

Indonesia – Australia Legal Development Facility

AidWorks Initiative Number INF 753

INDEPENDENT COMPLETION REPORT

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The views expressed in this report are those of the authors and do not necessarily represent the views of the Government of Australia or the Government of Indonesia

Aid Activity Summary

Aid Activity Name	INDONESIA AUSTRALIA LEGAL DEVELOPMENT FACILITY		
AidWorks No.	INF753		
Commencement date	12 April 2004	Completion date	Original: 12 April 2009 Extension: 31 Jan 2010
Total Australian \$	\$25.3 million		
Total other \$	n.a.		
Delivery organisation(s)	Melbourne University Private Ltd (GRM International) with Asian Law group Pty Ltd		
Implementing Partner(s)	BAPPENAS, law and justice sector agencies, the key partners being: • The Indonesian Supreme Court (MA - Mahkamah Agung), including the Religious Court (Badilag - Badan Peradilan Agama) and the General Courts (Badilum - Badan Peradilan Umum –) • The National Human Rights Commission (Komnas HAM) • The Attorney-General's Office (AGO - Kejaksaan Agung) • The Anti-corruption Commission (KPK – Komisi Pemberantasan Korupsi) • National Commission on Violence Against Women (Komnas Perempuan) Thirty nine civil society organisations, the key ones being: • Indonesia Legal Aid Foundation (YLBHI - Yayasan Lembaga Bantuan Hukum Indonesia) • The Institute for Policy Research and Advocacy (ELSAM - Lembaga Studi dan Advokasi Masyarakat) • Program for Empowering Women-headed Households (PEKKA - Pemberdayaan Perempuan Kepala Keluarga) • Transparency International (TII - Transparansi Internasional Indonesia) • Indonesian Association of Families of the Disappeared (IKOHI - Komisi untuk Orang Hilang dan Korban Tindak Kekerasan) • Centre for Legal and Policy Studies (Pusat Studi Hukum & Kebijakan Indonesia - PSHKI) • The Commission for 'the Disappeared' and Victims of Violence (KONTRAS - Komisi Orang Hilang dan Tindak Kekerasan)		
Country/Region	Indonesia		
Primary Sector	Governance - Law and Justice		

Acknowledgments

The team records its thanks to all Indonesian partners, the LDF advisers and management, the Federal Court of Australia, the Family Court of Australia and AusAID staff in Jakarta and Canberra who all contributed willingly and thoughtfully. Particular mention should be made of the superb organisational efforts and communications by Program Officer Rosyidah Handayani. Thanks to her skills the team fulfilled more than 40 appointments in ten days.

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Annex 1: List of Key Partners

Abbreviations, acronyms and notes

Acronym / Abbreviation	Description (Indonesian)	Description (English)
ACR		Facility Completion Report
AD	Rancangan Kegiatan	Activity Design
AG or AGO	Kejaksaan Agung	Attorney General's Office
AusAID	Badan Kerjasama Pembangunan Internasional Australia	Australian Agency for International Development
Badilag	Badan Peradilan Agama	Directorate General of Religious Court
BAPPENAS	Badan Perencana Pembangunan Nasional	National Body for Planning and Development
DEPKUMHAM	Departemen Hukum dan Hak Asasi Manusia	Department of Law and Human Rights
ELSAM	Lembaga Studi dan Advokasi Masyarakat	The Institute for Policy Research and Advocacy
Family Court	Pengadilan Keluarga Australia	Family Court of Australia
FRIP		Facility Review and Implementation Plans
GoA	Pemerintah Australia	Government of Australia
Goi	Pemerintah Indonesia	Government of Indonesia
ICW	Lembaga Pemantau Korupsi Indonesia	Indonesia Corruption Watch
IKOHI	Ikatan Keluarga Orang Hilang	Indonesian Association of Families of the Disappeared
JRTO	Tim Pembaruan Peradilan di Mahkamah Agung RI	Judicial Reform Team in Supreme Court of Indonesia
KA	Kejaksaan Agung	Attorney General's Office
KomnasHam	Komisi Nasional Hak Asasi Manusia	National Commission on Human Rights
Komnas Perempuan	Komnas Perempuan	National Commission on Violence Against Women
KONTRAS	Komisi untuk Orang Hilang dan Korban Tindak Kekerasan	The Commission for 'The Disappeared' and Victims of Violence
KPK	Komisi Pemberantasan Korupsi	Corruption Eradication Commission
LA	Penasehat Utama	Lead Adviser
LBH APIK	Lembaga Bantuan Hukum-Asosiasi Perempuan Indonesia untuk Keadilan	The Indonesian Women Association for Justice-Legal Aid Institute
LEIP	Lembaga Independensi Peradilan	Judicial Independence Institute
LDF	Fasilitas Pembangunan Hukum	Legal Development Facility
MA	Mahkamah Agung	Supreme Court
M&E	Pemantauan dan Evaluasi	Monitoring and Evaluation

Acronym / Abbreviation	Description (Indonesian)	Description (English)
MEF	Kerangka Monitoring dan Evaluasi	Monitoring and Evaluation Framework
MK	Mahkamah Konstitusi	Constitutional Court
NGO	Organisasi Non-Pemerintah	Non-Governmental Organisation
PA	Lembaga Mitra	Partner Agency
PEKKA	Pemberdayaan Perempuan Kepala Keluarga	Women Headed Household Empowerment
PKWJ UI	Pusat Kajian Wanita dan Jender Universitas Indonesia	The Women and Gender Studies Center at the University of Indonesia
PKA	Pusdiklat Kejaksaan Agung	Education and Training Center at the Attorney General's Office
RAN-PK	Rancangan Nasional untuk Pemberantasan Korupsi	National Action Plan on Corruption Eradication
RPJP	Rencana Pembangunan Jangka Panjang	Long-Term Development Plan
TA	Bantuan Teknis	Technical Assistance
TII	Transparansi Internasional Indonesia	Transparency International Indonesia
TNA	Analisa Kebutuhan Pelatihan	Training Need Analysis
YLBHI	Yayasan Lembaga Bantuan Hukum Indonesia	Indonesian Legal Aid Foundation

NOTES

- While acknowledging the differing perceptions / interpretations of the terms CSO and NGO, the acronym CSO is used within this document as that is the acronym in the terms of reference.
- The shorter acronym for the ‘Indonesia Australia Legal Development Facility’, i.e. ‘LDF’, is used throughout instead of the full acronym, ‘IALDF.’
- Throughout the text the term ‘agencies’ when used by itself refers to GoI law and justice agencies while the term ‘organisations’ refers to CSOs.

1 Executive Summary

1.1 Background

The Indonesia – Australia Legal Development Facility (LDF) was a A\$25 million AusAID-funded facility that operated from April 2004 through to January 2010. LDF built on AusAID's experience in the earlier Legal Reform Program initiated in June 2001. Melbourne University Private (MUP) was the initial managing contractor of LDF in a consortium with the Asian Law Group Pty Ltd. MUP was later taken over by GRM International.

1.2 Objectives, components and key results

The explicit **purpose** of 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.*

Managed as a facility with over 150 activities its scope was impressive across the four themes: judicial legal reform, improved human rights, anti-corruption and trans-national crime. LDF's key partners were:

- Indonesian Supreme Court (*Mahkamah Agung*) including Directorate Generals of the Religious Court (*Pengadilan Agama*) and the General Court (*Pengadilan Umum*)
- National Human Rights Commission (*Komnas HAM*)
- National Commission on Violence Against Women (*Komnas Perempuan*)
- Attorney-General's Office (*Kejaksaan Agung* or AGO)
- Anti-Corruption Commission (KPK – *Komisi Pemberantasan Korupsi*), and
- a large number of significant civil society organisations which are among the leaders within civil society of the legal reform, human rights and anti-corruption agenda.

LDF worked well at a senior level in the agencies and organisations and was a respected partner. Australia's support and AusAID's guidance was appreciated. All partners said LDF supported programs of agency-led reform at a pace set by them. The agencies selected the activities from their plans and priorities. LDF delivered its services with advisers¹, management and staff who were professional, responsive, flexible and who in the words of a senior judge 'delivered on their promises.'

¹ Technical advisers included a part-time specialist Lead Adviser for each thematic area, short-term and full-time Indonesian specialists, full-time in-line staff funded by LDF in the agency project offices and a number of international specialist advisers who made short-term inputs.

LDF supported the linking or ‘joining-up’ of civil society and the formal law and justice agencies in a unique manner called the ‘triangulation strategy which lead to direct CSO engagement where they:

- provided staff for the reform project offices in the Supreme Court and AGO and for the drafting of the transparency decrees
- participated in the Supreme Court’s five-year strategic planning process
- implemented divorce case management reform with the Religious Court
- raised awareness, participated in training, conduct research and reported trends on domestic violence laws and reviewed cases to judges, prosecutors and police
- generated a range of activities under the human rights theme building partnerships with DG HAM, Komnas HAM, Komnas Perempuan, police, the army, and
- engaged with government officials and parliamentarians on policy and legislative development, e.g. legal aid laws.

LDF’s partners produced a significant number of key outputs. Four highlights of emerging capacity are:

- Increased judicial transparency and accountability in the Supreme Court; enhanced ability of the court to manage its business under the ‘One Roof’ administrative arrangements; publication of fees and case timetables; the publication of 16,000 judgments on the internet and an audit conducted of all cases resulting in the Chief Justice working with judges to achieve a 70 per cent reduction in case waiting times.
- The ‘best practice’ access and equity studies for the Religious and General courts established a baseline for service delivery and transparency. The Religious Court study lead to significant reform of divorce case processes at a local level with support from PEKKA. This resulted in an 18-fold increase in the budget for the court to waive payment of service fees; and more circuit courts taking place in remote areas. It was estimated that by the end of 2008 there was a 10-fold increase in poor people accessing court fee waiver programmes. Similarly, there was a five-fold increase in the number of rural and remote clients that had their cases heard at a circuit court.
- The comprehensive training needs analysis implemented at KPK resulted in the commission now delivering all basic training for its anti-corruption investigators. Internal evaluations reported high levels of satisfaction by participants and managers with the training and its results.
- The portfolio of legal aid activities included a widely disseminated plain language legal services handbook (16,000 copies sold) with the sponsoring CSO seeking user feedback for improvements in future editions;² support for

² Copies were also circulated to most judges at the request of the Chief Justice. The ICR was told that lawyers

CSOs and government agencies to develop a national legal aid law and some direct support for innovative small-scale legal aid work in Jakarta.

LDF supported close, multi-layered and subtle relationships between the Indonesian Supreme Court and the Federal Court of Australia and the Family Court of Australia. This interaction enhanced the ability of the Indonesian judiciary to manage and resource their court as an independent judicial institution - in a very difficult cultural, political and institutional setting. As the Family Court noted in its brief to the ICR *‘[t]his process yields results because the dialogue is frank, constructive, knowledgeable of the context in which courts operate, and operates at a peer-to-peer level i.e. judge to judge, registrar to registrar, administrator to administrator.’* Similar words were used by the Chief Justice of the Federal Court and its Chief Executive when they spoke with the ICR.

LDF had a very good portfolio of gender equality activities, particularly in the access to justice and human rights themes. The way in which civil society organisations engaged with the courts on domestic violence issues, court processes and improving transparency was exemplary, perhaps unique in the development world. Gender effectiveness would have been further strengthened by a more strategic mainstreaming approach throughout LDF.

The reporting on activities and outputs was extensive at a tactical level. There were issues in monitoring, analysing and reporting on emergent higher level outcomes. The court equity and access studies and the caseload research were best practice research guiding management action to improve services.

LDF provided a sound platform for the next phase of assistance. AusAID senior management needs to implement and personally manage an engagement strategy with senior sector leaders to bridge the transition. There is an opportunity for more direct engagement through the management of the transition activities.

1.3 Outline the evaluation results

The consensus of the Indonesian partners and the ICR is that LDF was a good activity overall and made a valued contribution to the Australia – Indonesia development portfolio. The ICR endorses the conclusion of the 2007 Mid Term Review of LDF (MTR) that LDF ‘punches above its weight.’

Table 1: Evaluation Criteria Ratings

Evaluation Criteria	Rating (1-6)		Evaluation Criteria	Rating (1-6)
Relevance	5		Gender Equality	4
Effectiveness	5		Monitoring & Evaluation	3
Efficiency	4		Analysis & Learning	3
Sustainability	4			

were among the buyers of the publication.

Rating scale: 6 = very high quality; 1 = very low quality. Below 4 is less than satisfactory.

1.4 Lessons

The lessons in the ICR cover a wide range of topics. The three key ones are:

- Civil society can be supported to engage successfully with formal law and justice agencies while at the same time maintaining their own organisational advocacy activities and independence. The LDF ‘triangulation strategy’ is worthy of replication in other AusAID activities.
- Whole of government interventions can work and be extremely effective if nurtured and supported. Care is needed to design and implement appropriate entry and reporting arrangements.
- A facility such as LDF with its broad objectives and purpose should regularly re-assess its approaches and inputs through regular discussion and analysis among the partners, the contractor and AusAID.

1.5 Recommendations

These key recommendations are targeted at the proposed new program of assistance:

- 1 The Purpose of the next phase of assistance should have explicit links to the appropriate Government of Indonesia development and sector policies.
- 2 The LDF ‘triangulation strategy’ of joining up the law and justice agencies and CSOs should be continued with significant support for the CSOs to promote reform, engage in direct support of the agencies and encourage service delivery improvements.
- 3 AusAID, with appropriate Commonwealth government partners, need to establish stronger coordination, activity communication and reporting approaches for the whole of government engagements.
- 4 M&E needs strong attention at the *beginning of the activity* with partners, AusAID, the implementing agents and development advisers:
 - sharing a common understanding of its purpose and approaches
 - directing appropriate resources to the program and each activity
 - using participatory approaches to strengthen partner M&E capacity
 - conducting operational research and establishing baselines, and
 - capturing and disseminating lessons learnedall building on the LDF M&E foundation.
5. AusAID management and the program implementing agents have an obligation to support Australia’s engagement in Indonesia with strategic advice and analysis. The Minister Counsellor and the Counsellor responsible for the law and justice sector need to be engaged and visible in the sector on a regular basis in their representational and policy roles so as to contribute to

Australia's broader policy, political and economic objectives in its development partnership in Indonesia.

2 Brief on LDF and the ICR

2.1 What was LDF?

2.1.1 Activity background

The LDF was a \$25 million AusAID-funded facility that operated from April 2004 through to January 2010. It was intended to build capacity in the law and justice system by supporting judicial reform, improved human rights, anti corruption initiatives and improved trans-national crime responses. It built on AusAID's experience in the development and management of the earlier Legal Reform Program initiated in June 2001. LDF funded 154 formal activities with government and civil society partners.

LDF operated from an office in central Jakarta. The implementing contractor was a joint venture arrangement between:

- Melbourne University Private Ltd (latterly owned by GRM International) – responsible through the Management Support Team with the GRM Internal country office for contract management, activity management, the in-country office, procurement, recruitment of advisers and staff, financial management of the activities, day-to-day support of the partners and the activities,³ and
- Asian Law Group Pty Ltd which provided the initial staff, Australian and local advisers and technical expertise.

The majority of activities were conducted in Jakarta and West Java, reflecting the location of almost all leading national legal institutions. A number of activities, mainly human rights related, were conducted in other locations, including Papua.

The LDF Indonesian counterpart agency was BAPPENAS. The facility was overseen by an Advisory Board co-chaired by AusAID and BAPPENAS. Its membership comprised government and CSO representatives with academic experts active in the Indonesian legal and human rights sector. Sector agencies and CSOs had no direct representation.

LDF did not have an AusAID Technical Advisory Panel or similar arrangement. A Mid - Term Review of LDF was completed in May 2007.⁴

2.1.2 LDF objectives

LDF's **goal** was to *'reduce poverty in Indonesia by enhancing human rights and supporting the development of a more just and equitable legal system.'* Its **purpose** was *'to strengthen the capacity of Indonesian government and civil society institutions*

³ GRM International replaced Melbourne University Private Ltd in the role.

⁴ Sebastiaan Pompe, Paul Crawford, Daniel Rowland, *IALDF Mid Term Review Final Report*, AusAID, 15 March 2007

to promote legal reform and the protection of human rights through a facility that has the flexibility to provide core program support and respond to immediate and emerging issues.'

LDF was designed under the 2003 Country Strategy which had as Objective 2: *'strengthen the institutions and practices of democracy through assistance for legal and judicial reform, the institutions of human rights and public accountability, electoral and parliamentary processes and institutions and civil society.'* Two features of that strategy are worth noting: (a) it recognised that legal reform *'will be a long-term process'*, and (b) it had a direct and explicit focus to strengthen civil society to act independently in law reform and human rights initiatives and also to develop the capacity of state institutions to work with civil society.⁵

Pillar 3 of the *Australia Indonesia Partnership Strategy* (2008) states that Australian support for Government of Indonesia (GoI) agencies can provide *'strengthened capacity, accountability and responsiveness of legal, democratic and oversight institutions and processes.'*⁶ With a focus on government agency capacity building Pillar 4 proposes that AusAID support delivers *'improved capacity to ensure transport safety and security and to counter threats from transnational crime.'*⁷

The two key LDF objectives were:

- A. *'Assisting key government and related institutions to develop core program activities that support legal reform and human rights development and improve their capacity to provide advice and services.'*
- B. *Responding to immediate and emerging issues in the areas of legal development and human rights through partnerships with a wide range of stakeholders, including CSOs.'*

LDF pursued its goal, purpose and objectives by working with the key stakeholder partners across four broad thematic areas with ambitious objectives:

- **Access to Justice - Judicial Reform.** *To strengthen the administration of justice in Indonesia by building the capacity of the Indonesian court system to deliver improved services to justice-seekers and contribute to the empowerment of marginalised groups seeking to enforce their legal rights.*
- **Access to Justice - Human Rights.** *To enhance the promotion of human rights in Indonesia by building the capacity of human rights institutions to fulfil their legal and policy mandates and assist in promoting gender awareness among legal institutions.*
- **Anti-Corruption.** *To reduce the incidence of corruption by supporting GoI institutions and civil society organisations to combat corruption by supporting*

⁵ *Indonesia Country Program Strategy from 2003*, AusAID, 2003

⁶ *Australia-Indonesia Partnership – Country Strategy, 2008-2013*, p.14

⁷ *Ibid*, p.16

efforts aimed at law reform and enforcement, understanding the causes of corruption, and by supporting administrative reform.

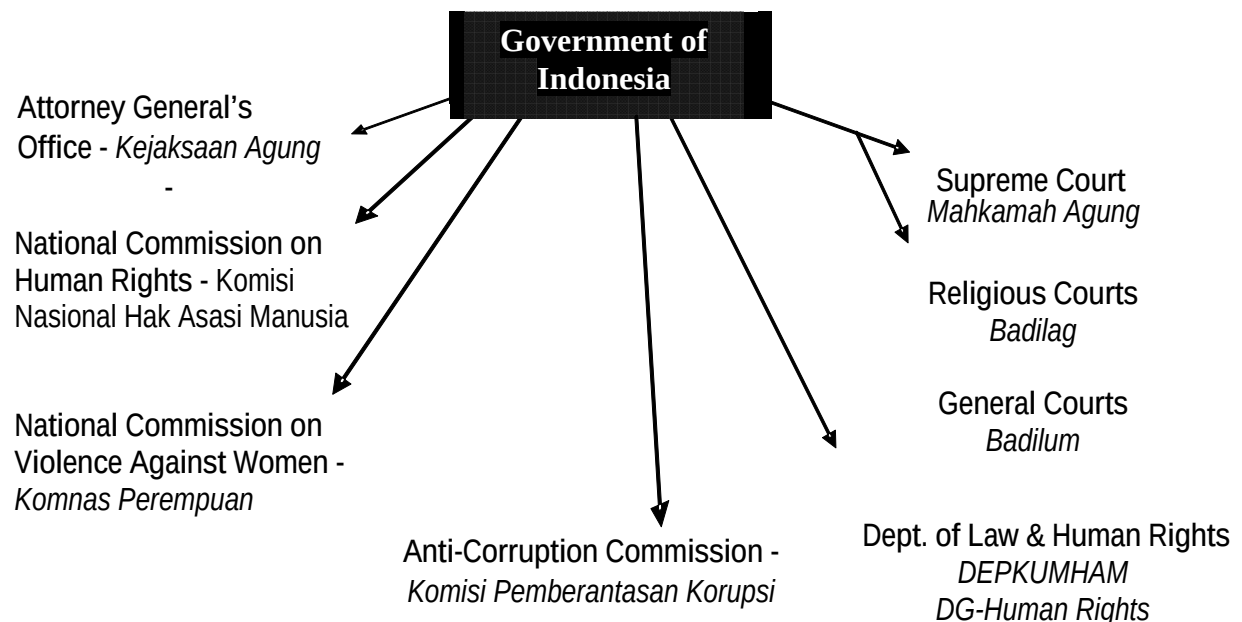
- **Prosecutions and Transnational Crime.** *To strengthen the ability of legal agencies to combat transnational crime by increasing their capacity to investigate and prosecute offences, particularly in the areas of money-laundering, people trafficking, illegal logging and counter-terrorism.*

2.1.3 LDF partners

LDF advisers worked with a number of significant legal, justice and human rights agencies and CSO organisations. See **Annex 1** for a list of agencies and organisations with which LDF had most involvement.

LDF's lead counterpart agency was BAPPENAS. The *key partners* are identified in *Figure 1* below.⁸

Figure 1: Key GOI agency partners



Particularly impressive was LDF's engagement with civil society, guided explicitly by the LDF design objectives, the AusAID 2003 country strategy and the triangulation strategy. Civil society actors with a particular focus on human rights and anti-corruption abound. They range in size from a few members only to those with many thousands of registered members, such as KONTRAS and YLBHI. The key ones are:

⁸ LDF had minimal engagement with the Constitutional Court. It worked only indirectly with the Police through its domestic violence activities in support of Komnas Perempuan and some training activities in human rights.

Access to Justice: Judicial Reform

- YLBHI, Yayasan Lembaga Bantuan Hukum Indonesia: *Indonesian Legal Aid Institute Foundation*
- PKWJ UI, Pusat Kajian Wanita dan Jender Universitas Indonesia: *Women & Gender Studies (University of Indonesia)*
- PEKKA, Perempuan Kepala Keluarga: *Women Headed Household Empowerment*
- LEIP, Lembaga Independensi Peradilan: *Institute for Judicial Independence*

Anti-corruption

- ICW: Indonesia Corruption Watch
- Transparansi Internasional Indonesia: *Transparency International Indonesian*

Access to Justice: Human Rights

- KONTRAS: Komisi untuk Orang Hilang dan Tindak Kekerasan, *The Commission for the Disappeared and Victims of Violence*
- ELSAM, Lembaga Studi dan Advokasi *Institute for Policy Research & Advocacy:*

Transnational Crime

- LBH APIK, Lembaga Bantuan Hukum Asosiasi Perempuan Indonesia untuk Keadilan: *Indonesian Women's Association for Justice and Legal Aid Institute.*

2.1.4 LDF financing

Table 2 - Total LDF budget and expenditure

Description	Total Budget (\$000s)	Expenditure (\$000s)	%	Budget remaining (\$000)
Activities	11,618	10,314	45.5	1,304
Fixed Fees	8,310	7,904	34.8	406
Lead Advisers	3,861	3,687	16.2	174
Reimbursables	945	799	3.5	145
TOTALS	24,735	22,706	100	2,029

Note: As provided by the contractor on 14 January 2010 based on expenditure to November 2009.

Activities by number, spending and theme as at December 2009 (**Table 3**).

Table 3 - Total LDF budget and expenditure by theme (Estimated to Dec 2009)

Theme	No. Activities	Budget (\$000)	Expenditure (\$000)	Unspent (\$000)
Access to Justice - Supreme Court *	29	4,034	3,769	265
Access to Justice - Human Rights *	49	3,868	3,734	134
Anti-Corruption *	30	2,808	2,420	388
Transnational Crime *	14	2,351	2,282	69
Access to Justice - Legal Reform	21	1,710	1,710	
Others	7	349	196	153
Uncommitted		300	0	300
Adjustments – net income			-131	131
	150	15,480	14,437	1,043

Note: 1. Source: LDF Report to AusAID December 2009 based upon estimates for Nov/Dec.
2.*= The lead adviser costs are included in these items

Annex 6 shows the actual spend by activity.

LDF activities can be categorised under a single main characteristic as per **Table 4**(data for 2004-2008 over 137 activities):

Table 4 – 2004-2008 LDF Activities by main type of activity

Activity category	No. Activities
Short term training	33
Workshop/Seminar/Campaign (in Indonesia)	24
Workshop/Seminar (International)	9
Study Tour/Work visits (in Indonesia)	3
Study Tour/Work Visit (international)	5
Materials/resources/policy development	12
Lead Advisers/Short-term and on-going technical assistance	22
Internships and placements	6
Commissioned surveys/research/review	17
Other (MoU signings, translations services, misc)	6
TOTAL	137

Government agencies received approximately 83% of the Imprest Account expenditure and CSOs received 17% according to the Activity Completion Report.⁹

LDF contracted a team of four part-time international Lead Advisers: one for each thematic area. Each adviser was with LDF for about four years. The Lead Advisers and with the Technical Director each made about six trips per annum to Jakarta. A number of local contractors were engaged to support the activities full-time in the agencies. Some were LDF employees, in other cases the positions within the agencies were funded by LDF e.g. key staff for the reform offices in the Supreme Court and at the AGO. Short-term local and international technical assistance was engaged for a range of tasks including capacity development and monitoring and evaluation (M&E).

2.1.5 Monitoring and evaluation

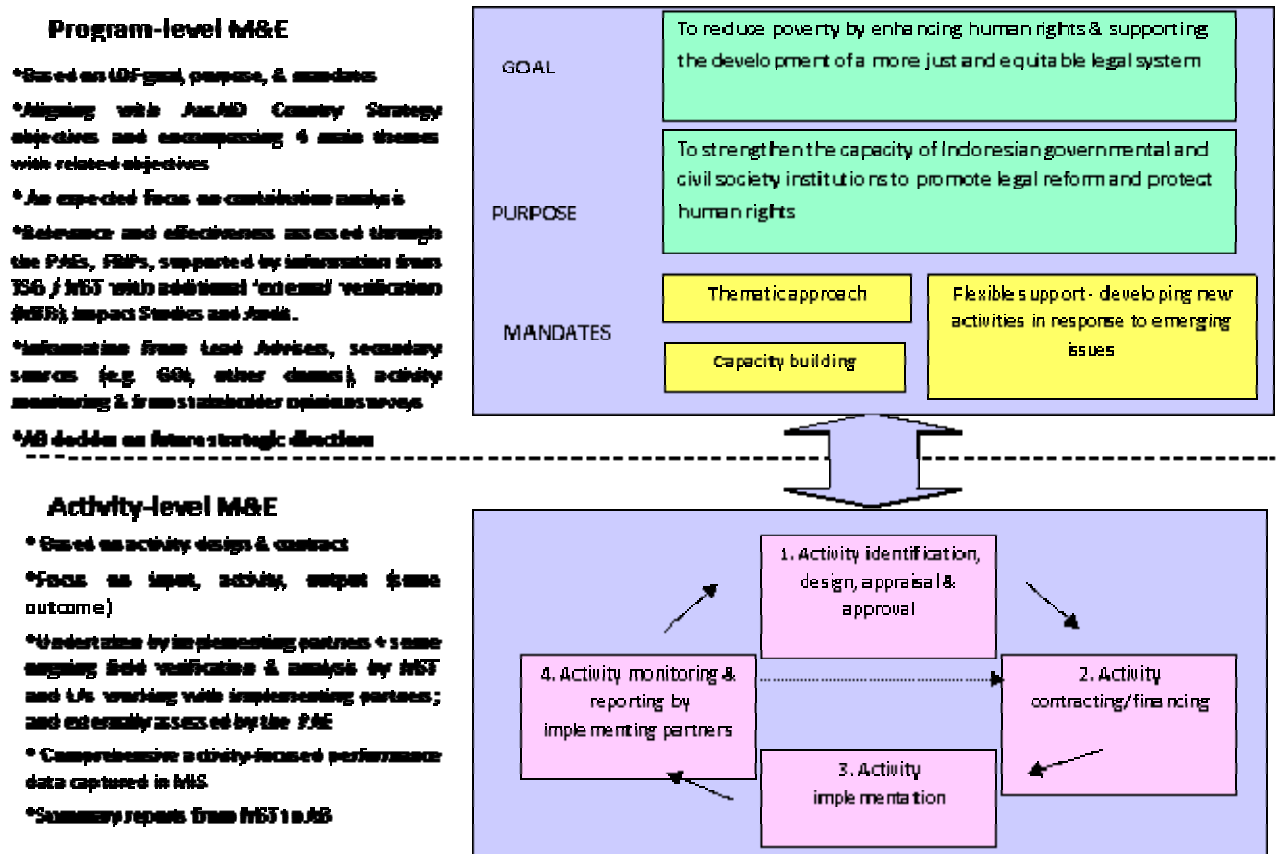
Given the importance of monitoring and evaluation (M&E) in the aid effectiveness agenda, and some of the issues discussed in this ICR, it is worthwhile providing a brief description of the Monitoring and Evaluation Framework (MEF) and the extensive M&E activity that was undertaken.

The structure of LDF M&E since the LDF Mid-Term Review in 2007 is briefly described below and in **Figure 2**. Prior to 2007 M&E activities were largely confined

⁹ LDF Completion Report (November 2009, Section 1.3. This is the direct cash contribution to CSOs and does not included the cost of CSO engagement in government agency activities, which was extensive by reason of the triangulation strategy mentioned earlier

to activity level monitoring and contractor performance monitoring¹⁰. Since June 2007 the contractor implemented and resourced some interesting and detailed reviews and thematic evaluations and made improvements to reporting.¹¹ Most of this was still at the activity level.

Figure 2: Levels of LDF M&E (Above-and-below the line)



Source: 2009 LDF Meta Evaluation

This conceptual approach was sound and logical. One aspect seemed to be missing at this stage - the linkage to GoI national and agency objectives. LDF's 154 separate activities were intended to make a cumulative contribution to the higher-level target outcomes.

The MEF then presented eight key questions. They were aimed to seek the necessary performance information to enable an assessment of LDF's overall effectiveness at all levels of the hierarchy with goal/purpose (Questions 1 and 2); outcome (3, 4, 5); and activity/output (6, 7, 8).

¹⁰ Three overarching Performance Assessment and Evaluations were completed in the first three years with nine completed during the last three years – See Annex 5 for a list.

¹¹ Including engaging a short-term M&E Adviser, Jeff Bost

The key MEF questions were:

1. What is happening in the sector?	}	Goal /
2. How much of what is changing has resulted from the LDF?		
3. Has the capacity of the key agencies changed? If so in what way?	}	Outcome
4. To what extent have the activities created impacts & benefits?		
5. What lessons were learned that influence future selection and design?		
6. What were the results (or benefits) of each Activity?	}	Activity / output
7. Were the activities and outputs implemented as planned?		
8. Were they technically appropriate and of quality?		

LDF intended that at its conclusion the M&E activities (routine monitoring and scheduled evaluations) would have provided answers to all these questions.

The effectiveness of M&E is discussed in **Section 3.7**. Reporting at the activity level was extensive. At the outcome level the majority of the work was completed in a number of special thematic evaluations in 2008 and 2009 and the single capacity impact report submitted at the end of LDF. ICR team does not believe that Questions 1 to 5 have been answered adequately, even acknowledging the long-term nature of development and the difficulties in measuring change in the governance and law and justice sector.¹²

2.2 Evaluation objectives

2.2.1 Approach to the ICR

The terms of reference for the ICR is attached. (**Annex 2.**) Milestone 1 of the ICR was the completion of a methodology prior to mobilisation. A first draft of the methodology was provided to the AusAID Post in Jakarta on 4 November 2009 with the final version, **Annex 3**, submitted on 6 November following feedback via tele-conference calls and email. Various drafts of the ICR were reviewed. The LDF Contractors provided comments in April 2010. The ICR was completed in May 2010.

2.2.2 Terms of reference

The terms of reference open with the ICR's generic purpose '*assess and rate the program's performance against the evaluation criteria of relevance, efficiency, effectiveness, impact (or potential impact), sustainability, monitoring and evaluation, gender equality, and analysis and learning.*'

¹² It is acknowledged that this is the experience in a number of law and justice development programs . See also Taylor V., *The Law Reform Olympics: Measuring the Effects of Law Reform in Transition Economies* 2005, Asian Law Center, University of Washington; School of Regulation, Justice and Diplomacy, Australian National University

The three specific objectives were to produce an ICR that assesses:

- i. reporting of key program outcomes and achievements*
- ii. draws out lessons learned, and*
- iii. provides recommendations for AusAID's future law and justice programs; and if relevant, for broader governance programs in Indonesia.*

As required by AusAID standard practice the ICR reports against the OECD's Development Assistance Cooperation evaluation criteria in **Section 3, Part A**.

2.2.3 ICR specific questions

The following specific questions were formulated for the ICR (the full questions are detailed in **Annex 3**):

- i Is a facility an appropriate modality for aid support to the Indonesian law and justice sector given the development needs and resources available?
- ii How effective was the LDF Advisory Board?
- iii What was the role of leadership in the agencies and the CSOs in contributing to increased and sustained capacity?
- iv How well did the contractor and AusAID Post report on key LDF outcomes and achievements?
- v Sustainability and development effectiveness is enhanced if development activities engage more broadly with partners to address systemic public administration constraints (i.e. lack of budget for training, lack of policy support from key central government agencies for agency reforms, poor organisational structure etc). How did LDF react?
- vi Critical to the effectiveness of a facility is (a) the design of the activities, and (b) the quality of the technical assistance. Given the broad range of activities supported under the facility, over 150, what are the lessons to be learned?

These questions are answered in **Section 3, Part B** (starting at **section 3.9**). Some issues are discussed in the Part A when unavoidable.

2.2.4 Evaluation scope and methods

The ICR was conducted in three phases:

- Prior to mobilisation the ICR team read a number of recent reports on trends in evaluations, several recent AusAID ICRs and the key documents related to LDF.
- Consultations were undertaken in Jakarta between Monday, 16 November 2009 and Tuesday, 1 December 2009 when the team held an initial debrief with AusAID Jakarta. Over 40 meetings and/or workshops were scheduled with a wide range of government and civil society counterparts. **Annex 3** lists

the individual consultations; the ten-day in-country schedule and the subsequent Australia consultations.

- Further consultations took place with AusAID in Canberra on 8 December 2009 and the Federal Court of Australia in Sydney on 9 December 2009. The Family Court of Australia was consulted by telephone on 16 December 2009.

The methods used by the team were:

- review of key documentation – listed in **Annex 5**, and
- interviews with a wide range of stakeholders.

Interviews were conducted in a mixture of Bahasa and English (when appropriate). For obvious reasons the ICR does not name individual commentators, except where necessary.

2.2.5 Evaluation team

The ICR team consisted of:

- John Mooney – team leader, development practitioner specialising in aid modality design, strategic analysis and activity review with a strong background in law and justice development activities. Mr Mooney practised as a lawyer, occupied a senior executive position in a major New Zealand government business and has worked on AusAID activities since 1993 in many capacities, most recently for six years as Strategic Planning and Evaluation Director of the Papua New Guinea Law and Justice Sector Program that finished in April 2009; and
- Budi Soedarsono – independent Indonesian legal sector and national development consultant, nominated by BAPPENAS, who started his government career in the Ministry of Justice and then had 20 years experience in BAPPENAS in this sector.

Neither of the ICR team members is an evaluation ‘expert’ nor do they hold qualifications in evaluation. What they bring to the ICR is their respective experience in development and law with BAPPENAS and AusAID in design, strategic development, implementation, project management and review. Both have strong legal sector backgrounds, as lawyers and in development. The ICR is therefore based upon the assumption that this broad experience will result in the team being able to make sound observations and valid judgements about how LDF performed, cross-checked against written material and the interviews.

2.2.6 Constraints

Firstly, development in the legal system is inevitably long-term and difficult to measure. Consequently, the DAC ‘Impact’ criteria has not been assessed or directly reported against. It was agreed with AusAID that the significant outputs and emergent outcomes were to be reported under the ‘Effectiveness’ criteria.

Secondly, the ICR was based upon a very short in-country mission consulting with a wide-range of stakeholders using a semi-formal interview process and reliance on the key documents. The ICR undertook no independent analytical work of its own. Within the documentation was a large number of lessons, observations, records of interviews (i.e. in the capacity study) which were used in the questioning of stakeholders, and workshops, to correlate feedback.

Thirdly, the ICR team was not required to conduct a cost benefit analysis. It was asked to comment of value-for-money aspects.

3 Evaluation findings

President Susilo Bambang Yudhoyono stated in his 100-Day Plan for this the second-term of his presidency that corruption in the courts, police and Attorney General's Office is the No. 1 problem facing Indonesia. Most experts agree that it will take years, or even decades, to reform the Indonesian criminal justice system. Indonesia is ranked as one of the world's most corrupt countries by Transparency International. Progress since 1998 on addressing the core service delivery constraints of corruption, lack of transparency, political interference and reducing the role of the intermediaries in the system (the so-called 'court mafia') has been very slow.

Reform in this sector has been being marked by small incremental steps which may often not seem to have much coherence or pattern to them. However, it has to be remembered that prior to *Reformasi* all the agencies in the sector were part of the political, bureaucratic and administrative fabric of that time. The leaders in the sector from the 1990s, including the judges, remained in office (and some do today). Some expectations for reform may have been unrealistic. Given these realities perhaps it is inevitable that reform is going to be gradual, uneven and uncertain.¹³

Australia's assistance was \$25 million over six years in 154 activities. Consequently, a realistic perspective is needed when assessing what LDF with its sector agency and CSO organisation society partners could have been expected to achieve. As always there is a definite limit as to what can be achieved through donor assistance alone, and overall LDF did well.

3.1 Part A – DAC criteria

AusAID requires all independent completion reports to rank the evaluation criteria of relevance, efficiency, effectiveness, impact (not assessed, see Section 2.2.6), sustainability, monitoring and evaluation, gender equality, and analysis and learning using this scale:

Satisfactory		Less than satisfactory	
6	Very high quality	3	Less than adequate quality
5	Good quality	2	Poor quality
4	Adequate quality	1	Very poor quality

¹³ There are many writings on this transition. Lev D., *Comments on the Judicial Reform Program*, 2004; <http://www.imf.org/external/np/leg/sem/2004/cdmfl/eng/lev.pdf>; Pompe P., *Indonesian Supreme Court: A Study of Institutional Collapse* 2005 Cornell Southeast Asian Program; Davidson S., Juwono V., Timberman D., *Curbing corruption in Indonesia 2004-2006* 2006 United State Indonesia Society; Asian Development Bank, *Country Governance Assessment Report Government of Indonesia* (Section VII & VIII in particular), 2004 and for a wide-ranging set of references http://www.asianlawgroup.com/frames/publications_content.html

3.2 Relevance

*To assess whether the activity contributes to higher level objectives of the aid program (outlined in country and thematic strategies).*¹⁴

3.2.1 Coherence with the Australian Country Strategy

LDF had high connectivity to both the 2003 and 2008 AusAID Indonesia country strategies.

From a monitoring perspective it was more than a little unfortunate that the goal and the purpose were so worded to Objective 2 (2003) and Pillars 3 & 4 (2008) in the respective country strategies. This may have been understandable if LDF was the initial exploratory engagement in the sector, but given that there was three years of previous activity a sharper focus may have been appropriate from the LDF design.

In 2007 the MTR was concerned that LDF's activities were too broad and that the linkage to the GoI and Australian strategies, and the LDF design, was weak.¹⁵

AusAID experience is that this occurs frequently in facilities that do not have a clearly articulated program logic and end of program outcomes. This is what happened in LDF. A number of factors contributed to this:

- the LDF goal and purpose were broader than the country strategy
- the flow-on consequence was that each thematic objective then became too ambitious
- the management approach as to how a 'demand-driven' and 'flexible' facility should work was perhaps overly accommodating in its initial years to unconstrained demands, and
- the belief within the LDF team that the nature of the sector made it extremely difficult to draw contribution connections from the specific activities through the amorphous legal reform objectives to the higher level goals. This supported an approach that encouraged a focus on the activities, rather than establishing a baseline that contributed to answering the 'so what' questions.¹⁶

The above issues were addressed and refocused partly during the second half of LDF when the M&E Adviser worked with the Lead Advisers to bring some coherence to each of the themes and a more realistic and practical MEF was implemented.

It was always going to be difficult for LDF to (a) balance and maintain the flexibility of the facility, which was much appreciated by the Indonesian partners, and (b) the

¹⁴ These italics introductions are guidance from AusAID on the content of the criteria

¹⁵ *op. cit.* MTR Recommendations: 27. "Project activities should be narrowly focused, with clearly defined outcomes, and that leverage into broader institutional problematic (*sic*), rather than broadly construed programs. The Judicial Reform Core Theme is regarded as exemplary.

¹⁶ *op. cit.* MTR, Annex 7. Also see Footnote 12.

need to bring coherence and consistency to the development activities and capacity development efforts as they worked toward the higher level purpose of LDF.

3.2.2 Coherence with Indonesian Strategy

All partners said LDF supported activities of agency-led reform at a pace set by them and chosen by them to meet their priorities. Lead Advisers and Commonwealth partners may have suggested reform approaches, and may have brokered, stimulated and facilitated action in particular areas, but the priorities were those of the partner agency or the NGO.

BAPPENAS asked the ICR Team ‘how did a set of activities within an LDF theme contribute to a national development objective?’.¹⁷ This question may reflect the overall M&E weakness in LDF reporting against the higher level purpose and outcomes. Also, Government of Indonesia indicators were not explicit in the MEF. There may also have been a disconnect between BAPPENAS and the national agencies themselves, particularly as to how the agency plans are linked to national plans.¹⁸

While individual activities had a foothold to varying degrees in an agency’s RENSTRA (five-year corporate plan) or an annual plan, it was hard for BAPPENAS to establish coherence to a national development objective for the sector. A further factor was that the LDF MEF designers found the then Indonesian national plans too broad in their objectives to link into. This can be addressed in the design of the follow-on activity as there is a new Indonesian policy document *National Access to Justice Strategy*.

Recommendation 1: The Purpose for the new sector partnership should have explicit links to the appropriate Government of Indonesian development and sector policies.

Rating

Evaluation Criteria	Rating (1-6)	Explanation
Relevance	5	LDF’s activities were highly relevant to and worked well under the two AusAID country strategies and their objectives. It worked with its partners on their agenda, their priorities and maintained relevance to the Indonesian partners, something they appreciated and valued highly. (The issues noted are primarily design and M&E related with the later assessed under that criteria.)

¹⁷ It should be noted that the National Access to Justice Strategy was launched by BAPPENAS at the end of LDF.

3.3 Effectiveness

Assess whether the activity achieved clearly stated objectives.

This section is in two main parts: firstly the effectiveness of LDF in delivering development outcomes and emergent impact. Secondly, a brief discussion on four underlying elements of the development approach including:

- Were the objectives clear?
- Was implementation successful?
- What was the capacity building approach?
- What was the role of Australian whole of government partners?

Two further elements of this assessment are discussed in **Sections 3.10** and **3.15** – the LDF as an aid delivery mechanism and the design of activities.

3.3.1 Achievement of objectives

Access to Justice: Legal Reform

LDF supported reform across the sector and most prominently and successfully with the judiciary.¹⁹ Specifically, among the mainline legal and justice sector agencies the judiciary remains the focus of the reform effort as the court has the longest history and arguably have progressed furthest. The judiciary is one of the few legal institutions that has marked the reform policy with structural change, improved internal coherence and an internally driven evolution. The external appointees (i.e. non-career judges) to the Supreme Court, including the previous Chief Justice Bagir Manan, helped make the Supreme Court a reform institution. The newcomers had their roots outside the courts and helped open up the Supreme Court for reform and outside assistance.

The Judicial Reform Team, funded by LDF, was staffed by civil society experts to assist the court in the implementation of the Blueprints (RENSTRA) and to coordinate donor support. The Supreme Court partnership with CSOs is historically unprecedented. It brought together technical experience with societal expertise and support and bridged the traditional divide between state and society. LDF's support and that of its predecessor made a significant contribution to this situation. Coupled with the deep engagement with the Australian courts this amalgam is most probably unprecedented in the development world. The 2nd Blueprint, finished in 2009, brought over 30 of the judges on board (c.f. only two judges involved five years ago) to engage with 20 CSO representatives to prepare the court's strategic plan.

The tripartite agreement between the Supreme Court and the two Australian courts (Federal Court of Australia and the Family Court of Australia) is unique in the judicial world. It provides a court-to-court and judge-to-judge basis for capacity development, sharing and engagement. LDF supported close, multi-layered and subtle relationships

¹⁹ Footnote #13 provides the context.

between the Indonesian Supreme Court and the Federal Court of Australia and the Family Court of Australia. This interaction enhanced the ability of the Indonesian judiciary to manage and resource their court as an independent institution - in a very difficult cultural, political and institutional setting. In the ICR's view this whole engagement is contributing to strengthening judicial independence in Indonesia.

As the Australian Family Court noted in its brief to the ICR *'[t]his process yields results because the dialogue is frank, constructive, knowledgeable of the context in which courts operate, and operates at a peer-to-peer level i.e. judge to judge, registrar to registrar, administrator to administrator.'* Similar words were used by the then Chief Justice of the Federal Court, Hon. Michael Black, and its Chief Executive in discussions with the ICR team. The Indonesian Supreme Court's December 2009 dialogue with the Australian courts contains similar sentiments. The Supreme Court of Indonesia is extremely proud of its achievements. It:

- has spoken of them at judicial seminars
- published its achievements internationally, and
- gladly and willingly shares progress with their Australian colleagues identifying weaknesses, areas for improvement and opportunities for future cooperation.

The two Australian Courts provided material to the ICR on their assessment of impact (**Annex 7**).

Increased judicial transparency and accountability in the Supreme Court under SK144 regulation drafted with LDF support; enhanced ability of the court to manage its business under the 'One Roof' administrative arrangements; publication of fees and case timetables for four courts; the publication of 16,000 judgments on the internet;²⁰ and an audit of all cases resulting in the Chief Justice working with judges to achieve a 70 per cent reduction in case waiting times and a 23 per cent reduction in cases older than 12 months.

The access and equity study guided the Religious Court to the significant reform of divorce case processes at a national and local level. This resulted in an 18-fold increase in budget for the court to waive fees; and more circuit court visits to remote areas. It was estimated that by the end of 2008 there was a 10-fold increase in poor people accessing court fee waiver programmes in the Religious Courts. Similarly, there was a five-fold increase in the number of rural and remote clients that had their cases heard at a circuit court. PEKKA, the Religious Court's CSO partner, spoke enthusiastically of the benefits to women and children in formalising births and divorce under this activity.

The Religious Court work is a success story. The use by the court of the access and equity survey data to improve services; transparency of schedules;²¹ the engagement

²⁰ www.asianlii.org and www.badilag.net

²¹ www.badilag.net now contains court schedules and sub-websites for certain Religious Courts across Indonesia. 26 of 29 High Religious Courts now have websites, as do 218 of 343 first instance Religious Courts.

with PEKKA (Women Headed Household Empowerment group) and management's commitment to reform was impressive.

A concern was expressed to the ICR team that the success in the Religious Court had been overstated given the underlying deficiencies in the laws of divorce and the draconian features of administrative practice. The ICR disagrees. The policy and substance of Indonesia's divorce law was beyond the LDF scope. LDF worked to make the present processes work better based upon a high quality piece of operational research prepared with the court, PEKKA and potential beneficiaries. The Court and PEKKA worked with women to formalize their status within the present system. This activity is assessed by the ICR team as very successful. LDF did not have as its mandate the promotion of changes to Indonesia's divorce laws. In the ICR's view this would have been a very difficult task for LDF to gain traction on, or entry into, without a proper foundation. Such reform is an extremely long-term development assignment going deep into state and religion relationships. The ICR strongly supports the work of LDF and the Family Court of Australia to bring the Religious Court to a position that saw its management act positively with PEKKA to improve the current situation. The Religious Court may be in a position to commence the larger reform policy discussion on the divorce law within the Indonesian government system.

Access to Justice: Human Rights

The human rights theme had a large and diverse set of activities ranging from training courses for CSOs and lawyers to promoting organisational change in Komnas HAM (Human Rights Commission) with the commission producing a manual of standard operating procedures, five regional plans and five regional conflict maps and legislative drafting for a national legal aid law. A national curriculum of gender - related policing was completed within the Police Academy. Draft provisions were prepared for the new criminal code on domestic violence. Work was undertaken to assist Indonesia endorse the International Criminal Court Convention. It is difficult to ascertain an overall theme within the range of worthwhile activities. Outcomes were difficult to find with many of the activities still a work-in-progress. Once again the engagement with civil society was extensive. Building their capacity to engage in policy dialogue, legislative reform and to seek accountability shows promise.

Increased access to knowledge of legal issues relating to the poor by legal aid lawyers, students, academics and citizens was covered in a number of activities. LDF supported the writing, publication and distribution of 16,000 copies of the first simple-language Legal Aid resource book in Indonesia. Demand for the book was evidenced by the fact that the first print run quickly sold out at bookstores despite a relatively high price and a rapid reprinting took place. At the request of the Chief Justice the book was sent to many judges. The ICR was told that many copies were purchased by lawyers. YLBHI, the sponsoring CSO, conducted market research on customer needs for a subsequent edition and identified a need to reprint specific sections of the book for sale at a lower cost.

LDF supported civil society groups to join-up with the Komnas Perempuan (National Commission on Domestic Violence and Women) in awareness raising and education

activities, e.g. the review of Religious Court judgments with feedback to the court and the training of Supreme Court judges and the police on aspects of the criminal code e.g. sexual offences and domestic violence. Three books on gender and justice were produced for law schools.

Anti Corruption

LDF's work in capacity building KPK (Anti-corruption Commission) prosecutors and investigators, and the commission's training capability was a solid success and highly valued. Over 200 officers have received training. The commission is now planning its training based around the LDF supported training needs analysis and curriculum, with Stage 4 now operational. KPK is conducting its own basic and introductory training and evaluates all training and assesses effectiveness. The ICR was told that the evaluations by participants and managers rate the training highly. This activity is vital in building KPK's own organisational capacity as it supports training its own recruits. Most of KPK's investigators come from the police and AGO on attachment. The training program enables KPK to build its own culture as an organisation with its own people.

The Lead Adviser working with KPK was highly valued by the organisation for his contribution to this sustainable training platform. His extensive experience in this area was respected. The training was conducted in government facilities, as were many LDF activities, which provided greater value-for-money when compared to using commercial and perhaps more upmarket venues.

While not entirely attributable to LDF support the extent of progress can be seen by the following comparisons of 2006 and 2008 results - pre-investigations (37/70); investigations (29/53) and prosecutions (10/43).

This activity has been successful because:

- KPK had a definite need – recruiting and training its own investigators
- the focus of the activity was quite narrow – improving KPK's training capability, and
- the Lead Adviser was qualified, persistent, hard-working and committed;

There is evidence of increased capacity of KPK to do its job through the introduction of Standard Operating Procedures, and enhanced liaison and cooperation with overseas agencies (e.g. ICAC Hong Kong and the UK Serious Fraud Office). KPK expressed a strong desire to expand this engagement through formal associations with similar Australian agencies. Their specific target is to obtain support for intermediate, advanced and specialist training and skills development. KPK has established a donor coordination committee. Their representatives asked for AusAID to take the lead in coordinating all Australian assistance.

Prosecution and Transnational Crime

The AGO is responsible for the prosecution of criminal cases. Progress at the AGO was slow. The small reform team there was very motivated. It can be strongly argued that the lack of a Lead Adviser in recent times to work with the AGO held back progress. The reform team at AGO urged the LDF team to stress to AusAID that current issues affecting the AGO's leadership do not impact on the reform team and its work. Policy dialogue with the Vice Attorney General whom also the coordinator for reform process at the AGO would benefit AGO and the Australian Indonesia relationship.

LDF provided support on training on various transnational crime issues: human trafficking; money laundering; illegal logging etc. An anti-money laundering and proceeds of crime handbook was published along with an extradition handbook. Training was provided to AGO and police staff in these areas. LDF funding enabled the police to attend this training as AGO is only able to fund its own staff from its budget. This engagement was valued by the AGO Academy. There is evidence that the assistance was effective. The AGO Academy's officers confirmed to the ICR that:

- the new curriculum was been incorporated into their annual training calendar
- pre and post course testing demonstrated an increased understanding of these issues, and
- the resource tools had been circulated widely to prosecutors across Indonesia.

The AGO International Office and the reform project office were both enthusiastic for future engagement. They were especially keen to support AusAID in gaining access to senior officers so that their work in seeking to drive bureaucratic reform could be strengthened.

Civil Society

The ICR feels that the effectiveness of LDF was significantly enhanced through the engagement with CSOs and joining them with the formal agencies. The triangulation strategy was a success. The civil society partners confirmed that as a result of LDF support (with finance, funding CSO staff employed in reform offices and facilitating their engagement in agency processes):

- CSOs had built relationships with state institutions that resulted in enhanced mutual capacity, trust, responsiveness and accountability.
- CSOs had a greater capacity to understand and engage in government processes. The immediate impact was improved CSO confidence to participate in the sector in activities such as raising awareness of judges on domestic violence laws, participation in strategic planning, joint drafting of legislation, reviewing judicial performance through judgment reviews, conducting human rights training with Komnas HAM and undertaking research activities with the Supreme Court.

- CSOs were seen as credible partners in the reform process. By gaining understanding of institutional complexity and policy-making they can contribute to rebuilding the trust between state and society.
- CSO involvement ranged in its intensity from the Supreme Court where it was institutionalised and embedded in the project office for the full reform process at the Supreme Court through to one CSO working with Komnas Perempuan and the police on a gender sensitive criminal justice system. Eighteen CSO or private sector persons occupied full-time positions on court management work in the Supreme Court, often directly involved in operational work such as case processing, public access, budgeting and donor coordination. In some sectors there was an element of dependence and reliance by the Court on CSO input.
- In the AGO, the CSOs (funded by LDF) also contributed through an institutionalised Program Management Office. Unlike at the court CSO involvement at the AGO was not active beyond the program office at the time of the ICR.

The LDF approach was a valuable strategy for AusAID as the triangulation strategy minimised the risk of inadvertently supporting a ‘fringe’ or ‘rogue’ CSOs. In the next phase the ICR team recommends that strong support be given to CSOs to support their work in seeking reform and service delivery improvements, especially by working in the system. The LDF arrangement achieved a suitable balance in the roles played by state institutions, CSOs working with state institutions and CSOs working outside the state institutions.

Lesson 1: Civil society can be supported to engage successfully with formal government agencies while at the same time maintaining their own organisational advocacy activities. A development activity implement a triangulation strategy by assisting to join-up leaders on both sides for specific activities of interest to both, e.g. transparency of court fees, domestic violence laws in judgments, training judges, legal aid policy reform, and better local access to divorce courts. Resourcing does not need to be significant.

1 **Recommendation 2:** The LDF ‘triangulation strategy’ of joining up the law and justice agencies and CSOs should be continued with significant support for the CSOs to promote reform, engage in direct support of the agencies and encourage service delivery improvements.

3.3.2 Elements contributing to, or constraining, effectiveness

Consistency of objectives in reporting

It was difficult for the ICR to follow the chain of objectives and outcomes within each theme. The 2007 MEF introduced new outcomes for each theme. However, in the Activity Completion Report (ACR), and other documentation, the thematic areas were reported on at different levels, as explained below:

- **Access to Justice – Legal Reform** theme reporting in the Activity Completion Report does not follow the MEF and it introduces three *new* ‘outcomes’ or objectives, which while they are an improvement on those in the MEF, are not the same as the MEF. Lead Adviser reporting during LDF was against the MEF.²²

LDF was not set up to collect evidence from beneficiaries or report on the new outcomes introduced into the ACR. There was no evidence, other than activities and inputs, to support the ACR when it says the *‘thematic area had three expected outcomes, all of which were met during the lifetime of the Facility.’* Outputs may have been achieved, as has been acknowledged under the Effectiveness heading, but there was limited evidence that the ultimate beneficiaries would agree or disagree with the achievement of the new outcomes.

This observation applies to all four themes – there is little external evidence of acceptance that outcomes were achieved.

- **The Access to Justice - Human Rights** theme reporting remained consistent with three outcome objectives built into the MEF and used for reporting under the thematic objective. Once again it was most probably a little ambitious to claim that *‘the program resulted in three major expected outcomes.’*
- The **Anti-Corruption** theme notes in the ACR the thematic objective while the report was written against the more precise MEF which was focussed on the performance of KPK in the prevention and identification of corrupt activities. The ACR described some explicit outcomes in terms of KPK staff doing a better job, training being effective and work practice improved.
- Finally within the **Transnational Crime** theme the outcome was simple and straight forward: *‘strengthened ability of legal agencies to counter trans-national crime and terrorism and to prosecute offences and to co-operate internationally.’* This was used for reporting. Again the ACR highlights outputs as outcomes, although there was some evidence that the training was being applied.

Lesson 2: The LDF purpose was extremely wide as were the component objectives. Sharper focus in at the thematic outcome level would have lead to a reduced number of activities and potentially a higher level of aid effectiveness.

Implementation

A number of significant and valued outputs have been produced. These are well documented in the ACR where they are reported on although at times without context and perhaps a little too broadly as to their level of achievement.

²² The ACR format is flexible. The ICR Team does not understand why the ACR summary reporting did not follow the MEF. No explanation was available.

Appreciation of effectiveness could have been enhanced for both BAPPENAS and AusAID if there had been more analytical reporting during LDF on the substance of the themes in the context of the sector's development, as opposed to the detailed and comprehensive activity reporting. There is some disagreement on this topic. The contractor's view is that LDF received clear oral and written instructions from AusAID at various stages to cease providing higher level 'analytical' reporting or broader sector analysis. Initially, LDF included such analysis in the adviser reports, specific briefing notes and the Facility Review and Implementation Plans (FRIPs) that went to the Advisory Board, BAPPENAS and AusAID. Current AusAID Post advice to the ICR Team was that AusAID regarded the analysis as inappropriate in the FRIPs where the emphasis should have been on the LDF objectives. However, somewhere along the line it was agreed that the broader sector analysis cease. What is disputed and unclear is the attribution of responsibility. The best conclusion seems to be that during the middle period of LDF the AusAID Post did not seek this information and the flow of information and briefings stopped.

The ICR team did not undertake an activity-by-activity qualitative assessment of the activities as we were not resourced to do so. Most of the activities were regarded by counterparts as successful. LDF's own thematic review made some conclusions on activity implementation and the achievement of objectives based upon an analysis of plans, progress reports and acquittal and completion reports under the former MEF's numerical rating system. In 2007 LDF management assessed as part of their internal processes all completed activities. As at June 2007 90% were ranked as satisfactory although only 20 out of 44 received a score of 75% or above. For the subsequent period to the end 2008 all activities were ranked as satisfactory. Only 22, or 50 per cent, received a score of 75% or more. The average ranking for all activities was a 65% satisfactory completion.

Naturally questions can be raised about the objectivity of the ratings. The LDF reviewer comments: *'[w]ere there no dud activities? Is this really the case? It was known to the reviewer through discussion and observation during earlier visits that some activities were delayed or had budget and management issues i.e. the normal implementation issues facing all projects.'* In his subsequent interviews the conclusion of those spoken to was that the results made sense. There was a cultural reluctance to mark down partners; there was a feeling that some agencies and CSOs lack capacity to meet the administrative requirements of LDF; and that problems in implementation are a natural occurrence. The ICR Team had no way to check this analysis. An average ranking for all activities of 65% being satisfactorily completed, with the biases mentioned above, intuitively seems reasonable to the ICR Team.

Capacity Building

LDF prepared a *Capacity Development Strategy* as part of the original Operations Manual. It was a highly theoretical piece of work. There was no evidence it was updated during LDF. LDF proceeded to undertake capacity development at four operation levels based upon the initial strategy: the individual, the work unit, organisations and the sector. Late in 2009 LDF commissioned a capacity building

impact analysis²³ of its approach to capacity development and the achievements. It relied heavily on guided discussions and a questionnaire. Its overall conclusions were:

‘In general, it needs to be noted that – as a relatively low-budget activity – LDF delivered substantial and sustainable capacity building outcomes to the law and justice sector in Indonesia. Certainly, positive changes in the sector would have occurred in Indonesia without AusAID support through LDF; but these improvements would have been much longer in being effected and institutionalised.

Equally significant is the benefits that have accrued from LDF’s flexible approach. As a facility, with some identified on-going or regular activities, it also maximised its potential to respond rapidly to emerging opportunities within the sector. This flexibility – as well as being valued greatly by GoI agencies, CSOs and LDF personnel, is an organisational capability perceived as desirable (and envied) by other donors operating in the law and justice sector in Indonesia.’²⁴

LDF had a significant positive impact on a number of key GoI agencies, and – to a lesser extent – on Indonesian CSOs and CSOs. Through training, mentoring, study tours, exchanges and resource development the Indonesian law and justice sector is better informed about international trends and developments in the sector; is more readily able to respond to emerging challenges – and criticisms; and in general, was been assisted by LDF to provide a more equitable and transparent service to clients of both GoI agencies and CSOs/NGOs.’

The ICR agrees with the broad sentiment of these paragraphs, but as with other LDF reporting feels that the claiming of ‘outcome’ achievements is a little too optimistic, especially in the first paragraph above. Outputs perhaps ‘yes’, but ‘outcomes’ the ICR disagrees. The review’s main conclusions, supported by the ICR are that LDF:

- Successfully enhanced the skills of individuals across various target groups and sectors, however impact was less easily proven.
- Contributed to building civil society capacity to engage in the formal sector at various levels. CSOs told the ICR that they valued LDF and Australian support to their organizations as it gave them a sense of well-being and moral support, even though the financial support was not large.
- In general, knowledge and skill transfer was highly successful with individuals in the human rights and access to justice sectors, and successful organizationally in the anti-corruption and transnational crime sectors. Future sector interventions should focus more on ToT (train-the-trainers) activities to build their knowledge transfer capacity, while still enhancing subject area knowledge.²⁵ The ICR was told that another critical factor was the credibility

²³ Lacey, Geoff, *IALDF Capacity Building Impact Analysis Study for Government of Indonesia Agencies & Indonesian Civil Society Organisations*, GRM International, October 2009

²⁴ *Ibid.* Executive Summary

²⁵ *Ibid.* p 29

and skills of the Lead Advisers and the access to the judges and staff of the two Australia courts. This was highly regarded by counterparts.

- Some examples of potentially sustainable skills transfer: change management training now entrenched in the Supreme Court based on FCA assistance; KPK is now managing its training based upon the LDF supported five-stage training plan; other training curricula development by LDF is now embedded in the annual program of the agencies e.g. transnational crime with the AGO Academy; human rights training in the army and marine training schools; and, gender and domestic violence awareness and operational feedback for the judges.

Australian whole of government partners

Engagement with Australian ‘whole of government’ partners the Federal Court of Australia and the Family Court of Australia was a success story in LDF. Both sides of the arrangement are enthusiastic supporters. **Annex 7** contains material from the Federal Court of Australia’s annual reports and the Family Court of Australia that illustrate what those institutions regard as significant successes. The enthusiastic commitment by the respective Chief Justices is a further illustration of how they value this engagement from Australia’s perspective. This is because:

- of the long-term nature of the relationship for over 15 years. This was initially started by key individuals but now endures despite retirements of key judges and changes on both sides
- of mutual respect, e.g. the FCA published the Indonesian Supreme Court’s logo in its annual report to the Australian Parliament a fact not lost on that court. The Indonesian court shared its successes with the Australian courts
- the Australian courts worked within the Indonesian courts’ reform Blueprints
- AusAID supported the reform office and the Indonesian judiciary’s thematic working sub-groups, and
- the dialogue is frank, constructive and knowledgeable of the context in which courts operate and operates at a peer-to-peer level i.e. judge to judge, registrar to registrar, administrator to administrator.

The potential for a number of Commonwealth and state agencies to partner or twin with Indonesian law and justice sector agencies is significant, and is being asked for by the LDF partner agencies, particularly KPK. This type of engagement is not without its risks.²⁶ AusAID, with the Department of Foreign Affairs and Trade, needs to seriously consider using the new ‘partnership’ to establish stronger coordination and activity communication approaches for these engagements, even if the funding is

²⁶ However, the political environment in Jakarta is such that there are politicians and other powerful interests that wish to hinder the reforms. There are as many who would like to see no donor involvement in building legal and judicial capacity.

from sources outside AusAID. Reform in the sector is fragile. It would be easy for a well-intentioned approach from an Australian agency to cause unintended harm to an Indonesian partner or the government to government relationship. KPK in particular is keen to build a similar relationship with several Australian anti-corruption agencies to support:

- the advanced training of investigators as it recruits and trains its own staff (as opposed to secondments from police and AGO), and
- access to new investigation methods and technology beyond basic training levels.

Lesson 3: Whole of government interventions can work and be extremely effective development initiatives if nurtured and supported. They are important to the overall mutual socio-political engagement between the two countries.

Recommendation 3: AusAID, with appropriate Commonwealth government partners, need to establish stronger coordination, activity communication and reporting approaches for the whole of government engagements.

Rating

Evaluation Criteria	Rating (1-6)	Explanation
Effectiveness	5	LDF was effective as a facility with 154 activities. Its reporting and assessment indicated that at the activity level objectives were achieved with emergent outcomes in some areas.

3.4 Efficiency

To assess whether the activity is managed to get value for money from AusAID's inputs of funds, staff and other resources, and to continually manage risks.

3.4.1 Value for money

ICR was not resourced to do a cost-benefit analysis. One concern of the ICR team was the balance of costs within the split of LDF resources:

- 35 per cent management fee
- 4 per cent reimbursables for Advisory Board etc
- 16 per cent for the part time Lead Advisers, and
- 45 per cent for in-country activities.

Perhaps it was inevitable that a facility with 154 activities was to have a high management cost component. Around 40 per cent of the total funding was consumed

on activity management and governance which does seem a little on the high side. As noted below the ICR felt that other options could have been considered to change technical advisory inputs with the potential to reduce Lead Adviser involvement and redistribute funding.

The ICR is of the view that given AusAID's nine years of involvement in the sector a smaller number of activities under less ambitious and more focussed objectives could have produced better outcomes and constituted better value-for-money.²⁷ Such a facility would have been easier to manage with a possible reduction on transaction costs.

3.4.2 Lead advisers and technical assistance

The use of technical assistance is reported on in **Section 3.14** as an ICR specific question. The LDF advisers were well qualified, respected and made significant contributions to effectiveness. The main question was whether or not the mix of technical assistance inputs was appropriate over the six years. This approach committed a significant proportion of the in-country Imprest Account budget (about 25 per cent of spending to the Lead Adviser cost, being 16 per cent of the total budget) to the four part-time Lead Advisers. The Lead Advisers mobilised from outside Jakarta approximately six times a year for assignments that were typically around three weeks in duration, but often longer. They also provided advice and engaged from their home base LDF provided a range of other technical inputs including:

- full-time Indonesian in-line consultants and technical experts (IT, HR, finance, communications) for the Supreme Court and AGO project offices
- an Indonesian principal legal adviser specialising in the legal system and human rights – available for short term inputs over four years
- international short term advisers in M&E, capacity development.

The ICR Team was told by local LDF contractor management that there was no funding for other inputs when requested by the agencies. They felt that the main constraint was the annual resourcing of the Lead Advisers (about \$1 million pa). The contractor stated on reviewing the ICR draft that “the fact that it was concluded to continue with the same mix of inputs does not mean it was not reviewed.”

The ICR view is that the fact that the major cost inputs were not changed over six years, especially when the MTR recommended at least one major change, is unusual.

Lesson 4: Within aid activities the mix of inputs including technical assistance and non-technical assistance should be reviewed annually with appropriate rationale included in the activity's annual plan or equivalent.

²⁷ See Recommendation 4 above. Tighter objectives and fewer activities could contribute to reduced transaction costs.

The LDF was well-administered. Partners said administrative arrangements were excellent. Since management was changed in 2007 LDF in-country managers provided greater scrutiny of proposed activities and their cost effectiveness.

A serious issue for AusAID and LDF partners at the end of LDF was that over \$1 million of the Imprest Account funding remained unspent. At times through LDF, and indeed in conversations with the ICR, LDF said that it was constrained from recommending new inputs by a lack of available funding. It seems recommendations could and perhaps should have been made to AusAID and BAPPENAS to re-assign funds when spending fell behind in some areas. This seems to have arisen because of confusion between the budget for an activity, and the financing of the activity, and a reliance on agencies and Lead Advisers as to the progress of an activity. The agencies seem to have regarded the budget as their 'pot' of cash, rather than managing the activity to the budget and leaving the financing to the contractor. The contractor should have been managing the financing of the total set of activities based upon the known commitments. The individual activity under-spending can be seen in **Annex 6**.

3.4.3 Advisory Board

This is reported on in **Section 3.11** as one of the specific ICR questions. As structured and managed it was difficult for the Advisory Board to make a significant contribution to the success of the facility. Individual contributions were valued by LDF and the LDF Management support team put significant effort into making the board work.

Rating

Evaluation Criteria	Rating (1-6)	Explanation
Efficiency	4	LDF was well administered, but only adequately managed. The missed opportunities to improve efficiency and effectiveness are significant. The discussion in Part B (Section 3.9 onwards) under the ICR Specific Questions impacted on this assessment.

3.5 Sustainability

LDF did not have a clear sustainability strategy. Sustainability received negligible coverage in the MTR.

LDF made great strides in building an environment within which it could work with its partners. There was strong ownership and institutional support for the LDF activities within the agencies which is a foundation for sustainability. The ability of agencies to organise themselves was evidence of sustainable capacity. In **Section 3.14** the ICR discussed the critical issue of support for public administration reform and financing. AusAID's internal development literature and its engagement strategy across the aid program as a whole is bring greater emphasis to this core competency and capability. LDF had some good examples in this area in particular:

- Greater engagement across the Supreme Court in the reform agenda particularly in bureaucratic reform and improved public administration; the court funding reform activities itself and integrating the project reform office into its way of working; the institutionalisation of the leadership and change management courses for judges and senior officers of the Supreme Court.
- The organisational changes within Komnas HAM based around the new operations manual supported by training in aspects of public administration.
- KPK is now organising and managing its own training based upon LDF's support for the initial Training Needs Analysis. KPK funded the logistics of the training activities from its operating budget, with some LDF assistance.
- Training courses in human rights, anti-corruption, trans-national crime, and the rights of women and gender equality that now have curriculum across the sector, with trained trainers and training materials. Some of these courses are now part of the standard training programs in KPK, the AGO Academy and the courts.

The triangulation strategy was important in building sustainability with civil society. The benefits for CSOs are discussed in **Section 3.3.1**.

Perhaps the main question mark on sustainability in an activity like LDF with so many activities is the ability of agencies and CSO organisations to continue, maintain or update LDF generated or supported outputs. For example YLBHI provided strong institutional support for the Legal Aid Handbook and they have undertaken market research for improvements for subsequent editions. They expressed concern to the ICR team about how this activity could be funded into the future if LDF's successor program did not support them? Similar issues arise if an agency does not have the recurrent government budget to continue the LDF activities. For example the Supreme Court and AGO reform activities are heavily depended on donor support for their stimulation and momentum in the project management office as change agent mechanisms and drivers. (It is acknowledged that in the Supreme Court it has changed its own budget to meet the reform agenda when it is put into operational practice.)

The LDF's own Capacity Impact Assessment contains little evidence of sustainability. The report's section on the topic is extremely general.²⁸

Rating

Evaluation Criteria	Rating (1-6)	Explanation
Sustainability	4	Many of the activities in the formal agencies can be sustained, perhaps less so in civil society. Civil society's engagement in LDF has increased the organisational

²⁸ *Ibid.* section 4.1

capacity of some of them.

3.6 Gender and HIV/AIDS

The ICR had the benefit of access to the 2009 LDF Gender Review and the rating of this element is largely based upon that AusAID contracted activity.²⁹ There are some impressive gender activities in the Access to Justice: legal reform and human rights themes. However, LDF lacked an overall consistent strategic approach to gender equality and gender mainstreaming across the team of implementers which inhibited effectiveness.³⁰ A regular gender input into LDF would have enabled the large volume of information and data to have been processed into useable qualitative analysis that could have been fed back into the sector through the agencies such as and Komnas Perempuan.

A *Gender Strategy* was produced early in LDF, and published prominently on the website. It made a commitment to gender equality objectives. It was not updated. The gender equality weaknesses identified in the review are largely structural in how the LDF management and senior advisers missed opportunities to introduce a consistent approach to gender equality that would have increased the sustainability. Gender aspects were consistently not integrated into LDF say through the design of activities or in the practices of management in the induction of advisers/consultants, the collection of data and the reporting and monitoring of the work of the Lead Advisers.

The flexibility and key gender partnerships of LDF, particularly with Komnas Perempuan, PEKKA, LBH-Apik, DERAP Warapsari, PKWJ UI and other University gender studies centres, are innovative and relevant, but there was a danger that the reforms are not reaching beyond Jakarta. The reforms in the religious courts were an exception with PEKKA working with the court and local authorities to establish court circuits.

The two *Access and Equity Studies* are excellent examples of supporting targeted research to inform policy related advocacy, improved access, staff training content, and LDF activity strategies and are well regarded – particularly the work in the Religious Court. They contain strong gender elements and are best practice.

LDF responded to priority issues by working to reduce the number of sections of the criminal code which violate the rights of women (the impact of which was not yet able to be seen), and further work which facilitated women formalising their legal status and that of their families in the Religious Court (which is showing good results).

Different gender roles, status, and opportunities have considerable impact on access to justice. LDF research and international experience highlights that women's access is

²⁹ Anne Lockley & Lidwina Inge, *Gender Review, IALDF Final Report*, AusAID, July 2009

³⁰ *LDF Gender Review*, AusAID, July 2009, pp. iii, 2 and 3

more constrained than that of men. LDF had considerable investment in this area and results are good – effectiveness is increased by the leverage that this achieved – for example the significant increase in funding for court fee waivers, and funding circuit court delivery – both strategies recognised as good gender practice.

There is a lack of women’s participation, relative to men’s, in formal decision-making and policy-setting at all levels of the law and justice sector, and particularly at senior levels. The *Gender Review* commented that this area could have benefitted from a more strategic approach. LDF to some extent mitigated the lack of women’s voice in decision-making through (a) support for Komnas Perempuan and civil society networks to participate in the law reform process, and (b) the strong engagement with women as key implementers with the project offices of the Supreme Court, the Attorney General’s Office, PEKKA’s Training Division and the CSOs. From the ICR Team’s observation the vast majority of LDF implementing partners in government and the CSOs were represented by women.

Nothing was done in LDF on HIV and AIDS, and other cross-cutting issues as identified in the current country strategy.

Lesson 5: Gender equality and the other cross-cutting issues need visible contractor commitment, in-country leadership, structure and resources. Implementing agents need to be held accountable for ensuring a consistent across the board mainstreaming and integration of cross-cutting development responses into activities. AusAID requirements are not daunting or onerous. All activity personnel have an obligation to seek through their personal behaviour and way of working to advance this agenda.

Recommendation 4: LDF’s strong operational engagement in gender equality activities should be continued in the next program supported by a ‘living’ gender equality strategy and fulltime advisory resources.

Rating

Evaluation Criteria	Rating (1-6)	Explanation
Gender Equality	4	LDF provides some very good examples of gender equality programming, particularly through the innovative joining up of civil society organisations and the formal sector agencies, and their actors. The weakness was in the inconsistent implementation of the strategy; the lack of specific gender M&E analysis above the activity and output level.

3.7 Monitoring and Evaluation

3.7.1 Structure of M&E

The reader needs to appreciate in the discussion that follows that M&E:

- in the law and justice sector has deep and complex issues of contribution and attribution that are not confined to Indonesia or LDF. Outcomes are very hard to measure;³¹ and
- in LDF improved considerably after the 2007 MTR with strenuous efforts by the M&E Adviser in particular to bring coherence to LDF reporting.

The ICR believes the perceived difficulty in reporting on law and justice outcomes impacted LDF's M&E performance to the very end, *despite the significantly increased activity and the work of the M&E adviser*. It is appropriate to open this discussion with some paragraphs from the 2007 LDF Mid Term Review on M&E in LDF prior to 2007. The ICR *did not* experience the 'defensiveness' referred to. However, the ICR does feel that the consequences of this thinking are reflected in the weakness in the reporting on Questions 1 to 4 of the MEF:

M&E Culture

A contributing factor to the defensiveness about the M&E arrangements may be the amorphous nature of legal reform outcomes, and the long logical linkages between facility interventions and the goal. It appeared that the IALDF team felt compelled to reiterate the uniqueness of the program and the inherent difficulties associated with 'conventional' M&E in this context. While these arguments were appreciated by the MTR they also seemed to perpetuate the defensiveness.

The defensiveness is understandable if the prevailing perspective on M&E is accountability-driven rather than learning-driven.

IALDF reports that AusAID has been unable to articulate precisely what information it expects. It seems that IALDF has interpreted AusAID's frustrations as arising from

³¹ See footnote 12

an unrealistic expectation that the amorphous changes fostered by the facility should be quantified, measured and warranted. In turn, this has reinforced IALDF's desire to explicate the uniqueness of the design, the emergent nature of outcomes, and the practical limits of conventional M&E. However, it could be that AusAID's disquiet about the M&E arrangements stem from the apparent defensiveness, rather than fundamental issues with the M&E data per se.

Ironically, this defensive response to AusAID may have fuelled concerns about the M&E arrangements, because when taken to its logical extreme, it asserts that difficulties associated with M&E in the legal sector render the exercise futile, and that the facility should simply be trusted to do 'good things.' This 'throwing-the-baby-out-with-the-bath-water' is an untenable position for any bilateral donor to accept.³²

Despite the strenuous efforts and improved M&E response, which addressed the MTR's technical suggestions, the ICR is left with the conclusion that LDF did not capture and report enough of the MEF's above the line questions, i.e. the outcomes.³³

Within the LDF documentation an issue was the interchangeable use of the words 'outcome' and 'output.' For most of LDF there was a disconnect between the AusAID and the LDF use of the term 'outcome' with AusAID seeking analysis and description of emerging benefits and the LDF team focussing more on the output or completed activity level. For the ICR the 'outcome' is the desired or intended result of the application of the inputs, the completion of the activities, including the production of outputs. In an activity such as LDF, with extensive training and awareness activities it was important that the M&E system was established to recognise that this type of activities was an input, in other words a means to achieving an end. The end being an agency or CSO having greater capacity to do an aspect of its job. The weakness seems to have been that intermediate desired outcomes were not agreed for the steps between the activity/output and the thematic objective..

Advisers and agencies all completed regular activity reports. There were nine Facility Review and Implementation Plans (FRIPs) prepared by LDF and presented to the Advisory Board. There were 13 formal higher level evaluations of LDF conducted by the contractor, some jointly with AusAID, and AusAID itself.³⁴ All were presented to the Advisory Board. The nine Performance Assessment and Evaluations included reviews of the four thematic areas and are listed in **Annex 5**. These were extensive activities. For example, the March 2009 *Thematic Desk Review of Activity Performance (2004 -2008)* involved document review (design, monitoring and completion reports; monthly/progress reports, FRIPs, financial data) statistical

³² *Op.Cit.* Attachment 9, (extracts from six paragraphs). It needs to be stated that the LDF contractor had genuine disagreement with aspects of MTR Attachment 9 when published in the 2007. The ICR includes only those paragraphs that relate to the situation in 2007 as a lesson for AusAID and others as to what can happen.

³³ Section 2.1.5

³⁴ The 2007 *Mid Term Review* and the 2009 *Gender Study*

analysis, cross-referencing through random sampling (10% of activities) and interviews with the LDF team. Over 100 reports were sighted in that review alone.

The actual M&E of activities was extensive and the list of evaluations conducted and presented is well in excess of similar activities that the authors have been involved with, especially activity since June 2007. However, the ICR team is left with the feeling that these exercises were ‘add-ons’ in the sense that they did not naturally arise from the progress of the activities. They were well done after the event as reconstructions, somewhat detached from the progress of the activity itself, and with minimal real-time engagement with the Lead Advisers or the implementing partners. With the major activity review, the gender study, the capacity impact study and the meta evaluation all taking place in 2009, and not being completed until late in 2009, there was limited opportunity for their findings or lessons to be taken into account.

The 2009 LDF Meta Evaluation, commissioned by LDF, concluded:³⁵*‘LDF has demonstrated a strong, ongoing commitment to M&E. Activity monitoring has been continuous, focused evaluations have been regularly undertaken and logically sequenced, key evaluation and performance questions addressed, methodologies have been appropriate and supporting evidence has general credibility. LDF’s M&E systems and approaches have been regularly reviewed and strengthened.’*

The ICR supports this statement as far as activity monitoring is concerned and the lower levels of outcome monitoring as described in **Section 2**. Questions 1 to 4 (contribution to LDF goal, purpose and outcomes) were not answered consistently in a timely manner throughout LDF.³⁶ As noted various higher level outputs produced at the end of LDF made an attempt to rectify the situation, but they are largely written in terms of outputs achieved.

Recommendation 5: M&E needs strong attention at the *beginning of the activity* with partners, AusAID, the implementing agents and development advisers:

- a. sharing a common understand if its purpose and approaches
- b. ensuring appropriate resources to the program and each activity
- c. using participatory approaches strengthening partner M&E capacity
- d. conducting operational research and establishing baselines, and
- e. capturing and disseminating lessons learned

all building on the LDF M& E foundation.

³⁵ Bost, *IALDF Meta Evaluation*, GRM International, October 2009, Jeff, p.4

³⁶ See earlier comments on the issue of whether LDF should have provided sector analysis

3.7.2 Where is the story of LDF?

Both AusAID and BAPPENAS feel that the ‘success stories’ of LDF in terms of capacity built or other outcomes has gone missing in the reporting.³⁷ Many people say LDF has been successful; has built excellent relationships and completed an impressive set of activities. The achievement of activities and outputs was well documented, but the ‘so what’ question is more often than not, not answered. Interestingly LDF advisers and some of the key counterparts can tell stories, freely and with passion, of how a partner was doing its job better and they can speak of the changes in capacity that are emerging. These stories were not captured in the writing from LDF in a manner that was accessible.³⁸ Some of these stories are spread throughout the ICR³⁹.

In the ICR’s view, and that of the Chief Justices of the two Australian partner courts, the story to tell about the enhanced capability in Mahkamah Agung (Supreme Court) is not about the activities themselves, but the emerging and substantive organisational capacity released within the court that strengthens it as the senior independent judicial body in Indonesia. The extensive outputs and the visits are but expressions of the court’s increasing confidence in its ability to manage its business with transparency and improved customer service. The Supreme Court’s December 2009 visit to Sydney saw the Indonesian delegation members ‘celebrate’ their successes and achievements in a formal presentation with their trusted Australian mentors. In the LDF M&E context what was missing in the feedback to the AusAID Post was a systematic and high quality contextual analysis and reflection on the improved capacity of the institution to sustain its reforms. Evidence such as that provided by the December 2009 visit to Sydney was rare.

A smaller issue is that some of the LDF statements of achievement in the reporting seem to be enthusiastically written and are too general. Often context was missing which makes it hard to gain a feeling of the scope of the activity and its achievements. This leads to problems for AusAID in its internal reporting as it became cautious as to the extent to which it could rely on the achievements, as opposed to the completion of activities.

³⁷ LDF understood that it was AusAID’s responsibility to brief BAPPENAS. LDF briefed BAPPENAS as a supplementary source. What seems to have been missing was outcome reporting through the Advisory Board, which AusAID and BAPPENAS chaired jointly, that was useful to the both. Also LDF could have organised a Facility Coordination Committee meeting of the three parties none of which were scheduled in the last two years of LDF.

³⁸ LDF was not guilty of providing a lack of documentation. It provided quarterly reports and succinct analysis of LDF against the MEF indicators, among the many reports. However, LDF did not provide a consolidated report from all four Lead Advisers each of who used a different format and three of whom were often late with their contributions. The issue for AusAID seems to have been the usefulness of the reporting. Regular opportunities for a structured forum where the stories could be told and shaped for use by BAPPENAS, AusAID and LDF may have assisted.

³⁹ For example the Chief Justices of both Federal Court of Australia and the Family Court of Australia told the ICR of strengthen capacity in the Supreme Court some of which is captured in Annex 6. Another illustration is KPK’s Training team’s enthusiasm for its ability to manage future investigation training.

3.7.3 How did this happen?

It was been hard for the ICR team to identify why this situation emerged but here are two suggestions:

- The whole activity had a defensive attitude to M&E from the beginning as discussed above. This seems to have continued in part in recent years. The engagement of an M&E adviser increased responsiveness and M&E activities, but it may also have lead to an attitude that M&E was the M&E Adviser's job.
- The March 2009 Thematic Desk review asked LDF management staff 'How effective do you think the M&E system is? What are the strengths? What are the weaknesses? What would you like to see done differently?' The responses are summarized (emphasis added):

*'Most respondents felt that more needed to be done – there was some frustration at not being able to assess impact, particularly with regard to the ultimate beneficiaries. This had two aspects – first having the personal time to conduct evaluations, second was acknowledgment of the short time frames of most activities and lack of opportunity to examine impact in the future. There were also shared views that the short term inputs of the Lead Advisers meant gaps in the assessments of some activities. Also shared views were expressed on the value of building partner M&E capacity.'*⁴⁰

The ICR team agrees with ALL these observations. The ICR suggests the following issues contributed:

- M& E of activities was not conducted appropriately to the size of the activity. LDF's partners should have been tasked with this work and funded for it as most have M&E/planning and research divisions.
- A local M&E Adviser should have been contracted to be available to manage M&E activity with beneficiaries in a set of key activities. This would have supplemented the work of the lead advisers and the international M&E adviser.
- The M&E framework had a one-size fits all approach according to LDF's M&E adviser's advice to the ICR team leader. Initially a two-week training activity received the same M&E attention as a much longer term engagement with the Supreme Court. M&E needed a more nuanced approach with more resources going into a couple of key areas, with perhaps a smaller set of contributing activities.
- The volume of reporting was massive from activity through to the FRIPs. As noted below its usefulness was often questionable. Less may have been more valuable. All Advisory Board members raised this as an issue. They appreciated the one hour or so pre-meeting visit from the Team Leader and a

⁴⁰ Bost, Jeff, *Activities – Thematic Area 1-4 (2004-2008) Desk Review*, LDF, March 2009

briefing in Bahasa. While valuable it was small when compared to the large size of the FRIP documentation.

- BAPPENAS and the Advisory Board had to absorb large English language documents, it was also an absorption issue for AusAID staff. While translations were offered that is not really the issue. Advisory Board members questioned what their role was and whether they needed all the activity material rather than focusing on achievements and outcomes through shorter management briefs.
- There also seems to be an attitude, not confined to LDF within the aid program, that as a report (or many reports) had been sent by the contractor to AusAID in an email then that was effective reporting.
- Early in LDF the lead advisers said that they provided analysis and background information in their reports. There were also attempts to establish regular dialogue between lead advisers and AusAID officers but over time these regular meetings ceased. Subsequently advisers dropped the analysis from their reports at the request of AusAID. Lead Advisers told the ICR team that they thought that their analysis was not being used or valued.

3.7.4 Whole of government and partner engagement in reporting

This was a weakness in LDF, though not necessarily the LDF's management team's responsibility. The two Australian courts reported extensively internally. The Lead Adviser in the court reform area also included her observations on this engagement in LDF reporting. However, there was no formal mechanism within LDF for the Australian courts to provide their feedback and inputs to AusAID. It would have been constitutionally inappropriate for the court to 'report' to either AusAID or LDF; however an appropriate M&E information loop was not established back to AusAID. This type of analysis could, and perhaps should, be being contributed to by the whole of government partners.

Rating

Evaluation Criteria	Rating (1-6)	Explanation
Monitoring & Evaluation	3	Good efforts have been made to implement the MEF since mid-2007, but assessed overall the effort was less than satisfactory. Despite all the M&E effort by LDF the clients do not feel that the LDF 'story' was told or was available.

3.8 Analysis and Learning

This is a difficult criteria to assess. Two aspects stand out, one very positive and best practice and the other a weakness.

3.8.1 Operational analysis

There are examples of very good operational research and analysis in LDF: e.g. the Access and Equity Studies and the Supreme Court case backlog study. These are best practice because they were prepared using participative methodologies and are now being used by the agencies senior management to make service delivery improvements. They provide a baseline and measurement of performance is continuing. The implementation of these pieces of research is a strong illustration of the depth of the relationship and trust with the Australian partner courts.

3.8.2 Capturing and using lessons learned

LDF went to extensive efforts to capture lessons learned, but was the resulting material used? Most LDF M&E documentation included a 'lessons learned' section, often many were captured, some of them quite extensive.

The March 2009 *Thematic Desk Review* of the themes found that 27 activities produced over 100 lessons, sourced from the Management Support Team and the Lead Advisers.⁴¹ Twenty seven per cent of the activities had lessons. (Extrapolated across 154 activities this would total over 500 lessons.) That review itself generated a further eight recommendations. Many of the lessons are at a lower administrative level, but some were worthy of wider dissemination and incorporation into LDF's way of working.

Some conclusions of LDF own *Thematic Desk Review* with which the ICR agrees:

- The concept of a 'lesson' was not well understood in the LDF management team.⁴²
- The extent of dissemination and applications of LDF lessons was uncertain. LDF had neither a firm definition of a 'lesson' nor a process to ensure it was captured and shared.⁴³ Also, the lessons analysis was done at the end of LDF, not as part of a process of continuous improvement.
- Twenty per cent of the listings were minor or administrative. A further 20 per cent of the lessons were 'positive or negative stories', and not viewed as lessons. The review concluded that 'although an interesting supplement e.g. bringing to life or confirming an activity's relevance, they were not really a lesson.' The examples given, while not lessons should have given LDF an early warning of the issues discussed in the M&E section above i.e. emerging impact was not being captured and what the participants described as lessons (i.e. the stories) was not being captured in some form of participative M&E.⁴⁴

⁴¹ *Ibid*, pp 24-26

⁴² *Ibid*, p. 24

⁴³ *Ibid*, p. 26

⁴⁴ *Ibid* p. 24

- Sixty per cent of the lessons were broad insights about activity management, working in Indonesia or international development. These were useful comments.

The following eight lessons were, in the view of the ICR, relevant examples from participants in the March 2009 *Thematic Desk Review* of lessons that needed to be followed up and which were all mentioned again to the ICR some nine months later:

- Better administrative arrangements and coordination for Australian visits.
- When women constituted less than 30% of a workshop no-one asked question why or developed a strategy to encourage greater female participation.
- Having one lead adviser conduct all training over seven days was unrealistic.
- High-ranking delegations need the highest quality interpretation and translation services.
- Activities and assistance need to move outside Jakarta.
- In the AGO office the project office needed to engage more with high-ranked officials if the reform agenda is to progress (with visible AusAID support if the ICR may add a rider).
- The Religious Court judges and officials should be used to socialise among themselves the concept of how to handle domestic violence cases with the Supreme Court Training centre and Komnas Perempuan.
- LDF needs to encourage and work with champions in agencies – champions with authority and influence.

Lesson 6: The capture and dissemination of lessons needs structure and process for them to be feedback into the activity delivery process to improve performance. As with all M&E it is everyone's responsibility, not just that of the activity managers and the M&E adviser.

Rating

Evaluation Criteria	Rating (1-6)	Explanation
Analysis & Learning	4	Some activities had a strong foundation in operational analysis. A higher ranking could have been achieved if the system for identifying and responding to lessons had been more timely and systematic.

3.9 Part B – Specific Questions

All of the following questions, bar the last one, were identified in the pre-mission methodology. A further question has been added given its significance during the mission.

3.10 Facility appropriate to this sector?

Is a facility an appropriate modality for aid support to the Indonesian law and justice sector given the development needs and resources available?

LDF as a Facility

LDF's design established it as a facility. In its first year LDF's design was changed by the AusAID Post from an institution-based activity to one with the four themes drawn from the country strategy. This was appropriate. Within the facility strong programmatic elements emerged as planned in some areas, e.g. support for the court reform agenda.

Speaking generally sorting out early what the objectives of the facility are, particularly if the goal and purpose are extremely wide, and adapting it as Australia's and Indonesia's development policy changes should be a priority. Facilities need constant and regular review, discussion and analysis by AusAID during their implementation life. If a facility is intended initially as a small activity to (a) maintain a presence in a sector for geo-political and development reasons, and (b) support 'demand-driven' activities, then it needs a particular set of cost-effective administrative and M&E arrangements. The mechanism would be largely operational with minimal strategic engagement.

However, LDF was different and it had a foundation in an earlier activity. It was located in a key Indonesian sector and it needed something more sophisticated in terms of strategic management and engagement between AusAID and the contractor (AusAID's implementing agent). In the view of the ICR the design's purpose was too broad and should have been narrowed. Consequently the objectives for the themes were also too broad. As noted earlier the ICR is of the view that a smaller number of activities under less ambitious and more focussed objectives would have produced better outcomes and constituted better value for money.

Lesson 7: Agreeing and reviewing the objectives of the facility, particularly if the goal and purpose are extremely wide, and re-assessing approaches and inputs needs constant and regular review, discussion and analysis by the contractor and AusAID.

Recommendation 6: The operating practice of the new program, and associated contracts, needs to ensure that AusAID, its partners and its implementing agent regularly review the:

- a. engagement approach to best achieve the activity's purpose
- b. appropriate mix of inputs, especially technical assistance; and
- c. approach to monitoring and reporting, and the resources applied to it, to ensure that the support processes are appropriate to the size of the activity, and, that the resulting products are timely

and useful to the implementers for management purposes and AusAID and its development partner in measuring performance.

3.11 Effectiveness of the Advisory Board

The Advisory Board was a well-intentioned concept. The people that formed it are eminent, were engaged and contributed when they could. Universally they said they enjoyed their time on it when they could attend. All agreed that they did not fulfil a role of effectively approving plans and monitoring performance. There was an attempt at the former in the nine meetings, but minimal of the latter although the LDF management arranged reports from the Lead Advisers on progress under each of the themes and the performance assessments.⁴⁵

Members were critical of the volume of paper, the use of English and the lack of good meeting and business procedure. Some members were critical of themselves for being interested only in their 'pet' theme. The LDF management team tried to meet some of the deficiencies through face-to-face pre-briefings and ad hoc consultations. LDF arranged for advisers to brief the board. Board members were consulted from time to time to clear blockages. But the overall conclusion was that the board was a 'rubber-stamp' that did not provide strategic direction.

Recommendation 7: Advisory boards and similar governance structures need to be relevant, effective and efficient. Governance bodies for development activities should look to have among their representation members who have a strong operational attachment to the activity and an incentive to attend and participate. Contractors should ensure that the meetings of these bodies follow in-country best practice, produce all materials in local official business languages and provide reports and recommendations in the local style.

3.12 Role of leadership

What was the role of leadership in the agencies and the CSOs in contributing to increased and sustained capacity?

The success or otherwise of interventions and activities in LDF varies according to the participating government agency or CSO and the strength of its leadership. The personal leadership of two Chief Justices, and a senior Deputy Chief Justice, made the interventions in Mahkamah Agung successful. The just retired chair of Komnas Perempuan used her position to gain access to the judiciary and played a leading role in encouraging the CSOs to engage with the court on domestic violence matters.

By way of contrast the work in the AGO has struggled for a number of reasons one of which was a lack of visible leadership of the bureaucratic reform agenda. Hence the

⁴⁵ LDF management did brief board members outside of the formal meetings. Their advice was sought from time-to-time on resolving problems and indentifying appropriate activities.

request from the reform office staff for AusAID engagement at a senior level to stimulate action.

Lesson 8: Activities are more likely to be successful if AusAID supports the partner agency to engage senior officers and managers directly in an activity's planning and management.

3.13 Reporting on outcomes

How well did the contractor and AusAID Post report on key LDF outcomes and achievements?

As noted elsewhere the lack of a formal information sharing linkage between AusAID and Whole of Government partners hindered quality reporting to GoI and GoA on the significant benefits of the work in the courts. These events made it very difficult for the AusAID Post to fulfil its internal reporting obligations with quality emergent outcome information.

3.14 Linkage to public sector reform

Sustainability and development effectiveness is enhanced if development activities engaged more broadly with partners to address systemic public administration constraints (i.e. lack of budget for training, lack of policy support from key central government agencies for agency reforms, poor organisational structure etc). How did LDF react?

Sustainability and development effectiveness is enhanced if development activities engage more broadly with partners to address underlying systemic public administration constraints (i.e. lack of budget for training, lack of policy support from key central government agencies for agency reforms etc). Within the Australian aid program building capacity in these areas as a priority, most probably higher than resourcing increased technical and legal skills. For example, in the professional and development experience of the ICR team leader the professional background of judges, prosecutors and lawyers does not necessarily equip them to be good managers, which the judges of the Supreme Court have to be under the One Roof policy in the Supreme Court. The increased management challenges draw away significant institutional resources, in terms of the Chief Justices time when acting as the chief executive, judges' time when contributing to planning and management, other personnel, time and budget, all at the expense of the substantive service delivery i.e. judges in court or chambers hearing and deciding cases.

There were some interesting and successful LDF supported efforts to move away from a totally technical and operational focus into improving organizational capacity to capture and use resources effectively:

- The project reform office in the Supreme Court contributed to bureaucratic reform activities with the court making progress on implementing the One Roof. The Federal Court of Australia worked directly with an enthusiastic Supreme Court to build public administration capacity to operate under that policy, firstly in Australia and now in Jakarta through the courts training unit

to implement change management approaches, better financial reporting and budgeting.

- Komnas HAM's organisational weaknesses were directly addressed through a new operations manual and organizational structure that have been implemented. The commission's chair told the ICR that it now has government budget and does not need AusAID assistance in Jakarta in the future. LDF's support for the commission's corporate re-organisation in Jakarta and in six provinces was assessed by them as effective. The future need is in the provinces.
- KPK is funding and managing increased training.
- The Religious Court secured a very large budget allocation for pro-bono cases (The ICR was told by the Court that this could not use it was allocated by the finance department to the wrong code in the chart of accounts.)⁴⁶ It was able to re-organise itself to increase court circuits with support from local level governments.

LDF did not have a specific public administration reform agenda in its design. These approaches were driven by the individual lead advisers rather than having the removal of the public sector administrative reform of bottlenecks and constraints as an LDF development priority. However, LDF did seek to address such issues when organization and counterpart interest aligned.

Recommendation 8: Targeted support for public administration reform should be a key aspect of assistance to the Indonesian law and justice sector, particularly when it can be linked to increasing the sustainability of operational interventions and improved service delivery for target populations.

3.15 Activity design and technical assistance

Critical to the effectiveness of a facility is (a) the design of the activities, and (b) the quality of the technical assistance. Given the broad range of activities supported under the facility, over 150, what are the lessons to be learned?

Design of activities

There was little change to LDF procedures over the six years. LDF operated as a stand-alone project with its own systems, processes and documentation. Most activity plans were written up as being 'demand-driven' apparently prepared with significant partner contributions. However, much of the LDF paperwork was done by the LDF team, with the Lead Advisers in a prominent role. The Lead Advisers designed activities with stakeholders. The LDF Team Leader negotiated the final approvals from BAPPENAS and AusAID.

⁴⁶ The Chief Justice had issued a decision stating that State Budgets could be used to waive court fees for the poor.

The agencies told the ICR team that they did not receive a formal copy of the approved activity designs, or the approved budget. The agencies negotiated the final content of an activity design with the LDF management team. Several agencies told the ICR that they managed the activity against their records, never having seen the final signed-off documentation.⁴⁷

The Lead Advisers acted as experts, mentors, facilitators and brokers – essential roles for development practitioners especially when technical expertise is not the primary skills deficit. Consequently they had significant influence on LDF's overall agenda and how activities were implemented.

LDF engaged contractors external to the agencies to implement parts of some activities, e.g. research for the access and equity studies. Agencies told the ICR team that opportunities were lost to involve their own internal divisions in the planning, design and implementation of activities, especially when research was contracted to third parties. LDF said that in all such cases it made a careful assessment of agency capacity and that agencies agreed with the approach.

Lesson 9: Partner agencies should be fully engaged in designing, managing and implementing activities. They should also be supported to work within their own government's systems. Opportunities to engage with and to build agency capacity in conducting research, M&E and training should be explored and if appropriate resourced.

Lead Advisers & Technical Assistance

An issue raised with the ICR by two agencies was whether it was appropriate for the Lead Advisers to provide policy and activity planning guidance, and then support implementation. The ICR was told that LDF did not have the spare financial resources to consider the extensive use of other forms of capacity-building inputs during implementation and therefore it made sense to access the Lead Advisers. Indonesian contracted full-time technical personnel were engaged in the themes, some short term advisers or experts were also engaged and visits to Australia were funded etc.

In the view of the ICR team different combinations of technical assistance resources could have been considered and used. Options included:

- Using the current Lead Adviser personnel for fewer assignments to assist primarily with activity design, policy advice, strategic interventions and monitoring.
- Engaging additional expert full-time Indonesian advisers to provide continuity, momentum in change management, public sector reform, gender and M&E. These positions could have provided full-time in-country support for each of

⁴⁷ This was not disputed by the LDF in-country management team, although the contractor states in the review of the draft ICR that 'documents were routinely provided.'

the Lead Advisers. (The ICR acknowledges the high number of Indonesian consultants engaged by LDF in the project offices and agencies in long term and short term roles.)

- Greater use of secondments from Australian Commonwealth or state government agencies or attachments to those agencies. The ICR has noted the need for care in implementing these arrangements.
- AusAID's response may have been enhanced if it had had a permanent law and justice adviser at the Post in Jakarta.

Recommendation 9: The design for the next stage of assistance must allow for a wide range of technical and other inputs including increased senior Indonesian technical assistance in law, justice, public administration and cross-cutting issues.

Based upon discussions with AusAID and LDF's Team Leader and his deputy, the ICR team was of the view that the contract arrangements for the management of the Lead Advisers were less than optimal. While the Team Leader may have been involved with the Lead Advisers he stated to the ICR that there were times when he did not know precisely what the visits by the Lead Advisers were for, what the outputs were likely to be, and what Lead Advisers were organising. He said that he did not manage these inputs. AusAID expressed similar sentiments in terms of knowing broadly what the Lead Advisers were engaged in.

The Review Team is drawn to the conclusion that during the second half of LDF this valued and expert team was not under the direct management of the in-country GRM lead facility office as to the content and programming of their work and became 'free agents' to work with their agencies. This arrangement was too loose from an activity coherence perspective, for effective communication and coordination with AusAID and for AusAID to be reassured that these inputs were value for money.

Accountability for managing technical advisory inputs within a 'partnership' or joint venture arrangement needs clarity and certainty. The head contractor must be able to demonstrate willingness and an ability to:

- recruitment and induction of advisers
- manage the TA inputs
- agree their work plan with partner agencies
- monitor the performance of TA against the work plan
- conduct at a minimum an annual performance assessment involving counterparts,
- review the continuing need for the TA input, and
- report to AusAID on these aspects.

Lesson 10: In activity implementation where two or more joint venture partners provide inputs such as technical assistance, or control those inputs, clear single contact point arrangements are required to manage all aspects of those inputs.

3.16 Aid effectiveness, Paris and the Jakarta Commitment

LDF operated over a period when the aid effectiveness agenda emerged strongly, especially from 2007 onwards particularly within Government of Indonesia's development structure and the *Jakarta Commitment: Aid for Development Effectiveness Indonesia's Road Map to 2014*. LDF does not seem to have responded to that agenda on a number of fronts during the life of LDF.⁴⁸ Opportunities seem to have been missed to:

- suggest changes to LDF's processes and procedures to either mirror or adopt GoI systems and processes;
- improve reporting to GoI, and
- strengthen the focus on outcomes and results.

There were individual elements of this new aid paradigm that are visible primarily because of the flexibility of the demand-driven facility i.e. the reform office in the Supreme Court was able to support the judges to set the activity agenda, driven by the justices, under the courts strategic plan and the role of civil society in policy formation and implementation.

3.17 Dialogue, strategy development and policy engagement

During the ICR Mission it became apparent that there were two related specific issues of concern to AusAID:

- LDF's lack of engagement with AusAID on strategy development and support for policy dialogue with the sector;⁴⁹ and
- AusAID engagement within the sector above the level of activity manager.

LDF has created a unique, welcoming and open platform for AusAID to engage at a senior level in this sector, something that reflects credit on all participants. Indonesian partners consistently identified LDF with Australia and AusAID.

GoI partners would welcome a deeper relationship with senior AusAID officers for a number of reasons. The presence of AusAID, a key Indonesian development partner, in an agency, and visits by senior officials from AusAID, gives recognition and status to individuals associated with the activity; it provides encouragement and helps them get access within their own organisation. Visible donor support can also provide

⁴⁸ The LDF completion report contains a general section on the Paris Declaration but nothing specifically relevant to LDF.

⁴⁹ This issue is discussed earlier in the ICR Report and is not repeated.

stability and resourcing to the reform activity in the agency, especially if senior AusAID officers are able to consult and have dialogue with senior agency officers (i.e. above the day-to-day activity management) in the context of the country partner's objectives. The law and justice sector is central to Indonesia's development as a participatory democracy. LDF provided formal and informal opportunities for AusAID and other commonwealth agencies to build durable and deep relationships with a sector that is in the national interest: relationships with the same institutional strength as that which exist between the Supreme Court of Indonesia and the two Australian commonwealth courts.

At various points in the five years relations between LDF and AusAID were strained, above a level typical in this business.

LDF as an organisation developed a strong identity of its own. For a variety of reasons it seems to the ICR team that LDF drifted away from AusAID in a strategic support sense as opposed to an administrative sense. Some separated LDF from AusAID 'we are LDF, not AusAID' was a quote heard more than once by the ICR team said in the context of not being accountable or answerable to AusAID. While formally speaking all advisers are employees of the contractor, and they are not AusAID representatives, there is a strong aspect to their work that they are part of the Australian contribution and that that needs recognition and cooperation.

A good feature of LDF and AusAID engagement was the regular weekly meeting at the LDF office between the AusAID Program Manager and the Management Support Team.

LDF's engagement with AusAID and AusAID's engagement with LDF at a level above the activity management and contract management aspects appears to have been minimal in recent years. The regular provision of analysis, strategic advice and dialogue on the development context and agenda seemed to be missing. The contractor is adamant that in the early years advisers and managers briefed AusAID regularly through face-to-face meetings and in written reports, but over a period of time this practice ceased, at AusAID request. Also, it seems that it became harder and harder to arrange meetings and the advisers felt that they were getting no feedback on the analysis provided. With the Lead Advisers being in Jakarta for relatively short periods if a meeting with AusAID was cancelled or postponed, by either party, it seems that it was difficult to reschedule the event.

Ironically, both AusAID officers and LDF team members expressed frustration about the lack of policy/strategic dialogue and conversation between them. The ICR team is not going to arbitrate as to who was responsible for the lack of engagement; fault appears to be on both sides. What is clear is that opportunities were lost to:

- to improve LDF
- for Australia to engage more deeply in the sector in representational and policy dialogue roles, and
- for LDF's successes and relationships to contribute to Australia's broader policy objectives in its engagements in Indonesia.

In the ICR team's view AusAID's engagement with the sector, above the level of activity managers and program officers has been less than optimal. AusAID A-based and local program managers are held in high regard for their engagement. However at the counsellor level and above engagement was minimal, until recently.

AusAID engagement in high level dialogue with partners needs senior management focus and resources, at the Post and on the Desk. Australia's policy is to engage more fully with its development partners. For a lengthy period the AusAID LDF activity managers and program officers did not receive regular high-level support from within the Post to maintain essential policy dialogue in the sector. As the next phase of support moves to a 'partnership' approach policy dialogue and engagement by senior AusAID staff will be even more important. The Minister Counsellor and Counsellor need to be engaged and visible in the sector on a regular basis. These do not always need to be formal meetings. Attendance at opening and closing functions, launches and social events all provide suitable forums where attendance will be appreciated by the Indonesians.

AusAID and the implementing support contractor need to clearly understand their respective roles in facilitating and supporting AusAID to achieve Australia's broader agenda and effective engagement.

Recommendation 10: AusAID management and the program implementing agents have an obligation to support Australia's engagement in Indonesia with strategic advice and analysis. The Minister Counsellor and the Counsellor responsible for the law and justice sector need to be engaged and visible in the sector on a regular basis in their representational and policy roles so as to contribute to Australia's broader policy, political and economic objectives in its engagements in Indonesia.

4 Conclusion and Recommendations

4.1 Overall Assessment

LDF was a sound activity within the Australia Indonesia development portfolio. The ICR endorses the 2007 Mid-Term Review's conclusion when it stated that LDF *'punches above its weight.'*

LDF worked well at a senior level and was a respected partner. Australia's support and AusAID's guidance was appreciated. All partners said LDF supported programs of agency-lead reform at a pace set by them; agencies selected the activities from their priorities; it delivered its services with advisers, management and staff that were professional, responsive, flexible and who in the words of a senior judge *'delivered on their promises.'*

As a facility with over 150 activities its scope it was successful across the four themes to varying degrees. It engaged with the formal agencies and a wide range of civil society partners and supported the linking or *'joining-up'* of them in a number of activities. LDF's civil society partners are among the leaders of the civil society legal reform and anti-corruption agenda.

Australia was identified by stakeholders with LDF's efforts and AusAID was spoken of as a highly regarded donor in the sector. This was primarily because of LDF's flexible way of working and responsive manner. Compared to other donors the LDF funding was small but the relationships are valued for their quality, not necessarily the volume of funding.

The fact that LDF was so widely respected owes much to individuals (Indonesian formal and informal sector people, LDF management, advisers and project staff, the Chief Justices and judges of Federal Court of Australia and Family Court of Australia, and their senior executives, and AusAID activity managers). The professional respect that they hold for each other together with sound administration held LDF together.

LDF achieved a significant number of key outputs. Outcomes are emerging in a sector where change takes many years, even decades. The reporting on activities and outputs was extensive at a tactical level, although the full impact of LDF does not come through clearly enough in a strategic sense.

LDF supported close, multi-layered and subtle relationships between the Indonesian Supreme Court and the Federal Court of Australia (who have worked together for 15+ years) and more recently the Family Court of Australia. There is no doubt that this interaction is enhancing the ability of the Indonesian judiciary ability to manage and resource their court as an independent institution - in a very difficult cultural, political and institutional setting.

There is a strong desire in the sector for more engagement with other Australian government institutions particularly from the anti-corruption commission (KPK) and the Attorney General's Office (AGO). Their focus was on supporting bureaucratic reform and the development of specialist skills and processes.

LDF delivered its services with advisers, management and staff that have been responsive, flexible and ‘who delivered on their promises’ – not one personal criticism was made of AusAID or LDF personnel by Indonesian stakeholders.

LDF had a very good portfolio of gender equality activities, particularly in the access to justice and human rights themes. The way in which civil society partners worked with the courts and others was exemplary.

LDF provides an extremely sound platform for the new phase of assistance. However, there is a risk of loss of engagement in the nine-month transition phase. With a reduced presence (i.e. no LDF) AusAID senior management needs to implement and personally manage an engagement strategy with senior sector leaders to bridge the transition. This will be an opportunity for a more direct engagement through the management of the selected set of transition activities in key areas.

4.2 Lessons

The key lessons include:

1. Civil society can be supported to engage successfully with formal government agencies while at the same time maintaining their own organisational advocacy activities. A development activity can implement a triangulation strategy to join-up leaders on both sides for specific activities of interest to both, e.g. transparency of court fees, domestic violence laws in judgments, training judges, legal aid policy reform, and better local access to divorce courts. Resourcing does not need to be significant.
2. The LDF purpose was extremely wide as were the component objectives. Sharper focus in at the thematic outcome level would have lead to and reduced number of activities and potentially a higher level of aid effectiveness.
3. Whole of government interventions can work and be extremely effective development initiatives if nurtured and supported. They are important to the overall mutual socio political engagement between the two countries.
4. Within aid activities the mix of inputs including technical assistance should be reviewed annually with appropriate rationale included in the activity’s annual plan or equivalent.
5. Gender equality and the other cross-cutting issues need visible contractor commitment, in-country leadership, structure and resources. Implementing agents need to be held accountable for ensuring a consistent across the board mainstreaming and integration of cross-cutting development responses into activities. They are not optional extras for AusAID agents (contractors and advisers) to pick and choose. AusAID requirements are not daunting or onerous. All activity personnel have an obligation to seek through their personal behaviour and way of working to advance this agenda.
6. The capture and dissemination of lessons needs structure and process for them to be feedback into the activity delivery process to improve performance. As with all M&E it is everyone’s responsibility, not just that of the activity managers and the M&E adviser.

7. Agreeing and reviewing the objectives of the facility, particularly if the goal and purpose are extremely wide, and re-assessing approaches and inputs needs constant and regular review, discussion and analysis by the contractor and AusAID.
8. Activities are more likely to be successful if AusAID supports the partner agency to engage senior officers and managers directly in an activity's planning and management.
9. Partner agencies should be fully engaged in designing, managing and implementing activities. They should also be supported to work within their own government's systems. Opportunities to engage with and to build agency capacity in conducting research, M&E and training should be explored and if appropriate resourced.
10. In activity implementation where two or more joint venture partners provide inputs such as technical assistance, or control those inputs, clear single contact point arrangements are required to manage all aspects of those inputs.

4.3 Recommendations

The key recommendations include:

1. The Purpose of the next phase of assistance should have explicit links to the appropriate Government of Indonesian development and sector policies.
2. The LDF 'triangulation strategy' of joining up the law and justice agencies and CSOs should be continued with significant support for the CSOs to promote reform, engage in direct support of the agencies and encourage service delivery improvements.
3. AusAID, with appropriate Commonwealth government partners, need to establish stronger coordination, activity communication and reporting approaches for the whole of government engagements.
4. M&E needs strong attention at the *beginning of the activity* with partners, AusAID, the implementing agents and development advisers:
 - a. sharing a common understand if its purpose and approaches
 - b. ensuring appropriate resources to the program and each activity
 - c. using participatory approaches to strengthen partner M&E capacity
 - d. conducting operational research and establishing baselines, and
 - e. capturing and disseminating lessons learnedall building on the LDF M& E foundation.
5. LDF's strong operational engagement in gender equality activities should be continued in the next program supported by a 'living' gender equality strategy and fulltime advisory resources.
6. The operating practice of the new program, and supporting contractual arrangements, need to ensure that AusAID, its partners and its implementing agent regularly review the:

- engagement approach to best achieve the activity's purpose;
 - appropriate mix of inputs, especially technical assistance; and
 - approach to monitoring and reporting, and the resources applied to it, to ensure that the support processes are appropriate to the size of the activity, and, that the resulting products are timely and useful to the implementers for management purposes and AusAID and its development partner in measuring performance.
7. Advisory boards and similar governance structures need to be relevant, effective and efficient. Governance bodies for development activities should look to have among their representation members who have a strong operational attachment to the activity and an incentive to attend and participate. Contractors should ensure that the meetings of these bodies follow in-country best practice, produce all materials in local official business languages and provide reports and recommendations in the local style.
 8. Targeted support for public administration reform should be a key aspect of assistance to the Indonesian law and justice sector, particularly where it can be linked to increasing the sustainability of operational interventions and improved service delivery for target populations.
 9. The design for the next stage of assistance must allow for a wide range of technical and other inputs including increased senior Indonesian technical assistance in law, justice, public administration and cross-cutting issues.
 10. AusAID management and the program implementing agents have an obligation to support Australia's engagement in Indonesia with strategic advice and analysis. The Minister Counsellor and Counsellor responsible for the law and justice sector need to be engaged and visible in the sector on a regular basis in their representational and policy roles so as to contribute to Australia's broader policy, political and economic objectives in its engagements in Indonesia.

4.4 Activities for consideration in the next phase

There are a number of activities that are showing promise and where the ICR believes that support would be of significant development value;

1. Assistance to the Supreme Court to implement the public administration reform agenda; transparency initiatives, strengthening judicial professionalism and independence and the growing judge to judge and court to court partnerships with the Australian Courts.
2. Implementing the access and equity studies in the Religious and General Court particularly where the poor are seeking services; encouraging those courts to look at the deeply entrenched policy impediments in law; systems and processes that restrict access to justice and potentially undertaking new studies in the lower level courts e.g. a district court in Jakarta and in a province.
3. Strengthening Komnas Perempuan work on domestic violence enforcement and seeking to have the laws applied. Extending it not only to the judiciary but also the police and prosecutors.

4. Taking up Komnas Ham's request to work with the human rights committees in six provinces including Papua and Aceh to strengthen their effectiveness to respond to complaints and conduct investigations.
5. Engagement and support for civil society to join up with the formal sector on human rights (e.g. legal aid law reform); gender equality; domestic violence.
6. Continued support for KPK's training and capacity building of its own cadre of investigators and prosecutors. This is a particular niche where Australian agencies could provide support.

Annex 1 – LDF Partners

IALDF Key Partner Implementing Agencies

Government Agencies	
1	Supreme Court (Mahkamah Agung)
2	Attorney General's Office (Kejaksaan Agung)
3	Anti-Corruption Commission (Komisi Pemberantasan Korupsi - KPK)
4	Human Rights Commission (Komnas HAM)
5	Religious Courts (Pengadilan Agama)
6	General Courts (Pengadilan Umum)
7	National Body for Planning and Development (Badan Perencana Pembangunan Nasional - BAPPENAS)
8	National Commission on Violence against Women (Komnas Perempuan)
9	Constitutional Court (Mahkamah Konstitusi)
10	Directorate General Human Rights (Dirjen HAM)
11	Cabinet Secretariat (Sekretariat Kabinet)
12	Indonesian Armed Forces (TNI)
16	Indonesian Judicial Commission

Civil Society Organisations	
1	Centre for the Study of Islam and Society (PPIM), University of Indonesia
2	Coalition of Court Observers (KPP)
3	Indonesian Association of Families of the Disappeared (IKOHI)
4	Indonesian Institute for Independent Judiciary - (LEIP)
5	Indonesian Judiciary Supervisory Community (MAPPI)
6	Transparency International – Indonesia (TII)
7	Legal Aid Institute (Lembaga Bantuan Hukum - LBH)
8	Lembaga Studi Advokasi Masyarakat (ELSAM)
9	University of Indonesia Law Faculty
10	Consortium for National Law Reform (KRHN)
11	Indonesia Corruption Watch (ICW) & Judicial Watch Coalition
12	Aceh Judicial Monitoring Institute
13	Masyarakat Transparansi Indonesia (MTI)
14	Syarikat Indonesia (Religious Conflict Mediation)
15	IKOHI (Eastern Indonesia Civil Society Capacity Building)
16	LBY Masyarakat (Community Legal Empowerment)
17	Indonesian Legal Aid Foundation (YLBHI)
18	Komisi Orang Hilang dan Tindak Kekerasan (KONTRAS)
19	Women and Child Legal Aid Institute (LBH APIK)
20	Derap Warapsari
21	Fadillah, Rizki and Rivai (FRR)
22	University of Diponegoro
23	ICITAP
24	Program for Empowering Women-headed Households (PEKKA)
25	Centre for Legal and Policy Studies (Pusat Studi Hukum & Kebijakan Indonesia - PSHKI)
26	University of Indonesia - Gender Studies Centre
27	Community Legal Aid Institute (Lembaga Bantuan Hukum - LBH Masyarakat)
28	Jakarta Legal Aid Institute (Lembaga Bantuan Hukum - LBH Jakarta)
29	Press Legal Aid Institute (Lembaga Bantuan Hukum - LBH Pers)
30	Human Rights and Legal Aid Association (Perhimpunan Bantuan Hukum & HAM - PBHI)
31	The SMERU Research Institute
32	Centre for Anti-Corruption Studies (Pusat Kajian Anti Korupsi - PUKAT)
33	Hukum-on-line
34	Indonesian Mediation Centre (Pusat Mediasi Nasional - PMN)
35	Indonesian Community Justice Monitoring (Masyarakat Pemantau Peradilan Indonesia - MAPPI)
36	National Legal Reform Consortium (Konsorsium Reformasi Hukum Nasional - KRHN)
37	Indonesian NGO Coalition for International Human rights Advocacy