

Legal Empowerment Working Papers

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Promoting Legal
Empowerment in the
Aftermath of Disaster: an
Evaluation of Post-Tsunami
Legal Assistance Initiatives
in Indonesia

Erica Harper



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LEGAL EMPOWERMENT WORKING PAPERS

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International Development Law Organization
Viale Vaticano, 106
00165 Rome, Italy
Tel: +39 06 4040 3200
Fax: +39 06 4040 3232
Email: idlo@idlo.int
www.idlo.int

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PROMOTING LEGAL EMPOWERMENT IN THE AFTERMATH OF DISASTER: AN EVALUATION OF POST-TSUNAMI LEGAL ASSISTANCE INITIATIVES IN INDONESIA

Dr Erica Harper¹

Executive Summary

The Indonesian province of Aceh has experienced two devastating events in recent years: the 1976–2005 separatist conflict and the earthquake and tsunami in 2004. These events damaged major elements of the legal, social and physical infrastructures in the province. Ironically, the tsunami contributed to a reconciliation process that culminated in a lasting peace settlement. The many consequences for Aceh include developments involving the interface between law, post-disaster reconstruction and post-conflict recovery. In this context, the present chapter discusses the International Development Law Organization's (IDLO's) *Post-Tsunami Legal Assistance Initiative for Indonesia* (February 2006 – September 2007) and its follow-on operation *Supporting the Development of the Justice Sector in Aceh Program*, which started in January 2008. In particular, this chapter highlights the challenges encountered in undertaking a legal empowerment program—one that involves the use of rights to benefit disadvantaged populations directly—in the aftermath of a natural disaster and a conflict and identifies lessons learned and possible best practices.

¹ This chapter draws on the author's experience as Chief of Party of the IDLO Post-Tsunami Legal Assistance Initiative for Indonesia (2005–2007) and its follow-on operation Supporting the Development of the Justice Sector in Aceh (2008–2009). The program of activities was implemented by the IDLO team of three international staff members and 28 national officers in partnership with the provincial *shari'a* courts, state courts and local NGO *Kelompok Kerja Transformasi Gender Aceh*. The author thanks Ms Hannah Derwent and national staff of the Banda Aceh field office for their assistance in developing this chapter.

Introduction

The Indonesian province of Aceh lies at the northern extremity of the island of Sumatra. Aceh's relative isolation, particularly during the Dutch colonial period, and strong Islamic identity contributed to the development of a unique legal tradition inextricably linked to *shari'a* (Islamic law). The province's physical isolation was exacerbated by an armed conflict between the separatist movement *Gerakan Aceh Merdeka* (GAM) and the Government of Indonesia (GOI) that commenced in 1976. The conflict intensified between 1990 and 1998 when the Government declared the province an "area of military operations" (*Daerah Operasi Militer*).

The development of the Acehnese legal system has been influenced by the various degrees of autonomy granted by the Indonesian Government. In 1999, in an effort to halt the conflict, *Law 44/1999 On the Special Status of the Province of Aceh* was promulgated. "Special Status" allowed for the implementation of *shari'a* in social life and the education system, facilitated policies designed to preserve and empower customary institutions and permitted the establishment of an institutionalized body of *ulamā* (religious scholars) to advise on regional policy.² Two years later, amid growing tensions between GAM and the Indonesian military, a second autonomy package was introduced. *Law 18/2001 on Special Autonomy for the Province of Nanggroe Aceh Darussalam* formally created the province of *Nanggroe Aceh Darussalam*, otherwise known as Aceh or NAD, and granted it a more extensive form of self-government.³ Powers devolved by the central Government included substantive control in the areas of policing and law and order,⁴ and the establishment of *shari'a* courts (*Mahkamah Syar'iyah*) with jurisdiction over family, inter-family and social matters for Muslims.⁵ Of particular importance was the power granted to the Acehnese provincial legislature (*Dewan Perwakilan Rakyat Daerah*) to pass regional regulations (*qanun*).⁶ The subsequently promulgated *qanun* introduced a more codified form of Islamic law and established new Islamic legal institutions such as religious prosecutors and the *Wilayahul Hisbah* (*shari'a* police).⁷ In May 2003, following a breakdown in peace negotiations, then President Megawati Soekarnoputri declared martial law in Aceh.⁸ At that time Aceh's new Islamic legal institutions were still in their infancy and only partially operational.

On 26 December 2004 an earthquake and tsunami struck Indonesia causing massive loss of life and widespread destruction. In 2006 the death toll stood at 126,000, with a further 93,600 persons missing presumed dead. The districts of Aceh Besar and Aceh Jaya and the municipality of Banda Aceh were most severely affected by the disaster. In addition to the dead and missing, the tsunami displaced 514,150 persons and affected over 300,000 land parcels; 252,223 houses were

² International Crisis Group, 2001, *Aceh: Can Autonomy Stem the Conflict?*, Asia Report No. 18, 27 June 2001, available online at <www.icg.org/home/index.cfm?id=1456&l=1> (last accessed 22 February 2004) 31; UNDP, 2003, *Aceh Regional Public Expenditure Review*, report on file with author, 1; T Lindsey and R Phillips 'Inheritance, Guardianship and Women's Legal Rights in Post-Tsunami Aceh: The Interaction of Syariah, Adat and Secular Laws' IDLO (2005) 3-4.

³ ICG (n 2) 12; Lindsey (n 2) 4.

⁴ Arts 21-3 Law 18/2001 on *Special Autonomy for the Province of Nanggroe Aceh Darussalam*.

⁵ *ibid* arts 25-26; see also 'Access to Justice in Aceh: Making the Transition to Sustainable Peace and Development' UNDP (Draft Report, May 2006) 23.

⁶ Art 1(8), 9 Law 18/2001 on *Special Autonomy for the Province of Nanggroe Aceh Darussalam*; Lindsey (n 2) 4.

⁷ Lindsey (n 2) 6.

⁸ See generally 'Aceh under Martial Law: Unnecessary and Dangerous Restrictions on International Humanitarian Assistance', *A Human Rights Watch Briefing Paper*, Human Rights Watch, September 2003; see also Edward Aspinall and Harold Crouch, 'The Aceh Peace Process: Why it Failed', *East West Center, Washington*, 2003.

partially or completely damaged.⁹ The United Nations Development Programme (UNDP) estimated that 34 percent of justice-related infrastructure including police stations, prosecution offices, court houses and prisons had been gravely damaged.¹⁰ Six courts, together with computers, libraries and archives, were completely destroyed. The *shari'a court* lost 85 staff members, including 5 judges and 13 administrative staff.¹¹

In the wake of the tsunami, the GOI and GAM agreed to recommence negotiations to end the conflict in Aceh. These negotiations took place in Finland and resulted in the signing of a *Memorandum of Understanding between the GOI and the Free Aceh Movement* on 15 August 2005 in Helsinki. The memorandum of understanding stipulated that a new Law on the Governing of Aceh (LOGA) would come into force no later than 31 March 2006.¹² The LOGA was passed by the Indonesian House of Representatives on 11 July 2006 and signed by President Soekarnoputri on 1 August 2006. Rather than modify Aceh's legal structures, the LOGA enhanced the legitimacy of existing institutions, particularly the *shari'a courts*.¹³ This law, together with *qanun* subsequently passed, created a new legal framework unique to Aceh and strongly Islamic in nature. The pillars of this framework most relevant to the resolution of tsunami-related disputes are discussed below.

The General Courts (Pengadilan Negeri)

Aceh has general state courts in each district and an appellant court in Banda Aceh. These courts have jurisdiction over a range of matters that includes criminal and civil offences, industrial relations, trade and tax. Pure land disputes would normally be dealt with by the general courts as part of their general jurisdiction pursuant to Article 50 of Law No. 2 of 1986 *On the General Court*.¹⁴ In Aceh, however, there was uncertainty following a Letter of Decision of the Chief Justice of the Supreme Court dated 6 October 2004, which purported to confirm a transfer of jurisdiction to the *shari'a courts* for criminal (*jinayah*) and civil-commercial (*muamalah*) cases covered under *qanun*.¹⁵ Following the tsunami, the *shari'a courts* asserted their reliance on the Supreme Court letter and Qanun No. 10/2002 to claim jurisdiction over any land dispute that formed part of a broader inheritance dispute.¹⁶

The Shari'a Courts (Mahkamah Syar'iyah)

It is important to emphasize that Aceh is not a "*shari'a state*". That is, Islamic law is not binding on every citizen or every element of its legal system to the exclusion of secular law. Aceh remains a province within Indonesia's secular governmental and legal systems. Throughout the country religious courts (*Pengadilan Agama*) operate with jurisdiction over Muslims in the areas of marriage, divorce,

⁹ 'Aceh and Nias One Year After the Tsunami: The Recovery Effort and Way Forward' Agency of the Rehabilitation and Reconstruction for the Region and Community of Aceh and Nias (BRR), (December 2005) 14; Dr D Fitzpatrick 'Restoring and Confirming Rights to Land in Tsunami-Affected Aceh' UNDP/Oxfam Report (July 2005) 4-5.

¹⁰ Consultative Group on Indonesia (CGI), 'Indonesia: Preliminary Loss and Damage Assessment' (January 2005) 64.

¹¹ *Mahkamah Syariah*, NAD (2005), *Laporan Tahunan Mahkamah Syariah Provinsi Nanggroe Aceh Darussalam Tahun 2004*, unpublished paper, on file with T Lindsey; see also Lindsey (n 2) 8.

¹² Arts 1.1.1-1.1.2 *Memorandum of Understanding between the GOI and the Free Aceh Movement* (15 August 2005).

¹³ *ibid* art 128.

¹⁴ Lindsey (n 2) 52.

¹⁵ See also Joint Decree of the Governor, Head of the Provincial Police Force, Head of the Provincial Prosecutors, Chairman of the *Mahkamah Syar'iyah*, Chairman of the Aceh State Court and the Head of Provincial Office of the Department of Law and Human Rights of 9 August 2004; Lindsey (n 2) 52.

¹⁶ Drs H Soufien Saleh, 2005, *Pembagian Hak Warisan (Pratek Mahkamah Sar'iyah di Nanggroe Aceh Darrussalam*, unpublished paper, copy on file with T Lindsey, 4; Lindsey (n 2) 53.

inheritance, guardianship and *wakaf* (charitable trusts/endowments).¹⁷ In Aceh, the religious courts were replaced by *shari'a* courts in 2003 by way of a Presidential Decree. These courts sit in each district, with appeals heard by the provincial-level *shari'a* court in Banda Aceh and finally by the Supreme Court of Indonesia (*Mahkamah Agung*) in Jakarta. The *shari'a* courts share the same jurisdiction as the religious courts, although *qanun* passed by the regional legislature have extended this to include authority over *ibadah* (Islamic worship) and *Syiar Islam* (activities undertaken to enhance the good image of Islam) and certain criminal matters.¹⁸

Customary Courts (*adat*)

Adat is roughly translated as customary or traditional law. It refers to a set of beliefs, norms or customs that traditionally apply in societies across Indonesia. Its content comprises descriptions of what a community does as much as a set of commands as to what its members should do. For these reasons, the substance of *adat* varies between and sometimes within districts, and any written version of *adat* may become outdated in a relatively short time.¹⁹ The chief authority regarding the legal standing of *adat* is found in Article II of the transitional provisions annexed to the Indonesian Constitution (1945). This states that all existing institutions and regulations valid at the date of independence would continue, pending the enactment of new legislation and the establishment of new institutions, and provided that they were in conformity with the Constitution.²⁰ In Aceh, the *adat* is strongly influenced by Islamic principles and *shari'a*. Increased autonomy has led to the creation of new institutions that promote and strengthen the role of *adat* in public life: these include the *Majelis Adat Aceh* (Aceh Adat Council), which is empowered to deal with aspects of *adat* law that are seen as distinct from *shari'a* or *fiqh*. Other reforms have focused on the administration of *adat* justice (*peradilan*) at the village level.²¹ *Perda (regional regulation) 7/2000 On the Establishment of Adat Life* clarifies the function of *adat* institutions—to resolve community and inter-community disputes—and articulates the types of cases that can be heard.²² Significantly, it requires that police give the *geuchik* (village leader) and *imeum mukim* (inter-village leader) the opportunity to settle disputes falling within their jurisdiction before commencing investigations.²³ Other provisions introduced through *qanun* include:

- the *camat* (sub-district leader) having the authority to resolve land disputes, strengthen women's empowerment and promote *shari'a*;²⁴
- *gampong* (village) leaders being empowered to promulgate and codify village-level rules, guidelines and *adat* customs, which are then forwarded to the *bupati* (district leader) for approval;²⁵ and
- the final and binding nature of the decisions of the *mukim* (inter-village leader).²⁶

¹⁷ See Law 7/1989 *On Religious Judicature*.

¹⁸ In terms of legislation, the primary source of *shari'a* is the Islamic Law Compilation (*Kompilasi Hukum Islam*, or KHI). A secularized version of classical *fiqh* (understanding, comprehension, knowledge, and jurisprudence in Islam) KHI is a mix of different *madhhab*, or schools of Islamic thinking. It comprises three books – inheritance, marriage and charitable trusts. Although it is the primary authority on Islamic law throughout Indonesia, KHI is a non-binding guide and judges may refer to other sources of law including (in Aceh) *qanun* passed by the regional legislature or *fatawa*. See art 26(2) Law 18/2001 on *Special Autonomy for the Province of Nanggroe Aceh Darussalam*; Lindsey (n 2) 30, 35, 41-48; UNDP (n 5) 23-24.

¹⁹ Lindsey (n 2) 33-34.

²⁰ *ibid* 13.

²¹ *ibid* 17.

²² art 6 *Perda 7/2000 on the Establishment of Adat Life*.

²³ *ibid* art 10.

²⁴ art 5 *Qanun 3/2003 on the Order, Position and Authority of the Government in the NAD Province*.

²⁵ *Qanun 5/2003 on the Gampong Governance Structures*.

²⁶ *ibid* art 12(3).

1. The IDLO Post-Tsunami Legal Assistance Initiative for Indonesia

In the wake of the tsunami, Aceh's legal context was at a complex crossroads of an emerging set of Islamic laws and legal institutions, an unprecedented natural disaster, a fledgling peace process, and a regional government with new and increased autonomy. While it was clear that Aceh's legal institutions needed to play a key role in the post-tsunami and post-conflict rehabilitation process, these institutions were far from fully developed. Thirty years of separatist conflict had led to court closures and the departure of court personnel—both of which had contributed to a widespread lack of confidence in and chronic under-utilization of the legal system. This lack of confidence was exacerbated by the corruption and lack of training that plague Indonesia's courts and related institutions. In view of these challenges and with funding from the governments of Finland and Ireland, IDLO resolved to undertake an initiative to help survivors to address their legal needs and contribute to wider justice sector development. Between December 2004 and January 2006, IDLO undertook five needs assessment missions to Aceh with a view to increasing its understanding of the situation. The conclusion was that four issues were interrupting the fair and equitable resolution of tsunami related disputes:

1. The main areas of legal dispute faced by tsunami-affected communities concerned land ownership, inheritance distribution and the appointment of guardians. A year after the disaster, however, very few tsunami-related cases had been referred to the *shari'a courts*.²⁷ Instead, communities chose to resolve matters at the village level through *adat*. Such local dispute resolution had a grounding in legislation, but research conducted by UNDP suggested that some *adat* leaders were attempting to resolve cases that were outside their jurisdiction (principally because they misunderstood their role),²⁸ and that due process standards were not always upheld. A further cause for concern was that the quality of *adat* decision-making was believed to be related, at least in part, to village leaders' understanding of applicable law and their knowledge of disputants' personal circumstances such as the origins of family wealth, lineage and community relationships. Widespread loss of life, however, meant that new *geuchik*, who were often unqualified and unfamiliar with such issues, had been appointed. These issues added to concerns as to whether the rights of vulnerable groups were being adequately protected.

2. Women faced particular challenges in protecting their legal rights in the post-tsunami context.

- The lack of gender parity in Islamic inheritance distribution, normally corrected through the custom of gifting,²⁹ was exacerbated by the tsunami, leaving women more vulnerable and with reduced access to physical and financial resources.

²⁷ Interview with Chief Justice of Banda Aceh *shari'a* court (26 April 2006); interview with Chief Justice Jantho *shari'a* court (27 April 2006).

²⁸ Perda 7/2000 regulates the types of cases that *adat* leaders can deal with, but research conducted by UNDP suggested that beliefs varied among *adat* leaders regarding their jurisdiction: most incorrectly thought that they could adjudicate civil and family law cases, land disputes, and sometimes criminal cases. This misunderstanding was exacerbated by provisions in formal law: for example, Art 12(3) Qanun 5/2003 provides that the *mukim's* decision is final and binding and Art 10 Perda 7/2000 requires that disputants attempt to resolve their disputes through *adat* before approaching the formal justice system. This led many *adat* leaders and community members to believe that *adat* was the only forum for resolving disputes, that decisions based on *adat* could not be appealed, and that referring disputes directly to formal legal mechanisms was prohibited. See UNDP (n 5) 43, 77, 91, 65, 90.

²⁹ To female children to make inheritance distributions equal.

- Widows and divorcees were at risk of being denied their inheritance shares by male relatives, particularly in the area of joint matrimonial property, as a result of power imbalances, lack of awareness regarding the applicable law and lack of documentation of wives' rights to particular parcels of property.
- Women do not automatically become the legal guardians of their own children in Aceh: accordingly, they were required to go through the courts in order to have that role legally recognized.
- There was widespread perception that women could not be appointed as legal guardians to orphans under their care: this created new economic burdens such as women being unable to access orphans' inherited assets to assist in their upbringing.

3. Low levels of awareness regarding the applicable law and procedures constituted a barrier to individuals protecting their legal rights. Particular areas of deficit included:

- land, inheritance and guardianship law;
- resolution of disputes relating to post-tsunami land certification or post-construction housing disputes;
- procedures for accessing formal justice institutions, particularly legal aid services;
- the legal rights of women, particularly in relation to marriage, divorce, domestic violence and guardianship; and
- the differences between *adat* law, Islamic law and secular law and how to resolve incompatibilities.

These findings were supported by other agencies. According to UNDP, "... levels of legal awareness relating to rights, duties and procedures within the formal and informal justice systems remain low among Acehnese. Villagers do not have information on laws that are relevant to them, nor processes to access the General and *Syariah* justice systems and are largely unaware of the limited existing legal aid services."³⁰ Lack of knowledge appeared to be endemic, affecting individuals, village-level decision-makers and formal legal actors. It was particularly low among vulnerable groups such as women, tsunami-affected groups and those living in isolated areas. One consequence was that individuals were unaware of and hence unable to exercise their constitutional right to choose between informal and formal dispute resolution. Further, individuals were unable to assess the quality or procedural correctness of both informal and formal dispute resolution processes, increasing the probability that outcomes might be arbitrary, discriminatory or not grounded in law.

4. Poor access to justice was preventing disputants from obtaining fair, law-based decisions. At the formal level, IDLO identified significant capacity and development weaknesses that prevented the courts from handling grievances satisfactorily: these included the high cost of accessing formal justice sector institutions, linguistic barriers³¹ and physical isolation. A further issue was the shortage of licensed lawyers, particularly women, and lawyers providing legal aid for poor people.³² In

³⁰ UNDP, *Access to Justice in Aceh: Making the Transition to Sustainable Peace and Development in Aceh* (2006), 12.

³¹ The official language of the courts is Bahasa Indonesia, but most of the population speak Acehnese or other dialects.

³² There were several reasons for this: (i) the conflict prevented the national bar examination from being held regularly in Aceh; (ii) lack of employment opportunities encouraged registered lawyers to move away from Aceh; and (iii) a significant number of lawyers lost their lives in the tsunami, including several government-employed prosecutors and women lawyers.

2006 there were only three sources of legal aid in Banda Aceh, all of them NGOs: (i) YLBH, a national legal aid service that concentrates on human rights and land rights cases; (ii) LBH-ANAK, which provides legal aid services for children; and (iii) KKTGA, which offers legal counseling to women in Banda Aceh and Aceh Besar. A final factor was that district and provincial judges exhibited varying levels of knowledge with respect to applicable law and procedures, which resulted in unsatisfactory dispute handling and uncertainty for litigants, particularly with respect to domestic violence, divorce, rape and *shari'a* offences.

Access to justice via customary law was similarly questionable. UNDP research suggested that *adat* processes were at times corrupt and unaccountable and led to unfair decisions that did not produce lasting resolutions.³³ The enforcement of *adat* decisions was found to be weak, with powerful figures often ignoring decisions—a situation that encouraged “forum shopping” among some segments of the population.³⁴ A final conclusion was that women, minorities and other vulnerable groups were disadvantaged and discriminated against under *adat* processes.³⁵ A major impediment to effective dispute resolution was that *adat* leaders lacked sufficient knowledge of the applicable law, the jurisdiction of *adat* law and, in particular, the alternative options and services available to resolve grievances. A further issue was the predominance of cultural norms that promote harmony over individual rights and adversarial processes; such norms merit respect for many reasons, not least that they promote social cohesion and stability by integrating different actors and factors. Nevertheless, individuals who sought recourse through the formal justice system, particularly vulnerable groups, were stigmatized, which created a strong disincentive to seek formal solutions outside *adat*.³⁶

1.1 Developing a change model for justice sector assistance

IDLO adopted a strategy of geographically-targeted justice sector development focusing on 100 tsunami-affected villages in Banda Aceh and Aceh Besar. The focus on a target number of beneficiaries facilitated a comprehensive and integrated response to the three major areas of weakness affecting the fair and equitable resolution of tsunami-related disputes: community legal awareness, the quality of customary dispute resolution and access to legal aid services. Concentrating on these complex interrelated issues in 100 communities was expected to have greater impact in terms of legal empowerment than addressing a single issue over a wider area. A holistic approach was also deemed essential in view of the interrelated nature of the problems faced in Aceh with regard to building and in some cases rebuilding equitable, effective justice systems. The strategy had the following goals:

1.1.1 Heightened community legal awareness, particularly with respect to the rights of women

IDLO determined that communities would benefit in three ways from increased awareness of legal rights, dispute-resolution mechanisms and the nature and availability of legal services. First, strong community legal awareness would act as a safeguard on the quality of informal and formal legal processes in that individuals would be more likely hold formal and informal justice sector actors to account. Second, greater awareness would increase the level of access to formal dispute-resolution mechanisms. Third, with greater knowledge, attitudes of powerlessness, resignation and legal disenfranchisement would gradually be replaced by a legal

³³ UNDP (n 5) 50.

³⁴ *ibid* 66-67.

³⁵ *ibid* 67, see also 71, 79.

³⁶ *ibid* 51-52, 79, 97; interview with Geuchik Kajhu (7 May 2006), Imam Meunasah Lampaseh Kota (3 May 2006); and geuchik Cut Lamkuweuh (1 May 2006).

culture of empowerment that protects individual rights.

1.1.2 Improved customary dispute resolution

The reality of post-tsunami Aceh was that the vast majority of land, inheritance and guardianship disputes were being resolved at the customary level. There were several reasons for this. Most Achenese found *adat* to be fast, familiar, simple, inexpensive and culturally relevant; it was also considered to be preferable to court-based litigation, which was seen as expensive and bureaucratic. A final factor was that the conflict period had left many with an entrenched fear of state-based institutions. Rather than attempt to alter this situation, IDLO determined that a more effective way to enhance legal empowerment would be to work to improve the quality of customary decision-making: fairer outcomes that upheld due process standards would offer a higher level of protection to vulnerable groups and shield the nascent and tsunami-affected courts from a mass of litigation.

1.1.3 Enhanced access to justice for vulnerable groups.

IDLO was aware that not all disputants would receive a satisfactory solution at the village level, even with improved customary decision-making. These persons needed to be able to exercise their right to formal justice. The most immediate need was for women, who were particularly vulnerable under *adat*, to be able to access the courts. IDLO planned to facilitate this by augmenting the supply of available legal aid actors and services.

2. Evaluating the Impact of IDLO Activities

It must be emphasized that the evaluation data discussed in this section relates only to the first phase of the IDLO Post-Tsunami Legal Assistance Initiative for Indonesia (February 2006–September 2007).³⁷ The activities continued through until December 2008 under a follow-up program entitled Supporting the Development of the Justice Sector in Aceh. Evaluation data for that period, however, was not available at the time of writing.

2.1 Raising community legal awareness

As discussed above, poor legal awareness was identified as a major impediment to individuals protecting and asserting their legal rights. Despite this, there were no centralized mechanisms to disseminate legal information, and legal institutions such as courts and NGOs did not have the resources or capacity to undertake comprehensive awareness-raising programs. In response, IDLO implemented three activities designed to give people a basis of knowledge to help them to defend their rights and obtain access to legal solutions.

2.1.1 The legal research and documentation exercise

Pre-program consultations concluded that there was no clear and accessible information about the laws regulating land, inheritance and guardianship matters, and no information on national and internationally-led reconstruction and

³⁷ The evaluation was conducted in October 2007. General evaluation tools included: (i) interviews with legal stakeholders (5 people); (ii) post-project beneficiary interviews (75 men, 100 women); and (iii) a general legal awareness survey of residents of Banda Aceh and Aceh Besar (121 men and 119 women). Project-specific evaluation tools included: (i) quantitative data on information resources disseminated to various user groups; (ii) survey data to assess readership of IDLO's newspaper articles; (iii) pre-intervention and post-intervention knowledge testing of beneficiaries involved in training; and (iv) client data relating to beneficiaries who received legal aid services.

compensation programs. The existing information related largely to official state law, but there was evidence that disputes were being resolved in villages in accordance with customary law. Further, the rapidly evolving jurisdiction of the *shari'a* courts meant that the extent to which secular laws applied in Aceh was poorly understood and somewhat controversial. There was evidently a pressing need for information resources that explained the applicable laws and the options available for resolving tsunami-related disputes. These resources needed to be suitable for use by legal practitioners, humanitarian agencies and communities.

IDLO responded by publishing the *Guidebook on Land, Inheritance and Guardianship Law in Post-Tsunami Aceh* and booklets of *10 Frequently Asked Questions*. These resources, available in both English and Indonesian, set out the legal principles, processes and institutions relevant to the resolution of tsunami-related disputes under *shari'a*, *adat* and secular law. To ensure technical accuracy and obtain the support of local stakeholders, the publications drew on three months of field research and were subject to extensive peer review.³⁸ Over 18 months, 3,684 information resources were distributed to NGOs, courts and communities. Of the Indonesian-language resources, 764 (22.55 percent) were delivered to legal professionals and NGOs and 2,055 (74%) to communities. It should be noted that apart from the resources provided to communities, which were disseminated as part of IDLO training programs, all books were disseminated upon direct request as opposed to unsolicited delivery.

Breakdown of Distribution (Indonesian-language resources only)

Resource	NGOs	Communities	Court	Other	Total Distributed
Guidebook	426 49%	317 36%	112 13%	15 2%	872 100%
10 FAQ Guardianship	82 12%	621 87%	4 0.5%	3 0.5%	710 100%
10 FAQ Inheritance	57 8%	651 91%	4 0.5%	3 0.5%	715 100%
10 FAQ Land	75 14%	466 85%	4 0.5%	3 0.5%	548 100%
Total	640	2,055	124	24	2,845

Although important information, data on the number of information resources disseminated does not necessarily give clear or unequivocal evidence regarding changed behavior. To better assess the impact, IDLO conducted a survey of beneficiaries and interviews with legal stakeholders. The results indicated that the resources were widely recognized and relevant to community needs. Interviewees noted their simplicity, practicality and user-friendly format. A recurring comment was that the resources, specifically the matrices of applicable law, were particularly useful given the dearth of legislation available. The three judges interviewed as part of this survey noted that many court staff were using the *Guidebook* in court as a reference tool. Likewise, the two legal aid representatives interviewed stated that they used the *Guidebook* to provide legal advice and develop clients' defenses.³⁹ Further evidence of the resources' utility was that local and international agencies had used the books to develop their own programs or to supplement existing programs. For example, the *Guidebook* was used as the curriculum of a training course for district court judges organized by the local NGO

³⁸ Organizations involved in peer review included BRR, the Indonesian Land Authority, IAIN University, *Dinas Syar'iat*, the *shari'a* court, local NGOs KKTGA and Flower Aceh, the World Bank, UNDP, Oxfam, UNIFEM, AIPRD-LOGICA and an expert from the University of Melbourne, Australia.

³⁹ IDLO, *Post-Tsunami Legal Assistance Initiative for Indonesia Monitoring and Evaluation Report* (February 2006 – September 2007) 26 September 2007, 20. On file with author.

Putroe Kande.⁴⁰ The following survey participant response was indicative of the general reaction to the materials:

“We recommend, endorse the use of the books, and also use the books as a reference for other projects ... such as the development of the Provincial Child Protection Law, a research/assessment paper that became a background of a programme design, and for two manuals being developed on woman and child rights”.⁴¹

While such data does not demonstrate impact on outcomes of disputes as a result of the resources, it suggests changes in behavior involving widespread use of the materials—which in turn could affect outcomes.

2.1.2 Raising community legal awareness through the Print Media Project

In this activity, IDLO published in cooperation with the state and *shari'a* courts a weekly column in the *Serambi* newspaper entitled “Anda dan Hukum dalam Keseharian” (The Law and You in Practice). Topics were selected based upon the keys areas of information deficiency identified through IDLO’s research, suggestions from legal stakeholders and a strategic decision to include ‘success stories’ from individuals who had resolved a legal problem through the courts—a move intended to eliminate common misconceptions and strengthen confidence in formal legal institutions. All 52 articles were posted on the IDLO website and distributed through various electronic mailing lists in both English and Indonesian.

IDLO selected print media as the medium for disseminating information, first because the awareness problem appeared to be endemic (not restricted to any particular group or area) and because the *Serambi* circulated 30,000 copies per day and was available throughout Aceh. Second, IDLO’s consultations with other agencies indicated that reading newspapers was a common pastime among men in Aceh, and that such resources were usually ‘recycled’—being passed between several readers prior to disposal.⁴² Research also indicated relatively high literacy rates in Aceh, particularly in more urbanized areas such as Banda Aceh and Aceh Besar.⁴³

A post-project legal awareness survey of 415 people was undertaken to evaluate the impact of the program.⁴⁴ Twenty-three percent of the people surveyed (33% of men and 11% of women) stated that they read the newspaper “frequently”. When asked if they had ever read the IDLO newspaper column, 21% respondents stated that they had done so (25% of men and 15% of women), which indicated (i) that most frequent readers also read the IDLO column, suggesting that the column was interesting, relevant and accessible, and (ii) that the estimated readership of the IDLO column was 63,000 per issue.⁴⁵ This was an extremely positive outcome given the low cost of the program (approximately US\$330 per issue), the low levels of awareness about legal rights, and the fact that the weekly column was the only

⁴⁰ *ibid* 21.

⁴¹ Response from survey participant 19 September 2007.

⁴² According to statistics provided by *Serambi*, 30,000 copies were circulated daily in 2006 and shared by about ten people. Total potential readership of IDLO’s articles was therefore 300,000 per week: interview between Mr G Ellem (IDLO) and the *Serambi* Newspaper (25 January 2007).

⁴³ Adult literacy in Aceh was 95.8% in 2002, compared with the national average of 89.5%. Female adult literacy was 94.1% compared with a national average of 85.7%. UNDP, *Aceh: Before the Tsunami* <http://undp.or.id/archives/aceh_update_report/Aceh_HDR-Summary.pdf> at 23 April 2009.

⁴⁴ The survey covered 415 persons (195 males and 220 females) in Banda Aceh and Aceh Besar.

⁴⁵ It must be reiterated that this data is a guide only. The sample size was small (415 persons) relative to total potential audience (300,000 persons) and further, this sample was taken from Banda Aceh and Aceh Besar where readership is likely to be highest. Finally, that gratuitous concurrence among the respondent population might have positively skewed figures must also be taken into account.

organized system for transmitting legal information to the public on a regular basis.

Anecdotal evaluation indicators also supported the utility of the articles. An interviewed legal aid service provider stated that the *Serambi* article profiling his organization *Free Legal Aid from the Legal Aid Foundation Lembaga Bantuan Hukum* resulted in “several new clients”.⁴⁶ A law lecturer from the national University UNSYIAH stated that he regularly read the *Serambi* articles, found them helpful and accurate, and often used information from the articles in his lectures.⁴⁷

Q.1 Do you frequently read the newspaper?		
Total Responses	Male Responses	Female Responses
Yes: 23%	Yes: 33%	Yes: 11%
No: 77%	No: 67%	No: 89%
Q.2 Have you ever read Update Keadilan in the Serambi Newspaper?		
Total Responses	Male Responses	Female Responses
Yes: 21%	Yes: 25%	Yes: 15%
No: 79%	No: 75%	No: 85%

2.1.3 Raising women’s legal awareness through film

In view of concerns that poor legal awareness was limiting women’s capacity to protect their legal rights, IDLO consulted local stakeholders to identify potential entry points for enhancing women’s knowledge of the law. The consultations revealed that film was an appropriate educational tool for women, particularly given Aceh’s strong culture of oral and visual communication, women’s decreased access to mass media and lower literacy levels, and the fact that women had limited opportunity to become involved in civil society activities. IDLO went on to produce a 30-minute educational film *The Stories of Aisha, Rauda and Ainun: Protecting Women’s Legal Rights in Aceh Post-Tsunami*. The film tracked the lives of three women struggling to overcome common legal problems in the aftermath of the tsunami. Through the narratives, the film examined the law relevant to land, inheritance and guardianship, and outlined the solutions that might be found.⁴⁸ To ensure that the film was legally accurate and culturally appropriate, the draft script was subject to two rounds of peer review by local and international stakeholders.⁴⁹ Filming took place in Banda Aceh and Aceh Besar using local actors and venues such as the legal aid office and *shari’a* court.

Over 18 months, the film was screened in 102 tsunami-affected villages in Banda Aceh and Aceh Besar, reaching 3,003 beneficiaries at a cost of US\$10 per beneficiary. Film screenings were followed by half-day information and training

⁴⁶ IDLO (n 39) 43.

⁴⁷ *id.*

⁴⁸ The themes of the film were: the right of women to be appointed as guardian to children under their care, the division of joint matrimonial property following the death of a spouse and the importance of joint land titling.

⁴⁹ Peer review was conducted by local organizations (KKTGA, MISPI, BRR, Indonesian Land Authority, Dinas Syar’iat and the *shari’a* court) and international organizations (UNDP, the World Bank and UNIFEM).

sessions facilitated by two female Acehnese experts in Islamic Law and Islamic philosophy (*Aqidah*). A post-project legal awareness test was given to 84 beneficiaries two months after the training. The test was also administered to a control group of 240 persons who had not been involved in the activity. Within the control group, the overall percentage of correct answers was 47 percent. When the same questions were posed to participants in the project the percentage of correct answers was 74 percent, suggesting a far superior knowledge of women's rights issues when compared to the general population.⁵⁰

In terms of anecdotal indicators, focus group discussions with selected beneficiaries two months after the activity indicated that 25 percent of participants had acted upon or knew someone who had acted upon the knowledge they had gained through the film to resolve a legal issue.⁵¹ One *shari'a* court judge had received several inquiries from people who had seen the film, particularly with regard to their right to be appointed guardians to orphans under their care.⁵² Feedback from facilitators' reports and the project managers' observation of screenings also supported the film's relevance. In particular, many participants noted that the program had been their first opportunity to obtain information about their legal rights.

BOX 1 – Participant learns that *Patah Titi* does not apply under Islamic law

By participating in IDLO's film program, X learned that under Indonesian law a grandchild can inherit from his/her grandmother or grandfather, even where the child's parent has predeceased the grandparent. This is inconsistent with the Acehnese custom of *patah titi* whereby a grandchild's inheritance rights are severed at the death of the parent(s). X believed that she was entitled to inherit from her recently deceased grandfather, but her uncle had taken her share of the inheritance. Following the film screening, X approached her village leader and explained what she had learned. Her village leader stated that he was unable to assist and that she was to adhere to the *patah titi* custom. X then approached the *Mahkamah Syar'iyah*, who confirmed that she was in fact entitled to inherit from her grandparents.

Finally, it should be noted that the cost-effectiveness of the activity (US\$10/beneficiary) was enhanced because the film was integrated into the community education programs of agencies such as the Canadian Red Cross, World Vision and Oxfam.

2.2 Improved customary dispute resolution

2.2.1 Community mediation and legal skills training

The Community Mediation and Legal Skills Training was a grassroots response to the numerous and complex legal issues created by the tsunami. With large tracts of land submerged, widespread destruction of boundary markers and loss of ownership records, the issues relating to land and property were overwhelming. Ensuring clarity of land ownership and protecting property rights was not only a precondition to the reconstruction process: it was essential to address the widespread uncertainty regarding ownership of assets brought about by the vast loss of life. Compounding this situation was the complex nature of Islamic

⁵⁰ IDLO (n 39) 60.

⁵¹ *id.* Action taken included women seeking further legal information, having a conflict resolved by village leaders, formalizing a guardianship arrangement, individually or jointly registering property, or approaching a legal aid organization for assistance.

⁵² *ibid* 58.

inheritance distribution, and the difficulty in determining rightful heirs in cases where numerous family members had died. Finally, with an estimated 30,000 children orphaned by the tsunami,⁵³ raising awareness about the responsibilities of guardians and the procedures related to guardianship formalization was necessary to protect the rights and welfare of orphans.

Evidence that the vast majority of tsunami-related disputes were being resolved through customary processes created concern as to (i) whether the rights of vulnerable groups were being adequately protected and (ii) whether decision-makers possessed the legal knowledge to make fair decisions grounded in law. In response, a training program was developed with a view to improving community leaders' mediation skills and their knowledge of land, inheritance and guardianship law. The rationale was that by raising awareness in these areas, decision-makers would be able resolve tsunami-related disputes within communities, hence reducing the caseload of the formal justice sector. Training participants were selected from a cross-section of community leaders, including *geuchik* (village chief), *imam meunasah* (religious scholar), *tuha peut* (elder) and women's, youth and religious leaders. IDLO established a list of criteria that included literacy, high-school education, 21+ years of age, experience in village-level organizations and a minimum target of 30% women. The objective was to reach a cross-section of community leaders rather than just the traditional male-dominated hierarchy, thereby providing broad-based capacity-building and empowerment for future leaders, including women.

Village position	Number	%
Village leader	327	47
Female leader	102	15
LOGICA cadre	87	12
Religious leader	63	9
Youth leader	45	6
<i>Tuha Peut</i> (elder)	35	5
Civil-society figure	23	3
Local government	18	3
TOTAL	700	100

The trainers comprised two judges of the *shari'a* courts, four lawyers and three legal academics. They first participated in a one-week training-of-trainers program in which, given their legal knowledge, the emphasis was on participatory and experiential learning techniques and community facilitation skills. This ensured that the training was technically accurate, interesting for village-level participants and culturally appropriate. The Indonesian Institute for Conflict Transformation facilitated a further one-week training-of-trainers on mediation.

The training was piloted in November 2006 to test modules, seek feedback from participants and enable trainers to fine-tune their facilitation skills. After significant redevelopment of the modules, the first phase was rolled out in December 2006. By April 2007, 34 four-day training workshops had been completed covering 95 tsunami-affected villages and reaching over 700 beneficiaries, of whom 24 percent were women.

The post-project evaluation confirmed that the legal knowledge of beneficiaries had improved. Of the 527 participants who had completed tests before and after

⁵³ Republic of Indonesia – Bappenas, 2005, *Master Plan for Rehabilitation and Reconstruction for the Regions and People of the Province of NAD and Nias Islands of the Province of North Sumatra – Main Book of Rehabilitation and Reconstruction*, I-1.

training, 418 (79 percent) had improved their scores. The average improvement in scores was 20 percent:⁵⁴ Although this percentage may appear low, it equates (on average) as participants being correct on four additional questions. When test questions relate to important issues such as women's names being included on land certificates and the responsibilities of guardians, even a 20 percent improvement can have far-reaching results. There was also evidence that the skills acquired were being put into practice: interviews with 91 beneficiaries two months afterwards showed that 39 percent had used their new knowledge to resolve a legal issue involving land, inheritance or guardianship, or knew of a person who had done so.⁵⁵

BOX 2 - Training Participant Mediates Inheritance Dispute

RZ is 38 years old and lives in *Lambada Lhok* village. He survived the tsunami but lost his wife and two children. A number of his wife's relatives survived. When they married, RZ and his wife had purchased land that had the status of joint matrimonial property. RZ believes that he has full rights to this land. RZ's brother-in-law, however, claims that he should get part his deceased sister's estate.

The *geuchik* (village head) of *Lambada Lhok* was contacted to resolve the dispute. The *geuchik* had previously attended IDLO's Community Mediation and Legal Skills Training and had learned about inheritance law and mediation skills. The *geuchik* heard both sides of the matter, then called the parties together with the religious leader (*imam meunasah*) and the sub-village leader. The *geuchik* mediated the case and correctly informed the parties that the deceased wife's family had a lawful claim to a percentage of the land. The parties agreed that RZ would pay 7,000,000 Indonesian rupiah (approximately US\$610) to the family of his deceased wife. When the case was resolved, a letter of agreement was drafted and signed by both parties and those present at the mediation.

BOX 3 – Training Participant Requests Assistance from the *shari'a* courts

After attending IDLO training, village leader IK had a greater appreciation of the importance of legalized guardianship. He learned that guardianship can protect inheritance, assist in administrative processes and protect the interests of the child. Concerned about the large number of orphans in his village, IK contacted the *shari'a courts* and requested that judges from the mobile court come to his village, hold hearings and, where appropriate, provide legal certification of guardianship.

2.3 Enhanced access to justice for vulnerable groups

2.3.1 Project on Legal Representation, Counseling and Support for Women in Nanggroe Aceh Darussalam

As discussed in Part B, individuals who were unable to obtain a satisfactory resolution at the customary level needed to be able to access the formal justice system. Obstacles included a dearth of legal aid service providers and poor community awareness regarding court processes. Women were particularly vulnerable to discrimination under *adat* and faced increased difficulty in obtaining legal information and solutions. In response, IDLO partnered with local NGO *Kelompok Kerja Transformasi Gender Aceh* (KKTGA) to implement a program to make legal counseling and representation available to women through a Women's Crisis Centre staffed by two lawyers and six counselors/paralegals.

⁵⁴ IDLO (n 39) 48-49.

⁵⁵ *ibid* 51. Action taken included seeking additional information, approaching individuals or organizations for assistance, or a case being mediated.

To raise awareness of women’s legal rights and the legal aid services available to protect them, KKTGA:

- broadcast 20 radio programs addressing land, inheritance and guardianship law and violence against women;
- advertised their legal aid services ten times a day on three radio stations;
- placed banners containing gender-friendly legal messages in strategic positions in Banda Aceh;
- distributed 2,000 brochures highlighting their legal aid services;
- distributed 3,000 stickers highlighting gender-friendly legal messages; and
- provided 84 days of on-site information dissemination and legal counseling for tsunami survivors and government departments in Banda Aceh and Aceh Besar, reaching 1,462 beneficiaries.

The post-project evaluation provided evidence that this awareness-raising led to increased utilization of KKTGA’s legal counseling and representation services:

- between February and April 2007, 24 percent of clients reported that they had become aware of KKTGA’s services through radio advertising;
- between February and April 2007, 18 percent of clients reported that they accessed KKTGA after participating in a community legal information session;
- in the months during and immediately after the radio advertisements, KKTGA experienced a surge in demand (see Table 1).

Table 1. Number of Clients Receiving Services from KKTGA (per month)

May-06	11
Jun-06	3
Jul-06	15
Aug-06	15
Sep-06	13
Oct-06	21
Nov-06	13
Dec-06	8
Jan-07	9
Feb-07	7
Mar-07	10
Apr-07	6
Total	131

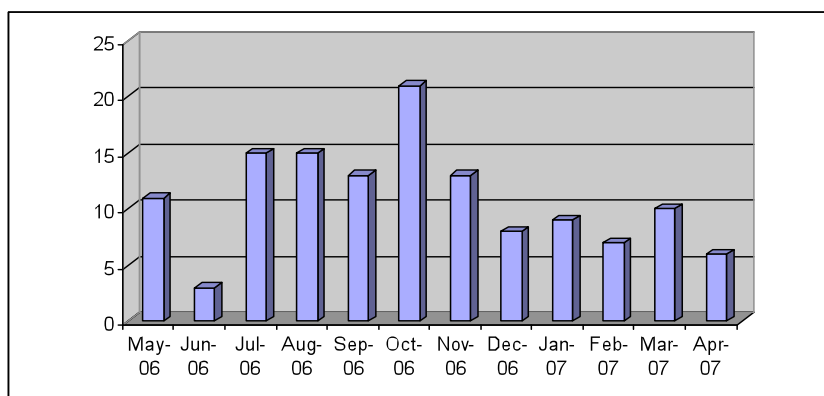


Table 2. Cases Disaggregated by Service

Service Type	No.	%
Litigation	28	21
Legal advice	88	68
Counseling	15	11
Total	131	100

Table 3. Types of Cases Processed by KKTGA

Case Type	No.	%
Domestic violence	62	47
Inheritance	22	17
Land	12	9
Guardianship	5	4

In 12 months, the KKTGA Women’s Crisis Centre provided 28 clients with legal representation, 88 with legal advice and 15 with counseling;⁵⁶ 47 percent KKTGA’s work with clients involved cases of domestic violence, a significant departure from the expectation that most cases would involve post-tsunami land, inheritance and guardianship disputes, which in fact accounted for 30 percent of the caseload. It was concluded that although there were many disputes involving land, inheritance and guardianship, they were being resolved through customary processes and women were either satisfied with the solutions or unable or unwilling to access the formal legal system. Domestic violence was generally not dealt with through customary processes, leaving resort to the formal justice system as the only option for affected women.⁵⁷

Of the 28 cases in which clients received legal representation, 21 had been fully resolved through the courts with decisions in the clients’ favor. This number may be considered too low to justify the employment of two full-time lawyers. It must be taken into account, however, that the resolution of court cases in Indonesia takes a long time and is subject to bureaucratic constraints. The level of demand may also be indicative of the wider problems facing the justice sector in Aceh at that time. These included deficiencies in the law and patriarchal attitudes on the part of justice sector actors, widespread fear of involvement in formal legal processes and the costs associated with court cases. These factors would have reduced the demand for legal representation services focusing on women. This does not mean that making such services available in Aceh was unnecessary or unsuccessful: for the rule of law to be established, disputants must have opportunities to access the formal legal system when necessary. The Women’s Crisis Centre was the only legal aid service of its kind in Banda Aceh and Aceh Besar that offered such access.⁵⁸

3. Additional experience, lessons learned and challenges for the future

The experience of IDLO and its partners in Aceh suggests that legal empowerment programs—that is, initiatives focusing attention and resources on using rights to benefit disadvantaged populations—can yield significant impacts, even with small budgets. This final section draws upon the evaluation data to review additional aspects of the post-tsunami response, identify lessons learned and highlight key challenges that need to be overcome in order to maximize such programs’ effectiveness.

⁵⁶ IDLO (n 39) 25.

⁵⁷ Domestic violence was generally regarded as a personal matter for resolution within the family.

⁵⁸ The Government-run legal aid service dedicated to women’s legal issues (LBH-APIK) was based in North Aceh (approximately six hours from Banda Aceh) and its services attracted a fee.

3.1 The importance of responding to current realities and the immediate needs of the disadvantaged

The legal empowerment discourse asserts that most international development agency efforts to build the rule of law have assumed a top-down approach that mainly focuses on judiciaries and other state institutions. This top-down paradigm holds that improvements to institutions and processes will benefit the poor and disadvantaged through economic growth, heightened trade and investment, job creation and secure private property rights.⁵⁹ Golub argues that this approach—the rule of law orthodoxy—is flawed in two respects. First, it incorrectly assumes that the formal court system is the preferred and primary means of dispute resolution for the poor and disadvantaged.⁶⁰ Making this assumption the basis of integrating law with development fails to respond to the principal legal needs of this group. Moreover, it exacts an opportunity cost in terms of foregoing alternative and potentially more impactful strategies, such as legal empowerment.⁶¹ Second, under the orthodox approach reforms are centered around a partnership between foreign specialists and local elites, neither of which have particularly good insight into the legal needs and aspirations of the poor.⁶² The orthodoxy ignores the fact that such local elites may not be powerful or willing agents of change, and that international practitioners have a tendency to focus on the formal court system and to replicate processes that they are familiar with, perpetuating a cycle of institutional emphasis.⁶³

Partly through this discourse, the importance of bottom-up approaches centered on disadvantaged populations is gaining acceptance among some policy-makers and practitioners.⁶⁴ In practice, however, international development organizations still have a tendency to think principally in terms of state institutions and formal judicial actors, and to structure interventions around ideal scenarios of what a modern justice system should look like. IDLO was not immune to such leanings. During the planning stages of the Aceh program, there was an assumption that courts were the locus of dispute resolution, that there would be an influx of tsunami-related cases, and that *shari'a* courts would need support and strengthening. The original concept paper proposed a court-annexed mediation project and training for legal stakeholders on tsunami issues.

Importantly, IDLO also prioritized a strong dialogue with local stakeholders and giving such stakeholders a voice in program development. It came as somewhat of a surprise when the *shari'a* courts (the central beneficiaries under the original concept paper) counseled against a court-focused approach and lobbied instead for a strengthening of local dispute resolution mechanisms. They explained that the courts lacked the capacity, and the judges the knowledge, to process a large number of cases, even with a diversionary mechanism in place. Furthermore, consistent with Acehnese norms disputes were being resolved at the village level, and it was unlikely that improvements to the formal sector would alter this. The courts advised that IDLO could most usefully assist by ensuring that disputes mediated through *adat* were resolved equitably and in accordance with due process standards. If this occurred, disputes were less likely to be appealed to the courts,

⁵⁹ Stephen Golub 'Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative' *Carnegie Endowment for International Peace Rule of Law Series: Working Paper No. 41* (October 2003) 3, 7-8.

⁶⁰ *ibid* 14-15; C Alkon 'The Cookie Cutter Syndrome: Legal Reform Assistance Under Post Communist Democratization Programs' (2002) *Journal of Dispute Resolution* 327, 339.

⁶¹ Golub (n 59) 15-16.

⁶² *ibid* 8-9, 24; SN Carlson 'Legal and Judicial Rule of Law Work in Multi-Dimensional Peacekeeping Operations: Lessons Learned Study' UNDPKO (March 2006) 16-17.

⁶³ Golub (n 59) 13, 17-19, 22; Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (2002) 70.

⁶⁴ See further Thomas F McInerney, 'Law and Development as Democratic Practice', (2005) 38 *Vanderbilt Journal of Transnational Law*, 109.

and a flood of tsunami-related cases could be avoided. IDLO's field research supported this assessment. It became clear that, for the poor, community structures were the operative framework for protecting legal rights and adjudicating disputes. Empowerment had to occur at this level if it was to have a substantive and lasting impact. The program hence evolved from one that was focused on state institutions to a series of grassroots initiatives that sought to respond to the legal needs of the Acehnese within a context that was relevant to them.

It was similarly clear that to have maximum effect, interventions needed to factor in the strong influence of Islam on Acehnese life. At both the court and customary levels, the applicable law for resolving guardianship and inheritance disputes (the latter incorporating most land disputes) was *shari'a*. Village-level religious leaders and judges of the *shari'a* courts wielded immense social authority. These realities were fed into program development. All print materials (including training modules, community booklets and posters) used Koranic verses or *fiqh* to support or reinforce statements of law. Sermabi newspaper articles carried the logo of the *shari'a* court. And at the beginning of the educational film, the Chief Justice of the provincial *shari'a* court gave a two-minute endorsement noting the film's compatibility with both Islamic and Indonesian law and instructing the audience to listen carefully and share the messages with family members.

IDLO believes that these provisions added authority to activities and promoted popular acceptance. Couching messages about legal rights within the Islamic discourse also helped build relationships with key legal stakeholders, a move that proved advantageous when obstacles were encountered. For example, part-way through the film activity, the provincial *shari'a* court received a complaint from a man whose wife had attended a screening of the educational film. The complaint centered around the film highlighting the right of women to be appointed as guardians, something that the community member did not believe to be correct. The judge who received the complaint took it upon himself to give a presentation at the Grand Mosque (*Mesjid Raya*) in Banda Aceh the following week, explaining the issue and confirming the film's correctness under Indonesian law and Islam.

These experiences demonstrate that legal empowerment requires a pragmatic focus. Program designers, NGO leaders and government officials should focus on where justice is actually being meted out and identifying what are the meaningful and immediate legal issues for the poor. In many situations, access to customary institutions, actors and processes may be more relevant than the formal justice sector. This is particularly the case in the wake of conflict or disaster where state capacity is limited. As noted above, one complication is that the international community has traditionally concentrated its activities on the reform of formal justice sector institutions: the courts, legislature, police and correctional facilities.⁶⁵ Assistance to customary processes has been largely neglected by United Nations agencies as well as multi-lateral and bi-lateral programs.⁶⁶ Recent developments in international policy discourse may, however, signal a sea-change in the policies of international organizations and donors with respect to their level of involvement with the informal justice sector. Leading development agencies such as the World Bank⁶⁷ and policy institutes such as the Centre for Humanitarian Dialogue⁶⁸ have released strong statements regarding the importance of customary systems in

⁶⁵ Kristina Thorne, *Rule of Law Through Imperfect Bodies? The Informal Justice Systems of Burundi and Somalia*, Centre for Humanitarian Dialogue Policy Paper (November 2005) 1.

⁶⁶ Ewa Wojkowska, *Doing Justice: How Informal Systems Can Contribute*, UNDP Policy Paper (December 2006) 5.

⁶⁷ See generally <www.justiceforthepeople.or.id/?lang=en&act=showMorePublications> at 10 May 2007.

⁶⁸ Thorne (n 65); see also United Kingdom Department for International Development (DFID) '*Non-State Justice and Security Systems*' (May 2004) 1.

promoting access to justice, sustainable judicial reform, and poverty alleviation. Such arguments are increasingly obtaining traction at the UN policy level:

Effective strategies for building domestic justice systems will give due attention to laws, processes (both formal and informal) and institutions (both official and non-official).⁶⁹

Perhaps a bigger question involves whether and in what ways the international humanitarian and development communities should engage with religious systems, particularly Islamic systems. In Aceh, IDLO was the only international organization working in partnership with the *shari'a* courts, and whose programs focused upon the implementation of *shari'a* at the community level. Other agencies cited mandatory restrictions that prevented them from undertaking such work. In addition, donors approached by IDLO for second-stage funding were reluctant to support processes that they regarded as lacking sufficient safeguards, promoting violent solutions and discriminating against women. These arguments mirror the views of critics of programs that engage with customary systems.

The counter-argument can also be drawn from the customary debate: religious legal systems, whether formalized or not, do exist. And for the poor, these systems can be the main and even the only option for dispute resolution. Ignoring these realities or (worse) using them as grounds for non-involvement, will not correct the injustices that occur through the operation of religious legal fora. Instead, it is the existence of those who have no choice but to rely upon such systems, that makes the case for active involvement compelling. As Thorne states, “the fact that these may not correspond to our concept of justice, or fully comply with international standards, is in reality only another reason why we should engage them.”⁷⁰ Programs like IDLO’s, where Islamic law and religious actors were used to promote, *inter alia*, the rights of women to own land, inherit and be appointed guardians of their own children, are positive examples of how engagement with religious systems can yield substantive impact.

3.2 The role of legal culture in legal empowerment programming

In the aftermath of the tsunami, rebuilding houses to accommodate the displaced was a lead imperative. A major impediment was that the disaster inflicted significant damage upon the National Land Offices (*Badan Pertanahan Nasional*) and the majority of land records and boundary maps were either lost or no longer legible.⁷¹ Compounding this was that approximately 75 percent of tsunami-affected land parcels were held under *adat* tenure; therefore, no official map or title even existed.⁷² Without state-recognized records of land ownership and boundaries, international agencies were reluctant to commence the rebuilding process. In response, a program of systematic land titling—the Reconstruction of Aceh Land and Administration System program (RALAS)—was developed. RALAS aimed to map and register up to 600,000 land parcels in tsunami-affected and adjacent communities.⁷³

⁶⁹ Security Council UNSC ‘Report of the Secretary General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies’ (2004) UN Doc S/2004/616 [35], see also [36].

⁷⁰ Thorne (n 65) 7.

⁷¹ Fitzpatrick (n 9) 4-5; see also UNDP (n 5) 9.

⁷² Erica Harper, *Guidebook on Guardianship, Inheritance and Land Law in Post-Tsunami Aceh*, IDLO (2006) 84.

⁷³ First, communities would reach agreement on land boundaries through a process of community land mapping or Community Driven Adjudication (CDA). Second, on the basis of the community land map officials from the national land office would survey boundaries and verify compliance with CDA procedures. Third, the resulting parcels of land would be registered and title certificates issued. BPN Decree No. 114-II.2005 *On the Land Registration Manual in Post Tsunami Areas*, 1, 5, 7.

The program also responded to what some development experts considered to be a prerequisite to the modern nation state – an efficient and comprehensive land administration system. According to such experts, individual titling would address the problem of land tenure security (particularly women’s tenure security), and contribute to economic growth as title holders would have greater access to credit.⁷⁴ These arguments drew heavily upon theories put forward by economist Hernando de Soto—theories that were subsequently adopted in the 2008 report of the Commission on Legal Empowerment for the Poor, which de Soto co-chaired.⁷⁵ Few questioned such a rationale at the time, perhaps because the logic sat nicely with the “build back better” mantra adopted by the Indonesian Government and members of the international community.

But was individual titling an effective vehicle for legal empowerment? While it may be too early to assess whether formalized land titling has had an impact on economic growth or poverty reduction, research data collected by IDLO does not support widespread improvements in perceptions of tenure security. Some communities surveyed felt that their land rights were even more vulnerable after their land boundary had been mapped and registered: they were concerned about the extension of government control over land and, in particular, the possibility that certification would facilitate appropriation of land by the state (a common occurrence during the conflict period). The evaluation suggested that land disputes were still being adjudicated through *adat* and that customary leaders based decisions on their knowledge of disputants’ land holdings and customary rules. Possession of a title certificate was not a particularly influential factor in such processes.

Moves to promote women’s tenure security through joint titling of matrimonially held property were similarly disappointing.⁷⁶ Survey data from several agencies showed that when left to communities, land was usually registered to male heads of household, not jointly with their wives. When such communities were provided with information on the legality of joint titling and its benefits, rates increased but not significantly. Only when agencies became actively involved or when joint titling was made mandatory did rates improve.⁷⁷

There are at least two lessons to be learned from this. First, when identifying potential approaches for legal empowerment it is important to make realistic assessments about the state of the formal legal system, particularly as to whether it can support an empowered population. In Aceh, where legal institutions functioned only marginally and there were cultural disincentives to utilizing courts and police services, titling probably had less to offer than planners expected.⁷⁸

Second, it is necessary to factor in the challenges that may stem from a weak formal legal system and related norms. In the case of RALAS, the assumption that

⁷⁴ See for example, World Bank, *Reconstruction of Aceh Land Administration System – Background* <<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/INDONESIAEXTN/0,,contentMDK:20877372~pagePK:141137~piPK:141127~theSitePK:226309,00.html>> at 7 April 2009.

⁷⁵ Hernando De Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (2000); Commission on the Legal Empowerment of the Poor, *Making the Law Work for Everyone*, Vol. 1, (3 June 2008).

⁷⁶ Joint titling was compulsory for all land purchased by BRR; BRR Policy Press Statement, Banda Aceh (19.09.06) on Joint Land-Titling - BRR/BPN Joint Agreement. On file with author. See also Harper (n 72) 98.

⁷⁷ UNDP has estimated that joint registration has occurred in 3.9 percent of cases (10,137 land certificates have been signed); data on file with IDLO.

⁷⁸ For further discussion on individualized titling as a vehicle for legal empowerment see G Payne, A Durand-Lasserve and C Rakodi, ‘Urban Land Titling Programmes’ in M Brøther and J Solberg (eds) *Legal Empowerment - a Way out of Poverty*, Norwegian Ministry of Foreign Affairs (June 2007) 11-40; Juan M Otto ‘Rule of Law Promotion, Land Tenure and Poverty Alleviation: Questioning the Assumptions of Hernando de Soto’ (2009) 1, *Hague Journal on the Rule of Law*, 173-195.

tenure security would flow naturally from the issuance of titles did not play true. Something was missing: to a large extent, this 'something' was the absence of a shared sense of legal values such as equality before the law and the need for due process and judicial independence. The legal culture of Aceh was not one where individuals could go to court or an administrative agency to defend their rights, where state-issued title was regarded as indisputable evidence of a right, and where women owned and exercised control over land on an equal footing with men. In this environment, to expect that the issuance of titles would erase hundreds of years of complex customary rules regarding the management and passage of land, or that mandatory joint titling would automatically translate into increased security of tenure for women, was too simplistic.

Programmatically, this area of legal 'culture' remains largely unexplored by the international community. There are several reasons for this. Sometimes it is assumed that a rule of law already exists; or (as in this example) that it will flow naturally from practical aspects of empowerment such as land titles. Sometimes the issue is avoided because practitioners fear accusations of legal or cultural imperialism. Or it is placed in the "too hard" category because we really know very little about how, why and under what circumstances legal cultures change. It is argued, however, that as we look more closely at frameworks and mechanisms to legally empower the poor, we must be very aware of the determinative role that widely held rule of law values play. This is undoubtedly a difficult and complex area. How is a strong legal culture measured? What are its components? And should international actors be in this business at all? These questions, however, must be addressed if legal empowerment programming is to become effective.

A limited number of organizations have begun to explore these issues, including the impact that facilitated positive experience may have on promoting the rule of law and related norms. For example, in a subsequent phase of IDLO's work in Aceh mobile courts were established to facilitate legal registration of guardianship; the aims were to educate community members with regard to the legal obligations of guardians with respect to their wards and to safeguard the rights of minors who had inherited property. The evaluation conducted some months afterwards concluded that although guardians appeared to have acquired and retained new knowledge, very little changed behavior could be observed. Although it was not directly evaluated, there was overwhelming anecdotal evidence that what participants remembered most about the experience was that court staff did not ask them to pay a bribe. Perhaps the most important impact of this program was not enhanced protection of minors' land rights, but instead one that IDLO did not think to measure—the impact that this single positive interaction with the legal system had on guardians. Whether this type of experience may constitute the beginnings of legal cultural change needs to be further explored.

Finally, while there needs to be more research into how to help build legal cultures that respect and advance disadvantaged populations' rights, it is also important to consider how programmatic interventions can have negative implications for normative change. A concern throughout the IDLO program was whether and to what extent activities should promote engagement with the formal legal system when it was apparent that this system was not fully functional. This was particularly pertinent to considerations of access to justice, impartial decision-making and protection of women's rights. There was concern about the consequences if, for example, individuals approached a court expecting to receive certain services but found that there was still a large gap between what the formal justice sector should provide and what it actually did provide. Would such experiences exacerbate existing feelings of disenfranchisement and cynicism regarding the achievement of a just and effective formal legal system?

Ultimately, it was concluded that the flaws in the formal legal system were also present in the informal system and that because the courts were sufficiently functional, engagement with the informal justice sector would be productive. A further consideration was that the transition to a society based on the rule of law required popular awareness of available options for resolving disputes: only by exploring such options would users gain sufficient awareness to demand improvements in state and non-state systems. An evaluation of these considerations needs to be integrated into project design and specifically risk analyses.

3.3 Challenges for the future: legal empowerment for all – the issue of scope

IDLO's strategy was to provide a holistic response to inter-connected problems, focusing on a limited number of beneficiaries (100 villages). Legal awareness-raising activities allowed this group to gauge whether justice being dispensed by customary processes was acceptable, and where it was not, they were provided with the knowledge and the means to access the formal justice system. The evaluation indicated that interventions had been generally successful vis-à-vis their stated objectives:⁷⁹ it confirmed that the legal knowledge of individuals and village decision-makers had improved; that decision-makers were putting their new skills into practice; and that some individuals were taking advantage of the legal counseling and representation offered by KKTGA and receiving favorable decisions in court. It seems reasonable to conclude that within the 100 target villages, legal empowerment did improve. The difficulty is that the problems affecting these 100 villages were equally apparent in Aceh's other 654 tsunami-affected villages, and even throughout Aceh (approximately 5,200 villages).⁸⁰

A key challenge to making significant gains in legal empowerment thus relates to scope of intervention. In a situation such as Aceh—where there is a weak rule of law culture, widespread mistrust of state institutions and a formal legal system that is marginally functional—a comprehensive, integrated and long-term approach is required. The realities of modern rule of law programming, however, are such that initiatives can generally only be implemented on a small scale and/or within a limited timeframe. Timescale is a particular problem in emergency contexts such as following a natural disaster. Early recovery programming is usually short-term (6-12 months). Many argue, however, that in sectors such as legal development, such activities should be situated within a longer-term development framework.⁸¹ Even then, program cycles (generally 3-5 years) are too short for substantive legal change to occur.

It is unlikely that funding modalities will change significantly in the near future, particularly in the current context of global economic recession. But if the issue of scale cannot be addressed, perhaps more can be done to promote complementarity in programming. In Aceh, IDLO, the World Bank, UNDP, UNICEF, Oxfam and several local NGOs implemented programs with legal empowerment components. These agencies adopted different approaches and target beneficiaries did not significantly or consistently overlap. It is not questioned that these interventions responded to key areas of deficiency. However, the fact that they did not reinforce one another, in addition to their small scale, meant that overall impact was limited. Had strategies been aligned and beneficiary groups coordinated, synergies could

⁷⁹ IDLO (n 39) 14-17.

⁸⁰ Indonesian village potential census (PODES) < <http://ideas.repec.org/p/fre/wpaper/4.html> > at 26 April 2009.

⁸¹ UNDP, 'Early Recovery and Rule of Law' (undated), report on file with author.

have produced wider benefits, making a greater contribution to justice sector development.⁸²

Turning such an agenda into reality is more easily said than done. International development and humanitarian agencies, donors, governments, domestic NGOs and, crucially, the partner populations themselves may have different views and objectives. Gaining consensus on a common approach can be problematic. If cooperation is to be the way forward, prerequisites include enhanced inter-institutional dialogue on legal empowerment approaches, greater research into what works and what does not, and large-scale empirically-driven evaluations that are shared and used to come to some form of agreement on best practices. With such knowledge, practitioners, policy-makers and other stakeholders will be better equipped to move legal empowerment away from a discussion and into a framework for action and impact.⁸³

⁸² It is important to note that this paper is not predicated on the assumption that IDLO's interventions were ultimately the most effective ones. Provided each intervention is properly and impartially evaluated there is potential for everyone to learn from the successes and failures of the others. That having been said, questions of economies of scale inevitably arise. Would a comprehensive and integrated approach have been more effective in the immediate aftermath of the tsunami? The short answer is probably "no". Given the unprecedented nature of the tsunami it is reasonable to assume that no organization would immediately have all of the answers. In the early months it was probably appropriate for different groups with different development philosophies to be trying different approaches. But once the immediate problems had been addressed – say one year out from the event – a coordinated approach incorporating the best aspects of each contribution would unquestionably have been more appropriate.

⁸³ An additional way that international agencies can respond to the issue of scope is to invest more strategically in local capacity building. As part of its exit strategy, IDLO assisted national staff form a NGO specializing in legal training and mediation. Seed funding to register the NGO was taken from the program budget, and training was provided on donor relations and the preparation of project proposals and funding applications. Although "IDLO International" is yet to withdraw completely from Aceh, the intention is that the local NGO will carry on some or all of the activities undertaken between 2006 and 2009.