



Australia Indonesia Partnership for Justice – II

Executive Summary

The *Australia Indonesia Partnership for Justice – II* (the Partnership) is a planned investment of up to AUD 40 million for five years. Two previous Australian aid investments, the *Australia Indonesia Partnership for Justice* (AIPJ) and the *Australia Indonesia Security Cooperation Program* will be brought together under a single investment to strengthen the rule of law and the security environment in Indonesia. The Partnership focuses primarily on leveraging Indonesia's own resources to support a range of policy changes with a smaller budget than previous Australian investments in the justice and security sector.

The Partnership is purposely designed as a flexible facility to enable iterative programming, in line with the reform priorities of both governments. It builds on reforms already underway and lessons learned from previous programs, as well as the robust partnerships that have developed over a number of years between Australian and Indonesian institutions. As a forum for policy dialogue, the Partnership agrees on priority reforms of mutual benefit, drawing on expertise from both countries and considering lessons from the region and international legal norms.

The overall goal of the Partnership is:

Strong and accessible justice and security institutions that enhance respect for enforceable rights and rules-based governance systems, over time contributing to stability and prosperity in Indonesia and the region.

In support of this shared goal, the Partnership has five high-level objectives:

1. Transparency, accountability and anti-corruption reforms commenced within judicial and government institutions are embedded in process and practice.
2. Indonesian organisations are preventing and investigating transnational crime more effectively.
3. Violent conflict is reduced through government and civil society promoting tolerance and countering radicalisation.
4. Police, courts and correctional services are collaborating to enforce rights and uphold the rule of law.
5. Justice and legal services promote greater accessibility and enhance gender equality.

All of the Partnership's activities contribute to one or more of the objectives.

To support the goals and objectives, the Partnership works under five pillars, noting that many activities cut across pillars:

- Transparency, accountability and anti-corruption
- Countering transnational crime and security strengthening
- Promoting tolerance and countering radicalisation
- Prison reform
- Gender equality and disability rights.

Investments under the Partnership are implemented through a flexible facility, managed by a contractor. The contractor has responsibility for the strategic management of the justice components of the investment, as well as responsibility for the day-to-day management of the whole investment portfolio. The partnership uses a single planning and reporting framework to promote strategic coherence between the work areas. Where technically appropriate and politically possible, justice and security activities under the Partnership are integrated.

Table of Contents

Executive Summary	1
List of Tables and Figures.....	2
Design Process	3
Introduction.....	5
1. Rationale for cooperation between Australia and Indonesia on justice and security	6
1.1 Indonesian Policy Context	6
1.2 Australia Policy Context	7
2. Justice and security sectoral analysis.....	8
2.1 Gender equality	10
2.2 Disability inclusion	11
2.3 Indigenous Peoples	13
2.4 Private Sector Engagement	13
2.5 Countering Violent Extremism.....	14
3. Australia's assistance to date	15
3.1 Lessons learned	16
4. Australia Indonesia Partnership for Justice – II (The Partnership)	18
4.1 Partnership goals and objectives	20
4.2 Partnership pillars	20
4.3 Theory of Change.....	24
4.4 Partnership strategy.....	25
4.5 Investment Criteria.....	27
5. Governance of the Partnership.....	28
6. Monitoring and learning	31
6.1 Six-monthly review and adaptation	32
7. Role of the Contractor	32
7.1 Project team.....	33
8. DFAT.....	34
9. Contractor Performance Assessment.....	35
10. Complementarities with other DFAT-funded, and other donor- funded programs.....	35
11. Risk	36
12. Budget.....	37
Annex 1: Law and Justice Sectoral Analysis	38
Annex 2: Summary of other donor's program.....	47

List of Tables and Figures

Table 1: Exiting institutional partnerships	19
Table 2: The Indonesian court system	39
Table 3: Law enforcement and oversight agencies	41
Table 4: Legal CSOs	45
Figure 1: Influencing policy change	26
Figure 2: Partnership Governance Arrangement	30

Design Process

The design is authored by the Justice and Democratic Governance Unit, Australian Embassy Jakarta, and has been written in consultation with Indonesia's National Planning and Development Agency (Bappenas), other relevant Indonesian institutions and civil society. The document is informed by an independently-led design process for the planned Australia Indonesia Partnership for Justice Phase II (AIPJ II), which commenced in 2014 but did not proceed to tender due to the rescaling of Australia's development cooperation with Indonesia.

In 2014, two rounds of stakeholder consultations were conducted by the design team. The first was a scoping mission that included a multi-stakeholder forum hosted by Bappenas with relevant government agencies, civil society partners and other donors. The second round of consultations provided stakeholders with the opportunity to comment on the draft design and included engagement with relevant Australian Government agencies, the Australian Human Rights Council, NSW Judicial Commission, the Australian Federal and Family Courts and the Law Counsel of Australia.

In mid-2015, as a part of the rescaling of Australia's development cooperation with Indonesia, the budget for law and justice was reduced to AUD 2.7 million per year for five years. A subsequent management decision was taken to add AUD 1 million per year for cooperation between Australian and Indonesian courts and AUD 1 million per year for activities to support countering violent extremism. Consequently, the investment value for the next phase of justice support was increased to AUD 23.5 million over five year, with an agreed upper limit of AUD 30 million to allow for potential growth.

The management decision to combine Australia's justice and ODA-eligible security investments was taken in January 2016. It was agreed that the Australia Indonesia Security Cooperation Program, previously managed by the Department of Foreign Affairs and Trade (DFAT), Canberra, would be combined with the next phase of justice cooperation to achieve greater development effectiveness, efficiency and strategic coherence. Following this decision, a design was drafted based on the revised scope and funding envelope of up to AUD 40 million.

The design process has involved extensive consultation with relevant Australian government agencies, including a workshop focused on scoping the investment and the key lessons learned from previous programs. A second workshop facilitated by Director Design Unit, DFAT Canberra, focused on the governance arrangements for the consolidated investment. Feedback from Australian Government agencies has been incorporated.

Throughout the design process the Justice and Democratic Governance Unit has engaged with Bappenas and the draft design was formally shared in May 2016. Bappenas conducted whole-of-government consultations including with Polhukam

(Coordinating Ministry of Law, Politics and Security), the President's Office and the Directorate General of Corrections from May to July 2016.

In June 2016, the document was independently peer reviewed against DFAT's design quality standards by Zazie Tolmer, Principal Consultant, Clear Horizons and Daniel Woods, Counsellor Australian Embassy, Timor-Leste. The design was circulated to country and thematic specialists within DFAT and Australian government partners for comment. A peer review discussion was held on 23 June, at which agreement was reached that the document should proceed to the delegate, pending agreed changes.

In August 2016, Bappenas hosted a whole-of-government and civil society design workshop. The proposed high-level objectives and work pillars were discussed by senior government officials and civil society. Feedback from that discussion, and subsequent discussions with Bappenas, has been incorporated in the design. It was agreed that all the partners would meet again early in the mobilisation phase to discuss activities.

Introduction

Australia and Indonesia have agreed to enter into a new five-year partnership (the Partnership) to strengthen the rule of law and the security environment in Indonesia. The Partnership pursues mutually agreed reforms that contribute to stability and growth in Indonesia and the region. Australia's contribution to the Partnership is up to AUD 40 million over five years.

The Australian and Indonesian governments drive the reform trajectory, consistent with national interests and emergent priorities. In the long term, it is expected that this partnership will create a stronger sense of shared respect for enforceable rights and rule-based governance systems, enabling deeper and more sophisticated bilateral cooperation across a range of strategic issues.

The Partnership includes Australia's law and justice investments, previously implemented through the *Australia Indonesia Partnership for Justice* (AIPJ), and counter-terrorism and security investments, previously implemented through the *Australia Indonesia Security Cooperation Program* (AISC). It builds on successful reforms and lessons learned from both programs, as well as the robust relationships and knowledge fostered to date. Where possible, the justice and security elements of the program are integrated. Over time, the partnership aims to improve whole-of-government coordination among both Indonesian and Australian agencies.

The modality for the Partnership is a facility managed through a contract with specific objectives but an unspecified pathway for delivery of the objectives. The flexible facility allows the partners, (Government of Australia and Government of Indonesia) to capitalise on political momentum for reform, test a range of approaches and scale up those that work. Consequently, the design outlines the goal, objectives and pillars of the Partnership and describes the anticipated *approach* to reform. It does not pre-determine the pathway of reform under each specific pillar or the sub-activities required to contribute to achievement of the overarching objectives. Under each pillar, priority reforms and the activities to support these are documented in an annual work and reviewed bi-annually through partnership reviews. The six-monthly partnership reviews assess changes in the political economy, evaluate progress under each reform component, review the effectiveness of the partnerships, and adjust and refine the program outcomes and/or program approaches as required.

This document guides the procurement of a managing contractor to implement the program on behalf of DFAT. The managing contractor has responsibility for day-to-day management of the whole investment portfolio. For justice reforms, the contractor works strategically with implementing partners and defers to DFAT and Bappenas for high level strategic direction. For counter-terrorism and security strengthening reforms, Australian government agencies drive the strategic direction, oversight, management and partner government engagement. Where technically appropriate and politically possible, justice and security activities under the Partnership are integrated, achieving greater strategic coherence across justice and security investments.

1. Rationale for cooperation between Australia and Indonesia on justice and security

Both countries' commitment to the rule of law and strong institutions, and the mutual interests which underpin cooperation in this area, are reflected in the *Australia-Indonesia Aid Investment Plan*. This strategy notes that justice and security cooperation is 'important to promoting stability and prosperity in the region', including through 'our shared interest in counter-terrorism, transnational crime, prison reform and anti-corruption'. The Plan sets out three objectives, all of which rest upon improvements to the rule of law and security strengthening in Indonesia: effective economic institutions and infrastructure; human development for a productive and healthy society; and an inclusive society through effective governance.

These policy commitments provide the framework within which the Partnership is to be implemented.

1.1 Indonesian Policy Context

The Indonesian government has articulated its goal for justice reform as follows:

To bring about criminal and civil justice systems that are efficient, effective, and accountable for justice seekers, supported by professional law enforcement personnel with integrity.... A goal of legal development is also to realise, respect, protect, and fulfil the justice rights of citizens....[and] lower levels of corruption.¹

In a range of policy documents, including the *National Medium-term Development Plan 2015-19* (RPJMN), the Indonesian Government has also recognised that Indonesia's stability and economic competitiveness rests on improvements to the rule of law, including through measures to combat corruption and violent extremism. The RPJMN specifically links law and justice to Indonesia's economic development challenges, acknowledging that investors and the private sector cannot operate without legal and regulatory certainty. In pursuit of this goal, three specific objectives are stated: improved transparency, accountability and speed in law enforcement; improved effectiveness or corruption prevention and eradication; and respect, protection and fulfilment of human rights. Underpinning these three objectives is the need for an integrated criminal justice system.

The RPJMN does not set out an overall objective for the security sector; however, counter-terrorism, countering violent extremism and security strengthening are covered under domestic affairs. Over the life of the RPJMN, Indonesia aims to create a more conducive environment for democracy through: progressing legislation on social conflict management; establishing a civic education centre for multiculturalism and tolerance; strengthening dialogue on conflict prevention and management at the

¹ Indonesian Government, *National Medium-Term Development Plan 2-15-19-Overarching Development Goals*, (2015)

community level; and establishing stronger government and community organisations for conflict management.

Indonesia's counter-terrorism approach, as stipulated in the RPJMN, aims to create a more conducive environment for terrorism management including implementation of new counter-terrorism legislation; prevention activities through strengthening civil society networks; and strengthening bilateral, regional and global cooperation on counter-terrorism. The Indonesian government has stated its intention to become a more active global advocate of religious tolerance and counter-radicalisation, in particular through involvement in the International Islamic Council.

1.2 Australia Policy Context

The Australian Government's development policy, *Australian Aid: Promoting Prosperity, Reducing Poverty, Enhancing Stability*, proposes that Australia should leverage and catalyse positive changes in developing countries through support for sustainable economic growth and development of human resources. It includes an Effective Governance pillar recognising the fundamental role of law and order and access to justice in achieving these goals. Australian Government policy also emphasises the importance of international counter-terrorism efforts, including those focused on law enforcement, terrorist financing, building counter-terrorism capacity in the region and countering violent extremism.

Australia's aid relationship with Indonesia has shifted from a donor-recipient relationship to a development partnership characterised by mutuality, collaboration and comparative advantage. Australia's ODA to Indonesia operates principally to assist Indonesia spend its own resources more effectively and efficiently. Indonesia allocates around AUD 6 billion (around 3 percent of its national budget) to law and justice institutions. Australia's contribution of up to AUD 8 million per year will be used to leverage Indonesia's own resources towards reforms already underway within the country.

Australia's Counter-Terrorism Strategy: Strengthening Our Resilience acknowledges that combating terrorism is essentially about limiting the spread and influence of violent extremist ideas.² The strategy emphasises the importance of Australia engaging with partner countries, in particular in the region, to 'build capacity, undertake joint operations, and exchange information to assist partner governments in detecting, monitoring and responding to terrorism.' This includes supporting partner countries to develop and disseminate values and narratives that run counter to violent extremism.

The Australian Government is increasingly focused on tackling corruption – both domestically and internationally – as a matter of national interest. In early 2016, Australia committed to a range of domestic and international anti-corruption measures, with the government acknowledging that corruption "threatens regional stability in our

²*Australia's Counter-Terrorism Strategy: Strengthening Our Resilience*, 2015, <https://www.nationalsecurity.gov.au/Media-and-publications/Publications/Documents/Australias-Counter-Terrorism-Strategy-2015.pdf>

neighbourhood” and that it can “distort the export and investment playing field against our best and most efficient firms”.³ These commitments include:

- joining new international efforts to streamline and focus international law enforcement cooperation on grand corruption;
- joining the Extractive Industries Transparency Initiative, an international model for increased transparency and accountability in the oil, gas and mining sectors;
- providing \$13 million in further development cooperation funding to support partnerships in the Pacific, Southeast Asia and South Asia aimed at strengthening implementation of the United Nations Convention against Corruption;
- exploring further avenues for taking action against bribery and corporate corruption, including through better resourcing of relevant agencies and strengthened domestic legislation.

The outcome of national elections in Australia in 2016 may impact the Australia policy context and the focus of Australia’s aid program. However, it is anticipated that strengthening the rule of law, in particular increasing Indonesia’s counter-terrorism capacity and anti-corruption capabilities, will remain a policy priority for Australia over the next five years.

2. Justice and security sectoral analysis

A comprehensive sectoral analysis of Indonesia’s law and justice institutions was completed in 2014 as a part of the design for the planned scale-up of AIPJ. Relevant analysis from this assessment is provided at Annex 1. Given the broader remit of the Partnership and the dynamic political economy of the justice and security sector, it is proposed that a comprehensive political economy analysis is carried out early in the implementation of the program.

Over the last 15 years, Indonesia’s justice institutions have undergone remarkable change. Courts have developed into the chief independent forum in which policy is tested and disputes between citizens and citizens and the state are adjudicated. New institutions have been established to support law enforcement, such as the Corruption Eradication Commission, a purpose-built organisation with broad powers to investigate and prevent national corruption. While some reform has occurred in the Chief Prosecutors office and the Police, these organisations have proven more difficult to penetrate. Importantly, reform processes underway since 1998 are vulnerable to elite ‘pushback’ from conservative judicial figures, and others who stand to lose out from a more transparent and functional system.

³ Press release from Minister for Justice and Minister assisting the Prime Minister for Counter-terrorism, 8 May 2016
<https://www.ministerjustice.gov.au/Mediareleases/Pages/2016/SecondQuarter/UK-Anti-Corruption-Summit.aspx>

There remains a popular perception that Indonesia's judicial system is closed, in-ward looking and dominated by corruption and cronyism.⁴ The general lack of trust in the system is a primary reason why many Indonesians are reluctant to report crimes or to give evidence at trial.⁵ This lack of public trust is exacerbated by a culture of impunity and corruption that persists in many parts of the criminal justice system. Despite this, Indonesians care deeply about law and justice issues and regularly rank 'corruption' as the most important issue for them, with general law and justice issues often making the list of top five issues facing the nation.⁶

Civil society organisations (CSOs) have been the key drivers behind progressive changes in the justice sector since 1998. They are regarded as valuable sources of technical assistance, and as well as stakeholders whose support is needed for important policy decisions. CSOs have influenced a wide range of actors including: the courts, the police, national and local governments, justice seekers and the broader community.

CSOs have influenced a range of significant reforms including:

- enactment of legislation, regulation and decisions, including at national, provincial, ministerial and judicial levels;
- institutional restructuring, most notably in the Supreme Court and the development of a national legal aid system;
- expansion of services for citizens, including access to legal aid, ability to obtain legal identity and improved case handling and increasing the number of citizens accessing legal services.⁷

Security sector reform in Indonesia has been a continuous process since the downfall of Soeharto in 1998. Major gains have been made in reforming aspects of the security sector, including police reform, counter-terrorism training, armed forces reform, human rights education and democratic control of the armed forces.⁸ Much of the initial reform was driven internally by military leadership and focused on the creation of a civilian body within the military and the separation of the police from the armed forces. After an initial push from within the military, CSOs have been the drivers of reform. By bringing together members of civil society, academics, politicians, civil servants and security sector personnel, CSOs have promoted security literacy and made some progress on human rights issues and greater protection for civilians.⁹ The military remains involved in political and civil spheres, public mistrust of security forces remains high, and security governance checks and balances remain inadequate.

⁴ Lindsay, T., 'The Indonesian Law and Justice Sector: A short assessment of the progress of reform', paper commissioned by the Australia Aid Program in 2014.

⁵ Gallup Polling, *Confidence in Judicial Systems Varies Worldwide*, October 2014, <http://www.gallup.com/poll/178757/confidence-judicial-systems-varies-worldwide.aspx>

⁶ Findings from a survey conducted by the Indonesian Institute of Science at: <http://news.detik.com/read/2012/10/11/214038/2060689/10/survei-lipi-korupsi-masalah-terpenting-yang-harus-diatasi>

⁷ ODI, *Evaluation of the Role of CSOs*, March 2016

⁸ Indonesia Country Profile, Security Sector Reform Resource Centre, Centre for Security Governance, <http://www.ssresourcecentre.org/resources>

⁹ Country Profile, Centre for Security Governance

Indonesia has maintained a relatively strong record of upholding pluralism and countering extremist beliefs. However, violent extremism within a very small segment of the population continues to pose a risk to national security and stability. This risk is growing with the potential for returning foreign fighters from the Middle East to Indonesia and the continued release of convicted terrorists from Indonesian prisons. The nature of the terrorist threat in Indonesia is changing with violent extremist groups attacking both domestic and international targets, receiving funding from a wider range of local and foreign sources, and recruiting members from a wider cross-section of society.

The Government of Indonesia has shown leadership in developing measures to combat terrorism and counter violent extremism. Authorities have achieved success in combating home-grown extremism, following the 2002 Bali bombings, including controlling the threat of Jemaah Islamiyah (JI) and its splinter organisations. In response to the rise of ISIS, the government announced a 'ban' on the organisation in August 2014; however this has had limited impact on preventing individuals from joining or supporting ISIS. Indonesia's National Counter-Terrorism Agency (BNPT) has a broad mandate to focus on investigative capacity, de-radicalisation and countering-violent extremism. To date, efforts have largely focused on disruption over prevention.

Due to its strategic location, Indonesia is vulnerable to various forms of transnational crime including human trafficking, people smuggling, illicit drug trafficking, and unreported and unregulated fishing. The Government of Indonesia has shown interest in strengthening legal frameworks to address these new and emerging crimes, including enhancing information sharing and law enforcement capacity in the region. Beyond strengthening legalisation there remains a pressing need to enhance enforcement mechanisms. In aviation security for example, the legislative and regulatory framework is relatively strong, however improving the effectiveness and consistency of operational security implementation remains a challenge.

2.1 Gender equality

A number of reforms have taken place in pursuit of gender equality over the last 10 years, including ratifying international conventions on women's rights, national strategies and programs specifically designed to address women's legal rights and interests. However in practice, women continue to routinely face discriminatory and unfair treatment under the Indonesian legal system.

Substantive constraints for women include:

- Gender biased and conflicting laws and regulations, and gender biased administrative and judicial interpretations and rulings (including in *adat*/customary law);
- Gender biases and insensitivity in administrative agencies including law enforcement agencies, the judiciary and the legal profession;

- Inadequate resourcing of agencies dedicated to the protection of women's interests;
- Difficulties for women in claiming and defending their rights before the law, including in court processes, often due to limited access to justice and affordable legal services;
- Lack of political and bureaucratic will to pursue gender sensitive reform of policies and laws and to improve their implementation and enforcement.

Over the past 15 years various domestic laws have been developed with great potential for positive gender impact, particularly the *Elimination of Domestic Violence Act (No 23/2004)*, The *Human Rights Act* (No. 21/1999), and anti-trafficking and witness protection laws. In addition, a Ministerial-level regulation and a collective *Decree on the Integrated Service Centre for victims of violence against women* has been issued. This includes the establishment of Special Services Unit Rooms in Regional and Municipal Police Stations throughout Indonesia for victims of violence against women.¹⁰

Despite a positive enabling environment, implementation of the legal framework for the protection of women's rights is still very weak. Recent research by local judicial monitoring CSO, MaPPI, on judicial decisions on cases involving women and violence found that while decisions were generally consistent and in line with the law, some of the consistencies were discriminatory and reflected negative values towards female victims of violence. For example, judges consistently mitigated sentences based on the sexual history of women as presented at the trial. Judges were also more likely to give lighter sentences based on repeat occurrences, reflecting a view that recurring violence was a lesser crime and less damaging than one off events. Furthermore, judges almost always required victims to give testimony in front of the accused perpetrator.¹¹ This report provides a clear case for judicial review, and both the Supreme Court and Judicial Commission have indicated their commitment to improving judges' attitudes and judicial behaviour on sexual violence.

In addition to addressing cases involving women and violence, there is a pressing need to: review local regulations that are biased against women, increase women's involvement in law-making and budgeting (gender-based budgeting); and mainstream gender into legal education curricula and training.

2.2 Disability inclusion

Overall people with disability in Indonesia have poor knowledge of their legal rights and show low willingness to access the formal justice sector. Research suggests when a person with disability is a victim of crime only eight percent of the cases brought to court are heard.¹² In part, this is because judges lack the knowledge and awareness to

¹⁰Komnas Perempuan (National Commission on Violence Against Women), *External Evaluation*, May – June 2006 p.15

¹¹ MaPPI research commission by AIPJ in 2015/16

¹² Research commission by PUSHAM UII, quoted in AIPJ Completion Report, p, 78

be disability competent. People with disability are reluctant to use formal law enforcement and judicial systems for a number of reasons that include:

- the awareness and sensitivity of individuals in the law enforcement agencies and judicial systems towards people with disability;
- a lack of experience and expertise in disability issues;
- distance and cost of accessing services;
- physical access to buildings;
- communication barriers faced by people with visual, hearing, psychological and learning impairments.

More broadly, the concept of disability as a rights issue is still relatively new and remains poorly understood and weakly applied by government and civil society in Indonesia. Many people with disability particularly in rural and more remote areas are unaware that they hold rights like other Indonesians, and most are unable to ensure their rights are adequately promoted and protected. People with disability are often viewed as ‘handicapped’, ‘sick’ and ‘unproductive’. In extreme cases, people with disability are hidden by their families in the home or placed in an institution.¹³

Since the 1980’s a range of disabled people’s organisations (DPOs) have emerged in Indonesia with varying degrees of capacity and ability to influence policy dialogues. The majority have been member-based organisations which have provided services for members, advocated for the rights of their members who are people with disability and carried out research on issues of relevance. Historically they have formed around specific disabilities.

Indonesia’s ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD) in November 2011 provided added impetus for DPOs to strengthen their advocacy efforts. These efforts were further enhanced by an increase in the support made available by development partners, as donors have become more aware and committed to disability rights in their own policies and programs.

In 2013 a high level delegation of government representatives in consultation with input from DPOs began work on a revised disability bill to reflect the principles of the CRPD. With assistance from Australia, a working group including key DPOs and CSOs was established to draft the law conduct research, prepare background documents, consult with parliamentary expert staff, and conduct public education campaigns. In March 2016 the Parliament endorsed the Disability Law.

This is significant reform that paves the way for reform of other laws (including criminal and civil laws), and provides legal impetus for national and local governments to budget for and implement accessible services. The challenges of implementing the Disability Law are significant; however there is high-level political momentum, civil society pressure, and knowledge to progress forward with regulations to implement the rights-based approach.

¹³2010, *Situation of People with Disability in Indonesia: Desk Review*; Centre for Disability Studies, Universitas Indonesia, Irwanto Eva, RahmiKasim, AsminFransiska, Mimi Lusli, Okta Siradj

It is important to recognise the intersection between gender and disability, as well as other forms of marginalisation. For example, the additional burden of discrimination suffered by women with disability increases the likelihood of them becoming a victim of crime and presents additional challenge in accessing legal recourse. Statistics show that women living with disabilities are up to four times likelier to become victims of domestic and family violence.

2.3 Indigenous Peoples

In recognition of the fact that indigenous peoples often experience disproportionate rates of poverty, and are at increased risk of exclusion and marginalisation, DFAT aims to design and deliver international development programs that strive to:

- Be inclusive of indigenous people's issues
- Improve outcomes for indigenous peoples
- Engage responsibly with risk and mitigate potential adverse impacts on indigenous peoples.

Justice and security sectoral analysis to date has not examined indigenous people's participation in, and access to, the justice and law enforcement system. However, due to the relative disadvantage of some ethnic groups in Indonesia and their particular vulnerabilities, it is assumed that there are significant differences in the way indigenous and non-indigenous people interact with the law. As a part of the comprehensive political economy analysis, to be undertaken early in implementation, the Partnership will support research on indigenous peoples' access and relationship with the justice and law enforcement system, with particular attention to the experience of indigenous women who are assumed to be further disadvantaged than indigenous males. This analysis will take into account geography, history, gender and other sociological and political factors that impact indigenous peoples' access to services. The findings of this research may be used to identify possible entry-points for specific activities focused on benefiting indigenous people. Under each of the work areas, the program will consider how the desired policy outcomes will impact indigenous peoples and where appropriate may develop specific strategies and activities to increase access and/or benefits.

2.4 Private Sector Engagement

Indonesia is increasingly focused on improving the business enabling environment as a part of its economic growth strategy. In the World Bank's *Ease of Doing Business Survey 2016* Indonesia ranked at 109 out of 189 economies. A major contributor to this overall low ranking is the sub-index on enforcing contracts, where Indonesia ranks an extremely low 172 out of 189. The current government has announced a target ranking of 40 for Indonesia to be achieved within the next two years. To achieve this ranking, a number of legal reforms are required to improve contract enforcement, insolvency procedures and national and local business regulations.

Corruption within the legal sector and more widely has been identified as one of the most significant barriers to a conducive environment for business in Indonesia. Businesses also have a strong interest in increased judicial transparency because the publication of decisions helps ensure judicial accountability and consistency of rulings. Particular legal problems identified by the private sector include:

- treatment of contractual and other civil disputes as criminal cases;
- lack of alternative dispute mechanisms; inconsistency and uncertainty of legislation;
- need for judge specialisation in commercial matters.

Consultation with the private sector suggests that while businesses have a strong interest in supporting reforms in the legal sector, to date they have had limited involvement. However, given their strong interest in anti-corruption, cutting red tape, legal consistency and transparency, there is significant potential to engage with the private sector under the new Partnership.

2.5 Countering Violent Extremism

Research by The Wahid Institute has identified 230 civil organisations from 1970 until now, of which 147 fall under the category of ‘intolerant sectarian movements’, 49 are inclined towards ‘radical extremism’, and 34 organizations were classed as ‘terrorist’ groups.¹⁴ The research indicated that networks of radical extremist groups have established strong local bases of support across the archipelago. While at least three out of the 49 radical extremist groups openly seek international funding, most have a very limited regional support base and around 63% of organisations exist only within a single province. The Wahid report identified that the most vulnerable provinces which generate radical extremist movements are: West Java, Central Java, Central Sulawesi, North Sumatra, Nusa Tenggara Barat (NTB), East Java and Aceh.

While limited research has been conducted by Wahid and other CSOs, there remains a lack of comprehensive and in-depth analysis on the causes of radicalisation and violent extremism in Indonesia. The Indonesian Government has acknowledged the need to support and work through civil society to reject intolerant sectarian movements. In particular BNPT, the state institution formed to focus on this issue, has acknowledged the need to engage with civil society, religious organisations, media and universities to develop and disseminate counter-narratives to radicalisation.

Indonesia’s counter-terrorism efforts have had renewed impetus since the Jakarta terrorist attacks on 14 January 2016. The rise of ISIS has also sharpened focus, as new threats emerge. Similar to the issues faced by Australia, Indonesia is now seeking to address the new challenges posed by the conflict in the Middle East and the issue of both individuals and families travelling to join the conflict in Syria. To help address these issues, legislation is currently before the parliament to revise and update Indonesia’s Anti-Terror Law. The management of terrorist prisoners are also a

¹⁴ The Wahid Institution, ‘*Revisiting the problems of Religious Intolerance, Radicalism and Terrorism in Indonesia: a Snapshot*’, 2014

particular challenge. The design of a comprehensive blueprint for terrorist prisoner management reform is high on the agenda for the Directorate General of Corrections.

There is growing recognition of the roles of women in countering terrorism and violence extremism. Terrorist groups are specifically impacting women and girls—from inflicting sexual violence and challenging basic human rights—to hindering socio-economic development by, for example, attacking girls' schools and educators. However, women can also be powerful agents of change and can play a crucial role both in detecting early signs of radicalisation, intervening before individuals become violent, and delegitimising violent extremist narratives.

New research suggests potential links between extremism and corruption suggesting that as corruption grows, radical narratives become attractive to its victims providing a receptive audience to what would otherwise be too extreme religious discourses.¹⁵ The Partnership will invest in building the body of knowledge on the causes of radicalisation and intolerance, including corruption, to inform interventions to counter extremism and intolerance.

3. Australia's assistance to date

The 2011-2016 *Australia Indonesia Partnership for Justice* (AUD 61.3 million) aimed to realise the legal rights of Indonesians, in particular people who are poor, women, people with disability and vulnerable children. In pursuit of this aim, AIPJ worked through seven work streams:

1. **Court reform:** a) supporting consistent, timely and transparent decisions by: publishing judicial decisions; developing court monitoring systems; and institutional reform to improve case management, and b) increasing access to courts and court processes through: Alternative Dispute Resolution; establishment of a small claims court; and peer-to-peer relationships between the Indonesian and Australian courts.
2. **Legal identity:** facilitating access to birth, marriage and divorce certificates, which are required to access public services, including social assistance programmes.
3. **Legal aid:** including passage and implementation of Indonesia's first nationally funded legal aid system.
4. **Disability inclusion:** to build accessibility into all activities through training, creating accessible formats and policy change.
5. **Civil society strengthening:** building the capacity of CSOs to become drivers of reform
6. **Anti-corruption:** KPK and subnational anti-corruption institutes to increase independence, transparency and accountability, and training and mobilising citizens
7. **Juvenile justice:** supporting implementation of a new juvenile law system.

¹⁵ Sarah Chayes, *Thieves of State: Why Corruption Threatens Global Security* (New York: W.W. Norton, 2015).

AIPJ built on Australia's work in Indonesia's justice sector over the last 15 years, which was initially focused on the Supreme Court, with subsequent funding through a facility that focused on promoting legal reform and the protection of human rights. AIPJ was managed through a facility and implemented through a range of local CSO partners.

The *Australia Indonesia Security Cooperation Program* supported a range of activities designed to address counter-terrorism priorities. Building on the previous *Counter-Terrorism Cooperation Fund* (2009 to 2013), AISC enhanced bilateral security cooperation between Indonesian and Australian counterpart agencies in key areas such as law enforcement, legal framework and criminal justice development, prison reform, aviation security and counter-terrorism financing. The program also contributed to enhanced regional security by building organisational capacity and operational effectiveness and addressing key challenges posed by terrorism in the region. Individual components under AISC were delivered by Australian and Indonesian agencies on a cooperative and collaborative basis.

Since 2004 Australia has supported the Jakarta Centre for Law Enforcement Cooperation (JCLEC) to develop counter terrorism and transnational crime capacity in Indonesia and the South East Asian Region. JCLEC is jointly managed by the Indonesian National Police (INP) and Australian Federal Police (AFP). JCLEC is funded by a range of donors, with Australia being the primary financial partner. The training facility has conducted an extensive range of training and capacity development activities for police, judges and prosecutors on topics including investigation, anti-corruption, combating illicit financial flows, information management. The model of institutional partnership between the AFP and INP has proven effective way for Australia to address key capacity constraints in Indonesian law enforcement agencies, with strong buy-in from the government of Indonesia. While a bilateral partnership, JCLEC has also welcomed participation from regional and international law enforcement agencies. JCLEC will not be integrated into the new investment; however, the Partnership will ensure complementarity and collaboration with the training centre.

3.1 Lessons learned

Previous Australian-funded investments in the justice and security sector employed range of effective change strategies to achieve reform. The most successful reforms have been characterised by partnerships between state and non-state actors that have capitalised on changes already occurring in the sector and have leveraged Indonesia's own resources.

Partnerships

Supporting partnerships, in particular between government and civil society, has been an effective way to support various policy reforms, including: new and amended legislation; large-scale policy or process reform; and policy changes at the local level. This is evident in the area of court reform where strong partnerships between CSOs and the Supreme Court have enabled civil society to drive policy development and provide valuable technical assistance. A high-level of trust between selected CSOs and the

Supreme Court has developed through secondments into the court to assist in designing and implementing reforms. Effective partnerships have also characterised AIPJ's work on disability, where DPOs have been supported to form coalitions and build strong working relationships with the Judicial Commission and legal aid organisations.

The high-quality relationships between Australian and Indonesian courts have been a key component of an ongoing process of reform in the Supreme Court and religious courts in Indonesia. Through AIPJ, reform-minded Indonesian judges and court administrators have connected with their counterparts from the Federal and Family courts in Australia, exposing them to new ideas and support from credible sources.

The peer-to-peer relationships built and sustained through the AISC have provided a forum to discuss counter-terrorism policy and operational best practice, which is an important means of influencing change over time. Previous Australian aid investments have highlighted that reform to the security sector in Indonesia is difficult, and relationships need to be established over a long period of time. Australian agencies have invested time and resources in building relationships with Indonesian counterparts, resulting in some influence on policy and operational change.

Reform champions

Successful reforms in the courts and the corrections system have, in part, revolved around identifying the people and groups well positioned to lead change and considering how their work could be supported and resourced. For example, AIPJ fostered links between reform champions within the courts, including the Chief Justice of the Supreme Court, and civil society partners and the Australian courts to drive accountability and transparency reforms.

Research and analysis

AIPJ utilised processes of analysis and ongoing research to diagnose problems, establish shared agendas for change, and identify entry points. This has included seconding members of civil society into judicial institutions, piloting innovative approaches and using IT-based solutions to catalyse change. For example, AIPJ-supported research undertaken with the Supreme Court which provided the basis for the blueprint for reform of the institution. Research has been most influential when it has been directly linked to policy change and presented to government with practical recommendations.

Iterative programming

The facility modality adopted under AIPJ provided sufficient flexibility to respond to opportunities and support positive changes in Indonesia's justice sector. Following an independent review of the program in 2012, the AIPJ was re-designed to articulate a clearer strategic direction for the facility. A new facility strategy was developed that provided sufficient balance between being responsive and being strategic, allowing the program to meet its end of program outcomes. Australian government agencies funded under the AISC have had the flexibility to respond to requests for technical assistance

from their counterparts, ensuring that their inputs have aligned with Indonesian government priorities.

Pilots and demonstration

Unlike other service sectors in Indonesia, which have mostly been decentralised, justice and security is still largely centrally managed. This means enacting reforms at the local level has generally required approval at the national level. However, within this framework AIPJ has demonstrated through small-scale projects how national reforms can be implemented at the sub-national level. Previous work in disability and legal aid suggests that by working with local champions, innovative approaches have been trailed at the sub-national level at the subnational level, for possible incorporation into national policy and programs. The provincial based activities have served as good locations to demonstrate to policy-makers at the national level how reforms can be operationalised at provincial and local levels.

Leveraging resources

Previous interventions have capitalised on changes already occurring in both sectors and have leveraged Indonesian's own budget. For example, under AIPJ Australia's support to legal aid organisations has been modest and targeted at addressing blockages. Capitalising on political will and decisions being made within government, AIPJ and its CSO partners started their legal aid activities just months before the enactment of the legal aid law in 2011. By focusing support on the accreditation of legal aid organisations rather than direct service delivery, AIPJ facilitated larger change processes resulting in the establishment of a national legal aid system funded through the Indonesian national budget.

Strengthening the capacity of civil society

AIPJ implemented over 80 per cent of its activities through civil society partnerships. The program successfully built the capacity of a select number of civil society organisations to support reforms in legal aid, legal identity, anti-corruption and court reform. Through the provision of flexible core funding and access to technical expertise, selected CSOs strengthened their governance and management systems, technical capacity, advocacy skills and networks. Significant changes can be observed in all of the selected COS partners, however financial sustainability and access to technical assistance continues to be an issue for most.

4. Australia Indonesia Partnership for Justice – II (The Partnership)

The Partnership focuses primarily on leveraging Indonesia's own resources to support a range of reforms with a smaller budget (up to AUD 40 million) than previous Australian interventions in the justice and security sector.

Effective partnerships between several Indonesian and Australian institutions, established as a result of previous investments in the justice and security sector, are

maintained and, where possible, strengthened under the Partnership. Table 1 lists the current institutional partnerships in the justice and security sector, noting that new partnerships may be identified throughout the investment.

Table 1: Exiting institutional partnerships

<i>Australian</i>	<i>Indonesian</i>
Department of Foreign Affairs and Trade	National Planning and Development Agency
Federal Court	Supreme Court
Family Court	Supreme Court and religious courts
NSW Judicial Commission	Judicial Commission
Attorney General's Department	Chief Prosecutors Office, Corruption Eradication Commission, Ministry for Law and Human Rights
Australian Federal Police	Indonesian National Police, Directorate General Corrections, National Counter-Terrorism Agency
Department of Immigration and Border Protection	Department of Immigration, Customs
Department of Infrastructure and Regional Development	Relevant counterparts on aviation and maritime security
AusTrac	Financial Transaction Reports and Analysis Centre

The rationale for the partnership approach is that reforms in the justice and security sector are sensitive and often contested. As such, a high degree of commitment is required from both governments. The Partnership brings together a wide range of stakeholders, government and non-government, Australian and Indonesian. It pursues multi-stakeholder collaboration and common ground for reform through policy dialogue. Through a process of policy dialogue at strategic and operational levels, it is anticipated that realistic and mutual reform priorities are more likely to emerge.

There are distinct differences in the way previous justice and security investments have been designed and implemented, however opportunities for greater collaboration between Australian government agencies exist. Similarly, the Indonesian Government has acknowledged that there are a range of institutions and agencies operating independently of each other, complicating whole-of-government efforts to combat corruption, counter violent extremism, and integrate the criminal justice system. The Partnership looks for opportunities to work across the justice and security elements, noting that there are some sensitivities linked to security activities, and that the Indonesian Government must retain ownership in this policy area.

The Partners retains the ability to work flexibly and respond to new opportunities for reform in the justice and security sector, while being guided by a strategic framework with objectives and work areas. Through policy dialogue at the strategic and operation level, it is intended that Indonesian and Australian partners make decisions in an equal and mutual manner. To agree on priorities reforms under each work area the partners draw heavily on political economy analysis, expertise from both countries, lessons from

the region, and international legal norms and standards. A professional partnership broker is engaged at strategic points throughout implementation to support productive policy dialogue.

The Partnership operates as a facility, with pre-determined objectives but with unspecified activities. DFAT contracts a company with responsibility for the day-to-day management of the investment. For reforms in the justice sector, the managing contractor plays a strategic role in facilitating policy dialogue between justice sector partners, while deferring to DFAT for high-level strategic direction. For security reforms, the managing contractor provides operational support and technical support as required but will not engage in policy dialogue.

4.1 Partnership goals and objectives

In line with the policy priorities of Indonesia and Australia outlined in Section 1, the proposed overall goal of the Partnership is:

Strong and accessible justice and security institutions that enhance respect for enforceable rights and rules-based governance systems, over time contributing to stability and prosperity in Indonesia and the region.

In support of this shared goal, the Partnership focuses on development problems of shared concern for Indonesia and Australia, where Indonesia demonstrates commitment to providing its own resources and Australia can add value. Based on initial discussions between Indonesia and Australia, five Partnership objectives are proposed:

1. Transparency, accountability and anti-corruption reforms commenced within judicial and government institutions are embedded in process and practice.
2. Indonesian organisations are preventing and investigating transnational crime more effectively.
3. Violent conflict is reduced through government and civil society promoting tolerance and countering radicalisation.
4. Police, courts and correctional services are collaborating to enforce rights and uphold the rule of law.
5. Justice and legal services promote greater accessibility and enhance gender equality.

All activities funded under the Partnership contribute to one or more of the objectives.

4.2 Partnership pillars

To support the goals and objectives, the Partnership will progress reforms under five pillars:

- **Transparency, accountability and anticorruption including but not limited to:**

- embedding transparency and accountability reforms already commenced, including: the publication and analysis of court decisions; knowledge management and dissemination; and supporting the education of judges, law enforcement officials and the community
- prioritising legal reforms that enhance the business enabling environment and help mitigate against financial crisis including the small claims mechanism and other alternative dispute resolution mechanisms
- supporting the implementation of Indonesia’s integrated criminal justice system , including data-sharing among agencies
- continuing to support corruption-prevention by working with government, business, political parties and the community at large to better detect and report corruptive behaviours, and self-regulate against bribery and gratification.
- **Countering transnational crime and security strengthening including but not limited to:**
 - increasing airport and maritime security and strengthening the overall border security architecture
 - enhancing bilateral cooperation on money laundering, the financing of terrorism and asset recovery
 - addressing issues associated with the return of foreign fighters
 - strengthening legal frameworks to investigate terrorism and related transnational crimes
 - possible cooperation on cyber security
 - possible cooperation on issues associated with drug abuse.
- **Promoting religious tolerance and countering radicalisation including but not limited to:**
 - commissioning research to better understand the drivers of radicalisation, violence and intolerance
 - supporting civil society to develop and disseminate counter narratives to intolerance and violence using on-line and other communications platforms
 - working with national and provincial governments to increase coordination, and develop strategies to reject violence and build community resilience
 - supporting de-radicalisation and re-integration in Indonesian prisons, schools and the community.
- **Prison reform including but not limited to:**
 - scoping and implementing policy and legislative reform to reduce the overall prison population including: pre-trial detention, alternative dispute resolution, remissions, parole and community detention
 - promoting an integrated ‘life-cycle’ approach to criminal justice –from arrest to incarceration to community release.

- further developing the prison management database (SDP) and ensure maximum uptake and application by prison staff
- implementing improved procedures and staff capacity to manage high-risk inmates, including terrorists
- implementing robust internal and external oversight mechanisms to increase compliance by the corrections system with standard minimum rules for treatment of prisoners.
- **Gender equality and disability rights including but not limited to:**
 - translating gender-specific research into evidence-based and gender-sensitive legal reform on issues including violence against women, child marriage and human trafficking
 - supporting legal-monitoring CSOs to develop and disseminate research on biases against women and people with disability under law
 - continuing to support access to justice for women and people with disability, including through reasonable adjustments and targeted training of judges, legal professional and law enforcement officers
 - supporting the implementation of the Disability Law
 - supporting gender mainstreaming across criminal justice institutions
 - building the advocacy capacity of DPOs and creating opportunities for multi-stakeholder dialogue on disability issues.

Across all pillars, the Partnership will work to strengthen coordination between criminal justice institutions, in line with the Indonesian Government's goal of establishing an integrated criminal justice system.

Under each pillar the Partnership supports activities in pursuit of reforms identified in an annual work plan. Given the dynamic political and social context in which the Partnership operates, the desired reforms are reviewed and adjusted on a six-monthly basis (described in further detail in section 6).

In line with DFAT's gender strategy and the Government of Indonesia's gender targets, the Partnership adopts a 'twin-track' approach to gender equality involving activities that are specifically designed to tackle gender inequalities while incorporating gender issues into all aspects of planning, implementation and review. Under the first track, the Partnership identifies specific reforms required to address gender inequalities in the legal system. The second track requires the implementing partners to consider how activities under all of the Pillars impact men, women and children differently and to ensure that inequalities are not exacerbated as a result of the Partnership's interventions.

The same approach is adopted for disability inclusion, with the Partnership pursuing specific policy changes to advance disability rights, for example supporting Indonesia to implement its new Disability Law. At the same time, accessibility issues are considered under each Pillar and the Partnership advocates a disability-inclusive approach to justice and security reform.

Gender equality and disability inclusion were specific objectives under the previous justice program and strong relationships are in place to continue this work. Australia's previous investments in counter-terrorism and security strengthening have not identified gender and disability as a primary focus. All implementing partners, including Australian government agencies, are supported by the contractor, to incorporate gender and disability awareness into project planning, implementation and reporting.

The legal identity, legal aid and juvenile justice work pursued under AIPJ will not be taken forward under the Partnership as discrete work areas. In the case of general legal aid support and juvenile justice, national systems are considered sustainable and are funded from the national budget. Targeted legal aid support may be undertaken in pursuit of one or more of the objectives. Legal identity work will be taken forward by other Australian aid investments in Indonesia.

4.3 Theory of Change

Whole of Investment Assumptions

- Continued democratic consolidation in Indonesia
- Australian and Indonesian governments remained committed to bilateral cooperation
- Judicial leadership and the bureaucracy remain open to reform
- Increasing capacity, and improving policy, systems and procedures will lead to behaviour change among target groups

Objectives

Transparency, accountability and anti-corruption reforms commenced within judicial and government institutions are embedded in process and practice.

Indonesian organisations are preventing and investigating transnational crime more effectively.

Violent conflict is reduced through government and civil society promoting tolerance and countering radicalisation

Police, courts and correctional services are collaborating to enforce rights and uphold the rule of law.

Justice and legal services promote greater accessibility and enhance gender equality.

Change strategies: identify/acknowledge key policy changes; analysis to understand the problem; building relationships with key decision-makers and bring like-minded reformers together; support policy development through range of techniques; embed reform using range of techniques to ensure uptake and sustainability

Pillars

Transparency, accountability and anticorruption

Countering Transnational Crime & Security Strengthening

Promoting Religious Tolerance & Countering Radicalisation

Prison Reform

Gender Equality and Disability Rights

Strong and accessible justice and security institutions that enhance respect for enforceable right and rules-based governance systems, over time contributing to stability and prosperity in Indonesia and the region.

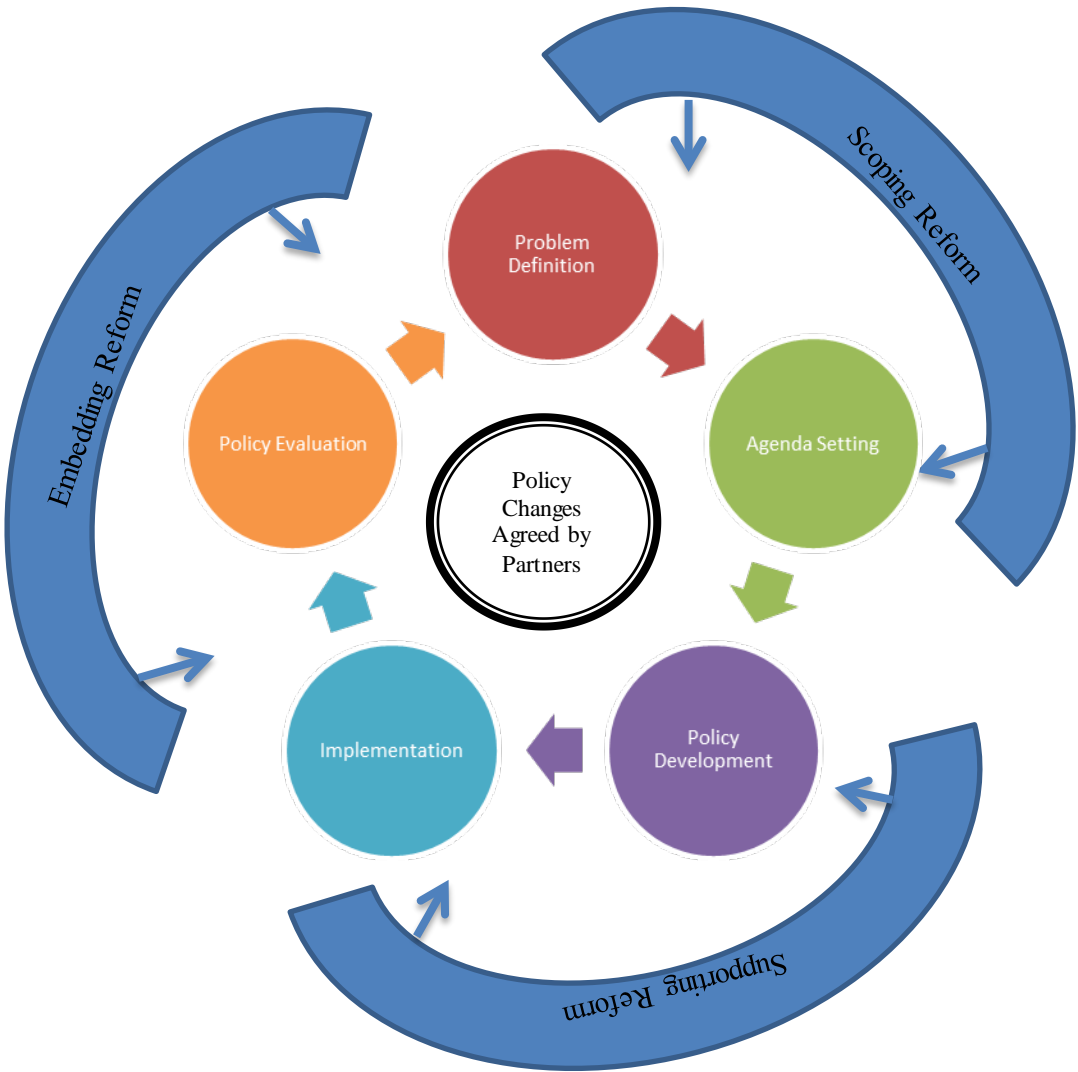
4.4 Partnership strategy

As an inherently political intervention, it is acknowledged that desired policy changes are likely to be slow, contested and non-linear. The Partnership aims to influence the policy process by engaging at different points throughout the policy cycle (figure 1).

It is theorised that the Partnership contributes to policy change by:

- **Identifying or acknowledging priority policy changes** in each pillar, based on policy dialogue between the Partners, and the investment criteria [scoping reform]
- **Supporting research and analysis** to understand the key constraints to achieving the policy change, with reference to opportunities and blockages in the policy cycle [scoping reform]
- **Identifying key decision-makers and stakeholders** with an interest in reform and assessing their relative influence over the policy process [scoping reform]
- **Identifying blockers** to reform, understanding their motivations and preparing to refute or work around counter reform [scoping reform]
- **Supporting policy development** using a range of strategies to support legislative, large-scale policy or local reform. Specific techniques may include: advocacy; drafting legislation and regulation; using evidence to develop policy and procedure; facilitating collaboration among government intuitions; providing technical assistance; local pilots and demonstrations; and educating and engaging the business and the community [supporting reform]
- **Building relationships of trust and mutuality** with reformers both inside and outside government. Where possible, drawing from existing relationships and using these as the platform for new engagements and initiatives. In new work areas, investing time and resources to establish credible relationships [supporting reform]
- **Bringing like-minded reformers together** to build momentum and support reform coalitions. Support may include: technical assistance, secretariat functions, access to international expertise/experience, support to plan for an resist counter-reform [supporting reform]
- **Embedding reform** by supporting mainstreaming, policy review and continuous learning and adjustment. Techniques may include: supporting GoI to advocate national budget (capital and maintenance), refining business processes and administrative processes, training, mentoring support to officials; scaling up pilots; supporting internal and external audit functions [embedding reform]

Figure 1: Influencing policy change



4.5 Investment Criteria

As a flexible facility, it is vital that a set of clear investment criteria is used to make decisions.

In selecting investments the Partnership uses the following criteria:

- Ability to demonstrate a clear and substantive contribution to one or more of the Partnership objectives
- ODA eligible as defined by the OECD Development Assistance Committee Reporting Directives on Overseas Development Assistance¹⁶
- Plan for sustainability, in particular for activities aiming to contribute change in public service policy and practice
- If a direct service delivery initiative, need to demonstrate the purpose and likely impact of catalytic change
- Link to initiatives carried out under previous justice and security programs, and/or other Australian aid investments
- Value for money
- The time horizon for achieving progress is reasonable and plausible and there are adequate resources to support this
- Alignment with the Aid Investment Plan for Indonesia and related Performance Assessment Framework
- Alignment with Indonesian and Australian government policy, in particular in relation to security cooperation, gender and economic diplomacy
- Risk for either partner in undertaking the initiative can be managed to a satisfactory level.

¹⁶OECD DAC Guidelines, in particular revised guidelines on Peace and Security www.oecd.org/development/evaluation/qualitystandards.pdf

5. Governance of the Partnership

The Partnership is governed by a Subsidiary Arrangement between DFAT and Bappenas under the *General Agreement on Development Cooperation* between Australia and Indonesia. The Subsidiary Arrangement covers all investments under the Partnership.

At a strategic level, the Partnership is governed by a Partnership Board comprising representation from DFAT and Bappenas. The Board meets on an annual basis to: set strategic direction for the Partnership in line with the priorities of both governments; approve an annual work plan documenting activities against budget under each work area; and review progress against outcomes documented in an annual report. To support the Board the managing contractor: monitors, collates and analyses progress; complies the annual work plan in consultation with DFAT and implementing partners; and provides the secretariat function for the Board.

As a part of the planning, programming and review process, the managing contractor facilitates policy dialogue between a range of partners (judicial institutions, government, CSOs, universities and business) to identify priority reforms under the pillars that contribute to one or more of the Partnership objectives. The contractor, in consultation with DFAT and relevant Bappenas Directorates, assesses the suitability of investing in these reforms using the investment criteria and develops an annual work plan. The contractor manages the implementation of agreed activities and reports on progress. The contractor also supports implementing partners to document and understand progress, and collates this analysis into a progress report for DFAT and Bappenas on a six-monthly basis (detailed in section 6).

For security investments, Australian Government agencies work with their Indonesian counterparts to identify priority reforms in counter-terrorism and security strengthening. Given the sensitivity of some activities, the activity proposals are submitted to DFAT to assess their suitability based on the investment criteria. DFAT provides endorsed proposals to the managing contractor for inclusion in the annual work plan. The annual work plan is discussed with the relevant Bappenas Directorates before being submitted to the Partnership Board for approval.

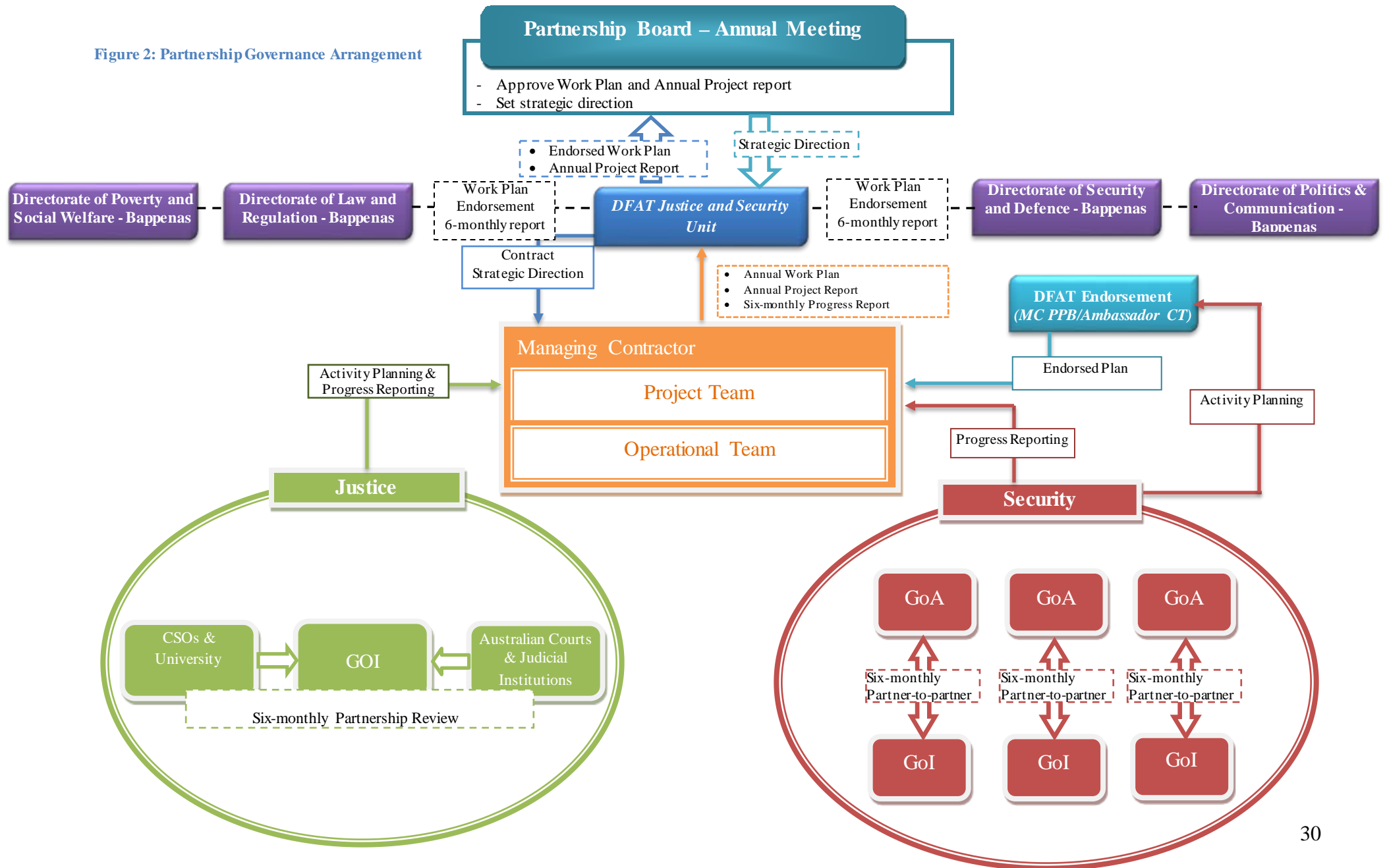
On a six-monthly basis, Australian government agencies conduct a process of review and adjustment with their counterpart agencies. This review assesses changes in the political economy, progress of activities and whether adjustments are required for the remaining six months of the work plan. The peer-to-peer partnership reviews also provide an opportunity to assess the health of the relationships between Indonesian and Australian agencies.

The contractor provides day-to-day operational support to Australian Government agencies in relation to logistics, administration, and financial and human resource management. The contractor assists Australian Government agencies to consider cross-

cutting issues of gender and disability in their work and to report against DFAT's and Bappenas' monitoring and reporting requirements.

The Partnership specifically engages an Australian Government legal adviser to ensure the work program is in line with broader bilateral law and justice cooperation including the newly established Ministerial Council on Law and Security. The adviser builds and maintains extensive relationships across the justice and security sectors; provides discrete advice on legal issues relating to the Partnership; supports the development of laws in response to terrorism and other transnational crimes; and building the capacity to implement transnational crime laws including through inter-agency and international cooperation.

Figure 2: Partnership Governance Arrangement



6. Monitoring and learning

As a purposefully flexible investment, it is vital that the Partnership monitors progress in each pillar and assess impact against its high-level objectives and goal. Reflecting on progress is critical to test the assumptions upon which interventions have been developed, and harness this to continually adjust. The contractor recruits and manages a monitoring and learning team with the expertise to:

- develop and implement a system for monitoring and learning
- train and support the implementing partners to report, explain and understand progress
- refine the Partnership's objectives over time
- assess the contribution of the Partnership's investments towards significant policy change.

In line with the Performance Assessment Framework (PAF) for Australia's development cooperation with Indonesia, the Partnership's monitoring and learning system focuses on measuring *significant policy change*. It is anticipated that investments under the Partnership contribute to PAF indicator number 21:

Number of significant instances where DFAT support resulted in improved policy.

This indicator aims to demonstrate the extent to which Australian-funded programs result in improved policy, with the intended outcome of Indonesia adopting 'more inclusive' and 'evidence-informed' policy and programs. The Partnership may also contribute to other PAF indicators including partnering with the private sector.

In order to measure the influence of the interventions on changes in the justice and security sector, the Partnership uses a narrative technique to measure policy uptake and implementation. This approach recognises that the Partnership works towards long term reforms that are generally context specific, non-linear and not amendable to quantification. The narrative approach to capturing progress assesses the Partnership's influence at different points throughout the policy cycle.

The monitoring and learning framework is aligned with Bappenas' targets and reporting requirements under RPJMN and the Sustainable Development Goals. Where possible, the Partnership adopts indicators and targets set by Bappenas to avoid duplication and to build the monitoring and evaluative capacity of relevant government agencies.

The monitoring and learning framework will be developed by the contractor in the early mobilisation phase in collaboration with DFAT and Bappenas.

6.1 Six-monthly review and adaptation

To ensure the Partnership works strategically towards its objectives, partners conduct a review and adaptation process every six months. The purpose of the six-monthly review and adaptation is to:

- learn from activities undertaken in the period
- situate the activities within the broader political economy
- maintain a flexible approach as well as progress towards objectives
- problem solve and managing issues including risk
- plan activities and document in annual work plan
- review activities and update work plan as required

For justice investments, the process includes all partners working in the sector and involves independent experts to assess progress. At strategic points throughout implementation, a partnership broker is used to evaluate the health of the partnerships. For security investments, Australian government agencies conduct peer-to-peer reviews with their counterparts and participate in the justice sector review as appropriate.

The process of review and adaption determines future funding and planning decisions based on whether activities are cumulatively making progress towards the Partnerships objectives. Data and analysis collected over a six month period by the monitoring and learning team provides the basis for understanding the changes occurring, or not occurring, and the foundation for reflecting, learning and further planning on a six-monthly basis. Through capturing thinking and experience in a structured way, the reflection process balances strategic thinking with responsive programing.

7. Role of the Contractor

A contractor manages Australia's investment on behalf of DFAT. The managing contractor is selected through a competitive tender process, in line with Australian procurement guidelines. The selected contractor enters into a contract with DFAT for a period of five years.

The managing contractor has responsibility for day-to-day management of the whole investment portfolio, in line with the contract, and DFAT's aid management and corporate policies. For justice reforms, the contractor works strategically with implementing partners and defers to DFAT for high-level strategic direction. The contract provides sub-contracts or grants to CSOs and invests in their capacity development as required. For security investments, the contractor provides operational support and, where appropriate, looks for opportunities to offer strategic advice and achieve strategic coherence. The contractor engages a team of technical staff and operational staff with the following attributes, among others:

- Extensive experience managing Overseas Development Assistance in Indonesia in the justice and security sectors, or other governance sectors;
- Broad and deep professional networks in Indonesia to ensure program implementation is informed by the best possible expertise;
- An approach to monitoring, evaluation and learning that fits the design and is well resourced;
- A culture of speaking with ‘one voice’ externally while promoting robust internal policy contestation;
- Capacity to deliver high-standard communication products and services including media and social media products;
- Experienced Contractor Representatives with a capacity to understand the Partnership’s role and position within Indonesian and Australian stakeholders;
- Proven partnerships management experience including managing relationships high-level government officials, local government civil society and the private sector;
- A proven ability to simultaneously manage risks and promote innovation;
- Financial systems that support program delivery across multiple sites in Indonesia;
- A capacity to provide accurate and updated financial information on expenditure to DFAT with short notice;
- Proven capacity to maintain high morale and a productive and inclusive working environment.

7.1 Project team

The contractor is expected to recruit and maintain a project team with following competencies:

- Overall facility management for investment of up to AUD 40 million;
- Recruiting and managing the staffing required for the facility, based upon the following principles
 - Utilising local expertise as much as possible
 - Ongoing utilisation of peer-to-peer partnerships between Indonesia and Australian justice and security institutions
 - Ensuring adequate resourcing is available for high quality research, learning and communications products;
- Risk management including political, reputational and fiduciary;
- Professional expertise in partnership brokering, including a commitment to train local partnership brokers;
- Stakeholder management including high-level government, CSOs, private sector and community;
- Communications including actively seeking opportunities for Indonesian and Australian stakeholders to engage constructively and raising awareness among partners;

- Technical expertise in monitoring, learning and evaluation with a focus on measuring policy reform;
- Technical expertise and demonstrated policy advocacy in gender and women's empowerment;
- Technical expertise and demonstrated policy advocacy in disability-inclusive development;
- Technical expertise and demonstrated policy advocacy in the following areas: anti-corruption, judicial reform, prison reform, counter-terrorism and countering violent extremism, and private sector engagement.

8. DFAT

The Partnership is managed by the Law and Security Section (Jakarta Post) reporting to Minister Counsellor Political and Public Diplomacy Branch. The Section will be responsible for management of the investment including:

- Oversight of the Partnership and provision of strategic advice to DFAT management;
- Management of the contract for the facility, including incentivising and assessing performance;
- Management of working-level relationships with the Government of Indonesia and support to DFAT management on high-level engagement;
- Monitoring, learning and reporting in accordance with DFAT's Performance Assessment Framework and aid quality processes;
- Management of investment-level risk register and escalation of risks as required;
- Internal reporting, with a particular focus on synergies between the justice and security elements;
- Communication and promotion of the achievements of the Partnership, including through the use of social and traditional media and contribution to the Embassy's public diplomacy agenda.

The Section works collaboratively with Political Section (Jakarta Post) and Indonesia Political and Governance Section (Canberra), including contributing to, and drawing from, analysis and research. The Section also contributes to whole-of-embassy priorities, including the Human Rights, Counter-terrorism, Gender and Disability Working Groups.

The composition of unit is:

- First Secretary, with strategic oversight of the Partnership and specific responsibility for planning, learning and adjustment;
- Unit Manager, with responsibility for head contract and day-to-day investment management, and managing judicial reform, communications and donor coordination;

- Senior Program manager, with responsibility for managing gender, disability and anti-corruption work areas, cross-cutting issues and impact evaluations;
- Senior Program manager, (Part-time) with responsibility for managing CT and CVE work areas, including liaison with Australian government partners at Jakarta Post and in Canberra;
- Program manager, with responsibility for prison reform, and management of risk, fraud and child protection across the investment.

9. Contractor Performance Assessment

DFAT conducts six-monthly performance assessments of the contractor, which are directly linked to payment. Performance assessments are conducted by the Justice and Security Section, in consultation with key stakeholders, and approved by Minister Counsellor, Political and Public Diplomacy.

10. Complementarities with other DFAT-funded, and other donor-funded programs

Collaboration and complementarity between the Partnership and other DFAT-funded and other donor-funded programs is required through the contract with the contractor. Representatives from other programs (DFAT-funded or other donor-funded) may be invited to a part of the six-monthly partnership review to discuss their work and opportunities for collaboration.

Internal mechanisms ensure regular and open communication between DFAT's governance programs to avoid duplication and maximise synergies between these programs. The Partnership works closely with the *Australia Indonesia Partnership for Economic Governance* and the *Government Partnerships Fund* in progressing legal reforms that complement DFAT's economic governance investments.

The Partnership's engagement with civil society also complements other DFAT-funded programs that work with civil society, including the Knowledge Sector Initiative, the Women in Leadership (MAMPU) program, Peduli (a program that supports marginalised communities in Indonesia) and DFAT's support to the implementation of the Village Law (KOMPAK).

The Partnership works closely with JCLEC and, where possible, utilises its training facility and expertise to support capacity development activities across justice and security institutions.

There are several other donors and international organisations working in the justice and security sector in Indonesia, (summarised in Annex 3). It is assessed that there is no direct overlap between the interventions of other donors and Australian's planned investment. Throughout the life of the investment, DFAT and the managing contractor will seek out opportunities to engage with other donors to ensure complementarity and collaboration where appropriate.

11. Risk

The context in which the Partnership is being delivered is dynamic, and at times, sensitive. The most important risk management strategy for the Partnership is to ensure that Australia's law and justice assistance in Indonesia is asked for, and approved by, the Indonesian government and that it works in close collaboration with Indonesian institutions. It remains critical that Australia's development assistance is not directed to influence individual legal cases, or perceived to be used for this purpose.

Major shifts in government policy

While there is current Indonesian political and bureaucratic support for the proposed goal and objectives of the Partnership, this could shift due to changing circumstances and other priorities for Indonesia. This would create some risks for the Partnership, particularly in its attempt to work collaboratively and in line with Indonesian Government interests and likely resourcing. Similarly, while the Partnership is currently well aligned with Australian Government policy, there is potential for that policy to change within the lifetime of the program.

To mitigate this risk, the Partnership has been designed as a flexible facility with scope to shift resources to meet emergent priorities, within a strategic framework. While the goal and high-level objectives of the program have been agreed between Indonesia and Australia, the activities to support these objectives will be developed throughout implementation. Should there be a major policy shift as a result of new government agendas in Australia or Indonesia, DFAT, the managing contractor and the implementing partners will use pre-existing relationships and networks to re-establish the credibility of the Partnership and re-scope its reform priorities.

Counter-reform and backlash

Given that the Partnership is seeking to achieve reform through indirect processes of facilitation, leverage and influence, there is risk that it will be criticised by stakeholders with an interest in maintaining the status quo. The Partnership will manage this risk by highlighting that all activities are developed and agreed through a strategic partnership between Indonesia and Australia. In essence, all reforms will be locally-led and have endorsement from the Government of Indonesia. The Partnership will also attempt to plan for counter-reform, through continuous assessment of the political economy and the development of strategies to assist reforms to overcome resistance and backlash.

Program performance

There is also a risk that identified policy objectives will be difficult to achieve or that unexpected changes will make their achievement difficult within the program lifetime. The process of outcome mapping and developing realistic annual progress markers will allow the program to monitor for risks in program performance. Further, the six-monthly, whole-of-partnership review will provide the opportunity for the partners to make adjustments in strategy, approach and operation as required.

Reputational risk

The risk of civil society partners being exposed to criticism that may reflect negatively on the bilateral relationship will be mitigated by requiring the managing contractor to insert a “bilateral relationship” clause in all sub-contracts — that is, a clause which prohibits the sub-contractor from engaging in any activity that may undermine the bilateral relationship between Australia and Indonesia, as determined in the Partnership Agreement. Consistent with previous interventions, the Partnership will not fund activities related to any specific legal case within the Indonesian justice system.

Program delay

The iterative approach poses the risk of delayed implementation, as the partners need to agree on the Principles of Partnership as well as policy outcomes under each work area. To mitigate this risk, the facility manager will engage a trained partnership broker to facilitate structured discussion and ensure decision points. It will be critical to ensure the representatives from both governments are committed to finding the common ground for reform. Through early engagement with the Government of Indonesia in the design process as well as throughout implementation, and continuous political economy analysis, the risk of the Partnership stalling will be mitigated. The Partnership has also allocated specific budget for ‘rapid response’ activity that may not be aligned with a work area but that will help to build a relationship or achieve ‘quick wins’ while policy dialogue is underway.

Work areas

There are specific risks associated with each work area. In particular, work areas that are associated with challenging existing arrangements such as addressing corruption, or challenging work practices within justice and security sector institutions, run some risk of creating opposition to the program. In order to mitigate this risk, Partnership’s activities be implemented in cooperation with Indonesian government, CSO and business partners, and that it is working in line with agreed approaches to reform within the Indonesian bureaucracy.

Risk management plan

The contract manager supports the partners’ efforts to monitor all risks closely, including through a current Risk Management Plan throughout the life of the investment. In addition, the DFAT program team retains its own risk register, with any significant risks to be escalated to the DFAT-wide risk matrix.

12. Budget

The Partnership will be tendered at up to AUD 40 million over five years.

Annex 1: Law and Justice Sectoral Analysis

Indonesia's justice and security sector has undergone significant reform since the resignation of President Soeharto in 1998. When compared with other emerging democracies Indonesia's democratic transition has been fast and far-reaching. According to World Bank, it took the fastest reforming countries of the twentieth century 41 years to move from average levels of governance to 'good enough'.¹⁷

During the New Order (1966-1998), the government controlled the judiciary, judges were classified as public servants and the courts had no control over resources or the appointment of judges. Courts were also closed from public scrutiny. Commentators have widely acknowledged that the result was political interference and lack of independence of the courts, leading to poor performance, corruption and a lack of access to legal recourse for the majority of Indonesians.¹⁸

Under Soeharto, the Indonesian police force was controlled by the military and served the primary role of maintaining internal security and the hegemony of the regime. Education and training of police were militarised, resulting in an authoritarian approach to law enforcement.¹⁹ While the police played a major role in maintaining state security, budget allocations and police numbers relative to the population were low and corruption was institutionalised. These factors, among others, led to deep mistrust and fear of the police in the community.

Parliamentary democracy was reinstated in 1998 and the constitution was amended to include separation of powers, direct elections, a Bill of Rights and a Constitutional Court. In 1999 the government adopted a package of reforms known as the 'one roof system' to bring all of Indonesia's judicial functions under the Supreme Court, independent of the legislative and executive branches of government. These reforms also introduced time limits on court decision making, mandatory written decisions and publication of decisions.²⁰ Although the regulations were passed in 1999 it was not until 2004 that the one roof reforms were implemented.

The one roof reforms effectively re-established the judicial system in Indonesia, however, it is important to note that most New Order institutions have been slow to reform and some are still resistant to change. Needless to say the reform process has been uneven. Some institutions have undergone significant reform, such as the Supreme Court and the Religious Courts, while others including the Chief Prosecutors Office and the Police have been more difficult to penetrate. Reform processes underway since 1998 remain vulnerable to elite 'pushback' from conservative judicial figures, and others who stand to lose out from a more transparent and functional system. In addition,

¹⁷ World Bank, *World Bank Development Report 2011: Conflict, Security and Development*, Washington DC: World Bank, 2011, pp.108-109

¹⁸ Overseas Development Institute, *Civil Society Contributions to Justice Sector Reform and Access to Justice*, AIPJ commissioned evaluation, 2016.

¹⁹ Lindsay, T., 'The Indonesian Law and Justice Sector: A short assessment of the progress of reform', paper commissioned by the Australia Aid Program, 2014

²⁰ ODI, *Civil Society Contributions*

Indonesia's judicial and security institutions continue to operate largely in isolation, and at times in contradiction, from one another. In some cases there are sound policy reasons for this separation; however, in most cases these divisions hinder the delivery of fair, transparent and consistent justice and security services.

a. The Judiciary

Indonesia's judicial system is complex, diverse and in many respects unique. The Supreme Court is Indonesia's peak appeal court, and also administers all other courts with the exception of the Constitutional Court. Four branches of the judiciary exist under the Supreme Court: General Courts; Military Courts; Religious Courts; and Administrative Courts. As outlined in the table below, there are a large number of courts in Indonesia with varying mandates.

Table 2: The Indonesian court system

<i>Court</i>	<i>Role</i>
Supreme Court	<p>Peak appeal court</p> <p>Administration of all other Courts (except Constitutional Court)</p> <p>Gained independence from the executive in 2004, including separate budget allocation and management of the careers of judges for more than 800 courts, 7,000 judges, and 27,000 court officials.</p>
Constitutional Court	<p>Decides on applications for review of the constitutionality of statutes passed by the parliament</p> <p>Does not hear appeals and decisions cannot be appealed</p> <p>Commenced operations in 2003 and has since created a forum for debate on the interpretation and application of the Constitution and a body of accessible, reasoned decisions</p>
General Courts Total no: 330	<p>Operate at the district (<i>kabupaten</i>) and city (<i>kota</i>) level as courts of first instance for civil litigation and criminal proceedings (except those within the jurisdiction of the special courts)</p>
Religious Courts Total no: 343	<p>Jurisdiction over disputes between Muslims in specified areas of Islamic law (inc. marriage, divorce, inheritance, trusts and Islamic finance)</p> <p>More than 95% of cases are divorce applications (around 70% brought by women)</p>
Administrative Courts Total no: 26	<p>Jurisdiction over disputes between Indonesian citizens and the government regarding alleged infringements of the law or misuse of power by a state organ or official but only after other administrative avenues have been exhausted.</p> <p>Case load is very low in comparison to other courts</p>
Military Courts	<p>Jurisdiction over matters involving military offences and alleged breaches of military law. Jurisdiction depends on the rank of the officer being tried and the type of breach alleged.</p> <p>Under New Order heard a wider ranges of matter involving military officers.</p>

Appeal Courts Total no: 34	Appeal from all first instance courts are heard by High Courts in all provincial capitals. Divided into: General; Religious; Administrative and military. The high courts have administrative and supervisory relations with the relevant first instance courts.
Special Courts (within the general courts) Total no: 6	These include Anti-corruption Court; Commercial Court; Industrial Relations Court; the Fishery Court and the Taxation Court Created to hear cases that require specially-trained judges.

Of the courts listed above, the Supreme Court, religious courts and general courts have been the most willing and able to implement institutional changes. The publication of over 1.5 million court decisions on the Supreme Court's website has significantly increased transparency and accountability. The availability of court decisions has prompted analysis and external scrutiny by CSOs, legal scholars and the media. The database is also used by businesses and potential investors as part of due diligence processes. The introduction of a chamber system (specialist streams for judges) in the Supreme Court has resulted in the allocation of judges with a higher degree of specialisation in the area of law they are adjudicating and greater internal scrutiny of decisions. Significant progress has also been made in challenging the once prevalent culture of impunity for judges. An ethics committee within the Supreme Court has worked with the Judicial Commission on developing an Ethics Code and Judicial Conduct Guidelines and has punished many court staff for violating the code. Some judges have been dismissed and others have been tried and convicted.

Religious courts have been reform leaders within the judiciary, in particular with regard to legal sector assistance programs. Through the introduction of fee waivers for poor litigants and the expansion of circuit court services in remote areas, the religious courts have assisted more poor and isolated Indonesians to access justice. The expansion of services has dramatically increased the number of legal identity cases, improving the ability of poor and isolated individuals to access vital legal identity documents and the social services that flow from them. Religious courts have also pioneered online publication of court judgements, a practice which has now been taken up by all religious courts and general courts. Religious courts and general courts have also improved their case management through the introduction of an electronic case file system; enabling judges to more effectively manage their caseloads and justice-seekers to monitor the progress of their case.

Judicial reforms have been significantly aided through partnerships between Indonesian and Australian courts. The involvement of Australian Courts in Indonesian Courts' reform process was formalised in 2004 through the signing of a memorandum of understanding (MoU). The Family Court became a party to that agreement in 2007. The MoU has an annexed work plan that is updated every two years. Assessment suggests

that the MoU arrangement has proven an effective mechanism for court-to-court development work.²¹

b. Law enforcement and oversight agencies

A range of government agencies have responsibility for policy making, planning, budgeting, implementing and overseeing justice and security services, and, like the courts, reform efforts have had mixed results. Table 2 outlines some relevant government agencies involved in the sector:

Table 3: Law enforcement and oversight agencies

Agency	Role
Judicial Commission	<p>Responsible for ensuring accountability of the courts through:</p> <ul style="list-style-type: none"> • Recommending candidates for selection to the Supreme Court • Assisting in the appointment of judges to some lower courts <p>‘External’ supervision of judicial conduct based on Code of Ethics and Judicial Behaviour Guidelines- but cannot seek to overturn a judicial decision or analyse a decision for the purpose of training and capacity building</p> <p>Supervision of judicial conduct by receiving and investigating complaints from the public; monitoring court sessions; and making recommendations to Supreme Court or Constitutional Court . Commissioners are appointed by the President.</p>
Chief Prosecutors Office	<p>Combined public prosecution service and Attorney General’s office. Comprised of 19,500 prosecutors across Indonesia who carry out criminal prosecutions.</p> <p>Supposed to play both a political role as chief lawyer to the government and an independent role as the public prosecutor (the source of internal tension)</p>
Police Force	<p>Upholding the rule of law with exclusive jurisdiction over internal security matters</p> <p>Separation from the armed forces by legislation in 2003</p>
Corruption Eradication Commission (KPK)	<p>Independent statutory organisation created in 2003 to carry out investigations and prosecutions of corruption offences independently of the police and public prosecutors</p> <p>Wide powers not available to any other organisation include: taking over investigations from police and prosecution; phone tapping; freezing bank accounts; restricting movements of suspects</p>
The Ombudsman	<p>National-level sector agency designed to mediate disputes between citizens and government departments</p> <p>Established in 2000 with very limited influence it was re-established in 2008 and since then has increasingly become an</p>

²¹ Lindsey, T, *Ten years of Court to Court Partnership. Assessing the impact of Australian engagement on judicial reform*, 2014: <http://www.aipj.or.id/uploads/files/BUKU>

Ministry for Law and Human Rights	<p>active watchdog institution (yet to reach international standards) with offices in every province</p> <p>Extremely broad mandate at the national level including: human rights protection; human rights research and development; immigration; prisons and corrections; legal drafting; intellectual property law; registration of companies; domestic and overseas asset recovery; national legal aid system; coordination of the government's legislative program.</p> <p>Local level: provincial offices responsible for managing confiscating assets and unclaimed estates; special facilities for narcotics offenders; and immigration detention centres</p>
Witness and Victim Protection Commission, (LPSK)	<p>Mandate since 2006 to protect victims and witnesses who have revealed information leading to a criminal prosecution, and provide witnesses and victims with restitution and compensation through the courts</p>
National Planning and Development Agency (BAPPENAS)	<p>Coordinates legal sector reform policy formulation and implementation by working closely with sectoral institutions, including courts</p> <p>Acts as the central coordinator for donor assistance and plays a key role in defining the nature of foreign intervention in the justice sector</p>
Ministry of Politics, Law and Security	<p>Planning and coordination of government's policies in law, politics and security. Reports directly to the President and works closely with several ministries including Home Affairs, Foreign Affairs, Attorney General, National Intelligence Agency, Defence, the Police and the Army.</p>
National Counter Terrorism Agency (BNPT)	<p>Established in 2010 to formulate counter-terrorism strategy and policies including working with other government agencies to implement the National Terrorism Prevention Program.</p> <p>Produced a De-radicalisation Blueprint in 2013 that identifies key rehabilitation and 're-education' of radical prisoners as a CVE priority.</p>

The KPK is regularly identified as the most trusted law enforcement agency in Indonesia. As a purpose-built institution with impressive human, organisational and political capital, the KPK has taken significant steps to investigate and prevent national corruption.²² The KPK has become increasingly focused on corruption prevention, including implementing campaigns that engage citizens in the prevention and reporting of corruption.

KPK has faced major threats since its inception in 2003. In 2009, the Constitutional Court created a new statute that granted the Anti-Corruption Court exclusive jurisdiction over corruption cases. The statute also mandated the establishment of new Anti-corruption courts in all provinces and gave the Chief Judge in each province the power to determine the ratio of 'ad hoc' versus 'career judges'. The result was that anti-

²² Since late 2012, two superior court judges have been dishonourably discharged by the KPK. The KPK secured 191 high-level corruption convictions in 2013, compared to 0 in 2003.

corruption courts were significantly weakened and began to grant acquittals for corruption cases. Since 2009, other decisions of the Constitutional Court have prevented the KPK from prosecuting corrupt acts that took place prior to its establishment and restricted the previously wider definition of corruption. More recently, the parliament has considered amending the KPK Law to Commission's authority.

The KPK has also been attacked through unofficial channels, most famously through a conspiracy involving prosecutors, the police and suspects to frame the Deputy Commissioners of the KPK. The plot eventually failed and in fact had the opposite effect of increasing public support for the KPK. While the framing attempt highlighted the resentment from law enforcement agencies towards the KPK, it also demonstrated the KPK's ability to attract strong civil society support to defend its legitimacy. With continuing high levels of civil society scrutiny and strong community support, the KPK is likely to continue as a high-performing and influential institution.

The corrections system, (within the Ministry of Human Rights), faces a number of serious challenges including:

- *Chronic corruption*: corruption pervades the system—starting from inmates paying unofficial fees to access prison services—and reaching outside of prisons to inmates being able to access the internet and phones to run illegal businesses. It is commonly acknowledged that visitors will pay bribes and that wealthy inmates can pay for luxury services and permission to leave prison for holidays.
- *Overcrowding, poor facilities and low quality services*: Indonesia's prison population has grown exponentially and is dominated by first-time offenders. Indonesia's 459 prisons are designed to have a maximum capacity of 109,000 inmates, while the current population sits at around 186,381.²³ Prisons in urban centres are often more than 200% over capacity, whereas prisons in remote locations often remain half full. Most prisons are in decaying condition and prisoners do not have adequate access to food, health care and clean water.
- *Prison overstay*: prisoners serving longer time than their sentences remains an issue for some inmates. While changes to regulations stipulated new procedures for prison heads in releasing overstaying inmates, the implementation of this regulation remains inconsistent across prisons.
- *Prison-based radicalism*: prison overcrowding results in terrorist offenders often being held in blocks and cells alongside the general inmate population, where they are known to recruit for new supporters. Through bribes, convicted terrorists have also gained access to mobile phones and other devices, which according to some sources have been used to plan and coordinate attacks.²⁴
- *Poor treatment of and inadequate services for women*: only one-quarter of female prisoners are in women-only facilities. The remainder are in facilities

²³ See <http://smslap.ditjenpas.go.id/public/grl/current/monthly>

²⁴ International Institute for Peace building

designed for men, in which they face increased threat of abuse and a lack of access to gender-appropriate social, recreational and vocational activities.²⁵

The corrections system experienced limited reform until 2008. However, its work since that time, supported by Australia through the Asia Foundation, has resulted in some improvements. Most notably, an information system has been established to improve the management of prisons and remand centres. All of Indonesia's 459 prisons are now covered by an electronic prisoner management system, which among other benefits, has reduced the average time to process a parole application in 2013 to three weeks, down from three months in 2011. Challenges remain in ensuring the database is used to its maximum potential to improve prison management and, where appropriate shared information with other law enforcement agencies.

The **Judicial Commission** has been partially successful in implementing its mandate, however, its role in monitoring judicial conduct has created significant controversy since its inception. Following a decision of the Constitutional Court in 2009, the Judicial Commission's authority was reduced to 'external' supervision of judicial conduct. Consequently, the commission now supervises judicial conduct by receiving and investigating complaints from the public. The Commission relies heavily on cooperation from the Supreme and Constitutional Courts, and significant tension still exists over its oversight role. Over time, an increasing number of sitting judges have been appointed by the Commission, which has contributed to improved understanding of its role and value within the courts. However, recent budget cuts combined with tension with the Supreme Court has limited the Commission's role in judicial selection.

The **Chief Prosecutor's office** is commonly described as 'closed' and 'inaccessible' and resistant to reform. Many legal CSOs, with some donor support, have attempted to engage with the prosecutor's office; however, most have ceased or significantly reduced their engagement because of lack of traction. Unlike the Supreme Court, the Chief Prosecutor's office has not undergone constitutional or structural change. As such it remains firmly within the Executive, with the Chief Prosecutor sitting in Cabinet. Opportunity for engagement with the prosecutor's office remains limited due to a lack of commitment from the leadership and the entrenched culture of prosecutors viewing themselves as 'lawyers for the state'. However, it should be noted that pursuing Indonesia's goal of an integrated criminal justice system will necessitate a reform process with the prosecutor's office at some stage, possibly commencing with a baseline study to identify a hierarchy of reforms.

As a legacy of the New Order, the **Police force** continues to be viewed with deep mistrust and scepticism by the public. In response to the public demand for reform during *Reformasi*, the police invested heavily in community policing as the primary method to re-build public trust and respect. The success of community policing has been limited by broader constraints including: outdated attitudes within the police force; police corruption; lack of political will; and lack of training and resources. Police are

²⁵ The Asia Foundation, *Program Proposal: Prison Reform*

also limited in their ability to perform their functions due to poor funding and insufficient equipment. A number of donors have engaged with the Indonesian police, including Australia through the Australian Federal Police. While some training programs, in particular those on human rights, community policing, and domestic violence have been delivered successfully, a wider institutional partnership with the police has not been attempted.

c. Critical role of civil society

Civil society organisations (CSOs) have been the key drivers behind progressive changes in the justice system over the last 15 years. Due to the bureaucratic constraints that hinder government institutions from procuring technical expertise, CSOs have been welcomed into a number of justice institutions. They are regarded as valuable sources of technical assistance, and as well as stakeholders whose support is needed for important policy decisions. CSOs have engaged with and influenced a wide range of actors across the justice and security sector including: the courts, governments, the police, prosecutors, justice seekers and the broader community. Some organisations operate entirely within the system, for example, the Judicial Reform Team Office comprised of civil society actors embedded within the structure of the Supreme Court. Others, such as Indonesia Corruption Watch, sit firmly outside government institutions, while others still work in-between, for example the Indonesian Legal Institute for Judicial Independence. Table 3 provides a summary of key CSOs involved in justice reform.

Table 4: Legal CSOs

<i>Organisation</i>	<i>Profile</i>
LeIP (Institute for Study and Advocacy for Judicial Independence)	Research based CSO founded in 1999 to advocate for judicial reform. Focused on development of the administration of justice and the development of laws and policies
MaPPI (Indonesia Judicial Monitoring Society)	Independent institute formed in 2000 attached to the University of Indonesia engaged in monitoring the judiciary
PSHK (Indonesia Centre for Law and Policies Studies)	Research institute formed in 1998 focused on socially responsible law-making. Conducts legislative monitoring, legislative assessment and design of legislation
PEKKA (Female Headed Family Empowerment Program)	Formed in as a network that aims to empower female heads of households in contributing to a prosperous, just and dignified society. Now operates in 855 villages across 20 provinces.
PUSKAPA (Centre of Child Protection)	Research centre founded by University of Indonesia in 2009 in partnership with Bappenas and Columbia University. Works to improve policy of children's access basic services including justice
KontraS (Commission for 'the Disappeared')	Formed in 1998 by an alliance of organisations focused on monitoring human rights violations towards the end of the New

and victims of violence)	Order. Promotes awareness of victims of abuse, violence and repression, particularly result for abuse of state power
LBH (Legal Aid Institute)	Established initially in Jakarta in 1969 to provide legal aid to poor, legally illiterate and marginalised people. Uses advocacy, strategic litigation and community empowerment to influence change. Now exists in a range of provinces, including Makassar and includes a specific network know as Association of Indonesian Women for Justice.
YLBHI (Indonesian Legal Aid Foundation)	Established to support the separate Legal Aid Institute in 15 provinces across Indonesia.

CSOs have influenced a range of important changes including:

- enactment of legislation, regulation and decisions, including at national, provincial, ministerial and judicial levels;
- institutional restructuring, most notably in the Supreme Court and the development of a national legal aid system;
- expansion of services for citizens, including access to legal aid, ability to obtain legal identity and improved case handling and increasing the number of citizens accessing legal services.²⁶

CSOs have played a key role in increasing public demand for better governance, including empowering citizens to stand up against government attempts to weaken the authority and budgets of the KPK. Faith-based social organisations, such as Nahdlatul Ulama (NU) and Muhammadiyah, have also played an important role in promoting policy-making that is based on an interpretation of Islam which promotes tolerance and rejects violent extremism.

According to a recent evaluation conducted by the Overseas Development Institute, the most effective tactics employed by legal CSOs can be characterised as collaborative, evidence-based and gradual, as opposed to confrontational and value-based.²⁷ Universities and CSO have successfully conducted research to build a strong evidence base, communicated the evidence and worked together with government and judicial institutions to formulate policy. The investment made by CSOs in relationships and alliance-building with government institutions as well as other community organisations was assessed by ODI as a critical factor associated with their ability to influence.

²⁶ ODI, Evaluation of the Role of CSOs, March 2016

²⁷ *ibid*

Annex 2: Summary of other donor's program

Sector	Donors	Time frame
Court reform	USAID	C4J (2010-2015)
	EU (UNDP)	SUSTAIN (2014-2019)
	The Netherlands (IDLO)	Rule of Law Cooperation (2016-2017)
	UNODC	2012-2015
Prosecutions	USAID	C4J (2010-2015)
	UNODC	2012-2015
Legal Aid	USAID	<ul style="list-style-type: none"> C4J (2010-2015) MAJU (2016- 2021)
	UNDP	SAJI (2012-2016)
Anti-Corruption	USAID	<ul style="list-style-type: none"> SIAP -1 (2011- 2016) CEGAH (2016 – 2021)
	UNODC	2012-2015
	DANIDA	Support to Good Governance in Indonesia (2014 – 2018)
Prison Reform	UNICRI	High Risk Assessment for High Risk Inmates (2015 – 2016) – piloting phase
	Norwegian Embassy (RWI)	2014-2016
CVE/CT	DANIDA	Support to Good Governance in Indonesia (2014 – 2018)
	UNICRI	High-Risk Assessment on High-Risk Inmates (2015 – 2016) – piloting phase
	UNODC	2012-2015
Disability inclusion	UNESCO	Promoting Social Inclusion of Person Living with Disabilities in Indonesia (2013 – 2015)
	Handicap International	<ul style="list-style-type: none"> Inclusive Education Phase III (2016 - 2017) Disabilities Inclusion with Indonesian Red Cross (2016 - 2017) Advocating for Change Phase III (2015-2018)

