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Indonesia Case Study

EVALUATION OF AUSTRALIAN LAW AND JUSTICE ASSISTANCE



DECEMBER 2012



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Cover image: The General Court of Stabat in North Sumatra, Indonesia, holds a circuit court in Gebang district in 2012. Australian assistance has increased access to circuit courts which provide a one-stop service to parents who cannot afford to travel to the city to obtain a birth certificate for their children. Photo courtesy of Hilda Suherman

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Abbreviations

AFP	Australian Federal Police
AGD	Attorney-General's Department (Australia)
AIPJ	Australia Indonesia Partnership for Justice
AsianLII	Asian Legal Information Institute
AusAID	Australian Agency for International Development
DFAT	Department of Foreign Affairs and Trade (Australia)
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
IMF	International Monetary Fund
IT	Information technology
JCLEC	Jakarta Centre for Law Enforcement Cooperation
LDF	Indonesia-Australia Legal Development Facility
NGO	Non-government organisation
NSW	New South Wales
ODA	Official Development Assistance
ODE	Office of Development Effectiveness
PEKKA	Pemberdayaan Perempuan Kepala Keluarga (Women-Headed Household Empowerment)
SMS	Short message service
UN	United Nations
UNDP	United Nations Development Programme
US	United States
USAID	United States Agency for International Development

Executive summary

This Indonesia case study forms part of a thematic evaluation by the Office of Development Effectiveness of Australian law and justice assistance. The objective of the evaluation is to assess the relevance and effectiveness of current Australian Government strategies and approaches to this important area of the Australian aid program, and to identify lessons to inform future programming choices. The evaluation also aims to promote improved coherence among the various Australian Government agencies involved in providing law and justice assistance (including AusAID, the Australian Federal Police, the Attorney-General's Department and others) by contributing to a shared understanding of the role that law and justice assistance plays within the Australian aid program.

This is one of three country case studies being conducted as part of the evaluation, alongside Cambodia and Solomon Islands. The case studies were selected in consultation with the relevant Australian Government stakeholders to reflect a diversity of country conditions. The evaluation was conducted during an 8-day mission to Indonesia from 4 to 13 April 2011.

Country context

Indonesia emerged from dictatorship and virtual economic collapse just over a decade ago to become a confident, rapidly growing country with an increasingly important voice in world affairs. With 234 million people, it is the world's fourth most populous country and Australia's biggest neighbour. Indonesia has a per capita income of nearly US\$4000 and has been making considerable progress in reducing poverty. However, 110 million people still live on less than \$2 per day and regional disparities are high.

Indonesia continues to struggle with major institutional deficits. Its radical decentralisation process created major capacity-building challenges at sub-national levels, and petty corruption is rife. At the central level, political transition has been gradual in nature, leaving in place strong vested interests from the previous regime. Corruption scandals are a constant feature in the Indonesian media, and despite strong public commitment by the Indonesian Government, the corruption problem has proved difficult to address.

Australian assistance

Australia has been providing small-scale assistance in law and justice in Indonesia since the 1990s, and launched its first major project, the Indonesia-Australia Legal Development Facility (LDF) in 2003. Since the completion of the LDF in 2009, a transitional assistance program has been in place while a new program, the Australia Indonesia Partnership for Justice (AIPJ), was under development. The purpose of the LDF was to support the first legal and judicial reforms after the political transition process. It was a highly flexible program that combined a core set of activities on access to justice, human rights, anti-corruption and transnational crime with a small grants facility able to respond rapidly to initiatives proposed by the counterpart agencies

and civil society partnership. The main partners were the Supreme Court, including its Religious Court Division, the prosecution service in the Attorney-General's Department, the Corruption Eradication Commission, the Human Rights Commission and the National Commission on Violence Against Women.

Other Australian support has included:

- a tripartite agreement between the Federal Court of Australia, the Family Court of Australia and the Indonesian Supreme Court on capacity building and sharing of experience
- developing Indonesian capacity for mutual legal assistance and international criminal cooperation, with support from the International Legal Assistance Branch of the Attorney-General's Department
- a joint training centre on transnational criminal cooperation serving the region as a whole, known as the Jakarta Centre for Law Enforcement Cooperation (JCLEC)
- a Corrections Reform Project run by the Department of Foreign Affairs and Trade in partnership with the NSW Department of Corrective Services, assisting with early reforms to the Indonesian prison system
- a range of other assistance from the Australian Transaction Reports and Analysis Centre (AUSTRAC), the Office of Transport Security and regional programs.

Achievements

Australia has been one of the most successful donors in the law and justice sector. The core of the assistance strategy has been to provide the leadership of the justice institutions with financial and technical resources to support the development and implementation of reform blueprints. In one of the most innovative aspects of the assistance, Australia funds support teams in the Supreme Court and Attorney-General's Office staffed by individuals brought in from non-government organisations (NGOs) and the private sector, which play an internal advocacy function and provide technical support for the leadership. The assistance has been set up in a flexible manner, to be able to respond quickly to requests by the counterparts and opportunities arising through the reform process. This flexible approach and the high-quality relationships it engendered enabled Australia to support the judicial reform process through a delicate early phase.

The twinning program between the Australian and Indonesian courts has been an important element of the assistance, giving rise to "close, multi-layered and subtle relationships".¹ Indonesian judges and court officials clearly appreciate direct policy dialogue with their Australian peers, and are more receptive to advice from fellow judges and court officers than from consultant advisers. The Australian courts have supported a range of reforms, including new case management systems, increased transparency and improved access to justice.

¹ Mooney, John and Budi Soedarsono, "Indonesia – Australia Legal Development Facility: independent completion report", May 2010, p. 3.

In one striking success story, ‘access and equity’ studies in the courts identified that women in poor communities were having trouble accessing the courts to legalise their marriages and divorces, causing them a range of problems. Australian assistance led to an increase in court budgets for fee waivers and circuit courts, resulting in significant and lasting increases in access to justice for poor women. Other results to which Australia has contributed include reduced case processing times in the Supreme Court, increases in judicial transparency and an impressive track record of successful corruption prosecutions by the Corruption Eradication Commission.

While this is a substantial set of results, much of the Australian capacity-building support for formal justice institutions is yet to result in measurable improvements in the quality of justice services provided to the Indonesian public. In part, this is because the LDF assistance was formulated in such a way as to make measurement of results difficult. But it may also be because capacity constraints, although endemic, are only one constraint on the delivery of justice services, given the difficult political environment and the existence of strong vested interest in the status quo. In these circumstances, capacity-building approaches need to be balanced by a strong focus on service delivery and access to justice.

Conclusions and recommendations

The evaluation notes a number of innovative aspects of the Indonesian assistance, including its flexibility, its strong relationships, its promotion of reform partnerships between the justice institutions and NGOs, the use of research and analysis to inform the assistance, its successes in attracting permanent budgetary allocation for justice services, and its use of transparency as a strategy for tackling corruption.

Whole-of-government delivery of assistance has been, on the whole, a source of strength, and there are advantages to both countries in building long-term relationships between Australian and Indonesian institutions. There are, however, some limitations. Australian Government agencies without a permanent presence in Indonesia are limited in the types of assistance they can provide. They tend to offer support that can be provided remotely or on short country missions, such as training courses, studies or draft legislation. Assistance of this type, even when formally agreed with the partner institution, can easily become supply-driven. We note the conclusion of the Independent Review of Aid Effectiveness that the multiplication of small-scale assistance delivered by separate agencies can be a cause of fragmentation, with costs for both coherence and value for money.²

There are at present no common budgetary or planning processes for law and justice assistance in Indonesia, and arrangements for operational coordination are at varying stages of development. The evaluation team recommends a number of remedies at both Canberra and country levels, including adoption of a set of common goals and principles applying to all

² <http://www.aidreview.gov.au/>

Australian law and justice assistance, a clear recognition that all agencies involved in the delivery of Official Development Assistance are bound by Australia's aid effectiveness commitments, and a greater level of engagement with and support from AusAID to other agencies to assist them with developing their programs. To clarify roles and responsibilities among the agencies, it may be useful to draw a distinction between the 'pure' development law and justice agenda (where the touchstone is poverty reduction, and where AusAID needs to lead) and the promotion of international cooperation on crime as a global public good, where the Attorney-General's Department and the Australian federal agencies should be setting the priorities.

The case study makes a number of other recommendations for the Indonesian law and justice assistance, including focusing the AIPJ on achieving incremental improvements in service delivery and resolving issues around access to justice, greater use of transparency and public information to tackle corruption within the justice system, more investment in aid effectiveness processes including joint funding with other donors of independent commissions and NGOs, and better integration of the World Bank's Justice for the Poor research into the planning and programming of Australian assistance.

1. Introduction

This case study of Australia's support for law and justice in Indonesia was undertaken as part of a thematic evaluation by the Office of Development Effectiveness (ODE) of law and justice assistance within the Australian aid program. The objective of the evaluation is to assess the relevance and effectiveness of current Australian Government strategies and approaches to law and justice assistance, and to identify lessons to inform future programming choices. The evaluation also aims to promote improved coherence among the Australian Government agencies active in the area by contributing to a shared understanding of the nature and role of law and justice assistance in the Australian aid program.

This is one of three country case studies being conducted as part of the evaluation, alongside Cambodia and Solomon Islands. Each case study examines the full range of Australian Official Development Assistance (ODA) in the law and justice field.

The evaluation team for the Indonesia case study consisted of Marcus Cox, Emele Duituturaga and Nur Sholikin.³ It involved 3 days of consultations in Canberra, a 10-day mission in Indonesia (Jakarta, Cianjur and Semarang) from 4 to 13 April 2011, and a review of available program documentation and country literature. The team met with a range of Australian Government agencies, Indonesian Government agencies, independent commissions, donor partners, civil society organisations and informed individuals. A list of institutions and people consulted appears in Annex B. There was limited scope for primary research within the case study, but in Cianjur the team visited the religious court and the women's non-government organisation (NGO) PEKKA to view some of the program results.

The case study is organised as follows. Section 2 looks at the national context and the state of the Indonesian law and justice sector. Section 3 provides an overview of Australia's law and justice assistance. Section 4 considers the relevance and coherence of Australia's objectives in law and justice. Section 5 reviews the assistance strategies that have been used, and assesses how effective they have been in producing the intended outputs. Section 6 assesses to what extent the assistance has produced sustainable results for the intended beneficiaries. Section 7 considers whether the activities have been efficiently delivered and whether they represent value for money. Section 8 assesses the extent to which the cross-cutting policy objectives in

Box 1: The Office of Development Effectiveness

Established in 2006, ODE reports directly to the Director General of AusAID as Chair of the Development Effectiveness Steering Committee, an inter-departmental oversight committee for Australian aid. ODE's primary role is to monitor the quality and evaluate the impact of Australian aid. It undertakes in-depth evaluations of selected country programs and thematic areas. Its findings are used to guide the design and management of aid programs, to inform aid allocation decisions within a growing aid budget and to inform the wider community of Australia's contribution to international development and poverty reduction.

www.ode.ausaid.gov.au

³ Nur Sholikin is a law professor and analyst for the legal NGO Pusat Studi Hukum & Kebijakan (PSHK) Indonesia.

Australia's aid program (gender equality, HIV/AIDS, disability) have been pursued. Section 9 summarises the results and offers some recommendations.

2. Context

2.1 The national context

Indonesia presents a unique country context for the Australian aid program. It emerged from dictatorship and virtual economic collapse over a decade ago to become a confident, rapidly growing country with an increasingly important voice in world affairs. With 234 million people, it is the world's fourth most populous country and Australia's biggest neighbour. Indonesia has a per capita income of nearly US\$4000,⁴ and has been growing rapidly over the past five years on the back of sound macroeconomic management, a boom in commodity exports and substantial external investment. It has also made considerable progress in reducing poverty. The government's long- and medium-term development plans suggest a strong commitment to equitable development, and it has a range of social protection programs, including cash transfers and health insurance for the poor. Between 2004 and 2010, the national poverty headcount fell from 16.7 per cent to 13.3 per cent,⁵ although the national poverty line is contested and the overall figure masks large regional disparities.⁶ Using the \$2 a day (purchasing power parity) international poverty line more common for middle-income countries, some 110 million people or nearly half of the population continue to live in poverty. Indonesia has made good progress towards its Millennium Development Goal targets on income poverty, education and gender equality, but is struggling with water and sanitation and a number of health goals, including maternal mortality and malnutrition. Compared to other contexts in which Australia is offering law and justice assistance, Indonesia offers a high level of budgetary resources and institutional capacity.

Yet despite its impressive development record, Indonesia continues to struggle with major institutional deficits. The country is exceptionally diverse, with some 300 ethnic groups spread over more than 17 000 islands. Management of local conflicts (of which Islamic extremism is only one element) continues to challenge the political institutions. Indonesia's famous 'Big Bang' decentralisation of 2001, in which a large share of central government functions and resources were handed over to provincial and local governments virtually overnight, created vast capacity-building challenges at sub-national levels which will take many years to address. There is little accountability for decentralised functions and petty corruption is rife. At the central level, the process of political transition (*Reformasi*) has been gradual, leaving in place many of the personnel and power structures from the Soeharto era. The electoral system produces minority governments that have to engage in complex negotiations among different power centres in order to govern, and are restricted in their freedom to act by the political

⁴ According to the World Bank classification, this puts it on the threshold between the lower middle-income and upper middle-income group of countries: <http://data.worldbank.org/about/country-classifications>.

⁵ In 2010, the Indonesian poverty line was calculated as Rp 232 989 per person per month for someone living in a city and Rp 192 354 per person per month for someone living in the country: Badan Pusat Statistik, *Profil Kemiskinan di Indonesia Maret 2010*, No. 45/07/Th. XIII, 1 Juli 2010.

⁶ The poverty rate ranges from 3.2% in Jakarta to almost 39% in Papua (2006 figures): Bappenas, "Poverty reduction in Indonesia: a brief review of facts, efforts, and ways forward", April 2006.

compromises that this entails. With highly entrenched systems of patronage still in place, Indonesia ranks 110th in the 2010 Corruption Perceptions Index,⁷ and corruption scandals are a constant feature in the Indonesian media. While the current President has repeatedly expressed a commitment to tackling corruption, particularly in the justice system, in this political environment reform is very difficult to achieve. As a result, there have been many new reform initiatives under *Reformasi*, including the creation of a series of presidential taskforces and independent commissions to strengthen accountability, but they face determined resistance from vested interests.

Many observers believe that Indonesia's political and economic transition is at a vulnerable point. More than a decade into *Reformasi*, much of the initial reform momentum appears to have been lost, and the reforms accomplished to date remain vulnerable to political reversals (at the time of the mission, the Indonesian national legislature was, for example, contemplating removing the prosecution powers of the Corruption Eradication Commission—Komisi Pemberantasan Korupsi, KPK). Endemic corruption could prove to be a significant constraint on the country's economic and social development. It could also weaken the political institutions and leave them less able to manage conflict.

The combination of large numbers of people living in poverty (in absolute terms) and Australia's clear interest in ensuring that its powerful neighbour remains stable and democratic makes Indonesia a high priority for the Australian aid program. Indonesia is the largest recipient of Australian bilateral assistance at over A\$450 million per year, with the primary focus in education, infrastructure and social protection.

2.2 The justice system in Indonesia

The justice system in Indonesia has proved to be one of the more difficult areas of government to reform. Under the previous regime, Indonesia was governed by a 1945 post-independence Constitution, which was a very limited document weighted heavily in favour of the executive. It did not guarantee the independence of the judiciary, and while it contained some statements of individual rights, they were left to the legislature to define and (after the 1950s) not justiciable. With the judiciary tightly controlled by the executive, use of the courts by the public was very low and the legal profession was held in low esteem.⁸

After parliamentary democracy was reintroduced in 1998, the 1945 Constitution was retained but heavily amended on four separate occasions, introducing the separation of powers, direct elections across all layers of government, a Bill of Rights and a Constitutional Court with some powers of judicial review.⁹ Many new legal institutions were established after *Reformasi*,

⁷ Transparency International, "Corruption Perceptions Index 2010", 2010: www.transparency.org.

⁸ Arnold, Luke, "How to promote bad governance: the reputational failure of formal legal education in Indonesia", LL.M. thesis, School of Oriental and African Studies, University of London, 2008.

⁹ The Constitutional Court can review statutes of the national legislature, but only prospectively, not *ab initio*. It cannot strike down subordinate regulations.

including the Constitutional Court, Judicial Commission, Corruption Eradication Commission and National Commission on Violence Against Women (Komnas Perempuan).

As of 1998, much of Indonesia's civil and criminal legislation still dated from the Dutch colonial era. This has changed only gradually, as the annual output of the national legislature remains limited and it tends to produce specific-purpose laws (*lex specialis*) rather than new or amended codes. Key elements of the Indonesian legal system—including aspects of commercial law such as mortgages—continue to be largely based on colonial-era legislation. Indonesian laws tend to lay down general principles, which are later given practical application through regulations and subordinate legal instruments. There is no reliable single source for publication of these legal instruments, making it difficult to ascertain the content of the law. During the transition period, the donor community (including the International Monetary Fund through conditions imposed through its Stand-By Facility) exercised substantial influence on the legislative agenda, establishing some new specialised courts and introducing elements of the common law tradition (e.g. dissenting judgments) into Indonesia's civil law system. Decentralisation led to a proliferation of sub-national regulations, with widespread inconsistency with national law. Provincial and local regulations that contradict national statutes may be struck down either by the Supreme Court or by the Ministry of Home Affairs, but the backlog of potential review requirements is vast and the process cumbersome. As a result, only small numbers have been struck down.

The justice system was relatively slow to engage with the *Reformasi* process. However, under the 'One Roof' reforms enacted in 1999 and implemented from 2004 onwards, the independence of the judicial system was secured by transferring administrative and financial responsibility for the court system (including the general courts, religious courts, administrative courts and military courts) from the executive to the Supreme Court. This transfer of responsibilities and resources (including some 30 000 staff, 700 court buildings, official housing and so on) posed a vast management challenge for an organisation with limited administrative capacity. Since then, the Supreme Court has been the primary counterpart for international assistance on judicial reform, under the coordination of the National Development Planning Agency, Bappenas. One of the early judicial reform measures was to open up the appointment of judges to public nominations. A concerted NGO campaign led to the appointment of a number of 'non-career' judges,¹⁰ including a relatively reform-minded Chief Justice appointed from academia, Professor Bagir Manan. Finding himself in charge of an institution that was strongly resistant to reform, the Chief Justice turned to legal NGOs for help with developing a reform agenda, resulting in the first blueprint for reform. The Chief Justice then brought in individuals from NGOs as resource people to support its implementation, which was later institutionalised in the form of a Judicial Reform Team Office, funded initially through a Dutch aid program and later by AusAID. This close relationship between civil society and reform leaders within the justice system, funded by external donors ('triangulation'), is characteristic of the governance reform process in Indonesia.

¹⁰ Under the civil law system that Indonesia inherited from the Dutch, junior judges are recruited from the ranks of law graduates and gradually make their way up through the system.

The Supreme Court has since produced a second blueprint for reform, this time with broader participation from within its own ranks and external stakeholders. Some of the achievements of the reform process to date have been improved case management, substantially reducing the Supreme Court backlog, and increased transparency through the publication of judicial decisions, case timetables and fees. The religious courts, which have jurisdiction for family law for the Muslim population, have been leading on improving transparency and increasing access and equity for the poor population, including through fee waivers, legal aid services and circuit courts.

Corruption remains a serious problem within the justice system, with the judiciary ranked by the Indonesian public as the second most corrupt institution after the national legislature.¹¹ A legacy of the Soeharto regime, this is widely believed to range from petty corruption by court officials, with litigants making informal payments to secure basic services, to grand corruption in the allocation and adjudication of high-profile cases. A particular feature of corruption in Indonesia is the so-called ‘judicial mafia’—shorthand for an entrenched system of intermediaries (including lawyers) that negotiate corrupt outcomes. The President has announced a Taskforce on Judicial Mafia to address this issue. Despite very strong media and civil society focus on the corruption issue, and repeated statements from the President that tackling it is a high priority, it has proved a very difficult problem to resolve.

During the Soeharto era, the Indonesian police force was folded into the military, where it became militarised but remained a junior agency to the army. Following the regime change, it was re-established as a separate agency, and its numbers grew very rapidly from some 190 000 in 1998 to 250 000 in 2001.¹² However, despite a new police law in 2002 and some symbolic changes such as new uniforms, the police force remains essentially unreformed. Like the army, it is required to meet a significant share of its operating budget from commercial activities, which lends itself to rent-seeking. According to one assessment, it remains a “reactive organisation, and still defensive, arrogant and insensitive to major segments of the population”.¹³

The main successes in the anti-corruption field have come from the establishment of new institutions outside the main judicial system. The Corruption Eradication Commission has proved very successful at prosecuting high-profile corruption cases before the Corruption Court, although its future is currently in doubt as a result of a political campaign against it.

¹¹ Transparency International Indonesia, “Barometer Korupsi Global”, 2009. The judiciary received a score of 4.1 on a scale of 1 to 5, with 5 representing ‘very corrupt’.

¹² Rahmawatti, A. and N. Azca, “Police reform from below: examples from Indonesia’s transition to democracy” in International IDEA, *Democracy, Conflict and Human Security: Further Readings*, 2006, pp. 53–67: http://www.idea.int/publications/dchs/dchs_vol2.cfm.

¹³ Ibid., p. 60.

The reforms to date do not appear to have had much impact on improving public perception of the justice system, which is still seen as corrupt and controlled by powerful interests. The courts are considered a last resort for the general public for resolving disputes. Only 19 000 civil disputes were brought to first instance courts in 2009 throughout the country¹⁴—an extremely low figure given the size of the Indonesian population. (Half of these cases are family law—an area where Australian assistance has focused.¹⁵) In fact, it is reported that Indonesian society was more litigious in the colonial period than it is now.¹⁶ Indonesians are more likely to seek justice through the informal system, which typically consists of community and religious leaders applying a mixture of formal and local customary law (see Box 2). It remains unclear whether Indonesians have an active preference for informal justice; it may simply be the only alternative given the high cost of accessing the formal system. Research has also indicated that there is a significant element of coercion of weaker parties in local justice fora, and that corruption is present there as well.¹⁷

Despite impressive progress on strengthening civil and political rights over the past decade, there is still a range of human rights issues in Indonesia. These include use of the death penalty, some limitations on religious freedoms for minority sects (both Muslim and other) and a range of restrictions on women's rights, particularly through local legislation inspired by Islamic law. While the central government has the authority to revoke these local regulations, it rarely does so. There are also reports of the torture and mistreatment of individuals by police and within the prison system. Indonesia has some 700 000 migrant workers abroad, who face a range of human rights violations both at home and in their host countries. While Indonesia has strong anti-trafficking laws and has criminalised

Box 2: Customary law in Indonesia

Under a system inherited from the colonial period, traditional or customary law (*adat*) is still in force in Indonesia where not inconsistent with statute law, and applies principally in the areas of land and inheritance. Customary law varies substantially across different regions and ethnic groups, with as many as 300 variants, and its content is treated as a matter of expert evidence by the formal courts.

At the community level, customary law is applied by village, clan and religious leaders in accordance with local traditions. As in many other countries, customary dispute resolution tends to favour restitution and rebuilding of relationships, and can work against vulnerable members of the community, particularly women in respect of property rights and domestic violence.

Islamic teachings are not a source of law in Indonesia, except indirectly where they have been incorporated into statute or local customary law. While the religious courts have jurisdiction over the Muslim population in family law matters, they adjudicate according to statute law.

World Bank, Justice for the Poor program, "Forging the Middle Ground: Engaging Non-State Justice in Indonesia", May 2008

¹⁴ Supreme Court data cited in AusAID, "Australia Indonesia Partnership for Justice (AIPJ): design document", July 2010, p. 5.

¹⁵ AusAID and Supreme Court of Indonesia, "Providing justice to the justice seeker: a report on the access and equity study in the Indonesian general and religious courts 2007–2009", 2010, p. 33.

¹⁶ Pompe, Sebastiaan and Dian Rosita, "Indonesian legal sector analysis", July 2008.

¹⁷ World Bank, Justice for the Poor program, "Forging the middle ground: engaging non-state justice in Indonesia", May 2008.

forced labour in domestic service, there are low rates of prosecution under this legislation, and it is reported that there could be as many as 80–100 000 cases of sexual exploitation and trafficking each year. Indigenous communities have faced widespread violation of their rights to access and manage traditional land as a result of forestry and mining operations, and uncompensated displacement is widespread.¹⁸

There is a limited institutional structure for protecting human rights. The Human Rights Commission (Komnas HAM) conducts research on human rights issues, and has a mandate to receive individual complaints, which it can investigate and attempt to mediate. It receives some 5–6000 complaints each year, but reportedly only has the capacity to follow up a small proportion of them. It makes recommendations to government and the national legislature, but most of these are not taken up. The Ministry for Law and Human Rights has a Directorate General of Human Rights, which is responsible for producing human rights strategies for the government but is not particularly active. There is no functional link between the two institutions.

¹⁸ Data in this paragraph come from AusAID, “AIPJ background analysis pack”, undated.

3. Overview of Australian law and justice assistance

This section of the report provides a brief description of the main strands of Australia's law and justice assistance in Indonesia. The findings of the evaluation follow from Section 4 onwards.

3.1 AusAID bilateral support

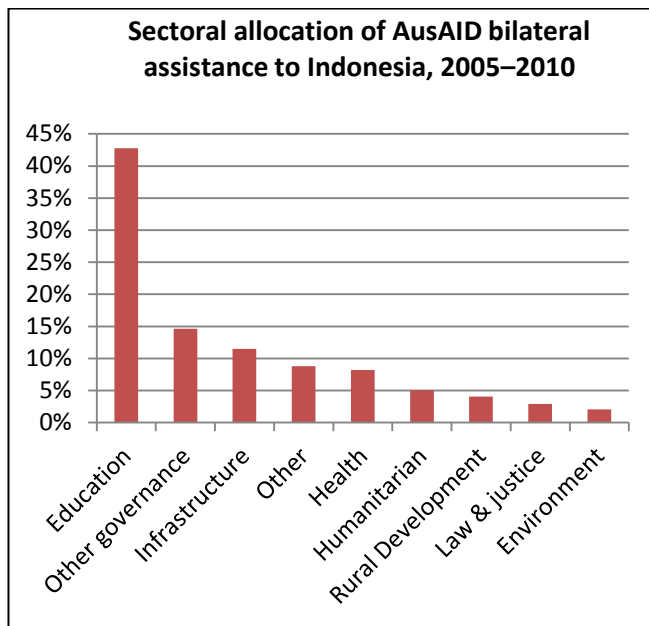
Australia began providing ad hoc assistance to Indonesian justice institutions during the 1990s, and established its first formal assistance project, the Law Reform Program,¹⁹ in 2002. This was a small-scale intervention with only modest objectives, which delivered a range of activities and developed relationships between AusAID and some Indonesian justice institutions, forming a foundation for later activities.

The first substantial project was the **Indonesia-Australia Legal Development Facility (LDF)**, which provided A\$24 million in assistance from 2003 to 2009. Implemented by a contractor on behalf of AusAID, the LDF supported a range of activities across four themes: judicial and legal reform, improved human rights, anti-corruption, and fighting transnational crime. The purpose of the LDF was:

“to strengthen the capacity of Indonesian Government and civil society institutions to promote legal reform and the protection of human rights through a facility that has the flexibility to provide core program support and respond to immediate and emerging issues.”

The objectives were therefore focused on the reform process itself. The LDF was a highly flexible design, which combined a core set of activities in judicial development and human rights with a small grants facility (Immediate and Emerging Priorities) able to support initiatives proposed by the Indonesian Government and civil society partners. Its primary counterparts were the Supreme Court (27% of funding), Attorney-General's Office (24%), Corruption Eradication Commission (13%), Human Rights Commission (12.5%), Religious Court Division of the Supreme Court (10.3%) and National Commission on Violence Against Women (4%). Over its lifetime, it supported some 154 separate activities.

¹⁹ The evaluation team was not able to find any documentation regarding the Law Reform Program.



Source: AusAID Statistics Unit

Following the completion of the LDF in December 2009, AusAID continued its core activities through a **Transition Program** (A\$2.7 million for an initial 9-month period, ultimately extended to around 18 months) pending the completion of a new design. The Transition Program, which was under implementation at the time of the evaluation, includes support to the Supreme Court, Attorney-General's Office and National Commission on Violence Against Women. It provides a framework of support for twinning arrangements with Australian courts (see below). It also includes research and analysis on a number of issues, including corruption and the rights of people with disabilities, to establish baseline information for the next phase of assistance.

While the Transition Program was under implementation, AusAID carried out a lengthy design process for a new **Australia Indonesia Partnership for Justice (AIPJ)**, commencing in mid-2011. The new program is quite open-ended in nature, and this case study will not review the design in any detail, although we note a number of lessons learned from past assistance and reflected in the new design. AIPJ remains a flexible program, recognising the dynamic environment in which implementation will take place. However, it is designed not as a facility (although a minor proportion of funds is reserved for small grants), but as programmatic support with activities developed through an annual work planning process. It will work with the National Development Planning Agency—Bappenas, the Supreme Court, Attorney-General's Office, Corruption Eradication Commission, National Commission on Violence Against Women and other state and non-state actors. AusAID has determined that it needs to play a more direct role in setting the strategic direction for the assistance. It has therefore recruited a Program Director under a direct AusAID contract, who will oversee the delivery of the assistance by the managing contractor and ensure a closer relationship between AusAID and the counterparts.

AusAID also funds the World Bank's **Justice for the Poor** East Asia and Pacific program. The funding for the Indonesia component of this program (US\$2 050 000 over 2008–13) is coordinated by AusAID's Law and Justice Unit in Canberra, but funds come from the Indonesia bilateral program. Justice for the Poor East Asia and Pacific is a research program launched by the World Bank in 2008 in partnership with AusAID, and also works in a number of other countries where AusAID has law and justice programs (Cambodia, Papua New Guinea, Solomon Islands, Timor-Leste and Vanuatu). It is an action-oriented research program aimed at generating a better understanding of the experiences of the poor in accessing justice, both formal and informal. It also engages in small-scale pilots designed to inform the development of legal empowerment activities. In Indonesia, it has carried out research into local justice mechanisms and how they interact with the formal justice sector. It has explored the barriers faced by poor women in accessing justice, and investigated drivers of corruption in local government. Piloting activities have included strengthening legal aid posts and dispute resolution processes at local level, working with Indonesian NGOs on paralegal support and women's access to justice, and working with five local governments on the quality of their regulations.

Altogether, AusAID's spending on law and justice in Indonesia has risen from A\$5 million in 2005 to nearly A\$12 million in 2010, but has declined as a proportion of a scaled-up bilateral program from 4.5 per cent to around 2.5 per cent.

3.2 Court twinning arrangements

The Federal Court of Australia and the Family Court of Australia have a tripartite agreement with the Indonesian Supreme Court governing cooperation on capacity building and sharing of experience. The cooperation among the courts is partially integrated with the AusAID assistance, in that there are overlapping objectives and both the LDF and the current Transition Program have supported court-to-court activities. However, the three courts set their own program for cooperation through an annual memorandum of understanding, first concluded with the Federal Court in 2004, with the Family Court participating from 2008. This memorandum of understanding, one of the first between superior courts of different countries, was an innovative model for judicial development cooperation that has since been emulated in other countries by Australian courts. Areas of support have included judicial transparency (including the publication of judicial decisions and other court information); financial management; case management reform (including backlog reduction); strengthening service delivery in family law and birth certificate cases, particularly for women, the poor and those living in remote areas; and leadership and change management, including assistance in the development of strategic plans. The Family Court of Australia has been closely involved in providing support to the Religious Court Division of the Indonesian Supreme Court, which handles family law matters for the majority Muslim population, including acting as a research partner on access and equity issues and helping to strengthen service delivery, particularly to women from poor communities. The relationship involves a series of reciprocal visits each year by judges and other court personnel, as well as ongoing support through email and telephone.

3.3 Support from the Attorney-General's Department

The Attorney-General's Department (AGD) International Legal Assistance Branch has a range of ODA activities in Indonesia, with a focus on developing Indonesian capacity for mutual legal assistance and international criminal cooperation. Australia and Indonesia have had a bilateral agreement on mutual legal assistance since 1995. AGD works primarily with the Ministry for Law and Human Rights and the Attorney-General's Office, both of which play a role in mutual legal assistance. Under AusAID's LDF program, AGD was the main delivery agency for the component on transnational crime. It has supported a range of legislative drafting initiatives on themes such as anti-money laundering, people trafficking and counter-terrorism, as well as on topics such as extradition and exchange of prisoners. The assistance typically includes analysing gaps between Indonesian regulations and the relevant international legal instruments, support for legislative drafting and follow-up training. There have been a number of short-term placements of staff between the institutions, to enable better understanding of each other's justice systems to support extradition requests.

3.4 Jakarta Centre for Law Enforcement Cooperation

The Australian Federal Police (AFP) and the Indonesian National Police have a joint training centre on transnational criminal cooperation, called the Jakarta Centre for Law Enforcement Cooperation (JCLEC), although it is located in the city of Semarang. JCLEC was first announced by the two governments in 2004 as a sustainable platform for the design and delivery of advanced law enforcement training, with an initial focus on counter-terrorism but broadening over time to include all forms of international criminal cooperation. While Australia is the main funder and constructed the large, high-quality premises, the Indonesian Government provided the site and other donors (including the European Commission) fund specific courses. Courses covering criminal investigation techniques, forensics, anti-corruption, immigration, international law enforcement cooperation, financial crime, terrorism and professional ethics have been offered to the Indonesian National Police and some 40 other Indonesian Government agencies, as well as to 46 other countries around the region. Trainers come from a range of Australian Government agencies (the AFP, AGD and others), Indonesian Government agencies, international organisations and other countries.

3.5 Corrections Reform Project

Through the Department of Foreign Affairs and Trade (DFAT), Australia is supporting the Directorate General of Corrections in Indonesia's Ministry for Law and Human Rights. The assistance is provided in partnership with the NSW Department of Corrective Services and The Asia Foundation, with funding from AusAID of around A\$650 000 per year. There are two strands to the assistance. First, funding is provided to The Asia Foundation for activities that include assisting the Directorate General of Corrections with developing a blueprint for reform, the development and piloting of an electronic database on prisoners, and a series of reforms designed to improve transparency in the prison system. Second, funding is provided

to the NSW Department of Corrective Services for short-term placement of officers to act as technical advisers. Activities include capacity building on how to produce standard operating procedures for the Indonesian prison system, and the development of a parole system, including psychological assessment of prisoners to enable more effective risk management.

3.6 Other assistance

There has been a range of other Australian assistance on law and justice in Indonesia. The AFP has a large complement of liaison officers, who provide some capacity-building support to the Indonesian National Police alongside their operational role. The Australian Transaction Reports and Analysis Centre (AUSTRAC) has provided support to the Financial Intelligence Unit of the Ministry of Finance on anti-money laundering. Australia's Office of Transport Security had made a substantial investment (A\$700 000 over two years) in improving law enforcement around the Bali airport. Indonesia also benefits from some of Australia's regional programs, such as the Asia Regional Trafficking in Persons Project. The evaluation did not examine these activities individually.

Activities of other leading donors in the law and justice field

Dutch/International Monetary Fund (IMF)

National Legal Reform Program

The Dutch, through their account at the IMF, have been engaged in the sector for some years, with the latest program (US\$7 million over 2 years) recently ended. Their assistance has supported the development of the Supreme Court's blueprint for reform, the Judicial Reform Team Office, the Judicial Commission, and specialist courts such as the Corruption Court. It had a substantial judicial training component. The program was implemented in partnership with Indonesian NGOs and academics, and was the most similar in content and approach to the Australian assistance.

United States Agency for International Development (USAID)/Millennium Challenge Account/US Department of Justice

Justice Sector Reform Program

The US Government has had a series of law and justice programs for more than 10 years, with an annual spend of approximately US\$4.5 million. It provides a range of technical assistance to the Supreme Court and the Attorney-General's Office, plus a range of special initiatives to support justice sector reform. In the past, it supported a judicial code of conduct and wealth reporting system, human resource management and procurement within the judiciary, improved transparency in the Corruption Eradication Commission, and the work of the Commercial and Anti-Corruption Courts. The US Department of Justice also provides support to Indonesian law enforcement agencies.

United Nations Development Programme (UNDP)

Strengthening Access to Justice in Indonesia

UNDP has recently completed a 5-year program on access to justice, carrying out pilots in three provinces focused on the demand side. Its activities included awareness raising of local communities and safe houses for victims of domestic violence. In the design of its new assistance, it has concluded that working solely on the demand side is not sufficient, unless it is linked to the formal justice providers. The new program will work with the traditional justice (*adat*) system in Aceh to resolve its linkages with the formal legal system. It will also assist the Human Rights Commission and Ombudsman to strengthen their national complaints mechanism.

European Union (EU)

Strengthening the Rule of Law and Security in Indonesia

This European Union project has been running since 2007, and includes support for the Corruption Eradication Commission, training of the Indonesia National Police on community policing, and human rights and training courses through JCLEC. From 2002 to 2006, the European Commission implemented a Good Governance in the Indonesia Judiciary program (US\$13 million over 4 years), which focused on judicial training. It has also provided support directly to the police and judiciary in Aceh, to strengthen conflict management.

4. Is Australia pursuing the right objectives?

This section of the evaluation looks at the objectives of the Australian assistance, their coherence and how relevant they are to the Indonesian national context and Australia's interests.

Australia has a diverse portfolio of law and justice assistance in Indonesia with no single set of objectives. In the literature on law and justice assistance, a distinction is often made between treating justice as an intrinsic good or as instrumental to the achievement of other development goals, such as economic growth, access to services, poverty reduction or improved governance.²⁰ The AusAID country strategies (2003 and 2008) define 'justice' as the development goal. There is no explicit link to other development outcomes (such as economic performance, social development goals or governance standards). The individual programs define their objectives in terms of specific changes to the legal system. The LDF objective was to promote 'legal reform' in order to create a more just and equitable legal system. Its focus was therefore on institutional change. The new AIPJ design is focused more on the delivery of law and justice services. Its objectives are 'better quality legal information and services', aimed at making justice more 'cost-effective, accessible and predictable'.

The primary rationale for the Australian assistance therefore seems to be the promotion of justice as a development goal in its own right. However, in discussions with the various Australian Government agencies, a number of instrumental rationales also emerged.

First, there is an emphasis on social justice in the Australian assistance, including securing fair access to the justice system itself for marginalised groups and strengthening legal rights in order to improve access to other public services and social programs. This social justice emphasis is highly relevant to the Indonesian country context. In a middle-income country, economic growth is likely to exacerbate inequality unless accompanied by social programs targeting the poor. This is especially so in Indonesia with its large geographical size and regional diversity. Indonesia's own development strategies emphasise the importance of equitable growth. One of the pillars of the National Medium-Term Development Plan 2010–2014 is 'inclusive and just development', which includes non-discrimination in service delivery and equitable development across regions. The National Access to Justice Strategy also makes linkages between access to justice and broader social and economic rights.

"Poverty should be understood not only as economic incapacity, but also the denial of basic rights fulfilment and unequal ability to live with dignity.
Empowerment of the poor in realising fundamental rights, either through formal

²⁰ Armytage, Livingston, *Reforming justice: a journey to fairness in Asia* (Cambridge University Press: forthcoming 2012), pp. 4–5.

or informal mechanisms, can become a means of reducing and overcoming poverty.”²¹

As a middle-income country, Indonesia also has the budgetary resources and institutional capacity to implement a range of pro-poor programs, including cash transfers, rice subsidies and free health insurance for the poor. These programs provide a context for the social justice agenda. A framework of enforceable rights can help them to operate fairly and reach the most vulnerable members of the community. Thus, the LDF program was able to assist women from poor communities to assert their right to a legal identity in order to access these forms of assistance. There is therefore a strong potential link between law and justice assistance and Indonesia’s poverty reduction agenda, although this link has been developed in only a few specific areas.

A second rationale for supporting the law and justice system is its importance to Indonesia’s political transition. Many analysts see Indonesia as being at a delicate point in its political development—it could move on towards democratic consolidation, or slip back into cronyism and political instability. Because of this, the development of the law and justice system is seen as contributing to Indonesia’s stability by upholding standards of governance and managing conflict. Of course, politics also constrains the opportunities for law and justice reform, which encounters strong vested interests and is vulnerable to setbacks and reversals. Donors seeking to invest in the justice system are therefore engaged in an inherently political domain where their influence is necessarily limited.

A third rationale concerns Australia’s national interests, of which there are many at stake in Indonesia. Australia clearly has a strong interest in its largest neighbour being both prosperous and stable—an interest that is well aligned with the Indonesian Government’s own development agenda. More specific Australian interests include counter-terrorism (more than 250 people have been killed in terrorist attacks in Indonesia since 1992, including 95 Australians), control of people trafficking and other international crime, and mutual legal assistance. There are many Australians within the Indonesian criminal justice system (including on death row) and Australian commercial interests before the Indonesian courts. Furthermore, direct linkages between Australian and Indonesian law enforcement agencies are useful to Australia.

One of our evaluation questions is whether there is any tension or incoherence between the promotion of Australian national interests and ‘pure’ development goals in the law and justice field. We are encouraged to find that, in Indonesia, care has been taken to avoid them coming into conflict. For example, in the DFAT-managed prisons project, improving the management of terrorist prisoners is part of the rationale for the assistance, but this goal has been pursued through support for improvements in the corrections system as a whole. AusAID has been careful to avoid promoting specific Australian interests (such as the treatment of Australians within the criminal justice system) within its assistance to judicial reform. The Australian

²¹ Bappenas, “National strategy on access to justice”, 2010, p. 3.

interests that are being promoted are shared interests with the Indonesian Government and do not detract from the developmental focus of the assistance. Australia's national interests are best served through the long-term development of Indonesian law and justice institutions and the good relationships that come from quality assistance programs, rather than by tailoring the aid program to specific bilateral interests.

The developmental objectives identified here—justice as an intrinsic good, greater social justice within service delivery and the consolidation of the democratic transition—are clear and appropriate to the country context. They constitute a strong justification for Australia's engagement in the sector. However, it is not always easy to follow these high-level objectives through to the design of the individual activities. There are some impressive activities on social justice, but the theme has not been pursued consistently, and there seems to have been no attempt to tie the justice agenda into Australia's support for service delivery (health, education and rural development). The political transition agenda is reflected in the emphasis on anti-corruption, particularly the support for the Corruption Eradication Commission and the prosecutorial service. Yet this theme does not obviously run through the selection of activities, and there are some notable gaps—such as electoral dispute resolution, judicial review of the administration or review of provincial and local regulations—that might have had more direct relevance to governance standards and democratic consolidation. In short, while the reasons identified for investing in law and justice are sound, there is scope to tailor the package of assistance more directly towards those specific objectives.

Box 3: Measuring results in law and justice

Measuring results poses particular challenges in the law and justice field. There are no standard measures for the level of justice in a particular community. A picture of the impact of law and justice assistance can be built up through some combination of:

- changes in the type or coverage of services provided by law and justice institutions
- changes in public perceptions of law and justice institutions
- changes in levels of public safety (through objective or subjective measures) or conflict in the community.

Such data are usually scarce, and the cost of commissioning surveys of public attitudes is substantial. Even when the data are available, external assistance is only ever one influence among many on the law and justice system, and attributing changes to external support can be very difficult. For all these reasons, monitoring of results is widely neglected in law and justice programs. Many programs limit themselves to tracking outputs and reform processes, rather than measuring results.

Terms like 'outputs', 'outcomes' and 'impact' are used to distinguish between different types or levels of results. However, there is considerable variation in how different practitioners use the terminology. In this evaluation, we use the terms as follows.

- **Outputs** refer to goods and services delivered by an assistance program. Outputs are within the direct control of the development agency or its implementers. They might include training courses delivered, equipment purchased or strategies developed.
- **Outcomes** are typically changes in institutional capacity, behaviour or resource use. Examples might include the introduction of a new case management system in the courts, or increases in police understanding of human rights. Outcomes are changes affecting a partner institution, rather than the ultimate beneficiaries, and are therefore intermediate results.
- **Impact** refers to changes in the lives of the beneficiaries, whether intended or unintended, positive or negative. Beneficiaries are individuals (the general public as a whole or particular groups), not organisations. Impact includes improvements in services delivered to the population, changes in public perceptions of law and justice institutions, and changes in crime levels or public safety.

Attribution measures the causal linkage between external assistance, and outcomes and impact. Strict attribution asks the question: would the impact have happened anyway, without the external assistance? Some types of development assistance lend themselves to quasi-experimental methods, using comparison groups. For example, if a crime prevention project is delivered in certain communities, the impact can be compared to similar communities that did not benefit from the assistance, to test whether the observed changes are a result of the project. However, most law and justice assistance does not have localised impact, and does not lend itself to experimental or quasi-experimental methods for determining attribution.

When it comes to evaluating reform and capacity building in central law and justice institutions, which is usually the focus of the Australian assistance, the challenge is less the attribution of a known set of results to the external assistance, as understanding the dynamics that determine the success or failure of different elements of the assistance. The question of what results were achieved must be accompanied by qualitative analysis of why things turned out as they did. This is the focus of this case study.

5. How effective is the Australian assistance?

This section of the evaluation reviews some of the main strategies and approaches used in the Australian assistance and assesses what has proved most effective in the Indonesian context.

5.1 Broad strategy

Australia's approach to law and justice assistance has clearly been shaped by the Indonesian country context. Indonesia is not an aid-dependent country, and external assistance makes up only a minor share of the budgets of the counterpart institutions. Donors must therefore look for interventions with a catalytic effect that will have lasting influence on the government's own policies, institutions and budgetary allocations. Indonesia tends to resist external pressure on its policy processes, particularly in the justice sector. Donors must therefore invest in building partnerships and relationships of trust, that allow for genuine policy dialogue without triggering sensitivities over national sovereignty. Indonesia specialists emphasise that policy influence depends heavily on interpersonal relationships with key figures in the counterpart institutions, rather than institutional relationships. This has been a consistent strength of the Australian support, which has invested heavily in building relationships, making more use of Australian experts with country-specific language and cultural skills than is typical in bilateral programs.

Box 4: A typology of law and justice assistance strategies

One of the most important choices facing the designers of law and justice assistance is the balance among different forms of engagement or ways of working. For the purposes of this evaluation, we categorise the main approaches as follows.

- 1. Institutional capacity building** of the formal law and justice institutions is the default option for many donors. It centres on training and equipping of the law and justice institutions, together with support for management systems and processes (see OECD DAC²² Handbook on Security System Reform). It typically begins with a needs assessment, used to identify institutional deficits and weaknesses, and then designs a package of capacity-building inputs to rectify them. The underlying theory of change is that increases in institutional capacity, particularly core functions like planning, budgeting and human resources, will translate into improvements in service delivery. International experience is that institutional capacity building can take a long time to impact on citizens. In fact, given that lack of capacity is usually only one of a range of factors constraining the delivery of justice, capacity building is not guaranteed to produce any results for citizens. At times, capacity-building approaches may come close to treating the justice institutions themselves as the intended beneficiaries.
- 2. A service-delivery approach** takes the users of law and justice services as the starting point, rather than the deficiencies of the law and justice institutions. It analyses what justice services are currently provided, taking into account both formal institutions and traditional

²² Organisation for Economic Cooperation and Development – Development Assistance Committee

or non-state actors. Programmatically, it works by trying to improve the coverage and quality of justice services, building on what already exists. This approach has a number of advantages over generic capacity building. Rather than starting from institutional weaknesses, it builds on strengths. It lends itself to more modest and therefore achievable incremental reforms, avoiding the trap of imported institutional blueprints. It takes the user of justice services as the starting point, and is therefore more likely to generate measurable results.

3. **A problem-solving approach** takes as its starting point issues or problems within the delivery of law and justice, and applies a problem-solving methodology to resolving them. It progresses from problem identification, through formulation of options, implementation of a chosen solution and measurement of results. A key part of the problem-solving approach is mobilising and empowering stakeholders with an interest in resolving the issue, whether inside the formal justice institutions or outside. The approach is flexible in the institutions it works with, whether central ministries or agencies, local providers or non-state actors. Solutions typically involve more than one actor. So far as possible, solutions should be institutionalised, thereby contributing to long-term institutional development. However, the range of possible solutions often includes bringing in non-state actors to address shortcomings in formal justice institutions. For institutions without strong planning and budgetary processes and management capacity, problem solving is often a more credible model of change than major institutional reform. Problem-solving approaches can be useful for addressing fragmentation within the law and justice sector. For example, solving problems such as prison overcrowding or excessive remand times requires joint efforts across a number of agencies, helping to introduce habits of collaborative working.
4. **A thematic approach** looks at the law and justice assistance as part of a strategy for addressing a broader social issue. For example, one might take mismanagement of natural resources, uncontrolled urbanisation or gender violence as the theme, and develop initiatives within the law and justice sector that complement a broader range of programming on this theme. This recognises that, while these thematic issues have important legal dimensions to them, a credible approach would involve action on several fronts, within a whole-of-government approach. An advantage of thematic approaches is that they can help introduce partner countries to the possibilities of using legislation and justice institutions as tools of social policy. However, many donors find it difficult to work thematically, because their programming is done purely on a sectoral basis.

Of course, in practice it is rare to find a 'pure' example in any of these categories; most programs involve a mixture. But it is also rare to find examples of programs where the options for engagement have been assessed systematically.

To analyse Australia's engagement strategy in Indonesia, we use a four-way typology of different approaches to law and justice assistance: capacity building, service delivery, problem solving and thematic (see Box 4). AusAID's law and justice assistance in Indonesia involves elements of the first three approaches. The core of the strategy, however, has been institutional capacity building of the formal law and justice institutions, particularly the Supreme Court and the Attorney-General's Office.

The focus on top-down institutional reform is partly a result of the structure of the law and justice sector in Indonesia, which unlike other public services has not been decentralised and continues to be administered from the capital. It also reflects the particular nature of the legal and judicial reform process in Indonesia. While *Reformasi* generated many changes in the legal

system, it did so without an overarching government policy for enhancing the delivery of law and justice services.²³ When the government introduced the One Roof system, it did so with a single statutory clause, leaving the Supreme Court itself to design the reform process.²⁴ As a result, it was left largely to individual law and justice institutions to decide whether and how to reform,²⁵ although Bappenas seeks to coordinate among these different initiatives.

This makes the reform process dependent on the qualities and preferences of the leaders of individual institutions. Some have been quite progressive and management-oriented, while others have been slow to engage. But even with progressive leadership, the organisations are inherently difficult to reform, owing to their scale and complexity, their rigid bureaucratic and hierarchical nature, legacies of the pre-*Reformasi* period, including corruption, and strong vested interests in the status quo. Reforms are therefore prone to stalling. With little capacity at their disposal to formulate and implement reform plans, the leadership has turned to NGOs and donors to provide technical and financial inputs into the reform process. This could be said to be the theory of change underlying most of the Australian assistance: that by boosting the resources available to reform-minded leaders within the law and justice institutions, it could increase their ability to deliver institutional change.

The core of the Australian strategy has been to provide the leadership of the Supreme Court and the Attorney-General's Office with resources to support the development and implementation of reform blueprints. It has done this both through funding specific reform activities and by supporting NGO engagement in reform through a strategy of 'triangulation'. Australia funds support teams in both institutions, staffed by individuals engaged from NGOs or the private sector. These play an internal advocacy function and act as a technical resource for the leadership. The assistance has been set up in a very flexible manner, to be able to respond quickly to requests by the counterparts and opportunities arising through the reform process. Many of the activities have involved fairly small financial inputs, although often accompanied by a high level of technical and management input from senior Australian advisers.

The effectiveness of this strategy has been variable across the institutions, depending substantially on the qualities of the leadership and the political climate in which they operate. The Supreme Court and the religious courts have had progressive leaders and have made progress on implementing their reform agendas. Leadership within the Attorney-General's Office has not been consistently supportive and the reforms have lagged behind.²⁶ When the

²³ Pompe, Sebastiaan and Dian Rosita, "Indonesian legal sector analysis", July 2008, p. 13–14.

²⁴ Since 2010, the Indonesian Government has had a program on bureaucratic reform, which covers the law and justice institutions. Led by the Vice President and the Minister for State Apparatus, the program involves granting budgetary increases to institutions conditional on achieving certain institutional performance targets. For example, in the Supreme Court this includes the publication of decisions.

²⁵ Pompe and Rosita note that this "basically leaves it to each legal institution individually to tackle reform, and indeed, whether to reform at all": "Indonesian legal sector analysis", July 2008, p. 14.

²⁶ "[The Attorney-General's Office] does not have good reputation within the community and is not seen as serious in its attempts to reform." AusAID, "Australia Indonesia Partnership for Justice (AIPJ): design document", July 2010. This was confirmed by a range of Indonesian stakeholders consulted by the evaluation team.

counterpart has been willing and active, with a clear set of reform goals and a structured approach for achieving them, the Australian support has been effective. The frequent changes of leadership, however, make these preconditions uncertain, rendering the assistance somewhat of a hostage to fate. The approach seems to have lacked alternative engagement strategies when the climate for top-down reform has not been favourable.

One reviewer pointed out that, while there were benefits in investing in close institutional relationships with the key counterparts, it also gave rise to a number of challenges.²⁷ It made it difficult to pursue justice issues that did not fall within the remit of an established counterpart (an example would be an administrative review of provincial and local regulations by the Ministry of Home Affairs—an issue flagged as important for human rights protection in diagnostic analysis commissioned by AusAID²⁸). Issues spanning institutional boundaries were also more difficult to tackle. For example, prison overcrowding is a significant problem in Indonesia, but while Australia provides capacity-building support to the judiciary, the prosecutors and the Directorate General of Corrections through parallel mechanisms, it has not been able to engage with a systemic problem of this kind at a policy or operational level.

The level of flexibility involved has been a controversial aspect of the assistance. As a ‘facility’, the LDF program was designed to facilitate experimentation, being able to mobilise relatively small amounts of funding rapidly to support new initiatives or opportunities. According to some of those involved in the design, this choice reflected AusAID’s uncertainty about the political environment and the lack of obvious entry points into the sector. The LDF’s flexibility was highly valued by the advisers on the program, as it enabled them to try out different NGO partners and be responsive to the preferences of the counterparts. According to one assessment, flexibility enabled the LDF to “punch above its weight”²⁹ and to operate in a dynamic political environment. By comparison, some other donor programs in the sector appear to have failed because they programmed their activities too rigidly and were unable to respond to changing circumstances.

However, AusAID was frequently concerned that the level of flexibility was excessive, and the drive to be responsive to multiple demands from the partners was leading to a proliferation of initiatives that were only loosely linked to the program’s overall objectives. The LDF supported more than 150 separate activities,³⁰ some of which appear rather ad hoc in nature. As a 2007 mid-term review put it: “[i]ncrementalism without policy focus may well come down to ad hoc tinkering.”³¹

²⁷ Pompe, Sebastiaan and Dian Rosita, “Indonesian legal sector analysis”, July 2008, p. 47.

²⁸ AusAID, “AIPJ background analysis pack: Paper 3 – The promotion and protection of human rights (particularly the rights of women and people with disabilities) in Indonesia”, pp. 18–28.

²⁹ Pompe, Sebastiaan, Paul Crawford and Daniel Rowland, “Indonesia-Australia Legal Development Facility mid term review”, March 2007, p. 4.

³⁰ GRM International, “Indonesia-Australia Legal Development Facility: facility completion report”, January 2010, p. 1.

³¹ Pompe, Sebastiaan, Paul Crawford and Daniel Rowland, “Indonesia-Australia Legal Development Facility mid term review”, March 2007, pp. 43–44.

On balance, successive reviewers judged the LDF's flexibility to be one of its core strengths, given the dynamic political and institutional environment. To be more strategic, this flexibility would need to have been accompanied by more effective oversight by AusAID, to ensure that the programming evolved in a strategic way. Through much of the LDF period, however, it appears that AusAID's oversight was not strong, and that it was left to the managing contractor to set the direction of the program,³² allowing some differences in approach to emerge.

In the new AIPJ design, the level of flexibility has been reduced slightly, with only 10 per cent of the annual expenditure set aside for small grants. An annual work planning process is used to give strategic direction to the assistance, while retaining the flexibility to alter the mix of activities and partnerships from year to year. It is clear that the new design is seeking to retain flexibility while ensuring that the activities are clearly oriented towards strategic goals.

Not all the Australian assistance has involved top-down institutional reform. It is notable that one of the most successful activities to date has utilised a problem-solving approach, involving assistance to women-headed households from poor communities with legal identity issues (see Box 5). This is an area where the AusAID project and the Australian courts worked very well together, and with their Indonesian counterparts. Research was used to identify a specific barrier to access to justice. A solution—namely, an increase in the court budget for fee waivers and circuit courts—was identified and incorporated into the judicial reform blueprint. This has produced some of the most immediate and tangible results to date. The contrast between the visible results achieved through such a problem-solving approach, and the difficulties of demonstrating concrete results from top-down capacity building, is instructive. Australia has not engaged with the informal justice system in Indonesia at all, except indirectly through Justice for the Poor research.

On the whole, Australia's engagement strategy makes sense in the context of supporting a reform process of a highly centralised justice system in its very early stages in a difficult political environment, when investment in relationships was key and a substantial element of opportunism was required. It also makes sense for a young program in a complex sector, where the most promising entry points or approaches are not necessarily apparent during design. However, overall the engagement is not well balanced across the range of possible approaches. As the reform process in Indonesia matures, AusAID has correctly identified that the support needs to move with it, to become more strategic in nature, building on the high-quality institutional relationships that have already been established.

³² The Independent Completion Report stated that: "AusAID's engagement with the sector, above the level of activity managers and program officers has been less than optimal... [A]t the counsellor level and above engagement was minimal, until recently." Mooney, John and Budi Soedarsono, "Indonesia – Australia Legal Development Facility: independent completion report", May 2010, p. 50. In its management response, AusAID agreed with this finding.

Box 5: Legal empowerment for women

One of the success stories of Australian assistance in Indonesia has been an initiative with the religious courts to help women from poor communities access the justice system. The religious courts in Indonesia have jurisdiction in family law matters for the Muslim population, administering statute rather than religious law.

The intervention addressed a specific problem facing female-headed households. To access a number of government social programs, including cash transfers, rice subsidies and free health insurance, the women in question have to establish that they are in fact the head of their household. This requires proof of marriage and/or divorce. However, research has shown that around 50 per cent of marriages and 86 per cent of divorces in poor communities are never formalised, due to the costs involved. As a result, these women face a denial of their legal identity with very direct economic consequences. It can also affect their ability to obtain birth certificates for their children and enrol them in school.

The AusAID program and the Family Court of Australia have worked together with PEKKA, an Indonesian NGO representing female heads of households. This began in 2007–08 with some small-scale research by PEKKA into barriers facing village women in accessing justice. This research identified the nature of the problem and brought it to the attention of the authorities. This was followed by Indonesia's first ever study into access and equity in the legal system, carried out collaboratively with the Supreme Court and religious courts with the support of the Family Court of Australia. The study set out to identify the level of satisfaction of court users, and the practical barriers poor communities faced in accessing justice. PEKKA assisted with identifying women heads of households to participate in the study. The research found that the barriers to accessing the courts for formalising marriages and divorces were predominantly economic, with both travel costs and court fees prohibitively high.

The research led to a commitment by the Chief Justice of the Supreme Court to improve access to justice through court fee waiver schemes and circuit court hearings, where religious court judges and clerks travel to villages to hear cases. Over successive years, a total of US\$3.5 million in additional budgetary resources was made available to fund fee waivers and circuit courts, representing an 18-fold increase in court fee waivers. A web-based system for tracking the number of individuals receiving fee waivers and having their cases heard on circuit was introduced, using simple short message service (SMS) technology. It found that the number of poor people benefiting from court fee waivers in the religious courts increased 10-fold between 2007 and 2010, and the number of people in remote areas benefiting from circuit court hearings increased 4-fold over the same period. The overwhelming majority of people benefiting from these access to justice initiatives were women. Various information services and outreach programs were introduced to improve transparency and access, including publicising information on court fees inside the courthouses. In addition, the fee system was changed so that payments were made at a bank, rather than in cash at the courthouse, to reduce opportunities for corruption. PEKKA continues to work with the Religious Court Division of the Supreme Court to identify the demand from female heads of households for their family law cases to be heard in the Indonesian courts. The PEKKA data assist the courts to direct budgetary resources where the demand for cases is highest. In addition, PEKKA provides paralegal services to women to help them through the process.

This demonstrates a number of the most effective elements of the Australian assistance. It was based on a three-way relationship between an Indonesian justice institution, an Australian justice institution (through the memorandum of understanding on judicial cooperation) and an advocacy NGO. It demonstrated how good-quality empirical research could be used to support policy development and improve service delivery. It illustrated how a bottom-up approach (research into the

realities facing poor women in accessing justice) and top-down institutional reform partnerships can reinforce each other. We note, however, that these results may be difficult to replicate within the general courts, which compared to the religious courts have less of a service orientation and more entrenched problems with corruption.

5.2 Triangulation with civil society

One of the most innovative aspects of the Australian assistance has been the way it has brokered partnerships between the counterpart institutions and civil society—a strategy known as ‘triangulation’. These partnerships were not created with the Australian assistance, but were a feature of the reform process in Indonesia. However, AusAID identified the opportunities they offered and tailored its support accordingly.

In the immediate post-Soeharto period, groups of young Indonesian lawyers and legal academics established NGOs to lobby for legal reform. Within a short period of time, much of the Indonesian capacity to formulate a legal reform agenda sat within civil society, rather than the formal justice institutions. When a new Chief Justice was appointed to the Supreme Court, he drew on these NGOs as sources of technical expertise. Initially, this happened in an ad hoc way, with individuals from the NGOs acting as resource people. Later, it was formalised through the establishment of the Judicial Reform Team Office in the Supreme Court and its equivalent in the Attorney-General’s Office, the Program Management Office. The Judicial Reform Team Office helped the Chief Justice with the formulation of two iterations of the Supreme Court blueprint for reform. The first was a document drafted entirely by NGO staff and adopted by the Chief Justice in the form of a decree. The second iteration was done through a more consultative process, involving a wider range of stakeholders both within and outside the institution. With a staff of six, the Judicial Reform Team Office has gone on to provide technical support for the complex change-management challenges involved in implementation. It also supports donor coordination.

The utility of this approach was two-fold. First, it provided an immediate boost in policy-making capacity for the Supreme Court at a critical time, to take advantage of the opportunity offered by the appointment of a new Chief Justice. Second, it enabled the NGOs active in the sector to form very productive partnerships with the court. It is readily apparent that the legal NGO community has a more sophisticated understanding of the complexities of institutional change processes than is typically found within civil society. As a result, their advocacy capacity would seem to have improved substantially.

The Judicial Reform Team Office is, however, a temporary expedient rather than a model for long-term institutional development. Over time, one would expect that the Supreme Court would acquire greater policy and management capacity, and would become less dependent on support from outside the institution to implement its reforms. The head of the Judicial Reform Team Office informed the evaluation team that this change is anticipated in their planning. They anticipate that NGO personnel will be replaced by permanent Supreme Court staff until the institution is fully integrated into the Supreme Court structure.

In the case of the Attorney-General's Office, the reform team has faced a much more difficult environment and has not yet reached the point of agreement on a blueprint for reform of its core functions (although it does have a bureaucratic reform agenda). The new program design appears to assume that the same strategy will ultimately be successful in this very different institution, even if it is some years behind the Supreme Court. However, at present this remains an assumption, and will need to be kept under review.

The evaluation team heard some criticism of the way donors have supported NGOs in the legal sector. Early in the *Reformasi* period, a lot of donor funding went directly to NGOs to support their advocacy efforts. When the judiciary began to formulate its reform agenda, much of this support was transferred to the formal institutions, leaving the NGOs feeling abandoned. Almost all donor support to NGOs is now project-based, which makes it difficult for them to develop their capacities and their own advocacy agendas. In addition, many individual NGO staff are recruited for contract work on donor projects or to work in the reform teams, which hollows out NGO capacity.

It was inevitable that at some stage there would be a rebalancing of engagement in favour of the formal institutions, which would cause difficulties for the NGOs. However, it is likely that NGOs will continue to play an important role in the reform process, particularly if the political environment becomes more difficult. They will be more effective if they are supported in a form that provides them with the freedom to set their own agendas and develop their capacities. This is an element that is currently lacking from the Australian support. Some kind of joint donor fund that provides stable, medium-term funding for NGOs, with accompanying capacity building, would offer a good complement to the new AIPJ design.

5.3 Twinning and other assistance

The twinning program between Australian and Indonesian courts is well established and unique in the sphere of Australian law and justice assistance. Successive reviews have found it to be an important element of the assistance, giving rise to "close, multi-layered and subtle relationships".³³ The memorandum of understanding between the Australian and Indonesian courts has supported an exchange of ideas and approaches on judicial reform at a number of levels, between judicial staff, registry staff and policy advisers. Indonesian judges and court officials clearly appreciate direct policy dialogue with their Australian peers, and are more receptive to advice from fellow judges and court officers than from technical advisers. For example, judges from the Federal Court of Australia have discussed judicial performance management with the Chief Justice of the Indonesian Supreme Court—a topic presumably beyond the reach of most donors. Technical advisers on the AusAID program also informed the evaluation team that they enjoyed higher levels of access to the judiciary as a result of the Australian courts' involvement.

³³ Mooney, John and Budi Soedarsono, "Indonesia – Australia Legal Development Facility: independent completion report", May 2010, p. 3.

While it is difficult to distinguish the achievements of the twinning arrangements from other elements of the support, it appears that the Australian courts have made important contributions in areas such as the use of information technology (IT) for case management and the reduction of the Supreme Court case backlog through an audit of cases and development of an action plan. Judges, registrars and court administrators from the religious court made a number of visits to the Family Court of Australia, where they had a chance to view the range of services available to clients, including duty solicitors, and the use of the website to promote those services. This influenced subsequent reforms in the religious court. Court officers from the Family Court of Australia have been involved in regular planning meetings with the religious courts on how to implement the findings of the access to justice survey.

The twinning arrangements and the AusAID assistance are complementary, and senior advisers on AusAID's LDF and transitional programs have invested considerable advisory time into supporting the courts' relationship. The twinning would have been much less effective if it were not part of a broader package of assistance, while the AusAID program has gained prestige, influence and access from the involvement of the Australian courts. However, the arrangements on the Australian side for joint working have not been fully worked out. This is further addressed in Section 7.

The AGD has also been involved in twinning activities with its main counterparts, the Ministry for Law and Human Rights and the Attorney-General's Office. Its activities have been focused on international cooperation on transnational crime, such as money laundering, people trafficking and counter-terrorism, and on mutual legal assistance areas such as extradition and exchange of prisoners. In the LDF program, transnational crime was one of the four thematic areas, and AGD's assistance was therefore provided under AusAID leadership. Since the end of the LDF, AGD has continued with a lower level of support on its own initiative. Among its activities, AGD developed an anti-money laundering and proceeds of crime handbook, and provided training to the Attorney-General's Office and police staff in these areas. According to the LDF Independent Completion Report,³⁴ these areas were incorporated into the Attorney-General's Office's training curriculum and post-training testing indicated increased understanding of the issues. We note, however, that personnel issues within the Attorney-General's Office, particularly the practice of rotating staff regularly between positions rather than allowing them to build up expertise in a particular area, may limit the impact of the training.

The JCLEC is a very impressive residential training facility, located in Semarang on the site of the Indonesian National Police Academy. It provides training to the Indonesian National Police and, to date, some 40 other Indonesian Government agencies and law and justice officials from 46 other countries. It is a joint facility of the Australian and Indonesian governments, with its curricula developed in close cooperation with the Indonesian National Police. In bringing together staff from different agencies and countries, the courses are designed to promote

³⁴ GRM International, "Indonesia-Australia Legal Development Facility: facility completion report", January 2010, p. 13.

awareness of the need for multi-agency and multi-jurisdictional responses to transnational crime. Training streams include investigations, intelligence, forensics, financial investigations and computer-based training. Some of the Indonesian officials that have received training through the centre have gone on to become trainers in subsequent programs. In 2010, the centre ran 69 courses with a total of 1751 participants, of whom 15 per cent were women.³⁵

As well as bringing together experts around the world to teach the latest international approaches, many of the courses involve case studies and role playing, to convey the skills for managing complex investigations and emergency responses. To that end, JCLEC has a computer laboratory that can be used as an operations centre for modelling crisis response. It also offers e-learning modules developed by the United Nations (UN) Office on Drugs and Crime and has the capacity to provide remote learning to several other Indonesian police academies.

Australia paid for the construction of the facility and meets most of its running costs, while other donors (including the United Kingdom, European Union, Spain, Germany, Canada and Denmark) fund specific courses. The Indonesian Government contributed the site and pays for the transport costs of its personnel to attend. While Australian investment in developing such a high-quality facility has clearly been substantial, it has had the effect of leveraging support from other donors, thereby increasing the output of the centre.

JCLEC training has a strong emphasis on inter-agency communication and coordination. As such, it is one of the few initiatives within the Australian assistance directed towards overcoming the fragmentation of the law and justice sector in Indonesia. JCLEC also promotes improved cooperation on transnational crime across the region. There are no monitoring arrangements to assess whether this is occurring, and in any case it would be difficult to attribute changes to a single training centre. However, the delivery of training with a strong international cooperation focus, and bringing together officials from peer organisations around the region at a common site, looks like an effective strategy for promoting that goal. We note that JCLEC keeps track of its alumni, but only for the purposes of identifying individuals attending repeat courses. The alumni network could be a very valuable resource for promoting regional cooperation, if it were developed with that purpose in mind.

The DFAT-managed Corrections Reform Project, though small in scale, has been highly strategic in nature. The Directorate General of Corrections manages a vast prison system with few resources and little capacity. Prisons are, in practice, highly autonomous and human rights abuses and corruption are reportedly widespread. In recent years, there have been various high-profile cases in which convicted criminals were able to continue with criminal activities (including terrorism) while serving their sentence. The project has helped the Directorate General to develop some of the capacities it would need to initiate a process of prison reform. It supported the development of a blueprint for reform. It provided training on how to develop standard operating procedures for prison management, which led to the Directorate General of

³⁵ Figures from the Jakarta Centre for Law Enforcement Cooperation website: www.jclec.com.

Corrections producing large numbers of its own standard operating procedures. This is the first time that prison procedures in Indonesia have been documented, although there is as yet no monitoring of whether the new standard operating procedures are being followed. The project assisted with the development of a national prisoner database, now being piloted in a number of prisons. This key management tool will help the Directorate General manage high-risk prisoners, including terrorist prisoners. It should also help to improve transparency within the prison system, for example by making information on sentences available to prisoners and their families. The project has also drawn on the expertise of the NSW Department of Corrections to support the development of a national parole system and psychological assessment tools for prisoners seeking parole.

The sheer scale of the Indonesian corrections system and its entrenched management problems make this an ambitious and long-term reform agenda, but the entry points chosen by the project appear strategic and likely to have a catalytic effect. The problem of corruption will pose a continuing barrier to reform because of the decentralised nature of the prison system.

We note that many of the problems the project is trying to address stem from prison overcrowding. The overcrowding issues cannot be resolved single-handedly by the corrections system, but need collaboration across the criminal justice system—an element currently lacking in Indonesia, as in many other countries. The separation of the Corrections Reform Project from AusAID's support to the prosecutors and courts is therefore likely to pose a constraint on the overall effectiveness of both projects. There are good reasons why they were initially set up as separate projects, due mainly to the highly sensitive nature of the corrections area. However, DFAT reports that this sensitivity has declined over time. If Indonesia demonstrates a serious commitment to prison reform, there may be scope for scaling up Australian assistance in this area. In that case, it may be worth considering bringing the assistance under one roof, to enable the pursuit of common objectives like reducing prison overcrowding.

The World Bank's Justice for the Poor research and piloting work has been slow to get off the ground, seemingly due to issues with funds transfer via Washington. It has produced some high-quality publications, which have added to the knowledge available on community-level justice issues. Potentially, the research can be used to improve the targeting of law and justice assistance, to maximise the benefits for the poor. However, the Justice for the Poor program is still trying to find its place within the wider landscape of law and justice assistance, and does not yet have a clear story as to how its research will translate into practical results. Its research agenda is generally not well linked to the design or delivery of the Australian assistance. According to Bappenas, the Justice for the Poor team provided valuable inputs into the development of the National Strategy on Access to Justice Framework.

Aid effectiveness

There appears to have been little joint effort by donors in the law and justice sector to strengthen aid effectiveness, and the issue has clearly not been treated as a priority by AusAID.

There have been few initiatives to implement the Paris Declaration and Accra Agenda for Action, or the localised Indonesian version, the Jakarta Commitment.³⁶

Australian assistance rates well in terms of alignment and country leadership. Although there is no overarching national strategy for the law and justice sector, Australia has worked closely to support individual institutional blueprints for reform and the National Strategy on Access to Justice Framework. The national planning and aid coordination body Bappenas is one of the primary counterparts for the assistance and closely involved in the allocation of funds. Furthermore, the high degree of flexibility in the Australian assistance, compared to other donors, has enabled it to be more responsive to the needs of the counterpart institutions.

However, the sector seems to be weak at harmonisation and coordination among donors. There is no formal sector coordination mechanism. There is informal consultation among the main donors, but this goes little beyond information sharing. This may be enough to avoid obvious duplication, but not enough to develop synergies and complementary approaches among the donors, even when supporting the same institutions. There is no joint analytical work, no joint funding arrangements, no delegated cooperation and no shared system for mutual accountability. While AusAID takes pride in having higher quality relationships with its Indonesian counterparts than some of the other donors, it does not seem to have invested the same level of effort into building relationships with other donors to improve the overall quality of external assistance to the sector. There are some areas of the Australian assistance—for example, support to NGOs and some of the independent commissions—where the impact of Australian assistance might be higher if it were planned jointly with other donors.

There is very little use of country systems for delivering Australian assistance. Indonesia's public financial management systems make provision of assistance via the treasury system very difficult, and the counterparts reportedly prefer to receive direct project assistance. Australian funding is reported in the Indonesian budget, but not aligned with the Indonesian budgetary cycle, and there is no use of national audit processes. There does not appear to have been any Australian investment in an overarching monitoring system for the law and justice sector as a whole, and the monitoring systems in place for individual institutions are weak.³⁷ In the AIPJ design, it is proposed to conduct a stocktake of monitoring arrangements in the law and justice sector, with a view to moving towards greater alignment of monitoring systems over time. One positive story on the use of country systems is the Judicial Reform Team Office in the Supreme Court and its equivalent in the Attorney-General's Office, which represents an interesting innovation for placing technical assistance under the management of the counterpart institution.

³⁶ Jakarta commitment: aid for development effectiveness – Indonesia's road map to 2014: **Error! Hyperlink reference not valid.** <http://www.aideffectiveness.org/media/k2/attachments/JakartaCommitment.pdf>.

³⁷ AusAID, "Australia Indonesia Partnership for Justice (AIPJ): design document", July 2010, p. 82.

6. Has the Australian assistance delivered sustainable results?

The Australian assistance has produced an impressive range of outputs, mainly of a capacity-building nature. The outputs indicate that the programs have been delivered with skill by advisers able to operate effectively in a difficult political context. Without attempting an exhaustive list, here are some of the main types of outputs that have been produced.

- There has been extensive knowledge and skills transfer to individuals across the law and justice institutions and the NGOs active in the area. The LDF Independent Completion Report in particular noted ‘highly successful’ skills development within the human rights and anti-corruption institutions,³⁸ which may be because smaller and more specialised institutions lend themselves to more focused and intensive training support. Much of this has been through direct training and opportunities to participate in events and study tours. There has also been substantial investment in training of trainers, curriculum development, guidance material and, of course, the JCLEC training facility itself.
- There has been extensive support provided to law and justice institutions to develop reform blueprints, strategic plans and standard operating procedures. Where the leaders of law and justice institutions have demonstrated an interest in reform, the Australian assistance has been able to boost their capacity to design and manage the reform process, through direct technical assistance, the funding of discrete activities and facilitating access to expertise in the NGO sector.
- There has been support for legislative development, including a draft law on legal aid, gender sections of the Criminal Procedure Code, and a series of laws and regulations governing transnational crime and mutual legal assistance. The LDF also helped to develop a legislative database.
- Australia has helped develop a new case management system within the Supreme Court, reducing the case backlog, together with a system for publishing judgments online.
- Australia helped develop websites for the courts, including a system for publishing judgments online with free access via the AsianLII³⁹ website, together with online publication of certain court management data (number of fee waivers granted, cases heard on circuit, individuals receiving aid through legal aid posts) for transparency purposes.
- Australia has produced various research outputs on justice issues in Indonesia. The most influential of these were the access and equity surveys for the religious and

³⁸ Mooney, John and Budi Soedarsono, “Indonesia – Australia Legal Development Facility: independent completion report”, May 2010, p. 27.

³⁹ AsianLII (www.asianlii.org) is a non-profit, free access website for 27 countries and territories in Asia, and part of the worldwide Free Access to Law Movement. It receives funding from AusAID’s Public Sector Linkages Program and the Attorney-General’s Department.

general courts, which helped demonstrate the value of service-delivery data in managing the court system and design the reform process. It has supported a range of research by Justice for the Poor, as well as the 2006 Indonesia corruption perceptions survey.

- To promote access to justice, Australia worked with partners to develop a series of legal aid handbooks and citizens' guides to the law and legal institutions, in written, audio and video formats, including on family law and birth certificate cases. These have been distributed to legal aid lawyers, judges and the public.
- Australia's support enabled the introduction of new investigatory tools and procedures for the Corruption Eradication Commission, boosting its capacity to prosecute complex corruption cases.

To what extent have these outputs brought about tangible benefits to the public? Perhaps the most direct benefit to the public has been the expansion in access to justice in the family law field, which represents half of all civil cases in Indonesia. The access and equity studies and related technical support from AusAID and the Family Court of Australia helped secure dramatic increases in the national budget allocation to the religious courts for fee waivers and circuit courts, allowing an increased number of women heads of households from poor communities to formalise their marriages and divorces and obtain birth certificates. Through a public SMS-based data collection system established by the LDF, we can see that there has been a 14-fold increase in the number of poor people obtaining fee waivers from the religious courts, and a 4-fold increase in cases heard at village level through circuit courts. The religious courts are also piloting legal aid posts in 46 of their 343 first instance courts. The succession of events makes it clear in this case that Australian support helped to facilitate these results.

These are impressive results in a narrow but important area. The lack of clear legal status for women heads of households affects their ability to access social benefits for their families and education for their children. Arguably this was a relatively easier problem set to address than most of those facing the law and justice system in Indonesia. The religious courts were already delivering an effective service with high client satisfaction, prior to the Australian assistance.⁴⁰ Most of the marriage and divorce cases that come before them are not contested, but simply involve formalising a de facto situation, and there are no strong power or economic differentials at play that would give rise to problems of corruption. The problem was therefore limited to overcoming financial and geographical barriers to accessing the courts. The problems facing the general courts, including more entrenched corruption, lower service orientation and greater public distrust, are much more difficult to resolve. This does not, however, take away from the importance of the result. Rather, it shows the value in focusing on discrete issues for defined groups of beneficiaries, where Australian support has the potential to make a real difference.

There have also been concrete improvements in case management systems within the Supreme Court. The LDF and the Federal Court of Australia supported an audit of the Supreme

⁴⁰ Sumner, Cate, *Providing justice to the justice seeker* (Jakarta: Mahkamah Agung and AusAID 2008).

Court caseload in 2006, creating a benchmark for subsequent efforts to reduce the backlog. Between 2006 and 2009, the number of Supreme Court cases more than two years old fell from 55 per cent to 17 per cent of the caseload, substantially reducing waiting times.⁴¹ Overall, the Supreme Court backlog has declined from 20 314 cases in 2004 to 8424 in 2010, enhancing access to justice. There has been other donor support in these areas, including some major investments in IT-based management systems, but with a number of high-profile failures. It does appear to have been Australian support that made the decisive difference, due to closer alignment to the preferences of the counterparts, a more flexible approach to programming assistance and a preference for technically more straightforward solutions.

One of the strategies utilised by the LDF and its successor has been the emphasis on transparency as a means of improving the quality of judicial services. In 2007, the Supreme Court Chief Justice launched a regulation on judicial transparency (SK144). This early reform measure, issued before the national legislature had adopted the law on freedom of information, was the result of extensive lobbying by NGOs and drafting support from the LDF. It has led to the publication of judgments online, using IT equipment provided by USAID/Millennium Challenge Corporation, with training support from the LDF. There are now nearly 20 000 decisions of the Supreme Court and 5000 decisions of the High Religious Courts on the Supreme Court website.⁴²

It has also led to increased transparency over court fees and fee income. Using a system developed by the LDF, all courts now transmit information on their fee income to the Supreme Court via SMS, with the results published in the Supreme Court's Annual Report. The public can also use the SMS gateway to access information on legal aid posts and the schedule of circuit courts, and to request circuit courts. The religious courts have developed a new website (www.badilag.net) with detailed information on their procedures and fees. The Supreme Court is developing an 'information desk' system to assist the public with accessing information and to hear public complaints (also USAID supported).

This emphasis on transparency is an innovative and promising approach to improving court performance, for several reasons. First, it enables the Supreme Court leadership to identify whether budgets are being allocated and used appropriately, and even provides some data on the performance of individual judges in delivering judgments. Second, it provides an information base for stakeholders within and outside of government to track key elements of the reform process, contributing to accountability. Third, where litigants have ready access to information on court procedures and the fees associated with them, they are less vulnerable to petty corruption by court officials. They cannot be required to make informal payments to have judgments issued if these are routinely posted online. We note, however, that this is only one dimension of the corruption problem; in many cases it is lawyers and other intermediaries that initiate corrupt payments. Fourth, the publication of judgments online may eventually lead to a practice of Indonesian NGOs, academics or legal practitioners reviewing and

⁴¹ GRM International, "Indonesia-Australia Legal Development Facility: facility completion report", January 2010, pp. 6–7.

⁴² <http://putusan.mahkamahagung.go.id/>.

commenting on judicial decisions, improving the quality of jurisprudence and public understanding of the law. Indonesian NGO representatives informed the evaluation team that this is not yet occurring to any significant degree. However, public access to judgments is still recent, and the practice may yet emerge. While it is not possible at this point to attribute concrete results to the increase in judicial transparency, we note that the time lags involved are substantial and the approach seems to be a promising one.

Australia has been providing support to the prosecutorial service in the Attorney-General's Office. This has included support for the development of a blueprint for reform (ongoing), new case management systems and training. The impact of training has been held back by the Attorney-General's Office's practice of rapid rotation of staff, rather than encouraging specialisation. The Attorney-General's Office has proved to be a more difficult counterpart than the Supreme Court, with uncertain commitment to the reform process. As a result, it is lagging some years behind. We have not seen evidence of any overall improvement in the prosecutorial service.

Despite extensive capacity-building support from the LDF, the Human Rights Commission (Komnas HAM) remains a fairly ineffective institution. It has no power to enforce its decisions, and reportedly limited influence with the executive. It receives in the vicinity of 5–6000 individual complaints per year, but is only able to respond to about a thousand of them. Although the evaluation team was not able to meet with the Human Rights Commission, no improvements in its operations are noted in the LDF reporting. The National Commission on Violence Against Women (Komnas Perempuan) has been more successful. The core budget support provided by Australia has helped it to expand its program of research and advocacy, and its work with law enforcement agencies and other Indonesian Government institutions to raise their awareness on issues related to gender-based violence. Overall, however, the success of the human rights element of the assistance has been rated only as 'fair'.⁴³

Support for the prosecution of corruption cases has been a major focus of the assistance, and has brought about some important results. There has been a strong formal commitment from the Indonesian Government to fighting corruption. It has ratified the UN Convention on Anti-Corruption and issued a number of national strategies and presidential decrees on eradicating corruption. Yet corruption remains entrenched at high levels of the state, and anti-corruption efforts are prone to setbacks. As an ad hoc body for prosecuting corruption, the Corruption Eradication Commission has been remarkably successful. At the time of the mission, it had a 100 per cent success record in prosecuting around 100 high-profile corruption cases over its 8-year history, including politically connected individuals such as members of the legislature, the elections commission, the central bank, provincial governors and mayors.⁴⁴ The LDF provided training and investigative tools to the Corruption Eradication Commission, with an emphasis on advanced surveillance techniques, and assisted with the development of standard operating procedures for its investigations. The Corruption Eradication Commission has

⁴³ AusAID, "Australia Indonesia Partnership for Justice (AIPJ): design document", July 2010, p. 70.

⁴⁴ Kemitraan, "Mapping report on state of play of anti-corruption reforms in the law and justice sector in Indonesia", 2010.

reportedly used electronic surveillance very effectively in its investigations. At present, however, it is under attack from the national legislature, which has threatened to remove its investigatory powers. Its future is therefore in doubt. Overall, the anti-corruption theme has been quite narrow, focused largely on capacity building for prosecution of corruption cases. Some recent analysis commissioned by AusAID may provide a basis for a broader engagement with this theme in the future.⁴⁵

While successful corruption prosecutions are definitely a result in their own right, a 2010 assessment commissioned by AusAID concluded that corruption within the legal system remains endemic, encompassing police, prosecutors, lawyers, judges and the corrections system.⁴⁶ Despite the creation of a presidential commission to address it, the problem of the ‘judicial mafia’—the system of intermediaries able to buy and sell outcomes within the justice system—remains highly entrenched, and will take many years of multi-faceted reforms to resolve. Australian assistance can only ever hope to make a modest contribution to this wider objective.

The support relating to transnational crime and related international cooperation, including legislative development and training, has not been monitored for impact on the quality of law enforcement operations in Indonesia or overall changes in institutional capacity. The AIPJ design document notes that the Attorney-General’s Office appeared less interested in assistance on transnational criminal cooperation than in support for its internal reform agenda.⁴⁷ The assistance does, however, seem to have helped build stronger relationships between the relevant Australian Government agencies (particularly AGD and the AFP) and Indonesian law enforcement agencies. In addition, JCLEC has helped build a network of officials from across the region, which is an important resource for facilitating international cooperation.

Overall, this is a commendable set of results for a relatively small-scale assistance program in a huge sector with many entrenched interests. It remains contested, however, the extent to which the core capacity-building support to the judiciary and prosecutorial services have translated into wider improvements in the level or quality of justice services. The national stakeholders consulted by the evaluation team believed the law and justice reform processes supported by Australia were important and necessary, but none argued that they had yet translated into improvements in service delivery, a reduction in corruption or increases in public confidence in the legal system. The LDF program was also criticised by successive reviewers for its lack of effective monitoring of impact data. (At the time of the mid-term review, no baseline data on service delivery had been collected.⁴⁸ Since then, the access and equity studies in the courts have provided some baseline data.)

⁴⁵ Ibid., p. 12.

⁴⁶ Ibid., p. 10.

⁴⁷ AusAID, “Australia Indonesia Partnership for Justice (AIPJ): design document”, July 2010, p. 71.

⁴⁸ Pompe, Sebastiaan, Paul Crawford and Daniel Rowland, “Indonesia-Australia Legal Development Facility mid term review”, March 2007, p. 44–45.

This is a key issue for the evaluation, and needs to be considered carefully. There are a number of reasons why results monitoring has been difficult. One is the objective difficulty of measuring change in the law and justice sector. The literature acknowledges that there is no consensus on indicators for different elements of law and justice assistance.⁴⁹ A second is lack of clarity and excessive breadth in the high-level objectives of the assistance. The designs were not formulated in such a way that it was obvious which results should be measured. If a robust approach to impact monitoring is not integrated into the design, it is very difficult to adopt at a later date. Hence, the observation in the Independent Completion Report that the LDF did not treat monitoring and evaluation as a management tool, but as a stand-alone contractual requirement.⁵⁰ Third, both Indonesian Government and AusAID documents make it clear that the reform processes supported by Australia were long-term in nature, and would take many years to deliver results. The LDF team consistently argued that a strict approach to impact measurement underrated the significance of their achievements. The LDF supported complex institutional reform processes that were in their infancy, when there was little capacity within the justice institutions to manage them. The most important achievements of the LDF involved seeding and nurturing reform processes through these delicate early phases, and that this was accomplished with considerable success. The LDF reporting therefore focused on process, rather than impact.

This is a dilemma that AusAID is yet to satisfactorily resolve. It would be a perverse result if the LDF program were rated unsuccessful because it is yet to achieve its intended impact, when it was praised by reviewers as a leading donor program in the sector. It would also be perverse if the imperative of managing for results made it impossible for donors to support long-term, complex and uncertain institutional change processes.

But conversely, if it is to make a long-term investment in institutional change, AusAID needs some assurance that its approach is valid through regular monitoring feedback. International experience is that many top-down capacity-building initiatives in the law and justice sector fail to deliver any appreciable impact on service delivery, no matter how long they are sustained.⁵¹ A lack of capacity is only one constraint on justice outcomes, and the link between capacity building and improvements in justice services is by no means a given. This is clearly also the case in Indonesia, given the complex and uncertain political terrain and existence of strong vested interests in the current status quo.

⁴⁹ See for example Rynn, Simon and Duncan Hiscock, "Evaluating for security and justice: challenges and opportunities for improved monitoring and evaluation of security system reform programmes", Saferworld Research Report, October 2009; Armytage, Livingston, *Reforming justice: a journey to fairness in Asia* (Cambridge University Press, forthcoming 2012).

⁵⁰ Mooney, John and Budi Soedarsono, "Indonesia – Australia Legal Development Facility: independent completion report", May 2010, p. 38.

⁵¹ See European Commission, "Thematic evaluation of European Commission support to justice and security system reform: desk report, Vol. 1, Main report", Brussels, ADE, February 2011. The preliminary evaluation findings of 20 projects concluded that there is "limited evidence of cases where the Commission has contributed to the strengthening of legal institutions in the delivery of criminal justice services or improved service delivery... [in part because] Commission contributions appear generally to have adopted an institutional capacity approach", p. 46.

This is not to say that Australia should not invest in supporting reform processes that look promising. But to be sure of delivering results, support for long-term and uncertain reform processes needs to be balanced with a more explicit focus on service-delivery and problem-solving approaches that deliver immediate benefits to the intended beneficiaries. There are encouraging signs that the new AIPJ design has a better balance, with its stronger focus on service delivery for marginalised groups.

With little concrete evidence on results, the question of sustainability reduces to whether the reform processes supported by Australia are likely to continue beyond the life of the assistance. As a middle-income country with budgetary resources and a demonstrated commitment to equitable development, Indonesia offers fairly good prospects for sustainability. Generally, the LDF program and its successors have shown a good commitment to promoting sustainable reform processes. They have supported medium-term reform strategies and permanent changes in institutional arrangements (e.g. new standard operating procedures). They have helped secure government budgetary allocations for new initiatives. In contrast to some of the other donors, they have invested in technologically appropriate solutions, such as the use of SMS, that are more likely to be used and maintained by the counterparts. Many of the training activities have involved train-the-trainer components. Overall, the program has been careful to support the reform agendas of its counterparts. One caveat, however, is that sustainability is dependent both on the external political environment and the personal disposition of the leadership of the institutions, both of which are beyond Australia's influence.

7. Have activities been efficiently delivered and do they represent value for money?

The LDF was designed to support small-scale activities and generally delivered them efficiently. According to one reviewer:

“Compared to other donors the LDF funding was small but the relationships were valued for their quality, not necessarily the volume of funding.”⁵²

In fact, there is no obvious correlation between the scale of expenditure and the level of impact on the reform processes. Some of the most effective interventions involved relatively little financial input. There were some concerns that the facility was too responsive to requests from its counterparts, sponsoring activities with limited strategic significance. There were also concerns over the relatively high level of input from senior Australian advisers. The four lead advisers cost around 16 per cent of the budget.⁵³ While this is high, it is not exceptional for law and justice assistance, particularly during early reform processes in difficult environments, where technical expertise and political negotiating skills are just as important as financial inputs.

This case study has not looked in detail into the management arrangements, but it is clear that there were some tensions between AusAID and its contractor. A number of reviewers commented that the LDF developed an identity that was separate from AusAID, with some differences of views on strategic direction.⁵⁴ On the other hand, at various times there seem to have been weakness in AusAID’s supervision of its contractors—in particularly a tendency to focus on contractual deliverables rather than the larger strategic picture.⁵⁵ AusAID has sought to overcome these issues in the design of the new AIPJ program by putting the managing contractor under the supervision of a Program Director contracted directly by AusAID. This will give AusAID more direct input into the program and its relationships.

There are some major issues regarding the efficiency of management arrangements across the different Australian Government agencies involved in the assistance. Most observers agreed that the involvement of other agencies in the implementation of AusAID projects offers a number of benefits, including more contemporary and relevant experience, the ‘horizontal’ of peer-to-peer relationships,⁵⁶ and the fact that it builds lasting relationships between Australian and Indonesian institutions.

⁵² Mooney, John and Budi Soedarsono, “Indonesia – Australia Legal Development Facility: independent completion report”, May 2010, p. 51.

⁵³ Ibid., p. 29.

⁵⁴ Ibid., p. 49.

⁵⁵ Ibid., p. 50.

⁵⁶ In literature on capacity building, ‘horizontal’ refers to the equal relationships enjoyed between peers from equivalent agencies in different countries, as compared to the implicit hierarchies involved in the delivery of technical expertise by

Agencies without a permanent presence in-country also have a number of disadvantages. They are restricted to activities that can be delivered remotely or during short visits (typically training sessions, workshops and study tours). These may be sufficient for transfer of technical skills in niche areas to relatively sophisticated counterparts (as is sometimes the case in Indonesia), but are not usually helpful for supporting complex institutional reforms. Even when assistance of this kind is based on a formal request, it can easily become supply-driven. Furthermore, it requires a supporting management structure in-country, which is provided either by AusAID or its implementing agency (for the courts) or DFAT (for AGD activities). Visits from Australia-based agencies require a significant level of organisational input, and there is no clear and agreed process for determining whether the value of visits corresponds with the level of effort required to make them happen.

There are no overarching planning processes for Australian law and justice assistance in Indonesia. AusAID's Indonesia program sources funds from multiple budget measures, and therefore law and justice activities have limited funding certainty. Both the courts' and AGD's activities are funded partly by AusAID and partly from their own resources. Yet their activities are programmed through separate processes, without common overarching goals or indicators of success. Both the courts and AGD report that they find AusAID's planning processes difficult to understand and engage with, and expressed frustration with the length of time it has taken to finalise the design of the new AIPJ program. But AusAID also reports that it sought but received little input from the other agencies into its design. In the case of the courts, activities are programmed through an annual annex to the memorandum of understanding to which AusAID is not a party, although both AusAID and Bappenas are consulted on the content.

Poor coordination gives rise to substantial risk of fragmentation of efforts within the Australian assistance, and consequent loss of at least efficiency, if not also effectiveness. The Independent Review of Aid Effectiveness cited the lack of a single aid budget process and the lack of effective whole-of-government coordination as drivers of fragmentation in the aid program.⁵⁷ It is hoped that the review will lead to new systems for joint planning, budgeting and operational integration, in order to make more efficient and effective use of the resources and comparative advantages of the different agencies.

In substance, the work of AusAID and the courts are clearly complementary, even if their priorities are not always identical. Though they need additional work, the current arrangements for operational coordination are a good basis to build on. The Australian courts appear to have learned a lot from their lengthy engagement in Indonesia, and over time have become more willing to take guidance from AusAID on overall strategy and questions of aid effectiveness.

contractors. See for example African Development Bank, "From aid effectiveness to development effectiveness: issue papers", Tunis, 2010, p. 9 ff.

⁵⁷ Australian Government, "Independent review of aid effectiveness", April 2011, p. 74.

As between AusAID and AGD, there is at present no mechanism for joint planning or operational coordination, beyond informal consultation. The AIPJ design document acknowledges this issue, and proposes the development of an Australian Government Framework for Assistance to Indonesia's Law and Justice Sector. This would involve AusAID, AGD, DFAT, the AFP and a number of other Australian agencies in joint processes to articulate common goals, establish a division of labour, develop a coordinating mechanism and enable joint reporting to the Indonesian Government on Australia's overall assistance to the sector.⁵⁸ The recommendations section of this report (Section 9) contains some further thoughts on this initiative.

AGD's assistance to Indonesia on transnational criminal cooperation and mutual legal assistance used to be a component of the LDF, but has been excluded from the design of the new AIPJ. According to the AIPJ design document, the Attorney-General's Office was less interested in this form of assistance than support to its general reforms. Continuing with a focus on transnational crime would therefore risk giving rise to "Indonesian perceptions of heavily supply-driven aid."⁵⁹ As a result, the transnational crime agenda was left out of the AIPJ design.

This begs the question: who makes the assessment as to whether transnational crime is a genuine priority within the Indonesian law and justice reform agenda? AGD leads on transnational criminal cooperation, but AusAID is better placed to assess what is a genuine priority of the Indonesian Government. If AusAID decides that AIPJ is more coherent without the inclusion of the transnational crime theme, does it make sense for AGD to continue its activities from other resources? At present, there is no way of ensuring coherence of the Australian assistance.

What then can be said about the overall value for money offered by Australia's law and justice assistance in Indonesia? While value for money is an increasingly important concept for the Australian aid program, no standard metrics or assessment tools have yet been developed. For the purposes of this evaluation, our assessment method takes into account:

- the expected development returns, including both positive returns and the avoidance of negative outcomes such as conflict
- the level of financial investment
- the level of risk/likelihood of achieving the intended outcomes.

Of these, only the level of investment can be quantified, but the concepts can still be used to make a qualitative assessment.

Within the AusAID Indonesia portfolio, law and justice assistance is seen as an area with potentially high returns. It is intended to improve governance standards and conflict

⁵⁸ AusAID, "Australia Indonesia Partnership for Justice (AIPJ): design document", July 2010, p. 37.

⁵⁹ Ibid., p. 71.

management, contributing to Indonesia's stability and consolidation of democratisation. This has both positive and preventative benefits. In addition, the social justice agenda empowering women, the poor and other disadvantaged groups to access a broad range of public goods and services is shared by both Indonesia and Australia, and is complementary to Australia's other support on service delivery in health, education and rural development. Australia also has national interests at stake, including improving Indonesia's capacity to counter the threat of terrorism and transnational crime.

The current level of financial investment (around A\$12 million in 2010, counting only AusAID funds) is a relatively small proportion of the total bilateral expenditure (around 2–3 per cent). The program has demonstrated that, under the right circumstances, quite small expenditure in the sector can have useful impact. However, considerable planning and design is required for each intervention, with a high level of expert input, resulting in very high management costs.

Finally, the evidence of impact to date suggests that the expected returns are both long term and uncertain. The reform processes are still at an early stage, and major improvements in the quality of justice delivered to the public are still some way off. The work on access to justice has delivered some important results in niche areas, but there is a long way to go to reverse Indonesians' distrust of the courts. Australia has made a useful contribution to strengthening the Corruption Eradication Commission, which is Indonesia's most successful anti-corruption institution, but eradication of corruption in the general courts is yet to make much progress. Overall, there is a high risk that changes in the political environment or in the leadership of the justice institutions could prevent achievement of the goals of the assistance and reverse gains already made.

The law and justice assistance is therefore high risk, high return on a modest investment. In the view of the evaluation team, such an investment represents value for money if it forms part of a balanced risk profile across the country program. In a country of the importance of Indonesia, the country program should include a mixture of investments with more certain development returns (e.g. education or infrastructure) with higher risk investments in other areas considered critical for the country's future.

8. Have cross-cutting policy objectives been pursued?

This section of the evaluation looks at the extent to which cross-cutting policy objectives in the Australian aid program have been pursued within the law and justice assistance. The three areas considered here are gender equality, disability and HIV/AIDS.

AusAID adopted a cross-cutting policy on disability-inclusive aid in November 2008. The policy includes targeted initiatives to meet the needs of people living with disability, ensuring that service-delivery programs meet their specific needs, and building leadership skills for people with disability and their organisations.⁶⁰ AusAID Indonesia responded to this by commissioning a study on the rights of people with disability within the Indonesian legal system,⁶¹ and plans to make the AIPJ program a flagship initiative in this area. The AIPJ does not have any activities on HIV/AIDS.

A gender review of the LDF program⁶² found that there had been a number of promising activities directed specifically towards helping women, but that overall there had been little explicit emphasis on gender equality as a cross-cutting theme across the activities. A Gender Strategy was developed early in the life of the facility, but was not consistently applied across the activities and was never updated. The gender review concluded that the strategy had been a “one-off desk exercise”, with little thought given to the process of its development or monitoring arrangements.⁶³ It may be that the nature of the Australian support (responding to the reform objectives of defined institutional partners) made it difficult to pursue cross-cutting thematic objectives. A number of LDF-commissioned studies identified the inconsistency of provincial and local regulations with the Constitution and the Convention on the Elimination of Discrimination Against Women (CEDAW), together with a lack of awareness about and enforcement of national legislation on women’s rights, as important barriers to gender equality. However, the LDF was not able to translate this analysis into a consistent program of action.

At the time of the gender review, there was little data disaggregation within the monitoring and evaluation framework, making it difficult to identify the impact of the assistance on women. This was later partially rectified through the systems introduced in the religious courts to collect data on women’s access to fee waivers and circuit courts. Australian assistance has also assisted the NGO PEKKA to make use of data on women’s access to justice in its advocacy, leading amongst other things to discussion between PEKKA and the Central

⁶⁰ www.aisaid.gov.au/aidissues/did/

⁶¹ Colbran, Nicola, “Access to justice Persons with disabilities Indonesia: background assessment report”, October 2010.

⁶² Lockley, Anne and Iidwina Inge, “Gender review, Indonesia-Australia Legal Development Facility: final report”, July 2009.

⁶³ Ibid., p. 5.

Statistics Agency on the way that female heads of households are treated in Indonesia's national socio-economic survey program.

There have been two main activities explicitly benefiting women. First, Australia has provided core funding for the National Commission on Violence Against Women. This flexible assistance is well appreciated by the commission, giving it the freedom to set its own agenda. The commission has engaged in research, advocacy and training on issues related to gender-based violence, and to some extent on broader gender equality issues, running training and awareness-raising programs for Indonesian Government agencies, including law enforcement bodies.

Second, within its access to justice theme, the LDF focused much of its efforts on supporting the right to a legal identity of women heads of households (see Box 5). The LDF and the Family Court of Australia supported and participated in high-quality research on the experiences of poor women in the justice system, analysing the barriers (mainly economic) they faced in accessing the courts. It identified family law and the religious courts as the most promising entry point for its interventions, particularly as family law cases account for 50 per cent of all court cases in Indonesia. It provided direct and indirect support to PEKKA as a leading women's NGO, and produced concrete and quantified benefits for a defined group of vulnerable women (heads of households in poor communities). This is an important example of a problem-solving approach to law and justice assistance, which has maximised the benefits to poor women of institutional reforms within the religious courts. Having identified this promising entry point, more assistance to PEKKA on legal empowerment activities is warranted.

Overall, gender was well integrated into two of the LDF's four components—access to justice and human rights—but not into the work on anti-corruption and transnational crime. This is perhaps not surprising, as the former two areas have more prominent gender equality dimensions. But it may also reflect the knowledge and interests of the different advisers on the team.

9. Conclusions and recommendations

Overall goals and approach

The case study suggests that the case for investing in law and justice in Indonesia rests on a number of justifications:

- the intrinsic developmental goal of improving justice and human rights, particularly for marginalised groups
- pursuing a broader social justice agenda, as a thematic goal
- advancing the anti-corruption agenda.

These are all relevant and legitimate goals. Under the LDF, however, the goals were defined too broadly, and the design lacked a strong rationale tying the objectives to the choice of activities offered. This is the root cause of the difficulties it faced with measuring results and communicating the 'story' behind the assistance.

This has improved in the new AIPJ design. The overarching goal (improving the quality of justice services) is linked to key outcomes that are clear and specific. There has been analysis of the kinds of problems facing the primary beneficiaries (the poor, women and people with disabilities), which will lend itself to a service-delivery or problem-solving approach. As the activities develop, we would recommend keeping them as focused as possible on incremental improvements in service delivery and resolving specific issues with access to justice for the target groups. This will help ensure that it is the Indonesian public, rather than the justice institutions, that is the beneficiary of the assistance, and will produce results that are more readily measurable.

One of the most interesting elements to emerge from Australian assistance in Indonesia to date has been the idea of using law and justice to advance the broader social justice agenda of access and equity in public services and development programs. As argued above, this seems particularly relevant to the Indonesian national context of a lower middle-income country with a range of pro-poor programs and strong formal commitment to balanced and equitable development. More could be done to develop a thematic approach on social justice, tying the law and justice area closer to other aspects of Australian assistance, particularly on service delivery. Following on from the success with formalising marriages and divorces in order to provide access to health, education and other social benefits, are there other instances where informality or denial of legal identity creates a barrier to accessing services? The Justice for the Poor research may be able to identify other issues. Given the AIPJ goal of becoming a flagship program for AusAID's new disability policy, there may be scope not just for reducing discrimination against people with disability within the justice institutions, but also to promote the emergence of an enforceable framework of rights that increase their access to health and education services. In other words, how can the Indonesian justice system become part of a broader strategy for empowering people and reducing discrimination? This would

involve the law and justice program working closely with other aspects of the country program.

The focus on corruption has been in some ways a less convincing element of the assistance to date. This is obviously sensitive political terrain, in which Australian influence is necessarily limited. The focus so far has been on the prosecution of corruption cases, and this remains the case in the new AIPJ design. As a 2010 analysis commissioned by AusAID pointed out, this is a rather narrow approach to a multi-dimensional problem.⁶⁴ There is not much evidence from international experience that capacity building of justice institutions that themselves have entrenched corruption problems can help address the broader problem of corruption across government. The use of transparency as a strategy for addressing corruption in the judiciary seems more promising, and there may be scope to extend this approach to other institutions, such as the Attorney-General's Office and the prisons administration. Fortunately, there is the flexibility within the AIPJ design to explore new approaches to anti-corruption.

In terms of the balance between capacity building, service-delivery, problem-solving and thematic approaches, we find that there has been a variety of forms of engagement, but the balance of effort has gone towards capacity building. The LDF program was designed at a time when the first political openings had appeared for a process of judicial reform. The core theory of change to the assistance was that, by making additional technical and financial resources available to reform-minded leaders in the court system, through a flexible funding arrangement and NGO 'triangulation', Australia could help those early reform processes gain traction and move forward.

This theory of change was to some extent borne out. Australian assistance did help to nurture the reform processes through a delicate early phase, cementing strong relationships with the counterparts and receiving widespread positive feedback from peers and reviewers. It does not appear, however, that attempts to reform these large and unwieldy institutions from the top down, by helping them formulate and implement comprehensive and ambitious reform strategies, have yet translated into general improvements in the quality of justice services provided to the Indonesian public. There have been some specific achievements, such as the reduced waiting times for justice in the Supreme Court, but the balance of opinion among stakeholders consulted for this case study was that the judicial reform process was yet to 'filter down' to the service-delivery level. While it is possible that these impacts are still in the pipeline, the causal chains are long and uncertain, particularly given the dynamic political environment in Indonesia and the vulnerability of the reforms to changes in the leadership of the institutions.

⁶⁴ Kemitraan, "Mapping report on state of play of anti-corruption reforms in the law and justice sector in Indonesia", 2010.

In fact, the international experience is that ambitious institutional reform processes in the law and justice system rarely filter down to measurable impacts for the intended beneficiaries.⁶⁵ This is not simply a problem of measurement—although measurement is of course a perennial challenge. The problem is more fundamental. Capacity building will only lead to improvements in justice services if capacity is the binding constraint on service delivery. It is just as likely that the binding constraint is imposed by politics and vested interests. The experience of *Reformasi* in Indonesia is that reform-minded institutions are allowed a certain space to move forward, but are then cut down to size when they start to threaten powerful interests. This appears to be happening now with the Corruption Eradication Commission.

It is therefore interesting to find that the most prominent success of the assistance to date has come about through a problem-solving approach on an access to justice issue. The work of the LDF, the Family Court of Australia and the NGO PEKKA identified a specific justice issue with wider socio-economic significance for a defined group of beneficiaries, identified solutions (fee waivers and circuit courts) and set about institutionalising them. It is notable that, when working this way, there were no substantial problems of measuring the results—it was relatively easy to identify what needed to be measured, and to design and implement systems to do so. As a model of institutional change, this is appealing. It built on the strengths of an existing institution, it mobilised local constituencies for change, and it led to clear and sustainable improvements in service delivery.

This is not intended to suggest that there is no value in supporting top-down reform processes. However, in our opinion, an assistance strategy that staked everything on top-down reform processes would not represent value for money. It needs to be balanced by a strong focus on service delivery and access to justice. For this reason, the AIPJ seems to have a much better balance than the LDF.

Innovative approaches

Australia's support for law and justice in Indonesia offers a rich source of lessons and experience. Many elements of the assistance have been highly innovative, offering useful options for consideration in other countries. Some of the most impressive features are as follows:

- the high level of flexibility of the assistance, enabling it to operate effectively in a volatile political environment and identify low-cost, high-impact interventions
- the strong investment in relationships with key figures in Indonesia's justice sector, led by Australian experts with strong cultural and language skills and now increasingly by Indonesian experts
- the strong partnerships built up between the Supreme Court and legal NGOs, that increased the court's capacity to develop and implement a reform agenda while

⁶⁵ See European Commission, "Thematic evaluation of European Commission support to justice and security system reform: desk report, Vol. 1, Main report", Brussels, ADE, February 2011. See also Armytage, Livingston, "Judicial reform in Asia – case study of ADB's experience: 1990–2007", *Hague Journal on the Rule of Law*, No. 3, 2011, pp. 70–105.

- helping the NGOs become more effective advocacy organisations by gaining a deeper understanding of the complexities of institutional change
- the use of research and analysis to inform the Australian assistance, and the success in demonstrating to the Supreme Court and religious courts the value of evidence in improving service delivery
- the success in attracting resources from the Indonesian budget to support activities piloted through Australian assistance
- the strong twinning relationships built up between the Indonesian and Australian courts, which improved the level of access and influence of the Australian assistance
- the use of transparency within the court system to increase accountability and tackle corruption
- the use of appropriate and cost-effective technologies, such as the SMS-based system for communicating management and access to justice data from regional and local courts to Jakarta.

9.1 Whole-of-government issues

The Indonesian experience shows the potential benefits of a whole-of-government approach to delivering law and justice assistance. The relationships between Australian law and justice institutions and their Indonesian counterparts can have distinct advantages over those involved in technical assistance delivered by a managing contractor. Capacity building by foreign consultants often involves implicit assumptions as to “expatriate expertise and recipient ignorance”,⁶⁶ which stands in the way of effective assistance. This is particularly the case in a country like Indonesia with its high levels of human capital. By contrast, when peer organisations from different countries meet, there is an assumption of equality that lends itself to a more constructive relationship. The twinning relationship between courts in the two countries seems to have been highly valued for this reason. Australian Government agencies may also be able to provide more relevant and up-to-date advice than contractors. Whole-of-government assistance also helps to build long-term relationships between Australian and Indonesian institutions, which are in both countries’ interests.

There are, however, some limitations. Australian Government agencies without a permanent presence in Indonesia are limited in the types of assistance they can provide. They are limited to offering support that can be provided remotely or on short missions, such as training courses, studies or draft legislation. Assistance of this type, even when formally agreed with the partner institution, can easily become supply-driven. It is also unlikely to be sufficient for supporting complex reform processes, unless anchored in a broader program of assistance. The multiplication of small-scale assistance delivered by separate agencies has been criticised by the Independent Review of Aid Effectiveness as a driver of fragmentation in the Australian aid program, with costs for both coherence and value for money. We are informed that, to

⁶⁶ ActionAid, “Real aid: making technical assistance work”, 2005, p. 3.

address this issue, AGD has recently stationed an officer in the Australian Embassy in Jakarta to support the delivery of its law and justice assistance.

These problems of whole-of-government coordination in law and justice assistance are not unique to Australia. In response to a similar proliferation of aid activities,⁶⁷ the United Kingdom established the Justice Assistance Network, with the original goal of developing a common strategy. This goal proved unachievable, given the diversity of institutional interests and perspectives involved, and was downgraded to sharing information and mapping activities.⁶⁸

There are many steps that might help to overcome the risks of incoherence and fragmentation in whole-of-government delivery of law and justice assistance, including at Canberra level:

- a set of overarching goals and principles that apply to all Australian law and justice assistance, by whichever agency it is delivered
- a more rational process for allocating budgets for law and justice assistance (we understand that this is under consideration as a result of the Independent Review of Aid Effectiveness)
- a clear understanding by all Australian Government agencies involved in the delivery of ODA that they are committed to the principles of the Paris Declaration and its successors, and a willingness to follow AusAID's guidance on aid effectiveness
- more effort by AusAID to engage with and support law and justice assistance by other agencies (as already happens through exchange of staff between AusAID and the AFP's International Deployment Group).

Possible measures at the country program level would include:

- joint planning processes in countries with significant whole-of-government engagement in law and justice assistance, to agree on common goals and approaches, joint overarching progress indicators, a clear division of labour and agency leads on particular themes or areas
- greater clarity within AusAID programs as to the contribution to be made by other government departments, to enable them to plan their engagement more effectively.

In determining roles and responsibilities of the different agencies, it might be useful to draw a distinction between two different types of legal assistance: (a) the general law and justice development portfolio, and (b) support for mutual legal assistance and international criminal cooperation. The latter, although part of Australian ODA, is distinctive in that there are more direct Australian interests at play, and the lead more naturally falls to other government agencies, including AGD and the AFP, than to AusAID. While international cooperation on

⁶⁷ Delivered by the Department for International Development (DFID), the Foreign and Commonwealth Office, the Home Office, the Crown Prosecution Service, the Ministry of Defence, the Stabilisation Unit, the Serious Organised Crime Agency, the Association of Chief Policy Officers and various individual police forces and judicial and quasi-judicial bodies.

⁶⁸ Stevenson, Rosemary, "Review of the justice assistance network", 2008; information provided by DFID.

crime may be in the interests of both countries (indeed, as a global public good it is of interest to the wider international community), it may not be a high priority for poverty reduction, which the Independent Review of Aid Effectiveness has said should be the touchstone for Australian aid. Indeed, there are a number of law and justice-related activities in Indonesia (such as JCLEC or assistance for security at Bali airport) that are not obviously part of Indonesia's national poverty reduction agenda, even though they are of interest to both governments. In practice, the two strands of the assistance have already been separated. International criminal cooperation has been excluded from AusAID's new program because it was not seen as a priority by AusAID's counterpart. On the other hand, AGD continues to support other Indonesian agencies, in particular the Indonesia Financial Transaction Reports and Analysis Center and the Ministry of Law and Human Rights, on more technical areas such as asset forfeiture and operations to counter the financial cost of terrorism.

For the general law and justice development portfolio, it would be preferable for all Australian Government assistance to be brought within a single planning and budgetary process, with the agencies deciding jointly on a common set of priorities against a known envelope of funding from the bilateral aid program. In this process, AusAID should play the lead role as the specialist development agency, but should draw on the sectoral expertise of the other agencies. Having been through a joint planning process, AusAID could then legitimately resist proposals for new activities that are not covered by the agreed priorities. This will pose a challenge for some of the other agencies, particularly AGD, which has been accustomed to developing its international cooperation activities through a proliferation of short-term activities without a clear strategic framework. Rather than attempting to sell its services to willing buyers, AGD will need to work harder to anchor its support within a broad Australian Government strategy, and to ensure its support meets the requirements of aid effectiveness.

For the area of transnational crime and international crime cooperation, different interests and considerations apply, and it might be appropriate for this to be located in a separate planning and budget process. The emphasis here should be on Australia's contribution to promoting global and regional public good around fighting transnational crime and terrorism. It might make sense for there to be a single budgetary allocation for this purpose, from which the responsible agencies could decide priorities in terms of country allocations and activities. The lead agencies here would be AGD and the AFP, rather than AusAID. However, these funds still qualify as ODA and should be subject to Australia's international commitments on aid effectiveness. AusAID should therefore continue to play a role in advising the other agencies.

9.2 Recommendations

It is not the task of this case study to make detailed recommendations on future Australian law and justice assistance to Indonesia, especially as the new AIPJ program has only just been designed. However, we would have a number of broad suggestions to pursue within AIPJ.

We suggest that the focus of efforts under AIPJ should be on achieving incremental improvements in service delivery and resolving specific problems of access to justice,

particularly for marginalised groups (poor communities, women and people with disabilities). As the program develops, activities should be designed around concrete service-delivery goals that allow for measurement of results.

We would recommend looking into the possibility of developing some thematic approaches, that tie the law and justice assistance into other aspects of the country program. The social justice theme is potentially a very relevant and useful one. AusAID should assess whether there is scope for anchoring other service-delivery objectives within an enforceable framework of legal rights—particularly for people with disabilities and other marginalised groups.

There is still an appropriate role for providing capacity-building assistance to law and justice institutions, including continuing with the strategy of ‘triangulation’ with NGOs to provide additional technical and financial resources to leaders with a reform agenda. However, our suggestion would be to focus this support less on comprehensive institutional reform strategies with very long time horizons, and more on institutionalising practical solutions to access to justice problems, as was done successfully in the family law area.

We recommend that AIPJ continues to build on the transparency theme, as a strategy for addressing corruption in justice institutions and building greater public confidence in the justice system. While courts are now publishing details of their fees and fee income, this is limited to posting on court websites and noticeboards. A more active public outreach campaign—particularly to inform the public that they don’t need to use intermediaries to access the courts—might be helpful.

We recommend that, as a lead donor in Indonesia and in the law and justice sector, AusAID invests more effort into promoting aid effectiveness—not just of its operations, but of external assistance as a whole in the sector. It could support Bappenas and the counterpart institutions to set down clearer guidelines for what kinds of assistance are most effective, to avoid a repetition of past mistakes. There may be scope for greater collaboration among donors around common themes—such as the AIPJ goal of introducing a legal aid system. Donor support for some of the smaller independent commissions might be more effective if a number of donors joined together to provide core funding—whether in the form of a basket fund or through a delegated cooperation arrangement. Establishing a joint basket fund for the Corruption Eradication Commission might be one way of signalling support for the institution while its mandate is under attack. We would also recommend that AusAID considers joining with donors to establish a basket for supporting NGO activities in the law and justice field. The support should be flexible enough to allow the NGOs to set their own research and advocacy agenda, and might include an element of core funding. It could also be used to complement AIPJ’s efforts to build a national legal aid system—for example, through an agreement with the Indonesian Government to jointly fund NGO provision of legal aid to supplement state provision.

We also recommend that AusAID explores ways to make better use of the World Bank’s Justice for the Poor research in its own planning and programming. There has been a series of

problems, mainly of a bureaucratic or funding flow nature, that has prevented this from occurring so far. If they can be resolved, AusAID should engage more in the development of the research agenda and help shape it to the benefit of both Indonesian Government and donor programming.

On whole-of-government coordination, we recommend the following set of processes at Canberra level:

- development of a set of overarching goals and principles applying to all Australian law and justice assistance, by whichever agency it is delivered
- a more rational process for allocating budgets for law and justice assistance (now underway following the Independent Review of Aid Effectiveness)
- a clear understanding by all Australian Government agencies involved in the delivery of ODA that they are committed to the principles of the Paris Declaration and its successors, and a willingness by the agencies to follow AusAID's guidance on aid effectiveness
- more effort by AusAID to engage with and support law and justice assistance by other agencies (as already happens through exchange of staff between AusAID and the AFP's International Deployment Group).

At the country program level in Indonesia, we recommend agreement across the different Australian Government agencies providing law and justice assistance on a common set of goals and results indicators for all their efforts, with a clear division of labour and agency leads on particular themes or areas. Agencies active in the general law and justice portfolio, including the twinning programs, should fall within the ambit of the new AusAID-led program. In the transnational crime sphere, there may be a case for the coordination to be provided under a different management structure, with AGD leading. However, strong coordination will still be needed in areas of overlap.

Annex A: List of documents consulted

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Annex B: List of interviews

Institution

Attorney-General's Department (Australia)

Attorney-General's Department (Indonesia)

AusAID Canberra

AusAID Indonesia

Bappenas

Cianjur

Corruption Eradication Commission

Department of Foreign Affairs and Trade (DFAT)

Family Court of Australia

Former AusAID project advisers

Jakarta Centre for Law Enforcement Cooperation (JCLEC)

Kemitraan (NGO Partnership for Governance Reform)

Ministry of Law and Human Rights

National Commission on Violence Against Women

National Legal Reform Program

PEKKA Cianjur—Women-Headed Household Program

Posbakum Cianjur

Supreme Court Judicial Reform Team Office

The Asia Foundation

United States Agency for International Development (USAID)

World Bank

Individuals

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Luke Arnold

Matt Kimberly

Saiful Doeana

Victoria Coakley

Nicola Colbran

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Visit to circuit court

M. Jasin and colleagues

Michael Bliss (Jakarta)

Emily Street (Jakarta)

Andrew Barnes (Canberra)

Leisha Lister

Cate Sumner

Tim Lindsey

Don Craill

La Ode Syarif

Hendra Gurning

Noli Kurniasih

Irene Situmorang

Binziad Kadafi

Seminar with beneficiaries

Visit to legal aid posts

Aria Suyudi and colleagues

Laurel MacLaren

Leopold Sudaryono

Bobby Rahman

Ray Johansen

Bambang Soetono

Karrie McLaughlin

Daniel Adler