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Reducing inequalities: legal reform and demand driven justice provision in Indonesia

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Abstract

Legal instruments (mainly in the form of statutes) and military force in the past in Indonesia were used by the authoritarian Suharto regime prior to his downfall in 1998 to repress any assertion of group based identity, group rights, and associated demands for the sake of security, stability and development. Favouritism towards particular groups on the part of the regime was common. Control by the state of the legal system meant that under the previous regime, marginalised groups had no avenue for recourse to challenge the power and domination of particular groups, even when it is unconstitutional or contravened their basic human rights. This sustained inequalities and was one of the drivers of communal conflicts. This paper argues that historically, horizontal inequalities between groups along political, economic and social dimensions have compounded unequal access to justice in the form of fair and equitable legal remedy and alternative dispute resolution processes in Indonesia. Unequal access to justice in Indonesia in turn has sustained the inequalities along other dimensions, as historically when one or the other group dominates the state at the local or national level, then networks of patronage and corrupt practices have sustained privileges for particular groups.

However, Indonesia has gone through a period of legal reform since the end of the authoritarian regime. Constitutional amendments, decentralisation, the introduction of a Bill of Rights and Human Rights Law, the ratification of many of the international instruments that protect rights, are just some of the many changes that provide for the recognition of and protection of mainly individual rights in the country. Some of these changes have indirectly helped to reduce inequalities between groups, particularly at the regional level. The recent ratification of the Anti-Ethnic and Racial Discrimination law has outlined protection for groups.

Yet, despite the progressive normative framework, justice provision in practice is undermined by weak state capacity in Indonesia to provide legal remedy in some of the far flung parts of the archipelago. This particularly affects the poor and disadvantaged in some of the less densely populated islands of the nation, where even accessing the justice system is a challenge and cooptation of the system by the wealthy and powerful is common. Development programmes are attempting to fill this gap by providing bottom up legal rights awareness raising and paralegal training services. In a sense this demand-driven justice provision is providing bottom up accountability and oversight of the legal system and public service provision, strengthening access to justice for some of the most disadvantaged. However, knowledge and rights awareness means that there are increasing challenges to historical networks of power at the local level, which is stimulating tensions and requires in-built conflict management mechanisms in such programs.

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Introduction

Indonesia is a vast archipelago and is defined by a large and diverse population. It has some 300 ethnic groups scattered across more than 10,000 islands, with approximately ten of these making up the bulk of the population. The largest ethnic group, the Javanese, mainly situated on Java island, account for almost half the population. As of 2009, the country has 31 provinces (and two special regions) within its borders at various stages of economic development (GOI, 2009). The majority of the population is Muslim. Yet, there are large concentrations of other ethnic and religious groups located in many districts. For the most part, the largest concentrated populations of Christians are found in the islands outside Java. In some cases there are ethno-religious groups that are numerically dominant when measured at the district level even though they are minorities when measured nationally. This is the case in many of the regions which have experienced communal conflict in the country. As such, there is a disjuncture between the majority-minority ethno-religious politics playing out within the vast and disparate provinces and districts in Indonesia vis a vis those taking place at the national level. Understanding all three levels of social relations in Indonesia is important for understanding identity politics, and how some groups may dominate or become marginalised politically, economically, socially, and in terms of access to the judicial system and legal remedy.

The challenge for Indonesia has historically been accommodating the many and varied different group interests and demands (both at the national and local level), all the while attempting to build a single, unified, and national Indonesian identity. This has been further complicated by the uneven development of the country, which has, in some places, strengthened boundaries around local identity groups who are either competing for resources or are marginalised from access to such resources. These resources include natural resource endowments (and the redistribution of resource revenues), public resources such as infrastructure, public service provision (including health and education services, the police and the judiciary, and the bureaucracy), and political capital (including representation of group interests in the local and national spheres).

The geographical vastness of Indonesia, its large population of some 220million people, and its archipelagic terrain has meant that some ethno-religious groups have had more privileges than others, even though the Indonesian Constitution does not differentiate the citizenry by their ethno-religious identity.[1] Uneven development geographically in Indonesia is linked to economic development in that that particular ethno-religious groupings which are situated in particular resource or access-poor regions are often underdeveloped vis a vis other groups, often reinforcing us-them divides and stimulating communal tensions. It also increases vulnerability to poverty traps around group identity. Geographical isolation of groups and poverty also impacts on access to justice and remedy in disputes when they arise. This includes both legal remedy through the judicial system and alternative dispute

[1] This is with the exception of the Chinese who have faced immense discrimination in the past in terms of the citizenship rights recognized through legal instruments such as statutes. This is not discussed in this paper.

resolution (ADR) provided by informal institutions and mediators such as elders and customary leaders or civil society organisations.

When groups (rather than individuals) are more privileged than others, particularly at the local level, these are defined as horizontal inequalities (inequalities between culturally defined groups with shared identities – HIs, see Stewart 2000). In the case that such identity groups have unequal access to economic and social capital, or political representation and support, there is increased likelihood that poverty traps may be sustained and human capabilities are not maximised which Stewart (2008) argues is detrimental not only to the group, but also to the wider society.

Further complicating such matters is the propensity that such inequalities have for driving conflicts. There are a variety of works that identify links between inequalities and violent conflict. For example, Gurr (1970, 1993) argues that relative deprivation is a necessary precondition for civil strife of any kind, driving the actions of the aggrieved. Stewart (2002) and Stewart, Brown and Mancini (2005), Stewart (ed 2008) and Østby (2008) provide evidence of the links between horizontal inequalities and the propensity for violent conflict in both national comparative studies. Mancini (2005) in a large N study finds that such horizontal inequality exists in Indonesia and can be linked to sub-national variations in conflict in the country (Mancini 2005). In local level accounts of conflicts, inadequate dispute resolution and legal remedy also drives local actors to take matters into their own hands.

Given the nature of Indonesia's geographic terrain, ethno-religious demographics, and unitary state structure, there are two ways in which inequalities arise in Indonesia and group boundaries are drawn. The first is around cultural groupings (ethnic, religious, linguistic, custom and tradition, and geographic region) and second around administrative units (provinces, and districts). We examine each of these in different parts of this paper.

This paper argues that horizontal inequalities between groups along political, economic and social dimensions compound unequal access to justice in Indonesia. Unequal access to justice in Indonesia in turn sustains the inequalities along other dimensions. This paper discusses how, in Indonesia, traditionally when one or the other group dominates the state at the local or national level, then networks of patronage and corrupt practices have sustained group privileges and undermined police and judicial independence from the political system. Legal instruments (mainly in the form of statutes) and military force in the past in Indonesia were used by the authoritarian Suharto regime prior to his downfall in 1998 to repress any assertion of group based identity, group rights, and associated demands for the sake of security, stability and development. Instead, favouritism towards particular groups on the part of the regime in terms of their access to the state ensured economic advancement and even legal impunity. This has meant that under the previous regime that marginalised groups had no avenue for recourse to challenge the power and domination of particular groups even when it is unconstitutional or contravened their basic human rights as individuals, which sustained inequalities and led to communal conflicts. This is despite the legal framework which provides for district level General Courts, provincial level High Courts, and the national level Supreme Court.

This paper also argues that the legal framework, state practice, and policies have gradually been changing since 1998 and the end of the authoritarian regime. They better recognise diversity and accommodate group-based demands, and even redress inequalities in Indonesia. However, while there have been significant changes to the legal structure of the

nation since the end of the Suharto regime, there is still a lag in ensuring the strong normative framework which now seeks to ensure human rights and even special treatment for groups to ensure equality is implemented in practice, particularly so that it can be accessed by vulnerable groups. Following the end of the regime, the ensuing residual weaknesses in the implementation of the legal system have meant, in the absence of outreach and oversight in the corners of the archipelago, legal remedy can only be accessed by a privileged few (which often plays out along group lines), or that actors can influence investigations by the police, cases put forward by the prosecution and the decisions made by judges. Development programmes are attempting to fill this gap by providing bottom up legal rights awareness raising and paralegal training services. In a sense this demand-driven justice provision is providing bottom up accountability and oversight of the legal system, although given that this challenges historical networks of power at the local level, this does stimulate tensions.

The paper is laid out as follows. First it examines why group identity is such an integral part of the nation and is embedded in how the Constitution was formed at Independence. Second it examines some of the historical practices which repressed diversity and expressions of group-based identities through legal instruments and force. This sustained inequalities between Indonesia's far flung regions and Java, where the central government is situated, as well as between groups who fell within or outside of patronage networks. This in part led to the end of the Suharto government in 1998 and a series of communal conflicts. Third it looks at the broader institutional and changes to the legal system which have taken place to address grievances with the previous regime. Fourth, it examines progressive changes to the legal framework from a human rights and access to justice for vulnerable groups particularly, particularly those aspects which may be useful to redressing group-based inequalities. In this section there is some discussion of the gap between the normative framework and perceptions of effectiveness of the justice system by district and by particular identity groupings.

Fifth this paper demonstrates, that given the gap between the normative framework and implementation realities, interim initiatives that seek to strengthen the justice system (both the informal and formal mechanisms) from the bottom up are essential to ensuring that the most disadvantaged groups have access to legal remedy or alternative dispute resolution mechanisms in order to reduce inequalities. This section examines how one development programme in Indonesia which uses a human rights based approach is attempting to do this and some of the difficulties it faces. By targeting underprivileged and marginalised groups in legal rights awareness raising, information sessions, paralegal training and facilitating interaction between the state and society, it is reducing inequalities in access to justice and thereby some of the other dimensions. However, in doing so, it is challenging status quo power structures and generating new tensions (although these can be considered positively as they are the residual effects of change).

Historical developments and group identities: legal instruments and policy responses to diversity and inequalities

When Indonesia gained Independence from the Dutch in 1945 (officially recognised in 1949), the young nation brought with it the legacy of tensions between nationalism and recognising the diversity of its group-based identities given the vastness and diversity of the archipelago. Ethno-nationalist groups and other organisations joined together in the

struggle for Independence. These included ethno-nationalist organisations formed around local identity groups, such as the 'Jongs' (or sons of the regions[2]) (Ingleson, 1975), religious organisations such as (Muhammadiyah and Nahdlatul Ulama), and bridging nationalist organisations such as the Indonesia Association (*Perhimpunan Indonesia - PI)*[3]. *Sumpah Pemuda (*the Youth [or Sacred] Pledge) of Indonesian Unity in 1928 and the establishment of *Partai Nasional Indonesia* (the Indonesian Nationalist Party) in 1927 were two of the key triggers to uniting these regionally based groups (Reid, 1979). Foulcher (2000) argues that although some of the young nationalist groups did combine in 1930 to form *Indonesia Muda (Young Indonesia)*, there was much dissent particularly on the issue of a single language to unify the disparate groups.[4] Even at the time of Independence, the tension between localisms and local loyalties and nationalism was never fully resolved.

Following independence, these tensions emerged in the debates around constitutional formation, and whether Indonesia would be a secular or Islamic state. The Jakarta Charter (*Piagam Jakarta)* was formulated shortly before Indonesia's Independence, to break the deadlock between: Muslim leaders who wanted special constitutional recognition of Islam, and those Muslims and non-Muslims who favoured a secular state. The key clause of the Charter stated that Muslims were obliged to carry out Islamic law stating that 'with the obligation for Muslims to implement (*menjalankan*) shariah'.[5] The Charter was included in the preamble of the draft constitution in June 1945 but was omitted from the final constitution shortly after the proclamation of independence on 17 August 1945 following strong objections from non-Muslim communities and initiatives on the part of Soekarno (the first President) to exclude the charter from the first Constitution.[6] Instead, the five principles (*Pancasila*) which underpinned the Constitution acknowledge commitment to belief in one God, a just and civilised humanity, national unity, and people's rule through consultation and representation, to achieve social justice for all Indonesians (Guinness 1994: 271). These principles embedded the importance of religious identity and the unification of Indonesia's ethnic groups in the Constitution, as well as the principle of justice for all in the philosophy of the new Republic.

One of the greatest challenges for Indonesia since Independence has been managing such diversity and group demands. Legge (1961: 231) argues that the very motto of the Republic, "Unity in Diversity" (*Bhinneka Tunggal Ika*), recognises the reality of the strength of regional awareness and the presence of distinct societies in the regions of Indonesia. Nationalist state policies, legislation, and the corresponding statutes under both the original Sukarno-led administration from 1945 until 1965, and later under the Suharto led administration from 1966 until 1998 sought to subsume such diversity in adherence to an

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[2] These young nationalist organisations which were formed around ethnic identities, such as the Jong Jawa (Javanese sons), Jong Sumatra (Sumatran sons) and Jong Batak (Batak sons) (Abdulgani, 1973)

[3] Kahin (1969:88) translates this as the Indonesia Union

[4] A later speech made in 1931 at the *Indonesia Muda* conference adjusted the original pledge to state: '*bersemangat yang satu'* (of one commitment) rather that rather than 'one language', which he argues is evidence of the contentious nature of committing to one language. Foulcher contends that it wasn't until the "Struggle Slogan" was pronounced at a youth conference held in August 1949, that the concept of "one language" took more concrete form.

[5] This wording was controversial in that it was not clear whether the implementation of Islamic law was within the purview of the state or is limited to individual Muslims. For a history of the evolution of the Charter, Boland (1971) for an account from a Christian perspective, and Anshari (1981) for an account from a Muslim perspective (from a modernist Muslim perspective)

[6] Several Islamist parties in 2000 began campaigning for the re-insertion of the Jakarta Charter into the constitution

Indonesian national identity. This was carried out through state legislation, policy, and the use of the military, although there was resistance to such strategies.

In the 1950s, the regions outside Java complained of economic and political marginalisation from the centre[7], perceiving that government policy favoured Java (Harvey, 1977: 1). They were also dissatisfied with the appointment of central government officials, particularly from Java, to the regional governments. *Pamong pradja* (central government representatives who monitored and led – *memimpin* – the regions) were sent to the regions outside Java, which the 'outer islands' considered as encroaching on their autonomy (ibid: 488; Legge 1961:19). This led to regional rebellions in different parts of the country around perceived inequality. For example in 1957, the Permesta (Charter of Universal Struggle, Cribb and Brown 1995:78) rebellion in East Indonesia, called for, amongst other things, provincial autonomy (Harvey, 1977:1). This was also linked to the PRRI (Revolutionary Government of the Republic of Indonesia) rebellion declared in Sumatra in 1958.

Harvey (1977: 152) explains that the goal of the rebels was to change national policy through regionalism, not separation from the Indonesian state. Eventually, the rebellions were quashed. However, such demands for greater self-management were accommodated through the ratification of regional autonomy laws in the 1950s: Law No.32, 19568, and Law No. 1, 19579. Yet, following the end of these rebellions, the key provisions of the 1956/57 Regional Autonomy Laws were revoked in 1959, when Soekarno implemented Guided Democracy (*Demokrasi Terpimpin*) (Legge, 1961: 209). Ricklefs (1983) highlights that the long process of political debate and deliberation among the members of the 1955 elected parliament to redraft the constitution, coupled with the regional rebellions at the time, created a feel of distrust among the military elites toward the politicians. This spurred the President to issue a decree in 1959 which abolished the parliament and reinstituted the first constitution of Indonesia under Guided Democracy.

Similarly, the Suharto-led New Order administration from 1966 sought to strengthen national identity and the central administration through parliament enacted legislation through statues and presidential decrees. The authoritarian administration sought ideological legitimacy through policies that continually reinforced 'stability' in Indonesia following the instability which characterised the Sukarno regime after the attempted coup in 1965 that culminated in mass killings throughout Indonesia (Hooker: 1995: 5 cf Geertz, 1990: 89). The cornerstone of New Order policies promoting stability was development. The Soeharto government contended that development would drive economic progress and prosperity for the nation (Hooker and Dick, 1995:3). This policy was implemented through Five-Year Development Plans (*Rencana Pembangunan Lima Tahun* – Repelita), which the New Order contended must be based on centrally driven programmes and central control. This was characterised by top-down decision-making and very little accommodation of local diversity.

Guinness (1994: 269) contends that part of this strategy was to assure stability included dual roles for the armed forces through military commands stationed throughout the archipelago performing both military and civil service functions, for example, having five armed forces representatives in each of the district and provincial parliaments. The military

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[7] The 'centre' is the common term used to refer to the central government and administration and / or the 'centre' of national politics.
[8] This law was concerned with the financial relations between the centre and the autonomous regions.
[9] This law was enacted to modify the appointment of Regional Heads. Legge (1961: 52) viewed this as more an attempt to weaken their office and strengthen the role of the regional parliaments.

became the arm of the central government in the regions, where it could use force, often at the expense of human rights to ensure that citizens adhered to the regime's increasingly repressive legislation and corresponding statutes. During Suharto's reign, the dual function *(dwifungsi)* of the military as both a defence force and a participant in civilian politics and governance was legitimised by Law No. 20/1982 on State Defence Regulations. Article 26 stated that the armed forces functioned as defence force and social force. Article 28 (1) stated that the armed forces acted as a social force by being a motor and 'stabiliser' that, with help from other social forces, held the responsibility to secure and strengthen the nation's struggle for independence and the prosperity of the people. Article 28 (2) stated that in order to execute the aforementioned actions, the armed forces were directed to participate actively in development and to strengthen national defence by participating in the decision-making process related to state and government affairs and to develop *Pancasila*[10] Democracy and government practices and development in accordance with the 1945 Constitution.

However, such policies did result in a rise in living standards. Schwartz (1999:2) argues that during the Suharto regime, average annual growth in excess of seven percent and a decline in the number of people in poverty from an estimated 70 percent in of the population in the late 1960s to around 11 percent by the mid-1990s. While development bought a rise in living standards in Indonesia, albeit unevenly across the archipelago, it also legitimised government policy and strategies, facilitating Jakarta's expanding control over many people's lives (ibid). Jones (2002: 64) argues that co-option of the political and business elite as well as emphasis on unity and stability allowed Jakarta to impose a centralistic regime and for the 'spoils' of development to flow into the hands of the military or 'cronies' with ties to Jakarta.

The promotion of regional cultures and recognition of groups was limited to ceremonial performances. Otherwise it was prohibited, as the New Order sought to defuse potential political problems, instability and thus challenges to its legitimacy and power. As Hooker and Dick (1995: 2) argue, the New Order attempted to 'prevent regional, linguistic, and religious differences from taking on a political force'. For example, sentiments that could be related to SARA (*suku, agama, ras, antar-golongan* – ethnic, religious, racial or inter-group relations) were suppressed. Any text that referred to ethnic, religious and other identity groupings, such as writings in the mass media, was banned through a variety of legislation, statutes and monitoring by agencies such as Komkamtib (Operational Command for the Restoration of Security and Order). Article 29 of the 1945 Constitution stated that the freedom of the press shall be provided by law. Law No. 21, 1982 on Amendments to Law No 11, 1966 on Basic Principles of the Press as Revised in Law No 4, 1967, specified that the duty of the press was "strengthening national unity and cohesion, deepening national responsibility and discipline" (Article 1 (5D)). In the elaboration of the law, point 17 states that:

> "Press Publications must be secured from all possibilities of being used by any person which will endanger State safety, public order or national interest "..''For example broadcasting the teachings of communism/Marxism-Leninism or writings that will damage national morals and integrity or cause disputes between ethnic, religious, racial, or other groups."

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[10] The five principles of the Republic of Indonesia acknowledge commitment to belief in one supreme God, a just and civilised humanity, national unity, and people's rule through consultation and representation, to achieve social justice for all Indonesians.

This limited the news reporting of ethno-religious tensions and controlling the public interpretation of all socio-political conflicts (Sen and Hill, 2000: 12). Hence, the laws which limited public discourse on SARA, are just one of many examples of laws which were used as an instrument to control the freedom of expression around group identity and action, often at the expense of human rights. Furthermore, it is evident from such statutes, that the state sought to minimise assertions of group identity as it could undermine its power.

However, despite all manner of mechanisms to repress regional identity and even communal conflicts as they arose under the authoritarian regime, there were still sporadic outbreaks of violence under the New Order. In the restive provinces of Aceh and Papua, there were struggles against central hegemony through clashes with the military and East Timor was under control of the Indonesian military by use of force.[11] Subversive groups were considered enemies of the state, including the Free Aceh Movement (*Gerakan Aceh Merdeka* – GAM) in Aceh, the Free Papua Movement (*Operasi Papua Merdeka*—OPM), the leaders of the actions against the state in the Tanjung Priok in 1984, the Jihad Command in 1981 (Nusa Bhakti et al, 2008). Nusa Bhakti et al argue that the coercive policies of the New Order government were based on the 'use of force' ideology embraced by the state. This ideology included the mechanisms, processes, and coercive techniques, which were collectively and structurally carried out to maintain power and control citizens (Bhakti et al, 2001: 27). The military under the New Order would hastily deal with cases of protest using coercion and violence, at the expense of human rights. Such policies were eventually one of the drivers of demands for the end of the regime.

Legislative change during the transition, efforts to appease discontent and reduce regional inequality

> "But Suharto's tightfisted control of the political system created its own set of political problems. By muzzling the press and prohibiting free political competition, Suharto kept out of sight but did not eliminate a number of potentially divisive flash points within Indonesian society. These included relations between the country's many ethnic minorities, and in particular the ethnic distribution of economic wealth; the relationship between Islam – the religion of 88% of Indonesians – and the state; the military's role in politics; and the form of nationhood binding the outer islands to Java, where 60 percent of Indonesians live…all these issues came to the fore the day Suharto resigned. And as Indonesia moves forward in reconstructing its political architecture, these are the issues that like at the heart of its political discourse." (Schwartz, 1999:2)

The political, economic and fiscal crises in 1997 undermined the strength of the Suharto regime and led to his eventual resignation in May 1998. Schwartz (1999:4) argues that Indonesia's economic performance in the 12 months from August 1997 were described as the most severe economic collapse suffered by any country since World War II. The number of Indonesians living under the poverty line had risen from 20million to 80million and was increasing (ibid). Such economic collapse deeply undermined his legitimacy (ibid). Discontent with the policies and practices of the past, the fast declining economy, and the shooting of four Trisakti University students in Jakarta on May 12, 1998, led to massive unrest in a number of cities in Indonesia. The ethnic Chinese were targeted in the violence, who despite making up only 4% of the population, controlled some 70 percent of the economy through enjoying the patronage of the Suharto regime (Schwartz, 1999:2).

[11]For and indepth discussion of this see Said (2001), Samego et al (1998) and Nusa Bhakti et al (2008)

Following this, Indonesia entered a period of massive change – of both the political and legal systems. These changes mainly encompassed revising the many statutes which undermined freedom of expression, association, the creation of organisations (which were once tightly controlled by the government, and associating with particular groups. Between the third week of May in 1998 when Habibe took power as interim President and August 1998, some 57 new parties were formed (ibid:3). This was following the restricted three party system which characterised the New Order period was dominated by Soeharto's Golkar (Functional Group) Party in the preceding 32 years. Fresh elections were held June 1999, which saw PDI-P (The Indonesian Democratic Party of Struggle) eventually win the largest percentage of the vote in the national parliament.

The role of the military in civilian life was rolled back through changes to legislation and statues. On April 1 1999, the National Police (Polisi Republik Indonesia - POLRI) were separated from the Indonesian Armed Forces and the name of ABRI was changed to the Indonesian National Army (Tentara Nasional Indonesia – TNI). The regional, district, and sub-district level social and political staff commands of the military were abolished while the ABRI factions in the national, provincial and district parliaments were gradually phased out, and statutes which allowed for a role for the military in government were abolished. Organisational relations between the military and the Golkar party were cut (Nusa Bhakti et al 2001). Furthermore, from the 1970s onwards Komkamtib (Operational Command for the Restoration of Security and Order) had interrogated people considered dangerous to the government and prohibited the public from undertaking any activity or publishing anything seen by the government as a potential source of conflict relating to the key areas of ethnicity, religion, race and societal relations (SARA). At the end of the New Order, this body became the Coordinating Agency to Support the Strengthening of National Stability (Bakorstranas). Bakorstranas was dissolved by then president Abdurrahman Wahid in 2000. Such changes involved a massive overhaul of the statutes which had previously been strong policy instruments of repression in Indonesia mainly through Law No. 3/2002 on State Defence which replaced Law No. 20/ 1982. This was one of the first legal steps taken to change the system from one of repression of individual rights through the control of the military to one where there was greater freedom of expression.

Following the end of Suharto's rule in 1998 and the dawn of the reform era, created a new set of statutes which were better focussed on recognising regional diversity and groups in the country. The ratification of the Decentralisation Laws No. 22 and 25 in 1999 which decentralised most authority to the district level by 2001 allowed for a greater degree of self-management of local affairs, implicitly recognising the diversity of groups in Indonesia. Indonesia is a unitary state with a strong central administration which traditionally administered its power through its regional representatives, the provincial governments. However, in the 1999 laws significant powers were devolved to the districts (decentralization was implemented in 2001) to such an extent that the country is said to have implemented the substance of federalism without changing the unitary system (Tirtosudarmo, 2008: 6). The impetus for decentralization was a combination of attempting to bring government closer to the people, appeasing the demands of each country's divergent groups for greater self-rule, and compartmentalization of potential ethno-religious and regional conflicts (Booth 2001:1; Diprose 2009; Tirtosurdarmo, 2008). Such legislative changes were also supported

by amendments to the 1945 Constitution (*Undang-Undang Dasar 1945 – UUD1945*), which were intended to strengthen regional autonomy.[12]

On the one hand, such legislative change was an instrument for reducing inter-regional political inequalities in terms of representation, voice and autonomy, particularly between the islands outside and within Java. It increased the likelihood of political representation and access to the state and a greater degree of self rule at the provincial and district levels, as well as increased the likelihood that local people would be more likely to fill strategic bureaucratic positions in the local civil service. These were long held complaints which originally drove the regional rebellions and other forms of discontent in the outer islands as such positions were filled from outside and the riches of the regions were carried back to Jakarta. The boundaries of groups in this sense coincided with administrative boundaries.

However, the changes spurred a fair amount of redistricting with boundaries being redrawn around groups and their geographical terrain, or around competing larger groups (Diprose 2007, 2009). In some places this has created greater ethno-religious segregation, as particular groups are now more strictly confined to districts and sub-districts which were once much more diverse (ibid). These laws were revised through Law No.32 2004 allowing for the direct elections of provincial governors, district heads and municipal mayors. Such changes have allowed local leaders to be elected, rather than appointed from above. Political competition and vested interests in accessing the state is nothing new in Indonesia, but in an era of freer elections and closer government, gaining local government office is a high stakes game where mobilising around local identities and groupings, has become more commonplace.[13]

Yet, severe poverty during the financial crisis, the rolling back of fuel subsidies, unstable exchange rates, constitutional amendments, legislative change, the privatisation of many state industries and increasing inflation all contributed to chaotic domestic politics in the early post- New Order period of the late 1990s. This was only made more difficult by the vacuum of dispute resolution mechanisms in the reform period where the residual judicial, legislative and security systems from the New Order period were too weak or too compromised to contain growing unrest and outbreaks of violence in the archipelago. Previously, the military and central government policies had controlled many aspects of civic life down to the village level, had allowed for particular favoured groups to dominate politics and the state locally and nationally (as is described above) with no form of recourse to challenge such power structures legally or in any or through political representation of marginalised groups.

In addition, the Indonesian legal system, comprised of district, provincial, and national courts, the religious courts, the supreme court, was based on systems of patronage and susceptible to corruption.[14] The changes to the policy and legal instruments, such as the decentralisation laws and other statutes mentioned above had already been introduced,

[12] For example, in the Second Amendment, articles 18, 18A, and 18B grant the broadest authority possible to the provinces, *kabupaten,* and *kota*, without differentiating the authority according to level of government. *Kompas* (2002, 12 August) 'Undang-Undang Dasar Negara Repubik Indonesia Tahun 1945 dan Perubahannya', p29-30

[13] However, while this may have been the case in recent times, many lessons have been learnt from the deadly ethnic conflicts which took place over the last decade in the country, and mobilisation around sensitive identities has to some extent begun to decrease – or at the very least is so excepted that it is no longer a trigger for violence.

[14] See for example Lindsey and Dick (2002) on corruption in Asia; Holloway (ed) (2002) on corruption in Indonesia; Lindsey (1999).

however, conflict broke out before they were implemented or had impact. Furthermore, such changes also meant that there were new opportunities to seek power and challenge the status quo in districts, where felt inequalities, particularly in terms of access to the state surfaced (see below).

Waves of violence in the form of communal clashes occurred almost simultaneously in a number of provinces across Indonesia. While in the twenty years prior to the end of the Suharto regime there were cases of communal violence and clashes between citizen groups and the military[15], collective violence began to intensify in more frequent clashes in different parts of the archipelago between 1996-7. Following the end of the regime however, incidences of communal conflict and inter-group clashes rose, reaching a peak between 1999-2001 and decreasing in number and intensity by 2003-4. Varshney et al (2004: 24) put the minimum estimated death toll from collective violence in Indonesia at over 10,700 people between 1990-2003, nearly 90% of which occurred after 1997.

Many of the conflicts began with youth clashes at a time where there was intense local competition for power given the legislative and institutional changes mentioned above – a period which Bertrand calls a "critical historical juncture", where structural change opens up opportunities for groups to challenge the status quo power hierarchies and he links to greater likelihood of conflict. It is not surprising that these conflicts took place where there were large but different ethno-religious groupings living side by side. In each of these conflicts there were complaints of inequality: marginalisation in access to the state, discriminatory practices on the part of the state towards particular groups, different levels of access to resources and wealth, and longstanding grievances around the domination of particular groups, and mobilisation of such grievances by elites.[16]

In some cases, such as in the conflict in Poso district which had political and economic roots but groups mobilised around religion, there were complaints of unfair treatment towards particular groups by the state, both pre-conflict and during the conflict (Diprose, 2009). Diprose, (2009) details some of the complaints of favouritism and domination of the state by particular groups and the inequalities between the groups involved in the conflict in terms of access to the state. Furthermore, field interviews in Poso revealed that Christians in particular felt they had been unfairly treated by the judiciary in terms of the legal prosecutions in the first phase of the conflict where the sentencing for high profile Christians accused of instigating violence was much lengthier than for Muslims. One Christian civil servant was sentenced to 20 years in jail, where no Muslim was given any where near the same sentence. This is despite the fact the Christian side suffered greater casualties and property destruction in the first two phases of the conflict. Furthermore, in 2006, three Christians were executed by the state for their role in the violence and no Muslim suffered such a severe penalty.

[15] Friend (2003:299) highlights that between 1992-97, roughly 500 Churches, an average of 100 churches a year, were burned down based on communal tensions.
[16] See Aragon (2001), Bertrand (2004), Davidson (2005), Diprose (2008, 2009), HRW (2003, ICG (2004), Smith (2005), Tajima (2008), Van Klinken (2007),

Legal reform, human rights and improving conditions for vulnerable groups

All of the changes mentioned above outline how, in the reform era, the state has indirectly sought to redress the inequalities in Indonesia – both regional, and between groups – through greater autonomy and self-management for Indonesia's districts and diverse groups, less repressive state practice and the use of force to repress diversity, freedom of expression individually and in the media, and so on. However, Indonesia also made a number of other progressive changes to the legal system, both in amendments to the Constitution and the introduction of new statutes which seek to strengthen the compromised legal system and pay greater attention to human rights. The protection now offered under Indonesian law far supersedes that proffered by the Suharto regime, and in fact that provided by many other countries, and key human rights are now being enforced by Indonesia's recently-established Constitutional Court through Article 24C of the Constitution and Law No.24, 2003).

The first was key change was the introduction of a constitutional Bill of Rights. This is largely based on a 1998 Decree of the People's Consultative Assembly (MPR) which contained a Human Rights Charter which was mainly replicated in the Human Rights Law (Law No. 39 of 1999) and a Human Rights Court Law (Law No 26 of 2000).

Some of these rights were incorporated into constitutional amendments. Four different sets of constitutional amendments were made in 1999, 2000, 2001, and 2002. This included a Bill of Rights in the 2000 amendments. In particular relation to articles which have the potential to improve equality and thereby reduce inequalities, the Bill of Rights affords that each person has the right to: just legal recognition, guarantees, protection and certainty, and to equal treatment before the law (Article 28D(1)); equal opportunity in government (Article 28D(3)); embrace their respective religions and to worship in accordance with their religion; to choose their education, teaching, employment and citizenship; to choose a residence within the territory of the state, to leave the state, and to return to the state (Article 28E(1)); to associate, assemble and express an opinion (Article 28E(3)); to facilitation and special treatment to obtain the same opportunities and benefits in order to achieve equality and justice (Article 28H(2)); to social security which permits self development in its entirety as befits human dignity (Article 28H(3)); and, protection against discriminatory treatment based upon any grounds whatsoever and shall have the right to protection from such discriminative treatment (Article 28I(2)). Furthermore, the revisions to the Constitution in article 18B (2) also recognises and respects the *adat* (custom and tradition) law and the communities that abide by this law, along with their traditional customary rights as long as these remain in existence and are in accordance with societal development and the principles the Unitary State of the Republic of Indonesia, and shall be regulated by law. These are supported by the Article 28I (3) which states that the cultural identities and rights of traditional communities shall be respected in accordance with the development of times and civilisations.

The Human Rights Law outlines a range of human rights and elaborates on many of the bill of rights articles mentioned above. However, this can be overridden by other statutes, if they are more detailed or more recently enacted. Nevertheless, Human Rights Courts have been established permanently in Jakarta, Medan, Surabaya and Makassar. This is the only court that imposes penalties for breaches against the Human Rights Law.

As is evident in the selection of rights from the Bill of Rights which are mentioned above, special treatment for achieving opportunities and benefits to achieve equality and justice, equal opportunity in government, and protection against discriminatory treatment are

potentially instruments that can be used to overcome inequalities. These rights are afforded to individuals not groups. However, "to be free from discriminatory treatment based on any grounds whatsoever", provides scope for this to be associated with discriminatory treatment around group identities. Given that these rights are enshrined in the constitution, which Indonesians hold in the highest regard, then the new legal framework introduces a level of protection not previously granted to citizens. However, these rights are subject to Article 28J (2) of the Constitution, which allows these rights to be limited by legislation directed at 'protecting the rights and freedoms of others and which accords with moral considerations, religious values, security and public order in a democratic society'. Yet, there are a number of absolute rights in the Constitution to which Article 28J(2) does not apply. These are: the right to life, to be free of torture, to think freely, to embrace a religion, to be free from slavery, to be recognised as an individual before the law, and to be free from being subject to retrospective laws, are basic human rights which cannot be limited in any way. UNDP (2007) argues that there are many cases where the Constitutional Court has upheld the rights in the Bill of Rights, even the rights not subject to Article 28J.

Indonesia has also sought to improve judicial independence through a series of legal reforms in 2004. Under Law No.4/2004 on Judicial Authority, full authority has been given to the Supreme Court to manage the organizational, administrative and financial affairs of both itself and the courts under its authority. Previously, under the Suharto regime, the Ministry of Justice had financial and administrative control over the general and administrative courts. Lev (1978) argues, that this was a means for the state to exercise influence over judges through the control of wages and promotion and to ensure patronage.

Indonesia has also ratified a number of international instruments which seek to protect human rights. These include the International Covenant on Civil and Political Rights but not the two optional protocols; the International Convention on the Elimination of All Forms of Racial Discrimination; The Convention on the Elimination of All Forms of Discrimination against Women and signed but not ratified the Optional Protocol; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment but not the Optional Protocol; the Convention on the Rights of the Child and signed but not ratified the two optional protocols; and the International Covenant on Economic, Social and Cultural Rights.

The constitution also outlines obligations on the state in Articles 28 and 34 with respect to human rights and the protection of vulnerable groups. In particular, that the 'protection, promotion, enforcement and fulfilment of human rights are principally the government's responsibility' (Article 28I(4)); the state must develop a social security system for all and to empower the weak and impoverished (Article 34(2)) and that the state must provide appropriate healthcare and public service facilities (Article 34(3)).

The constitutional amendments on the Bill of Rights, mainly protect individuals rather than groups. In 2008, a bill was passed to ensure the protection of groups from racial and ethnic discrimination. The bill, also called Law No.40 (2008), defines race as a nation's classification based on particular physical characteristics and line of descent (Article 1(2)); and ethnic as the categorization of humans based on faith, values, norms, culture, language norms, history, geography, and kinship (Article 1(3)). The bill particularly defines the term 'each person' that is used on articles of the bill stipulating the perpetrators of racial and ethnic discrimination to include discrimination conducted by individuals or corporations, where corporation are defined as a group of people and/or wealth that is well-organized, that is a legal or non-legal entity (Article 1(7)).

The bill defines racial and ethnic discrimination as: to impose differentiation, exceptions, limitations, or selection based on race and ethnicity, which causes the extraction or subtraction of recognition, acquirement, or implementation of human rights and basic freedom in equality in civil affairs, politics, economics, social affairs and culture (Article 4(a)); to display hate or hatred to people because of racial and ethnic differences based on actions of making writings or pictures to be placed, displayed, or distributed in public places or other placed that can be seen or read by other people (Article 4B(1)); an oration, disclosure or verbalization of certain words in public or in other places that can be heard by other people (Article 4B(2)); to wear something on oneself in the form of an object, words or picture in public places or other placed that be read by other people (Article 4B(3)); to take away a life, torture, rape, sexual deviations, theft accompanied by violence, or the taking away of freedom based on race and ethnic discrimination (Article 4B(4)). Articles which have a relation to group protection includes the abolishment of racial and ethnic discrimination by: providing protection, certainty, and equality in law to all citizens to live free from racial and ethnic discrimination (Article 5A); providing a guarantee that there will be no obstacles for initiatives by individuals, groups of people, or institution that needs protection and guarantee of equality in the use of rights as citizens (Article 5B); providing understanding to communities regarding the importance of pluralism and respect for human rights through national education (Article 5(C)). Also, the bill stipulates that each person, individually or as a group, has the right to file a case for redress through the state courts for racial and ethnic discrimination acts done unto them (Article 14). The law attempts to deter people from committing racial and ethnic discrimination by setting prison as the minimum sentence. Based on a Jakarta Post interview[17] with the Chairman of the special committee in the House of Representatives responsible for deliberating this bill, leaders of public institutions found guilty of adopting discriminatory policies would face jail terms one-third more severe than those stipulated in the Criminal Code.

The greatest challenges in terms of upholding the rights and obligations outlined in the constitution and potentially using such instruments to reduce inequalities, however, are enforcement and introducing state policies to ensure that rights are upheld. The discussion in the previous section outlines how compromised the state and the judicial system was under the previous regime, where it was controlled through systems of patronage and coercion. Individuals or groups being able to access the state for personal enrichment or prioritising one's own group have been a long standing grievance of many of the country's marginalised groups which was discussed in the previous section, and was a driver of many local conflicts which broke out at the end of the New Order period. Changing a system from one where human rights were subjugated to security and stability through the use of coercion and violence (often perpetrated by the state) to one where they are a part of a constitutional bill of rights will no doubt take many years to bring into action. Ensuring that such rights are upheld by courts and officers of the state outside the reach of oversight bodies in the far flung corners of the archipelago is also a policy challenge. This is particularly the case where long-employed civil servants are accustomed to the ways of the previous regime, or lack administrative capacity, resources, and knowledge of such changes

[17] Based on interview with Murdaya Poo, the chairman of the special committee for the bill, House of Representatives of the Republic of Indonesia, taken from The Jakarta Post, "Bill Against Racial Discrimination Passed", Wednesday, 20 Ocotber 2008, online edition: http://www.thejakartapost.com/news/2008/10/29/bill-against-racial-discrimination-passed.html

or how to enact them. Lindsey (2001)[18] argues that corruption amongst the Indonesian judiciary is endemic, where the highest bidder wins the case, which presents a significant challenge to ensuring legal instruments provide basic legal remedy, let alone protection against discrimination.

Preferences and trust in formal justice providers

Furthermore, UNDP (2007)[19] outlines how suspicion of the formal justice system is rife in perceptions of citizens and affects their preference for the using informal justice system. In early 2005, UNDP conducted a large assessment on access to justice in five provinces the Indonesia. 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.'[20] This approach is drawn from Articles 7 and 8 of the Universal Declaration of Human Rights (UDHR) where access to justice is recognised as a fundamental human right by recognising, respectively: (i) the right to equality before the law and the equal protection of the law without any discrimination, and; (ii) the right to an effective remedy by a competent national tribunal for acts violating the fundamental rights granted by the constitution or by law. As UNDP (2007) highlights, access to justice is much more than simply a right in itself, but also includes the means of realising the enjoyment of a whole range of other rights.

The access to justice assessment included a survey of some 1000 respondents in each four of the provinces affected by communal conflict in Indonesia between 1998 and 2002 (Central Sulawesi, North Maluku, Maluku, and West Kalimantan) as well as Southeast Sulawesi which had not experienced the same levels of violence. Approximately 4500 respondents were interviewed in total. The respondents included ordinary men and women, disadvantaged men and women, as well as informal (tradition and custom) and formal justice providers. The disadvantaged were defined as those who are some of the most vulnerable to injustice yet least able to advocate for change on their own behalf (UNDP, 2007). The survey aimed to quantify community attitudes towards the formal and informal justice systems, and also their priority issues in relation to access to justice.[21]

All of the provinces chosen in the broader study experience both the difficulties and success stories of strengthening the justice system in Indonesia over the past ten years, coupled with the obstacles of maintaining and accessing the justice system amidst outbreaks of communal violence and conflict in four of the provinces. In conflict situations, the hurdles for citizens to access the justice system and for institutions to provide uninterrupted justice services are manifold, requiring special attention from policy makers and practitioners. However, even without the impediment of poor human security and the threat of further episodes of violence, the challenges to strengthening the justice system of implementation and enforcement in Indonesia persist in all areas.

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[18] LINDSEY, T., 'Abdurrahman, the Supreme Court and Corruption: Viruses, Transplants & the Body Politic in Indonesia', in Arief Budiman and Damien Kingsbury (eds), Indonesia: The Uncertain Transition, Crawford House: Adelaide, 2001

[19] One of the authors of this paper, Rachael Diprose, was a contributing author to the assessment

[20] 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.

[21] A stratified random sampling method was employed, whereby a random sample 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 disadvantaged group.

The overwhelming finding of the report was a strong preference for the informal justice system in all five provinces (UNDP, 2007). The term 'formal justice system' was used to refer to the formal 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. The 'informal justice system' was used to refer to all forms of non-state dispute resolution, including customary law (adat) and mediation or arbitration by village heads, religious leaders and other community figures.

First, UNDP asked respondents to what extent they had used the formal or informal justice system. The aggregate figures for the survey found that 10% of people had actually used the formal justice system and 12% had used the informal justice system. However, there was significant variation between districts in provinces, and in most cases places which had experienced severe conflict, such as Poso, had higher usage of the informal justice system, if they used any justice system at all.

Table 1: 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: Courtesy of UNDP (2007) Access to Justice Survey – All Provinces

However, the survey results on perceptions of the formal justice system and its effectiveness showed a strong perceived preference (not based on use) for the informal justice system. 28 percent of survey respondents across the provinces were 'satisfied' with the performance of the formal justice system, 37 percent were 'dissatisfied' and 35 percent had no opinion. In contrast, 53 percent of people were satisfied with the informal justice system and only 17 percent were dissatisfied (UNDP, 2007).

In order to understand whether there are perceived differences between groups in the effectiveness of the formal justice system based on the UNDP raw survey results, the authors undertook further analysis of the survey data. A series of questions on the perceptions of communities of the formal justice system were asked. Respondents were asked to state to what extent they agreed or disagreed with the statements presented in

Table 2 on the following page. A seven point scale was used. The scoring was as follows : 1=very much disagree, 2=disagree, 3=somewhat disagree, 4=neutral, 5=somewhat agree, 6=agree, 7=very much agree. Thus, a mean, or average score of 5 indicates that, on average, the group somewhat agreed with the statement. The results are broken down by religious group for a selection of the districts in the study and the table notes whether these districts are conflict affected or not as well as which group constitutes the majority of population in the district. Tests for significant differences between the perceptions of groups in each district were carried out.[22]

If we examine the dynamics in Poso, which is relevant to the next section of this paper, then it is evident that the views of Muslims and Christians in the district in the de-escalation phases of the conflict were significantly different (often to 1% confidence) regarding their perceptions of the formal justice system. While neither group expressed particularly positive views on average, the views of Christians were significantly more negative in most cases, with the exception of opinions on trust police and trust in judges where the views of both groups were similarly negative for the police and fairly close to neutral on average for judges. When asked if the formal justice system is effective in protecting rights of citizens without regard to age, gender, race and social status, the Muslim group, which had a slight majority at the onset of the conflict, were significantly more likely to agree to some extent with the statement than Christians. Muslims, on average, somewhat agreed with the statement, whereas Christians, on average had a lower score. Similarly, when asked, if law officers extort people, both groups had negative views on average, but significantly more so amongst the Christians in Poso.

[22] Where the data for each question was normally distributed, standard t-tests to compare means were used. Where data was not normally distributed, non-parametric tests were used – the Mann-Whitney U and the Wilcoxon W. In the table, the number of respondents (N), the mean (average) and t-test score as well as the significance score are presented for districts where standard t-tests were used. Where non-parametric tests were used, the Mean Rank and the Significance are reported as well as the overall mean for the group.

Table 2. Religious group perceptions of the formal justice system in selected districts

Question: To what extent do you agree with the following statements	District →	POSO (conflict affected)				DONGGALA (not conflict affected)				AMBON CITY (conflict affected)				NORTH HALMAHERA (conflict affected)				TERNATE (less conflict affected)		BAUBAU (not conflict affected)	
	Demo-graphics →	Pre conflict: Slight Muslim Majority				Muslim Majority				Pre conflict: Slight Christian Majority				Pre-conflict: Muslim Majority				Muslim Majority		Muslim Majority	
	Religion	No. Resp	Ave. / Mean	t-test	Sig.	No. Resp	Mean Rank	Sig.	Mean	No. Resp	Mean Rank	Sig.	Ave. / Mean	No. Resp	Ave. / Mean	T-test	Sig.	No. Resp	Ave. / Mean	No. Resp	Ave. / Mean
Formal justice system is effective in protecting rights of citizens without regard of age, gender, race & social status	Christian	307	4.09	-6.045	**.000**	217	275.6	**.000**	4.5	310	211	**.004**	5.06	227	5.18	-0.45	.7	9	5.67	11	4.36
	Muslim	179	5.07			248	195.7		3.46	93	173		4.53	255	5.25	-0.45		412	5.19	487	5.52
Formal justice system is effective in controlling abuse of power	Christian	301	3.77	-3.785	**.000**	214	271.3	**.000**	4.22	299		.17	4.78	228	4.61	-2.18	**.000**	8	4.38	11	4.27
	Muslim	176	4.36			242	190.7		3.38	91			4.53	245	4.91	-2.18		412	4.92	487	5.06
Formal justice system is effective in resolving conflicts between citizens	Christian	304	3.65	-6.021	**.000**	217	270.5	**.000**	4.49	309		.701	4.93	229	4.93	0.42	.7	9	4.78	11	4.18
	Muslim	170	4.54			243	194.8		3.54	93			4.86	248	4.88	0.42		413	5.07	489	5.42
Most people trust the police	Christian	308	3.79	0.488	.626	218	303.1	**.000**	4.49	301	196	.903	4.09	228	3.85	2.63	**.000**	9	4	11	3.82
	Muslim	176	3.72			247	171.1		2.62	91	198		4.11	251	3.45	2.62		415	4.13	483	4.2
Most people trust judges	Christian	297	3.93	-1.461	.145	216	272.6	**.000**	4.09	300	192	.299	3.91	230	3.64	2.29	**.000**	9	4.56	11	4
	Muslim	171	4.13			225	171.5		3.03	89	206		4.1	253	3.29	2.29		415	3.95	482	4.24
Most people trust lawyers	Christian	295	3.95	-2.807	**.005**	213	256.1	**.000**	4.04	295	190	.557	4	229	3.71	2.18	**.000**	9	3.33	11	4.18
	Muslim	173	4.35			214	172.1		3.17	87	198		4.11	251	3.38	2.18		413	3.96	484	4.19
Law officers (police, attorney, judge, correctional institution officer, lawyer) treat people well	Christian	301	3.93	-3.43	**.000**	217	285.6	**.000**	4.54			.139	3.98	225	4.24	-1.43	.2	9	4.67	11	4.09
	Muslim	175	4.44			246	184.7		3.06				3.68	251	4.45	-1.43		412	4.52	485	4.76
In formal justice system, everyone are equal in rights	Christian	301	4.08	-8.257	**.000**	215	278.2	**.000**	5.03	294	195	**.001**	5.07	230	4.57	2.31	**.000**	8	4.75	11	4.64
	Muslim	178	5.27			246	189.8		3.57	77	152		4.34	258	4.21	2.29		411	4.72	483	5.32
Law officers do not extort people	Christian	306	3.28	-2.957	**.000**	217	273	**.000**	3.53	288	187	.974	3.63	225	3.45	0.2	.8	8	3.38	11	4.82
	Muslim	171	3.7			232	180.1		2.65	84	186		3.63	253	3.42	0.2		407	3.55	484	3.9

Meanwhile, in neighbouring Donggala, there were similarly significant differences in the views of the two groups to that of Poso. However, the situation was reversed. The 'minority group', Christians, who make up about 15-20% of the population were consistently significantly more positive in the perceptions of the formal justice system than Muslims. This is an interesting finding, particularly when compared to the perceptions in neighbouring Poso which experienced such severe violence. In Poso, the Christian group, which at the time of the conflict had a slightly smaller population than Muslims in the district, and was a minority in the province and had more negative perceptions of the performance of the formal justice system, this same minority group in Donggala felt that more positive than the majority group.

When we look at the other districts, there is a similar pattern. In conflict affected North Halmahera, where conflicts also escalated as people were mobilised around religious group boundaries (even if the roots of the conflict were many and varied), the group which is a local minority, the Muslims, have significantly more negative views than the majority group in most of the statements asked in the UNDP survey. This was not the case, however, in Ambon city where communal conflict also occurred at a similar time to of that in North Halmahera and Poso. In this conflict the military and the police were deeply involved in the conflict. There were not only clashes between the police and military, but each aligned itself with one or the other side in the conflict (Bhakti et al, 2008). As such, it is not surprising that there are very few differences in the views of groups around their trust in the formal justice system, and perceptions of its effectiveness which were mainly negative.

Overall when we examine these patterns of perceptions, in all cases the smaller religious group in each district, particularly conflict affected districts, were significantly more likely to have negative views of the state and its provision of justices as well as treatment of citizens. Consequently, it seems that during the time it takes for legal reforms to take time to take full effect, there is a need to provide interim measures which improve not only local level performance of the police, the judiciary and the civil service but also the ability of more marginalised groups to access the legal services provided.

Donor funded development programmes in Indonesia: improving access to justice and reducing inequalities between groups

The UNDP assessment (2007:111) of access to justice in Indonesia identified a number of perceptions of injustice and inequalities between disadvantaged groups around obtaining access to government services and assistance in healthcare, education, and post-conflict rebuilding. Other key issues identified as obstacles to access to justice were included poor access to entitlements around the ownership and fair management of land and natural resources; the risk of gender violence; poor enforcement of labour rights; as well as criminality and inadequate law enforcement. Many of these were associated with the formal justice system.

As such, informal mechanisms available for dispute settlement and problem solving for the poor, were in most cases the preferred means of seeking remedy for a number of reasons: accessibility, affordability, and speed in obtaining immediate results (UNDP, 2007: x). Such informal mechanisms included those provided by tradition and customary institutions, religious leaders and civil society organisations (CSOs). However, the informal system, the assessment found, had its own inadequacies including the potential for unmonitored biased decision-making of mediators, particularly when local elites involved in this process were close to one or the other group involved. This disadvantaged marginalized groups such as women,

minority groups and the poorest of the poor (often isolated geographically and ethnically) (ibid: 112). According to the assessment, when mediation involved poorer, disadvantaged groups in disputes with parties outside the village (corporate/government), resolution through ADR was difficult, if not impossible. This is because villagers often do not know the processes and procedures available to directly discuss matters with these external parties.

Based on these research findings, a number of recommendations were raised for development and justice-related stakeholders:

- Intensify efforts to build community awareness of their basic and legal rights
- Reaffirm the role of the state in providing legal aid
- Support the provision of community legal aid through civil society organisations
- 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

Given these research findings, UNDP Indonesia embarked on an ambitious development agenda to improve access to justice for the most disadvantaged groups in some of Indonesia's far flung, mainly conflict affected provinces. Other agencies in Indonesia, including the World Bank and its Justice for the Poor programme, the European Union and the Asia Foundation have also been working to strengthen the legal and informal justice systems through a variety of initiatives.

In partnership with Bappenas, Indonesia's National Development and Planning Board, UNDP Indonesia developed the LEAD (Legal Empowerment and Access for the Disadvantaged) programme[23] to reduce group-based inequalities in access to fair and equitable justice-providing mechanisms, particularly for the most poor and marginalised. The programme aims to increase awareness of basic human and legal rights of disadvantaged groups, using a human-rights framework and human rights based approach to development[24].

One of the ways that LEAD does this is by supporting local civil society organizations (CSOs) that are already working on such issues through providing grants that enable them to target the poor, women, minorities, and other marginalized groups in villages. CSOs that are funded through a competitive bidding process are called local partners[25]. The programme also aims to contribute to justice sector reform (policy, coordination mechanisms, and state-civil society cooperation). At the national level, the programme is engaged in a consultation process with Bappenas to provide key inputs into a National Access to Justice Strategy to be integrated into the 2010-2014 National Mid-Term Development Plan. Through a working group that consists of representatives from the National Development Planning Agency, World Bank, UNDP and CSOs, the strategy incorporates mechanisms for strengthening the Indonesian

[23] UNDP Indonesia, LEAD Project Document, p1.

[24] The United nations states "in a human rights based approach human rights determine the relationship between individuals and groups with valid claims (rights-holders) and State and non-state actors with correlative obligations (duty-bearers). It identifies *rights-holders* (and their entitlements) and corresponding *duty-bearers* (and their obligations) and works towards strengthening the capacities of rights-holders to make their claims, and of duty-bearers to meet their obligations.". United Nations. "The Human Rights Based Approach to Development Towards a Common Understanding Among the UN Agencies." (2003: 2). As such human rights principles and standards should be incorporated into all stages of the program development process. In a speech to the World Summit in Johannesburg on August 28, 2008, Mary Robison stated "*A human rights approach adds value because it provides a normative framework of obligations that has legal power to render governments accountable.*"

[25] UNDP Indonesia, LEAD Project Document, p28.

legal system at all levels (in many of the substantive areas mentioned above) and has involved developing a series of action plans. It consultative process has also involved a series of consultations aimed at bringing in input from representatives of all 33 provinces in Indonesia regarding the national strategy[26].

The program aims to help communities help themselves in accessing justice.[27] This in practice means it endeavours to strengthen the ability of disadvantaged groups to demand that the state addresses issues in basic service delivery firstly by ensuring they are aware of their basic rights to these services through village level discussions (*diskusi kampung)* which are facilitated by CSOs, and secondly by bridging these communities with the appropriate individuals or institutions in order to ensure these rights are upheld. Research conducted by the authors[28] between January and April 2009 in conflict-affected Poso found that before such discussions were held, an extensive consultation process was used to ensure that disadvantaged groups and appropriate program beneficiaries were identified social networks that they trusted to encourage their participation. Local leaders were involved in the process, particularly in order to access networks of villagers, gain their support, and coordinate activities. The research found that this had the dual effect of ensuring they did not disrupt activities may potentially undermine local power structures, particularly where elites had previously enjoyed development spoils intended for the poor.

> *"For three months (before programme implementation) we tried to understand the location of the villages where we would be working, build our network within the village, and form discussion groups for each of the seven villages where we will be working. Although we have been working in most of these villages, we consulted with the village government and other village level figures for this particular programme, such as women and other village figures. The village head and these local leaders also helped us in introducing us to potential beneficiaries that we hadn't already spoken to."*
> (Womens Solidarity team leader – LEAD funded, Tentena, Poso District, 24/03/09)

Following the first phase of identifying beneficiaries, the CSOs then introduce the program and its potential activities to the village community to gain buy-in of the selected beneficiaries as well as other members of the community. CSOs then consult with beneficiaries to determine topics of discussion that they feel are important to them, introducing rights-related issues such as access to education, health, special local or national government initiatives, and women and child protection rights—including domestic violence. Villagers determine which topics best suit their collective interest, each of which is discussed through the course of three or four Village Discussion sessions between facilitating CSOs and villagers. This includes sessions that involves local government officials that have knowledge or the authority on the topic in question. By involving local government/officials in these discussions, communities can directly speak to officials where in normal circumstances this would seem an impossible if not highly difficult feat for disadvantaged groups to access.

> *"In Bukit Bambu Village, there were village discussions with beneficiaries who wanted to improve access roads throughout the village. These discussions were followed up through three local parliament hearings which resulted in the coordination of efforts between the local*

[26] LEAD Project Website, http://lead-project.net/theme/legal-justice-sector-reform#block-views-theme_partner
[27] Prodoc, p.15
[28] This is a part of a larger AusAID funded CRISE project in Indonesia and Sri Lanka on Development Effectiveness, conflict management and inequalities. The authors would also like to thank research assistants.

parliament and other relevant local government department until it realized through the 2009 local budget plan."

(Director, LPMS – LEAD funded, Poso District, 20/02/09)

The case in Bukit Bambu Village is an example of how Village Discussions removed the barriers of communication and negotiation between the state and poor village communities, giving the poor a forum to address problems in their village—in this case poor road access—with the appropriate local government officials that have the authority to follow through on these concerns.

In another example, LEAD also assisted one community to find alternative forms of problem solving that does not always need to be processed through the formal legal system. In Tentena, one of the local partners in partnership with LEAD is *Solidaritas Perempuan* (SP- or, Women's Solidarity), describes how they assisted villagers to identify their problems and possible solutions.

"There were two problems identified together with the women. One problem was a disfunction in the irrigation system up on the village hill side that has been left unrepaired to the point where irrigation water could not travel down to the fields at the lower levels. Another problem is the water pollution in the river as a result of garbage and land dumping by the hydro-power electric company that is located closeby. This has caused the women to be unable to retrieve clean water from the river for their daily activities. Through village discussions with the government and other relevant parties (in this case the hydro-power electricity company), these problems are being addressed. The irrigation system is under repair and irrigation water can now travel to the lower fields. Beneficiaries were also able to voice their concerns directly to the electricity company and now the company has cleaned up the river and si no longer dumping their garbage there."

(SP representative – LEAD funded, Tentena, Poso District, 24/03/09)

The authors of this paper affirmed that disadvantaged groups are targeted to attend these meetings together with village officials, customary leaders, religious leaders and in some instances government representatives from higher levels so that there is both common understanding of processes and rights of access as well as entitlements and that local elites are aware of the kinds of information citizens receive. As such, the programme provides better knowledge of and the consequent demand for better delivery entitlements to including health, education, legal aid, land titling, social security, subsidies, witness protection in police investigations, and access to assistance and institutions that provide dispute resolution services and legal remedy. It also provides a form of bottom up demand for accountability bottom up oversight of the state and both formal and informal justice systems.

However, demand-driven justice provision, particularly when related to access to state resources and legal remedy that were previously only enjoyed by more privileged groups with the knowledge of or control of such resources, challenges the status quo and undermines existing power structures. Some local officials perceive these discussions to be a critique of their performance in delivering public services rather than an outreach and information sharing service. Those with roles in government structures (this includes Village Heads, who are partially a part of the government structure although they are chosen by their own village community) often feel that they are being 'attacked', as by drawing attention to rights and entitlements, the programme highlights the incapacity of the government in delivering basic services.

For example, a village discussion on the provision of subsidized rice for the poor (a government sponsored development programme known as *Raskin*[29]) was perceived by the Village Head of one village as effort to target blame on him concerning decisions on the distribution of rice for the poor over three years ago. Raskin is a nation-wide government programme targeted for the poorest of the poor in a village, based on a poverty criteria set by the national-level statistics agency (or BPS, *Badan Pusat Statistik)*. Often, the number of the poor calculated by the statistics agency does not match the true number of the poor in a particular village. In Sintuwulemba village in Poso District, 40 households were identified to receive Raskin aid when in reality there were 80 households who were considered to be poor in that village. To reconcile this, the village head and other local figures held a discussion with the intended 40 heads of households to request their willingness to share their quota with the remaining 40 households—in which all parties agreed with and considered fair. The discussions produced a signed agreement and the process and decisions were officially documented for government records. The distribution was implemented without problems in spite of the reduction in the aid beneficiaries were supposed to receive. When the issue of Raskin was selected by beneficiaries as a topic for a LEAD sponsored Village Discussion, the village head felt that his past decisions in resolving problems with the distribution of Raskin were being questioned.

> "*It seems that these discussions aren't about defending the poor's rights, but rather an effort to find fault with the village government*"
>
> (Village Head, Sintuwulemba village, Poso District, 18/03/09)[30]

The statement shows how the village head perceived the Village Discussions to be a forum to spotlight weaknesses of the village government structure in their decision making processes. Apparently, CSOs consider this is as a normal reaction of village government structures towards this programme and thus attempts to reconcile these differences in perception by building good interpersonal relations to drive government buy in of not only the LEAD programme in general, but of the activities conducted in respective villages[31].

Other government officials fear that indications of abuse of authority might be discovered through these discussions, as disadvantaged groups—whom are often information poor—come to understand not only their rights, but the legal framework and processes that come along with it. This newfound capacity of the community (particularly disadvantaged groups) to question local officials and place scrutiny in the process of public service delivery is a phenomenon that alters the long standing paradigm concerning the relationship between the government and its community, where communication flows top-down and is often left unquestioned. Here, civil society organizations play a key role in liaising with the government to smooth the path of this new change. However, in a program such as LEAD which has no overarching supporting structure at the local level behind its grant making mechanisms, such as a District Coordinator who can smooth out misinterpretations of programme intentions and better communicate program intentions to district and lower levels of government, this is left to the individual capacities and commitment of CSOs. Such coordination with government and conflict management mechanisms (as this is causing tensions between incumbent power structures and disadvantaged groups) are not a part of program design. This is important in

[29] Raskin is an acronym in Bahasa Indonesia for Beras untuk Rakyat Miskin, or Rice for the Poor.
[30] Based on interviews, File: TP022_KADESSINTUWULEMBAkilo9_180309
[31] Based on interviews with LPMS, local partner for LEAD programme in Poso District, Central Sulawesi Province. File: TP001_Budiman_LPMS_200209

that in many cases the very nature of CSOs is adversarial to the government, and this makes coordination with government difficult.

LEAD is also influencing the way informal problem solving institutions, such as customary law councils (Dewan Hukum Adat) are perceiving rights and resolving disputes. Such councils, as was stated previously are often more accessible forms of redressing disputes as they are less costly, settlement is more immediate and charges and sanctions are set on the spot. However, the capacity of these informal mechanisms to ensure the application of human rights in its processes and settlements are questionable, particularly where programmes such as LEAD do not exist. One example is how principles of gender equality are often compromised is when cases of domestic violence or rape are settled in a way that tends to be unfair to women victims.

> "*In Toyado Village, there was a case last week where a woman was severely beaten by her husband. The case was settled only with a verbal statement by the husband that he would never do it again, without any written agreement. Ironically the abuse has already been repeated three times. The village head continued to say that going through the police would make the problem will be more complicated…Clearly I saw that the head of village, religious and adat figures were on the side of the perpetrator and considered the abuse as a small problem."*
> (Victim Assistance Division, Womens CSO – KPKPST – LEAD funded, Poso District, 27/02/09)

In Poso, *adat* institutions are perceived to pressure villagers to use *adat* mechanisms which resolve problems 'in the family way' rather than through the legal system in order to maintain harmony within families/the community. This becomes problematic when *adat* leaders advise against going through the legal system in cases where the disputing party(s) are not satisfied with the outcome of *adat* law decisions—emphasizing that settlements obtained through *Adat* law is final. This is not forgetting that *adat* law is explicitly recognised and respected by the Indonesian Constitution. Such institutions are not free from the influence of political or security sector elites.

For example, during the research it was revealed that a member of a local community policing group was charged with felony for taking sexual advantage of a mentally disabled, 17 year old girl in one village. At first, the family of the victim went to the *Adat* council seeking remedy. However, the final decision of the council was considered highly unsatisfactory by the victim's family which resulted in their decision to settle the dispute through court. The victim's family requested the help of a local CSO known to have links with other legal aid organizations, who then advised and sought for a well-known women's organization which specialises in providing assistance and advocacy for violation of women and child rights (this is a LEAD funded CSO). When the Adat council discovered that the victim's family would be pushing this case to the courts with the assistance the women's organization, a member of the *adat* council (who has a background in law) agreed to defend the police officer in court. This developed a perception of the adat council leanings towards the police.

> "*They (the adat council) were always trying to approach us to drop the case. There was one member of the council who had a law degree who became the lawyer defending the perpetrator. Because they did not succeed in convincing us to settle the problem through Adat, then they wanted to be against us—that was the message they were sending us. As members of the Adat council they should be protecting the victim who is a member of their community. They told us that they feared the village would be attacked by the police if we continued to go to the courts, and I told them that no such thing would happen because we are in a nation where*

the law applies. We were angered by the council's statement because the Chief of the local community police only spoke to the adat council to convince us to back down"

(Aunt of Victim/village resident, Poso District)

In spite of this, programme interaction with customary mechanisms of dispute settlement is having a positive impact through information dissemination on human rights conventions and stipulations, in which customary communities in some instances are beginning to apply and adapt into their laws.

" One of our organization members that is now in the Adat Council recently informed us that there wil revisions to Adat Law. There have been a few cases settled through Adat that are decided to be followed up through court. There will be revisions of the Adat law to follow the times."

(Womens CSO – KPKPST – LEAD funded, Women's CSO funded by LEAD, Poso District, 27/02/09)

CSOs partnering with LEAD have also supported disadvantaged groups to use the formal legal system when *adat* leaders make unfair decisions. By involving adat leaders through LEAD activities from the start and inviting them to attend village discussion throughout the programme period, local CSOs also interact with informal/alternative mechanisms for problem solving at the village level and thus indirectly expose the *adat* community to human rights-based approaches and principles of gender equality.

LEAD aims to strengthen the legal system at the community level, by selecting one or two individuals from targeted villages to receive paralegal training so that they are able to provide first hand legal assistance for disadvantaged groups in their respective villages. The training is conducted by one of the local partners based in Palu that is working with LEAD, specializing in providing legal assistance and advocacy in Poso. By providing paralegal assistance at the village level, villagers, and more particularly disadvantaged groups can access justice in a way that is not intimidating to them compared to if they were forced to do so directly through formal mechanisms or with expensive lawyers from outside the village.

By funding local CSOs, LEAD taps into a local knowledge network that is already conflict sensitive (although in the absence of a supporting coordination structure it is also generates tensions). In 'post' conflict contexts, targeting only one group in a community—no matter how vulnerable and poor they may be – may trigger new conflicts if these targeted groups fall on one or the other side of a larger conflict in a region. There are many cases in Aceh[32], as well as in Poso, where the targeting of IDPs—without considering to include support for host communities— has triggered new tensions and if extended over a period of time creates new inequalities where the once disadvantaged group becomes more privileged than others. Local partners that work in LEAD are aware of these potential divides and therefore include the whole community informally through their activities. Other programmes that don't tap into local knowledge or map local contexts may unwittingly ride on the back of local tensions.

One of the local partners of LEAD in Poso often extends the programme beyond targeted beneficiaries to include people of neighbouring villages that request to be involved in village discussions, and holds village discussions in neighbouring villages that are not target villages[33]. In such cases, local partners are being sensitive to include communities outside of

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[33] Based on interviews with LPMS, local partner for LEAD programme in Poso District, Central Sulawesi Province. File: TP001_Budiman_LPMS_200209

the target groups, while continuing to give special attention to vulnerable groups to ensure they are involved and , most importantly, active in these discussions. This is because in the presence of the whole community, the most vulnerable often feel reluctant to voice their concerns.

Other LEAD activities, which help reduce inequalities and better access to the state for disadvantaged groups include setting up grievance handing mechanisms in the form of ‘complaint posts’ (pos pengaduan) so that beneficiaries can report injustices that might need to be following up, or to give input to the programme itself. LEAD also builds on this potential for grassroot level empowerment by providing paralegal training so that vulnerable groups have a first hand, accessible means of addressing injustices. As communities become more aware of their basic rights, and thus of the injustices that they face in accessing these basic rights, grievances are channelled through local partners, calling in demands for assistance and advocacy to follow through on these cases. The greatest challenge however, is ensuring such practices are sustainable beyond the life of the programme. Because LEAD builds on existing community empowerment programmes of local CSOs, there is a relative certainty that current efforts will continue.

There is still room for improvement in the coordination of LEAD activities in Poso District. Coordination between local partners working under LEAD, as well as between local partners and the local government, is often conducted in an informal and ad hoc manner—relying highly on personal relations. During Poso District’s emergency phase in the year 2000, where humanitarian aid streamed in to alleviate the impact of conflict in the region, UN OCHA facilitated regular coordination meetings inviting government and NGOs. These meetings were considered useful in informing the aid community of the latest conditions in the field and of NGO activities that are implemented. The coordination meetings came to a halt after UN OCHA phased out of Poso District, and unfortunately, the local government did not continue to host the meetings[34].

Conclusion

Horizontal inequalities between groups along political, economic and social dimensions have historically compounded unequal access to justice in Indonesia. Unequal access to justice in the form of legal instruments, access to the state more generally, and or fair and equitable alternative mechanisms in Indonesia in turn sustains the inequalities along other dimensions as people cannot obtain or ensure that their rights to entitlements are upheld and potential poverty reducing mechanisms or forms of political representation can be accessed. Domination of the state by particular groups, favouritism towards clients through patronage networks, together with the use of the law to repress expressions of group based identity and basic human rights were features of the state under the previous New Order regime. These not only produce inequalities between groups, particularly locally, but were one of the drivers of communal conflicts in Indonesia which erupted in the early transition period. Under the previous regime that marginalised groups had no avenue for recourse to challenge the power and domination of particular groups even when it was unconstitutional or contravened their basic human rights as individuals.

Since 1998 there has been a massive amount of legal reform which has revoked the gamut of legal and policy instruments used by the New Order to sustain its power. Constitutional amendments, new statutes, a Bill of Rights and the Human Rights Law mainly recognise

[34] Based on interview. File: TP001_Budiman_LPMS_200209

individual rights with the exception of a few clauses. Although, many have indirect group-based inequality reducing effects. Even so, it will be some time before previous practices of corruption of the judicial and other legal service bodies can be eroded and enforcement of the new laws be felt as these constitute significant challenges. 2004 survey results demonstrate that there are still differences between groups, for example religious groups, in treatment by the state and trust in the state, particularly in conflict regions, where local groups which do not have majority representation have more negative perceptions. Some of this may be improved with the new anti-discrimmination law which considers the right to non-discrimmination along group lines.

To reduce inequality and improve equality between groups in practice, interim programmes that drive demand for justice from the bottom up are serving to strengthen some of the weaknesses in the legal and informal justice sectors, such as that provided by LEAD - UNDP. This is also providing bottom up accountability and oversight of the legal system, although it challenges preceding networks of power at the local level. As such, progressive programmes which use a rights based approach to reduce inequalities and challenge power structures should be aware that they may stimulate tensions with those groups who were originally privileged, and consequently require conflict management mechanisms to be built into these programmes. Despite this, interim initiatives that seek to strengthen the justice system (both the informal and formal mechanisms) from the bottom up are essential to ensuring that the most disadvantaged groups have access to legal remedy or alternative dispute resolution mechanisms in order to reduce inequalities.