



Access to Justice:
Empowering female
heads of household
in Indonesia

© PEKKA and AusAID 2010

The information in this publication may be reproduced with suitable acknowledgment.

Designed by Mariana Rollgejser [mariana@rollgejser.com]



Access to Justice: Empowering female heads of household in Indonesia

This Access and Equity Study was supported by the Australian Government through the AusAID-funded Indonesia Australia Legal Development Facility (IALDF), a joint Indonesian and Australian Government initiative.

Research Coordinator and Author: Cate Sumner, IALDF Lead Adviser—Access to Justice/Judicial Reform.

Editorial Advisor: Leisha Lister, Executive Advisor, Family Court of Australia

Poverty and Legal Access Survey research team:

- PEKKA: Nani Zulminarni, Fitria Villa Sahara, Kodar Tri Wusananingsih, Mien Rianingsih, Romlawati and Adi Nugroho
- SMERU: Akhmadi, Sri Budiyati, Asri Yusrina, Athia Yumna
- Family Court of Australia: Leisha Lister, Executive Adviser, and
- Indonesia Australia Legal Development Facility: Cate Sumner, Lead Adviser—Access to Justice/Judicial Reform.

The access and equity research project (2007–2009) has four separate research components and involved the support of the following partners:

- Supreme Court of Indonesia including:
 - Bapak Cicut Sutiarmo, Director-General of the General Courts, the Supreme Court of Indonesia and colleagues in the Directorate-General for the General Courts (*Badilum*), particularly the Statistical and Documentation Unit
 - Bapak Wahyu Widiana, Director-General of the Religious Courts, the Supreme Court of Indonesia and colleagues in the Directorate-General for the Religious Courts (*Badilag*), particularly the Statistical and Documentation Unit, and
 - The Judicial Reform Team Office of the MA.
- IALDF staff
- Family Court of Australia
- The PPIM (Centre for the Study of Islam and Society) at the State Islamic University (UIN) Syarif Hidayatullah Jakarta: Dr Jajat Burhanudin
- Private and legal aid lawyers working in family law who participated in focus group discussions
- Dewi Novirianti, Simon Yos Sudarso and Indra Krishnamurti, who assisted with the case-file analysis research component
- Ibu Siti Ruhaini Dzuhayatin, Director of the Women's Studies Centre, UIN Sunan Kalijaga in Yogyakarta and Professor Dr. Sulistyowati Irianto, from the University of Indonesia, Jakarta, who provided guidance on the gender dimensions of the survey.

Contents

Foreword	by Diani Sadiawati, Director Law and Human Rights, Bappenas	iv
Foreword	by Nani Zulminarni, Coordinator, PEKKA National Secretariat	vi
Abbreviations		ix
Key Findings		i
Chapter 1	Introduction to the Access and Equity Research	7
Overview		8
Aims of the research		8
Female heads of household in Indonesia		8
PEKKA NGO		9
2007 Access and Equity Study		10
2009 Access and Equity Study		11
Methodology		11
Chapter 2	Introduction to the family law jurisdiction of the General and Religious Courts	17
The importance of family law cases and birth certificate cases being heard in the Courts		17
Legal process for marriage and divorce (including process for legalising marriage)		18
Legal process for obtaining a birth certificate		20
Prodeo (fee waiver) process under Indonesian law		21
Jurisdiction for family law cases (legal basis)		23
Chapter 3	Research Findings	29
PEKKA Income		30
Marriage and Divorce		34
Birth Certificates		45
Educational attainment of PEKKA members		48
Educational attainment of dependants of PEKKA members		49
Cost of educating one child as a proportion of a PEKKA member's average per capita income		52
Gender preferment in education		55
Chapter 4	Key Findings and Strategic Response	57
Annex 1		71
Extract from Government of Indonesia's Strategic Plan for Universal Birth Registration in Indonesia		
Annex 2		73
Challenges and solutions in providing the mandatory nine years of education for the children of PEKKA members		
Acknowledgements and Study Partners		77

Foreword

Diani Sadiawati, Director Law and Human Rights, Bappenas

The commitment of the Indonesian Government to provide justice for all Indonesians, especially poor community groups and women, is an important priority for the coming five years. Through a lengthy assessment process involving various stakeholders, Bappenas launched the National Access to Justice Strategy in October 2009, which was then integrated into the Medium Term Development Plan 2010-2014, especially in the Chapter concerning Law and State Agencies.

In line with the process of democratization, the Government is fully aware that implementation of the National Strategy requires active participation from various parties and stakeholders. Justice issues, especially for poor and marginalized community members and women, have complex dimensions and require a multidimensional approach. For these reasons, the Government welcomes and supports every effort made by many parties, including civil society, to improve access to justice for the poor.

This access to justice research *Empowering Female Heads of Household in Indonesia* was implemented jointly by the National Secretariat for the Empowerment of Female Heads of Household (Seknas PEKKA), the Supreme Court, SMERU, the Indonesia Australia Legal Development Facility (IALDF) and the Family Court of Australia, and it represents a concrete outcome of the National Access to Justice Strategy.

It is hoped that the results of this research will assist many parties, including Government and civil society in partnership, to develop programmes to empower poor communities, especially female heads of household, so as to contribute to the building of a prosperous and just society and, furthermore, to assist in eradicating poverty. These are objectives that have for some time been the subject of Government programmes, including the National Community Empowerment Programme (PNPM).

Connected to these issues, Presidential Regulation Number 5 of 2010 concerning the National Medium Term Development Plan (RPJMN) 2010-2014 has budgeted approximately Rp 300 billion to support access to the Indonesian courts for the poor, including court fee waivers, circuit courts and legal aid, all disbursed by the Supreme Court.

Civil society groups like PEKKA that work at the grassroots level play an important role in supporting community empowerment, especially for poor women, by providing information about how to obtain justice through the court process. For this reason, I hope that the collaboration seen in this research project between civil society and the Supreme Court, the last bastion of justice, and related institutions will continue and flourish.

The Supreme Court, working in cooperation with civil society organisations through the General and Religious Courts, has made a significant contribution to empowering communities, especially poor communities. It is hoped that these steps will speed up the realisation of fundamental rights of citizens as a means of reducing and overcoming poverty.

Family law is the focus of this research and touches on many important and inter-related issues, such as legal and registered marriage, under-age marriage, legal divorce and birth certificates for children, all of which in many cases require formalisation through the court system. For this reason, access to justice is very important, especially for women and children.

My appreciation goes to the research team for completing *Access to Justice: Empowering Female Heads of Household in Indonesia*. As stated in the National Access to Justice Strategy, partnership between Government, civil society organizations and related parties is the key to success in empowering communities.

My thanks and gratitude go to the PEKKA National Secretariat, the Director General of the Religious Courts, the Director General of the General Courts, Supreme Court, SMERU, the Family Court of Australia, and for its support, to the Australian Government through IALDF, as well as all other parties involved directly or indirectly in this research. I hope that the research recommendations will become a basis for making policy decisions that are more focused on the community, especially poor and marginalised communities, through the various programmes in the National Medium Term Development Plan (RPJMN) 2010-2014.



Diani Sadiawati

Director Law and Human Rights, Bappenas
Jakarta, 21 April 2010

Foreword

Nani Zulminarni, Coordinator, PEKKA National Secretariat

“Today 35 Cianjur PEKKA women will participate in a circuit court for resolution of their marriage issues, especially legalisation of their unregistered marriages. The PEKKA women are being given priority for the finalisation of their cases through a circuit court and they do not have to pay because everything is covered by the government.”

I received this happy news via an sms message at the end of 2007 from Oemi Faezhati, a PEKKA field worker for the empowerment of female heads of household in Cianjur area. I was right to be happy because after establishing PEKKA in 2001 we found in our work in the field that among the serious problems faced by PEKKA women living in poverty were family issues, including cases of unregistered marriage, divorce, abandonment and neglect, as well as children without birth certificates. Poverty and social isolation (ostracism) have kept PEKKA women from obtaining their rights, especially those connected with legal issues. The reality we observed in the field motivated us to develop a Legal Empowerment Program in 2004, in cooperation with the World Bank's Justice for the Poor Program.

During the initial stage, the focus of PEKKA's legal empowerment program was to grow and strengthen the critical awareness of PEKKA women concerning legal rights and justice through training activities, support, and information dissemination. In addition, we also had to train legal field workers to act as paralegals in each of their districts, because legal aid is not available at village level for impoverished community members. This programme has clearly already succeeded in building the legal awareness of PEKKA women to fight for rights and justice in connection with their marriage issues. Building the capacity of legal field workers has successfully developed the motivation and confidence of PEKKA women to fight for their rights by using existing legal mechanisms. However, this is far from easy. This is because in a systemic sense there is not yet a mechanism that is truly open and accessible to the poor in the community, especially PEKKA women, that will allow them to take part in the legal process and obtain justice in an inexpensive and simple way. Or if there is, PEKKA women do not yet have access to information about it.

In 2006, I received a visit from an LDF consultant – Cate Sumner – who planned to undertake research concerning access to justice for the poor. LDF chose PEKKA locations in Cianjur, Brebes and Jonggat, and PEKKA women in these areas, as the subject of their research. In fact, I didn't greatly value research at that time. I was then prejudiced against 'research'. I had good reason to feel that way too. So much research has been carried out, especially involving the poor as its subject. However, the results of this research have not brought direct benefits to the poor communities that were its subject. In fact, the reports produced were not accepted and understood by these communities because they were mainly just stored in libraries where they were used only by elite academics.

Through several stages of discussion, I tried to better understand how the research undertaken by LDF could help us in our legal empowerment efforts, and directly assist PEKKA women to obtain their rights to justice. Finally I agreed to the involvement of PEKKA members as subjects of the LDF research. And in fact it is true that the results of the research fully supported our original thesis that female heads of household represent the poorest of the poor and have the greatest difficulty in accessing justice through the legal system in Indonesia for various reasons. The research provided reliable empirical evidence of this.

However, I was more interested in the follow-up to the research, that is, how the results would be used. LDF, through its research consultants, really involved us in the follow-up process in an on-going basis, including the process of “socialisation” and discussion of the results with legal agencies in Indonesia. We made the most of these opportunities by conveying the issues PEKKA encountered in the field concerning the legal process faced by PEKKA members, as well as developing communications and linkages with legal agencies right up to the level of the Supreme Court of Indonesia. This is the point from which change began. The research results were taken further through new policies that are quite beneficial for poor communities, especially policies for the allocation of budget resources for circuit courts in poor regions. These policies directly resolve issues for PEKKA women who otherwise do not have the means to pay court fees.

The success of this research also motivated LDF to implement follow-on research concerning recommendations we made, namely looking at access to justice in the General Courts and access to education for children of poor families. And again, PEKKA was prepared to be a subject of this research. This time, the involvement of PEKKA was more intensive, because PEKKA staff were also involved in the research as part of the team assembled by SMERU, the research institute selected by LDF to implement the research. In addition, PEKKA was also involved directly in discussions to analyse the research findings, make the report and develop the key findings and recommendations to reflect the needs of PEKKA members and other disadvantaged community groups.

The report before the reader now represents just one part of a longer process. Almost a year has been taken by the team involved in finalising the analysis and recommendations in order that this research will really provide direct benefits to poor communities - and so the report won't merely be used to decorate libraries. Great hopes have been placed in this report's recommendations by PEKKA women in particular, and disadvantaged community groups in general. They hope for change in the system that will give them greater access to justice. An even bigger challenge, however, is surely how to use these research results to the best advantage for advocacy and action in the field to achieve a fundamental change.

This research exists due to the dedication and hard work of the whole team involved in this activity, both directly and indirectly. The extended family of PEKKA associations conveys its highest appreciation to Cate Sumner and Leisha Lister, the SMERU research team, and PEKKA National Secretariat programme staff, both in the field and in the Secretariat. Thanks go also to AusAID and LDF, who made this research possible, and Kamala Chandra Kirana who was a peer reviewer of the report recommendations. Special appreciation is expressed to PEKKA women and PEKKA field workers, the wider community in PEKKA areas, and local government officials who provided information for this research.

Hopefully this research result will make a contribution to the process by which disadvantaged families in Indonesia can lead lives with a sense of justice and dignity, especially female headed households.



Nani Zulminarni

Koordinator Nasional Seknas PEKKA
Jakarta, 14 February 2010



ABL
HIJK
PQRS
WX
Y

List of Abbreviations

AusAID	Australian Agency of International Development
Bappenas	Indonesian National Development Planning Agency
BLT	<i>Bantuan Langsung Tunai</i> Direct Cash Transfers
BPS	<i>Badan Pusat Statistik</i> , Indonesian Bureau of Statistics
IALDF	Indonesia Australia Legal Development Facility
Jamkesmas	<i>Jaminan Kesehatan Masyarakat</i> Indonesian Health Insurance Program for the Poor
KUA	<i>Kantor Urusan Agama</i> Religious Affairs Office
MA	<i>Mahkamah Agung</i> – Indonesian Supreme Court
NAD	Nanggroe Aceh Darussalam province
PEKKA	<i>Pemberdayaan Perempuan Kepala Keluarga</i> – Empowerment of Female Heads of Household (NGO)
PPP	Purchasing Power Parity
Raskin	Rice subsidy program of the Indonesian Government
SMERU	Research institute selected by IALDF to conduct the research



Key Findings

1 The reported number of female-headed households in Indonesia is under-estimated.

In 2010, the Indonesian Bureau of Statistics (BPS) estimated that there were 65 million households, 14%, or 9 million of which are headed by women.¹ The BPS definition of the head of a household currently allows for two different people to be considered as the head of a household: (i) the person who is actually responsible for the daily needs of a household or (ii) the person who is considered the head of the household. This definition is confusing, as only one person can be named as the head of household through the BPS national survey process. It is therefore probable that there is an under-estimation of the number of female-headed households in Indonesia. This has implications for policy planning and implementation for Indonesia's pro-poor poverty alleviation programs that benefit female heads of household and their families.

2 55% of the 601 PEKKA women interviewed live below the Indonesian poverty line.²

14% of the Indonesian population lives below the Indonesian poverty line. More than half of the PEKKA members surveyed fall within this group. If an international poverty line of USD\$2 PPP³ was applied to this group of women, 79% of the PEKKA members surveyed would fall under this international poverty line.

3 One-third of those female heads of household who live below the Indonesian poverty line are unable to access cash transfer schemes.

While most PEKKA members living below the Indonesian poverty line were able to access the rice subsidy program (*raskin*), the government cash transfer payments (*Bantuan Langsung Tunai* BLT) made in 2005 and 2008 were more difficult for PEKKA members to obtain.

4 One-third of female heads of household living below the Indonesian poverty line were unable to access the free medical treatment program (*Jamkesmas*).

This percentage increased to 48% in West Kalimantan for those PEKKA members surveyed living under the Indonesian poverty line.

5 Three out of every ten PEKKA members surveyed were married under the age of 16, the legal age of marriage.

On average, 27% of PEKKA members were married under the age of 16, which is below the legal age of marriage in Indonesia. This increased to 49% of PEKKA members surveyed in West Java.

6 Less than 50% of PEKKA members surveyed have a legal marriage.

¹ Hartanto, Wendy (2010) *The 2010 Indonesia population census*, Statistics Indonesia/BPS and *Statistik Gender 2009*, BPS.

² *Profil Kemiskinan Di Indonesia Maret 2009*, *Badan Pusat Statistik*, *Berita Resmi Statistik No. 43/07/Th. XII, 1 Juli 2009*. The poverty line for urban dwellers is Rp222,123 and for those living in villages is Rp179,835. In March 2009, 32.5M people or 14% of the Indonesian population lived below the Indonesian poverty line.

³ The international poverty line of USD\$2 PPP is Rp 404, 715 for urban dwellers and Rp 286,892 for those living in villages. (2009 adjustments to the USD\$2 PPP were provided by the World Bank Jakarta Office).

2 Key Findings

- 7 A central principle of justice is that it be universally accessible. Unfortunately, the poorest sections of Indonesian society face significant barriers bringing their family law cases to the courts. Nine out of ten PEKKA heads of household surveyed were unable to access the courts for their divorce cases. For the poor, the cost of court fees and transportation to the nearest court is perceived as an overwhelming barrier to accessing the courts. Information and support for disadvantaged groups to navigate their way through court processes are also important, especially when combined with low levels of literacy. However, as demonstrated through the collaboration of PEKKA and the Religious Courts, the information barrier for disadvantaged groups can be overcome through the work of court information desks and collaboration with NGOs.

14% of Indonesian people live under the Indonesian poverty line.

The average total cost of a Religious Court case for survey respondents was Rp 789,666, (USD\$90) almost four times the monthly per capita income of a person living on or below the Indonesian poverty line.

The average total cost of a General Court divorce case in 2008 was Rp 2,050,000 (USD\$230) where the party did not use a lawyer; approximately ten times the monthly per capita income of a person living on or below the Indonesian poverty line.

These costs prevent the poor from being able to bring their family law cases to the courts according to the requirements of Indonesian law.

- 8 **88% of PEKKA female heads of household would be more motivated to obtain a legal divorce if the court fees were waived.**

The waiver of court fees (*prodeo*) will greatly assist those living under the Indonesian poverty line, as well as other poor clients of the Indonesian courts, who often go into debt or use several months of household income to bring a divorce case to the courts.

- 9 **High transportation costs are a barrier to accessing the court, especially for the rural poor who live a greater distance from the courts.**

The cost of transportation to a court varies significantly, depending upon where a party lives in relation to the court. The greater the distance to the court, the greater the transportation costs for the party.

The average cost of transport for an urban PEKKA member to attend court was Rp 25,000 (USD\$2.50) per return trip while a rural PEKKA member faced an average cost of Rp 92,000 (USD\$9) per return trip to the court, representing almost half the monthly income of a household living under the Indonesian poverty line.

- 10 **89% of PEKKA women would be more motivated to obtain a legal divorce if a circuit court was held in a nearby town.**

For the rural poor, the cost of transportation is a significant proportion of the overall cost of bringing a case to court. Transportation costs can represent 70% or more of the total cost of bringing a case to court. Bringing the court to the party would significantly reduce the costs of bringing a case to court and increase access to justice for the poor living in rural and remote areas.

11 Over-estimation of the down-payment made to courts for divorce cases is a disincentive to justice seekers bringing their cases to court, particularly the poor.

On average, clients in the six Religious Courts surveyed made a down-payment of 24% more than the final cost of the case set out in the court judgment. Clients in the six General Courts surveyed made a down-payment of 79% more than the final cost of the case set out in the court judgment.

The higher the down-payment required, the less likely the poor will be able to bring their family law cases to court.

12 Reimbursement of the down-payment made to courts is important for all clients, but particularly for the poor.

Greater transparency of court fees and the down-payments made to courts for divorce cases would assist in building public trust and confidence in the courts.

13 79% of PEKKA members who were able to access the courts were either satisfied or very satisfied with the service provided by the courts.

14 In 78% of the 264 divorces, PEKKA members identified domestic violence as a factor.⁴

15 Divorce through the courts provides legal certainty for women and the poor.

Without a legal divorce it is not possible to legally re-marry. Children from subsequent marriages where there was no prior legal divorce will be unable to have their father's name on the birth certificate. This is a disincentive for many Indonesian women to obtain birth certificates for their children.

Judges and court staff of the Indonesian Courts and PEKKA female heads of household living under the Indonesian poverty line agree that a formal divorce through the Indonesian Courts clarifies legal responsibilities for the care and financial support of both former spouses and children of the marriage.

PEKKA women find it difficult obtaining a family card listing them as the head of household without a formal divorce certificate. This document evidencing their role as a female head of household can be important in assisting them to access public services, especially those targeting the poor, such as subsidised rice programs, free health care and cash transfers.

16 Nine out of ten court survey respondents did not consider the Indonesian legal requirement to bring divorce cases to court as the primary motivating factor for bringing their case.

Only 11% of Religious Court and 8% of General Court clients surveyed chose to use the courts because it is a requirement of Indonesian law.

Of the 1655 clients surveyed, 89% of Religious and 91% of General Court clients registered their cases in court because other non-court resolution mechanisms, such as family conciliation, had failed or because their partner had chosen to take the case to the courts.

⁴ PEKKA survey respondents were asked if violence (physical, psychological, economic or sexual) against themselves and or their children was a factor in the divorce.

- 17 56% of children of PEKKA women surveyed did not have a birth certificate. This percentage increased to 87% of PEKKA women surveyed in Aceh.**

A cycle of non-legal marriage and divorce exists for many PEKKA female heads of household. The failure to obtain legal documentation in relation to marriage and divorce is associated with the low rate of birth certificates for children. If parents are unable to bring their birth certificate cases to the General Courts, their child's basic human right to a legal identity, as well as access to a range of social services, such as health and education, will be denied or diminished.

The Government of Indonesia has placed a high priority on every Indonesian child's birth being registered by 2011. The requirement of Law 23 of 2006 that parents bring a birth certificate matter to the General Courts if they do not obtain a birth certificate for their child within one year of its birth is a significant disincentive for the poor and those living far from Civil Registries.

- 18 Of the 601 PEKKA members surveyed, 24% never went to school and 34% never completed primary school.**

42% of PEKKA members completed primary school compared with the national average of 72%. 14% of PEKKA members completed junior high school compared with the national average⁵ of 41%.

27% of PEKKA members surveyed were married under the legal age of 16. In most cases, under-age marriage prevents girls from completing the national requirement of nine years of education, as schools generally do not permit girls to continue their education once they are married.

- 19 The educational attainment of dependants of PEKKA women fall well below national standards.**

- 28% of PEKKA dependants never attend school compared with the national average of 8%
- 63% of PEKKA dependants finished primary school compared with the national average of 72%
- 34% of PEKKA dependants finished junior high school compared with the national average of 41%, and
- 13% of PEKKA dependants finished senior high school compared with the national average of 23%.

- 20 Whether a child is able to complete the mandatory 9 years of education appears to be strongly linked to whether a child has a birth certificate.**

For the dependants aged 10-19 of PEKKA members surveyed in West Java, West Kalimantan and East Nusa Tenggara, 78% are still at school. Of these dependants who are still at school, 70% of them have birth certificates.

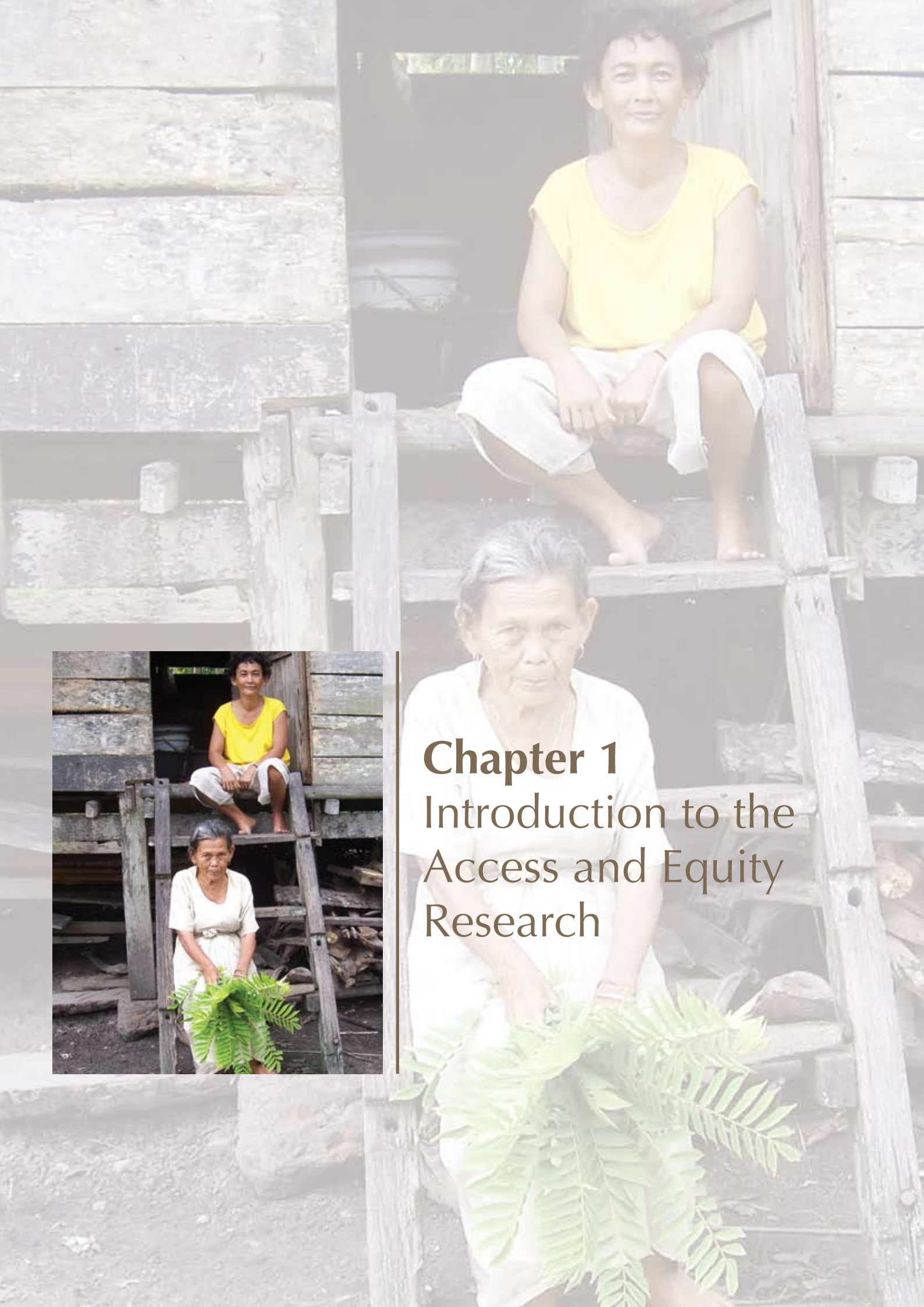
21 The cost of educating one child represents a significant proportion of a PEKKA member's average annual per capita income:

- Educating one primary school child at a state school takes 51% of the PEKKA member's annual per capita income.
- Educating one junior high school child at a state school takes 140% of the PEKKA member's annual per capita income.
- Educating one senior high school child at a state school takes 178% of a PEKKA member's annual per capita income.

These figures demonstrate that the total cost of educating a child at junior and senior high school exceeds the average per capita income in a PEKKA household that would notionally be allocated to meet the day-to-day needs of that child. For children of female heads of household, the completion of the mandated nine years of education is far from a reality.

22 PEKKA members will educate their sons over their daughters by a factor of 3:1 if forced to make a choice because of household income constraints.

The National Strategy on Access to Justice highlights the priority of broadening access to justice for poor and marginalised people by implementing non-discriminatory policies as well as affirmative actions. This requires the realisation of basic preconditions for legal aid services, namely: First, implementation of the principles that services are “obligatory” and “free of charge”—or at least “affordable”—in the fulfilment of access to justice for the poor. Second, the ability of poor people to defend and fight for their constitutional and legal rights without discrimination based on poverty. In human rights terms, this condition is guaranteed by the recognition of the equal rights of all before the law and government. Third, assurance that the poor encounter not barriers, but instead facilitation of access to legal resources on an equal basis with the rich and powerful.⁶



Chapter 1
Introduction to the
Access and Equity
Research

In 2009, the Indonesian National Access to Justice Strategy was launched, which commenced with the lines:

The importance of strengthening access to justice for all people, especially the poor and marginalised, is now beyond question. Indonesian citizens have yet to fully realise the fulfilment of their rights under the Constitution. Many activities have indeed been undertaken to strengthen community empowerment in development, particularly in social and economic fields. While social and economic rights are fundamental for the people of Indonesia, they are best attained alongside efforts to strengthen legal rights. Thus, implementation of the rule of law in Indonesia essentially depends on the implementation of access to justice.⁷

The access and equity study was conducted as a collaborative research project led by the Supreme Court of Indonesia and the AusAID-funded Indonesia Australia Legal Development Facility (IALDF) from 2007–2009. The four different research components that made up the study examined the level of satisfaction of justice seekers who were able to access the Indonesian courts for their family law matters and whether there were sections of the community who were unable to bring their family law cases to the courts and the reasons why. One of the research components examined the barriers faced by female heads of household in the PEKKA organisation, the majority of whom live under the Indonesian poverty line, in bringing their family law cases to the courts as a way of assessing barriers generally faced by women, the poor or those living in remote areas.

This first chapter outlines the aims of, and methodology for, the research components included in the access and equity study. It also provides an overview of the available statistics on female-headed households in Indonesia and the PEKKA organisation whose members agreed to be surveyed as part of the study.

Chapter Two explores why it is important for Indonesian citizens to have their family law and birth certificate cases heard by Indonesian courts. There is then a brief overview of the legal requirements to obtain a valid marriage, divorce certificate or birth certificate and how impoverished citizens may apply for a case to be heard with the court fee waived (a *prodeo* case). The chapter concludes with data on the number of divorce cases heard in the General and Religious Courts and how this has been steadily increasing over the last decade.

Chapter Three presents the key research findings from the Poverty and Legal Access Survey in relation to PEKKA members':

- (i) income levels and ability to access government poverty programs
- (ii) ability to obtain legal marriage, divorce and birth certificates for themselves and their children (and considers reasons why access to government agencies and courts may be limited for PEKKA members), and
- (iii) education levels and that of their dependants (and compares this with national data on educational attainment).

Chapter Four summarises the key findings and presents strategic policy recommendations.

Overview

The access and equity study has been a collaborative research effort coordinating four separate studies conducted over three years.

Aims of the research

The access and equity study in family law and birth certificate cases had the following aims:

- (i) to provide the Supreme Court of Indonesia (*Mahkamah Agung Republik Indonesia—MA*) with empirical data on the quality of service provided to court users by the General and Religious Courts in the area of family law
- (ii) to ascertain whether there are sections of the community, particularly those living under the Indonesian poverty line, who are unable or unwilling to access the services of the Religious and General Courts for their divorce and birth certificate cases and, if so, to identify the reasons why
- (iii) to consider strategic policy responses (both financial and organisational) that the Supreme Court should consider in order to provide universal access to the Religious and General Courts for people living below the poverty line or in remote communities (the study considered these issues with a particular focus on divorce cases [in both the Religious and General Courts] and the provision of birth certificate statements [*Penetapan Akta Kelahiran*] by the General Courts), and
- (iv) to identify how the lack of a birth certificate affects an individual's access to broader public services, such as education.

Female heads of household in Indonesia

In 2010, the Indonesian Bureau of Statistics (BPS) estimated that there were 65 million households, 14% (9 million) of which are headed by women.⁸ BPS defines the head of household as a person who is responsible for the daily needs of a household or the person who is considered the head of the household.⁹ A head of a household can be either a man or a woman with a marital status of single, married, divorced or widowed.

BPS defines a couple as divorced when a husband and wife are separated. This includes those divorces that are not legal as they have not been authorised by the Indonesian courts. While not having the force of law, it is possible for men to divorce their wives under local *adat* or religious laws in Indonesia. In practice, the only way a woman can initiate a divorce is through the courts. The BPS definition of divorce does not include husbands and wives who are living separately but still consider themselves to be married, for example, where the husband or wife lives in another area for the purposes of education or employment. Women who have never been married but have children are also included in this BPS definition of a divorced person.¹⁰

The BPS definition of the head of a household currently allows for two different people to be considered the head of a household: (i) the person who is actually responsible for the daily needs of a household or (ii) the person who is considered the head of the household.¹¹ This definition is potentially confusing as only one person can be named as the head of household through the BPS national survey process. In many

8 Hartanto, Wendy (2010) *The 2010 Indonesia Population Census*, Statistics Indonesia/BPS and *Statistik Gender 2009*, BPS.

9 <http://sirusa.bps.go.id/index.php?link=kueslistbykegiatan> viewed on 14 December 2009. **Kepala Rumah Tangga (Head of Household)**: seorang dari sekelompok anggota rumah tangga yang bertanggung jawab atas kebutuhan sehari-hari rumah tangga tersebut atau orang yang dianggap/ditunjuk sebagai kepala di dalam rumah tangga tersebut.

10 <http://sirusa.bps.go.id/index.php?link=kueslistbykegiatan> viewed on 14 December 2009. **Cerai hidup (Divorced)**: Status dari mereka yang hidup berpisah sebagai suami isteri karena bercerai dan belum kawin lagi. Dalam hal ini termasuk mereka yang mengaku cerai walaupun belum resmi secara hukum. Sebaliknya, tidak termasuk mereka yang hanya hidup terpisah tetapi masih berstatus kawin, misalnya suami/isteri ditinggalkan oleh isteri/suami ke tempat lain karena sekolah, bekerja, mencari pekerjaan, atau untuk keperluan lain. Wanita yang mengaku belum pernah kawin tetapi pernah hamil, dianggap cerai hidup.

11 The latter definition is only to be used in certain circumstances, for example, a household where there are a number of students living together and (for the purpose of BPS survey) they should appoint one person as the head of the household. However, it is easy to see how this dual definition as read out by the survey enumerator could be confusing and how a proportion of survey respondents could focus on the latter part of the dual definition rather than the former part.



Indonesian households, the former may be a woman and the latter a man. For example, in a significant number of households in Indonesia the husband will relocate to seek work. In these circumstances, the wife becomes the de-facto head of household, especially in those cases where the husband has left the family for a long period of time and does not provide any support to the household. In these cases, the husband can still be considered the head of household using the BPS definition and it is unlikely that the woman will identify herself as the head of the household. It is therefore probable that there is an under-estimation of the number of female-headed households in Indonesia. This has implications for policy planning and implementation, particularly for Indonesia's pro-poor poverty alleviation programs, that should benefit female heads of household as well as male heads of household and their families.

PEKKA NGO

Approximately 9 million households in Indonesia are headed by women. These households include approximately 44 million citizens.¹² PEKKA (*Pemberdayaan Perempuan Kepala Keluarga*) is an Indonesian NGO established in 2001 that works with over 12,000 female heads of household through a network of 500 PEKKA groups dispersed across 330 villages in 8 Indonesian Provinces, including NAD, West Java, Central Java, West Kalimantan, West Nusa Tenggara, East Nusa Tenggara, North Maluku and Southeast Sulawesi.¹³

PEKKA's vision is to build the capacity of female heads of household by:

- 1 improving the welfare of female heads of household,
- 2 facilitating improved access to resources by female heads of household,
- 3 enabling female heads of household to actively participate in every phase of development in their area,
- 4 raising the awareness of female heads of household of their rights as equal members of society, and
- 5 empowering female heads of household to have control of their lives and the decision-making process within their families as well as within society.

Members of PEKKA are female heads of household through being widowed, divorced, abandoned or single. Women who are married but responsible for the household because their husband is ill, incapacitated, unable to work, or working overseas and not supporting the household financially can also be members of PEKKA.

¹² BPS Survei Sosial Ekonomi Nasional (SUSENAS) 2008 data establishes that the average Indonesian household comprises 4.88 members.

¹³ More information on PEKKA can be obtained from its English and Bahasa Indonesia websites at www.PEKKA.or.id.

The PEKKA membership provides a specific population from which to draw conclusions about the barriers faced by Indonesian women who (i) may have experienced divorce (ii) fall under the Indonesian poverty line (iii) generally have not accessed the courts to formalise their divorce, and (iv) as women, share the gender of the majority of applicants bringing cases before the courts.

PEKKA members experience significant social and economic disadvantage. Through identifying the barriers this group faces in bringing their family law cases to the courts it was considered that this may also reflect the barriers faced by other disadvantaged groups in Indonesia. Similarly, if the Indonesian courts could increase access for PEKKA members, then access to the courts for other socially and economically disadvantaged groups would probably also increase.

2007 Access and Equity Study

This research has drawn upon information and data obtained in the 2007 access and equity study funded by the Australian Government. The report, *Providing Justice to the Justice Seeker: A Report on the Indonesian Religious Courts Access and Equity Study 2007*¹⁴ provided information to the Supreme Court of Indonesia who, in turn, increased the budget of the Religious Courts in 2008 by Rp 23 billion (USD\$2.3M) to waive court fees for the poor (*prodeo* cases) and to hold more circuit courts¹⁵ in order to assist those who lived in rural and remote areas to access the courts for their family law cases. A further Rp 12 billion (USD\$1.2M) was granted in the 2009 APBN State Budget for the Religious Courts, despite an overall MA budget reduction due to the global financial crisis. This represents an average annual eighteen-fold increase over the last two years in the Religious Courts budgets for *prodeo* cases and circuit courts. In the Government of Indonesia National Medium Term

Figure 1 Projected number of court fee waiver cases – Prodeo

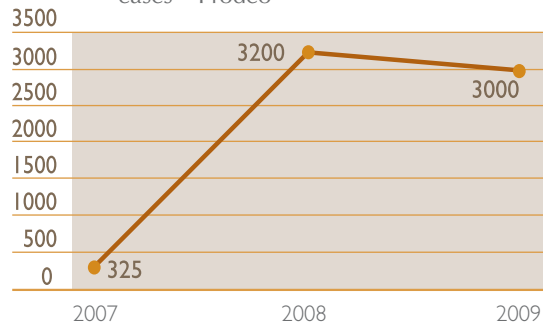
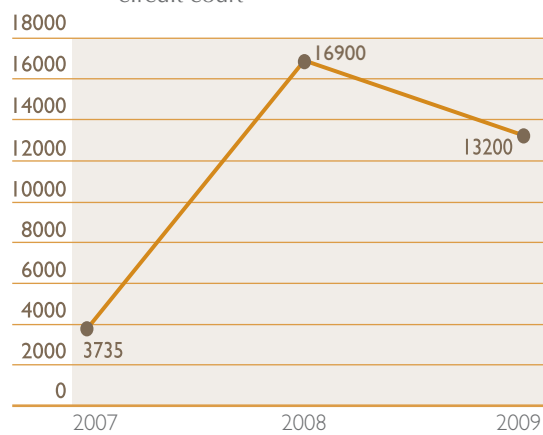


Figure 2 Projected number of cases heard by circuit court



Development Plan (RPJMN) 2010-2014, over Rp 300 billion (approximately USD\$35M) has been budgeted for supporting access for the poor to the Indonesian courts including court fee waiver, circuit courts and legal aid. One third of this budget is allocated for the Religious Courts.¹⁶

Data is currently being collected from 343 Religious Courts to measure how this increase in funding translated into more poor people benefiting from better access to the Religious Courts through court fee-waiver processes and increased circuit courts in rural and remote areas. Based on projections from a sample of more than 50% of Religious Courts, it is estimated that by the end of 2009 there was a ten-fold increase in poor people accessing court fee-waiver programs in the Religious Courts. Similarly, there was a four-fold increase in the number of rural and remote Religious Court clients that had their cases heard at a circuit court.¹⁷

¹⁴ Sumner, C, (2008), *Providing Justice to the Justice Seeker: A Report on the Indonesian Religious Courts Access and Equity Study 2007*. Mahkamah Agung and AusAID.
¹⁵ The Religious Court's budget to waive court fees and hold circuit courts was less than Rp1bn in 2007 and increased to Rp24bn in 2008.
¹⁶ RPJMN 2010-2014 (Bidang Politik, Hukum dan Keamanan) on I.M. 174.
¹⁷ Data compiled from Badiag's SMS database with 170 Religious Courts (50%) reporting for 2009.

2009 Access and Equity Study

At the request of the Supreme Court, an expanded access and equity study was undertaken in 2009 that included the General Courts of Indonesia. This new study continued the strong collaboration with the Indonesian NGO, PEKKA.

The study was conducted as a collaborative research project led by the Supreme Court of Indonesia and the AusAID-funded Indonesia Australia Legal Development Facility (IALDF). The research project involved the following partners:

- Supreme Court of Indonesia (including General and Religious Courts and the Directorates-General that administratively support these two jurisdictions: *Badilum* and *Badilag*)
- IALDF staff
- Family Court of Australia
- PEKKA, NGO for Indonesian female heads of households
- The PPIM (Centre for the Study of Islam and Society) at the State Islamic University (UIN) *Syarif Hidayatullah Jakarta*
- SMERU Research Institute
- private and legal aid lawyers working in family law, and
- a number of individual researchers and gender specialists who contributed to the design and implementation of the access and equity study.

In summary this access and equity study has, over the last 3 years, surveyed approximately 2500 Indonesians to obtain their views and perceptions about family law and access to Indonesian courts. The study also reviewed and analysed 1214 divorce and birth certificate court files. 68 General and Religious Courts across 18 Indonesian provinces have been involved in the access and equity study.

Methodology

To be able to consider the research objectives it was necessary to look at the question of access and equity in the Indonesian courts from four different perspectives:

- (i) Clients who were accessing the courts were asked for their perceptions of the level of service they received when bringing their cases to the court.
- (ii) Members of the legal profession were also asked for their perceptions of the level of service provided to their clients and themselves.
- (iii) The case files kept by courts in family law cases were reviewed to gather data related to key client service issues, such as the cost of court fees and the average number of times parties were required to come to court for their cases, and
- (iv) Female heads of household (most of whom lived under the Indonesian poverty line) were interviewed to see whether disadvantaged groups in Indonesia were able to access the courts for their family law and birth certificate cases.

The 2007–2009 access and equity study consisted of the following four research components, each with a different methodology.



Figure 3 Indonesian provinces where Access and Equity Study conducted 2007-2009



- 01 Nanggroe Aceh Darussalam
- 02 North Sumatera
- 03 Riau
- 04 Riau Archipelago
- 05 West Sumatera
- 06 Jambi
- 07 Bengkulu
- 08 South Sumatera
- 09 Bangka Belitung
- 10 Lampung
- 11 Banten
- 12 Jakarta
- 13 West Java
- 14 Central Java
- 15 Yogyakarta
- 16 East Java
- 17 Bali
- 18 West Nusatenggara
- 19 East Nusatenggara
- 20 West Kalimantan
- 21 Central Kalimantan
- 22 East Kalimantan
- 23 South Kalimantan
- 24 North Sulawesi
- 25 Gorontalo
- 26 West Sulawesi
- 27 Central Sulawesi
- 28 South Sulawesi
- 29 Southeast Sulawesi
- 30 North Maluku
- 31 Maluku
- 32 West Papua
- 33 East Papua

Table 1 Courts included in the Access and Equity Study 2007-2009

Province		Courts (RC = Religious Courts GC = General Courts)
1	Aceh (NAD)	RC Lhoksukon
2	North Sumatera	GC Medan, RC Tebing Tinggi
3	West Sumatera	RC Bukit Tinggi
4	South Sumatera	GC RC Palembang, RC Kayu Agung
5	Riau	RC Rengat
6	DKI Jakarta	GC Central Jakarta, GC West Jakarta, GC South Jakarta, RC West Jakarta, RC South Jakarta
7	West Java	GC Bekasi, GC Cibinong, RC Subang, RC Cibadak, RC Cikarang, RC Tasikmalaya, RC Bogor, RC Cianjur
8	Central Java	GC Semarang, RC Banjarnegara, RC Kendal, RC Wonosobo, RC Pati, RC Boyolali, RC Banyumas, RC Semarang, RC Purwokerto
9	East Java	GC Surabaya, GC Sidoarjo, GC Kab. Kediri, GC Blitar, GC Malang, GC Jember, RC Kab.Kediri, RC Tulungagung, RC Kab.Madiun, RC Gresik, RC Bondowoso, RC Trenggalek, RC Ngawi, RC Ponorogo, RC Kab. Malang, RC Malang (Kota)
10	Yogyakarta	GC Yogyakarta, GC Sleman, RC Yogyakarta, RC Sleman
11	East Kalimantan	RC Samarinda
12	South Kalimantan	RC Kandangan
13	West Kalimantan	GC Pontianak, RC Pontianak
14	North Sulawesi	GC Manado, GC Tondano, GC Bitung, RC Manado,
15	Central Sulawesi	GC Palu, GC Luwuk, GC Poso
16	South Sulawesi	RC Pangkep
17	NTB	RC Sumbawa Besar, RC Giri Menang
18	Bali	GC Denpasar, GC Gianyar, GC Tabanan, RC Denpasar

1. Court User Surveys

In order for this research to have national significance, a total of 1653 parties from 60 courts (both Religious and General Courts) were randomly selected and interviewed as follows:¹⁸

- a. In 2007, 1040 clients from 35 Religious Courts, whose cases commenced in 2006, were randomly selected to obtain their views on the level of service provided to them by the Religious Courts.
- b. In 2009, 613 clients from 25 General Courts, whose cases commenced in 2008, were randomly selected to obtain their views on the level of service provided to them by the General Courts.

2. Legal profession survey

In 2009, 65 members of the legal profession and legal aid organisations, (including university legal aid clinics) from Denpasar, Jogjakarta and Malang with experience in family law were surveyed to obtain their views on the level of service provided by the General Courts, particularly in the area of family law. Each focus group participant also completed a questionnaire.

Through focus group discussions, lawyers and legal aid representatives provided general comments about the level of service provided by the General Courts, and in some cases the Religious Courts, in the area of family law. The focus groups also enabled members of the profession to discuss areas where the General Courts could improve services for the poor and those living in rural and remote locations.

Table 2 Sampling methodology for court user survey

	General Courts Survey	Religious Courts Survey
Sample	National	National
Method	Random Sampling	Random Sampling
Number of Respondents	613 (data valid for n=609) from 25 General Courts	1,042 (data valid for n=1,033) from 35 Religious Courts
Status of parties in their divorce case	Applicants (parties who brought the divorce case): 302=49.6% Respondents in the divorce case: 307=50.4%	Applicants (parties who brought the divorce case): 519=50.2% Respondents in the divorce case: 514=49.8%
Gender of survey respondents	Male 295 =48.1% Female 318=51.9%	Male 431=41.4% Female 611=58.6%
Margin of Error	+/- 4% with a level of confidence of 95%	+/- 3% with a level of confidence of 95%
Year Survey Undertaken	Survey undertaken in 2009 for parties with cases heard in the General Courts in 2008. ¹⁹	Survey undertaken in 2007 for parties with cases heard in the Religious Courts in 2006.

¹⁸ The General Courts hear less than 4500 divorce cases across more than 340 General Courts. The 25 General Courts were therefore randomly selected from 55 General Courts that had more than 50 divorce cases in 2008.

¹⁹ 89% of the General Court cases were heard in 2008, 7% of the cases were heard in 2007 and 4% in 2009.

3. Case-file analysis

In 2009, a case-file analysis was undertaken of 1214 divorce and birth certificate court files from six General Courts and six Religious Courts. The case-file analysis provided data on (i) the number of court attendances by parties for the duration of the case (ii) the time taken from filing a case in court to its finalisation, and (iii) the total cost of the case for the parties.

12 courts were selected (see Table 3) and included four high-volume courts (defined as courts with more than 1000 cases a year excluding traffic or summary cases), four medium-volume courts (defined as courts with between 500 and 1000 cases) and four low-volume courts (defined as courts with less than 500 cases).

1163 divorce case files, representing between 9% and 100% of total divorce cases heard by these courts in 2008, were analysed for the purposes of this research.

Similarly, 51 birth certificate case files from three of the six General Courts surveyed, representing 100% of the birth certificate case files in the General Courts of Central Jakarta, Malang and Yogyakarta were analysed.

Table 3 details the percentage of the total number of divorce cases analysed per court in the case-file analysis.

4. Poverty and Legal Access Survey (PEKKA survey)

In 2007 and 2009, a total of 764 PEKKA members were surveyed to establish whether they were able to bring their divorce and birth certificate cases to the Indonesian courts and if not, what barriers they faced. The data presented in this report refers to the 600 female heads of household interviewed in 2009 from NAD (Aceh), West Java, West Kalimantan and East Nusa Tenggara.

The research areas were selected to include geographic areas where PEKKA is established in western, central and eastern Indonesia. In each province one district was selected, and within each district two sub-districts were selected based on the following criteria: (i) both urban and rural regions were included (ii) the number of respondents was proportional to the number of PEKKA members in the sub-district (iii) Muslim and Christian/Catholic communities were proportionate so as to gather data on family law

Table 3 Sampling Methodology for Case file analysis

General Courts			Religious Courts		
	Number of divorce files reviewed of total divorce cases received in 2008	% of Divorce Case Files Heard in 2008 reviewed		Number of divorce files reviewed of total divorce cases received in 2008	% of Divorce Case Files Heard in 2008 reviewed
GC Bitung	48 of 48	100%	RC South Jakarta	239 of 1962	12%
GC Gianyar	23 of 40	58%	RC Kab Malang	443 of 4743	9%
GC Central Jakarta	78 of 125	62%	RC Manado	43 of 149	29%
GC Malang	62 of 69	90%	RC Pontianak	59 of 592	10%
GC Pontianak	40 of 44	91%	RC Yogyakarta	47 of 467	10%
GC Yogyakarta	50 of 50	100%	RC Denpasar	31 of 232	13%
Total	301 of 376 cases received in 2008	83% average survey sample of divorce case	Total	862 of 8145 cases	14% average survey sample of divorce case

cases in both the Religious and General Courts, and (iv) villages were selected randomly based on the average number of PEKKA members.

Selected PEKKA member respondents were aged 65 years old or under and had primary economic responsibility for one or more family member dependants. Dependants were defined to include children, parents, siblings and other extended family members.

A research team was formed to guide all aspects of the research for the *Poverty and Legal Access Survey*. It comprised representatives from:

- PEKKA: Nani Zulminarni, Fitria Villa Sahara, Kodar Tri Wusananingsih, Mien Rianingsih, Romlawati and Adi Nugroho
- SMERU: Akhmadi, , Sri Budiyati, Asri Yusrina, Athia Yumna
- Indonesia Australia Legal Development Facility: Cate Sumner; Lead Adviser—Access to Justice/ Judicial Reform, and
- Family Court of Australia: Leisha Lister; Executive Advisor.

All members of the team contributed their particular area of expertise and worked to transfer their knowledge to other members of the group. The research collaboration encompassed all aspects of the access and equity study.

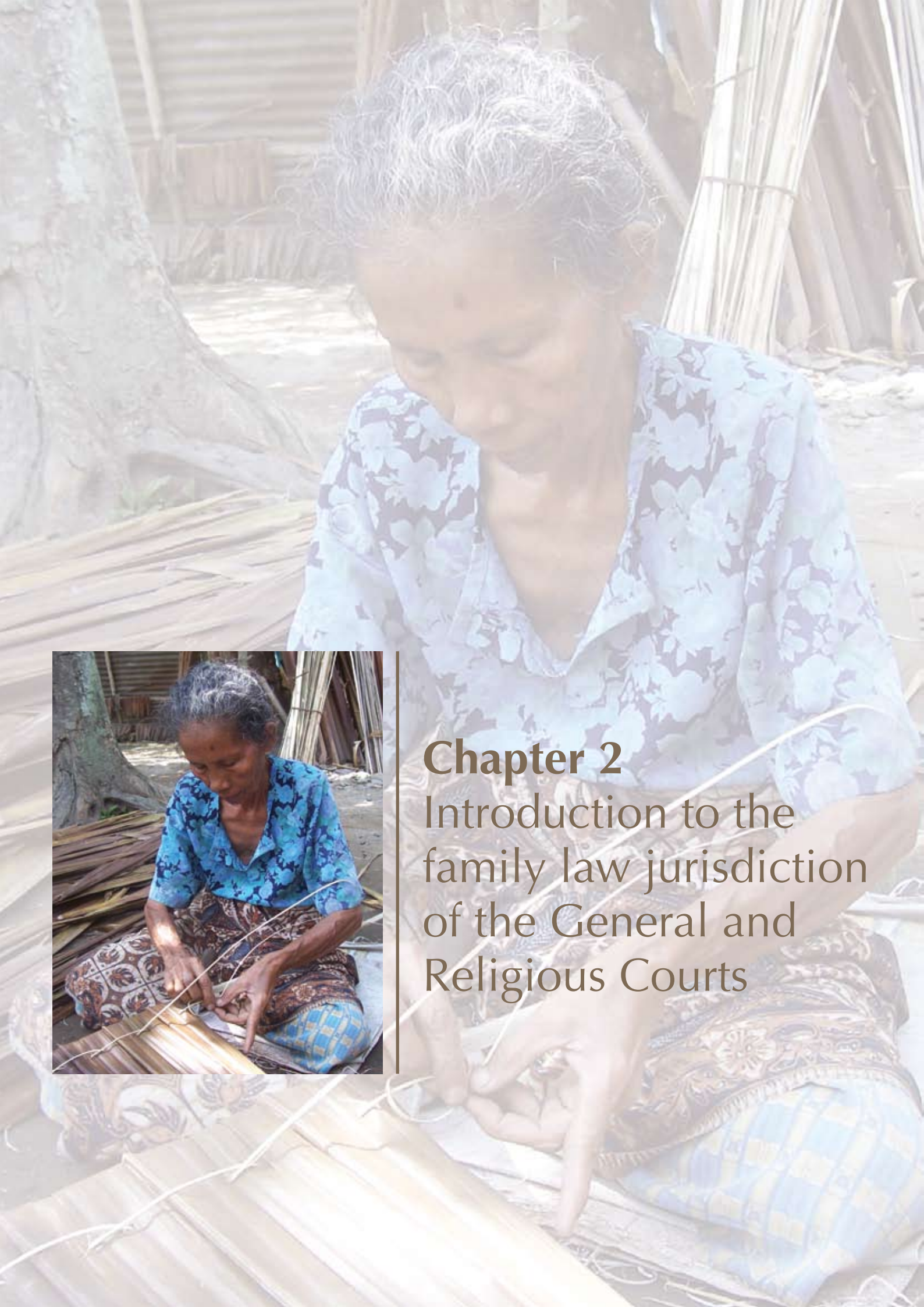
Table 4 Research Areas and Number of Respondents

No.	Province	District	Sub-District	Number of Respondents PEKKA Members
1	Nanggroe Aceh Darussalam (NAD)	Pidie	Mutiara Timur Kembang Tanjong	164
2	West Java	Karawang Cianjur	Telagasari Tempuran	115
3	West Kalimantan	Pontianak Kubu Raya	Siantan Sungai Raya Rasau Jaya	155
4	East Nusa Tenggara	Flores Timur	Kelubagolit Ile Bolong	167
Total				601



Table 5 Timeline and Approach for Poverty and Legal Access Survey

February 2009	PEKKA, SMERU, LDF and Family Court of Australia drafted the survey questionnaire and sampling methodology.
March 2009	A pilot survey was undertaken by PEKKA and SMERU in Karawang.
April 2009	Research was undertaken in Aceh, NTT, West Java and West Kalimantan jointly by PEKKA and SMERU and included 750 surveys as well as in-depth discussions with government and court officials and PEKKA members.
May–June 2009	SMERU processed the survey data and trained PEKKA staff members on how to use the data management software.
July–November 2009	The data was analysed by all members of the research team and the key research findings and strategic response for the publication were drafted.
November–December 2009	The draft report was prepared by members of the research team.
March 2010	The report was finalised.



Chapter 2

Introduction to the
family law jurisdiction
of the General and
Religious Courts

This chapter explores why it is important for Indonesian citizens to have their family law and birth certificate cases heard by Indonesian courts. There is then a brief overview of the legal requirements to obtain a valid marriage, divorce certificate or birth certificate and how impoverished citizens may apply for a case to be heard with the court fee waived (a *prodeo* case). The chapter concludes with data on the number of divorce cases heard in the General and Religious Courts and how this has been steadily increasing over the last decade.

The importance of family law cases and birth certificate cases being heard in the courts

...the right to be recognised before the law' is one of the most central human rights. The state is thus under the obligation to give formal, legal recognition that a person exists. Legal Empowerment requires an affordable document with which the bearer can prove his or her identity. Without such proof of their legal identity the poor, in particular, are often excluded from the formal protections of the state legal system and as beneficiaries of public goods and services.²⁰

Requirement of Indonesian Law

Indonesian law requires all divorces to be approved by the Religious Courts for Muslims and the General Courts for non-Muslims in order to be legally valid (Law No. 1 of 1974 concerning Marriage). It is therefore mandatory that divorce cases are brought before the Indonesian courts if the marriage is to be formally dissolved.

Access to justice for all

A principle of justice is that it be universal. If Indonesian law mandates that all divorces must be heard before Indonesian courts then all Indonesian citizens who divorce should be able

to bring their cases to the court regardless of how rich or poor they are, how educated they are, or how far they live from a court.

Legal Certainty

Judges, court clients and members of the community who are too poor to bring their divorce cases to the courts, agree that divorce through the Indonesian courts provides legal certainty. A formal divorce through the courts also clarifies legal responsibilities for the care and financial support of former spouses and children from the marriage. Without a legal divorce it is not possible to legally remarry in Indonesia. This in turn has implications for obtaining birth certificates for children from subsequent marriages as the father's name cannot be put on the birth certificate without a legal marriage certificate.

Poverty alleviation

49% of Indonesian citizens live under USD\$2 PPP per day with 14% of this group living on less than USD\$0.66 per day.²¹ Households that have experienced the sudden loss of the head of household through death, divorce or abandonment often enter a downward spiral of poverty that can last for generations as children are withdrawn from school and prematurely placed into labour markets.²² Divorce through the courts has the potential to distribute household assets in a more equitable fashion and in a way

20 2008, *Making the Law Work for Everyone Volume 1, Report of the Commission on Legal Empowerment of the Poor*.

21 Bappenas UNDP (2007) Report on the Achievement of Millennium Development Goals Indonesia 2007, p 12 and Profil Kemiskinan Di Indonesia Maret 2009, Badan Pusat Statistik, Berita Resmi Statistik No. 43/07/Th. XII, 1 Juli 2009.

22 S Guggenheim, PEKKA Proposal.

that supports the parent who has day-to-day care for the children from the marriage (in most cases the mother).

Broader social and economic development programmes

Birth certificates are of critical importance for children in developing countries in terms of accessing a wide range of public services. UNICEF Indonesia currently estimates that 60% of children living in Indonesia are without a legal identity.²³ This increases to more than 80% in poor provinces. Increasingly the provision of public services, such as education and health, require children to have birth certificates. Without a birth certificate children may face difficulty in accessing these services. For example in recent years local government regulations have required parents to provide birth certificates for their children when enrolling them in school.

For women, men and children alike, evidence of legal marriage and divorce has a critical impact on many related areas of social and economic development, for example:

1. **Security** and proof of identity become critical issues in criminal assault/domestic violence and human trafficking cases.
2. **Land assets** and whether the title to matrimonial or jointly-owned land is in the name of the husband or wife or both can become a key determinant of individual wealth.
3. **Moveable assets** and the question of who controls moveable assets relates to the ability to generate income for the family or provide collateral for credit.
4. **Identity cards and family cards** can evidence poverty and guarantee access to subsidised health care, other government services and cash transfer schemes.

5. **Underage marriage contracts** become less common as a legal marriage with a party that is under-age requires a court to issue a judgment on the matter.
6. **Birth certificates are important in their own right** and because of the links between non-legal marriage and children being unable to obtain birth certificates.
7. **Inheritance rights for children** of non-legal marriages are problematic because of a lack of standing.
8. **Legal divorce provides a mechanism for former spouses to be responsible** for providing for the food, health and educational needs of the children of the marriage.
9. **Legal divorce provides a clear decision on child custody matters** and the arrangements for caring for children of a marriage once the marriage dissolves.

Legal process for marriage and divorce (including process for legalising marriage)

A marriage in Indonesia is legal if it is undertaken in accordance with the requirements set out in the *Marriage Law 1974*. It must also be registered in accordance with the provisions of the Population Administration Law,²⁴ including the requirement that a marriage must be registered within 60 days with the Office of Religious Affairs (KUA – Kantor Urusan Agama) for Muslims and the civil registry for non-Muslims. At the time of the formal registration of a marriage with the KUA or civil registry both husband and wife receive a marriage book or extract (*kutipan akta perkawinan*). This documentation is necessary if the couple later seek a birth certificate for their children that will have both their names listed as parents as well as if they later seek to obtain a legal divorce.

23 UNICEF: Overview - Birth Registration for all, http://www.unicef.org/indonesia/protection_2931.html.

24 Article 40, Law 23 of 2006 on Administrasi Kependudukan.



The Religious Courts hear two types of divorce cases, each with different requirements. The first is a divorce initiated by the husband (*cerai talak*) and the second is a divorce initiated by the wife (*cerai gugat*). 67% of divorce cases decided in 2009 by the Religious Courts were initiated by the wife.²⁵

The Population Administration Law further requires that a divorce be registered within 60 days from the date that the divorce judgment is final and binding.²⁶ A party to a divorce in the General Courts must bring a copy of the divorce judgment to the Civil Registry so that it can be noted on the Divorce Register and a divorce certificate issued. The Religious Courts however, print and issue divorce certificates once the divorce judgment has become final and binding.²⁷

The Registrar of the Religious Courts conveys a copy of the court judgment to the Civil Registry within 30 days of it becoming final and binding.²⁸ Both court clients and lawyers expressed the view that the extra step required for General Courts clients to take the judgment to the Civil Registry within 60 days means that in many cases the time period elapses and it becomes problematic to register the divorce at the Civil Registry.

In 2009, over 13,000 cases were received by the Religious Courts concerning marriage legalisation (*itsbat nikah* cases) in which the Religious Courts provide the applicant with a document evidencing an earlier marriage.²⁹ This document can then be used at the civil registry to obtain other documents, including birth certificates.

25 Badilag (2010) *E-profile for the Religious Courts 2009*. Of 223,371 divorce cases decided in 2009, 149,240 were initiated by women and 74,131 by men.

26 Article 40, Law 23 of 2006 on Administrasi Kependudukan.

27 A decision is final and binding 14 days after it has been read out in court before both parties. If both parties are not present in court, then the decision becomes final and binding 14 days after it has been delivered to the parties (Law 7/1989, article 54 and HIR articles 128 and 129 (2)). If respondent party cannot be found, the court sends the decision to the Head of District (Bupati/Walikota) to publish in his/her office. HIR article 390 (3).

28 Undang-Undang no.7 1989 concerning the Religious Courts, Article 84 .

29 Islamic Law Compilation Book 1 (concerning marriage), Article 7 and Law 23 of 2006 concerning Population Administration, Article 36.

Legal process for obtaining a birth certificate

Approximately 60 per cent of Indonesian children under-five years of age do not have birth certificates and half are not registered anywhere. This represents one of the lowest birth registration levels of any country in the region.

*Birth registration is a fundamental human right and an essential means of protecting a child's right to their identity. Registering a birth serves as an effective civil mechanism that legally acknowledges a person's existence, enables a child to possess a birth certificate, establishes the child's family ties, and tracks life's major milestones from birth through marriage and death. Birth registration also helps governments to track their country's demographic statistics, health trends and differentials. Comprehensive data means more accurate planning and implementation of development policies and programs, particularly in the fields of health, education, housing, water, sanitation and employment...*³⁰

The law on Population Administration requires parents to obtain a birth certificate within 60 days of a child's birth. A civil registry will issue a birth certificate without charge to parents if they register their child's birth within 60 days. If the birth is not registered within one year from the child's date of birth, Law 23 of 2006 on Population Administration requires a birth certificate statement to be obtained from a General Court before the Civil Registry will issue a birth certificate.³¹

Transition provisions were put in place by the Ministry of Home Affairs to delay the effect of certain provisions of Law 23 of 2006 as they apply to birth registration until December 2010.³² In particular, the requirement of a General Court



decision in order to obtain a birth certificate will not enter into force until 2011. The transition provisions were required in order to provide time to raise awareness of the provisions of the new law. However, it had also become clear that the requirement for a General Court decision would be a barrier to achieving the Government of Indonesia's Strategic Plan for Universal Birth Registration in Indonesia which aims for all births in Indonesia to be registered by 2011.³³

The Law on Population Administration³⁴ provides for children to be issued with birth certificates even in cases where their parents do not have a marriage certificate. In these circumstances only the mother's name is recorded on the birth certificate. Cultural norms in Indonesia however act as a strong disincentive to obtaining a birth certificate for a child unless both parents' names appear on the birth certificate.

30 UNICEF: Overview - Birth Registration for all, http://www.unicef.org/indonesia/protection_2931.html.

31 Law 23 of 2006 concerning the administration of population (tentang administrasi kependudukan).

32 Departemen Dalam Negeri, Letter dated 11 March 2009, Batas Waktu Pelaksanaan Program Dispensasi Pelayanan Pencatatan Kelahiran dalam Masa Transisi Berlakunya Undang-Undang Nomor 23 2006.

33 Departemen Dalam Negeri RI, Rencana Strategis 2011 Semua Anak Indonesia Tercatat Kelahirannya (Renstra 2011) 2008.

34 Law on Population Administration Article 52 (2).

Prodeo (fee waiver) process under Indonesian law

Excellent courts are affordable and easily accessible for litigants. Court fees do not prevent members of the public from accessing the judicial process, cumbersome procedures and requirements do not drive up litigation expenses, and forms and comprehensible basic information about court processes are readily available at low or no cost.

Excellent courts limit financial barriers to the judicial process by setting fees at a reasonable level, permitting waiver of fees for persons who are indigent, and by working with relevant agencies and organisations to ensure that legal services are affordable and that legal assistance is available.³⁵

The Civil Procedure Code of Indonesia (*Kitab Undang-Undang Hukum Acara Perdata*) provides that a party wishing to bring a civil case may apply to the court to have court fees waived if the party is unable to pay (the *Prodeo* process). This process was confirmed by the Chief Justice of the Supreme Court of Indonesia in a recent Court Regulation in which it was stated that: 'Fees for *prodeo* cases at first instance, appeal and cassation levels including industrial relations disputes with a value below Rp 150,000,000 will be borne by the State in accordance with existing laws and regulations.'³⁶

The party seeking to have the court fee waived will need to present a letter from the village head (the 'poverty letter', *surat keterangan tidak mampu – SKTM*) as evidence of the party's poverty. The court will register the case and the court receipt that is placed in the court file has a nil value.³⁷

The court will then require the applicant to attend a hearing before a panel of three judges to present evidence establishing their poverty. The judicial panel will issue a determination on whether to accept the case on a fee waiver basis after giving any other party to the case the opportunity to be heard on the issue. If the judicial panel rejects the fee waiver petition then the case will only proceed if the party pays the usual court fee down-payment for the case.

The Indonesian Bureau of Statistics (BPS) has developed national poverty indicators and in some areas between 20 and 50% of the population is considered to be living under the Indonesian poverty line. Each year BPS issues a document fixing the Indonesian poverty line and the percentage of the population in each province that falls under the Indonesian poverty line. In March 2009, 32.5 million Indonesian citizens (14% of the population) lived below the Indonesian poverty line, defined as Rp 222,123 for city areas and Rp 179,835 for rural areas. The percentage of Indonesian citizens living below the poverty line in the rural areas (17%) is significantly higher than for city dwellers (11%).

Of 33 Indonesian provinces, Table 6 shows those provinces where more than 20% of the rural population live under the Indonesian poverty line.³⁸

In addition to the national poverty line indicator, the USD\$2 Purchasing Power Parity (PPP) per day per capita is also used as an indicator to measure poverty. According to this measure, the National Planning Development Agency (*Bappenas – Badan Perencanaan Pembangunan Nasional*) states that in 2006 around 49% of the population of Indonesia was living on less than USD\$2 PPP a day.³⁹

35 (2008) International Framework for Court Excellence, National Centre for State Courts at p.16.

36 Peraturan Mahkamah Agung No 2 of 2009 Tentang Biaya Proses Penyelesaian Perkara dan Pengelolaannya pada Mahkamah Agung dan Badan Peradilan yang berada Dibawahnya. Article 2 (4): Biaya untuk penyelesaian perkara dengan acara prodeo pada tingkat pertama, banding dan kasasi serta perkara Perselisihan Hubungan Industrial yang nilai gugatannya dibawah Rp 150.000.000,00 (seratus lima puluh juta rupiah) dibebankan kepada Negara sesuai dengan ketentuan peraturan perundang-undangan yang berlaku.

37 Herzien Inlandsch Reglement (HIR) Article 237.

38 *Profil Kemiskinan Di Indonesia Maret 2009*, Badan Pusat Statistik, *Berita Resmi Statistik No. 43/07/Th. XII, 1 Juli 2009*.

39 Bappenas UNDP (2007) Report on the Achievement of Millennium Development Goals Indonesia 2007, p 12.

If applied to the 14 poorest provinces shown in Table 6, the majority of the provincial population would fall under the USD\$2 PPP per day per capita poverty indicator:

In order to obtain evidence of poverty, men and women must approach the village leader for a letter certifying that they are in fact poor. In circumstances of wide-spread rural impoverishment village leaders may not understand that a high proportion of the villagers in their area are living under the Indonesian poverty line and therefore eligible for a poverty letter. Instead, as the test is a subjective test and based on the village leader's perception, they may only allocate a poverty letter to those who appear to be the poorest in their area.

In summary, each time a court client is required to obtain a poverty letter or similar document at village level it involves:

- an extra step in the process of bringing a legal divorce case for one of the most disadvantaged groups, in itself a disincentive
- loss of time
- possible embarrassment at making the request to a local leader who may not agree with the person applying to the courts for a divorce case
- possible informal payment (bribe) to the village official that is difficult for those living under the Indonesian poverty line to make, and which is, in any case, contrary to the purpose of the court fee waiver process.

In the last ten years, programmes aimed at alleviating poverty have been introduced by the government. These provide free or subsidised rice (*Raskin*), free health care (*Jamkesmas*) and cash transfers (BLT) to the poor based on household income assessments. If a court client seeking court fee waiver assistance is also a recipient of one of these government poverty alleviation programmes, it would give a judicial panel a reasonable indication that they were sufficiently poor to be a legitimate court fee waiver recipient, without need of a poverty letter.

Table 6 Percentage of Rural Population living under the Indonesian poverty line

Province	% of rural population in each province under the Indonesian poverty line
Papua	47%
West Papua	45%
Maluku	34%
Gorontalo	33%
NTT	25%
Aceh (NAD)	24%
Jogjakarta	23%
South East Sulawesi (Tenggara)	23%
East Java	21%
Central Sulawesi	21%
Lampung	21%
Central Java	20%
Bengkulu	20%
NTB	20%



Jurisdiction for family law cases (legal basis)

General Courts

There are 352 first instance General Courts and 30 High Courts across Indonesia and these courts have jurisdiction over the following matters:⁴⁰

1. civil cases (including divorce cases for non-Muslims, inheritance, land cases, contract and commercial cases), and
2. criminal cases.

Table 7 summarises cases decided by the General Courts in 2009 at first instance. In 2009, divorce cases comprised 3% of all General Court cases. However divorce cases represent 37% of all civil cases decided by the General Courts.⁴¹

Table 7 Cases decided by the General Courts in 2009

Case Type	First instance General Courts	% of total first instance civic cases
Divorce cases	5,285	37%
Other civil cases	8,974	63%
Civil matters (permohonan)	37,326	–
Criminal cases	151,169	–
Total	202,754	–

Religious Courts

There are 343 first instance Religious Courts⁴² and 29 High Religious Courts across Indonesia. These courts have jurisdiction for Muslims in the following matters:⁴³

1. divorce (included in marriage cases)
2. inheritance, *wasiat* [wills and testaments], and *hibah* [charitable bequests], which are carried out in accordance with Islamic law
3. *wakaf* [charitable trusts] and *shadaqah* [other forms of alms]
4. *infaq* and *zakat* [charitable donations/alms]; and
5. syari'ah economy.

Table 8 summarises cases decided by the Religious Courts in 2009 at both first instance and appeal levels.⁴⁴

The number of divorce cases heard by the Religious Courts has significantly increased in the past five years⁴⁵ with a rise of 50% over the last three years alone. The General Courts have recorded a similar increase in divorce cases over the last 10 years. The Department of Religious Affairs attributes this increase to the fact that, 'women have become smarter, more stable, better protected by laws, and more aware of their rights and gender equality.'⁴⁶ This has contributed to an increasing proportion of the non-legal divorces now filtering into the Religious Courts.

⁴⁰ General Courts acquired this jurisdiction pursuant to the Law on Judicial Power (2009) and Law on General Courts (Law No. 2 Year 1986 as amended by Law No. 8 Year 2004 and the Law on Judicial Power 2009).

⁴¹ Caseload data is taken from the Supreme Court annual report for 2009 and from subsequent data provided by the statistical units of the Directorate-General for the General Courts (Badilum) and Religious Courts (Badilag). The case numbers for the General Courts exclude summary or short cases (such as traffic fines) that are heard in an expedited way by the General Courts. Until the 2007 Annual Report of the Supreme Court, the number of General Court cases was obscured by several million summary traffic offences that are processed by the General Courts in an expedited way. These traffic and other summary cases are now presented separately in the Supreme Court Annual Report resulting in a clearer picture of the judicial workload of the General and Religious Courts.

⁴² In Nanggroe Aceh Darussalam Province, the Religious Courts are named Mahkamah Syar'iyah (Syar'iyah Courts) and are invested with jurisdiction pursuant to Law No 18 of 2001, Qanun No. 10 of 2002 and Presidential Decision 11/2003. The jurisdiction of the Mahkamah Syar'iyah in NAD province includes a number of criminal matters.

⁴³ Religious Courts acquired this jurisdiction pursuant to Law No.7 of 1989 and Law No.3 of 2006 on the Religious Judiciary.

⁴⁴ Profil Peradilan Agama, Direktorat Jenderal Badan Peradilan Agama Tahun 2009 (from www.badilag.net).

⁴⁵ Himpunan Data Statistik Perkara di Lingkungan Peradilan Agama Seluruh Indonesia Tahun 2005, (2006) Mahkamah Agung, Direktorat Jenderal Badan Peradilan Agama, pp 3 and 269. Also E-profile documents for the Religious Courts for the years 2004, 2006 and 2007 available on the Badilag website www.badilag.net.

⁴⁶ Nasaruddin Umar, Director-General for Islamic Public Guidance at the Department of Religious Affairs as reported in the Jakarta Post on 18 August 2009, 'Divorce rate up 40 percent in five years'.

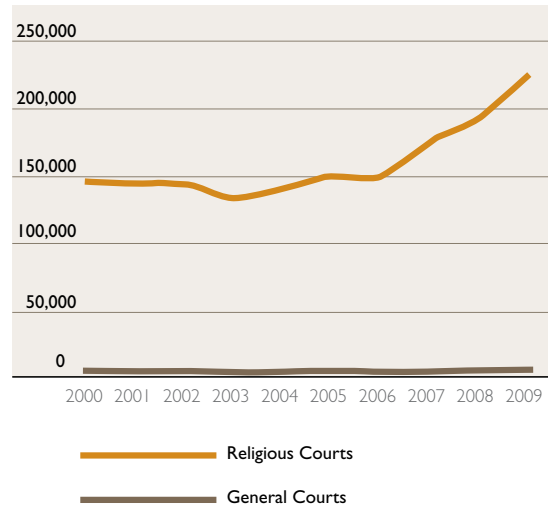
Table 8 Cases decided by the Religious Courts in 2009

Case Type	First Level Religious Court	% (of total first level)	Appeal Level/ High Religious Court	% (of total first level decisions appealed)
Marriage	241745	98.25%	1633	0.67%
Inheritance	1015	0.41%	260	25.6%
Testament	4	0%	18	450%
Bequest	45	0.02%	12	26.6%
Property Donation (wakaf)	12	0.01%	7	58.3%
Alms (Shadaqah)	12	0.01%	0	0%
PSHP	1897	0.77%	0	0%
Syariah Economy	5	0%	1	20%
Other case	1301	0.53%	25	1.92%
Total cases decided	246036	100%	1956	0.79%
Cases rejected/ withdrawn	11762			
Total cases 257798				

Table 9 Number of divorce cases received in the General and Religious Courts over the last ten years

Year	Religious Court Divorce Cases	General Court Divorce Cases
2000	145,609	3539
2001	144,912	3877
2002	143,890	3842
2003	133,306	3361
2004	141,240	2514
2005	150,395	2674
2006	148,890	2606
2007	175,088	3645
2008	193,189	4404
2009	223,371	5285

Figure 4 Divorce case numbers in the General and Religious Courts over the last ten years



Divorce cases now form the single largest group of cases in the Indonesian judicial system comprising 50% of all cases

It is a significant, if little understood, fact that divorce cases now form the single largest group of cases in the Indonesian judicial system, comprising 50% of all cases followed by criminal cases (33% of cases).⁴⁷ The Religious Courts decide 98% and the General Courts 2% of all divorce cases in Indonesia, which means the Religious Courts now have a significant direct engagement with Indonesian families.

An examination of how divorce cases are handled in Indonesian Courts thus provides insights into how the judiciary is perceived to resolve the largest single block of cases in the country.

Despite the fact that Indonesia's non-Muslim population (mainly comprising Christians, Hindus, Buddhists and Confucians) is approximately 15% of the total population, the General Courts only hear 2% of the total number of all divorces nationally in Indonesia. This low figure may be due to the inability of non-Muslims to access the General Courts for their divorce cases.

The study further found that the divorce cases decided in the General Courts in 2009 represented 37% of all the civil cases decided in the General Courts. Accordingly, an analysis of court user perceptions of client services in divorce cases may have broader application to other civil cases in the General Courts.

Table 10 Cases decided by first instance General and Religious Courts in 2009

General Courts	202,754	44%
Religious Courts	257,798	56%
Total	460,552	100%

Table 11 Cases decided by first instance General and Religious Courts in 2009 (type)

Divorce Cases (Religious Courts 98% & General Courts 2%)	228,656	50%
Criminal cases	151,169	33%
Other civil cases in the General Courts (gugatan + permohonan)	46,300	10%
Other civil cases in Religious Courts (gugatan + permohonan)	34,427	7%
Total	460,552	100%



⁴⁷ Caseload data is taken from the Supreme Court annual report for 2009 and from subsequent data provided by the statistical units of the Directorate-General for the General Courts (Badilum) and Religious Courts (Badilag). The case numbers for the General Courts exclude summary or short cases (such as traffic fines) that are heard in an expedited way by the General Courts.

Women bring twice as many divorce cases to the courts as men, and in nine out of ten cases they are successful

In both the General and Religious Courts women initiate twice as many divorce cases as men, regardless of income level.

Nine out of ten divorce cases brought to the Religious Courts are accepted with only 3% of cases in the Religious Courts being rejected or not accepted by the court. Eight out of ten divorce cases brought to the General Courts are accepted, with only 4% of cases in the General Courts being rejected or not accepted by the court.



Table 12 Summary of how divorce applications are dealt with by the 12 Courts included in the case file analysis

	Granted	Case rejected	Case Not Accepted	With-drawn by the Parties	Cases Not Finished	Lapsed	No answer
6 Religious Courts (RC)	89%	2%	1%	5%	0%	3%	1%
RC Denpasar	93.55%	0%	0%	3.23%	0%	3.23%	0%
RC South Jakarta	81.59%	2.09%	1.26%	7.95%	0%	6.69%	0%
RC Kab. Malang	93.23%	1.58%	0.23%	3.16%	0%	0%	2%
RC Manado	74.42%	2.33%	4.65%	13.95%	0%	4.65%	0%
RC Pontianak	88.14%	0%	0%	5.08%	0%	5.08%	2%
RC Yogyakarta	89.36%	0%	0%	6.38%	0%	0%	4%
6 General Courts (GC)	82%	1%	3%	9%	1%	2%	3%
GC Bitung	83.33%	2.08%	6.25%	6.25%	0%	2.08%	0%
GC Gianyar	86.96%	4.35%	0%	8.7%	0%	0%	0%
GC Central Jakarta	74.36%	1.28%	0%	11.54%	0%	2.56%	10%
GC Malang	87.10%	1.61%	3.23%	6.45%	1.61%	0%	0%
GC Pontianak	85.00%	0%	5%	5%	0%	5%	0%
GC Yogyakarta	80.00%	0%	4%	14%	2%	0%	0%





Chapter 3 Research Findings

This chapter presents the key research findings from the Poverty and Legal Access Survey in relation to the 601 PEKKA members who were surveyed, including:

- (i) the income of PEKKA members and their ability to access government poverty programs
- (ii) PEKKA members' ability to obtain legal marriage, divorce and birth certificates for themselves and their children and reasons why access to government agencies and courts may be limited for them, and
- (iii) the educational attainment of PEKKA members and their dependants with a comparison of national data on educational attainment.

All references to PEKKA members in this chapter refer to the 601 PEKKA members who participated in the Poverty and Legal Access Survey.

Poverty is characterised by a lack of access to essential goods, services, assets, and opportunities to which every human being is entitled

Everyone should be free from hunger, should be able to live in peace, and should have access to basic education and primary health care services. Poor households need to sustain themselves by their labor and be reasonably rewarded and should have a degree of protection from external shocks. In addition, individuals and societies are also poor—and tend to remain so—if they are not empowered to participate in making the decisions that shape their lives.⁴⁸

Poverty should be understood not only as economic incapacity, but also as the denial of basic rights fulfilment and unequal ability to live with dignity. Empowerment of the poor in realising fundamental rights, either through formal or informal mechanisms, can become a means of reducing and overcoming poverty. Without the ability to defend or struggle for these rights, the poor cannot defend and develop their lives with dignity.

The National Strategy on Access to Justice examines how problems with rule of law can contribute to the existence of poverty. The alleviation of poverty is acknowledged to require improvement of the legal system, both in the substantive law and in the institutions for legal enforcement and legal empowerment within the framework of democratic rule of law.⁴⁹

⁴⁸ *Enhancing the Fight Against Poverty in Asia and the Pacific: The Poverty Reduction Strategy of the Asian Development Bank 2004.*

⁴⁹ National Access to Justice Strategy (2009), p3.

PEKKA Income

55% of the 601 PEKKA members surveyed live below the national poverty line.⁵⁰ This group of PEKKA members represents the poorest 14% of the Indonesian population as determined by the Indonesian Bureau of Statistics (BPS).

79% of PEKKA members live below the international poverty line of less than USD\$2 PPP per day (or Rp 404,715 per person per month in urban areas and Rp 286,892 per person per month in rural areas, adjusted for purchasing power parity in 2009 terms).⁵¹

Average household income was calculated to include all income obtained by the PEKKA member and dependants living in the household as well as any income received from family members living outside the household. PEKKA members have primary economic responsibility for, on average, 3.6 people (including themselves), although some PEKKA members have primary economic responsibility for up to ten people in their household. Average per capita income was

55% of the 601 PEKKA members surveyed live below the national poverty line

calculated by dividing each unit of household income by the number of dependants.

The average total income per capita per month of the 601 PEKKA members surveyed was Rp 207,000 and average total expenditure per capita per month was Rp 240,000, which approximates the 2009 Indonesian poverty line as determined by BPS.⁵²

The PEKKA income level is considerably below that of the Religious Court clients surveyed, who had an average per capita monthly income of Rp 956,500 (or close to five times the PEKKA per capita monthly income).⁵³ General Court clients had an average per capita monthly income of Rp 1,560,000 (or close to eight times the PEKKA per capita monthly income).⁵⁴

Table 13 Percentage of PEKKA members living below the Indonesian poverty line

National poverty line	Aceh (NAD)	West Java	West Kalimantan	East Nusa Tenggara	Total
Above poverty line	85 52%	60 52%	56 36%	68 41%	269 45%
Below poverty line	79 48%	55 48%	99 64%	99 59%	332 55%
Total	164	115	155	167	601

Table 14 Percentage of PEKKA members living below the USD\$2 PPP international poverty line

USD\$2 PPP International poverty line	Aceh (NAD)	West Java	West Kalimantan	East Nusa Tenggara	Total across four areas
Above poverty line	47 29%	15 13%	32 21%	35 21%	129 22%
Below poverty line	117 71%	100 87%	123 79%	132 79%	472 78%
Total	164	115	155	167	601

50 Profil Kemiskinan Di Indonesia Maret 2009, Badan Pusat Statistik, Berita Resmi Statistik No. 43/07/Th. XII, 1 Juli 2009.

51 PPP stands for Purchasing Power Parity. 2009 adjustments to the USD\$2 PPP were provided by the World Bank Jakarta Office. The PEKKA members in West Java were considered to live in urban areas while the other three areas were rural.

52 Profil Kemiskinan Di Indonesia Maret 2009, Badan Pusat Statistik, Berita Resmi Statistik No. 43/07/Th. XII, 1 Juli 2009.

53 Survey undertaken in 2007.

54 Survey undertaken in 2009.

Table 15 Average total income and expenditure for PEKKA members (Rp)

	Average for four study areas	Aceh (NAD)	West Java	West Kalimantan	East Nusa Tenggara
Average total household income per month	617,190	475,276	838,384	372,929	830,946
Average total income per capita per month	206,999	144,201	283,998	142,483	275,525
Average total household expenditure per month	730,044	795,143	841,893	583,463	725,142
Average total expenditure per capita per month	239,587	240,742	262,972	220,139	240,401

PEKKA Members’ Access to Government of Indonesia Poverty Alleviation Programs

However, a key problem remains in the women’s sector, namely the lack of sensitivity to gender within formal institutions. Poor and uneducated women experience difficulties in claiming and defending their rights before the law, including in court processes. Women’s perspectives are still poorly represented and their experiences are still ignored within decision-making structures—including at the local level—which results in laws and policies, especially in budgeting, that are disadvantageous for women. Similar problems also occur in various forms within informal justice mechanisms, where a strong patriarchal culture hinders women’s access to justice.⁵⁵

One-third of PEKKA female heads of household living below the Indonesian poverty line surveyed were unable to access cash transfer schemes.

One-third of PEKKA female heads of household living below the Indonesian poverty line surveyed were unable to access cash transfer schemes.

While most PEKKA members surveyed living below the Indonesian poverty line were able to access the rice subsidy (*raskin*), the government cash transfer payments paid in 2005 and 2008 (*Bantuan Langsung Tunai BLT*) were more difficult for PEKKA members to obtain.

On average, 94% of PEKKA members surveyed living below the Indonesian poverty line were able to access the rice subsidy.



55 National Access to Justice Strategy (2009) p8.

Table 16 Percentage of PEKKA members living below the poverty line who received the government rice subsidy

Rice subsidy	Aceh (NAD)	West Java	West Kalimantan	East Nusa Tenggara	Total
Received rice subsidy	79	53	82	97	311
Did not receive rice subsidy	0	2	17	2	21
Number of PEKKA members living below the Indonesian poverty line	79	55	99	99	332
% of PEKKA members living below the Indonesian poverty line who receive the rice subsidy	100%	96%	83%	98%	94%

Table 17 Percentage of PEKKA members living below the poverty line who received the government cash transfers

Cash transfer program	Aceh 2005	Aceh 2008	West Java 2005	West Java 2008	West Kalimantan 2005	West Kalimantan 2008	East Nusa Tenggara 2005	East Nusa Tenggara 2008	For all four areas
Received	76	73	30	31	61	61	55	61	448
Did not receive	3	6	25	24	38	38	44	38	216
Number of PEKKA members living below the Indonesian poverty line	79	79	55	55	99	99	99	99	664
% of PEKKA members living below the Indonesian poverty line who did not receive the cash transfer	4%	8%	45%	44%	38%	38%	44%	38%	33%

However, on average, 33% of PEKKA members surveyed living below the Indonesian poverty line did not receive the government cash transfers of 2005 and 2008. This rose to 44% of PEKKA members in West Java and East Nusa Tenggara who were unable to access the cash transfer program.

On average, 34% of PEKKA members surveyed living below the Indonesian poverty line did not receive the card evidencing their entitlement to obtain free medical treatment (*Jamkesmas*). This figure rose to 48% of PEKKA members surveyed and living under the Indonesian poverty line being unable to access free health care in West Kalimantan, and 40% in East Nusa Tenggara.

On average, 34% of PEKKA members surveyed living below the Indonesian poverty line did not receive the card evidencing their entitlement to obtain free medical treatment (*Jamkesmas*).

The Indonesian cash transfer scheme (*BLT*) and the health insurance scheme for the poor (*Jamkesmas*) are distributed through a two-tiered approach:

- (i) BPS determines a quota per district for the cash transfer scheme or *Jamkesmas*.
- (ii) Village officials distribute these benefits based on the BPS quota and local data obtained from household poverty assessments.

Table 18 Percentage of PEKKA members living below the poverty line who did not receive access to the free government health treatment service (*Jamkesmas*)

Free health treatments	Aceh (NAD)	West Java	West Kalimantan	East Nusa Tenggara	Total
Able to access free health treatment	72	36	51	59	218
Unable to access free health treatment	7	19	48	40	114
Number of PEKKA members living below the Indonesian poverty line	79	55	99	99	332
% of PEKKA members living below the Indonesian poverty line who were unable to access free health treatment	9%	35%	48%	40%	34%

When the available quota for either the cash transfer scheme, or *Jamkesmas*, in each district is limited, village officials use their discretion as to who receives these government programs from among those who satisfy the program's criteria. The data suggests that female heads of household do not fare well when government

poverty programs have an element of discretion in their allocation.

The following case study illustrates how critical access to free health care is for female heads of household, especially those living in remote areas far from hospital services.

Case study one

Anxiously awaiting health card

Ibu F is a PEKKA leader from Ile Boleng, East Flores, NTT. For more than six months Ibu F has been waiting anxiously for her health card, which will be used to obtain medical treatment. In early 2009, Ibu F went for a check at the local health clinic. The doctor advised her that she had goitre and suggested that she undergo treatment for three months. The doctor further advised her that if there was no change in her condition she would require an operation. Three months of medical treatment passed and there was no change in her condition.

As there was not a hospital with full treatment facilities in the sub-district or district capitals, Ibu F travelled to the public hospital in Kupang to have the goitre in her neck checked. The journey from her village to Kupang was quite a distance. In order to get there, Ibu F had to cross from Adonara Island to Flores before taking a boat overnight to Kupang. At the public hospital in Kupang Ibu F had a check in the laboratorium prodia and paid more than Rp 400,000. Then she had a USG check that was more than Rp 200,000. Added to this were administration fees at each clinic of between Rp 12,000–20,000. The costs were significant and Ibu F had to pay the total fees as she does not have a health card.

After the doctor checked the lab and USG results she advised Ibu F that her goitre needed surgery. The doctor estimated that the operation costs would be more than Rp 20 million, which includes the operation fee, the fee for the hospital room and the medicine. Added to this was the cost of transportation. This cost is very high for Ibu F, as she is a female head of household with responsibility for one teenage child still at home. It was suggested to Ibu F that she try to obtain a poverty letter (SKTM) to obtain medical cost relief from the Walikota Kupang. Unfortunately, Ibu F was not a resident of Kupang and did not have an identity card from Kupang. Then the doctor suggested Ibu F obtain a health card in order to obtain relief from the cost of the operation.

CONTINUED...

...CONTINUED

While she was in Kupang, one of her friends, a PEKKA leader, telephoned her to advise her that information in the local health clinic stated that a doctor from Australia would come to the health clinic to assist the community. On hearing this information Ibu F felt some hope. In order to obtain this service an individual was required to have a health card and be registered at the health clinic. Ibu F asked her brother-in-law to register her name at the health clinic. The story that follows is her struggle to obtain a health card.

Upon returning from Kupang, Ibu F went to the village office in order to process a health card. She received clarification that the list of people who would receive a health card had already been sent to the sub-district level. Ibu F then approached the sub-district secretary and obtained clarification that it was already too late to add a new name to this list. He suggested to her that she change her name with a family member or another person who was already on the health card list. Ibu F found someone who was prepared to have their name substituted by Ibu F's on the health card list as they did not need a health card. The requirements to process the health card were completed and the file surrendered. As of August 2009, there was no news concerning the health card that will determine her fate.

Marriage and Divorce

Age of first marriage

On average, 27% of PEKKA members surveyed were married under the age of 16, which is below the legal age of marriage in Indonesia. This statistic increased to 49% of PEKKA members surveyed in West Java.

Under Article 7 of the Indonesian Marriage Law No.1 of 1974, a marriage is permitted if the man is 19 years of age and the woman 16 years of age. Under-age marriage in most cases prevents girls from completing the national requirement of nine years of education, as schools generally do not permit girls to continue their education once they are married.

Table 19 shows that some of the PEKKA members surveyed were married as early as age nine.

On average, 27% of PEKKA members surveyed were married under the age of 16, which is below the legal age of marriage in Indonesia.

Table 19 Percentage of PEKKA members who married under the age of 16 in the four survey fields

First marriage under 16 years of age	Aceh (NAD)	West Java	West Kalimantan	East Nusa Tenggara	Total
<16	29%	49%	32%	5%	27%
>=16	71%	51%	68%	84%	70%
Did not answer	–	–	–	10%	3%
Total	164	115	155	167	601

Table 20 Age of first marriage for PEKKA members who were married under the age of 16

Age of first marriage under 16	Aceh (NAD)	West Java	West Kalimantan	East Nusa Tenggara	Total
9	–	2	–	–	2
10	1	–	–	–	1
11	1	1	1	–	3
12	–	12	9	–	21
13	2	8	14	–	24
14	5	8	7	2	22
15	38	25	18	7	88
Total	47	56	49	9	161

Legal status of marriage

Over 50% of the PEKKA group do not register their marriages formally. Nine out of ten of the Indonesian court clients surveyed do formally register their marriage.

It is important to raise awareness in the community that both the General and Religious Courts can provide documentation evidencing the existence of a marriage even after the marriage has been entered into.

- 97.1% of Religious Court clients confirmed that they had registered their marriage at the KUA. 93.4% of General Court clients confirmed that they had registered their marriage formally at the civil registry.
- The 601 PEKKA women surveyed had a total of 782 marriages between them, of which only 48% were legal marriages under Indonesian law. The PEKKA members from West Kalimantan had a significantly higher legal marriage rate of 71% despite having the highest percentage of its members living

under the Indonesian poverty line. East Nusa Tenggara and West Java had the lowest levels of legal marriage, with approximately one third of their members having a legal marriage. This variation in the percentage of PEKKA members with a legal marriage may be due to West Kalimantan having the lowest average cost for obtaining a marriage certificate of Rp 23,000 and West Java having the highest average cost for obtaining a marriage certificate of Rp 86,000.

- The Government of Indonesia's Strategic Plan for Universal Birth Registration by 2011 includes in its primary program the goal of 'Exemption from Religious or General Court fees for obtaining documents evidencing the existence of a marriage (for both Muslims and non-Muslims).⁵⁶ The Government of Indonesia's Strategic Plan for Universal Birth Registration by 2011 should be strongly supported.

Table 21 Proportion of PEKKA marriages that are legal amongst survey respondents

Region	Total marriage	Total legal marriage	% of marriages that are legal marriages
Aceh (NAD)	190	96	50.53%
West Java	236	81	34.32%
West Kalimantan	195	139	71.28%
East Nusa Tenggara	161	59	36.65%
Total	782	375	47.95%



⁵⁶ Relevant extracts from the Government of Indonesia's Strategic Plan for Universal Birth Registration by 2011 is attached at Annex 1.

Table 22 Number of marriages by PEKKA members surveyed

Number of marriages	Aceh NAD		West Java		West Kalimantan		East Nusa Tenggara		Total		Total Number of Marriages
	N	%	N	%	N	%	N	%	N	%	
0	1	0.5	-	0	0	-	17	10	18	3	0
1	141	86	47	41	123	79	139	83	450	75	450
2	18	11	38	33	25	16	11	7	92	15	184
3	3	2	19	17	6	4	-	-	28	5	84
4	1	0.5	4	3	1	1	-	-	6	1	24
5	-	-	4	3	-	-	-	-	4	1	20
6	-	-	1	1	-	-	-	-	1	0	6
7	-	-	2	2	-	-	-	-	2	0	14
Total	164	100	115	100	155	100	167	100	601	100	782

PEKKA members identified the following as the main reasons why they do not obtain a legal marriage:

- not aware of the importance of a legal marriage
- do not know the procedures for obtaining the marriage book
- think that it is the husband's responsibility to obtain the marriage certificate, and/or
- believe that it is sufficient if they marry under religious law.

Table 23 Average cost of a Marriage Certificate for PEKKA members

Region	Total legal marriages	Average Marriage Certificate cost (Rp)	Maximum cost of a Marriage Certificate (Rp)
Aceh (NAD)	96	27,156.25	300000
West Java	81	86,061.73	600000
West Kalimantan	139	23,169.42	300000
East Nusa Tenggara	59	33,466.10	150000
Total	375	39,394.80	600000



Divorce

A central principle of justice is that it be universally accessible. Unfortunately the poorest sections of Indonesian society face significant barriers in bringing family law cases to the Courts. Nine out of ten female heads of households living under the Indonesian poverty line surveyed were unable to access the Courts for their divorce cases. The main barriers are financial and relate to court fees and transportation costs to travel to the court.

14% of Indonesian people live under the Indonesian poverty line. The average total cost of a Religious Courts case for survey respondents was Rp 789,666 (this includes the court fee, transportation, and other costs) almost four times the level of the Indonesian poverty line per capita per month. The average total cost for the General Courts survey respondents who brought divorce cases in the General Courts in 2008 was Rp 2,050,000 in the cases where the party did not use a lawyer (approximately ten times the level of the Indonesian poverty line) and Rp 10,350,000 where the party did use a lawyer (approximately 52 times the level of the Indonesian poverty line). It is therefore clear that a proportion of the poor in Indonesia are not

able to bring their family law cases to the Courts according to the requirements of Indonesian law, a conclusion that is supported by the fact that 86% of the PEKKA group surveyed did not bring their divorce cases to the Courts.

265 PEKKA divorces were recorded for the 601 PEKKA members surveyed. However, 86% of these divorces were not legal. This increased to 92% in NTT and 93% in West Java. Only 38 cases were brought to the Indonesian courts. Of the 38 divorce cases brought to the court, two-thirds involved PEKKA members as the initiators or applicants in the case. Of the 17 PEKKA members who initiated a court case, and can remember what it cost, in 3 cases the court fee was waived and in the other 14 cases the average total cost for the divorce court case was Rp 1,065,500 (this includes the court fee, transportation, and other costs), over 5 times the average PEKKA income per capita per month.

The PEKKA data also reflects the national trend that it is women who are the applicants in two thirds of all divorce cases brought to the Indonesian courts.

Table 24 Data on the total number of divorces for PEKKA members and the number of legal divorces

Region	Total Divorces	Total Legal Divorces through a Court	% Legal Divorces	Applicant is:	
				Wife	Husband
Aceh (NAD)	45	12	27	9	3
West Java	152	10	7	6	4
West Kalimantan	56	15	27	9	6
East Nusa Tenggara	12	1	8	1	0
Total	265	38	14	25	13



79% of the PEKKA members who brought their cases to the General and Religious Courts were satisfied or very satisfied with the level of service provided by the Indonesian courts.

Overall, there is a low rate of legal divorce amongst PEKKA members due to the cost of bringing a divorce case to the courts. However, for those PEKKA members who are able to bring their case to court, 24% are very satisfied and 55% are satisfied with the service they received at the court.

PEKKA members who were not satisfied with the service they received at court identified the following reasons for their dissatisfaction:

- The court fees were too high.
- The service from administrative staff was not pleasant.
- The court process took too long.
- The court fees were not transparent.
- They did not understand the court process.
- The court would not process the divorce as the wife was pregnant.
- The court did not notify the parties to the case.

PEKKA female heads of household who are not formally divorced frequently mentioned two issues of importance to them during interviews.

79% of the PEKKA members who brought their cases to the General and Religious Courts were satisfied or very satisfied with the level of service provided by the Indonesian courts.

Firstly, they want their legal status clarified for themselves, their former partners and for society through a divorce certificate issued by the Religious Courts. In a society where local social networks and the relationships that are constructed within these form the parameters of most people's lives, to receive formal legal documents that provide clear evidence of the legal status of one's relationships is highly significant. For many women, the desire for a divorce certificate reflected a simple need to have a formal legal defence for their children and themselves against possible criminal acts of violence and abuse, whether from a former spouse or from others. In fact, 78% of PEKKA women surveyed in 2009 said that domestic violence against themselves and/or their children was a factor in their divorce.

Secondly, PEKKA female heads of household identified that they wanted to be able to obtain the identity documents (*Kartu Keluarga* or Family Card) issued at local government level as evidence of their role as a head of household. When the Religious Courts provide women with a divorce

Table 25 Opinions of PEKKA members surveyed concerning the level of service they experienced in the Religious or General Courts

What is your opinion concerning the Court services in the Religious or General Courts?	Aceh (NAD)	West Java	West Kalimantan	East Nusa Tenggara	Total	%
Very satisfied	8	0	0	1	9	24%
Satisfied	3	8	10	0	21	55%
Less satisfied	0	1	1	0	2	5%
Not satisfied	1	1	2	0	4	11%
Extremely unsatisfied	0	0	2	0	2	5%
Total	12	10	15	1	38	100%

certificate they are frequently providing evidence that a woman is now the head of a household and responsible for its day-to-day needs. The local government offices that issue family cards verifying poverty, health cards, rice subsidies and cash transfer payments, need evidence that the woman is actually the head of the household. It is for this reason that access to the Religious Courts for the poor, particularly for women, is critical to accessing broader public services, as the divorce certificate is used as evidence to obtain new identity or family cards that show that the woman is divorced and now the head of her household. Without proper

documentation, it can be extremely hard for women to obtain these documents.

Some of the stories from the PEKKA members on their experience of legally documenting their marriages, divorces and obtaining birth certificates for their children are included in this report.

Polygamous marriages are a good example of the kind of dilemmas of uncertain status that informal divorces can create for women, dilemmas that can often be resolved, or at least made less difficult, by access to the Religious Courts and the issue of state-sanctioned documentation.

Case study two

Rejecting polygamous marriages

Ibu A lives in the district of Sungai Raya in West Kalimantan. Ibu A married legally in the Religious Affairs Office (KUA) and has a marriage certificate.

Ibu A was separated from her husband as he wished to be married again without her agreement. At the time Ibu A was pregnant with their second child. Ibu A was visited by her husband's family and the new wife who forced Ibu A to sign a letter of authorisation for the second marriage of her husband. Ibu A felt pressured and signed this letter but says she did not agree with the second marriage of her husband.

After discussing the matter with her uncle and receiving advice from the head of the village, Ibu A finally reported to the local office of the Department of Religious Affairs (KUA) that she had been pressured into approving the authorisation letter for the second marriage of her husband. According to Ibu A, she was fortunate because she kept the marriage book for her husband and herself and, by withholding it, was able to prevent the KUA from approving her husband's second marriage. Her uncle told her that if a wife agreeing to a polygamous second marriage does not give her authorisation in a Religious Court then the marriage is not legal and the local KUA officials could be reported to the police.

The husband and the new wife finally did not marry formally, but he moved out of Ibu A's home and lived together with his new wife. Ibu A said that after being left by her husband she did not dare leave her house for a year. After having contact with PEKKA in 2004, Ibu A finally decided to divorce her husband through the Religious Court. The reason for bringing the case to the Court was because without a formal divorce certificate she was often harassed as a single woman, her status being in limbo between marriage and divorce.

The process of bringing the case itself was not complicated. The cost that she paid in order for the court process from the beginning until the final divorce decision was Rp 500,000 (USD50). This cost did not include her transport costs but these were not high as her place of residence was quite close to the Court. The divorce decision of the Religious Court of Pontianak was delivered after one month, with the process taking three hearings. Her husband did not come to the hearings.⁵⁷

57 The interview with Ibu A took place in March 2009 and a copy of the interview is on file with the authors of this report.

Case study three How difficult it is to divorce—marriage and experience of domestic violence

Call me Ibu S I am 41 years old and married with children. I attended Islamic elementary school, Islamic junior high and a private senior high school in the capital of the province.

After leaving home for some time, I came back to my village and got married at the sub-district Office of Religious Affairs (KUA). The administration fee was Rp75,000 and was paid by my husband. The requirements were to fill out a form and to submit a photo and ID. Our first child was born in 1997. A year later, I asked for a divorce because my husband cheated on me. His family made threatening gestures, like beating and even pointing a knife at me. My husband's sibling told me to forget about my husband's affair and not to tell a soul about it. Then I filed a case at the General Court of X (for domestic violence), but my child was kept by my husband's family in another village for three days and two nights, although my child was still breastfed. His family interferes too much in our marriage. When I filed for a trial at the court of X, I had to pay Rp 25,000 for the administration fee. The case reported was abuse by the husband. I told the official everything, including the physical abuse I received from my husband. The hearings were two weeks after that, but my husband did not attend the first and second hearings. At the trial, my husband's family brought a group of 30 people, while I was by myself. My brother actually offered to come along but I told him no. The court decided that my husband should pay a fine, but I did not know how much. The verdict said that my husband got a three-month sentence (suspended), but if the physical abuse continued, he would go to jail.

In 1998, after the verdict from the General Court, I filed for divorce at the Religious Court in W (on the same island). My husband did not come to the first hearing. At the second hearing, he came but did not want to divorce me, while I insisted on a divorce. He did not come for the third hearing. I came to the *kabupaten* Religious Court and handed the court letter to the village head to be given to my husband. But up to now (the time of this interview), my husband has not showed up. He has not given me my rights as a wife since 1998. In 2000, accompanied by my father, I asked for a divorce to the *adat* institution. There are four family clans in his village. Only two would come to the meeting, because the other two are either my husband's clan or related to it. The two-clan meeting was attended by 50–60 people and cost me about Rp 200,000 for consumption. It was decided that I and my child should return to my father's family. This decision was delivered to my husband and his family by two representatives of the meeting. My husband's family accepted the decision but demanded that my child be returned to them in the future. The meeting also came to an agreement that if the *belis* (dowry) was delivered before sunset, I had the right to keep my child. Until today, I do not have a divorce certificate. Hopefully, with the help of other PEKKA members I can settle this problem.⁵⁸

Case study four Waiver of court fees

Qu: When the circuit court (sidang keliling) was held, did many villagers attend and observe it?

Ibu O (PEKKA member): Yes, many. At that time, the local hall looked like a hospital. The local government offices were transformed and looked like a 24-hour clinic full of people. Most villagers realised the benefit of the circuit court. Local government officers had started to give attention to circuit courts and considered that poor villagers' access to justice could be realised. Previously, villagers do not have information on circuit courts and they do not have information that there is a court fee-waiver process (*prodeo*) for poor villagers and a circuit court can be implemented in their nearest village. Villagers considered that this circuit court is a real breakthrough.

Waiver of court fees (the *Prodeo* process) will greatly assist people living under the Indonesian poverty line as well as poor clients of the Indonesian courts who typically either go into debt or use several months of household income to bring a divorce case to the courts.

Providing accurate legal information to female heads of households living in poverty is also a critical factor in raising the legal divorce rate amongst this group. The access and equity study found that Khader Hukum ('law cadres', PEKKA members trained to assist other members with legal issues) are the single greatest source of information available to PEKKA members regarding the Courts. 72% of PEKKA members say if they wanted to obtain information about court processes they would approach the Khader Hukum. Other sources that PEKKA members trusted to provide accurate information on court processes were:

■ Village officials (aparatus desa)	71%
■ Court officials	60%
■ Family	55%
■ Other NGOs	52%

When PEKKA women were asked what was the best way to convey information about court processes, their preferences were as follows:

■ Face to face discussions	96%
■ Video/film/TV	32%
■ Radio	27%
■ Brochure/ leaflet	26%
■ Written media (newspaper)	22%

For the poor, the cost of court fees and transportation to the nearest court is perceived as an overwhelming barrier to accessing the courts. Information and support for disadvantaged groups to navigate their way through court processes are also important, especially when combined with low levels of literacy. However, as demonstrated through the collaboration of PEKKA and the Religious Courts, the information barrier for disadvantaged groups can be overcome through the work of court information desks and collaboration with NGOs.

Transportation costs

Ibu E (PEKKA member): For those (PEKKA members) who do not have a marriage certificate, they have noticed that having a marriage certificate will provide benefits and are now trying to obtain a marriage certificate. Until now, if villagers want to attend court proceedings in the Religious Courts, they have to pay transportation that is around Rp 400,000 including miscellaneous court fees. For poor villagers, their life is already difficult let alone if they have to pay for marriage legalisation in the Religious Courts.

Ibu Y (PEKKA member): Initially, I identified who is going to participate in the sidang keliling (circuit court). I made a list of those who want to file cases of marriage legalisation and divorce. Along the process, I noticed that many villagers (non-PEKKA members) were interested to file their cases, but the money is the problem. They always think that they can only go to court if they have the money. When they noticed the PEKKA program (in collaboration with the Religious Courts) will hold a circuit court, they enthusiastically registered.

This is particularly when they noticed that children's schools required them to show their kid's birth certificate; then they realised that a marriage certificate is necessary.

For the poor, the main barriers to accessing the courts are financial and relate to court fees and transportation costs to travel to the nearest court.

These problems are especially significant for the rural poor: 88% of PEKKA members would be more motivated to go to court for their divorce cases if the court was able to waive the court fee, and 89% of PEKKA members would be more motivated to go to court for their divorce cases if the court heard their case in a circuit court.

The cost of transportation to a court varies significantly depending upon whether a party lives in an urban environment close to the court, or in a rural environment. 50% of court clients surveyed in 2007 and 2009 live within a 10km radius of the General or Religious Court that heard their divorce case. The 600 PEKKA women interviewed lived in both urban and rural areas. Urban PEKKA members lived on average 13km from the court at a cost of Rp 25,000 per return trip to the court. However, rural PEKKA members lived on average 80km from the court, at a typical cost of Rp 92,000 per return trip to the court (close to half the monthly per capita income of a PEKKA member).

The cost of a divorce case in the Religious Courts (only court fee and the party's transportation costs) can therefore vary significantly, depending upon how far the party lives from the court. Divorce cases in the General Courts cost more, as there are on average three more court appearances per case. The further the parties to a divorce case live away from the court, the higher the transportation costs. In the NTT case given above, for example, transportation costs comprise as much as 70% of the cost of the case.

Transparency of court fees and over-estimation of court fee down-payment

If the court does not waive the court fees, the party bringing a case to court must pay a down-payment on court fees at the time of registering the case. The down-payment is set by the court and is supposed to approximate the average cost of a case in that court.

Overestimation of the down-payment made to courts for divorce cases relative to the actual cost of the case is a disincentive to justice seekers bringing their cases to court, particularly the poor.

Table 26 Cost of a divorce case in both the General and Religious Courts for Urban and Rural Court users

	Court Fee	Transportation Costs	Divorce Case Cost = Court Fee + Transportation Costs
Urban Religious Court user	Rp 350,000 (or USD\$35)	Rp 25,000 x 5 trips to the court = Rp 125,000 (or USD\$12.50)	Rp 475,000 (or USD\$48)
Urban General Court user	Rp 350,000 (or USD\$35)	Rp 25,000 x 8 trips to the court = Rp 200,000 (or USD\$20)	Rp 550,000 (or USD\$55)
Rural Religious Court user (e.g. NTT)	Rp 350,000 (or USD\$35)	Rp 100,000 x 5 trips to the court = Rp 500,000 (or USD\$50)	Rp 850,000 (or USD\$85)
Rural General Court user (e.g. NTT)	Rp 350,000 (or USD\$35)	Rp 100,000 x 8 trips to the court = Rp 800,000 (or USD\$80)	Rp 1,150,000 (or USD\$115)

Reimbursement of the down-payment made to courts is important for all clients, but particularly for the poor.

On average clients in the six Religious Courts surveyed paid 24% more as a down payment than the final cost of the case set out in the judgment. On average clients in the six General Courts surveyed paid 79% more as a down payment than the final cost of a case as set out in the judgment. Greater transparency of court fees and the down-payments made to courts for divorce cases would assist in building public trust and confidence in the courts.

The average actual court cost was Rp 340,000, however the average down-payment sought in the General Courts surveyed was Rp 520,000 and Rp 420,000 in the Religious Courts surveyed. The courts determine the down-payment on court fees to be paid by the applicant party in civil cases. The largest part of the cost of the down-payment is the cost of summoning parties to the court hearings and these costs vary depending on how far from the court parties live. The applicant party may need to make an additional down-payment on court fees if the case costs more or if it costs less they will have the balance reimbursed at the end of the case.

Figure 5 Average Down-Payments and Court Costs in the Selected Religious Courts (Rp)

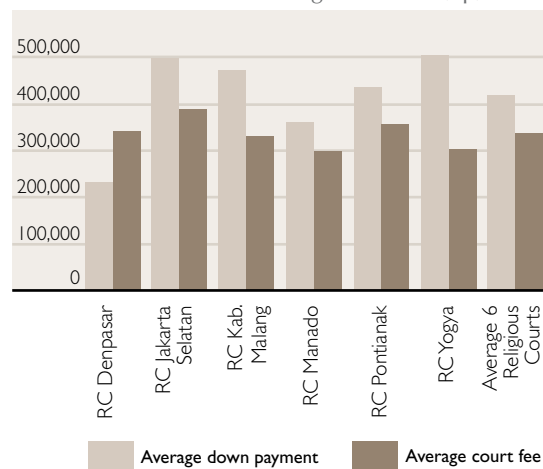
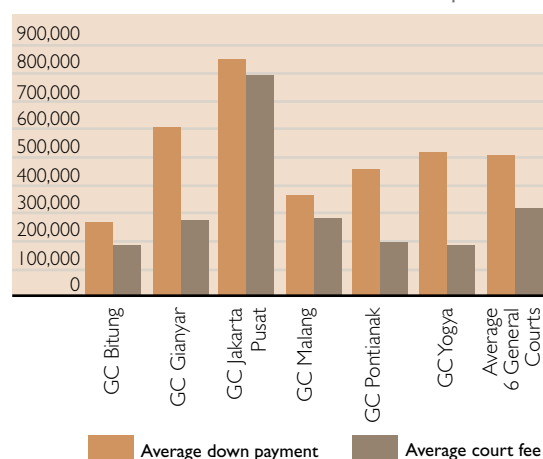


Figure 6 Average Down-Payments and Court Costs in the Selected General Courts (Rp)



Even if the balance of the down-payment is promptly returned by the court to the applicant party at the end of the court process, overestimation of the down-payment represents a significant amount of monthly household budgets. This has a serious impact on poor households, given that 49% of the population live on less than USD\$2 PPP per capita per day.

Low understanding of legal requirements for divorce in Indonesia

Only 11% of Religious Court and 8% of General Court survey respondents chose to use the courts because it is a requirement of Indonesian law. 89% of Religious and 91% of General Court

clients registered their cases in court because other non-court resolution mechanisms (family conciliation) had failed, or because their partner had chosen to take the case to the courts.

Nine out of ten court survey respondents did not consider the Indonesian legal requirement to bring divorce cases to court as the primary motivating factor for their case.

It is important for the courts to provide guidance on what cases must be referred to the General and Religious Courts under Indonesian law as well as the benefits for individuals and families in having a legal divorce, child guardianship and property settlement cases resolved through the courts.

Table 27 Reasons why General and Religious Court clients brought their cases to the courts

	General Courts	Religious Courts
Not able to solve the problem among family members	61.3%	55.8%
To follow the pathway pursued by the wife/ husband	17.1%	10.0%
Belief that the courts would provide a resolution	9.1%	16.3%
To follow the legal procedure in Indonesia	8.1%	9.6%
To follow a friend or neighbour's suggestion	0.7%	6.0%
Don't know	3.7%	2.2%



Birth Certificates

The unique status and place of children within society—politically, socially, as well as culturally—position children as a group that needs special protection. Their physical and mental development places them at risk of abuse. Violence, mistreatment and exploitation experienced by children contribute to their powerlessness and poverty. Therefore, tackling these problems from a children's justice perspective is one of the important priorities in eradicating poverty. When children experience violence, mistreatment or exploitation, they become at risk of entering the justice system, either as victims, witnesses or perpetrators of crime...

In the child labour sector, the economic crisis has increased the number of under-aged workers, also known as school dropouts, who are forced to work to support their families. In reality, child workers are deliberately targeted by employers because of their low wages and obedient behaviour.⁵⁹

A cycle of non-legal marriage and divorce exists for many PEKKA female heads of households living below the Indonesian poverty line. The failure to obtain legal documentation in relation to marriage and divorce is associated with 56% of children from these marriages not obtaining birth certificates.

The lack of such an identity document affects both the children's inheritance rights and access to government services such as state education. It also means that children of the poor in Indonesia are unable to exercise their basic human right to obtain an identity document, established under the Convention on the Rights of the Child.

Birth certificates

56% of children of those PEKKA women surveyed did not have birth certificates. However, this rises dramatically to 87% of children of PEKKA members in Aceh. This figure reflects the UNICEF Indonesia estimate that:

Approximately 60 per cent of Indonesian children under five years of age do not have birth certificates, and half are not registered anywhere. This represents one of the lowest birth registration levels of any country in the region.⁶⁰

Table 28 Possession of birth certificates for children of PEKKA women

Do you have a birth certificate for your children?	Aceh (NAD)	West Java	West Kalimantan	East Nusa Tenggara	Total
Yes	56	124	152	202	534
No	366	90	124	104	684
Total	422	214	276	306	1,218
% without a birth certificate	87%	42%	45%	34%	56%

The overwhelming majority of PEKKA members do not obtain a birth certificate for their children until after 60 days which means they have to pay a fee to obtain the birth certificate. If they seek a birth certificate later than one year from the birth of the child they face an arduous and expensive procedure before a General Court.

The two main reasons cited by PEKKA women as to why they did not obtain birth certificates for their children were (i) they did not realise the importance of a birth certificate; and (ii) they did not have money to pay the Civil Registry fee to obtain it. For those PEKKA members who obtained birth certificates for their children later than 60 days from the date of birth of their children they cited as the reason why they did so either or both of (i) a requirement related to their child's education or (ii) a government programme that assisted with the provision of birth certificates.

59 National Access to Justice Strategy p9-10

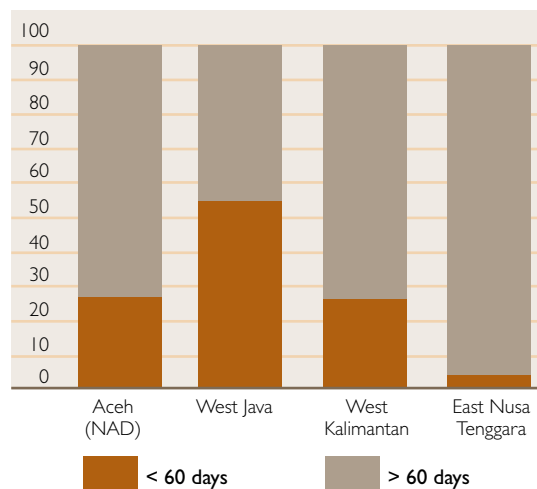
60 UNICEF: Overview - Birth Registration for all, http://www.unicef.org/indonesia/protection_2931.html

In Indonesia, many of the same barriers that stop poor people accessing the Religious Courts for legal divorce also prevent parents from obtaining birth certificates for their children:

- (i) The cost of a birth certificate charged by the Civil Registry if the birth certificate is not obtained within 60 days from the child's birth.
- (ii) The fact that the Civil Registry has the power to impose a fine if parents do not obtain a birth certificate for their child within one year after its birth.
- (iii) The cost of transportation from the village where the family lives to the district capital where the Civil Registry is located.
- (iv) The wages foregone by spending a day or more travelling to the Civil Registry to obtain the birth certificate.
- (v) Prevalence of illiteracy and lack of understanding of the process of obtaining a birth certificate or its importance for a child.
- (vi) Parents lacking evidence of the birth of their child (required for birth registration) if the child is born at home without assistance from a hospital, health clinic or midwife.
- (vii) The requirement to bring a case to the General Courts at a cost of Rp 400,000 (USD\$40) if the birth certificate is not obtained within one year.

In comparison, those survey respondents who obtained legal divorce certificates through the courts were more likely to have birth certificates for their children. 81% of Religious Court clients confirmed that their first child had a birth certificate and 97% of General Court clients confirmed that their first child had a birth certificate.

Figure 7 PEKKA women and when they obtain birth certificates for their children



The Government of Indonesia has placed a high priority on every Indonesian child's birth being registered by 2011. However, if a marriage certificate cannot be produced at the Civil Registry the birth certificate will only include the mother's name.

In 2009, over 13,000 cases were received by the Religious Courts concerning marriage legalisation (*itsbath nikah*). In these cases, the Religious Court provided the applicant with a document evidencing an earlier marriage. This document can then be used in a Civil Registry to obtain other documents (like birth certificates) for example, where a marriage certificate is sought so that the names of both parents can appear on the birth certificate.

The Religious Courts thus have a critical role to play in establishing identity and access to service for poor Muslim women and children, as the following case study shows.

Case study five A circuit court for a marriage legalisation case

Ibu B: I am 36 years old and have six children from the same husband. I've lost my marriage book, so I filed a marriage legalisation (*itsbath nikah*) case in the circuit court. The process was easy.

Q: Who informed you of the circuit court?

Ibu B: Initially, PEKKA informed us through a PEKKA worker. She said there will be a circuit court held for marriage legalisation, so those who do not have a marriage book are able to register to participate in the circuit court. My marriage book disappeared a long time ago, and I have many children as well as many necessities. Requesting a birth certificate I will need a marriage certificate, I was confused, so I decided to register for the circuit court.

Q: Had you been thinking of the fees for a circuit court?

Ibu B: I was too scared of the fees to file for marriage legalisation in court before. I understand that the cost is pretty expensive. Therefore, whenever I wanted to file for marriage legalisation I always postponed it. My preference has been to pay my children's school fees. So, money is the matter, I could not file a case for a marriage legalisation until PEKKA informed us of the circuit court.

One month after the circuit court, the marriage book was available for collection.

Ibu B: I hope that a circuit court can be held again in the near future. Many villagers do not have a marriage book, their children won't have birth certificates since it requires their parents to have a marriage book. I was initially confused when I wanted to have a Family Card (*Kartu Keluarga*) since I did not have a marriage book. Once I got the marriage book, I can get the children birth certificates.



Educational attainment of PEKKA members

58% of PEKKA members surveyed never went to school or did not complete primary school. 42% of PEKKA members completed primary school (or a higher level of education) compared with the national average of 72%.⁶¹ 14% of PEKKA members completed junior high school (or higher) compared with the national average of 41%.⁶²

86% of PEKKA members have either never been to school, dropped out of primary school or only completed primary education. The children of PEKKA women therefore need learning support structures in order to complete the nationally

58% of PEKKA members surveyed never went to school or did not complete primary school.

mandated nine years of education, given the low levels of educational attainment by the parent with primary responsibility for their welfare. In the focus group discussions with PEKKA members in NTT (attached at Annex 2), the advantages of community learning centres were emphasised as supporting the educational development of PEKKA children still at school as well as older PEKKA children or PEKKA members themselves who wish to advance their education through completing educational equivalence programs.

Table 29 Educational attainment of PEKKA members

	Aceh (NAD)	West Java	West Kalimantan	East Nusa Tenggara	Total	National educational attainment 2008 ⁶³
Never attend school	29%	13%	34%	17%	24%	8%
Did not complete/ have not yet completed primary school	21%	40%	43%	34%	34%	20%
Finished primary school	27%	34%	15%	37%	28%	31%
Finished junior high school	10%	8%	3%	6%	7%	18%
Finished senior high school	13%	5%	4%	6%	7%	23%
	100%	100%	100%	100%	100%	100%



⁶¹ The 42% of PEKKA members that completed primary school includes those PEKKA members that completed junior high school (7%) and senior high school (7%).

⁶² BPS, SUSENAS 2008.

⁶³ BPS, SUSENAS 2008.

Educational attainment of the dependants of PEKKA members

The Government of Indonesia has mandated that all children should complete nine years of education. In 2008, 72% of Indonesian children completed primary school and only 41% completed junior high school.⁶⁴ The educational attainment of dependants of PEKKA women fall well below national standards as the following points illustrate:

- 28% of PEKKA dependants never attended school compared with the national average of 8%
- 63% of PEKKA dependants finished primary school compared with the national average of 72%
- 34% of PEKKA dependants finished junior high school compared with the national average of 41%, and
- 13% of PEKKA dependants finished senior high school compared with the national average of 23%.

There is also significant variation in the educational attainment of the dependants of PEKKA members across the four survey fields as follows:

- In West Kalimantan, 42% of the dependants of PEKKA members surveyed either never attend school or do not finish primary school compared with the national average of 28%.
- In NTT, only 20% of the dependants of PEKKA members surveyed finished junior high school compared with the national average of 41%.
- In NTT and West Kalimantan, only 7% and 15% respectively of the dependants of PEKKA members surveyed finished senior high school compared with the national average of 23%.

Table 30 Educational attainment of PEKKA members and their dependants (ten years and older) compared with the national educational attainment of citizens (ten years and older)

	Educational Attainment (National)	Educational Attainment PEKKA Members	Educational Attainment PEKKA Dependants
Never Attended School	8%	24%	28%
Completed Primary School (or higher)	72%	42%	63%
Completed Junior High School (or higher)	41%	14%	34%
Completed Senior High School	23%	7%	13%



⁶⁴ BPS, SUSENAS 2008. The BPS data on educational attainment uses a sample of citizens aged ten years and over. The same sample was used to measure the educational attainment of PEKKA dependants so that comparisons with the national data could be made.

Table 31 Educational attainment of dependants of PEKKA members surveyed compared with the national educational attainment of citizens (ten years and older)

	Aceh (NAD)	West Java	West Kalimantan	East Nusa Tenggara	Total	National educational attainment 2008 ⁶⁵
Never attend school	30%	18%	27%	41%	28%	8%
Did not complete/ have not yet completed primary school	8%	6%	15%	12%	10%	20%
Finished primary school	4%	35%	25%	27%	29%	31%
Finished junior high school	36%	27%	17%	13%	21%	18%
Finished senior high school	22%	15%	15%	7%	13%	23%
	100%	100%	100%	100%	100%	100%

Whether a child is able to complete the mandatory 9 years of education appears to be strongly linked to whether a child has a birth certificate.

Table 32 Correlation between educational attainment and birth certificates – dependants aged 10 to 19 years

PEKKA dependants aged 10-19 years old	West Java				West Kalimantan				East Nusa Tenggara				Total
	Not at school		Still at school		Not at school		Still at school		Not at school		Still at school		
	Birth Certificate		Birth Certificate		Birth Certificate		Birth Certificate		Birth Certificate		Birth Certificate		
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	
10			4	3			10	7			13	11	48
11	–	–	4	4	–	–	10	4	–	–	13	7	42
12	–	–	7	5	1	–	4	7	–	–	19	9	52
13	–	–	7	1	1	4	14	5	–	1	25	5	63
14	1	–	9	4	–	–	8	2	1	1	14	4	44
15	1	2	11	3	2	3	15	2	1	3	9	3	55
16	5	3	5	1	3	1	5	1	2	4	6	2	38
17	1	4	5	2	3	2	7	1	1	5	12	3	46
18	5	4	3	2	3	4	2	2	1	1	6	2	35
19	3	5	2	–	5	2	4	2	2	6	2	1	34
Total	16	18	57	25	18	16	79	33	8	21	119	47	457
Of those at school % with/without birth certificate			70%	30%			71%	29%			72%	28%	
Number of dependants not at/at school	34		82		34		112		29		166		457
% of dependants not at/at school	29%		71%		23%		77%		15%		85%		

For the dependants aged 10-19 of PEKKA members surveyed in West Java, West Kalimantan and East Nusa Tenggara, 78% are still at school. Of these dependants who are still at school, 70% of them have birth certificates.⁶⁶

In East Nusa Tenggara, 85% of PEKKA dependants aged 11-19 are still at school. However, of the 29 dependants aged 11-19 who are not still at school, 21 (or 72%) do not have birth certificates.

When the educational attainment of dependants aged 15-22 of PEKKA members surveyed are reviewed, 78% of these 132 dependants who are still at school have birth certificates.

For this cross-section of younger dependants, almost half (46%) do not complete the mandatory nine years of education. One in five do not complete the six years of primary school.

Table 33 Educational attainment of PEKKA dependants aged 15-22 years who are no longer at school

15-22 years old and not at school	Aceh (NAD)	West Java	West Kalimantan	East Nusa Tenggara	Total
Never attend school	2%	2%	2%	4%	2%
Did not complete/ have not yet completed					
Primary school	4%	10%	20%	32%	17%
Primary school	18%	31%	26%	32%	27%
Junior high school	43%	43%	23%	21%	32%
Senior high school	33%	14%	30%	11%	22%



⁶⁶ The dependants of PEKKA members surveyed in Aceh have not been included in this analysis as 84% of the dependants aged 11-19 do not have birth certificates.

Cost of educating one child as a proportion of a PEKKA member’s average per capita income

The data below was collected by asking PEKKA members to calculate the different cost components in educating one child at primary school, junior and senior high school. The total cost of educating one child at each of these levels was then calculated as a percentage of the average per capita income of a PEKKA member in each province and in aggregate. These figures demonstrate that the total cost of educating a child at junior and senior high school exceeds the average per capita income in a PEKKA household that would notionally be allocated to meet the day-to-day needs of that child. While 56% of PEKKA dependants are able to finish primary school, only 27% of PEKKA dependants are able to finish junior high school, and only 13% finish senior high school. These figures are well below the national average for school attainment. They highlight the fact that for children of female heads of household, the completion of the mandated nine years of education is far from a reality.

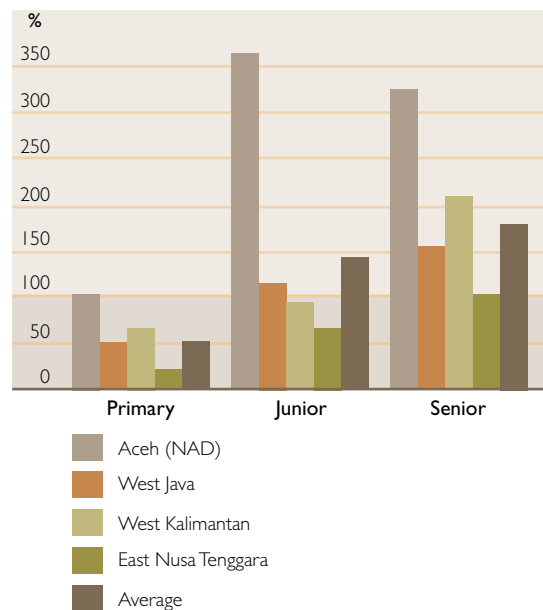


The cost of educating one child represents a significant proportion of a PEKKA member’s average per capita income:

- Educating one primary school child at a state school takes 51% of the PEKKA member’s annual per capita income.
- Educating one junior high school child at a state school takes 140% of the PEKKA member’s annual per capita income.
- Educating one senior high school child at a state school takes 178% of a PEKKA member’s annual per capita income.

If a PEKKA family lives far from a junior or senior high school they may need to send their child to a boarding house in the village or town where they will be schooled. This is a significant additional cost related to high school education and explains why the educational attainment of PEKKA dependants is half that of the national average.

Figure 8 Percentage of PEKKA member annual per capita income used for educating one primary school child, one junior high school child, and one senior high school child.



At primary school level, the Indonesian Government has introduced a school fee assistance program (BOS) which, among other things, waives school fees.

The research found that the significant costs associated with primary school education are as follows:

- Snacks bought from kiosks outside the school grounds account for 57% of the total cost across the four fields. This rises to 84% of the total cost of educating a child in Aceh.
- Extra-curricular activities account for 16% of the total cost across the four fields. This rises to 45% of the total cost of educating a child in West Kalimantan.
- The child's uniform and shoes account for 14% of the total cost across the four fields. This rises to 41% of the total cost of educating a child in NTT.

The significant costs associated with junior high school education were identified as follows:

- Snacks bought from kiosks outside the school grounds account for 24% of the total cost across the four fields. This rises to 39% of the total cost of educating a child in West Kalimantan.
- Boarding costs account for 23% of the total cost across the four fields. This rises to 62% of the total cost of educating a child in Aceh.
- Transportation costs account for 17% of the total cost across the four fields. This rises to 40% of the total cost of educating a child in West Java.
- Extra-curricular activities account for 16% of the total cost across the four fields. This rises to 23% of the total cost of educating a child in West Kalimantan.

At senior high school level, the significant costs were:

- Transportation costs account for 25% of the total cost across the four fields. This rises to 30% of the total cost of educating a child in West Kalimantan.
- Snacks bought from kiosks outside the school grounds account for 25% of the total cost across the four fields. This rises to 50% of the total cost of educating a child in Aceh.
- Extra-curricular activities account for 14% of the total cost across the four fields. This rises to 20% of the total cost of educating a child in West Kalimantan.
- School fees account for 12% of the total cost across the four fields. This rises to 23% of the total cost of educating a child in NTT.

In the focus group discussions with PEKKA members in NTT (attached at Annex 2), strategies for increasing the attainment of the national standard of nine years of education are outlined.



Table 34 Total cost to educate one primary school student and percentage of a PEKKA members annual per-capita income

Annual cost to educate one primary school student (Rp)	Aceh (NAD)		West Java		West Kalimantan		East Nusa Tenggara	
School fees	1,837	0%	4,645	0%	4,680	0%	9,517	2%
Stationery	57,980	3%	43,484	3%	58,737	5%	79,523	13%
Curriculum books	10,122	1%	22,153	1%	20,362	2%	13,753	2%
Transportation	61,510	3%	0	0%	38,645	3%	15,172	3%
Uniform and shoes	129,898	7%	171,355	11%	70,309	6%	244,960	41%
Compulsory donations	10,592	1%	12,581	1%	2,618	0%	5,517	1%
Bought snacks	1,491,286	84%	1,148,610	74%	423,354	38%	189,023	32%
Extra-curricular activities	22,000	1%	145,063	9%	496,833	45%	41,556	7%
Total	1,785,225	103%	1,547,890	45%	1,115,539	65%	599,021	18%

Table 35 Total cost to educate one junior high school student and percentage of a PEKKA members annual per-capita income

Annual cost to educate one junior high school student (Rp)	Aceh (NAD)		West Java		West Kalimantan		East Nusa Tenggara	
School fees	34,567	1%	26,823	1%	12,104	1%	290,618	14%
Boarding house	3,900,000	62%	0	0%	0	0%	600,000	28%
Stationery	80,896	1%	58,324	2%	79,311	5%	102,563	5%
Curriculum books	33,881	1%	121,088	3%	109,973	7%	103,375	5%
Transportation	524,716	8%	1,552,942	40%	211,676	13%	135,000	6%
Uniform and shoes	211,851	3%	230,294	6%	174,108	11%	274,000	13%
Compulsory donations	24,239	0%	38,441	1%	15,162	1%	12,386	1%
Bought snacks	928,433	15%	1,236,527	32%	633,836	39%	250,250	12%
Extra-curricular activities	563,475	9%	592,625	15%	376,026	23%	352,550	17%
Total	6,302,057	364%	3,857,064	113%	1,612,196	94%	2,120,742	64%

Table 36 Total cost to educate one senior high school student and percentage of a PEKKA members annual per-capita income

Annual cost to educate one senior high school student (Rp)	Aceh (NAD)		West Java		West Kalimantan		East Nusa Tenggara	
School fees	57,778	1%	683,000	13%	401,1301	1%	768,709	23%
Boarding house	492,000	9%	0	0%	0	0%	773,333	23%
Stationery	119,056	2%	86,111	2%	115,957	3%	138,282	4%
Curriculum books	60,407	1%	329,611	6%	213,304	6%	104,659	3%
Transportation	824,185	15%	1,336,500	26%	1,056,478	30%	1,035,500	30%
Uniform and shoes	246,667	4%	254,444	5%	267,174	8%	338,977	10%
Compulsory donations	34,296	1%	114,722	2%	107,826	3%	55,619	2%
Bought snacks	2,788,500	50%	1,382,324	27%	671,477	19%	181,999	5%
Extra-curricular activities	957,647	17%	1,023,000	20%	711,857	20%	0	0%
Total	5,580,536	322%	5,809,713	153%	3,545,203	207%	3,397,078	103%

Gender preferment in education

PEKKA members will educate their sons over their daughters by a factor of 3:1 if they are forced to make a choice about who could be educated given household income constraints.

PEKKA members were asked who they would choose if they had to make a choice between educating their sons or their daughters. PEKKA members will educate their sons over their daughters by a factor of 3:1, on average, across the four research fields. However in West Java, this factor was closer to 4:1 in favour of a son's education.

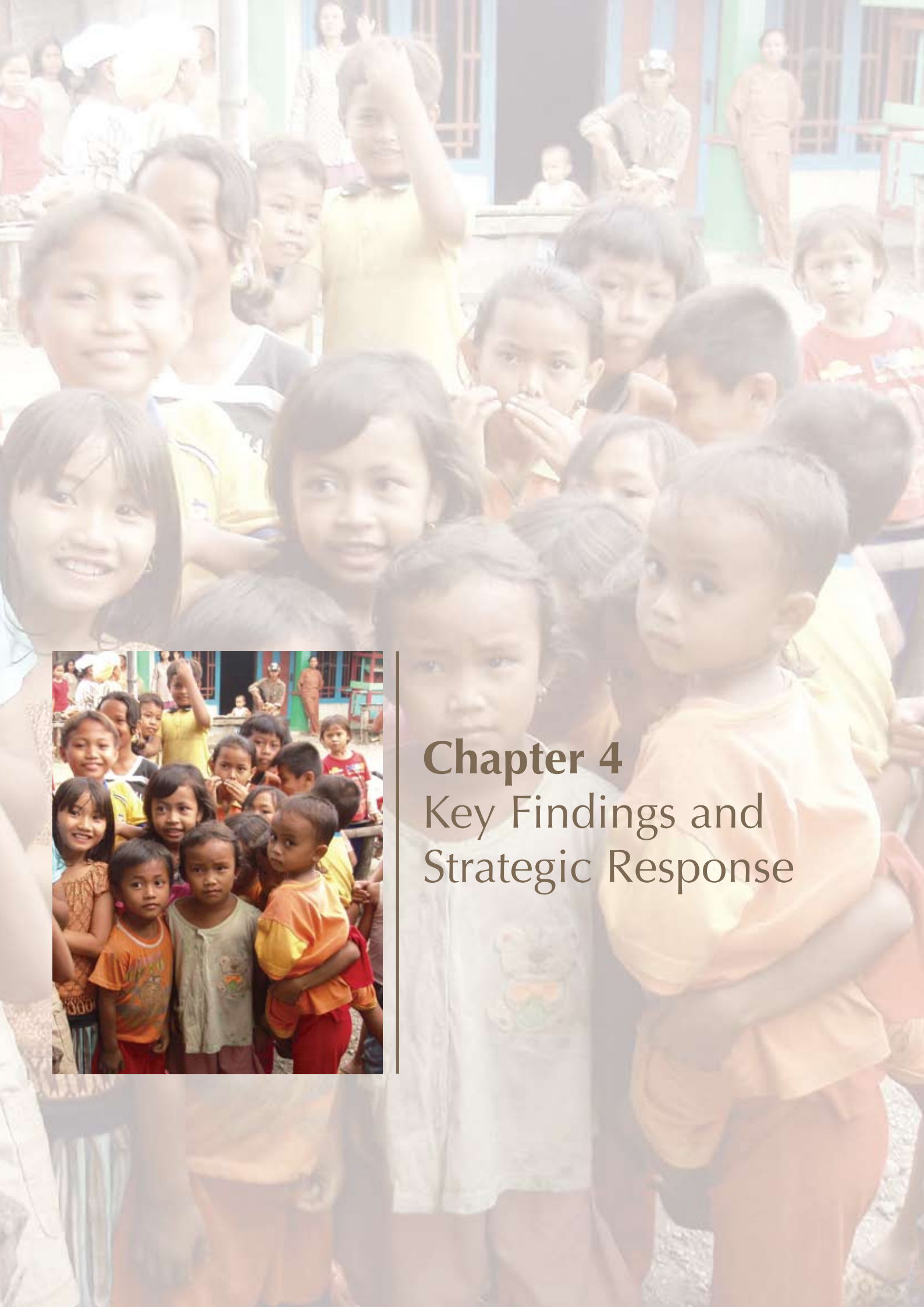
The main reasons given as to why higher educational attainment for boys would be favoured over girls were as follows:

- Boys will become the head of a household.
- Girls will become wives.
- Boys have a better future.
- Boys will take care of, and look after, their parents in their old age.

PEKKA members will educate their sons over their daughters by a factor of 3:1 if they are forced to make a choice about who could be educated given household income constraints.

Table 37 Gender preferment in education

% PEKKA members who choose:	Aceh (NAD)	West Java	West Kalimantan	East Nusa Tenggara	Total
Daughters	29.27	12.17	25.16	26.35	24.13
Sons	67.07	79.13	74.19	73.65	73.04
Did not answer	3.66	8.70	0.65	0.00	2.83



Chapter 4 Key Findings and Strategic Response

This chapter summarises the key findings and strategic response of the access and equity study and have been drafted collaboratively by the Poverty and Legal Access Survey research team.

The strategic response section is colour-coded to show those strategic actions that:

- are achievable, have high impact and can realistically be undertaken in the short-term [in green], and
- will require PEKKA to engage in advocacy with one or more agencies and may take longer to achieve [in purple].

Access to justice

Access to justice in the Indonesian context refers to the circumstances and processes whereby the State guarantees the fulfilment of fundamental rights based on the Constitution and universal principles of human rights, and the ability of all citizens (claims holders) to know, understand, be aware of and make use of these basic rights, through formal and informal justice institutions that are supported by the existence of accessible and responsive public complaint mechanisms, in order to obtain the resources to improve the quality of their lives.⁶⁷

PEKKA will be responsible for directing the follow-up actions for many of the strategic responses. PEKKA is an organisation providing extraordinary support to female heads of household across Indonesia, and during 2010 it will expand its operations from 8 to 17 provinces.

Most of PEKKA's work is directed at the community level—empowering the more than 12,000 female heads of household who are its members. Through its National Secretariat, PEKKA has the ability to engage with national and provincial level government agencies to advocate for policy changes that will provide direct benefits to PEKKA members across the country.

However, PEKKA's ability to support female heads of household through both its grass-roots programs and policy advocacy will be substantially increased if Indonesian government agencies and civil society groups, as well as international and bilateral donors, work with PEKKA to support these policy outcomes.

Key findings	Strategic response
<p>1. The number of female-headed households in Indonesia is under-estimated.</p> <p>In 2010, the Indonesian Bureau of Statistics (BPS) estimated that there were 65 million households, 14%, or 9 million of which are headed by women.⁶⁸ The BPS definition of the head of a household currently allows for two different people to be considered as the head of a household: (i) the person who is actually responsible for the daily needs of a household or (ii) the person who is considered the head of the household. This definition is confusing, as only one person can be named as the head of household through the BPS national survey process. It is therefore probable that there is an under-estimation of the number of female-headed households in Indonesia. This has implications for policy planning and implementation for Indonesia's pro-poor poverty alleviation programs that benefit female heads of household and their families.</p>	<p>PEKKA National Secretariat and SMERU to work with BPS and Bappenas:</p> <ul style="list-style-type: none"> to change the BPS definition of head of household to be the 'actual person who is responsible for the daily needs of a household' and remove reference to the 'person who is considered/ appointed the head of the household'. to develop a more accurate estimate of the proportion of de-facto female heads of household in Indonesia to ensure effective policy planning, using the new definition of a head of household <p>PEKKA to work with government agencies and Parliament to advocate for:</p> <ul style="list-style-type: none"> the head of a household to be defined as the person who is responsible for the daily needs of a household and not by reference to cultural norms in relevant legislation (e.g. the Marriage Law), and gender equality in household roles.
<p>2. 55% of the 601 PEKKA women interviewed live below the Indonesian poverty line.⁶⁹</p> <p>14% of the Indonesian population live below the Indonesian poverty line. More than half of the PEKKA members surveyed fall within this group. If an international poverty line of USD\$2 PPP⁷⁰ was applied to this group of women, 79% of the PEKKA members surveyed would fall under this international poverty line.</p>	<p>PEKKA to continue its livelihood programmes with some of the poorest members of Indonesian society to raise income levels for female heads of household and the families they support.</p> <p>PEKKA National Secretariat to raise the profile of households headed by women in the context of poverty alleviation policy formulation through a dialogue with relevant government agencies, e.g. Vice-President's Office (Committee for Poverty Alleviation), Coordinating Ministry for Community Welfare (KESRA) and National Programme for Community Empowerment (PNPM), Ministry of Social Affairs (DepSos).</p>

68 Hartanto, Wendy (2010) *The 2010 Indonesia population census*, Statistics Indonesia/BPS and *Statistik Gender 2009*, BPS.

69 *Profil Kemiskinan Di Indonesia Maret 2009*, Badan Pusat Statistik, *Berita Resmi Statistik No. 43/07/Th. XII, 1 Juli 2009*. The poverty line for urban dwellers is Rp 222,123 and for those living in villages is Rp 179,835. In March 2009 32.5M people or 14% of the Indonesian population lived below the Indonesian poverty line.

70 The international poverty line of USD\$2 PPP is Rp 404, 715 for urban dwellers and Rp 286,892 for those living in villages. 2009 adjustments to the USD\$2 PPP were provided by the World Bank Jakarta Office.

Key findings	Strategic response
<p>3. One-third of those female heads of household who live below the Indonesian poverty line are unable to access cash transfer schemes.</p> <p>While most PEKKA members living below the Indonesian poverty line were able to access the rice subsidy program (<i>raskin</i>), the government cash transfer payments (<i>Bantuan Langsung Tunai BLT</i>) made in 2005 and 2008 were more difficult for PEKKA members to obtain.</p>	<p>PEKKA groups across the country should attend the district-level meetings to discuss the allocation of <i>Jamkesmas</i> cards (free health treatment) to raise the visibility of PEKKA female heads of household so that these women are considered when scarce resources are allocated. Similar strategies should be adopted for advancing a more gender-equitable allocation of cash transfers to PEKKA female heads of households.</p> <p>PEKKA groups across the country will provide information to PEKKA members on how to access cash transfers and free medical treatment.</p> <p>The PEKKA National Secretariat will work with government agencies responsible for the implementation of poverty alleviation programs to ensure that guidelines for the distribution of a government cash transfer scheme or <i>Jamkesmas</i> or other poverty alleviation programs will (i) require village officials to report on the proportion of poor female-headed households that were recipients of these benefits, and (ii) specify that village meetings need to be scheduled at times that allow women to attend and encourage women's participation at these meetings.⁷¹</p>
<p>4. One-third of female heads of household living below the Indonesian poverty line were unable to access the free medical treatment program (<i>Jamkesmas</i>).</p> <p>This percentage increased to 48% in West Kalimantan for those PEKKA members living under the Indonesian poverty line.</p>	<p>Strategic response is the same as for key finding 3.</p>

71 In Aceh, the majority of village meetings take place after 6pm while village traditions do not allow women to leave home at this time.

Key findings	Strategic response
<p>5. Three out of every ten PEKKA members surveyed were married under the age of 16, the legal age of marriage.</p> <p>On average, 27% of PEKKA members were married under the age of 16, which is below the legal age of marriage in Indonesia. This increased to 49% in West Java.</p>	<p>PEKKA groups across the country will work with the Religious Affairs Office (KUA) and the Civil Registry to raise awareness in the community of:</p> <ul style="list-style-type: none"> • the importance of a legal marriage • the fact that it is illegal to marry a girl under the age of 16, and • the provisions of the Child Protection Law of 2002 protecting girls and boys under the age of 18. <p>The PEKKA National Secretariat will engage in a dialogue with the Department of Education to facilitate girls being able to continue their education regardless of their marital status or becoming pregnant.</p> <p>The PEKKA National Secretariat will conduct an advocacy program:</p> <ul style="list-style-type: none"> • to increase the legal age of marriage for girls to 18 • to raise awareness of the importance of girls receiving a birth certificate as a way of evidencing their age when registering their marriage • to raise awareness that the national mandatory requirement of nine years of education will be denied to girls if they marry under-age, and • to raise awareness at village level of the importance of girls completing their education before marrying, as schools generally do not permit girls to continue their education once they are married.



Key findings	Strategic response
<p>6. Less than 50% of PEKKA members surveyed have a legal marriage.</p>	<p>PEKKA groups across the country will:</p> <ul style="list-style-type: none"> • work with religious leaders and institutions to emphasise to women and men at the time of their marriage that Indonesian law requires a religious marriage to be registered at the Religious Affairs Office (KUA) or Civil Registry within 60 days • raise awareness at community level of the importance of legal marriage as a prerequisite for: <ul style="list-style-type: none"> – having both parents’ names on the birth certificates of children of the marriage. • raise awareness of the responsibility of both husbands and wives to obtain the marriage certificate and keep their own copies, and • raise awareness in the community of the court processes for: <ul style="list-style-type: none"> – retrospectively legalising a marriage (<i>itsbath nikah</i>) – obtaining evidence of marriage when the original documents have been lost, and – the ability for the poor to apply to have these marriage legalisation cases heard on a fee-waiver (<i>prodeo</i>) basis. • work with the Office of Religious Affairs (KUA) and Civil Registries to publicise to PEKKA members when they will be holding mobile clinics and what services will be provided to the community. This is particularly beneficial for the poor as they can receive information and process marriage and birth certificates without incurring the cost of travelling to the district or sub-district capital.

Key findings

7. A central principle of justice is that it be universally accessible. Unfortunately, the poorest sections of Indonesian society face significant barriers in bringing their family law cases to the courts. Nine out of ten PEKKA heads of household surveyed were unable to access the courts for their divorce cases. For the poor, the cost of court fees and transportation to the nearest court is perceived as an overwhelming barrier to accessing the courts.

Information and support for disadvantaged groups to navigate their way through court processes are also important, especially when combined with low levels of literacy. However, as demonstrated through the collaboration of PEKKA and the Religious Courts, the information barrier for disadvantaged groups can be overcome through the work of court information desks and collaboration with NGOs.

14% cent of Indonesian people live under the Indonesian poverty line.

The average total cost of a Religious Court case for survey respondents was Rp 789,666, almost four times the monthly per capita income of a person living on or below the Indonesian poverty line.

The average total cost of a General Court divorce case in 2008 was Rp 2,050,000 where the party did not use a lawyer, approximately ten times the monthly per capita income of a person living on or below the Indonesian poverty line.

These costs prevent the poor from being able to bring their family law cases to the courts according to the requirements of Indonesian law.

Strategic response

PEKKA will work with Religious and General Courts to:

- continue to assist PEKKA members and other disadvantaged community members to register their family law cases at a circuit court.
- increase awareness in the community of the courts' ability to waive court fees in cases of poverty and to provide circuit courts
- develop 'how to' guides on how to register divorce, marriage legalisation and birth certificate cases with the court and apply for a court fee waiver, and
- provide data on the number of PEKKA members seeking to bring family law cases across the country who require fee waiver assistance and/or their case heard in a circuit court and facilitate these cases being heard.

PEKKA recommends that the Supreme Court of Indonesia consider publishing in its annual report the number of cases in which the court fees are waived and the number of cases heard on a circuit court in order to demonstrate its commitment to access to justice for women, the poor or those living in remote areas.

PEKKA will seek approval from the Supreme Court for para-legal staff to be able to assist justice seekers by providing support in the court room as a lack of education, information, and confidence, often deters poor women from bringing divorce cases to court.

Key findings	Strategic response
<p>8. 88% of PEKKA female heads of household living under the Indonesian poverty line would be more motivated to obtain a legal divorce if the Court fees were waived.</p> <p>The waiver of court fees (<i>prodeo</i>) will greatly assist those living under the Indonesian poverty line, as well as other poor clients of the Indonesian courts, who often go into debt or use several months of household income to bring a divorce case to the courts.</p>	<p>Strategic response is the same as for key finding 7.</p>
<p>9. High transportation costs are a barrier to accessing the court, especially for the rural poor who live a greater distance from the courts.</p> <p>The cost of transportation to a court varies significantly depending upon where a party lives in relation to the court. The greater the distance to the court, the greater the transportation costs for the party.</p> <p>The average cost of transport for an urban member to attend court was Rp 25,000 per return trip, while a rural PEKKA member faced an average cost of Rp 92,000 per return trip to the court, representing almost half the monthly income of a household living under the Indonesian poverty line.</p>	<p>Strategic response is the same as for key finding 7.</p>
<p>10. 89% of PEKKA women would be more motivated to obtain a legal divorce if a circuit Court was held in a nearby town.</p> <p>For the rural poor the cost of transportation is a significant proportion of the overall cost of bringing a case to court. Transportation costs represent up to, or more than, 70% of the total cost of bringing a case to court. Bringing the court to the party would significantly reduce the costs of bringing a case to court and increase access to justice for the poor living in rural and remote areas.</p>	<p>Strategic response is the same as for key finding 7.</p>

Key findings	Strategic response
<p>11. Over-estimation of the down-payment made to courts for divorce cases is a disincentive to justice seekers bringing their cases to court, particularly the poor.</p> <p>On average, those clients in the six Religious Courts surveyed made a down-payment of 24% more than required for the final cost of the case. This increased to 79%, on average, for clients in the six General Courts surveyed.</p> <p>The higher the down-payment required, the less likely the poor will be able to bring their family law cases to court.</p>	<p>PEKKA groups across the country will work with Religious and General Courts to ensure that signs are clearly visible in the court waiting area advising court clients: (i) of the basis for calculating the court fee down-payment (ii) that they should receive a receipt for the initial down-payment of court fees, and (iii) that any balance from the down-payment will be returned to them at the end of the case.</p> <p>If the court has a website, this information should also be made available on the website.</p>
<p>12. Reimbursement of the down-payment made to courts is important for all clients, but particularly for the poor.</p> <p>Greater transparency of court fees and the down-payments made to courts for divorce cases would assist in building public trust and confidence in the courts.</p>	<p>PEKKA groups across the country will educate their members that:</p> <ul style="list-style-type: none"> • they should receive a receipt for the initial down-payment of court fees, and • any balance from the down-payment will be returned to them at the end of the case.
<p>13. 79% of PEKKA members who were able to access the courts were either satisfied or very satisfied with the service provided by the Courts.</p>	<p>The PEKKA National Secretariat will discuss with the Religious and General Courts the areas identified by PEKKA members where they are less satisfied with the level of client service:</p> <ul style="list-style-type: none"> • Financial transparency; • Information on court fee waiver for the poor; • Delays in their case and in receiving the court judgment; • Simplifying court forms
<p>14. In 78% of the 264 divorces, PEKKA members identified domestic violence as a factor.⁷²</p>	<p>PEKKA groups across the country will work with local and religious leaders to raise community awareness of:</p> <ul style="list-style-type: none"> • the Domestic Violence Law (Law No 23 of 2004) • that domestic violence is a criminal offence, and • the impact of domestic violence on the development of infants and children.

⁷² PEKKA women survey respondents were asked if violence (physical, psychological, economic or sexual) against themselves and or their children was a factor in the divorce.

Key findings	Strategic response
<p>15. Divorce through the courts provides legal certainty for women and the poor.</p> <p>Without a legal divorce it is not possible to legally re-marry. Children from subsequent marriages where there was no prior legal divorce will be unable to have their father's name on the birth certificate. This is a disincentive for many Indonesian women to obtain birth certificates for their children.</p> <p>Judges and court staff of the Indonesian courts and PEKKA female heads of household living under the Indonesian poverty line agree that a formal divorce through the Indonesian courts clarifies legal responsibilities for the care and financial support of both former spouses and children of the marriage.</p>	<p>PEKKA will continue its legal empowerment programs and extend these into other provinces.</p>
<p>16. Nine out of ten court survey respondents did not consider the Indonesian legal requirement to bring divorce cases to court as the primary motivating factor for their case.</p> <p>Only 11% of Religious Court and 8% of General Court clients surveyed chose to use the courts because it is a requirement of Indonesian law.</p> <p>Of the 1655 clients surveyed, 89% of Religious and 91% of General Court clients registered their cases in court because other non-court resolution mechanisms, such as family conciliation, had failed or because their partner had chosen to take the case to the courts.</p>	<p>The PEKKA National Secretariat will urge national government agencies to raise awareness at village level of the importance of legal marriage and divorce for the husband, the wife and the children of these marriages.</p> <p>The Government of Indonesia's Strategic Plan to achieve birth registration for all Indonesian children will not achieve its goal unless the government also mounts an information campaign on the state's requirements concerning legal marriage and divorce to facilitate the choice of whether both parents' names are included on a child's birth certificate.</p>

Key findings

17. 56% of the children of PEKKA women surveyed did not have a birth certificate. This percentage increased to 87% in Aceh.

A cycle of non-legal marriage and divorce exists for many PEKKA female heads of household living below the Indonesian poverty line. The failure to obtain legal documentation in relation to marriage and divorce is associated with the low rate of birth certificates for children. If parents are unable to bring their birth certificate cases to the General Courts their child's basic human right to a legal identity, as well as access to a range of social services such as health and education, will be denied or diminished.

The Government of Indonesia has placed a high priority on every Indonesian child's birth being registered by 2011. The requirement of Law 23 of 2006 that parents must bring a birth certificate matter to the General Courts if they do not obtain a birth certificate for their child within 1 year from its birth is a significant disincentive for the poor and those living far from civil registries.

Strategic response

PEKKA National Secretariat will work with the Ministry of Home Affairs and the Supreme Court to give effect to the Strategic Plan for the Universal Registration of Birth by 2011, in particular through the waiver of court fees for:

- marriage legalisation cases in the Religious and General Courts, and
- birth certificate cases (General Courts).

PEKKA will work with the General and Religious Courts to:

- continue to assist PEKKA members and other disadvantaged community members to register their family law cases at a circuit court;
- raise awareness that the Indonesian courts can hear marriage legalisation cases to provide a statement of marriage that can be used to obtain birth certificates for children;
- increase awareness in the community of the court's ability to waive court fees in cases of poverty and to provide circuit courts; and
- develop 'how to' guides on how to register divorce, marriage legalisation and birth certificate cases with the court and apply for a court fee waiver.

PEKKA will work with the Department of Internal Affairs to advocate in favour of a non-judicial approach to obtaining birth certificates once the stipulated time for birth registration has elapsed following the birth of a child. The existing requirement in Law 23 of 2006 for a birth certificate matter to be brought to the General Courts should be reconsidered to see if a non-judicial approach can be found, as this is a significant barrier to the poor and those living far from civil registries in obtaining birth certificates for their children.

Key findings

18. Of the 601 PEKKA members surveyed, 24% never went to school and 34% did not complete primary school.

42% of PEKKA members completed primary school compared to the national average of 72%. 14% of PEKKA members completed junior high school compared to the national average of 41%.⁷³

27% of PEKKA members surveyed were married under the legal age of 16. Underage marriage, in most cases, prevents girls from completing the national requirement of nine years of education as schools generally do not permit girls to continue their education once they are married.

Strategic response

The PEKKA National Secretariat should continue to work with the Indonesian government to support opportunities for educational equivalency programs (*Packet A, B and C*) to be undertaken by PEKKA members for their own benefit and to support their children's educational outcomes. PEKKA will advocate that the costs of undertaking the educational equivalency programmes (*Packet A, B and C*) should be waived for people living under the poverty line.



Key findings	Strategic response
<p>19. The educational attainment of dependants of PEKKA women fall well below national standards:</p> <ul style="list-style-type: none"> • 28% of PEKKA dependants never attend school compared with the national average of 8%. • 63% of PEKKA dependants finished primary school compared with the national average of 72%. • 34% of PEKKA dependants finished junior high school compared with the national average of 41%. • 13% of PEKKA dependants finished senior high school compared with the national average of 23%. <p>20. Whether a child is able to complete the mandatory 9 years of education appears to be strongly linked to whether a child has a birth certificate.</p> <p>For the dependants aged 10-19 of PEKKA members surveyed in West Java, West Kalimantan and East Nusa Tenggara, 78% are still at school. Of these dependants who are still at school, 70% of them have birth certificates.</p>	<p>PEKKA groups across the country will:</p> <ul style="list-style-type: none"> • approach teachers and school committees to obtain scholarships for the children of the poor • approach Education Departments to provide free books in schools (in areas where there is no or poor Internet connection, the Education Department should provide free hard-copy books to schools as it is not possible to access the e-books in these regions) • work with provincial and local government education departments to obtain free transportation⁷⁴ (this is especially important for high school students, as for the NTT PEKKA members transportation costs account for 40% of the total cost of educating a junior high school student in West Java and 30% of the annual cost of educating a senior high school student in West Kalimantan) • raise awareness that the Indonesian courts can hear marriage legalisation cases to provide a statement of marriage that can be used to obtain birth certificates for children; • continue to establish community education centres that are able to provide a wide range of books and IT resources to both children and adults in the formal and informal education systems: <ul style="list-style-type: none"> – These centres provide a focal point for after school hours learning and mentoring from community leaders and members with higher levels of education. – For students whose parents have low educational levels, the community education centres would also provide educational support and a venue for seeking advice on homework, school projects and examination revision. • conduct an advocacy campaign with the Ministry of Education to engage with provincial and local government education departments on the cost of multiple school uniforms (3-4 different uniforms required) and the impact of this policy, especially on the poor.

74 In 2007, the kabupaten government provided free transportation from PEKKA villages to the sub-district senior high school.

Key findings	Strategic response
<p>21. The cost of educating one child represents a significant proportion of a PEKKA member's average annual per capita income:</p> <ul style="list-style-type: none"> • Educating one primary school child at a state school takes 51% of the PEKKA member's annual per capita income. • Educating one junior high school child at a state school takes 140% of the PEKKA member's annual per capita income. • Educating one senior high school child at a state school takes 178% of a PEKKA member's annual per capita income. <p>These figures demonstrate that the total cost of educating a child at junior and senior high school exceeds the average per capita income in a PEKKA household that would notionally be allocated to meet the day-to-day needs of that child. For children of female heads of household, the completion of the mandated nine years of education is far from a reality.</p>	<p>Strategic response is the same as for key findings 19 and 20.</p>
<p>22. PEKKA members will educate their sons over their daughters by a factor of 3:1 if forced to make a choice because of household income constraints.</p> <p>14% of the Indonesian population live below the Indonesian poverty line. More than half of the PEKKA members surveyed fall within this group. If an international poverty line of USD\$2 PPP was applied to this group of women, 79% of the PEKKA members surveyed would fall under this international poverty line.</p>	<p>PEKKA groups across the country will work to raise the awareness of PEKKA members of:</p> <ul style="list-style-type: none"> • the importance of education for girls as well as boys, and • the fact that girls of PEKKA members should not marry under the legal age of 16 years so that they may complete the nationally mandated nine years of education. <p>The PEKKA National Secretariat will encourage government and international donor programs to support community education centres and multi-year scholarship programs for girls that cover the total cost of educating a student.</p>



Annex 1

Extract from
Government of
Indonesia's Strategic
Plan for Universal Birth
Registration

Government of Indonesia’s Strategic Plan for Universal Birth Registration in Indonesia (Renstra 2011)⁷⁵

No.	Objective	Activity	Timeframe	Implementing Agency	Output
10. Exemption from court fees in the Religious or General Courts for obtaining documents evidencing the celebration of a marriage (for both Muslims and non-Muslims).					
I	Greater access to documents evidencing the celebration of a marriage (for both Muslims and non-Muslims)	Taking an inventory of married couples who lack documents evidencing their marriages	2009–2010	District and municipal governments	Inventory of married couples who lack documents evidencing their marriages
		Fee reductions or exemptions for obtaining such documents (for both Muslims and non-Muslims)	2010–2011	District and municipal governments	Lower cost of obtaining documents evidencing marriage

⁷⁵ Chapter 3, D Program Strategies, Departemen Dalam Negeri RI, Rencana Strategis 2011 | Semua Anak Indonesia Tercatat Kelahirannya (Renstra 2011) 2008.



Annex 2

Challenges and solutions in providing the mandatory nine years of education for the children of PEKKA members

The following table highlights comments from focus group discussions with PEKKA members in NTT on 24 June 2009 and meetings with teachers and principals from the sub-districts in NTT that were surveyed along with comments from the Head of the Education Department in Larantuka.

<p>Challenges facing PEKKA women in sending their children to school</p>	<p>Possible solutions/approaches to addressing these challenges suggested by PEKKA members, teachers and principals in NTT</p>
<p>1. Economic factors:</p> <p>Income of parents is low:</p> <ul style="list-style-type: none"> • Uniform and shoes are expensive, especially if there are a number of school-aged children. • Books are expensive (beyond the four textbooks provided by the BOS). • Children assist their parents by working and producing income for the family. 	<p>Build parents income through:</p> <ul style="list-style-type: none"> • capital to support business • business skills training, and • developing marketing networks. <p>Conduct advocacy programs with the government on the cost of uniforms (3-4 different uniforms are required) and the impact of this policy, especially for the poor. (For the NTT PEKKA members, the uniform costs account for over 40% of the annual cost of educating a primary school child.)</p> <p>Approach teachers and school committee to obtain scholarships (fee waivers) for the children of the poor. (For the NTT PEKKA members, school fees account for 23% and 26% of the annual cost of educating a junior and senior high school student respectively.)</p> <p>Approach the Education Department to obtain free books.</p> <p>Approach the Education Department to obtain free transport.⁷⁶ (This is especially important for senior high school students, as for the NTT PEKKA members transportation costs account for 35% of the annual cost of educating a senior high school student.)</p> <p>Fewer changes to the curriculum so that books can be reused for a few years.</p> <p>Approach government for a regulation on truancy.</p>

76 In 2007, the kabupaten government provided free transportation from PEKKA villages to the sub-district SMA.

Challenges facing PEKKA women in sending their children to school	Possible solutions/approaches to addressing these challenges suggested by PEKKA members, teachers and principals in NTT
<p>2. Little understanding of the long-term value of education</p> <ul style="list-style-type: none"> • Parents give priority to financing local cultural/ adat ceremonies ahead of their children’s education. • Children have little motivation/interest in going to school. • Negative influences of older children who do not go to school (gambling, smoking, drinking). • Less attention and support from parents in the child’s education. 	<p>Have more simple/less expensive adat ceremonies.</p> <p>Form after-school mentoring groups to meet on a regular basis. Provide interesting educational resources through community education centres.</p> <p>Give advice to children on the importance of education for their future:</p> <ul style="list-style-type: none"> • from parents • from local government through youth groups • from village adat institutions, and • from local leaders. <p>Parents to spend as much time as possible assisting their children to learn. (Bearing in mind that 17% of NTT PEKKA members surveyed never went to school and a further 51% did not complete primary school.)</p>
<p>3. Parents are migrant workers:</p> <ul style="list-style-type: none"> • Both parents, or • Only the mother. 	<p>Parents need to send home money for their children regularly otherwise grandparents or other family members caring for the children cannot continue their education.</p>
<p>4. Economic factors</p> <ul style="list-style-type: none"> • Junior high schools are far from the village and transport costs are expensive. Location of the junior high school is 12 kilometres from PEKKA members’ homes in Kelubagolit and Ile Boleng in NTT. • School fees are expensive. • Boarding house is expensive. 	<p>Approach the Education Department to obtain free transport.⁷⁷ (This is especially important for senior high school students. For the NTT PEKKA members, transportation costs account for 35% of the annual cost of educating a senior high school student.)</p> <p>Approach teachers and school committee to obtain scholarships for the children of the poor. (For the NTT PEKKA members, school fees account for 23% and 26% of the annual cost of educating a junior and senior high school student respectively.)</p> <p>Pool student travel (as larger numbers of students make the transition to junior high school) and use parental transport cooperatives.</p>
<p>5. Quality of teaching resources is limited and schools are not provided with electricity during daylight hours.</p>	<p>Provide schools with libraries, science laboratories, computers (and internet access), sports facilities and more books to make learning more interesting for children.</p> <p>Provide schools with electricity during daylight hours so that students can learn to use computers and other equipment that requires electricity.</p>

77 In 2007, the kabupaten government provided free transportation from PEKKA villages to the sub-district SMA.

Challenges facing PEKKA women in sending their children to school	Possible solutions/approaches to addressing these challenges suggested by PEKKA members, teachers and principals in NTT
<p>6. Those who obtain equivalency of junior high school/SMP (Packet B) are not accepted in public schools at senior high school/SMA.</p>	<p>Need an advocacy program with the Education Department to address this policy.</p>
<p>7. Quality and quantity of teachers is low.⁷⁸ Improve behaviour of teachers toward students —stop violence towards students from teachers.</p>	<p>Approach the government to improve the quality of the teachers. Invite protection officers for women and children (within the police) to socialise protection of students from violence.</p>
<p>8. Some children feel ashamed to be at school if they are much older than their peers.</p>	<p>Encourage and provide support for the three systems of education in Indonesia: Formal or vocational, informal/ education equivalency (Packet A,B,C); non-formal (home-schooling).</p>
<p>9. Parents prioritise boys' education over girls'.</p>	<p>In NTT, by a factor of 3:1, parents say they will educate boys over girls if they face financial or other constraints. (This can be seen in the SUSENAS data for East Nusa Tenggara and is particularly evident in the education statistics for junior and senior high school and beyond when education becomes significantly more expensive.) Raise awareness of income opportunities for educated girls; work with local religious and civic leaders.</p>
<p>10. Too few books/learning resources accessible to students in community education centres.</p>	<p>Need community education centres that are able to provide a wide range of books and IT resources to both children and adults in the formal and informal education systems. These centres would provide a focal point for after-school hours learning and mentoring from community members. For students whose parents have low educational levels, the community education centres would also provide educational support and a venue for seeking advice on homework, school projects and examination revision. (51% of NTT PEKKA women surveyed either never went to school or did not complete primary school.)</p>

78 Only 30% of Indonesian teachers have a university degree.



Acknowledgements and Study Partners

This access and equity study was supported by the Australian Government through the Indonesia Australia Legal Development Facility (IALDF), a joint Indonesian and Australian Government initiative.

The research study has been a collaborative effort coordinating five separate studies conducted over three years.

In this study, the issue of access to both the General and Religious Courts was also considered from the viewpoint of Indonesian female heads of household living below the poverty line. The study is indebted to the PEKKA NGO for supporting the two surveys of their members conducted in 2007 and 2009. Ibu Nani Zulminarni, PEKKA's National Coordinator, and all the PEKKA staff mentioned in the introductory pages of this document have contributed many days of their time undertaking the field research as well as analysing the results and developing the key findings and strategic response. The SMERU Research Institute, together with senior members of the PEKKA National Secretariat and PEKKA field workers, surveyed 600 PEKKA female heads of household in Aceh, West Java, West Kalimantan and East Nusa Tenggara. The data from this survey has been analysed by the SMERU research team lead by Bapak Akhmadi and the project is indebted to the SMERU Research Institute's expertise in poverty analysis.

This access and equity study could not have been undertaken without the support of Dr. Harifin A Tumpa, SH. MH., the Chief Justice of the Supreme Court of the Republic of Indonesia and the leadership of the two Directors-General for the General and Religious Courts: Bapak Cicut Sutiarno and Bapak Wahyu Widiani. The support of their colleagues in the Directorate-General for General Courts (*Badilum*) and the Directorate-General for Religious Courts (*Badilag*) has been unstinting. The case statistics included in this report are the result of the patient and meticulous support of the Statistics and Documentation Unit

for each of these jurisdictions. Wiwiek Awiati and Meissy Sabardiah at the Supreme Court Judicial Reform Team Office have helped to coordinate many aspects of this and other LDF activities, for which LDF is very grateful.

68 General and Religious Courts across 16 Indonesian provinces have been involved in the access and equity study over the last three years. I am particularly grateful to the Chief Judges and Registrars of these courts for their assistance throughout the study. While aware that the courts sometimes cannot satisfy all the needs of their clients, they have been open and transparent with the independent Indonesian research institutes and researchers that have conducted the study, and they have also provided many valuable insights on the practice of family law in Indonesia.

The surveys of 1040 Religious Court clients and 613 General Court clients were undertaken by the Centre for the Study of Islam and Society (PPIM) at the State Islamic University (UIN) Jakarta. Dr Jajat Burhanudin, Director of the Centre, has been the guiding hand behind ensuring that the survey data was collected by hundreds of researchers across dozens of locations in Indonesia and then entered and analysed in Jakarta.

The Family Court of Australia has supported the access and equity study through the interaction and engagement of judges, court administrators and staff, which takes place several times a year under the framework of an MOU between the Supreme Court of Indonesia, the Federal Court of Australia and the Family Court of Australia. IALDF would like to thank The Hon. Diana Bryant, Chief Justice of the Family Court of Australia and Richard Foster PSM, CEO, for their commitment to supporting the access and equity study and the on-going dialogue on family law issues between the Family Court of Australia and the Indonesian courts. This engagement has allowed key access and equity issues to be discussed by judicial colleagues on a Court-to-Court basis, which is

invaluable when looking at critical issues of providing universal access to family courts. Leisha Lister, Executive Advisor to the Family Court of Australia Chief Executive Officer, has provided significant technical expertise and direction to the access and equity study conducted over the last three years. The study has benefited from her extensive experience of client service delivery in the Family Court of Australia.

Ibu Siti Ruhaini Dzuhayatin, Director of the Women's Studies Centre, UIN Sunan Kalijaga in Yogyakarta and Professor Dr. Sulistyowati Irianto, from the University of Indonesia, Jakarta, provided valuable comments from a gender perspective on the court satisfaction questionnaires used in the 2007 Religious Courts survey and the 2009 General Courts survey respectively.

Simon Yos Sudarso and Dewi Novirianti were the lead technical researchers for the case file analysis conducted in 12 Courts in 2009. They lead research teams in each of the six geographic areas where the case file analysis research was conducted and also provided invaluable comments on the structure and content of the questionnaires used in this research. Indra Krishnamurti has provided dedicated assistance and advice on the court sampling selection process for the 2009 General Courts access and equity study and lead the team that processed and presented the case file analysis data. Simon Yos Sudarso has also played an instrumental role as both an interpreter and translator during this study.

A special thank you is owed to all the court clients as well as lawyers and legal aid institutes that took the time to participate in the access and equity study and provide their suggestions on how client services in family law and birth certificate cases in Indonesian courts could be improved.

Kamala Chandra Kirana, Scott Guggenheim, Robyn Phillips and Matt Zurstrassen provided comments on earlier drafts of this report for which I am very grateful. I would also like to thank Marco Fabri, Francesco Contini and Davide Carnevali at the Research Institute on Judicial Systems (IRSIG) in Bologna who generously shared information and experience in conducting client service surveys in the European civil law judicial context.

This study could not have been undertaken without the considerable efforts of the dedicated IALDF team in Jakarta. Two IALDF Team Leaders, Stewart Fenwick and Nenad Bago, Deputy Team Leader Bob Holland and Project Officer, Ibu Terria Lamsihar, have all been instrumental to the completion of this study. Professor Tim Lindsey, IALDF Chief Technical Advisor, has been a constant reference point throughout this study and has provided generous editorial comments on drafts of this document. GRM Project Managers Felix Yeboah and Mark Pruden as well as Erni Andriani have provided a solid institutional foundation for this and many other LDF activities.

Finally, a warm thank you to AusAID and particularly to its staff at the Embassy in Jakarta who have provided strong support and commitment to this and other activities conducted through the Indonesia Australia Legal Development Facility over the last five years.

Cate Sumner

Lead Adviser – Access to Justice/ Judicial Reform
Indonesia Australia Partnership for Justice Transition

April 2010



Photo credits

Cover Image	Regional Meeting of PEKKA in NTT (PEKKA)
Page viii	Early childhood education program run by PEKKA leaders in North Maluku (PEKKA)
Key Findings	(PEKKA)
Chapter 1	Idi Rayeuk Aceh (PEKKA)
P9	PEKKA Leaders managing scholarships for poor children in NTB (PEKKA)
P11	Idi Rayeuk (PEKKA)
P15	Langsa (PEKKA)
Chapter 2	Pidie, Aceh (PEKKA)
P19	Women judges from PA Giri Menang, NTB (T. Lamsihar)
P20	Mother and Child PEKKA Centre NTT (Cate Sumner)
P22, P24	(Cate Sumner)
P25, P27	(Cate Sumner)
P26	Circuit Court Cipanas (Leisha Lister)
P27	Public Primary School in Kelubagolit, NTT (Cate Sumner)
Chapter 3	Kuala Bate, Aceh (PEKKA)
P31	Makanan Sehat Aceh Besar (2) (PEKKA) and Idi Rayeuk, Aceh (PEKKA)
P35	PEKKA community centre in Kelubagolit, NTT (Cate Sumner)
P36	Circuit Court Cipanas (AusAID & Leisha Lister)
P37	Textiles of PEKKA members from NTB (Cate Sumner)
P44, P48 (left)	Market in Kelubagolit, NTT (Cate Sumner)
P47, P48 (right)	PEKKA Weavers (Cate Sumner)
P49, P52	Members and their children in Sukarara, Central Lombok (Cate Sumner)
P51, P53	PEKKA members and their children, Lombok (Cate Sumner)
Chapter 4	Children in Wlahar village near Brebes (Cate Sumner)
P60, P67	FGD on education with PEKKA members from Kelubagolit and Ile Boleng, NTT (Cate Sumner)
Annex 1	Women at Cipanis Circuit Court (Leisha Lister)
Annex 2	(AusAID)
P76	Acknowledgements and Study partners: Woman at Cipanis Circuit Court (Leisha Lister)



Access to Justice: Empowering female heads of household in Indonesia



Australia Indonesia Partnership

Kemitraan Australia Indonesia



FAMILY COURT OF AUSTRALIA

INDONESIA • AUSTRALIA
L·D·F
LEGAL DEVELOPMENT FACILITY



PPIM
Pusat Pengkajian Islam dan Masyarakat
Center for the Study of Islam and Society
UIN Jakarta

LEMBAGA PENELITIAN
SMERU
RESEARCH INSTITUTE