ACCESSING THE COURTS

ANNE WALLACE AND LEISHA LISTER*

ABSTRACT

This paper examines the way in which people access courts, using a case study of recent reforms in the Indonesian Religious Courts to illustrate the importance of transparent processes, timely and accessible information and legal support. The paper examines the relationship between institutional reform and access to justice approaches, in light of the various theoretical models of judicial reform. It suggests that a dual-track approach has been effective in this situation and identifies some key features that have contributed to that success.

I INTRODUCTION

Judicial reform initiatives have become an important feature of the development programs that have been an increasing feature of the international landscape in the period since World War II. A recurrent theme in the literature on judicial reform is the debate between two competing models — a '"thin", pro-market efficiency model'[1] as opposed to a '"thick", pro-poor rights promoting model.'[2]

The former, widely perceived as the prevalent model, is a 'top-down' approach centring on reform of state institutions and legal frameworks to promote transparency, efficiency and accountability, with the overarching objective of promoting economic reform.[3] This 'market' or 'rule of law' model (sometimes characterised as supply, rather than demand, driven) has been of particular significance in reform efforts in Eastern Europe.[4]

The latter, a 'rights based' model, prioritises the promotion of access to justice by means of a 'bottom up' approach focussed on community engagement.[5] The development of this alternative paradigm in legal development, focussing on access to justice and legal empowerment has occurred against a wider context, including a move to a broader concept of 'development' with a focus on the rights and needs of the poor, rather simply promoting or creating the conditions for economic growth, and a concept of economic development itself

* Anne Wallace teaches in the Law and Justice Studies Programs at the University of Canberra, and researches in the fields of judicial administration and court technology. Leisha Lister is the Executive Adviser for the Family Court of Australia, and has spent the last 6 years working with the Religious Courts in Indonesia on access to justice issues discussed this article.

[1] Livingstone Armytage, Searching for Success in Judicial Reform – Voices from the Asia Pacific Experience (2009, Oxford University Press) 2.

[2] Stephen Golub, *Beyond Rule of Law Orthodoxy-The Legal Empowerment Alternative*, Rule of Law Series, No 41 (Carnegie Foundation, 2003); Benjamin van Rooij, *Bringing Justice to the Poor: Bottom-up Legal Development Cooperation* (March 25, 2009) 3-4 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1368185>; Livingston Armytage, 'Judicial Reform in Asia: Case Study of AusAID's Experience in Papua New Guinea: 2003-2007' (2010) 2(4) *Journal of Development Effectiveness* 442, 443.

[3] Armytage, above n 1, 2; Dory Reiling, *Technology for Justice - How Information Technology Can Support Judicial Reform* (Leiden University Press, 2009) 15; Jacqueline Vel, 'Policy Research on Access to Justice in Indonesia: A review of World Bank and UNDP Reports', 2010(1) *Law, Social Justice & Global Development Journal*, 6.

[4] Ibid.

[5] van Rooij, above n 2, 3-4.

that is focused at the micro, rather than the macro, level. [6] It has been an emerging feature of reform projects centred in developing countries in the Asia-Pacific region in recent decades, although the desire for judicial reform in order to enable, for example, a country to join the World Trade Organisation, also remains a strong incentive to participate in these types of reforms.[7]

It needs to also be seen against a background of increasing criticisms of the dominant rule of law approach, which is seen as being based on a series of assumptions — about is impact on the alleviation of poverty and promotion of economic growth — that have not been validated empirically.[8] It has also been criticised as having a poor track-record to achieving poverty reduction and over-emphasising the role of legal institutions, including the judiciary, in achieving reform,[9] and giving rise to approaches to implementing change that do not always take account of local contexts.[10]

This paper examines some recent judicial reform efforts in the Indonesian courts and suggests that a blend of the two approaches can achieve successful outcomes — under certain conditions. In particular, appropriate approaches by external agencies and organisations involved in international development projects can facilitate a process of engagement between civil society and legal institutions engaged in reform to achieve improvements in access to justice for the poor. It draws on a recent investigation into this subject matter by two leading Australian experts in Indonesian legal reform, concerning the outcomes of the Indonesia – Australia Legal Development Facility (LDF) project that ran from 2004 to 200, and was funded by AusAID (the Australian Government development agency) in the sum of A$25 million.[11] It also draws on the experience of both authors' involvement with aspects of that project, and a recent conference held in Indonesia to promote court administration.[12]

It begins by sketching an overview of both the 'market' and 'rights-based' approaches to judicial reform, before providing an introduction to the context of recent judicial reform initiatives in Indonesia. It then focuses specifically two case studies of successful reform initiatives in Indonesia's Religious Court, identifying particular factors that have contributed to that success. From that analysis, it identifies some key features, including approaches to partnerships in judicial development that support local autonomy and allow for the development approaches that meet local solutions, rather than focussing solely on models provided by external donor agencies.

II JUDICIAL REFORM MODELS

'Pro-market' reforms tend to emphasise the need to improve the quality and timeliness in court processes and judicial decision-making by reforming the legal framework in which economic activity takes place (laws, institutions, personnel), as well as providing a stable social environment within which market activity can flourish, by safeguarding public order

[6] Ibid, 19-20.
[7] Reiling, above n 3, 15.
[8] van Rooij, above n 2, 11-16; Golub, above n 2, 9-11.
[9] van Rooij, above n 2, 11-16; Golub above n 2,11-16.
[10] van Rooij, above n 2, 11.
[11] John W S Mooney and Budi Soedarsono, *Independent Completion Report* (Indonesia – Australia Legal Development Facility, 2003) 8-19.
[12] IACA Asia-Pacific Regional Conference, Bogor, Indonesia, 13-16 March 2011: *Asia Pacific Conference in Indonesia* (2011) International Association for Court Administration <http://www.iaca.web.id/>.

and security.[13] A central feature of the rights-based approaches are judicial reform projects that focus on improving access to justice and reducing poverty, as well as promoting good governance.[14]

The two models are not necessarily inconsistent; organisations such as the World Bank explicitly incorporate both rationales into their programs, with its concept of 'inclusive liberalism.'[15] However the relationship between them and the extent to which both can be successfully accommodated within judicial strengthening programs is a subject of debate. Some research suggests that even where a bottom up approach is explicitly mandated in reform agendas, and supported by development funding, there will be a tendency to revert, in the implementation of such an initiative, to conventional, 'top-down' state-centric activities such as 'developing case management systems, training clerks, renovating court infrastructure and so on.'[16]

III JUDICIAL REFORM IN THE INDONESIAN COURTS

The Indonesian judicial system, has long suffered from a poor reputation.'[17] In 2007, the World Bank described it in the following terms: 'Thirty years of political marginalization has left Indonesia's legal institutions degraded and ineffective. Rife with corruption and poorly resourced, the legal institutions suffer from a chronic lack of public trust.'[18]

In the period since the end of the New Order Era and the resignation of President Soeharto in 1998, there has been an active law reform movement. There has been a particular focus on providing access to justice, for the poor and marginalised. A national Access to Justice Strategy was launched in 2009,[19] and the country's current National Medium Term Development Plan 2010-2014 sets annual targets that must be met for specific access to justice initiatives (including those discussed below).[20] Access to justice for women and children has been identified as a priority area,[21] something that has particular significance for the work of the Indonesian Religious Courts.

Structural reforms that transferred authority for the courts from the executive to the judiciary and the appointment of a Chief Justice with a professed reform agenda, has been accompanied by the issuing of a number of Judicial Reform Blueprints, which include a focus on access to justice.[22] The most recent of these was issued in October 2010[23] and its emphasis on access to the courts has been reinforced by Presidential instruction.[24]

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[13] Ibid.
[14] Armytage, above n 1.
[15] Vel, above n 3, 6; See also *World Bank's Role* (2011) World Bank <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTINST/0,,menuPK:1974074~pagePK:149018~piPK:149093~theSitePK:1974062,00.html>.
[16] Armytage, above n 2.
[17] Cate Sumner and Tim Lindsey, 'Courting Reform: Indonesia's Islamic Courts and Justice for the Poor', Lowy Institute Paper 31 (2010, Lowy Institute for International Policy) 11, 12.
[18] World Bank, *Justice for the Poor in Indonesia: Legal Reform at Sub-National Level. Draft Strategy Paper 2006-2009* (World Bank, Jakarta, 2007).
[19] Wahyu Widiana, 'Access to Justice for the Poor: the Badilag Experience', (Paper presented at the IACA Asia-Pacific Regional Conference, Bogor, Indonesia, 13-16 March 2011) 11.
[20] Widiana, above n 19, 1; Diani Sadiawati 'Access to Justice for The Poor' (Presented at the IACA Asia-Pacific Regional Conference, Bogor, Indonesia 13-16 March 2011).
[21] Sadiawati, above n 20.
[22] Sumner and Lindsey, above n 17, 13-14.

However, as Sumner and Lindsay note,[25] this access to justice reform agenda, at least prior to the most recent judicial blueprint, appeared to have had little impact on public perceptions of the courts, which are still generally low. The sole and striking exception to this rather gloomy picture is Indonesia's national system of Religious Courts, which consistently score highly in surveys of public trust and competence.[26]

The Indonesian Religious Courts deal with cases where the parties are Muslim and on a range of issues related to what in Australia would come under the general rubric of 'family law' — marriage, divorce, divisions of property, and the status, maintenance, custody and guardianship of children — as well as issues related to inheritance, wills and testaments, charitable requests and philanthropy and 'shar'iah' economy issues.[27] In a country of over 230 million[28] where over 80% of the population is Muslim,[29] they are among the busiest courts in the country.[30]

To give an indication of their size and significance, overall there are 807 courts established over Indonesia's 34 provinces and 443 districts. Of those, 372 are Religious Courts (342 first instance courts, and 30 higher courts). In simple terms, 46% of the country's courts are Religious Courts.[31]

Much of the reform effort in the Religious Court over the past 15 years has been carried out in co-operation with AusAID funded programs. One feature of those programs has been the involvement of Australian courts as development partners; the Religious Courts have worked particularly closely with the Family Court of Australia over the past fifteen years, on issues such as case management, financial management, and access to justice issues.[32]

This examination of the Religious Courts' success focuses on two reform initiatives: firstly, a government funded program to assist those living in remote areas and those who were unable to afford court fees to access the court's services, by increasing the use of court circuits and providing a system of fee waivers, and secondly, the court's innovative use of modern information and communications technology to create a culture of information exchange, transparency in decision-making and promote access to the courts.

An analysis of both these reforms suggests that while the initial impetus for judicial reform in Indonesia may be influenced particularly by the market model of judicial reform, a strong focus on access to justice within Indonesia, and within the leadership of the courts, and the Religious Court in particular, has resulted an approach that has focussed on access to justice

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[23] Widiana, above n 19, 1.
[24] Ibid.
[25] Sumner and Lindsey, above n 17, 13-14.
[26] Ibid.
[27] Sumner and Lindsey, above n 17, 1-2.
[28] World Bank, *World Development Indicators* (2011) Google Public Data Explorer http://www.google.com.au/publicdata/explore?ds=d5bncppjof8f9_&met_y=sp_pop_totl&idim=country:IDN&dl=en&hl=en&q=what+is+the+population+of+indonesia#ctype=l&strail=false&nselm=h&met_y=sp_pop_totl&scale_y=lin&ind_y=false&rdim=country&idim=country:IDN&ifdim=country&hl=en&dl=en.
[29] *About Indonesia* (2009) Embassy of the Republic of Indonesia <http://www.kemlu.go.id/canberra/Pages/TipsOrIndonesiaGlanceDisplay.aspx?IDP=1&l=en>.
[30] Sumner and Lindsey, above n 17, 2.
[31] Widiana, above n 19, 1.
[32] Ibid, 1-2.

for the poor, while pursuing structural reform. This has been facilitated by an emphasis by those Australian agencies, in particular the Australian courts working with the Religious Courts that has focussed on providing support that has 'enhanced the ability of the Indonesian judiciary to manage and resource their court as an independent institution - in a very difficult cultural, political and institutional setting'[33] rather than importing pre-determined solutions.

III FEE WAIVERS AND CIRCUIT COURTS

Two of the most successful initiatives undertaken by the Religious Courts have been the conduct of circuit courts, and the extension and publicising of the court's ability to waive court fees in certain cases (prodeo cases).[34] As explained below, these initiatives operate in tandem.

Both initiatives were instituted as a result of the findings of an access and equity study conducted between 2007-2009 to investigate public perceptions about family law and access to the Religious courts.[35] The study was conducted with the assistance of the Family Court of Australia and the Indonesia Australia Legal Development Facility, as part of a project funded by the Australian Agency for International Development ('AusAID').[36] A follow-up survey was conducted in 2009.[37]

Among its findings, the survey revealed that Indonesia's poor experience significant barriers to using the services of the Religious Courts to deal with family law matters. One particularly marginalised group, who score very low on access to justice indicators, are households headed by single women (defined as widowed, divorces or separated, single women, unmarried women with children, neglected wives, women caring for very ill husbands.[38] The 2009 survey found that one third of these households live below the Indonesian poverty line (US$1 per day).[39]

The access to justices surveys found that, for these households, their lack of access to justice often result in 'a cycle of non-legal marriage and divorce.'[40] PEKKA, a non-government organisation that supports and advocates for this group, report that less than 50% of their members have registered marriages; less than 4% would take a case to the court, only one in 10 obtain divorce through the court because of the cost,[41] and 56% of children in these households do not have birth certificates.[42]

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[33] Mooney and Soedarsono, above n 11, 8-19.
[34] Widiana, above n 19, 2.
[35] Ibid; Bagir Manan, 'Access to Justice in Indonesia' (Paper presented at the IACA Asia-Pacific Regional Conference, Bogor, Indonesia, 13-16 March 2011) 1. For a full account of the findings, see Cate Sumner, *Providing Justice to the Justice Seekers: A Report on the Indonesian Religious Courts Access and Equity Study* (2010); Sumner and Lindsey, above n 17, 18-27.
[36] Ibid; *Our Projects: Indonesia-Australia Legal Development Facility (IALDF)* (2011) GRM International <http://www.grminternational.com/hiBand/projects/project_sheet.cfm?pdsnumber=356>.
[37] Widiana, above n 19, 4.
[38] Nani Zulminarni, 'Women Headed Household Empowerment (PEKKA) Organizing Around Access to Justice' (Presented at the IACA Asia-Pacific Regional Conference, Bogor, Indonesia, 13-16 March 2011).
[39] Ibid.
[40] Widiana, above n 19, 2.
[41] Zulminarni, above n 38.
[42] Ibid.

Lack of registration, of both births and marriages, has also been revealed as a significant issue, and are often linked, so that, for example, production of a valid marriage certificate is required in order to register the birth of a child.[43] Without valid identity documents, it can be difficult for these households to access state resources, such as cash transfer schemes, and free health care for the poor.[44]

For this group, the main barriers to accessing the services of the Religious Courts were identified as a lack of financial resources to pay court fees and travel to court. [45] Indonesia is a vast county, and the survey found that distance to court and transport costs could add up to 70% to the total cost of having a matter brought to court.[46] For PEKKA households, the average distance to a court from their home was 20 kilometres.[47] Such difficulties were obviously exacerbated by the fact that the Religious Courts had been unable to meet the requirement laid down by law to establish a permanent court in each of Indonesia's 443 districts.[48] Survey findings indicated that 88% of those for whom divorce might be an option would seek to obtain a legal divorce if court fees were waived and 89% would be more motivated to do so if the court hearing was held in a nearby town. [49]

The surveys found that another significant factor contributing to lack of access to the Religious Courts was the inability of potential clients to access information about court services, an inability further impeded by low levels of literacy.[50] The report recommended the use of circuit courts as having the potential to assist with improving levels of awareness and providing information to communities about court services, as well as answering an immediate need to assist communities deal with their legal matters.

The recommendations of the report on the survey were to increase the budget provided to the Religious Courts to provide for the waiver of court fees (prodeo cases) and for the conduct of circuit courts.[51] It also recommended that more frequent circuits be held, and that there be a program of raising public awareness, and providing more and better information, about court procedures, including fee waiver.[52]

Following the 2007 survey, the Supreme Court increased the budget for prodeo cases, and additional funding was also provided to enable the Religious Court to conduct more circuit courts.[53] Subsequently, there was a four-fold increase from 2007-2010 in the number of clients from remote and regional areas are accessing the court (an increase from 3,359 to 13,011).[54] While circuit courts were carried out 'from time to time'[55] prior to the reform process, the result of the reforms and additional funding has been to make the scheduling of circuits a more regular, and demand-driven process (as we will discuss below) and the court

[43] Widiana, above n 19, 9.
[44] Sadiawati, above n 20.
[45] Widiana, above n 19, 2, 4, 8.
[46] Ibid.
[47] Zulminarni, above n 38.
[48] Widiana, above n 19, 8.
[49] Ibid 4.
[50] Ibid 2, 8; Sumner, above n 35.
[51] Sumner, above n 35; Widiana, above n 19, 2, 8.
[52] Sumner, above n 35; Widiana, above n 19, 3.
[53] Sumner and Lindsay, above n 16, 30.
[54] Widiana, above n 19, 9.
[55] Ibid, 7.

now conducts circuits in 179 locations.[56] There has been a significant increase in the number of prodeo cases.[57]

However, it is important to note that merely increasing the budget for both these activities was not, on its own, responsible for this increase in access to justice. Indeed initially there were difficulties in spending the increased budget for fee waiver.[58] In part, this was a result of a lack of process, and it was subsequently necessary to introduce new systems of financial reporting to monitor the expenditure of the budget for prodeo and ensure appropriate accountability (discussed further below).[59] The increase in budget has been complemented by the court setting yearly targets for the number of prodeo cases to be dealt with using this funding.[60]

Lack of awareness among potential court clients of the availability of fee waiver was revealed as a significant issue and one that the Religious Courts have tackled by means of a novel partnership with PEKKA, the non-government organisation (NGO) referred to above that works to strengthen and support households headed by women. The conduct of circuit courts has also been seen as a way to increase community awareness about court services and, here again, the involvement of PEKKA has been critical to the court's success.

PEKKA itself is a national network comprising 503 grass roots organisations, covering 353 villages, 86 sub-districts, and 28 districts, throughout the country.[61] Its response to the national access to justice strategy has been to employ a number of techniques including critical awareness raising, paralegal development, the use of multi-stakeholder forums, conducting research and networking.[62]

PEKKA were involved, and facilitated, the 2007 and 2009 access to justice surveys, but their involvement was conditional on there being an agreement with the court that the research would be used to deliver actual benefits to the women who had participated in it. The organisation actively sought to use its involvement in the research to facilitate dialogue with higher levels of the Religious Court. That dialogue resulted in an awareness among PEKKA of the fee waiver budget and that it was not being fully taken up, and PEKKA then took on the project, working with the court, use the prodeo budget, by assisting their communities to access fee waiver and circuit courts conducted at village level.[63]

All these strategies have been employed to assist the access to justice program in the Religious Courts. At grassroots level, paralegals literally doorknock villages asking women if they have marriage certificates, if separated if they want a divorce, or if their children's births have been registered. They explain about court costs, fee waiver and the court process. As the national co-odinator of PEKKA recently explained, communities are sometimes initially reluctant to approach the court, but after hearing about fee waiver they are more eager to come.[64] The paralegals provide ongoing assistance and support by preparing applications for

[56] Ibid, 9.
[57] Ibid 7, 9.
[58] Ibid, 3.
[59] Ibid, 6.
[60] Ibid, 7.
[61] Zulminarni, above n 38.
[62] Ibid.
[63] Ibid.
[64] Ibid.

women seeking orders from the court and accompany them to the court to for filing of documents, and for hearings.[65]

However, the work done by PEKKA workers goes further than the type of paralegal work that would familiar in the Australian context. PEKKA volunteers organise a volume of cases ready for hearing, arrange for registration of the necessary paperwork in the court and then request the court to conduct a circuit court in the area where the cases are ready to be heard. [66]

Circuit court hearings then, are co-ordinated jointly by the Religious Court and PEKKA. After cases are filed at the court, information about the court process and requirements is fed back to the applicants by the paralegals.[67] Cases are usually heard quickly with a decision handed down in two to three days.[68] In 2010, more than 4,000 cases were processed through circuit courts in this fashion.[69]

As at 2010, 120 well-trained PEKKA paralegals had assisted 258 clients to access a village circuit court, of whom 226 had been fee waiver cases. It has facilitated 1689 clients to access birth certificates for their children.[70] On the 'demand side', PEKKA has identified no less than another 9323 potential cases for the court; information that is, in turn, useful for the court in planning its workload.[71]

However, while PEKKA's involvement has been critical in enabling the court to achieve its to expending its fee-waiver and circuit court budget and, in a country where public trust in the judicial system has long been marred by a lack of transparency and accountability, it has also been important that the fee waiver program, has been administered in a way that demonstratives those qualities as well. Here the major enabling factor has been a strategic and thoughtful use of simple and effective information and communications technology ('ICT').

IV USE OF INFORMATION AND COMMUNICATIONS TECHNOLOGY

As discussed above, the increased budget for prodeo cases necessitated new systems to monitor and report on the way that budget was allocated.[72] At a more general level, of course, good reporting systems are important to helping the courts appropriately allocate resources and accurately gauge the level of demands for access to justice and court services.[73]

A timely and accurate reporting from 706 courts throughout a large, geographically scattered country can be a resource-intensive activity for any organisation. A particular consideration for the Indonesian courts has been the time taken to collect data, compile and process reports. Reporting is still largely done in paper-based formats which are sent by mail, in a two-stage

[65] Ibid.
[66] Ibid.
[67] Ibid.
[68] Ibid.
[69] Ibid.
[70] Ibid.
[71] Ibid.
[72] Widiana, above n 19, 6.
[73] Aria Suyudi, 'SMS Data Collection to Increase Access to Justice – enhance Transparency and Accountability: Indonesian Experience' (Presented at the IACA Asia-Pacific Regional Conference, Bogor, Indonesia 13-16 March 2011).

process which involves monthly reports being compiled at regional level and then consolidated at the Supreme Court level, involving some 29 forms to be completed.[74] The complexities of this process have been exacerbated by changes in the management responsibilities from central government to the judiciary in 2005. [75]

As a result the court leadership has had difficulties in obtaining accurate data about workload and case processing in the lower courts and in monitoring and enforcing reporting requirements.[76] Although improvements in infrastructure are being made, including the use of information and communications technology, such as email, the majority of the courts still lack these facilities.[77]

On the other hand, SMS mobile phone technology is widely available in Indonesia, and offers easy to use tool that can be mobilised quickly;[78] and it is this that the Religious Courts have employed to provide a cost effective method of obtaining timely reports, with a system called SMS Gateway.[79] Indonesia enjoys 100% coverage cellular signal nation-wide, and has over 180 million cellular subscribers, catering to over 240 million citizens, as opposed to a merely 30 million broadband users. [80]

From the perspective of the courts, SMS technology is very economical to operate, requires a minimal investment (court staff either have one, or can be issued with a court mobile).[81] SMS can also be used for broadcasting mass messages to staff (such as reminders about due dates for reporting information) as well as for reporting purposes. [82]

In simple terms, the way it works is to require court staff to SMS their report data, in a required format, to a central court number. The data is uploaded from that message onto the court server and collated. [83] The resulting reports are then uploaded onto the Court's website,[84] so that court staff, and the public, can see the resulting statistics as they are added, in real time.

The SMS Gateway has been very successful in reducing the time required to both transport and process reports. Data is transported practically instantaneously and processing time has, also been reduced 'from months to almost instant.'[85] The strategy is to use it to complement existing printed reports, so that it also serves as a vehicle to introduce staff to a change to a more IT-based reporting environment.[86]

The publication of the resulting statistics is only part of the function of the Religious Courts' website. The site, launched in 2006, has been purposefully used as a platform 'to

[74] Ibid.
[75] Suyudi, above n 73.
[76] Ibid.
[77] Ibid.
[78] Ibid.
[79] Widiana, above n 19, 6; Suyudi, above n 73.
[80] Suyudi, above n 73.
[81] Ibid.
[82] Ibid.
[83] Suyudi, above n 73.
[84] At <http://www.badilag.net/>.
[85] Ibid.
[86] Ibid.

communicate new events, policies, information and training packages to all courts via the Internet.'[87] The information thus communicated is also publically available, which is part of a deliberate a court strategy which has focused on the use of the website to promote accountability and transparency.[88]

V STRUCTURAL REFORM – LEGAL INSTITUTION STRENGTHENING

These initiatives in Indonesia's Religious Courts have taken place against a backdrop of capacity building with the courts themselves, something that has been a significant part of the overall law reform agenda. Indeed, it has been observed that: 'The judiciary is one of the few legal institutions that has marked the reform policy with structural change, improved internal coherence and an internally driven evolution,'[89] although the overall pace of change remains slow, and concerns about corruption remain significant.[90]

The AUSAid-funded Legal Development Faculty Program included a judicial reform agenda, which an independent evaluation has assessed as the most prominent and successful aspect of that program,[91] pointing to 'increased judicial transparency and accountability in the Supreme Court … enhanced ability of the court to manage its business under the 'One Roof' administrative arrangements; publication of fees and case timetables, internet publication of judgments, and reduction on case-processing times and backlogs.[92] Another significant outcome of the structural reforms identified by Sumner and Lindsay in the case of the Religious Courts, has been the appointment of a dedicated court administrator, at a senior level, someone who has management, rather than judicial, qualifications. This is contrary to the position in the other Indonesian courts, where these positions tend to be occupied, on a rotating basis, by members of the judiciary.[93]

VI DISCUSSION AND ANALYSIS

This recent reform experience in the Indonesian courts is interesting in several respects. On the one hand, it can be attributed to factors inherent in that particular court, including strong leadership, which is committed both to improving its public image, but also to a social justice agenda,[94] the use of a dedicated court management position with specialist expertise to run the Religious Court, as well as a strong commitment to electronic communication, in particular, the use of the Internet.[95]

The broader context in which institutional reform is being pursued in Indonesia is also significant; notably, the strong emphasis in national rhetoric and policy on access to justice, and the active role played by non-government organisations, such as PEKKA, and other elements of civil society, in the reform process. That context also includes the economic and social changes occurring in Indonesia; the rapid development of information and communications technology, in particularly, SMS and Internet. These are developments that

[87] Sumner and Linsey, above n 17, 34.
[88] Ibid; Widiana, above n 19, 8.
[89] Mooney and Soedarsono, above n 11, 18.
[90] Ibid 15.
[91] Mooney and Soedarsono, above n 11.
[92] Ibid, 19.
[93] Sumner and Lindsay, above n 17, 33-4.
[94] Ibid, 34-5.
[95] Ibid.

are not perhaps often perceived as immediately relevant to the many Indonesian who live below the poverty line and lack the capacity to access even basic services, yet these reforms illustrate that combined approach – working at village level with NGOs, coupled with a willingness to engage with modern information and communication tools, can be very effective in judicial reform.

The role of grassroots organisations such as PEKKA in assisting courts (and government funders) to implement reforms to improve access to justice and obtain accurate data about the potential demand for judicial services is also significant.[96] Although courts in many countries, do generally seek to engage more broadly with their constituents and representative interest groups these days, what is striking about this example is that the relationship between the NGO and the court has been developed as one of equals – PEKKA's supporting the court's reform projects in order to deliver real benefits to its constituency.[97]

There may be parallels or lessons that can be drawn here for other courts and their constituencies; not just in Indonesia but also elsewhere in the world. The specific nature of the jurisdiction and the issues may change; but it may be possible to forge a useful operating partnership in other contexts – the delivery of court services to indigenous Australians in this country, is an obvious example that springs to mind.

The Indonesian Religious Court's experience with the use of ICT is particularly interesting. As Reiling points out, technology is often highlighted as a means to achieve reform in judicial systems, and resolve a range of problems in developing court systems, ranging from the immediately practical (publication of court decisions) to the symbolic (acting as a signifier of a modern judicial system), but in practice it does not resolve them so easily.[98]

One common complaint is that overseas aid agencies who fund judicial reform projects in developing countries often import expertise that brings with it pre-defined solutions based on experience in developing countries. These solutions sometimes provide unsuitable for adaption to the local system, for a range of reasons, including lack of supporting infrastructure, adequately trained personal, ongoing budget for technical support and, critically, a failure or inability to adapt or adjust them to the needs of the local court system.

While the development of an SMS reporting system is not, in itself, an Indonesian initiative, the fact that this solution to the problem of timely reporting was suggested, and implemented, by and using local 'in-house' technical expertise within the courts, is significant. It demonstrates that development projects may be better fussed on supporting local expertise to identify sustainable solutions to local needs, rather than importing pre-defined solutions.

VII CONCLUSIONS

These recent reform initiatives in Indonesia's Religious Court have attempted to marry both approaches to judicial reform – a grass roots justice initiative and a structural reform program in the judiciary. The results suggest that rather than viewing these development approaches as competing paradigms, an approach that sees them work in tandem maybe more successful in promoting access to justice for the poor, at least under certain conditions.

[96] Zulminarni, above n 38.
[97] Ibid.
[98] Reiling, above n 2, 15-16.

An independent evaluation of the IFLF program identified the need to improve the process for monitoring and evaluating such projects to ensure, among other things, that lessons learned are captured and disseminated, and that the process of monitoring and evaluation receives attention from the outset, so that there is a clear understanding of what constitutes a 'lesson' in term of project's objectives, rather than simply at the level of project activities.[99] Identifying conditions under which a successful structural reform can support access to justice could be a critical part of such evaluation.

One lesson that may be able to be drawn from the Religious Court experience, is that the fact that it has been served by a dedicated and specialist court administrator (unlike the other Indonesian courts) and has a clearly defined jurisdiction may mean that these solutions have been easier to craft and implement than would be the case in a court with a more diverse jurisdiction, juggling competing demands, without the benefit of such administrative expertise. A challenge now for the Indonesian courts will be to see if the success in the Religious Court can be continued and extended to other areas of the country's judiciary.

[99] Mooney and Soedarsono, above n 11, 9-10, 36-40.