPJ;
 - greater high level engagement by AusAID in the management of AIPJ and in building relationships with relevant Indonesian and Australian stakeholders;
 - greater involvement of AusAID in the implementation of AIPJ, supported by the Program Director and ISP;
 - greater alignment with GoI reporting and M&E processes where possible; and
 - greater support for collaborative government-to-government activities in support of AIPJ outcomes.
- **Greater emphasis on cross-cutting issues such as human rights and performance** as reflected in the incorporation of such issues (in particular women's rights and rights of people with disability) into the AIPJ cross-cutting issues. AIPJ will also support activities that build on LDF's activities in support of combating corruption.
- **Clearer focus.** This design document has a single objective and articulates the outcomes it expects AIPJ to achieve under this. All activities will need to establish a direct link to one or more of the specified outcomes. Moreover, the Operating Principles – particularly the principle of 'critical mass' – and the capacity development approach should ensure that AIPJ, while remaining responsive to change, does not involve a large number of small activities as occurred under LDF.

5. Annexes

5.1 *Design Process and Summary of Consultations*

Australia has provided support to Indonesia's law and justice sector for over ten years. Australia's current program, the Indonesia Australia Legal Development Facility (LDF) is due to end in December 2009.

AusAID has been undertaking a detailed process of analysis and consultation to develop a new program of assistance to Indonesia's law and justice sector. This new program of assistance will be called the Australia Indonesia Partnership for Justice.

AusAID commissioned an Indonesian Legal Sector Analysis in June 2008 which, following consultations with a range of key stakeholders, provided analysis on current issues in the sector and recommendations for future engagement.

AusAID engaged a concept development team to conduct further consultations with stakeholders in November 2008. Following these consultations, a concept note was developed which set out the proposed goals and objectives of the new program. The concept note was approved through an internal peer review process in June 2008. The Director Law and Human Rights, Bappenas, participated in the peer review representing the GoI.

In Australia: external and whole-of-government consultations

Date & Place	Organisation	Participants
21 July 2009, Canberra	Australian Department of Foreign Affairs and Trade	Various
23 July 2009, Canberra	Australian Attorney-General's Department	Various
22 October 2009, Canberra	Australian Federal Police	Various
12 November 2009, Canberra	Attorney-General's Department	Various
30 November – 2 December 2009, Sydney	Informal consultations with the Federal Court of Australia, Family Court of Australia and AsianLII	Various
December 2009 – January 2010	Attorney-General's Department, Department of Foreign Affairs and Trade, Federal Court of Australia, Family Court of Australia	Sought written comments on AIPJ draft design document from a range of officials from these whole-of-government and judicial partners.
27 January 2010	Australian Council for International Development (ACFID)	Various

In Indonesia

Date & Place	Event	Participants
May 2008, Jakarta and Kupang	Indonesian Legal Sector Analysis mission	A comprehensive range of government and non-government stakeholders were consulted. ¹⁰⁵
November 2008, Jakarta	Follow-up to first AIPJ Concept Peer Review	A round of consultations with a range of government and non-government organisations in Jakarta to obtain more information on the sector.
April-May 2009, Jakarta and Yogyakarta	LDF Gender Review	The LDF Gender Review mission consulted with a range of government and non-government organisations, including the Directorate General of Human Rights, AGO, Indonesian Supreme Court, Bappenas, Komnas Perempuan, Women Headed Households Empowerment Association (PEKKA), Women's Legal Aid Foundation (LBH Apik), University of Indonesia Centre for Women and Gender Studies (PKWJ-UI), the World Bank and UNIFEM.
May 2009, Jakarta	Revisions to the AIPJ concept note	AusAID consulted Bappenas on revisions to the AIPJ concept note.
1 June 2009, Jakarta (with videolink to Canberra)	Second AIPJ Concept Peer Review	Various
3 August 2009, Jakarta	Preliminary stakeholder workshop on AIPJ design	Range of government and non-government stakeholders, including Bappenas, Indonesian Supreme Court, University of Indonesia Centre for the Study of Persons with Disability, Komnas Perempuan, YLBHI, Komnas HAM, Religious Court, AGO, ICW and KPK.
19 August 2009, Jakarta	Stakeholder workshop on AIPJ objectives	Range of government and non-government stakeholders, including Bappenas, Indonesian Supreme Court, KPK, Ministry of Law and Human Rights (Directorate Generals for Human Rights and Legislation); University of Indonesia Centre for the Study of Persons with Disability, YLBHI, Komnas HAM, Komnas Perempuan, AGO, Ombudsman and Judicial Commission.
14 – 21 January, 2010, Jakarta	Comprehensive consultations on draft AIPJ design	Comprehensive range of governments and non-government organisations. ¹⁰⁶
Ongoing, Jakarta	AIPJ design	Ongoing consultation with Bappenas.

¹⁰⁵ These included the AFP, DFAT, LDF Team Leader and Lead Advisors, leading Indonesian experts on the sector, Indonesian Supreme Court, AGO, Komnas HAM, Indonesian Ministry of Home Affairs, KPK, Bappenas, Constitutional Court, Directorate General for Human Rights, Religious Court, ELSAM, YLBHI, PSHK, Indonesian Human Rights Working Group, a range of legal sector NGOs in Jakarta and Kupang, range of local government officials and national government representatives in Kupang, Asia Foundation, UNDP, USAID, Millenium Challenge Cooperation, UNODC, Dutch Embassy, World Bank (Justice with the Poor Project) and Partnership for Governance Reform.

¹⁰⁶ Including the Chief Commissioner of Komnas HAM, senior officials from the Supreme Court (Deputy Chief Justice Paulus, Director-General for Religious Courts, Director-General for Military and Administrative Courts, Directorate-General Secretary for General Courts and the Head of the Judicial Reform Team Office), new commissioners of Komnas Perempuan, Deputy Attorney-General, key officials from the Ministry of Law and Human Rights, Deputy Commissioner of the KPK, DFAT Minister-Counsellor and representatives from PERADI, PSHK, MAPPI, LeIP, ICW, TII, ELSAM, LBH APIK, PEKKA, YLBHI, LBH Masyarakat, LBH Jakarta and the UI Disability Centre.

5.2 *Likely Impacts of Law and Justice Sector Reform in Indonesia on Poverty Alleviation and Sustainable Development*

In Indonesia, entrenching the rule of law and protecting human rights is likely to support poverty alleviation and sustainable development, including the achievement of the Millennium Development Goals, through:

1. **Providing mechanisms for the poor and the marginalised to address grievances.** The existence of a set of standards to protect the poor and marginalised, if complemented by institutions capable of enforcing those standards, can lead to the realisation of basic human rights (freedom of association/expression, access to education/health, anti-discrimination, etc) which both constitute development ends in themselves and also support the improvement of service delivery in support of other development outcomes.¹⁰⁷ At present, some groups in Indonesia – including rural women¹⁰⁸ and people with a disability¹⁰⁹ – are often unable to have their rights realised through access to fair and effective dispute resolution mechanisms.
2. **Building confidence in the capacity of state institutions to ensure security.** A legal system which administers justice fairly and effectively – both in disputes between private citizens and those involving the state – is likely to reduce incentives to resort to vigilantism, which in turn is likely to reduce the risk of violent conflict and promote stability.¹¹⁰ This importance to Indonesia of stability, and the interconnected relationship this has with security and economic development, is recognised in the *AIP Country Strategy 2008-13*. At present, a widespread lack of public confidence in Indonesian law and justice institutions is feeding the development of informal security networks, which may undermine Indonesia's stability in the long-term.¹¹¹
3. **Guaranteeing certainty to domestic and international investors.** A predictable legal system is likely to encourage both domestic and international businesses to invest in Indonesia and make more long-term investments, which in turn will contribute to formal sector job creation. At present, Indonesia ranks 129th out of 181 countries surveyed in the World Bank's Ease of Doing Business Index, partly due to a particularly low ranking for the sub-index concerning the "procedures, time and cost to resolve commercial disputes".¹¹² The comparative experience of other middle-income countries shows that Indonesia will struggle to transition from a lower- to a higher-middle income country without rectifying this 'bottle neck'.¹¹³
4. **Reducing corruption.** The existence of impartial law enforcement and reliable avenues for enforcing transparency (e.g. freedom of information laws) is likely to, among other things, reduce the state revenue lost to corruption, bring about a greater culture of merit-based

¹⁰⁷ See, eg, Amartya Sen, *Development As Freedom* (1999).

¹⁰⁸ For example, the LDF demonstrated through a series of court user surveys of the Religious Court system that poor rural women faced significant obstacles to accessing family law dispute resolution mechanisms, which in turn is plays a critical role in obstructing access to health and education services for their children.

¹⁰⁹ This is based on detailed anecdotal evidence presented during consultations for this design. See also Eva Rahmi Kasim, 'Equal Access?', *Inside Indonesia*, July 2009, <<http://insideindonesia.org/content/view/1227/47/>>.

¹¹⁰ See, eg, UNDP, *Strengthening Rule of Law and Protection within an Early Recovery Framework* (2007) ("While capacity building will provide the knowledgebase, operational tools and infrastructure to enable effective and efficient administration of justice, rule of law programming – by default – warrants confidence building as the very basis for peaceful conflict resolution and a culture of justice.")

¹¹¹ See, eg, Sebastiaan Pompe and Dian Rosita, *Indonesian Legal Sector Analysis* (2008) p.7. Pompe and Rosita argue, for example, that 'there is a correspondence between the rise of structural low level violence in a country such as Indonesia and institutional effectiveness. The effectiveness of legal institutions is a matter of security.'

¹¹² Indonesia ranked 140 out of 181 on this sub-index: World Bank, *Doing Business 2009: Rankings*, <<http://www.doingbusiness.org/EconomyRankings/>>.

¹¹³ Pompe and Rosita argue that "weak legal institutions and weak legal certainty impact directly on poverty and unemployment" and that experience from other countries demonstrates that "sustained economic growth and poverty reduction are extremely hard to achieve without improving the rule of law": Sebastiaan Pompe and Dian Rosita, *Indonesian Legal Sector Analysis* (2008) p.8.

procurement and staffing in state institutions, and support more effective delivery of basic services.¹¹⁴ The *AIP Anti-Corruption for Development Plan 2008-13*, for example, recognises that corruption damages public trust and accountability and distorts the allocation of public resources. At present, Indonesia suffers from high levels of corruption.¹¹⁵ In the RAN-PK, the Government of Indonesia itself states that '[c]orruption in Indonesia is a disturbing phenomenon that has spread and expanded to the executive, legislature and judiciary. This has been one of the main factors that hampers Indonesia's development'.

5. **Entrenching democracy and supporting a robust, pluralist civil society.** As the role played by the Constitutional Court in Indonesia's recent legislative and presidential elections demonstrates, the existence of prompt and well-reasoned judicial decisions is crucial to quelling electoral uncertainty and entrenching public trust in the electoral process. A fair and effective law and justice sector, grounded in respect for basic human rights, is also a crucial element in supporting the development of a robust, pluralist civil society.¹¹⁶ This in turn is important to cement progressive reforms.

¹¹⁴ See, eg, Navin Girishankar et al, 'Governance' in World Bank, *A Sourcebook for Poverty Reduction Strategies* (2002) 269.

¹¹⁵ As discussed above at 2.1.2 (The Current State of Indonesia's Law and Justice Sector).

¹¹⁶ See, eg, World Bank, *Social Development Note No. 82: Enabling Environments for Civic Engagement in PRSP Countries* (2003).

5.3 Key Indonesian Laws relating to Law and Justice Sector Reform

The ultimate policy context for the AIPJ is the *Constitution of the Republic of Indonesia 1945*, which now recognises the pre-eminence of the rule of law and enshrines a significant number of internationally recognised human rights. Relevant constitutional provisions include:

- a commitment to the rule of law (art 1(3));
- a commitment to the principle of an independent judiciary (art 24);
- the establishment of a system of judicial review by a Constitutional Court (art 24C);
- the right to freedom of association, assembly and expression (arts 28 and 28E(3));
- the right to life (art 28A);
- the rights of children to freedom from violence and discrimination (art 28B(2));
- the right to education (arts 28C and 31);
- the right to equal treatment before the law (art 28D(1));
- the right to freedom of religion (arts 28E(2) and 29);
- the right to communicate and to obtain information (art 28F);
- the right to be free from torture or inhumane and degrading treatment (art 28G);
- the right to health (art 28H(1));
- the right to receive affirmative action to have the same opportunities and benefits as others (art 28H(2)); and
- the right to be free from discriminative treatment (art 28I).

Throughout the past decade, Indonesia has passed a number of laws and policies which demonstrate a commitment to reform the accessibility, transparency and accountability of the country's law and justice system. These laws and policies roughly fall into four categories: legal services, legal information, human rights and anti-corruption. Among the most important are:

- **Law No. 39 of 1999 concerning Human Rights.** The Human Rights Law articulates Indonesia's commitment to a range of basic human rights. It also ensures the independence of Komnas HAM.
- **Presidential Decree No. 91 of 1999 concerning a National Legal Documentation and Information Network (JDHI).** Decree 91/1999 establishes a network (called the "JDIH") for distributing legislation at national, provincial and district/municipal levels. It names the Ministry of Law and Human Rights as responsible for ensuring that all legislation is properly distributed to relevant offices and made publically available. The implementation of Decree 91/1999 has been patchy; some regions¹¹⁷ and government institutions¹¹⁸ appear to have implemented it well and made most legislation publically available, whereas others have not.
- **Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.**
- **Law No. 30 of 2002 concerning the Commission for the Eradication of Corruption (KPK).**
- **Law No. 23 of 2004 concerning the Elimination of Domestic Violence.** The Domestic Violence Law makes it a judiciable offence to resort to physical or emotional violence in the household and has played a key role in raising public awareness of violence against women and the importance of a rights-based approach to addressing this issue.
- **Law No. 32 of 2004 concerning Regional Governance.** The Regional Governance Law, together with a law relating to financial decentralisation, establish a comprehensive system of

¹¹⁷ In Surabaya, for example, both the Municipal Government (<http://jdih-surabaya.org>) and the Provincial Government (<http://jdih.jatimprov.go.id>) have established websites which contain extensive legislative information pursuant to the JDIH Decree.

¹¹⁸ The National Audit Board (BPK), for example, has established a website which makes its legislation publically available: www.jdih.bpk.go.id

decentralised governance in Indonesia. Although the judiciary and police are expressly exempted from the decentralisation process, these laws affect the law and justice sector by transferring significant legislative and service delivery authority to sub-national governments. The Regional Autonomy Law does, however, provide authority to the Ministry of Home Affairs to annul Regional Regulations (*Perda*) which conflict with National Laws (*Undang-Undang*). The system also allows for judicial review of *Perda* by the Supreme Court. The implementation of these *Perda* review mechanisms has been very poor, as the Ministry has only had the capacity to review a small portion of all *Perda* being passed and the Supreme Court has limited its own jurisdiction to review *Perda*.¹¹⁹

- ***Law No. 11 of 2005 concerning the Ratification of the International Covenant on Economics, Social and Cultural Rights (ICESR).***
- ***Law No. 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights (ICCPR).***
- ***Supreme Court Decree No. 144 of 2007 concerning Transparency of Information in the Judiciary.*** Decree 144/2007 commits the Supreme Court and all lower courts under its supervision to make a range of judicial information publically available to the public. The Decree sets out mechanisms for applying to access information and states that all courts should appoint an Information Officer to manage these processes. The judicial information covered by Decree 144/2007 includes most relevant judicial information (judicial decisions and institutional information such as fees, annual reports, practice notes, public investigations, etc) except for information which relates to cases which are subject to appeal.¹²⁰ While a large number of the Supreme Court's own decisions are now publically available, it admits that it has experienced challenges in implementing Decree 144/2007 with regard to lower courts.
- ***Law No. 7 of 2006 concerning the Ratification of the United Nations Convention against Corruption.***
- ***Law No. 14 of 2008 on Freedom of Information.*** Law 14/2008 establishes rules and mechanisms for facilitating public access to range of judicial, legislative and executive government information. It includes, for example, provisions requiring the establishment of a Central Information Commission in Jakarta and a Provincial Information Commission in each province. Law 14/2008 is due to enter into force in April 2010.
- ***Law No. 25 of 2009 concerning Public Service Delivery.*** The Public Service Delivery Law sets minimum standards for the delivery of basic public services (such as adherence to anti-discrimination principles), and refers to various mechanisms for the resolution of complaints relating to these standards.

¹¹⁹ Under Supreme Court Regulation 1/2004 concerning Judicial Review, the Supreme Court has stated that it will only review *Perda* that are less than 180 days old – regardless of when the cause of action arises.

¹²⁰ This is potentially problematic, because it does not guarantee public access to lower court decisions which are still subject to appeal. These decisions are often those most in need of public scrutiny. Exemptions exist, however, for cases involving 'corruption, terrorism, narcotics, money laundering or other matters considered by the Court Chairperson to be of public importance'.

5.4 AIPJ Stakeholder Analysis

This Annex provides an overview of key law and justice sector actors in Indonesia.

General courts and religious courts (under the management of the Supreme Court) *Pengadilan umum dan pengadilan agama*

Under the provisions of Article 24 of the Indonesian Constitution, the court of last resort is the Supreme Court (*Mahkamah Agung*). In 2004, Indonesia's courts were united under the administrative, organisational and financial authority of the Supreme Court rather than joint responsibility with the Ministry of Law and Human Rights (sometimes called the 'One Roof Policy'). Those four branches of the court system (excluding the Constitutional Court) are now:

- General Courts of Justice (civil and criminal cases);
- Religious Courts;
- State Administrative Courts; and
- Military Courts.

In the general court system, cases at first instance are heard by District Courts (*Pengadilan Negara*) at the district/municipality level and appeals are heard by Courts of Appeal/Intermediate Courts (*Pengadilan Tinggi*) at the provincial level. Cases from *Pengadilan Tinggi* can be appealed to the Supreme Court on questions of law. Similar arrangements exist for other branches of the court system. The Supreme Court is also empowered by statute to review the conformity of Government Regulations, Presidential Regulations and Regional Regulations with National Laws.

Though the courts are generally perceived as among the least transparent institutions in the country, they are obviously central to the effective functioning of the law and justice sector in Indonesia and there are some signs of reform. The Supreme Court is proposed as an AIPJ partner because it is an integral justice institution with which Australian institutions have built a productive and sound working relationship over ten years, most recently under LDF. With demonstrable results achieved in the General Courts of Justice and the Religious Courts, the Supreme Court is a key determinant in the quality, equity and accessibility of justice in Indonesia and touches on the lives of most people who interact with the justice system. Continued engagement also provides the potential for ongoing whole-of-government collaboration by leveraging the pre-existing relationship with the Federal Court of Australia which has been providing assistance to the Supreme Court since 1999. A strong relationship also exists between the Family Court of Australia and the Religious Court.

Attorney-General's Office (AGO) *Kejaksaan Agung (Kejagung)*

The Attorney General's Office (*Kejaksaan Agung*) answers to the Executive and is primarily responsible for prosecuting criminal offences. The geographical distribution of the AGO mirrors that of the Supreme Court with district (*Kejaksaan Negeri*) and provincial (*Kejaksaan Tinggi*) level offices. The AGO has 5 divisions:

- General crime;
- Special crimes (which includes corruption and human rights);
- Civil and administrative;
- Supervision (which deals with human resources management); and
- Oversight.

The AGO also maintains an Information Centre and a Centre for Training and Education.

The AGO is proposed as an AIPJ partner because it is a key institution but faces a range of significant challenges in terms of service delivery and credibility. Like the Supreme Court, it is an

important link in the ‘chain’ of justice and accordingly is a significant determinant of the equitability and accessibility of justice, particularly in terms of the criminal law. Whilst the focus of support to the AGO will differ from that assistance under LDF which initially focused on transnational crime, pre-existing relationships built under LDF provides a sound platform for ongoing reform activities notwithstanding the challenges facing the agency.

Directorate General for Human Rights
Direktorat Jenderal Hak Asasi Manusia (Ditjen HAM)

The Directorate General of Human Rights (*Ditjen HAM*) is a division within the Ministry of Law and Human Rights. It has a duty to formulate and implement policies and technical standardisation in the field of human rights. To carry out this duty, *Ditjen HAM* is responsible for:

- preparation of department policy formulation; implementation of policy and technical standardization; compilation of norms, standards, guidelines, criteria and procedures in the field of public communications services (all three includes cooperation, dissemination and strengthening of human rights information in the context of the protection, promotion, enforcement, compliance and respect for human rights;
- provision of technical assistance and evaluation;
- coordinating the implementation of the National Committee Secretariat activities of the National Action Plan for Human Rights (RAN-HAM).

LDF has provided assistance with the implementation of the RAN-HAM. The latest RANHAM, which was launched in 2004, has been rolled out across Indonesia at different levels of government. LDF assisted with a national seminar for 300 district officials, and has also funded several regional coordination workshops.

Ditjen HAM is likely to be a partner supported through AIPJ due to their clear mandate as the lead government agency on human rights policy and because of the spread of their representative offices throughout Indonesia.

Directorate General for Legislation
Direktorat Jenderal Peraturan Perundang-undangan (Ditjen PP)

The Directorate General for Legislation is a division within the Ministry of Law and Human Rights. Its mandate is to formulate and implement policies on legislative drafting and to pursue technical standardisation in the field of legislation. Its responsibilities cover:

- preparation of departmental policy in the field of legislative drafting;
- policy implementation in the field of legislative drafting in accordance with applicable regulations;
- formulation of standards, norms, guidelines, criteria and procedures in the field of legislative drafting;
- providing technical guidance and evaluation on legislative drafting;
- drafting, harmonising, monitoring and evaluating the laws and regulations; and
- publishing draft legislation and relevant supporting materials.

Ditjen PP has an emerging relationship with the Office of Legislative Drafting and Publishing within Australia’s AGD. In a meeting between the two agencies in November 2008, several proposed cooperative initiatives were discussed, including projects relating to the electronic publication of legislation.

National Legal Development Agency
Badan Pembinaan Hukum Nasional (BPHN)

The National Legal Development Agency (BPHN) is a portfolio agency within the Ministry of Law and Human Rights. Its functions include:

- developing networks and systems for documenting legal information (including legislation);
- developing law libraries;
- formulating and implementing technical policy in relation to improving the legal system;
- providing technical guidance and evaluation on improvements to the legal system;
- implementing GoI development plans in relation to the coordination of legal development;
- coordinating the national legislation development program (*Prolegnas*);
- guiding, supervising and assisting the development of legal education; and
- raising public awareness about the rule of law.

BPHN's functions indicate that it is an important actor in the sector. However, it has a low profile and no significant links to any Australian organisations.

Coordinating Ministry for Political, Legal and Security Affairs
Kementrian Koordinator Politik, Hukum dan Keamanan (Kemenko Polhukam)

The Coordinating Ministry for Political, Legal and Security Affairs (*Kemenko Polhukam*) is the peak agency within the GoI for 'assisting the President to coordinate the planning and formulation of policy, and the synchronisation of its execution, in the fields of politics, law and security.'¹²¹ The *Kemenko Polhukam* coordinates whole-of-government policy involving a number of agencies, including the Department of Law and Human Rights, the AGO, the Ministry of Home Affairs, the Ministry of Foreign Affairs and the National Police Force.

The position of Coordinating Minister for Political, Legal and Security Affairs is generally allocated to a former senior official from the Armed Forces. President Yudhoyono held this post prior to becoming President. As such, the *Kemenko Polhukam* wields significant political weight. Given its political clout and the importance of enhanced coordination between legal institutions, the *Kemenko Polhukam* has a vital role to play in supporting reforms to the law and justice sector. The Deputy Coordinating Minister for Law and Human Rights, who is usually selected from the senior ranks of the AGO, has a particular important role to play in this regard.

Australia has very few links with the *Kemenko Polhukam*, but given its importance to the sector it is worth exploring how a partnership with this institution can be established.

**National Human Rights Commission and the
National Commission on Violence against Women**
Komisi Nasional Hak Asasi Manusia (Komnas HAM) dan
Komisi Nasional Anti Kekerasan Terhadap Perempuan (Komnas Perempuan)

The National Commission on Human Rights (*Komnas HAM*) is an independent body that conducts research, monitoring and public education on human rights. *Komnas HAM* also provides consultation, negotiation, mediation and reconciliation services, refers unresolved issues to the court system when necessary and provides the President and Parliament with recommendations regarding settling significant human rights cases. Under the provisions of *Law 39 of 1999 concerning Human Rights*, *Komnas HAM* commissioners are selected by the National House of Representatives

¹²¹ Presidential Regulation No. 9 of 2005 concerning the Rank, Duties, Functions, Structure and Working Arrangements of the Ministries of the Republic of Indonesia, article 6.

(*Dewan Perwakilan Rakyat*) from candidates proposed by the sitting members of *Komnas HAM*. The present commissioners are impressive individuals but *Komnas HAM* continues to face several challenges, among them technical difficulties in managing individual complaints from the community.

The government budget for *Komnas HAM* includes the operating expenses for the National Commission on Violence against Women (*Komnas Perempuan*) and the Commission for Child Protection (*Komisi Perlindungan Anak Indonesia*, or KPAI). *Komnas Perempuan* has been an important partner under LDF by implementing the work on the development of a gender sensitive criminal code. AusAID has recognised the importance of this institution and its potential to contribute to debate on, and protection of, women's rights in Indonesia. As such, AusAID is also providing direct financial support to *Komnas Perempuan* for two years (2009-2010) to assist it to carry out key core activities whilst it resolves its position within GoI's budgetary structure.

Australia has strong relationships with *Komnas HAM* and *Komnas Perempuan* and support for these institutions has been a key feature of LDF.

Corruption Eradication Commission ***Komisi Pemberantasan Korupsi (KPK)***

The Corruption Eradication Commission (KPK) has a mandate to support corruption prevention and investigate and prosecute large-scale (over one billion rupiah) corruption cases that involve law enforcement agencies, state apparatus, and people who are allegedly involved with corruption by state apparatus or law enforcement apparatus.

Corruption cases from KPK are dealt with by a Special Court on Anti-Corruption, which has five judges, three of whom are ad-hoc judges (compared with other court tribunals which consist of three judges). There are also certain time requirements with regard to progressing cases before the Special Court and once presented, indictments cannot be withdrawn. Ad-Hoc Judges of the Special Court were chosen by a special selection committee constituted under the Supreme Court, comprising NGO representatives, scholars, and judges. In late 2006 the Constitutional Court ruled that the establishment of the Special Court on Anti-Corruption in the law regulating the KPK is 'conditionally unconstitutional'. The Constitutional Court gave a maximum of three years (until late 2009) for Parliament to enact a new law on the Special Court.

Since its establishment in 2004, the KPK has not prosecuted a great deal of cases (approximately only one hundred). Of the 500+ districts in Indonesia, for example, the Special Court exists in only one (Central Jakarta). However, the KPK's perfect strike rate and the high profile of the officials it has successfully prosecuted has played an important role in raising the profile of the GoI's anti-corruption drive.

The KPK is currently a key focus of the GoI's anti-corruption efforts and is generally seen as an effective and credible institution. AusAID has provided support to the KPK under LDF and a Memorandum of Understanding has been signed between the KPK and several Government of Australia agencies (AGD, APSC and ACLEI). It is therefore well-positioned to continue to be a key Government of Australia partner and to receive future assistance under AIPJ. However, such assistance will need to be mindful of:

- the AGO's mandate as the primary prosecutorial agency in Indonesia;
- the high level of donor assistance which the KPK receives;
- the fact that the KPK focuses on high-profile cases and has very little presence at sub-national level; and

- recent allegations against the Chief Commissioner (for murder) and several other commissioners (for corruption).

National Development Planning Agency
Badan Perencanaan Pembangunan Nasional (Bappenas)

The State Ministry of National Development Planning (*Bappenas*), which is also known as the National Development Planning Agency, is mandated to assist the President with policy formulation and the coordination of development planning. The National Development Planning System now provides three levels of national development planning¹²²:

- a) A Long Term Development Plan of 25 years duration that is endorsed by the Parliament made in the form of a statute.
- b) A Medium Term Development Plan of 5 years duration that aligns with the Long Term Development Plan. It is made in the form of a Presidential Regulation. The planning process includes planning consultation that must be conducted within two months of a President taking office, whilst the plan itself must be completed within three months of a President taking office.¹²³
- c) An Annual Development Plan of 1 year duration that aligns with the Medium Term Development Plan. Annual Development Plans are also called Government's Working Plans (*Rencana Kerja Pemerintah* or RKP). The making of RKP is also the initial stage of state budget cycle. The law states that RKP must be in place in April of every year for the establishment of the budget of the following year.

Bappenas conducts the whole planning process, including bottom up planning through the district planning agencies (*Bappeda*) which informs both the local and national development plans that shape the local and state budgets. It is AusAID's main counterpart with regard to the Jakarta Commitment and is a key partner as GoA works towards greater use of GoI systems. One tangible ramification of the Jakarta Commitment is the necessity for donor registration of assistance on the **Blue Book**.¹²⁴ *Bappenas* manages coordination and documentation of funding priorities and their implementation, and the '**Blue Book**' is the culmination of this work¹²⁵. Whilst in the past some donor funded initiatives have progressed even though not included in the Blue Book, moving forward, being 'on the Blue Book' is important because:

- It is GoI policy;
- It is consistent with the Jakarta Commitment;
- It is a practical means of pursuing alignment with partner country priorities and donor coordination as key aid effectiveness principles;
- It is consistent with GoA policy to work in partnership with GoI to support its own priorities; and
- It will facilitate effective management as progressively, visas, taxation and other administrative issues relevant to donor assistance will be linked to a Blue Book entry.

Bappenas' **Directorate of Law and Human Rights** has been playing an important role in the planning process in terms of legal and judicial reform. The Blueprints for the Supreme Court, Court Reform, Human Rights Court, and the establishment of Anti-Corruption Court all benefited from coordination by *Bappenas*. *Bappenas* also played a key role in coordinating the drafting of the *National Access to Justice Strategy* and *National Action Plan on the Eradication of Corruption* (RAN-PK). In each case the same approach was used for coordination with *Bappenas* hosting

¹²² These planning cycles articulate important periods for the alignment of donor funding cycles.

¹²³ This means the next plan must be in place in January 2010 at the latest.

¹²⁴ "Project and Technical Assistance Proposals Volumes I and II.

¹²⁵ According to *Law No. 1 of 2004* and *Government Regulation No. 2 of 2006*.

meetings for senior officials of relevant institutions, and providing drafts of the blueprints and other documents with facilitated input by various actors and civil society partners.

Bappenas has a long-standing relationship with AusAID and co-chairs the annual Senior Officials Meeting which determines the priorities of the AIP.

Judicial Commission **(*Komisi Yudisial*)**

The Judicial Commission (*Komisi Yudisial*) was established in 2004 with the authority to supervise the conduct of judges, and to select judicial candidates to be elected by the Parliament as Supreme Court Judges. In 2006, the Constitutional Court ruled that the Commission did not however have the authority to supervise judges in their judicial decision making capacity.

The Australian Government has limited experience and relationships within this agency upon which future activities could be soundly based. However, a ‘watching brief’ by AIPJ and incremental interaction via *Bappenas* may present opportunities for future support, if it subsequently became appropriate to do so.

Constitutional Court **(*Mahkamah Konstitusi*)**

The authorities and responsibilities of the Constitutional Court (*Mahkamah Konstitusi*) include reviewing National Laws (*Undang-Undang*) against the Constitution, resolving disputes over the authority of state institutions whose powers derive from the Constitution, overseeing the dissolution of political parties, and ruling on electoral disputes. The Constitutional Court also has the authority to impeach the President and/or the Vice-President.

The Constitutional Court is a key law and justice sector institution in Indonesia. However, it has not sought international donor assistance and has expressed the view that doing so could be interpreted as interference in its independence. At present, therefore, it is not feasible for AIPJ to fund activities which directly involve the Constitutional Court.

Ombudsman ***Ombudsman Republik Indonesia***

The Ombudsman (*Ombudsman Republik Indonesia*) was formerly established in 2008, but operated from 2000-2008 under a Presidential Decree (rather than a constitutive statute) as the National Ombudsman Commission. Its functions involve investigating complaints made in relation to the delivery of public services which have been funded (fully or partly) through national or sub-national government budgets.

In 2002, there was early contact between Australia’s Commonwealth Ombudsman and the National Ombudsman Commission and this support continued through the AusAID-funded Government Sector Linkages Program (GSLP) and the Government Partnerships Fund (GPF). In May 2006, a Statement of Understanding was signed by the Commonwealth Ombudsman, the Chief Commissioner of the Indonesian National Ombudsman Commission, the New South Wales Ombudsman and the West Australian Parliamentary Commissioner for Administrative Investigations. This statement involved an agreement that all parties would work together to strengthen links between them.

The Ombudsman is yet to illustrate that it is playing a strong role in reforming the sector, partly due to the fact that it did not have a statutory basis until late 2008. It is also unclear what the Ombudsman's relationship will be to the Delivery of Public Services Commissions to be established at national and sub-national levels under the recently-passed Delivery of Public Services Law. To the extent to which the Ombudsman can contribute to AIPJ's objectives and expected outcomes, AIPJ seek to involve it in AIPJ activities and/or build on existing partnerships between the Ombudsman and its Australian counterparts.

Professional associations

Asosiasi advokat

There is a range of relevant professional associations for advocates (barristers), notaries and other legal sector professions in Indonesia. These associations, particularly those with the statutory authority to discipline members, have the potential to play a role in enhancing the quality and integrity of the legal profession. This in turn would provide important support to Indonesia's anti-corruption agenda.

At present, the professional associations in the legal sector are fragmented. There have, however, been several attempts to introduce a single professional association for advocates, including an Advocates Law in 2003 and a recent Constitutional Court decision that the Indonesian Bar Association (PERADI) is the only bar association with the authority to conduct pre-admission training and to admit and discipline advocates.

PERADI has had some contact with the Law Council of Australia (LCA), and LCA has conducted a needs assessment of PERADI which was raised at the most recent meeting of the Australia-Indonesia Working Group on Legal Cooperation. The importance of PERADI to the effective functioning of the legal profession and the law and justice sector as a whole points to the importance of developing this emerging partnership.

Legal sector NGOs

LSM-LSM di sektor peradilan

The past ten years has seen the emergence of dozens of new NGOs which are conducting work related to the Indonesian law and justice sector. There has also been a lifting of restrictions placed on older law and justice sector NGOs, such as YLBHI. These organisations are at the core of the 'demand-side' of justice and therefore complement the largely supply-side emphasis of institutional efforts to improve the delivery of legal services. Legal sector NGOs are also relied upon by the GoI, donors and the private sector to support and/or substitute the delivery of key services (eg legal aid) and technical assistance for policy-makers.

The AusAID-commissioned *Indonesian Legal Sector Analysis* and other research on the sector points to the following issues in relation to Indonesian law and justice NGOs:

- NGOs are suffering organisational stress and, in some cases, declining capacity. Although the reasons are varied, they typically included 'change weariness', 'brain drain', and inability to continuously attract and retain young professionals in the face of more financially compelling and personally challenging alternatives. Although several national-level organisations working in the law and justice sector demonstrate a very high level of technical capacity and commitment to reform, much of civil society in the sector – particularly at the district and provincial levels – struggles with many of the capacity challenges similar to those agencies in the sector with which they are engaging;
- Since *Reformasi*, NGOs working in the area of justice have loosely been divided along two lines. First, there are those that have followed a more traditional 'outside' path of advocacy,

critiquing, and bridging between formal institutions and communities. Second, there are those that have directly engaged as service providers, advisers, reformists and experts ‘inside’ the justice agencies, almost exclusively as a result of donor funding. Some of course have spanned both;

- Internal NGO involvement in formal sector reform ranges from being embedded and widespread (such is the case of the Supreme Court) to being embedded but contained (such as in the Program Management Office of the AGO) to being ad hoc (such as in Corrections and the Indonesian National Police). However, whilst the upside of this approach has included (but is not limited to) building of local ownership, cultural and contextual relevance, a low cost local technical resource base and the breaking down of traditional formal-informal barriers, there has been considerable downside in terms of NGO organisational viability;
- The current approach to the use of ‘embedded’ NGO personnel is effectively transforming some NGOs into commercial consultancies, which poses significant downsides and risks for donors and NGOs alike, including jeopardising broader advocacy roles and contributing to the NGO malaise;
- At this point in time, given community capacity, there is no logical alternative to NGO engagement as an instrument to support enhanced law and justice sector service delivery through demand-side activity; and
- Generational change is an issue for many NGOs, as a large number of their personnel who were active in the *Reformasi* period are moving on to new challenges such as study or professional development, or are withdrawing from the sector from exhaustion or frustration.

Under AIPJ’s objective, AIPJ will seek to adopting a more structured approach which supports both the ‘internal’ and ‘external’ engagement models in a manner that ‘does no harm’ and builds demand-side capacity and ongoing NGO viability. Key areas of such focus under AIPJ could include:

- support for organisational clarity around strategy and policy, including clarification of organisational mandate and the mechanisms needed to achieve organisational objectives;
- support for clear definition of who their target groups are, how these are to be reached, and how service delivery is quantified;
- support for demand-driven reforms, including stimulation of community demand through outreach activities, surveys and monitoring. Whilst it is important to retain close involvement with law and justice sector agencies, it is equally important that balance between supply and demand be achieved, and NGOs are a key contributor to that balance;
- supporting the development of administrative and managerial capacity of law and justice sector NGOs, including support for attraction and retention strategies, including but not limited to incentive-based initiatives; and
- support for enhanced sub-national engagement, as few NGOs have branches at district or provincial levels¹²⁶. However, it is a common practice for Jakarta-based NGOs to work together with their partner organisations when conducting activities at local levels for the purposes of efficiency, accessing specific local knowledge and building the capacity of local NGOs. This can be reinforced as many of them have the same local partners.

¹²⁶ Those which do include: YLBHI (Indonesian Legal Aid Foundation, 14 branches), LBH APIK (Legal Aid Office of Indonesian Women Solidarity for Justice, 12 branches) and KontraS (the Commission for the Disappeared and Victims of Violence).

Law schools *Fakultas hukum*

There are approximately 200 law schools in Indonesia, of which around 30 are state law schools. The best and brightest Indonesian high school graduates very rarely choose to study law, which is both a cause and an effect of the challenges facing the country's law schools. These include budget constraints, poor marketing, curriculum development capacity, teaching methods, research, academic administration and ongoing professional development. Indonesia's *National Access to Justice Strategy* recognises the importance of this, and has therefore included bringing about a "change of paradigm in legal development and the role of legal education in Indonesia" as the first of its "major strategies".

Human resource development, marketing, refinement of selection processes, the establishment of international networks and the reinvigoration of a state law school curriculum consistency¹²⁷ may be valid entry points for Australian assistance to Indonesia's tertiary legal education sector. At present, however, other donors – most notably USAID – are currently designing programs in support of some of these areas. Assistance to this sector will therefore not be a primary focus of AIPJ at present. Some assistance to Indonesian law schools may be provided in support of AIPJ's outcomes and/or under the Partnership and Emerging Issues Fund.

Media

The Indonesian media currently enjoys unprecedented levels of freedom of expression however its investigative capacity remains very weak. This is particularly so in relation to reporting on law and justice sector issues. While media associations are not envisaged as a short-term counterpart for the AIPJ, future engagement may be a useful way of supporting demand-driven reform in the justice sector.

National Parliament *Dewan Perwakilan Rakyat (DPR) dan Dewan Perwakilan Daerah (DPD)*

Indonesia's National Parliament consists of the People's Representative Council (DPR) and the Regional Representative Council (DPD). The National Parliament was largely a rubber stamp prior to *Reformasi*, but in recent years it has been playing an increasingly powerful role in setting the legislative agenda. However, the national parliament is widely perceived as corrupt, as well as unproductive since it routinely fails to meet its legislative targets under annual and five yearly planning cycles. AusAID currently provides funds for a UNDP-Asia Foundation induction program for members of Indonesia's parliament, with scope for further work with parliament in the future. Assistance to Parliament will not be a primary focus of AIPJ.

Sub-national parliaments *Dewan Perwakilan Rakyat Daerah (DPRD)*

Sub-national parliaments (DPRDs) play an important role in Indonesian governance in the era of *reformasi* and decentralisation. These parliaments have varying records of legislative achievement and clean government. Many DPRDs regularly pass Regional Regulations (*Perda*) which conflict with higher sources of law, such as national laws (*Undang-Undang*), the Constitution and

¹²⁷ Until it was dissolved in 2003, the state law schools were organised into a consortium, one of the mandates of which was to approve a national curriculum, which all state law schools would teach. Following dissolution of the consortium there has been no ongoing consolidation or coordination of law school curricula and there is currently significant disparity across the legal education spectrum.

Indonesia's international legal obligations. There is therefore a need to ensure harmonisation of laws. Australia has had very little involvement with DPRD's to date.

Sub-national governments ***Pemerintah Daerah (Pemda)***

Sub-national governments (*Pemda*) are designated as the major providers of basic public services (health, education, infrastructure, etc) under Indonesia's system of decentralised governance. Although they do not have jurisdiction of legal issues, they have an important role to play at the nexus of access to justice and access to other government services, such as through the provision of legislation.

Australia has some involvement with *Pemda* in Aceh, NTT, NTB, Papua and West Papua Provinces.

5.5 Detailed Analysis of Lessons Learned from Previous Assistance

1. BACKGROUND

Australia has been providing assistance to Indonesia's legal sector since 1999. Initial support was provided to the Supreme Court under the Government Sector Linkages Program (now PSLP) and grew under the Legal Reform Program 2001-2003 (\$4.6) and the Indonesia Australia Legal Development Facility (LDF) April 2004- December 2009 (\$24.6).

The objective of Australia's most recent program of support, LDF, was 'to reduce poverty in Indonesia by enhancing human rights and supporting the development of a more just and equitable legal system' and its purpose was 'to strengthen the capacity of Indonesian governmental and civil society institutions to promote legal reform and the protection of human rights through a facility that has the flexibility to provide core program support and respond to immediate and emerging issues'. LDF commenced with a focus on working with key partner institutions but evolved to adopt a thematic approach with four key themes: access to justice, human rights, anti-corruption and transnational crime. It has worked with a wide range of partners in the sector.¹²⁸

2. INDEPENDENT REVIEWS

An independent Mid Term Review (MTR) of LDF was conducted in March 2007. It found that LDF:

- was amongst the most strategic and influential donor programs with relation to the Indonesian central legal institutions, notably the Supreme Court and other elements of the judiciary;
- had been well-received by counterparts due its flexibility;
- was weak in articulating clear medium and high-level reform objectives. It noted that LDF's stated focus on incrementalism, responsiveness and institutions were not objectives themselves but were instruments for achieving objectives;
- had made some significant contributions to Indonesian legal development, but not evenly across themes. The MTR challenged LDF to demonstrate how its many activities added up to a higher objective;
- assessed the Access to Justice Theme as "outstanding" in its realisation of its goals and objectives. Positives include inclusion of gender, linkages to broader reforms and extensive CSO involvement; and
- assessed the Human Rights Theme as "fair" in reaching its objectives. Aspects that were lacking from this theme include an absence of clear priorities, no way of determining measurable impact, or way to measure effectiveness.¹²⁹

These conclusions are supported by the first draft of the Independent Completion Report which has recently been undertaken (report in the process of being finalised).

3. LESSONS LEARNED

The MTR and other assessment tools have highlighted a number of lessons in relation to LDF, as discussed below.

3.1 Lessons Relating to the Facility Model

The following lessons relate to the Facility model and the overall approach of LDF:

- LDF, as a facility, is **flexible and responsive**, which makes it popular with counterparts as it can respond to ad hoc requests and can establish relationships in this way;
- The **underlying rationale** of LDF was **incremental engagement** and relationship building. This was good to establish relationships with institutional players, but the approach needs to evolve to address key sector issues. There needs to be a balance between being flexible and working on the right/tough issues;

¹²⁸ Including the Supreme Court, the Religious Court, the Anti-Corruption Commission, the National Human Rights Commission, the National Commission on Violence Against Women, the Directorate General of Human Rights, the Attorney General's Office and the Legal Aid Foundation.

¹²⁹ MTR was unable to assess the Anti-corruption and Trans-national crime themes at the time as these were less fully advanced.

- The overall **objective** of LDF was **too high** level – it therefore did not have a clear statement of what it was trying to achieve;
- Without a clear objective statement it is **difficult to articulate achievements** under LDF. With almost 150 small-value activities, it is difficult to aggregate into a clear overall message of achievement;
- There has been very **little integration into GoI processes** or systems. Being flexible and responsive has actually contributed to working outside GoI systems (eg on procurement and travel); and
- Facilities are management intensive and are therefore **costly** delivery mechanisms.

Based on these lessons the successor program to LDF should:

- try to maintain flexibility but articulate clear, measurable objectives upfront;
- contribute to the objectives by identifying proactive strategies rather than relying on change to occur primarily through incremental engagement and relationship-building;
- have fewer, more targeted activities which clearly relate to stated objectives; and
- have a limited mechanism to retain a significant degree of flexibility in order to respond to ad hoc and emerging issues.

3.2 Lessons Relating to Substance of LDF

The following lessons relate to engagement under the four key themes of LDF.

3.2.1 Access to justice/Judicial reform

- This has been the most successful component under LDF. It is the theme with the most demonstrable and tangible results. Successes include improving case management in the Supreme Court by reducing the case backlog by over 50 per cent; establishing a baseline data set on access and equity in the Religious Court, particularly to women and the poor, by conducting a large-scale survey aimed at improving court services; working with the Religious Court to implement recommendations emerging from the survey, including a budget increase for fee-waived cases and an increased number of circuit courts; improving transparency of the courts through the publication of decisions on the internet and the notification to users of court administration fees.
- Focus on service delivery under this component was a strength.
- This component benefitted from a long history of cooperation. It built upon over ten years of assistance to Indonesia's courts from the Federal Court of Australia, and expanded this relationship to include the Family Court of Australia and the Religious Court of Indonesia. This peer-to-peer assistance is unique and valuable.
- Despite these successes, there still is a need to ensure all activities link clearly to the stated objectives of the program.
- While LDF has made some very positive gains in this area, the judiciary continues to be widely perceived as corrupt and reluctant to undertake some large-scale fundamental reforms. This seems to be at odds with LDF's successes in this area.
- A pragmatic focus on women's issues, through access to courts and family law issues, has been a very positive aspect of the program.

Application: The new program should seek to build upon the work done under this theme where possible. The court-to-court partnerships should be maintained. The work focussing on women's access to legal services with the Religious Court should also be continued and expanded to the general courts system. The progress made on access to legal information (ie. decisions and fee structures) offers significant potential as a building block for further improvements to judicial transparency.

3.2.2 Human rights

- Under this theme, LDF supported legal aid initiatives and human rights organisations. Key outputs included the development of the first ever comprehensive compilation of Indonesian law and policy advice in the Indonesian Legal Aid Handbook; the facilitation of debate on a national legal aid system; the training for advocates to enable them to represent legal aid clients in court; and the provision of assistance to the National Human Rights Commission, including capacity building for its regional offices.
- The overall success of this theme was "fair".
- There was an over-emphasis on technical training, and not enough emphasis on sustainable service delivery.

- There was not a clear overall objective for engagement on this theme, which led to activities being too diverse and non-strategic.
- The capacity of counterparts is low and, unlike working with the courts, none of the key institutions in this field have clear strategic plans or a reform agenda. The capacity of institutions in the regions where they are most needed is particularly low – most officials, particularly in the regions, don't have a sound understanding of basic human rights issues.
- Human rights is a particularly sensitive area and some proposed activities were deemed too sensitive for implementation.
- There are many donors involved in providing human rights assistance, but this is not well coordinated.

Application: Whilst there is room for improvement on engagement under LDF, Human Rights remains an important issue and should remain a focus for a future program, bearing in mind the following:

- focus should be on service delivery;
- activities should be better aligned to GoI's international human rights obligations;
- focus needs to be on strengthening rights bodies and enhancing awareness of human rights principles at the sub-national level;
- there is potential to focus on particular issues such as women's rights and rights of people with disabilities.

The lack of a national legal aid system remains a big obstacle for the community to protect and enforce their legal rights in Indonesia. This issue should be a focus for the future program.

3.2.3 *Anti-corruption*

- Anti-corruption remains a key component of the AIP Country Strategy and LDF has been one of the main mechanisms by which anti-corruption activities have been implemented. Key outcomes include the development of a Training Needs Analysis for the Corruption Eradication Commission (KPK) and specialist technical training in evidence collection, storage and handling, investigation and surveillance techniques.
- Assistance provided under this theme was too narrow and focussed on areas of technical expertise possessed by the Lead Adviser.
- LDF missed opportunities to expand the scope of this theme, despite the release of the *Australia Indonesia Partnership for Anti-Corruption Action Plan 2008-13*.
- KPK is a strong institution with strong donor support.

Application: Anti-corruption remains an important issue for AIP, and a future program will continue to be a principal vehicle for engagement and implementation of the *AIP Anti-Corruption Action Plan*. However, support for anti-corruption should be:

- broader than just technical training for KPK;
- aligned with KPK's strategic plan, with potential to focus on anti-corruption efforts at sub-national level;
- coordinated with other donor support for KPK and other institutions; and
- supportive of NGO monitoring initiatives.

3.2.4 *Transnational crime*

- The transnational crime component is the least developed of the four thematic areas under LDF. Key activities under LDF included specialised training for prosecutors in current trans-national crime issues such as illegal logging and training for prosecutors and judges in the application of Indonesia's anti-terrorism laws, including innovative moot-court style advocacy skills training.
- The Attorney-General's Office (AGO), which manages public prosecution in Indonesia, was less interested in engagement on trans-national crime than support for its general bureaucratic reform program (hence shift in program focus under LDF).
- AGO does not have good reputation within the community and is not seen as serious in its attempts to reform. Given the challenges facing the AGO, there is a risk that focusing Australian assistance to it solely on transnational crime will give rise to Indonesian perceptions of heavily supply-driven aid.
- Some good examples of addressing key emerging issues such as illegal logging through training exercises under this component could be picked up in the future program.

Application: Based on lessons from LDF, a new program should:

- maintain engagement with AGO, particularly in relation to the AIP anti-corruption objective. This should be done notwithstanding constraints to reform, in order to ensure that AusAID is in a position to assist should real reform efforts commence;
- address transnational crime issues – both current and emerging (eg people smuggling) – through a flexible funding mechanism or separate program of assistance, rather than as a primary objective of a new program; and
- look for ways to coordinate with proposed USAID assistance to the AGO where possible.

3.2.5 NGOs

The Indonesia Legal Sector Analysis raised several issues in relation to NGOs, including:

- NGOs are in malaise. They are lacking energy to maintain momentum of reform and need revitalisation.
- LDF's attempt at triangulation has been successful in parts (eg the Judicial Reform Team Office at the courts staffed by NGO representatives, and the partnership between ELSAM and DGHAM).
- LDF and other donors are contributing to the stagnation of NGOs by using them as pool of individual consultants rather than engaging with and supporting the organisations themselves.

Application: A future program should adopt a “do no harm” approach to working with NGOs:

- engaging NGOs rather than individuals where possible;
- providing capacity building support to key sector NGOs;
- providing core support to NGOs where feasible and strategic.

3.3 Lessons Relating to the Management of LDF

The following lessons are derived from management aspects of LDF:

- **Management costs** of facilities are **high**. Facilities are resource-intensive and associated management costs are high. Legal sector programs are particularly expensive, as legally qualified technical assistance attracts a premium rate. A large portion of the funds under LDF went to management and international technical assistance.
- Given the associated costs, Lead Advisers were engaged on part-time basis – are based in Australia. There **should be greater use of in-country expertise** rather than international/Australian advisers. The new design could look at placing advisers – including Indonesian advisors – within counterparts.
- The **Advisory Board mechanism did not work**. It was not used to guide or shape LDF as anticipated and turned into a rubber stamp for pre-prepared work programs. The future program should reconsider the Advisory Board mechanism. A new program steering mechanism should include counterparts and stakeholders rather than independent observers only.
- There needs to be a **clear role in program management** for the Government of Australia, particularly **AusAID**. Relationships with counterparts often developed through program staff rather than AusAID staff, which made leadership and engagement on the program difficult. The future program should clearly state the role of AusAID within program management.

3.4 Lessons Relating to Donor Coordination

- There is no formal donor coordination mechanism for the sector as a whole.
- There is coordination for some parts of the sector, eg the KPK coordinates donor assistance for its programs and the courts regularly hold (somewhat ineffective) donor coordination meetings. However, in some areas, such as human rights assistance, there are many donors doing lots of small training activities and no central point of coordination.
- There is good communication between key donors in the sector – currently USAID, IMF/Netherlands, UNDP and AusAID, but this is informal/personal rather than institutionalised coordination.
- The future program should support GoI to coordinate donor activities and to monitor donor assistance to the law and justice sector.

5.6 AIPJ Problem Analysis Matrix

The problem analysis framework established here is based on three approaches:

- the importance of law and justice institutions as implementers of recent reforms;
- the importance of law and justice “building blocks” of transparency, accountability and accessibility as key to ensuring concrete change; and
- the importance of selecting appropriate entry points for Australian assistance.

Implementation focus: translating commitments into effective legal services

First, given the current context of law and justice sector reform in Indonesia described above (see 2.1.2), it is important that the focus be on implementation issues – ensuring the translation of high-level reform commitments into the effective delivery of legal services to the community. This need is recognised, for example, in the *National Access to Justice Strategy*. It is also a core element of the *GoI Annual Work Plan (RKP) 2010*, Agenda Three of which is the ‘reinforcement of bureaucratic and legal reforms, as well as the consolidation of democracy and national security’ (emphasis added).

This implementation emphasis in turn implies an initial focus in the analysis on the effectiveness of legal sector institutions. This would form a logical next step in the reform trajectory of Indonesia’s law and justice sector, as described in Part 2 above, from a lack of commitment to the rule of law (pre-1998), to the designing of new legal and institutional frameworks grounded in the rule of law and human rights (1998-2004) and then to the “road-testing” of the new policies and institutions (2004-2009).

Building block focus: accessibility, transparency, accountability

Second, the analytical framework for the problem analysis will focus on the building blocks for an effective law and justice sector: accessibility, transparency and accountability. According to Indonesian law and policy, these concepts are defined as:

- Accessibility – the extent to which the “legal system can be accessed by all people in society and... can administer rules and decisions which are fair for both individuals and groups”;¹³⁰
- Transparency – the extent to which law and justice sector actors “are open to the rights of the community to obtain accurate, honest and non-discriminative information relating to state administration, while ensuring the protection of individual rights, group rights and state secrets”;¹³¹ and
- Accountability – the extent to which law and justice sector institutions “are held responsible for each activity and outcome, in line with the law, to the community...in whom ultimate sovereignty is vested”.¹³²

This element of the analytical framework is informed first and foremost by GoI policy. Although there is no overarching sector-wide policy on law and justice reform, an examination of the current policy context – as described above – reveals that the underlying theme of recent GoI policy on law and justice is a commitment to enhanced accessibility, transparency and accountability. This commitment can be seen as a ‘de facto’ sector-wide policy.

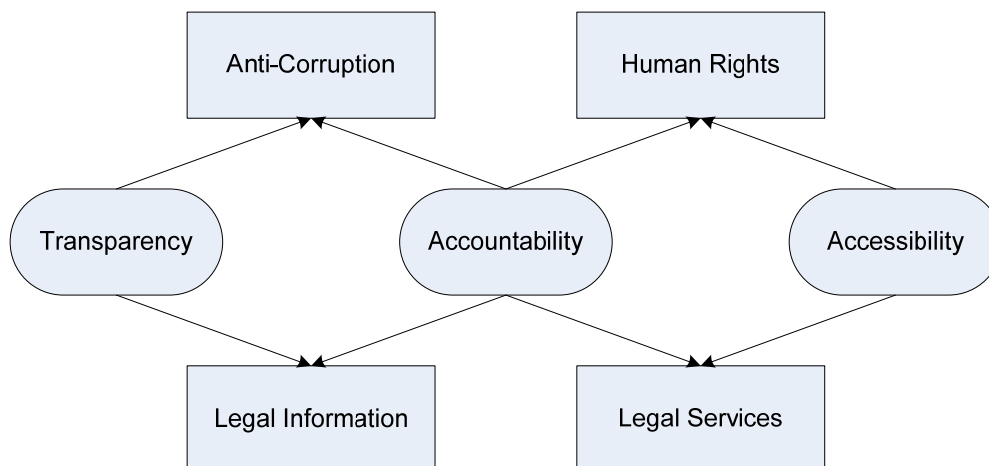
¹³⁰ *Indonesian National Access to Justice Strategy*, p.5.

¹³¹ Elucidation to Law No. 28 of 1999 concerning the Administration of the State in a Manner Free from Corruption, Collusion and Nepotism.

¹³² Elucidation to Law No. 28 of 1999 concerning the Administration of the State in a Manner Free from Corruption, Collusion and Nepotism.

The figure below describes how a commitment to transparency, accountability and accessibility has been the underlying theme across a range of GoI reforms to the law and justice sector, spanning anti-corruption, human rights, legal information and legal services.

Figure 2: Transparency, accountability and accessibility as key themes underlying a range of law and justice sector reforms



The importance of donors supporting accessibility, transparency and accountability as law and justice sector building blocks is also a key theme in the latest academic thinking on the provision of development assistance for governance reform. This thinking emphasises the importance of donors focusing on supporting the *process* of governance reform – on supporting the crafting of equitable ‘rules of the game’ – rather than on working towards specific end states.¹³³

Supporting the development of accessible, transparent and accountable law and justice sector actors is about supporting the process of Indonesian law and justice reform rather than any specific end goal; accessibility, transparency and accountability are not law and justice ends per se, but rather basic principles for ensuring that “the political energy discharged through ongoing social and economic change finds a constructive (rather than disabling or destructive) outlet.”¹³⁴

Entry points focus: matching significance, demand and supply

Third, in examining the implementation issues facing institutions within the Indonesian law and justice sector for the purposes of providing Australian development assistance, consideration must be given to which Indonesian organisations are appropriate “entry points” for such assistance. Such a consideration must take into account:

- the significance of each institution to the effective functioning of the system as a whole. This includes the ability of the institution to encourage and model reform in other areas of the sector. The benefit of AIPJ’s investment will be enhanced if those organisations with which it works have a significant role in the sector and/or are able to encourage reform in other organisations;
- each institution’s commitment to, and capacity for, progressive reform. ODA is generally more effective when delivered to (or through) institutions that have both a clear commitment and a strong capacity to reform;
- Australia’s capacity to support reform efforts. This issue requires, in turn, consideration of three issues:

¹³³ See, eg, Daniel Adler, Caroline Sage and Michael Woolcock, *op cit*.

¹³⁴ Daniel Adler, Caroline Sage and Michael Woolcock, ‘Interim Institutions and the Development Process: Opening Spaces for Reform in Cambodia and Indonesia’, *BWPI Working Paper 86*, March 2009, p.14.

- the quality of relationships between the Indonesian institution and Australia, including relevant counterpart Australian institutions. Strong relationships provide an important starting point for effective cooperation;
- Australia's ability to provide expertise, including through AusAID's whole-of-government partners; and
- alignment with Australia's national interests.

These three approaches frame the initial problem analysis.

Implementation focus	Building blocks focus			Entry points focus		
Organisation	Accessibility	Transparency	Accountability	Significance to sector (0=low; 5=high) ¹³⁵	Commitment and capacity for reform (0=low; 5=high) ¹³⁶	Australia's comparative advantage as a donor ¹³⁷ (0=low; 5=high)
General courts	Physical and financial access to courts, particularly for women and people with disability, is weak. Quality and timeliness of decisions is weak.	Publication of decisions in Supreme Court is moderate. Publication of decisions in intermediate and lower courts is weak. Publication of user fees is weak. Publication of information on court management and performance is moderate.	Mechanisms to prevent corrupt decision-making are weak. Incentives to produce logical decisions are weak. Financial and human resource management is weak. Leadership and strategic thinking is moderate.	5		5 – existing relationship between Federal Court of Australia and Supreme Court of Indonesia; GoA has strong interest in supporting judicial reform in Indonesia.
Religious courts	Physical and financial access to courts in moderate.	Publication of appellate decisions is strong.	Mechanisms to prevent corrupt decision-making are moderate.	3		5 – existing relationship between Family Court of Australia

¹³⁵ The analysis supporting these assessments can be found at Annex 5.4 (AIPJ Stakeholder Analysis).

¹³⁶ The analysis supporting these assessments can be found at Annex 5.4 (AIPJ Stakeholder Analysis).

¹³⁷ This category includes the existence of relationships with key Australian counterparts, the existence of relevant Australian expertise and alignment of the relevant issues with Australia's national interests.

	Quality and timeliness of decisions is moderate.	Publication of first instance decisions is moderate. Publication of user fees is moderate. Publication of information on court management and performance is moderate.	Incentives to produce logical decisions are weak.			and Religious Court of Indonesia; GoA has strong interest in supporting reform of religious court (family law) reform in Indonesia to facilitate greater access to justice for women; Australia has moderate expertise on issues relating to religious court reform.
Attorney-General's Office	Community's ability to benefit from effective prosecution of crimes is weak.	Publication of reasons for prosecution or non-prosecution is weak. Publication of information on internal management and performance is weak.	Mechanisms to prevent corrupt practices are weak.	5		4 – some engagement with AGO's Reform Office under LDF; strong GoA interest in effective system of prosecution in Indonesia.
Constitutional Court	Community's ability to lodge constitutional complaints is moderate.	Availability of Constitutional Court cases, operating procedures and corporate information is strong.	Independence of Constitutional Court justices is strong.	5		1 – Constitutional Court is not very open to donor funding.
Directorate General for Human Rights	General community's ability to consult with government on human rights policy is moderate. Access of people with disabilities to consultative processes on human rights policy is weak.	Reporting to international bodies on human rights treaties is weak.	Accountability for human rights violations, particularly at sub-national level and in relation to the rights of women, is weak.	4		4 – close links under previous AusAID programs.
Directorate General	Community's ability to	Publication of	Mechanisms to ensure	4		3 – some prior

for Legislation	access legislation and regulations is weak.	legislation and implementing regulations in draft form is weak.	harmonisation between national and sub-national legislation are weak.			engagement with the Attorney-General's Department.
National Legal Development Board (BPHN)	Community's ability to benefit from effective justice sector policy-making is weak.	Publication of legislation and implementing regulations is weak.	Expert commentary on legal policy is weak.	3		3 – some prior engagement with other Ministry of Law and Human Rights agencies, but no prior engagement with BPHN; strong expertise within Australia on publishing legislation.
Coordinating Ministry for Political, Legal and Security Affairs	Community's ability to benefit from effective coordination between justice sector institutions is weak.	Public and GoI understanding of the role of the Coordinating Ministry is weak.	The absence of a sector-wide reform policy makes accountability for coordination weak.	4		2 – no prior engagement; no natural counterpart agency in Australia.
National Human Rights Commission (Komnas HAM)	Community's ability to lodge complaints is moderate. Follow-up on complaints is weak.	Reporting on complaints management is weak.	Independence of commissioners is strong.	4		5 – significant engagement under previous AusAID programs; strong GoA interest in human rights in Indonesia.
Commission on Violence Against Women (Komnas Perempuan)	Community's ability to lodge complaints is moderate. Follow-up on complaints is weak.	Reporting on complaints management is weak.	Independence of commissioners is strong.	3		5 – significant engagement under previous AusAID programs; strong GoA interest in gender equality in Indonesia.
Commission on Corruption Eradication (KPK)	Community's ability to benefit from efforts to eradicate high-level	Public information on KPK's performance is moderate.	Independence of commissioners is moderate.	3		4 – some engagement under LDF; MoU with

	corruption is moderate.					GoA.
Bappenas	Community's ability to participate in formulating development plans and coordinating donor assistance to the legal sector is moderate.	Public information on development planning and coordination in the legal sector is moderate.	Monitoring and evaluation of legal sector development initiatives is weak.	3		5 – long-stranding AusAID counterpart.
Judicial Commission	Community's ability to benefit from effective screening and monitoring of judges is weak.	Availability of information on the screening and monitoring of judges is weak.	Independence of commissioners is moderate.	3		1 – very limited prior engagement.
Ombudsman	Community's ability to lodge complaints is moderate. Follow-up on complaints is weak.	Reporting on complaints management is weak.	Independence of commissioners moderate.	2		2 – some prior engagement under GPF.
Indonesian Bar Association (PERADI)	Community's ability to lodge complaints against lawyers is weak. Follow-up on complaints is weak.	Availability of bar association policies, corporate information and complaints handling information is weak.	Representation of legal profession's interests is moderate.	4		3 – some engagement between PERADI and the Law Council of Australia.
Legal sector NGOs	Community's ability to monitor justice sector activities through NGOs is moderate.	Availability of information on NGO approaches and activities is moderate.	Reporting to donors is strong. Accountability of NGO management to core stakeholders is weak. This includes legal aid organisations, which are generally dependent on donors and therefore not as accountable or sustainable as possible.	4		5 – AusAID continues to provide significant support; GoA has interest in supporting a robust civil society in Indonesia.
Law schools	Community's ability to	Availability of general	Lack of reform agenda	5		2 – limited

	access quality legal education is weak.	information about legal education in Indonesia is moderate.	for legal education results in weak accountability of law schools to reform legal education.			engagement in past programs; significant expertise in Australia in delivering quality legal education; other donors more active.
Media	Community's ability to access quality journalism on legal affairs is weak.	Access to information on media ownership is moderate.	Media independence is strong.	3		1 – no prior engagement, but strong expertise in Australia on media coverage of legal issues.
National parliament	Community's ability to register interests with national parliament is weak.	Performance reporting and record-keeping is weak.	Electoral fairness is moderate.	5		3 – some prior engagement.
Sub-national parliaments	Community's ability to register interests with national parliament is moderate.	Performance reporting and record-keeping is weak.	Electoral fairness is moderate. Consistency of sub-national legislation with national laws, particularly those concerning the rights of women and ethnic/religious minorities, is weak.	5		0 – no prior engagement.
Sub-national executive governments	Community's ability to register interests with sub-national governments is moderate.	Administrative decisions are often unavailable.	Electoral fairness is moderate. Consistency of sub-national implementing regulations with national laws is weak.	5		3 – some prior engagement in targeted provinces.

5.7 *Synergies between AIPJ and other Australian ODA-funded Programs*

World Bank's Justice for the Poor Project

AusAID currently supports the World Bank's Justice for the Poor Project (J4P) in Indonesia. The aim of the J4P is to enhance the ability of poor, vulnerable and marginalized Indonesians to access justice. J4P to date has dealt primarily with non-state justice sector institutions. Australia's continued contribution assists women's legal empowerment and inclusive, community-based dispute resolution, thereby supporting AIPJ's objective relating to increasing demand for legal services.

There are clear synergies between AIPJ and J4P given that the scope of AIPJ primarily concerns the formal legal sector and J4P's work has to date been mainly about understanding and strengthening informal justice sector institutions. AIPJ's focus on transforming reforms into concrete change will position it to act as a 'bridge' between the reform processes within the formal law and justice sector on one hand and the informal law and justice sector on the other.

AusAID political governance initiatives

AusAID's political governance initiatives will be centred on the Indonesia Electoral Systems Strengthening Program (IESSP) (under development). The IESSP's has two main focal points, the first on strengthening electoral processes and systems, and the second on promoting civic engagement with the electoral process throughout the electoral cycle. These focal points fit neatly with AIPJ's objectives. AIPJ's objective of improving the supply of legal services will strengthen institutions which play a key role in supporting electoral processes and systems.¹³⁸ Similarly, IESSP's focus on civil engagement complements AIPJ's objective around stimulating more effective demand for legal services.

AusAID sub-national governance initiatives

The AIPJ has been developed as part of a larger package of Australian support intended to expand, and improve the quality of, critical services in Indonesia. In Indonesia's decentralised system, sub-national governments have principal responsibility for the delivery of services and ensuring the quality of these services. AusAID is seeking to address capacity constraints at the sub-national level as part of its wide focus on improved service delivery, including through the development of the Australia Indonesia Partnership for Decentralisation (AIPD).

Like AIPJ, AIPD will focus on both institutional strengthening (with an emphasis on local governments' knowledge development and on performance monitoring) and stimulating demand for good governance (with an emphasis on assisting civil society to scrutinise the management and expenditure of public funds). AIPJ will contribute to achieving AIPD's objectives through its focus on strengthening government and civil society capacity in relation to the delivery of legal services to communities. AIPJ will contribute towards creating a clearer operating environment through, for example, activities that improve community access to legal information, particularly at a sub-national level. While appropriate principles and mechanisms are still being developed,¹³⁹ AIPJ will work closely with AIPD and other programs operating at the sub-national level through practical measures. These might include engagement in common coordination and knowledge sharing mechanisms, particularly in relation to service delivery at local levels.

¹³⁸ As discussed above the law and justice sector plays a crucial role in supporting democratic institutions.

¹³⁹ The AIPD design process is still underway. It is expected that the design will be completed by October 2009, with implementation to commence in mid-2010.

AusAID economic governance initiatives

AusAID has recently established the Australia Indonesia Partnership for Economic Governance (AIPEG). This initiative will focus on institutional strengthening and policy advice in relation to tax administration, debt management, financial system stability, international trade policy, economic policy coordination and public financial management. AIPJ's contribution to strengthening the rule of law in Indonesia is likely to support the long-term sustainability of the reforms to which AIPEG will contribute.

AusAID is currently developing a second phase of the Australia Indonesia Government Partnerships Fund (GPF), which proposes to continue to develop government-to-government linkages between Australian and Indonesian agencies in support of economic governance and public sector management in Indonesia. The continued development of partnerships between Australian and Indonesian justice sector institutions will complement the GPF partnerships by deepening bilateral government-to-government links in a related but distinct sector. In doing so, AIPJ will be supporting greater whole-of-government engagement between the two countries.

AusAID regional programs

AusAID's Asia Regional Branch is currently funding the Asia Regional Trafficking in Persons (ARTIP) Project. ARTIP aims to contribute to the prevention of trafficking in persons in the Asia region by facilitating a more effective and coordinated approach to trafficking by the criminal justice systems of a range of national governments, including the GoI. ARTIP has also worked closely with ASEAN to develop training materials for use by all ASEAN members, which should enhance cross-border cooperation on trafficking matters. AusAID is also supporting the United Nations Office on Drugs and Crime (UNODC)'s Regional Program for East Asia and the Pacific, which includes combating human trafficking as a key component.

AIPJ's objectives and expected outcomes clearly support the work being done under ARTIP and the AusAID-supported UNODC regional program on human trafficking. Firstly, by working to build the capacity of prosecutorial agencies and to improve the transparency of judicial decision-making, AIPJ will directly contribute to the strengthening of the criminal justice system which administers Indonesia's anti-trafficking laws. Secondly, by promoting human rights and the rule of law generally, AIPJ will be addressing some of the long-term, systemic factors which facilitate trafficking in persons.

Other Australian Government programs

AIPJ has been designed taking into account the fact that there are several other initiatives being managed by other Australian Government agencies in Indonesia's law and justice sector. These initiatives include, for example, a \$1.3 million two-year program of assistance managed by DFAT in conjunction with The Asia Foundation to support improvements to the administration of corrective services in Indonesia. A range of other initiatives are managed by agencies such as DFAT, AFP and AGD. AIPJ's design ensures that there is very little risk of overlap between AIPJ and these initiatives. It is hoped that the proposed whole-of-government framework mentioned above will assist initiatives to go beyond this and actively support each other.

5.8 *Monitoring & Evaluation Approach*

The purpose of this section is to identify key principles and issues that the full monitoring and evaluation framework will be expected to address when it is developed during the inception phase of AIPJ. It provides the guiding principles that the Monitoring and Evaluation Framework (MEF) will be expected to address when it is developed.

1. Guiding Principles

A guiding principle for the AIPJ's monitoring and evaluation activities will be to work with, and through, Indonesian systems. There is currently no overarching monitoring system for the legal sector as a whole, and the monitoring systems in place for individual institutions are weak. Consequently, AIPJ will be expected to build the capacity of Indonesian institutions to monitor and assess their own progress towards their stated goals. In turn, this will eventually provide a sustainable basis for monitoring the long-term contribution of AIPJ to changes in Indonesia's legal sector at the impact level. At the same time it is recognised that expectations of improvements in Indonesian systems will need to be modest. As discussed above, as part of the annual workplan, the Program Director and technical support team will support institutions proposing activities to provide a capacity assessment and capacity development plan. These will explicitly address the capacity of the institution to monitor progress against its institutional goals, and specify areas where further support is needed. The AIPJ transition program will undertake a preliminary stocktake of existing Indonesian Government monitoring systems in the legal sector, which will feed into the AIPJ MEF and enable it to be operational within the shortest possible delay.

A second principle is that all quantitative data collected will be gender disaggregated, and the collection of qualitative data will make special efforts to differentiate between the views of men and women. The same considerations will apply for the collection and analysis of data in relation to people with a disability to the extent possible.

Thirdly, the MEF will be expected to be a practical and implementable framework that provides timely and accessible information, and enables stakeholders to make informed decisions over the life of the program. In particular it will enable the Partnership Board, Working Committee and Program Director to incorporate lessons learned into the forward planning of the AIPJ, and maintain an informed strategic focus – in terms of activity management, the institutions with which the program engages and its strategic direction.

Fourthly, the management team will be expected to undertake ongoing and frequent dialogue with AusAID on performance measurement and reporting, including assisting with AusAID's internal reporting needs. It will be a formal responsibility of the Program Director and the ISP to ensure that all staff and contractors are aware of M&E obligations and to cultivate a culture that sees M&E as a vital tool for the continuous improvement of the program based on lessons learnt.

Finally, it is recognised that the legal sector is highly complex, and effective monitoring systems to assess donor contributions to the legal sector in recipient countries are not as well-developed as in other sectors. Consequently, the MEF will specify points at which the MEF itself will be reviewed, taking into consideration emerging best practice for monitoring legal sector programs, and emerging lessons learned from working in Indonesian partner systems. It will specify how such findings will be incorporated into the revised MEF.

2. Evaluability Assessment.

During the inception phase, the Monitoring & Evaluation Specialist will be expected to conduct an evaluability assessment of the AIPJ with full stakeholder participation. This assessment will include a review of the program logic and confirm a shared understanding of end-of-program outcomes. It

will also examine potential data sources, particularly those in partner government systems, and areas where AIPJ should conduct further baseline analytical work, building on that already proposed under the Legal Transition Program.

The Evaluability Assessment (EA) of the Project should be conducted with full stakeholder participation. If the contractor is not familiar with these processes then they should become informed, or recruit an M&E Specialist with knowledge, of the processes involved. An EA includes, at a minimum:

- a) Consultation with stakeholders to confirm a shared interpretation of the expected long-term and end of initiative outcomes;
- b) A review of the program logic and description of the extent to which it is evaluable including clarity of expression of end-of-initiative outcomes in the documentation;
- c) An examination of proposed/potential data sources (including partner systems) to ensure that data is of sufficient quality; is collected and analysed as expected; and will be available within the required reporting cycles;
- d) An assessment of the capacity of the implementation team and partners to participate in the design and/or conduct of M&E activities;
- e) A review of the budget/resources available for M&E activities;
- f) Identification of reporting requirements for key stakeholders. This includes progress reporting, Quality at Implementation Reporting, and Annual Program Performance Reporting. There should be a clear recognition of how the M&E plan is expected to provide evidence for reporting against the Country Program Performance Assessment Framework.
- g) Identify key evaluation questions of interest to stakeholders;
- h) A review of cross-cutting issues that will need to be included in the MEF; and
- i) Clear identification of issues and/or constraints that will affect the design of the M&E Framework (plan).

Significant work was done under LDF that could be used as a basis for ongoing monitoring of the program, and as important information sources in their own right. These include court based access and equity studies and case load audit, as well as operational research. These could form an important part of AIPJ baseline work.

3. Performance Questions

The MEF will specify measures to collect AIPJ-specific information based on proposed key questions, with suitable outcome indicators. Indicative questions that will need to be considered by the MEF are given in the tables below. The MEF will specify whether such information can be gathered using Indonesian monitoring systems and the extent to which the AIPJ will need to establish separate monitoring systems.

3.1 *ISP performance*

The ISP is expected to deliver the management services described in this design document and the Scope of Services. AusAID will carry primary responsibility for monitoring ISP performance, using information provided by the ISP through regular reporting, and drawing on feedback from a range of stakeholders. AusAID's democratic governance team in Jakarta will monitor and register contractor performance according to AusAID's corporate requirements, as part of the annual contractor performance assessment process, based on the following questions and means of verification.

<i>Performance Expectation – Key questions</i>	<i>Means of Verification by AusAID</i>
Does the ISP prepare the annual workplan in a timely fashion, based on sound, documented analysis and strong stakeholder engagement?	Assessment by Democratic Governance team in AusAID of the annual workplan and feedback from stakeholders, mid-term review /evaluation.
Is the ISP proactive in providing advice on activity pipeline and giving effect to AIPJ operating principles?	Ongoing review and analysis of requests for activity approval against selection criteria.
Is the ISP responsive to AusAID and Partner requests, within scope of strategic intent and operating principles?	Assessment by AusAID of responsiveness.
Are reports provided on time and to the required standard?	Review of reports.
Does the ISP maintain appropriate and effective relationships with stakeholders?	AusAID seeks feedback directly from relevant GoI stakeholders on annual basis
Does the ISP provide pro-active timely, quality advice to AusAID on sectoral issues?	Assessment by AusAID of advice provided.
Is the ISP proactive in identifying and resolving issues with AIPJ progress at both Partnership and individual activity level?	Assessment by AusAID of effectiveness of problem solving based on review of documentation and direct monitoring.
Does the ISP control expenditure effectively, and provide timely financial reporting and invoicing?	Audit, assessment of accuracy and usefulness of financial information.

The MEF will also address the performance of the ISP and Program Director in the appropriate management of the activity cycle.

Taken together, the above sets of questions will enable AusAID to make an overall assessment of the ISP's performance in developing and managing an effective activity program.

3.2 Governance arrangements

A range of stakeholders play a role in the management of AIPJ. Accordingly, a formal and regular assessment of those arrangements will be conducted to ensure that they are operating effectively. The effectiveness of overall governance arrangements for AIPJ – in particular the effective functioning of the decision-making bodies will be conducted through an annual review of the arrangements by AusAID, in consultation with relevant GoI stakeholders.

<i>Performance Issue</i>	<i>Stakeholders</i>	<i>Questions</i>
Are stakeholders being effective in providing AIPJ with strategic direction?	Working Committee and Partnership Board members	<ul style="list-style-type: none"> ▪ How rigorously has the annual activity workplan been assessed? ▪ What has been the scope and quality of input to strategic discussion by members of decision-making bodies? ▪ How effective have the decision making processes been in balancing strategic intent with the need to be flexible in response to emerging requirements? ▪ How efficient have decision making processes been in relation to new

		<p>activities?</p> <ul style="list-style-type: none"> ▪ How effective has AIPJ oversight been in managing risks associated with program fragmentation? ▪ To what extent have oversight bodies provided guidance to ensure the increasing coherence of the AIPJ?
Are partner agencies engaged effectively in activity implementation?	Partner agencies	<ul style="list-style-type: none"> ▪ Are Partner agencies actively involved in the process of developing activity proposals? ▪ Are Partner agencies providing the resources necessary to support activity implementation? ▪ Is the leadership (or other relevant senior staff) of Partner agencies actively involved in supporting or leading reform efforts?

The Program Director will assess the effectiveness at this level on a six-monthly basis, and include this assessment in both the progress report and annual report to the Working Committee and Partnership Board as discussed above in part 4. The questions will also be an important focus of the mid-term independent review and completion review.

3.3 *Activity Delivery*

This level involves monitoring and evaluating the individual activities implemented through AIPJ. The Program Director, with assistance from the ISP, will carry primary responsibility for this level of M&E, with additional oversight by AusAID as necessary (on an exception basis only). Each activity will have its own monitoring and reporting framework developed as part of individual activity designs. An important part of these designs is that they clearly indicate their proposed contribution to the higher level outcomes of the program.

The ISP will develop systems and processes for activity monitoring and evaluation to be included in the Operations Handbook. Wherever feasible and appropriate, activity level M&E should be consistent with any relevant M&E systems in Partner agencies, and incorporate those systems to the extent possible. The capacity assessments conducted at the outset of engagement with individual institutions will form a solid basis for assessing the achievements of activities, and higher level outcomes. M&E functions for all activities will include:

- Identifying specific outputs or results to be delivered by activities;
- Identifying how those outputs or results contribute to AIPJ outcomes and their strategic value in the law and justice sector;
- Specifying how monitoring of the four cross-cutting issues will be conducted;
- Monitoring and managing the performance of service providers and the progress of activities;
- Analyzing the achievement of the intended outputs or results, assessing their contribution to AIPJ objectives, and – where relevant – comparing progress to baseline information; and
- Identifying lessons learned to guide future activities and the overall implementation of the AIPJ as it evolves towards a more programmatic approach.

More in-depth assessments should be undertaken for significant activities (in terms of either size, the nature of work in which they were involved, or their potential to offer important lessons for other areas of the AIPJ). It will be the ISP's responsibility to make recommendations about when such evaluations should be undertaken, using the Performance Fund.

Activity progress will be provided at six-monthly intervals, as described above in part 4.

3.4 *AIPJ outcomes and contribution to achieving the objective*

This level examines the achievement of AIPJ's outcomes and objectives, and the contribution of this to AIPJ's End of Program Goal, as discussed in Part 3 above. The Program Director, ISP, AIPJ partners and AusAID will all share responsibility at this level.

At the outcome level, M&E will address both *capacity* and *performance*. As has been discussed above, a key focus on AIPJ is the development of the capacity of law and justice institutions to deliver services to the community. While the purpose of developing capacity is to improve performance, it is important that capacity and performance still be examined as distinct issues. Performance can vary over any given period of time for a range of factors including, but not limited to, changes in capacity. Monitoring performance, while obviously important, is only a proxy for monitoring capacity. Monitoring capacity improvement is important in its own right because it is strengthened capacity that provides the basis for *sustained* performance improvement over time. Also, strengthened capacity can lead to performance improvements *other than* those that are directly targeted. A narrow focus on *intended* performance improvements may not capture these benefits effectively.

AusAID, through its democratic governance advisor, will have overarching responsibility for a six-monthly review of the progress of the AIPJ in the broader sectoral context. The MEF will also be expected to specify how Australian Government partners will contribute to reporting on contributing to the achievement of AIPJ's objective, following consultation with the relevant agencies.

A key element to track the progress of AIPJ at the outcomes and impact level will be a high-quality survey of public perceptions. This survey is intended to cover key areas where AIPJ is hoping to make a difference, namely improved access to quality legal services and information. A baseline survey will be conducted as early as practicable once the AIPJ is mobilised, with a follow-up survey conducted at least twice more over the life of AIPJ. This survey is expected to produce information that is not only of relevance to AIPJ but also to a wider Indonesian government and non-government audience.

An independent review of AIPJ will be conducted two years after the commencement of the program, and again two years later. The timing of this review will be expected to feed into the relevant annual Partnership Board meeting. These independent reviews will be contracted and managed by AusAID's democratic governance team in accordance with its corporate guidelines for independent reviews.

3.5 *Cross-cutting Issues*

In addition to addressing the different levels of intended outcomes under AIPJ, the M&E framework will specify the measures to assess the performance of the program against the four Cross-cutting issues: human rights, anti-corruption, partnership and policy dialogue, and performance.

For each cross-cutting issue, the MEF will explain how activities across the outcomes will be monitored to inform decision-makers of possible synergies, and assess progress under each cross-cutting issue over time. It is envisaged that the annual workplan will lay out how issues in each cross-cutting issue will be progressively built on in the coming year.

The rights of women and people with a disability are of particular concern. Consequently, all data will be disaggregated by gender and proposed analytical work, in particular surveys, will place a priority on being gender-sensitive.

Initial analysis suggests that quantitative data concerning people with a disability is very weak. Given the importance placed on addressing the needs of people with a disability under the AIPJ, it is envisaged that the M&E framework will include a periodic evaluation or assessment of the specific issues facing people with a disability to inform activities in the area.

The MEF will consider the quality of relationships and partnerships developed through AIPJ. This will focus in particular on the quality of dialogue between AusAID and other Australian Government agencies with GoI partners.

<i>Performance Issue</i>	<i>Stakeholders</i>	<i>Questions</i>
Are partnerships being effectively developed?	All GoA / GoI Partners	<ul style="list-style-type: none"> ▪ What have been the attendance and participation rates at Partnership Board and Working Committee meetings? ▪ What is the quality and frequency of policy dialogue between GoA and GoI institutions, both through AIPJ bodies (Working Committee and Partnership Board) and more broadly?
What has been the contribution of partnerships to the objective and outcomes of the program?	All GoA / GoI Partners	<ul style="list-style-type: none"> ▪ To what extent have partnerships between government agencies provided an effective contribution to achievements under AIPJ's objective? ▪ To what extent have institutions been satisfied with the partnerships in which they are involved?

4. Further issues

In addition to the above, the MEF will be expected to meet the following general quality requirements:

- a) All indicators will be supported by a **sound methodology**, and means of verification should be fully designed. Means of verification are not reports, but actual methods required to collect the primary data. Secondary data sources are also to be used where appropriate. All tools required to collect data must be designed and included in the annexes of the MEF (for practical reasons a small number of tools may not be able to be developed during the development of the initial MEF). The development of sound methodology usually requires specialist expertise.
- b) Where **special evaluation studies** are to be conducted, the full design should be described in the MEF with a description of the methods for data collection and analysis elaborated and tools developed.
- c) The **achievement and quality of outputs or deliverables** must be addressed. A number of output indicators are required to be reported on routinely. This could include the development of a "Fact Sheet" where key project outputs are reported against in a concise form that allows efficient monitoring and reporting of the project by AusAID staff (this is in addition to routine reporting requirements).
- d) Identification of how the findings of the monitoring and evaluation activities will be **disseminated and utilised**. This does not refer to a reporting frequency table, but rather to what mechanisms are in place to ensure that findings are disseminated to all relevant stakeholders and that findings are likely to be responded to or utilised.
- e) A full **implementation schedule** should be included that shows when all key M&E activities will be carried out. Identification of M&E activity responsibilities (that are

matched to individuals' capacities and resources to meet them) should be included in this plan.

It is recognised that AusAID will play an important role in the overall monitoring of the program. AusAID has traditionally been weak in undertaking this function and often under-resourced. The MEF will include a monitoring workplan detailing the activities, timing and resourcing required by AusAID to fulfil its monitoring and evaluation responsibilities, as well as for other significant monitoring partners where appropriate

- f) There should be a **complete costing (budget)** of the MEF for both personnel requirements and the costs of conducting monitoring and evaluation activities.

Note: The design and conduct of M&E activities needs to be supervised and directly supported by an M&E Specialist with demonstrated practical experience in M&E theory and practice; and, with post graduate training in research or evaluation methodology.

5.9 Guidelines for Assistance to Civil Society under AIPJ

AIPJ recognises that Indonesian government agencies are fundamental to achieving the core objective of AIPJ and that government agencies have increasingly turned to professional justice sector civil society organisations (CSOs) to provide technical assistance in support of government reform programs. AIPJ recognises that a number of important justice sector CSOs now provide sophisticated technical advice and support to government agencies, in addition to their strengths in analytical studies and monitoring. Notable recent examples of how justice sector CSOs support government reform priorities was the drafting of both the Supreme Court and AGO reform “blueprints.” In other words, the Indonesian Government itself seeks out and often *prefers* the assistance of high quality Indonesian civil society justice sector organisations.

Supporting the Indonesian Government’s justice sector reform priorities and programs through and in partnership with Indonesian justice sector organisations also ensures the long-term sustainability of justice sector reform beyond the life of AIPJ. The further development of stronger, more capable, higher quality professional justice sector organisations is envisioned as an important long-term contribution of AIPJ to the objective of improved access to quality legal services and information.

The *Indonesian Legal Sector Analysis*¹⁴⁰ states that civil society in the law and justice sector is currently in a state of malaise due to donor organisations employing relevant CSOs as consultancies and service providers. Current donor practices which often prioritise the hiring of individuals over organisations mean that CSOs are often stripped of core personnel and left without the time and resources to undertake work critical to their sustainability and effectiveness, including:

- developing secure funding bases;
- improving lines of accountability to key stakeholders;
- formulating goals and strategies;
- establishing knowledge management systems; and
- building human resource management systems.

In other words, previous donor support has often engaged with justice sector CSOs not as genuine partners, but rather as consultants. Conversely, AIPJ sees independent, professional, high calibre justice sector CSOs as integral elements in successful Indonesian government justice sector reform. AIPJ will support CSOs in their key roles at the intersection between state and society, in a triangulation approach that has been widely acknowledged as one of the most successful aspects of Australia’s previous assistance to the law and justice sector in Indonesia.¹⁴¹

Mechanisms that might be appropriate to provide funding to CSOs might include core funding, and/or grant or activity funding. The managing contractor for AIPJ will be expected to specify their approach to engaging CSO expertise to achieve the program’s outcomes and to strengthening CSOs the long-term organisational capacity.

¹⁴⁰ Sebastian Pompe and Dian Rosita, *Indonesian Legal Sector Analysis* (2008).

¹⁴¹ This issue was consistently raised during consultations for the Independent Completion Report of the Legal Development Facility as well as consultations for the present design, between November 2009 and January 2010.

5.10 Risk Matrices

Design and Management Risks

Risk Event	Impact	Likelihood¹⁴²	Consequences¹⁴³	Risk Treatment	Responsibility
1. AIPJ funds many small activities across many issues/institutions	No sustainable and/or meaningful impact	3	4	1.1 Ensure governance arrangements offer strategic advice capable of informing activity design and selection; ensure continual application of activity selection criteria and operating principles; use Justice Partnerships Development Fund to ring-fence other program funds from ad hoc requests; ensure proper socialisation of design, including through inception workshop.	AusAID; ISP
2. Stakeholder disappointment due to receiving less support under AIPJ than under LDF.	Key stakeholders attempt to undermine AIPJ activities	2	3	Maintain dialogue with key stakeholders; make up-front investment in socialisation of design	AusAID Jakarta (in relation to Indonesia-based stakeholders); AusAID Canberra (in relation to Australia-based stakeholders)
3. Governance arrangements fail to provide strategic direction to AIPJ.	Effectiveness (particularly impact and alignment) of AIPJ compromised	2	3	Conduct ongoing reviews of governance arrangements, making appropriate changes to structure and/or composition of relevant boards when necessary	AIP Partnership Board; AusAID; Bappenas
4. Women not sufficiently involved in AIPJ activities	AIPJ's impact on gender equality weakened; overall sustainability of AIPJ's impact is compromised	2	4	Draw up and implement a gender strategy within the first three months of AIPJ's mobilisation	AusAID; ISP
5. Relationships with GoI are driven primarily by the ISP rather than GoA	Partnership not sustainable over the long-term	3	3	Ensure that the strategic direction of the partnership is set by AusAID and Bappenas and managed by an AusAID-contracted Program Director; make significant AusAID resources available for relationship building and intellectual input into the direction of AIPJ; clarify to ISP the value of government-to-government partnerships	AusAID; Bappenas; Program Director

¹⁴² 1 = Highly unlikely; 5 = Highly likely.

¹⁴³ 1 = Minor; 5 = Major.

6. GoI partners reluctant to engage due to the requirement that all AIPJ assistance be on-budget	AIPJ unable to provide funding to key partners	2	4	Emphasise alignment of AIPJ funding with GoI priorities; emphasise benefits of relationships formed through AIPJ	AusAID; ISP
7. High AIPJ staff turnover	AIPJ activities lack continuity and relationship-building interrupted	3	3	Dedicate sufficient resources to ensure strong AusAID involvement in the management of AIPJ in order to ensure continuity	AusAID; ISP
8. ISP relations with key stakeholders deteriorates	AIPJ loses credibility and is unable to progress key activity implementation	2	4	Ensure that all key personnel in the ISP are committed to developing and maintaining strong partnerships with key counterparts, and respond to partners' concerns and sensitivities	ISP

Operating Environment Risks

Risk Event	Impact	Likelihood	Consequences	Risk Treatment	Responsibility
Changes to reform momentum in key GoI partners	AIPJ unable to achieve traction with important partners	2	4	Conduct institutional assessments to form initial basis for decisions to engage and work with particular institutions; conduct ongoing assessments of institutional capacity and openness to reform; shift focus between GoI agencies to support the most reform-minded agencies while maintaining dialogue with less reformist ones; in the event that government agencies across the board lose reform momentum, shift focus to improving civil society's capacity to build political will for reform; proactively develop partnerships with a range of state and non-state actors	Partnership Board; AusAID; Bappenas; ISP
Indonesian public perceives AIPJ as too political	Key state and non-state partners reluctant to engage	2	4	Ensure close and ongoing communication with Bappenas and other key GoI partners; ensure close alignment with GoI priorities; implement communications strategy	AusAID
Deterioration of bilateral relationship	AIPJ becomes politicised and unable to achieve traction with key partners	1	5	Build strong partnerships with GoI partners, based on frank and frequent communication	Partnership Board; AusAID; Bappenas
Antagonistic relationships between GoI and civil society partners	Government and civil society groups are unable to work in partnership thereby reducing	2	4	Look for opportunities to build and strengthen opportunities for GoI and CSO partnerships, drawing on lessons learned from LDF (including secondments from NGOs to	AusAID; ISP; Partnership Board

	prospects for achieving important legal reform goals			government reform teams); participation of CSOs in governance arrangements	
Civil society partners become overly critical of government	AIPJ perceived as undermining GoI agenda, leading to GoI partners withdrawing support	2	3	Develop and apply strict criteria for providing assistance to civil society	AusAID; ISP
Security situation in Indonesia deteriorates severely	AIPJ forced to cease until security improves	1	5	AusAID to implement relevant security protocols; ISP to develop security plan	AusAID; ISP
Politicisation by Australian partners given broad and extensive GoA interest in the program	AIPJ becomes too 'supply-driven', thereby compromising its strategic assistance to the sector	2	4	AusAID to play a pro-active, coordinating role with whole-of-government partners on program developments to ensure adequate coordination, information sharing and alignment of interests.; AusAID to appoint a dedicated officer in Canberra and work on a broader whole-of-government strategy to ensure that Australian assistance to the sector is well coordinated and informed	AusAID Canberra
Other donors do not prioritise donor harmonisation	AIPJ fails to complement, or actually duplicates, other donor initiatives in the sector	2	3	Hold regular donor coordination meetings; support Bappenas to encourage greater donor harmonisation	AusAID; ISP

5.11 Position Descriptions

Terms of Reference – AIPJ’s Program Director

Background

Australia has been providing assistance to the Indonesian law and justice sector for ten years, most recently through the Indonesia Australia Legal Development Facility (LDF). In late 2010, a new five-year program, to be called the Australia Indonesia Partnership for Justice (AIPJ) will be mobilised to replace LDF as AusAID’s flagship program of assistance to Indonesia’s law and justice sector.

While AIPJ will aim to build upon some of the relationships and success stories under LDF, it will involve a number of key changes to the implementation arrangements. These will include:

- a more ‘hands-on’ role for the Government of Australia (GoA) and an increasing emphasis on direct relationships between Indonesian and GoA counterparts, as distinct from indirect relationships formed via sub-contractors;
- greater alignment with Government of Indonesia (GoI) priorities;
- more clearly defined outcomes and more strategic deployment of assistance; and
- enhanced monitoring and evaluation.

In order to support these new directions, AusAID will engage a Program Director for the AIPJ. The Program Director will be engaged separately from the Implementation Service Provider (ISP), and will report to AusAID.

AusAID will be responsible for the overall management of the AIPJ and will take a lead role on fostering productive partnerships, policy dialogue and whole-of-government coordination. AusAID will also co-chair the governance body – the AIPJ Partnership Board. The AIPJ ISP will be responsible for providing direct assistance to the Program Director in order to facilitate his/her management of the AIPJ implementation on behalf of AusAID. The ISP will be responsible for the day-to-day management of the ISP including its staff and the technical assistance personnel that it recruits. The ISP will be responsible for its obligations under its contract with AusAID including, among other things, the provision of logistics and administrative support and the recruitment of staff and technical assistants.

General responsibilities of the Program Director

The Program Director will be responsible for the strategic management and oversight of the AIPJ, working closely with the AusAID Jakarta Democratic Governance team. The Program Director will not employ personnel directly, but will oversight the ISP’s staff and technical assistants.

With support from the ISP, the Program Director will lead the establishment, development and strategic implementation of the AIPJ. This will entail:

- building relationships with key GoI counterparts, GoA partners and relevant civil society groups and donors in Indonesia and Australia;
- staying abreast of the latest international thinking on development assistance in the law and justice sector, and ensuring that this is integrated into AIPJ’s implementation where feasible and desirable;
- providing strategic advice to both GoI and GoA on sector priorities, reform dynamics and donor coordination;
- providing strategic guidance over the development of activity plans for the achievement of AIPJ outcomes;

- ensuring the AIPJ Monitoring and Evaluation Framework provides relevant information to inform the strategic direction of the program and builds on lessons learnt;
- establishing more detailed information on the roles and responsibilities of the Partnership Board, as outlined in the AIPJ Design Document;
- assisting all stakeholders to prepare for the meetings of these bodies so as to ensure maximum levels of strategic direction for AIPJ;
- developing guidelines for the allocation of AIPJ funds through the ISP's financial systems and, where possible, through GoI systems;
- promoting greater coordination of GoA agencies involved in the provision of development assistance to the Indonesian law and justice sector in Indonesia, including by assisting AusAID to develop and promote the proposed Framework for Australian Assistance to Indonesia's Law and Justice Sector;
- identifying opportunities for policy dialogue between Australia and Indonesia on law and justice issues;
- identifying opportunities for Australian support for improved whole-of-government coordination of law and justice sector institutions in Indonesia;
- identifying opportunities for enhancing AIPJ's use of Government of Indonesia systems (planning, budgeting, financing, auditing, etc);
- ensuring AIPJ is aligned with GoI priorities; and
- providing briefings to relevant GoA partners on legal development issues in Indonesia.

The Program Director will also work closely with AusAID Jakarta's Democratic Governance Team and the Democratic Governance Adviser.

Reporting

The Program Director is responsible for producing six-monthly progress reports for AusAID, with assistance from the ISP. These will include:

- an update on general reform dynamics in the law and justice sector, including possible implications for future AIPJ activities;
- identification of potential new activities and partners;
- recommendations on how AIPJ can make increasing use of GoI systems and achieve better alignment with GoI priorities.

This formal report will complement regular verbal and written reporting throughout program implementation.

Supervision and decision-making

The Program Director will report to and work under the direction of the Counsellor for Democratic Governance and Policy Coordination, AusAID Jakarta. The ISP will report to the Program Director, who will be responsible for managing the ISP in accordance with the terms of the ISP's contract.

The Program Director must receive appropriate approval from AusAID and endorsement from the Partnership Board for all activity proposals included in annual work plans. For approval of out-of-cycle activity proposals, the Program Director and ISP must submit proposals to AusAID for approval (with Bappenas' concurrence) at the appropriate level once between approval cycles. AusAID will establish appropriate procedures for out-of-cycle activity approvals.

Within three months of AIPJ's mobilisation, the Program Director, in cooperation with the ISP and AusAID, will develop a set of detailed engagement protocols to inform key roles and responsibilities, principles and ways of working, communication protocols, delegations, decision-making authorities and dispute-resolution procedures.

Duration

AusAID intends to engage a Program Director for the duration of the AIPJ, subject to regular performance monitoring.

Location

The Program Director will be co-located with the ISP. AusAID will explore the option of the Program Director working out of the Australian Embassy with AusAID Jakarta's Democratic Governance team for one day per week.

Skills, knowledge and experience

The Program Director will have the following skills, knowledge and experience:

Required:

1. Masters in law or related field and at least ten years experience in the law and justice sector, including considerable time in a development context;
2. significant experience in a public sector or other major organisational environment, including experience and understanding of reform processes and change management;
3. demonstrated success in strategic planning and policy skills;
4. demonstrated understanding and commitment to AusAID's approach to key development principles, including aid effectiveness, gender equality and capacity development; and
5. demonstrated ability to develop and facilitate constructive working relationships with colleagues, counterparts and others, including in the law and justice sector and in cross-cultural contexts.

Highly desirable:

1. fluency in spoken and written Bahasa Indonesia;
2. in-country experience in Indonesia; and
3. experience working for AusAID.