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Justice For All?

An Assessment of Access to Justice in Five Provinces of Indonesia

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FOREWORD

Minister of State for National Development Planning/
Chairperson of National Development Planning Agency

First and foremost, I would like to warmly welcome the publication of "Justice for All: An Assessment of Access to Justice in Five Provinces of Indonesia" – the result of a study, conducted trough the cooperation of Bappenas, UNDP, and PSPK-UGM. This study will provide us with a description of the real circumstances of the five provinces, which experienced conflicts, either vertically or horizontally, such as in West Kalimantan, Central Kalimantan, Maluku, North Maluku and Central Sulawesi.

Access to justice, as shown in the five provinces, has become a very important issue when justice seekers are in situation of conflict, especially those who are incapacitated and marginalized. Imbalance of power, rivalry of authority over natural resources, exploitation of racial sentiments and of religions have become stimulating factors for the occurrence of multidimensional and complex clashes. Justice has turned out to be a "luxury" and can hardly be touched by common people.

In order to strengthen good governance, effective involvement of both the society and the government is required. Effective involvement, in turn, requires continuous support for applying the principles of public participation, accountability and transparency, particularly in the legal field. Justice seekers need to have sufficient and relevant information on laws and procedures in Indonesia. Through such information they would be able to acknowledge their own legal rights and obligations, how to implement them, how to seek redress for any future violations of those rights, as well as the consequences of any breach of obligations.

Lastly, I expect the findings of this study can contribute a real benefit, not only for law enforcers and justice seekers, but also for society in general, specifically the poor and marginalized. For those who are involved in this study, both directly and indirectly, I hereby would like to express my highest appreciation.
Thank you.

Jakarta, December 2006

Minister of State for National Development Planning/
Chairman of National Development Planning Agency

H. Paskah Suzetta

PREFACE

Access to justice is a vital part of the UNDP mandate to reduce poverty and strengthen democratic governance. Within the board context of justice reform, UNDP focuses on supporting justice and related systems so that they work for those who are poor and disadvantaged. This is consistent with UNDP's strong commitment to the Millenium Declaration and the fulfillment of the Millenium Development Goals. Empowering the poor and disadvantaged to seek remedies for injustice, strengthening linkages between formal and informal structures, and countering biases inherent in both systems can provide access to justice for those who would otherwise be excluded.

To better understand and promote access to justice in Indonesia, the BAPPENAS Directorate of Law and Human Rights and UNDP initiated, in 2004, this extensive assessment of access to justice for the most disadvantaged populations in five provinces. This assessment has led to the development of a new initiative to enhance access to justice. The Legal Empowerment and Assistance for the Disadvantaged (LEAD) project will address the very issues identified in this report. The government of Indonesia and UNDP expect that, if sound progress can be made in strengthening citizens' access to justice, one critical condition for sustainable peace and development in the target provinces can be achieved.

On behalf of UNDP, I thank the Government of Indonesia for inviting UNDP to engage in the justice sector. I would also like to thank the hundreds of individuals and the organizations that were involved in this assessment. UNDP is committed to continuing its support to the Government of Indonesia in strengthening access to justice for all Indonesians.

Bo Asplund

Resident Representative
UNDP Indonesia

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This report is the product of a wide-ranging assessment of community access to justice in five provinces of Indonesia.

The access to justice assessment was led by Diani Sadiawati, Director of Law and Human Rights at BAPPENAS and Ewa Wojkowska, Programme Manager, Human Rights, Legal and Justice Sector Reform at UNDP Indonesia. The main authors of this report are Chris Morris, Norul Rashid, Suzanne Charlé and Rachael Diprose.[1]

The assessment was jointly developed and managed by the National Development Planning Agency (BAPPENAS), the Centre for Rural and Regional Development Studies at Gadjah Mada University (PSPK-UGM) and UNDP Indonesia. The following individuals played key roles in the assessment: Arief Christiono Soebroto (BAPPENAS); Mochammad Maksum, Dyah Ismoyowati, Susetiawan, Rahardjo, Mohtar Mas'oed, Sigid Riyanto, Sri Natin, Khoiruddin Nasution, Arief Akhyat, Sisparyadi, DC Mulyono, Suparmi and Emma Soraya (PSPK-UGM); Rudiarto Sumarwono, Sari Aziz, Yudit Yuhana, Peter De Meij, Mohammad Doddy Kusadrianto, Nesya Hughes and Verena Riyaningsih (UNDP Indonesia).

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- **Maluku:** Semuel A.M. Littik (Team Leader), Elsa R.M. Toule, Arman Anwar, M. Barkah Pattimahu and Efie Baadilla;
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[1] Chris Morris prepared Parts 1 – 3 (except for Sections 4.1 – 4.3 of Part 2) and Annexes 1 and 2. Suzanne Charlé prepared Sections 4.1 – 4.3 of Part 2 and Annexes 3 – 6. Norul Rashid and Rachael Diprose both prepared earlier, more detailed reports of the assessment findings in each province, upon which this final report is based.

The Law Faculties of Tadulako, Haluoleo, Pattimura, Khairun, and Tanjungpura Universities provided much appreciated logistical and operational support to the assessment teams. Christopher Dureau, Simon Butt and Steve Golub provided technical inputs at various stages throughout the assessment. The quantitative survey of community perceptions related to justice was undertaken by Forum Kota (City Forum) in Maluku, Lembaga Penelitian dan Pengembangan Masyarakat (the Institute for Community Research and Development) at Khairun University in North Maluku, Perkumpulan Bantaya (Bantaya Association) in Central Sulawesi, Lembaga Pengembangan Masyarakat Pesisir dan Pedalaman (the Institute for the Development of Coastal and Inland Communities) in Southeast Sulawesi, and Catalyst in West Kalimantan. The survey results were processed and analysed by Indra Krishnamurti and his team.

Contributions to the design and methodology of the access to justice assessment were made by: Toshihiro Nakamura, Ingrid Blokhus, Caroline Cooper, Agung Djojosoekarto, Fredrik Eriksson, Iwan Gunawan, Clarissa Meister-Petersen and Eugenia Piza-Lopez (UNDP Indonesia); Aparna Basnyat, Emilia Mugnai, Sanaka Samarasinha and Sudarshan (UNDP Bangkok SURF/Bangkok Regional Centre); Sara Ferrer-Oliviera (UNDP Cambodia); Marie-Louise Muff (UNDP India); and Chantelle McCabe (OHCHR).

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The team extends its appreciation to all of those mentioned above, and to all others whose contributions have made this assessment possible. In particular, we would like to recognize the participation of the hundreds of respondents who gave freely of their time, often at the end of a hard day's work, to assist us with gaining an accurate picture of the realities involved in seeking justice through the formal and informal legal systems.

Likewise, we extend our thanks to the judges, lawyers, prosecutors, police, government officials and community leaders in each province who took the time to speak with the research teams and provided their perspectives on the challenges currently facing those responsible for the provision of justice-related services. We hope that this assessment, and the recommendations arising from it, may make a small yet tangible contribution to the ongoing efforts to make greater access to justice a reality for all Indonesians.

Finally, thank you and goodbye to our friend and colleague Amparo Tomas (1971-2005), who was a key architect of this assessment and of the UNDP Access to Justice practice more broadly. She was an inspiration to all who knew her and will always be remembered not only for her passion for human rights but also for the way she touched so many lives here and all over the world.

Jakarta, January 2007

The views expressed in this publication are those of the authors and do not necessarily represent those of the United Nations or UNDP.

EXECUTIVE SUMMARY

Access to justice for all – regardless of gender, race, religion or wealth – is an ideal that lies at the heart of most democratic societies. Yet in Indonesia, justice remains out of reach for many citizens – particularly the poor, ethnic and religious minorities, women and those living in rural areas.

To date, most initiatives supporting justice-sector reform in Indonesia have taken place at the national level and focussed on key State institutions such as the courts, prosecution service and police. However, undue emphasis on a narrow conception of justice, limited to the enforcement of laws by the institutions of the State, may lead to a somewhat distorted view of reality in the Indonesian context. In many communities, informal justice mechanisms combining elements of negotiation, mediation and arbitration serve as a primary means of dispute resolution for a significant proportion of civil and (usually petty) criminal matters. In examining the extent to which a community and its members enjoy access to justice, the question must therefore be more than simply 'is justice accessible', but also 'is that which is accessible just'?

This report seeks to approach the issue of access to justice from the perspective of the poor and disadvantaged – those who are some of the most vulnerable to injustice yet least able to advocate for change on their own behalf. Based on the results of qualitative and quantitative research undertaken in West Kalimantan, Maluku, North Maluku, Central Sulawesi and Southeast Sulawesi, the report focuses firmly on identifying the key justice-related issues affecting citizens at the village level, the steps they have taken to resolve those issues, and why. The performance of formal and informal justice mechanisms is also considered, as are recent legislative and institutional developments with the potential to impact upon access to justice in broader terms.

Improved Normative Framework for Access to Justice and Human Rights

Post-Soeharto reformasi has involved the comprehensive and ongoing reform of the legal architecture governing Indonesia's formal institutions of justice. Perhaps the most significant achievement to date has been the establishment of a Constitutional Court, vested with the power to conduct judicial review of legislation and declare invalid that which is found to be inconsistent with the Constitution. Of similar importance are the so-called 'one roof' reforms of 2004, which bolster judicial independence by transferring administrative and financial authority over the courts from the then Ministry of Justice to the Supreme Court. Other notable developments have been the separation of the police from the armed forces and their placement under direct civilian control, together with the creation of a constitutionally-mandated Judicial Commission empowered to monitor, investigate and recommend punishment for inappropriate judicial behaviour. Continuing community disillusionment with the performance of the justice system and other government institutions has also generated support for

the establishment of a Corruption Eradication Commission, Human Rights Court, Human Rights Commission, Police Commission, Prosecutorial Commission and National Ombudsman Commission. While the newly created bodies charged with monitoring the formal institutions of justice carry the potential to serve a vital function, it remains too early to make any assessment of their performance except to say that teething troubles are likely as they grow into their new roles. The most prominent example of such troubles has been the rapid deterioration in relations between the Judicial Commission and the Supreme Court, ending in a recent constitutional challenge by a number of Supreme Court justices that saw the Judicial Commission stripped of its judicial oversight function (for the time being at least). Uncertainty over the circumstances in which the Prosecutorial Commission may take control of an internal investigation by the Attorney General's Office creates the potential for similar tensions to arise. The effectiveness of the new Police Commission is also under question because it lacks power to investigate police misconduct or abuse of power.

A number of important advances have been made in relation to the normative protection of human rights since the fall of the New Order, the single most significant being the enactment of a constitutional bill of rights on 18 August 2000. Coupled with the establishment of the Constitutional Court with jurisdiction to conduct judicial review of laws alleged to infringe these constitutionally protected rights, the bill of rights (in theory at least) provides Indonesians with stronger legal protection of their human rights than that enjoyed by citizens in a number of more advanced democracies. A Human Rights Law guarantees a number of rights additional to those entrenched in the Constitution, although principles of statutory interpretation render these non-constitutional rights vulnerable to either deliberate or inadvertent derogation by future inconsistent legislation. Indonesia's recent accession to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights means that the country has now also ratified most of the major international human rights instruments.

Together, the current mix of constitutional, statute and international law provides more detailed protection for a greater range of human rights than has existed at any other time in Indonesian history. The central issue now, therefore, is whether Indonesia can move beyond the mere recognition of human rights (important as that is) and effectively employ the law as a tool for the realisation and enforcement of those rights. Although progress is being made, there remains significant scope for improvement. Neither is the issue limited to the national level, as the advent of decentralisation means that hundreds of regional parliaments now have authority to pass regional regulations encompassing a broad range of subject areas. Serious attention must be paid to monitoring these regulations for consistency with the rights protected by the Constitution and Human Rights Law, and amending or invalidating those found to be inconsistent.

Key Justice-Related Issues from the Perspective of the Poor and Disadvantaged

A persistent theme that emerged throughout the five provinces was an emphasis on the economic dimension of justice, a clear reflection of priorities in communities where daily life often revolves around the myriad challenges of maintaining an adequate livelihood. In particular, equality, evenness and non-discrimination in the distribution of government services and assistance was cited as central to achieving justice by respondents across all provinces. This and other key justice-related issues raised by interviewees and FGD participants can be grouped into six categories:

- Access to Government Services and Assistance
- Ownership and Management of Land and Natural Resources
- Gender Violence and Discrimination
- Employment and Labour Rights
- Criminality and Inadequate Law Enforcement
- Post-Conflict Security, Property Rights and Other Issues

The results of the quantitative research corresponded closely with the results of the qualitative research outlined above, with survey respondents across the five provinces nominating 'poverty', 'education' and 'public health' as the three most commonly encountered issues in their village. Other frequently cited issues included 'land disputes', 'unemployment', 'domestic disputes' and 'criminality'. Apart from minor fluctuations around the mean, there were no striking differences in the responses of men and women when the data from the five provin-ces is combined.

Community Awareness of Rights Remains Low

The qualitative phase of the assessment found that community awareness of specific rights protected or established by Indonesian law is low. The assessment did, however, document many instances in which poor and disadvantaged citizens have taken action that demonstrates a general awareness of their rights in a wide range of areas, including property ownership, healthcare, education, access to government subsidies and freedom from domestic violence. Yet, even though citizens have often taken the initiative to complain to a relevant government agency, they frequently appear at a loss for what to do if (as is often the case) no improvement occurs as a result of their complaint. At other times, citizens perceive a breach of their rights but take no action for reasons including their weak bargaining position, expense, embarrassment, a desire to preserve social harmony and suspected police complicity in criminal activities.

Choice of Forum – Informal Justice Mechanisms Preferred

The choice of the formal or informal justice system to resolve a problem is influenced by a complex and interrelated set of factors,

not all of which are necessarily given equal weight, nor consciously considered. In most cases villagers display a strong preference for the informal justice system, except in more serious criminal cases and (to a lesser extent) civil cases such as divorce and inheritance where it may be desirable to have formal state recognition of any settlement reached. Apart from the common perceptions that pursuing justice through informal channels is quicker, cheaper and easier than through the formal institutions of justice, a number of other factors also drive community choices. In particular, informal justice mechanisms are perceived to be less intimidating and produce fairer outcomes than their formal counterparts, and are considered to have a greater ability to preserve social harmony between the disputing parties. In contrast, the formal justice system is often viewed as being only for those 'who have done something wrong' and therefore worthy of avoidance lest one be tarnished by association.

Despite the many perceived advantages of the informal justice system, the choice to use it may not always be entirely voluntary. Financial and geographic reasons alone may preclude the formal justice system as an option, and significant social pressure may exist to resolve disputes informally, particularly for family disputes. Surprisingly however, considering respondents' overwhelming stated preference for the informal justice system over the formal justice system, the quantitative survey revealed little difference between the numbers of respondents who had used each system. Overall, 10 percent of respondents claimed to have used the formal justice system while only a slightly greater 12 percent claimed to have used the informal system.[2] It should however be noted that as these figures do not express frequency of use, there remains the potential for the frequency of use of either system to be slightly higher due to instances of multiple use by individual respondents. Further, the real possibility of respondents misunderstanding what is meant by the formal and informal justice system (and what constitutes a legal problem) means that these figures are best regarded as a guide rather than a precise measure of community use of each of the respective systems.

Lack of Availability and Inadequacy of Legal Aid and Other Legal Services

State-sponsored legal aid schemes are limited in scope, chronically under-funded and are not well-known amongst prospective beneficiaries. Courts may appoint lawyers for indigent defendants only in more serious criminal matters – those charged with less serious crimes may be unable to access legal advice of even a general nature. A basic allowance for these lawyers was previously channelled through regional offices of the Department of Law and Human Rights, but this ceased with the 'one roof' amendments in 2004. Although this has been replaced with a very limited financial assistance scheme administered by the Supreme Court, no lawyers, judges or court staff contacted during the assessment seemed to be aware of its existence. The result is that in many cases, private lawyers

2 Approximately five percent of respondents claimed to have used both systems and are therefore counted twice in these figures – when allowance is made for this, a total of 17 percent of respondents claim to have sought resolution of a problem through either the formal or informal justice systems.

rather than the State now bear the financial burden for providing legal aid, except in some provinces and districts where local governments have made small allocations for legal aid out of their own budgets. There is no provision for indigent litigants to receive free legal representation in civil cases, and the perceived and actual cost of private lawyers means that few poor and disadvantaged citizens currently consider them a viable means of obtaining legal assistance. Further, while indigent litigants may be entitled to a waiver of court fees, they continue to bear the often heavy financial burden of calling witnesses.

A number of local non-government organisations are engaged in the provision of either legal or quasi-legal services, often to specific sections of the community or in relation to specific issues. However, their capacity is limited in both financial and human terms, and to make the best use of available resources they tend to concentrate on collective representation rather than providing assistance in individual disputes. A significant gap therefore exists in the availability of generic legal services to individual poor and disadvantaged members of the community, particularly in rural areas. Notably, of the three most prominent national legal services NGOs, none has representation in any of the five assessed provinces except West Kalimantan. Community outreach programs run by government institutions and civil society organisations are also an important tool for raising community legal awareness and empowering communities to pursue their rights. The assessment has documented outreach activities conducted by both government and non-government institutions, but they are very limited in scope (both geographic and substantive) and of uncertain impact.

Formal Justice System

Police Most Frequently Accessed Formal Justice Institution: The police are the branch of the formal justice system with which the public have the highest level of contact. Not only do the police perform a traditional policing role but they are also directly or indirectly involved in informal dispute resolution. Although an apparent shortage of police personnel is a common problem throughout the five provinces, particularly acute is the lack of women officers stationed at the local level. This significantly restricts the extent to which the police can provide services that are sensitive to the needs of vulnerable victims such as women and children, at the point where the majority of community interaction takes place. Police are also clearly hampered by inadequate operational resources, a situation that in some cases is exacerbated by the process of regional subdivision (pemekaran). On the one hand this brings services closer to the community, but on the other hand appears to result in existing resources being spread even more thinly. Allegations of inappropriate conduct by police are widespread, and there is a lack of monitoring and an apparent unwillingness to hold officers accountable for their actions. Consequently, community levels of trust in the police are low, and commonly cited obstacles to dealing with police include fear, cost or bribes, and violence.

Prosecutors Have Low Community Profile: The prosecution service has the lowest community profile of the key formal justice institutions, as prosecutors rarely interact with the community at large except through infrequent legal awareness programs that are limited in geographic scope. Although a few prosecution offices contacted during the assessment reported adequate staffing, the majority felt that staff levels were insufficient. Prosecutorial experience levels are also an issue in some locations – for example, the conflict in Maluku has made it difficult for the local prosecution service to retain senior prosecutors, with the majority now having less than three years experience. Access to legislation and legal texts is limited, and prosecutors are often required to buy these materials themselves whenever they travel to Jakarta.

Courts Seen as Expensive and Unfair: Consistent with (or perhaps as a result of) the reputation of Indonesian courts as corruption-ridden, citizens commonly cited cost, bias, fear and a perception that judges are unfair as the major obstacles to achieving justice through the courts. However, according to a survey by The Asia Foundation, this may apply more to the district courts than the religious courts, which the survey found to enjoy a significantly better reputation.[3] The most frequently accessed courts are the religious courts, for divorce and other family law related matters experienced by Muslims. A commonly cited problem by both civil and religious courts that participated in the assessment is a lack of judges. This is certainly the case by reference to the nationally mandated minimums for the respective classification of court, although the assessment could not verify to what extent this was valid in light of actual judicial workload. Numbers of administrative staff also vary significantly between courts with similar numbers of judges – no explanation for this pattern was obtained.

Physical resources, including buildings, equipment, court libraries and operational funds are generally limited, although significant variation exists between districts. As with the police, regional subdivision appears to be placing a drain on resources by duplicating infrastructure that may not in fact be warranted by the current low caseload in an area. The implementation of court-annexed mediation appears to have been haphazard, and at least in the district courts contacted during the assessment, of minimal success. Conflict has taken a toll on court personnel and infrastructure, and several instances of physical intimidation of judges were documented. According to judges, no formal schemes are in place to ensure their safety.

Informal Justice System

Despite significant regional variation, most informal justice mechanisms fall within two main categories and employ similar processes. The basic distinction lies between communities where cases are heard by traditional *adat* leaders according to *adat* or customary law, and those where disputes are resolved through mediation or 'soft' arbitration by village authorities – in most

3 Survey Report: Citizen's Perceptions of the Indonesian Justice Sector - Findings and Recommendations, The Asia Foundation, Jakarta, 2005, p. 73.

cases the village head. The division is not always so clear cut in practice, as resolution according to *adat* law often involves elements of mediation and 'soft' arbitration and in places such as Maluku, the *adat* leader may simultaneously hold the position of village head. Meanwhile, in ethnically heterogeneous communities, the two processes may exist side by side with the choice of forum depending on the ethnicity of the parties to the dispute.

The jurisdiction of an informal justice mechanism is generally limited to the village in which it is based, as parties from outside that village will not necessarily acknowledge the moral authority of the relevant informal justice actor. This naturally restricts the types of cases that may be effectively resolved by informal means to predominantly small scale matters involving parties resident in a village. Apart from the advantages of accessibility, speed and low cost mentioned above, the informal justice system also diverts these less serious cases from the formal justice system, thereby alleviating pressure on resource-deficient formal justice institutions. Where punishments are in the form of fines, the informal justice system promotes the redistribution of scarce resources within a village, rather than their expenditure on fees or bribes for the police or other formal justice actors. This assumes that informal settlements and decisions are actually complied with, which is not always the case due to an absence of effective enforcement mechanisms apart from the imposition of social pressure or sanctions. These may or may not be successful depending on the circumstances of a case and the relative power of the parties involved.

The assessment identified arbitrariness in decision-making and discrimination against women and minority groups as two key factors that sometimes undermine the ability of the informal justice system to produce outcomes that take adequate regard of the rights of all parties. Also of note is that women are almost completely unrepresented on village decision-making bodies and as informal decision-makers. For these reasons, and despite the informal justice system being widely viewed by villagers as the most likely way of achieving an outcome that 'satisfies the community's sense of justice', there remain a number of situations in which it falls well short of realising this ideal.

Conclusions and Recommendations

The key point to emerge from the assessment is that the majority of issues that villagers cite as ongoing sources of injustice are those that are not amenable to resolution via the informal justice system. As effective as informal mechanisms may be in small cases of a local nature, issues involving parties outside the village structure – such as government agencies, corporations or even citizens from neighbouring villages – will generally be beyond their effective jurisdiction. The crux of the problem for many communities therefore lies in the fundamental mismatch between citizens' relative pref-

erence for the informal justice system and the fact that the most commonly cited cases of serious injustice are largely unsuitable for resolution via this forum.

This report makes five core recommendations to government, donors and civil society.

1. Intensify efforts to build community legal awareness. In light of generally low levels of community legal awareness, support should be given to activities by both state and non-state actors that are aimed at building citizen's awareness of both their rights and obligations under both national level laws and regional regulations. Perhaps more importantly, efforts should also be made to increase the availability of information about legal services and dispute resolution methods beyond the village level. This includes developing the capacities of informal justice actors and community leaders to provide information to members of their communities about legal rights and legal and other services that may be available to them. Women should be designated as a priority target for legal awareness programs and activities due to their overall lower levels of legal awareness, and research on the effectiveness of different popular education methods should be conducted to ensure that these programs achieve maximum impact.

2. Reaffirm the role of the State in the provision of legal aid. Although the central government currently provides limited legal aid for indigent defendants in criminal matters, funding is manifestly inadequate and should be increased (although given the current economic situation, it is recognised that this is easier said than done). Provincial and district governments should also be encouraged to contribute to legal aid schemes through making allocations in their own budgets. Considering the majority of injustices cited by the poor and disadvantaged are civil in nature, the scope of legal aid funding should be widened to encompass the provision of legal aid to indigent litigants in certain civil matters. Efforts to draft and enact a comprehensive law regarding legal aid should be supported, while at the same time studying alternative options for achieving similar results through policy changes under existing regulations.

3. Support the provision of community legal services by civil society. Civil society has a legitimate and important role to play in the provision of legal and quasi-legal services. Capacity development of existing organisations providing such services should be encouraged where service quality could be improved through enhanced technical or general management skills. In some cases, capacity development could also include support for widening the geographic or thematic scope of the services an organisation provides. Moreover, because the majority of these civil society organisations are located in district or provincial capitals, attention should be given to increasing their accessibility to those living in rural areas. This could be done through training village-level paralegals with links to legal aid posts at the sub-district level and a legal aid lawyer

or organisation at the district-level and above.

4. Focus on advocacy and empowerment to reduce discriminatory and arbitrary decision-making practices in the informal justice system. Citizens' preference for the informal justice system should not be interpreted as meaning that the system always produces fair and appropriate outcomes, or protects the rights of women or minority groups. While recognising the practical skills informal justice actors may have developed through serving their communities, many could benefit from capacity development in the areas of mediation techniques and citizens' rights. Greater recognition of the rights of women and other disadvantaged groups should be supported by advocacy and empowerment activities aimed at their securing an increased role in village governance and justice mechanisms. Monitoring of informal justice mechanisms by government and civil society organisations should be encouraged to promote transparency and bring to public notice cases in which the rights of a party have not been adequately taken into account.

5. Consolidate efforts to reform the formal justice system. In light of continuing corruption, poor performance and resource shortages, there should be no let-up in efforts to reform the formal justice system so that it becomes an effective means of resolving grievances which the informal justice system is not equipped to address. In order to improve the capacity of the police to deal sensitively with vulnerable women and children who are victims of crime, priority should be given to increasing the recruitment of female police officers and ensuring that they are stationed at sub-district police stations (POLSEK) where the majority of community interaction takes place. In order to ensure the most efficient allocation of resources, a national legal survey of the real needs of key justice institutions such as the courts and the police should be conducted, including staffing levels, salaries and operational resources. Lastly, in order to promote greater accountability, support should be given to civil society and state monitoring of formal justice institutions, legislative bodies and government agen-cies mandated with the delivery of public services.

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GLOSSARY

AAI – Asosiasi Advokat Indonesia	Indonesian Association of Advocates
Adat	Custom and tradition
Adat law	Customary law
ADR	Alternative dispute resolution
AKBP – Ajun Komisaris Besar Polisi	Senior Police Commissioner
AKP – Ajun Komisaris Polisi	Junior Police Commissioner
Askes – Asuransi Kesehatan	State-sponsored health insurance
Babinsa – Bintara Pembina Desa	Member of security forces stationed within a village
BPS – Badan Pusat Statistik	Central Bureau of Statistics
Baileo	Sacred meeting place in *adat* villages of Maluku
Baku Bae	Reconciliation process for peace in Maluku
BAPPENAS – Badan Perencanaan Pembangunan Nasional	National Development Planning Agency
Bedup – bekal hidup	Emergency government aid payment
BPD – Badan Perwakilan Desa	Village Representative Council
BISPA – Balai Bimbingan Sosial dan Pengentasan Anak	Juvenile Detention Centre
BBR – bahan bangunan rumah	Materials for home construction (government aid)
Bupati	District Head (executive government)
Camat	Sub-district Head
Danramil – Komandan Komando Rayon Militer	Sub-district Military Commander
Delik aduan	Crimes which require a complaint as a precondition to police investigation
Depdagri – Departemen Dalam Negeri	Ministry of Home Affairs
Depnakertrans – Departemen Tenaga Kerja dan Transmigrasi	Ministry of Manpower and Transmigration
Desa	Village
DPRD – Dewan Perwakilan Rakyat Daerah	Regional legislature at the provincial, district and municipal levels
Dinas Sosial	Office of Social Affairs
Dinas Tenaga Kerja dan Transmigrasi	Office of Manpower and Transmigration
Dinas Kesehatan	Office of Health Affairs

Dinas Perikanan	Office of Fisheries
Dusun	Hamlet/sub-village
Golkar – Golongan Karya	The political party associated with the Soeharto administration
Hibualamo	A traditional house for meetings on all issues of communal significance (North Maluku)
HAPI – Himpunan Advokat & Pengacara Indonesia	The Indonesian Association of Advocates and Lawyers
Hukum	Law
IDP	Internally displaced person
IKADIN – Ikatan Advokat Indonesia	Indonesian Bar Association
IKBM – Ikatan Keluarga Besar Madura	Madurese Community Association
IPHI – Ikatan Penasehat Hukum Indonesia	The Indonesian Association of Legal Advisors
Jadup – jaminan hidup	Living support (government aid payment)
Kabupaten	District
Kepala Desa	Village Head
Kamtib – Keamanan dan Ketertiban	Community security and order group (community based)
Kampung	Neighbourhood
Kanwil – Kantor Wilayah	Regional Office
Kapolda – Kepala Kepolisian Daerah	Provincial Police Chief
Kapolres – Kepala Kepolisian Resort	District Police Chief
Kapolri – Kepala Kepolisian Republik Indonesia	Chief of the Indonesian National Police
Kartu Sehat	Health Card
Karimbi	A sentence of punishment according to the *adat* of Gonda Baru village (Southeast Sulawesi)
Kasat Intelpam – Kepala Satuan Intelijen dan Pengamanan	Head of Intelligence and Security Unit (police)

KDP	Kecamatan Development Program
KDRT – kekerasan dalam rumah tangga	Domestic violence
Keadilan	Justice
Kecamatan	Sub-district
Kejaksaan Agung	Attorney General's Office
Kejaksaan Negeri	Public Prosecutor's Office (district level)
Kejaksaan Tinggi	Public Prosecutor's Office (provincial level)
Kelurahan	Urban administrative unit equivalent to a village
Kilala	A scared fortune teller who has authority to choose *adat* leaders in Gonda Baru village (Southeast Sulawesi)
Konsultan hukum	Legal consultant
Komisaris Polisi	Police Commissioner
Koramil – Komando Rayon Militer	Sub-district Military Command
Kota	Municipality/city
KUHAP - Kitab Undang-Undang Hukum Acara Pidana	Code of Criminal Procedure
KUHP – Kitab Undang-Undang Hukum Pidana	Criminal Code
KUT – Kredit Usaha Tani	Farm Enterprise Credit
LBBT – Lembaga Bela Benua Talino	Institute for Indigenous Communities and Legal Advocacy (West Kalimantan)
LBH – Lembaga Bantuan Hukum	Legal Aid Institute
LBH-Apik – Asosiasi Perempuan Indonesia untuk Keadilan	Indonesian Women's Association for Justice Legal Aid Institute
LSM – lembaga swadaya masyarakat	Non-government organization (NGO)
Lurah	Head of a *kelurahan* (urban equivalent to a village head, but a government employee)
MABM – Majelis Adat dan Budaya Melayu	Malay *Adat* and Culture Council (West Kalimantan)
MAD – Majelis Adat Dayak	Dayak *Adat* Council (West Kalimantan)

Mahkamah Agung	Supreme Court
Mahkamah Konstitusi	Constitutional Court
Muspika – Musyawarah Pimpinan Kecamatan	Council of Sub-District Leaders (including representatives of security forces)
Muspida – Musyarawah Pimpinan Daerah	Council of District Leaders (including representatives of security forces)
Musyawarah	Deliberation by consensus
Mosehe	Peace building ritual according to Tolaki *Adat* system in South Konawe, Southeast Sulawesi
Negeri	Name for *adat* villages in Maluku
PAM – perusahaan air minum	Water company
Pancasila	Indonesia's state philosophy, comprising the following five principles: a commitment to belief in one God; a just and civilised humanity; national unity; people's rule through consultation and representation, and; social justice for all Indonesians
Panitera	Court registrar
PBR – Partai Buruh Rakyat	Labour Party
PD – Partai Demokrat	Democratic Party
PDI-P – Partai Demokrasi Indonesia – Perjuangan	Indonesian Democratic Party of Struggle
Pemda – pemerintah daerah	Regional government (province, district or municipal level)
Pemkot – pemerintah kota	Municipal government
Pengacara	Lawyer
Pengadilan Agama	Religious Court
Pengadilan Militer	Military Court
Pengadilan Tata Usaha Negara	State Administrative Court
Pengadilan Umum/Negeri	General/State Court
Penyelidikan	Initial inquiries into a suspected crime

Penyidikan	Investigations to compile a brief of evidence
Peradi – Perhimpunan Advokat Indonesia	Indonesian Advocates' Association
Perda – Peraturan Daerah	Regional regulations passed by provincial, district, or municipal legislatures
Perppu – Peraturan Pemerintah Pengganti Undang-undang	Government Regulation in Lieu of Law
PKK – Pemberdayaan dan Kesejahteraan Keluarga	Family Welfare and Empowerment
PNS – pegawai negeri sipil	Civil servant
POLDA – Kepolisian Daerah	Regional/Provincial Police
POLRES – Kepolisian Resort	District Police
POLSEK – Kepolisan Sektor	Sub-district Police
Posyandu – pos pelayanan terpadu	Integrated health service for mother and child
PPKR – Peningkatan Perkebunan Karet	Provincial Office of Plantations' Community Rubber
Rakyat	Development Project (West Kalimantan)
P3NTR – Petugas Pegawai Pencatat Nikah Talak Rujuk	Marriage and Divorce Registration Officer
Pra-sejahtera	Persons entitled to welfare (the very poor)
Pro deo	Scheme whereby court fees are waived for indigent litigants in civil cases
PTT – pegawai tidak tetap	Non-permanent employee
PT – perseroan terbatas	Limited liability company
Puskesmas – Pusat Kesehatan Masyarakat	Community Health Centre
Raskin – Beras untuk Miskin	Rice for the Poor (an aid programme distributing subsidized rice to the poor)
Renstra – Rencana Strategis	Provincial Development Planning Strategy
RPK – Ruang Pelayanan Khusus	Special Service Room (provided by police for sensitive cases involving women or children)

RT – Rukun Tetangga	Neighbourhood Association (lowest level administrative unit in urban areas)
RW – Rukun Warga	Ward (second-lowest level administrative unit in urban areas, comprising several *RT*s)
Satu atap	'One roof' – policy under which all courts fall within the administrative aegis of the Supreme Court
Satgas – satuan tugas	Squad (military or police)
Sekda – Sektretaris Daerah	Regional Secretary (third highest ranking office in local administrations after Governor, District Head or Mayor, and their deputies)
SK – surat keputusan	Written administrative decision or decree
Surat Miskin	Certificate of indigence
SPDP – Surat Pemberitahuan Dimulainya Penyelidikan	Notice of Commencement of an Investigation (police)
TKBM – tenaga kerja bongkar muat	Manpower for loading and unloading (stevedore)
SD – Sekolah Dasar	Elementary School
SMP – Sekolah Menengah Pertama	Junior High School
SMU – Sekolah Menengah Umum	Senior High School
TNI – Tentara Nasional Indonesia	Indonesian National Armed Forces
Tokoh masyarakat	Community leader
Undang-undang	Law/Statute/Act (national level)
YLBHI – Yayasan Lembaga Bantuan Hukum Indonesia	Indonesian Legal Aid Foundation

PART 1
INTRODUCTION

PARTICIPANTS OF FOCUS GROUP DISCUSSION, IN SOROWALIO, BAU-BAU, SOUTHEAST SULAWESI

PART 1
INTRODUCTION

> Question: What does law and justice mean to you?
>
> Answer: We don't know about any of these things…We are not educated people…these are matters that only the clever people from the city are familiar with. We are farmers, we rear animals, we go to the market, we sell our crops and we use the money to buy rice. Why do we need to know?
>
> Woman, Wayame Village, Maluku, May 2005

Despite Indonesia's steady progress towards greater democracy and protection for human rights in the eight years since the collapse of the New Order, justice remains a hollow concept for many Indonesians, particularly the rural poor. More open government has not always been matched by significant improvements in economic prosperity, and even a basic understanding of the law and legal process may seem like an 'optional extra' when the ever-increasing cost of basic goods and services makes survival a daily struggle.[4]

However, greater legal awareness may in fact bring tangible economic and other benefits. For example, the woman in Wayame may be better equipped to claim the government subsidies and assistance to which she is entitled, and understand her options if administrative irregularities result in her receiving less than what she should. Alternatively, she may feel more empowered to take action against incidents of domestic violence or sexual discrimination, or to enforce her rights upon divorce.To date, most initiatives in support of justice-sector reform in Indonesia have focussed on the national level, a logical approach at first glance considering the centralised nature of the key justice institutions such as the police, prosecution service and the courts. However, mixed results and slow progress have lead to an increasing recognition that despite attempts to strengthen these 'duty bearers', genuine reform may prove elusive without a corresponding effort to assist 'claim holders' at the grass roots level to demand the fulfilment and protection of their rights. In other words, top-down fixes must be matched by bottom-up capacity development. Unfortunately, the growing desire to address the demand side of the justice equation has so far been hampered by a lack of data that could assist to design programmes that address real needs. Without downplaying their importance and usefulness, donor initiatives aimed at improving understanding of justice-related issues and capacities at the local level have been few and small in scale, and have tended to focus upon areas not affected by conflict.[5]

This report is the result of an assessment of access to justice undertaken between January and September 2005 in five predominantly conflict affected provinces of Indonesia – West Kalimantan, Maluku, North Maluku, Central Sulawesi and Southeast Sulawesi. With a focus primarily on the perspective of the poor and disadvantaged rather than the formal institutions of justice, the assessment does not claim to be com-

4 In 2004, Indonesia was the only country affected by the Asian economic crisis not to have bounced back to its pre-crisis growth rate, although a modest reduction in the poverty rate had been achieved. See *National Human Development Report 2004: The Economics of Democracy –Financing Human Development in Indonesia*, BPS-Statistics Indonesia, BAPPENAS and UNDP, Jakarta, 2004, p.1.

5 See for example: World Bank, 'Village Justice in Indonesia: Case Studies on Access to Justice, Village Democracy and Governance', World Bank Jakarta, February 2004. This paper primarily examines the resolution of corruption cases in Kecamatan Development Project (KDP) community development projects using the KDP structure. Barron *et. al.*, 'Do Participatory Development Projects Help Villagers Manage Local Conflicts? A Mixed Methods Approach to Assessing the *Kecamatan* Development Project,Indonesia', CPR Working Papers, Paper No. 9 (Revised Version)March 2004 also focuses on KDP structures.

prehensive, either in terms of subject matter or geographic coverage. Nevertheless, it is hoped that it can contribute to filling the knowledge gap that currently exists in relation to access to justice at the local level in Indonesia. This is of particular importance in conflict-prone regions, where greater access to justice brings with it the potential to achieve the peaceful resolution of disputes that may otherwise degenerate into violence.

1.1 GUIDE TO THE REPORT

The report is divided into three parts. Part One begins by suggesting a conceptual framework for access to justice and providing an overview of some of the key recent amendments to the laws and regulations that together constitute the normative framework governing the provision of justice-related services in Indonesia. It then briefly outlines the structure and authority of the key institutions of justice in Indonesia and the accountability mechanisms established to monitor their performance. Thereafter, consideration is given to the normative protections afforded to human rights under Indonesian law and the legislative recognition of *adat* or customary law, particularly as it applies to land. Part One concludes with an introduction to the assessment locations and an explanation of the methodology employed in both the qualitative and quantitative components of the research.

Part Two consists of a compilation of the key findings drawn from each of the five provinces. It commences by presenting a view of justice from the perspective of the disadvantaged, discussing which groups are classified as disadvantaged and why; how members of these groups conceptualise 'justice' and, in light of this; assesses the key justice-related issues affecting them. It then assesses community awareness of rights, and the current avenues for poor and disadvantaged citizens to obtain legal information or assistance through either outreach activities or legal aid from State and non-state providers. Patterns of use of the formal and informal justice systems are examined, together with a number of factors that may influence choice of forum, where such 'choice' is, in fact available. Finally, a limited assessment is made of the capacity of both the formal and informal justice systems to provide appropriate remedies for grievances, and of where the two systems intersect and in what circumstances.

Part Three presents some general conclusions and makes a number of recommendations to guide the direction of future government, civil society and donor initiatives aimed at increasing access to justice for Indonesia's poor and disadvantaged. Finally, Annexes 2 – 6 provide more detailed coverage of the assessment findings by province, each following a similar structure to that employed in Part Two.

1.2 WHAT IS 'ACCESS TO JUSTICE'?

UNDP defines access to justice as 'the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards.'[6] Articles 7 and 8 of the Universal Declaration of Human Rights (UDHR) enshrine access to justice as a fundamental human right. Article 7 recognizes the right to equality before the law and the equal protection of the law without any discrimination. Article 8 provides for the right to an effective remedy by a competent national tribunal for

6 United Nations Development Programme, Programming for Justice: Access for All – A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice, Asia-Pacific Rights and Justice Initiative, UNDP Regional Centre Bangkok, 2005, p. 5.

acts violating the fundamental rights granted by the constitution or by law. Importantly, access to justice is much more than simply a right in itself – it also constitutes a key means of realising the enjoyment of a whole range of other rights.[7]

While 'access to justice' is undoubtedly an effective catchphrase around which to rally support for positive action, the term can be somewhat deceptive in its simplicity. 'Justice' is an inherently subjective and value-laden concept whose meaning may entail different things to different people in different places and at different times. For example (as will be shown in Part Two of this report) many of the poor in Indonesia show an understandable tendency to place greater emphasis on the economic dimension of justice, while minority ethnic groups may highlight non-discriminatory treatment at the hands of the majority as a key pre-condition to obtaining what they consider a just remedy for their grievance.

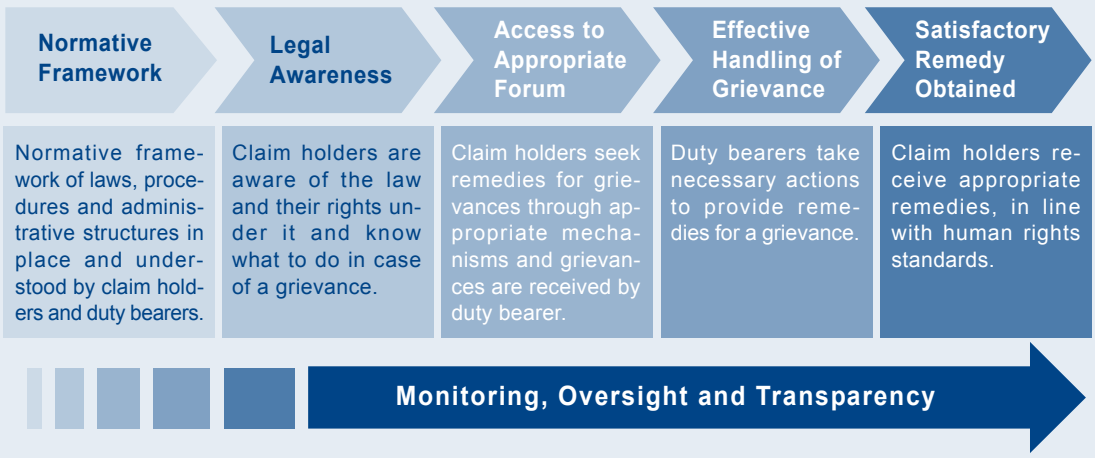
Access to Justice for Whom ?

Access to justice for all, irrespective of gender, race, religion, age, class or creed, is one of the ultimate objectives to which all societies and their legal systems should aspire. Promoting greater access to justice is also a goal central to UNDP's global mandate of reducing poverty and strengthening democratic governance. In this context, UNDP is focussing its efforts on improving access to justice for poor, disadvantaged and marginalised citizens who are often the least able to assert and protect their rights.

A Conceptual Framework for Access to Justice

Rather than simply constituting a state of affairs, 'access to justice' is perhaps better envisioned as a process by which a range of different inter-related factors combine to enable citizens to obtain a satisfactory remedy for a grievance without, as Indonesians might say, being tempted to '*main hakim sendiri*' (take the law into one's own hands). Such factors include, but are not limited to, an adequate legislative framework, basic community legal awareness and functioning formal and informal institutions of justice that are accessible in physical, economic and intellectual terms. The conceptual framework shown in Figure 1 illustrates this process in simple terms, and also explains the overall structure of this report.

FIGURE 1: A CONCEPTUAL FRAMEWORK FOR ACCESS TO JUSTICE



7 See generally United Nations Development Programme, 'Access to Justice Practice Note', 9 March 2004, available at http://www.undp.org/governance/docs/Justice_PN_En.pdf (accessed 6 June 2006).

The **Normative Framework** can be either formal or informal in nature. Formal norms in Indonesia are reflected in documents such as the 1945 Constitution, national legislation, government and regional regulations, presidential and ministerial decrees and jurisprudence produced by the courts (although only decisions of the Constitutional Court are formally binding upon other courts). Informal norms evolve through social interaction and reflect customs and accepted behaviours within a particular group or community. The normative framework has both the capacity to protect and defend the interests of the poor, and but also has the potential to in fact perpetuate injustices and inequities.

Community **Legal Awareness** is critical to securing access to justice. At the extreme, poor and disadvantaged citizens may be unable to exercise their rights because they are simply unaware of them. More commonly, citizens may be aware in general terms that they have been wronged in some way, but be unable to point to a right that has been breached and be unaware of how to seek redress for their grievance. Community legal awareness does not mean that citizens must have specific knowledge of all of their rights under the law, but rather that they are able to recognise a situation in which they may have legal rights and know when and how they should seek further assistance, and from whom.

In seeking remedies for their grievances, knowledge alone is clearly not sufficient – the poor and disadvantaged require adequate **Access to Appropriate Forums** from both a geographic and financial perspective. An appropriate forum may be either formal or informal, and may include local government offices and processes not normally associated with the formal justice sector. Informal justice systems deal with the majority of disputes in Indonesia, and many other justice-oriented disputes and needs that are priorities for the disadvantaged are handled by government offices other than the courts.

Effective Handling of Grievances and Provision of Remedies entails the impartial, timely and consistent application of applicable norms by formal and informal justice institutions, free from corruption or political intervention and in accordance with national and international human rights standards. Effective handing of grievances includes the provision of adequate legal representation when required, the timely enforcement of remedies, and accountability to the public for performance against agreed service standards.

Monitoring, Oversight and Transparency of both the formal and informal justice systems at all stages of the justice process is fundamental to achieving the goals articulated above. The monitoring and oversight function is both a stand alone element of an access to justice strategy and a cross-cutting theme which underpins all components of the strategy. To be most effective, monitoring and oversight should ideally involve a combination of both top-down and bottom-up processes.

1.3 TERMINOLOGY

In this report, the term '**formal justice system**' is used to refer to the formal, state-based institutions of justice – the police, prosecution service, courts and private

lawyers – whether or not they handle a case in accordance with established procedures or in a more 'informal' manner. In contrast, '**informal justice system**' is used to refer to all forms of dispute resolution operating outside of the formal justice system, including (but not limited to) the application of customary law (*adat*) and mediation or arbitration by village heads, religious leaders and other community figures. Limits are however placed on what may constitute the 'informal justice system' – direct resolution between disputants without the assistance of a third party is excluded from the definition, as are situations where friends of one party may attempt to intercede with another party on the first party's behalf. A further category of '**auxiliary justice institutions**' is used to refer to formal state institutions (such as local government offices) that do not comprise part of the formal justice system yet nevertheless exercise administrative authority over matters that feature prominently as sources of injustice for local communities (for example, land or fisheries).

It is recognised that the formal / informal dichotomy employed here is somewhat problematic in a number of respects. For example, these terms do not always adequately capture the extent to which the State is involved in a particular justice process, and nor is the dividing line between formal and informal as clear in practice as their definitions would tend to suggest.[8] Further, describing a traditional justice system as 'informal' may imply that it is somehow simplistic or inferior when this is not the case – on the contrary, some 'informal' justice systems may apply a highly developed system of rules and be quite formal in procedure. The terms 'formal' and 'informal' justice system are therefore better regarded as useful shorthand rather than precise technical definitions.

The report also adopts the language of a human rights-based approach, which speaks of **claim holders** (those who are entitled to the enjoyment and protection of rights) and **duty bearers** (those institutions or persons, formal or informal, with a duty to protect or facilitate the enjoyment of those rights). The terms '**poor and disadvantaged**' and '**marginalised**' are used more or less interchangeably, and refer to those who are least able to enjoy their right to a standard of living adequate for their basic health and well-being, including sufficient food, housing, healthcare and education, or those who suffer discrimination because of their gender, ethnicity or religion.

When dealing with government administrative units, the report uses the term '**district**' to describe *kabupaten* and '**municipality**' to describe *kota*, although 'district' may sometimes be used to refer implicitly to both, because they occupy the same strata in the hierarchy of government. *Kecamatan* is referred to as '**sub-district**', while the rural *desa* and urban *kelurahan* are both translated as '**village**'. The sub-village administrative unit of *dusun* in rural areas and *rukun warga* (*RW*) and *rukun tetangga (RT)* in urban areas are translated respectively as '**hamlet**' and '**ward/neighbourhood association**'.

8 While the formal justice system will always be state-based, it does not follow that the informal justice system will always operate completely independent of the State. In some cases, actors in the informal justice system may be members of the state apparatus (such as local government officials), while in other cases informal justice processes may receive some degree of state recognition. Similarly, where police officers resolve a matter informally rather than through official channels, have they strayed so far from their official mandate that they are more appropriately regarded as acting completely outside the formal justice system, or have they continued to act on behalf of the formal justice system albeit inan informal manner? The question is of course one of degree whose answer will depend heavily on the circumstances of each individual case.

2. A NORMATIVE FRAMEWORK FOR ACCESS TO JUSTICE

2.1 RECENT DEVELOPMENTS

Much has changed in Indonesia in the eight years following the fall of President Soeharto in 1998, an event that marked the end of more than thirty years of authoritarian rule and signalled the beginning of a new era of political and social renewal under the broad banner of *reformasi* (reform). The wide-ranging constitutional and legislative change has significant implications for the normative legal framework regulating access to justice in Indonesia.

Of particular importance is the comprehensive overhaul of the legal architecture governing the Indonesian judiciary, beginning in 2001 and 2002 when constitutional amendments were passed which required the establishment of a Constitutional Court with the power to conduct judicial review of legislation and declare invalid that which is found to be inconsistent with the Constitution.[9] The Constitutional Court is the first judicial body in Indonesia to be vested with such power, the Supreme Court having jurisdiction only to determine the validity of subordinate legislation made pursuant to a Law, but not the validity of a Law itself. The ability of the Constitutional Court to act as a check on the exercise of legislative power therefore represents a major step forward in Indonesia's process of democratic reform, and brings with it the potential for the enforcement of the important human rights guarantees now entrenched in the Constitution.

A further suite of legislation relating to the judiciary was enacted in 2004, a key component of which was Law No.4/2004 regarding Judicial Power. Law No.4/2004 implements the so-called '*satu atap*' or 'one roof' reforms and shifts financial and administrative authority over the courts from the Ministry of Justice and Human Rights to the Supreme Court, thereby enhancing the structural independence of the judiciary from the executive branch of government.[10] Other justice-related institutions have also been the subject of significant reform. In 2000, the Indonesian National Police were excised from their former position as a branch of the military and placed under direct civilian control.[11] An independent Judicial Commission mandated by constitutional amendment has been established, and changes have been made to the legal framework under which the Indonesian Prosecution Service operates. Further developments of note have been the establishment of a Human Rights Court, Human Rights Commission, Corruption Eradication Commission, Police Commission, Prosecutorial Commission, National Ombudsman Commission, and a Truth and Friendship Commission to investigate human rights violations in the former East Timor.

The following sections aim to give a very brief overview of the structure and authority of the main branches of the formal justice system in Indonesia and the mechanisms in place to monitor their performance. Thereafter, consideration is given to the recognition and protection of human rights under Indonesian law, particularly the rights of most relevance to the poor and disadvantaged.

9 The Court was formally established in 2003 with the passage of Law No.24/2003 regarding the Constitutional Court.

10 Other changes were Law No.5/2004 which amends Law No.14/1985 on the Supreme Court; Law No.8/2004 which amends the General Courts Law (Law No.2/1986); and Law No.9/2004 regarding Administrative Courts which amends Law No.5/1986.

11 The separation was effected on an interim basis by MPR Decree No.VI/2000 regarding the Separation of the Indonesian National Army and the Indonesian National Police and MPR Decree No.VII/2000 regarding the Role of the Indonesian National Army and the Role of the Indonesian National Police, until the enactment of Law No.2/2002 regarding the Indonesian National Police and Law No.3/2002 regarding National Defence.

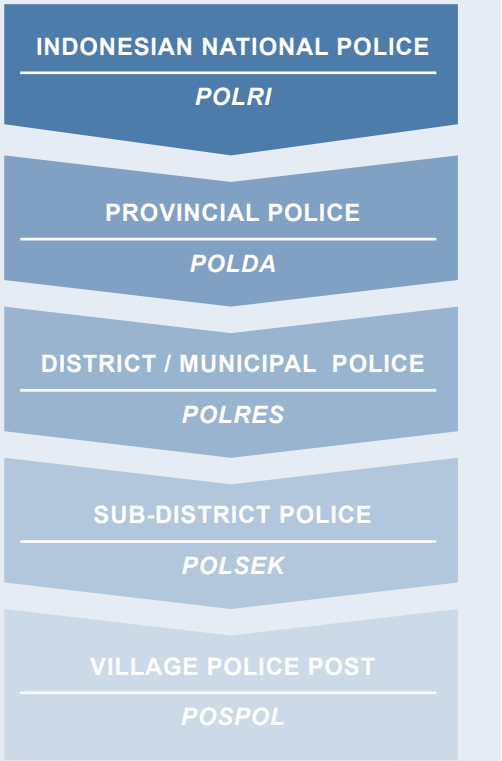
2.2 POLICE

The Indonesian National Police

The Indonesian National Police (*Kepolisian Republik Indonesia* or POLRI) is governed by Law No.2/2002 regarding the Indonesian National Police, and (as mentioned above) is now responsible directly to the President.[12] The key functions of POLRI are maintaining public security and order; law enforcement, and; protecting, looking after and providing of services to the community.[13]

The structure of POLRI mirrors the governmental administrative structure and reaches from the national level all the way down to the sub-district and in some cases the village level (see Figure 2). Headquartered in Jakarta, POLRI is represented in each province by a provincial police force (*Kepolisian Daerah* or POLDA) with a Provincial Police Chief who is directly responsible to the National Police Chief.[14] Each provincial police force has the authority to structure their sub-provincial representation in accordance with local needs,[15] and commonly police stations exist at the district or municipal levels (*Kepolisian Resort* or POLRES) and at the sub-district level (*Kepolisian Sektor* or POLSEK). In densely populated areas, a police post (*Pos Polisi* or POSPOL) may be established at the village level, but this is not common. A paramilitary mobile brigade (*Brigade Mobil* or BRIMOB) also exists for deployment to the regions to handle 'high intensity security disturbances'.[16] Although POLRI's statutory authority includes raising community legal awareness[17] and assisting in the resolution of disputes

FIGURE 2: HIERARCHY OF POLICE



public order,[18] its key task is conducting investigations under Indonesia's Criminal Code (*Kitab Undang-Undang Hukum Pidana* or KUHP) and other criminal laws. Police will usually begin their investigations by determining whether a crime has in fact been committed (referred to as the *penyelidikan* or initial inquiry stage) after which further investigations will be conducted to gather evidence and witness statements (termed *penyidikan*).[19] The police have authority to investigate almost all crimes on their own initiative, although the Code of Criminal Procedure (*Kitab Undang-Undang Hukum*

12 Article 8(1), Law No. 2/2002 regarding the Indonesian National Police.

13 Article 2, Law No. 2/2002.

14 Article 26, Presidential Decree No.70/2002 regarding the Organisational Structure and Operating Practices of the Indonesian National Police.

15 Article 26(5), Presidential Decree No.70/2002.

16 Article 23, Presidential Decree No.70/2002.

17 Article 14(1)(c), Law No. 2/2002 regarding the Indonesian National Police.

18 Article 15(1)(b), Law No. 2/2002 regarding the Indonesian National Police.

19 Ibrahim Assegaf, 'Legends of the Fall: An Institutional Analysis of Indonesian Law Enforcement Agencies Combating Corruption', in T Lindsey & H Dick, Corruption in Asia: Rethinking the Governance Paradigm, Federation Press, Sydney, 2002, p. 130, footnote 11.

Acara Pidana or KUHAP) prohibits police from conducting investigations into a small number of crimes without first being officially requested by an 'interested party' to take action against the person who allegedly committed the crime.[20] These crimes are referred to as 'complaint crimes' (*delik aduan*) and include a number of family law matters,[21] crimes of defamation,[22] and disclosure of confidential information.[23]

Monitoring and Oversight: The National Police Commission

In addition to regulating POLRI, Law No.2/2002 provides for a National Police Commission to be established by Presidential Decree,[24] with membership consisting of three government ministers, three policing experts and three community leaders. The Commission is tasked with advising the President on policing policy, providing input into the appointment and removal of the Chief of Police, and receiving public suggestions and complaints about police performance and channelling them to the President.[25] At the time of writing, members of the Commission had only just been announced and the Commission was not yet fully functional.[26]

While it remains premature to make any assessment of the performance of the National Police Commission, some concern does exist over its level of independence from government, considering that the three leadership positions on the Commission are allocated *ex officio* to the Coordinating Minister for Politics, Law and Security, the Minister of Home Affairs and the Minister of Law and Human Rights. Moreover, the potential effectiveness of the Commission is also under question considering that it will have no power to investigate misconduct or abuse of power within the police force.[27] Instead, the Commission is limited to providing advice and input to the President while POLRI retains authority to investigate itself through its internal Division of Professional Accountability and Internal Control.[28]

2.3 PUBLIC PROSECUTION SERVICE

The Indonesian Public Prosecution Service

The Indonesian Public Prosecution Service (*Kejaksaan Republik Indonesia*) is governed by Law No.16/2004 regarding Public Prosecution. The key functions of the prosection service are instituting prosecutions on behalf of the State and executing final binding judicial orders and decisions. They may also conduct investigations into certain crimes, and conduct further investigations to supplement a brief of evidence before lodging it with a court.[29] Prosecutors also have authority to act on behalf of the state or government in civil and administrative matters, both in and out of court. Other duties perhaps not commonly associated with the role of public prosecutors include implementing public legal awareness programs, 'monitoring schools of thought that pose a threat to the community and the State', and preventing the 'misuse or defamation of religion'.[30]

20 Article 1(25), KUHAP (Code of Criminal Procedure).

21 Articles 72, 73, 278, 284, 287 KUHP (Criminal Code).

22 Articles 310, 311 and 315 KUHP.

23 Article 322 KUHP.

24 Presidential Decree No.17/2005 regarding the National Police Commission.

25 Articles 37-40, Law No.2/2002.

26 'Anggota Komisi Kepolisian Nasional', *Hukumonline*, 30 May 2006, http://www.hukumonline.com/detail.asp?id+14924&cl=Aktual (accessed 14 June 2006).

27 'Komisi Kepolisian, Masyarakat Kecolongan', *Tempointeraktif*, 14 June 2005, http://www.tempointeraktif.com/hg/nasional/2005/06/14/brk,20050614,id.html (accessed 14 June 2006).

28 Article 19, Presidential Decree No.70/2002 regarding the Organisational Structure and Operating Practices of the Indonesian National Police.

29 Article 30(1) Law No.16/2004 regarding the Public Prosecution Service and Articles 13-15 KUHAP.

30 Article 30(3)(a) (d) and (e) Law No.16/2004 regarding the Public Prosecution Service.

As a national institution, the Indonesian Public Prosecution Service is headquartered in Jakarta at the Attorney-General's Office (*Kejaksaan Agung*). The Attorney-General is a political appointee who serves at the pleasure of the President, assisted by a Vice -Attorney-General and a number of Junior Attorneys-General who are drawn from the ranks of senior career prosecutors. Representation in the regions is through a High Prosecutor's Office located in the capital city of each province, and a District Prosecutor's Office located in the capital city of each district or municipality (see Figure 3).[31] Where appropriate, District Prosecutors' Branch Offices may be established by Decree of the Attorney-General.[32]

FIGURE 3: HIERARCHY OF PROSECUTORS

Most prosecutions are conducted by prosecutors from a District Prosecutor's Office, who receive their brief of evidence from the local District Police (POLRES) and appear in the local District Court. If an appeal is lodged in the provincial High Court, the prosecutor who initially handled the case will usually continue to do so. The High Prosecutor's Office will primarily prosecute serious or sensitive cases arising within a province that have been investigated by the Provincial Police (POLDA), both at first instance in the District Court and on appeal in the High Court. District prosecutors also play a central role in the investigation and prosecution of corruption related cases, supervised by provincial prosecutors or the Attorney General's Office if the monetary value of the case exceeds certain predetermined levels.[33]

Monitoring and Oversight: The Prosecutorial Commission

A Prosecutorial Commission has recently been established by Presidential Regulation to scrutinise the performance and behaviour of prosecutors and staff in the execution of their duties and their behaviour outside of their official duties.[34] The Commission can summon and question prosecutors and staff; request information from within the prosecution service and government agencies, and; receive reports from the public about the behaviour of prosecutors and related staff.[35] The Commission reports to and advises the Attorney-General for hisor her further action.[36]

31 Article 6 Law No.16/2004 regarding the Public Prosecution Service.

32 Article 7 Law No.16/2004 regarding the Public Prosecution Service.

33 Corruption cases with a monetary value under Rp.100 million can be investigated upon the initiative of the District Prosecutor's Office. Investigation of cases between Rp 100 million and Rp 1 billion must be approved and supervised by the Provincial Prosecutor's Office, while investigation of cases valued at over Rp 1 billion must be approved and supervised by the Attorney General's Office: Attorney General's Circular SE-003/A/JA/05/2002 regarding Changes to the Control of Prosecutions for Special Criminal Matters.

34 Presidential Regulation No.18/2005 regarding the Prosecutorial Commission of the Republic of Indonesia, made pursuant to Article 38 of Law No.16/2004.

35 Article 11 Presidential Regulation No.18/2005 regarding the Prosecutorial Commission of the Republic of Indonesia.

36 Article 10(1)(d) Presidential Regulation No.18/2005 regarding the Prosecutorial Commission of the Republic of Indonesia.

The Commission does not replace the existing internal oversight mechanisms of the Public Prosecution Service.[37] However, all internal investigations of a suspected violation of prosecution service regulations must be reported to the Commission, which may take control of the investigation if: it appears to be insincere or unduly protracted; the outcome of the investigation is considered inappropriate given the conduct in question, or; there is collusion in the implementation of the internal investigation.[38] Clearly, such a formulation leaves significant room for dispute as to precisely when the Prosecutorial Commission has authority to take over an investigation, and it remains to be seen how these provisions will function in practice; for example whether similar tensions will arise between the Attorney-General's Office and the Prosecutorial Commission as have already arisen between the Supreme Court and the Judicial Commission (see 2.5 below).

The Prosecutorial Commission is comprised of seven members, selected by the President from a list of fourteen proposed by the Attorney-General, who have backgrounds as either former prosecutors, legal practitioners, legal academics or members of the community.[39] Commissioners serve a four year term (extendable for an additional four years) and can be removed only by the President on the recommendation of the Commission. The first Commissioners were inaugurated on 16 March 2006.[40]

2.4 PRIVATE LAWYERS

National Practicing Requirements

The majority of the Indonesian legal profession is regulated by Law No.18/2003 regarding Advocates.[41] To be admitted to practice as an advocate, a candidate must hold an undergraduate law degree, be at least 25 years of age, have passed the professional exam set by the professional organisation regulating admission to practice, and have worked under supervision for two years at an advocate's office.[42] The Law purports to authorise only advocates to provide legal services,[43]. which are defined as legal consultations, legal aid, legal representation or performing other legal acts on a client's behalf.[44] A client is defined as a person who receives legal services, whether free or not.[45] These new requirements have significantly restricted the ability of legally trained but non-admitted practitioners working in legal aid institutes or university-based legal clinics (that is, non-advocates) to provide legal aid services to indigent clients. However, as will be explained in more detail in Part Two at 2.2 , their effect has been (or at least should have been) somewhat ameliorated by a recent decision of the Constitutional Court which struck down the prohibition against non-admitted practitioners providing legal services.

37 'Besok, Komisi Kejaksaan Dilantik' *Kompas*, 15 March 2006, (accessed 15 June 2006). http://www.kompas.com/utama/news/0603/15/063123_.htm

38 Article 12(2), Article 10(1)(a) and Article 10(1)(b) Presidential Regulation No.18/2005 regarding the Prosecutorial Commission of the Republic of Indonesia.

39 Article 4 and Article 18, Presidential Regulation No.18/2005 regarding the Prosecutorial Commission of the Republic of Indonesia.

40 'Besok, Komisi Kejaksaan Dilantik' *Kompas*, 15 March 2006, http://www.kompas.com/utama/news/0603/15/063123_.htm (accessed 15 June 2006).

41 Notaries are regulated by Law No.30/2004 regarding Notary Services and Land Deeds Officers (authorised to make deeds regarding title to land) and operate under Government Regulation No.37/1998 regarding Regulation of Land Deeds Officers.

42 Article 1(7) Law No.18/2003 regarding Advocates.

43 Article 31 Law No.18/2003 regarding Advocates. At the time of writing an application to the Constitutional Court was being heard as to whether legal graduates undertaking non-litigious work as legal consultants fall within the definition of 'advocate' and are hence regulated by the Advocates Law, although a literal reading of the Law would appear to confirm that they do. For example, Article 32(1) provides that advocates, legal advisors, practicing lawyers and legal consultants already practicing before the passage of the Law are all automatically declared advocates, implying that legal consultants fall within the definition of 'advocate'. However, in a separate decision, the Court struck down Article 31 as unconstitutional – see Part Two of the report at 2.2.

44 Article 1(2) Law No.18/2003 regarding Advocates.

45 Article 1(7) Law No.18/2003 regarding Advocates.

Provision for Lawyer-Client Access in Criminal Proceedings

The Code of Criminal Procedure (KUHAP) provides the accused with the right to legal aid from one or more legal advisors of their own choosing during each stage of the legal process initiated against them – that is, from the moment they are interrogated or investigated by police, when the prosecution is preparing a case against them, and, of course, during the trial.[46] Suspects or accused who have been detained have the right to contact and correspond with their legal advisors and must be provided with writing materials to do so.[47] This correspondence must be confidential – it cannot be examined by police, prosecutors, wardens, or judges, 'unless there is sufficient reason to suspect that the correspondence is being misused'.[48] The KUHAP does not, however, define 'misused', leaving officials with significant discretion to breach this confidentiality.

Legal advisors have the right to contact and speak to suspects and accused at all stages of an investigation.[49] However, if a legal advisor is found to be 'misusing' this right to communicate, then he or she will be warned.[50] If the legal advisor ignores the warning, then contact between the accused and the lawyer is to be monitored, and if misuse continues, then contact can be ceased.[51] Officials have wide discretion to determine whether the contact has been 'misused' and hence, ultimately, to prevent legal lawyer-client communication.

Monitoring and Oversight: The Indonesian Advocates' Association

The United Nations Basic Principles on the Role of Lawyers acknowledge that 'professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from improper restrictions and infringements and cooperating with governmental and other institutions in furthering the ends of justice and public interest'.[52] The Indonesian legal profession is regulated by a single professional association whose establishment is required by the Law regarding Advocates. In fulfilment of this requirement, eight pre-existing lawyers professional associations came together in December 2004 to form the Indonesian Advocates Association (*Perhimpunan Advokat Indonesia* or PERADI). However, although PERADI now carries out all regulatory functions, the eight professional associations continue to maintain an independent existence with the primary role of advocating for the interests of their members.[53]

As the sole professional association prescribed by statute, PERADI is required to provide professional training courses, regulate admission to practice[54] and to determine and administer a professional code of ethics for advocates.[55] The current Code was jointly drafted and adopted in 2002 by seven of the eight lawyer's associations that together established PERADI, and includes provisions on: the personal behaviour of lawyers, lawyers' relationships with clients

46 Articles 54 and 55 KUHAP (Code of Criminal Procedure).

47 Articles 57(1), 62(1) and 73 KUHAP.

48 Article 62(2) KUHAP.

49 Articles 69 and 70(1) KUHAP.

50 Article 70(2) KUHAP.

51 Articles 70(3) and (4) KUHAP.

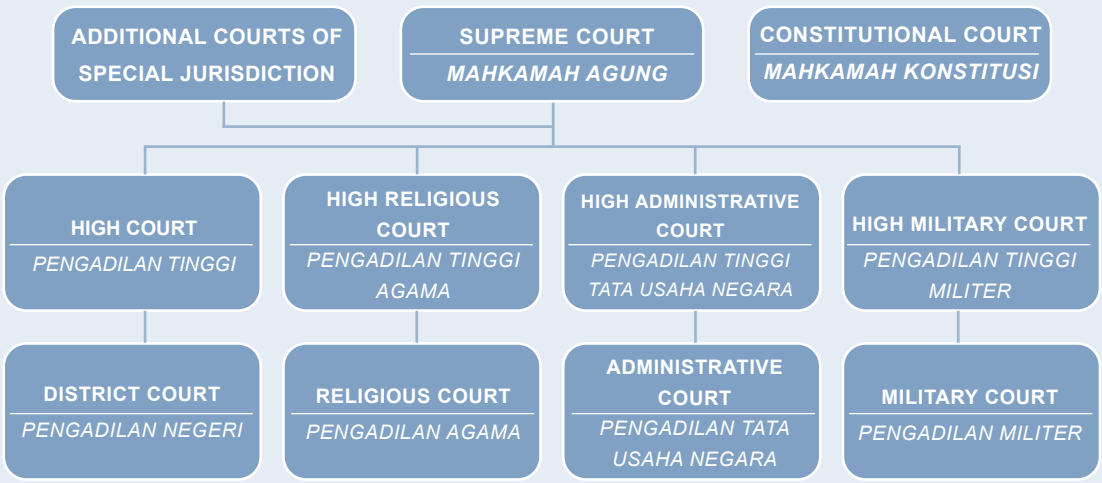
52 Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 and available from the Office of the High Commissioner for Human Rights at http://www.193.194.138.190/html/menu3/b/h_comp44.htm (accessed 16 June 2006)

53 Interview with Hadi Hardiansyah, Executive Director of PERADI, Jakarta, 3 October 2006.

54 Article 2(2) Law No.18/2003 regarding Advocates.

55 Article 29 Law No.18/2003 regarding Advocates.

FIGURE 4: STRUCTURE OF THE INDONESIAN JUDICIARY



and between themselves, the way advocates should handle cases.[56] The Code of Ethics establishes an Honour Council to receive and investigate complaints about alleged breaches of the Code by advocates. The Council is empowered to impose sanctions of varying severity upon advocates found to have breached the Code, the most severe being revocation of the right to practice.[57]

2.5 COURTS

The Indonesian Judiciary

The legal basis of the Indonesian Judiciary lies in Article 24 of the 1945 Constitution, which provides that judicial power is to be exercised by a Supreme Court and judicial bodies under its authority. Article 24 also vests judicial power in a Constitutional Court and other judicial bodies as established by statute.

The Supreme Court sits at the apex of the Indonesian judicial system, exercising final appellate jurisdiction over all matters except for those falling within the jurisdiction of the recently established Constitutional Court.[58] Beneath the Supreme Court, the Indonesian judicature is divided into four branches: the general courts, the military courts, the religious courts and the administrative courts (see Figure 4). A partial exception exists in the province of Aceh, where special autonomy laws permit the religious courts to be replaced by *syari'ah* courts, vested with an expanded jurisdiction to hear certain civil and criminal matters that previously fell within the preserve of the general courts.[59] Additional courts of specialist jurisdiction, such as the Commercial Court, have also been established pursuant to legislation and either stand alone or are incorporated into district or high courts.

The recently-created **Constitutional Court** sits in Jakarta and has jurisdiction to hear cases regarding: the constitutionality of statutes; disputes over the jurisdiction of state institutions; the dissolution of political parties; disputes over the results of general elections, and; DPR motions for the impeachment of the President or Vice President.[60]

56 Indonesian Advocates' Code of Ethics, adopted 23 May 2002 and available at http://www.peradi.or.id.

57 See Articles 10-21 of the Indonesian Advocates' Code of Ethics.

58 Article 10, 11, 12 Law No. 4/2004 regarding Judicial Power.

59 Article 15 Law No.4/2004 regarding Judicial Power; see generally *Access to Justice in Aceh: Making the Transition to Sustainable Peace and Development*, UNDP Indonesia, Jakarta, October 2006.

60 Article 24C of the Constitution and Article 10 Law No.24/2003 regarding the Constitutional Court.

The **Supreme court**, apart from hearing appeals from the general, military, administrative and religious courts, can also review the validity of subordinate legislation – such as government regulations, presidential decisions and ministerial decrees – to determine whether they are consistent with the statutes under which they are made.[61] Inconsistent subordinate legislation can be declared invalid by the Court and cease to have binding legal force.[62] The Court also has the power to review the procedural validity of lower-level laws, that is, it can review the 'procedures used to enact the law'.[63] However, the Supreme Court cannot review the constitutionality of statutes – this is the exclusive jurisdiction of the Constitutional Court.

General courts of first instance (district courts or *pengadilan negeri*) are to be located in every district and have jurisdiction over all matters arising within that district, both civil and criminal, that do not fall within the jurisdiction of the religious, administrative, military and other specialist courts.[64] The geographic jurisdiction of district courts is sometimes expanded to cover neighbouring districts (often newly created) that have not yet established district courts of their own. Appeal courts (high courts or *pengadilan tinggi*) are located in the capital city of each province and hear appeals from the district courts situated within their jurisdiction.[65] District and high courts can provide advice on legal matters to government institutions in their jurisdictions if requested,[66] and can be given additional tasks and authority by legislation.[67]

Religious courts (*pengadilan agama*) are to be located in every district and hear mostly family law cases such as divorce or inheritance.[68] The religious courts apply the Compilation of Islamic Law *(Kompilasi Hukum Islam*) – a codification of certain Islamic precepts that are vested with the status of state law – and as such their jurisdiction extends only to Muslim citizens. Religious courts of appeal (*pengadilan tinggi agama*) are located in the capital city of each province.

Administrative courts (*pengadilan tata usaha negara*) are located in each district and hear disputes between Indonesian citizens and the government over alleged infringements of the law or misuse of power by a state organ or official, but only after other administrative avenues have been exhausted.[69] In practice, administrative courts tend to be located in provincial capitals only due to a low case-load. Administrative courts of appeal *(pengadilan tinggi tata usaha negara*) are located in Jakarta, Medan, Surabaya and Makassar.

Military courts at the district level hear criminal cases involving military personnel at first instance[70] but can only hear cases involving officers ranked captain and below.[71] High military courts located in four regions

61 Article 11(2)(b) Law No.4/2004 regarding Judicial Power; Article 31(2) Law No.14/1985 as amended by Article 20 Law No.5/2004.

62 Article 31(4) Law No.14/1985 regarding the Supreme Court as amended by Article 20 Law No.5/2004.

63 Elucidation to Article 11(2)(b) of Law No.4/2004 regarding Judicial Power.

64 Article 4 Law No.2/1986 regarding the General Courts as amended by Article 4 Law No.8/2004.

65 Article 4 Law No.2/1986 regarding the General Courts as amended by Article 4 Law No.8/2004; Article 6(b) Law No.2/1986.

66 Article 52(1) Law No.2/1986 regarding the General Courts.

67 Article 52(2) Law No.2/1986 regarding the General Courts.

68 Articles 2 and 4 Law No.7/1989 regarding Religious Courts as amended by Law No.3/2006

69 Article 6 Law No.5/1986 regarding Administrative Courts as amended by Article 3 Law No.9/2004; Articles 48(1) and 48(2) Law No.5/1986. Administrative courts cannot review administrative decisions issued during a war, state of emergency, natural disaster or an extraordinary dangerous situation (Article 49(a)) or during a pressing situation in the public interest (Article 49(b)).

70 Article 15(1) Law No.31/1997 regarding Military Courts.

71 Article 40 Law No.31/1997 regarding Military Courts.

have first-instance jurisdiction over soldiers ranked major and above[72] and also hear appeals from district level military courts. Although military courts have traditionally exercised jurisdiction over crimes committed by military personnel regardless of whether they occurred during the course of duty or not, the Law on the Indonesian National Armed Forces (Law No.34 of 2004) now requires military personnel charged with civilian crimes to be tried in the civilian courts.[73] In practice, however, military courts continue to have jurisdiction over all crimes committed by military personnel, as the government, military and the House of Representatives (DPR) negotiate over a timetable for transition.[74]

The **Commercial court** was established in 1998 and is primarily tasked with handling bankruptcy applications and intellectual property cases. It sits as a specialized chamber within district courts in five major centres including Jakarta. Appeals from the Commercial Court proceed directly to the Supreme Court.[75]

The **Anti-Corruption court** was established in 2004 and hears corruption-related cases at the District, High Court and Supreme Court levels.[76] Operating from the Central Jakarta District Court, the Court was on its inception staffed by six career and nine non-career judges, however an additional twelve non-career judges have recently been appointed in response to the Court's heavy caseload.[77] Responsibility for prosecuting cases in the Anti-Corruption Court lies with the Corruption Eradication Commission (KPK).

Permanent **Human Rights courts** have been established in Jakarta, Medan, Surabaya and Makassar, each having jurisdiction over a separate geographic region of Indonesia. They have jurisdiction to hear cases involving gross violations of human rights (defined as genocide or crimes against humanity) that are committed within Indonesia or that are committed outside of Indonesia by Indonesian citizens.[78] The Act under which these courts are constituted also allows the establishment of ad hoc, or temporary, human rights courts by presidential decree on the recommendation of the parliament, to try cases of gross human rights violations committed before the legislation was adopted.[79]

The **Tax court** is established in Jakarta as a court of first and last resort for hearing taxation disputes and is supervised by the High Administrative Court in Jakarta. Applications for reconsideration of decisions by the Supreme Court can be made if strict requirements are met.[80]

72 Article 41 Law No.31/1997 regarding Military Courts.

73 Article 65(2) Law No.34/2004 states that that 'Soldiers are to fall within the jurisdiction of the military court in the event of a violation of criminal military law and within the jurisdiction of the general courts in the event of a violation of general criminal law...'.

74 'Butuh Dua Tahun, Peradilan Umum Bagi TNI', *Gatra Online*, 31 March 2006, available at http://www.gatra.com/2006-03-31/artikel.php?id=93399 (accessed 13 June 2006).

75 Law No.4/1998 regarding Bankruptcy.

76 Presidential Decree No.59/2004 regarding the Formation of the Anti-Corruption Court at the Central Jakarta District Court.

77 'Akhirnya Hakim Ad Hoc Tipikor Segera Dilantik', *Hukumonline*, 8 June 2006, available at http://hukumonline.com/detail.asp?id=14977&cl=berita (accessed 4 October 2006).

78 Articles 4 - 9, Law No.26/2000 regarding the Human Rights Court.

79 Article 43 Law No.26/2000 regarding the Human Rights Court. An Ad Hoc Human Rights Court for Timor-Leste was established under Law No.26/2000 to hear cases of alleged human rights violations in the former East Timor between April and September 1999 in the lead up to and aftermath of the referendum on independence. However, of the eighteen Indonesian military and police officers, two Indonesian government officials and a militia member who were brought to trial, all but one were found not guilty either at first instance or on appeal. A United Nations Commission of Experts empanelled to review (*inter alia*) the conduct of these trials found serious deficiencies in the judicial process: see *Report to the Secretary- General of the Commission of Experts to Review the Prosecution of Serious Violations of Human Rights in Timor-Leste (then East Timor) in 1999*, 26 May 2005, S/2005/458.

80 Law No.14/2002 regarding the Tax Court.

The **Labour court** is Indonesia's most recently created court, inaugurated in Padang on 14 January 2006, with operations planned to start simultaneously in the capital cities of Indonesia's 33 provinces. The Labour Court replaces the government-sanctioned Regional and Central Committees for Settlements of Industrial Disputes (P4D and P4P) and has jurisdiction to hear and decide all industrial disputes, with an expedited appeals process direct to the Supreme Court.[81]

Indonesian legislation has long provided for the creation of a **Children's Court**,[82] but to date only one 'Children's Chamber' has been established in the Bandung District Court (in August 2004).[83] Preparations are also being made to establish **Fisheries Courts** to hear fisheries related crimes, pursuant to Article 71 of Law No.31/2004 regarding Fisheries, within the district courts of North Jakarta, Medan, Pontianak, Bitung and Tual.[84]

Judicial Independence

The independence of the Indonesian judiciary is enshrined in Article 24(1) of the Indonesian Constitution, which establishes that:

> *Judicial power is an independent power to mintain a system of courts with the objective of upholding law and justice.*

Article 1 of Law No.4/2004 regarding Judicial Authority echoes Article 24(1) of the Constitution by providing that:

> *Judicial power is an independent state power to be exercised through judicial institutions that uphold law and justice on the basis of Pancasila, in order to maintain the Indonesian Rule of Law [Negara Hukum Republik Indonesia].*

Equally importantly, Article 4(3) of Law No.4/2004 prohibits interference in judicial affairs by extra-judicial parties unless permitted by the Constitution, while Article 33 requires that judges must maintain independence in performing their tasks and duties.

The actual realization of an independent judiciary in Indonesia is, however, a relatively recent (and indeed ongoing) development. During the New Order period, financial and administrative control over the general and administrative courts lay with the then Ministry of Justice (now the Ministry of Law and Human Rights), the military courts with the Ministry of Defence and Security and the religious courts with both the Ministry of Justice and the Ministry of Religious Affairs. This control was often thought to be used to influence judicial decisions in which the government was a party or had an interest, [85] and judges, being reliant on the government for employment, pay and promotion, were naturally reluctant to bite the hand that fed them.[86] For example, it was often said that the Ministry of Justice used its considerable discretion over transfers and promotions to reward judges for loyalty and to punish them for disloyalty. The Jakarta-based NGO LeIP (*Lembaga Independensi Peradilan* or Institute for an Independent Judiciary) points to one judge who served in Aceh for 11 years and to some judges who served for similar times in other

81 Law No.2/2004 regarding Industrial Relations Dispute Resolution.

82 Law No.3/1997 regarding the Children's Court.

83 Menengok Ruang Sidang Anak PN Bandung' *Pikiran Rakyat*, 2 March 2006 available at http://www.pikiran-rakyat.com/cetak/2006/032006/02/0402.htm.

84 Article 71(3) and (4) Law No.31/2004 regarding Fisheries. The courts will have geographical jurisdiction consistent with the existing jurisdiction of the relevant district court. Technical details regarding the court's establishment and operation are to be regulated by a yet to be issued Presidential Decree and although the Fisheries Law calls for the first court to be in operation by October 2006, current progress indicates that delays are likely. See 'Banyak Kendala, Pembentukan Pengadilan Perikanan Tertunda' *Hukumonline* 20 April 2006, http://www.hukumonline.com/detail.asp?id=14738&cl=Berita (accessed 16 June 2006); 'MA Akui Kesulitan Cari Hakim Ad Hoc Pengadilan Perikanan', Hukumonline, 22 June 2005, http://www.hukumonline.com/detail.asp?id=13049&cl=Berita (accessed 16 June 2006).

85 Supreme Court of Indonesia, Policy Paper on Judicial Personnel Management Reform, Supreme Court of Indonesia, Jakarta, 2003, p. 122.

86 Lev, 'Judicial Authority and The Struggle for An Indonesian Rechsstaat', (Fall 1978) 13 *Law & Society Review* 37 at 55-56.

'hardship' provinces, and notes that other judges have been promoted and transferred far earlier than they would normally be.[87]

In 1999, the DPR passed legislation initiating a five-year process whereby responsibility for the management of all courts except the Constitutional Court was shifted to the Supreme Court (the so-called '*satu atap*' or 'one roof' reforms).[88] It was only in 2004, with the passage of Law No.4/2004 regarding Judicial Authority, that full authority was vested in the Supreme Court to manage the organizational, administrative and financial affairs of both itself and the courts under its authority.[89] Such reform is undoubtedly an important step forward, although much hoped-for improvements are likely to be gradual rather than instantaneous. Enacting new legislation is one thing – unravelling an entrenched judicial culture born of Soeharto's three decades of calculated judicial subordination and demoralisation is proving to be much more difficult.

Monitoring and Oversight: The Judicial Commission

Indonesia recently established an independent Judicial Commission with the two primary responsibilities of: (a) selecting candidates for Supreme Court judicial positions and presenting them to the DPR for confirmation, and; (b) upholding judicial honour and dignity, including scrutinising judicial behaviour.[90] The Commission has its legal basis in Article 24B of the Constitution, inserted by the third amendment to that document in November 2001, and was established by Law No.22/2004 on the Judicial Commission. The Law reaffirms that the Judicial Commission is to be independent when exercising its powers[91] and provides that it is to be comprised of seven members, drawn from the ranks of former judges, legal practitioners, legal academics and community members.[92] However, a recent decision of the Constitutional Court has effectively eviscerated the Commission by stripping it of its authority to exercise arguably the more important of its two functions – conduct oversight of judicial behaviour. The series of events leading to this decision will be outlined below, but it is helpful to first consider in more detail the role of the Judicial Commission as it was originally intended.

The Judicial Commission's establishment had been heralded as a major step forward for Indonesian judicial reform, as it provided the first independent forum with the potential to assist in remedying major problems that have long plagued the Indonesian judiciary, including political or otherwise inappropriate appointments to the Supreme Court and unchecked judicial misconduct and other criminal activities. In discharging its responsibility to scrutinise judicial behaviour, the Commission was empowered to receive reports from the community regarding judicial behaviour (of which it received 729 in its first 11 months of operation);[93] seek periodic reportsfrom courts regarding judicial behaviour, and; summon and seek explanations from judges suspecting of breaching the judicial code of ethics.[94]

87 Supreme Court of Indonesia, 'Policy Paper on Judicial Personnel Management Reform', Jakarta, 2003, p. 131.

88 Law No.35/1999.

89 Article 13(1) Law No.4/2004 regarding Judicial Authority. The one exception is the Tax Court, whose organisational, administrative and financial affairs are managed by the Ministry of Finance, with only technical legal matters coming under the authority of the Supreme Court: see Article 5 of Law No.14/2002 regarding the Tax Court.

90 Article 13 Law No.22/2004 regarding the Judicial Commission.

91 Article 2 Law No.22/2004 regarding the Judicial Commission.

92 Articles 6(1) and (3) Law No.22/2004 regarding the Judicial Commission.

93 *'Problem Legitimasi dan Eksistensi Komisi Judisial'*, *Kompas* 22 June 2006, http://www.*antikorupsi*.org/mod.php?mod=publisher&op=viewarticle&artid=8380 (accessed 27 June 2006).

94 Article 22(1) Law No.22/2004 regarding the Judicial Commission.

If the Judicial Commission found that a judge had committed a violation, it could, depending on the gravity of the alleged breach, propose that the judge be punished by written reprimand, suspension or dismissal.[95] The Judicial Commission would then have sent the proposed sanction and its reasons for imposing it to the Supreme Court and/or Constitutional Court leadership for further action. Written reprimands issued by the Judicial Commission were binding; however, the Supreme and Constitutional Courts retained discretion as to whether to accept or reject recommendations of suspension or dismissal.[96]

The Judicial Commission experienced frosty relations with the Supreme Court since the first seven commissioners were inaugurated in August 2005, with the Judicial Commission standing accused by some of being overly political and the Supreme Court, for its part, of being unduly defensive.[97] Controversy arose after the Judicial Commission unsuccessfully lobbied the President to issue a Government Regulation in Lieu of Law that would require the reselection of all Supreme Court judges.[98] Tensions were further heightened after Busyro Muqoddas, the Head of the Judicial Commission at the time of writing, publicised through the media a list of 13 Supreme Court judges alleged to be 'problematic', although only three had actually been examined by the Commission.[99] As a result, one Supreme Court judge reported the Commission to the police for defamation although the judge withdrew the complaint after receiving a letter from the Commission absolving him of any wrongdoing.[100]

The dispute culminated in 31 Supreme Court Judges applying to the Constitutional Court for judicial review of the Judicial Commission's mandate under Law No.22/2004, seeking (among other things) a declaration that the meaning of the word 'judge' in Article 24B of the Constitution did not extend to judges of the Supreme Court. Such a reading would mean that the Judicial Commission would not have the authority to oversee Supreme or Constitutional Court judges, a reading seemingly at odds with the intent of the legislature (and the Supreme Court itself who assisted with drafting the bill presented to the DPR).[101] In its decision, the Constitutional Court held that 'no convincing constitutional basis' could be found as to whether or not Supreme Court judges were included in the definition of 'judge' in Article 24B(1) – rather, the Court left theissue open for the DPR and President to clarify through legislation (although it did express the opinion that there would be no constitutional barrier to the enactment of either option). In relation to its own judges, the Constitutional Court ruled that they do not fall within the definition of 'judge' in Article 24B(1) and therefore are not subject to oversight by the Judicial Commission, but that they are instead subject to oversight by their own Honour Council established under the Law

95 Article 23(1) Law No.22/2004 regarding the Judicial Commission.

96 Article 23(2) and (3) Law No.22 regarding the Judicial Commission. Notably however, the Supreme Court did not follow a single recommendation issued by the Judicial Commission in the 11 months since its inception: see 'Problem Legitimasi dan Eksistensi Komisi Judisial', *Kompas* 22 June 2006, http://www.anitkorupsi.org/mod.php?mod=publisher&op=viewarticle &artid=8380 (accessed 27 June 2006); 'KY Minta MA Serius Tanggapi Rekomendasinya', *Hukumonline* 8 June 2006 http://www.hukumonline.com/detail.asp?aspid+14978&cl=Berita (accessed 27 June 2006).

97 See for example 'Sebastian Pompe: KY Politis, MA Defensif', *Hukumonline*, 17 March 2006, http://hukumonline.com/detail.asp?id=14563&cl=Berita (accessed 4 October 2006).

98 'KY Minta Presiden Terbitkan Perppu Seleksi Ulang Hakim Agung', *Hukumonline*, 5 January 2006, http://www.hukumonline.com/detail.asp?id=14157&cl=Berita.

99 'Harifin A. Tumpa Sudah Laporkan Busyro ke Polisi' *Hukumonline*, 11 February 2006, http://www.hukumonline.com/detail.asp?id=14368&cl=Berita.

100 'Belum Diperiksa, KY Nyatakan Artidjo Tidak Bermasalah', *Hukumonline*, 15 February 2006, http://www.hukumonline.com/detail.asp?id=14394&cl=Berita.

101 'Pada Saat Pembahasaan RUU KY, Pemerintah Didampingi MA', *Hukumonline*, 2 May 2006, http://www.hukumonline.com/detail.asp?id=14824&cl=Berita.

regarding the Constitutional Court.[102] Most significantly, however, the Court dealt the Judicial Commission a near fatal blow by holding that the legislative provisions governing the Commission's oversight function were so vague as to be incapable of meaningful interpretation and therefore a source of legal uncertainty, and on that basis unconstitutional.[103]

As explained above, the effect of the decision is to strip the Judicial Commission of its role in scrutinising judicial behaviour. Although this has drawn strong criticism from civil society, some feel that it may in fact constitute a blessing in disguise that will force the legislature to tighten up what many regard as sloppy legislation.[104] Indeed, the Court itself in its judgement urged legislators to take prompt action to revise the Law regarding the Judicial Commission and reinstate the Commission's former powers, albeit in a more clearly expressed form. While at the time of writing the Government's response remained to be seen, hopes are that a legislative formulation can be found that gives the Commission adequate authority to scrutinise the behaviour of judges but at the same time sets clear boundaries to ensure that it does not stray into areas in which it has no business (such as examining the legal merits of judgements).

2.6 THE NATIONAL OMBUDSMAN COMMISSION

The National Ombudsman Commission (NOC) was established by Presidential Decree on 10 March 2000 amidst hopes that it could help promote long-awaited improvements in public service delivery by government institutions.[105] Unfortunately, six years later, these hopes remain largely unrealised and questions are being raised as to the NOC's continuing relevance. The NOC is an independent institution vested with authority to carry out investigations in response to public complaints about government institutions (including the courts) and with a particular focus on the delivery of public services.[106] The Commission is located in Jakarta and comprised of a Chairperson, Deputy Chairperson and nine members who are assisted by a complement of technical and administrative staff.[107] To enable it to carry out its mandate, four sub-commissions are established within the NOC. The most important is the Sub-Commission for Clarification, Monitoring and Investigation, which receives complaints about public services, carries out monitoring or investigation in response to those complaints, and conveys its findings and recommendations to the relevant government agency.[108]

In 2005, the NOC received 1010 complaints, 21 percent concerning the police, 17 percent regarding regional governments and 16 percent directed towards the courts.[109] However, the NOC is widely viewed as an inherently weak institution lacking any meaningful authority, and its non-binding recommendations are routinely ignored by the government institutions that have found

102 Article 23 Law No.24/2003.

103 Constitutional Court Decision No. 005/PUU-IV/2006, 23 August 2006, pp 199-201.

104 McBeth, J 'Internal Tussle Gets in the Way of Reforms', The Straits Times , 21 September 2006.

105 Presidential Decree No.44/2000 regarding the National Ombudsman Commission.

106 Article 2, Presidential Decree No.44/2000 regarding the National Ombudsman Commission.

107 Articles 6 and 13, Presidential Decree No.44/2000 regarding the National Ombudsman Commission.

108 Article 9, Presidential Decree No.44/2000 regarding the National Ombudsman Commission. Other Sub-Commissions are the Sub-Commission for Awareness and Education which is responsible for publicizing the NOC and its role; the Sub-Commission for Prevention which monitors theimplementation of the NOC's recommendations, and; the Special Sub-Commission with responsibility for the production of routine and incidental reports, and carrying out other special tasks as delegated by the plenary meeting of the NOC (the highest decision-making body of the NOC).

109 'Komisi Ombudsman Nilai Koordinasi Pengawasan Lemah', *Tempointeraktif*, 13 March 2006, http://www.tempointeraktif.com/hg/nasional/2006/03/13/brk,20060313-75067,id.html (accessed 11 October 2006).

themselves the subject of complaints.[110] This is largely due to the fact that the NOC owes its existence to a mere Presidential Decree rather than a more substantial Law enacted by the DPR, although funding constraints have also impacted on the NOC's ability to work effectively.[111] The preamble to the Presidential Decree under which the NOC is established contemplates the eventual enactment of a National Ombudsman Commission Law, and explains that its establishment by Presidential Decree is only an interim measure. However, no Law had been passed at the time of writing, and it remains to be seen whether the NOC will survive long enough for this to take place.

2.7 HUMAN RIGHTS UNDER INDONESIAN LAW

The key elements of Indonesia's current legal regime for human rights protection were enacted after the fall of former President Soeharto, largely in response to domestic and international pressure for stronger human rights safeguards. The single most significant achievement is a constitutional bill of rights, inserted into the Constitution as part of the second amendment to that document on 18 August 2000. Coupled with the establishment of the Constitutional Court with jurisdiction to conduct judicial review of Laws alleged to infringe these constitutionally protected rights, the bill of rights (in theory at least) provides Indonesians with stronger legal guarantees of their human rights than those enjoyed by citizens in a number of more advanced democracies.[112] Other statutory protections for human rights can be found in Indonesia's Human Rights Law[113] and Human Rights Court Law,[114] both enacted in the wake of the violence and killing which erupted in East Timor after the referendum for independence in August 1999.[115] Together, this mix of constitutional and statute law now provides more detailed protection for a greater range of human rights than has existed at any other time in Indonesian history.

Indonesia's recent accession to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural rights means that the country is now also party to most of the major international human rights instruments, as shown in Box 1.[116] However, it is important to note that ratification or accession alone is not sufficient to give these international instruments domestic legal effect – separate implementing legislation is required. In some cases this may entail the passage of entirely new legislation, while in others harmonisation of existing legislation and regulations will be required to ensure consistency with the international standards by which Indonesia has agreed to be bound. Neither should this process be viewed as somehow limited to the national level – the advent of decentralisation means that hundreds of regional parliaments now have authority to pass regional regulations encompassing a broad range of subject areas, not all of which necessarily comply with Indonesia's

110 'Semuanya demi Menegakkan Supremasi Hukum…!', *Kompas*, 30 April 2005, http://www.kompas.com/kopmas-cetak/050/430/Fokus/1721061.htm (accessed 11 October 2006).

111 'Semuanya demi Menegakkan Supremasi Hukum…!', *Kompas*, 30 April 2005, http://www.kompas.com/kopmas-cetak/050/430/Fokus/1721061.htm (accessed 11 October 2006).

112 For example, Australia has no constitutional bill of rights, although its High Court has shown some willingness to find implied rights within the Constitution. England and New Zealand are two other countries without constitutional bills of rights (in England's case having no written constitution at all).

113 Law No.39 of 1999 regarding Human Rights.

114 Law No.26 of 2000 regarding the Human Rights Court.

115 Philip Eldridge, 'Human Rights in Post-Soeharto Indonesia' (2002) IX(1) Brown Journal of World Affairs 127, at 133; Indonesia: Impunity versus Accountability for Gross Human Rights Violations, ICG Asia Report No 12, Jakarta/Brussels, 2 February 2001, pp. 13-14.

116 In the case of international agreements whose subject matter encompasses human rights, Indonesian law requires that the legislature must pass a law ratifying Indonesia's acceptance of an agreement before Indonesia will be bound by the agreement: Article 10 Law No.24/2000 regarding International Agreements.

BOX 1: MAJOR INTERNATIONAL HUMAN RIGHTS INSTRUMENTS RATIFIED BY INDONESIA

Indonesia has ratified or acceded to the following international human rights instruments:

- **ICCPR** – The *International Covenant on Civil and Political Rights* but not the two optional protocols;
- **ICESCR** – The *International Covenant on Economic, Social and Cultural Rights*;
- **CERD** – The *International Convention on the Elimination of All Forms of Racial Discrimination*;
- **CEDAW** – The *Convention on the Elimination of All Forms of Discrimination against Women* and signed but not ratified the Optional Protocol;
- **CAT** – The *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* but not the Optional Protocol;
- **CRC** – The *Convention on the Rights of the Child* and signed but not ratified the two optional protocols.

In addition, Indonesia has signed, but not yet ratified, the *Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*.

Source: Office of the High Commissioner for Human Rights [117]

international obligations (or the Constitution and Human Rights Law).

Indonesia's Constitution and Human Rights Law give domestic legal effect to a large number of the rights found in the international human rights treaties to which Indonesia is a signatory. The cornerstone of Indonesia's regime for the protection of human rights is the Constitution, in particular Article 28I(1) which enshrines six core non-derogable rights that 'cannot be limited under any circumstances'. These are the rights to: life; freedom from torture; freedom of thought; freedom of religion; freedom from slavery; recognition as an individual before the law, and; freedom from the retrospective application of laws. A wide range of other rights are also afforded constitutional protection, examples of which can be found in Box 2. The Human Rights Law expands upon and adds to the rights in the Constitution, and also establishes a National Human Rights Commission (*Komisi Nasional Hak Asasi Manusia* or *Komnas HAM*) with responsibility for study, research, monitoring, awareness building and mediation regarding human rights.[118]

Specific Rights related to Women, Children and other Vulnerable Groups

Without derogating from the importance of other rights, reference to a few constitutional and statutory rights of particular relevance to disadvantaged and vulnerable groups will be made by way of illustration. For example, the Constitution guarantees that every person has the right to 'special treatment to obtain the same opportunities and benefits to achieve equality and justice'.[119] Citizens also have a right to 'social security which permits holistic self-development as befits human dignity'.[120] Children in particular have the right to continuation of life, to grow, to develop, and to protection from violence and discrimination.[121]

The Human Rights Law contains more rights specifically related to women, children and other vulnerable groups than does the Constitution. Chapter III Part 9 of the Law regarding children's rights contains more rights than any other of the Law's subject areas, and emphasises that 'children's rights

117 Office of the High Commissioner for Human Rights (as at 8 May 2006), http://www.ohchr.org/english/countries/ratification/index.htm (accessed 12 June 2006).

118 Article 76(1)) Law No.39/1999 regarding Human Rights.

119 Article 28H(2) Law No.39/1999 regarding Human Rights.

120 Article 28H(3) Law No.39/1999 regarding Human Rights.

121 Article 28B(2) Law No.39/1999 regarding Human Rights.

BOX 2: KEY CONSTITUTIONAL RIGHTS

- Right to life (Art 28I(1))*
- Right to freedom from torture (Art 28I(1))*
- Right to freedom of thought and conscience (Art 28I(1)) *
- Right to freedom of religion (Art 28I(1))*
- Right to freedom from slavery (Art 28I(1))*
- Right to recognition as an individual before the law (Art 28I(1))*
- Right not to be subjected to laws of retrospective application (Art 28I(1))*
- Right to associate freely and to express an opinion (Art 28E(3))
- Right to protection of and equality before the law (Art 28D(1))
- Right to freedom and protection from discrimination (Art 28I(2))
- Right to education (Art 31)
- Right to work and obtain fair and just reward and treatment (Art 28D(2))
- Right to obtain healthcare (Art 28H(1))
- Right to communicate and obtain information (Art 28F)
- Right of traditional communities to respect for their cultural identity and rights in accordance with the progression of the times and civilisation (Art 28I(3))

** Non-derogable rights*

are human rights and, in their interests, are recognised and protected by law even when they are in the womb'.[122] It provides additional legal protections for child defendants, such as disallowing the imposition of the death penalty or life imprisonment[123] and giving them the right to have their case heard in an impartial Children's Court in a hearing closed to the public.[124] Chapter III Part 9 also deals with women's rights, such as their right to special protection from things that could threaten their safety or reproductive health when working.[125] The elderly and physically or mentally disabled citizens are acknowledged to have the right to obtain treatment, education, training and special assistance or state funds to guarantee an appropriate existence.[126] Additionally, Part 4 of the Law addresses the 'Right to Obtain Justice' and includes a range of protections that apply to defendants during the criminal justice process.

State Obligations

Article 28I(4) of the Constitution establishes that the 'protection, promotion, enforcement and fulfilment of human rights are principally the government's responsibility'. Specifically in relation to the human rights of poor and disadvantaged citizens, the Constitution also imposes specific obligations upon the State to:

- Care for the poor and for abandoned children - Article 34(1);
- Develop a social security system for all and to empower the weak and impoverished as befits human dignity-Article 34(2);
- Provide appropriate healthcare and public service facilities - Article 34(3);
- Respect the cultural identity of traditional communities, including communal land rights, in accordance with the progression of the times and civilisation - Article 28I(3).

2.8 STRENGTH OF DOMESTIC HUMAN RIGHTS PROTECTIONS

While Article 7 of the Human Rights Law affirms the right of citizens to make use of all the enforcement machinery for the international human rights instruments to which Indonesia is a party, domestic law is the

122 Article 52(2) Law No.39/1999 regarding Human Rights.
123 Article 66(2) Law No.39/1999 regarding Human Rights.
124 Article 66(7) Law No.39/1999 regarding Human Rights.
125 Article 49(2) Law No.39/1999 regarding Human Rights.
126 Article 42 Law No.39/1999 regarding Human Rights.

most accessible (and likely most effective) means of enforcing human rights. When considering Indonesia's human rights regime, it is important to note that different rights have different levels of relative strength, depending on the instrument in which they are contained.

Constitutional Rights

The rights contained in the Constitution enjoy the strongest position. As constitutional rights, they cannot, in theory, be ignored or overridden – deliberately or unintentionally – by government action or by any other Indonesian law. Citizens who believe that a law infringes their constitutional rights can request the Constitutional Court to review the law and to declare it to have no binding force.[127] However, some constitutional rights are stronger than others.

As outlined above, the strongest rights – which 'cannot be limited under any circumstances' – are those contained in Article 28I(1). These rights mirror the rights contained in the International Covenant on Civil and Political Rights that are non-derogable under Article 4 of the Convention (with the exception of the right not to be imprisoned merely on the ground of inability to fulfil a contractual obligation).[128] The Constitutional Court can invalidate – and has invalidated – a number of laws which are not consistent with these non-derogable rights.[129]

The second most strongly-protected rights are those contained in provisions of the Constitution other than Article 28I(1). These rights are not absolute, as Article 28J(2) permits them to be limited or overridden by legislation which aims to protect 'the rights and freedoms of others and which accords with moral considerations, religious values, security and public order in a democratic society'. As a result, the Constitutional Court will not necessarily strike down all legislation which undermines them. The Court will balance the interests in protecting the constitutional right with the purpose and importance of legislation that undermines that right but protects the human rights of other people. In practice, the Constitutional Court has upheld constitutional rights in many of the cases it has

127 The significance of the Court's jurisdiction in this area should not be underestimated, as it gives the judiciary greater power than it may have in other more advanced democracies. In Britain for example (which has no constitutional bill of rights), human rights guarantees are contained in the Human Rights Act 1998, which has the status of an ordinary Act of Parliament. The Human Rights Act adopts a rule of construction that states that both future and past legislation should, to the extent possible, be interpreted con-sistently with the Act. However, where there is an irreconcilable difference, a court cannot set aside the offending law (as can be done by the Constitutional Court in Indonesia). Instead, the law will continue to apply but a court can make a 'declaration of in-compatibility' which gives parliament the option of using a fast-track procedure to amend the inconsistent legislation (although it is under no obligation to do so): See Clayton, R and Tomlinson, H, The Law of Human Rights Volume 1, OxfordUniversity Press, Oxford, 2000, p 62.

128 Although this right is not recognized in the Constitution, it is protected by Article 19(2) Law No.39/1999 regarding Human Rights.

129 For example, in the wake of the 2002 Bali bombings, the Government issued a Government Regulation in Lieu of Law (*Peraturan Pemerintah Pengganti Undang-undang* or *perpu*) outlawing acts of terrorism (Perpu No.1/2002 regarding the Eradication of Terrorism). It then issued a second *perpu* (Perpu No.2/2002) which declared Perpu No.1/2002 to have retrospective application to those involved in the Bali bombings. The two *perpu* were subsequently converted into Law No.15/2003 and Law No.16/2003 upon receiving the approval of the DPR. One of those convicted under these two Laws, Masyukur Abdul Kadir, challenged his conviction on the grounds that it breached his right not to be subjected to laws of retrospective application under Article 28I(1) – a right that according to the Constitution 'cannot be limited under any circumstances'. A narrow majority of the Constitutional Court (five judges) upheld his appeal and struck down Law No.16/2003 regarding the Application of Law No.15/2003 regarding the Eradication of Terrorism to the 2002 Bali Bombings. However, four judges (in dissent) held that the prohibition of retrospectivity could be set aside in very serious cases such as the one at hand. In a controversial postscript to the case, the Chief Justice of the Constitutional Court announced to the press his own interpretation of the decision, namely that it would only operate prospectively and that the convictions of those already con-victed under Law No.16/2003 would stand. The judgement itself is silent on this issue, and the Chief Justice's interpretation is at odds with the common understanding that a law found to be unconstitutional has never been constitutional, and therefore never had binding force. On this point, see Butt, S and Hansell D, 'The Masykur Abdul Kadir Case: Indonesian Constitutional Court Decision No 13/PUU-I/2003' 6(2) Australian Journal of Asian Law 176 at p 181.

heard since its establishment in 2003.[130] However, it has also enforced the Article 28J(2) limitation and allowed the government to pass laws that infringe the rights contained in Article 28 of the Constitution, provided that those laws meet the conditions contained in Article 28J(2).[131]

Non-Constitutional Rights

The Human Rights Law is Indonesia's second-most important human rights document after the Constitution. Many of the rights protected by the Human Rights Law are also contained in the Constitution and therefore subject to the strong protection that inclusion in that document provides. However, those rights recognized only in the Human Rights Law, while still enjoying a relatively high level of protection, are more vulnerable to either intentional or inadvertent abrogation by both existing and future Laws. The following discussion concerns only these rights that are contained in the Human Rights Law but not the Constitution.

The Human Rights Law, as a statute enacted by the national parliament (DPR), occupies the highest stratum in the hierarchy of Indonesian legislation and will prevail over any subordinate legislation (such as a government or regional regulation) that purports to limit the rights contained within it.[132] Subordinate legislation that appears inconsistent with a provision of the Law can be challenged in the Supreme Court, and, if found to be inconsistent, declared invalid. Therefore, the only significant threat to the rights contained in the Human Rights Law comes from other Laws at the same level in the legislative hierarchy. The DPR is of course free to enact Laws that explicitly repeal or amend the Human Rights Law, in which case their effect will be clear. Alternatively, the DPR may either intentionally or inadvertently pass Laws that, while not explicitly repealing or amending the Human Rights Law, are nevertheless inconsistent with one or more of its provisions. In such cases, two well-established principles of Indonesian statutory interpretation will operate to help determine which of the two Laws should prevail.

The first principle is *lex posteriori derogat lex priori* – that is, if two Laws conflict with each other, then the more recently enacted Law shall prevail. Under this principle, any Law passed after the Human Rights Law which contravenes one or more of the rights contained in the Human Rights Law will most likely be held to override it. The rationale underpinning this rule is that if parliament

130 For example, in March 2006 the Court held that the requirement imposed by Article 35(d) Law No.39/2004 regarding the Placement and Protection of Indonesian Workers Overseas that prospective migrant domestic workers possess a minimum of junior high school education was invalid on the grounds that it was inconsistent with a number of constitutionally protected rights (Decision 019/PUU-III/2005). The court held that by imposing a requirement that was not relevant to the type of work being regulated, Article 35(d) of the Law violated the following articles of the Constitution: Article 27(2) (the right to work); Article 28A (the right to life and a livelihood), and; Article 28H(1) (the right to an adequate standard of living). See 'MA Koreksi UU 39/2004' Kompas Online, 29 March 2006, http://www.kompas.com/kompas-cetak/0603/29/Politikhukum/2544689.htm.

131 For example, Law No.30/2002 regarding the Corruption Eradication Commission empowers the Commission to, among other things, conduct telephone taps and record conversations. This was challenged in the Constitution Court on the grounds that such a power is inconsistent with Articles 28D and 28G(1) of the Constitution which guarantee rights to equality before the law, personal dignity and a feeling of security. The Constitutional Court held that because such rights are not non-derogable rights contained in Article 28I(1), their restriction may be justifiable under Article 28J(2) in certain circumstances. In this case, the Court viewed corruption as an extraordinary crime which warranted an extraordinary response such as telephone tapping, and upheld the provisions on the basis of Article 28J(2). See Constitutional Court Decision No. 006/PUU-I/2003 pp103-104. Another example is Law No.39/2002 regarding Broadcasting, which imposes requirements (a) that television stations broadcast a minimum 60 percent locally produced content and (b) that all programs must be classified by the censor. A number of broadcast industry associations sought judicial review of these provisions by the Constitutional Court, arguing that they were in breach of Articles 28E(2) and 28F of the Constitution which guarantee freedom of speech and communication. However, the Constitutional Court held that the restrictions of the rights to freedom of speech and communication were valid by virtue of Article 28J(2). The Court took the view that the requirement of 60 percent local content was a legitimate means of protecting the Indonesian nation, while the requirement that programs be classified by the censor was necessary for the protection of the community as consumers of broadcast services. See Constitutional Court Decision No. 005/PUU-I/2003, 28 July 2004, pp 83-84.

132 Indonesia's hierarchy of laws, as set out in Article 7 Law No.10/2004 regarding the Enactment of Legislation, is as follows: Laws (*Undang-undang*) / Government Regulations in Lieu of a Law (*Peraturan Pemerintah Pengganti Undang-undang*); Government Regulations (*Peraturan Pemerintah*);Presidential Regulations (*Peraturan Presiden*), and; Regional Regulations (*Peraturan Daerah*) which can be made at either the provincial, district/municipality or village level.

passes a new Law which contradicts an older Law, then it is taken to have intended to revoke the relevant provision in the older Law, even if it does not explicitly state this intention.

The second principle is *lex specialis derogat lex generalis* – that is, if two Laws are applicable to the case at hand, then the more specific of the two is to be applied. The Human Rights Law has provisions of very general application and it is likely that a court would view another Law dealing with a particular subject to be more specific than the Human Rights Law. So, for example, the right to the presumption of innocence in the Human Rights Law might be usurped by a Law which removed the presumption for specific types of cases, such as corruption or terrorism.

As can be seen, the rights recognised only in the Human Rights Law are inherently weaker than those contained in the Constitution. While these rights will prevail over all subordinate legislation, they can be revoked at will by the DPR, or inadvertently infringed by future inconsistent Laws. However, this apparent fragility is not unusual and is consistent with the situation in a number of other countries,[133] and ultimately of limited consequence due to the strong protection of human rights in the Constitution.

Towards a Greater Focus on Compliance and Enforcement

The significant constitutional and legislative reforms of the past eight years mean that human rights now enjoy relatively strong protection under Indonesian law. The real issue, therefore, is not so much the adequacy of this normative framework, but, as with so many other laws in Indonesia, the extent to which is complied with and enforced. Of particular note in this regard is that even though the Constitution and Human Rights Law require the government and others to uphold and respect human rights, neither imposes penalties on those who breach them. Only the Human Rights Court Law imposes penalties, and then only for genocide and crimes against humanity. However, the recent prosecutions of serious human rights abuses in the former East Timor, found by a UN Commission of Experts to be 'manifestly inadequate', illustrate some of the difficulties that continue to plague efforts to achieve accountability for such abuses.[134] Moreover, as mentioned above, the substantial devolution of power to local legislatures creates new challenges in ensuring the myriad of new and existing regional regulations are consistent with the human rights protected by the Constitution and Human Rights Law. Where they are not, these regulations may be applied for a significant period of time before they are declared invalid, if in fact this occurs at all.

2.9 *ADAT* AS PART OF THE NORMATIVE FRAMEWORK

What is *Adat*?

Adat is a somewhat amorphous concept which, in simple terms, may be broadly defined as the traditions or customs upon which the community life of a certain ethnic group is based. However, as Hooker explains, the word '*adat*' itself can be used variously to refer to 'law, rule, precept, morality, usage, custom, agreements, conventions, principles, the act of conforming to the usages of society,

133 Again, using the UK as an example, the *Human Rights Act (*1998) is simply an ordinary Act of Parliament and can be repealed just like any other Act (see note 127 above).

134 Report to the Secretary-General of the Commission of Experts to Review the Prosecution of Serious Violations of Human Rights in Timor-Leste(then East Timor) in 1999, 26 May 2005, S/2005/458, p. 6 (see note 79 above).

decent behaviour, ceremonial, the practice of magic, sorcery [or] ritual'.[135] The renowned Dutch colonial legal anthropologist Cornelis van Vollenhoven identified a number of universal *adat* principles which are said to exist throughout Indonesia, despite the country being home to more than 300 different ethnic groups, many of whom have their own language, culture and traditions.[136] These universal principles include '... ...a preponderance of communal over individual interests, a close relationship between man and the soil, an all-pervasive 'magical' and religious pattern of thought, and a strong family-oriented atmosphere in which every effort [is] made to [resolve] disputes through conciliation and mutual consideration'.[137]

Adat as Law?

The multidimensional nature of *adat* means that there is not necessarily a clearly defined line between *adat* that constitutes mere 'custom' as opposed to *adat* which is elevated to the higher status of 'law'. The traditional 'positivist' view espoused by van Vollenhoven is that only those customs of a legal nature whose breach requires the imposition of a sanction by the *adat* community have the status of *adat* law.[138] However, more recent scholarly opinion highlights the artificiality of distinguishing between the legal and non-legal aspects of *adat*, on the basis that there are a variety of factors that motivate compliance with *adat* norms, not all of which involve fear of sanctions.[139] Whatever its more appropriate classification, *adat* generally forms part of an oral tradition that is handed down from generation to generation, although there are instances where attempts at codification have been made. Common issues regulated by *adat* law include crimes against property and the person, 'immoral' behaviour such as adultery and pre-marital sexual relations, marriage and inheritance, and the division, use and management of land and natural resources.

Recognition of *Adat* in National Law

Adat law continues to find formal recognition in national law, albeit limited. For example, Article 25(1) of Law No.4/2004 regarding Judicial Power provides that '[a]ll court judgements must contain the reasons and basis for decision, including the specific article of the relevant legislation or the source of the *unwritten law* upon which the judgement is based' [emphasis added]. Here, 'unwritten law' is generally regarded as referring to *adat* law. Indirect reference to *adat* is also made in Article 28(1) of the Law, which states that '[a] judge is obliged to seek out, observe and understand the legal values and sense of justice that live within the community.' Another example is Law No.1/1974 regarding Marriage. Article 37 of the Marriage Law provides that '[i]f a marriage is dissolved through divorce, the joint property is to be regulated by the law of the respective parties'. In the Explanatory Memorandum, 'the law of the respective parties' is defined to mean 'religious law, *adat* law and other laws'. Perhaps the most important example is the Basic Agrarian Law 1960 (BAL), which states

135 M.B. Hooker, *Adat* Law in Modern Indonesia, Oxford University Press, Kuala Lumpur, 1978, p. 50.

136 T. Lindsey, *The Indonesian Legal System*, LMC 10, Northern Territory University, Faculty of Law Centre for Southeast Asian Law, Darwin, 1996,pp. 25-26; T. Lindsey, 'Paradigms, Paradoxes and Possibilities: Towards Understandings of Indonesia's Legal System', in V. Taylor (Ed), Asianlaws through Australian Eyes, Law Book Company Information Services, Sydney, 1997, p. 94.

137 S.T. Alisjahbana, Indonesia: Social and Cultural Revolution, Oxford University Press, Singapore, 1966, p. 71.

138 Fitzpatrick, D, 'Disputes and Pluralism in Modern Indonesian Land Law' (1997) 22 Yale Journal of International Law 171 at p. 178.

139 See for example R. Haverfield, 'Hak Ulayat and the State: Land Reform in Indonesia', in T. Lindsey, Indonesia: Law and Society, Federation Press, Sydney, 1999, pp. 43-44. See also M.B. Hooker, *Adat* Law in Modern Indonesia, Oxford University Press, Kuala Lumpur, 1978, p. 146.

that 'the agrarian law of Indonesia that applies to the land, water and sky is *adat* law, insofar as it is consistent with the interests of the nation and the State…and the provisions of this Law…'.[140] In fact, the BAL even goes so far as to purport to be based on *adat*,[141] although the substance of the Law and its effects upon *adat* communities has led to debate over the extent to which this is true in practice.[142]

Adat and the Basic Agrarian Law 1960

Respondents throughout the assessment frequently cited land disputes as a source of injustice, particularly those that arise where communal land is appropriated by the State for transmigration schemes, national parks or for use by either state-owned or private enterprises. In anticipation of the discussion of this issue later in the report, it is helpful here to briefly sketch the legal backdrop against which these disputes commonly occur.

The Basic Agrarian Law (BAL) lays the foundations of modern Indonesian land law, and states its aim as the achievement of 'prosperity, happiness and justice for the nation and its people, especially farming communities' through promoting unity, simplicity and certainty in land law.[143] It was enacted to end the legal dualism that had carried over from the Dutch colonial period, whereby land (and the law governing it) was divided into two groups – 'Western' and 'Indonesian'.[144] The BAL converts all Western statutory rights and most *adat* (Indonesian) rights into what are generally recognised to be Western-style registrable land rights,[145] but emphasises that these rights have their origins in *adat* law and also serve a social function where the needs of the individual right-holder must be balanced against the needs of the community and the State.[146] However, as Fitzpatrick noted in 1997, 'it is apparent that the BAL's objectives of legal unity and certainty have not been attained and will not be attained in the foreseeable future. The Indonesian government estimates that no more than twenty percent of all registrable land, and only ten percent in rural areas, has been registered under the BAL'.[147]

A significant feature of the BAL is that it does not convert the *adat* communal right to land known as *hak ulayat* into a statutory right. Article 3 acknowledges that *hak ulayat* exists and may continue to do so, but only insofar as it may be reconciled with the wider national interest. For example, the General Elucidation explains that 'it is unacceptable if an *adat* community, based upon their *hak ulayat*, simply refuses to allow the large-scale, orderly clearing of forest in order to implement a plan to increase food stocks or for transmigration'.[148] In practice, the Government has adopted a policy whereby all uncultivated *hak ulayat* land is treated as belonging to the State, on the basis that Article 33(3) of the Constitution vests the State with ultimate control over all land.[149] The implication of this policy is that the

140 Article 5 Law No.5/1960 (the Basic Agrarian Law).

141 General Elucidation to the Basic Agrarian Law 1960 Part III (1) 'Considering that the majority of Indonesian society observes *adat* law, so too will the new agrarian law be based on *adat* law, as the original law, which is refined and reconciled with the interests of society in a modern State…'.

142 See for example Fitzpatrick, D, 'Disputes and Pluralism in Modern Indonesian Land Law' (1997) 22 Yale Journal of International Law 171.

143 General Elucidation to the Basic Agrarian Law (1960) Part I.

144 Fitzpatrick, D, 'Disputes and Pluralism in Modern Indonesian Land Law' (1997) 22 Yale Journal of International Law 171 at p. 175.

145 Fitzpatrick, D, 'Disputes and Pluralism in Modern Indonesian Land Law' (1997) 22 Yale Journal of International Law 171 at pp 172-173.

146 Article 6 Basic Agrarian Law (1960) as explained in the General Elucidation Part II paragraph (4).

147 Fitzpatrick, D, 'Disputes and Pluralism in Modern Indonesian Land Law' (1997) 22 Yale Journal of International Law 171 at p. 173.

148 General Elucidation to the Basic Agrarian Law 1960 Part II paragraph (3).

149 Fitzpatrick, D, 'Disputes and Pluralism in Modern Indonesian Land Law' (1997) 22 Yale Journal of International Law 171 at p. 186.

Map of Indonesia and Assessment Sites – Provinces and Districts

Government has been free to 'grant rights to uncultivated *hak ulayat* land without obtaining the consent of the relevant local community and without triggering the legal obligation to pay "adequate" compensation to holders of expropriated titles'.[150]

While the issues are of course significantly more complex than has been presented here, it is hoped this brief explanation is nevertheless sufficient to enable an appreciation of the legal issues underpinning the land disputes described later in the report.

3. ASSESSMENT LOCATIONS AND METHODOLOGY

3.1 ASSESSMENT LOCATIONS

Overview

The access to justice assessment was conducted in five provinces of Indonesia – West Kalimantan, Maluku, North Maluku, Central Sulawesi and Southeast Sulawesi. These provinces were selected because they are amongst the ten priority provinces for UNDP in Indonesia, having low human development indices, high poverty rates and a proneness to crisis (whether in the form of conflict or natural disasters).[151] In addition, UNDP already had an established a presence in each of the selected provinces which was anticipated to promote greater efficiency in the data collection process. The following are brief overviews of the demographics and history of conflict in each province. More detailed accounts are provided in Annexes 2 – 6 of the report.

West Kalimantan

West Kalimantan Province occupies the western third of the island of Borneo. It shares its borders with the provinces of Central and East Kalimantan to the East, and the Malaysian state of Sarawak to the North. Although it is the fourth-largest province of Indonesia in terms of land area, West Kalimantan has a population of just over four million, concentrated primarily along the coastal fringe. The two predominant ethnic groupings are Muslim Malays and indigenous Christian Dayaks. The remainder of the population are ethnic Chinese, Madurese, Javanese and others.

150 Fitzpatrick, D, 'Disputes and Pluralism in Modern Indonesian Land Law' (1997) 22 Yale Journal of International Law 171 at p.186.

151 The other five priority provinces are Papua, East Nusa Tenggarra (NTT), West Nusa Tenggarra (NTB), Gorontalo and Aceh.

West Kalimantan has experienced a number of episodes of intense inter-ethnic conflict over the past eight years, most notably in 1997, 1999 and 2001, and some incidents of small-scale violence continue to occur. The conflict pitted the majority Dayaks and Malays against the Madurese minority, resulting in at least 2000 (mainly Madurese) deaths and countless more injuries, widespread destruction of property and the forced displacement of approximately 100,000 Madurese, many of whom remain unable to return to their homes.

Maluku

Maluku Province lies in the eastern Moluccas[152] archipelago of Indonesia, between Sulawesi and Papua provinces, and to the north of Timor. Before North Maluku was carved out as its own province in 1999, Maluku was the largest province in Indonesia in geographic terms, covering over 850,000 square kilometres, 90 percent of which was sea. Maluku Province now consists of 559 islands,[153] only a few of which are larger than 1,000 square kilometres.[154] The capital of Maluku Province, Ambon, is located on the small island of the same name that lies to the southwest of the much larger Seram island. The provincial population, estimated at 1.29 million in the 2003 census,[155] is almost evenly split between Muslims (49 percent) and Christians (50 percent), most of whom are Protestant.[156] The migrant population of Maluku (six percent) comes mostly from Sulawesi and Java.[157]

Between 1999 and 2002, widespread conflict between Christians and Muslims raged throughout the region, leading to the largest recorded displacement of people in Indonesian history. Approximately 700,000 people - almost one-third of the population at the time of 2.1 million - escaped or were evacuated, mostly within Maluku and North Maluku, or to the neighbouring provinces in Sulawesi; smaller numbers fled to Irian Jaya and elsewhere in Indonesia.[158] At least 5000 people (perhaps as many as 10,000) were killed in the fighting[159] and Maluku's economy shut down almost entirely, heavily affecting the rest of Maluku's population.[160] While the violence has abated in North Maluku, sporadic outbursts of violence continue to occur in Maluku, particularly in Ambon.

North Maluku

The recently-created province of North Maluku consists of 395 islands, 64 of which are inhabited, scattered over some 140,000 kilometres, most of which is sea. As its name implies, North Maluku is located due north of Maluku Province, and sits between Papua to the east and Sulawesi to the west. The province is ethnically diverse, with a total of 28 groups of Polynesian and Melanesian ancestry, each with its own language.[161] The population of approximately 866,000 is predominantly Muslim (85 percent), followed by Protestants, Catholics, Hindus and Buddhists. The capital of North Maluku, Ternate, is predominantly Muslim; however there is a significant Christian minority in

152 In keeping with modern Indonesian terminology, this report uses the term Moluccas to refer to the geographical entity, i.e. the archipelago of islands between Sulawesi and Papua, which encompasses the political entities of both Maluku and North Maluku today.

153 Central Bureau of Statistics Maluku Office - see 'Sekilas' at http://maluku.bps.go.id (accessed 6 June 2006).

154 K.A. Monk, Y. de Fretes, Y. and G. Reksodiharjo-Lilley, The Ecology of Indonesia, vol. V: The Ecology of Nusa Tenggara and Maluku, Periplus Editions, Singapore, 1997.

155 Central Bureau of Statistics Maluku Office, 'Population Statistics of Maluku Province', http://maluku.bps.go.id/ringkasan-eksekutif/re-2.html(accessed on 13 June 2006).

156 'Population of Indonesia: Results of the 2000 Population Census, series L2.2', Statistics Indonesia, Jakarta, 2001.

157 Graham Brown with Christopher Wilson and Suprayoga Hadi, Overcoming Violent Conflict (Vol. 4): Peace and Development Analysis in Maluku and North Maluku, UNDP Indonesia, Jakarta, 2005, p.9.

158 International Crisis Group, 'The Search for Peace in Maluku,' *Asia Report No. 31*, 8 Feb. 2002 (Jakarta/Brussels).

159 International Crisis Group, 'The Search for Peace in Maluku,' *Asia Report No. 31*, 8 Feb. 2002 (Jakarta/Brussels).

160 United Nations Resident Coordinator (UN RC), 21 March 2000.

161 'Population of North Maluku - Census 2000', Statistics Indonesia, Jakarta, 2001.

the northern part of Halmahera island and on Obi and Bacaan islands.

The distribution of the population has been dictated not only by patterns of progress and development in the province, but also by the polarization caused by the 1999 sectarian violence that erupted between the Christian and Muslim communities.[162] The human cost of this conflict was 1,655 dead, 1,219 seriously wounded, 2,315 missing and approximately 97,000 displaced from their homes.[163] Public and private property also suffered extensive damage, including houses, mosques, churches, schools, hospitals and shops.

Central Sulawesi

Central Sulawesi Province, with a population of approximately 2.25 million in 2004,[164] is one of six provinces in Sulawesi, a large island in north-eastern Indonesia.[165] Stretching from the central mountain ranges west to the Makassar Strait, north to the Sulawesi Sea and east to the Molucca Sea, Central Sulawesi encompasses over 68,000 square kilometres. Although three-quarters of the population is Muslim, Central Sulawesi is also home to a large Christian population, as well as Hindus and Buddhists. The province is ethnically heterogeneous, with 12 major ethnic groups including the indigenous Kaili, Pamona, Kulawi and Lore, as well as migrant populations from Java, Bali, East and West Nusa Tenggara and neighbouring provinces of Sulawesi.[166]

Since 1998, when violence between Christians and Muslims first broke out in Poso District, Central Sulawesi has suffered numerous acts of collective and individual violence in which an estimated 2,000 people have died and 148,000 people have been displaced.[167] Much of the violence has been concentrated in Poso, where clashes between Muslim and Christian youths triggered major incidents between 2000 and 2002.[168]

Southeast Sulawesi

Southeast Sulawesi Province is also located on the island of Sulawesi and shares land borders to the northwest with South Sulawesi and Central Sulawesi. East Nusa Tenggara lies to the south across the Flores Sea and Maluku is located to the north in the Banda Sea. The population of approximately 1.9 million[169] is predominantly Muslim (90 percent), while the Christian community makes up a small part of the Muna, Tolaki and Moronene local ethnic groups as well as Torajan migrants from Central Sulawesi. Other groups include government-sponsored transmigrants from Java, Lombok, Bali and some ethnic Chinese. Although free from the large-scale collective violence that has plagued the four provinces discussed above, Southeast Sulawesi has become a place of refuge for many internally displaced persons (IDPs) fleeing conflict, particularly from Maluku and East Timor.

162 Data on Registration of Voters and Continuous Population, North Maluku branch of Statistics Indonesia, 2004, p. 1.

163 *Bakornas*, 25 September 2000.

164 BPS Central Sulawesi, 'Sulawesi Tengah Dalam Angka 2004' (2005), available at www.infokom-sulteng.go.id (accessed 5 May 2006). This source has been used for much of the following material.

165 Central Sulawesi has one municipality and nine districts, namely Banggai Islands, Banggai, Morowali, Poso, Donggala, Toli-Toli, Buol, Parigi Moutong and Tojo Una-Una.

166 Prominent groups from other provinces in Sulawesi include the Bugis, the Gorontalo people and Menadanese.

167 'Poso Setelah Yudhoyono-Kalla Jadi Pemenang', *Kompas*, 3 November 2004 available at http://www.kompas.com/kompas-cetak/0411/03/Politikhukum /1364053.htm (accessed 16 August 2005).

168 'The Conflict in Cental Sulawesi,' *The Jakarta Post*, 23 January 2004; Program on Humanitarian Policy and Conflict Research, Harvard College, 2001 (www.preventconflict.org); Varshney, Ashutosh, Rizal Panggabean, and Mohammad Zulfan Tadjoeddin (2004) 'Patterns of Collective Violence in Indonesia (1990-2003)', Jakarta: UNSFIR Working Paper, April 2003. Also interviews with Muslim and Christian leaders in Poso, May 2005.

169 Much of the information in the following section is taken from interviews with local informants and 'Sulawesi Tenggara Dalam Angka, 2003', BPS Southeast Sulawesi, 2004.; 'Kabupaten Konawe Selatan Dalam Angka, 2003', BPS Konawe Selatan, 2004; 'Kota Baubau Dalam Angka, 2003', BPS Kota Bau-Bau, 2004; as well as village and subdistrict monographies (BPS in each subdistrict).

Key Development Indicators – A Provincial Snapshot

As explained above, two of the key indicators underpinning the selection of the assessment provinces were low human development indices and high poverty rates. The Human Development Index (HDI) measures overall achievements in three basic dimensions of human development – life expectancy, educational attainment and adjusted income. The Human Poverty Index (HPI) measures poverty by using four key variables – the percentage of people expected to die before age 40, the percentage of adults who are illiterate, the percentage of people without access to health services and safe water and the percentage of children aged under five who are underweight.[170] In 2003, the average HDI for Indonesia 66 while the average HPI was 22.7.[171] *Table 1 (below)* shows the HDI, HPI and Gross Regional Domestic Product (GRDP) for each of the five provinces in 2002, along with their relative rank out of the 30 provinces in existence at that time.

On these indicators West Kalimantan is worst off out of the five provinces, having a national ranking of 27 in terms of HDI and an HPI rank of 30 (the highest HPI of all 30 provinces). This is despite West Kalimantan ranking 14 in terms of Gross Regional Domestic Product per capita, which indicates that income from natural resources has not been adequately reinvested in services for the people. Maluku is the assessment province best off in relative terms, falling just inside the top 10 provinces measured by HDI and just outside the top 10 provinces measured by HPI. This is despite Maluku being ranked third last by GDRP per capita. Southeast Sulawesi, Central Sulawesi and North Maluku are all located in the lower range of the rankings for both HDI and HPI.

3.2 METHODOLOGY

Selection of Assessment Locations

The majority of the assessment was carried out between January and September 2005 by five inter-disciplinary teams of local

TABLE 1: SELECTED DEVELOPMENT INDICATORS (AS AT 2002)

Province	GRDP	GRDP Rank	HDI	HDI Rank	HPI	HPI Rank
West Kalimantan	1975	14	62.9	27	38	30
Maluku	950	28	66.5	12	22.9	10
North Maluku	1094	26	65.8	19	27.9	22
Central Sulawesi	2053	12	64.4	22	28.9	25
Southeast Sulawesi	948	29	64.1	26	25.8	20

Source: National Human Development Report 2004[172]

NOTES:
GDRP = Gross Regional Domestic Product per Capita (1000s of rupiah / month)
HPI = Human Poverty Index
HDI = Human Development Index
Rank = Rank out of 30 provinces

170 National Human Development Report 2004: The Economics of Democracy – Financing Human Development in Indonesia, BPS-Statistics Indonesia, BAPPENAS and UNDP Indonesia, Jakarta, 2004, p 73

171 National Human Development Report 2004: The Economics of Democracy – Financing Human Development in Indonesia, BPS-Statistics Indonesia, BAPPENAS and UNDP, Jakarta, 2004, pp 10 and 15.

172 National Human Development Report 2004: The Economics of Democracy – Financing Human Development in Indonesia, BPS-Statistics Indonesia, BAPPENAS and UNDP, Jakarta, 2004, pp 12 and 101.

TABLE 2: SELECTED ASSESSMENT AREAS

Province	District	Sub-District	Village
West Kalimantan	Bengkayang	Samalantan	Samalantan
			Marunsu
		Monterado	Monterado
			Beringin Baru
	Ketapang	Delta Pawan	Kali Nilam
			Sukaharja
		Sukadana	Sutra
			Pangkalan Buton
Maluku	Ambon	Teluk Ambon Baguala	Wayame
			Hutumuri
		Nusaniwe	Nusaniwe
			Urimesing
	Central Maluku	Pulau Haruku	Pelauw
			Haruku
		Amahai	Sepa
			Amahai
North Maluku	Ternate	South Ternate	Kayu Merah
			Sasa
		Moti	Moti Kota
			Takofi
	North Halmahera	Tobelo	Gosoma
			Gorua
		South Tobelo	Gamhoku
			Tobe
Central Sulawesi	Poso	Poso Pesisir	Kasiguncu
			Tokorondo
		North Lore	Watutau
			Maholo
	Donggala	Banawa	Boneoge
			Labuan Bajo
		Kulawi	Matauwe
			Lonca
Southeast Sulawesi	South Konawe	Tinanggea	Potuho Jaya
			Mokupa Jaya
		Konda	Lambusa
			Tanea
	Bau-Bau	Bungi	Kalia-lia
			Palabusa
		Sorawolio	Gonda Baru
			Kaisabu Baru

researchers in each province and based in the Faculty of Law at the state university of that province. The research teams reflected religious, ethnic and gender diversity, and included academics and CSO workers.

Two districts were identified as the focus of the assessment in each province, using criteria developed in consultation with the research teams. The districts were selected to ensure variety in terms of: the intensity

of conflict that each had previously experienced; their ethnic or religious homogeneity or heterogeneity; the strength or weakness of traditional *adat* justice systems; their proximity to or distance from the provincial capital, and; their levels of poverty and development. Two sub-districts were then selected within each district, and two villages within each sub-district, again according to the criteria mentioned above – where appropriate. Eight villages were selected in each province as the focus of the assessment, giving a total of 40 villages across the five provinces as shown in Table 2 .

Qualitative Research

While conducting a general socio-economic mapping exercise in each village, the research teams endeavoured to identify particular groups in the community who were poor or disadvantaged by virtue of: (i) the non-fulfilment of basic rights to food, healthcare, education and other government services; (ii) discriminatory treatment by government or other community members, or; (iii) the inability to participate in decision-making affecting their futures. Villagers were grouped by geography, type or mode of employment, gender or ethnicity, but did not necessarily identify themselves as members of that group. One 'disadvantaged group' was selected in each village to be the primary respondents in the qualitative phase of the assessment, on the basis that they were either worse off than other groups in the village or that they constituted a type of group that had not been selected in other villages.

Approximately 200 focus group discussions (FGDs) were conducted with members of these groups in which they shared their opinions about the most pressing justice-related issues they face on an everyday basis, and their experiences of resolving grievances through both the formal and informal justice systems. The FGDs were supplemented by approximately 700 in-depth interviews, primarily with ordinary villagers, but also with village-level community and religious leaders, sub-district officials, police, prosecutors, lawyers, judges and other duty-bearers. The research teams also made use of secondary sources such as administrative data held by provincial, district, sub-district and village level government and justice institutions. After the research was completed, two villages in each province were re-visited by a separate team who met with villagers to verify the integrity of the data. Further verification at a more general level was carried out through a seminar in each province, where the research findings were discussed with an audience that included village representatives from each district, representatives from the police, prosecution service and courts, local government officials, academics and NGO workers.

Quantitative Survey

To complement the qualitative research, a survey of approximately 4500 respondents was conducted across the five provinces. The survey attempted to quantify community attitudes towards the formal and informal justice systems, and priority access to justice issues. A stratified random sampling method was employed, whereby a random 30 men and 30 women from the selected disadvantaged group were surveyed in each village, together with a random 30 men and 30 women who were not classified as members of the chosen disadvantaged group for that location.[173] The demographic characteristics of the sample, along with the quality control measures taken to ensure the integrity of the data, are detailed in Annex 1.

173 In cases where the selected disadvantaged group was gender-specific, the male or female relatives of the group were included in the sample as appropriate.

Survey Limitations

There are some important limitations of this survey. First and foremost, the survey is based almost entirely on perceptions of the formal and informal justice systems, as only a small percentage of respondents had actual experience of them. Perceptions are useful insofar as they give an indication of factors that may guide individual choices in addressing justice-related issues, but may provide a somewhat distorted picture of reality. For example, the qualitative research revealed that many respondents do not understand what prosecutors do, which limits the extent to which they provide a considered response to the question of whether or not they trust prosecutors. Assessments of systems or institutions as 'satisfactory' or 'unsatisfactory' also provide an insight into the opinions of respondents, but the lack of objective reference points limits the ability to draw conclusions about the actual performance of those systems or institutions.

Considering the education level of respondents and the subject-matter of the survey, it is possible that some respondents did not understand all of the questions in the survey and therefore provided answers that do not directly correspond with the questions asked, or simply provided a random answer to avoid the embarrassment of admitting that they did not understand the question. This may be a particular problem where respondents were asked to differentiate between potetially unfamiliar concepts such as the formal and informal justice systems and legal and non-legal problems. It is also possible that despite standardised training, bias was introduced by enumerators through the way they asked the questions and clarified any misunderstandings that respondents may have had. A lack of fluency in Indonesian, the language of the survey, was also an obstacle to some respondents. However, rather than excluding these respondents from the sample, either the enumerator or a third person would translate the questions into a local language and then translate the responses back into Indonesian for inclusion in the questionnaire. The downside of this is of course a greater possibility of misunderstanding or misinterpretation of either questions or answers by both respondents and enumerators.

The potential sampling error for the survey in its entirety (approximately 4500 respondents) is 1.5 percent with a confidence interval of 95 percent. The sample proportion was 50% percent - the proportion of the population who might be expected to answer in a certain way to key questions in the survey – conservatively set at 50 percent because this produces the maximum possible variation and therefore the maximum possible error. For provincial-level figures the potential sampling error is approximately 3.3 percent with a sample of 900 respondents; at the district level the figure is 4.6 percent with a sample of 450 respondents.[174]

174 Sampling error calculated with the online tool available at http://www.dssresearch.com/toolkit/secalc/error.asp (accessed 30 June 2006).

PART 2
FINDINGS

BARGE FULL OF LOGS IN KETAPANG

PART 2
FINDINGS

1. JUSTICE FROM THE PERSPECTIVE OF THE DISADVANTAGED

1.1 WHO ARE THE DISADVANTAGED ?

For the purposes of this assessment, the more disadvantaged or marginalized groups of people were selected as respondents. Members of these groups, although they may not necessarily consciously identify themselves as such, generally represent the poorest of the poor–those who are least able to enjoy their right to a standard of living adequate for their basic health and well-being, including sufficient food, housing, healthcare and education. The key assumption underlying their selection was that in general, the disadvantaged would face similar barriers to access to justice as villagers who were better-off, but to a greater extent.

Although the exact circumstances of each group differed from village to village, a number of groups with similar characteristics were frequently found to be amongst the more disadvantaged or marginalised elements of communities throughout the five provinces. A selection of these groups is shown in Table 3, and more detailed information about these and other groups selected in each province is provided in Part III of this report. The inclusion of groups here and elsewhere in the report should not be taken as implying that other groups in these areas are not disadvantaged or marginalised – indeed, in some cases, where the degree of disadvantage between two groups in one village was judged to be similar, the group that had not been selected in other villages was selected to ensure variety in the sample.

1.2 COMMUNITY PERCEPTIONS OF JUSTICE

'Justice' is an inherently value-laden term, the meaning of which is often different to different people in different places and at different times. Respondents throughout the assessment were invited to explain how they conceptualised justice and what justice meant to them in real terms. Although many respondents struggled to articulate their understanding of justice in the abstract, they generally experienced no such difficulties relating concrete examples of the many injustices to which they feel subjected.

Justice as Equality: Respondents in a number of villages in North Maluku identified justice as 'equality before the law',[175]. although the prevailing belief is that justice is unattainable for the poor. In that vein, women in Moti Kota, Ternate Municipality, likened justice to 'a glass half full' or a 'completely broken plate.[176] In Haruku, Central Maluku District, justice was equated with respect for human rights, and said to encompass values such as ethics, truth, freedom, equality and non-discrimination. In Sepa, also in Central Maluku District, respondents felt that justice was attained when one 'feels satisfied' with what has been given and no one is left feeling 'left out'.[177]

Justice from an Economic Perspective: A persistent theme that emerged in all five provinces was an emphasis on the economic dimension of justice, a clear reflection of priorities in communities where

175 FGD Desa Kayu Merah, April 2005; FGD with youths Desa Sasa, 6 April 2005; FGD with youths Desa Takofi, April 2005.
176 FGD with women, Desa Moti Kota, February 2005.
177 FGD with youths, Desa Sepa, April 2005.

TABLE 3: A SELECTION OF DISADVANTAGED GROUPS AND THEIR EXPERIENCES

Group	Locations	Example of Group Experience
Sharecrop or Landless Farmers	- Ketapang - South Konawe - Ambon - Ternate	Sharecrop farmers in Mokupa Jaya, South Konawe District, cultivate land under an arrangement whereby if land owners are satisfied with crops over a period of time, the farmer is given half the land. Farmers are unsure of how to arrange official deeds of title, and despite agreements to the contrary some owners have sold land without consulting or compensating farmers.
Internally Displaced Persons (IDPs)	- Central Maluku - Bengkayang - North Halmahera - Poso - Bau-Bau	IDPs in Amahai, Central Maluku District, have yet to be repatriated to their original villages due to bureaucratic impediments, and no timetable has been set for this to happen. They have difficulty obtaining subsidised housing and healthcare, and are socially estranged from their host community.
Women	- Bengkayang - Central Maluku - South Konawe - Bau-Bau - Donggala	Female fishmongers in Moti Kota, Ternate Municipality, contribute income to 30 households – in 19 of these households, these women are the sole breadwinner. The fishmongers' income is low and uncertain, and they are often reliant on the good-will of others to survive. In general, they own no property and are vulnerable to discrimination in the provision of subsidies for health, education and housing.
Casual Labourers	- Bengkayang - Ketapang - North Halmahera - Ambon	Casual gold-mining labourers in Monterado, Bengkayang District, work long hours in dangerous conditions without any occupational health and safety protections. There is a high risk of land slides and frequent exposure to dangerous substances such as mercury. Labourers' wages are sometimes withheld if they do not find gold.
***Adat* Communities**	- Ambon - Poso - Donggala	Farmers in Lonca, Donggala District, traditionally farmed their *adat* lands until they were compulsorily acquired by the government and included in the Lore Lindu National Park. The farmers argue that the government has ignored their *adat* land rights and reduced their access to cultivatable land.
Residents of Slum Areas or Geographically Isolated Hamlets	- Bau-Bau - Ketapang	279 people live in the hamlet of Kolagana, a geographically remote section of Palabusa in Bau-Bau District. Only approximately 10 percent are literate and most have no ready access to clean water or healthcare services. After land values increased when a new road was built through the area, a neighbouring community made claims on the land arguing that they had originally cultivated it. Residents of Kolagana do not know how to resolve this problem.

Source : Access to Justice Assessment Team Reports

daily life often revolves around the myriad challenges of maintaining an adequate livelihood. In particular, equality and non-discrimination in the distribution of government services and assistance were frequently cited as central to achieving justice by respondents across all provinces. This could be in relation to, access to and distribution of healthcare cards, subsidised rice, educational assistance or community development projects.

For example, respondents in Marunsu, Bengkayang District, felt that it was unjust that their village has never received a 'slice of the development cake', whereas villages in other sub-districts have been the beneficiaries of government projects year after year.[178] Likewise, female Ambonese IDPs living in Kailia-Lia, Bau-Bau Municipality, felt that it was unjust that they had received little assistance from government or other organisations despite

178 FGD with men, Desa Marunsu, 19 April 2005.

Women of Moti village, Ternate, North Maluku

their status as IDPs. Justice will be achieved, one woman explained, 'when we feel the same as other citizens in the village – that is, when we have our own homes and don't have to live in the homes of family or friends, when our children have an adequate education, and when we can live safely and peacefully and have enough food and drink for each day. If we can achieve this, then we will have justice.[179]

Social Justice: While principles of equality and non-discrimination are often relevant, they can also be problematic if interpreted strictly without making allowance for legitimate differences in needs, a premise that (in theory at least) underlies most government assistance schemes. This dilemma is neatly illustrated by the method of subsidised rice distribution adopted by the village head in Sasa, Ternate Municipality. To the frustration of poor sharecrop farmers, the method chosen is to divide the rice equally amongst all villagers without distinguishing between the needy and the better off. In response to criticism the village head explained that he had used this method in order to guard against allegations of 'preferential treatment' that could trigger resentment amongst sections of the community. Notwithstanding the fact that treatment should be preferential, provided it is based on relevant considerations such as financial situation rather than irrelevant considerations such as kinship relationships, and that regardless of which option he chose a section of the community would potentially end up unhappy.

179 FGD participant, Desa Kailia-Lia, 14 April 2005.

1.3 KEY JUSTICE - RELATED ISSUES AFFECTING DISADVANTAGED COMMUNITIES

Consistent with their economically-oriented conception of justice, many of the key injustices cited by disadvantaged communities relate to their social and economic welfare. These can be grouped into six main categories, namely:

- *Access to Government Services and Assistance*
- *Ownership and Management of Land and Natural Resources*
- *Gender Violence and Discrimination*
- *Employment and Labour Rights*
- *Criminality and Inadequate Law Enforcement*
- *Post-Conflict Security, Property Rights and Other Issues*

These injustices occur to some degree in every province, although conflict-related issues arose mainly in districts affected by conflict or that have provided refuge for those fleeing it. This section will first present the survey results of the key issues facing villagers in their daily lives, and then outline in general terms the specific thematic issues raised by respondents in FGDs and interviews throughout the assessment. Greater detail regarding the situation in each of the five provinces can be found in Part Three of this report.

Key Justice - Related Issues – Survey Results

Survey respondents in each of the 40 villages across the five provinces were asked to nominate in order of importance, the three most commonly encountered issues in their village from a list of 20 options. 'Poverty', 'education' and 'public health' were most frequently nominated as the number one, two and three issues respectively, while 'land disputes',[180] 'unemployment', 'domestic disputes' and 'criminality' were other commonly selected issues (see Table 4). Apart from minor fluctuations around the mean, there are no striking differences in the responses of men and women when the data from the five provinces is combined.

Disaggregating the data by province reveals many similarities but also a few key differences across the five provinces. Poverty

TABLE 4: MOST COMMONLY ENCOUNTERED ISSUES IN ASSESSMENT LOCATIONS – ALL PROVINCES

Rank	Number 1 Issue				Number 2 Issue				Number 3 Issue			
	Global (n = 4367)		Women (n = 2145)		Global (n = 4319)		Women (n = 2125)		Global (n = 4165)		Women (n = 2049)	
1	Poverty	48%	Poverty	49%	Education	33%	Education	30%	Public Health	14%	Public Health	16%
2	Education	11%	Education	13%	Poverty	10%	Poverty	11%	Unemployment	12%	Poverty	14%
3	Land Disputes	11%	Land Disputes	8%	Land Disputes	10%	Unemployment	10%	Criminality	11%	Unemployment	13%
4	Neighbourhood Disputes	5%	Domestic Disputes	6%	Unemployment	9%	Public Health	8%	Poverty	11%	Land Disputes	11%
5	Domestic Disputes	5%	Neighbourhood Disputes	5%	Public Health	7%	Land Disputes		Land Disputes	10%	Domestic disputes	8%

Source : Access to Justice Survey

'Global' = all survey respondents (male and female)
'Women' = female survey respondents only

180 The category of 'land disputes' encompasses three sub-categories – land disputes between citizens; between citizens and companies, and; between citizens and the state. The vast majority of response nominated disputes between citizens, followed by citizens and the state and lastly citizens and companies.

was most frequently selected as the number one issue in all provinces, while education was the most frequently selected number two issue. There was however significant variation amongst provinces in the most frequently selected number three issue, and also in the relative importance ascribed to different issues, as shown below.

West Kalimantan: Respondents in West Kalimantan placed the greatest emphasis on public health compared to respondents in other provinces, with 14 percent nominating it the number two issue and 29 percent nominating it the number three issue – the most nominated number three issue of all provinces. The number of respondents nominating poverty as the number one issue is approximately 20 percent higher than average across the provinces and the highest of them all. Unlike the other provinces, criminality is absent from the top five issues across each three categories.

Maluku: Unemployment was much more frequently cited by respondents in Maluku than on average, being the second most nominated number two issue (16 percent of respondents) and the most nominated number three issue (21 percent of respondents). Criminality also featured most strongly as an issue compared to other provinces, with eight percent of respondents nominating it as the number one issue in their village, 10 percent nominating it as the number two issue and a further 13 percent nominating it as the number three issue. Notably absent was any mention of public health amongst the top five most nominated issues in all three categories.

North Maluku: In stark contrast to all other provinces, divorce featured prominently as an issue in North Maluku. Twenty-five percent of women nominated divorce as the number two issue in their village.

Central Sulawesi: Land disputes were given a slightly higher weighting than other areas, being the most nominated number three issue, as were domestic disputes (the second-most frequently nominated number one issue). In contrast to all other provinces, education was not one of the top five issues cited by respondents as the number one issue in their village. Criminality also featured in the top two issues.

Southeast Sulawesi: Criminality featured prominently as an issue, with a level of responses similar to those in Maluku. Six percent of respondents labelled it the number one issue in their village, eight percent as the number two issue, and 18 percent as the number three issue (the most frequently nominated number three issue).

Access to Government Services and Assistance

This category encompasses both access to and inefficiency or corruption in the provision of government services and assistance, and accounts for approximately half of all the examples of injustice cited by respondents throughout the assessment. The government services and assistance in question include healthcare, education, subsidy schemes of general application and aid packages targeted specifically at victims of conflict, particularly IDPs. These issues correspond with poverty, education and healthcare nominated as the three most-frequently occurring issues by survey respondents. The issues canvassed here were present in all provinces, although not every issue is necessarily present in every village.

It may come as little surprise that complaints of maladministration and corruption of government subsidy schemes were near the top of the list of respondents' complaints. For example, in some villages, the illegal imposition of additional charges on

subsidised rice (*beras miskin* or *raskin*) by village officials renders it no cheaper than the market price. In others, subsidised rice is simply distributed evenly throughout the village, thereby reducing the amount received by the poorest households whom the scheme is designed to benefit (as outlined at 1.2 above). Likewise, holders of healthcare cards (*kartu asuransi kesehatan* or *askes*) who are entitled to subsidised medical care and medicines are sometimes forced to pay market prices by community healthcare workers, or are given what they perceive to be 'second-class' treatment. Compounding these problems are instances of negligent failure to register eligible recipients for the schemes; or the registration of ineligible participants - often relatives or friends of the village official administering the scheme – thereby excluding eligible recipients. Such practices further undermine the efficacy of many programs of government assistance and instil feelings of injustice in those who should benefit but do not. Others remain unaware of the benefits to which they are entitled.

The delivery of government assistance to victims of conflict is similarly plagued with troubles and a major cause of concern for those affected. Years after conflict has subsided some IDPs have not received their entitlements such as repatriation travel, cash grants and home rebuilding assistance, either because of administrative inefficiency or, more often, the embezzlement of funds earmarked for this purpose. IDPs also alleged that permanent residents of villages in which they had sought refuge were prioritised for regular government programs such as *raskin* and *askes*. Complaints such as these were prevalent in all of the districts directly affected by conflict, and amongst the Ambonese IDP community in Bau-Bau District of Southeast Sulawesi.

The high cost of education, the derelict condition of many schools and the alleged discrimination in the provision of educational scholarships were further issues said to produce injustice. In areas that have been the subject of transmigration programs, the provision of economic assistance to transmigrants such as subsidised housing and farming equipment frequently sparks jealousy amongst locals who feel worse off than the transmigrants and yet they have received no government assistance.Even access to clean water is not guaranteed for some. For example in Bau-Bau allegations were made of unequal distribution of scarce water resources to urban residents at the expense of rural residents; communities in Bengkayang suffer pollution of their water sources caused by illegal mining and water infrastructure in Poso was heavily damaged during the conflict.

Ownership and Management of Land and Natural Resources

As throughout almost all of Indonesia, ownership and management of land and natural resources are sources of tension in many of the districts that were the focus of the assessment. There are two main contexts in which these issues arise. The first is conflict over land use and ownership sparked by government appropriation of land for national parks, transmigration schemes or commercial use. In such circumstances the issue of non-recognition of claimed *adat* land rights is often at the centre of communal dissatisfaction. The second is lack of clarity concerning title over land, which can range from disputes between individuals to disputes on a much larger scale.

The declaration or expansion of national parks in Central and Southeast Sulawesi and West Kalimantan has had serious implications for many poor and disadvantaged citizens living in affected areas. For example, some nine years after the Rawa Aopa

Watumohai National Park was declared in Southeast Sulawesi, indigenous Tolaki residents sold land to Bugis farmers from South Sulawesi in adeal to which sub-district and district offi-cials were both parties. Several years later, after the Bugis farmers had cleared and cultivated the land, National Park rangers torched the crops on the grounds that they were within the boundaries of the National Park. The farmers are angry and confused as to why one branch of government permitted the sale of land while another subsequently destroyed the crops.

In West Kalimantan, farmers in Ketapang District whose land has been appropriated for inclusion in the buffer zone of Gunung Palong National Park allege that they were not given the opportunity to either participate in the development of policies directly affecting their livelihoods or negotiate adequate compensation for the appropriation of their property; nor have they been educated about the purpose of the government's environmental preservation policies in the region. Similar problems have arisen in Central Sulawesi in relation to the Lore Lindu National Park that spans Poso and Donggala districts. Disputes over land sparked by transmigration are particularly prevalent in Southeast Sulawesi, in both South Konawe and Bau-Bau districts. Here, land over which indigenous communities claim *adat* rights had been appropriated, reportedly without compensation, over a period of decades for use in government-sponsored transmigration programs. However, as with most cases there is more than one side to the story. According to the transmigrants, the land they received had not been used by indigenous communities for generations and these communities did not object at the time it was appropriated by government – only when they saw the potential of the land being realised by the more industrious transmigrants did they realise what they had lost and attempt to reclaim it. Consequently, productive land is now in some cases lying fallow as neither side dares use it for fear of sparking open conflict. In Central Sulawesi, similar problems have arisen but in the context of land allocations to state-owned companies such as PT Hasfarm and PT Mustika. According to the traditional owners, thousands of hectares of what is claimed to be *adat* land has been transferred to these companies without any payment of compensation.

BOX 3: CHANGES IN COMMUNAL LAND STATUS IMPACT *ADAT* COMMUNITIES IN CENTRAL SULAWESI

Since 1992, the Central Sulawesi government has enforced a policy whereby all unregistered land is deemed to be state land. This has resulted in the abrogation of rights to which communal *adat* title exists. In Watutau, hundreds of hectares of *adat* land have been given over to the state companies PT Hasfarm and PT Mustika, or have been designated part of the Lore Lindu National Park. Villagers have sought assistance from the provincial administration and parliament, but their efforts have been fruitless.[181] In 1995, the *adat* community in North Lore lost a large portion of their communal lands, when the government gave rights of use over 7,740 hectares to PT Hasfarm, without the payment of any compensation to villagers. Some villagers lost their livelihoods and income, as well as livestock which died as a result of PT Hasfarm's activities. The government initially offered employment to villagers, however PT Hasfarm subsequently brought in labourers from outside the community. Frustrated, the villagers began to reoccupy the land, while also taking their complaints to the Provincial DPRD and protesting at the subdistrict office. The company has allegedly failed to implement conservation policies and neglected to maintain large proportions of the land; no local taxes have been paid. To date the issue remains unresolved.

Source: FGDs in North Lore (Maholo and Watutau) and in Kulawi, Central Sulawesi, April 2005

181 The villages in Lore Utara subdistrict that have had land problems in connection with the Lore Lindu National Park are Watutau, Kaduwaa, Wuasa, Watumaeta and Sedoa.

An absence of certainty of title to land is also a key concern amongst many respondents, and is a particularly acute problem in the post-conflict areas that make up the majority of the assessment locations. Less than 25 percent of rural parcels of land in Indonesia have formal certificates of title, which apart from creating a fertile environment for disputes over land ownership, also has the indirect effect of hampering investment and agricultural productivity.[182] For example, in Desa Wayame, Ambon, sharecrop farmers have been harassed by 'outsiders' with no apparent connection to the land in question who threaten retribution if the farmers do not pay a 'fee' for using the land. To avoid this harassment, the farmers have shifted their crops deep inside the forest, damaging the environment and contaminating the local water supply. In West Kalimantan, lack of certainty of title to rubber plantations in Bengkayang District has caused headaches for farmers who are rendered vulnerable to land grabs by 'newcomers' moving into areas to take over lands abandoned by the Madurese. This situation arose after many companies abandoned their plantations before farmers had finished paying off their debt to the companies under a scheme by which farmers would only receive certificates of title to their plantations upon settlement of their debt.

Gender Violence and Discrimination

Violence and discrimination against women is an issue simmering beneath the surface in most, if not all, assessment locations. Although many women prefer not to discuss the issue in public, much less with people from outside of their village, incidents of domestic violence were either openly acknowledged or more discretely hinted at by women in FGDs and interviews. However, violence and discrimination against women is not limited to the family unit. In Poso, for example, there were frequent reports of sexual abuse of women at the hands of the security forces.

Female vegetable sellers in South Konawe reported sexual harassment by drivers who take them to market and of intimidation and theft by market thugs. In some villages of South Konawe, some respondents claimed that young girls were forced into under-age marriage. A number of women complained of abandonment by husbands who refuse to contribute to the costs of raising their children. In addition, as respondents in West Kalimantan argued, women often shoulder a far heavier workload than their husbands, matching their work in the fields as well as looking after their household. Not infrequent were tales of husbands who

BOX 4: SEXUAL ASSAULT BY THE SECURITY FORCES – 'NOT UNCOMMON'

In 2004, a TNI soldier from Palu sexually assaulted a 14-year-old girl in Tokorondo. In early 2005, she gave birth to a baby, however as of mid-June, the perpetrator had provided no support. With the support of an NGO, the family contacted the battalion, demanding that the soldier take responsibility. In a letter, central headquarters responded that it was handling the case, but at the time of the assessment the perpetrator was still stationed in Palu, with full benefits and duties. The soldier and his commander approached the family, offering Rp 2 million (around USD 200) to drop the case, but the family rejected the offer. One resident said: "It is not uncommon for soldiers at the end of their posting to take advantage of the situation, approach females without going through their parents, forcing or threatening them if they don't engage in sexual relations."

Sources: Interview with KPKPST NGO representative, Poso Pesisir, Central Sulawesi, January, 2005; FGDs in Tokorondo, Central Sulawesi, February and June 2005

182 14th Consultative Group Meeting on Indonesia: Statement on Poverty by Jehan Arulpragasam, World Bank Senior Economist, Jakarta, January 20, 2005. Available at http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/INDONESIAEXTN/0,,contentMDK:20324694~menuPK:287094~pagePK:141137~piPK:141127~theSitePK:226309,00.html (accessed 7 July 2006).

would drink or gamble away all of their earnings, leaving wives solely responsible for meeting the household budget.

Employment and Labour Rights

Employment and labour rights issues most frequently surface in district capitals where industry is present and farming is not the primary source of livelihood. However, they are not restricted to such areas and can also arise in rural areas where large scale plantation or mining companies are active. Wages payed to those engaged in manual work such as factory workers and stevedores are low and in many cases below the regional minimum wage. For example, factory workers at a pearl company in Bau-Bau District, most of whom are women work six days per week and earn approximately Rp 260,000 (USD 28) per month, just over 50 percent of the 2005 regional minimum wage for Southeast Sulawesi of Rp 498,600 (USD 50) per month.[183] Labourers working for a plantation company in North Lore subdistrict in Central Sulawesi alleged nonpayment of outstanding wages after ownership of the company changed hands.

Workers are often powerless to negotiate with employers who respond to their complaints or requests for better conditions with threats of dismissal. A similar fate awaits those who wish to establish or join a union, despite the existence of a constitutional right to do so. In the plywood factories of Ketapang, union leaders were often discriminated against to such an extent that they chose to resign rather than continue to endure the constant discrimination. Workers are commonly engaged without written contracts and with minimal occupational health and safety protections. When accidents do occur, some employers provide free treatment for work-related injuries while others will cover only half the cost, leaving workers to bear the remainder from their already meagre wage.

Criminality and Inadequate Law Enforcement

Criminality and inadequate law enforcement were of concern in many villages, but were

Informal gold miners in West Kalimantan

183 Regional Investment Indonesia (website of the Coordinating Board for Investment or Badan Koordinasi Penanaman Modal) available at http://www.regionalinvestment.com/index.php?option=com_content&task=view&id=889&Itemid=537 (accessed 7 July 2006).

BOX 5: A WORKPLACE DISPUTE ENDS IN COURT

In August 2003, the factory manager of a plywood factory in Desa Sukaharja imposed a 3-week ban on workers bringing food to the workplace after accusing them of not cleaning up after themselves. The ban applied only to labourers, and not to management. The workers considered this ban unjust, as they relied on bringing food from home to make the most of their meagre wage. During the third week of the ban, the factory manager conducted a raid, seized all food found in possession of the workers, and, according to some reports, burnt it. Incensed by this action, workers who were members of the Indonesian Wood and Forestry Workers Union (SPKHut) served the company with written notice that they would conduct a similar raid on management and subsequently did so, afterwards claiming that they had seized only food and cutlery. However, management reported four union organisers to the police, alleging their actions had caused damage valued at Rp 2 million. The four organisers were brought to trial at the Ketapang District Court, and were all convicted of damaging or destroying property (Article 406(1) Criminal Code), and inciting others to do the same (Article 55(1) Criminal Code).[184] The workers found this grossly unfair, considering the factory manager had not also been charged with destroying the property of workers. They allege the police, prosecution and judges had been 'bought' by the company.

Source: FGD with men & interview with Neighbourhood Association head, Kalinilam, West Kalimantan, April 2005

often not afforded the same level of priority other issues. The one exception is Poso district, which for a sustained period has experienced high levels of violent crime – often aimed at instilling terror in the population.[185] Without downplaying the seriousness of criminal activity in other conflict-affected districts in the assessment, the situation in Poso remains particularly acute with a litany of unresolved crimes stretching back to the start of the conflict.

One high-profile example is that of the village head of Tokorondo, who in 2002 was shot in the back of the head by unknown assailants as he was riding his motorcycle to his plantation. The Sulawesi Provincial Police and the National Police Headquarters took charge of the investigation but despite repeated demands for information, citizens allege that they have received no updates on the progress of the case. Although some criminal acts are perpetrated by private citizens, others are committed by the very security forces who are supposed to be addressing the problem. Villagers in Tokorondo claim at least 22 cases of abuse and violence occurred at the hands of the security forces during 2004, most of which remain unresolved.

In other districts, youth crime was cited as a problem and often linked with alcohol consumption. In Southeast Sulawesi respondents raised the issue of unresolved thefts, and in one such case a vigilante response occurred because the police force were regarded as ineffective and slow to respond. On the occasions when women in Central Sulawesi have reported domestic violence

BOX 6: VIGILANTE JUSTICE IN LABUAN BAJO

Traditional fishermen and port workers who live in Labuan Bajo, Central Sulawesi, don't expect crime to stop. During a wave of thefts, police and other security forces reportedly never bothered come to the village to look for the perpetrators. According to the fishermen and port workers, this is because the security forces themselves were often the perpetrators. Consequently, the community provides its own security through community monitoring of the village, and volunteers are quick to act if anyone is threatened. 'If a theft occurs, the victim screams and all of the men of the neighbourhood run from their houses, while the women scream out in support,' said one. 'If we catch the thief, we will beat him until he repents'.

Source: FGD in Labuan Bajo, Central Sulawesi, April 2005

184 Ketapang District Court Decision No: 11p/pid.B/2004 PN. Ketapang.

185 Indeed, the conduct of the assessment in Poso district was seriously impeded at times as continuing violence made conditions unsafe for the research team.

by their husbands, sons or sons-in-law to the police, the police have failed to make any arrests. Loggers in North Halmahera complain of extortion by police officers who demand illegal fees of up to Rp 200,000 per truck load of wood, threatening the confiscation of the wood if the loggers do not comply.

Post-Conflict Security, Property Rights and Other Issues

This category encompasses many of the issues described above that, because of the post-conflict environment in which they occur, are more severe or widespread than they may otherwise be. Post-conflict security, for example, involves not only actual violence such as that in Poso mentioned above, but also the threat of violence should IDPs return to areas in which they are no longer welcome. A related problem is obtaining adequate compensation for land in circumstances where its enjoyment by the original owner has become untenable due to the new religious or ethnic composition of the surrounding area, or as a result of appropriation by third parties, or both.

For example, Madurese IDPs from Bengkayang cannot return to their property due to continued fears for their physical security, and because much of their land is now occupied by Dayaks. Proving ownership is problematic - although some IDP land was registered with the National Land Agency (BPN) before the riots, most certificates of title were lost in the chaos of the conflict. Some IDPs, whose land has not been occupied and who retain proof of ownership, have managed to sell it to willing buyers. The majority, however, have not been so fortunate, and their primary concern is now to obtain adequate compensation for their land so that they can start a new life in another location. Resolution of this issue has so far proved elusive. IDPs are extremely dissatisfied with government efforts to date, and assistance from local NGOs has not been successful.

Another particularly sensitive situation exists in North Maluku in relation to the custody of Muslim children 'adopted' by Christian families during the conflict and raised as Christians. Of the approximately 100 Muslim children 'adopted', most have been returned to their natural families, but 15 remain with their 'foster' families who have refused to return them unless their natural families pay millions of rupiah in compensation for

BOX 7: 'SAVED' OR 'SEIZED'? THE MISSING CHILDREN OF TOBE

During the conflict in North Maluku, more than 100 Muslim children from Tobe village (some of whose parents had died in the fighting) were taken into the care of local Christian families. While the Christians took the view that they had 'saved' these children, many of their Muslim families felt that they had in fact been 'seized'. After the conflict subsided, the majority of the children were reunited with their biological families. However, fifteen Muslim children remained in the care of Christian families and were raised as Christians. When their biological families sought their return, the Christian families demanded compensation (amounting to millions of rupiah) for the expenses they incurred in looking after the children.

The children's biological families are poor and cannot afford to pay the amounts requested. Not only that, but they have also lost many otherwise productive work hours in attempting to resolve this problem. Apart from attempting to negotiate directly with the Christian families, they have also involved a number of local politicians and government officials in the negotiations but to no avail. They are reluctant to resort to the courts because the Christian families have threatened to use their influence with court officials (some of whom are relatives) to ensure the biological families do not win the case. Although recognized as a potential conflict-risk, this case is no longer a priority for the authorities. The biological families worry that if they resort to the courts, the law will not be on their side – and the truth and their children will be lost.

Source: Interviews with Secretary, Togoliua, May 2005; Chief of subdistrict police, South Tobelo, 30 April 2005; Coordinator for the Resolution of 'detained children,' Togoliua, 30 April 2005; Village Head of Togoliua, 5 Feb. 2005; Staff at Masehi Injili Church, Halmahera, April 2005

the cost of maintaining them. Unable to pay the amount requested, the parents and families have attempted to resolve the issue informally through negotiation and mediation, but without success (see Box 7).

As mentioned above, the provision of aid and government services to IDPs remains problematic, with significant numbers still living in barracks or with family members. In many cases, increased flows of aid have simply meant increased opportunities for corruption, and many respondents complained about not receiving their full entitlements, or worse, not receiving anything at all. Unemployment is another problem not specific to post-conflict regions, but one exacerbated by the dampening effect of conflict on provincial and district economies. To illustrate, village officials in North Halmahera estimated that as many as 70 to 80 percent of youths in some villages are unemployed because of the conflict. In one village, those who used to work at a banana factory that was destroyed during the conflict now scrounge an uncertain living as labourers or motorcycle taxi drivers. There are side effects as well – in Haruku village in Maluku, high youth unemployment is now seen as a major factor driving crime in the area.

Access to Justice = A Better Standard of Living?

A focus on the economic dimension of justice is the overwhelming theme to emerge from both the qualitative and quantitative research. In particular, it is hard to look past the fact that approximately half of all the examples of injustice cited by respondents concern access to and inefficiency or corruption in the provision of government services and assistance like healthcare and education. Employment and labour issues are also closely linked with citizens' ability to maintain an adequate livelihood, as are issues related to the ownership and management of land and natural resources. For example, poor pay and conditions for labourers are largely a result of their widespread inability to exercise their constitutional and legal rights to form a union and bargain collectively; otherwise productive land may lie fallow due to unresolved disputes over ownership between neighbouring communities. Significantly, the nature of many of these injustices is such that their resolution, even if only partial, should also lead to a direct improvement in living standards. The net effect of these findings, therefore, is to make the argument for legal empowerment programmes all the more compelling, because of the broader benefits to be realised by equipping communities with the knowledge and skills to assert their rights

2. COMMUNITY AWARENESS OF RIGHTS

Taking action to defend or claim a right presupposes that an individual or community possesses at least a basic awareness of the fact that they have been wronged in some way or are not receiving something to which they are entitled, if not knowledge of the actual right itself. It also requires that an individual or community is sufficiently aware of which people or institutions are available to help with the process of defending or claiming that right, if they are not capable of resolving the issue unassisted. This section examines community awareness of rights briefly surveys the currently available services and institutions that can provide legal assistance and contribute to raising community legal awareness.

2.1 COMMUNITY AWARENESS OF RIGHTS AND OPTIONS

Low Awareness of Actual Rights

The qualitative phase of the assessment found that community awareness of specific rights provided by Indonesian legislation is low. For example, in the assessment locations, women who are victims of domestic violence are largely unaware of the existence of Law No.23/2004 regarding the Elimination of Domestic Violence, in particular their rights as victims under Chapter IV and the obligations of the police and other agencies under the 'Protection' provisions of Chapter VI. Similarly, most labourers are ignorant of their rights under Law No.13/2003 regarding Manpower, such as to reasonable working hours and benefits, to belong to a union, to bargain collectively, and to strike.[186] Labourers engaged in physically dangerous work; such as gold-miners in Bengkayang District and port labourers in Ambon Municipality; are also unaware of their rights and the obligations of their employers in relation to workplace safety, as set out in Articles 12 and 14 of Law No.1/1970 regarding Occupational Safety and Chapter X of the Manpower Law.

Communities were found to have greater familiarity with informal justice processes. However this does not necessarily translate into knowledge of their rights under *adat* law that might be used to resolve their disputes. Given that *adat* law generally forms part of an oral tradition handed down from generation to generation, there is often no objective reference point to seek information on the law apart from the *adat* leaders who have something of a monopoly over knowledge of the subject. In West Kalimantan at least, communities at times appeared highly reliant on these leaders for knowledge of their rights and obligations. A lack of awareness of laws restricting rights can also cause problems – for instance, the women of Desa Sutra, Ketapang District, claim not to understand why the park rangers harass and arrest them in a seemingly arbitrary fashion for simply going about their daily work as they have always done in what is now the buffer zone for Gunung Palong National Park.

Who Makes the Rules and Why Does it Matter?

At a more general level, survey results indicate that while the majority of respondents are aware that national laws exist, fewer understood their significance or who was responsible for making them. Although most respondents (81 percent) had heard the term 'statute or legislation' (*undang-undang*),[187] fewer (63 percent) had heard of a 'regional regulation' (*peraturan daerah* or *perda*)[188] and only 46 percent thought that some aspect of their daily lives was affected/ governed by such laws or regulations.[189] Only 39 percent of respondents were able to provide an example of areas in which laws and regulations influenced their daily lives, the most frequently cited being taxes, electricity, traffic and the environment (in order of frequency). Thirty-two percent of respondents knew that law is made by the DPR and President, while 25 percent knew that regional regulations are made by the Provincial or District Legislature along with the Governor or District Head.[190]

Women Trail Men in Legal Awareness

When results are disaggregated by gender, women display a distinctly lower level of

186 See for example Chapter X 'Protection, Wages and Welfare' and Chapter XI 'Industrial Relations', Law No.13/2003 regarding Manpower.

187 n = 4524.

188 n = 4317.

189 n = 4524. Eight percent of respondents thought laws and regulations might affect their daily lives, 14 percent thought that they had no effect,and 29 percent did not know. Three percent of respondents did not provide an answer.

190 Only the DPR has authority to pass Laws (undang-undang), although the DPR, President and DPD can all submit bills for consideration. A Law is usually enacted with the joint assent of the President and DPR, although if the President refuses to give assent the bill will automatically become Law 30 days after receiving the assent of the DPR by operation of Article 20(5) of the Constitution and Article 38(2) of Law No.10/2004 regarding the Enactment of Legislation. The President can however issue Government Regulations in Lieu of Law, Government Regulations and Presidential Regulations: See Law No.10/2004.

legal awareness than men. Ten percent less women had heard of '*undang-undang*' as compared to men (76 percent and 86 percent respectively), while five percent fewer women than men could nominate 'the president and DPR' (the strictly correct answer), 'the DPR' or 'the President' as the parties responsible for making laws (62 percent of women compared to 67 percent of men). The disparities between men and women are even more pronounced in their knowledge about regional regulations. Fifteen percent less women than men had heard of a *'perda*' (56 percent and 71 percent respectively), while 12 percent fewer women than men could nominate 'the district head/governor and the DPRD' (the strictly correct answer), 'the DPRD' or 'the district head/governor' as the party responsible for making regional regulations (48 percent of women as opposed to 60 percent of men).

Action Demonstrating General Awareness of Rights

Of course, actual knowledge of specific rights or of the legislative process is of secondary importance to whether poor and disadvantaged individuals and communities are aware of their rights in general terms, and of what options are available to them to gain further information and provide assistance with rectifying breaches or non-fulfilment of those rights. The assessment uncovered many instan-ces in which the poor and disadvantaged took action that demonstrates a general awareness of their rights in a wide range of areas, including property ownership, healthcare, education, access to government subsidies and freedom from domestic violence. However, although citizens have often taken the initiative to complain to a relevant government agency, they frequently appear at a loss for what to do if no improvement results from their complaint.[191] The following examples are typical:

- Rubber farmers in **Beringin Baru**, Bengkayang district, have asked the district Plantations Office for help in resolving the issue of promised certificates for their land, and the district office has reportedly asked the company (PTP XIII) to resolve the problem, but no progress has been made. The rubber farmers do not know of anyone else they can ask for assistance.

Rubber Farmers in Marunsu, Bengkayang

191 The Asia Foundation made a similar finding in their 2001 survey - that 47 percent of rural respondents who experienced a legal case or dispute took no action because they did not know what to do (it being implicit that they believed their rights to have been infringed): Survey Report: Citizen's Perceptions of the Indonesian Justice Sector – Findings and Recommendations, The Asia Foundation, Jakarta, 2005, p. 81.

- In **Potuho Jaya**, South Konawe district, parents have approached the local government to complain about inadequate school facilities for their children. Despite promises of action, no improvements have been made and the parents do not know what else they can do.
- IDPs in **Gorua**, North Halmahera district, claim that the Office of Social Affairs has manipulated data by falsely registering some IDPs as having returned to their place of origin. As a result, these IDPs – 184 Muslim and 40 Christian households – cannot collect their entitlements such as healthcare cards and rebuilding allowances (*bahan bangun rumah* or BBR). Despite persistent queries, officials from the Office of Social Affairs have reportedly failed to provide any useful information on the IDPs' status or set a specific date for their return.

However, in some situations, citizens appear to be aware of their rights but feel constrained from taking action for either political, economic or social reasons, or a combination thereof. Examples of these reasons include the following:

- **Weak Bargaining Position:** Port labourers in Desa Nusaniwe, Ambon municipality, many working without written contracts, do not know how to negotiate with employers who often respond to complaints with threats of dismissal.[192]
- **Duty-bearer Complicity:** Residents in Marunsu have not formally complained about the illegal sale of alcohol and gambling in the village, because they strongly suspect police complicity in these activities and are therefore pessimistic about prospects for change.[193]
- **Expense:** Rubber farmers from Beringin Baru, Bengkayang district, have not gone directly to the plantation company offices themselves to try and resolve the issue of their land title certificates because the transportation costs are too high.
- **Preservation of Social Harmony:** Villagers in Sasa, Ternate municipality didn't complain about the inequitable distribution of subsidised rice 'to avoid a misunderstanding'.
- **Personal Relationships:** Citizens in Marunsu, Bengkayang district, were reluctant to complain about the nurse who only attended the village clinic for two hours every day and always left early to 'pick up her children from school' because she was nice and was not well-supported by her superiors.
- **Shame or Embarrassment:** Wives of port labourers in Gosoma, North Halamahera district, stated that unless they were in fear of their life they would not seek to resolve issues of domestic violence outside of the family sphere, or at most the village head, in order to avoid public shame and embarrassment.

Awareness of Domestic Violence

Survey results from the five provinces provide a further proxy indication of women's awareness of their rights in a range of different situations. Almost three-quarters of women survey respondents believe they if they were beaten and injured by their husband they would report the matter to the

192 FGD with men, Desa Nusaniwe, 12 May 2005; Interview with a youth, Desa Nusaniwe, 13 May 2005.

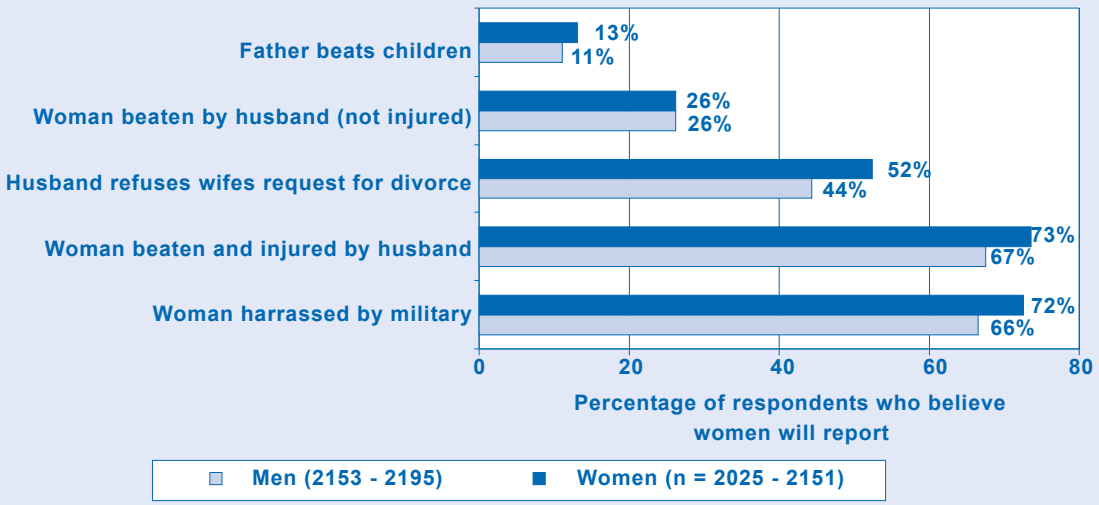
193 FGDs in Desa Marunsu, 17-19 April 2005.

local authorities (formal or informal – including the police, village head, religious leaders or *adat* leaders but not other family members or friends). A similar number would report being harassed by the military, but only a quarter would report being beaten but not injured by their husbands (see Chart 1). Again, while it is important to recognise that the perceived likelihood of reporting an incident is not a direct measure of awareness of rights, it does show that those who think they would report at least believe that they have been wronged in some way and that there is something they can do about it. Of course, the number of women who are broadly aware of their rights could well be much higher, but they may have other reasons for not reporting, such as embarrassment, a desire to preserve social harmony or a sense of futility. It is also important to bear in mind that these figures are indicative at best – there is no guarantee that an intention to report in the abstract will translate into action in a real-life situation.

Interestingly, men consistently rate women as less likely to report an incident than do women themselves, except in the case of a beating not causing injury (where the responses of men and women were identical). This could mean that despite their intentions, in practice women do not report abusive behaviour as often as they say they would. Alternatively, it could be that men are sometimes reported for criminal behaviour when they do not expect it. Further, the fact that far fewer women would report the beating of children than an assault on themselves tends to indicate that the former practice is considerably more socially acceptable than the latter. The qualitative research shows that the village authorities, *adat* or religious leaders would usually be the first point of complaint for most reported domestic violence cases. If women are not satisfied with the response at this level, 39 percent believe they would then go to the police, three percent indicated an intention to report to a court, and two percent stated

CHART 1: PERCEIVED LIKELIHOOD OF WOMEN TO REPORT DIFFERENT INCIDENTS

Question: 'In the following cases, will a woman report to the local authorities?' (Local authorities includes the police, village head, *adat* or religious leaders, but not family members or friends)



Source: Access to Justice Survey - All Provinces

they would report to an NGO or legal aid organisation. The remaining 56 percent say they would do nothing.[194]

Three provinces stand out when the data is disaggregated by province. Central Sulawesi is prominent for being the province where both male and female respondents estimate that women are most likely to report incidents. On average at least 20 percent more respondents in Central Sulawesi than in any other province predict that a woman will report a particular incident and for some types of incident the figure is more than double that of other provinces. In Southeast Sulawesi, there was a huge gap in the number of men and women who thought a woman would report if she was beaten and injured as opposed to beaten without suffering any injuries, going from the lowest percentage of respondents in all provinces (for the former category) to the second highest (for the latter category). By contrast, in Maluku men consistently rated women as more likely to report such incidents than did women themselves.

Success Stories

While it would be misleading to characterise poor and disadvantaged citizens' access to the formal justice system generally as anything greater than limited, the assessment did nevertheless document a number of cases in which citizens successfully pursued their grievances through the courts, police or other state institutions. For example, a mother of four in Gamhoku village, North Maluku, took action to divorce her husband who had abandoned her and whose whereabouts were unknown. Despite being unfamiliar with the legal system, she took the initiative to visit the Religious Court, met the Registrar and requested information on divorce proceedings. After studying the information, she decided to file a petition for divorce. Although apprehensive of appearing before a judge, she represented herself during the hearing and was rewarded with the granting of a divorce, custody of her children and joint marital property consisting of a coconut grove to compensate for the lack of child maintenance.

Villagers in Lambusa, Southeast Sulawesi, also successfully resorted to the formal justice system to resolve a case of theft. In 2001, building materials bought to construct a mosque and kindergarten in the village mysteriously went missing. After investigation by village authorities, the building materials were found in the possession of a resident of a neighbouring village. He claimed that he had bought the materials from a young man from Lambusa, who was eventually located and handed over to the sub-district police for questioning. The case went to trial, and the young man was convicted of theft and sentenced to 18 months months imprisonment by the Kendari District Court.

A further example is the case of port labourers in Gosoma, North Maluku, who took action against nepotism and corruption in the port management authority. After an official embezzled Rp 24 million (around USD 2400) by forging a fictitious purchase of gas masks for the labourers, a number of labourers reported the incident to the sub-district head whom they thought may be able to assist. On the contrary, the sub-district head could do nothing, the labourers were threatened by management and their salaries withheld for a week. Some of the labourers initiated a petition to report the matter to the police, but failed to gain wide-

194 n = 1791. An additional 2733 respondents did not provide a valid answer.

spread support due to fears of sackings. Although the embezzlement went unresolved, the workers did make progress by seeking an audience before the local parliament (DPRD) to complain about the secretary of the port authority they alleged had a conflict of interest because he was also a civil servant. As a result, the secretary was compelled to withdraw from his post.

2.2 RAISING AWARENESS THROUGH LEGAL AID AND COMMUNITY OUTREACH

Lawyers and legal aid have the potential to play a vital role in connecting communities with formal justice system actors, provided that communities are aware of their existence, and (amongst other things) they are both geographically and financially accessible. Community outreach by government institutions and NGOs can also be instrumental in raising community legal awareness of rights and of the people and institutions that are available to provide assistance with problems of a legal nature. The following is a brief overview of currently existing opportunities for citizens to access legal assistance from either private lawyers, through state-funded schemes or from community organisations, together with community outreach activities aimed at increasing community legal awareness.

Private Lawyers

The number of practicing lawyers in the assessment locations is relatively small, probably because of the low number of people who can afford their fees. Lawyers predominantly base themselves in the provincial capitals and to a lesser extent in the district capitals, close to the courts and a wealthier client-base. In Maluku, for example, there are approximately 50 lawyers in the provincial capital of Ambon, but only one or two in Masohi, the capital of Central Maluku district.[195] Fees are agreed between lawyer and client – sometimes by reference to a percentage of the value of the case, and the capacity of a client to pay. Their fees and geographical location tend to put lawyers' services well out of reach of the poor and disadvantaged, particularly those living in rural areas. In addition to the opportunity cost of lost working hours, rural residents must also bear the expense of either travelling to the city to see a lawyer, or covering the lawyer's travel to their village.

The *Pro Bono* Requirement for Private Lawyers

Advocates are ethically obliged to provide legal assistance free of charge (*pro bono*) to indigent clients in both civil and criminal matters under Article 7(h) of the Code of Ethics for Indonesian Advocates. Advocates are also legally obliged to do so under both Article 56(2) of the Indonesian Code of Criminal Procedure (KUHAP) where they are appointed by a court to act for a defendant in a criminal trial, and under Article 22 of Law No.18/2003 regarding Advocates.

The procedure for appointment of counsel by a court under the KUHAP is largely an informal affair – for example, in Ambon the judges of the District Court reportedly know which lawyers have the 'necessary social spirit' for *pro bono* work, and will only call on those lawyers to act for indigent defendants.[196] The procedure for the provision of *pro bono* legal services by advocates under Article 22 is to be regulated by Government Regulation, which, at the time of writing, remained in draft form. Apart from establishing procedures for indigent litigants to request *pro bono* assistance, the draft Regulation regarding the Conditions for and Method of Provision of Free Legal Assis-

195 Interview with executive director of LBH Baku Bae, Ambon, 12 December 2005. The executive director felt that 50 advocates was actually too many for a town the size of Ambon, considering the low spending power of its inhabitants, and that too many advocates could lead to 'unhealthy competition' and prevent lawyers from making a reasonable living.

196 Interview with Executive Director of LBH Baku Bae, Ambon, December 2005.

tance proposes sanctions for advocates who refuse to provide *pro bono* legal assistance to indigent clients, ranging from an oral warning to withdrawal of the right to practice (Article 10).[197] The range of situations in which sanctions can be imposed is left to the discretion of the Honour Council of the Advocates' Organisation (PERADI).

In practice, the assessment found that the provision of *pro bono* legal assistance by advocates is limited. For example, in Palu, the secretary of the Indonesian Advocates' Association (AAI) reported that the police, prosecution service and the courts had made no requests to members of his organisation to provide their services *pro bono* during the 18 months to January 2006[198] (although this does not take into account instances of citizens approaching lawyers directly). When they do engage in *pro bono* work, lawyers will reportedly recover their costs by charging higher fees to wealthier clients. As will be explained below, central government funding that lawyers can claim for providing legal assistance to indigent clients is extremely limited, although some district administrations do provide a small amount of additional funds for this purpose.

Implied Constitutional Right to Legal Assistance

In a 2004 decision concerning Law No.18/2003 regarding Advocates, the Constitutional Court of Indonesia recog-nised an implied right to legal assistance in the Constitution. The Court argued that as Article 1(3) of the Constitution establis-hes Indonesia as a state governed by the rule of law, it therefore follows that 'the right to legal assistance, as a human right, must be considered a citizen's constitutional right, even though the Constitution does not explicitly regulate or state this, and therefore the State must guarantee its fulfilment'.[199] The provision of legal aid by both state and non-state actors is a vital means of ensuring the fulfilment of this right for poor and disadvantaged citizens.

State-Sponsored Legal Aid

There are a number of state-sponsored facilities, providing legal aid or court cost waivers to indigent defendants or litigants. However, these schemes are by no means comprehensive, are themselves chronically under-funded, and are not well-known amongst prospective beneficiaries. Legal aid in civil cases remains governed by a Dutch civil procedural Code dating back to 1848: the *Herziene Indonesisch Reglement* (the Revised Native-Indonesian Regulation or H.I.R).[200] Under Articles 237-242 of the H.I.R., a court may, at its discretion, waive lodgement and other administrative fees in civil cases involving a litigant is classed as indigent, under a procedure termed *pro deo* (from the Latin 'for God'). To be classed as indigent and hence eligible for *pro deo*, a prospective litigant must obtain a letter certifying their indigence from the relevant village or sub-district authorities and attach it to the statement of claim lodged with the court registry. The actual criteria against which a person is judged indigent do not appear to be well-defined and their application in practice rather subjective, with particular weight reportedly being given to a person's outward appearance including their clothing and jewellery. [201]

197 Draft regulation available at http://www.legalitas.org/database/rancangan/2004/cuma2.htm.

198 Interview with Secretary of AAI Palu, Palu, 18 January 2006.

199 Constitutional Court Decision Number 006/PUU-II/2004, 13 December 2004, p. 29.

200 A joint civil and criminal code applicable only to Indonesians in the Dutch East Indies that was promulgated in 1848, revised in 1926, further amended in 1941 and parts of which remain valid today: Lev, Daniel S., 'Colonial Law and the Genesis of the Indonesian State' 40 (October 1985) Indonesia 57 at 61.

201 Interview with Registry Secretary, Ambon Religious Court, 16 December 2005.

Pro deo is not full legal aid, as the court is not obliged to appoint a lawyer to act on the indigent litigant's behalf, although court staff may be able to help with the drafting of documents associated with filing a statement of claim.[202] Indigent litigants needing more detailed legal advice or legal representation in court must rely on a lawyer volunteering his or her services, rather than a court-appointed lawyer, although courts may in some cases be able to assist with linking the litigant with a lawyer prepared to assist on a *pro bono* basis. Equally important to note is the fact that *pro deo* does not absolve an indigent litigant from bearing the costs involved with serving summons and calling witnesses. This can be prohibitively expensive, particularly for rural residents living some distance from the court.

For more serious criminal cases, Article 56 of the Indonesian Code of Criminal Procedure regulates the provision of legal aid by the state. For those charged with or suspected of crimes punishable by the death penalty or a maximum term of imprisonment of 15 years or more, Article 56(1) requires that officials in charge of each stage of proceedings (that is, the police, the prosecution service or a court) must appoint a lawyer for the accused if they do not already have one, regardless of the financial status of the accused. For those charged with crimes punishable by a term of imprisonment of five years or more, Article 56(2) requires officials to appoint a lawyer only if the accused is indigent and therefore unable to afford a lawyer at his or her own expense. The test of indigence in criminal cases is similar to that for civil cases outlined above – that is, a certificate of indigence combined with a subjective assessment of appearance. There is no provision for legal aid for offences punishable by a term of imprisonment of less than five years.

Although Article 56(2) stipulates that lawyers appointed under this mechanism must provide their services free of charge, until recently there was a method by which these lawyers could claim a set fee from the then Ministry of Justice. Lawyers contacted during the assessment explained that until 2004, they received a flat fee of between Rp 250,000 – Rp 400,000 per case for which they acted as a court-appointed lawyer (the official allocation from the Ministry of Justice was reportedly Rp 500,000).[203] However, this funding ceased in 2004 with the transfer of administrative responsibility over the courts from the Ministry to the Supreme Court under the 'one roof' amendments discussed earlier (at 2.5). It has now been replaced by a Supreme Court adminis-teredlegal aid fund that in 2005 was worth Rp 1.5 billion (USD 150,000) with 500 criminal cases being awarded Rp 3 million (USD 300) each. In 2006, funding was reduced to Rp 1.25 billion (USD 125,000) with 250 cases receiving Rp 5 million (USD 500) each. The funding is only available for criminal cases tried in district courts, and does not cover criminal appeals or civil actions in the district, administrative or religious courts.[204] Unfortunately, information regarding the procedure for applying for funding, or the criteria for awarding it, was unavailable at the time of writing.

Surprisingly, no lawyers or district court judges or officials contacted during the

202 These court staff may or may not have formal legal training. For example, at the Ambon District Court, civil registry staff who provide quasi-legal advice have either senior high school or bachelor's degree level education, not necessarily in law: Interview with a Junior Registrar, Ambon District Court, 12 December 2005.

203 A lawyer in Ambon reported that the fee he used to receive from the Regional Office of the now Department of Law and Human Rights was Rp250,000 per case, while a lawyer in Ternate reported that he used to receive Rp400,000: interview with a lawyer, Ambon, 13 December 2005; interview with a lawyer, Ternate, 16 December 2005.

204 Interview with Ms. Nisa Istiani, Consultant for the Judiciary Reform Team, Supreme Court of Indonesia, Jakarta, 4 October 2006.

assessment appeared to be aware of this source of funding, indicating that it is not well publicised or not distributed equally to all provinces (or both). Consequently, most court-appointed lawyers in the five assessed provinces are currently providing their services on a true *pro bono* basis. The one exception is in West Kalimantan, where district administrations in both Ketapang and Singkawang have made limited budget allocations for the provision of legal services to indigent criminal defendants (see Annex 2 at 3.2). Further, in Ketapang some funds are allocated to fund legal representation in civil matters which is outside the scope of the current national level legal aid scheme.

A number of civil society organisations are currently pushing for the enactment of a Legal Aid Law, a draft of which they were preparing at the time of writing. The Draft Law guarantees state funding for legal aid providers, without, notably, the requirement that a legal aid provider be admitted to practice as an advocate.[205] To qualify as a legal aid provider, an educational background in legal studies at the undergraduate level would be sufficient – a formal law degree would not be required. Under the proposed scheme there would be no differentiation between the provision of legal aid in criminal or civil cases, and the key determinant of eligibility for legal aid would be a person's financial status. As with the current *pro deo* and legal aid procedures, under the Draft Law, indigence would be proved through a certificate from a village or subdistrict official. Funding is called to be set at a minimum of one percent of the State Budget. However this seems to be a highly aspirational figure considering the government's present difficulties in lifting the national education budget above the 9.1 percent allocated in the 2006 State Budget and closer to the 20 percent mandated by the Constitution.[206] The fate of the Draft Law will of course depend heavily on the response it receives from government and the legislature, which, at the time of writing, remained to be seen.

Community-Based Organisations Engaged in Provision of Legal-Related Services

In its 2004 decision referred to above, the Constitutional Court observed that non-profit organisations play a vital role in ensuring access to justice for the poor.[207] The three largest non-government legal aid organisations in Indonesia are the Indonesian Legal Aid Foundation (*Yayasan Lembaga Bantuan Hukum Indonesia* or YLBHI), the Indonesian Legal Aid and Human Rights Association (*Perhimpunan Bantuan Hukum dan Hak Asasi Manusia Indonesia* or PBHI) and the Indonesian Women's Association for Justice Legal Aid Institute (*Lembaga Bantuan Hukum Asosiasi Perempuan Indonesia untuk Keadilan* or LBH-APIK). However, at the time of the assessment, only LBH-APIK had an office in West Kalimantan province, and none had offices in Maluku, North Maluku, Central Sulawesi or Southeast Sulawesi provinces (although PBHI subsequently established an office in West Kalimantan in December 2005). While a number of local organisations provide either legal or quasi-legal services, often to specific sections of the community or in relation to specific issues, a serious vacuum remains when it comes to the provision of generic legal services to individual poor and disadvantaged members of the community, especially in rural areas.

205 The absence of the requirement to be admitted would open the door for non-admitted legal graduates working for NGOs such as YLBHI to provide legal services and receive government funding for doing so. Enactment of such a provision may also require simultaneous amendment of the Law on Advocates in order to ensure consistency between the two Laws.

206 'Menkeu: Perubahan Anggaran Pendidikan Maksimal 10 Persen', Antara, 7 June 2006, (accessed July 2006).

207 Constitutional Court Decision Number 006/PUU-II/2004, 13 December 2004, p. 29.

Legal Aid Institute for Women and Families (LBH PeKa) in West Kalimantan

For example, in West Kalimantan LBH-APIK provides legal services, but only to women, primarily in cases of domestic violence and those involving female migrant workers, and with a geographic focus on districts that lie on or close to the border with Malaysia. The Consultation and Legal Aid Institute for Women and Families (LBH PeKa) does similar work in a similar geographic area. However, there are no equivalent services provided in the southern district of Ketapang, where NGO activity in general appears minimal. In North Maluku, the Legal Consultation Unit of Khairun University provides limited free legal advice to those in Ternate, but no other organisations were identified as providing actual legal aid in Ternate or North Halmahera. Similarly, in Maluku LBH Baku Bae provides very limited legal aid services to those within the vicinity of Ambon Municipality, but it has no external sources of funding, no office and the Executive Director has noted 'the fading idealism of some members'.[208] Although a number of other NGOs are engaged in advocacy work in Maluku, at the time of the assessment, none appeared to be engaged in the provision of legal advice or services. The legal aid landscape in Southeast Sulawesi is equally barren. However, in Central Sulawesi four organisations provide legal-related services, primarily on collective issues affecting groups such as farmers or conflict-related cases of violence.

Impact of Law on Advocates on Provision of Legal Aid by Community-Based Organisations

Many of the staff working in the community-based organisations referred to above are not legally trained, and of those that are, most have not been admitted to practice as advocates. The enactment of Law No.-18/2003 regarding Advocates therefore caused serious consternation within the legal aid community due to Article 31 of the Law, which made it a criminal offence to work as an advocate without a practicing certificate from the Indonesian Advocates' Association. As was explained above, the Law defines 'advocate' very broadly, meaning that anyone who provides any form of

208 Interview with executive director of LBH Baku Bae, Ambon, 12 December 2005. Considering these circumstances, some question exists as to whether LBH Baku Bae can rightly be said to still exist.

legal services would fall within the definition, regardless of whether or not they accept payment for those services.[209] The effect was that persons previously involved in legal aid work both in and out of court – particularly through the types of NGOs and university legal aid clinics mentioned above – would not be able to continue to do so unless they were admitted to practice as advocates. For university lecturers admission was impossible due to the prohibition against public servants being admitted as advocates,[210] while the cost and time involved in gaining admission was a significant barrier for many NGO workers.[211] There were at least several documented cases of lecturers involved in university legal aid clinics being investigated by the police for alleged violations of Article 31.[212]

In 2004, the constitutional validity of Article 31 was challenged in the Constitutional Court by three law lecturers from Muhammadiyah University in Malang, East Java, who were involved in the provision of legal aid services through the Law Faculty's legal aid clinic. The lecturers had been refused permission to represent a client of the legal aid clinic who was under investigation by the Malang District Police, on the grounds that they were not admitted to practice as advocates. The Constitutional Court upheld their challenge and declared Article 31 invalid on the grounds that it breached Articles 1(3) and 28F of the Constitution.[213] In its judgement, the Court made the important observation that the Law on Advocates:

> *should not be interpreted as a means of legalising and legitimising the position that only advocates are permitted to appear before a court, because such matters must be regulated by the law of procedure. However, the law of procedure as it currently stands does not require parties who appear before a court to be represented by a lawyer. Therefore, from the absence of such a requirement it follows that parties other than advocates must not be refused permission to represent parties before a court. This is also in accordance with the prevailing conditions in society, where the number of advocates is not sufficient, nor evenly spread, compared to the geographic area* [*of Indonesia*] *and the number of citizens who require legal services*.[214]

However, despite the clear words of the Constitutional Court, anecdotal evidence suggests that many judges have adopted a restrictive interpretation of the judgement and are continuing to refuse non-admitted lawyers (that is, non-advocates) leave to appear before them. Their refusal is based on the argument that the invalidation of Article 31 only removes the criminal penalty for non-advocates purporting to act

208 Interview with executive director of LBH Baku Bae, Ambon, 12 December 2005. Considering these circumstances, some question exists as towhether LBH Baku Bae can rightly be said to still exist.

209 Article 1 Law No.18/2003 regarding Advocates.

210 Article 3(1)(c) Law No.18/2003 regarding Advocates.

211 As mentioned at 2.4.2, admission requires the completion of a course run by the Indonesian Advocates' Association (approximately 1 month and costing Rp4-5 million) followed by 2 years of work experience in an advocate's office.

212 Constitutional Court Decision Number 006/PUU-II/2004, 13 December 2004, p. 23.

213 The Court held that as Article 1(3) establishes Indonesia as a state governed by the rule of law, it therefore follows that 'the right to legal assistance, as a human right, must be considered a citizen's constitutional right, even though the Constitution does not explicitly regulate or state this…'.The Court considered Article 31 breached this implied right to legal assistance by restricting the ability of non-admitted legal practitioners to provide legal advice, and thereby also restricted the ability of citizens to obtain such advice. Similarly, under Article 28F every person is guaranteed the right to 'seek, obtain…and convey information'. The Court was of the opinion that a person requiring out-of-court legal services in essence wants to obtain legal information, and that it is every person's right to choose from where they obtain that information. The Court held that the effect of Article 31 was an unacceptable restriction on this right to obtain information.

214 Constitutional Court Decision Number 006/PUU-II/2004, 13 December 2004, pp 31-32.

as an advocate, but not the prohibition against the practice itself.[215] Such an argument appears to have no basis in the Law on Advocates, which, apart from the now invalid Article 31, makes no mention of any restriction on non-advocates enga-ging in the provision of legal services. It is also clearly inconsistent with the Constitutional Court's understanding of the effect of its ruling, as demonstrated by the passage of the judgement extracted above. It seems that some judges will still allow non-admitted practitioners to appear before them, where they recognise those practitioners to be associated with LBH and other similar organisations.[216] However, other judges are reported to be less sympathetic and it therefore remains to be seen how and if the Constitutional Court's decision can be effectively enforced.

Existing Community Outreach Programs

Community outreach programs by government institutions and civil society organisations can assist to raise community legal awareness and empower communities to claim their rights. The assessment has documented reports of outreach activities being conducted by both government and non-government institutions. However, these activities are limited in scope and frequency, their impact uncertain, and, crucially, few if any respondents contacted during the assessment had ever been involved in a program aimed at building their legal awareness.

The Ministry of Law and Human Rights is the key government institution charged with raising community legal awareness. It has a regional office located in each provincial capital. The core functions of the regional offices include 'fostering of legal culture, provision of legal information, raising public legal awareness and disseminating information relating to human rights'.[217] Prime responsibility for this rests with each office's Division for Legal Services and Human Rights, which contains subsections for legal documentation and information; dissemination of information related to human rights, and; legal aid and public legal awareness. Because it is a central government institution, the Ministry of Law and Human Rights legal awareness activities focus only on national-level legislation rather than regional regulations.

Each year specific laws are targeted for socialisation, which recently have included those related to human rights, domestic violence, narcotics and regional elections.[218] Each regional office is supplied with materials for this purpose, although not necessarily in an easily digestible format – most consist simply of a booklet version of a law in its original form with 'Basic Materials for Building Legal Awareness' (*Bahan Pokok Penyuluhan Hukum*) printed on the cover. Teams of office staff and local university lecturers are then formed and travel to the small number of villages for which funding is allocated, and conduct information sessions in public halls or at the local school. The 'Legally Aware Families' (*Keluarga Sadar Hukum*) program is another nationwide initiative ostensibly aimed at increasing legal awareness, and involves a legal information session in a village followed by a quiz about the legal issues covered. The winners advance to 'play-offs' at the sub-district, district and provincial levels before a national final is held in Jakarta. However, despite having the outward appearance of a positive initiative,

215 Interview with Restu Mahyuni, International Relations Division of YLBHI, Jakarta, 3 October 2006.

216 Interview with Asfinawati, Director of LBH Jakarta, 4 October 2006.

217 See for example the Core Tasks and Functions of the Maluku Regional Office of Law and Human Rights: (accessed 13 July 2006).

218 Interview with the Head of the Division of Law and Human Rights Services at the Maluku Regional Office, 12 December 2005.

the 'Legally Aware Families' program has been tainted by its reputation as a New Order tool for social control, heavy on emphasising obligations but light on promoting rights.

Provincial and district/municipal governments also have divisions responsible for raising public legal awareness and socialising new regional regulations (*perda*). At the provincial level, a legal bureau (*biro hukum*) is located within the secretariat of the provincial government (*sekretariat daerah*). Within each legal bureau is a division (*bagian*) for legal information, which in turn is split into sections (*sub-bagian*) for public legal awareness and legal documentation. The exact names and responsibilities of these divisions and sections may vary according to region, but the basic structure remains similar.[219] There is also a legal division (*bagian hukum*) within the secretariats of district and municipal governments, again commonly including sections for public legal awareness and legal documentation.[220]

The Maluku Regional Office of Law and Human Rights cites low education levels amongst the population and limited funding for socialisation as the key obstacles to realising greater community legal awareness.[221] At the time of the assessment, the Ministry of Law and Human Rights was reportedly considering a new model for outreach activities, due for release some time in 2006.[222] Although the assessment did not collect detailed information on the activities of provincial and district governments, anecdotal evidence suggests that socialisation of regional regulations at this level is even more problematic than national laws. In an apparent attempt to address this issue, the Ministry of Law and Human Rights was in December 2005, negotiating a memorandum of understanding with the Ministry of Home Affairs, which would enable greater co-operation between its regional offices and sub-district and district administrations. This could involve these administrations making a monetary contribution to legal awareness campaigns conducted by regional offices within their jurisdictions, while in return the regional office would assist with the socialisation of regional regulations, a task currently beyond the scope of their responsibilities. [223]

Public prosecutors offices are also required to contribute to raising public legal awareness, and while detailed information was not available, their outreach activities appear to be very limited in scope. For example, since its establishment, the Tobelo Public Prosecutors Office reports having conducted outreach programmes in only seven of the 174 villages within its jurisdiction,[224] while the Ambon Prosecutor's Office claims to reach only eight of the 50 villages within its jurisdiction every year.[225] Police are also mandated to conduct legal awareness campaigns, but the assessment did not collect information on the status of current programs. The assessment documented NGOs in each province conducting outreach activities on topics relevant to their area of focus, but due to funding and personnel constraints these activities are invariably of limited scope and geographic coverage.

The medium of information dissemination greatly affects the chances of that information

219 See for example the structure of the Legal Bureau of the Central Sulawesi Provincial Government at (accessed 13 July 2006).
220 See for example the structure of the Legal Division of the Bulungan District Government at (accessed 19 July 2006).
221 Interview with the Head of the Division of Law and Human Rights Services at the Maluku Regional Office, 12 December 2005.
222 Interview with the Head of the Division of Law and Human Rights Services at the Maluku Regional Office, 12 December 2005.
223 Interview with the Head of the Division of Law and Human Rights Services at the Maluku Regional Office, 12 December 2005.
224 Interview with a public prosecutor, Tobelo District, 12 February 2005.
225 Interview with the Chief Prosecutor for Ambon Municipality, 13 December 2005.

reaching its target audience. In its 2001 survey, The Asia Foundation found that television is the most widely accessed source of general legal information (79 percent of respondents), followed by radio (49 percent of respondents) and newspapers (48 percent of respondents).[226] Figures were higher in urban areas and lower in rural areas, but followed a similar pattern. In 2004, the National Legal Development Agency (*Badan Pembinaan Hukum Nasional* or BPHN) conducted a limited evaluation of legal awareness campaigns conducted by three regional offices of the Ministry of Law and Human Rights and found that television broadcasts on legal issues, such as those by national public broadcaster TVRI (*Televisi Republik Indonesia)*, were one of the more effective ways of reaching the population (although the method by which effectiveness was measured was not specified).[227] Other examples of state-sponsored legal awareness campaigns in the mass media include a 10 minute radio slot broadcast after the midday news every Monday on the public radio broadcaster RRI (*Radio Republik Indonesia*). Three four-episode educational radio plays were broadcast throughout 2004.[228]

3. FACTORS INFLUENCING CHOICE OF FORUM

If citizens perceive that their rights have been breached or their entitlements withheld, the formal or informal justice systems offer several possible alternatives. Both the qualitative and quantitative components of the assessment found that citizens strongly prefer the informal justice system, confirming similar findings by The Asia Foundation and the World Bank.[229] This section considers some of the reasons why citizens choose one system over another, if indeed such a choice actually exists.

3.1 PATTERNS OF USE OF FORMAL AND INFORMAL JUSTICE SYSTEMS

Little Difference between Formal and Informal

Both the qualitative and the quantitative research show community preferences are clearly in favour of the informal justice system. However, actual patterns of use show that in practice there is surprisingly little difference between the numbers of respondents who have used the formal justice system as compared to the informal justice system. Throughout the five provinces, 10 percent of respondents claimed to have used the formal system, while only a slightly greater 12 percent claimed to have used the informal system (see Chart 2). It therefore appears that while citizens may prefer the informal system for either its relative or real advantages over the formal system, there remain some cases for in which citizens are prepared to use the formal justice system as the more appropriate (or indeed only) option.[230]

226 Survey Report: Citizen's Perceptions of the Indonesian Justice Sector – Findings and Recommendations, The Asia Foundation, Jakarta, 2005, p. 95.

227 'Kegiatan-Kegiatan Penyuluhan Hukum BPHN', BPHN website, (accessed 13 July 2006).

228 'Kegiatan-Kegiatan Penyuluhan Hukum BPHN', BPHN website, (accessed 13 July 2006).

229 The Asia Foundation found that 86 percent of respondents believe it is better to settle disputes by musyawarah (deliberation and consensus-building) than by going to any formal legal institution: Survey Report: Citizen's Perceptions of the Indonesian Justice Sector – Findings and Recommendations, The Asia Foundation, Jakarta, 2005, p 38. The World Bank made a similar finding – see 'Village Justice in Indonesia: Case Studies on Access to Justice, Village Democracy and Governance', World Bank Jakarta, February 2004, p. 37.

230 It should also be noted here that as only 4.6 percent of respondents reported having been involved in the resolution of a case in court (either directly as a litigant or defendant or indirectly as a witness), at least 5.4 percent of the 10 percent of respondents who reported using the formal justice system had contact only with the police. In reality this figure is most likely higher, on the basis that some respondents who went to court also went to the police first.

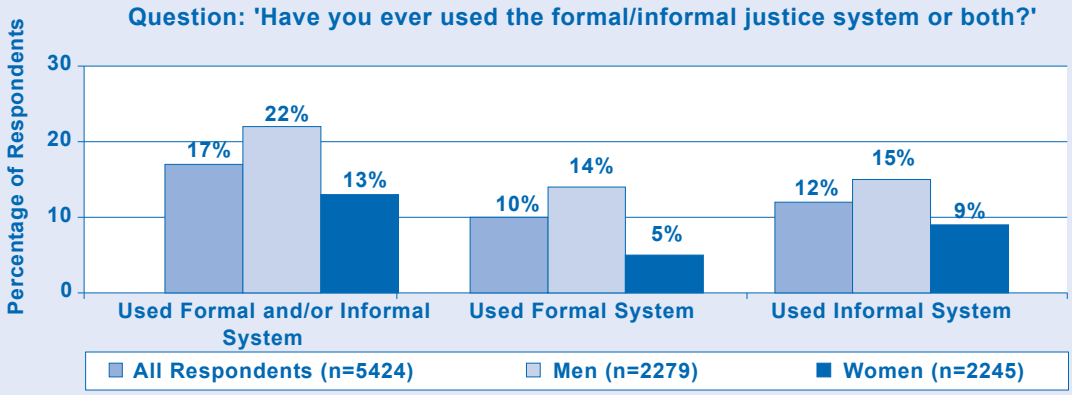
However, where citizens do resort to the formal justice system, they will often do so after failing to obtain satisfaction from the informal justice system. This is evident from the fact that although the sum of those who had used the formal and informal justice systems was 22 percent, only 17 percent of respondents reported having used the formal 'and/or' informal systems. The shortfall of five percent represents those who were effectively counted twice in the figure of 22 percent because they had used both the formal and informal systems. It should be noted that as these figures do not express frequency of use, there remains the potential for frequency of use of either system to be slightly higher due to multiple instances of use by individual respondents.[231] Further, the real possibility of respondents misunderstanding what is meant by the formal and informal justice system (and what constitutes a legal problem) means that these figures are best regarded as a guide rather than a precise measure of community use of each of the respective systems.

The finding that 10 percent of respondents had used the formal justice system corresponds closely with the results of a 2001 survey conducted by The Asia Foundation in Java, North Sumatera and South Sulawesi in which 11 percent of respondents reported having used the formal justice system (either the courts or the police).[232] Interestingly, The Asia Foundation found that a much greater 36 percent of respondents had pursued non-formal solutions to resolve their case or dispute. However, this discrepancy may be partially explained on the basis that the range of non-formal solutions encompassed significantly more than did the definition of informal justice system employed in this assessment.[233]

Women Show Greater Relative Preferenc for Informal Justice

As can be seen from (Chart 2), men are more likely than women to have used the formal and/or informal justice systems (22 percent of men compared to 13 percent of women). Men did not display a clear prefe-

CHART 2: USE OF FORMAL AND INFORMAL JUSTICE SYSTEMS



Source: Access to Justice Survey - All Provinces

231 The vast majority of respondents had used the formal and informal justice system between one and three times. Only 0.4 percent of respondents reported having used the formal system more than three times, while 0.6 percent said they had used the informal system more than three times.

232 Survey Report: Citizen's Perceptions of the Indonesian Justice Sector – Findings and Recommendations, The Asia Foundation, Jakarta, 2005, p. 73.

233 For example, non-formal solutions included in The Asia Foundation survey but not falling within the definition of informal justice system used in this assessment include: talking directly to the other person involved in the dispute; involving a third person from the family in a deliberation, and; hiring people to threaten the other person. See Survey Report: Citizen's Perceptions of the Indonesian Justice Sector – Findings and Recommendations, The Asia Foundation, Jakarta, 2005, p. 141.

rence for either the formal or informal justice system, with almost equal numbers having used each system (14 percent and 15 percent respectively). Women, on other hand, tend to have a greater relative preference for the informal justice system than do men. Whereas only five percent of women reported having used the formal justice system, almost double that number (nine percent) had used the informal justice system.

Patterns of Use by Province

Considering patterns of use by province, North Maluku stands out as the only province in which a higher percentage of respondents reported having used the formal justice system than the informal justice system. Disaggregating the data by district, higher than average levels of use of the formal justice system in a district tend to correspond with higher than average levels of use of the informal justice system, and vice versa. The reverse is often true in districts with lower than average levels of use of the formal or informal justice systems (see Table 5). For example, Bengkayang has the highest level of use of the formal justice system and the second highest level of use of the informal justice system (16 percent and 17 percent respectively), while Ketapang has the lowest levels of use for both the formal and informal justice systems (three percent and four percent).

Some conflict-affected districts appear to exhibit higher levels of use of the formal and informal justice systems than non-conflict-affected districts, although thispattern is not uniform or absolute. For example, the districts of Bengkayang and Poso have a history of high-intensity violent conflict and also recorded by far the highest levels of use of both systems. However, against this trend, the district of Bau-bau has no history of conflict yet recorded the third highest levels of use of both systems, while in North Maluku citizens of the less-heavily conflict-affected Ternate used both systems more than did their counterparts in the more heavily conflict-affected North Halmahera. Both Bau-bau and Ternate did however function as places of refuge for those displaced by conflict, which may have led to disputes with local populations (in relation to land, for example) and local authorities (in relation to the provision of IDP benefits and assistance).

3.2 FACTORS INFLUENCING CHOICE OF FORUM

Choice of forum is influenced by a complex and interrelated set of factors, not all of which are necessarily given equal weight, nor consciously considered by an individual faced with deciding whether to use the formal or informal justice system to resolve a problem. This section attempts to outline some of the main factors at play, but is by no means exhaustive. Moreover, it should be noted from the outset that given the small percentage of respondents who reported having used either the formal or informal justice systems, the majority of opinions presented here are based on perception rather than personal experience.

Type of Case

In simple terms, the type of case is probably the most influential factor dictating whether citizens choose the formal or informal justice system. The ‘type of case’ refers more to the subject matter of a dispute or incident and the parties involved, rather than whether it is civil or criminal in nature, as many villagers tend not to draw a conscious distinction between criminal and civil law. Almost without exception, villagers who were interviewed or participated in FGDs throughout the five provinces stated that they would choose the informal justice system as their

TABLE 5: USE OF FORMAL AND INFORMAL JUSTICE SYSTEMS BY PROVINCE / DISTRICT

Province / District	Intensity of Conflict	Sample Size	Used Formal and/or Informal System	Used Formal System	Used Informal System
West Kalimantan	**-**	**891**	**15%**	**9%**	**11%**
Ketapang	None	449	5%	3%	4%
Bengkayang	High	442	24%	16%	17%
Maluku	**-**	**788**	**13%**	**7%**	**9%**
Ambon	Higher	405	14%	9%	10%
Central Maluku	Lower	383	13%	5%	8%
North Maluku	**-**	**968**	**12%**	**10%**	**8%**
Ternate	Lower	473	15%	13%	11%
North Halmahera	Higher	495	9%	7%	4%
Central Sulawesi	**-**	**961**	**30%**	**11%**	**23%**
Poso	High	475	42%	12%	36%
Donggala	None	486	19%	10%	11%
Southeast Sulawesi	**-**	**916**	**16%**	**10%**	**11%**
South Konawe	None	419	9%	6%	7%
Bau-bau	None	497	21%	14%	14%

Source: Access to Justice Survey – All Provinces

initial point of complaint, except for serious criminal cases, which they would report directly to the police. Examples of serious cases included murder, rape, robbery, drug possession or trafficking, and other 'serious violations of citizens' rights', although police involvement may be requested in less serious cases that might escalate into a more serious incident, such as fighting with sharp weapons. In Central Sulawesi in particular, respondents explained that even when formal authorities become involved, villagers often prefer the continued presence of informal leaders to act as their representatives. Some exceptions to the rule include cases involving rights that can only be granted by a court, such as divorce, child custody, child maintenance and inheritance, although this is more common in urban rather than rural areas (where marriages are frequently unregistered and therefore not recognised by a court).[234] Complex issues, like land title disputes, were often viewed as being better resolved in court, although parties would usually first attempt to settle the case informally. Complaints about the provision of public services and development programs are usually taken to the service provider directly, such as the village midwife for health services, or to the village head. If many people are affected by an issue, village and sub-district officials may sometimes take their complaints to the district office in charge of the relevant public service. Village and sub-district officials may also try to access the commission in the district parliament responsible for oversight of the policy area relevant to the dispute, particularly when a district office has not responded to the complaint.

General Perceptions of the Formal and Informal Justice System

Twenty-eight percent of survey respondents were 'satisfied' with the performance of the formal justice system, compared to 37 percent who were 'dissatisfied' and 35 percent who 'didn't know'. In contrast, community

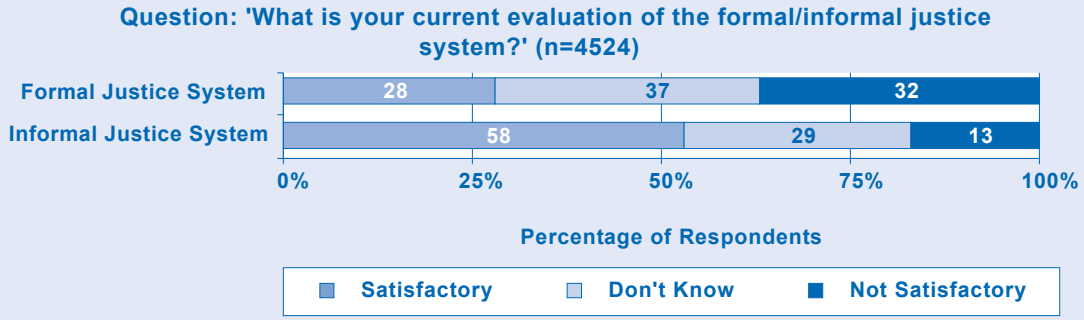
234 Although for Muslims, an infrequently used procedure termed istbat nikah is available under Article 7 of the Compilation of Islamic Law, which enables a court to recognise an unregistered marriage for the purposes of divorce: see (accessed 16 October 2006).

satisfaction with the informal system (53 percent) was almost double that with the formal system, while levels of dissatisfaction (17 percent) were less than half of those with the formal system (see Chart 3). Women were slightly more likely than men to evaluate the formal justice system as satisfactory (45 percent compared to 42 percent), but men's and women's levels of satisfaction with the informal justice system were very similar (75 percent and 76 percent respectively). Again, it is important to note that as the majority of respondents have not used either the formal or informal justice systems, the responses shown here are based predominantly on perception rather than personal experience.

As can be seen in Table 6, the highest levels of dissatisfaction with the formal justice system were recorded in Central and Southeast Sulawesi, particularly Donggala and Bau-Bau districts (50 percent of respondents in each district). Ironically, Southeast Sulawesi is also the province with the highest average level of satisfaction with the formal justice system (33 percent). Taking into account both levels of satisfaction and dissatisfaction, respondents in Central Sulawesi have the lowest overall opinion of the formal justice system (26 percent satisfied and 47 percent dissatisfied). At the other end of the scale, Maluku is the only province in which a greater percentage of respondents are satisfied with the formal system than are dissatisfied (24 percent compared to 21 percent), although this result was obtained in the context of a very high number of 'don't know' responses.

Library of Masohi's District Prosecution Office

CHART 3: OVERALL COMMUNITY SATISFACTION WITH THE FORMAL AND INFORMAL JUSTICE SYSTEMS



Source: Access to Justice Survey - All Provinces

Southeast Sulawesi has the highest overall levels of satisfaction with the informal justice system when both positive and negative responses are taken into account (72 percent and 14 percent respectively), followed by West Kalimantan (58 percent and 13 percent respectively). South Konawe district in Southeast Sulawesi stands out in particular, with 80 percent of respondents satisfied with the informal justice system and only 10 percent dissatisfied. The most negative attitudes towards the informal justice system by a significant margin are in Donggala (46 percent satisfied and 43 percent unsatisfied) and in Central Maluku (only 28 percent satisfied).

Levels of satisfaction do not appear to correlate with levels of use of either system. Ketapang is the district with the highest percentage of respondents satisfied with the formal justice system (38 percent) and has only a slightly above-average dissatisfaction rate (39 percent), but has the lowest levels of use of the formal justice system of all the assessed districts. Meanwhile, Central Maluku is the district with the lowest level of satisfaction with the formal justice system (14 percent), yet it has the second-lowest level of use. Similarly, South Konawe has the highest level of satisfaction with the informal justice system but one of the lowest levels of use (seven percent), while Donggala has the highest level of dissatisfaction but only slightly higher levels of use than in South Konawe (11 percent).

Knowledge and Understanding of the Formal and Informal Justice Systems

As a general rule, communities across the five provinces feel that they have a greater knowledge and understanding of the informal justice system than its formal counterpart. This finding comes as little surprise, considering the low percentage of the population that has actually used the formal system. Although only a slightly higher percentage of respondents report having personally used the informal justice system, its proximity to communities provides far greater scope for absorbing knowledge by witnessing stages in the process first hand. However, as will be explained in more detail at 4.4, knowledge of the informal system does not necessarily extend to knowledge of the law it applies (when the informal system in question is based on *adat* rather than simply mediation or *musyawarah*). Rather, this knowledge is generally limited to who to approach to lodge a grievance and the process by which that grievance will be resolved.

Throughout the qualitative research, the police emerged as the formal justice institution with the highest profile in the community,

TABLE 6 : OVERALL COMMUNITY SATISFACTION WITH THE FORMAL AND INFORMAL JUSTICE SYSTEMS

Province / District	Sample Size	Satisfactory		Unsatisfactory		Don't Know	
		Formal	Informal	Formal	Informal	Formal	Informal
West Kalimantan	**891**	**31%**	**58%**	**32%**	**13%**	**37%**	**29%**
Ketapang	449	38%	61%	39%	11%	23%	28%
Bengkayang	442	23%	55%	26%	15%	51%	30%
Maluku	**788**	**24%**	**41%**	**21%**	**11%**	**55%**	**48%**
Ambon	405	34%	53%	32%	13%	34%	34%
Central Maluku	383	14%	28%	11%	9%	75%	63%
North Maluku	**968**	**26%**	**41%**	**31%**	**12%**	**43%**	**47%**
Ternate	473	26%	40%	26%	10%	48%	50%
North Halmahera	495	26%	43%	36%	15%	38%	42%
Central Sulawesi	**961**	**26%**	**53%**	**47%**	**34%**	**27%**	**13%**
Poso	475	23%	61%	44%	24%	33%	15%
Donggala	486	29%	46%	50%	43%	21%	12%
Southeast Sulawesi	**916**	**33%**	**72%**	**49%**	**14%**	**19%**	**14%**
South Konawe	419	33%	80%	47%	10%	20%	10%
Bau-bau	497	32%	65%	50%	18%	18%	17%

Source: Access to Justice Survey – All Provinces

largely because of their relative proximity to many villages and their role as the first (and in many cases the only) point of contact with the formal justice system for most citizens. Citizens were generally aware of the exis tence of courts, although not necessarily of the full extent of their role – for example, FGD participants in Pangkalan Buton, Ketapang District, appeared unaware of the courts' civil jurisdiction, describing their function simply as to 'find people guilty and put them in jail'.[235] There was also very low awareness of the steps required to take a matter to court, or of assistance for those classed as 'indigent'. Respondents had the least knowledge about the existence and function of public prosecutors, presumably because they are not involved in the direct provision of services to communities and therefore rarely interact with them. The services of a lawyer were generally viewed as being beyond respondents' capacity to pay.

Male FGD participants and interviewees sometimes (but not always) had a higher awareness of the roles of formal justice actors than did women, although the reverse was rarely true. Those with higher levels of education, such as village heads or younger people who had graduated from senior high school (SMU), also tended to have a better overall awareness of the roles of each formal justice institution, although not in significant detail. The survey results concord with the qualitative findings that for most people, the informal justice system is easier to understand than the formal justice system. Only 32 percent of respondents agreed that formal justice mechanisms are understandable by most people, whereas 53 percent disagreed or didn't know and 15 percent were neutral.[236] In contrast, 65 percent of respondents considered that informal justice systems are understandable by most people, 26 percent disagreed or didn't know,

235 FGD with men and women, Pangkalan Buton, 27 April 2005.
236 n = 4524.

and nine percent were neutral. [237] Women reported a slightly lower understanding than men of both systems (10 percent less than men for the formal system and eight percent less than men for the informal system).

Central Maluku district stands out for having a number of survey responses which, considered together, point towards a very low awareness of the formal justice system in the villages where the assessment was conducted. In Central Maluku, only 19 percent of respondents thought that the formal justice system was understandable, in comparison to the inter-provincial average of 32 percent. A very high 76 percent of respondents had no opinion as to whether the formal justice system was satisfactory or not, while a further 52 percent had no opinion as to whether the formal system was fair or biased in favour of certain groups. These apparent low levels of awareness of the formal justice system can perhaps be explained in part by the fact that only five percent of respondents from Central Maluku reported having used it – a figure only half of the average of 10 percent across the five provinces.

Perceived Fairness of Decision

Community beliefs that the informal justice system produces fairer outcomes than does the formal justice system were evident throughout the qualitative and quantitative research. For example, in Ketapang, FDG participants were confident of a fair result from an informal justice mechanism, whereas they felt that there was no guarantee that the formal system would 'satisfy the community's sense of justice'. In Maluku, such a situation was concerning because respondents felt that once a matter proceeds to court, they lose control of the dispute and the court's decision binds them, regardless of whether or not they agree with the outcome. Formal justice actors, especially the police, are often perceived as not being neutral in carrying out their duties and having a tendency to favour a particular party.

Although some allegations of bias were levelled against the informal justice system, they were much fewer in number than those made against the formal justice system. A perhaps more insidious issue, related and yet distinct, is where the abrogation of a party's rights by an informal justice

FGD in the middle of paddy field

237 n = 4524.

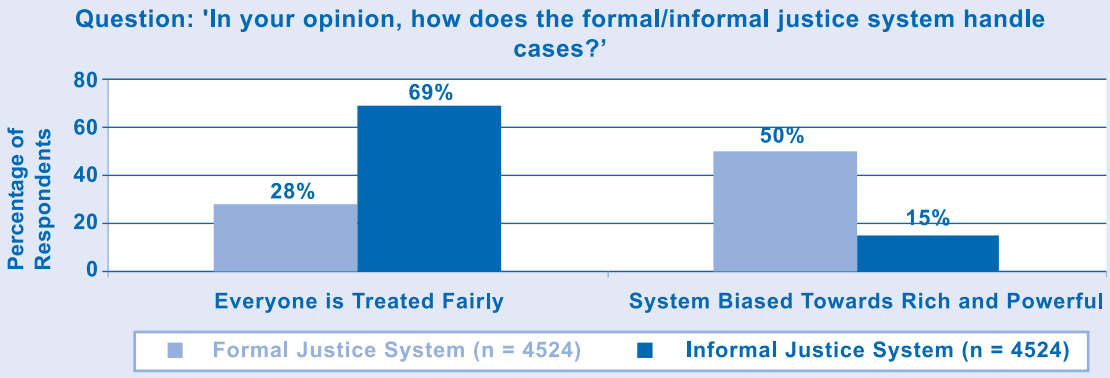
mechanism is then obscured behind the veil of an oft-stated desire to maintain harmonious community relations. Considering the tight-knit social structure and mutual inter-reliance that characterises many communities (particularly in rural areas), it would be unwise to under-estimate the real value and importance of maintaining good community relations. However, the question nevertheless arises of at what cost, and to whom? Where a party whose rights are not upheld by an informal decision is politically or economically weak, they may have no choice but to accept the injustice. Although the option of pursuing a remedy through the formal system theoretically remains open, the cost of doing so, both in financial and social terms, may be prohibitive.

Responses to the quantitative survey overwhelmingly show that the community considers the informal justice system to produce fairer outcomes than its formal counterpart. Only 28 percent of respondents thought that the formal justice system treats everyone fairly, as opposed to a much greater 69 percent of respondents for the informal system. Further, 50 percent of respondents felt that the formal justice system favoured the rich and powerful, whereas only 15 percent held this view about the informal system (see Chart 4). For cases in which an informal justice actor is related to one of the parties in a dispute that he must adjudicate, 57 percent of respondents still thought that the informal justice actor would continue to treat everyone fairly, while 24 percent thought he would be biased in favour of the relative.[238]

There was no significant difference between the responses of men and women regarding the fairness of the formal justice system. However, women were less inclined than men to believe that the informal justice system treated everyone fairly (66 percent of women as opposed to 71 percent of men). Although only a handful of women (0.1 percent) thought that the informal justice system was biased in favour of males, 3.6 percent more women than men thought that it was biased towards the rich and powerful. Men and women also provided similar responses on the perceived fairness of a decision where a family member of an informal justice actor is involved in a case being decided.

Disaggregating the data by province and district reveals some interesting differences

CHART 4: PERCEIVED FAIRNESS OF FORMAL AND INFORMAL JUSTICE SYSTEMS



Source: Access to Justice Survey - All Provinces

238 n = 4524. 16 percent of respondents answered 'don't know' and 3 percent did not answer the question.

of opinion (see Table 7). West Kalimantan has the highest percentage of respondents who believe the formal justice system is fair to everyone (44 percent). Ketapang district in particular has almost twice the average number of respondents (51 percent) who believe that the formal justice system is fair to everyone, and a below average 42 percent who believe it is biased in favour of the rich and powerful. This is despite (or perhaps even because of) the district having the lowest percentage of respondents who have actually used the formal system (three percent). As well as having the lowest level of satisfaction with the formal justice system, respondents in Central and Southeast Sulawesi are also least likely to believe the formal system is fair, particularly in Donggala and South Konawe districts. In Donggala, only 15 percent of respondents believe that the formal justice system is fair to everyone and 67 percent believe it is biased in favour of the rich and powerful, while in South Konawe the figures are 22 percent and 67 percent respectively. In Donggala the average number of respondents have used the formal justice system (10 percent), while in South Konawe the figure is a below-average six percent.

When it comes to the informal justice system, as with the formal system West Kalimantan is also the province with the highest percentage of respondents who think that the informal justice system treats everyone fairly (77 percent combined with a below-average 12 percent think it is biased in favour of the rich and powerful).

TABLE 7: PERCEIVED FAIRNESS OF THE FORMAL AND INFORMAL JUSTICE SYSTEMS

Province / District	Sample Size	System Fair to Everyone		System Biased in Favour of Rich and Powerful		Don't Know	
		Formal	Informal	Formal	Informal	Formal	Informal
West Kalimantan	**891**	**44%**	**77%**	**40%**	**12%**	**16%**	**11%**
Ketapang	449	51%	83%	42%	11%	7%	6%
Bengkayang	442	36%	70%	39%	15%	25%	15%
Maluku	**788**	**27%**	**63%**	**38%**	**12%**	**35%**	**25%**
Ambon	405	26%	67%	54%	14%	20%	19%
Central Maluku	383	27%	59%	21%	10%	52%	31%
North Maluku	**968**	**28%**	**67%**	**41%**	**11%**	**31%**	**22%**
Ternate	473	31%	63%	30%	10%	39%	27%
North Halmahera	495	24%	70%	53%	12%	23%	18%
Central Sulawesi	**961**	**18%**	**60%**	**65%**	**28%**	**17%**	**12%**
Poso	475	22%	70%	63%	19%	15%	11%
Donggala	486	15%	50%	67%	37%	18%	13%
Southeast Sulawesi	**916**	**23%**	**75%**	**63%**	**14%**	**14%**	**11%**
South Konawe	419	22%	80%	67%	9%	11%	12%
Bau-bau	497	24%	71%	61%	18%	15%	11%

Source: Access to Justice Survey – All Provinces

Southeast Sulawesi was close behind with 75 percent who think the informal justice system is fair to everyone and a below-average 14 percent who think it is biased in favour of the rich and powerful. These are the same two provinces which reported the highest levels of satisfaction with the informal justice system and the highest belief in the fairness of the informal system even if a decision-maker's family members are parties to a case.

The lowest percentage of respondents who think everyone is treated fairly by the informal justice system are in Central Sulawesi (60 percent and an above-average 28 percent who think it is biased in favour of the rich and powerful) which corresponds with it being the province where respondents have the highest level of dissatisfaction with the informal justice system. This is largely due to responses in Donggala which are the most negative across all districts by a substantial margin. In Donggala, only 50 percent of respondents believe that the informal justice system is fair to everyone and 37 percent believe it is biased in favour of the rich and powerful. When family members of the decision-maker are involved, less than half of all respondents (48 percent) thought the informal case would be decided fairly, while one third (33 percent) thought the decision-maker would be biased in favour of family members.

Community Trust

In line with overall community satisfaction levels with the formal and informal justice systems, and reflecting the results of the qualitative research, the survey results show that the community generally places significantly greater trust in informal justice system actors than their formal justice system counterparts (see Chart 5). While 64 percent of respondents trusted informal justice actors, only approximately 38 percent of respondents trusted actors from each of the institutions that together comprise the formal justice system. However, a degree of caution is necessary in interpreting the survey results, bearing in mind that not only have most villagers had no direct contact with any of these actors, some have little understanding of what they do, while a few are not even aware of their existence.

Of the formal justice actors, trust was highest in prison officers by a slight margin, perhaps because they play no role in the adjudication process and therefore do not contribute to the making of decisions that are perceived as unfair or biased, from which feelings of distrust are likely to develop. Meanwhile, the fact that the highest level of distrust is directed towards the police does not necessarily mean that they are any worse than other formal justice actors. Rather, this could simply be a reflection of the fact that the police are the institution with which the community has the most frequent contact, and the community is therefore more aware of instances of poor police conduct. Women's levels of trust in formal justice actors were approximately five percent lower than those of men across all categories. However, women's levels of distrust in formal justice actors were also one to four percent lower than those of men, the difference being caused by a higher level of 'neutral' or 'don't know' responses by women. The pattern is repeated in the case of informal justice actors, with female levels of trust lower than those of males, but only by a narrow margin (62 percent compared to 65 percent). Women's levels of distrust in informal justice actors were slightly lower than those of men (10 percent as opposed to 12 percent), with a higher percentage responding 'neutral' or 'don't know'.

Disaggregating the data by district, the police can be used as general indicator of attitudes towards the formal justice system because they are the institution with which the public are most familiar. The conflict-affected districts of North Halmahera and Poso are revealed as those with the highest percentage of respondents who distrust the police (51 percent and 49 percent respectively), while respondents in the non conflict-affected districts of Ketapang and Bau-bau have the highest levels of trust in the police (56 percent and 44 percent respectively). However, this is not necessarily conclusive of any link between conflict and high levels of distrust in the police, as respondents in conflict-affected Bengkayang and Ambon have only slightly lower levels of trust in the police than their counterparts in Ketapang and Bau-bau (41 percent and 40 percent respectively).

Approachability

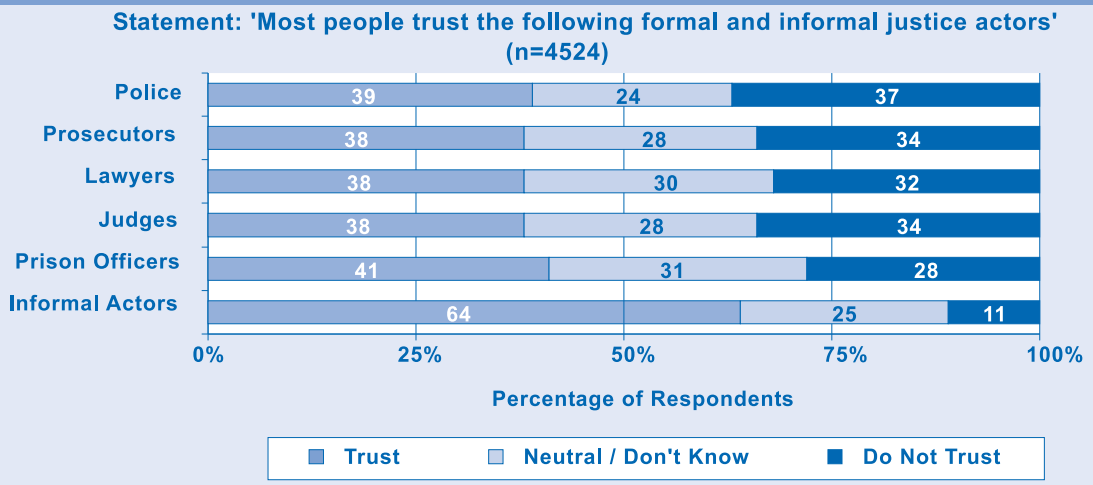
The formal justice system, with its apparently complex and mystifying procedures, is generally considered far less approachable than the informal justice system, which is comprised of (usually) trusted and respected community leaders. As the principal interface between the community and the formal justice system, the police can play a significant role in influencing community choices between the formal and informal justice systems. However, despite the motto 'we are ready to serve you' emblazoned across most police stations, the image of the friendly local policeman is a rarity in the five assessed provinces, as it most likely is throughout Indonesia.

In response to an open-ended question regarding the main problem faced when dealing with police officers, 22 percent of respondents cited 'fear' (the most frequently cited issue), 18 percent considered the process 'difficult' and 13 percent cited 'violence' (see Table 8). The most significant difference between the responses of males and females was in relation to fear; females were 10 percent more likely than males to nominate this as a problem (27 percent as opposed to 17 percent respectively). In comparison, only two percent of respondents nominated fear as a problem when dealing with the informal system.

However, it is not just the perceived complex procedures of the formal justice system that form a psychological barrier to prospective users, but also the very composition of the personnel who staff its various institutions. For example, the police are often regarded as unapproachable because they are not representative of the communities they serve, in both ethnic and socio-economic terms. In North Maluku, police officers are frequently viewed as 'outsiders' in contrast with village leaders who communities consider 'one of their own'. Similarly, the Christian Dayak majority in West Kalimantan believes that the police are not ethnically representative; most are non-Dayak Muslims who are thought to have an inadequate understanding of Dayak adat. Many police originate from comparatively high socio-economic classes, by virtue of the fact that the going rate for bribes to gain admission into the police force is reportedly approximately Rp 20-25 million.[239] Besides placing a police career well and truly out of reach for the poor or disadvantaged, the obvious corollary of this practice is that new recruits will want a return on their investment that official salaries are clearly incapable of providing.

239 Interview with a farmer, Desa Samalantan, West Kalimantan, April 2005; Interview with a mother of a prospective policeman, Desa Marunsu, West Kalimantan, April 2005; Interview with applicant to the police force, Desa Sukaharja, West Kalimantan, May 2005.

CHART 5: COMMUNITY TRUST IN FORMAL AND INFORMAL JUSTICE ACTORS



Source: Access to Justice Survey - All Provinces

Preserving Social Harmony and Avoiding Embarrassment

The belief or in some cases romanticised notion that the informal justice system is able to resolve grievances in a way that preserves social harmony clearly influences citizens' choice of that system to resolve disputes. For example, in Sepa village in Maluku, a youth explained that because many community members are related through marriage, they prefer to resolve disputes 'within the family' and therefore rarely report matters to the police. In North Maluku, litigation is reportedly considered contrary to the spirit of community and neighbourly tolerance. Such findings accord with those of the Asia Foundation survey, in which 58 percent of respondents who had used musyawarah (informal deliberation and consensus-building) reported that they had chosen this option 'to keep the peace/harmony'.[240]

However, preserving social harmony might sometimes simply plaster over a dispute without adequately addressing the legitimate concerns of one or more of the parties involved. In Central Sulawesi, for example, some citizens believed that the social harmony supposedly preserved by the informal justice system was sometimes little more than a facade, as 'peace' was often enforced and 'settlements' often left one of the parties feeling that their grievance had not really been resolved. This was in fact the second-most frequent complaint of survey respondents when asked to nominate the main problem when dealing with informal justice actors (12 percent – see Table 8).

The stigma associated with the formal justice system can also influence citizens' choices. For example, in Pangkalan Buton, West Kalimantan, the formal justice system is regarded by some as only for those who have 'done something wrong' and therefore worthy of avoidance lest one be tarnished by association. Likewise, in Bau-bau, respondents suggested that using the formal justice system could embarrass them in front

240 *Survey Report: Citizen's Perceptions of the Indonesian Justice Sector – Findings and Recommendations*, The Asia Foundation, Jakarta, 2005,

of the community. Interestingly however, when asked the main problem in dealing with formal justice actors, not a single survey respondent across all five provinces cited 'embarrassment' or 'shame' (although this is perhaps a consequence of the very nature of embarrassment itself). In contrast, eight percent of survey respondents nominated feelings of shame or embarrassment as the main impediment to dealing with an informal justice actor (see Table 8).

Geographic and Financial

For the vast majority of the poor and disadvantaged, the informal justice system is far more accessible than the formal justice system, in both geographic and financial terms. For citizens living outside of district capitals, particularly in eastern Indonesia where districts are geographically larger, a trip to the nearest lawyer or court could involve several hours of travel (or more) on potentially infrequent public transport. Even to reach a sub-district police station, in most cases the formal justice institution located closest to the community, could involve a journey of an hour or more. Accordingly, only 38 percent of survey respondents felt that formal justice system institutions were located within an accessible distance of their homes, while 39 percent believed it not accessible (15 percent were neutral and eight percent didn't know).

In contrast, for most villagers, the informal justice system is within walking distance of their homes, depending on the location of the village or neighbourhood head's house. Seventy-two percent of respondents felt that the informal justice system was easily accessible from home – twice as many as for the formal justice system. Only six percent felt it was not easily accessible (five percent were neutral and 16 percent did not know). Nevertheless, the simple fact that local leaders are located close to their communities does not mean that they are always available for consultation – village heads are not government employees, and although they receive a token allowance, they are usually farmers or fishermen just like other villagers and are therefore busy earning a living during the day. This may account for the fact that nine percent of survey respondents think that the main problem with informal justice actors is that they are 'difficult to meet', while a further 10 percent think that 'time' is a problem (see Table 8).

TABLE 8: PERCEPTIONS OF MAIN PROBLEMS IN DEALING WITH FORMAL AND INFORMAL JUSTICE ACTORS

Police Officers (n = 2419)		Judges (n = 1004)		Lawyers (n = 1270)		Informal Justice Actors (n = 1185)	
Main Issue	%	Main Issue	%	Main Issue	%	Main Issue	%
Fear	22	Bias	28	Cost	83	Decision not binding	14
Cost	19	Unfair	28	Bribes	6	Peace is enforced	12
Difficulty	18	Cost	16	Fear	5	Misunderstanding	10
Bribes	17	Fear	13	Don't understand	2	Time	10
Violence	13	Reluctance	8	Reluctance	2	Difficult to meet	9
Bias	4	Don't understand	2	Dishonesty	1	Shame/Embarrassment	8

Source: Access to Justice Survey – All Provinces

Of greater concern to most citizens than geographic accessibility is the affordability of using the formal justice system. A common chorus of complaint arose in each of the five provinces that the formal justice system was prohibitively expensive. Consistent with this, expense was the problem survey respondents most frequently associated with the police and lawyers – bribes and other costs for the police (36 percent of respondents) and high fees and bribes for the lawyers (89 percent of respondents). In comparison, only 12 percent of respondents cited cost or bribes as a problem when dealing with the informal system (with responses equally split between the two categories).

Some citizens believed that in many situations there was little point in resorting to the formal justice system, because the cost of processing a case would exceed the cost of whatever was at stake (see Box 8). Moreover, before even setting foot inside a police station or lawyer's office, villagers must calculate not only the cost of transportation but also the opportunity cost, or the amount of productive income-earning time that must be sacrificed to make a complaint and pursue the case. For people whose savings are minimal or non-existent, a single day of lost income can result in serious hardship.

Timeliness, Predictability and Enforceability

In line with the old adage that justice delayed is justice denied, citizens show a natural preference for the reasonably swift informal justice system processes, rather than the delays and drawn-out procedures that so often characterise the formal justice system. Focus group discussion participants throughout the five provinces valued the fact that informal penalties and sanctions are usually enforceable immediately after a decision has been made, enabling the quick resolution of cases (notwithstanding the not-infrequent issue of parties who reject a decision and simply refuse to comply with it, often without further sanction). In simple cases, resolution may be achieved on the spot, often within one to three days, and occasionally requires up to a week. This is clearly favourable to the weeks, months or even years involved in obtaining a remedy through the formal justice system. Survey respondents drew a significant distinction between the predictability of

BOX 8: AT WHAT COST JUSTICE?

In Tokorondo village, Poso district, Central Sulawesi, 'Pak Agus' owned land that had been illegally occupied by another villager. After the illegal occupier refused to vacate the land, Pak Agus decided to report the matter to the police. Doing so cost him Rp 100,000, which he was told was to cover the cost of the paper used to make the report, together with petrol and other costs associated with summoning the illegal occupier so that he could account for his actions. After being questioned by the police, the two parties made peace and the illegal occupier signed a written agreement to vacate Pak Agus' land. Unfortunately, he later reneged on his agreement, so Pak Agus decided to pursue his claim in court.

Pak Agus' claim progressed through the court system before he finally obtained a binding decision in his favour from the Supreme Court. Despite this, however, he still finds himself unable to reclaim his land, as he has not yet paid an additional fee of Rp 5 million to have the decision enforced. He is reluctant to pay this fee because by his calculations he has already spent over Rp 10 million on the case. He now wonders whether it was all worth it, considering that the land in dispute, if sold, would be worth no more than Rp 3 million.

Source: Interview with 'Pak Agus', Tokorondo, Poso District, Central Sulawesi, 16 June 2005.

decision-making in the formal and informal systems. Only 27 percent thought that formal court decisions could be predicted based on the results of previous cases of a similar nature (40 percent thought they were unpredictable), whereas 43 percent thought informal justice system decisions were predictable (24 percent thought they were unpredictable). Given that consistency in the treatment of similar cases is arguably a basic element of fairness, and consistent treatment should give rise to predictability, the difference in responses for the formal and informal systems tends to indicate that this is perhaps one of the factors underpinning community perceptions that the informal justice system treats parties more fairly than its formal counterpart.

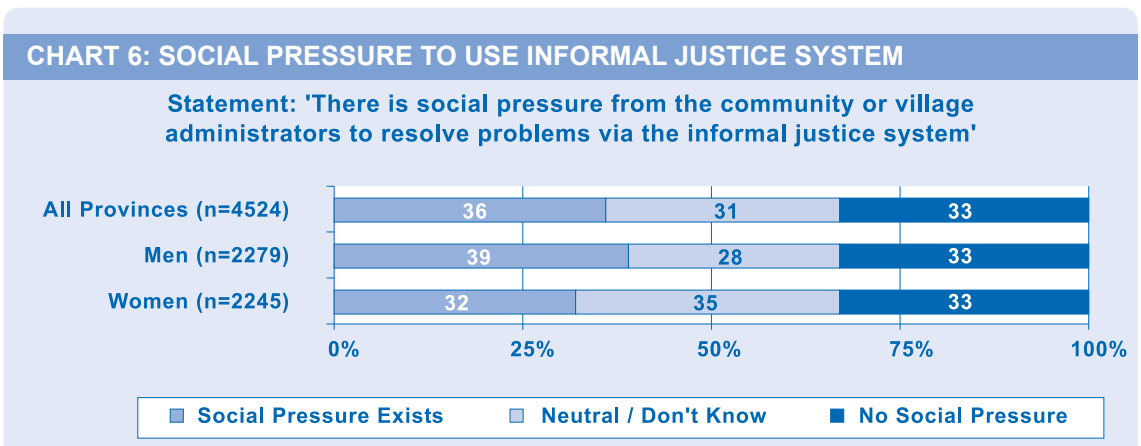
One of the key perceived benefits of the formal justice system is that its decisions are enforceable (although in many cases a careful distinction may need to be drawn between the enforceable nature of a decision and its actual enforcement). In contrast, a decision reached through the informal justice system, while it may be said to be binding, is generally only enforceable to the extent that the parties are willing to comply with it. The communities who participated in the assessment generally viewed this as a negative, both in interviews and FGDs and in the survey, where the non-binding nature of decisions was the most frequently cited problem when dealing with informal justice actors (14 percent of respondents – see Table 8). During the assessment, several cases were documented in which one of the parties to a dispute acted with impunity in simply failing to comply with the sanctions imposed by the informal justice mechanism.

3.3 IS TRUE CHOICE OF FORUM ALWAYS AVAILABLE?

For financial or geographic reasons alone, for many of the poor and disadvantaged any choice of forum in theory rarely translates into actual choice of forum in practice. However, some additional factors may further limit an individual's ability to select the forum of his or her choice.

Significant social pressure to use the informal justice system may come from both community leaders and the community at large. As can be seen from (Chart 6), survey respondents were evenly split on this issue – 36 percent believed social pressure existed, 31 percent believed it did not, and 33 percent were unsure. Men are more likely than women to feel that social pressure exists to use the informal justice system, although equal numbers

CHART 6: SOCIAL PRESSURE TO USE INFORMAL JUSTICE SYSTEM



Source: Access to Justice Survey - All Provinces

TABLE 9: SOCIAL PRESSURE TO USE INFORMAL JUSTICE SYSTEM

Province / District	Sample Size	Social Pressure Exists	No Social Pressure Exists	Neutral / Don't Know
West Kalimantan	**891**	**30%**	**33%**	**37%**
Ketapang	449	35%	43%	22%
Bengkayang	442	25%	23%	52%
Maluku	**788**	**22%**	**38%**	**40%**
Ambon	405	33%	28%	39%
Central Maluku	383	10%	48%	42%
North Maluku	**968**	**40%**	**36%**	**24%**
Ternate	473	38%	12%	50%
North Halmahera	495	41%	34%	25%
Central Sulawesi	**961**	**39%**	**40%**	**21%**
Poso	475	30%	57%	13%
Donggala	486	49%	23%	28%
Southeast Sulawesi	**916**	**46%**	**31%**	**23%**
South Konawe	419	50%	30%	20%
Bau-bau	497	43%	31%	26%

Source: Access to Justice Survey – All Provinces

of men and women feel that the opposite is the case.

However, the existence of social pressure to use the informal justice system does not appear to lead to a significantly greater percentage of people using the informal system as compared to the formal system. Respondents in South Konawe district are most likely to feel the existence of social pressure to use the informal justice system (50 percent), however this did not seem to have any impact on elevating usage levels of the informal justice system – only one percent more respondents had used the informal justice system than the formal system (seven percent and six percent respectively – see Table 9*)*. Donggala residents were the second most-likely to experience social pressure to use the informal justice system (49 percent), and again, as with South Konawe, there was only a one percent difference in the number of respondents who have used the informal system as opposed to the formal system (11 percent and 10 percent respectively). Poso is the one district in which a large imbalance exists between the number of respondents who have used the formal and informal justice systems (12 percent as compared to 36 percent). However, somewhat counter-intuitively, Poso is also the district with the highest percentage of citizens who deny the existence of social pressure to use the informal justice system. This can perhaps be explained on the grounds that social pressure to use the informal system is more discernable in places where the formal system constitutes a realistic alternative, which, in the case of conflict-ridden Poso is by no means assured.

Citizens who bypass the informal justice system may find that their actions are interpreted by community leaders as displaying a lack of trust in their abilities and authority, which could damage the leaders' standing both within their community and with their superiors. Consequently, by using the formal system, citizens run the risk that future appeals to village leaders for assistance with unrelated matters may fall on deaf ears. At a more general level, bypassing the informal justice system may provoke dis-quiet about airing the village's 'dirty laundry' in public and involving outsiders in a case that other community members feel could have been resolved internally in a more harmonious fashion.

For less serious cases, bypassing the informal justice system may be futile because police may simply decline to handle the case and will instead refer it back to the village authorities for resolution. This is the increasingly com mon experience of Dayaks in Bengkayang, where the adat system is still influential. Similarly, in Central Maluku where adat also remains strong, a village head may reportedly intervene personally to withdraw a complaint from the police in order to resolve it himself. On the rare occasions that cases of domestic violence are refer-red to the police, a similar outcome may result.

3.4 LACK OF AWARENESS OF APPROPRIATE FORUM

It is clear from the assessment that while some citizens may be familiar with the forums available to seek legal redress, they are much less familiar with options for resolving the issues that they feel to be the greatest cause of injustice in their daily lives. These issues are frequently civil in nature, affect a group of people rather than individuals, and because they involve either the government or parties from outside the local area, are not suited to resolution via the informal justice system.

In each province, cases were documented involving citizens who wanted to take action against issues that they felt to be unjust, but did not know where or how to lodge their grievance (see 1.3 and 2.1 above). For example, in Palabusa, Southeast Sulawesi, achieving settlement of a land dispute involving two neighbouring communities has proved elusive at the village level, and neither community knows what further steps they can take to resolve the issue. In West Kalimantan, villagers in Samalantan and Monterado are unsure of what to do to prevent ongoing pollution of their drinking water caused by illegal mining, after reporting the problem to the local government failed to achieve results. In Gorua, North Maluku, some IDPs have not been registered as such and cannot, therefore, receive any government benefits – a situation they blame on manipulation of data by the local Office of Social Affairs. They have repeatedly asked the Office for an explanation but have received no response and do not know how they should proceed. These cases are discussed in more detail in Annexes 2 – 6.

4. JUSTICE ACTORS AND PROVISION OF REMEDIES

Whatever complaints are levelled against the formal institutions of justice, it must be recognised that they often have to work under difficult conditions

and with limited budgets. This section is not a comprehensive assessment of the workings of the formal institutions of justice – such an undertaking is well beyond the scope of this assessment. Rather, it provides a sketch of the conditions under which police, prosecutors and judges are required to work. It should also be noted while many claims of understaffing or inadequate resources are undoubtedly well-founded, in most cases the assessment has not been able to verify their accuracy by reference to actual workloads or expenditure.

4.1 POLICE

Citizens contact the police more often than other legal institutions, primarily for criminal matters but occasionally for civil matters as well (which strictly speaking do not fall within the jurisdiction of the police). The provincial police structure extends from the provincial capital (POLDA) to the subdistrict level (POLSEK) in all provinces, so the police are the arm of the formal justice system that is closest to the community. However, this does not mean that all citizens have equal access – with the rare exception of village level police posts (POSPOL) in more densely populated areas, police stations are located in the district and subdistrict capitals, often far from villages under their jurisdiction. For example, the nearest police station from the Hutumuri community in Ambon Municipality, Maluku, is 40 kilometres away. Even when police stations are closer, the cost of transport to a police station can be prohibitive for many of the poor.

As outlined at 2.2, the core duties of the Indonesian police are to maintain law, order and public security; receive reports and complaints from the public on criminal and other matters; assist in dispute settlement and mediation, and; conduct criminal investigations and compile briefs of evidence for prosecutors. The police are also required to conduct public legal awareness programs. In many instances, the assessment teams found that police worked closely with village institutions in case referrals and dispute

FGD with Women in Maluku

FGD with men – The assessment concluded that men generally tend to have higher legal awareness than women.

resolution, and with the exception of serious crimes, often settled disputes by mediation or *musyawarah*. In this way, police and village leaders can together play a critical role in suppressing inter-communal tension and low-level violence caused by land disputes, fights amongst youths and other such issues.

Throughout Indonesia, the Indonesian National Police (POLRI) suffers from many structural and local-level weaknesses.[241] During the assessment, police officers, commanders and citizens reported numerous deficiencies to the assessment teams. These included insufficient numbers of police and staff, poor recruitment and training practices and low budgets. Respondents argued that these deficiencies undermine police capability to respond fully and in a timely fashion to crimes and to uphold the rights of citizens, and are simultaneously a cause of and justification for police involvement in corrupt activities.In addition to undermining the ability of police to operate effectively, these weaknesses also undermine public perceptions of the police. The results of the access to justice survey show that respondents perceive 'fear', 'cost', 'difficulty', 'bribery' and 'violence' as the main problems involved in dealing with the police (see Table 8). Another poll in 2004 by the Indonesian NGO ProPatria suggests that the community sees police passivity as a major factor behind the outbreak of public disturbances.[242] Nonetheless, many respondents also view the police as a key component of a well-functioning justice system. The following sections provide a brief overview of the assessment findings.

Human Resources

In 2004, there were approximately 280,000 police officers in Indonesia, including 33,000 members of the paramilitary mobile brigade (BRIMOB). [243] This gives a police

241 'Indonesia: Rethinking Internal Security Strategy', International Crisis Group, Asia Report No. 90, Jakarta/Brussels, 20 December 2004.

242 'Rekomendasi Arah Kebijakan Keamanan dan Ketertiban Masyarakat serta Penegakan Hukum', ProPatria, 24 October 2004.

243 'Indonesia: Rethinking Internal Security Strategy', International Crisis Group, *Asia Report No. 90*, Jakarta/Brussels, 20 December 2004, p. 7.

to citizen ratio of roughly 1: 810, well below POLRI's target ratio of 1:350 (for Jakarta)[244] and the generally accepted international ratio of 1:400 or less.[245] However, in practice police are not distributed evenly throughout Indonesia, meaning that while in some locations the police to citizen ratio can be much better than 1:810, mathematics alone shows that in other locations it can be much worse.

Under-staffing the norm: In Central Sulawesi, police numbers have steadily increased from 3,442 in 1999 to 5,501 as at May 2005. [246] Data from Central Sulawesi Regional Police (POLDA) indicates that this represents a shortage of 452 officers based on what the province should have according to national standards.[247] With a population of approximately 2.5 million, Central Sulawesi currently has a police to citizen ratio of approximately 1:455, which would reduce to 1:419 if all of the vacant positions were filled. The Poso District Police (POLRES) has 457 officers, slightly more than the recommended 475, by virtue of the extra officers deployed in response to local conflict and security issues. POLRES Donggala, on the other hand, has 458 officers but a recommended number of 612. According to the Chief of POLRES Donggala, this staffing shortfall puts a strain on existing personnel and results in poor quality investigations.[248] District police commanders have reportedly found it difficult to fill vacant positions, particularly in some of the more isolated districts and islands.

In 2004, POLDA West Kalimantan had a total of 7,618 police officers and 269 civil support staff, having grown from 6,658 police officers and 232 civil support staff in 2000.[249] The police to citizen ration in 2004 was 1:512. In the non-conflict district of Ketapang, police numbers have increased in line with population growth over the last five years and the police to citizen ratio has hovered around 1:750.[250] The conflict-affected Bengkayang has 376 officers and a higher police to citizen ratio of roughly 1:515, despite it being a newly created district and therefore especially prone to understaffing.[251]

North Maluku has 1510 police officers serving a population of approximately 866,000, a ratio of approximately 1:573.[252] Sub-district POLSEK stations are particularly understaffed in Ternate Municipality – POLSEK North Ternate has 23 officers serving 60,504 inhabitants (a ratio of 1:2630) and POLSEK South Ternate has 17 officers serving 57,499 inhabitants (a ratio of 1:3382).[253] In neighbouring Maluku specific information on police numbers could not be obtained, although police at POLSEK Nusaniwe in Ambon Municipality report that their 31 officers and two detectives are adequate to meet the station's caseload. On Haruku Island, however, the Deputy Chief of the local POLSEK reports that his 14 officers are less than half of the required 30 according to national standards, and consequently he must redirect

244 Statement of Irjen Pol. Drs. Firman M. Gani, in *The Daily Jakarta Shimbun*, 12 March 2005 ().

245 For example, Australia 1:415, ; Malaysia 1:260, ; US cities with populations over 250,000 1:330, Japan 1:480 and the UK 1:286, 'Global Report on Crime and Justice', United Nations Office of Drug Control and Center for International Crime Prevention, New York, 1999, p.24, cited in 'Indonesia: Rethinking Internal Security Strategy', International Crisis Group, *Asia Report No. 90*, Jakarta/Brussels, 20 December 2004, p. 7.

246 Data from the Development and Planning Bureau, POLDA Central Sulawesi, May 2005.

247 List of Standard and Actual Police Officer and Civil Servant Numbers, POLDA Central Sulawesi, as at May 2005.

248 Interview with District Chief Police of Donggala, August 2005.

249 Data from POLDA West Kalimantan, June 2005.

250 Data from POLRES Ketapang, May 2005.

251 Data from POLRES Bengkayang, May 2005.

252 Data from POLDA North Maluku, April 2005.

253 POLRES Ternate, 'Report on the Status of POLRES Ternate and Its Associated POLSEKs', September 2004, p.5

a significant number of cases to the District Police in Ambon Municipality.[254]

Police numbers in Southeast Sulawesi have increased from 2706 in 2000 to 4,342 in 2004, an increase of over 60 percent in just four years.[255] However, population growth has been almost as rapid, with the result that the police to citizen ratio has decreased only slightly from 1:482 to 1:440.[256] Moreover, the provincial average disguises the fact that some districts still have a very high citizen to police ratio due to police being concentrated in urban areas. While the provincial capital Kendari has a police to citizen ratio of 1:265, in the assessment districts of Bau-Bau and South Konawe, the ratios are 1:730 and 1:884 respectively. Even so, these high ratios still constitute an improvement on the situation in 2000, when Buton district (part of which became Bau-bau) had a police to citizen ratio of 1:1509 and Konawe district (part of which became South Konawe) had a ratio of 1:1170.[257]

Female officers in short supply: An acute shortage of female police officers was observed in many of the districts in which the assessment was conducted. For example, the Donggala District Police in Central Sulawesi has 458 officers, none of whom are female.[258] In West Kalimantan, the Ketapang District Police have 20 policewomen from a total of 639 officers,[259] while in Bengkayang only six out of 376 officers are women.[260] In both Ketapang and Bengkayang, the female officers are all stationed at the district headquarters (POLRES), rather than at the sub-district stations (POLSEK) where the majority of community interaction takes place, particularly in rural areas.

The situation is similar in North Maluku – POLRES Ternate has approximately 20 policewomen from a total of approximately 400 officers, but in North Halmahera there are no women police officers at all. In Ternate there is a recruitment quota of approximately 10% for women officers, which is reportedly met in most intakes of new recruits.[261] However, while females often number more than 25% of the total number of applicants for police positions in Ternate, many are rejected because they do not meet recruitment criteria. According to the Deputy Chief of the Ternate District Police, the most common reason for rejection is failing a virginity test.[262] Such a test is discriminatory on at least two grounds – (i) that it is not also applied to men, and; (ii) that it is of no relevance to the ability of a woman to carry out her duties as a police officer.

This shortage of female police officers impacts directly on the ability of the police to deal sensitively with women who fall victim to crimes such as domestic violence or sexual assault. In many locations, female victims may have little choice but to report to male police officers, which at best may be embarrassing, and at worst expose them to further discrimination. In North Maluku for example, the head of one of the sub-district police stations acknowledged that

254 Interview with Deputy Chief of POLSEK Haruku, Haruku, May 2005.

255 Interview with staff from the Personnel Division of POLDA Southeast Sulawesi, Kendari, 8 April 2005.

256 Interview with staff from the Personnel Division of POLDA Southeast Sulawesi, Kendari, 8 April 2005.

257 Interview with staff from the Personnel Division of POLDA Southeast Sulawesi, Kendari, 8 April 2005.

258 Interview with District Chief Police of Donggala.

259 Interview with Deputy Chief of Police, Ketapang District Police, 11 May 2005.

260 Interview with Deputy Chief of Police, Bengkayang District Police, 25 April 2005.

261 Interview with Deputy Chief of District Police, Ternate, Dec. 2005. In 2005, out of 286 candidates, only nine women were hired at the first phase of recruitment - *Data Tata Usaha Polda Maluku Utara, 2005.*

262 Interview with Deputy Chief of POLRES Ternate, 15 December 2005.

because he had no female officers, he frequently assigned domestic violence and sexual assault cases to male officers.[263] While there is no guarantee that female officers will handle these types of cases more sensitively than their male colleagues, there is certainly an increased likelihood of this occurring.

Physical and technical resources

In all of the assessment provinces, police appeared to suffer from a lack of physical and technical resources to cover their basic operational requirements. Limited budgets and low salaries combine (together with lax oversight and accountability procedures) to make rent-seeking and other corrupt activities common police practice throughout the assessment locations. Resource deficiency is in some instances amplified by the ongoing, Indonesia-wide process of subdivision of existing districts (*pemekaran*) to create new, smaller districts. While this brings government closer to the people, it also burdens financial and human resources because it requires the establishment or upgrading of government infrastructure within the new district, including police stations.

Subdistrict police stations chronically under-resourced: Inadequate resources were particularly evident at the subdistrict level, where a lack of vehicles, communications and basic office equipment places severe constraints on police officers' ability to operate effectively. This inadequacy is even more pronounced in less-densely populated regions where a subdistrict may encompass a significant geographic area, parts of which are accessible only by poor quality road, or, in some cases, by sea. The following examples are illustrative.

In Samalantan sub-district, Bengkayang district, West Kalimantan, police are equipped with one patrol car and three motorbikes to cover a land area of 574 square kilometres and a population of 20,385, which the subdistrict Police Chief claims is grossly insufficient.[264] The situation is similar in neighbouring Monterado, where officers are often forced to use their personal vehicles for official transportation.[265] In the newly-created subdistrict of Bungi, Bau-bau Municipality, Southeast Sulawesi, there are two motorcycles, one walkie-talkie, one computer and one typewriter to be shared amongst 19 officers.[266] In Tinanggea subdistrict, South Konawe district, police are slightly better off – the 14 officers at POLSEK Tinanggea have five motorbikes, two citizen band radios, one computer and three typewriters at their disposal.[267]

Operational funding to pay for petrol and other expenses incurred in handling cases is also limited. The new POLRES for North Halmahera district, still under establishment at the time of the assessment, had a 2005 budget of only Rp 8 million (approximately USD 800) for this purpose, or approximately Rp 660,000 (approximately USD 66) per month.[268] This was estimated to be sufficient to cover only one case per month. Meanwhile, the Chief of POLSEK Tinanggea claims that for as long he had held his position the station has never received any operational funding, with the result that his officers have to personally bear all of the

263 Interview with Chief of Sector Police, Tobelo, 16 April 2005.
264 Interview with Chief of POLSEK Samalantan, 18 April 2005.
265 Interview with Chief of POLSEK Monterado, 21 April 2005.
266 Interview with the Chief of POLSEK Bungi, Liabuku, 26 April 2005.
267 Interview with the Head of Internal Affairs, POLSEK Tinanggea, Tinanggea, 13 May 2005.
268 Interview with Chief of POLRES Tobelo, Tobelo, 16 April 2005.
269 Inteview with the Chief of POLSEK Tinanggea, Tinanggea, 13 May 2005.
270 FGD in Tanea village, South Konawe, Southeast Sulawesi, 3 May 2005.

expenses they incur in carrying out their duties.[269] It should therefore come as little surprise that police may often request 'petrol money' or 'cigarette money' from a justice-seeker before even considering rendering assistance.[270]

Budget limitations for operations impede the services that police can provide to detainees. Although subdistrict police stations in West Kalimantan receive Rp 150,000 per month (around USD 15) for the medical care of detainees in their custody (in itself a seemin-gly insufficient amount), no official budget allocation exists for providing them with food or clothing. Consequently, detainees are forced to rely on donations from families and friends.[271] A similar situation exists at POLSEK Teluk Ambon Baguala, in Ambon Municipality (see Box 9). At a more basic level, detention facilities themselves at subdistrict police stations may be inadequate to deal with female or child offenders. For example, POLSEK Samalantan must send any female or child detainees to POLRES Bengkayang in the district capital, as they have no separate holding cells to those used for adult male detainees. Child detainees at POLSEK Teluk Ambon Baguala may not be so lucky – on busy days, they are incarcerated together with adult detainees in the small lock-up. [272]

Low salaries invite rent-seeking: At the time of the assessment, the lowest ranking non-commissioned officers received a basic salary of Rp 600,000 per month (around USD 60) while middle ranking officers (Commissioner to Chief Commissioner rank) received between Rp 1,064,100 and Rp 1,679,900 per month (between USD 106 and USD 167).[273] These rates have now been increased slightly.[274] A range of various allowances are also paid on top of the basic salary, which can significantly increase an officer's take-home pay. In the case of middle to high ranking officers, the amount can be equivalent to or greater than their basic salary (for example, in 2006 a Chief Commissioner received a structural allowance of Rp 1.5 million per month).[275] Even so, official remuneration is still unrealistically low by just about any measure.It

BOX 9: NOT ENOUGH

Once investigations commence, costs are incurred. It costs money to register a case. Sometimes my officers have to pay for their own transport to deliver case files to the prosecutor. Others have bought their own computers to enable them to complete office work at home. Sometimes my officers are not able to deal with complex cases involving many accused and witnesses. Suspects detained in our cells are not provided food because we have not received funding, so their families have to feed them. We lack personnel, typewriters and computers, and we lack funding.

Chief of POLSEK Teluk Ambon Baguala, May 2005

271 Interview with Deputy Chief of Police, Bengkayang District Police, 25 April 2005

272 Interview with Chief of POLSEK Teluk Ambon Baguala, Ambon, 22 May 2005.

273 Pursuant to the now superseded Government Regulation No.14/2003 regarding Adjustment of Basic Salaries for Members of the Indonesian National Police.

274 Basic salaries are now set by Government Regulation No. 68/2005 regarding the Second Amendment to Government Regulation No. 29/2001 regarding Salaries of Members of the Indonesian National Police. The actual salary levels are set out in an annex to the Regulation, which was not available at the time of writing.

275 See the attachment to Presidential Regulation No. 73/2006 regarding Allowances for Structural Positions in the Indonesian National Police. A structural position is one that involves heading an organisational unit within the police force structure (Article 3, Presidential Regulation No. 73/2006). For those holding non-structural or functional positions, a flat allowance of Rp 75,000 per month was payable in 2006: see PresidentialRegulation No. 13/2006 regarding General Allowances for Members of the Indonesian National Police.

is an open secret that police take the liberty to supplement their income by other means, sometimes by petty bribery but also though involvement in larger scale protection rackets and black market activities. In Tobelo for example, the District Police Chief openly admits that his officers sometimes engage in impro-per conduct.[276] An example from the nearby Tobe village is the imposition of illegal charges on wood harvested by 'chainsaw workers' from the village. Police allegedly demand payment of an illegal fee of Rp 200,000 per truck load of wood, and threaten to confiscate the wood if payment is not made.[277] Meanwhile, in Moneterado sub-district in Bengkayang district, West Kalimantan, police are reportedly involved in illegal mining. Likewise, in Marunsu village (also in Bengkayang) the community strongly suspects police complicity in illegal gambling and the sale of black-market alcohol.[278]

Innovations

In some regions, police have attempted to make improvements to the way they serve the community. For example, POLDA West Kalimantan has initiated weekly morning coffee meetings with various community leaders to discuss the effectiveness of law enforcement in the province. In March 2005, it also launched an online complaint service and installed a dedicated post office box in Pontianak for receiving complaints.[279] While these are potentially positive developments, questions must be raised about the efficacy of such methods of soliciting feedback and receiving complaints, particularly from poor and disadvantaged citizens who do not have access to computers or email, and for whom even posting a letter may involve considerable effort and expense.

Special Service Rooms for Vulnerable Victims: A more important advance has been the passage of Law No.23/2004 regarding the Eradication of Domestic Violence, which includes within it provisions relating to the treatment of victims and witnesses of domestic violence and sexual assault. Under Article 10(c) of the Law, victims of domestic violence and sexual assault have the right to 'special treatment' that respects their privacy, when dealing with formal justice actors such as the police, prosecution service, lawyers and the courts. In order to realise this right, Article 13(a) provides that the national and provincial governments may establish Special Service Rooms (*Ruang Pelayanan Khusus* or RPK) within police stations so that victims can be dealt with confidentially, ideally by adequately trained female police officers. In practice, however, RPK are usually only established at the district level and above, and even then not all districts yet have them. For example, in North Maluku, there were only two RPK in operation at the time of the assessment – one at POLRES Ternate and the other at POLRES Central Halmahera. The remaining six POLRES in North Maluku, all still in the process of establishment in their respective newly created districts, do not have RPK facilities (and nor do any of the subdistrict police stations in the province).[280] In Ternate there is reportedly good coordination between the RPK and a local women's NGO (*Daurmala*) to provide counselling and accompaniment services to female victims of crime, although none of the staff (of the RPK or NGO) are trained psychologists.[281]

While the establishment of Special Service Rooms is a positive step forward, perhaps more important is the way in which they operate. Although the research teams collected

276 Interview with Chief of District Police, Tobelo, 16 April 2005.
277 FGD with men, Togoliua hamlet, Tobe Village, North Halmahera, North Maluku , 6 February 2005.
278 FGDs in Marunsu village, 17-19 April 2005.
279 At the time of writing, the POLDA West Kalimantan website and online complaint service ( ) was unavailable – it is not known how long this has been the case.
280 Interview with Head of Professional Ethic and Security Section, POLDA North Maluku, 14 April 2005.
281 Interview with police officer, POLRES Ternate, 28 February 2005.

only limited information on this topic, it would appear that there remains room for improvement, particularly in relation to the training of RPK staff. At a more basic level, for as long as there is shortage of female police officers to staff RPK, and for as long as these female officers are not deployed to subdistrict level police stations, the establishment of more RPK may ultimately be a somewhat hollow achievement.

Recruitment and Training

The minimum educational requirement to be accepted into the police force is a high school diploma. As with the process of civil servant recruitment more generally, allegations are rife of corruption in the selection of new police recruits. In North Maluku, Rp 10-15 million was reportedly the going rate for selection. [282] while in West Kalimantan a figure of between Rp 20-25 million was commonly cited.[283] As mentioned at 3.2 (above), the obvious corollary of this practice is that new recruits will want a return on their investment that official salaries are clearly incapable of providing. Further, as Box 10 suggests, money may remain a criteria for promotion as officers attempt to progress through the ranks.

Once selected, police cadets undergo nine months of specialized training before being deployed. Semarang Police Academy, the most prestigious programme, offers courses for around 200 cadets annually. However, the Police Academy does not accept female cadets (at least one of the reasons why there is a dearth of female police officers), although the College of Police Science now offers a non-degree class for female police. Approximately 10,000 officers, a third of whom are women, have been trained in foreign funded, specialized human rights programs run by the Ministry of Law and Human Rights.[284] The Police Academy and the Police Command School offer courses for district police head appointees, while the University of Indonesia offers graduate degrees in police studies. Little data could be obtained on the content and adequacy of pre-deployment training for police officers.

The quality of law enforcement appears to be compromised by insufficient post-deployment training for police officers in all provinces. For example, as part of the police's split from the military, some military personnel have been assigned to the police force. However, most have not received professional re-training or orientation for their new role. [285] Police contacted throughout the assessment frequently expressed a desire for more training and information on new legislation – which they say is necessary for them to

BOX 10: NOT SELECTED

I failed an initial test for a promotion. Many of my friends succeeded. I heard rumours that they had paid bribes. I didn't want to play the game, as I wanted to be selected on merit. Some passed the test despite questionable work performance. I have been an investigating officer of petty crimes since 1993 and have always handled a heavy caseload…. It is unfair, this process.

Police Officer, Teluk Ambon Baguala, May 2005

282 FGD in Desa Gosoma, 19 February 2005.

283 Interview with a farmer, Desa Samalantan, West Kalimantan, April 2005; Interview with a mother of a prospective policeman, Desa Marunsu, West Kalimantan, April 2005; Interview with applicant to the police force, Desa Sukaharja, West Kalimantan, May 2005.

284 Country Governance Assessment Report on Republic of Indonesia , Asian Development Bank, 2004.

285 Interview with Deputy Chief of POLRES Ternate, 15 December 2005.

carry out their jobs well – as well as materials and information systems to aid their investigations. However, the costs and distances involved in attending advanced training are usually prohibitive.[286]

Mediation

Police routinely mediate minor cases such as public nuisance and neighbourhood quarrels. Police say they recognize the importance of amicable settlement and consensus, to avoid disharmony within the community. For example, the police in the Maluku Province often assist citizens to resolve less serious criminal cases as well as civil disputes. If an agreement is reached between the parties, the police prepare a ' letter of undertaking' for them to comply with.[287] The Teluk Ambon Baguala POLSEK Sector Police report handling 37 complaints during the first quarter of 2005; of these, the police resolved 17 cases through mediation. [288] If mediation efforts are not successful, then the case is usually forwarded to the prosecutors with case notes (if it is a criminal case).

Monitoring and oversight

Monitoring and oversight of the conduct of police officers is widely recognised to be lax. A number of police officers contacted throughout the assessment openly admitted as much themselves. For example, the Deputy Chief of POLRES Ternate acknowledges that inappropriate conduct, including corruption, is seldom reported or investigated primarily because of a lack of effective monitoring and accountability procedures. [289] In Ambon Municipality, police officers found to have conducted themselves improperly are liable to be subjected to the '551' regime, denoting five months of education, five months of practical training and one month of job orientation. Officers who have committed serious offences can be dismissed or prosecuted. No information could be obtained regarding the number of officers that had actually been sanctioned for improper conduct, however anecdotal evidence suggests that their number is very few. As mentioned at 2.2 (above), it remains to be seen whether the new Police Commission will have any impact in increasing the accountability of police officers for inappropriate behaviour.

4.2 PROSECUTION SERVICE

As outlined at 2.3 (above), the key functions of the prosecution service are instituting prosecutions on behalf of the State and executing final binding judicial orders and decisions. They may also conduct investigations into certain crimes, and conduct further investigations to supplement a brief of evidence before lodging it with a court.[290] The following is a brief overview of the human resources, physical resources and caseloads of prosecutors' offices throughout the assessment locations.

Human Resources

In comparison to the police, prosecutors were far more likely to report that their workload was not excessive and that the number of prosecutors in each office was commensurate with the number of cases they were required to process. There were of course complaints of understaffing (particularly in North Maluku), but issues more commonly raised related to a lack of experience or resources impacting upon the ability of prosecutors to carry out their mandate effectively. The following is a brief overview of prosecutorial numbers and workload in each of the five provinces.

286 Interview with Chief of POLSEK Nusaniwe, Ambon Municipality, 26 May 2005.
287 Interview with Head of Intelligence and Security, District Police, Ternate, 7 May 2005.
288 Interview with police officer, Teluk Ambon Baguala Sector Police, 22 May 2005.
289 Deputy Chief District Police, Ternate City, Dec. 2005.
290 Article 30(1) Law No.16/2004 regarding the Public Prosecution Service and Articles 13-15 Code of Criminal Procedure.

West Kalimantan: Prosecution services in West Kalimantan are under the authority of the Provincial Prosecutor's Office located in Pontianak, which oversees a total of 140 prosecutors spread throughout the province (24 of whom are women). The Provincial Prosecutor's Office is staffed by 30 prosecutors (23 male and 7 female) and 86 administrative staff. The Ketapang District Prosecutor's Office has grown from five prosecutors in 1999 to 11 in 2005 (one of whom is a woman) and is supported by 12 administrative staff. According to staff, the number of prosecutors is well matched to the office's caseload, most of which involves illegal logging, drugs and corruption. [291] The recently established Bengkayang District Prosecutor's Office opened with seven prosecutors in 2003 and had grown to 10 prosecutors in 2005, supported by two administrative staff. Notably, no prosecutors are of Dayak ethnicity (the predominant local ethnic group). The office handles two to three cases per month on average, with 29 cases in 2004 and nine cases in the three months from January to March 2005. [292]

Maluku: In Maluku, the Masohi District Prosecutor's Office in Central Maluku is staffed by eight prosecutors who each have a caseload of two to three cases per month. However, many cases run for more than one month, and in the 12 months to December 2005 the office had cumulatively handled 60 cases (predominantly traffic and theft cases as well as corruption cases involving civil servants and violent crimes committed by youths).[293] Prosecutors report that human resources are commensurate with the caseload. Meanwhile, the District Prosecutor's Office in Ambon Municipality has 14 prosecutors and 38 administrative staff, and has jurisdiction over Ambon island, the Lease islands and some of Central Maluku district. The average caseload is around four cases per month per prosecutor, which the Chief Prosecutor (a woman) believes is reasonable.[294] However, the office lacks experienced prosecutors: only two of the 14 prosecutors have more than three years' experience. Many prosecutors fled during the conflict and have not returned – they have generally been replaced by prosecutors from Bali who, as Hindus, are less vulnerable to claims of bias in favour of either Muslims or Christians. However, many of these prosecutors are coming to the end of their assignment period and usually cannot be convinced to stay on – as a result, the number of prose-cutors fell from 19 in 2004 to 14 in 2005. [295]

North Maluku: The North Maluku Provincial Prosecutor's Office was established in 2003, four years after the new province of North Maluku was carved out of the existing province of Maluku. As of 2005, there were 38 public prosecutors (two of whom were female) and 108 administrative staff assigned to two district prosecutor's offices and six branch offices.[296] Since 1999, the six public prosecutors of the Ternate District Prosecutor's Office have shouldered a heavy caseload. In that year, the office processed 106 cases, which rose to 118 in 2001 (many of these conflict-related), dropped to 51 in 2002, and then rose again to 73 cases in 2003. [297] At the time of the assessment, the Tobelo Prosecutor's Office was still a branch of the Ternate Prosecutor's Office, although

291 Interview with Chief Prosecutor of Ketapang District Prosecutor Office, 21 April 2005.
292 Interview with staff member, Bengkayang District Prosecutor's Office, 25 April 2005.
293 Interview, Prosecutor, Masohi District Prosecutor Office, 11 May 2005.
294 Interview with Chief Prosecutor, Ambon District Prosecutor's Office, Ambon, 13 December 2005.
295 Interview with Chief Prosecutor, Ambon District Prosecutor's Office, Ambon, 13 December 2005.
296 Information from North Maluku High Prosecutor's Office, 25 February 2005.
297 BPS North Maluku, *Ternate Municipality in Figures: 2003*, BPS North Maluku, Ternate, 2004, p. 108.

it was soon due to become a district office in its own right. It is staffed by only two prosecutors and five administrative staff, who are responsible for nine subdistricts throughout the expansive North Halmahera district. Their workload is prodigious – in the period 1999-2004 they reported having processed 351 assault cases, 285 rape cases, 170 gang attacks, 338 murders and 363 thefts (a large number of these cases being conflict-related).[298] According to the head of the Tobelo Prosecutor's Office, national standards require it to have four prosecutors (as opposed to the current two), which will increase to seven prosecutors when it becomes a District Prosecutor's Office in its own right.[299]

Central Sulawesi : The number of prosecutors at the Provincial Prosecutor's Office in Palu has reduced from 31 in 1999 to 24 in 2005, but so has the caseload – from 1,154 cases in 1999 to 685 in 2004.[300] As at 2005 there were 80 prosecutors spread throughout Central Sulawesi – 12 more than that required by national standards, yet 120 short of the 200 that the Head of the Human Resources Sub-Section estimates is necessary in light of the province's size and levels of crime and conflict. [301] There are currently 28 vacant positions due to a lack of candidates of the rank required for the positions. However, the number of prosecutors in Donggala is considered sufficient, nine being stationed at the District Prosecutor's Office, and a further three and one respectively at two branch offices at the subdistrict level. The District Prosecutor's Office in Poso is staffed by eight prosecutors – more detailed information could not be obtained due to security considerations preventing the research team travelling to Poso.

Southeast Sulawesi: The Bau-Bau District Prosecutor's Office is home to 11 prosecutors and 44 administrative staff, and has jusrisdiction over not only Bau-Bau Municipality, but also Buton and Wakatobi districts. [302] This is a very large geographic area, some of which (such as Binongko and Tomia in Wakatobi) is accessible only by boat, and then only in good weather. [303] At the time of the assessment South Konawe had only been established as a district for 1.5 years and did not yet have its own prosecutor's office – instead, all cases continue to be handled by the Konawe District Prosecutor's Office, which has 13 prosecutors (three of whom are women) and eight administrative staff.[304]

Physical and Technical Resources: Most prosecution offices complained about their lack of technical resources, including transportation, computers, communications equipment and up-to-date legal literature. Provincial prosecutor's offices are invariably the best equipped, both in terms of vehicles and computers. For example, the Central Sulawesi Provincial Prosecutor's Office has (among other things) six cars, one prisoner transport vehicle, 14 motorbikes, 16 desktop computers, three laptops and a new photocopy machine.[305]

298 Interview with Head of the Tobelo Prosecutor's Office, Tobelo, 8 February 2005.
299 Interview with Head of the Tobelo Prosecutor's Office, Tobelo, 8 February 2005.
300 Interview with the Head of Human Resources Sub-Section, Central Sulawesi Provincial Prosecutor's Office, Palu, 23 March 2005.
301 Interview with the Head of Human Resources Sub-Section, Central Sulawesi Provincial Prosecutor's Office, Palu, 23 March 2005.
302 Interview with Head of the Development Section, Bau-bau District Prosecutor's Office, 22 April 2005.
303 Interview with Head of the General Crimes Section, Bau-bau District Prosecutor's Office, 11 February 2005.
304 Interview with Head of the Inteligence Section, Konawe District Prosecutor's Office, Unaaha, 19 May 2005.
305 Data from Central Sulawesi Provincial Prosecutor's Office, 23 March 2005.

Provisioning becomes sparser at the district level – by way of illustration, the Bau-bau District Prosecutor's Office is equipped with one jeep, two prisoner transport vehicles (one inoperable), two motor bikes (one inoperable), four computers and eight typewriters.[306] Similarly, prosecutors in Ketapang are equipped with four motor bikes, two telephones, four computers, seven typewriters and, by the office's own admission, a very poor filing system. [307] Meanwhile, one of the least well-equipped prosecutor's offices is the branch office in Tobelo, where two prosecutors and five administrative staff must share one car, one computer and two typewriters to cover all of North Halmahera district. [308]

Limited Transportation Restricts Operations in Rural and Remote Areas: For example, in Southeast Sulawesi's Konawe district, prosecutors are responsible for both Konawe and the newly created South Konawe district, which together span a large (and in places remote) geographic area. Because South Konawe does not yet have its own district court, some cases are heard in the Konawe district capital Unaaha, while others are heard in the provincial capital Kendari. Complicating matters is the fact that the Konawe Prosecutor's Office has only two vehicles – one used by the Chief Prosecutor, and the other used to transport detainees.[309] This often leaves prosecutors without transportation when they are due in court.

Delays also frequently arise from witnesses failing to attend court, because of the long distances they must travel and the fact that there is no official funding to help ease the financial burden of such travel (similar problems were noted in Bau-bau, Ambon and Tobelo). In Ambon for example, where a victim is clearly unable to meet these expenses themselves (as may be the case with people living in the Lease or Banda islands who have to travel to the Ambon District Court), the prosecution office may help to pay for their transport. There is no formal policy governing the provision of such assistance – it is entirely at the prosecutor's discretion. However, in such cases the victim, defendant and all the witnesses may all have to travel to Ambon together in close quarters on the same small speedboat (it being prohibitively expensive to use two separate boats). [310]

Shortage of legislation, books and other legal materials: Prosecutorial libraries, particularly at the district level, often hardly warrant the name. In Maluku, for example, the libraries of the Ambon and Masohi district prosecutors' offices consist of little more than two shelves of a small bookcase, stocked with an (almost invariably) incomplete set of legislation and legal texts. Indeed, the entire library of the Ambon District Prosecutor's Office (albeit not that extensive in the first place) was lost during the conflict, but ironically not due to intentional destruction – rather, the books were stored in a shed while another government agency temporarily occupied the building, where they were demolished by termites.[311] Legislation and legal texts are often not available in the provinces, and are not sent from the Attorney-General's Office in Jakarta. Accordingly, prosecutors often take advantage of official or personal trips to Jakarta to stock up on these materials.[312]

306 Interview with Head of the Equipment Section, Bau-bau District Prosecutor's Office, 22 April 2005.

307 Data from Ketapang District Prosecutor's Office, April 2005.

308 Interview with Head of the Tobelo Prosecutor's Office, Tobelo, 8 February 2005.

309 Interview with a prosecutor, Konawe District Prosecutor's Office, Unaaha, 5 April 2005.

310 Interview with Chief Prosecutor, Ambon District Prosecutor's Office, Ambon, 13 December 2005.

311 Interview with Chief Prosecutor of Ketapang District Prosecutor Office, 21 April 2005.

312 Interview with Head of the General Crimes Section, Bau-bau District Prosecutor's Office, 11 February 2005; Interview with Chief Prosecutor of Ketapang District Prosecutor Office, 21 April 2005.

Low Salaries: The basic salaries for prosecutors are in line with the standard salaries for civil servants, although allowances for functional and structural positions may differ. [313] s a rough guide, at the time of the assessment a junior prosecutor with a rank of Category III(a) received a basic salary of approximately Rp 900,000 per month, along with a functional allowance of Rp 600,000, giving a total salary of Rp 1.5 million per month. At the other end of the spectrum, a high ranking prosecutor with a Category IIII(d) ranking received a basic salary of around Rp 2.3 million per month, with a functional allowance of Rp 1.65 million, for a total salary of Rp 3.95 million per month.[314] Such salaries are unrealistically low, with the result that prosecutors, like many other govern-ment employees, often seek to supplement their income through other unofficial (and improper) means.

4.3 THE COURTS

General Courts

The following is a brief summary of the human and physical resources of the general, religious and administrative courts in the assessment locations.

Staffing and Caseloads : The Southeast Sulawesi High Court has eight judges, and in 2004 heard 68 criminal cases and 46 civil cases (all of which have been decided).[315] The Head of Human Resources considered that the eight judges were insufficient for the caseload, and suggested that 40 would be a more appropriate number. However, this number would seem to be excessive, and no basis was given for his calculation. In Kendari, the District Court's 13 judges and 12 support staff are felt to be sufficient to deal with the approximately 500 criminal and 50 civil cases filed annually.[316] However, Bau-bau District Court, with 8 judges and 27 support staff, reportedly has a backlog of cases.

The High Court of West Kalimantan in Pontianak oversees and hears appeals from the 7 district courts whose combined jurisdictions encompass the 12 districts and municipalities of the province. The court reportedly has a backlog of cases, although the exact number could not be ascertained. It was suggested that a large number of appeals are caused by district court judges not exercising the requisite degree of care in preparing judgements, on the basis that if a party is dissatisfied they can simply appeal the decision. A 1997 World Bank study lends weight to this opinion with its finding that most Indonesian judges, particularly those at the district court level, are considered to have inadequate knowledge of substantive and procedural law and are often 'indifferent to legal accuracy' when making their decisions on cases.[317]

Seven judges (none of them female) sit on the Ketapang District Court. The deputy chief justice of the Court regards this as an adequate number considering the court's caseload, even though it is two short of the nine judges it should have according to the officially proscribed standards for Class II District Courts. Twenty-one administrative staff assist the court's work, a reduction from 26 in 1999. [318] Meanwhile, the Singkawang

313 Basic Civil Service Salaries are currently governed by Presidential Regulation No. 1/2006.
314 Data from Konawe District Prosecutor's Office, Unaaha, April 2005.
315 Interview with the Criminal Registrar, Southeast Sulawesi High Court, Kendari, 23 June 2005.
316 Interview with the Head of Public Relations, Kendari District Court, Kendari, 17 May 2005.
317 World Bank, *Law Reform in Indonesia: Diagnostic Assessment of Legal Development in Indonesia* (Volume I), Cyberconsult, Jakarta, 1997, p. 122 and p. 143.
318 Interview with Deputy Chief Justice of Ketapang District Court, 19 April 2005.

District Court hears cases from the districts of Bengkayang and Sambas and the municipality of Singkawang (although this is simply a product of changing political boundaries – the Court's geographic jurisdiction has not changed since it was originally established as the Sambas District Court). For undetermined reasons, the number of judges on the court has declined steadily from 10 in 2000 to only 4 in 2005, while administrative staffing levels have been reduced from 32 to 15.[319]

The Central Sulawesi High Court consists of eight judges, although the Chief Justice believes that nine are needed in light of the caseload (see Table 10).[320] Indeed, while no assessment of actual judicial workload was made, it does seem odd that while the Central Sulawesi High Court has three fewer judges than the Religious High Court (which now has 11 judges), over the five years from 2000-2004 it has handled a caseload seven to ten times greater than that of the Religious High Court.[321] At the district level, the Donggala District Court commenced operations in May 2005 with three judges. Prior to that, cases had been heard at the Palu District Court, which has nine judges and 50 support staff.[322] The new North Maluku High Court commenced operations in March 2005, although at the time of the assessment was yet to issue a judgement in relation to the three appeals it had received. The reason cited for this was that as only two judges had been appointed to the Court there were not enough to form the panel of three usually required to hear cases (even though the Chief Justice of the Supreme Court can grant approval for appeals to be heard by a single judge). In North Halmahera, the number of judges at the Tobelo District Court has increased from three in 2002 to nine in 2005.[323] The court has hearing chambers in four locations outside of Tobelo, in the subdistricts of Kao, Galela, North Morotai and South Morotai. However, because of a

TABLE 10: COMPARATIVE CASELOADS OF CENTRAL SULAWESI PROVINCIAL-LEVEL COURTS (2000-2004)

Year	High Court					Religious High Court		Admin Court
	Total Cases Received	Civil		Criminal		Total Cases Received	Total Cases Decided	Total Cases Received
		Rec.	Dec.	Rec.	Dec.			
2000	127	91	87	36	34	14	12	15
2001	136	78	70	58	56	16	19	10
2002	107	76	65	31	30	15	15	9
2003	125	83	78	42	41	10	10	12
2004	103	45	46	58	52	13	13	9
TOTAL CASES RECEIVED	598					68		55

Source: Central Sulawesi High Court and Religious High Court; Palu Administrative Court, March-August 2005

319 Data from Singkawang District Court, April 2005.

320 Interview with the Chief Justice of the Central Sulawesi High Court, May 2005.

321 Although the Religious High Court has not always had such a high number of judges – in 2000 there were only two judges, which grew to seven in 2003, eight in 2004 and 11 in 2005: Data from Central Sulawesi High Religious Court, May 2005.

322 Interview with Registrar of the Palu District Court, Palu, June 2005.

323 Interview with Registrar of the Tobelo District Court, 20 April 2005.

shortage of official cars and motorbikes, judges only routinely travel to North and South Morotai – most cases from the nearby Kao and Galela are heard in Tobelo. The Court's caseload for 1999 was 63 criminal and 52 criminal cases; in 2002 four criminal and 19 civil cases; in 2003 14 criminal and 19 civil cases; and in 2004 25 criminal and 31 civil cases.[324] Meanwhile, the Ternate District Court is staffed by five judges and 22 support staff.

Illustrative Budgets: In 2005, the Southeast Sulawesi High Court's official budget was approximately Rp 2.17 billion (USD 217,000). Of this, the major allocations were for wages (Rp 1.33 billion or USD 133,000); office materials, supplies for the Court medical clinic and a nurse (Rp 187 million or USD 18,700), and; procurement of equipment such as motorbikes and maintenance of official residences (Rp 650 million or USD 65,000). [325] In contrast, the 2005 operational budget for the Bau-bau District Court (not including wages) was only Rp 116 million (USD 11,600).[326] Meanwhile, the Kendari Administrative Court had an official 2005 budget of Rp 744 million, which had to cover wages, procurement, building maintenance, *pro deo* cases and updating the court library.[327]

Physical and Technical Resources: As with the police and prosecution service, the physical and technical resources of the courts are often very limited. By way of example, the Singkawang District Court is equipped with one car, two telephones, four computers and six typewriters. The Ternate District Court is much the same – two cars, four motorbikes, three telephones, four computers and fourteen typewriters.

Impact of Conflict on Court Operations: Conflict and violence hindered the functioning of the courts and sometimes prevented it altogether. For example, the Poso District Court ceased operations during the height of the conflict and in its aftermath – all cases were transferred to the Palu District Court, a five to eight-hour drive away. At the time of the assessment the Poso District Court was functioning again, but had yet to resume normal operations.

Court-annexed Mediation: By virtue of Supreme Court Decree No.2/2003, all civil cases filed at courts of first instance must be diverted for attempted resolution by mediation before proceeding to trial. [328] The mediation process must be led by a certified mediator (who may be a judge or non-judge) and the costs borne by the parties based upon an agreement between them. There is no charge incurred where a judge functions as a mediator,[329] but a judge may not act as a mediator in a case over which he or she is presiding.[330] The time allocated for mediation is 22 working days from the date a mediator is appointed,[331] except where the mediator is not registered with the court, in which case a maximum of 30 working days are available.[332] Where agreement between the parties is reached it must be concluded in writing, which may then be certified by the presiding judge.[333] Alternatively, if mediation fails to produce a settlement, the case will proceed as normal.[334]

324 Case Register of the Tobelo District Court, as at April 2005.
325 Interview with the Head of the Finance Sub-Section, Southeast Sulawesi High Court, Kendari, 23 June 2005.
326 Interview with the Deputy Secretary of the Bau-Bau District Court, Bau-bau, 20 April 2005.
327 Interview with the Head of the Kendari Administrative Court, Kendari, 19 May 2005.
328 Article 2(1) Supreme Court Decree No.2/2003.
329 Article 15(4) Supreme Court Decree No.2/2003.
330 Article 4(4) Supreme Court Decree No.2/2003.
331 Article 9(5) Supreme Court Decree No.2/2003.
332 Article 5(1) Supreme Court Decree No.2/2003.
333 Article 11 Supreme Court Decree No.2/2003.
334 Article 12 Supreme Court Decree No.2/2003.

Although the assessment did not collect comprehensive data on the implementation of pre-trial mediation, the available information shows that to date the scheme has not been particularly successful or well-implemented (at least in the assessment locations). The one court that reported a (single) case being resolved by mediation was the Ketapang District Court, although the number of cases that failed to achieve a mediated settlement was not ascertained.[335] At the Ternate District Court one judge had been trained as a mediator by the Supreme Court, but at the time of the assess-ment no cases had reached settlement by mediation and all had continued to trial.[336] At the Masohi District Court in Central Maluku, of the 11 civil cases heard in 2005, none were successfully settled by mediation. The Deputy Chief Justice suggested that this was because the parties were all 'too stubborn and hung-up on their principles' to be able to settle, and that if parties were prepared to compromise they would have done so before bringing a matter to court.[337] He also reported that the court was not systematically implementing the Supreme Court Decree due to a 'lack of judges'.

Working with informal/*adat* justice systems: One case was documented of a district court taking the initiative to better understand local *adat* law in an attempt to improve coordination between itself and local *adat* institutions. In Maluku, the Masohi District Court had circulated a detailed questionnaire to ten villages within its jurisdiction, seeking information about *adat* law and practices. [338] The intention was to eventually come to some sort of agreement as to which types of cases should be processed by the Court and which should be resolved according to *adat*.

Religious Courts

Staffing and Caseloads: The number of judges at the Central Sulawesi High Religious Court has increased from only two in 2000 to 11 in 2005, despite the caseload remaining constant or even decreasing slightly. Beneath the High Religious Court are eight district religious courts that together heard 1119 cases in 2004. Between 2000 and 2004 there was an average cumulative backlog of 115 undecided cases each year, approximately ten percent of the total number of cases received each year. [339] The religious courts in Donggala and Poso each have jurisdiction over two districts, and both claim to lack sufficient numbers of support staff. The Poso Religious Court hears cases from Tojo UnaUna, 60 kilometres away. The Donggala Court has travelling panels that hear cases in several subdistricts. To get to the hearing chambers in Ampana subdistrict, judges must make a six hour journey each way to hear a case.

Located in Pontianak, the High Religious Court of West Kalimantan oversees all Religious Courts at the district and municipality level in the province, and hears appeals from decisions of these courts brought by Muslim litigants. The bench has grown from 3 judges in 1999 to 7 judges in 2005 (one of whom is female), with administrative staff numbers increasing from 26 to 33 over the same period.[340]

335 Interview with Deputy Chief Justice of Ketapang District Court, 19 April 2005.
336 Interview with a judge, Ternate District Court, Ternate, 16 December 2005.
337 Interview with Deputy Chief Justice of Masohi District Court, 15 December 2005.
338 Interview with Village Secretary of Amahai village, Central Maluku, 15 December 2005.
339 Data from Central Sulawesi High Religious Court, Palu, May 2005.
340 Administrative Section of the High Religious Court of West Kalimantan, May 2005.

Divorce Cases Most Common: Throughout the assessment locations, divorce cases were the category of case most commonly heard by the religious courts. In Ketapang, West Kalimantan, there has been an increase in divorce petitions by women in the past two years, a phenomenon a religious court judge and a lawyer attribute to a growing awareness among women that they can resolve domestic problems through the formal justice systems. [341] In North Maluku, the Ternate Religious Court in North Maluku received 284 cases in 2004, of which 154 were petitions for divorce filed by female litigants as opposed to 115 such petitions lodged by men.[342] Similarly, in Central Sulawesi, a Justice of the High Religious Court reported that in his experience, slightly more women than men initiate divorce proceedings in the religious courts.[343]

Illustrative Cost of an Appeal: To lodge an appeal at the Central Sulawesi Religious Court a fee of Rp 107,000 (USD 11) is payable, comprising: an administration fee of Rp 75,000; a document lodgement fee of Rp 24,500; stamp duty of Rp 6000, and; an 'editing fee' (*biaya redaksi*) of Rp 1,500. However, the assessment team reported that in practice this amount is best viewed as a deposit, and further payments will likely be necessary. If all the documents are complete and any required witnesses are available, an appeal should be finalised within a month, but if not then the process may take up to six months. [344] In Central Sulawesi, only a very small percentage of decisions from district level religious courts are appealed to the high court (around one to two percent).[345]

Funding: Religious courts generally receive less funding than their general court counterparts at both the district and provincial level. For example, from 1999 to 2004, the budget of the Ketapang Religious Court was roughly two thirds of the budget of the Ketapang District Court (see Table 16 in Annexe 2). The 2004 Religious Court budget was Rp 512 million (USD 51,000) as opposed to the District Court budget of Rp 805 million (USD 80,000).

Administrative Courts

Administrative courts typically report very low caseloads, which is somewhat ironic in light of the vast number of complaints about government decision-making and policies, some of which could potentially be challenged in the administrative court system. The Chief Justice of the Kendari Administrative Court attributed this to the fact that his court has a very low community profile and its jurisdiction is commonly misunderstood, even amongst lawyers, who sometimes direct clients to the District Court when really their case should be heard at the Administrative Court.

In Palu, the Administrative Court has six judges and jurisdiction over all of Central Sulawesi, but for the period 2000-2004 had a caseload of only 9 to 14 cases per year (see Table 10).[346] An average of four decisions per year are appealed to the High Administrative Court in Makassar, and an average of two of these decisions ultimately go on cassation to the Supreme Court.[347] The three most common types of cases heard are: (i) disputes involving the process of issuing of land certificates; (ii) employment disputes arising within the civil service (such

341 Interiew with a judge, Ketapang Religious Court, Ketapang, 18 April 2005; interview with a lawyer, Ketapang, 15 April 2005. The exact number of cases was not obtained.

342 Interview with staff member, Ternate Religious Court, Ternate, 17 May 2005.

343 Interview with a Justice of the Central Sulawesi High Religious Court, Palu, 17 January 2006.

344 Interview with Deputy Registrar, Central Sulawesi Religious High Court, 8 August 2005.

345 Data from Central Sulawesi High Religious Court, Palu, May 2005.

346 Interviews with the Chief Justice and Deputy Registrar of the Palu Administrative Court, 10 August 2005; Palu Administrative Court Case Registration Book, 1999-2005.

347 Palu Administrative Court Case Registration Book, 1999-2005.

as unfair dismissal); and (iii) disputes over the running of tenders for government contracts. Official case registration fees are Rp 250,000 at first instance (although litigants may be asked to pay more where witnesses live some distance from the court and serving a summons will be expensive); Rp 500,000 for appeals (half of which is allocated to the Palu Administrative Court and the other half to the High Administrative Court), and; Rp 750,000 for cassation.[348]

The Kendari Administrative Court has a bench of seven judges, supported by 30 administrative staff, and has jurisdiction over all of Southeast Sulawesi. Its caseload is low – around 18 cases per year – and the Chief Justice was perhaps the sole respondent to admit that his institution was over-staffed and in his opinion really only required a maximum of five judges.[349] The Pontianak Administrative Court, with jurisdiction over West Kalimantan, has seen judicial numbers increase from three in 1999 to seven in 2005 (while administrative staff numbers have remained steady at ten). It too reports a very low caseload. At the time of the assessment, North Maluku did not yet have its own Administrative Court – the Ambon Administrative Court in Maluku continued to exercise jurisdiction over North Maluku.

4.4 INFORMAL JUSTICE SYSTEM

Types of Informal Justice

The types of informal justice mechanisms operating in Indonesia are many and varied – a clear reflection of the ethnic diversity that characterises the country. [350] However, while this may make generalisation about specific rules and procedures somewhat difficult, most informal justice mechanisms fall within two main categories and employ processes that share many common features.

The basic distinction lies between communities in which cases are heard by traditional *adat* leaders according to *adat* or customary law, and those which disputes are resolved through mediation or 'soft' arbitration by village authorities – in most cases the village head. Of course, the division is not nearly so clear cut in practice, as resolution according to *adat* law often involves elements of both mediation and 'soft' arbitration, and in places such as Maluku, the *adat* leader may simultaneously hold the position of village head. Meanwhile, in ethnically heterogeneous communities (such as some villages in Bengkayang), the two processes may exist side by side, with the selection of forum depending on the ethnicity of the parties to the dispute. The following discussion will outline the basic process common to most informal dispute resolution mechanisms and some of their inherent weaknesses that can lead to injustice for women and minority groups.

Adat or Customary Law

As outlined in Part One, *adat* may be broadly defined as the traditions or customs upon which the community life of a certain ethnic group is based. The role of *adat* in general and *adat* law in particular (if it can appropriately be referred to as such) usually remains strongest in areas where there is a high level of ethnic homogeneity, for example Dayak *adat* in Bengkayang, Butonese *adat*

348 Interview with Chief Justice of the Palu Administrative Court, 10 August 2005.

349 Interview with the Head of the Kendari Administrative Court, Kendari, 19 May 2005.

350 See for example Fitzpatrick, D, 'Disputes and Pluralism in Modern Indonesian Land Law' (1997) 22 Yale Journal of International Law 171 at p.176.

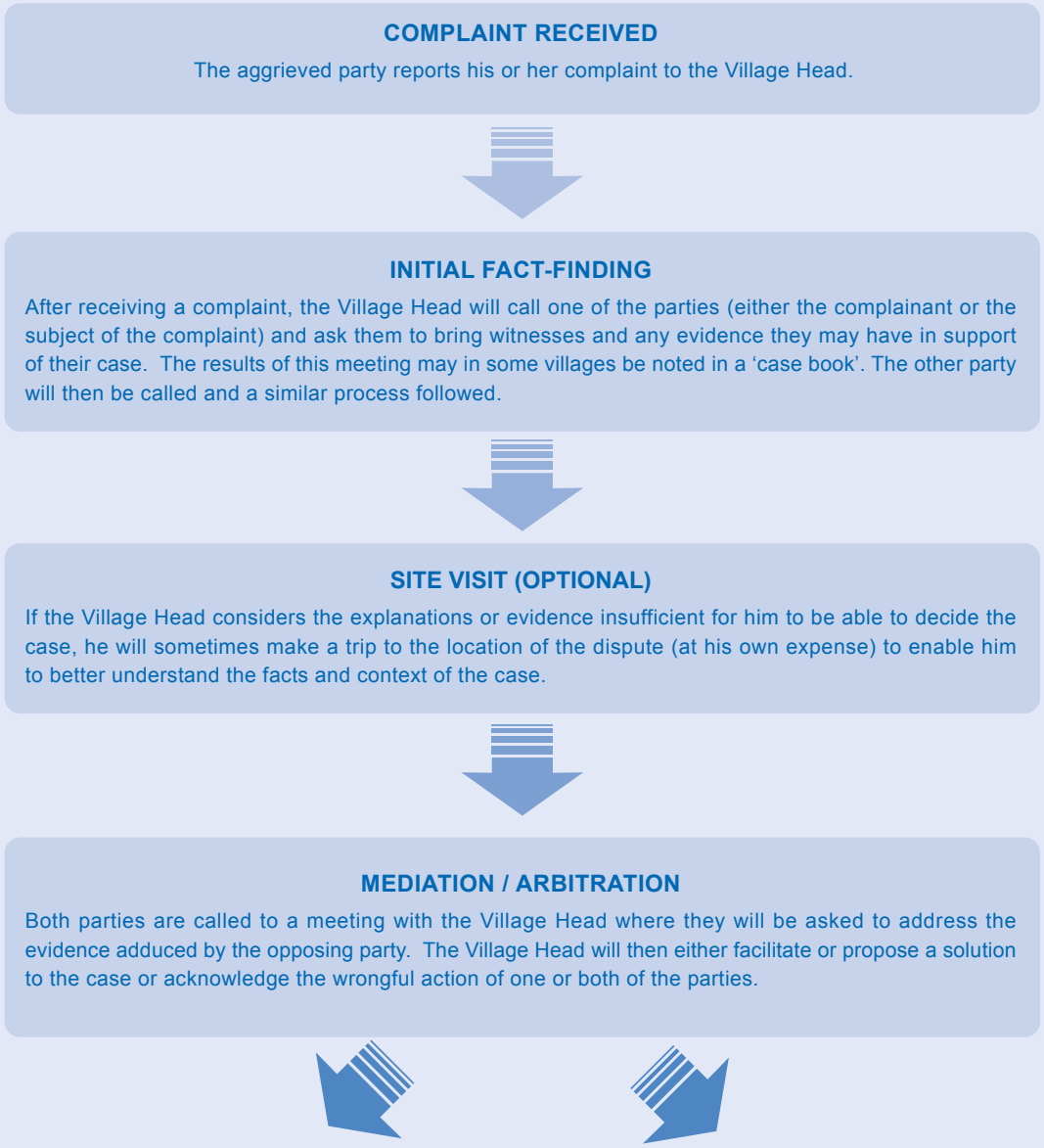
Traditional hall for village meetings in Maluku

in Bau-bau, and the *adat* of some of the kingdoms and sultanates of Maluku and North Maluku. While significant regional variation exists, the resolution of cases by *adat* authorities often follows a similar process to that outlined below at Figure 5. In regions where there has been significant transmigration and mixing of ethnic groups, the influence of *adat* often tends to fade, and dispute resolution through community leaders becomes the norm. This is especially so in urban areas, where ethnic heterogeneity and the adoption of more modern lifestyles combine to limit the relevance of *adat* rules and functionaries in community life.

Mediation and 'Soft' Arbitration

Where *adat* does not form the basis of informal dispute resolution, mediation or 'soft' arbitration is employed in a process whereby an influential community figure (usually the village head) assists the parties to a dispute to reach a mutually acceptable agreement, or proposes a settlement by reference to 'common sense' and local conceptions of what is fair and just in the circumstances. Where the process more closely approximates arbitration, it is described as 'soft' in the sense that any decision made is generally only binding if both parties agree, and in most cases there remains scope for negotiation over the nature and size of any sanctions or settlement. If agreement still proves elusive, the option of resolution through the formal justice system or another informal justice mechanism theoretically exists, although not without economic or social risk. (Figure 6) illustrates the common steps in the informal dispute resolution process. It should however be noted that the process is not always as linear as Figure 6 may suggest a matter may bounce back and forth several times between the different steps before being resolved.

FIGURE 6: DISPUTE RESOLUTION VIA VILLAGE AUTHORITIES IN WEST KALIMANTAN



Source: Interviews with Village Heads of Pangkalan Buton and Sutra, April 2005

Submission to the jurisdiction of an informal justice mechanism is theoretically voluntary, although as has been discussed above, factors such as social pressure and a lack of realistic alternatives place significant restrictions on the extent to which this is true in practice. Hearings are sometimes held in open session, depending on the nature of the dispute, and at other times involve only the parties to the dispute. Parties almost always represent themselves, and no instances of lawyers representing or advising one of the parties were uncovered during the assessment. Where agreement cannot be reached and a decision must be made (particularly in criminal-type cases), the informal justice actor may make a decision by himself, take counsel from other respected community figures, or occasionally seek input from the community as to an appropriate punishment. In some villages decisions are always recorded in writing, often in the form of a signed statement between the parties. In other villages, for example those in Bengkayang in which Dayak *adat* remains strong, the decision will simply be committed to the memory of the decision-maker and the parties. The following example in Box 11 illustrates how a case of chicken theft in Southeast Sulawesi is handled by an informal justice mechanism.

BOX 11: UNDERCOVER TEAM OF VILLAGERS EXPOSES CHICKEN THEFT RACKET IN SOUTHEAST SULAWESI

In 2003, Potuho Jaya village was in the midst of a series of unexplained chicken thefts. Almost every night a new family would fall victim to the thieves, who would usually make off with one or two chickens. The community held a meeting and decided to form small teams of 4-5 villagers in each neighbourhood (RT) to conduct undercover investigations into the thefts. After several nights of lying in wait without success, one team finally caught a chicken thief red-handed. The modus operandi of the thieves turned out to involve several of the gang watching television at the victim's house and keeping the victim distracted, while the thief snuck around to the back of the house and stole the chickens. The thief was immediately marched to the hamlet head's house, where he revealed the identities of his co-conspirators who were then apprehended one by one. The thieves turned out to be young men who were members of the village youth group karang taruna.

After the thieves were all assembled, they were taken to the village head's house to be tried in an informal hearing chaired by the village head. Those present at the hearing included the victims, the thieves' parents, the undercover team who caught the thieves, village administrators, community leaders and several members of the village's civil defence unit. The village head opened the hearing by inviting the undercover team to explain how they had apprehended the thieves. Next, the victims were asked to testify as to the losses they had suffered, and finally the thieves were given an opportunity to explain their actions. It transpired that six of the thieves had been actively involved in the chicken theft, while a further two had benefited from the proceeds of the crime by eating the chickens after they had been cooked, with knowledge that they had been stolen.

After hearing all of the facts, the village head opened the floor to community and youth leaders who were invited to give their opinions as to what punishment should be imposed upon the perpetrators. It was eventually decided that the appropriate sanction was a fine of ten sacks of Portland cement for each of the six thieves and a fine of five sacks of Portland cement for the other two accomplices. Before the sanctions were finalised in writing, the perpetrators and their families were given an opportunity to express their exceptions to the punishment. One of the perpetrators' families argued that the size of the fine would impose an undue burden on their family, and after a round of bargaining between the family, the village head and other community and youth leaders, the fine was reduced to five sacks of cement for the thieves and two sacks of cement for the accomplices.

Source: Interviews in Potuho Jaya village, Southeast Sulawesi, April 2005

Community members in Potuho Jaya summed up the benefits of this method of dispute resolution in this case as follows: (i) The fine was not unduly harsh but nevertheless served as a good lesson to the young men; (ii) the cement could be utilised by the community to build a small bridge, a benefit they would not have received had the case been reported to the police; (iii) the dispute resolution process was simple, timely and inexpensive, and; (iv) the entire village could monitor the enforcement of the punishment.

Arbitrary Decisions and Discrimination Against Women, Minority and Other Disadvantaged Groups

Despite the informal justice system being widely viewed by villagers as the most likely way of achieving an outcome that 'satisfies the community's sense of justice', there remain situations in which it falls well short of realising that ideal. Arbitrariness in decision-making and discrimination against women and minority groups are two factors that sometimes undermine the ability of the informal justice system to produce just outcomes.

In disputes where the two parties cannot reach agreement, a decision on the basis of an irrelevant consideration (such as a test of strength) may sometimes seem to be the easiest means of achieving resolution. For example, in Pelauw village, Maluku, a dispute over the ownership of a fruit tree growing on the boundary of two parcels of land could not be resolved through mediation by the village head due to inadequate independent evidence as to the actual location of the boundary (see Box 27 in Annex 3). To decide the issue, the village head suggested that the two disputants engage in a contest of holding their breath underwater, with the winner to receive the fruit tree. Although the disputants agreed, and indeed this particular case may have been very difficult to resolve by other means, resolving disputes based on arbitrary considerations would seem to bring with it a greater potential for unfair decisions.

Some decisions of informal justice systems are discriminatory against women and fail to take their interests into account. An illustration of how such discrimination may manifest itself in practice is a case documented in Watutau village, Central Sulawesi (see Box 12). Many of the decisions can largely be attributed to a patriarchal culture that has resulted in women being excluded from village decision-making bodies and informal justice mechanisms. Out of the 40 villages studied during the assessment, the only village in which women had some level of representation on a village decision-making body was in Amahai, Central Maluku. However, it can

BOX 12: AN *ADAT* APPROACH TO YOUNG LOVE

In Watutau village, Central Sulawesi, a girl became pregnant to her fiancé before their marriage. Later, sensing that his feelings had changed, she called off the engagement. A public adat meeting was called to adjudicate on the violation of adat law that forbids pre-marital sexual relations. More than 100 people attended, including the boy, the girl and their respective families. Only the adat leaders and the disputants were allowed to speak. Although both parties admitted to having sexual relations and were each fined Rp 250,000 (USD 25) as punishment, the girl was additionally fined the head of a pig for breaking off the engagement, was ordered to pay an adat fee of Rp 125,000 (USD 12.50) for registering the case with the adat council, and was left with a bill for Rp 600,000 (USD 60) to pay for the food consumed at the public meeting. In addition to this, she bore the future financial burden of raising the child as a single parent without any guarantee of assistance from the father.

Sources: FGDs with adat community, Watutau, 12-13 Feb 2005; interview with adat leader, Watutau, 23 Feb 2005

hardly be said to constitute a model example – of the 16 members of an *adat* equivalent to a village council, only one was a woman.

Ethnic minorities may also be subject to discrimination when they willingly (or in some cases less than willingly) subject themselves to dispute resolution according to the *adat* law of an ethnic majority. This issue was particularly prevalent in relation to the application of Dayak *adat* in West Kalimantan. For example, in Monterado, complaints were aired that heavier sanctions are imposed on non-Dayaks compared to Dayaks for similar cases, and that Dayaks are given the opportunity to compromise over the severity of sanctions whereas non-Dayaks are not. In Samalantan, claims were made of favouritism by *adat* leaders in favour of their relatives and unnecessary harshness towards non-Dayak defendants in criminal matters. At the more extreme end of the scale, the issue was raised of Dayak *adat* being forcibly applied to non-Dayaks by so-called '*adat* gangsters' (*preman adat*), although the extent of this practice could not be verified.

In all of the cases described above, losing parties theoretically retain the option of recourse to either the formal justice system or an alternative informal justice forum if they feel a decision is unfair. However, the social and economic risks involved in doing so mean that in reality they may feel compelled to comply with the decision. Moreover, when people from socially or politically marginalised groups such as women or ethnic and religious minorities are the beneficiaries of an informal decision, they may find it equally difficult to ensure that the opposing party complies with the decision because of their inability to exert social or political pressure, which are the only real tools available for enforcement.

Intersection Between the Formal and Informal Justice Systems

A degree of interaction between the formal and informal justice systems is an inevitable consequence of their overlapping jurisdictions, particularly in criminal matters but also in a range of civil matters. However, the exact point at which that intersection occurs, in what circumstances and under what terms, differs from place to place and can often be somewhat blurred.

The most frequent point of intersection between formal and informal justice is the police, often at the sub-district level (see Box 13). Common circumstances in which this could occur are either when a complainant goes directly to the police and they advise the complainant to first pursue informal resolution, or when an informal justice actor to whom a case has been reported contacts the police because of fears that the matter could turn violent. In the first type of case, a question exists as to whether the police give citizens true choice in whether they wish to pursue a matter formally or informally, or if the police will initially refuse to act before attempts at informal resolution have failed. The assessment did not yield sufficient data to draw any conclusions on this point.

At other times the police, rather than being reluctant to process a case, may be overly enthusiastic to do so in the hope of extracting a bribe from the 'guilty' party for dropping the investigation. For example, the assessment documented the case of a villager in Ketapang who after reporting a stolen cow to the police, subsequently wanted to withdraw the case and handle it informally. However, the police had spotted an opportunity to exploit their position of power and refused to drop the case on the grounds that it was a serious criminal

BOX 13: A FLOODED RICE FIELD

Ibu Nur and Pak Sofyan were neighbours in Samalantan village whose children often played at each other's houses. In September 2004, Ibu Nur's rice fields had become so dry that she decided to build a dam in the irrigation system order to retain more water. Unfortunately, the dam was so effective that eventually her rice fields began to flood, as did those of Pak Sofyan that were located upstream. Pak Sofyan confronted Ibu Nur about the flooding and an argument ensued. Suddenly Pak Sofyan's son Dedi appeared carrying a piece of wood and struck Ibu Nur on the hand, causing her to fall into the mud. The wound to Ibu Nur's hand needed treatment at the local health centre, and her injured pride also required that Pak Sofyan and his son be held accountable for their actions.

Ibu Nur initially reported her grievance to the hamlet head and village secretary. When they failed to take action she reported the matter to the police, explaining that because she did not understand the formal laws governing the case she would prefer that it be settled according to adat. On the following day, the police called the hamlet head and village secretary to the police station to discuss what should be done and it was decided that Ibu Nur, Pak Sofyan and Dedi should all be summoned to the station and the matter then be resolved according to adat. At that meeting, Pak Sofyan agreed that in addition to paying for Ibu Nur's medical treatment, he would pay the standard adat fine of one chicken, two kilograms of sticky rice, two kilograms of regular rice, one bottle of coconut oil, some brown sugar and a small water jug. Ibu Nur and Pak Sofyan also signed an agreement not to repeat their actions that was filed with the hamlet head. The process took three days.

However, on the day that Pak Sofyan was to pay the adat fine he reneged. He has not been held to account for his failure to pay and although Ibu Nur considers this to be highly unfair, she has not pursued the matter because she knows he is just as poor as she is. The two are no longer on speaking terms.

Source: Interview with Chairman of Samalantan Subdistrict Dayak Adat Council (names have been changed)

matter. They then approached the thief's family and informed them it would cost Rp 7 million (USD 700) to avoid criminal prosecution (see Box 17 in Annex 2).

In West Kalimantan, positive cooperation between the police and *adat* leaders is reportedly a relatively recent development, and has its origins in the inter-ethnic violence that plagued the province in the late 1990s.[351] According to the Chairman of the Bengkayang District Dayak *Adat* Council, prior to 1997 the police were opposed to the application of *adat* law on the grounds that it undermined the national system of laws. However, after being incapable of stemming the violence without assistance from Dayak *adat* leaders, the police have become much more amenable to the application of *adat* law in resolving disputes (whether that be because it is effective or because it simply reduces their workload). Cases can either be resolved at the police station, or remitted to the *adat* leaders for resolution on the condition that the outcome is reported to the police, who will make note of it for their records. However, citizens in several villages complained that as outsiders police did not fully understand their *adat* laws, which they felt limit the ability of the police to interact effectively with *adat* institutions.

In Maluku, there have been some attempts to coordinate the authority of courts and village legal institutions. At the time of the assessment, the Masohi District Court was circulating a detailed questionnaire about *adat* law and practices to 10 villages in the district, with the objective of enabling the courts and villages to agree on the categories of cases more appropriately resolved at the

351 Interview with the Chairman of the Bengkayang District *Adat* Council, Bengkayang, 25 April 2005

courts and in *adat* institutions. In some cases, the two processes may nevertheless end up operating concurrently. For example, cases involving serious bodily harm are generally acknowledged to fall clearly within the jurisdiction of the formal system, but deep-seated community beliefs may also require that in addition to the formal justice process the matter must be settled according to *adat*, in order to recover the equilibrium that has been disturbed by the crime and to facilitate peace between the two sides. This of course brings with it the risk of double punishment, if either system does not recognise (to some extent) the sanctions imposed by the other.

4.5 STATE AND CIVIL SOCIETY MONITORING OF THE INFORMAL JUSTICE SYSTEM

In a sense, the decisions of informal justice mechanisms (and the conduct of informal justice actors) are already subject to some degree of 'informal' monitoring by the local communities to whom they are morally (and in the case of village heads politically) accountable. However, there are often limits as to what can be done to expose or take action against an unfair or inappropriate decision where the successful party, or indeed the decision-maker, is a powerful figure in political, social or economic terms. In the five assessed provinces, there currently appears to be minimal monitoring of informal justice mechanisms by persons or organisations external to the village structure with the ability to bring issues of concern to public notice.

Police may on occasion undertake limited monitoring of the informal justice system when they refer a case back to an informal justice mechanism for resolution. In some cases this may involve the police being present at the informal hearing, while in other cases a condition of allowing the matter to be resolved informally may be that a copy of the document outlining the eventual settlement be lodged with the police. However it is unclear whether monitoring extends to implementation of the settlement or simply as to the fact that it exists.

Riverside houses in Ketapang.

The only other example of formal monitoring of the informal justice system uncovered by the assessment was in Amahai village in Maluku, albeit passive rather than active in nature. Around 1984, Amahai village reintroduced caning as an *adat* sanction in order to combat the increasing number of young men who were flouting *adat* law and simply refusing to pay the *adat* fines that had been imposed for their violations. Not all villagers agreed with this, and some considered the caning itself a criminal act that should be reported to the police. In response, the *adat* leaders held a meeting with judges of the Masohi District Court, who upon hearing the reasons for the caning were able to accept it as a legitimate practice and no controversy has arisen since.

PART 3
CONCLUSIONS & RECOMMENDATIONS

COASTAL VILLAGE – IN SPITE OF THE FISHING INDUSTRY, UNEMPLOYMENT IS GROWING

PART 3
CONCLUSIONS & RECOMMENDATIONS

Justice in the eyes of the poor and disadvantaged is closely intertwined with the daily economic challenges they face in maintaining a basic standard or living for themselves and their families. Accordingly, the single most frequently cited source of injustice by communities throughout West Kalimantan, Maluku, North Maluku, Central Sulawesi and Southeast Sulawesi related to obtaining access to government services and assistance in areas such as healthcare, education and post-conflict repatriation and rebuilding. It may come as little surprise that complaints of maladministration and corruption of government assistance programs in these areas were near the top of the list of respondents' complaints.

A further five categories of key justice-related issues were also identified during the assessment, beginning with ownership and management of land and natural resources. This can range from small-scale land disputes between neighbours to disputes involving larger areas of land that are often particularly intractable when they pit villagers against government, corporations or even neighbouring communities. The issue of gender violence and discrimination was raised by women throughout the five provinces, and despite several examples of those who had successfully stood up for their rights, the majority feel they are largely powerless to address the problem. Apparent violations of labour rights were most common in more urban environments, where workers in factories or ports are often in a weak bargaining position to negotiate better conditions from their employers. Criminality and inadequate law enforcement were of concern in many villages, but were often not afforded the same level of priority as most of the issues described above. The one exception was Poso district, where unresolved and continuing incidents of violent crime are a serious cause of concern. In post-conflict areas such as Poso, issues of physical security, access to government services and assistance and land ownership are also often more acute than they may otherwise be.

The assessment makes it clear that access to justice for poor and disadvantaged communities entails far more than simply adequate access to the formal institutions of justice, although this is certainly important. The informal justice system is the preferred forum for the majority of local disputes, for the relative or real advantages it has over the formal justice system in terms of accessibility, speed, cost and perceived ability to preserve harmonious relations between parties. However, despite the community viewing the formal justice system as intimidating, more expensive, harder to understand and liable to produce unfair outcomes, it is generally accepted to be the only appropriate forum for serious criminal matters and certain civil matters such as more complex land disputes. It is also important to note that community preferences for the informal justice system should not be interpreted as meaning that it is blemish – free – a number of concerning trends were noted in terms of arbitrary

decision-making and discrimination towards women and ethnic minorities by informal justice mechanisms.

It is also apparent from the assessment that the majority of injustices cited by citizens often evade resolution because they involve parties external to a village, who therefore lie beyond the effective jurisdiction of the informal justice mechanisms upon which communities so reliant. This is particularly so when the opposing party is not a natural person but a government or corporation, as is frequently the case with large scale matters. These injustices persist because communities do not know of or are unable to access other avenues for resolving the issue at hand. In some cases this may be the formal justice system, but in others, direct engagement with the government institutions responsible for particular issues may be an equally effective means of achieving just outcomes. In the assessment locations, however, citizens' attempts to pursue this avenue have more often than not ended in failure due to a lack of response from government and citizens' subsequent inability or unwillingness to organise for further action or access assistance and advice.

This report makes five core recommendations to government, donors and civil society in response to the findings of the assessment, as set out below. The conclusions upon which the recommendations are based, along with the recommendations themselves, are outlined in more detail in each of the sections that follow.

- *Intensify efforts to build community legal awareness*
- *Reaffirm the role of the State in the provision of legal aid*
- *Support the provision of community legal services by civil society*
- *Focus on advocacy and empowerment to reduce discriminatory and arbitrary decision-making practices in the informal justice system*
- *Consolidate efforts to reform the formal justice system*

1. INTENSIFY EFFORTS TO BUILD COMMUNITY LEGAL AWARENESS

Support activities by both state and non-state actors that are aimed at building general community legal awareness. Although the assessment documented a significant number of cases in which citizens, through their actions, demonstrated an implicit awareness of their rights, general community legal awareness remains low. More than half of all survey respondents (61 percent) were unable to provide a single example of areas in which they thought that laws and regulations influenced their daily lives. Currently existing outreach activities are limited in scope, geographic coverage and frequency – for example the Ambon Prosecutor's Office aims to conduct legal awareness campaigns in a maximum of eight out of the 50 villages in its jurisdiction every year. Campaigns should continue to focus on tangible legal issues that are of relevance to the target population, such as workers rights in the

case of factory workers, but also provide information about the administration of government subsidy and assistance schemes that are often perceived as being a source of injustice. The provision of information regarding restrictions on citizen's rights or entitlements is equally important, in order to reduce the occurrence of disputes or perceived discrimination that are based on misunderstandings of rights.

Increase the availability of information about legal services and dispute resolution methods beyond the village level. Although citizens have shown a clear preference for either the relative or real advantages of the informal justice system, many of the issues that they cite as the most frequent sources of injustice are of a nature that renders them incapable of resolution via such forums. This is because issues such as inefficiency or corruption in the provision of government services, or the management and ownership of land and natural resources, often arise not in the context of a dispute between citizens, but in the context of a dispute with parties external to a village such as government agencies or corporations. Although citizens may be aware that their rights have been breached (in general terms at least), they are often unaware of all of the available options for pursuing a remedy for their grievance. For example, citizens are largely ignorant of the *pro deo* provisions that would entitle them to a waiver of administrative fees for lodging a civil case at the local court, or of the fact that a lawyer, ethically and legally bound to provide free legal advice to the poor, may in some cases be able to assist them on a no-cost or reduced-cost basis.

Develop the capacities of informal justice actors and community leaders to provide information to members of their communities about legal rights and legal and other services that may be available to them. Community leaders such as village heads are often the person to whom citizens first report when they need assistance or have a grievance. They are therefore a potentially effective means of channelling information to the community, at least for issues that are clearly beyond their jurisdiction and therefore not subject to the common preference for settling matters internally. However, alternative sources of information (and community awareness of such sources) nevertheless remain important, especially for the not infrequent cases of when the village administration is the subject of a citizen's complaint.

Designate women as a priority target for legal awareness campaigns and activities. Both the quantitative and qualitative components of the assessment revealed consistently lower legal awareness amongst women than men, a point of which the survey results are particularly illustrative. Amongst survey respondents in the five provinces, ten percent less women than men had heard of a law (*undang-undang*) and 15 percent less women than men had heard of a regional regulation (*perda*). Women also had inferior knowledge of the legislative process, with five percent less women than men being able to name the parties responsible for making laws, and 12 percent less women than men being able to name the parties responsible for making regional regulations. In relation to the operation of the formal justice system,

a further 10 percent less women than men consider that it is understandable by most people. Of course, the above examples are cited for their indicative value in demonstrating the legal awareness of women relative to men, rather than in support of an argument that civic education should take priority over other forms of legal literacy. Promoting understanding of the legislative process, as desirable and important as it may be, arguably takes second place behind building women's awareness of rights (even in general terms) that are relevant to problems and issues that arise in everyday life. Women's rights in relation to domestic violence are one prominent issue, although it is of course equally important for men, as perpetrators of violence against women, to be made aware of women's rights and their obligation to respect them.

Place greater emphasis on the socialisation of regional regulations. Although not a focus of the qualitative component of the assessment, anecdotal evidence suggests that the current enthusiasm of regional governments for passing regional regulations (*perda*) is not yet matched by efforts to make communities aware of the content of these new regulations by which they may be bound. The quantitative survey results add weight to this conclusion, indicating that community awareness of *perda* is significantly lower than that of laws (*undang-undang*). Although 81 percent of respondents throughout the five provinces had heard the term '*undang-undang*', only 63 percent had heard of the term '*perda*', let alone the substance of such a regulation. However, considering the tendency for *perda* to be passed that are inconsistent with

Dusun Wayame, Teluk Ambon Baguala, Maluku

national-level laws (and in some cases the human rights protected in the Constitution), any increased socialisation of regional regulations must be matched by greater scrutiny of their content in order to avoid promoting laws that are, in fact, 'illegal'.

Encourage research on the effectiveness of different popular education methods to ensure existing legal awareness-building programs achieve maximum impact. Limited funds place significant restrictions on the frequency and geographic scope of outreach activities of both state institutions and civil society organisation. Given present realities, it must be assumed that resources will remain limited for the foreseeable future, and is therefore important to extract a maximum return on the investment of available funds. Attention should focus on both methods and mediums of information delivery. For example, the current State-provided 'Basic Materials for Building Legal Awareness', consisting simply of a copy of a law targeted for socialisation, are not the most easily digestible way of presenting information about a policy that the law is designed to implement. In light of The Asia Foundation's finding that television and radio are citizens' two top sources of legal information, serious consideration should be given to making more effective use of these mediums for increasing legal awareness.

2. REAFFIRM THE ROLE OF THE STATE IN THE PROVISION OF LEGAL AID

Increase central government legal aid funding for indigent defendants in criminal matters. Legal aid funding for court-appointed lawyers has in the past been provided by the then Ministry of Justice through its regional offices, but has ceased since administrative and financial responsibility for the courts was shifted from the Ministry to the Supreme Court under the 'one-roof' amendments. Limited funding is now provided through a Supreme Court administered scheme, but the budget of Rp 1.25 billion (USD 125,000) for 2006 was a 17 percent reduction on the 2005 budget, and was allocated for only half the number of cases (250 as opposed to 500). Although Indonesian advocates are under an ethical and legal duty to provide free legal assistance to the poor, it is neither fair nor realistic to expect the legal profession to shoulder such a high proportion of this burden. An increase in funding would provide greater incentives for advocates to provide legal advice and representation to indigent clients and, although no guarantee in itself, may enable them to spend more time on such cases and thereby reduce the chances of indigent defendants receiving second-class justice.

Widen the scope of legal aid funding to encompass the provision of legal aid to indigent litigants in certain civil matters. Although indigent litigants are currently entitled to a waiver of court fees under the *pro deo* provisions, this scheme does not extend to the provision of professional legal advice or representation. State-sponsored assistance to indigent litigants in civil matters is generally limited to the advice that may be provided by court administrative staff, not all of whom have formal legal training. Moreover, *pro deo* does not cover an eligible litigant's costs of summoning opposing parties and witnesses, both of which can be prohibitively expensive to the poor,

especially those living in rural areas some distance from the nearest court. Eligibility criteria for the types of cases to be funded under an expanded *pro deo* scheme would of course need to be carefully framed in order to obtain maximum impact from limited funds. It may also be preferable that civil society organisations such as university legal aid clinics and legal services NGOs are made eligible to receive funding for their legal work with indigent clients, not only advocates. Lastly, consideration should be given to covering some or all of the substantial costs involved in summoning opposing parties and witnesses, to make *pro deo* a more realistic option for those for whom even this form of legal aid remains financially out of reach.

Encourage provincial and district governments to contribute to legal aid schemes through making allocations in their budgets. With budgets tight at both the central and regional levels, sharing the burden of funding legal aid may enable a greater pool of resources to be made available than would be the case if responsibility rested with only one level of government. Further study would be required to determine whether stand-alone schemes (as currently exist in some regions) are the most effective method of achieving this, or whether administrative costs could be reduced and ease of use for clients increased by channelling central and regional funding through one integrated program.

Continue efforts to draft and enact a comprehensive law regarding legal aid, but at the same time study alternative options for achieving similar results through policy changes under existing regulations. A specific law governing the provision of state-subsidised legal assistance for indigent defendants and litigants could provide a strong basis for a comprehensive legal aid scheme covering both criminal and civil jurisdictions, and function as a clear expression of political will to promote the fulfilment of every citizen's right to legal assistance, a right that the Constitutional Court has implied into the Constitution. However, considering an already crowded legislative program, it would be prudent to consider alternative options for achieving similar results under existing regulations, at least as an interim measure. If the core obstacle to the provision of such a scheme is a lack of money, the mere existence of a law regulating legal aid and guaranteeing state funding may not be the panacea that some hope it to be. While a legal aid law may comprise an effective tool for exerting pressure on those responsible for allocating government funds, economic realities would likely render symbolic any guarantee of state funding contained within it, as has been the case with the constitutional guarantee of 20 percent of the state budget for education.

3. SUPPORT THE PROVISION OF COMMUNITY LEGAL SERVICES BY CIVIL SOCIETY

Promote the capacity-development of existing civil society organisations engaged in the provision of legal and quasi-legal services. The capacity of many civil society organisations at the provincial and especially district level is, often by their own admission, relatively weak. Assistance with building technical, management, financial and administrative skills, has the

District Court of Ambon

potential to greatly enhance the ability of these organisations to provide services that will hopefully, in turn, increase access to justice for the poor and disadvantaged communities with which they work. Potential activities are not necessarily limited to the provision of formal training – equal or greater results may be achieved by supporting programs such as staff exchanges between NGOs to facilitate the sharing of knowledge by those who have achieved successes in other districts or provinces. Where an organisation shows sufficient promise, the provision of core funding support to cover expenses such as staff salaries and overheads may be another effective means of building capacity. While support for civil society service provision may be less desirable where it usurps a core function of government, legal aid is an area in which civil society arguably has a legitimate, and indeed vital, role to play.

Encourage the expansion of existing civil society efforts to provide legal services and quasi-legal services, including, where appropriate, widening the geographic or thematic scope of those services. Without detracting from the good work already being done by some organisations, there remain many gaps in the provision of legal services by civil society organisations in the five provinces that have been the focus of the assessment. Existing organisations tend to focus on a rather narrow thematic area, and due to limited resources mainly concentrate on issues involving classes of people rather than individuals, often within a restricted geographic area. Notably, none of the three major legal services NGOs (YLHBI, PBHI or LBH-APIK) are represented in Maluku, North Maluku, Central Sulawesi or Southeast Sulawesi, although LBH-APIK is active in West Kalimantan, where PBHI

has also just established an office. Existing capacities should be built upon wherever possible, although if long-term core and technical support can be assured, the feasibility of establishing a new organisation where none currently exist should not necessarily be discounted. While an inherently higher-risk strategy, chances of success may be heightened by partnering with one of the more established national legal services NGOs, in order maximise the depth of experience and resources the new organisation has to draw on.

Increase the accessibility of legal information and legal services, particularly in rural areas, through training village-level paralegals with links to legal aid posts at the sub-district level and a legal aid lawyer or organisation at the district-level and above. Legal aid organisations are usually based in provincial or in some cases district capitals, often many hours travel away from some of the more remote regions of the areas that they serve. To provide real access to legal services for citizens living in these villages, a linking mechanism is required to facilitate the two-way flow of information between justice-seekers and legal aid providers without requiring citizens to travel long distances. The first link in the chain are village-level paralegals – non-legally trained local residents who are provided with sufficient training to identify not only basic legal issues and the options available to address them, but also dispense information about commonly applicable government subsidies and assistance schemes. Citizens with legal or administrative problems could seek initial assistance from a paralegal, who, as a fellow community member, should be more approachable than a person from outside the village. If necessary, the paralegal could assist citizens with reporting to a legal aid post established at the sub-district level, which could then put citizens in contact with a legal aid lawyer at the district level, or a legal services organisation at the provincial level sitting at the apex of the entire structure. Importantly, the potential benefits of employing such a structure are not limited to rural communities – those living in urban areas may derive equal benefits because despite their physical proximity to a legal services organisation, they may lack the knowledge or initiative to be able to independently seek out legal services. The World Bank and UNDP are currently implementing this model in a number of districts in Aceh (and the World Bank in a number of other provinces as well), which will provide some useful examples from which to evaluate its effectiveness and distil lessons to guide similar activities in future.

4. FOCUS ON ADVOCACY AND EMPOWERMENT TO REDUCE DISCRIMINATORY AND ARBITRARY DECISION-MAKING PRACTICES IN THE INFORMAL JUSTICE SYSTEM

Support capacity development for informal justice actors in the areas of mediation techniques and citizens' rights. Citizens' preference for the informal justice system should not be interpreted as meaning that the system always produces fair and appropriate outcomes, or protects the rights of women or minority groups. Several instances of arbitrary decision making or bias against such groups were documented during the assessment, and there is little reason to believe that these

are simply isolated examples. Although in some cases informal actors already have considerable practical mediation skills built-up over years of experience serving their communities, additional training in mediation principles and techniques may assist them to provide fairer and more effective dispute resolution services that are more sensitive to the needs of women and other marginalised groups. Campaigns to increase informal justice actors' awareness of citizens' rights, particularly under the Constitution and Human Rights Law, may likewise promote the slow process of attitudinal change that must take place if the informal justice system is to more adequately fill the gap in the provision of formal justice services that will inevitably continue for the foreseeable future.

Support an increased role for women in village governance and justice mechanisms through advocacy and empowerment. In almost all of the 40 villages in which the assessment was conducted, women had no role in village decision-making bodies or informal justice mechanisms. One exception was the village of Amahai in Central Maluku, although it can hardly be said to constitute a model example – of 16 members of an *adat* equivalent to a village council, one was a woman. Achieving an increased role for women in village governance and justice will not be easy, as it effectively involves swimming upstream against a steady current of ingrained stereotypes of gender roles and established patterns of exclusion that have been at the core of village life for generations. It is however extremely important, in order to reduce gender bias in decision-making at the village level and ensure that women's interests are not overlooked or discounted.

Support monitoring of informal justice mechanisms by government and civil society organisations. In a sense, the decisions of informal justice mechanisms and the conduct of informal justice actors are already subject to some degree of 'informal' monitoring by the local communities to whom they are morally (and in some cases politically) accountable. However, there are often limits as to what can be done to expose or take action against an unfair or inappropriate decision where the successful party, or indeed the decision-maker, is a powerful figure in political, social or economic terms. In the five assessed provinces, there is currently minimal monitoring of informal justice mechanisms by persons or organisations external to the village structure, with the ability to bring issues of concern to public notice. Such monitoring is important in light of citizens' generally high level of dependency upon informal mechanisms and the fact that this state of affairs is unlikely to change in the short to medium term. Monitoring may be easier in villages where written records of informal decisions are kept, and is already taking place to a limited extent in cases where police refer a matter back to an informal mechanism but require a written account of the settlement as evidence that a matter has been dealt with. Where such records are not currently produced, advocating for their production may be an activity that could simultaneously increase accountability

of informal justice mechanisms within communities and facilitate their monitoring by external parties.

5. CONSOLIDATE EFFORTS TO REFORM THE FORMAL JUSTICE SYSTEM

Continue to support measures to eradicate corruption and improve standards of conduct within the police force, prosecution service and judiciary. Citizens who participated in both the qualitative and quantitative components of the assessment displayed a high degree of reluctance to interact with formal justice institutions, particularly the police, due to perceptions of pervasive corruption that are firmly grounded in reality. For example, when asked what the main problem was when dealing with the police, 36 percent of survey respondents nominated cost or bribes, while a further 22 percent were afraid, 18 percent thought the process was difficult, 13 percent said that police officers were violent and 4 percent believed they were biased. Reports of police involvement in illegal gambling rackets, the sale of alcohol and extortion were not uncommon, and the disciplining of officers for their involvement in these activities is rare.

Prioritise efforts to increase the recruitment of female police officers, and ensure that they are stationed at sub-district police stations (POLSEK) where the majority of community interaction takes place. An acute shortage of female police officers was noted in many of the districts in which the assessment was conducted. Despite respondents from provincial and district level police forces confirming the existence of a policy to increase the numbers of female recruits, it appears that this scheme is yet to bear fruit, if indeed it has been seriously implemented. There is also a strong tendency for female officers to be stationed at district police headquarters (POLRES) rather than at sub-district stations, where the majority of community interaction takes place, particularly in rural areas. The result is that women who fall victim to crimes such domestic violence or sexual assault frequently have no choice but to report to male police officers which at best may be embarrassing, and at worst expose them to further discrimination, if they decide to report to police at all. Special Service Rooms (RPK) should be established at police stations where they do not yet exist, although to be of any real benefit they must also be adequately staffed by female officers.

Implement a national legal survey of the real needs of key justice institutions such as the courts and the police, including staffing levels, salaries and operational resources. Although not comprehensive by any means, this assessment has noted many instances of what would appear to be grossly under-resourced justice institutions, both in terms of staff numbers and equipment. However, drawing definite conclusions is problematic. Simply comparing existing resources with nationally mandated minimums may be misleading, as the reference point itself may not be reflective of real needs. The mere fact that a court, for example, lacks the full complement of judges that a court of its category should possess according to national standards cannot be interpreted as conclusive evidence actual resource deficiency. The court may be located in a new district, where the caseload

is so low that when assessed according to judicial workload, the court is actually overstaffed, even though it would appear understaffed by reference to national standards. Identifying areas where resources are not being efficiently utilised would (political considerations aside) enable their diversion into areas where they can be put to more productive use. As an added benefit, a survey would also provide a clearer picture of the extent to which potentially unnecessary duplication of judicial infrastructure is taking place due to the runaway trend of creating new districts that is currently gripping the regions.

Support civil society and state monitoring of formal justice institutions, legislative bodies and government agencies mandated with the delivery of public services. Effective public scrutiny of the workings of institutions such as the police, the courts and government agencies has the potential to help reduce corruption and improve performance. The Freedom of Information Bill, when passed into law, should provide monitoring organisations with a valuable additional tool to support their work. Increasing access to court judgements and to *perda* are two issues that require particular attention. Although monitoring at the local level may more often involve civil society organisations,public participation should also be encouraged in state bodies such as the judicial, prosecution and police commissions, as well as the Corruption Eradication Commission and the National Ombudsman Commission. Procedures for filing complaints with these commissions should be well publicised and further consideration given as to how to ensure realistic access for citizens at the local level.

ANNEX 1
SURVEY DEMOGRAPHICS

SMILING BOATMAN IN TOBELO, NORTH MALUKU

ANNEX 1
SURVEY DEMOGRAPHICS

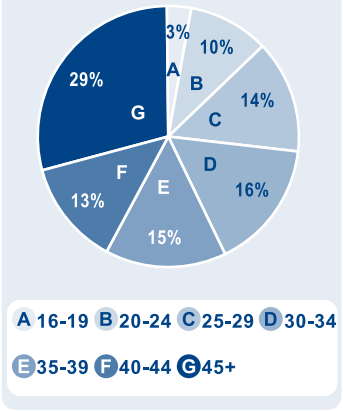
1.1 DEMOGRAPHIC CHARATERISTICS OF THE SAMPLE

The sample age range of 16 years and above represents approximately 70 percent of the Indonesian population.[352] The proportion of each age group in the sample corresponds in approximate terms with the proportion of each age group in the general population, with the exception of those aged 15-19. In the 2000 census, the 15-19 age group comprised 15.11 percent of those aged 15 and above in the general population, but this group makes up only 3 percent of the sample. Consequently, the sample is considerably under-representative of young people and slightly over-representative of each of the older age groups. For example, 10.66 percent of those in the general population aged 15 and above were aged 35-39, as compared to 15 percent in the sample.

The average level of education of respondents in the sample is relatively low, consistent with the wider Indonesian population (see Chart 8). The highest level of education achieved by 50 percent of respondents is elementary school, with women being slightly less-educated than men (53 percent of women have elementary school education or less, compared to 48 percent of men). This figure is slightly higher than the national average (in 2004) of 56.16 percent.[353] Sixteen percent of respondents had graduated from high school, while only four percvent had graduated from The combined 20 percent of respondents in the sample who have at least graduated from high school is slightly lower than the national average (in 2004) of 23.72 percent.[354]

CHART 7: AGE OF RESPONDENTS

Question: 'What is your current age?' (n=4524)



Source: Access to Justice Survey

Approximately 90 percent of respondents identify themselves as living in rural villages. The majority work as farmers, fishermen or animal breeders (57 percent); 10 percent operate private businesses and 14 percent are not working (see Chart above). Monthly household income amongst respondents in the sample is low compared to national and provincial averages (see Chart 10 above). Fifty percent of respondents live in households with a reported monthly income of less than Rp 450,000 (approximately USD 49),[355] while a further 31 percent live in households with a reported monthly income of between Rp 450,001 and Rp 900,000 (approximately USD 49 – 98). Using national and provincial average monthly household expenditure as proxy indicators of household income, this means that 81 percent of respondents live on below the national average of Rp 946,000

352 2000 Census by Statistics Indonesia, 'Ulasan Singkat Nasional Hasil Sensus Penduduk Tahun 2000' available at http://www.bps.go.id/sector/population/Pop_indo.htm (accessed 29 June 2006).

353 Satistics Indonesia Social Welfare Statistics - Education, http://www.bps.go.id/sector/socwel/table2.shtml (accessed 30 June 2006).

354 Statistics Indonesia Social Welfare Statistics - Education, http://www.bps.go.id/sector/socwel/table2.shtml (accessed 30 June 2006).

355 Based on an exchange rate of 1 USD = Rp9200.

per month and at least 50 percent live on below the average of Rp 555,000 per month across the five selected provinces.[356] Only 3 percent of respondents have an income of over Rp1,800,000 per month (approximately USD 196). 64 percent are Muslim, 29 percent Protestant, 3 percent Catholic, and 4 percent 'other' or 'no answer'. The vast majority of respondents are married with children (83 percent). Only 22 percent of respondents speak Indonesian as a first language.

1.2 QUALITY CONTROL

The survey was conducted by a local NGO from each province. Two survey coordinators from each of the five NGOs were trained in Yogyakarta by PSPK-UGM, and these coordinators then trained their teams of enumerators to collect the data. After the data was collected, an attempt was made to verify its integrity. A list of all respondents in each village was compiled and approximately 20 names randomly selected from it. Monitors with no relationship to the NGO or enumerators that had conducted the survey then visited 10 people from this list (approximately 8 percent of the sample in each village), confirmed that they had been surveyed by an enumerator, and repeated a short series of objective questions that should be answered consistently regardless of a respondent's feelings on a particular day (for example, their age or number of their children). PSPK-UGM then compared the results of the monitoring with the results of the survey to check for consistency. One village was removed from the sample when significant inconsistencies between the survey data and the monitoring data raised the prospect that some survey responses may have been fabricated in that village.

CHART 8: EDUCATION LEVELS

Question: 'What is your highest level of formal education?' (n=4524)

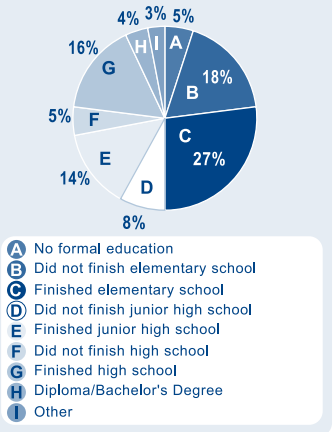


CHART 9: OCCUPATIONS

Question: 'What is your current occupation?' (n=4524)

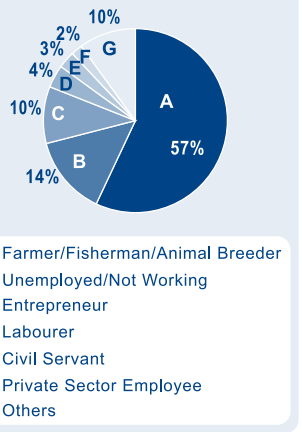
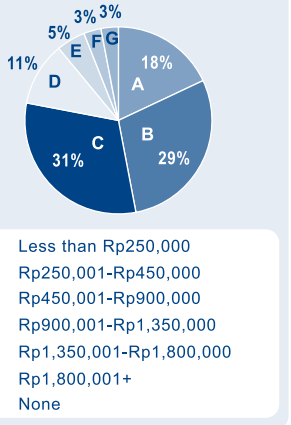


CHART 10: MONTHLY INCOME

Question: 'Which category best describes your monthly household income?' (n=4524)



Source: Access to Justice Survey – All Provinces

356 Figures based on data from SUSENAS 2004 (National Social Economic Survey) by Statistics Indonesia. Given that data on average household income could not be obtained, average monthly household expenditure is used as a proxy on the assumption that household savings at this end of the income scale are low or non-existent. This assumption is underpinned by data from the Access to Justice Survey in which 80 percent of survey respondents reported having no monthly savings (n=3982).

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ANNEX 2
WEST KALIMANTAN PROVINCIAL REPORT

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1. INTRODUCTION

1.1 OVERVIEW OF WEST KALIMANTAN

West Kalimantan Province occupies the western third of the island of Borneo, and shares its borders with the provinces of Central and East Kalimantan to the east, and the Malaysian state of Sarawak to the north. Although the fourth largest Indonesian province, West Kalimantan has a population of only slightly over four million, concentrated along the coastal fringe. The province has a rich heritage of cultural and religious diversity, which is reflected in its demographic composition. The two predominant ethnic groupings are the Malays and the indigenous Dayaks, each comprising approximately 34 percent of the population. West Kalimantan is also home to a sizeable ethnic Chinese community (approximately 10 percent of the population), while the remaining 22 percent is made up of Javanese, Madurese and a smattering of other ethnicities. Approximately 57 percent of the population is Muslim, 34 percent follow the Christian faith with a relatively even distribution of Protestants and Catholics, and eight percent are Buddhist.[357]

West Kalimantan's vast interior is sparsely inhabited and covered by large tracts of dense forest, although the area has dwindled considerably in recent years due to widespread logging. Despite West Kalimantan's abundant forest resources, the mainstay of the provincial economy is the increasing number of oil palm, rubber and coconut plantations, which generate much needed employment and foreign exchange. Approximately 62 percent of the population works in the agricultural sector, while the official unemployment rate stands at approximately nine percent.[358] Poverty is widespread.

1.2 HISTORY OF CONFLICT

West Kalimantan has experienced a number of episodes of intense inter-ethnic conflict over the past eight years, most notably in 1997, 1999 and 2001, and some incidents of small-scale violence continue to occur.[359] While conflict is not the focus of this access to justice assessment, a brief consideration of its causes and impacts in West Kalimantan provides a useful backdrop against which the results of the assessment can be viewed. Not only has conflict influenced the types of injustices being faced by the poor and disadvantaged, but a significant factor behind the escalation of the conflict was the inability or unwillingness of the formal justice system to adequately respond to incidents of violence and intimidation and facilitate their peaceful resolution.

The worst outbreaks of conflict were the so-called 1997 Sanggau Ledo riots in Sambas District between the Dayaks and the Madurese, which resulted in approximately 1,700 deaths (mainly Madurese) and countless more injuries. In addition, hundreds of houses and shops were destroyed or damaged, thousands of hectares of farmland were laid to waste, and more than 25,000 Madurese were forced to evacuate their

357 All data sourced from West Kalimantan in Figures 2002 (Pontianak: BPS West Kalimantan, 2003).

358 West Kalimantan in Figures 2002 (Pontianak: BPS West Kalimantan, 2003).

359 For a more comprehensive account of conflict in West Kalimantan and its impact, see Achwan R et al, Overcoming Violent Conflict Volume 1: Peace and Development Analysis in West Kalimantan, Central Kalimantan and Madura (Jakarta: UNDP Indonesia, 2005). Available at http://www.undp.or.id/programme/conflict/pda.asp.

homes and flee to other parts of Kalimantan and Indonesia. Conflict again erupted in Sambas District during 1999, this time between the Malays and the Madurese, with the Dayaks soon joining forces with the Malays. The deaths of between 200 and 500 Madurese ensued, again with widespread damage to land and property. It is estimated that this episode of violence resulted in approximately 80,000 Madurese fleeing their homes, 70,000 took refuge in temporary IDP camps in Pontianak City and Sambas District, and 10,000 returned to their native island of Madura. In 2001, an anti-IDP riot in Pontianak claimed the lives of 10 Madurese IDPs who where living in the camps.[360] And in July 2002, Dayaks beheaded four Madurese, according to police.[361]

The immediate triggers of these out-breaks were often relatively minor incidents in the case of the Sanggau Ledo riots, a disagreement over a girl between Dayak and Madurese youths eventually turned violent. However, the root causes of conflict in West Kalimantan are to be found in underlying structural issues whose origins can be traced to the policies of the New Order regime, particularly those related to land management, forestry and village governance. The 1960 Basic Agrarian Law [362] enabled the central government to claim title to unregistered land and recognized *adat* land rights only insofar as they did not conflict with the national interest; the 1967 Basic Forestry Law [363] dealt similarly with *adat* forestry rights. The combined result was that large areas of predominantly Dayak communal forests and lands came under the control of Jakarta-based logging and plantation enterprises (both state-owned and private sector), curtailing access to livelihoods for local communities and precipitating far-reaching social change.[364] A decade later, the 1979 Village Adminis-tration Law[365] imposed a common administrative structure on all villages throughout Indonesia, severely diminishing the role of *adat* institutions in village governance and further fuelling Dayak grievances.

Meanwhile, increasing numbers of Madurese were migrating to West Kalimantan and beginning to settle the lands vacated by the Chinese after widespread anti-Chinese violence erupted in 1967 (resulting in thousands of Chinese killed and more than 55,000 becoming refugees).[366] Although spontaneous Madurese migration pre-dated the New Order, the regime's development policies significantly boosted the flow of investment to the province and created numerous employment opportunities that were maximized by the Madurese and facilitated further migration by this group. The Dayaks, already feeling marginalized by the Madurese influx, now saw the recent arrivals as prospering at their expense. The eventual outbreak of conflict, according to Jamie Davidson, of the National University of Singapore, was the result of a coalescing of political consciousness among Dayaks and the growth of Dayak-oriented NGOs. He argues that, while these NGOs provided a vehicle for the Dayaks to vent grievances pertaining to social change, competition for resources, the impact of environmental degradation, transmigration, land-ownership and other state-

360 All data sourced from Achwan R. et al, Overcoming Violent Conflict Volume 1: Peace and Development Analysis in West Kalimantan, Central Kalimantan and Madura (Jakarta: UNDP Indonesia, 2005) pp. 31-33.

361 'Indonesia: Heightened Security May Hurt Provinces,' 29 June 2002, www.rcnetwork.net/Indonesia (accessed 26 June 2006).

362 Law No. 5/1960.

363 Law No. 5/1967 now replaced by Law No.41/1999.

364 Peluso N., 'Seeing Property in Land Use: Local Territorializations in West Kalimantan, Indonesia' (2005) 105(1) Danish Journal of Geography, pp. 1-15.

365 Law No.5/1979.

366 Davidson J., 'The Politics of Violence on an Indonesian Periphery' (2005) 11(1) *South East Asia Research*, pp. 59-89. See also Indonesia: Communal Violence in West Kalimantan, Human Rights Watch/Asia, December 1997, vol. 9, No. 10 available at http://www.hrw.org/reports/pdfs/i/indonesa/brneo97d.pdf

based policies, there were no strong and impartial legal and political institutions needed to facilitate the peaceful resolution of such grievances.[367]

1.3 ASSESSMENT LOCATIONS

West Kalimantan is divided into ten districts and two municipalities.[368] The two districts selected for the assessment were Bengkayang, situated in the northern tip of West Kalimantan and bordering Sarawak, and Ketapang, located in the southern tip of the province. Bengkayang was selected as a district that has borne the brunt of severe inter-ethnic violence and where *adat* law and institutions continue to wield significant influence.Ketapang was selected as a district that has been free of communal conflict and where the role of *adat* law and institutions has largely faded. Although the assessment locations are not necessarily representative of other districts in the province, their contrasting characteristics provide exposure to a wide variety of justice-related issues affecting the poor and disadvantaged in West Kalimantan.

Bengkayang

Bengkayang is a relatively new district, carved out of the inland section of Sambas District in 1999. A five hour drive north of Pontianak, it has a population of 193,653 (2003), of which approximately 70 percent are Dayak. Almost all Madurese residents fled the area during the 1997 or 1999 riots, and at the time of writing had not yet felt safe to return and reclaim their property, which in some cases is now illegally occupied by the remaining residents. Around 80 percent of the population work in the agricultural sector; rice, rubber and pepper are key products.

Of Bengkayang's 10 subdistricts, the long-established Samalantan and the recently created Monterado were selected for the assessment. Two villages were identified to be the focus of the assessment in each subdistrict, and their key charac-teristics are described in Table 11.

Ketapang

Located six hours by fast boat or two days by road to the South of Pontianak, Ketapang is one of West Kalimantan's oldest districts. Geographically, it is dividedmore or less equally between coastal swamps and flatlands, and a hilly, forested interior. Ketapang's population of 461,186 (2003) is comprised of mostly Malays (concentrated in coastal areas) and Dayaks (concentrated in the interior), along with smaller Madurese and Javanese communities. Although itself free from inter-ethnic violence, Ketapang has served as a refuge for Madurese displaced by the Sanggau Ledo and Sambas riots. Key economic sectors are logging (both legal and illegal) and rubber and palm oil plantations. Ketapang is also home to Gunung Palong National Park, world-renowned for its biological diversity. Of Ketapang's 19 subdistricts, the urban Delta Pawan and more remote Sukadana were selected for the assessment. The key characteristics of the two villages selected as the focus of the assessment in each subdistrict are described in Table 12 .

367 Davidson J., 'The Politics of Violence on an Indonesian Periphery', ibid.

368 Districts: Bengkayang, Kapuas Hulu, Ketapang, Landak, Melawi, Pontianak, Sambas, Sanggau, Sekadau and Sintang. Municipalities: Pontianak and Singkawang.

TABLE 11: OVERVIEW OF ASSESSMENT LOCATIONS – BENGKAYANG DISTRICT

Subdistrict	Village	Characteristics
Samalantan	Samalantan	Subdistrict capital situated on main road to the district capital. Population of 4,343 with 525 households (2004). Majority Dayak with other ethnicities Malay and Javanese. 68% Christian and 32% Muslim. All Madurese residents were driven out during the 1997 and 1999 riots, with widespread property damage. Established government, public health and educational facilities. Key livelihoods are rice farming and community owned rubber plantations.
	Marunsu	Situated on main road to the district capital. Population of 2,013 with 402 households (as at 2004). Almost exclusively Dayak, with a small number of Batak, Bugis and Sundanese. 93% Christian and 7% Muslim. Minimal animosity between Dayak and Madurese villagers – the Madurese only fled Marunsu out of fear they would be attacked by raiders from neighbouring villages. No damage to village property. Key livelihoods are rice farming and community-owned rubber plantations.
Monterado	Monterado	New sub-district capital, with population of 4,727 (as at 2004) equally balanced between Dayak and Malay ethnicities. 53% Muslim and 47% Christian. All Madurese residents were driven during the 1997 and1999 riots, with widespread damage to property. Limited public health and educational facilities. Key livelihoods are illegal gold mining and community-owned rubber plantations. Mining activities have caused serious environmental degradation.
	Beringin Baru	Population of 1,498 (2004) with 44% Dayak, 28% Javanese, 25% Malay and a small number of other ethnicities. 56% Muslim and 44% Christian. All Madurese residents were driven out during the 1997 and 1999 riots, with widespread property damage. Limited government, public health and educational facilities. Key livelihoods are rice farming and community-owned rubber plantations.

Source : West Kalimantan Access to Justice Assessment Team Reports

2. JUSTICE FROM THE PERSPECTIVE OF THE DISADVANTAGED

2.1 WHO ARE THE DISADVANTAGED?

Certain groups of people were selected in each village to be the focus of the assessment, on the basis that they were relatively more disadvantaged or marginalized than others in those villages. Members of these groups, although they may not necessarily consciously identify themselves as such, generally represent the poorest of the poor or those who are least able to enjoy their right to a standard of living adequate for their health and well-being, including adequate food, housing, healthcare and education. The basic assumption underlying their selection was that in general, the disadvantaged would face similar barriers to access to justice as villagers who were better off, but to a greater extent.

The selected groups and their key features are described in Table 13. In some cases, where the degree of disadvantage between two groups in one village was judged to be similar, the group that had not been selected in other villages was selected to ensure variety in the sample. Two special categories exist: women and Madurese IDPs. Women were automatically selected as a group upon which to focus in each village, in recognition of the discrimination and marginalisation they often experience living in a society with predominantly patriarchal customs and traditions. Likewise, Madurese IDPs in Bengkayang face particular issues arising out of

TABLE 12: OVERVIEW OF ASSESSMENT LOCATIONS – KETAPANG DISTRICT

Subdistrict	Village	Characteristics
Delta Pawan	Kali Nilam	Urban village located in the district capital, with a population of 6,179. Predominant ethnicity Malay, followed by Javanese and Madurese, with small Dayak and Chinese communities. Population is largely Muslim. No IDPs. Proximate to government, public health and educational facilities. Village is home to two large factories. Key livelihoods are manual labour and trading. High unemployment rate.
	Sukaharja	Urban village in the district capital, with a population of 9,463. Predominant ethnicity Malay, followed by Javanese and Madurese, with a small Dayak community. Population is largely Muslim. Limited government, public health and educational facilities.Village is a refuge for small number of IDPs. Large number of residents employed in plywood factories and the civil service, while the remainder farm or fish.
Sukadana	Sutra	Coastal village in the subdistrict capital, with a population of 3,950. Predominant ethnicity Malay, followed by Madurese. Almost exclusively Muslim. No IDPs. Proximate to government, public health and educational facilities. Key livelihoods are farming, fishing and civil service employment. Situated within buffer zone of Gunung Palong National Park. Conflict exists over natural resource usage.
	Pangkalan Buton	Village with a population of 2,358. Predominant ethnicity Malay, followed by Madurese and Chinese. Majority Muslim, with small Christian and Buddhist communities. No IDPs. Key livelihoods are farming and forestry. Situated within buffer zone for Gunung Palong National Park. Conflict exists over natural resource usage.

Source : West Kalimantan Access to Justice Assessment Team Report

the conflict that are not common to other groups. Since they had been displaced, special efforts were made to include them, so their voices and experiences could be taken into account

2.2 COMMUNITY PERCEPTIONS OF JUSTICE

A common understanding of justice has proven perpetually elusive, perhaps due to the inherently value-laden nature of a term whose meaning may entail different things for different people in different places and at different times. While disadvantaged communities in West Kalimantan struggled to articulate their understanding of justice in the abstract, they experienced no such difficulties in providing a definition in the negative by relating concrete examples of the many injustices to which they feel they are subjected in their everyday lives. A consistent theme throughout the eight villages selected for the assessment was an emphasis on the economic dimension of justice, a clear reflection of priorities in communities where daily life often revolves around the myriad challenges of maintaining an adequate livelihood.

In Marunsu, participants in an FGD for male youths defined justice as 'equality, uniformity in distribution and non-discrimination', citing as an example of injustice the case of a teacher who arbitrarily awarded a scholarship to a well-off student while those less well off went without.[369] In the same village, adult male FGD participants equated justice with the equal provision of government services, complaining that they have never re-

369 FGD with male youths, Marunsu village, 14 May 2005.

TABLE 13: SELECTED DISADVANTAGED GROUPS - WEST KALIMANTAN PROVINCE

Village	Disadvantaged Groups (Bold = Selected Group)	Group Experience	Key Justice Issue
BENGKAYANG DISTRICT			
Samalantan	■ **'Illegal' rubber farmers** ■ Madurese IDPs ■ Female victims of domestic violence	This group, from the hamlets of Jirak and Mendung Terusan, faces uncertainty over ownership of their rubber plantations after the Community Rubber Development Project (PPKR) withdrew from the area prior to them having paid off their debt to the Project for their plantations. Without settlement of their debt they cannot obtain a certificate of title.	*Access to land and natural resources*
Marunsu	■ **Female victims of domestic violence** ■ Madurese IDPs	Women in Marunsu generally shoulder a greater burden than their husbands, working both in the rubber plantations and rice fields as well as in the home. The gambling and drinking habits of their husbands drain family finances and often trigger disputes which lead to the occurrence of domestic violence.	*Gender violence*
Monterado	■ **Casual mining labourers** ■ Non-Dayak villagers ■ Madurese IDPs ■ Poor housewives	This group, primarily comprised of young unmarried men, works long hours in dangerous conditions without any occupational health and safety protections. There is a high risk of land slides and frequent exposure to dangerous substances such as mercury. Labourers' wages are sometimes withheld if they do not find gold.	*Employment and labour rights*
Beringin Baru	■ **'Illegal' rubber farmers** ■ Madurese IDPs	This group comprises former casual labourers of a state-owned plantation company, who have continued to harvest rubber from the company's plantation after it ceased operations in 2000. Without certificates of title, the farmers are vulnerable to their source of livelihood being seized by other villagers or new-comers who claim the plantation as their ancestral lands.	*Access to land and natural resources*
Special Category	■ **Madurese IDPs** (originating from the assessment locations but now living in Singkawang)	The Madurese have been driven out of the assessment locations and dispossessed of much of their real and personal property. They face serious threats to their physical security should they return to their villages to try to reclaim what is rightfully theirs. Many now live in poor conditions in IDP camps in other districts/regions.	*Post-conflict security and property rights*
KETAPANG DISTRICT			
Kali Nilam	■ **Slum dwellers** ■ Plywood factory labourers (especially female)	Members of this group live in slum conditions in a flood-prone area of Kali Nilam. They work as port, building or plywood factory labourers, cleaners, and in other assorted casual employment. Commercial sex workers are based in the neighbourhood, generating tension within the community.	*Employment and labour rights*
Sukaharja	■ **Unskilled casual labourers** ■ Elderly inhabitants of retirement home	This group comprises residents of RT 5 and RT 16 who are poor and make an uncertain living as casual labourers, street-sweepers, laundry ladies and whatever else is available. The children of these labourers have the highest school drop-out rate of all the children in the village.	*Employment and labour rights*
Sutra	■ **Fishermen**	Fishermen in Payak Hitam hamlet make an uncertain living from traditional fishing methods, while facing competition from modern, well-equipped trawlers. Comprising mostly Madurese migrants, they have no alternative vocational skills. This hamlet has the lowest literacy rate of the village and has poor sanitation.	*Access to government services and assistance*
Pangkalan Buton	■ **Farmers dispossessed of their land**	The residents of Pampang hamlet have had their fields compulsorily acquired to form the buffer zone for Gunung Palong National Park. The replacement fields provided are situated far from their village, and they are subject to frequent raids by park rangers if they attempt to utilise their original fields. Residents do not have easy access to health or educational facilities.	*Access to land and natural resources*

Source : West Kalimantan Access to Justice Assessment Team Reports

ceived a 'slice of the development cake', whereas villages in other subdistricts have been the beneficiaries of government projects year after year.[370] Beringin Baru saw injustice in the perceived favourable treatment of transmigrants who were allocated 60 percent of new rubber plantation areas in the village, as opposed to only 40 percent for local residents.[371]

In the villages of Kali Nilam and Sukaharja, respondents also drew a close connection between justice and their economic welfare. Commonly perceived injustices were the ever-increasing price of goods, the high cost of education, low wages and the non-fulfilment of labour rights. In Pangkalan Buton, villagers felt that the restriction on farming their traditional lands, imposed after the area was declared a buffer zone for Gunung Palong National Park, was fundamentally unjust. Venting his frustration, one FGD participant declared that 'we don't feel like Indonesian citizens, because the government cares more about protecting orang-utans than us humans.[372]

2.3 KEY JUSTICE-RELATED ISSUES AFFECTING DISADVANTAGED COMMUNITIES

Consistent with their economically oriented conception of justice, many of the key injustices felt by disadvantaged communities relate to their social and economic welfare.

These can be grouped into five main categories, namely :

- Access to Government Services and Assistance
- Access to Land and Natural Resources
- Gender Violence
- Employment and Labour Rights
- Post-Conflict Security and Property Rights

This section will first present the results of a survey of approximately 850 villagers as to what they consider the most pressing issues in their daily life, and then examine in more detail the specific thematic issues raised by respondents in FGDs and interviews during the assessment.

Survey Results

Survey respondents in each of the eight assessment locations in West Kalimantan were asked to nominate (in order of importance) the three most commonly encountered issues in their village from a list of 20 options. Poverty, education and public health were most frequently nominated as the number one, two and three issues respectively (see Table 14), while unemployment, neighbourhood disputes and land disputes were other commonly selected issues.

Disaggregating the data by district reveals that the key difference between responses from Bengkayang and Ketapang is the higher relative importance ascribed to land disputes in Bengkayang and poverty in Ketapang. In Bengkayang, 12 percent of respondents nominated land disputes as the number one issue facing villagers as opposed to seven

370 FGD with men, Marunsu village, 19 May 2005.
371 FGD with rubber farmers, Dusun Gemah Ripah, Beringin Baru village, 22 May 2005.
372 FGD with disadvantaged men and women, Dusun Pampang, Pangkalan Buton village, 27 May 2005.

percent globally and only two percent in Ketapang. A further 17 percent of respondents in Bengkayang selected land disputes as the second most frequently encountered issue in their village as opposed to 10 percent globally.[373] In Ketapang, 80 percent of respondents nominated poverty as the number one issue facing villagers, as opposed to 63 percent globally and 46 percent in Bengkayang. Perhaps in connection with this, a higher percentage of Ketapang respondents cited unemployment as issue number one, two or three as compared to the global results.

Women mirrored the global survey response by nominating poverty, education and public health as the most important issues facing villagers, but tended to place slightly less emphasis on poverty and slightly greater emphasis on education. Women also consistently placed greater importance on neighbourhood disputes than did respondents globally. Although domestic disputes and domestic violence were nominated as issues by a slightly larger percentage of women respondents than men and women combined (two to four percent as opposed to one to two percent), they did not feature prominently in the list of the top five issues confronting residents in the eight assessment locations, although under-reporting is always a possibility due to feelings of shame or embarrassment.

Access to Government Services and Assistance: Access to government services (such as health and education) and assistance in the form of subsidies was the issue most consistently raised by respondents in FGDs and interviews throughout Bengkayang and Ketapang. In some cases residents' lack of awareness of such programs is an obstacle, but more frequently they do not have the knowledge of where to complain about lack of service or the capacity to do so. Respondents also expressed concern over corruption and inefficiency in the delivery of government services and assistance.

Access to Subsidies: Although the communities in Bengkayang and Ketapang are, for the most part, physically isolated from the world beyond their doorsteps, they are vulnerable to the impact of global trends, such

TABLE 14: MOST IMPORTANT ISSUES IN ASSESSMENT LOCATIONS – WEST KALIMANTAN

Rank	Number 1 Issue				Number 2 Issue				Number 3 Issue			
	Global (n = 864)		Women (n = 429)		Global (n = 859)		Women (n = 400)		Global (n = 840)		Women (n = 411)	
1	Poverty	63%	Poverty	50%	Education	37%	Education	30%	Public Health	29%	Public Health	27%
2	Education	10%	Education	15%	Public Health	14%	Public Health	18%	Unemployment	16%	Neighbourhood Disputes	20%
3	Land Disputes	7%	Neighbourhood Disputes	11%	Unemployment	11%	Poverty	16%	Education	14%	Unemployment	14%
4	Unemployment	5%	Unemployment	5%	Poverty	10%	Neighbourhood Disputes	15%	Poverty	8%	Poverty	11%
5	Neighbourhood Disputes	4%	Domestic Disputes	4%	Land Disputes	10%	Unemployment	10%	Neighbourhood Disputes	5%	Education	10%

Source : Access to Justice Survey West Kalimantan

'Global' = all survey respondents (male and female)
'Women' = female survey respondents only

373 It should be noted that as the survey was conducted only in the eight assessed villages, it does not capture the responses of Madurese IDPs from Bengkayang who were forced to flee their homes. The likely consequence of this is a slight understating of the importance of land disputes, which is one of the key issues faced by this group.

as recent increases in world oil prices, which have increased the prices of fuel, food and other essential goods and services. Respondents in Kali Nilam expressed little faith in the State's ability to offer meaningful subsidies to counter the rising costs of fuel.[374] In Payak Hitam and Pangkalan Buton, respondents reportedly had no access to programs such as Rice for the Poor (*Beras Miskin*) or the fuel subsidy, although some had learned of their existence through television.[375] Out of 122 households in two of the poorest neighbourhoods of Sukaharja (RT 5 and 16), only eight households had received social safety net benefits for a limited duration, seven years ago.

Access to Healthcare : Respondents raised concerns about both the geographic and financial accessibility of adequate healthcare. In Samalantan, Monterado and Marunsu the community health centre is reportedly rarely staffed by a doctor, and even the nurse is difficult to contact if a villager falls sick. In Marunsu, Samalantan, Beringin Baru and Sukaharja, villagers complained of the high cost of medication, and the fact that usually they must go into debt to buy it from the community health centre or small stalls. Respondents in Marunsu and Samalantan felt that contraception was prohibitively expensive and not readily available, and that as a result many women were continually pregnant. In Sukaharja, citizens complained about being charged for health services that are supposed to be subsidized. They also complained about the bureaucratic channels they had to navigate and the bribes they had to pay to obtain treatment. In one case, they said, a hospital declined to operate on a healthcare cardholder, and only did so after the head of a neighbourhood association intervened on the patient's behalf. In Sutra and Pangkalan Buton in particular, residents had very low awareness of healthcare cards (*kartu sehat* or its replacement, *kartu askes*) or the benefits to which cardholders are entitled.

Access to Education: In almost all assessed villages, parents worried that the cost of even basic education for their children is beyond their means.[376] Youths in Kali Nilam also complained about the inequitable distribution of education subsidies and alleg-ed that the government education policy marginalizes the underprivileged.[377] Educational facilities in Monterado are poor, and while women in the village have complained to the local education office, there has been no improvement. In Payak Hitam hamlet in Sutra, there are many school-aged children but no primary schools to accommodate them.

Access to Clean Water: Mining in Samalantan and Monterado has caused widespread pollution of the natural environment, including supplies of clean drinking water. Despite complaints by villagers, the subdistrict government has not taken any action against mine owners who are responsible for the pollution and also damage to local water mains. In Monterado, the situation is now such that the primary water supply is not potable, so residents are forced to spend approximately Rp. 70,000 (USD 7) per month to buy drinking water. The Bengkayang District Government has reportedly promised to allocate funds to resolve the problem, but at the time of the assessment no action had been taken.

Access to Land and Natural Resources: As in many other parts of Indonesia, access to land and natural resources is a significant

374 FGD with disadvantaged youths, Kali Nilam village, 25 April 2005.

375 FGDs with men and women, Pampang village, 27 April 2005.

376 FGD with women, Kali Nilam village, 22 April 2005; interviews with disadvantaged women, Kali Nilam village, April and May 2005; FGD with men, Sutra village, 26 April 2005; FGDs with men and women, Pampang village, 27 April 2005. FGD with women, Marunsu village, 20 April 2005. The issue was also raised in Monterado village and Beringin Baru village.

377 FGD with disadvantaged youths, Kali Nilam village, 25 April 2005.

issue in West Kalimantan. In Bengkayang, it arises in the context of rubber plantations, while in Ketapang, the ever-expanding buffer zone of Gunung Palong National Park has had serious implications for the livelihoods of residents in surrounding villages

Uncertainty of Land Ownership: Rubber farmers in both Samalantan and Beringin Baru are plagued by uncertainty over title to their rubber plantations, after the state-owned enterprises under which they were previously managed ceased operations in the area. In Samalantan, and particularly the hamlets of Jirak and Mendung Terusan, the Community Rubber Development Project (PPKR) left before farmers had paid off their debts for their plantations. Without settling their debts, the farmers cannot obtain certificates of title. In Beringin Baru, former casual labourers of a state-owned plantation company continued to harvest rubber from the company's plantation after operations ceased in 2000. They, too, have no certificate of title to the plantation they are harvesting. Without certificates of title, farmers might lose their source of livelihood if the plantations are seized by other villagers or new comers who claim the plantation as their ancestral lands. Farmers expressed confusion over what they could do to attempt to resolve the situation.

Natural Resources: Gunung Palong (Mount Palong) in Ketapang District has been declared as a National Park since Dutch colonial days. After Indonesian independence, local residents were free to conduct agricultural activities such as cultivating rice fields and durian plantations, and making use of timber to build and repair their houses. In 1977, the government declared a small part of the mountain protected, without causing significant disruption to villagers' daily life. However, between the years 1984 and 2000, the buffer zone for the national park was incrementally expanded until it had seriously encroached on the traditional farming lands of the local population.

In 2002, almost all durian plantations and orchards in Pampang hamlet were appropriated under government conservation policies, and villagers were prohibited from farming their lands. Farmers consider the replacement farmlands in the lowland area of Begasing as unacceptable because of the time and cost involved in travelling to the area. Begasing is 13 kilometres from Pampang by road, meaning the majority of farmers (who do not own motorised transportation) must spend nights in Begasing and leave their houses in Pampang unattended. Villagers have requested that a short-cut route be established, but park authorities have resisted, noting it would damage the forest. Farmers in Pampang say they were not given the opportunity to participate in the development of policies affecting their livelihoods and to negotiate adequate compensation for the appropriation of their property, nor have they been educated about the purpose of the government's environmental preservation policies in the region.

In both Pampang and neighbouring Sutra, villagers report that they are constantly harassed by park rangers when working in their traditional lands, and they risk arrest and prosecution for what to the villagers are undefined and unknown offences (see Box 14). These farmers do not know where they can seek recourse for unjust treatment by rangers or from whom they can seek assistance to resolve the problem.[378] The possibility that their land and livelihood might disappear at the government's whim has engendered a deepening sense of injustice

[378] FGD with women, Tambak Rawang, 29 April 2005.

that villagers believe has the potential to spark violence.

Gender Violence

Incidents of domestic violence were reported in Samalantan, Monterado and Marunsu. Women in Samalantan and Marunsu report shouldering a much heavier work load than their husbands, both in the house and in the fields, and that in some cases, their husbands stay up so late drinking, gambling and playing billiards that they are physically incapable of working the following day. Women's frustration with their husbands gambling and drinking away families' meagre finances often leads to domestic disputes, which end in the occurrence of domestic violence. In Monterado, gambling, alcohol and drugs are also blamed for an increase in drunken fights, extra-marital sex and, on occasion, rape.

Employment and Labour Rights

Labour issues are most prominent in urban areas of Ketapang District where plywood factories are located, but are also present in relation to the illegal gold mining industry of Monterado in Bengkayang District. In Ketapang, plywood factory labourers in Kali Nilam and Sukaharja are young and largely female, and are employed on a daily, monthly or piece rate basis. Daily and monthly labourers earn between Rp. 19,000 (around USD 1.90) and Rp. 20,500 (around USD 2) per day, working 25 days per month, with no sick leave except for work related injuries in some cases. One company, PT Suka Jaya Makmur, provides a clinic for their labourers and covers in full any medical expenses arising from work-related injuries, whereas PT Kawedar Wood Industries does not provide a clinic and will only cover half of any medical expenses arising from work-related injuries. Labourers on piece rates can earn a maximum of around Rp. 30,000 (around USD 3) per day with no healthcare or coverage for work-related injuries.

BOX 14: CAUGHT

In January 2005, Zainuddin and Syafaruddin, two villagers from Pampang hamlet in Pangkalan Buton village, were carving planks from a fallen durian tree to replace Zainuddin's kitchen floor, in preparation for his marriage the following week. Because they were within the buffer zone of Gunung Palong National Park, they were arrested by armed park rangers and taken to Ketapang. Despite appeals by the village chief, hamlet chief and family members, the two men were detained for a week and then placed under house arrest, on condition that they reported to Ketapang every week to assist with the investigation. When both were detained a second time, villagers staged a demonstration and searched the forest for park rangers, eager to take revenge. The village chief and other community leaders have appealed for calm, but at the time of the assessment the situation remained tense and volatile.

Source: Interview with a villager in Pangkalan Buton village (actual names have been changed)

Factory management is reportedly hostile to union activity and union organizers are vulnerable to discrimination if they attempt to encourage workers to stand up for their rights: such action reportedly leads to either outright dismissal or deliberate intimidation such that the work environment is made so unpleasant that the targeted individual will eventually resign of their own accord. Workers are in an unfavourable bargaining position because of their poor education and low social status, combined with the fact that employment opportunities in the region are scarce. All respondents who worked in the factories explained that they had never signed a contract with their employers, and displayed a low level of awareness regarding

their rights and entitlements under state law and regulations. Workers were apathetic about prospects for change, responding that if union organizers can be dismissed for standing up for their rights, little hope exists for ordinary workers who do the same. They believe the Ministry of Manpower and the police are susceptible to bribes by companies and are incapable of protecting workers' rights.

In Bengkayang, casual mining labourers in Monterado work long hours in dangerous conditions without any occupational health and safety protection. There is a high risk of landslides and frequent exposure to dangerous substances such as mercury. In some cases, workers have been provided with protective equipment but have declined to use it, arguing that it impedes their ability to move quickly when forced to flee landslides. Workers do not seem concerned about the dangers of their occupation, focussing instead on the income it can generate – usually a minimum of Rp. 22,500 (around USD 2.25) per day. Employment conditions appear to depend largely on the whim of employers. Some will reportedly withhold labourers' wages if they do not find gold, while others will continue to pay workers even when mining machinery is out of order and they cannot work. Although workers are not insured, some report that their bosses will pay their healthcare costs if they are injured at work and will pay compensation of Rp. 15 million (around USD 1,500) to their families if they are killed in a workplace accident.

Post-Conflict Security and Property Rights: The 1997 and 1999 anti-Madurese riots caused large numbers of Madurese to flee their homes in what is now Bengkayang. The Madurese IDPs who participated in the assessment originated from the villages of Samalantan and Beringin Baru, but their experience is largely representative of those from other villages in the district.

When Madurese residents fled Samalantan and Beringin Baru in 1999, most of their homes were razed to the ground – burned or destroyed so completely that there remained nothing left to salvage. These IDPs now live in Singkawang, either in government barracks or with relatives, and feel unable to return to their former villages for fear of threats to their personal security. Much of their land has been occupied by Dayaks from outside Bengkayang (predominantly from Landak District), who consider it theirs by way of ancestry and also as the spoils of the war with the Madurese, which they, as the victors, are entitled to enjoy.

Although some IDP land was registered with the National Land Agency (BPN) before the riots, most people who held certificates of title lost them in the chaos of the conflict. Some IDPs, whose land has not been occupied and who retain proof of ownership, have managed to sell it to willing buyers. The majority, however, have not been so fortunate, and their primary concern now is how to obtain adequate compensation for their land that can be used as capital to start a new life elsewhere.

Resolution of this issue has so far proved elusive. IDPs are extremely dissatisfied with government efforts to date, and while assistance has also been sought from local NGOs, it has been equally fruitless. The subdistrict head recently organized a survey of all ex-

isting IDP lands and assets in the region to be used in assessing future claims, but at the time of the assessment no further action had been taken. Non-Madurese villagers living in Salamantan and Beringin Baru feel threatened by the new arrivals, fearing that if they cannot prove ownership of their land, it is also liable to appropriation on the grounds that it is ex-Madurese. In some cases, the predominantly Dayak newcomers have instigated campaigns of intimidation and violence against villagers, with little or no response from the police.

IDPs also voiced concern over discrimination and corruption in the provision of government services, both those specifically targeted at them and in general. For example, IDPs who live with relatives feel that it is unfair that they do not get the same amount of government assistance as IDPs who live in the barracks, even though their living conditions are similarly poor. Others have noticed that the amount of aid they receive from the government is less than the amount stated in official information. IDPs are also reportedly subject to discriminatory treatment when trying to obtain identity cards, and in their dealings with police, whose first question is often 'are you Madurese'? According to one respondent, police shot six suspects in the leg in 2004, all of whom were Madurese, whereas to the best of his knowledge suspects of other ethnicities did not receive such treatment.[379]

3. COMMUNITY AWARENESS OF RIGHTS

Taking action to defend or claim a right presupposes that an individual or community possesses at least a basic awareness of the fact that they have been wronged in some way or are not receiving something to which they are entitled, if not knowledge of the actual right itself. It also requires that an individual or community is sufficiently aware of which people or institutions are available to help with the process of defending or claiming that right, if they are not capable of resolving the issue unas-sisted. This section examines community awareness of rights in both specific and general terms, and then provides an overview of available services and institutions that can provide legal assistance and contribute to raising community legal awareness.

3.1 COMMUNITY AWARENESS OF RIGHTS AND OPTIONS

As would be expected, community awareness of specific rights protected or established by Indonesian legislation is low. For example, throughout the assessment locations, women who are victims of domestic violence were unaware of the existence of Law No.23 of 2004 regarding the Elimination of Domestic Violence, in particular their rights as victims under Chapter IV and the obligations of the police and other agencies under the Protection provisions of Chapter VI. The gold-mining labourers in Monterado do not know of their rights and obligations or those of their employers as set out in Articles 12 and 14 (respectively) of Law No.1 of 1970 regarding Occupational Safety and Chapter X of Law No.13 of 2003 regarding Manpower. Similarly, plywood factory labourers in Kali Nilam and Sukaharja are also largely ignorant of their rights under the Manpower Law, regarding, for example, working hours and benefits, the right to belong to a union, the right to bargain collectively, and the right to strike.[380] A lack of awareness of laws restricting rights can also be an issue: the women of Sutra claim not to understand why the park rangers harass and arrest them in a seemingly arbitrary fashion for simply going about their daily work as they have always

379 Unfortunately the circumstances of the shootings and indeed their very occurrence could not be verified.

380 See for example Chapter X 'Protection, Wages and Welfare' and Chapter XI 'Industrial Relations', Law No.13 of 2003 regarding Manpower.

done in what is now the buffer zone for Gunung Palong National Park.

At a more general level, survey results indicate that while the majority of respondents were aware of the existence of laws, fewer understood their significance or who was responsible for making them. Although most respondents (80 percent) had heard the term 'Law' (*Undang-undang*),[381] only 53 percent had heard of a 'regional regulation' (*Perda*)[382] and only 42 percent were of the opinion that some aspect of their daily lives was regulated or influenced by such laws or regulations.[383] Of those respondents who believed their daily lives were regulated or influenced in some way by laws and regulations, 27 percent were able to provide an example, the most frequently cited being (in order of frequency) taxes, traffic, electricity, fights and ID cards. Only 24 percent of respondents knew that legislation is made by the DPR and president, while 21 percent knew that regional regulations are made by the provincial or district legislature along with the governor or district head. Of course, actual knowledge of specific rights or of the legislative process is of secondary importance at best – the key question is whether poor and disadvantaged individuals and communities are aware of their rights in general terms, and of what options are available to gain further information and provide assistance with rectifying breaches or non-fulfilment of those rights. In West Kalimantan, the assessment shows many cases in which the poor and disadvantaged have taken action that demonstrates a general awareness of their rights in a wide range of areas, including property ownership, healthcare, education, clean water and freedom from domestic violence. Although citizens have in many instances taken the initiative to complain to a relevant government agency, they frequently appear at a loss for what to do if (as is often the case) no improvement occurs as a result of their complaint. The following examples are typical:

- Fishermen in **Sutra** have complained to the village-level military post (*babinsa*)[384] about modern trawlers fishing in their traditional fishing grounds, but there has been no resolution of the issue and the fishermen claim they do not know what else they can do.[385]
- Villagers in **Monterado** have complained to the subdistrict government to take action against illegal miners polluting the water supply, but to no avail. The complainants have taken no further action.
- Madurese IDPs from **Samalantan** are acutely aware of the violation of their rights in relation to property ownership and have complained to the sub-district government, who have reported that they are waiting for the district government to take action, who in turn are waiting for the provincial government to provide guidance.
- Rubber farmers in **Beringin Baru** have asked the district Plantations Office for help in resolving the issue of certificates for their land, and the district office has reportedly asked the company (PTP XIII) to resolve the problem, but no progress has been made. The rubber farmers do not know of anyone else they can ask for assistance.

381 N = 891(21 respondents did not provide an answer).

382 N = 891 (18 respondents did not provide an answer).

383 N = 891 (5 respondents did not provide an answer). 12 percent of respondents thought laws and regulations might affect their daily lives, 16 percent thought that they had no effect, and 29 percent did not know.

384 *Bintara Pembina Desa* – a non-commissioned military officer stationed at the village level, constituting the lowest rung of the T.N.I.'s territorial command.

385 Interview with a fisherman, Tambak Rawang, 23 April 2005.

- Villagers in **Pangkalan Buton** have sent letters to the district head and district legislature regarding their dissatisfaction with their newly allocated farmlands but have received no response, and do not know what else they can do.

Further, while it may be possible to equate action taken to defend a right with awareness of that right (at least in general terms), the reverse cannot necessarily be said in cases of inaction and passivity. In some situations, citizens may be aware of their rights but feel constrained from taking action for political, economic or social reasons, or a combination thereof. The following examples are illustrative:

- **Duty-bearer complicity:** Residents in Marunsu have not formally complained about the illegal sale of alcohol and gambling in the village, because they strongly suspect police complicity in these activities and are therefore pessimistic about prospects for change.[386]
- **Personal relationships:** Citizens in Marunsu were reluctant to complain about the nurse who only attended the village clinic for two hours everyday and always left early to pick up her children from school because she was nice and wasn't well-supported by her superiors.
- **Shame or embarrassment:** Women in Monterado often don't complain about domestic violence because they are afraid that village authorities will not take any meaningful action, it is embarrassing, complaining may only make an abusive husband even more violent, and that their husbands might divorce them. One woman in Marunsu explained that she was afraid to report her husband's abusive behaviour to the police for fear that she herself would be blamed and imprisoned, rather than her husband.[387]
- **Expense:** Rubber farmers from Beringin Baru have not gone to the plantation company offices to try and resolve the issue of their land title certificates because the transportation costs are too high.
- **Weak Bargaining Positions:** The factory labourers in Kali Nilam and Sukaharja feel that they are being treated unfairly by their companies, but are not fully aware of their rights. Having seen how union organizers have been dismissed for atepting to improve workers' situation, the labourers feel intimidated and hesitate to take action.

Survey results from West Kalimantan provide a further indication of women's awareness of their rights in a range of different situations. Just over half of women survey respondents believe they would report if they were beaten and injured by their husband, and almost 70 percent would do so if they were harassed by the military, but only 15 percent would report if they beaten but not injured by their husbands (see Chart 11). Again, it is important to note that perceived likelihood of reporting an incident is not a direct measure of awareness of rights, it does show that those who think they would report (at a minimum) believe that they have been wronged in some way and there is something they can do about it, even if they are not aware of their actual rights. Of course, the number of women who are broadly aware of their rights could be higher, but they may have other reasons for not reporting, such as embarrassment or a sense of futility.

386 FGDs in Marunsu village, 17-19 April 2005.

387 FGD with women victims of domestic violence, Marunsu village, 19 April 2005.

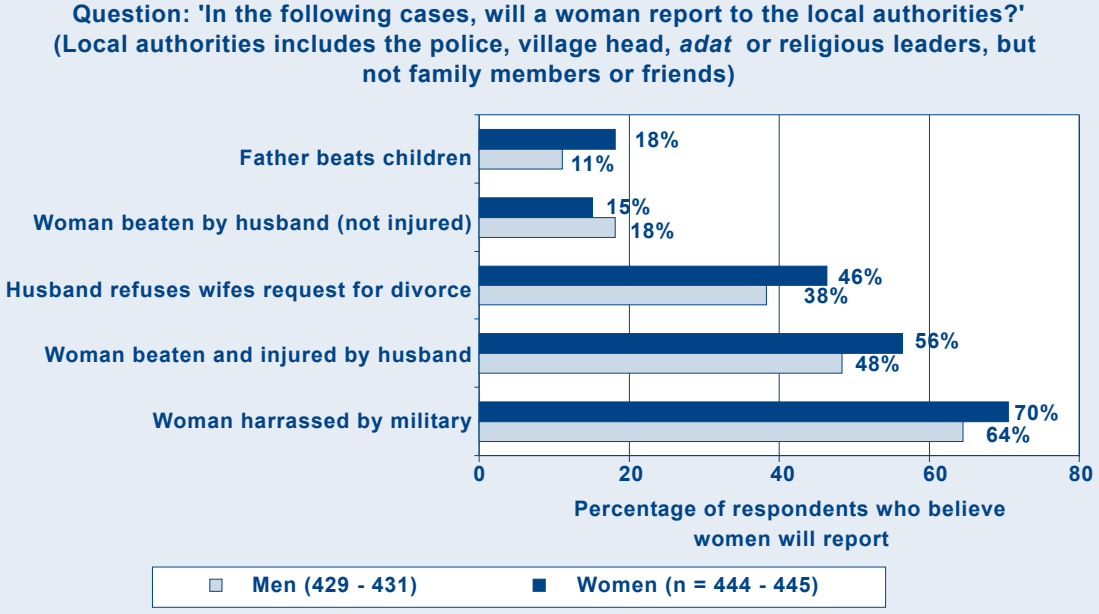
Interestingly, men consistently rate women as less likely to report an incident than do women themselves. This could mean that despite their intentions, in practice women do not report abusive behaviour as often as they say they will. Alternatively, it could be that men are sometimes reported for criminal behaviour when they do not expect it. Further, the fact that fewer women would report the beating of children than an assault on themselves would seem to indicate that the former practice is vastly more socially acceptable than the latter. The qualitative research shows that the village authorities, *adat* or religious leaders would usually be the first point of complaint for most of these issues. If women are not satisfied with the outcome of reporting to one of these figures, only 22 percent believe they would then go to the police, while 76 percent say they would do nothing.[388]

Instances of individuals being completely unaware of their rights or of the fact that they were being wronged in some way were extremely rare. One of the few examples that came to light during the assessment was that some of the casual gold-mining labourers in Monterado – most of whom had dropped out of school after junior high school (SMP) – had little regard for their personal safety provided they were paid at the end of a day's work. It appears that the most common situation in which citizens find themselves is being aware that they are being wronged in some way, but not knowing where or how to complain, or who to turn to for assistance with determining what their rights are and what can be done to enforce them.

3.2 RAISING AWARENESS THROUGH LEGAL AID AND COMMUNITY OUTREACH

Lawyers and legal aid have the potential to play a vital role in bridging the gap between communities and formal justice

CHART 11: PERCEIVED LIKELIHOOD OF WOMEN TO REPORT DIFFERENT INCIDENTS – WEST KALIMANTAN



Source: Access to Justice Survey West Kalimantan

388 N = 135

system providers, provided that communities are aware of their existence, and (among other things) they are both geographically and financially accessible. Community outreach by government institutions and NGOs can be instrumental in raising community legal awareness of both rights them-selves and also of people and institutions that are available to provide assistance with problems of a legal nature. The following is a brief overview of services in Bengkayang, Ketapang and the provincial capital, Pontianak.

Lawyers

At the time of the assessment there were 12 licensed advocates practising in Ketapang District and all were affiliated with the Indonesian Bar Association (IKADIN) and based in the city of Ketapang. Although usually based in their city offices during normal working hours, they can meet clients at other times and places in urgent cases. No lawyers are domiciled in Bengkayang, owing to the fact that a district court has not yet been establis-hed there. Instead, lawyers live and practise in Singkawang, travelling to the villages in Bengkayang to advise their clients if and when necessary.

When a client engages an advocate, a power of attorney is negotiated and signed. There is no standard scale of fees the amount charged varies widely, and depends on, among other things, the financial ability of a particular client. Advocates often act on a conditional basis, whereby they handle a case with reimbursement of operating costs only but with an entitlement to a predetermined percentage of the damages awarded if the client wins a case. Depending on the case, operational costs can range from Rp. 50,000 (around USD 5) to Rp. 5 million (around USD 500), not including registration fees of between Rp. 300,000 (around USD 30) to Rp. 1 million (around USD 100) for civil cases and fees for registering a power of attorney amounting to Rp. 150,000 (around USD 15). All of these costs and fees are borne by clients, which places the services of a private advocate far out of reach of the majority of poor and disadvantaged citizens. Although Law No.18 of 2003 regarding Advocates obliges lawyers to provide free legal services for indigent clients, in most cases lawyers in private practice will reportedly refer this type of client to an NGO rather than handling the cases themselves.[389]

Legal Aid

The expense of engaging a private lawyer means that access to legal aid is of vital importance to poor and disadvantaged citizens should they want to resolve a dispute or seek to enforce their rights through the formal legal system. Limited state-sponsored legal aid is available in Singkawang and Ketapang, however NGOs providing legal aid or quasi-legal aid services appear to be concentrated in the provincial capital Pontianak or the municipality of Singkawang that borders Bengkayang.There is a noticeable absence of NGOs engaged in this type of activity in Ketapang.

State - Sponsored Legal Aid

Courts may appoint a lawyer who holds a practising certificate from one of the lawyers' professional accreditation organizations (now the Indonesian Advocates' Association or PERADI) to act on behalf of indigent clients, either under the provisions of Article 56 of the Code of Criminal Procedure (KUHAP) for criminal matters or under the

389 Such as LKBH PeKa, LBH Pancasila or LBH Perisai Bangsa in Singkawang.

prodeo procedures for civil cases. At the provincial level, the sole source of funding for state-sponsored legal aid is the Regional Office of the Department of Law and Human Rights, which reportedly provides funding up to Rp 1.5 million (around USD 150) per case for indigent litigants (although the number of cases funded per year or the total budget allocation is unknown).[390] At the district level, however, legal aid funding from the regional office has reportedly dried up in the last two years, prompting district administrations in both Ketapang and Singkawang to take the positive step of making their own budget allocations for the provision of legal services to indigent litigants and defendants.

In 2004, the Ketapang District Government allocated funds of Rp. 1 million (USD 100) per case for 10 criminal cases and Rp. 500,000 (USD 50) per case for 10 civil cases.[391] In Singkawang, the Municipal Government has allocated Rp. 1 million (USD 100) per case for lawyers who act for indigent litigants or defendants (although the number of cases per year for which this budget exists is unknown). Lawyers can claim the allowance by submitting a copy of the decision from the Singkawang District Court, along with a letter certifying their client's indigent status.[392] This service is only provided for those residing in Singkawang Municipality and does not extend to residents of Bengkayang District, whose administration does not provide such funding. While no evaluation can be made of the adequacy of such schemes without further research, it is likely that they are insufficient to meet the demand for subsidized legal services.

It is worth noting that the law faculty of Tanjungpura University (the largest state university in West Kalimantan) also has a legal aid unit. However, it is reportedly used more as a means for academic lawyers to skirt the restriction against their engaging in private practice, rather than for the provi sion of true legal aid services.[393]

Indonesian Women's Association for Justice Legal Aid Institute (LBH-APIK)

Established in 1995, the Indonesian Women's Association for Justice Legal Aid Institute (*Lembaga Bantuan Hukum – Asosiasi Perempuan Indonesia untuk Keadilan* or LBH-APIK) is headquartered in Jakarta and has branches in 13 provinces, including one in Pontianak, West Kalimantan (established in 1997). LBH-APIK provides structural legal aid (both in and out of court) for female justice seekers, particularly those who are politically, economically, socially or culturally marginalized. It is also active in conducting women's training and empowerment programs, advocacy for policy change and research related to women's legal rights and empowerment.

In West Kalimantan, LBH-APIK has a staff of 10 and focuses its work on the northern districts of Bengkayang, Sambas, Landak and Sanggau that lie on or close to the border with Malaysia. Consequently, apart from handling cases of domestic violence, much of LBH-APIK's work in this province relates to cases involving female and child migrant workers, including human trafficking. LBH-APIK in Pontianak has been appointed as the focal organization on issues relating to female migrant workers in the region,[394]

390 Interview with Head of Section, Legal Services and Development, Regional Office of the Department of Law and Human Rights, Pontianak, 16 May 2005, P1L5.

391 Interview with an advocate, Ketapang, 16 April 2005.

392 Interview with an advocate, Singkawang District Court, 29 April 2005.

393 Discussion with law faculty staff member, Pontianak, July 2005.

394 Asian Development Bank, Legal Assistance and *Legal Campaign Advocacy, Indonesian Women's Association for Justice - LBH-APIK*, available at http://www.adb.org/gender/working/inooo1.asp, accessed 30 March 2006.

and its activities have reportedly received a favourable response from local government agencies and police forces.[395] Other initiatives have included a legal awareness program on the rights of female migrant workers and commercial sex workers, and youth-oriented workshops to examine issues such as sexual harassment of students, date rape, sexual violence and drug abuse.

Consultation and Legal Aid Institute for Women and Families (LKBH PeKa)

The Consultation and Legal Aid Institute for Women and Families (*Lembaga Konsultasi dan Bantuan Hukum Perempuan dan Keluarga* or LKBH PeKa) is located in the city of Singkawang, on the northwestern border of Bengkayang. Established in 1998, LKBH PeKa provides shelter and legal assistance for women and children who are victims of crime, including human trafficking (an increasing problem in West Kalimantan due to its proximity to East Malaysia). The institute also provides assistance to migrant workers, female domestic workers, and female defendants in criminal cases. LKBH PeKa aims to raise community awareness of legal rights and obligations relating to women and children; to empower women to take a more active role in community life, and to stimulate household industries, co-operatives and small businesses to improve family welfare. The director of LKBH PeKa said the organization is particularly concerned about the reported lack of sensitivity by judicial officers when dealing with victims of sexual abuse and the allegedly inadequate sentences imposed on sexual offenders.

Although based in Singkawang, LKBK PeKa will in theory accept cases from anywhere in West Kalimantan. In practice, however, this is precluded by limited human and financial resources.[396] Initially, LKBH PeKa would approach female victims of crime to offer assistance, however now victims from both Singkawang and Bengkayang actively seek out assistance from LKBH PeKa. At the time of the assessment, the director said LKBH PeKa was providing shelter and assistance to six women and children, whom they attempt to "empower with education and encouragement to resolve their own problems".[397] LBH PeKa reportedly has the largest funding and outreach capacity of legal-related NGOs in West Kalimantan. Although detailed information was unavailable, it receives some funds from the District Office of Social Affairs, including a weekly subsistence allowance of Rp. 30,000 (around USD 3) per week for the women in its care.

Institute for Indigenous Communities and Legal Advocacy (LBBT)

The Institute for Indigenous Communities and Legal Advocacy (*Lembaga Bela Benua Talino* or LBBT) was founded in 1993 in response to an increasing number of development-related laws and regulations that were considered a threat to the rights of indigenous Dayak communities in West Kalimantan. With a staff of 15 (all Protestant and Catholic Dayaks), LBBT has established a presence in four districts[398] and has as its mandate the protection of the rights, entitlements and natural environment of rural indigenous Dayak communities. One of the core functions of LBBT is to develop the capacity of indigenous communities to understand and pursue these rights, through activities such as: training paralegals to build the capacity of *adat* service providers; strengthening *adat* practices; offering representation in the resolution of *adat*-related disputes, and training its staff in the techniques of critical legal analysis.

395 Interview with the head of LBH-APIK Pontianak, Pontianak, 20 May 2005.

396 Interview with Director of LKBH PeKa, Singkawang, 30 April 2005.

397 Interview with Director of LKBH PeKa, Singkawang, 30 April 2005.

398 Sekadau District – 26 villages within 2 subdistricts; Kapuas Hulu District – 27 villages within 3 subdistricts; Melawi District – 10 villages in 1 subdistrict, and; Bengkayang District – 4 villages in 1 subdistrict.

The other core function of LBBT is to represent indigenous communities affected by the illegal or inequitable exploitation of communal land and natural resources, predominantly by corporations. In such cases, citizens can lodge a complaint with LBBT (in some cases this is accompanied by a supporting letter from village authorities) after which LBBT will advise the complainant and/or accompany the community's representative in mediation with the other party to the dispute. For example, in 2004 LBBT represented the Nagna Awin community from Kapuas Hulu District in an out-of-court settlement with a company and obtained Rp. 200 million (around USD 20,000) in compensation on its behalf. Similarly, in 2005, it obtained Rp. 120 million (around USD 12,000) compensation for the Kampung Metibar community in Serawan subdistrict. LBBT's involvement does not extend to overseeing the execution of agreed settlements, and it does not provide communities with assistance in managing any financial component of a settlement. LBBT does not charge for its services but accepts voluntary reimbursements for costs incurred in handling a case.[399]

Institute for the Development of the Borneo Social Community (*Manso Borneo*)

The Institute for the Development of the Borneo Social Community (*Lembaga Pengembangan Komunitas Sosial Borneo* or *Manso Borneo*) is a Bengkayang-based organization focussing on the prevention of people trafficking. While its focus is on preventative measures and raising community awareness of the issue, it also assists victims of trafficking to report their cases to the police.

Community Outreach

In addition to the activities of the NGOs described above, a number of state institutions and agencies such as the police, prosecution service and Department of Law and Human Rights are also mandated with performing a community outreach function to raise citizens' legal awareness.[400] Unfortunately, limited information was available on the extent of these activities in West Kalimantan. Although not directly aimed at raising community legal awareness, the West Kalimantan Provincial Police Force has organized weekly 'morning coffee' dialogues with community leaders since June 2005, with the aim of obtaining feedback on the effectiveness of law enforcement in the province. Unfortunately, no information was available on the impact of these sessions on citizens' access to justice.

In theory, legal information is available from the Legal Bureau of the Regional Secretariat of West Kalimantan Province (located at the Governor's Office); the legal unit at the offices of district heads, and the law and regulations unit at the Regional Office of the Department of Law and Human Rights. Each of these offices has a library that is open for public use and functions as passive means of disseminating legal information. For example, the Regional Office of the Department of Law and Human Rights provides free brochures on human rights and the role of legal institutions for interested citizens.[401] However, in practice these offices are inaccessible for many citizens who live outside urban areas, and the legal information available is rarely comprehensive, complete or up to date.

399 Interview with head, Case Management Division, LBBT, Pontianak, 16 May 2005.

400 See for example Art 14(1)(c) Law No.2 of 2002 regarding the Indonesian National Police and Art 30(3) Law No.16 of 2004 regarding Prosecution Services.

401 Interview with Head of Section, Legal Services and Development, Regional Office of the Department of Law and Human Rights, Pontianak, 16 May 2005.

4. ACCESS TO APPROPRIATE FORUM

Where citizens are sufficiently aware of a breach or non-fulfilment of their rights, a number of possible alternatives are available to them through either the formal or informal justice systems. After briefly outlining the different dispute resolution forums available in the assessment locations, this section considers some of the reasons why citizens choose one system over another and in what circumstances.

4.1 AVAILABLE OPTIONS

Formal Justice System

For initial processing of criminal matters arising in the assessment locations, district police forces are headquartered in the capital cities of Bengkayang and Ketapang. Police are also stationed in each of the four selected subdistricts except the newly created Monterado, over which the Samalantan subdistrict police retain jurisdiction while its current police post is upgraded to subdistrict status. The prosecution of criminal cases is carried out by an Office of Public Prosecutions in each district.

For civil and family law matters, district and religious courts are located in the cities of Ketapang and Singkawang. The jurisdiction of the yet-to-be-established Bengkayang District Court is currently exercised by the Singkawang District Court, while the Bengkayang Religious Court is also located in Singkawang, a carry-over from when Singkawang formed part of Bengkayang District. Appeals from these courts are possible to the High Court or Religious High Court of West Kalimantan, both located in Pontianak, and then again to the Supreme Court of Indonesia in Jakarta.

For other matters, the Administrative Court for the province is located in Pontianak and the Military Court, with jurisdiction over West Kalimantan, is located in Medan, Sumatra. Newly created labour courts should be located in both Bengkayang and Ketapang, although information regarding progress with their establishment was not available at the time of writing.

Informal Justice System

The informal justice system refers to alternative methods of dispute resolution outside of the formal justice system that combine (in varying degrees) elements of negotiation, mediation and arbitration, usually at the village or hamlet level. In West Kalimantan, for cases involving only Dayaks, the informal justice system will involve dispute resolution by traditional leaders according to Dayak traditional (*adat*) law. Non-Dayaks living in predominantly Dayak villages may also access such dispute resolution mechanisms by consent, although this is rare and allegations of coercion have arisen in some cases.

Patterns of Use of the Formal and Informal Justice Systems

Use of the formal and informal justice systems in the eight assessment locations was relatively low, although significant differences in usage patterns existed between Bengkayang and Ketapang (see Chart 12). Of 891 respondents across the two districts, 15 percent reported having used either the formal or informal justice system (or both). On average, nine percent of respondents reported having used the formal justice system at least once, and 11 percent of respondents reported having used the informal justice system at least once. In Bengkayang, however, patterns of usage were signi-ficantly higher than average for both the formal and informal justice

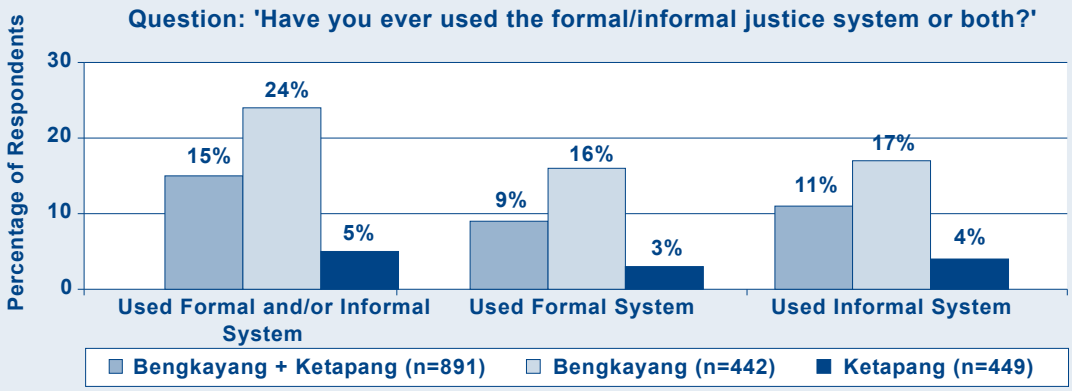
system, both for West Kalimantan and across the other four assessment provinces. Twenty-four percent of respondents had used either the formal or informal justice system (or both), with 16 percent having used the formal system and 18 percent having used the informal system. In Ketapang the reverse was true, with usage figures being the lowest of all of the 10 districts assessed throughout the five provinces. Only five percent of respondents had used either the formal or informal justice system (or both), with three percent having used the formal system and four percent having used the informal system. Throughout the target villages in West Kalimantan, only 0.9 percent of respondents (eight people) reported having taken a case to court.[402]

Several possible explanations exist for the differing patterns of use between Bengkayang and Ketapang, none of which are mutually exclusive. Higher than average rates of use in Bengkayang may be due in part to issues arising out of conflict, in particular a higher instance of land and property disputes. The lower than average rates of use in Ketapang could simply reflect a lower incidence of problems that villagers are unable to resolve without the involvement of a third party, or they could mean that citizens in Ketapang are reluctant or unable to enlist the assistance of the formal or informal justice system to resolve their problems. The absence of legal services NGOs operating in Ketapang could provide a partial explanation for lower use of the formal justice system in that district, but physical inaccessibility is an unlikely cause considering that 50 percent of respondents live in an urban area in relati-vely close proximity to police stations and the courts. The lack of more detailed information prevents the drawing of any firm conclusions.

4.2 FACTORS INFLUENCING CHOICE OF FORUM

Choice of forum is influenced by a complex and interrelated set of factors, not all of which are necessarily given equal weight, nor consciously considered by an individual faced with deciding whether to use the formal or informal justice system to resolve a problem. This section attempts to outline some of the main factors at play, but is by no means exhaustive. Further, while it is somewhat artificial to separate these factors and deal with them one by one, it nonetheless helps to illustrate the different dimensions

CHART 12: USE OF FORMAL AND INFORMAL JUSTICE SYSTEMS – WEST KALIMANTAN



Source: Access to Justice Survey West Kalimantan

402 N = 857.

of the decision-making process. It should be noted from the outset that given the small percentage of respondents who reported having used either the formal or informal justice systems, the majority of opinions presented here are based on perception rather than personal experience.

Type of Case

In simple terms, the type of case is probably the most influential factor in whether citizens choose the formal or informal justice system. Almost without exception, villagers choose the informal justice system as their initial point of complaint, except in serious criminal cases that they will report directly to the police. Examples of serious cases provided by FGD participants in Pangkalan Buton included: murder, rape, robbery, drug possession and trafficking, and fighting with sharp weapons. Other examples are cases involving rights that can only be granted under civil law, such as divorce, custody, maintenance and inheritance. Subject to these exceptions, villagers rarely drew a conscious distinction between civil and criminal cases or which method of resolution was more appropriate for which type of case. The following sections may shed some light on how this state of affairs has come to pass.

General Perceptions of Formal and Informal Justice Systems

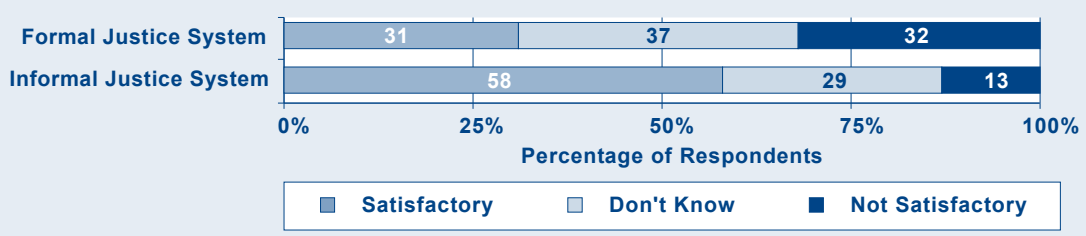
General community levels of satisfaction are overwhelmingly higher in relation to the informal justice system as compared to the formal justice system (without reference to any particular element or feature of the respective systems). Just under a third of all survey respondents were satisfied with the formal justice system, in contrast to almost double that number (58 percent) who were satisfied with the informal justice system (see Chart 13).

Knowledge and Understanding of the Formal and Informal Justice Systems

Across the eight villages, community knowledge of the formal justice system and the key actors involved was uniformly low. Most respondents were aware of the existence of the police and the courts and their basic functions, although not necessarily the full extent of their authority. For example, FGD participants in Pangkalan Buton were seemingly unaware of the civil jurisdiction of the courts, describing their function simply as to 'find people guilty and put them in jail'.[403] The most well known actors in the formal justice system are the police, stemming from their physical proximity to the

CHART 13: OVERALL COMMUNITY SATISFACTION WITH THE FORMAL AND INFORMAL JUSTICE SYSTEMS

Question: 'What is your current evaluation of the formal/informal justice system?' (n=891)



Source: Access to Justice Survey West Kalimantan

403 FGD men and women, Pampang Hamlet, Pangkalan Buton village, 27 April 2005.

community and their role as the primary point to report crimes or seek assistance. The prosecution service is the institution with the lowest profile in the community and although respondents were mostly aware of the existence of prose-cutors, few could describe what they actually do. The different stages in the formal justice process also remain shrouded in mystery for many, as community members have generally not experienced or obser-ved the process for themselves.

Women generally displayed a slightly lower awareness of the formal justice system than did men. For example, according to a number of female respondents in Marunsu, the police sit at the apex of the formal justice system hierarchy because they are institution to which people report or complain.[404] These women had heard of prosecutors and judges, but have very little conception of their respective roles. Certain groups of men also displayed lower than average awareness of the formal legal system, such as casual mining labourers in Monterado whose knowledge of the formal justice system began and ended with the police. Young men in Monterado, on the other hand, displayed a higher than average understanding of the police and how they operate, stemming from the fact that they, by their own acknowledgement, drink alchohol and take drugs with members of the police force on a regular basis.[405] Their knowledge of formal justice institutions other than the police, however, remained low. A similar contrast was apparent in Kali Nilam where older women respondents had never heard of prose-cutors, whereas younger women with senior high school (SMU) education confidently cited prosecutors as one of the actors in the formal justice system, although they did not have a clear understanding about how the system functioned as a whole.[406]

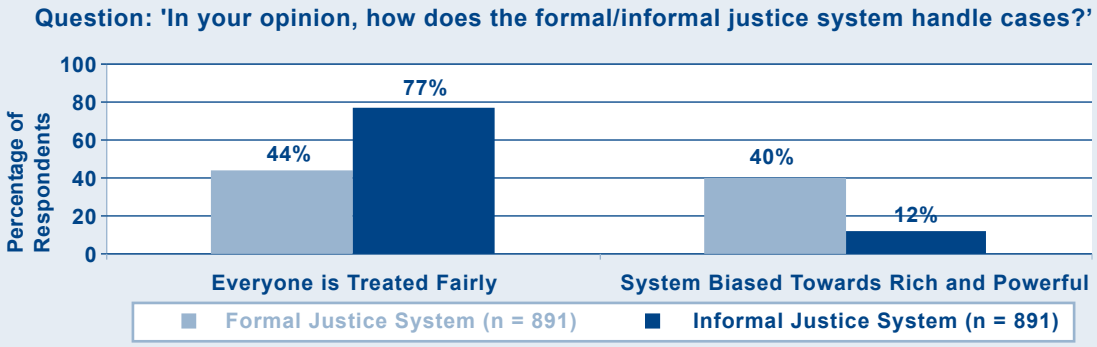
As would be expected, community knowledge of the informal justice system, in terms of the actors and process involved, was vastly greater than their knowledge of the formal justice system. Village or neighbourhood heads or *adat* leaders are well known and generally easily accessible, the informal justice process is thought to be straightforward and citizens have either experienced it or observed its operation themselves. The survey results concord with the qualitative findings that for most people, the informal justice system is easier to understand than the formal justice system. Only 36 percent of respondents agreed to a greater or lesser extent that formal justice mechanisms are understandable by most people, as opposed to 46 percent who disagreed or didn't know, and 18 percent who were neutral.[407] In contrast, 58 percent of respondents considered that informal justice systems are understandable by most people, 27 percent disagreed or didn't know, and 15 percent were neutral.[408] While a similar percentage of males and females responded that the informal system was understandable, 10 percent fewer females than males felt the same way about the formal system.[409]

Perceived Fairness of Decision

Given the poor reputation of the Indonesian courts, a somewhat surprising 44 percent of survey respondents considered that the formal justice system treats everyone fairly, although an almost equal 40 percent perceived it as being on the side of the rich

404 Interview with youth, Marunsu, 16 April 2005.
405 FGD youth group, Monterado , 21 April 2005.
406 FGD women and disadvantaged women group, Kali Nilam, 22, 25 and 26 April 2005.
407 N =891.
408 N = 891.
409 31 percent of women (n = 450) c.f. 41percent of men (n = 441).

CHART 14: PERCEIVED FAIRNESS OF FORMAL AND INFORMAL JUSTICE SYSTEMS – WEST KALIMANTAN



Source: Access to Justice Survey West Kalimantan

and powerful (see Chart 14).[410] In contrast, 77 percent of respondents believed the informal justice system treats everyone fairly, with only 12 percent of the opinion that it is on the side of the rich and powerful.[411] Respondents were slightly more negative in their expectations of the informal justice system when a case involved family members of the decision maker, with 23 percent believing the process would be biased in favour of the family member, but 64 percent maintaining their faith that the system would continue to treat everyone fairly.[412]

The qualitative research paints a similar picture, perhaps slightly more biased in favour of the informal justice system than the survey results, although this could be partly due to the social risk of FGD participants criticising the informal system (and implicitly its actors) in front of their peers. Villagers in Sukaharja and Kali Nilam felt there was no guarantee that any result achieved through the formal justice system would 'satisfy the community's sense of justice', while villagers in Sutra and Pangkalan Buton in particular believed that the police were often biased in carrying out their duties.[413] A common response in FGDs throughout the eight target villages was that the informal justice system 'satisfies the community's sense of justice'. For example, FGD participants in Kali Nilam FGD participants gave an overwhelmingly positive evaluation of their neighbourhood (RT) head as impartial and the antithesis of the corrupt formal justice system.[414] Similar sentiments were expressed in Sukaharja in relation to a neighbourhood head who was widely considered fair, impartial and not susceptible to corruption.[415]

Community Trust

In line with overall community satisfaction levels with the formal and informal justice systems, and reflecting the results of the qualitative research, the survey results show that the community places generally significantly greater trust in informal justice system actors compared to those in the formal

410 N = 891; 30 percent slightly on the side of the rich and powerful and 10 percent definitely on the side of the rich and powerful. Respondents were offered the full spectrum of choices, including that the system was biased towards the poor, but responses to these options were negligible (<1percent). 15 percent did not know.

411 N = 891; 11 percent slightly on the side of the rich and powerful and 2 percent definitely on the side of the rich and powerful.

412 N = 891; 20 percent rather on the side of the family member and 3 percent definitely on the side of the family member.

413 FGD women, 22 April 2005 and interviews with disadvantaged women 26 April 2005, Kali Nilam; youth FGD, 26 April 2005, Kali Nilam

414 FGD women, 22 April 2005; men FGD, 22 April 2005 and youth FGD, 24 April 2005, Kali Nilam village.

415 FGD men and women, Sukaharja village, 6 May 2005

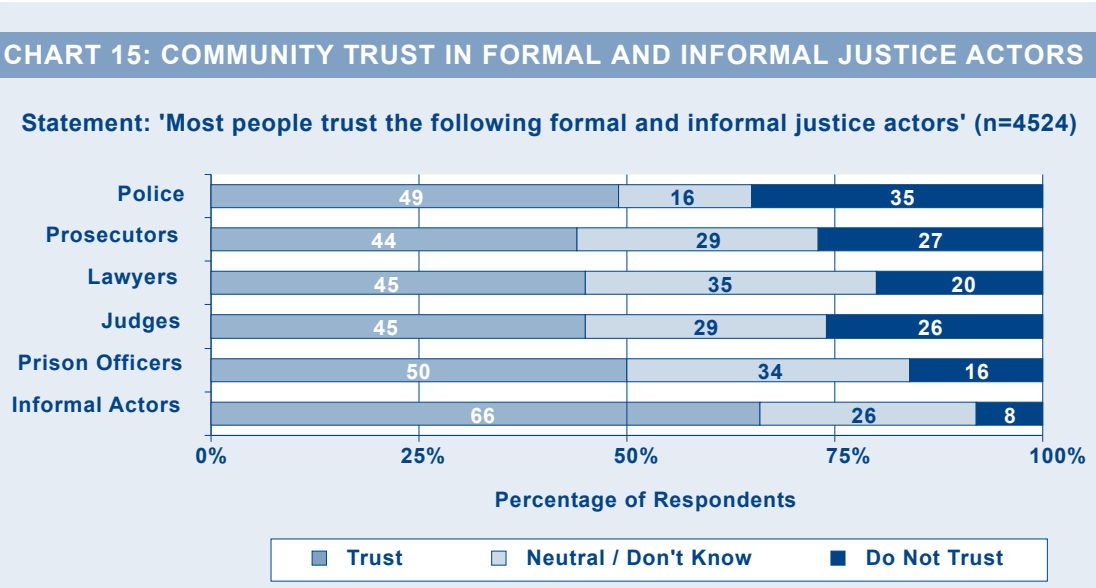
justice system (see Chart 15). While 66 percent of respondents trusted informal justice actors, less than half of respondents trusted actors from each of the institutions that comprise the formal justice system. However, a degree of caution is necessary in interpreting the survey results: most villagers have had no direct contact with any of these actors, some have little understanding of what they do, while a few are not even aware of their existence.

Trust was highest in prison officers by a slight margin, perhaps because they play no role in the adjudication process and therefore do not contribute to the making of decisions that are perceived as unfair or biased, from which feelings of distrust are likely to develop. The fact that the highest level of distrust is directed towards the police does not necessarily mean that they are any worse than other formal justice system actors — it could simply be a reflection of the fact that the police are the institution with which the community has the most frequent contact, and the community is therefore more aware of instances of poor police conduct. Interestingly, female levels of trust towards formal justice actors were consistently 10 to 20 percent higher than those of men, and nine percent higher than men in relation to the informal justice system. [416]

Geographic and Financial Accessibility

For the vast (if not absolute) majority of the poor and disadvantaged, the informal justice system is far more accessible than the formal justice system, in both geographic and financial terms. Villagers in Kali Nilam and Sukaharja are, by virtue of the fact that they live in the city of Ketapang, reasonably close to the courts and the lawyers who practise there. Prospective litigants from Pangkalan Buton and Sutra, however, would need to spend a minimum of two hours on the one public bus that operates to Ketapang each day. Villagers in Bengkayang would require a similar amount of time to reach the courts and lawyers in Singkawang. Despite this, 56 percent of survey respondents in Ketapang felt that courts were located within an accessible distance from people's homes,

CHART 15: COMMUNITY TRUST IN FORMAL AND INFORMAL JUSTICE ACTORS



Source: Access to Justice Survey West Kalimantan

416 58 percent of females trust the police c.f. 39 percent of males; 51percent of females trust judges c.f. 37 percent of males; 52 percent of females trust prosecutors c.f. 36 percent of males; 51 percent of females trust lawyers c.f. 39 percent of males; 55 percent of females trust correctional officers c.f. 43 percent of males. There was little variation in the percentage of 'neutral' and 'don't know' responses between males and females.

while only 22 percent considered them inaccessible.[417] In Bengkayang, 43 percent of respondents similarly thought that courts were located within an accessible distance from people's homes, compared to 36 percent who were of the opposite view. [418] Although the police are the arm of the formal justice system that is located closest to the community (as outlined above), they are generally located in the subdistrict capital, in many cases a significant distance from some of the villa-ges falling under their jurisdiction. In contrast, the informal justice system for most villagers is just a short walk away, depending on the location of the village or neighbourhood head's house. Seventy-eight percent of survey respon-dents considered that the informal system was within an accessible distance of people's homes.[419]

Of greater concern to most citizens than geographic accessibility is the cost of using the formal justice system. A common chorus of complaints arose in each of the eight villages that the formal justice system was prohibitively expensive. Consistent with this, expense was the problem survey respondents most frequently associated with the police and lawyers, in the case of police bribes and other costs (39 percent of respondents)[420] and for lawyers' high fees and bribes (85 percent of respondents).[421] In comparison, only 14 percent of respondents cited cost or bribes as a problem when dealing with the informal system.[422]

Some citizens believed that in many situations there was little point in resorting to the formal legal system, because the cost of processing a case would exceed the cost of the item at stake.[423] Moreover, before even setting foot inside a police station or lawyer's office, villagers must calculate not only the cost of transportation but also the opportunity cost, or the amount of productive income-earning time that must be sacrificed. For people whose savings are minimal to non-existent, a single day of lost income could result in serious hardship. Although limited *pro deo* (free) services are available through the courts for civil cases, indigent citizens are largely ignorant of this service and are therefore unable to take advantage of it. Further, while *pro deo* may release indigent litigants from the burden of court fees, they are still liable for the significant expense of summoning any witnesses needed to appear at any trial.

On the other hand, a prosecutor from the Bengkayang District Prosecutor's Office raised the point that at least in relation to criminal matters, the poor were being forced into the formal system because of their inability to afford *adat* sanctions, which are usually monetary.[424] Where *adat* systems remain influential, he alleged that the rich can often act as they please and effectively just 'pay a fine' for any transgressions, whereas the poor are more likely to be reported to the police. Further research would be necessary to determine to what extent this is borne out in practice.

Approachability

The formal justice system, with its apparently complex and mystifying processes, is

417 N = 469; 22 percent of respondents were either neutral or did not know.

418 N = 465; 21 percent of respondents were either neutral or did not know. The higher figure in Ketapang can likely be explained by the fact that two of the assessment villages (Kali Nilam and Sukaharja) are within the city of Ketapang itself and therefore in relatively close proximity to the courts.

419 N = 891.

420 N = 496.

421 N = 174.

422 N = 258.

423 Interviews with disadvantaged men, 3 May 2005 and with disadvantaged youths, 27 April 2005, Kali Nilam.

424 Participant in a UNDP-sponsored seminar on Access to Justice, Hotel Kapuas, Pontianak, 16 February 2006.

regarded by some as only for those who have 'done something wrong' and therefore worthy of avoidance lest one be tarnished by association.[425] In contrast, the informal justice system is comprised of (usually) trusted and respected community leaders who are far more approachable than formal justice system actors. In some respects, this is a self-reinforcing process – citizens avoid the formal system because it is unfamiliar, and it remains unfamiliar because they keep avoiding it. The reverse applies in explaining the familiarity of the informal system.

As the principal interface between the com munity and the formal justice system, the police in particular (and the image they project) can play a significant role in influencing community choices between the formal and informal justice systems. Despite the motto 'We are ready to serve you' that is emblazoned across most police stations, the image of the friendly local policeman is a rarity in West Kalimantan. In response to a question regarding the main problem faced when dealing with police officers, 21 percent of respondents cited fear (the second most frequently cited issue after payment of bribes), while 17 percent considered the process difficult.[426] Females were slightly more likely than males to nominate fear as an issue (25 percent as opposed to 18 percent respectively). Young males in Monterado were a notable exception; they preferred to resolve problems through the police because, as mentioned above, many of them mixed in the same social circles and were therefore well known to each other. In comparison, only six percent of respondents nominated fear as an obstacle when dealing with the informal system.[427]

Police often are regarded as unapproachable because officers are not representative of the communities they serve, in both ethnic and socio-economic terms. For example, FGD participants in Beringin Baru highlighted that not one resident from Beringin Baru works as a policeman or woman in the sub-district capital. Meanwhile, Christian Dayaks in Marunsu and Samalantan felt that the police were not ethnically representative, as to the best of their knowledge most of the police are Muslim. They also felt that as outsiders, the police did not adequately understand their traditional law or customs. Police originate from a relatively high socio-economic class, by virtue of the fact that the going rate for bribes to gain admission into the police force in West Kalimantan is reportedly Rp. 20 to 25 million (around USD 2000 to USD 2500).[428] Besides placing a police career well and truly out of reach for the poor or disadvantaged, the obvious corollary of this practice is that new recruits will want a return on their invest-ment that official salaries are clearly incapable of providing.

Timeliness and Predictability

In line with the old adage that justice delayed is justice denied, citizens show a natural preference for the timely justice process provided by the informal justice system, rather than the delays and drawn-out procedures that so often characterize the formal justice system. Focus group discussion participants valued the fact that informal penalties and sanctions are usually enforced immediately after a decision has been made, enabling the quick resolution of cases (notwithstanding the issue of parties who reject a decision and simply refuse to comply with

425 FGD men and women, Pampang Hamlet, Pangkalan Buton village, 27 April 2005 FGD men and women, Pampang Hamlet, Pangkalan Buton village, 27 April 2005.

426 N = 489.

427 N = 258.

428 Interview with a farmer, Sindu Hamlet, Samalantan village, 13 April 2005 and Interview with villager of Marunsu village, 16 April 2005.

it). In simple cases resolution may be achieved on the spot, in most cases in one to three days, and occasionally up to a week. In comparison to the weeks, months or even years involved in seeking justice via the formal system, choice of forum on this basis needs no further explanation.

Respondents did not draw a significant distinction between the predictability of decision making in the formal and informal systems. Thirty-five percent thought that court decisions could be predicted based on the results of previous cases, whereas only a slightly greater number (43 percent) held a similar opinion of the informal justice system.[429] Given that consistency in the treatment of similar cases is arguably a basic element of fairness, and consistent treatment should give rise to predictability, the similarity of responses for the formal and informal systems tends to indicate that this is not a key determining factor in the community's assessment that the informal system is fairer than the formal system.

4.3 IS TRUE CHOICE OF FORUM ALWAYS AVAILABLE ?

For financial or geographic reasons alone, for many of the poor and disadvantaged any choice of forum in theory rarely translates into actual choice of forum in practice. However, some additional factors may operate to further limit an individual's ability to select the forum of his or her choice. Significant social pressure from both community leaders and the community at large may exist in favour of resolving cases via the informal justice system. As can be seen in Chart 16, survey respondents were evenly split on this issue between the 30 percent who believed social pressure existed, the 33 percent who believed it did not, and the 37 percent whose opinion was neutral.[430]

Citizens who bypass the informal justice system may find that their actions are interpreted by community leaders as displaying a lack of trust in their abilities and authority, which could damage the leaders' standing both within their community and with their superiors. Consequently, by using the formal system citizens run the risk that future appeals to village leaders for assistance may fall on deaf ears. As respondents in Pangkalan Buton pointed out, the same might also apply even by appealing a decision made at village level to the subdistrict authorities.[431] At a more general level, bypassing the informal justice system might provoke community disquiet about airing the village's dirty laundry in public and involving outsiders in a case that could have been resolved internally in a more harmonious fashion.

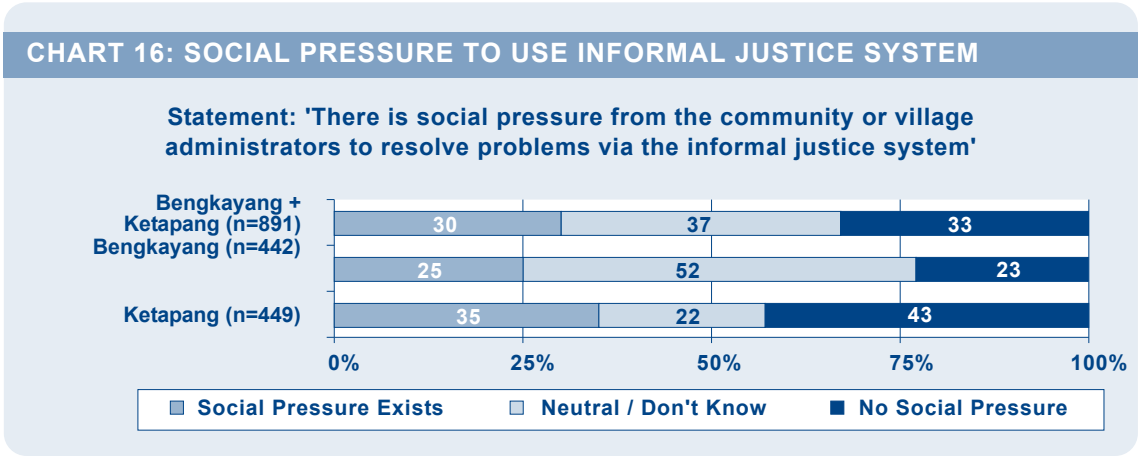
For less serious cases, bypassing the informal justice system might be futile because police can simply decline to handle the case and instead refer it back to the village authorities for resolution. This is particularly for Dayaks in Bengkayang, where the *adat* system is still influential. Cases of domestic violence were examples of such situations given by respondents in Monterado.[432]

4.4 LACK OF AWARENESS OF APPROPRIATE FORUM

What is apparent from the assessment is that while citizens may be familiar with the forums available to seek redress for criminal

429 N = 891.
430 N = 891.
431 FGDs with disadvantaged men and disadvantaged women, Dusun Pampang, DesaPangkalan Buton, 27 April 2005.
432 FGDs in Marunsu, 21 and 23 April 2005.

CHART 16: SOCIAL PRESSURE TO USE INFORMAL JUSTICE SYSTEM



Source: Access to Justice Survey West Kalimantan

acts or small-scale disputes among themselves, they are much less familiar with options for resolving the issues that they feel to be the greatest cause of injustice in their daily lives. These issues are frequently civil in nature, affect a group of people rather than individuals, and because they involve either the government or parties from outside the local area, are not suited to resolution via the informal justice system. For example, villagers in Samalantan and Monterado are unsure of what they can do about the ongoing pollution of their drinking water caused by illegal mining, after reporting the problem to the local government failed to achieve results. More examples have been outlined in greater detail above.

5. JUSTICE ACTORS AND PROVISION OF REMEDIES

5.1 FORMAL JUSTICE SYSTEM

Police

In Ketapang, police numbers have increased in line with population growth over the last five years, with the result that the ratio of police to citizens has averaged around 1:750 (in 2005 the figure was 1:730).[433] There is, however, an acute shortage of female police officers (numbering only 20 of 639 officers as of May 2005), all of whom are stationed at the district headquarters and not at the subdistrict level where the majority of community interaction takes place.[434] Over the last five years the Ketapang police have managed to solve just over 50 percent of officially reported crimes (for example, police solved 194 of 366 crimes reported in 2004).[435]

In Bengkayang, at the time of writing there were 376 officers, with a ratio of police to citizens of roughly 1:515. Only six are women, and, as in Ketapang, none are stationed at the subdistrict level.[436] Two female officers are tasked with conducting examinations and searches of female and child victims and defendants at the district police headquarters. The Bengkayang District Police processed 35 cases in 2003 and 38 cases in 2004, but data as to the number of cases that were resolved was unavailable.[437]

A shortage of resources, both human and financial, is apparent in both districts, especially at the subdistrict level. For example,

433 Interview with Deputy Chief of Police, Ketapang District Police, 11 May 2005. The Deputy Chief also stated that the number of police officers in Ketapang have risen steadily from 527 in 1999 to 639 in 2005.

434 Ibid.

435 Ibid.

436 Interview with Deputy Chief of Police, Bengkayang District Police, 25 April 2005.

437 Ibid.

the long established Samalantan sub-district police have one patrol car and three motorbikes to cover a land area of 574 square kilometres and a population of 20,385, which they claim is grossly insufficient. Basic salaries are low, ranging from Rp. 758,200 per month (around USD 75) for the lowest ranking uniformed members of the police force to Rp. 1,374,000 per month (around USD 130) for mid-ranking officers (a range of various allowances are usually paid on top of these rates).[438] Although subdistrict police stations receive Rp. 150,000 per month (around USD 15) for the medical care of detainees in their custody (in itself a seemingly insufficient amount), no official budget allocation exists for providing them with food or clothing.[439] Consequently, detainees are forced to rely on donations from families and friends.

This resource deficiency has been amplified in Bengkayang by the fact that the district has only recently been created through the ongoing and Indonesia-wide process of subdivision of existing districts (*pemekaran*). While this may have the benefit of bringing government closer to the people (and creating more employment opportunities for local officials), it also imposes a strain on financial and human resources by requiring the establishment or upgrading of government infrastructure at the appropriate administrative levels within the new district, including the police. For example, the existing police post in Monterado must now be upgraded to a subdistrict police station serving eight villages with a com-bined population of 18,342. The 13 police staffing the station (as of May 2005) are reportedly involved in illegal gold mining to supplement their meagre salaries, reducing the time they can spend on their official duties.They are equipped with only three motorbikes, and so officers are forced to use their personal vehicles for official transportation.[440] Further compounding the problem is the fact that Bengkayang is an unpopular posting for police officers because, as with many new district capitals, it is relatively isolated and undeveloped. As a result, most police commute from Pontianak or other areas and live in Bengkayang only during the week, leading to a shortage of officers on the weekends.

As a way to promote settlements that are in line with community values and at the same time minimize the workload of a resource-deficient formal justice system, the police often recommend that resolution of cases reported to them should first be attempted according to *adat* or by the village authorities. At this basic level, the police appear to interface effectively with the informal justice system, however many villagers in Bengkayang accused the police of failing to understand their *adat* laws and practices. As mentioned above, although Dayaks are in the majority in Bengkayang, its police force is comprised predominantly of Javanese, Sundanese, Bataks and Malays, with only a few Dayaks. In Ketapang, the police have an unwritten agreement with the major ethnic organizations that the resolution of inter-ethnic disputes should, insofar as is possible, be done by dialogue and consensus between the organizations. Particularly in the case of disputes between palm oil companies and the community, the police play a mediatory role rather than processing the case according to formal laws and procedures.[441]

438 Ibid.
439 Ibid.
440 Interview with Chief of Police of Monterado subdistrict, 21April 2005.
441 Interview with the Deputy Chief of Police, Ketapang District Police, Ketapang, 11 May 2005.

As already mentioned, one positive development (in sentiment at least) is the recent establishment of weekly 'morning coffee' meetings held between the West Kalimantan Provincial Police and various community leaders, to discuss the effectiveness of law enforcement in the province. In March 2005, the provincial police also launched an online complaint service and installed a dedicated post office box in Pontianak for receiving complaints.[442] While these are positive developments, questions can be raised about the efficacy of such methods of soliciting feedback, particularly from poor and disadvantaged citizens.

The Deputy Chief of Police for Ketapang complained that because the police are obliged to serve the people they will be criticized for the smallest mistake, but are never praised when they do well because that is simply their job.[443] Praise for police from respondents was indeed rare, one of the few examples coming from a respondent in Marunsu who was impres-sed by the speed with which the police arrived at the scene of a fight between two men, thus stopping the violence from spreading.[444] Unfortunately, the reality appears to be that when it comes to cultivating a positive public image, the police don't do themselves many favours (see Box 15).

BOX 15: THE CASE OF A STOLEN COW

A group of farmers in Monterado jointly received a single cow from a government assistance program. One of the farmers was accused of stealing the cow; a report was made to the hamlet head, and when there was no satisfactory resolution, the theft was reported to the police. The police detained the suspect, along with the cow he was alleged to have stolen. The complainant reported that when he initially reported the crime, he gave the police Rp. 50,000 (around USD 5), but was then asked to pay another Rp. 50,000 (around USD 5), which he did. Later on he was asked to pay more money, which he refused to do. Unfortunately the eventual outcome of this case is unknown.

Source: Interview with respondent in Monterado, 20 May 2005

Prosecution

Prosecution services in West Kalimantan are under the authority of the High Prosecutor's Office located in Pontianak, which oversees a total of 140 prosecutors spread throughout the province (24 of whom are women). The High Prosecutor's Office is staffed by 30 prosecutors (23 male and seven female) and 86 administrative staff. In 2004 the routine operational budget for the office was Rp. 8.44 billion (around USD 8.44 million), with a number of additional allocations including Rp. 350 million (around USD 35,000) for programs aimed at promoting legal awareness. Its physical resources include a number of cars and motorbikes, one telephone, one fax and 30 desktop computers.[445]

The Ketapang District Prosecutor's Office has grown from five prosecutors in 1999 to 11 in 2005 (one of whom is a woman) and is supported by 12 administrative staff. According to staff, the number of prosecutors is well matched to the office's caseload, most of which involves illegal logging, drugs and corruption.[446] A policewoman is available to assist with cases involving women and children, and a special room is available for use in such cases. Technical resources include four motor bikes, two telephones, four computers, seven typewriters and, by the office's own admission, a very poor filing system. A strength of the office is reportedly effective coordination between the police and civil investigators

442 POLDA KALBAR website www.kalbar.polri.go.id.
443 Interview with the Deputy Chief of Police, Ketapang District Police, Ketapang, 11 May 2005.
444 FGD Men group, Marunsu, 14 April 2005.
445 Data from the West Kalimantan Prosecutor's Office, April and May 2005.
446 Interview with Chief Prosecutor of Ketapang District Prosecutor Office, 21 April 2005.

TABLE 15: NUMBER OF WEST KALIMANTAN JUDICIAL OFFICERS 1999-2005

Year	1999	2000	2001	2002	2003	2004	2005
Judicial Officers (Provincial Level)	4	4	10	11	9	11	9
Judicial Officers (District Level)	50	54	60	60	62	62	62

Source: High Court of West Kalimantan, May 2005

from the Department of Forestry.[40] Additionally, a coordination meeting is held each month among these authorities, judges, lawyers and representatives of the National Human Rights Commission, but no information is available about the content or outcome of these meetings.

The recently established Bengkayang District Prosecutor's Office opened with seven prosecutors in 2003 and had grown to 10 prosecutors in 2005, supported by two administrative staff. Notably, no prosecutors are of Dayak ethnicity. The office handles only two cases per month on average, with 29 cases in 2004 and nine cases in the three months from January to March 2005. According to the staff, the most common crimes are assault, rape, theft, prostitution and disorderly behaviour that is often alcohol related. [447]

COURTS

General Courts

The **High Court of West Kalimantan** in Pontianak oversees and hears appeals from the seven district courts whose combined jurisdictions encompass the 12 districts and municipalities of the province. The court reportedly has a backlog of cases, although the exact number could not be ascertained. Staff advanced two reasons for this, namely (a) that a bench of nine judges is insufficient to handle the volume of cases (although actual judicial workload could not be verified), and; (b) that district court judges frequently do not exercise the requisite degree of care in preparing judgements on the basis that if a party is dissatisfied they can simply appeal the decision, leading to a large number of appeals. As can be seen from (Table 15) the total number of judicial officers in West Kalimantan has remained relatively steady over the past five years.

Seven judges (none of them female) sit on the **Ketapang District Court**. The deputy chief justice of the court regards this as an adequate number considering the court's caseload, even though it is two short of the nine judges it should have according to the officially proscribed standards for Class II District Courts. Twenty-one administrative staff assist with the court's work, a reduction from 26 in 1999.[448] The court-annexed mediation scheme devised by the Supreme Court is in the initial phases of implementation, with one case being successfully resolved by this method as of May 2005. As can be seen from (Table 16), funding

40 Ketapang District Prosecutor Office has a good relationship with investigators from Department of Forestry in handling cases that related to the Law No. 41 year 1999 concerning Forestry.

447 Interview with Bengkayang District Prosecutor's officer, 25 April 2005.

448 Interview with Deputy Chief Justice of Ketapang District Court, 19 April 2005.

levels for the Ketapang District Court have increased in real terms (after accounting for inflation) by an average of approximately 12 percent per year. No evaluation is made of the adequacy of these amounts, which would require at a minimum a needs-based calculation of staff numbers considering workload, salaries and other expenditures that is beyond the scope of this assessment.

Although its geographic jurisdiction hasnot changed since the process of regional subdivision began, the **Singkawang District Court** now hears cases from the districts of Bengkayang and Sambas and the municipality of Singkawang. For undetermined reasons, the number of judges on the court has declined steadily from 10 in 2000 to only four in 2005, while administrative.

Religious Courts

Located in Pontianak, the High Reli - giousCourt of West Kalimantan vversees all religious courts at the district and municipality level in the province, and hears appeals from decisions of these courts brought by Muslim litigants. The bench has grown from three judges in 1999 to seven judges in 2005 (one of whom is female), with administrative staff numbers increasing from26 to 33 over the same period.[451]

The Bengkayang Religious Court commenced operations in October 2001 and is located in the city of Singkawang, occupying the building of the former Sambas Religious Court, which has now shifted to the capital of the new district of Sambas. With jurisdiction over Bengkayang District and the Municipality of Singkawang, the court is staffed by six judges (four male and two female) and 13 administrative staff and equipped with one motorbike, one telephone, four desktop computers and two typewriters. The court can reportedly hold *ad hoc* sessions in Bengkayang City but are reluctant to do so because of a lack of official vehicles (a single motorbike) and staff. The Bengkayang Religious Court has a relatively low workload, since its jurisdiction extends only to Muslim citizens while Dayak

TABLE 16: FUNDING PATTERNS OF KETAPANG DISTRICT AND RELIGIOUS COURTS 1999-2004

Year	Inflation (%)	KETAPANG DISTRICT COURT			KETAPANG RELIGIOUS COURT		
		Budget (RP x1000)	Yearly Increase (%)	Real Increase (%)	Budget (RP x 1000)	Yearly Increase (%)	Real Increase (%)
1999	-	315,162	-	-	228,258	-	-
2000	9.4	438,754	39.2	29.8	217,363	- 5.0	- 5.0
2001	12.6	590,958	34.7	22.1	322,832	48.5	48.5
2002	10.0	611,726	3.5	- 6.5	406,951	26.1	26.1
2003	5.1	739,323	20.9	15.8	460,937	13.3	13.3
2004	6.4	805,432	8.9	2.5	512,400	11.2	11.2
AVG	**8.7**	**-**	**21.4**	**12.7**	**-**	**18.8**	**10.1**

Source: Budgets - Ketapang District Court and Religious Court, May 2005; inflation rate - Statistics Indonesia [449]

449 National inflation rates calculated by Statistics Indonesia, available at http://www.bps.go.id/sector/cpi/table3.shtml (accessed 31 May 2006).

450 Prosecutor from Bengkayang District Prosecutor's Officer who was a participant in a UNDP-sponsored seminar on Access to Justice, Hotel Kapuas, Pontianak, 16 February 2006.

451 Administrative Section of the High Religious Court of West Kalimantan, May 2005.

Christians form the majority of Bengkayang's population. In contrast, the religious court in Ketapang has reportedly experienced a significant increase in divorce motions over the past two years, a phenomenon both a religious court judge and a lawyer attribute to a growing awareness among women that they can resolve domestic problems via the formal justice system.[452] The Ketapang Religious Court is staffed by five judges (including one woman) and is equipped with three motorbikes, three computers and six typewriters. The court's budget for the period can be seen at Table 15, which shows that funding has increased at a rate similar to that of the Ketapang District Court, after adjustment for inflation.

Administrative Court

The Pontianak State Administrative Court has jurisdiction over all of West Kalimantan to hear disputes of an administrative nature arising between private citizens or legal entities and organs or officials of the state. No state administrative courts have yet been established at the district or municipal level outside of Pontianak. The Pontianak State Administrative Court has grown from three judges in 1999 to seven judges in 2005, one of whom is female. The number of administrative staff has remained constant at ten since 1999, and the court is equipped with two cars, six motorbikes, five computers and nine typewriters.

Civil Society Monitoring of Formal Justice System

The Assessment did not identify any civil society organizations in Ketapang engaged in monitoring the operation of the formal justice system. The only organization identified in Bengkayang performing a quasi-monitoring function is the very recently established Joint Community Anti-Corruption Forum (*Gabungan Forum Masyarakat Anti-Korupsi* or GAFORMAS), which since 2005 has concerned itself with monitoring irregularities in the use of public funds by state agencies and providing advocacy services for community members involved in legal disputes. An example of its work is provided in Box 16.

5.2 INFORMAL JUSTICE SYSTEM

Bengkayang District

The Dayak *adat* system permeates all levels of society in Bengkayang and is the primary means of dispute resolution in the district for those of Dayak ethnicity in almost all cases. In general, cases which involve at least one Dayak will be resolved according to Dayak *adat*, while cases that do not involve a Dayak are usually resolved via village authorities in a manner similar to that described below. However, in some villages (such as Samalantan and Marunsu), minority non-Dayak ethnic groups often choose to submit to Dayak *adat* in resolving disputes involving two non-Dayak parties because they feel that they as outsiders should make concessions by adapting to the ways of the original inhabitants. In most cases, victims are given a choice whether they prefer to use the formal or informal justice forum. Dayak *adat* is by no means monolithic, and there exist significant variations in rules, traditions and terminology between different subethnic groupings throughout Kalimantan. However, for illustrative purposes, Table 17 shows the Dayak *adat*

452 Interview with religious court judge, 18 April 2005; interview with an advocate in Ketapang, 15 April 2002. The exact number of cases was unable to be independently verified based on court records.

structure in Samalantan subdistrict from the Kanayatn subethnic group.

Dispute Resolution Process

At whatever level the *adat* dispute-resolution process is initiated, the relevant *adat* official will preside over an open hearing attended by the parties to the dispute, their families, witnesses, *adat* community elders (*Tuha-Tuha*) and anyone else with an interest in the case. Both sides will be given the opportunity to put forward their cases and call witnesses in their support. This can usually be achieved in one to three hearings, after which the *adat official* will decide the case guided by the motto: 'If the punishment is too harsh for the crime then the gods will be angry, if the punishment is too light for the crime, then the ghosts will be angry'. The elders will oversee the process to ensure that the correct *adat* is applied and in the proper way. Decisions are not recorded in writing, but are kept in the living memory of the *adat* elders to act as reference points in deciding future cases. The village or hamlet head may also be asked to approve of the decision in order to increase its moral force and encourage its implementation by the party required to do so. If the decision has been made at hamlet or village level by a *Pasirah* or *Pangaraga*, it may be appealed to a *Pangaraga* or the *Kepala Binua* (as appropriate) by the unsatisfied party. In deciding a case, the *adat* official will be guided by knowledge handed down from generation to generation that sets out the appropriate sanctions for particular *adat* violations. In theory at least, the specificity of these rules means there is limited scope for discretion. Sanctions are based upon and measured in an *adat* unit of sanctions called *tail*. For small violations such as fights or domestic disputes where no injury results the sanction is 3.5 *tail*, for fights where blood is drawn the punishment is 6 *tail*, and sanctions of up to 12 *tail* or more can be imposed for the most serious cases. To illustrate, 3.5 *tail* consists of one large water jar, one bowl, two kilograms of sticky rice, two kilograms of regular rice, one chicken, a sufficiency of cooking oil, and some turmeric (this spice symbolizing the sincerity of the apology).[453] If goods are difficult to obtain, their monetary value may be paid instead. This is determined by reference to the market value at the time, meaning that the monetary value of an *adat* fine can rise and fall in line with the price of goods. However, the number and type of physical goods in lieu of which money is paid always remains the same. In the absence of a formal enforcement mechanism, compliance with *adat* decisions is highly dependent on factors such as communal shame, fear of social ostracism and the influence or charisma of the *adat* leader. Although the official penalty for non-compliance with

BOX 16: THE RISKS OF GAMBLING

A man placed a bet of Rp. 1,000 (around USD 1) on a game of cards. Despite the trivial amount, the man was arrested for gambling and detained by the police, who demanded a payment of Rp. 350,000 (around USD 35) for his release. The money was paid and the man was released. The Joint Community Anti-Corruption Forum advocated on the gambler's behalf for the return of the Rp. 350,000 (around USD 35) bribe and was successful in persuading the police to return Rp. 250,000 (around USD 25). However, the police insisted on retaining Rp. 100,000 (around USD 10) on the grounds that they needed it to build a fence for their station.

Source: Interview with Director of Legal Aid Institute for Women and Families (LBH PeKa), Singkawang, 30 April 2005

453 Interview with Chairman of Samalantan Subdistrict Dayak Adat Council, 18 April 2005.

TABLE 17: HIERARCHY OF DAYAK *ADAT* LEADERS AND INSTITUTIONS IN SAMALANTAN SUBDISTRICT

Rank	Leader or Institution	Jurisdiction	Function and Authority
	District *Dayak Adat* Council	District	Coordination of *adat* system in relevant administrative area. Collective representation of *adat* community with government and other ethnic organisations. Facilitates the selection of new *adat* officials. No arbitration powers.
	Sub-District *Dayak Adat* Council	Sub-district	
	Temenggung or Timanggong	All *Kepala Binua* in a certain area	*Adat* leader responsible for coordination of *Kepala Binua*. No arbitration powers. Current *Temenggung* in Samalantan is also chair of the Samalantan Sub-District Dayak *Adat* Council.
	Kepala Binua or Bide Binua	Defined geographical area including both whole and parts of villages. Unrelated to official state administrative boundaries. Where a case involves parties from the jurisdiction of two different *Kepala Binua*, they will jointly preside over the case.	Highest-ranking *adat* official with authority to make final binding decisions from which no appeal is possible. Deals directly with serious cases (such as those involving death or significant injury) and hears appeals of decisions made by lower-ranking *adat* officials. There are 30 *Kepala Binua* in Bengkayang District.
	Pangaraga	A village	Originally functioned as an *adat* 'prosecutor' responsible for helping determine appropriate sanctions for violations of *adat* law. Now second-tier *adat* official with authority to decide appeals from a decision of a *Pasirah*. Decision can be appealed to *Kepala Binua*.
	Pasirah	Hamlet or sub-village	Originally functioned as an *adat* 'lawyer' responsible for ensuring there was no biased or erroneous application of *adat* law. Now *adat* official of first resort with arbitration powers for dispute resolution. Decision can be appealed to *Pangaraga*.

Source: Interview with Chairman of Samalantan Subdistrict Dayak Adat Council, 18 April 2005

adat sanctions is the imposition of an even harsher penalty, as can be seen from the case study at Box 13 (Part 2) this does not always transpire in practice.

Adat Interaction with the Formal Justice System

According to the chairman of the Bengkayang District Dayak *Adat* Council, the willingness of the police to work with *adat* leaders as in Box 13 (Part 2) is a relatively recent development, with its origins in the inter-ethnic violence that plagued West Kalimantan in the late 1990s.[454] Prior to 1997, the police were reportedly opposed to the application of *adat* law on the grounds that it undermined the national system of laws. However, after being incapable of stemming the violence without assistance from Dayak *adat* leaders, the police have become much more amenable to the application of *adat* law in resolving disputes (perhaps because it is effective or because it reduces their workload). Cases can either be resolved at the police station, or remitted to the *adat* leaders for resolution on the condition that the outcome is reported to the police, who will make note of it for their records.

Current Issues

Not everyone is happy with the role played by *adat* law in village justice, nor the manner in which it is applied. In Monterado,

454 Interview with Chairman of Bengkayang District *Dayak Adat* Council 25 April 2005.

complaints were aired that heavier sanctions are imposed on non-Dayaks compared to Dayaks for similar cases, and that Dayaks are given the opportunity to compromise over the severity of sanctions whereas non-Dayaks are not.[455] In Samalantan, some villagers claimed that *adat* leaders favour their relatives and are unnecessarily harsh towards non-Dayak defendants in criminal matters.[456] At the more extreme end of the scale, the issue was raised of Dayak *adat* is being forcibly applied to non-Dayaks by so-called '*adat* gangsters' (*preman adat*), although the extent of this practice could not be verified. Tension can even exist among *Dayaks* themselves regarding the application of *adat* law. For example, the dispute between Dayak newcomers who had arrived to occupy lands abandoned by the Madurese in some villages have caused significant unrest and fear among local Dayaks because of the allegedly threatening manner in which they have sought to enforce their (different) version of Dayak *adat* upon local residents.[457] In all of these cases, more research would be necessary to distinguish between legitimate grievances and the complaints of disgruntled losing parties.

Despite citizens' claims that the informal justice system is more approachable and comprehensible than the formal justice system, citizens' actual knowledge of *adat* law may often not be much greater than their knowledge of its formal equivalent. At times, communities appeared highly reliant on *adat* leaders who have something of a monopoly over knowledge of *adat* law. A breakdown in inter-generational transfer of knowledge concerns some, who suggest that some *adat* leaders do not want to share it with the younger generation, while the younger generation is not interested in acquiring 'old fashioned' knowledge and is instead moving to adopt a more modern way of life.

Moreover, there appears to be a tendency for citizens to adopt an unquestioning attitude to the fairness and appropriateness of *adat* sanctions, on the basis that if their ancestors decided certain sanctions are fair then that is determinative of the matter. Consequently, at least some aspects of *adat* law appear to have remained stagnant despite the potential for an un-codified system of rules to evolve in response to changing community values. For example, sanctions in the form of goods are retained even though the relative value of the goods has drastically decreased since they were determined as sanctions. In making this point, a group of youths in Beringin Baru cited with disapproval the example of an *adat* rule providing that whoever impregnates a woman outside of wedlock can absolve himself of all future responsibility for the woman and child by paying an *adat* fine of Rp. 3 million (around USD 300).[458] Monetization of *adat* sanctions has also led to suggestions that *adat* is being 'commercialized', although opponents of this view argue that the underlying symbolism of the goods comprising the *adat* sanction is not lost simply by converting their value to cash. Selection of *adat* leaders can also be problematic. Generally recognized selection criteria are that candidates must be male, aged 50 or above, be married according to *adat*, have knowledge of *adat*, and be wise, honest, neutral and unemotional. However, government has

455 Interview with a villager, Giriharjo hamlet, Monterado village, 27 January 2005.

456 Ibid.

457 Interview with a villager, Monterado village, 29 January 2005.

458 Interview with a villager, Beringin Baru, 25 January 2005.

reportedly become involved in the selection of some *adat* leaders, resulting in conflicts because other people feel that they should be the *adat* leader, and a lack of respect from the community because they are not involved in the selection process. Reportedly for reasons of tradition, women cannot act as *adat* officials. They may become members of relatively recently established *Dayak Adat* Councils, although their participation rates are reportedly low – in Ketapang, for example, of the 60 members of the *Dayak Adat* Council, only eight are women.[459]

Ketapang District

Unlike the largely homogenous Bengkayang, the selected villages in Ketapang reflect the ethnic heterogeneity that characterizes so many of the villages in the district. The mix of Malays, Madurese, Dayaks, Chinese and Javanese means that *adat* no longer holds influence in the administration of villages, with full legal and moral authority in the hands of office holders. Figure 7 illustrates common steps in the informal dispute resolution process via these authorities.

The duration of the process depends on the complexity of the matter, but will commonly take no longer than one week. In the urban villages of Sukaharja and Kalinilam, the point of first resort is the head of the neighbourhood association (RT) rather than the village head, with a similar process being followed. If there is no resolution, then the matter will be taken to the village head (citizens sometimes skip the RT if they think the problem is serious enough.) Common matters resolved through this mechanism include disputes over the boundaries or lease of land (residential or agricultural), traffic accidents, affairs, divorce, inheritance of land, fights and other petty criminal matters (see Box 17). Serious criminal matters (for example murder, rape, robbery and drugs) are considered outside the scope of the village head's authority.[460]

Civil Society Monitoring of Informal Justice System

In a sense, the decisions of informal justice mechanisms (and the conduct of informal justice actors) are already subject to some degree of 'informal' monitoring by the local communities to whom they are morally accountable. However, there are often limits as to what can be done to expose or take action against an unfair or inappropriate decision where the successful party, or indeed the decision-maker, is a powerful figure in political, social or economic terms.

5.3 AUXILIARY JUSTICE INSTITUTIONS

Formal state institutions (such as local government institutions) that do not comprise part of the formal justice system yet nevertheless exercise administrative authority over matters that feature prominently as sources of injustice (for example, land) are sometimes described as 'auxiliary justice institutions'.

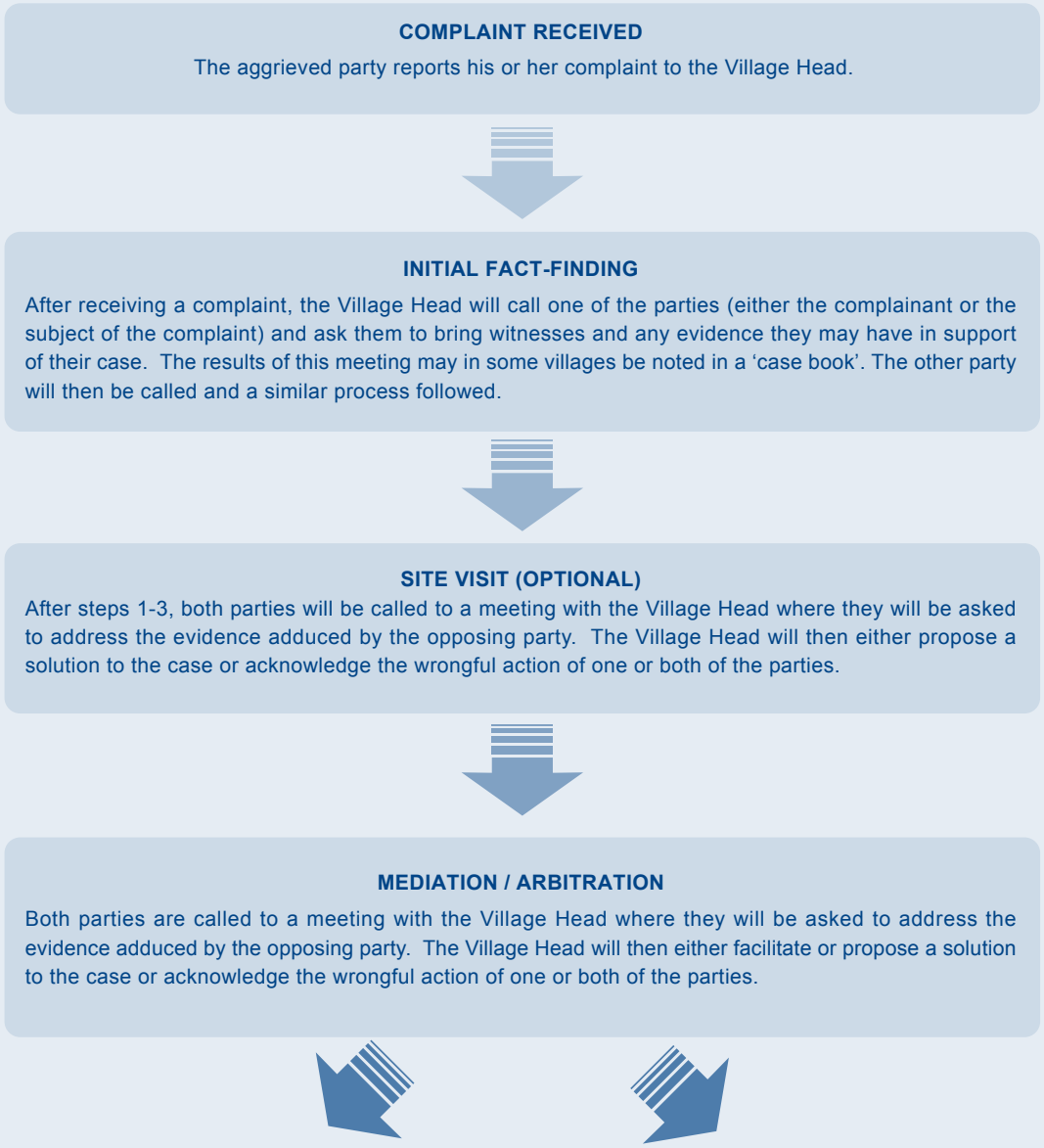
Government Institutions

Legislative Councils (DPRD) at the provincial and district levels channel public complaints or petitions, and can act as mediators between parties such as the government and the community or employees and employers. In 2002,

459 Interview with member of *Dayak Adat* Council in Ketapang, 16 April 2005.

460 Interview with village head of Pangkalan Buton and Interview with village head of Sutra, 14 April 2005

FIGURE 7: DISPUTE RESOLUTION VIA VILLAGE AUTHORITIES



Source: Interviews with village heads of Pangkalan Buton, 14 April 2005, and Sutra, 20 April 2005

the West Kalimantan Provincial Legislative Council (DPRD) received 1,003 complaints or petitions (most likely largely conflict-related), 83 in 2003, 22 in 2004, and 36 in the first half of 2005. The majority of complaints or petitions in 2004 to 2005 have been labour related, lodged in particular by former employees of sawmills and plywood factories that have closed without paying out employee entitlements.[461]

Standing commissions of the DPRD may call government institutions within their jurisdiction to ask for explanations concerning provision of government services, and can also exert political pressure on the executive and government institutions to help resolve such issues.[462] According to the vice chairman of the Bengkayang District Legislative Council, the community can direct government-related complaints to either Commission A, which is responsible for, among other things, general and village-level governance, law and order, and community organizations, or to Commission D, which is responsible for government services in the fields of education, health and industrial relations.[463]

Community Organizations

The most prominent community organizations in West Kalimantan are arguably those representing the key ethnic groups – in particular the Dayaks, Malays and Madurese. In general these organizations do not play a quasi-judicial role in relation to individual cases, but rather facilitate the resolution of inter-group disputes through mediation and negotiation. Police may sometimes be invited to participate in or oversee such mediations.

The ***Dayak Adat* Council** (*Majelis Adat Dayak* or MAD), established in 1994, was the first of the provincial level ethnic organizations in West Kalimantan. Tasked primarily with representing the Dayak ethnic group in dealings with government and other ethnic groups, it also coordinates a series of autonomous ***Dayak Adat* Boards** (*Dewan Adat Dayak* or DAD) that exist at the district and subdistrict levels in areas with significant Dayak populations. The

BOX 17: CATTLE RUSTLING IN KALI NILAM

In 2003, the head of RT (neighbourhood association) 17 in Kali Nilam received a report that an unknown cow had been found in the neighbourhood. The owner of the cow subsequently materialized, alleging that it had been stolen by his niece. The theft of livestock is significant and the owner had already reported the matter to the police. However, because the suspect was a relative of the victim, the RT head attempted mediation.

During a meeting between the two parties at the RT head's house, the niece acknowledged she had taken the cow, but said she had done so because her uncle owed her a debt that he refused to pay. The uncle, meanwhile, denied the existence of the debt. Without reaching a conclusion regarding the debt, the uncle and his niece agreed to resolve the matter amicably in order to preserve family ties. The niece resolved to return the cow to her uncle, while the uncle agreed to withdraw his complaint to the police.

Unfortunately for the niece, the police spotted an opportunity to exploit their position of power and refused to withdraw the complaint on the grounds that it was a serious criminal matter. They then allegedly approached the niece's family and informed them that it would cost Rp. 7 million (around USD 700) to avoid criminal prosecution. The family would not confirm or deny whether the payment was made, but the matter progressed no further. According to the RT head, the matter could have been concluded within a day but for the involvement of the police.

Source: Interview with Neighbourhood Association (RT) 17 Head, Desa Kali Nilam, May 2005

461 Based on the field observation by Access to Justice research team in West Kalimantan, see also the list of reports/complaints submitted to the secretariat office of West Kalimantan Local Parliament (DPRD) during the first quarter of 2005.

462 Interview with Vice Chairman of West Kalimantan Local Parliament (DPRD), 18 May 2005.

463 Interview with Vice Chairman of Bengkayang District Local Parliament (DPRD) 3 June 2005.

Bengkayang Dayak Adat Board has no arbitration powers, in recognition of Dayak *adat* whereby the sub-district *adat* leader functions as the decision-making authority of final resort. In Ketapang, however, the recently formed (2002) *Dayak Adat* Board has positioned itself as a court of appeal for *adat*-related disputes that cannot be resolved at the subdistrict level, a move that has not been met with unanimous approval because of the apparent contradiction with established *adat* practice (as mentioned above). Whoever holds the position of chairman of the Ketapang DAD also functions as the *gemalaq*, or the supreme *adat* decision maker with authority to decide cases appealed from the subdistrict level in accordance with *adat* law. Such cases are heard in open session, and an interesting feature of the process is that the *gemalaq* has the right to be paid up to 25 percent of the value of the settlement in recompense for handling the case, a concept known as *soyid*.[464] In theory at least, this would seem to open the possibility for unscrupulous *adat* leaders to inflate the value of a settlement in order to increase the value of their share in it.

The provincial level ***Malay Adat* and Culture Council** (*Majelis Adat dan Budaya Melayu* or MABM) was formed in 1997 and exists to study and preserve positive aspects of Malay culture and *adat* in West Kalimantan, empower Malay peoples in various fields of endeavour, and represent

Malays in dealing with other sections of the community.[465] Branches exist at the district level in Bengkayang and Ketapang and also at the subdistrict and village levels where there are significant Malay communities. The organization has no power of arbitration over disputes involving Malays, who in general do not have a strong system of *adat* laws. However, the organization has been and continues to be active in mediating with other ethnic representative organizations on behalf of Malays to try to resolve or reduce inter-ethnic tensions and violence.

The **Madurese Community Association** (*Ikatan Keluarga Besar Madura* or IKBM) of West Kalimantan was established in 1996 in the midst of the Sanggau Ledo violence between Dayaks and Madurese. It aims to promote cooperation with government and the social and economic development of ethnic Madurese, and to work together with other ethnic communities to prevent the spread of inter-ethnic conflict.[466] Unlike the MAD/DAD and MABM described above, IKBM does not have an extensive administrative structure descending to the village level, nor does it have *adat* councils or institutions. Instead, it often works through other public insti-tutions such as mosques to encourage better integration of Madurese migrants into West Kalimantan society. Although not affiliated with IKBM, the **Madurese Community Association of Ketapang** (*Ikatan Keluarga Madura Ketapang* or IKMK) plays a similar role in that district. While having no power of arbitration, IKMK plays a role in mediating disputes of both an inter-ethnic or intra-ethnic nature, often involving religious leaders or Madurese community leaders because of the tendency of Madurese to afford significant respect to these figures.[467]

464 Op., cit. Dayak Adat Council, Ketapang 16 April 2005.

465 Articles of Association of the West Kalimantan Malay *Adat* and Culture Council.

466 Interview with the vice chairman of the Madurese Community Association (IKBM), Pontianak, 27 May 2005.

467 Interview with Madurese Community Leader in West Kalimantan, 17 April 2005

ANNEX 3
MALUKU PROVINCIAL REPORT

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1. INTRODUCTION

1.1 OVERVIEW

Maluku Province lies in the eastern Moluccas[468] archipelago of Indonesia, between Sulawesi and Papua provinces, and north of Timor. Before the separate province of North Maluku was carved out in 1999, Maluku was the largest province in Indonesia, covering over 850,000 square kilometres, 90 percent of which is maritime. Maluku Province consists of 559 islands,[469] only a few of which are larger than 1,000 square kilometres.[470] The capital of Maluku Province, Ambon City, lies on the small island of Ambon, southwest of Seram.

The population of Maluku, estimated at 1.29 million in the 2003 census,[471] is almost evenly split between Muslims (49 percent) and Christians (50 percent), most of whom are Protestant.[472] Christians are slightly more concentrated in the urban areas, where they represent 56.7 percent of the population; Muslims form a slight majority in the rural areas. The migrant population of Maluku (6.6 percent) comes primarily from Sulawesi, a large island to the west of Ambon, and Java.[473] For the most part, Muslims and Christians live in separate *negeri* or villages, and even within mixed villages, they tend to live in separate *kampungs* or neighbourhoods. Specifically,many ethnic Butonese migrants from southeast Sulawesi and ethnic Bugis and Makassarese, from South Sulawesi, have settled in their own *kampungs.*[474]

Widespread conflict in the region, from 1999 to 2002, led to the largest recorded displacement in Indonesian history– approximately one-third of the population fled or were evacuated, most within Maluku, North Maluku or to neighbouring provinces in Sulawesi; smaller numbers fled to Papua and elsewhere in Indonesia. The slow-down or even standstill of economic life impacted the rest of Maluku's population.[475]

Almost three-quarters of the households in Maluku Province live below the poverty line. Seventy-seven percent of the population above the age of 10 has an education of junior high or below.[476] Conflict interrupted and frequently stopped education, so that in the 2003 National Final Examination, Maluku's education system ranked 30th of 33 provinces. With the cessation of most fighting, education improved, and in 2004, Maluku ranked 23rd.[477]

468 In keeping with modern Indonesian terminology, this report uses the term Moluccas to refer to the geographical entity, i.e. the archipelago of islands between Sulawesi and Papua, which encompasses the political entities of both Maluku and North Maluku today.

469 See Sekilas at: http://maluku.bps.go.id (accessed 6 June 2006).

470 K.A. Monk, Y. de Fretes, Y. and G. Reksodiharjo-Lilley, *The Ecology of Indonesia, vol. V: The Ecology of Nusa Tenggara and Maluku*, (Singapore: Periplus Editions, 1997).

471 Population Statistics of Maluku Province (http://maluku/bps.go.id /ringkasan-eksekutif/re-2.html), accessed on 13 June 2006).

472 'Population of Indonesia: Results of the 2000 Population Census, series L2.2', Jakarta: Badan Pusat Statistik, 2001.

473 Graham Brown with Christopher Wilson and Suprayoga Hadi, *Overcoming Violent Conflict, vol. 4, Peace and Development Analysis in Maluku and North Maluku,* (Jakarta: CPRU-UNDP, 2005), 9.

474 Human Rights Watch, 'Indonesia: The Violence in Ambon,' March 1999 (http://www.hrw.org/reports/1999/ambon).

475 United Nations Resident Coordinator (UN RC), 21 March 2000.

476 See http://maluku/bps.go.id /ringkasan-eksekutif/re-2.html.

477 Provincial Government of Maluku, 'Rencana Strategis (Renstra) Provinsi Maluku Tahun 2003-2008', (Ambon: 2004), 37-40; also, Dr. Ratumanan, Fakultas Keguruan and Ilmu Pendidikan, Universitas Pattimura, January 2005. Rankings are based on grades obtained by Maluku students in the National Final Examination (EBTANAS).

Most economic activity – including trade, tourism and education–is centred in Ambon. Despite these urban sources of revenue, agriculture (coffee, corn, copra and sugar) is still the key component of Maluku's economy, employing more than 60 percent of the labour force. The conflict aggravated unemployment–the number of companies in the province fell by 20 percent and over 30,000 people lost jobs between 1999 and 2002, 40 percent of the companies' work force–and although many inhabitants turned to agriculture for survival, productivity did not significantly increase. Central Maluku and Buru were even more affected economically by the conflict than Ambon. Farmers who remained could not sell their harvested produce as local buyers and traders had fled and transportation to out-side markets was considered dangerous. Prices of key commodities fell drastically as local markets collapsed.

Ambon experienced the largest drop in population during the conflict period compared with other districts, with decreases ranging from 18 to 29 percent per year in Ambon City.

The chronic poverty and economic hardship faced by the majority of Maluku's inhabitants stands in contrast with the abundant natural resources found in province.[478] Although much of Maluku is heavily forested, especially on the islands of Seram and Buru, the inhabitants and regional government do not benefit because the central government regulates forestry cultivation[479] (the Department of Forestry controls 92 percent of the land) A number of wood-processing industries have been developed in Seram and Ambon. Plywood is exported to Japan, Singapore and Hong Kong. The exploitation of forestry resources is mainly on the larger islands, such as Seram, and Buru.[480]

Although the seas surrounding the Moluccas are rich in marine life, only about 8 percent of households in Maluku benefit from this natural resource.[481] The local fishing community, which still uses traditional fishing methods, has been unable to compel the regional government to control exploitation of natural resources by well-connected conglomerates.[482] Maritime products include pearls, aquarium fish, and shrimp. There is also mining, including manganese, copper, chrome, gold, asbestos and, to the east of Seram, oil and gas.[483]

1.2 HISTORY OF CONFLICT

The roots of conflict in Maluku can be found in the region's long and complex history. The people of the Moluccas - the famed Spice Islands - have been sailors for millennia, and were actively trading with merchants from China, India and Arab states in the 500s and 600s. Before the arrival of the Europeans in the 16th century, two rival sultanates in Ternate and Tidore dominated the region. In the 15th century, Muslim mis-

478 Pemerintah Daerah Provinsi Maluku, 'Rencana Strategis (Renstra) Provinsi Maluku Tahun 2003-2008', (Ambon: 2004), 24-27; Badan Pusat Statistik (BPS) Provinsi Maluku, 'Indikator Kesejahteraan Rakyat Provinsi Maluku 2002', (Ambon: 2003), 26.

479 The Program on Humanitarian Policy and Conflict Research at Harvard University (HPCR), web portal on 'Building Human Security in Indonesia', www.preventconflict.org (accessed 6 June 2006).

480 See Eastern Indonesian Knowledge Exchange, www.bakti.org.

481 Renstra, op.cit., p. 26.

482 George Junus Aditjondro, 'Guns, pamphlets and handie-talkies: How the military exploited local ethno-religious tenion in Maluku to preserve their political and economic privilege', in I. Wessel and G. Wimhofer, eds, *Violence in Indonesia*, (Hamburg: Abera, 2001). Also, Aditjondro, 'Playing Political Football with Moluccan Lives,' Ambon Berdarah On-Line, www.go.to/ambon, and Aditjonro, 'The Political Economy of Violence in Maluku, Indonesia.'

483 Nick Mawdsley et al, 'Building Sustainable Peace: Local Economic Development, Natural Resources and Livelihoods-North Maluku, Maluku', (UNDP-BAPPENAS, 2003). Also: PKPM- Investment Indonesia Online, Regional Potential-Maluku, www.bkpm.go.id/bkpm/detailcat.php?mode=baca&info_id=60 (accessed 6 June 2006).

sionaries from Malaysia brought Islam, which was adopted particularly on the coasts.[484] Catholic missionaries followed the Portuguese (Saint Francis Xavier resided for a while in Ambon). But soon the Dutch established their spice empire and, basing themselves in Ambon, forced the Spanish, their last European rivals, to leave in 1663. Catholic missionaries were expelled and the Calvinist Dutch Reformed Church was virtually the only Christian influence in the region for 300 years. Many of the people in the Moluccas converted to Christianity, particularly in the south.[485]

By 1650, the local population was already divided along commercial, factional and religious lines, divisions that continued into the mid 20th century. Christians received preferential treatment under the Dutch colonial administration, particularly in Ambon: Only they were allowed to attend schools set up by the Dutch, and so they dominated the bureaucracy and civil services.[486] During Indonesia's war of independence, many Christian Ambonese–worried about Muslim Javanese domination–sided with the Dutch and, in April 1950, some leaders proclaimed an independent Republic of South Maluku (*Republic Maluku Selatan*, RMS). The RMS movement was largely but not exclusively Christian. After a brief but bloody war, RMS was defeated and an estimated 12,000 Ambonese families fled to Netherlands. Sukarno sought to integrate Maluku by promoting large projects in the region, such as the Wayame shipyard in Ambon;[487] some Christian Ambonese in the RMS were awarded important roles in the central government.[488] Under the Soeharto regime, Maluku lost its economic privilege, and Soeharto-linked conglomerates began to feast on the province's natural resources; governorships were allocated to non-Malukan military officials. The New Order kept the province relatively passive by using the spectre of the RMS against political opponents. Communal relations remained outwardly peaceful until just after Soeharto fell.[489]

The chronology of the conflict in Maluku has been well documented.[490] On 19 January 1999, a minor brawl between a Christian Ambonese bus driver and a Bugis Muslim immigrant passenger expanded into intercommunal violence between Christians and Muslims. The conflict was fueled by the presence of Ambonese Christian gangsters, who had recently been deported from Jakarta after a deadly fight with Ambonese Muslims in a red-light district. After several days of destructive urban riots, sectarian conflict spread rapidly throughout the island of Ambon and into Central Maluku, catalysing further conflicts in Aru, Kei, North Maluku, Tanimbar, Buru and even as far away as Lombok.

Violence resumed and intensified in July 1999, spreading to other parts of the province; Ambon was essentially divided into Muslim and Christian zones, with each side inflicting heavy casualties.[491] A Christian massacre of about 500 Muslim villagers in

484 Brown et al., *Overcoming Violent Conflict,* op., cit.

485 HPCR, www.preventconflict.org, op. cit.

486 D. Bartels, 'Politicians and magicians: Power, adaptive strategies, and syncretism in the Central Moluccas,' in G. Davis, ed., *What Is Modern Indonesian Culture?,* (Athens: Ohio University Center for International Studies, 1979).

487 Aditjondro, 'Guns, pamphlets and handie-talkies,' op. cit.

488 J. Bertrand, *Nationalism and Ethnic Conflict in Indonesia* (Cambridge: Cambridge University Press, 2004).

489 J. Bertrand, ibid.

490 See International Crisis Group, 'Indonesia's Maluku Crisis: The Issues', (Jakarta/Brussels: International Crisis Group, 2000); ICG, 'Indonesia: Overcoming murder and chaos in Maluku', (Jakarta/Brussels: 2000); ICG 'Indonesia: The search for peace in Maluku', International Crisis Group Asia Report 31, 8 Feb. 2002 (Jakarta/Brussels).

491 Human Rights Watch, 'Indonesia: The violence in Ambon', (New York: Human Rights Watch, 1999); ICG, 'Indonesia: The search for peace in Maluku', ibid.

Tobelo District on Halmahera Island at the end of December 1999 created the domestic political conditions that allowed for Laskar Jihad, a militia based in Java to move in. Important Muslim political leaders saw Laskar Jihad as a force dedicated to the protection of endangered Muslims. In May, Christian militias were put on the defensive as thousands of Muslims arrived in the islands. Trained in basic military techniques by sympathetic officers in the Indonesian National Military (*Tentara Nasional Indonesia*, TNI) and supported by elements in the security forces, Laskar Jihad fighters inflicted casualties on the Christian community, causing thousands to flee. The national government declared a civil emergency in June 2000; bombs continued into 2002.[492]

At least 5,000 people (perhaps as many as 10,000) were killed and close to 700,000 – almost one-third of the population of 2.1 million – became displaced.[493] Even on the remote islands of Kesouri and Teor off Seram, the forced conversion of Christians to Islam caused displacement of 800 families to Southeast Maluku. Finally, by mid-2001, there was a lull in violence and Christian and Muslim factions signed a peace accord in February 2002.

While the violence has abated in North Maluku, sporadic outbursts of violence continue in Maluku, particularly in Ambon, although thus far they have not triggered sustained violence. In April 2004, an RMS clone known as Front for Moluccan Sovereignty (FKM), raised their flag and fighting broke out, resulting in dozens of deaths. In May 2005, six men were shot while they were sleeping in a remote police outpost on the island of Seram. Police - arrested three of the perpetrators—all linked to jihadist organizations—and pieced together the elements of a mujahidin-*preman* alliance that has been responsible for acts of lethal violence going back to 2001.[494] Members of major jihadist organizations—Jemaah Islamiyah (JI), offshoots of Darul Islam (DI) and KOMPK—see Maluku as an area where 'enemies of Islam' (including local Christians) pose a threat to the Muslim community.[495]

There are several root causes of the conflict. Significantly, both the official transmigration and the spontaneous migration during the Soeharto era disturbed fragile ethnic and religious balances in Maluku. Most transmigrants and a large proportion of migrants were from Java and predominantly Muslim. The impacts of migration were not just demographic, but also economic, social and environmental: transmigrants were allocated communal land traditionally used and owned under *adat* by local communities; infrastructure projects, built to support the transmigrants, often displa-ced or hindered local communities.[496] Frequently, immigrants were poorly integrated into traditional local structures and *adat*.[497] The influx was particularly felt in the Christian communities, where the belief was widespread that the transmigration programme was limited to Muslims only.[498]

492 ICG, 'Indonesia: The search for peace in Maluku,' ibid.

493 Ibid.

494 Sidney Jones, 'Asking the right questions to fight terror,' The Jakarta Post, Indonesia Outlook 2006-Political, http:// www.thejakartapost.com (accessed 6 June 2006).

495 ICG, 'Weakening Indonesia's Mujahidin networks: Lessons from Maluku and Poso, Asia Report No. 103, 13 October 2005.

496 J. Leith, 'Resettlement history, resources and resistance in North Halmahera', in S. Pannell and F. von Benda-Beckmann, eds., *Old World Places, New World Problems: Exploring issues of resource management in Eastern Indonesia*, (Canberra: Australian National University, Centre for Resource and Environmental Studies, 1998).

497 F. von Benda-Beckmann, F. and K. von Benda-Beckmann, 'Property, politics and conflict: Ambon and Minangkabau compared', *Law and Society Review* 28.3 (1994).

498 D. Bartels, 'Your God is No Longer Mine: Moslem-Christian fratricide in the Central Moluccas (Indonesia) after a half-millennium of tolerant co-existence and ethnic unity'. Unpublished manuscript, 2001.

When Christian elites were displaced from top political jobs, traditional sources of authority were weakened. The Muslim and Christian communities increasingly distrusted one another because of outbreaks of violence elsewhere in Indonesia (specifically the burning of churches and attacks on mosques in Jakarta and West Timor). When conflicts did arise in Maluku, security task forces were either incompetent or biased in failing to establish security in the area. The arrival of outside Muslim militias further inflamed the situation. (JI justified many of its subsequent bombings as retaliation for deaths of Muslims in Ambon).[499] Jakarta was also slow to act: By late June 2000, when then President Abdurrahman Wahid proclaimed a state of civil emergency, some 3,000 had already been killed and 320,000 Maluku citizens had benn displaced.[500]

Most IDP camps are separated into either Muslims or Christians although a few, such as the one at Halong Naval Base in Ambon, are mixed. The flight of refugees has led to the effective partitioning of much of the two Maluku provinces into Muslim and Christian zones.[501] In September 2003, the three-year-old Civil Emergency Status of Maluku was lifted. Recently, there has been a clear shift, favouring peace and stability in the region. Previously fractious Christian and Muslim communities have been provided opportunities to meet naturally, at markets in neutral areas. The *Baku Bae* (reconciliation) movement has sponsored informal meetings between leaders. The June 2006 peaceful election of Maluku's regional heads is considered an important benchmark in the peacekeeping process,[502] however many residents in Maluku, and particularly Ambon, still live in what some analysts bluntly call a 'violent security situation.[503]

1.3 ASSESSMENT LOCATIONS

Maluku is divided into seven districts and one municipality.[504] The two districts selected for the assessment were Ambon Municipality (where Ambon City, the capital, is located), and the more isolated Central Maluku District, which is comprised of several islands. Both districts were afflicted by communal violence during the period of conflict from 1999-2002.

Ambon City suffered extensive physical damage and over 112,000 people fled the area.[505] Despite the high-level of conflict, Ambon became a magnet for many IDPs from Central Maluku and Buru looking for aid (there were 119 Muslim IDP sites and 123 Christian IDP sites).[506]

Central Maluku suffered less property damage and civilian displacement. Haruku village and Sameth, a neighbouring village, were destroyed, and there was also fighting in Amahai District, with a subsequent exodus of refugees, but overall the intensity and duration of conflict was moderate compared with Ambon.

Although the assessment locations are not necessarily representative of other districts in Maluku Province, their contrasting characteristics provide exposure to a wide variety of justice-related issues affecting the poor and disadvantaged in Maluku.

499 International Crisis Group, website.

500 Anonym, 2004; Data Maluku Tahun 2004, Yayasan Salawaku Maluku (2002) Konflik Maluku dan Berbagai Permasalahannya.

501 ICG, 'Indonesia, the Search of Peace in Maluku.'

502 M. Aziz Tunny, 'Markus Jacob Papilaja: From Conflict to a Model of City Government,' *The Jakarta Post*, 1 June 2006.

503 Travel advisory, Australian Government, Department of Foreign Affairs and Trade, June 2006.

504 Districts: Central Maluku, Southeast Maluku, Buru, West-Southeast Maluku, West Seram, East Seram, Aru Islands and Ambon Municipality.

505 *Kompas*, http://www.kompas.com/kompas-cetak/0309/05/daerah/537622.htm (accessed 20 June 2006).

506 Ibid.

Ambon Municipality

Ambon Municipality is the oldest of the four districts in the province. Its population of 233,319 (2003) is heterogeneous, and lives in 50 villages that tend to be divided along religious lines. The administrative regions of the Municipality consist of: Ambon City, the district capital; Sirimau subdistrict; Teluk Ambon Baguala (TAB) subdistrict, and Nusaniwe subdistrict. Christian Protestant Ambonese tend to govern the city's administrative structures, while socio-economic life is dominated by Chinese, Bugis, Buton and Makassar ethnic groups. Compared to the rest of Maluku, Ambon Municipality is densely populated: the average density in Maluku Province is 15 people per square kilometre, but in Ambon that figure is 650.[507] Traditions and customary practices are no longer evident in most localities, although the mayor of Ambon Municipality has actively used the local *adat* principle of *pela-gandong* (brotherhood ties among people from different villages regardless of faith) to overcome religious sentiments that led to communal war. He believes the principle has effectively hastened the psychological rehabilitation and normalization of life in the municipality.[508] In 2005, the city was highly heterogeneous: Muslims accounted for 43.81 percent, Christians 49.44 percent, Catholics 6.25 percent, Buddhists 0.45 percent and Hindus, 0.15 percent.[509] The district has been the centre of political power, trading and education for centuries and is relatively well developed. The economy of Ambon Municipality is based on trading, hotel and restaurant services, farming and fishing.[510] Communities living near the city have relatively easy access to public-sector facilities. However, the violence severely impacted the city's residents and devastated the economy. The population of Ambon Municipality dropped from 314,000 in 1998 to 206,210 in the 2000 census. By 2002, almost one third of the capital's households lived below the national poverty line.[511] In Ambon City, many IDPs have yet to be relocated, subsisting on government aid, living on borrowed land.

Of Ambon Municipality's three subdistricts, the coastal Teluk Ambon Baguala, 12 kilometres northeast of Ambon City and Nusaniwe, 9 kilometres to the southwest, were selected for the assessment. Teluk Ambon Baguala has a heterogeneous population of Muslim Butonese and Christian Ambonese; Christians dominate the political structure. Because of the violence, the subdistrict is now segregated by religion and ethnicity. The area suffered extensive damage and mass displacement; few residents who fled have returned. Nusaniwe subdistrict, a coastal region with some tourist facilities and a traditional fishing community, did not suffer as great displacement. Three villages were identified to be the focus of the assessment, and their key characteristics are described in Table 18.

Central Maluku

Central Maluku, with nine subdistricts, is much less developed than Ambon Municipality. Masohi is the district capital on the large island of Seram, north of Ambon.

507 Eastern Indonesian Knowledge Exchange, http://www.Bakti.org (accessed 6 June 2006).

508 Tunny, 'Markus Jacob Papilaja,' The Jakarta Post, 1 June 2006.

509 See http://www.depos.go.id/Balatbang/Puslitban%20UKS/2005/rusmin.htm (accessed 23 June 2006).

510 See http://www.malukuprov.go.id/subpage.asp?id=40 , accessed 20 June 2006.

511 As documented by the research team. According to BPS the indicator of poverty is monthly family income below Rp. 150.000 (approx.USD 15) www.depsos.go.id/ditppk/html/modules.php%

TABLE 18: OVERVIEW OF ASSESSMENT LOCATIONS – AMBON DISTRICT

Subdistrict	Village	Characteristics
Teluk Ambon Baguala	Wayame	5 km. outside subdistrict capital, Passo, and 27 km. from Ambon City. Heterogeneous population of 3,100: Ambonese, Chinese, Bugis Buton, Makassar, Arab, Manadanese and Javanese (Muslim, Protestant and Catholic). Unlike surrounding villages, virtually unaffected by violence. Has attracted IDPs. Public facilities include: *Puskesmas*, markets, kindergarten and elementary schools. Main employment: civil service. Agricultural sector dominated by migrant Butons. Fading customary practices, despite origin as *adat* enclave from Ruma Tiga village, due to heterogeneity and migration.
	Hutumuri	Located 7 km. from subdistrict capital, Passo. Homogeneous population (Christian Ambonese). Public facilities: *Puskesmas* without doctor, kindergarten through high school. At the end of 1999, Christians forced Muslim Butonese who lived in Toisapu hamlet to leave and burned 100 houses. (The Muslims fled to Pohon Mangga village.) The rest of the village had little damage. 85% of 3,285 villagers are farmers. *Adat* is strong, but was severely affected by Law 5/1979, which created one uniform structure for village governance and administration and disregarded diverse traditional institutions and customs.
Nusaniwe	Pohon Mangga	Located 5 km. from subdistrict capital of Nusaniwe. Heterogeneous population includes people from Ambon, Sulawesi, Java, and Manado. Religions: Protestant, Muslim and Catholic. Muslims in Pohon Mangga are the only ones left in the area. Although there have been violent incidents, there was little physical damage, and both Moslems and Christians consider the area secure. Working *Puskesmas*, kindergarten and elementary schools.

Source: Maluku Access to Justice Assessment Team Reports

Masohi was severely damaged during the conflict, with many houses, mosques and churches burned to the ground. Seram Island, one of the largest in the Mollucas (17,429 square kilometres), has densely wooded mountains in its interior; other small islands include Banda, Haruku, Saparua and Nusa Laut. Most of Central Maluku's population of 550,743 (2003) live in isolated communities, far from administrative centres. Muslims are the majority (67 percent); Protestants (32.43 percent); the rest are Catholic, Hindu and Buddhist.[512] Muslims are dominant in government structures; socio-economic life is ethnically dominated by the Javanese, Pagand, Bugis and Buton ethnic groups. Traditions and customary life are strong in the district, particularly in the homogenous *adat* villages in the two selected subdistricts.

The two subdistricts selected for the assessment were the small island of Haruku, 63 kilometres by sea from the district capital, Masohi, and Amahai, linked to Masohi by a smooth 5 kilometre road. Haruku has a population of 24,772; Muslims (the majority) live in four villages in the north, Christians live in seven villages in the south. Conflict caused massive displacement, but little physical damage. Roads remain unsafe. Amahai escaped destruction during the conflict, with comparatively few displacements. Its government is dominated by Christian Ambonese. Travel is relatively easy, as Amahai is the gateway to Masohi; there are frequent boats and ferries to Ambon. The key characteristics of the two villages selected as the focus of the assessment in each subdistrict are described in Table 19.

512 Central Statistic Bureau (BPS), Maluku Province, Indikator Kesejahteraan Rakyat Propinsi Maluku 2002, Ambon 2003.

TABLE 19: OVERVIEW OF ASSESSMENT LOCATIONS – CENTRAL MALUKU DISTRICT

Subdistrict	Village	Characteristics
Haruku Island	Pelauw	Subdistrict capital, one hour by boat from Ambon. Population of 3,000 as of 2001 is primarily Ambonese and Butonese (Muslim). Lengthy conflict, little property damage, no IDPs. In 1999 inhabitants of Pelauw and other Muslim clans attacked the nearby Christian village of Kariu, compelling the villagers to leave. Working Puskesmas and hospital (no doctor), elementary, middle and high schools, traditional market, harbour, PLN and expensive satellite phone service. Inhabitants cultivate clove, coconut and cocoa using traditional methods. Adat customs strong.
	Haruku Island Village	45 minutes by speedboat from Ambon City. Population of 2,160 (Christian Protestants). In 1999, Haruku villagers destroyed farmlands of a Muslim village in retaliation for the attack on Kariu village. In response, Muslims destroyed houses and church, and villagers fled to the mountains. The IDPs have returned to rebuild Haruku. *Puskesmas* (no doctor); elementary, middle and high schools; clean water supply; intermittent electricity; expensive satellite phone service. Natural resources: forestry, agriculture, and fishing. There are also gold mines. *Adat* traditions involved in election of *Raja*, marriages and upholding *sasi.*
Amahai	Sepa	Sepa is 21 km. from the district capital, with limited public transportation. Heterogeneous population: Muslim Ambonese and Buton majority, Naulus (animist) minority. Little damage during the conflict, few IDPs. Operating facilities: Puskesmas (no doctor); elementary, middle and high schools; makeshift market; no public telecommunication. Main sources of livelihood: farming and fishing, rudimentary and traditional methods.
	Amahai	Subdistrict capital, 2 hours by ferry from Ambon City. Heterogeneous population of 3,049 (2005). Village structure dominated by Christians. Little damage during the conflict, but large number of IDPs from Lava village. Puskesmas, kindergarten, elementary, junior high and vocational high schools, PLN, harbour, telecommunication, and market. Clove and coconut plantations are cultivated by traditional means.

Source: Maluku Access to Justice Assessment Team Reports

2. JUSTICE FROM THE PERSPECTIVE OF THE DISADVANTAGED

2.1 WHO ARE THE DISADVANTAGED ?

Table 20 provides a summary of those groups selected as most disadvantaged in Maluku Province and the basis for their selection. The justice issues that groups such as the *adat* leaders of Hutumuri, the women of Haruku, the land-owning farmers of Amahai and the IDPs of Amahai must contend with are echoed elsewhere in assessed villages, and provide some sense of the challenges facing Maluku's various disadvantaged groups.

2.2 COMMUNITY PERCEPTIONS OF JUSTICE

The community's perception of justice is a reflection of their daily struggle to earn a living and the social injustices that they often encounter. As elsewhere, the people have little or no knowledge of specific laws, but they do have heart-felt views regarding justice. The inhabitants of Wayame village, for instance, defined justice as "equal treatment for all" and injustice as disregard for the "little people" who have been denied their basic entitlements to live a decent and meaningful life. [513] To the Haruku inhabitants, justice means respect for an individual's human rights; they also linked it with values such as ethics, honesty, truth, freedom, equality and non-discrimination.[514] Youths

513 Women FGD, Waringan Cap hamlet, Wayame, 6 May 2005.

514 Public FGD, Haruku village, April 2005.

TABLE 20: SELECTED DISADVANTAGED GROUPS – MALUKU PROVINCE

Village	Disadvantaged Groups (Bold = Selected Group)	Group Experience	Key Justice Issues
AMBON DISTRICT			
Wayame	▪ **Sharecrop farmers** ▪ IDPs ▪ Women	Most families in this category fall below the national poverty line. As sharecroppers, their livelihood is uncertain and dependent on the use of others' land. Typically, they purchase materials with high-interest credit. Education for their children is unattainable. State subsidies are irregular. Sharecroppers are the most marginalized group in the study.	Land disputes Access to credit Access to government subsidies
Hutumuri	▪ ***Adat* leaders** ▪ IDPs ▪ Women ▪ Small-scale entrepreneurs ▪ Young people	The *adat* community and leaders are campaigning to regain lost legitimacy and state recognition of their local culture and traditions and rights. They lack capacity to mobilize sustainable political support and are struggling to retain their unique historical identity even within their own communities.	Declining *adat* tradition Lack of state recognition of *adat* institutions
Nusaniwe	▪ **Unskilled labourers** ▪ Farmers /fishermen ▪ *Adat* leaders	Of the 600 households in the Pohon Mangga (Nusaniwe) area, the majority are IDPs who have returned to their homes and have lost their jobs because of the conflict. 90% must now make a living as unskilled labourers. They work very long hours and struggle to send their children to school. They have no capacity to mobilize support to improve their work environment and feel discriminated and marginalized due to their low social status	Employment and labour rights
CENTRAL MALUKU DISTRICT			
Haruku village	▪ **Women** ▪ Farmers /fisherman ▪ *Adat* leaders	Of the 661 women in Haruku Village, many are single. They rank low in the patriarchal society. Most sell produce at local markets as well as taking care of the house. Often their husbands take their earnings, without offering a financial support. Domestic abuse is common, as are out-of-wedlock pregnancies.	Domestic violence Domestic disputes Employment
Sepa	▪ **Farmers** ▪ IDPs ▪ *Adat* leaders	Although they own their land, the farmers of Sepa face disputes regarding land use because of uncertain titles. They compete for land with outsiders, who were given licenses by the government to cultivate in the forests. This group does not receive sufficient or timely state subsidies and aid.	Property rights Access to government subsidies Employment
Amahai	▪ **IDPs** ▪ Farmers ▪ Young generation	The Amahai IDPs have yet to be repatriated due to regional bureaucratic impediments. The IDPs have had trouble obtaining subsidised housing and health care; they have yet to receive a schedule for repatriation to their own communities. The IDPs are socially estranged from the local community and are not able to access effective justice processes that could resolve their problems.	Access to government aid Inefficient delivery of government services Employment
Pelau	▪ **Farmers/fishermen** ▪ Woment Government officers ▪ *Adat* leaders	The villagers of Pelauw use traditional means to harvest clove, cocoa and coconuts, and to fish the sea. Since they receive little government aid, they cannot improve their production. This is particularly hard on the fishermen, who must compete with corporate fishing fleets that often illegally exploit the natural resources. They have no knowledge of government subsidies available to support workers' cooperatives; there is no one to advocate for their rights.	Access to government aid Employment

Source: Maluku Access to Justice Team Reports

in Sepa believed that justice is attained when one "feels satisfied" with what has been given and that no one should feel "left out."[515] Some IDPs in Amahai were optimistic, stating that justice is something "attainable and real."[516]

2.3 KEY JUSTICE-RELATED ISSUES AFFECTING DISADVANTAGED PEOPLE

Most of the justice-related issues affecting the disadvantaged in the selected locations pertain to their economic progress and social welfare. These can be grouped into five main issues, namely:

- *Declining adat traditions and institutions*
- *Land and property rights*
- *Labour rights and employment opportunities*
- *Woman and gender-based issues*
- *Post-conflict issues; IDP acces to government assistance; resettlement; land rights*

This section will first present the results of a survey of almost 800 villagers as to what they consider the most pressing issues in their daily life, and then examine in more detail the specific thematic issues raised by respondents in FGDs and interviews during the assessment.

Survey Results

Survey respondents in each of the assessment locations in Maluku were asked to nominate (in order of importance) the three most commonly encountered issues in their village from a list of 20 options. Poverty, education and unemployment were most frequently nominated as the numbers one, two and three issues respectively (see Table 21), while land disputes, criminality and disputes between neighbours were other commonly selected issues. For the most part, women's responses mirrored those of the general population, however women did mention disputes between neighbours and domestic disputes more frequently than the general population.

A number of responses differed significantly between Ambon and Central Maluku. In

TABLE 21: MOST IMPORTANT ISSUES IN ASSESSMENT LOCATIONS – MALUKU

Rank	Number 1 Issue				Number 2 Issue				Number 3 Issue			
	Global (n = 734)		Women (n = 357)		Global (n = 706)		Women (n = 343)		Global (n = 645)		Women (n = 316)	
1	Poverty	33%	Poverty	28%	Education	29%	Education	27%	Unemployment	21%	Unemployment	22%
2	Land disputes	17%	Education	11%	Unemployment	16%	Unemployment	13%	Criminality	13%	Criminality	13%
3	Unemployment	10%	Land disputes	14%	Domestic disputes	10%	Criminality	11%	Poverty	9%	Land disputes	9%
					poverty	10%			Domestic disputes	9%		
4	Education	9%	Disputes betwen neighbours	12%	Criminality	9%	Land disputes	10%	Land disputes	8%	Domestic disputes	8%
5	Criminality	8%	Education	11%	Poverty	6%	Domestic disputes	9%	Housing problem	6%	Housing problem	7%
					Domestic disputes							

Source: Access to Justice Survey Maluku

'Global' = all survey respondents (male and female)
'Women' = female survey respondents only

515 Youth FGD, Sepa village, April 2005.

516 Interview with IDPs from Lava, May 2005.

Ambon Municipality, 16 percent of respondents nominated unemployment as the number one issue facing villagers as opposed to 10 percent globally and only three percent in Central Maluku. A further 24 percent of respondents in Ambon Municipality selected unemployment as the second most important issue in their village as opposed to 16 percent globally and seven percent in Central Maluku. In Central Maluku, 15 percent of respondents nominated domestic disputes as number one issue facing villagers as opposed to two percent in Ambon Municipality and eight percent globally.

Struggling *Adat* Traditions and Institutions

In recent years, *adat* leaders, particularly in Central Maluku Regency where many *adat* systems are still vital, have been campaigning to regain lost legitimacy and state recognition of their local culture and traditions, and socio-economic rights. Specifically, *Adat* village leaders in Hutumuri, Haruku, Amahai and Pelauw point at the damaging effect that Law No. 5 /1979 on village government had on indigenous people and life.[517] The law, which remained in effect for over two decades, was passed during the Soeharto era as a way of centralizing and standardizing village governance. The village structure it imposed was modelled on traditional Javanese village governance systems, which bore no relation to indigenous governance systems on the outer islands.This effectively strengthened the power of the central government while marginalizing or co-opting traditional leadership within the official village government system.[518] It was abolished in 1999 (see Box 18).

According to the Chief Judge in Masohi District Court, there has only been one documented case in which the rights of *adat* communities were recognized in a court of law. The case involved a dispute between a village and the district government over traditional land that was appropriated by the

BOX 18: VILLAGE AUTONOMY - A BRIEF HISTORY

Village Governing Law No. 5 /1979 was considered extremely damaging to the indigenous peoples in Indonesia because it negated the roles of adat leaders in government, and instead placed the village head under the aegis of the subdistrict head. The law regroups indigenous villages under one large village (desa pengembangan); the administrators are known as Village Head, Ward Head, and Neighbourhood Chiefs.

Twenty years later, Administration Law No. 22/ 1999 on Regional Governance was passed, abolishing the uniform village governance system and recognizing adat structures and territorial rights of indigenous peoples. Agrarian State Minister Decree No. 5 /1999 also recognized the land rights of indigenous peoples. Law No 22/1999 establishes regional autonomy on five fundamental principles: democracy, people's participation and empowerment, equity and justice, recognition of the potential and diversity of regions, and the need to strengthen the regional legislatures.

Encouraged by the amended legislation, advocates for indigenous groups have continued to press regional governments to respect the aspirations and rights of indigenous people.[519]

Source: Interview with Adat leaders in Nusaniwe and Wayame, April-May 2005

517 Interviews conducted from January to February 2005 in these villages.

518 For a discussion on how this law impacted leadership and traditional forests and what the impacts of the new laws are, see Ahmad Dermawan, Heru Komarudin and Sian McGrath, 'Decentralization in Indonesia's forestry sector: Is it over? What comes next?', paper presenteda the 11th Biennial Global Conference of the International Study of Common Property, on the theme 'Survival of the Commons', Bali, 19-23 June 2006.

519 See for instance : 'Indigenous Social Movements and Ecological Resilience: Lessons from the Dayak of Indonesia', Janis B Alcorn and Antoinette G Royo, Discussion Paper Series, Biodiversity Support Program, Washington D.C., 2000; Abdias Yas, 'Menapaki Jejak Pejuan Hak Adat,' Seri Kumpulan Kasus No. 01, Lembaga Bela Banua Talino, Pontianak, 2003.

government without compensation. The village's claim was recognized by the district and appellate courts. At the hearing, the judges heard testimony from *adat* leaders and accepted that land ownership need not be proved by documentary evidence because that was not the traditional way of recording information, and that witnesses' testimony was sufficient.[520]

Typically, however, many *adat* leaders and communities lack capacity to mobilize sustainable political support for their cause and are struggling to retain their unique historical identity. Villages such as Nusaniwe and Wayame have seen a decline in *adat* traditions and systems of governance due to the increasing heterogeneity of their populations and migration.[521] *Adat* leaders claim that there has been deliberate weakening of their traditions: frequently, the regent or mayor has selected village heads based on political affiliation and party loyalty.[522]

According to the *adat* leaders of Sepa, the regional budget allocation for the *adat* villages is insufficient and the community is not included in the industrialization plans or in decision and policy making at the regional government level. In fact, the functioning government structure in Sepa is still based on the outdated 1979 legislation that does not accommodate the contemporary *adat* institution, and fails to represent their interests.[523] There has been negligible media and advocacy support for preservation of the community's culture, language and local traditions.

Land and Property Rights

The problems for land administration are acute in Maluku, where few people hold title deeds and ownership is difficult to substantiate following conflict and destruction of people's property. These problems are heightened by the fact that local land administrations are not always operating effectively.[524]

To many of the inhabitants in the assessed districts, land is their only means of survival.[525] The Wayame sharecroppers say they face constant harassment from others outside the village claiming title to their lands, demanding unauthorized payments and threatening retribution should they fail to pay.[526] The farmers attempt to avoid these disruptions by shifting deep inside the forest to plant their crops, spoiling the natural habitat and contaminating the water supply. Left without any good options, their indiscriminate use of land has unwittingly damaged the environment–going against their traditional, non-invasive ways of farming.

In Sepa, land was traditionally owned by 14 *adat* clans (*soa*) until it was transferred to the Sepa village government. Because of its historical ties to the land, and strict regulations about its use (*sasi*), the Sepa *adat* community is generally resistant to outsiders laying claims to its land. The community's traditional laws regarding the use of the land and its products are very specific and there are on occasion internal breaches of rights (such as the unauthorized purchase of coconuts during harvesting,

520 Interview with Chief Judge, Masohi District Court, Dec 2005.

521 Interviews with leaders in Nusaniwe and Wayame.

522 Interview with Chairman, Commission A, DPRD, Maluku, Dr. Bitzael Temmar, Commission A, DPRD Office, Ambon, 13 April 2005. See also Harian Umum Siwalima, Ambon, 14 April 2005, p. 2.

523 Law No 5/1979.

524 Nick Mawdsley et al, 'Building Sustainable Peace: Local Economic Development, Natural Resources and Livelihoods-North Maluku, Maluku', UNDP-BAPPENAS, 2003.

525 Approximately 60 percent of the Maluku labour force works in the agricultural sector. Badan Pusat Statistik (BPS) Provinsi Maluku, 2003. Indikator Kesejahteraan Rakyat Provinsi Maluku 2002, Ambon, p. 26.

526 Farmers Group FGD, Wayame, February 2005.

BOX 19: THE SACRED LAND

After the conflict ended, a Christian community built a settlement on land used by the Amasuhu adat community as a burial ground. Apparently, the Christian community had obtained permission from the Amasuhu village head to use the land. immediately requested the village head not to grant permission because of the land's sacred history. felt it was my responsibility to defend the land in the interests of the entire Christian and Muslim community.

Nusaniwe Subdistrict Head (Camat)

Source: Interview with Nusaniwe Subdistrict Head, April 2005

which is prohibited by *adat*). Other land disputes occur because there is no clearly defined demarcation between Sepa land and land belonging to other villages.[527]

Because of the social and political makeup of the region, *adat* communities and people who were dislocated in the upheavals frequently are involved in land disputes. One such case occurred in Nusaniwe (see Box 19).

Employment and Labour Rights

The regional authorities in Ambon Municipality have started to industrialize the Teluk Ambuan Baguala subdistrict because of its proximity to Ambon City. There is significant agricultural potential and the sea is rich with resources. However local communities have accused some industries owned by the TNI of infringing on the locals' rights and creating unfair competition. By way of example, two fishing companies currently operate in Laha Village, even though they have no operating licenses. According to the village secretary, both companies receive support from the Indonesian Military Air Force (TNI AU).[528] The local fishing and farming communities cannot afford to modernize production methods, yet must compete with such industries for a share in the market. These communities have received little aid from the district government.[529]

The severe downturn in the local economy caused by the conflict has meant that most of the educated youths in Haruku do not have sustainable employment and are financially dependent on their parents. Restless and unable to connect with society, many resort to alcohol abuse, leading to fights with youths from other communities (and run-ins with the police).[530] Many youths end up as labourers, with no real future.

Years of conflict also destroyed many farms. Some Muslims who fled during the conflict have refused to return to Christian-dominated areas and have moved instead to cities where they make uncertain livings as labourers, market helpers and tailors. [531] Farmers who managed to remain in Wayame village face a hard existence; they have not received farming tools promised under an aid programme by the government and instead have had to take loans and purchase raw materials on credit to cultivate their farms, putting them into debt.

In Pohon Mangga (Nusaniwe), there is high unemployment. About 90 percent of those who do manage to find work are unskilled labourers.[532] Port container labourers often

527 Interview with Village Secretary of Sepa, February 2005.

528 Interview with Village Secretary TAB, 27 January 2005.

529 S. Sahubawa, Membedah Potensi Peluang Pembangunan Maluku dari Laut, Seminar Nasional Perikanan dan Kelautan; Seminar 'Saatnya Membangun Maluku dari Laut', organized by Maluku District Government and Pergerakan Mahasiswa Islam Indonesia Maluku dan Maluku Utara, Ambon, 17 May 2005.

530 Youth FGD, Haruku, April 2005; men FGD, Haruku, April 2005.

531 Youth FGD, Nusaniwe, 9 May 2005.

532 Interview with Neighbourhood Chief 03/07 and Village Representatives FGD, Nusaniwe, 18 Feb 2005.

BOX 20: JOBS FOR SALE

For those who have struggled to achieve good education, the civil service and police force remain the most respectable professions. The youths in Nusaniwe, however, have little faith in civil service recruitment process, which they believe is tainted with KKN- Korupsi, Kolusi dan Nepotisme (corruption, collusion and nepotism).

The youths say that many from the villages fail recruitment tests because they have no 'sponsors' from the city. A 'sponsorship' to the police force costs Rp. 30 million (around USD 3000) and a place in the civil service costs Rp. 25 million (around USD 2500). Becoming a port labourer remains the only option, a job that can be secured without a recruitment test or a fee.

Source: Youths FGD, Nusaniwe, May 2005

work without written contracts, earning a fixed amount that is often below the minimum wage and that does not take into account their productivity. They have no health insurance. They do not know how to negotiate with employers who often respond to their complaints with threats of dismissal.[533] They have little capacity to access an appropriate forum to resolve their differences with employers and to communicate their grievances, a situation that breeds despair and rage, as voiced in Box 21.

Women and Gender-Based Issues

For a variety of reasons, including outbreaks of violence, the research team was not able to convene special women's FGDs in all villages assessed. Some of the reasons directly reflect the hardships women face. For instance, in Hutumuri village, the research team was not able to discuss justice issues with women because the women were too busy earning a living, working with their husbands and caring for their families. Some were involved in community projects such as PKK (*Pemberdayaan Kesejahteraan Keluarga*), caring for the elderly and working on church activities.[534]

During FGDs, the justice issues most frequently mentioned by women in the villages were poverty, domestic violence and lack of employment opportunities. This is consistent with the survey results where women listed poverty (20 percent), domestic disputes (19 percent), domestic violence (18 percent), education (14 percent) and unemployment (eight percent).[535]

Domestic Abuse: Some issues, such as domestic abuse, could only be dimly mirrored in the women's indirect (or non-existent) responses. Many women were reluctant to discuss domestic disputes and violence, which they perceived as private and sensitive issues. Some of the data presented is thus limited to secondary sources and the team's personal observations.

To the women in Pohon Mangga (Nusaniwe), domestic abuse is a personal and private family issue that they would not address

BOX 21: ONLY THROUGH VIOLENCE

Labourers are the least respected people. We have low social status because we do menial work….In reality, we work very hard using our own resources, and those who insult and mistreat us are living off our hard work. We have no one to defend our labour rights. If we don't fight for ourselves, we cannot survive in this country. It is only through violence that we can resolve our differences.

Labourer, Nusaniwe, 12 May 2005

533 Interview with a youth, Nusaniwe, 13 May 2005; Men FGD, Nusaniwe, 12 May 2005.

534 Demographic data of Hutumuri village, 2003.

535 Approximately 336 people responded to this question.

in a public forum.[536] The Wayame women refused to discuss domestic violence although they did not deny its occurrence and frequency. The team encountered si-milar attitudes at the FGD with women in Pelauw.[537] Women in Amahai are also concerned about domestic violence.[538]

The majority of these women have accepted that men's abusive behaviour is an aspect of their lives that they cannot change. Moreover, most have children and are financially dependent on their husbands because employment opportunities are limited.

Employment: Unemployment and consequent poverty and inability to pay for food, education and health care were mentioned by many women. Women in Amahai voiced worries about the lack of employment opportunities. They also complained about the poor delivery of government subsidies for education, health care and food.[539] In Pohon Mangga (Nusaniwe), most women are homemakers and some work as domestic helpers because their husbands are unemployed.[540] In Haruku, working women usually sell food or are cleaners at the local market (a small number are nurses and schoolteachers).[541] All are concerned about uncertain income.

The IDPs in Amahai struggle to make a living by farming on small parcels of land and selling produce at the local market. Muslims farmers who once owned land are now making uncertain livings as labourers, market helpers and tailors.[542] A respondent explained that when the conflict destroyed his produce stall, he lost the support of his labour union. His only option was to travel to Ambon City to discuss his dilemma with the authorities, who have promised to replace his stall.[543]

Unresolved Post Conflict Justice Issues: The sectarian violence in Maluku has resulted in the mass exodus and displacement of more than 320,000 people from their homes and communities.[544] At the end of 2001, it was reported that about 160,000 Muslim Butonese from Maluku were in refugee camps in Buton in Southeast Sulawesi. Others had fled their homes and sought refuge with relatives and friends outside refugee camps. Many IDPs have yet to be relocated, and reside in IDP campsites and temporary shelters or abandoned premises within and outside Ambon Municipality.[545] According to the Maluku Office of Social Affairs as of the beginning of 2005, approximately 30,000 IDPs still required relocation.[546]

The IDP conundrum remains one of the most critical post-conflict issues in the province. The IDPs who have yet to return to their communities face a number of justice issues that exacerbate their already difficult existence: inefficient or discriminatory distribution of subsidies and inadequate social services; lack of economic opportunities at return /resettlement sites; inefficient data collection and information dissemination; [547] lack of security, particularly for minority groups in

536 Women FGD, Nusaniwe, 17 Feb. 2005.

537 The team encountered a similar situation at the Women FGD, Pelauw, 19 Feb. 2005.

538 Women FGD, Amahai, Jan. 2005.

539 Women FGD, Amahai, Jan 2005.

540 Women FGD, Nusaniwe, 17 Feb 2005.

541 Women FGD, Haruku, Feb 2005.

542 FGD, Nusaniwe, 9 May 2005.

543 Interview with Nusaniwe citizen, 13 May 2005.

544 Maluku in figures 2004 (Data Maluku Tahun 2004), Yayasan Salawaku Maluku (2002) Konflik Maluku dan Berbagai Permasalahannya.

545 Indonesia, the Search of Peace in Maluku, International Crisis Group, Asia Report No 31, 8 Feb 2002, Brussels.

546 Liputan6 SCTV, http://www.liputan6.com/view.

547 'Indonesia 2004', United Nations Consolidated Appeals Process: http://www.reliefweb.int.

religiously homogeneous locations; and property and land rights. These unresolved post-conflict issues undermine social cohesion and are potential conflict triggers.[548]

Inefficient Distribution of Government Subsidies/Services: As of 2005, 56 IDP households in Nusaniwe have yet to receive their housing subsidy. Although the regional authorities are aware of their dilemma, a resolution is not imminent. Some have waited for three years to return to their homes and have little faith in the regional authorities' ability to distribute housing subsidies equitably and efficiently.[549] The 110 IDP families who fled from their homes in Lava during the conflict now live in Amahai. Most still live in temporary housing. [550] Many IDPs have expressed dissatisfaction with the quality and adequacy of health care and education subsidies; they feel the officials discriminate against IDPs who are not permanent residents in the village.[551] Officials have at times prevented beneficiaries from purchasing 'Rice for the Poor' programme (*Raskin*) rice and many suspected the supplies were 'reserved' for the ward officials in charge of distribution.[552] The IDPs in Nusaniwe complained that village officials had sold them rice under the programme at Rp. 3,000 (around 30 US cents) per kilogram instead of the stipulated price of Rp. 1,000 (around 10 US cents) per kilogram because the officials claimed that they had to 'take a loan' to facilitate the distribution.[553] (Farmers in Wayame who were *Raskin* beneficiaries echoed these complaints, claiming that there was never sufficient rice to purchase and they consequently had to pay market prices).[554]

Lack of Security: Some of the Muslim IDPs now in Nusaniwe have refused to return to their farms villages which are now Christian dominated and have moved instead to Muslim sections in the cities.[555]

Land and Property Rights: Land and property disputes are common among different ethnic groups. In Wayame village, some IDPs return to destroyed homes and occupied lands. They have become strangers in the villages of their birth and do not know where to go to seek assistance.[556]

IDPs from Lava who are still living in settlements in Amahai feel ashamed of their low social status because they are living on borrowed land in communities to which they do not belong. [557]

Land issues can be explosive in Maluku. Here, land-related grievances are so politicised that disagreements frequently lead to violence, particularly if disputants are from different ethno-religious backgrounds.[558] In Nusaniwe, when the subdistrict head and Governor failed to resolve a long-standing dispute, Muslim residents forced a Christian family to vacate their home, which they had built on Muslim burial land after the conflict had ended.[559]

3. COMMUNITY AWARENES OF RIGHTS

This section examines community awareness and then provides an overview of currently available services and institutions that can provide legal assistance and contribute to raising community legal awareness.

548 Interview with representative, Baku Bae, Ambon, 2005.
549 Interview with Neighbourhood Chief 03/07, Nusaniwe, 18 Feb 2005 and Men FGD, Nusaniwe, 12 May 2005.
550 Interview with IDP, Lava IDP settlement, May 2005.
551 IDP FGD, Amahai, May 2005.
552 Men FGD, Nusaniwe, 12 May 2005.
553 Interview with Neighbourhood Chief, Pohon Mangga, Nusaniwe, 2005.
554 Farmers FGD, Wayame, Feb 2005.
555 FGD, Nusaniwe, 9 May 2005.
556 Interview with an IDP from Ureng, Wayame 4 Mar 2005.
557 Interview with IDP from Lava, May 2005; men FGD, Amahai, May 2005; interview with village representative, Amahai, May 2005.
558 Interview with Village Head, Hutumuri, Jan/Feb 2005.
559 Youth FGD, Nusaniwe, 9 May 2005.

3.1 COMMUNITY AWARENESS OF RIGHTS AND OPTIONS

As would be expected, community awareness of specific rights protected or established by Indonesian legislation is low in Maluku, particularly in remote areas.

Many of the inhabitants in Wayame have never left their community, and rely on the village head to resolve their problems. [560] They are not familiar with laws and the legal processes relevant to securing their rights and entitlements. [561] They appear reluctant to explore justice-related issues as their lives evolve around the daily struggle to make a decent living and to survive.

Throughout the assessment locations, women victims of domestic violence appeared unaware of the existence of Law No.23 of 2004 regarding the Elimination of Domestic Violence, in particular their rights as victims under Chapter IV and the obligations of the police and other agencies under the 'Protection' provisions of Chapter VI. Most of the women in Haruku, who are frequent victims of spousal abuse, had no idea there were human rights specifically accorded to women under international and national laws. They were, however, keen to learn about women's rights and entitlements.[562]

At a more general level, a survey of almost 800 people indicates that while the majority of respondents are aware of the existence of laws, citizens' general understanding about legal processes that create and protect their rights is limited. Although 82 percent were generally aware of the term *undang-undang* (laws/legislation), [563] only 19 percent understood that *Perda* (regional regulation) is created by DPRD and the governor, as opposed to 39 percent who did not know. Approximately 38 percent knew that legislation affects citizens' daily lives but 38 percent did not. [564]

Information gained in the assessments and interviews gave further insight into the average citizens' lack of understanding the various options in achieving their rights. In Maluku, a significant number of the poor, particularly women, simply did not know their rights.

The assessment shows that others have some general idea of their rights, especially when those rights have been violated and the citizens' welfare and security are threatened. However, most of the disadvantaged people the researchers spoke with have no understanding of how to access or to mobilize support to pursue their rights.

- The farmers in **Hutumuri** do not know how to apply for land certificates because there has been no socialization of relevant laws by the regional authorities.[565]
- The inhabitants of **Nusaniwe** and **Wayame** have expressed disappointment in the lack of educational facilities and opportunities for their children. They are aware that it is the state's responsibility to ensure children attain this basic right.[566] Conflict disrupted education and now even basic education remains financially unattainable for some. Parents do not understand why they are required to pay for books and fees and do not know how to obtain subsidies so that their children can go to school.[567]

560 Interview with Village Head, Wayame, 7 May 2005.
561 Male FGD, Waringin Cap, 6 May 2005.
562 Women FGD, Haruku, Feb 2005.
563 N= 788.
564 N= 788.
565 Farmers FGD, Hutumuri and participant, youth FGD, Hutumuri, 7 Feb 2005.
566 See also Art 39 Indonesian Human Rights Charter, 1945 Constitution.
567 Men FGD, Nusaniwe 12 May 2005 and FGD Wayami.

There are instances when the poor and disadvantaged have taken actions that demonstrate a general awareness of their rights in a range of areas, including property ownership and government entitlements. However, although citizens have taken the initiative to complain to a relevant government agency, they frequently appear at a loss for what to do if (as is often the case) no improvement occurs. The following examples are typical:

- It is widely accepted in **Haruku** that youths are the main contributors to crime. Although citizens have approached the government about starting programs aimed at employment, there are no youth groups or community leaders focussing on youth affairs. There are few opportunities for young people to meet and exchange experiences and form community groups.[568]

- Sections of **Hutumuri** farmers' lands have been destroyed by fire, but the authorities have not rehabilitated the fields, despite repeated requests for assistance.[569]

- IDPs in **Amahai** are familiar with the range of entitlements accorded to them under state laws and policies, and they often lodge complaints with the appropriate authorities when they do not receive the subsidies for education, health and relocation. However, they do not understand the regional government's relocation policies and were unhappy when IDPs from other ethnic groups were relocated before them.

- Returning **IDPs to Wayame** have fulfilled all requirements for relocation but could not prove entitlements to land/property at their places of origin.

Perhaps the most disheartening cases in this conflict-ravaged region are those in which citizens are abused by the very forces meant to be keeping the peace (see Box 22).

Further, while it may be possible to equate action taken to defend a right with awareness of that right (at least in general terms), the reverse cannot necessarily be said in cases of inaction and passivity. In some situations, citizens may be aware of their rights but feel constrained from taking action for political, economic or social reasons, or a combination thereof. The following examples are illustrative:

- **Duty-bearer complicity:** Some Nusaniwe labourers once worked for a fishing company partly owned by the military. When the owners defaulted on their salaries, the labourers reported the matter to the Manpower and Transmigration Department, but it could not assist them. They have not gone to the police because they do not want to challenge the military directly.[570]

- **Poor bargaining position:** Port labourers of Nusaniwe, many working without a written contract, do not know how to negotiate with employers who often respond to their complaints with threats of dismissal.[571]

568 Interview with Village Secretary, Haruku April 2005; youth FGD, Haruku, April 2005; men FGD Haruku, April 2005; interview with a female villager, Haruku, April 2005.

569 Farmers FGD, Hutumuri and participant, youth FGD, Hutumuri, 7 Feb 2005.

570 Men FGD, Nusaniwe, 12 May 2005.

571 Interview with a youth, Nusaniwe, 13 May 2005; men FGD, Nusaniwe, 12 May 2005.

BOX 22: KEEPING THE PEACE

Satgas TNI-AD has been in Nusaniwe village since sectarian violence broke out and is mandated to keep the peace. Although the military unit has resolved some minor civilian disputes, many villagers accuse the army of contributing to social instability, in part because of ill-disciplined troops who act cruelly, sometimes with impunity.

"A member of Satgas Armed 9 tortured my 12-year-old child until his face was all bruised," said one parent. "When I demanded justice, his superior told me his subordinate was under a lot of stress and offered me an apology. The subordinate was never punished."

Another resident recalled an incident in which a member of KOPASSUS mistreated a civilian: "The victim's family reported the matter to the military police, but the police asked the family impossible questions such as name of accused, his rank, his unit, the emblem on his uniform. How was the family supposed to know all this? I don't think they were serious about investigating the military."

When military justice is finally meted out, it, too, can be brutalizing.

"When members of Satgas Division 731 get drunk, they target people who have committed minor crimes and beat them up," said one resident. "One was caught mistreating a civilian and, in the presence of the civilian, his superior officer beat him until he passed out."

Such a severe response is common: "We often turn to KOPASSUS to resolve our disputes," noted one man, "but they tend to over-react by beating up the wrong-doer."

Source: FGDs, Nusaniwe, 2005

- **Lack of mobility/shame:** Most of the women in Haruku are socially marginalized from decision-making either at the village level or within the family unit. Intoxication and habitual abusive behaviour of men are commonplace and women accept it as an aspect of a life that they cannot change. Most are financially dependent on their husbands. These women generally feel they have access only to the traditional justice system at the village.

- **Corruption and nepotism:** The Nusaniwe youths believe that corruption and nepotism impact directly on their ability to compete for jobs in the police department and civil service and that short of paying money, they have no chance of employment.

Two groups stand out from others in their ability to employ effective strategies to resolve disputes: traditional *adat* leaders who recognized that local legislation was the most sustainable solution to securing their rights and IDPs who organized and got the backing of the local *lurah*. The two actions are described below.

A dispute between the Hutumuri village leaders and the regional government occurred when the Ambon Municipality's mayor passed a regulation that implicitly ignored the legitimacy of *adat* institutions in Ambon City. This led to a citywide boycott of village head elections by the *adat* communities until Law 32/2004 regarding Local Governance was enacted by the government in 15 October 2004 as a replacement for the controversial Law 22/1999. [572] This law automatically abrogated Regulation 207/2002 which was issued by Ambon's mayor in reference to Law 22/1999. The Hutumuri village head collaborated with 21 other *adat* village heads in the *Adat*

572 The article 126 of Law 22/1999 has received many complaints from Adat leaders since it does not recognize the existence of village authority within city administration. Article 126 does no longer exist in Law 32/2004.

Community Forum[573] to campaign for recognition of *adat* traditions, laws and communities. The impasse finally broke when the government enacted Law No. 32/2004 that explicitly recognises the *adat* communities. According to the Hutumuri *adat* leaders, it is imperative that the local laws correct the power imbalances between the regional government and *adat* community and that full recognition of their rights be codified. The Hutumuri village head believes that Hutumuri will be a model of how a village can successfully revive an *adat* system of governance.[574]

Some IDPs have also learned about the power of collective action and how to negotiate some of the complexities of the justice system. According to the Lava IDPs, the Office of Social Affairs' IDP coordinators failed to advise them of their relocation rights. The Lava IDPs were resentful when other ethnic groups were relocated before they were. Soon, the Lava IDPs organized and collectively raised various issues before the Village Head, who then advocated on their behalf. [575]

Survey results from disadvantaged groups from Ambon Municipality and Central Maluku provide a further indication of women's awareness of their rights in a range of different situations. A survey of almost 800 people [576] reveals that approximately 65 percent believed that women would report a husband abusing his wife, resulting in injury, 44 percent would report if a company seized land belonging to illiterate women and 68 percent would report if the military harassed women. Figures broken down by male and female responses are presented in Chart 17 .

In the survey of over 300 women, 29 percent of women would not report if a husband physically abused his wife without causing injury,[577] however 64 percent would report if there was an injury. (Approximately 27 percent of the women respondents finished elementary school and 25 percent completed high school. Unemployment was high–about 42 percent–while the rest worked in agriculture or in small businesses. Over 70 percent were married with children, 13 percent single and about 9 percent single mothers. A very high percentage of the women–98 percent–had never used the formal or informal justice system).

Unlike other provinces, in Maluku, the men had higher expectations of the women reporting incidents than the women did for themselves; this was particularly true in situations in which the husband refuses a wife's request for divorce (46 percent men agreed vs. 37 percent women) and when a woman was harassed by the military (74 percent men agreed vs. 62 percent women.) As in other provincial assessments, children's rights were the least observed: Only 20 percent of the women believed women would report a father beating children, while men were a bit higher at 27 percent.

It is important to note that while perceived likelihood of reporting an incident is not a direct measure of awareness of rights, it does show that those who think they would report (at a minimum) believe that they have been wronged in some way and there is something they can do about it, even if they are not aware of their actual rights. Of course, the number of women who are broadly aware of their rights could be higher, but they may have other reasons for not

573 A coalition of 22 adat village heads from the Ambon Municipality.

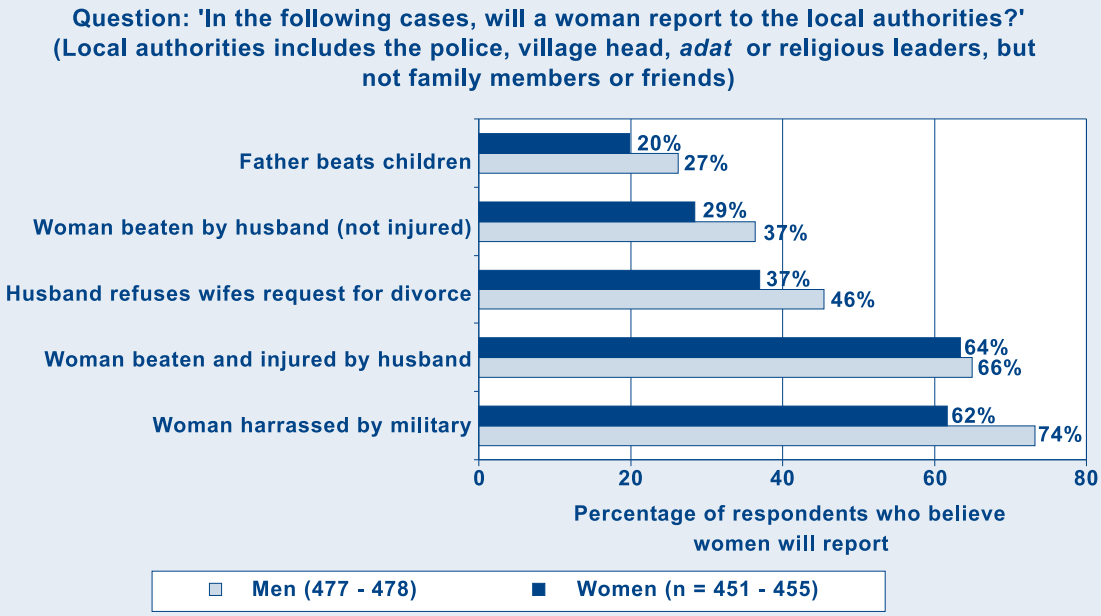
574 A coalition of 22 adat village heads from the Ambon Municipality.

575 Interview with Hutumuri village head, April 2005.

576 Interview with IDP from Lava, May 2005; men FGD, Amahai, May 2005; interview with village representative, Amahai, May 2005.

577 Between 640-700 people responded to each question.

CHART 17: PERCEIVED LIKELIHOOD OF WOMEN TO REPORT DIFFERENT INCIDENTS – MALUKU



Source: Access to Justice Survey Maluku

but they may have other reasons for not reporting, such as embarrassment or a sense of futility.

3.2 RAISING AWARENESS THROUGH ADVOCACY, LEGAL AID AND COMMUNITY OUTREACH

Lawyers

At the time of the assessment, there were 50 practising lawyers in Ambon Municipality.[578] Most are local Christian Ambonese, who have a good understanding of the local communities and culture. An advocate interviewed explained that lawyers cannot choose clients on basis of ethnicity or religion or financial ability. Lawyers are obliged to represent indigent litigants whenever possible and assist them in their search for justice and remedy. There is an acute shortage of lawyers in Masohi (capital of Central Maluku). Advocates prefer to live in Ambon and travel to Masohi when necessary. According to the executive director of Baku Bae LBH, citizens typically must travel to these cities to access lawyers.[579]

In Maluku, advocates are organized in professional associations such as the Indonesian Association of Advocates and Lawyers (HAPI), the Indonesian Association of Advocates (AAI), the Indonesian Association of Legal Consultant (IPHI) and the Indonesian Advocate Association (IKADIN).

Lawyers' fees vary, depending on negotiated terms between lawyers and clients. Legal costs for court cases are too high for many of the poor. Registration fees for a case may cost up to Rp 300,000 (around USD 30) and a litigant has to pay additional costs such as bailiff's fees for summoning witnesses.[580]

578 Based on the responses of 148 disadvantaged women.

579 Lawyers or advocates (*pengacara*) are litigation lawyers in private practice with formal legal training (see Law No 18/2003). Legal consultants (*konsultan hukum)* do not generally practise litigation but offer specialized legal advice. In Maluku, advocates are organized in professional associations such as the IndonesianAssociation of Advocates and Lawyers (HAPI) and Indonesian Association of Advocates (AAI).

580 Interview with Executive Director, Baku Bae LBH, Dec 2005.

Legal Aid

State-Sponsored Legal Aid: The provincial courts offer legal aid for civil cases (*Prodeo)*[581] and criminal cases (Art 56, KUHAP)[582] to indigent court users. An applicant must have a letter from the village head certifying indigence, but even a letter does not ensure that the court will provide legal aid. Eligibility criteria is undefined and, in practice, highly arbitrary. According to a court official, basic appearance is a determining factor. An applicant who wears expensive jewellery may not receive legal aid as opposed to someone who wears shabby clothing.[583]

Access to state-sponsored legal aid is further complicated by the fact that state funding for legal aid under Article 56 has been irregular and although reportedly lawyers rarely refuse, there is virtually no financial incentive for them to take on legal aid cases.[584] Prior to the 'one roof' reorganization of the judiciary, court-appointed lawyers received an allowance of Rp 250,000 (around USD 25) per case from the then Ministry of Justice. The Maluku Province Regional Office of the Ministry of Law and Human Rights, now responsible for legal aid, is under funded and, according to the executive director of LBH Baku Bae, court-appointed lawyers do not receive timely remuneration, if they receive it at all.[585] Litigants who are not represented may also obtain legal assistance from court registry staff on filing procedures. Court administrative staff explain that most of them are not legally trained but are able to provide limited legal advice based on job experience and training.[586] Even then, court expenses are out of reach for most of the poor: A *prodeo* applicant is still required to pay the expenses of summoning the opposing party or witnesses.[587]

NGOs: The legal aid institute ***Lembaga Bantuan Hukum* (LBH) *Baku Bae*** was established in 2003 to help achieve post-conflict peace and reconciliation—*Baku Bae* is Ambonese for 'wanting peace'.[588] Originally, it had two legal posts in the subdistricts, but at the time of writing did not even have an office in Ambon. Approximately 42 of the Ambonese lawyers are on the Board of Founders and 18 are registered to provide legal aid services. It does not enjoy consistent funding and is not geographically available to the rural poor. LBH Baku Bae has recently focused on representing public interest or class action cases but may refer individual cases to other non-LBH Baku Bae lawyers. LBH Baku Bae also provides legal advice and representation to indigent citizens however it no longer engages in advocacy work due to lack of funds.[589] According to a staff member, LBH Baku Bae has worked with IDPs who have lost their property when they fled violence and returned to find their property unlawfully occupied. The police, customary institutions and regional government have often asked LBH Baku Bae to mediate and resolve disputes that might turn violent.[590]

581 Interview with Assistant Registrar, Ambon Religious Court, Dec. 2005. *Prodeo* originates from a Dutch law, i.e. Articles 237-242, HIR (*Herziene Indonesisch Regiement)* that allows the court to waive administrative fees for indigent litigants.

582 *KUHAP= Kitab Undang Undang Hukum Acara Pidana* (Criminal Procedure Code). According to Art 56 of the KUHAP, an accused who faces minimum imprisonment of five years' or more is entitled to free legal representation.

583 Interview with Assistant Registrar, Ambon Religious Court, Dec. 2005.

584 Interview with Executive Director, LBH, Baku Bae, Dec. 2005; interview with Junior Registrar Ambon District Court, 12 Dec 2005.

585 Interview with Executive Director, LBH, Baku Bae, Dec. 2005.

586 Interview with Junior Registrar, Ambon District Court, 12 Dec. 2005.

587 Interview with Assistant Registrar, Ambon Religious Court, Dec. 2005.

588 The Indonesian Legal Aid Foundation (*YLBHI/Yayasan Lembaga Bantuan Hukum Indonesia*) has helped to establish an LBH in 14 provinces. LBH Baku Bae operates under the administrative umbrella of the YLBHI but remains an autonomous and self-funding NGO.

589 Interview with Executive Director of LBH Baku Bae, Ambon, Dec. 2005.

590 Interview with staff representative, Baku Bae, Ambon, 2005.

Advocacy and Community Outreach

Community legal outreach programs are designed to educate citizens on legislation and its impact on their rights,[591] and on legal procedures and remedies. Organizations that engage in legal advocacy speak for those who have no capacity to address and influence changes in policies, systems and practices that deny justice to citizens.

Yayasan Sala Waku **(YSW),** Ambon, specializes in legal advocacy for rural communities. Its mission is to protect the rights and entitlements of indigenous people and their natural environment. It has instituted projects to empower *adat* communities to defend their socio-economic rights and to address human rights abuses. In 2001, as part of its conflict-prevention efforts, YSW established two satellite foundations for Christian (*Yayasan Penabur Maluku*) and Muslim (*Yayasan Amanah Maluku*) communities in Latta, Kayu Putih and Batu Merah villages.[592]

Baileo Maluku Network is a coalition of local NGOs. The coalition has provided humanitarian assistance to IDPs and was involved in post-conflict reconstruction activities in both Muslim and Christian areas.[593]

Community Outreach

Apart from the activities of the NGOs described above, a number of state institutions and agencies such as the police, prosecution service and Ministry of Law and Human Rights are also mandated with performing a community outreach function to raise citizens' legal awareness.[594] There was no information that police had conducted formal outreach sessions for the public. Police officers in Nusaniwe said that they had, on their own initiative, attended an outreach program for the public on the interpretation of the recent Law on the Abolition of Domestic Violence; it was the only way, they said, that they could get information they needed.

The Department of Law and Human Rights, through its Maluku Regional Office and district prosecutors, is now responsible for legal awareness programs covering various civil and criminal law issues, including socialization programs for detainees at the local penitentiaries. The programs cover laws relating to human rights, domestic violence, narcotics, decentralization and land rights.[595]

The Chief Prosecutor says that the Ambon and Masohi District Prosecutor Offices conduct legal awareness sessions in two villages each quarter, targeting villages that have experienced sectarian violence or those with high crime rates.[596] He said post-conflict tensions exit in some Ambon villages and prosecutors are careful to avoid large gatherings of villagers who still question the lack of the accountability of those responsible for killings and destruction during the conflict. The program content is general and does not cover specific justice issues, although a representative from the Ambon Prosecutor's Office sometimes meets with village heads to discuss

591 Also known as 'socialization'.

592 Executive Director, Yayasan Sala Waku, Ambon, 2005.

593 There are other NGOs and civil society oversight groups (CSOs) that the research team has identified but not assessed. These include Maluku's Forum for Anti Corruption *(FORMASSI)* that was established by the Regional Government to examine and deal with corruption in the civil service. It is chaired by the Governor and comprises civil servants, academics and NGO activists. Other NGOs operating in the districts include Maluku Government Watch, Maluku Corruption Watch and National Commission on Human Rights – Maluku Representative,. According to the research team, these NGOs focus on district level governance issues and not village level justice issues.

594 See for example Art 14(1)(c) Law No.2 of 2002 regarding the Indonesian National Police and Art 30(3) Law No.16 of 2004 regarding Prosecution Services.

595 Interview with Head, Regional Office (Law and Human Rights), Dec 2005.

596 Chief Prosecutor, Ambon District Prosecution Office, 13 Dec 2005 and Head of Intelligence Section, Masohi District Prosecutor Office, Dec 2005.

programs of local interest; recently, laws on domestic violence were covered.[597]

Each outreach team consists of six people, with two or three prosecutors.The Masohi Office has discussed with villagers the functions of public prosecutors, drug laws and marriage laws.[598] The most remote villages are four or five hours by car, and as many as six representatives (one prosecutor) will present the program to 50 to 100 inhabitants.

The Maluku Regional Office believes that there is generally a low level of lega l awareness among citizens due to high illiteracy rates and insufficient funding to conduct regular socialization.[599] Indeed, Wayame FGD participants have complained that they have never been invited to these programs.[600]

In a survey of 567 people, 51 percent said they do not understand legal procedures of the formal legal system.[601]
Out of almost 800 citizens surveyed, 90 percent wanted representatives from organizations to visit the community to discuss administration of justice matters.

The High Prosecutor is also the facilitator for cross-sector coordination at the district level involving the *Musyawarah Daerah Kota Ambon* (*MUSPIDA*), which offers a forum for citizens to register their complaints and channel their grievances on issues undermining their economic welfare such as poor distribution of *Raskin.* In 2005, the High Prosecutor's Office had organized a legal outreach program for the communities.

Courts' outreach is extremely limited. According to a court officer, no funds were allocated for outreach in 2005, and so only the Religious Courts had a program, once or twice a year, covering issues such as marriage and divorce.[602]

4. ACCESS TO APPROPRIATE FORUM

4.1 AVAILABLE OPTIONS

There are two categories of resolution forums handling grievances and disputes in Maluku province–the formal and informal justice systems. The key features and operational capacity of each system are highlighted below.

Formal Justice System

The three main components of the formal legal system in Maluku Province are the police, prosecution and courts.

The Maluku police structure extends from the provincial capital to the villages. Citizens usually access the nearest police post at the villages or subdistricts. For initial processing of criminal matters arising in the assessment locations, district police forces are headquartered in the capital cities of Ambon and Masohi (Central Maluku). Police are also stationed in each of the four selected subdistricts. Nusaniwe *Polsek,* however, is 15 kilometres outside of the subdistrict capital. According to officials, Haruku Island *Polsek* is inaccessible to many villages and only operating at 50 percent capacity. Consequently, many cases are referred to Ambon Municipality and Lease Island *Polres*.

597 Chief Prosecutor, Ambon District Prosecution Office, 13 Dec 2005.
598 Head of Intelligence Section, Masohi District Prosecutor Office, Dec 2005.
599 Interview with Head, Regional Office (Law and Human Rights), Dec 2005.
600 Public FGD, Wayame village, 2005.
601 Approximately 16% were neutral and 33% agreed they understood the procedures.
602 Interview with Junior Registrar, Ambon District Court 12 Dec 2005.

An Office of Public Prosecution carries out the prosecution of criminal cases. There are five district-level prosecution offices at Ambon, Saumlaki, Tual Namlea and Masohi. The Ambon District Prosecutor's Office covers Ambon Municipality, a part of Central Maluku District, including the Lease and Banda islands and has two satellite offices (*Cabang Kejaksaan Negeri)* at Saparua and Banda. The Masohi District Prosecutor's Office has jurisdiction over the rest of Central Maluku, including the entire Seram region and has three satellite offices at Pire, Wahai and Geser. West Southeast Maluku is a new district that has its own public prosecutor at Saumlaki. However, authority over the public prosecutor satellite office at Wonreli has not yet been transferred to the Saumlaki Public Prosecutor. The public, understandably, has little interaction with public prosecutors.

For civil and religious matters, district courts are in the cities of Ambon and Masohi. There are no courts in TAB and Nusaniwe subdistricts. Religious courts are located in Ambon City and Masohi. Appeals from these courts can be made to the High Court or Religious High Court of Maluku in Ambon City, and then to the Supreme Court of Indonesia in Jakarta. An Administrative Court is located in Ambon; a labour court, required by legislation in 2004,[603] has yet to be established. The High Court and District General Courts have jurisdiction to hear criminal and civil cases and the Religious Court's jurisdiction is restricted to Muslim citizens and non-criminal matters.[604]

Informal Justice System

The informal justice system refers to alternative methods of dispute resolution outside of the formal justice system that combine (in varying degrees) elements of negotiation, mediation and arbitration, usually at the village or hamlet level. These vary considerably in the two districts.

Central Maluku is home to diverse *adat* communities and traditional justice institutions. In some villages, the village head is both the *adat* and village leader.[605] A typical *adat* institution in Central Maluku Regency is administered by a wide array of key figures. The *adat* systems tend to govern only specific groups, however there are also times that they are accessed by groups outside the community.

In Ambon Municipality, few working traditional justice institutions remain. In Hutumuri village, the *adat* and administrative components of village government are segregated. However, the informal justice system encompasses the exercise of quasi-judicial functions by centralized political forms, the *Musyawarah Pimpinan Kecamatan* (*Muspika)*, a Subdistrict Executive Council consisting of the head of subdistrict (*Camat)*, and heads of both military and police offices at the subdistrict level, Military District Commander (*Danramil*) and District Police Chief (*Kapolsek*) and the *Musyawarah Pimpinan Dewan* (*Muspida*) both at provincial and district *(kabupaten)* level.

Patterns of Use of Formal and Informal Justice Systems

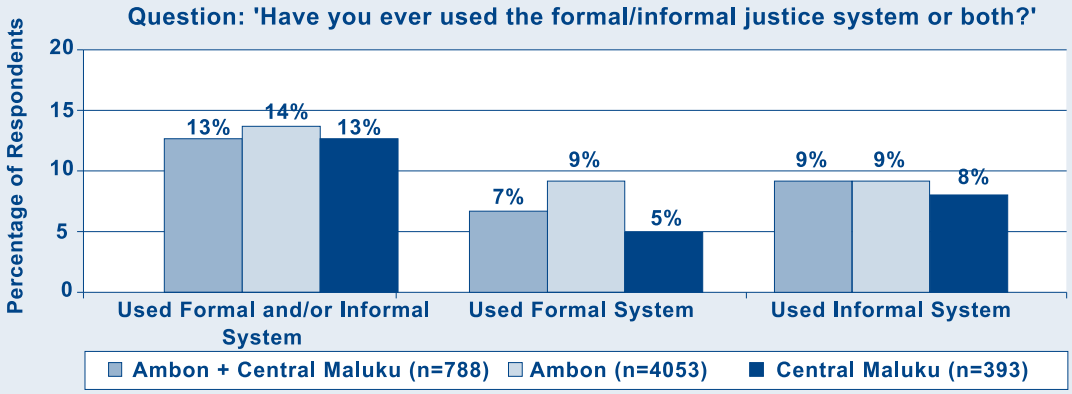
Use of the formal and informal justice systems in the eight assessment locations was relatively low: In Ambon and Central Maluku only about 14 percent of the respondents had ever accessed either the formal or informal system (see Chart 18).

603 Law No. 2 of 2004 on Industrial Disputes Settlement, which requires that an Industrial Relations Court be established in each province.

604 Law No. 7/1989 on Religious Courts. These courts deal with matters concerning marriage, divorce, inheritance and endowment. They do not implement *hudud,* the criminal aspects of *Shari'ah* that prescribe punishment such as whipping and stoning to death.

605 For instance, in Sepa, Amahai and Hutumuri villages.

CHART 18: USE OF FORMAL AND INFORMAL JUSTICE SYSTEMS – MALUKU



Source: Access to Justice Survey Maluku

4.2 FACTORS INFLUENCING CHOICE OF FORUM

Most communities participating in the assessment prefer to resolve their disputes through informal mechanisms. There are many reasons for this, including: type of case; compatibility with local traditions and social mores; expeditious nature of the process; geographical accessibility, and cost. Citizens avoid the formal justice system because they perceive it as costly, complex and involving justice actors that are not sensitive to local traditions.[606] Distance is a disincentive. These factors are discussed in more detail below.

In a survey on the effectiveness of the formal justice system, of 788 respondents, 54 percent believe that it is effective in resolving conflicts between citizens, 50 percent considered formal justice system is effective in controlling abuse of power and 61 percent of respondents believe that it is effective in protecting rights of citizens and that everyone is treated equally by the formal legal system. When asked those same questions about the informal system, people were more positive, with between 56 to 73 percent responding favourably (63 percent for resolving conflict between citizens, 56 percent for controlling abuse of power, 73 percent for protecting rights of citizens).

However, the respondents were less impressed with the formal justice system when it came to having understandable mechanisms (36 percent disagreed), while 41 percent believed that law officers use extortion. The figures for the informal system were much more favourable: 60 percent found the mechanism to be understandable and only 11 percent thought the informal justice actors engaged in extortion.

Type of Case

The nature and gravity of the issue is a key factor influencing the choice of forum. Even in Central Maluku, where traditional *adat* justice systems are frequently used, citizens in Haruku are aware that for serious offences, the police are the competent forum.[607] In Ambon's Hutumuri village, where the use of informal justice system is high, some men are inclined to view the formal legal system as accessible only to the rich and influential. Nonetheless, they believe that the formal legal is the

606 Men FGD Haruku Village, April 2005; Interview with Village Head, Wayame, 7 May 2005;

607 Men FGD Haruku Village, April 2005. Men FGD Hutumuri, 19 April 2005;;Interview with Deputy Chief of Haruku Police Office, Pelauw, May 2005

appropriate mechanism to address serious violations of citizens' human rights and to protect the public from harm.[608]

In *adat* villages, land disputes are frequently settled through *adat* proceedings. For instance on Haruku Island, residents of various villages will take their complaints to *Latu-pati.* This is the council of all the village leaders of Haruku. Its main function is to organize gatherings to resolve inter-communal/village land disputes and other critical issues.

In some cases, however, residents believe that complex issues like land title disputes are better resolved in court and, in fact, as mentioned earlier, one *adat* village successfully challenged the taking of land by the district government in district court.[609]

Villagers are also aware that those who first use the *adat* system and do not accept *adat* decisions can, and sometimes do, turn to the formal justice system as a viable alternative forum, as noted in Box 23. However, as the litigants learned, the costs of the formal justice system – in money and time – are significant. In this particular case, the ultimate Supreme Court decision – arrived at by a circuitous route – was the same as originally made in the *adat* mediation.

For the very few who have the means and can afford the time away from their jobs, the courts are the best option to resolve land disputes. For other disputants, the willingness and good will of civil society and community leaders is imperative to securing their rights. Recently, the indigenous people of Nuaulu relocated to Sepa village. The land that the Nuaulu had occupied encompasses the mountainous region of Amahai subdistrict. The legal status of the land is unclear. The Sepa government has requested that this land be included in its jurisdiction so that it can represent the Nuaulu people in land matters. This has not occurred, and the village has lost control of the land and cannot stop external exploitation of its natural resources. The village head must negotiate with an unsympathetic regional government (*Pemda Kabupaten*) and requires external support from advocacy groups and NGOs to resolve this complex and sensitive issue for his community.[610]

BOX 23: RESOLVING A LAND DISPUTE

A land dispute arose between Clan Thenu and Clan Lilipori in Hutumuri. They approached the village head/adat leader to mediate in a musyawarah. Clan Lilipori was dissatisfied with the village head's decision to award the land to Clan Thenu and engaged a lawyer to file a claim at Ambon District Court. The judge attempted to settle the matter prior to the hearing but the parties could not agree. The lawyers for the clans presented their cases and the District Court awarded the land to Clan Thenu. Clan Lilipori was still dissatisfied and filed an appeal. Ambon High Court reversed the District Court's decision. Clan Thenu appealed to the Supreme Court of Indonesia and won on appeal.

The case took five years. All parties were reportedly satisfied with the final decision; and competent authorities had handled the case fairly. However, litigation costs and lawyers' fees were high, and one clan had to sell properties to meet legal costs. The proceedings were also time-consuming, and clan members spent many days in court. The parties concluded that the informal justice process (which came to the same conclusion as the Supreme Court) is far more affordable, straightforward and expeditious.

Sources: Men FGD, Hutumuri village, 19 April 2005, interview with village secretary of Hutumuri, 12 April 2005

608 Men FGD, Hutumuri village, 19 April 2005.

609 Interview with Chief Judge, Masohi District Court, Dec 2005.

610 Interview with Village Secretary of Sepa village, February 2005.

In Sepa, some residents believe that police action is a deterrent to repeat offences. They explained that they would be satisfied if the police arrested and temporarily detained an offender, even if the matter did not proceed to court.[611]

General Perceptions of Formal and Informal Justice Systems

General community levels of satisfaction are significantly higher in relation to the informal justice system as compared to the formal justice system (without reference to any particular element or feature of the respective systems): 24 percent of respondents were satisfied with the formal justice system, in contrast to 41 percent of respondents who were satisfied with the informal legal system (see Chart 19).

Compatible with Traditions and Social Mores

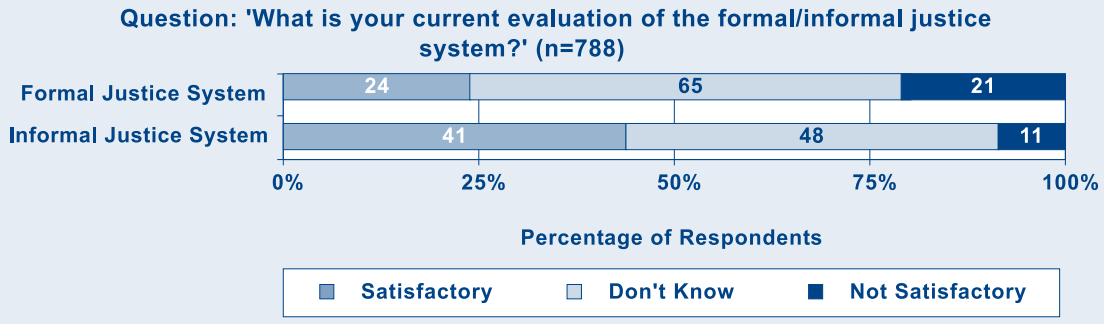
The Wayame sharecropper farmers perceive all within their community as kin and prefer to involve the village head or neighbourhood chief in resolving disputes. The inhabitants are reluctant to explore justice forums outside their communities because of their close-knit society and traditions.[612] In Sepa, the *adat* village head exerts significant influence over his community and resolves almost every case referred to him, including minor offences such as thefts and disorderly behaviour. Even if a dispute has been referred to the police, the village head may intervene to withdraw the complaint and handle the matter within his community.[613] One Sepa youth explained that the inhabitants rarely visit the police because many are related through marriage, and would prefer to resolve disputes "within the family." [614]

Perceived Fairness

In a survey of 788 respondents, only 27 percent perceived the formal justice system to treat everyone fairly compared with the informal justice system, which rated at 63 percent. Similarly, 38 percent of respondents believe the formal system is biased toward the rich and powerful while only 11 percent thought the informal system was biased in this way.

These responses were confirmed in the focus group discussions.The Pelauw community perceives the police as ineffi-

CHART 19: OVERALL COMMUNITY SATISFACTION WITH THE FORMAL AND INFORMAL JUSTICE SYSTEMS



Source: Access to Justice Survey Maluku

611 FGD participant, Sepa, 2005.
612 Village Head, Waringin Cap Hamlet , 6 May 2005.
613 Village Secretary, Sepa village, April 2005; Women FGD, Sepa, April 2005 and interview with *Saniri Negeri,* Sepa, April 2005.
614 Interview with a youth, Sepa Village, April 2005.

cient and corrupt and reluctant to investigate complaints unless given monetary incentives.[615] Compared to this, they say, a traditional justice actor exercises his discretion based on good faith, integrity and wisdom.[616] Some men in Hutumuri are inclined to view the formal legal system as accessible only to the rich and influential.[617] Although the Lava IDPs understand the roles of the various actors in the criminal justice process, they believe that the formal legal system serves only the rich and well connected, and that law enforcement officers are not impartial.[618]

On the other hand, in the informal justice process, people suggest that there are no 'losers', as the central objective is to achieve an outcome based on consensus and reconciliation (see Box 24).

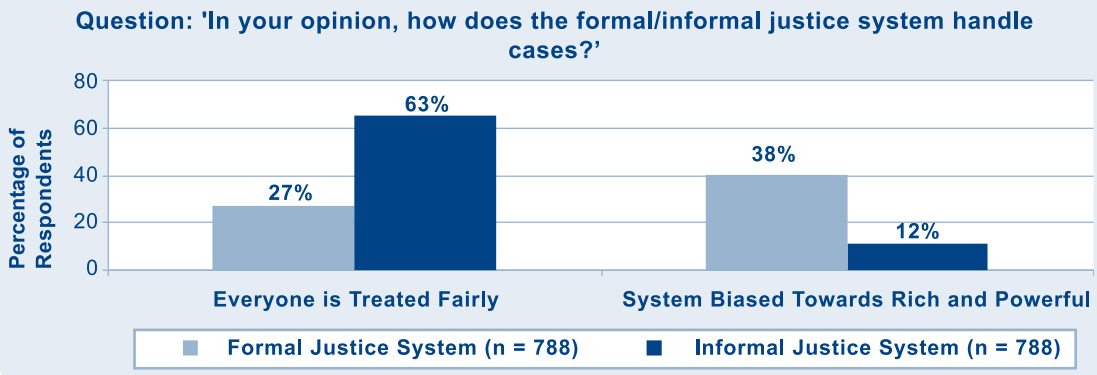
Community Trust

In line with overall community satisfaction levels with the formal and informal justice systems, and reflecting the results of the qualitative research, the survey results show that the community places significantly greater trust in informal justice system actors compared to their formal counterparts (see Chart 21). While 61 percent of respondents trusted informal justice actors, only less than half of the respondents trusted actors from each of the institutions that together comprise the formal justice system. However, a degree of caution is necessary in interpreting the survey results, bearing in mind that not only have most villagers had no direct contact with any of the formal justice system actors, some have little understanding of what they do, while a few are not even aware of their existence.

There is also a problem of the region's history of violence: Troops conducted security operations in Ambon and police officers were arrested for partisan involvement in the conflict. This legacy has undercut people's faith in the police.

Satgas TNI-AD is generally well respected by the Nusaniwe community and community leaders for its efficient dispute resolution techniques and law enforcement. However, many have acknowledged that Satgas personnel have a poor human rights record when dealing with offenders and require close supervision and monitoring.

CHART 20: PERCEIVED FAIRNESS OF FORMAL AND INFORMAL JUSTICE SYSTEMS – MALUKU



Source: Access to Justice Survey Maluku

615 Youth FGD, Pelauw, May 2005, Men FGD, Haruku, April 2005.
616 Ibid.
617 Men FGD, Hutumuri village, 19 April 2005.
618 Interview with IDP, Amahai, May 2005.

BOX 24: RECONCILIATION

In Haruku, a farmer, BM, shot and killed what he believed was a wild pig that was destroying his crops. The pig's owner, JT, demanded compensation. BM refused, pleading that he had simply made a mistake and, in turn, demanded damages for his crops.

JT filed a complaint with the village head. At a musyawarah, facts were presented and witnesses heard. Although it was clear that both disputants had suffered losses, the prevailing consideration was to maintain good relations, since JT and BM were related. The village head ruled that BM should compensate JT for the market value of the pig and that JT compensate BM for his damaged crops.

Despite this ruling, both parties were advised to apologize to each other and not to pursue damages to avoid damaging family ties. Both parties accepted the proposal as fair and just and the matter was resolved amicably, consistent with local adat and societal expectations.

Source: Men FGD, Haruku, 2005

Geographic and Financial Access, Time

In Nusaniwe, the proximity of the police to the Nusaniwe ward facilitates reporting of serious (domestic violence, rape) as well as minor cases (fights, intoxication).[619] However, in Hutumuri, the village head is still the preferred means for dispute resolution as the police are 40 kilometres away. Residents of Pelauw, Sepa, the Lava (Amahai) IDPs, and Haruku perceive the justice system as unaffordable; they all worry about transportation costs to the cities where the formal justice institutions are located.[620] Moreover, they note that once a matter proceeds to court, it is beyond their control and the decision is binding, whether the litigants agree with it or not. Sometimes, people who are negotiating a business transaction (in the case below, land – which often is highly charged issue) will access the most convenient and available means of resolution.

In a citizens' survey of 124 respondents, 68 percent believe the main problem with lawyers is the cost of legal services. Hutumuri residents say that the legal process is time consuming and the remedies granted may not justify the costs incurred or time spent.[621] Although the nearest District Police and District Court are relatively close to Pohon Mangga (Nusaniwe)–just five kilometres–one litigant noted that he loses daily earnings of between Rp. 30,000 to 50,000 (around USD 3 to 5) each time he attends court.[622] Traditional justice systems, on the other hand, are usually free or very inexpensive. In Pelauw, an *adat* village whose inhabitants are predominantly Muslim, there are no other costs involved, except for a small administrative fee of about Rp. 5,000 (around 50 US cents) and the process may take from a day to a week to complete.

Familiarity and Flexibility

The formal legal system is unfamiliar to many. Many Sepa inhabitants say they are not familiar with legal processes and have no way to learn about justice options outside their community. Those with higher education such as the village head and school teachers are aware of the functions and roles of formal justice institutions and actors.[623] The Hutumuri *adat* community considers the

619 Youth FGD, Nusaniwe, 8-9 May 2005 and interview with villagers, Nusaniwe, 10 May 2005.
620 Interview with IDP, Amahai, May 2005; interview with Head of Hutumuri Village, April 2005; youth FGD, Pelauw, May 2005.
621 Men FGD, Hutumuri, 19 April 2005.
622 Youth FGD, Nusaniwe Ward, 9 May 2005.
623 Men FGD, Sepa April 2005.

traditional dispute resolution process as more accessible and less convoluted since there are no written rules. Moreover, decisions are not legally binding and parties are not precluded from alternative forums.[624] Consistent with the qualitative assessment, the survey reveals that the majority polled [625] viewed the informal justice system as effective, particularly in terms of protecting the rights of citizens and treating people well and equally

Is True Choice of Forum Always Available?

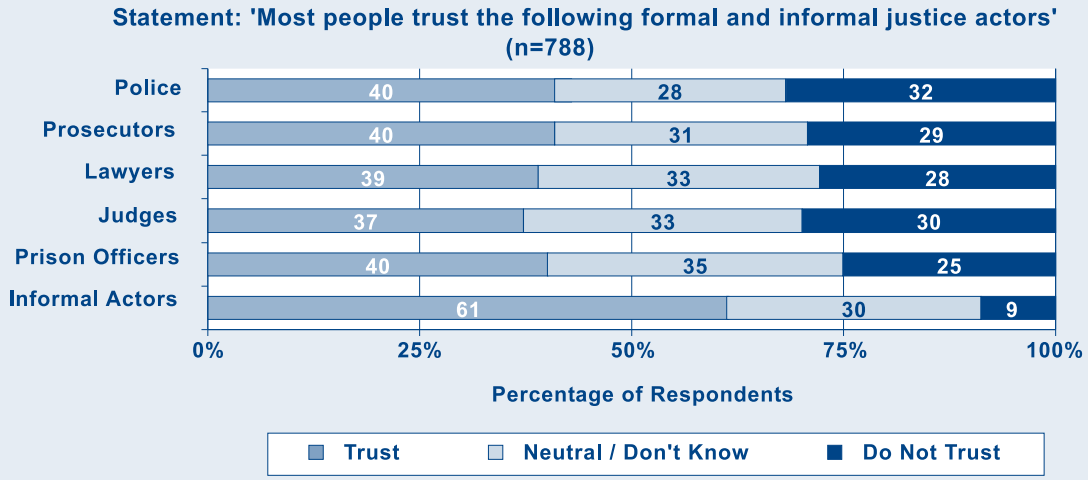
For financial or geographic reasons alone, for many of the poor and disadvantaged any choice of forum in theory rarely translates into actual choice of forum in practice. However, some additional factors may operate to further limit an individual's ability to select the forum of his or her choice.

Significant social pressure from both community leaders and the community at large may exist in favour of resolving cases via the informal justice system. Litigation in traditional villages is often contrary to the spirit of community and neighbourly tolerance. As can be seen from Chart 22, while 38 percent of respondents believed social pressure did not exist, 22 percent believed social pressure did exist.[626]

In some instances, women are blocked from obtaining remedies when their marriages fail: A second marriage under *Syari'ah* law must be approved by the court and registered, otherwise it is not recognized and a second wife may lose her entitlements. Naulu women who have been married according to their animist traditions cannot claim matrimonial remedies in a court of law, because Naulu traditional marriages cannot be registered or validated.[627]

Citizens may not always have a real choice once they have submitted to a resolution forum. Depending on the circumstances, it is ultimately within the authorities' discretion to decide on means of resolution required.

CHART 21: COMMUNITY TRUST IN FORMAL AND INFORMAL JUSTICE ACTORS – MALUKU



Source: Access to Justice Survey Maluku

624 Interview with Hutumuri *Adat* leaders (*Soa*); men FGD, Dusun Waringin Cap, 6 May 2005.

625 N=792.

626 N = 788.

627 Interview with Arman Anwar, lecturer, Faculty of Law, University of Pattimura, 11 December 2005.

BOX 25: A SALE OF LAND

In Nusaniwe, for generations the same family had been farming a piece of land that had belonged to deceased Go King Peng. The family built a settlement on it, and the current landowner decided to sell them the land. However, the parties could not agree on the evaluation.

Nusaniwe is not an adat community; there are no determinant adat practices regarding the sale of land and no local adat resolution mechanisms. The prospective seller and buyer rejected the option of going to the police, as the office was 20 kilometres away. The Lurah and his assistants did not reside in the ward and only worked during office hours. Moreover, the Muslim land buyer was not comfortable dealing with a predominantly Christian village administrative body.

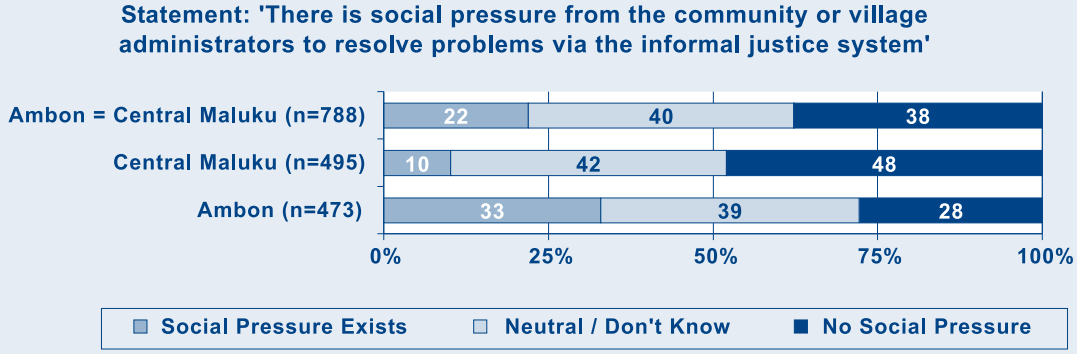
Both parties decided to approach the Head of RT and Commander of KORAMIL to mediate. They were geographically accessible and cost nothing. The mediators convened a hearing and ruled on the market value of the land, which was accepted by both parties as reflective of prevailing land rates and affordable. However, both parties could not agree on means of payment and the matter was deferred for further resolution.

Sources: Interview with service providers, Nusaniwe, 10 May 2005; men FGD, Nusaniwe, 12 May 2005

In Amahai, the village secretary said he refers cases that could trigger violence or destruction to the police. For example, in 2005, he referred a land dispute he was mediating to the police to prevent a violent outcome.[628] In Pelauw, the deputy chief of police said that sometimes victims (or perpetrators) who are concerned for their immediate safety report the matter to the police. Once safety is assured, the police frequently return cases to the village institutions, particularly in when complaints are less serious, such as theft of livestock.[629] Illiteracy and/or a lack of knowledge of options also stops members of communities, particularly the most disadvantaged. In FGDs in the isolated village of Sepa, many people indicated that the community is not familiar with court procedure and lacks capacity to learn more about external justice options. The FGD participants also said that the inhabitants are also socially reclusive and not able to learn about issues outside the community.

Finally, intimidation and fear–on a private or communal scale–can prevent the public from reporting their problems, either by directly intimidating the citizen or impacting the justice system itself. A representative of

CHART 22: SOCIAL PRESSURE TO USE INFORMAL JUSTICE SYSTEM – MALUKU



Source: Access to Justice Survey Maluku

628 Interview with Village Secretary, Amahai, December 2005.

629 Interview with Deputy Chief, Pelauw Sector Police, Pelauw, May 2005.

the Marital Counselling Agency in Nusaniwe said that women are often reluctant to report their husbands to the police for fear of further violence.[630] During the civil emergency in Maluku, much of the justice system simply wasn't operating, as was reported by the International Crisis Group (see Box 26).

5. JUSTICE ACTORS AND PROVISION OF REMEDIES

5.1 FORMAL JUSTICE SYSTEM

Formal justice providers surveyed during the assessment generally tend to view the justice system as satisfactory although they have observed that the formal legal system needs to build its capacity and improve accessibility to the public, including simplifying legal procedures, improving morale of public officers and eradicating corruption.

Police

According to a wide range of sources, the police force suffers from many structural and local-level weaknesses such as inequitable recruitment process, human, technical resource deficiencies, and undisciplined and corrupt officers.Some police stations are not operational, lack experienced staff and not geographically accessible to rural inhabitants. These issues affect commitment and quality of law enforcement. The perception is that the police cannot fully respond to the rights and legal needs of citizens.

Ambon Municipality and subdistricts: The jurisdiction of Ambon Muncipality and island of Lease *Polres* include the island of Ambon, Haruku, Saparua and Nusa Laut. There are five sector commands offices *(Polsek)* under the authority of *Polres* Ambon i.e. Teluk Ambon Baguala (TAB), Nusaniwe, Sirimau and Haruku.

The Teluk Ambon Baguala *Polsek* has 26 police officers, it is located in Wayame village which is approximately 16 kilometres from Passo, the capital city of Teluk Baguala subdistrict. The *Polsek* covers 16 villages and two wards within Teluk Ambon Baguala subdistrict. The Nusaniwe Polsek is situated in Latulahat village,15 kilometres from Amahusu, the subdistrict capital.

BOX 26: PARALYZED

'Despite the security forces' relatively successful efforts to reduce direct violence, the civil emergency government was still far from able to take legal action against those responsible for disorder. During the early months of the conflict, the police arrested the two men whose quarrel had triggered the initial violence, and they were sentenced to jail terms of six and five months respectively.

'But as the violence spread it became more difficult to arrest those involved and especially to bring them to court. The national police chief announced in July 2000 that the Maluku police had investigated 490 criminal cases and arrested 855 suspects but trials could not be held. "Our difficulty at present", he said, "is that legal institutions such as prosecutors, courts and so on are not operating. Prosecutors, judges and court clerks have gone. And many of the prisons have damaged or destroyed".

'The following month the governor said that over 200 cases were ready for trial, which might be held on naval ships. When asked in November 2001 whether cases could be taken to court in the near future, he described the courts as still "paralyzed" and admitted that the law could not be upheld in the current circumstances.'

Source: 'Indonesia: The Search for Peace in Maluku', ICG, Brussels, 8 Feb. 2002

630 Interview with representative, Marital Counselling Agency*(Badan Pembina Penasehat Perkawinan*), Nusaniwe subdistrict, Ambon.

The Nusaniwe *Polsek* is supported by 31 police officers to cover five villages and eight wards. According to police there, with the limited number of police officers, they still can respond adequately to investigation requirements and caseload.[631]

Apart from their core legislative duties in maintaining law and order and initiating criminal investigations, the police in the Maluku Province often assist citizens in dispute resolution of minor serious criminal cases as well as civil disputes. According to one officer in Teluk Ambon Baguala (TAB), mediating disputes is a key function of the police, and they will mediate if parties are willing.[632] According to police officers, this process means that more cases are resolved through mediation and fewer cases have to be adjudicated in the courts. The TAB Sector Police report processing 37 complaints during the first quarter of 2005; of these, the police resolved 17 cases through mediation.[633]

Central Maluku District: The Central Maluku District Police has wide jurisdiction over the entire Seram Island (consisting of two districts) and deal with wide-ranging issues. According to the police in Masohi, one of the more critical security situations the police were facing during the assessment were the elections of village heads, which according to them was a potential conflict trigger. The police also have to deal with escalation of disputes over land entitlements and alcohol abuse among youths. [634] The police say that although they try to assist complainants, by advising them of their rights, advocates are more effective; police are well aware of their limits in regards to legal matters and would like more support in this area.[635]

The Amahai Sector Police (*Polsek*) has jurisdiction over 24 villages, but has processed only a handful of cases in 2005. This is because most of the *adat* communities in these villages resort to the informal justice system such as customary institutions to resolve their disputes. This helps to alleviate the work of the Polsek that lacks police personnel.[636]

Although the Haruku Island Sector Police has jurisdiction over 10 villages (including assessed villages Pelauw and Haruku), according to police officials it is operating at 50 percent of ideal capacity. Some of the cases investigated include cases of torture where the victim and accused were from different ethnic groups and another involving the TNI. Many cases are referred to and resolved at Ambon *Polsek* and Island of Lease because of inadequate resources and investigative tools at Haruku Island *Polsek*. According to the deputy chief of district police, this *Polsek* is geographically inaccessible to some villages such as Pelauw village and is not adequately equipped to deal with potential mass unrests or serious crimes that may occur in remote locations.[637]

The effective functioning of the provincial police is often impeded by lack of human and technical resources and some police posts reportedly lack the basics to be operationally effective. Lack of basic office equipment to perform routine functions is reportedly particularly acute at the subdistrict level (see Box 9 in Part 2). At the Teluk Ambon Baguala Sector Police, officers are aware that children and victims of sexual violence require special facilities and treatment.

631 Interview with Nusaniwe Police officer, Nusaniwe Subdistrict Police Office, 26 May 2005

632 Law No 2/2002 on the Indonesian Police, articles 2, 14-16. Interview with police personnel, Sector Police, TAB sub-district, 22 May 2005.

633 Interview with police officer, Teluk Ambon Baguala Sector Police, 22 May 2005.

634 Interview with police personnel, Masohi, May 2005.

635 Ibid.

636 Ibid.

637 Interview with Wakapolsek, Pelauw, May 2005.

However, they say the Sector Police detention facilities are inadequate and on busy days, juvenile offenders are incarcerated together with adult offenders in a small lock-up.[638] They worry that continuing legal education and socialization of new legislation for police officers are inadequate. In Nusaniwe, police officers attended, on their own initiative, an awareness program on the Law on the Elimination of Domestic Violence organized by an NGO.[639]

The police work on a large number of incidents, involving a broad variety of crimes, many of which are complex in nature. According to the Director of Criminal Investigations, Regional Police, most cases in 2004 and 2005 were property thefts and some serious crimes of murders, shootings and two bombing incidents. He was unable to provide an accurate correlation between the number of criminal incidents that occurred and those that were eventually reported, but believes that vigilantism is not uncommon. He stated that the number of complainants who are willing to use the police to resolve disputes is insignificant. He believes that citizens avoid the police due to their geographical isolation, costs involved in accessing the police; apprehension of the authorities; apathy and a perception that some situations are trivial and do not require the attention of the authorities.[640]

Police officers noted that they are not offered monetary incentives for good performance and that promotion and recognition are rarely given. Nepotism and corrupt activities taint recruitment and selection, which has a demoralizing effect on candidates.[641]

Interaction between police and informal justice actors: At times, the police may return minor cases to *adat* leaders, such as referring youth altercations to the village head of Hutumuri for resolution.

Monitoring and oversight: In Ambon Municipality, police officers found to be guilty of misconduct are liable to receive a '551' rehabilitation regime, denoting five months of education, five months of practical training and one month of job orientation. Officers who have committed serious offences are liable to dismissal or prosecution.

Prosecution

The District Prosecutor's Office is situated in Ambon Municipality. It has jurisdiction to receive investigative files from *Polres* Pulau Ambon, Pulau Lease and part of the work of *Polres* Central Maluku Regency. The District Prosecutor's Office in Ambon City is staffed by 14 prosecutors (the chief prosecutor is female) and 38 administrative staff. The number of prosecutors fell from 19 in 2004 to 14 in 2005. The average caseload is around four cases per month per prosecutor, which the chief prosecutor believes is reasonable.[642] However, the office lacks experienced prosecutors: only two of the 14 prosecutors have more than three years' experience. During the conflict, many prosecutors fled, and have not returned. Now, many of the prosecutors assigned to the district are from Bali, and they typically cannot be convinced to stay past their normal assignment period, because they want to return home.

The chief prosecutor added that the budget allocation for Maluku prosecution office has always been less than optimal and that technical resources, such as computers for the use of all prosecutors, are inadequate. She also

638 Interview with head of Teluk Ambon Baguala Sector Police, 22 May 2005.

639 Interview with head of Nusaniwe Sector Police, Nusaniwe, 26 May 2005.

640 Interview, Director, *Reserse dan Kriminal Kepolisian*, Regional Police, 2005.

641 Officer, TAB, 2005.

642 All of the information from the Chief Prosecutor comes from an interview with her in Ambon District Prosecutor's Office, 11-17 December 2005.

noted that the law library at the office is rudimentary–two shelves of a bookcase, stocked with a few legal texts and legislation–whereas according to her the library at the courts receives updates every year. The library was ruined during the conflict – not because it was burned, but because another agency used their office and stored the books out the back where they were eaten by termites. Since updated legal materials are not available in Ambon, prosecutors must buy them on their own whenever they are in Jakarta.

The chief prosecutor believes that there is constructive interaction between prosecutors and the police. She said although the prosecutors only start communication after receiving the SPDP (Letter to Start the Investigation/*Surat Pemberitahuan Dimulainya Penyelidikan*) that outlines a basis to indict, the police might ask prosecutors for advice on criminal procedure before indictment. She said this has helped the police work more effectively. According to the Head of the Political and Social subsection of Masohi District Prosecutor Office, prosecutors ask police for more details or evidence to support a case, and he believes providing legal advice to the police improves presentation of cases in court and general police professionalism. A police officer in TAB Sector Police agrees with their assessment of the collaborative efforts of police and prosecutors, noting that investigators and the District Prosecutor coordinate well and do not often disagree as the District Prosecutor respects and accepts the investigations of police officers.[643]

The Chief Prosecutor says that prosecutors try to help victims and defendants. Since the passage of legislation on domestic violence, her office has implemented practical measures for vulnerable victims such as women and children as well as for female offenders and delinquents. These include a request to the investigators to coordinate with the Bureau of Social and Juvenile Guidance (*Balai Bimbingan Sosial dan Pengentasan Anak/BISPA*) to investigate a child's physical and mental welfare, educational background and to arrange for counselling for women. The District Prosecutor would consider these mitigating circumstances before ordering detention for offenders. The Chief Prosecutor states that a prosecutor 'represents' victims. Although prosecutors cannot officially reimburse witnesses responding to a summons to attend court (as there is no budget allocation for this), prosecutors sometimes informally assist those who reside in remote regions such as Lease or Banda Islands. Sometimes, geography takes its toll: If a site visit to the crime scene is required, for example, on Lease Islands, the victim, defendant and witnesses may have to travel together in a small speedboat, as it would be prohibitively expensive to charter separate boats.

The Masohi District Prosecutor's Office faces similar challenges, according to one prosecutor. Eight prosecutors each handle two to three cases per month. The caseload has risen: In 2004, the office processed 30 to 40, in 2005 60 cases (predominantly traffic and theft cases as well as corruption cases involving civil servants and violent crimes committed by youths).[644] The human resources are reportedly commensurate with the caseload, although the office lacks legal and research materials to facilitate prosecutors' work.[645] The prosecutors report that they are often at risk when they handle cases involving dangerous criminals and terrorists, a risk they have accepted as an occupational hazard. Prosecutors say the only incentive for good performance is a possible promotion. But prosecutors at the provincial

643 Interview, Head of Political and Social Subsection, Masohi District Prosecutor Office, 11 May 2005

644 Interview, Prosecutor, Masohi District Prosecutor Office, 11 May 2005.

645 All information comes from an interview with a prosecutor, Masohi District Prosecutor's Office, December 2005.

level have a long wait to a transfer to the more prestigious Attorney General's Office in Jakarta; they are told that other prosecutors are reluctant to accept rotating assignment to the provinces.

The prosecutor said that the High Prosecutor has implemented protective measures for women/ child victims and offenders. These include authorizing the police/investigators to liaise with BISPA to investigate a child's physical and mental welfare and to arrange with NGOs to counsel victims of sexual offences. The High Prosecutor would consider special circumstances and needs of female/child offenders before ordering their detention. [646] The prosecution may sometimes assist summoned witnesses residing in remote regions (such as the Banda Islands) with their transportation costs, although there is no actual budget for this purpose. [647]

Courts

The conflict essentially brought the courts in Ambon Municipality to a full stop, and recovery has been slow (see Box 26).

Ambon Municipality houses the High Court, as well as the District Court and the Religious Court. The Ambon District Court has a wide jurisdiction encompassing Pulau Ambon, Lease Islands, Banda and Buru. There are no courts in TAB and Nusaniwe subdistricts. Some of the cases heard are crimes of torture, sexual offences and minor offences. Civil cases include land title disputes and inheritance with a rising number of divorce petitions.

Consistent with accepted judicial practice, a court should facilitate access by simplification of procedures and referrals to special settlement conferences and mediation for indigent and low-income parties to facilitate redress.[648] However, according to the junior registrar in Ambon, parties will incur costs if the courts mediate. To trigger mediation, litigants must register their case in court. In practice however, parties are usually requested to 'negotiate' a resolution without a mediator present. If parties cannot agree, they return to the judge who may suggest solutions.[649] None of the 11 civil cases heard in 2005 were resolved by mediation. Out-of-court settlement for registered cases is uncommon.[650] The judges at the Masohi District Court have not received formal training on mediation and it would appear that Regulation 2/2003 has not been implemented at the District Court. (Regulation 2/2003 requires mediation as a first step for litigants, and establishes the procedure for settlement judges or mediators to attempt settlement before a hearing.) [651] To date, court-annexed mediation here has not been productive.

In an attempt to come to an agreement about which types of cases should be processed in the court and which should be processed in the villages according to *adat*, the Masohi District Court has circulated a detailed questionnaire about *adat* law and practices to 10 villages or *negeri* to be filled out and returned to the court.[652]

5.2 INFORMAL JUSTICE SYSTEM

Resolution via *Adat* and Other Local Institutions

As noted above, the informal legal process is attractive to citizens because of its simplicity and ability to function within a community's social and cultural norms. It renders practical

646 Interview with a prosecutor, Ambon District Prosecutor's Office, 17 June 2005.

647 Interview with a prosecutor, Masohi District Prosecutor's Office, December 2005

648 See Trial Courts Performance Standards, Desk Reference Manual, National Centre for State Courts, United States, 2003 and 'Guide to Judicial Conduct', Australia Institute of Judicial Administration Incorporated, 2002.

649 Interview with Junior Registrar, Ambon District Court, 12 Dec 2005.

650 Interview with Asst Chief Judge, Masohi District Court, Dec 2005.

651 Interview with Asst Chief Judge, Masohi District Court, Dec 2005.

652 Amahai Village Secretary.

and pragmatic solutions based either on *adat* or on the principles of reconciliation and preservation of communal harmony. It is adaptable to wide-ranging issues, as it does not function within the confines of written rules. The predominant justice mechanisms employed in villages are: 1) village administrative institutions, managed by a village head/ward head/neighbourhood chief, staff and other community leaders and 2) *adat* or traditional justice institutions, comprising *adat* and religious leaders. To resolve simple matters, there are also *tokoh masyarakat* who exist outside the *adat* structure, and, in Christian communities, priests and clergy from a variety of different churches.

Central Maluku is home to diverse *adat* communities; traditional justice institutions are more prevalent here than in Ambon Municipality. In some villages, such as Sepa, Amahai and Hutumuri, the village head is both the *adat* and village leader. In others, the *adat* and administrative components of village are separate.

Adat in Central Maluku is by no means monolithic, and there exist significant variations in rules, traditions and terminology between different sub-ethnic groupings. However, for illustrative purposes, the *adat* structure in Haruku Island subdistrict is presented here:

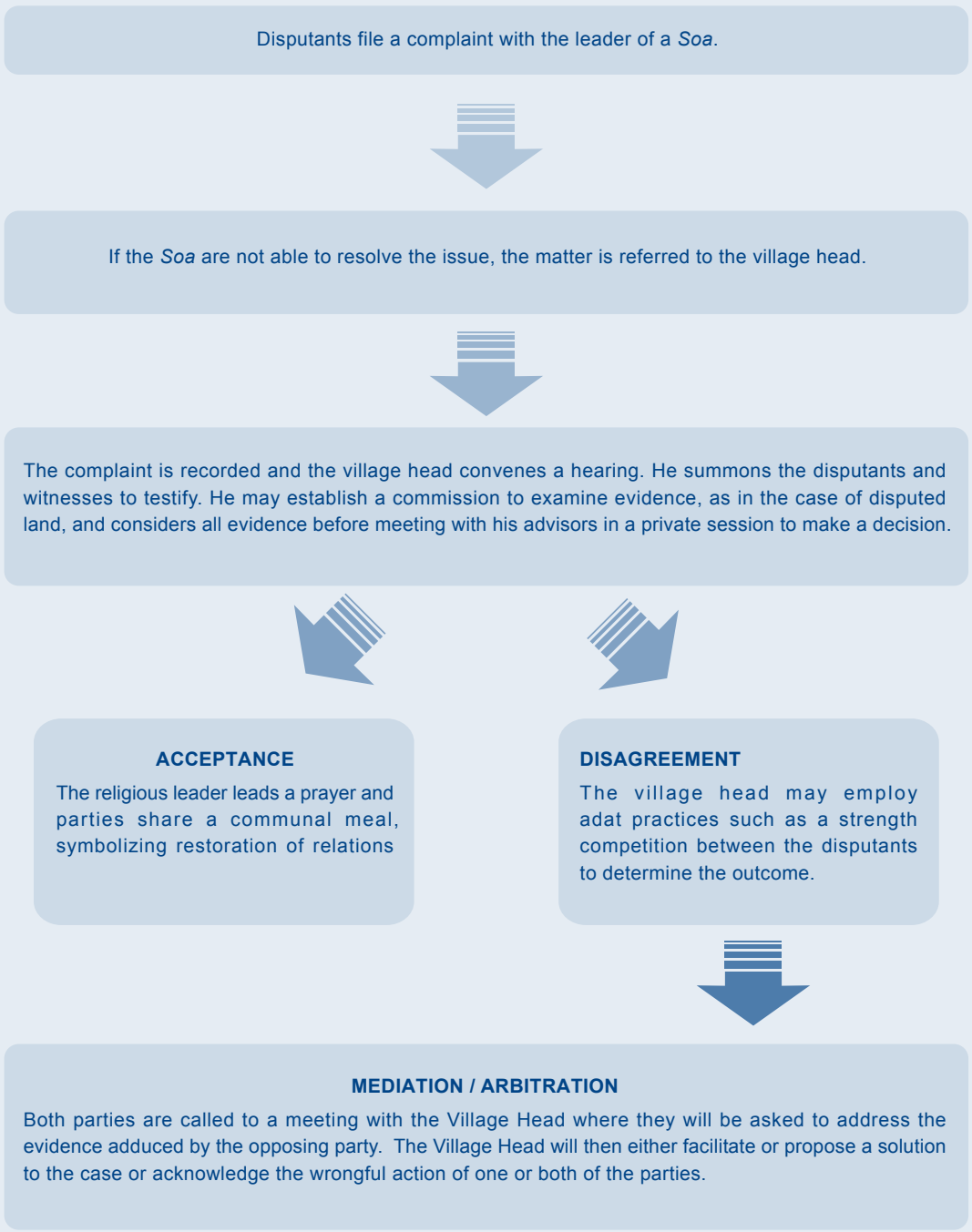
- ***Raja* (King)** is the traditional Maluku village leader of the *adat* community. He governs his community, facilitates gatherings of *adat* and community leaders, implements administrative policies and regulates development programs for his village.
- ***Latu-pati*** is the council of all the village leaders of Haruku. Its main function is to organise gatherings to resolve inter-communal/village land disputes and other critical issues. There is no single authoritative voice in the council and solutions are achieved by consensus.
- ***Saniri Besar*** is the village council representing the *adat* community, comprising village and *adat* representatives and other community leaders. Its primary function is to facilitate meetings.
- ***Saniri Negeri*** is the village legislative body comprising village institutions. Its main duties are to assist in regulating and implementing policies of the village administration.
- ***Soa*** is a grouping of clans that implements the tasks of the *Saniri Negeri* and assists the *Soa* leaders in wedding and funeral ceremonies.

Dispute Resolution Process

Disputes are routinely resolved using a mediation technique known as *musyawarah (*deliberation by consensus). It is common in heterogeneous as well as predominantly *adat* or homogeneous communities. A typical *musyawarah* as practiced in Hutumuri is illustrated in Figure 8.

Even in villages where the influence of *adat* in dispute resolution has declined, *adat* institutions retain their authority over some issues, e.g. marriage and matrimonial matters, appointment of *adat* leaders and monitoring of *adat* breaches known as *sasi*. *Sasi* is a prohibition of the exploitation of natural resources based on the reasoning that since the community has a link to its natural environment and takes sustenance from it, it has an obligation to protect these environs and ensure equitable distribution of nature's resources to all in the community. According to the village secretary in Sepa, there are various types of *sasi* pertaining to the sea, the river, the forest and the *adat* community.

FIGURE 8: A *MUSYAWARAH* IN AN *ADAT* VILLAGE (HUTUMURI)



Source: Interviews with Village Heads of Pangkalan Buton and Sutra, April 2005

Adat transgressions include prohibition of fishing after certain hours; picking unripe fruits; fighting on a Sunday and wearing inappropriate clothing after a river bath.[653] Village *adat* institutions also resolve non-*adat* issues [654] such as property and land disputes, damage to crops and animals; [655]. fights, thefts, slander and pregnancy out of wedlock.[656]

The *adat* institution in Amahai imposes two forms of *adat* sanctions - caning or a fine. According to the village secretary, caning is relatively rare: between 2004 and 2005, only one offender was caned for vandalism.[657] Usually caning is carried out in public and is limited to offenders above 15 years for offences such as fighting, stealing and child molestation. Fines are common and are determined by reference to the number nine. If the fine is payable in goods, the number of goods will always be nine (for example chickens, plates, etc). If a fine is payable in cash, the amount will be 9, 99, 999, 9,999, 99,999 and so on. However, the fine will then be rounded up by one rupiah to the nearest 10, 100, 1,000 or 10,000 for ease of administration. A repeat offender will be required to pay double. The reconciliatory approach is also common. In some cases, the village head might decide that the offender should make an apology to the victim and receive spiritual guidance from a religious figure.

Oversight

In Amahai, where the *adat* tradition is very strong, the *Saniri Negeri* consists of four representatives from each of the four *soa* in Amahai, and is the equivalent to the village DPR. The chairmanship of this institution rotates between the different *soa* on a monthly basis. It has responsibility for making all decisions related to village development, and also monitors the village administration and village head or *upu latu* and can hold themto account for any irregularities in the discharge of their duties.

Adat Interaction with the Formal Justice System

The documented instances in which there have been interactions between the two systems were neither formalized nor legislated. The role and functions of formal legal institutions such as the courts and police and village institutions do not seem to militate against each other. Each sector plays a complementary role and the boundaries of authority and jurisdiction appear to be well demarcated in practice.

In fact, the informal justice system complements the effective functioning of formal legal institutions as it diverts many minor complaints and disputes from a resource deficient formal legal process. The police/courts and village institutions appear to coordinate well in case referrals, particularly on issues that might generate widespread violence or create public disorder. Thus, although the Amahai Sector Police has jurisdiction over 24 villages, it has processed few cases in 2005, because most disputes were resolved at the village level. This has alleviated the work of the Sector Police that have few personnel and limited resources.[658] There have been some attempts to coordinate the authority of courts and village legal institutions. The Masohi District court has circulated a detailed questionnaire about *adat* law and practices to 10 villages or *negeri.* The objective is to enable the courts and villages to agree on the categories of cases more appropriately resolved at the courts and in *adat* institutions.

653 Village secretary, Sepa, Feb. 2005.

654 Although resolution of these issues may attract *adat* sanctions and remedies.

655 Interview with subdistrict head, Haruku,Masohi 14 May 2005; village secretary, Sepa, Feb 2005.

656 Village secretary, Amahai, 14 May 2005.

657 Between 2004-2005, only one offender was caned for vandalism. Interview with village secretary, Amahai village, Dec. 2005.

658 Interview with police personnel, Masohi, May 2005.

According to the village secretary of Amahai,[659] formal justice actors rarely interact with traditional leaders. The only instance when the court was invited to monitor traditional practices was when *adat* caning became a common punishment and some villagers considered the act unlawful and reported the matter to the police. However, after the village *adat* leaders held a seminar with the Masohi District Court in 1984 to explain the purpose of the caning, the court was able to accept it as a legitimate practice.

The village secretary of Amahai, however, does not see any problem in referring cases to the formal justice system. In his village, serious crimes such as murder or conduct that could trigger violence or widespread destruction are referred to the police. In 2005, only three cases were referred to the police: a land dispute, an altercation and theft of livestock. The land dispute referral was a civil case and not appropriate for police action, but it was a preventative measure to prevent a violent outcome from the escalating dispute. In cases where the victims (or perpetrator) are concerned for their immediate safety, they will report to the police, who may later return the case to the *saniri negeri* to be processed. For less serious cases such as chicken thefts, the police return the matter to the village institutions.

Disputants in an *adat* hearing have a choice to seek alternative remedies with the police or courts, if not satisfied with the village head's decision. Similarly, parties who have submitted to the jurisdiction of the court in civil matters are still able to settle the matter out of court using *adat* mechanisms. However, it does not apply for criminal matters, once the case submitted to the court, it cannot be settled through out of court settlement using adat mechanism. In this way, for civil matters judges recognize *adat* institutions as a form of ADR complementing the litigation process.

Current Issues

Adat and religious leaders have taken an active part in bringing peace to the region: In early 2001, approximately 200 Muslim and Christian leaders met to explore reconciliation in Maluku. However, traditional justice has limitations that might compromise citizens' access to appropriate and satisfactory remedies for some justice issues.

Traditional justice forums may not be appropriate to resolve serious violations of human rights, violent crimes such as domestic violence, or complex issues such as land and property disputes. A traditional justice system may not be an effective forum to address socio-economic grievances arising from inadequate and discriminatory public services, labour disputes, abuse of power and corruption.

Sanctions for criminal matters in a customary judicial process may not always reflect internationally established criminal justice principles of rehabilitation, deterrence, promotion of rule of law and safeguarding society.[660] For instance, traditional institutions in Amahai impose only two forms of *adat* punishment – corporal punishment and pecuniary sanctions, neither of which may be appropriate responses to the conduct in question. Most of the cases resolved in *adat* or village institutions are not serious offences and caning is not a frequent sanction. The legality of non-judicial caning has been debated once at the provincial level, as mentioned earlier.[661]
Citizens might accept *adat* practices because

659 Interview, Amahai, December 2005.

660 Prosecutor v Dragan Obrenovic, Sentencing Judgment, International Criminal Tribunal for the former Yugsolavia (ICTY), Case No IT/02/60, 10 December 2003, p.14-16. The ICTY applies internationally established principles in sentencing.

661 Interview with Village Secretary, Amahai, Dec 2005.

of their precedence and tradition. However, some practices might produce unjustifiable outcomes (see Box 27). In land and property disputes, resolution at the formal justice system may be more appropriate, as a decision is grounded on factual merit and law. Informal resolutions that attract sanctions such as an *adat* compensation or apology may not deter and lack binding authority, leading some offenders to re-offend or simply avoid compliance. Thus, a decision issued by an informal justice actor is only binding if parties are willing to adhere to it.

The assessment indicates that women are likely to turn to village institutions for protection against domestic violence and that a likely outcome is reconciliation or non-punitive measures. Despite communal acceptance of traditional justice, it can propagate discriminatory attitudes and practices against women and girls.

There is no indication that the traditional leaders interviewed in the assessment had received any training in dealing with women's issues or were equipped to provide any special facilities such as psychological counselling.

Women are not traditionally represented in *adat* institutions; for instance the last time a female was appointed village head in Haruku was in 1942.[662] While not all *adat* villages recognize this as a problem, in Amahai there is a growing recognition that there should be a balance between men and women. According to the village secretary, currently there is no minimum level of representation for women in the *saniri negeri*, and there is only one woman out of the 16 members, but new members are about to be chosen and there is hope that more women will be selected. The members' tenure is the same as that of the *kepala desa* – five years.[663] Youths have also highlighted an absence of youth representatives or a facility dealing with youth affairs in traditional institutions.[664] The traditional justice system tends to treat the symptoms rather than examine the causes of a dispute, conflict or conduct. It sometimes de-emphasizes individuality and personal responsibility and elevates community and family unity. This approach may sometimes contravene women's

BOX 27: SURVIVAL OF THE FITTEST

A fruit tree grew on the boundary of two pieces of land in Pelauw owned by two men. Both claimed ownership of the tree. The long-standing dispute compelled the village adat leader to intervene to mediate the issue.

During the musyawarah, witnesses from both sides were called to testify on the origin of the boundary. A religious leader was present to perform religious rituals during the deliberations but played no part in the decision-making process. The adat leader's assistants examined the disputed boundary and other physical evidence.

The adat leader was not able to resolve the dispute for lack of independent evidence on the boundary issue. An alternative solution was suggested, common to the Pelauw adat community. The disputants were asked to perform a traditional ritual to test of physical strength. Whoever was able to dive into the ocean and hold his breath the longest would be awarded the fruit tree. The parties accepted this suggestion and were bound by the outcome because of their respect for tradition.

Source: Village Secretary of Pelauw, May 2005

662 Interview with Village secretary, Haruku village, April 2005.
663 Village secretary, Amahai village.
664 Youth FGD, Hutumuri, 7 Feb 2005.

rights under domestic international law.[665]

The decline of *adat* and utilization of customary institutions is evident in some communities such as in Nusaniwe and Wayame. It has been observed that changing lifestyles and ambitions have eroded morality and religion. For instance, one villager in Nusaniwe said that a case of pregnancy out of wedlock is now considered conventional; a woman's family will no longer request for *adat* compensation.[666] There is also a perception that customary leaders are out of touch with the lives of the inhabitants and cannot relate to those of different religious beliefs.[667] Traditional institutions may therefore have to adapt to an evolving demographic landscape to ensure their relevance and viability.

Ambon Municipality: The influence of *adat* in resolving community issues is declining. In Hutumuri village, the *adat* and administrative components of village government are segregated. The influence of *adat* in resolving community issues is declining although the *adat* institution retains its authority over matrimonial matters, appointment of community leaders and development of *baileo* (the *adat* village sacred meeting place). The *Soa* will usually attempt to resolve land-related issues, failing which the *adat* leader will intervene. Despite this, the *adat* leader's decisions are often disregarded and, because the decisions are not binding, disputants routinely proceed to the formal justice system as a secondary option. The *adat* institution and religious bodies such as the church are excluded from key administrative and development functions of the village and are relegated to a coordinating role.

Resolution via Alternate ADR Mechanisms

There are ADR mechanisms that are centralized political structures, in the forms of *Musyawarah Pimpinan Dewan* (*Muspida*) both at provincial and district *(kabupaten)* level, and *Musyawarah Pimpinan Kecamatan* (*Muspika*) at subdistrict level. A *Muspika* is a District Executive Council consisting of the head of subdistrict (*Camat)*, and heads of both military and police offices at the sub-district level, Military District Commander (*Danramil*) and District Police Chief (*Kapolsek*).

Muspida is a forum consisting of a governor or *bupati*, the head of the 14 military branches at provincial or district (*Danrem* and *Dandim*) level, the head of the police office at provincial and district level, the chairperson of local parliament, and the head of the judicial office at the district level. They hold regional leadership meetings to discuss problems and issues in the respective region with representatives of social organizations.

Informed observers suggest that the *Muspida* or *Muspika* are, in reality, representations of national interests and are not simply consultative forums. Rather, these are vehicles in which most of the significant political decisions were made and are political mechanisms to safeguard the interests of Jakarta.[668]

In Ambon Municipality, the *Camat* governs the subdistrict Teluk Ambon Baguala and falls within the administrative aegis of the Mayor of Ambon Municipality. The *Camat* has administrative jurisdiction encompassing

665 Declaration on the Elimination of Violence against Women 1993 (GA Resn 48/104); the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985. According to the Victoria Falls Declaration, "…it is essential to promote a culture of respect for stated human rights norms and particularly those affecting women e.g. Convention on the Elimination of All Forms of Discrimination against Women. Judicial officers should be guided and apply them when interpreting and applying the provisions of the national and customary law when making decisions."

666 Interview with a villager, Nusaniwe village, 12 May 2005.

667 Interview with a Villager, Nusaniwe, 9 May 2005; Youth FGD, Nusaniwe, 8 May 2005; Interview with a Villager Nusaniwe, 12 May 2005.

668 'Assessing current political developments in Indonesia', Mochtar Buchori and Cornelis Lay, Institute of Southeast Asian Studies, Singapore, 2000.

16 villages and two wards. A parallel administrative body is situated in Nusaniwe subdistrict, run by the Nusaniwe *Camat.*

The *Camat* is mandated to deal with all economic, social and political matters within his jurisdiction – governance, population, labour, education, health, family, religious affairs, farming, transport andcommunication. He also functions as the PPAT (Land Titles Officer) at the subdistrict level, disburses allocated regional budget, and manages production and output from mining of natural resources.

As the leader of the *Muspika*, the TAB *Camat* is generally responsible for resolving disputes falling within his jurisdiction. Specifically, he is mandated to conduct cross-sector coordination between civilian administration authorities and the military at the *kecamatan* level and engages in discussions with *Muspika* leaders in other subdistricts. For instance, if a dispute is characterized as one threatening regional security, the local military agency *Danramil* will be chiefly responsible and work in coordination with *Polres* or *Polsek*. According to the research team, there has been little impediment in the allocation of tasks and responsibilities and there has been effective communication among all actors.

Range of Justice Issues Covered by *Muspika*

One of the functions of the *Camat* is to facilitate access to subsidies and aid to IDPs residing in the region. However, the procedure was cumbersome for many who have to obtain an application form from the *Camat*, return to their villages to obtain the village head authorisation and back to the *Camat*. The *Camat* resolved this obstacle by distributing his staff to the villages to assist the IDPs with their applications.

In relation to IDPs' entitlement to BBR (*Bahan Bangunan Rumah* or housing subsidy), the TAB *Camat* has implemented a system of monitoring and verification to ensure that there is equitable distribution to the needy. The *Camat* has highlighted issues of concern relating to the welfare of IDPs. First, he has noted inaccurate data collection on the number and location of IDPs, noting that the Provincial IDPs agency has been known to manipulate data. Consequently, some IDPs are unregistered and do not receive subsidies. Second, despite the verification system, BBR has been distributed to priority villages with high concentrations of IDPs. This policy has caused much dissatisfaction among other villages, who see the action as discriminatory. Third, the population does not receive sufficient and timely information on government policy changes on IDPs entitlements, resulting in confusion and discontentment.

According to the TAB *Camat*, there have been no complaints in relation to *Raskin* distribution. The *Camat* holds the office of PPAT and is also authorized to resolve land disputes. The TAB *Camat* also deals with other social issues, such as labour and employment conditions and family affairs.

The Nusaniwe *Camat* similarly deals with BBR and IDPs issues arising from his area of jurisdiction and at times, resolves sensitive inter-communal land disputes.

Resolution of Disputes

The TAB *Camat* is faced with myriad justice

issues raised by members of the community who are at times disillusioned with local governance. The *Camat* says he does not hesitate to involve the Governor and IDP government coordinators in a *musyawarah* process. According to the *Camat*, the disputants are generally satisfied with these proceedings because he tries to respond positively to all their concerns.

In relation to his capacity as head of PPAT, the TAB *Camat* resolves land-related issues raised by the inhabitants. He says his office has received no complaints in the issuance of land certificates and titles because he has adhered to established practices and legal principles and has been assisted by land experts such as the *Lurah*, *Kades* and other *kecamatan* officers.[669] The *Camat* does not charge for this service. Similarly, the Nusaniwe *Camat* issues land certificates without charge and says he has warned his staff not to collect unauthorized fees from the public.[670]

The Nusaniwe *Camat* resolves IDP-related complaints. For instance, the *Camat* and his staff visit housing contractors to monitor their services to the IDPs. His office investigates fictitious BBR disbursements and refers cases to the police.According to the TAB *Camat*, the TAB office is operating at 60 percent of required capacity although the budget allocation for both TAB and Nusaniwe *kecamatan* is sufficient for operational costs. He says salaries are not equal to the work.

In Nusaniwe, the *Camat* says the local media is the only means through which the public is informed of the *kecamatan* social development achievements and resolution of community issues. The *Camat* works closely with the local media to inform citizens of progress made on issues concerning them. The *Camat* may also refer cases/disputes to the *Lurah* or *Kades* for resolution, monitor the progress of the cases and request updates.

5.3 AUXILIARY JUSTICE INSTITUTIONS

There are several auxiliary institutions that aid Maluku residents in their quest for justice. Team 20 was immensely successful in its response to sectarian violence and the problems citizens faced. Based in Wayame village, Team 20 is comprised of 10 leaders from the Muslim community and 10 from the Christian community. It was created as a response to the sectarian violence, as an effort to create a resolution mechanism that respects the rule of law and to defend the community against misinformation and propagandist elements.

Team 20 conducts inquiries into matters of concern to the Wayame inhabitants, verifies the truth and accuracy of information, and disseminates its findings to all members. The team organizes *musyawarahs* to debate and arrive at a consensus on issues affecting community peace and security. Some matters stem back to the 1999 conflict, others are new situations that might escalate into a conflict. The team investigates and conveys its findings to the community.
Despite its contribution in bringing peace and reconciliation to the area–Wayame suffered less disruption than other villages

669 Interview, Camat of Teluk Ambon Baguala Office, 20 – 21 June 2005.
670 Interview, Camat of Nusaniwe Village Office, 16 June 2005

largely due to the cooperation inspired by the team–its has never been financially supported by the regional government or civil society. Team 20 has lost a number of its members and is no longer fully functioning. (The lack of financial support from the government has forced the members to find jobs outside Wayame.) Nonetheless, the community still turns to Team 20 to resolve disputes, a testament to its relevance and efficacy.

ANNEX 4
NORTH MALUKU PROVINCIAL REPORT

ANNEX 4
NORTH MALUKU PROVINCIAL REPORT

1. INTRODUCTION

1.1 OVERVIEW OF NORTH MALUKU

The province of North Maluku was administratively separated from Maluku Province on 16 September 1999, after intense intercommunal conflict erupted on the island of Halmahera in August of that year. North Maluku's 395 islands (64 of which are inhabited) are scattered over 140,256 square kilometres, most of which is sea. In southeastern part of the Indonesian archipelago, North Maluku is bordered by the Pacific Ocean to the north, Papua and the Halmahera Sea to the east, Sulawesi and the Maluku Sea to the west, and Maluku Province and the Seram Sea to the south. There are 6 districts and 2 municipalities, 45 subdistricts, 676 villages and 80 wards (*kelurahan*).[671]

The population of 866,354 is predominantly Muslim (85 percent), followed by Protestants, Catholics, Hindus and Buddhists. The distribution of the population has been dictated not only by patterns of progress and development, but also by the polarization caused by sectarian violence.[672]

Historically, Christians were a majority in Maluku, but since Indonesia's independence, Maluku's population has swelled with the arrival of Muslim migrants, mainly Bugis and Butonese from nearby South Sulawesi, and also migrants from Sumatra and Java. Most migration was spontaneous; other groups came as part of government transmigration programs and relocation programs.[673] From 2003 to 2004, there was a significant decline in the number of Muslims and Protestants but a rise in the number of Catholics, Hindus and Buddhists.[674] The capital, Ternate, is predominantly Muslim, however there are significant Christian minorities in the northern part of Halmahera island and on Obi and Bacan islands. The province is ethnically diverse, with a total of 28 groups of Polynesian and Melanesian ancestry, each with its own language.[675]

Medical resources, such as public clinics, doctors and other trained medical personnel, are limited.[676] Discriminatory practices, especially against the poor, have been documented, as have corrupt practices in the administration of health services. North Maluku has a high mortality rate and poor nutrition is prevalent.[677]

Over half of the population farm, tending plantation crops such as cloves, nutmeg and coconuts. Others are traditional fishers. In the cities, many are traders or have jobs in the civil service. North Maluku is heavily forested, and there are significant mining

671 Ternate is comprises four subdistricts, 60 wards; Tidore Islands has five subdistricts, 20 villages, and 20 wards; West Halmahera has five subdistricts, 130 villages; North Halmahera has 9 subdistricts, 174 villages; East Halmahera has 9 subdistricts, 41 villages; Central Halmahera 3 subdistricts, 31 villages; South Halmahera has 9 subdistricts, 194 villages, and the Sula Islands have 6 subdistricts, 86 villages. North Maluku Strategic Development Plan, 2004.

672 Data on Registration of Voters and Continuous Population , Central Statistic Bureau of North Maluku (BPS-Malut) 2004, p. 1.

673 Program on Humanitarian Policy and Conflict Research is an international research and policy program based at the Harvard School of Public Health at: www.preventconflict.org/portal/main/maps_maluku_overview.php (accessed 19 July 2006).

674 'The Fundamental Development Patterns of North Maluku Province for Years 2003-2007,' BPS-Malut, 2004. Muslims: 670,383 to 627,772; Protestants: From 203,244 to 149,340; Catholics: 6,862 to 8,710; Hindus: 120 to139; Buddhists: 74 to 123.

675 Population of North Maluku, Census 2000, Central Office of Statistics (BPS). See also http://bankdata.depkes.go.id/Profil/web%20profil%202001 /Lampiran%2015.htm access 24 June 2006

676 There are 11 hospitals and 327 *puskesmas* and *posyandu* in the province, BPS, 2003.

677 'North Maluku in Figures', Ibid

and timber activities. The ocean around North Maluku represents the largest maritime territory in Indonesia and is rich in marine resources, including different types of fish, prawns, sea cucumbers, seaweed and pearl oysters, some of which are cultivated and others hunted and caught. Marine resources have typically been exploited by outsiders, as have forestry resources – especially wood processing (plywood). Little of the income generated by nickel and gold mines in Halmahera trickles down to the loca lpeople. According to the Central Statistics Bureau, the unemployment rate in North Maluku in 2004 was 7.53 percent, or 183,462; other reports have suggested that unemployment is even higher – among the highest in the nation.[678] In 2003, 60,354 *Prasejahtera* families were entitled to state welfare.[679]

1.2 HISTORY OF CONFLICT

After the fall of Soeharto's, large-scale ethnic and religious violence swept Indonesia's eastern islands. Riots started in early 1999 on Ambon Island, the epicentre of the conflict, then quickly spread.

In North Maluku (then a district), the catalyst for conflict was the proposed establishment of a new district, Makian Daratan with Malifut as its capital. It was to consist of 16 villages of migrants from Makian (a volcanic island west of Halmahera), five villages of Kao (indigenous to this region), and six villages of Jailolo people. The Makianese, who are predominantly Muslim, backed the idea of the new district, which would have had huge financial consequences, since their new district would receive all the tax revenues from a gold mine, the area's only industry. The Kao, who are predominantly Christian (80 percent) as well as Muslim and followers of the indigenous religion, firmly opposed the proposal, as did the local Jailolo people (who are Muslim). They believed the land was theirs: in 1975, thousands of Makianese had been resettled in the region after a volcanic eruption threatened their island. (In fact, there had been little damage, but the Makianese elected to stay, something the local people resented.) The Kao and Jailolo villagers had no desire to become minorities in their ancestral lands and refused to be included in the new subdistrict of Malifut. The Kao believed that the Makianese were receiving preferential treatment, and that the Kao villages were the subjects of Islamization. As early as February 1999, Kao leaders warned that blood would be spilled if the plan went forward.[680]

On 18 August, the day the new district was to be inaugurated, men from Malifut entered Sosol, one of the Kao villages to be incorporated in the new district, and killed a number of people. Ultimately, 12 people died and fighting continued until 21 August when the Ternate Sultan arrived and convinced both sides to put down their arms. Underscoring the fact that this was nota religious conflagration was the alliance between the Muslim Sultan and the mostly Christian Kao, and the fact that Muslim Kao fought alongside Christians against the Muslim Malifut. But as in Maluku Province, the origins of the conflict in North Maluku were quickly subsumed by religious rhetoric. Fighting erupted again in October, and by the end of the month, the Kao had reduced Malifut

678 'Basic Patterns in North Maluku' op. cit., p. 1 or http://www.bps.go. id/leaflet-jul-05-ind.pdf (accessed 17 July 2006).

679 North Maluku in Figures 2003,' op. cit.

680 Much of the description of the conflict comes from: 'Indonesia: Overcoming Murder and Chaos in Maluku', ICG Asia Report, No. 10, Jakarta/Brussels, 19 Dec.2000. Also, Smith Alhadar, 'The Forgotten War in North Maluku', Inside Indonesia, No. 63, July-Sept. 2000 and Christopher R. Duncan, 'The Aftermath of Civil War', Inside Indonesia, No. 67, Jan. – Mar. 2002.

to rubble, killing 100 Makianese and forcing 4,000 to flee to Ternate and the neighbouring island of Tidore.

The arrival of the displaced Makianese in Ternate sparked off rioting. Soon, they began agitating for a Jihad to take their land back and for reprisals against Christians. By early November, all Christians had been purged from Ternate and local Jihad groups started to form. The Sultan of Ternate sent 4,000 of his guards to protect the Christians. By 27 December, he had to back down under the pressure of Muslim fighters loyal to the Sultan of Tidore. The district legislature and bureaucracy were purged of all Christians and Muslims sympathetic to Christians.

In Halmahera Island's Tobelo District, local Christians killed at least 500 Muslims; 10,000 fled between 26 December and 1 January. The massacre provoked outrage; in Jakarta, more than 100,000 Muslims demonstrated, calling for a holy war. Later in January, Laskar Jihad militias, originally from Java, arrived in North Maluku. On 19 June 2000, jihad militias operating out of Ternate killed at least 200 Christians in the village of Duma and, supported by some army units, went on to destroy every Christian village in Galela subdistrict and on Morotai and Obi islands.

On 27 June, President Abdurrahman Wahid declared a state of civil emergency. When the violence halted, as many as 250,000 people had been displaced from their homes – almost a third of the population. During the fighting an estimated 20,000 homes were destroyed, along with churches, mosques, schools, hospitals and government buildings. Tensions remained high for several years. The Governor of North Maluku said: 'The rule of the moment is to keep the Muslims and Christians divided to avoid violence.'

As may be evident from this brief history, the conflict cannot be ascribed solely to religious factors, but to a complex mix of ethnic, cultural, geographic, economic and religious differences, some new and some dating back 500 years. International Crisis Group described the situation well:[681] Although the traditional sultanates of Ternate and Tidore had been absorbed into the modern province of Maluku, the current sultans continue to wield considerable informal political influence. While Ternate, the capital, has always been predominantly Muslim, there have been large concentrations of Christians in the northern half of Halmahera, and on the islands of Obi and Bacan. The Ternate Sultan had traditionally protected the interests of the region's minority Christians. The Christians, in turn, had remained some of his most ardent supporters. The sultan and his followers also served to mediate communal conflicts when they flared. The Tidore sultanate has struggled with Ternate for regional supremacy for 500 years and has tended to be more overtly Islamic than Ternate. The latest manifestation of this rivalry was Tidore's failed effort to be declared provisional capital of the new province of North Maluku in 1999. Tidore's power grab, and Ternate's opposition to it, reopened old wounds. The rivalry played a pivotal role in the spread of violence in North Maluku.

Just as in the south, North Maluku's conflicts have been aggravated by migration.

681 'Overcoming Murder and Chaos in Maluku,' ICG Asia Report 10, 19 Dec. 20 (Jakarta/Brussels).

In Ternate, there has been some migration of Muslims from other parts of Indonesia – many Muslim militia leaders have family ties to Sulawesi. But more important has been the movement of people within the province. For instance, in the last 25 years numerous battles have broken out between the Makian and Kao ethnic groups, due to the migration policies of the Soeharto years, which forced the transfer of traditional Kao land to the Makian, and guaranteed a legacy of conflict between the two communities.The Makian are exclusively Muslim, and have purged most of North Maluku's traditional beliefs from their daily lives, whereas the Kao are Christian (about 80 percent) and Muslim (about 20 percent) and view their ethnic identity as more important than their religion.

As in Ambon, migration hastened the traditional leadership's descent towards irrelevance and this trend, already visible before the fall of Soeharto, only increased the anxiety level of local Christians after his fall. They felt then that democratically elected local governments and the planned decentralization of power to the provinces would deprive them of protection.

In recent years, large-scale violence has been avoided, and by the end of 2005, most IDPs from North Maluku had returned home or resettled; about 15,500 remain displaced in North Maluku, and according to the Internal Displacement Monitoring Centre, the situation has shifted to a post-conflict reco-very phase.[682] Many of the social issues affecting IDPs have lingered: education and health care has been disrupted; families have been broken; unemployment is high because of the loss of jobs and land and property disputes arising from the conflict remain unsolved.

Economic recovery has been slow because people's means of making a living were destroyed: fields, plantations, boats, factories, markets. In remote areas, especially in the south, most services are not functioning, because of the extensive private and public damage. Authorities recognize that much needs to be done before the situation is stable. According to Bo Asplund, United Nations System Resident Coordinator /Humanitarian Coordinator and UNDP Resident Representative, UNDP analysis has shown that in North Maluku, there is a close correlation between conflict violence and the high rate of unemployment, particularly of youth and displaced persons.[683]

1.3 ASSESSMENT LOCATIONS

North Maluku Province is divided into six districts and two municipalities.[684] The research team selected two districts for assessment – North Halmahera and Ternate Municipality. The selection is primarily based on criteria that facilitate a comparative profile of the selected localities. North Halmahera was socially and economically disrupted by regional strife and violence; Ternate City escaped the destructive consequences of the violence. Although the assessment locations are not necessarily representative of other districts in the province, their contrasting characteristics provide an overview of a variety of justice-related issues affecting the poor and disadvantaged in North Maluku. The following section offers brief profiles of the selected districts and subdistricts,

682 Internal Displacement Monitoring Centre, http://www.internal-displacement.org, accessed 19 July 2006. Also, 'Number of IDPs in North Maluku as of September 2005', Cardi.

683 UNDP Economic and Social Council, Indonesia country team panel, Geneva, 12 July 2006.

684 Districts: Ternate City, North Maluku Islands, Central Halmahera, North Halmahera, South Halmahera, Sula Islands, East Halmahera and Tidore City.

with particular emphasis on post-conflict conditions and features.

North Halmahera District

North Halmahera District, measuring 7,843 square kilometres, is a relatively new district, carved out of the northern section of Halmahera Island in May 2003.[685] It is 35 minutes by speedboat from the provincial capital, Ternate, and about 3.5 hours overland by car. North Halmahera District has nine subdistricts.

North Halmahera's population of 165,327 (2004) is comprised of Tobelo, Galela, Morotai, Makian, Kao, Modole Kao, Tobaru, Loloda, Sanger, Manado, Java, Ambon, Buton, Gorontalo, Bugis and Batak communities. Although the numbers of Christians and Muslims is relatively balanced overall, some villages and subdistricts have significant majorities of one religion or the other: Christians are dominant in North Loloda, Tobelo, South Tobelo and Kao, while Muslims are dominant in Malifat, South Morotai, South West Morotai and Galela.[686]

The key economic sector is agriculture, specifically plantations of coconut palms, cloves, and cacao; mining is also important. While these natural resources have provided significant revenue for investors and the government, local inhabitants have not shared in the benefits. The exploitation of natural resources is unregulated and has caused substantial damage to the environment. In addition to farming, residents work as civil servants, traders, fishermen, teachers and labourers.

North Halmahera District is a significant post-conflict site study: Large-scale violence occurred in Tobelo, Malifut, Kao and Galela subdistricts, which resulted ina mass exodus of some of 13,709 families. The initial conflict in this district contributed to the conflict in Ternate, which then had a wider influence on the others areasof North Maluku including Tobelotown, Galela, Kao and Malifut subdistricts.The violence also caused heavy damageto public infrastructure.

Of North Halmahera's nine subdistricts, the urban Tobelo and more remote South Tobelo were selected by the research team as paradigmatic. Table 22 illustrates the salient demographic and post-conflict features of the two subdistricts.

Ternate City

Ternate City, with a population of 148,945, is on the southeast coast of the small Ternate Island (93 square kilometres).[687] The dominant ethnic group is Makian, followed by Tidore, Ternate, Sanana and Kei. Natural resources are abundant. Employment is mainly in the public sector; others in household industries, timber processing factories, port and hotels, fishing and agriculture, and tourism.[688] Unemployment rate is about 50 percent of the total labour market. Ternate City became a refuge for the displaced, attracting approximately 53,681 IDPs, most of them Muslims. This put a huge strain on the population, not only in terms of housing, but also employment. Some 3,423 IDPs have since left the city. In the meantime, Ternate residents who left during the conflict have returned but are residing in temporary shelters.[689] Ternate City, which has had a city government since 1983 and a strong *adat* tradition, is considered administratively advanced.

685 North Halmahera in Figures, PBS Tobelo 2004, p. 5.
686 North Halmahera District Secretary Dr. Salahuddin Baba.
687 See http://www.walhi.or.id/bioregion/nas/peng_basis_bioreg/ .
688 Cooperatives, Industry and Trade Office in Ternate City, 'Ternate City In Figures 2003' p. 149.
689 'Report of Governor of North Maluku on Riots Caused by SARA' (ethnic, religious, racial relations), North Maluku Province, 2000; data from UNDP North Maluku and the Social Affairs Office in North Maluku Province.

TABLE 22: OVERVIEW OF ASSESSMENT LOCATIONS – NORTH HALMAHERA DISTRICT

Subdistrict	Village	Characteristics
Tobelo	Gosoma	Located in the centre of North Halmahera District capital, Tobelo. Population of 3,680. Christian majority (71.9%), followed by Muslims (26.1%). Multi-ethnic population includes Tobelo, Galela, Tobaru, Java, Buton, and Chinese. Had facilities of elementary to high schools, Puskesmas, mosques, churches and government offices, some of them were damaged during the conflict and not rehabilitated, some of them are running in a poor condition. Village administrative structure headed by Christian; staff is evenly divided between Christian and Muslim. Main livelihood farming, coconuts and vegetables.
	Gorua	4 km. outside the district capital. Population of 2,962 is made of Tobelo and Galela people; Muslim majority (82.5%) and Christian minority (17.5%). Inter-religious marriages are common. A Muslim stronghold during the conflict. Heavy damage to houses; public infrastructure was not rehabilitated. Informal administrative structure is dominated by Tobelo ethnic group. All 4 hamlet heads are Muslim. All village administration staff are male. Public facilities in this village: elementary, secondary and high schools, market and ferry port. Farming is primary means of living.
South Tobelo	Gamhoku	Lies within South Tobelo, with population of 1,110 (Tobelo, Loloda and Sangir ethnics). Christian majority (86.9%) and Muslim minority (13.1%). Village administrative structure is dominated by Christian males. 350 IDPs. Some damage to houses and mosques during the conflict, but now no evidence of ethnic tension. Mosque, church, and elementary schools are operating. Farming and fishing primary means of living.
	Tobe	10-15 km. outside district capital. Population of 2,982, with equal number of Muslims (50.8%) and Christians (49.2%). Heterogeneous community (Tobelo, Modole, Kao, Tobaru, Galela, Loloda, and Sangir). Village administrative structure is multi-ethnic, all male. 64 IDP households. Mosque, church, government offices and schools were destroyed during conflict, now only elementary schools and village medical care (*Polindes*) available. Farming and fishing primary livelihoods.

Source: North Maluku Access to Justice Assessment Team Reports

Of the four subdistricts, the assessment team selected South Ternate and Moti. South Ternate is an ethnically diversecity with a Muslim majority. It did not suffer any physical damage from conflict, but was refuge to large numbers of IDPs; IDPs have been provided adequate support and some are integrated into society. Moti island – which can only be reached by an hour-long sea voyage – was unaffected by conflict. The population stands at 4,536, all are Muslims and of Tidore and Makian ethnicity. Over 95 percent of Moti subdistrict residents are farmers and fishermen and all are *Raskin* (Rice for the Poor) recipients and health card holders. There is no distinct community tradition or custom. The villages of Kayumerah / Sasa (South Ternate subdistrict) and Moti Kota/ Takofi (Moti subdistrict) have been selected for their contrasting conflict-related features and socio-economic characteristics.

2. JUSTICE FROM THE PERSPECTIVE OF THE DISADVANTAGED

2.1 WHO ARE THE DISADVANTAGED?

The research team has identified several disadvantaged groups in each assessed village and has selected one considered

TABLE 23: OVERVIEW OF ASSESSMENT LOCATIONS –TERNATE CITY DISTRICT

Subdistrict	Village	Characteristic
South Ternate	Kayu Merah	Urban village located in the district capital. Population of 2,292, various ethnicities. Muslim majority followed by Protestant, Catholics and Buddhists. Little damage to property during conflict; government offices, schools and hospitals are all operational. After the conflict, many Muslim refugees of various ethnic groups arrived and set up small businesses. About 30% of the labour force are traders, 30% are civil servants and 30% work in the private sector; the rest are military, farmers, sailors and labourers.
	Sasa	Urban village is located 8 km. from the district capital, with a population of 1,753 made of various ethnicities. Population is predominantly Muslim. Refugees from Halmahera fled to this village. No damage to public facilities, which include kindergarten and Muslim elementary, junior and senior high schools. Chief occupations: fishing, day labour and trade.
Moti	Moti Kota	Coastal village located in the subdistrict capital accessible by boat, with a population of 1,149. Ethnically homogenous, alll Muslims. No IDPs, not affected by conflict. Government facilities: elementary, junior and senior high schools, *Puskesmas* and market. Farming and fishing by traditional means are sources of livelihood.
	Takofi	Village with a population of 778, majority Muslim. Tidore and Makian ethnicity. There was no destruction during the conflict, however refugees from Malifut chose this as a haven, with no subsequent conflict escalation. The village has elementary and junior high schools, a village office and *Puskesmas* without doctor. Chief occupations: farming and fishing.

Source: North Maluku Access to Justice Assessment Team Reports

'most disadvantaged' for further study. Disadvantaged groups do not generally enjoy fulfilment of basic rights such as health care, education and adequate housing. These groups are not able to progress and benefit from social services accessible by others in the population due to deliberate or indirect discrimination or exclusion bythe government and society. Women have been generally identified as disadvantaged because they exist in a predominantly patriarchal and exploitative social environment, have experienced gender discrimination and economic disempowerment, and are typically unable to progress in their communities.

Disadvantaged groups selected for further study are usually low in socio-economic status, are less educated and have transient means of livelihood. These groups face intimidation and discrimination when they seek their rights. They have little access to legal services and administrative information, have not benefited from sustainable government assistance anddo not participate in decision-making affecting their futures. Table 24 provides a summary of those selected in North Maluku as most disadvantaged and the basis for their selection.

2.2 COMMUNITY PERCEPTIONS OF JUSTICE

The communities in the assessed villages identified justice as "equality before the law",[690] however the prevailing belief is that justice is an unattainable commodity for the poor. Women in Moti Kota compared justice to a glass half full" or a complately broken

690 Kayu Merah village FGD, April 2005; youth FGD, Sasa village, 6 April 2005 and Youth FGD, Takofi village, April 2005.

TABLE 24: SELECTED DISADVANTAGED GROUPS – NORTH MALUKU PROVINCE

Village	Disadvantaged Groups (Bold = Selected Group)	Group Experience	Key Justice Issues
TERNATE DISTRICT			
Kayu Merah	■ **Fishing Community** ■ Widows ■ Labourers	The fishermen make an uncertain living from traditional fishing methods. They have yet to receive sustainable aid from the district government to modernize their fishing methods. Government assistance for health (*Dinkes Program Kartu Sehat*) does not reach everyone who needs it; a similar problem is reported regarding education subsidy assistance. 27 households.	Access to government service and assistance
Sasa	■ **Sharecrop farmers** ■ Poor Children	Farmers do not possess alternative means of livelihood in this village about 5 km. from the provincial capital. Some are domiciled on landowners' property and have no secure parcels of land to grow crops. Children's education suffers because of their parents' uncertain financial status. 70 out of 387 families are *raskin* recipients.	Access to land; Access to government assistance
Moti Kota	■ **Female Fishmongers** ■ IDPs From Halmahera ■ Poor fishermen	In this remote village, *dibo-dibo* women contribute income to 30 households; 19 widows are sole breadwinners. The fishmongers' incomes are low and uncertain—in effect, the women are dependent on the goodwill of others. The women own no property, 70% are poor. Due to their illiteracy and poverty, they are vulnerable to discrimination in health, education and housing matters. Entire population has the right to *Raskin*.	Access to government services and assistance; Gender discrimination
Takofi	■ **Poor Fishmongers** ■ Farmers	In the remote village of 778 farmers and fishermen, 31 poor households that are potential health-card beneficiaries have little or no access to medical care. People often don't understand their rights regarding health-care subsidy procedures; authorities frequently discriminate against them and refuse to give services.	Access to government services and assistance
NORTH HALMAHERA DISTRICT			
Gosoma	■ **Port Laboruers** ■ Wives Labourers	The labourers work in the port; the jobs are transient and lowly paid. Wives of port labourers report frequent quarrels and physical violence by their husbands.	Employment and labour rights; Domestic violence; Health care
Gorua	■ **Internally Displaced Persons (IDPs)**	134 Muslim IDP households and 40 Christian IDP households have yet to return to their homes due to bureaucratic impediments. The IDPs have problems securing subsidized housing, health care and education for their children. This group is socially estranged from the local community.	Post-conflict security and property rights; Access to government services and assistance
Gamhoku	■ **Copra Farmers** ■ Wives and Children of farmers	90% farmers own small plots of land (.5 hectare). Many must supplement income by collecting copra for coconut plantation owners. Although they must put up capital, the copra farmers lack bargaining power with buyers who control market prices; also they have no leverage with creditors. Financial worries fuel domestic tensions and violence.	Employment and labour rights; Access to capital; domestic violence
Tobe	■ **Parents of missing children**	During the 1999 sectarian violence, many Muslim children were separated from their parents, and brought up by Christian families. The biological parents of 15 children have unsuccessfully attempted mediation with these families, but have yet to regain custody and control of their children.	Post-conflict security and human rights

Source: North Maluku Access to Justice Assessment Team Reports

plate".[691] Justice is also equated with honesty, which villagers in Sasa believe is a rarity.[692]

Frequently in FGDs, citizens spoke of justice as something they seek when they attempt to overcome discriminatory government practices in provision of health care services, education and food subsidies. The women in Tobe village equated justice with respect for the rights and property of others, citing the case of missing children, in which sth rights eof the biological parents were disregarded.[693]

These sentiments reflect citizens' collective and consistent experience of social injustice, and their conviction that state institutions which were established to serve the public and improve lives have failed to do so.[694]

2.3 KEY JUSTICE-RELATED ISSUES AFFECTING DISADVANTAGED PEOPLE

Most of the justice-related issues affecting the disadvantaged relate to their economic progress and social welfare. Others specifically relate to post-conflict conditions. These can be grouped into five main issues:

- Access to Government Services and Assistance
- Employment and Labour Rights
- Women and Gender-based Issues
- Access to Land
- Post-Conflict Security, Property and Human Rights

This section will first present the results of a survey of approximately 940 villagers as to what they consider the most pressing issues in their daily life, and then examine in more detail the specific thematic issues raised by respondents in FGDs and interviews during the assessment.

Survey Results

Survey respondents in each of the eight assessment locations in North Maluku were asked to nominate (in order of importance) the three most commonly encountered issues in their village from a list of 20 options. Poverty and education were most frequently nominated as issues numberone and two (see Table 25); criminality was ranked third by all respondents, while women cited public health. Divorce, inheritance issues and (again) public health were othercommonly selected issues.

Many of the justice issues documented by the research team reflect the concerns and problems faced by the rural and urban communities across the two selected districts. Again, most of these issues pertain to citizen's economic progress and social welfare. In a survey conducted of 942 respondents the most frequent socio-economic and justice issues affecting people of Ternate and North Halmahera are poverty (54 percent), education (16 percent), and land disputes between citizens (seven percent), divorce (five percent) and unemployment (three percent).

In Ternate and North Halmahera, 938 respondents cited as significant issues education (35 percent), divorce (14 percent), public health (eight percent), unemploymentand land disputes (seven percent).

691 Women FGD, Moti Kota village, Feb. 2005.
692 Women FGD, 5 April 2005.
693 Women FGD, Tobe village, April 2005.
694 Women FGD, Kayu Merah village, April 2005

TABLE 25: MOST IMPORTANT ISSUES IN ASSESSMENT LOCATIONS – NORTH MALUKU

Rank	Number 1 Issue				Number 2 Issue				Number 3 Issue			
	Global (n = 942)		Women (n = 460)		Global (n = 938)		Women (n = 458)		Global (n = 924)		Women (n = 445)	
1	Poverty	54%	Poverty	61%	Education	35%	Education	30%	Public Health	17%	Public Health	21%
2	Education	16%	Education	23%	Divorce	14%	Divorce	25%	Poverty	16%	Public Health	15%
3	Land Disputes	7%	Divorce	5%	Public Health	8%	Public Health	13%	Public Health	12%	Human Right Violations	12%
4	Divorce	5%	Unemployment	3%	Unemployment	7%	Unemployment	10%	Unemployment	9%	Unemployment	9%
5	Unemployment	3%	Criminality	2%	Land Disputes	7%	Poverty	5%	Land Disputes	7%	Criminality	9%

Source: Access to Justice Survey North Maluku

Global = all survey respondents (male and female)
Women = female survey respondents only

Access to Government Services

In interviews and FGDs, disadvantaged groups identified corruption, collusion and nepotism (KKN- *Korupsi, Kolusi dan Nepotisme*) in local government, as well as inefficient government services as some of the key justice issues affecting their welfare. They believe that corruption and discrimination get in the way of citizens' ability to access state benefits and to pursue a decent living. The involvement of government officials in KKN in the province is well documented – nine cases represent over Rp. 122 billion (around USD 12.2 million) in losses of state funds.[695] Acquittals in many of these cases have led the community to doubt the ability (or desire) of law enforcement authorities to address corruption.[696]

Access to Subsidies: Citizens have consistently conveyed frustration and resignation at the policies and practices of state agencies, which they perceive as discriminatory and inequitable. In Kayu Merah, fishermen are the mainstay of the village's economy. They are concerned that the district government has been slow to provide them subsidies and aid to modernize their fishing methods that are meant to be available through the Economic Development Programme for Coastal Communities from the Provincial Office of Maritime Affairs and Fisheries.[697] The Sasa sharecroppers have expressed frustration with the way the village head distributes 'Rice for the Poor' (*Raskin*), because he does not draw a distinction between needy beneficiaries and others. (The village head explained that he distributes the rice to entire community

695 Some of the recorded cases of corruption in North Maluku are: 1) the Fishing Nets Case involving the Chairperson of the Ternate City Council (state losses of Rp. 775 million or equal to around USD 77,500); 2) 'Champions' CaseÊinvolving 7 members of the district/provincial legislative council (state losses of Rp. 23 billion or equal to around USD 23 million); 3) 'Gama-gate' scandal involving the former Regional Secretary and District Head of West Halmahera District (state losses of Rp. 1.7 billion or equal to around USD 1.7 million); 4)the Case of Inflated Purchase Prices ('Mark-Ups') in the Reforestation Fund involving members of the Provincial Legislative Council (state losses of Rp. 5 billion or equal to around USD 5 million); 4)the Education and Teaching Case involving the Head of the Education Office (state losses of Rp. 1.2 billion or equal to around USD 1.3 million); 5)the Grant Funds Case (state losses of Rp. 1.8 billion or equal to around USD 1.8 million); 6) corruption within the Coordinating Taskforce for Disaster and Refugee Management (state losses of Rp. 15 billion or equal to around USD 15 million); 7)the 'Riol' Case (state losses of Rp. 4 billion or equal to around USD 4 million); 8) the Corruption of Health Funds Case (state losses of Rp. 15 billion or equal to around USD 15 million), and 9) the Civil Emergency Case involving the former Regional Secretary for North Maluku Province (state losses of Rp. 54 billion or equal to around USD 54 million). Source of data: NGO Makuwaje Consortium.

696 For instance, the court delivered an acquittal in the Education and Teaching Case. The Fishing Nets case was heard at the time of writing and the NGO Konsorsium Makuwaje has predicted an acquittal. Three years ago, the NGO Gamalama Corruption Watch alleged police corruption in the illegal use of funds, but the Attorney General only recently started to investigate the allegation. Malut Post, 'Aspirasi, Cermin Reformasi 2004-2005'.

697 FGD for General Groups, Kayu Merah village, 6 February 2005.

to avoid resentment and feelings of preferential treatment).[698] In Takofi, women complained that the rice provided through *Raskin* was sometimes unsuitable for consumption.[699]

Access to Health Care and Education: Many entitled to healthcare subsidies do not know why they have to pay for medicine and treatment and observed that non-subsidized patients have received preferential treatment. In Sasa, some villagers complained to the hospital staff but were warned "Don't fight us".[700] Residents of Takofi village have to travel to Ternate City, which is approximately one hour from Takofi to access the nearest medical centre as their local clinic is inadequately staffed.[701] Less than half are registered or *Askes* benefits, though many more are eligible. Participants explained that they have to pay Rp. 20,000 (around USD 2) per prescription, making medicine unaffordable for most; inequitable distribution of mosquito netting meant inadequate protection against malaria.[702] The Gosoma port labourers are no longer entitled to free prescriptions and although the workers' union raised this issue with management, they have yet to achieve a solution.[703] Women in Sasa note that the subsidised health-care service discriminates against health card holders.[704]

Employment and Labour Rights

In Gosoma village, port labourers wages are low – Rp. 20,000 or around 2 US dollars a day. The labourers say employers do not respect their rights and intimidate those who challenge management decisions.This group has no way to raise their grievances or to seek redress. Despite contributions to health care and insurance, they have difficulty claiming reimbursement from their employers. They are unable to resolve their dissatisfaction with management as they have little bargaining power. Men complained of corrupt and unethical work management practices; some initiated a petition to report the matter to police.[705] Female fishmongers of Moti Kota face discrimination by law enforcement officers in Ternate City when they try to sell their fish (see Box 28). In Sasa, sharecroppers work for plantation owners. Although they must put up capital, the copra farmers lack bargaining power with buyers who control market prices; also they have no leverage with creditors. In Tobe village, the chain-saw workers cultivate the forests and sell their wood products in the city market. They complained that police officers extort unauthorized fees of up to Rp. 200,000 (around USD 20), threatening to confiscate their wood products if the men do not comply. The workers have done nothing about the exorbitant payoffs. They fear the police and do not know of the relevant justice processes that could protect them.[706]

Women and Gender-Based Issues

The most frequently documented issues affecting women are poverty, domestic violence and deprivation of matrimonial entitlements. These issues have been catalogued in most women's FGD convened in the eight villages and in most of the

698 This is known as Raskin (Beras Miskin).

699 Interview with female head of household, Takofi, 22 January 2005.

700 FGD, Sasa village, 19 February 2005.

701 A resident explained that he had brought a pregnant relative to the village clinic but was advised to proceed to Ternate City for delivery, as the clinic had no facilities. The midwife agreed to reimburse the transport and treatment costs but that promise did not materialise. The resident refused to complain to the District Health Department because of lack of faith in the public service system.

702 Takofi Public FGD, 13 February 2005.

703 Men FGD, Gosoma village, 20 April 2005.

704 Women FGD, Sasa, 5 April 2005.

705 705Men FGD, Gosoma village, 20 April 2005

706 Public FGD, Togoliua village, 6 Feb 2005.

interviews. It is probable that issues relating to poverty, educational opportunities and domestic violence are part of a widespread pattern of discrimination and abuse experienced by women outside the assessed localities.[707] Here, as elsewhere in Indonesia the number of women heads of households has increased, especially in conflict areas. Most women live in extreme poverty, with daily incomes of less than one dollar a day (below the national poverty level).[708]

In Moti Kota, the *dibo-dibo* women – many of whom are the sole support for their families – are the most disadvantaged of the women groups assessed. They experience gender-based discrimination, social estrangement, and economic disempowerment and yet have no capacity to progress.

Domestic violence was explicitly mentioned as a problem in Kayu Merah; Sasa; Moti Kota; Gosoma; Gorua; Ghamoku and Tobe. The wives of port labourers in Gosoma spoke of the frequent domestic disputes and, at times, physical violence by their husbands – a probable manifestation of anxiety and frustration with their financial difficulties.[709]

BOX 28: THE FEMALE FISHMONGERS OF MOTI KOTA

During fishing season, the female fishmongers of Moti Kota village walk for many miles to the city market to sell fish. Widowed and with children to feed, they see the market as their only means of livelihood. These women are often harassed by security personnel who chase them away and damage their stalls. Fear of the authorities leaves these women without recourse or remedy. They believe that silence and acceptance are their only options.

Source: Women FGD, Moti Kota, 14 February 2005

In Ternate City, 154 women filed divorce petitions in 2004; most based the grounds on domestic violence.[710]

Land Rights

The complexities of land rights and titles impact many citizens, as approximately 56 percent of the population work in the agricultural sector in North Maluku.[711] Land-related issues dominated every FGD conducted at Sasa village; they were also mentioned in Gorua and Gosoma. A significant number of villagers in the assessed localities depend on land as their only means of livelihood. Land disputes are rife because parcels of lands have not been legally certified by the authorities, and tenants and land users do not possess certificates to prove ownership and other entitlements, as illustrated in Box 29.[712]

Unresolved Conflict-Related Issues

For many years, one of the most pressing post-conflict challenges facing North Maluku is the presence of thousands of IDPs across cities and villages. At one point, 250,000 people – about a third of the population had been displaced as a result of the sectarian violence in North Maluku. The key justie issues affecting IDPs are distinct from other disadvantaged groups as they are borne out of the violence and destruction of the conflict. An estimated 15,500 IDPs in North Maluku still have not been resettled or returned to their villages in the province, and more wait in other provinces;[713] many have lost their homes and property. (In the assessment sites, approximately 64 IDP families from Ternate had not returned and 40 IDP families from Morotai remain in Togoliua at the

707 Women FGD, Kayu Merah, 18 February 2005, FGD, Sasa ,21 February 2005, Women (Family Heads/Cake Sellers) FGD, Moti Kota, 24 February 2005, Women FGD, Gosoma, 20 February 2005; Women FGD Gorua, 21 February 2005; Interview with Village Head, Gamhoku, 13 January 2005 and FGD, Gamhoku, 21 February 2005. and Women FGD, Togoliua, 19 February 2005.

708 *Seknas Pekka* (the National Secretariat of the Women Heads of Households Empowerment Program), 2004.

709 Women FGD, Gosoma village 20 April 2005.

710 Interview with court personnel, Ternate Religious Court, 17 May 2005.

711 Data from P4B BPS Survey in North Maluku Province 2004.

712 FGD, Kayu Merah, 6 Feb. 2005; FGD for General Groups and Staff at Subdistrict Office (Pegawai Tidak Tetap/PTT), Moti Kota, 14 Feb. 2005

713 'Number of IDPs in North Maluku as of September 2005', CARDI, December 2005.

BOX 29 : THE PROBLEM WITH LAND TITLE NO. 52

Citizen A owned a piece of land in Sasa village. The certificate of ownership was held by Citizen B and Citizen C held a power of attorney to manage the land. The land was apportioned and sold to 20 tenants residing on the land. The tenants could not obtain certificates of land ownership because the National Agency for Land Affairs delayed issuing the certificates when the tenants refused to pay the high administrative fees. Citizen B decided to sell the land, without notice. The tenants consulted the village head for a resolution.

The village head held a musyawarah with Citizens A, B and C and directed that Citizen B pay the tenants a just compensation for land sold and to refrain from selling other parcels of the land. He issued an ultimatum that, in the event of Citizen B's default; he would refer the matter to the District Court.

Citizen B failed to comply and the matter was referred to the police and classified as a cheating case. The Public Prosecutor agreed to issue an indictment against Citizen B. The District Court judge agreed to hear the matter but commented that the procedure was incorrect, that it was a civil case and not a criminal matter and the police should not have been involved.

Source: Interview with Village Head, Sasa, 15 January 2005

beginning of 2005.)[714] Some IDPs reside in cramped spaces on private land and have to pay rent, and others are housed in camps. There are widespread allegations of corruption in the management of funds for the IDP program.[715] For instance, IDPs from Ambon fled to Kayu Merah village in 1999 during the sectarian violence. Three years after their arrival, the North Maluku authorities have yet to register them.[716] The absence of coordinated aid efforts has also aggravated their situation. Some IDPs who have resettled in Gorua village have not received sufficient subsidy to rebuild destroyed homes.[717]

IDPs' means of livelihood are uncertain: men are generally unemployed or work as *ojek* drivers[718] or day labourers, women take in laundry and sell cooked food. Others farm on small parcels of land that have been damaged during the conflict.[719]

In some of the assessed villages, 70 to 80 percent of youths are unemployed because of the conflict.[720] In North Halmahera, youths worked at a banana factory in Galela before it was destroyed; now they work as labourers or *ojek* drivers, their incomes uncertain. Youths from Gosoma, Gorua and Tobe villages are dissatisfied with civil service recruitment practices, claiming that there is bribery and a system of patronage. Their discontentment and restlessness find expression in alcohol abuse, disorderly behaviour and fights.[721]

During the conflict, many children from Tobe were 'held' by families on the opposing side of the conflict. Most were returned to their families, but about 15 Muslim children remained in the custody of the Christian families and were raised as Christians. There were attempts to resolve this matter through various informal means and channels but without success (see Box 7 in Part 2).

714 Interview with village chief, Tobe, 5 February 2005.

715 Interview with the village chief, Gamhoku, 13 January 2005, interview with IDP, Gamhoku, 14 January 2005 and FGD with IDPs, Balai Desa, 21 February 2004; interview with hamlet chief, Togoliua, 5 February 2005. See also 'Enhancing local governance through decentralization policy in managing conflict-affected regions in Indonesia', a paper presented by Dr. Suprayoga Hadi, at the International Conference on Engaging Communities; UNDESA/UNCRD Workshop on Decentralization: Poverty Reduction, Empowerment and Participation, Brisbane, Australia,14-17 August, 2005.

716 'Data identification on returning refugees', North Maluku Social Services Agency, 2003, and interview with a refugee in Ambon City, 31 January 2005.

717 Women FGD, Gorua village, 28 April 2005

718 Ojek drivers are usually unlicensed motorcycle drivers who transport passengers for a fee.

719 Interview with IDP from Oba, refugee camp, 6 Feb. 2005. See also Report on IDPs in North Halmahera, Office of Social Affairs, 2003

720 Interview with Village Secretary, Gamhoku village, 13 January 2005 and with police personnel, Gamsungi, 5 February 2005.

721 Interview with an ojek driver, Gorua village, 6 February 2005; police personnel, Gamsungi, 5 February 2005 and FGD participants, Balai village (Gamhoku), 21 February 2005.

BOX 30 : 'I WANT TO BE A POLICE OFFICER...'

The 1999 conflict brought with it unemployment and restlessness among educated youths; many dream of joining the national police force as a way out. Recruitment, however, proves challenging. Youths from the districts routinely fail to qualify as opposed to youths from outside the district. IDPs charge that nepotism and corruption fuel the recruitment process and exchanges of millions of Rupiah dictate selection. Bribery of civil service personnel, however common, does not guarantee success. Some who paid still failed to get a place in the civil service, and lost everything. Even injustice costs something.

Source: IDPs FGD, Gosoma, February 2005

3. COMMUNITY AWARNESS OF RIGHTS

3.1 COMMUNITY AWARENESS OF RIGHTS AND OPTIONS

Citizens' general knowledge about legal processes that create and protect their rights is limited. About 90 percent of the 978 people surveyed have never used either formal or informal legal system. Although 75 percent were generally aware of the term *undang-undang* (laws/legis-lation), only 24 percent understood that *Perda* (regional legislation) is created by DPRD and the governor, as opposed to 41 percent who did not know. The majority surveyed (49 percent) knew that legislation affects citizens' daily lives, although 30 percent did not. Some citizens have used this knowledge. For instance, the Gamhoku copra farmers went to the DPRD to discuss their lack of bargaining power in an inequitable market system, because the DPRD was in a position to pass legislation that could assist them. The approach, however, yielded no results.[722]

Similarly, citizens have virtually no knowledge of specific laws affecting individual and community rights. However, many are aware of their rights in general terms. The North Maluku assessment team found many instances in which the poor and disadvantaged have taken action, demonstrating a general awareness of their rights in a wide range of areas, including labour, health care, land rights and spousal abuse.

Often, there is little or no response to these complaints. In some instances, citizens continue to push for their rights, exhibiting an understanding of the options they have in the formal and informal legal systems. For example, in Gosoma village, port labourers recounted an incident in which an officer from the *Tenaga Kerja Bongkar Muat/TKBM (The Association of Port Labourers for Loading and Unloading* which represents labourers who have registered at the Port Authority, stole Rp. 24 million (around USD 2400) by forging the fictitious purchase of gas masks for the labourers. Several workers raised the matter with the subdistrict head (*Camat*), but nothing was done. Instead, port management threatened the labourers and withheld their salary for a week. Undeterred, some workers initiated a petition to report the matter to the police but failed to garner full support, because many workers feared losing their jobs. Currently, these labourers are resigned to working in an environment where there is little opportunity for redress.[723] The labourers did, however, achieve some results from another body: the Regional Parliament (DPRD) agreed to investigate a complaint of conflict of interest the labourers made concerning a labour management board member who was concurrently holding a government post. Because of their collective

722 Public FGD, Gamhoku, 7 Feb. 2005, interviews with an IDP, 13 Jan. 2005 and a farmer, 21 Feb. 2005, Gamhoku.
723 Men FGD, Gosoma, 20 April 2005.

efforts and sustained pressure on the DPRD, the member was compelled to withdraw from the board.[724]

In Moti Kota, a fisherman reported corruption involving the distribution of government benefits. The *Dinas Perikanan Kota* (Office of Fisheries, Ternate) had distributed aid in the form of motorized fishing boats, intended for fishermen who did not own boats. The respondent claimed that one beneficiary was a farmer – a relative of the *lurah* – who went on to sell the boat. The community knew about the fraud, but feared the *Lurah* and did not protest. One fisherman, however, reported the incident to *Dinas Perikanan*, which offered him compensation in the form of a motor – an offer the fisherman rejected, since he didn't own a boat. The respondent is now gathering evidence and plans to pursue the matter further.[725]

Often, however, citizens are at a loss for what to do when their initial attempts to achieve justice fail. Also, because of citizens' lack of knowledge of the law (and the lack of qualified people who might explain the law to them), they frequently do not understand the full extent of their rights. This can harm their chances of success when they are involved in complex disputes, such as those involving property and land titles. The following are some examples:

- The **IDPs in Gorua** claim that the Office of Social Affairs manipulated data, falsely registering IDPs as having returned to their places of origin. As a result, the IDPs – 184 Muslim and 40 Christian households cannot collect their entitlements such as health cards and BBR. Despite persistent queries, the Office of Social Affairs (*Dinas Social*, Dinsos) has failed to give useful information regarding IDPs' status or to set a specific date for StageII of the return procedure.[726]
- In **Gamahoku,** the **copra farmers** have attempted to discuss with DPRD their lack bargaining power in an inequitable market system. The farmers believed that DPRD members are public representatives who are in a position to pass legislation to assist them, but their efforts have not been fruitful.[727]
- In **Sasa village, sharecroppers** lost farmland they traditionally used when the North Maluku DPRD claimed the land and forwarded a certificate of entitlement to the village head (*Lurah)*.[728] The farmers approached the village head, but gained no support, as he planned to convert the and for public use. Although the farmers are resigned to losing their means of livelihood and have left the matter to the district government (*Pemkot),* they told the assessment team that they hope the authorities will extend some remedial assistance to them.The situation is unlikely to be resolved in the farmers' favour, as they are not legally entitled to the land.

Further, while it may be possible to equate an action taken to defend a right with awareness of that right (at least in general terms), the reverse cannot necessarily be said in cases of inaction and passivity. In some situations,citizens know that there are forums to resolve grievances, and are aware of at least some of their choices, but are constrained from taking action due to fear of the authorities, or various economic or

724 Men FGD, Gosoma, 20 April 2005.
725 Respondent, Moti Kota, 26 April 2005.
726 Men FGD Gorua 28 April 2005.
727 Public FGD, Gamhoku, 7 Feb. 2005; interview with IDP and farmer on 13 Jan. and 21 Feb. 2005, respectively, Gamhoku.
728 The Halbar Pemda has explained that the land is to fund the transfer of the North Halmahera new capital to Jailolo.

social reasons. The following examples are illustrative:

- **Duty-bearer complicity:** The *dibo-dido* (female fishmongers) of Moti Kota are frequently harassed in the market by *Kamtib* law enforcement officers, who damage their stalls. Fearing the authorities, the women see no recourse or remedy; silence and acceptance are their only options. Tobe wood cutters complained that police officers extort unauthorized 'fees' of up to Rp. 200,000 (around USD 20), threatening to confiscate their wood products if the men do not comply. The workers have not reported the exorbitant pay offs, because they fear the police and do not know of the relevant justice processes that could protect them.[729]
- **Weak bargaining positions:** As mentioned earlier, most Gosoma port labourers shied away from reporting the corrupt practices of a TKBM officer to the police for fear of losing their jobs.
- **Personal relationships:** The Sasa sharecroppers have expressed frustration at the policies of the *Raskin* programme, which they viewas discriminatory and unfair. According to them, the distribution policy does not draw a distinction between needy beneficiaries and those who can afford necessities. These farmers have remained silent to avoid 'a misunderstanding' with the *lurah.* For his part, the village head believes that preferential treatment would increase resentment and so distributes rice to his entire population.[730]
- **Social mores:** Some IDPs who have resettled in Gorua village have not received sufficient subsidy to rebuild destroyed homes. Some attempted to resolve the issue with village authorities, with little success. Others chose to do nothing as they considered themselves more fortunate than those who had not received any subsidies.[731]
- **Expense:** The Kayu Merah fishing community is dissatisfied with the health-care subsidy (*Dinkes Program Kartu Sehat*), which only covers one member of a household and is not transferable. Residents decided not to raise the matter with the Ternate Department of Health because of potential delays; they believed their time was better utilized making a living.[732]
- **Shame or embarrassment:** In every FGD with women, participants said that although they would go to the police to report an abusive situation, they would not proceed if their husbands signed a 'Letter of Agreement' with the police, pledging restraint from future violence.The wives of port labourers in Gosoma who spoke of spousal abuse said that, unless their lives were threatened, they would not seek to resolve their problems outside the family sphere or, at most, the *lurah* to avoid embarrassment and costs.[733]
- **Lack of faith in authorities:** In Takofi village, a resident explained that he had brought a pregnant relative to the village clinic but was advised to proceed to Ternate City for delivery, as the clinic had no facilities. The

729 Public FGD, Togoliua village, 6 Feb. 2005.
730 Public FGD, Desa Sasa, 4 April 2005.
731 Women FGD, Gorua village, 28 April 2005.
732 Fisherman, Male FGD, Kayu Merah, 30 March 2005.
733 Women FGD, Gosoma 20 April 2005.

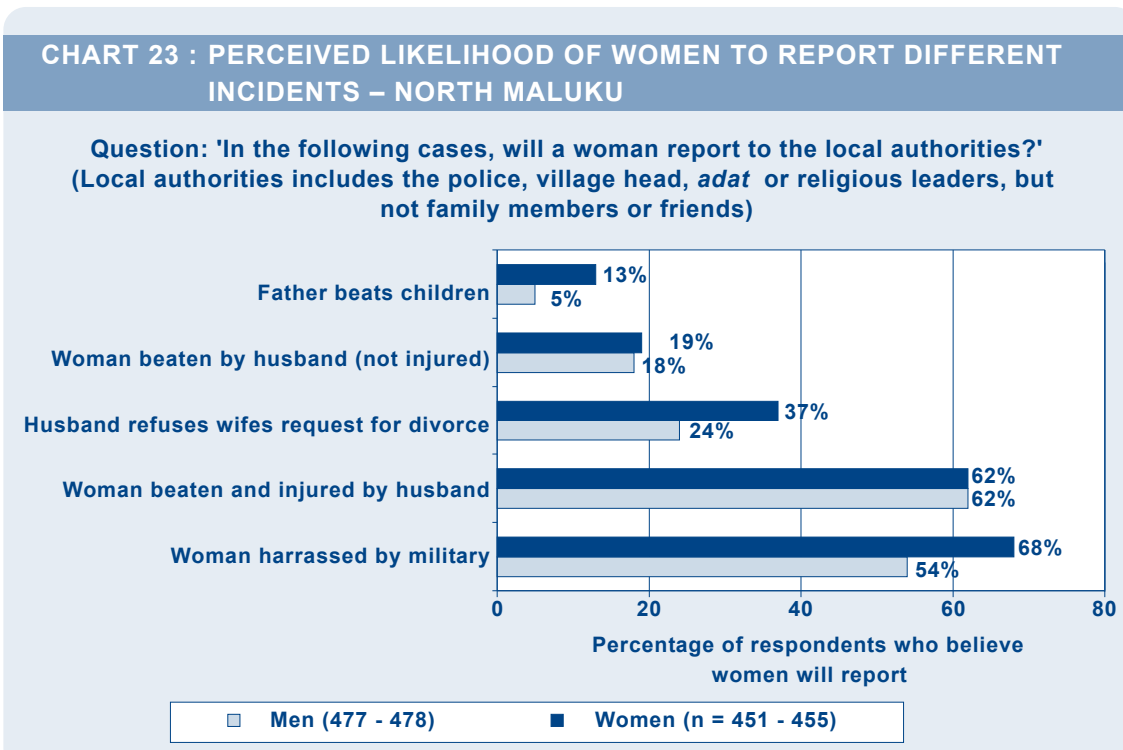
midwife agreed to reimburse the transport and treatment costs but she never did. The resident refused to complain to the district health department because of lack of faith in the public service system.

Survey results from North Maluku provide an indication of women's awareness of their rights in a range of situations. 62 percent of women respondents believe they would report if they were beaten and injured by their husband, and 68percent would do so if they were harassed by the military, but only 19 percent would report if they were beaten but not injured by their husbands. Just over a third would report if their husbands failed to give them a divorce (see Chart 23).

Again, it is important to note that while the perceived likelihood of reporting an incident is not a direct measure of awareness of rights, it does show that those who think they would report (at a minimum) believe that they have been wronged in some way and there is something they can do about it, even if they are not aware of their actual rights. The number of women who are broadly aware of their rights could be higher than indicated by the survey, but they may have other reasons for not reporting, such as embarrassment or a sense of futility.

As in other provincial assessments, men consistently rate women as lesslikely to report an incident than do women themselves *except* in the case of a woman being beaten and injured by her husband, when men and women are equal at 62 percent. Further, the fact that very few people would report the beating of children (13 percent women, 5 percent men) would seem to indicate that the practice is vastly more socially acceptable than wife beating.

CHART 23 : PERCEIVED LIKELIHOOD OF WOMEN TO REPORT DIFFERENT INCIDENTS – NORTH MALUKU



Source: Access to Justice Survey North Maluku

The qualitative research shows that some women have equipped themselves with skills and knowledge to access the legal process. Across the assessed villages in North Maluku, women have used the formal legal system such as the police and religious courts to fight for their rights and remove themselves from an exploitative social/family structure (see Table 26).

3.2 RAISING AWARENESS THROUGH LEGAL AID AND COMMUNITY OUTREACH

The following is a brief overview of currently existing services in Ternate City and North Halmahera.

Lawyers

At the time of the assessment, there were about 25 lawyers[734] practicing in 8 districts (including Ternate City and North Halmahera).[735] Citizens generally have to travel to the cities to access lawyers. Citizens' access to legal services is severely restricted because of high legal costs: Fees may range from Rp. 50,000 to Rp. 5 million (around USD 5 to USD 500), excluding operational costs such as court filing fees of Rp. 300,000 to Rp. 1 million (around USD 30 to USD 100) and limited knowledge on how to commence legal action.[736] Lawyers do not charge a standard fee, and *pro bono* work, is infrequent because of the financial

TABLE 26 : GENDER-RELATED JUSTICE ISSUES AND THEIR RESOLUTION AND OUTCOME

Village	Description of Dispute/Situation	Resolutiopn and outcome
Sasa	A husband physically abused his wife when she objected to his second marriage. Despite repeated threats and abuse, she refused to withdraw her police complaint.	The wife reported her husband's infidelity to the police. She then filed for divorce at the Ternate Religious Court and is determined to complete the process.
Moti Kota	A man rejected a paternity claim by his lover and refused to be responsible.	The woman filed a complaint with the village customary institution and the religious leader compelled the man to marry her. Soon he left her and she was left without any enforceable remedies as his whereabouts were unknown.
Takofi	A husband committed adultery and took a second wife in another village. In response, the wife's family assaulted the husband, who reported the matter to the police.	The judge rewarded her efforts with a divorce order, custody of the children and all assets to compensate for her husband's failure to provide child maintenance.
Ghamoku	Ibu Min is a domestic worker and a mother of four. Her husband has abandoned her. Although unfamiliar with the legal system, she visited the Religious Court, met the registrar and requested information on divorce proceedings. She studied the procedure and decided to file a divorce petition. Although apprehensive of the legal system and appearing before a judge, she represented herself during the hearing.	The police complaint was resolved amicably. The wife subsequently filed for divorce at the Ternate Religious Court.

Source: Women FGDs in Sasa, 19 Feb. 2005; Moti Kota, 14 Feb. 2005; Takofi village, 23 Feb. 2005; interview with a disadvantaged woman, Gamhoku, 2005

734 Lawyers or advocates (*pengacara*) are litigation lawyers in private practice with formal legal training (see Law No. 18/2003). Legal consultants (*konsultan hukum)* do not generally practise litigation but offer specialized legal advice. In North Maluku, advocates are organized in professional associations such as the Indonesian Association of Advocates.

735 Interviews with an advocate at Desa Gamsungi, 19 Feb. 2005 and an advocate at Kampung Pisang Ternate, 7 April 2005.

736 Public FGD Gosoma, 8 February 2005.

disincentives. According to the Director of the Indonesian Bar Association (AAI), lawyers do not possess sufficient resources to offer legal aid and do not receive timely payments for services rendered.[737] In fact, most local lawyers are not willing to work outside the large cities. The average caseload of advocates indicates that citizens do not frequently engage lawyers' services. In Tobelo subdistrict the typical annual casetload of an advocate includes a few criminal cases (assault, rape, corruption) and one or two civil cases a year (typically land disputes).

Legal Aid

The expense of engaging a private lawyer means that access to legal aid is of vital importance to poor and disadvantaged citizens should they want to resolve a dispute or seek to enforce their rights through the formal legal system. In North Maluku, 64 percent of respondents admitted they do not understand court procedures.[738] Of 886 citizens surveyed, 95 percent wanted representatives from organizations to visit their communities to discuss 'administration of justice' matters. Their desires are likely to be left unmet: There is no official legal aid institute, either sponsored by the state or NGOs in North Maluku, however Khairun University provides some legal aid assistance to the community through the Centre of Legal Aid Assistance.

Legal practitioners on both sides of the bench acknowledge that citizens' access to legal aid should be reinforced, and that, concurrently, legal aid facilities in the province require strengthening.[739] The research team has concluded that in North Halmahera, the public has not fully benefited from legal advocacy due to lack of NGOs and legal aid programmes. Apart from the DPRD Commissions discussed below, there are few legal aid facilities or NGOs that advocate citizens' rights, including legal rights, although there are about five national and international NGOs in the region. Following is a brief discussion of what the AAI director calls 'incidental legal aid' currently available in North Maluku.

State-Sponsored Legal Aid

The provincial courts offer legal aid for civil cases (*Prodeo)* [740] and criminal cases (Art 56 KUHAP).[741] In practice, however, it is difficult to define the eligibility criteria. A judge explained that he might have to examine an applicant's appearance or speak to the applicant's family members for proof of indigence. Court officials have indicated that it is, in reality, a situation of 'no money, no case'.[742] They believe that the public's avoidance of the courts stems from a lack of knowledge of their rights, in particular of

BOX 31: STILL WAITING FOR LEGAL AID IN NORTH MALUKU

North Maluku needs a sustainable and well-funded legal aid facility. Thus far, we have to work with 'incidental' legal aid, which does not fully benefit the public. Our citizens remain ignorant of their rights because of lack of legal facilities to advise and educate them. A legal aid institute will also motivate lawyers to offer their services. I have no doubt it would attract the full support of the lawyers in this region.

Director, Indonesian Association of Advocates (AAI), Ternate City, 13 December 2005

737 Interview, director of AAI, Ternate City, 13 December 2005.

738 N=213

739 Interview with Ternate Religious Court judge, Ternate City, 12 Dec. 2005.

740 *Prodeo* originates from a Dutch law i.e. articles 237- 242, HIR (*Herziene Indonesisch Regiement*) that allows the court to waive administrative fees for indigent litigants. An applicant requires a letter from the Village Head certifying indigence and the court has the discretion to provide or refuse legal aid.

741 *KUHAP* is the acronym for *Kitab Undang Undang Hukum Acara Pidana* (Criminal Procedure Code). According to Art 56 of KUHAP, an accused person who faces minimum imprisonment of five years' or more is entitled to free legal representation.

742 Interview with court personnel, Ternate Religious Court, 17 May 2005.

Prodeo, and perceived complexity of judicial procedures.[743] For instance, two litigants applied for *Prodeo* only after a judge had advised them of the facility.[744] Local government funding for legal aid has been irregular. Due to the reorganization of the judiciary pursuant to the 'one roof' legislative amendments, the Ministry of Law and Human Rights no longer allocates to courts the usual budget of Rp. 400,000 (around USD 40) per case for *pro bono* work. This has essentially stopped payment for legal aid, since according to a member of DPRD Commission A (Ternate City), there has been no mandatory budget allocation for court legal aid.[745]

Advocacy and Community Outreach

Since the reform era, some **universities and NGOs** have advocated against social injustices by educating the community on their rights and lawful entitlements. These activities sometimes occur in an interactive dialogue forum with police, prosecutors and judicial staff on issues such as law enforcement, human rights and public interest cases.[746] In Ternate, there is an active NGO movement involved in advocacy and handling critical citizens' issues; in Tobelo, despite the presence of five national and international NGOs, only one (*Saro Nofero*) is involved in justice related activities. Some NGOs represent and mediate on behalf of the socially disadvantaged, and have facilitated meetings with regional officials to resolve issues such as repatriation of IDPs.

Following is a brief description of the active NGOs in the province:

The Legal Consultation Unit, Khairun University dispenses free legal advice but avoids outreach activities due to financial constraints.

***Daulat Perempuan Maluku Utara* (Daurmala)** was established to advocate for the rights of women, including the protection of commercial sex workers. Daurmala and other NGOs have been enlisted by the regional government to assist the police to support victims of sexual violence during investigations and trial proceedings. Pursuant to Law No. 23/2004 on the Elimination of Domestic Violence, the police must now offer specific support services to these victims.[747]

The Women's Centre is actively involved in advocating women's rights and encouraging their participation in social and political life.

Saro Nofero seeks to create legal awareness and enhance capacity. To this end, the NGO has developed community awareness programs regarding legal issues through the community college. The community college has three sections: Village Research and Development Centre (*Pusat Pengkajian Latihan Penembangan Pedesan*); a credit union, which has about 600 members, and a polytechnic for community development, which is currently running a pilot program in South Tobelo District in capacity development of the Village Council (BPD).[748]

Reconciliation teams such as Team 13 have been established at the subdistrict levels. Team 13 plays an important role in the return of IDPs and reconciliation among previously warring communities and villages.

743 Interview with staff of Ternate District Court, 10 May 2005.
744 Interview with court personnel, Tobelo District Court, 13 Jan. 2005.
745 Interview with judges at the Ternate Religious Court and Ternate District Court, 12 Dec 2005; interview with a member of DPRD Commission A, Ternate City, 13 Dec. 2005.
746 Interview with a human rights activist, NGO *Perumnas,* Ternate, 5 April 2005.
747 Interview with Ternate District Court personnel, 10 May 2005.
748 Interview with Director of Yayasan Sanro, Wari, 27 April 2005.

It has effectively worked within the cultural traditions of the community.[749] However, it does not represent all sectors of society such as women and has experienced declining funds and support from the military and government.

The public sector also has some outreach programs:

Ministry of Law and Human Rights: Prior to the 'one roof' reorganization, the public benefited from some outreach programmes on legal issues, ranging from matrimonial matters to crime, organized by the Regional Office of Law and Human Rights Regional Office.

Tobelo District Prosecution Office organizes outreach programs to raise public awareness of the law and legal process. Due to insufficient human and financial resources, it has conducted outreach in only seven of the 174 villages within its jurisdiction.[750] The Ternate District Prosecution Office has organized community outreach programs in subdistricts and villages, covering topics such as illegal logging and narcotics, which are significant problems in the region.[751] According to the director of the AAI, many lawyers and bar associations are struggling to pay for further legal education for themselves, and are financially constrained to participate in community outreach programs.[752]

Moti Kota Health Department: According to a health care officer in Moti Kota, the health department and an NGO have organized outreach programs to inform the public about their entitlements.[753]

P3NTR (*Petugas Pegawai Pencatat Nikah Talak Rujuk/Marriage Registration Officer)* consists of civil servants who are trained to advise Kayumerah residents on marriage and divorce laws and judicial processes.

The **media** have been active in highlighting matters of public interest such as corruption in the formal legal system. Some journalists have been intimidated and physically threatened after reporting on the corrupt activities of public officials and law enforcement officers.[754]

4. ACCESS TO APPROPRIATE FORUM

Where citizens are sufficiently aware of a breach or non-fulfilment of their rights, a number of possible alternatives are available to them through either the formal or informal justice systems. After briefly outlining the different disputeresolution forums available in the assessment locations, this section considers some of the reasons why citizens choose one system over another and in what circumstances.

4.1 AVAILABLE OPTIONS

Formal Justice System

The main components constituting the formal legal system in North Maluku Province are: the Regional Police, Public Prosecutors Offices, and Courts found in the districts and the provincial level.

The **North Maluku police** structure extends from the provincial capital to the villages. At the provincial level, Regional Police (*Polda*) headquarters is located in the capital, Ternate City. POLDA, which currently has only preparatory status, is meant to implement police

749 Independent Thematic Assessment, July 2004, page 31.
750 Interview with a public prosecutor, Tobelo District, 12 February 2005.
751 Interview with a public prosecutor, Ternate City, December 2005.
752 Interview with Director, AAI, Ternate City, 13 December 2005.
753 Interview with staff of medical clinic, Moti Kota sub-district, 18 April 2005.
754 Interview with representative,Pemred Tabloid Insident , Ternate, 11 June 2005.

functions within the jurisdiction of the Province of North Maluku and has overall administrative authority and control overall law enforcement posts in the province and jurisdiction over the entire province. ('Preparatory status' indicates that the organization is undergoing transition to a 'definitive status' – *induk* – and that it does not as yet have adequate and complete personnel and infrastructure).

District Police (*Polres*) have jurisdiction over assigned district(s). At the lowest level, within each of the regional commands are Sector Police posts (*Polsek*) embracing one or more subdistricts within the regional commands. The *Polsek* is the closest police command (with the exception of outposts) to the villagecommunities. People usually access the nearest police post at the villages or subdistricts. Apart from their core duties in maintaining law and order and initiating criminal investigations, the police often assist citizens in dispute settlement for both criminal and civil matters. According to the Deputy Chief of Police of Ternate City, mediation is one of the key functions of the police.[755] The police work closely with community and village leaders/institutions in case referrals and dispute resolution. The police investigate serious criminal cases such as sexual and violent offences and illegal logging, but routinely return less serious cases to village institutions – such as thefts, domestic disputes and disagreements among neighbours.

The **prosecution service** in North Maluku was established in 2003 and has yet to enjoy full capacity and optimal functioning. An administrative staff of 108 and 38 public prosecutors (with 2 female officers) are assigned to district public prosecution offices in Tobelo and Ternate, and four satellite offices in Ternate city.[756]

Courts: The High Court of North Maluku was established in March 2005 in Sofifi. (Previously, the High Court of Maluku Province had jurisdiction over North Maluku.) There are General Courts and Religious Courts in the two assessed districts.[757] The Tobelo District Court administers four hearing rooms (*tempat sidang*) at the subdistricts.[758] Ternate City is home to the District Court of Ternate and Religious Court of Ternate.[759] The High Court of North Maluku administers these courts and the geographical jurisdiction extends to all subdistricts of Ternate City and West Halmahera.

The High Court and District Courts have jurisdiction to hear criminal and civil cases. The typical case portfolio of the Ternate District Court includes land disputes, sexual offences and robbery. The court also makes special provisions for women and child victims and offenders by coordinating with BISPA/Child Care Office and NGOs. The Religious Court's jurisdiction is restricted to Muslim citizens and non-criminal matters that must be resolved under *Syariah* law.[760] This includes: divorce petitions, marriage applications and other matrimonial matters, and other *Syariah* based claims for inheritance, grant, bequests and alms. The province does not have an Administrative Court; a Labour Court, required under recent legislation, hasyet to be established.[761]

755 Law No. 2/2002 on the Indonesian Police, articles 2, 14-16. Interview, Ternate City, December 2005.

756 Letter from North Maluku High Prosecutor's Office, 25 Feb 2005.

757 The Ternate District and Religious Courts (Ternate City) and Tobelo District Court and Morotai Religious Court (North Halmahera).

758 In South and North Morotai, Kao and Galela subdistricts.

759 The Religious Court deals with the administration of Islamic law. In 2003, it heard a total of 93 divorce cases (Talaq).

760 Law No. 7/1989 on Religious Courts. These courts deal with matters concerning marriage, divorce, inheritance and endowment. They do not implement hudud, the criminal aspects of Shariaah that prescribe punishment such as whipping and stoning to death.

761 Law No. 2 of 2004 on Industrial Disputes Settlement, which requires that an Industrial Relations Court be established in each province.

Informal Justice System

The predominant dispute resolution mechanisms employed at the villages are village administrative institutions and *adat* / traditional justice institutions. The former is usually administered by the village head, his staff and other community leaders. Disputes are routinely resolved using mediation techniques known as *musyawarah (*deliberation by consensus). *Musyawarah* is practised in heterogeneous as well as predominantly *adat* or homogeneous communities. Some villages use traditional justice systems unique to the region, falling under one of the four sultans (Tidore, Ternate, Bacan and Jailolo). The clergy is also sometimes approached, especially in situations where those involved are interested in discretion and inkeeping peace within the community.

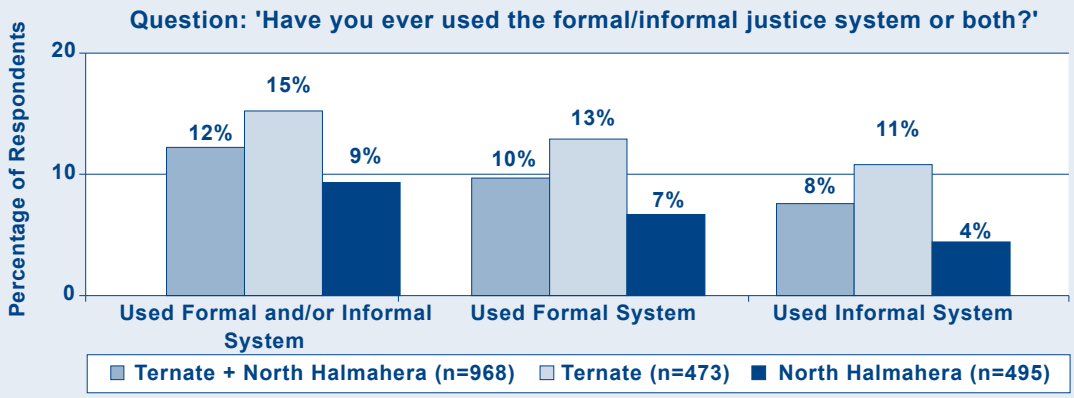
The importance of the informal justice sector was underscored by the work of community, religious and customary leaders who led post-conflict reconciliation efforts through the Halmahera Board for Public Harmony.[762]

4.2 FACTORS INFLUENCING CHOICE OF FORUM

Use of the formal and informal justice systems in the eight assessment locations was slight but consistent differences existed between Ternate and North Halmahera (see Chart 24). Of 968 respondents across the two districts, 12 percent reported having used either the formal or informal justice system (or both). On average, 10 percent of respondents reported having used the formal justice system at least once, while 8 percent reported having used the informal justice system at least once. In Ternate patterns of usage were somewhat higher than Halmahera for both the formal and informal justice system.

Citizens are not always aware that they actually have a *choice* of forum, particularly those residing in rural and remote villages, and may turn to a mechanism most convenient and familiar to them. A citizen's preference for ajudicial forum is shaped not only by socio-cultural considerations and psycho-

CHART 24: USE OF FORMAL AND INFORMAL JUSTICE SYSTEMS – NORTH MALUKU



Source: Access to Justice Survey North Maluku

762 Interview with Sartje Papulung, January 12, 2005.

logical motivations, but also by practicalities. Following are some reasons cited in interviews and discussion groups for the selection of forum.

Type of Case

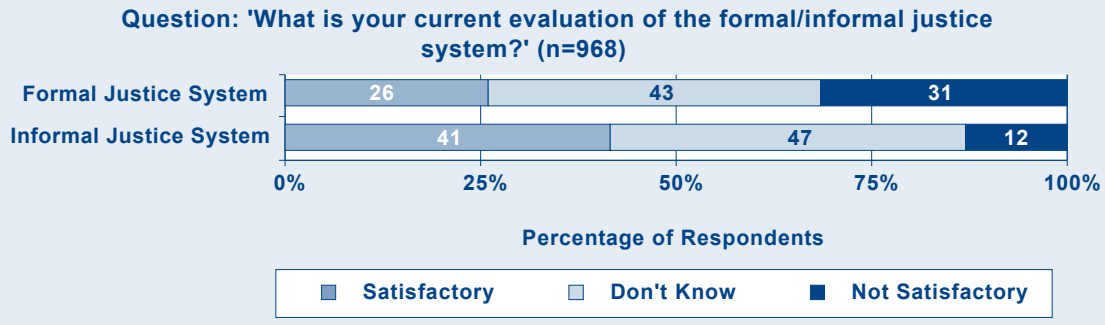
In simple terms, the type of case is probably the most influential factor in whether citizens choose the formal or informal justice system. Almost without exception, villagers choose the informal justice system as their initial point of complaint, except in serious criminal cases such as murder or robbery or serious spousal abuse, which they usually will report directly to the police.

For instance, the Tobe residents prefer the informal system to resolve most family-related disputes. In Gorua, villagers resolve petty criminal and civil matters involving family members or close acquaintances within the family sphere. Sometimes women would report an abusive situation to the police, but could not proceed if their husbands sign a 'Letter of Agreement' with the police, pledging restraint from future violence.[763] In Gamhoku, people turn to the traditional informal justice system (*Hibualamo*) in cases involving adultery, flirting with the wife of another *(selingkuh*); theft, using abusive language; *mertua.*[764] In Gorua and Gosoma, land disputes are sometimes resolved at the village institution comprising the village head, village secretary, religious leader and a specialist on land matters.[765] However, because land disputes are complex, usually multi-partied and always sensitive, they are routinely resolved at the formal legal system where disputants hope to receive fair and enforceable decisions on their entitlements.[766] The Gosoma, Tobe and Gorua communities are aware of the limitations of the informal legal system and that the police are the competent forum for handling serious cases such as murder and other violent crimes.[767]

General Satisfaction with Formal and Informal Legal Systems

Most communities assessed find the informal legal system more satisfactory than the formal (41 percent as opposed to 26 percent). They use the informal justice system because it is expeditious, geographically

CHART 25 : OVERALL COMMUNITY SATISFACTION WITH THE FORMAL AND INFORMAL JUSTICE SYSTEMS



Source: Access to Justice Survey North Maluku

763 Women FGD, Kayu Merah village 18 Feb. 2005. According to the research team, this was the situation documented in women group FGD at every village.

764 Forbidden from using certain expressions, as they are considered disrespectful and aggressive.

765 Interview with Village Secretary, Gosoma, 6 February 2005.

766 According to the research data, the Ternate District Court has heard more cases on land disputes from Sasa village than from any other villages.

767 Interview with Head of General Affairs of Tobe Village, 13 January 2005 and interview with Chairman, BPD,13 January 2005.

accessible and less costly. More important, they value the way in which the informal system deals with them. People generally see the infor-mal justice system as highly effective in protecting their rights (90 percent) and in resolving conflict (77 percent), while treating them well (70 percent). When questioned, people found the informal justice system to be particularly effective in protecting the rights of citizens (87.95 percent) and in resolving conflicts between citizens (77.07 percent). However, they believed that there was little understanding in how much proceedings would cost (41.85 percent thought people did not understand the costs versus 41.3 percent who believed people did understand).

Tradition/ Knowledge and Understanding

The people of North Maluku are not litigious and they have long-standing traditions of settling problems within the community. In Sasa, this is particularly true of family disputes and troubles involving youths. In Takofi, tradition demands resolution within the community whenever possible. If the matter remains unresolved, the police are contacted. To the Takofi community, village institutions are familiar, with no language or cultural barriers. A village leader is accessible and more trusted than police officers and the courts, and considered 'one of their own' whereas a police officer is an 'outsider'. Men in Gorua said that the village authorities are the first ones they turn to for legal advice. Citizens may avoid the formal legal system because of perceived complexity in instituting legal action and delays in resolving cases. In a survey of 213 people, 64 percent admitted they do not understand court procedures. Citizens understand the basics of the criminal litigation process and the role of police, but are unaware of the costs involved, duration of the process, penal laws and procedure [768] or how to seek legal counselling. On the other hand, over 65 percent of those surveyed said that the informal systems are understandable.

Geography and Cost

The *Polsek* is the closest police command (with the exception of outposts) to the village communities. Disadvantaged groups usually access the nearest police post at the villages or subdistricts. However, Takofi villagers note that reporting crimes such as domestic violence to the police is very inconvenient. The nearest Sector Police in Moti is a 'preparatory' station, which means that the villagers must travel to Ternate City - a trip that costs Rp. 100,000 (around USD 10) in transportation and more for accommodation in the city. (A preparatory status police station is usually not competent to discharge all functions because of inadequate staffing, so investigations are usually transferred to another police station. There are six preparatory district police stations in North Maluku.) The Gamhoku and Tobe communities prefer the informal resolution mechanism for similar reasons. In Gosoma, a villager who was unaware of legal aid facilities at the court, said he would access informal processes to save costs. In a survey of 181 people, 83 percent believe the main problem with lawyers is the cost of legal services. According to a facilitator for Kayu Merah's Special Service Room for Domestic Violence (RPK), victims of domestic violence are apprehensive about using the RPK facilities because they believe there will be costs involved if they report the matter to the police.[769]

768 Men and women FGDs, Togoliua 5 April 2005. FGD IDPs Gamhoku, Balai desa, 21 February 2005 and interview with village officer, Gosoma, 19 February 2005. Women. FGD, Takofi, 23 Feb 2005. Interview with Head of General Affairs of Tobe Village, 13 January 2005 and interview with chairman, Village Supervisory Board (*Badan Pewakilan Rakyat/BPD)* 13 January 2005. Public FGD, Gosoma, 8 Feb. 2005. According to a RPK facilitator for Kayu Merah village, victims of domestic violence are apprehensive about the RPK facilities because they believe they have to incur costs if they report the matter to the police (Interview, 18 Feb 2005).

769 Interview, RPK facilitator, Kayu Merah, 18 Feb. 2005).

Approachability

Youths in Gosoma viewed the formal justice process as distant from their daily existence and doubted if the formal legal system could alleviate their daily problems.[770] On the other hand, youths sometimes chose to access the informal processes because they are discreet. For instance, in Kayu Merah village, youths turn to a selected *ibu* – an older, well-respected and discreet woman who mediates and reconciles disputes without informing the youths' parents.[771] In Gosoma, women said that pregnancy out of wedlock – one of the more common problems in the village—is usually resolved by a priest, typically in a church. This dispute resolution is preferred because it is discreet, conciliatory and preserves family and community relations.[772]

While informal sectors are often seen as approachable, sometimes the reverse is true: Although the Sasa farmers should have been the prime recipients of the 'Rice for the Poor' benefits, they have remained silent about *lurah's* decision to distribute the funds among the entire village, to avoid a 'misunderstanding' with the village head. They believe government agencies do not accommodate basic needs of the poor and that there is a burgeoning gulf between the haves and the have-nots.[773]

Trust and Graft

Almost 65 percent of citizens surveyed believed that, in the informal sector, everyone had the same rights. In Gamhoku, some respondents explained that they believed disputants to be more in control of the process, since there is no external influence or power imbalance among parties and justice actors. The views of the formal sector are quite different. Specifically, the public's experiences with the police were often negative. Citizens frequently complain about petty corruption and misconduct by police officers and security personnel. Women in Kayu Merah told of a case of domestic violence that was reported to the police. The suspect was arrested but later released because his wealthy parents had paid the police a large amount of 'guarantee money. The men in the village also had some stories (see Box 32):

BOX 32: 'RAN OUT OF FORMS…'

I once accompanied a female relative to the police station to file a complaint against her husband for physical abuse. The officer informed us that he was unable to process her complaint because he had 'run out of forms'. I interpreted this as a request for 'administration fees' and I gave him Rp. 10, 000 (around USD 1) in the hope that our case would be processed quickly. On the contrary, the matter was unjustifiably delayed and unnecessarily convoluted. The police made no progress. Consequently, we decided to withdraw our complaint and resolved the matter among family members.

Male FGD participant, Kayu Merah, 2005

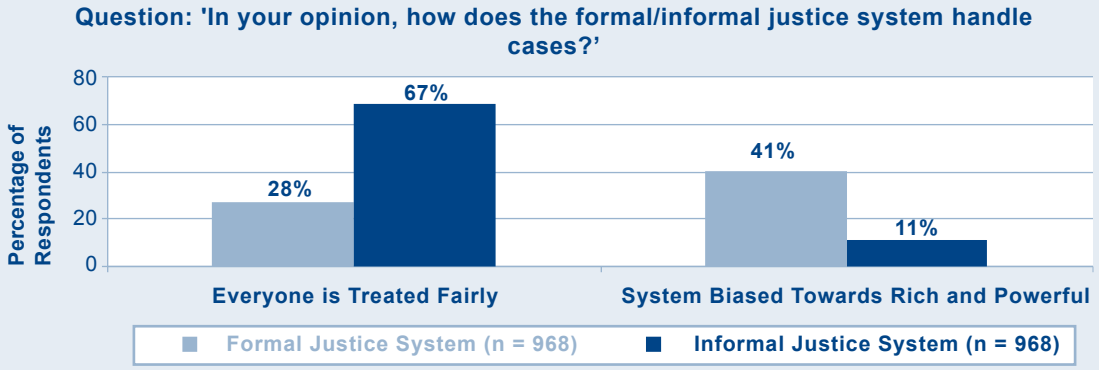
Women are frequently the targets of official misconduct, as exemplified by the female fishmongers of Moti Kota. Widowed and with children to feed, the market is their only means of livelihood. Security personnel often chase the women away and damage their stalls.

Perceived Fairness/ Predictability of Outcome

A survey of 968 respondents showed that the informal justice system is perceived as fairer than the formal, echoing sentiments expressed in group discussions and inter-

770 Youth FGD, Gosoma 21 April 2005.
771 Youth FGD, Kayu Merah, 1 April 2005.
772 Women FGD, Gosoma, 20 April 2005.
773 Public FGD, Sasa village, 4 April 2005.

CHART 26 :PERCEIVED FAIRNESS OF FORMAL AND INFORMAL JUSTICE SYSTEMS – NORTH MALUKU



Source: Access to Justice Survey North Maluku

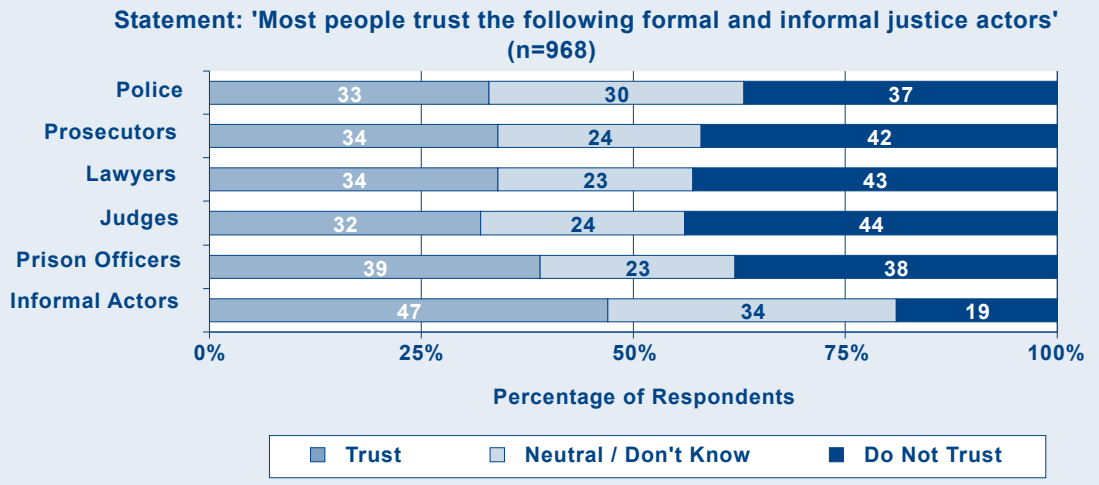
views. Approximately 67 percent of the respondents viewed the informal justice system as satisfactory, while only 28 percent thought the formal system satisfactory. Similarly, while only 11 percent found the informal system to be biased toward the rich; almost half regarded the formal system as biased in this way (see Chart 26).

In North Maluku the level of trust in most formal justice actors is persistently lower than the trust in informal actors: for instance, 47 percent believe informal actors are trusted, while about one-third trusted police, prosecutors, lawyers and judges (see Chart 27).

Enforceable Remedies

Across the villages in Ternate City, women have utilized the religious court for divorce and child maintenance; they know where to go if they decide to leave an abusive house-

CHART 27: COMMUNITY TRUST IN FORMAL AND INFORMAL JUSTICE ACTORS – NORTH MALUKU



Source: Access to Justice Survey North Maluku

hold. Women in Takofi noted that the formal legal system is more "legitimate" and effective in imposing appropriate sanctions and enforceable remedies particularly in relation to the criminal matters. The customary or traditional justice mechanism – which is typically dominated by men – might perpetuate powerlessness of women to obtain appropriate and sustainable remedies,
particularly in matters involving personal security, child maintenance and property claims.

In Gorua and Gosoma, land disputes are sometimes resolved at the village institution comprising the village head, village secretary, religious leader and a specialist on land matters.[774] However, because land disputes are often complex, they are routinely resolved within the formal legal system where disputants hope to receive fair and enforceable decisions on their entitlements. The Ternate District Court has heard more cases regarding land disputes from Sasa than from any other village.

4.3 IS TRUE CHOICE OF FORUM ALWAYS AVAILABLE?

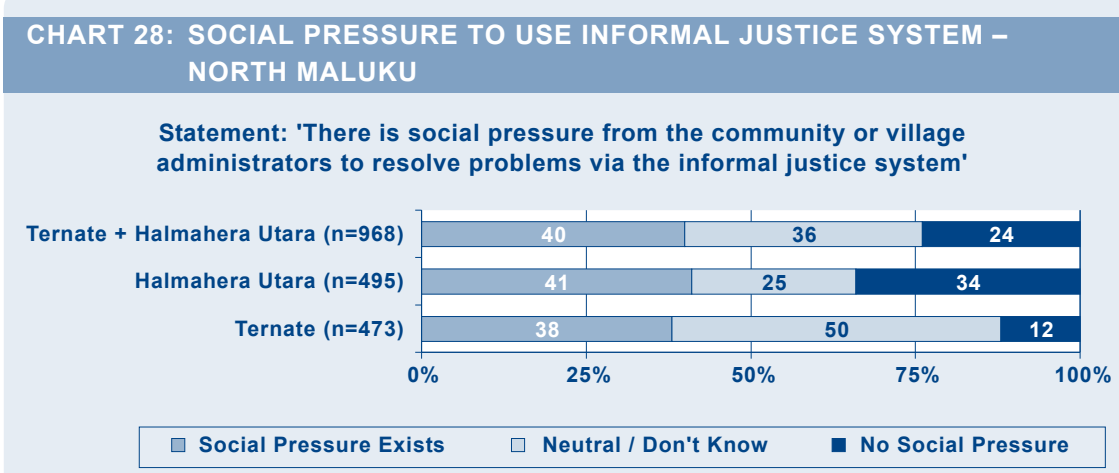
There are cases in which citizens do not access either the formal or the informal justice system. There are several reasons preventing the public from appropriately responding to their grievances and disputes:

- Insufficient capacity to respond due to illiteracy, lack of knowledge, intimidation and fear
- Lack of information on the proper procedure to access legal process
- Litigation is considered contrary to the spirit of community and neighbourly tolerance

5. JUSTICE ACTORS AND PROVISION OF REMEDIES

This section outlines the formal and informal legal system recognition of citizens' rights, the strengths and weaknesses of both systems and explains whether they adequately address citizens' grievances and provide satisfactory remedies in accordance with international human rights standards and practices. In some cases, the resolution involves a close interaction of many actors in both formal and informal justice systems. The number of actors, however, does not necessarily guarantee a satisfactory outcome, as exemplified in the case below.

CHART 28: SOCIAL PRESSURE TO USE INFORMAL JUSTICE SYSTEM – NORTH MALUKU



Source: Access to Justice Survey North Maluku

774 Interview with Village Secretary, Gosoma, 6 Feb. 2005.

5.1 FORMAL JUSTICE SYSTEM

Police

The North Maluku Regional Police Headquarters is still under 'preparatory' status, which indicates that it is not ready to fully discharge all obligations and duties. Usually, investigations would be transferred to a 'definitive status' (*induk*) police station. Instead, the staff is conducting operations from other government office premises. To date, the police headquarters has no water, electricity or communication equipment.[775] Police officers say most district-level stations lack experienced or sufficient staff. There are 23 police officers serving 60,504 inhabitants in North Ternate (less than 30 percent of the required minimum); in South Ternate, 17 instead of 77 officers serve 57,499 inhabitants.[776] The work of the police is generally hampered by inadequate operational facilities such as counselling for victims and resources, and budget allocation.[777]

BOX 33: REHABILITATION

In April 2005, a 15-year-old youth was caught sexually abusing a 4-year-old girl. The boy's parents proposed that both children undergo a customary matrimonial union (kaweng gantung) on the condition that the couple would not live as man and wife until both reached a suitable age, when both parties would be entitled to reject the union.

The victim's family rejected the proposal and referred the matter to the police for investigation. The public prosecutor in Ternate City indicted the 15 year old and tried him before the Ternate District Court. The court, however, took into consideration the boy's age and released him into the custody of his community for moral guidance and spiritual rehabilitation. No other sanctions were imposed.

Source: Interview with Grand Judge of Ternate Sultanate, 6 January 2006

Nonetheless, the District Police in Ternate City and Central Halmahera seem to be coordinating well with NGO support networks to assist vulnerable victims. They have each established a Special Service Room (*Ruang Pelayanan Khusus*/ RPK) staffed with female officers to assist victims of sexual offences and child victims. The RPK functions within a system integrating police investigations, social services and medical treatment at the local hospital. The complainant is accompanied by a social worker (usually an NGO volunteer), is offered trauma counselling and need only pay for the costs of a medical report.[778] Sometimes, the police or NGO representative will help the victim pay costs of the medical report. There are no RPK facilities at the Regional Police Headquarters in Ternate City, at the North Halmahera Regional Police, at Tobelo District Police (which still is in preparatory status), or the subdistricts.[779]

There is an acute shortage of female officers. The Regional Police tries to assign one or two female officers to each district, but the recruitment quota of 10 percent is usually not achieved because women routinely fail recruitment criteria.[780] Consequently, male officers are frequently assigned cases of domestic violence and sexual offences.[781]

The quality of law enforcement is also impacted by insufficient post-deployment training and legal education/socialization for police officers. For example, some military personnel have been re-assigned to the police force but have not received professional re-training or orientation for

775 Logistical Data of Regional Police, *Maluku Utara,* 2005.

776 Fact Sheet on District and Sectoral Office of Police, North Maluku, p. 5, September 2004.

777 Interview with Chief of District Police, Tobelo, 16 April 2005 and interview with head of Intelligence and Security (Kasat Intelpam), Ternate District Police, Ternate, 7 May 2005.

778 Interview with Ternate District Police personnel, 28 February 2005. interview with Deputy Chief of District Police, Ternate, Dec 2005.

779 Interview with Head of Professional Ethic and Internal Control *(Kepala Seksi Propam)*, Regional Police, 14 April 2005.

780 Interview with Deputy Chief of District Police, Ternate, Dec. 2005. In 2005, out of 286 candidates, only nine women were hired at the first phase of recruitment – Administrative Data of North Maluku Regional Police*, 2005.*

781 Interview with Chief of Sector Police, Tobelo, 16 April 2005.

their new role.[782] The absence of rigorous screening and the presence of widespread corruption in recruitment practices reinforce the public's low confidence in the formal legal system.[783] Law officials note that civil service salaries are not commensurate the high cost of living in the cities;[784] in such conditions, some officers engage in improper conduct and petty bribery.[785] The Police Chief of Ternate admits that misconduct routinely goes unreported and that offenders are seldom disciplined.[786] This has a direct impact on the citizens' view of the police: In a survey on citizens' perception of the 'main problems with the police', 31 percent found it 'difficult' to deal with the police, 20 percent believe they are violent and 16 percent found them corrupt.[787]

Apart from their core duties in maintaining law and order and initiating criminal investigations, the police often help settle disputes. According to the Deputy Chief of Police, Ternate City, mediation is one of the key functions of the police.[788] The police work closely with community and village leaders/institutions in case referrals and dispute resolution. The police investigate serious criminal cases such as sexual and violent offences and illegal logging but routinely return to village institutions cases of thefts, domestic disputes and disagreements among neighbours.

Police routinely mediate minor cases such as public nuisance and quarrels among neighbours. The police convene a dialogue with relevant parties (such as the suspect, victim and village leaders)[789] and if an agreement is reached, prepare a 'letter of undertaking' for parties to comply.[790] Police officers sometimes advise complainants of the benefits and disadvantages of criminal litigation and com-plainants decide whether to proceed in the formal justice system or resolve informally. It is unclear whether citizens are given a real choice when the police return their complaints to the villages.

Prosecution

The North Maluku Public Prosecution offices were established in 2003; as of 2005, there were 108 administrative staff and 38 public prosecutors (with 2 female officers) assigned to two district public prosecution offices and six satellite offices.[791]

According to staff, human and technical resources are deficient and directly affect the range and quality of service to the public. Public prosecutors have the legal training to conduct public outreach programs to educate the public on their human rights and the criminal justice process, but do not have adequate resources to fulfil this obligation. Apart from prosecutors' main duties in advising police and conducting criminal prosecutions, prosecutors are empowered to initiate investigations e.g. into corruption and abuse of power by public officials, seek protection for vulnerable victims in court proceedings and to conduct legal education programs for the community.[792]

782 Deputy Chief of District Police, Ternate, Dec. 2005.

783 Interview with police personnel, Ternate City, 2005.

784 A Commander earns less than USD 200 (Rp. 1.9 million) /month including allowances. The lowest-ranked officer earns less than USD 90 (Rp. 830,000) /month. Interview with police personnel, Regional Police and with an advocate, Kantor HAPI, Ternate City, 7 April 2005.

785 Interview with Chief of District Police, Tobelo, 16 April 2005.

786 Deputy Chief District Police, Ternate City, Dec. 2005.

787 N=374.

788 Law No. 2/2002 on the Indonesian Police, articles 2, 14-16. Interview, Ternate City, December 2005.

789 Women FGD, Kayu Merah village, 31 March 2005.

790 Interview with Head of Intelligence and Security, District Police, Ternate, 7 May 2005.

791 Letter from North Maluku High Prosecutor's Office, 25 Feb 2005.

792 Law No. 16/2004 regarding Public Prosecutors, articles 1, 30.

Since 1999, the Ternate Public Prosecution Office has shouldered a heavy caseload. In that year, the office processed 106 cases, which rose to 118 in 2001. In 2002, the figures dropped to 51 cases but rose to 73 in 2003. At present, there are 6 public prose cutors[793] and 20 administrative staff assigned to the Ternate District Prosecution Office. The facilities at Ternate office appear to be manifestly deficient: there are only 4 computers and 2 typewriters.

The Tobelo Prosecution Office is headed by an adjunct female public prosecutor and she is assisted by another public prosecutor and five administrative staff members. Again, facilities are limited: a patrol van, one computer and two typewriters. The facilities and resources cannot accommodate the mandate of the office. According to a prosecutor, the office is operating at 20 percent of its capacity, and there is a heavy workload – from 1999-2004, there were a total of 351 torture cases, 285 rape cases, 170 violent attacks (*pengeroyokan*), 338 murders and 363 thefts. The Public Prosecutor Office is also handling a corruption case involving misuse of IDP funds of Rp.1 million (around USD 100). The suspect has not returned the money and the prosecutor is attempting to resolve the matter either by requesting administrative action or criminal prosecution.[794]

The Tobelo Prosecution Office does not have witness protection facilities and engages outside groups to assist. Mandated outreach program-ming to instil public awareness of the legal process and the law is limited due to a small budget; only 7 out of 174 villages have been visited.

The Ternate District Prosecution Office has conducted public outreach programmes in the subdistricts and villages, covering topics on illegal logging and narcotics. Expert advisors are only available at the Attorney General's Office. There are limited opportunities for advanced legal education although prosecutors must attend training sessions on local issues such as fishing rights and general topics such as gross violations of human rights.[795] A public prosecutor notes that his office works to defend the rights of victims of crime and witnesses. Prior to a hearing, a prosecutor verifies that their statements have been provided voluntarily and accurately; when the victim has suffered material losses, a prosecutor must endeavour to seek restitution from the accused. A prosecutor is also empowered to seek witness protection measures for victims of sexual violence.[796]

Courts

In 2005, the Provincial High Court in North Maluku had a backlog of appeal cases. The registrar complained that there were insufficient numbers of support staff and that the building lacks basic facilities such as clean water, electricity and communication facilities. The district courts in Ternate and Tobelo are operating with half of the required number of judicial personnel.[797] Two of the four hearing rooms (*tempat sidang*) at the subdistricts are not operational due to lack of resources.[798]

According to accepted judicial practice, acourt should facilitate access by simplification of procedures and referrals to special settlement conferences and mediation for indigent and low-income parties to facilitate

793 There are two vacant posts.
794 Interview with a public prosecutor, Prosecutor's Office, 12 Feb 2005.
795 Interview with a Public Prosecutor, Ternate, December 2005.
796 Ibid.
797 Operational data of Tobelo District Court, 2004 and interview with Registrar, Tobelo District Court, 19 February 2005.
798 In South and North Morotai, Kao and Galela subdistricts.

redress. Present regulations require judges to attempt mediation before proceeding to a hearing. Court officials doubt the efficacy of this scheme and have suggested that additional mediation facilities should be established outside the court system to improve citizen's access to justice.

Ternate Religious Court: The geographical jurisdiction of the Ternate Religious Court extends to the four subdistricts in the region of Ternate City: North Ternate City, Ternate Island, Moti and West Halmahera, as well as a part of South Halmahera District. The religious court has not been able to keep up with the number of cases submitted, and court officials suggest that it should be elevated to the level of a High Religious Court – something that has not yet happened.[799] Judges' performance is monitored by the field supervisory judge (*HAWASBI)*, who has the authority to supervise case management and the judicial process. Judges found guilty of abuse of power or misconduct are liable to be disciplined or dismissed.[800]

The Ternate Religious Court has a prolific caseload. This is the only formal legal institution that is commonly accessed by the Muslim community of Ternate on matrimonial matters, inheritance, bequests and alms. In 2004, there were 284 petitions, of which 154 were filed by female petitioners; 250 decisions decisions were issued. Other cases involved marriage applications, child support and other maintenance claims. In 2005, there were 76 family-law related petitions; 68 decisions and judgements rendered.

According to a court official,[801] female petitioners seeking divorce are generally more tolerant of adultery than domestic violence. The Panel Judge routinely encourages parties to attempt reconciliation for petitions based on adultery.

The Religious Court charges petitioners an average administrative fee of Rp. 132,000 (around USD 13.20). There is a scale which is dependent on geographical proximity of the litigant's residence and the number of witness summons issued.[802] Assistance, at the cost of Rp. 40,000 (around USD 4), will be provided to those unable to file court documents on their own.[803] However, the accessibility of the court in terms of its affordabilty has been challenged. Court officials have indicated that in reality, it is a situation of 'no money, no case.'[804]

Formal Judicial Structures in North Halmahera: The Tobelo District Court, which opened in 2002 after the conflict dissipated, has jurisdiction over all localities in Tobelo.[805] Four trial courts have been established in South and North Morotai, Kao and Galela subdistricts, designed to ensure wider accessibility to the inhabitants. However, the Kao and Galela courts are not functioning due to lack of basics such as furniture and office equipment, thus Tobelo District Court is currently processing cases from these areas.

Morotai Religious Court commenced operations in Tobelo in 2003. It has jurisdiction over the people of Muslim faith in

799 The Religious Court of Ternate is one of the seven Religious Courts under the jurisdiction of the High Religious Court of Ambon. After regionaldivision of the District of North Maluku into the Province of North Maluku the Religious Court of Ternate should have been elevated to become the High Religious Court of Ternate, but this has not been effected.

800 Interview, 17 May 2005 and Law No. 7 1989 on Religious Court.

801 Interview on 17 May 2005.

802 For instance, for residents of the villages of Moti Kota and Takofi, the case fee is the same at Rp 167,000, while the villagers of Sasa pay Rp.. 30,000 (around USD 3)

803 Decision of the Head of Religious Court of Ternate No. PA.v.2/2HK.00.8/46/2004 on Case Fee in Religious Court of Ternate.

804 Interview with court personnel, 17 May 2005.

805 UU 4/2004 Tentang Kekuasan Kehakiman, UU No 8/2004 Tentang Pengadilan Umum .

the entire North Halmahera region, encompassing nine districts. Consistent with recruitment policy, there are 15 court staff of various ethnicities, of whom 4 are female. The three judges are all male and the court is operating at 50 percent of the minimum resource requirement.[806]

5.2 INFORMAL JUSTICE SYSTEM

The two justice mechanisms typically employed in the villages are village administrative institutions and *adat* / traditional justice institutions.

Village administrative institutions are usually run by the village head, his staff and other community leaders. Disputes are resolved via *musyawarah,* deliberation by consensus. (Musyawarah is practised in heterogeneous as well as predominantly *adat* or homogeneous communities.) At the district level (South Ternate and Moti), inhabitants use village justice forums (there are no *adat* forums) or the formal legal system if they are not satisfied with village justice.

There are several levels of authority in the informal justice system at the subdistrict level:

1) The ward chief (*Lurah*) is the government's representative and administers the political district (*kelurahan*). He also serves as a customary judge and adviser.
2) The village head (*Kades/Raja).* The *Kades*/*Raja*'s authority and legitimacy to resolve disputes, regulate and monitor breaches of *adat* practices or communal laws are derived from several sources:
   a) as a leader of the village government, he is elected by the residents,
   b) he receives his authority to deal with issues falling within his jurisdiction, manage and regulate exploitation of natural resources from district level regulations,
   c) because he is elected as leader of an *adat* community, he acquires the mandate and competence to implement *adat* regulations, written or otherwise.
3) The *Imam* (representing Muslims) and *Pendeta* (representing Christians) are spiritual leaders and provide religious guidance to the community. It is noteworthy that unlike an order from he Religious Court, the religious leader's decision is neither binding nor enforceable.

Adat: Some villages use justice systems unique to the region, and intimately tied to its history, traditions and culture. In North Maluku, the authority of the four historic kingdoms – Tidore, Ternate, Bacan and Jailolo – governs the *adat* communities. A triumvirate of the sultan (*Joi Kolano*), a village chief, (*Sangaji*) and a customary leader (*Fanyira)* heads each grouping of *adat* clans (*Soa*). The sultan is influential in his community and is believed by many to have magical powers, but appoints a representative and gives him authority to preside over disputes. Sultans will intervene to resolve grave and politically sensitive situations involving different communities in their kingdoms.

Adat systems differ from one to the other. Following are brief descriptions of an *adat* system in each district:

Ternate City traditional justice is known as *Adat Seatorang* meaning 'according to tradition.' The key figures are the Sultan,

806 Budget Report of Morotai Religious Affairs Court.

Jogugu (prime minister), *Jo Kalem* (supreme spiritual leader), *Kadi* (supreme customary judge) and *Imam* (spiritual leader); each has distinct roles and responsibilities. The *adat* community is known as *bala kusu sekano kano* and it adheres to the authority of the Sultanate and his kingdom.[807] In Ternate, the Sultan appoints the customary village leader as his representative and bestows upon him the moral authority to preside over disputes. There is also widespread belief that the individual appointed shares the same heritage with someone in a clan or community who once occupied that position. The communities in Ternate have a strong link to the Sultan, are relatively loyal and respectful of his authority. They are likely to adhere to his decisions and directions and his authority could influence their political choices.[808] At the village or district level, the traditional judge (*Kadi*) and great leader (*Imam Agung* or *Jo Kaleng*) are appointed to preside over matters referred to them.

The customary justice system in North Halmahera centres on the *Hibualamo* (traditional house for meeting), which includes legislative, executive and adjudication bodies. The latter operates within the *Hibualamo* and its mandate is executed by functionaries in the villages. Tradition requires each *adat* village to house a *Hibualamo* but in contemporary times, religious figures and the village head work together to resolve disputes.[809]

Resolution via *Adat* System

In assessing the people's legal needs and perception of justice,[810] it is note-worthy that kinship and traditional ties are still very strong among the population of Halmahera peninsula. They believe that the entire community descended from one ancestral line. The customary/traditional system was built on seeking consensus through *Hibualamo* and *Sariloha (Galela).* A dispute involving a breach of custom isconventionally resolved through a process of mediation involving a local leader as mediator. Tradition requires each *adat* village to house a *Hibualamo,* but in contemporary times, religious figures and the village head work together to resolve disputes.[811] The decision or agreement is sealed with an oath and the penalty or sanction comes in the form of a 'traditional compensation'.[812] Traditional justice process and procedure are straightforward, as illustrated in Figure 9.

Resolutions are designed to bring peaceand reconciliation among disputants by reaching an agreement/consensus. The informal legal system resolves issues such as domestic violence, elopement, pregnancy out of wedlock, inheritance, conflicts within the family and among neighbours, intoxication and disorderly behaviour among youths.[813]

Apart from these issues, traditional mechanisms such as the *Hibualamo* resolves breaches of *adat* and code of ethics such as adultery, flirting with the wife of another, and using disrespectful language.[814] Sanctions imposed on transgressors range from the compensatory to the punitive, such as pecuniary penalties, verbal warning, public apology, community service and

807 Interview with Supreme Judge, Ternate Sultanate and adat representatives, Ternate City, 6 January 2005.

808 When the Sultan became the Regional Parliament (DPRD) member from Golkar for the region of Ternate city and its surrounding, Golkar came out as the winner of the 1999 General Election. This also happened in the 2004 General Election when the Sultan became the head of the Regional Council of the Democrat Party, the party dominated the majority of Regional Parliamentary seats.

809 Jesaya Benari, '*Tobelohoka,* A History of the Tobelo People', Favorit Photo, 2000).

810 See Chapter V for detailed discussion.

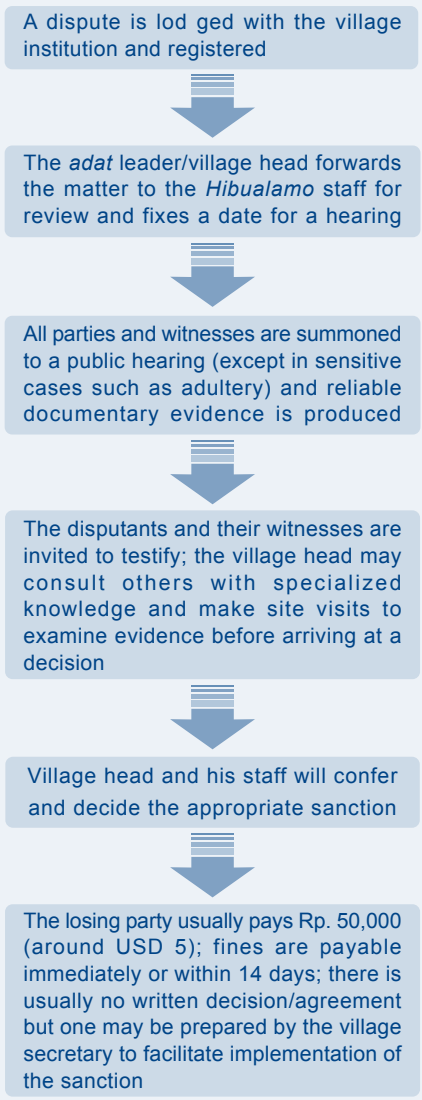
811 Benari, 'Tobelohoka, A History of the Tobelo People', op. cit.

812 Ibid.; interview with Secretary of Hibualamo, Tobelo, 3 February 2005; interview with traditional leader, Gosoma, 3 February 2005.

813 FGDs, Takofi, Moti Kota, Sasa villages, 2005; interview with religious leader, Gorua, 26 April 2005 and interview with a priest, Gosoma,25 April 2005.

814 Interview with village head, Gamhoku, 13 April 2005. Similar *adat* breaches were documented in Ternate City, interview with religious leader, Gorua, 26 April 2005.

FIGURE 9: HIBUALAMO DISPUTE RESOLUTION



communal ostracism.[815] Monetary penalties are routinely imposed in matrimonial matters, such as the payment for loss of virginity (*Mohole hemaije*) and divorce papers (*Roehe maginitara*). A *Kadi* may decide to marry a couple who have eloped, with or without parental consent.[816] The village chief, *Sangaji,* is appointed to monitor the implementation of the sanction. The efficacy of this system depends on willingness of the parties to comply with the sanctions. At times, the person sanctioned refuses to adhere to the will of the traditional leader and turns to the formal legal system.

Customary institutions are structured by authority given by the community and implemented by customary leaders. Their geographical jurisdiction is generally limited to the village level community where the dispute originates. If a resolution is not achievable, the matter is submitted to the Sultan or to the community, for instance, the *Hibualamo* in Tobelo. For intervillage disputes, the Sultan may act as facilitator or refer the matter to the district-level *Hibualamo*.

If the resolution process becomes unmanageable, or no consensus is reached, the village head may advise parties to resolve their differences through the police.[817] The traditional/village leaders will usually verify if parties prefer to proceed to other competent legal institutions before issuing a decision.[818]

Strengths of ***Adat*** system: A notable feature of informal legal system is the availability and accessibility of the leaders to their community and other communities, at all times for all issues. It is adaptable to wide-ranging issues, as it does not function within the confines of written rules.

During the years of conflict, several peacemaking teams consisting of *adat* and religious representatives (Team 13, Team 17 and Team 32) utilized the *Hibualamo*

815 FGD, Sasa, 19 Feb. 2005, 4-5 April 2005; Public FGD and interview with religious leader, Takofi, 13 Feb 2005.
816 FGD, Sasa, ibid.
817 Interview with village leader, Moti Kota, 9 Jan. 2005.
818 General FGD, Kayu Merah, 6 Feb. 2005.

approach to mediate among warring factions to bring peace to the region.[819] Since then, traditional/*adat* justice actors have actively promoted post-conflict reconciliation and have attempted to address inter-ethnic tensions before they escalate.[820] Because of their influence within communities and in particular among youths, they have the potential to adopt a monitoring role in conflict prevention.

Citizens are attracted to the informal legal process because of its simplicity and ability to function within a community's social and cultural norms. Solutions are practical and pragmatic, based either on *adat* or on the principles of reconciliation and preservation of communal harmony.

The informal legal system complements the effective functioning of formal legal institutions as it diverts many minor complaints and disputes, allowing the police and the courts to focus on serious crimes that threaten the security and stability of society. Formal legal actors have acknow-ledged these strengths and sometimes refer cases to community leaders for resolution.

A case that attracts *adat* sanctions is normatively resolved at customary institutions, but citizens generally know that they have an option to use the formal legal system if the outcome is not satisfactory.[821] This is particularly important in more serious cases.

Limitations: Although clearly the preferred choice, there are limitations to the informal justice process. An appreciation of its weaknesses will assist in the alignment of potential assistance and engagement with these institutions.

Informal resolutions that attract sanctions such as an *adat* fine or community service may not deter and lack binding authority, enabling some offenders to re-offend or simply avoid compliance.[822] Thus, a decision issued by an informal justice actor is only binding if parties are willing to adhere. Compliance is also very much dependent on factors such as fear of communal ostracism, family pressure, influence and the charisma of the justice actors.

Sometimes a customary leader takes on the role of a *de facto* criminal judge and imposes punishment on individuals who may have little choice in accepting punishment once they have submitted to his jurisdiction. In many cases analysed, resolutions of grievances and compliance with sanction were made to avoid communal shame, embarrassment or simply to expedite the resolution of the matter. It is difficult to conclude that the sanctions imposed were just or appropriate punishment fitting the transgressions. For instance, the assessment has documented cases where a serially abusive husband did not receive appropriate punishment for a serious crime that would have meant imprisonment, if the husband were convicted in court.

The method can be very effective – but sometimes with the questionable price of corporal punishment. Pregnancy out of wedlock is a frequent occurrence in Takofi, but 75 percent of couples in such a situation get married after the intervention of the religious leader or village head, who either persuades the couple or uses 'forceful measures' such as a beating.[823] In Sasa village, the victim of a physical assault

819 Interview with NGO activist,. North Maluku, 21 February 2005.
820 Interview with religious leader, Gamhoku village, 12 April 2005.
821 Men FGD, Gamhoku 13 April 2005 and interview with *adat* leader, Gamhoku, 15 April 2005.
822 Interview with senior government official, Gorua, 20 February 2005.
823 Female FGD Takofi, 23 Feb. 2005.

demanded and was allowed by the customary judge to inflict the same degree of pain on the offender.[824] Some villagers view such a sanction system as arbitrary and liable to influence by the disputants.[825]

The customary or traditional justice mechanism may also perpetuate powerlessness of women to obtain appropriate and sustainable remedies, particularly in matters involving personal security, child maintenance and property claims. For instance, a widowed or abandoned mother with children must have the capacity to own property and regain lost entitlements from her husband's estate. In an informal justice process, a man's promise to provide financial support in a pregnancy out of wedlock case is not legally enforceable if the man fails to comply.[826] Matrimonial entitlements and property issues are likely to be satisfactorily resolved in a court of law, which has the authority to issue binding judicial orders.[827] The customary *adat* institutions are male-dominated by tradition and unlikely to be more inclusive in the near future. There is no indication that the traditional leaders interviewed during the assessment had received any formal training in dealing with women's issues or were equipped to provide any special services such as psychological counselling.[828] The traditional justice system therefore treats the symptoms rather than examining the causes of a dispute, conflict or conduct. It de-emphasizes individuality and personal responsibility and elevates community and family unity. This approach may sometimes contravene women's rights under international law.[829]

Finally, traditional justice institutions can only effectively address a limited scope of issues and are not appropriate to deal with serious crimes or socio-economic issues and disputes arising from inadequate public services, or in dealing with discriminatory or corrupt government practices and abuse of power.

824 Interview with Village Head of Sasa, 31 Jan. 2005. According to him, the offender accepted the punishment because he wanted to conclude the matter quickly.

825 Public FGD, Sasa village, 7 Feb. 2005 and interview with a village leader, Sasa, 31 Jan. 2005.

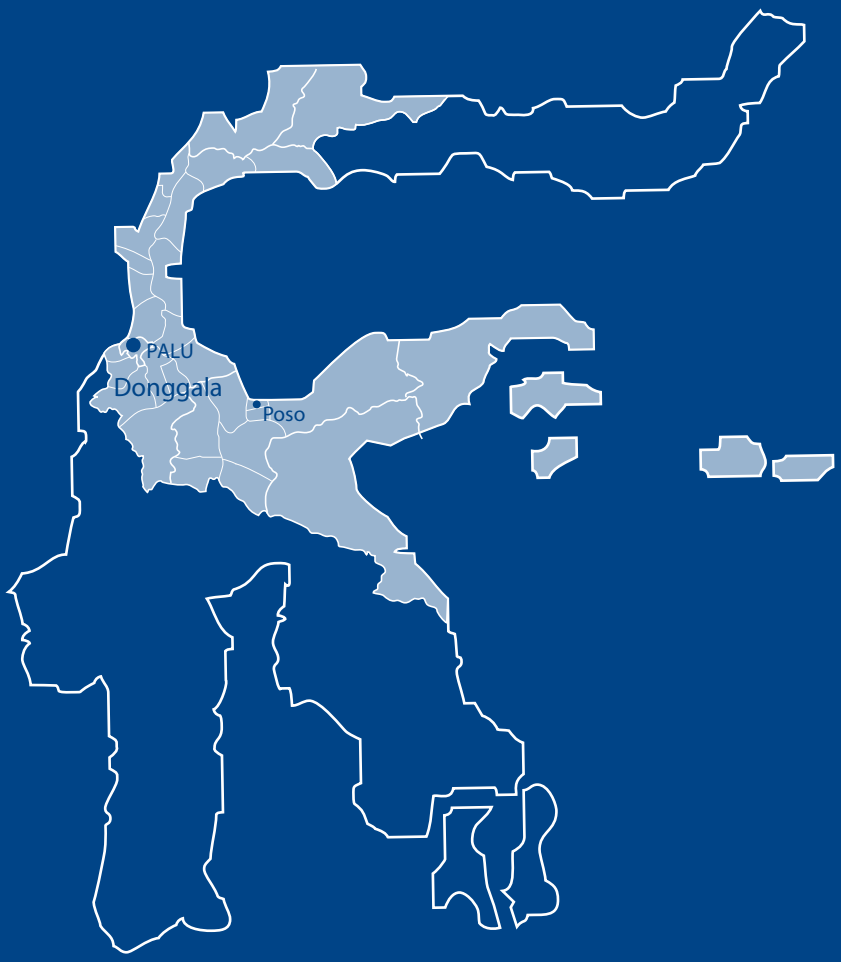
826 Women FGD, Moti Kota village, 14 Feb. 2005. In *adat* communities such as in Gamhoku and Gosoma, the religious leader will impose '*adat* compensation', e.g. for child maintenance and loss of virginity.

827 In Ternate City, traditional institutions deal with marriage, divorce, inheritance, grants, and endowments matters. If these matters cannot be satisfactorily resolved by the Sultan, then the matter will proceed to a court of law. Interview with member of traditional community in Ternate City, 5 January 2005.

828 A traditional leader is appointed if he meets criteria such as minimum age, has extensive knowledge of *adat* precepts and practices and has experience in dispute resolution at the community level.

829 Declaration on the Elimination of Violence against Women 1993 (GA Resn 48/104); the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985. According to the Victoria Falls Declaration, '…it is essential to promote a culture of respect for stated human rights norms and particularly those affecting women, e.g. Convention on the Elimination of All Forms of Discrimination against Women. Judicial officers should be guided and apply them when interpreting and applying the provisions of the national and customary law when making decisions.'

ANNEX 5
CENTRAL SULAWESI PROVINCIAL REPORT



ANNEX 5
CENTRAL SULAWESI PROVINCIAL REPORT

1. INTRODUCTION

1.1 OVERVIEW OF CENTRAL SULAWESI PROVINCE

Central Sulawesi Province, with a population of 2,242,914 (2004),[830] is one of six provinces in Sulawesi, a large island in north-eastern Indonesia.[831] Stretching from the central mountain ranges west to the Makassar Strait, north to the Sulawesi Sea and east to the Molucca Sea, Central Sulawesi encompasses over 68,000 square kilo-metres. Its capital, Palu, is strategically situated at a nexus of roads, rivers and a trading port in the northwest of the province. Although three-quarters of the population is Muslim, Central Sulawesi is also home to a large Christian population, as well as Hindus and Buddhists. There are nine districts. Central Sulawesi is ethnically heterogeneous, with 12 major ethnic groups, including the Kaili, Pamona, Kulawi and Lore. Migrant populations come primarily from Java, Bali, East and West Nusa Tenggara, and from neighbouring provinces of Sulawesi.[832] *Adat,* the system of local customs and traditions found throughout Indonesia, is still strong in villages where indigenous communities are a majority.

1.2 HISTORY OF CONFLICT

Since 1998, when violence between Christians and Muslims first broke out in Poso, Central Sulawesi has suffered numerous acts of collective and individual violence, in which an estimated 2,000 people died and almost 150,000 people were displaced.[833] Much of the violence has been concentrated in the Poso District, where clashes between Muslim and Christian youths triggered major incidents between 2000 and 2002.[834] The national economic downturn (starting in 1998), the democratic transition and local grievances all formed the backdrop to these clashes.

Historically, local peoples in Central Sulawesi have organized (and been organized) loosely around religious identity. Muslim traders brought Islam to the coastal region in pre-colonial times. Inhabitants of the interior highlands of Central Sulawesi had far less contact with outsiders and followed local animist beliefs until the late 1800s, when Protestant missionaries proselytized in the region, with Dutch colonial blessings. Lorraine Aragon of the University of North Carolina reports 'the routine existence of small-scale warfare, but no persistent division' between the highlanders and mainly Muslim lowlanders.[835] Indeed, the groups were economically, politically and socially interdependent through trade, war alliances and inter-marriages.Over the past 100 years there have been periodic outbreaks of violence between Christians and Muslims as well as struggles for power and autonomy, often stoked by external interests, and the expansionary and

830 BPS Sulawesi Tengah (2005) *Sulawesi Tengah Dalam Angka, 2004*, (www.infokom-sulteng.go.id), accessed 5 May 2006. This source has been used for much of the following material.

831 Central Sulawesi has one municipality and nine districts, namely Banggai Islands, Banggai, Morowali, Poso, Donggala, Toli-Toli, Buol, Parigi Moutong and Tojo Una-Una.

832 Prominent groups from other provinces in Sulawesi include the Bugis, the Gorontalo people and Menadonese.

833 http://www.kompas.com/kompas-cetak/0411/03/Politikhukum/1364053.htm.

834 Jakarta Post, 23 Jan. 2004; 'The Conflict in Central Sulawesi,' Program on Humanitarian Policy and Conflict Research, Harvard College, 2001 (www.preventconflict.org); Varshney, Ashutosh, Rizal Panggabean, and Mohammad Zulfan Tadjoeddin (2004) 'Patterns of Collective Violence in Indonesia (1990-2003)', Jakarta: UNSFIR Working Paper, April 2003. Also, interviews with Muslim and Christian leaders in Poso, May 2005.

835 Aragon, Lorraine V. (2002) 'Waiting for Peace in Poso: Why Has This Muslim-Christian Conflict Continued for Three Years?' Inside Indonesia, 70; Aragon, Lorraine V. (2001) 'Communal Violence in Poso, Central Sulawesi: Where People Eat Fish and Fish Eat People', Indonesia,Vol. 72, p. 55.

consolidation policies of various actors: the Dutch colonial administration; the Japanese during World War II (loosely aligned with Muslim groups and administrations from Gorantalo in North Sulawesi), and forces seeking to convert parts of the region to Islam or Christianity during the post-Indonesian independence period, such as the Darul Islam and Permesta rebellions.[836] At times, Permesta forces fought against Darul Islam and at others they fought against the military, who were seen as trying to Islamicize the highlands. Permesta and Darul Islam briefly fought alongside each other against the central government in Jakarta. Thus, while Christians and Muslims were often pitted against one another, the dynamics of the tensions are complex, reflecting dynamic political agendas that were not exclusively defined by religious cleavages.

From 1970 until the 1990s, New Order development policies were often based on patronage of local groups. With the introduction of development programs authorized by Presidential Decree, the central government favoured Muslim groups over the Central Sulawesi Christian Church (*Gereja Kristen Sulawesi Tengah*, GKST) synod by providing grants for various public works.[837] Subsequent outbreaks of violence between Muslims and Christians, as well as between migrant and indigenous groups, in Palu and Poso were promptly repressed by the New Order.[838] During the early 1990s, Jakarta shifted its patronage to GKST,[839] stimulating, in part, Islamic claims to power during the violence between 1998 and 2004.

In the final days of the New Order, Muslims were again privileged, leading to resentment within Christian communities.[840] After Soeharto resigned, tensions rose when Poso's Muslim governor proposed a Muslim successor as Poso District Head instead of the customary Christian. The situation was compounded by migration dynamics, as economically pressed groups, predominantly Muslims, migrated to Central Sulawesi. Many of them were part of the government's transmigration program. Indigenous people viewed this influx as a threat to the historic Christian domination of the highlands. As in other parts of Indonesia, transmigrants were given significant economic aid and incentives unavailable to local groups, further fuelling Christian resentment toward mainly Muslim migrants. Thus, the tensions leading to the recent communal clashes were underpinned by socio-economic, demographic and political grievances rather than by religious ideology.[841]

1.3 ASSESSMENT SITES

To compare the dynamics of access to justice, the team chose Poso District, which has experienced large-scale collective violence[842] and Donggala District, which did not suffer communal conflict. Donggala, which had its administrative boundaries redrawn in 2003, was also selected so researchers could examine how successfully

836 Following Indonesia's independence, two regional rebellions arose, Darul Islam, from 1952 to 1965, and Permesta from 1957 to 1961. The Darul Islam rebellion attempted to establish an Islamic state in Sulawesi in alliance with parallel Darul Islam movements in Java and Aceh (Velthoen 2003: 104-6). In 1957, another secessionist movement, called Permesta, consisting of mainly Christians from North Sulawesi, was established.

837 Joost Cote, 'Historical roots of inter communal violence in Central Sulawesi', International Seminar: Religion and Conflict, Bandung 10-11 January 2005, p. 4.

838 Breakdown: Four Years of Communal Violence in Central Sulawesi,' New York: Human Rights Watch, 2002, p. 6.

839 Cote, op.cit., p. 4.

840 Aragon (2001), op.cit., p. 54.

841 For more information on the conflict in Poso, see: Aragon, Lorraine V. (2002) and (2001), op. cit.; Cote, op. cit.;'Breakdown' HRW (2002), op. cit. UNDP PDA Assessment (2004); *Suara dari Poso: Kerusuhan, konflik, dan resolusi*, YAPPIKA, 2003; Indonesia Backgrounder: 'Jihad in Central Sulawesi', Jakarta: International Crisis Group, 2005; and Varshney, Ashutosh, Rizal Panggabean, and Mohammad Zulfan Tadjoeddin(2004) 'Patterns of Collective Violence in Indonesia (1990-2003)', Jakarta: UNSFIR Working Paper, April 2003.

842 On several occasions, when local tensions increased, the research team had to withdraw from the region for reasons of safety.

justice can be accessed in recently established institutions.

The districts are demographically similar, based on ethnicity and religion, levels of poverty and development, and formal and informal institutions pertaining to access to justice (that is, there are similar state-based structures as well as informal problem-solving and *adat* mechanisms).[843] Both districts are relatively poor compared to other districts in Indonesia and the poverty deepened with the onset of the economic and monetary crisis in 1998. Prior to the outbreak of conflict in the late 1990s, Poso had a slightly higher human development index (HDI) than did Donggala, 68 compared to 63 in 1996. (In Indonesia in that year, the average HDI was 66 and 77 was the highest score.) By 1999, the HDI for the province had fallen to 63, but had rebounded somewhat to 64 in 2002.

The HDI measures the average achievements in a country by three basic dimensions: A long and healthy life, as measured by life expectancy at birth; knowledge, as measured by the adult literacy rate and the combined primary, secondary and tertiary gross enrolment ratio; and a decent standard of living, as measured by GDP per capita. The gap between the index and 100 represents the human development shortfall.

Poso

Poso, with its mountainous highlands and lowland coastal areas, is a fivehour drive to the east of Palu, the capital of Central Sulawesi. Despite the natural wealth of the forest, plantations and abundant rice and fisheries yields, many of Poso's citizens live in poverty. In 2001, 41.2 percent of the population or 106,703 people were classified as poor.[844] Education levels are low: 5,251 children were unable to complete nine years of compulsory education, and 6,698 children were unable to continue to high school-/vocational school (SMU/SMK) in 2003; 62 percent of the workforce had a grade-school education or less.[845] The lack of employment opportunities, particularly for middle and high school graduates, is a serious challenge for the local government.[846]

As a result of the conflict, triggered in 1998 by a brawl among Muslims and Christians and continuing until 2002, 143,354 people were forced to relocate.[847] Two subdistricts of Poso were selected for review by the assessment team: Poso Pesisir on the coast and North Lore in the highlands.

- Poso Pesisir is one of four subdistricts in Poso District; it suffered the worst damage during the conflict.[848] Large segments of the community evacuated at the height of the conflict[849] and 6,401 houses and public buildings were damaged.[850] Many people were killed and injured in bombings and shootings, although there are no concrete figures for the subdistrict. *Adat* systems are weak in the wards and villages.[851] In Poso Pesisir disputes are attempted to be resolved through formal means (under state laws) or through deliberation

843 The assessment attempts to capture a variety of different local socio-economic and demographic dynamics below the district level in order to assess how well the justice system is functioning in a variety of contexts. Similar findings then, are not only attributable to the local context,but also broader patterns in access to and the provision of justice.

844 Poverty data for Poso District 2001- cooperation between BAPPEDA, Kabupaten Poso and BPS Poso (2004); *Kabupaten Poso Dalam Angka* 2003 (Poso in Figures).

845 Ibid.

846 Ibid.

847 Satkorlak Central Sulawesi, as clarified on 1 Dec. 2002 and 17 Feb. 2003 by OCHA.

848 Interview with member of police force, Mapane village, 12 March 2005.

849 Interview with former coordinator of Laskar Jihad, Poso Pesisir, 31 December 2004.

850 *Dampak Konflik Horizontal di Kabupaten Poso*, BPS Sulawesi Tengah, 2004.

851 Member of ward administration, Kasiguncu, 24 Jan. 2005; FGDs in Kasiguncu, 17-18 Feb. 2005; FGDs in Tokorondo, 19-20 Feb. 2005.

sessions (*musyawarah*), which are facilitated or mediated by officials from the village and the subdistrict level.

- North Lore subdistrict was not as severely affected by the violence as Poso Pesisir, but some of its citizens were involved in clashes.[852] The subdistrict has become a refuge for internally displaced persons (IDPs), Predominantly Christians and a small number of Muslims.[853] An estimated 10,000 IDPs from Poso entered the subdistrict in 2001 (a total of 143,354 people were forced to relocate from subdistricts in Poso).[854] While most IDPs have returned to their villages, others have settled in North Lore. Some IDPs were provided with houses and farmland, however many still have no living quarters or employment. Many have not received IDP aid or rebuilding entitlements.[855] *Adat* is still strong in North Lore and is used to solve disputes, particularly among the local Napu and Tawailia groups.[856]

Table 27 outlines the features of the villages selected in each subdistrict for in-depth review.

Donggala

Donggala District is close to the capital of Central Sulawesi, Palu. The main sources of livelihood are farming and plantation work, fishing in the coastal regions, and trade and cottage industries in the urban areas.[857] Forestry and mining are significant sources of revenue for the district government but, as in Poso, they have not raised the standard of living for the poor inhabitants—44,035 in 2004.[858] Banawa and Kulawi subdistricts were selected for further review in this assessment.

- Banawa. As a centre of governance for the district, Banawa subdistrict has comparatively good health and education facilities and employment opportunities.[859] Even though Banawa, with a population of 59,736, is relatively privileged, the number of poor households in 2004 was 3,231.[860] The *adat* system is relatively weak in Banawa subdistrict, and in some places is only important for marriage rituals.[861]
- Kulawi lies in the highlands, 105 kilometres from the district capital. Public facilities are unevenly distributed; people living in remote regions have little access to economic resources, education and health facilities.[862] Kulawi, with a population of 25,430, has a total of 1,385 households living in poverty.[863] *Adat* is still quite strong in Kulawi subdistrict, where there arelarge indigenous

852 FGD in Maholo village, 10-11 Feb. 2005.

853 Ibid.

854 IDPs are mainly located in Maholo, Watutau, Tamadue, Wuasa, Alitupu and Watumaeta villages. Interview with Community Health Centre (*Puskesmas*) head, Wuasa village, 1 March 2005. Satkorlak Central Sulawesi, as clarified on 1 Dec. 2002 and 17 Feb. 2003 by OCHA.

855 FGDs in Maholo village and Watutau village,10-13 February 2005.

856 Member of village representative council, Maholo, 9 February 2005.

857 *Data Demografi Kabupaten Donggala, Dinas Keluarga Berencana dan PP Kab. Donggala*, 2004 (shortened to Donggala in Figures, 2004).

858 Ibid.

859 District and subdistrict summary reports; Observations by the research team.

860 Donggala in Figures, 2004, op. cit.

861 Interview with Bone Oge ward officials, 24 January 2005.

862 Donggala in Figures, 2004, op. cit.

863 Ibid.

TABLE 27: OVERVIEW OF ASSESSMENT LOCATIONS – POSO DISTRICT

Subdistrict	Village	Characteristics
Poso Pesisir	Kasiguncu	Pre-conflict population of ward in 1997 was 3,099; by 2003, it dropped to 2,184. Population is balanced between Christians (mostly Pamona and Pebato) and Muslims (Bugis and Gorantalonese). 507 families are categorized poor; most are employed in plantation work and farming. 503 IDP families have yet to receive assistance (*Jadup, Jaminan Hidup*) and house building materials (BBR -*Bahan Bangunan Rumah*). Of 155 families, not one member has graduated from elementary school (SD). During conflict in 2000-2002, 30 people were killed or missing, 4 disabled; 1,137 houses were damaged. None of the murder cases have been solved. Weak *adat* system.
	Tokorondo	The pre-conflict population of 1,935 was inflated to 3,519 in 2003. According to the *lurah*, none of the original 80 Christians remain. Tokorondo is now a Muslim village with small population of Hindu Balinese. Still ethnically diverse with 30% local Kaili people, 30% Bugis, 26.5% Palopo and 10% Gorontalo migrants. 335 very poor families and 187 poor families (1,053 people in 2003). To date, 360 families have not received *Jadup/Bedup* entitlements, scheduled to be provided 2004. Employment: Cacao farming (dry land) 50%, fishing and farm labour. Not one person in 135 families graduated from elementary school; 787 families have graduates from elementary or junior high school. Conflict impact: over 500 houses and public facilities were burned. Weak *adat* system
North Lore	Watutau	Population of 740 is 97% Christian Napu. Key employment: plantation labour, farming and animal husbandry. Lack of educational facilities. Some disputes over land rights. No telephone in the village, the village health centre (*polindes*) was damaged and unused. In 2003, there were 50 very poor and poor families. Few children go to junior high school—the schools are 14-20 km. away and there is no public transport. IDP destination. Strong Napu *adat* system.
	Maholo	The population of 726, is 75% Christian Napu, 17% Christian migrants, 8% Muslim migrants. Plantation labour and farming are key livelihoods. One of the few high schools in the region is in this village. No health care personnel, nearest clinic is 15 km. away. No telephone, 6 hours electricity per day. 104 families do not have houses. 37 families are classified as very poor or poor, but only 3 have the relevant declarations of status as poor; 5 have their health cards. Destination for IDPs. Strong *adat* system, applied only to the Napu.

Source: Central Sulawesi Access to Justice Assessment Team Reports

populations of Christian Kulawi and Muslim Kaili.[864]

Table 28 outlines the features of the villages selected in each subdistrict for in-depth review.

2. JUSTICE FROM THE PERSPECTIVE OF THE DISADVANTAGED

2.1 WHO ARE THE DISADVANTAGED IN CENTRAL SULAWESI?

The access to justice assessment conducted in Donggala and Poso Districts found the existence of two broad categories of disadvantaged groups. The structurally disadvantaged, who struggle with poverty, unemployment and poor access to education and health services,are found throughout both research districts. The lives

864 Interview with *adat* figure, Matauwe, 2 March 2005.

TABLE 28: OVERVIEW OF ASSESSMENT LOCATIONS – DONGGALA DISTRICT

Subdistrict	Village	Characteristics
Banawa	Labuan Bajo	Coastal ward with a population of 2,461 (2004), partially urban, 9 km. from capital. Population is 99% Muslim - Bugis (62%), Kaili (25%) and minority migrant groups. 50 Butonese IDP families. Wealth from tourism and other resources does not tend to benefit inhabitants: 212 families classified as very poor, comprising nearly half the villagehouseholds. Key livelihoods: fishing (migrants) and plantation labour (local Kaili people). No prevailing *adat* system. Local conflicts involve youths.
	Bone Oge	Coastal ward with a population of 2,797, 12 km. from capital; 1,118, are elementary school graduates. Muslim Kaili form 99% of population. Most local people do not benefit from natural resources. 210 families in the category of very poor in 2004. Health facilities are not always accessible by the poor. Employment: Fishing, manual labour at the Donggala port. There is no prevailing *adat* system. Conflict confined to local issues.
Kulawi	Matauwe	Village is surrounded by forest, 1 km. to subdistrict capital. The population of 572 is predominantly Christian Kulawi(88%), Muslims account for 11%. 50 families in very poor category. Despite adequate health infra structure, some villagers have limited access due to limited funds. Key livelihoods: forestry and plantation labour. High regard for Kulawi *adat*.
	Lonca	Mountain village, 9 km. to the subdistrict capital by very dangerous, steep road. Population: 463 (2004). Predominant ethnicity: Uma and Mona (from the Kulawi group), 97% Christian. Key livelihoods: plantation labour and forestry. 44 very poor families. Currently PLTA Microhydro is working to light all households. School infrastructure appears to be adequate, since the subdistrict capital is close by. More children in this area reach high school education compared to other research assessment villages. High regard for *adat*.

Source: Central Sulawesi Access to Justice Assessment Team Reports

of women and children were commonly found to be profoundly impacted by these issues. Others, the locally disadvantaged, such as IDPs and victims of conflict, are disadvantaged interms of access to justice as a result of specifically local conditions. *Adat* communities were also found to be disadvantaged across both districts: Since 1992, the Central Sulawesi government has endorsed a policy by which all land that does not have a certificate is state land. As a result of this policy, village communities that have used *adat* to govern the use of local lands (particularly for farming coffee and collecting rattan) have found that their rights to the lands are unclear and in jeopardy.

In Poso, locally disadvantaged groups include many of the victims of conflict and IDPs. They have poor access to government services, a poor standard of living, and no remedies for the injustices they suffered during the conflict. Over the past decade, *adat* communities in North Lore have seen their customary rights undermined by state policies, as central and regional governments have claimed traditional land and passed it on to private companies (as in 1995, when PT. Hasfarm was given almost 8,000 hectares of communal land; villagers received no compensation) and national agencies (when community forest and coffee gardens were taken by the government to establish Lore Lindu National Park).[865]

865 Interview with member of village administration, Watutau, 14 February 2005; FGD in Maholo and Watutau,10 – 13 February 2005; Michael Hoppe and Heiko Faust, Transmigration and Interaction in Indonesia, Impact on Resource Use in the Napu Valley, Central Sulawesi'', Discussion Paper Series, No. 13, Research Project on Stability of Rain Forest Margins(STORMA), January 2004.

Table 29 outlines the four disadvantaged groups in each district (one in each village) selected for further review in the assessment. The views of these groups on access to justice are canvassed together with those of the broader population in the next sections of this report and underpin many of the findings on access to justice in Central Sulawesi. In many cases, the group selected in the qualitative component of the assessment was deemed the most disadvantaged in each village. However, when disadvantaged groups in villages were similar, another disadvantaged group was selected to provide variety in the sample.

2.2 COMMUNITY PERCEPTIONS OF JUSTICE

The assessment team found that the poorest of the poor and the most disadvantaged see justice not only as being able to seek and obtain remedy for legal infringements, but also as the ability to resolve problems and uphold rights to basic services such as health, education and law enforcement. Disadvantaged groups in Central Sulawesi typically did not have specific definitions of justice; rather, they described what was unjust. good example of this was found in Maholo (one of six villages in Poso's Lore Utara subdistrict that attracted fleeing Christian IDPs). Here, FGD participants described a multitude of injustices, which were often specific to certain groups.[866] IDPs decried KKN–corruption, collusion and nepotism. According to them, not one of the 178 IDPs in Maholo has received *Jadup/Bedup* payments (aid programs for IDPs). However, they say civil servants have received the payments, although they aren't entitled to them. Also, the IDPs note that, according to newspaper reports and information gathered by NGOs, half the *Jadup/Bedup* funds have been misappropriated. Response to the conflict by state legal institutions, they complain, has been slow or non-existent: No perpetrators involved in the conflict have been arrested. Cases involving bomb threats and bombs in Poso, and the highly publicized murders of village heads and also the rector of the university remain unsolved.

Members of Maholo's Napu *adat* community complain that the government has discriminated in favour of powerful interest groups–specifically, PT Hasfarm, a plantation company that, villagers say, has ignored local customary rights, destroyed cultural sites, and has failed to pay severance and sometimes even wages to local employees.[867]

A fisherman who was beaten in Donggala for trying to stop illegal fish bombing summed up the sense of lack of justice in the formal judicial system: "Given that this case has taken a year to process and still no decision has been made or outcome achieved, I find the lack of action and decisions made by the police to be discriminative in favour of those who have money.... The perpetrator is still running around and has not faced any legal sanctions...because I don't have money, justice doesn't favour me".[868]

Many see justice as directly connected to their ability to earn a living: The local traditional fishermen in Labuan Bajo believe central government policies are discriminatory, specifically mentioning hikes in fuel cost, which they cannot afford, and revolving funds, which they say are given only to individuals close to program administrators, not those in need.[869]

866 FGDs with disadvantaged groups and residents in Maholo, 24 April 2005 and 13 May 2005. Responses are briefly described in the following paragraphs.

867 FGDs with disadvantaged groups and residents in Maholo, ibid.

868 Interview with victim, Bone Oge, 5 May 2005.

869 FGD with traditional fishermen and labourers, Labuan Bajo, 28 April 2005.

TABLE 29: SELECTED DISADVANTAGED GROUPS – POSO, CENTRAL SULAWESI

Village	Disadvantaged Groups (Bold = Selected Group)	Group Experience	Key Justice Issues
POSO DISTRICT			
Kasiguncu	■ **Children affected by conflict** ■ Female victims of sexual assault ■ IDPs who lost land ■ Poor who have not received welfare ■ Poor farmers	Kasiguncu was seriously affected by ethno-communal tensions, violence and property destruction. Many children lost their parents or were forced to move for safety. Some were sent to an orphanage in Balikpapan; at first, they were well treated, but soon they were severely abused (including beatings, starvation and sexual assaults).	Conflict-related security; law enforcement; access to public services
Tokorondo	■ **Victims of violence at the hands of security personnel** ■ IDPs who have not received entitlements	These victims have experienced torture and threats by security forces (both police and military), and have no access to legal representation. Cases of beatings, assaults with weapons, extortion of levies, verbal abuse, sexual abuse resulting in pregnancy and abandonment were common. 605 families lost their homes; 368 households have not received assistance from the *jadup* program, and 30 have not received rebuilding assistance. These same people lost homes, friends and family in the conflict.	Conflict-related security; law enforcement; access to public services
Watutau	■ ***Adat* community** ■ Poor women and children ■ Farmers, Plantation workers ■ IDPs	Napu *adat* community members in Watutau argue that government policies ignored and weakened their customary rights to communal lands, resulting in easy acquisition of *adat* land by the government to award to other parties. There is rising resentment against the government.	Access to land and natural resources; labour and employment rights
Maholo	■ **IDPs** ■ Poor women and children ■ Farmers, Plantation workers ■ Marginalized *adat* Napu community	There are 178 IDPs in Maholo who suffered losses: their houses were burned, family members killed or missing, some are permanently disabled. There is no government support and they don't know where to begin to make claims. Following the violence and trauma of the Poso conflict, they feel they have no recourse or remedy.	Conflict-related security; law enforcement; public service provision
DONGGGALA DISTRICT			
Labuan Bajo	■ **Traditional fishermen and port workers** ■ Poor families ■ School dropouts ■ Poor female fishmongers	Fishermen and port workers have poor access to education, health services, clean water and local resources. Human security and legal protection are deficient. FGDs with fishermen and port workers revealed that, according to them, justice will not be achieved until the powerful and the authorities recognize their rights relating to access to natural resources and minimum wages, which they rely on for their daily needs to survive.	Access to land and natural resources; labour and employment rights
Bone Oge	■ **Traditional fishermen** ■ Poor families	Traditional fishermen in Bone Oge have poor access to health and education services, food and other staples, legal representation, security, and a basic standard of living. The fishermen affected by governmet land acquisition programs received no compensation or land certificates after they were relocated. The regional government has refused to give compensation mainly due to the fact that the fishermen could not prove land ownership.	Access to land and resources; access to public services
Matauwe	■ **Poor women** ■ Farmers ■ Children who drop out of school ■ Families without access to aid	Women in Matauwe work as peasant farmers alongside their husbands, while also taking on all household duties. They have very little knowledge of justice processes or oftheir rights to health and education services.	Access to public services; access to land and resources
Lonca	■ ***Adat* farmers** ■ Families without access to aid	*Adat* farmers in Lonca traditionally used *adat* lands that have been acquisitioned by the government for the Lore Lindu National Forest. The farmers argue that the government ignored their *adat* rights, and reduced their access to cultivatable land, while the land in the forest is not used	Access to land and resources; access to public services

Source: Central Sulawesi Access to Justice Team Reports

Similarly, traditional fishermen in Bone Oge and Labuan Bajo–who were relocated after the beachfront they traditionally used was acquired for a tourist development in 1998–said they never received the new land certificates and other facilities they were promised, although certificates for the beachfront were issued in the name of the former governor's children.[870] Farmers in Lonca complain that the government ignored their *adat* rights when it claimed their traditional lands as national forest. The people in Lonca believe that the acquisition was not only unjust but unwise–their farming practices, they claim, are sustainable and have not endangered the forest for generations, and so they have continued to use the land, in defiance of the law.[871]

For those whose lives were shaken by the horrors of communal violence, justice is directly connected with their right to security–and the stark lack of it. In Tokorondo Ward, 605 families lost their homes, many public buildings were destroyed, some citizens were relocated and many were victims of violence at the hands of the security forces. Assessment results show that most disadvantaged people worry about a lack of protection for witnesses, arbitrary searches of their homes, and inaction—or illegal actions—on the part of law enforcement officers.[872]

Rather than report problems to the security law enforcement agencies, young and older men in Tokorondo say it is better and safer to "put up with it" and "leave it in the hands of God".[873] Young women in Tokorondo, however, argue that there must be further struggles to uphold their rights, particularly since they are the victims of sexual assault and they do not want to see other women go through the same experience.[874]

2.3 KEY JUSTICE-RELATED ISSUES AFFECTING DISADVANTAGED COMMUNITIES

The assessment team has concluded that the same groups are consistently and directly affected by justice issues: the poor, the marginalized, the isolated, the uneducated and those who have limited access to government and justice services. Disadvantaged groups generally fall into two categories: the structurally disadvantaged, found in both districts as the result of broader structural conditions in the province, and the locally disadvantaged who are disadvan-

BOX 34: VIOLENCE, INTIMIDATION AND WRONGFUL ARRESTS

Village officials from Tokorondo recall 12 May 2005 with a sense of resigned dismay: At 3 p.m., Mobile Brigade (Brimob) officers from Polres Poso, led by the Poso Chief of Police, raided Tokorondo. The police said they were securing the area for the District Head elections. The homes of two village officials were raided, as was the home of a religious leader, who had been falsely arrested in 2004. No evidence was found, and the families—embarrassed and shocked by the invasion of their privacy—argue this was intimidation. Police could not explain why they raided the homes and the sector police head claimed no knowledge of the raids.

Source: Interviews with victims, Tokorondo, 19 May 2005; police officer, Sector Police, Poso Pesisir, 25 May 2005

870 Ibid., and FGDs in Bone Oge, 14 and 18 February 2005.
871 FGDs in Lonca, 25-28 April 2005.
872 Interview with victims, Tokorondo, 19 May 2005.
873 FGD with disadvantaged male youths, Tokorondo, 1 May, 2005; FGD with adult males, Tokorondo, 19 February, 2005.
874 Ibid

taged in terms of access to justice as a result of specifically local conditions.[875] In Poso District, where communities are still dealing with the ravages of communal violence, which plagued the district for seven years and still threatens to disturb the fragile peace, villagers frequently mentioned justice issues specifically pertaining to conflict-related security and law enforcement. Justice for villagers, particularly disadvantaged groups, involves upholding and protecting their rights to security. They are not only concerned about being able to seek and obtain remedy for legal infringements, but they also seek resolutions that will put an end to the injustices they see in their lives. Conflict-related issues in Poso District are numerous, specifically:

- Poor law enforcement and security
- Unresolved cases of murder, violence, destruction
- Break-down of public services (health, education, public works, administration and governance)
- Access to and management of natural resources

With their economically oriented conception of justice, disadvantaged communities in both Poso and Donggala shared common justice issues relating to their social and economic welfare. These can be grouped into five main categories:

- Provision of public services
- Law enforcement and violence
- Access to and management of natural resources
- Access to capital
- Labour and employment rights

This section will first present the results of a survey of approximately 450 villagers in each district, probing what they considered the most pressing issues in their daily life, and then examine in more detail the specific thematic issues raised by respondents in FGDs and interviews during the assessment.

Survey Results

Survey respondents in each of the eight assessment locations in Poso and Donggala were asked to nominate (in order of importance) the three most common issues in their village from a list of 20 options. Poverty and domestic disputes were most frequently listed as the number one issue (see Table 30), education and public health as the number two issue, and land disputes were most frequently mentioned as third. Women also worried about housing problems and human rights violations.

A number of responses differed significantly between Poso and Donggala. In Poso, 11 percent of respondents selected land disputes between citizens as the most important issue facing villagers as opposed to 7 percent globally and only 1 percent in Donggala. In Donggala, 8 percent of respondents nominated public health as the most important issue in their village as opposed to 1 percent in Poso but a similar 8 percent globally.

When the justice issues are broken down into conflict-related issues and non-conflict related issues, other issues come to the fore (see Table 31). The conflict-related issues mentioned across all villages in Poso were unresolved cases of death, violence and property destruction. Breakdown in the

875 Of course, it is arguable that there is some overlap between these categorizations if the disadvantages experienced are due to specifically local structural conditions However, the categorization attempts to differentiate between those groups which are disadvantaged based on similar inequalities across a variety of geographic areas, versus those which are a phenomenon specific to one geographical area.

TABLE 30: MOST IMPORTANT ISSUES IN ASSESSMENT LOCATIONS – CENTRAL SULAWESI

Rank	Number 1 Issue				Number 2 Issue				Number 3 Issue			
	Global (n = 734)		Women (n = 357)		Global (n = 706)		Women (n = 343)		Global (n = 645)		Women (n = 316)	
1	Poverty	44%	Poverty	45%	Education	25%	Education	27%	Land Disputes	19%	Land Disputes	19%
2	Domestic disputes	14%	Domestic disputes	15%	Poverty	15%	Poverty	15%	Poverty	14%	Public health	16%
3	Land disputes	10%	Public health	9%	Land disputes	13%	Public health	8%	Public health	12%	Poverty	14%
4	Public health	8%	Education	4%	Criminality	8%	Domestic disputes	7%	Education	10%	Education	11%
5	Criminality	6%	Housing Problem	3%	Public health	6%	Criminality	7%	Housing Problem	8%	Housing Problem	7%

Source: Access to Justice Survey Central Sulawesi

'Global' = all survey respondents (male and female)
'Women' = female survey respondents only

provision of public services and poor law enforcement and security were mentioned in the two villages that suffered the worst violence.

Of all the non-conflict related issues, the problem of KKN and deviance in the provision of public services was mentioned in all villages, showing the pervasiveness of these problems in Poso and Donggala Districts. Citizens in all villages except Kasiguncu mentioned natural resource management, access and use as an important issue. Interviewees in five villages raised two significant problems: access to capital (and excessive debt) and also law enforcement and violence. These issues will be explored in greater depth below.

Conflict-Related Issues

All four assessment sites in Poso reported unresolved cases of death, violence and property destruction. Schooling of children was disrupted, while parents lost their livelihoods due to the violence. In Kasiguncu and Tokorondo, which were particularly hard hit, water facilities (PAM) were heavily damaged during the riots, as were health facilities. Farmers were pressured to repay Farm Enterprise Credit (*Kredit Usaha Tani,* KUT), even though the fighting prohibited them from planting and tending their crops. Female children were sexually harassed: in Tokorondo alone there were 22 cases of abuse and violence at the hands of security forces, which were reported to the researchers, most occurring in 2004 after the height of the conflict.[876] Only one case, in which a soldier assaulted an underage female, has been processed through legal channels.

Access to Public Services and Public Service Program Delivery

A major complaint from all villages concerns corruption and poor general public service delivery of programs such as Rice for the Poor, Health Care Cards and education. [877]

- **Access to Subsidies:** According to FGD respondents, relief and building

876 FGD in Tokorondo, 19-20 February 2005.

877 FGDs in all villages in the assessment.

TABLE 31: DISTRIBUTION OF KEY JUSTICE-RELATED ISSUES - CENTRAL SULAWESI

Region	Poso				Donggala			
Village	Kasiguncu	Tokorondo	Watutau	Maholo	Labuan Bajo	Bone Oge	Matauwe	Lonca
CONFLICT RELATED ISSUES								
Break-down in public service provision (health, education, public works, administration and governance)	x	x						
Poor law enforcement and security	x	x						
Unresolved cases of death, violence, property destruction, etc. due to conflict	x	x	x	x				
NON CONFLICT RELATED ISSUES								
Natural resource management, access and use		x	x	x	x	x	x	x
Law enforcement and violence in the community				x	x	x	x	x
Deviance in public service provision (administration and governance) and program delivery (poverty eradication programs, assistance for IDPs) and corruption	x	x	x	x	x	x	x	x
Labour and employment rights: discrimination and deviance in employment practices by large companies			x	x	x	x		
Access to capital: excessive debt to moneylenders and credit programs			x	x	x	x	x	

Source: Every incident tracked in in-depth interviews and FGDs in all assessment locations

have yet to distributed in either Kasiguncu or Tokorondo. In Tokorondo, 360 households have not received relief funds *(Jadup/bedup)* and 30 households have not received rebuilding funds (BBR). The community has taken this issue to the Office of Social Affairs, the *Bupati* of Poso and the DPRD, through dialogue and protests, but there have been no clear results. Shortly after several NGOs, includingLPMS and PRKP publicized the alleged diversion of these funds, their offices were bombed.[878]

- **Corruption** allegedly occurs in almost all agencies and programs, beginning at the village level up through offices in charge of poverty-alleviation programs, to the police and prosecutors' office, according to traditional fishermen and labourers in Labuan Bajo. These citizens have a number of specific complaints: aid programs are not properly publicized and explained; data regarding the number and names of beneficiaries is falsified, and no dependable,independent monitoring system has been put in place to supervise and check the delivery of aid programs. *Raskin* is not evenly distributed in Labuan Bajo,

878 Interview with Development Section Head, Tokorondo village, 8 March 2005.

and according to the fishermen and labourers, often the *kelurahan* staff buy *raskin* at insider prices and then resell it at market prices.[879]

- Health Care: In all the assessment sites, respondents complained that the JPS Health program is bureaucratic and lacks clarity. Many cited the prohibitive price of medicines (in Labuan Bajo and Bone Oge, village midwives sell contraceptive pills labelled as free) and the difficulty in getting health care cards; health facilities are poor or damaged.According to respondents in Maholo, delays in assistance have meant that some women have lost their babies.
- Education: In Watutau and Maholo, a number of children cannot continue their education to the junior high (SMP) level, since the SMP is too far away. In Bone Oge, elementary and junior high school teachers seldom come to classes, since they also live far away from the villages and do not want to travel the 30 kilometre distance.

Access to Land and Natural Resources Problems of access to and ownership of natural resources are common, despite and perhaps because of the region's abundance of resources. In North Lore and Kulawi, there is rising resentment against the government for decreasing the community access to communal lands. The villagers argue that state companies that now use *adat* land (thanks to government policies) do not properly care for the land and have degraded the forest to the detriment of the villages. People feel disempowered, having lost access to lands that they consider to be theirs.[880]

In Watutau individuals have traditionally owned 1,119 hectares of *adat* land. However, since the change in government law, the government has issued certificates to villagers for only 20 hectares, thus depriving most Watutau residents of their traditional lands and their means of livelihood (see Box 3 in Part 2).Residents in Maholo face a similar situation. Villagers protested when the government took away the use of these lands, but to date there has been no action by the authorities to remedy the situation.

Access to Capital

In Watutau, farmers have trouble paying KUT loans because of drought, failed harvests and falling prices; they receive no support from Farmers Credit Unions. In Bone Oge and Labuan Bajo, fishermen and farmers, with little access to capital and poor collateral, have been forced to turn to moneylenders. Excessive interest rates have led to mounting debts; many farmers in Bone Oge have lost their land.[881] In one case in Labuan Bajo, a man found that, after making one year's worth of instalments on a loan for the purchase of a fridge, none had been credited. He reported the incident to police who suggested he solve the problem through informal channels. The man's uncle repaid the debt in full to the creditor and took the fridge for his own use. In Bone Oge, the moneylenders, members of the community and neighbourhood officials held a dialogue.[882] Although some credit issues were addressed, the practice continues and, in fact, one moneylender now controls 90 percent of the coconut plantations originally owned by villagers.

879 FGD with traditional fishermen and labourers, op., cit..
880 FGDs in North Lore (Maholo and Watutau); FGDs in Kulawi (Lonca and Matauwe).
881 FGD in Kelurahan Bone Oge, 23-27 April 2005
882 Ibid

Employment and Labour Rights

Private enterprise PT. Perkebunan Hasfarm, which has reportedly recently changed ownership, has not paid farm labourers from Watutau and Maholo. PT. Pelindo did not pay legally mandated minimum wages to 54 port labourers from Labua Bajo and Bone Oge, nor does it observe safety and health rules.

Law Enforcement

Law enforcement is weak in conflict and non-conflict affected villages alike. Communities complain that the police fail to give optimal service, but routinely request compensation, services or administrative fees. In Banawa subdistrict, residents say drunk, under-age boys are responsible for most assaults. Despite laws against the sale of alcohol to youths, alcohol is freely sold, while law enforcement officers look the other way. When women report domestic violence–by husbands, sons, and son in-laws–police fail to make arrests. Villagers say that police take action against perpetrators slowly–if at all (see Box 35).[883]

3. COMMUNITY AWARENESS OF RIGHTS

Taking action to defend or claim a right presupposes that an individual or community possesses at least a basic awareness of the fact that they have been wronged in some way or are not receiving something to which they are entitled, if not knowledge of the actual right itself. The individuals or community must be aware of which people or institutions are available to help with the process of defending or claiming that right, if they are not capable of resolving the issue unassisted. This section examines community awareness of rights in both specific and general terms, and then provides an overview of the available services and institutions that can provide legal assistance and contribute to raising community legal awareness.

3.1 COMMUNITY AWARENESS OF RIGHTS AND OPTIONS

The assessment surveyed 961 citizens in Central Sulawesi regarding perceptions of their rights. Respondents were divided equally among men and women; both disadvantaged and general population community members were interviewed. Thirty-one informal and formal justice providers were asked about their perceptions of access to justice.

In the majority of FGDs in Donggala and Poso, the disadvantaged groups articulated their rights in terms of access to basic health

BOX 35: TROUBLED WATERS FOR DONGGALA FISHERMEN

Making a living as a fisherman can be a high-risk occupation in Donggala. To increase their catch, large companies illegally use dynamite to 'fish bomb', seriously damaging the fishing grounds of the traditional fishermen. In April 2004, one of the traditional fishermen challenged the fishermen who were conducting this 'bombing' and was consequently beaten. The victim told his family of the incident, and the family vowed to seek revenge. Three days later, one of the perpetrators was seen in the village. A local elder, worried that a fight was imminent, intervened and took information about the fish bombing and beating and took it to the Sector Police. The perpetrators were bought to the police station. The victim has spent time and money, photocopying materials and making trips to the police station; a local NGO in Palu city has given him legal advice. Despite this, one year later, no action has been taken against the companies or the perpetrators.

Source: Interview with victim, Bone Oge, 05 May 2005; interview with perpetrator, Bone Oge, 7 May 2005

883 Interview with a Bone Oge ward official, 24 January 2005; interview with Lonca village officials, 23 January 2005

and education, protection from violence (often perpetrated by security apparatus), protection of their access to lands and sources of livelihood, protection from discrimination in favour of the wealthy and powerful, and in some cases remedy for violations of these rights.

- **Fishermen in Labuan Bajo** aptly summed up their general perceptions of rights: "The citizens believe that justice will not prevail until the powerful people give or value citizens' rights to natural resources,such as land, sea and air, which are the basic needs of everyday citizens. Only when the security forces of land and sea do not abuse their authority will the citizens feel that justice has occurred. Only when the port workers get a wage which is fair and appropriate to the minimum wage regulations, and only when fuel prices and fishing equipment are in line with the value and availability of the catch will citizens feel that justice has been achieved".[884]
- **Young males in Tokorondo** added: "People have the right not only to convey their aspirations to the village/ward administration, but also to demand that these rights areanticipated by their leaders".

The knowledge of human and legal rights is growing, particularly in areas where NGOs such as The Study of Advocacy and Human Rights Organization (LPSHAM) are active. In the more isolated areas of Poso and Donggala, it was clear from villagers' complaints that they knew when an injustice had occurred, but they were not likely to take action.

Although citizens have in some instances taken the initiative to complain to a relevant government agency, they frequently appear at a loss for what to do if (as is often the case) no improvement occurs. Efforts to achieve justice through formal legal processes are seen as fruitless, as in the following examples.

- **The Tokorondo Village Head was murdered** at the end of 2002. Polda Sulteng and Mabes Polri took charge of the investigation of the shooting, but villagers say that until now, the police have issued no statements about the progress of the case, despite continued demands from the family.[885]
- **In Kasiguncu, families of victims who were murdered** or 'disappeared' during the conflict feel frustrated because they do not believe the police are 'serious' or diligent in their investigations. Most cases are unsolved and no arrests have been made. In 2004, the Poso District Police Office handled 414 cases, butonly 160 cases were resolved.[886]

Knowledge of general rights does not translate as knowledge of legal rights and processes in Poso and Donggala. Many people are more familiar with *adat* laws or local leaders than the national law, and hence resort to the informal system to resolve disputes, as they are wary of the formal legal system. The advocates interviewed by the assessment team identified a number of obstacles for disadvantaged and indigent users of the formal legal system:

- Lack of knowledge of legal rights, obligations and processes (people must rely on legal advice to which they have little access)
- Poor socialization of legal rights, processes and law by government bodies

884 FGD with traditional fishermen and labourers, op.,cit.
885 FGDs in Tokorondo, op., cit.
886 Poso District Police Office, Criminal Case Data for 2004.

- Poor knowledge of the cost of legal services
- Poor knowledge of how to access legal advice. Few people realize lawyers are obliged by law to provide *pro bono* services.

In fact, people sometimes may be aware of rights but feel constrained from taking full action for various reasons.

- **Duty-bearer complicity:** No one in Maholo has received *Jadup/Bedup* payments but civil servants have (who are not entitled to these benefits). According to NGOs and newspaper reports, half of the funds intended for IDPs have instead been misappropriated by officials who have spent the money on various 'informal' expenditures. Also, according to surveys of men and women in both districts, roughly one third do not think that, if the military harassed a woman, the incident would be reported to the authorities (see Chart 29).
- **Expense:** At many FGDs, people argued that the courts are only affordable for the elite classes, and taking a case to court is not an option for the poor, who must work every day just to live. Bribes are also a concern.
- **Shame:** In Labuan Bajo, children left school, because their parents were too poor to pay school fees. The parents, determined to have their children educated, requested that the principal reduce the school fees. But the school regulation was clear and the students felt ashamed to push for or receive a reduction, so they simply left school.

Women's Perceptions of Rights and the Actions They Take

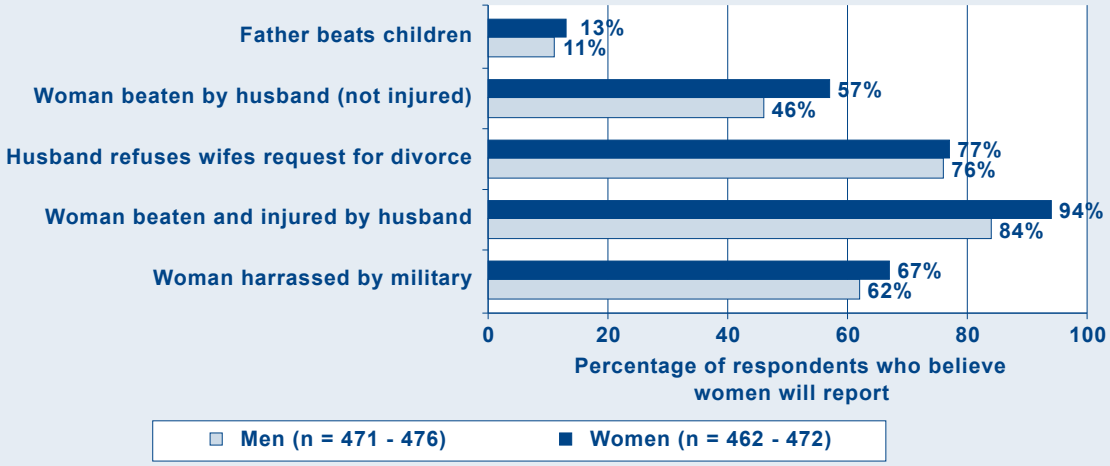
The assessment survey gauged citizens' perceptions of their rights in. In all, 961 respondents participated (480 men and 481 women). Women overwhelmingly responded that they would stand up for their rights and are willing to take action to seek remedy: In male/female conflicts, more than 44 percent of all respondents would expect women to stand up for their rights. However, more women believed that women would remain silent and do nothing/surrender (21 percent women vs. 19 percent population in general).

Many women tend to resolve disputes through deliberation and traditional mechanisms (45 percent of female respondents), but only 40 percent of female respondents were satisfied with the decisions (disadvantaged women tended to be even less satisfied.) When asked what they did if they were dissatisfied, more than a third said they did nothing.

Over half of the women respondents (57 percent) said that if a woman was beaten and not injured, the incident would be reported (men, on the other hand, had little faith that such an incident would be reported–only 46 percent agreed) if there was an injury, the number of women respondents who thought the incident would be reported jumped to 94 percent. The men again underestimated the women's response if there was an injury (84 percent). Three-quarters of both men and women thought reports would be made if a man refused his wife's request for a divorce, while about two-thirds of the respondents thought harassment by military would be reported. The rights of children, however, were a mere

CHART 29: PERCEIVED LIKELIHOOD OF WOMEN TO REPORT DIFFERENT INCIDENTS – CENTRAL SULAWESI

Question: 'In the following cases, will a woman report to the local authorities?' (Local authorities includes the police, village head, *adat* or religious leaders, but not family members or friends)



Source: Access to Justice Survey Central Sulawesi

blip on the radar: Only 13 percent of all respondents thought a father beating a child would be reported.

There are more women's empowerment NGOs in Poso than in Donggala–which might explain why women in Poso tend to be more aware of their rights and more willing to take action compared to women in Donggala (66 percent in Poso are likely to report an incident even if no injury results compared to 35 percent in Donggala).

3.2 RAISING AWARENESS THROUGH LEGAL AID AND COMMUNITY OUTREACH

Even when people are aware of their rights, they don't always know how to go about seeking remedies for their problems. Lawyers and legal aid can play a vital role in bridging the gap between communities and formal justice system providers, provided that communities are aware of their existence, and that they both geographically and financially accessible. Community outreach by government institutions and NGOs can be instrumental in raising community legal awareness.

Following is a brief overview of services. While there are private practice lawyers at the provincial level[887] and a number of NGOs (particularly in Poso), they do not have the resources or capacity to provide legal representation and advice for many indigent citizens for a variety of reasons, briefly examined here.

Private Practice Lawyers

Only 32 lawyers in Palu have more than 10 years of experience.[888] While Article 56, KUHAP sets the fees for legal services, in reality fees vary, and are usually 10 percent

of the value of the resources of the case. Extra expenses are charged if the advocate must travel to a client's village. In one case in Donggala, the amount was Rp. 5,000,000 (around USD 500); in Poso, Indonesian Advocates Association (AAI) lawyers charge an additional Rp. 10 million (around USD 1000) —about two times more than the actual operational costs. Criminal cases range between Rp. 10 million to 15 million (around USD 1,000 – 1,500). Such costs are completely prohibitive for indigent clients, many of whom live in rural areas far away from the lawyers' city offices.[889]

A significant number of lawyers will only take on cases that are well funded; consequently, most of AAI's clients in Poso and Donggala are wealthy city dwellers.[890]

In theory, the government provides indigents with legal aid either through state funding of private practice lawyers or state-provided lawyers. In fact, the assessment found no evidence of state-provided lawyers. The assessment also found that, when government funding is provided to private practice lawyers or legal aid lawyers, fees in Central Sulawesi are well below standard fees: in 2002, the payments were between Rp. 250,000 (around USD 25) in Donggala and Rp. 750,000 (around USD 75).

Although members of professional law organizations are required by law to provide *pro bono* services to indigents, instances of this are very rare. AAI undertakes approximately 10 to15 *pro bono* cases per year in Donggala. The AAI was also involved in conflict cases in Poso, that were moved to Palu because of shootings of justice providers.[891] In Palu, the secretary of the AAI says that for 18 months neither the courts, prosecutors nor police have referred any citizens requiring *pro bono* services to private practice lawyers.[892] Threats of bombing against lawyers involved insensitive cases also limit participation.

Legal Aid: The major form of free legal assistance is through the organisations, Perkumpulan Bantaya and LPS-HAM in the provincial capital. These two organizations are partners of the Legal Aid Institute (LBH) in Makassar, which helps in some of the larger cases. These services, however, are only provided at the provincial level. Legal aid institutions in Central Sulawesi have very limited capacity and outreach programs.

NGOs and other civil society organizations in Central Sulawesi provide limited advocacy services, typically in the form of collective representation in disputes (not necessarily through formal dispute resolution processes) and through lobbying and monitoring. They face significant obstacles: Of particular concern is their inability to assure the safety of clients and staff. "People in Poso don't want to talk because if you talk today, tomorrow you disappear," the founder of Bantaya Legal Aid in Palu commented. "We don't even know where the last *Bupati* is. And when Tokorondo village demonstrated in front of the local parliament, the head of the village was shot."[893] Staffing, training

887 There are three advocate/lawyer professional organizations in the province: the Indonesian Advocates Association (AAI), the Indonesian Advisory Services Association (API) and the Indonesian Lawyers Union (SPI). These organizations provide legal assistance services for criminal, civil and administrative cases. They are obliged by Law No.18 (2003) on Advocates (Article 22, Clause 1) to provide pro bono services to indigent users. The Indonesian Lawyers Union has a provincial office in Palu but no district offices. The AAI in Palu has jurisdiction over the Palu municipality, but also coordinates its branch offices in Donggala and Poso and sometimes provides Palu based services to these areas. (Interview with AAI officer of Palu Headquarters, Palu, 18 Jan. 2006.)

888 Ibid.

889 Ibid. Also AAI head of Donggala Branch, 18 January 2006.

890 Ibid.

891 The AAI provided *pro-bono* services on the case of the murder of a judge in Poso. The case was never adjudicated due to the wrongful arrest of a suspect.

892 AAI officer, Palu, op. cit.

893 Interviews with YBH Bantaya staff, Palu, 17 January 2006.

and funding are also challenges, as is briefly described below. There is little communication among the civil society organizations in Poso.

In all, seven organizations are involved in legal advocacy and conflict resolution in the assessment sites. Few NGOs are in Donggala, given its proximity to Palu, the provincial capital, and little information on these organizations was obtained during the assessment. In Poso, a number of NGOs have been formed in response to the conflict, but they generally undertake advocacy activities only. While they have put issues in Poso on the district and national public agenda, they have had little success in seeking prosecution of the perpetrators of the conflict. In addition to the five discussed below, there are also: YTM-LPSM in Palu/Poso, that focuses on conflict resolution; and Synod Women's Commission of the Central Sulawesi Christian Church (GKST) in Poso, which is involved in advocacy for women's rights in Poso, with specific focus on members of GKST.

Few deal in individual representation. Bantaya Legal Aid Foundation in Palu (affiliated with LBH), The Study and Advocacy of Human Rights Organization, and Central Sulawesi Legal Aid Association all focus on large-scale collective disputes with an extensive public interest.

The Study and Advocacy of Human Rights Organization (LPS-HAM) is based in Palu. One lawyer and a group of law-school graduates provide legal and human rights assistance in approximately 20 cases a year to victims and people accused of crimes in Poso, Luwuk and Donggala districts. Many of the cases involve terrorism. Most clients are from marginalized areas and from lower socio-economic backgrounds; often they have been negatively impacted by government policy. LPS-HAM also conducts community awareness-raising in relation to legal and human rights. Because many cases involve violence or accusations of misconduct by the government or military or police, in general, most lawyers and others feel intimidated and are reluctant to provide *pro bono* services in support of victims. LPS-HAM pays legal costs if a client doesn't have the capacity to pay. According to the LPS HAM director, funding is limited to contributions by LPS-HAM staff.[894]

Central Sulawesi Legal Aid Association (PBHR Sulteng), also in Palu, was originally a student organization. Its members provide legal aid and consultation services. These social activists, who are familiar with the Palu culture, typically have four to five years of experience. Some have a legal background. Most have picked up skills through internal discussions and attending other forums. PBHR tends to assist in broader collective or public interest cases: in Tojo Una-Una, for instance, they helped local landowners contesting the government's acquisition of their traditional land. Most clients are from urban middle- to lower-income groups and are usually labourers, fishermen, farmers and *adat* community members. PBHR relies on donations, although it does get some government funding, amounting to Rp. 300,000 (around USD 30) per case.[895]

Bantaya Legal Aid Foundation (YBH) in Palu focuses on dispute resolution and legal education. Few staff members have any formal legal training. YBH Bantaya promotes a return to *adat* law in managing

894 Interview with director of LPS-HAM Sulawesi Tengah, 17 January 2006
895 Interviews with PBHR staff, Palu, 18 January 2006.

horizontal disputes and assists in mediating land claims to forested areas. Despite the threat of physical violence, YBH Bantaya has been able to publish information on human rights violations in Poso. Most clients are farmers and *adat* communities seeking to resolve civil cases. Funding is provided through the Dutch organizations IKKO and PIVA; outreach programs are limited.[896]

Poso Conflict Resolution Centre (PRKP) mediates conflicts among individuals, communities and the state on land rights issues that have emerged since the beginning of the conflict in Poso. The organization has very little familiarity with the state legal system and formal litigation, and little contact with official state institutions such as the police, courts and local parliament, although they would like to develop these further. However, staff members of PRKP say they have substantial experience in successfully promoting informal resolution of conflicts. Established just after the Malino agreement, PRKP has a staff of seven (two financial); they receive grants from international organizations such as UNDP, CARE, the Japanese embassy and Common Ground. PRKP has 'solved' 13 cases of land dispute through community discussion since its inception. In 2004, the organization handled 20 cases of land dispute between various parties. PRKP argues that, given the high number of IDPs, the inaccessibility of the formal legal system and the demise of traditional *adat* forms of justice, dispute over land ownership can easily take on the attributes of religious or ethnic conflict. Through offering conflict mediation and reconciliation services, PRKP hope to minimize further violence. Their offices were bombed, reportedly because of their inter-religious work. There is a need for training for staff.[897]

Community Outreach

In addition to the activities of the NGOs described above, state institutions and agencies such as the police, prosecution service and Ministry of Law and Human Rights are also mandated with community outreach. There was little evidence, however, that these mandates are being carried out. The sector police (Poso Pesisir, Lore Utara, Banawa and Kulawi) attempt to resolve some civil cases informally through mediation. There is an unwritten agreement that the staff in the *Polsek* will encourage parties to reconcile and not to take the case to court.[898] The prosecutor's office in Donggala, cognizant of the lack of representation for those indicted, now disseminates information to communities (through local government offices) on basic rights and legal information and legal outreach programs.

4. ACCESS TO APPROPRIATE FORUM

4.1 AVAILABLE OPTIONS

In Central Sulawesi, as elsewhere in Indonesia, there are two main forms of dispute resolution, the formal justice system and the informal justice system. Citizens' choice of forum depends on the local norms of resorting to particular forums for particular types of problems, and also their perceptions of each of the justice systems. In low-conflict areas such as Donggala, citizens typically try to resolve the problems between themselves, or resort to the closest state actor: the police. However, conflict-affected

896 YBH Bantaya staff, op. cit..

897 Interviews with PRKP, PRKP Office, Poso, 18 January, 2006.

898 For example, in Polsek Kulawi, the police also consider the demography and *adat* principles when handling a case. If a criminal case (except murder) is reported to the police, Polsek officials also inquire whether or not parties have attempted to resolve the case through *adat* mechanisms in the village/*kecamatan*, and if not, the officials recommend the parties to do so. In the past, the police have received a joint request from a complainant, head of village and members of an *adat* institution to stop police investigation of a case, so that the case can be settled in the village level.

Poso citizens see a greater role for informal leaders, NGOs and government representatives in collectively trying to resolve problems. All groups, but particularly disadvantaged groups, see the formal system as having a much lower capacity to resolve conflicts compared with the informal system.

Formal Justice System

In Donggala, some of institutions have only recently been formed given its new district administrativestatus:TheDonggala Regional Police office was established in 2003, and the Donggala District Court in May 2005 (previously cases were heard in Palu).[899]

In Central Sulawesi, as in the rest of Indonesia, the hierarchy of police offices extends from the provincial office down to the sector police at the subdistrict level, with some police posts in particular villages. The Poso Regional Police Office covers both the Poso and Morowali Districts, a significant geographical challenge.[900] The Provincial High Prosecutor's Office in Central Sulawesi is located in Palu. There are two branches of the Donggala Prosecutor's Office (in Tompe and Sabang) and at least five branches of the Poso Office (in Ampana, Kolonodale, Tentena, Wakai and Bungku).

The province is also complete with most courts: the Central Sulawesi High Court, the State Administrative Court and the Religious Court of Appeals in Palu, as well as district general and religious courtsin Donggala and Poso (each of the district courts has jurisdiction for two districts). There are also offices of the provincial and district administrations, and the local legislatures.

Informal Justice System

Informal dispute resolution in this report refers to methods of solving problems that are an alternative to court litigation or legally binding adjudication and arbitration in Central Sulawesi. Alternative Dispute Resolution (ADR) usually refers to a range of procedures for resolving disputes between parties outside the conventional court system and most often includes non-binding facilitation, conciliation and mediation, or legally binding arbitration and adjudication.

The informal justice system in Central Sulawesi consists of the legally non-binding components of ADR, as well as *adat* practices in *adat* communities, and other social norms, customs and traditions, which determine dispute resolution processes and procedures. Usually, *adat* applies to the specific ethnic communities in particular localities in Central Sulawesi that adhere to a local set of customs and traditions. The customary (*adat*) system still plays an important role in peoples lives in a number of areas in Central Sulawesi, particularly where there are large populations of Christian Kulawi and Muslim Kaili. *Adat* systems—which adhere to a local set of customs and traditions—are instrumental in resolving various problems in the community, including regulating the use of natural resources by the indigenous community inhabiting the mountainous regions. *Adat* is strong in Maholo and Watutau villages in Poso and the Lonca and Matauwe villages in Donggala.

899 Prior to the Government regulation No. 71/1999 regarding the relocation of capital city of Donggala district, the capital city of Donggala district was Palu, but since the enactment of the regulation, the capital city of Donggala moved to Banawa. The relocation resulted in the relocation and establishment of a new regional police in Banawa Donggala, which was previously under the jurisdiction of Palu Regional Police.

900 There are sectoral police in all the research districts, with Kulawi covering two subdistricts: Kulawi and Pipikoro Poso Pesisir covering three subdistricts: Poso Pesisir, Poso Pesisir Selatan, Poso Pesisir Utara, and Lore Utara covering both Lore Utara and Lore Tengah.

4.2 PATTERNS OF USE IN THE FORMAL AND INFORMAL JUSTICE SYSTEMS

In the qualitative component of the research,[901] in all villages, informal mechanisms (either social norms of seeking assistance from local leaders, or the use of the *adat* system where it still had influence) were generally the first to be used to resolve disputes, except in instances of serious crimes such as murder and grievous bodily harm, which are reported to the police.

Across more than 100 incidents tracked in the villages, the formal system almost consistently failed to produce any results on the key justice issues. The informal system was able to produce some outcomes, if the incident was within the bounds of the moral jurisdiction of local leaders.

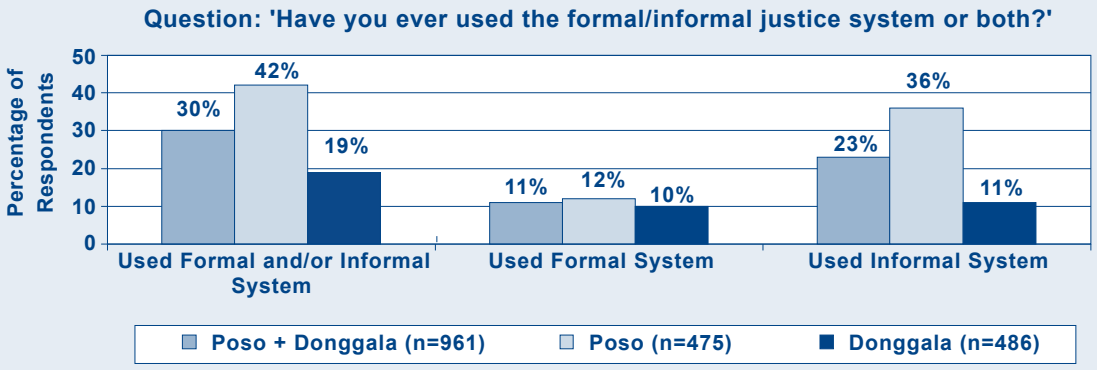
The findings of the qualitative research were supported by the survey results. More people in aggregate use the informal rather than the formal justice system. Only 12 percent of the respondents have had interactions with the formal justice system (courts, police, lawyers or prosecutors), compared to 23 percent of respondents who have resorted to the informal justice system (traditional leaders, village leaders, other informal institutions) one to three times (see Chart 30).[902] However, this does not mean that they have not interacted with the formal justice system – nearly 20 percent of all survey respondents had either been in prison or had a close family member who had been in prison.

4.3 FACTORS INFLUENCING CHOICE OF FORUM

When the findings from the FGDs and the survey are combined, a number of factors appear to shape people's perceptions of satisfaction with each justice system and their subsequent choice of forum. These include:

- Type of case
- Satisfaction
- Familiarity and comprehensibility of justice processes

CHART 30 : USE OF FORMAL AND INFORMAL JUSTICE SYSTEMS – CENTRAL SULAWESI



Source: Access to Justice Survey Central Sulawesi

901 All of the findings in this section represent summaries of case outcomes followed in the qualitative research. They represent a summary of some 100 incidents followed across the eight assessment villages. For the sake of brevity, these mappings are not presented here.However, the findings are concurrent with the survey results discussed in the section.

902 Only 33 people had ever gone to court and half of these were satisfied with the outcome. Of these 33 people, only 2 were disadvantaged women,but 15 disadvantaged men had been able to access the courts.

- Geographical accessibility
- Time and cost
- Language or cultural barriers
- Trust in institutions and providers
- Interaction and participation
- Potential for privacy
- Likelihood of outcomes
- Social harmony

The following example demonstrates how the choice of forum is dictated by multiple considerations. In this case, virtually all of the factors cited above are present.

Type of Case

In many of the cases regarding civil disputes, informal mechanisms were first applied. Local leaders are a trusted source of moral authority on social issues, small theft, individual land disputes, family disputes and broader social tensions – and these were the most likely to be resolved and to have a solid outcome within the bounds of the village. If the problem could not be solved or was beyond the jurisdiction of the village, people took the cases to the formal system. Even when the formal authorities became involved, villagers preferred a continued presence of informal leaders acting as their representatives.

Satisfaction

While most participants had not had interactions with either system, their perceptions help explain why they resort to particular forums for problem solving, as shown in Chart 31. Only 26 percent were to some degree satisfied with the formal justice system, whereas 53 percent were satisfied with the informal justice system.

There was no significant variation from the aggregate in the perceptions of the formal system between men and women: in both groups, the majority of perceptions were negative. However, disadvantaged groups in particular were more dissatisfied with formal justice services than the general community.

Familiarity and Comprehensibility

Approximately 40 percent of 961 respondents thought that the language in the courts was not understandable for most people. The survey also indicates only 20 percent of respondents understand the mechanisms of formal justice system to some degree.

Likelihood of outcomes

Across the different target groups in the survey, the informal justice system was consistently considered more effective at

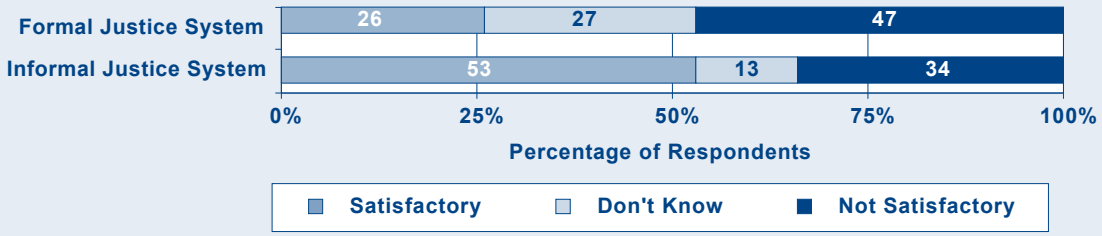
BOX 36: HOW *ADAT* COMMUNITIES SOLVE PROBLEMS

One evening in 1985, two groups of youths from Watutau were hunting deer approximately one kilometre from their homes. To lure the deer, they whistled, imitating the call of a fawn. One hunter, taking aim at the doe, mistakenly shot and injured a member of the other group. Communal tensions flared and the perpetrator took refuge in the local adat leader's home for protection from potential vigilantes. The village leader together with other adat leaders sought assistance from the North Lore Sector police to provide security in the village while they sought to resolve the problem. The police guarded the deliberation session, facilitated by local leaders and attended by both families. The leaders decided that the perpetrator should give the victim one cow. Both sides agreed and tensions dissipated. The case never entered the formal system.

Source: FGDs in Watutau 10-13 February, 2005

CHART 31 : OVERALL COMMUNITY SATISFACTION WITH THE FORMAL AND INFORMAL JUSTICE SYSTEMS

Question: 'What is your current evaluation of the formal/informal justice system?' (n=961)



Source: Access to Justice Survey Central Sulawesi

resolving conflicts as compared to the formal justice system (see Chart 32). About 24 percent of 893 respondents thought that court decisions were predictable and based on precedent.

Fairness

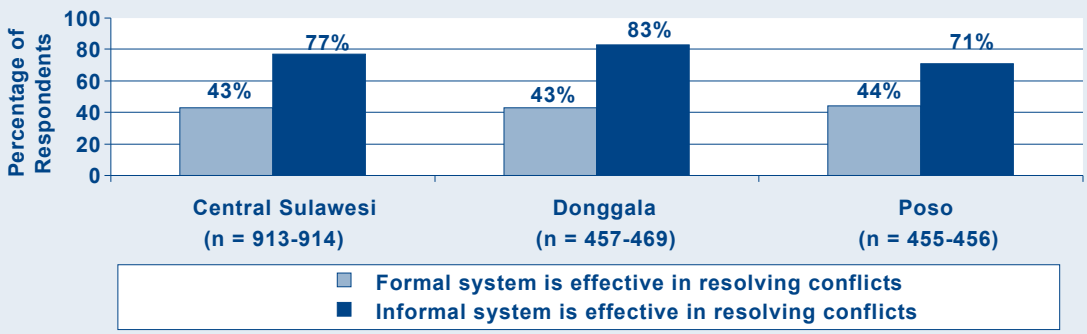
When asked for their opinion on how the informal and formal systems handle cases (see Chart 33), 60 percent thought the informal treated everyone fairly, while only 18 percent thought the formal system did. Reversely, 65 percent of the respondents thought the formal system was biased towards the rich and powerful, while 28 thought that to be the case in the informal system.[903]

Community Trust in Formal and Informal Justice Actors

In Central Sulawesi, trust in the ability of formal legal and law enforcement institutions to provide services and respond to public need is quite low: Some 47 percent of the respondents had negative perceptions of the formal system. Less than half of all respondents in the survey who evaluated each type of institution (police, courts, etc.) trusted that institution and its representatives,

CHART 32: CAN THE FORMAL/INFORMAL JUSTICE SYSTEMS EFFECTIVELY ADDRESS CONFLICTS?

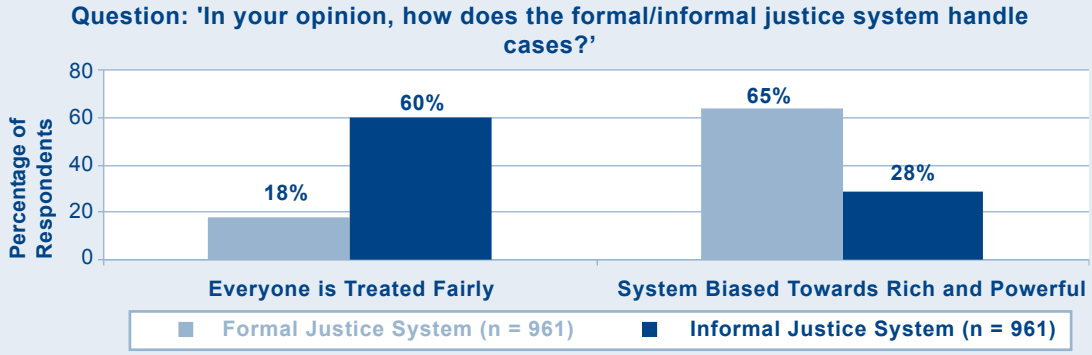
Question: Can the formal/informal justice systems effectively address conflicts?



Source: Access to Justice Survey Central Sulawesi

903 N=961.

CHART 33 : PERCEIVED FAIRNESS OF FORMAL AND INFORMAL JUSTICE SYSTEMS – CENTRAL SULAWESI



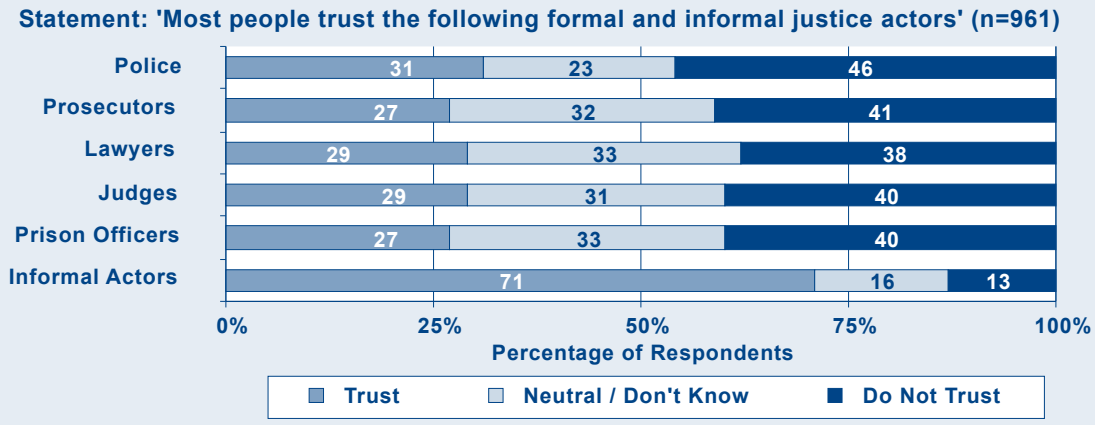
Source: Access to Justice Survey Central Sulawesi

with the police held in the lowest regard, following by the prosecutors (see Chart 34). A full 61 percent of the 961 respondents thought that law officers practiced extortion. Only 29 percent of 961 people trust judges. The informal sector faired much better: Of the 961 respondents, 71 percent of 961 respondents trust the informal justice system (this did not vary significantly by target group).

Approachability

Bias and fear are persistent problems in Central Sulawesi, particularly in Poso. The poor and the undereducated say they are more vulnerable to bribery and terror tactics in the formal sector. Rather than report problems to the security law enforcement agencies, young and older men in Tokorondo say it is better and safer to "put up with it" and "leave it in the hands of God" since reports to the law enforcement agencies take a long time to process and typically result in bogus accusations and more victims in the village in the future. Focus group discussions in Tokorondo revealed that vil-

CHART 34: COMMUNITY TRUST IN FORMAL AND INFORMAL JUSTICE ACTORS – CENTRAL SULAWESI



Source: Access to Justice Survey Central Sulawesi

TABLE 32 : EVALUATION OF THE FORMAL JUSTICE SYSTEM – CENTRAL SULAWESI

Perception	Reason	Percent
Positive	Problems can be solved well/ are processed well	15%
	Formal system or resolution is fair	3%
	Other positive	11%
	Total	**29%**
Negative	Require bribes to solve problems	4%
	Problems remain unsolved	15%
	Formal system is biased towards the wealthy	6%
	Formal system is unfair	17%
	Lengthy	3%
	Costly	13%
	Far and difficult	4%
	Other negative	9%
	Total	**71%**

Source: Access to Justice Survey Central Sulawesi (N=625)

lagers are frightened when security forces approach, particularly if they are armed.[904]

Perceptions of the informal justice system were generally positive. However, some respondents did see the potential for bias and suggested that peace is enforced rather than voluntary, indicating that the use of the informal justice system may not always be a choice.

Both men and women saw the informal system as generally being satisfactory, cases being well handled well, but sometimes peace being enforced when cases were not resolved, indicating that in difficult cases their needs are not always met and fairness does not prevail. Women commented that, at times, the system was biased against them. However, when compared to the formal justice system, perceptions of the informal system are still relatively positive.

Understanding and Accessing

When it comes to understanding and accessing the informal justice system, the vast majority of perceptions were positive, compared to the difficulties they experienced in understanding and accessing the formal system. Of 961 people, 75 percent thought that most people could understand informal justice mechanisms.

Cost and Timeliness

For the vast (if not absolute) majority of the poor and disadvantaged, the informal justice system is far more accessible than the formal justice system, in both geographic and financial terms. Expense was the problem survey respondents most frequently associated with the police and lawyers, in the case of police bribes and other costs (33 percent of respondents) and high fees and bribes in the case of lawyers (40 percent of respondents). In comparison, only 5 percent of respondents cited cost or bribes as a problem when dealing with the informal system.

Many interviewed in Central Sulawesi see formal legal remedies as beyond their reach. Donggala residents were particularly vocal on this point. Apart from 'informal charges'

904 FGD in Tokorondo, 19-20 February 2005.

TABLE 33 : EVALUATION OF THE INFORMAL SYSTEM – CENTRAL SULAWESI

Perception	Reason	Percent
Positive	Informal system is fair	5%
	Problems are handled according to tradition	2%
	Informal system is satisfactory	3%
	Speedy response	8%
	Problems are handled well	15%
	Other positive	32%
	Total	**65%**
Neutral	If informal system cannot resolve the problem it is passed on to the formal system	4%
	Total	**4%**
Negative	Often reach wrong decision	6%
	Informal system is biased	10%
	Cases are not resolved but peace is enforced	10%
	Other negative	5%
	Total	**31%**

Source: Access to Justice Survey Central Sulawesi (N=698)

such as cigarette money for police, clerks, and judges, poor villagers say they cannot afford the many expenses involved in lodging complaints such as photocopies, materials, transport to the district capital, let alone representation. In both districts, costs for rural poor are particularly steep because of the large distances they must travel to the courts.[905]

Traditional fishermen and port workers in Labuan Bajo explained in an FGD that they cannot afford lawyers so they are rarely represented in legal cases (no free legal representation is provided). This, they noted, is one reason why they prefer to go to their local leaders. Their feelings were backed up in the survey, in which typical males saw the informal system as dispute resolution mechanism of first resort, offering a speedy response and generally satisfactory results, indicating that men highly value the services offered.

4.4 IS TRUE CHOICE OF FORUM ALWAYS AVAILABLE?

In some cases villagers do not seek justice via either the formal or informal mechanisms. There are various reasons for this: Some do not know where to go, others cannot afford the time and money. Still others hesitate because litigation is contrary to the spirit of community and neighbourly tolerance. One of the more common complaints is the absence of a credible facility to lodge a complaint or grievance involving a public officer. The qualitative research found that

905 Chief Justice of the Poso Religious Court, 19 January, 2006.

this occurs when formal authorities are party to the disputes, particularly in cases regarding communal lands, deviation in aid and development funds, and in the administration of public services. If villagers considered thesecond party to the dispute too powerful, often they did not seek justice at all; this was particularly true of disadvantaged groups and victims of conflict in Poso.

When villagers did present their complaints, formal authorities typically took no action, triggering frustration and, in some instances, civil disobedience and protests, as well as an abiding reluctance to use the formal system in the future. This pattern is frequently seen in disputes between the *adat* communities and district government and national park authorities. The villagers in North Lore destroyed some of PT Hasfarm's plantations in response to the loss of their communal lands to the company and thelack of response from the district government. Where there was NGO support and legal representation—if the villagers were close to legal representation or if the dispute was large in scale—citizens were more likely to seek justice and had more success, despite powerful interest groups (although outcomes were not necessarily clear). In many cases, however, there were no NGOs to provide support.

Social pressure from both community leaders and the community at large may exist in favour of resolving cases via the informal justice system. As can be seen in Chart 35, survey respondents are evenly split on this issue: 39 percent believe social pressure exists and 40 percent believe it does not, while 21 percent are neutral.[906] However, respondents hold significantly different views in the two districts. In Donggala, almost half of the respondents believe there is social pressure to resolve problems via the informal justice system, while in Poso only 30 percent believe that to be the case.

4.5 LACK OF AWARENESS OF APPROPRIATE FORUM

In the FGD with the poor women of Maturate, discussion generally revolved around poor access to health services and education, and their lack of knowledge of how to resolve these problems. Although most could not afford even basic health services, many of these women had not been provided with health care cards. They had no idea why they have not received the cards, nor did they know to whom they should complain; in fact, they had no idea that this service was their basic right.

The women were, however, aware of the role of the village head and *adat* elders in resolving problems in the village. They did know that meetings were held to resolve problems. However, they had not gone to the village head to ask for help regarding health services – they had no idea that he could be of assistance.

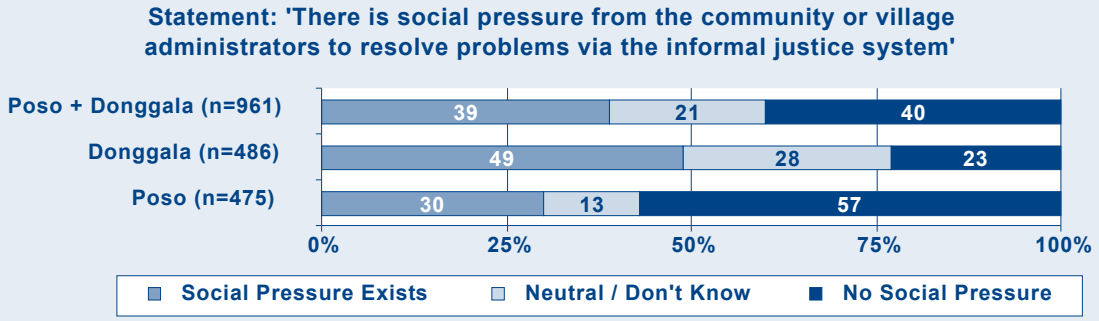
5. JUSTICE ACTORS AND PROVISION OF REMEDIES

5.1 FORMAL JUSTICE SYSTEM

The formal justice institutions exist mainly at the district and provincial level (with the exception of the police and government administrators which reach the subdistrict and village level). In a survey of 433 citizens, views on the formal justice system overall were split almost equally between positive

906 N=961.

CHART 35: SOCIAL PRESSURE TO USE INFORMAL JUSTICE SYSTEM – CENTRAL SULAWESI



Source: Access to Justice Survey Central Sulawesi

and negative. There is overall a lack of trust in virtually every level of the system; the general view is that that these institutions are not meeting their responsibilities and duties. However, respondents generally believe the formal system is likely to improve over the next five years.

Police

The Central Sulawesi Provincial Police (*Polda* Sulteng) was formed in 1994.[907] The jurisdiction of *Polda* Sulteng covers all nine *kabupaten* and *kota* in Central Sulawesi.[908] Within its authority is the supervision of five *Polres*, including the sites of this study, Donggala and Poso (Poso District and Morowali District).[909] Within each of the regional commands are Sector Police (*Polsek),* which usually cover one or more subdistricts within the regional commands. According to the Provincial Police Chief, depending on the case, the police may: impose fees or fines; bring criminal charges; detain suspects, or resolve problems 'in a family manner'.

Polres Donggala was formed in 2003. According to their figures, 486 officers are stationed here (based on the population, the National Police Force recommended number is 612 – which states that the ratio of police officers to citizens should be 1:350).[910]; there are six female administrative staff.[911]

Polres Poso has 475 officers, slightly over the National Police Force recommended number of 457. Extra police were deployed due to local conflict and security issues. *Polres* Poso is long established in the region, and its jurisdiction stretches across Poso and Morowali Districts. In Poso District, the two relevant *Polsek* to our research areas are *Polsek* Poso Pesisir and *Polsek* Lore Utara. *Polsek* Poso Pesisir covers three subdistricts: Poso Pesisir, Poso Pesisir Selatan and Poso Pesisir Utara. *Polsek* Lore

907 Under Decision of Panglima ABRI No.: Kep.06.V/1994 (10 May 1994) and Kapolri decision No.:Skep.01/II/1995 (28 February 1995). The legalbasis and authority of Polda Sulteng is based on: Tap MPR No.VII/ 2000 and Law No. 2 of 2002 on the Indonesian Police, The Criminal PenalCode (KUHP) and Procedures (KUHAP); interview with Deputy Police Chief and other staff in Provincial Police Headquarters.

908 Central Sulawesi has one municipality and nine districts, namely Banggai Islands, Banggai, Morowali, Poso, Donggala, Toli-Toli, Buol, Parigi Moutong and Tojo Una-Una.

909 Previously, Polda Sulteng had authority for Polres Donggala, Poso, Banggai, and Polres Buol Toli-Toli. However, with the subdivision (*pemekaran*) of government administrative areas, Polda Suteng is in the process of forming several new Polres: Polresta Palu (already formed along with the transfer of Polres Donggala to Donggala) and new Polres for Kabupaten Morowali, Banggai Kepulauan and Polres Buol, as well as Polsek offices in several new subdistricts.

910 Statement of Irjen Pol. Drs. Firman M. Gani, as quoted in the *The Daily Jakarta Shimbun*, 12 March 2005 , http://www.ecpainjica.or.id/page.php?lang=id&display=media&sub=2005 march 003

911 Interview with Kapolres Donggala. List of Civil and National law enforcement officers of Central Sulawesi Regional Police *(Daftar DSP/RIIL Kekuatan Personil Polri/PNS Polda Sulteng)*.

Utara covers two subdistricts: Lore Utara and Lore Tengah.[912] The Pesisir *Polsek* office deals with a broad variety of cases,including: torture, shootings, theft, vandalism, threats, fish bombing, gambling, fraud, embezzlement, morality, decency crimes (*kesusilaan*), drugs and alcohol consumption and traffic accidents.[913] While some of these cases are commonly found throughout Indonesia, many specifically relate to the conflict in Poso. The aggregate provincial data demonstrates that most of the crimes reported to the police are cases of major theft (*pencurian berat*).[914] Only half of all criminal cases registered with the Central Sulawesi Provincial Police Office were solved or forwarded to the prosecutor's office. This has been true, with small percentage changes from 2002 through 2004, as shown in Table 34.

Figures for 2005 did not improve: By July 2005, only about half of all reported cases had been resolved by police or forwarded to the prosecutor's office in Donggala (486 reported and 246 solved) and one third in Poso (153 reported, 49 solved).[915] Poso has been particularly problematic: In 2003, 2,340 cases (2,214 theft cases) were reported in Poso, of which only 64 were solved.[916] It must be noted that none of these figures actually convey the size or complexity of the cases, particularly those pertaining to the conflict. In Pesesir, the chief of police noted that the ebb and flow of the conflict makes it extremely difficult for police to find witnesses willing to testify.[917]

Innovations: There are a few special considerations for victims of abuse. In Polda Sulteng, women and children suspects are given special treatment by appointed staff and are provided with a special room (*Ruang Pelayanan Khusus/RPK*).

A number of issues are of concern to the police:

Training: According to the Chief of Police of Polres Palu, training for recruitment and promotion is limited to a handful of institutions, many in Java, and the cost of initial training can be prohibitive for many applicants. There is little funding for staff training in specialist areas relevant to local dynamics, a lack that is profoundly felt in Poso. The Polres Commander states that many of Polsek staff do not have adequate training to deal with the complex cases arising from local conflict. Consequently, Polsek Poso

TABLE 34 : REPORTED & SOLVED CASES IN CENTRAL SULAWESI

Year	Crimes Reported	Crimes solved
2002	4.907	2.209
2003	18.579	9.625
2004	3.283	1.495

Source: Directorate of criminal investigation Central Sulawesi Regional Police

912 Lore Tengah is a new subdistrict, formed as a result of the division of Lore Utara subdistrict
913 Interview with Subdistrict Poso Pesisir Chief of Police, 25 May 2005.
914 Directorate of criminal investigation, Central Sulawesi Regional Police (*Dit Reskrim Polda Sulawesi Tengah),* July 2005.
915 Ibid.
916 Ibid.
917 Chief of Police Poso Pesisir, op. cit.

Pesisir has not been dealing withcases of terrorism, mass violence, or any case that might have the potential to further stimulate local tensions. Such cases are referred to Polres Poso, which has not yet been able to solve the cases.[918] Table 35 is a grizzly reminder of what the police are facing, and why public trust has eroded.

Personnel: The number of police officers in Central Sulawesi has steadily increased since 1999, when the number stood at 3,442. By 2005, 5,501 police officers were serving approximately 2.5 million people (1:455).[919] Nonetheless, regional police commanders in Central Sulawesi have found it hard to fill open positions, particularly in some of the isolated islands. In Polres Donggala, as of 2005, there were many vacancies: 3 commissioners, 9 deputy commissioners, 20 inspectors and 31 civil servant support staff.[920] This has put a strain on existing human resources. Interviews with representatives from the police at the provincial and regional levels indicate that inadequate numbers of staff result in poor research and investigations. Some argued that low salaries do not provide incentive for further training or increased productivity.

Funding: The police chief of Polres Donggala argues that he does not have enough disposable funds and equipment, particularly for cases that are complicated or far from the police station.[921] Under such conditions, one officer said, police in the field"sometimes engage in illegal acts" to increase their funds and facilities.[922]

At the subdistrict level in all areas, law enforcement personnel made similar complaints about lack of resources and geographical

TABLE 35: REPORTED CONFLICT-BASED CASES POSO PESISIR POLSEK, 2002-2004

No.	Case	Date	Actors	Note
1	Mysterious shooting of two residents of Masani village	19 July 2002	To date, perperator not captured	The two victims died when they were shot in the head, neck and left leg
2	Shooting of Tokorondo village head	26 December 2002	To date, perperator not captured	Victim died after being shot in the back of the head
3	Shooting of citizen in Kasiguncu	26 December 2002	To date, perperator not captured	Victim injury in head and face
4	Mass attack in Pinedapa village	11 Oktober 2003	30 suspects still on the wanted list	
5	Mass attack on Saatu village	11 Oktober 2003	13 suspects still on the wanted list	
6	Shootings in Pinedapa village	27 Oktober 2003	Perpetrators still being investigated	
7	Murder in Tabalu, Kasiguncu near the river	16 November 2003	11 suspects still on the wanted list	
8	Shooting in Pinedapa village	19 February 2004	Ahmad Laparigi CS	
9	Murder and mu tilation of Pinedapa village head	5 November 2004	Ahmad Laparigi CS involved	Head of the victim found 50 m. from the church in tree trunks in Tokorondo village

Source: Case data from Poso Pesisir North and South, Poso Pesisir Polsek

918 Poso Pesisir Chief of Police, op. cit. No further information is available, as the research was cut short due to unstable conflict dynamics.

919 Central Sulawesi Regional Police Office, Planning and Development Bureau.

920 List of Civil and National Law Enforcement Officers in Central Sulawesi Regional police.

921 Interview with Chief of Police Donggala District 4 April 2005.

922 Ibid.

challenges. The Poso Chief of Police specifically complained that transportation resources are inadequate: 4 trucks, 4 cars and 155 motorbikes. He argued that these resources are insufficient considering Poso Polres' vast jurisdiction, which spans 14,433.76 square kilometres, and the vulnerability of the region to conflict.[923]

As noted earlier, the police are on the front lines of the formal justice system, and are often the first and sometimes only contact citizens have with formal justice providers. Consequently, the qualitative and quantitative findings of the assessment reveal that most people's reference to formal justice providers pertains to the police. In many cases, the perceptions were negative. The qualitative interviews found five major complaints, that the police: 1) were not accountable; 2) often partial to the powerful; 3) slow to act; 4) poor at investigation, and 5) corrupt. The survey echoed these concerns: the process is costly (34 percent); fear of the police (22 percent); police violence (13.7 percent); difficulty of process (11 percent) and bribes are required (9 percent).[924] These answers wer concurrent with district results, although twice as many people in Poso were fearful of the police as were in Donggala (30 percent vs.14 percent). In light of these findings, it is not surprising that, when questioned about trust in law enforcement institutions, only 31 percent of all respondents had trust in the police—the lowest of all institutions.

Prosecution Services

The Provincial High Prosecutor's Office in Central Sulawesi is located in Palu. There are two branches of the Donggala Proseuctor's Office (in Tompe and Sabang) and at least five branches of the Poso Office in Ampana, Kolonodale, Tentena, Wakai and Bungku. It is the obligation of the prosecutor's office, in coordination with the presiding judge, to ensure that legal repre-sentation is provided for those indicted of crimes with a sentence of more than five years, and to ensure that legal advice had been given at the time the indicted signed their statements.

Representatives from the provincial and district levels stated that when they receive statements in the case files, they assume that representation or advice was given and do not implement any form of oversight during the investigations. They also assume that the police read the perpetrators their rights, but there is no form of oversight to ensure that this is the case.[925]

The expedient and effective handling of cases is dependent on the pre-case coordination with the police, ensuring that case files are complete. In many cases, prosecutors say, lack of coordination means the case is slow in reaching the court.[926] Sometimes, witnesses are not interviewed, evidence is insufficient or incomplete, and the case is passed back and forth between the police and the prosecutor's office, resulting in extensive delays.[927] The extensive terrain in Donggala and Poso makes provision of services even more difficult.[928]

The High Prosecutor's Office employs 25 prosecutors, with 24 performing duties in 2004, down from 31 in 1999. Another 80 prosecutors are employed across the districts (14 are women). However, the budget only provided for 68 positions in 2005—it is unclear how the other positions were funded.[929]

923 Interview with Chief of Police of Poso Subdistrict, 10 March 2005.
924 N=771.
925 Interview with staff at the High Prosecutor's Office, 21 March 2005; interview with public prosecutor, Donggala, 13 March 2005.
926 Ibid
927 Ibid.
928 Ibid.
929 Interview with the head of personnel of the High Prosecutor's Office, Palu, 24 March 2005.

The head of personnel estimates that 200 prosecutors are needed, taking into account the geographical size of the province and the level of vulnerability towards conflict and crime. In particular, he argued that prosecutors have inadequate resources to deal with large-scale cases of corruption and unexpected complex cases.[930] The High Prosecutor's Office finds it hard to find skilled staff to fill vacant positions in the district offices, particularly in the newly formed offices (28 positions remain vacant in the provincial office).[931] In Donggala,recognizing that those indicted of crimes are poorly represented, the prosecutor's office now disseminates information to communities on basic rights and legal information and legal outreach programs.

Few citizens ever interact with therosecutor's office; even so, the people have very little trust in prosecutors and little knowledge of the services available. Only 27 percent survey respondents believed that people trust prosecutors.[932] Because there is so little contact, only one-third of the respondents were able to identify obstacles with prosecution services: the process is costly (49 percent); time consuming (12 percent); bribes are required (10percent), and there is fear of the prosecutors (7 percent).

Courts

General Courts

The **Central Sulawesi High Court** in Palu, as a court of appeal, tried 256 criminal cases and 428 civil cases during the period of 1999 to 2004. In general, however, there is a shortfall in the number of civil cases being processed compared to the number that are filed with the court.[933] Many are cases related to land. This backlog could be due to the number of judges assigned to the Provincial High Court which is now eight (one of whom is a woman), one short of the number required on the volume of cases. The High Court Clerk noted that the work of the court is sometimes delayed due to inadequate administrative support and physical resources. For example, the High Court has only two motor vehicles and three motorbikes, one telephone, one fax line and nine computers available to service the entire province.

Over time, the number of judges in the province has decreased relative to population size. In 2004, there were 80 judges in the state courts in province, but the head of personnel at the High Court estimated that 200 were needed relative to case load and the size of jurisdiction. The Chief Justice said that some judges lack skills and full knowledge of the law, however according to him these deficiencies are overcome through constant communication with colleagues and all the actors associated with the courts.

The Palu District Court had 10 judges in 2004 and 9 in 2005 (only one of whom was female) with 50 support staff. According to interviews with court officers and documents, Palu district needs 25 judges and 101 support staff relative to the number of cases and the geographical area of the district. Palu Court is in disrepair: typewriters are broken, there are no seats in the three offices nor is there storage space for archives.There is only one functioning car and 3 motorbikes for the entire district.

930 Ibid.

931 Ibid.

932 N=961.

933 All the information on the general court comes from an interview with Chief Justice of the Central Sulawesi High Court and the head of personnel, 10 August 2005.

The Poso District Court had eight judges in 2004. The court ceased to function during the height of the conflict (2000-2002)[934] Due to the conflict, many cases from the Poso District have been tried at the Palu District Court, a five- to eight-hour drive away. The new Donggala District Court has currently three judges.

Religious Courts

The Religious High Court, based in Palu and formed in 1995, oversees all religious courts at the district and municipality level in the province, and hears appeals from decisions of these courts brought by Muslim litigants. In 2005 there were five judges on the bench, none were women. Representatives argue that eight judges are needed for the Religious Court of Appeals to function effectively. In each case heard there are usually only three judges on the presiding council even though five members should be present, including the Chief Justice and his/her Deputy. The Religious High Court monitors the district religious courts.[935] There were 46 support staff in 2004.

There are eight district religious courts in Central Sulawesi. In Donggala, the religious court is located in the capital and has jurisdiction over two districts (Donggala and Parigi Moutong). In Poso, the religious court is located in Poso City and has jurisdiction over Poso District and Tojo Una-Una District. There are four judges and 17 support staff, which the Chief Justice of Poso says is half the number of staff needed to cover the two districts within their jurisdiction. They use a panel system for complicated cases with three presiding judges hearing the case. There are hearing chambers in Tojo Una-Una for small cases, but decisions are made, and larger cases are heard, in Poso, complicating the process for clients and increasing the expenses incurred in travelling the slow and windy 60 kilometres between districts.[936]

Religious High Court representatives argue that they need at least eight judges per district to deal with the 1,000 or more cases filed each year. In fact, there are usually two to three judges per district and there are only two female judges for the entire province, one in Palu and one in Buol. [937]

Administrative Court

The Administrative Court in Palu has jurisdiction to hear disputes of an administrative nature arising between private citizens or legal entities in Central Sulawesi and organs or officials of the state. In Central Sulawesi, it hears cases pertaining to land certification, civil administration and tender processes. Decisions of the Administrative Court can be appealed in the State Court. Between 1999 and 2005, the Administrative Court in Palu has heard 75 cases in total (12 from Donggala and 2 from Poso). There are six judges in this court, one of whom is female.

The courts – general and religious – face a number of challenges specific to Central Sulawesi:

Geography: Because the courts' jurisdictions are physically large, costs in time and money are high for both clients and court officials.[938] For instance, the jurisdiction of the Poso District Religious Court is so large that many witnesses must travel 60 to 100 kilometres over broken and sometimes flooded roads to get to the court. To travel to the hearing chambers in Ampana, Poso

934 During the assessment, staff were rarely present at the office. Furthermore, the security situation in the district prevented the research team from revisiting the court to gain further information.

935 Interviews with Religious High Court Deputy Chairperson, Palu, 7 Aug. 2005; Religious High Court Judge, Palu, 17 Jan. , 2006.

936 Chief Justice of the Poso Religious Court, Palu, 17 Jan. 2006.

937 Religious High Court Judge, Palu, op. cit.

938 Interview with Chief Justice of the Poso Religious Court, op. cit., and Chief Justice of the Donggala Religious Court, 19 January 2006.

District Religious Court judges must make on average a six-hour journey each way to hear a case.[939] Similar circumstances exist in Donggala. To overcome this problem in Donggala, the court has travelling panels that hear cases in several sub-districts in Parigi Moutong.

Safety: The religious and public courts had to close in Poso during the conflict. Most of the cases from the Poso District have been tried at the Palu District Court due to the conflict, despite the inadequate facilities mentioned above and the distance—between five and eight hours' drive from Poso. Several high-profile public officials have been attacked and stabbed. Few of the judges have been willing to travel into conflict areas.[940]

Strengths and Innovations: The Palu court attempts to be flexible when it comes to trying cases from Donggala, to provide more effective judicial services until the new Donggala court is fully operational. Cases are heard in the afternoon, so that members of the prosecutor's office have time to travel to the provincial capital where the Provincial High Court is located.

Oversight: The Provincial High Court monitors performance within the state courts. The budget for this process is Rp.17,000,000 (around USD 1,700). The Religious High Court conducts ad hoc monitoring of District Religious Courts and organizes discussions to determine how to overcome institutional weaknesses. During these workshops with District Religious Court judges, the Provincial High Court seeks to determine variations in sentences and decisions passed down, and to disseminate information and resources to the districts. The Religious High Court also conducts internal investigations of violations of the law in judicial processes. Representatives argue that, in the few cases where this has occurred, usually the error was procedural, rather than a deliberate deviation from the law. No one has ever been dismissed over such cases.[941]

There is little trust in the courts in Central Sulawesi as indicated in the survey results. While few informants in the survey have actually used the courts, the perception exists that geographical accessibility and cost are problem in accessing the court and very few cases actually reach the court in the legal process.

- Only 29 percent of 886 respondents trust judges. 363 people identified the following obstacles with the courts: cost (37 percent), bias (22 percent), fear (14 percent), and unfairness (10 percent).
- 19 percent of 862 respondents in aggregate thought that most people know the cost of going tocourt.
- Two-thirds of the people disagreed to varying extents that the courts are accessible geographically for most people and a further 10 percent were neutral on this statement.
- Under half of the formal provider sthought that the courts were geographically accessible.

Civil Society Monitoring of Formal Justice System

Some NGOs and civil society organizations monitor government activities, but very few systematically monitor the courts, prosecutor's office, the police, and the correctional institutions. In Palu, a new NGO, Palu Justice World (PJW), is beginning to

939 Ibid.
940 Religious High Court Judge Palu, op. cit.
941 Ibid

court hearings in Central Sulawesi. Otherwise, oversight of formal institutions is based on particular cases in which NGOs are involved. These include: LBH Rakyat Palu (Legal Aid Foundation Rakyat Palu), and LPSHAM (Human Rights and Legal Study Development Centre) and KPKPST (Gender Equality Movement Group of Central Sulawesi), which focus on abusive conduct of military personel toward citizens, such as rape and sexual harassment.

5.2 INFORMAL JUSTICE SYSTEM

There are two forms of informal justice processes in Central Sulawesi: those based on custom and tradition (*adat)* and thos based on social norms of seeking assistance from local leaders beginning at the lowest level within the village, and then following the hierarchical structure up to the subdistrict and, in some cases, district level. Very few *adat* institutions exist beyond the village level in Central Sulawesi.

The *adat* mechanisms are widely used and prevalent in the more ethnically homogenous regions of Poso and Donggala; in the multiethnic villages, village officials and representatives are accessed.

Resolution via *Adat* Practices

In the four assessed villages that use the *adat* system, the first point of contact would either be the village head or the local *adat* leader, who would coordinate with the village head on a time for a meeting between the disputing parties, their families and other interested parties and witnesses. The *adat* meetings were public, unless the issue was particularly sensitive. Typically the disputes involved youths, communal land use, violations of marriage laws and adultery. In particularly heated cases, the police would be asked to be present at the meeting to provide some kind of security.

In North Lore subdistrict of Poso, the *adat* system is often used within and between villages for problem solving for moral and social issues, particularly related to extramarital affairs, youth disputes, inheritance, and so on. The *adat* customs are particularly strong in the Napu and Tawailia communities.

In Donggala's Kulawi subdistrict, *adat* is strong in Matauwe and Lonca villages. In Matauwe, cases are tried in the building known locally as the *Palengku,* while in Lonca, *adat* cases are held at the village hall. Cases involve: immorality, inheritance, minor criminal offences such as theft and disorderly conduct and violations of adat laws regarding the environment and forest. Generally, decisions (which are not legally binding) are discussed with the parties involved, and then are accepted.[942]

The following case provides one example of a dispute resolved through *adat* in Kulawi.

The resolution, in two days, was intentionally swift, because of the potential for conflict. The speed was due to the fact that both the victim and the perpetrator were from the same village and same ethnic group and so they recognized the *adat* leader's role, although neither side was fully satisfied.

Resolution via Quasi-*Adat* Institution

In Watutau in Poso Pesisir,[943] informal dispute resolution involves the *Tuana,* a quasi-*adat* institution in which local leaders employ mechanisms of problem solving. The

942 FGD in Matauwe, 20 February, 2005, 4 May 2005.

943 FGDs with the adat community affected by the disputes over communal land rights, Watutau, 12-13 February, 2005; interview with *adat* leader, Watutau, 23 February 2005.

BOX 37 : A CASE OF VIOLENCE RESOLVED BY AN *ADAT* LEADER

In Kulawi, a man asked a woman to call her nephew to work for him, but she refused. An argument ensued and the man slapped and beat her, violating unwritten local *adat* laws. The victim's family was incensed and reported the problem to the village head, who contacted the adat leader. The adat leader summoned the perpetrator to his house. After hearing the man's story, the adat leader determined a sanction of Rp. 100,000 (around USD 10). He then went to the victim, to hear her version and to see if sanction was acceptable. The victim and the family agreed, the outcome was reported to the village head, who wrote out the agreement to be signed by both parties.

Source: Interview with participants in the case, Kulawi, 18 June, 2005

village head acts as an informal leader of the group, which includes the head of the RT, the sub-village head and *adat* leaders. *Tuana* sanctions are respected because of the moral authority of this group. Police are involved, guarding *adat* meetings – an integration of formal and informal justice proviers.

Initially, complaints are made to the head of the RT, who attempts to facilitate an agreement between the parties.If he is unsuccessful, the village head seeks a resolution; otherwise a meeting of the *Tuana* is called. In this sense, there is a coordination of informal mechanisms, which include broader social norms, as well as *adat* custom and traditions.There are, however, limitations to the process. Women are not always well served by *adat* and quasi-*adat* institutions. Most of the traditional leaders are men and

typically they do not handle cases involving women—particularly rape and harassment. Such cases tend to be ignored or passed on to the police (rarely resulting in just outcomes). In a case in Watutau (described in Box 12 in Part 2), the woman ultimately bore with the greatest burden, both in court fines and charges and the future burden of caring for a child as a single parent without guaranteed financial assistance.

Rarely are *adat* laws written in either of these villages, although often the outcomes of cases are recorded in a registry. It is also important to remember that in Watutu, the religious and ethnic dynamics are relatively homogeneous, and only one group has customs and traditions specific to problem solving. If another group is involved, then the dominating groups' *adat* traditions are generally observed.[944]

Dispute Resolution via Village Authorities

In all eight research villages, people sought assistance from the leaders closest to them to facilitate meetings between disputing families and parties, and then followed the general hierarchy upwards. That is, they would seek assistance from the RT/RW head; if conciliation failed, the RT/RW head would seek the assistance of the village head, who would usually call in other informal leaders for consultation. Villagers preferred to use such informal mechanisms, and decisions or mutually agreed to outcomes were respected and adhered to because of the trust that they place in their local leaders and the inclusiveness in the process.

One example of dispute resolution involving the fishermen of Labuan Bajo gives some insight into how the village system works,

944 Interview with *adat* leader, Watutau, ibid.

and why people prefer it (see Box 38). In this part of Donggala District, there are frequent disputes revolving around fishing rights. The Labuan Bajo fishermen explain that the different fishing communities are made up of different ethnic groups, all with their own moral and social values which govern their fishing practices and moral codes. Competition among these groups and disagreements over fishing practices and boundaries often takes on ethnic undertones.

In seeking assistance and resolution to such problems, the fishermen usually go to their elders in the fishing community, preferring to resolve problems informally between families as much as possible. A high level of respect for these elders (who convene as a group if problems are inter-ethnic) ensures that the fishing community adheres to their decisions. Problems will escalate to the village level if the elders are unsuccessful in facilitating a mutually acceptable outcome.

If the fishermen cannot resolve a particular problem via elders, they approach the head of the neighborhood, followed by the village head, and finally the subdistrict head (with a letter outlining the dispute from the village head). At the point resolution is sought outside the village, the resolution/facilitation mechanisms become more formal in nature, relying on the state administrative institutions.

Discussions with villagers shed light on some of the drawbacks to the informal justice system. Local officials cannot always enforce their decisions, sometimes leading to locals taking justice into their own hands. One villager in Labuan Bajo explained: "The incorrect use of the beach cottages by men who bring women other than their wives to the cottage at night is a serious infringement on morality. So the community will go to the RT Head and ask them to kick the perpetrator out. If we are ignored, we will stone the roof of the cottage and even set it on fire".[945]

BOX 38 : A MIXTURE OF WISE VOICES

The traditional fishermen from Labuan Bajo seek their catch in specific catchment areas called *rompong*. Each area is set with approximately 40 baskets, all underwater, to catch fish. Some men were fishing in 1999 when local army forces approached the *rompong*.

The fishermen were questioned and beaten by the TNI; later, it was revealed that a fisherman from a competing group in another village had misled the TNI, telling them that the men were illegally fishing in someone else's *rompong*.

The fishermen reported the incident to their group elder, who then reported the incident to the village head. Tension in the community against the neighbouring village was already high; to avoid potential conflict, the village head and fishing elders set up a peaceful discussion with the elders and village head from the neighbouring village. The people from both villages fully trusted these leaders as their representatives.

The leaders visited the Commander of the Donggala regional unit. The Commander, together with both sets of elders and the village heads, approached the two groups of fishermen several times and held meetings and discussions with the victims and perpetrators. Eventually both sides agreed not to seek further vengeance; since that date, there have been no other disputes between these communities.

Source: FGD, Labuan Bajo, Central Sulawesi, 2005

945 Villager, Labuan Bajo, 6 May 2005.

The system also fails to provide all citizens with justice. Like the villagers of Labuan Bajo, the villagers in Bone Oge prefer to approach informal village leaders and the village head to settle disputes and give advice on moral and social issues. However, according to the FGDs conducted, women who are victims of violence have difficulty in obtaining fair and equitable justice because of the local patriarchal culture, low education levels, and poor access to information on human and gender rights which underpin deliberation processes. (Moreover, there are no local women's empowerment organizations to aid them.) Informal systems also can fail to provide justice for villagers when at least one of the parties involved in a dispute is a powerful interest group, such as a company with interests in the village, a state enterprise opeating in the region, or even state institutions themselves. In discussions, people said that, in such cases, the village head and local leaders tend to represent the interest group (particularly when they are locally based), rather than being a source of authority facilitating dispute resolution.

The assessment survey shows the specific strengths of the informal justice mechanisms that make them appealing to citizens. In it, 71 percent of 881 respondents stated that *adat* law was in effect in their village, indicating the prevalence of the system. These traditional laws covered marriage, adultery, fines, land and fights. When questioned whether an informal justice system and actors (mediators, legal aid, NGOs, religious and community leaders, etc.) were needed outside the formal system, 98 percent of 972 respondents considered informal actors and leaders as essential. While generally popular and trusted, informal justice mechanisms, in particular *adat* mechanisms, are more popular in Poso than Donggala, according to the survey. People understand the informal justice system, feel that it protects their rights, and believe the likelihood is high of compensation and remedies. Ninety percent believe it 'treats people well', 86 percent believe that it 'understands peoples' problems' and 81 percent believe that there is no extortion involved in informal justice processes.[946]

The informal system is an *accessible* mechanism for communities to resolve daily disputes that involve people from their own family and neighbourhood. The *participatory* approach to dispute resolution allows both sides to engage in dialogue. Judgements are designed to uphold perceived and established social and cultural norms; at the same time, the system is *adaptable.* Disputants voluntarily submit to the jurisdiction of the key actors in this system and because of the non-binding nature of the system.

Two major problems identified in the survey is that decisions are not always binding, and that sometimes 'peace is enforced'. Also, informal justice providers sometimes have difficulties in deciding sanctions and have too many problems to solve, particularly since many work on an informal basis.

5.3 AUXILIARY JUSTICE INSTITUTIONS

The survey did not cover perceptions of the district legislatures or offices of administration. However, the duty bearers themselves have opinions on how they are perceived by the public. A major issue identified by interviewees from the DPRD in Donggala and Poso is the delivery of public services, which is concurrent with qualitative findings and many of the complaints in previous sections.[947]

946 N = between 904 - 961

947 The following information is based on interviews with the Deputy Chairperson of the DPRD Donggala, 19 January 2005; Chairperson of Commission A and Member of Commission A, DPRD Poso, 19 January 2005.

Representatives of the Offices of Social Affairs and of Fisheries in Donggala say communities complain they do not receive enough aid or funding for development projects.[948] However, a representative from the Office of Social Affairs noted that while his office received 100 requests for assistance, there was funding to assist only 30 households.[949] He recognized that the office has been criticized for delays in the delivery of *jadup* aid, however, he argued the the office does not have to resources to deliver their services speedily.[950]

Similarly, in Poso the provincial government has criticized the Office of Social Affairs for failure to provide aid and poor performance. However, the Social Affairs representative argued that the provincial government does not understand the pressures and constraints of working in a conflict area. He went further to say that initially, the central government failed to recognize the seriousness of the conflict in Poso, viewing it as a trivial regional problem. Only when the international community drew attention to the matter did the central government act.[951]

Representatives from all the offices of public administration feel that the offices are under-funded and under-staffed.[952] For example, according to local regulations, the Office of Fisheries must liase with communities once every three months to provide updates on local regulations and to explain any changes to the fishing licensing process. In fact the Office of Fisheries is only able to visit 3 of the 21 subdistricts in Donggala each quarter.[953] Furthermore, the head of the Office of Social Affairs in Poso said that while a staff of 48 should be sufficient, the office in fact is under-resourced, because staff members' skills, experience and commitment are so low. This he attributed in part to inefficiency on the part of staff but also to post-conflict trauma.[954]

In Donggala and Poso, members of the legislatures assert that they do not have adequate resources to investigate expediently public complaints about actions of government offices or institutions.[955] Regardless, the DPRD has no arbitration powers in such matters and can only act as a mediator between the community and the district government. There are no district-level ombudsmen in Poso or Donggala and none of the offices of administration reviewed in this assessment had a complaints unit. Each office deals with complaints through meetings with claimholders and the department head or his/her representative. However, these offices are in district capitals, far from most villages.[956] In some cases, the offices manage to respond to community demands, in other cases they have neither the capacity nor the resources to act.[957]

Nonetheless, there have been innovations. The district legislatures organize investigating teams for issues of public concern. The government officials involved are called in

948 Interviews with representatives from the Office of Fisheries and Marine Affairs, Donggala, 20 January 2006; representatives from the Office of Social Affairs, Donggala, 18 January 2006.

949 Office of Social Affairs, Donggala, ibid.

950 Ibid.

951 Ibid.The Office receives just Rp. 5 million (USD 500) per year in operational expenses. The respondent explained he felt embarrassed to reveal this figure. In 2005, Rp. 5 billion worth of program funding was agreed to, but the office received only Rp. 160 million.

952 Representatives from the Office of Fisheries and Marine Affairs, Donggala, op. cit..

953 Ibid.

954 Office of Social Affairs, Poso, op. cit.

954 Office of Social Affairs, Poso, op. cit.

955 Deputy Chairperson of the DPRD Donggala, Chairperson of Commission A and Member of Commission A, DPRD Poso, op. cit.

956 The Office of Fisheries and Marine Affairs, Donggala, op. cit.

957 All interviews with Offices in the assessment.

for interviews as a part of the investigation. They will, however, pass on relevant information to the police or military. Commission A, despite inadequate resources, attempts to monitor the performance of the courts, police and prosecution services.[958]

The Office of Manpower and Transmigration has, in some cases, been able to faciitate tripartite agreements for employees. If complaints are raised, the office prefers to solve any dispute through informal means and by appealing to company management. Only if the management is unwilling to negotiate will the office take the matter through formal channels at the provincial level.[959] The Office of Manpower and Transmigration had also implemented a scheme to overcome seasonal and temporary unemployment. If, for example, farm workers are waiting for crops to ripen, the office willcreate a short-term scheme where the workers are employed to make fishing nets.[960] Other offices, such as the Office of Fisheries, have been involved in ad hoc dispute resolution.

958 The following information is based on interviews with the Deputy Chairperson of the DPRD Donggala, 19 January 2005; Chairperson of Commission A and Member of Commission A, DPRD Poso, 19 January 2005.

959 Interviews with representatives from the Office of Manpower and Transmigration, Donggala, 18 January, 2006

960 Ibid.

ANNEX 6
SOUTHEAST SULAWESI PROVINCIAL REPORT

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1. INTRODUCTION

1.1 PROVINCIAL OVERVIEW

The province of Southeast Sulawesi (Sulawesi Tenggara), with a population of 1,919,273 (2003), is part of Sulawesi, a large island in northeastern Indonesia.[961] The province – a peninsula and several large and small islands – measures just over 38,000 square kilometres. It is bordered by South Sulawesi and Central Sulawesi to the north; the Flores Sea to the south; to the east by the Banda Sea (and Maluku), and to the west by Bone Gulf and Sout Sulawesi. The province was created in 1964, when it was separated from South Sulawesi.

The region is rich culturally, and heterogeneous indigenous and migrant populations support and maintain diverse ethnic and religious traditions: 22 indigenous ethnolinguistic groups account for about half the population.[962] Over 90 percent are Muslim; the Christian community consists of a small-part of the Muna, Tolaki and Moronene local ethnic groups as well as Torajan migrants from South Sulawesi. *Adat* (custom and tradition) communities can be found in villa ges where there is a large population of indigenous people, 85 percent of whom live in rural areas. The indigenous people of the region (Bugis, Buton and Makassar, or BBM) are extremely mobile. They have a long history of migration, living and working both temporarily and permanently in eastern Indonesia and elsewhere in the archipelago.[963] Across the province there are migrant groups, many of them part of the central government transmigration program: Lombok and Javanese (Muslim), Torajans (Christian), and small numbers of Balinese (Hindu) and Chinese Indonesians (Confusianists).

Just under two-thirds of the employed population works in the agricultural sector: 12 percent in trade, 11 percent in services; others are employed in manufacturing; transportation and communications; the construction sector; finance, mining and power.[964] On the smaller islands, most people engage in traditional fishing and farming. South-east Sulawesi is one of the poorest provinces in Indonesia: 24 percent of the population are living under the national poverty line.[965] Infant mortality rates are high, with many of the subdistricts recording 55 deaths per 1,000 live births, significantly above the national average of 43 per 1,000.[966] Population growth rate is high, at 2.61 percent, due to the influx of IDPs.[967]

961 Much of the information in the following section is taken from interviews with local informants and BPS Sulawesi Tenggara (2004) *Sulawesi Tenggara Dalam Angka, 2003*, Badan Pusat Statistik: Sulawesi Tenggara; BPS Konawe Selatan (South Konawe) (2004) *Kabupaten Konawe Selatan Dalam Angka, 2003,* Badan Pusat Statistik, Southeast Sulawesi; BPS Baubau (2004) *Kota Baubau Dalam Angka 2003,* Badan Pusat Statistik, Southeast Sulawesi, as wellas village and subdistrict monographies (BPS in each subdistrict).

962 Institute for Rural and Indigenous People, http://www. IDRAP.or.id, accessed 8 July 2006. The largest groups are: Buton, Muna, Bugis, Kalisoso, Toraja, Moronene, Tolaki, Wolio and Wowonii.

963 Graeme Hugo, 'Second-class citizens?', Inside Indonesia, April-June 2005.

964 BPS Southeast Sulawesi, op.cit.

965 Choirul Maksum, 'Official Poverty Measurment in Indonesia'. Paper delivered at the International Conference on Official Poverty Statistics, Mandaluyong City, 4-6 October 2004. Based on estimates from BPS-Statistics Indonesia.

966 'Nutrition Map of Indonesia', a joint project of World Food Programme/UN and BPS-Statistics Indonesia, released 6 July 2006.

967 BPS Southeast Sulawesi, op.cit.

Conflict in surrounding areas and economic factors cause migration into and out of Southeast Sulawesi

1.2 HISTORY OF CONFLICT

Conflict in Southeast Sulawesi in recent years has been confined to specific areas, and certainly never reached the levels witnessed in other provinces, such as Central Sulawesi and Maluku. Howevever, there have been some incidents of large-scale collective violence and small-scale incidents of collective and individual violence, all resulting in loss of life and property. A number of factors have contributed to grievances within this heterogeneous society: high levels of poverty and unequal distribution of wealth; low education levels; unequal land ownership; government and large enterprise appropriation policies that have restricted traditional communities' access to customary land; and strains created by the introduction of migrants via national transmigration programs and the recent influx of IDPs, primarily from Maluku.

In 2001, the province was home to 110,000 to 130,000 displaced persons (IDPs), many who had fled from Maluku to Southeast Sulawesi. This influx, which was the largest in Indonesia, increased political unrest and disputes over land, and necessitated aid projects.[968] (Because many of the IDPs were originally from the region, or recent decendants of Sulawesi migrants, they did not encounter as many cultural and religious problems with the local population as did IDPs in other parts of Indonesia).[969]

These grievances have been exacerbated due to few functioning avenues of redress and large power imbalances. One very recent example of this occurred in late 2005, when police forcibly evicted hundreds of people from Kontu village on Muna Island. According to the Asian Human Rights Commission, the district government had claimed the land, which borders preserved forest, for a plan-

968 Dato Mohamed Jawhar, 'What is Terrorism?,' Asian Affairs, March 2002. Also,Patrick Sweeting, Gorge Conwa and Nabile Hameed, 'Promoting sustainable return and integration of IDPs in Indonesia,' Forced Migration Review, Sept. 2004, and Internal Displacement Monitoring Centre, Indonesia Country page, http://www.internal-displacement.org, accessed 10 July 2006.

969 'Transmigrants and refugees,' Down to Earth, No. 44, February 2000.

tation. At least 25 villagers were injured and 150 houses were burned and destroyed by the police.[970] NGOs mounted protests and are attempting to help the affected people in their negotiations with the authorities.

Clashes between youths commonly trigger violence.[971] As in other provinces, the nati onal context has provided a background to communal violence: poorly performing national and local institutions, the economic downturn and transition since 1998, reduction in fuel and other subsidies, a weak and disempowered police force, and other problems left over from the New Order regime.

1.3 ASSESSMENT LOCATIONS

South Konawe District and Baubau Municipality were selected as the sites for the access to justice assessment in the province. South Konawe is a rural district on the main peninsula of South-east Sulawesi, carved out of Konawe District in 2003. It was selected in order to examine the dynamics of access to justice in a rural area that is in the process of establishing justice institutions. Baubau, on Buton Island, has well-established justice institutions. *Adat*, traditional law and customs, can be found in both locations, but is less prevalent in the multi-ethnic villages of South Konawe than in Baubau, where Butonese *adat* traditions continue to wield influence.

Konawe

South Konawe, with a population of 225,768, is a rural area approximately 75 kilometres from the provincial capital.[972] South Konawe was administratively separated from the Konawe District in 2003, and the local legislative assembly (*DPRD*) was established by the general elections in 2004. While 93 percent of the population is Muslim, the district is ethnically heterogeneous, with sizeable communities of local Tolakinese and migrant Javanese.[973] South Konawe's natural resources are rich, with dense forests and seas abundant with marine life. Agriculture and fishing are the main sources of employment; others work in mines, with livestock and in the forests. In South Konawe, 15,667 households were categorized as poor in 2004.[974] No official data is available on education levels, however according to the staff of the regional planning board, the lack of educational facilities and inadequate numbers of teachers have contributed to the low education levels.[975] In South Konawe disputes have arisen in relation to government policies classifying *adat* lands as Rawa Aopa Watumohai National Park conservation lands. Local people have claimed land on the basis of *adat* that were classified as settlement land for transmigrants or conservation lands for Rawa Aopa Watumohai National Park. Conflicts arising from overlapping claims have been identified in selected villages of Mokupa Jaya, Potuho Jaya, Lambusa, Tanea, and the areas surrounding the National Park.[976]

Tinanggea and Konda subdistricts have been selected for review in the assessment. Tinanggea's population of 31,729 (2003) is predominantly Muslim, consisting of local

970 'Hundreds of villagers forcibly evicted,' Asian Human Rights Commission Urgent Appeals Programme, 14 Dec. 2005.

971 Ashutosh Varshney, Rizal Panggabean and Mohammad Zulfan Tadjoeddin, *Patterns of Collective Violence in Indonesia (1990-2003)*, Jakarta,2004.

972 BPS South Konawe, *op.cit*, 2003, pp. 31-32.

973 Interview with staff, Regional Planning and Development Board, South Konawe, 10 January 2005.

974 Office of Social Affairs and Health of South Konawe, 2004.

975 Interview with staff, Regional Planning and Development Board, op. cit.

976 Mapping Report (Southeast Sulawesi Assessment Team), 2005 pp. 2 – 30.

TABLE 36: OVERVIEW OF ASSESSMENT LOCATIONS – SOUTH KONAWE DISTRICT

Subdistrict	Village	Characteristics
Tinanggea	Mokupa Jaya	Mokupa Jaya has a population of 511 (99% Muslim), predominantly local Tolaki, followed by the Bugis, Javanese and Balinese. Key sources of livelihood are plantations and agriculture. Many villagers continue to farm and harvest land claimed by the government for Rawa Aopa Watumohai National Park. Limited government, public health and educational facilities (one school). 60% of the people (309) are below the national poverty line. Weak *adat* system, some Bugis norms are followed. Main issue in the village relates to land disputes.
	Pohuto Jaya	Pohuto Jaya's population of 1,048 is largely Muslim with a small number of Christian and Hindu families. Predominant ethnicity is local Tolaki, followed by Javanese, Balinese and Bugis. Although the ward has limited government, public health and educational facilities (1 elementary school), education levels are higher than Mokupa Jaya. Agriculture is the main source of livelihood.
Konda	Lambusa	With a population of 1,678, the village is 98% Muslim and predominantly Javanese. No IDPs but there are some land disputes between migrants and indigeneous people. Key sources of livelihoods are plantations, subsistence farming and animal husbandry. Better education levels compared to other villages, half of Lambusa's people have graduated from high school.
	Tanea	The village population of 1,007 is Muslim, predominantly Tolaki and Javanese. Plantations and forestry are the main source of employment; people are poorer than residents of surrounding villages and only a few own land. Primary schools are badly damaged. High regard for Tolaki *adat.* Some conflicts between local and transmigrant communities over land claims. Half of Tanea's young generation have only graduated from elementary school.

Tolaki and transmigrant ethnic groups including Javanese and Sundanese. There are also Balinese transmigrants (Hindu).[977] The 28 villages and 2 wards that make up the subdistrict of Tinanggea have been established or predominantly settled by the transmigrant communities, in relatively gretaer numbers than the local Tolakinese and other ethnic groups.[978] According to a family planning field officer in Tinanggea, more than half the population in Tinanggea lives in poverty and access to land and livelihoods have been disrupted by government land appropriation policies.[979]

Konda subdistrict, with a population of 18,716 (2003) in 20 villages, is similar to Tinanggea in terms of religious and ethnic makeup.[980] The subdistrict historically has been an important destination for central government-sponsored transmigration, and the secretary of the subdistrict administration estimates that the Javanese community outnumbers other local ethnic groups.[981]

According to officials in both subdistricts, tensions exist between local and transmigrant communities.[982] Only in areas where there is a dominant Tolaki population is the

977 BPS Tinanggea (2004) *Tinanggea Dalam Angka* (Tinanggea in Figures) 2003, BPS Konawe Selatan.

978 Mapping Report, Southeast Sulawesi Assessment Team, 6 March 2005, p.4.

979 Interview with Family Planning Field Officer, Tinanggea, 4 January 2005.

980 BPS Konda (2004) 4) *Konda Dalam Angka* (Konda in Figures) 2003, BPS Konawe Selatan.

981 Interview with the secretary of Konda Subdistrict, 9 January 2005.

982 Interview with staff member of the governance section chief of Tinanggea Subdistrict, 3 January 2005; interview with the secretary of Konda Subdistrict.

adat system prevalent. Otherwise, citizens follow local norms of the village or their own particular identity group.

Bau-bau Municipality

Baubau, five hours boat from the provincial capital, has a population of 116,911, about half that of South Konawe.[983] While the bulk of the population is Muslim, the province is ethnically heterogeneous, with local Butonese, as well as migrants from Java, Bali, and other parts of Southeast Sulawesi.[984] In areas with large Butonese populations, local *adat* is a form of organizing social relations and problem solving. In 2004, there were 53,517 IDPs (10,197 households); most came from conflict areas in Ambon and East Timor.[985] This influx contributed to an unusually high population growth rate of approxima tely 3.35 pe cent.[986] Key economic sectors are forestry, agriculture, cacao plantations and fisheries.[987] The Bureau of Statistics categorized 16,388 households as poor in 2003, and 7,968 households above the national poverty line.[988] Compared to South Konawe, Baubau has relatively good educational facilities: 65 elementary schools, 17 junior high schools, 11 high schools, 6 vocational schools, a few *Madrasah* (Islamic schools) and 4 universities.[989]

Of Baubau's four subdistricts, Bungi and Sorawolio were selected to examine the dynamics of accessing justice. *Adat* practices exist in many villages in both of these subdistricts. Both areas have experienced communal tensions, which often relate to access to natural resources and their management and uneven distribution of development projects (frequently involving IDPs). In the Baubau subdistrict of Bungi, the arrival of IDPs has put a strain on an already bleak employment picture and inadequate public utilities and housing, stimulating local tensions. A religious leader says that conflicts usually involve youth clashes, vigilante responses to theft and, on one occasion, an attack against a Christian Timorese refugee.[990] Social tensions in Sorawolio subdistrict arise from the unequal distribution of clean water and access to the natural water sources. The community of Sorawolio – which has tried to protect and manage forest resources – argues that the allocations are insufficient compared to those of Wolio and Betoambari, two subdistricts in Baubau City. Disputes between Gonda Baru ward and Kangkokea village over borders and associated resources also led to a conflict.[991] Citizens say that local grievances also arise from perceived injustices in the implementation of community projects/programs, transparency of program implementation (village/ward administration), and providing allowances to the ward/village staff.[992] The Butonese *adat* traditions are important in many villages of Bungi: In the villages of Kalia-Lia and Palabusa, *adat* leaders play important roles in the community. In contrast, in the Sorawolio subdistrict,Kaisabu Baru has no prevailing *adat* system, [993] while in Gonda Baru ward, the Laporo *adat* system is well structured, and *adat* officials work together to resolve problems within the com-

983 BPS Baubau (2004), op.cit., p. 42.
984 Ibid.,
985 Office of Social Affairs of Baubau City, Baubau 2004.
986 Ibid., p. 42.
987 BPS Baubau, op.cit, p. 111
988 Ibid., pp. 35 and 49.
989 Ibid., pp. 54-55.
990 Interview with religious leader, Bungi, 11 January 2005.
991 PDAM is a state enterprise that manages the water supply in the area. The water supply sources are located in the upstream region of Kangkokea River and to the west of the river. If the administrative boundares of the region were to change, Buton district would lose its water source asset.
992 Interview with citizens, Gonda Baru and Kaisabu Baru, 2-3 February 2005.
993 LIPPDA data, Baubau, 2003.

TABLE 37: OVERVIEW OF ASSESSMENT LOCATIONS – BAUBAU MUNICIPALITY

Subdistrict	Village	Characteristics
Bungi	Kalia-Lia	Ward with a population of 2,282, 99% Muslim. Butonese are the predominant ethnic group, including 428 IDP families from Ambon and East Timor, who arrived between 1999 and 2002. Main water supply managed by PDAM, which serves Kalia-Lia, Lowu-Lowu and Makassar Island. Main occupations are farming, fishing and civil service. Marine and plantation products are traded around the district; developed tourism sector for local and international visitors. 262 very poor families. Good education services including high schools. No prevailing *adat* system. Local conflicts involve youths.
	Palabusa	Coastal ward, population of 1,395 (all Muslim), located 12 km. from the capital of Liabuku subdistrict. Butonese are the predominant ethnicity; some Ambonese IDPs but most have returned home. Resources: Fisheries and marine products, pearl harvests, plantations. 210 very poor families. Site of Buton Pearl Harvest Company (*Perusahan Selat Buton*).
Sorawolio	Gonda baru	Newly established village, with a population of 1,698 (all Muslim).Predominant ethnicity: Laporo (sub-group of Butonese); All IDPs who lived here between 1999 and 2004 have returned home. Key livelihoods: forestry and plantations. 199 very poor families. Lack of educational facilities (1 elementary school and 1 kindergarten). Laporo *adat* system prevails. Some conflicts over access to clean water and abuse of forest resources.
	Kaisabu baru	Newly established village, with a population of 1,007 (98% Muslim). Predominant ethnicity: Butonese followed by the Cia-Cia, Wolio, Robo Robo, and Kapontori, and migrant groups. Key livelihoods: plantations and forestry. 287 very poor families. Better education facilities compared to Gonda Baru (1 high school). High regard for Butonese *adat* system. Some tensions over clean water supply and development projects. Home to IDPs between 1999-2004, only some of whom have returned home.

Source: BPS (2004) Bungi/Sorawolio in Figures, 2003; Village monographs for 2004; interview with Village Head, Kalia-Lia, 13 February 2005; interviews with Gonda Baru community members, 3-4 February 2004.

munity.[994] Table 37 describes the key aspects of the two villages in each subdistrict selected for assessment.

2. JUSTICE FROM THE PERSPECTIVE OF THE DISADVANTAGED

2.1 WHO ARE THE DISADVANTAGED?

Disadvantaged groups in both South Konawe and Baubau are impacted by the socio-economic conditions in each region and also by the structural provision of government and justice services. Poverty levels, access to education and health services, and key problems such as access to land and natural resources, and gender rights all affect particular sections of the community. This is particularly the case for the rural poor, who are the least likely to have access to adequate health and education facilities, or the resources to access available justice institutions in the province; indeed, they are the most likely to be landless, earning minimal wages.These groups have not benefited from local development projects and subsidies.The assessment found many of these disadvantaged groups in villages throughout the selected districts.

994 Interview with *adat* leaders, Gonda Baru, 18 February 2005.

TABLE 38: SELECTED DISADVANTAGED GROUPS – SOUTHEAST SULAWESI PROVINCE

Village	Disadvantaged Groups (Bold = Selected Group)	Group Experience	Key Justice Issue
SOUTH KONAWE DISTRICT			
Potuho Jaya	⊙**Transmigrant farmers** ⊙Poor elementary schoolo droupouts	For 13 years, 25 transmigrant families have owned and cultivated land in Potuho Jaya; each has a title to the land. The local community in nearby Lere village claims the land as *adat* land and has threatened the transmigrants.	Access to land and natural resources
Mokupa Jaya	⊙**Poor share-crop farmers** ⊙farmers dis-possessed of land for National Park ⊙Poor school dropouts	Sharecroppers cultivate land; if the owner is satisfied with the crop, they will be given half of the land. However, the workers are unsure how to organize official deeds for proof of ownership of the land. Sometimes owners have sold the tended land without consulting or compensating the farmers as agreed.	Property rights; access to land and natural resources
Lambusa	⊙**Female vegetable-sellers** ⊙Poor transmigrant Farmers	Women who travel to Kendari town market to sell their produce are often the target of intimidation and sexual harassment by market thugs who damage and steal their vegetables.	Gender violence
Tanea	⊙***Adat* farmers dispossessed of their land** ⊙Poor indigenous children ⊙Poor school dropouts	In 1972, the government appropriated much of Tanea villagers' land for transmigrants, offering no compensation. While the transmigrants received many government benefits, local farmers received no assistance or education in new techniques. Traditional farming techniques produce small yields, so poverty-stricken farmers of Tanea supplement their income by collecting firewood and rattan from the forest.	Access to land and natural resources
BAU-BAU DISTRICT			
Kalia-Lia	⊙**Female IDPs** ⊙Poor farmers ⊙East Timorese and Ambonese IDPs	Kalia-Lia IDPs still have no permanent housing, although many have been here since 1999 when the Ambon riots occurred. (In nearby Sorawolio subdistrict, IDPs have housing.) Education beyond elementary school is too expensive, health services limited. IDP women selling cakes and vegetables in Baubau City have been forcibly evicted and their vegetables confiscated by market officials.	Provision of public services, subsidies and aid
Palabusa	⊙**Isolated poor** ⊙Underpaid female and teenage workers at PT Selat Buton (Pearl harvesting Company)	276 people live in the remote Kolagana area of Palabusa. Only 10% are literate, most have no clean water or access to health services. After land values increased because of plans for a new road, the nearby Baruta community claimed the Kolagana land, arguing they had originally cultivated this land. Neither community knows who can help them resolve the conflicting claims.	Access to land and natural resources
Gonda Baru	⊙**Poor women** ⊙Village officials receiving very low honorariums ⊙Children who have dropout of school ⊙Homeless IDPs	Levels of education among females are very low; it is claimed that some parents deliberately do not educate their daughters. Many husbands do not involve their wives in decision making. Domestic violence is prevalent.	Gender rights, violence and discrimination
Kaisabu Baru	⊙**Isolated poor**	Unlike other wards of Kaisabu Baru, Komba-Komba and Wakaisua do not have access to clean water or health facilities. Fields are 10 kilometres from the wards. Residents of Komba-Komba and Wakaisua note that all aid assigned to Kaisabu Baru has been used for development projects in other areas within the village.	Delivery of public services, subsidies and aid

Source: Southeast Sulawesi Access to Justice Team Reports

The groups selected for further review in South Konawe are described in Table 37. In some cases, where the degree of disadvantage between two groups in one village was judged to be similar, the group that had not been selected in other villages was selected to ensure variety in the sample. Women were automatically selected as a group upon which to focus in each village, in recognition of the discrimination and marginalisation they often experience living in a society with predominantly patriarchal customs and traditions.

In South Konawe District, the most disadvantaged groups include: transmigrant rice farmers in Potuho Jaya; sharecrop farmers, female vegetable sellers and *adat* farmers. All of these groups face particular difficulties in solving their problems and/or sustaining a basic standard of living related to broader justice issues in the province. In Baubau Municipality, the most disadvantaged are: female IDPs in Kalia-Lia, isolated poor in Palabusa, the poor women of Gonda Baru, and the isolated poor in the Komba-Komba and Wakaisua areas of Kaisabu Baru. The views of these groups on access to justice are canvassed together with those of the broader population and underpin many of the findings on access to justice in Southeast Sulawesi.

2.2 COMMUNITY PERCEPTIONS OF JUSTICE

A common understanding of justice has proven perpetually elusive, perhaps due to the inherently value-laden nature of a term whose meaning may entail different things for different people in different places and at different times. While disadvantaged groups in the eight villages in Southeast Sulawesi struggled to articulate their understanding of justice in the abstract, their comments in Focus Group Discussions revealed a range of perceptions of justice that are largely shaped by the hardships in their daily lives: inadequate living conditions vis-à-vis those of others in the community; local disputes problems and experiences, and interactions with state and informal institutions specific to their communities.

The poor farmers in Kaisabu Baru were perhaps the most philosophical about justice, tying it directly to the workings of the justice system. Justice, they said, entails “the division of all things being equal and even…and those who commit a wrong doing being brought to justice.”

Others emphasized the links between justice and upholding their rights: For the poor fishermen living in Kolagana hamlet in Palabusa village who have no legal certainty over ownership of land given to them by a palace official in 1970, justice is about control over land; for the women vegetable sellers of Lambusa, justice is about being able to sell their produce in Kendari market without being sexually harassed by thugs. Often, in issues concerning the use and ownership of land, the rights of one group collide with the rights of another: poor transmigrant farmers in Lambusa argue that they have been waiting for land certificates for 33 years, and when finally they received these certificates, local indigenous groups stepped forward to claim the land.

Frequently, the participants based their vision of, and hopes for, justice on what they perceive to be the lack of justice in their

lives. Like IDPs in other provinces, female Ambonese IDPs in Kalia-Lia noted that there was no justice in their current situation, in which they have received little attention from the government or other organizations despite their status as IDPs. Justice will be achieved, one woman explained, "when we feel the same as other citizens in the village, that is, we have our own homes and don't have to live in the homes of friends or kin, when our children have an adequate education, and we can live safely and peacefully and have enough food and drink for each day. If we can achieve this, then we will have justice."[995]

In Makupo Jaya, one FGD participant fingered the government for the lack of justice he experienced, speaking of "unequal treatment on the part of the government, particularly when it comes to development programs to build roads, and village education and health facilities. We do not have these things."[996]

Sometimes, the people pointed at these injustices as the source of conflict among various groups in their communities. The transmigrant farmers in Potuho Jaya noted: "Our situation is unjust because the rice lands we own are being claimed by local residents, which is creating disharmony in social relations between the transmigrants and the indigenous community."[997]

2.3 KEY JUSTICE-RELATED ISSUES AFFECTING DISADVANTAGED COMMUNITIES

The disadvantaged groups in Southeast Sulawesi perceptions of justice are inextricably linked with local problems tied to what they see as infringement of rights and

TABLE 39: KEY JUSTICE ISSUES IN ASSESSMENT LOCATIONS – SOUTHEAST SULAWESI

Region	South Konawe				Baubau			
Justice Issue/Village	Mokupa Jaya	Potuho Jaya	Lambusa	Tanea	Kalia-Lia	Palabusa	Gonda Baru	Kaisabu Baru
NON CONFLICT - RELATED ISSUES								
Access, use, management and ownership resources of natural resources	x	x	x	x	x	x	x	x
Poor public service provision (administration and governance) and program delivery (poverty eradication programs, assistance for IDPs)	x	x	x	x	x	x	x	x
Law enforcement	x	x	x	x	x	x	x	x
Employment and labour rights					x	x	x	x
Gender rights	x		x	x				
Adherence to adat values					x		x	

Source: Southeast Sulawesi Access to Justice team reports.

995 FGD participant, Kalia-Lia, 14 April 2005.
996 FGD particiant, Mokopu Jaya, 11 May 2005.
997 In-depth interview with a farmer, Potuho Jaya, 16 April 2005.

TABLE 40: MOST IMPORTANT ISSUES IN ASSESSMENT LOCATIONS – SOUTHEAST SULAWESI

Rank	Number 1 Issue				Number 2 Issue				Number 3 Issue			
	Global (n = 905)		Women (n = 450)		Global (n = 898)		Women (n = 447)		Global (n = 887)		Women (n = 452)	
1	Poverty	46%	Poverty	46%	Education	32%	Education	32%	Crime	18%	Unemployment Poverty	15%
2	Education	15%	Education	19%	Poverty	14%	Poverty	19%	Unemployment	12%	Public health	14%
3	Land disputes	14%	Land disputes	11%	Domestic disputes	10%	Domestic disputes	10%	Domestic disputes poverty	11%	Domestic disputes	12%
4	Disputes betwen neighbours	8%	Crime	7%	Crime	8%	Land disputes	8%	Land disputes	10%	Crime	9%
5	Crime	6%	Disputes betwen neighbours	3%	Unemployment	7%	Unemployment	7%	Public health	9%	Education	8%

Source: Access to Justice Survey Southeast Sulawesi

'Global' = all survey respondents (male and female)
'Women' = female survey respondents only

The first three issues were cited in all of the assessment sites throughout the province; the last three were site-specific, relating to local conditions. Table 39 charts the key justice issues as described in interviews and focus group discussions, and shows how they were distributed throughout the assessment locations.

This section will first present the results of a survey of approximately 900 villagers as to what they consider the most pressing issues in their daily life, and then examine in more detail the specific thematic issues raised by respondents in FGDs and interviews during the assessment.

Survey Results

Survey respondents in each of the eight assessment locations in Southeast Sulawesi were asked to nominate (in order of importance) the three most commonly encountered issues in their village from a list of 20 options. Poverty, education and crime were most frequently nominated as the number one, two and three issues respectively (see Table 40), while unemployment, domestic disputes, poverty, public health and land disputes were other commonly selected issues.

- Access to and management of land and natural resources
- Access to public services (poor public service provision and delivery)
- Law enforcement
- Employment and labour rights
- Gender rights
- Adherence to *adat* values

In South Konawe 21 percent of respondents selected education as the most frequent issue facing villagers as opposed to only 10 percent in South Konawe and 15 percent globally. In South Konawe, 15 percent of respondents nominated disputes between neighbours as the most frequent issue facing villagers as opposed to only 1 percent in Baubau and 7 percent globally.

Women mirrored the global survey response by nominating poverty and education as the two most important issues facing villagers, but put significantly less emphasis on disputes between neighbours and a much greater emphasis on criminality, which garnered 6 percent of women as the number one problem, 7 percent as number two, and 9 percent as number 3. (Of the global population, 8 percent rated domestic disputes as the number two problem, and 18 percent as the number three).

The three issues immediately following – access to natural resources, law enforcement, and access to public services – were identified as key justice issues in all assessment villages.

Poor Public Service Provision and Program Delivery

Across the eight assessed villages, participants cited flawed program delivery and poor provision of public services–development programs, health and education services, public infrastructure, subsidies– as major problems.

Flawed Program Delivery: In Kalia-Lia, the IDPs from East Timor and Ambon complain that officials embezzle relief funds intended for the IDP community, by changing the names of recipients. FGDs and in-depth interviews revealed that IDPs feel the officials' actions and the continuing uncertainty regarding the provision of housing impair
their socio-economic stability.[998] In Sorowolio subdistrict, local grievances also arise from perceived injustices in the implementation of community projects and programs; participants claim that the village and ward administrators are not transparent in implementing programs and in providing staff allowances.[999] In Kalia-Lia, residents have been disappointed with the government's delivery of an irrigation system. In 2004, the government earmarked 50 hectares of land to be converted to rice paddies to increase employment opportunities in the village. The Office for Housing and Infrastructure provided two tractors and an irrigation system. However, the system was improperly built, and instead of irrigating the rice paddies, the water spills into the village's guava and teak plantations, ruining these crops. The irrigation development supervisor has not responded to residents' complaints.

Access to Government Subsidies: In South Konawe, Tinanggea subdistrict, the main local ethnic group, the Tolaki, argue they have been consistently marginalized from development funding and processes in contrast to the transmigrants.[1000] Many Javanese have settled in Tinanggea through the central government's transmigration programme,[1001] and their villages now outnumber those of the local Tolakinese and other ethnic groups.[1002] Interviews with members of the local ethnic community revealed that they feel that they do not stand on an equal footing with the transmigrants, who, they say, have greater access to housing, farming equipment and other government aid packages. Unequal access to these material and economic benefits has led to disputes between the local and the transmigrant communities, which many respondents worry could trigger more serious conflicts in the future. According to the secretary of Konda subdistrict, the economic disparity that exists

998 FGDs in Kalia-Lia, 16 and 14April 2005; in-depth interview with Kalia-Lia resident, 9 April 2005.
999 Interview with a number of villagers, Gonda Baru ward, Sorawolia subdistrict, 2 February 2005.
1000 Interview with Syarir Mangidi, a staff member of the governance section chief of Tinanggea subdistrict, 3 January 2005.
1001 Interview with Hajar Gunawan, 10 January 2005.

between the largely transmigrant Javanese community and the local ethnic groups is also a source of communal tension. Although no statistics are available on the ethnic makeup of Konda, the district administration estimates that the Javanese outnumber other local ethnic groups because the subdistrict has always been an important transmigration destination.[1003]

Access to Clean Water: In interviews and FGDs in Sorawolio subdistrict's smaller villages and wards, many participants complained about the unequal distribution of clean water and poor access to natural water sources. These inequities, they said, sometimes lead to conflict. In the Amanasi ward of Gonda Baru, for instance, community members said that they must pay between Rp.3,000 (around 30 US cents) and 5,000 (around 50 US cents) for each gallon of water. Gonda Baru ward and Kangkokea village have territorial disputes regarding village borders and associated resources.[1004] In Kaisabu Baru, villagers said that PDAM authorities prioritized the supply of clean water to city residents; in response, the dissatisfied villagers drilled the main pipes from the supplier. The communities of Sorawolio claim that their water allocations are insufficient compared to two subdistricts in Baubau, namely Wolio and Betoambari. They feel this is particularly unjust since they have made efforts to protect the forests and watershed. Citizens of the Buton District are particularly worried that, if proposed changes in the administrative boundaries of the region are made, Buton District will lose its water source to another district.[1005]

Access to Education: Respondents in Tanea village say that their village lacks even the most basic educational facilities and that the government has been slow to respond to requests. Residents in other assessment villages such as Mokupa Jaya and Potuha Jaya were also concerned about the lack of schools and inaction on the part of the highly centralized bureaucracy that failed to heed their complaints.

Law Enforcement

Law enforcement is a key issue identified across all villages, affecting all citizens. Participants in FGDs and interviews are concerned that unresolved thefts sometimes lead to vigilantism, as happened in Bungi subdistrict.In all four villages of South Konawe, IDP women are unhappy with the performance of law enforcement personnel:

BOX 39: ASSAULT AND DEATH – UNRESOLVED

During a wedding in Atari Jaya in 2003, a young man from Mokupo Jaya was stabbed by another man from nearby Mandoke (also part of Tinanggea District). Both had been drinking heavily. The victim died on the way to the health clinic. Village heads from Atari Jaya and Mokupo Jaya reported the incident to the police in Tinanggea. The police arrived the following day, but by this time, the body had been buried and the perpetrator had fled.

The case has yet to be settled. The family of the victim believes the response of the police has been inadequate and the subsequent lack of a final settlement is unjust. They cannot pursue the case further in the formal justice system: From Mokupo Jaya, it takes two hours to reach the police station, seven hours to reach the prosecutor's office, and five hours to reach the general court. In addition, they have little understanding of the legal processes.

Sources: Interviews with community leader, Mokupa Jaya, 17 and 22 April; Sector Police Chief, Tinanggea, 13 May 2005; victim's family, 17 April 2005

1002 Mapping Report, Southeast Sulawesi Assessment Team, 6 March 2005, p.4.
1003 Interview with the secretary of Konda subdistrict (3C4L1), 9 January 2005.
1004 Interviews with community members, 3-4 February 2004.
1005 PDAM is a state enterprise that manages the water supply in the area. The water supply sources are located in the upstream region of Kangkokea River and to the west of the river.

For instance, women who sell cakes and vegetables in Baubau City say thieves steal their vegetables with impunity.

Law enforcement officials are also said to be slow in responding to other, more serious crimes. The following case study outlines villagers' frustrations villagers with poor law enforcement and how these frustrations shape their perceptions of law enforcement institutions.

Access to Natural Resources and Land

Justice issues regarding access, use, management and ownership of natural resources were mentioned in interviews and discussions throughout all eight villages. In a survey of over 900 people, residents said that half of the disputes between their community and another pertain to land.[1006]

In South Konawe District, citizens reported that serious land disputes have arisen in relation to inconsistencies in government policies on classifying land to be reserved for specific purposes, such as cultivation, development, settlement, *adat* or national park preserves. The lack of clear and decisive policies has resulted in overlapping land claims made by local *adat* communities, who base their claims on traditional *adat* stewardship and use of the land, and by transmigrants, who say that the lands were granted to them as part of their transmig-ration package. These issues became even more complicated when the government reserved parts of these lands for the Rawa Aopa Watumohai National Park. Disputes revolving around similar issues have been noted in the villages of Potuho Jaya, Lambusa, Tanea and Mokupa Jaya.[1007]

- In **Potuho Jaya** and **Lambusa**, transmigrant families who have been cultivating land given to them by the government are now being challenged by members of nearby *adat* communities. In Potuho Jaya, 25 families who have been farming the land for 13 years, have received threats of violence and other forms of intimidation from the local Lere community. Thus far, they say, government response has been ineffective.
- In **Tanea**, local *adat* people live in poverty; much of their land was taken in 1972 by the government and given to transmigrants.
- In **Mokupa Jaya** cocoa plantations have been appropriated as part of the Rawa Aopa Watumohai National Park. In 1998, indigenous Tolaki residents. sold the land to Bugis farmers who had migrated from South Sulawesi; subdistrict and district officials were party to the transaction. In 2004, after the Bugis farmers had cleared and cultivated the land, officers from the national park torched the crops, claiming that it was national park land. In interviews and FGDs, the farmers said they were angry and confused as to why the government had permitted sale of the land, and then destroyed the crops.The Bugis farmers, who see the court system as a last resort, expect the government to prevent further damage to the plantations and are hopeful the matter can be solved through informal discussions, but as yet there has been no outcome.[1008]

1006 N=934; 10 percent of the residents reported disputes between their community and another.

1007 Mapping Report (Southeast Sulawesi Assessment Team), 2005 pp.2 -30.

1008 In-depth interview with village resident, Mokupa Jaya, 9 February 2005; FGD with local farmers, 23 February 2005.

In Baubau, government policies have also sparked land disputes, some surrounding land grants to IDPs and others due to unclear land titling:

- In **Kaisabu Baru,** the government negotiated to clear village land for IDP housing under the Transmigration Village Program (*Program Transmigrasi Sisipan Desa*). In exchange, the government promised to provide housing to those community members who had no homes. However, the office neglected to include any locals from Kaisabu Baru on the list of 167 recipients. In protest, the community blocked the road to the transmigration site.
- In **Gonda Baru,** there are several disputes relating to land. IDPs claim that they were not given large enough plots off which to make a living, thus condemning their families to poverty. Another problem revolves around the 2002 district rezoning, which shifted the border between Gonda Baru and the village of Kangkongkea, so that land once in Kangkongkea is now part of Gonda Baru Kangkongkea residents refused to vacate the land, which has increased tensions between Gonda Baru and Kangkongkea villagers. FGD participants argued that the government must immediately move to resolve this matter before tensions escalate to violence.
- In the remote **Kolagana hamlet of Palabusa**, 276 residents who live in extreme poverty face uncertain land tenancy. In 1970, *Sultan Belum Muncul*, a member of the Bugis royal family, gave land to the community to occupy and tend. Several years ago, plans were announced to build a sealed road to Kolagana, resulting in a rise in land values. This prompted the nearby Baruta community to claim the land, arguing that they had originally cultivated this land. The feud heightened when Baruta villagers used the coastal waters of Kolagana for seaweed cultivation, interfering with Kolagana fishermen. The people of Kolagana, who have a literacy rate of just 10 percent, retain many traditional animist beliefs. In FGDs, they worried about future disputes with neighbouring villages, and said that they need to be able to build

BOX 40: WHOSE LAND, WHOSE SEA?

In 2004, a dispute over the growing of seaweed along the Kolagana coastal area erupted between the Baruta people (who grow the seaweed) and the Kolagana people (who catch fish along the shore).Initially, only one person from Baruta asked permission to grow seaweed along the Kolagana coast, but this number quickly grew to 21. The two groups met and decided that no additional people would be allowed to cultivate seaweed. Before the decision was implemented, a citizen of Baruta living in Baubau made a false report to the Bungi police that the Kolagana people had damaged the boats of the Baruta. The police investigated, but found no damage and made no arrests. Kolagana residents were furious, and only a meeting between traditional leaders prevented an escalation of conflict. At this meeting, it was decided that: 1) The Kolagana and the Baruta are of the same origin, and they are brothers; 2) the use of the coast should be balanced: one Baruta boat for one Kolagana boat; 3) each boat owner should pay Rp. 10,000 (around USD 1) to their respective village. There have been reports that not all Baruta are paying the fee. The Kolagana still lack certainty of the ownership of their land.

Source: Indepth interview with area head, 13 April 2005; community leader 15 April 2005; school principal, 15 April 2005, FGD with women, Kologana, 11 April, 2005, FGD male dry-land farmers, Kolagana, 13 April 2005

permanent houses on their land and have full access to local seas to be able to have secure livelihoods (see Box 40).

Employment and Labour Rights

Employment and labour rights were of particular concern in Baubau District, and were mentioned in FGDs and interviews in every village except Kalia-Lia. In Konda subdistrict, the Javanese transmigants tend to control tofu, *tempeh* and vegetable production, as well as dominating the supply of these products to the provincial capital of Kendari.[1009] The transmigrant communities are normally provided with economic incentives to settle in Konda. In Tananggea, a local official said the Tolaki believe that they have unequal access to economic benefits as compared to the transmigrant communities (especially the Javanese and to a lesser extent the Balinese).[1010]

In Palabusa (Bungi subdistrict), the pearl company PT Selat Buton employs 170 workers, most of whom are women. Workers work six days a week and are paid Rp. 260,000 (around USD 26) per month. At the end of 2004, workers held a demonstration demanding an increase in pay, and more timely payment of their monthly wages. While the company remedied the latter issue, wages remain at the same level. In addition, while the company offers some compensation for workplace injury and death, there are no occupational health and safety measures in place.

The arrival of IDPs has increased competition and stimulated local tensions in the villages of Kalia-Lia, Palabusa and Gonda Baru, where many, particularly poor women, already need jobs.[1011]

Owing to the high levels of poverty in Gonda Baru, once children complete elementary school, parents expect them to help work the rice fields or become independent. Children rarely attend middle school.

Gender Rights

Gender related issues were raised in FGDs across all villages of South Konawe. Transmigrant women find it hard to obtain farmlands to cultivate their own crops in Mokupa Jaya and Potuho Jaya; they also suffer from sexual harassment when they trade their goods in Mokupa Jaya, and young girls are often forced into early marriages in Mokupa Jaya and Tanea.[1012] Women in Gonda Baru felt they were not represented by the formal justice system, as there are few local policewomen. Women from Lambusa who travel to the Kendari town market to sell their produce claim they are often the target of intimidation and sexual harassment by drivers who take them to the market and thugs, who damage or steal their vegetables.

Adherence to *Adat*

Adat is an important part of local life in both Bungi and Sorawolio, where Butonese *adat* traditions are used to resolve problems. However, in two of the assessment wards, Kalia-Lia and Gonda Baru, people are concerned about citizens' adherence to *adat* laws and also what they see as the government's lack of respect for traditional laws and customs. In Kalia-Lia, for instance, the *adat* leaders say they have had trouble getting officials to compensate the villagers for *adat* lands that were taken over and acquired by the government. In Gonda Baru, the *adat* system is well structured. However, *adat* leaders say that there have been problems regarding the use and sale of *adat* community assets and lands. In one case,

1009 Interview with the secretary of Konda Sub-district (3C4L1), 9 January 2005.

1010 Interview with Syarir Mangidi, governance section chief of Tinanggea Subdistrict, 3 January 2005.

1011 Interview with Village Secretary, Palabusa Village, 14 January 2005.

1012 Interview with Adat leader, Mokupa Jaya, and Tanea, 9 February and 19 February 2005; interview with religious leader, Bungi, 11 January 2005; FGD with women, Kologana, 11 April 2005.

the village head and another individual failed to follow *adat* rules and did not call a community meeting regarding an exchange of *adat* land. Instead, the land was sold based on a verbal agreement between the two men, by passing *adat* mechanisms. They also say that the people of nearby villages (Bugi, Karya Baru and Kongkokea) frequently access Gonda Baru *adat* forest, but fail to follow *adat* laws concerning harvesting and hunting.

3. COMMUNITY AWARENESS OF RIGHTS

3.1 COMMUNITY AWARENESS OF RIGHTS AND OPTIONS

Citizens in Southeast Sulawesi are able to identify issues and problems that impact on their lives directly. However, the assessment team found that knowledge of legal rights within the communities is limited. Villagers claim they do not really know their legal rights and have rarely (if ever) received training or information on legal rights and processes. The villagers of Potuho Jaya complained that they have never received any legal services from any institutions regarding their legal problems: “We, the common people in village, lack knowledge of legal matters, and we hope that they will assist us regarding our case of indigenous claims to our land and our rice fields.[1013] The assessment team found that farmers in Mokupa Jaya whose community plantations were appropriated by the state for the national park made similar complaints: “We the people of Mokupa Jaya lack legal knowledge; we hope that our legal rights in developing our cacao plantation on which our lives depend are well protected. Unfortu-nately we don't know how to deal with such problems and therefore we can do nothing."[1014]

In Southeast Sulawesi, the assessment indicates that there are cases in which the poor and disadvantaged have taken action, demonstrating a general awareness of their rights. Most often, they tend take action via the informal justice system on a range of issues, including land, crops, theft, adultery – and frequently, there is a successful resolution. Only in one case, did villagers report taking an action to the formal system, whichresulted in a successful outcome:

- In **Lambusa,** a man stole building materials and was handed over to police as he had several prior convictions of theft in the village. The court sentenced the man to one and a half years in jail.

In another instance, villagers successfully petitioned local government and police to exonerate citizens who had been unlawfully arrested. During FGDs in **Kaisabu Baru,** participants said that 43 residents were charged with cutting down trees in a forest preserve. The villagers were released after the Kaisabu Baru community held demonstrations outside the police station and the local government offices, contesting the allegations.

However, citizens often do not know what to do if their actions fail to produce results, as is often the case. Following are some examples.

- In **Potuho Jaya,** parents have approached the local government, claiming that school facilities are inadequate for the children. Despite promises, there have been no improvements and the parents don’t know what else to do.

1013 FGD with men, Pohuto Jaya, 11 April 2005; interview with local community leader, Potuho Jaya, 14 April 2005
1014 FGD with men, Mokupa Jaya, 11 May 2005; FGD with Youth, Mokupa Jaya, 12 May 2005

- In **Palabusa,** the Kolagana have occupied and tended land in Palabusa since 1970. The Baruta community also claimed the land as their own, when land values increased because of a new road project. The problem has been taken to the village level authorities but no settlement has been reached. Neither community feels they have a viable means to channel their grievances.
- In **Mokupa Jaya,** migrants purchased land from local groups, and worked it, only to have their crops burned by employees of the National Park. The farmers are angry, because they say government officials knew about and permitted the sale of the land.

Furthermore, while it may be possible to equate action taken to defend a right with the awareness of that right (at least in general terms), the reverse cannot necessarily be said in cases of inaction and passivity. In some situations, citizen may be aware of their rights, but feel constrained from taking action for political, economic or social reasons. The following examples are illustrative.

- **Duty-bearer complicity:** Tanea residents allege that village officials are misappropriating Rice for the Poor allotments and health concession cards intended for poor residents, but they have done nothing.
- **Duty-bearer complicity:** Women IDPs from Kalia-Lia attempt to support their families by selling cakes and vegetables in Baubau City market, however they have not been provided an official place to sell their produce. Instead, market officials have forcibly evicted many from the market and confiscated their vegetables.
- **Shame or embarrassment:** Levels of education among women in Gonda Baru are very low; there are claims that some parents deliberately do not school their daughters. Men do not take female family members into account in making decisions, and in FGDs, women claimed that spousal abuse is a frequent occurrence. Although women do sometimes turn to the informal system to address spousal abuse, the husbands typically ignore the decisions and the sanctions imposed.
- **Expense:** In Mokupa Jaya, a young man was killed at a wedding and his family feels that the police response has been inadequate. However, they cannot appeal to other actors in the formal government because the offices are too far away and too expensive to reach.

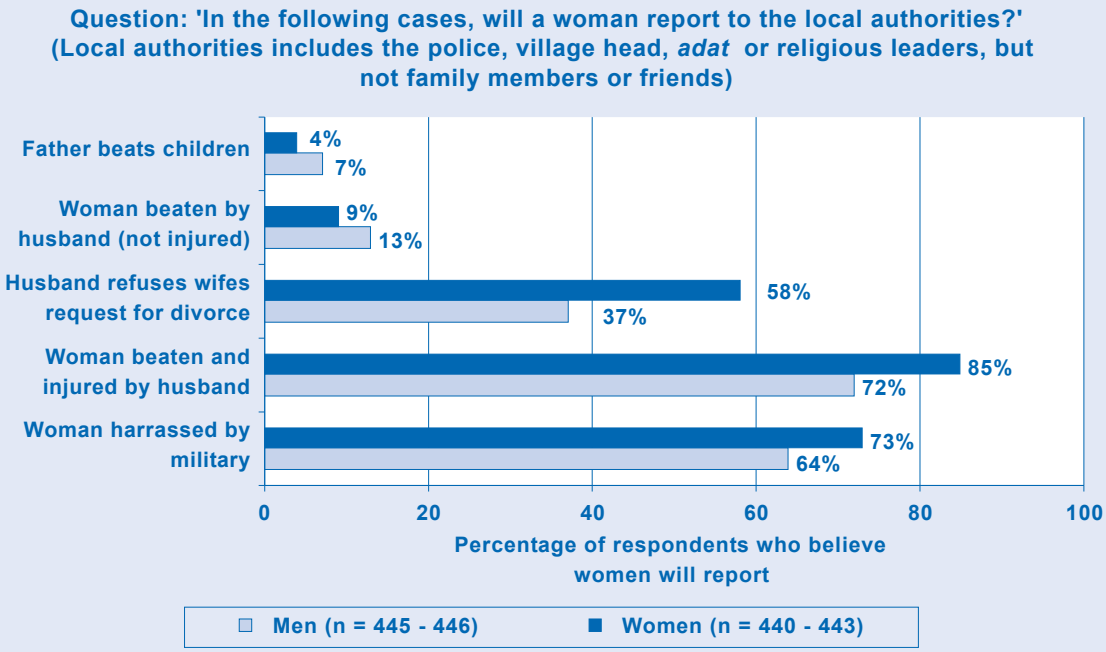
Women's Perceptions Of Rights And The Actions They Take

Survey results from Southeast Sulawesi provide a further indication of women's awareness of their rights in a range of different situations (see Chart 36).

It is interesting to note that both men and women of Southeast Sulawesi have a higher belief that women will stand up for their rights than do their counterparts in other provinces. (Men do, however, tend to underestimate the likelihood of a woman to act, compared to women's own estimates.)

According to the survey, 85 percent of the women would report a husband beating

CHART 36: PERCEIVED LIKELIHOOD OF WOMEN TO REPORT DIFFERENT INCIDENTS – SOUTHEAST SULAWESI



Source: Access to Justice Survey Southeast Sulawesi

and injuring a wife, but only 9 percent would report the beating if there were no injury. 73 percent of the women would report harassment by the military.

It is important to note that while perceived likelihood of an incident is not a directmeasure of awareness of rights, it does show that those who think that they would report (at a minimum) believe that they have been wronged in some way and that there is something they can do about it. Of course, the number of women who are aware of their rights could be higher than indicated by the survey, but they might have reasons for not reporting, such as embarrassment or a sense of futility.

Men typically rate women as less likely to report an incident than do women themselves, with the exception of when a woman is beaten by her husband but not injured. It is also important to note that both men and women have very poor expectations of a woman reporting a father beating a child: only 7 percent of the men and a very low 4 percent of women.

3.1 RAISING AWARENESS THROUGH LEGAL AID AND COMMUNITY OUTREACH

A key finding of the Southeast Sulawesi assessment team is that while people may be aware of their rights, they do not always know how to seek a remedy. There are private practice lawyers and a limited-number of NGOs available to assist the communities of both districts. The following is a brief overview of available services in Bengkayang, Ketapang and the provincial capital, Pontianak.

Lawyers

No data was available on the number of private practice lawyers at the provincial level in Southeast Sulawesi. According to a lawyer in Baubau, only 10 people from government and non-government organizations provide legal advice in the city.[1015] The cost of legal representation in Southeast Sulawesi is determined largely by lawyers, according to the difficulty of the case and the financial situation of their clients.[1016] A lawyer in Kendari said that private lawyers infrequently represent poor clients; when they do, they subsidize the legal costs by charging affluent clients higher fees. Laywers also said that, atlhough Law No. 18 of 2003 regarding Advocates obliges lawyers to provide free legal advice for indigents, pro bono services are rarely provided.[1017]

Lawyers identified the following as impediments to service:[1018]

- Access to witnesses, evidence and key documents.
- Lack of understanding by police, prosecutor's office and the courts of a lawyer's role in defending clients. Trials will often commence before a defendant's legal team has been given access to information presented by the prosecution.
- No formal mechanisms to protect lawyers against threats and intimidation. At present lawyers and advocates report such cases to police or the advocates' association if they take any action at all.

Legal Aid

There are two forms of free legal assistance potentially available for indigent citizens: state-provided legal aid and legal aid through legal aid organizations.

State-Sponsored Legal Aid: According to lawyers and NGOs, no government funds are allocated for legal assistance nor are any government resources allocated for advisors to represent indigent clients.[1019] If they cannot access a legal aid organization, citizens must represent themselves or pay for private practice lawyers, a financial impossibility for most poor.[1020]

NGOs: There are 536 civil society organizations and non-government organizations (NGOs) registered with the Provincial Office of National Unity and Community Protection in Southeast Sulawesi. The assessment team found no clear evidence indicating which, if any, were engaged in activities related to legal empowerment and assistance, with the exception of the Legal Aid Institute, LBHR.[1021] There was no data that any of these organizations were engaged specifically in monitoring of the legal system; however a handful is involved in monitoring government activities. At the district level, the assessment team found no evidence of civil society organizations or NGOs engaged in access to justice in South Konawe.

In Baubau City, there are a variety of NGOs involved in: empowerment of village and marginalized communities; advocacy campaigns and the preservation of natural

1015 Interview with lawyer, Baubau, 23 February, 2003

1016 Interview with private practice lawyer, Kendari, 27 July 2005; Lawyer, Baubau, 23 February, 2003. No interviews were conducted with privatepractice lawyers in South Konawe given its status as a new district, with many lawyers being located in Konawe.

1017 Interview with private practice lawyer, Kendari, 27 July 2005; Lawyer, Baubau, 23 February, 2003.

1018 Ibid.

1019 Some funds were available when the administration of the judiciary was under the Ministry of Justice. However, the procedure for the disbursement of funds became unclear after the administration of the judiciary was transferred to the Supreme Court under the 'one roof' system.

1020 Interview with senior advocate Baubau, 30 April 2005.

1021 198 foundations, 143 other NGOs, 195 other civil society organizations (professional organizations, functional services, religious organizations); LBHR staff member, Kendari, June 4 2005.

resources; child protection; policy and human rights advocacy.[1022] NGO representatives say there is little coordination among these organizations and that they have a limited capacity to carry out legal aid and advocacy activities.

LBHR, with an office Baubau, provides legal aid and advocacy for indigent citizens. Because of limited resources, LBHR only takes cases that are collective in nature and have a significant broader public interest, such as subsidies for fuel price hikes. LBHR services mainly focus on public advocating instead of involving in litigation process, if the cases require litigation process than LBHR will cooperate with other NGOs such as IPR (Institut Pembelaan Rakyat/People Defence Institute) or WALHI (Indonesian Forum for Environment) both are located in Kendari. Much of LBHR's work involves mediation with the government agencies rather than direct legal representation in courts The staff has little capacity to provide legal outreach services to remote areas.[1023]

Other groups active in policy and human rights advocacy are the **Human Rights Channel, Corruption Monitoring Movement (GPK)**; **Urban Poor Union (SRMK)**; **National Farmers Union (STN)**. These advocates work under a great deal of stress. Activists say that two NGO activists were assaulted and killed: the first supposedly for his criticism of government policies in Buton District, and the second for exposing a corruption case involving the distribution of *raskin* (Rice for the Poor). Another activist was kidnapped by police, but escaped with the assistance of colleagues. Interest groups often use terror tactics and threats to discourage the NGO movement and activists seeking to protect human rights.[1024]

Regional Autonomy Monitoring Forum (FP OTDA), LBHR and **GPK** organize protests at the parliament and government offices in support of public interest issues, disseminate press releases and distribute information on public interest cases of public interest and bring class action suits against government agencies.[1025]

Piara in Baubau City began to advocate for and seek to empower children in 2002, based on assistance from the Netherlands. Piara collects data on the street children in Baubau and teaches alternative skills to these children to increase their opportunities for employment. It is no longer actively involved in child protection and advocacy due to lack of funding and internal conflict.

Studio Pesisir in Baubau City was established by Piara activists. There is no outside funding. Volunteers work with approximately 70 children from low-income families with poor educational back-grounds. Outside of school hours, children learn new skills and to play.[1026]

Community Outreach Facilities

There is a distinct lack of community outreach regarding legal assistance in Bungi, Tinanggea and Konda subdistricts. There are no institutions providing information regarding legal rights, settlements or the function of judiciary systems, nor are there pamphlets or any other materials alerting the public of legal rights and the function of the judiciary systems. There are no advisers available to explain legal rights to disadvantaged groups.

According to villagers, there has been little proactive outreach by government officers

1022 Interview with activists in Baubau, 21 February 2005 and FGD session on 24 February 2005.
1023 Interview with LBH Foundation Director, Jakarta, 15 November, 2005
1024 FGD with Baubau NGO representatives, 25 February 2005.
1025 Interview with NGO representatives in Baubau, 30 April 2005
1026 Interview with Baubau activists, 23 February, 2005; FGD session on 24 February 2005.

and agencies regarding national forest and park zoning and policies. Their observations are backed up by a 2000 study by Operation Wallacea, which found that few villagers ever had a chance to meet with Rawa Aopa Watumohai National Park authorities to comment on park boundaries and the subsequent process of zoning within the park.[1027] There has been some progress: environmental NGO Walhi-Sulteng is actively engaged with local communities and the governor's office in Kendari to set up formal sections of the forest as 'people enclaves' that would resolve conflict over forest use.[1028] However, the long pattern of forced evictions of villagers from their land and homes in the forest continues to the present. (see 'History of Conflict', above).

4. ACCESS TO APPROPRIATE FORUM

In Southeast Sulawesi, citizens resort to either the formal or informal justice system at the onset of a problem, or may use them consecutively, accessing the formal justice system when they are dissatisfied with informal dispute resolution outcomes. Citizens' choice of forum not only depends on local norms of resorting to a particular forum for particular types of problems, but also their perceptions of each of the justice systems.

4.1 AVAILABLE OPTIONS

Formal Justice System

In Southeast Sulawesi, some of formal justice institutions are well established, but others are still in the process of being formed.

Baubau City, previously under the jurisdiction of Buton Regional Police, is now under the jurisdiction of the Preparatory Baubau Regional Command. The police office for Bungi subdistrict is located in Liakubu. Its jurisdiction includes Palabusa, Kalia-Lia, Lowu-Lowu, Kolese, Ngkari-Ngkari, Kampeo-hano and Liabuku.[1029] Sorawolio subdistrict police office has jurisdiction over Kakabu Baru, Karya Baru, Bugi and Gonda Baru.[1030] Most of the cases handled by these offices are criminal acts, often triggered by drunkenness.

The South Konawe Regional Command Office in Unaaha was formed on 30 June 2004.[1031] The Tinanggea subdistrict police office has jurisdiction over Tinanggea's 28 villages (including Makupa Jaya and Potuho Jaya) and Ngapaaha subdistrict. The Konda subdistrict police have jurisdiction over 20 wards/villages, including Konda, Lambusa and Tanea.

In addition to the regional commands, the Southeast Sulawesi Provincial Police (*Polda Sultra*) formed in 1998, has the added jurisdiction of the Water Police Unit (*Satuan Polisi Perairan*), Air Police Unit (*Satuan Polisi Udara*), Mobile Brigade (*Brimob*), and State Police School (*Sekolah Polisi Negara*).[1032]

An Office of Public Prosecutions in Baubau City carries out the prosecution of criminal cases in Baubau. All cases in South Konawe District are referred to the Konawe District Prosecutor's Office in Unaaha, since a district prosecutor's office has yet to be established.

1027 Julian Clifton, 'Park management and potential for tourism in the Rawa Aopa Watumohai National Park, Sulawesi Tenggara', Operation Wallacea Report to RAWNP Office, Unaaha, 1-24 August 2000.

1028 Multistakeholder Forestry Programme, Achievements after 2 • years implementation,' Indonesia Ministry of Forestry and Department for International Development UK, August 2003.

1029 Interview with the Chief Police of Bungi sector, and a police officer, Liabuku, 26 April 2005

1030 Southeast Sulawesi Site selection Report-Access to Justice assessment

1031 Interview with Deputy Chief of Police Polres Unaaha , 11 April 2005.

1032 Interview with head of Bureau of Planning and Development, Provincial Police Office, 2 April 2005.

General and religious courts are located in Baubau City. South Konawe as yet has no civil or religious courts, and so all matters are heard in Kendari. Appeals from these courts are possible to the High Court or Religious High Court of Southeast Sulawesi, both located in Kendari, and then again to the Supreme Court of Indonesia in Jakarta. All administrative cases from all of the districts in Southeast Sulawesi are directed to the Administrative Court of Kendari, which was established in 1998. Appeal from this court is possible to the High Administrative Court, which is also located in Kendari, and then again to the Supreme Court of Indonesia in Jakarta.

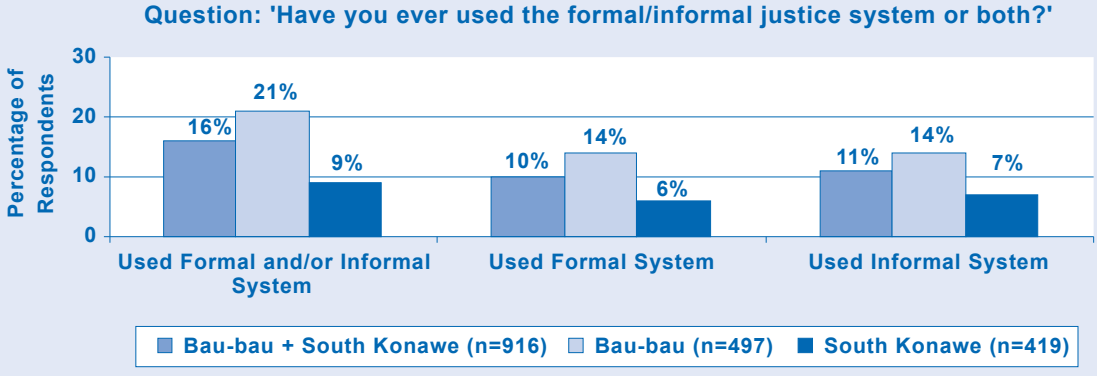
Informal Justice System

The informal justice system in Southeast Sulawesi refers to alternative methods of dispute resolution outside of the formal justice system that combine (in varying degrees) elements of negotiation, mediation and arbitration, usually at the village or hamlet level. These legally non-binding components include *adat* practices in *adat* communities, and other social norms, customs, and traditions, which determine dispute resolution processes and procedures. Usually, *adat* applies to the specific ethnic communities in particular localities of Southeast Sulawesi. In villages where *adat* is not strong, the informal justice system encompasses the exercise of quasi-judicial functions by neighbourhood heads, hamlet heads, village heads and other community or religious leaders.

Patterns Of Use Of Formal And Informal Justice Systems

The numbers of people who use the informal and formal justice systems are relatively equal, as seen below. There are some services that the formal system offers that aren't offered by the informal justice system, such as certification processes, divorce processes, and land certification. Consequently, use does not necessarily mean that people are equally satisfied with the two justice systems or with the outcomes, as is made clear in this section. Usage patterns of both the formal and informal justice systems in the four assessment locations in Baubau were relatively high, while in South Konawe, usage was lower (see Chart 37). Of 916 respondents across the two districts, 16 percent

CHART 37: USE OF FORMAL AND INFORMAL JUSTICE SYSTEMS – SOUTHEAST SULAWESI

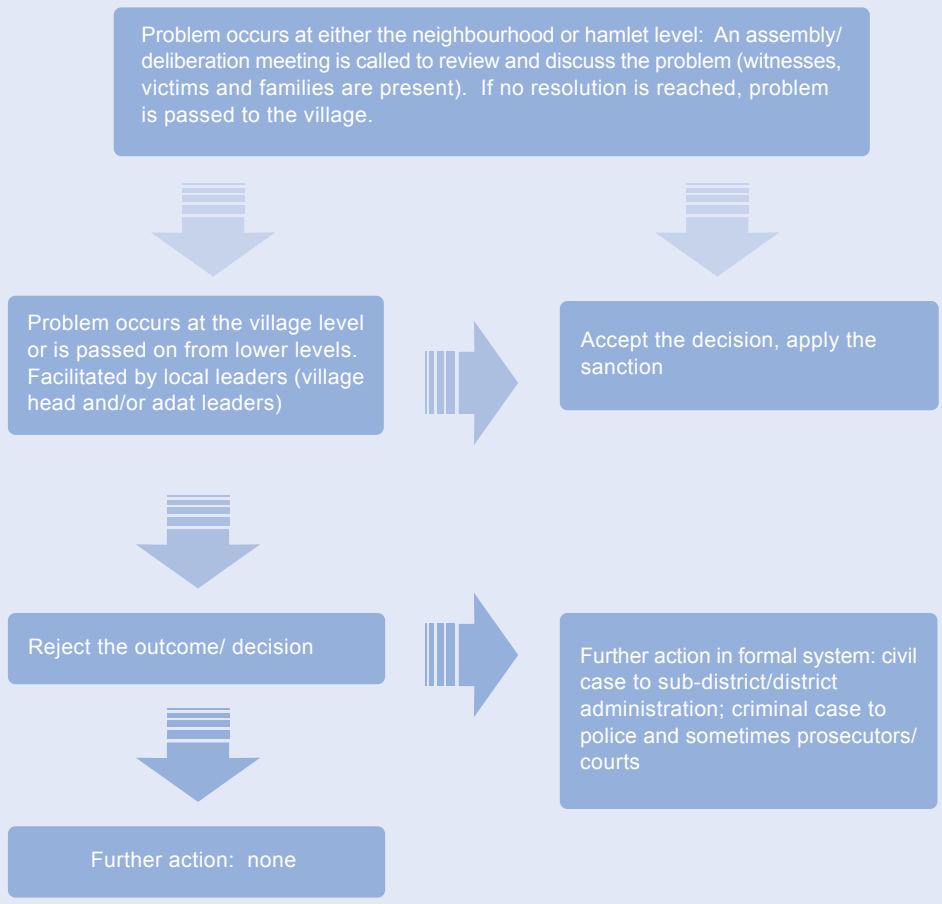


Source: Access to Justice Survey Southeast Sulawesi

reported having used either the formal or informal justice system (or both). On average, 10 percent reported having used the formal justice system at least once; 11 percent reported having used the informal justice system at least once. In Baubau, patterns of usage of both the formal and informal justice systems were significantly higher than average both for Southeast Sulawesi and in comparison with the other assessment provinces, except West Kalimantan. 21 percent of respondents had used either the formal or informal justice system (or both), with 14 percent using the formal system and the informal system. In South Konawe, the usage figures were comparable with the provincial average: 6 percent had used the formal system and 7 percent had used the informal system.

In the qualitative component of the research, in all villages, informal mechanisms (either social norms of seeking assistance from local leaders, or the use of the *adat* system) were the first to be used to resolve problems, with the exception of serious crimes such as murder and grievous bodily harm, which were reported to the police. Across more than 100 incidents tracked in the villages, the formal system has almost consistently failed to produce any results on key justice issues. The informal system was able to pro-

FIGURE 10: VILLAGE PROBLEM SOLVING IN SOUTHEAST SULAWESI



Source: FGDS and interviews, Southeast Sulawesi, 2005

duce some outcomes if the issues were within the bounds of the moral jurisdiction given to the local leaders. Figure 10, is a summary of the problem-solving patterns in Southeast Sulawesi that do not involve serious crimes issues. The informal system was able to produce some outcomes if the issues were within the bounds of the moral jurisdiction given to the local leaders. Figure 10 presents a summary of the problem-solving patterns in Southeast Sulawesi that do not involve serious crimes.

4.2 FACTORS INFLUENCING CHOICE OF FORUM

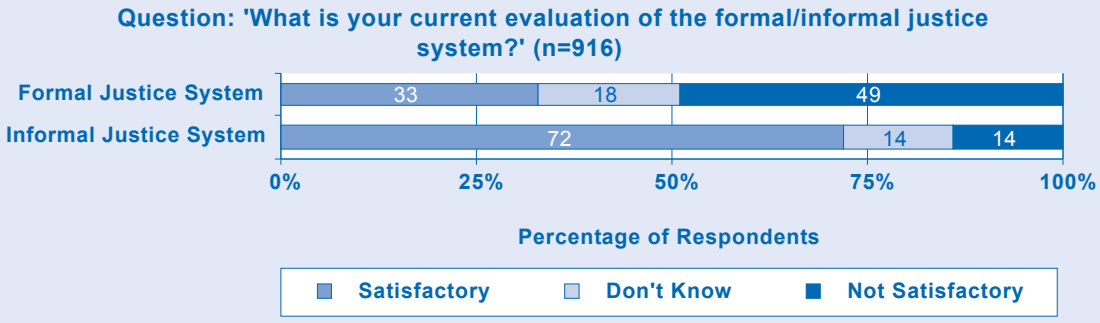
Table 40 summarizes the findings from the FGDs with disadvantaged groups on their perceptions and experiences of each of the justice systems in a selection of five villages in the assessment.[1033] While most participants had never interacted with either system, their perceptions help explain why they do or will resort to particular forums for problem solving. When we combine these findings with a survey of their perceptions of the justice systems, it is evident that a number key factors shape people's choice of forum: type of case; familiarity and understandability of justice processes; geographical accessibility; cost; time needed; likelihood of outcomes; social harmony and the likelihood of embarrassment; fairness and trust in institutions.

Type of Case

Across the eight villages, the village informal justice system is used for smaller problems and disputes between individuals, including small scale crimes such as theft and beatings. Land issues, which are prominent in the region, are often settled by *adat* leaders, especially within their specific communities and among other *adat* communities.

Crimes such as murder are generally reported to the police. Complaints about the provision of public services and development programs are usually first taken to the service provider directly, such as the village midwife for health services, or to the village head. If many people are affected, village and subdistrict officials sometimes take their complaints to the district office in charge of delivering public services. In cases with a significant public interest affecting a number of claimholders, such as the corruption of rice for

CHART 38: OVERALL COMMUNITY SATISFACTION WITH THE FORMAL AND INFORMAL JUSTICE SYSTEMS - SOUTHEAST SULAWESI



Source: Access to Justice Survey Southeast Sulawesi

1033 The views of FGD participants in the final three villages: Mokupa Jaya, Lambusa, and Tanea did not vary from those canvassed in the table, with the informal justice system being the preferred form of dispute resolution in all cases.

the poor subsidies, village representatives will try to access the commission in the district parliament responsible for oversight of the policy, particularly when the district office in charge has not responded to complaints.

When issues are complicated, courts tend to be seen as a potential forum if nothing else succeeds: In **Mokupa Jaya** land that Bugis farmers bought in 1998 was appropriated as part of the Rawa Aopa Watumohai National Park; security officers destroyed the farmers' crops, as mentioned earlier.The farmers, who are angry and cannot understand why the government permitted sale of the land, but then destroyed their crops, feel that it is the government's place to prevent further damage to the cocoa plantations. The farmers are hopeful the matter can be solved through informal discussion with park authorities, but as yet there has been no resolution of the matter, and the farmers see that the court may their last resort to justice.[1034]

General Perceptions of Formal and Informal Legal Systems

Few people have actually used either system (10 percent used the formal justice system and 11 percent used the informal justice system),[1035] however general community levels of satisfaction are overwhelmingly higher in relation to the informal justice system compared to the formal justice system (without reference to any particular element of the respective systems). 33 percent of all survey respondents were satisfied with the formal justice system, in contrast to 72 percent who were satisfied with the informal justice system (see Chart 38).

These results gauge perceptions of each system, not actual personal experience with the system. However, perceptions are an important indicator of whether people will choose to resort to a particular forum if problems arise.

Knowledge and Understanding and Other Perceptions

Table 41 gives some specific perceptions of the two systems of justice in the various villages, and highlights how the perceptions of the citizens (as well as their understanding or the lack of understanding) lead them to generally prefer the informal justice system. The FGDs revealed that there is little knowledge of formal dispute resolution processes and institutions outside of the police and courts.These formal processes are perceived to be time consuming, expensive, difficult to understand, and sometimes biased. Some participants feared the police; others worried that using the system could result in social embarrassment. In contrast, informal dispute resolution processes involving discussions facilitated by elders, *adat* leaders, and officials are seen to occur more frequently, be easier to understand, cheaper and to better reflect community perceptions of what 'justice' is. The decisions resulting from informal justice disputeresolution processes are generally accepted.

General Perception of Fairness

In response to the statement: 'Everyone is treated fairly' only 23 percent believe it to be true of the formal justice system, while almost three-quarters of the respondents agreed that it described the informal system.[1036] The formal justice system also faired poorly in regards to the statement that it is biased towards the rich and powerful, in which 63 percent agreed, versus only 14 percent agreeing about such bias in the informal system (see Chart 39).

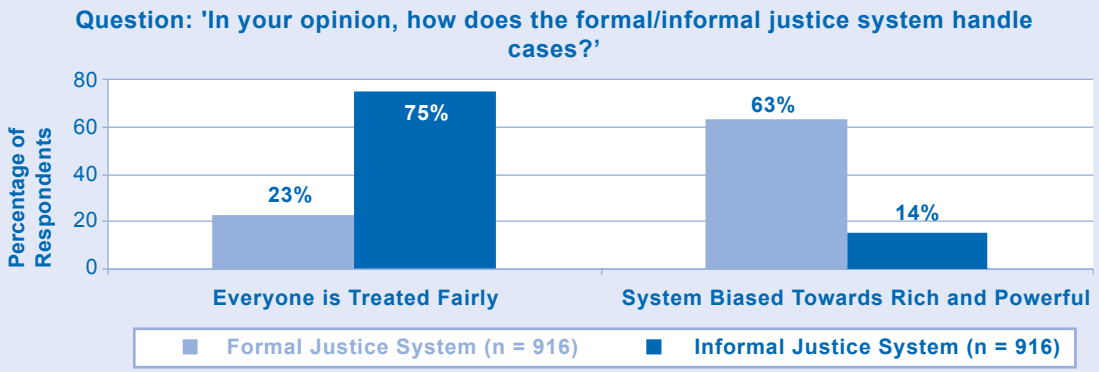
1034 Interview with village resident, Mokupa Jaya, 9 February 2005; FGD with local farmers, 23 February 2005.
1035 Only 41 people in the survey had ever gone to court and only 12 of these were satisfied with the outcome.

TABLE 41: PERCEPTIONS OF FORMAL AND INFORMAL JUSTICE SYSTEM

Village	Perceptions of the Formal justice System (FGD Participants)	Perceptions of the Informal Justice System (FGD Participants)	Preference
Kalia-Lia	Most views of formal dispute resolution (DR) pertain directly to the police (participants' only contact with formal justice system). The police are seen as responsible for protecting the community and catching criminals. Participants endeavour to avoid interacting with formal justice institutions as they are seen to be time consuming and expensive. Participants did not know how to access information on the use of formal dispute resolution (DR).	Participants prefer to resolve problems peacefully and harmoniously based on community/family discussions. Informal DR is seen as cheaper, quicker, and easier compared to the formal justice system. Informal DR processes are seen as better reflecting community views of what justice is compared to formal DR. Community leaders and village officials are seen as 'protectors' and dispute resolution facilitators.	Informal justice system
Kolagana hamlet, Palabusa	There was very little knowledge of formal DR actors and institutions. Participant's knowledge of the law pertained to 'not breaking rules or interfering with other people' to avoid being punished. Participants' main interaction with formal institutions is with the police, who are perceived to protect the community and punish those who commit crimes or run amok.	Participants prefer to use the informal system to solve their problems through community/family relations and discussions, with the assistance of local leaders. Discussions are considered to occur more frequently, be easier to understand, quicker, and incur less financial cost than formal processes. If problems fall within the realm of local *adat* law, villagers will seek assistance from *adat* leaders.	Informal justice system
Gonda Baru	Participant's knowledge of formal DR institutions was limited to the police and courts. Few disputes are resolved in the formal justice system. Formal DR processes are seen as very expensive and time consuming.	Participants perceive *adat* institutions to represent all groups in the community including the rich and poor. Cases are seen to be resolved quickly, often in one day, and processes tend to be inexpensive. Community members generally accept *adat* sanctions and few take their problems to the formal system even if they are dissatisfied with informal justice system outcomes.	Informal justice system
Kaisabu Baru	It was difficult for participants to describe the actors involved in formal DR processes. Few have used the formal justice system, with experiences limited to negative interactions with the police. Participants perceive the formal justice system to be complicated, expensive and time consuming. They are fearful of the police and see them as biased towards those who can afford to pay bribes. Participants described the use of the formal system as socially embarrassing.	Participants understand informal processes and perceive them to require little time and financial cost. The costs involved usually involve providing cigarettes and tea and coffee for people involved in the discussions. Local leaders are selected jointly by villagers, religious leaders and elders to facilitate discussions. The overwhelming preference of participants was to use the informal justice system, only using the formal justice system as a last resort.	Informal justice system
Pohuto Jaya	Participants do not believe the formal justice system reflects villagers' perceptions of justice. Participants perceive formal DR actors from the police to the courts as unable to carry out their responsibilities: they believe cases are manipulated; decisions are biased and unfair; and processes are complicated, expensive, rarely resulting in outcomes. Participants see the institutions themselves to be useful, but corrupted by some individuals within them.	Participants see informal justice processes, which involve the local leaders and village officials as facilitators, as better reflecting community perceptions of justice. Facilitators are seen to work together to solve problems. Processes are perceived to be simple, quick, cheap, monitored by the community themselves, avoiding revenge seeking and preserving harmonious community relations over the longer term.	Informal justice system

Sources: FGDs of men and women in five villages

CHART 39: PERCEIVED FAIRNESS OF FORMAL AND INFORMAL JUSTICE SYSTEMS – SOUTHEAST SULAWESI



Source: Access to Justice Survey Southeast Sulawesi

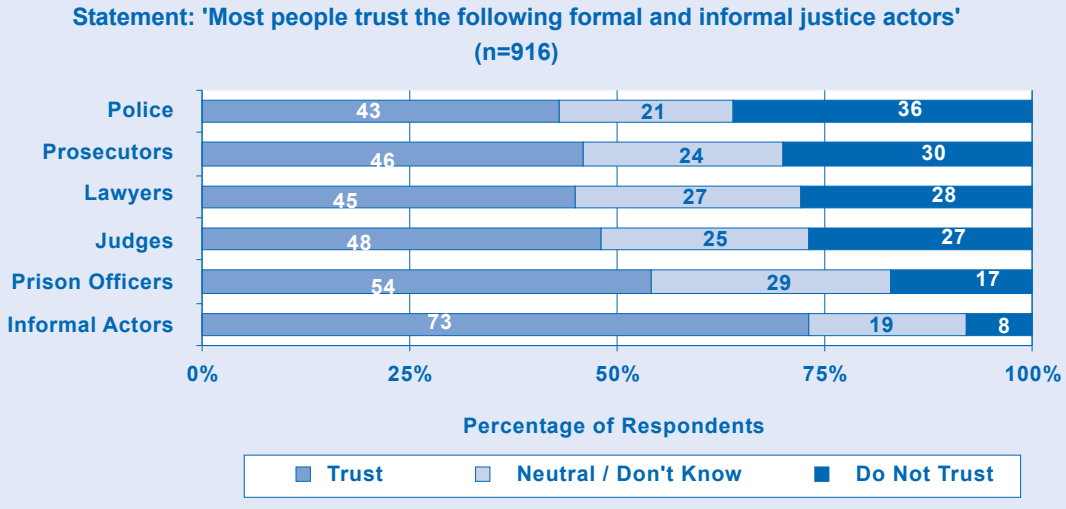
Effectiveness

The effectiveness of a particular forum in addressing a problem influences the choice of forum. In Southeast Sulawesi, citizens believe the informal justice system and providers are more skilled in conflict-resolution, as compared with the formal system: 89 percent of respondents agreed that the informal system had such capacity. Both the aggregate responses and the break downs by region and target group were highly correlated in most cases, although respondents in Baubau seem less positive compared to those in South Konawe where the qualitative results saw informal justice systems being more widely used in the areas. Again, disadvantaged women were more pessimistic than other target groups.

Community Trust

In line with the overall community satisfaction levels with the formal and informal justice

CHART 40: COMMUNITY TRUST IN FORMAL AND INFORMAL JUSTICE ACTORS – SOUTHEAST SULAWESI



Source: Access to Justice Survey Southeast Sulawesi

1036 N = 926

systems, the survey results show that the community places significantly greater trust in informal justice system actors compared to their formal counterparts (see Chart 40). While 73 percent of respondents trusted informal justice actors, in most cases, only half of the respondents trusted the formal institutions and their representatives (the police were held in the lowest regard, followed by correctional institutional officers). Eight percent of all respondents believe that, within the formal justice system, 'Bribes are required to solve problems'. On the other hand, *adat* leaders are highly trusted. And if that trust is broken sometimes there are sanctions: In Gonda Baru, the assessment team found that if leaders do not perform their roles well, the community would ask them to resign. In such a case, the former leader would suffer a degree of social isolation, being excluded from major *adat* events in the village.

TABLE 42: NEGATIVE AND POSITIVE PERCEPTIONS OF FORMAL AND INFORMAL JUSTICE SYSTEMS

Perceptions of the formal justice system	Response	Perceptions of the informal justice system	Response
Negative Perceptions		**Negative Perceptions**	
Formal system is biased towards the upper class	12%	Biased	9%
Formal system is unfair	12%	Often reaches wrong decision	2%
Problems remain unsolved	11%		
Requires bribe to solve problems	8%		
Victims are not treated well	3%		
Police cannot solve people's problems well	2%		
Lengthy	2%		
Other	6%		
Total	**56%**	**Total**	**11%**
Positive Perceptions		**Positive Perceptions**	
Problems can be solved well	10%	Decision is fair and accepted by community	21%
Problems are processed well	9%	Handled well	21%
Formal system is good and fair	6%	Problems are solved in a fair manner	12%
Community tends to accept decision	6%	Unbiased	7%
Formal system can solve problems traditional systems cannot	3%	Uses deliberation	6%
More open for all	3%	Satisfactory	5%
Formal system is respectful	2%	All problems are reported to traditional leader	4%
Other	3%	Prompt	4%
		Every problem is handled according to tradition	3%
		If informal system cannot handle, referred to formal system	3%
		Satisfactory	2%
		Other	1%
Total	**42%**	**Total**	**89%**

Source: Access to Justice Survey Southeast Sulawesi

Nearly 90 percent of the respondents had positive perceptions of the informal justice system, although in some cases it is perceived to be biased. Among the target groups there were generally positive perceptions of the informal system. Women, while generally satisfied, were the most likely to think the system was biased against them out of all the target groups.

Other Issues

In FGDs, participants suggested that formal processes are time consuming,expensive, difficult to understand, and sometimes biased. Participants in some villages feared the police (this was particularly true in Gonda Baru.) In Gonda Baru and other *adat* villages, some citizens indicated that using the formal system could result in social embarrassment. Many people are not aware of the costs surrounding court procedures: 42 percent of respondents and only three formal justice actors thought that most people know the actual costs. Geographical accessibility of the courts is of concern, particularly among formal providers: three-quarter of the formal providers think it an obstacle, but only one quarter of the general public thinks so.

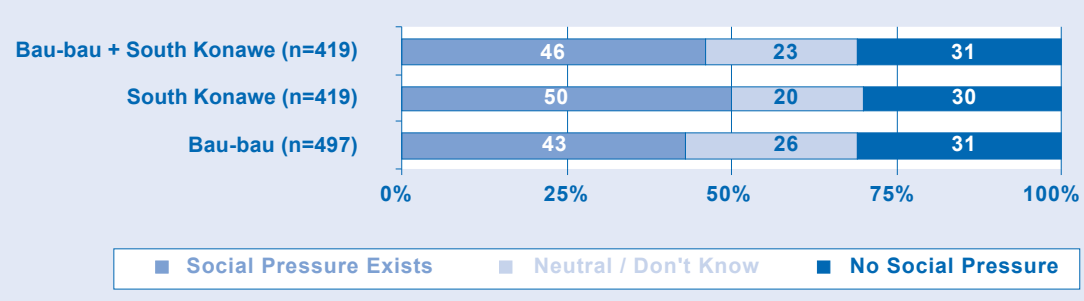
In contrast to formal justice processes, informal dispute resolution processes involving discussions facilitated by elders, *adat* leaders, and officials are seen to occur more frequently, be easier to understand, cheaper and faster. Participants in Gonda Baru, for instance, noted that their *adat* system is reliable and affordable – "sometimes problems can be settled in one day." Above all, they say that *adat* decisions are more reflective of community perceptions of justice. Consequently, the decisions resulting from informal justice dispute resolution processes are generally accepted.

Table 42 shows the positive and negative perceptions of both justice systems across the assessment sites.

4.3 IS TRUE CHOICE OF FORUM ALWAYS AVAILABLE?

For financial or geographic reasons alone, for many of the poor and disadvantaged any choice of forum in theory rarely translates into actual choice of forum in practice. However, some additional factors may operate to further limit an individual's ability to select the forum of his or her choice.

CHART 41: SOCIAL PRESSURE TO USE INFORMAL JUSTICE SYSTEM – SOUTHEAST SULAWESI



Source: Access to Justice Survey Southeast Sulawesi

Social pressure from both community leaders and the community at large may sometimes exist in favour of resolving cases via the informal justice system. As can be seen from Chart 41, 46 percent of the respondents believe social pressure exists, 31 percent believe it does not; the rest are neutral.

For some, there simply is no forum for justice – except through an individual's own actions. For instance, in Kalia-Lia, a Timorese refugee was repeatedly attacked because he was Christian. According to the assessment team, the case apparently was settled when the victim married a Butonese and converted to Islam.

4.4 LACK OF AWARENESS OF APPROPRIATE FORUM

When Villagers Do Not Seek Justice

While citizens may be familiar with the forums available to seek redress for criminal acts or small-scale disputes among themselves, they are much less familiar with options for resolving the issues that they feel to be the greatest cause of injustice in their daily lives. These issues are frequently civil in nature, affect a group of people rather than individuals, and because they involve either the government or parties from outside the local area, are not suited to resolutionvia the informal justice system. In some cases, villagers do not seek justice using either forum. In part, this may be due to poor familiarity with justice processes. In Kalia-Lia, the IDPs from East Timor and Ambon suspect officials of embezzling relief money intended for the IDP community, by changing names of recipients. This, they said, directly impacts their economic stability, however the IDPs are unsure of whom to approach regarding this matter and have taken no action.[1037]

The qualitative research found that villagers hesitated to go to either forum when formal authorities were the second party to the disputes, particularly over communal lands, misuse of poverty alleviation and development funds, and complaints concerning the administration of public services. Villagers seldom would seek remedy in such cases, particularly through government offices. Villagers, particularly disadvantaged groups, seldom sought justice when the second party to the dispute was considered too powerful.

As mentioned earlier, *Perusahaan Selat Buton* has been charged with violating the rights of its female employees. Palabusa villagers in Bungi argued that female pearl workers do not know their rights because Office of Manpower and Transmigration *(Dinas Tenaga Kerja dan Transmigrasi)* has failed to raise awareness regarding labour rights and laws. People noted that the pearl company has contributed to the construction of mosques as well as a water cistern in the village, which might account for the lack of official interest in looking into the situation.

5. JUSTICE ACTORS AND PROVISION OF REMEDIES

5.1 FORMAL JUSTICE SYSTEM

Police

In 2004, 4,342 police officers were employed in the province, representing a ratio of 1:440 police to citizens. From 2000 to 2004, with the exception of 2002, the ratio of police officers to population in the province met or exceeded the national police 2004 target of 1:750.[1038]

1037 FGDs in Kalia-Lia, 16 and 14April 2005; in-depth interview with Kalia-Lia resident, 9 April 2005.

1038 (http://www.polri.go.id/aboutus/kebijakan.php)

Police say that filling positions in some of the more isolated islands is challenging. In 2005 there were many vacancies. In the South Konawe Regional Command, alone, there were over 45 openings.[1039] Other openings in the provincial level included: 17 senior police commissioners (*Ajun Komisaris Besar Polisi* – AKBP), 153 police commissioners (*Komisaris Polisi – Kompol*), 136 junior police commissioners (*Ajun Komisaris Polisi* – AKP), 165 inspectors, 1,244 police officers, and 829 civil servant staff. An officer at the Tinanggea Sector Police said 37 officers are optimal (one for every village), but in 2005 it had 14, including the police chief.[1040] Reportedly resources are also limited at the subdistrict level: *Polsek Bungi* had only one motorcycle used by the chief and one Walky Talky.[1041]

One way of determining the effectiveness of the provision of law enforcement services is to compare the reported caseload with resolved cases (including those forwarded to the prosecutors office). While this method is inadequate on its own, it can be illuminating when combined with The perceptions of citizens using these services. In 2005, the resolution of reported cases was only 27 percent, a decrease from 57 percent in 2004 and 87 percent in 2003. Most of the crimes reported to the police are cases of fraud (*penipuan*) and serious theft (*pencurian berat*).[1042]

Resolution of cases reported to the subdistrict sector police, even those of a criminal nature, are often handled informally in Southeast Sulawesi, such as through amicable settlement and consensus (*musyawarah dan kekeluargaan*) to avoid disharmony in the community. For example, the Konda Sector police did not proceed to compile a complete case file involving 12 perpetrators of illegal logging. Local people protested and lobbied for the release of the perpetrators. The police, wanting to avoid a potential clash, warned the suspects not to repeat the offence and released them.[1043]

Police do not follow up all cases they refer to the informal authorities, leading to the possibility that victims are left without resolution to their problems. A case oftorture /abuse (*penganiayaan*) was reported to *Polres Konda*; officials recommended the victim resolve the case through the local informal dispute resolution processes. The victim accepted the advice. *Polsek Konda* did not follow up on the victim's initial report, and is unsure of what happened in the case.[1044]

In the previous sections we saw extensive variation in the qualitative findings on the perceptions of the performance of the police, their impartiality and effectiveness.In most cases, they were perceived to be slow to act and susceptible to corrupt practices. The assessment survey found that there are five main obstacles in dealing with police:[1045]

- Fear (28.5 percent)
- Difficulty of process (24.4 percent)
- Bribes are required (18.3 percent)
- Police are violent (11.2 percent)
- Process is costly (7.6 percent)

Prosecution

There are 11 public prosecutors (one woman) at the Baubau District Prosecutor's Office

1039 Interview with Personnel Division of Polda Sulawesi Tenggara , 8 April 2005
1040 Interview with police officer, Polsek Tinanggea, 13 May 2005
1041 Interview with the Bungi Chief of Police and a police officer, Liabuku, 26 April 2005
1042 Case Data provided by Polda Sulawesi Tenggara.
1043 Interview with head of Investigation Unit (Kepala Unit Reserse), Polsek Konda, 19 April 2005
1044 Ibid
1045 Access to Justice Survey Southeast Sulawesi, 578 people.

and 44 staff.[1046] Since South Konawe does not have a district prosecutor's office, all cases are handled by Konawe District Prosecutor's Office, which has 13 prosecutors (3 women) and 8 staff.[1047]

Challenges for the prosecution services: Representatives from the Prosecutor's Offices at the provincial and district levels claim that lack of coordination with the police in the precase stage, and ensuring that case files are complete often slows the process.[1048]

Currently, the Konawe District Prosecutor's Office has jurisdiction over two districts that are spread over a large and challenging geographical area. Prosecutors say that this makes providing services to South Konawe difficult. Witnesses often fail to show up in cases, because of the long distances they must travel. Moreover, cases are heard in two separate state courts, one in Kendari and another in Umaaha, which creates logistical problems. Limited transportation further impedes service: the prosecutor's office only has two vehicles, one of which is used by the head of the office and the other for transporting detainees.[1049] People also see challenges with the prosecution service. Only 47 percent of respondents have trust in the prosecution services and few had an understanding of what services they provide.

Courts

District Courts. As a newly created district, South Konawe did not have a district court in 2005. All cases continue to be heard by the Kendari District Court, staffed by 13 male judges and 12 support staff. The court considers the number of judges to be sufficient to the caseload (approximately 500 criminal cases and 50 civil cases per year).[1050]

Baubau District Court in Baubau City has eight judges (all male) and 27 support staff (double that of Kendari).[1051] The caseload is about 540 a year, or 40 to 50 cases per-month.[1052] The Baubau judges feel that their court requires an additional two to four judges to accommodate the workload.[1053]

Provincial High Court: Five judges were assigned to the court from 1999 to 2000, subsequently increasing to ten from 2001 to 2004 and dropping to eight in 2005. The Chief Justice said that ideally, the number of judges required based on the volume of cases being processed is nine judges, however he explained that special initiatives have overcome these shortfalls, particularly through communications and building relations.[1054]

Religious Courts in Southeast Sulawesi: The jurisdiction of Baubau Religious Court (four male, two female judges) encompasses Baubau City and the districts of Buton, Bombana and Wakatobi. Locals hope to establish new religious courts in Wakatobi and Pasar Wajo, but the Supreme Court has yet to make a decision.[1055] Seven male judges and one female make up the Religious High Court.[1056]

1046 Interview with Baubau Prosecutors, 11 and 25 February, 2005.
1047 Interview with Konawe Prosecutor, Unaaha, 5 April 2005.
1048 Interview with Prosecutor, High Prosecutor's Office, Kendari, 31 May 2005; interview with Konawe. Prosecutor, Unaaha, 25 March 2005; interview with Baubau Prosecutors, 11 and 25 February 2005.
1049 Interview with Konawe Prosecutor, Unaaha, 25 March 2005.
1050 Interview with the Head of Public Relations for the Kendari District Court, Kendari, 17 May 2005.
1051 Interview with the Vice-Secretary of the Baubau District Court, Baubau, 20 April 2005.
1052 Interview with a Judge of the Baubau District Court, Baubau, 23 February 2005.
1053 Ibid.
1054 Interview with the Chief Justice of the High Court, Kendari, 23 June 2005.
1055 Interview with Deputy Secretary, Baubau Religious Court, Baubau, 12 April 2005.
1056 Interview with personnel, Religious High Court of Appeal, Kendari, 25 June 2005.

Challenges for the courts: The most common reason cited by judges for delays in case processing in the Baubau District Court is the absence of witnesses. Often, the judges say, witnesses live in the islands surrounding Baubau and they are hesitant to spend the time and money to catch a ferry to give evidence in a trial that does not directly concern them.[1057] Judges have been threatened (phone calls) and physically intimidated. In 2002, a bomb exploded at the home of the Chief Justice; there were no injuries. According to the judges, there are no official standards or procedures to ensure their protection from threats or intimidation, although they usually contact the Baubau Regional Police Command to ask for assistance if they deem it necessary.[1058]

Although the general population had little interaction and experience with the courts (very few cases ever reach the court), only half the survey participants trusted the courts in Southeast Sulawesi. Geographic inaccessibility and cost were cited as problems.

Obstacles cited were:[1059]

- Unfairness (43 percent)
- Bias (25 percent)
- Reluctance (11 percent)
- Fear (11 percent)

5.2 INFORMAL JUSTICE SYSTEM

There are two primary forms of nonformal dispute resolution in the selected villages in Southeast Sulawesi, based either on *adat* or local social norms. Typically, people seek assistance from the leaders closest to them to facilitate meetings between disputing faiilies and parties. In villages where *adat* traditions and customs are still strong, *adat* leaders are approached; in others, assitance is sought from the hierarchy of village officials and leaders. The assessment findings show that the *adat* and other informal dispute resolution systems found in the villages tend to operate independently of one another. The mechanisms and processes of resolution vary from one village to the next, reflecting the local socio-cultural beliefs and realities.

Resolution Via *Adat* Practice

Adat justice systems tend to be more prominent in Baubau Municipality, which is less ethnically and religiously diverse than South Konawe.The predominant *adat* systems in the region are Butonese (mainly in Baubau) and the Tolaki (mainly in South Konawe). In the assessment areas, the Butonese *adat* mechanisms are mainly found in the villages of Gonda Baru and Kaisabu Baru in Sorwolio subdistrict, and in the villages of Kalia-Lia and Palabusa in Bungi. The Tolaki *adat*-mechanisms tend tobe used among the Tolaki groups in Tinanggea and Konda, and the village of Tanea. Two examples of *adat* processes are outlined below (one from each subdistrict where *adat* is a form of dispute resolution).

Butonese *adat* in Baubau: The *adat* systems in the villages of Gonda Baru (Sorowolio subdistrict) rely on the guidance of the *Parabela, Moji* and *Pande-suka,* who are key leaders in most Butonese *adat* systems. The leaders are exclusively male; custom dictates that women have no rights in important decision making.[1060] The following describes the customs of the Laporo subethnic group.[1061]

- ***Parabela*** acts as the judge in social disputes and *adat* dispute-resolution processes.

1057 Interview with a Judge of the Baubau District Court, op. cit.
1058 Interview with a Judge of the Baubau District Court, Baubau, 23 February 2005.
1059 Access to Justice Survey of 922, few had used court services, hence there were only 270 answers regarding obstacles.
1060 FGD with Gonda Baru women's group 15 April 2005; FGD with men, 11 April 2005.
1061 In-depth interview with village head, Gonda Baru, 16 April 2005

- ***Moji*** handles religious problems and issues.
- ***Pandesuka*** considers agricultural matters such as the distribution of land for cultivation among the people.
- ***Waci*** resolves socio-political matters of the community.[1062]

Adat figures in Gonda Baru said that they routinely settle a variety of disputes, including: thefts of rattan and bananas from plantations; land disputes; corruption and defamation.[1063] The process is based on discussion among families and community (*keluargaan).* Claim holders in social disputes (family disputes, minor quarrels or immoral acts) usually present their case to the *Parabela,* who convenes a meeting between disputants and sometimes invites the community to attend. After hearing the evidence, the *Parabela* renders a decision, which is absolute. If guilt is determined, a sanction in the form of *Karimbi* or punishment is declared. *Karimbi* take many forms, depending on the seriousness of the offence. For theft, the guilty party must parade around the village with the stolen item, sounding a gong and stopping at every household to greet the residents and admit his guilt.[1064] Villagers say such sanctions normally serve as a reminder and also a deterrent against repeat offences. At the same time, the process helps maintain good familial relations between the quarrelling parties.[1065] Perpetrators of serious offences can be banished from community social events until the *Parabela* decides to withdraw the sanction. If a serious crime is committed and is beyond the jurisdiction of the *adat* custom, the case will be submitted to village authorities and settled according to formal channels.[1066]

No documentation or records are kept; traditions are passed down orally. The *adat* leaders are normally chosen by a revered fortune-teller (*Kilala*).[1067] If the *adat* elders or leaders abuse the *adat* system or are biased in dispensing sanctions, the community has the right to ask for replacement or resignation. Leaders who commit such offences are also subject to social banishment.[1068] New *adat* leaders are appointed if a leader becomes ill or sick or commits an offence.[1069] In rare cases, the neutrality or objectivity of the *adat* leaders comes into question if their family members are involved in a dispute taken to the elders.[1070]

The Tolaki *Adat* System in South Konawe. The Tolaki *adat* system applies only in areas where Tolaki are a majority. (In the assessment village of Tanea, this was one of the systems used.) Serious conflicts are resolved using the *adat* approach of *Mosehe*. The *Putobu* (local *adat* leader) leads the resolution process.[1071]

The *Putobu* invites the disputants to a meeting at the village head's residence. The disputants are represented by *Patibara,* who are similar to advocates.Sometimes village officials are present, to strengthen the resolution process. Women participate in the process if the issues are related to their families, otherwise their roles are limited.

1062 In-depth with an *adat* leader, 16 April 2005.
1063 In-depth with *adat* figures, Gonda Baru, 16 April 2005.
1064 Interview with residents from 4 FGD, 19 April 2005.
1065 Four different FGDs, Gonda Baru, 19 April 2005.
1066 Interview with *adat* leaders, 18 February 2005.
1067 FGD with Gonda Baru men's group, 11 April 2005 and interview with adat figures 16 April 2005.
1068 Ibid.; interview with a resident, 15 April 2005
1069 FGD with GondaBaru men's group, adat figures, ibid
1070 FGD with men's group, ibid.
1071 Interview with Tolaki Adat leader in Tinanggea, 13 April 2005.

After discussions of the problem, *Putobu* makes a decision and facilitates the peace-building process through the *Mosehe* ritual. This comprises: a coil made of rattan with a betel leaf in the middle symbolizing a peaceful relation that is binding (*kalo-sara*); a piece of banana symbolizing harmony, and an egg that is broken, symbolizing the end of conflict without any feelings for revenge.[1072] According to this custom, divine retribution will fall upon those who disregard the ritual. Any parties failing to respect the decisions will be labelled *Mate Sara* (no *adat*), and risk banishment or exclusion from the community.[1073] One case resolved using Tolaki *adat* in Tanea village, where 90 percent of the population is Tolaki, is outlined in the Box 41.

While *adat* justice systems typically pertain only to a specific ethnic group, in Tinanggea subdistrict, the assessment team found that respect for *adat* customs among the multi-ethnic communities tends to encourage a higher level of tolerance among the people. The prevalent *adat* systems and values – Tolaki, Javanese, Bugis, Sundanese and Balinese - play important roles in laying the rules of social engagement for the community. In Mokupa Jaya, the local Tolaki, as well as Javanese and Balinese transmigrants and Bugis have all had problems with government policies relating to land. As previously noted, the two groups have been impacted by land policies regarding the Rawa Aopa Watumohai National Park: local Tolaki people, whose ancestral lands were claimed for the National Park, and Bugis cultivators, who had not been told that land they purchased was reserved for the National Park, and whose crops were subsequently destroyed by the government land authorities. Despite the fact that these people are dependent on the land for their livelihoods, they are looking to their *adat* systems to resolve their problems. The Mokupa Jaya people hope that the dispute can be resolved through the *adat* system, although, if necessary, they will use the formal justice system to obtain legal certainty.

Resolution Via Village Authorities

In villages where ethnic *adat* is not strong (often due to the presence of significant transmigrant and migrant populations), the villagers tend to seek resolution to common justice issues through assistance from local leaders.The pattern tends to go from neighbourhood heads (Kepala RT/RW) up to village head, who may call in other informal leaders for consultation. The system is also used in villages, like Lambusa, where no formal justice actors are nearby. In these, the mechanisms tend to be less symbolic and the sanctions extremely practical. Typically, these are used when there is a dispute between migrants and locals.

BOX 41: TURNING TO LOCAL WISDOM

In 2005, a young girl suffered a broken leg and broken teeth after she fell off a motorcycle taxi. The incident was reported to police, who found that the taxi driver had disobeyed traffic rules, thus causing the accident. Although the police were initially involved, both parties eventually sought a resolution from the adat justice system, because they felt the matter would be handled more efficiently and fairly. After listening to both sides, the Putobu ordered the motorcycle taxi driver to pay the young girl's medical expenses. The driver paid and the victim's family was satisfied.

Source: Interview with adat leaders and citizens in Tanea, 20 April 2005

1072 Tolaki adat leader, ibid.
1073 Tolaki adat leader, ibid.

BOX 42: THE SLAUGHTER OF A COW

When a Lambusa villager saw a cow in his field, eating and trampling the crops, he hurled a machete at the cow, hoping to chase it away. Instead, the machete struck the cow, which quickly bled to death. The villager immediately went to the village head. He reported the incident to the owner, who lived in a nearby village. The owner became enraged and came to Lambusa, armed with a machete. The villagers in Lambusa, however, were able to prevent a confrontation. The village head asked the two men to give testimonies about the events. The discussions were heated, but the village head was able to offer a resolution. He advised to owner to quickly butcher the cow so it could be sold at market. With this money, he would be able to buy a new cow. The man responsible for the cow's death was given a warning and told to throw sticks or stones in the future, rather than a machete. Both parties accepted this decision. The village head noted that the quick resolution prevented retaliation, and that his decision helped educate the participants, so such incidents wouldn't be repeated.

Source: Interviews with village head and other community members, Lambusa, 22 and 28 April 2005

In Potuho Jaya, for instance, where the majority of the transmigrant residents come from Java and Bali, the informal resolution mechanisms involve a high level of community participation. Minor criminal or civil cases are brought to the informal discussion session (*persidangan*) at the residence of the village head. These meetings are attended by the village officials and community leaders who have knowledge of the village justice system. The village head assumes the role of village judge (*hakim desa*). After the disputing parties present their cases, the village judge imposes sanctions. For criminal cases (theft or adultery), compensation takes the form sacks of cement, bought for the injured party; the number of sacks increases with the seriousness of the crime.[1074] The families of both parties can present their cases before a verdict is finalized. Afterwards, they usually appeal the number of sacks of cement.[1075] This type of system is also used in villages like Lambusa, where there are no formal justice facilities. Citizens, mostly Javanese transmigrants, bring their problems to the village head, who hears the discussion (*persidangan*) in the community hall. With their families in attendance, the parties present their cases. Other community leaders voice their suggestions, before the village head announces the sanctions.The guilty party will be asked to offer a public apology to the injured party. The village head says that the presence of the families and community leaders serves an important function in binding social relations within the community, while the presence of the civil defence unit (*Hansip*) ensures that proceedings run peacefully. In addition, all conflict cases are reported to the police in Konda.[1076]

The assessment found such informal resolution processes have the immediate effect of diffusing problems complicated by ethnic tensions between the Javanese and the Tolaki, such as those presented in Box 42.

Informal Justice System Interaction with Formal Justice System: Police frequently work closely with the informal justice system. The following example, from the Kolagana hamlet of Palabusa village, gives an insight into how community leaders and the police work together in a relatively informal atmosphere to maintain peace and order. The simplicity of the approach is particularly important in Kolagana, where residents are isolated and the majority still practice animism.[1077] Almost 90 percent cannot read or write

1074 Interview with a community figure in Desa Potuho Jaya, 13 April 2005 and other figures in Potuho Jaya, 14 April 2005

1075 Interview with community figures in Potuho Jaya, 14 April 2005; and Head of Village Representative Council, in Desa Potuho Jaya, 13 April 2005

1076 Interview with village head in Lambusa, 28 April 2005

1077 Indepth Interview with Tokoh Masyarakat (community figures) Kolagana, 15 April 2005.

BOX 43: WORKING IN TANDEM

A dispute broke out between two Kolagana residents. In the heat of the argument, one threatened the other with a machete. The man reported the attack to the subdistrict police, who promptly detained the assailant for three days. The community leader (tokoh masyarakat), who is also the school principal in the village, approached the police. He and the police brought the two parties together to discuss their differences. A resolution was reached, and the police, satisfied that peace had been achieved, took no further action.

Source: Interview, village principal, SD Kolagana, 15 April 2005

and live in extreme poverty – most houses are occupied by more that one family.[1078]

In fact, in Palabusa the police are sometimes part of the informal justice system: the village security (*Babinsa*) usually includes one police officer from the subdistrict office or nearest post.

Strengths of the informal justice system

Local leaders are a trusted source of moral authority on social issues, small theft, individual land disputes, family disputes, and broader social tensions – and these were the most likely to be resolved within the bounds of the village. Even when the formal authorities became involved, villagers preferred a continued presence of informal leaders, acting as their representatives. The following summary in Box 43 outlines what the survey respondents thought about the providers and forums in the informal justice system; again, perceptions are positive.

The people see the informal system as an accessible mechanism, where communities can resolve some of their daily disputes with family members and neighbours.The informal mechanisms take a participatory approach to dispute resolution, in which all sides engage in dialogue. Judgments are designed to uphold perceived and established social and cultural norms. It is adaptable because it does not function within the confines of written rules. Disputants voluntarily submit to the jurisdiction of the key actors in this system and because of the non-binding nature of the system.

Limitations of the informal justice system

Citizens observed three key obstacles regarding the informal justice system: informal justice actors have too many problems to solve; there is sometimes no common understanding, and they can be incompetent. The assessment team noted that village-level dispute reso-

BOX 44: THE PEOPLE'S CHOICE[1079]

Informal Justice Providers:

- Treat people well – 93%
- Understand people's problems – 95%
- Do not engage in extortion – 77%

Informal dispute resolution mechanisms:

- Language used/dispute resolution processes understandable – 95%
- Accessible – 91%
- People know cost – 61%
- Decisions could be foreseen based on precedent – 45%

Source: Access to Justice Survey Southeast Sulawesi

1078 Interview with school principal, SD Kolagana, 15 April 2005 and FGD women, 11 April 2005.

1079 N=approximately 860 respondents.

lution mechanisms are optimally utilized for internal community matters. They are limited in that they cannot deal with serious problems such as murder and grievous injuries (nor should they). Decisions are not enforceable and sometimes the operators can be susceptible to bias.

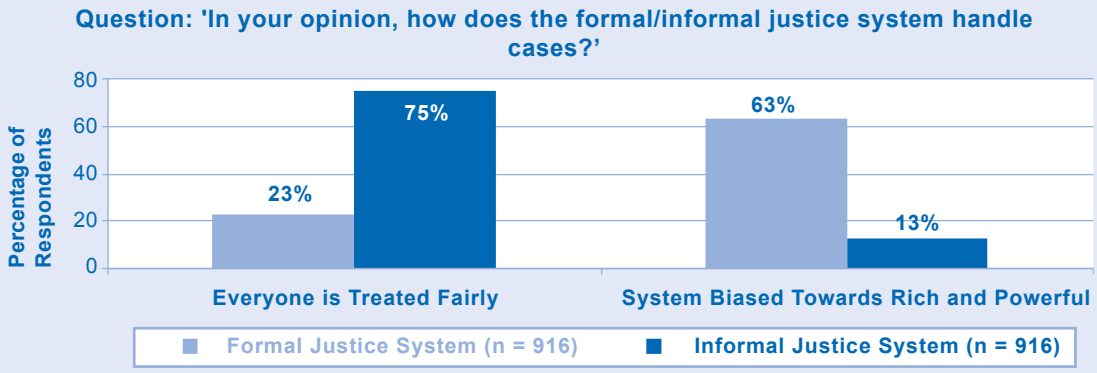
In the survey, 75 percent of the respondents considered local authorities to be fair to everyone, but there was some perception that rich and powerful have an advantage in this system (13 percent), demonstrating that monitoring is important (see Chart 42). Women are not involved in the system, unless they or a family member is directly part of a case. Finally, three-quarters of respondents thought that adherence to the decisions made by the informal justice system was frequent, while one quarter thought decisions were adhered to only sometimes.

Auxiliary Justice Institutions

The Baubau and South Konawe District Legislatures (DPRD) are elected representative councils. It is the responsibility of each of the commissions to handle complaints pertaining to their portfolios. Commission D is responsible for policy and regulations pertaining to manpower, social issues, education, culture, health and population matters. Issues pertaining to governance at the district, subdistrict and village levels, as well as security and order, law, certificates, politics and community organizations are covered by Commission A. Both of these commissions exist in Baubau and South Konawe DPRDs, but reportedly are ineffective.

At present, there is no ombudsman in Baubau or South Konawe. Instead, each District Office of Administration is supposed to deal with complaints.This takes place through meetings with constituents. At least half of the justice issues in Southeast Sulawesi pertain to problems of public administration. These offices are in district capitals, far from most villages and their complaint handling capacity is inadequate.

CHART 42: PERCEIVED FAIRNESS OF FORMAL AND INFORMAL JUSTICE SYSTEMS – SOUTHEAST SULAWESI



Source: Access to Justice Survey Southeast Sulawesi