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**Looking beyond the state: aid and
governance support to the local
level in Timor-Leste**

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Executive summary

As independence the Timor-Leste state was shallowly-rooted and poorly-understood, as centralized state institutions were absent from the lives of the more than 70% of Timorese people who live in rural areas. Instead, many Timorese people continued to live accordingly to local socio-political practices and institutions; they essentially lived 'outside' the state and received almost no state services. Although the Timor-Leste government has begun to engage with local governance institutions and justice mechanisms since 2004, and service delivery in rural areas has improved, more should be done to decentralize power and functions to the local level.

Focusing Australian aid and governance support on building centralised state institutions in Timor-Leste may not be the most efficient or effective use of Australian development assistance. Instead, there is strong evidence to suggest that Australia should look beyond the state, to the often effective and locally-legitimate local practices and institutions that lie beneath. By expanding the focus of Australia's assistance to the local level and supporting increased decentralisation, Australia may assist the Timorese people to build their state from the ground up, embedded on strong, local foundations.

Introduction¹

In 1999 Australia led the international response to the crisis that engulfed the Timorese people after they overwhelmingly voted to regain their independence. Australia has since taken a leading role in efforts to build the Timor-Leste state.

Reflecting wider international trends, state-building in Timor-Leste initially focused on building centralised state institutions capable of maintaining law and order, governing the people and delivering public goods and services. Given the significant level of destruction experienced in Timor-Leste (74% of buildings and infrastructure was destroyed in the violence that followed the 1999 vote),² the progress that Timor-Leste has made suggests that it is a state-building success story, for which Australia can claim some credit.

However, Timor-Leste has experienced challenges, including a major security crisis in 2006 that necessitated an Australian-led stabilisation force, and the attempted assassination of its President in 2008. There is also evidence that for several years after independence in 2002 centralised state institutions were shallowly-rooted and poorly-understood, as they were absent from the lives of the more than 70% of Timorese people who live in rural areas. Instead, many continued to live accordingly to local socio-political practices and institutions; they essentially lived 'outside' the state and received almost no state services.

This suggests that focusing Australian aid and governance support on building centralised state institutions in Timor-Leste may not have been, and may not still be, the most efficient or effective use of Australian development assistance. Instead, there is strong evidence to suggest that Australia should look beyond the state in Timor-Leste, to the often effective and locally-legitimate local practices and institutions that lie beneath. By expanding the focus of

¹ This submission is based on: Joanne Wallis, 'A liberal-local hybrid peace project in action? The increasing engagement between the liberal and local in Timor-Leste', *Review of International Studies*, Vol. 38, Iss. 4, 2012, pp. 735-761.

² UNOHCHR, *Report of the International Commission of Inquiry on East Timor to the Secretary-General*, UN Doc. A/54/726, S/2000/59, 31 January 2000.

Australia's assistance to the local level and supporting increased decentralisation, Australia may assist the Timorese people to build their state from the ground up, embedded on strong, local foundations.

Local-level governance

Although state-building efforts have focused on centralised state institutions, the Timor-Leste Constitution does require the decentralisation of political³ and administrative⁴ powers and functions to local-level governments.

The progress of political decentralisation has been slow. A Local Development Programme ran from 2004 until 2006, which saw pilot 'local assemblies' established in eight of Timor-Leste's 13 districts. That was followed in 2007 by the Local Governance Support Programme. This Programme has designed policy guidelines to manage the introduction of a single tier of local government, whereby the existing districts and 65 sub-districts will be merged into 13 municipalities.⁵ It is intended that the municipalities will be delegated responsibility over certain service delivery functions, and that they will coordinate with the *sucos*. While the government mooted holding the first municipal elections in October 2010, they have been delayed until at least 2014. The primary reasons for this delay are a lack of political consensus and concern about the slow progress of local capacity-building.

The progress of administrative decentralisation has also been slow, with limited powers and functions decentralised to centrally-appointed administrators in the districts and sub-districts. In 2004 the Timor-Leste government recognised that it was not yet able to permeate rural areas, and that many local socio-political institutions continued to perform governance functions, ensure order and provide the social support network. As a result, it sought to engage with local socio-political institutions which were centred around Timor-Leste's 442 villages (*sucos*) and 2,225 hamlets (*aldeias*). Democratic elections were introduced for *aldeia* chiefs, *suco* chiefs and *suco* councils (comprising the *suco* chief, *aldeia* chiefs, two women, two young people (one male, one female) and one elder).⁶ *Suco* chiefs were empowered to 'lead activities' in a very broad range of areas, including: 'peace and social harmony'; 'food security'; 'protection of the environment'; 'education, culture and sports'; and 'maintenance of social infrastructure'. The *suco* council was empowered to 'promote debate on, and the planning, follow-up, and control of, activities to be carried out in the *suco*'.

After a change of government, in 2009 an amendment to the law saw *suco* chiefs become known as *suco* leaders, although the range of activities in which the *suco* leader was entitled to exercise power remained virtually the same. The mandate of *suco* councils was also clarified and enhanced, including giving the council increased power over planning, monitoring and undertaking social infrastructure and development projects. The new approach also provided that *suco* leaders and council members should receive 'an incentive', including an allowance and fees to attend meetings, and that the government would provide *sucos* with 'material and financial resources with a view to ensuring their

³ *Constitution*, section 72(1).

⁴ *Ibid.*, section 5(1); section 71(1).

⁵ *Decentralisation and Local Government in Timor-Leste – Policy Orientation Guidelines for Decentralization and Local Government in Timor-Leste* (Dili: Ministry of State Administration and Territorial Management, March 2008).

⁶ *Decree Law on Community Authorities No. 5/2004* (2004); *Law on the Election of Suco Chiefs and Suco Councils No. 2/2004* (2004).

proper functioning and development'.⁷ In 2009/2010 the new government also introduced the *Pakote Referendum*, which decentralised capital works projects, such as the building of schools, roads and health clinics, to the district level. In 2010/2011 it introduced the *Pakote Dezenvolvimentu Desentralizasaun* to decentralise development programs, such as water, sanitation and housing, to the *suco* level. In December 2010 the government held a meeting of all 442 *suco* leaders to discuss plans for further decentralisation.

The quality of local decision-making and development under the decentralised system has differed, because under the 2004 law the powers given to *suco* leaders and councils were broad and ill-defined. In addition, the capacity of *suco* leaders to plan and implement projects varied, and until 2009 few resources were devolved to the local level. There was also limited oversight provided by the state government. The fact that the government has since attempted to increase decentralisation, clarify the law and improve the operation of local actors, suggests that it recognises that many Timorese people closely identify with local institutions, and that linking the government to these institutions might in turn encourage them to develop a sense of identification with centralised state institutions.

This suggests that Australia aid and governance support should be directed towards assisting increased decentralisation in Timor-Leste, as this could help to make centralised state institutions work through local socio-political institutions. This approach recognises the reality that, while local institutions have their faults, they are often the only institutions available that are capable of performing governance functions, ensuring order and delivering social support. Decentralisation may also increase the accountability of political leaders and the responsiveness of government to local demands, and deliver better quality community infrastructure at a lower price.⁸ Each of these benefits may, in turn, help to increase the Timorese peoples' faith and trust in their centralised state institutions, and therefore strengthen the Timor-Leste state.

The benefits of decentralisation should not be overstated, and it can raise difficulties. Local elites may not necessarily be more responsive than central state institutions, although local socio-political practices which emphasise consultation and consensus-building remain strong in Timor-Leste. Central government resistance can also lead to unequal or ineffective decentralisation, and decentralised governments can be costly and face capacity limitations.

However, since the Timor-Leste government has formalised local institutions there seems to be a strong argument for Australia's aid supporting the decentralisation of greater power and resources to them, so that they are able to perform their role. Keeping in mind the difficulties posed by decentralisation and the variable performance of these institutions to date, Australia should encourage the Timor-Leste government to ensure that this is accompanied by state regulation, including through providing clearer job descriptions for *suco* leaders and council members and by clearly delineating the activities for which they are responsible, in order to ensure consistency across *sucos*. Australia should also draw on its long experience of local government to assist the Timor-Leste government to develop the capacity to oversee local institutions, in order to: hold *suco* leaders and councils

⁷ *Law on Community Leaderships and Their Election No. 3/2009* (2009), section 16.

⁸ World Bank, *World Development Report 2004: Making Services Work for Poor People* (Washington: World Bank, 2004).

accountable for their performance; check that leaders are representing and consulting their people; and confirm that leaders are following the law.

Local-level law and justice

In Timor-Leste the main centralised state justice institutions, the *Policia Nacional de Timor-Leste* (PNTL) and the courts, are also almost entirely absent from rural areas and functioning at only limited capacity in Dili and other urban centres. As a result, many Timorese continue to rely on local justice systems to settle disputes and perform basic law and order functions. Therefore, while many Timorese are aware of the state justice system⁹ and believe that it does have the potential to provide justice,¹⁰ they cite inaccessibility, delay and high costs as disincentives to utilising it.¹¹ In contrast, local justice mechanisms are perceived to be more sensitive to local contexts, and to meet the practical considerations of accessibility, timeliness and affordability. Indeed, a 2008 survey found that Timorese are five times more likely to identify community leaders, rather than the PNTL, as the individual/institution with primary responsibility for maintaining security in their locality.¹² This is also partly due to the type of crimes that occur, as in rural areas levels of serious crime remain low. Instead, the most common offences are theft, land grabbing and gender violence, which community leaders have traditionally played an important role in resolving.

As the rule of law and state justice institutions remain weak, the state has pragmatically decided to engage with local justice mechanisms. The same law that sought to engage with local political institutions also empowered *suco* chiefs to 'provide for the creation of grassroots structures for the resolution and settlement of minor disputes' and to 'promote the creation of mechanisms for the prevention of domestic violence'.¹³ This law was amended in 2009, but the powers given to *suco* leaders remained the same.¹⁴ This approach is in accordance with the Constitution, which provides for a law to be made to 'institutionalise means and ways for the non-jurisdictional resolution of disputes'.¹⁵

Although many Timorese exhibit a preference for local justice mechanisms, they should not be accepted uncritically, as there are concerns over: the neutrality of decision-makers; the consistency of decision-making; and the treatment of women, particularly in cases of sexual assault and domestic violence. Indeed, while local justice mechanisms remain the preference for minor matters, survey evidence reveals an increasing preference for

⁹ Avocats Sans Frontieres, *Access to Legal Aid in Timor-Leste – Survey Report* (Dili: Avocats Sans Frontieres, 2006).

¹⁰ Asia Foundation, *Law and Justice in Timor-Leste: A Survey of Citizen Awareness and Attitudes Regarding Law and Justice 2008*, Dili, Asia Foundation, 2009.

¹¹ *Ibid.*; Avocats Sans Frontieres, *Access to Legal Aid*; JSMP, *Key Themes in Legal Development: A JSMP Retrospective, 27 April 2001 – 27 April 2008* (Dili: Judicial System Monitoring Programme, 2008); UNDP, *Strengthening the Justice System in Timor-Leste Programme – Independent/External Mid-Term Evaluation Report* (Oslo: United Nations Development Programme and the Norwegian Agency for Development Cooperation, 2007); USAID, *The Crisis in Timor-Leste: Causes, Consequences and Options for Conflict Management and Mitigation* (Dili: USAID, 2006).

¹² When members of the public were asked 'Which institution/individual has primary responsibility for maintaining security in your locality?', 38% identified their *suco* (village) chief; 19% identified community leaders; and 18% identified elders. Therefore, a total of 75% of respondents identified community leaders, as compared to 15% who identified the PNTL. Asia Foundation, *A Survey of Community-Police Perceptions: Timor-Leste in 2008* (San Francisco: Asia Foundation, 2008), p. 23.

¹³ *Decree Law on Community Authorities*, section 3.

¹⁴ *Law on Community Leaderships and Their Election*, section 11.

¹⁵ *Constitution*, section 123(5).

centralised state justice institutions for serious matters (such as murder).¹⁶ Yet even when serious matters are referred to the state justice system, the police often encourage victims to seek recourse through local justice mechanisms and informal mediation. There are reports that Timorese judges now informally incorporate customary compensation payments into their sentences,¹⁷ in a move described as 'legal pragmatism'.¹⁸ There is also an increasing willingness to recognise out-of-court agreements reached through local justice mechanisms.¹⁹

There is the risk that the formal recognition of local justice mechanisms may undermine the establishment of the rule of law. The principle of the rule of law requires the universal and consistent application of the law by a formal regulatory system in which there is a clear hierarchy of law. As local justice systems coexist with state justice institutions and often enforce customary, rather than state, law this results in legal pluralism. This could have a detrimental effect on the rule of law, since it may result in inconsistent decision-making. Indeed, *sucu* leaders sometimes reach different decisions in similar cases, or are perceived to be biased.²⁰

To deal with the challenge posed by legal pluralism, Australia could assist ongoing efforts in Timor-Leste to formally recognise customary law, as this would provide some certainty concerning the content and hierarchy of laws. Australia could assist the work of the Ministry of Justice, which in cooperation with the UNDP began developing a draft *Customary Law* in 2008. There are a number of difficulties when seeking to identify elements of customary law that are sufficiently common and certain to be codified, since it is generally oral, constantly evolving and highly localised between groups. Despite this, consultations on the draft *Customary Law* found that, while local practices were diverse in terms of language and dialects, most handled things in the same way. Therefore, while codifying customary law is difficult, it at least provides a degree of the consistency and uniformity required to help entrench the rule of law. Moreover, Australia can draw on its experience of indigenous local justice mechanisms and customary law to inform its assistance to Timor-Leste. For example, in Australia local justice actors are involved in court decision-making in cases involving indigenous persons and local justice sanctions are taken into account by the courts. These experiences may offer valuable lessons that Australia can pass on to Timor-Leste.

Another difficulty of formally recognising local justice mechanisms is the question of whether they comply with liberal human rights standards. In Timor-Leste there are concerns over the neutrality of local justice decision-makers, the consistency of their decision-making and their treatment of women, particularly in cases of sexual assault and domestic violence.²¹ For example, a 2008 survey revealed that 58% of respondents disapprove of women being able to speak for themselves in local justice mechanisms.²² However, the Constitution specifies

¹⁶ Asia Foundation, *Law and Justice in Timor-Leste*; Avocats Sans Frontieres, *Access to Legal Aid*.

¹⁷ Asia Foundation, *Law and Justice in Timor-Leste*.

¹⁸ USAID, *Rule of Law in Timor-Leste* (Dili: Freedom House, USAID and the ABA Rule of Law Initiative, 2007), p. 24.

¹⁹ JSMP, *The Interaction of Traditional Dispute Resolution with the Formal Justice Sector in Timor-Leste* (Dili: Judicial System Monitoring Programme, 2005).

²⁰ Spencer Zifcak, *Restorative Justice in East Timor: An Evaluation of the Community Reconciliation Process of the CAVR* (New York: Asia Foundation, 2004), p. 51.

²¹ UNOHCHR/UNMIT, *Facing the Future: Periodic Report on Human Rights Developments in Timor-Leste, 1 July 2009-30 June 2010* (Dili: United Nations Office of the High Commissioner for Human Rights and UNMIT, 2010).

²² Asia Foundation, *Law and Justice in Timor-Leste*.

that 'local norms and custom' must only be taken into account to the extent that they are not 'contrary to the Constitution'. Consequently, they are subject to the human rights protections enshrined in the Constitution, although these mechanisms are admittedly weak. To address this issue Australian aid could assist the Timor-Leste government to develop the capacity to supervise local justice mechanisms, such as through reviewing whether the penalties imposed in local mechanisms are proportionate and comply with the human rights protections enshrined in the Constitution. Australia could also assist with educational programs to help communities adapt their local justice mechanisms to reflect the human rights protections contained in the Constitution.

Conclusion

Although the Timor-Leste state has achieved an impressive amount of progress since it regained independence in 2002, the capacity of centralised state institutions to reach the primarily rural population remains relatively limited. This suggests that Australian aid and governance support directed at centralised state institutions might have had, and may continue to have, a limited impact on most Timorese peoples' lives. Instead, to maximise the effectiveness and efficiency of its aid and governance assistance, Australia should look beyond centralised state institutions, and focus on the local socio-political practices and institutions that are most relevant to the majority of Timorese peoples' lives. Directing Australian aid and governance support to decentralizing powers and functions to these already-existing and often highly-legitimate local practices and institutions may assist the Timorese people to build their state from the ground up, embedded on strong, local foundations.